

***A Little Privacy Please! What Lawyers
Need to Know About New Developments in
Data Protection***

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ASSOCIATION OF BUSINESS TRIAL LAWYERS

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Cybersecurity Landscape

- **Data Breach Notification Statutes**
 - 54 US Jurisdictions
- **New York Department of Financial Services (NYDFS) Cybersecurity Rule**
- **Federal Trade Commission**
 - Section 5: “unfair or deceptive acts or practices in or affecting commerce”
- **Securities and Exchange Commission (SEC) Statement and Guidance on Public Company Cybersecurity Disclosures (17 CFR Parts 229 and 249)**
- **Health Insurance Portability and Accountability Act (HIPAA)**
- **European Union (EU) General Data Protection Regulation (GDPR)**

Notification Periods

| Jurisdiction | Time |
|--|--|
| California | “most expedient time possible and without unreasonable delay... ” |
| NY Department of Financial Services | 72 hours |
| Colorado | 30 days |
| Florida | 30 days |
| Ohio | 45 days |
| Washington | 45 days |
| Connecticut | 90 days |

General Data Protection Regulation



Overview

- General Data Protection Regulation (GDPR)
- EU privacy regulation adopted in 2016; effective May 25, 2018
- Replaces the Data Protection Directive adopted in 1995
- Sets uniform minimum privacy and data security protections across EU member states
- GLOBAL SCOPE: applies to any processing of “personal data”
 - within the EU; OR
 - of a data subject in the EU, regardless of location of processing
- “Personal data” = any data relating to identified or identifiable person
- Significant expansion of privacy rights and requirements

Key requirements

- **Legal bases of processing** (Art. 6)
- **Express Consent** (Art. 7)
- **Data Subject Rights** (Arts. 13-20)
- **Privacy by Design & Default** (Art. 25)
- **Processor Liability** (Art. 28)
- **Record of Processing Activities** (Art. 30)
- **Data Security** (Art. 32)
- **Data Protection Impact Assessments** (Art. 35)
- **Breach Notification** (Arts. 33, 34)
- **Data Protection Officer** (Arts. 37-39)

PENALTIES

FINES

- Greater of **10M €**, or **2%** of global revenue from prior year
 - *E.g.*, breach notification
- Greater of **20M €**, or **4%** of global revenue from prior year
 - *E.g.*, data subject rights

SUSPENSION OF PROCESSING

CLASS ACTIONS

- Google, Facebook were sued for \$8.8B on May 25, 2018

DATA SUBJECT LAWSUITS

Law Enforcement Issues

- **Requests for customer information**
- **Legal process standards**
 - *United States v. Carpenter* (June 22, 2018) (No. 16–402)
- ***United States v. Microsoft Corporation* (No. 17-2)**
 - Supreme Court Argument (Feb 27, 2018)
- **Clarifying Lawful Overseas Use of Data ("CLOUD") Act**
 - Enacted March 23, 2018
- **Whether and when to report and seek assistance?**

