

## Summary of United States Laws that Could Impact Internet Adoption-related Services

This memorandum summarizes federal and state laws in the United States that could impact groups who use the Internet to facilitate adoptions. It focuses on laws that apply to Internet listings of photographs or other information concerning children who are available for adoption (“Internet photolisting”), as well as the use of the Internet to match children with prospective adoptive parents.

### I. Synopsis

The primary issues that arise under U.S. federal and state law are as follows:

- Under the federal laws that implement the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, a person or group that provides “adoption services” between residents of the United States and other countries that are parties to the Convention will have to be accredited or approved through procedures established by the U.S. State Department. Under the State Department’s proposed rules (which have yet to become final) “[i]dentifying a child for adoption and arranging an adoption” will constitute an “adoption service.” However, the State Department’s rulemaking notice makes clear that the proposed definition of “adoption service” does not extend to simple Internet photolisting of children waiting for adoptive placement. Therefore a group that simply posts such information or pictures need not be accredited or approved. None of these requirements takes effect until the Convention comes into force in the United States. That occurs after the State Department has issued its final rulemaking. The comment period for the proposed rule ended on December 15, 2003, and the State Department has not indicated when it will issue its final rule.
- Because adoption photolisting necessarily involves gathering personal information about children and posting it on the Internet, entities that photolist should consider any potential effect of the Children’s Online Privacy Protection Act (“COPPA”). COPPA, together with the Federal Trade Commission’s implementing rules, prohibits web site operators from collecting personal information online from children under the age of 13 without parental consent. The FTC’s rules also provide that web site practices regarding use of children’s information cannot be unfair or deceptive. For this and a variety of other reasons, an entity operating an Internet photolist should take pains to ensure that children cannot post or provide their personal information without the consent of a parent or guardian or other appropriate safeguards, and it should be careful when crafting policies governing precisely who may consent to the posting of a child’s picture or other information.
- A federal statute, 47 U.S.C. § 230, could shield operators of photolisting web sites from claims that information provided by third parties was deceptive or defamatory. However, this defense would apply only where the information at issue was truly “provided by another” and the operator did not participate at all in its “creation or development.”

*This memorandum is for general informational purposes only and does not represent our legal advice as to any particular set of facts, nor does this memorandum represent any undertaking to keep recipients advised as to all relevant legal developments.*

- Most, if not all, states have tort laws or privacy statutes that impose liability for revealing or publicizing private facts without consent or for misappropriating a person's image or other information. In order to avoid liability under these tort laws and statutes, operators of photolisting web sites must ensure that they have obtained consent that is both effective and broad enough to encompass all intended uses of a potential adoptee's information and li. In the context of minors who may not have regular parent or guardian arrangements, formulating policies for consistently obtaining effective consent may prove challenging.
- Several states prohibit entities not licensed as adoption agencies from advertising children for adoption.<sup>1</sup> For example, a Florida statute makes it unlawful for any person, "[e]xcept an adoption entity, to advertise or offer to the public, in any way, by any medium whatever that a minor is available for adoption or that a minor is sought for adoption; and further, it is unlawful for any person to publish or broadcast any such advertisement without including a Florida license number of the agency or attorney placing the advertisement." These state statutes could be construed to prohibit Internet photolisting by groups that are not licensed as adoption agencies in those particular states.
- Some states have statutes that prohibit unlicensed entities from "assisting" in placing or arranging placement of a child for adoption. For example, the District of Columbia's "Baby Broker Act" states that no one "other than a licensed child-placing agency, may place or arrange *or assist in placing or arranging* for the placement of a child" for adoption. Similarly, Kentucky prohibits an unlicensed entity from acting as an "intermediary in the placement of a child for adoption." Montana goes so far as to prohibit an unlicensed entity from "facilitating the placement of a child by maintaining a list in any form of birth parents or prospective adoptive or foster parents." It is conceivable that a state attorney general or local prosecutor in such a state could assert that Internet photolisting "assists" in placement of children for adoption, and thereby require that such photolisting be carried out only by entities licensed in that particular state.
- Several states have statutes that prohibit unlicensed entities from charging fees for bringing adoptive parents and children together. Some states also prohibit unlicensed entities from advertising within their borders that such services are available for compensation. For example, an Oklahoma statute prohibits unlicensed entities from "knowingly publish[ing] for circulation within the borders of the State of Oklahoma an advertisement of any kind" in any medium for "services for compensation to assist with or effect the placement of a child for adoption." Fees charged by licensed entities tend to be regulated extensively. Private entities that provide Internet

---

<sup>1</sup> It is possible that these statutes could be vulnerable if challenged under the U.S. Constitution's First Amendment free speech provision. An analysis of the potential merits of such a challenge is beyond the scope of this memorandum. It is also possible that, depending on the circumstances of the entity posting adoption-related information on a web site, an individual state's courts may lack personal jurisdiction to enforce some statutory provisions. Such an analysis would be very fact-specific, and hence is also beyond the scope of this memorandum.

photolisting but charge small registration fees could run afoul of some of these state provisions.

## II. Federal Laws

### A. 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

In March 1994, the United States signed the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, *adopted* May 29, 1993, 1870 U.N.T.S. 167 (the "Convention"). The U.S. Senate gave its advice and consent to the Convention in 2000, but it will not come into force in the United States until the federal regulations that implement the Convention have become final and entities have been accredited under those regulations. *See* 146 Cong. Rec. S8866 (daily ed. Sept. 20, 2000) ("The President shall not deposit the instrument of ratification for the Convention until such time as the Federal law implementing the Convention is enacted and the United States is able to carry out all the obligations of the Convention, as required by its implementing legislation"); *see also* Accreditation of Agencies and Approval of Persons Under the Intercountry Adoption Act of 2000, 68 Fed. Reg. 54,064, 54,067 (Sept. 15, 2003) ("Accreditation of Agencies") (describing the proposal of a process to occur before the Convention comes into force in the United States). The federal regulations to implement the Convention were proposed on September 15, 2003, and the comment period ended on December 15, 2003. *See* Bureau of Consular Affairs, U.S. State Department, "Extension of Public Comment Period to December 15, 2003 on Proposed Rules for 22 CFR Parts 96 and 98," *available at* <http://www.travel.state.gov/extension22cfr.html>. The U.S. State Department has not indicated when it will issue a final regulation.

The text of the Convention itself is unlikely to restrict adoption-related Internet postings. However, Article 32 does prohibit "improper" or "unreasonable" fees for activities related to intercountry adoptions. It provides:

- (1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption.
- (2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.
- (3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

Therefore, entities involved in photolisting children available for adoption could fall within the Convention's strictures if they charge high or questionable fees.

### B. Intercountry Adoption Act of 2000 and Proposed State Department Rules

The federal legislation and proposed regulations implementing the Convention are also unlikely to affect common adoption-related Internet postings. However, if groups or individuals identify a child for adoption and then actually "arrange" an adoption over the Internet, the

proposed implementing regulations would require them to be certified through the U.S. State Department's forthcoming procedures.

In 2000, the U.S. Congress enacted the implementing legislation for the Convention. *See* Intercountry Adoption Act of 2000, Pub. L. No. 106-279, 114 Stat. 842 (codified at 42 U.S.C. §§ 14901 et seq.). The Intercountry Adoption Act prohibits non-accredited entities from offering, providing, or facilitating "adoption services" for intercountry adoptions governed by the Convention. It states that "no person may offer or provide adoption services in connection with a Convention adoption in the United States unless that person - (1) is accredited or approved in accordance with this [statute]; [or] (2) is providing such services through or under the supervision and responsibility of an accredited agency or approved person." 42 U.S.C. § 14921(a). The statute provides civil penalties for violating Section 14921 and criminal penalties for a knowing and willful violation. 42 U.S.C. § 14944.

Therefore, any entity providing "adoption services" must be accredited by the State Department (or its designated authority) once the law takes effect. Whether Internet photolisting constitutes "adoption services" is not clear from the face of the statute. However, as discussed below, a proposed regulation would (assuming it is adopted in its current form) clarify that an entity does not provide "adoption services" if it merely identifies children available for adoption but does not go on to arrange the adoption.

The statute defines "adoption service" as follows:

The term "adoption service" means –

- (A) identifying a child for adoption and arranging an adoption;
- (B) securing necessary consent to termination of parental rights and to adoption;
- (C) performing a background study on a child or a home study on a prospective adoptive parent, and reporting on such a study;
- (D) making determinations of the best interests of a child and the appropriateness of adoptive placement for the child;
- (E) post-placement monitoring of a case until final adoption; and
- (F) where made necessary by disruption before final adoption, assuming custody and providing child care or any other social service pending an alternative placement.

42 U.S.C. § 14902(3). It also states that "[t]he term 'providing', with respect to an adoption service, includes facilitating the provision of the service." *Id.*<sup>2</sup> The statute's text is therefore

---

<sup>2</sup> The statute's prohibition against offering, providing, or facilitating "adoption services" without accreditation does not apply to four excepted activities: (1) performance of background studies and home studies that are approved by an accredited agency; (2) provision of child welfare services; (3) provision of legal services;

subject to a few possible readings, and its likely scope was unclear before the U.S. State Department interpreted it in its proposed regulation. A narrow reading would only require accreditation if an entity facilitated or provided all six of the listed services. A very broad reading could make it applicable to any entity that “facilitates” “identifying a child for adoption” – which could be nearly any Internet site focused on adoption.

In any event, the State Department’s proposed implementing regulation provides guidance for groups that operate Internet photolists. The implementing regulation, which the State Department proposed in September 2003, would make clear that the definition of “adoption services” includes “any one” of the six services listed in the statute above. *See Accreditation of Agencies*, 68 Fed. Reg at 54,093 (to be codified at 22 C.F.R. pt. 96). But with regard to the first of the six listed services (identifying a child and arranging an adoption), the overview accompanying the proposed rule explains that its application would be limited as follows:

An agency or person that both identifies a child for adoption and arranges the adoption would be covered by the requirement. On the other hand, a magazine or TV show or newsletter, which simply posts pictures and information about children waiting for adoptive placements on behalf of other agencies, persons, or public bodies, would not be covered. These media companies are not covered because they are only communicating information on a child awaiting placement, rather than both identifying a child for adoption and arranging the adoption.

Accreditation of Agencies, 68 Fed. Reg. at 54,076. Therefore, Internet sites that simply list or show pictures of available children would be exempt from the federal accreditation requirement. To fall within the requirement, a site or its operator would have to go further and “arrange” the adoption.

The Intercountry Adoption Act’s prohibitions will not go into effect until the Convention comes into force in the United States. *See Intercountry Adoption Act of 2000* § 505, Pub. L. 106-279. As noted above, that will not occur until the State Department issues its final implementing regulation.

#### C. Children’s Online Privacy Protection Act (COPPA)

Entities that photolist children available for adoption may be subject to the Children’s Online Privacy Protection Act (COPPA). In order to comply with COPPA, entities that photolist should follow the U.S. Federal Trade Commission’s guidelines for ensuring that they do not collect any information directly from children. COPPA states that it is unlawful “to collect personal information *from a child* in a manner that violates” regulations promulgated by the Federal Trade Commission. 15 U.S.C. § 6502(a)(1) (emphasis added). Because most photolisting sites collect information about available children from social service agencies or guardians, but not from children themselves, COPPA is unlikely to come into play. COPPA,

---

and (4) actions by a prospective parent acting on his or her own behalf. 42 U.S.C. § 14921(b). However, it is unlikely that any of these exceptions would apply to Internet photolisting.

combined with the Federal Trade Commission's implementing regulations, is focused on data collected from children and prohibits a web site "operator" from collecting "personal information" online from children under the age of 13 without receiving parental consent. *See* 16 C.F.R. pt. 312. The FTC's rules define "personal information" broadly, and the definition would certainly include a child's photograph or other information commonly posted on adoption photolistings. *See* 16 C.F.R. § 312.2. In any event, the Federal Trade Commission's rules provide a safe harbor from COPPA enforcement actions if a web site follows certain privacy-protection guidelines approved by the FTC. *See* 16 C.F.R. § 312.10. Links to approved guidelines can be found on the FTC's web site at [www.ftc.gov/privacy/safeharbor/shp.htm](http://www.ftc.gov/privacy/safeharbor/shp.htm).

#### D. Federal Shield from Certain Forms of Liability for Third-Party Content

Photolisting sites that post or compile information obtained from outside groups or individuals may face lawsuits if the information they receive and post turns out to have been false or defamatory. The theory would generally be that the site operators "published" or "distributed" the false or defamatory information. This could come into play if a photolisting web site posted an inaccurate description of a child. However, a 1996 federal law, 47 U.S.C. § 230, could provide operators of web sites with photolistings an important defense against attempts to hold them liable for information obtained from third parties. Section 230 shields a "provider" of an "interactive computer service" from civil liability where imposing such liability would treat the provider as the "publisher" or "distributor" of another party's content.<sup>3</sup>

An important requisite for a Section 230 defense is that the content at issue be "provided by another." If a court finds that a web site operator participated, in whole or in part, in the "creation or development" of the offending information, then the operator may be deemed an "information content provider" and Section 230 immunity would not apply. *See* 47 U.S.C. § 230. Accordingly, federal law would not provide a shield from civil liability to Internet sites that photolist children but author their own text descriptions. These sites would be at risk of civil liability for any damage done to any party (such as the child, biological parents, or adoptive parents) by misleading or libelous statements in their photolistings. Similarly, editing and revising the contents of photolisting submissions would considerably weaken a site's Section 230 defense, because it could be held to constitute "creation or development." On the other hand, simply cutting or rejecting (rather than revising) inappropriate content would generally leave a Section 230 defense intact.

#### E. Other Federal Laws

Several other federal statutes deal with the general subject of adoption; however, our research did not reveal any that would regulate adoption assistance provided over the Internet. Rather, they are designed to encourage or study adoptions generally. *See, e.g.*, 42 U.S.C. § 5113 (directing the U.S. Department of Health and Human Services to conduct education, training, and information programs regarding adoption, provide a national adoption information exchange,

---

<sup>3</sup> Section 230 arguably applies to state criminal laws as well, though no case has settled that issue. *Cf. Doe v. America Online, Inc.*, 783 So. 2d 1010 (Fla. 2001) (holding that Section 230 shielded America Online from civil liability arising out of alleged violations of state criminal statutes). Section 230 provides no defense against federal criminal statutes such as federal obscenity or child pornography laws, but these are unlikely to be an issue for adoption web sites.

and work to eliminate barriers to adopting across jurisdictional boundaries); 42 U.S.C. § 5114 (requiring the Department of Health and Human Services to prepare a study on interstate and intrastate adoption and submit an action plan to facilitate interjurisdictional adoption of foster children).

#### F. AdoptUSKids.org

Since October 2002, the Department of Health and Human Services has helped sponsor an adoption site, <http://www.adoptUSKids.org>, listing children available for adoption who are considered the hardest to place. In its first year of operation, more than 6500 children were featured on the site, and the site claims credit for 1500 successful adoptions of listed children.<sup>4</sup> Several states have either cooperated with this site, cooperated with private photolisting sites, or established their own sites. The state-related photolisting sites are listed below, under each state discussed. Photolisting sites created and run by state or federal governments are less likely than private sites to be impacted by U.S. adoption laws, because sovereign immunity theories and the U.S. Constitution's Eleventh Amendment provide state and federal agencies with an important shield.<sup>5</sup>

### III. State Laws

State privacy laws should be an important consideration for any operator of an Internet photolisting of children available for adoption. Each U.S. jurisdiction recognizes, whether by statute or common law, some or all of the four major "invasion of privacy" torts described generally in Restatement (Second) of Torts, §§ 652A-652E, or in the influential law review article, William L. Prosser, *Privacy*, 48 Cal. L. Rev. 381 (1960). Two of these torts are particularly likely to have relevance to adoption photolistings: (1) public disclosure of private facts, and (2) misappropriation of image or personality. The key to avoiding liability for invasion of privacy is to ensure that any photolisting operator obtains consent that is both effective and broad enough to encompass any intended use of personal images or information. When dealing with children who are available for adoption, obtaining appropriate and effective consent may often be complicated. Web site operators may need to obtain the consent of one or all of (1) a child's biological parents, (2) foster parents, (3) an adoption agency; (4) a state agency responsible for a child, or (5) the child him- or herself. Obtaining the proper scope of consent will require web site operators to anticipate and accurately describe such factors as how an image and personal information will be used and presented in a photolisting, and how access to the photolisting is granted or restricted. For example, the common practice of presenting a "featured child" in a prominent place on a web site's home page may well require special disclosure and permission to avoid raising misappropriation issues.

Several states have also adopted "baby broker" acts that proscribe certain child placement activities by entities that are not adoption agencies licensed within those states. Internet adoption assistance raises three major issues under these statutes. First, several states prohibit entities that

---

<sup>4</sup> See Department of Health and Human Services Administration for Children and Families, "Raising Awareness, Eliminating Barriers: The Collaboration to AdoptUSKids," available at [http://cbexpress.acf.hhs.gov/articles.cfm?article\\_id=743](http://cbexpress.acf.hhs.gov/articles.cfm?article_id=743).

<sup>5</sup> An analysis of sovereign immunity law, the Eleventh Amendment, and their various exceptions is beyond the scope of this memorandum.

are not licensed as adoption agencies from advertising children for adoption. Second, some state statutes prohibit unlicensed entities from assisting or acting as an intermediary in the placement of children for adoption. Third, if an unlicensed entity charges any fees for adoption-related services, it will likely run afoul of state statutes providing that only licensed agencies can charge such fees.<sup>6</sup> The various states' statutory approaches to each of these issue categories is provided below:

A. Alabama ([www.adoptuskids.org/states/al](http://www.adoptuskids.org/states/al))

1. Advertising: The relevant statute only prohibits advertisements of adoption services that are otherwise illegal: "It shall be unlawful for any person or persons, organizations, corporation, partnership, hospital, association, or any agency to advertise verbally, through print, electronic media, or otherwise that they will:
  - (1) Adopt children or assist in the adoption of children in violation of this chapter;
  - (2) Place or assist in the placement of children in foster homes, group homes, or institutions in violation of this chapter; or
  - (3) Pay or offer money or anything of value to the parents of a child in violation of [provision prohibiting payments to parents of adoptive children].

Any violation of this section shall be punished as a Class A misdemeanor." Ala. Code § 26-10A-36.

2. Assisting in placement: Alabama prohibits non-licensed entities from "engaging in the business of placing minors for adoption." Ala. Code § 26-10A-33. The comments to the provision explain the scope of the definition of "placing children":

"Placing children is intended to be more than merely assisting a natural parent in identifying potential adoptive parents. It contemplates the assumption of the natural parents' role of selecting the adoptive parents. Consequently, doctors, ministers, lawyers and others who merely assist a natural parent by identifying potential adoptive parents as an incidental part of their professional roles are not deemed to be placing children. On the other hand, anyone who essentially steps in the shoes of the natural parent and assumes the responsibility of selecting the adoptive parents is placing children. . . . Other indicia of being in the business of placing children is when it occupies or engages the

---

<sup>6</sup> Moreover, as the state-by-state catalog of laws below demonstrates, many states place tight restrictions on the fees that licensed agencies may charge.



time and labor of persons as a principal concern, interest or for profit.”

3. Fees: “No person, organization, group, agency or any legal entity may accept any fee whatsoever for bringing the adopting parent or parents together with the adoptee or the natural parents.” Ala. Code § 26-10A-23(a). In addition, “[i]t shall be a Class C felony for any person or agency to receive any money or other thing of value for placing, assisting or arranging a minor placement. This section is not intended to prohibit legitimate charges for medical, legal, prenatal or other professional services.” Ala. Code § 26-10A-34(b).

B. Alaska (photolisting site: [www.nwae.org](http://www.nwae.org))

1. Advertising: No prohibition found.
2. Assisting in placement: No prohibition found.
3. Fees: No prohibition found. The relevant statute only requires that a petitioner for adoption file an accounting of expenses paid, including for placement. *See* Alaska Stat. § 25.23.090.

C. Arizona (photolisting site: [www.de.state.az.us/dcyf/adoption/meet.asp](http://www.de.state.az.us/dcyf/adoption/meet.asp))

1. Advertising: No prohibition found.
2. Assisting in placement: No statutory prohibition found, unless the assistance is in return for payment. *See* Ariz. Rev. Stat. § 8-130. However, administrative regulations provide that only licensed adoption agencies may provide the following “adoption services”: “Recruiting a birth parent to place a child through a particular agency; . . . [p]lacing a child in an adoptive home; [m]onitoring, supervising, or finalizing an adoptive placement; and [p]roviding networking or matching services for a birth parent, an adoptive parent or an adoptive child.” Ariz. Admin. Code R6-5-7002 (emphasis added).
3. Fees: “[A] person shall not do any of the following unless the person is employed or engaged by and acting on behalf of a licensed adoption agency:
  - "1. Solicit or accept employment or engagement, for compensation, by or on behalf of a parent or guardian for assistance in the placement of a child for adoption.
  2. Solicit or accept employment or engagement, for compensation, by or on behalf of any person to locate or obtain a child for adoption.”
4. Ariz. Rev. Stat. § 8-130.

D. Arkansas (photolisting site: [www.state.ar.us/dhs/adoption/adoption.html](http://www.state.ar.us/dhs/adoption/adoption.html))

1. Advertising: Arkansas's administrative regulations contain the following prohibition:

- “1. The [child placement] agency shall not encourage a child to make public statements to acknowledge his or her gratitude to the agency.
2. Children shall not be exploited at public gatherings such as campaign publicity efforts to raise funds for the agency.
3. *The agency shall not use, or permit to be used reports, pictures or other information from which children can be identified, in any public disclosures (including recruitment efforts) except under the following conditions:*
  - a. A consent form must be signed by the child, if the child is 10 years of age or older, and the natural parent or legal guardian with information regarding the intent of the publicity prior to publication.
  - b. The signed consent form shall be on file with the agency before any reports or pictures from which children can be identified are used.
  - c. The signed consent form shall indicate in what publication(s) the picture(s) or report(s) will appear.
  - d. Copies of the publication in which information about the child is included shall be available for review. A copy of each use shall be placed in the child's record.”

Code Ark. R. 016 15 009 at § 204 (emphasis added).

2. Assisting in Placement: Arkansas's statutes require a license for any group that “operate[s] or assist[s] in the operation of a child welfare agency.” Ark. Code Ann. § 9-28-407. It defines a “child welfare agency” to include any entity that “[p]laces any unrelated minor for care on a twenty-four-hour basis with persons other than themselves,” or any entity that “plans for or assists” in such placements. Ark. Code Ann. § 9-28-402(6). Arkansas' administrative regulations require a license for any “child placement agency,” which is defined as “any group, association, partnership, corporation or person; other than the natural parents or guardian of a child, who *plans for the placement* of or places a child in an institution, foster home, or adoptive home.” Code of Ark. R. 016 15 009 at §§ 101, 104 (emphasis added).

3. Fees: We found no prohibition on charging fees. However, all child placement agencies that charge fees for services must have a written policy that “describe[s] the relationship between fees and services provided and the conditions under which fees are charged and/or waived.” Code of Ark. Rules 016 15 009 at § 203(4). This policy must be available to the public. *Id.* at § 203(5).

E. California (photolisting site: [www.CAKidsConnection.com](http://www.CAKidsConnection.com))

1. Advertising: California’s statutes prohibit advertisements by unlicensed entities placing or soliciting children for adoption. On the other hand, they allow, but require a specific disclosure, on advertisements by “adoption facilitators” who help arrange adoptions but are not licensed adoption agencies.
  - a) The prohibition on advertisements for unlicensed placement services or soliciting children for adoption provides: “Any person or organization that, without holding a valid and unrevoked license to place children for adoption issued by the department, advertises in any periodical or newspaper, by radio, or other public medium, that he, she, or it will place children for adoption, or accept, supply, provide, or obtain children for adoption, or that causes any advertisement to be published in or by any public medium soliciting, requesting, or asking for any child or children for adoption is guilty of a misdemeanor.” Cal. Fam. Code § 8609(a).
  - b) The regulation of advertisements by adoption facilitators provides: “Any advertising by an adoption facilitator shall:
    - (a) Identify the name of the party placing the advertisement and shall state that the party is an adoption facilitator.
    - (b) Be subject to Section 17500 of the Business and Professions Code.
    - (c) Provide, in any written advertisement, the disclosure required by subdivision (a) in print that is the same size and typeface as the name required pursuant to subdivision (a) or any telephone number specified in the advertisement, whichever is the larger print size.
    - (d) Provide the disclosure required by subdivision (a) in the same color as the most prominent print in the advertisement where the advertisement contains more than one color.
    - (e) Present the disclosure required by subdivision (a) in a readily understandable manner and at the same speed and volume, if applicable, as the rest of the advertisement if the advertisement is a television advertisement.” Cal. Fam. Code § 8624.

2. Assisting in placement: California's statutes prohibit unlicensed placement, but specifically sanction paid facilitation of placements by "adoption facilitators":
  - a) "Any person, other than a birth parent, or any organization, association, or corporation that, without holding a valid and unrevoked license to place children for adoption issued by the department, places any child for adoption is guilty of a misdemeanor." Cal. Fam. Code § 8609(b).
  - b) The statute states that an "adoption facilitator" is a person who "[a]dvertises for the purpose of soliciting parties to an adoption or locating children for an adoption or acting as an intermediary between the parties to an adoption [or] [c]harges a fee or other valuable consideration for services rendered relating to an adoption." Cal. Fam. Code § 8623. Adoption facilitators must obtain a general "business license" in the appropriate jurisdiction and must be bonded for \$10,000. Cal. Fam. Code § 8636.
3. Fees: "Adoption facilitators" can contract for and charge fees for services rendered relating to an adoption. Cal. Fam. Code § 8636. The adoption petitioner must report such fees to the Court. Cal. Fam. Code § 8630.

F. Colorado (photolisting site: [www.adoptex.org](http://www.adoptex.org) or [www.afrr.org](http://www.afrr.org))

1. Advertising: No prohibition found.
2. Assisting in placement: Colorado's statutes prohibit unlicensed entities from "*placement* of any child legally available for adoption." Colo. Rev. Stat. § 19-5-206(1) (emphasis added). Colorado also defines as a "child placement agency" as an entity that "*places or arranges for placement* any child under the age of 18 years." Colo. Rev. Stat. § 26-6-102. Its regulations prohibit operating such an agency without a license, and they elaborate that "to arrange for placement is to act as an intermediary by assisting a parent or guardian or legal custodian to place or plan to place a child" with persons unrelated to that child. 12 Colo. Code Regs. § 2509-8, General Rules for Child Care Facilities § 7.701.23, Rules and Regulations for Child Placement Agencies § 7.710.1(B). But Colorado's regulations then imply that a prohibition on actions by out-of-state agencies may be limited to actual placement of a child, rather than simply acting as an intermediary. They state that "[a]ny agency from out of state *placing* a child within Colorado must be licensed as a child placement agency by the Colorado Department of Human Services unless the placement services are coordinated with and provided by a county department of social services or a child placement agency licensed by the department." 12 Colo. Code Regs. § 2509-8, General Rules for Child Care Facilities

§ 7.701.23, Rules and Regulations for Child Placement Agencies  
§ 7.710.1(A)(2) (emphasis added).

3. Fees: “No person, other than an adoption exchange whose membership includes county departments and child placement agencies, a licensed child placement agency, or a county department, shall offer, give charge, or receive any money or other consideration or thing of value in connection with locating or identifying for purposes of adoption any child, natural parent, expectant natural parent, or prospective adoptive parent . . . .” Colo. Rev. Stat. § 19-5-213(1)(b).

G. Connecticut (photolisting site: [www.adoptuskids.org/states/ct](http://www.adoptuskids.org/states/ct))

1. Advertising: Connecticut’s regulations approve child placing agencies advertising “in any Connecticut public media regarding availability of their adoption services or for the placement of a child for the purpose of adoption.” Conn. Agencies Regs. § 45a-728-6. Connecticut’s regulations appear only to prohibit use of a child’s photograph or other information for activities that benefit a child placing agency rather than the child. They state:  
  
“Children in the care of a child placing agency shall not be:  
(1) Required or permitted to solicit funds for the child placing agency;  
(2) identified by name, in photographs, or in any other manner in its fund-raising material and activities or in public relations; or  
(3) exploited by the child placing agency or any of its staff for their own advantage or purposes.” Conn. Agencies Regs. § 17a-150-61.
2. Assisting in placement: Connecticut’s statutes prohibit “placing a child” without a license. Conn. Gen. Stat. § 17A-149. Its regulations state that “[t]he activities of out-of-state non approved child placing agencies shall be permitted, so long as such activities are not performed within the State of Connecticut and are of the type customarily performed by a child placing agency, and provided further that the actual placement of a child is made only by the department or a child placing agency.” Conn. Agencies Regs. § 45a-728-4.
3. Fees: No prohibition found on fees charged by child placing agencies. A child placing agency must place a fee schedule on file with the Department of Children and Families. Conn. Agencies Regs. § 17a-150-69(b). Entities that are not licensed child placing agencies are prohibited from accepting “cash or other consideration . . . for the identification or location of a specified child or children for prospective adoptive parent(s) or for information regarding birth parents.” Conn. Agencies Regs. § 45a-728-3.

H. Delaware (photolisting site: www.adopt.org)

1. Advertising: No one except an agency licensed in Delaware or the Delaware Department of Services for Children “shall advertise in [Delaware] regarding the availability of adoption services or for the placement of a child for purpose of adoption.” Del. Code Ann. tit. 13, § 930.
2. Assisting in placement: Delaware’s statutes regulate “whoever places a child in [Delaware] for the purpose of adoption, brings or receives a child from outside [Delaware] into [Delaware] for the purpose of adoption, advertises in [Delaware] regarding adoption services *or for the placement of a child* for purpose of adoption, or *acts as an intermediary* for the purpose of adoption.”
3. Fees. Delaware’s statutes state: “No person or organization who is in any way connected with an adoption shall receive any remuneration in connection therewith, except for court costs and legal services; provided, however, that the Department, licensed agency or authorized agency may charge a service fee for each adoption in an amount not exceeding the cost of services rendered, to be paid by the adopting parent or parents.” Del. Code Ann. tit. 13, § 928(b). Delaware prohibits adoptions in which paid, unlicensed intermediaries have been involved. *See* Del. Code Ann. tit. 13, § 904 (“No placement for an identified adoption in which an intermediary has been involved shall be approved or permitted by the Department or a licensed agency.”). Delaware defines such an “intermediary” as “any person for compensation . . . or other legal entity, except the Department or a licensed agency, which in any way acts, or offers to act, as a link between a birth parent and an adoptive family in any proposed placement of a child or any person who receives remuneration for so acting or offering to act.” Del. Code Ann. tit. 13, § 901(6).

I. District of Columbia

1. Advertising: No prohibition found.
2. Assisting in placement: The District of Columbia’s “Baby Broker Act” provides that “no firm, corporation, association, or agency, other than a licensed child-placing agency, may place or arrange *or assist in placing or arranging* for the placement of a child under 16 years of age in a family home or for adoption.” D.C. Code Ann. § 4-1405. Violations are punishable by criminal fine and imprisonment. *See* D.C. Code Ann. § 4-1408. However, at least one court decision has held that before establishing a violation of the Baby Broker Act, the District’s government must show a “substantial nexus” with the placement activity such that the District has a “significant interest” in the placement at issue. *Galison v. District of Columbia*, 402 A.2d 1263, 1266-67 (D.C. 1979). This rule

provides a strong argument that the District's Act could not be implicated unless an Internet posting results in an adoption into or out of the District.

3. Fees: "Neither the Mayor nor any child-placing agency authorized to perform services in connection with placing a child in a family home for adoption may make or receive any charge or compensation whatsoever for such services, except that a licensed child-placing agency which is organized and operated exclusively for religious or charitable purposes and no part of the net earnings of which can inure to the benefit of any private shareholder or individual may be allowed to charge adoptive parents, within prescribed limits, for such services an amount not to exceed the average costs incurred; such average costs and prescribed limits to be determined in accordance with rules and regulations . . . ." D.C. Code Ann. § 4-1410.

J. Florida (photolisting site: [http://www.myflorida.com/cf\\_web/myflorida2/healthhuman/adoption/search/index.shtml](http://www.myflorida.com/cf_web/myflorida2/healthhuman/adoption/search/index.shtml))

1. Advertising: Florida's statute provides that "[i]t is unlawful for any person . . . [e]xcept an adoption entity, to advertise or offer to the public, in any way, by any medium whatever that a minor is available for adoption or that a minor is sought for adoption; and, further, it is unlawful for any person to publish or broadcast any such advertisement without including a Florida license number of the agency or attorney placing the advertisement." Fla. Stat. § 63.212(1)(g).
2. Assisting in placement: Florida's restrictions do not extend to "assisting" in placement or arranging placement with an adoption agency. The statute's restriction is limited to placement or attempted placement for adoption in Florida. The statute states that it is unlawful for any person "[e]xcept an adoption entity, to place or attempt to place within the state a minor for adoption unless the minor is placed with a relative or with a stepparent. This prohibition, however, does not apply to a person who is placing or attempting to place a minor for the purpose of adoption with the adoption entity." Fla. Stat. § 63.212(1)(b).
3. Fees: Florida's provision states that it is unlawful for any person "[e]xcept an adoption entity, to charge or accept any fee or compensation of any nature from anyone for making a referral in connection with an adoption." Fla. Stat. § 63.212(1)(f).

K. Georgia (photolisting site: [www.myturnnow.com](http://www.myturnnow.com))

1. Advertising: "It shall be unlawful for any person, organization, corporation, hospital, or association of any kind whatsoever which has not been established as a child-placing agency by the department to . . . [a]dvertise, whether in a periodical, by television, by radio, or by any other

public medium or by any private means, including letters, circulars, handbills, and oral statements, that the person, organization, corporation, hospital, or association will adopt children *or will arrange for or cause children to be adopted or placed for adoption.*” Ga. Code Ann. § 19-8-24(a)(1).

2. Assisting in placement: No prohibition on “assisting” found, unless the “assisting” takes the form of prohibited advertising.
3. Fees: No prohibition found.

L. Hawaii

1. Advertising: No prohibition found.
2. Assisting in placement: No prohibition found.
3. Fees: No prohibition found.

M. Idaho

1. Advertising: Idaho’s statutes contain the following prohibition:

“No person or entity shall cause to be published for circulation or broadcast on a radio or television station within the geographic borders of the state of Idaho an advertisement or notice of a child or children offered or wanted for adoption or shall hold himself out through such advertisement or notice as having the ability to place, locate, dispose, or receive a child or children for adoption, unless the person or entity is a duly authorized agent, contractee or employee of the department of health and welfare or an authorized children’s agency or institution licensed by the department . . . .” Idaho Code § 18-1512A(2). The statute defines “advertisement” as “communication by newspaper, radio, television, handbills, placards or other print, broadcast or the electronic medium.” Idaho Code § 18-1512A(1).
2. Assisting in placement: Idaho’s statutes are less likely to restrict Internet adoption posting than some other states. They prohibit operating a “children’s agency” in Idaho without a license. Idaho Code § 39-1220. The statutes define “children’s agency” as “a person who operates a business for the *placement* of children in foster homes or for adoption in a permanent home and who does not provide child care as part of that business.” Idaho Code § 39-1202(4) (emphasis added). “Placement” is defined as “finding a suitable . . . adoptive home for a child *and* completing the arrangements for a child to be accepted into and adjusted to such home.” Idaho Code § 39-1202(19).



3. Fees: Idaho's agency regulations prohibit a children's agency from accepting contributions or contribution commitments from adoptive applicants (or anyone acting on the applicants' behalf) during the period of application or before an adoption has been finalized. *See* Idaho Administrative Code § 16.06.02.669. A children's agency that provides adoption services is required to include a delineation of fees and charges for expenses in its program statement. *See* Idaho Administrative Code § 16.06.02.662. It also must be a nonprofit corporation. *See* Idaho Administrative Code § 16.06.02.661.
- N. Illinois (photolisting site: [www.adoptinfo-il.org](http://www.adoptinfo-il.org))
1. Advertising: Entities that are not licensed as child care facilities are prohibited from publishing "any advertisement soliciting a child or children for care or placement or offering a child or children for care or placement." 225 Ill. Comp. Stat. 10/12. But the same statute also provides that a licensed child care facility "may publish advertisements of the services for which it is specifically licensed or issued a permit." 225-III. Comp. Stat. 10/12.
  2. Assisting in placement: A license is required for any entity that "arranges for care or placement" of one or more children. 225 Ill. Comp. Stat. 10/4.
  3. Fees: Fees or compensation for "placing" a child cannot be given to any person or entity besides a licensed "child welfare agency." 720 Ill. Comp. Stat. 525/2.
- O. Indiana (photolisting site: [www.state.in.us/fssa/adoption/](http://www.state.in.us/fssa/adoption/))
1. Advertising: No prohibition found.
  2. Assisting in placement: Indiana prohibits operation of a "child placing agency" without a license. *See* Ind. Code § 12-17.4-6-1(a). It defines "child placing agency" as "a person who provides child welfare services to children and families. The services include home studies, investigation, and recommendation of families for the purpose of placing, arranging, or causing the placement of children for adoption . . ." Ind. Code § 12-7-2-31.
  3. Fees: Indiana's statutes prohibit, "with respect to an adoption, transfer[ring] or receiv[ing] any property in connection with the waiver of parental rights, the termination of parental rates, the consent to adoption, or the petition for adoption." Ind. Code § 35-46-1-9. However, the statute makes an exception for certain reimbursements of birth parent expenses and "reasonable charges and fees" levied by a licensed child placing agency. *Id.*

- P. Iowa (photolisting site: [www.iakids.org](http://www.iakids.org))
1. Advertising: No prohibition found.
  2. Assisting in placement: Iowa's statutes prohibit operating or soliciting or receiving funds for "a child placing agency" without a license. Iowa Code § 238.5. An entity operates a child placing agency if it "represents itself as placing children permanently or temporarily in private family homes or as receiving children for such placement, or which *actually engages*, for gain or otherwise, *in such placement*." Iowa Code § 238.2 (emphasis added)
  3. Fees: "Any person assisting in any way with the placement or adoption of a minor person shall not charge a fee which is more than usual, necessary, and commensurate with the services rendered." Iowa Code § 600.9(1)(b).
- Q. Kansas (photolisting site: [www.cominghomekansas.org](http://www.cominghomekansas.org))
1. Advertising: Kansas prohibits non-licensed entities from advertising that they will adopt or place a child: "No person [who is not a child placement agency authorized by Kansas law] shall advertise that such person will adopt, find an adoptive home for a child or otherwise place a child for adoption." Kan. Stat. Ann. § 59-2123(a)(1). It defines "advertise" as "to communicate by newspaper, radio, television, handbills, placards or other print, broadcast *or electronic medium*." Kan. Stat. Ann. § 59-2123(c)(1) (emphasis added).
  2. Assisting in placement: No prohibitions on assisting placement found. An existing Kansas statute provides that if a child is placed in Kansas by an association that is incorporated under the laws of a state other than Kansas, the association must "furnish[] the [Kansas] board of administration with such guaranty as they may require that no child will be brought into the state of Kansas by such society or its agents having any contagious or incurable disease, or having any deformity, or being of feeble mind or vicious character, and that said association will receive and remove from the state any child brought into the state of Kansas by its agent which shall become a public charge within the period of five years after being brought into the state." Kan. Stat. Ann. § 38-315.
  3. Fees: In connection with an adoption or placement, a person can recover "reasonable fees for legal and other professionals services rendered . . . not to exceed customary fees for similar services by professionals of equivalent experience and reputation where the services are performed, except that fees for legal and other professional services as provided in this section performed outside the state shall not exceed customary fees for similar services when performed in the state of Kansas." Kan. Stat.

Ann. § 59-2121(a)(1). A child-placing agency can also recover “reasonable fees.” Kan. Stat. Ann. § 59-2121(a)(2).

R. Kentucky (photolisting site: <http://cfc.ky.gov/cbs-snap/>)

1. Advertising: “A person, corporation, or association shall not advertise in any manner that it will receive children for the purpose of adoption. A newspaper published in the Commonwealth of Kentucky or any other publication which is prepared, sold, or distributed in the Commonwealth of Kentucky shall not contain an advertisement which solicits children for adoption or solicits the custody of children.” Ky. Rev. Stat. Ann. § 199.590(1).
2. Assisting in placement: “No person, association, or organization, other than the cabinet or a child-placing institution or agency shall place a child *or act as intermediary* in the placement of a child for adoption or otherwise . . . . This section shall not be construed to prohibit private independent adoption or the right to seek legal services relating to a private independent adoption.” Ky. Rev. Stat. Ann. § 199.590(3) (emphasis added).
3. Fees: “A person, organization, group, agency, or any legal entity, except a child-placing agency, shall not accept any fee for bringing the adoptive parents together with the child to be adopted or the biological parents of the child to be adopted.” Ky. Rev. Stat. Ann. § 199.590(5).

S. Louisiana (photolisting site: [www.adoptuskids.org/states/la](http://www.adoptuskids.org/states/la))

1. Advertising: “It shall be unlawful for any person *other than a child-placing agency* possessing a . . . license or a Louisiana-based crisis pregnancy center to advertise through print *or electronic media* that it will adopt children or *assist in the adoption of children*.” La. Rev. Stat. Ann. § 46:1425(A) (emphasis added).
2. Assisting in placement: Any entity “engaged in placing children . . . for adoption” is a “child-placing agency” and is required to obtain a license. La. Rev. Stat. Ann. §§ 46:1403(A)(2), 46:1421.
3. Fees: Payments “to a child-placing agency or its agent or any broker for the following expenses are permissible”: (1) “Reasonable expenses incurred by the department or the agency for adjustment counseling and training services provided to the adoptive parents and for home studies or investigations”; and (2) “Reasonable administrative expenses incurred by the department or the agency, including overhead, court costs, travel costs, and attorney fees connected with an adoption. In approving a reasonable fee or overhead, the court shall consider and include additional expenses incurred by the department or the agency not specifically allocated to the adoption before the court, including the cost of failed adoptions, where

those expenses or fees represent actual costs of the department's or agency's [permissible] adoption services." La. Children's Code Art. 1200 (B); *see also* La. Rev. Stat. § 286 (prohibiting "payment or receipt of anything of value for the procurement, attempted procurement, or *assistance in the procurement* of a party to an act of voluntary surrender of a child for adoption," but making an exception for the expenses outlined above).

T. Maine (photolisting site: [www.adoptuskids.org/states/me](http://www.adoptuskids.org/states/me))

1. Advertising: "Advertising for adoption services or soliciting adoption services is prohibited, except that licensed child-placing agencies may advertise in accordance with rules adopted by the department." Me. Rev. Stat. Ann. tit. 18-A, § 9-313. Maine's administrative rules define "advertise" as "the act of stating in writing that the facility is available and willing to provide an individual which will result in the placing *or assisting* in finding homes for children under 18 years of age for purposes of either adoption or foster care." Code Me. R. 10-148, Ch. 19, § 1(B) (emphasis added).
2. Assisting in placement: Maine's statutes prohibit operation of a "child placing agency" without a license. *See* Me. Rev. Stat. Ann. tit. 22, § 8204 (1). However, whether an individual operates a child placing agency turns on how he advertises or holds himself out, rather than on what services he provides. Maine's statutes and rules define "child placing agency" as "a facility which advertises itself or holds itself out as finding homes for or otherwise placing children . . ." Me. Rev. Stat. Ann. tit. 22, § 8201; Code Me. R. 10-148, Ch. 19, § 1(G). And Maine's statutes provide that "[a]ny individual who does not advertise himself or hold himself out as placing or finding homes for children for the purpose of adoption, but who places or assists in placing a child for adoption, shall not be deemed to operate a child placing agency and shall not be subject to the licensing requirements." Me. Rev. Stat. Ann. tit. 22, § 8204(2).
3. Fees: "No individual who places or assists in placing a child for adoption shall charge a fee which represents more than the reasonable costs of the services provided." Me. Rev. Stat. Ann. tit. 22, § 8204(3).

U. Maryland (photolisting site: [www.adoptuskids.org/states/md](http://www.adoptuskids.org/states/md))

1. Advertising: An agency or individual must be licensed in Maryland as a "child placement agency" and must have a written service plan in order to "[a]dvertise adoption services through the media." Md. Regs. Code 07.05.03.03(A), (C).
2. Assisting in placement: Maryland's statutes prohibit unlicensed entities from engaging in "placement of minor children in homes or with

individuals.” Md. Code Ann. Fam. Law § 5-507(a); Md. Code Ann. Fam. law § 5-301(b), (j).

3. Fees: Maryland’s statutes provide that “an agency, institution, or individual who renders *any service* in connection with the placement of an individual for adoption . . . may not charge or receive from . . . either the natural parent . . . or from . . . the individual who is adopting . . . , any compensation for the placement.” Md. Code Ann. Fam. Law § 5-327(a)(1). However, the statutes allow an administrative agency to establish rules for a child placement agency to accept “reasonable reimbursement” for its costs of providing adoption services. Md. Code Ann. Fam. Law § 5-327(b). Maryland’s administrative regulations allow licensed child placement agencies to accept reasonable reimbursement using a sliding fee scale based on an applicant’s income. *See* Md. Regs. Code 07.05.03.07.

V. Massachusetts (photolisting site: [www.adoptuskids.org/states/ma](http://www.adoptuskids.org/states/ma))

1. Advertising: Massachusetts has two statutes prohibiting advertising for adoption by unlicensed groups. The first is expressly limited to newspaper, radio, and television advertisements. Accordingly, it should not impact Internet adoption-related services. However, the second provision is not so limited.
  - a) The first provision states: “No person shall cause to be published in a newspaper distributed anywhere in the commonwealth or to be broadcast on a radio or television station in the commonwealth an advertisement or notice for the placement or reception of a child under sixteen years of age for family foster care, family day care, large family day care, day care center care, school age child care program, group residential care, or temporary shelter care or adoption unless such advertisement is placed by a licensed or approved placement agency, by a licensed family day care home, large family day care home, family day care system, day care center, school age child care program, group care facility or temporary shelter facility, or with the written approval of the office. Such advertisement or notice shall include the license or registration number issued to the provider or agency pursuant to section ten.” Mass. Gen. Laws Ann. ch.28A, § 14.
  - b) The second provision states: “Any person or entity other than a duly authorized agent or employee of the department of social services or a child care or placement agency licensed under the provisions of chapter twenty-eight A, who causes to be published in the commonwealth an advertisement or notice of children offered or wanted for adoption, or in any way offers to place, locate or dispose of children offered or wanted for adoption, or

who holds himself out in any way as being able to place, locate or dispose of children for adoption shall be punished by a fine of not less than one hundred nor more than one thousand dollars.” Mass. Gen. Laws Ann. ch. 210, § 11A.

2. Assisting in placement: Massachusetts’ statute prohibits “facilitating” placement with an adoptive parent: “No person shall place or knowingly facilitate the placement of any child as defined in section two in the care or control of any other person not related to such child by blood or marriage, or in the care or control of any organization other than a licensed or approved placement agency, for purposes of adoption in the commonwealth.” Mass. Gen. Laws Ann. ch.28A, § 11.
3. Fees: Massachusetts’ statute prohibits unlicensed entities from accepting payment for placing a child for adoption: “Any such person who shall accept payment in the form of money or other consideration in return for placing a child for adoption shall be punished by a fine of not less than five thousand and not more than thirty thousand dollars, or by imprisonment in jail or house of correction for not more than two and one-half years or in the state prison for not more than five years, or both.” Mass. Gen. Laws Ann. ch. 210, § 11A.

W. Michigan (photolisting site: [www.mare.org](http://www.mare.org))

1. Advertising: Michigan forbids unlicensed entities from soliciting “potential adoptive parents” for a child. Mich. Comp. Laws § 710.55(1). However, its definition of “solicit” “does not include public communication that is not directed to specific individuals.” Mich. Comp. Laws § 710.55(2). Therefore Michigan’s prohibition should not apply to a web site that is open to the public.
2. Assisting in placement: Michigan forbids unlicensed entities from “placing” a child for adoption. Mich. Comp. Laws § 710.55(1). It defines “placement” narrowly as “selection of an adoptive parent for a child *and* transfer of physical custody of the child to a prospective adoptive parent.” Mich. Comp. Laws § 710.22(r). As noted above, Michigan also forbids unlicensed entities from “soliciting” specific individuals to be adoptive parents. Mich. Comp. Laws § 710.55(1), (2).
3. Fees: Michigan’s statutes prohibit compensation for “[r]eferring a prospective adoptive parent to a parent or guardian of a child for purposes of adoption,” or “[r]eferring a parent or guardian of a child to a prospective adoptive parent for purposes of adoption.” Mich. Comp. Laws § 710.54(2). A licensed child placing agency can charge “reasonable and actual” charges for other services in connection with an adoption. Mich. Comp. Laws § 710.54(3). With the exception of these charges and limited others that a court may approve, Michigan forbids any

payment “in connection with” (1) “[t]he placing of a child for adoption,” or (2) “[t]he registration, recording, or communication of the existence of a child available for adoption.” Mich. Comp. Laws § 710.54(1).

- X. Minnesota (photolisting site: [www.mnadopt.org](http://www.mnadopt.org))
1. Advertising: No prohibition found.
  2. Assisting in placement: Minnesota requires a license for any entity to “help plan the placement of a child” in adoption or “engage in placement activities” in Minnesota, whether or not the adoption ultimately occurs in Minnesota. Minn. Stat. § 245A.03(1)(3); Minn. Stat. § 259.47(11). Minnesota defines “placement activities” to include “facilitating placement by maintaining a list in any form of birth parents or prospective adoptive parents.” Minn. Stat. § 259.21(9).
  3. Fees: A licensed agency may receive payment for “reasonable expenses for adoption services” if it provides a schedule of fees and a timeline indicating which each fee or portion must be paid. Minn. Stat. §§ 259.37(1), 259.55(1)(3).
- Y. Mississippi (photolisting site: [www.mdhs.state.ms.us/fcs\\_adopt.html#children](http://www.mdhs.state.ms.us/fcs_adopt.html#children))
1. Advertising: Mississippi prohibits any person from advertising or allowing any “sign or marking” indicating that he or she is available to provide assistance in identifying or locating a prospective adoptee or adoptive parent. *See* Miss. Code Ann. § 43-15-117(2)(b).
  2. Assisting in placement: Mississippi has a statute that expressly permits a person to “assist a parent in identifying or locating a person interested in adopting the parent’s child, or in identifying or locating a child to be adopted.” Miss. Code Ann. § 43-15-117(2)(a). However, that person cannot charge any fee or advertise his or her availability to provide such assistance. *See* Miss. Code Ann. § 43-15-117(2)(a), (b). Mississippi forbids unlicensed persons or entities from “child placing” or providing “placement services.” *See* Miss. Code Ann. § 43-15-107(1); Miss. Code Ann. § 43-15-117(1). “Child placing” is defined as “receiving, accepting or providing custody or care for any child . . . for the purpose of . . . finding a person to adopt the child.” Miss. Code Ann. § 43-15-103(c).
  3. Fees: An unlicensed person may not charge for any assistance to a parent in identifying a person interested in adopting a child or in identifying or locating a child to be adopted. *See* Miss. Code Ann. § 43-15-117(2). Licensed child-placing agencies may charge reasonable fees, provided they provide proper written disclosures. *See* Miss. Code Ann. § 43-15-117(4), (5).

- Z. Missouri (photolisting site: <http://www.dss.mo.gov/cd/adopt/index.htm>)
1. Advertising: No prohibition on advertising children for adoption was found. However, a person who advertises himself as placing children for adoption must be licensed as a “child placing agency.” *See* Mo. Rev. Stat. §§ 210.481, 210.486.
  2. Assisting in placement: Missouri’s statutes allow “placing” a child for adoption only by its department of social services, a licensed child placing agency, or an “intermediary.” *See* Mo. Rev. Stat. § 453.014(1). Missouri defines an “intermediary” to include only a licensed attorney, a licensed physician, or a clergyman of the parents. *See id.*
  3. Fees: Missouri’s regulations contemplate fees charged by licensed child placing agencies for “child finding services”; those fees must be described in a verbal explanation and written agreement. *See* Mo. Code Regs. Ann. tit. 13, § 40-73.080(4)(B).

AA. Montana (photolisting site: [www.adoptuskids.org/states/mt](http://www.adoptuskids.org/states/mt))

1. Advertising: In Montana, an unlicensed entity is not allowed to “advertise in any public medium that the person: (i) knows of a child who is available for adoption; or (ii) is willing to accept a child for adoption or knows of prospective adoptive parents for a child.” Mont. Code Ann. § 42-7-105(1).
2. Assisting in placement: Unlicensed entities are not allowed to “engage in placement activities,” which are defined as “placement of a child for adoption” or “facilitating the placement of a child *by maintaining a list in any form of birth parents or prospective adoptive or foster parents.*” Mont. Code Ann. § 42-7-105; Mont. Code Ann. § 52-8-101. In addition, only a licensed child-placing agency is permitted to “solicit” persons to adopt or “arrange” for persons to adopt. Mont. Code Ann. § 52-8-103. “Soliciting” is defined rather broadly to include “request, offer, promote, or refer, either directly or indirectly through correspondence, advertising, or other method, a potential adoptive or foster parent or couple, birth parent or parents, or placement of a child by a birth parent.” Mont. Code Ann. § 52-8-101.
3. Fees: Entities are prohibited from accepting fees “as a condition of placement” that are not authorized by statute. Mont. Code Ann. § 42-7-105(3). However, fees are authorized for services that relate to “placement of a child.” Mont. Code Ann. § 42-7-101(1)(b).

BB. Nebraska (photolisting site: [www.hhs.state.ne.us/adp/adpxchan.htm](http://www.hhs.state.ne.us/adp/adpxchan.htm))

1. Advertising: Nebraska prohibits unlicensed entities from advertising children for placement for adoption: “Except as otherwise provided in the



Nebraska Indian Child Welfare Act, no person, other than a parent, shall . . . advertise a child for placement . . . unless such person shall be duly licensed by the Department of Health and Human Services . . . .” Neb. Rev. Stat. § 43-701.

2. Assisting in placement: Nebraska prohibits unlicensed entities from “assisting” in placement for adoption: “Except as otherwise provided in the Nebraska Indian Child Welfare Act, no person, other than a parent, shall (1) place, (2) *assist in placing*, . . . (4) give the care and custody of any child to any person or association for adoption or otherwise, except for temporary or casual care, unless such person shall be duly licensed by the Department of Health and Human Services . . . .” Neb. Rev. Stat. § 43-701.
3. Fees: No statutes found that address or prohibit fees.

CC. Nevada (photolisting site: [dcfs.state.nv.us/page37.html](http://dcfs.state.nv.us/page37.html))

1. Advertising: Nevada’s statute prohibits unlicensed entities from advertising that they will place or obtain children for adoption, and prohibits them from soliciting children for adoption. However, another provision expressly allows a person to “share information” regarding an adoption if the person receives no compensation for any service related to that adoption. Finally, Nevada provides certain regulations for agencies that advertise or publish information about children to be adopted.
  - a) The restriction: “Except as otherwise provided in NRS 127.240 . . . any person or organization other than an agency which provides child welfare services who, without holding a valid unrevoked license to place children for adoption issued by the division: . . . Advertises in any periodical or newspaper, or by radio or other public medium, that he will place children for adoption, or accept, supply, provide or obtain children for adoption, or causes any advertisement to be published in or by any public medium soliciting, requesting or asking for any child or children for adoption, is guilty of a misdemeanor.” Nev. Rev. Stat. § 127.310.
  - b) The exception: “This section does not prohibit a person, including a person acting in his professional capacity, from sharing information regarding an adoption if no money or other valuable consideration is paid: (a) For such information; or (b) For any other service related to the adoption that is performed after sharing information.” Nev. Rev. Stat. § 127.240.
  - c) Regulation of information advertised or published by licensed agencies: “(1) An agency which provides child welfare services or any child-placing agency may publish in any newspaper published in this state or broadcast by television a photograph of and relevant

personal information concerning any child who is difficult to place for adoption. (2) A child-placing agency shall not publish or broadcast: (a) Any personal information which reveals the identity of the child or his parents; or (b) A photograph or personal information for a child without the prior approval of the agency having actual custody of the child.” Nev. Rev. Stat § 127.283.

2. Assisting in placement: “[A]ny person or organization other than an agency which provides child welfare services who, without holding a valid unrevoked license to place children for adoption issued by the division: (a) Places, arranges the placement of, or assists in placing or in arranging the placement of, any child for adoption or permanent free care . . . commits a misdemeanor.” Nev. Rev. Stat. § 310.
3. Fees: “[N]o person who does not have in full force a license to operate a child-placing agency may request or accept, directly or indirectly, any compensation or thing of value for placing, arranging the placement of, or assisting in placing or arranging the placement of, any child for adoption or permanent free care.” Nev. Rev. Stat. § 127.290(1). On the other hand, “A licensed child-placing agency may accept fees for operational expenses.” Nev. Rev. Stat. § 127.290(2).

DD. New Hampshire (photolisting site: [www.adopt.org](http://www.adopt.org))

1. Advertising: New Hampshire prohibits advertisements soliciting or offering care or placement of a child, if they are published by a person who is required to obtain a license but has not. “A . . . child-placing agency licensed or operating under a permit issued by the department may publish advertisements of the services for which it is specifically licensed or issued a permit under this subdivision. No person who is required to obtain a license or permit under this subdivision may advertise or cause to be published an advertisement soliciting or offering care for a child for care or placement unless the person has obtained the requisite license or permit.” N.H. Rev. Stat. Ann. § 170-E:39. However, most providers of Internet adoption-related services could argue that they are not “child-placing agencies” as defined by New Hampshire’s statute, and therefore New Hampshire’s licensing requirements and advertising prohibitions do not apply.
  - a) New Hampshire defines a “child-placing agency” as “any firm, corporation or association which: (a) *Receives* any child for the purpose of providing services related to arranging for the placement of children in a foster family home, group home, or child care institution; or (b) *Receives* any child for the purpose of providing services related to arranging for the placement of children in adoption.” Most providers of Internet adoption-related services would not “receive” children in New Hampshire.

2. Assisting in placement: New Hampshire's statutes do not appear to forbid unlicensed entities from "assisting" in placement if those entities do not "receive" the child.
  3. Fees: No prohibition found.
- EE. New Jersey (photolisting site: [www.state.nj.us/humanservices/adoption/childframe.html](http://www.state.nj.us/humanservices/adoption/childframe.html))
1. Advertising: No prohibition found.
  2. Assisting in placement: New Jersey's statutes include a general restriction stating that unlicensed entities shall not "place, offer to place *or materially assist* in the placement of any child for adoption in New Jersey." N.J. Stat. Ann. § 9:3-39.1(a) (emphasis added). However, New Jersey includes an exception for unlicensed intermediaries who rely on licensed New Jersey adoption agencies to supervise placement and provide the required approvals, home studies, and counseling services. *See* N.J. Stat. Ann. § 9:3-39.1(a)(4); *see also* N.J. Admin. Code tit.10, § 121-1.1 (providing a similar exception for adoption agencies licensed outside of New Jersey). New Jersey defines an "intermediary" as an entity unlicensed in New Jersey "who acts for or between any parent and any prospective parent or acts on behalf of either in connection with the placement of the parent's child for adoption." N.J. Stat. Ann. § 9:3-38(l). New Jersey's exceptions for intermediaries and out-of-state agencies should ensure that its restrictions do not apply to Internet sites that identify children available for adoption but do not place those children.
  3. Fees: While New Jersey does allow unlicensed entities to act as intermediaries in cooperation with New Jersey adoption agencies, it prohibits those entities from receiving any compensation for their adoption services. *See* N.J. Stat. Ann. § 9:3-38(l) (an intermediary "shall not receive money or other valuable consideration in connection with the placement of a child for adoption."); N.J. Stat. Ann. § 9:3-39(d) (criminalizing payment or acceptance of fees by unlicensed entities in connection with an adoption).
- FF. New Mexico (photolisting site: [www.state.nm.us/cyfd/adopt\\_categories.htm](http://www.state.nm.us/cyfd/adopt_categories.htm))
1. Advertising: No prohibition found.
  2. Assisting in placement: New Mexico has two different provisions that regulate adoption-related activities and could be relevant to Internet photolisting sites. First, a provision of its Adoption Act imposes criminal penalties on any person "other than agency" who, "in the regular course of business, selects an adoptive family for a prospective adoptee or arranges for the selection." N.M. Stat. Ann. § 32A-5-42(A). However, this provision is unlikely to affect most Internet photolistings because the

statute explains that “the exchange of information between persons regarding the existence of a potential adoptee or potential adoptive family shall not be a violation.” *Id.* In addition, the prohibition does not apply to agencies licensed by other states. *See* N.M. Stat. Ann. § 32A-5-3(D) (defining “agency” to include entities authorized to place a child “in this or any other state”).

Second, New Mexico’s Child Placement Agency Licensing Act prohibits operating a “child placement agency,” which it defines as an entity “undertaking to place a child [for adoption] in this or any other state.” N.M. Stat. Ann. § 40-7A-3; N.M. Stat. Ann. § 40-7A-8. The Child Placement Agency Licensing Act does not define “placement,” but the Adoption Act’s definition makes this prohibition unlikely to apply to operators of Internet sites that do not actually arrange the physical transfer of an adoptee. *See* N.M. Stat. Ann. § 32A-5-3(R) (defining “placement” as selecting a family or matching a family and adoptee “and physical transfer of the adoptee”).

3. Fees: No prohibition found. Licensed agencies may charge “reasonable and actual fees” for their services. N.M. Stat. Ann. § 32A-5-34(B).

GG. New York (photolisting site: [www.ocfs.state.ny.us/adopt/Internet/InternetPhotoinq.asp](http://www.ocfs.state.ny.us/adopt/Internet/InternetPhotoinq.asp))

1. Advertising: No prohibition found.
2. Assisting in placement: New York forbids unlicensed entities from “placing out” children for adoption. N.Y. Soc. Serv. Law § 374(2). The statute defines “place out” as “to arrange for the free care of a child in a family other than that of the child’s parent, step-parent, grandparent, brother, sister, uncle, or aunt or legal guardian, for the purpose of adoption or for the purpose of providing care.” N.Y. Soc. Serv. Law § 371(12). A 1990 case provides a measure of clarity with regard to what services would likely avoid the statute’s prohibition. In *Matter of the Adoption of Baby Boy*, 556 N.Y.S.2d 463 (N.Y. Sur. 1990), the court decided that an adoption counseling and information exchange service called Adoption Action (whose services might resemble adoption-related services that could be provided over the Internet) did not illegally “place out” a child. *See id.* The court held that in deciding this issue, it must examine the “totality of the circumstances.” *Id.* at 465. The court stated that it would consider the party’s “motives and intentions,” though such motives, “no matter how altruistic or humanitarian, are not by themselves determinative.” *Id.* Because Adoption Action brought the parties together but did not arrange the actual adoption, the court held that its actions were “akin to that of an independent search agency which brings about or locates, but does not ‘place out’ as that term is defined.” *Id.* at 466. The Court did note that the Surrogate’s Court in another county had adopted a

rule in 1987 that “the use of independent search agencies involved in the procurement or placement of children is prohibited.” *See id.* (citing *Matter of Adoption of Calynn, M.G.*, 523 N.Y.S.2d 729, 731 (N.Y. Sur. 1987)); *see also Matter of Adoption of Baby Boy M.G.*, 515 N.Y.S.2d 198, 201 (N.Y. Sur. 1987) (noting that the same “temporary” rules were approved by the New York State Surrogates’ Association). However, the Court rejected such a rule because the legislature had not drafted it into law. *Matter of the Adoption of Baby Boy*, 556 N.Y.S.2d at 466.

3. Fees: New York’s statute prohibits non-licensed entities from collecting fees in connection with the placing out of a child or “assisting” in “arranging” for the placement of the child: “[N]o agency, association, corporation, institution, society or organization, except such an authorized agency, and no person may or shall request, accept or receive any compensation or thing of value, directly or indirectly, *in connection with the placing out or adoption of a child or for assisting a parent, relative or guardian of a child in arranging for the placement of the child* for the purpose of adoption; and no person may or shall pay or give to any person or to any agency, association, corporation, institution, society or organization, except such an authorized agency, any compensation or thing of value in connection with the placing out or adoption of a child or for assisting a parent, relative or guardian of a child in arranging for the placement of the child for the purpose of adoption. The prohibition set forth in this section applies to any adoptive placement activity involving a child born in New York state or brought into this state or involving a New York resident seeking to bring a child into New York state for the purpose of adoption.” N.Y. Soc. Serv. Law § 374(6) (emphasis added). As a result, the same court described above that held that Adoption Action had not “placed out” a child nevertheless held that it had to forfeit the fees it received for its consultative and information exchange service. *See Matter of the Adoption of Baby Boy*, 556 N.Y.S.2d at 466-67. On the other hand, an “authorized agency” may collect a fee for “reasonable and necessary expenses of . . . placement.” N.Y. Soc. Serv. Law § 374(6).

HH. North Carolina (photolisting site: [www.dhhs.state.nc.us/dss/adopt](http://www.dhhs.state.nc.us/dss/adopt))

1. Advertising: North Carolina prohibits advertising of children for adoption, but it contains exceptions for entities licensed by North Carolina and “adoption facilitators.” The exception for “adoption facilitators” effectively limits the prohibition to entities who are not licensed *and* who either charge fees or operate on a for-profit basis.
  - a) North Carolina defines an “adoption facilitator” as “an individual or a *nonprofit* entity that assists *biological parents* in locating and evaluating prospective adoptive parents *without charge*.” N.C. Gen. Stat. § 48-1-101(3a).

- b) “No one other than a person or entity” licensed in the jurisdiction where it operates to place children, “or an adoption facilitator, may solicit potential adoptive parents for children in need of adoption. No one other than a [licensed] agency or an adoption facilitator, or an individual with a completed preplacement assessment that contains a finding that the individual is suitable to be an adoptive parent or that individual's immediate family, may solicit for adoption a potential adoptee.” N.C. Gen. Stat. § 48-10-101(a).
  - c) “No one other than a county department of social services, an adoption facilitator, or an agency licensed by the Department *in this State* may advertise in any periodical or newspaper, or by radio, television, *or other public medium*, that any person or entity will place or accept a child for adoption.” N.C. Gen. Stat. § 48-10-101(b).
  - d) The statute clarifies that it does not prohibit a person (if he or she is found suitable in a preplacement assessment) from advertising that he or she wants to adopt. But the statute places the following limitations on these advertisements: “The advertisement may be published only in a periodical or newspaper or on radio, television, cable television, or the Internet. The advertisement shall include a statement that (i) the person has a completed preplacement assessment finding that person suitable to be an adoptive parent, (ii) identifies the name of the agency that completed the preplacement assessment, and (iii) identifies the date the preplacement assessment was completed. Any advertisement under this subsection may state whether the person is willing to provide lawful expenses.” N.C. Gen. Stat. § 48-10-101(b1).
2. Assisting in Placement: As mentioned above, North Carolina’s statute defines a class of “adoption facilitators” who are unlicensed individuals or nonprofits who may assist biological parents in locating and evaluating potential adoptive parents without charge. N.C. Gen. Stat. § 48-1-101(3a).
  3. Fees: An agency licensed in the jurisdiction in which it operates “may charge or accept a reasonable fee or other compensation from prospective adoptive parents. In assessing a fee or charge, the agency may take into account the income of adoptive parents and may use a sliding scale related to income in order to provide services to persons of all incomes.” N.C. Gen. Stat. § 48-10-103(e). However, payment cannot be made contingent upon placement or completion of the adoption. N.C. Gen. Stat. § 48-10-103(c). An unlicensed entity (including an “adoption facilitator”) is prohibited from charging for “the placement of a minor for adoption” or for “[a]ssisting a parent or guardian in locating or evaluating a potential adoptive parent or in transferring custody of a minor to the adoptive parent.” N.C. Gen. Stat. § 48-10-102(a).

II. North Dakota (photolisting site: [www.adopt.org](http://www.adopt.org))

1. Advertising: North Dakota has an advertising restriction that could prohibit Internet photolistings by groups that are not licensed in North Dakota. Under North Dakota's restriction, it is unlawful for an unlicensed group to "advertise in any public medium that the person knows of a child who is available for adoption or is willing to accept a child for adoption or that the person knows of prospective adoptive parents of a child." N.D. Cent. Code § 5-12-17. North Dakota also has a narrow restriction forbidding a "maternity home for unmarried mothers" from advertising "that it will give children for adoption." N.D. Cent. Code § 50-19-11.
2. Assisting in placement: North Dakota's statutes not only prohibit advertising by unlicensed groups; they also make it unlawful to "facilitate placement of a child by maintaining a list in any form of birth parents or prospective adoptive parents." N.D. Cent. Code § 50-12-17. The combination of North Dakota's advertising and listing prohibitions could pose significant problems for unlicensed groups that are subject to its jurisdiction.
3. Fees: No prohibition found. Child-placing agencies may be reimbursed for home studies, and "supervision and evaluation of any placement." N.D. Cent. Code § 50-12-09; *see also* N.D. Cent. Code § 14-15.1-06 (agencies may charge "reasonable fees," subject to court approval); *see also* N.D. Cent. Code § 12.1-31-05 (accepting unauthorized fees for placing a child constitutes a crime called "child procurement").

JJ. Ohio (photolisting site: <http://www.odjfs.state.oh.us/oapl/query.asp>)

1. Advertising: Ohio's statutes prohibit persons or entities that are not Ohio-licensed adoption agencies (or a designated governmental entity) from engaging in a range of advertising activities. The relevant provision states that no such unlicensed person or entity "shall advertise that the person or government entity will adopt children or place them in foster homes, hold out inducements to parents to part with their offspring, or in any manner knowingly become a party to the separation of a child from the child's parents or guardians, except through a juvenile court or probate court commitment." Ohio Rev. Code Ann. § 5103.17.
  - a) In 1954, the Ohio Supreme Court stated that "[i]t is obvious that this section of the Code is designed to prevent the advertising of children for adoption or placement in foster homes." *In re Tilton*, 120 N.E.2d 445, 450 (Ohio 1954).
2. Assisting in Placement: Ohio's statutes provide that "[o]nly an [adoption] agency or attorney may *arrange* an adoption." Ohio Rev. Code Ann. § 3107.011 (emphasis added). But they also provide that "[a]ny person

may informally aid or promote an adoption by making a person seeking to adopt a minor aware of a minor who will be or is available for adoption.” *Id.*

3. Fees: Ohio’s statutes provide that an adoption agency that arranges an adoption can charge for its expenses. *See* Ohio Rev. Code Ann. § 3107.10(C). The same provision includes a broad prohibition of payments by adoption petitioners that would rule out fees to entities (such as intermediaries) that assist in placing or arranging an adoption but are not adoption agencies or attorneys. *See id.*

KK. Oklahoma (photolisting site: [www.adoptuskids.org/states/ok](http://www.adoptuskids.org/states/ok))

1. Advertising: Oklahoma’s statutes define the crime of “trafficking in children” to include advertising services for compensation to “assist with” placement of a child, or soliciting a pregnant woman to place her coming child for adoption. They also establish the publishing of such advertisements as a separate offense. The offense of trafficking includes:
  - a) “*advertising of services for compensation to assist with* or effect the placement of a child for adoption or for care in a foster home by any person or organization except by the Department of Human Services, or a child-placing agency licensed in this state.” Okla. Stat. Ann. tit. 21, § 866(A)(1)(e) (emphasis added). This provision clarifies that “[n]othing in this paragraph shall prohibit an attorney authorized to practice law in Oklahoma from the advertisement of legal services related to the adoption of children.” *Id.*
  - b) “advertisements for and solicitation of a woman who is pregnant to induce her to place her child upon birth for adoption, except by a child-placing agency licensed in this state or an attorney authorized to practice law in Oklahoma.” Okla. Stat. Ann. tit. 21, § 866(A)(1)(f)(1). The provision clarifies that “[n]othing in this section shall prohibit a person from advertising to solicit a pregnant woman to consider adoptive placement with the person or to locate a child for an adoptive placement into the person's own home, provided that such person has received a favorable preplacement home study recommendation in accordance with Section 7505-5.1 of this title, which shall be verified by the signed written statement of the person or agency which performed the home study.” *Id.*
  - c) The statutes also state that “[n]o person shall knowingly publish for circulation within the borders of the State of Oklahoma an advertisement of any kind in any print, broadcast or electronic medium, including, but not limited to, newspapers, magazines, telephone directories, handbills, radio or television, which violates



subparagraph e or f of paragraph 1 of subsection A of this section” (quoted above). Okla. Stat. Ann. tit. 21, § 866(B)(1).

2. Assisting in placement: Oklahoma’s statutes do not appear to prohibit assisting in the placement of a child, unless that assistance is compensated or involves soliciting a pregnant woman to give up her child for adoption.
3. Fees: In addition to advertising for a fee, Oklahoma’s statutes include the following fee-related activities in the crime of “trafficking in children”:
  - a) “the acceptance, solicitation, offer, payment or transfer of any compensation, in money, property or other thing of value, at any time, by any person *in connection with* the acquisition or transfer of the legal or physical custody or adoption of a minor child, except as ordered by the court or except as otherwise provided by” a statute allowing certain payments to adoption agencies. Okla. Stat. Ann. tit. 21, § 866(A)(1)(a).
  - b) “the acceptance or solicitation of any compensation, in money, property or other thing of value, by any person or organization for services performed, rendered or purported to be performed *to facilitate or assist* in the adoption or foster care placement of a minor child, except by the Department of Human Services, a child-placing agency licensed in Oklahoma pursuant to the Oklahoma Child Care Facilities Licensing Act, or an attorney authorized to practice law in Oklahoma.” Okla. Stat. Ann. tit. 21, § 866(A)(1)(b) (emphasis added). This provision includes the clarification that it “shall not prohibit an attorney licensed to practice law in another state or an out-of-state licensed child-placing agency from receiving compensation when working with an attorney licensed in this state who is, or when working with a child-placing agency licensed in this state which is, providing adoption services or other services necessary for placing a child in an adoptive arrangement.” *Id.*
  - c) “the receipt of any money or any other thing of value for expenses related to the placement of a child for the purpose of an adoption by the birth parent of the child who at the time of the receipt had no intent to consent to eventual adoption or by a woman who is not pregnant but who holds herself out to be pregnant and offers to place a child upon birth for adoption.” Okla. Stat. Ann. tit. 21, § 866(A)(1)(d).

LL. Oregon (photolisting site: [www.nwae.org/wait-or.html](http://www.nwae.org/wait-or.html))

1. Advertising: Oregon prohibits unlicensed entities from advertising “[a] child offered or wanted for adoption” or “[t]hat the person is able to place, locate, dispose of or receive a child for adoption.” Or. Rev. Stat.

§ 109.311(4)(a). Two limitations will render this prohibition less problematic for most Internet photolisting sites: First, the statute's definition of "advertise" is limited to communications that originate in Oregon. Or. Rev. Stat. § 109.311(4)(d). Second, the statute's prohibition does not apply to any entity that has a contract with an Oregon adoption agency that authorizes the advertising. *See* Or. Rev. Stat. § 109.311(4)(b)(A).

2. Assisting in placement: Oregon prohibits unlicensed entities from "engag[ing] in child-placing work." Or. Rev. Stat. § 418.300. Its statutes do not define what constitutes "child-placing work."
3. Fees: Oregon prohibits unlicensed entities from charging fees "for locating a minor child for adoption or for locating another person to adopt a minor child." Or. Rev. Stat. § 109.311(3). Licensed adoption agencies are permitted to charge "reasonable fees" for their services. *Id.*

MM. Pennsylvania (photolisting site: [www.adoptpakids.org](http://www.adoptpakids.org), [www.diakon-swan.org](http://www.diakon-swan.org))

1. Advertising: No prohibition found. The Pennsylvania Supreme Court has stated that "Advertising for adoption has not been barred by the General Assembly and is certainly a legitimate means, in this society, of making one's availability to adopt publicly known." *In re Baby Girl D.*, 517 A.2d 925, 930 (Pa. 1986).
2. Assisting in placement: Pennsylvania places no restrictions or licensing requirements on persons who wish to arrange adoptions. Its statutes define the role of an "intermediary," which is "[a]ny person or persons or agency acting between the parent or parents and the proposed adoptive parent or parents in arranging an adoption placement." 23 Pa. Cons. Stat. § 2102. But, as one court observed, "[a]ny person may be an intermediary in the Commonwealth of Pennsylvania. There is no license requirement and no regulation whatsoever." *Adoption of Baby Boy L.*, 27 Pa. D. & C.3d 584, 586 (Pa. Com. Pl. 1983).
3. Fees: Pennsylvania authorizes payments to an intermediary for reimbursement of "[r]easonable expenses incurred by the agency," including overhead costs. 23 Pa. Cons. Stat. § 2533(d). Other payments may violate Pennsylvania's prohibition against "dealing in infant children." *See* 18 Pa. Cons. Stat. § 4305.

NN. Rhode Island (photolisting site: [www.adoptionri.org](http://www.adoptionri.org))

1. Advertising: No prohibition found.
2. Assisting in placement: According to Rhode Island statutes, no entity except a licensed agency or parent is permitted to "place, offer to place, or assist in the placement of a child in Rhode Island, for the purpose of

adoption.” R.I. Gen. Laws § 42-72.1-4(c) (emphasis added). However, the prohibition does not apply when the entity “places, offers to place, or assists in the placement . . . through a child-placement agency” licensed in Rhode Island. *Id.*

3. Fees: Rhode Island’s statutes do not address fees.

OO. South Carolina (photolisting site: [www.adoptuskids.org/states/sc/search.html](http://www.adoptuskids.org/states/sc/search.html))

1. Advertising: No prohibition found.
2. Assisting in placement: South Carolina defines an entity as a “child placing agency” subject to licensing requirements if that entity “facilitates the placement of children for the purpose of adoption.” S.C. Code Ann. §20-7-1650(e). Whether an entity engaged in Internet photolisting “facilitates placement” may depend on whether (**Unfinished**)
3. Fees: South Carolina allows child-placing agencies and sending agencies from other states to charge “reasonable fees.” S.C. Code Ann. § 20-7-1690(F)(6) & (7).

PP. South Dakota (photolisting site: [www.state.sd.us/social/cps/Adoption/index.htm](http://www.state.sd.us/social/cps/Adoption/index.htm))

1. Advertising: No prohibition found.
2. Assisting in placement: South Dakota’s statutes provide that no unlicensed entity may “place” any child for adoption. S.D. Codified Laws § 26-6-8.
3. Fees: South Dakota’s statutes prohibit unlicensed entities from receiving any fees “in connection with the placing of any child for adoption.” S.D. Codified Laws § 25-6-4.2. The same provision allows agencies licensed in South Dakota to charge fees. *See id.*

QQ. Tennessee (photolisting site: [www.state.tn.us/youth/adoption/profilesstart.htm](http://www.state.tn.us/youth/adoption/profilesstart.htm))

1. Advertising: No prohibition found.
2. Assisting in placement: In Tennessee, the prohibition on placement assistance is limited to entities that receive a fee for their services. Its statute provides that only a licensed “child placing agency” is permitted to “engage in the placement of children for adoption,” but the statute “shall not be construed to prohibit any person from advising parents of a child or prospective adoptive parents of the availability of adoption . . . so long as no remuneration, fees, contributions, or things of value are” given or received. Tenn. Code Ann. § 36-1-108(a); *see also* Tenn. Code Ann. § 36-1-108(b) (“Placement of a child or children for adoption means” that

the entity is engaged “for any remuneration, fee, contribution, or thing of value . . .”).

3. Fees: Unlicensed entities are forbidden from accepting any fee, payment, or contribution for child placement services. *See* Tenn. Code Ann. § 36-1-109(a)(1); Tenn. Code Ann. § 36-1-108(a)(b). Child placing agencies that are licensed in Tennessee may charge a reasonable fee, regulated by the Department of Children’s Services. Tenn. Code Ann. § 36-1-108(d).

RR. Texas (photolisting site: [www.tdprs.state.tx.us/adoption\\_and\\_foster\\_care/child\\_search/default.asp](http://www.tdprs.state.tx.us/adoption_and_foster_care/child_search/default.asp))

1. Advertising: No prohibition of advertising found, unless through that advertising one manages to identify an expectant parent and prospective adoptive parent to each other. (see below)
2. Assisting in placement: Texas’s statutes provide that a person who is not a parent, guardian, or recognized child-placing agency commits an offense if he or she “*serves as an intermediary* between a prospective adoptive parent and an expectant parent or parent of a minor child *to identify the parties to each other*; or . . . places a child for adoption.” Tex. Fam. Code Ann. § 162.025(a).
3. Fees: No prohibition of fees found.

SS. Utah (photolisting site: [www.utdcfsadopt.org](http://www.utdcfsadopt.org), [www.nwae.org](http://www.nwae.org))

1. Advertising: Utah’s statutes prohibit an “attorney, physician, or other person” not licensed by the State from advertising that he or she is available to assist a parent in locating a potential adopter, or to assist a prospective parent in locating a potential adoptee. *See* Utah Code Ann. § 62A-4a-602(2). Specifically, the provision states that an unlicensed person may not:
  - a) “issue or cause to be issued to any person a card, sign, or device indicating that he is available to provide that assistance”;
  - b) “cause, permit, or allow any sign or marking indicating that he is available to provide that assistance, on or in any building or structure”;
  - c) “announce or cause, permit, or allow an announcement indicating that he is available to provide that assistance, to appear in any newspaper, magazine, directory, or on radio or television; or”
  - d) “*advertise by any other means* that he is available to provide that assistance.”

Utah Code Ann. § 62A-4a-602(2)(b) (emphasis added).

2. Assisting in Placement: According to Utah’s statutes, an entity not licensed by the State may not “engage in child placing, *or solicit money or other assistance for child placing.*” Utah Code Ann. § 62A-4a-602(1) (emphasis added). On the other hand, the statute provides that “[a]n attorney, physician, or other person [not licensed by Utah as an adoption agency] may assist a parent in identifying or locating a person interested in adopting the parent's child, or in identifying or locating a child to be adopted.” Utah Code Ann. § 62A-4a-602(2)(a).
3. Fees: While an attorney, physician, or other person not licensed as an adoption agency can “assist” a prospective adoptive parent and potential child in identifying each other, “no payment, charge, fee, reimbursement of expense, or exchange of value of any kind, or promise or agreement to make the same, may be made for that assistance.” Utah Code Ann. § 62A-4a-602(2)(a). The same statute clarifies that “[n]othing in this part precludes payment of fees for medical, legal, or other lawful services rendered in connection with the care of a mother, delivery and care of a child, or lawful adoption proceedings; and no provision of this part abrogates the right of procedures for independent adoption as provided by law.” Utah Code Ann. § 62A-4a-602(3).

TT. Vermont (photolisting site: [http://www.projectfamily.state.vt.us/child\\_meet\\_kids.html](http://www.projectfamily.state.vt.us/child_meet_kids.html))

1. Advertising: No prohibition found.
2. Assisting in placement: Only a licensed agency may “place a minor for adoption,” but Vermont defines “place for adoption” narrowly as “to select a prospective adoptive parent for a minor *and* transfer physical custody of the minor to the prospective adoptive parent.” Vt. Stat. Ann. tit. 15A, § 2-101(a); Vt. Stat. Ann. tit. 15A, § 1-101(3), (15) (emphasis added).
3. Fees: Unlicensed entities are prohibited from charging accepting fees for “the placement of a minor for adoption,” but as noted above, “placement” is construed narrowly to require selection of the adoptive parent and transfer of custody. Vt. Stat. Ann. tit. 15A, § 7-105(a); Vt. Stat. Ann. tit. 15A, § 1-101(15). A licensed child placing agency may accept a reasonable fee for its expenses. Vt. Stat. Ann. tit. 15A, § 7-104.

UU. Virginia (photolisting site: [www.adoptuskids.org/states/va](http://www.adoptuskids.org/states/va))

1. Advertising: No prohibition found. Unlicensed agencies are forbidden from advertising that they offer adoption services for a fee. *See* Va. Code Ann. § 63.2-1218.
2. Assisting in placement: Virginia’s statutes provide that children may be “placed” for adoption only by agencies licensed in Virginia or agencies

outside Virginia licensed according to the laws that govern them. Va. Code Ann. § 63.2-1200.

3. Fees: Unlicensed entities may not receive fees. See Va. Code Ann. § 63.2-1218. Licensed adoption agencies may charge fees for “reasonable and customary services.” *Id.*

VV. Washington (photolisting site: [www.nwae.org](http://www.nwae.org))

1. Advertising: Washington’s statutes prohibit unlicensed entities (or prospective parents who have receive a favorable preplacement recommendation) from advertising a child offered or wanted for adoption: “No person or entity shall cause to be published for circulation, or broadcast on a radio or television station, within the geographic borders of this state, an advertisement of a child or children offered or wanted for adoption, or shall hold himself or herself out through such advertisement as having the ability to place, locate, dispose, or receive a child or children for adoption unless such person or entity is: (a) A duly authorized agent, contractee, or employee of the department or a children's agency or institution licensed by the department to care for and place children; (b) A person who has a completed preplacement report . . . with a favorable recommendation as to the fitness of the person to be an adoptive parent, or such person's duly authorized uncompensated agent, or such person's attorney who is licensed to practice in the state.” Wash. Rev. Code Ann. § 26.33.400(2).

- a) The statute’s definition of “advertising” could be read to apply its prohibitions to Internet posts. It states: “Unless the context clearly requires otherwise, ‘advertisement’ means communication by newspaper, radio, television, handbills, placards or other print, broadcast, or the electronic medium. This definition applies throughout this section.” Wash. Rev. Code Ann. § 26.33.400(1).
- b) The statute states that Section 26.33.400’s prohibitions do not apply to “any radio or television station or any publisher, printer, or distributor of any newspaper, magazine, billboard, *or other advertising medium* which accepts advertising in good faith without knowledge of its violation of any provision of [Section] 26.33.400.” Wash. Rev. Code Ann. § 26.33.410.

2. Assisting in placement: No prohibition found, unless the assistance involves illegal advertising.
3. Fees: No prohibition found.

WW. West Virginia (photolisting site: [www.wvdhhr.org/oss/adoption/wv\\_children.asp](http://www.wvdhhr.org/oss/adoption/wv_children.asp))

1. Advertising: No prohibition found.

2. Assisting in placement: West Virginia's licensing requirements do not appear to apply to entities that simply provide Internet photolistings. West Virginia requires that any entity that "operates a child placing agency" must be licensed. W. Va. Code § 49-2B-3. It defines a "child placing agency" as "a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption." W. Va. Code § 49-2B-2(h).
3. Fees: Unlicensed entities are prohibited from charging fees for "locating, providing or procuring a minor child for any purpose which entails a transfer of the legal or physical custody of said child, including, but not limited to, adoption or placement." W. Va. Code § 48-22-803. Licensed adoption agencies are permitted to charge fees for "reasonable and customary services." *Id.*

XX. Wisconsin (photolisting site: [www.wiadopt.org/](http://www.wiadopt.org/))

1. Advertising: Wisconsin's statutes would prohibit certain adoption-related advertising over the Internet, but its prohibition is limited to advertisements that originate in Wisconsin. *See Wis. Stat. Ann. § 48.825(1)(a).* Therefore, the statute should not affect an entity operating an adoption photolisting outside of Wisconsin. In addition, Wisconsin's statute exempts Wisconsin-licensed adoption agencies and groups that provide information as part of the state's adoption information exchange program. *See Wis. Stat. Ann. § 48.825(3).*

With those exceptions, Wisconsin prohibits the following types of advertisements: (1) advertising "for the purpose of finding a child to adopt"; (2) advertising "that the person will find an adoptive home for a child or arrange for or assist in the adoption or adoptive placement of a child"; and (3) advertising "that the person will place a child for adoption." Wis. Stat. Ann. § 48.825(2).

2. Assisting in placement: Wisconsin's licensing requirement is limited to entities that "receive children" for placement. Wis. Stat. Ann. § 48.60. Therefore, its licensing requirements should not affect entities that simply provide Internet photolistings.
3. Fees: Wisconsin permits payment of fees to licensed child welfare agency. *See Wis. Stat. Ann. § 48.913(1)(e).* Its statutes do not address payments to unlicensed intermediaries or entities for assisting in placement.

YY. Wyoming (photolisting site: [dfsweb.state.wy.us/childsvc/updates/adoption/tocadp.htm](http://dfsweb.state.wy.us/childsvc/updates/adoption/tocadp.htm))

1. Advertising: No prohibition found.

2. Assisting in placement: Wyoming's licensing requirements should not apply to groups that simply provide photolistings of children available for adoption. Wyoming requires that "child placing agencies" be licensed only before "exercising care, custody or control of any minor." Wyo. Stat. Ann. §§ 14-4-102(a), 14-4-101(a)(vi).
3. Fees: No prohibition found.