

Dealing with Your Digital Assets

In an increasingly digital age, more assets are now being held intangibly online, rather than physically, and it is surprising how many people do not give this a second thought. Indeed it is not just a question of online accounts but also “digital assets” that now need to be included within financial planning. This is especially pertinent for those dealing with these assets in the event of serious illness or death who may need access to passwords to access these online accounts.

The definition of a digital asset is broad, including all content, accounts and files created and stored online or on digital devices such as computers and smart phones. Examples of digital assets include blogs, gambling accounts, media stores and music owned via players such as iTunes, online gaming accounts, email and social media accounts, as well as online bank accounts, and trading sites such as eBay and internet payment accounts such as PayPal.

Some clients consider digital assets to be of predominately sentimental value, such as digital photographs but these assets can also include items that may have a monetary value such as music and book collections purchased and stored electronically. Too often digital assets are lost, as no-one other than the deceased is aware of their existence. To avoid this happening, we recommend that individuals prepare an inventory of all online accounts and corresponding user names, which should be stored in hard copy and updated regularly. For security reasons, passwords should not be listed. There are commercial third parties that offer online password management services, which claim to securely store user names and passwords.

Even in cases where an executor has knowledge of the digital assets and the relevant passwords to access them, there is debate as to whether the executor should be accessing them. Generally, many online provider’s terms and conditions state that services are personal (to the deceased) and prohibit the provision of login and password details to anyone else, including a personal representative. By accessing a deceased’s account an executor could therefore inadvertently find them self breaking the law. As there is no specific UK legislation dealing with this, executors will have to consult the Terms of Use of each provider separately in order to establish their rights to access and manage the assets.



People often believe that they own their digital assets but this is often not the case. In reality, some assets are not owned by the individual and are not really assets at all, but merely licences to use a website's services. As a general rule, licences are specific to an individual, they are not transferable and terminate on death - meaning that the 'asset' will not therefore form part of a deceased's estate. An example of this is an individual's iTunes account, which is not transferable upon death and the account is not 'owned' by the deceased; they merely have a licence to access the music and videos.

For digital 'assets', it is the licence agreement that will determine what will happen to the asset on the death of the individual and confirm whether there is any ongoing interest that can be passed on to beneficiaries of the estate. The licence agreement should include specific terms as to how the asset will be administered on death. Unfortunately, in the majority of cases, licence agreements still remain blank on this matter and there is little in the way case Law to help.

The potential pitfalls surrounding digital assets can be eased by taking certain steps. An ideal occasion to discuss this is when reviewing the will. The following recommendations are likely to be appreciated:

- Maintaining an up to date inventory of all digital assets which should be stored alongside the Will (do not include it in your Will as it becomes a public document on death). It is also advisable to make a record of all passwords, but for security reasons, this should be stored separately.
- Include gifts of the digital assets within your Will especially sentimental assets such as digital photos which can be gifted as personal chattels. Digital assets with a significant financial value or any associated intellectual property rights will need specialist treatment.
- For online assets, check the Terms of Use to see if they specify what will happen to the account on death. Appropriate guidance can then be given to the executors -for example, you may want your facebook profile to be changed to an 'in memorium' page or deleted completely.
- Specific authority should also be given to the executors to access and manage the digital assets.

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