

# Where There's a Will, There May Still Not be a Way

By Reg P. Wydeven  
October 3, 2012

For the last couple of articles, I've written about my son's new iPod. He totally loves it, and never wants to put it down. He's downloaded several cool games. He also uses his iPod to read great books, like 'Diary of a Wimpy Kid' and 'Nate the Great.' While he does his homework, he uses it to listen to music by Big Time Rush and Tao Cruz. He even watches G.I. Joe cartoons on it while he brushes his teeth.

I've had my smartphone since February, and I've already got about a hundred songs on it, lots of comic books and a few ebooks. My mother-in-law has a Nook from Barnes & Noble, and she loves to read books and magazines on it. My sister loves reading and has tons of novels loaded on her Amazon.com Kindle, which she brings everywhere. My dad already has dozens of CDs imported onto his iPod.

I love being able to watch my favorite TV shows and movies right on my phone, in addition to listening to my favorite tunes and reading comics and books. But I'd still never give up my collection of actual DVDs, CDs, comics and books. When I die, I want my family to enjoy these items as much as I have. Although I'm pretty confident that most of it will end up on ebay before the last shovel of dirt is on me.

While my kids can fight over who gets the DVDs for the complete original 'Star Trek' series and my G.I. Joe comics, divvying up my digital library may be a little trickier.

Although I have a bunch of DVDs, CDs, comics and books, I don't "own" their digital counterparts on my computer, tablet or smartphone. When I download a movie, book or song, I actually purchase a license to use the digital file, but I don't own the file itself.

For example, when I downloaded the 'Star Trek II: The Wrath of Kahn' soundtrack on my phone, I agreed to a license agreement with Apple's iTunes store where I was granted a "non-transferable" right to listen to the rendition of 'Amazing Grace' that was played at Spock's funeral. The use of digital files purchased from iTunes is further limited to only those Apple devices used by the account holder. Amazon.com has a similar license agreement, the terms of use of which state, "You do not acquire any ownership rights in the software or music content."

Therefore, when I die, my digital collection really can't be passed on to my kids. As is the norm with technology, the law cannot keep up with the changes in the digital world. While Connecticut, Idaho, Indiana, Oklahoma and Rhode Island have passed laws allowing executors or relatives to access a deceased person's email and social networking accounts, they don't extend to digital files.

To combat this, Jacksonville attorney David Goldman created DapTrust, a software program that creates a legal trust to hold your online accounts that contain music, ebooks and movies. For \$150, DapTrust will store and manage your digital accounts and passwords and provide you with instructions for creating a legal trust to house these accounts.

Experts of digital media are crying for legal reform and the update of intellectual property laws to provide for the passing of a person's digital library between one or more heirs upon their death. Because each year our libraries are shifting from "actual" to "digital," these experts claim the need for new legislation gets more pressing each day.

While I hope there will be such legislation soon, I have to say I'm not dying to find out.