

California's New "Internet Eraser Law"

California adopted the "Internet Eraser Law" effective January 1, 2015, aimed at protecting the privacy of minors.¹ The bill was signed into law by California Governor Jerry Brown on September 23, 2014, and is codified in [Sections 22581 - 22582 of the California Business and Professions code](#). The Law requires operators of Internet websites, online services, and online or mobile applications to furnish a mechanism by which minors can request removal of certain media and content (e.g., videos, photos, comments) that they posted on these services. The Law also prohibits the advertising and marketing of certain items by operators of such services.² If you own any of these services that are accessible to minors, your business may be affected.³

Broad application to services accessible by minors

The Law applies to "minors" who are under the age of eighteen, and to "operators" (i.e., owners) of Internet websites, online services, and online or mobile applications that are either "directed to" minors or "operated with actual knowledge" of the operators that such services are being used by minors.⁴ The Law describes services directed to minors as being those "created for the purpose of reaching an audience that is predominately comprised of minors, and is not intended for a more general audience comprised of adults."⁵ However, the Law itself does not provide specific guidance on the issue of "actual knowledge" of a minor's status or examples of how such knowledge can be obtained. Operators located outside of California should also bear in mind that the scope of the Law extends to them to the extent minors who utilize their internet or mobile apps or services reside in California.⁶

Removing content from the services

One of the primary goals of the Law is to give another chance to minors who have suffered from a lapse in good judgment regarding their online or mobile posts which they may come to later regret, by allowing minors to request removal of the applicable media or content (e.g., videos, photos, comments) they posted on such services.⁷ Accordingly, operators must provide a mechanism for either removing (e.g., via a "delete" button) the content from the services or anonymizing it, provide "notice" to minors of such mechanism, and give clear instructions on the procedure for removing (or requesting removal of) the applicable content.⁸ Interestingly, the Law also requires that a disclaimer be made to minors stating that the provision of the content removal process does not necessarily ensure full or comprehensive removal of their content.⁹

There are also certain restrictions and exclusions with respect to the Law's application. For instance, only minors who have registered with the applicable online or mobile services or apps are eligible to request removal of their content, in which case, the removal instructions provided by the operator must be followed.¹⁰ There are exceptions to the Law, however, for content for which the minor was paid to post, content that had originally been posted by a third party (even

¹ Cal. Bus. & Prof. Code §§ 22582

² Cal. Bus. & Prof. Code § 22580 - 22582

³ Cal. Bus. & Prof. Code § 22580(f)

⁴ Cal. Bus. & Prof. Code §§ 22580(b)(1), 22580(d), 22580(f), 22581(a)

⁵ Cal. Bus. & Prof. Code § 22580(e)

⁶ Cal. Bus. & Prof. Code §§ 22580(d), 22580(f)

⁷ Cal. Bus. & Prof. Code § 22581(a)

⁸ *Id.*

⁹ *Id.*

¹⁰ Cal. Bus. & Prof. Code §§ 22581(a), 22581(b)(4)

compromising pictures of the minor uploaded by a rival), and content required to be maintained by federal or state law.¹¹ Also, the Law does not limit the ability of law enforcement agencies to subpoena the content of minors.¹²

Advertising and marketing restrictions

In conjunction with its content removal provisions, the Law prohibits the advertising or marketing of certain items (such as alcohol, tobacco, firearms, spray cans, fireworks) to minors by operators of services directed to this demographic.¹³ Operators have an affirmative obligation under the Law to notify its advertisers that the operator's services are directed to minors, and any operator with "actual knowledge" that a minor is using its services must take "reasonable actions in good faith designed to avoid marketing or advertising" these items to minors.¹⁴

Consequences of violations

Although the Law itself does not provide for a private right of action, the State Attorney General is empowered to raise a civil suit on behalf of injured minors under [California's Unfair Competition Law](#), which provides for injunctive relief and significant civil penalties and damages of up to \$2,500 per violation.¹⁵

What this means going forward

In spite of the apparent protection and privacy it affords to minors, the breadth of the Law and lack of sufficient clarity in some respects may leave it ripe for legal challenge as to the interpretation of certain aspects of it. Online or mobile app content seldom exists in a vacuum, and the Law could require operators to remove or effectively anonymize qualified content or media – even content that is newsworthy or has already been commented on, responded to, or otherwise interacted with by others. Considering the majority of content or media at issue as contemplated by the Law exists in the context of social media apps and services – of which minors represent a major demographic - the permanent removal or anonymization of such content may prove challenging for the operators of these services if integrity of the user experience in general is to be retained. Operators of such apps and services directed to minors would be wise to revisit their current user content sharing flows, terms of use and privacy policies, to assess how best to ensure compliance with the Law. If the Law applies to you, compliance is required as of January 1, 2015.¹⁶

¹¹ Cal. Bus. & Prof. Code §§ 22581(b)(5), 22581(b)(2), 22581(b)(1)

¹² Cal. Bus. & Prof. Code § 22581(c)

¹³ Cal. Bus. & Prof. Code § 22580(h)(2)(i)

¹⁴ Cal. Bus. & Prof. Code § 22580(h)(1), Cal. Bus. & Prof. Code § 22580(b)(2)

¹⁵ Cal. Bus. & Prof. Code § 17200, 17206(a)

¹⁶ Cal. Bus. & Prof. Code §§ 22582