California Enacts Broad New Social Media Legislation on Content Moderation Practices

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Key Points

- This September, California Gov. Gavin Newsom signed AB 587 into law, establishing new transparency requirements for social media companies. The new requirements include publicly posting and submitting to the California Attorney General (AG), semiannual reports on company content moderation practices.
- AB 587 applies to "social media companies" (defined as persons or entities that own or operate one or more social media platforms) with gross revenues of over $100 million.
- This law follows a recent pattern of emerging state content moderation laws. Social media content moderation laws in Texas and Florida are undergoing court challenges.
- The California requirements go into effect on January 1, 2024.

Background

On September 13, 2022, California enacted a broad social media transparency law (AB 587) requiring social media companies to post their terms of service with, and to submit semiannual reports to, the California AG's office. The newly required reports must also include information related to each social media company's content moderation practices. The legislation applies to social media companies, as defined in the statute, with gross revenues of more than $100 million for the preceding year. Few companies will satisfy the revenue thresholds but, for those that do, the compliance obligations will be burdensome.

Content moderation has been on the forefront of policy debates at both federal and state levels for several years. The Trump Administration initiated proceedings to curtail immunities afforded by Section 230 of the Communications Decency Act, and several members of Congress have introduced legislation to either amend or repeal the protections it affords to online platforms. In addition, the U.S. Supreme Court announced that in its upcoming term, it will be hearing a case on the limits to immunities offered under Section 230 to online platforms. Similar to California, states

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such as Texas and Florida have enacted content moderation laws. In Texas and Florida those laws are the subject of ongoing court challenges.

Scope and Requirements

Unlike other content moderation frameworks that have been advanced in recent years, this new law does not dictate whether or how social media companies should moderate content. Instead, AB 587 takes an approach grounded in voluminous public disclosures. Under AB 587, a "social media company" that meets the revenue threshold must provide to the California AG:

1. A copy of their current terms of service.
2. Semiannual reports on content moderation.

The semiannual reports must include: (i) how the terms of service define certain categories of content (e.g., hate speech, extremism, disinformation, harassment and foreign political interference); (ii) how automated content moderation is enforced; (iii) how the company responds to reports of violations of the terms of service; and (iv) how the company responds to content or persons violating the terms of service.

The reports must also provide detailed breakdowns of flagged content, including: the number of flagged items; the types of flagged content; the number of times flagged content was shared and viewed; whether action was taken by the social media company (such as removal, demonetization or deprioritization); and how the company responded. Social media companies that do not supply their terms of service to the AG's office, fail to submit their reports or materially omit required information from their reports are subject to fines up to $15,000 per violation per day.

For purposes of this legislation, a social media company is defined as a person or entity owning or operating one or more social media platforms. Social media platforms are defined as public or semipublic internet based services or applications with users in California, that both substantially function to connect users socially (not including connecting solely through email or direct messages) and allow users to (i) build public or semipublic profiles; (ii) populate a list of users over a shared social connection; and (iii) create or post content viewable by other users (such as message boards and chat rooms). Companies providing services limited to "direct messages, commercial transactions, consumer reviews of products, sellers, services, events, or places, or any combination thereof" are not covered by AB 587.

Takeaway

For social media companies, compliance with the reporting requirements will require tracking and maintaining information that may not already be tracked and maintained. Covered social media companies should begin preparing as soon as possible to implement the procedures needed to collect and maintain the required data.

Initial reports to the California AG's office are due no later than January 1, 2024. Thereafter, reports will be due semiannually on April 1 (covering the third and fourth quarters of the previous year) and October 1 (covering the first and second quarters of the year).

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