



**Federal Bar  
Association**

# **The Privacy Mindset of the U.S. v. EU: Implications for U.S. Businesses in a Post-COVID Era**

Managing eDiscovery Vendors and Contract Terms Issues

**Annual Meeting & Convention | Charleston, SC**

Follow the FBA at:





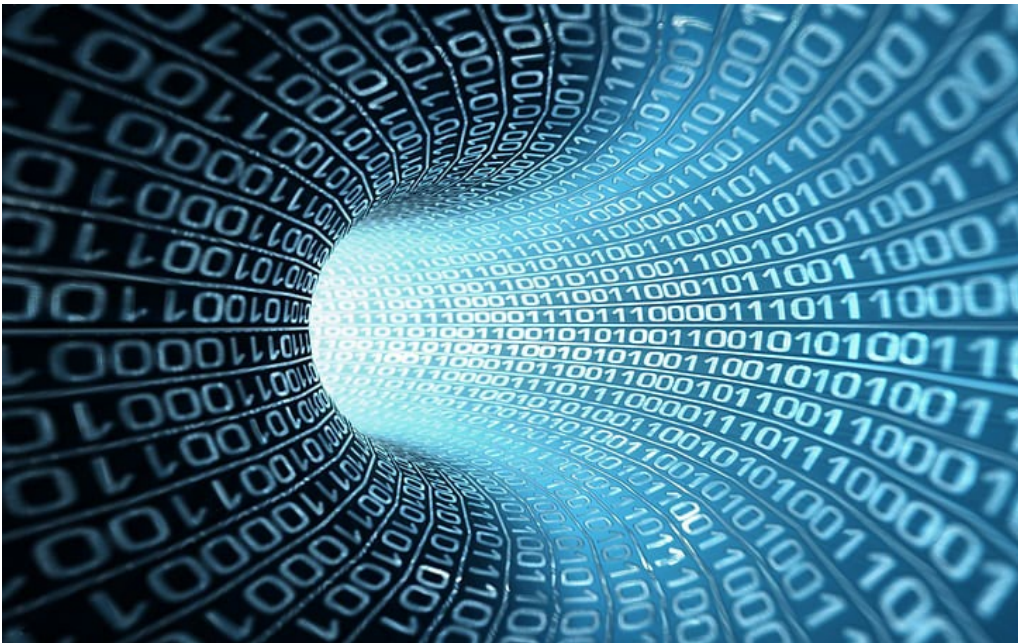
# Vendor Management and Contract Terms

- Practical Solutions/Best Practices
- Initial Considerations
  - Understand and document actual data flow (are we creating risk for our clients?)
  - Beware of secondary and collateral Uses
  - Determine and document the legal basis for Processing
  - Determine and document the legal basis for Onward Transfer
  - Legacy data- acquired prior to or separate from litigation purposes



# GDPR and Vendor Management

- It's a coordination thing
  - Complex/often changing data flow
- Consistent/coordinated basis for Processing and Onward Transfers?
- Does the paper match reality?



# Vendor Management and Contract Terms

**ANNUAL MEETING  
& CONVENTION**

September 15-17, 2022

- Risk Assessments
  - Completed prior to processing or disclosure
  - Frequency? Updates?
  - Third party Obligations (Are they consistent?)
    - Controllers?
    - Processors?



# GDPR and Vendor Management

- Processing and Onward Transfers?
  - Extent of applicable exception(s)?
  - More sources of risk than commonly understood
    - Legacy Data
    - Old contracts



# Vendors and eDiscovery

- Identify when non-US data protection laws do not allow for the processing or transfer of data requested in discovery.

- Organizational Tasks and Obligations

- Accountability
- Address both Privacy and Security?
- Regularly Review and Update – policies, procedures, training, etc.
- Understand, document and actively manage data flow and risks

Where processed

Cloud service providers

eDiscovery providers

Legacy data – Old consent?

Onward transfers within the same organization and with subsidiaries and parents

Old privacy policies, website terms of use, contract terms

Transfers between parties

# Discovery – Exceptions

- **Exceptions for Processing Personal Data (Article 6, GDPR)**
  - Consent
  - Necessary for compliance with a legal obligation of controller
  - Legitimate interests of the controller or third parties, unless the interests or fundamental rights and freedoms of the affected individual override those interests
- **Exceptions for Transferring Personal Data**
  - Consent
  - Legal Claims
- **Basis**
  - Binding Corporate Rules.
  - Standard Contractual Clauses.
- **Address and manage the contract terms with vendors to coordinate GDPR compliance between all parties!**