



State Privacy and Security Coalition, Inc.

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April 4, 2014

We thank you for the opportunity to participate in the Uniform Law Commission's (ULC) drafting of the Fiduciary Access to Digital Assets Act (FADA). We learned much from the process and appreciated the opportunity to meet with ULC commissioners and members of the FADA drafting committee. We found the ULC members inviting and willing to hear our concerns about the FADA draft.

Unfortunately, we find ourselves at an impasse on several key components of the FADA draft. Despite our ongoing concerns about conflicts with federal law, the FADA draft, if passed into law, would place our members, businesses, and customers in a dangerous position. If members and businesses comply with FADA, they risk potential violation of federal law and facing civil damages. For customers, FADA would create false expectations of what happens to their digital accounts after they die.

These ongoing concerns include, but are not limited to:

- *Section 9 requires custodians to disclose stored communications to fiduciaries.* This should not be a mandatory disclosure, as it may conflict with federal law in some instances. Instead, custodians should have the option to disclose stored communications to fiduciaries.
- *The draft provides no indemnification protections for custodians who are required to produce communications contents.* Fiduciaries seeking to access stored communications and other accounts should indemnify custodians from all civil and criminal actions when the custodian complies with a mandatory request for access.
- *Section 8 requires an affirmative opt-in by users to make valid a custodian's terms of service provision limiting fiduciary access.* Custodians' terms of service agreements should control what happens to a user's accounts when they die, whether the terms of service provision is default, opt-out, or opt-in.

For these reasons, we proposed to the FADA drafting committee in good faith a more narrowly tailored compromise that would require disclosure of account log information from which custodians could identify specific parties (such as financial institutions) whose communications are relevant to the Fiduciary's responsibilities.

Because of the rejection of our proposed compromise and our concerns with the current FADA draft, we may begin pursuing other ways to address the question of access to digital assets after death.

We thank you again for the opportunity to work with you.

Sincerely,

Steve DelBianco  
Executive Director, NetChoice

Carl M. Szabo  
Policy Counsel, NetChoice

James J. Halpert  
General Counsel, State Privacy  
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CC: Members of the FADA drafting committee