



The Sedona Conference

Commentary on Data Privacy and Security Issues in Mergers & Acquisitions Practice

(May 2019)

The Sedona Conference Working Group on Data Security and Privacy Liability (WG11) developed the *Commentary on Data Privacy and Security Issues in Mergers & Acquisitions Practice* (“*Commentary*”) to provide practical guidance on data privacy and security issues that must be considered in a potential acquisition. In doing so, it approaches these issues from the perspective of the buyer. It is intended to provide a framework for addressing the privacy and security issues that likely will impact a transaction.

The *Commentary* addresses these privacy and security issues in the three basic stages of a transaction:

- (1) Determining the scope of the acquisition
- (2) Conducting due diligence
- (3) Closing and post-closing considerations

At the end of each stage, there is a short summary containing the key “takeaway” points. In addition, the *Commentary* aims to give practical demonstrations of those processes, including sufficient background information to demonstrate how the proposed guidance will work in the real world. Given this approach, the *Commentary* is not intended to be exhaustive and certainly could not be; the scope of the issues that may arise will necessarily turn on the specifics of a given transaction and the terms negotiated by the buyer and the seller.

It is our hope that the *Commentary* will be of use not only to professionals working on an acquisition, but also to those who will work on the post-deal integration of acquired assets. We have also appended to the *Commentary* a summary of the categories and types of data implicated in the deal analysis (Appendix A); sample representations and warranties that address privacy and security concerns (Appendix B); and basic due-diligence requests (Appendix C).

The full text of The Sedona Conference *Commentary on Data Privacy and Security Issues in Mergers & Acquisitions Practice* is available free for individual download from The Sedona Conference website at:

https://thesedonaconference.org/publication/Commentary_on_Data_Privacy_and_Security_Issues_in_Mergers_and_Acquisitions_Practice.

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