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# Calif.'s Delete-Button Law Invigorates Teen Privacy Push

By **Allison Grande**

Law360, New York (September 25, 2013, 10:32 PM ET) -- California Gov. Jerry Brown has signed a bill requiring websites and mobile apps to permit minors to delete their photos and other potentially embarrassing postings, a popular measure that is likely to inspire additional protections for children and teenagers across the country, attorneys say.

With the enactment of S.B. 568 on Monday, California became the first state to impose an obligation on websites and apps to give registered users under the age of 18 the ability to delete content they have posted. The bill also bars sites from compiling underage users' personal information to market alcohol, tobacco, guns and other products or services that minors can't legally purchase or use.

While the legislation is much less restrictive than the expanded obligations placed on operators by **recent revisions** to the federal Children's Online Privacy Protection Act rule, the California bill does apply to teens between 13 and 18 who are not swept up by the federal regulation, a difference that attorneys expect to fuel debate over what privacy protections should be given to minors who are not currently covered by COPPA.

"What we're seeing from California is a move to nudge the federal law and perhaps influence other states to move in the direction of enabling children to remove posted content at a later date, and to move the age time frame from under 13 to under 18," Alston & Bird LLP privacy and data security practice co-chair Paul Martino told Law360 on Wednesday. "Even though this bill only applies to two limited areas, it has the potential to raise the question among lawmakers at the state and federal level about whether the current regime for children under 13 is sufficient."

Although the idea of expanding COPPA's protections to teens was floated during the extensive process undertaken by the Federal Trade Commission beginning in 2010 to update COPPA, the agency was restricted from including minors older than 13 in its regulation because of statutory language that limited its application to children younger than 13.

However, the FTC and others have sought other routes for strengthening online privacy protections for teens who have been said to "self-reveal before they self-reflect," with the regulator **saying in response** to a frequently asked COPPA question in April that even though the statute does not apply to teenagers, the regulator "is concerned about teen privacy and does believe that strong, more flexible protections may be appropriate for this age group."

The statement echoed the position taken by the regulator in its March 2012 privacy report, in which the agency also articulated its support for an "eraser button" that would allow teens and other consumers to delete content they post online.

"The FTC has been talking broadly about teens' privacy since before the California privacy bill was passed," Dorsey & Whitney LLP partner Melissa Krasnow said. "It wouldn't surprise me if the law in California prompts the FTC to study the topic more and issue reports or some sort of guidance or regulation on the topic soon."

Attorneys also expect California's move to affect the action of state and federal lawmakers concerned with the amount of data that teens are offering up online.

"Supporters of this bill are not going to be satisfied just passing this in California; they'll want to move on to another state and pressure Congress to make other moves," Martino said.

While the spread of the bill's influence is likely to be slow, it has a better chance of gaining traction than broader proposals that have sought to give users more control over their data, such as the unsuccessful **Do Not Track Kids Act** and a **controversial provision** in the European Union's proposed data protection overhaul that would create a broad "right to be forgotten," according to attorneys.

Unlike these measures, the California bill limits companies' obligations to provide users under 18 with notice and instructions on how to delete their data to information that the user has posted and does not require operators to delete data stored on their servers or information that has been reposted by a third party.

"The bill is not as thorough as other concepts that have been floated, such as the right to be forgotten in the EU, and is not quite as elaborate," Reed Smith LLP senior associate Lisa Kim said. "It's pretty straightforward in the requirements of what data companies need to delete."

But attorneys noted that operators may get tripped up by some ambiguous language about which sites are covered by the restrictions.

"Under COPPA, the FTC has provided quite a bit of guidance about what facts they take under consideration when determining if a site is directed or has actual knowledge that it is providing services for children under 13," Fenwick & West LLP associate Madeline Zamoyski said. "They don't have that same kind of guidance about what 'directed to minors' means in the California statute."

Attorneys noted that companies have plenty of time to iron out potential compliance difficulties, given that the law doesn't take effect until Jan. 1, 2015. But the extra implementation time also opens the door for challenges to the law, which attorneys expect to range from First Amendment arguments to contentions that the California bill conflicts with COPPA.

"The concern would be that the California law purports to regulate the collection, use, distribution and disclosure of information from kids under 13 as well as kids who are between 13 and 18, and in that way it covers the same subject matter as COPPA and would be preempted by COPPA," Cooley LLP special counsel Chuck Schwab said.

The lag in implementation time also gives federal lawmakers the time to pass a federal law that would preempt the California statute as they did when they passed the CAN-SPAM Act shortly before a junk email bill was set to go into effect in California in 2003, although Bingham McCutchen LLP privacy and security group co-chair Jim Snell noted that companies would probably prefer a federal statute over state level legislation on the issue.

"The California law is going to add a layer of compliance and regulation that companies will need to analyze on a state-to-state rather than on a nationwide basis," he said. "I think industry would prefer that, if this issue needs to be legislated, it be legislated through a

uniform, nationwide standard rather than having to try to apply individual state's legislation nationwide.”

--Editing by Elizabeth Bowen and Chris Yates.