

A CLIENT GUIDE: DIGITAL ASSETS, PLANNING FOR WHAT HAPPENS WHEN YOU DIE

WHAT ARE DIGITAL ASSETS?

The term “digital assets” refers to the possessions you access on a digital device such as a laptop, mobile phone, tablet or personal computer. They are normally accessed via an online account run by a third party provider such as Google, Facebook, Netflix, Apple, Microsoft or Amazon. Examples of digital assets are digital photos, digital music tracks or videos that are stored online and accessed by logging into a personal account with the provider. Other examples are emails, conversations in social media, online games and online family ancestry databases (which could include family photos, videos and even DNA test results).

Most people also access actual assets and services such as money in a bank account, loans on credit cards, pension funds, investment portfolios, and utilities such as gas and electricity via online accounts. Although the underlying asset or service is not a digital asset, access is controlled via a digital portal by typing in a username and password.

Maintaining access to online accounts is essential for either financial or sentimental reasons. It is very important to plan what will happen to your online accounts when you die. Imagine if, following your death, family and friends were unable to access your documents and photographs, and that the companies running the platform where they are held permanently deleted your digital assets. This is what could happen if you do not make plans now to enable your executors to access the assets on your death.

HOW SHOULD I PLAN AHEAD TO DEAL WITH MY DIGITAL ASSETS?

Review what you have

The first and most important step is to review what assets and information you hold digitally in online accounts. Make a list of logins and passwords for all online accounts. Please ask me for a standard log for recording the information if you need one.

It is very important that you store this list **securely** as a hard copy and keep it up to date (consider reviewing it every six months). If you would like me to store the log for you please let me know so that I can arrange for it to be kept in our strong room. Alternatively, you could use a commercial password manager as a gateway for all your passwords. Please ask me for details if you would prefer this option.

You should tell executors of the existence of the list and where it is stored (but do not give it to them). Do not give this information to anyone else. In particular, never share PIN numbers or other information relating to a bank account.

Find out what will happen to your digital assets when you die

After you have reviewed what digital assets you have, the next step is to clarify what will happen to those assets when you die if you do nothing. For each online account review the terms and conditions you agreed to when creating the account. 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. Be aware that some internet service providers (ISPs) will permanently destroy your digital assets after a period of inactivity if someone such as an executor does not intervene. I can provide you with details of the standard terms and conditions for the most frequently used accounts if you would find this helpful.

Consider choosing an account nominee to take over control of certain aspects of your account where the ISP offers this facility. Currently the only ISPs offering this are Facebook (you can nominate a legacy contact), and Google (you can nominate an Inactive Account Manager).

Memorialising social network accounts

Some social media platforms, such as Facebook, allow the accounts of deceased account holders to be memorialised. Essentially, the account is frozen so that no one can log into it. Only verified friends and family can then see the deceased's profile or locate it in a search. Friends and family can post comments to the deceased's page in remembrance of them. Once memorialised an account cannot be accessed or unlocked. If you would like any social media accounts to be memorialised, give written instructions to executors, or your other chosen nominee. Review these instructions regularly. Executors could be instructed to leave a particular message for followers or friends. Consider whether such a message should be posted on personal pages on social media and who should be able to see them.

Create hard copies

If you are concerned about your accounts being deleted after a period of inactivity you may want to print off hard copies, burn to a CD or download onto a USB stick any photographs and documents that are only stored digitally and keep them in a safe place where executors and family can find them.

Another option may be to retain downloaded copies of key documents and information 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, may enable executors to access and print off assets more easily. Some ISPs offer a link to a downloadable file containing everything you have uploaded on an account. This can be a useful way of taking a snapshot of what an account contains.

Access to your devices

Equally important is securing access to your laptops, PCs, mobile phones and any household devices controlled remotely (the Internet of Things). Make a note of passwords and login details for your devices so executors can gain access to information and assets stored on them when you have died. Executors may need to access information held on your devices to complete tax returns or when administering your estate after you have died. This is particularly important for Apple devices because Apple implements particularly strong safeguards to protect account holders' data from falling into the wrong hands. This could mean that it is impossible to unlock an Apple device without the log in ID and password even if executors make a request to Apple.

PLANNING POINTS FOR PARTICULAR TYPES OF DIGITAL ASSET

Photographs and videos

In most cases, photographs and videos will only be of sentimental value and they may only be of interest to family and friends. Consider whether these assets should be left as part of a general gift of personal possessions or as a specific gift in your will.

In some cases, your photographs or videos may 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 in your will with separate executors appointed to administer them.

Consider creating hard copy albums of photographs of particular sentimental or monetary value, if necessary, so they are more easily accessible to executors or family on death and are less likely to be lost or destroyed.

Consider whether any photographs and videos might cause distress to family members if they are seen. You should consider whether they should be destroyed in your lifetime. Be aware that your executors may not be able to follow instructions to destroy items after death if this could lead to a diminution of the value of the estate and possible legal action by your family. You should consider leaving instructions for your executors about any photographs or videos you would prefer to be kept confidential. However, be aware that those instructions may not be followed.

Music tracks

Control of music accessed online (either via a subscription service or paid for per track) usually rests with the ISP (such as Spotify or Apple in the case of iTunes) so that you will only have a licence to listen to your online music tracks. This means that, when you die, the licence comes to an end and the music tracks can no longer be accessed. If you have set up a sharing facility to enable other members of your family to access tracks, they may be denied access after you have died if you are the organiser or main account holder. Apple's iTunes allows you to burn some of your licensed content to CD. Strictly speaking, the terms of the licence will not extend beyond your death so that family members may be infringing Apple's terms and conditions if they continue to listen to downloaded tracks on CD.

Bearing all this in mind, if you would like friends and family to have information about the music you enjoy (for example, if you would like a particular track to be played at your funeral or memorial service), you should consider making a manual, hard copy list and retain it with your papers.

Loyalty points

Points on loyalty schemes such as the Tesco Clubcard or Nectar card can mount up. The terms and conditions of some schemes allow these points to be passed on to others after you die either by will or by written request to the scheme administrator. You should check the terms for each scheme to make sure. Some schemes may provide that any points are lost when you die. If points cannot be passed on you may want to consider using them up as you go along rather than allowing them to build up. Let me know if you would like to provide a gift of any loyalty points in your will.

Emails

Consider whether any sensitive or confidential information is stored in your emails and whether access to these emails by family members after death would cause distress. If so, you should consider deleting sensitive information during your lifetime rather than leaving it to your executors as they may have a duty not to follow instructions about destruction after your death.

Consider printing off emails and keeping them in hard copy if they hold valuable content. This may involve consideration of intellectual property issues where the contents have a monetary value rather than a purely sentimental value.

[If you run your own business you should plan for what will happen to your business emails and other information held online after you have died. This is a vital part of succession planning for your business. Your business emails may need to be handled particularly carefully. Consider who within the business, and apart from your executors, may need to have access to your business email account in the event of your death. 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 after you have died or lost capacity. This may be vital to ensure business continuity. You should discuss what should happen to business email accounts and sensitive business information in the event of your death with your business partners.]

Intellectual property

If any assets you hold online have intellectual property rights attached to them (such as original literary or other artistic works like books or paintings) consider including them in a separate legacy in your will with separate executors to deal with succession to and exploitation of those rights. Please discuss this with me if you think it applies.

Crypto-currency

If you hold crypto-currency such as Bitcoin or Ethereum, you should note down details of the public and private keys held in any digital wallets and arrange for the details to be stored securely. You may want to include a specific legacy in your will to deal with your holdings. This will also help to alert your executors to the existence of the holding so that they can take action after you have died to secure control. If your executors do not have the necessary expertise to administer your crypto-currency, consider appointing separate executors with relevant knowledge and skills to take control of and deal with your holding after you have died. Please discuss this with me if you think it applies.

CASE STUDIES: WHAT MIGHT HAPPEN IF I DO NOTHING?

Albert

Albert is a professional photographer who has also produced commercial videos for advertising. He posts most of his photographs on Instagram and Facebook to market his business. He has a separate account on Flickr where he and his wife and children post and share personal photos. He also has two Twitter accounts, one for his business and one for posting personal photos, opinions, tweets and retweets. He has two email accounts, one of which is personal and one of which he uses for his business. Albert has an Apple iPhone which he uses both for business and personal calls. He can access his business and personal emails from his mobile. He also has a PC at home where he stores his photographs on the hard drive as well as in an iCloud account which he syncs regularly. He uses an Apple iPad when he is out and about on business and can access all his emails, online accounts and photographs from the device.

Albert is killed in a car accident and has not considered what would happen to his digital assets. His executors are his wife and his daughter. They don't have Albert's current username and password for his Apple devices so cannot access his Apple iPhone, Apple iPad or anything he accessed from his PC that is stored in iCloud. They contact Apple but are told that there is nothing they can do without production of a "court order". Apple are not satisfied with a copy of Albert's death certificate or the grant of probate. Albert's wife and daughter can only access the photographs Albert stored on the hard drive of his PC as they cannot get into his phone or tablet.

Bart

Bart is a keen online gamer. He particularly likes to play Cadcraft, a popular game with participants all over the world. The game involves creating personalised avatars and trading personalised costumes and weapons for virtual characters. Bart has spent several years designing unique costumes for his main avatar Boris. He recently sold a spear designed for Boris for £2,000. Bart has built a reputation amongst the Cadcraft community for creating stylish weapons and outfits. He has also developed a YouTube channel as a spin off from his Cadcraft gaming where he discusses his plans for new costumes and avatars and where he hosts livestreams and tutorials. He currently has three million followers and also has an associated Patreon account, which generates an income of £20,000 a year.

Bart has been trading Peachycoin, a crypto-currency, for several years. Although the currency is extremely volatile, Bart reckons that his current holding would be worth £500,000 if it were converted into ordinary currency. He accesses his Peachycoin via a hot wallet connected to the internet and stores details of his private and public keys on his Apple iPhone.

Bart is killed in a plane crash while travelling to a Cadcraft convention in California. He has not made a will or thought about what will happen to his digital assets if he dies. His parents are entitled to his estate under the intestacy rules but cannot access his Cadcraft account because Bart did not leave details of his username and password. When word spreads that Bart has died, other Cadcraft gamers copy Bart's designs and trade them online. Bart's parents are unable to realise any monetary value from his online accounts or download any images to remind them of their son's creative ability. His parents know nothing about Bart's Peachycoin holding. They are unable to access his Apple iPhone and so do not know about his hot wallet or the public and private keys. All the data on the Apple iPhone is wiped off when the device is reset to factory settings before his parents sell it on.

Caroline

Caroline primarily uses her Facebook account to keep in touch with her children and grandchildren as they are spread all over the world. Caroline has built up a small business on Etsy where she sells Apple iPad covers made out of Harris tweed, which are particularly popular with Americans and Canadians.

Caroline has made a will and has given some thought to her digital assets when doing estate planning. She would like her daughter in the UK to take over her Etsy business. Caroline has included a gift of the business, including her trading name and her contacts list in a specific clause in her will. She stores all the usernames and passwords for her online accounts with CrystalClear Manager a password manager that is particularly rated for being cyber secure. She stores details of her account with CrystalClear with her will which is held in her solicitor's strong room. She has informed CrystalClear that her executors are her husband and her daughter and that her daughter and her son are her attorneys under a lasting power of attorney.

Caroline dies unexpectedly when she falls overboard while sailing on the ferry to Harris from Oban. Her executors secure the goodwill and value associated with her business relatively quickly because they can access her Etsy shop immediately. Etsy cannot give the executors continued access to the account once they know that Caroline has died but are prepared to pass certain information to Caroline's executors once they have seen a copy of the grant of probate. Caroline's daughter is able to carry on Caroline's business which is a great comfort to her and acts as a continuing memorial of her mother's talents.



If you have any questions, please feel free to get in touch :-)

Ella Millett