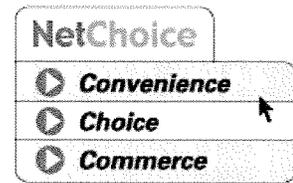


NetChoice *Promoting Convenience, Choice, and Commerce on the Net*

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The Honorable Kevin Cotter, Chairman
Michigan House of Representatives
Lansing, MI 48933

October 2, 2014

RE: *NetChoice Statement regarding HB 5366 - 5570*

Chairman Cotter and Members of the House Judiciary Committee:

NetChoice appreciates the time Chairman Cotter and staff has spent discussing the complicated and nuanced legal issues in the package of bills before the committee today; namely HB 5366 - 5370, comprising fiduciary access to digital assets. We also appreciate the Chairman's willingness to consider the concerns of online service providers and be open to revising legislation as the bill moves forward in Michigan.

We recognize that this is a sensitive topic but we ask the committee to not forget the privacy interests of those with whom the deceased communicated – a communication has two parties, both of whose interests must be considered. As such, any state bill should balance the privacy rights of decedent and other parties with whom the decedent may have communicated with the need for fiduciaries to perform their administrative duties. Moreover, a bill should not set the default privacy to zero.

Online communications are very different from letters and other written documents left behind by those who've departed.

- Users don't expect their private email, texts, and instant messages to become public when they die. Think about the last time you sent an email in which you vented frustrations about a family member. Would you want those letters handed over to your family many years after you sent them?
- Federal law limits our ability to disclose these stored communications to fiduciaries. Thus a state law forcing disclosure conflicts directly with federal privacy law.

We recognize the importance of this issue and seek a balance between the privacy of the deceased, the desires of their family, and compliance with federal law. As such, we ask that you adopt the substitute amendment.

The substitute proposed allows a fiduciary to obtain information from the decedent's electronic account which would allow them to perform their duties, while remaining consistent with the obligations and protections afforded third parties and email service providers under federal law. The substitute builds upon a seven year-old Rhode Island law whose sponsor was the Chief Clerk of the Providence Probate Court.

While the substitute includes privacy protections, we continue to urge caution moving forward. As you can see, there is much to consider. And the risk in moving too quickly on this legislation is that state law would create conflicts with the strong privacy protections afforded email communications under federal law.

Moreover, different services offered on the internet have different treatments for privacy and access to the deceased's personal communications. Online companies work diligently to provide after-life privacy tools and choices to their customers. Already, Google provides an inactivity account manager, Facebook provides a memorialize feature, and Yahoo sets privacy to its highest level by deleting emails upon notice of death. More tools and options are coming soon.

We thank you for considering our views. Please let me know if I can provide further information.

Sincerely,



Carl Szabo
Policy Counsel, NetChoice

NetChoice is a trade association of e-Commerce and online businesses. www.netchoice.org