

GLOBAL DATA REVIEW



LAND OF LITTLE KINGS

What can the EU learn from Germany's data protection landscape?

LACKING BITE

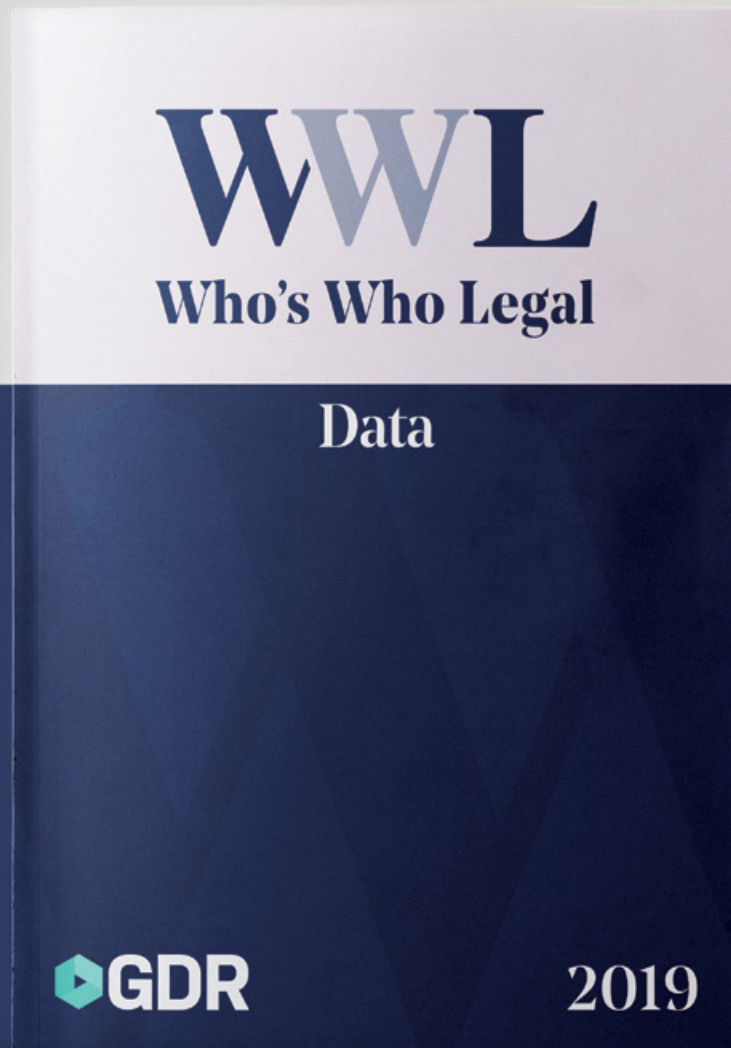
Reform may be on the way for Canada's privacy enforcement framework



40 UNDER 40

Up-and-coming young data lawyers
from around the world

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Online November 2018

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 Who's Who Legal

WELCOME



Welcome to the inaugural print issue of Global Data Review, which marks the full launch of a publication that has been in the works since early 2018.

But what is GDR?

We believe it's the only publication that reports on and analyses the rules on data use and data trading around the world. We capture the landscape for companies that have or want to acquire data; that want to know how they can use it; and want to stop rivals or wrongdoers from accessing it. In other words, the law that governs data as an asset, wherever it is gathered or used.

At the moment, privacy and data protection are core parts of our beat – it is, after all, the year of the GDPR. But we are conscious that priorities are shifting: we will also capture data localisation, trade secrets, sector-specific cybersecurity, IT litigation that relates to data processing and other parts of the law that have little to do with personal data.

The magazine in front of you is an important quarterly complement to our daily online news service (please visit globaldatareview.com). The centrepiece of our first issue is a 40 Under 40 feature profiling the leaders among the new generation of data lawyers. We also have in-depth coverage of Germany's devolved privacy enforcement regime, and what the new GDPR enforcement framework across the EU could learn from it; and a feature tracing the evolution of Canada's PIPEDA enforcement regime – we ask whether it should be given some real teeth. Last, but certainly not least, we have an overview of Brazil's new omnibus data protection legislation, authored by local experts.

A stylized, handwritten signature of Tom Webb in black ink, positioned above a horizontal teal line.

TOM WEBB
EDITOR

GLOBAL DATA REVIEW LAUNCH



FEED

News from around the world.



LAND OF LITTLE KINGS

What can the EU learn from Germany's model of data protection enforcement?



40 UNDER 40

GDR profiles the younger generation of data lawyers: the names you need to know.



LACKING BITE

Canada's federal privacy framework is seen as being toothless – but reform may be on the way.



INPUT

Experts lay out the key aspects of Brazil's new data law.

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FEED



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FEATURES AND ANALYSIS, VISIT

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IRELAND

The Data Protection Commissioner slams Yahoo!'s security standards, in the wake of a 2014 hack that saw unauthorised access of approximately 39 million European users' data.

UK

The Information Commissioner's Office says it plans to fine Facebook £500,000 – the maximum allowed under pre-GDPR legislation – over the Cambridge Analytica scandal. The fine would be the ICO's highest to date.



US

The Supreme Court in *Carpenter* rules that individuals have a reasonable expectation of privacy in cell site location information. Observers say the judgment opens the door to future rulings expanding US data privacy rights even further.

BRAZIL

The Federal Senate passes the General Data Protection Law – but the country's president only partially approves the bill, vetoing the creation of a separate data protection authority.

SWEDEN

The European Court of Human Rights refuses to strike down the country's bulk interception regime, rejecting a consumer group's claim that its oversight framework is inadequate.

EU

The European Union's Parliament, Commission and Council finalise draft legislation that seeks to tackle intra-EU data localisation. The planned rules would force EU member states to justify localisation measures to the European Commission.

GERMANY

The Internet Corporation for Assigned Names seeks an injunction that would force a registrar to continue collecting administrative and technical contact information. Registrar EPAG claims doing so would violate the GDPR.



INDIA

An expert committee publishes a draft of India's first overall data protection legislation, which is inspired by the GDPR – and would introduce GDPR-level fines.

INDONESIA

Two Indonesian groups sue Facebook, accusing it of illegally leaking Indonesian user data to Cambridge Analytica.

AUSTRALIA

Proposed new legislation would force companies to grant access to encrypted customer data, with failures to comply punished by fines of up to A\$10 million (€6.4 million) or up to 10 years' imprisonment.



Land of little kings

VINCENT MANANCOURT

Germany's system of having state watchdogs enforce federal data law is a forerunner for the EU regulatory model under the GDPR. As the EU's attempt to harmonise data protection law and its enforcement across the bloc gathers momentum, what can it learn from its largest economy's attempts to do the same?

“**I**t will never happen,” says Matthias Bergt, smiling wryly. “You have 16 kings in Germany and they will always want to rule their kingdom.”

The Berlin-based von Boetticher partner is not the only one sceptical about the possibility of Germany ever having a single data protection authority. Marit Hansen, the data protection commissioner for the state of Schleswig-Holstein, is doubtful it will happen “in our lifetime”.

Unlike most other countries in the world, which delegate data protection law enforcement to a single body, in Germany the responsibility falls to a combination of 17 state authorities and a federal enforcer – bar Bavaria, where separate bodies look after the public and private sectors, state enforcers deal with both sectors, which are governed by different laws. While the public sector is subject to law that varies from state to state, federal law governs the private sector. The federal enforcer looks after current as well as former federal organisations that have been privatised, as well as some sectors such as telecommunications and the postal service.

The rest of Europe – and indeed the world – has long followed Germany’s lead when it comes to data protection. It was a German state, Hesse, that enacted the world’s first data protection legislation in 1970, with other states quickly following suit and a federal act coming into force in 1978. It was a German politician, Jan Philipp Albrecht, who proposed the GDPR, and the EU regulation bears more than a passing resemblance to the German law it replaced. Naturally, Germany was the first EU member state to update its legislation to incorporate the new EU rules.

“I sometimes have the impression that colleagues [abroad] would like to hear the German opinion on data protection because we have had the same principles more or less since 1995 . . . we also have many statements from supervisory authorities to study,” says Philipp Schröder-Ringe, a partner at HÄRTING Rechtsanwälte in Berlin.

The extent to which other countries look to Germany was laid bare to Schröder-Ringe during his studies at Stockholm university – 90% of the books on data protection in the university’s library were German, he says.

As the EU tries to harmonise data protection law and its enforcement across the bloc, Germany offers a case study. Like in the EU under GDPR, in Germany separate state bodies have been tasked with enforcing the same law in a (theoretically) uniform way.

The results are mixed.

Starting with the law itself, the GDPR’s opening clauses – which allow EU member states to modify the provisions of the binding articles of the regulation – have been a cause for division among the German states just as they have among EU member states. Within Germany, one example is the requirement to hire a data protection officer. While some states include a strict requirement for organisations with 10 members or more to have a data protection officer, others, such as Bavaria, have included exceptions to that rule. There are also different requirements for when organisations need to carry out privacy impact assessments.

For Michael Schmidl, a partner at Baker McKenzie in Munich, the opening clauses have been used by legislators to try to preserve the status quo as much as possible. “I spoke with public officials who directly confirmed to me that their slogan was ‘maximum preservation,’” he says.

Differing interpretations of the law among Germany’s enforcers also highlights the difficulties in harmonising multiple bodies.

In 2013, *Der Spiegel* magazine reported that pharmaceutical data centres were selling prescription records to medical research companies, which in turn turned the data into studies that they sold to drugmakers. According to the magazine, the data being sold by one data centre had not been anonymised as it should, but rather contained a pseudonym in which the name of a patient was replaced with a lifelong code.

Thilo Weichert, the then-data protection commissioner of Schleswig-Holstein, called the practice a “long-term scandal”; he held that replacing names with numbers did not constitute anonymisation.

“It is obvious that this data was used by the pharma industry to send reps to doctors to sell specific drugs. That is the aim of this data processing, which the anonymous data is supposed to prevent,” he said at the time in an interview with *Deutsche Welle*.



**Across Germany
enforcers'
approaches
differ: lawyers
speak of a
north–south
divide.**

€1,124,000

Reportedly the highest administrative fine for violations of Germany's data protection law. It was imposed on the Germany rail operator Deutsche Bahn by Berlin's data protection authority in 2009 for screening employee data and matching them with supplier data, supposedly to detect fraudulent activities, in particular employee-fronted shell companies.

16

The number of state data protection authorities regulating the private sector.

10

The number of people an organisation can employ – and whose regular duties include processing personal data – before needing to appoint a data protection officer.

2

The number of slots Germany has on the European Data Protection Board – a representative from the federal regulator, and a rotating position for state regulators. All other EU member states have one representative.

But Bavaria's data protection commissioner, Thomas Kranig, had a different opinion. He defended the data handling, arguing that the records had been encrypted in such a way that the behaviour of the doctor or the patient couldn't be tracked.

It is not the only instance of disagreement among Germany's privacy watchdogs.

In March, the Datenschutzkonferenz (DSK), a German body similar to the European Data Protection Board (EDPB) that brings the state authorities together, issued a paper contradicting an earlier opinion published by the Hesse enforcer. The Hesse authority had said merchants have a legitimate interest in passing email addresses on to delivery companies so that they can inform customers of the status of their deliveries; but the DSK said merchants would have to obtain extra consent to do so.

And at the beginning of 2018, the DSK issued guidance on video surveillance that contradicted a respected data protection foundation's advice on the matter. At issue was the extent to which people need to be informed when they are being filmed in public: the foundation, known as the Data Protection and Data Security Society, said a notice telling people that they were being filmed and the name of the data controller would suffice, whereas the DSK said more details of the data processing would need to be given. Lawyers are still seeking clarification on the matter.

There is also anecdotal evidence of differences between enforcers' approaches, and lawyers speak of a north-south divide.

"It is sometimes said that the data protection authorities from the southern part of Germany are supposed to be a bit more business-friendly than [those] in the northern part of Germany," says Undine von Diemar, partner at Jones Day in Munich.

Others are less cautious in their assessments: "It gets less constructive the more north you go – especially if you are an American company," says one lawyer, who recalls a "tight fight" with the Berlin authority over a new software service contrasting starkly with the "constructive dialogue" they had with the Bavarian enforcer over the same topic.

It seems no two states illustrate this perceived north-south divide more than Schleswig-Holstein and Bavaria.

Connecting Denmark to the rest of Germany, the state of Schleswig-Holstein has long loomed large on the data protection scene. GDPR architect Jan Philipp Albrecht represents the state in the European Parliament, and its enforcer was involved in a high-profile battle with Facebook and the local operator of a Facebook fan page that reached the European Court of Justice (the court found in favour of the watchdog, ruling that both parties shared responsibility for protecting data).

Observers say the authority is unafraid to voice its opinion: "very loud" is how one describes it, with another saying the authority, along with Hamburg's enforcer (also seen as influential) as "liking publicity" and after "a big fish".

Yet another lawyer says they would not like to advise clients subject to the Schleswig-Holstein commissioner's jurisdiction because "you know they always take the approach that's strongest."

Some say Schleswig-Holstein's assertive approach is the legacy of Thilo Weichert, who served as the state's data protection commissioner between 2004 and 2015. He is a long-standing critic of Facebook and one of the German data protection scene's most vocal commentators. To this day, employees at the authority are banned from using both Facebook and Twitter because it is not satisfied that either handles data properly.

But even among lawyers who call some of Weichert's positions "extreme", there is a grudging respect for him. "He published quite a bit and was just one of the pioneers of data protection law," says Daniel Rücker, a partner at Noerr in Munich. "He was often taking extreme positions, but [they were] very high quality and well argued."

Asked whether the characterisation of Schleswig-Holstein as a strict enforcer is fair, the current commissioner, Marit Hansen, says: "We try to interpret the law how it is. I don't think we are overly strict. We encourage . . . good solutions." She points to the authority's first-of-its-kind data protection certification scheme as evidence that it is as concerned with constructive solutions than coming down hard on companies.

Hansen does, however, admit that the enforcer's ban on Facebook and Twitter displays a strictness "not shared by many".

"We don't think social media is bad, but we want them to change according to the law," she says.

Bavaria's watchdog is also seen as one of Germany's most influential – and comes in for much praise by lawyers: "Probably one of the best in Europe," is how Stefan Schicker, a partner at SKW Schwarz in Munich, describes it. For Rücker, the Bavarian body is strict but reasonable. "I have a very high opinion of the authority; they always see the big picture and try to balance things in a reasonable way," he says.

Baker McKenzie partner Schmidl describes the Bavarian regulator as "very pragmatic and close to the economy". He also praises the authority for answering questions promptly, something he says cannot always be said of Germany's other data protection authorities.

Bavarian data protection commissioner Kranig is commended for the proactive role his agency takes too. After the European Court of Justice invalidated the safe harbour agreement, Kranig's authority sent out questionnaires asking organisations how they dealt with data transfers between the US and the EU.

In another instance, it sent letters to thousands of companies telling them to activate a type of email encryption required by law. For von Boetticher partner Bergt, this was a welcome intervention.

"[The authority] requested that companies activate StartTLS. I think that's very good because I often have this problem. StartTLS is an [internet standard] from 1999 and still there are many companies that haven't activated this, which I really don't understand because that's two minutes' work and it gives really good protection," says Bergt.

He adds that the authority uses the media shrewdly, issuing press releases when it publishes an opinion or decision. "I think it's very important so the public gets to know the work the authority does . . . I think it's not so important to fine everybody, but to make these fines public," he says.

According to Jones Day partner von Diemar, the Ansbach-headquartered regulator takes its advisory role seriously, especially for small- and mid-sized businesses: "I can definitely say . . . that the Bavarian data protection authority really aims to



establish a good working relationship with companies and their legal advisers, with the aim of promoting data protection.”

For staff at the watchdog itself, the oft-mentioned north–south divide is more hearsay than anything else. “I’ve heard people make that statement, but I don’t know if that’s empirically verifiable,” says Mirka Möldner, who heads the department in charge of the insurance companies and health sectors, as well as freelancers and non-profit organisations at the regulator.

It perhaps shouldn’t come as a surprise that Bavaria’s regulator comes in for praise. After all, it can afford to carry out its duties. As Morrison & Foerster’s Hanno Timmer puts it: “Bavaria is one of the wealthier German states and has enough money to employ people, which is not always the case in other states”.

But even an authority as well-funded as Bavaria’s has its work cut out. Timmer estimates it has around 15 members of staff dedicated to investigations – compared to over 2 million companies in the state.

A fine of more than €1 million for the German railway operator Deutsche Bahn in 2009 is among the highest to have been levied for data protection law violations in Europe. Even so, Timmer says enforcement action has not historically been an issue in Germany. He says that of the 50 or so fines levied by the Bavarian authority in the past year, around 30 were worth less than €1,000.

Berlin’s regulator was even more hands-off, handing out just six fines last year, according to Bergt. “I tell my clients to just fly under the radar, because [the authority] does not have the resources to actively find infringers. So you just need to make sure there won’t be any complaints and if you manage this, you’re safe.”

But this state of affairs is likely to change. The GDPR’s much-publicised penalties will make companies pay more attention of data protection authorities.

Germany’s regulators are taking their new responsibilities seriously. Commissioners now meet around seven times a year under the auspices of the DSK, rather than in a biannual conference that was previously the norm. Data protection heads now also regularly communicate informally via email or phone to harmonise decision-making – a practice Schleswig-Holstein commissioner Hansen describes as “good but stressful”.

And for all the talk of divergences in opinions and of a north–south divide, Germany’s data protection enforcers are increasingly a paragon of cooperation. Lawyers talk of an enforcement landscape that is more and more aligned. “I think over the last half-year or year . . . [the state regulators] are really trying to align what they say much more than they did before,” Timmer says.

This latest push for greater harmonisation is the just the latest chapter in a history of increasing cooperation, first through the Düsseldorfer Kreis, a grouping of private sector privacy commissioners that merged with the DSK once the enforcers themselves started merging the public and private sector roles.

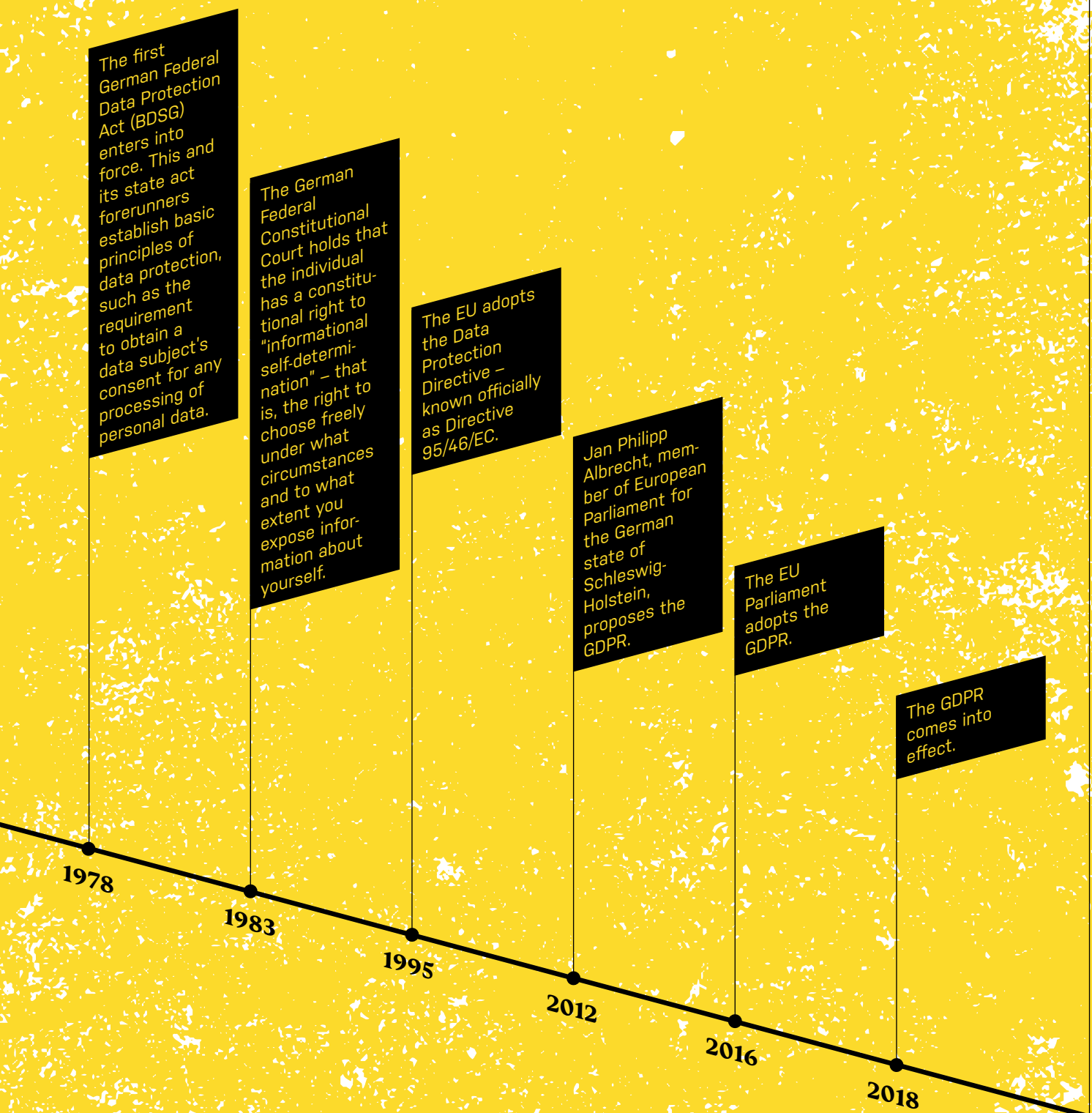
The DSK has many more sector-specific working groups than its EU equivalent, the EDPB, which looks to harmonise the interpretation of the GDPR across the bloc. DSK’s papers on the articles of the GDPR are praised by SKW Schwarz’s Schicker as “short and concise – they are very much focused on how to implement the law in practice,” he says.

But for Greenberg Traurig Berlin counsel Carsten Kociok, the DSK’s papers are too brief; he prefers the resources provided by the UK’s Information Commissioner’s Office, which can run to 40 pages or more – providing a “real compendium with examples and getting into the details”.

This brevity could be a symptom of the DSK’s consensus-driven approach – and an example of its limits. For Bergt, the DSK seems to be “afraid of saying anything”

The state of Hesse enacts the world's first data protection act. Germany's other states soon follow suit.

1970



The union of German data protection authorities seems to be “afraid of saying anything”

in its papers. “The reason why their papers are worse than they should be is that [the enforcers] have to agree on every word and it seems to be really, really hard for them.”

But alignment between the enforcers is still a work in progress, lawyers say. “I think the German authorities now, more than ever, need to come to joint positions,” says Rücker. “At the moment, in my impression, this is developing more and more, and can be seen in several joint opinions recently published by the German Datenschutzkonferenz.”

A rotating position on the EDPB, where state commissioners will take turns to represent Germany alongside its federal enforcer, will make greater harmonisation ever more crucial. Other EU member states are represented by just the one enforcer.

For Friederike Gräfin von Brühl, a partner at K&L Gates in Berlin, the difficulties Germany has had in enforcing harmonisation should serve as a warning to EU, as it tries to do the same. “Already within Germany the enforcement positions are quite different. They are trying to harmonise enforcement . . . but there are still discrepancies and between EU member states, such discrepancies will likely be even stronger,” she says.

Schicker says the main challenge in aligning the views of 16 data protection authorities in Germany is politics. “I think you have to understand that there are 16 little kingdoms, which have developed their own traditions and specialties over the years. The challenge now is to harmonise these independently developed opinions – it will be interesting to see whether that can happen.”

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40 UNDER 40

Welcome to the first edition of the Global Data Review 40 Under 40, in which we profile the 40 individuals who represent the best and the brightest of the data law bar around the world.

What is a data lawyer? There isn't an easy answer.

Ten years ago, people working in the tech space frequently focused on legal advice around IT and outsourcing; US privacy lawyers advised or litigated around the patchwork of federal and state regulation; in Europe, data protection lawyers helped clients stay on the right side of the line. Things have changed: corporate clients now typically demand holistic advice that relates to how they gather, use, exploit and dispose of data – personal or not – when figuring out how to launch innovative new products, services and business models. They also respond to complaints, investigations and litigation when things go wrong, and try their best to make sure things don't go wrong in the first place.

Broadly speaking, these are the issues we believe occupy a data lawyer in 2018 – even if within that they may have their own specialisms or focus on mainly advisory work or litigation. And with GDR launching, we wanted to profile the new generation of individuals advising in this emerging area of practice.

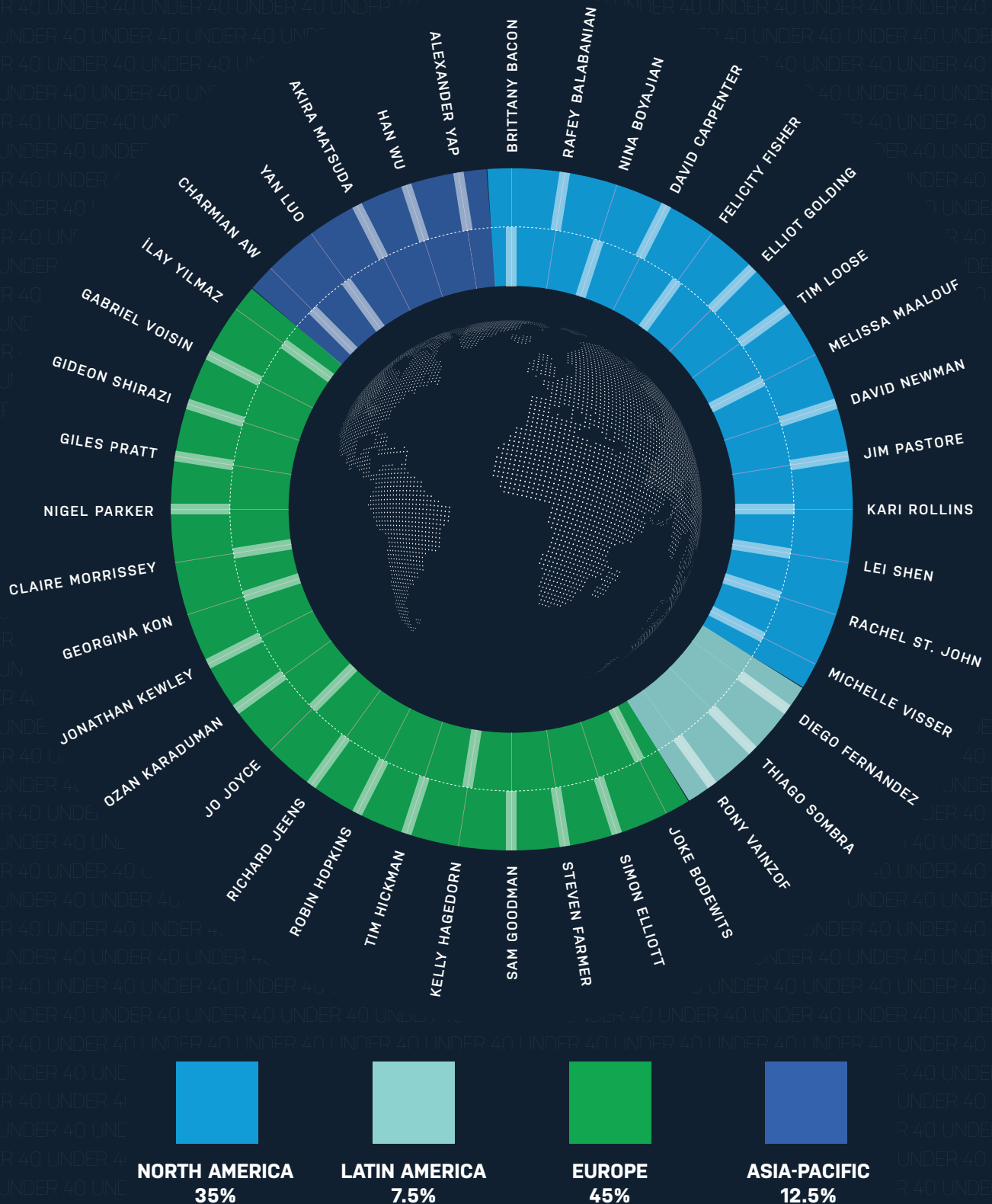
We contacted hundreds of law firms, asking them to present their best and brightest, alongside information about their case work and recommendations for three lawyers outside their firm who they reckoned made the cut. We eventually reached a final 40, and asked each lawyer to answer questions about their practice, their background, local trends, and what they do with their spare time – we are, after all, interested in profiling people, not just their careers.

We are proud to present the final list. It is interesting to witness the diversity of work and career background that has led these people to where they are today: many are privacy specialists with a strong advisory practice, but others specialise in cybersecurity and cyber fraud litigation, or intellectual property and IT, or are more broadly technology lawyers who have over time increasingly been tasked with dealing with companies' use of data as an asset.

We asked them all what they believe data lawyers will be working on in 10 years' time. There were plenty of answers, but from the dozens of responses we collected, recurring themes emerged: AI and big data, and the rise of the internet of things.

So, do we know what a data lawyer is, in summer 2018? It's becoming clearer. But ask us again in a decade, and you may get a very different answer.

THE 40 BY REGION AND GENDER



"Always be curious and willing to learn."



CHARMIAN AW

📅 Drew & Napier
📅 35
📍 Singapore
👔 Director

Professional history

I started out my legal career focusing on telecommunications, media and technology work. About seven years ago, I started delving into data work, and this eventually culminated in my current specialisations in data privacy and cybersecurity work. So much has changed in terms of that landscape, and all within the past decade. Today, we see convergence in ICT and media – the latter of which encompasses online streaming and social media – as well as technology and digitalisation being firmly embedded in various sectors and businesses globally.

What do you do?

I am actively involved in assisting companies on data privacy compliance, as well as advising on issues relating to

information governance, enforcement, breach management and notifications, security, monitoring and surveillance, and cross-border transfers.

What drew you to your area of practice?

Data privacy and cybersecurity are ever-evolving areas of law and practice, and relevant to nearly all organisations with a digital footprint. This makes working in this space very exciting indeed!

Influences and mentors?

I would have to say all of my former and present teachers, from those who taught me at school, to my friends, peers and colleagues today from whom I continue to learn, and who have taken the time to share their invaluable experiences, knowledge and wisdom with me.

Advice for young lawyers?

Always be curious and willing to learn. In this field, youth can be an asset,

as young persons tend to be well-connected with technology and up-to-date with trends and developments in the digital world. Seek out a worthy mentor with whom you can engage in meaningful discussions on the subject. Also, look globally and be prepared to step out of your comfort zone.

If you hadn't been a lawyer...

Possibly a food critic, wine connoisseur, writer and/or podcaster.

What's everyone talking about?

Distributed ledger technology and the blockchain, and the opportunities and disruption it poses. Also, how robots may soon take over all our jobs – albeit with certain exceptions.





What's your favourite restaurant?

If I am feeling fancy, Spago at Marina Bay Sands or Luke's Oyster Bar and Chop House. Otherwise, give me a bowl of Katong laksa any day.

A portrait of Brittany Bacon, a woman with long blonde hair, smiling and wearing a light blue button-down shirt. The background is a blurred office setting.

"This field occupies a space where policy, law and business issues intersect."

BRITTANY BACON

 Hunton Andrews Kurth
 34
 New York
 Partner

Professional history

In 1999, I was an original member of a non-profit group called the Teenangels, which was led by cyber lawyer and child advocate, Parry Aftab. We went into schools around the country and taught children about responsible and safe use of the internet. We briefed members of Congress, gave interviews to the media, trained teachers and parents, and spoke at major industry conferences. I continued this work through college and law school. I graduated from law school in 2009, when the economy was reeling and the legal industry was deferring (or letting go) its rising first-year associates. I was among the deferred associates who were advised to start looking for a job while getting paid a stipend for

one year. During that time, I worked as a volunteer staff attorney with the NY Volunteer Lawyers for the Arts, an incredible non-profit organisation that provides legal services to low-income NYC artists. Meanwhile, I sent emails to every contact I had at law firms and in-house, requesting meetings and asking if there were any openings in their offices. By some stroke of luck and amazing timing, I was introduced to my now-partners, Lisa Sotto and Aaron Simpson, who agreed to interview and ultimately hire me eight years ago as a first-year associate on Hunton & Williams' global privacy team.

Career highlights?

In summer 2016, Hunton's privacy team had been called in to advise on a possible data breach at Yahoo!. The investigation found that Yahoo! had experienced two of the largest data breaches in reported history: one affecting approximately 500 million user accounts, and another affecting

approximately 3 billion user accounts. Our team helped managed Yahoo's entire legal response, including directing two outside forensic firms; conducting the global legal analysis; and preparing notification materials, regulatory responses, media statements and business partner outreach materials for the incidents.

Influences and mentors?

My parents were my earliest and most profound influences. I dearly miss one of my other mentors, the late Joseph Alhadeff of Oracle, who helped usher me into and through a career in privacy law and was one of the brightest people I've ever met.

Advice for young lawyers?

Go for it! This field occupies a space where policy, law and business issues constantly intersect, and it thrives on innovative and strategic, outside-the-box thinking.



"I am proud of being one of the lead attorneys in the Facebook Biometrics litigation."

RAFEY BALABANIAN

Edelson
38
San Francisco
Partner

What do you do?

I handle complex plaintiff-side privacy litigation on behalf of classes of people and, more recently, on behalf of governmental entities.

Career highlights?

I am very proud of being one of the lead attorneys in the Facebook Biometrics litigation, where we got a class certified of several million people who had their biometric information harvested by Facebook. I am proud of our firm's lead role in *Spokeo*, where the Supreme Court endorsed the core tenet of privacy law – that people can be injured both tangibly and intangibly

when their privacy rights are violated. I am proud to have been lead counsel in *Harris v comScore*, where we achieved adversarial certification of what is believed to be the largest privacy class in US jurisprudence. And I am proud to be lead counsel in *Birchmeier v Caribbean Cruise*, where we reached a US\$76 million cash settlement – the largest consumer privacy settlement to date.

Influences and mentors?

I'm a first-generation American, and my parents risked literally everything to come to this amazing country in hopes of providing a better life for me and my two sisters. They fled a war-torn nation, and did so with little more than the clothes on their backs. My parents were determined to make a better life for me and my sisters and they worked tirelessly to make that

happen. My parents taught me that there is absolutely no replacing hard work and that it can make dreams come true. I would have to say that my other mentor is my partner, Jay Edelson. Whatever success I've managed to achieve in my career thus far is due, in large part, to Jay.

If you hadn't been a lawyer...

If I wasn't a lawyer, I'd like to say that I would have been a tennis professional ranked in the top 10 in the world. There are, however, a couple guys on the tour right now (Federer, Nadal, Djokovic and Murray) who probably would have given me some trouble. In all seriousness, though, my dream as a kid was to be a tennis pro and while I didn't make it that far, I had a respectable career as a junior and went on to play in college.

"Everybody is talking about privacy and cybersecurity."



JOKE BODEWITS

📄 Hogan Lovells

📅 37

📍 Amsterdam

👔 Counsel

Professional history

I started working as a patent attorney-at-law but soon realised that I find data-related questions more interesting. Besides my law career I teach privacy and cybersecurity at various institutes, including CPO University of Nijmegen and at data protection officer training courses organised by IIR [the Institute for International Research].

What do you do?

I handle all kind of questions and issues relating to the handling of personal data, such as how to use data as a company asset, to negotiate data-related contracts, to help determine global data strategies, or to handle cybersecurity incidents and questions by supervisory authorities.

Career highlights?

One of my highlights is the fact that my office now has a self-sustainable privacy and cybersecurity practice with dedicated, enthusiastic and very knowledgeable lawyers. Other highlights relate to successfully representing companies in enforcement actions initiated by supervisory authorities without fines being imposed.

Influences and mentors?

Eduardo Ustaran on handling data-related questions and making sure that every working product that is delivered to a client is helpful, practical and ready for use. For privacy and cybersecurity-related questions this means that you need to have an expert understanding of the law, the regulators, the regulators' expectations and your client. Only if all these conditions are met can you really help with practical advice that is ready for use.

Advice for young lawyers?

Go for it! Do not let anyone steal your joy or temper your ambitions or goals. It is a great field to work in, and will only get more interesting and challenging.

If you hadn't been a lawyer...

I would have liked being a pop star. Being on stage to entertain people must be great. Too bad that my lack of talent will stop me from ever being discovered as a pop star.

What's everyone talking about?

How to handle cybersecurity incidents, and the potential impact of the proposed e-Privacy Regulation.

What is the most significant current trend in your jurisdiction?

Everybody is talking about privacy and cybersecurity, even at birthday parties.

Favourite restaurant?

Balthazar's Keuken in Amsterdam.

"The areas I practice in have been rapidly evolving with changing and maturing technology."



NINA BOYAJIAN

Greenberg Traurig
36
Los Angeles
Shareholder

Professional history

I am an IP and privacy litigator, with over 11 years of litigation and trial experience extending to both state and federal courts.

What do you do?

I focus my practice on trademark counselling, enforcement and litigation; copyright counselling, enforcement, and high-stakes copyright litigation; unfair competition or false advertising counselling, and litigation; entertainment and media counselling and litigation; trade secret litigation; privacy or publicity counselling and litigation; and TCPA class action defence.

What drew you to your area of practice?

The areas I practice in have been

rapidly evolving with changing and maturing technology. That changing landscape makes the practice diverse and exciting.

Career highlights?

I had the privilege of representing the estate of Michael Jackson in various lawsuits against and on behalf of the Estate, including obtaining an injunction in a trademark case that was affirmed by the Ninth Circuit. Since 2012, I've also been IP counsel to Ares Management, a publicly traded, leading global alternative asset manager with approximately US\$112 billion of assets under management and approximately 1,005 employees. I manage and enforce Ares' worldwide trademark and domain name portfolio, and offer advice and counselling regarding copyright and privacy matters. Other highlights have been working as pro bono counsel to Mona Foundation, a non-profit organisation that supports grassroots initiatives focused on education and raising the status of women and girls

in the US and abroad; helping an activist from the Democratic Republic of Congo through asylum proceedings; two trials during two separate pregnancies . . .

Influences and mentors?

My professional mentors include those who are subject-matter experts, but also those who are just excellent lawyers with the highest level of integrity. And my father, also a lawyer, who showed me what it took to "do it all".

What will data lawyers be advising on in 10 years?

If I knew that, I'd be in a different profession . . . Seriously though, I think much more of the same, though it will all be more built in to the infrastructure of business rather than being lawyer-driven as it is now.

What do you do to relax?

Yoga, beach, run, family time.



"It has been fun to work with my colleagues as we all learn this area of the law."

DAVID CARPENTER

Alston & Bird
38
Atlanta
Partner

What do you do?

I am a member of Alston & Bird's litigation and trial practice team, which unsurprisingly makes me a data and privacy litigator. Usually I come in on the back end, defending data breach and TCPA class actions, among other data and privacy matters, but I also counsel clients on specific issues related to the same.

Career highlights?

I have been fortunate to defend some of the biggest data-breach cases in the country, working hand-in-hand with our technology and privacy team, which is often on the ground with the client at the time the breach is discovered.

Influences and mentors?

With data and privacy litigation being relatively cutting edge, it has been fun to work with my colleagues as we all really learn this area of the law. My partners Kristy Brown, Cari Dawson and Donald Houser have been big influences through this process as we all have grown together in the data and privacy area.

Advice for young lawyers?

My advice is to learn how to be as good a lawyer as you can be. There is no one particular skill that is going to make a young attorney a better data and privacy lawyer than another. But being a good writer and being able to think quickly and creatively are key assets to anyone looking to be a successful litigator.

If you hadn't been a lawyer...

Prior to going to law school, I worked in Major League Baseball, first for the

Colorado Rockies and then for the Atlanta Braves. If I weren't a lawyer, I'd imagine I would have continued down that path and would still be in a major league front office.

What's everyone talking about?

In data-breach litigation and in TCPA litigation, parties are still wrestling over core issues like standing, duty, and guidance from the relevant governmental authorities. The results of these fights will shape litigation in this area going forward and are, therefore, front of mind for all data and privacy litigators.





What do you do to relax?

I have three children under the age of six, so I like to spend as much time as I can with them (though it is not always relaxing). I also enjoy playing golf and am trying to get them to pick up the sport and join me on the course.



"Immerse yourself in the detail of the latest data tech trends and regulatory hot topics."

SIMON ELLIOTT

 Dentons
 36
 London
 Partner

Professional history

I have been a data lawyer for over a decade, having joined (what was then) Denton Wilde Sapte in 2005. I joined the firm because of the strength and reputation of its technology practice, and was quickly drawn into advising on data-focused matters and data protection compliance. It was an area that, at the time, many other lawyers were keen to avoid – probably because of the jargon! – but I enjoyed the technical and intellectual challenge of the field, and still do.

What do you do?

Help clients navigate thorny data privacy compliance issues and develop enterprise-wide data privacy compliance frameworks. Most recently, this has focused on assisting clients with

their preparations for the introduction of the GDPR – from fact-find and gap assessment to policy production and operationalisation. And I have assisted with multiple data transfer projects – ranging from dual application Binding Corporate Rules to standard contractual clause implementation in 50+ countries.

Career highlights?

Being at the forefront of the work for clients on assessing and designing GDPR-compliant approaches in a market with limited precedents and firm regulatory guidance has certainly been a highlight.

Who are your influences and/or mentors, and why?

Undoubtedly my fellow partners Martin Fanning, Nick Graham and Scott Singer in the data protection team at Dentons in London. Over many years they have been great teachers and supporters and incredibly generous with their time, knowledge

and wisdom. And most importantly, being able to do the job with a smile on their faces.

Advice for young lawyers?

Immerse yourself in the detail of the latest data tech trends and regulatory hot topics. There are plenty of great resources to keep up to date with developments. It's the sexy area of law!

What career would you like to have had, if you weren't a lawyer?

Oddly enough, probably in the police. It's the family business.

What's everyone talking about?

Data ethics. Designing a compliance model for an organisation is one thing, but what does an organisation think is "the right thing" to be doing with that data?

Most significant current trend in your jurisdiction?

Four little letters: GDPR.

"Being able to speak the same language as IT and security professionals goes a long way."

STEVEN FARMER

■ Pillsbury Winthrop Shaw Pittman

📅 37

📍 London

👔 Counsel

What drew you to your area of practice?

An interest in how technology can provide solutions followed by a recognition that data was increasingly becoming the key asset of many of those organisations operating in this space. During the noughties there were far fewer data lawyers in the market compared to the position now, and it was finding that relative niche that made this area even more appealing.

Career highlights?

Being part of one of the first teams to successfully apply for Binding Corporate Rules on behalf of a global client stands out. This really was uncharted territory at the time, for all law firms and clients alike, and it was

very satisfying getting this over the line. Advising on and helping resolve a recent high-profile, multimillion-dollar data breach on behalf of a client involving cybercriminals in multiple jurisdictions was also very rewarding. More recently, having an op-ed published in the *Wall Street Journal* on the impact of the GDPR for US organisations was exciting. The piece I co-authored was also picked up by the BBC, leading to a few quotes in that evening's news.

Advice for young lawyers?

Keep on top of technological developments, and have a decent grasp of IT fundamentals since the law is continually playing catch up. Being able to speak the same language as IT and security professionals, at least to a degree, goes a long way and allows the issues to be identified.

If you hadn't been a lawyer...

I was actually very close to reading geography at university, rather than

law. The two both require strong research and analytical skills and so I'd say they have more in common than some might think. Had I read geography, then who knows – perhaps a volcanologist!

What do you do to relax?

European legislators have kept data practitioners very busy in recent months and that trend looks set to continue for the foreseeable future. I enjoyed watching some of the games in this summer's FIFA World Cup though – particularly since the England team performed unexpectedly well.

Favourite restaurant?

Denise's in central London has always been a favourite – until recently it was run by a very hospitable family who would always throw in a dessert on the house, or the odd glass of wine.

"I think data will continue to fuel economies and become more important."



DIEGO FERNÁNDEZ

Marval O'Farrell & Mairal

39

Buenos Aires

Partner

Professional history

I joined Marval O'Farrell & Mairal in 2003 and have been a member of the firm's IP group since then. During 2013 I pursued an LLM degree in IT and privacy law from the John Marshall Law School in Chicago. Immediately after and during 2014, I worked as visiting foreign counsel with Foley & Lardner in Chicago office. I rejoined Marval in February 2015.

What do you do?

I am actively involved in a wide range of projects that have a data component, from M&A transactions to outsourcing agreements, and from privacy corporate practices to complex international data transfers.

Career highlights?

I have participated in some high-level transactions in which data processing was the driver, and which demanded coordination of the deal in the Latin American region. I have also counselled software developers in the integration of privacy by default and by design into their ongoing businesses to comply with regulations in South America. I have also participated in large outsourcing projects involving heavy negotiations and multiple jurisdictions, and some complex bank acquisitions in which not every consent was in place – which triggered creative ways in performing the transaction and also post-closing practices.

Advice for young lawyers?

I would definitely encourage young lawyers to specialise in this area of the law. I do think that data will continue to fuel economies and will become even more important than what it already is. Perhaps they will need to adapt to a less traditional approach,

meaning becoming more involved in the businesses practices and providing even more practical approaches.

If you hadn't been a lawyer...

I always wanted to have a small hostel in the Argentine Patagonia, serving foreign tourists and getting into conversations with them.

Most significant current trend in your jurisdiction?

Argentina is rethinking its Data Protection Law. The draft bill to a large extent resembles the provisions of the GDPR and seeks, among other things, to keep Argentina's declaration of adequacy by the EU.

What do you do to relax?

I run – as much as I can. As I am not playing rugby anymore, running clears my mind in a way that no other activity does. I also try to spend as much time as possible with my wife and three kids.



"I anticipate that the field will split into further specialisms."

FELICITY FISHER

Fieldfisher
32
Palo Alto
Director

Professional history

I originally qualified as a technology transactions lawyer at Osborne Clarke, covering the full gamut of licensing and outsourcing deals to advising on e-commerce and digital regulatory matters, with some privacy. Osborne Clarke had an office in the Silicon Valley, so when the opportunity to do a secondment in California came up, I leapt at the chance and found myself boarding a flight for San Francisco in April 2014. As I immersed myself into work in the Bay Area, it quickly became clear that most of my clients needed EU privacy advice, particularly in the wake of the fall of the Safe Harbor Scheme and in the run-up to the GDPR coming into effect. Realising

privacy was both a really interesting and growing area, I dedicated myself to becoming an EU privacy specialist and switched firms to work in the Fieldfisher Silicon Valley team in January 2016.

What drew you to your area of practice?

Data protection law is constantly evolving but not fast enough to keep up with the rapid pace of technological change and emerging data uses, so privacy lawyers have to creatively interpret the law and boundaries of acceptable compliance to enable our clients to strike an acceptable balance between innovation, monetisation and respect for an individual's human right to privacy.

Influences and mentors?

Mark Webber is my current boss and someone I've worked since my days at Osborne Clarke. It was Mark who

encouraged me to move to Silicon Valley and without his support and encouragement I definitely wouldn't have got this far! Phil Lee is also a brilliant privacy lawyer and all-round great guy that I feel very lucky to work with.

What will data lawyers be advising on 10 years from now?

As [GDPR] issues get more complex and the case law, codes of practice and regulatory guidance develop, I anticipate that the field will split into further specialisms – potentially based on industry and/or subject.

What do you do to relax?

I am a gym junkie and love to work out in my spare time or do anything active (whether running or cycling). I am also currently trying to master surfing! My husband and I also love to travel and are always plotting our next international adventure.



*"Be passionate,
be curious,
and take
ownership in
everything
you do."*

ELLIOT GOLDING

📄 Squire Patton Boggs

📅 33

📍 Washington, DC

👔 Partner

What do you do?

I primarily help healthcare and technology companies (along with other consumer-facing companies) manage data privacy and cybersecurity risk by balancing legal, technical and practical concerns.

What drew you to your area of practice?

I have always been drawn to emerging areas of law. There is something very compelling about developing a practice, and having the ability to flex creativity, in a space that is maturing rapidly and sometimes lacks clearly defined rules.

Influences and mentors?

Robin Campbell, co-leader of the firm's data privacy and cybersecurity practice,

has played a major role in shaping my approach to law, business development, client services, and understanding about how they are all intertwined.

Robin has been seconded three times to clients to manage privacy in-house, and is one of the most talented attorneys I've ever known. Imparting her first-hand experience, she's mentored me not only about the legal system, but more importantly, the real-world application of it. Robin has taught me that a successful lawyer needs to also act as a business partner and provide practical solutions while analysing and reducing any risks.

Advice for young lawyers?

Be passionate, be curious, and take ownership in everything you do. Keep up to date on privacy and cybersecurity news, trends and developments. Do not be deterred from this field by thinking that you need a background in science or technology to succeed, though understanding technology always helps.

If you hadn't been a lawyer...

Chef.

Most significant current trend in your jurisdiction?

Today, nearly every company has become a data company – even in less traditional sectors such as manufacturing. That data is being used to better design products and services and even feed machine-learning and artificial intelligence models. With increased data collection and connectivity, however, privacy and cybersecurity risks rise exponentially.

What do you do to relax?

I exercise (biking and weightlifting), travel (beach vacations are my favourite), and play the guitar.

Favourite restaurant?

Peter Luger. My family surprised me by taking me there once and, to this day, it is still the best steak I have ever had.

"I enjoy the challenge of keeping pace with cyber fraudsters."

SAM GOODMAN

20 Essex Street
27
London
Barrister

Professional history

I am currently a barrister at 20 Essex Street Chambers. Prior to joining 20 Essex Street, I taught law at University College London. I have also worked in the London office of Kobre & Kim.

What do you do?

Much of the work I do in this area is aimed at recovering assets, whether that be money or data itself. To that end, I am regularly instructed to seek urgent interim relief, such as disclosure orders to reveal the identities of cyber fraudsters, password orders to regain access to electronic assets and freezing injunctions to prevent cyber fraudsters from wrongfully dissipating their own assets to frustrate enforcement.

What drew you to your area of practice?

I enjoy the challenge of keeping pace with cyber fraudsters, who are constantly finding new ways to misappropriate and misuse data. As lawyers in this field, it is our job to match their creativity. As a result, not only does a practitioner need to stay on top of a variety of different areas of law, but also a whole variety of exciting new technologies. For example, I have recently delivered a series of talks with Lawrence Akka QC on blockchain and cryptocurrencies. Though I must admit that I am better at advising on the legal issues arising out of cryptocurrencies than I am investing in them!

Career highlights?

I am currently instructed by a major financial institution to assist in unravelling a fraud, pursuant to which over US\$1 billion of its customers' money was misappropriated and

transferred to bank accounts all over the world. The fraudsters were able to hack into the company's IT system and effect a series of fraudulent transfers before falsifying the company's records. Recovering the misappropriated funds is highly rewarding work.

Advice for young lawyers?

Get to grips with the relevant underlying technology and the data vocabulary – your clients will appreciate it if you can speak their language. Make sure you know your Merkle tree from your Byzantine Generals' Problem and your data controllers from your data processors.

If you hadn't been a lawyer...

I like to think I would have been a spy.

What do you do to relax?

Run, read and travel.



"The GDPR seemed like a good opportunity to get involved in data."

KELLY HAGEDORN

🏢 Jenner & Block

📅 37

📍 London

💼 Partner

What do you do?

There are two aspects to what I do as regards data: compliance and investigations. The first covers the all of the steps that clients need to take to become compliant with data protection law, from data mapping and scoping through to policies, procedures and training of employees. The second covers both investigations into data breaches or misuse and also the implications of data protection legislation on investigations more generally.

What drew you to your area of practice?

I really wanted to try something new. I have worked in the white-collar space

for my whole career, and data protection has been something that has always hovered on the periphery. The GDPR seemed like a good opportunity to get involved.

Influences and mentors?


I worked for a long time with Antony Dutton, both at Norton Rose and Dechert. He pushed me to see that I was actually not too bad at this job, and that I could be a partner if that was what I wanted to do. Since arriving at Jenner & Block, I've been able to work with brilliant people who are too numerous to name, but I will single out Nancy Libin in our DC office, who introduced me to data law and appears to have infinite patience for my questions, and Christine Braamskamp and Peter Pope here in London, who keep me amused and educate me in the dark arts of white-collar crime in equal measure.

What's everyone talking about?

Two things: the first is privilege, and how the ENRC case will play out. This is hugely important to lawyers working in investigations of all types and has the potential to change the way internal investigations are conducted. The second is exactly what, in practice rather than in theory, the impact of the GDPR on investigations will be – particularly when the US authorities are involved and want access to data.

Favourite restaurant?

I have too many to list, but I am a big fan of both the Begging Bowl and Ganapati in Peckham. I do like to be able to waddle home after a meal.



"One of the most interesting aspects of data protection law is that there is a lot of uncharted territory."

TIM HICKMAN

📅 White & Case
📅 36
📍 London
👔 Partner

Professional history

I moved to the UK as a teenager. When I left school I had to work for two years before I could go to university as a local student. I went on to study law at university and secured a training contract at Linklaters. Upon qualification I moved to what was, at that time, an exciting US firm looking to grow in London – unfortunately, that was Dewey & LeBoeuf. Following the collapse of that firm, I moved to Hunton & Williams. I then joined White & Case.

What do you do?

I advise companies on how to make better decisions about the data they handle.

What drew you to your area of practice?

I don't think I know anyone who consciously planned to become a data protection lawyer. Like many data protection specialists, I started out as an IP lawyer, but received more and more data protection questions over time, largely because nobody knew where else to send those questions.

Career highlights?

One of the most interesting aspects of data protection law is that there is a lot of uncharted territory. This has afforded me the opportunity to work with some of the world's largest companies on genuinely cutting-edge data protection problems that have never previously been considered.

Advice for young lawyers?

Never give anyone your only copy of anything. Under-promise and over-deliver – especially in relation to deadlines. Be proactive. In particular,

when you are given a task, try to anticipate what will come next, and see whether there is anything you can do at this stage to make that next step smoother. Manage expectations. If you realise that you are not going to meet a deadline, let the person in charge know as early as possible, because that will enable them to plan accordingly. Leaving it until the last minute will make it worse.

If you hadn't been a lawyer...

I would probably have been an illustrator.

What's everyone talking about?

The GDPR. Specifically, who is going to get the first multimillion-euro fine, and when will it happen.

What will data lawyers be advising on in 10 years?

Artificial intelligence. Or, possibly, the artificial intelligence will be providing all the advice, and we will all be retired.



"I like that this area evolves so quickly."

ROBIN HOPKINS

11KBW
39
London
Barrister

Professional history

I spent the bulk of my twenties on disparate university degrees. I tried management consultancy but didn't enjoy it, so converted to law and came to the bar of England and Wales a decade ago.

What do you do?

A lot of what I do is help clients develop their business models to make the best commercial use of their data assets, while at the same time avoiding legal and regulatory entanglement and keeping individual customers happy. Another big strand is litigation: challenges to how controllers have used or misused personal information.

What drew you to your area of practice?

I started practice in the relatively early days of freedom of information litigation in the UK. This got me interested and experienced in the balance between transparency and competing interests like privacy. This was a natural fit with data protection, which was growing exponentially as I was building my practice. I like that this area evolves so quickly: it is not weighed down by endless precedents, and always has an eye on the future, on technology, changing business models and changing human attitudes to privacy. You feel like you can help shape principles and practice, rather than simply comply with what black-letter law dictates (because it often doesn't tell you the answers!).

Influences and mentors?

My chambers has two of the best Queen's Counsel in this area of law: Tim Pitt-Payne and Anya Proops. They have helped shape my career from the

outset. I wouldn't have managed to build a satisfying and specialist career like this without their support.

If you hadn't been a lawyer...

I met a vicar once who told me I should be a vicar. Left to my own devices, and if money were no object, I would probably end up trying to write history books (something about Reformation or Victorian London, I suspect).

What's everyone talking about?

Whether to base data processing models on consent or on legitimate interests, and how to be transparent with individuals – especially if you use their data, but they've never heard of you. Also: Brexit.

What do you do to relax?

Read, cycle, swim, barbecue, garden cricket with my children. I like country walks, sea swimming and finding old churches and good coffee (seldom in the same place). I shuck the odd oyster.

"I am too frequently introduced as the man you don't want to meet."

RICHARD JEENS

📅 Slaughter and May

🎂 37

📍 London

👔 Partner

Professional history

I'm a Slaughter and May lifer. I joined in 2005 and have been there ever since.

What do you do?

I am too frequently introduced as the man you don't want to meet, which I take as shorthand for the fact my practice largely involves advising whenever data law becomes contentious.

Career highlights?

While advising a major global insurer on a data breach, persuading an (appropriately) cautious Chancery judge to grant urgent orders against the suspected data thief and their (as yet unknown and unnamed) accomplices, and to keep the whole proceedings and party names confidential. Then serving the orders via a dark web messenger

service. Since the breach had yet to be announced and we needed to be able to pursue proceedings in over 60 jurisdictions, the scope, confidentiality and service of the orders were critical. Less dramatically (and with materially more sleep), helping a client handle a politically charged investigation, both in terms of their substantive, technical responses but also their broader reputational and communications strategy.

Influences and mentors?

Family aside, the late Frances Murphy, corporate partner at Slaughter and May, because she gave me a job and always supported me, even when I told her I didn't want to be a corporate lawyer. Sara Luder, for her insight and empathy at some of my most difficult moments personally and professionally. And Sarah Lee, for her continuing advice and example in the disputes team at Slaughter and May; it's humbling being in partnership with someone whose court victories were case studies at law school.

If you hadn't been a lawyer...

Professional marksman. I won the individual event at the world long-range target rifle championship in Australia in 2011 but it's a strictly amateur sport, so work and family has somewhat taken precedence since.

What's everyone talking about?

Right now, it's the GDPR and, sadly, Brexit. But more interesting in the contentious space is how questions such as the enforceability or jurisdiction of smart contracts will be determined. Data (and the proper use of data) is key to so many businesses; it's exciting to see how potential legal challenges are being overcome across the firm to facilitate the possibilities that are opening.

What do you do to relax?

Relax might not be the word, but spending time with my young family is what I aim to do outside work.

"Obtaining one of the first injunctions against 'persons unknown' on Twitter was big for me."



JO JOYCE

📅 Taylor Wessing
📅 33
📍 London
💼 Senior associate

Professional history

I studied history at university but I always wanted to be a lawyer. I intended to become a barrister but I participated in a vacation scheme, at the end of which I was offered a training contract, and decided that becoming a solicitor was the right route for me. Despite that decision, my life almost went in another direction, when I took a year off between my law conversion course and the legal practice course to work in the US. I worked in Washington, DC and later London in political analysis and media relations, as well as doing some freelance writing; it was an exciting time but I am very glad now that I decided to stick with the law. After completing my training contract I

qualified as a solicitor into the intellectual property team at Shoosmiths. I practised there for four happy years as an intellectual property and data privacy lawyer before deciding that I needed a new challenge. I joined Taylor Wessing in 2016.

What do you do?

My work encompasses data privacy and information rights, advisory, transactional and contentious work. Depending upon the audience I might introduce myself as a data privacy lawyer, an information rights lawyer, or a reputation management lawyer. Luckily, Taylor Wessing is very supportive of my decision to work the way I do and sees the benefit and professional flexibility that comes with a broad experience.

Career highlights?

I am lucky to have had so many highlights. Obtaining one of the first injunctions against "persons unknown"

on Twitter, for a breach of confidence claim, was a big early high for me.

Influences and mentors?

My first mentor in law was Anastasia Fowle, a partner at my first firm. She taught me so much about IP and data but also about getting things done. In my current working life, the head of Taylor Wessing's data practice, Vinod Bange, is definitely my biggest influence.

If you hadn't been a lawyer...

I considered journalism or public policy work when I was a student, but history was my first love and I would like to think I could have had an academic career as a historian.

Favourite restaurant?

For the happy memories, and the free drinks they gave me during my student years, I have to say Gino's in Oxford.



"We will see more objections to the results of automated decisions made by AI."

OZAN KARADUMAN

📅 Gün + Partners

📅 36

📍 Istanbul

👤 Partner

Professional history

I graduated from the Law Faculty of Galatasaray University in 2006 and completed my internship at Gün + Partners in 2007. I have been working at Gün + Partners since my internship and became partner in 2018.

What do you do?

As our Data Protection Law was enacted relatively recently (in 2016), currently I mostly deal with full-scale compliance projects. Additionally, I help our clients in cases of data breaches.

Advice for young lawyers?

I would advise them to read a lot about technology and follow the developments in technology and the applications involving data processing

activities. It would be better for the young lawyers to refrain from looking at data issues from a purely legal perspective; they should try to understand the technology or the structure behind it, the stakes involved and, always, the purpose behind a restriction related to data processing.

If you hadn't been a lawyer...

I would like to have been a writer of fantasy or science fiction novels, or a carpenter.

What's everyone talking about?

Our Data Protection Law was enacted only two years ago, and most of the secondary legislation has been issued recently. Our law is modelled on the EU's Data Protection Directive but it is not the same, and also includes some concepts from the GDPR. There have been a lot of discussions about how the provisions of our law should be implemented. Our Data Protection Law requires all data controllers (local and foreign alike) to register

themselves with the Data Controllers Registry, together with their personal data inventories. This registration requirement has been the subject of many debates recently.

What will data lawyers be advising on in 10 years?

As the AI technologies and automated decision-making applications will develop, I believe that we will see more objections to the results of the automated decisions that are made by AI. As the intellectual property behind the AI structure will be protected, it will be a challenge (even more than it is now) to prove the objections, and to find the balance between IP protection and data protection.

What do you do to relax?

I read fantasy books together with a cup of coffee or a glass of single malt or wine. I try to carve wood from time to time but generally end up with shapeless lumps of wood.



"Data is often a business's most valuable asset, but also its greatest risk."

JONATHAN KEWLEY

Clifford Chance
36
London
Partner

What do you do?

All businesses are now tech businesses – and I advise on all aspects of tech risk and opportunity from an M&A, risk and crisis management perspective. A decade ago, "data law" was considered a niche area. How that's changed! Data is often a business's most valuable asset, but also, in the new environment of global regulatory and customer scrutiny, its greatest risk. Whether businesses are planning IT renewal, developing new AI tools, diligencing a potential target, or responding to a cyber attack, I'm there to help across the board.

What have been some of your career highlights?

Being asked to launch and co-lead our cross-practice tech group is a definite highlight. Unlike the traditional law firm model of tech expertise sitting in one practice or team, this virtual group sits across every practice area and sector – in the same way that technology cuts across every industry.

Influences and mentors?

Our senior partner Malcolm Sweeting has been a great mentor and friend. Despite being a finance lawyer by background, he's pivoted to tech in a really brilliant way. He's seen how technology will disrupt our industry and encourages everyone, regardless of practice or background, to come on the journey with us. Malcolm is always there to encourage and help, always has an open door and mind, and now is as techie as the rest of us. He draws a line at wearing Converse trainers though!

What will lawyers in your field be advising on 10 years from now?

It's a cliché now to say that 'data is the new oil' – but I think the next frontier is how safely to monetise this digital commodity while building a robust legal (and moral) framework and process to do so.

What do you do to relax?

Read. A lot. A passion from my days of studying English at university. It helps working with a great team at Clifford Chance who, like me, are all very creative. We have a table in my office covered in books, autobiographies and magazines we've read. It's so important to make time to be creative and share ideas outside our everyday work.

What's your favourite restaurant?

Bistrotheque, in Hackney. I used to go there a lot pre-kids, and now they love it too! No late nights any more though, only brunches.

"The highest highs in my career have been about working with great teams."

GEORGINA KON

📁 Linklaters

📅 38

📍 London

👤 Partner

What do you do?

It's hard to put your arms around data law – so it's difficult to give a precise definition of what I'm doing at any particular time. I'm lucky enough to be in a place that allows me to do lots of different types of data law with a really broad set of colleagues with complementary practice areas.

What drew you to your area of practice?

My mother was a computer programmer, even before most households had computers in them. She was ahead of her time and inspired an interest in all things technology- and data-related. Working in the data, technology and commercial space means that I'm always dealing with relatable facts

– I can picture what clients are talking about, what the impacts on everyday people and businesses might be, and that really interests me.

Career highlights?

I'm currently enjoying working on accelerator projects that use data in innovative way, although I can't give too much away about those... I've done projects where the client has saved over a billion, come through an investigation unscathed, done things it never thought it could or produced something that really changes lives. But day to day, the highest highs in my career have always been about working with great teams.

Advice for young lawyers?

Don't just spot issues, also identify solutions, remedies and safeguards. Have a good network of people who touch different aspects of data whom you can share ideas with and bounce things off. It really helps to understand

how commercial contracts and the wider world works as well: don't be too black letter, make sure your advice is realistic and user-friendly. Also, you're going to have to keep reading lots and lots of guidance and deal with evolving technology, so you will never be able to say you've mastered it once and for all. You'd better like learning!

What's everyone talking about at the moment?

In no particular order, everyone's talking about how sick and tired they are of receiving GDPR marketing emails; Cambridge Analytica; whether they're behind on the innovation, robotics and digital front; how to work with start-ups; whether sourcing is dead; and how data is now the most valuable asset of most organisations and what that means for competition.

What do you do to relax?

Play video games, sadly!



"I was intrigued by the intersection of law and privacy."



TIMOTHY LOOSE

 Gibson Dunn & Crutcher
 37
 Los Angeles
 Partner

What do you do?

I routinely help companies defeat cases threatening to impose billions of dollars in liability under consumer data and privacy protection statutes. I have also advised companies on mitigating the risk of these types of lawsuits by adopting best practices.

What drew you to your area of practice?

I was drawn to the field of data based on a matter that I successfully handled for Dun & Bradstreet as a young associate – a class action lawsuit based on credit reporting data. I was intrigued by the intersection of law and privacy, especially in a world where the volume of information that is being shared and stored over the internet is growing by the day.

Career highlights?

Most recently, I obtained decertification of a long-running class action lawsuit brought against Yahoo!

alleging misuse of consumer telephone records, and secured a summary judgment victory for Vroom in a putative class action brought under the Telephone Consumer Protection Act.

What do you do to relax?

When I'm not litigating big data issues, I enjoy spending time outdoors, unplugged, with my wife and three children.

Favourite restaurant?

My favourite place for a cup is G&B Coffee, at the recently revived Grand Central Market in downtown Los Angeles.



"Being a regulatory lawyer in a digital age, data law seems a natural choice."

YAN LUO

📅 Covington & Burling
📅 37
📍 Beijing
👔 Of counsel

Professional history

Although I grew up and obtained my undergraduate law degree in China, I started my career not in China, but in Brussels, as a regulatory lawyer. After more than three years in Brussels, I moved to the US and interned for the Federal Trade Commission, before joining Covington. I also practised in the firm's Washington, DC office before relocating to Beijing.

What do you do?

Instead of focusing on a discrete area of privacy or cybersecurity law, I find myself working on many aspects of the broader "data law". For example, I have advised Chinese clients on GDPR compliance, worked with US companies on

data-related transactions, represented clients in relation to evolving data breach notification rules in China, and was part of the expert group advising the Chinese government on its effort to draft national AI standards. In a sense, I became a generalist in the broader data law field, thanks to the new China Cybersecurity Law and the increasing awareness of data privacy laws in China.

What drew you to your area of practice?

I like technology in general and am always fascinated by what technologies can do to improve our lives. Being a regulatory lawyer in a digital age, data law seems to be a natural choice.

Advice for young lawyers?

Understand the technologies and business models of your clients. For example, the largest US high-tech companies are operating in a very

different market environment compared to the Chinese tech giants. As a result, Chinese companies have developed differently, and it is important to understand how and why different underlying technologies are used to build different business models.

What will data lawyers be advising on in 10 years?

I guess we will all be working on AI-related matters. But technology is moving too fast for us to say anything for sure.

Favourite restaurant?

Living in China where good food is everywhere and having the most convenient e-payment and food delivery apps, it is hard to name a favourite restaurant because delicious things are relatively cheap and convenient to try! I guess I have favourite apps, but not necessarily a favourite restaurant. Welcome to China's digital economy!



"US companies are putting more resources into privacy and security compliance."

MELISSA MAALOUF

📅 ZwillGen

📅 36

📍 Washington, DC

👤 Shareholder

Professional history

I started my legal career at Willkie Farr & Gallagher in DC in 2007. In 2012, I joined ZwillGen, when the firm only had seven lawyers. In March 2018, I became a shareholder of the firm.

What do you do?

I counsel clients on US and international data privacy and security issues. In particular, my practice focuses on advising providers of wearables, internet-connected devices, and mobile applications on integrating privacy by design into their products in a way that balances innovation with consumer privacy in an increasingly data-driven world. I have defended major media, social networking and gaming companies in US Federal Trade Commission and

state attorney general investigations.

What drew you to your area of practice?

Technology has always fascinated me. In third grade, I was an assistant in my school's first computer lab that housed brand new Macintosh Classics and Laserdisc players, and my interest continued to grow from there. When I went to law school in 2004, there weren't many classes outside of the IP space involving technology, although I did take one computer crime class. Luckily, at the time that I was a summer associate at Willkie in 2006, the DC office was building up a privacy practice to service some of the firm's largest multinational clients that were finding privacy and security to be areas of increased regulatory scrutiny. I quickly raised my hand and took on as many projects in privacy and security as I could, and I haven't looked back since!

Influences and mentors?

My greatest mentors have been my truly amazing colleagues. ZwillGen was built on an experienced attorney model, and through the years we've focused on hiring accomplished practitioners in all areas of internet and technology law.

What's everyone talking about?

The many applications of blockchain technology, and whether the blockchain is a fad or here to stay.

Most significant current trend in your jurisdiction?

Competing on privacy. As consumers become savvier about privacy, and as the number of high-profile privacy and security incidents continue to increase, US companies are putting more resources into privacy and security compliance.

What do you do to relax?

Go for a walk, enjoy a hot cup of matcha or plan my next trip!

"Understanding data flows and how corporates use, process, transfer and store data is very important."

AKIRA MATSUDA

📄 Iwata Godo

📅 35

📍 Tokyo

👔 Counsel

Professional history

I qualified as a Japanese attorney at law in 2008 before joining a large Tokyo firm. I have been working as a corporate lawyer since then.

What do you do?

Data protection and privacy laws in Japan and EU (GDPR) have been very substantially overhauled. My main activities in relation to data protection have been to advise Japanese and foreign multinationals on global compliance to meet the organisational and documentary challenges arising from these overarching reforms.

Career highlights?

Since 2015, I have been double hatting between Japan and Singapore – which has allowed me to get a deep understanding of the data protection legal framework in ASEAN, including as to how cross-border data transfers can be lawfully effected to and from Japan.

Influences and mentors?

Yoshihiro Toji of Iwata Godo (Tokyo) and Lim Chong Kin of Drew & Napier (Singapore). My role model is Landry Guesdon.

Advice for young lawyers

Comprehensive knowledge of the data laws and regulations, including future trends, is a must, both locally and globally. In addition, understanding data flows and how corporates use, process, transfer and store data is very important. A good knowledge of criminal laws (ie, wiretapping) also helps.

If you hadn't been a lawyer?

I would have been an airline pilot – I love travelling around the world.

What's everyone talking about?

In Japan, how Japanese MNEs can comply in a timely way with the GDPR ... and the FIFA World Cup in Russia, with tears still in the eyes for the Japan team fans.

What will data lawyers be advising on in 10 years?

As machine learning and big data are keys to AI, I expect data protection will still be a hot topic in connection with AI!

What do you do to relax?

I love taking short trips on weekends, and of course longer trips when I am able to take leave! The pursuit of work-life balance and privacy are legitimate purposes in a tough Japanese working environment.

"The digital age will evolve with innovation, AI and robotics."



CLAIRE MORRISSEY

📄 A&L Goodbody
📅 39
📍 Dublin
💼 Partner

Tell us about your professional history.

I studied in Dublin, the US and Belgium. I was a researcher at the Law Reform Commission, I tutored at the National University of Ireland in Dublin and Galway, and I trained and qualified with A&L Goodbody. Two years post-qualification I moved to London to join Slaughter and May's IP/IT group; before returning to A&L Goodbody, I joined the technology group at Olswang (now CMS).

What drew you to your area of practice?

As a junior lawyer, it was a developing area of law. It was one that I could get stuck into, take ownership of and develop an expertise.

Career highlights?

Rejoining A&L Goodbody's commercial and technology team as a partner has been a highlight. It had a real sense of homecoming.

Advice for young lawyers?

Show your enthusiasm for the area. Get involved with all things data within and outside your organisation.

If you hadn't been a lawyer...

I almost joined An Garda Síochána, the Irish police. I also almost became a teacher. I went so far as to do the interview for teacher training for history and the Irish language, Gaeilge.

What will data lawyers be advising on in 10 years?

Data will continue to be key. The digital age will evolve with innovation, AI and robotics. The GDPR and EU e-Privacy Regulation will still be the cornerstone of EU data protection legislation. This will throw up societal

and legal challenges for individuals, businesses, advisers, regulators and the judiciary. Legislatures will consider if these challenges can be met by a GDPR and e-Privacy 2.0, or whether it is time for wholesale reform.

Most significant current trend in your jurisdiction?

Interest in what the enforcement priorities of Ireland's Data Protection Commission will be are centre stage for many businesses. The potential for the DPC to influence the development of European and international data protection laws has increased exponentially over the past number of years.

What do you do to relax?

I run ultras. I have done ultras here in Ireland and abroad including the Kerry Way Ultra (120 miles in consecutive 40 hours), Wicklow Way Ultra, Glacier Lakes, the Marathon des Sables (twice!) and Transgrancanaria.

A portrait of David Newman, a man with dark hair, smiling, wearing a dark suit, white shirt, and a red tie. The background is a gradient of blue and teal geometric shapes.

"I expect the field will be transformed by developments in AI, machine learning, and quantum computing."

DAVID NEWMAN

📄 Morrison & Foerster
📅 38
📍 Washington, DC
👔 Of counsel

Professional history

I came to MoFo in the beginning of 2017 after spending most of the first decade of my legal career in government. From 2013 to 2017, I worked in the White House as Special Assistant and Associate Counsel to the President and in various positions on the staff of the National Security Council. Prior to the White House, I worked at the Department of Justice, where I participated in the management of the DOJ's National Security Division.

What drew you to your area of practice?

As I was preparing to leave government, I spent a lot of time thinking

about how I could build an exciting practice around the unique set of experiences I had in government. In addition to the substantive work I had done, a common theme of my past roles at the White House and the Department of Justice was that I was thrown into an issue that was exploding in the news (or, at least within government) and asked to give advice in real time that was practical, informed by the short-term and long-term priorities, and that could be used by everyone who was part of the response.

Career highlights?

My in-person interview with Justice Ginsburg, whose commitment to equal rights under the law so inspired me in law school. The work I did on the National Security Council staff on the response to the Ebola crisis. Being at the FBI's Strategic Information


and Operations Center during the pursuit and apprehension of Dzhokhar Tsarnaev, who was later convicted of perpetrating the Boston Marathon Bombing. Seeing the celebrations in the Rose Garden and in front of the White House on the day of the landmark Supreme Court decision in *Obergefell v. Hodges*, which established that same-sex couples have a fundamental right to marry.

What will data lawyers be advising on in 10 years?

I expect that the field will be transformed by developments in AI, machine learning and quantum computing.

What do you do to relax?

At this time of year, anything that involves being outdoors with my three daughters, especially if they are on a bike or near a pool.



*"Data laws
can be
particularly
hard and
frustrating for
businesses to
navigate."*

NIGEL PARKER

🏢 Allen & Overy

📅 38

📍 London

👔 Partner

Professional history

I've worked for A&O my whole career, since 2003. I've been lucky to work for extended periods in two of our international offices: Tokyo and Bratislava. The experience of working in Tokyo in particular was special – it was never ever dull, the food and people were fantastic, and I even got to hone my data law skills, working with the local *bengoshi* to advise overseas clients on Japan's data protection laws.

What do you do?

A&O is a global firm with a strong transactional practice, and data is increasingly central to transactions, so as a data specialist I have an increasingly important role to play.

Clients also turn to us when things go wrong – we help respond to incidents, such as data breaches, complaints and regulatory investigations. We also help them to avoid getting into bother in the first place, by helping define and implement strategies and controls around use of data. Data laws can be particularly hard (and frustrating) for businesses to navigate – as an area of law it is largely principles-based, so there is often a large bridge to cross between the law and practice.

Advice for young lawyers?

I'd recommend to get a good grounding in the technology. There is rarely a data protection problem that doesn't require a good understanding of the tech. It's also important to be opportunistic – it's no good just focusing on what takes your interest, you have to follow your clients, to make sure you are relevant to whatever problems they are facing.

If you hadn't been a lawyer...

I'd probably have liked to start my own business. The only other job I have had (besides paper boy and pot washer) was as a waiter, so I guess if I were to start a business it would have to be something in the hospitality industry. My clients include hotels and I really enjoy working in the sector.

What's everyone talking about?

The World Cup? [UK reality TV show] Love Island? I'd personally rather talk about anything other than GDPR – I think we've all reached saturation point.

What do you do to relax?

I've installed a pizza oven in my garden, so currently spending a lot of time working on perfecting my pizza-making skills. My kids give me marks out of 10.

"The opportunity to work with such a diverse roster of clients has been extremely rewarding."

JIM PASTORE

Debevoise & Plimpton

39

New York

Partner

Professional history

Shortly after I graduated from Stanford Law in 2004, I joined Debevoise & Plimpton. In 2009, I joined the US Attorney's Office for the Southern District of New York and worked in the Complex Frauds Unit and Computer Hacking and Intellectual Property sections. I had the incredible opportunity of litigating eight jury trials to verdict and served as lead prosecutor on a number of high-profile cases, including *United States v Monseguir (aka 'Sabu')* and *Operation Card Shop*, both of which were named in the FBI's top 10 cases of 2012. In 2014 I returned to Debevoise and resumed working with the intellectual property practice, and the emerging cybersecurity and data privacy group.

What do you do?

I help clients manage cyber risks, from pre-breach counselling to post-breach response, and everything in between. A lot of my cases also involve working closely with top forensic investigators to help bridge the gap that can exist between the victims of cyber attacks and law enforcement officials who ultimately want to locate and punish the culprits.

Career highlights?

In addition to the cases I mentioned above while at the US Attorney's office, I led Operation Dirty R.A.T., which essentially targeted the creators and users of Blackshades ransom and malware, which, at the time, resulted in the largest-ever worldwide law enforcement action against cybercriminals. The opportunity to work with such a diverse roster of clients including the Home Depot, PayPal, American Express and the National Basketball Association, among others, has been

extremely rewarding and makes my job much more interesting.

Influences and mentors?

Among my earliest influencers were my parents. My dad went through law school as a night student at St John's, starting school when I was a year old. Some of my earliest memories are driving with my mother to pick him up late at night from school and then watching him study for exams and the bar. More recently, Bruce Keller and Jeff Cunard [respectively former and current Debevoise partners] taught me how to practise law as a craft, to take pride in the work, and to be intellectually curious about my clients' problems.

What do you do to relax?

I love running. I'd say watching the New York Mets, but there's nothing particularly relaxing about that lately.



"Our data practice has data privacy expertise at its core, but that's only part of the story."

GILES PRATT

 Freshfields Bruckhaus Deringer

 39

 London

 Partner

Professional history

I've travelled around the Freshfields network in my 15-plus years, working out of Paris, New York and London and I've also enjoyed being in-house on secondment in the IP team of a big consumer brand.

What do you do?

Our data practice has data privacy expertise at its core, but that's only part of the story. We cover all the IP and contractual angles on how to manage data, and our data group brings together specialists from employment, antitrust, tax, transactional and investigations teams so that we can offer a rounded view of how to manage data in the context of major projects, transactions, investigations and crises.

What drew you to your area of practice?

It's always changing. Fifteen years ago lawyers didn't think much about data, and it certainly wasn't on the front page of the news every day. These days, it's almost all you hear about.

Career highlights?

We've helped global businesses enable their scientists to share data on collaborative platforms, we've advised on how to launch connected and autonomous vehicles, and we've also helped some fantastic charities to bring people together and to highlight important causes, all through how they leverage data.

Advice for young lawyers?

Always ask yourself what advice real people in real businesses need to make the most of their data and to develop trust in their brand. There's a lot of guidance out there that's too generic or scaremongering.

If you hadn't been a lawyer...

Wildlife photographer.

What's everyone talking about?

AI. But not everyone talking about it understands it . . .

What will data lawyers be advising on in 10 years?

Ten years ago very few lawyers could have meaningfully focused on data, so it's very hard to predict the next 10 years! At a guess, the challenges of quantum computing.


What do you do to relax?

I'm usually running around after my son, who has a bit more energy than the average lawyer.

What's your favourite restaurant?

It's all about the coffee for me. A great place on the corner of Carter Lane near work.





"You will be infinitely more effective if you know and understand the relevant technologies."

KARI ROLLINS

Sheppard Mullin Richter & Hampton

38

New York

Partner

Professional history

I came up through the ranks not as a transactional intellectual property attorney, but instead as a commercial litigator. When I started focusing my practice on data privacy about eight years ago, I brought my significant litigation and internal investigation experience with me to that practice to help companies better prepare and respond to data breach and cybersecurity threats.

Influences and mentors?

I was first introduced to the world of data privacy law by Liisa Thomas. Since that initial introduction, and still today, she remains one of my mentors – not just in the realm of data privacy law (because she literally wrote

the book on data breach), but also more generally in career development and advancement.

Advice for young lawyers?

To succeed in this space, you have to stay abreast not only of the ever-changing legal landscape, but also, and equally as important, the constantly evolving technologies and cyberthreats. As a practitioner, you will be infinitely more effective if you know and understand the relevant technologies – ie, the difference between two-factor and multi-factor authentication, the variations of malware used in recent attacks on companies, the use and effectiveness of EMV chip technology at payment platforms, and the list goes on and on.

What will data lawyers be advising on in 10 years?

I actually do not think it will be much different in principle than it is today, but instead the technologies, threats and commoditisation of "personal"

information will have so evolved as to make the basic questions upon which we advise and litigate simply more complex. Those basic questions being, for example, what is or what should be protected information? How should it be protected, both by the law and by standard, and reasonable security practices? How do we respond to breaches impacting the security, confidentiality, and integrity of protected categories of information? And who is or who should be ultimately responsible when such a breach occurs?

What do you do to relax?

I love to compete in triathlons, and recently completed my first full Ironman. If I'm not swimming, biking, or running, I enjoy playing tourist in my own city – New York – and taking full advantage of all the great museums, exhibits, musicals, plays, concerts and food the city has to offer. And in the winter, skiing as much as time will permit



"This field is constantly changing at a very fast pace."

LEI SHEN

🏢 Mayer Brown

📅 39

📍 Chicago

💼 Partner

What do you do?

I began my career as a technology transactions attorney, working on IT and licensing agreements. However, I was very interested in privacy on a personal level and loved reading about it in my spare time. I was such a nerd that I read privacy treatises for fun, and I jumped on any privacy-related work that came in. Mayer Brown's cybersecurity and data privacy practice has grown substantially since then, and I'm fortunate that I am now able to focus my entire practice on privacy.

Career highlights?

Preparing my clients for the EU GDPR was certainly a highlight. More broadly, I've enjoyed leading global projects, in

part because they raise privacy issues in dozens of countries, and in part because I have the opportunity to work as a team with local counsel around the world. On a personal level, I felt great satisfaction, particularly as a working mother, when I was promoted to partner here at Mayer Brown.

Influences and mentors?

When I began my career, I worked almost exclusively with Geff Brown (currently at Microsoft), who was a generous mentor and an incredibly talented attorney. In addition, my Mayer Brown colleague, Rebecca Eisner, has long been my champion. She supported my interest in privacy from the start, and has provided valuable and unwavering support as I balance my roles as both a mother and a partner at a large law firm.

Advice for young lawyers?

This field is constantly changing at

a very fast pace. New laws and new developments occur almost daily, so you will need to have a genuine interest in order to keep up.

What's everyone talking about?

Many four letter words – the GDPR, of course, as well as the new wave of laws that has been triggered by the GDPR, including the new CCPA in California.

Most significant current trend in your jurisdiction?

California just enacted the CCPA, which provides GDPR-like rights and obligations. It's likely that other states will follow suit shortly, similar to how California started the wave of data breach notification laws.

Favourite restaurant?

Alinea is an amazing molecular gastronomy restaurant here in Chicago. I've been a big fan of Chef Achatz since he was at his prior restaurant, Trio.

"The cases are at the forefront of law and technology and you always learn something new."



GIDEON SHIRAZI

4 Pump Court
29
London
Barrister

What do you do?

The focus of my data law practice is large commercial disputes. Within this broad category, disputes come in all shapes and sizes. Some cases involve helping a company respond to the consequences of a hack or data breaches and the claims that come out of that. Others involve dealing with confidential information or data that has been stolen or misused with significant commercial implications. There are disputes about data issues that come up in outsourcing agreements, such as questions about hosting, storing or using data provided by another party or even issues about transfer speeds and the impact on profitability.

What drew you to your area of practice?

I came from a very science-centric family – my dad is a computer programmer and I did maths at university – so I have always had an interest in technology and cybersecurity. When I went into law, I was very lucky to qualify at the pre-eminent barristers' chambers for IT law and to be introduced to tech disputes by some of the top lawyers in the field. It is a very exciting area because the cases are often right at the forefront of law and technology and you always learn something new.

What have been some of your career highlights?

I think my favourite case so far was an arbitration where my team's client was claiming over US\$1 billion because it believed that a major airplane manufacturer had misused various confidential data and information to

produce modifications to their aircraft. The case was fascinating and the team working on the case was exceptionally good.

If you hadn't been a lawyer...

I think that in another life I would have been an astronaut exploring the unknown, but I think law probably suits me better.

What is the most significant current trend in your jurisdiction?

GDPR has had a huge impact and continues to impact. That has all led to a great deal of work for lawyers. I think everyone is also waiting warily for the next big data breach to see how the ICO implements its new regulatory powers.

What do you do to relax?

I'm a big fan of comedy, theatre and museums.

"Data breaches in the financial industry are a very relevant matter at the moment."



THIAGO SOMBRA

📄 Mattos Filho

📅 37

📍 Brasília

👤 Partner

Professional history

I was a state attorney at the General Attorney's Office for 10 years, and in 2016 decided to leave the office to open my data protection and anti-corruption law firm. In 2017, I joined Mattos Filho as a data protection, cybersecurity and anti-corruption partner.

What do you do?

My activities are concentrated in tech regulation, data protection and cybersecurity. In our practice, our main advice relates to the struggles that clients face with regulators when introducing a new technology, or when they need advice concerning how to comply with data protection regulation or fulfil specific requirements under a law enforcement authority.

What drew you to your area of practice?

Innovation and the desire to work in a field that is always changing drew me career to data protection and tech regulation.

Influences and mentors?

The most insightful influences were [Hogan Lovells London partner] Eduardo Ustaran and my data protection law professor at the London School of Economics, Andrew Murray. Both are genuinely talented professionals who helped create a data protection culture and interest in many countries.

Advice for young lawyers?

You must be disciplined in what you do, and always be ahead of the information and trends.

If you hadn't been a lawyer...

Mechanical engineer.

What's everyone talking about?

In Brazil, the data protection bill under Congressional analysis is the hot topic of the moment, since it is about to be voted. *[Brazil's congress passed the legislation in July 2018. Brazil's president Michel Temer signed most of the bill into law in August.]*

What will data lawyers be advising on in 10 years?

In 10 years from now, lawyers will be focused on the internet of things, and how AI will be regulated by specific bodies.

Most significant current trend in your jurisdiction?

The impact of the GDPR on Brazilian companies, and how they will implement tools to allow cross-border data transfers. Data breaches in the financial industry are also a very relevant matter at the moment, since Brazil's Central Bank has issued a resolution focusing on cybersecurity.



"The conversation inevitably turns to governance and strategically managing data."

RACHEL ST. JOHN

Osler Hoskin & Harcourt
36
Calgary
Associate

Professional history

I completed the joint common and civil law degree programme at McGill University in Montreal. After law school, I had an opportunity to join the privacy and cybersecurity group at Hunton & Williams in New York. From there, I returned home to Canada and joined my current team at Osler Hoskin & Harcourt.

What do you do?

My practice focuses exclusively on privacy and data management. I provide advice on Canadian privacy and data-governance issues arising from the collection, use, disclosure and management of personal information. I also assist clients in responding to Canadian privacy regulatory investigations.

Influences and mentors?

There are a few people that have played a pivotal role in the development of my career path. George N Hood, a former vice principal of advancement at Queen's University in Kingston, Ontario was a strong supporter of my legal education and taught me by example with his work in organisational turnaround to pursue my goals with tenacity. [Osler partner] Adam Kardash and [Hunton Andrews Kurth partner] Lisa Sotto, respected leaders in the privacy field, have also both been central to my development as a lawyer by setting high standards, asking tough questions, and providing meaningful feedback.

If you hadn't been a lawyer...

Real estate development. I love urban design and the evolution of communities.

What's everyone talking about?

An overarching theme in all of my discussions is the fast-paced nature of

the digital economy and the increasing complexity of privacy and information security requirements that are so fundamental to an organisation's ability to remain competitive. This is evidenced by the GDPR and new breach notification requirements under Canada's federal data protection law, the Personal Information Protection and Electronic Documents Act (PIPEDA). When speaking with clients, the conversation inevitably turns to governance and strategically managing data in light of these myriad requirements.

Most significant current trend in your jurisdiction?

Canada has amended PIPEDA to include a mandatory security breach notification requirement, which takes effect in November. A key focus for many organisations, and a current trend for my practice, is the development of comprehensive breach readiness and response protocols to set out a process to comply with these new obligations.



"My practice, and challenge, is to make sure legal issues do not hinder the digital economy."

RONY VAINZOF

Opice Blum Bruno Abrusio e Vainzof

38

São Paulo

Partner

What drew you to your area of practice?

The world's largest and most powerful nations are actively striving to develop a vibrant data-driven economy, such as the digital strategies undertaken by the United Kingdom and Germany. Brazil is among those, for example, owing to the recently enacted decree that established the Brazilian digital transformation strategy. Thus, my practice, and challenge, is to make sure legal issues do not hinder the digital economy. Also, to incentivise that the impact of technological advancements to the law are deeply analysed, studied and debated. Such vibrant, challenging and unique set of features drew my attention to this practice area.

Influences and mentors?

Educationally, my mother, who teaches at one of the best universities in Brazil (the University of São Paulo) in the area of human genetics, as well as my partner Juliana Abrusio – who heroically always managed to harmonise her personal life, professional and academic activities. As regards my practical activities, my partner and mentor Renato Opice Blum, who opened me uncountable doors inside and outside the office, so that I could become the professional that I am today.

Advice for young lawyers?

Seek international courses and certifications in the data protection area, such as by the IAPP and Exin. Study the local legislation applicable, as well as the different international models – eg, US sectoral laws and the EU's GDPR. Try to match academics and practice.

If you hadn't been a lawyer...

Marketing.

What's everyone talking about?

Within the practice area, Cambridge Analytica and the fact that the Brazilian GDPR draft bill is likely to be soon approved. *[Brazil's congress passed the legislation in July 2018. Brazil's president Michel Temer signed most of the bill into law in August.]*

Most significant trend in your jurisdiction?

Personal data protection and the use of artificial intelligence in law.

What do you do to relax?

Running.

Favourite restaurant?

Spot. A great cosmopolitan and contemporary restaurant.

"It is likely that we'll see significant new privacy and cybersecurity regulations."

MICHELLE VISSER

📅 Ropes & Gray
📅 38
📍 San Francisco
👔 Partner

What do you do?

I defend companies that have been accused of violating allegedly applicable privacy and/or cybersecurity requirements. I handle the class action litigation, regulatory investigations, and card brand claims that frequently result from these accusations. I also regularly oversee forensic investigations of cybersecurity incidents and provide clients advice regarding their incident response procedures.

Career highlights?

I was part of the Ropes & Gray team that secured a landmark appellate win for medical laboratory LabMD against the FTC. Our team had been thinking about the issues raised in the *LabMD* appeal for years, so we were thrilled when LabMD selected us to represent

it in the appeal and gratified when the Eleventh Circuit vacated the commission's order.

Advice for young lawyers?

If you're still in law school, take classes in the area or get involved in groups that are focused on data issues. Increasingly, we're seeing candidates with relevant educational background. If you're planning to work at a law firm, do your research into whether the firm truly has a robust practice in this space. Finally, be proactive in sharing your opinions and strategic thoughts. Doing so often leads to increased opportunities.

If you hadn't been a lawyer...

If I weren't a lawyer and reality weren't an obstacle, I would like to have been a professional basketball player in the WNBA, or a news anchor on a major network. Realistically, though, if I hadn't gone to law school, I likely would have pursued a career in economics.

What's everyone talking about?

The issues that have been coming up most recently in my discussions with others in the industry include the California Consumer Privacy Act of 2018, the GDPR, AI-related issues, the implications of the Eleventh Circuit's *LabMD* decision, and the likelihood of more regulation in this space.

What will data lawyers be advising on in 10 years?

While the rate of implementation remains unclear, it is likely that we'll see significant new privacy and cybersecurity regulations in the next 10 years that will drive the need for legal advice and result in new types of litigation.

What do you do to relax?

I enjoy being active, including by running, hiking and chasing after my 17-month-old son.

"Things are getting more and more technical."



GABRIEL VOISIN

📅 Bird & Bird
📅 35
📍 London
💼 Partner

What do you do?

We assist clients across the globe in making sure that they are compliant with applicable privacy legislation such as the GDPR or e-Privacy rules.

Career highlights?

Two particular highlights in my career to date spring to mind. The first is client-related and links to one of the largest personal data breaches in the recent years, which affected millions of individuals in over 30-plus territories. The severity of the incident mixed with the volume of hours myself and the team spent on this matter meant that the case was all the more rewarding once finalised.

The second is linked to our team in the London office. When I joined

Bird & Bird back in 2011, there were only three of us in the London data protection team: one partner and two associates. Seven years later, we are in a completely different environment.

Influences and mentors?

Jérôme Huet at University Paris II Panthéon-Assas, and Chris Hoofnagle at UC Berkeley, San Francisco.

Advice for young lawyers?

Things are getting more and more technical. Being a good lawyer is a given. More and more clients expect lawyers to have a strong technical knowledge of their systems or industries so we can be put in front of their engineers, R&D and data scientists to fine-tune their engines. It's important to be tech savvy so you can get your head around things such as ad-tech, profiling and anonymisation solutions.

If you hadn't been a lawyer...

I would probably be an entrepreneur.

There are few random things running through my head that I would've liked to have done such as operating a rooftop bar in Paris, importing crab-infused cachacas from Brazil or running a bed and breakfast on the Ile de Ré.

What will data lawyers be advising on in 10 years?

The battle between privacy and intrusive technologies will continue, and things are unlikely to slow down. We are likely to see a boom where multiple individual, possibly supported by non-for-profit organisations, will cluster together and sue companies and/or public bodies for breach of privacy laws.

What do you do to relax?

I love running to clear my mind, and it often gives me a different perspective on certain problems I'm trying to solve.



"With the rapid development of AI, there will be more ways of utilising data."

HAN WU

King & Wood Mallesons
36
Beijing
Partner

Professional history

I was actually trained to be an engineer as an undergraduate, giving me the advantage of combining technology and law. This had a positive impact when I practised antitrust and privacy law.

What do you do?

What I do is to essentially act as a bridge between technology and rules.

My knowledge in rules gives me a sense of what a compliant technology is like, and my understanding of technology allows me to better address legal issues in a practical way.

Influences and mentors?

Susan Ning [a partner at King & Wood Mallesons in Beijing], one of the most honourable female lawyers in the world.

If you hadn't been a lawyer...

Chances are that I would have been a writer – maybe I could have been another JK Rowling!

What will data lawyers be advising on in 10 years?

With the rapid development of AI, there will be more ways of utilising data. I imagine lawyers will be advising on, for example, the capitalisation of data – even the securitisation of data.

What do you do to relax?

This question is so hard that it took me over three minutes before I could think of something – I consider a not-so-tense conference call relaxing. I always enjoyed reading, as I find it calming.



"The focus on data has sharpened since a data protection law fully came into effect."

ALEXANDER YAP

📄 Allen & Gledhill
📅 38
📍 Singapore
💼 Partner

What do you do?

My practice has always dealt with data in a transaction and licensing context. The focus on data has sharpened especially since an overarching data protection law fully came into effect in Singapore in mid 2014.

Career highlights?

From a data law perspective, the recent transaction where Allen & Gledhill acted as transaction counsel for Grab on its acquisition of the south east Asian operations and assets of Uber. From a more general perspective, I have since 2008 been involved in advising on various aspects of the arrangements through which the Formula 1 race has been hosted in Singapore. Owing to the subject matter, doing this work

always seems very interesting and a bit of a "highlight".

Influences and mentors?

I've been very fortunate to have Tham Kok Leong as my "pupil master" and as the head of the firm's technology practice. It's no exaggeration that part of the reason I have continued in practice is his intelligence, guidance, patience and support.

If you hadn't been a lawyer...

Probably a programmer – but I believed (when I was 18) that if I was serious about programming, a move to Silicon Valley was necessary, and I did not want to make that move.

What will data lawyers be advising on in 10 years?

Advice on legislation that governs the manner in which AI may be deployed and relevant related-controls, and agreements for the exploitation of AI.

Most significant current trend in your jurisdiction?

The number of, and the success of, initial token/coin offerings launched from Singapore has resulted in the creation of a far larger group of clients who are start-ups. This is especially interesting as their business models tend to be very novel, and require input from specialists in quite a few disparate legal areas.

What do you do to relax?

I used to play first-person shooters, most recently Overwatch, as a team game with friends and colleagues. Having said that, just the concept behind the current leading game in this genre – a battle royale where the aim is to be the last survivor – does not seem particularly relaxing. My next project is to regain some mastery of the piano – I haven't owned one for some years.

"I seek to provide my clients with a clear picture of how data law is interpreted."

İLAY YILMAZ

ELIG Gürkaynak

36

Istanbul

Partner

What do you do?

I seek to provide my clients with a clear picture of how data law is interpreted and to explain jurisdictional differences relating to compliance issues; to create and implement practical solutions for foreign clients who wish to enter the Turkish market or jurisdiction; and to bring an enthusiasm for the technology-driven environment.

What drew you to your area of practice?

The dynamic and ever-evolving nature of the technology sector.

Career highlights?

Being promoted to partner at the age of 33; working alongside our founding partner, Gönenç Gürkaynak, and our talented associates in our top-flight

TMT team; and the opportunity to assist outstanding clients who always pose cutting-edge, sophisticated and challenging legal questions to us.

Influences and mentors?

I am fortunate to have been working with Gönenç Gürkaynak for more than 10 years, who is a great mentor to me. Some of my other influences are well-known figures from various fields, who inspire and drive me with their own passion and success. To name just a few: Nicole Wong, an attorney and former deputy US chief technology officer; Christiane Amanpour, chief international correspondent for CNN; Roberto Bolle, a principal dancer étoile at La Scala Theatre Ballet in Milan; and Alain de Botton, a philosopher and author.

What will data lawyers be advising on in 10 years?

Lawyers in my field will be advising on issues relating to the data processed and used through [AI and blockchain]

technologies, along with the ongoing debate surrounding legal and ethical concerns raised by these novel technologies, which I hope will not end up penalising or hindering technological improvements.

What do you do to relax?

Whenever I get a chance, I travel the world. Visiting a faraway place at least once a year is really important to me. I crave the opportunity to experience and learn from different cultures, cuisines and traditions, and to pick up a few words of a new language.

Favourite restaurant?

I was fortunate to have been born into one of the richest cuisines in the world, and a couple of excellent local restaurants that I would recommend are Yeni Lokanta and Sunset Grill & Bar in Istanbul. My international favourites are Epicure in Paris and Gion Karyo in Kyoto.



Lacking bite

TOM WEBB



Reform may be on the way for Canada's private sector data privacy landscape, following concerns that its enforcement regime lacks teeth.

***Tom Webb** investigates its current system and the prospects for change.*

"We find ourselves unable to keep pace with the challenges of an increasingly complex digital environment, in no small part because Canada's privacy laws are not adapted to the realities of the 21st century."

That's Daniel Therrien, Canada's federal privacy commissioner, in a May 2018 letter to a select committee of the country's House of Commons. In that letter, Therrien laid out serious difficulties that his agency, the Office of the Privacy Commissioner of Canada (OPC), has encountered in attempting to enforce Canada's federal privacy law, the Personal Information Protection and Electronic Documents Act, known as PIPEDA.

"At present, we know our powers are not strong enough and enhancing them, to have a better understanding of our environment, is a good starting point," he wrote.

The sentiment won't be anything new to data privacy enforcement authorities around the world. All eyes are currently on Europe,

where the GDPR has boosted member state authorities' ability to impose eye-watering fines, following decades of authorities only being able to deliver slaps to the wrist. Brazil has already followed suit, with its legislature having approved GDPR-style legislation that set up the country's first overall data protection regime and enforcer in August 2018. The previous month, India's government received a GDPR-influenced draft bill that would set up the country's first data protection framework.

In his letter, Therrien pointed to the GDPR's 4% of turnover maximum fines, as well as the US Federal Trade Commission's track record in extracting multimillion-dollar penalties through settlements. Given the global trend towards handing greater enforcement and penalty powers to countries' regulators, Canada starts to look like the odd one out. The office's setup, and the framework it enforces, arguably looks outdated and ill-suited to respond to an increasingly data-driven economy.

The ombudsman

PIPEDA is nearly 20 years old. The country's provinces can also pass their own privacy legislation, taking matters there outside PIPEDA's jurisdiction if Canada's government deems them to be substantially similar to the federal rules. So far, Alberta, British Columbia and Quebec have received that stamp of approval for their general legislation; New Brunswick, Newfoundland and Labrador, Nova Scotia, and Ontario healthcare privacy legislation have also been deemed similar to PIPEDA.

PIPEDA itself, observers agree, is a broadly sensible and flexible piece of legislation that sets data privacy and security principles similar to what can be seen in the EU. The law regulates the collection and processing of personal information, mostly based on the concept that individuals must provide consent to all collection, use or disclosure of their data "except where inappropriate". While the law is more consent-focused than the GDPR, it is more open to principles such as implied consent as a basis for processing data that would probably fall foul of Europe's more hard-line take on the concept.

The federal privacy landscape has changed in recent years, indicating a will to stick to international developments. The country's first federal mandatory breach notification regime will kick in from November 2018, after Alberta took the lead in implementing a mandatory regime in 2010. It will provide a roadmap for the commissioner's investigations, not only by setting up mandatory notification to the OPC of all breaches that create a "real risk of significant harm", but also by forcing organisations subject to PIPEDA to retain records of all security incidents – no matter how trivial – for two years. Those records will be disclosable not only to the OPC, but potentially to plaintiff-side litigators in Canada and abroad looking to put together arguments about companies' security policies. Observers agree that the notification


and record-keeping requirements have already pushed companies to set up or re-examine their security arrangements in a bid to stay compliant with the new regime.

And the breach notification rules also create new monetary risks: companies that fail to report notifiable breaches, or fail to maintain appropriate records, are exposed to fines of up to C\$100,000 (\$76,000).

But the extent to which the OPC's enforcement actions actually act as a deterrent against misconduct or breaches of PIPEDA remains unclear. The breach notification regime is now one of two parts of PIPEDA, which actually leaves companies liable for fines in cases of non-compliance; the other, carrying identical penalties, is for obstructing its investigations.

The OPC's ability to make any kind of a direct dent on non-compliant companies is limited. While it can compel evidence and summon witnesses, it needs to approach Canada's Federal Court should it need to get a binding order against a defendant that refuses to comply or settle. By contrast, the provincial commissioners in Alberta, British Columbia and Quebec can issue mandatory orders without needing to go to court.

The federal office's maximum available fine may also not be much of a deterrent. In his May 2018 letter to Canada's parliament, commissioner Therrien also argued that his office needs more funds, pointing as an example to the UK Information Commissioner's Office's planned growth from 370 staff in 2017 to 700 in 2021. Therrien said the OPC has asked for a "modest" 30% boost to its funding – a C\$8 million (US\$6 million) increase – to help issue more policy guidance, educate Canadians and help its "overwhelmed" investigative resources. More realistically, he said, a 90% increase proportionate to what the UK Information Commissioner's Office received might be needed. "The former would allow us to undertake a limited number of proactive promotion and compliance



CANADA'S PARLIAMENT
MAY SOON DECIDE
WHETHER PIPEDA
NEEDS A REVAMP

“GDPR created
an opportunity
for dialogue,
for discussion”
— LISA LIFSHITZ

RECENT INVESTIGATIONS

AUGUST 2016

The Canadian federal regulator concludes its investigation of the Ashley Madison breach, working alongside the Office of the Australian Information Commissioner. Ashley Madison's operating company enters a compliance agreement with the Canadian regulator, and an enforceable undertaking with the Australian office, after the probe found multiple infringements of Canadian and Australian privacy legislation stemming from security failures.

AUGUST 2017

The regulator finds that Wajam Internet Technologies installed software that tracks individuals' online search queries and overlays results derived from content shared from the individuals' social media contacts, and shows adverts based on individuals' searches. It finds Wajam installed the software and harvested information without meaningful consent, as the software is bundled with unrelated programmes. Wajam sells its assets to a newly formed Hong Kong company after the OPC issues a preliminary report, saying it cannot comply with OPC recommendations; it agrees to destroy its hard drives containing personal information.

MARCH 2018

The OPC opens a formal investigation into the Facebook and Cambridge Analytica scandal, after receiving a complaint against Facebook. "If true, the allegations raise a major challenge for privacy rights," commissioner Therrien says in a statement. A month later, the OPC and the Office of the Information and Privacy Commissioner for British Columbia start a joint investigation of Facebook and Victoria-based AggregateIQ.

JULY 2018

The OPC finds that New Zealand-based Profile Technology illegally scraped personal information from Facebook profiles and featured the data on its own social media platform. Profile Technology ultimately takes the profiles down and uploads them to the Internet Archive, meaning they remain available to the public; the OPC says this makes the information less readily available as it is no longer indexed by search engines, but that the action does not resolve the regulator's concerns. The OPC coordinates with New Zealand's Office of the Privacy Commissioner, which previously investigated the company.

activities and reduce but not eliminate our backlogs of complaints," Therrien wrote.

"There's a paucity of resources, and the office does not have sufficient order-making powers," says Lisa Lifshitz, a partner at Torkin Manes in Toronto. "Generally speaking, we don't have fines, with very rare exceptions. I think that's a concern.

"Higher fines would raise companies' exposure to privacy law and increase general knowledge about privacy," Lifshitz believes. "That was one of the impacts of the GDPR: it created an opportunity for dialogue, for discussion."

Observers are quick to point out that the office's oversight of PIPEDA and Canadian private sector privacy is not as a law enforcer. The commissioner is deemed an ombudsman, with the office's guidance to potential complainants saying he "takes a cooperative and conciliatory approach to investigating complaints whenever possible and encourages resolution through voluntary cooperation".

In 2009, the OPC under Jennifer Stoddart commissioned academics Lorne Sossin and France Houle to review the office's powers. Two years later, they found that the ombudsman model was broadly successful, but nonetheless recommended that the OPC should receive some order-making powers, directed towards the SME sector in which "compliance appears to be the lowest, and where all available data from provincial enforcement suggests that only the threat of penalties that affect the bottom line can lead to a change in business behaviour, and ultimately, in business culture". Canada's government did not act on the recommendations.

Some believe there is a risk that granting the commissioner stronger enforcement powers could affect what has, for many companies, become a productive relationship. Observers note the difference between reporting potential issues or starting conversations with traditional law enforcers – which almost inevitably creates

the risk that approaching them could lead to dire consequences – with the lesser potential for harm that comes from being able to talk openly to the privacy commissioner’s officials.

Éloïse Gratton, a partner at Borden Ladner Gervais in Montreal, believes that companies operating in Canada “like the current [ombudsman] approach because they like being able to have a free conversation with the regulator about all sorts of issues. There are no fines or penalties at the end of the day, so companies have been motivated to be very transparent in reporting breaches, even when they are not mandatory.”

Blake Cassels & Graydon partner Wendy Mee also believes companies “don’t fear” approaching the office.

“It does open up this ability to speak more openly, and I think the office have been effective in using that type of [ombudsman] model,” she says. “I hope that, in any event, were they to receive broader powers, that they would not only have a hardline enforcement approach, and would retain the ombudsman model.”

And Fasken Martineau DuMoulin Toronto partner John Beardwood says: “We have a regulator who is supposed to have an ombudsman role, and structured as such, who now wants to be in a position to also have enforcement powers. But you either have to structure agencies like enforcers, or like ombudsmen.” Beardwood, who believes that the office does not need additional powers, says any granting of such powers would have to come alongside stronger defence rights.

“As [the office’s] decisions are currently non-binding, the procedural protections regarding the exercise of the commissioner’s powers in PIPEDA in connection with conducting an investigation is relatively

light,” he says, adding that if the OPC had the power to issue binding orders, “procedural protections would need to be beefed up . . . It would entirely change the structure of how PIPEDA works.”

Beardwood points to the commissioner’s ability to publish the names of wrongdoers to make an example of them. “I think that’s enough,” he says. “People already worry about being targeted by the privacy commissioner.”

But others disagree that reputational harm alone is a sufficient deterrent.

“I definitely think the possibility of having fines, or order-making powers, would encourage compliance more than the existing regime does,” says Blakes partner Mee, who believes many companies seek to comply as it’s the right thing to do. “A lot of organisations put in good efforts to comply with privacy legislation. But when push comes to shove, and they’re trying to balance all sorts of different obligations, they might look at privacy law and



ISTOCK.COM/ MICHAEL BURRELL

1977

Canada appoints first privacy commissioner, Inger Hansen.

2000

PIPEDA comes into force, giving the OPC jurisdiction over private sector privacy.

2001

European Commission PIPEDA adequacy decision.

2007

First parliamentary review of PIPEDA. Canada's government agrees with the ETHI committee that PIPEDA needs no significant changes.

2011

OPC under commissioner Jennifer Stoddart publishes report on ombudsman model.

2014

Canada's prime minister appoints Daniel Therrien as the Privacy Commissioner of Canada

2015

The Digital Privacy Act amends PIPEDA to introduce mandatory breach notification.

February 2018

Second parliamentary review of PIPEDA suggests boosting the OPC's enforcement powers, among other reforms.

November 2018

PIPEDA breach notification regime goes live.

think about what the consequences would actually be if they didn't comply with its requirements. There are maybe some reputational issues – which aren't insignificant because companies don't want to be publicly shamed. But otherwise, there's not really a lot."

An OPC spokesperson told GDR that the regulator has previously noted that it does not have "a specific amount in mind" for any maximum fines, "but the amount would have to be sufficient so as to incentivise companies to comply with the law as opposed to merely being the cost of doing business . . . Canada needs powers comparable to those in other jurisdictions in terms of order-making powers and fines in order to have meaningful impact on privacy protection and continue to enjoy the trade partnerships we have forged with Europe and others."

The outlook

The House of Commons' Standing Committee on Access to Information, Privacy and Ethics (ETHI) also believes that the current enforcement framework needs changing. In a report adopted in February 2018, the committee backed calls for Canada's privacy commissioner to receive "enforcement powers, including the power to make orders and impose fines for non-compliance", as well as "broad audit powers, including the ability to choose which complaints to investigate".

The committee also made a slew of further recommendations, including ensuring that consent remains the core part of PIPEDA, albeit with possible clarifications; ensuring that measures could be implemented to improve algorithmic transparency; making privacy by design a central principle of the legislation; and introducing rights to data portability, erasure and de-indexing.

The committee also explicitly pointed to the risk that Canada may risk losing its adequacy status with the EU's data protection

regime, urging the federal government to work with Europe to figure out what adequacy means post-GDPR. The EU considered PIPEDA adequate in 2001, allowing transfers of personal data from the bloc into Canada without the need for binding corporate rules, model clauses or certification by EU national data protection authorities.

But the GDPR goes into more detail about exactly what is needed for non-EU countries to be deemed adequate, compared to the old regime; the European Commission now needs to look at the "existence and effective functioning of one or more independent supervisory authorities . . . with responsibility for ensuring and enforcing compliance with the data protection rules, including adequate enforcement powers". EU data protection enforcers can now impose enormous fines; will the European Commission consider that PIPEDA provides for adequate enforcement powers? With the commission set to review the matter before 2020, it's now a live issue for Canada's government.

Canada's Innovation, Science and Economic Development (ISED) Minister Navdeep Bains responded to the ETHI committee's advice by saying the federal government "shares the committee's view that changes are required to our privacy regime to ensure that rules for the use of personal information in a commercial context are clear and enforceable and will support the level of privacy protection that Canadians expect". Bains said the government agrees that "the time has come to closely examine how . . . PIPEDA's enforcement model can be improved", and will "assess the viability of all options" to strengthen the legislation's compliance and enforcement regime. Bains said the government will look at alternative models and consider their potential effects on several issues – including the effect on "open dialogue between businesses and the OPC".

Bains also said Canada's government is working with trade partners to discuss

“The time has come to examine how PIPEDA’s enforcement model can be improved.”

— NAVDEEP BAINS

international data transfers and the interoperability of different data privacy regimes; and is in talks with the European Commission to understand what it would need to maintain its PIPEDA adequacy decision. He also noted the ETHI recommendations on introducing GDPR-like data subject rights – like portability and an explicit right to be forgotten – into the federal Canadian regime. Bains said it is unclear that PIPEDA needs to mirror the GDPR’s rights and protections to maintain its adequacy status, as the GDPR mandates only “essential equivalence” to its own regime rather than an exact match (though he promised to consult on the possibility of nonetheless incorporating those rights into PIPEDA). Several observers say the potential killer of any adequacy decision would probably not be Canada’s differing approach to data subject rights: at the end of the day, while details may differ on the approach towards these rights, the EU could simply think the rights mean little if the OPC cannot meaningfully enforce them.

In a statement to GDR, Canada’s innovation ministry noted a government consultation launched in June 2018 on digital innovation. A report from the consultation is set to be published in autumn. “As noted by Minister

Bains, this report will guide any legislative or policy changes that the government may make,” an ISED spokesperson said.

Torkin Manes partner Lifshitz believes there will have to be reform.

“I’m holding my breath and waiting for the first opportunity for a European citizen to show the current Canadian framework is inadequate under the GDPR,” she says. “There are serious concerns that the current framework is insufficient, compared to the current protections in the EU. That’s going to be the real impetus for reform.” Whatever happens, observers agree that they would like to see more guidance that companies can use to stay on the right side of the line – though one says some hard precedent through enforcement and case law would be even more useful.

But John Beardwood notes that while the Liberal Party-led federal government could be helpful to the privacy commissioner, the party “[walks] a tightrope between being pro-industry and anti-business. Granting any sort of order-making powers to the privacy commissioner is likely to be considered anti-business. I’m not sure what side of the fence they would want to be on right now – and it’s not that pressing an issue.”



Brazil's new data protection law

Fabio Ferreira Kujawski and Maíra Schweling Scala at Mattos Filho in São Paulo lay out the key features of Brazil's new data protection legislation.

After many years of debate, Brazil's Congress finally passed a data protection bill on 10 July. The bill was sent for enactment by Brazil's president, who signed it into law on 14 August; it will be effective in 18 months.

Until now, the Federal Constitution included general principles of privacy, and certain statutes provided for the right of privacy in specific circumstances. The recently approved data protection bill, known as the LGPD, is the first general law aiming to regulate the right of privacy as a fundamental right of any individual, regardless of the type of relationship established with a controller. It is significantly inspired by the EU's GDPR. Non-compliance with the LGPD can result in fines of up to 2% of the net turnover of the infringing entity's conglomerate in Brazil in the previous fiscal year, limited to 50 million reais (€11,078,110) per violation.

Applicability

The LGPD will apply to any data-treatment activities carried out by a private entity or government, regardless of how the data is collected; whether the data has been collected in Brazil; or the country where the



FABIO KUJAWSKI
Mattos Filho



MAÍRA SCHWELING SCALA
Mattos Filho

controller, processor or data is located, provided the data treatment takes place in Brazil or the purpose of the data treatment activity is the offer of goods or services to individuals located in Brazil.

The LGPD will not apply to data treatment carried out by an individual for personal reasons; for journalistic, artistic or academic purposes; or by government agencies for national security and criminal prosecution matters.

Definitions of personal, sensitive and anonymised data

The LGPD defines personal data as any information relating to an identified or identifiable individual.

Sensitive data is defined as any personal data relating to an individual

regarding racial or ethnic origins, religious or political beliefs and affiliations, health, sexual orientation, and genetic or biometric data.

Anonymised data is defined as a data belonging to an individual that cannot be identified or identifiable, considering the use of technical mechanisms available at the time of its treatment. The LGPD does not regulate anonymised data unless it becomes personal data if the anonymisation process is reversed or could be reversed with reasonable efforts.

Lawful basis for processing data

The LGPD determines the lawful basis for processing data, among which we highlight the following: free, informed and unequivocal consent; compliance with contracts or legal obligations; the exercise of rights in administrative or judicial proceedings; protecting the life of the data subject; protection of health when the processing is made by health professionals or sanitary agencies; legitimate interest of the controller, except if the data subject's privacy rights should override the controller's legitimate interest; and for the protection of trade, for example, the prevention of fraud.

When sensitive data is treated on

the basis of consent, in addition to the attributes mentioned above, consent should be express and provided separately.

As we can see, the LGPD contemplated other means by which data can be treated, differently from the Internet Act, which relied almost exclusively on the data subject's consent.

Underlying principles for data processing

Any data processing shall abide by the following principles: lawfulness and specific purposes; adequacy; data minimisation; right of access; accuracy of data; transparency; security and prevention; non-discrimination; and accountability of the data controllers and data processors.

Similar to the provisions of the GDPR, the LGPD also requires controllers and processors to implement records of processing, through which all important characteristics of the data treatment should be described, including, among others, the lawful basis adopted by the controller or the processor.

The data processor may be held jointly and severally liable with the data controller if it violates the LGPD, or if it fails to comply with the controller's processing instructions. As a result, controllers and processors shall ensure that their current agreements are clear on the characteristics of the data processing and that all instructions from controllers are subject to written confirmation from the processor.

The data subject might be entitled to the shift on the burden of proof in legal actions brought against controllers or processors, whenever the data subject is considered vulnerable or when proving the allegations might be considered very burdensome to the data subject. This is the same procedural benefit to which consumers are entitled under Brazil's Consumer Protection Code.

Children's data

The LGPD affords additional protection with respect to data collected from children and adolescents. It establishes that their data can only be processed in their best interests and upon the consent of their parents or legal guardians. Controllers and processors must make reasonable efforts to verify whether the consent was actually given by the respective parent or legal guardian.

National Data Protection Authority

The LGPD creates the National Data Protection Authority (ANPD), an agency subordinated to the Ministry of Justice that will be responsible for regulating, supervising and enforcing the legislation. [Editor's note: Brazil's president Michel Temer vetoed the creation of the ANPD on constitutional grounds when he signed the LGPD into law on 14 August. He indicated at the

Data breach notification requirements

The LGPD determines that the individual or legal entity responsible for the data treatment shall notify the ANPD and, in some cases, the data subjects in the event of any security incident that could lead to significant risk or cause damages to such data subjects.

The communication must be delivered within a reasonable time, to be determined by the ANPD, and must address all important aspects concerning the incident, such as the nature of the personal data affected, the technical and security measures employed to the data, risks relating to the incident, the reasons for any delayed notification, and the measures that have been or will be taken to reverse or mitigate the effects of the data incident, among others.

"THE LGPD IS THE FIRST GENERAL LAW AIMING TO REGULATE THE RIGHT OF PRIVACY AS A FUNDAMENTAL RIGHT OF ANY INDIVIDUAL."

time that he nonetheless planned to create a data protection agency through separate legislation. This article was written before President Temer signed the bill into law.]

International data transfers

International data transfers are permitted solely in the cases provided for in the LGPD, which include data transfer to countries that provides an adequate level of protection (to be defined by the ANPD); data transfer duly authorised by the ANPD; data transfer necessary for the protection of the life or physical safety of the data subject or third parties; a data subject's specific consent; model clauses, binding corporate rules and codes of conduct duly approved by the ANPD.

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