

Privacy and the Intersection of E-Discovery

UT LAW 2021 eDiscovery Essentials

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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



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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).

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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

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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

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6

6

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