



PRIVACY & SECURITY LAW



REPORT

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Internet

MySpace-AG Pact Puts on Hold State Efforts To Limit Child Access to Social Network Sites

State lawmakers have had little success in the 2008 legislative season moving legislation that would go beyond federal law and impose new limits on access by children to social networking, virtual world, and other Web sites.

“The lack of action by state lawmakers should not really come as a surprise,” given recent industry self-regulatory initiatives underway, Denise Tayloe, president and chief executive officer of Vienna, Va.-based Privo, told BNA. Privo works with companies to ensure that children who visit Web sites are protected through a proprietary “identity and permission management platform.”

“The way I read it, now that the leading social networking sites—MySpace and Facebook—have agreed to take measures to increase privacy controls and explore ways to further protect children, there isn’t much incentive for states to enact child Web restriction laws right now” she said.

But that may change in 2009 if those sites do not live up to the promises they made to 49 state attorneys general to devise by the end of 2008 a self-regulatory system that incorporates better ways to protect children’s privacy, Tayloe said.

Sites Seek to Avoid Statutory Mandate. “Don’t mandate more children’s privacy rules,” was the mantra that social networking and other Web sites had been repeating for the last few years to state lawmakers and attorneys general, Tayloe said. They complained that requiring them to verify identity and parental consent information on all minors, rather than just on those under age 13, as is required by the federal Children’s Online Privacy Protection Act (COPPA), 15 U.S.C. § 6501 et. seq., would be too costly, and that the technology did not yet

exist to allow them to improve identity validation, Tayloe said.

But despite their objections, it’s clear that like most industries, social networking and other Web sites that collect personal information from children would rather come up with their own rules than face a statutory mandate, she said.

The particular concern about state legislation for those sites is that they will end up having to comply with differing standards, she said, noting similar objections to what businesses consider a piecemeal approach to data breach notification that has resulted in 43 different state breach notice laws.

The possibility that states may renew their legislative efforts to regulate social networking sites is a strong incentive for the sites to do an effective job of coming up with a new self regulatory scheme, Tayloe said.

States Look Beyond COPPA. COPPA, which applies to commercial Web sites directed at children under age 13 and other sites that knowingly collect personal information from children under age 13, requires that covered sites obtain verifiable consent from a parent or guardian before collecting personal data from children under age 14. The Federal Trade Commission is charged with enforcing COPPA, but state attorneys general also may file state court lawsuits to enforce the law.

Social networking sites, and virtual world game playing sites, such as SecondLife, collect personal information in order to register individuals to allow them to set up personal pages, post information, and communicate with other site users. Children’s Internet safety advocates have charged that such sites do not do enough to verify parental consent, and warn that young children who join such sites could be exposed to inappropriate content, be placed at risk of exploitation by sexual predators, and/or have their personal information used for marketing or other unauthorized purposes.

As the popularity of social networking sites has soared in recent years, concerns about privacy protec-

Facebook Joins Child Net Safety Task Force Under Agreement With 49 Attorneys General

Facebook, together with attorneys general from 49 states and the District of Columbia, announced May 8 that the Social networking Web site has joined MySpace on the Internet Safety Technical Task Force, which is examining new age-verification and user identification tools for social networking sites.

The task force was established as part of a January agreement between the AGs and MySpace (7 PVLR 83, 1/21/08). Under the pact, MySpace agreed to invite other social networking sites, age and identity verification experts, child protection groups, and technology companies to participate on the task force.

MySpace also promised to take several steps to improve Internet safety for minors, including promoting free parental monitoring software, creating a minors-only section on the company's popular Web site, improving the algorithm used to check for underage users and exploring the establishment of a children's e-mail registry (7 PVLR 83, 1/21/08). In its agreement, Facebook made similar promises.

Under the agreements, MySpace and Facebook said they would work to establish a registry of e-mail addresses provided by parents who want to restrict their children's access to the sites. Some have suggested that Utah and Michigan's child protection registry laws, which make it a crime to send e-mail containing pornography or promoting tobacco, alcohol and gambling products and services to children, could serve as a model for the social networking site registries (7 PVLR 129, 1/28/08). Full text of the Facebook agreement is available at <http://op.bna.com/pl.nsf/r?Open=dapn-7f4kfm>.

Only Texas Attorney General Greg Abbott (R) refused to approve the agreements, saying that they would only give parents a false sense of security that their children would now be protected. Abbott earlier filed lawsuits against two Web sites aimed at children in what he said were the first two COPPA state court enforcement actions (6 PVLR 1865, 12/10/07).

tion, and the need to protect children, have proliferated (6 PVLR 1765, 11/12/07).

In reaction, state legislators and attorneys general have for the last several years discussed the need for legislation to cover older teenagers. Legislation to extend COPPA's restrictions to children between the ages of 14 and 17 has been under consideration in New Jersey since 2002. Bills to restrict social networks access for minors were introduced in the 2007 legislative session in some states, including Georgia and North Carolina, but none became law.

A handful of bills under consideration in 2008 sought to restrict Web site access or require Internet service providers to give parents control over their minor children's access to Web pages. But such measures died in

Iowa and Florida, and bills in New Jersey and Illinois appear to have stalled.

Wait and See on MySpace, State AGs Agreement. Agreements between state attorneys general, MySpace and Facebook, established an Internet Safety Technical Task Force to issue by the end of 2008 a formal report with findings and recommendations for social networking site privacy and child protection self-regulation (*see box*).

Taylor emphasized that two leaders of the push in recent years for states to pass online child protection laws, Connecticut Attorney General Richard Blumenthal (D) and North Carolina Attorney General Roy Cooper (D), ended up brokering the deal with MySpace announced in January that allowed the site a year to come up with a self-regulatory plan.

"What that said to me was that the states would back off on their efforts to pass laws on the issue and told Web sites like MySpace they had one year to make improvements," Taylor said. "If those kind of sites don't have children's privacy shipshape by the end of the year, I think you're going to see states passing laws," she said.

The virtual world industry has already undertaken some self-regulation, including working to create a specialized privacy trustmark system for online game and virtual world sites, which has been offered by the Entertainment Software Rating Board (ESRB) since 1999. According to ESRB, the seal program was among the first approved by the Federal Trade Commission as a COPPA safe harbor for Web sites.

But pressure on state lawmakers to enact social networking restriction laws likely will only increase in the face of a recent federal appeals court ruling in *Doe v. MySpace Inc.*, 2008 WL 2068064 (5th Cir. May 16, 2008), which held that federal law prohibited a lawsuit against MySpace. The lawsuit alleged MySpace had negligently allowed an underage child to register on its site who was then assaulted by a sexual predator she met through the site (*see related report in this issue*).

In addition, Taylor predicted that "there likely will be new bills introduced next year—no matter what happens with the attorneys general agreement—that say it's not OK for an adult to create a false child identity for an online registration for these sites." That type of measure is consistent with the focus in state legislatures on enacting criminal laws that limit convicted sexual predator access to the Internet and social networking sites, she pointed out.

A woman who allegedly created a false profile on the MySpace Web site and used that account to harass a teenaged girl who later committed suicide was indicted May 15 by a grand jury in the U.S. District Court for the Central District of California for violations of the federal Computer Fraud and Abuse Act (*United States v. Drew*, C.D. Cal., 2:08-cr-00582-UA, indictment issued 5/15/08).

The woman allegedly created a MySpace profile, presenting herself as a 16 year-old male, flirted with the girl using messaging features on the service, and later told the girl the world would be better without her in it, which allegedly drove the girl to commit suicide later the same day.

Meanwhile, there is no legislation before the 110th Congress that would amend COPPA to expand its coverage to older children. There is a bill under consider-

ation in Congress that seeks to require libraries and schools to take measures to prevent underage access to social networking and virtual worlds game playing sites (see box).

New Jersey Legislation Flounders. A bill to extend COPPA-like protections to children between the ages of 14 and 17 was introduced in New Jersey Legislature for the first time in 2002 by Sen. Barbara Buono (D), during her first term. Buono has reintroduced the measure every new biennial session of the Legislature since then, but the legislation has never moved.

In January, Buono reintroduced the "Adolescents' Online Privacy Protection Act" (S.B. 1132), which was joined by an Assembly companion measure (A. 108). The bills would order the state to adopt regulations to mandate that Web site operators that collect personal information make reasonable efforts to obtain "verifiable parental consent" before allowing children 14 to 17 to register for or use the site.

Web site operators that violated the proposed law would be subject to a fine of not more than \$7,500 for a first offense, and not more than \$15,000 for any subsequent offenses.

The bills were returned to the same committees that failed to act on them in previous sessions of the Legislature. However, even if the bills are not acted upon by the end of 2008, they will be carried over to the second year of the legislative session in 2009.

Illinois Bill Would Require Parent Access. In Illinois, the "Social Networking Website Access Restriction Act" (H.B. 4874), would require social networking Web sites to obtain and retain written permission from a parent or guardian to allow a child under the age of 18 to use the site.

In addition, H.B. 4874 would require social networking Web sites to provide parents or legal guardians of minors "unlimited access to the webpage profile of the minor under his or her supervision." The bill also contains a provision that would prohibit registered sex offenders from hosting or accessing a social networking site.

Under the bill, the law would be enforced by the state attorney general, who could prosecute a knowing violation by a social networking site owner or operator as an unlawful business practice.

In March, the bill was approved in committee and endorsed for action, but it has not been taken up on the floor. The Illinois Legislature meets year-round.

Another Illinois bill, "The Social Networking Web Site Prohibition Act" (S.B. 1682), which was introduced in February 2007, would prohibit public libraries and schools from allowing publicly available computers to be used to access social networking sites. The bill has not been acted on in committee.

Iowa, Florida Bills Die. Web access restriction bills in Florida and Iowa died when the respective legislatures closed their 2008 legislative sessions.

Iowa H.F. 2202 would have prohibited social networking sites from allowing minors to maintain a "personal internet page" unless a parent or guardian granted permission.

H.F. 2202, which was opposed by Microsoft Corp. and the American Civil Liberties Union, had a unique provision that would have required social networking site operators to verify the identity of a person provid-

Rep. Kirk Pushes Child Web Access Bill; Asks FTC to Take More Aggressive Stance

The Federal Trade Commission should play a more aggressive role in ensuring that younger children are not exposed to objectionable material and/or do not place themselves at risk of harm from online sexual and other predators by using virtual world game sites, such as SecondLife, and social networking sites, such as MySpace, Rep. Mark S. Kirk (R-Ill.) said in a May 5 letter to FTC Chairman William E. Kovacic.

FTC staff have been investigating whether social networking Web sites are in compliance with the Children's Online Privacy Protection Act since at least 2006 (5 PVL 952, 7/3/06). The FTC had pursued COPPA enforcement actions against online marketers. But in January, the FTC gained a consent decree against a social networking site that specifically targeted children between the ages of 8 and 14, which included a \$130,000 civil penalty (7 PVL 177, 2/4/08).

Kirk said in a May 5 press statement that additional legislation is needed. "If sites like Second Life won't protect kids from obviously inappropriate content, the Congress will," Kirk said in the press release, calling for passage of his "Deleting Online Predators Act (DOPA)" (H.R. 1120). A version of DOPA passed the House in 2006 by an overwhelming 410-15 vote, but did not see Senate action.

DOPA, which has 91 bipartisan cosponsors, would require schools and libraries to certify that they are working to prevent underage access to Web sites without adult supervision. It also would require the FTC to create an educational Web site on the dangers facing children in Internet social networks and virtual worlds, issue regular consumer alerts, and establish an advisory board to review and report on children's privacy and safety protection on commercial social networking sites.

A bill in the Senate, the "Protecting Children in the 21st Century Act" (S. 49), which was introduced in January 2007 as S. 49 by Sen. Ted Stevens (R-Alaska), contained similar provisions to DOPA. However, in August 2007, Stevens introduced an amended version of the legislation as S. 1965, which would only require that the FTC explore ways to protect minors from inappropriate online content. The Senate May 22 approved S. 1965 by unanimous consent.

Full text of Kirk's letter to the FTC is available at <http://op.bna.com/pl.nsf/r?Open=dapn-7efld>. Full text of H.R. 1120, as introduced, is available at <http://op.bna.com/pl.nsf/r?Open=dapn-7efljc>. Full text of S. 1965, as approved by the Senate, is available at <http://op.bna.com/pl.nsf/r?Open=dapn-7f5ggg>.

ing permission for a minor to use a site, rather than requiring site operators to confirm the age of the registrant. The bill would have established a \$500 civil penalty for each violation of the proposed law.

A set of companion bills in Florida (H.B. 1029/S.B. 2232) focused on Internet service providers rather than on social networking sites by requiring ISPs to make available to subscribers the means to allow them to regulate the Internet access of users under the age of 18.

BY DONALD G. APLIN

New Jersey S. A. 108/S.B. 1132, as introduced, is available at <http://www.njleg.state.nj.us/2008/Bills/A0500/>

108_I1.PDF. Illinois H.B. 4874, as introduced, is available at <http://www.ilga.gov/legislation/95/HB/PDF/09500HB4874lv.pdf>.

Florida H.B. 1029, as amended and approved in committee, is available at <http://op.bna.com/pl.nsf/r?Open=dapn-7f3qpc>. Full text of Iowa H.F. 2202, as introduced, is available at <http://op.bna.com/pl.nsf/r?Open=dapn-7f3qkl>.

Full text of the indictment in United States v. Drew is available at <http://op.bna.com/pl.nsf/r?Open=dapn-7f5qa2>,