
retail

October 16, 2013

Dear Retail Clients and Friends,

California recently enacted a so-called “delete button” law, which prohibits certain advertising and marketing to minors and requires operators of websites and online services to allow minors to remove online posts. Although the focus and impetus for the law was minors’ use of social networks, the law may also impact retailers. This edition of ***Morgan Lewis Retail Did You Know?*** describes the law and its potential application to your company.

Background

Many retailers are familiar with the requirements of the Children’s Online Privacy Protection Act (COPPA), which requires parental notice and verifiable consent before personal information is collected online from children under the age of 13. In addition, the California Online Privacy Protection Act (CalOPPA) currently requires websites and online services that collect personal information through the Internet about consumers in California to provide a privacy policy. Concerned that online advertising may be directed to minors who post embarrassing or ill-advised pictures or comments on the Internet before considering the consequences, California has added additional provisions specifically focused on minors to CalOPPA.

The Law

The new requirements, effective January 1, 2015, apply to all online operators—including websites, online services, and online or mobile apps—that either direct their services to minors or have actual knowledge that a minor is using their site or service. Unlike COPPA, which is limited to children under 13, the new California law applies to anyone under the age of 18. The law includes a number of requirements that may impact retailers.

The new provisions will require a retailer to allow a minor who is a registered user of the retailer’s site or service to delete or request deletion of any content posted by the minor. In addition to providing this “delete button,” operators must provide minors with notice regarding the ability to delete online content and clear instructions on the process for doing so.

Operators are also prohibited from marketing or advertising certain categories of products or services to minors. The law contains a long list of prohibited items. Many are obvious, such as alcohol and firearms, but the list also includes less-obvious categories, such as spray paint, certain dietary supplements, and tanning devices.

Practical Advice

Most of the discussion surrounding the new requirements has focused on the application of the “delete button” to social networking sites. However, retailers should consider how the law may apply to their own websites and online services. For example, to the extent that a retailer allows minors to register and provide product reviews or comments, the retailer will need to comply with the new “delete button” requirements. In addition, retailers should note the restrictions on advertising and marketing to minors and ensure that they have policies and procedures in place to prevent such ads from appearing on their sites. California continues to be a hotbed of regulatory enforcement and class actions related to privacy, and we expect that these new requirements will generate similar attention.

Morgan Lewis

How We Can Help

We can assist with a review of your company's online sites and services to determine whether and how these new requirements may apply to you. We regularly assist retailers with privacy issues, including compliance, audits, class action and individual privacy litigation, and state and federal investigations.

Contacts

If we can be of assistance to you in these matters, please feel free to get in touch with your Morgan Lewis contact or any of our Retail Practice leaders:

Greg Parks, Litigation
Philadelphia
215.963.5170
gparks@morganlewis.com

Anne Marie Estevez, Labor & Employment
Miami
305.415.3330
aestevez@morganlewis.com

Joseph Duffy, Litigation
Los Angeles
213.612.7378
jduffy@morganlewis.com

Ezra Church, Litigation
Philadelphia
215.963.5710
echurch@morganlewis.com

These individuals are part of our international Retail Practice. Attorneys from our 25 offices regularly represent national, regional, and local retailers in a broad array of subject matters including litigation, labor and employment, real estate, tax, transactional, and regulatory.

About Morgan Lewis Retail Did You Know? This message is part of our effort to educate our retail clients and friends about important legal developments. One thing we hear frequently from our retail clients is that it is hard to keep track of new and emerging laws and lawsuit trends that affect retailers. All too frequently, the first notice comes in the form of a lawsuit seeking millions of dollars. To help you be more proactive in managing legal compliance, we are providing these emails.

About Morgan, Lewis & Bockius LLP

With 25 offices across the United States, Europe, the Middle East, and Asia, Morgan Lewis provides comprehensive litigation, corporate, transactional, regulatory, intellectual property, and labor and employment legal services to clients of all sizes—from globally established industry leaders to just-conceived start-ups. Our international team of lawyers, patent agents, benefits advisers, regulatory scientists, and other specialists—more than 1,600 legal professionals total—serves clients from locations in Almaty, Beijing, Boston, Brussels, Chicago, Dallas, Dubai,* Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, Moscow, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, Washington, D.C., and Wilmington. For more information about Morgan Lewis or its practices, please visit us online at www.morganlewis.com.

*In association with Mohammed Buhashem Advocates & Legal Consultants

This Alert is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes. Links provided from outside sources are subject to expiration or change. © 2013 Morgan, Lewis & Bockius LLP. All Rights Reserved.