

Digital assets: what happens to them when I die?



Increasingly, we are living our lives in a digital age, where more and more assets are held intangibly online, rather than physically. This briefing note considers in broad terms what you need to do to ensure these digital assets are dealt with in accordance with your wishes.

At a glance

- “Digital asset” includes all content, files and accounts created and stored online or on computers, smartphones and tablets etc
- For many (but not all) types of digital asset, the individual does not actually own the asset; he merely has a licence to use a website’s services and so there may be no interest which can be passed onto family and friends
- It is crucial to review online information and assets on a regular basis.
- Importantly, you should not instruct anyone to access your online accounts after you have died (unless this is authorised by the website) or leave them a list of login details.
- Our advice regarding dealing with online assets may depend on whether the assets merely have a sentimental value or whether they have a monetary value eg where intellectual property rights might be exploited.

- Bitcoin (a type of digital currency) and other cryptocurrencies.

Can all digital assets be bequeathed on death?

Some assets are not actually owned by the individual, rather, the individual has a licence to use a website’s services. A licence is generally personal to an individual and therefore cannot be transferred and so will terminate on death. For example, an iTunes account is not transferable on death as individuals merely have a licence to access music and videos.

For many types of digital assets, the individual, on opening the account with the Internet Service Provider (“ISP”), will have accepted terms and conditions of use set out in a Licence Agreement. This agreement should set out what will happen to the asset on death and whether there is any continuing interest that can be passed on to family and friends.

What is a digital asset?

Digital asset is broadly defined and includes all content, files and accounts created and stored online or on computers, smartphones and tablets etc.

Examples of digital assets include (but are not limited to): Music downloaded from iTunes and stored on a computer.

- Your e-mail, Facebook and Twitter accounts
- Photographs and videos stored on a computer or other digital device.
- Online gaming accounts eg Xbox Live.
- Online bank accounts.
- Accounts with trading sites eg Ebay.
- Accounts with internet payment sites eg Paypal.

What should I do in relation to my digital assets?

All clients should review online information and assets including:

- Reviewing what assets and information you hold digitally in online accounts and making a hard copy list of those assets for your executors (without login details).
- Telling your chosen executors of the existence of the list, or keeping it with your will.

Reviewing the information and assets held in online accounts and considering how they should be administered following death. Items to consider may include:

- photographs and videos (see Photographs and videos);
 - information stored in emails (see Emails); and
 - intellectual property in blogs, domain names, gaming avatars, online books and other original works (see Intellectual property).
- Reviewing the terms and conditions agreed to when creating online accounts. There may be specific terms on which assets will be administered on death or if there is no activity on an account for a long period of time.
 - Reviewing whether any websites you use have a facility which allows another person to download your data on your death. The main examples are Google Inactive Account Manager and Facebook Legacy Contact. You will need to decide who you want to be able to access your data (if anyone) and agree to this in advance;
 - Printing off hard copies, burning to CD or downloading onto a USB stick any photographs and documents that are only stored digitally and keep them in a safe place where your executors can find them.
 - Retaining copies of key documents and data on a personally owned device (such as a laptop, tablet or personal computer), rather than storing them solely online. Downloading or keeping copies of assets on an external hard drive or on a USB stick, for example, may enable executors to access and print off assets more easily.
 - Regularly reviewing any instructions or wishes communicated to executors in any letter of wishes concerning online assets or information.

Many websites' terms and conditions prohibit you from passing on your login details to other people. Executors who log on to your online accounts using your username and password after your death may be committing a criminal offence under the Computer Misuse Act 1990. You should not instruct anyone to access your online accounts after you have died (unless this is authorised by the website) or leave them a list of login details.

There are some websites which make specific provision for another person to receive data from your account after your death, if you agree to this in advance. For example, Google Inactive Account Manager and Facebook Legacy Contact allow you to nominate another individual to receive some data from your accounts after your death.

Other websites will not allow another person to access your data even after death, though they will often close the account if provided with a copy of the death certificate. Data held by those websites will be lost unless backed up regularly in a format which your executors can access.

Particular assets: issues to consider

Photographs and videos

- In the majority of cases, photographs and videos will only have a sentimental value therefore they may be only of interest to family and friends. Consider whether these assets should be left as part of a general gift of personal possessions or under a specific gift. If you are leaving a laptop or mobile telephone to a named individual, remember that this may contain photos or videos.
- In some cases, you may need to consider whether any photographs or videos have more than a nominal monetary value so that valuable copyright attaches to them. Any intellectual property rights may need to be the subject of a separate gift with separate executors appointed to administer them.
- Create hard copy albums of photographs of particular sentimental or monetary value, if necessary, so they are more easily accessible to executors on death and are less likely to be lost or destroyed.
- Photographs and videos that might cause distress to family members if they are seen, should be destroyed by you. Be aware that executors (in their role as fiduciaries) may not be able to follow instructions to destroy items after death if this could lead to a reduction in the value of the estate.
- Twitter will remove imagery of deceased individuals in certain circumstances but may not be able to comply with all requests from family to delete images if their newsworthiness

means that this would not be in the public interest.

- You should leave instructions for executors about confidential photographs and videos while being aware that those instructions may not be followed.

Emails

- Consider whether any sensitive or confidential information is stored in emails and whether access to these emails by family members after death would cause distress. If so, you may need to delete the sensitive information during your lifetime if there is a risk of another person obtaining access to the account. Your executors may have a duty not to follow any instructions to destroy information.
- Consider whether emails should be printed off and kept in hard copy or stored in an electronic format which your executors can access if they hold valuable content. This may involve consideration of intellectual property (IP) issues where the contents have a monetary value rather than purely a sentimental value.
- If the client owns a business, access to emails may need to be handled carefully. Consider who within the business, and apart from the personal representatives, may need to have access to your email account in the event of your death. This should be part of a wider discussion about business succession planning.
- If you store sensitive business information online (such as client or contact lists) a hard copy may need to be printed off and retained, or stored on a USB stick in case it is difficult to access the information online following death. This may be vital to ensure business continuity.

Intellectual Property

- If assets held online have more than a merely sentimental value you should consider including them in a separate legacy with separate executors to deal with IP issues.

Will drafting

We will discuss with you how you would like your assets or information held online to pass under the terms of your will. Our advice may depend on whether the assets merely have a sentimental value or whether they have a monetary value eg where IP rights might be exploited.

Conclusion

This is a rapidly developing area of law. There is no definitive answer as to how your digital assets will be dealt with on your death, as no 2 ISPs are the same. It is therefore crucial to ensure that assets and information held digitally are reviewed on a regular basis and that your Will deals with them adequately.

For further advice, please contact a member of the team.

Meet our experts

Our experienced team operates nationwide. For further advice, please get in touch with your local contact.



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