

Navigating the Legal Landscape of Data Privacy & Security: Risks, Regulations, & Best Practices

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Presenter Bios

Billee Elliott McAuliffe

Member
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- Billee Elliott McAuliffe is the practice group leader of the Information Technology and Data Privacy practice groups in the Corporate Department of Lewis Rice. In over twenty years of practicing law, Billee has gained extensive experience in all areas of corporate law, including technology licensing, cybersecurity and data privacy, mergers and acquisitions, and general business and corporate law. With this background and perspective, she understands the operations and needs of all types of businesses and provides well-rounded, practical, client-centered guidance and advice.

Melissa G. Powers

Associate
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- Melissa G. Powers is an associate practicing general business and transactional law in the Corporate Department of Lewis Rice. Her areas of specialty include cybersecurity and data privacy, as well as information technology and cyber liability insurance. She regularly advises on compliance and best practices for data management and incident preparedness. Melissa also designs and implements privacy and security programs including audit and risk assessments, global policies, national and international data transfer agreements, and innovative structures, processes, and arguments to enable organizations to comply with an increasingly complex global regulatory environment.

Today's Agenda

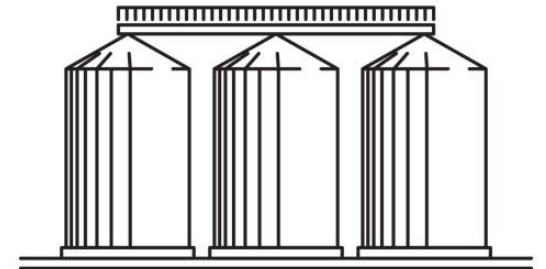
- Laying the Foundation: Essentials of the Key Regulatory Frameworks
- Evolving Landscape: Impact of AI and Increasingly Global Standards
- Proactive Compliance Strategies
- Navigating Internal and External Documentation
- Risk Management Techniques
- Lessons Learned: Recent Data Breaches and Enforcement Actions



Key Regulatory Frameworks

Pre-2018

- Federal – Industry Specific (GLBA, FERPA, HIPAA)
- State – Data Breach Notification Laws
- International – Canada/European Union/Safe Harbor/Privacy Shield



Key Regulatory Frameworks

Post-2018

- European General Data Protection Regulation (“GDPR”)
- California Consumer Privacy Act (“CCPA”)
- 19 Other State Comprehensive Privacy Laws
- Other International Frameworks
 - Brazil
 - China
 - India
 - Canada (Quebec in particular)



Essential Components of Frameworks

Privacy Principles

1. Lawfulness, Fairness, and Transparency
2. Purpose Limitation
3. Data Minimization
4. Accuracy
5. Storage Limitation
6. Integrity and Confidentiality
7. Accountability



Essential Components of Frameworks

- Data Mapping/Inventory & Records of Processing
- Privacy Policies and Notices
- Risk Assessments
- Data Subject Rights
- Data Processing Agreements
- Data Retention Policies
- Security Measures
- Annual and Event-Based Reviews



Evolving Landscape: Impact of AI

What is Artificial Intelligence (AI)?

- Machines That Mimic Human Learning, Comprehension, Problem Solving, Decision-Making, Creativity & Autonomy.
- Use Math & Logic to Simulate Human Reasoning, Learning, & Decision-Making.
- Identify Patterns in Data & Use That Information to Make Predictions or Take Actions.





Artificial Intelligence: Risks vs. Rewards

REWARDS

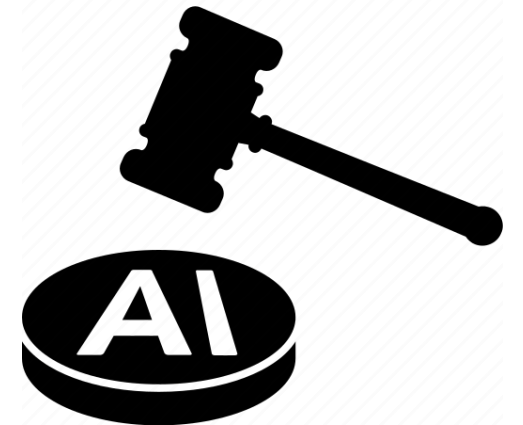
- *Automation*
- *Improved Decision-Making*
- *Enhanced Customer Experience*
- *Personalized Experience*
- *Error Reduction*
- *Efficiency*
- *Cost Reduction*

RISKS

- *Bias & Discrimination*
- *Lack of Transparency*
- *Loss of Human Interaction*
- *Security Risks*
- *Privacy Risks*
- *Social Manipulations*
- *Regulation (Lack of Regulation)*
- *Economic Costs*

Regulation/Lack of Regulation

- Regulation → How? Who?
- Reliance on Existing Laws
- EU AI Act
- State Laws Targeting “High Risk” AI (e.g., profiling or discriminatory use)
- State Laws Targeting Specific Use Cases (e.g., elections/politics, musicians)
- Federal TAKE IT DOWN Act
- Executive Order on “Advancing Artificial Intelligence Education for American Youth.”



Evolving Landscape: Increasingly Global Standards

- GDPR Amendments
- Continued Regulation in the EU
- Increased Country-by-Country Regulation
 - Large and Small
 - India
 - China
 - Vatican City



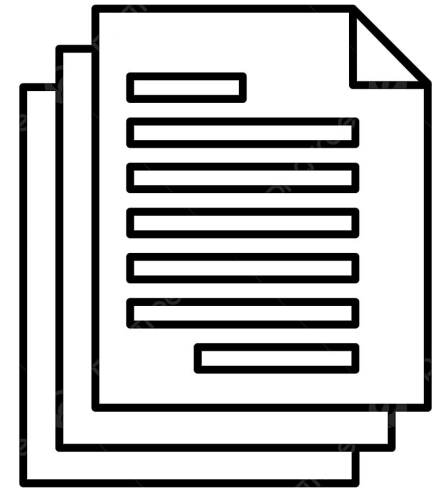
Proactive Compliance Strategies

- Privacy by Design
- Privacy by Default
- Creating a Defensible Position
- Prioritizing Good Faith Efforts
- Adaptable and Evolving Approach



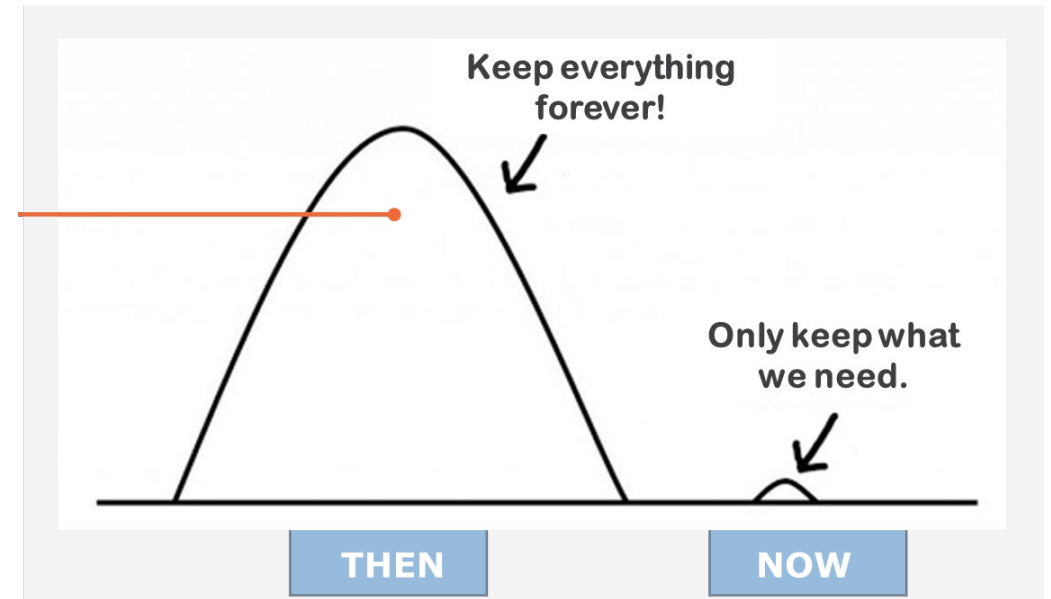
Navigating Internal and External Documentation

- Internal Documentation
 - Risk Assessments
 - ROPAs
 - Incident Response Plans
 - Data Retention Policies
 - Vendor Contracts
- External Documentation
 - Privacy Policies and Notices
 - Consent Forms
 - Data Subject Request Mechanisms



Risk Management Techniques

- Consistent Application of Data Minimization and Retention Policies
 - **Key Risks:**
 - ❖ Data Breach
 - ❖ Ransomware Attack
 - ❖ Enforcement Action
 - ❖ Litigation
 - ❖ Class Action
 - ❖ Consumer Requests





Risk Management Techniques

- Informal and Formal Data Protection Assessments
 - Data protection assessments are risk assessments designed to help businesses identify, analyze, and limit the privacy risks associated with data processing.
 - Many, but not all laws, require them for certain types of “high risk” processing.
 - Targeted Advertising
 - Sales of Personal Data
 - Profiling
 - Processing Sensitive Data
 - Beyond the formal, legally-required assessments, informal assessments provide benefits, too.

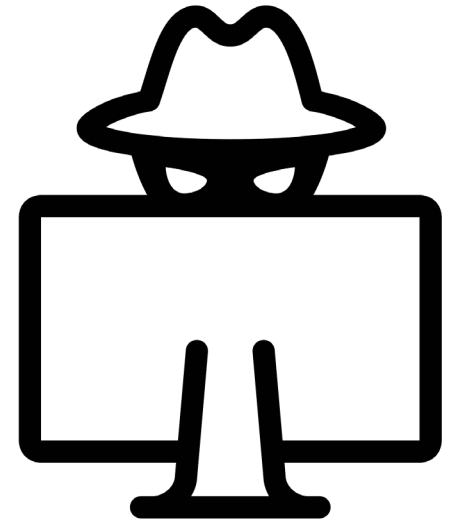


Risk Management Techniques

- Robust Processing Contracts
 - Specific requirements for processing agreements in each law.
 - Recommended contractual minimums absent legally-required provisions.
 - Role acknowledgment and designated responsibilities
 - Compliance with law, including requisite notice and consent
 - Security measures
 - Breach notification
 - Cooperation and assistance
 - Indemnification

Lessons Learned: Recent Data Breaches

- Disney / Slack Data Breach
 - Disney's Slack platform was infiltrated in July 2024
 - No breach of systems
 - Access stemmed from an employee's personal computer
 - Lack of MFA
 - 1.1TB of company data, including 44 million messages' worth of data publicly leaked
 - Lessons Learned
 - Personal Devices and Device Management
 - Access Control and Permissions Settings
 - Monitoring Third-Party Applications
 - Employee Awareness and Training





Enforcement & Penalties

CCPA:

- CA AG (through civil action) and the California Privacy Protection Agency (through administrative proceedings) enforce the CCPA.
- Fines (1) up to \$2,500 per violation; or (2) up to \$7,500 per intentional violation or violation involving minors under age 16.
- For data breaches, consumers may bring **a private right of action** to recover the greater of (1) \$100-\$750 per incident or (2) actual damages.

GDPR:

- Supervisory data protection authorities have exclusive enforcement authority.
- A violation may result in fines up to 20 million euros or up to 4 % of a company's total global revenue of the preceding fiscal year, whichever is higher

Lessons Learned: Recent Enforcement Actions

- Honda CCPA Enforcement Action
 - Enforcement brought by the California Privacy Protection Agency (CPPA)
 - Alleged violations primarily related to aspects of the consumer request process, asymmetry in consent choices, and lack of vendor contracts
 - Honda must change its business practices and pay a \$632,500 fine
 - Lessons Learned
 - Tailored Approach for Consumer Rights
 - Documentation and Vendor Contracts
 - Digital Advertising as an Enforcement Priority
 - Consider the User Experience
 - Regular Reviews



QUESTIONS?

Thank You!

We have resources about U.S. State Privacy Laws available here: <https://www.lewisrice.com/u-s-state-privacy-laws/>.

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