

YOUR SCHOOL MAY BE WIRETAPPING: HERE ARE THE KEY RISKS YOU MAY BE OVERLOOKING

Insights
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Unbeknownst to you, your school may be collecting and sharing digital information with third parties, and savvy plaintiff's lawyers are using this to bring wiretapping lawsuits. Most schools are surprised to learn that by simply signing up for free analytics services to manage website traffic and data, they are allowing companies to collect and use information from anyone who visits the school's website. This issue has cropped up in a number of wiretapping cases across the country, and this new genre of litigation is quickly becoming a growing trend. How can you protect your school? Here's what you should know to stay ahead.

Understanding the Trend

Plaintiffs' lawyers have access to sophisticated tools that can scan websites to determine whether schools or other businesses are improperly collecting and sharing information with third parties. Lawsuits invoking old statutes originally designed to curb literal "wiretapping" have been filed against schools and other businesses alleging they are collecting and sharing information with third parties without obtaining the proper consent.

In addition to issues with free analytics tools, there may be links on your website to social media, which can have associated "meta pixels" that use data obtained from visitors to your website to re-target them with ads across different platforms. A visit to your website, for example, might lead to a potential student or parent receiving an ad for school supplies on a different website. Schools that use these and

Related People



Risa B. Boerner, CIPP/US, CIPM

Partner

610.230.2132



Susan M. Guerette

Partner

610.230.2133

similar tools may be unwittingly sharing information on visitors to their websites with third parties.

We are seeing a substantial number of demand letters and claims being filed over these issues. You can track these cases using [Fisher Phillips' Digital Wiretapping Litigation Map](#).

Read on to learn how to spot issues and safeguard your processes.

Lack of Knowledge Isn't a Legal Defense

It is typically not a defense to these claims for a business or school to say that they weren't aware that they were sharing information with third parties. Many businesses don't even realize that they are sharing information until it's too late, and they have to spend what could be a considerable sum to settle a claim or defend a lawsuit.

For example, many schools and businesses use Google Analytics. Schools may believe that their "free version" is free, but by signing up, schools agree to allow those companies to collect and use information from anyone who visits the school's website. The value to those companies is collecting and using this data, and maybe even selling it to third parties.

"We Have a Cookie Banner So We're All Set" – Not Necessarily!

Schools may believe that they are protected because they have a "banner" on their website that notifies visitors about the use of cookies. While this is a good step, many schools do not have a banner and others have not set their banners up properly so they do not afford adequate protection against these claims. It is important not only that schools include banners asking for permission to use information, but also that these banners are legally compliant.

Courts Have Been Mixed On Third-Party Tracking Issues Under Wiretapping Laws

Cases alleging violations of wiretapping statutes due to third-party website tracking technology are being brought all over the country with varying results. [The Massachusetts highest court has said that its wiretapping statute cannot be used to bring such claims](#), but certain [California courts have permitted similar cases to proceed](#). And a Florida federal

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court earlier this year allowed a class action lawsuit to proceed that involved the alleged use of pixels to intercept the contents of communications on a website.

In many other jurisdictions, there is not yet any definitive appellate decision precluding the filing of such claims. Overall, the results of these lawsuits have been a mixed bag, largely depending on the particular circumstances and legal arguments in each case.

Non-Profit Status Doesn't Mean You're in the Clear

The fact that a majority of independent and private schools are non-profits will also not provide a defense to these claims. The wiretapping statutes cited in these lawsuits apply to non-profits as well as for-profit businesses.

What Can Your School Do?

If your school is not sure whether it collects information and shares it with third parties, you can have trained professionals review your website to determine whether it could be in violation. In some cases, a software change can avoid the issue. In other cases, by adding or correcting your cookie banner, you can comply with applicable laws, which will keep your school out of the lawyers' crosshairs.

If you receive a demand letter from an attorney or a complaint is filed against your school, you should consult with counsel right away. Many of these cases begin with a demand letter and may be resolved less expensively if they are addressed at that early stage.

Fisher Phillips has a dedicated team of privacy attorneys working on this every day, and we have created a [Digital Wiretapping Litigation](#) resource page with articles and updates to help schools avoid being the subject of this new wave of litigation.

Conclusion

We will continue to monitor developments in this area and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. You can also visit [FP's US Consumer Privacy Hub](#) for additional resources to help you navigate this area. If you have questions, please contact your Fisher Phillips attorney, the authors of this

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