The Bytes and Beneficiaries Blog

What Happens When States Can't Regulate AI? A Wake-Up Call for Estate Planning and Digital Succession Professionals

In the rush to regulate artificial intelligence (AI), a new political fault line is emerging—not between left and right, but between **federal and state authority**. As Congress considers sweeping legislation that would centralize AI oversight, one proposal under discussion would **preempt state governments from enacting their own AI regulations**. Proponents argue that a unified national standard is essential for innovation and international competitiveness. But beneath the surface lies a concerning consequence: **a legal and ethical vacuum**, especially when it comes to **the handling of AI-generated data in end-of-life and estate planning**.

We are quickly entering an era in which AI not only assists in our daily routines, but **co-creates parts of our identities**, digital footprints, and legacy. AI-generated communications, deepfake avatars, co-authored content, and algorithm-driven memory collections are becoming increasingly common—raising the profound question: **Who owns this data after we die, and who has the right to control it?**

We are not just talking about photos in the cloud or social media accounts. **AI has introduced a new class of assets that can replicate our voice, extend our presence, and co-create our legacy. If these tools can simulate us, they must also be subject to our control—even after death.**

States as Laboratories of Innovation

Historically, states have served as “laboratories of democracy,” often leading the charge in consumer protection, privacy, and digital rights. California’s Consumer Privacy Act (CCPA), for example, became a model for other states and even influenced global standards. In the realm of estate law—especially digital estate law—state legislatures have stepped up to fill the gaps left by federal inaction.

But if new federal AI legislation preempts state-level governance, that dynamic could change dramatically. Without the flexibility to craft their own AI-specific rules, **states will lose the ability to address local concerns and evolving technologies through tailored legal responses**. In effect, this may stall legal

clarity and innovation in key areas—**like digital succession and end-of-life planning**—where immediacy matters.

The Danger of Waiting for Washington

Despite the urgency, federal lawmakers have yet to introduce or pass any comprehensive legislation that addresses the unique intersection of **AI-generated data and digital estate planning**. In fact, most existing laws—such as the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)—predate the AI boom and primarily deal with static digital assets like email, cloud storage, or cryptocurrency, not dynamic, co-created, or autonomous AI content.

In the absence of both state and federal legal frameworks, we are left in a precarious situation: **AI-generated data—some of it deeply personal or commercially valuable—exists in a legal gray zone.** If someone dies today with a voice clone, chatbot legacy system, or AI-written intellectual property, who has the right to access it, manage it, or shut it down?

The longer we wait for national legislation, the more urgent it becomes for individuals to **formalize their wishes and directives** for the AI-generated content and associated data created and used.

Why Formal Directives Matter—Now More Than Ever

Given the uncertainty in the legal landscape, individuals and estate planners should proactively account for AI-generated data as part of digital afterlife planning. That means:

- **Identifying AI-generated content** (e.g., co-written documents, avatars, chat histories, creative outputs).
- **Clarifying ownership rights** and usage restrictions in wills, trusts, and digital directives.
- **Specifying who has access to AI platform contents and data post-death**, and under what terms.
- **Defining whether AI systems should continue functioning after death** (e.g., legacy bots), and for what purposes (memorial, education, or business).

Without clear directives, fiduciaries may find themselves blocked by platforms, entangled in privacy violations, or caught in emotionally fraught disputes over how (or whether) an AI-created digital self should persist.

The Bottom Line

A federal ban on state regulation of AI might simplify compliance for tech companies—but it could seriously complicate the lives of everyday people trying to manage their digital legacy. Until a robust, thoughtful federal law addresses these issues head-on, **the burden falls to individuals, estate professionals, and digital rights advocates to plan intentionally and precisely**.

And in a world where both state and federal governments have yet to catch up, the time to act is now.