

September 9, 2015

The Honorable Richard Blumenthal
Ranking Member
Senate Commerce Committee
Subcommittee on Consumer Protection, Product
Safety, Insurance, and Data Security

The Honorable Steve Daines
Member
Senate Commerce Committee
Subcommittee on Consumer Protection, Product
Safety, Insurance, and Data Security

Dear Senators Blumenthal and Daines:

On behalf of the Software & Information Industry Association (SIIA), I write regarding the “Safeguarding American Families from Exposure by Keeping Information and Data Secure Act (S.1788). SIIA and our member companies agree with the need to safeguard student information, and are engaged in a continuous process to enhance student privacy and data security.

As background, SIIA is the principal trade association for the software and digital content industry. Many SIIA members work with schools, state agencies and universities nationwide to develop and deliver software applications, digital content, data systems, web services and related technologies. SIIA also helped to develop the Student Privacy Pledge, now signed by over 175 school service providers clarifying their commitments to the appropriate use of student data to meet legal responsibilities and community expectations.

We appreciate your commitment to keeping student information secure and believe S.1788 makes an important contribution to that process. However, SIIA recognizes that there now exists a strong protection framework of federal and state law, enforceable privacy policies, and binding contracts. S.1788 would unnecessarily add requirements and restrictions that create conflicting definitions and obligations on school service providers that create a regulatory environment impossible for school service providers to navigate.

It is necessary that any new authority preempt the overlapping state laws and harmonize the multiple overlapping federal laws including the Children’s Online Privacy Protection Act and the Family Educational Rights and Privacy Act.

In addition, SIIA has identified a number of questions and concerns regarding S.1788 that must be addressed in order to provide the protection for student data sought while not stifling the innovation in education necessary for today’s students, including the following:

- Unnecessary Coverage of Non-Personal Information – SIIA agrees with the need to protect student personal information. But S.1788 would actually sweep in other information that is not necessarily personally identifiable as well as make school service providers liable for knowing whether the data and files they maintain under a school’s direction is personally identifiable even if they have no knowledge, and could not possibly have such knowledge.
- Unnecessary Restriction on Educational Use of Student Information – SIIA agrees with limits on the use of student information for behaviorally targeted commercial advertising. Indeed, we think it is already forbidden under current Federal law and it is part of the Student Privacy

Pledge. But S.1788 could limit student access to advanced learning technologies that are essential to modern education by seeking to restrict behaviorally targeted commercial advertising in a way that may limit the use of student information to help educators, students and families identify educational opportunities whether a learning module, college or scholarship even absent consideration.

- Lack of Parental Choice – While current laws empower parents to authorize additional uses of their children’s data, S.1788 would not provide this opportunity to consent even given clear and conspicuous notice.
- Unnecessary and Impractical Identification of Subcontractors – S.1788 would require school service providers to potentially publicly identify their subcontractors, raising a number of concerns. First, this requirement is impractical as subcontractors may continuously evolve over time, while some school service providers could employ hundreds or even thousands of subcontractors such as online tutors. Second, identification of subcontractors threatens data security by providing a roadmap to those looking to gain unauthorized access. The requirement is unnecessary since student rights can be protected by holding vendors accountable for the activities of their contractors.

SIIA recognizes the importance of safeguarding student privacy, but is concerned that S.1788 would create barriers to the appropriate use of technology and data by educators and students, institutions and families. SIIA agrees it makes sense to review policies and practices, and we recently supported the creation of a federal Student Privacy Policy Commission sponsored by Senators Hatch (UT) and Markey (MA) and included in the Senate-passed “Every Child Achieves Act” (S.1177).

In light of the existing protection framework and the outstanding issues with S.1788, SIIA believes it first makes sense for this stakeholder panel to review practices, consider if policy and definitional updates may be needed, and assess the coordination of inconsistent federal and state laws in light of evolving technologies and education models. Taking the time to further understand this complex issue will hopefully allow us to avoid new laws that end up restricting student access to advanced technologies.

SIIA looks forward to working with you further on these issues. If you have questions regarding these issues, please do not hesitate to contact me or to reach out to Brendan Desetti, SIIA’s Director of Education Policy, at bdesetti@siaa.net.

Sincerely,



Mark McCarthy
Vice President

cc: Senate Commerce Committee Chair and Ranking Member