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March 2, 2015

Honorable Eric Coleman, Co-Chair
Honorable William Tong, Co-Chair
Joint Judiciary Committee
Legislative Office Building Room 2500
Hartford, CT 06106

Dear Senator Coleman and Representative Tong:

I am the executive director of the Internet Coalition (IC), a trade association whose members include companies such as 1-800-Flowers, Amazon.com, Expedia, Experian, eBay, Facebook, FTD, Google, Match.com, and Yahoo!

I am writing to urge you **not to advance SB 979**, the Uniform Fiduciary Access to Digital Assets Act that is scheduled for a hearing on March 6. As currently drafted, the bill would grant a broad right of access to the contents of a decedent's email. While well intentioned, it raises several complex issues regarding user and third-party privacy rights, would override any express wishes made by the decedent to online services, conflict with federal law which prohibits release of such data, create problems with company authentication processes and could perpetuate fraud.

While an expectation of privacy may vary depending on the medium, most people assume private messages, like instant messaging, remain private. By granting a fiduciary, by default, access to a decedent's online accounts and communications this bill seriously threatens the privacy rights of the deceased - as well as anyone they communicated with. What if the deceased was a doctor, lawyer or teacher? By granting broad and full access to such information, even sensitive or revealing communications to a spouse could be made public.

Unfortunately, federal law forbids online services from releasing certain information. Section 2702 of the 1986 federal [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 email recipient, 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). See: [Ehling v. Monmouth-Ocean Hospital Service Corp.](#)

It is also important to uphold existing company internal authentication processes. For example, Facebook users often send and receive email through their account. However, Facebook will not issue login and password information of a deceased user. Instead, a family member may contact Facebook directly and request the loved one'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 an executor or family member decides to use the dead person's account for illegal purposes.

Many private sector companies have already responded to the deceased account issue by creating services that allow users to store their digital assets and communications in one place, for subsequent delivery to a next of kin, relatives or an executor/fiduciary. However, this bill ignores such a process

and instead would trump any decisions the decedent may have expressed to online services about how to treat their online assets after death.

Instead of heading down this path, we ask that you consider giving Connecticut citizens the ability to choose their afterlife privacy, while still allowing a fiduciary to wrap-up the estate, without conflicting with federal law. To that end, we advocate replacing **SB 979** with Netchoice's [Privacy Expectation Afterlife and Choices Act \(PEAC\) Act](#). Under the PEAC Act:

- The privacy expectations, express statements of wills, and settings of users remain when the user dies. Unauthorized fiduciaries may not read private communications – privacy choices in life continue after death.
- Fiduciaries can see the banks, stock managers, and accountants with whom the deceased corresponded. This lets fiduciaries identify important interactions, like those with a bank or online broker, and then contact those institutions as part of closing the account.
- Fiduciaries can see the contents of communications only when the deceased expressly allowed it in their will or some mechanism indicating the user's choice. If the deceased allowed disclosure of these communications, then service providers must comply, subject to verification and indemnification processes.

For all of these reasons, we ask that you **do not advance SB 979** and instead consider adopting the PEAC Act. Thank you for considering our views. Please feel free to contact me if you have any questions or would like to discuss our concerns in more detail.

Sincerely,



Tammy Cota