WINSTON & STRAWN LLP

Privacy & Data Security

Winston takes a strategic approach to privacy and data security, integrating cross-practice capabilities to provide our clients with cutting-edge counseling; trade secret protection and investigations; cybersecurity incident investigations, including breach and ransomware; data-security class action litigation; and international data protection. Our Global Privacy & Data Security Practice features a core team of more than 20 privacy professionals and is bolstered by over 60 attorneys from a variety of other disciplines firmwide. Our team combines compliance counselors, transactional lawyers, former government regulators and federal prosecutors, seasoned investigators, and experienced litigators. Few firms can rival our in-depth, sophisticated, and integrated experience in this area.

Our practice is anchored by lawyers who regularly advise the world's largest companies on their most complex and highly sensitive data issues, spanning from the extensively regulated financial and health care industries to the specific and complex online and retail sector. While our practice is top tier, it is how we dispense advice that differentiates us from other firms. By leveraging a pragmatic business approach and technical forensic expertise, we understand the practical composition of each client's business and issues. That experience and approach ensures that we translate the legal and regulatory expectations into specific business decisions and actions.

Key Contacts

Alessandra Swanson

Sean G. Wieber

Areas of Focus

Privacy & Data Security Counseling & Compliance Programs

Our privacy and data security attorneys assist clients in developing best practices for information governance, assessments, audits, privacy policies, procedures, training tools, and cross-functional programs that affect the handling and protection of a company's data. This work includes identifying privacy and cyber risks in corporate transactions and employee benefit plans and advising on the structure of employee-facing privacy and security policies and practices to ensure compliance with the various domestic and foreign data protection laws. These laws include the California Consumer Privacy Act (CCPA), the New York SHIELD Act, and other emerging U.S. state privacy laws, as well as the EU and UK's General Data Protection Regulation (GDPR) and rapidly developing privacy regulatory regimes in Asia. We provide strategic counsel on the legal issues surrounding the cross-border transfer of personal information between countries, including China, the UK, EU Member States, and the United States. We also regularly advise boards and senior executives concerning the risks of cybercrime, data theft, data governance and record retention, and privacy and security incidents.

Regulated Personal Information

We leverage both the firm's counseling and litigation offerings for companies looking for practical and solution-oriented assistance navigating the compliance, regulatory enforcement, and class action risks presented by the emerging patchwork of complex (and often conflicting) privacy laws with *private rights of action*. In this area, we primarily focus on three privacy statutes that have become active breeding grounds for debilitating class action litigation: the federal Telephone Consumer Protection Act (TCPA), the Illinois Biometric Information Privacy Act (BIPA), and the California Consumer Privacy Act (CCPA). We have experience with other key privacy laws, including the California Invasion of Privacy Act (CIPA), the Florida Telephone Solicitation Act (FTSA), the Florida Security of Communications Act (FSCA), and the Video Privacy Protection Act (VPPA). These laws contain private rights of action and provide for uncapped statutory damages, often leading to "bet-the-business" class action damage calculations. Consequently, they are heavily used by the plaintiffs' bar. We help companies across all industries understand and address their obligations under these laws while proactively taking steps to mitigate potential regulatory and class action exposure.

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Privacy & Data Security Litigation

We have extensive experience defending our clients in class action and other privacy and consumer-protection actions, including those resulting from data breaches. We are particularly experienced in defending clients against litigation involving claims of a violation of the TCPA, BIPA, CCPA, CIPA, FTSA, FSCA, or the VPPA, among other privacy laws and statutes. Notably, we have established teams located in the most significant jurisdictions for privacy litigation, including Illinois, California, and Florida. We have a proven record of success handling class action cases in state and federal courts, at both the trial and appellate levels.

Theft of Confidential Information & Trade Secrets

Our Privacy & Data Security Practice includes attorneys dedicated to helping clients protect their valuable data with proactive strategies. With the benefit of our computer forensic and data-security expertise, we have deep experience in leading significant trade secret investigations to catch and quantify the theft of valuable corporate data. We are well positioned to help companies respond to trade secret misappropriation by pursuing all legal remedies, including civil litigation and criminal prosecution.

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Internal Forensic Investigations & Cybersecurity Incidents

We are highly experienced in leading significant data-security investigations, including cyber, data breach, ransomware, insider data theft, and third-party vendor and cloud investigations. Winston is one of the only firms that has attorneys with computer forensics expertise—a valuable differentiator that provides our clients an edge in handling complex data investigations, incident response, and litigation. Once the investigation is complete, we deftly navigate a patchwork of complex laws that require companies to notify third parties and, if notification is required, we help clients formulate communications to the relevant governmental agencies, employees, and third parties. Additionally, our robust regulatory defense team remediates risk in government investigations or enforcement actions.

Technology Outsourcing & Vendor Contracts

We work with clients to develop, negotiate, and execute major contracts that implicate the use, sharing, disclosure, and safeguarding of personal information. As companies increasingly rely on vendors (including cloud platform companies) to perform tasks like administering employee benefits, hosting e-commerce websites, and contacting customers on their behalf (e.g., via text message), they must transfer the sensitive personal information under their purview into the care of third parties. We help clients develop strategies to address material risks in this area, including responsibilities related to breach notification and indemnification, and negotiate contracts that give them maximum protection. We also assist in vetting potential vendors and negotiating licensing and service agreements, particularly with respect to the privacy and data-security provisions in such contracts.

Health Care & HIPAA Privacy & Security

Our team includes a former federal regulator from the U.S. Department of Health and Human Services – Office for Civil Rights, uniquely positioning us to provide practical advice about how to navigate HIPAA and HITECH compliance obligations and address related risks. Outside the United States, our capabilities extend to some of the most challenging jurisdictions, such as the EU and China, where our locally qualified data lawyers advise multinational health care services providers on the collection, storage, process, and transfer of health care data and assist in designing and implementing local data strategies, including telemedicine.

We emphasize not only meeting regulatory requirements, but also creating compliance infrastructure that can be effectively and successfully implemented in our clients' business environments. Our goal is to create a compliance program where employees understand how to appropriately secure and maintain the privacy of patient information without these obligations interfering with the critical care that they provide. We also assist in reviewing business associate and other vendor agreements, advising on the use of patient information for marketing and advertising purposes, and crafting incident response and breach-notification plans.

Financial Privacy

We represent more clients in the financial services industry than in any other sector. Our extensive financial industry knowledge includes a long history of representing companies before domestic and international regulatory agencies, legislatures, and courts. We regularly help clients navigate arbitration panels and international tribunals. Our experience includes assisting clients with the electronic delivery of financial services and the establishment of online banking programs, advising financial institutions on Gramm-Leach-Bliley compliance, and representing clients before the Consumer Financial Protection Bureau.

Emerging Technologies: AI, Facial Recognition, Internet of Things

Our team has extensive experience working with emerging technologies, including artificial intelligence (AI), facial recognition, and Internet of Things (IoT). We have built data-privacy compliance programs applied to new technology. We provide strategic counseling to help companies best position themselves to comply with existing privacy and data-security laws and employ privacy by design in anticipation of future legal requirements. We take a comprehensive approach to these deeply complicated matters by working with our Intellectual Property lawyers, who bring technical know-how to help our clients protect the technology, and data-security experts, who help meet the challenge of applying best practices and reasonable security.

E-Commerce & Consumer Interaction Privacy Compliance

We represent some of the world's largest and most well-known brands and retailers and help their business teams understand how they can leverage their cache of consumer personal information while meeting global privacy obligations. We assist with the creation of consumer-facing privacy policies and website terms of use, and the development of back-end compliance infrastructure to address various levels of consumer notice, choice, and opt-outs that satisfy the requirements of global companies interacting with myriad laws, including, among others, GDPR and CCPA. We also work with our clients to review websites and develop mobile applications to identify privacy-related issues like marketing consent and cookie consent language. We also assist clients with respect to issues surrounding the analysis of large data sets and the de-identification, aggregation, and sharing of personal information, as well as other "big data" matters.

Marketing & Online Advertising Privacy Compliance

Many of our clients engage in marketing activities using email, automated telephone dialing systems, text message marketing, artificial or prerecorded calls, or fax machines. In the United States, the CAN-SPAM Act, TCPA, and related state laws impose strict requirements around how this marketing must be conducted. We help our clients build marketing programs that address and mitigate related risk. We counsel clients about interest-based advertising, mobile marketing, programmatic, and advertising matters. Our team has extensive knowledge regarding the Children's Online Privacy Protection Act (COPPA), the Federal Trade Commission Act, the Digital Advertising Alliance's Self-Regulatory Principles, and similar legal requirements and industry guidelines.

Cross-Border Data Transfers & Worldwide Privacy Compliance

Our clients operate on a worldwide basis and constantly encounter issues related to complying with the various privacy and data-security laws in jurisdictions in which they operate, as well as navigating data localization and cross-border data issues. In the EU and UK, our attorneys work together to address GDPR and member-state implementing measures. In China, through our strategic alliance with Yuanda, a premier Chinese law firm, we offer sophisticated legal and technical support, leveraging the team's Chinese law capabilities and our global experience, to help clients ensure systemic privacy compliance and data security in China.

> "Competency, collaboration, and expert advice that combine to form the basis of exceptional service from a team of [privacy & data security] subject-matter experts."

The Legal 500 US 2022

Related Capabilities

Advertising Litigation | Class Actions & Group Litigation | Commercial Litigation & Disputes | Compliance Programs | eDiscovery & Information Governance | Employee Benefits & Executive Compensation | Intellectual Property | International Trade | Labor & Employment | Mergers & Acquisitions | Privacy: Regulated Personal Information (RPI) | Trade Secrets, Non Competes & Restrictive Covenants | Government Investigations, Enforcement & Compliance | Automotive & Mobility | Financial Services | Health Care | Life Sciences | Retail & Luxury | Technology, Media & Telecommunications | Asia | Europe | Latin America & Caribbean | North America

Recent Experience

GenNx360's Majority Investment in Whitsons Culinary Group

Resources

Class Action Insider

Related Insights & News

IN THE MEDIA

Sean Wieber Discusses the Potential Increase in Privacy Cases Going to Trial in Illinois with *Bloomberg Law*

MARCH 20, 2024

BLOG

Spotlight on Regulatory Cross Border: AI Act Advances Through the European Parliament

MARCH 19, 2024

BLOG

President Biden Issues Major New Executive Order Restricting Transfer of Americans' Bulk Sensitive Data to China

MARCH 1, 2024

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Winston Hosts 2024 Financial Services Symposium in Charlotte

JANUARY 24, 2024

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Spotlight on Regulatory Cross Border: First Steps for Regulating AI in the European Union

DECEMBER 19, 2023

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China's CAC Changes Course on Cross-Border Transfers with Draft Regulations

OCTOBER 5, 2023

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2023 Health Care & Life Sciences Summit

SEPTEMBER 21, 2023

WEBINAR

Cybersecurity 101: Best Practices for Attorneys to Protect Their Companies and Clients (And Themselves) in 2023

SEPTEMBER 20, 2023

BLOG

China's Regulations on Cross-Border Transfers of Personal Information Now in Effect

JULY 6, 2023

SPEAKING ENGAGEMENT

A Ransomware Attack in Action: When Cyber Extortion Strikes

JUNE 28, 2023

BLOG

Potential Lanham Act Reverberations: "Malicious" and "Threat" Are Statements of Fact, Not Opinion

JUNE 22, 2023

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Winston & Strawn's Product & Mass Torts Summit 2023

JUNE 14, 2023