



Data Privacy in 2021 and Beyond

A Two-Part Analysis and Discussion

BARTON
Discover Better Law



Kennedy Jenks



SOMPO INTERNATIONAL

SPEAKERS:

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AGENDA

December 8, 2021

10:30 to 10:35 AM

- Introduction: The Nuts and Bolts of Implementation and Maintenance of a Data Protection Program

10:35 to 10:55 AM

- Compliance, Governance & Documentation

10:55 to 11:15 AM

- Information Security, Breach Risk Mitigation, and Insurance

11:15 to 11:35 AM

- Third Party Risk Management

11:35 to 12:00 PM

- Privacy and Data Protection as a Value Proposition



Compliance, Governance & Documentation

- Policies and Notices
 - Review and updates of public-facing privacy policy
 - Updates and implementation of cookie notices
- Consumer Rights
 - Transparency
 - Cookie notice (banner)
 - Website privacy policy
 - Data subject access request process
- Personnel & Staffing
 - Personnel requirements (DPOs, CPOs, compliance assurance teams, etc.)
 - Data Protection Officer roles & responsibilities
- Internal audits & monitoring



Compliance, Governance & Documentation (cont'd)

- Data Governance & Assessments
 - Data inventory and mapping to understand flow of data within business.
 - Basis for collection and processing/applicability derogations.
 - Uses and sharing of information for permissible and closely related purposes to those in privacy policy.
 - Consent management and tracking.
 - Access controls.
 - Retention and deletion policy and schedules.
 - Data Protection Impact Assessment (DPIA)
 - Data Transfer Impact Assessment (DTIA)



Information Security, Breach Risk Mitigation, and Insurance

- Documented security program (accuracy and integrity of data)
 - Internal audits and monitoring
 - Malware monitoring and alerts
- Encryption of protected information at rest and in motion
- Incident Response Plan (tested)
- Testing the Incident Response Plan
 - Table-Top exercises for Incident Response Plan
- Business Continuity and Disaster Recovery Plans (tested annually)



Information Security, Breach Risk Mitigation, and Insurance (cont'd)

- Privacy and security awareness in annual training and as part of new employee orientation and ongoing for all employees
- Regular Vulnerability and Risk Assessments
 - Third-party
- Insurance: global coverage for supervisory authority and other governmental proceedings?
 - Application process: the need for documented controls
 - Preparation for the application process in a hardening market
 - Renewals

Third Party Risk Management

- Due Diligence up front – select your partners wisely
- Contractual considerations – SCCs and more
- Monitoring after execution of an agreement
 - Defining an approach that takes into account the risk level of the vendor and the data to which it has access
 - Documenting your follow-up
 - Addressing any deficiencies identified as swiftly as possible
- Cross-border considerations for certain vendors (e.g., Cloud providers, 24/7 support services)



Privacy and Data Protection as a Value Proposition

- Find your internal champions
- Build your reputation as a good steward of personal information
- Turning Privacy controls as a method for obtaining new and retaining existing business
- Privacy by Design as a product enabler
- Investors' due diligence into regulatory compliance
- Insurance considerations





Privacy & Data Protection as a Value Proposition (cont'd)

- Corporate governance:
 - Advice to the board regarding data protection legal requirements and business impacts – often now a legal requirement
 - Documentation of board advice and board actions can be essential to a defense to shareholder derivative actions in the event of same following a data breach





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