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Are You Ready for the New Data Privacy Rules?

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Agenda

- Introduction: Setting the Stage for a New Privacy Framework
- Emerging Standards and Common Themes
- California Consumer Privacy Act | CCPA
- Liability and Litigation Risks
- Q&A

Setting the Stage for a New Privacy Framework

- Historical U.S. State and Federal Activity
  - Data Security
  - Data Privacy
  - Breach Notification
- EU General Data Protection Regulation

Agenda

Introduction: Setting the Stage for a New Privacy Framework

Emerging Standards and Common Themes

California Consumer Privacy Act | CCPA

Liability and Litigation Risks

Q&A

Emerging Standards and Common Themes

- Extraterritorial Reach
- Expanded Definition of Personal Information
- Transparency and Notice
- Data Subject Rights
- Data Security and Breach Notification
- Third-Party Oversight
- Governance and Risk Assessments
- Liability

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Liability and Litigation Risks

Q&A

PII, PHI, and NPI → PI

- What data is regulated?
  - Any data identifying a single person or household; or capable of doing so if combined with additional data.
  - "Information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household."

Name	Mail address	Phone number	Email address	IP address	Account info
SSN	Drivers license	Passport number of other ID	Biometrics	Geolocation	Protected classifications
Financial information	Medical information	Health insurance information	Commercial information	Education	Employment
Internet activity, browsing, search	Physical characteristics	Visual	Audio	Thermal	Olfactory

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Liability and Litigation Risks

- **Case Study: 2016 Breach**
  - Exposed names, phone numbers, and emails of over 20MM individuals
  - Vector: Attackers acquired login credentials for an associated AWS account
- How much did it cost?
  - **$148 million settlement** with all state attorneys general
  - California user share represents roughly **$18 million**
- **What is the post-CCPA dollar amount?**
  - **$240 million** minimum penalty
  - **$1.8 billion** maximum penalty

- **How does it fit with the existing breach notification law?**
  - Both broader and narrower than existing breach notification law

Breach notification law	CCPA breach action
Any CA resident "whose unencrypted personal information was, or is reasonably believed to have been, **acquired by an unauthorized person**."	"Any consumer whose nonencrypted or nonredacted personal information … is subject to an unauthorized access and exfiltration, theft, **or disclosure** as a result of the business' violation of **the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information** …"

  - Broader: Arguably includes mere access; statutory damages
  - Narrower: Introduces right to cure and affirmative defense
  - Impact of existing breach notification obligations
    - Will tempt businesses not to provide notice

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Questions and Answers

Speaker Biography

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Education

- **Boston College Law School, J.D.**
- **Dickinson College, B.A.**

About

Scott Lashway is co-leader of the privacy and data security group and based in Manatt's Boston office, which he manages for the firm. His practice focuses on matters involving the intersection of law and technology, with an emphasis on cybersecurity, data privacy, technology-focused litigation and other areas of data security.

Scott represents and counsels clients in complex business disputes and class actions, internal investigations, and government enforcement matters, and advises on compliance risks and vulnerabilities. He regularly represents clients in courts nationwide, including Massachusetts state and federal courts as well as matters involving the Massachusetts Attorney General's Office and Massachusetts Secretary of State.

Scott routinely conducts investigations and counsels clients on incident response confronting sophisticated cyberattacks, and represents clients in related law enforcement inquiries, regulatory matters and data privacy litigation.

He represents clients before various state and federal regulators, including the Securities and Exchange Commission (SEC), the Department of Justice (DOJ), the Financial Industry Regulatory Authority (FINRA), state attorneys general, the New York Department of Financial Services (NYDFS), and the Federal Trade Commission (FTC).

Scott's clients are in a wide range of industries, including financial services and insurance; technology, including ad-tech and mar-tech; life sciences; intelligence and data processing; professional services firms; transportation; education; and gaming.

Before joining Manatt, Scott worked as a partner at an international law firm and was co-chair of the cybersecurity, data breach and privacy team. He has also worked as senior in-house counsel and head of investigations for a Fortune 100 global financial services company.

Speaker Biography

Kaylee Cox Bankston

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Education

- **Georgetown University Law Center, LL.M., National Security Law**
- **University of Miami School of Law, J.D., magna cum laude**
- **University of Arkansas, B.A., International Relations, Spanish & Latin American Studies, cum laude**

About

Kaylee Cox Bankston is a privacy and data security attorney in the firm's Washington, D.C., office.

Kaylee focuses her practice on complex cybersecurity and privacy matters, including information privacy and data security compliance, governance, regulatory investigations, litigation and class action defense, security breach incident response, breach preparation and cybersecurity risk management, and development of corporate privacy and security programs.

She advises clients on data breach preparation and cybersecurity risk management, as well as program developments and improvements and risk mitigation strategies. Kaylee also has extensive experience advising clients on comprehensive data privacy and security compliance matters. She represents companies before U.S. and international regulators in data security and privacy investigations. Kaylee also represents clients in privacy and security disputes and litigation.

Kaylee represents clients across a wide range of industries, including banking and financial services, insurance, healthcare and life sciences, retail, real estate, government contractors, telecommunications, manufacturing, education, information technology and e-commerce, energy, transportation, news and media, and hospitality.

Before joining Manatt, Kaylee worked at an international law firm as co-chair of the firm's cybersecurity, data breach and privacy team. She has also worked in private practice, advising companies on business immigration and employment compliance laws in the information technology industry.

450+

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