

# YOUR DIGITAL DEATH

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The internet, and its accompaniments, telephones, I-Pads, etc., are quickly becoming the premiere method for social, financial and news communication. This interaction begins as the most rudimentary text message and ends with the transfer of billions of dollars through secure accounts.

# YOUR DIGITAL DEATH

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## Types of communications:

To name only some: websites, e-mails, texts, blogs, Facebook and similar social network accounts, telephone calls and records, file sharing sites, credit cards, bank and securities accounts, Pay-Pal, YouTube Videos, Twitter, Flickr photo albums, student school accounts, Netflix, I-Tunes, etc.

# WHO OWNS THESE ACCOUNTS

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All of the internet uses listed on the previous page are created, usually, through the entry of a valid email account and the entry of some type of unique password. However, the principle that must be recognized by the user is that, in almost all instances, they are simply renting space. They are really the owners of nothing other than a mere license to the internet address to which they are posting. Obvious exceptions to this include, in most instances, your website, your bank, savings, securities and credit card accounts.

# WHAT HAPPENS TO THESE ACCOUNTS WHEN YOU DIE?

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Well, several things, first, you must remember that many internet users do not disclose the ownership or use of some or all of their internet based relationships to anyone. Thus, for these people their internet uses will continue on into existence (unused) until either the web site shuts down for other reasons unrelated to action on the part of the deceased or his or her relatives. Other websites, more particularly those that require the payment of monthly or some type of recurring dues will shut down when the users credit card finally stops paying the fee. It's hard to consider hearing this between spouses: "Hey Honey, if I die before you, please be sure to stop paying the monthly dues to that X-Rated Porn site I visit all the time, OK. Thanks, I knew you'd understand," or "Hey Dear, please be sure to close down that Yahoo email account I have where I email my old boyfriend everyday, OK." These accounts will probably die a slow and excruciating slow death from nonuse.

# WHAT HAPPENS TO THESE ACCOUNTS WHEN YOU DIE?

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Most users let others know of their use of online accounts but, more likely than not, do not share the details of the accounts with anyone for a whole variety of reasons. Probably the principal reason for nondisclosure is simple impracticality. Many people have 15 or more online accounts and many of these accounts have different passwords (you don't want to have just one password that you use all the time). Also, many would argue, writing them down seems to go against the reason you have a password anyway ! So therefore, giving the password to others is just viewed as a waste of time. With these people at least two events will occur: First, as their heirs know of the existence of the accounts, they will try to contact the account holders and determine what, if anything can be saved, and secondly, they will terminate payment to all billed on-line accounts.

# WHAT HAPPENS TO THESE ACCOUNTS WHEN YOU DIE?

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## Examples:

Facebook, in its statement of rights and responsibilities provides in section 4(9) “you will not share your password”

In its help center the question is posed: How do I report a deceased user or an account that needs to be memorialized or deleted? It answers as follows:

### Memorializing the account:

Please [report this information here](#), so we can memorialize this person’s account.

Memorializing the account restricts profile access to confirmed friends only. Please note that in order to protect the privacy of the deceased user, we cannot provide login information for the account to anyone. We do honor requests from close family members to close the account completely.

### Removing the account:

Immediate family members may request the removal of a loved one’s account. This will completely remove the account from Facebook so that no one can view it. We will not restore the account or provide information on its content unless required by law. If you are requesting a removal and are not an immediate family member of the deceased, your request will not be processed, but the account will be memorialized.

Immediate family members may [request to remove an account from the site here](#). You may also use this form if you have a special request regarding a deceased user's account or would like to remove the profile.

# WHAT HAPPENS WHEN I DIE?

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A review of another type of account, Yahoo's Flickr, provides that the following occurs upon their being notified of your death:

*No Right of Survivorship and Non-Transferability.* You agree that your Yahoo! account is non-transferable and any rights to your Yahoo! ID or contents within your account terminate upon your death. Upon receipt of a copy of a death certificate, your account may be terminated and all contents therein permanently deleted.

# What Happens When I Die?

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Obviously these are two diametrically opposite results that occur upon your death. One thing which should be noted is that in both instances, the surviving family members get no rights, nor access to, any of the information contained in the accounts. This should be very important to most people.

# What Can I Do To Preserve My Online Accounts?

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The rights of heirs, beneficiaries and guardians are, to say the least, unclear when it comes to ones digital assets. Very few states have statutes on their books providing any guidance whatsoever. New York and Oklahoma have at least attempted to provide some guidance in this area but their statutes are weak. As an example, Section 269 of Oklahoma's statute provides as follows:

“The executor or administrator of an estate shall have the power, where otherwise authorized, to take control of, conduct, continue, or terminate any accounts of a deceased person on any social networking website, any microblogging or short message service website or any email service websites.”

# Do the statutes help?

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While at first glance the statute appears to be of great assistance, you must notice two great shortcomings. First, the statute only deals with four separate types of accounts, namely, “any social networking website, any microblogging or short message service website or any email service websites.” Thus by definition all other types of websites are eliminated. Second, the statute is limited by the phrase “where otherwise authorized”. Thus it would seemingly be limited by the language contained in both the Yahoo and Facebook contract language.

# What Can You Do?

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As shown the statutes really don't provide the type of complete protection you need to protect your digital life at your death. As an alternative, commentators recommend that you use two different tools.

The first is an online account where you can safely place the names of all of your digital accounts and their respective passwords and other needed information. Two examples of these types of websites are LegacyLocker.com and Entrustet.com. Both of these websites provide very useful instructions and storage sites for all of your internet information. Both promise complete safety and security.

# What Can I Do?

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Secondly, you need to create a digital will. This is accomplished by creating a complete list of all of your online accounts, memberships, passwords and all computer files. You must then decide who will get what at your death or if you would like to have them deleted at your death.

Then you must select a digital executor to deal with all of your accounts at your death. This person, of course, must be willing and able to follow your instructions closely and accurately.

Finally be sure that your attorney is aware of your digital will and knows that you have selected a digital executor. You always want to make sure that there are no conflicts with the instructions you have given your digital executor and the terms of your will.

The previously mentioned websites will provide invaluable guidance in pulling together this task.

# Do Not Put Off This Task!!

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It is very important that you understand your rights and responsibilities for all of your digital accounts. Given the time constraints we were only able to review the agreements of two different websites. Each will be different. As an example, what happens to your I-Tunes when you die? Do you want your parents or other loved ones to have access to your Facebook account?

**GOOD LUCK!!!**

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**THANKS FOR ATTENDING!**