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5 KEY TAKEAWAYS

Lessons Learned Since GDPR's Adoption on May 25th

On September 13, 2018, the International Section of the Georgia Bar sponsored a presentation entitled "EU GDPR Status Updates – Lessons Learned Since May 25th" at the Atlanta offices of Kilpatrick Townsend & Stockton LLP. The esteemed panel of GDPR "all stars" included Pamela Garay, Assistant Vice President & International Privacy Officer of Assurant, Inc., Trish Marcucci, Assistant Vice President & Senior Legal Counsel of AT&T Inc. and Dr. Aruna Sharma, Assistant General Counsel & Data Protection Officer, Turner Broadcasting System, Inc. The panel was moderated by Amanda Witt, a Kilpatrick Townsend partner and co-leader of the Cybersecurity, Global Privacy and Data Governance Team.

The panel first discussed some of the challenges that their organizations faced when implementing the European Union's General Data Protection Regulation ("GDPR"), which became effective on May 25, 2018. All three panelists were tasked with implementing the law across countries, business units and continents.

Overall, according to the panelists, the main five lessons learned since May 25th included the following:

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Senior management involvement and engagement is key in order to successfully implement GDPR. One panelist received senior management buy-in very early and has been working to implement GDPR since the final regulation was issued, including spending one year in the United Kingdom to more effectively coordinate her organization's GDPR project.

Aside from the challenges relating to the ambiguity of the requirements of the GDPR text and paucity of regulatory clarifications, in-house privacy professionals and counsel are faced with real-world obstacles to compliance, like non-existent IT solutions that have to be developed and a shortage of adequately trained staff.

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Implementing and complying with the GDPR requires cross-border collaboration, which presents cultural and linguistic challenges. As one panelist learned, "a biscuit is not always a biscuit." Building an effective organizational structure is key to both implementing GDPR and maintaining compliance. Although each of the panelists' organizations had structured their privacy offices and work streams differently, they all worked with a combination of consultants and law firms in developing their global privacy programs. They also identified privacy "champions" in various offices and units in order to provide guidance to local employees and flag issues.

The panelists agreed that one of the most significant challenges was negotiating data processing addenda (DPAs), which are required by Article 28 of the GDPR. In many instances, processors were unaware of the GDPR and had to be convinced that signing a DPA was actually required. Organizations need to be prepared to educate vendors on the obligations of having a DPA under the GDPR and its required contents.

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Looking ahead, the panelists agreed that the organizational foundation established for GDPR will be very useful for implementing California's Consumer Privacy Act, the Brazilian Data Protection Act (Lei Geral de Proteção de Dados, or LGPD) and any other GDPR-like laws that may be adopted in the near future (such as India's). Thankfully, according to one panelist, GDPR has made senior management more receptive to requests for resource allocations in the future although she did have to demonstrate how GDPR resulted in budget efficiencies. Allocating budget dollars to compliance matters will continue to be a struggle without a demonstrated business case in favor of GDPR compliance (i.e., showing that compliance can be a market advantage or create efficiencies, and not just a cost for a preventative measure). It will, however, be important for organizations to remain dedicated to GDPR compliance as the urgency of the initial compliance deadline fades into the past and new priorities emerge.

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