


# Tech and Child Privacy Can California Fix the Mess?

Frederick S. Lane

Alaska Society for Technology in Education  
2023 Annual Conference  
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## Cybertraps & Cyberethics



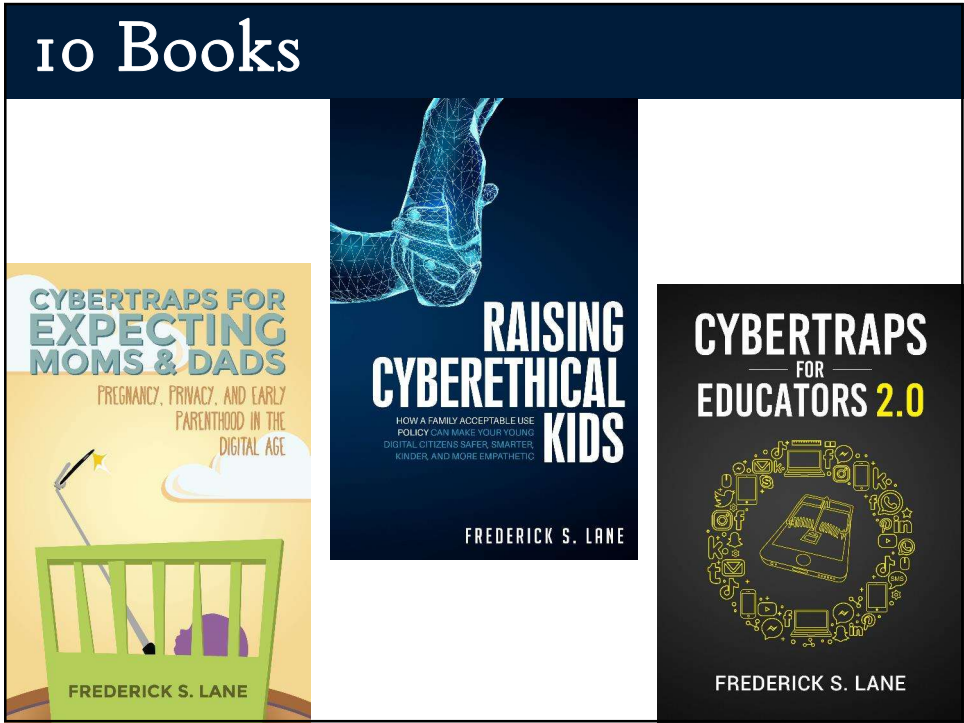
The Center for  
CYBERETHICS



**THE CYBERTRAPS PODCAST**  
Frederick Lane & Jethro Jones

The Cybertraps Newsletter

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## Illuminate Data Breach

- **Illuminate Education Hacked in December 2021**
- **Hack Went Undetected for at Least 2 Months**
- **Massive Data Theft of Personal Identifying Information**
  - At Least 1 Million Students in NY
  - 24 School Districts, 18 Charter Schools (Possibly More)
- **Illuminate Lied about Encryption**
- **Substantial Risk of Identity Theft**

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## Schools Need Student Data

- Identity
  - Name, Address, SSN
- Health and Safety
- Local, State and Federal Requirements
- Grades and Performance
- Discipline Issues
- District Planning

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## Student Privacy Is at Risk

- Overcollection of Data
- Inadequate Professional Development
- Insufficient Education of Students and Parents
- Overzealous PR Activities
- Inadequate Local Security
- Flawed Evaluation and/or Supervision of EdTech Companies

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## Duty of Care

- **Schools Have a Duty of Care with Respect to Student Data**
- **Overarching Ethical Duty**
  - *In Loco Parentis*
- **Common Tort Law**
  - Negligent Infliction of Harm
  - Intentional Infliction of Emotional Distress, etc.
- **Statutory and Regulatory Reqs.**
  - Federal Education Rights and Privacy Act
  - Health Insurance Portability and Accountability Act

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## FERPA (1974)

- **Defines “Education Records”**
- **Governs Access and Control**
  - Generally, release of “education record” requires written parental consent
- **Explicitly Permits Release of PII to 3<sup>rd</sup> Parties (i.e., EdTech Companies)**
  - Consent of parent or student not required
- **Social Media Is a Huge Challenge**
- **U.S. Offers Lots of Guidance**
  - <https://studentprivacy.ed.gov/>

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## COPPA (1998)

- Ordered FTC to Issue Regulations to Protect Child Privacy
- Governs Collection of PII Data from Children <13
- Applies to “Commercial Websites and Online Services”
- Excellent FAQ:
  - <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-o>

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## California Age-Appropriate Design Code Act (2022)

- Modeled after UK Age Appropriate Design Act (2021)
- Several Innovative Provisions:
  - Privacy Policies Must Be Written in Age-Appropriate Language
  - Data Protection Impact Assessment for New Services
  - Default Setting for High Level of Privacy
  - Clear Indicator for Child or Parent of Monitoring or Tracking
  - Prohibition Against Using Data in a Materially Harmful Way
  - Prohibition Against Using “Dark Patterns” to Increase Yield of Personal Information

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## Better Protection of Student Data

- Cybersecurity Starts at Home
  - Patches and Professional Development
- The Safest Data Is Uncollected Data
- Thoroughly Vet EdTech Companies and Vendors
- Local Backups of Data Shared with 3<sup>rd</sup> Parties
- Timely and Transparent Communication of Any Breaches
- The Price of Data Collection Is Eternal Vigilance

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