

Viable Solutions to the Digital Estate Planning Dilemma

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I. INTRODUCTION	61
II. PLANNING FOR THE DIGITAL AFTERLIFE.....	62
III. DIGITAL ASSETS.....	63
IV. DIGITAL ASSETS' UNIQUE CHALLENGES TO TRADITIONAL ESTATE PLANNING TECHNIQUES 64	
A. TRADITIONAL ESTATE PLANNING.....	64
B. TRADITIONAL ESTATE PLANNING VERSION 2.0.....	65
1. Location of Digital Assets	65
2. Ownership of Digital Assets.....	66
3. Security Concerns Surrounding Digital Estates.....	67
4. Individual Goals Regarding Digital Assets.....	68
V. CURRENT DIGITAL ASSET ESTATE PLANNING TOOLS	68
VI. WORKABLE SOLUTIONS	70
VII. CONCLUSION.....	71

I. INTRODUCTION

Countless people are dying without proper digital estate plans in place, leaving billions of dollars of assets unaccounted for in the digital world. This is occurring in part because individuals are often unaware that traditional estate planning tools and techniques, such as wills, are ill-equipped to handle the unique challenges of digital estate planning. As a result, the majority of Americans are vastly unprepared for their digital afterlife, unintentionally foregoing digital estate planning altogether and leaving their assets trapped in a digital purgatory.

With the ongoing growth in our reliance on technology, interaction via social media, digitization of individual's property, and further advancement of new Internet technologies, the amount and value of our digital assets are growing exponentially. In response to this immediate need for digital estate planning and

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management of digital assets, some businesses began to offer their users the ability to plan for the disposition of their digital assets upon their death. However, due to the novelty of this area of law, the business solutions currently afforded often leave more questions than answers about what happens to the individual's digital assets, raise concerns about privacy and security, and augment disputes over their overall effectiveness in the estate plan. This Essay examines the importance and increasing prevalence of digital assets, discusses the challenges facing traditional estate planning in the growing world of digital assets, and suggests a workable strategy for the creation of a well-developed and manageable digital estate plan.

II. PLANNING FOR THE DIGITAL AFTERLIFE

Transferring property, wealth, assets, and family heirlooms from one generation to another has always been a primary focus of proper estate planning. The electronic and technological innovations of the twentieth century, society's reliance on the Internet and electronic commerce ("e-commerce"), and the growth of cloud computing have given rise to a new digital world of assets which may be accessible across the world through a variety of mediums.¹ Due to their importance in our everyday life, financial and sentimental value, and continuing growth, digital assets should be considered as a part of any estate plan. Digital assets and online accounts have the potential to continue indefinitely. As with any asset that can exceed the lifespan of the original owner, estate planning for digital assets is a vital part of the preservation of one's legacy and property disposition.

Many individuals unknowingly leave a significant amount of digital assets unaccounted for after death. For example, by the end of 2012, over 30 million Facebook users have died, leaving no directions as to the handling of their accounts.² Failure to consider digital assets as part of the estate planning can result in loss of items that contain sentimental and financial value for the deceased relatives. According to a 2011 McAfee study, the average Internet user places a value of \$37,438 on their digital assets,³ while a U.S.-based Internet user values their digital assets near \$55,000.⁴

The growth and development of the digital world has also changed the manner in which businesses operate, store information, market products, and reach consumers. The U.S. e-commerce industry is valued at nearly \$225 billion.⁵ Today, businesses often rely on a wide range of digital assets to ensure a strong

1. For a discussion of digital assets, including a definition, see *infra* Part III.

2. See Jaweed Kaleem, *Death on Facebook Now Common as 'Dead Profiles' Create Vast Virtual Cemetery*, HUFFINGTON POST (Jan. 16, 2013, 6:03 PM), http://www.huffingtonpost.com/2012/12/07/death-facebook-dead-profiles_n_2245397.html (stating that an estimated 30 million Facebook users have passed away, leaving behind their accounts).

3. Press Release, McAfee, McAfee Reveals Average Internet User Has More than \$37,000 in Underprotected 'Digital Assets' (Sept. 27, 2011), *available at* <http://www.mcafee.com/us/about/news/2011/q3/20110927-01.aspx>. On average, this includes 2777 unique digital files. *Id.*

4. *Id.*

5. Ken Hao, *E-commerce and the Global Battle for Internet Economics*, CNNMONEY (June 21, 2013, 6:40 AM), <http://finance.fortune.cnn.com/2013/06/21/e-commerce-global-internet-economics/> (describing the growth of e-commerce).

web presence through online storefronts, e-commerce services, and cloud-based products, as many consumers expect businesses to have both brick-and-mortar locations while offering online access.⁶ These digitized assets are crucial to the company's success and functionality and, at the same time, represent the growing digitalization of business assets.⁷ The average business insists that up to 20% of its digitally stored information is critical to operations.⁸ This percentage is likely to increase over time as companies continue to rely upon electronically stored information. Accordingly, proper estate planning and business succession plans are needed to protect and manage digitized business assets.

Digital assets, without a doubt, add a new wrinkle to the already complex legal practice of estate planning. Digital estate planning can be especially problematic because digital assets are often difficult to locate without proper guidance from the decedent. Without a well-designed digital estate plan, locating and disseminating digital assets is akin to searching for buried treasure with neither a treasure map nor a shovel.⁹ Further, accessibility and transferability issues can arise as these digital assets are often spread across various social networks, email accounts, online service providers, and digital devices. Providing access and location information regarding digital assets via wills creates security concerns as their location and passwords may become public.

The expansive nature of digital assets and the aforementioned issues surrounding this novel area of law triggers the need for more precise and well-developed asset management systems. This Essay defines the scope of digital assets, discusses unique challenges digital assets provide for traditional estate planning, and concludes with a viable strategy for the creation of a well-developed and manageable digital estate plan.

III. DIGITAL ASSETS

A "digital asset," for the purposes of digital estate planning, is any "asset that exists only as a numeric encoding expressed in binary form,"¹⁰ i.e., anything of value stored electronically. Digital assets are created and may exist in both

6. See, e.g., Press Release, Oracle, Social Media Users Expect Rapid Live Help, According to Consumer Report from Oracle (May 14, 2012), available at <http://www.oracle.com/us/corporate/press/1627424> (describing a report showing that consumers expect companies to have an online and a social media presence).

7. See generally Nelson D. Schwartz, *Online Banking Keeps Customers on Hook for Fees*, N.Y. TIMES (Oct. 15, 2011), http://www.nytimes.com/2011/10/16/business/online-banking-keeps-customers-on-hook-for-fees.html?pagewanted=all&_r=2& (setting forth positive and negative aspects of online banking services).

8. Roberto Cenicerros, *Companies Advised to Protect Critical Digital Assets*, BUS. INS., Apr. 26, 2004, at 20, 20.

9. See *Google Adds "Digital Estate Planning" to Its Services*, GOOGLE (Apr. 11, 2013), <http://www.google.com/hostednews/afp/article/ALeqM5jlEYycuSwQjdvGZFRA7lpbJ5YWMw?docId=CNG.b89bb27a709f6cbf4e3e2898e4e0c8ff.341> (discussing Google's entry into the digital estate management market).

10. Delia Băbeanu et al., *Strategic Outlines: Between Value and Digital Assets Management*, 11 ANNALES UNIVERSITATIS APULENSIS SERIES OECONOMICA 318, 318 (2009).

personal and business settings. For instance, an individual's digital asset estate may consist of videos, text documents, photographs, music, emails, online subscriptions, cell phone applications, video games, online personal social media accounts, and other similar items. In the business setting, the digital estate may contain valuable information such as mailing addresses, customer lists, online storefronts, business bank accounts, payroll systems, computer software, business plans, and other digitized assets.

Data about the digital asset, commonly referred to as metadata, is also considered part of the digital asset. Metadata may contain information about when the digital asset was created, by whom it was created, when it was last accessed, and whether it was edited or altered.¹¹ Additionally, metadata may be used to authenticate and describe the digital asset and enhance retrieval of similarly situated assets.¹² As such, metadata can be invaluable in lawsuits and ownership disputes regarding digital assets.¹³

It is important to distinguish items that do not constitute digital assets. Specifically, digital assets do not include the electronic storage units within which they are held—such as computers, servers, video game consoles, cameras, and cell phones.¹⁴ While digital storage units are vital to the maintenance, collection, and distribution of digital assets, they are not the primary focus of digital estate planning.

IV. DIGITAL ASSETS' UNIQUE CHALLENGES TO TRADITIONAL ESTATE PLANNING TECHNIQUES

In order to properly plan for the disposition of digital assets, it is important to understand how traditional assets are transferred upon death and why digital assets might receive variant treatment.

A. TRADITIONAL ESTATE PLANNING

Estate planning was developed in order to “bring[] into existence an arrangement for the disposition of *wealth*.”¹⁵ Over time, testamentary disposition of assets through a will or similar device became the traditional and most popular mechanism of posthumous real property transfer. Statutory rules developed formal will requirements to ensure both the authenticity of the will, as well as the testator's intent, thus requiring the testator to seriously consider the substance and construction of his or her estate plan.¹⁶ Where there is no will, a jurisdiction's

11. *Metadata Is Public Record, Says Arizona Supreme Court*, INFO. MGMT., Jan./Feb. 2010, at 6, 6.

12. Julie Gable, *Examining Metadata: Its Role in E-Discovery and the Future of Records Managers*, INFO. MGMT., Sept./Oct. 2009, at 28, 29–31.

13. *See id.*

14. *See* Băbeanu et al., *supra* note 10, at 318.

15. *McKen V. Carrington, Estate Planning for the Non-Taxable Estate*, 21 ST. MARY'S L.J. 367, 368 (1989).

16. *See, e.g.*, UNIF. PROBATE CODE § 2-502 (amended 2010), 8 U.L.A. 209 (2013).

probate and intestacy laws determine the method of disposition of the decedent's property.¹⁷

B. TRADITIONAL ESTATE PLANNING VERSION 2.0

Digital assets are property and thereby allow the owner to manage, transfer, and bequeath them. However, the actual owner of a digital asset might not always be clear. For example, the creator of the digital asset might merely hold a lifetime lease, and the service provider who stores the digital asset might have full ownership rights. Therefore, individuals incorporating digital asset planning into an overall estate plan must consider the nature of and practical limitations surrounding a transfer of digital property. The transfer of digital assets generally involves the following four issues: (1) identification of and access to the digital assets; (2) ownership rights; (3) security; and (4) transfer and disposition of the decedent's property.¹⁸

1. Location of Digital Assets

In order to properly plan for the disposition of digital assets, one must identify not only who owns the digital asset, but also where it is located and how to access it. An average Internet user has approximately 26 different accounts¹⁹ and 10 unique passwords, creating a logistical and tracking nightmare for estate planners.²⁰ While cloud computing and online storage capabilities enable better information storage, access, and sharing, they also present greater challenges for digital estate planners attempting to pinpoint a digital asset's exact location.²¹ Digital assets stored in the cloud are often password protected and categorized by individual accounts (i.e., a user name or account number), which allows individuals to sort and safely access their digital assets.²² Furthermore, digital assets can be physically stored on multiple servers with a variety of different

17. Brittany H. Hatting, Note, *Love Isn't All You Need: An Argument for Statutory Recognition of Committed Heterosexual Relationships Under Intestacy Laws in South Dakota in Response to In Re Estate of Duval*, 57 S.D. L. REV. 369, 379 (2012).

18. Gerry W. Beyer & Naomi Cahn, *When You Pass On, Don't Leave the Passwords Behind: Planning for Digital Assets*, PROB. & PROP., Jan./Feb. 2012, at 40, 41-43 (describing the make-up of a well-developed digital estate plan).

19. See *Warning About Online Fraud as Information Theft Rises*, BBC (July 17, 2012, 6:29 AM), <http://www.bbc.co.uk/news/technology-18866347> (noting the number of unique online accounts the average Internet user owns).

20. *Average Person Uses 10 Online Passwords a Day*, THE TELEGRAPH (June 28, 2011, 7:38 AM), <http://www.telegraph.co.uk/technology/news/8602346/Average-person-uses-10-online-passwords-a-day.html>.

21. Judy Martel, *Figure Online Accounts into Estate Planning*, BANKRATE.COM (Feb. 1, 2012) www.bankrate.com/finance/personal-finance/figure-online-accounts-into-estate-planning.aspx (noting the importance of leaving a paper trail so that estate executors can find online accounts).

22. Dinei Florencio & Cormac Herley, *A Large-Scale Study of Web Password Habits*, WWW 2007, available at <http://research.microsoft.com/pubs/74164/www2007.pdf>.

companies, individuals, and governments.²³ As such, the digital assets could be found in multiple different legal jurisdictions, states, or even countries, creating the potential for conflict of law concerns regarding the ownership, transferability, and accessibility of the digital assets.

2. Ownership of Digital Assets

Second, while it is crucial to identify the digital asset's location and accessibility, digital asset ownership rights, copyrights, and contractual rights are often less clear than traditional tangible property because the digital assets are often stored, created, and managed by a third party. Ownership rights of digital assets stored with third parties are not always as hereditary in character because "the terms of the contract between online service providers and account holders . . . govern the ownership and inheritability of 'digital assets.'"²⁴ To determine the ownership rights of a digital asset, one must examine the user's property rights relative to those of the third-party online service provider who is storing, managing, and protecting the digital asset. In the majority of instances, the third-party provider will own the property rights to the account.²⁵ For example, in the case of Facebook, an account is the property of the company, and not the individual end user.²⁶ However, at the same time, personal information stored on the account, such as pictures, social media postings, status updates, and other similarly situated data, can be protected by copyright law and constitute a decedent's intellectual property.²⁷

Problems arise when a beneficiary wishes to obtain access to a digital asset, but the asset is located in an account where the beneficiary does not have immediate access.²⁸ If the third-party provider closes the decedent's account and deletes any data stored on the account, irreplaceable digital property—which may contain pecuniary and sentimental value—could be lost forever. Furthermore, it is unclear whether the third party has any duties to preserve these digital assets for the benefit of the beneficiaries.

Depending on the type of digital asset and service provider storing the digital assets, ownership rights and the legal ability to access digital assets may vary significantly. For instance, a comparison between three similar email service providers shows that service provider contracts may differ significantly in respect to how they treat a decedent's digital content. Yahoo!, pursuant to the "No Right of

23. See *Zoho FAQ*, Zoho.COM, http://www.zoho.com/zoho_faq.html (last visited March 13, 2014) (noting that all customer information is accessible anywhere as long as you have internet access and that all information is stored on multiple servers at multiple different locations).

24. Michael D. Roy, Note, *Beyond the Digital Asset Dilemma: Will Online Services Revolutionize Estate Planning?*, 24 QUINNIPIAC PROB. L.J. 376, 384 (2011).

25. See F. Gregory Lastowka & Dan Hunter, *The Laws of the Virtual Worlds*, 92 CALIF. L. REV. 1, 50–51 (2004) (describing property rights and allocation of those rights pursuant to the End-User License Agreements).

26. Jason Mazzone, *Facebook's Afterlife*, 90 N.C. L. REV. 1643, 1648–49 (2012).

27. *Id.* at 1649–50.

28. See *id.* at 1651.

Survivorship and Non-Transferability” clause of its terms and conditions, will permanently delete contents of the user’s account upon the user’s death.²⁹ Google’s policy differs slightly, stating that in some “rare cases” it may provide a deceased user’s content to an authorized representative.³⁰ Hotmail/Outlook states that it will provide a copy of email messages, contact lists, attachments, and other content after proper authentication of ownership.³¹ Social media site terms and conditions may also vary.³² Ultimately, digital assets held or stored by online service providers will be subject to the terms of the service contract, binding the account holder and the service provider.³³ Disputes pertaining to the digital asset ownership in reference to online accounts are settled by courts construing the terms and conditions of the contract of the third-party online provider through the application of state law.³⁴

3. Security Concerns Surrounding Digital Estates

Proper digital estate planning must account for the digital asset transferor’s security concerns. Wills are poor legal devices for managing digital asset information because traditional wills become public, thus exposing the location and access information of the digital assets to potential threats.³⁵ Including passwords and other confidential information in a will is likely to endanger the security of one’s digital assets and could undermine the entire estate plan. Cybercrime represents a real and serious threat to any digital estate transfer. Identity theft is the fastest growing crime in the world, impacting over 27,000 people worldwide each day to the tune of an estimated \$56 billion each year.³⁶ In 2010, the IRS allocated over \$12 million to over 5,000 stolen identities of deceased U.S. citizens, in connection with scams perpetrated via the decedent’s “Electronic

29. *Yahoo Terms of Service*, YAHOO!, <http://info.yahoo.com/legal/us/yahoo/utos/utos-173.html> (last updated Mar. 16, 2012) (emphasis omitted).

30. *Accessing a Deceased Person’s Mail*, GOOGLE, <https://support.google.com/mail/answer/14300?hl=en> (last visited Feb. 23, 2014) (emphasis added).

31. *Question: My Family Member Died Recently/Is in Coma, What Do I Need to Do to Access Their Microsoft Account?*, MICROSOFT (Mar. 15, 2012), <http://answers.microsoft.com/en-us/windows/live/forum/profile/my-family-member-died-recently-is-in-coma-what-do/308cedce-5444-4185-82e8-0623ecc1d3d6> (“The Microsoft Next of Kin process allows for the release of Outlook.com contents, including all emails and their attachments, address book, and Messenger contact list, to the next of kin of a deceased or incapacitated account holder and/or closure of the Microsoft account, following a short authentication process.”).

32. *Compare Yahoo Terms of Service, supra note 29, with Statement of Rights and Responsibilities*, FACEBOOK, <https://www.facebook.com/legal/terms> (last updated Nov. 15, 2013).

33. See David H. Ogwyn, *Digital Asset Planning and Protection: Inventory, Provide Access, and Leave Instructions*, 60 LA. B.J. 208, 211 (2012) (comparing policies of service providers).

34. Roy, *supra* note 24, at 384.

35. Beyer & Cahn, *supra* note 18, at 42.

36. See *Farmers Identity Shield*, FARMERS, http://web.archive.org/web/20121020034036/http://www.farmers.com/identity_shield_insurance.html (last visited Feb. 22, 2014) (stating the global impact of identity theft).

Filing Identification Number.”³⁷ Additionally, cyber theft is expected to continue to grow at a rapid pace as more people gain access to the Internet and more assets are digitized, increasing the value of targetable digital assets.³⁸

4. Individual Goals Regarding Digital Assets

After providing for the location, accessibility, and ownership of a digital asset, one must then determine the individual’s estate plan wishes and legacy goals. People generally do not have specific digital estate plans in place, often attributable to the fact they are unaware of the importance of developing a specialized digital estate plan.³⁹ Many people mistakenly believe that the only benefit of estate planning is the disbursement of assets upon death according to one’s wishes. However, security issues, protecting a legacy (including a personal, family, or commercial image), and fulfillment of an overall estate plan are equally important. Uncertainty as to the dissemination and management of assets often arises in the absence of an estate plan, potentially creating significant strife for family members. It is therefore imperative for estate planning attorneys to consider digital assets in addition to physical or traditional assets to ensure both the fulfillment of their client’s wishes and the safe and efficient transfer of digital assets to the next generation.

V. CURRENT DIGITAL ASSET ESTATE PLANNING TOOLS

In its current developmental stage, estate planning for digital assets is being done through wills, trusts, and online digital estate planning services. This section explores these three methods of transferring digital assets and discusses their individual shortcomings.

Through the use of traditional wills, individuals may express their intentions and plan for disposition of their assets. However, disposition and transfer of digital assets through wills can be problematic, as briefly mentioned earlier. Given that the average number of specific digital assets per individual is nearly 3,000 files, providing identification and access to all of these assets can be overwhelming.⁴⁰ Due to the continuing growth and the changing nature of the digital assets, the will provisions may become quickly outdated.⁴¹ The speed of the digital world seems to outpace these traditional estate planning tools, as passwords and access

37. Janet Novack, *IRS Pays Refunds to 5,000 Dead People in Post-Mortem Theft Scam*, FORBES (May 6, 2011, 9:53 AM), <http://www.forbes.com/sites/janetnovack/2011/05/06/irs-pays-refunds-to-5000-dead-people-in-post-mortem-identity-theft-scam/> (internal quotation marks omitted).

38. See TREND MICRO INCORPORATED, SECURITY THREATS TO BUSINESS, THE DIGITAL LIFESTYLE, AND THE CLOUD: TREND MICRO PREDICTIONS FOR 2013 AND BEYOND 3 (2012), available at www.trendmicro.com/cloud-content/us/pdfs/security-intelligence/spotlight-articles/sp-trend-micro-predictions-for-2013-and-beyond.pdf (predicting that “security threats will appear in unexpected places” with the increased role of digital technology in our everyday lives).

39. See Becky Yerak, *Digital Assets Often Forgotten During Estate Planning*, PITTSBURGH POST-GAZETTE (Aug. 31, 2012, 4:00 AM), <http://www.post-gazette.com/business/businessnews/2012/08/31/Digital-assets-often-forgotten-during-estate-planning/stories/201208310173>.

40. See *supra* note 3.

41. Beyer & Cahn, *supra* note 18, at 42.

information can change daily, requiring constant updates to the will. Although the digital property may belong to the decedent, the third-party user agreements and term-and-condition contracts may limit or completely block a beneficiary's right of access to the decedent's digital assets.⁴² In addition, wills may become a public document upon the decedent's death; therefore, security and privacy aspects of the transfer of digital assets may be compromised.⁴³

Trusts can alleviate some of the above-described concerns. Trusts provide for a more secure transfer of digital assets than wills because trust documents do not become public.⁴⁴ Thus, key private information regarding passwords, accounts, and contents remain out of the public eye. Further, the law permits individuals to transfer digital assets into a trust while maintaining control and use of the assets for the remainder of the individual's life.⁴⁵ Sometimes, the trusts are subject to more relaxed formation requirements than wills, allowing for easier creation and modification.⁴⁶ As such, trusts can more easily adapt to the changing nature of digital assets. However, very few people actually set up trusts specifically designed for digital estate planning.⁴⁷

Although both wills and trusts can transfer digital assets from the decedent to the beneficiaries, they are becoming a tool of the past due to the speed of today's technology. In response, several online estate planning services have developed in order to facilitate one's digital asset planning needs.⁴⁸ These services are designed to specifically address the digital management, location, and confidentiality of one's digital assets during an individual's lifetime.⁴⁹ As such, these digital estate planning services have latched onto the lucrative digital asset management industry—anticipated to be a \$1 billion industry in 2013.⁵⁰

While these online digital estate planning services offer a degree of efficiency that is unmatched by traditional estate planning techniques—enabling individuals to update, manage, and track their digital assets on demand—serious concerns exist regarding their reliability and sustainability as estate management tools. For example, while digital estate planning services claim to provide exceptional account security, caution is nonetheless warranted because, not unlike a traditional bank vault, these services create a large repository of wealth and property,

42. See *id.* at 41.

43. *Id.* at 42.

44. *Id.*

45. See *id.*; see also UNIF. TRUST CODE § 601 (amended 2010), 7C U.L.A. 545 (2006).

46. Beyer & Cahn, *supra* note 18, at 42.

47. See Yerak, *supra* note 39.

48. See Ann Marsh, *Preparing Clients for Their Digital Afterlife During Estate Planning*, SECURESAFE (Dec. 23, 2011), <http://www.securesafe.com/en/in-the-media/2011/12/23/preparing-clients-for-their-digital-afterlife-during-estate-planning/>.

49. See, e.g., *What We Offer*, CANTO, <http://www.canto.com/what-we-offer/> (last visited Mar. 27, 2014) (offering a digital-estate-planning asset management service).

50. *Digital Asset Management Market Expected to Surpass \$1 Billion in 2013*, SAYS ABI RESEARCH, BUSINESSWIRE (Sept. 3, 2008, 9:36 AM), <http://www.businesswire.com/news/home/20080903005870/en/Digital-Asset-Management-Market-Expected-Surpass-1#UwIxdP2fvjQ>.

rendering them prime targets for cybercrime and theft.⁵¹ Additionally, these digital estate planning services are not regulated and are often not run by attorneys, creating concern as to who is being entrusted with the individual's passwords, assets, and information.⁵² Finally, there are serious stability concerns as to the continued existence of online digital estate services, as these services are relatively new and turnover in the industry has been significant.⁵³ However, digital estate planning services such as Eterniam, a Seattle, Washington-based company, are beginning to realize the importance of establishing trust with clients by stressing their commitment to security, privacy, and long-term stability.⁵⁴ Estate planning ultimately should not be a short-term solution, but rather should provide lasting peace of mind and planning options to an individual testator.

VI. WORKABLE SOLUTIONS

While proper digital estate planning is crucial to the management of one's digital assets and enduring legacy, the inability of traditional estate planning techniques and online digital estate planning services to provide satisfactory solutions can leave many people at a loss. However, attorneys can still provide workable solutions to the challenges of digital estate planning.

First, attorneys should inform their clients about the importance of proper digital estate planning and hopefully get the clients to consider the goals of their digital assets. Proper management of digital assets is about more than just wealth. Legacy, appearance, and family sentiments should help shape the digital asset plan. Not all of digital estate planning will be the preservation of assets. In some instances, decisions should be made to destroy, delete, and terminate digital assets. This is especially important due to the potential never-ending nature of digital assets.

Attorneys, wealth managers, and financial planners should then help the client compile, update, and retain a comprehensive record of the client's digital assets, login information, and the location of digital assets. By passing along electronic storage devices such as a computer, phone, camera, or flash drive, many digital assets can be transferred to the deceased's beneficiaries in the same manner as a traditional tangible asset. However, when dealing with digital assets not stored on a physical storage unit under the individual's control, the access information may be stored on a password-protected and encrypted digital storage device—such as a flash drive—that the estate planning attorney provides to the client. This type of

51. See John Conner, Comment, *Digital Life After Death: The Issue of Planning for a Person's Digital Assets After Death*, 3 EST. PLAN. & COMMUNITY PROP. L.J. 301, 321–22 (2011).

52. See Roy, *supra* note 24, at 387–88.

53. See Frank S. Baldino, *Estate Planning and Administration for Digital Assets*, MD. B.J., Nov./Dec. 2012, at 28, 30 (“One of the problems with relying on these companies, however, is that they are still new start-ups and may no longer be in business when their services are needed by the decedent's family.”).

54. See *About Us*, ETERNIAM, <https://eterniam.com/about> (last visited Feb. 23, 2014) (implying that their business model is designed to limit concerns about the company's continued existence and increase consumer trust).

digital asset management system can allow for the individual to dispose of the storage device via his or her will, but continue to use the digital assets, make changes to the access information when needed, and safely store this information.

While serious concerns still exist with online digital estate planning services, they should not be discounted entirely. These companies can provide valuable planning strategies and management of one's digital assets. However, it is crucial to perform a due diligence review of any such service before entrusting the service with access information or details about the digital assets. It is also important to check with digital service providers to see what their policies are with regards to assets. Knowing the ownership rights and transferability of digital assets is a crucial step. This could also lead an individual to switch service providers if one company offers better digital asset rights.

Currently, there is no quick solution for disposition of digital assets. Instead, it must be a well-thought-out and developed plan that is integrated within the overall estate plan. Keeping track of assets, determining goals, and knowing rights are the crucial steps to maintaining, managing, and securely developing an estate plan for the proper disposition of digital assets.

VII. CONCLUSION

As traditional estate planning techniques appear outdated and ill-equipped to deal with digital assets, online digital estate planning companies do not yet offer a golden solution. While improvements in the online digital estate planning service market could make these viable options, a more workable solution exists through the self-management of digital assets with the assistance of an estate planning attorney. Attorneys will need to work with their clients to stress the importance of individual digital asset management. Furthermore, people must develop clear legacy goals and estate plans for their digital assets and decide which assets they wish to preserve and which assets they wish to delete. Ultimately, a combination of traditional estate planning techniques, such as trusts and wills, along with the efficiency model of online digital estate planning services, will best serve the attorney's goal to provide a comprehensive, secure, and well-developed digital estate plan.