

Yahoo presses SJC case to hit delete on emails

Chris Villani Friday, March 10, 2017



Credit: Angela Rowlings

DEAD LETTERS: Yahoo! lawyer Marc J. Zwilling argues yesterday that the company's terms of service allow it to delete any user's account anytime.

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An attorney for Yahoo! told the Supreme Judicial Court the email giant has the right to destroy anyone's emails without that person's consent — even in the face of an order from the high court instructing otherwise — in a case that could determine what happens to people's emails after they die.

John Ajemian was killed when he was struck by a car in 2006 and did not leave a will. His siblings, Marianne and Robert Ajemian, want to access his Yahoo email account, but the company refused, citing its terms of service and a 1986 federal law called the Stored Communications Act.

Chief Justice Ralph Gants pressed Yahoo! lawyer Marc J. Zwillinger on whether the terms of service give the company carte blanche to wipe out a person's email account anytime it wants.

“Isn't that what your terms of service says, ‘We can do whatever we damn well please with these records, and there is nothing you can do about it?’” Gants asked. “Is it not true that the terms of service say ‘we can destroy all of your documents without your approval?’ ”

“The terms of service do say that,” Zwillinger replied.

When signing up for a Yahoo! email account, small print at the bottom of the screen links to the company's terms of service and privacy policy.

Gants and other justices noted most users do not read the two documents, which total nearly 4,500 words, excluding provisions for people living outside the United States.

“(Yahoo!) would absolutely say they have the right to stop operating the service and shut down, it's a free email service,” Zwillinger said. “And if tomorrow they decided they could not offer that service anymore ... they would shut it down. Their terms of service allow them to do that.”

Zwillinger argued being forced to turn the emails over would compromise users' privacy, open the company up to civil suits, and force Yahoo! to “administer the estates of 225 million monthly users who are all going to die.”

Robert Kirby, an attorney for the Ajemians, argued the emails are the modern-day equivalent of a safe or the “box under grandpa's bed” left when he dies.

“This is just a newfangled form of property but it is property nonetheless,” Kirby argued. “It's just a different storage

medium. Whether it's banking information, a manuscript, or illicit emails from your paramour. Just like grandpa, if you don't want them to be found, delete them."