

KIRKLAND ALERT

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Marketing to Minors: New Maine Law Takes Hard Line

The State of Maine recently enacted a new law that significantly restricts the collection and use of personal information from minors (i.e., individuals under the age of 18) for marketing purposes. The new law, entitled “An Act to Prevent Predatory Marketing Practices against Minors” and scheduled to take effect on September 12, 2009, regulates how online and offline marketers acquire certain information from minors and how that information is used to direct advertising to minors. The law represents a significant step by a state legislature to prevent advertisers from directly marketing to minors.

Regulated Collection, Disclosure, and Use

The new law restricts the collection of personal (including health-related) information from anyone under the age of 18 for marketing purposes without first obtaining “verifiable parental consent.” “Personal information” is broadly defined as any “individually identifiable information,” including name and address, but also certain health information about an individual. Obtaining “verifiable parental consent” means undertaking “any reasonable effort, taking into consideration available technology” to ensure that a parent authorizes the collection.

Once collected, Maine’s law prohibits the disclosure and use of a minor’s personal information. Specifically, the law:

- Prohibits any person from disclosing a minor’s personal information to another person. An entity may not “sell, offer for sale, or otherwise transfer” the information to another company if the information individually identifies the minor or will be used for marketing purposes directed to minors. Practically, this provision prohibits the disclosure of any information falling within the purview of the statute even after parental consent is obtained.
- Prohibits any person from using a minor’s personal information for “predatory marketing.” “Predatory marketing” is broadly defined as “promoting any course of action for [that] minor relating to a product.” Accordingly, even after an advertiser obtains verifiable parental consent to collect information, the advertiser cannot use the information for any marketing purpose directed toward that minor.

Enforcement and Penalties

Both the Attorney General and private citizens may bring enforcement actions for violations of the law. The Attorney General may bring an action under the Maine unfair trade practices law. Plaintiffs are also entitled to seek attorneys’ fees and treble damages if violations were willful.

Relationship to COPPA

The Children’s Online Privacy Protection Act of 1998 (“COPPA”) is a federal statute that similarly seeks to restrict the collection and use of information collected from minors. The Maine Act is broader than COPPA in several respects. First, the Maine Act is broader than COPPA in that it restricts information collected from individuals under the age of 18, whereas COPPA only applies to children 13 years old and under. Second,

COPPA only relates to online marketing, while the Maine Act restricts the collection and use of information from both online and offline sources. Finally, while the Maine Act prohibits use of information collected from minors for marketing purposes even after verifiable parental consent is obtained, COPPA permits some use of information collected post-consent.

Conclusion & Recommendations

We recommend that advertisers evaluate how the new Maine law relates to their marketing, promotion, and advertising practices. To the extent necessary, businesses should update their procedures and technologies to comply in advance of September 12, 2009, when the law is scheduled to take effect. Businesses should also evaluate practices of any vendors, service providers, and business partners engaged in activities regulated by the law to ensure they are in compliance.

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