



Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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| Issue | Original UFADAA | PEAC Act | Revised UFADAA |
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| Estate representative's access to the <i>content of a decedent's electronic communications</i> . | Permitted unless the decedent opted out while alive. | Not permitted unless a court finds that the decedent consented to disclosure and the estate indemnifies the custodian. The request must specifically identify the account. | Not permitted unless the decedent consented to disclosure. Custodian may request a court order specifically identifying the account and finding consent. Indemnification not required. |
| Estate representative's access to <i>other digital assets</i> of a decedent. | Permitted unless the decedent opted out while alive. | Unless the decedent opted out, access to one years' worth of records permitted with a court order only if relevant to resolve fiscal assets of the estate. | Permitted unless the decedent opted out or the court directs otherwise. Custodian may request a court order specifically identifying the account and finding that access is reasonably necessary for estate administration. |
| Conservator's access to the <i>content of a protected person's electronic communications</i> . | Permitted if access ordered by the court. | Not addressed. | Custodian need not disclose contents without the express consent of the protected person, but may suspend or terminate an account for good cause if requested by the conservator. |
| Conservator's access to <i>other digital assets</i> of a protected person. | Permitted if access ordered by the court. | Not addressed. | Permitted if authorized by the conservatorship order. Custodian may require specific identification of the account and evidence linking the account to the protected person. |

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| <i>Agent's access to the content of a principal's electronic communications.</i> | Permitted if expressly authorized by the principal. | Not addressed. | Permitted if expressly authorized by the principal. Custodian may require specific identification of the account and evidence linking the account to the principal. |
| <i>Agent's access to other digital assets.</i> | Permitted under a grant of general or specific authority. | Not addressed. | Permitted under a grant of general or specific authority. Custodian may require specific identification of the account and evidence linking the account to the principal. |
| <i>Trustee's access to the contents of electronic communications of a trust account.</i> | Permitted unless prohibited by the user, trust, or court. | Not addressed. | Permitted when trustee is the original user. Also permitted when the trustee is not the original user if authorized by the trust. Custodian may require specific identification of the account and evidence linking the account to the trust. |
| <i>Trustee's access to other digital assets of the trust.</i> | Permitted unless prohibited by the user, trust, or court. | Not addressed. | Permitted unless prohibited by the user, trust, or court. Custodian may require specific identification of the account and evidence linking the account to the trust. |

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| Effect of boilerplate term-of-service prohibiting fiduciary access. | A blanket prohibition on fiduciary access is void as against public policy. | Not specifically addressed, but terms-of-service arguably enforceable by the reference to “other applicable law” (i.e. contract law) in Sec. 3(c). | Three tiered approach: <ol style="list-style-type: none"> 1. A user’s direction using an online tool prevails over an offline direction and over the terms-of-service <i>if</i> the direction can be modified or deleted at all times. 2. A user’s direction in a will, trust, power of attorney, or other record prevails over the boilerplate terms-of-service. 3. If a user provides no direction, the terms-of-service control, or other law controls if the terms-of-service are silent on fiduciary access. |
| Effect of other terms-of-service. | Not addressed. | Recipient has no greater rights than the user. | Unless they conflict with a user’s direction, terms-of-service are preserved and the fiduciary has no greater rights than the user. |

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| Procedure for disclosing digital assets. | Not addressed, but use of the term “access” throughout the act arguably contemplates the fiduciary logging on to the user’s account. | Provider not required to allow a requesting party to assume control of a deceased user’s account. | The custodian has three options for disclosing digital assets: <ol style="list-style-type: none"> 1. Allow the requestor to access the user’s account. 2. Allow the requestor to partially access the user’s account if sufficient to perform the necessary tasks. 3. Provide the requestor with a “data dump” of all digital assets held in the account. |
| Administrative fees. | Not addressed. | Not addressed. | A custodian may assess a reasonable administrative charge for the cost of disclosing a user’s digital assets. |
| Deleted assets. | Not addressed. | Deleted assets need not be disclosed. | Deleted assets need not be disclosed. |
| Unduly burdensome requests. | Not addressed. | Court shall quash an unduly burdensome order. | A request for some, but not all, of a user’s digital assets need not be fulfilled if segregation is unduly burdensome. Instead, either party may petition the court for further instructions. |
| Fiduciary duties. | Incorporated by a generic reference to “other law.” | Not addressed. | Expressly incorporated. |
| Account termination. | Not addressed. | Not addressed. | If termination would not violate a fiduciary duty, the fiduciary may request account termination rather than disclosure of assets. A custodian may require specific identification of the account and evidence linking the account to the user. |

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| Joint accounts. | Not addressed. | Custodian need not disclose if aware of any lawful access to the account following the death of the user. | Custodian need not disclose if aware of any lawful access to the account after receipt of the disclosure request. |
| Timely compliance. | Required within [60] days, or fiduciary may request an order of compliance. | Not addressed. | Required within [60] days, or fiduciary may request an order of compliance. The order must contain a finding that disclosure does not violate 18 U.S.C. § 2702. |
| Custodian immunity. | Custodian is immune from liability for an act or omission done in good faith compliance with the act. | Custodian not liable for compliance in good faith with a court order issued pursuant to the act. | Custodian is immune from liability for an act or omission done in good faith compliance with the act. |