

Report to the Nevada Technological Crimes Advisory Board (TCAB)  
from  
the Privacy Subcommittee  
by  
Hal Berghel, Subcommittee Chair  
June 5, 2014

Background: The Technical Privacy Subcommittee last met on May 30, 2014. The following actions were taken at that time by unanimous consent:

1. Proposed joint resolution to amend Article 1 Section 1 of the Nevada Constitution to specifically include “privacy.” The wording adopted by the subcommittee appears in Agenda Item 9(G):

*As adopted by subcommittee:*

Section. 1. Inalienable rights. All men are by Nature free and equal and have certain inalienable rights among which are those of enjoying and defending life and liberty; Acquiring, Possessing and Protecting property and pursuing and obtaining safety, **privacy**, and happiness

The Subcommittee wishes to point out that it considered this minimalist approach the most likely to succeed, but other things equal would prefer stronger wording along the lines of Montana’s Article II, Section 10:

The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

2. Proposed change in NRS 49.275 to make the current Nevada Shield Law more inclusive in light of the proliferation in new Internet and digital news venues. (Item 9 (D)).

**Proposed statute:**

- NRS 49.275 News media.** 1. “Journalism” means gathering, preparing, collecting, photographing, filming, recording, writing, editing, reporting, or publishing information concerning matters of potential interest for dissemination to a segment of the public, in any medium of expression that currently exists or shall exist in the future.
2. “Legal proceeding” means any hearing, trial, or investigation:
- (a) before any court, grand jury, coroner’s inquest, jury, or any officer thereof;
  - (b) before the Legislature or any committee thereof;
  - (c) before any department, agency, or commission of the State; or
  - (d) before any local governing body or committee thereof, or any officer of a local government.
3. In any legal proceeding, no person or entity engaged in activities of journalism may be required to disclose any published or unpublished information related in any way to activities of journalism engaged in by any person or entity.
4. A party issuing a subpoena in any legal proceeding to a third party that seeks the records of a person or entity engaged in activities of journalism shall provide notice of the subpoena to the person or entity at least five days before issuing the subpoena. The notice shall include, at a minimum, an explanation of why the requested records will be of material assistance to the party seeking them and why alternate sources of information are not sufficient to avoid the need for the subpoena.
5. In the case of a person or entity whose activities do not fall within the definition of “journalism” set forth in subsection (1), a judge may exercise discretion to apply the provisions of subsections (3) and (4) if the judge determines that doing so would serve the interest of justice by aiding or protecting activities related in any way to the dissemination of information.

We note that the younger generations are relying on the Internet as a primary news source. Internet blogs, newsfeeds, bulletin boards, and the like, no matter how well done, are not covered by the existing shield law because it identifies reporters by employer rather than function. This revision of the statute brings NRS 49.275 into compliance with current journalistic realities.

3. Proposed Joint Resolution Urging Congress to take certain actions to protect the privacy of citizens of Nevada (9H):

[SENATE] [ASSEMBLY] JOINT RESOLUTION NO. \_\_\_

[SENATE] [ASSEMBLY] JOINT RESOLUTION – Urging Congress to take certain actions to protect the privacy of citizens of Nevada.

WHEREAS, Rapid and continuing technological change pose an increasing threat to the privacy of the citizens of Nevada; and

WHEREAS, Commercial, criminal, and governmental enterprises operating both within the United States and external to the United States are using currently legal and illegal means to obtain as much information as possible about the lives and activities of citizens of the State of Nevada; now, therefore, be it

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That the members of the 77th Session of the Nevada Legislature hereby urge Congress to enact legislation ensuring that information about the lives and activities of citizens of the State of Nevada be collected and used only with the continuing consent of the individual citizen concerned, given openly, knowledgeably, and explicitly for a specific, identified purpose; and be it further

RESOLVED, That the [Secretary of the Senate] [Chief Clerk of the Assembly] prepare and transmit a copy of this resolution to the Vice President of the United States as the presiding officer of the United States Senate, the Speaker of the House of Representatives and each member of the Nevada Congressional Delegation; and be it further

RESOLVED, That this resolution becomes effective upon passage.

4. In addition, it was the sense sense of the Subcommittee that it was supportive of the concept of amending NRS 179.045 (Item 10(A))to allow for electronic transmissions, on the condition that appropriate safeguards for security and privacy could be identified and incorporated. The Subcommittee is willing to provide advice on implementation to the Nevada Legislature and the Nevada Supreme Court.

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