Moving to a National Model

DATA PRIVACY AGREEMENTS IN A NEW AGE

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Why a National Model?

- Subject matter is national.
- GDPR and CCPA are establishing new national norm.
- GDPR is creating a legal environment more challenging than FERPA.
- Because of GDPR Challenges, technology companies may be more open to less burdensome requirements.

- Alignment of state laws.
- More convenient for both school district and companies, predictable duties, cheaper to contract, middle of the road provisions.
Examples of Models to Emulate

- Architect Agreements (AIA).
- UCC forms
- Use of riders for state-particular legal requirements.
Where do we stand now?

• Several states have adopted a variant of the CSDPA

• Some confusion among vendors arising from minor differences between the state agreements.

• Hundreds of vendors and school districts have adopted the CSDPA-based contracts.

• Many school districts have adopted policies requiring DPA’s as a condition of procurement.
Customizing Large Tech Agreements

- Worked with Apple to revise the DPA to meet the main features of a DPA.
- Just initiated discussions with Amazon.
Looking ahead; 3.0 and National Framework

• Three main tasks:
  1. Update agreements to reflect member and vendor suggestions.
  2. Continue working on SDPC National Clause Set.
  3. Aligning data security provisions with authoritative standards.
What Tasks Should We Focus On?

- Expanding the Agreement on include provisions that may impact the Privacy provisions, but are usually found in the TOS:
  1. Assignment.
  2. Limits of liability.
  3. Indemnity.
  4. Other important boilerplate: Such as entire agreement, severability, etc.
New Provisions?

- Revamping definition section.
- Deidentification provisions.
- Security.
- Advertising.
- Recitals and section citations.
- Riders for advertising and security?
Customization and its Perils

• What can be modified?

• What is the best way to alert others about customization?
New Types of Agreements

- Interagency?
- Research?
- Sub-processors or “ecosystem” apps?
Conclusion

• Questions?
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