

Wednesday, February 17 (all times EST)

12:00 — 12:15 **Welcome & overview**
([Gerlach](#), [Weinlein](#))

12:15 — 1:30 **[Session 1] Proportionality in cross-border discovery**
([Calvert](#), [Gotler*](#), [Scullion](#), [Yelton](#), [Zogby](#))

A panel of WG6 brainstorming group members will lead a dialogue with all attendees on their outline on the topic. The 2015 amendments to Federal Rule of Civil Procedure 26(b)(1) make explicit that the scope of permissible discovery is limited to that which is “proportional” to the needs of the case, considering certain factors. Following those amendments, a number of U.S. courts have used a Rule 26(b)(1) proportionality analysis to determine whether information residing outside the U.S. that is subject to foreign data protection or other laws restricting disclosure must be produced in U.S. litigation. *The Sedona Conference International Litigation Principles* provides guidance on balancing potential conflicts between U.S. litigation requirements and non-U.S. data protection laws, and specifically references Rule 26(b)(1) in this context. In addition, *The Sedona Conference Commentary on Proportionality in Electronic Discovery* references “privacy” interests generally as a potential factor that may weigh in favor of limiting discovery. The brainstorming group has been evaluating in greater depth whether the U.S. legal community would benefit from additional stand-alone guidance from WG6 on whether it is appropriate under Rule 26(b)(1) to consider cross-border legal conflicts involving data protection in the proportionality analysis, and if so, what factors should be considered as part of this analysis.

Required Materials:

- 1.1 The Sedona Conference WG6 Brainstorming Group Outline – Proportionality in Cross-Border Discovery

1:30 — 1:45 **Break**

Wednesday, February 17 (all times EST)**1:45 — 2:45 [Session 2] Discovery under 28 U.S.C. § 1782**

([Carlsen](#), [Conlon*](#), [Francis](#), [Sablone](#), [Stone](#))

A panel of WG6 brainstorming group members will lead a dialogue with all attendees on their outline on the topic. Although 28 U.S.C. § 1782 has not garnered as much attention as issues relating to discovery abroad for use in United States courts, some recent cases suggest that this may be changing. For example, in *In re Del Valle Ruiz*, 939 F.3d 520 (2d Cir. 2019), the Second Circuit held that the reach of section 1782 is not limited to information in the United States; a court may order production of information stored abroad for use in foreign proceedings as long as it has jurisdiction over the responding party. These decisions may have significant implications for international comity and for the privacy interests of data subjects. The Sedona Conference and WG6 have previously published commentaries on cross-border discovery, most notably The Sedona Conference *International Litigation Principles*. However, the focus has generally been on the acquisition of information for use in United States litigation, not for use in foreign proceedings. The brainstorming group has been evaluating whether WG6 should develop a commentary or otherwise address section 1782.

Required Materials:

- 2.1 The Sedona Conference WG6 Brainstorming Group Outline – Discovery Under 28 U.S.C. § 1782

2:45 — 3:00 Break**3:00 — 4:15 [Session 3] International legal holds**

([Mandel](#), [Osuch](#), [Solomon*](#), [Tredennick](#))

A panel of WG6 drafting team members will lead a dialogue with all attendees on their latest draft of the Commentary on the topic. With the draft Commentary, WG6 aims to provide a source of comprehensive guidance for practitioners navigating the conflicting obligations that often arise between international data preservation requirements and data protection rules in the context of cross-border litigation and investigations. The draft Commentary is intended to supplement existing publications of The Sedona Conference that address international legal holds but not in a comprehensive fashion.

Required Materials:

- 3.1 The Sedona Conference Draft Commentary on International Legal Holds

4:15 — 5:15 Reception

Thursday, February 18 (all times EST)

12:00 — 1:15 [Session 4] Cross-border privilege issues

([Marsillo](#), [Presnell](#), [Sterling*](#), [Thomas](#))

A panel of WG6 drafting team members will lead a dialogue with all attendees on their draft Commentary on the topic. The goal of the draft Commentary is to provide practitioners, courts and regulators with a framework for analysis involving conflicting obligations that may arise when the disclosure of information in one jurisdiction may be considered waiver of a protected privilege in another jurisdiction, in the context of cross-border litigation and investigations.

Required Materials:

4.1 The Sedona Conference Draft Commentary on Cross-Border Privilege Issues

1:15 — 1:30 Break

1:30 — 2:45 [Session 5] Ephemeral messaging

([Blaustein](#), [Christensen](#), [Favro*](#), [Gaston](#), [McPeak](#))

A panel of WG6 drafting team members will lead a dialogue with all attendees on their latest draft of the Commentary on the topic. The draft Commentary is intended to address the tension between (a) the positive role of ephemeral data in complying with international data protection mandates and information governance best practices to minimize data and (b) meeting U.S. law enforcement and regulatory requirements to capture communications, and litigation obligations to preserve data.

Required Materials:

5.1 The Sedona Conference *Commentary on Ephemeral Messaging* (Public Comment Version)

2:45 — 3:00 Break

Thursday, February 18 (all times EST)

3:00 — 4:15 [Session 6] International Litigation Principles, Second Edition
([Backhouse*](#), [Brady](#), [Brupbacher](#), [Shonka](#), [Weaver](#))

A panel of WG6 drafting team members will lead a dialogue with all attendees on their draft of a second edition of the *International Litigation Principles*. After years of development at WG6 meetings, a “European Union Edition” of The Sedona Conference *International Litigation Principles* was published for public comment in December 2011. No final version was ultimately prepared, and WG6 published a “Transitional Edition” of *International Litigation Principles* in January 2017. Because the intervening years saw tumultuous developments in data protection law, the Transitional Edition was intended to bridge the gap before the GDPR came into full effect in May 2018 by providing a resource that included GDPR references and analysis. In drafting the second edition of the *International Litigation Principles*, a drafting team reflecting a wide range of geographic coverage, practice areas and experience has sought to ensure a more universal approach and applicability. Recent case law, research on blocking statutes of various jurisdictions, and developments out of Europe including *Schrems II* and revised standard contractual clauses and their impact are being taken into account by the drafting team. The principles and accompanying commentary have been reviewed and revised as necessary. A seventh principle on data security has been added. Definitions and usage of terms in the publication have been reviewed and updated as needed. Practice materials in the appendices have been reviewed and augmented as appropriate.

Required Materials:

- 6.1 The Sedona Conference Draft International Litigation Principles, Second Edition

Recommended Materials:

- 6.2 The Sedona Conference *International Litigation Principles* (Transitional Edition)