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**Testimony of Suzanne Brown Walsh
Estates and Probate Section**

IN SUPPORT OF

**Senate Bill 979
AAC the Connecticut Uniform Fiduciary Access to Digital Assets Act**

Judiciary Committee
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My name is Suzanne Brown Walsh. I am one of Connecticut's Uniform Law Commissioners (ULC), a partner in the Trusts & Estates practice group of Murtha Cullina LLP, and past Chair of both the Estates & Probate and Elder Law Sections of the Connecticut Bar Association. **I submit this testimony on behalf of the Estates & Probate Section and urge you to SUPPORT SB 979, the Connecticut Uniform Fiduciary Access to Digital Assets Act (UFADAA)**, which will expand and update the Connecticut law that since 2005 has given executors necessary access to a decedent's emails. I chaired the UFADAA Drafting Committee, which had many tech company representatives participating, and Commissioner David Biklen was also member of that committee, so this is very much a product of our Connecticut ULC delegation.

SB 979 is necessary because probate law has not kept pace with technological advances in the Internet age. A generation ago, a human being delivered our mail, photos were kept in albums, documents were filed in file cabinets, and money was deposited at the corner bank. For most people today, at least some of their property and communications are stored as data on a computer server and accessed via the Internet. While Connecticut citizens have complete control over what happens to their tangible personal property when they die or lose legal decision making capacity that is not always the case for their digital assets. SB 979 solves that problem.

Digital assets are things like email, digital photos, electronic documents, music, movies, games, social media accounts and electronic currency such as Bitcoins. **Digital assets can be extremely valuable—domain names have sold for more than \$35 million and a virtual space station sold five years ago for \$635,000 in the virtual gaming platform Entropia.** This bill will give Connecticut citizens the full power to plan for the management and disposition of their digital assets in the same way they can make plans for their tangible property by providing instructions in a will, trust, or power of attorney, or by using simple online planning tools. If a person has no estate plan, the same court-appointed fiduciary that manages the person's tangible assets can manage the person's digital assets, distributing those assets to heirs or disposing of them as appropriate.

SB 979 will authorize access by four types of fiduciaries, if the account holder for whom the fiduciary is acting has not indicated that access should be barred:

1. personal representatives of decedents' estates
2. court-appointed conservators of incapacitated persons' property
3. agents under a power of attorney
4. trustees

In our society, businesses and other organizations simply must deal with fiduciaries to ensure the orderly transfer of private property. When someone dies, becomes incapacitated, or appoints an agent or trustee, that fiduciary may have to close bank accounts, cancel subscriptions, forward mail, pay bills, sell property, and start or stop benefit payments. Banks, hospitals, magazine publishers, insurance companies, investment firms, credit card issuers, the post office, the IRS, and millions of other entities deal with fiduciaries every day. There is no good reason why internet-based businesses cannot abide by the same rules.

Many people, especially younger people, have no formal estate plan. However, even those people can provide directions for the disposition of their property. When I opened my retirement account, I was asked to name a beneficiary to receive any remaining funds when I die. When I began seeing my new doctor, I was asked to name an emergency contact, and to specify whether that person had my permission to view private medical records. Asking this type of question is a simple matter. Yet, we are not asked similar questions when we open email accounts, cloud-based document storage accounts, or a social media accounts.

One major firm has recently taken a step in that direction. Google's "Inactive Account Manager" feature allows you to direct Google how to handle your digital assets in the event your account is inactive for a period of time (you choose how long). You can direct Google to delete your assets, or to grant access to a trusted person for whom you provide a phone number and email address. You can provide different instructions for different assets. For example, you might allow your sister to download all of your photos and YouTube videos, allow your business partner to access document files stored in the cloud, and order Google to delete all of your Gmail messages. And you can change your mind and provide new instructions at any time.

Google has given us a glimpse into the future. If SB 979 and similar bills in other states are widely enacted, I expect other firms will follow Google's lead and begin asking the same questions of their account holders.

Finally, I want to be very clear as to what SB 979 will NOT do:

- The bill will not conflict with federal privacy laws. UFADAA carves out an exception for electronic communications protected by federal law.
- The bill will not permit invasions of privacy. Fiduciaries are subject to strict, legally enforceable standards of conduct. This is why we rarely hear about estate

administrators revealing secrets of the deceased, or of the deceased's clients, patients, or confidants.

- The bill will not ban private or anonymous accounts. An adult account holder can register under a pseudonym if anonymity is allowed by the provider, and can also direct the account provider to delete all digital assets in the event of the account holder's death or incapacity.
- The bill will not impose unreasonable costs or burdens on internet-based businesses. Google has already shown it is feasible to permit account holders to provide appropriate directions.
- The bill will not allow access to email or other digital accounts provided by employers, which are excluded from the Act's coverage.

Enacting SB 979 will apply the same laws that govern our tangible personal property to our digital assets. I ask for your support to advance this important legislation for the digital age. **Please, don't let a tech company dig your digital grave and bury your digital assets—enact SB 979.**

Thank you.

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