

Law Banning Marketing to Minors Effective September 12, 2009

The Maine law entitled “An Act to Prevent Predatory Marketing Practices against Minors,” which governs the collection and use of personally identifiable information (“PII”) from individuals under 18 years of age residing in Maine, is scheduled to go into effect on September 12, 2009.¹

This law, with requirements broader in scope than the federal Children’s Online Privacy Protection Act (COPPA) Rule, bans the knowing collection or receipt of PII from all minors (presumably any resident of Maine under 18 years of age, as the statute does not define “minor”), both online and offline, without verifiable parental consent, and prohibits the use of PII regarding a minor for the purpose of marketing a product or service to that minor or promoting any course of action for the minor relating to a product. The latter prohibition applies even if verifiable parental consent has been obtained. The statute defines PII to include, by way of example, a minor’s name in combination with any other information concerning the minor. Any violation of the law will constitute unfair trade and predatory marketing practices with potential civil penalties of \$10,000 to \$20,000 for the first violation and \$20,000 or more for subsequent violations. Each unlawful collection of data or unlawful predatory marketing activity is considered a separate violation; private litigants have the right to sue for actual damages (up to \$250 for each violation) and injunctive relief and to recover reasonable attorneys’ fees and costs if a violation of the law is found to have occurred (as opposed to COPPA which is limited to actions instituted by the FTC or the state Attorneys General).

¹ Several media and web companies filed a lawsuit last week in federal court seeking injunctive and declarative relief that the statute violates the First Amendment and the Commerce Clause of the Constitution.

If you have questions regarding this Alert, please contact [Elizabeth A. Corradino](mailto:ecorradino@mosessinger.com) at 212.554.7892/ecorradino@mosessinger.com or [Myka W. Todman](mailto:mtodman@mosessinger.com) at 212.554.7618/mtodman@mosessinger.com.

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The Chrysler Building
405 Lexington Avenue
New York, NY 10174-1299
Tel: 212.554.7800
Fax: 212.554.7700

2200 Fletcher Avenue
Fort Lee, NJ 07024
Tel: 201.363.1210
Fax: 201.363.9210
Abraham Y. Skoff, Esq.
Managing Attorney for New Jersey

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