

The Sedona Conference

Quantifying Violations under U.S. Privacy Laws

(April 2021 Public Comment Version)

As data privacy receives more attention in the United States and elsewhere—and as new laws in the U.S. take shape and are enacted—the Sedona Conference Working Group on Data Security and Privacy Liability (WG11) recognizes that a consistent approach to quantifying violations under U.S. privacy laws could be helpful to impacted parties, courts, authorities, and practitioners, not to mention the general public. With various jurisdictions and enforcement authorities involved in current and future enforcement of such data privacy laws, however, consistency can be challenging to reach. With an eye towards consistency, WG11 hopes that The Sedona Conference *Commentary on Quantifying Violations under U.S. Privacy Laws* (“*Commentary*”) will be of use to stakeholders in reaching a fair interpretation of the meaning of a “per violation” measure of damages.

The first section of this *Commentary* reviews at a high level the landscape of existing privacy laws in the United States, addresses certain ambiguities regarding the calculation of penalties and damages that may arise under such laws, and examines the way in which other somewhat analogous statutes have been enforced across the country. The second section examines possible ways in which violations of privacy laws could be quantified given statutory construction and existing case law. The last section endeavors to provide a useful test courts can use to evaluate the meaning of a “per violation” measure of damages in the context of data privacy violations in a way that benefits consumers and provides deterrent value to regulators but is fair and provides due process to potential violators.

The full text of The Sedona Conference *Commentary on Quantifying Violations under U.S. Privacy Laws*, Public Comment Version, is available free for individual download from The Sedona Conference website at https://thesedonaconference.org/publication/Commentary_on_Quantifying_Violations_under_US_Privacy_Laws.

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