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# Tweets from the Grave: Social Media Life After Death

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NOTES

Tweets from the Grave:  
Social Media Life After Death

Jason R. Hollon<sup>1</sup>

INTRODUCTION

NEARLY everyone under thirty does it. Sisters, brothers, fathers, and mothers are on there. Even grandmothers and grandfathers are linked in. Every day millions and millions of users log onto Facebook, Twitter, MySpace, and a host of e-mail providers, exposing themselves to a world of information unmatched in history. Connecting with old friends, sharing statuses, and posting photos, users are able to get close and personal with everyone on their “friends” list. Over 901 million users are on Facebook, 555 million on Twitter, and millions on various other sites.<sup>2</sup> Furthermore, over 425 million people currently use the e-mail service, Gmail, and the number is growing.<sup>3</sup> While these sites and services can be excellent for social—and in many cases professional—advancement, they present a variety of unique legal questions that for the most part have been left unanswered.

Every inbox, chat window, and old wall post contains the potential for incriminating or even devastating information to be revealed. An individual’s thoughts, feelings, and observations about the world are propounded over various outputs. One can assume that social media users would not be comfortable with family members, friends, and other loved ones poring over the vast amount of messages and confidences contained in such accounts. Further, the idea that their observations and thoughts about the world could be owned and promulgated by someone else would arguably have an effect on users. However, each day thousands of users pass away and leave their accounts still active, waiting on the next log in to connect to the social media universe.<sup>4</sup>

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2 Dave Larson, *Infographic: Spring 2012 Social Media User Statistics*, TWEET SMARTER (May 15, 2012), <http://blog.tweetsmarter.com/social-media/spring-2012-social-media-user-statistics/>.

3 Sundar Pichai, *Chrome & Apps @ Google I/O: Your web, Everywhere*, OFFICIAL GOOGLE BLOG (June 28, 2012), <http://googleblog.blogspot.co.at/2012/06/chrome-apps-google-io-your-web.html>.

4 See Jaweed Kaleem, *Death on Facebook Now Common As ‘Dead Profiles’ Create Vast Virtual Cemetery*, HUFFINGTON POST (Dec. 7, 2012, 6:40 PM) (updated Jan. 16, 2013, 6:03 PM), [http://www.huffingtonpost.com/2012/12/07/death-facebook-dead-profiles\\_n\\_2245397.html](http://www.huffingtonpost.com/2012/12/07/death-facebook-dead-profiles_n_2245397.html).

The question quickly becomes: what happens to social media accounts after the user has expired? While most users may believe that their information remains private after their demise, a number of factors affect the ultimate disposition of the content.

Described in the “User Agreement Page” when the account is created, each individual site has various procedures to deal with the passing of a user that are unique and different from others. Many sites allow for the executor of the estate to obtain all the information from the account, and to shut it down completely or even continue running the site.<sup>5</sup> Users often click “agree” to these terms of agreement as quickly as possible, without a second thought as to the implications.

Should these terms be in full effect? Or should traditional property law adapt to these issues? Ohio State University Law Professor Peter Swire compared social media and traditional property law like this: “What happens if a 21-year-old had a safe deposit box at the bank, the answer is the safe deposit box belongs to his estate and whoever controls the estate gets to open the box.”<sup>6</sup> However, it is not that simple. Even if one were to apply traditional property notions to this unique situation, issues such as the decedent’s preference and the terms of the site’s agreement will also come into play. Professor Naomi Cahn of George Washington University asserted that the most important of these issues should be “complying with what the individual wanted and protecting the individual.”<sup>7</sup> However, it is unlikely that many social media users have thought about what they want to happen with their media after death, let alone informed anyone else of their social media wishes.

In an attempt to cure some of these issues, five states to date have created statutes that attempt to address these concerns. Oklahoma, Connecticut, Rhode Island, Idaho, and Indiana have all passed statutes that attempt to substitute common property law and replace it with positive law on the issue.<sup>8</sup> While each represents an effort to fix problems, they are each different in many regards. Connecticut and Rhode Island deal solely with e-mail accounts, leaving uncertainty as to other forms of online social media.<sup>9</sup> The rest cover the

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5 See *Accessing a Deceased Person’s Mail*, GMAIL HELP, <http://support.google.com/mail/bin/answer.py?hl=en&answer=14300> (last visited Apr. 5, 2014); *Statement of Rights and Responsibilities*, FACEBOOK, <https://www.facebook.com/legal/terms> (last modified Nov. 15, 2013); *Terms of Service*, TWITTER, <https://twitter.com/tos> (last visited Apr. 5, 2014).

6 Jessica Hopper, *Digital Afterlife: What Happens to Your Online Accounts When You Die?*, NBC NEWS ROCK CENTER WITH BRIAN WILLIAMS (June 1, 2012, 7:53 AM), [http://rockcenter.nbcnews.com/\\_news/2012/06/01/11995859-digital-afterlife-what-happens-to-your-online-accounts-when-you-die?](http://rockcenter.nbcnews.com/_news/2012/06/01/11995859-digital-afterlife-what-happens-to-your-online-accounts-when-you-die?)

7 *Id.*

8 See CONN. GEN. STAT. ANN. § 45a-334a (West Supp. 2013); IDAHO CODE ANN. § 15-3-715(28) (Supp. 2013); IND. CODE ANN. § 29-1-13-1.1 (LexisNexis 2011); OKLA. STAT. ANN. tit. 58, § 269 (West Supp. 2014); R.I. GEN. LAWS § 33-27-3 (2011).

9 See CONN. GEN. STAT. ANN. § 45a-334a; R.I. GEN. LAWS § 33-27-3.

broad spectrum of Internet social resources.<sup>10</sup> However, they all differentiate in what sort of power they give the executors of the estate. Indiana, Connecticut, and Rhode Island limit the executor's power to obtain copies of the media and information stored on the account.<sup>11</sup> However, Oklahoma and Idaho give the executor full power over the site.<sup>12</sup> This includes, presumably, the ability to control and continue the accounts themselves.

Of course these statutes run up against—or are directly adverse to—the user agreements that each user of the site has agreed to. Furthermore, the state's common law property principals also play a large role in determining what happens to the information. The question quickly becomes: which one wins? These conflicts can lead to wildly different results and conclusions throughout the country. For example, an estate of a deceased Twitter user that has agreed to Twitter's terms of service will only have the option for the deceased user's account to be completely deactivated.<sup>13</sup> However, if this user resides in Oklahoma, the estate would get full access to the account under the statute.<sup>14</sup> The social media site could also refuse to comply with the statute, asserting that their user agreement trumps any state law, forcing even more litigation to settle the estate. These inconsistent results are an unacceptable way to deal with the disposition of property.

This Note argues for the adoption of a federal statute that would deal with the disposal of user's accounts after death and ensure their interests are protected. Part I looks at the various property interests that are involved in these websites. Part II outlines the procedures each website follows according to its own policy. Part III examines the five states that have attempted to pass legislation on the issue and their merits and shortcomings. Part IV describes a potential federal statute to handle the interests of the deceased and provide a uniform disposition of social media property.

## I. PROPERTY INTERESTS IN THE ACCOUNT

To begin to formulate a potential solution to the problem it is vital to identify and fully understand that the interests of the user. As stated above, social media sites and e-mail give broad power to millions of individuals to convey ideas, messages, and photos; many of which are saved on their personal accounts. It is easy to see that these forms of information could be viewed as intangible property, passable to heirs through wills, and if there is no will,

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<sup>10</sup> See IDAHO CODE ANN. § 15-5 (Supp. 2013); IND. CODE ANN. § 29-1-13-1 (LexisNexis 2011); OKLA. STAT. ANN. tit. 58, § 269 (West Supp. 2014).

<sup>11</sup> CONN. GEN. STAT. ANN. § 45a-334a; IND. CODE ANN. § 29-1-13-1.1; R.I. GEN. LAWS § 33-27-3.

<sup>12</sup> IDAHO CODE ANN. §15-3-715(28); OKLA. STAT. ANN. tit. 58, § 269.

<sup>13</sup> *Contacting Twitter About a Deceased User*, TWITTER HELP CENTER, <https://support.twitter.com/articles/87894> (last visited Apr. 5, 2014).

<sup>14</sup> See OKLA. STAT. ANN. tit. 58, § 269.

through the intestacy process of each state.<sup>15</sup> Users of these accounts likely view this information as their property, protected against intrusion from outsiders and subject to their complete discretion.

However, in the world of cyber laws, this is not the case. Each social media website has its own end user agreement that dictates the property owners of the information on the website.<sup>16</sup> In a literal reading of Facebook's "Statement of Rights and Responsibilities" and Twitter's "Terms of Service" it would appear that the user actually owns the account and all of its content.<sup>17</sup> For example, in the second section of its agreement, Facebook states: "You own all the content and information you post on Facebook."<sup>18</sup> Twitter has a similar provision.<sup>19</sup> However, through other provisions on both Twitter and Facebook, it is increasingly obvious that both networking sites control the access to the account and thus the content that is posted. Various provisions stipulate rules of use for both sites. Section 15 of Facebook's agreement states that any violation of the agreement or any action that leaves Facebook open to legal liability will result in termination of the account.<sup>20</sup> This ability to bar the user from the site for a violation of their agreement indicates a power to exclude—a key element in the "bundle" of property rights.

The question becomes: how much legal power is granted to these user agreements? According to F. Gregory Lastowka and Dan Hunter, these agreements are given more deference, and will be given more deference as issues arise in the future.<sup>21</sup> Regarding such agreements, they write: "Though property rights may exist in virtual assets, the allocation of those rights will depend largely on the End-User License Agreements."<sup>22</sup> While Lastowka's and Harper's article deals with virtual assets in the form of property earned in an online gaming setting, the principle can translate to social media agreements. The content that the user posts to Facebook and Twitter could be viewed as a virtual asset and therefore the property—according the user agreements—of the website they are on. If the websites retain property rights in the content posted by the user's account, traditional property notions may not apply and users may be left at the mercy of each website's procedures.

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15 UNIF. PROBATE CODE § 3-101 (amended 2010), 8 pt. II U.L.A. 22 (2013).

16 See, e.g., *Statement of Rights and Responsibilities*, FACEBOOK, *supra* note 5, § 2; *Terms of Service*, TWITTER, *supra* note 5, § 7.

17 See *Statement of Rights and Responsibilities*, FACEBOOK, *supra* note 5, § 2.

18 *Id.*

19 See *Terms of Service*, TWITTER, *supra* note 5, § 8.

20 *Id.* § 15.

21 See F. Gregory Lastowka & Dan Hunter, *The Laws of the Virtual Worlds*, 92 CALIF. L. REV. 1, 50 (2004).

22 *Id.*

## II. WEBSITE'S USER DEATH PROCEDURES

## A. Twitter

Of the three social media sites examined, Twitter's deceased user policy is the most respectful of the decedent's interests.<sup>23</sup> Instead of requiring the account to continue or distributing the information contained on the account to someone responsible for the estate, Twitter's user policies are fashioned so that the account can be shut down completely and deleted from the website.<sup>24</sup> This deactivation protects a user's interest in privacy, and allows them to exit the cyber world at death.<sup>25</sup>

The deactivation process, while fairly lengthy, is simple. In order to deactivate the account, Twitter requires a notarized letter from the person seeking deactivation that includes his or her name, address, photo ID, and relation to the user, along with copy of the death certificate and a copy of the obituary.<sup>26</sup> Twitter's policy also states that it will not give out access to the account (username and password) to anyone, no matter the relation to the decedent.<sup>27</sup> This strongly supports the interest of the decedent in keeping his account contents private.<sup>28</sup>

In order to complete this process, Twitter requires that the person be a "person authorized to act on the behalf of the estate."<sup>29</sup> However, later on the policy asks the requester to simply include a description of his or her relationship to the deceased.<sup>30</sup> There is no definition as to what constitutes an "authorized person," nor is a requirement listed for proof of authorization.<sup>31</sup> While a death certificate is required as proof, it does not provide information on who is in fact authorized to act on behalf of the estate.<sup>32</sup>

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23 It is most respectful in the sense that it takes into account what the average, reasonable person would want with respect to keeping his or her information private and accounts shut down. It is possible that some users would want their accounts to be continued by a family member or friend, but it is to be assumed for purposes of this Note that the average person would not.

24 See *Contacting Twitter About a Deceased User*, TWITTER HELP CENTER, *supra* note 13.

25 It should be noted that the account more than likely remains permanently on the website's servers even though it is deactivated. However, this technological issue is beyond the scope of this Note.

26 See *Contacting Twitter About a Deceased User*, TWITTER HELP CENTER, *supra* note 13.

27 *Id.*

28 This stands in contrast with the Gmail policy, which will allow a person to acquire all of the information on the account. See discussion *infra* Part II.C.

29 *Contacting Twitter About a Deceased User*, TWITTER HELP CENTER, *supra* note 13.

30 *See id.*

31 *See id.*

32 This is the case because many states require that the death certificate be completed shortly after the death, and therefore before the probate process begins. See KY. REV. STAT. ANN. § 213.076(1) (a), (c) (LexisNexis Supp. 2013) (requiring that a death certificate be filed five days after death).

The ambiguity in these terms creates a potential problem when dealing with Twitter. While, as stated above, their deactivation process allows for the idea of privacy for the deceased, it could potentially run counter to a decedent's expressed wishes. One may assume that most decedents would not want their accounts to continue without them, but it is possible for users to expressly indicate they would like the account to remain online, allowing for tagging and mentions in a type of remembrance or memorial fashion. However, with this ambiguity in the Twitter provision, it is possible for someone who is not the administrator of the estate to deactivate the account contrary to the decedent's wishes. This discrepancy illustrates the problem inherent in all of these procedures: the user's wishes and websites' interests are not balanced and therefore must be remedied.

### B. Facebook

Twitter's procedures do a good job meeting the user's privacy interests, but present a potential problem if the user expressly wishes the account to remain on the website. Facebook however, serves the latter interest greatly. Facebook allows for a deceased user's account to remain active but in a "memorial" state.<sup>33</sup> Claiming to protect the deceased's privacy, "memorializing" the account allows it to remain active (it can be tagged, followed, etc.) in a "in remembrance" state.<sup>34</sup> With just an e-mail address, a claim of family member status, and a URL of an obituary or news article, a person may memorialize a user's account.<sup>35</sup> Ignoring for a moment the potential fraud in this request process,<sup>36</sup> the results of the memorialization process can be dramatic. Should family members of the deceased come across the account while on the site, one can imagine that this would be a particularly emotional experience.<sup>37</sup>

Facebook also allows the account to be deleted entirely.<sup>38</sup> Through a "special request," Facebook will shut down the account, removing the timeline, photos, and any posts that have been accumulated on the account.<sup>39</sup> The process for this

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33 See *What Happens When a Deceased Person's Account Is Memorialized?*, FACEBOOK HELP CENTER, <https://www.facebook.com/help/103897939701143> (last visited Apr. 5, 2014).

34 See *id.*

35 See *Memorialization Request*, FACEBOOK, <https://www.facebook.com/help/contact/?id=305593649477238> (last visited Apr. 5, 2014).

36 See CBC News Community, *Facebook Flaw Allows Users to "Kill" Friends*, STORIFY, <http://storify.com/cbccommunity/dead-on-facebook> (last visited Apr. 5, 2014) (describing a story in which someone memorialized a user's account by linking to a similarly named individual's obituary).

37 Apparently, memorialized accounts will not continue to appear in public spaces such as suggestions for the "People You May Know" feature or in the facial recognition photo tagging technology. See *What Happens When a Deceased Person's Account Is Memorialized?*, FACEBOOK HELP CENTER, *supra* note 33.

38 See *How Do I Submit a Special Request for a Deceased Person's Account on the Site?*, FACEBOOK HELP CENTER, <https://www.facebook.com/help/265593773453448/> (last visited Apr. 5, 2014).

39 See *id.*

special request is much more onerous than that of memorialization. In addition to the information that is required for memorialization, the requestor must be an immediate family member or the executor of the estate, and provide a digital copy of either the birth certificate, death certificate, or proof of authority.<sup>40</sup> In addition, Facebook states that, “to protect the privacy of people on Facebook,” it will not provide the login information for any account.<sup>41</sup>

While Facebook’s policy has some of the same problems as the Twitter procedure, Facebook does provide more options than Twitter for dealing with the decedent’s account. The more options that are available to the estate, the better the opportunity to conform to any express wishes that the decedent may have had.<sup>42</sup> While Facebook obtains high marks in the option category, its policies again demonstrate the problem: there are no set rules in the absence of express wishes. By allowing family members to decide what to do with the deceased user’s account, various outcomes ensue that are often contrary to the decedent’s interests or non-expressed wishes.

### C. Gmail

Gmail is one of the largest e-mail providers in the world.<sup>43</sup> As the e-mail component of Google, one of the largest Internet search and advertising companies in the world, Gmail has an enormous number of users.<sup>44</sup> Gmail accounts (and e-mail in general) receive and store vital information relating to its users’ lives. Most social networking sites send e-mails to the address associated with the account any time a message is received, a wall post added, or a mention of the account holder has occurred.<sup>45</sup> Therefore, in addition to other

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40 *Special Request for Deceased Person’s Account*, FACEBOOK, <https://www.facebook.com/help/contact/?id=228813257197480> (last visited Apr. 5, 2014).

41 *Id.*

42 By allowing for memorialization or for deletion, Facebook has placed stakes at both ends of the spectrum, allowing for any express wish (short of the account continuing) to remain an option.

43 Sean Ludwig, *Gmail Finally Blows Past Hotmail to Become the World’s Largest Email Service*, VENTURE BEAT (June 28, 2012, 5:05 PM), <http://venturebeat.com/2012/06/28/gmail-hotmail-yahoo-email-users/> (describing the race between Yahoo, Hotmail, and Gmail to be the largest provider). Different figures exist, but, with little doubt, Gmail is at least the world’s third largest provider. *See id.*

44 Steve Lohr & Claire Cain Miller, *Google Casts a Big Shadow on Smaller Web Sites*, N.Y. TIMES (Nov. 3, 2012), <http://www.nytimes.com/2012/11/04/technology/google-casts-a-big-shadow-on-smaller-web-sites.html> (describing Google as “the dominant Internet search and advertising company” with the power to ruin companies with a switch of its search algorithm).

45 It is possible to turn these e-mail notifications off by changing user account preferences. *See, e.g., Updating Your Email Preferences*, TWITTER HELP CENTER, <https://support.twitter.com/articles/127860> (last visited Apr. 5, 2014); *How do I Adjust My Email Notifications from Facebook?*, FACEBOOK HELP CENTER, <https://www.facebook.com/help/154884887910599> (last visited Apr. 5, 2014). In addition, most email providers allow users to automatically filter unwanted messages to spam folders.



private information, access to e-mail accounts can lead to access to the user's social media accounts in a roundabout way. Since Gmail is one of the sites that contains the most information about the deceased, one may conclude that its strong policy is intended to respect the decedent's privacy after death.

Gmail states that in "rare instances," it may provide the contents of the account to an authorized representative of the deceased.<sup>46</sup> Acknowledging that its users place strong trust into it when creating their accounts, Gmail maintains that it reviews every content request carefully.<sup>47</sup> The Gmail's deceased user process is broken down into two parts, each requiring extensive documentation and time.<sup>48</sup> Step one generally follows the form of the first two sites analyzed (by requiring, for example, a Photo ID, address, Death Certificate, etc. to deactivate an account); however it requires that the requestor send in an email that the requester has received from the decedent's account.<sup>49</sup> Following a lengthy review, the application then moves on to Step two if approved. Step two adds into the mix a requirement not seen in the Twitter and Facebook policies: a court order.<sup>50</sup> Again, the private content in most users' accounts and the trust that users place in Gmail to protect their information might explain this stringent requirement. Even in the event the requestor can comply with both steps, it is still not a guarantee that his or her request will be approved.<sup>51</sup> Further, if the request is denied, Gmail claims it "will not be able to share further details about the account or discuss [its] decision."<sup>52</sup>

It is clear that Gmail takes its privacy policy very seriously; it seems that access to these accounts is nearly impossible to obtain except in extremely rare circumstances. While this is important and takes into account the strong privacy interests of the user, it illustrates another problem that occurs without a bright line rule: there is no way to access to the files without court intervention.<sup>53</sup> While the main interest of the user is presumably privacy, there will likely be instances in which the family needs the documents for financial or probate

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46 *Accessing a Deceased Person's Mail*, GMAIL HELP, *supra* note 5.

47 *Id.* ("[W]e take our responsibility to protect the privacy of people who use Google services very seriously.").

48 *Id.* (listing the requisite information for Part 1 of the process and the potential documents required for Part 2). If the review goes beyond Part 1, the waiting period between Parts 1 and 2 could "take up to a few months." *Id.*

49 *Id.* This presumably allows the Gmail staff to have further proof that the requestor in fact knows the deceased and has received emails from them in the past.

50 *Id.* (stating that additional legal documents will be requested in Part 2, including "an order from a U.S. court and/or additional materials"). There is not a description of what additional legal materials would be requested. *See id.*

51 *Id.*

52 *Id.*

53 I assume that since Gmail does not always approve an application for review to proceed to the second step of its process, there are occasions in which the court system will have to become more involved.

proceedings. This undoubtedly slows down the probate process and cuts against the interests of the state for efficient probate procedure.

### III. STATE ENACTMENTS

As seen above, user agreements and procedures from the websites themselves can be too broad like Facebook's, too ambiguous like Twitter's, or too strict like Gmail's. As the numbers of users on these sites have grown and subsequently millions have passed away, states have begun to pass legislation in an attempt to remedy the potential problems that occur after a user's death.<sup>54</sup> To date, five states have passed statutes that deal with online accounts. More states have attempted or are currently attempting to pass similar legislation.<sup>55</sup> A Nebraska law was introduced in the 2013 legislative session that would allow the representative of the estate to remove all social media of the deceased.<sup>56</sup> Moreover, Oregon's is one of many state bar associations forming groups to address the issue, though no bill has been formally introduced.<sup>57</sup>

The five states that have actually enacted statutes addressing the issue have wide variations in exactly what is covered, who can take advantage of the statute, and what they can do with the content once they are able to act under the statute. It is easier however, to view these statutes in terms of their scope and then analyze their individual approaches to this problem. Two states' statutes only reach e-mail providers,<sup>58</sup> and the other three states have statutes that purport to regulate all forms of social media and e-mail.<sup>59</sup> Each of the

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<sup>54</sup> Katy Steinmetz, *States Seek a Way to Pass on Digital Accounts After You Die*, TIME SWAMPLAND BLOG (July 27, 2013), <http://swampland.time.com/2013/07/27/states-seek-a-way-to-pass-on-digital-accounts-after-you-die/>.

<sup>55</sup> *See id.* Several more states have attempted to join in with these five, most notably New York, which proposed a law that would have "allow[ed] people to designate an 'online executor' [sic] in their will who [could] terminate social networking accounts." Melissa Holmes, *Social Media Users Can Create "Online Executor" in Will*, WGRZ.COM (Feb. 5, 2012, 5:05 PM), <http://www.wgrz.com/news/article/153959/1/Social-Media-Users-Can-Crete-Online-Executor-In-Will>. This legislation did not pass. Gerry W. Beyer, Governor Preston E. Smith Regents Professor of Law, Tex. Tech Univ. Sch. of Law, *Digital Assets, Pets, and Guns: Estate Planning Does Not Include Just Grandma's Cameo Brooch Anymore*, Presentation to Estate Planning Council of Central Texas 16 (Jan. 7, 2014).

<sup>56</sup> Ryan Luby, *Legislation Proposed for One's Online Afterlife*, KETV (Jan. 24, 2013, 10:22 PM), <http://www.ketv.com/politics/Legislation-proposed-for-one-s-online-afterlife/18272446>; *see also* KSE FOCUS, *States Examine Laws Governing Digital Accounts After Death*, CONGRESS.ORG (June 13, 2013), <http://congress.org/2013/06/13/states-examine-laws-governing-digital-accounts-after-death/>.

<sup>57</sup> Michael Avok, *New Bills Claim Social Media Is Part of Estate*, AUGUSTA CHRON., Mar. 18, 2012, at B9.

<sup>58</sup> *See* CONN. GEN. STAT. ANN. § 45a-334a (West Supp. 2013); R.I. GEN. LAWS § 33-27-3 (2011).

<sup>59</sup> *See* IDAHO CODE ANN. § 15-3-715(28) (Supp. 2013); IND. CODE ANN. § 29-1-13-1.1(d) (LexisNexis 2011); OKLA. STAT. ANN. tit. 58, § 269 (West Supp. 2013). It could be said that the Indiana statute was intended to regulate e-mail only, like the Connecticut and Rhode Island

statutes contains potential problems in their implementation, but also some features that would be vital to any proposed federal legislation.

### A. *Connecticut and Rhode Island Statutes*

Rhode Island and Connecticut have had their e-mail-based laws in place for several years but they have received little-to-no mention in secondary material, and related documented litigation is sparse.<sup>60</sup> Both of the statutes are fairly clear on what they target and what information is covered under the law. Both compel the e-mail service providers to provide access to, or copies of, the contents on the e-mail account.<sup>61</sup> This presumably means that the e-mail providers must turn over the decedent's account information regardless of their own policies. However, the two statutes differ in what they require before turning over the property. In Connecticut, it is enough that the administrator or executor makes a written request along with the death certificate and proof of administrator status, or that a probate court orders the service to provide the documents.<sup>62</sup> In Rhode Island, both the administrator's request and the order of the probate court in the jurisdiction are necessary to compel the service to act.<sup>63</sup> In addition, Rhode Island makes it necessary for the administrator to agree to indemnify the service provider against any liability stemming from compliance with the order.<sup>64</sup> This provision—Rhode Island being one of only five states to include it—is more than likely designed to help ease the service providers' qualms about releasing such confidential information.

This difference between the two is subtle; however, it is crucial to balance the effects that these requirements could have if included in a federal legislation scheme. A requirement of the administrator to prove that he or she is in fact the administrator and not just a close family member protects the estate in that it ensures that someone with legal authority is making the decision and receiving the information.<sup>65</sup> But the most important difference is that a court

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statutes. It defines "custodian" as "any person who electronically stores the documents or information of another person." § 29-1-13-1.1(a). However, "information" could certainly be interpreted to mean any personal information, which is a key feature of Facebook, Twitter, and other social media.

60 See CONN. GEN. STAT. ANN. § 45a-334a; R.I. GEN. LAWS § 33-27-3. The Rhode Island law has been cited in only one recorded brief or motion since its adoption in 2007. The Connecticut law has been cited in three motion briefs since its adoption in 2005.

61 In fact, the statutes contain identical language: "An electronic mail service provider shall provide, to the executor or administrator of the estate of a deceased person who was domiciled in this state at the time of his or her death, access to or copies of the contents of the electronic mail account of such deceased person . . ." CONN. GEN. STAT. ANN. § 45a-334a(b); R.I. GEN. LAWS § 33-27-3.

62 CONN. GEN. STAT. ANN. § 45a-334a(b).

63 R.I. GEN. LAWS ANN. § 33-27-3.

64 *Id.*

65 This should be contrasted with the websites analyzed above which did not require proof of administrator or executor status. See discussion *supra* Parts II.A-C. Therefore, both statutes are in

order is required in Rhode Island, whereas it is optional in Connecticut. The biggest benefit of the court order requirement is it ensures the decedent's information is being distributed for valid or important reasons that the court can discern. However, a drawback to such a requirement is that it guarantees court involvement in every instance of the statute being invoked. This cuts strongly against the states' judicial efficiency interests.

Furthermore, the statutes' effectiveness is tough to discern. The Connecticut statute has been cited in a handful of briefs in both federal and state court. However, these rulings do provide some insight into the workings of the Connecticut statute. In an answer to a motion to compel discovery, the administrator of the estate of Elizabeth Caron described the difficulty in utilizing the statute against one of the websites.<sup>66</sup> In question was the administrator's diligence in obtaining e-mail records from Google (Gmail).<sup>67</sup> The plaintiff (the decedent's spouse) served a subpoena upon the administrator requesting information from the decedent's Gmail account.<sup>68</sup> The administrator wrote Google to obtain information from the decedent's Gmail account.<sup>69</sup> Despite the administrator's multiple requests to Google, follow-up letters, and a citation to Connecticut's statute in support of the request, Google did not provide the information and, in fact, totally failed to respond.<sup>70</sup> This illustrates the friction that exists from the companies not wanting to subvert their own procedures because of a state law. The administrator cited the statutory authority and had authority as administrator on his side, but could not, nevertheless, get Google to comply, leading to the inference that, without a court order, the chances of website compliance is nearly zero.

### *B. Indiana, Idaho, and Oklahoma Statutes*

Indiana, Idaho, and Oklahoma have taken their respective statutes quite a bit further than their legislative counterparts in Connecticut and Rhode Island. All three have statutes that could enable administrators to reach and control all forms of social media, not just obtain e-mail documents from service providers. This broad reach approach is one that any federal legislation should strongly consider so that the interests of the decedent are covered on a wider spectrum. Therefore, these statutes should be examined carefully for both positive and negative features.

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direct conflict with the requirements of all three websites: Twitter, Facebook, and Gmail.

66 Memorandum of Law by John E. Meerbergen, Administrator of the Estate of Elizabeth Anne Caron, in Opposition to Plaintiff's Motion to Compel Discovery at 3–4, *Caro v. Weintraub*, No. 3:09–CV–01353–PCD (D. Conn. July 23, 2010).

67 *Id.* at 2.

68 *Id.* at 3.

69 *Id.*

70 *Id.* at 3–4.

Of the three, Indiana's statute is undoubtedly the most careful in terms of what is required for access to the decedent's online information. In this sense it is much more like the Connecticut and Rhode Island statutes. It requires that the administrator of the estate prove that he or she is the administrator and provide either documentation of the death or a probate court order requiring disclosure.<sup>71</sup> Furthermore, in a way that mirrors the Rhode Island language of indemnification, the Indiana statute states that the custodian does not have to disclose if the disclosure would result "in violation of any applicable federal law."<sup>72</sup> This illustrates at least some consideration for the website services' interests.

However, there is an issue with ambiguity in Indiana's statute. It purports to reach any custodian, which is defined as a "person who electronically stores the documents or information of another person."<sup>73</sup> Given that this language otherwise closely tracks the Rhode Island and Connecticut statutes' language, it could be argued that it was only intended to reach e-mail accounts. However, as written: "electronically stores the documents or information of another person" lends itself to the argument that Facebook and Twitter are designed to hold the information of others and, therefore, would clearly fit into the statute.<sup>74</sup> However, as is the case with many of these statutes, no court has interpreted the statute and, therefore, the precise meaning of the language is unclear.

Both Oklahoma and Idaho's statutes are extremely similar in their text and intended effects. They both grant powers that are extensively broader than other measures out there, including the policies of the websites themselves. Their language is similar, providing that the administrator of the estate shall have the power to take "control of, conduct, continue or terminate any accounts" of a deceased person.<sup>75</sup> Moreover, the statutes provide that this power to take over and control applies to "any social networking website, any microblogging or short message service website or any e-mail service website."<sup>76</sup>

The only substantial difference in the two provisions is that the Idaho law does not require that the administrator have court authorization.<sup>77</sup> The Oklahoma statute provides only that an administrator "shall have the power, where otherwise authorized."<sup>78</sup> It is unclear exactly what "authorized" means in this context but it is clear that it means something more than what is described in the Idaho statute.<sup>79</sup> As illustrated above with the Connecticut statute,

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71 IND. CODE ANN. § 29-1-13-1.1(b) (LexisNexis 2011).

72 *Id.* § 29-1-13-1.1(d).

73 *Id.* § 29-1-13-1.1(a).

74 *Id.* The statute does not define what "information" qualifies. *See id.* § 29-1-13-1.1.

75 IDAHO CODE ANN. § 15-3-715(28) (Supp. 2013); *see* OKLA. STAT. ANN. tit. 58, § 269 (West Supp. 2014).

76 IDAHO CODE ANN. § 15-3-715(28); *see* OKLA. STAT. ANN. tit. 58, § 269.

77 *See* IDAHO CODE ANN. § 15-3-715; OKLA. STAT. ANN. tit. 58, § 269.

78 OKLA. STAT. ANN. tit. 58, § 269.

79 The Idaho law lists this provision with other powers of the executor, such as depositing

social websites and e-mail providers are very reluctant to give out this type of information even with a court order. The actual effectiveness of Oklahoma's provision is therefore in question.<sup>80</sup>

The overall broad nature of the statutes is also of concern. It is clear that in order to comply with some express wishes of the decedent, it could be necessary to take control of and maintain the pages. However, considering the privacy interests of the decedents, these statutes seem to overstep. It is difficult to imagine a person (perhaps in their late teens or early twenties in these situations) who would feel comfortable with his or her family having complete access to his or her social media accounts. Therefore, while the statutes are a step in the right direction because they reach social media in addition to e-mail services, they are not the best solution to the problem.

#### IV. LEGAL SOLUTION

Current state legislation is not sufficient for a proper resolution of most claims. The policies and procedures that the websites themselves have transcribed are insufficient in a wide variety of ways. The court system has also been rather silent on this issue. Therefore, a solution is needed that will take the varying elements of the statutes that are proficient and eliminate those that are less helpful. The solution must further consider the interests that the websites themselves have in protecting their users. Finally, it must provide some degree of uniformity across the nation, so that a user in Tennessee gets the same treatment as a user in Michigan.<sup>81</sup>

In order to ensure that all the interests of the users, the websites, and the states are protected in a uniform manner, a federal statute would be the ultimate solution. Through this statute, Congress could ensure that all users are treated fairly and that the dominant privacy interests of decedents are protected. Further, Congress and the federal judiciary would have a better chance of enforcing orders dealing with a decedent's account, as opposed to a state court. In order to do this effectively, a number of issues must be considered: whether Congress has the authority to pass such a statute, what components would be necessary to achieve the goal of decedent-focused estate administration, and what components could be omitted.

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money into the bank on behalf of the estate, paying taxes, investing money, etc. IDAHO CODE ANN. § 15-3-715. Nearly all of the provisions included with it involve maintaining and growing the estate itself. *See id.* Given this, one interpretation of the Idaho statute might suggest that Idaho legislators had in mind that estate administrators should be free to act to protect and grow the estate, thus not requiring that administrators have court authorization to access online information.

80 As with the other statutes discussed, neither the Oklahoma nor Idaho provisions have been subject to any judicial interpretation.

81 Given the mass use of these sites on a national scale, uniformity is important to all social media users, especially considering the current disparate treatment.

*A. Congressional Jurisdiction for the Federal Statute*

The first challenge to this solution would likely be a challenge to Congress's power to pass a law that regulates a probate issue such as this. State law has traditionally controlled this area of the law. However, Congress has broad authority under the Commerce Clause of the United States Constitution, which allows it to regulate commerce "among the several states."<sup>82</sup> The Supreme Court has interpreted this to include three distinct categories in which Congress can regulate. Congress may regulate "channels of interstate commerce," "instrumentalities of interstate commerce," and "activities having a substantial relation to interstate commerce."<sup>83</sup> Congress has on several occasions exercised this power in the regulation of Internet activities.<sup>84</sup>

The Supreme Court has not directly addressed the issue presented: whether or not the Internet fits under the *Lopez* analysis although several federal circuits have. The Third Circuit has held that the Internet is clearly a channel of interstate commerce, finding in *United States v. MacEwan* that Congress's ability to pass child pornography laws "lies in its ability to regulate the channels and instrumentalities of interstate commerce."<sup>85</sup> Further, the Eleventh Circuit has found that "[t]he internet is an instrumentality of interstate commerce."<sup>86</sup> Under this logic, "Congress clearly has the power to regulate the Internet, as it does other instrumentalities and channels of interstate commerce."<sup>87</sup>

The Internet can fairly be classified as either a "channel" of interstate commerce or as an "instrumentality." It is a channel in that it is a way that commerce is propelled throughout the states, much like a roadway or waterway. Further, it could be classified as an "instrumentality," as many companies depend on the Internet to help them carry out their business. While it is fairly clear that this would be within the Commerce Clause domain, the Supreme Court has recently placed a strong emphasis on providing a "jurisdictional hook" in any federal legislation to establish that such legislation "is in pursuance of Congress'

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82 U.S. CONST. art. I, § 8, cl. 3.

83 *United States v. Lopez*, 514 U.S. 549, 558-59 (1995).

84 *See, e.g.*, 15 U.S.C. §§ 6551, 8402 (2012); 18 U.S.C. § 2252 (2012).

85 *United States v. MacEwan*, 445 F.3d 237, 245 (3d Cir. 2006).

86 *United States v. Hornaday*, 392 F.3d 1306, 1311 (11th Cir. 2004) (citing *United States v. Pipkins*, 378 F.3d 1281, 1295 (11th Cir. 2004); *United States v. Panfil*, 338 F.3d 1299, 1300 (11th Cir. 2003)).

87 *Id.* at 1311.

power to regulate interstate commerce.<sup>88</sup> Therefore, the social media statute should also contain such a hook to be sure of its constitutionality.<sup>89</sup>

The new federal statute should also be clear on the fact that it is intended to preempt and replace all state laws on the issue of access to and distribution of social media accounts after death. This is vital to the viability of this legislation because of the overarching goal of uniformity. The laws of Congress “shall be the supreme Law of the Land.”<sup>90</sup> However, state laws and federal statutes can work in the same subject area if Congress does not preempt the state law. Such a result could drastically undermine the effectiveness of the statute.

Congress can preempt state law in either of two ways: expressly through the language in the statute, or impliedly through the structure and purpose of the act.<sup>91</sup> When determining whether implied preemption is present, there is a strong tendency to give deference to state power. Therefore, the courts must find that it was the “clear and manifest purpose” of Congress to preempt the state law.<sup>92</sup> It should be clear both in the statute and in the committee reports that Congress intends to preempt the five state statutes currently in effect and any others that may exist at the time of enactment.<sup>93</sup>

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88 *United States v. Morrison*, 529 U.S. 598, 613 (2000). *Compare Morrison*, 529 U.S. at 613 (“Like the Gun-Free School Zones Act at issue in *Lopez*, § 13981 contains no jurisdictional element establishing that the federal cause of action is in pursuance of Congress’ power to regulate interstate commerce.”), and *Lopez*, 514 U.S. at 561–62 (explaining that the statute in question had no “jurisdictional element” that would ensure that the activity “affects interstate commerce”), with *Gonzales v. Raich*, 545 U.S. 1, 25–26 (2005) (“Unlike those at issue in *Lopez* and *Morrison*, the activities regulated by the CSA are quintessentially economic. . . . Prohibiting the intrastate possession or manufacture of an article of commerce is a rational (and commonly utilized) means of regulating commerce in that product.”).

89 The potential federal statute language would read: “Website/E-Mail provider’ is defined as any Internet-based company that is engaged in interstate commerce.” *See infra* Part IV.B.

90 U.S. CONST. art. VI, cl. 2.

91 *See Altria Group, Inc. v. Good*, 555 U.S. 70, 76 (2008) (citing *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977)).

92 *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

93 The new social media statute should be based on one of the most enforced express preemption provisions from the Fair Packaging and Labeling Act of 1966 15 U.S.C. § 1461 (2012). That provision provides:

It is hereby declared that it is the express intent of Congress to supersede any and all laws of the States or political subdivisions thereof insofar as they may now or hereafter provide for the labeling of the net quantity of contents of the package of any consumer commodity covered by this chapter which are less stringent than or require information different from the requirements of section 1453 of this title or regulations promulgated pursuant thereto.

*Id.* The potential federal statute language would read: “It is the intention of Congress to supersede and preempt any state or local political subdivision’s law in regards to the distribution of any and all accounts of the protected decedent on any social networking website, microblogging, or short message service website or any e-mail service website.” *See infra* Part IV.B.



*B. Substantive Policies of the Federal Statute*

With jurisdictional and preemption issues decided, the important, substantive side of any potential federal legislation must be considered. Considerations of all the parties involved and their interests must be the most important factors when deciding what parts to include in a federal bill on this issue. The states need to be assured of efficient probate action and the ability to get information they need for their procedures. The companies themselves have a strong interest in keeping information on their sites private and confidential. Finally, and most importantly, the interests of the decedent must be emphasized. In order to consider most effectively all of these interests, provisions from both the websites' procedures and the states' positive laws should be drawn on. With all the interests, jurisdictional, and preemption issues considered, a federal statute should mirror the following language:

- A.) It is the intention of Congress to supersede and preempt any state or local political subdivision's law in regards to the distribution of any and all accounts of the protected decedent on any social networking website, microblogging, or short message service website or any e-mail service website.
- B.) Upon receipt of notification that the user is deceased, the provider shall disable the account and maintain all electronically stored information for two years from the date of receipt.
- C.) If the user dies intestate:
  - 1.) The stored information shall be released to the administrator of the estate if:
    - i. The information is vital to probating the estate and/or an ongoing criminal investigation and,
    - ii. The provider receives an order of the court in writing to release the information.
  - 2.) Upon passing of two years' time, the provider shall destroy all information from or relating to the account.
- D.) If the user dies testate:
  - 1.) Upon written request from the administrator of the estate the provider shall comply with decedent's will.
- E.) A written request made to the website(s) under any provision of this statute shall be sent by the administrator or executor of the estate and be accompanied by a copy of

the death certificate and a certified copy of the certificate of appointment as executor of administrator.

F.) “Website/E–Mail provider” is defined as any Internet based company that is engaged in interstate commerce.

G.) Any Website/E–Mail provider, acting in good faith compliance with this law or order of a court pursuant to this law, will be deemed to be exempt from any civil liability.

The first component that must be included is language that ensures that the express wishes of the decedent are honored. Ultimately, the goal of all probate procedure is the distribution of an estate in accordance with the last wishes of the decedent. The focus of the new federal statute should remain on the situations in which the decedent has *not* left express wishes. This should be the case whether the decedent desired the account to be deleted, memorialized, or continued by a family member.

In order to consider the interests of the sites themselves, the entire statute should shield the websites from any potential liability that could arise from the disclosure of the information. A few of the state statutes provide some legal shield for the companies: Rhode Island forces the family to indemnify the website,<sup>94</sup> and Indiana requires disclosure only to the extent such disclosure is lawful.<sup>95</sup> To ensure that compliance is as efficient and forthcoming as possible from the websites, similar provisions should be included in this federal proposal.<sup>96</sup> Without the fear of possible litigation, the websites are more likely to comply, which furthers the interest of the state.

Furthermore, when dealing with the express wishes of the decedent, it is important to consider the states’ interest in obtaining information from these accounts. In the scenario in which the decedent has instructed that his online accounts be destroyed, it is possible such accounts contain valuable information that is important to either a criminal trial or civil litigation.<sup>97</sup> In the Indiana statute, a provider cannot destroy or dispose of electronically stored documents for two years after receiving a request or order.<sup>98</sup> Two years would ensure that any pending litigation regarding information on the account would have time to work its way through the court system. This serves the interest of the state,

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<sup>94</sup> See R.I. GEN. LAWS § 33–27–3(2) (2011).

<sup>95</sup> See IND. CODE ANN. § 29–1–13–1.1(d) (LexisNexis 2011).

<sup>96</sup> The potential federal statute language would read: “Any website/e–mail provider, acting in good faith compliance with this law or order of a court pursuant to this law, will be deemed to be exempt from any civil liability.”

<sup>97</sup> In fact, that was the issue the Connecticut brief, discussed above, regarding an administrator attempting to obtain information from the Gmail account in order to probate the estate. See Memorandum of Law by John E. Meerbergen, *supra* note 66, at [pincite].

<sup>98</sup> IND. CODE ANN. § 29–1–13–1.1.

the service, and the estate; therefore, it should be included in both situations in which the decedent's wishes were expressed, and when the decedent was silent as to his or her wishes.<sup>99</sup>

It is important to also indicate who may dispose of the account or make the request to the website and what would be required to carry out the decedent's wishes. For the entirety of the statute, the administrator of the estate should be the person who is designated to enable the statute's provisions. This ensures that the express wishes of the decedent are carried out. More importantly, by designating the administrator as the sole representative under the statute, the state is ensured that a capable and effective person is representing the estate. An administrator is normally court approved and is subject to probate court challenge if their duties are not carried out effectively. In fact, all five statutes enacted allow only the administrator to have access to the provisions under the statute.<sup>100</sup> The decedent is further protected by a personal representative requirement in that it ensures that someone acting out of spite, fraud, or any other motive will be unable to alter, access, or delete the decedent's accounts.<sup>101</sup>

It seems however, that although Gmail and Twitter require the person accessing the information to be the authorized representative of the estate, other websites, like Facebook, may have little interest in such a rigid requirement.<sup>102</sup> This could be an attempt on the websites' part to avoid entanglements with the court system, or general interest in speeding up the process of complying with the decedent's wishes. Such a provision, combined with an indemnity provision and the requirement that the person provide proof (a will or other official court document) that he or she is the personal representative of the estate, would not be overly hurtful to the websites' interests.<sup>103</sup>

The breadth of the statute is very important as well. With the number of social media sites growing, and subsequently the amount of users increasing,

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99 The potential federal statute language would read: "Upon receipt of notification that the user is deceased, the website(s) shall maintain the account and all electronically stored information for two years from the date of receipt."

100 CONN. GEN. STAT. ANN. § 45a-334a (West Supp. 2013); IDAHO CODE ANN. § 15-3-715(28) (Supp. 2013); IND. CODE ANN. § 29-1-13-1.1(b); OKLA. STAT. ANN. tit. 58, § 269 (West Supp. 2014); R.I. GEN. LAWS § 33-27-3 (2011).

101 *Contacting Twitter About a Deceased User*, TWITTER HELP CENTER, *supra* note 13.

102 Compare *Contacting Twitter About a Deceased User*, TWITTER HELP CENTER, *supra* note 13 (stating that only a person authorized to act on behalf of estate or with a verified family member to have an account deactivated), and *Accessing a Deceased Person's Mail*, GMAIL HELP, *supra* note 5 (stating that in rare cases Gmail may be able to provide contents to authorized representative), with *Special Request for a Deceased Person's Account*, FACEBOOK, *supra* note 39 (requiring that requestor to be either an immediate family member or executor for account removal or special requests); and *Memorialization Request*, FACEBOOK, *supra* note 35 (merely asking for requestor's relationship to deceased for account memorialization).

103 The potential federal statute language would read: "A written request under any provision of this statute made to the website(s) shall be sent by the administrator or executor of the estate and be accompanied by a copy of the death certificate and a certified copy of the certificate of appointment as executor of administrator."

it is vital that the statute cover as many websites as possible to ensure that the interests are adequately covered. Two of the state statutes analyzed above, Connecticut and Rhode Island, only reach e-mail providers.<sup>104</sup> This coverage is not broad enough to adequately cover all social media interests that the decedent could have online. Indiana's law refers to "any person who electronically stores the documents or information of another person."<sup>105</sup> This is a broad statement of the sites and persons covered by the statute but it might be too specific for a federal statute's focus. Some sites may be able to argue that they do not store any information and therefore should not be brought into the scope of the statute under that language. Therefore, the federal statute should contain language similar to that contained in the statutes from Oklahoma and Idaho that are more far-reaching and cover "any" site.<sup>106</sup> This will ensure that all interests of every user of any website are clearly covered.<sup>107</sup>

This leaves the intestacy provisions of the statute. These are far and away the most important of the provisions in the legislation, as this language is what directly deals with the interests of an intestate decedent. The first part of the statute that deals with this is the language that requires the information to be released only if it is vital to probating the estate or an ongoing criminal investigation and the request is accompanied by a court order. This is contrary to the websites' policies in that they will, in some situations other than for probate or criminal investigation purposes, release information to the representative of the estate.<sup>108</sup> Further, this is contrary to four of the five state statutes that have been passed, which allow administrators or representatives access to decedents' online information regardless of the reason.<sup>109</sup> However, it is nearly the same language that is contained in the Rhode Island Statute but the Rhode Island provision does not require probate or a criminal investigation for release.<sup>110</sup>

The overarching interest that must be protected in this statutory scheme is the ultimate privacy of the decedent and what their wishes would have been. While this language is contrary to the policies of the states and of the websites themselves, it ultimately ensures that the privacy of the decedent is secured by only allowing the information to be released in extreme circumstances. Further, through the court order requirement, the judge can adjudicate these

104 See CONN. GEN. STAT. ANN. § 45a-334a; R.I. GEN. LAWS § 33-27-3.

105 IND. CODE ANN. § 29-1-13-1.1(a).

106 See IDAHO CODE ANN. § 15-3-715(28) (Supp. 2013); OKLA. STAT. ANN. tit. 58, § 269 (West Supp. 2014).

107 The potential federal statute language would read: "on any social networking website, microblogging, or short message service website or any e-mail service website."

108 *Contacting Twitter About a Deceased User*, TWITTER HELP CENTER, *supra* note 13; *What Happens When a Deceased Person's Account Is Memorialized?*, FACEBOOK HELP CENTER, *supra* note 33.

109 See CONN. GEN. STAT. ANN. § 45a-334a; IDAHO CODE ANN. § 15-3-715(28); IND. CODE ANN. § 29-1-13-1.1(b); OKLA. STAT. ANN. tit. 58, § 269.

110 R.I. GEN. LAWS § 33-27-3 (2011).

any disputes and ensure that the privacy and probable wishes of the deceased are protected.

The second part of the intestacy provisions, and possibly the most essential feature of the statute, is the requirement that after the two years have passed the provider must destroy all the information from or relating to the account. This language is not found in any of the state statutes or in the websites' policies, except for slightly similar language in the Indiana statute.<sup>111</sup> This provision is essential to the operation of the statute because it allows social media information to be destroyed upon death, a policy which is likely supported by most social media users today. In this manner, it furthers the substantive interests of the decedent in privacy and in their likely wishes.

Moreover, the provision ensures the overarching interest of uniformity for both the estate and the websites. By requiring that all information be destroyed from the account after two years every account will be treated the same way. The websites are benefitted in that they will know the law and how it will apply across the board. They will not have to concern themselves with which state's law requires disclosure and which does not; all state laws will be treated uniformly. Furthermore, the interests of the decedent in uniformity are clearly served, as it ensures that each user will be treated the same, regardless of the state they live in.

#### CONCLUSION

The social media revolution has changed the lives of millions of people across the country. From romantic relationships to bank statements and from job offers to failed connections, entire lives are contained on these accounts. The sheer amount of information that is unknowingly entrusted to these website providers brings a variety of issues and personal interests to the forefront of legal debate. Proactive measures must be undertaken to ensure that these rights are better protected in any situation, especially in case of the death of the user.

Federal legislation aimed at dealing with the issue head on is the best solution to the problem. It will provide security to all the parties involved, allow for uniform results across state lines, and offer a measure of enforceability that state statutes have struggled with. By providing that the accounts be discontinued and removed from the servers, the confidentiality that every user expects is guaranteed. Congressional action that dictates that users' express wishes are carried out and protects the interests of those that die intestate is necessary in this ever-expanding field. It may not be the most popular solution among the states or the websites themselves, but it is certain to be favored by the millions of social media users.

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<sup>111</sup> Its two-year language is directed towards the preservation of the information for at least two years. IND. CODE ANN. § 29-1-13-1.1(c).