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Faculty subject to change without notice.
Wednesday, July 25, 2018
2:30-5:00  Corporate Counsel Roundtable
An informal gathering for corporate counsel attending the Institute to exchange ideas before the opening of the program. (No CLE.)

At Crowell and Moring, LLP, Rue Joseph Stevens 7

Thursday, July 26, 2018
7:30-8:30  Breakfast
8:30-8:45  Introduction and Welcome
8:45-10:15  Breaking News:  Update on the General Data Protection Regulation
The General Data Protection Regulation (GDPR) will be in full effect in May. Regulators have warned that there will be no “grace period” and early enforcement activity is expected to flag priorities for compliance. This panel will assess key concepts for cross-border discovery, including transfer derogations, Article 48 and new standards for consent and review available interpretation and guidance.
Moderator: Natascha Gerlach
Speakers: Cecilia Alvarez; John Bowman; Bruno Gencarelli, Emmanuel Ronco, Ralf Sauer

10:15-10:35  Break
10:35-11:35  From Aerospatiale to In Re Bard:  Cross Border Discovery From US Civil Litigation
The United States Supreme Court’s 1987 Aérospatiale Decision set the standard for courts determining how U.S. cross-border discovery should be conducted. However, a new emphasis on proportionality and scope of relevance in the 2015 Federal Rules of Civil Procedure amendments has altered the equation for U.S. courts weighing cross-border discovery issues. This panel will explore emerging trends and discuss how U.S. lawyers can leverage traditional, revitalized legal principles to manage and minimize conflicts.
Moderator: David Kessler
Speakers: Susan Hammond, Taylor Hoffman

11:35-1:00  Lunch
11:35-1:00  Bonus Session: ISO/IEC 27050 eDiscovery Standard
The International Organization for Standards ("ISO") in conjunction with the International Electrotechnical Commission ("IEC") has developed an eDiscovery standard with wide ranging implications. While ISO/IEC 27050 is intended to harmonize terminology and provide guidance on end-to-end eDiscovery processes, concerns have been raised by the breadth of the proposed standard and its one-size-fits-all approach.
This session provides an overview of the standard and discusses the ramifications if implemented in its current form. (There will be no CLE credit offered for this session.)

1:00-2:15  **We Are Here To Help: Cross Border Discovery in Government Investigations**

Government investigations raise unique challenges for responding parties. Generally requests for information are broad and agencies may be unwilling to “tip their hand” by narrowly focusing requests. Cross-Border requests add a layer of complexity. This panel will address how to conduct effective internal investigations in order to negotiate a compliant yet responsive process.

Moderator: Jeane Thomas (Moderator)

Speakers: Farah Pepper, David Shonka, Natasha Williams

2:15-3:30  **Internecine Warfare: Cross Border Discovery Within the EU (Pre-Trial Discovery and European Commission)**

Cross-border disclosure tensions are not unique to the EU/U.S. Within the EU, friction arises between civil and common law jurisdictions. With Brexit looming, the adequacy of the U.K.’s data protection may also be in question. This panel identifies issues and outlines practical measures for resolving conflicts while teasing out ‘lessons learned” for U.S. practitioners.

Moderator: Natascha Gerlach

Speakers: Cecilia Alvarez, Emmanuel Ronco

3:30-3:50  **Break**

3:50-4:50  **Privilege in the U.S. and in E.U.**

The attorney-client privilege provides one of the few exceptions to the required disclosure of relevant information in U.S. litigation. But the privilege can been lost if communications are not kept adequately confidential. Moreover, differences among legal systems regarding the scope and type of privilege may be missed by practitioners. This session discusses best practices for counsel to protect privilege across legal systems.

Moderator: David Cohen

Speakers: Jenn Hamilton, Daniel Kadar, Patrick Zeller

5:30-7:00  **RECEPTION**

**DAY 2 (JULY 27)**

7:30-8:30  **Breakfast**

8:30-9:30  **"I'm Not Hiding the Ball" How to Educate the Court and the Opponent About Data Protection and Foreign Laws**

Assertions of data protection as a basis for withholding discovery tend to raise suspicion in the U.S. Educating opposing counsel and the court is vital. This panel will discuss effective advocacy techniques—what works and what does not—including how and when to raise the issue. The panel will also outline practical discovery management strategies designed to mitigate or avoid conflicts.
Moderator: Denise Backhouse
Speakers: Michael Becker, Farah Pepper, Jeane Thomas, Patrick Zeller

9:30-10:45  **Minimizing Risks: Preservation and Collection**

Preservation can be a flash point in cross-border matters as the competing needs for prompt action and compliance with regulations create conflict. This session provides practical guidance for companies and their counsel on planning compliant discovery processes. The panel will outline preservation and collection options, data review strategies, and provide guidance on data transfer and production.

Moderator: Christian Zeunert
Speakers: David Cohen, Susan Hammond, Cecil Lynn, Natasha Williams

10:45-11:00  **Break**

11:00-12:15  **Minimizing Risks: Culling and Review**

The principle of data minimization requires that processed data should be limited to the necessary cut. In U.S. discovery, this can equate to relevance and responsiveness. This panel will discuss how technical data culling options and conducting reviews for privacy, relevance and privilege can be used to help meet data protection requirements while managing the risks.

Moderator: Taylor Hoffman
Michael Becker, Natasha Williams, Dan Regard, Christian Zeunert

12:15-1:45  **LUNCH**

1:45-3:00  **Ethics: Special Considerations for Representing Multinational Companies in Cross Border Discovery**

Counseling multinational companies requires a lawyer to take into account legal, cultural and practical issues across jurisdictional boundaries. This panel will explore the unique ethical issues that arise for lawyers in providing competent representation while maintaining privilege, addressing professional secrets regulations and will provide practical insights on effective planning and communication.

Moderator: Denise Backhouse
Speakers: Jennifer Hamilton, Daniel Kadar, David Kessler

3:00-4:15  **Is the Grass Greener? A Regulator’s Perspective**

This session provides the regulator's perspective on the balancing obligations under the GDPR with U.S. discovery responses to help participants gain greater insight into their responsibilities and where that challenges and opportunities they see ahead.

Moderator: John Bowman
Speakers: Bruno Gencarelli, Romain Robert, Ralf Sauer, David Shonka (FTC)

4:15-4:30  **Closing Remarks/Adjourn (Agenda subject to change without notice.)**