

Digital Assets

Keeping Track

An article by  safely filed

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Digital Assets 1

Lindsay Bryce, a solicitor with the Scottish law firm of Murray Donald, discussed our use of the Internet for many financial transactions and asked the following questions.

... how many of us give a thought to what happens to our virtual world on our deaths, or if we lose capacity? How will our loved ones know about those paperless bank accounts, those family photograph albums, those unfinished journal articles or books stored on our laptops or tablet computers? Even if they know about them, how will our families access this information? What happens to our digital music and eBook libraries? Will our beneficiaries be able to inherit these in the same way they would be able to inherit a CD collection or the contents of our bookcase?¹

Good questions.

Your Music - The Difference Between License and Ownership

Another word for license is “permission.” When you get your driver’s license, what you receive is permission to operate a motor vehicle on a publicly owned road. You do not get ownership of the road.

Now here’s the bad news. If you read the “Terms and Conditions” of just about any music, video or e-book site, you’ll see that you don’t get ownership of the song, video or book. All you get is a license to use it.

That license goes to you personally, and usually is not transferable. So, in the same way that you could not give or lend your driver’s license to anyone else, you technically can’t give your downloaded music, videos or books away in your will. This could be a big deal. One of the larger iPods will hold 40,000 songs. At \$0.99 each, that little machine could hold almost \$40,000 worth of music. And technically, that license dies when you do.

¹See <http://www.murraydonald.co.uk/news/290-inheritance-in-the-digital-age> for the full article.

You are probably thinking, “Who cares? Nobody will find out.” But don’t be too sure. While backing up your music is perfectly acceptable, if you inherited an iPod and you backed up those songs online, somebody may be able to see your account to determine if you paid for what you stored. You may be ordered to delete them. It would also be interesting to see a contested will and a ruling in a probate case. The judge may simply decide that the songs on the \$40,000 iPod belong to nobody because the license died with the iPod’s owner.

Other digital assets are your email, email address book, music, video and social media accounts. And the law is unsettled on ownership of those assets. See [this link](#) for a short article on the problem.

Ownership of Assets in Digital Form

While you may not legally own the songs you paid for, there are many other items that are stored in digital form that you clearly own. One example is an intangible financial asset like a share of stock or a mutual fund. Even if you no longer get the paper evidence of ownership in the form of a monthly statement mailed to your home, you still own that asset.

The same can be said of intellectual property. If you have an unpublished book on your computer, even though that book is in digital form, you clearly own it and can sell or give that asset away just like it a physical object.

But the problem with assets in digital form is that they get lost. They are literally invisible, sitting on a hard drive or in the cloud. So if something happens to you, how can you be sure that your family can find and see them?

Making the Invisible Visible

In the past, if something happened to you, one of your family members could go through your paper folders to determine what you owned. With the advent of the Internet, there may not be any paper files to go through.

As a first step and at a minimum, tell someone you trust that you have these assets and in what websites they recorded. Make sure they have account numbers, and contact information, like a telephone number or web address. They should also have some idea of what is in the accounts, so they can prioritize if anything happens to you. For example, they may need to know that an account at an insurance company has information on a life or health policy, as opposed to homeowner’s insurance.

Your email address book is one digital asset that many of us don't think about. You may not want to share your email address book with your daughter now, but if something happened to you, you'd probably appreciate having your daughter notify your friends. She couldn't do that without their email addresses, and she needs your name and password to get into your account. And if that email address book is a business asset, then make sure that the business won't lose that asset.

Recording Digital Assets and Licenses

Because the laws may change on the issues of license and ownership, consider, at least for now, treating both those assets you clearly own and those for which you only have a license the same way.

How you handle this is up to you, and there may be some contractual restrictions on giving others access to your accounts. But do something. Consider keeping a paper list of assets in a drawer where it is easy to find. Make sure that list includes the internet sites on which you transact any business, along with account names and passwords. You may have an Amazon account with a credit. Make sure that is also on the list.

Whether Digital or Not, Keep it Simple

It doesn't really make sense to have one place to list digital assets or assets that are recorded digitally and another place for assets evidenced by paper records. Have one place to record all the assets and anything else you want your family to know about. Remember, if nobody knows about an asset, if it is invisible in a computer somewhere, you may as well have never owned it. It is lost and goes into that pool of \$58 Billion of unclaimed assets in the United States².

Many people use a safe deposit box as a storage place for records of assets and that is certainly something we recommend you consider. But a safe deposit box has limitations. You can only get to it during bank hours and in some states, the bank where the box is located is legally obligated to deny access to the box after the death of an owner and can let you open it only on court order or with a court representative standing next to you. So make sure that for documents in a safe deposit box, a copy is held outside of the box. While this is important for all asset lists, it is extremely important for documents like life insurance policies, medical powers of attorney, wills, living wills and trusts. In some instances the original is not necessary and a copy can be legally binding.

But in any event, you don't want to send your family on a hunt through your desk, filing cabinets and safe deposit boxes or even worse, having them go through your browser history to

²See [CNN Money](#)

try to find any accounts with assets you might own. Try to designate one place where everything can be found.

Seriously Consider Going Online

Whether your assets are digital (your email account), are not digital but in digital form (the unpublished book) or are represented by a paper document (deeds or certificates of deposit), either the asset itself or your proof of ownership, or both, are vulnerable and need to be protected. Aside from the convenience of having a list of the assets or the documents representing them in one place, where the list is easy to find, there are five additional reasons for keeping your records online.

1. **Destroyed, lost and incomplete files.** One of the problems with a paper record of your assets is paper's vulnerability to fire, flood and theft, or simply getting lost. Keeping a paper record can be a burden and if you have to search for it every time you make a change, you might not keep it as up-to-date as you know you should.
2. **Drag and Drop convenience.** Why print out an electronic statement and put it in a paper folder, when you can simply drag and drop the statement from a folder in your computer to an online storage account?
3. **Your children's preference.** If you are reading this, you are probably familiar with how the Internet works. If you have children, they will likely be more comfortable going through your records in an online account rather than going through your desk or old boxes of files. And you can't lose the Internet. You can always find it as long as you have a computer, mobile device and an internet connection.
4. **Audit trail.** The other advantage of keeping your records online is that a good service will provide an audit trail of your activities. For example, what if you changed your mind about a "Do Not Resuscitate" directive, executed a new one, but didn't destroy the first one because you lost it? When it was needed, and if it only existed in paper form, it could be that the old one was found first and used. No one would know you had changed your mind and had another directive. That could make for a very bad day. So get a service with an audit trail.
5. **Flexibility.** With a good online service, you can change your mind at any time and upload new documents and delete old ones. You can easily change who has access to your files with just a click of the mouse. And the audit rail mentioned above will help keep your intentions straight.

And though for many, security of an online service is a concern, a good service is managed by professionals who keep the latest virus software working for your account, encrypt your files both in storage and in transmission and have procedures in place to help you and your family if

you lose a password. For most of us, that is better than the security we have on our own computers.

Also consider going online for the following reason; if you have created something digitally, like a book, professional photograph, music, video or any type of intellectual property, what you created is subject to destruction by fire, theft or natural disaster, just like a physical object. But even more importantly and likely, it is subject to destruction by computer hard drive crash or virus. For the reasons mentioned in the paragraph above, it might be better off stored online than on your hard drive. Just upload it to the same account where you keep your important records.

We Are Not Going to Go Backwards

Years ago, if you got a digital document and needed to file it, you would print a copy and put it in a paper file folder, somewhere in a filing cabinet. Sometime in the 90's digital documents started to outnumber paper ones. Now, we rarely get paper documents and if we do, we probably scan them and put them into a digital folder. That's quite a switch.

Digital documents are just too convenient. Expect this trend to continue. Paper won't be gone in the next couple of years, but if the habits and preferences of the millennial generation are any indication, very little will be in paper form 20 years from now.

Online Services

With the exception of our own company, SafelyFiled, we are not making any recommendations about online document storage and sharing services. You need to evaluate which one is best for you. And companies often change their offerings, so a company with a big security hole in 2013 may have fixed it in 2014. So you need to do your homework.

Consider a number of factors.

1. Security is obviously number 1. The service should enforce strong authentication, have good verification for password changes, and encrypt documents both in transit and in storage.
2. Sharing is clearly important. You want some people to see some documents but not others. Make sure you can easily do this. The service should enable you to register people and give you the granularity to share some items but not others. While it is convenient to send a link to someone who has not registered with the service it is not secure. Anyone who gets that link will also be able to access your document
3. Separate the wheat from the chaff. If you use a backup or collaborative workspace service like Carbonite or Dropbox, you may not want to mix in your important papers or

records of digital assets with that account. That could be like bringing your tax returns to the office and filing them under “Taxes” in a company filing cabinet that your coworkers have access to. It might be too easy for someone to see something you want to keep private. Alternatively, it may be difficult for people to find the truly important data when it is needed. So consider a separate service for what you consider important, personal and confidential.

4. Take into account other convenient functions that can be built into the storage site, like automatic messaging, automatic reminders and a place to easily record the location of the paper original, if any.
5. An audit trail is important. This gives you a log of who accessed each item. If you give your accountant access to some files, the audit trail will show whether he accessed the files that he claimed he looked at, or it will show that he downloaded an unexpected number of your files on a particular date.

These issues are the most important, but you may also want to consider where the help desk is located, what amount of storage capacity is available and what the size limitations are on each file uploaded. And if you have questions, send an email to the company. Seeing how quickly and how thoroughly they respond will give you some insight into the quality of their service.

Conclusion

While the law is unsettled regarding digital assets, it is important to remember that digital assets and assets in digital form can have significant value. However, no matter what the value, they can easily get lost.

Seriously consider using some of the available Internet-based tools to keep track of them. Use a high-quality company to help you store, organize and share information about all your assets, whether recorded on paper or digitally.