

A guide to your digital assets

Nowadays, understanding your digital legacy is just as important as understanding your financial and business legacy.

In this guide, we explain briefly what can be done to protect your digital assets in the UK.



CONTACT US

When you want the best outcome, you need the best people

+44 (0)1242 514000

willans@willans.co.uk

Find your lawyer online at
www.willans.co.uk/people

WHAT IS A DIGITAL ASSET?

A digital asset is, in essence, any asset which is owned by a person and stored in digital form that is uniquely identifiable and has a value.

These digital assets can be just as precious and important as physical assets, and often have monetary or sentimental value.

Records or rights? An important distinction (for lawyers, at least!)

Digital records (such as social media, online music, blogs and email accounts) are seen as part of the device in which they are recorded, such as a mobile phone or laptop. As such, when it comes to how these are treated in your will, they are passed on with, and as part of, the associated device.

Although these digital records are indeed precious assets to many, in the eyes of the law, they have no proprietary existence or value in and of themselves. Rather, it is the digital property rights and interests that are associated with them that have proprietary existence, and potentially monetary value.

Therefore, when solicitors and lawyers are administering the estate of a deceased person, we have to differentiate between digital records (which will not pass under a will or intestacy) and digital property rights and interests (which do pass).

Rights associated with information within these assets may be transferred to the personal representatives of a deceased person's will (subject to the agreements of commonly-used servers, such as Instagram and Google).

WHAT IS A PERSONAL REPRESENTATIVE?

A personal representative (PR) is the person who is responsible for dealing with a deceased person's estate. This could be an executor named in the deceased person's will, or the estate administrator if the person died without a will.

The deceased person's estate is automatically transferred to their PR, including their digital assets.

Your PRs have a duty to preserve and protect assets collected after your death.

In performing these duties, your PRs must act with due diligence, much like in the administration of non-digital assets. If there is a loss, and the PRs took all reasonable care and could not avoid the loss, they will not be liable for it.

PRs are also, in certain circumstances, subject to a statutory duty of care and skill under the Trustee Act 2000.

When deciding who to appoint as your PR, choose someone who is aware of the responsibility a role such as this entails, and someone who you can trust will act in your best interests and in a responsible manner. If you are appointing multiple PRs, it is recommended to choose people who get along, so they will work well together.

Do I need a specific 'digital executor'?

A "digital executor" is only necessary if you wish to appoint someone you trust and who is sufficiently knowledgeable about computing devices and cloud services that an expert will not need to be instructed as well.

Digital records that were under your control can be managed after death either by the executor or by someone else as a digital manager. However, as digital records are not property, the executor or digital manager will not be entitled to an indemnity out of the estate for expenses incurred in managing digital records (unless its payment is expressly or impliedly authorised by the person making the will).

WHAT KINDS OF DIGITAL ASSETS ARE THERE?

Assets can be divided into four groups:

Financial value assets

- Cryptocurrency accounts, shopping accounts & online trading accounts, etc.

Sentimental value assets

- Personal letters, emails, texts, photos & videos, etc.

Intellectual value assets

- Domain names, websites, blogs & digital art, etc.

Social value assets

- Social media and gaming accounts.

A guide to your digital assets



YOUR LIFE & THE LAW

Our newsletter for private clients, *Your Life & the Law*, is filled with topical legal updates that might affect you as an individual and your family.

Sign up to receive the latest issues by email or post, or download current and past issues at:

willans.co.uk/your-life-law

CONTACT US

When you want the best outcome, you need the best people

+44 (0)1242 514000

wills@willans.co.uk

Find your lawyer online at
www.willans.co.uk/people

SOME EXAMPLES OF T&CS FROM DIFFERENT PROVIDERS

Most providers will set out what can be done for digital accounts after someone dies in their terms and conditions. Here are some examples:



Facebook

When you die, friends and family can 'memorialise' your Facebook account.

Memorialised accounts have the word 'remembering' next to your name on your profile and your content shared by you stays on your Facebook page as well as being visible to the audience it was shared with. No one can log into the memorialised account and dependent on the privacy settings, friends can share memories on your timeline.

Facebook T&Cs state: "You may designate a person (called a legacy contact) to manage your account if it is memorialised. Only your legacy contact or a person who you have identified in a valid will or similar document expressing clear consent to disclose your content upon death or incapacity will be able to seek disclosure from your account after it is memorialised."

The legacy contact can accept requests on behalf of the account, change the profile picture and cover photo and pin tribute posts to the profile. If the legacy contact creates an area for tributes, then they can decide who can see and post these tributes.

Another option is to have your account permanently deleted once you pass away.



Google

Google has an Inactive Account Manager service which allows the account to be closed or for the submission of requests for

data from the account. You decide upon a length of time for the account to be inactive, and after that period expires, your nominated person will have access to your account.

Also, you can choose to set your Google account to auto-delete itself 3 months after contacting your nominated person, allowing time for the person to transfer your data before deletion and stop others from using your account.



Twitter

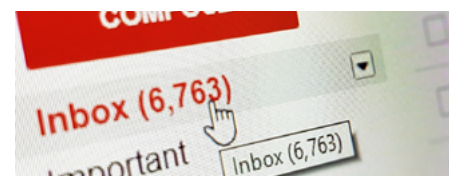
The only option on Twitter in the event of your death is to have the account deactivated.



Apple iCloud

Apple's Terms of Use state that your account is non-transferable and that any rights to your Apple ID or content within your account terminate upon your death.

Upon receipt of a death certificate, your account may be terminated and all content with your account deleted.



E-mail

Generally, the digital records on the deceased's computing device will provide information with which the PRs will be able to ascertain what digital property rights and interests need to be administered and will be available for distribution.

A guide to your digital assets



HOW CAN WILLANS HELP?

Our knowledgeable team handles all aspects of wills, trusts and inheritance tax planning and Court of Protection applications. Our work is often for clients who have been with us for many years; in some instances we act for second or third generations of the same family.

Please telephone or email to arrange an appointment.

SHOULD YOU INCLUDE YOUR DIGITAL ASSETS IN YOUR WILL?

We recommend you include any digital assets you may own in your will, so that any value attributed to those digital assets will form part of your estate.

Once you have collated a list of as many accounts you think you have, we would advise creating a memorandum of all usernames and passwords for the accounts for future use by your PRs when you die (taking care with security and storage of such a list). Keep this memorandum in a safe place, and ensure you tell your PRs where to find it.

Devices form part of the personal chattels clause in a will, so may be distributed following a separate letter of wishes. If your will does not leave any directions in relation to your digital assets, they will fall into the residue of the estate and will be distributed as per the instructions of the will.

How are digital assets taxed?

Digital assets tend to be taxed in the same way as other intangible assets. They are generally valued as part of your overall estate for inheritance tax purposes, and any acquisitions and disposals may even fall within the scope of capital gains tax.

With the rise in technology and therefore, investment in digital assets (in particular cryptocurrencies), HMRC has issued guidance on how it taxes these digital assets.

Five tips for managing your digital assets:

- You should consider and record all digital assets you have before we meet to discuss the contents of your will. Make a note of them including the computer devices you have and whether you use any internet services.
- We recommend you consider appointing a digital manager or digital executor (appointed representative) who can access and manage your digital assets after you have died.
- Create a list of all usernames and passwords for all the accounts which can be used in future by your appointed representative after you have died. Keep this note up-to-date

and in a safe place, and ensure your appointed representative is aware of it and where the list can be found on your death.

- Consider creating lasting powers of attorney (LPAs) for both health and welfare and property and finances when it comes to digital assets; this way, you'll be able to nominate a trusted person to make decisions on these should you lose capacity to make them yourself.

HOW CAN WE HELP?

Our wills, trusts & probate lawyers have advised many people on including digital assets in their will and lifetime and estate planning.

If you would like any more information on digital assets and how to manage them pre and post-death, please do not hesitate to contact us.

CONTACT US

When you want the best outcome, you need the best people

+44 (0)1242 514000

wills@willans.co.uk

Find your lawyer online at www.willans.co.uk/people