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# Managing digital and intangible assets

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through partnership

# Introduction

- We live in an age of electronic information of increasing volumes and types.
- This electronic information can have value (e.g., cryptocurrencies and intellectual property) and can be an asset (or liability).
- It can be important to manage the asset (or liability) during one's lifetime and thereafter (e.g., vis-à-vis an estate plan).



# What is a digital asset?

According to *Wikipedia*, a digital asset is:

- Anything that exists in a digital format and comes with the right to use.
- Is currently in circulation or is or will be stored on digital appliances such as PCs, laptops, portable media players, tablets, storage devices, etc.



# Examples of digital assets

- Photos
- Logos
- Illustrations
- Animations
- Audiovisual media
- Name/image/likeness
- Presentations
- Spreadsheets
- Emails
- Word documents
- Domain names/email addresses
- Social media pages



# Intellectual property

## Can IP be a digital asset?

- Trademarks
- Copyrights
- Patents
- Trade secrets
- Right of publicity

**Do certain types of IP exist in digital format and come with the right to use?**



# Financial digital assets

## Examples of financial digital assets

- Cryptocurrency or virtual currency
- Blockchain tokens
- Digital wallets



# Who maintains digital assets?

- Financial institutions
- Brokerage companies
- Social media companies
- Email account providers
- Cloud storage providers
- Digital media providers
- Domain name/website hosts
- IP registration organizations



# Access to digital assets

**What is a fiduciary?**

**What duties do fiduciaries have?**

**Common issues for fiduciaries and advisors:**

**Securing access to digital assets**

- Often no paper trace
- Usually password protected accounts

**Distinction between a right to use and actual ownership of an asset**



# Roadblocks to accessing digital assets

## Terms of service agreements

Content and copyright rights may be limited by terms of service.

## End user agreements

Many digital media providers allow access to music and media through a service that is “licensed” not sold.

## License to access agreements

Many digital platforms grant a “limited, non-exclusive, non-transferrable...license to access...”



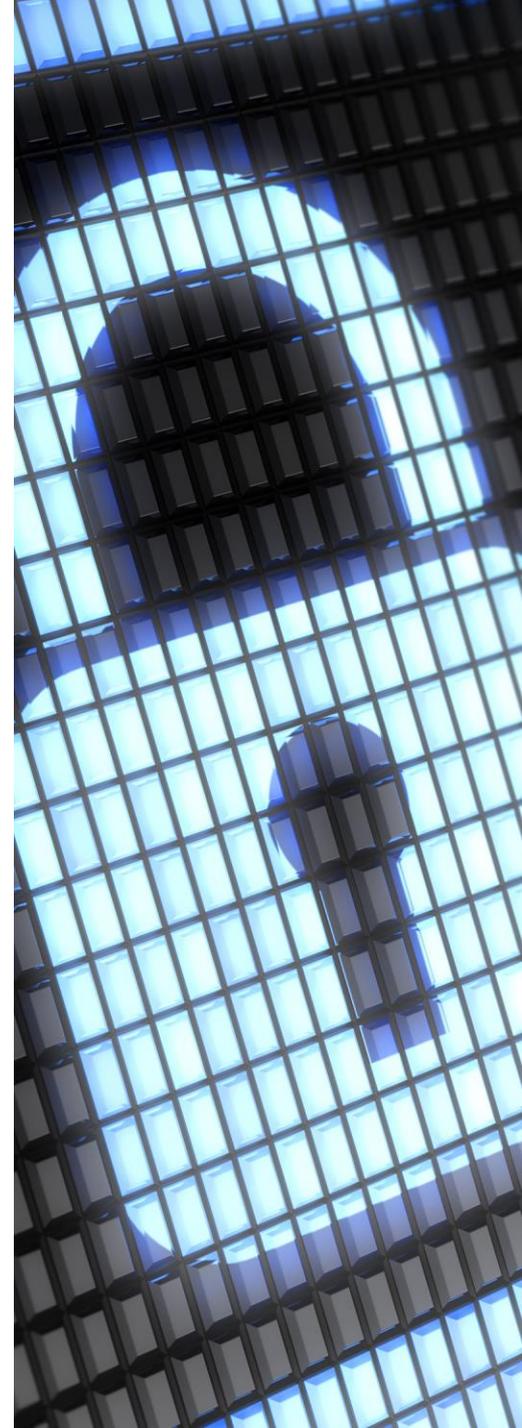
# Uniform Fiduciary Access to Digital Access Act of 2014

- Provided fiduciaries with default access to all digital information.
- Treated digital assets like traditional assets.
- Personal representatives and executors would have the same right to access the decedent's accounts as the decedent had during their lifetime.
- UFADAA of 2014 received strong opposition from tech companies and privacy groups.



# Revised UFADAA of 2015

- 2014 Act was revised to protect the contents of electronic communications from disclosure with the user's consent.
- Fiduciaries were still permitted to access other digital assets unless prohibited by the user.
- RUFADAA has been enacted in 47 US States, plus U.S. Virgin Islands and District of Columbia



# Key changes of RUFADAA

- Absent specific consent of the decedent, Executors no longer have authority over the content of electronic communications (e.g., emails, DMs, etc.).
- Executors must now petition the court and explain why access to other digital assets is required.
- Absent specific permission, online providers can look to their own terms of service in deciding whether to grant Executors access
- Online providers can refuse requests that are unduly burdensome, demand court orders, limit compliance, and charge fees to comply.



# Are digital assets worth the hassle to preserve?

## It depends...

- Financial digital asset accounts
- Domain names and websites
- Cryptocurrency
- Intellectual property
- Social media accounts



Protect

# Locating valuable digital assets

**If a digital asset has monetary value, it should be identified, located, and accessed.**

- Allows use and distribution to the appropriate person(s).
- Enables the fiduciary the ability to manage and/or settle the owner's estate.



# Digital assets of sentimental value

**These assets may be of far greater import to family members of the deceased.**

- Parents of deceased minor introduced legislation to allow post-mortem access to their son's social media page.
- Facebook and Instagram allow users to designate post-mortem "legacy" settings.



# Practical tips

- Take time to understand rights related to providing access to digital assets.
- Understand and ensure specific language is included in estate planning documents - do not rely upon inferences.
- Compile a list of digital assets, including location, and access details (e.g., logins, passwords, etc.), don't forget access to computers/phones/tablets.
- Provide clear written guidance on how digital assets should be handled (e.g., pass on, archive, donate, delete/destroy, etc.).
- Regularly update list of digital assets and wishes.
- Visit [Uniform Law Commission Website](#), find your state/territory, and review the RFADAA for details.

# Contact information



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# Questions