LOS ANGELES Daily Iourna

MONDAY, MARCH 3, 2014

COVER STORY

Legal framework for kids' apps takes shape



Alexander Drecun / Special to the Daily Journal

Akin Gump partner Paul C. Lin helps advise the rapidly growing ranks of educational technology companies like FuHu Inc.

By Alexandra Schwappach / Daily Journal Staff Writer

Four years ago, Akin Gump Strauss Hauer & Feld LLP attorney Paul C. Lin began working with FuHu Inc., a designer and seller of consumer products and services designed for children. Since its founding in 2008, the El Segundo-based company has thrived - it created the award-winning nabi tablet, teamed up with tech giant Intel Corp. to design an educational Android tablet, and has been repeatedly named as one of the fastest growing companies in America.

FuHu is one of hundreds of educational technology companies that have flourished over the last couple of years as schools and universities look to do more educating online and through electronic devices like tablets and phones.

"The educational technology sector is doing very well." Lin said. "In the last few years, FuHu has gotten a lot more products in the pipeline and into the marketplace."

But as with any fast-moving industry, government policy has struggled to keep up with innovations in education technology, or edtech. Conflicting state and federal laws on privacy issues — how entities are allowed to use the data collected from consumers - present significant challenges for how many companies do business.

"The law generally lags behind technology," said Karl M. Manheim, a privacy expert and professor at Loyola Law School. "It's really difficult 20 introduced the Student Online

for government agencies to keep up with it."

Recent weeks have shown an uptick in student data privacy activity, highlighting the push and pull between state and federal realms. U.S. Education Secretary Arne Duncan last week addressed edtech leaders about a push toward federal regulation of student data privacy at the School Privacy Zone summit in Washington, D.C.

The Software & Information Industry Association also released five best practices for companies to follow in their handling of private student data, and U.S. Senator Edward Markey of Massachusetts said that he would soon introduce federal legislation on the topic. In Maryland, lawmakers heard about a measure to limit commercial use of student data by cloud-computing service vendors.

On a local level, California's Senate leader Darrell Steinberg on Feb.

Personal Information Protection Act (SOPIPA), a bill that would bar K-12 online educational sites, services and applications from compiling, sharing or disclosing student's personal information.

"This bill was introduced in the sprit of keeping pace with technological developments and ensuring that these great opportunities are used to the right purpose," said Rhys Williams, press secretary for Steinberg.

The proposed legislation - SB 1177 — seeks to close a loophole not covered by federal law. Nothing at the federal level requires private companies to act responsibly with kids' information data, Williams said.

There's a gap between the two federal laws that address privacy in education - the Children's Online Privacy Protection Act (COPPA) and the Family Educational Rights and Privacy Act (FERPA), Williams said. COPPA protects the collection of electronic personal data only for children 13 years and younger, while FERPA protects the educational data collected in the public sector, not private companies.

In 2010, the Federal Trade Commission was asked to extend the COPPA rule to teenagers but refused to do so.

The United States' lack of concentrated focus on privacy issues and incompatible state and federal laws puts a strain on companies like those in the edtech sector, Manheim said.

"The focus on privacy is thin and weak at the federal level," he said. "So state legislators step in to try and fill the vacuum and what you get are all these laws that are working against each other."

Manheim said Steinberg's bill is a much-needed law, especially since federal regulations don't quite hit the mark.

"Keep in mind that the last major overhaul of federal privacy law was in 1986 with the Electronic Communications Privacy Act, and the federal government has failed miserably since then in protecting online data," he said. "I think we'll see more action at the state level to fill in the gaps left by federal law."

Statistics show just how much the



Courtesy of marketwired.com From left: FuHu tablets nabi 2, nabi XD and nabi Jr.

educational sphere has shifted to electronic devices and to online mediums. According to The 2013 Survey of Online Learning conducted by the Babson Survey Research Group, more than 7.1 million students were taking at least one online course during the fall 2012 term, an increase of 411,000 students over the previous year.

Educational software for the K-12 market accounted for \$7.97 billion in company revenues nationwide in 2011-2012, according to an educational technology market report conducted by the Software & Information Industry Association. That's a 2.7 percent increase from the \$7.76 billion in 2010-2011.

Dozens of edtech companies have popped up in the last five years alone, many of them in California. Evolving Wisdom LLC, founded in 2009 and based in San Rafael, provides an e-learning community through virtual online courses and workshops. AcademixDirect Inc., based in Mountain View, has provided marketing services for educational institutions since it was established in 2008.

Steinberg's proposed SOPIPA legislation is important because it puts the responsibility of protecting student information on the third party vendor instead of the institution, said Michael B. Goldstein, co-chair of Cooley LLP's higher education practice group. He said SOPIPA is proof that the law is looking to align with where the industry is headed.

"The degree to which institutions are outsourcing to third parties - for marketing, counseling, testing, placement - is really exploding," Goldstein said. "I think what we are seeing now is legal framework beginning to catch up to this profound change in the education system."