



**PlayWell, LLC**

The Privacy and Marketing Compliance Consultancy

# **Student Online Personal Information Protection Act (SOPIPA)**

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# About PlayWell, LLC

- The only professional consultancy fully dedicated to helping companies and schools navigate their compliance requirements
- Expert in privacy, safety, advertising, marketing, content and product development regulations and industry best practices
- Taking the complexity out of developing compliant practices while achieving business goals
- Backed by 20+ years of experience creating, assessing and implementing compliance programs for major media organizations, education and entertainment companies around the globe

# **Student Online Personal Information Protection Act**

# SOPIPA

- California student data privacy law
- In effect as of January 1, 2016
- With AB1584, creates broad student data privacy landscape in California
- Imitated across the states:
  - 11 laws in 2015
  - Over 50 bills across 22 states and growing

# General Requirements

- Requirements
  - Reasonable security procedures and practices
  - Controls on third parties
  - Deletion of data at request of school or district
- Prohibitions
  - Targeted advertising
  - Creating a profile of students using covered information
  - Selling student information
  - Disclosing covered information except in limited circumstances

# **Who Must Comply?**

# Operators

- Operators of websites, online services, applications and mobile apps with actual knowledge that their product or service:
  - Is used **primarily** for K-12 school purposes; **and**
  - Was designed and marketed for K-12 school purposes
- Does not apply to general audience products, even if accessible through a K-12 operator's product

# K-12 School Purposes

- Customarily take place at the direction of the K-12 school, teacher or school district; or
- Aid in the administration of school activities:
  - Instruction in the classroom or home
  - Administrative activities
  - Collaboration between students, school personnel, or parents; or
- For the use and benefit of the school



# **What Information is Protected?**

# Covered Information

- Personally identifiable information or materials created or provided by:
  - A student, the parent or legal guardian to an operator via the product for K-12 purposes
  - An employee of agent of the K-12 school, district, LEA or county office of education to an operator

# Covered Information (cont.)

Information gathered by an operator through the product or service, **descriptive or otherwise identifying a student**, including but not limited to:

- Information in a student's educational record or email
- First and last name
- Home address
- Telephone number
- Email address
- Other information that allows physical or online contact
- Discipline records
- Test results
- Special education data
- Juvenile dependency records
- Grades
- Evaluations
- Criminal records
- Medical records
- Health records
- Social security number
- Biometric information
- Disabilities
- Socioeconomic information
- Food purchases
- Political affiliations
- Religious information
- Text messages
- Documents
- Student identifiers
- Search activity
- Photos
- Voice recordings
- Geolocation information

# **Complying with SOPIPA**

# Required Practices

- Delete covered information at the request of the school or district
- Implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information
- Protect information from unauthorized access, destruction, use, modification or disclosure

# Prohibited Practices

- Operators may not:
  - Serve targeted advertising
  - Use information, including persistent identifiers to amass a profile on K-12 students except for a K-12 school purpose
  - Sell student information
  - Disclose covered information except in limited circumstances

# What is Targeted Advertising?

- An operator shall not knowingly...
  - Engage in targeted advertising on the operator's site, service, or application, **OR**
  - Target advertising on any other site, service, or application when the targeting of the advertising is based upon any information, including covered information and persistent unique identifiers, that the operator has acquired because of the use of that operator's site, service, or application

# What Does that Mean?

- **PlayWell** says...
  - Retargeting of students or parents off of the product is not acceptable
  - However, “targeted advertising” in the product remains undefined



# How Will California Define “Targeted?”

- **Behaviorally targeted advertising:** tailored ad that is served based off of a collection of information about online activities and Web viewing behaviors, over time and across non-affiliated websites
- **Contextual targeting:** ad is served is based on a single visit to a web page or a single search query.

# Acceptable Disclosure

- Covered information may only be disclosed:
  - To ensure legal and regulatory compliance
  - To respond or participate in a judicial process
  - To protect the safety of individuals or the security of the product
  - If required by other federal or state laws
  - For “legitimate” research purposes
  - To state or local educational agencies, schools and districts for K-12 school purposes
  - To further K-12 purpose of the product (with restrictions in place)

# Third Party Service Providers

- Due diligence and contractual limitations:
  - Prohibit additional uses of data and data disclosure
  - Implement and maintain reasonable security policies

# How Can You Use Information?

- Student data, including covered information may be used for adaptive or customized student learning
- Deidentified covered information may be used:
  - To improve educational products
  - To demonstrate the effectiveness of the products, including for marketing purposes
  - To maintain, develop, support, improve or diagnose operator's product
- When aggregated, deidentified data may also be shared for development and improvement of educational sites, services or applications

# Student Rights

- Students may download, export, or otherwise save or maintain their own student created data or documents

# **District Guidance and SOPIPA**

# How Are Schools Enforcing SOPIPA?

- Questions, Rigidity, Anxiety
  - Lengthy and repetitive data privacy and security questionnaires
  - Direct lift from the laws without regard for product specifics
    - “Not applicable” not accepted
    - Prohibitions on legal use of aggregated, deidentified data
  - Comply with the full California Education Code

# **Regulatory Interpretation and Enforcement**



# What's Next?

- General guidance expected from California
  - Defining “targeted advertising?”
  - Enforcement authority
    - California Business & Professions Code
      - “Unfair Competition”



# PlayWell, LLC

## The Privacy and Marketing Compliance Consultancy

- ▶ Student Data Privacy: FERPA, PPRA, SOPIPA, emerging legislation
- ▶ Youth Data Privacy: COPPA, calOPPA
- ▶ User Safety and Cyberbullying
- ▶ Compliant Marketing and Promotions
- ▶ Education and Training
- ▶ Compliance Policies and Practices
- ▶ Building Organizational Cultures of Compliance
- ▶ Strategic Compliance Communications and Crisis Response

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