

The Sedona Conference

Commentary and Principles on Jurisdictional Conflicts over Transfers of Personal Data Across Borders

The Sedona Conference Working Group on International Electronic Information Management, Discovery, and Disclosure (WG6) developed the *Commentary and Principles on Jurisdictional Conflicts over Transfers of Personal Data Across Borders* (“*Commentary*”) to:

- (1) provide a practical guide to corporations and others who must make day-to-day operational decisions regarding the transfer of data across borders; and
- (2) provide a framework for the analysis of questions regarding the laws applicable to cross-border transfers of personal data; and
- (3) encourage governments to harmonize their domestic laws to facilitate global commerce.

Basic principles of international law relating to sovereignty, due diligence, jurisdiction, and the rights enjoyed by natural persons can help support a set of principles that can serve as a framework for analyzing cross-border transfers of personal and confidential data in a global economy. This *Commentary* puts forth six principles to guide readers in determining which nation’s laws should apply in a given context.

Principle 1: A nation has nonexclusive jurisdiction over, and may apply its privacy and data protection laws to, natural persons and organizations in or doing business in its territory, regardless of whether the processing of the relevant personal data takes place within its territory.

Principle 2: A nation usually has nonexclusive jurisdiction over, and may apply its privacy and data protection laws to, the processing of personal data inextricably linked to its territory.

Principle 3: In commercial transactions in which the contracting parties have comparable bargaining power, the informed choice of the parties to a contract should determine the jurisdiction or applicable law with respect to the processing of personal data in connection with the respective commercial transaction, and such choice should be respected so long as it bears a reasonable nexus to the parties and the transaction.

Principle 4: Outside of commercial transactions, in which the natural person freely makes a choice, a person’s choice of jurisdiction or law should not deprive him or her of protections that would otherwise be applicable to his or her data.

Principle 5: Data in transit (“Data in Transit”) from one sovereign nation to another should be subject to the jurisdiction and the laws of the sovereign nation from which the data originated, such that, absent extraordinary circumstances, the data should be treated as if it were still located in its place of origin.



Principle 6: Where personal data located within, or otherwise subject to, the jurisdiction or the laws of a sovereign nation is material to a litigation, investigation, or other legal proceeding within another sovereign nation, such data shall be provided when it is subject to appropriate safeguards that regulate the use, dissemination, and disposition of the data.

The full text of The Sedona Conference *Commentary and Principles on Jurisdictional Conflicts over Transfers of Personal Data Across Borders* is available free for individual download from The Sedona Conference website at

https://thesedonaconference.org/publication/Commentary_and_Principles_on_Jurisdictional_Conflicts_over_Transfers_of_Personal_Data_Across_Borders.

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