



23 October 2019.



Mr Alan Cameron AO  
Chairperson  
New South Wales Law Reform Commission  
GPO Box 31  
Sydney  
NSW 2001

Dear Sir,

**“Submission concerning digital assets upon death or incapacity”**

Please find enclosed submissions in relation to the above issues.

Yours faithfully

Mr R Dean B, Bus LL, B



There can be no doubt that since the inception of the internet the World as we knew it 30 years ago has changed and will continue to do so at an accelerating rate for many decades to come and may in fact not ever stop.

As society moves towards a total digital presence, leaving the hard copy of documents and pictures far behind us, we enter a World that requires swift and clear direction in relation to addressing obvious and potential issues, that may well cause distress and or great cost to families and their beneficiaries unless addressed.

The impact of each person's digital footprint is becoming more important day by day.

It is well recognised that when a family house is engulfed by fire that a parent normally will do two things, firstly they grab the children and take them to safety and secondly, they attempt to grab the family picture album and save their memories.

Irreplaceable family pictures are a connection to their past and family members long gone, once gone they probably cannot be replaced. It is indicative of the value that people place on their family pictures.

### **Practical Considerations**

By way of back-ground *My Life My Legacy* addresses the issue of storing personal family data in a safe location, and allowing the member to structure that information in an orderly manner with the express intent of allowing any current family members to link to that particular members web page and create a family tree and upload pictures and videos and documents.

More importantly that once the member passes, that anyone Worldwide will be able to access and view (but not delete) that members memorabilia.

Imagine if you could access your Great Great Grandfathers information that he had specifically left in a safe location for you to look at.

Therefore, the system has only two choices.

Firstly, to lock off all data once a date of death is entered and not allow anyone to access and see the life story of that person.

Not very satisfactory if you want your Grandchildren's children to see and learn about you.

*Our dead are never dead to us, until we have forgotten them.*

George Eliot 1819-1880

Secondly allow the information to be safely stored and any person gain access, as that person may well be a direct descendant. People marry and change their name, so controls cannot be put in place to satisfy establishing a genuine descendant. But what is important is the issue of who owns digital data (i.e. pics, videos, documents in soft copy)

This is particular importance, if there is hard copy in existence, can the person upload the soft copy transfer ownership and copyright of the soft copy, while retaining the hard copy and subsequently passing that onto to future generations by devolution?

These submissions address the vexed issue of what protections should be put in place to protect the valuable and important "digital property" a person may own and who either dies or becomes incapacitated, and how such property may be controlled and or used.

## **Digital Data Is Not Property**

[Legal Issues](#)

from the *pure-information* dept

Thu, Jul 24th 2014 1:18pm — [Glyn Moody](#)

Back in March, we reported on an interesting case where a UK court ruled that information stored electronically is [not property](#). Now [senior judges in New Zealand have agreed](#) (found via [@superglaze](#)), as the Lexology site explains:

*Jonathan Dixon, the Queenstown bouncer who accessed CCTV footage of the England Rugby Captain in a bar during the 2011 Rugby World Cup, appealed his conviction for dishonestly obtaining property on the basis that the digital data did not come under the definition of 'property' in the Crimes Act. The New Zealand Court of Appeal yesterday agreed (but substituted his conviction with one of dishonestly obtaining a benefit).*

Lexology goes on to explain:

*The accepted legal position is that confidential information is not property, but protected by the law from abuse, as a matter of 'conscience' arising from the circumstances in which the information was obtained.*

*The New Zealand Court of Appeal considered that a computer file's "stored sequence of bytes available to a computer program or operating system... cannot meaningfully be distinguished from pure information", and therefore was not 'property' for the purposes of the Crimes Act.*

Although two court cases do not make a definitive answer, it's significant that they were in different, albeit related, jurisdictions, and that the judges based their decisions on very different legislation.

It certainly adds fuel to the already heated debate about whether it is possible in any sense to "steal" digital files containing copyright material.