The Online Eraser Law: A New Standard In Digital Privacy

On September 12, 2013, California became the first state to sign into law a bill that requires websites, mobile apps and other online services to provide an "eraser button" to its users under 18 years old. The purpose of the law is to provide minors with a means to remove any embarrassing online content they later regret posting, such as compromising prom photos, videos of ill-advised school-yard pranks, "mean girl" Facebook gossip, or less-than-flattering (or all-too-revealing) "selfies."

The law, entitled the "Privacy Rights for California Minors in the Digital World" (Cal. S.B. 568), requires operators of Internet Web sites, online services, online applications, or mobile applications ("operators") directed towards or known to be used by minors (that is, persons under the age of 18) to:

- Permit minors who are registered users of the operator's site, service, or application to remove or, if the operator prefers, to request and obtain removal of, content or information posted by the minor on the operator's site/service/application, *unless* (a) the content was posted by a third party (such as the minor's friend); (b) the minor was compensated for providing the content; (c) the content is anonymized so that the minor cannot be individually identified; (d) the minor fails to follow the instructions regarding removal; or (e) as otherwise required by law.

- Provide notice to such minors that he/she may remove (or request and obtain removal of) content or information posted by the registered user, along with clear instructions on how the user may remove or request removal of the content.

- Provide notice to such minors that their removal rights do not guarantee complete or comprehensive removal of the content they post.

Although dubbed the "online eraser law," S.B. 568 provides that an operator shall be deemed compliant if it merely renders the content invisible to other users or the general public even if the content or information remains on the operator's servers in some form. In other words, a permanent and complete erasing (deletion) is not technically required.

Importantly, unlike the "Right to be Forgotten" initiatives currently underway in the European Union

(which, broadly speaking, would allow a user to request that an online service provider delete all data it has about that user, including data that has been made public on social media sites or otherwise), S.B. 568 does not require site operators to remove content that was either posted or reposted by third parties. So, despite the good intentions of S.B. 568, that photograph of little Billie "not inhaling" which was re-posted by his classmates may still finds its way to his college admissions officer.

Although S.B. 568 governs only the collection of information of minors who reside in California, any company with a website or app that is accessible by California residents may fall within the law's reach. Looking ahead, as S.B. 568 is likely to become the *de facto* national standard, sites and apps should act now to assess their privacy and data collection policies and practices, as well as their age identification procedures, and update them accordingly. Fortunately, as the law does not go into effect until January 1, 2015, companies still have ample time to make the necessary changes to achieve compliance.

A copy of S.B. 568 can be found here.

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