
Wednesday, April 14 (all times EDT)

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

12:15 — 1:30 **[Session 1] Interpreting and applying “risk-of-harm” triggers in breach notification statutes**
([Cattanach*](#), [Keller](#), [Moss](#), [O’Neill](#), [Sella-Villa](#), [Wescott](#))

A panel of WG11 brainstorming group members will lead a dialogue with all attendees on their outline, which considers whether to form a drafting team to prepare a Commentary on how to interpret and apply “risk of harm” language that appears in breach notification statutes such as GDPR and certain U.S. state statutes. The interpretive issues for consideration in such a Commentary potentially include (1) what sort of harm “counts” for purposes of applying the statutes; (2) how likely does that harm have to be under those statutes; and (3) is the relevant harm and likelihood evaluated data subject by data subject or as to the entire group of data subjects at issue.

Required Materials:

- 1.1 The Sedona Conference WG11 Brainstorming Group Outline – No Risk of Harm Exception (April 2021)

1:30 — 1:45 **Break**

1:45 — 2:45 **[Session 2] Federal preemption of U.S. state privacy and data security statutes: What are the dividing lines?**
([Falk](#), [Kriger*](#), [Robinson](#), [Trilling](#), [Vanaskie](#))

One of the contentious aspects of a potential federal privacy law, data security law, or data breach notification law are the questions of whether and to what extent such laws should preempt otherwise applicable state privacy and data security statutes. Oftentimes, the positions that are advocated for on this issue are driven more by political considerations than policy considerations. From a broad policy perspective, what are the arguments for and against? The panel, including representatives of various stakeholder groups, will lead a dialogue on the contours of the differences on this topic, such as complete preemption vs. floor preemption, and how the arguments for and against preemption are affected by where the federal privacy law lands on issues like what the law requires and prohibits, who is permitted to enforce it, what courts are available for its enforcement, and what remedies are available in those courts.

Recommended Materials:

- 2.1 *Federal Preemption: A Legal Primer*, Congressional Research Service
- 2.2 *Mozilla v. FCC*, No. 18-1051 (D.C. Cir. 2019) (Preemption Section of Decision Only)

Wednesday, April 14 (Cont.) (all times EDT)**2:45 — 3:00 Break****3:00 — 4:15 [Session 3] Has the time come for a second edition of the WG11 Commentary on Application of Attorney-Client Privilege and Work-Product Protection to Documents and Communications Generated in the Cybersecurity Context?***(Baxter-Kauf*, Cohen, Kosseff, Romine, Stella)*

A panel of WG11 brainstorming group members will lead a dialogue with all attendees on their outline, which evaluates the desirability of convening a drafting team to prepare a second edition of WG11's *Commentary on Application of Attorney-Client Privilege and Work-Product Protection to Documents and Communications Generated in the Cybersecurity Context*. Updates and additions for a second edition that have been considered by the brainstorming group are:

- recent developments in the law;
- significant new cases addressing the issue;
- the application of these privilege principles to communications between insurers and insureds in the data security context; and,
- the application of these principles to communications among counsel and expert reports prepared under privilege in multi-jurisdiction data breach matters.

Required Materials:

- 3.1 The Sedona Conference WG11 Brainstorming Group Outline – Privilege Commentary, Second Edition (April 2021)

Recommended Materials:

- 3.2 The Sedona Conference *Commentary on Application of Attorney-Client Privilege and Work-Product Protection to Documents and Communications Generated in the Cybersecurity Context*

4:15 — 5:15 Reception

Thursday, April 15 (all times EDT)**12:00 — 1:15 [Session 4] What are the legal and policy bases and considerations for and against outright bans of facial recognition technology?**

([Berger](#), [Clayton](#), [Hartzog](#), [Promislow*](#), [Ritvo](#))

The city of Portland, Oregon recently enacted what looks to be a first-of-its-kind statute imposing an outright ban on the use of facial recognition technology. This panel will update meeting participants on the Portland law and its legislative history, and similar statutes, and then use that update as a springboard to discuss:

- What are some of the most important open legal issues regarding the interpretation, enforcement, and enforceability of the Portland statute?
- What other outright bans on the use of facial recognition technology have been enacted or are being considered for enactment in the U.S. and around the world, and how do those compare to the Portland statute?
- What is the state of current legal and policy commentary as to the propriety or impropriety, from a legal and policy perspective, of banning the use of facial recognition technology? Is it possible to assess, and compare, the societal costs and benefits of facial recognition technology? Could the FTC or a state AG bring an enforcement action right now on the theory that use of facial recognition technology is an unfair trade practice because its benefit to consumers is outweighed by its potential harm to consumers?

Required Materials:

- 4.1 Ordinance of the City of Portland – Prohibit the use of Face Recognition Technologies by Private Entities in Places of Public Accommodation in the City
- 4.2 Ordinance of the City of Portland – Prohibit the acquisition and use of Face Recognition Technologies by City bureaus
- 4.3 Evan Selinger and Woodrow Hartzog, *The Inconsentability of Facial Surveillance*, Loyola Law Review

Recommended Materials:

- 4.4 Joint investigation of Clearview AI, Inc. by the Office of the Privacy Commissioner of Canada, et al.

1:15 — 1:30 Break**1:30 — 2:30 [Session 5] WG11 town hall**

([Drum](#), [Jorgensen](#), [Keller](#), [Kriger](#), [Meal*](#), [Moncure](#), [Pizzirusso](#), [Promislow](#), [Saikali](#), [Wilan](#))

WG11 Steering Committee members will lead a dialogue amongst the WG11 members in attendance on progress made on the work product of the Working Group, and by the Working Group as a whole. WG11 member input will be sought regarding the future direction of WG11, including ideas for existing and new commentaries and projects.

Thursday, April 15 (Cont.) (all times EDT)**2:30 — 2:45 Break****2:45 — 4:00 [Session 6] COVID-19 related data collection and processing: Navigating the potential conflict between public health needs and privacy and data security mandates**
([Moncure](#), [Moss](#), [Schroeder](#), [Solomon](#), [Wilan](#)*)

In response to the COVID-19 pandemic, governments and private companies around the globe are collecting significant amounts of personal information including health and tracing information in the name of public health. The dialogue leaders will examine the implications of such collection and processing and the intersection and potential conflict with privacy and data security requirements and best practices. Among other topics, the panel will examine the collection, use and sharing of individual health information; the use of geolocation and other tracking information for contact tracing and notification; possible privacy implications associated with vaccination status; and concerns around the vulnerability of such information to external cybersecurity threats. Both U.S. and international privacy and data security regulations will be included in the dialogue.

Recommended Materials:

- 6.1 H.R. 778: Secure Data and Privacy for Contact Tracing Act of 2021
- 6.2 California Labor Law 6904.6: California law mandating certain action if "an employer or representative of the employer receives a notice of potential exposure to COVID-19"
- 6.3 Letter to Google re contact tracing apps, State of New York, Office of the Attorney General
- 6.4 Legaretta v. Macias, No. 21-CV-179 MV/GBW (D.N.M. Mar. 4, 2021)
- 6.5 Executive Order Number 21-81: Prohibiting COVID-19 Vaccine Passports, State of Florida, Office of the Governor

4:00 — 4:05 Closing
([Meal](#), [Weinlein](#))