



SEPTEMBER 2015

## Delaware Enacts Package of Internet Data Laws

by *leuan Jolly, Partner*

Joining the collection of states with online privacy laws, Delaware has enacted a package of statutes governing the collection, storage and use of the personal information of Delaware residents by websites, Internet and cloud service providers, and Internet and mobile applications. While the statutes incorporate provisions that are already in effect under other states' privacy laws — notably those in California — they add to the regulatory burden of operators of any website, Internet service or app that might reach Delaware residents.

The [Delaware Online Privacy and Protection Act](#) requires that operators of any website service or app that collects personally identifiable information through the Internet about Delaware residents who use or visit the site or app must make their privacy policies conspicuously available — and that operators comply with their stated policies. This can be done a number of ways under the statute, including posting the policies on a web page, if it's the home page or first significant page a user sees after entering the website. Or an icon or text link can be used that meets specific requirements, including one that contains the word "privacy," on the home or first page that hyperlinks to a web page on which the actual privacy policy is posted.

The act also includes specific prohibitions against the advertisement and marketing of age-restricted

products — alcoholic beverages, tobacco, firearms, pornography, dietary supplements, and tattooing and piercing, among others — on websites and mobile apps directed at children. The prohibition also applies to third-party marketing services that provide advertising to sites. The act requires that the operators provide notice to any third-party advertising services that the site is directed to children. Once a third-party advertising service has received the notice, the act's prohibitions apply to the advertising service directly. The statute specifically defines a website, service or app directed at children as one that is "targeted or intended to reach an audience that is composed predominantly of children." The relevant determining factors include the subject matter of the site, visual or audio content, age of models, language, or other characteristics of the site or app, whether advertising promoting or appearing on the site or app is directed to children, and "any competent and reliable empirical evidence regarding audience composition and intended audience" of the site or app. More than simply referencing or linking to another site, service or app that is directed to children is required in order for a site to be considered directed to children.

*This publication may constitute "Attorney Advertising" under the New York Rules of Professional Conduct and under the law of other jurisdictions.*

While the statute does not require operators to age-screen visitors to their site, actual knowledge that a child is using the site does trigger obligations under the statute. If an operator has actual knowledge that a child is using the site, the operator is prohibited from using the child's personally identifiable information to market or advertise the prohibited products or services. The operator also may not disclose the child's personally identifiable information to others that it has actual knowledge will use the child's information for prohibited marketing or advertising purposes. Separately, the statute prevents e-book purveyors from sharing users' reading histories, without a court order or warrant. The act goes into effect on Jan. 1, 2016.

Delaware also enacted its Student Data Privacy and Protection Act limiting access to student online data. The law prohibits education technology service providers from collecting data for noneducational purposes, from using collected data to target advertising to students and their families, and from selling student data to third parties. It also requires that these providers implement "reasonable procedures and practices for ensuring the security of student data they collect or maintain," and that they must delete the student data if requested by a school district.

Like many of the other states' privacy legislation, Delaware's new statutes apply not only to Delaware business, but to any business with a web-based site, service or app that reaches Delaware consumers.

For more information about privacy and data protection issues, please contact [leuan Jolly](mailto:leuan.jolly@loeb.com) at [ljolly@loeb.com](mailto:ljolly@loeb.com).

**This alert is a publication of Loeb & Loeb and is intended to provide information on recent legal developments. This alert does not create or continue an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations.**

© 2015 Loeb & Loeb LLP. All rights reserved.

## Advanced Media and Technology Practice

KENNETH A. ADLER	KADLER@LOEB.COM	212.407.4284
ELIZABETH J. ALLEN	EALLEN@LOEB.COM	312.464.3102
AMIR AZARAN	AAZARAN@LOEB.COM	312.464.3330
IVY KAGAN BIERMAN	IBIERMAN@LOEB.COM	310.282.2327
CHRISTIAN D. CARBONE	CCARBONE@LOEB.COM	212.407.4852
TAMARA CARMICHAEL	TCARMICHAEL@LOEB.COM	212.407.4225
MARC CHAMLIN	MCHAMLIN@LOEB.COM	212.407.4855
MEG CHARENDOFF	MCHARENDOFF@LOEB.COM	212.407.4069
ALESON CLARKE	ACLARKE@LOEB.COM	310.282.2240
PATRICK N. DOWNES	PDOWNES@LOEB.COM	310.282.2352
CRAIG A. EMANUEL	CEMANUEL@LOEB.COM	310.282.2262
KENNETH R. FLORIN	KFLORIN@LOEB.COM	212.407.4966
DANIEL D. FROHLING	DFROHLING@LOEB.COM	312.464.3122
NOREEN P. GOSSELIN	NGOSSELIN@LOEB.COM	312.464.3179
DAVID W. GRACE	DGRACE@LOEB.COM	310.282.2108
NATHAN J. HOLE	NHOLE@LOEB.COM	312.464.3110
MELANIE J. HOWARD	MHOWARD@LOEB.COM	310.282.2143
THOMAS P. JIRGAL	TJIRGAL@LOEB.COM	312.464.3150
IEUAN JOLLY	IJOLLY@LOEB.COM	212.407.4810
CAROL M. KAPLAN	CKAPLAN@LOEB.COM	212.407.4142
ELIZABETH H. KIM	EKIM@LOEB.COM	212.407.4928
JANICE D. KUBOW	JKUBOW@LOEB.COM	212.407.4191
JULIE E. LAND	JLAND@LOEB.COM	312.464.3161

JESSICA B. LEE	JBLEE@LOEB.COM	212.407.4073
SCOTT S. LIEBMAN	SLIEBMAN@LOEB.COM	212.407.4838
DAVID G. MALLEN	DMALLEN@LOEB.COM	212.407.4286
DOUGLAS N. MASTERS	DMASTERS@LOEB.COM	312.464.3144
NERISSA COYLE MCGINN	NMCGINN@LOEB.COM	312.464.3130
ANNE KENNEDY MCGUIRE	AMCGUIRE@LOEB.COM	212.407.4143
DANIEL G. MURPHY	DMURPHY@LOEB.COM	310.282.2215
BRIAN NIXON	BNIXON@LOEB.COM	202.618.5013
ELISABETH O'NEILL	LONEILL@LOEB.COM	312.464.3149
SUE K. PAIK	SPAIK@LOEB.COM	312.464.3119
ANGELA PROVENCIO	APROVENCIO@LOEB.COM	312.464.3123
KELI M. ROGERS-LOPEZ	KROGERS-LOPEZ@LOEB.COM	310.282.2306
SETH A. ROSE	SROSE@LOEB.COM	312.464.3177
ROBERT MICHAEL SANCHEZ	RSANCHEZ@LOEB.COM	212.407.4173
ALISON SCHWARTZ	ASCHWARTZ@LOEB.COM	312.464.3169
MEREDITH SILLER	MSILLER@LOEB.COM	310.282.2294
BARRY I. SLOTNICK	BSLOTNICK@LOEB.COM	212.407.4162
BRIAN R. SOCOLOW	BSOCOLOW@LOEB.COM	212.407.4872
AKIBA STERN	ASTERN@LOEB.COM	212.407.4235
JAMES D. TAYLOR	JTAYLOR@LOEB.COM	212.407.4895
JILL WESTMORELAND	JWESTMORELAND@LOEB.COM	212.407.4019
DEBRA A. WHITE	DWHITE@LOEB.COM	212.407.4216
MICHAEL P. ZWEIG	MZWEIG@LOEB.COM	212.407.4960