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What Happens to Your Facebook Account When You Die?

February 3, 2012 By [Ada Kulesza](#)



In 2005, college student [Loren Williams](#) was killed in a motorcycle accident. His grieving mother, yearning to feel closer to her son, wanted to use his Facebook page. More than just seeing the site, she wanted to see his correspondence, to read his messages, in hopes of understanding her son better.

A 25-year-old federal law, however, barred her from accessing his account.

Digital media has evolved at breakneck speed, giving lawmakers little time to catch up. The latest federal law concerning digital media after you die is from 1986, while [Oklahoma](#), of all places, has the most progressive and up-to-date law about digital estate on its books.

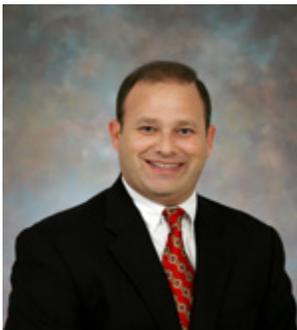
The 1986 Electronic Communications Privacy Act prevents disclosing stored communications unless there's a court order. Oklahoma's laws, on the other hand, allow disclosure to estate fiduciaries.

Facebook refused Williams' mother, Karen, access to his account and even changed the password when Karen got it from a friend. She eventually retained a lawyer and sued Facebook in 2007, **finally getting the court to issue an order to allow her access.**

License Expired

When you sign up for a website, you are agreeing to terms of license, so any "assets" under that license fall under licensing rules, says Florida-based estate planning lawyer [David Goldman](#).

Attorney David Goldman



If you have an iTunes account, and you purchase music through that account, when you [die](#) the license for that account expires. The same principle applies to Facebook or Twitter, so when you die the license to all the content generated on that account, technically, expires. So if people gain access to these accounts after the user has died, it could be a liability, Goldman says. Legally speaking, once someone passes, their licenses to all that media expires.

"If you have an iPhone, you'd have hundreds of dollars worth of apps or thousands of dollars worth of music. When you die those licenses expire," Goldman says.

It's a little different with a financial instrument like PayPal, where the money wouldn't disappear, but for survivors of the deceased to get access to digital accounts, they'd need to hire a lawyer.

"There is litigation against AOL and Google to access emails. The courts have, after a bunch of time and a bunch of money, appeared to grant access. So far as I know they haven't really provided access, but compiled the content. You're basically getting raw data but not getting access to the account itself," he says. Opening a probate case can cost thousands of dollars and take time. Some attorneys suggest using a will or trust that

gives access to a password through a separate writing memorandum – a document that can be attached to a will, so the will does not need to be re-written every time there's an adjustment.

The best way to ensure a digital legacy is to create accounts in the name of a trust. If the account is in the name of a trust, the trustees and beneficiaries can retain access to the digital licenses.

Digital Death

The issue of digital estate planning goes beyond whether fiduciaries should have access to social media issues. There's online banking, documents, and the [thousand other little things](#) people do electronically.

Attorney Wendy S. Goffe



“If you run an Internet-based business, digital estate planning needs to be integral to your plans. You need to have detailed instructions,” says Seattle-based estate attorney [Wendy S. Goffe](#), a lawyer at Graham & Dunn, PC.

“If you're a professional photographer and you've got all your photos online, or you're an author and you self-publish online and you have all your work stored in the ether, it's critical. It is your legacy. You can have a Pulitzer-winning novel, it'll be all gone,” she says.

There aren't any concrete rules in place, either. Even estate-planning attorneys may be less than web-savvy – she admits with a laugh that her Seattle clientele are often more tech-smart than she. Consumers should make sure their attorneys are aware of their digital assets, and if needed, engage an adviser who knows his or her way around digital estate.

“I think we're in a time of disruptive change where there isn't a right answer, and there are a lot of approximate answers. The standards are changing really quickly, but one good option is to use a site that stores all this stuff and then tell someone you have it there,” she says. Don't just give your attorney your password information, though.

“Another (option) is to put it all on a thumb drive and stick it in a safe deposit box,” she adds.

A person's will should specify what he or she wants done with all their digital property after they pass. Goffe says, “A person may have a self-published Pulitzer-winning novel on Amazon that would be deleted forever” if a fiduciary doesn't know it exists. On the other hand, a parent might not want their children to read their journal, and that parent should make those wishes clear in a will.

If other states or the federal government adopt laws similar to Oklahoma's concerning rights to digital media, beneficiaries could gain access to log-in information; but until then, consumers have to obtain a court order to get access to their loved ones' social media sites after they've passed.

Tagged as: [digital death](#), [digital estate law](#), [facebook](#), [twitter](#), [flickr](#), [internet law](#), [itunes](#), [myspace](#), [social media after death](#)

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