

Estate Planning for Digital Content



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Gone are the days when it was relatively easy to inventory the assets of an individual after their death (in estate planning terms, an individual who has passed away is often referred to as the “decedent”). Tangible personal property could be identified by walking around the decedent’s residence. If the personal representative¹ was not aware of all the decedent’s assets, they could simply watch the mail for account statements that would inevitably show up in the mailbox. Similarly, bills and other obligations of the decedent would appear in the mail. Checking statements could be reviewed to ascertain the typical cash flows each month. Thus a physical inspection plus a little bit of time usually provided a fairly accurate guideline to the assets and liabilities of an estate.

The digital age has drastically changed this tried and true process. Statements of accounts are often sent electronically or are simply available for review online. Payroll deposits are made electronically, and bill payment is done online—often automatically to regular payees each month. Individuals have social media accounts and store their treasured family photos electronically. They may have domain names, blogs or other online accounts that have a value.

This digital transformation has had a significant effect on both estate planning and estate administration. The personal representative may be unaware of the scope of the decedent’s online accounts. Even if there is an awareness of specific accounts, the accounts may not be accessible to the executor because

they do not have the passwords to the decedent’s computer or the specific accounts. Bill payments may continue unabated as the personal representative has no way to shut them off or is unaware that they are occurring. Unsavory types may use obituaries to attempt to steal the decedent’s identity such as by opening new credit cards in the decedent’s name. Personal representatives may not be aware of such activity for months.

This whitepaper will explore the importance of planning for digital content and note the uncertainties surrounding this complicated planning area. It will describe the steps that individuals may undertake to enhance the accessibility of these assets to their personal representatives and heirs.²

¹ The term personal representative is used in this whitepaper to refer to any successor fiduciary of a decedent’s estate, such as an executor, administrator or successor trustee.

² This whitepaper uses the term “heir” in the colloquial sense—referring to a person who receives property from a decedent—rather than its strict legal sense.

What is digital content?

Without attempting to provide a comprehensive definition, terms like digital content or digital assets often refer to images, text, multimedia information, or other personal property stored in a digital format on a computer, server, or other electronic device. The most common types of such assets are as follows:

1. **Financial accounts** that are generally designed to be accessed via the internet and have little or no connection to a physical location. This may be an account at a specific financial institution or arrangements to pay bills that reoccur with some regularity online.
2. **Social media accounts** such as Facebook, Instagram, Tik-Tok or personal e-mail accounts. These are used for personal interface and also to store and share photos and videos.
3. **Loyalty programs**, such as airline miles, hotel points, and cash back programs on credit cards.
4. **Personal assets**, including digital photographs, videos, or music playlists. Sensitive personal information, including medical records and income tax filings, is increasingly stored digitally. It is not uncommon for such sensitive information to be password-protected above and beyond the basic password for someone's computer.
5. **Domain names and blogs** may have considerable value but may require passwords.

Why plan for digital content and assets?

The above-noted description of digital content should make it obvious why planning is important. Unfortunately, dealing with such assets is a step that is often overlooked in the estate planning process. The most important reasons to plan for digital assets are the following:

1. **Prevent financial loss.** If an account with significant value cannot be accessed, it may be lost to the heirs, or, at the very least, its distribution delayed. Bill payments will not automatically stop because someone dies. For example, monthly payments of health insurance premiums can continue long after death when the decedent is obviously not in need of further coverage.
2. **Make it easier for the heirs and the executor.** The family cannot deal with assets it does not know about or cannot access because they lack the passwords or granting of access by the decedent. The more accounts that someone has, the more potential problems are created for those left behind.
3. **Don't lose those treasures.** Irreplaceable photos of deceased family members or significant family moments may be lost if no one can access them. Tax records may be vital for the executor and may be otherwise unavailable—especially if a decedent did not have a regular accountant.

4. **Minimize the risk of identity theft.** Someone could steal the identities of the decedent both for financial gain and to create new identities for others.
5. **Keep private information private.** Personal information should not become public.

The obstacles

Most states have passed some version of the Uniform Law Commission's Uniform Fiduciary Access to Digital Assets Act.³ These laws generally provide the decedent's fiduciaries with certain access to their digital property. However, laws vary from state to state, and best practice is to plan ahead and make specific provision for digital assets to ensure consistency and stability in the administration of the estate.

Ownership is another area of concern. Many digital accounts, such as electronically purchased music or books, are not owned by a decedent but rather available to access via licensing agreements with a provider. Few people actually know what these agreements say—they usually simply clicked "I agree" when they signed up. Such agreements may prohibit or limit transfer at death.

Safety is also a significant issue. Yes, a person can make a list of all their passwords or use the same one for everything, but this creates major risk if these passwords—especially passwords for financial accounts—fall into the wrong hands.

³ "Fiduciary Access to Digital Assets Act, Revised," Uniform Law Commission, March 18, 2025, <https://www.uniformlaws.org/committees/community-home?CommunityKey=f7237fc4-74c2-4728-81c6-b39a91ecd22>.



Planning for digital content

Despite these obstacles and uncertainties, there are a number of reasonable steps that can be taken to protect and transfer digital content. The following are suggestions that everyone may want to consider to ease the burden of administering estate administration.

First, update your estate planning documents. Most well drafted wills, revocable trusts, and powers of attorney today contain a clause which essentially grants your executor, trustee, or attorney-in-fact broad access, use, and control over all your digital accounts, electronically stored information, social media, and the like. If your documents have not been recently updated they may not contain such a clause, but even if they do, these clauses are untested for the most part and may run into obstacles with licensing agreements. They cannot hurt, however, and may encourage a court or provider to grant access to accounts to your fiduciaries. In addition, specific bequests should be made with respect to loyalty program benefits such as airline miles or hotel points. Again, there may be rules of the airline or hotel chain that come into play.

Secondly, inform your executor-to-be or a trusted relative. Let them know where you have online accounts and provide a means of accessing your passwords. Consider making a digital inventory. There are services that will store all your passwords in a digital vault that can be accessed with a single password. If you use such a service, remember to check to make sure your executor or named beneficiary will be able to access it. If you make a list of passwords, keep it stored in a safe place, such as a safe deposit box, and remember to keep it updated as passwords change. Giving someone else your user name or password may violate your service agreement. There is always some risk in creating such a list, so consider its security carefully. Back up your family photos with an online storage provider that will allow them to be saved if there is an issue with your computer.

Third, for your most utilized digital assets (such as e-mail, photos, and social media) check with your service providers to see if they have an option to name someone as a successor to have access to your accounts after you have passed away. Even though your estate plan will name a successor fiduciary, many online service providers

allow you to name someone directly within their application or account to make the process more streamlined.

Finally, take steps to protect your privacy. A revocable trust does not become a public record in most states, so it typically provides more privacy than a will. Most particularly, if specific accounts (such as an airline frequent flyer account) are being referenced, a revocable trust may be preferable. Minimize the number of accounts if possible. Consolidation of accounts leaves fewer accounts for your executor to deal with. If all bills are being paid from one account, it always gives your executor a clearer viewpoint into what bills are set on autopay and the option of closing that account to stop unwanted bill payments.

Think digital

The bottom line is that digital assets are more and more of a concern in preparing an estate plan. Preparing for the disposition of the jewelry and the beach house is often an obvious task. Accessing your online accounts is not, but it should be!

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