

WHAT IS YOUR DIGITAL LEGACY?

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OBJECTIVE

To answer the question:
What happens to my digital
“stuff” when I die or become
disabled?

The Digital Movement

● From



to



and



and



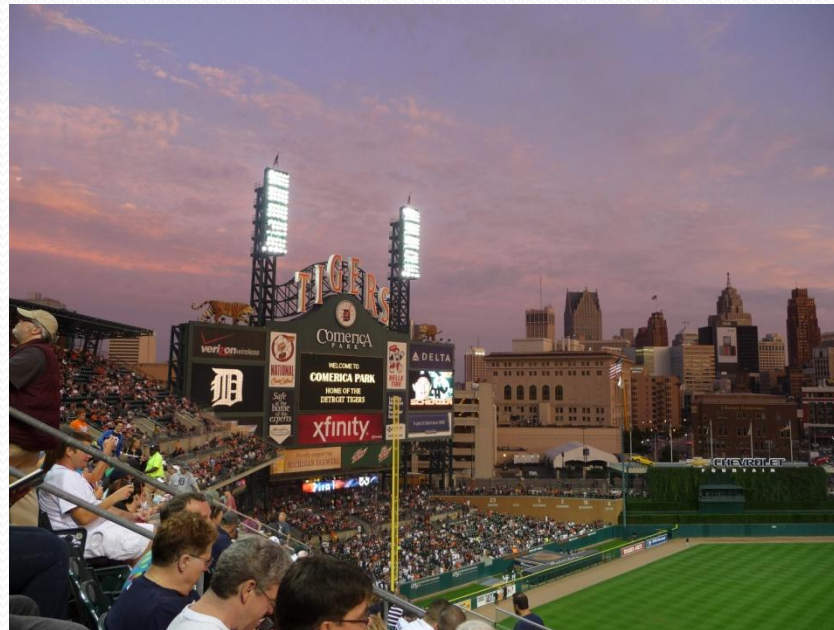


Most of us and our clients have now developed a collection of “stuff” online

- The move from physical to digital has impacted all of the following...
 - Pictures
 - Communications (email)
 - Social Media and online profiles (who will tend my Farmville farm when I’m gone?)
 - Finances
 - Online store accounts (ebay, overstock.com, etc.)
 - Digital media (iTunes, amazon.com, etc.)
 - Virtual Property (Fantasy sports leagues, on-line gaming)

What has value?

- Form
- Content
- Perspective of time and place



These are all good things

- Start converting your photos, VHS, cassette tapes, floppy disks, etc. NOW!
- Digitizing everything ensures that it will last forever, and can't be destroyed by negligence, natural disasters or time. Beware of backwards compatibility problems.
- HOWEVER, we must protect access to this property (both now, if/when we become disabled, and upon our inevitable demise).

HOW DO WE DO THIS



How do we assist clients in this planning?

PLAN!

- A. Create an inventory of your online assets (“stuff”).
- B. Decide who is in charge of those assets if you become disabled or when you die, and name that person (your digital personal representative with power to protect your assets).
- C. Include special instructions (i.e. privacy concerns).

INVENTORY

Decide “what has value” (not just financial value).

- In addition to photos, emails, and social media sites, chances are you have invested \$ online with no tangible products to show for it. Protect your property!
- Personal information may be invaluable to your loved ones (we will get into this more later with the Justin Ellsworth case).

Inventory Checklist

- Make sure you include everything from your computer, other devices, and the “virtual world” (i.e. cloud, internet)
- All email accounts
- All social websites you participate in
- Financial and commerce accounts
- There are apps for this (My Eyes Only)
- Make a simple spreadsheet with passwords to access assets

DIGITAL ASSET INVENTORY						
Asset		Access			Wishes	
Name	Contents	Location	Username	Password	Instructions	Recipient

What digital media have I purchased or created?

- Digital movies
- TV Shows
- Books (Kindle, iPad-audio and written)
- Apps
- Computer software
- www.YouTube.com favorites
- And...

iTunes!

- When you purchase digital files (music, movies, books), you have merely purchased a *license* for personal use.
- Apple's Terms of Service has a provision covering **nuclear weapons** – but nothing specifically about the transfer of your media upon death or disability.
- It appears that legally – for now – there is no way to transfer iTunes media upon death or disability.

From Apple.com...**10. Export Control.** You may not use or otherwise export or reexport the Apple Software except as authorized by United States law and the laws of the jurisdiction in which the Apple Software was obtained. In particular, but without limitation, the Apple Software may not be exported or re-exported (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. By using the Apple Software, you represent and warrant that you are not located in any such country or on any such list. You also agree that you will not use these products for any purposes prohibited by United States law, including, without limitation, the development, design, manufacture or production of **missiles, or nuclear, chemical or biological weapons.**

Who is in charge?

- After you inventory your digital assets, you must decide who to give the access to in the event of your death or disability.
- Make sure you indicate whether you want your digital personal rep. to archive your content, share your content with others, or delete your content (and/or secure privacy of some content which may be harmful).
- Make sure to include any special instructions (like deleting adult content so your grandma doesn't run across it while searching your computer for family photos).

SOCIAL MEDIA PROFILES



What happens to my personal cyberspace pages after I die or become disabled?

FACEBOOK

Memorializing accounts (from www.facebook.com)

- We may memorialize the account of a deceased person. When we memorialize an account we keep the profile on Facebook, but only let friends and family look at pictures or write on the user's Wall in remembrance. You can [report](#) a deceased person's profile. We also may close an account if we receive a formal request from the person's next of kin
- http://www.facebook.com/help/contact.php?show_form=deceased
- http://www.facebook.com/help/contact.php?show_form=memorialize_special_requests

TWITTER

(From Twitter.com...) How to Contact Twitter About a Deceased User

- In the event of the death of a Twitter user, we can close the account and help family members recover public Tweets from the account.
- Please provide us the following:
- Your first and last name, contact information (including email address), and your relationship to the deceased person.
- The username of the Twitter account, or a link to the account's public profile page.
- **A link to a public obituary article.**
- You may contact us at privacy@twitter.com, by fax, or by mail at the following address :
- Twitter Inc.,
c/o: Trust & Safety
795 Folsom Street, Suite 600
San Francisco, CA 94107
Fax : 415-222-9958
- We will answer by email while specifying which information is needed.
- We may not hand over access to the account, or share any non public information related to the account.

LINKEDIN

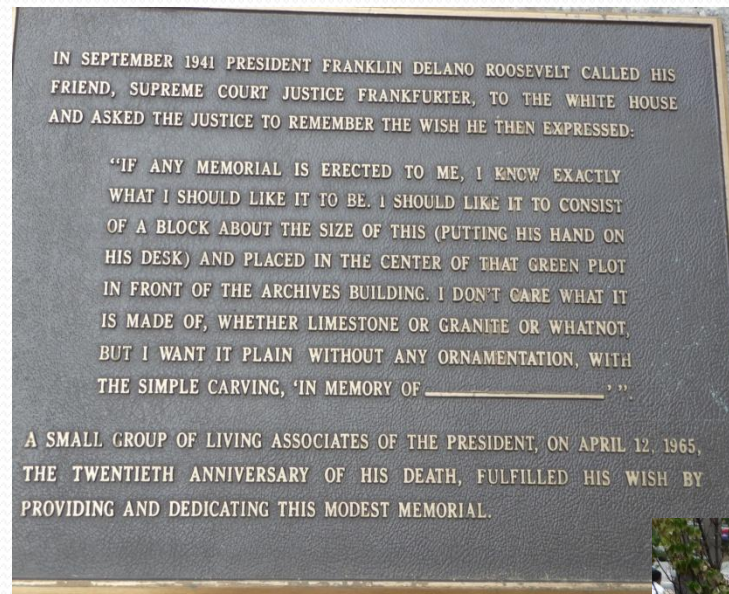
Memorializing Accounts (from www.linkedin.com)

- If we learn that a User is deceased, we may memorialize the User's account. In these cases we may restrict profile access, remove messaging functionality, and close an account if we receive a formal request from the User's next of kin or other proper legal request to do so.

BLOG SPECIFICS



- The Brad Graham story: Brad had a popular blog. He died suddenly at a young age and had no plan in place for his blog. His friends decided to continue his blog in his memory.
- Even the most technologically savvy people often do not leave instructions for what is to happen to their online creations.



Other Posthumous Options

- Have your digital personal rep. add an auto response on your email account for a set number months...

-Example: “This email address is no longer being checked because John Doe is no longer alive. Please send any condolences to his family at doe@comcast.net”
- They could also send a “final tweet or post” to your friends, if those are your wishes.

Posthumous Options

- **Greatgoodbye.com**-This site sends an email for you (written by you in advance) upon notice of your death.
- Sites like this don't require relying on a human to send your final messages to your friends and family.
- There are also many online memorial sites, including...
 - Bcelebrated.com**
 - Online-Legacy.com**
 - MyWonderfulLife.com**



How will my loved ones know which online sites are mine?

*This can be especially tricky for people with common names, i.e.
Amy Tripp, John Doe.

CLAIM WHAT IS YOURS

- This is a process where you use a program called “ClaimID” and point out what is and is not yours on the web.
- Give your digital personal representative access to the claimID so they do not have to wade through the entire internet trying to figure out what is yours.
- This can be done unofficially.

Who has access to my “stuff”?

- Who controls/owns it?
 - Alive, with capacity
 - Alive, without capacity (digital personal rep.)
 - After death (digital personal rep.)
 - For how long?
- Your digital personal rep. can be a single person or a Web service of your choosing.
- They will distribute or delegate your digital assets according to your wishes.

The Important Justin Ellsworth Case from Oakland County, MI



Background

- Justin Ellsworth was a Marine serving in Iraq.
- He most often communicated with his family by exchanging emails with his father. These emails were sometimes shared with the whole family, and they were a great source of comfort to Justin and his family.
- Justin was killed in the line of duty, in November of 2004.
- Justin's family wanted to retrieve all his Yahoo! emails, a request that was denied by Yahoo!

Case Notes

- Yahoo! denied the Ellsworth family access to Justin's emails due to a clause in their terms of service agreement that states "accounts are non-transferrable".
- Justin's father took Yahoo! to court in Oakland County, MI, both in the Court of Public Opinion and the Probate Court of Oakland County.
- Within six months, a Probate Court judge signed an order instructing Yahoo! to provide Justin's father John with copies of his son's emails.

Apparent SCAG

STATE OF MICHIGAN
PROBATE COURT
OAKLAND COUNTY
CIRCUIT COURT - FAMILY DIVISION

ORDER TO PRODUCE INFORMATION

FILE NO.
2005-296,651-DE

OSM CODE, ORD

In the matter of, JUSTIN M. ELLSWORTH, Deceased.

1. Date of hearing: 4-20-05 Judge: Eugene Arthur Moore P17524
Bar no.

On Petition to Produce Information filed, THE COURT FINDS that:

2. Notice of hearing was given to or waived by all interested persons:

objected - and no one having

IT IS ORDERED that Yahoo! Inc. shall produce and deliver to the Personal Representative (via CD-ROM and via written format) the contents of any and all emails currently stored at the email address entitled "jellsworth@yahoo.com" or currently held in the account represented by that address, as well as any and all contents of electronic files that may be currently stored there in the Photos and Briefcase areas.

IT IS FURTHER ORDERED that Yahoo! Inc. shall close the email address and the account represented by it upon production and delivery of the information described above and shall destroy all emails and contents of electronic files stored at that address or in the account represented by that address, but not until 15 days after the receipt by the Personal Representative of all emails and contents of electronic files stored at that address and the account represented by it.

4-20-05
Date

Judge



J. Matthew Calomiris, Jr.
Attorney name

P56102
Bar no.

31800 Northwestern Highway, Suite 350
Address

Farmington Hills, MI 48334
City, state, zip

(248) 539-7900
Telephone no.

1073275-2

Do not write below this line - For court use only

-DCPC-EST-DY-
2005 APR 20 AM 9:57

Please see attachment A for more court documents.

Why is this important?

- Companies (such as Yahoo!) will have to add language to their terms and conditions clauses to deal with the issue of “what happens to my digital content when I die or become disabled”?
- This is just another example of why it is important to have your wishes in writing, including how you want your digital assets disposed of or protected and distributed.

Similar Litigation

- There haven't been too many cases dealing with these matters so far. The Justin Ellsworth case is the most prominent.
- **OKLAHOMA:** In November, 2010, Oklahoma enacted a probate statute that allows executors to access, delete, or administer online accounts of deceased persons.
- **IDAHO:** Adopted a similar statute in July, 2011.

How can we save our loved ones these headaches?



- Give those that we trust our passwords.
- Create and maintain an INVENTORY of your digital life
 - On paper
 - Online (or applications)
 - Keep this up to date!
- Archive in numerous places.
- Remember: Inventory, name your digital personal rep., pass along special instructions.

Other Options: Online Storage Accounts

- Many companies are cropping up to help us preserve our digital legacy.
- These sites serve as a secure backup to all your digital files.

- Flickr
- Carbonite
- Dropbox



Password Keepers

- **RoboForm.com**-stores all your passwords in one place and allows you instant access into all your frequented websites.
- **StickyPassword.com**-password manager and online form-filler.
- **Aurora Password Manager** on www.animabilis.com-stores website and email access passwords, helps you create unbreakable passwords.

Digital Estate Planning

- **LegacyLocker.com** – “a safe, secure repository for your virtual digital property that lets you grant access to online assets for friends and loved ones in the event of loss, death or disability”.
- **Entrustet.com** – “allows people to quickly, easily and securely prepare last wishes for their digital assets”.
- **DataInherit.com** – “The highly secure online storage for passwords and documents. These online safes from Switzerland offer individuals around the world highly secure online storage for passwords and digital documents.”



How to help those who have no plan in place?

- **DigitalEstateServices.com**-This site helps survivors get into locked computers to archive the contents and gain usernames and passwords. A “digital locksmith”.
- **Forensic computer services**-Companies that help recover lost passwords and deleted computer data.
 - www.compforensics.com**
 - www.computerforensicservicesllc.com**
 - www.forensiccomputerservice.net**

The Law

- Like anything else, if you don't have your wishes clearly expressed at the time of your death, your digital assets will be distributed according to the laws of the state you were residing.
- Do not include usernames and passwords in your documents (especially your will). Once a will is filed, it becomes part of the public record.
- Hopefully firms will start asking about digital content on their estate planning intake forms (see attachment B).

Where should I note my intent?

- Powers of Attorney

-Sample language: Electronic and Social Media. To access any and all of my online accounts; to obtain, use, or change any of my usernames and/or passwords to any of my online accounts; to manage, add, delete, modify, curate, archive, maintain and increase access or limit access to any of my online content; to transfer ownership rights and to maintain, modify, delete, or cancel any of my online accounts. Such powers shall apply to all of my digital assets, including, but not limited to, social media accounts such as Facebook, Twitter, LinkedIn, any and all data and photo archiving sites, blogs and websites of mine whether I am maintaining such accounts in my individual name, through a business, through a pseudonym or anonymously.

Where should I note my intent?

- Last Will and Testament

-Electronic and Social Media. To access any and all of my online accounts; to obtain, use or change any of my usernames and/or passwords to any of my online accounts; to manage, add, delete, modify, curate, archive, maintain, and increase access or limit access to any of my online content; to transfer ownership rights and to maintain, modify, delete, or cancel any of my online accounts. Such powers shall apply to all of Settlor's digital assets, including, but not limited to, social media accounts such as Facebook, Twitter, LinkedIn, any and all data and photo archiving sites, blogs and websites of mine whether I have been maintaining such accounts in my individual name, through a business, through a pseudonym or anonymously.

Where should I note my intent?

- Revocable Living Trust

-Sample Language: Electronic and Social Media. To access any and all of Settlor's online accounts; to obtain, use or change any of Settlor's usernames and/or passwords to any of Settlor's online accounts; to manage, add, delete, modify, curate, archive, maintain, and increase access or limit access to any of Settlor's online content; to transfer ownership rights and to maintain, modify, delete, or cancel any of Settlor's online accounts. Such powers shall apply to all of Settlor's digital assets, including, but not limited to, social media accounts such as Facebook, Twitter, LinkedIn, any and all data and photo archiving sites, blogs and websites of Settlor's whether Settlor is maintaining such accounts in Settlor's individual name, through a business, through a pseudonym or anonymously.

Assign Digital Assets in a Trust

- Here digital assets are transferred into the trust during the client's lifetime (if permitted).
- Much of your digital content is not owned by you, but licensed to you during your lifetime. The license ends at death/disability. However, if you have transferred the digital media to a trust, the assets should survive past your death since the trust does not terminate on death.
- This is a good option because you can easily update the trust, and this way your digital contents remain private while avoiding probate.
- You can have the same trustee or different ones for digital assets (see attachment C and D).

Where should I note my intent?

- General Assignment

-Sample Language: To the extent possible, this assignment shall also act as delivery of all of my digital assets, including, but not limited to, social media accounts such as Facebook, Twitter, LinkedIn, any and all data and photo archiving sites, blogs and websites of mine whether I am maintaining such accounts in my individual name, through a pseudonym or anonymously.

Auto-triggers set up by you

- These sites will release your emails or digital content either due to a lack of response from you, after so much time, or a response from your identified digital executors.
- **Ifidie.org**-sends you an email every two weeks, requiring a response. If no response, they release your content.
- **Greatgoodbye.com**-this site relies on a code from your digital personal rep. before it will release your emails.
- **DeadMansSwitch.com**-if you fail to respond to three emails in a row your emails will be released.

Stay up to Date:

- These websites have breaking news on the subject of protecting your digital assets upon death or disability...
- www.thedigitalbeyond.com
- www.deathanddigitallegacy.com
- www.yourdigitalafterlife.com/resources
- [@onlinememorials](https://twitter.com/onlinememorials) (twitter)



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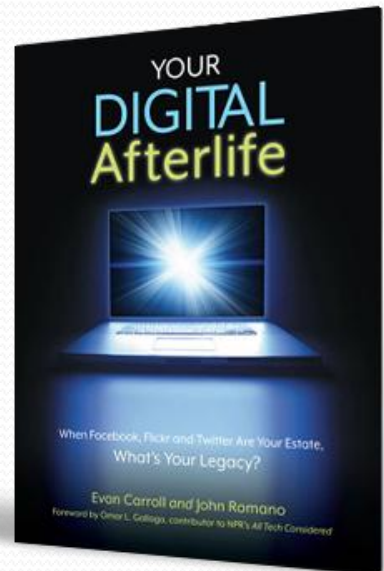
ADDITIONAL REFERENCES

Your Digital Afterlife **When Facebook, Flickr and Twitter Are Your** **Estate, What's Your Legacy?**

By Evan Carroll and John Romano

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From Estate Planning for Digital Assets and Online Financial Accounts: A live 90 minute webinar presented on July 27, 2011

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