

## **DIGITAL AFTERLIFE**

### ***A Looming issue of dealing with death and online identity***

#### ❖ **Introduction**

*“There are three kinds of death in this world. There's heart death, there's brain death, and there's being off the network.” –*

Guy Almes, Director of the Academy for Advanced Telecommunications and Learning Technologies, Texas A&M University.

The Internet is really young. It is a tool used constantly in a person's day-to-day life. People use the Internet for countless reasons, ranging from posting thoughts and pictures onto blogs, to keeping up with friends and family, and even maintaining bank accounts and credit card balances. As we go through our lives we create vast amounts of data. Emails, phone calls, social network posts, photos, utility bills, health monitoring devices, text messages, browsing data, purchase receipts and more are all born out of the regular course of our actions. It's more than just data. It represents our actions, interests, intentions, communications, relationships, locations, behaviors and creative and consumptive efforts.

So, a person may have thousands of e-mails stored on remote servers or in his computer. Now, you would hardly find a person who does not have a Facebook page, or a Twitter account. Further one may have kept stored countless photos in a Flickr album. All the aforesaid information or data amounts to a digital profile of sorts, which raise a very interesting question: ***what will happen to your treasured digital possessions when you die?*** For example; profiles of the dead are left suspended in mid-air, leaving a silence, very well noticed by his or her friends until someone posts condolences message.

#### ❖ **Digital Afterlife**

The Digital Legacy make the estate planning process in regards to your valuable online content — a simple one, so you can rest assured that everything of digital importance is safe for all of eternity. It takes care of one's 'Digital Afterlife'. Whether it is one's email account, online photo site, or blog, web accounts, all are important and have value. The same way will protect bank accounts, stocks etc., Digital Legacy ensures that your valued digital assets go to the right people.

*“Digital Afterlife can be understood as maintaining or transforming digital content of users present in the web-space according to users will in case of users deceased or incapability of operating their personal accounts which are considered to be a virtual representation of users in the web platforms. The user generated content can be termed as digital footprints in the cyberspace, the process also generates mass of internet users and wide range of issues of legalizing and transforming content right of users under social medias and web-based services.”*

One digital data needs to be protected through a convincing means in order to protect a legacy existing in future. Digital data can be valuable for legal, researches, scientific, commercial and non-commercial purposes. Thus, the data needs protection providing systematic information base for future generations. Digital afterlife concept is also getting popular in growing economies like India as well where a businessman is being reported making a digital will.

#### ❖ Organizations and their services for Digital Content

Organizations which have tried to foresee this issue have started capitalizing the opportunity by taking responsibility for the digital legacy and making money out of this new business opportunity.

**Legacylocker.com:** Legacylocker.com is a web based company that operates as an executor providing access to the username and passwords of deceased ones to access the deceased's account. It is based on San Francisco, California.

They charge a certain sum of money for maintaining their services to the user. Their services are based on access of username and password to useful accounts only

**Think Up:** There is another free online application, Think Up, which is an open source web application that captures all your activity on social networks like Twitter, Facebook and Google+. With Think Up, you can store your social activity in a database that you control, making it easy to search, sort, analyze, publish and display activity from your network. Its purposes include offering permanent access for researchers, historians, scholars, people with disabilities, and the general public to historical collections that exist in digital format.

**Bcelebrated.com:** This web based service allows user to create digital environment pursuing it to be made as a reflection of their identical physical life so that when they pass away it could be used as a memorial page of user. The implied logic of this kind of services is to promote online memorials of the deceased ones saving time, resources and money.

**Sugarsync.com:** It is a cloud based online backup services for day to day utilization providing user to collaborate upto 5 Gigabytes of space in the cloud and sync their important files and folders remotely.

#### ❖ Privacy and Policy regarding various sites

Privacy will play a major role in the evolution of the internet. It is also clear that until the courts establish ground rules for global online privacy (including the rights of the deceased), it is up to individuals to take proactive steps to pass on their digital effects securely and with dignity.

**MySpace**, the biggest social network, has made headlines when profiles of the deceased have been made public. Famously, the case of 17-year-old Joshua Anson Ballard, who in 2005 posted his own suicide note as a MySpace bulletin, revealed just how emotionally charged a remembrance profile can become. Administrators of MySpace say “they treat death on a case-by-case basis”, but there are limited options. MySpace never deletes a profile for inactivity, the site says. “However, if a family requests that a profile be removed we will honour their request and remove the profile in question”. MySpace does not allow anyone to assume control of a deceased user's profile and, as with any profile in our network; the memorial profile must abide by our terms of use.

So, the option is either to leave a profile untouched, open to unmoderated comments, or to remove it completely.

**LinkedIn, a social network for professionals**, has a clear policy on user death: at the family's request, the profile is simply removed. We first of all offer our condolences and then proceed to close their account so their details are no longer visible to anyone, says **Cristina Hoole of LinkedIn**. "Our focus is on making this process very simple for the people left behind and therefore ensures this is dealt with immediately."

As per **Yahoo** spokesperson Amanda Millar "Protecting the privacy of our users is a top priority," The Company made a commitment to treat everyone's account content as confidential, "even after death".

**Google** imposes rigorous conditions and a deliberately lengthy two-part review, which involves sending a paper copy of a death certificate to its California headquarters, before it will allow access to Gmail and information stored in Google Drive and Google Documents. As per Google's spokesperson, Kate Mason "The underlying point is we would always privilege someone's privacy, it's really hard for us to make exceptions to open somebody's account to someone else."

**Live Journal**, a veteran of social networking, has it right. For deceased users, a special memorial status has been implemented, which in effect freezes the profile - but leaves it there to be enjoyed without fear of it being hijacked or spammed. The user's friends can - if the family wishes - continue to read all the existing journal entries. This status is typically applied at the request of a family member.

**Under Face book's current policy**, deaths can be reported through an online form. When the website learns of a death, it puts that person's account in a memorialised state. Certain information is removed, and privacy is restricted to friends only. The profile and wall are left up so friends and loved ones can make posts in remembrance.

**Twitter** will act on the instructions of the deceased's personal representative or a verified immediate family member to deactivate an account and will, upon request, also provide a permanent back up of the deceased's public tweets.

### ❖ The Cases of Digital legacy

Digital existence and the fight to claim it came to light when in U.S., one Karen Williams fought a two-year battle with Face book for full access to her deceased 22-year-old son's account. The website relented and gave her 10 months, after which the account would be deleted forever. A big question can be put up that should a person's "digital estate" be handed over to relatives?

On November 13, 2004, Lance Cpl. Justin M. Ellsworth was killed in action while serving as a Marine in Fallujah. His father, John Ellsworth, decided to create a memorial for his son by using the e-mails that Justin had sent and received while he was serving in Iraq. In order to do this, however, John Ellsworth needed access to his son's account, a request **Yahoo!** denied. **Yahoo! claimed** that if it granted Justin's parents access to his account, it would be in direct violation of its **privacy agreement** that it's over 40 million users must agree to. Finally, after a heated court battle that lasted over three months, a Michigan court finally granted the **Ellsworth's access** to their son's e-mail.

### ❖ Law on Digital Legacy

Legislators are beginning to take notice that it is important to give families control of on-line accounts of their deceased relatives. Few states in US have passed or proposed legislation dealing with the issue.

**Oklahoma:** The State of Oklahoma has passed a legislation relating to probate procedure; authorizing an executor or administrator to have control of certain social networking, microblogging or e-mail accounts of the deceased; providing for codification; and providing an effective date.

#### **Important Section:**

*"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 e-mail service websites."*

**Connecticut:** The state passed an Act concerning access to decedents' electronic mail accounts.

### **Important Section**

*"An electronic mail service provider shall provide, to the executor or administrator of the estate of a deceased person who was domiciled in this state at the time of his or her death, access to or copies of the contents of the electronic mail account of such deceased person upon receipt by the electronic mail service provider of: (1) A written request for such access or copies made by such executor or administrator, accompanied by a copy of the death certificate and a certified copy of the certificate of appointment as executor or administrator; or (2) an order of the court of probate that by law has jurisdiction of the estate of such deceased person."*

**Rhode Island:** This US state introduced legislation in February 28, 2007, known as "ACCESS TO DECEDENTS' ELECTRONIC MAIL ACCOUNTS ACT".

### **Important Section**

*"An electronic mail service provider shall provide, to the executor or administrator of the estate of a deceased person who was domiciled in this state at the time of his or her death, access to or copies of the contents of the electronic mail account of such deceased person upon receipt by the electronic mail service provider of: (1) A written request for such access or copies made by such executor or administrator, accompanied by a copy of the death certificate and a certified copy of the certificate of appointment as executor or administrator; and (2) an order of the court of probate that by law has jurisdiction of the estate of such deceased person, designating such executor or administrator as an agent for the subscriber, as defined in the Electronic Communications Privacy Act, 18 USC 2701, on behalf of his/her estate, and ordering that the estate shall first indemnify the electronic mail service provider from all liability in complying with such order."*

**Nebraska:** The state proposed legislation to allow next of kin to control digital accounts after a user has passed away. Senator John Wightman is proposing Legislative Bill 783 on behalf of the Nebraska Bar Association to clarify the rights of representatives of the deceased. The proposed bill is modeled after Oklahoma's digital property management after death law. The law states that: *"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 micro blogging or short message service website or any e-mail service websites."*

## ❖ Conclusion

There are many issues related to our ability to preserve, prepare, and produce a way for future generations to be able to view the content we create over our lifetimes as a digital legacy. There is forethought and steps that need to be taken when considering preserving our digital data. Those steps include making sure that the data you create can be stored in a place where you own it. Some of the applications that we have already talked about like Think up, Backupify, the Locker Project, and others that take one step towards the preservation process by giving us access to the data we create on social services and elsewhere. However, their terms of use are not all the same and may not present a comfortable legal risk model to individuals considering those services. Suffice it to say that before trusting the keys to one's digital life to a digital estate planning service, knowledgeable legal counsel should be consulted to review and discuss the terms of use with you.

Control over the digital assets may be stymied by the terms of use of the websites containing the digital assets. For instance, the social media website may not allow heirs to continue the decedent's social media presence as a memorial to the decedent. In some instances, the family or heirs may have valid reasons for wanting the decedent's social media presence to be promptly removed, but will have to work through the terms and conditions of the social media website provider.

