

**New York State Bar Association**

**Seasonal Meeting, Paris**

**20 October 2016**

**3:45 – 5:00 p.m.**

**Cross-Border Data Security**

**Panel description**

As recent events have shown, electronic data is rarely secure, especially when cross-border issues arise. Hear from expert practitioners in this important and growing area of the law and learn how you and your clients can best approach cross-border data security

**Speakers**

Co-Chairs:

Jonathan P. Armstrong, Partner, Cordery (UK)

Ted Kobus, Partner, Baker Hostetler (USA)

Speakers are as follows:

Anne-Cécile Colas, Group Data Privacy Counsel, Sodexo SA (France)

Paul Lanois, Cross-border Legal, Credit Suisse AG (Switzerland)

Diane O'Connell, PwC (USA)

Tomoyuki Otsuki, Senior Counsel, IBM Japan Ltd (Japan)

**Format**

1. Introduce the panel – Ted (5 mins)
2. Setting the scene – Jonathan (5 mins)
3. Questions (each panellist to think of questions, Jonathan & Ted to moderate) e.g.
  - a. Has Snowden & the Schrems litigation made life harder for you?
  - b. What is the attitude of employees to privacy? Has this changed?
  - c. Will GDPR & the equivalent new Japanese legislation have an effect on your business?
  - d. Does it stop cross-border deals being done (D O'C to lead on this)
  - e. Is it possible to comply in a global operation? Can any way of transferring data ever be adequate? (ACC to lead on this)
  - f. Do you see harmony or dis-harmony amongst regulators?
  - g. What will be the implications of the Yahoo breach?
  - h. Will new technologies like cognitive computing (e.g. Watson & AI) & big data make life easier or harder? Will AI replace lawyers? (TO to lead on this; ACC not so comfortable on this one)
  - i. What are the issues we should be looking out for in the next 5 years?



**Jonathan P. Armstrong**  
**Partner, Cordery**



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#### **Practice Areas**

- Anti-Corruption
- Computer Law
- Corporate Compliance
- e-commerce
- Fashion
- Internal Investigations
- Internet Law
- Privacy
- Product Liability
- Retail
- Security and Security Breaches
- Technology

#### **Admissions**

- England and Wales

#### **Education**

- Nottingham Law School, Law Society Finals, 1989
- University of Leeds, LL.B. Law, 1988

Jonathan is an experienced lawyer with Cordery in the UK with a concentration on compliance and technology. His practice includes advising multinational companies on matters involving risk, compliance and technology across Europe. He has handled legal matters in more than 60 countries involving bribery and corruption, corporate governance, ethics code implementation, reputation, internal investigations, marketing, branding and global privacy policies. Jonathan has been particularly active in advising multinational corporations on their response to the UK Bribery Act 2010 and its inter-relationship with the U.S. Foreign Corrupt Practices Act (FCPA). The Cordery team frequently work as specialist compliance co-counsel with firms in the US and Europe.

Jonathan is one of three co-authors of the LexisNexis definitive work on technology risk, "Managing Risk: Technology & Communications". He is a frequent broadcaster for the BBC and other channels and appeared on BBC News 24 as the studio guest on the Walport Review.

Jonathan was recently ranked as the 14th most influential figure in data security by Onalytica in their 2016 Data Security Top 100 Influencers and Brands Survey.

In addition to being a lawyer, Jonathan is a Fellow of The Chartered Institute of Marketing. He has spoken at conferences in the U.S., Canada, China, Brazil, Singapore, Vietnam and across Europe. Jonathan qualified as a lawyer in the UK in 1991 and has focused on compliance and technology matters for more than 20 years.



**Theodore J. Kobus III**  
**Partner, BakerHostetler**

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#### **Services**

- Privacy and Data Protection
- Media Law and Digital Content

#### **Industries**

- Financial Services
- Healthcare
- Retail Stores
- Hospitality

#### **Admissions**

- U.S. Court of Appeals, Federal Circuit
- U.S. Court of Appeals, Third Circuit
- U.S. District Court, District of Colorado
- U.S. District Court, Middle District of Pennsylvania
- U.S. District Court, Western District of Pennsylvania
- U.S. District Court, Eastern District of Pennsylvania
- U.S. District Court, District of New Jersey
- Pennsylvania

#### **Education**

- J.D., Widener University School of Law, 1994, *cum laude*
- B.S., Purdue University, 1987

Ted Kobus focuses his practice in the area of privacy, data security and intellectual property. He advises clients, trade groups, and organizations regarding data security and privacy risks, including compliance, developing breach response strategies, defense of regulatory actions, and defense of class action litigation. Ted counsels clients involved in breaches implicating domestic and international laws, as well as other regulations and requirements. Having led more than 750 data breach responses, Ted has respected relationships with regulators involved in privacy concerns as well as deep experience to help clients confront privacy issues during the compliance risk management stages. He is invested in his client relationships and approaches engagements practically and thoughtfully.

Ted is national leader of the firm's Privacy and Data Protection team and currently serves on BakerHostetler's Policy Committee. He is ranked in Chambers USA: *America's Leading Lawyers for Business* and was one of only three attorneys named an MVP by Law360 for Privacy & Consumer Protection in 2013. Ted is a regular contributor to BakerHostetler's Data Privacy Monitor blog and regularly speaks at major industry events regarding data breach response, risk management, and litigation issues affecting privacy, including being the only private attorney to speak at the National Association of Attorneys General on data security issues.

#### **Experience**

- Leading breach response, regulatory defense, and class action defense of massive credit card breach on behalf of large, privately held retailer. Guided client through initial investigation of criminal attack on payment processing network, including engagement of forensic team and collaboration with government entities to pursue attackers. Led the defense against six putative class actions, a single plaintiff lawsuit, and inquiries from state attorneys general and the Federal Trade Commission, convincing regulator not only to close investigation against client, but to establish client as victim in the breach. Developed strategic plan to defend against lawsuits and actions filed in six different state and federal jurisdictions and negotiated settlement with putative plaintiffs. Continues to defend client against demands by

issuing banks alleging losses related to fraudulent charges and card reissuance costs and provides guidance to client regarding obligations held to payment processor under specific regulations.

- Leads engagement with health system, providing advice on breach analysis, notification obligations, crisis management, investigation of incident and regulatory compliance following theft of computers containing information of approximately four million patients. Coordinates breach investigation, including forensic team, and leads breach response, crisis management, and notification of all patients and physicians affected. Leads post-breach response as well, involving resolution of patient complaints and regulatory investigations. Assisting and advising client in responses to investigations initiated by government agencies. Ted has led the response to nearly half of the 12 largest HIPAA breaches announced to date.
- Develops incident response plans and privacy policies, provides proactive incident response training and counsels on privacy and security issues globally.
- Has defended more than 50 investigations brought by all Regional Offices the Department of Health and Human Services (HHS) Office for Civil Rights (OCR).
- Defending several Civil Investigative Demands (CIDs) brought by state Attorneys General regarding his client's data security practices and compliance with federal and state laws.
- Defending clients in statutory damage claims brought regarding the collection, use and sharing of customer information.
- Representing financial institution following discovery of malicious software on employee workstation computer possibly capturing confidential customer information. Coordinates breach investigation, response strategy, and post-breach response, including resolution of customer complaints and defense of investigation by banking regulators.
- Leading defense of putative class action seeking damage for technology client's use of cookies on its website. Filed Notice of Removal and motion to transfer venue in state court to preserve client rights if case is ultimately remanded.

#### **Recognition**

- Chambers Global: Privacy & Data Protection (USA) (2014 to 2016)
- Chambers USA: Nationwide Privacy and Data Security (2013 to 2015)
- Cybersecurity Docket "Incident Response 30" (2016)
  - New York: Privacy and Data Security Law
- Law360: MVP in Privacy & Consumer Protection (2013)
- Certified Information Privacy Manager



**Anne-Cécile Colas**  
**Group Data Privacy Counsel, Sodexo SA**

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Anne-Cécile has recently joined Sodexo as in-house lawyer leading the data protection practice for the group.

She has spent 10 years+ as a Paris-based attorney-at-law (notably with Bird & Bird and with EY Law) and data protection expert lawyer advising multinational companies of pharma, banking, retail, air and train transportation and luxury industries; focusing on defining international data transfers strategies and data protection compliance programs. Her practice includes leading data protection law compliance assessments at European and worldwide levels, drafting and implementing BCR (Binding Corporate Rules), managing broad-scale international data protection projects and drafting of various legal memos, procedures and policies relating to data protection compliance.

Anne-Cécile is also a specialist counsel on data protection issues in litigation. She has assisted many French and international companies based in France in case of audit and enforcement actions from the French data protection authority. She has also assisted an international airline operating worldwide in several litigations on data protection matter before the French courts.

Additionally, Anne-Cécile is member of Women in Privacy and of IAPP (International Association of Privacy Professionals). She is certified by the IAPP for her European Legal Data Protection practice (CIPP/E).



**Paul Lanois**  
**Legal Counsel, Cross-border Legal at**  
**Credit Suisse**

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- Vice Chair, In-House Counsel Committee of the International Technology Law Association (ITechLaw)
- Exam Development Board Member of the International Association of Privacy Professionals (IAPP)
- Admitted to the District of Columbia (DC), New York (NY) and the Supreme Court of the United States (SCOTUS)
- Listed in the *Legal 500's GC Powerlist*

*Prior professional experience*

- Associate Professor, *University of Cergy-Pontoise*
- Associate at *Simpson Thacher & Bartlett LLP, Allen & Overy LLP and Linklaters LLP*

*Education*

- J.D./Master in Law, *University of Paris - Sorbonne* (France)
- LL.M, *University of Pennsylvania Law School* (USA)
- Certificate in Business and Public Policy, *The Wharton School of the University of Pennsylvania* (USA)

*Areas of Practice*

- Corporate Governance and M&A
- Cross-Border Legal
- Cybersecurity law and privacy



**Diane E. O'Connell**  
**Director of Risk Management in the Transaction**  
**Services group at PricewaterhouseCoopers LLP**



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Diane has experience in international business transactions, finance, M&A, contract negotiations, and international regulation of the financial services industry specializing in private equity, and commodity derivatives.

Before joining PricewaterhouseCoopers, Diane previously worked at the law firms of Paul Hastings, Janofsky & Walker LLP and Fragomen Delrey, Bernsen & Lowey LLP as well as the General Counsel's office of the New York Area. She also participates in the Transaction Services Women's Committee and Open Circle group at PwC, and is a member of the Executive Committee and Open Circle group at PwC, and is a member of the Executive Committee of the International Section of the NYSBA.

Diane received her LLM in Financial Services Law from New York Law School in 2011, focused on international regulatory initiatives after the economic crisis of 2008; her J.D. from New York Law School in 2005; her B.A. in Biology from City University of New York, Queens College; and has completed graduate work at the City University of New York Graduate Center in Bioremediation. Diane is a member of the State Bars in New York, New Jersey and Connecticut.



**Tomoyuki Otsuki**  
**Senior Counsel and Trust & Compliance**  
**Officer at IBM Japan, Ltd**

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Mr Otsuki is based in Tokyo, Japan. In this role, his areas of practice includes corporate governance, labour and employment, litigation, anti-corruption, compliance, and technology laws. Prior to joining IBM, he worked for private practice, multinational companies, and private equity fund.

Mr. Otsuki graduated from Kyoto Sangyo University in 1987 with an LL.B. and received a JD from Salmon P. Chase College of Law, Northern Kentucky University in 1995. He is admitted to practice law in Washington State, New York and Kentucky.