

The Advisor

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Is There Life After Death for Your Digital Assets?

By [Lisa Statt Foy](#)

Digital assets. It is a phrase that is currently trending among legal commentators and Canadians alike. Some argue that it is a critical topic for any estate plan. Others feel it has no place in an estate planning meeting. So, what is the answer?

The answer: it depends. Simply having an online presence does not necessarily mean that you should immediately call your estate lawyer. The key question is: Do you have digital (electronic) **assets**? Do you have electronic property that has **value**? “Value” is a subjective question. It may mean monetary value (such as a vast digital music library, or a four-digit PayPal seller account). However, it can also mean sentimental value (such as those digital photos that are stored only on your laptop or in the cloud, or a blog that documents your child’s first year). Electronic accounts that contain information of a personal or sensitive nature may also be “valuable” to the extent that it is vital to you to either prohibit or restrict access to such information on your death (such as private Facebook or other social-networking accounts, or email accounts with sensitive correspondence).

If on a review of your online or electronic property, there is little that you would describe as “valuable,” you likely do not need to undertake a rigorous planning exercise to assist your Executor and beneficiaries. In most cases, providing access to such assets by documenting their existence and the corresponding login credentials will be sufficient to allow the Executor to take control over such assets. More difficult questions arise when determining how to securely document such login information while keeping it close enough at hand to keep it current and complete.

Keep in mind that not all of your digital assets are transferable, nor can all be continued after your death. Many of your assets are not “owned” by you: use is governed by a license or terms of use that terminates on your death. In such circumstances, providing access to such digital assets may be the only means by which the assets can be maintained after your death.

If the quality or quantity of your digital assets is significant, you may wish to seek guidance as to how to implement your wishes in the event of your death or incapacity. Such a plan might include a comprehensive inventory of such assets, and the relevant login credentials. It would also document your wishes with respect to specific assets, and explore the logistics by which your Executor can secure such assets and fulfill your wishes. For example, you may wish to instruct your Executor to delete your email accounts without reading or publishing the contents, or direct your Executor to access your Facebook account and obtain a download of all of the account contents for the interest and records of your family (currently Facebook accounts cannot be continued on death of the holder). If you are a business owner, it might be particularly important to understand which digital assets are owned by you personally and which are held by the corporation.

At minimum, if you retain important or valuable documents and files on a password-protected computer or other device, you should consider securely documenting the passwords or providing them to your Executor. In many cases, where you own the digital assets, your Executor will be able to take control – eventually. However, the process can be time-consuming and disordered, as the service providers’ rules vary widely, and protocols are often not consistently applied. Further, where you do not own the digital asset – for example, Facebook accounts – there is no guarantee that the service provider will honor your direction to your Executor. Therefore, simply providing an inventory of such assets, and a means to access them, can go a long way to giving your Executor timely control and benefiting your beneficiaries with use of such assets. However, where loss of the electronic materials would be devastating to your loved ones, reproducing the assets on non-password protected medium (such as memory cards and external hard drives) would always be advisable.

Should you wish to discuss your need for a digital asset estate plan, or if you are considering preparing such a plan, please contact our [Wills and Estates](#) Group. We have expertise in such matters, and would be very happy to assist.

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