

# Global Privacy Issues

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Crowell & Moring LLP

# Introduction

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- **Introduction to data protection**
- **Application of data protection laws to healthcare industry**
- **Rules on handling personal information**
- **Data protection response strategies**

# What is Privacy? What is Data Protection?

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- **Perceptions of privacy**
- **Cultural disparities**
- **Data protection laws**

# Data Protection Law

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- **Protect and allow the free flow of personal information**
- **Regulate processing of personal information by organisations**
- **Provide individuals with rights**

# Personal Information

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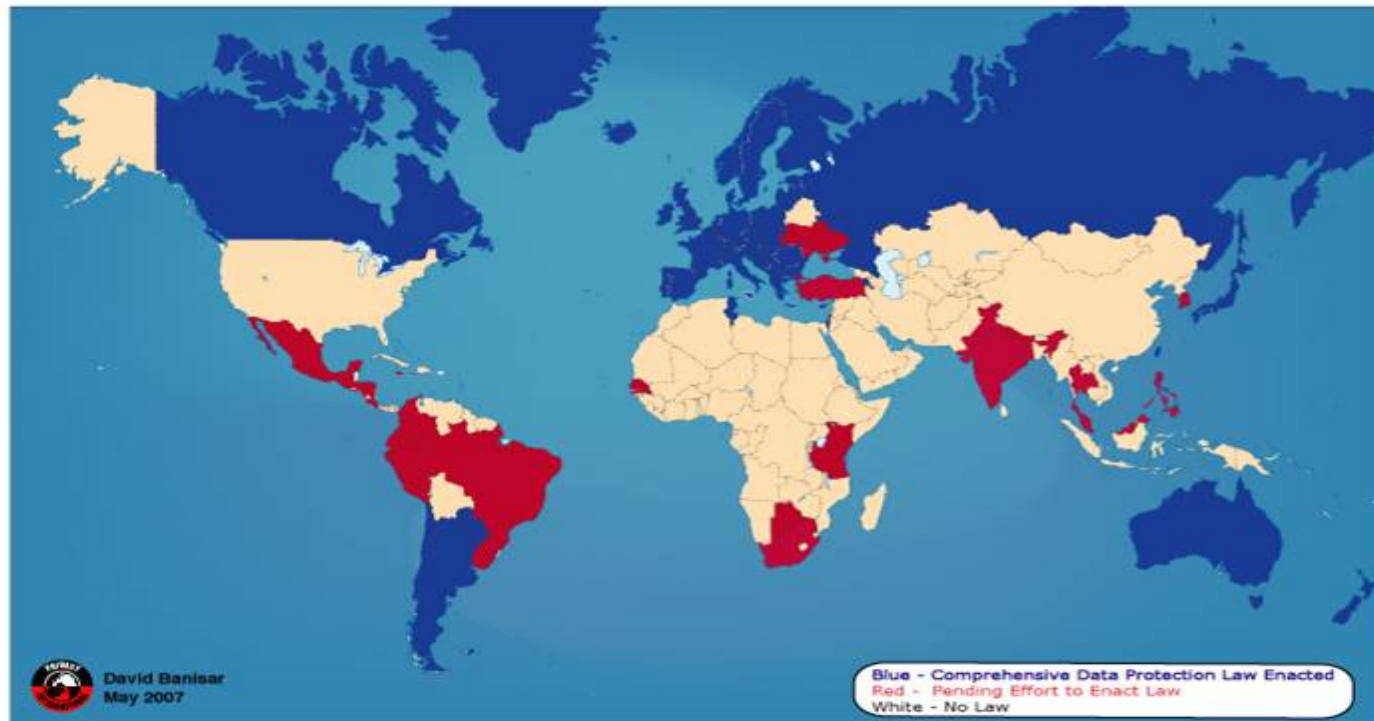
- **Personal information (or personal data) means “any data which enable the identity of an individual to be established by reference to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity”.**

**Article 2(a), the Directive**

- **May include: Names and addresses in employee and personnel files and HR databases, information held by third party benefit providers, marketing databases, e-mail correspondence, files on hard drives, telephone records and bank records, video conference records, and others.**

# Data Protection Law Map

**Data Protection Laws Around the World**



<http://www.privacyinternational.org/survey/dpmap.jpg>

# Why Do We Care?

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- **Tyco**
- **Swift**
- **Company X**

# Data Protection Enforcers

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- **Powers of Data Protection Authorities**

- Investigative powers
- Powers of intervention
- Right to bring legal proceedings
- Exchange information
- Exercise powers on behalf of another
- Article 29 Working Group in Europe

- **Types of Powers**

- Fines
- Injunctions (orders to stop processing)
- Criminal sanctions
- Reputational harm

# When the Law Might Apply

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- **Overseas based subsidiaries**
- **Overseas service contracts**
- **Overseas claims processing centres**
- **Covered individuals located overseas**

# Rules on Handling Personal Information

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- **Handling Requirements:**

- Finality – compatible processing
- Transparency – notices to data subjects
- Legitimacy – consent, legal obligation, legitimate interests of controller, other exceptions
- Proportionality – avoid excessive disclosure
- Accuracy and retention of data – up to date records retained for appropriate time periods
- Security – organisational and technical security, use of third parties
- Rights of data subjects – access requests and obligations
- Disclosure – additional consent sometimes required

# Rules on Transferring Personal Information

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- **Transfer restrictions may apply**

**Eg. In Europe:**

- Consent of data subject
- Establishment, exercise or defence of legal claims
- Recipient is safe harbor member
- Data transfer contracts are adopted
- Other exceptions apply

# Data Protection Response Strategy

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- **Determine whether national laws might apply**
- **Map corporate information infrastructure**
- **Review existing expectation of privacy**
- **Take necessary steps to permit collection/review and transfer (including policy and procedure and contract review)**