

DRAFT
FOR DISCUSSION ONLY

SOCIAL MEDIA PRIVACY ACT
(STUDENT ONLINE PRIVACY PROTECTION ACT)

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAW

April 17-19, 2015 Drafting Committee Meeting

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April 3, 2015

SOCIAL MEDIA PRIVACY ACT

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STUDENT ONLINE PRIVACY PROTECTION ACT

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STUDENT ONLINE PRIVACY PROTECTION ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the [Student Online Privacy Protection Act.]

SECTION 2. DEFINITIONS. In this [act]:

(1) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) “Educational institution” means a public, private or non-profit institution that provides an organized course of study to students at the post-secondary, [secondary, ~~elementary, kindergarten, or pre-school~~] level. The term includes an agent, a representative or a designee of an educational institution.

(3) “Login information” means a user name, a password, or other means of authentication required to access or exercise control over a protected personal online account.

(4) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency or instrumentality, or other legal entity.

(5) “Protected personal online account” means an online account, created or maintained by an individual, that requires login information to access or exercise control over that account.

The term:

~~(A) includes an electronic device that provides access to a protected personal online account; and~~

~~(B) does not include an online account or electronic device that:~~

(i) an educational institution supplies or pays for; or

(ii) a student creates or maintains on behalf of or under the direction of an educational institution as part of that student’s education.

(6) "Student" means an individual who participates, on a full-time or part-time basis, in an organized course of study at an educational institution. The term includes:

(A) a prospective student who has expressed an interest in or applied for admission to an educational institution, or whom an educational institution is otherwise considering for admission; and

(B) a parent or legal guardian of a student who is under the age of [majority]. ^{OK}

SECTION 3. PROHIBITIONS AND RESTRICTIONS. Except as otherwise provided in Section 4:

(1) An educational institution ~~may~~ ^{shall} not require, request, or coerce a student to:

Not sure I grasp the situation where and how the metadata will be obtained and what I can do with it.

^{keep all} (A) disclose the ~~existence of,~~ ~~identifying information for,~~ ~~contents or~~ ^{meta-} ^{data of} ^{???} or login information for, a protected personal online account;

(B) alter the settings of a protected personal online account, including settings that affect whether another person is able to view the contents of that account; or

(C) access a protected personal online account in the presence of the educational institution in ^{any} a manner that enables the educational institution to observe the contents of the account.

(2) An educational institution may not expel, discipline, deny admission to, delay admission to, or otherwise penalize, or threaten to expel, discipline, deny admission to, delay admission to, or otherwise penalize, a student for refusing or failing to comply with ^{any action by} an educational institution ~~action~~ that violates paragraph (1).

(3) ~~An~~ educational institution that inadvertently, or through a person other than the student, ^{learns of the existence of,} ^{acquires} ^{identifying information or} ^{login information for,} or accesses the contents ^{or meta-data} ^{???} of, a student's protected personal online account:

not defined

(A) ~~[properly]~~ may possess the information;

(B) may not use the ~~[identifying or]~~ login information to access or alter the student's protected personal online account;

(C) may not use the existence, contents ^{???} or meta-data of the student's protected

personal online account as the basis for a decision or action detrimental to any student; and

(D) shall dispose of the ~~[identifying information or]~~ login information for, or contents or ^{???} meta-data of, the student's protected personal online account as soon as practicable. §

SECTION 4. EXCEPTIONS.

(a) Section 3 does not apply to an educational institution's actions that would otherwise violate Section 3 if the educational institution's actions are necessary to:

(1) comply with federal, state, or local law or with the rules of a self-regulatory

organization that exercises delegated federal, state or local power to make those rules;

(2) ~~investigate an alleged violation of law by the student;~~

^{policy} (3) ~~(2) investigate a student's violation of law, or of written educational institution policies regarding education-related misconduct of which the student had reasonable notice,~~

~~where the educational institution reasonably suspects that the student has violated, is violating, or will violate those laws or policies, and the educational institution accesses only accounts, content~~

^{???} ~~and meta-data that it reasonably believes to be directly relevant to the investigation;~~

~~(3) penalize a student for violating the law, or written educational institution policies regarding education-related misconduct of which the student had reasonable notice; or~~

(4) protect against

(A) an imminent and significant threat to health, safety, [↑]property[↑], or the

functioning of the educational institution's information or communications technology systems;

or

(A) conflicts with (D)- if you can possess the info, why must you dispose of it???

Not sure I grasp the import of the need to access the account if I have determined there was a violation

doesn't this highlighted text also apply to the investigation of an alleged violation of law???

(B) disclosure of information that the educational institution has a proprietary interest in, or has a legal obligation to keep confidential.

(b) Section 3 does not apply to an educational institution insofar as it accesses or uses information about a student that can be obtained without login information and without taking an action that Section 3 otherwise prohibits.

(c) This section does not permit an educational institution to:

(1) alter the settings of a student's protected personal online account, or

(2) alter or remove the content or meta-data of a student's protected personal

~~online account, except that an educational institution may [alter the settings of a student's protected personal online account and] alter or remove the content or meta-data of a student's protected personal online account if it has a clear proprietary interest in, or the law requires it to, alter or remove [those settings and] that content or meta-data, or if~~ ^{unless} authorized by court order or other law to do so.)

But I am not sure how the educ inst would alter the content if it had a court order- I would think the order would be directed to the SM provider

SECTION 5. CIVIL ACTION.

(a) An educational institution that violates this [act] is subject to a civil penalty of [\$1000] for each violation. For this purpose, each violation of this [act] with respect to a particular online account is a separate violation.

(b) A student injured by a violation of this [act] may bring a civil action against the educational institution.

(c) In an action under subsection (b):

(1) a prevailing student may obtain:

(A) injunctive or other equitable relief;

(B) [damages in the amount of [\$1000] or] actual damages[, whichever is

greater];

(C) [punitive damages]; and

(D) costs and reasonable attorneys' fees.

May deter suits by persons
harmed by the institution

(2) The court may award a prevailing educational institution costs and reasonable attorneys' fees if the court determines the action was frivolous and without reasonable cause.

SECTION 6. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.

SECTION 7. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

SECTION 8. EFFECTIVE DATE. This [act] takes effect on [effective date].