

DATA, PRIVACY & **CYBERSECURITY**



ROPES & GRAY

ADVANCES IN TECHNOLOGY are greatly increasing the value of data as an asset, even while cybersecurity threats and regulations—along with the growth of privacy regulations globally—are expanding

the potential liability of the misuse of personal data. Understanding complex data privacy and cybersecurity laws is essential to unlocking the full value of data.

HOW WE CAN HELP

Every business is now a data business. The collection, use, storage, commoditization, disclosure, transfer, security, theft and disposal of data create competitive, reputational and financial opportunities and risks. With some of the world's most experienced leading data lawyers, our team counsels clients and helps them manage the full array of issues that arise from data across transactions, business innovations, investigations and litigation.



PRIVACY AND CYBERSECURITY COMPLIANCE AND COUNSELING

Provide global guidance on key components of privacy and data protection laws and regulations, including developing robust information governance and tailored compliance plans, and preparing for and responding to data security incidents.



REGULATORY INVESTIGATIONS AND LITIGATION

Defend companies in investigations and litigations arising from cyberincidents and any resulting theft, loss or unauthorized use of confidential or personal information, as well as alleged violations of applicable data privacy requirements.

A. REGULATORY INVESTIGATIONS AND LITIGATION

B. PRIVACY AND CYBERSECURITY COMPLIANCE AND COUNSELING

C. CORPORATE INNOVATION AND TRANSACTIONAL SUPPORT



CORPORATE INNOVATION AND TRANSACTIONAL SUPPORT

Offer privacy and cybersecurity-related diligence for mergers and acquisitions, and advice related to the buying, selling and licensing of data, as well as complex collaborations to develop or exploit data.

MARKET RECOGNITION

■ **Chambers**

Edward McNicholas ranked individually in *Chambers Global* (2011–2019) and *Chambers USA* (2008–2019). Rohan Massey recognized as an “up and coming” individual by *Chambers UK*.

■ **Law360**

Named Privacy Group of the Year (2011, 2012, 2015, 2016 and 2018).

■ **The Legal 500**

Named a top-tier firm in the U.S. for “Media, technology and telecoms: Cyber law (including data protection and privacy),” and ranked for “Media, technology and telecoms: Data privacy and data protection” in 2018. Edward McNicholas recognized for cyber law and data protection and privacy (2012–2016); Rohan Massey recognized in 2016.

■ **Financial Times**

Shortlisted as a top firm for legal expertise by *Financial Times North America Innovative Lawyers 2018* due to the firm's success advising on privacy litigation.

■ **National Law Journal**

Edward McNicholas (2016) and Mark Szpak (2015) honored as Cybersecurity & Data Privacy Trailblazers.

A. PRIVACY AND CYBERSECURITY COMPLIANCE AND COUNSELING

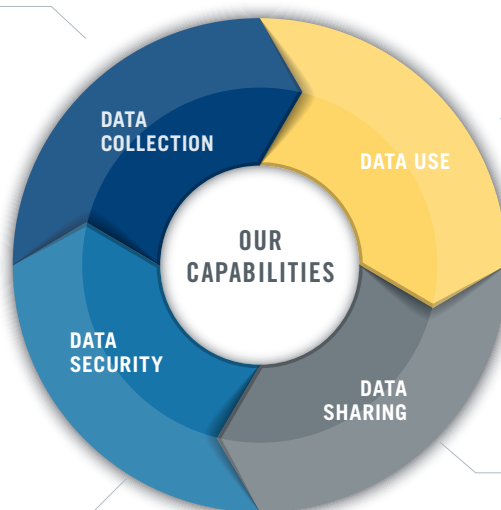
UNDERSTANDING INCREASINGLY COMPLEX privacy and cybersecurity laws and finding practical ways to address their implementation are top priorities for many clients. Our

compliance and counseling attorneys help clients comply with the law and minimize privacy and cybersecurity risks, as well as prepare for and respond to cyberincidents.

Advise clients on meeting their legal obligations under relevant statutory regimes:

- The EU's General Data Protection Regulation (GDPR)
- Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- Gramm-Leach-Bliley Act (GLBA)
- Fair and Accurate Credit Transactions Act (FACTA)
- California's Consumer Privacy Act (CCPA)

- Respond to cybersecurity incidents.
- Conduct privileged cybersecurity assessments to identify and mitigate risks.
- Provide privacy assessments and privileged advice on meeting legal obligations for consumer data privacy.
- Defend cybersecurity regulatory investigation and litigation.



Advise clients on key components of—and compliance with—global privacy and cybersecurity laws.

Advise clients on innovative data transactions to unlock the value of electronic data assets.

INCIDENT PREPAREDNESS

We advise clients on how best to prepare for a potential incident before it happens, as well what steps to take after discovery of a potential privacy or data security incident. We leverage our experience managing complex cybersecurity incidents to assist clients in developing incident response programs designed to prepare the organization and its employees before the discovery of a cyber threat or incident.

Capabilities

- Designing a flexible cyber threat and incident response plan, with guidance on appropriate investigation, escalation and communication
- Identifying and engaging appropriate external resources before an incident occurs

- Conducting tabletop exercises to practice incident response
- Reviewing logging and other data retention programs to ensure that appropriate information will be available for review by cyber-incident response teams

INCIDENT RESPONSE

Ropes & Gray's global presence means that we can have a response team in place within 24 hours of discovery of a cybersecurity incident—anywhere in the world. Drawing upon our experience managing privileged investigations and responding to cybersecurity incidents, our attorneys advise on the myriad legal issues that arise during an incident and help an organization avoid common and not so common pitfalls.

Capabilities

- Overseeing the forensic investigation of the scope and causes of the incident
- Advising on the implementation of appropriate containment, remediation and security enhancement programs
- Advising on reporting and disclosure obligations under applicable laws
- Developing e-discovery strategies around preservation, collection and technology-assisted review
- Providing other crisis management support, including guidance on internal and public communications, as well as interactions with law enforcement, boards of directors and C-suite executives

OUR TRACK RECORD

- **PERFORMED** a privacy, security and digital risk assessment for a consumer products company with **operations in more than 100 countries** around the globe.
- **ROLLED OUT** global privacy policy, terms of use and corresponding user dashboard for a popular suite of fitness apps **using teams of local counsel spanning five continents**.
- **DEVELOPED** privacy and security strategy for integration of three separate mobile app platforms, including addressing **global issues of user consent, control and transparency**.
- **REGULARLY CONDUCT** privileged, confidential investigations into cyberincidents, data misuse and trade secret misappropriation concerns for clients **across the technology sector**.
- **DEVELOPED** a global privacy program for a food products company in **more than 40 countries** around the globe.
- **ADDRESSED** privacy and security aspects for a U.S. and EU rollout of a popular mobile application and provide continuing support through the rollout of additional versions, features and technologies, **particularly as the company contemplates new data uses**.
- **ASSISTED** with scoping and execution of readiness exercises including **breach response and regulatory audit dry-runs**.
- **DRAFTED AND REVISED** a website privacy statement of an intelligent media company to address data collection use and disclosure **through multiple platforms**, including website, mobile and social, as well as integrating client's existing safe harbor policy.
- **DEVELOPED** and **successfully negotiated** a binding Corporate Rules application for a multinational health IT company.

UNMATCHED DEPTH OF EXPERIENCE

In the more than a decade since cyberincidents have begun to make an impact on global commerce, the attorneys now at Ropes & Gray have handled some of the highest-profile incidents, with hundreds of millions of dollars at stake. Companies represented include:

THE TJX COMPANIES Cyberincident		WYNDHAM HOTELS AND RESORTS Cyberincident involving computer networks		MIG Allegation of third-party cookie workaround	LIVINGSOCIAL Global hack of more than 50 million credit cards	TARGET Cyber-incident	THE HOME DEPOT Cyber-incident	USIS Advanced persistent threat cyberattacks	ARBY'S Cyber-incident	YAHOO Data breaches		
2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
HEARTLAND PAYMENT SYSTEMS Cyberincident within processing system		SONY Criminal cyberattacks affecting more than 100 million Sony entertainment accounts		MAJOR INS. CO. Criminal cyberattack on computer network		NEIMAN MARCUS Credit card breach		LABMD Ropes & Gray challenges FTC at 11th Circuit		MICHAELS STORES Credit card breach		INVESTMENT BANK Largest MNPI loss

“Their record is unmatched. Many law firms claim to have a major data security practice, but Ropes invented it, litigated, and won all of the important early cases in this field.”

—U.S. News & World Report

B. CORPORATE AND TRANSACTIONAL

THE ACQUISITION and management of data has become a pervasive business concern that presents legal issues in corporate transactions across industries and geographies. Our corporate and transactional attorneys help clients navigate their data concerns and proactively identify data, privacy and cybersecurity risks that may be underlying a potential deal.

- We perform privacy and cybersecurity-specific due diligence to assess and address risk in the

context of private equity deals, mergers and acquisitions, and other corporate transactions.

- We advise clients on buying, selling and licensing data; the formation, acquisition and sale of companies built on data analytics; and the development and monetization of technology infrastructure essential to data mining and data science.
- We assist clients in understanding the legal landscape surrounding the alternative data marketplace and

addressing the risks associated with participation in that market.

- We provide support for securities offerings, including reviewing investor-facing language to identify statements that may warrant reconsideration to reduce risk in light of recent enforcement actions and class-action litigation.
- We review and negotiate contracts concerning data and vendor relationships.

C. CIVIL LITIGATION AND REGULATORY ENFORCEMENT

ROPES & GRAY ATTORNEYS have handled civil litigation and regulatory investigations resulting from some of the highest-profile cases in courts throughout the United States, as well as before the Federal Trade Commission (FTC), Office of Civil Rights (OCR), Securities and Exchange Commission (SEC), virtually every state attorney general’s office, and non-U.S. regulatory bodies, including the U.K.’s Information Commissioner’s Office (ICO) and Financial Conduct Authority (FCA).

CIVIL LITIGATION

We defend clients in the civil litigation that often follows a cybersecurity incident or allegations of privacy violations. Our clients include victims of some of the largest cybersecurity

incidents involving personal information, including individual consumers, financial institutions, card brands, vendors and shareholders.

Our experience includes handling privacy litigation brought under federal statutes, such as the Telephone Consumer Protection Act, the Consumer Fraud and Abuse Act, the Stored Communications Act, GLBA, HIPAA, FACTA, the FTC Act, and the Wiretap Act; under state common-law theories and state statutes governing unfair and deceptive trade practices, ZIP code collection practices, data breach notification, and cybersecurity; and under a wide range of non-U.S. regulatory regimes.

REGULATORY ENFORCEMENT

Privacy and cybersecurity incidents often result in government investigations. On the privacy side, we represent and defend clients in investigations by national regulators in the United States, European Union and Asia (e.g., OCR, FTC, SEC, FCA, CNIL, ICO, etc.), or by state attorneys general, regarding allegations that an entity broke the law by the manner in which it collected or used personal information. On the cybersecurity side, we represent and defend clients in investigations by regulators or state attorneys general regarding allegations that an entity broke the law by the manner in which it maintained or secured information, which can include personal information or business and corporate information and systems.

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