AGENDA
AMERICAN BAR ASSOCIATION
CROSS BORDER DISCOVERY CONFERENCE
JULY 26-27
MUNICH GERMANY
DAY 1 (JULY 26)

7:30-8:30 Breakfast

8:30-9:30 Session 1: Rock and Hard Place: Conducting U.S. Discovery in the E.U.
This session features a high-level panel discussion to highlight the conflict between broad U.S. discovery obligations and the related challenges associated with discovery in the E.U. The panel will walk participants through a hypothetical featuring key issues from E.U. preservation to data transfer to the U.S.

9:30-11:00 Session 2: An Introduction to E.U. Data Protection
What is Personal Data and Sensitive Personal Data? What is Processing? What is Transfer? How do these terms relate to and shape the preservation, collection, search and ultimate production of data in U.S. litigation? This session answers these questions and illustrates the framework of the E.U. Data Protection schema as well as the players who shape the U.S. discovery landscape.

11:00-11:15 Break

11:15-12:30 Session 3: The Impact of GDPR
The General Data Protection Regulation (GDPR) goes into effect in May 2018. It is going to bring many changes to E.U. data protection, but only some are going to directly impact cross border discovery: including new transfer derogations; strict scrutiny on consent; Article 48; and one stop shop?

12:30-2:00 Lunch

Keynote Speaker: Wayne Matus, Managing Director, Litigation and Investigations, UBS AG

2:00-3:00 Session 4: Beyond Data Protection: Other E.U. Laws That Impact U.S. Discovery
This session looks beyond the E.U. Data Protection Directive and the G.D.P.R. Rules to look at other laws in Europe that significantly impact how companies manage cross border issues. From seemingly benign import/export laws to grappling with complex labor regulations and blocking statutes, this panel provides a necessary heads up.
3:00-4:00  **Session 5: U.S. Discovery Law is More Than *Aerospatiale***

The Hague Convention and the United States Supreme Court’s 1987 *Aerospatiale* Decision are often cited as “one-stop-shops” for laws related to the gathering evidence abroad for civil discovery. This panel, while underscoring the importance of both *Aerospatiale* and The Hague Convention, discusses the variety (and quality) of other U.S. discovery laws to consider in the cross-border discovery analysis including can savvy U.S. lawyers in some cases avoid the conflict entirely by focusing on proportionality and possession, custody and control?

4:00-4:15  **BREAK**

4:30-5:30  **Session 6: The Impact of the Cloud on Cross Border Discovery**

The complexity of cloud services introduces a host of issues many of which should be addressed before receipt of a discovery request or subpoena. This panel focuses on the jurisdictional challenges related to the discovery and production of data stored in cloud-based repositories.

5:30-7:00  **RECEPTION**
DAY 2 (JULY 27)

7:30-8:30  Breakfast

8:30-9:30  Session 7:  How do you set up your discovery?  Preservation through Production

This session provides practical guidance for companies and their counsel to comply with discovery obligations that involve cross-border preservation and the ultimate transfer of data for production. The panel will walk participants through preservation and collection options, review strategies, and guidance on data transfer and production.

9:30-10:30  Session 8:  How do you manage cross border discovery with your opponent and the court?  Rule 26(f), Rule 16, and Protective Orders

One important way to mitigate the conflict between U.S. discovery obligations and E.U. law is to enlist the aid of your opponents and the Court to structure the discovery scope and procedure in a way that is more amenable to E.U. Law. This panel will discuss how to introduce these issues and educate opponents and judges about E.U. conflicts. The Panel will also discuss potential strategies to mitigate conflicts such as phasing discovery and including special data security and redaction provisions for E.U. Personal Data into Protective Orders. Finally, the panel will also address the potential cultural divide that may exist within the same client on opposite sides of the Atlantic.

10:30-10:45  Break


The attorney-client privilege is a bedrock principles of United States Jurisprudence; the notion that communications between a lawyer and client are sacrosanct and shielded from disclosure in litigation. This session discusses how U.S. privilege is treated in the European Union and its member states where the principles of privilege are limited, and in some cases, may not apply at all. Can you protect from discovery the same type of communications created in the EU as you can in the U.S.?

11:45-1:15  LUNCH

1:15-2:15  Session 10:  Irreconcilable Difference:  Ethical Quagmire of Non-Compliance

It has long been understood that allegiance to multiple competing interests can lead to a conflict between them. Lawyers are trained to avoid conflict or, at a minimum, disclose the conflict and, if possible, gain consent. This session
discusses the challenges that may arise between E.U. Data Protection rules and U.S. law and what impact disclosure would have on the corporation and client.

2:15-3:15  **Session 11: Data Protection Authority Roundtable**

Data Privacy Authorities (“DPAs”) are a critical part of the European privacy and governance schema. DPAs supervise and enforce regulations related to the processing and data transfer to ensure compliance with the laws that regulate the use of personal data. This session consists of regional DPAs who will provide greater insight into their responsibilities and what they see as the greatest opportunities for corporations in working with the DPA.