

# Regulatory Aspects of International Data Transfers

Gabriela N. Smith, Esq.

The Gabriela Noemí Smith Law Firm, PLLC

Nuts and Bolts of International Law

International Law Section of the State Bar of Texas

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# Step 1. Identify Data Flow



“other operational locations”

# Other Examples

- Outsourcing Transactions
  - Data processing in foreign countries.
  - Who has access to my customer's information?
- Cloud Computing
  - Where are the computers and storage devices located?
- Corporate directories available to users all over the world
  - U.S. employee accesses directory and pulls info about colleague in India.

# Step 2. Identify Sources of Privacy Obligations

- Laws
- Contracts
- Privacy Policies

# Laws of Transferors, Transferees, And Third Country

- **Transferor:** the privacy law of the transferor may apply wherever the data is maintained.
- **Transferee:** the privacy law of the transferee will generally apply once data is transferred there.
- **Third Country:** details of the transaction must be observed to determine whether a third country's law also applies.

# High Level Overview of U.S. Regulatory Framework for Privacy of Information

## Highlights

- **HIPAA/HITECH:** Protection of individually identifiable health information
  - Covered Entities: Health Plans, Healthcare Clearinghouses, Healthcare Providers.
  - Business Associate: Third party service provider that participates, creates, maintains, transmits protected health information.
  - Texas privacy law more stringent than HIPAA.
- **Gramm-Leach-Bliley (“GLB”) Act:** Requirements/restrictions on collection, protection, and disclosure of customer information; applies to financial institutions (broad definition).
- **FTC:** Consumer privacy and privacy-related trade practices; enforcement powers.

*In a very general sense, companies should scrutinize the transfer of all “personally identifiable information.” That is, information that allows one to determine the identity of an individual.*

# EU Directive

- Directs members of the European Economic Area (“EEA”) to enact a privacy law.
  - The EEA includes the E.U. plus Iceland, Liechtenstein and Norway.
- Applies to “processing” of “personal data.”
  - “Personal data” includes “any information” relating to an individual.
- Six types of compliant transfers:
  - Consent, adequate protection jurisdiction, safe harbor agreements, standard contract clauses, binding corporate rules, exempted transfers.
  - Personal data may move, but may only go to a place where protections of the transferor jurisdiction will continue to apply.

# EU Directive

New York Times

TECHNOLOGY

## Data Transfer Pact Between U.S. and Europe Is Ruled Invalid

By **MARK SCOTT** OCT. 6, 2015

Europe's highest court on Tuesday struck down an international agreement that allowed companies to move digital information like people's web search histories and social media updates between the European Union and the United States. The decision left the international operations of companies like Google and Facebook in a sort of legal limbo even as their services continued working as usual.



# Argentina

- Contact local counsel.
- Close resemblance to EU Directive principles.
- Deemed “adequate” under the EU Directive.
- Prohibits transfer of data to a jurisdiction with inadequate privacy protections.
- Other jurisdictions with comprehensive privacy laws: Canada, Australia, Hong Kong.

# Next Steps

3. Develop Compliance Programs for Each Data Flow.
4. Monitor.
5. Review Agreements.
6. Update Privacy Policies.

# Thank You.

Gabriela Noemí Smith, Esq.  
Managing Attorney  
The Gabriela Noemi Smith Law Firm, PLLC  
Offices in Dallas, Texas and Lima, Peru  
+1 (214) 901 – 2010  
[gsmith@gnslawpllc.com](mailto:gsmith@gnslawpllc.com)  
[www.gnslawpllc.com](http://www.gnslawpllc.com)