

INTER(DRAG)NET

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Two recent lawsuits over privacy issues on the internet are helping shape an emerging area of the law called cyberlaw. One lawsuit alleges there's too much privacy, the other claims there's not enough.

Lance Corporal Justin Ellsworth was a U.S. Marine killed on November 13, 2004, in the line of duty in Iraq after inspecting a bomb. Being on the other side of the world than his loved ones in Detroit, Justin communicated with family members and friends using e-mail. On numerous occasions, Justin informed his father, John, that his e-mails kept him going and he treasured them dearly.

After Justin was killed, John wanted to make a scrapbook of these e-mails, including hundreds of letters of encouragement from complete strangers. When John contacted Yahoo, Inc., to gain access to his son's account because he didn't know Justin's password, Yahoo responded, "Negative."

Yahoo's policy states that upon the death of an account holder, the account terminates. Therefore, Yahoo informed John that they would only grant him access to Justin's account after he obtained a court order. Accordingly, John had no choice but to petition the Oakland County probate court, which ordered Yahoo to grant him access to Justin's account.

Because of the relative novelty of widespread use of the internet and e-mail, there are no hard and fast rules for transferring or granting access to a deceased person's e-mail account. Because of its dedication to confidentiality, Yahoo errs on the side of caution and only grants access after receiving a court order.

Several other internet providers, such as America Online, Inc., EarthLink, Inc., and Hotmail, all have less restrictive policies in place that allow for the transfer of a deceased member's account upon receiving proof of death and the requester's identity as being the next of kin.

Hotmail is owned by Microsoft Corp., which, coincidentally, filed 117 lawsuits against unknown internet site operators alleging engaging in scams to obtain personal and financial information from unsuspecting consumers.

Commonly called 'phishing', these internet site operators pose as legitimate businesses, like banks or online merchants like Amazon.com or ebay, and send out millions of e-mails requesting recipients to update their account information. This information, typically including personal information, such as social security numbers, bank account numbers, etc., ends up being sent to the scam artists' websites that are designed to look legitimate.

Microsoft filed the suits against the unknown scam artists, commonly called 'John Doe' suits, in the U.S. District Court in the State of Washington. Once filed, Microsoft can now investigate these site operators during the discovery phase of the suit in an effort to identify the perpetrators. Microsoft received support in its efforts from the Federal Trade Commission and the National Consumers League.

In an ironic twist on the Ellsworth case, one of the most prevalent phishing scams involves site operators sending out e-mail messages informing recipients that a long lost relative passed away and that they stand to inherit part of that relative's estate. To help distribute the inheritance, the scam artist asks the recipient to supply bank account information so the funds can be wired.

So to summarize, if you want your family to be able to read your emails asking to obtain your personal information to perpetuate an internet scam, make sure they know your account password before you die.

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