

## Patterson Belknap Webb & Tyler <sup>LLP</sup>

### PRIVACY AND CYBERSECURITY ISSUES FOR NONPROFITS

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## Privacy and Cybersecurity Issues

- Scenario Posed
  - Dot.org is a fictional tax-exempt organization
  - Primary mission to improve teaching
    - disseminates teaching materials on web site
    - raises funds to develop and distribute products
    - has teacher members and provides services to members
    - publishes a journal on teaching
    - tracks usage of its site
  - Received complaint from member about privacy policy and has decided to review its practices

## Personally Identifiable Information (PII) is

- Information that can be used on its own or in combination to identify, locate an individual such as full name (if uncommon), home address, personal email address, driver's license number, date and place of birth, telephone number, biometric/genetic information
- Other information that can become PII when combined with other personal information such as full name (if common), country, state, postcode, city of residence, age, gender, race, name of school or work place
- Sensitive Personal Information is information generally subject to higher standards of privacy and protection such as: SSN, financial data, health information, data about children, precise geographic information

## Legal Framework

- Privacy Laws in the U.S.
  - A patchwork of state and Federal laws
  - Applicable depending on
    - (1) nature of entity collecting/using data
    - (2) nature of information
    - (3) nature of use
  - Because there is no overarching law the privacy regime can be complex and contradictory.

## Federal Law

- The Federal Trade Commission (FTC) is primary US privacy regulator
- Its jurisdiction limited to corporations organized “to carry on business for [their] own profit or that of their members”
  - FTC generally refrains from pursuing 501(c)(3)s
  - H.R. 5255 would extend jurisdiction to 501(c)(3)s
- Under the FTC Act,
  - FTC can bring enforcement actions for
    - failure to post privacy policy
    - unauthorized disclosure of PII
    - failure to maintain security

## Other Federal Laws

- Fair Credit Reporting Act (“FCRA”) and Fair and Accurate Transactions Act (amended FCRA)
  - Applies to consumer reporting agencies that provide credit report information, and those who use consumer reports, including nonprofits
  - Significant if use consumer reports for employment decisions
  - Requires notification to potential employee and permission
- Gramm-Leach-Bliley Act
  - Applies to financial information and businesses that provide financial services and products
  - Requires providing a privacy notice to all customers
- Other – HIPAA, COPPA and FERPA – to be discussed later

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