



# INTEGRATION

Fresh Considerations on Acquired Business Integrations



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Joe is a corporate and securities attorney who focuses his practice on helping clients navigate acquisitions, investments, and sales. He advises private equity firms and their portfolio companies, as well as strategic and family business buyers and sellers on all aspects of their transactions. Senior stakeholders also rely on Joe for day-to-day advice on a wide range of corporate issues, and to coordinate the delivery of services from additional firm practice areas, including executive compensation, labor and employment, intellectual property, risk management, and corporate governance, often in anticipation of their acquisitions or investments.



**Joel M. Lutz**

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Joel focuses on providing privacy, data security, and commercial advice to technology, financial services, media, ad tech, and health care companies. He has experience developing, implementing, and advising on global privacy programs.

Joel also assists clients with technology licensing, negotiating business agreements, and providing business lines with integrated legal advice from teams of in-house and outside counsel. He leads privacy and security assessments addressing global regulatory compliance and data risk management, including assessments covering: GDPR, CCPA, HIPAA, and FTC Consent Order compliance.



**David Gomez**

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General Counsel

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David Gomez, who joined Olympus in 2016, has held a variety of leadership roles and is now serving as the General Counsel for the Olympus Corporation of the Americas. In this strategic role, David works closely with the executive management, the Board of Directors, and leaders throughout the organization both within the Americas and globally. His key responsibilities include overseeing the organization's legal matters affecting the Americas region and ensuring the efficient day-to-day functioning of the Legal Department. Dave also serves on the Executive Diversity Council and provides legal support to the Company's Therapeutic Solutions Division (TSD).

# Framing the Conversation



**Mergers & Acquisitions**



**Carve-outs**



**Acqui-hires (onboarding key employees with relationships)**

# Culture and Fit



**TABLE STAKES**



**EXPECTATIONS SETTING**



**COMPLIANCE PLANNING /  
LEGAL, ETHICAL CULTURE**

# Pre-Planning

Antitrust  
considerations

Considering  
redundancies both  
in roles/functions,  
but also vendor  
commitments, etc.

Cross-border  
considerations

# Customer and Vendor Contractual Considerations

- **Antitrust considerations / terms of agreements**
- **Mind the deal structure – equity vs. asset**
- **Expectations of customers post-closing / terms of agreements**
  - Are you repapering?
- **Third party consents and approvals – requirements and processes**
  - Relying on pattern of practice
- **Use of AI by Target**
- **Scope of restrictive covenants – affiliates, related parties, enforceability**
- **Indemnity limitations (or not)**



# Labor & Employment

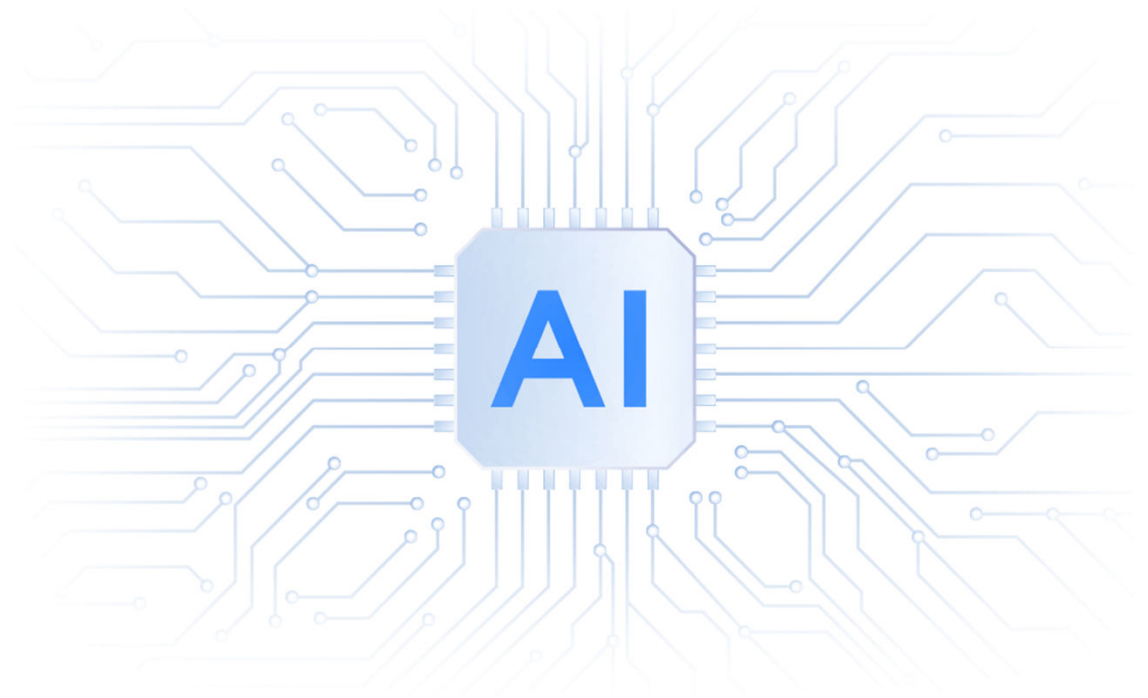
- **Employees vs. independent contractors**
- **Expectations setting**
  - Sellers who controlled financials
  - New offer letters?
- **International workforce considerations**
- **Termination of benefit plans**
- **Were I-9s collected?**

# Intellectual Property

- **What does Target own vs. what do sellers own?**
- **Do we have all log-in and account information, including for code and history?**
- **Is Target moving to your company's policy and procedures?**

# Privacy Risks and Considerations

- **Privacy obligations**
- **Marketing**
- **A.I.**



# External Business Requirements

**Privacy Notices**

**Consumer Rights  
(Opt-outs)**

**Consumer Rights  
(Consent)**

**Consumer Rights  
(Requests)**

# Internal Business Requirements



# Focus on External Requirements

## A Plan of Attack:

- What laws apply?
- What data do we have?
- What does the privacy policy need to say?
- What rights must we offer?
- What marketing are we doing?
- What opt-outs are required from marketing?

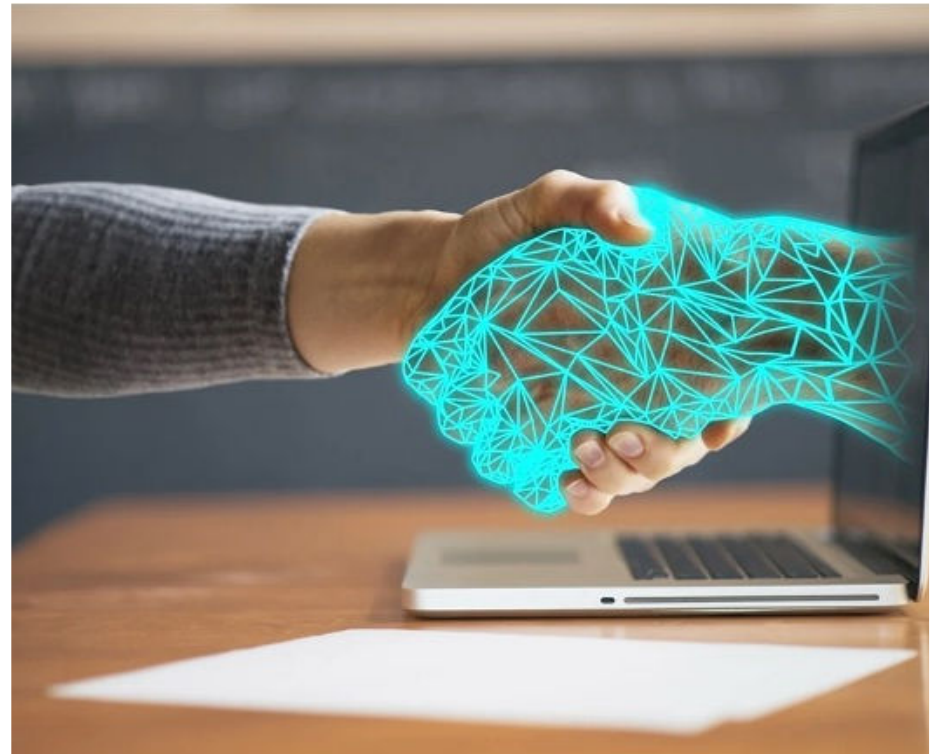


# Integrating Divergent IT Systems and Data Silos

One of the most daunting challenges is melding together two (or more) IT infrastructures. Each system might have been architected with different security protocols, data storage policies, and access controls. This integration involves:

- **Data Consolidation:** Merging databases can inadvertently expose sensitive information if security layers aren't uniformly applied.
- **System Compatibility:** Legacy systems with outdated or weak encryption may require immediate upgrading. Even aligning encryption strategies can be a challenge.
- **Role-Based Access Controls:** Aligning user permissions across both legacy systems is crucial to avoid overexposure of sensitive data.

Inadequate integration can invite data breaches or result in unintentional sharing of personal data between departments and entities that shouldn't cross paths.



# Data Mapping – A Foundational Activity

- **Stakeholders**
  - Marketing
  - Product/IT Development
  - HR (for CA)
- **Third Parties**
  - Service Providers
  - Contractors
- **Data Collection Flows**
  - Selling or Sharing?
  - Retention





# First Key Question: Does it Apply?

1. What jurisdictions are involved?
2. Who are the data subjects?
3. How much data is involved?
4. Is there a revenue or small business exception?
5. What type of business is involved?
6. What type of data is involved?



# External Business Requirements: Consumer Rights

## Basic Rights

1. Right to Access
2. Right to Delete
3. Right to Data Portability

## Some States Add a Little More:

1. Right to Correct
2. Right to Opt-In for Sensitive Data Processing (consent based)
3. Right Against Automated Decision Making (if significant impact – but watch out for profiling in the future)

# External Business Requirements – Privacy Notices/Policies

## 1. Categories of Personal Data

- Consider your audience and any exemptions that may apply

## 2. Purpose of Processing

## 3. Categories of Personal Data Disclosed to Third Parties

## 4. Categories of Third Parties with Whom Personal Data is Disclosed with

- Consider service providers, contractors, and other third parties

## 5. Exercising Consumer Rights

- Including how to exercise any appeals

## 6. General Best Practices

- Clear, accessibility, last updated, and contact information

# Customer and Partner Data: Consent + Communication

**Customer data introduces additional layers of complexity. Many customers consent to data usage under the premise that a specific company is handling their information. Shifting control to another entity raises questions such as:**

- **Re-Consent Requirements:** In many cases, transferring data to a new corporate structure will necessitate re-obtaining consent from customers or notifying them of the change in data stewardship. In some cases, there may be constraints or embargoes on customer data .
- **Transparency and Accountability:** Failing to communicate these changes can damage customer trust and even lead to regulatory penalties.
- **Data Segmentation:** Determining what data is critical versus what can be archived or deleted is part of an effective integration plan.

**Ensuring that customer and partner data is handled according to their consent and expectations is a cornerstone of maintaining a positive reputation and avoiding legal pitfalls.**

# Cross-Jurisdictional and Regulatory Challenges

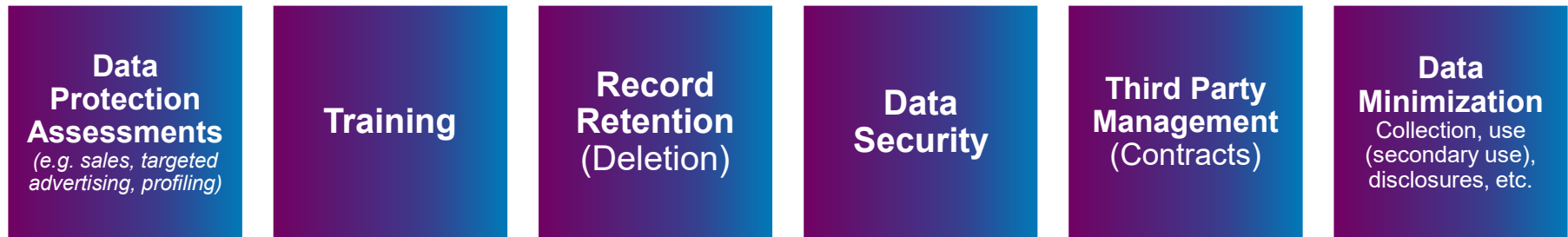
**When companies operate in multiple jurisdictions, the merged entity must comply with a patchwork of data privacy regulations. Consider:**

- **International Data Transfers:** Rules governing data flow between entities in the EU, the US, and other regions can be at odds with one another.
- **Regulatory Overlap:** The integration may trigger multiple regulatory bodies to have oversight, complicating compliance efforts.
- **Legal Liabilities:** Any unresolved issues—such as non-compliant systems or prior breaches—can result in fines, sanctions, or enforced remedial measures.

**A careful mapping of where data originates, where it's processed, and which regulatory guidelines apply is essential to mitigate these risks**



# Remember Internal Business Requirements Too!



# Potential Data Breaches and Security Lapses

- **Inadequate Data Protection**

- Inadequate data protection measures can expose organizations to significant risks during mergers and acquisitions.

- **Identifying Vulnerabilities**

- Organizations must regularly assess their security infrastructure to identify and mitigate potential vulnerabilities.

- **Proactive Security Measures**

- Implementing proactive security measures is essential to prevent breaches and protect sensitive data during M&As.



# Training and Awareness for Employees

- **Importance of Training**

- Training employees on privacy compliance is crucial for ensuring they understand their responsibilities and the potential risks.

- **Raising Awareness**

- Raising awareness about data privacy helps foster a culture of compliance and vigilance among employees.

- **Protecting Personal Data**

- Understanding the importance of protecting personal data is essential for all employees in the organization.





# Employee Data & Internal Privacy

Employees' personal data—ranging from payroll details to performance records—requires careful treatment during M&A. Key issues include:

- **Data Inaccuracy and Duplication:** When systems merge, employee records might be duplicated or inaccurately linked, causing administrative confusion.
- **Changes in Data Processing:** Employees expect a particular standard of privacy; altering the ways in which their data is processed without transparent communication can erode trust and potentially violate employment or privacy laws.
- **Regulatory Concerns:** Beyond internal policies, labor laws in various jurisdictions govern employee data and dictate how it should be managed during transitions.

**It's vital to align HR practices with overarching data protection measures, ensuring that both legacy and new practices honor employees' privacy rights and that required employee consents are in place where required by law.**



# Regulatory Scrutiny and Penalties

- **Regulatory Compliance Importance**
  - Ensuring compliance with regulatory standards is crucial in M&A transactions to avoid legal repercussions.
- **Scrutiny of M&A Transactions**
  - Regulatory bodies closely examine mergers and acquisitions to ensure adherence to privacy and other laws.
- **Consequences of Violations**
  - Violating privacy laws can result in hefty penalties and legal challenges, impacting business operations.



# Reputational Damage and Loss of Consumer Trust

- **Impact of Privacy Failures**

- Privacy compliance failures can severely damage a company's reputation and lead to a loss of consumer trust.

- **Importance of Compliance**

- Prioritizing compliance is essential for businesses to maintain brand integrity and consumer confidence.



# Successful Examples of Privacy Compliance in M&As

- **Prioritizing Privacy Compliance**
  - Organizations that prioritize privacy compliance during M&As often experience smoother transitions and enhanced stakeholder trust.
- **Lessons from Successful M&As**
  - Analyzing case studies of successful M&As reveals common strategies that effectively integrate privacy compliance.
- **Strategic Transition Planning**
  - Effective transition planning that includes privacy measures is key to reducing risks and ensuring compliance throughout the M&A process.



# Lessons Learned From Compliance Failures

- **Identifying Compliance Pitfalls**
  - Examining past compliance failures helps in identifying common pitfalls that organizations encounter during mergers and acquisitions.
- **Areas for Improvement**
  - Learning from compliance failures reveals areas where organizations can improve their compliance frameworks and practices.
- **Enhancing Future Compliance**
  - By reflecting on past failures, organizations can develop better strategies to enhance compliance in future M&As.

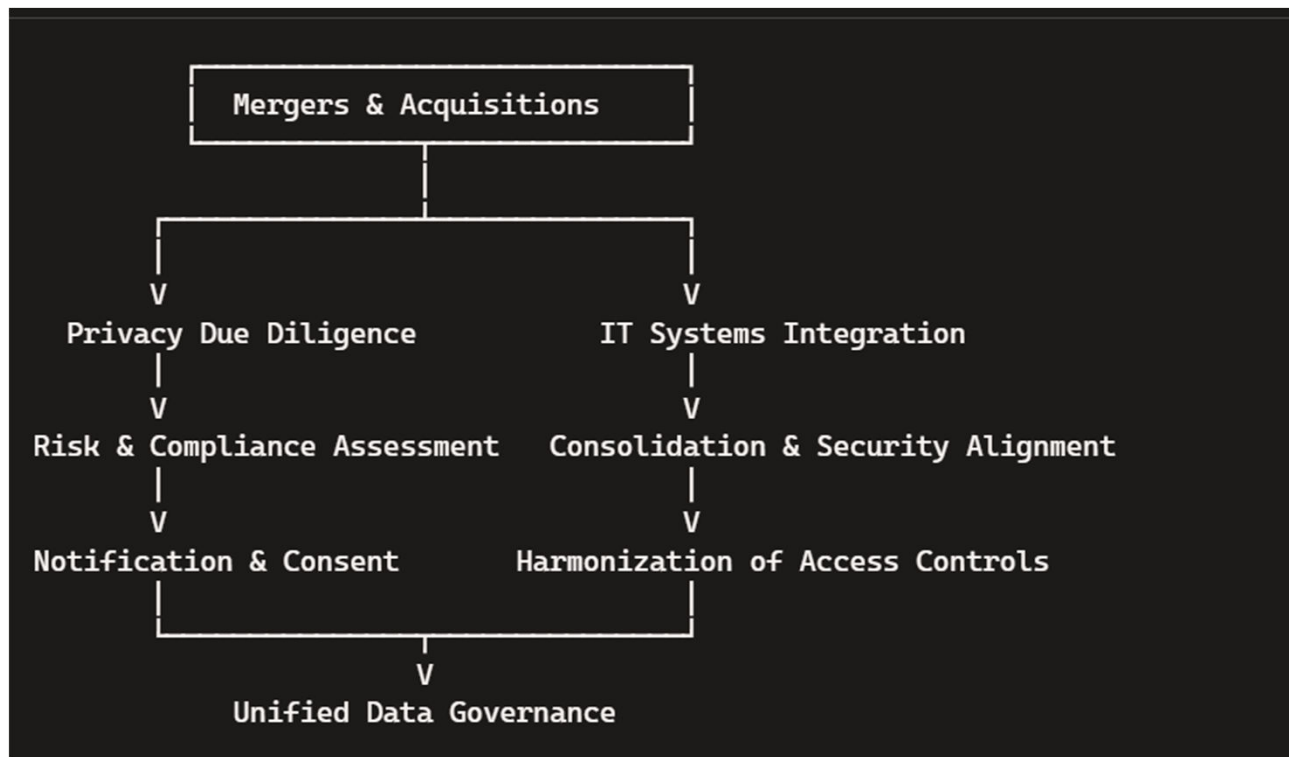




# Key M&A Privacy Control Areas

Area	Key Action	Outcome
Due Diligence	Conduct a comprehensive privacy audit	Identify risks and liabilities pre-merger
IT Integration	Standardize data security measures across systems	Ensure consistent protection for all data assets
Employee Data Protection	Update HR data processes and communicate changes internally	Maintain transparency and safeguard internal data
Customer Data	Notify customers and obtain re-consent as needed	Uphold trust and meet legal obligations
Regulatory Compliance	Engage legal counsel and privacy experts	Harmonize practices across jurisdictions

# M&A Privacy Key Steps Visualization



# Best Practices for Ongoing Privacy Compliance Post-Merger

- **Regular Audits**
  - Conducting regular audits helps ensure compliance with regulations and identifies areas for improvement post-merger.
- **Updates to Privacy Policies**
  - Updating privacy policies is essential after a merger to reflect new practices and regulatory requirements.
- **Continuous Employee Training**
  - Ongoing training for employees helps reinforce compliance awareness and adapts to new procedures following the merger.





# Evaluating Data Transfer Agreements and Contracts

- **Importance of Contract Review**
  - Reviewing contracts related to data transfer is crucial to ensure compliance and protect all parties involved in M&A.
- **Compliance with Laws**
  - Ensuring agreements comply with applicable laws is vital to avoid legal issues and safeguard both parties' interests.
- **Protecting Both Parties**
  - Proper evaluation of data transfer agreements helps protect the rights and responsibilities of both entities in the transaction.



# A reminder about the benefits of ACC membership...

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