

## **Inheritance Vs Company Policy a Case study**

### **Why does a deceased soldier's email thoughts become the property of a company?**

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#### Table of Contents:

Abstract and Key Words_____	02
Introduction and Legal Implications _____	03
Lack of federal laws regulating Internet_____	04
Electronic Communications Privacy Act_____	05
Privacy rights in the digital age_____	07
Social and Ethical issues in the Information Age_____	08
Yahoo policy Vs American On Line (AOL) and EarthLink_____	09
Yahoo's revenue report_____	11
Conclusion_____	12
Reference / Acknowledgement _____	13

## *Abstract*

The study of ethical issues concerning computers and networking has raised a lot of concerns in the United States and abroad. Many issues such as privacy, children's safety, morality of intellectual property, protection for software, open-source software, identity theft, scam, Spam, and email have been the subject of many controversies and news headlines. In an article titled, "Dead Marine's Kin Plead for Email" posted on Tuesday, December 21, 2004 @ 15:29:31 EST from Veterans Today: <http://www.veteranstoday.com/printout198.html>. The question of privacy has once again arisen. In this paper, I am going to analyze the issues of privacy, legal, social, and ethical issues surrounding Lance Cpl. Justin M. Ellsworth's case.

## **Key words**

*Global Culture, Ethical, policy, Privacy, Integrity, Legal, Computers, computer networks, Internet, data, software,*

*Email:* With multitasking workstations, mail can be delivered and announced while the user is working in an application. Otherwise, mail is sent to a simulated mailbox in the network server or host computer, which must be interrogated. [2]

## **Introduction**

On a personal level, I sympathize with the parents of Lance Cpl. Justin M. Ellsworth. Ellsworth was a young man with a bright future that was tragically killed in Iraq while serving the United States Marine Corps. It is very important to address and analyze this issue in a legal, ethical and social aspect. I will answer questions such as: Is this information still available? Is it ethical for Yahoo to give the password to Justin's family despite its policy, which calls for erasing all accounts that are inactive for 90 days?

What are the social and ethical implications regarding this case? Do US laws protect Justin's privacy? I will compare Yahoo's email policy against the policies of America On Line

(AOL), EarthLink, and Microsoft Hotmail. I will also determine whether or not Justin's confidentiality and integrity regarding his privacy, even after death, is violated.

### **Legal Implications**

Yahoo must weigh the consequence of its action before giving up Justin's record to his parents. Some people may say that it is not a big deal; However, they may think otherwise if it happened to them. Again we do not know what can be offensive for Justin's parents. As parents they can forgive him, I think they are looking for something that can comfort them. They are melancholic, they missed their son." I want to be able to remember him in his words. I know he thought he was doing what he needed to do. I want to have that for the future;" said John Ellsworth, Justin's father." It's the last thing I have of my son [3]. However, we have to consider the legal, ethical and social issues of this story too. Let's concentrate on the legal part first. Is it legal for Yahoo Internet to give the emails information to Justin's parents? Yahoo has provided us with powerful way to communicate and interact through the Internet. Today, Yahoo reveals itself as one of the top companies that offer free email accounts to millions of people all over the world. The way they proceed in the above-mentioned situation, will set a precedent and have far reaching implications on Internet consumer policy.

The challenges are numerous. Yahoo must choose between following the wishes of Justin's parents and upholding corporate policy which guards Justin's privacy even in death. Yahoo's main goal is remain loyal to their subscribers. Though they may be personally sympathetic, they will not sacrifice their professional and ethical duties to execute their contract with Justin. Other subscribers would be equally assured of Yahoo's commitment to their privacy in similar situations.

## **Lack of federal laws regulating Internet**

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. " [4]

Yahoo can defend its position based on the 4<sup>th</sup> amendment to the US Constitution.

It would be considered an illegal and unreasonable search against Justin's "papers and effects" if they were to remit his emails. During the time the founding fathers were writing the fourth amendment, the Internet did not exist. If they were writing the constitution today they would probably have included the Internet on it.

The language of the provision, which became the Fourth Amendment, underwent some modest changes on its passage through the Congress, and it is possible that the changes reflected more than a modest significance in the interpretation of the relationship of the two clauses. Madison's introduced version provided "The rights to be secured in their persons, their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized." As reported from committee, with an inadvertent omission corrected on the floor, the section was almost identical to the introduced version, and the House defeated a motion to substitute "and no warrant shall issue" for "by warrants issuing" in the committee draft. In some fashion, the rejected amendment was inserted in the language before passage by the House and is the language of the ratified constitutional provision. [5]

As noted above, the noteworthy disputes over search and seizure in England and the colonies revolved around the character of warrants. There were, however, lawful warrant-less searches. These were primarily searches incident to arrest and they apparently gave no rise to any disputes.

The question arises whether the Fourth Amendment's two clauses must be read together or independently. If read together, it would mean that the only searches and seizures

that are "reasonable" are those which meet the requirements of the second clause, that is, are pursuant to warrants issued under the prescribed safeguards. If the two clauses are considered independent, "reasonable" searches without warrant are acceptable in certain situations.

This issue has divided courts for some time, it has seen several reversals of precedents, and it is important for the resolution of many cases. It is a dispute, which has run consistently throughout cases involving the scope of the right to search -- incident to arrest. The right to search an arrestee without a warrant is unquestioned. The range of a search is still debatable. The scope of a search involves areas within and without the control of the arrestee. Yahoo's management may argue that it does not go this far regarding Justin's case.

### **Electronic Communications Privacy Act**

The Electronic Communications Privacy Act of 1986 is a collection of statutes that regulate the interception of wire, electronic, and oral communications. These statutes work in conjunction with the Fourth Amendment of the U.S. Constitution, which protects individuals from unlawful search and seizure. [6]

In the federal sphere, only the Electronic Communications Privacy Act of 1986 (ECPA) directly prohibits the interception of e-mail transmissions.

The ECPA prohibits the interception by unauthorized individuals or individuals working for a government entity, acting without a proper warrant.

It prevents corporate competitors from accessing unauthorized information. However, while there is no specific prohibition in the ECPA for an employer to monitor the e-mail of employees, the ECPA does not specifically exempt employers.

The ECPA has several exceptions to the application of the prohibition of interception of electronic communications. The three most relevant to the workplace are (a) where one party consents, (b) where the provider of the communication service can monitor communications, and (c) where the monitoring is done in the ordinary course of business.

The first exception, consent, can be implied or actual. Several courts have placed a fairly high standard for establishing implied consent. For example one court held that "knowledge of the capability of monitoring alone cannot be considered implied consent." Accordingly, for an employer to ensure the presence of actual consent, it should prepare, with advice of counsel, a carefully worded e-mail Policy Statement that explains the scope of employer monitoring. The employees should sign this Policy Statement. For example, if the policy statement states that personal communications will be monitored only to determine whether there is business content in the communications, then this would probably not amount to consent to review the full text. [7] As a marine, Justin worked for the government of The United State of America; therefore he surely signed a policy statement similar to the Electronic Communications Privacy Act. Also, as a Yahoo's subscriber, he accepted to be bounded to Yahoo's policy.

Additionally, notice that communications might be monitored may have a significantly different legal effect than a notice stating that communications will be monitored.

### **Privacy rights in the digital age**

Part of the regulations represented in the U.S. legal code specify the responsibility of common carriers (organization that process or move data for hire) to protect the confidentiality of customer information, including that of other carriers. The privacy of Customer Information Section of the common carrier regulation specifies that any proprietary information shall be used explicitly for providing services, and not for any marketing purpose. It also stipulates that carriers cannot disclose this information except when necessary

to provide their services. The only other exception is when a customer requests the disclosure of information, and then the disclosure is restricted to that customer's information only. [8]

With the rise of technology there arose a fear of surveillance. George Orwell's book *1984* was a science fiction novel set in a world of total government control with no personal privacy. The year 1984 passed us by without noticeable "big brother" control, and the national concern over espionage diminished with the collapse of the cold war Soviet Union.

Today surveillance only requires a personal computer. Technology has made the power to monitor others widely available to governments, private enterprise, and individuals.

An employee, by the very nature of the employment relationship, must be subject to some level of monitoring by the employer. However, this monitoring has limits. Courts have held that it is an invasion of privacy for an employer to monitor employee telephone conversions. Similarly, mail carried through the U.S. postal service is granted a high level of protection. The same guarantee should be applied for electronic mail as well.

However, much employee communication now takes place over private and public networks via e-mail, or voice mail. These forms of communication are very different from telephone calls and letters. For example, after transmission and receipt, these communications are stored for an indefinite period of time on equipment under the exclusive control of the employer. Additionally, these communications can be examined without the knowledge of the communicators. As is often the case, the law has difficulty keeping pace with the issues raised by fast changing technology.

We do not have any confirmation that as a marine, the government was not sniffing in his e-mail account. Is this a violation of his privacy?

### **Social and Ethical issues in the Information Age**

In general, individuals elect to trade some aspects of personal freedom for social order. As Jean-Jacques Rousseau explains in *The Social Contract or Principles Of Political Right* (1762). [9]

Ethical issues: intellectual property rights, electronic monitoring of employees, data utilization, and morality in information systems usage.

Being an employee of the United States' Government, Justin signed a contract by joining the Marine Corps. He's bound to this contract, so they may use his personal items for national security reasons. However, it would be unethical for Yahoo to release the data regarding his e-mail's account.

Cultural issues: assimilation of emerging technologies, developing trust, power asymmetry, policy implementation, and social environments.

Cultural differences can make it difficult to determine what is and is not ethical especially when considering the use of computers. Studies on ethics and computer use reveal that individuals of different nationalities have different perspectives; difficulties arise when one nationality's ethical behavior conflicts with the ethics of another national group. For example, to Western cultures, many of the ways in which Asian cultures use computer technology is software piracy. [10]

From my cultural background perspective, a parent can access whatever his son or daughter owns even when alive. In some other culture parents dictate most of the time how the children should act and what they could have.

Human interaction issues: recruitment and detainment of technical personnel, motivation, leadership, social presence, and organizational champions of information systems.

As professionals, Yahoo's management team must do their job even though they may be labeled inhuman. Sometimes it happens!

Relationship issues: development partnerships, virtual teams, group cohesiveness, collaboration, group facilitation, networking, and buyer-supplier linkages.

It is Justin's parents quest to see the last thoughts of their son.

Security issues: misuse of data, virus/worm creation, Internet abuse, and data protection, fraud with systems use, and standards and regulations.

The question is: does Yahoo abuse its power by not providing the email information? As a member of US marine the government might already had access to the emails and erased some they think might harm national security if it exists. [11]

### **Yahoo policy Vs American On Line (AOL) and EarthLink**

“The Company’s terms of service require the company not to disclose private email communications for its users. Yahoo will turn over the account to family members only after they go through the courts to verify their identity and relationship with the deceased. After 90 days of inactivity, Yahoo deletes the account. “

Yahoo spokeswoman Mary Osako said: "Emotionally, this is very difficult for all involved. However, there are important reasons why we feel it is important to uphold the preferences that are part of the agreement we have with our users regarding their privacy. What all of us are looking for is a path that upholds individual privacy and also fully respects a family's request."

John Ellsworth's battle against Yahoo raises the issue of whether companies should depart from their policies under certain circumstances. Some e-mail providers, such as America Online, allow next-of-kin to access email accounts of the deceased by submitting documents proving the relationship and by faxing a copy of the death certificate. AOL does not require family members to go through the courts.

EarthLink also has policies in place for special circumstances involving the death of a family member similar to AOL's.

The Marine Corps. has a system of returning personal items to families and next-of-kin. The families receive the soldier's possessions at the time of death, as well as items in storage at his or her base in the United States. Items range from cars to crates of small personal possessions left behind before shipping out. All letters destined for mail are sent to their recipients, and received mail, including opened letters, are sent to their families.

Marine spokesman Brian Driver said: "Each Marine gets a crate or large boxes to pack stuff in. Whatever's in there gets sent back. Period."

Because infantry on the front lines do not get a Marine e-mail account, many soldiers turn to the couple hundred Internet cafes set up around Iraq and send correspondence through web mail providers such as Yahoo, AOL and Microsoft Hotmail.

Only officers outside the front lines get official Marine email accounts used for interoffice communications. If the officer is killed, the Marines delete the account after retrieving messages that could be important for unit operations, national security, or other official priorities.

E-mail has become a source of information about soldiers on the front lines. Images of the war and correspondences to loved ones have helped paint a picture of life in Iraq and Afghanistan, while helping families stay in touch with loved ones serving abroad.

Soldiers killed in action may also have important information in their email accounts to help families settle personal matters, such as closing out accounts or other housekeeping matters.

Ray Everett-Church, a legal expert on privacy issues, said companies should adhere to strong privacy policies, up to a point. In certain cases such as this, email providers should make exceptions, he said. "Any well-run organization should be capable of designing policies that adapt to unique and difficult circumstances," Everett-Church said. "In this case, I think that while it's good to have a consistent policy, it's not good to slavishly follow it in all circumstances, particularly one as sensitive as this." [12]

Yahoo is one of the most profitable corporations in America. The following data evidences this:

All revenue amounts are part of Yahoo's \$758 million for the January-March 2004 quarter, which includes TAC:

**Marketing services:** Yahoo's biggest revenue generator--composed of its branded advertising and paid search businesses--reported \$635 million in revenue, \$10 million stemming from a one-time gain from the expiration of a third-party loyalty program. That's up from \$545 million from the fourth quarter. Executives maintained that online advertising, both branded

and search, will grow between 30 percent and 35 percent in 2004. That's less than the 40 percent in 2003, but greater than the overall Internet industry's growth.

"Our general belief is there is increased acceptance of the medium overall by advertisers, and we think our results reflect an ability to gain share even against increased opportunities," Yahoo's Chief Operating Officer Dan Rosensweig said in an interview. "The whole category is growing and we're growing faster than the category."

At the end of the quarter, Yahoo had \$2.79 billion in cash, cash equivalents and investments.  
[13]

### Conclusion

To conclude, there is nothing that can replace the emptiness in the Ellsworth's hearts after the death of their son Justin. Yahoo should not let emotions guide it or drive its policy. This information is very confidential and private. As a result, Yahoo Internet has the responsibility to adhere to their contractual agreements regarding confidentiality and integrity when managing consumers' accounts. If in the future, Yahoo has to face the "big brother" (US government) in a similar scenario, I hope they will stay strong in their resolve. If I were in the management team of Yahoo, I would stick to the law and principles that all users signed and agreed to when they opened their accounts.

To prevent a case like this, I would suggest that every user delegate someone on his last will (a parent, family or a friend) to access his or her email account in case of sudden death.

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### Reference and Bibliography

1. Merriam-Webster. "Ethical, Policy, Privacy, Integrity, Legal, Available, Confidential, Haiti" Merriam-Webster Online.[Cited 12 February 2005]. Available from the World Wide Web <<http://www.m-w.com>>.

2. Alan Freedman. *The Computer Glossary: The Complete Illustrated Dictionary*, 9<sup>th</sup> Edition. AMACOM, American Management Association. N.Y. Page 131, 2001. ISBN 0-8144-7094-7
3. Veterans Today Online. [Cited 18 February 2005]. Available from the World Wide Web <<http://www.veteranstoday.com/printout198.html>>
4. Amendments to the Constitution. [Cited 19 February 2005]. Available from the World Wide Web <<http://www.house.gov/Constitution/Amend.html>>
5. History and Scope of the amendments. [Cited 19 February 2005]. Available from the World Wide Web <<http://caselaw.lp.findlaw.com/data/constitution/amendment04/01.html#2>>
6. Michael E. Whitman and Herbert J. Mattord. *Principal of Information Security*. 2<sup>nd</sup> Edition. Boston, MA. Thomson Course Technology. 2005, page 78.
7. Second of a series discussing privacy rights in the digital age. [Cited 10 February 2005]. Available from the World Wide Web <<http://www.lectlaw.com/files/emp41.htm>>
8. Legal Information Institute. *Privacy of Customer Information*, title 47, sec. 222. . [Cited 8 February 2005]. Available from the World Wide Web <<http://www4.law.cornell.edu/uscode/47/222.html>>
9. John B. Noone. *Rousseau's Social Contract: A Conceptual Analysis* Athens: University of Georgia Press, 1981
10. Inquirer. "Software Piracy in Asia Exposed." *The Inquirer Online*. 27 January 2002. [Cited 13 February 2005]. Available from the World Wide Web <<http://www.theinquirer.net/piracy1.htm>>
11. ITMGT-8: Social Issues in Information Systems [Cited 8 February 2005]. Available from the World Wide Web <[http://galletta.business.pitt.edu/amcis2003/05ITMGT8\\_SocialIssues.htm](http://galletta.business.pitt.edu/amcis2003/05ITMGT8_SocialIssues.htm)>
12. Ariana Eunjung Cha, Families of military dead fight for digital memories. *The Washington Post*. Saturday, February 05, 2005. [Cited 12 February 2005] Available from the World Wide Web : <[http://seattletimes.nwsourc.com/html/nationworld/2002171721\\_online05.html](http://seattletimes.nwsourc.com/html/nationworld/2002171721_online05.html)>
13. Jim Hu, Yahoo beats Street, splits stock. *CNET News.com*, April 7<sup>th</sup>, 2004Yahoo! [Cited 12 February 2005] Available from the World Wide Web : <[http://news.com.com/Yahoo+beats+Street%2C+splits+stock/2100-1038\\_35186908.html?tag=nl](http://news.com.com/Yahoo+beats+Street%2C+splits+stock/2100-1038_35186908.html?tag=nl)>