

Technology, Privacy & Data Security

As the technology sector continues to evolve, and new rules develop across different platforms and industries, the importance of tech- and business-savvy counsel becomes increasingly important. Recognizing that technology law is integral to businesses of every size, every stage, and across every industry, Cozen O'Connor's multidisciplinary Technology, Privacy & Data Security team serves as a one-stop shop to help clients — ranging from startups to Fortune 100 companies — navigate technology transactions, as well as regulatory, litigation, and risk management issues.

Our clients include global players in adtech, fintech, edtech, and martech; health care; retail; the financial industry; cloud computing; data brokerage; blockchain; and cosmetics. We also represent online ad networks, software and mobile app developers, media monitors, digital interactive agencies, international e-commerce companies, and major telecommunications and cable service providers, among others.

Transactional Services

Our transactional team addresses a wide range of cyberlaw, privacy, and data security issues and technology- and internet-related transactions. We handle strategic outsourcing/licensing, optimizing digital assets, internal data management and privacy governance, as well as media M&A and other corporate-level technology transactions. We also handle buy- and sell-side technology transactions that typically involve cloud computing, data privacy, IP, software, and security, and interactive marketing regulatory compliance.

Additional transactional services include:

- drafting and negotiating software, IT services, data, and digital media agreements;
- advising clients in the use and protection of IP assets;
- counseling clients on the protection of personal data and other sensitive data assets; and
- inbound and outbound technology licensing and acquisition.

Regulatory Services

The regulatory landscape surrounding data protection and cybersecurity is ever-changing and fraught with landmines. One incident of data loss, breach, or cyberattack can undermine years of good will and leave clients with daunting financial, legal, and reputational challenges. When disaster strikes, companies need a true crisis manager at the helm to stem the damage and ensure that the remediation strategy complies with all relevant laws and regulations.

We provide advice and counsel on the full panoply of issues clients face in this highly regulated space, including but not limited to complying with the Health Insurance Portability and Accountability Act (HIPAA), the Gramm-Leach-Bliley Act (GLBA), the Electronic Communications Privacy Act (ECPA), the California Consumer Privacy Act (CCPA), Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act, the Children's Online Privacy Protection Act (COPPA), and the Fair Credit Reporting Act (FCRA). We also advise on international data transfers and assist U.S. companies to comply with the EU General Data Protection Regulation (GDPR) and the ePrivacy Directive.

Additional regulatory services include:

- drafting privacy policies and privacy-related disclosures, and structuring privacy and security by design;
- assisting with advertising and marketing privacy (including retargeting, cross-device tracking, cookie



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Related Practice Areas

- Artificial Intelligence
- Business
- Class Actions
- CODISCOVER (eDiscovery)
- Commercial Litigation
- Corporate
- Government & Regulatory
- Health Care & Life Sciences
- Infrastructure
- Insurance Corporate & Regulatory
- Italy Practice
- Privacy Litigation – Emerging Trends

matching, and identity resolution);

- providing advice and counsel on compliance with the Telephone Consumer Protection Act (TCPA), the Canadian Anti-Spam Law (CASL), Canada's Personal Information Protection and Electronic Documents Act (PIPEDA), and Federal Trade Commission (FTC) guidelines (including privacy and data protection, advertising disclosures, endorsement and testimonial guidelines, and native advertising guidelines);
- handling contracts with all aspects of the digital advertising ecosystem, including DSPs, SSPs, DMPs, yield optimization tools, verification tools, ad servers, list management, and lead generator/aggregator and performance marketing contracts; and
- evaluating and managing vendor privacy and security.

In the event of a data privacy or security breach, our attorneys routinely conduct immediate forensic and recovery operations, send notifications, arrange for customer outreach, communicate with government officials, protect clients from liability, and craft public messages. We also counsel clients on investigations by the FTC, by the U.S. Department of Health and Human Services' Office of Civil Rights (OCR), and under the Sarbanes-Oxley Act.

In addition, Cozen O'Connor's government affairs professionals closely monitor potential changes in state and federal policy regarding data privacy and electronic information security. A leader in policy reform, Cozen O'Connor works with clients to ensure policy compliance in this ever-changing regulatory landscape and also routinely represents clients before regulators and legislators.

Litigation Services

Our team of skilled litigators represents clients in privacy and data-related class actions, multiparty and individual cases, and arbitrations in jurisdictions across the country as well as in front of federal regulatory agencies, such as the FTC. We are particularly well-known for defending data privacy class actions using creative and cutting-edge approaches. Our team has been at the forefront of some of the most significant data privacy litigation in the country in recent years, especially in the area of biometric privacy. We are recognized trailblazers in privacy class action defense in both federal and state courts, and at both the trial and appellate levels. Beyond litigation, we work hand-in-hand with the firm's nationally recognized State Attorneys General practice and Public Strategies group to ensure our clients respond appropriately to state investigations and are getting up-to-date guidance in this ever-changing area.

Risk Management Services

Our group also has extensive experience in the fast growing and ever-evolving cyber risk market. As a long-time leader in the insurance bar, Cozen O'Connor attorneys have helped develop first- and third-party cyber/privacy/tech policies, errors and omissions insurance, and cybercrime policy language. We also advise on coverage under all first- and third-party lines of insurance, including cyber and technology, and have been involved in managing some of the largest consumer data breaches on behalf of our insurer clients.

Wherever technology meets the law, Cozen O'Connor is waiting at the crossroads with a team of experienced counsel ready to help.

Experience

Represented SourcEdge Solutions, a national technology solutions provider of claims systems modernization services, in its sale to private equity-backed Alivia Analytics, a leading AI-based healthcare payment integrity platform for fraud, waste, and abuse. This transaction drew on the experience of the firm's corporate, tax, labor and employment, employee benefits and executive

compensation, intellectual property, health law, and technology, privacy and data security attorneys.

Represented a community care organization that had entrusted all of its critical systems, including email, to a cloud service provider which suffered a ransomware attack and did not provide adequate notice that patient and employee information had been compromised for thousands of individuals. The service provider was not cooperative in providing the information the client needed in order to comply with its data breach notice obligations under HIPAA and state law, so the client filed suit to force cooperation and recover other damages. Our team handled the litigation and worked with the client's cyber insurer and its vendors to determine what notices should be given and to approve the content of the notices. We also negotiated agreements with the previous and a new cloud services provider to migrate the client's applications and data.

Represented a \$75 million participant in a \$500 million syndicated loan for a data center in Northern Virginia.

Represented an international provider of enterprise data software for compliance-related uses in an IT outsourcing transaction with an international network of public accounting, tax, consulting, and business advisory firms.

Represented an international e-commerce company in a technology procurement transaction with a SaaS vendor hired to modernize and manage the client's digital returns process. Our team analyzed how the new system would materially impact the client's operations and obligations, focusing heavily on the interconnected issues of privacy and security, designing parameters around everything from text message language to opt-out protocols and ensuring compliance with all international, federal, and state data protection and privacy laws.

Negotiated a high-stakes master SaaS development and hosting agreement on behalf of a governmental entity with a software developer which will design and host a new digital client management system for the entity. The project posed a number of challenges, including the need to extract information from a dated legacy system, create customized software solutions, and securely maintain extremely sensitive information. The client engaged Cozen O'Connor to assist with RFP drafting and bid appraisals, and once the software developer was selected, we led intensive negotiations, securing key contractual protections, including an information security addendum with detailed obligations governing data storage and processing and a framework for response and recovery in the event of a breach.

Negotiated a model combined software development and cloud service agreement on behalf of an international medical diagnostics company with a digital services provider. In negotiating the agreement, our team first resolved multijurisdictional privacy and intellectual property questions, then addressed the interconnected issues of service level and liability, and ultimately developed a unique agreement that combines requirements for the vendor to develop and operate specialized back-up systems as well as a liability structure that incentivizes quick resolution of problems and establishes compensation metrics for a sustained outage.

Represented Kinetiq, Inc., a cutting-edge TV intelligence platform, in a significant data integration agreement with a UK-based digital intelligence services suite. Our team was involved in the early discussions between the companies, drafted the initial letter of intent, and led the subsequent negotiations. In the course of those negotiations, we navigated a robust set of restrictions, developed specific remedies should those limits be breached, and won key concessions around contract jurisdiction and enforcement.

Represented a small independent airline in its negotiation of a data integration agreement with one of

the largest air carriers in the world. The deal was complex and multifaceted, establishing bidirectional data flows, with attendant privacy, data security and liability issues, and initiating our client's participation in the major airline's worldwide rewards program. The final agreement limited our client's liability, codified inclusion in the rewards program, and enabled a significant venture investment.

Represented Pinnacle 21, LLC, a provider of SaaS solutions for clinical data fitness, regulatory compliance, and FDA submission readiness, in its \$310 million sale to Certara, Inc. (Nasdaq: CERT), a biosimulation company.

Represented The Burgiss Group, LLC, a provider of systems and data on private capital, in its acquisition of Caissa LLC, a developer of an investment analytics software platform.

Represented QuickFrame, a developer of an online video marketing platform, in its sale to MNTN, a provider of online digital advertising software.

Represented the owners of BTB Security, a cybersecurity and digital forensics solutions company, in the sale of BTB Security to Netrix LLC, a provider of managed and professional IT services. Netrix is majority-owned by private equity firm OceanSound Partners.

Represented ClickSWITCH, LLC, a provider of a digital account switching SaaS solution for financial institutions and challenger banks, in its sale-by-merger to Q2 Holdings, Inc., a cloud-based banking and lending software company.

Represented Othot, Inc., a provider of advanced analytics software to higher education institutions, in its sale to Liaison International, a student recruitment and admissions management and marketing automation software provider.

Represented Sherpa Software, LLC, an enterprise data governance and eDiscovery solutions provider, in its sale to Gimmel LLC, an information governance software solutions provider.

Represented Binarytree.com Inc., a provider of cloud based software migration services, in its acquisition by Quest Software Inc., a global systems management, data protection, and security software provider.

Played an instrumental role in the Federal Retirement Thrift Investment Board ("FRTIB") awarding the Thrift Savings Plan ("TSP") recordkeeping contract -- one of the largest federal contracts of 2020 -- to a team consisting of Accenture Federal Services LLC and our client, Alight Solutions LLC. The Cozen O'Connor team supported Alight in developing its initial offer, refining its best and final offer, and negotiating the prime contract with FRTIB and the subcontract between Accenture and Alight. We also advised Alight on the Federal Acquisition Regulations, Federal Employees' Retirement System Act of 1986 ("FERSA") and Privacy Act of 1974. The contract spans more than 13.5 years when all options are exercised, with a base value of \$3.3 billion.

Provided advice and counsel to a publicly traded REIT on cybersecurity and incident response plans, and provided overall assistance regarding risk management relating to cybersecurity.

Provided advice and counsel on insurance coverage issues relating to high-profile consumer data breaches that involved millions of cardholders, including oversight of settlement negotiations with nationwide class counsel and payment card brands.

Provided crisis management arising from unauthorized intrusions into clients' computer systems.

Evaluated, created and implemented breach prevention and systems protection.

Handled claims involving Internet security, privacy, theft of confidential data, website content, unfair competition, antitrust, advertising and intellectual property issues.

Advised clients on coverage under all first-party and third-party lines of insurance, including Internet, information technology, multimedia, fidelity/crime, commercial general liability, professional services, property and all-risk forms.

Drafted first- and third-party cyber/tech/privacy policies, endorsements and contracts for entities ranging from European-based international funds and stock transfer systems to small businesses in all sectors spanning the globe.

Conducted internal assessments of our clients' business operations, systems, and needs, up to and including negotiating insurance policy terms and protections, as well as indemnity agreements with vendors and other service and product suppliers.
