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## CALIFORNIA PASSES FIRST STATE LAW ON STUDENT PRIVACY

On September 29th, California passed the Student Online Personal Information Protection Act ("SOPIPA"), the first state law in the nation that addresses young student privacy and places direct liability on non-educational institutions. SOPIPA regulates "operators," defined as the operator of an Internet web site, online services (including cloud computing), online application or mobile application with actual knowledge that the site, service or application (i) is used primarily for K-12 purposes and (ii) was designed and marketed for K-12 school purposes. "K-12 purposes" means purposes that customarily take place at the direction of the K-12 school, teacher or school district or aid in the administration of school activities, including, but not limited to, instruction in the classroom or at home, administrative activities, and collaboration between students, school personnel or parents, or are for the use and benefit of the school.

SOPIPA does not apply to general audience website sites, online services, online applications or mobile applications, even if login credentials may be used to access those general audience sites, services or applications. The definitions of "operator" and "K-12 purposes" are broad. SOPIPA could apply to operators of websites, services or applications that assist high school students in calculating college costs and exploring financial aid options. Thus, certain marketing efforts by private student lenders could trigger SOPIPA.

Similar to the Gramm-Leach-Bliley Act, SOPIPA (i) regulates how operators use and share student information and (ii) requires operators to implement data safeguards. Specifically, SOPIPA prohibits an operator from (i) knowingly engaging in targeted advertising on the operator's site, service or application based on any information, including covered information, that the operator has acquired because of the operator's site, services or application; (ii) using information gather on the operator's site, service or application to amass a profile about a K-12 student, except in furtherance of K-12 purposes; (iii) selling a student's information, including covered information; or (iv) disclosing covered information, subject to certain exceptions. "Covered information" means personally identifiable information or materials in any media that (i) is provided by a student or the student's parent or legal guardian to an operator in the course

of using the operator's site, service or application for K-12 school purposes; (ii) is provided by an employee or agent of a K-12 school and other specified school administrative bodies to an operator; or (iii) is gathered by an operator through the operation of the site, services or application and is descriptive of a student or otherwise identifies a student.

Operators must also (i) implement and maintain reasonable security procedures and practices appropriate to the nature of the covered information, (ii) protect that information from unauthorized access and (iii) delete a student's covered information if the school or district requests deletion of the data under the school's or district's control.

SOPIPA lacks a penalty or enforcement provision. SOPIPA will likely be enforced through California's Unfair Competition Law, which allows a state, certain municipalities and private plaintiffs to bring claims for violation of the Unfair Competition Law.

SOPIPA becomes effective January 1, 2016. It is unknown whether California will issue regulation or guidance clarifying the scope of SOPIPA. SOPIPA joins a growing body of California privacy law, including the California Online Privacy Protection Act and California Financial Information Privacy Act. Our firm regularly advises clients on federal and state privacy laws and maintains a Marketing and Privacy Digest that is available through subscription.



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