

## Estate Planning For Your Digital Property

By *Brian (Baruch) Y. Greenwald and Hillel D. Weiss*

Estate planning is the process of anticipating and arranging for the disposal of your estate during your life and generally becoming more organized about your affairs. Traditionally, estate planning included planning for your care in the event you become incapacitated, the care of your minor and disabled dependents following the death of both you and your spouse, and the distribution of your assets following your death. As the “Information Age” continues to progress, our culture and daily lives become increasingly integrated, intertwined and entrenched with technology. As a result, in addition to traditional tangible and real property, most people today have online accounts and other digital assets that need to be administered as part of their estate after their passing.

It is not only the youth and middle-aged that have taken to the technological advances and online phenomena, many “old-schoolers” are also “connected” and drawn to the world wide web, technological

gadgets and products that enhance their quality of life and ability to manage their time more efficiently.

Developing an inventory of your assets is crucial to achieving the final goal and to assuring a faster probate process when the time comes. A thorough asset inventory can add to your peace of mind today as well as allow you to take comfort in knowing that you will leave your heirs a final, thoughtful expression of your regard for them through an orderly estate plan.

Today, a comprehensive estate inventory and plan should include digital assets. Obviously, the landscape of one’s digital inventory is a work in progress that is constantly changing. Many people have an ever-increasing number of online accounts, personal digital devices, data storage locations and other digital assets, and a list of such assets needs to be monitored and updated consistently. More importantly, keeping a current list of usernames, passwords, security questions and answers for each account might be the only method of ensuring accessibility to your digital assets after your passing.

Presently, no federal laws have been developed to address the administration of digital assets after death, and only a few states have adopted relevant legislation. In July 2012, the Uniform Law Commission appointed a Drafting Committee on Fiduciary Access to Digital Assets to propose a uniform law for states to hopefully adopt. However, at the moment, nothing has been proposed by the committee, let alone adopted by any state.

A competent estate attorney can assist you in inventorying your digital assets, and can also guide you in connection with planning for such assets, such as by utilizing the appropriate legal means by which others of your choosing can access your digital assets in due course following your death. Online companies’ terms of service and state laws can vary widely in the rapidly evolving world of digital estate planning. Your attorney is in the best position to help ensure that access to each online asset is transferred according to your wishes without running up against online fraud and anti-hacking laws.

Each individual company has its unique default procedures for dealing with the death of an account owner (See sidebar below).

### MAKE A PLAN

To make sure your online content is not lost forever when you die or become incapacitated, some planning is necessary.

This means that someone must know your accounts, and their usernames, passwords, security questions and answers. Without that information, some, if not all, of the material you posted or stored online during your lifetime (including all of your email communications), can remain inaccessible even to your loved ones after your death. Many online accounts have terms that restrict who may access the account, and few will provide usernames and passwords. However, most companies will allow a designated executor access to personal assets such as stored photos.

The following are a few steps to consider implementing to ensure your digital “self” is laid to rest in the most appropriate and most secure manner possible:

✿ First, create an inventory of all your online accounts. Consider

### The following is a list of popular online accounts and the procedures that are implemented once the company is notified of the death of an account owner.



✿ **GOOGLE** – May place an account that has not been used for a prolonged period into an “inactive” status, making it inaccessible after a specified period of time of inactivity.

The company has also recently introduced an “Inactive Account Manager” that allows an account holder to instruct Google regarding how to handle all accounts associated with his/her username if the accounts are dormant for an amount of time determined by the account holder.

✿ **HOTMAIL** – Will provide an authorized individual with copies of any emails and lists of contacts found in the deceased user’s account, and then close the account.



✿ **YAHOO!** – Upon receipt of a death certificate, they will delete all content and remove the account.



✿ **FACEBOOK** – Has set up a specific procedure for memorializing an account. Alternatively, they will close an account upon formal request from next of kin.

✿ **LINKEDIN** – Will close an account after receiving verification of death.



✿ **TWITTER** – Upon request from next of kin, will provide copies of tweets and then close the account.

✿ **PAYPAL** – Allows a personal representative to close the account and will distribute any remaining funds via check.



✿ **ITUNES** – Does not offer any manner to transfer music files, as only the user has a license to the music.

things like social media accounts, email accounts, bank and brokerage accounts, credit management accounts, credit card sites and gaming accounts as well as accounts with merchants, coupon sites, shopping sites, frequent flyer programs and forums. Then move on to websites you own or have accounts with, including any accounts with your employer and any cloud services you access. Also list any video or music accounts as well as sites that may have access to your medical records.

✿ Make sure to list your usernames, passwords, security questions and answers for all accounts and store the list in a safe location (perhaps with the copies of your executed estate planning documents), so that the information will be accessible to your executor or other personal representative/fiduciary. Do not include this information in your will since it can become a matter of public record once it is probated.

✿ Be sure to update the list as you change passwords or usernames or add additional accounts.

✿ Make a list of all your elec-

tronic devices that you use to access the internet or store information, including USB drives and external hard drives. Chances are, these devices have data including cookies stored on them that may contain personal information.

✿ Choose a person to handle your digital assets following your death. Ideally, this should be someone who

sure your will lists these people as executors of your digital assets.

✿ Leave detailed instructions about the disposition of your digital assets, including any rewards or frequent flyer miles (if transferable), gaming accounts, emails, photos, blog or online journal content and social media accounts.

**“As the “Information Age” continues to progress, our culture and daily lives become increasingly integrated, intertwined and entrenched with technology...”**

is technologically savvy, or literate at the very least. In some cases, you may prefer to choose more than one person to handle specific types of accounts -- for instance, one person to handle your social media accounts and another to have access to your financial information. Make

✿ Finally, consider leaving a digital message -- or several -- to loved ones to be distributed following your passing. Some people even leave messages to be posted on their social accounts, blogs or websites to provide comfort to those they leave behind and inspi-

rational messages to loved ones.

For many, digital assets can have as much sentimental value and importance as traditional property such as heirloom jewelry, artwork, furnishings and the like. If you are truly concerned about what will happen to your online accounts and digital property, carve out some time today to ask an estate attorney or another professional for advice regarding how to incorporate your digital assets into your overall estate plan.

The information presented in this article is for general information purposes only. It is not intended as professional counsel and should not be used as such. ♥

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