

Old Enough to Know Better: Developments in Children's Privacy

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Agenda

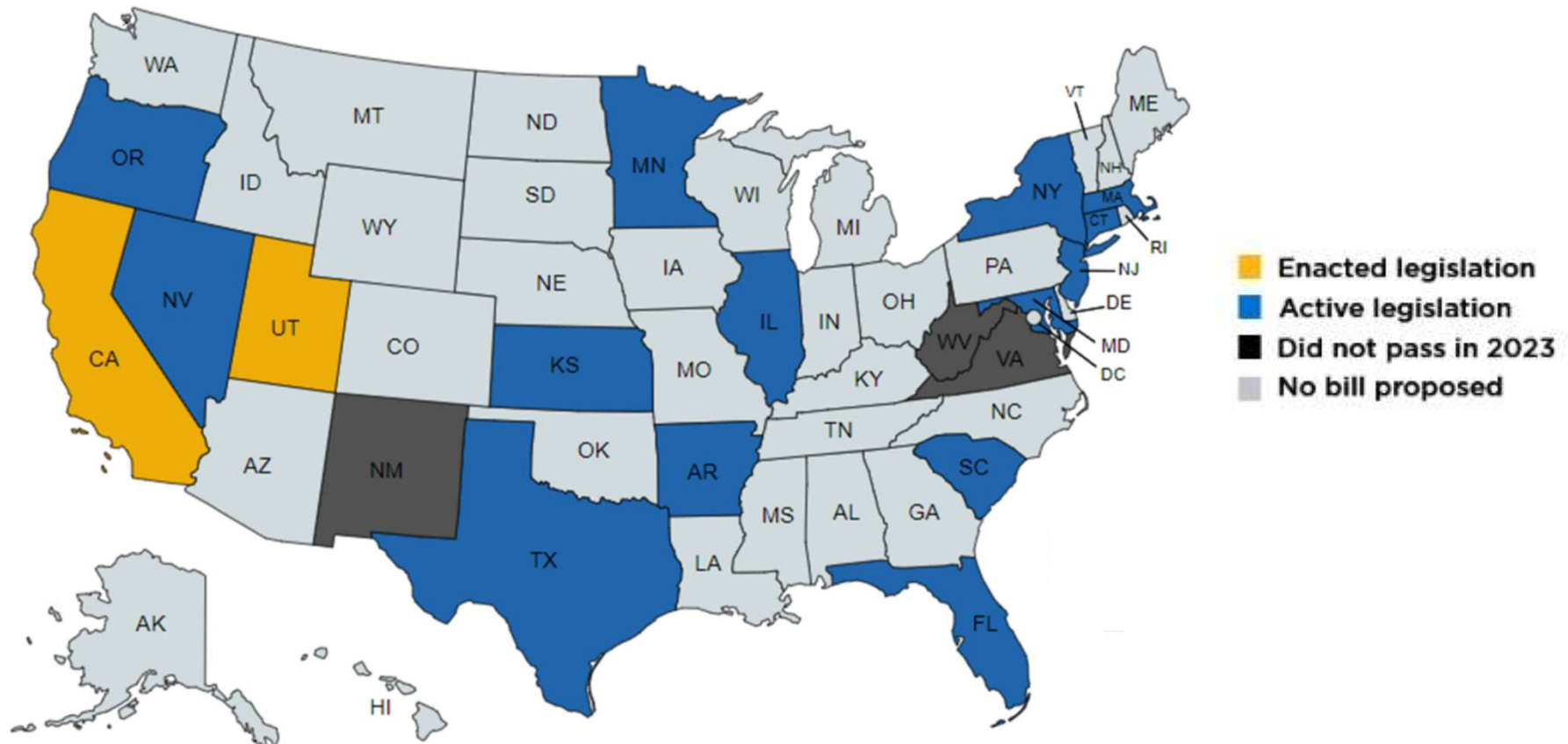
- Recent Developments in State Law
- State and Federal Activity
- Discussion:
 - What is motivating policy makers to act now?
 - What types of harms is legislation trying to address?
 - What types of sites should be covered?
 - Is legislation the best solution?

Background/COPPA



- Children's Online Privacy Protection Act (COPPA) enacted in 1998
- Amended in 2013 to expand scope
- Enforcement by FTC and by State AGs
- Requirements:
 - Online privacy policy describing information practices for personal information collected online from children;
 - Direct notice and verifiable parental consent (limited exceptions) before collecting children's information;
 - Parental choice to internal uses and prohibition on disclosure to third parties, unless integral to site/service
 - Parent's right to access, review, and request deletion of children's information
 - Parent's right to prevent further use or online collection of a child's personal information;
 - Maintain the confidentiality, security, and integrity of information collected from children
 - Retention for only as long as is necessary to fulfill the purpose for which children's personal information was collected and secure deletion requirements; and
 - Cannot condition a child's participation in an online activity on the child providing more information than is reasonably necessary to participate in that activity.
- Applies to the online collection, use and disclosure of personal information from children under the age of 13 by commercial websites and online services

Recent Developments in State Law



California Age-Appropriate Design Code Act (“CAADCA”)

- Based in large part on EU law
- Requires businesses that provide online services, products, or features that will be likely accessed by children to
 - Configure all default privacy settings to a high level of privacy
 - Provide privacy information, terms of service, policies, and community standards using clear language suited for the age of the children that are accessing these online services, products, or features
 - Complete a Data Protection Impact Assessment
- Prohibits covered businesses from:
 - Using the personal information of children for any reason other than a reason for which the personal information was collected, unless the business can demonstrate a compelling reason to do so that aligns with the best interests of the children
 - Using dark patterns—online experiences designed to steer users toward a specific choice—often related to making purchases or providing personal information
- Signed by Governor Gavin Newsom on September 15, 2022
- Scheduled to go into effect July 1, 2024
- On December 14, 2022, NetChoice, a trade association of online businesses, sued the California AG, challenging the constitutionality of CAADCA

Recent Developments in State Law



Utah Children's Online Privacy Laws

- Pair of bills signed March 23, 2023
- Goes into effect March 1, 2024
- Applies to social media companies such as TikTok, Twitter, and Meta
- Prohibits social media companies from sending minors targeted advertisements or specific accounts and collecting, sharing, or using personal information on the account
- Requires social media companies to obtain parental consent before minors can sign up
- Prohibits minors under the age of 18 are also prohibited from using social media between the hours of 10:30 PM and 6:30 AM, unless specific changes are made providing consent by a parent or guardian
- Violations are subject to enforcement by the UT Division of Consumer Protection
- Violations could result in administrative fines, enforcement through injunctions, civil penalties, and other relief through the judicial process

State and Federal Activity



The Washington Post
Democracy Dies in Darkness

House panel grilled TikTok CEO for 5 hours about app's ties to China

Utah social media law means kids need approval from parents

By Sam Metz and Barbara Ortutay | AP
March 24, 2023 at 7:18 a.m. EDT

Biden puts children's privacy at the forefront, again



TikTok wants to distance itself from China – but Beijing is getting involved

PUBLISHED FRI, MAR 24 2023 3:44 AM EDT | UPDATED 4 HOURS AGO

The New York Times

Biden's Options on TikTok Narrow After Beijing Pushes Back

TikTok May Face \$29 Million Fine for Failing to Protect Children's Privacy

British regulators have sent a warning notice to the company, the first major case under new rules in Britain that protect minors online.

Discussion

- What is motivating policy makers to act now?
- What types of harms different proposals are trying to address?
 - Privacy harms?
 - Design harms?
 - Content harms?
- What is the appropriate scope for these laws?
 - What types of sites should be covered?
 - Actual knowledge/constructive knowledge?
 - How do sites distinguish 17- from 19-year-olds?
 - Directed to children/likely to be accessed by children?
- Is legislation the best solution?
 - What role parents should play?
 - Parental consent, parental control, parental tools