

Welcome and Some Housekeeping Items

- Your environment should be free from distractions
- Be sure to mute your microphone if you are not speaking
- Ask questions! Our panelists are happy to engage with you
- If you didn't provide your California bar number, email: socal@accglobal.com
- Watch for the survey/evaluation request sent to your email after the program

A reminder about the benefits of ACC membership...

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- Community Outreach, Diversity Initiatives & Pro Bono Offerings
- Leadership and Speaking Opportunities, Chicago Lawyer Subscription
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CPRA, CCPA and Emerging Technology Trends Reveal Potential Gaps in Data Privacy Measures

Association of Corporate Counsel
Southern California Chapter Event
May 20, 2021

Meet Our Speakers



Moderator:

Jessica Gil, Esq.

Associate Vice President
Consulting Solutions
Robert Half Legal



Panelist:

Katie Stevens

Director
Technology Consulting
Protiviti



Panelist:

Jessica Gross

Associate
Sheppard Mullin



Panelist:

Joel Wuesthoff, J.D.

Managing Director
Consulting Solutions
Robert Half Legal



- Industry statistics
- Evolving laws
- Operationalizing the process
- Key takeaways

What the Statistics Show

Robert Half Legal surveyed more than 200 lawyers with hiring responsibilities at law firms and companies in the U.S.



57%

are hiring for new positions in 2021.

Among the full-time positions being added:*

63% Lawyers

43% Data privacy specialists

41% Compliance specialists

*Top responses shown.

Robert Half Legal survey of more than 100 lawyers with hiring responsibilities at companies in the U.S.

74% said their legal department's spending on data privacy-related projects has increased compared to a year ago.

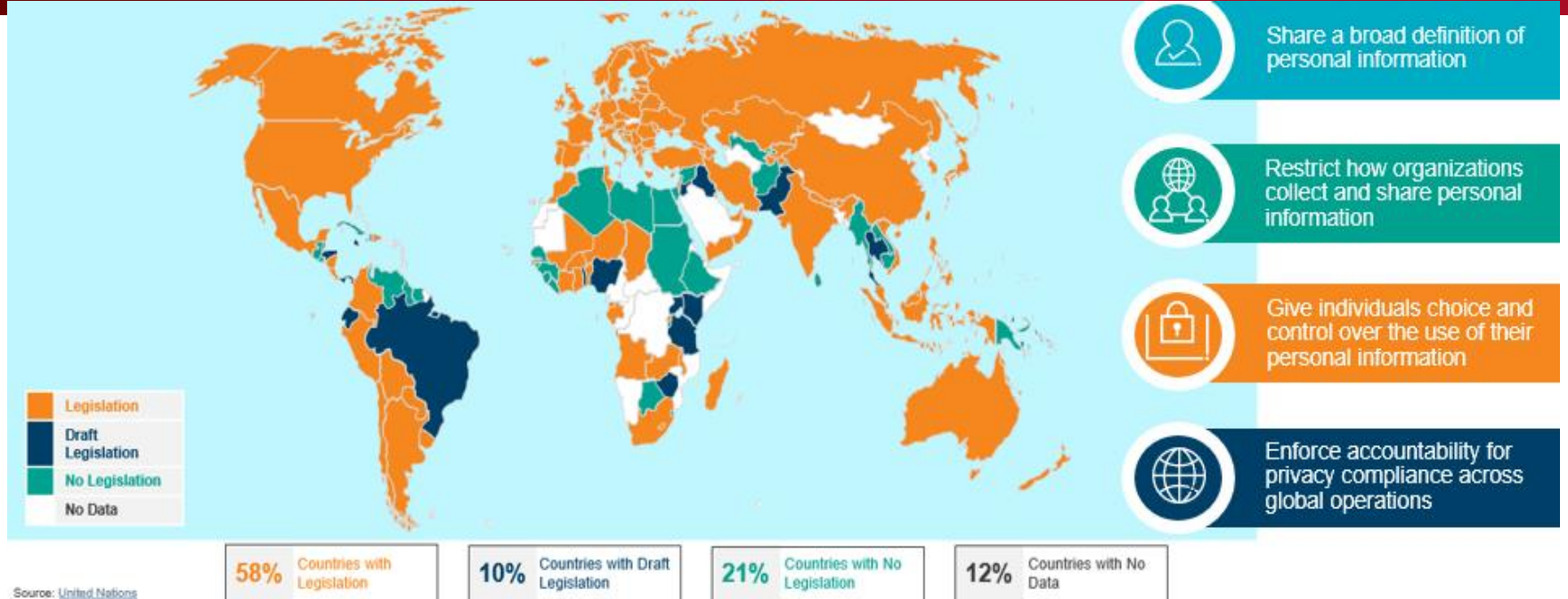
68% of legal department budgets, on average, will be spent on data privacy-related projects in 2021.

The top challenge cited in managing data privacy projects:*

25% Volume of data

22% Changing regulations

Global Privacy Law Regulations



Source: IAPP <https://iapp.org/resources/article/state-comparison-table/>

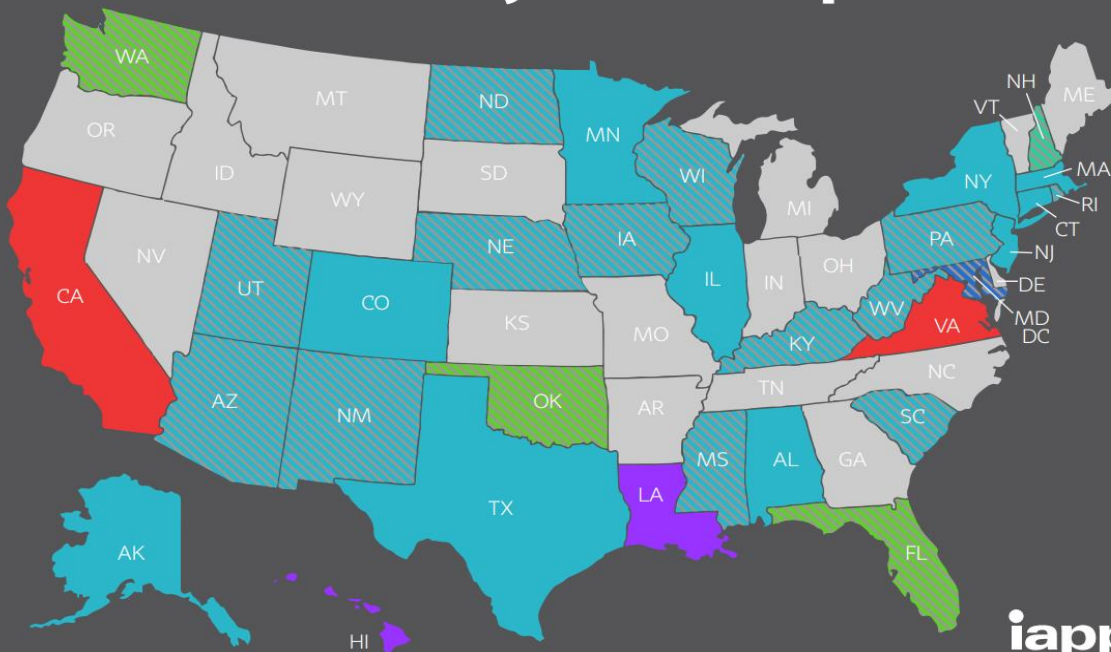
State Comprehensive-Privacy Law Comparison



- Task Force Substituted for Comprehensive Bill
- Bill Died in Committee or Postponed
- None

Statute/Bill in Legislative Process:

- Introduced
- In Committee
- Cross Chamber
- Cross Committee
- Passed
- Signed



Last updated: 5/10/2021



Privacy Statutes by State

Source: IAPP <https://iapp.org/resources/article/state-comparison-table/>

Comparison Table

<p>In Session: all above states</p>	Introduced	<p>L - private right of action for security violations only In - opt-in consent requirement p - prohibition without consent u - unclear s - opt-in requirement for all sensitive data</p>
	In Committee	
	Crossed Chamber	
	Cross Committee	
	Passed	
	Signed	

¹ California Privacy Rights Act's right of restriction/limitation is only applicable to sensitive personal data

Legislative Process: [Introduced](#) > [In Committee](#) > [Crossed Chamber](#) > [Cross Committee](#) > [Passed](#) > [Signed](#)

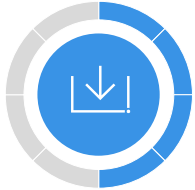
Further information and most recent version of the IAPP's US State Comprehensive Privacy Law Comparison can be found [here](#)

State	Legislative Process	Statute/Bill (Hyperlinks)	Common Name	Right of Access	Right of Rectification	Right of Deletion	Right of Restriction	Right of Portability	Right of Opt-Out	Right Against Automated Decision Making	Private Right of Action (s = security only)	Opt-in requirement-age	Notice/Transparency Requirement	Risk Assessments	Prohibition on Discrimination (exercising rights)	Purpose/Processing Limitation
LAWS PASSED (TO DATE)																
California		CCPA	California Consumer Privacy Act (2018; effective Jan. 1, 2020)	x	x	x	x				L 16	x				x
California ¹		Proposition 24	California Privacy Rights Act (2020; effective Jan. 1, 2023)	x	x	x	x	x	x	x	L 16	x	x	x	x	x
Nevada		SB 220/Ch. 603A	(2019; effective Oct. 1, 2019)							x				x	x	
Virginia		HB 2307	*Consumer Data Protection Act	x	x	x	x	x	x		13	x	x	x	x	x

Consumer Rights										Business Obligations						
Right of Access	Right of Rectification	Right of Deletion	Right of Restriction	Right of Portability	Right of Opt-Out	Right Against Automated Decision Making	Private Right of Action (s = security only)	Opt-in requirement-age	Notice/Transparency Requirement	Risk Assessments	Prohibition on Discrimination (exercising rights)	Purpose/Processing Limitation				

ACTIVE BILLS			
Alabama		HB 216	Alabama Consumer Privacy Act
Arizona		HB 2865	
Connecticut		SB 893	
Florida		HB 1734	Florida Privacy Protection Act
Florida		HB 969	
Illinois		HB 3910	Consumer Privacy Act
Kentucky		HB 408	
Maryland		SB 0930	Maryland Online Consumer Protection Act
Massachusetts		SD 1726	Massachusetts Information Privacy Act
Minnesota		HF 1492	Minnesota Consumer Data Privacy Act
Minnesota		HF 36	
New York		A 680	New York Privacy Act
New York		SB 567	
Oklahoma		HB 1602	Oklahoma Computer Data Privacy Act
Washington		HB 1433	People's Privacy Act
Washington		SB 5062	Washington Privacy Act 2021

California Consumer Rights



Access

(CCPA 1798.100)

A consumer shall have the right to request that a business that collects a consumer's personal information disclose to that consumer the categories and specific pieces of personal information the business has collected.



Erasure

(CCPA 1798.105)

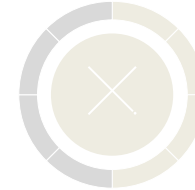
A consumer shall have the right to request that a business delete any personal information about the consumer which the business has collected from the consumer.



Disclosure

(CCPA 1798.110 & 1798.115)


A consumer shall have the right to request that a business disclose to the consumer information related to collection, sale, and disclosure of personal information. These sections provide requirements specific to the disclosure content.



Opt-Out

(CCPA 1798.120 & 1798.135)

A consumer shall have the right, at any time, to direct a business that sells personal information about the consumer to third parties not to sell the consumer's personal information.

- AG Enforcement Activity
 - 200+ Enforcement Letters sent
 - “Other uses”
- Privacy Policy Requirements
- Opt-Out of Sale  Do Not Sell My Personal Information
 - Disclosures of personal information “for monetary or other valuable consideration”



- Class Actions
- “Reasonable Security” requirement



The Future of CCPA & CPRA

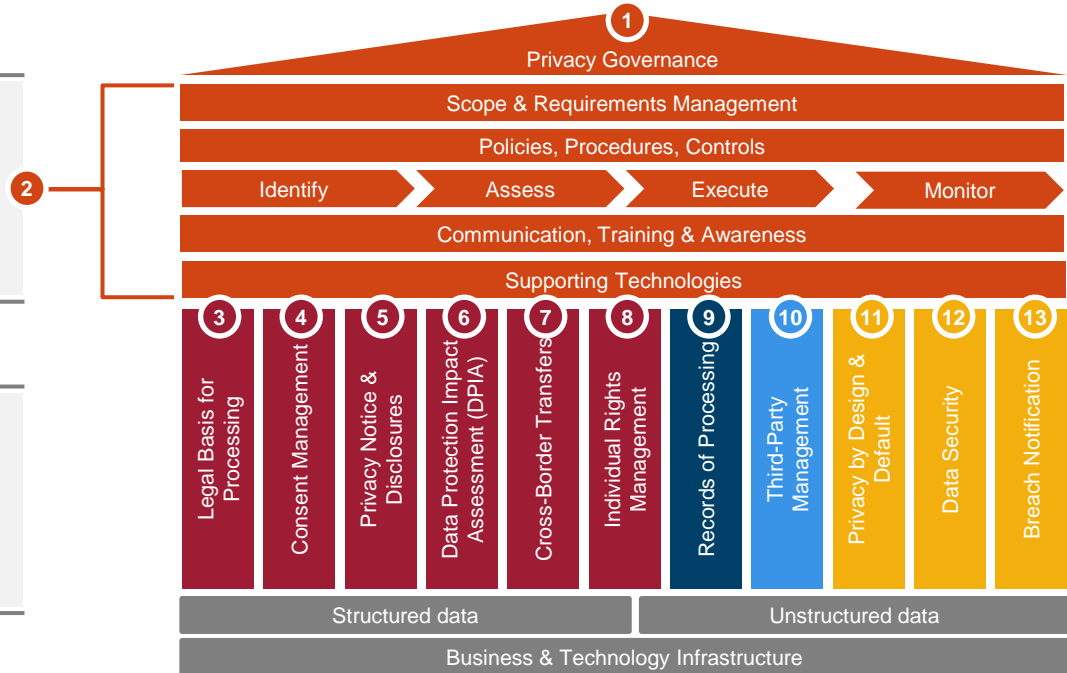


- Expands to include the right to opt-out of “sharing”
- Adds right to limit uses of “sensitive personal information”
- Not clear how employee and B2B data will be treated
- New agency
- DSR
- Emerging technologies and privacy by design

Impacts of a Privacy Management Framework

Adopting a Privacy Management Framework will help address privacy risk, drive ethical decisions around privacy and meet compliance obligations.

Knowing and documenting the collection, use, disclosure, retention and destruction of personal data is foundational to mature data management and data privacy.



Privacy & Data Protection Domains:

- Governance
- Privacy Obligations
- Recordkeeping
- Data Protection

Mapping to Regulatory Requirements

Privacy Controls Framework	Program Governance	1. Privacy Governance – designation of privacy function, roles and responsibilities	● ○ ○ ● ●		
	Privacy Obligations	2. Ongoing Compliance – policies, procedures, training and awareness	● ● ○ ● ●		
		3. Legal Basis for Processing – lawfulness of processing	● ○ ● ● ●		
		4. Consent Management – conditions for consent and consent evidence	● ● ● ● ●		
		5. Privacy Notifications – privacy information provided to individuals	● ● ● ● ○		
		6. Privacy Impact Assessment – identification and minimization of high-risk processing	● ○ ○ ● ○		
		7. Cross-Border Data Transfers – restricted transfer of personal data	● ○ ● ○ ○		
		8. Individual Rights Management (IRM) – individual’s privacy requests and complaints	● ● ● ● ●		
		9. Records of Processing – data inventory and recordkeeping	● ● ● ● ●		
	Record Keeping	10. Third-Party Processors – data processing agreements and compliance assessments	● ● ● ● ○		
	Data Protection	11. Privacy by Design & Default – data minimization, data retention, system development privacy considerations	● ● ○ ○ ●		
		12. Data Security – controls related to the confidentiality, availability and integrity of personal data	● ● ● ● ●		
		13. Breach Notification & Incident Response – identification and response to data breaches	● ● ● ● ●		
Privacy Law:	●	●	●	●	●
General Data Protection Regulation (GDPR)	California Consumer Privacy Act (CCPA) <small>(#12 & #13 are implied in other CA laws)</small>	Australian Privacy Principles (APP)	The Health Insurance Portability and Accountability Act (HIPAA)	Personal Information Protection and Electronic Documents Act (PIPEDA)	

Prioritizing Data Subject Rights Management

Observations



Data subject rights at core of most complaints



Most regulations follow the core rights of access, correct and delete



DSR penalties can be just as bad as data breach

Recommended Actions



Buy-in from data owners to develop tools for efficiency



Treat all data by the strictest standards



Explore providing data subjects with the option to carry rights on their own



Treat DSR the same as incident response (i.e., test regularly, prepare and respond)



The Evolution of Privacy Tech

Source: [Michael Tefula](#)

CONSUMER LIBERTY

- Personal Data Economy
- Privacy Assistants
- Private Communities

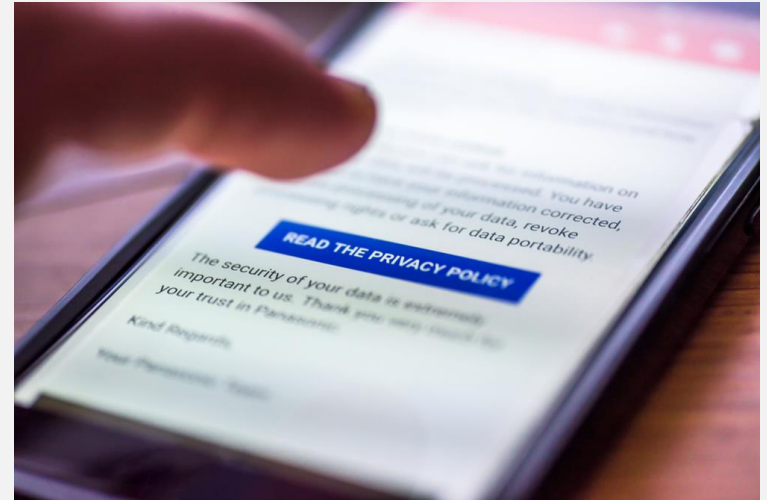
REGULATORY COMPLIANCE

- Automated Compliance & Governance

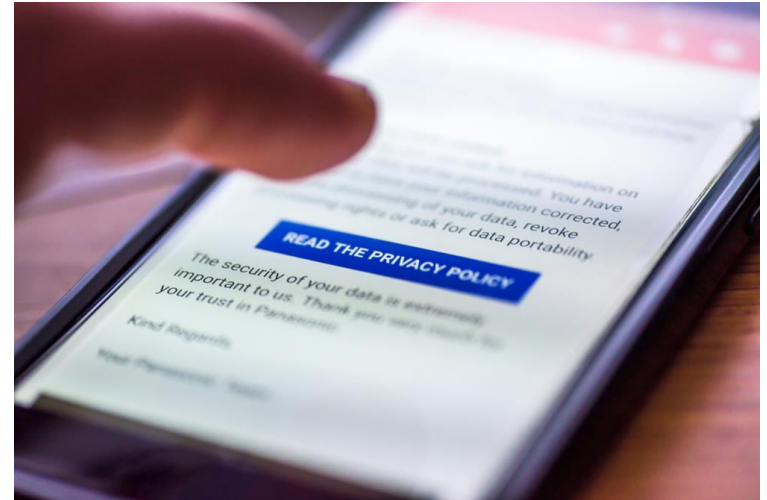
PRIVACY BY DESIGN

- Data Anonymization Tools
- Data Privacy Tools

- [IAB CCPA Compliance Framework for Publishers & Technology Companies](#)
 - Opt-out program
 - Recently released data deletion specifications
- [Digital Advertising Alliance](#)
 - Expanded global preference settings



- Google
 - Third-party cookie requirements
 - “Secure-by-default” through SameSite classification system
- Apple
 - Safari anti-tracking and third-party cookie blocking
 - iOS 14.5 anti-tracking
 - App Store requirements



- COVID-19 screening data
- Contact-tracing
- Mobile health apps
- Vaccines
- EEOC



U.S. Laws

- 2020: Most legislative attempts failed
- 2021: About half are pending; half have failed
- AI for hiring and BCG

EU

- 2020: EC white paper on AI



Under CCPA:

- **Notice at Collection:** Businesses must provide employees with disclosures about:
 - What categories of personal information are collecting about them
 - AND
 - The purpose for collecting that information
 - » AG regulations clarify that if the business wants to use the personal information for another purpose, it must provide new notice that contains information about the new use
- **Reasonable Security:** California employees will have the right to bring an action against businesses for breaching their data and recover \$100-750 damages per person.

Under CPRA - January 1, 2023: Workforce have full rights under the new California Consumer Privacy Right Act **unless otherwise amended.**



Key takeaways

Additional Resources



[IAPP: State Comprehensive Privacy Law Comparison](#)

[European Commission White Paper: On Artificial Intelligence - A European approach to excellence and trust](#)

[Cross-Device Tracking: A Federal Trade Commission Staff Report](#)

[California Data Breach Report 2012-2015](#)

[Executive Perspectives on Top Risks for 2021 and 2030, Protiviti](#)



Jessica Gil, Esq.

Associate Vice President, Consulting Solutions, [Robert Half Legal](#)

PROFESSIONAL EXPERIENCE

Jessica Gil is an Associate Vice President for Robert Half Legal Consulting Solutions (RHLCS). Formerly a practicing attorney, she started with Robert Half as an Account Executive specializing in the placement of contract attorneys and paralegals before quickly transitioning into her current role.

Jessica helps clients implement solutions in a wide variety of areas including eDiscovery & litigation, compliance, contracts and data privacy. Her clients rely on her to provide strategies and project plans that are transparent, predictable and effective.

RHLCS works with law firms, corporations and government clients to build custom-tailored solutions to fit their specific needs and budgets. Solutions incorporate subject matter expertise, technology and staffing augmentation. RHLCS is the only single solution that brings world-class caliber consulting and one of the largest networks of specialized staffing resources together to help our clients prioritize, complete, and manage ongoing projects.

CONTACT

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AREAS OF EXPERTISE

- eDiscovery (collection, hosting & processing)
- Litigation Management
- Privacy
- In-house Legal Departments & Law Firms

INDUSTRY EXPERTISE

- Healthcare
- Financial Services
- Manufacturing
- Technology and Software

EDUCATION

- J.D., Creighton School of Law
- B.A., University of Portland

PROFESSIONAL MEMBERSHIPS & CERTIFICATIONS

- Virginia State Bar – Esq.
- Women in eDiscovery



Katie Stevens

[Director, Technology Consulting, Protiviti](#)

PROFESSIONAL EXPERIENCE

Katie Stevens is a Director in Protiviti's Security & Privacy practice who leads the firm's Privacy as a Service (PaaS) managed services globally.

Katie has more than 16 years of Security & Privacy experience and 20 years of overall technology experience. Prior to joining Protiviti, Katie assumed a lead Technology Risk and Compliance role at a global banking firm with focus in IT Risk Management, Identity & Access Management, Business Continuity and Data Protection.

Since joining Protiviti in 2011, Katie has provided Security & Privacy services for clients in a variety of industries, including financial services, healthcare services, retail, consumer products and legal services.

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AREAS OF EXPERTISE

- InfoSec & Compliance
- Data Governance & Privacy
- Identity and Access Management
- Role Based Access Control
- Application & Data Security

INDUSTRY EXPERTISE

- Financial Services
- Consumer Product
- Legal Services
- Healthcare Services
- Retail
- Hospitality Services

EDUCATION

- MBA, Business Administration, Rockhurst University, Kansas City
- Associate, Project Management, George Washington University
- BS, Management Information Systems, Iowa State University



Jessica R. Gross, Esq.

Associate, Sheppard Mullin

PROFESSIONAL EXPERIENCE

Jessica Gross is an associate on the Privacy & Cybersecurity team at Sheppard Mullin's San Diego office and is the Lead Associate of the Blockchain Technology & Digital Currency team. Jessica is a data privacy and security professional who helps clients understand their obligations and address some of the biggest challenges of today's digital world.

As an associate in the Labor and Employment Group, Jessica assists on employee privacy and personnel management issues, including background checks, device and social media use policies and other employment agreements such as proprietary innovation and information agreements.

Jessica also supports the firm's eDiscovery needs and other general litigation matters. Managing complex electronic discovery issues can be daunting. Jessica can assist litigation counsel and trial teams with the collection, production and presentation of electronically stored information.

As a former judicial law clerk for a federal magistrate judge, Jessica is well-trained to effectively and efficiently manage discovery obligations and resolve discovery disputes in motion practice if necessary.

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PRACTICE AREAS

- Privacy and Cybersecurity
- Labor and Employment law

INDUSTRY EXPERTISE

- Blockchain & Fintech

EDUCATION

- J.D., California Western School of Law, *cum laude*
- B.A., University of California, San Diego

PROFESSIONAL CERTIFICATIONS

- Certified Information Privacy Professional – U.S. Private Sector
- Certified Information Privacy Professional – Europe
- OneTrust Privacy Management Professional



Joel Wuesthoff, J.D.

Managing Director, Consulting Solutions, Robert Half Legal

PROFESSIONAL EXPERIENCE

Joel Wuesthoff is a former practicing attorney, Certified Information Systems Security Professional (CISSP), Certified Third-Party Risk Professional (CTPRP) and a Managing Director for Robert Half's Legal Consulting Solutions in New York. With 20-plus years of legal practice and consulting work in high-stakes litigation and government investigations, he has led information governance engagements and privacy & security assessments for complex enterprises, working with general counsel's offices, Chief Risk Officers, audit committees and IT departments to improve risk postures resulting from privacy mandates and security imperatives.

Joel works with clients to identify solutions for managing cybersecurity, privacy and related Big Data challenges and social media application growth, helping to align legal objectives with IT department priorities and responsibilities, and develop process and protocol manuals to standardize the entire risk management process.

CONTACT

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AREAS OF EXPERTISE

- Security & Privacy Law
- Electronic Discovery and Evidence
- Corporate Governance, Risk and Compliance

INDUSTRY EXPERTISE

- Healthcare
- Financial Services
- Litigation & Investigations
- Technology and Software

EDUCATION

- J.D., Vermont Law School
- B.A., McGill University

PROFESSIONAL MEMBERSHIPS & CERTIFICATIONS

- Certified Information Systems Security Professional (CISSP)
- Certified Information Privacy Professional/Europe (CIPP/E)
- American Bar Association's Fall Meeting: Cybersecurity: A Unified Approach across Public Markets [DFARS & NIST 171/53]
- Author: A Look at the Cybersecurity Legal Landscape in 2017: The State of the Law and Potential Liability
- Co-author of "Topical Issues in Cross Border Discovery; Reconciling Personal Data Regulations and International Guidelines, 5th Annual Sedona Conference International Program, Zurich 2013
- Author, Sedona Conference Writing Committee, Cyber Liability Issues and Recommendations



Thank You

