

## SJC ruling could have significant implications for T&E law

By: Katie Von Kohorn ◉ November 9, 2017



The Supreme Judicial Court on Oct. 16 issued a decision holding that the federal Stored Communications Act allows Yahoo to divulge the contents of a decedent's email account based solely on the personal representatives' consent.

Although the ruling in *Ajemian v. Yahoo* does not order Yahoo to disclose the emails immediately to the personal representatives, the court held that the SCA permits such disclosure.

In 2006, John Ajemian died without a will. He left behind a Yahoo email account, which he and his brother had opened a few years before. After Yahoo refused to disclose the contents of the account to the co-personal representatives of John's estate, the personal representatives sought to obtain access to the account in the Probate & Family Court.

Yahoo moved for summary judgment, and the judge ruled in favor of Yahoo, holding that the SCA prohibited disclosure of the email account. The personal representatives then appealed to the SJC.

The SJC considered whether the personal representatives could "lawfully consent," under the SCA, to the release of the contents of the email account, in order to take possession of it as property of the estate.

That presented the "novel question whether lawful consent for purposes of access to stored communications properly is limited to actual consent, such that it would exclude a personal representative from consenting on a decedent's behalf."



*Chief Justice Ralph D. Gants, writing separately, looked ahead to the possibility that the Probate Court, on remand, might not order disclosure of the email account to the personal representatives.*

If the court had held that "lawful consent" were limited to "actual consent," prohibiting personal representatives from accessing a decedent's stored communications, that interpretation would preempt state probate and common law, "would result in the creation of a class of digital assets — stored communications — that could not be marshalled," and would thus interfere with the administration of a decedent's estate.

The court noted that personal representatives already are able to grant consent on behalf of a decedent in a variety of other situations.

The SJC concluded that the SCA allowed personal representatives to "lawfully consent" to the release of a decedent's stored communications, in accordance "with the broad authority of a lawfully appointed personal representative to act on behalf of a decedent."

Finally, the court cautioned that (1) its holding did not require Yahoo to release the contents of the email account to the personal representatives, only that the SCA did not prohibit such disclosure; and (2) neither the Probate Court

nor the SJC could determine at this stage whether the terms of service agreement prohibited disclosure.

The case will now return to the Probate & Family Court for a determination on whether the terms of service agreement blocks disclosure.

SJC Chief Justice Ralph D. Gants, writing separately, looked ahead to the possibility that the Probate Court, on remand, might not order disclosure of the email account to the personal representatives. He warned that if the Probate Court were to rule that Yahoo could destroy the email account rather than releasing it, “we would surely reverse that ruling,” and chided that the personal representatives should not have to spend any more money to gain access to the decedent’s email account.

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