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Legal results

Managing digital assets after death

“Digital assets” is a broad term used to describe social media accounts, email accounts, digital music libraries, blogs, games that have monetary value and other online financial accounts.

Wills are often filled with references to money, houses, shares and other personal items as the most considered “assets” of an estate. However, with almost 60% of Australia’s population having a presence on social media and other digital forms of communication, most never consider what would happen to their digital property upon their death.

Legislation in Australian regarding digital assets and their transferability on death is currently non-existent although there are some jurisdictions beginning to shine a spotlight on the issue.

Failure to plan for digital assets could see such assets (both with monetary value and sentimental value) drift off into the “netherworld”.

Whilst there are no uniform laws governing digital assets in relation to the death of their “owner”, many companies have policies around executors or family members gaining access to a deceased member’s account or site after their death.

The current position of the major social networks and online services are as follows:

Facebook	The profile of a deceased person may be deleted or “memorialised” at the request of a family member. A memorialised profile allows friends and family to post on the wall of the profile page in remembrance but does not allow anyone to access the account. Alternatively, a person can designate someone called a “legacy contact” to manage their account after their death. Legacy contacts can write a post to display on the memorialised profile page, change the deceased person’s profile picture and even respond to new friend requests on behalf of the deceased. They can also download an archive of posts and photos from the deceased.
Google, Gmail, YouTube or BlogSpot	Access to a deceased person’s account is at the discretion of Google.
Hotmail	Access to a deceased person’s Hotmail account is at the discretion of Microsoft.
Yahoo mail	A Yahoo mail account can only be accessed by the account holder. The account can be permanently deleted by sending a copy of the death certificate and account details to Yahoo.
Yahoo Flickr	A deceased person’s Flickr account becomes invalid upon their death. Their account can be closed by sending a copy of their death certificate and the account url to Yahoo.



Twitter	Twitter will not provide login information for a deceased person's account to anyone; however the executor of their estate can apply to have the account deleted.
Amazon Kindle	Amazon does not have a policy in relation to deceased members' accounts.
Ebooks	The user is only provided with a license for private non-commercial use. As such, Ebooks are not an asset that can be transferred.
iTunes	As above, the user is only provided with a license for private non-commercial use. As such, music purchased through iTunes is not an asset that can be transferred.
Ebay	A deceased person's Ebay account cannot be transferred, but the account can be closed by sending a copy of the death certificate to Ebay.
Paypal	A deceased person's PayPal account can be closed by providing documentary evidence of death and identity.
Skype	A Skype account cannot be deleted. If you have the deceased's account details and password, you can remove any personal information from their Skype profile.
Instagram	The profile of the deceased person may be deleted or "memorialised" at the request of an immediate family member. Proof of death will be required to memorialise the account and proof of authority of the appointed legal personal representative of the deceased is required to close the account.
Frequent flyer points	The treatment of the transfer of frequent flyer points on death varies from airline to airline. In relation to Qantas frequent flyers, membership is automatically terminated on death, the points are not redeemed or transferred and are instead cancelled and the account closed.

Digital storage has become an increasingly popular way to store and record personal information and assets, however consideration must be given to how this information can be accessed and used after the death of its "owner".

increased use of social media such as Facebook, Twitter, Blogger, Gmail and Instagram, there is a large amount of personal information being stored online. Additionally, personal information can now be stored digitally on a range of devices, including on computers, mobile phones and tablets, external hard drives, DVDs and USB flash drives.

There are several options that an individual can consider to ensure that digitally stored information is accessible upon their death, including:

True key	<p>True Key is a password manager that allows you to securely store a list of usernames and passwords in a virtual vault that is locked with a master password.</p> <p>The True Key data is kept on your trusted device and does rely on you providing login details to the executors of your estate.</p>
1Password/LastPass	<p>1Password and LastPass are also comprehensive password managers. Similar to True Key they provide a place for users to store passwords, software licenses and other sensitive information in a virtual vault that is locked with a master password.</p> <p>As with True Key, data is kept on your own devices, and it does rely on you providing the login details to the executor of your estate.</p>



Estate planning

Estate planning and ways to protect your digital assets

Will makers should attempt to:

1. Provide their digital and online account information to their executors, including all passwords and login details, along with instructions in relation to what information is confidential.
2. Consider providing their executors with a list of hardware they own and any relevant information about special programs they use including the location of important digital files and online memberships.
3. Give instructions in relation to how they would like their accounts and information to be managed after their death (specifying what should be destroyed, cancelled, changed to “in memorium”).
4. Consider the terms and conditions of the digital assets including their country of origin to ensure that wishes are able to be exercised and are in accordance with the asset holders policies including whether access by an executor using a password would breach the terms and conditions.

Sladen Lega
Tower Two | Collins Square
Level 22, 727 Collins Street
Melbourne 3008
Victoria Australia

PO Box 633
Collins Street West
Victoria 8007

T +61 3 9620 9399
F +61 3 9620 9288

sladen.com.au

