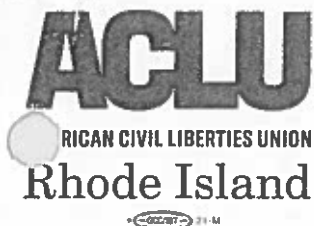


Attachment #32

ACLU, 9/18/19 letter and commentary



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September 18, 2019

To Chairman Shanley and members of the Commission,

Thank you for the opportunity to testify again on the package of legislation being brought before the Rhode Island Online Data Transparency and Privacy Protection Commission.

Especially in light of the recent enactment of substantial and comprehensive consumer privacy protections by our Northeast neighbor Maine, we are glad to see the continuing conversation around this critical issue in Rhode Island. This legislation, passed during Maine's 2019 legislative session, provides considerable autonomy and authority to consumers and requires "express, affirmative consent" before the "use, disclosure, sale or access" of personal data occurs. Attached in this packet is a copy of this important piece of legislation. We believe that Rhode Island, like Maine, has the potential to be on the forefront of protecting the digital privacy of all individuals.

It is important for us to reiterate our significant concerns about the model student privacy act being considered by the commission and discussed further today. Not only would it drastically undermine our current statute, but it would actually serve to *increase* the access that larger tech companies have to student data. For this reason, and the reasons we have expounded at past commission hearings, we believe that this legislation should be summarily rejected.

Further attached are two pieces of testimony, one which is from a previous commission hearing at the beginning of May, which detail our concerns about the model student privacy bill and which contain several suggestions for strengthening the "Rhode Island Right-to-Know Data Transparency and Privacy Protection Act." We are also resubmitting a memo written by Timothy Edgar, a Senior Fellow at the Watson Institute for International and Public Affairs at Brown University and an Executive Master of Cybersecurity, which provides further commentary on the legislation being discussed today. Finally, we are putting before the commission a proposed amended version of our current statute which governs student data privacy, §16-104-1, with several changes which would ensure more comprehensive protections for students.

We look forward to the dialogue surrounding these pieces of legislation and hope that, during the upcoming legislative session, this commission will ultimately recommend comprehensive and positive change for data privacy regulations in Rhode Island.

Thank you for your consideration of these important matters.

**COMMENTARY ON THE "MODEL STUDENT ONLINE PERSONAL INFORMATION
PROTECTION ACT"**
September 18, 2019

The ACLU appreciates the opportunity to provide commentary on the package of legislation proposed by the Rhode Island Online Data Transparency and Privacy Protection Commission. We would like to reiterate our substantial concerns regarding the "Model Student Online Personal Information Protection Act" which we have been communicating to the commission since February. Although we are supportive of legislation which would increase data privacy protections for students, we have to emphasize that neither this legislation, nor the alternate pieces of legislation which this commission has considered, meet this goal.

We have summarized our concerns with this legislation below and continue to find that several aspects are problematic and counter to the goal of enhancing statutory student data privacy protections.

- The proposed legislation undermines current law, R.I.G.L. 16-104-1(b), which protects all student data from being used for advertising purposes.
 - Current statute does not differentiate between deidentified and descriptive student data, creating the presumption that all student data falls under the provisions of the law. However, the proposed legislation permits specific usage of "deidentified" student data.
 - Current statute also explicitly prohibits the use of any student data for advertising purposes, but the proposed legislation would allow for deidentified student data to be utilized "to demonstrate the effectiveness of the operator's products or services, including in their marketing" (section (3)(4)(b) on page 5).
- The proposed legislation does not "prohibit an operator of an Internet website, online service, online application, or mobile application from marketing educational products directly to the parents, provided the marketing did not result from the use of covered information obtained by the operator through the provision of services covered under this section" (section (3)(5)(e)).
 - We fail to understand how marketing can be targeted directly to parents without having used student data providing identifying information on the parents of the students.
 - Even more concerning, "parental and family information" is not explicitly noted within the list of description information comprising covered student information under section (2)(a)(iii) in the proposed bill.
- This bill allows the use of "recommendation engines" by operators, which capture consumer data to provide relevant and individualized product recommendations (section (d), page 5).