

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

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

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

Balancing Test

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

Importance to the litigation
of the documents requested

Degree of specificity of the
request

Whether the information
originated in the United
States

Availability of alternative
means of securing the
information

Extent to which noncompliance
with the request would undermine
important interests of the U.S., or
compliance would undermine
important interests of nation where
information is located

COVINGTON

5

5

Potential Consequences

Spoliation of Evidence

- Adverse inference jury instructions
- Monetary fines
- Attorneys fees and costs

Contempt of Court

Dismissal of Claims/Directed Judgment

Criminal Obstruction Claims And Criminal Fines

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

[Privacy and the Intersection of E-Discovery](#)

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

"Privacy and the Intersection of E-Discovery"