

iAWFUL (Internet Advocates' Watchlist For Ugly Laws)

August 2009 Update (new items in italics)



A NetChoice Initiative

- 1. *Maine Predatory Marketing Law – What’s wrong? Creates an unprecedented prohibition on collecting information about and marketing to teenagers.*** At the very end of its session, the Maine legislature passed a sweeping law that regulates a company’s marketing and data collection practices. Ostensibly modeled from the federal Children’s Online Privacy Protection Act, the Maine law (10 MRSA c.1055) requires “verifiable parental consent” before any company collects or receives personal information of anyone under 18 years old, impacting all sorts of websites where teenagers can provide their names and other personal information. It also flat-out prohibits using that information for marketing products to minors. The law imposes strict liability that would prevent common marketing practices used to serve teens information on colleges, test prep services, class rings, etc. Moreover, the law enables private rights of action and sets minimum statutory damages that will encourage frivolous lawsuits where there is no actual harm whatsoever. The law becomes effective on September 12, 2009, but we’re advocating for a stay to examine unanticipated but unintended consequences.
- 2. *Hotel Taxes on Online Travel Companies. What’s wrong? Travel sites are being threatened with the wrong tax rate in the wrong jurisdiction.*** Local governments want to levy their double-digit tax hotel occupancy taxes on service fees charged by online travel websites. New York City recently passed an ordinance to create this new tax, which is opposed by over 100 NYC hotels and by the American Society of Travel Agents. The state of Florida also considered bills to tax service fees as hotel rentals. This is the wrong approach. Service fees should not be taxed the same as a hotel room charge. If these service fees were to be taxed at all, they would be taxed as a service rendered to the traveler booking the room -- a new tax that would have to be levied by the jurisdiction where the traveler resides.
- 3. *New Jersey Social Networking Bill (A 3757) – What’s wrong? It turns social networking sites into social networking police.*** This bill requires social networking websites to promptly review user allegations of harassment and abusive language, and to provide a report of the result of any review "upon request" from the user. Many sites already have “report abuse” buttons and they already revoke abusive users. However, faced with adverse publicity and cost of lawsuits, many websites will be forced to lower the bar for kicking-off users. This isn’t confined to websites based in New Jersey—it will regulate any website, anywhere, that can be used by New Jersey residents. For more information, see <http://blog.netchoice.org/2009/04/new-jersey-bill-requires-myspace-to-be-mypolice.html>
- 4. *Revenue Rulings by Colorado and Washington State Tax Administrators Create New Digital Download Taxes – What’s wrong? Discriminates against***

goods and services sold online versus offline. The Colorado Department of Revenue recently issued a ruling that would impose sales tax on any service or subscription where users can download or print documents or web pages. Services aren't taxed in Colorado, but this ruling makes them taxable if the service is provided online. Just emailing a document to a customer would make an otherwise nontaxable service into a taxable digital good.

In addition, the Washington Department of Revenue issued a draft rule that taxes all digital products, regardless of how they are accessed (downloaded, streamed, subscription service, networking, etc.). Washington broadly defines "digital good" to encompass a variety of things, even digital schematics of a lawnmower transferred electronically to a repair shop! What's more troubling is that the ruling suggests that payments for displaying online advertising would suddenly become a taxable event.

5. **North Carolina Digital Downloads Tax Bill (HB 558/S 487) – What's Wrong? Discourages the Greenest Way to Purchase Music and Other Content.** This bill would discourage the most environmentally friendly way for consumers to purchase movies, music, and software by applying a sales tax to the digital download of these goods. The bills would also place local businesses that sell these goods at a disadvantage to out-of-state competitors. For more information, see <http://blog.netchoice.org/2009/06/yes-north-carolina-lets-be-fair-about-digital-downloads.html>
6. **North Carolina Tickets Tax Bill (SB 99) – What's wrong? Taxes the Internet (and only the Internet) resale of tickets.** SB 99 violates federal law because it explicitly targets Internet—and only Internet—ticket sales. The Internet Tax Freedom Act Amendment Acts of 2007 (Public Law No: 110-108) provides a moratorium through November 1, 2014 on any "multiple or discriminatory taxes on electronic commerce." This law bars federal, state and local governments from imposing discriminatory Internet-only taxes such as bit taxes, bandwidth taxes, and email taxes. It also prohibits the sort of *prima facie* discrimination exhibited by SB 99—"Reselling or offering to resell admission tickets on the Internet..."). For more information, see <http://blog.netchoice.org/2009/05/north-carolina-bill-could-be-first-law-to-be-a-multiple-or-discriminatory-tax-on-the-internet.html>
7. **Federal & State Bills on Organized Retail Crime – What's wrong? They create unwarranted, extraordinary burdens on online marketplaces.** Federal: The Combating Organized Retail Crime Act of 2009 (S 470), the Organized Retail Crime Act of 2009 (HR 1173) and the E-Fencing Enforcement Act of 2009 (HR 1166). State: Massachusetts HB 1344. These bills would mandate online and off-line marketplaces to investigate suspicious sales, place disclosure requirements on online marketplaces, impose obligations upon online marketplaces to police small retailers absent evidence of criminal activity. The Massachusetts bill provides for the forfeiture of any property used or intended to be used to commit or facilitate a violation, and is so broad that it could encompass a company's servers and domain names. For more information, see <http://blog.netchoice.org/2009/02/everything-old-is-new-again-big-retailers-going-after-ecommerce-again.html>

- 8. *Massachusetts Online Advertising Bill (HB 313) – What’s wrong? It threatens the viability of new business models on the Web.*** Massachusetts seeks to regulate “online preference marketing” in which information is stored from consumers’ online searches and used by advertisers to target specific advertisements toward them. But there is nothing nefarious or dangerous to consumers about advertising that is more relevant to them. The bill is unnecessary because industry is already working toward self-regulatory best practices. Consumers—not legislators—should decide whether or not this type of service succeeds in the marketplace.
- 9. *North Carolina Advertising Nexus Proposal. What’s wrong? Unconstitutionally expands sales tax burdens to out-of-state businesses.*** North Carolina is the latest state (after New York and Rhode Island) to rule that Internet advertising triggers a nexus for sales tax collection and remitting obligations for out-of-state businesses. States think that they are expanding their revenue base, but they are wrong—fewer advertising dollars would flow to in-state publishers and websites. Online companies and content providers are still experimenting with new models for advertising and distribution. State laws that use Internet advertising as a proxy for an in-state sales representative will stunt the growth of new business models and distort the evolution of Internet marketing.
- 10. *New York Online Employment Services Taxation Issue – What’s wrong? Discriminates against services provided over the Internet.*** The New York Tax Department asserts that online job-seeking and resume services may be subject to sales taxation. New York currently taxes “information services” and maintains that the providing of employment information falls within this definition. We disagree. Online companies fulfill the traditional role of a “headhunter” (which is a non-taxable service) only using non-traditional means. The fact that information is provided or utilized digitally does not change the fact that their service is designed to establish an employment relationship between an employer and a job seeker.