

# Digital Assets

**I**t seems that filing cabinets, pencils, erasers and other office supplies of a few years ago are either obsolete or will be soon. Much of the estate planning of yesteryear depended on paper files kept in safe places and instructions as to where to locate other documents in Letters of Instruction or other informal (and legally nonbinding) documents. Today, much of this information is kept in computers, stored on the internet, and passwords are necessary to access much of this information.

So, even though you've helped your clients plan their funeral arrangements and who inherits their assets, have your clients thought about what happens to their digital and other unique assets if they are incapacitated or die?

## What Are Digital Assets?

Digital assets include things like social media accounts, email accounts, photo books, PayPal accounts, websites and investment accounts. But digital assets also include client files, images, documents, audio, video and similar digital files stored on your electronic devices, be they a mobile phone, laptop, tablet or computer.

And these digital assets have sentimental, historical and financial value.

Thanks to advances in technology, what once was a love letter is now a love email. A family photo album is now on Photobucket. Historically tangible items that were passed from generation to generation are now digitally stored. But, are they still being passed down from generation to generation? Well, without proper planning and organization, it will be extremely difficult for your clients' loved ones to access these materials.

The estimated average value of a person's digital assets—such as photo libraries, personal communication and entertainment files—is about \$55,000, according to McAfee ([www.mcafee.com/us/about/news/2011/q3/20110927-01.aspx](http://www.mcafee.com/us/about/news/2011/q3/20110927-01.aspx)). This value is based on sentimental attachments and financial investments.



Thanks to advances in technology, what once was a love letter is now a love email. A family photo album is now on Photobucket.

The following are challenges encountered when attempting to include digital assets in an estate plan.

**No Planning or Information Left for Loved Ones:** Most people do not plan their estates with their digital assets in mind. In fact, digital assets are often ignored until the person becomes incapacitated or dies.

## Modern, Practical Estate Planning Considerations

**Service Agreements:** There is a lack of uniformity as each online service provider has a different set of terms of use. Most likely, family members will not be able to access their loved one's accounts unless they have been given a list of accounts with the passwords. But even then, most online providers have restrictions in their terms of use that only allow the account holder to access the account. Consider the following:

- Yahoo accounts are non-transferable (<http://info.yahoo.com/legal/us/yahoo/utos-173.html>), which means the user cannot give anyone else access to the account. Once Yahoo learns that someone other than the user on record is accessing an account because the account holder has died, it reserves the right to terminate the account and delete all of the contents. This is what Yahoo wanted to do in 2004, when Justin Ellsworth—a 20-year-old marine—died in Iraq. His parents wanted access to his Yahoo email account and were able to do so only after getting a court order ([http://news.cnet.com/Yahoo-denies-family-access-to-dead-marines-email/2100-1038\\_3-5500057.html](http://news.cnet.com/Yahoo-denies-family-access-to-dead-marines-email/2100-1038_3-5500057.html)).
- Facebook will allow a family member to close a loved one's account or have it "memorialized," but only after providing death certificates and ensuring the rightful person is accessing the account. A "memorialized" Facebook account looks the same as a regular Facebook account except no one can log into the account. It remains in remembrance of the deceased person ([www.facebook.com/help/359046244166395](http://www.facebook.com/help/359046244166395)).
- Google has been the most innovative in this area. Earlier this year it launched Inactive Account Manager (IAM), which allows account holders to instruct Google what they want done with their Google accounts. The IAM controls Gmail, Google Drive, Picasa, Web Albums, YouTube and more. Account holders can choose to have account deleted after a

certain number of months of inactivity, or they can designate a trusted contact to receive their data, among other features (<http://googlepublicpolicy.blogspot.com/2013/04/plan-your-digital-afterlife-with.html>).

**Lack of Legislation:** Only a handful of states—and California is not among them—have taken steps to enact some form of legislation that addresses digital assets.

For example, Idaho amended its probate code in 2011 to expand the powers of a personal representative of an estate to include digital estate administration (<http://commllaw.cua.edu/res/docs/21-1/Perrone.pdf>).

Because of the lack of legislation, the realm of digital estate planning has been largely left in the hands of estate planning attorneys. With little direction, most estate planning attorneys will agree that having a Letter of Instruction with your estate planning documents will certainly provide some guidance to the personal representative of your estate.

Along with usernames and passwords, security codes, locations and types of digital assets, a Letter of Instruction should include details of what your client would like to be


Historically tangible items that were passed from generation to generation are **now digitally stored.**

done with each digital asset at time of death or incapacity.

While a Letter of Instruction is not a legally binding document, it should be reviewed by the attorney who drafts the client's estate plans to ensure that it does not conflict with wills, trusts, etc. A modern Letter of Instruction may also include instructions as to what will happen to a person's unique assets, such as pets and disposition of family photos

(digital or otherwise). Further, the Letter of Instruction should include beneficiary contact information (addresses, phone numbers, email addresses, etc.); credit card numbers; information about military service; parent's names; birth places; etc. (for death certificate purposes); and any specific funeral wishes.

#### Conclusion

Modern estate planning includes the preparation of relevant legal documents (wills, trusts, powers of attorney, etc.), but also instructions as to digital assets. These instructions include providing passwords along with other vital information that will be necessary to loved ones. Care must be taken to ensure that these instructions are stored in a safe place, such as a safety deposit box, and periodically updated. 

**Armine Bazikyan, Esq.** practices law and specializes in estate planning, probate, entity formation and trust administration. You can reach her at [armine@bazikyanlaw.com](mailto:armine@bazikyanlaw.com).

**Michael B. Allmon, CPA**, of Michael B. Allmon & Associates LLP CPAs, is founding chair of the CalCPA Estate Planning Committee. You can reach him at [mike@mbacpas.com](mailto:mike@mbacpas.com).

## Enhance Your Image

Core to CalCPA is enhancing the image and promoting the integrity of the CPA profession. The CalCPA member logo is the most recognizable symbol of membership in the California Society of CPAs. Members can display our specially designed member logo proudly on their website, business cards, stationery and collateral material.\*



Learn more and download our member logo at [www.calcpa.org/memberlogo](http://www.calcpa.org/memberlogo)

\*The CalCPA member logo may be used only by CalCPA members. If the member is in a public accounting firm, all CPAs in the firm must be members before the logo may be used.