

# DATA SECURITY & PRIVACY

Our multi-disciplinary and multi-industry team of former in-house lawyers from international businesses, seasoned trial and transactional lawyers, and regulatory privacy specialists guide our clients through the challenge of protecting the privacy and security of data in the face of constantly changing technology and regulation.

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Privacy and data security issues impact every industry and affect almost all aspects of a company's operations. Sales, human resources, data maintenance and storage, IT, legal and compliance, even litigation, all require careful attention to the protection of personal and business information.

We recognize the challenges businesses face from rapidly evolving laws and even more rapidly evolving technology in these areas. We also recognize the special challenges imposed by government regulation of companies in specialized fields, such as finance e-commerce and health care. To help our clients successfully navigate these challenges and manage their risks in these areas, we have put together a multi-disciplinary team of lawyers with deep experience in addressing data privacy and information security obligations and disputes in a variety of fields.

## Cross Border Business & Data Transfer

Some of the most significant challenges to U.S. businesses arises not from U.S. laws, but from the laws of foreign countries where the business operates, has employees, or markets its products. We help companies navigate these challenges by determining the applicability and requirements of these laws and keeping an eye on how trends can impact our clients' operations and plans. Representative work includes:

- Defending against litigation or government information requests that infringe on data privacy restrictions in other countries
- Assisting in and recommending best options for the cross border transfers of data
- Managing cross border data breaches
- Providing advice and counsel related to the EU General Data Protection Regulation and e-Privacy directive, and other foreign data protection laws
- Drafting, and where applicable negotiating, notices, consents, data processing addendums, privacy policies and related documents under foreign data privacy regulations
- Preparing and advising regarding self-certification mechanisms

### Data Breach Prevention & Response Management

We recognize that no business is immune from a possible data breach, and we help clients plan for, test, evaluate, respond to, and recover from data breaches. Over the years we have developed strong relationships with forensic firms and other experts to ensure prompt and effective data breach response and mitigation.

Our work includes:

- Managing and handling data breach investigations, notices, and reporting
- Working with law enforcement to pursue criminal action against hackers and botnet operators
- Addressing and advising with respect to PCI-DSS issues in a data breach
- Negotiating contracts to manage data breach risks
- Developing programs and providing advice and counsel regarding data security breaches, including applicable reporting requirements
- Addressing cyber insurance coverage issues

### e-Commerce

We recognize that online advertising and sales are paramount for many businesses, and we help our clients stay compliant with regulations and challenges unique to this space. Our work includes:

- Providing advice and counsel related to data privacy and information security obligations for companies engaged in e-commerce
- Drafting online privacy policies and terms of use
- Advising regarding cookie regulations and management, third party advertising, and cross device tracking
- Assisting with PCI-DSS compliance
- Advice regarding data aggregation
- Negotiating e-commerce vendor agreements

### Employment, Trade Secrets & BYOD Policies

From applicants to reasonable accommodations, we help employers navigate the array of laws and regulations limiting the use and disclosure of employee data and requiring notice to applicants and employees regarding the collection and processing of their data. We also assist international employers with cross border transfers of employment related information, and are experienced with protecting business and customer data through strong security, telework, and BYOD policies and programs. Examples of our work include:

- Defending and pursuing claims for invasion of privacy and trade secret misappropriation
- Preparing policies and other guidance regarding privacy, social media, data protection, BYOD and mobile device programs, and employee monitoring
- Providing advice and counsel regarding compliance with GINA, ADA, drug testing statutes, FCRA and other laws imposing privacy obligations on employers

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- Preparing consents and notices related to the processing of employee data, including requirements under the CCPA, GDPR, drug testing, and other statutes
- Advice regarding employee monitoring and compliance with laws requiring notice
- Pursuing claims related to unlawful recording of workplace conversations and computer trespass by employees

## Financial Privacy & Data Security Compliance & Monitoring

- Developing policies, notifications compliant with GLBA, FCRA, FACTA, and PCI DSS
- Contract and vendor management to comply with GLBA, FCRA, FACTA, and PCI DSS
- Providing comprehensive legal support for full range of financial privacy and data security matters

## Health Care & HIPAA Compliance

Our team provides advice and counseling regarding HIPAA and other state and federal laws governing the privacy and security of patient data. Examples include:

- Development of policies to comply with HIPAA's privacy and security requirements and advice regarding ongoing day-to-day HIPAA compliance
- Investigating possible breaches and coordinating notices to affected individuals, the media and the Office for Civil Rights
- Negotiation of health care technology and cloud service agreements, including related business associate agreements
- Diligence related to data privacy and security issues in health care transactions

## Litigation

We are adept at handling privacy issues in court. Our litigation experience includes:

- Defending Telephone Consumer Privacy Act (TCPA) putative class actions
- Defending claims arising out of wire fraud and business email compromises (BECs)
- Protection of company data through Computer Fraud and Abuse Act (CFAA), computer trespass and trade secret litigation
- Working with law enforcement to pursue criminal action against hackers and botnet operators
- Defending cases involving employee privacy issues
- Pursuing John Doe actions regarding improper social media postings and regarding interference with Google Ads accounts
- Addressing special issues in litigation pertaining to protected PII and PHI

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### Marketing & Advertising

We help clients pursue their marketing goals while staying compliant with state, federal, and international laws. Our work includes:

- Advice and planning regarding TCPA, CAN-SPAM and state law requirements for email, texting and telephone solicitations
- Drafting and negotiating email service provider contracts and service level agreements
- Guidance and drafting regarding cookie compliance and management
- Advice and drafting regarding online contests
- Advice regarding compliance with data privacy laws in connection with data analytics and sales of consumer data

### Public Records/FOIA Requests

We help our clients who contract with government entities protect their information from public record access requests. When needed by our clients, we pursue access to data held by the government. Our work includes:

- Pursuing objections under FOIA and state law to third party requests for competitive, personnel or client data
- Making and defending public records access requests