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

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Rep. Jeff Barker, Chair   March 16, 2015
House Committee On Judiciary
Salem, Oregon

RE: *Support for HB 2647, Privacy Expectation Afterlife and Choices Act (PEAC) Act*

Chairman Barker and members of the committee:

We ask that you move forward with HB 2647, the Privacy Expectation Afterlife and Choices Act (PEAC) Act.

We recognize the need of fiduciaries to wrap-up estates and some of the challenges fiduciaries face when it comes to accessing electronic communications of the deceased. At the same time we need to respect the privacy expectations of the deceased, the privacy of those with whom they communicated, and federal privacy law. To that end, the PEAC Act achieves a balance for all these concerns

That is why the PEAC Act is supported by the online industry and was created with input from privacy advocates such as the ACLU, Center for Democracy and Technology, and Electronic Frontier Foundation.

Under the PEAC Act, Oregon would allow its citizens to choose their afterlife privacy while allowing the fiduciary to wrap-up the estate and comply with federal law. Moreover, other states are passing the PEAC Act – it was passed unanimously by the Virginia General Assembly last month.

Under the PEAC Act:

- The privacy expectations, statements in a will, and settings chosen by users would remain after the user dies. Unauthorized fiduciaries may not read private communications, since privacy choices in life continue after death.

- Fiduciaries can see the banks, investment managers, and accountants with whom the deceased corresponded. This lets fiduciaries identify important interactions and contact those institutions as part of settling the estate.

- Fiduciaries can see the contents of communications *only* when the deceased expressly allowed it in their will, or when there is some other evidence of user consent. If the deceased allowed disclosure of these communications, then service providers must comply, subject to verification.

It's not just our view that HB 2647 is the correct approach. It's also what your constituents believe. The national polling firm Zogby Analytics surveyed adults across age, demographics, and political spectrums on this issue. Zogby's poll found:[1]

> **By nearly 5-to-1, Americans support the approach of the PEAC Act.** Over 70% of Americans say their private online communications and photos should remain private after they die, unless

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[1] Available at NetChoice.org/Afterlife

they gave prior consent for others to access. Only 15% say that estate attorneys should control their private communications and photos, even if they gave no prior consent for sharing.

The PEAC Act gives users the privacy defaults they want. Just 15% said an estate attorney should make the decision about sharing their private communications and photos. 43% say these items should be deleted upon proof of death. 30% say their estate could access these items only if they gave prior consent. These results match the approach found in the PEAC Act.

Key results of this polling are attached to our testimony.

For all these reasons, we urge that you to pass HB 2647. Thank you for considering our views. Please let me know if I can provide further information.
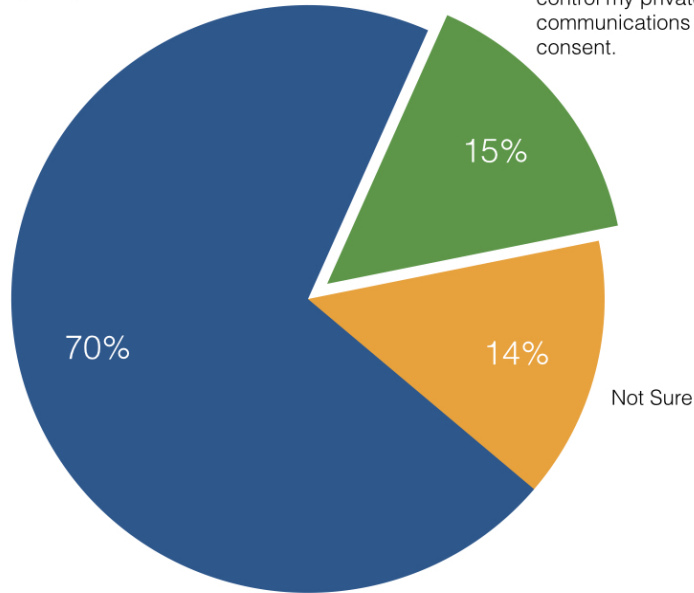

Sincerely,

Carl Szabo
Policy Counsel, NetChoice

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

After a person dies which of the following describes your view when it comes to keeping the emails and instant messages along with digital photos they have sent privately?

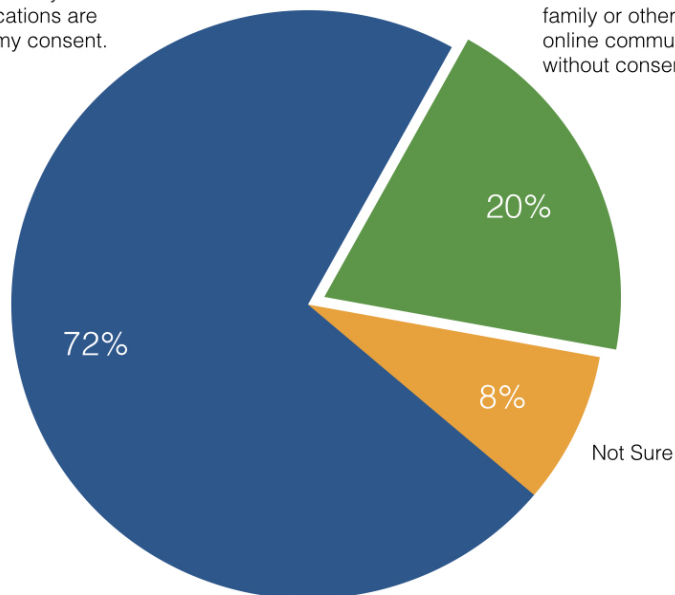No one should access content after I die, unless I gave prior consent.

Estate executors should control my private communications even if no consent.
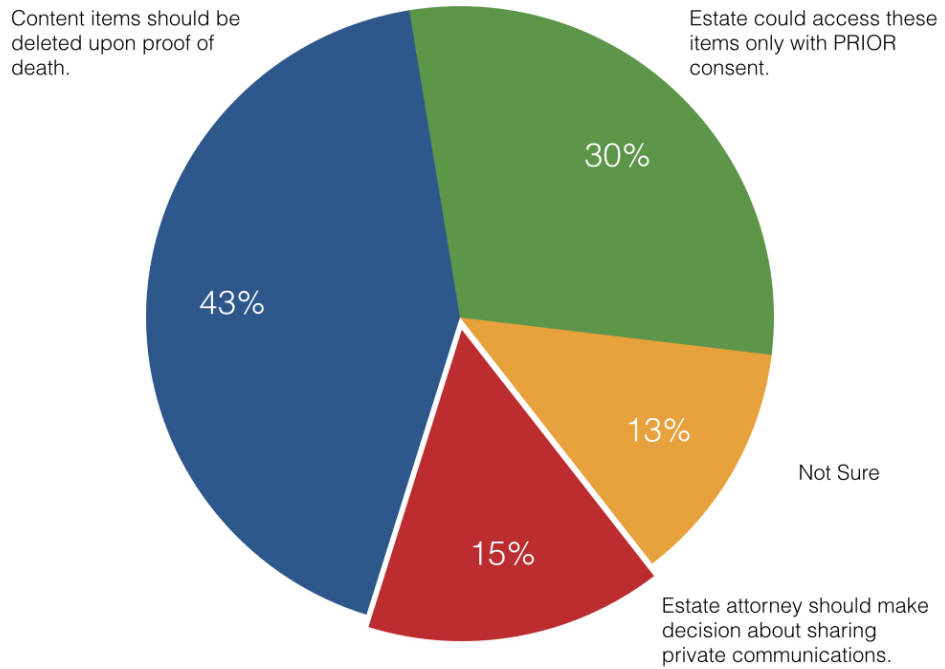
15%

14%

Not Sure

70%

Which of the following describes your view when it comes to keeping electronic communications and photos private, so they could not be shared without your consent?

It's against my privacy if those communications are shared without my consent.

I don't care if my friends, family or others see my online communication without consent

20%

8%

Not Sure

72%

How do you want an online service to handle your private accounts when you die?

Content items should be deleted upon proof of death.

Estate could access these items only with PRIOR consent.

30%

43%

13%

Not Sure

15%

Estate attorney should make decision about sharing private communications.

In your opinion, what should be the priority on privacy of online communications when someone dies?

Privacy should be the priority. We don't know if a deceased person wanted to share.

Access should be the priority. It doesn't matter whether the deceased wanted to share.

14%

70%

15%

Not Sure