

# Privacy and the Intersection of E-Discovery

UT LAW 2021 eDiscovery Essentials

Mark Young

**COVINGTON**

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG LONDON LOS ANGELES  
NEW YORK PALO ALTO SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

[www.cov.com](http://www.cov.com)

1

## Agenda

1 Approach of U.S. Courts to Foreign Data Privacy Laws



2 Privacy Challenges Presented by GDPR (and similar laws)



3 Compliance Strategies



COVINGTON

2

2

# Part 1

## Approach of U.S. Courts to Foreign Data Privacy Laws

3

3

### Landmark Case: *Aerospatiale*

“It is well settled that [foreign] statutes do not deprive an American court of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate that statute.”

*Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Ct. for S. Dist. of Iowa*, 482, U.S. 522, 544 n.29 (1987).

COVINGTON

4

4

## Balancing Test

- *Aerospatiale* led to development of a balancing test
- Five non-exhaustive factors



COVINGTON

5

5

## Potential Consequences



COVINGTON

6

6

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 \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Privacy and the Intersection of E-Discovery

Also available as part of the eCourse

[2021 e-Discovery Essentials eConference](#)

First appeared as part of the conference materials for the  
2021 E-Discovery Essentials session

"Privacy and the Intersection of E-Discovery"