



**MOTION PICTURE ASSOCIATION**  
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**MEMORANDUM IN OPPOSITION TO OREGON SENATE BILL 54**  
**Personal Representative, Conservator or Settlor Access to Digital Accounts &**  
**Assets**

The Motion Picture Association of America, Inc. (MPAA) and its member companies\*, which are the largest producers and distributors of motion pictures in the U.S., oppose Oregon Senate Bill 54. This legislation would give unfettered access and control of digital accounts and assets of a deceased person, including motion pictures and television programs.

The provisions of SB 54 which authorize the Personal Representative, Conservator or Settlor to “access, take control of, possess, handle, conduct, continue, distribute, dispose of or terminate any digital asset and digital accounts of the decedent” disregards the terms of service, license and contractual obligations previously agreed to by the deceased person while living.

Moreover, MPAA submits that this bill violates Section 106 of the federal copyright law, 17 U.S.C. section 106, and is likely pre-empted. Section 106 provides that the copyright owner of any work has the exclusive right to set the terms and conditions of the exploitation and distribution of the work, including motion pictures and television programs. Copying and redistribution by a Personal Representative of motion pictures stored in a digital account would violate federal copyright law.

In addition, the subject of this bill is under consideration by the Uniform Law Commission to update the Uniform Probate Code and other relevant state statutes to take account of digital assets including e-mail accounts, photos, music, e-books and motion pictures. Oregon is a member of the Uniform Law Commission, and at minimum, the Oregon Legislature should await action on SB 54 in order to evaluate the model bill that is drafted and approved by the Uniform Law Commission.

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\* MPAA member companies are: Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc. CBS Corporation is an associate member.

Many digital assets are stored remotely and the values can be significant. According to an Intel study, Americans value their digital assets on average at \$55,000. Today, there is some uncertainty about the nature and scope of a Personal Representative's ability to manage these accounts and assets upon the death or incapacity of the asset holder. However, a Personal Representative, Conservator or Settlor, as well as heirs, should be required to adhere to the law, as well as any contractual obligations, particularly for valuable intellectual property, just as the deceased would be required to do during his/her life.

For example, motion pictures and television programs that are stored in a cyber-locker or in another form of remote digital "cloud" storage facility and that have been lawfully purchased are subject to licenses, governing the right to share and/or copy the digital files, as well addressing public performances of those files, including charging others for on-line viewing. The provisions of SB 54, however, would allow the fiduciary unfettered access to these digital assets without regard to existing legal and contractual obligations.

Additionally, billions of illegally copied motion pictures, sound recordings, computer programs and television programs reside within individuals' cyber-lockers. This infringement causes enormous harm to intellectual property owners. For example, last year's criminal indictment of Megaupload, one such alleged service, estimates the loss from that service alone at \$500,000,000. While intellectual property owners and the federal government are attempting to address the harm from this theft, state law should not exacerbate the problem by allowing fiduciaries to copy and distribute these infringing files of deceased persons.

For these reasons, MPAA and its member companies strongly urge the Oregon Legislature defeat Senate Bill 54.

*January, 2013*