

What Happens to Your Digital Assets When You Die?

Law and Technology Collide in Gray Area

Dr. Marsha L. Bayless & Dr. J. Keaton Grubbs, Stephen F. Austin State University
and Dr. Kyle Post, Tarleton State University

February 2015 – Facebook

Facebook offers 186 million users in the United States a new option.

Can now designate an individual listed as a legacy contact to perform designated tasks once the owner of a Facebook account dies.

USA Today – February 2015
Zogby Poll reports that most adults are concerned about what happens to their digital presence when they die.

Of 1,012 adults surveyed, 71% said they wanted their communications to remain private unless they gave prior consent, and 43% wanted private accounts on online services deleted unless they gave prior consent for someone else to access them.

eAccounts and Blog Entries

Email such as Yahoo!, Gmail, Outlook, Suddenlink

Social such as Facebook, LinkedIn, Instagram, MySpace, Twitter

Online purchase and use such as iTunes, Amazon, Kindle, SecondLife, Virtual World

Who owns your eAccounts when you die?

Who owns the content, the actual blog entries, the pictures, books, music and other data or documents? Who can access them to get to see the content or to get possession of the content.

These questions were discussed in an article titled *Digital Assets: Law and Technology Collide – A Dilemma Needing a Solution*. Published in the *Southern Journal of Business and Ethics* in Fall 2014 by Kyle C. Post, Marsha L. Bayless, and J. Keaton Grubbs.

What are Digital Assets?

Some scholars describe Digital Assets as the following:

1. Devices and data
2. Email
3. Online service accounts
4. Financial accounts
5. Online businesses or stores

Do You Own Digital Music or Books?

Amazon indicates the person who buys a digital book for the Kindle, the purchaser has a non-exclusive right to view, use, and display the material unlimited times on the Kindle. However, the user may not sell, rent, lease, distribute, broadcast, sublicense, or otherwise assign any rights to the material. The 600 books on my Kindle, then, are for my personal use and not to pass along to my heirs. Music could have the same type of license.

What About Email that You Create? Can That be Inherited?

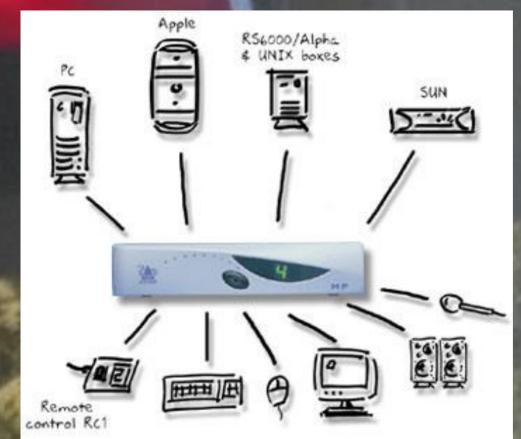
Digital transmissions which include email are specifically covered by the Digital Performance Right in Sound Recordings Act of 1995 which amended the Copyright Act. Copyright protection is automatic. Some service providers, such as Yahoo! Email may require that an email account be non-transferable as one of the terms of service. With emails, the author of an email may obtain copyright protection but if he or she does not retain a copy (printed or in digital format) there may not be any means to secure a copy. The author of the email may need to make copies to ensure that the email is available to his or her heirs after death.

Laws Related to A Deceased Person's Email Account

Connecticut, Rhode Island, Indiana, Oklahoma, and Idaho have passed laws divided into two categories: 1) the executor should have control over the digital assets and allow the executor the continued use of the account and 2) those that grant an executor only access to the contents of a decedent's email accounts. At the present time there are many gray areas in the law related to the inheritance of digital assets. In fact, there is a glaring need for clarification. Until a court or laws are created, the issues may be ruled by the various user agreements presented by online organizations.

The Challenge: Issues Impact So Many Types of Laws

The different laws implicated in these issues include property, wills and inheritance, privacy, contract (user and licensing agreements and terms of use), family, and even copyright.



Digital Assets are Everywhere