



ReedSmith

Managing digital and intangible assets

Prepared for **FIRMA**

Presented by Keyonn Pope

May 13, 2021

ReedSmith

Driving progress
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...”



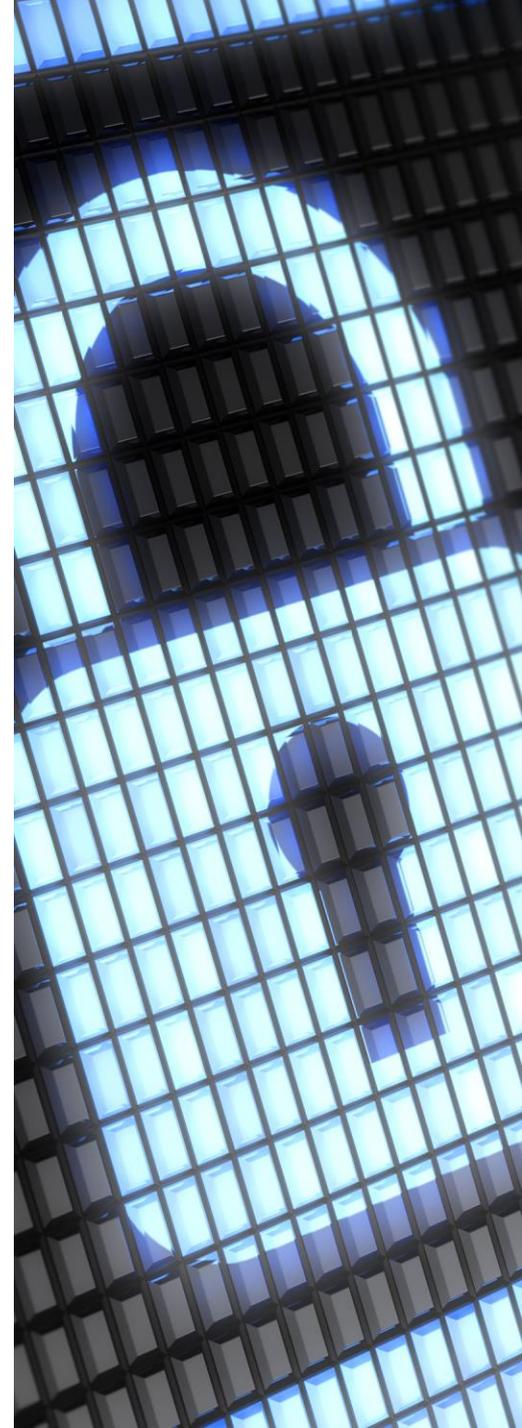
Uniform Fiduciary Access to Digital Access Act of 2014

- 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



Keyonn Pope

Partner

Chicago

+1 312 207 2414

kpope@reedsmith.com



Questions