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July 5, 2011

Commissioner Harriet Lansing
Chair, Committee on Scope and Program
Uniform Law Commission
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602

Re: Supplement to:
Project Proposal: Fiduciary Powers and Authority to Access Online Accounts
and Digital Property During Incapacity and After Death

Dear Harriet:

This is a Supplement to our May 31, 2011, Project Proposal for a uniform law to grant fiduciaries specific powers and authority to gain access to an individual's online accounts and digital property during incapacity and after death. This Supplement responds to two anticipated questions related to this Project Proposal.

1. Which ULC Acts and other statutes are related to this Project Proposal?

The Uniform Probate Code ("UPC") is directly related to this Project Proposal. Currently, twenty jurisdictions have enacted the UPC or substantially similar laws. The UPC primarily deals with the administration of a deceased person's estate. Portions of the UPC also deal with the protection of a living person under a disability (guardianship and conservatorship), agents acting under a durable power of attorney and nonprobate transfers on death. However, not all of the jurisdictions enacting the UPC have enacted the guardianship and conservatorship portion, the durable power of attorney portion or the nonprobate transfers on death portion.

The Uniform Guardianship and Protective Proceedings Act is a separate, free-standing version of Article V, Parts 1-4, of the UPC that deals with guardianship and conservatorship proceedings. Currently, nineteen jurisdictions have enacted the Uniform Guardianship and Protective Proceedings Act, and two of those jurisdictions have not enacted the UPC.

The 1979/1987 Uniform Durable Power of Attorney Act ("1979/1987 Act") is a separate, free-standing version of Article V, Part 5, of the UPC. The 1979/1987 Act has been replaced with the 2006 Uniform Power of Attorney Act ("2006 Act"). Currently, forty-three jurisdictions have enacted the 1979/1987 Act, the 2006 Act or substantially similar laws. Eleven of those forty-three jurisdictions have enacted the 2006 Act. Twenty-three of those forty-three jurisdictions have not enacted the UPC.

The Uniform Nonprobate Transfers on Death Act is a separate, free-standing version of Article VI, Parts 1-3, of the UPC. Currently, eleven jurisdictions have enacted the Uniform Nonprobate Transfers on Death Act or substantially similar laws, and two of those jurisdictions have not enacted the UPC.

The Uniform Trust Code (“UTC”) is also related to this Project Proposal, because the trustee of a revocable trust or of an irrevocable trust may hold an individual’s online accounts, intellectual property or other digital property during the individual’s incapacity and after the individual’s death. Currently, twenty-four jurisdictions have enacted the UTC or substantially similar laws, and three additional jurisdictions introduced the UTC in 2011.

In addition, all fifty states have enacted criminal laws penalizing unauthorized access to computer systems and types of private or protected personal data. A list of citations to these state laws is attached to this Supplement. These laws generally provide consumer protection against fraud and identity theft but may have a chilling effect on fiduciaries trying to carry out their duties.

As we envision the new uniform law comprising our Project Proposal, it probably would be best if it were a separate, free-standing act, much like those uniform laws discussed above, that could easily be grafted onto the UPC by those states that have already adopted the UPC. Adopting this approach would also make it possible to adopt the proposed new uniform law in those jurisdictions that have yet to adopt the UPC.

2. What organizations or interest groups are likely to have an interest in this Project Proposal?

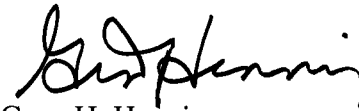
As mentioned in section 4 of our Project Proposal, online service providers are likely to have an interest in this Project Proposal. Major online service providers include America Online, Apple, eBay, Facebook, Google, Intuit, Microsoft, Myspace, Twitter, WordPress and Yahoo!

Consumer advocacy groups, such as the American Civil Liberties Union, the Electronic Frontier Foundation and the Center for Democracy & Technology, are likely to have an interest in this Project Proposal. There are also technology industry advocacy groups, such as the Computer & Communications Industry Association, the Distributed Computing Industry Association, the Software & Information Industry Association and TechAmerica, that are likely to have an interest in this Project Proposal.

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My partner, Jim Lamm, and I would be pleased to respond further to any questions the Committee might have concerning the Project Proposal and to assist further in any additional study and/or drafting effort that that Committee would decide to pursue.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Gene Hennig". The signature is fluid and cursive, with a prominent initial "G" and "H".

Gene H. Hennig
Minnesota Commissioner
Uniform Law Commission

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Computer Hacking and Unauthorized Access Laws

Hacking is breaking into computer systems, frequently with intentions to alter or modify existing settings. Sometimes malicious in nature, these break-ins may cause damage or disruption to computer systems or networks. People with malevolent intent are often referred to as "crackers"--as in "cracking" into computers.

"Unauthorized access" entails approaching, trespassing within, communicating with, storing data in, retrieving data from, or otherwise intercepting and changing computer resources without consent. These laws relate to either or both, or any other actions that interfere with computers, systems, programs or networks.

See also: Computer crime statutes specifically related to [viruses](#), [contaminants](#), and [destructive transmissions](#).

External links where available:

STATE	CITE
Alabama	Ala. Code § 13A-8-102, § 13A-8-103
Alaska	Alaska Stat. § 11.46.740
Arizona	Ariz. Rev. Stat. Ann. § 13-2316
Arkansas	Ark. Stat. § 5-41-103, -104, -203
California	Cal. Penal Code § 502
Colorado	Colo. Rev. Stat. § 18-5.5-102
Connecticut	Conn. Gen. Stat. § 53a-251
Delaware	Del. Code tit. 11, § 932, § 933, § 934, § 935, § 936
Florida	Fla. Stat. Ann. § 815.01 to 815.07
Georgia	Ga. Code § 16-9-93, § 16-9-152, § 16-9-153
Hawaii	Hawaii Rev. Stat. § 708-892, § 708-891.5, § 708-895.5, § 708-892.5
Idaho	Idaho Code § 18-2202
Illinois	Ill. Rev. Stat. ch. 720, § 5/16D-3, § 5/16D-4
Indiana	Ind. Code § 35-43-1-4, § 35-43-2-3
Iowa	Iowa Code § 716A.1 to 716A.16
Kansas	Kan. Stat. Ann. § 21-3755
Kentucky	Ky. Rev. Stat. § 434.845, § 434.850, § 434.851, § 434.853
Louisiana	La. Rev. Stat. Ann. § 14:73.3, § 14:73.5, § 14:73.7
Maine	Me. Rev. Stat. Ann. tit. 17-A, § 432 to 433
Maryland	Md. Criminal Code Ann. § 7-302
Massachusetts	Mass. Gen. Laws Ann. ch. 266, § 33A
Michigan	Mich. Comp. Laws § 752.794, § 752.795
Minnesota	Minn. Stat. § 609.87, § 609.88, § 609.89, § 609.891
Mississippi	Miss. Code Ann. § 97-45-1 to 97-45-13
Missouri	Mo. Rev. Stat. § 537.525, § 569.095, § 569.097, § 569.099
Montana	Mont. Code Ann. § 45-2-101, § 45-6-310, § 45-6-311
Nebraska	Neb. Rev. Stat. § 28-1343, § 28-1343.01, § 28-1344, § 28-1345, § 28-1346, § 28-1347
Nevada	Nev. Rev. Stat. § 205.473 to 205.492
New Hampshire	N.H. Rev. Stat. Ann. § 638:17, § 638:18
New Jersey	N.J. Rev. Stat. § 2A:38A-3
New Mexico	N.M. Stat. Ann. § 30-45-3, § 30-45-4, § 30-45-5
New York	N.Y. Penal Law § 156.00 to 156.50
North Carolina	N.C. Gen. Stat. § 14-453 to 14-458
North Dakota	N.D. Cent. Code § 12.1-06.1-08

Ohio	<u>Ohio Rev. Code Ann. § 2909.01, § 2909.07(A)(6), § 2913.01, § 2913.04</u>
Oklahoma	<u>Okla. Stat. tit. 21, § 1951, § 1952, § 1953, § 1954, § 1955, § 1957, § 1958</u>
Oregon	<u>Or. Rev. Stat. § 164.377</u>
Pennsylvania	<u>18 Pa.C.S.A. § 7601 - 7616</u>
Rhode Island	<u>R.I. Gen. Laws § 11-52-1 to 11-52-8</u>
South Carolina	<u>S.C. Code Ann. § 16-16-10 to 16-16-30</u>
South Dakota	<u>S.D. Codified Laws Ann. § 43-43B-1 to § 43-43B-8</u>
Tennessee	<u>Tenn. Code Ann. § 39-14-601, § 39-14-602</u>
Texas	<u>Tex. Penal Code Ann. § 33.02</u>
Utah	<u>Utah Code Ann. § 76-6-702, § 76-6-703</u>
Vermont	<u>Vt. Stat. Ann. tit. 13, § 4101 to 4107</u>
Virginia	<u>Va. Code § 18.2-152.2, -152.3, -152.4, -152.5, -152.5:1, -152.6, -152.7, -152.8, -152.12, § 19.2-249.2</u>
Washington	<u>Wash. Rev. Code § 9A.52.110, § 9A.52.120, § 9A.52.130</u>
West Virginia	<u>W. Va. Code § 61-3C-3, -4, -5, -6, -7, -8, -9, -10, -11, -12</u>
Wisconsin	<u>Wis. Stat. § 943.70</u>
Wyoming	<u>Wyo. Stat. § 6-3-501 to § 6-3-505</u>

Compiled by **Jason Gardner** for NCSL, May 2009

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Last update: 05/21/09

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