

**ULC DRAFTING COMMITTEE ON SOCIAL MEDIA PRIVACY  
MINUTES FOR THE CONFERENCE CALL OF FEBRUARY 5, 2015**

**Participating on the Call**

*Commissioners:* Sam Thumma (Chair), Jerry Bassett, Nicole Bordonaro, Diane Boyer-Vine, Steven Chow, Brian Flowers, Lisa Jacobs, Peter Langrock, James Mann, Steve Wilborn

*Reporter:* Dennis Hirsch

*Division E Chair Member:* Tom Buiteweg

*Reporter:* Dennis Hirsch

*ABA Advisor:* Fritz Langrock

*Observers:* Timothy Dawson, Jose Dimas, Rodney Kimura, David Leifer, Megan Michiels, Beth Milito, Valerie Mirko, Carol Stripsky, Carl Szabo, John Walda (others may have joined after the roll was taken)

*ULC Staff:* John Sebert, Liza Karsai, Terry Morrow

**Introduction**

Chair Thumma convened the call, welcoming all participants. Chair Thumma noted ULC staffing changes. He requested that changes to the November 2014 meeting minutes be submitted by February 9 [note: none were submitted].

**Meeting Scheduling**

The Drafting Committee will meet in Washington, D.C. on February 27-28 and March 1. The second meeting will be on April 17-18 and the morning of April 19. The ULC Annual Meeting is in July in Williamsburg, VA. The committee will present its draft on Wednesday, July 19 for 90 minutes [this date is tentative].

**Statutory Structure and Variables**

Dennis Hirsch introduced this document, noting that its structure and set of variables are not definitive at this time. His role, he explained, is to tee up issues and provide information and recommendations as appropriate.

Three categories of issues were introduced and discussion followed:

*What is protected?*

The definition of 'social media privacy' was considered. The Wikipedia definition was offered to start the discussion, including consideration of whether email and/or texting would be included. Dennis Hirsch discussed his research of state statutes, which indicates three concepts: (1) social networking accounts; (2) social media accounts; and (3) online accounts.

Discussion turned to whether the traditional concept of a 'user' was changing for the purposes of social media. One participant cautioned against a model or definition that might be obsolete soon and introduced the concept of a *personal internet account*. Later, some concern was expressed that this concept may go beyond 'social media.'

Broader questions—including 'what are we trying to protect,' 'what privacy are we trying to protect,' and 'what are the limits'---were considered. Dennis Hirsch offered for consideration two concepts related to theories of privacy: (1) the different roles people play; and (2) the safety valve mechanism. One participant distinguished forced access to a social media account to a request to access a social media account. Another focused upon

'compelled exposure' as an operative concept. Another person offered that 'behind the wall' may be a helpful view to adopt. Another person suggested that a focus upon the *audience* might be fruitful.

Concern was expressed regarding the inclusion of email within the definition of social media.

#### Who is protected?

The charge states that employees/prospective employees and students/prospective students constitute the scope of those to be protected.

The scope of potential coverage was discussed. For example, the call considered whether 'prospective employees' would include applicants and/or recruits. The distinctions among full-time, part-time, and independent contractor status were considered.

Discussion turned to job fairs, 'pre-applicants,' and prospective employees. A question was raised whether employment discrimination law may have useful guidance.

Similar questions were raised concerning students and prospective students (who is included in each class). One participant suggested that *capacity* might be a significant concept to consider. Another asked about athletic recruiting.

One participant requested that a stable of examples of problems be developed to help guide discussion. The function of the Prefatory Note and Comments followed. Dennis Hirsch encouraged the committee members to submit real-world problems to consider in the drafting process.

#### Who is regulated?

Dennis Hirsch opened by noting that the variables identified in the document are not recommendations of the approach that the committee *should* take. Among the questions to consider is whether public, private, and nonprofit entities should be treated in the same way. Similarly, one person asked whether public and private educational institutions would be treated the same.

Avoidance of criminal sanctions in ULC acts was discussed.

#### **Timing**

Chair Thumma stated that a draft act should be created well before the ULC Annual Meeting in July. John Sebert noted that a draft would be needed by the last week of May in order to be ready for the Annual Meeting.

A draft would not be distributed ahead of the February Drafting Committee meeting; Dennis Hirsch plans to have material to circulate for the committee's consideration.

Chair Thumma concluded the conference call by thanking all participants and restating the meeting dates.