

# Email privacy – implications for the future essay

[Business](#)



The death of a loved one is tragic, especially that of a young man killed in war. Peace and healing for the family may take years. Many grieving family members can find some solace in reviewing letters and possessions of the deceased. Unfortunately, this unhappy task has just become that much more difficult in the age of technology.

Privacy issues, while of the utmost importance for the living, become a hassle and source of additional grief for the families of the deceased. The case of Justin Ellsworth is a prime example. His parents sought some emotional consolation in reading his final words and thoughts from the front in Iraq, but his email provider, Yahoo, refused to relinquish the password to his emails, citing its privacy contract. Thus, determining a precedent for electronic privacy is a complex and emotional matter which must be resolved. The case of Justin Ellsworth has elevated this issue to the forefront and forced people to consider the issue of privacy in a technological age. Recently the courts ordered Yahoo to relinquish the emails; they presented the parents with a CD containing his messages. Unfortunately, the messages were only his incoming messages, not his outgoing.

While Yahoo does appear to be complying with the court order willingly, it seems that in the passage of time, the outgoing messages, the ones most important to Mr. and Mrs. Ellsworth were lost. This could have been prevented if the password to the account had been given to them instead of a CD. It seems that this court order falls short of setting a precedent, leaving the issue very much up for debate about what to do when it inevitable arises again.

What remains clear is “ in an age in which the written word is increasingly found on computers instead of pen and paper, it [the Ellsworth case] brought to national attention the issue of who should have access to a dead loved one’s account” (Chambers 2005). Email privacy is established contractually for very legitimate reasons. Individuals’ personal and business communication falls under protective legislation. One such piece of legislation is Bill § 2703 - Required disclosure of customer communications or records.

According to this bill, email and other electronic communication can only be surrendered to the government or other 3rd party recipients if the “ entity offers specific and articulable facts showing that there are reasonable grounds to believe that the contents of a wire or electronic communication, or the records or other information sought, are relevant and material to an ongoing criminal investigation” (Required Disclosure of Customer Communications of Records, 2006). However, the Ellsworth case does not involve a court case or a criminal investigation, and the primary party is no longer living. How should, then, the precedent be set? One of two considerations can be utilized in evaluating the moral aspects of this question - the utilitarian and the deontological approaches to moral problem solving. The utilitarian theory says that the greatest good or the greatest happiness for the greatest number will indicate the best moral choice. The deontological theory argues that moral decisions are reached by taking care to make sure that whatever action is taken is based on duties to the involved human beings and suitable to becoming a universal law; that is, it would be appropriate to make the same decision in every situation presented (Kay,

1999). Both of these approaches may provide insight into the above situation. According to the utilitarian approach, the ethical choice that provides the greatest well-being for the greatest number of people should be chosen. Applied to the Ellsworth case, the utilitarian might argue that more people will be harmed from the relinquishing of the password than will be benefited.

In this situation, the only people to benefit are the parents and family members of Justin Ellsworth. However, the privacy considerations of every other email recipient and sender that used his account under the auspices that its content would be private may be hurt. Nobody knows what secrets or other private information may be in the emails both sent and received through that one account. The senders and receivers, which might total in the hundreds, assumed confidentiality of those messages, or at least placed trust in Justin that the content would end with him.

Now Justin is unable to uphold that end of the bargain, so Yahoo must do it for him. The utilitarian would say that the greatest good, happiness, or well-being would be achieved by not relinquishing access to the email account. The deontologist might argue that the contents of the email should be relinquished to the parents because human beings should never be treated as a means to an end. For example, in using Justin's case as a precedent for the good of others, as the utilitarians do, he is being treated as a means to a greater end, as are his parents.

This is unjust. Instead, morality should be judged by "examining the nature of actions and the will of agents rather than the goals achieved" (Kay, 1999). According to this view, the motives of and duties to Justin's parents should

be analyzed rather than the implications the decision might have upon society. Because the motives are just in this case, they want to read their son's last words for their own, personal healing, access should be granted. Both views have advantages and disadvantages. The utilitarian view does keep the larger society's protection in mind. One boy's parents should not be enough to risk the privacy of hundreds of other individuals.

Unfortunately, one overriding disadvantage of the utilitarian view is that it can lead to injustice for some people, the minority, in favor of the majority (Rabins, Harris, Pritchard ; Lowery, 1995). In this case, the Ellsworths are in the minority, left to suffer and grieve. The deontological view has the strength of attempting to establish a universal law that can be used time and time again. Its shift to the duty from consequence is based on the simple fact that nobody can control the future, so the future consequences should not be considered (Kay, 1999). In this case, the actual effect on others cannot possible be predicted; the duty then falls to doing what is morally right for the parents. However, one distinct disadvantage arises from this approach. There is no real way to solve a problem if two duties come into conflict. The deontological approach seeks to set up universal standards of action, yet what would happen if a person who had written an email steps up and admits to some extremely personal information traded in the emails that he or she does not want made public.

Here is a conflict of duties, the duty to the parents and the opposed duty to the person who has come forward, but this approach provides no justifiable way to solve the dilemma. In order to really solve this problem, individuals must now start realizing that they must make these decisions before death.

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In today's technological age, provisions for the distribution of electronic property must be made just as one would determine the recipient of real estate or estate jewelry. One cannot blame Yahoo for wanting to uphold its contractual obligation with its customers; if it didn't, the company could easily come under legal attack. Some have suggested that provisions for electronic property be made part of standard estate planning checklists (Chambers, 2005). Only when people plan for these issues ahead of time will they be able to be morally and justly solved in the future.

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