

Tammy Cota, Executive Director
1615 L Street NW, Suite 1100
Washington, DC 20036-5624
Cell: 802-279-3534
Email: tammy@internetalliance.org
Web: www.internetalliance.org



February 7, 2013

Honorable Floyd Prozanski, Chair
Senate Judiciary Committee
900 Court St. NE
Salem, OR 97301

Dear Chairman Prozanski:

The Internet Alliance (IA), comprised of the leading Internet, communications and technology companies are writing to urge you to reject SB 54, which would grant a broad right of access to the contents of a deceased users email, social networking and other online accounts. While well intentioned, the legislation raises several complex issues regarding user privacy rights, data production and retention, access, authentication, fraud, and conflicting state and federal legal requirements.

We applaud your committee's interest in shining the light on this issue by scheduling a hearing on February 11 to discuss the provisions contained in SB 54. People need to be reminded that they have a choice about their digital legacy after their death. Hopefully, as more people become aware of this issue, they will take steps to insure that their wishes regarding the treatment of their digital assets upon death are clear. Currently however, states have started to address this issue without a full appreciation of the various conflicting stakeholder interests. We understand that families often find solace in maintaining the online accounts of their loved one, and that executors and fiduciaries often seek access to the contents of a decedents digital account in order to fulfill their duties. But these interests may often be opposite to the interests or express wishes of the decedent, and unfortunately, proposals such as SB 54 would allow an executor to trump the decedents own wishes and access information the person requested be kept private.

Furthermore, state laws that grant a fiduciary access to the contents of such electronic communications directly conflict with federal law and leave providers of electronic communications with the unenviable choice of having to pick which law to violate. Specifically, Section 2702 of the 1986 [Electronic Communications Privacy Act](#) restricts an electronic computing service or remote computing service from providing the contents of an electronic communication without the lawful consent of the originator or recipient of the email, or the subscriber of the service. There is also case law that confirms that civil subpoenas cannot compel production of records from online providers, as it violates the Stored Communications Act (8 U.S.C. Sec. 701).

Indeed, it is due to these conflicting interests that the [Uniform Law Commission \(ULC\)](#) has established a committee to attempt to find a solution that adequately balances the concerns of access to a decedents account, with restrictions on the disclosure of the

content of electronic communications imposed under federal law by the Electronic Communications Privacy Act. As the goal of the ULC is to craft a manageable and understandable set of rules by 2014 that will be broad and technologically flexible enough to be used in any state, it is premature for states to act at this time.

It is also important to recognize that companies are attempting to address this issue through internal authentication processes and their own terms of service. For example, Facebook will not issue login and password information to family members of a person who has died. However, a family member may contact Facebook directly and request the dead person's profile be taken down or turned into a memorial page. If a memorial page is chosen, then that account could never again be logged into and the account is taken off public search results. This is a very effective way to avoid fraudulent activities that could arise if a person, including a family member, decides to use the dead person's account illegally. But this does not even take potential fraudulent activity into account. In addition, the private sector is responding to this situation by creating services that allow users to store their digital assets and communications in one place, for subsequent delivery to a party such as next of kin, relative or executor/fiduciary.

For all of these reasons, we urge that you reject this bill. Please feel free to contact us if you have any questions or would like to discuss our concerns in more detail.

Sincerely,

Tammy Cota

Tammy Cota

cc: Senate Judiciary Committee members