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SYMPOSIUM 2025

Law Firm Data Insights and Governance

Data, Data Everywhere!

Agenda

- Introduction
- Breaking the Ice & Hypothetical
- Importance & Risks
- Data Governance & Handling
- Managing Privacy
- Managing Data Governance Policies
- Final Thoughts
- Questions

Breaking the Ice & Hypothetical

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Breaking the Ice

- Share a memorable adventure (experience/challenge) faced while managing large volumes of data in your legal practice? How did you navigate through it?

Hypothetical

- You are an associate at a law firm. A new corporate client comes to you with a litigation matter and a number of requests for production incorporating email, ephemeral messaging, and mobile/laptop devices. What are the issues/concerns that are going to matter from a data governance perspective? What are the questions you should have prepared for your clients? Who are the experts you should have on your team?

Importance & Risks

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Why is data governance important and what are the risks involved?

- Sanctions
- Costs: Litigating collection (discovery) vs litigating the merits
- Data Hygiene

Importance & Risk: Sanctions

FRCP 37(e)

- (e) Failure to Preserve Electronically Stored Information. If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:
  - (1) upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or
  - (2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:
    - (A) presume that the lost information was unfavorable to the party;
    - (B) instruct the jury that it may or must presume the information was unfavorable to the party; or
    - (C) dismiss the action or enter a default judgment.

Importance & Risk: Sanctions

Reasonable Preservation

- ***In re Google Play Store Antitrust Litig*., No. 21-md-02981-JD (N.D. Cal. March 28, 2023)** – failure to suspend automated janitorial functions, giving "each employee carte blanche to make his or her own call about what might be relevant," and "intentionally deciding not to check up on employee decisions" (essentially "a 'don't ask, don't tell' policy for Chat preservation") found not to have been reasonable steps to preserve.

Intent to Deprive

- ***GMS Indus. Supply, Inc. v. G&S Supply, LLC*, No. 2:19-cv-324 (RCY) (E.D. Va. Mar. 22, 2022)** – in this case, the court found intent to deprive based on the defendant's decision, after receiving hold notices, to download an application called File Shredder and use it to permanently delete all user created files on his computer

Importance & Risk: Other Factors & Things to Remember

Irretrievable loss or prejudice

Sanctions can Exceed the Case Value.

- ***Klipsch Grp., Inc. v. ePRO E-Commerce Ltd*., 880 F.3d 620 (2d Cir. 2018)** – in this case, the Second Circuit approved discovery sanctions – including a $2.7 million award of fees and costs in a case with a value of around $20,000 – over the Defendant's objection that such sanctions were "impermissibly punitive, primarily because they are disproportionate to the likely value of the case," because as the court explained "the monetary sanctions it awarded properly compensated Klipsch for the corrective discovery efforts it undertook with court permission in response to ePRO's misconduct."

Importance & Risk: Costs

Discovery is already expensive, why tack on motions practice litigating the collection/discovery process?

- According to a survey of Fortune 200 companies, "while only some of the survey respondents were able to provide data on a per case bases, for the period 2006-2008, the average company paid average discovery costs per case of $621,880 to $2,993,567."
  - https://www.uscourts.gov/sites/default/files/litigation_cost_survey_of_major_companies_0.pdf

Data Governance & Handling

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Data Hygiene

Data Governance & Handling

A disciplined method for overseeing data throughout its entire life cycle, from acquisition and utilization to eventual disposal.

Data Governance: Framework

Data Governance: Emerging Data Types

- Ephemeral messaging
- Mobile
- Collaboration (Teams etc.)
- GenAI/CoPilot/Other Corporate Custom Tools

Managing Privacy

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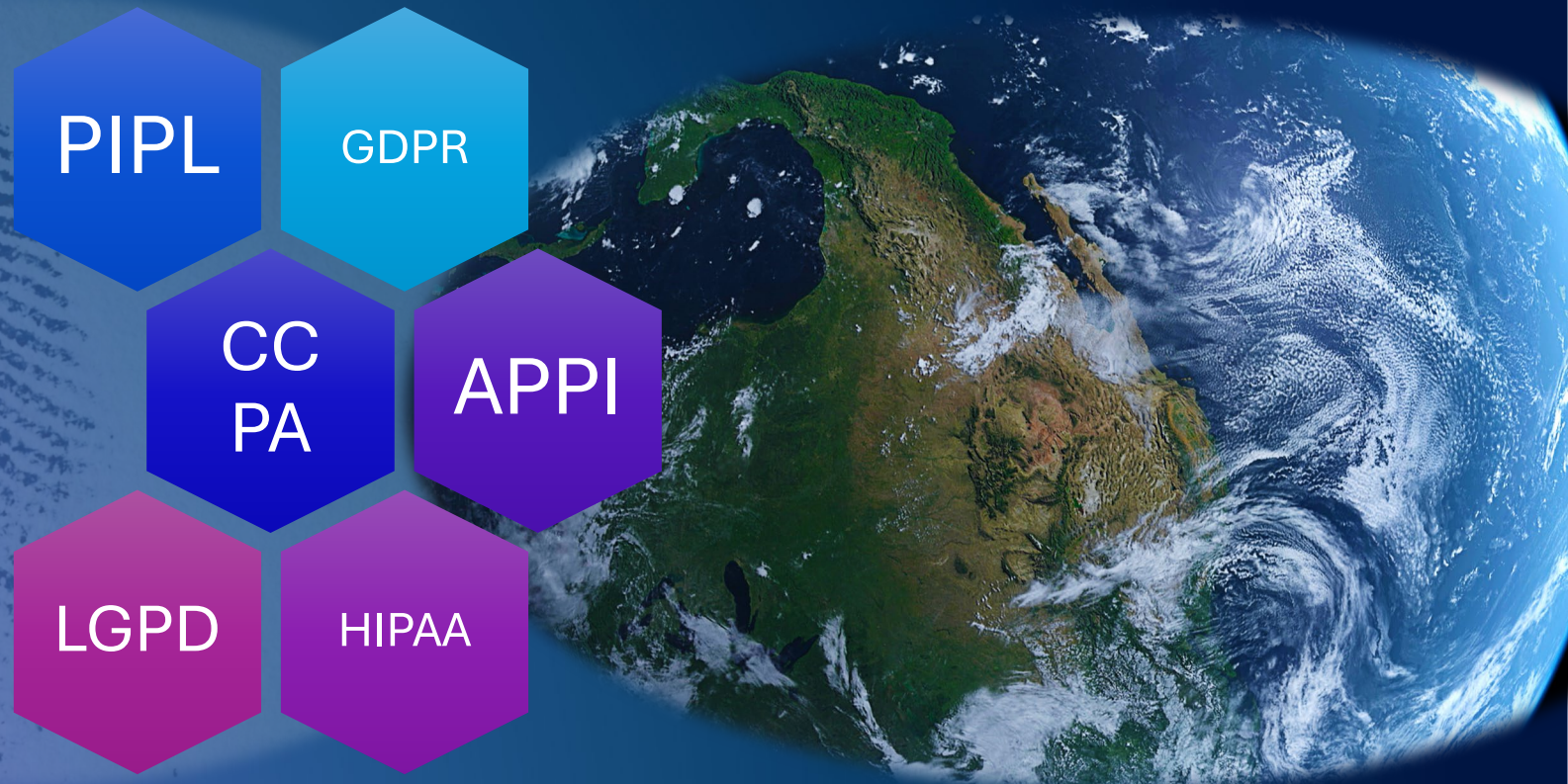
Managing Data Privacy

A person should have authority/control over their personal data, including the ability to decide how organizations collect, store and use their data.

Privacy Regulations & Compliance

Art. 25 GDPR

The controller shall implement appropriate technical and organisational measures for ensuring that, by default, only personal data which are necessary for each specific purpose of the processing are processed.



Privacy by Design

- **Via Policy**
  - Integrating privacy considerations into the design and development of systems and processes ensures that privacy is maintained throughout the data lifecycle.

- **Via Workflow**
  - Implementing data minimization and anonymization techniques helps reduce the risk of data breaches and ensures that only necessary data is collected and processed.

Managing Data Governance Policies

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Managing Data Governance Policies

"I never had a policy; I have just tried to do my very best each and every day."

- Abraham Lincoln

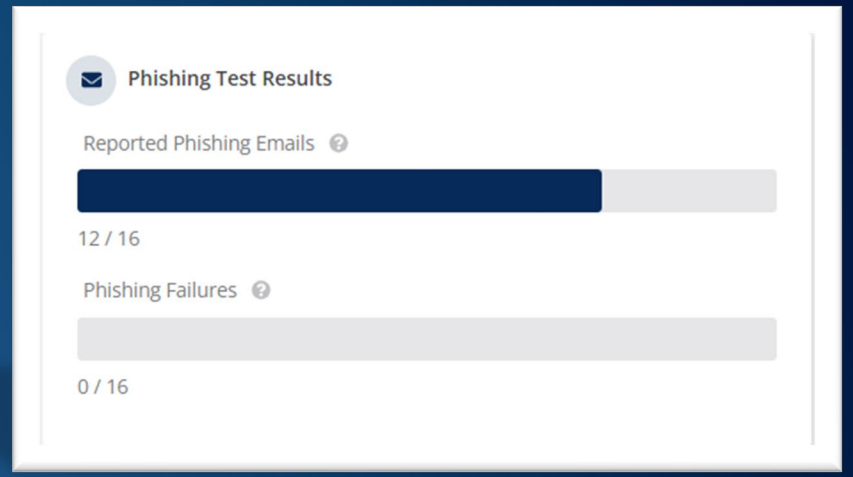
Policy Development

Policy Communication and Training

- Regularity of communications and training increases the chance that members of organizations will react appropriately when dealing with cybersecurity threats, data privacy, and overall sensitive data protection.

Policy Monitoring and Enforcement

- Examples Include:
- Role-Based Access Control/Data Encryption
- IP Controls for Access
- Email "Phishing" Tracking



Policy Refresh

- Recurring review of policy:
- Ensures up to date treatment for new data types/case law/legislation.
- Reduces organizational risk (incorporates lessons learned)
- Keeps policy fresh on the mind of those tasked with ultimate compliance.

Final Thoughts

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Hypothetical

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Final Thoughts

- Data Governance reduces risk of sanctions, avoids unnecessary motions practice costs, and ensures good overall data hygiene
- Data types are constantly evolving and having a data governance framework can ensure standardized and defensible approaches that meet the reasonable preservation burden standard.
- Protecting personal data is a legal requirement in most jurisdictions; good data governance encompasses the protection of personal data.
- An effective data governance policy is one that is monitored, updated, and enforced.

Questions

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