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TALKING POINTS

The password to leaving your online life behind

By Judith Ashton and Marjorie Suisman

Computers are designed on two questionable assumptions: that the user will easily remember a number of passwords, and that the user will stay alive indefinitely. The first assumption is often wrong, and the second, eventually, is always wrong.

When a loved one has died or become incapacitated, family and friends often need, but may not have, access to information stored online or in a computer's memory. Today, proper estate planning must include planning for access to, or disposal of, digital information.

Most of us have carefully-drafted wills in which we direct who should receive our assets when we die, and who should manage our estates. We may also have trusts or powers of attorney that become effective when we are incapacitated.

We fail to consider digital information, even though these days it is through computers that we access bank and brokerage accounts, correspond for both business and social purposes, and maintain key personal information.

Although we spend much of our lives in front of our computer screens, most of us have not given much thought to what happens to the information we keep online.

E-mail records and social networking information present an immediate problem at death or upon incapacity. If we have not planned for access to these materials, what becomes of them?



Some online information may never be accessible to anyone. Website account survivorship policies are as divergent as the sites themselves.

For example, Yahoo! Mail keeps all deceased account holders' online activities confidential, absent a court order. Buyer information on eBay is similarly inaccessible. Some service providers allow a personal representative access, but usually only if that person provides proof of court appointment and a death certificate. Many sites have yet to establish policies.

Even more problematic than e-mail

and social networking information is financial, insurance and other account information kept exclusively online.

Without account information, surviving family members or those assisting us if we cannot care for ourselves may not even know that some accounts exist.

Without passwords, these people may not be able to access them without a court order.

In such situations, bills have gone unpaid, important information is lost forever and assets may not be transferred as the deceased wished.

What should you do right now?

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You can take a few simple steps that will avoid putting your loved ones through unnecessary hardship. Of utmost importance is to prepare a list of your e-mail accounts and your online financial, business and social accounts, including passwords and security codes.

Once you have a list, you have several options.

One option is to have your attorney keep it in a sealed envelope with instructions as to who is to have it when you die or become incapacitated.

Another is to give the envelope to a loved one or trusted friend, with the same instructions.

You may also choose to store your information in a safe-deposit box. You must, however, ensure that a trusted person is authorized to access this box on your behalf when you die or there's lack competency. Banks in many states will not allow a person access simply because he or she has a key, the password or the combination.

A fundamental problem with all of these options is that they require your continued diligence to keep the information up-to-date.

A fourth alternative is to use an online service that will keep track of at least some information (e.g., accounts and passwords) in real time.

For a nominal fee, one popular site will encrypt your account information and allow you to designate a beneficiary for each account. The site also allows you to write a letter or record a video that will accompany the information provided to the beneficiary. Once the company verifies your death, it will forward the documents to that person.

Another such website is essentially an electronic safe-deposit box that allows you to upload digital files of



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important documents, bank account and credit card numbers, passwords and benefit information. These sites are not geared to deal with incapacity situations.

Moreover, there may be risks to storing your information on websites like these. They may be susceptible to hackers, making privacy a concern, and they may go out of business, in which case your information may be inaccessible and lost forever.

Of course, there may be information on your computer that you do not want to share with loved ones, whether it be of a personal nature or confidential business information. Without planning, even well-intentioned survivors who wish to respect your privacy may not be able to distinguish private records from records that should be shared.

For planning purposes, you can think of your information as falling into four categories:

1. Information that is not sensitive;
2. Information that is private, but should be disclosed promptly to a particular person at your death (for example, active business records should go

to a co-worker, banking information to your executor);

3. Private information that should go to specific person, but is without urgency; and

4. Information that should be destroyed.

With these categories in mind, where and how the information should be stored can be more readily determined.

Regardless of the method you choose to protect and store your online account information, what is most important is that you list the information you want others to have, update it regularly and plan for its release upon your incapacity or death.

Marjorie Suisman, Esq., and Judith Ashton, Esq., are shareholders of the Boston-based law firm of Davis, Malm & D'Agostine, a full-service law firm serving the varied legal needs of individuals, public and private companies, and institutions. The authors thank Avi M. Lev, Esq., and Elise S. Wald, Esq., an associate at the firm, for their valuable contributions to this article.