



# International Privacy Year in Review

May 10, 2022

# BCLT BY THE NUMBERS

**#1**

IP law program,  
**18 years in a row,**  
by US News



**3**

Faculty Directors ranked among  
top 5 most cited IP scholars

**40+**

Practitioner-instructors  
teaching advanced and  
technology courses



**50+**

Law & tech courses  
planned for 2021-2022



**9**

BCLT faculty-authored textbooks



**12**

Tech focused Student  
Groups



**9**

Major conferences  
planned for 2021-2022

**20+**

Other expert-level  
events planned for  
2021-2022

**24**

Years BCLT has been  
collaborating with  
Federal Judicial Center

**800+**

Federal judges  
trained at the BCLT/  
FJC IP seminar



# International Privacy – Year in Review



**Helen Dixon**  
Irish Data Protection  
Commissioner



**Lothar Determann**  
Professor, Freie Universität Berlin  
Lecturer, UC Berkeley School of Law  
Partner, Baker McKenzie

# Global Overview

More countries add GDPR-like data processing regulations to privacy laws:

- 30 EU + EEA Member States
- 14 countries on EU “adequate levels” list, incl. Japan, Korea, UK
- Brazil (2020), China (2021), India (2022?), Russia (2006), Sri Lanka (2022), Thailand (2022?), Turkey (2016)
- USA? California (2018), Virginia (2020), Colorado (2021), Utah (2022), Connecticut (2022?)

# European Union

## **GDPR – the Law of Everything**

- protects “rights and freedoms” – does not mention “privacy”
- requires supervisory authorities to respond to every individual complaint  
leaves civil actions to member states
- individuals often sue authorities rather than companies that allegedly violate privacy rights and the GDPR
- requires national authorities to coordinate for consistency
- lets CJEU have the last word



# European Union

## Key Enforcement Cases

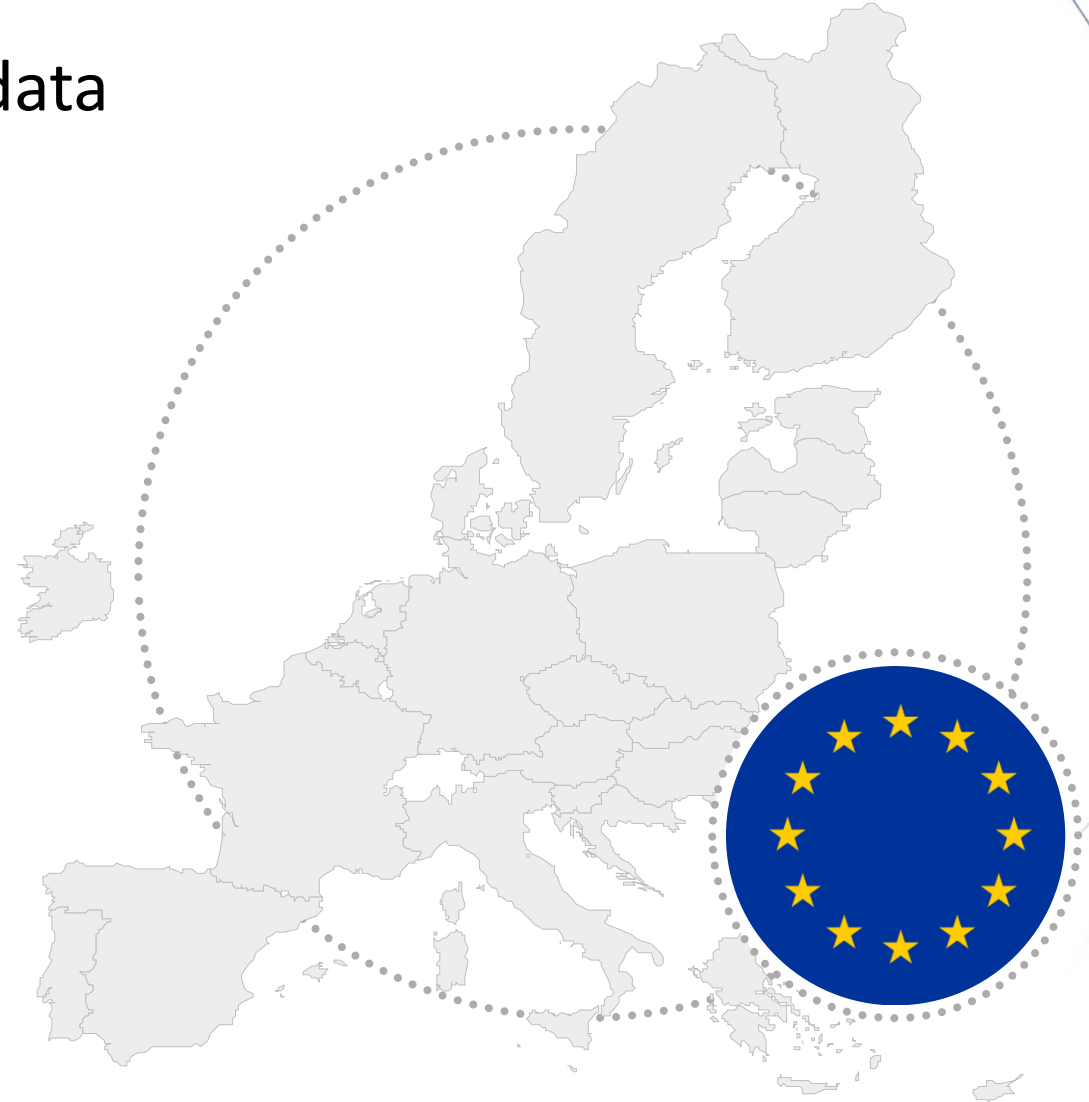
- Amazon (Luxembourg)
- WhatsApp (Ireland)
- Meta (Ireland)
- Twitter (Ireland)



# European Union

Other important activities of the EU data protection authorities:

- Guidance
- Education
- Consultation
- Children's data



# EU-U.S. Privacy Shield Framework

U.S. Safe Harbor and EU-U.S. Privacy Shield Frameworks launched in 2000 and 2016

Adequacy decisions in 2000 and 2016

Schrems I and II decisions of the CJEU, invalidating adequacy decisions in 2015 and 2020

U.S. Commerce Department continues Privacy Shield Program

Agreement in Principle between EU and U.S. in 2022





# European Union / UK post-BREXIT

UK keeps GDPR in place for now

Separate SCC addendum,  
separate representative  
designation, separate jurisdiction  
("two-stop shop")

UK ICO's Age-appropriate design  
code adopted by California  
Legislature



# Brazil

In 2020, Brazil enacted the *Lei Geral de Proteção de Dados* (LGPD), closely modeled after the GDPR. Provisions for administrative sanctions were delayed 2021, but consumer protection authorities and courts LGPD principles quickly.

In 2021, the National Consumer Secretariat fined Banco Cetelem S.A. bank for using data without consent of elderly consumers.



# People's Republic of China

The PRC enacted Cybersecurity laws to protect national security, require data residency and limit cross-border transfers.

PRC supported tech companies in AI development and social credit system.

In July 2021, the Cyberspace Administration of China (CAC) announced that the DiDi (滴滴) app was unlawfully collecting personal information potentially harming personal privacy, cybersecurity, and national security. The CAC required app stores to remove DiDi apps shortly after DiDi's 2021 IPO in the US.

The PRC enacted a Personal Information Protection Law (PIPL) to take effect in November 2021.



# India

*Justice KS Puttaswamy (Retd.) & Anr v. Union of India & Ors* challenged the constitutional validity of the Aadhar Card Scheme. The Supreme Court of India ordered the Legislature to enact data privacy legislation.

A bill to enact a Personal Data Protection Act has been pending since 2018, see 37 *Berkeley Journal of International Law* 481 (2019).

In *Manohar Lal Sharma v. Union of India* (2021), the Supreme Court of India held that unauthorised surveillance of stored data with Pegasus spyware for reasons other than the nation's security is illegal.



# Mexico

Mexico enacted a broad data protection law in 2010 - *Ley Federal de Protección de Datos Personales en Posesión de los Particulares*

[www.diputados.gob.mx/LeyesBiblio/pdf/LFPDPPP.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LFPDPPP.pdf) ("LFPDPPP").

April 25, 2022, the Mexican Supreme Court ("SCJN") ruled to invalidate the decree creating the National Registry of Mobile Telephony Users ("PANAUT"), which required mobile phone users to register biometric information when purchasing SIM cards, incl. fingerprints or iris recognition, name, address, phone number, nationality, and national Population Registration Key (CURP) number.

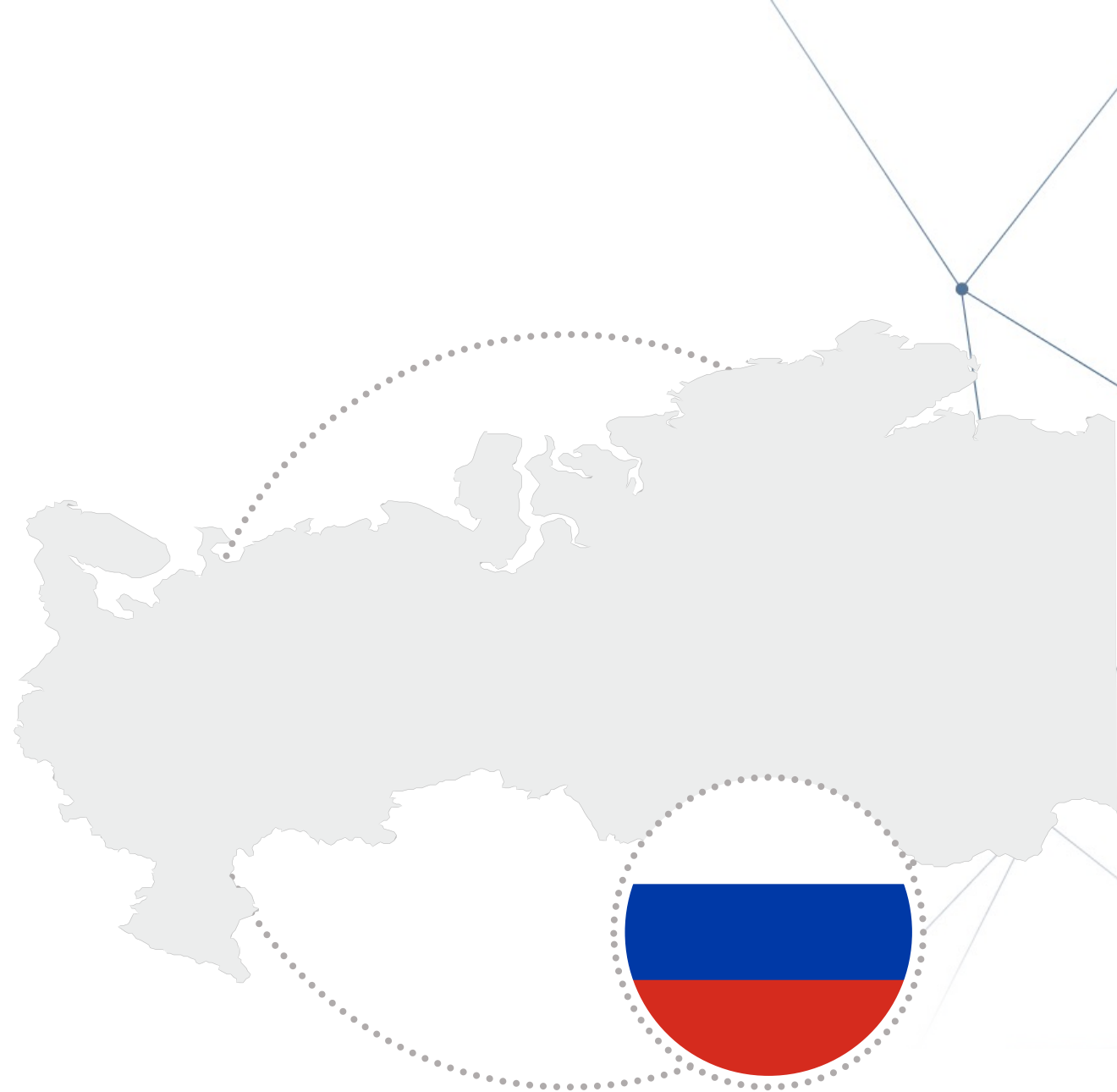


# Russia

In 2006, Russia enacted data protection law similar to Directive 95/46/EC.

In 2014, Russia added data residency requirements and started actively enforcing residency requirements, incl. with audits, imposing fines on global social media companies and ordering Russian telecommunication service providers to block access to foreign media sites. Several fines were imposed in 2021 and some sites remain blocked in 2022.

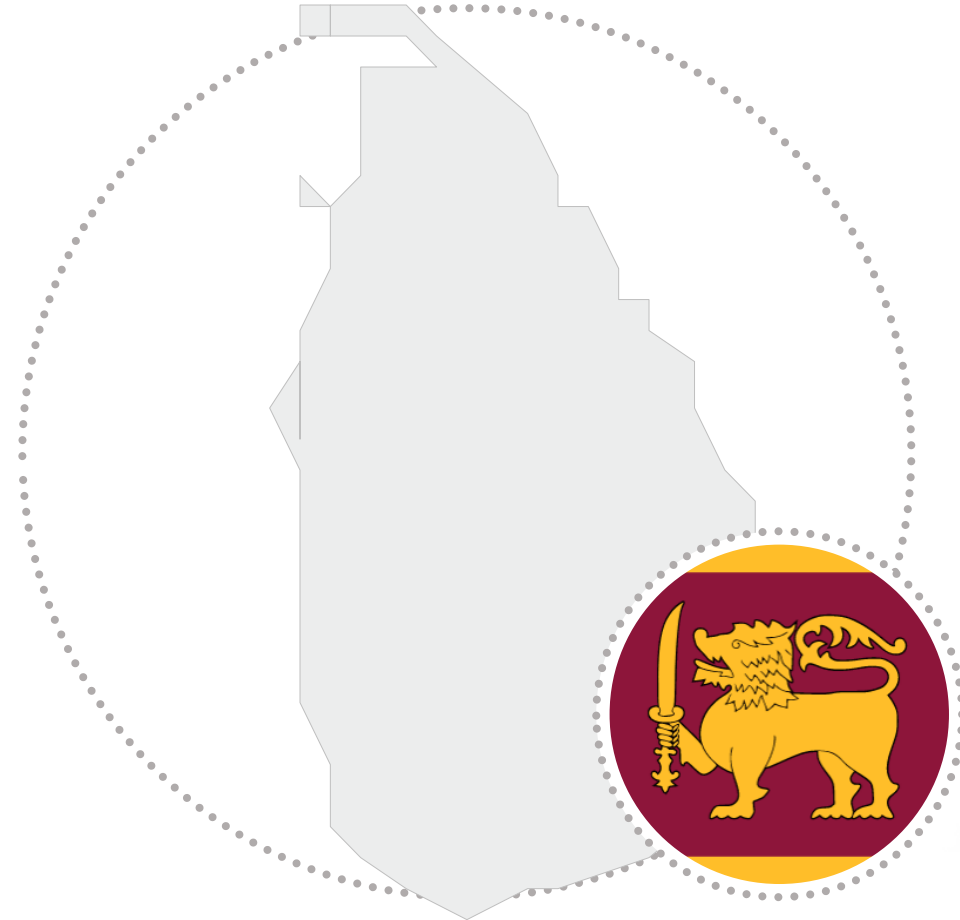
Russia's "landing law" requires foreign social media companies to establish local corporate presences. Cross-border data transfers would be further restricted according to a new bill in 2022.



# Sri Lanka

On March 18th, 2022, Sri Lanka enacted the Personal Data Protection Act.

In *Chinnappa et al. v Kanakar et al* (1910) a court recognised a right to household privacy in upholding a custom in the Jaffna peninsula, where adjoining landowners were permitted to enter the neighbour's land to protect his fence with the covering of ola leaves.

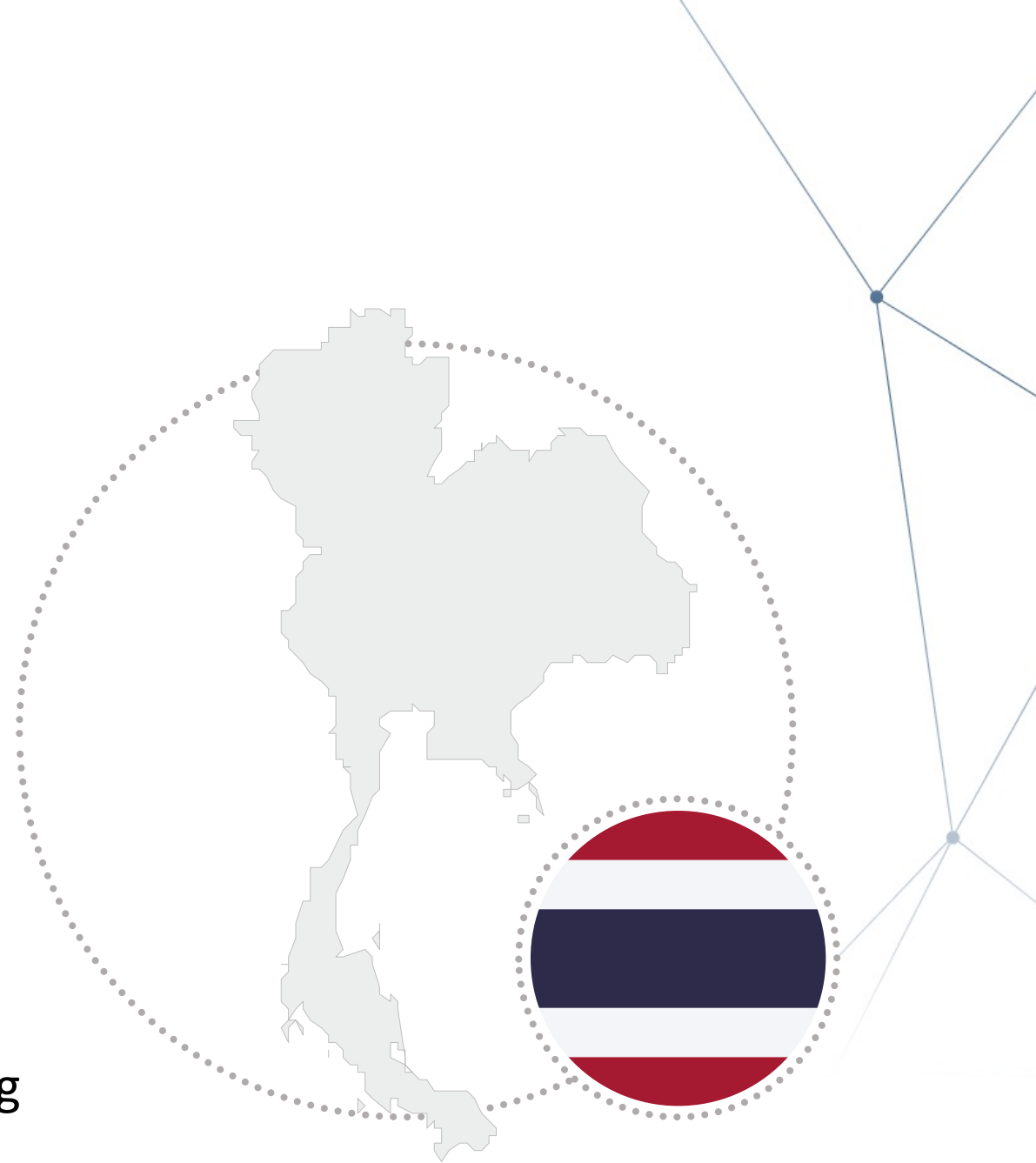


# Thailand

In 2019, Thailand enacted a comprehensive Personal Data Protection Act. The Thai government extended the law's May 27, 2020 effective date twice by one year, on May 8, 2021 to the latest new effective date of June 1, 2022.

Thailand's Personal Data Protection Act borrows from the GDPR but there are differences in details, including disclosure requirements and characterization of sensitive data.

The Personal Data Protection Committee may prescribe terms to be included in data processing agreements between data controllers and data processors.





# Turkey

2016 Law No. 6698 on Protection of Personal Data ("**LPPD**") contains many GDPR-like provisions and requires companies to register (in VERBIS).

Cross-border data transfers require explicit data subject consent, approval of the Turkish Data Protection Authority, executive undertakings, binding corporate rules, or an adequacy finding (but safe country list has not been issued yet).

The Turkish DPA fined a U.S. social messaging app for failure to obtain consent for cookies and cross-border data transfers in 2021 and published guidance on general consent requirements in 2022. DPA also imposed fine on car rental company in 2022.

The Turkish Constitutional Court published decision no. 2018/11988 on right to request protection of personal data in which it evaluated the processing of biometric data.



# Global Overview

Businesses can apply “highest common denominator” measures in some areas (e.g., data security, data subject request processing) but must localize in other areas, such as

- privacy notices (to meet language, terminology, specific disclosure and accessibility requirements)
- data processing agreements (to satisfy prescriptive requirements for particular clauses)
- consent and opt-out mechanisms (e.g., ePrivacy cookies consent requirements and California “do not sell my info” rules are not aligned)

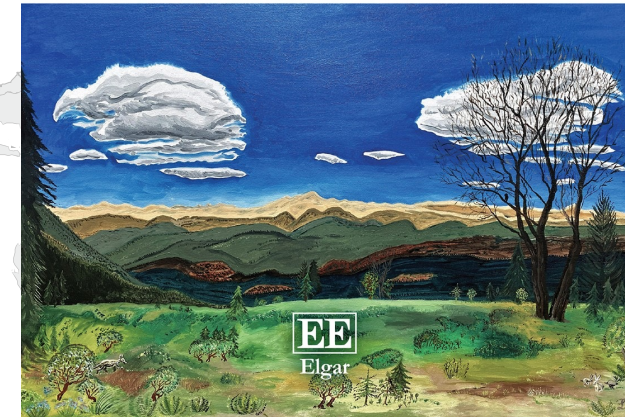
ELGAR COMPLIANCE GUIDES

Lothar Determann

## *Determann's* Field Guide to Data Privacy Law

International Corporate Compliance

FIFTH EDITION





**Q&A**



**IP+TECH**  
MONTH

**Thank you for joining us.**

IP Month Agenda:

[www.law.berkeley.edu/research/bclt/bcltevents/ip-and-tech-month-at-berkeley-law/agenda/](http://www.law.berkeley.edu/research/bclt/bcltevents/ip-and-tech-month-at-berkeley-law/agenda/)

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