

PRESENTED AT

34th Annual Nonprofit Organizations Institute

January 12-13, 2017

Austin, Texas

Privacy and Cybersecurity Issues for Nonprofits

Laura E. Butzel

Nancy A. Kopans

PRIVACY AND CYBERSECURITY ISSUES FOR NONPROFITS

1133 Avenue of the Americas New York, NY 10036
212.336.2000 fax 212.336.2222 www.pbwt.com

I. Why Nonprofits Need to Address Privacy and Cybersecurity Issues

Nonprofits may collect or have access to personal information about many different groups of people the organization works with, such as, volunteers, clients, mailing list recipients, donors, survey participants, and employees. Nonprofits must be aware of the responsibilities and risks related to collecting, using, storing and even destroying personal information.

II. Overview of Data Privacy Regimes

A. Personally identifiable information (PII) is information, which can be used on its own or combined with other information to identify, contact, or locate a single person.

B. Some PII can, on its own identify, contact, or locate an individual. This includes:

- (i) Full name (if uncommon)
- (ii) Home address
- (iii) Personal email address
- (iv) Driver's license number
- (v) Date and place of birth
- (vi) Telephone number
- (vii) Biometric/genetic information

Other information can become PII when combined with other personal information, such as:

- (i) Full name (if common)
- (ii) County, state, postcode or city of residence
- (iii) Age
- (iv) Gender

- (v) Race
- (vi) Name of school or workplace

Sensitive personal information is information generally subject to higher standards of protection and privacy. This includes an individual's:

- (i) Social Security number
- (ii) Financial data
- (iii) Health information
- (iv) Data about children
- (v) Precise geographic information

C. United States

1. Privacy Laws in the United States. In the United States, there are a number of federal and state privacy laws that have developed, which are applicable depending on (1) the nature of the entity collecting and using the data; (2) the nature of the personal information; and (3) the nature of the use. With no comprehensive federal law, the privacy regime is a sometimes contradictory patchwork system of federal and state laws.

2. The Role of the Federal Trade Commission (FTC). The FTC is one of the primary US privacy regulators. The FTC's jurisdiction is limited to corporations that are "organized to carry on business for [their] own profit or that of [their] members." The FTC, therefore, has generally refrained from pursuing enforcement actions against corporations recognized as exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code; however, trade and professional associations exempt from tax under Section 501(c)(6) of the Code are subject to the FTC's jurisdiction. The issue of FTC jurisdiction has been the subject of debate in light of the FTC's role in overseeing data security regulations and several recent instances where the FTC has taken action against nonprofit entities. In addition, in May 2016, a

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Privacy and Cybersecurity Issues for Nonprofits

Also available as part of the eCourse

[2017 Nonprofit Organizations eConference](#)

First appeared as part of the conference materials for the
34th Annual Nonprofit Organizations Institute session
"Privacy and Cybersecurity Issues for Nonprofits"