

# The best privacy advisers in 2007

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If your company loses a laptop, rolls out a new Web site or globalizes its HR information system, who are you going to call to square away the privacy requirements?

That's the question I recently posed to over 400 corporate privacy leaders in North America and Europe for the second year running. This question has become increasingly important in 2007 as security-breach notification requirements have started to spread from the U.S. to Canada, Europe and Australia, and as Europe has stepped up enforcement of its existing privacy laws.

So what did this year's poll, albeit unscientific, reveal?

## **Still about the law**

Although no major privacy legislation was passed worldwide in 2007, organizations are still apparently absorbing the aftershocks of past laws, court decisions and new enforcement. When asked to name the top firms with privacy practices, there were two votes for a law firm for every one vote for a consultancy.

This says to me that many organizations still have immature privacy programs — they're struggling to reach and maintain privacy compliance and are only beginning to determine how to take privacy to the next level of building trust with customers.

Which law firm earned top honors? For the second year in a row, New York-based [Hunton & Williams](#) received the most votes — 157 out of 393 cast in the law-firm category. Hunton's Lisa Sotto also topped the voting for privacy guru, with 66 votes out of 421 recorded. Several survey takers said Sotto was their choice for U.S.-based issues, while Chris Kuner, in Hunton's Brussels office, was their go-to person for EU privacy.

“Kirk Nahra of [Wiley Rein](#) provides practical, sound legal advice on privacy matters,” said one respondent of the No. 2 vote-getter for top privacy pro. Another exuded, “Alisa Bergman is the smartest and most talented attorney I have run across in my 20-year career,” referring to [Venable](#)'s privacy star. Several survey takers listed corporate CPOs as their choice for top privacy expert. “My 'No. 1' would go to a practitioner,” said one, “such as Janet Chapman [Charles Schwab] for U.S. financial issues, Stan Crosley [Eli Lilly] for pharma and David Hoffman [Intel] for technology.”

Which consulting firm had the best showing? Last year, [Ernst & Young](#), [Deloitte & Touche](#) and [PricewaterhouseCoopers](#) ranked evenly. The votes were still close this year, but E&Y edged ahead with 38 tallies out of 203 in this category. Respondents indicated that they're turning to this group for help for privacy-related initiatives such as enterprise risk assessments, where the legal questions are secondary.

### **Factors cited**

What were the reasons survey takers gave for choosing one firm over another? In a nutshell, they want the right answer, they want it quickly, they want it in a way that they can practically implement — and they don't mind if they have to pay a premium for it. These are the factors respondents cited:

- **Broad and deep expertise (cited by 82%)** — The firm's staffers consistently demonstrate a high-caliber command of privacy and are well respected in the field.
- **Practical advice (78%)** — Their advice is not theoretical but realistic and actionable, sensitive to business constraints.
- **Timely and thorough work (63%)** — Their work is not only swift but is complete and accurate in the details.
- **Accessible staff (56%)** — Their staff is personable and responds quickly to calls and messages.
- **They understand my business (56%)** — They take the time to understand clients' businesses and deliver advice from the business perspective.

- **Global staff and affiliates (33%)** — They have staff or affiliates in many countries with a command of their local scenes and a consistent global framework of advice.
- **Government connections (31%)** — They have an extensive network of government ties that clients can access and that broadens their expertise.
- **Interdisciplinary perspective (31%)** — The firm's privacy practice leverages other functions within the firm to provide more comprehensive advice.
- **Affordable rates (19%)** — Their firm charges reasonable rates.

### Other drivers

I asked the privacy experts how they've seen the privacy market change this year. “The biggest development,” said Peggy Eisenhauer, head of [Privacy and Information Management Services](#), “is the explosion of enforcement activity everywhere.”

“We saw more active enforcement with historically large fines and penalties,” seconded Rebecca Herold of [Rebecca Herold LLC](#).

London-based Bridget Treacy, a Hunton attorney, thought the EU opposition to SWIFT (Society for Worldwide Interbank Financial Telecommunication) data transfers to the U.S. government was a watershed development. “This year European regulators signaled that it's no longer acceptable for businesses to pay lip service to data-privacy compliance.”

Fred Cate, law professor at Indiana University, agreed. “Disclosures of secret government surveillance and data-mining programs sharpened attention this year on the volume and types of personal information that businesses are collecting and sharing with the government.”

Echoing this theme, Kuner said that “the biggest privacy development in 2007 has been the increasing number of cases in which companies are caught in the middle between U.S. law-enforcement requirements and EU data-protection requirements.”

Marty Abrams, head of Hunton's Center for Information Policy Leadership, saw the center of privacy gravity move eastward. "The most significant development in 2007 is that we have finally begun a dialogue between Asia and Europe on the unique privacy cultures that exist in these different worlds."

### **Outlook for the privacy market**

So will corporate privacy agendas in 2008 continue to be driven by litigation and government enforcement actions? For their part, privacy attorneys are confident that the answer is yes. "The need to respond to government enforcement agencies 'swinging a bigger bat' will generate increased demand for privacy advisory services in 2008 and 2009," said Venable's Milo Cividanés.

London-based Eduardo Ustaran of [Field Fisher Waterhouse](#) added, "Until a greater degree of harmonization among global privacy laws is achieved, businesses will continue to look for practical mechanisms such as Binding Corporate Rules to legitimize their global-processing operations."

Larry Ponemon, head of the [Ponemon Institute](#), agreed. "The biggest source of demand for privacy advisory services will be helping to navigate regulations."

The lingering effects of the war on terror caught the attention of Ed McNicholas, head of the privacy practice at [Sidley Austin](#). "The privacy impacts of antiterrorism programs — and the potential liability of corporate America for such programs — will continue to be a predominant issue for years to come," he said. But others also see trends in the marketplace posing new challenges to corporate privacy programs.

"I think more companies will start to realize over the next couple of years that legal compliance alone won't be enough to retain their customers' trust," said Richard Purcell, head of [Corporate Privacy Group](#).

"I anticipate a significant upsurge in companies embracing new media technologies," said Justine Gottshall of [Wildman Harrold](#), "and needing to

address the privacy, security and related compliance issues that are inherent in utilizing new media to its fullest potential.”

Stu Ingis of Venable agreed. "New media advertising is beginning to become mainstream, and household brands will race to understand how to utilize these services while staying within legal and self-regulatory accepted practices."

“As wireless applications continue to develop and technologies further converge, new questions will arise about protecting privacy in a wireless world,” added Alisa Bergman of Venable.

With stepped-up legal enforcement, more visibility on corporate-to-government data sharing, and new technologies impacting privacy, Rena Mears, head of Deloitte's privacy practice, sees “a growing need for integrated solutions incorporating risk identification, governance, operational controls and technologies.” What will these solutions look like?

Jim Koenig, co-leader of PwC’s privacy practice, thinks major organizational changes are part of the solution. "We see a trend where CPOs and chief compliance officers are working together to build privacy, security and identity theft prevention into larger, integrated, global risk-management frameworks."

So, if you're one of the companies I contacted for the survey that didn't have someone in charge of privacy, you may be playing catch-up in 2008.

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## **Popular privacy-law practices**

For the second year, corporate privacy professionals said Hunton & Williams was their top choice among law firms with privacy practices. Many

of the top vote-getters have bolstered their incident-response and international-compliance practice areas since 2006.

Firms	Voting Tier*	Privacy FTEs on Staff**	Key Practice Areas***
Hunton & Williams	I	24	<ul style="list-style-type: none"> <li>• Global data protection</li> <li>• Information security and incident response</li> <li>• Financial, health and workplace</li> </ul>
Venable	I	10	<ul style="list-style-type: none"> <li>• Incident response, audits, compliance</li> <li>• Legislation, investigations and litigation</li> <li>• International data protection</li> </ul>
Baker & McKenzie	I	60	<ul style="list-style-type: none"> <li>• Global compliance and data transfers</li> <li>• Offshoring, outsourcing and third party</li> <li>• Direct marketing, e-commerce and technology</li> </ul>
Wiley Rein	II	5	<ul style="list-style-type: none"> <li>• Health care and financial services</li> <li>• Overall privacy assessments</li> <li>• Privacy investigations and litigation</li> </ul>
Privacy & Information	II	2	<ul style="list-style-type: none"> <li>• International data protection</li> <li>• Targeted marketing</li> </ul>

Management Services			<ul style="list-style-type: none"> <li>• Privacy assessments and incident response</li> </ul>
Morrison & Foerster	II	20	<ul style="list-style-type: none"> <li>• Privacy and data security advice</li> <li>• Technology and sourcing transactions</li> <li>• Litigation and dispute resolution</li> </ul>
Field Fisher Waterhouse	III	8	<ul style="list-style-type: none"> <li>• Global privacy compliance</li> <li>• EU data protection and security</li> <li>• Binding corporate rules</li> </ul>
Covington & Burling	III	15	<ul style="list-style-type: none"> <li>• Global compliance audits</li> <li>• Security legislation and incident response</li> <li>• New media and online advertising</li> </ul>
WilmerHale	III	7	<ul style="list-style-type: none"> <li>• International compliance</li> <li>• FTC and U.S. state compliance</li> <li>• HIPAA, GLB and COPPA compliance</li> </ul>
Sidley Austin	III	21	<ul style="list-style-type: none"> <li>• Data breach and information security</li> <li>• Global data protection audits</li> <li>• Workplace, sectoral and national security</li> </ul>

Faegre & Benson	III	12	<ul style="list-style-type: none"> <li>• Global compliance and data transfers</li> <li>• E-commerce and direct marketing</li> <li>• Financial, health care and employee</li> </ul>
Cabinet Gelly	III	1	<ul style="list-style-type: none"> <li>• European and French data protection</li> <li>• International data transfers</li> <li>• HRM and CRM system compliance</li> </ul>
Hogan & Hartson	III	25	<ul style="list-style-type: none"> <li>• Privacy and security audits</li> <li>• International compliance</li> <li>• Financial and health care</li> </ul>
Wildman Harrold	III	13	<ul style="list-style-type: none"> <li>• New media and marketing</li> <li>• Compliance assessments and implementation</li> <li>• Breach prevention, response and litigation</li> </ul>

Based on 393 responses to the question, "Which law firm has the best privacy practice?"

\*Voting Tier I = over 10% of votes cast; Tier II = 5% to 10%; Tier III = 1% to 4%.

\*\*Firms estimated their full-time equivalents working on privacy and provided links to staff bios to corroborate.

\*\*\*Firms volunteered their key practice areas.

### Top privacy audit and consulting firms

The Big 4 audit firms topped the non-law firm list for the second year, although Booz Allen and several smaller firms newly joined the rankings.

Privacy-compliance and privacy-program creation were commonly cited practice areas in this group.

Firms	Voting Tier*	CIPPs on Staff**	Key Practice Areas***
Ernst & Young	I	36	<ul style="list-style-type: none"> <li>• Regulatory compliance and risk assessment</li> <li>• Vendor risk management</li> <li>• Privacy audits and assessments</li> </ul>
Deloitte & Touche	I	54	<ul style="list-style-type: none"> <li>• Global strategies and programs</li> <li>• Governance, operations and technology implementation</li> <li>• Audit, compliance and incident response</li> </ul>
PricewaterhouseCoopers	I	25	<ul style="list-style-type: none"> <li>• Global regulatory compliance</li> <li>• Information security and risk management</li> <li>• Privacy program development</li> </ul>
KPMG	II	22	<ul style="list-style-type: none"> <li>• Global privacy strategies and programs</li> <li>• Audit, compliance and incident response</li> <li>• Vendor risk management</li> </ul>

Booz Allen Hamilton	II	22	<ul style="list-style-type: none"> <li>• Global privacy strategies and programs</li> <li>• Incident response and risk management</li> <li>• Privacy operationalization and compliance</li> </ul>
Samet Privacy	III	2	<ul style="list-style-type: none"> <li>• Assessments, audits, policies and training</li> <li>• Web, technology and new media</li> <li>• COPPA, Truste, Safe Harbor</li> </ul>
Rebecca Herold	III	1	<ul style="list-style-type: none"> <li>• Privacy and compliance programs and education</li> <li>• Information security programs and education</li> <li>• Vendor risk management</li> </ul>
Privacy Ready	III	1	<ul style="list-style-type: none"> <li>• Privacy strategies and programs</li> <li>• Issue prevention and management</li> <li>• Product privacy impact assessments</li> </ul>
Corporate Privacy Group	III	1	<ul style="list-style-type: none"> <li>• Privacy strategies and programs</li> <li>• Education for PII management</li> <li>• Compliance planning and oversight</li> </ul>

Based on 203 responses to the question, "Among consulting and audit firms, which one has the best privacy practice?"

\*Voting Tier I = over 10% of votes cast; Tier II = 5% to 10%; Tier III = 1% to 4%.

\*\*Firms reported the number of Certified Information Privacy Professionals as recorded by the International Association of Privacy Professionals.

\*\*\*Firms volunteered their key practice areas.

\*\*\*\*Votes for Minnesota Privacy Consultants were excluded.

### Top 25 privacy experts

Privacy attorneys dominated this first-time poll, although a number of CPOs and consultants dotted the list.

Privacy Experts	Voting Tier*	Firm
Lisa Sotto	I	Hunton & Williams
Kirk Nahra	II	Wiley Rein
Chris Kuner	II	Hunton & Williams
Alisa Bergman	II	Venable
Peggy Eisenhower	III	Privacy & Information Management Services
Stu Ingis	III	Venable

Brian Hengesbaugh	III	Baker & McKenzie
Marty Abrams	III	Hunton & Williams
Fred Cate	III	Indiana University
Ruth Bro	III	Baker & McKenzie
Becky Burr	III	WilmerHale
Shai Samet	III	Samet Privacy
Rebecca Herold	III	Rebecca Herold
Jeff Nicol	III	Privacy Ready
Maureen Cooney	III	Hunton & Williams
Bridget Treacy	III	Hunton & Williams
Eduardo Ustaran	III	Field Fisher Waterhouse
Pascale Gelly	III	Cabinet Gelly
Anna	III	Baker &

Gamvros		McKenzie
Emilio Cividanes	III	Venable
Larry Ponemon	III	Ponemon Institute
Miriam Wugmeister	III	Morrison & Foerster
Ed McNicholas	III	Sidley Austin
Richard Purcell	III	Corporate Privacy Group
Dan Swartwood	III	Motorola

Based on 421 responses to the question, "Which individual person would you say is the No. 1 privacy expert?"

\*Voting Tier I = over 10% of votes cast; Tier II = 5% to 10%; Tier III = 1% to 4%.