

A Comparative Study on the Management of Digital Assets in Virtue of Fiduciary Relationship

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***Abstract:** In this era of digital communication, people keep living online even after death. Digital information stored in a personal computer, information stored in cloud backups, online digital accounts and record of digital communications are recognized as digital assets in various countries. As the extent of digital assets is ever-evolving, a perfect balance between the concerning rights and privacy issues should be constructed without any gap. The paper ventures to examine the legal extent of digital assets with illustration and exceptions by comparing American and Canadian legislations. Some recent cases have been analyzed to find out the taxonomy of obstacles faced by the family members while getting access to deceased digital assets even after a court's order in favet. The paper examined the existing user end policy of popular digital service providing companies with the intent to find out issues connected protinus with digital assets rights which are not recognized by the existing policies. Society can't deny the significant values of digital assets and that's why fiduciaries should get access to virtual assets or accounts holding such assets of a deceased or person with disabilities. The paper has compared the functionality of different American state legislations and the American federal and Canadian uniform legislation for the management of digital assets and record of digital communication in virtue of fiduciary relationship. Many states lack similar legislation and Bangladesh is also not an exception. Policymakers needed to be aware of such novus legal developments for safeguarding the rights and interest of the citizens. The paper concluded by providing recommendations for the policymakers.*

***Keywords:** Digital assets, Fiduciary access, Digital communication record, Deceased online accounts*

1. Background of the Study

The legal concept of assets includes both tangible assets like house or land and intangible assets like copyright and patent. Frequent use of digital

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accounts and online storage systems has created a distinct concept of assets which are owned by individual persons by the means of digital communication. Countries like America and Canada have enacted legislation recognizing personal online accounts, online stored information and record of digital communication as a legal asset of a person. The extent of digital assets is ever-evolving as new digital platforms are emerging every day with new opportunities and schemes. For this reason, a comparative study between the American and Canadian legislations designed that the term “Digital assets” should not be limited only to online accounts or online storage system but also extends to any electronic record communicated or stored by a person by the means of digital communications. Whilst enacting legislation another crucial challenge is to establish a connection between the fiduciary access rights and privacy issues. The law needs to be specific on circumstances which ought to be dealt with digital assets management laws and on the contrary which under the cyber or privacy laws. As like other sorts of property, digital assets are accessible by appointed legal representatives or fiduciaries in case of death or incapacity of any digital account user under the American and Canadian legislations. In many cases, fiduciaries and family members have faced legal impedimenta while granting access to the digital account of a deceased or incapacitated person. A number of complications in several cases resulted in the loss of valuable information and suffering on the concerning persons. After examining the existing user end policies of some popular online companies the result clearly shows that in many cases rules are not complying with the demand of the account users or their fiduciaries. Comparative study on the American state legislation reveals a distinct set of safeguard clauses provided by granting access to deceased or incapacitated person’s digital assets by fiduciaries under a will, a personal representative, a legal guardian and a trustee for the management of digital assets. American federal legislation and Canadian uniformed legislation are similar to the core principles with similar objectives and some minor differences. Appointment of a custodian with the power to control the extent of fiduciaries access is a superior clause provided by American federal and state legislation which is absent on Canadian part. There is no scope to confine the concept of the property only on the real-life assets while vast personal information is communicated and stored on digital forms. State legislative authorities should recognize the concept of digital assets by enacting appropriate laws for the management of digital properties in virtue of fiduciary relationship and some recommendation has been provided on the light of the comparative findings

have been summarized on the part of this paper. For every right, the law should provide remedies in case of infringement of such rights.

2. Objectives of the Study

The main objectives of this study are to analyze the evolving concept of digital assets and their management by granting access to the fiduciaries or appointed legal representatives from a comparative approach. The study also aimed to examine the concerning rights in light of existing practices by companies providing digital services. On the basis of the comparative findings, another manifold objective of the paper is to provide recommendation for the policymakers while enacting legislation for managing digital assets in virtue of fiduciaries. However, the other specific objectives of the study are as follows:

1. Measuring the legal paradigm of digital assets by establishing a bridge between digital assets rights and privacy issues with exceptions.
2. To analyze the significance of fiduciary access and identifying the existing legal obstacles by the cases study.
3. To explore the user end policies or company guidelines regarding the management of deceased online accounts.
4. To make a comparison between the American state legislations and between the American federal legislation and Canadian uniform legislation.
5. Providing recommendations for the policymakers.

3. Methodology of the Study

In this study, we followed the qualitative method to fulfil our work. Basically, a qualitative method was chosen to explore the functionality of different state and federal legislation, for measuring the extent of protection paradigm while accessing digital assets by fiduciaries, to identify the existing legal obstacles through case analysis and for scrutinizing the user end policies of a number of companies. This research uses secondary data collected from peer-reviewed journal articles, books, government and non-government organization reports, and grey literature: including some articles published in electronic and print news media, state and federal legislation, online company policies as well as international legal instruments. For the treatment of the subject in a scientific manner accurate, we relied on the approaches to legal research methodologies lineup are:

1. Analytical approach: Analysis involves the explanation of digital assets, the connection between fiduciary access rights and privacy issues and digital company user end policies etc.
2. Case study approach: We have analyzed different case studies that have been taken from various secondary sources to identify the legal obstacles while accessing deceased or incapable person's digital assets by appointed representatives or fiduciaries.
3. The comparative approach: Comparative analysis has been made between American state legislations and between the American federal legislation and Canadian uniformed legislation.

4. Legal Paradigm of Digital Assets in the Era of Modern Technologies

Apart from the general taxonomy of personal and real property, a unique subdivision of the personal property has emerged which is coined as "Digital assets/Digital property." With the characteristics of both intellectual property and intangible property, they can also be tangible when printed on papers (Gerry W. Beyer and Kerri M. Griffin, 2011). In the era of digital communication, the information transferred in daily life is represented by binary digits or bits. Recent communication systems transfer digital information or analogue data is converted to digital before transferring (Upamanyu Madhow, 2008, pp.1). Digital assets are electronic records, binary 1s and 0s, connected with the right or interest of a person (Gerry W. Beyer, 2017, pp.1). The extent of digital assets is ever-evolving with the creation of a thousand internet users daily. Digital information stored in a personal computer, information stored in cloud and online accounts are the basic examples of the digital asset (Nathan Lustig, 2012). The term "digital asset" does not include an underlying asset or liability, unless the asset or liability is itself an electronic record (California Probate Code, Part 20). While examining some recent cases related to the access of digital assets or accounts holding digital assets of deceased or incapable persons by the fiduciaries, a set of complications has been taxonomies which seek a legal solution. The Uniform Fiduciary Access to Digital Assets Act 2014 of the United States was enacted and revised in 2015 by the Uniformed Law Commission. On the light of the federal Revised Uniform Act, almost 50 states of the USA have enacted laws that give a person's family (or Executor) the right to access and manage digital assets of a deceased person ("State-by-State Digital Estate Planning Laws," n.d.). The Texas Estates Code has recognized emails, text messages,

photos, digital music and video, word processing documents, social media accounts; e.g., Facebook, LinkedIn, Twitter; on-line financial, utility, credit card, loan accounts, and gaming avatars as digital assets (Texas Revised Uniform Fiduciary Access to Digital Assets Act 2017). The Nevada Revised Uniform Fiduciary Access to Digital Assets Act has recognized digital assets as an electronic record in which a natural person has a right or interest (Nevada Revised Statutes 722.110). The Uniform Fiduciary Access to Digital Assets Revised Act 2015 suggested that in case of any information shared through social networks which are publicly accessible without any restriction, will be protected under the privacy law but will not be recognized as digital assets. The digital information communicated through the private email service providers, such as employers and educational institutions is also included from the list of digital assets (Charles Doyle, 2012).

4.1 Defining the term “Digital assets/Digital property”

Any electronic records that are created, recorded, transmitted or stored in digital or other intangible forms by electronic, magnetic or optical means or by any other similar means in which a natural person has a right or interest could be considered as “Digital assets/Digital property”. With the characteristics of both intellectual property and intangible property, they can also be tangible when printed on papers. It can be categorized under three different headings namely: actual currency information accounts containing information of personal or commercial interest, and accounts containing virtual property. Some common form of digital assets are emails, text messages, photos, digital music and video, word processing documents, social media accounts; e.g., Facebook, LinkedIn, Twitter; on-line financial, utility, credit card, loan accounts, and gaming avatars.

4.1.1 Exception

The term “digital asset” does not include an underlying asset or liability, unless the asset or liability is itself an electronic record. Any information shared through social networks which are publicly accessible without any restriction will be protected under the privacy law but will not be recognized as digital assets. The digital information communicated through the private email service providers, such as employers and educational institutions is also included from the list of digital assets.

A number of accounts we used frequently are yet governed by the "terms of service" or a "privacy policy" of that particular service such as Gmail, Facebook, or Twitter. Still, it is necessary to determine the legal status of these accounts after the death of the user (Charles Doyle, 2012). If we examine the existing user end policies or company policies of some popular online account and service providers, we can find the presence of lacunas and complexities. After a comparative analysis between the American state legislation, it can be said that although all the state legislations derived their power from the federal legislation a couple of changes were adopted to meet the demand of the local citizens. Different provisions can be pointed out regarding the extent of the authority of any appointed legal representatives or fiduciaries, the appointment of a custodian or the inclusion of the digital communication record as digital assets. Model legislation for accessing the digital assets of Individuals through the fiduciary relationship was adopted in August 2016 by the Uniform Law Conference of Canada, ULCC (Uniform Access to Digital Assets by Fiduciaries Act of 2016). It was the first initiative in Canada for tackling the legal issues demanding fiduciaries access to digital assets of the deceased and incapacitated persons, along with the appointed legal representative of a living person. The Uniform Law Conference Canada Act, 2016 defines "digital asset" as: a record that is created, recorded, transmitted or stored in digital or other intangible forms by electronic, magnetic or optical means or by any other similar means (Uniform Access to Digital Assets by Fiduciaries Act, 2016). A digital asset is accessed by using a digital account and it can be categorized under three different headings namely: actual currency information accounts containing information of personal or commercial interest, and accounts containing virtual property (Assante Wealth Management, 2017). Minor differences could be seen while comparing the American and Canadian legislation on defining some particular terms, the connection between the concerning rights or privacy issues and the appointment and authority of custodian to control the power of the fiduciaries while accessing digital assets of the deceased or incapable person. But both state legislations serve a common motto, to facilitate the access of appointed persons or fiduciaries for managing the account of a deceased or incapable person.

4.1.2 Defining the term "Fiduciary Relationship"

"Fiduciary" means an original, additional, or successor personal representative,

[conservator], agent, or trustee or any person acting under a power of attorney. It can be any personal representatives/ guardians/ attorney under a Power of Attorney, and trustees appointed to hold a digital asset in trust.

5. Administering Digital Assets in Virtue of Fiduciary Relationship

The concept of digital assets is a fairly new phenomenon and in case of failure to provide legal safeguards, assets with the sentimental and monetary value may be lost forever. It will result in unnecessary legal headaches while administering the deceased's digital assets and accounts by the legal representatives. Many of Individuals use different usernames and passwords for their accounts to secure their online accounts as well as personal information. In case of death or incapacities of any family member, it imposes a challenge for the existing family members to access the accounts and retrieve essential information (Andrea Coombes, 2009). Although some countries have enacted laws enabling the family members to access incapable person's or deceased member's online accounts it is still unclear what happens if these laws conflict with service agreements ("New Oklahoma law puts control of deceased's social media accounts in estate executors," 2010). Indeed a family member of the deceased person is entitled to seek a remedy before the court for gaining access to these accounts which are required to comply with a complex set of formalities and legal challenges imposed by the online companies. After the death of a person, the family members should get access to online assets or account holding assets for preventing the deceased person's Identity theft. A series of offences could have occurred in the meantime while authorities update the database information regarding the deceased person like getting a national Identification card, applying for a job or opening credit cards etc. Without accessing deceased online accounts, the virtual protection mechanism can't be initiated. Without the knowledge and access of online publication of a deceased person, the family members may be unable to protect that copyright (Darren Rowse, 2009). Online publications are subjected to copyright protection for the author's lifetime plus an additional 70 years after his death. The theft of content could go unnoticed while anyone copying the deceased person's work if access not granted to the fiduciaries on due time (John Conner, 2011). If the digital assets remain undiscovered for a long period that could run the risk of getting lost forever. In case of any business conducted by the deceased or incapacitated person and if he is the sole authority of that account, complication and financial loss could have resulted regarding the following issues like

online bid advertisements may go unanswered, electronic bills may go undiscovered, incoming orders may not be responded and programs related to customer relationship, employee payroll accounts, website hosting and corporate bank accounts etc (Tamara Schweitzer, 2010).

Now a day's digital platform is a vital source of income produced through websites, blogs or different digital content sharing platforms. After the death of the owner of such a digital platform, if the family members failed to manage the site by obtaining a court's order, the value of the site can be depreciated. Although in many cases digital assets may not be publicly valuable their appeal to the family members can't be assessed by ordinary measurement mechanisms. In this era of cloud computing, people stored their Image albums, letters, memorials, and other special contents online. On the other hand, instead of maintaining diaries in physical form, people liked to use personal blogs. Email and online chatting platforms are replacing letters and greeting cards. The life story of a deceased might be lost permanently without informing the family members about their existence and granting them access within appropriate time (Rob Walker, 2011). By appointing an appropriate representative, a person can easily prevent the discovery of a particular type of information by any specific person/group of person, who is not supposed to discover any private, hurtful or confidential Information.

6. Case Analysis:

Reaffirming the Significance of Fiduciary Access for Managing a Deceased or Incapable Person's Digital Assets

If we study some recent cases where the fiduciary access to deceased's digital assets were confirmed by the judicial authorities of America and Canada, we can find legal complications as a common agenda on every particular cases. The worst scenarios are denial of fiduciary access by a digital service providing company even after a court's order, losing precious information's, temporary financial loss and deprivation of legal rights due to complications.

6.1. The first case concerning the refusal of fiduciary access by Facebook authority:

In 2012, the Stassen's 21-year-old son committed suicide who was a university student. The reason was unknown and consequentially the parent Helen and

Jay Stassen wanted to access their son's Facebook and Gmail accounts to find any suicide notes posted by their son (Epstein, 2012). The primarily Facebook authority denied account access to the parents and refused to release any information, citing concerns over breaching their client's ownership rights even after a court order declared the parents the heirs to their son's estate (Masterman&Sivarajah, 2017). The case of Stassen Family, the Wisconsin government enacted statutes enabling the fiduciaries access over deceased accounts.

6.2. The second case of accessing a deceased password-protected personal computer:

Leonard Bernstein began an autobiography which spanned his fifty years as a world-renowned composer, orchestrator, conductor, and musician two years early before his death (Haft, 2017). He wrote his memoir named "Blue Ink" in 1988 and died in 1990 leaving behind the manuscript on a computer file which was password protected. No one was able to break the password and the precious document was lost forever (Beyer & Cahn, Digital Planning: the Future Of Elder law, 2013). The complication could easily be avoided if fiduciaries could access the hard drive of the computer.

6.3. The third case of You Tuber Grant Thompson where the YouTube authority denied access to the channel mates after his death:

Popular YouTube star Grant Thompson, the creator behind YouTube's popular "King of Random" channel, has died at age 38 by a paragliding accident in Utah ('King of Random' YouTube star Grant Thompson dies in a paragliding accident, 2019). His channel had 11 million subscribers with billions of views and it was a source of finance also. A complication arises when his fellow channel mates tried to gain control over the channel. After complying with a complex set of formalities, the channel ownership was transferred by the YouTube authorities (Baer, 2019).

6.4. The fourth case of a physically challenged person where his wife was refused to access the husband's bank account:

Eva Kriple was authorized to act on behalf of his husband through a power of attorney. Her husband was suffering from physical dementia. She managed her husband's bank account for four consecutive years and later

was informed that the password was incorrect and she tried to recover the password by providing her husband's social security numbers but failed. The bank told him that a power of attorney does not allow access to online banking for the sake of the customer's safety and risk mitigation. She was able to write checks but was denied electronic access on her husband's account (ElderLawAnswers, n.d.). Justice was denied and the family faced unnecessary legal complication as there was no clear legal provisions.

7. Existing user policies for accessing and managing deceased person's digital account

Deceased user policy is essential for the effective management of digital assets. Most of the policies adopted by the companies are ambiguous or in saddest cases no policies at all for determining the fate of the deceased digital assets and accounts. Some of the user policies of popular companies are categorized below:

SL	Name of the service provider	Service provided for the deceased account	Explanation	Restriction
1	Gmail	<ul style="list-style-type: none"> a. Close the account b. Submit a request for funds from the account c. Obtain data from the account 	After providing required document and providing an email correspondence between the family member and the account owner, family members can either delete ("About Inactive Account Manager," n.d.) or receive a CD-ROM of the account contents("Submit a request regarding a deceased user's account," n.d.)	NA
2	Yahoo	<ul style="list-style-type: none"> a. Conditional access to the account b. Removing account after verification 	Family members can only access the deceased account with an order of the court but can close the account providing a copy of the death certificate (Terms of Service and Privacy Policy, n.d.). The following documents will be necessary: <ul style="list-style-type: none"> a. A request letter b. The Yahoo ID of the deceased user c. Proof of representative authority d. A copy of the death certificate 	NA
3	Hotmail	<ul style="list-style-type: none"> a. Conditional access to the account b. Removing account after verification 	Family members can only access the deceased account with an order of the court but can close the account providing a copy of the death certificate. They can also receive a CD-ROM of the account contents (Request to access emails from a deceased user's account, n.d.).	NA

SL	Name of the service provider	Service provided for the deceased account	Explanation	Restriction
4	Facebook	<ul style="list-style-type: none"> a. Gaining account access by legacy contract b. Closing the account on request c. Downloading an account archive 	<p>Users can select a representative on Facebook as their legacy contact. ("How do I add, change or remove my legacy contact on Facebook?," n.d.) which allows them access to their profile after their death. (Vanessa Callison-Burch, Jasmine Probst& Mark Govea, 2015)</p> <p>The legacy contact after requesting Memorialization will be allowed to manage the deceased profile from his own account without signing in to the deceased account. The legacy can download a copy of archived Information. ("Accessing & Downloading Your Information," n.d.) All the future log in will be prevented also. ("How can I manage or delete information about me?," n.d.)</p>	NA
5	Twitter	<ul style="list-style-type: none"> a. Closing the account on request b. Downloading an account archive 	<p>Twitter will deactivate the user's account upon the request from authorized representatives or close family members. Such a person after providing required documents can get an archive of the tweets. ("How to contact Twitter about a deceased family member's account," n.d.)</p>	NA
6	Instagram	<ul style="list-style-type: none"> a. Account memorialization b. Removal of account 	<p>Upon the request of family members or authorized representatives after proving sufficient documents of connection and death certificate. ("Responding to legal requests and preventing harm," n.d.)</p>	NA

SL	Name of the service provider	Service provided for the deceased account	Explanation	Restriction
7	LinkedIn	<ul style="list-style-type: none"> a. Memorializing the account b. Removing the account 	<p>Family members can memorialize the User's account after proving the required documents. They can also close the account after providing death certificates and other required documents (How We Share Information of LinkedIn (n.d.))</p>	<p>In the case of Memorializing:</p> <ul style="list-style-type: none"> a. Profile access is restricted and b. Messaging functionality is removed

8	WordPress	Conditional access to the account	Username and password will be provided to the authorized person or close family members on two grounds only: <ul style="list-style-type: none"> a. Upon the court's order b. Upon good faith of the company for public welfare ("Protection of Certain Personally-Identifying Information," n.d.). 	NA
9	Myspace	<ul style="list-style-type: none"> a. Deleting or removing content b. Preserving the deceased account 	<p>Family members are allowed to delete/remove Content from the deceased's account or make requests for preserving it.</p> <p>The following documents must be submitted:</p> <ul style="list-style-type: none"> a. Death certificate b. User's ID c. Proof of relation (How Can I Delete or Access 	NA

8. Comparison between the existing state legislations of USA regarding the Management of Digital Assets

After the Uniform Law Commission enacted the Revised Uniform Fiduciary Access to Digital Assets Act (2015), almost 50 states have enacted laws which empower family members or executors the right to get access and manage digital assets after the death of any person.

State	Name of the Statute	Enforced Date	Extent of Authority
Alaska	Alaska House Bill No. 108	Enforced from October 31, 2017	Authorized personal representatives/ trustees to access the deceased online assets and manage it. (Alaska House Bill No. 108 of 2017)
Alabama	Alabama House Bill 138	Enforced from January 1, 2018	Authorized personal representatives/ trustees to access the deceased online assets and manage it. (Alabama House Bill 138)

Connecticut	An Act Concerning Access To Decedents' Electronic Mail Accounts of 2005	Enforced from October 1, 2005	After presenting the death certificate and required documents, an executor may access email and Facebook accounts of the deceased person. (An Act Concerning Access To Decedents' Electronic Mail Accounts of 2005)
Delaware	HB 345 Fiduciary Access to Digital Assets and Digital Accounts	Enforced from August 12, 2014	Empowers fiduciaries to access the digital assets as well as accounts in case of a person's incapacitation through a power of attorney. (Bill 345, An Act To Amend Title 12 Of The Delaware Code Relating To Fiduciary Access To Digital Assets and Digital Accounts, 147th General Assembly, 2014)
Florida	Florida Statutes 2016	Enforced from July 1, 2016	Authorizing a user to use an online tool to allow a custodian to disclose to a designated recipient or to prohibit a custodian from disclosing digital assets under certain circumstances; providing procedures for the disclosure of digital assets; authorizing the court to grant a guardian the right to access a ward's digital assets under certain circumstances. (Florida Statutes 2016, Chapter 740)
State	Name of the Statute	Enforced Date	Extent of Authority
Georgia	The Official Code of Georgia Annotated Amendment 2018	Enforced from July 1, 2018	Authorized personal representatives/ trustees to access the deceased online assets and manage it. (The Official Code of Georgia Annotated Amendment 2018)
Indiana	Indiana Senate Enrolled Act 2016	Enforced from July 1, 2018	Authorized personal representatives/ trustees to access the deceased online assets and manage it. (Indiana Senate Enrolled Act 2016)
Kansas	Kansas Senate Bill 63	Enforced from July 1, 2017	Under the Act, four types of people are authorized to access the digital assets of the deceased namely: fiduciary under a will, personal representative, a legal guardian and a trustee. (Kansas Senate Bill 63)
Maryland	Maryland Fiduciary Access to Digital Assets Act of 2016	Enforced from October 1, 2016	Authorized personal representatives/ trustees to access the deceased online assets and manage it. (Maryland Fiduciary Access to Digital Assets Act of 2016)

Michigan	Michigan Fiduciary Access to Digital Assets Act 2016	Enforced from June 27, 2016	Every digital assets are bequeathed from one person to the next representative or appointed person. Under the Act, all digital information, social media and website accounts should be treated as assets after the death of the owner. (Michigan Fiduciary Access to Digital Assets Act 2016)
State	Name of the Statute	Enforced Date	Extent of Authority
New Mexico	New Mexico Senate Bill 60	Enforced from January 1, 2018	Authorized personal representatives/ trustees to access the deceased online assets and manage it. (New Mexico Senate Bill 60)
New York	estates, powers and trusts law Amendment Act 2016	Enforced from September 29, 2016	A user can appoint a custodian who is empowered to disclose or not to disclose the user's digital assets partially or completely and electronic communication information will also be subjected to such condition. The user is also empowered to provide any particular procedure of disclosing information. (The estates, powers and trusts law Amendment Act 2016)
North Carolina	North Carolina Senate Bill 805	Enforced from September 29, 2016	This law authorizes a decedent's personal representative or trustee to access and manage digital assets and electronic communications. The electronic communication data record is also considered as digital assets. (North Carolina Senate Bill 805)
Oregon	Oregon Senate Bill 1554	Enforced from January 1, 2017	Personal representatives or trustees are empowered to access and manage digital assets of a deceased under particular limitations. The empowered person is also empowered to obtain a copy of the digital communication of the deceased accounts. The power to set protocols, responding to any consequential situations and to bring controversial matters before the court. (Oregon Senate Bill 1554)
South Dakota	State of South Dakota Uniform Fiduciary Access to Digital Assets Act 2017	Enforced from July 1, 2017	Authorized personal representatives/ trustees to access the deceased online assets and manage it. The electronic communication data record is also considered as digital assets. (State of South Dakota Uniform Fiduciary Access to Digital Assets Act 2017)

State	Name of the Statute	Enforced Date	Extent of Authority
Tennessee	Tennessee Uniform Fiduciary Access to Digital Assets Act 2016	Enforced from July 1, 2016	Authorized personal representatives/ trustees to access the deceased online assets and manage it. The electronic communication data record is also considered as digital assets. (Tennessee Uniform Fiduciary Access to Digital Assets Act 2016)
Texas	Texas Revised Uniform Fiduciary Access to Digital Assets Act 2017	Enforced from September 1, 2017	Authorized personal representatives/ trustees to access the deceased online assets and manage it. The electronic communication data record is also considered as digital assets. (Texas Revised Uniform Fiduciary Access to Digital Assets Act 2017)
Washington	Revised Code of Washington	Enforced from June 9, 2016	This law authorizes a person to appoint a custodian for the management of digital assets and upon the request of the fiduciaries, the custodian is empowered to provide access for the fulfillment of fiduciary duties. (Revised Code of Washington, Chapter 11.120)
West Virginia	The Code of West Virginia Amendment Act 2018	Enforced from June 5, 2018	A user can appoint an agent under the power of attorney who is authorized to access and manage the digital contents and assets. (The Code of West Virginia Amendment Act 2018)
Wyoming	The Code of West Virginia Amendment Act 2018	Enforced from July 1, 2016	A user can appoint an agent under the power of attorney who is authorized to access and manage the digital contents and assets. (The Code of West Virginia Amendment Act 2018)

9. Comparison between the American and Canadian Legislation regarding the Management of Digital Assets with observatory comments

The Canadian Act for the recognition and management of digital assets was introduced in August 2016 under the Uniform Access to Digital Assets by Fiduciaries Act. It was enacted under the shadow of the Revised Uniform Fiduciary Access to Digital Assets Act 2015, enacted and revised by the Uniformed Law Commission of the USA. Although minor differences could

be found comparing the American and USA legislation both serve a common motto, to facilitate the access of appointed persons or fiduciaries for managing the account of a deceased or incapable person. In this modern era of technology, we can't deny the significance and role of digital assets in addition to the real assets. A basic comparison of the functionality and fundamental guidelines are provided below:

Key points	USA	Canada	Observation
Legislation	Revised Uniform Fiduciary Access to Digital Assets Act, 2015	Uniform Access to Digital Assets by Fiduciaries Act, 2016	An statute is required for smooth functioning
The extent of digital assets	“Digital asset” means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.	A record that is created, recorded, transmitted or stored in digital or other intangible forms by electronic, magnetic or optical means or by any other similar means is considered as “Digital assets”.	“Digital asset” includes any electronic record in which an individual has a right or interest by electronic, magnetic or optical means or by any other similar means. It may be is created, recorded, transmitted or stored in digital or other intangible forms.
Information & Record	Information & Record defined by the Act.	Information & Record not defined by the Act.	All the relevant terms should be explained by the Act
Fiduciary	“Fiduciary” means an original, additional, or successor personal representative, [conservator], agent, or trustee.	“Fiduciary” means an original, additional, or successor personal representative, [conservator], agent, or trustee.	“Fiduciary” means an original, additional, or successor personal representative, [conservator], agent, or trustee or any person acting under a power of attorney.
Types of fiduciaries	<ol style="list-style-type: none"> 1. Personal representatives, 2. Guardians, 3. Attorney under a Power of Attorney, and 4. Trustees appointed to hold a digital asset in trust. 	<ol style="list-style-type: none"> 1. Personal representatives, 2. Guardians, 3. Attorney under a Power of Attorney, and 4. Trustees appointed to hold a digital asset in trust. 	<ol style="list-style-type: none"> 1. Personal representatives, 2. Guardians, 3. Attorney under a Power of Attorney 4. Trustees appointed to hold a digital asset in trust, or 5. Any other person recognized and appointed by the Act

<p>The balance between the concerning rights and privacy issues</p>	<p>This Act specified circumstances under which the issues would be subjected to privacy law and exceptions when fiduciary access should not be recognized as “Disclosure” of personal information.</p>	<p>In the case of fiduciary access to digital assets, the Act doesn’t recognized it as the “Disclosure” of personal information.</p>	<p>The Act should specify circumstances under which the issues would be subjected to privacy law and exceptions when fiduciary access should not be recognized as “Disclosure” of personal information. There will be scope for the legislatives to grant fiduciary access to digital assets as a special prerogatives where it won’t be recognized as the “Disclosure” of personal information.</p>
<p>Custodians power to determine the level of fiduciaries access</p>	<p>The Act authorized the custodian of any digital assets to determine the required level of fiduciary access in case of any particular type of digital assets or record of digital communications.</p>	<p>The Act doesn’t provide such types of authorization.</p>	<p>Any provision to empower the custodian of any digital assets to determine the required level of fiduciary access in case of any particular type of digital assets or record of digital communications could also be inserted.</p>

10. Conclusion with recommendations for the policy makers

In this modern landscape where digital communication is an integral part of our day to day life, we live more our life online rather than the real world. Similarly, an important part of a person’s life keeps living online after his death. There is no scope to confine the concept of the property only on the real-life assets as a vast amount of personal information is communicated and stored on digital forms. We can’t deny the sentimental, monetary and commercial values of digital assets and policymakers need to be aware of this new development for safeguarding the rights and interest of citizens by enacting appropriate policies. Primarily the policymakers should provide legal recognition to the concept of digital assets before enacting legislations targeted for fiduciary empowerment. Like Bangladesh the concept of assets is limited to public, personal and co-operative ownership in many countries and digital assets lack the constitutional recognition apart from the realistic assets. All the related legal terms should be defined properly by illustrating the exceptional grounds where the issues should be dealt with cyber or privacy laws and the consequences if the fiduciary violates the right of the deceased

of the person with disabilities. Information communicated by employers and educational institutions might not be subjected under the concept of digital assets but the policymakers should consider issues where such communication contains information purely personal in nature or person's reputation is closely connected with it. The appointment of custodian could create a check and balance between the fiduciary rights and extent of exercising those rights while granting access for managing digital assets. Inserting the custodian's provision could act as a safeguard clause by empowering him to take legal actions if the fiduciary or legal representative misuses his power. The policy should ensure that fiduciaries, appointed persons, trustees or appointed custodians are authorized to access and manage a person's digital assets in case of his death or incapacity without any legal obstacles and all lacunas of the existing law should be removed for ensuring appropriate fiduciary access. In many cases, digital assets are accessed through a digital account and some of these accounts prevent the access of digital assets showing the limitation provided by their terms of service and user end policy. Such kind of legal barriers should be resolved by writing a will and addressing digital assets as a general form of real-life assets. Before enacting policies, the legislative should scrutinize the existing user end policies of the companies providing digital access, with the intent to cover any such issues where the company policies failed to recognize any particular rights or no effective safeguard provided in case of infringement of rights. Many countries lack any effective legislation regarding the management of digital assets in virtue of fiduciary relations and resulted in legal complications when courts deciding cases and Bangladesh is also a member of that list. It is the high time for the legislative authorities to recognize the right to digital assets by enacting appropriate legislation for the management of digital assets. It doesn't matter how inferior the right is, the laws should be enacted with such capabilities that could ensure justice in every single case.

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