

schools bring is sort of the world of school lawyers. As you know, school lawyers represent the interests of public school districts across the country. And so this morning, I heard a lot of conversations about what might happen when notice is supposed to be given or consent requested and who's doing that, whether it's the school board or the teachers. And school lawyers are those I think that are very helpful in helping school districts-- both the administrators and the school boards--

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So when we talk about where do we go from here, from my perspective, an important aspect is how do we get parents more involved, more knowledgeable, more actually exercising the consent. Because I think what FERPA and COPPA were about-- and still are about-- parents actually determining the kind of information that's collected about their children and how it's used. So I'm really encouraged about all of these people being on the same page about chatting, and I hope that an important aspect of that will be how can we get more involved and more knowledgeable and more able to make decisions?

KATHLEEN STYLES: So Rachel-- from your perspective as a parent advocate, do you share David's concern? Do you see any cause for celebration, for anything that's going right from the parent perspective now?

RACHAEL STICKLAND: So that's a great question. From the previous panel this morning, Jeff. Co. is on a path that was largely the result of the inBloom controversy, and so they're doing a lot of really terrific things that other districts may not be able to do. And we passed a law in 2014 and then another in '15 that's just coming into effect now, so we won't really know some of the outcomes of what that will look like. But I can say with a straight face that from a parent's perspective and now having two kids in the classroom, absolutely nothing has changed since inBloom.

From a parent's perspective, kids are still signed up for apps without knowledge or consent. Largely, there's a lot of tech in the classroom that we're never asked to consult or give our opinion about. So I haven't really seen any improvement or areas where I feel like there's a bright light for the future. I will say specifically with the student privacy pledge, it's voluntary, it's self regulating for the most part.

I understand that it is enforceable in some capacities, but for instance, the Electronic Frontier Foundation submitted a complaint in December 2015 against Google and their Google Apps for Education

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AMELIA VANCE: Absolutely. I definitely agree with Rachel. We have a long way to go. We still have a lot of companies that can sign the pledge, can take more steps. We have a lot of districts that still need to be more transparent. And as I mentioned, there's still a really unfortunate lack of training and resources and funding to actually put many of the ideas and laws that have been put in place into actual practice.

But we have had a monumental shift from where we started. I mentioned this morning I run sort of the education privacy resource center website FERPA Sherpa, and one of the things I did when I came on board at FPF was pull all of the resources relevant to student privacy-- most of which didn't exist three or four years ago-- and put them on the site. And there are 450 resources on there. And the guide that David and Rachael put together-- a parent guide-- FPF has put together a parent and educator guide.

There are infographics about how data is used in ush usignC /Pscundrec.-1 (e)4 (dp7p2(d i)-2 (4 (A)2 (nd t)-2

As I mentioned earlier, Utah is one of the only states that has actually really funded this. And one of the things they funded was a dedicated trainer at the state level who goes out to districts and helps them with all of these things, and has helped them create model contracts and training materials and everything else, so those districts of 50 kids don't have to do this alone. Wisconsin-- not because of a law-- has the best student privacy website of anyone in the country. They have a module on training on how you use PII, they have resources, they have really understandable resources for parents. So there's a lot of examples out there. There's a lot of things that are going well. But on the other hand, there is still a long ways to go.

KATHLEEN STYLES: OK. Well, I'd like to dig in a little bit on some of the burning COPPA questions. I think this is the only crowd I could refer to burning COPPA questions, but I will do that. So I'd like the panel to imagine that it's a clean slate-- that the FTC has said nothing about when schools can give consent, or what the parent's role is, or what the vendor's role is. What should that process look like? Should schools be able to give consent for the use of this type of technology in the classrooms? And if so, what kind of notice should they be required to give to parents? Keeping in mind what we've heard today around the administrative burden on schools of potentially going out and getting parental consent, but also the really legitimate concerns that have been raised by parents about the use of this data-- their children's data-- and the need to have parents involved and aware of what's happening?

FRANCISCO NEGRON: So if I can start with that one and jump in to say that I think that you're talking about a world where you haven't said anything at all. So I think the first thing is just to acknowledge that COPPA itself is sort of an imperfect creature, and that it was not intended to the applicability to schools that we now know we're all here to consider. So I would start with just that. And so I would start by asking, well, where are the scenarios where schools are using technology in the classroom? What are the ways that they're using it that's different than at the time of COPPA?

So take for instance the large scale data aggregation programs and testing systems that schools use at a district level. So that seems to me to be markedly different in the approach than something that an individual teacher might use in a classroom. Because when it's the district doing something, then it's probably subject to all kinds of legal review. Contractually, it's probably been vetted by the school board, who's approved the contract. And so parents by and large have all kinds of information about what the district is getting ready to do with information. So notice and consent is, I think, ostensibly a lot easier in that scenario.

But then when we're talking about a teacher in a classroom, that vetting may not happen in the way that it happens with those large scale contracts. And so I think what I would say to the FTC is, well, look at what the needs are now. Don't assume that there's one solution for everything. I think it's important.

And one of the things that we at the National School Board Association have said to the departments is you have an important role as conveners. You might want to convene school districts, practitioners, school lawyers, and operators in the area of school technology so that we can talk about what the needs are of vendors, what the needs are of schools, and then how it's actually being used, whether it's in the classroom or whether it's these sort of district wide

DAVID MONAHAN: I understand it's a real concern, because I'm hearing a lot. And I think one of the difficulties is that this transformation has happened so fast, as everyone knows. In just a few years, all of a sudden so much of our children's education and our school's administrative procedures are all electronic and digitized. And so now all of a sudden you have that kind of problem of, well, how is that consent going to fit in here? Is it going to throw a monkey wrench into things?

And you know what? In some instances, I think a school may need to pull back, and may need to say, well, we goofed. If we didn't have children's privacy front and center when we were deciding whether to use the system or to use the software, then we goofed, and we need to pull back and figure out how to incorporate that and how to give parents the ability to really protect their children's information.

KRISTIN COHEN: Did you want to jump in?

DAVID LEDUC: Yeah. I think one of the key points I heard earlier today-- and I think one of my key takeaways-- was that hearing from the school districts say, if we make this too difficult, then teachers either aren't going to use the technology, or they're going to use it, and they're not going to tell us. So I think that speaks to if we make it too difficult though, the technology won't be used, and it will be a road block. So that's why I think this is a very valuable discussion. I think the current framework is pretty well structured in its current regard in terms of having the schools be able to provide that consent, having them work closely with the vendors, having the vendors have responsibilities.

So I think the model works. I think there are certainly concerns. I think we heard a lot today, and I think industry can certainly continue working with schools and keep striving to do a better job. And I think a lot of the resources that have been suggested here today and talked about I think will be helpful. But at the end of the day, I don't think it would be good to move to a model-- I mean, I'm a teacher. I'm a parent myself of small children in Fairfax County, so I know how difficult it can be with a lot of stuff coming home and returning papers. And I know that my household and our school district isn't like all of those across the country, so I'm sensitive to the challenges. And I think we certainly don't want to lose the opportunity to utilize the technology.

RACHAEL STICKLAND: May I dovetail on something David Monahan said just very briefly? Which is as a parent, it's very difficult to wrap my head around the idea that children in the consumer space would have better protection and more parent involvement than the educational context-- that somehow, the same rules don't apply when kids are in education-- the same protections against commercial use of data. Because if an operator is subject to COPPA, they're using that data commercially, right? I mean, that's the assumption-- that they are a commercial entity.

And so even if they are producing an educational product, they still are a commercial entity. So it's just it's very odd to me as a parent to hear, gee, you as a parent have this ability in the consumer space. But in the educational context, we're just going to strip this right from you, because administratively, it is too much of a burden.

I worry about more a district passing the

lot of a grey area, and I'm not sure that we can avoid having a lot of grey area. But I think the key

and refine and develop those products and then market them back to kids. If there's another example, I'd love to learn about it. Because it just seems completely inappropriate that this particular industry ge

mean by product development and using it for commercial purpose. If schools are going to somehow be held liable for activity that a vendor is engaged in--

AMELIA VANCE: Let me just be very clear. The schools will never be held liable under COPPA.

FRANCISCO NEGRON: You heard it here. I can go home now. I think I got what I came for. But I think that's the concern. The concern is how do we know when we contract with-- and I'm not talking about something that happens just by a teacher in a classroom downloading an app, I'm talking a sort of a broader contract-- if we're going to have language in a contract with a large scale technology provider that says you're never going to use this for commercial purposes, I

RACHAEL STICKLAND: Yes. I'll add this. We've never had a parent contact us and say, can we please have less rights?

KRISTIN COHEN: But I guess I would love to get the opinion from Francisco and Steve specifically about how that would affect the school and if that's a concern in terms of maintaining our educational records and that relationship with your records and data and parents.

STEVE SMITH: Sure. So there were two questions-- one was access to the data. Parents definitely should have access to the data, and that should be laid out in the DPA as far as having access, just because of the relationship of the vendor to school relationship. It at least now comes through the school to provide that access, but no obstructions whatsoever if they want to have access to that data. As far as deleting the data, it kind of gets back to this being a core piece of

to make sure parents do have access and can challenge any data that's in the record that should not be there.

RACHAEL STICKLAND: Well, from a practical perspective-- and I'm sorry to jump in-- but from a practical perspective, parents across the country reach out

sufficiently clear? I know Amelia is going to understand it, because we've talked about this before. But let me see if I could try that again. So would you have FERPA be the law that covers every keystroke of every student or the education record maintained in the central file and held for longer than a year or some of the more restrictive notions that we sometimes see asserted?

STEVE SMITH: I'll go first. Because of the nature of the online tools, the position we take-- and I think the only way to really ensure that we're capturing it all-- is whenever a student logs in to an application, there is potential of capturing some part of the student record. So to me, it's everything because of the potential. Once you start-- I've been dealing with this for almost 10 years, talking to vendors about what we want to protect and why. And once you start going down the hole of this isn't an educational record, this isn't PII, you never get out of it. So it's like once there's the ability for student data to be captured, we need to protect it the same way.

RACHAEL STICKLAND: I would agree, yeah. I know it complicates things for school districts-- I'm sorry, Amelia, I just interrupted-- because when parents ask for access to that information, obviously it's going to complicate that issue, because it's very difficult even now for schools to know if some of that metadata-- the data that some folks say are not identifiable-- to provide that and give access and the ability to correct. But I agree in substance with what you say exactly.

FRANCISCO NEGRON: I just wanted to say that I'm going to, again, give you my one size fits all anti-regulation speech. What I'm saying is that a record that says here are the kid's grades or here are students' performance or this is how he did certain things is markedly different from-- although in concept, I agree with what Steve said, is metadata, is a number of keystrokes, is the time that it took a student to select an icon-- is that really a student record? And if it is, then how does the school provide that?

Do we now have to create a record which FERPA doesn't require us to do? So now do we have to have in our contract with a vendor you must provide us the information in the way that it's requested by the parent, which is the number of keystrokes? I mean, we're going to have to create a record. It's just untenable, I think, to do that. So we have to understand what we're talking about when we're talking about metadata, about the information that's actually being used for the commercial purpose. We need clarity there, OK? Not just about the actual use-- like they're taking a list of students-- which is I think what we're all thinking about-- and selling it to somebody else, or saying kids like the color blue, and we have 100,000 kids in our database, and we know that. And so that's useful for your marketing purposes.

We need to sort of get away from those concepts and try to understand what really we're talking about when we're talking about the information. FERPA talks in terms of student records, and not every piece of information in a school district is a student record, even if it relates to student. So I would caution that we need to apply that same kind of nuance. And I know it's not going to make you happy, Kathleen, but it just concerns me. I don't know how we would actually respond as a school district to that.

DAVID LEDUC: I agree with that. I think at one point when FERPA was created, I suppose, an educational record-- you knew what it was. It was a number of variables. And with so many other data points, I just don't think it's practical to roll everything in and say all this data is now

an educational record. It's not practical for the schools, for the districts, for the vendors. And I think it's generally not desirable.

AMELIA VANCE: I think we have to be really careful too about-- as Francisco was saying-- not creating an unfunded mandate that cost \$10,000 to pull keystroke information, which really wasn't what the parent wanted in the first place. They may have wanted more of the behavioral information that comes from that app or something like that. I absolutely think that we should protect all personal information, whether it's considered part of the education record or not.

I also think that when we're talking about access to it, we need to think in terms of why FERPA was created in the first place, which was to make sure that parents could see the information that was being shown to others about their child or stored about their child. And most of the time, when you get access to the record or request, it's about a specific thing. It's why wasn't my child chosen for the honor program, or why did my child get disciplined, or things like that. And I think-- again, I hate to keep using the word nuanced here-- but I think there has to be a level of nuance to make sure that schools can practically fulfill what parents need to see, but not a mandate that every keystroke needs to be there. But if it's personal information, I think you can add the nuance that that does need to be protected, even if every keystroke doesn't need to be given in a stack up to the ceiling to the parent to fulfill FERPA's requirements.

KATHLEEN STYLES: So David Monahan gets the final word, then we turn to Kristen, who will start asking questions from the audience.

DAVID MONAHAN: I was just going to say to Francisco's point-- we can hear this is one where everyone is going to need to put their heads together. But to Francisco's point, there may not be that clear a divide between the personal information of results and how many kids like the color blue. Because there is a grade area where it's like, yes, and this particular kid loves the color blue and loves this particular movie. Let's start to target them with advertising for that movie.

FRANCISCO NEGRON: And we all agree that that's the inappropriate use. We all agree to that.

DAVID MONAHAN: Glad to hear that.

FRANCISCO NEGRON: We all agree that that's not [INAUDIBLE].

KRISTIN COHEN: Just before I move to the audience questions-- and I think Kathleen kind of asked us, but I just want to ask it a little bit more specifically. Is there something you think that the FTC should do to harmonize the COPPA rule more with FERPA? And one question that we have heard is that maybe schools should only be able to give consent where schools are using a vendor under the school official exception. Would that be a worthwhile way to think about it? What are some of the problems, if you foresee any, with that type of regime? And I open that up to anyone.

RACHAEL STICKLAND: That would be wonderful.

AMELIA VANCE: I would say not until FERPA is modernized. I think it's a mistake to sort of-- we're at a crossroads here. And instead of moving forward, that would be a step backward, only it would make administrative process easier. But until FERPA is clarified and modernized, I don't think it protects kids any more than it does now.

KATHLEEN STYLES: Anybody else?

STEVE SMITH: That's kind of the model we've been working under currently.

DAVID LEDUC: Yeah, I think it's pretty consistent with the current model where things are right now.

KRISTIN COHEN: OK. So we did get a number of audience questions. So this question is for you, Steve. An audience member asks, do schools ever reac

the end of the day, is really the training and the funding and the guidance that can make more people aware of how to keep this information safe.

RACHAEL STICKLAND: I will say quickly-- security certainly is an issue, obviously, and it's one that's very black and white. You can either protect your data, or you can't. But honestly, my bigger concern about data being collected in schools are the ethical uses of big data and what that means for our future, what it means for our kids, where this data is going to be going. There are a lot of vendors operating in the educational space that don't intend to be there long term. They're collecting a lot of data, and they can be merged or bought by other companies-- large companies. So to get into the meat of that question, I think we need to talk about the ethics of big data, especially in an educational context.

DAVID MONAHAN: And if I may also quickly add-- and by the way, Amelia, I look forward to saying hi to you after the session, because we haven't met, and we've been chatting a lot here. But I don't think it's fair to put it all on the school districts and the lack of funding. A lot of data breaches are for vendors that are not having strong safeguards in place. And we've heard a lot today about the good vendors, and we've heard about the not so good vendors. And one of the biggest reasons that data can be at risk is because vendors don't have the proper protections in place. So don't ask government to-- you came to schools, you convinced them to buy these products, and now you're saying it's on them to protect the information. No, the vendors that are

the next year or two-- exactly what the enforcement landscape will look like. But we're still sort of in the infant stage of all of that.

KRISTIN COHEN: OK. So we're coming to the end, but we're just going to close it off with one last question for all of you. What is your number one wish list item that you would give to Kathleen and I as regulators?

DAVID LEDUC: Just one again?

KATHLEEN STYLES: Just one.

DAVID LEDUC: I can't pass, and I can't say it depends.

KRISTIN COHEN: Who's counting?

DAVID LEDUC: I think if I had to pick just one, I would say clarifying this definition of what's an educational purpose and what's a commercial purpose.

KATHLEEN STYLES: And how would you clarify it?

KRISTIN COHEN: She's tough.

DAVID LEDUC: We already answered that. The regulations really seem to hang around that, and that's the point at which the schools can act as an agent and provide the consent, and the technology providers can operate. As I mentioned earlier, I think it's in the best interest of the studen

such a pleasure to talk with you and to learn more about how this is working in your school districts. It's great to see school districts who are trying to do the right thing and are really pushing forward on this front.

And our different advocacy groups-- both the advocacy groups that have been on panels, whether it's Commercial Free Childhood or Future of Privacy Forum, and then some of you all in the audience are also with different advocacy groups-- you are a vital part of the ecosystem in which we try to define the appropriate rules for student privacy in schools with educational technology. And we appreciate you being here so much and hearing from you regularly.

And then finally-- last, but absolutely not least, Rachael-- our parents and our parent groups. It's the group which is hardest for us as federal officials to hear from are parents. I was talking with somebody with the national PTA earlier today, and it's really hard to talk to parents. Some of us have recently started volunteering in schools just so we can be in schools more and understand more of the on the ground challenges that students and parents and teachers face every day. So I appreciate you all being here and providing your perspective.

In terms of our next steps, we will be sitting down separately and jointly with the Federal Trade Commission after today and pondering through what we've heard here today. I, for one, have read all the comments that were submitted, and I make a promise I'm going to read them all again, because there was some really incredibly thoughtful material that was put in all of those comments. And I don't know what our next steps will be, and I don't have any timeline to announce for our next steps. The point from today was to listen, to hear from you all, and so we can take into account what each of our agencies will be doing as we move forward.

The proceedings today are going to be available on a continuing basis on the FTC website. So in case today was not geeky enough, you can go back and rewatch from 9 o'clock this morning up until now and see all the brilliant comments that were made. What did I forget Kristen?

KRISTIN COHEN: I can't think of a thing.

KATHLEEN STYLES: It's been a pleasure. Thank you all.

[APPLAUSE]