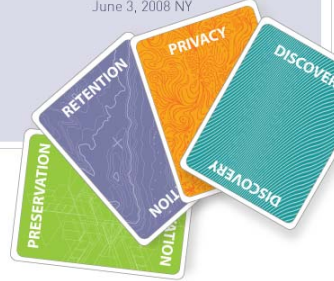




THE INTERSECTION OF PRIVACY, DISCOVERY  
AND RETENTION OBLIGATIONS  
A Legal and Operational Review

4TH ANNUAL  
CGOC WORKSHOP  
June 3, 2008 NY



# Managing International eDiscovery

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## Directive 95/46/EC of the European Parliament and of the Council

**“Everyone has the right to respect for his  
private and family life, his home and his  
correspondence.”**

***- European Convention for the Protection of  
Human Rights and Fundamental freedoms***



## Agenda

- Tricks and traps
- Working within the rules
- Managing a large global collection



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## Tricks and traps

- **Tricks**
  - Consult with qualified local counsel
  - Evaluate company's policies regarding access to the data
  - Are there binding corporate rules to provide for data access and transfers
- **Traps**
  - Lack of company policies
  - Custodians may object
  - Tipping-off employees may impair the investigation



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## Working within the rules

### ▪ Rules for data processor versus controller

- Processor – data collection, storage & hosting
- Controller – decision making, review & analysis

### ▪ Informed consent

- Applies to data processor
- Given before the access
- Specify the purpose for data access
- Freely given, and
- Informed



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## Managing a large global investigation

### ▪ Example scenario

- US multi-national with operations in Americas, Europe and Asia
- Allegations of Foreign Corrupt Practices Act violation

### ▪ Approach

- Assess company policies and local country rules
  - Obtain copies of company policies and validate existing agreements
  - Consult with a multi-national law firm with experience
  - Consult with local counsel
- Implement legal hold
- Define roles for data processor
- Define roles for data controller

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## Managing a large global investigation

### ▪Use data processor to perform the following activities:

- Perform local data collections
  - Consider the use of network data acquisition methods
  - Implement protocols to protect data such as use of encrypted media and establish secure data rooms in appropriate regions (e.g., US, Europe, Asia)
- Provide **local/regional** data processing and hosting capabilities to facilitate analysis by lawyers and accountants
  - Some providers use mobile solutions to provide onsite analysis without outside connectivity

### ▪Use data controller to perform the following activities

- Develop filtering criteria and keyword searches
- Determine what data is **relevant** to the investigation
- Arrange for transfers of relevant material to central investigative team location



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# Questions?

