



April 16, 2015

Chair Floyd Prozanski and Members of Senate Judiciary
900 Court St. NE, S-415
Salem, OR 97301

Subject: Oppose SB 369 and -4 Amendments

Chair Prozanski and Members of the Senate Judiciary Committee,

Thank you for allowing TechNet to be a part of the working group on SB 369. While we appreciate the ability to participate in the process, TechNet remains significantly concerned with SB 369 and the -4 amendments.

On a broad level, the -4 amendments change the text and intent of the uniform draft drastically, but do not appease the primary concerns of the industry. There have recently been discussions in other states between industry and the Uniform Law Commission about revisiting the issue on a national level. As technology companies operate globally, we believe it is important to see at least a national solution to the issue of decedent access. There are millions of communication services in existence today. It is unworkable to require companies to comply with a complex Oregon law that is drastically different than national and global practice.

Unfortunately, the -4 amendments still force companies to choose to comply either with either federal law or state law by requiring the release of a subject line in the catalog. The US Department of Justice considers subject lines to be content under the Electronic Communications Privacy Act (ECPA). Per ECPA, companies cannot release the subject lines without express consent from the sender or recipient.

The -4 amendment language allows a trustee to file an affidavit with an online service provider requesting access to a person's digital communications. However, the affidavit does not require an independent fact check or unique identifier to associate a person with a particular e-mail address. Unlike bank accounts, which include a name and social security number, online service providers do not require a unique identifier. A person could sign up for an email service using any combination of letters and numbers with no other identifying information (for example, John Smith signs up as js88@gmail.com or johnsmith5@yahoo.com.) An online service provider would have no way of knowing that it is the correct person's email address on the affidavit. Further, if subject lines are included in the catalog turned over are the wrong person's, all parties on the communication can file suit under ECPA for unlawful disclosure.

There are significant workability issues to require all service providers to comply with a mandate to impose an inactive account manager. It is most likely that the service provider would not know the physical location of a person registering an account, or have

information relating to when an account holder changes addresses or registers with a different address than where they may be physically located.

Further, not all online accounts are appropriate for an inactive account manager. In 2014, there were almost 1.5 million applications available for download in the Google Play store. There are apps, chatrooms and message boards for people with addictions, personal medical conditions, and services that are based on the notion of anonymity. Requiring these to include an inactive account manager fundamentally alters how those services could be used and chills online communications in fear that a person's innermost thoughts or questions may be publicly outed at any time if a person in the chain of communication is incapacitated or dies.

The engineering, development, and maintenance of an inactive account manager tool is not the simple click of a button. For very large companies, systems are incredibly complex and a drastic change is likely to be burdensome and costly. Under any webpage a user sees is between hundreds to millions of lines of code. For smaller online service providers, the time and resources to build and maintain this tool are unlikely to exist at all.

Furthermore, to create this type of tool, a company must create a compliance mechanism to turn over the data-- pulling this data from databases is an extremely complex, time-consuming process. In situations where many people can communicate in one message, the engineering of an all-party consent tool would be exponentially more complicated. It would be unworkable to expect the thousands of email, text messaging, social media and other communication providers to create an integrated means of communicating to each other whether a sender of a communication that uses one service has consented to the disclosure of a communication to the fiduciary of the recipient using another service.

TechNet appreciates the ability to participate in the work group process, however we do not believe that the -4 amendments are workable for industry or desirable for the public. Please feel free to contact me with any questions, concerns, or feedback. I can be reached at mschrader@technet.org.

Sincerely,

Megan Schrader
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