

## CDT Urges Repeal of Maine Marketing-to-Minors Law

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The Judiciary Committee of the Maine State Legislature held a hearing today to discuss the future of [Public Laws 2009, Chapter 230](#) [2], the Act to Prevent Predatory Marketing Practices Against Minors. Enacted earlier this year, this law intended to target deceptive online marketing by prescription drug companies to minors under the age of 18.

The law as drafted, however, was substantially overbroad. It prohibits the collection of personal and health-related information from minors without verifiable parental consent, and prohibits the transfer, online or offline, of any information about Maine minors, even with parental consent. Six weeks ago, CDT was actively preparing to pursue a constitutional challenge against the Act and consulting closely with the Maine Civil Liberties Union to explore potential collaboration. However, several groups, including the Maine Independent Colleges Association and the Maine Press Association, then challenged the law in federal court on constitutional grounds, and we temporarily set aside our efforts to watch the outcome of that case. Following the pledge of Maine Attorney General Janet T. Mills not to enforce the problematic law, the court dismissed the case, and the legislature must now decide whether to repeal or amend the Act.

The Maine legislature must repeal this law. The current bill poses numerous constitutional issues that cannot be resolved with any set of amendments. It is also preempted by one or more federal statutes and may lead to a number of problematic, though unintended, consequences for adults and minors alike, both inside and outside of Maine. CDT highlighted many of these issues in our [comments submitted](#) [3] to the Committee:

- The Act violates the First Amendment rights of Maine minors. Minors, especially older minors, have a right to receive information just as adults do, and speakers have the right to reach an audience of minors. Minors have the right to receive information about health-related issues such as sexually transmitted diseases and mental health issues *without* parental consent.
- Very few online service providers can afford to undertake any "parental consent" process, as we have seen with providers' efforts to comply with the federal Children's Online Privacy Protection Act (COPPA). Many sites simply take steps to exclude minors (those under the age of 13, under COPPA) from their sites altogether, and this is likely the reaction providers will have to Maine's Act. The impact on minor's rights to receive information under the Maine Act will be all the more problematic and severe since the Act applies to all minors under 18.
- The Act will have significant negative effects on the free speech and privacy rights of adults both inside and outside of Maine. Some service providers will decide to exclude all users from Maine, rather than risk violating the Act (and incurring hefty civil penalties). And many providers will increase the amount of data they collect from *all* users, in order to screen out Maine-based visitors to their sites. Thus, even the privacy of Internet users with no relationship with Maine will be harmed by this Act.
- This type of broad regulation aimed at a group of speakers on the Internet violates the Commerce Clause of the Constitution. The Internet is a seamless medium that spreads across traditional territorial borders. Online service providers reach across state lines and are unable to effectively comply with state-by-state laws regulating their interactions with users. Courts across the country have recognized that state attempts to regulate speech online would subject the Internet to a disparate and even contradictory patchwork of laws, and thus violate the Commerce Clause.

These constitutional defects are severe, and cannot be remedied by piecemeal amendment. CDT urges the Maine legislature to repeal the law and explore existing mechanisms under both Maine and federal law to address the types of deceptive and unfair trade practices identified by the legislature.



CDT commends Attorney General Mills and the Maine Civil Liberties Union for their strong and continued support of Maine residents' constitutional rights.

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