Thank You Law Commission!

But Our Access Is In Another Statute! – How the Uniform Fiduciary Access to Digital Assets Act promises to give user accounts an extra life, and how the delivered result is less than hoped.

Many of us will accumulate vast libraries of digital books, music, movies, and software licenses over the course of our lifetimes. Clients' financial and social lives are increasingly taking place online. As of June 2014, Apple accounts had been used to download 75 billion apps from the Apple App Store.[[1]](#footnote-1) The year before, Apple announced that viewers were downloading 800,000 TV episodes and 350,000 movies per day.[[2]](#footnote-2) Altogether users are spending an estimated $20 billion per year in the iTunes market place (including music, software, services, and video).[[3]](#footnote-3)

Apple is by no means alone. In 2012 Activision Blizzard estimated 9.6 million subscribers to World of Warcraft,[[4]](#footnote-4) where assets of real-world value can be amassed while a paid subscription runs. Valve’s PC game app store, Steam, announced reaching 75 million users in January of 2014,[[5]](#footnote-5) up 10 million from just three months earlier[[6]](#footnote-6). The number of users signed in at one time regularly reaches 7 million.[[7]](#footnote-7) Use of the internet by clients for these purposes is only going to increase and be more common in the future. Where clients would once have bequeathed their book or vinyl collection, now only life-estate licenses remain to “owners” of digital collections. As was stated by co-author of “Your Digital Afterlife” Evan Carroll, “I find it hard to imagine a situation where a family would be OK with losing a collection of 10,000 books and songs,"[[8]](#footnote-8) and yet, service providers claim that is exactly how it should work.

In 2004, Yahoo! was embroiled in a legal battle when a marine was killed in Iraq and his family was forced to go to court if they wanted access to his email account.[[9]](#footnote-9) In the meantime, Yahoo’s automated policy deleted the account after 90 days of inactivity.[[10]](#footnote-10) While a few states have attempted to address some of the issues, most states have not answered the questions of what *should be* allowed with these assets after the primary user passes away. As of February 2014, six states had independently addressed certain aspects of fiduciary access to digital assets.[[11]](#footnote-11) These statutes take various approaches, some compelling service providers to allow fiduciaries access, while others redefine fiduciary authority to include authorization to access digital property.[[12]](#footnote-12) As will be explored below, these statutes seem to be aimed at gaining access to information and records, but are generally not well suited for describing the legal possibilities or processes for redistributing any of the underlying value.

The National Conference of Commissioners on Uniform State Laws approved its Uniform Fiduciary Access to Digital Assets Act (UFADAA) in July of 2014,[[13]](#footnote-13) which has yet to be adopted anywhere, much less tested in court. Several provisions go a step further than present law in ensuring that fiduciaries, including executors and trustees, have access to the digital accounts of decedents.[[14]](#footnote-14) Due to inherent limitations built in to the current digital asset system, however, much of the value original purchasers enjoy, and pay for, in life will still go with them to the grave.

Many questions remain matters of contract and common law. As stated, the underlying value in many accounts is not in the knowledge or records to be gleaned by logging in, but in the actual *use* of the account. There may be important information in an email account necessary for wrapping up an estate, or in a Flickr account for recovering valuable intellectual property, but knowledge of which songs or games were purchased is of much less value to heirs and beneficiaries than the ability to enjoy those works. Being able to continue the online business is more important than simply seeing what sales already occurred, but if the business is run through a service such as Amazon or eBay, that might not be possible. The reputation, customer base, and account status are locked to a user account. EBay’s terms,[[15]](#footnote-15) like most Terms of Service (“TOS”) agreements, expressly forbid transferring the account,[[16]](#footnote-16) and many prohibit granting anyone else access or supplying credentials to log in.[[17]](#footnote-17) In response, many online services reserve the right to block access and even terminate an account and delete content if the terms are violated.[[18]](#footnote-18) Attempting to continue deriving value from the decedent’s account may well not only block that type of access, but could cause the entire asset to be forever placed out of reach to anyone.

The current approach proposed by legal and non-legal parties alike, is to attempt to fly below the radar, hand off the credentials at death, and take care of business.[[19]](#footnote-19) As mentioned this approach often violates the service provider’s terms, but it also exposes the person accessing the asset to potential civil and even criminal liabilities under state and federal laws.[[20]](#footnote-20) Nevertheless fiduciaries are forced to find a balance somewhere between the potential liability for accessing the assets, and the potential liability to beneficiaries for failing to do so. Online service providers face a similar conundrum of being legally bound by their own terms and other laws, and facing the public outcry, as did Yahoo!, when they keep to those policies in delicate situations.

This article discusses the current and likely future of the law, and finally proposes a preferable state of the law. The article begins by explaining the current course assets take, both in terms of enforcing TOSs as contracts and of applying the various laws already in effect. The article then discusses the proposed changes as formulated in the UFADAA and the extent of their effect. After illustrating the present law and the immediate foreseeable future, the article points out the remaining ambiguities and inequities and proposes a possible course to resolve the problems.

**Current and Proposed Law**

The law around wills and will-substitutes is premised on, among other things, the idea that a person gains some benefit in being able to allocate a lifetime worth of assets to loved ones. Legally, that is nearly impossible under the current scheme of digital assets. What exactly a person *can* do with a given asset depends in part on the nature of the asset. Categories include, among many others, computers and devices, email and communications, social media accounts, online businesses and publications, and multimedia content. There is substantial overlap both in content and in service providers among these categories, but the particular services that fall within each category may be treated differently.

**Decedent’s Tangible Digital Devices**

Under copyright law, a work is protected if it takes the form of an "original work[] of authorship fixed in any tangible medium of expression . . . ."[[21]](#footnote-21) For these purposes a computer hard drive or the storage of a mobile device are both tangible media of expression, and a work stored there is “fixed.” The copyright in a work includes the exclusive right of distribution.[[22]](#footnote-22) Thus, without further law on the matter, transferring ownership of a decedent’s tangible, digital devices, containing copyrighted software and media, would constitute a *per se* violation of the copyright holder’s exclusive right of distribution. Fortunately the analysis does not end there. The copyright statute includes what is referred to as the “first sale” doctrine.[[23]](#footnote-23)

The first sale doctrine dictates that the copyright holder’s right to control distribution of a particular copy of a work is exhausted after the first sale of that copy.[[24]](#footnote-24) Thus, for example, the copy of the operating system preinstalled on a computer may legally be resold or transferred with the computer it came stored on. The portable device to which licensed multimedia works were copied may be transferred. This doctrine has severe limitations as will be seen with other digital assets, but it is helpful in managing the transfer of title of tangible objects.

If the decedent does not expressly authorize the executor or trustee to access the contents of such devices, however, the fiduciary faces a risk of liability for accessing them. The Computer Fraud and Abuse Act of 1984 (“CFAA”) imposes criminal liability on anyone who “intentionally accesses a computer without authorization or exceeds authorized access, and thereby obtains . . . information from any protected computer.”[[25]](#footnote-25) Effectively, any computer or computer-like device that connects to the internet is a “protected computer.”[[26]](#footnote-26) Furthermore, all fifty states criminalize unauthorized access to computers and computer systems.[[27]](#footnote-27) The CFAA itself does not define authorization, however. If a cautious fiduciary’s authorization is deemed insufficient or unclear, looming criminal charges will deter the fiduciary from taking the chance. While the likelihood of a fiduciary being held liable for accessing a decedent’s computer may be slim, it is nevertheless potentially criminal conduct and the status should ideally be made clear to a fiduciary, for the fiduciary’s sake, and for the sake of the beneficiaries who stand to gain from a thorough accounting.

The Uniform Fiduciary Access to Digital Assets Act would address this and most similar scenarios if adopted. Section 7(e) of the Act grants fiduciaries with authority over property the right to access the property and any digital asset stored in it.[[28]](#footnote-28) The definition of “digital asset” and lacking definition of “access” both pose problems for handling certain types of content stored on a device, but the initial authority to access the device and retrieve information is granted. The Act specifies that such a fiduciary is an “authorized user for purposes of any applicable computer fraud and unauthorized access laws.”[[29]](#footnote-29) With the first sale doctrine addressing copyright issues, and presumably UFADAA or its analog protecting against criminal liability, a fiduciary will in the foreseeable future be able to access a computer or device under the fiduciary’s authority.

**Email and Communications**

As explained, many online service providers limit by TOS contract what a user can do with an account, or even with the credentials to sign in.[[30]](#footnote-30) Whether users knowingly agree to such limitations is questionable, but the typical “click-wrap” procedure of having users tick a box stating that they agree to the terms during sign up is frequently sufficient to establish a manifestation of assent, regardless of whether the person actually read the terms.[[31]](#footnote-31) A user could unwittingly violate the terms by granting a fiduciary access and in doing so risk losing the account.

Granting a fiduciary such access might also expose the fiduciary to liability. The same rules that impose criminal liability for accessing a decedent’s devices without authorization apply equally to remotely accessing a service provider’s computers in excess of what is authorized.[[32]](#footnote-32) Even if the user expressly grants the fiduciary access to an account and its content, it may still constitute unauthorized access under the CFAA.[[33]](#footnote-33) This course of action would be protected under UFADAA.[[34]](#footnote-34) Section 7 resolves both aspects of the TOS limitations by stating that “[i]f a provision in a terms-of-service agreement limits a fiduciary’s access to the digital assets of the account holder, the provision is void as against the strong public policy of this state.”[[35]](#footnote-35) As explained above, the fiduciary would not be liable under the CFAA because fiduciaries are statutorily authorized, and under this section the service provider cannot block access either.

Under present law, the service provider too is forced to choose between two less than ideal scenarios where email accounts are involved. Just as the user is bound by the TOS agreement, the service provider is also bound by the privacy policy. If the policy states that only the original account holder will be granted access to the contents of the account, then violating those policies opens the service provider to liability according to the Federal Trade Commission (“FTC”), which prevents commercial entities from “using unfair methods of competition in or affecting commerce and unfair or deceptive acts or practices in affecting commerce.”[[36]](#footnote-36) The FTC’s Web site expressly provides: “When companies tell consumers they will safeguard their personal information, the FTC can and does take law enforcement action to make sure that companies live up [to] these promises.”[[37]](#footnote-37) If disclosing to a fiduciary is against the service provider’s privacy policy, violating that policy could land the company in trouble with the FTC.

Regardless of the self-imposed privacy policy, a public provider of “electronic communication services” such as email is subject to the Stored Communications Act,[[38]](#footnote-38) a portion of the broader Electronic Communications Privacy Act.[[39]](#footnote-39) These Acts limit divulging content or metadata of online communications to certain circumstances and certain parties.[[40]](#footnote-40) A service provider faces liability under these acts for improper disclosures, regardless of the privacy policy involved.

Again, the UFADAA attempts to resolve these concerns, in this case by granting immunity to service providers. Simply put, section 9 reads, “A custodian [a.k.a. service provider] and its officers, employees, and agents are immune from liability for any act done in good faith in compliance with this [act].”[[41]](#footnote-41) If the fiduciary meets the statutory requirements for establishing its status as an authorized fiduciary, the service provider will not be liable for granting access. Though fiduciaries and service providers are exposed to potential liability for merely logging in and reading email under the present scheme, the proposed uniform act would protect good faith cooperation at least this far. In most scenarios an email account is only valuable for the communications and information it contains. Gaining access for reviewing that information maintains most of the account’s value for beneficiaries. Many other types of accounts have value beyond the information they contain, and the current and proposed laws do not clearly preserve that value for anyone beyond the original user.

**Online Businesses, Social Media Accounts, and Multimedia Collections**

As for logging in and accessing these accounts, the limitations and proposed solutions discussed above apply here as well. Under the current law, when push comes to shove, i.e. when a matter goes to court, any assets stored by online service providers is forever cut off when the original user passes away. The online credentials may not be handed off, the service provider may not divulge them, and the fiduciary commits a crime by using them if successful. Under the proposed law, the original user may grant a fiduciary access to the account,[[42]](#footnote-42) the service provider can and must allow the access under the proper circumstances,[[43]](#footnote-43) and the fiduciary can access the account free of liability.[[44]](#footnote-44) For many accounts, however, the value in seeing past transactions is only a small portion of the overall value. Previously the example of a business run through Amazon or eBay illustrated that a fiduciary and eventually beneficiaries will wish to but be unable to carry on where a decedent left off. The extent of a fiduciary’s authority remains unclear even under the proposed uniform act.

The text of the act provides some insight into the scope of the fiduciary’s access. For example, for assets acquired by a trustee, where the trustee is the original account holder, section 6(1) states that a trustee “has the right to access each digital asset held in trust.”[[45]](#footnote-45) The term “access” is not directly defined, but the definition of “digital asset” suggests what type of access is intended. The term is defined as “a record that is electronic.”[[46]](#footnote-46) The word “record” is further defined as “information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.”[[47]](#footnote-47) And “information” is defined as “data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.”[[48]](#footnote-48) Thus, ultimately, a digital asset is “data, text, images, videos, sounds, codes, computer programs, software, databases, or the like” “that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form” and is “electronic.” With that in mind, access refers to access to images, video, sounds, software, “or the like,” but two very important questions remain. What is included in “access” and, despite the lengthy definition, what counts as a “digital asset” and what does not?

*Digital Asset*

The second and final sentence of the definition of “digital asset” states that “[t]he term does not include an underlying asset or liability unless the asset or liability is itself a record that is electronic.”[[49]](#footnote-49) The example proffered of such an underlying asset is a bank account.[[50]](#footnote-50) Control of the online banking account does not equate to control over the underlying asset in this scenario,[[51]](#footnote-51) presumably because the underlying asset is money, not an electronic record. Presumably, the fiduciary *would* have access to the history of transactions visible from the online account, as that would be a “record that is electronic” or a “digital asset.” The interpretation seems reasonable, but application in other contexts quickly raises unanswered questions.

 Identifying the Asset

To properly formulate the unanswered question of what can be done with a given asset, the asset must first be identified. Taking, for example, the eBay seller account, when a user registers, that user contracts with the service provider that both parties will abide by the terms.[[52]](#footnote-52) The user will follow the rules for posting, eBay will allow the user to buy and sell, eBay will take a cut of the sales, and the user will receive the rest.[[53]](#footnote-53) In short, the user has obtained a license to do business on eBay’s site under the registered username.[[54]](#footnote-54) For the Steam user, it is a license to download and play the “purchased” games.[[55]](#footnote-55) Online service providers are careful to formulate the transaction as granting a license, not as a transfer of title in any way. Even where a “file” embodying a copyrighted work is “sent” to the user, the user has often only acquired a license to create that single copy and play it back. If the license is similar to the iTunes “Terms and Conditions” a limited number and type of other copies are authorized for specific scenarios, but “any other use of the iTunes Products may constitute a copyright infringement.”[[56]](#footnote-56) Had the user purchased a vinyl record of the same copyrighted work, the first sale doctrine would allow the user to, for example, transfer that record to a trustee or to a spouse or children.[[57]](#footnote-57) Under the current scheme, courts are upholding the express terms of these agreements,[[58]](#footnote-58) which preclude transfers and label transactions as licenses.

With many such service providers, purchasing media in a given digital ecosystem has advantages. For example, if a user purchases a song in iTunes, the song can be automatically downloaded to all of that user’s devices.[[59]](#footnote-59) The service provider may allow streaming of that song to devices where the song is not yet downloaded,[[60]](#footnote-60) and the song is automatically included in an online collection.[[61]](#footnote-61) Acquiring songs outside of the ecosystem and importing them is possible, but not as automated. Thus, “used” digital works, while in theory identical to new ones, do in fact have slightly less value. ReDigi, Inc. attempted to make a marketplace for such used digital songs, claiming that the first sale doctrine in play with tangible items should and does apply to digital files.[[62]](#footnote-62) Capitol Records, LLC sued ReDigi for copyright infringement, and won on summary judgment.[[63]](#footnote-63) The analysis hinged on the fact that in order to transfer a digital file over the internet, the computers effectively create a copy at the destination computer.[[64]](#footnote-64)

Because the reproduction right is necessarily implicated when a copyrighted work is embodied in a new material object, and because digital music files must be embodied in a new material object following their transfer over the Internet, the Court determines that the embodiment of a digital music file on a new hard disk is a reproduction within the meaning of the Copyright Act.[[65]](#footnote-65)

Ultimately, the court came to this conclusion even assuming that “only one file exists before and after the transfer.”[[66]](#footnote-66) The court established that:

 the first sale defense is limited to material items, like records, that the copyright owner put into the stream of commerce. Here, ReDigi is not distributing such material items; rather, it is distributing reproductions of the copyrighted code embedded in new material objects, namely, the ReDigi server in Arizona and its users' hard drives. The first sale defense does not cover this.[[67]](#footnote-67)

Thus, for purposes of transferring licensed multimedia, the user is bound by the restrictions in the agreement and has no authority to transfer such assets to a trustee or anyone else if it involves a digital transfer.

With multimedia collections, the account is worth possibly as much as the cost of acquiring the multimedia, or possibly less. With other types of accounts, however, the account may increase in value due to input that is not copyrighted, or to which the user holds the copyright. For example, the eBay seller account with thousands of positive ratings from buyers is not protected by copyright. Similarly, the blog account or online comic with an extensive reader base face no obvious copyright liability to the web host for continuing to use the service, all of these scenarios are subject to the policies in the agreement entered into by the original user.

A family member attempting to carry on the family eBay “store” would be in violation of the TOS agreement.[[68]](#footnote-68) Such a family member is not necessarily a fiduciary, but even if acting as one, the person acting under current law may not even access the account, much less continue to use it this way. The family member would be exposed to all of the civil and criminal liability discussed above under the CFAA and similar laws.[[69]](#footnote-69) Though the copyright infringement is not obvious, there is potential copyright liability for such action.[[70]](#footnote-70) In *Ticketmaster L.L.C. v. RMG Technologies, Inc.*, 507 F. Supp. 2d 1096 (C.D. Cal. 2007), a user was held liable for copyright infringement for accessing (and thus by the nature of web browsing, necessarily “reproducing”) a website for a purpose that constituted a violation of the website’s terms of service.[[71]](#footnote-71) Regardless of whether “access” is narrowly or broadly defined, unless the license to continue doing business under that account is deemed a “digital asset,” not even a fiduciary can access the account to harvest the value the original user worked to foster, not without risking significant liability that is.

 “Digital Asset” or Not

With the asset identified, the question remains of whether these licenses are “digital assets” under the proposed Uniform Fiduciary Access to Digital Assets Act. If so, a trustee of a trust, or an executor or administrator of an estate, would be authorized to access them.[[72]](#footnote-72) The Act limits digital assets to “data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.”[[73]](#footnote-73) However, a digital asset by definition does not include an underlying asset unless that asset is a digital asset. With the example of legally downloaded audio tracks, the primary asset is the user account. The end of the chain,

…

*Access*

…

(summary of issues unaddressed by current/proposed law)

**[My] Proposed Resolution**

**Conclusion**

1. http://www.statista.com/statistics/263794/number-of-downloads-from-the-apple-app-store/ [↑](#footnote-ref-1)
2. http://www.apple.com/pr/library/2013/06/19HBO-GO-WatchESPN-Come-to-Apple-TV.html [↑](#footnote-ref-2)
3. http://www.asymco.com/2013/06/19/measuring-the-itunes-video-store/ [↑](#footnote-ref-3)
4. Press Release, Activision Blizzard, Activision Blizzard Announces Better-Than-Expected Fourth Quarter & Calendar Year 2012 Results (Feb. 7, 2013) (on file with author), *available at* http://files.shareholder.com/downloads/ACTI/2329417148x0x634081/fbb6a75d-f965-442b-8d6abde335918118/Q4\_2012\_atvi\_press\_release.pdf. [↑](#footnote-ref-4)
5. http://www.ign.com/articles/2014/01/15/steam-tops-75-million-users [↑](#footnote-ref-5)
6. http://www.ign.com/articles/2013/10/30/steam-passes-65-million-accounts [↑](#footnote-ref-6)
7. http://store.steampowered.com/stats/ [↑](#footnote-ref-7)
8. http://www.marketwatch.com/story/who-inherits-your-itunes-library-2012-08-23?page=1 [↑](#footnote-ref-8)
9. http://news.cnet.com/Yahoo-denies-family-access-to-dead-marines-e-mail/2100-1038\_3-5500057.html [↑](#footnote-ref-9)
10. *Id.* [↑](#footnote-ref-10)
11. CONN. GEN. STAT. § 45a-334a (2013); IDAHO CODE ANN. § 15-5-424(3)(z) (2011); IND. CODE § 29-1-13-1.1 (2013); OKLA. STAT. tit. 58, § 269 (2013); R.I. GEN. LAWS § 33-27-2 (2011); VA. CODE ANN. § 64.2-110 (2012). [↑](#footnote-ref-11)
12. *Id.* [↑](#footnote-ref-12)
13. Uniform Fiduciary Access to Digital Assets Act, Title page, *available at* http://www.uniformlaws.org/shared/docs/Fiduciary%20Access%20to%20Digital%20Assets/2014jul31\_UFADAA%20as%20approved%20July%202014%20for%20distribution.pdf. [↑](#footnote-ref-13)
14. *See, e.g.*, Uniform Fiduciary Access to Digital Assets Act, § 7 (explaining that any existing state law inhibiting fiduciary access under the act is void). [↑](#footnote-ref-14)
15. *eBay User Agreement*, eBay, http://pages.ebay.com/help/policies/user-agreement.html. [↑](#footnote-ref-15)
16. *See, e.g.*, *Statement of Rights and Responsibilities*, Facebook, https://www.facebook.com/legal/terms (last revised Nov. 15, 2013) ("You will not share your password . . . , let anyone else access your account, or do anything else that might jeopardize the security of your account. You will not transfer your account . . . to anyone.”). [↑](#footnote-ref-16)
17. *Id.* [↑](#footnote-ref-17)
18. *Id.* (“If you violate the letter or spirit of this Statement . . . , we can stop providing all or part of Facebook to you.”) [↑](#footnote-ref-18)
19. *See, e.g.*, Frank S. Baldino, *Estate Planning and Administration for Digital Assets*, MD. B.J., Nov.–Dec. 2012, at 28-30 (“[A]n attorney should recommend that the client prepare an inventory of each of his or her digital assets . . . including the domain name of the site, usernames, passwords, and answers to any security questions necessary to access the site. . . . Such an inventory will assist the Personal Representative in marshaling the electronic assets of the estate.”). [↑](#footnote-ref-19)
20. The Computer Fraud and Abuse Act renders it a crime to access a computer beyond what is authorized. 18 U.S.C. § 1030 (2012). Similar state statutes apply in all fifty states. *See, e.g.*, Alaska Stat. § 11.46.740 (2013); Ind. Code § 35-43-2-3(b) (2013); Mass. Gen. Laws ch. 266 § 120F (2013); Minn. Stat. § 609.891(1), (4) (2013); S.D. Codified Laws § 43-43B-1(1)–(2) (2013); Vt. Stat. Ann. tit. 13, § 4102 (2013*); see also Computer Hacking and Unauthorized Access Laws*, Nat’l Conf. of State Legislatures, www.ncsl.org/issues-research/telecom/computer-hacking-and-unauthorized-access-laws.aspx (last updated June 19, 2012) (listing the relevant statutes for all fifty states). [↑](#footnote-ref-20)
21. 17 U.S.C. § 102(a) (2012). [↑](#footnote-ref-21)
22. 17 U.S.C. § 106(3) (2012). [↑](#footnote-ref-22)
23. 17 U.S.C. § 109 (2012). [↑](#footnote-ref-23)
24. *Id.* [↑](#footnote-ref-24)
25. 18 U.S.C. § 1030 (2012). [↑](#footnote-ref-25)
26. *See Shurgard Storage Centers, Inc. v. Safeguard Self Storage, Inc.*, 119 F. Supp. 2d 1121, 1127 (W.D. Wash. 2000). [↑](#footnote-ref-26)
27. *See supra* note 20. [↑](#footnote-ref-27)
28. Uniform Fiduciary Access to Digital Assets Act, § 7, *available at* http://www.uniformlaws.org/shared/docs/Fiduciary%20Access%20to%20Digital%20Assets/2014jul31\_UFADAA%20as%20approved%20July%202014%20for%20distribution.pdf. [↑](#footnote-ref-28)
29. *Id.* [↑](#footnote-ref-29)
30. *See infra* notes 15 and 16. [↑](#footnote-ref-30)
31. CITATION PENDING [↑](#footnote-ref-31)
32. *See, e.g.*, CFAA, 18 U.S.C. § 1030 (2012). [↑](#footnote-ref-32)
33. *Id.* [↑](#footnote-ref-33)
34. Uniform Fiduciary Access to Digital Assets Act, § 7(b), *available at* http://www.uniformlaws.org/shared/docs/Fiduciary%20Access%20to%20Digital%20Assets/2014jul31\_UFADAA%20as%20approved%20July%202014%20for%20distribution.pdf. [↑](#footnote-ref-34)
35. *Id.* [↑](#footnote-ref-35)
36. 15 U.S.C. § 45(a)(2) (2012). [↑](#footnote-ref-36)
37. *Making Sure Companies Keep Their Privacy Promises to Consumers*, Fed. Trade Comm’n, http://www.ftc.gov/news-events/media-resources/protecting-consumer-privacy/enforcing-privacy-promises (last modified Sept. 4, 2013). [↑](#footnote-ref-37)
38. 18 U.S.C. §§ 2701–2711 [↑](#footnote-ref-38)
39. Electronic Communications Privacy Act of 1986 (ECPA), Pub. L. No. 99-508, 100 Stat. 1848 (codified as amended at 18 U.S.C. §§ 1367, 2701–2711, 3117, 3121–3127 (2012)). [↑](#footnote-ref-39)
40. *Id.* [↑](#footnote-ref-40)
41. Uniform Fiduciary Access to Digital Assets Act, § 9, *available at* http://www.uniformlaws.org/shared/docs/Fiduciary%20Access%20to%20Digital%20Assets/2014jul31\_UFADAA%20as%20approved%20July%202014%20for%20distribution.pdf. [↑](#footnote-ref-41)
42. *See* note 34. [↑](#footnote-ref-42)
43. *See* notes 34 and 41. [↑](#footnote-ref-43)
44. *See* note 29. [↑](#footnote-ref-44)
45. Uniform Fiduciary Access to Digital Assets Act, § 6, *available at* http://www.uniformlaws.org/shared/docs/Fiduciary%20Access%20to%20Digital%20Assets/2014jul31\_UFADAA%20as%20approved%20July%202014%20for%20distribution.pdf. [↑](#footnote-ref-45)
46. *Id.* at § 2(9). [↑](#footnote-ref-46)
47. *Id.* at § 2(21). [↑](#footnote-ref-47)
48. *Id.* at § 2(15). [↑](#footnote-ref-48)
49. *Id.* at § 2(9). [↑](#footnote-ref-49)
50. *See* Comment to Section 2, Uniform Fiduciary Access to Digital Assets Act, *available at* http://www.uniformlaws.org/shared/docs/Fiduciary%20Access%20to%20Digital%20Assets/2014jul31\_UFADAA%20as%20approved%20July%202014%20for%20distribution.pdf. [↑](#footnote-ref-50)
51. *Id.* [↑](#footnote-ref-51)
52. *eBay User Agreement*, eBay, http://pages.ebay.com/help/policies/user-agreement.html. [↑](#footnote-ref-52)
53. *Id.* [↑](#footnote-ref-53)
54. *Id.* (stating that “eBay offers you *access to and use of* our sites, services, applications and tools,” (emphasis added) as opposed to ownership of ). [↑](#footnote-ref-54)
55. *Steam Subscriber Agreement*, Steam, http://store.steampowered.com/subscriber\_agreement/ (stating that “Valve hereby grants, and you accept, a limited, terminable, non-exclusive *license* and right to use the Software.” (emphasis added)). [↑](#footnote-ref-55)
56. *iTunes Store Terms and Conditions*, Apple, http://www.apple.com/legal/internet-services/itunes/us/terms.html. [↑](#footnote-ref-56)
57. 17 U.S.C. § 109 (2012). [↑](#footnote-ref-57)
58. CITATION PENDING [↑](#footnote-ref-58)
59. *See* note 56. [↑](#footnote-ref-59)
60. *Id.* [↑](#footnote-ref-60)
61. *Id.* [↑](#footnote-ref-61)
62. *Capitol Records, LLC v. ReDigi Inc.*, 934 F. Supp.2d 640 (S.D.N.Y. 2013). [↑](#footnote-ref-62)
63. *Id.* at 661. [↑](#footnote-ref-63)
64. *Id.* at 649. [↑](#footnote-ref-64)
65. *Id.* [↑](#footnote-ref-65)
66. *Id.* at 648. [↑](#footnote-ref-66)
67. *Id.* at 655. [↑](#footnote-ref-67)
68. *eBay User Agreement*, eBay, http://pages.ebay.com/help/policies/user-agreement.html. [↑](#footnote-ref-68)
69. *See, e.g.*, note 20. [↑](#footnote-ref-69)
70. *See, e.g.*, *Ticketmaster L.L.C. v. RMG Technologies, Inc.*, 507 F. Supp. 2d 1096 (C.D. Cal. 2007). [↑](#footnote-ref-70)
71. *Id.* (In essence, the user accessed the website by for commercial purposes when the terms expressly stated private use only. The harm happened to be extensive, but the actual copyright violation was that simple.) [↑](#footnote-ref-71)
72. Uniform Fiduciary Access to Digital Assets Act, §§ 3 and 6 , *available at* http://www.uniformlaws.org/shared/docs/Fiduciary%20Access%20to%20Digital%20Assets/2014jul31\_UFADAA%20as%20approved%20July%202014%20for%20distribution.pdf. [↑](#footnote-ref-72)
73. *Id.* at § 2(15). [↑](#footnote-ref-73)