

A Decedent's Digital After-Life

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Date : November 27, 2013

Jamie Patrick Hopkins, *Afterlife in the Cloud: Managing a Digital Estate*, 5 **Hastings Sci. & Tech. L.J.** 210 (2013), available at [SSRN](#).

A decedent might have gone to join his digital property in the clouds, but for the estate lawyer here on earth, these digital assets may require more novel and not (as of yet) widely embraced estate planning techniques.

In his recent article, [Professor Jamie P. Hopkins](#) identifies the digital assets that increasingly are property interests of a decedent's estate. The mechanics for establishing joint ownership of digital assets is less than clear; the importance of including digital assets in the estate plan for their post-death transfer is highlighted.

Each digital asset at death becomes an estate asset that must be identified, valued and transferred. This is an inescapable truth, whether the digital asset in an individual's Facebook page (with typically zero financial value), an on-line store of a sole proprietorship (with a going-concern value) or an electronic folder of never before seen photographs by a world-class photographer (with values high enough to trigger estate and inheritance taxes on their transfer).

Even the non-tech savvy client typically possesses digital assets. The dusty, yellowing pages of the family photo album are being replaced by digital storage. Traditional approaches to locating physical assets may prove insufficient in locating digital assets. And even once found, digital assets are typically password protected. So rather than searching for one safe deposit box key, the probate attorney requires a (potentially) unique "password key" to each asset.

As digital assets cannot exist independently of the online service provider, the extent of the surviving property interest in a digital asset may be limited by contract with the online service provider. Some digital assets are strictly non-transferable, more like a right than a true property interest.

Professor Hopkins does an excellent job of guiding digital estate planners in adapting to these situations in a legal environment that is still new and growing. The article specifically highlights the need for legislative solutions and points to a few already-existing examples. The author also informs the reader of a few online service providers who offer post-mortem asset management services for their digital assets. With good reason, estate planners and others should be wary of this new market given the uncertainty around its potential for longevity and security.

Just as other areas of law such as commercial law (electronic chattel paper), property law (online property records), and courts in general (electronic filing) have moved into the digital area, estate planning must follow suit. This article does well to point out some key issues in the area and provide suggestions for improvement and guidance. By reminding estate planners to leave private information out of wills if working in this arena or to move the digital assets entirely to a trust for easy transferability, Hopkins offers practical advice for a situation that may not yet have reached practicability for many. The article leaves out a few questionable scenarios such as digital assets belonging to multiple parties (couples' Facebook pages for one example), but extends practical logic to

estate planning in a manner that is thought-provoking and innovative.

Cite as: Lynda Wray Black, *A Decedent's Digital After-Life*, JOTWELL (November 27, 2013) (reviewing Jamie Patrick Hopkins, *Afterlife in the Cloud: Managing a Digital Estate*, 5 **Hastings Sci. & Tech. L.J.** 210 (2013), available at SSRN), <https://trustest.jotwell.com/a-decedents-digital-after-life/>.