

DIGITAL LEGACY

FUTURE PROOFING A VIRTUAL LIFE IN THE DIGITAL WORLD

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By

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Introduction

Facebook, Twitter, Flickr, Google, Yahoo!, YouTube, Ebay; like it or not these names, or at least the media tools they represent, are here to stay. Such tools increasingly form part of many people's daily lives and dictate the means by which we communicate and transact with each other. However, in a world where life is more virtual and networking is governed by the web, who has a right to inherit our digital legacy after we die?

Organising one's personal affairs in the event of death is a morbid concept for younger individuals. However, as on-line activity and the average age of users increases¹, it's not just logical, but will become vital to do so in order to protect, preserve and potentially pass on our digital legacy to loved ones.

Can or, indeed, should our on-line persona and what flows from that be preserved for the benefit and enjoyment of future generations? Dealing with digital media after death is still a new concept. Internet Service Providers (ISPs) and other media organisations currently seem more interested in how they can make a profit from signing us all up to their services.² As the position stands research shows that most ISPs rely on data protection and privacy laws to prevent the publication or transfer of material to third parties. However, strictly speaking data protection legislation only applies to living individuals³, therefore, practice varies between different organisations and tends to be dealt with on a case by case basis, with no uniform approach.

ISPs seem to view their services as a functional, current service to individuals and do not take a long term view of what will happen to the huge amount of data that is stored by users as part of the incentive to sign up. The fact that the ISP is being used as a long term vault for the storage of very personal and potentially valuable information, records and photographs is not seen as a priority to the ISP and it is, therefore, more cost effective for the services to be terminated on an individuals death.

Uncertainty and current ISP policies has in recent years led to the creation of various on-line third party providers who, for a fee, allow individuals to upload passwords and other personal data to their sites, to be passed on to beneficiaries

¹ See Schedule 1: "UK Social Network Statistics July 2009" 22/07/09 www.comscore.com

² As evidenced by the next FT Digital Media & Broadcasting Annual Conference 2010 entitled "Maximising Revenues in an Evolving Media Landscape"

³ Data Protection Act 1998 1(1)

after death. Questions arise as to effectiveness and security of this approach and, with established laws already in existence to deal with the transfer of physical assets, is employing the services of another on-line organisation the best way forward?

Most people owning physical assets, such as bank accounts, investments or property will know they should make a Will to deal with these effectively on death, or should appoint an Attorney to give instructions during their lifetime. However, despite this around 70% of the adult population currently do not have a valid Will in place. Even when individuals have addressed this practical step, giving consideration to how the law deals with assets held in cyberspace (in the form of profiles, emails, blogs, videos, photos, comments, links and even accumulated virtual wealth) has yet to become standard practice in the world of Will drafting.

Over the course of the last six months a group of private client and commercial lawyers at Thomas Eggar LLP have been working together to come up with a solution to the digital legacy issue for the firm's clients. Based on current law the team has produced a set of standard clauses and precedents enabling individuals to transfer on-line authority to their appointed representatives. At the same time the authors undertook separate research, sifting through the wealth of statistics and opinions available, seeking to clarify current law and practice and identify the options available. The aim of this report is to gather this information together, highlight to the industry and its regulators the potential pitfalls of failing to recognise the dangers and to assist them in adopting a uniform approach in the age of the digital legacy.

It seems that Bill Gates was correct when he said, "*The internet is becoming the town square for the global village of tomorrow*". That being the case, the time has come to consider how to respect the dignity and wishes of those lost within that on-line community and to allow the preservation and legacy of memories and valuable material to be passed to the people they leave behind.

Growth of Digital Media

Market analyst trendwatching.com predicts that 2010 will be the year that digital consumers start to recognise the real value of their online presence.⁴ Users will become wiser about how their personal data is held and the way in which they

⁴ "Risque and opinionated with a digital afterlife; consumer predictions for 2010" 11/12/09 *The Independent*

and commercial organisations can make money from it. Services offering to safeguard or back up personal data will continue to flourish, seeing a growth in digital afterlife services, such as those discussed below.

Social Networking continues to dominate online activity in the UK and abroad. According to Econsultancy⁵, the leading source on digital marketing and ecommerce, social networks and blogs are the 4th most popular online activities, even beating personal email.

A May 2009 report from ComScore revealed that of the 36.9 million UK Internet users, 80% regularly visit at least one social networking site.⁶ Facebook, is the UK's most used social networking site, surpassing 350 million users worldwide.⁷ Perhaps even more dramatically, an additional 100 million new users joined in the five months between July and December 2009.⁸ By way of comparison, it took radio thirty-eight years, terrestrial TV thirteen years and the internet four years to reach 50 million users.⁹ If Facebook were a country, it would now be the third most populated place in the world.¹⁰

Whilst it remains to be seen how many of these Facebook users are active or even authentic, it's certainly true that social networking is now a mainstream activity for UK internet users of all ages. So much so, that in December 2009, www.divorce-online.com revealed that one in five divorce petitions now site Facebook as a contributory factor.¹¹ From personal experience even the author is finding it increasingly difficult to keep in touch with and involve non-participating friends and relatives in planned events. Those who refuse to participate in social media networking may increasingly find themselves excluded from a world of social activities, making the pressure to join up even more acute.

Of course, Facebook isn't the only Social Media site that has increased in popularity in the UK. As the graphs, courtesy of clickymedia.com, in Schedule 2 show the rapid rise of Twitter and steady growth of the commercial networking site LinkedIn show the increasing importance of having an on-line persona. Econsultancy's figures suggest that 80% of companies use, (or are planning to use), LinkedIn as their primary tool to find employees during the course of this

⁵ Econsultancy's "Social Media Statistics" document – part of the "Internet Statistics Compendium" and other reports (<http://econsultancy.com/reports/statistics>)

⁶ "Nine out of Ten 25-34 year old UK Internet users visited a Social Networking site in May 2009" http://www.comscore.com/Press_Events/Press_Releases/2009/7/Nine_Out_of_Ten_25-34_Year_Old_U.K._Internet_Users_Visited_a_Social_Networking_Site_in_May_2009

⁷ "UK Social Media Statistics December 2009" <http://www.clickymedia.co.uk/2009/12/uk-social-media-statistics-december-2009/>

⁸ See 7

⁹ See 5/7

¹⁰ See 5/7

¹¹ "Facebook 'sex chats' blamed for one in five divorces" 22/12/2009 www.dailymail.com

year¹² and the site has just celebrated reaching its 45-millionth membership. Flickr, formed in 2004, already hosts more than 3.6 billion user images.

A recent survey carried out amongst Thomas Eggar LLP employees revealed that of the 173 out of a total number of 439 staff who responded, aged between 18 and 65, 68% regularly used on-line social networking sites¹³. Only 8% were aware of what would happen to their on-line persona or digital legacy on death and fewer than 2% had done anything about protecting it. These results are, therefore, typical of those documented in other research, showing the widening gap between the ease of creation and lack of knowledge about the longer-term protection of our digital legacy.

Regulation and Rights

Under English Law the position is clear. The copyright in emails, other writings and photos, as with other personal possessions, forms part of the estate of a deceased individual. Therefore, the ownership of this information should pass to executors and personal administrators. Whilst copyright laws may be clear, there's little use in having the right to information, without the ability, permission of the owner of the medium upon which the copyright material is stored, and the relevant passwords to access it and this is where the problem lies. In the world of the digital legacy, it appears that individual ISPs have seen fit to adopt their own policies, though their standard terms and conditions. This means that users, or their personal administrations, must establish the exact terms applying to individual accounts and liaise with ISPs accordingly.

As is seen from the information contained in Schedule 3, ISPs currently adopt different approaches towards continuing access and use of profiles and email addresses after death. Coupled with the fact that the Internet is a global community, ISPs and other on-line companies may have to consider the laws of several jurisdictions in order to determine the issue at hand.

Most ISPs cite privacy and data protection laws as the reasons behind their lack of co-operation on the issue of transferring a digital legacy. However, whilst it is recognised that the responsibility to hold and store individual personal data must be of paramount consideration to such commercial organisations, certainly under UK law these rules cease to apply after death.

¹² See 5/7

¹³ See Schedule 4 "Digital Legacy Survey 2010" 26/01/10

The most widely publicised case to date involved Yahoo!'s approach, following the death of a US soldier in Fallujah, Iraq in November 2004.¹⁴ When Lance Cpl Justin Ellsworth's was killed, his father decided to create a memorial to his son using the emails he had written and received whilst in the Middle East. However, Yahoo!, adhering to their terms of service, refused to give Lance Cpl Ellsworth's family his password or access to his correspondence on the basis of privacy.

Following an Order of the Court Yahoo! released the correspondence to the family, but has yet to amend its standard terms in light of the judgement. Despite this landmark decision there has been no definitive ruling on the status of such digital information and, in any event, the scope of this judgement is currently limited to cases arising in the US.

Solutions and the Limitations

Spotting a gap in the market, over the last few years several on-line businesses have emerged offering individuals a subscription service in an attempt to overcome the related problems of conflict of laws, privacy concerns and delegated access. Such companies also seek to offer subscribers the opportunity to make electronic bequests or allow families to leave digital remembrances and memorials.

US companies such as Legacy Locker, Assetlock and Deathswitch allow users to upload their personal login details, providing access to their digital information, persona and assets. Individuals then specify who should receive this information after death. More than 1,500 have signed up to Legacy Locker since its launch in April 2009, paying \$299.99 each for a lifetime subscription¹⁵.

Simply providing a list of passwords and details to a "trusted" 3rd party or company is an inherently problematic and far from simple solution. One can easily envisage the dangers of leaving such sensitive information to friends or family. However, it's just as likely that a company might go bankrupt or have ceased to exist by the time of your death. What happens to your information then? What steps are taken by the companies to vet employees and ensure they can't obtain access to your personal information or, indeed, that the systems are secure from outside hackers. In an unregulated digital market place, at a time when identity

¹⁴ "Who Owns Your Emails?" 11/01/2005 <http://news.bbc.co.uk/1/hi/magazine/4164669.stm>

¹⁵ <http://legacylocker.com/signup>

fraud is a major issue to most financial institutions and governments, anyone handing over such sensitive personal information is seriously increasing the risk of becoming victim of fraud. In many cases individuals may also find that, by providing passwords, they have breached the terms of their user licensing agreements with the ISP and could have their accounts closed and all content deleted. It would be a sad result if, out of desperation, in the act of trying to protect their digital legacy, individuals brought about their premature on-line demise!

In reality, most digital information is currently lost when an individual dies. Otherwise, the family must resort to trying to hack into the deceased's computer to recover what information they can¹⁶ and, if they still have the energy, write to each ISP to see what can be done.

It should be a matter of personal choice what happens to your digital legacy after your death. Although it may be difficult for loved ones to have to go through the process of transferring information and permanently deleting accounts (and the metaphorical connotations of doing so), the alternative is the Facebook approach¹⁷; an eternity in cyberspace, frozen in a memorialised state. Whereas Facebook's approach is certainly clear and comes at a time when other ISPs are less open about this issue, it raises the question of how long is an appropriate period of mourning. In theory, users could log on in their 80's to find the majority of the images staring back belonging to friends long since departed.

If third party companies aren't the way forward and the ISPs haven't provided us with a unified solution, we must rely on the law as it currently stands and adapt it to meet the needs of our changing social culture. In this case the best way to ensure wishes are respected is to have them documented and communicated in an appropriate legal form, such as a Will or a Power of Attorney. We must, therefore, trust the law to protect our digital interests, until cyberspace catches up.

Any legal solutions will need to be in a form which is acceptable and potentially enforceable against the ISPs, noting again that many will be based outside the UK. Accordingly, appropriate drafting of suitable permissions and rights as part of your Will or POA will need to be in a suitable form, thereby having a good chance of being enforceable in the relevant jurisdiction.

¹⁶ This too could be deemed unlawful under the Computer Misuse Act 1990 s1(1)

¹⁷ "What happens to your Facebook after you die?" 28/10/2009
<http://facebookdevelopment.wordpress.com>

Trading of Virtual Assets and Taxation

For most users, the potential loss of our on-line legacy in the form of profiles or photos might cause distress, but the value is purely sentimental, rather like a precious scrapbook of memories. However, one of the driving factors making it ever more important to resolve uncertainty is the need to address the increasing importance of the virtual goods market within cyberspace. It is possibly only the potential value of this market that will force ISPs, companies, regulators and individuals alike to resolve the legal position of the digital legacy.

We live in a disposable world, where space and waste are environmental issues. The next generation won't amass record, CD and video collections. Already, many consumers under 45 now carry their personal entertainment collections around with them in the form of MP3 players. In the next few years we are likely to see the same transition take place in the publishing industry too. Whilst, it is beyond the scope of this report to address the potential value of such downloaded libraries and their copyright limitations on transfer to beneficiaries, it is used here as an example of the massive shift in spending habits and the accumulation of tangible assets that has already taken place in society. Currently, the idea of spending real money to acquire virtual assets seems ridiculous to most consumers. However, with the increased use of credit/debit cards and on-line banking, the concept of 'real' money has already been stretched.

The current worth of the US virtual goods market is expected to surpass \$1 billion this year.¹⁸ The global market is thought to be potentially five or six times as much. However, what happens to the value enshrined in such virtual assets after death and, assuming there is value, what are the tax implications.

Greg Lastowka, a law professor at Rutgers University in New Jersey, is currently writing a book on property rights and virtual goods. He states, "When you have a real, tangible sword or gold coin, you can have an exclusive right to that object and the law can recognise that, but when you have the mediation of the network software and the owner of the virtual environment, they have an interest as well. They're caught in the middle".¹⁹

On 1st December 2009 The Daily Mail reported on a 23 year old hacker arrested for stealing player's identities, skills, weapons and virtual money in an online

¹⁸ "Virtual goods sales to hit \$1 billion in 2009 as social games pay off big" 14/10/2009 <http://games.venturebeat.com>

¹⁹ "Virtual estates lead to real world headaches" <http://www.nytimes.com> 02/11/2009

computer game.²⁰ In the first case of its kind, the British man targeted users playing Runescape, a medieval fantasy game with more than 100 million players worldwide. It can take players years to accrue wealth and skills by collecting gold coins and using them to trade with other players. The avatars can sell off their own weapons, skills and equipment, which can be worth thousands of pounds in the real world.

Massive multiplayer online games (MMOGs) such as World of Warcraft and the Everquest series have millions of players around the world. These individuals pay to play and spend limitless hours online acquiring valuable points, goods and services to increase their characters' net worth. This phenomenon is now referred to as a real-money transfers or real-money trades (RMT).²¹

Security experts first predicted trouble in the virtual asset arena more than three years ago²², when Governments started to take notice of the sums of money changing hands. In 2006 this resulted in Korea making third-party RMTs illegal.²³ The threat of possible government regulation and potential legal action saw some of the biggest names in the business sit up and take notice. eBay was quick to follow suit, and in 2007, amidst brewing controversy and potential regulation of RMTs, they banned the sale of virtual assets in its marketplace.²⁴ Although against the rules of the game, one Runescape account was recently sold on eBay for £46,000.²⁵

Sony has already devised its own solution to RMT of virtual items. Deciding to address consumer demand, rather than spending millions trying to fight the inevitable, they launched Station Exchange (now 'Live Gamer Exchange') in 2005.²⁶ Live Gamer Exchange is an online marketplace providing a platform whereby the sale of goods acquired within Sony's own games (such as Everquest, Everquest II and Star Wars Galaxies) can be traded legally.²⁷ As advisers we must, therefore, keep ahead of such developments and start to consider and address with clients the issue of virtual assets. This is relevant both to ensure the value is protected and passed to beneficiaries and also to deal with any tax issues that may arise.

²⁰ "Computer hacker arrested (in real life) for theft in online medieval fantasy game Runescape" 01/12/2009 www.dailymail.co.uk

²¹ "Why is eBay banning the sale of online-game virtual assets?" by Julia Layton <http://money.howstuffworks.com>

²² "Hacker arrested for stealing virtual assets in online game" 01/12/2009 www.darkreading.com

²³ "Finally, Korean Government to legalize RMT" 23/11/2006 <http://virtualeconomy.org>

²⁴ "eBay bans auctions of game goods" 30/01/2007 www.cnet.co.uk

²⁵ See 20

²⁶ "Sony scores with Station Exchange" 25/08/2005 <http://news.cnet.com>

²⁷ See 26

In 2006 CNET news, an American website, published an article entitled "IRS taxation of online game virtual assets inevitable"²⁸. At that time senior economist, Dan Miller, noted that with growth rates of 10% to 15% per month, it would be a question of when, not if, Congress and the IRS started paying attention to the issue of taxing virtual assets accrued through online gaming.

In 2004, Julian Dibbel, author of *Play Money*, was one of the first to raise the issue of whether the transfer of virtual assets or players' acquisition of virtual loot created a taxable event.²⁹ Indeed, experts agree³⁰ and HM Revenue and Customs are unlikely to dispute, that if the transfer of virtual property amounts to a transfer of value from the individual's estate, whether by gift or on death, then (subject to reliefs and exemptions) it will be a taxable event.

With little or no case law on this subject, it may be a while before the Courts settle the position of virtual assets. Up until now there has been little need for legislation due to the small instances of large virtual sums changing hands. However the position is changing, as illustrated by individuals such as Anshe Chung, a Second Life 'land mogul' who has amassed over \$1 million in virtual land. When first reported back in 2007, it was mooted that her heirs might well face some interesting inheritance tax issues if she were to die and bequeath her virtual estate.³¹

Conclusions

Innovation and the assets created are continually evolving and history shows us the dangers of reacting too slowly to change. 1894 saw the first privately owned motor car driven in the UK. However it wasn't until 1903, as a result of increasing deaths due to excessive speed and vehicle safety, that compulsory registration and the drivers licence was introduced. Similarly, the first credit card was issued by Dinners Club in 1950, with the first bank credit card following in 1958.³² As a result of the increasing need to protect consumers from unscrupulous lenders, it took until 1974 for the first UK consumer credit legislation to be passed,³³ imposing strict requirements on lenders if they wished to ensure enforceability of agreements. The law is still feeling its way in the grey area of cyber space and the digital legacy, but there is time for ISPs and regulators alike to take a proactive approach in order to protect users.

²⁸ Written by Daniel Terdiman 03/12/2006 <http://news.cnet.com>

²⁹ "Play Money; or how I quit my day job and struck it rich in virtual loot farming" by Julian Dibbel

2004 Published by Basic Book

³⁰ William LaPiana a wills trusts and estates professor at New York Law School. see 26

³¹ "Buying Virtual Real Estate Is Neither Easy Or Cheap" 31/05/2007 www.mortgagebusinessdaily.com

³² Bank Americard (now Visa)

³³ Consumer Credit Act 1974

Currently, without a uniform approach, internet users who want to ensure their email and other online accounts are accessible to their legal heirs (or otherwise) should incorporate the necessary wording into their wills as part of the estate planning process. As long as people continue to invest time and money in the virtual world, this issue will continue to arise. If nothing is done, policy makers will be forced to issue legislation potentially in the wake of individual loss and heartache. At the very least, ISPs have a responsibility to make users more aware of their policies, or in the case of virtual assets, that these are non-transferable.

In the real world, the post office doesn't send someone to burn your correspondence after your death. The Land Registry doesn't send a crew to tear down your home, but online (under current agreements) this can in effect be the default position³⁴.

If individuals are serious about retaining their online presence they should appoint an executor, somebody who'll handle their affairs after death.³⁵ If users don't want relatives sifting through their virtual dirty laundry then they should either be given a chance to say so by the ISP, or consider regular editing of their inbox.

Although Thomas Eggar LLP has yet to come across a case where a family wish to access digital information, we are currently advising a client who wishes to give such a power to their Attorneys. This is to protect their position in the event of them lacking the physical or mental capacity to manage their on-line accounts. Over the course of the next few months we will be liaising with the Office of the Public Guardian (OPG) on the registration of the client's Lasting Power of Attorney. Assuming the OPG are willing to accept the authority contained in the LPA, the ISPs should then respect the view of this official legal office. It is hoped that such recognition will be the first step in getting ISPs to agree the rights of individuals to deal with their digital legacy and encourage those providers to seek specific instructions from users.

"By starting to think this through and set up a better, cleaner system, we'll enhance what's arguably one of the most amazing moments in documenting individual histories".³⁶

³⁴ See 19

³⁵ "What happens to your e-mail when you die? Or your digital photos, or your Web site domain? How to prepare" By Scott Reeves updated 12:54 p.m. ET Feb. 1, 2006 Forbes Magazine

³⁶ Deven R. Desai, a visiting fellow at the Center for Information Technology Policy at Princeton University in New Jersey and professor at the Thomas Jefferson School of Law in California. See 16

Schedule 1

Statistics courtesy of www.comscore.com/Press_Events/Press_Releases/2009/

comScore, Inc. (NASDAQ: SCOR) is a global leader in measuring the digital world and preferred source of digital marketing intelligence

Age Profile of U.K. Social Networking Site Category Visitors		
May 2009		
Total U.K., Age 15+ - Home & Work Locations		
Source: comScore World Metrix		
Age Segment	% Reach	Average Hours per Visitor
<i>Total U.K. Internet Audience</i>	80%	4.6
Persons: 15-24	86%	5.4
Persons: 25-34	89%	5.4
Persons: 35-44	79%	4.3
Persons: 45-54	77%	3.9
Persons: 55+	67%	3.7

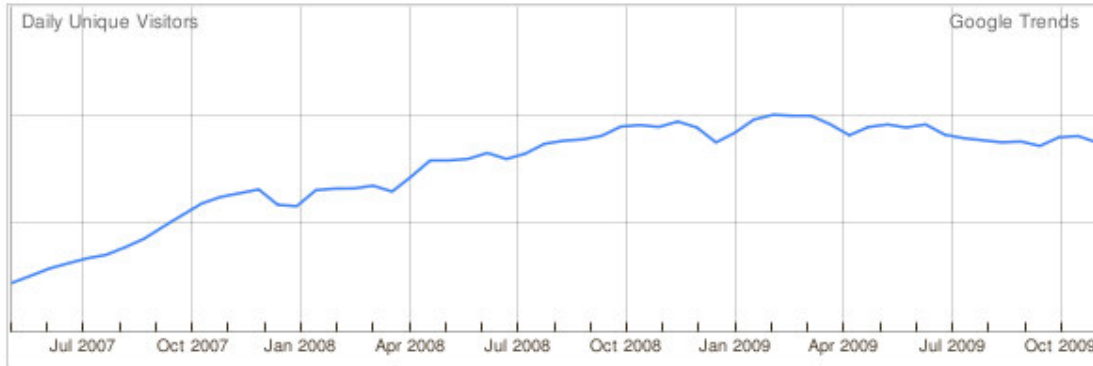
Top 10 Social Networking Sites Ranked by Total U.K. Unique Visitors (000)*			
May 2009 vs. May 2008			
Total U.K., Age 15+ - Home & Work Locations			
Source: comScore World Metrix			
Property	May-08	May-09	% Change
<i>Total U.K. Internet Audience</i>	34,489	36,855	7
<i>Social Networking</i>	27,118	29,444	9
Facebook.com	15,195	23,860	57
Bebo	11,895	8,546	-28
Windows Live Profile	N/A	6,891	N/A
MySpace Sites	8,335	6,531	-22
Twitter.com	80	2,670	3,226
Digg.com	1,311	1,759	34
Friends Reunited Group	3,271	1,629	-50
Tagged.com	669	1,625	143
Deviantart.com	900	1,453	61
Buzznet	939	1,370	46

Schedule 2

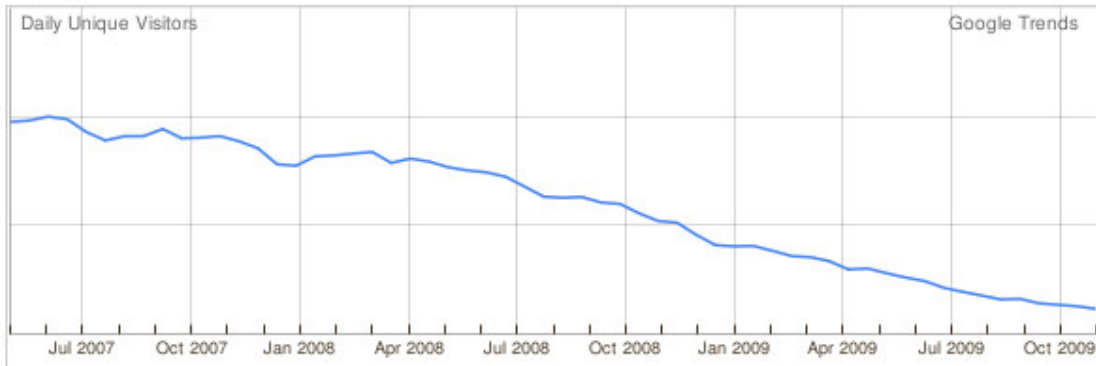
"UK Social Media Statistics December 2009"

<http://www.clickymedia.co.uk/2009/12/uk-social-media-statistics-december-2009/>

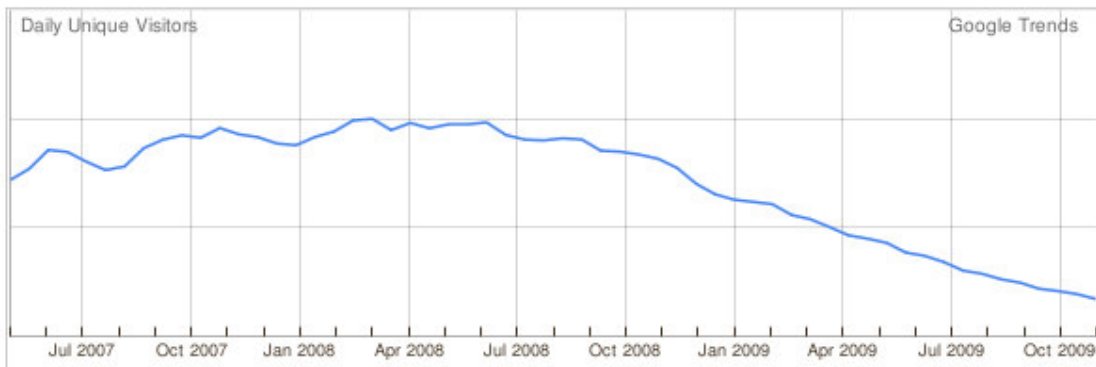
facebook.com



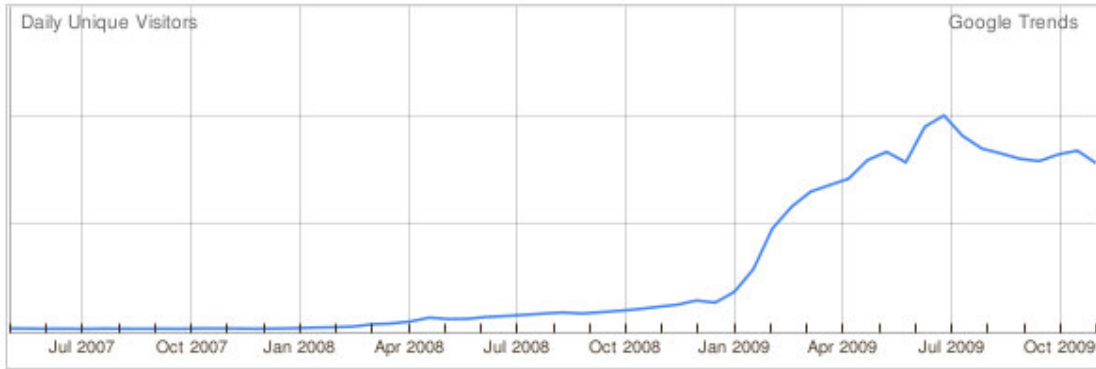
myspace.com



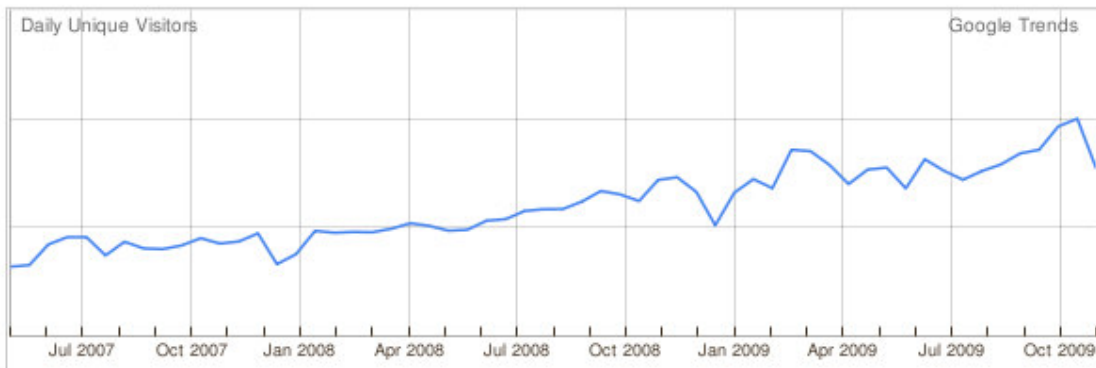
bebo.com



● twitter.com



● linkedin.com



Schedule 3










ISPs – Current Policies

Facebook	<p>Following the Virginia Tech shootings in 2006, Facebook decided to revisit their general policy and introduce a memorial that deals with the deceased. This was considered a good concept and has been adopted by other ISPs since.</p> <p>Max Kelly, Facebook’s head of security, announced a policy of memorializing profiles of users who have died. Once the user’s death has been confirmed, their profile can be turned into a sort of visual shrine. The profile is locked so no one can log into it and sensitive information (including status updates) is removed. Yet at the same time, their wall is left open for family and friends to pay their respects.</p> <p>Family members can determine how the memorial looks and behaves – for example whether others can continue to write on the user’s page – but they can’t log into the profile themselves.</p> <p>From Facebook’s Help Page: “Please note that in order to protect the privacy of the deceased user, we cannot provide login information for the account to anyone. We do honor requests from close family members to close the account completely”. If relatives prefer not to have the profile stand as an online memorial, Facebook will remove the account altogether.</p> <p>www.facebook.com/policy.php</p>
MySpace	<p>MySpace has no set policy when it comes to the profiles of deceased users. A spokesperson said: “Given the sensitive nature of deceased member profiles, MySpace handles each incident on a case-by-case basis when notified and will work with families to respect their wishes”.</p> <p>On receipt of proof of death they can delete a MySpace profile if requested, however they will not allow next of kin to access, edit or delete any of the content or settings on the user’s profile.</p> <p>MySpace do not delete profiles after periods of inactivity, but will remove a deceased user’s profile at the family’s request. A spokesperson said giving the users a choice about who can access their data “sounds like a good idea”.</p> <p>http://faq.myspace.com/app/answers/detail/a_id/369/kw/deceased/r_id/100061</p>
Hotmail	<p>A spokesperson said: “Microsoft’s policy allows next of kin to gain access to the content of the account of the deceased upon proving their own identity and relationship. Hotmail does not have an option to specify in advance that they do not want the contents of their email accessed by a next of kin”.</p> <p>In addition, Hotmail lets relatives order a CD of all the messages in a deceased user’s account if they provide a death certificate and proof of power of attorney, Gmail requires the same paperwork plus a copy of any relevant correspondence between the deceased and their executor, granting them access.</p> <p>Alternatively, Hotmail will remove an account if it is inactive for 270 days.</p> <p>http://windowslivehelp.com/solutions/safety/archive/2009/12/18/how-to-request-data-from-a-deceased-user-s-account.aspx</p>
Gmail	<p>Gmail will allow the next of kin or executor of estate to apply for access to a deceased user’s email account. However, they need more identification than Hotmail. The person would have to prove their own identity and supply a death certificate as well as proof of an email conversation between them and the deceased.</p>








	<p>If the deceased user was underage, the next of kin would also have to provide a copy of the birth certificate. Gmail does not delete the deceased user's account, but says the next of kin could choose to do so after gaining access to it.</p> <p>Gmail can hold up To 7GB – or roughly 70,000 emails – with a small to medium picture attached to each and they archive the messages you've written as well as received.</p> <p>http://mail.google.com/support/bin/answer.py?hl=en&answer=14300</p>
Yahoo!	<p>Yahoo! has the strictest policy when it comes to the data of its deceased users. The company will allow the account to be closed at the request of the user's next of kin, but will not give them access to it.</p> <p>A spokesperson said: "The commitment Yahoo! makes to every person who signs up for a Yahoo! mail account is to treat their email as a private communication and to treat the content of their messages as confidential". Their current policy states that survivors have no rights to the email accounts of the deceased. Yahoo! accounts are deactivated after 90 days if they have not been used.</p> <p>http://www.makeuseof.com/tag/what-happens-to-your-email-and-social-networking-sites-when-you-die/</p>
Paypal	<p>A spokesperson said: "certain documents such as a copy of the death certificate, the will and photo ID for the executor" were required for access to the deceased's accounts.</p> <p>http://www.paypal.com/cgi-bin/webscr?cmd=p/gen/terms-outside</p>
Flickr	<p>Photo-storage site Flickr will keep an account up and mostly open to the public, but if a user had marked any photos as private, the site won't let family or friends into the account to access them.</p> <p>Your account is non transferable and legally speaking should die when you do but in reality your account will remain active provided there's occasional activity – which can be as simple as logging in from time to time. If you don't have access to the log-in details you can't shut down somebody's photostream without sending Yahoo!'s legal compliance team a copy of the person's death certificate.</p> <p>http://www.techradar.com/news/world-of-tech/what-happens-to-your-web-stuff-when-you-die--475705</p> <p>http://uk.docs.yahoo.com/info/terms.html</p>

Schedule 4

Results of the Thomas Eggar Survey

Digital Legacy Survey 2010			
Respondents:		173 displayed, 173 total	
Launched Date:		21/01/2010	
1. Are you:			
		Response Total	Response Percent
Male		47	27%
Female		126	73%
Total Respondents			173
2. Age:			
		Response Total	Response Percent
18 - 24		10	6%
25 - 34		54	31%
35 - 44		44	26%
45 - 54		42	24%
55 - 64		22	13%
65 +		0	0%
Total Respondents			172
(skipped this question)			1
3. Do you currently have an online profile on a social networking site?			
		Response Total	Response Percent
Yes		117	68%
No		54	32%
Total Respondents			171
(skipped this question)			2








4. If so, which site(s)?

		Response Total	Response Percent
Facebook		101	61%
MySpace		8	5%
Twitter		12	7%
Linked In		38	23%
Bebo		0	0%
Second Life		1	1%
Friends Reunited		50	30%
Other, please specify		48	29%
Total Respondents			165
(skipped this question)			8




5. How often do you visit the following sites?

	Every Day	Every Few Days	Once Week	a Once Month	a Every Few Months	Never	Response Total
eBay	2% (4)	7% (11)	9% (14)	15% (24)	34% (55)	34% (56)	164
Facebook	20% (33)	23% (38)	12% (19)	7% (12)	4% (6)	34% (56)	164
iTunes	3% (5)	10% (17)	10% (17)	15% (25)	12% (20)	49% (80)	164
MySpace	0% (0)	0% (0)	1% (2)	3% (5)	5% (8)	91% (149)	164
Linked In	1% (2)	3% (5)	7% (11)	8% (13)	12% (20)	69% (113)	164
Yahoo!	18% (30)	6% (10)	4% (6)	3% (5)	10% (16)	59% (97)	164
Twitter	3% (5)	1% (1)	2% (3)	1% (2)	3% (5)	90% (148)	164
Bebo	0% (0)	0% (0)	0% (0)	0% (0)	1% (2)	99% (162)	164
Hotmail	16% (27)	15% (24)	4% (7)	4% (7)	4% (7)	56% (92)	164
Gmail	9% (14)	4% (6)	1% (2)	1% (1)	2% (3)	84% (138)	164
Flickr	0% (0)	0% (0)	1% (1)	2% (4)	5% (8)	92% (151)	164
Second Life	0% (0)	0% (0)	0% (0)	0% (0)	2% (3)	98% (161)	164
Friends Reunited	0% (0)	1% (1)	0% (0)	5% (8)	24% (40)	70% (115)	164
Total Respondents							164
(skipped this question)							9



6. Do you use your online profile on social networking sites to:

		Response Total	Response Percent
Stay in touch with friends		107	72%
Make plans with friends		59	40%
Make new friends		9	6%
Organise with others for an event/issue or cause		34	23%
Promote yourself or your work		24	16%
Make new business or professional contacts		27	18%
Other, please specify		34	23%
Total Respondents			148
(skipped this question)			25



7. Are you aware of what will happen to your online accounts and profiles when you die?

		Response Total	Response Percent
Yes		13	8%
No		135	84%
Other, please specify		13	8%
Total Respondents			161
(skipped this question)			12



8. Do you have a Will?

		Response Total	Response Percent
Yes		75	47%
No		86	53%
Total Respondents			161
(skipped this question)			12

9. If yes, is it current (i.e made within the last 3 years and reflecting your current circumstances)?

		Response Total	Response Percent
Yes		50	57%
No		37	43%
Total Respondents			87
(skipped this question)			86




10. Have you made any provisions to deal with your online profiles and accounts in the event of your death?

		Response Total	Response Percent
Yes		3	2%
No		130	98%
Total Respondents			133
(skipped this question)			40




11. If yes, how?

Total Respondents		10
(skipped this question)		163

12. Some sites give automatic access to your next of kin in the event of your death. Would you be happy with this?

		Response Total	Response Percent
Yes		96	60%
No		19	12%
Don't know		46	29%
Total Respondents			161
(skipped this question)			12

13. Would you be interested in protecting your online accounts if there was a system in place allowing your wishes and instructions to be followed or considered?

		Response Total	Response Percent
Yes		96	60%
No		16	10%
Don't Know		48	30%
Total Respondents			160
(skipped this question)			13

14. Please feel free to make any additional comments about the issues raised in this survey:

Total Respondents	21
(skipped this question)	152

Profiles



Nicola Plant Partner, Private Client Practice Group

Nicola heads up the London Private Client Team and the Sports & Media Group for the firm. Nicola's time is spent providing clients with traditional and high level estate planning, inheritance and capital gains tax advice involving the creation and rearrangement of trusts, providing business protection planning for owner managed businesses, advising on the set up and administration of philanthropic, charitable trust foundations.

Nicola is regularly called upon by the press and media to provide interviews and comment on relevant legal developments in the news and has been a contributor on the panel for BBC Radio 4's Moneybox Live programme.

Please contact Nicola with any questions on
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Eleanor Johnson-Cadwell Trainee Solicitor, Private Client Practice Group

Ellie is a Trainee Solicitor currently working as part of Nicola Plant's team.

Ellie graduated from Brighton University with a degree in Social Sciences and joined Thomas Eggar LLP in 2005 as a legal secretary. Whilst working as part of the Tax and Trust Administration team she completed the law conversion and Legal Practice Course part-time and was awarded a training contract with the firm in 2008.

Ellie qualifies in September 2010, when she will rejoin the Tax and Trust team in Chichester as a Solicitor.

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Alistair MacFarlane and Richard Hastings are credited for their involvement in the production of the precedents.



Alistair MacFarlane
Partner, Private Client Practice Group

Alistair heads up the team dealing with elderly client issues and has a particular interest in powers of attorney and administering the affairs of people who have lost capacity and their estates. At the same time he provides clients with traditional and high level estate planning, inheritance and capital gains tax advice including the creation and rearrangement of trusts.



Richard Hastings
Head of Technology sector
Partner, Commercial Technology & Intellectual Property

Richard Hastings heads up the firm's commercial team at Thomas Eggar LLP. Richard joined Thomas Eggar as a Commercial Technology partner in November 2006 after spending the last 12 years as a commercial In-House lawyer holding several senior legal positions including Legal Director for Sir Alan Sugar at Amstrad Plc, and as General Counsel for Interoute Telecommunications. Richard joined us from his previous position as European General Counsel for Yahoo! where he had responsibility for all of the company's legal affairs including a team of 24 lawyers across Europe. Richard also heads up our Intellectual Property team and has specific expertise in all areas of Intellectual Property, Data Protection, Commercial Technology, and Telecommunications Law.

Thomas Eggar LLP is a recognised leading law firm in the South, offering both Commercial and Private Client services. www.thomaseggar.com

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