

WG1 Call for Volunteers (August 2020)

- [Brainstorming Group on Discovery and Preservation of Data from the Internet of Things \(IoT\)](#)
- [Brainstorming Group on Improving the Privilege Log Process](#)
- [Brainstorming Group on Discovery Sanctions](#)

We are pleased to announce several new opportunities to become more involved with the Working Group. The Steering Committee is forming three new Brainstorming Groups. Please see the descriptions below. **Be sure to follow the subsequent instructions for applying and note that the deadline for submitting an application to participate is August 31, 2020. When submitting your application, please identify the project for which you are applying. If you are interested in multiple projects, please indicate your order of preference.**

- Brainstorming Group on Discovery and Preservation of Data from the Internet of Things (IoT)

The Internet of Things (IoT) is ubiquitous, and innovation continues at a rapid pace, but courts and parties seem to struggle with the discovery of IoT. However, there is little guidance regarding how courts should treat IoT data, where and how to get that data, and if different rules apply to discovery from IoT devices. IoT consists of many different types of technology, from consumer goods like wearables, digital assistants, smart home devices (thermostats, light bulbs, doorbells, refrigerators, e.g.), and vehicles/Infotainment Systems/Sensors to industrial IoT such as safety and maintenance monitoring, supply-chain tracking and monitoring, and productivity tracking and monitoring.

To this end, the Internet of Things Brainstorming Group will consider and make recommendations to the WG1 Steering Committee for a Sedona Conference publication that addresses the following issues: (i) the potential relevance of IoT data to different case scenarios; (ii) the unique challenges related to IoT data, and the potential need for obtaining discovery from, for example, internet-connected cameras, home automation systems, smart speakers, TVs, refrigerators, and wearables; (iii) the limited case law related to IoT discovery issues; (iv) discovery of data generated by motor vehicles, i.e., black box, infotainment systems, and parking or other sensors; (v) in the industrial realm, the challenge of IoT data generated in factories, warehouses, and pipelines, among other settings; (vi) who owns the data and who can access it; (vii) how to preserve IoT data; and (viii) whether the standards are different in civil versus criminal cases.

The Steering Committee liaisons will be Greg Kohn, and Tim Opsitnick. [Jump to Brainstorming Group Member Expectations & Application Process](#)

- Brainstorming Group on Improving the Privilege Log Process

Adequate privilege logs are required to protect privilege while providing enough information for the opposing party to evaluate the claim of privilege. With the enormous volumes and complexity of electronically stored information (ESI) involved in modern eDiscovery, reviewing

documents for privilege and preparing privilege logs is usually highly resource intensive, time consuming, and expensive—often costing hundreds of thousands of dollars or more. Much of the effort and expense may be incurred in connection with communications that are not very important, but must nevertheless be protected to uphold the privilege. Additionally, despite the time and expense involved, privilege logs today often do not achieve the goal of enabling parties and courts to fairly assess the claims of privilege on the face of the privilege log entries.

The Privilege Log Brainstorming Group will consider and make recommendations to the WG1 Steering Committee for a Sedona Conference publication that addresses the following issues: (i) what is working and not working with respect to privilege logs; (ii) what alternative approaches and methodologies may mitigate the issues that litigants face with respect to privilege logging; and (iii) how we can move the law forward in a reasoned and just way to ensure procedures regarding privilege are aligned with the mandate of Federal Rule of Civil Procedure 1 to "secure the just, speedy, and inexpensive determination" of every case, while at the same time ensuring that parties have the ability to obtain evidence necessary to litigate cases.

The WG1 Steering Committee liaisons will be Andrea D'Ambra and Gareth Evans. [Jump to Brainstorming Group Member Expectations & Application Process](#)

- **Brainstorming Group on Discovery Sanctions**

In the discovery context, sanctions are typically addressed under Federal Rules of Civil Procedure (FRCP) 26 and 37. The 2015 FRCP Amendments to those rules noted that the differing standards applied by federal circuits for imposing "sanctions or curative measures" where a party failed to preserve ESI had "caused litigants to expend excessive effort and money on preservation in order to avoid the risk of severe sanctions if a court finds they did not do enough." 2015 Advisory Committee Notes to Rule 37(e). In light of the amendments' objectives, and as discovery practice evolves, the ways in which courts address sanctions for discovery misconduct invite further examination as to whether and how sanctions requests should be approached any differently under the current Rules.

To this end, the Discovery Sanctions Brainstorming Group will consider and make recommendations to the WG1 Steering Committee for a Sedona Conference publication that addresses the following issues: (i) how discovery sanctions deter discovery misconduct; (ii) discovery sanctions issues that remain uncertain or create confusion; (iii) how to ensure that sanctions orders are reasonable, even-handed, and in keeping with the goals of discovery; (iv) issues that should be decided by the court, as opposed to the jury (along with types of instructions that should be provided to the jury); and (v) the impact of sanctions-related disputes on FRCP 1's mandate that the court and parties employ all federal rules to achieve "the just, speedy, and inexpensive determination of every action."

The WG1 Steering Committee liaisons will be Amy Sellars, Lea Malani Bays, and Philip Favro. [Jump to Brainstorming Group Member Expectations & Application Process](#)

EXPECTATIONS OF BRAINSTORMING GROUP MEMBERS:

- Participation in Brainstorming Groups is a benefit of individual Sedona Conference Working Group Series membership. Each Brainstorming Group member must keep their membership current at all times during the process.

- Brainstorming Group members are expected to regularly join and participate in Brainstorming Group telephonic meetings—Brainstorming Group leaders will take attendance for all meetings, and track meeting participation and contributions.
- Brainstorming Group members will be expected to draft or assist in drafting portions of the outline and/or perform research as needed.
- Brainstorming Group members are expected to review all team drafts that are circulated, and comment and/or revise/edit as necessary.
- Brainstorming Group members are expected to dialogue, not debate, and work as part of a team to achieve consensus. The main point is that it is critical that all Brainstorming Group members are active, engaged participants in the outline drafting efforts in order to produce high-quality work product in a limited timeframe.

HOW TO APPLY:

NOTE: If you are not currently a Working Group member, but interested in participating, please become a member by signing up for a Working Group Series (WGS) membership on [The Sedona Conference website](#). Once a WGS member, one is eligible to take part in the activities of all Working Groups, including WG1. If you have any questions about how to sign up for a membership or encounter any difficulties while doing so, please contact our office at info@sedonaconference.org or (602) 258-4910.

To be considered for any of the three Brainstorming Groups, please provide separate answers to each of the questions below and submit to Dave Lumia at dbl@sedonaconference.org no later than August 31, 2020. Please be brief when answering the questions; no more than 50 words per answer to a question.

- What is your profession and expertise?
- How many years of experience do you have?
- What organization do you work for?
- Do you regularly represent requesting parties, producing parties, or both?
- What qualifications or experiences make you particularly qualified to serve on this Brainstorming Group, and why?
- If you wish to be considered for more than one Brainstorming Group, please indicate which ones and rank your preferences.

When selecting members of a Brainstorming Group, we seek differing perspectives, viewpoints, backgrounds, and experiences in order to build a consensus-based document that is beneficial to all stakeholders. Please do not be discouraged if you are not selected for the Group. Because The Sedona Conference is a self-selected group of engaged, proactive people, we get many more excellent and eminently qualified applicants for each Group than we can take. If you do not get selected for a Group, please try again! Even if you are not selected, your application and eagerness to be involved are favorably considered the next time you apply for a Brainstorming

Group or Drafting Team. Also remember that as a member of WG1, you will have the opportunity to review and comment on any member-only work-product written by this Group.

IMPORTANT NOTE ABOUT SUBSEQUENTLY FORMED DRAFTING TEAMS:

Frequently, after the Brainstorming Group has presented an outline to the membership and after a short period of member review and comment, the Steering Committee will approve the formation of a Drafting Team to produce a draft publication on the proposed topic. Being a member of the Brainstorming Group does factor into your consideration for Drafting Team membership, but it is not a guarantee that you will be selected. This is because Drafting Teams are usually smaller than Brainstorming Groups, function over a longer period of time, and require a particular balance of perspectives and experiences in order to build a consensus-based document that is beneficial to all stakeholders. Further, as mentioned, a Brainstorming Group is asked to recommend the composition of a subsequent Drafting Team, which may include a different mix of experience, expertise, or perspectives than for the Brainstorming Group.