



What Happens to Your Digital Assets and Social Media Accounts When You Die?

In today's increasingly digital age, factoring digital assets into your estate plan is becoming increasingly important. But what exactly are digital assets?

Digital assets generally include any data in which a person has some ownership, right, or interest. This can consist of information in e-mail accounts, data saved on smartphones or tablets, digital photographs, saved files, social media accounts, and numerous other assets.

Types of Digital Assets

Some digital assets may have monetary value. For instance, intellectual property in the form of a blog or other work may be monetarily valuable. Other assets, such as family photos or videos, may have sentimental value. The distinction between the two is not unlike physical assets that may have a monetary or sentimental value.

To properly create an estate plan, all assets must be accounted for. When it comes to digital assets, there needs to be a plan for situations where you become incapacitated or die. If you are unable to access your own accounts, it may be crucial for your loved ones or agents to access e-mail, social media, or other digital assets. Without prior planning, gaining access to your accounts and assets can be difficult.

Tools for Managing Digital Assets

Fortunately, companies are beginning to become aware of this need. For instance, in 2013, Google created the "Inactive Account Manager" that allows you to determine if your data should be deleted after a period of time or, conversely, if specific

trusted individuals should be able to access your Google accounts after your passing. Additionally, Facebook released a feature in 2015 called a "legacy contact." The legacy contact is a person or persons you can designate to handle specific actions in the application in the event of your death. The legacy contact does not entirely control your account but can manage certain portions to carry it on in your memory if desired. You can also choose to delete your account at death or for nothing to happen with your account upon your passing.



Since 2015, there have been other tools and features introduced by various platforms that can help manage digital assets in the event of incapacity or death. Here are a few notable examples:

- **Apple's Digital Legacy:** In 2021, Apple introduced the Digital Legacy feature with iOS 15. This feature allows users to designate Legacy Contacts who can access their data, including photos, messages, notes, and more, after their death.
- **Facebook Memorialization Settings:**

Facebook has enhanced its legacy contact feature by allowing users to pre-approve whether their account should be memorialized, deleted, or managed by a legacy contact.

- **X's Policy for Deceased Users:** While not as advanced as Facebook's or Google's tools, X allows a person authorized to act on behalf of the estate or a verified immediate family member of the deceased to request the deactivation of a deceased user's account.
- **Instagram Memorialization:** Instagram offers an account memorialization option similar to Facebook's, allowing accounts to be remembered after the user passes away. Family members can request the memorialization or removal of the account.
- **Microsoft's Next of Kin Process:** Microsoft provides a Next of Kin process, which allows family members to access a deceased user's emails and other account content.

Incorporating these tools into your estate planning strategy can help ensure your digital assets are managed according to your wishes. Be sure to discuss these options with your estate planning attorney to ensure they are properly integrated into your overall estate plan.

Steps to Protect Digital Assets

For the multitude of digital assets that do not yet have these features, there are some steps your estate planning attorney can assist with. The best way to protect your digital assets is to specifically include them in your estate planning documents, much like you would for other types of physical assets. At Carlile Patchen & Murphy, our attorneys advise clients to explicitly grant the power to manage digital assets in a Power of Attorney. This

power allows an agent to manage digital assets in the event you are unable to do so on your own. Furthermore, we encourage clients to include a provision in their Last Will & Testament which allows their executor to manage digital assets after their passing.

In addition to specifically drafting these powers into your estate plan, it is important to create and maintain an inventory of digital assets. Such an inventory will be essential for your agents to act on your behalf in the event that you are incapacitated or pass away. This should be thought of as a carefully protected roadmap that can be accessed in the event something happens to you.

Legal Considerations

Unfortunately, federal and state laws have not kept up with the fast-changing digital landscape. Some states have begun passing laws to address digital assets, but those laws are largely untested in the courts. Someday, we hope to have Ohio laws that specifically address these assets. Until then, it would behoove all clients with a significant digital presence to ensure their estate plan is updated to include the necessary provisions to account for the management and control of all digital assets in the event of incapacity or death.

If you want to learn more about including digital assets in your estate plan, please contact your attorney or any member of the Family Wealth & Estate Planning Group at Carlile Patchen and Murphy.