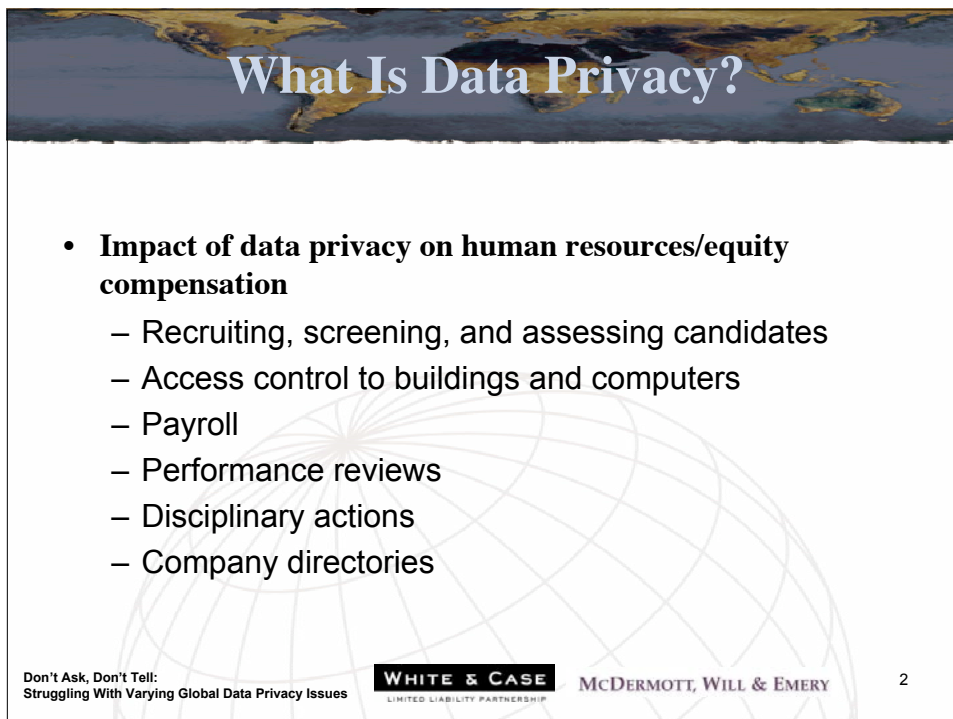

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Don't Ask, Don't Tell: Struggling With Varying Global Data Privacy Issues

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What Is Data Privacy?

- **Impact of data privacy on human resources/equity compensation**
 - Recruiting, screening, and assessing candidates
 - Access control to buildings and computers
 - Payroll
 - Performance reviews
 - Disciplinary actions
 - Company directories

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Two Different Approaches

- **US**
 - Relatively little legislation, with self-regulation and enforcement of deceptive practices legislation for failing to comply with announced privacy policy
- **Europe**
 - EU Data Protection Directive implemented by detailed national legislation in each Member State



US Statutory Landscape

- **There are no generally applicable statutes**
- **Existing statutes adopt a piecemeal, sector-specific approach**
- **Statutes exist at both federal and state levels**
- **Most sectors lack specific regulation**



Specific Statutes

- **Fair Credit Reporting Act**
- **Gramm-Leach-Bliley Act of 1999**
- **Children’s Online Privacy Protection Act of 1998 (“COPPA”)**
- **Health Insurance Portability and Accountability Act of 1996 (“HIPAA”)**
- **Video Privacy Protection Act of 1988**

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European Union

- **Directive 95/46/EC on data protection**
- **Article 29 Working Party Opinion 8/2001**
- **Some European Union countries have more burdensome requirements than others**

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EU Directive

- **Collection and processing of data**
 - Limited to a specific purpose
 - Personal data may be retained only as long as necessary
 - Data must be accurate and up-to-date
 - Data subject must be notified
 - Data must be protected by adequate security measures
 - Data subject must have access to data and be allowed to correct errors
- **Cross-border transfer of data**
- **“Adequate protection”**

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Emerging EU Countries

- **Cyprus** -- **The Processing of Personal Data (Protection of Individuals) Law 2001**
- **Czech Republic** -- **Czech Data Protection Act – June 2003**
- **Estonia** -- **Estonian Personal Data Protection Act – passed in 1996 (amended respectively in 1998, 2000, 2001 and 2002)**
- **Latvia** -- **Personal Data Protection Law - April 2000**
- **Lithuania** -- **Law of the Republic of Lithuania "On Personal Data Protection" - June 1996 (amended in accordance with EU)**

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Emerging EU Countries

- **Hungary** -- Act No LXIII of 1992 on Protection of Personal Data and Disclosure of Data of Public Interest -- Commission Decision on the adequate protection of personal data provided in Hungary - 26.07.00 (2000/519/EC)
- **Malta** -- Data Protection Act 2001
- **Poland** -- Act of 29.08.97 on the Protection of Personal Data
- **Slovak Republic** -- Act No. 428 of 3 July 2002 on Personal Data Protection
- **Slovenia** -- Personal Data Protection Act 1999

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Data Privacy in Other Countries Argentina

- **Argentinean Constitution grants a right to individuals to access data and make corrections or deletions**
- **Database registration**
- **Argentina deemed to provide “adequate protection” by EU**

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Data Privacy in Other Countries Canada

- **Personal Information and Electronic Documents Act** regulates data privacy activities, including those activities conducted by employer
- **Quebec Privacy Act** governs at provincial level
- **Disclosure to employee prior to collecting personal data**
- **Income Tax Act** requires written consent for use of **Social Insurance Number**
- **Canada** deemed to provide “adequate protection” by EU

Data Privacy in Other Countries Israel

- **Database registration**
- **Disclosure to employee prior to collecting personal data**
- **Obtain an undertaking from any foreign recipient of personal data**

Data Privacy in Other Countries

Hong Kong

- **The Personal Data (Privacy) Ordinance regulates data privacy activities, including those activities conducted by employers**
- **Disclosures to employees prior to collecting the employees' personal data**
- **Obtain consent to transfer data outside Hong Kong**

UK Perspective

- **A smokescreen for incompetence**
- **A discovery mechanism**
- **Criticism of legislation and guidance**
- ***Durant v FSA* – what is personal data?**
- **No hard and fast rules – common sense principles-based approach required**
- **Shift in enforcement approach – more guidance, less complaints handling**



EU Data Protection Working Party Opinions

- **Need for a balanced approach in the fight against terrorism**
- **Processing of personal data in the employment context (employee consent)**



US PATRIOT ACT

- **Increased surveillance and investigative powers for law enforcement agencies**
- **Access to data held by third parties, including employers, without individual's consent or knowledge**
- **Third parties prohibited from notifying individual of data transfer**
- **Expanded scope of foreign intelligence search without probable cause**



Enforcement Actions

- **Germany**
 - A local subsidiary refused to transfer employee data to its U.S.-based parent because of fears of local data privacy violations
- **India**
 - May adopt safeguards to protect data privacy (outsourcing from U.S. and EU presents risks)
- **Netherlands**
 - Auction website, Ibazar, was prohibited from transferring customer information to eBay in the U.S.



Enforcement Actions

- **Spain**
 - Spanish data protection agency investigated 620 cases and imposed fines of approximately US\$10 million
- **Sweden**
 - An airline's use of information about kosher meal requests was found to be violation of data privacy laws
- **United States**
 - HIPAA, Gramm-Leach-Bliley Act, and the California Financial Information Privacy Act (effective July 1, 2004) increase data privacy protections



Any Questions?

Thank You

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19