

CALIFORNIA'S NEW 'DIGITAL ERASER' EVAPORATES EMBARRASSMENT

Part 2 of 2: New California privacy laws will make it easier for kids to remove inappropriate posts from websites.



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Editor's note: This article is part two of a two-part series about the recent changes to California privacy law. Part one discusses the new California Privacy Policy Law and amendments to the state's Data Breach Notification Law.

On Sept. 23, California Governor Edmund "Jerry" Brown signed into law Senate Bill 568, "Privacy Rights for California Minors in a Digital World." S.B. 568 includes a provision known as the "Delete Button" or "Eraser" law, which allows minors under 18 to request that companies delete specified information that the requestor had previously posted online.

California State Senator Pro Tem Darrell Steinberg, who sponsored the bill, said a motivating factor behind the law is that colleges and universities have the ability to research applicants' Facebook pages and web presence.

The "Delete Button" law adds to a growing body of legislation aimed at regulating minors' Internet presence. New amendments to the Children's Online Privacy Protection Act—the federal law governing Internet content available to children—which broaden the swath of personal information that may

not be collected without parental notification and consent took effect on July 1, 2013.

The "Delete Button" law applies to companies operating websites, mobile and Internet-based "apps," and to those providing online services. However, it only covers websites and apps "directed" to minors, or that have actual knowledge that a minor is using its site. The law defines a site "directed to minors" as one "created for the purpose" of reaching predominately those under 18. This definition is less specific than COPPA—under the federal statute, regulators must consider a number of factors to determine what websites are "directed to children," including language and advertising content, while S.B. 568 focuses on the intent of the website creator.

All covered companies must notify minors of their right to request removal of unwanted information posted by the minor on the company's web site, and must remove such information upon request. Alternatively, companies can comply with this law by providing minors with clear instructions as to how to directly remove information that they posted.

The "Delete Button" law has a number of enumerated limits that affect its scope:

- Minors can only request deletion of information

that they posted. S.B. 568 does not allow a minor to request deletion of information that was stored, republished, or reposted by a third party (this limitation stands in contrast to COPPA, which permits parents to request deletion of their children's personal information, regardless of who originally posted the content).

- Only “registered users” of a company's website can request deletion.
- If a minor fails to follow the procedures for deletion, a company need not delete the information.
- Those receiving compensation for posted content cannot request deletion.
- Minors cannot request deletion of posted content that is inaccessible to third parties.

It is unclear to what extent the law will alter companies' current content-deletion practices, because most websites and apps already voluntarily allow users to remove their posts. Moreover, the law makes abundantly clear that companies need not collect age information about users to comply with the law; they need only respond after a user requesting deletion identifies himself or herself as a minor. As a result, the “Delete Button” law may incentivize companies not to determine whether a user is a minor.

The “Delete Button” law applies to minors under the age of 18—significantly different from COPPA, which applies only to children under 13. However, S.B. 568 does not explicitly address whether companies must provide “delete button” privileges to minors who lie about their age. This is a common phenomenon—for example, Facebook requires all users to be 13 or older, but a 2011 McAfee study found that 37% of 10-12 year olds have a Facebook account. The same pre-teen who claims to be 21 to obtain a Facebook account may later ask Facebook to delete an embarrassing post. S.B. 568 does not appear to extend the “deletion” right to this pre-teen, because it only applies to companies that have “actual knowledge that a minor” is using its website. However, after the “21-year-old” pre-teen makes the deletion request, the website will have actual knowledge of the user's age. Companies that restrict access to minors may therefore be in a position

where they honor deletion requests of these minors, and then delete their accounts.

The geographic reach of the law is ambiguous. S.B. 568 is silent about whether it regulates only those businesses with a brick-and-mortar presence in California, or all websites that California minors might post information on.

Codified at Business and Professions Code §§ 22581-22582, the “Delete Button” law becomes effective Jan. 1, 2015. This gives companies ample time to alter their websites and apps in accordance with the law; it also provides a significant amount of time to lodge legal challenges or introduce amendments.

All companies that permit information to be posted onto their websites should establish procedures to remove information posted by minors upon request. Additionally, such companies should update their privacy policies or other relevant disclosures to inform minors of their right to request deletion. Companies should be especially careful in phrasing their disclosures so as not to create any unintentional obligations beyond those imposed by S.B. 568.

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