



Digital assets

A Guide



DOWN'S
SOLICITORS AND NOTARIES

What are digital assets?

The term “digital assets” refers to the possessions you access on a digital device such as a laptop, mobile phone, tablet or personal computer. They are normally accessed via an online account run by a third party provider such as Google, Facebook, Netflix, Apple, Microsoft or Amazon. Examples of digital assets are digital photos, digital music tracks or videos that are stored online and accessed by logging into a personal account with the provider. Other examples are emails, conversations in social media, online games and online family ancestry databases (which could include family photos, videos and even DNA test results).

Most people also access actual assets and services such as money in a bank account, loans on credit cards, pension funds, investment portfolios, and utilities such as gas and electricity via online accounts. Although the underlying asset or service is not a digital asset, access is controlled via a digital portal by typing in a username and password.

Maintaining access to online accounts is essential for either financial or sentimental reasons. It is very important to plan what will happen to your online accounts when you die. Imagine if, following your death, family and friends were unable to access your documents and photographs, and that the companies running the platform where they are held permanently deleted your digital assets. This is what could happen if you do not make plans now to enable your executors to access the assets on your death.

How should I plan ahead to deal with my digital assets?

Review what you have

The first and most important step is to review what assets and information you hold digitally in online accounts. Make a list of logins and passwords for all online accounts. Please ask me for a standard log for recording the information if you need one.

It is **very important** that you store this list **securely** as a hard copy and keep it up to date (consider reviewing it every six months). If you would like me to store the log for you please let me know so that I can arrange for it to be kept in our strong room. Alternatively, you could use a commercial password manager as a gateway for all your passwords.

You should consider telling your executors of the existence of the list and where it is stored (but do not give it to them). Alternatively, if you do not wish for us to hold a copy of the list, we can keep a note that one exists on file.

Do not give the list to anyone.

In particular, never share PIN numbers or other information relating to a bank account.



Find out what will happen to your digital assets when you die



After you have reviewed what digital assets you have, the next step is to clarify what will happen to those assets when you die if you do nothing. For each online account review the terms and conditions you agreed to when creating the account. There may be specific terms on which assets will be administered on death or if there is no activity on an account for a long period of time.

Be aware that some internet service providers (ISPs) will permanently destroy your digital assets after a period of inactivity if someone such as an executor does not intervene.

Consider choosing an account nominee to take over control of certain aspects of your account where the ISP offers this facility. Currently the only ISPs offering this are Facebook (you can nominate a legacy contact), and Google (you can nominate an Inactive Account Manager).

Memorialising social network accounts

Some social media platforms, such as Facebook, allow the accounts of deceased account holders to be memorialised. Essentially, the account is frozen so that no one can log into it. Only verified friends and family can then see the deceased's profile or locate it in a search. Friends and family can post comments to the deceased's page in remembrance of them. Once memorialised an account cannot be accessed or unlocked. If you would like any social media accounts to be memorialised, give written instructions to executors, or your other chosen nominee. Review these instructions regularly. Executors could be instructed to leave a particular message for followers or friends. Consider whether such a message should be posted on personal pages on social media and who should be able to see them.



Create hard copies

If you are concerned about your accounts being deleted after a period of inactivity you may want to print off hard copies, burn to a CD or download onto a USB stick any photographs and documents that are only stored digitally and keep them in a safe place where executors and family can find them.

Another option may be to retain downloaded copies of key documents and information on a personally owned device (such as a laptop, tablet or personal computer), rather than storing them solely online. Downloading or keeping copies of assets on an external hard drive or on a USB stick, may enable executors to access and print off assets more easily. Some ISPs offer a link to a downloadable file containing everything you have uploaded on an account. This can be a useful way of taking a snapshot of what an account contains.

Access to your devices

Equally important is securing access to your laptops, PCs, mobile phones and any household devices controlled remotely (the Internet of Things). Make a note of passwords and login details for your devices so executors can gain access to information and assets stored on them when you have died. Executors may need to access information held on your devices to complete tax returns or when administering your estate after you have died. This is particularly important for Apple devices because Apple implements particularly strong safeguards to protect account holders' data from falling into the wrong hands. This could mean that it is impossible to unlock an Apple device without the log in ID and password even if executors make a request to Apple.



Planning points for particular types of digital asset



Photographs and videos

In most cases, photographs and videos will only be of sentimental value and they may only be of interest to family and friends. Consider whether these assets should be left as part of a general gift of personal possessions or as a specific gift in your will.

In some cases, your photographs or videos may have more than a nominal monetary value so that valuable copyright attaches to them. Any intellectual property rights may need to be the subject of a separate gift in your will with separate executors appointed to administer them.

Consider creating hard copy albums of photographs of particular sentimental or monetary value, if necessary, so they are more easily accessible to executors or family on death and are less likely to be lost or destroyed.

Consider whether any photographs and videos might cause distress to family members if they are seen. You should consider whether they should be destroyed in your lifetime. Be aware that your executors may not be able to follow instructions to destroy items after death if this could lead to a diminution of the value of the estate and possible legal action by your family. You should consider leaving instructions for your executors about any photographs or videos you

would prefer to be kept confidential. However, be aware that those instructions may not be followed.

Music tracks

Control of music accessed online (either via a subscription service or paid for per track) usually rests with the ISP (such as Spotify or Apple in the case of iTunes) so that you will only have a licence to listen to your online music tracks. This means that, when you die, the licence comes to an end and the music tracks can no longer be accessed. If you have set up a sharing facility to enable other members of your family to access tracks, they may be denied access after you have died if you are the organiser or main account holder. Apple's iTunes allows you to burn some of your licensed content to CD. Strictly speaking, the terms of



the licence will not extend beyond your death so that family members may be infringing Apple's terms and conditions if they continue to listen to downloaded tracks on CD.

Bearing all this in mind, if you would like friends and family to have information about the music you enjoy (for example, if you would like a particular track to be played at your funeral or memorial service), you should consider making a manual, hard copy list and retain it with your papers.

Loyalty points

Points on loyalty schemes such as the Tesco Clubcard or Nectar card can mount up. The terms and conditions of some schemes allow these points to be passed on to others after you die either by will or by written request to the scheme administrator. You should check the terms for each scheme to make sure. Some schemes may provide that any points are lost when you die. If points cannot be passed on you may want to consider using them up as you go along rather than allowing them to build up. Let me know if you would like to provide a gift of any loyalty points in your will.

Emails

Consider whether any sensitive or confidential information is stored in your emails and whether access to these emails by family members after death would cause distress. If so, you should consider deleting sensitive information during your lifetime rather than leaving it to your executors as they may have a duty not to follow instructions about destruction after your death.

Consider printing off emails and keeping them in hard copy if they hold



valuable content. This may involve consideration of intellectual property issues where the contents have a monetary value rather than a purely sentimental value.

If you run your own business you should plan for what will happen to your business emails and other information held online after you have died. This is a vital part of succession planning for your business. Your business emails may need to be handled particularly carefully. Consider who within the business, and apart from your executors, may need to have access to your business email account in the event of your death. If you store sensitive business information online (such as client or contact lists) a hard copy may need to be printed off and retained, or stored on a USB stick in case it is difficult to access the information online after you have died or lost capacity. This may be vital to ensure business continuity. You should discuss what should happen to business email accounts and sensitive business information in the event of your death with your business partners.

Intellectual property

If any assets you hold online have intellectual property rights attached to them (such as original literary or other artistic works like books or paintings) consider including them in a separate legacy in your will with separate executors to deal with succession to and exploitation of those rights. Please discuss this with me if you think it applies.

Crypto-currency

If you hold crypto-currency such as Bitcoin or Ethereum, you should note down details of the public and private keys held in any digital wallets and arrange for the details to be stored securely. You may want to include a specific legacy in your will to deal with your holdings. This will also help to alert your executors to the existence of the holding so that they can take action after you have died to secure control. If your executors do not have the necessary expertise to administer your crypto-currency, consider appointing separate executors with relevant knowledge and skills to take control of and deal with your holding after you have died. Please discuss this with me if you think it applies.



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