

QuickLaunch University Webinar Series

Data Privacy and GDPR—Is Your Startup Ready?

October 10, 2017

Attorney Advertising

WILMERHALE® 

WILMER CUTLER PICKERING HALE AND DORR LLP ©



Webinar Guidelines

- Participants are in listen-only mode
- Submit questions via the Q&A box on the bottom right panel
- Questions will be answered as time permits
- WebEx customer support: +1 888 447 1119, press 2

WilmerHale has been accredited by the New York State and California State Continuing Legal Education Boards as a provider of continuing legal education. This program is being planned with the intention to offer CLE credit in California and non-transitional credit in New York. This program, therefore, is being planned with the intention to offer CLE credit for experienced New York newly attorneys only. Attendees of this program may be able to claim England & Wales CPD for this program. WilmerHale is not an accredited provider of Virginia CLE, but we will apply for Virginia CLE credit if requested. The type and amount of credit awarded will be determined solely by the Virginia CLE Board. Attendees requesting CLE credit must attend the entire program.



Speakers



Dr. Martin Braun
Partner
WilmerHale

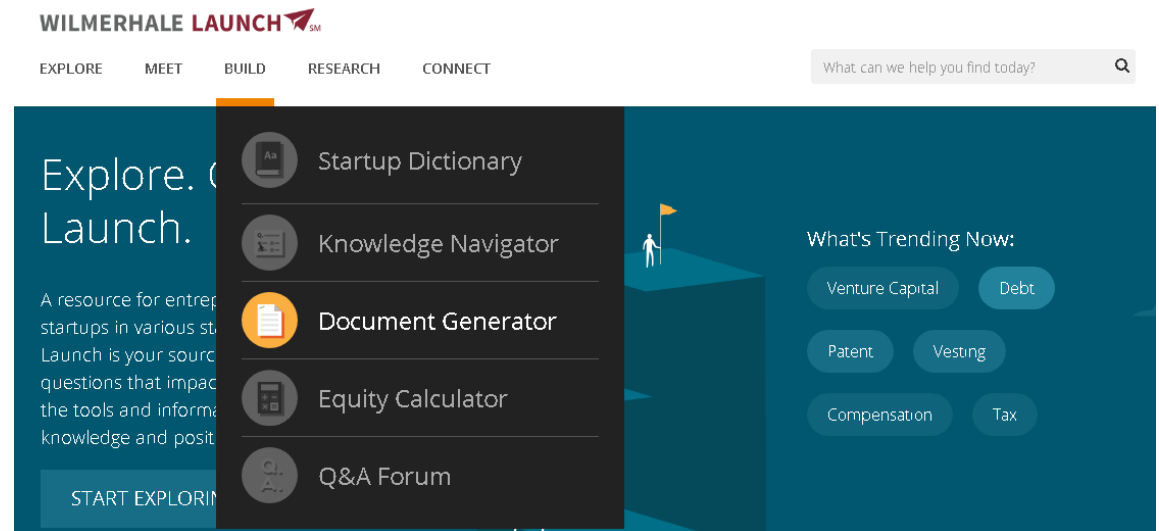


Dave Gammell
Emerging Company Practice Co-
Chair and Partner
WilmerHale

Additional Resources

For more information visit [WilmerHaleLaunch.com](https://www.wilmerhalelaunch.com)

- A website full of vital information, tools and connections needed to position entrepreneurs and startups for success
- Draws on expertise of WilmerHale's extensive team of lawyers practicing in areas critical to emerging companies in various stages of growth
- Features a growing library of video insights from lawyers, investors and other experts
- Allows entrepreneurs and investors to build knowledge, research topics with everyday impact and connect with dedicated lawyers
- **Contains Document Generator**





Additional Resources

WilmerHale Privacy and Cybersecurity Law Blog

<https://www.wilmerhale.com/blog/privacy-and-cybersecurity/>

Twitter

@WHCyberPrivacy

Website

<https://www.wilmerhale.com/cybersecurity-privacy-and-communications/>



Overview

- 1. General background**
- 2. Core principles**
- 3. Applicability of the GDPR**
- 4. Consequences of applicability**
- 5. International transfers of personal data**
- 6. Guidance from supervisory authorities**
- 7. Outlook**
- 8. Q&A**



General Background

- The European General Data Protection Regulation (“GDPR”) will have full legal effects from May 25, 2018.
- It replaces Directive 95/46/EC.
- Member states have only very limited power to regulate data protection, e.g. in the areas of employee data protection, freedom of speech/media, and research.
- Threat of massive fines, additional enforcement risks.

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0679>



Core Principles of the GDPR

- Definition of “**personal data**” and “**special categories of personal data**” (Art. 4(1), Art. 9)
- “**Processing**” of personal data (Art. 4(2))
- Requirement of a **legal basis** for processing (Art. 6), such as consent, legitimate interests, contract, etc.
- General **principles** relating to processing (Art. 5)
- “**Controller**” and “**processor**” (Art. 4(7), Art. 4(8))
- Restrictions of international “**transfers**” of personal data (Art. 44-50)



Applicability of the GDPR

Article 3 GDPR – Territorial Scope

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller *or a processor* in the Union, regardless of whether the processing takes place in the Union or not.
2. This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller *or processor* not established in the Union, where the processing activities are related to:
 - a) the **offering of goods or services**, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or
 - b) the **monitoring of their behavior** as far as their behavior takes place within the Union.



Applicability of the GDPR

- Directly subject to GDPR
 - As a controller?
 - As a processor?
- Indirectly subject to GDPR because of a contract with an organization which is subject to GDPR?



Consequences of Applicability (examples)

- Art. 27 – Representative of controller or processor not established in the European Union
- Art. 37 – Data protection officer
- Art. 33, 34 – Notification of Breaches
- Art. 32 – Security of processing
- Art. 30 – Records of processing activities
- Art. 25 – Data protection by design and by default (controllers)
- Art. 13/14 – Information obligations (controllers)
- Art. 15-22 – Data subject rights (controllers)



Controller-Processor Agreements

Art. 28 GDPR

- Core obligations:
 - Follow instructions
 - Appropriate measures for IT security
- Written or electronic contract
- Content of contract cannot override underlying facts
- Mandatory content of contract
- Subprocessing



International Transfers of Personal Data

- Art. 44 – International transfers only if level of protection of GDPR is not “undermined”
- “Privacy Shield”
 - Results of review expected for coming weeks (October)
- “Standard Contractual Clauses”
 - Irish High Court has decided to refer the question of the validity of the Standard Contractual Clauses to the European Court of Justice, decision expected for early 2019
- Additional adequacy findings by the European Commission (?)



Guidance from Supervisory Authorities

Article 29 Working Party

- Data data protection impact assessment (consultation)
- Data portability
- DPOs
- Lead Supervisory Authority

Member state supervisory authority guidance

- ICO, CNIL, etc.



Outlook

- Enforcement as of May 25, 2018
- What are companies doing right now?
- Further guidance by data protection authorities
- National data protection laws
- E-Privacy Regulation (replaces Directive 2002/58/EC “Cookie Directive”)



Questions

Dr. Martin Braun

Partner, WilmerHale

+49 69 27 10 78 207

Martin.Braun@wilmerhale.com

David Gamell

Emerging Company Practice Co-Chair and
Partner, WilmerHale

+1 (617) 526 6839

David.Gammell@wilmerhale.com

Wilmer Cutler Pickering Hale and Dorr LLP is a Delaware limited liability partnership. WilmerHale principal law offices: 60 State Street, Boston, Massachusetts 02109, +1 617 526 6000; 1875 Pennsylvania Avenue, NW, Washington, DC 20006, +1 202 663 6000. Our United Kingdom office is operated under a separate Delaware limited liability partnership of solicitors and registered foreign lawyers authorized and regulated by the Solicitors Regulation Authority (SRA No. 287488). Our professional rules can be found at www.sra.org.uk/solicitors/code-of-conduct.page. A list of partners and their professional qualifications is available for inspection at our UK office. In Beijing, we are registered to operate as a Foreign Law Firm Representative Office. This material is for general informational purposes only and does not represent our advice as to any particular set of facts; nor does it represent any undertaking to keep recipients advised of all legal developments. Prior results do not guarantee a similar outcome. © 2004-2017 Wilmer Cutler Pickering Hale and Dorr LLP