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Who Inherits Your Internet/Virtual Estate?

It is a cliché to note that we *live* in a digital age. But who knew we are in so deep that lawmakers and attorneys are trying to clarify what it means to *die* in a digital age.

Virtually everyone who has access to a computer creates data online that can be considered digital “assets”. Domain names, emails and texts, documents on shared work websites, payment information on retail and billing websites, banking and credit information on file with financial institutions, photos and experiences displayed on social networks, and copyrighted content posted on blogs.

What happens to this information when the “owner” dies?

In the analog age, this kind of information might have been stored in a safe, a file drawer, or even a shoebox. It was estate miscellany—insignificant monetary value, but still valued by owners and heirs as the emotional component of a legacy. The owner’s Will may have stipulated who should inherit each item, but often it was left to surviving family members to decide how to divide the mementos. That probably happened amicably most of the time, but could also start fights that would last decades. That’s how important these symbols can be. But either way, there was no question about the heirs’ access to them.

Today that may not true. How many times have you created an online account that requires a terms-of-use agreement? Do you fully read these agreements or see them as just legal jargon? Generally, they state that the account and whatever is created in it are not owned by you or transferrable to another party. What lawmakers and attorneys are wrestling with is how death should affect those agreements.

One assumption behind estate planning is that your assets can go in three possible directions when you die—to family members (or other specified individuals), to charities, and the government. How they pass to these three can be determined by Will, by contract, or by act of law. Within those parameters, your estate plan should assure that the right assets will go to the right recipients at the right time and in the right manner. In other words, you are in control.

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So, do you have control over assets you create on Facebook, YouTube, and Tumblr? News stories have emerged about sites like these blocking heirs' access to the deceased's account—whether because the systems are passively guided by the terms-of-use agreement or the website owners actively claim all the ownership rights. Drawn out lawsuits over a few posted photographs somehow does not seem to fit the open Internet culture we have come to expect. But that's the reality.

Until this confusion is settled by legislation and regulation, what can you do to protect online assets and preserve them for your heirs?

- First you can document all your online accounts where your digital data is stored.
- Specify where the data is located on the Internet, along with user names, passwords, and security questions/answers that allow access.
- Store this document on a flash drive, an external hard drive, or on paper in a secure and indestructible location, informing a trusted individual.
- Discuss your digital footprint with your estate planning team, so they can develop a plan to protect and preserve your digital assets.

It is getting harder to recall what life was like before the Internet changed everything. Back when answering a question might require a physical encyclopedia or a trip to a public library—both of which were years out of date. The Internet has made information easier and more fun. Not even the invention of printing, automobiles, or television changed lives this much.

Now we know it changes death and estate planning as well. It would be interesting to find out if Steven Jobs' estate plan accounted for who owns and controls his digital assets now. We have to expect that technology creates unexpected side effects that take time to cure. Yet all developments like this have to start with awareness. It is good to know lawyers are working on this situation, but we have to work on it too.

If you would like to share insights and solutions, we would love to hear from you.

Best Regards,

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