

Uniform Fiduciary Access to Digital Assets Act

By default - contents of electronic communications are DISCLOSED

§ 4: “[U]nless otherwise ordered by the court or provided in the will of a decedent, the personal representative of the decedent has the right to access:”

Requires disclosure of contents unless otherwise specified in the deceased’s will

§ 4: “Subject to Section 8(b) and unless otherwise ordered by the court or provided in the will of a decedent, the personal representative of the decedent has the right to access:”

No granularity of disclosure of contents – all or nothing – unless limited through a will

§ 4 “[T]he personal representative of the decedent has the right to access: (1) the content of an electronic communication ... ; (2) any catalogue of electronic communications sent or received by the decedent; and (3) any other digital asset in which at death the decedent had a right or interest.

Privacy Expectation Afterlife and Choices Act

By default - contents of electronic communications remain PRIVATE

§ (1)(B)(2) “A provider shall be required to disclose to the executor or administrator of the estate of a deceased user the contents of the deceased user’s account to the extent reasonably available only if the executor or administrator gives the provider all of the following”

Requires disclosure ONLY if the deceased expressly stated in the will or provider choice mechanism and the court finds this consent valid.

§ (1)(B)(2)(c): “An order of the court of probate that by law has jurisdiction of the estate of a deceased user: (i) finding that the will of the decedent or setting within the product or service regarding how the user’s contents can be treated after a set period of inactivity or other event expressly consented to the disclosure of the contents of the deceased user’s account by the executor or administrator of the estate of the deceased user;”

By default discloses only the information needed to wrap-up the estate

§ 1(A) “[A] provider ... [shall] disclose ... a record or other information pertaining to the deceased user ... but not including the contents of communications or stored contents”

Requires businesses to violate federal privacy law

UFADA requires providers to disclose even though such disclosure violates federal privacy law. For providers, violation results in § 4 states that the personal representative of the decedent has the “*right to access,*” unless otherwise *ordered by the court* or provided in the will of a decedent, the catalogue data as well as the *content* of an electronic communication that the custodian is permitted to disclose under the ECPA.

Recognizes importance and supremacy of federal law privacy law and provides appropriate accommodations

The Electronic Communications Protection Act (ECPA) creates privacy protections superior to state law. PEAC Act avoids violating federal law and instead operates within the limitations of ECPA to create a law that works by disclosing records of communications by default and requiring express consent for disclosure of contents.

Mandates disclosure of contents of joint-accounts.

UFADA does not address or raise concerns about the privacy interests of joint-account holders.

Respects privacy of other joint-account holder and allows joint-account holder to object to disclosure.

§ (1)(B)(3)(b) “Notwithstanding Section 1, a provider cannot be compelled to disclose any record or any contents of communications if... the provider is aware of any indication of lawful access to the account after the date of the deceased user’s death or that the account is not that of the deceased user;”

No requirement to prove ownership of the account in question

Bad actors under UFADA can send notices to access accounts without any showing the account belonged to the deceased individual.

Creates a mechanism to ensure that the correct account is disclosed

§ (1)(B)(c)(v) “An order of the court of probate that by law has jurisdiction of the estate of a deceased user [must find] that the account(s) belonging to the deceased user have been identified with specificity, including a unique identifier assigned by the provider;”

Also addresses the issues of Conservator, Trustees, and Powers of Attorney

§4,5 and 6 grant conservators, trustees, and agents operating under a power of attorney blanket access to all contents of electronic accounts. So if there even agents operating under a limited power of attorney get access to all electronic communications.

PEAC does not need to address Conservator, Trustees, and Powers of Attorney

Since individuals cannot grant express consent posthumously it is not necessary for this legislation to address situations where the principle is alive. Moreover, providers already have mechanisms to address situations of conservator, trustee and powers of attorney.

Obliterates express and implied privacy choices made through provider tools

Unless the deceased expressly prohibited access to electronic communications in a will, the fiduciary may access all communications. This includes items that are in the “trash can” but not yet deleted from the server.

§ 4 “Subject to Section 8(b) [(user choice tools)] and unless otherwise ordered by the court or provided in the will of a decedent, the personal representative of the decedent has the right to access:”

Respects privacy choices and implied and express actions to prevent access

§ 3 “A provider cannot be compelled to disclose any record or any contents of communications if: the deceased user expressed a different intent through (1) deletion of the records or contents during the user’s lifetime, or (2) affirmatively indicating through a setting within the product or service regarding how the user’s records or contents can be treated after a set period of inactivity or other event;”