YOUR DIGITAL ASSETS AND YOUR ESTATE PLAN

by Jeffery D. Stinson, CELA*
*Certified Elder Law Attorney (CELA) by the National Elder Law Foundation

In just a few short years, the way we store information has changed significantly. Fewer and fewer people keep family photos in hard-bound albums, movies on DVD, music on CD, books on shelves, or financial information in filing cabinets. More and more business is conducted online where geographic addresses are being replaced by web addresses.

We communicate differently as well. Instead of penning a letter to issue a service complaint to a business or express our gratitude to a friend, we open our email or post our status on social media.

While technology has allowed us the convenience of storing a vast amount of information on a thumb drive saving room on our shelves and de-cluttering our homes, issues arise in the transfer of that information at the death of the owner. Inheriting dad's music collection or the family photo album used to be a matter of delivering a tangible item to the recipient.

Now the delivery of the digitized version of these assets requires the navigation of passwords, user agreements, and the previous owner's computer file structure.

Consequently, planning for the transfer of these "digital assets" is essential to ease your family's burdens at your death, keep the Personal Representative of your estate free of legal liability, prevent losses to your estate, prevent identity theft at your death, and preserve your legacy.

INVENTORY YOUR DIGITAL ASSETS

A good first step in planning is to inventory your digital assets. Be sure to inventory both software and hardware. Most people will remember to list their itunes account, social media accounts, email accounts, and online bank accounts, but often they will forget the devices they use to access this information. Most mobile devices and computers require a password to obtain access. A partial inventory may allow your family to access your itunes account, but what about the other digital music files stored on your smartphone? Your daughter can download your pictures stored in Shutterfly with your password, but does she also have the password to your Ipad to access the pictures you saved on that device? You will be amazed at the number of password required devices you use in a week. Without the device password, your family may be left with nothing more than an interesting paper weight.

Also, make sure to update your inventory often. The best method is to update your inventory as you sign up for new accounts, purchase new devices, or change passwords. However, with the amount of digital data we now consume each day, this process can get taxing. Therefore, a regular check may be more appropriate to your needs to ensure the list is complete and passwords are up-to-date. Consider scheduling a quarterly task on your calendar to take inventory of your digital assets.

You should also prepare a list of electronic bill payments that are paid out of your bank accounts and a list of invoices you receive electronically. This will ensure that your Personal Representative will not miss an installment payment after your death and keep your bank account from being accidentally overdrawn.

STORE THE INVENTORY AND ALERT FIDUCIARIES OF ITS LOCATION

You should store your inventory in a safe place and provide a few trusted individuals (think your Power of Attorney or Personal Representative under your Last Will and Testament) with its location. Online services are also available to store your digital asset inventory, leave post-humus messages, establish a post-death memorial website, etc. The problem, however, is to pick a company that will outlive you. For a list of these services go to:

www.thedigitalbeyond.com/online-services-list.

DEFINE WISHES ON USE OF DIGITAL ASSETS AND APPOINT SOMEONE TO EXECUTE THOSE WISHES

After you inventory your digital assets, you should then determine how you want those assets used upon your incapacity or death and decide who should execute those wishes. While the extent of some people's digital assets are insignificant enough that simply providing this inventory to their trusted individuals will ensure execution of their desires, most persons will require more formality in the disposition of their digital assets. This is especially true since many "Terms of Service" agreements and privacy laws prohibit others from accessing the individual's account. Accessing an account without proper authority can also expose the Personal Representative of your estate to legal liability if the wrong person accesses or receives a digital asset.

At the least, you will need to provide the person appointed to execute your wishes the authority necessary to access your digital assets and execute your wishes. Your Power of Attorney document should contain a clause specifically authorizing your Power of Attorney to access your digital assets. If your current document does not contain such a clause, it is probably time for an update.

While Indiana state law allows the Personal Representative of your estate to access to your digital assets, defining the disposition of your digital assets through a Last Will and Testament may be problematic. A Last Will and Testament is a public record and listing digital asset information in your Will can expose this sensitive information to the public. In addition, many digital assets end upon the death of the individual. This is because many digital assets are licenses which by their definition end with the death of the licensee. Itunes, Amazon, Gmail, Facebook, and Twitter are all licenses.

A better option is to create a "Digital Asset Trust" for your digital assets. Since a trust never "dies," online identities that are licenses will not expire. You can formulate a specific plan for management of your digital assets upon your incapacity through the Trust. You can also instruct your Trustee on who gets access to your online information after your death and provide specific instructions as to what those individuals can do with that information.

POSTSCRIPT

Some companies have predefined “consumer friendly” terms in their user agreements that allow the owner of the account some discretion of how the account is used post death. For example, Facebook has a policy called memorialization. Once the user’s death is confirmed, the user’s profile is frozen and sensitive information is removed. Only confirmed friends can see the profile or locate it in a search. The users Wall stays open for friends and family to leave respects. As another example, Google will allow you to decide what happens to your data at your death and even set up “emergency contacts” for Google to contact if your account is inactive over a specified period of time.

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