

2018 TECH TALK

Critically legal updates
in Technology



**Baker
McKenzie.**

5th Annual Silicon Valley Tech Talk

13 September 2018

Santa Clara, CA

Agenda



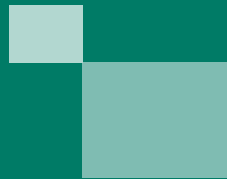
9:00 am – 9:15 am	Welcome & Introduction
9:15 am – 9:40 am	Could Antitrust Regulators Change the Silicon Valley Landscape?
9:40 am – 10:05 am	Modern Workforce: California Employment Update
10:05 am – 10:25 am	A New Era of Global Political Risk Management: The Trump Administration, China, Russia, and more
10:25 am – 10:35 am	Break
10:35 am – 11:00 am	Tax Update for non-Tax Lawyers: How Tax is Driving Major Business Transformations in Silicon Valley – Buy-Sell Conversions, Global Corporate Footprint and Supply Chain Reorganizations, IP Migrations, and more

Agenda



11:00 – 11:20 am	Drones: Trends in Commercial Application, Regulation, and Legal Issues
11:20 – 11:45 am	Pro Bono and The World Economic Forum's Centre for Fourth Industrial Revolution
11:45 am – 12:00 pm	Break
12:00 – 1:00pm	Global Privacy Update: California Consumer Privacy Act, GDPR, and more
1:00 – 2:00 pm	Lunch and Keynote

Could Antitrust Regulators Change the Silicon Valley Landscape?



1

SPEAKERS

Creighton Macy (Washington, D.C.)

Agapi Patsa (Brussels)

Carolina Pardo (Bogota)

What regulators are saying...



"Change is happening today, in the way we look at digital technology. After the first thrill, when we discovered what these technologies could do, we've started to see that there's a dark side as well. A side that can challenge our most basic values – our privacy, our freedom to choose, even our democracy."



"We'll always be challenged by new technology and new practices. Particularly in digital, you have what are called network effects, so it's winner take all. That could cause issues. You have issues dealing with big data that people talk about, and you have to take a look at that and how does that really fit into, ultimately, what benefits the consumer and the free market? So I think the law is flexible."



"By means of regular consultations with other authorities, CADE has been managing to exchange information and coordinate the pace of its proceedings with antitrust developments abroad."

Merger Control and Innovation



The Modern Workforce: California Employment Update



2

SPEAKERS

Susan Eandi (Palo Alto)

Mike Brewer (San Francisco)

Julia Wilson (London)

Did you know?



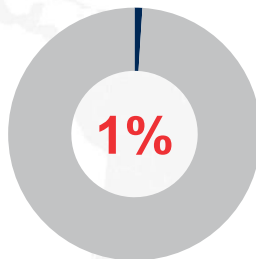
between **25** and **30%** of workers in the US engaged in independent work on a supplementary or primary basis in the preceding month



More than **one in ten** workers rely on gig work for their primary income

41.8M

people participate in independent work at least monthly



Less than one percent of workers regularly use online platforms to connect with work opportunities

1.3M

people are currently engaged in the gig economy in the UK

What models are being used by global businesses?



Platform/crowd work

Where an online platform matches businesses with specific needs to workers with the appropriate skills — with larger tasks, the work is often split among a number of people drawn from a "virtual cloud" of workers.



Collaborative employment

Where a group of freelancers or small organizations might club together creating the scale to offer services to much bigger clients.



Contractors/freelancers

While these models are not new, the size and scale of businesses' deployment of these models is growing.



Casual work

Where the employer is under no obligation to guarantee work but can call on workers on demand, say, at times of peak production or activity. This is a common feature in a number of jurisdictions with most national regulations including some level of protection in terms of pay rates or minimum hours.



ICT-based mobile work

Where workers can do their job from any place at any time, supported by modern technology. This is common in certain sectors like IT, but could be further adopted across a wide variety of sectors.



Agency/employee provision/leasing

Where employees are retained by a professional employer organization or company for them to work for the organization's client or business.



Portfolio work

Where a self-employed, often highly skilled individual completes work for a number of clients.



Mobile contingent workers

Individuals who are engaged as contingent workers under temporary, part-time or "independent" positions and who are deployed to other countries to fill short- or long-term engagements.

Misclassification risk in the spotlight



- Existing legislation (on employment status, working time etc.) often inflexible and unsuited to platform, crowd or other modern types of agile working.
- Platform work scrutinized by courts:
 - trend in UK courts towards classifying platform workers as "workers" (intermediate status between employment and self-employment)
 - extensive class action litigation in US where landmark California decision recently extended wage & hour laws to gig economy workers. *Dynamex v. Superior Court*
 - However, class action waivers are now valid in US arbitration agreements. *Epic Systems*



Key takeaways



1. Know **where** your company engages workers around the globe and **how** the engagement is structured.
2. Stay up to speed on changes in the law in each jurisdiction as it is constantly evolving and never static.
3. Adopt risk mitigation strategies tailored to the jurisdiction (e.g. arbitration agreements with class action waivers are a good approach in the US, but not in Europe generally speaking).



A New Era of Global Political Risk Management: The Trump Administration, China, Russia, and More



3

SPEAKERS

Alison Stafford Powell (Palo Alto)

Anne Petterd (Singapore)



1

US Increases Tariffs

2

China: Non-Tariff Barriers?

3

CFIUS Reform

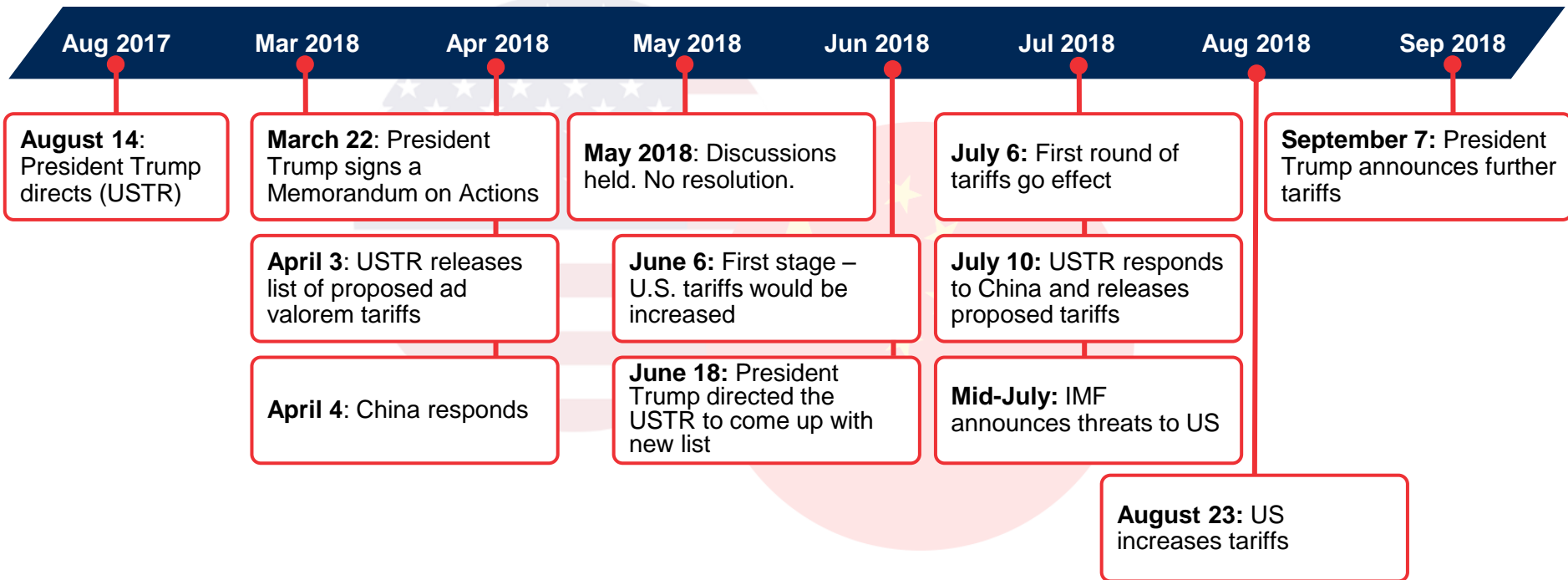
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US Sanctions

5

FTA Developments

1 US Increases Tariffs



2 Non-Tariff Barriers



Additional Regulatory Scrutiny



Environmental Regulation



IP Enforcement



Visa / Immigration Delays



Customs / Import Delays

3 Changes to CFIUS



Forbes

“Mergers, Acquisitions And Investments Involving U.S. Companies With Chinese & Other Foreign Parties”

— *Forbes*
August 2018

TC TechCrunch

“A new foreign investment bill will impact venture capital and the US startup ecosystem”

— *TechCrunch*
August 2018

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Connecting knowledge & people

“New CFIUS Law Moves To Protect Emerging Technologies And Personal Information, Takes Aim At Chinese Investment”

— *Mondaq*
August 2018

 **South China Morning Post**

“Donald Trump signs defense bill imposing tougher regulations on foreign investments – including China”

— *South China Morning Post*
August 2018

THE WALL STREET JOURNAL.

“The Morning Risk Report: CFIUS Reform Becomes Law”

— *Wall Street Journal*
August 2018

4 Supply Chain Disruption



collateral damage purchasing freight forwarders
facilitators management analysis contract
cost import supply chain
sanctions shutdowns goods logistic export
provision financial quantity company industry ban
disruption

5 FTA Developments



TPP-11

Parties: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore and Vietnam
GDP USD 10.2 trillion (2016)
[Compare with United States GDP of USD 18.57 trillion (2016)]

RCEP

Parties: China, ASEAN countries, Japan, India and Australia
GDP USD 23.8 trillion (2016)

ASEAN

Parties: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam
GDP USD 2.57 trillion (2016)

Tax Update for non-Tax Lawyers



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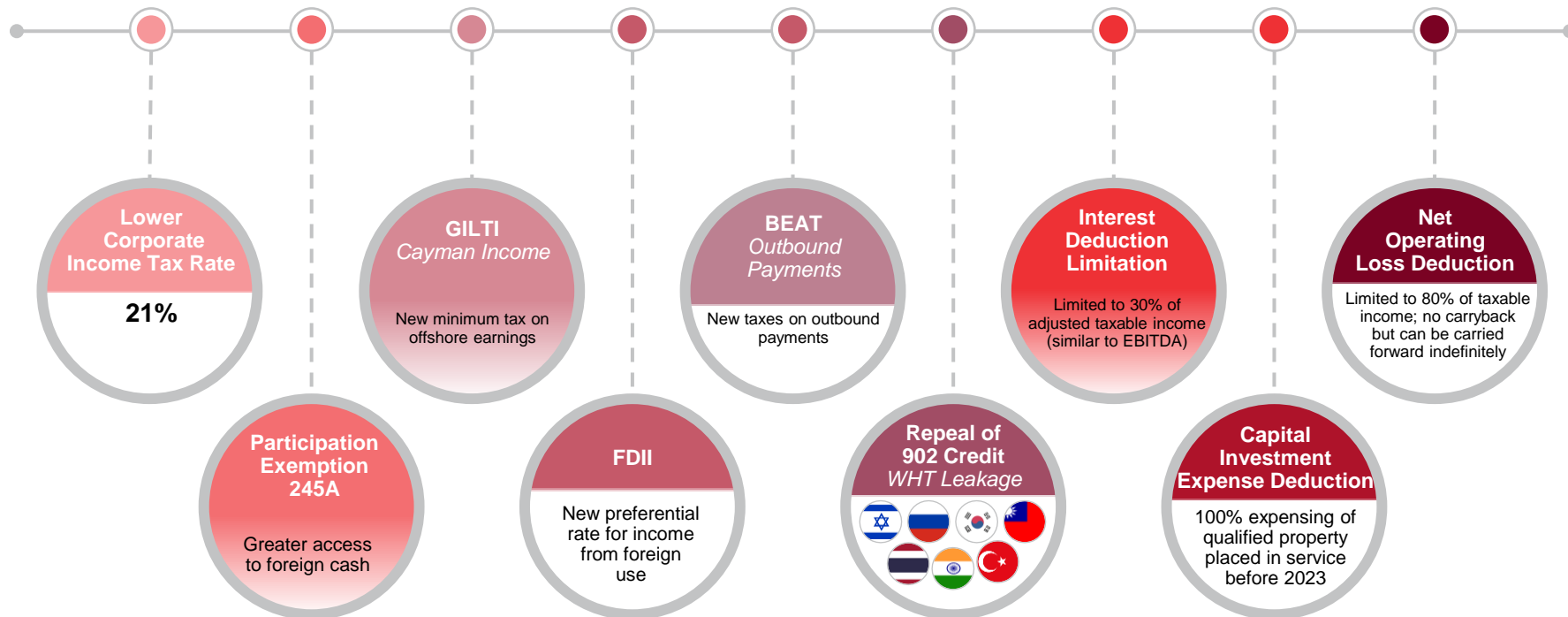
SPEAKERS

Joyce Smith (San Francisco)

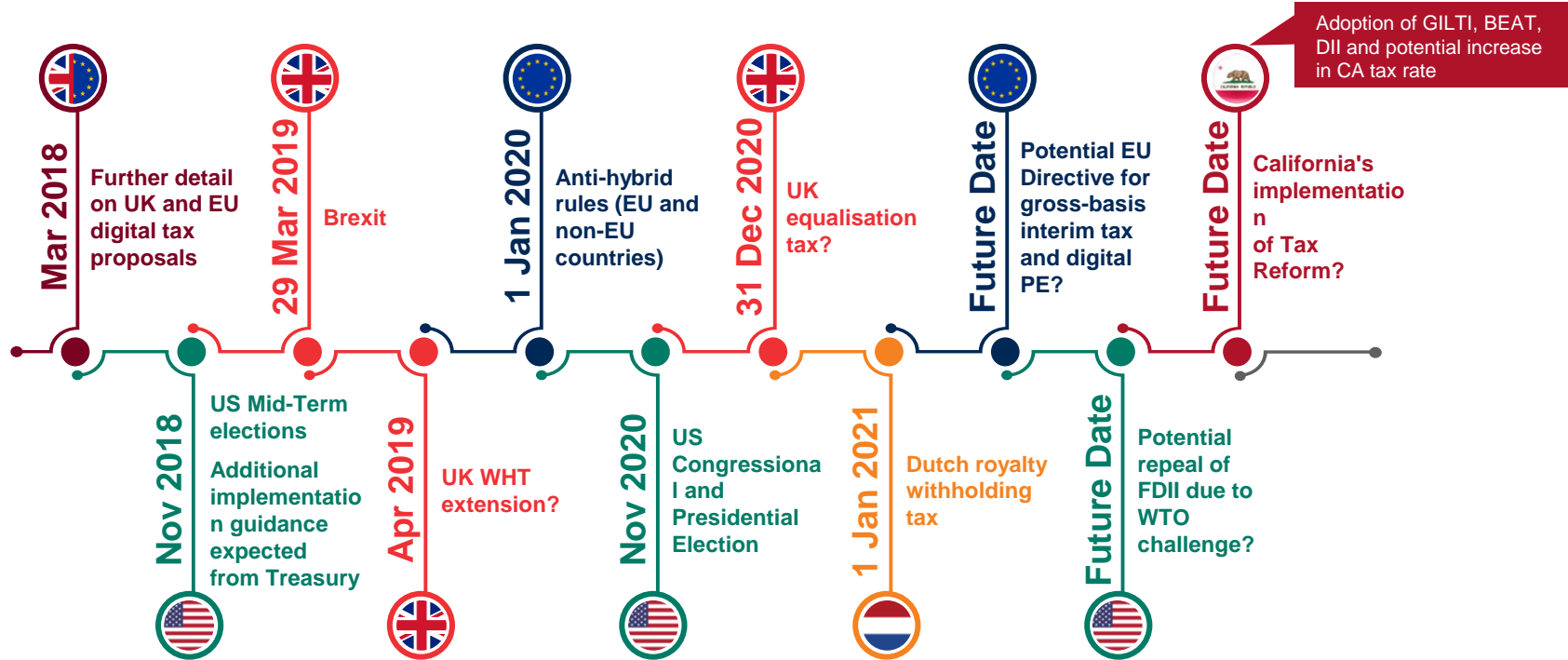
Kate Alexander (London)

Kirsten Malm (San Francisco)

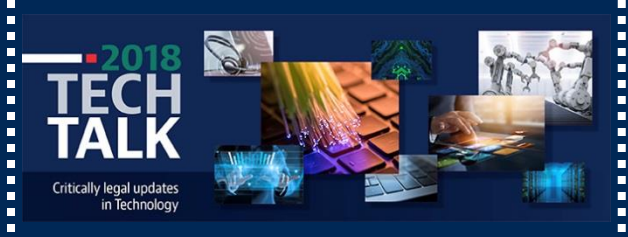
Key US tax reform changes



Potential future risks



US and Global Tax Reform



Business Model
Transformation

Corporate Restructuring

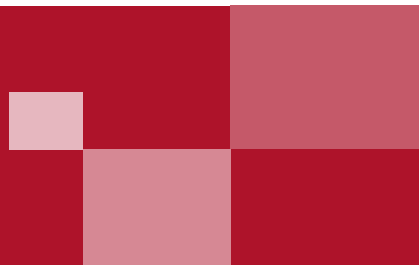
Supply Chain Reorganization



Location of
Employees

Migration of IP

Drones: Trends in Commercial Application, Regulation, and Legal Issues



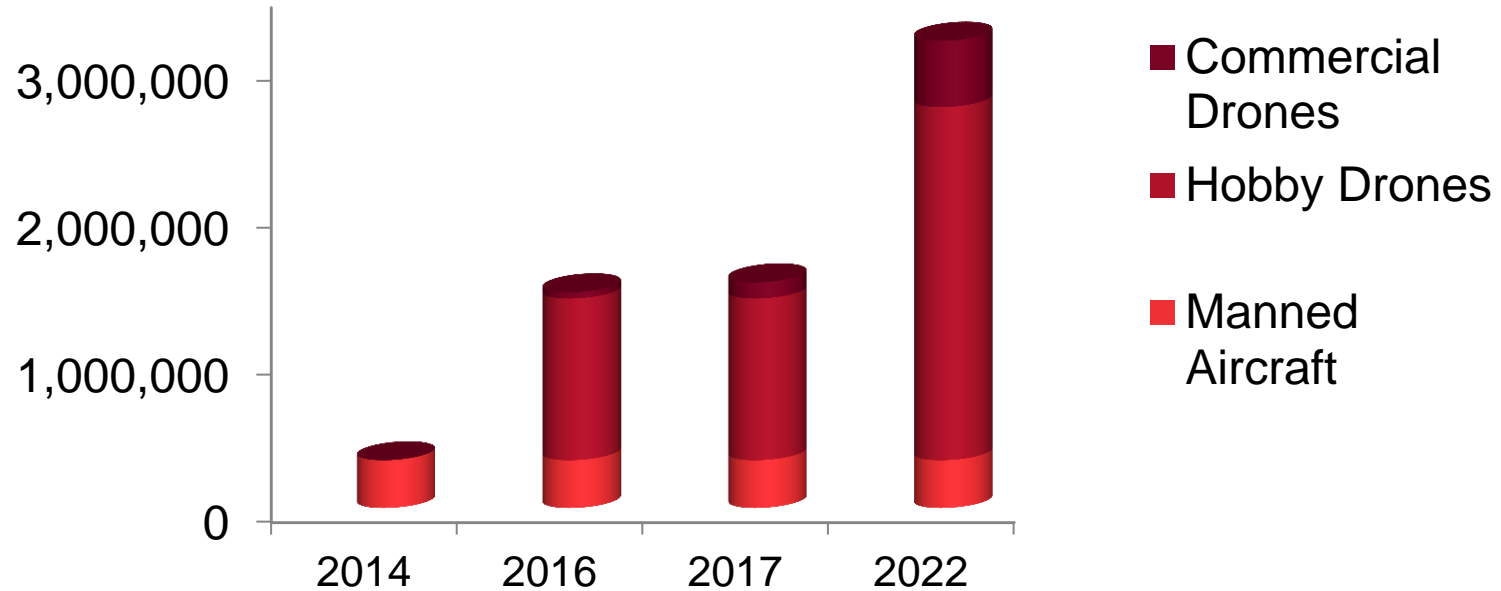
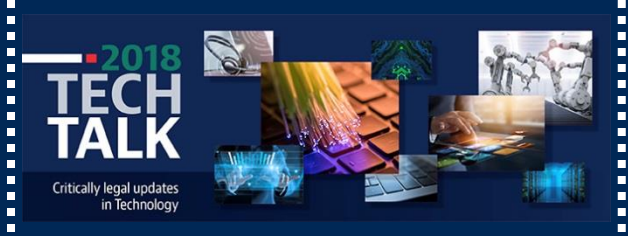
5

SPEAKERS

Ken Quinn (Washington, DC)

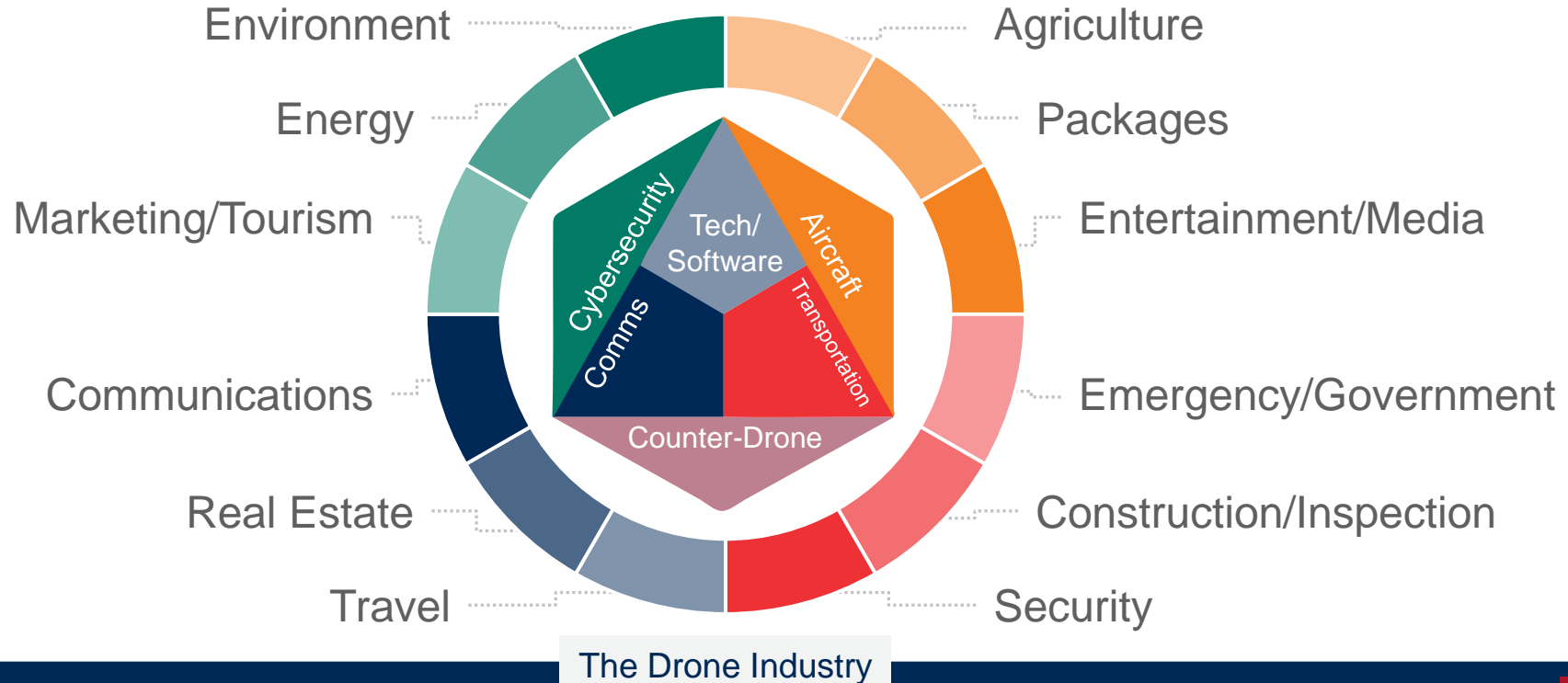
Jennifer Trock (Washington, DC)

Drones Take Off



Source: FAA Aviation Forecasts

Drones in Industry



Newsworthy Drones



WEIRD NEWS 12/10/2015 03:27 pm ET

Some People Are Very Displeased With This Turkey-Cooking Drone

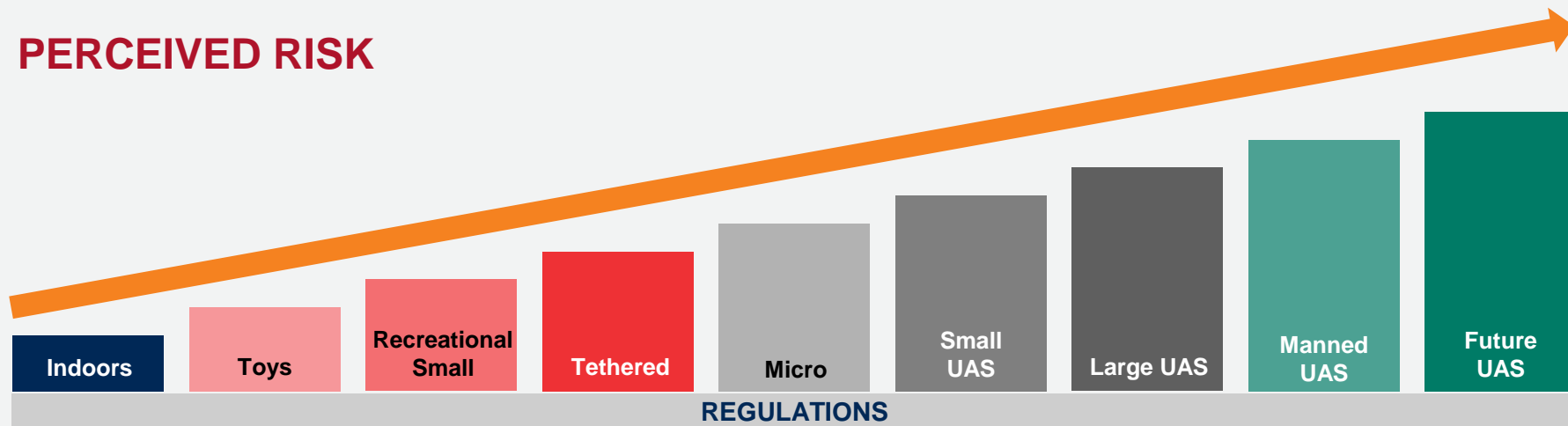
The teen who created it has gotten in trouble with drones before.



The Development of Drone Regulations



PERCEIVED RISK



Current U.S. Requirements



- Governed by FAA's Part 107
 - Less than 55 lbs
 - Visual Line of Sight
 - Altitude limited to 400 feet
 - UAS-pilot certification required
- Waivers are available for more complex operations
- Testing of complex operations is being done in FAA's Integration Pilot program



Small Drone Rules

- Governed by FAA's exemptions and manned aircraft rules
- Safety is the primary factor keeping drones grounded on a large scale
- Regulations haven't prevented the development and testing of platforms for the future



Large Drone Rules

Requirements in Europe



- Governed by Regulation (EU) 2018/1139
 - Drones under 150 kg fall under EU rules
 - Key principles of safety, security, privacy, data protection, and environmental protection
- Many countries have adopted, or are about to adopt, rules on drones
- Italian drone regulations (issued by ENAC) based on purpose, operation, and take-off mass

- Based on the JARUS model with Open and Specific Categories, but not a Certified Category
- Technical requirements include marking and registration
- Open Category operating requirements depend upon drone size and risks
- If the Open Category requirements are not met, further approval under the Specific category is required



Current Frameworks



EASA's Proposed Rules

Legal Issues

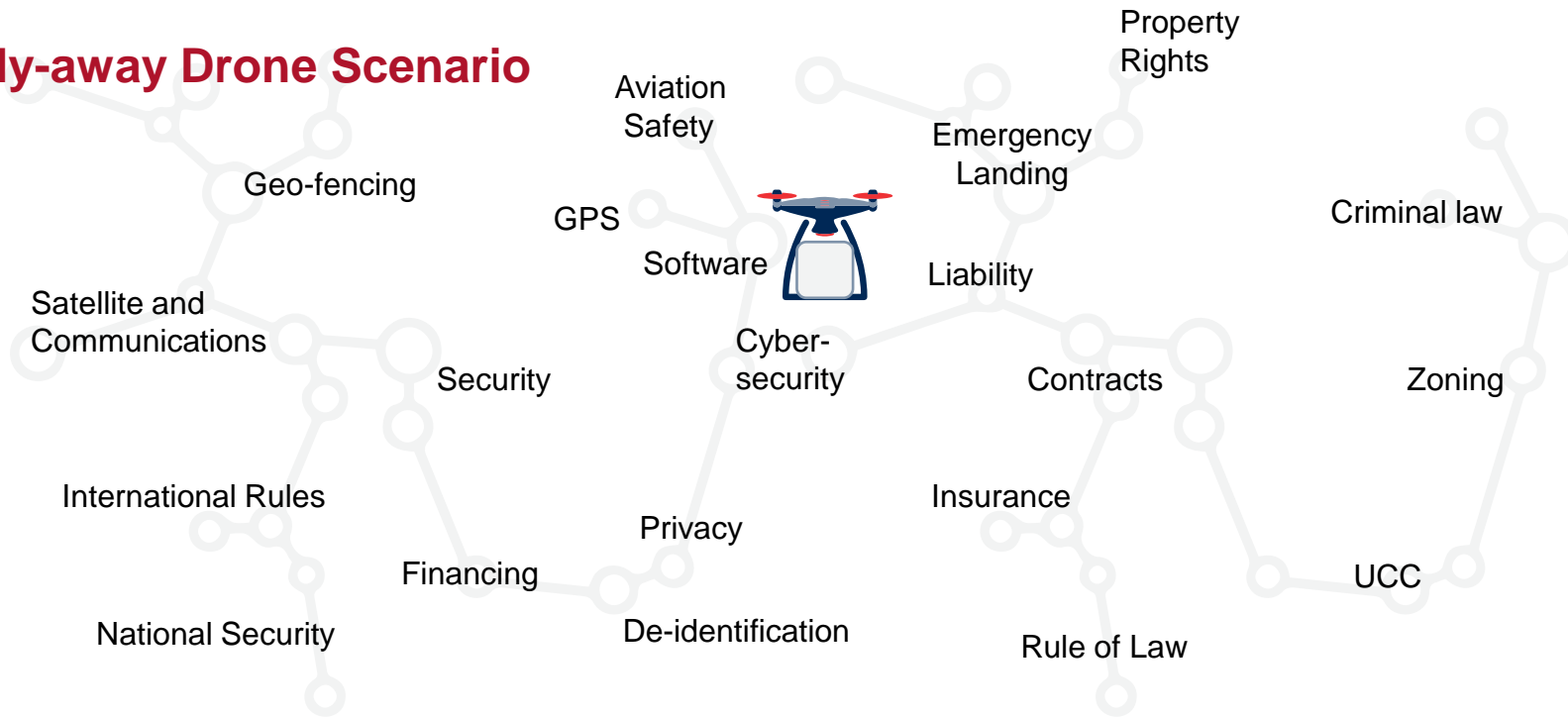
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Where do you fit in the network?



Fly-away Drone Scenario



Pro Bono and The World Economic Forum's Centre for Fourth Industrial Revolution

6

SPEAKER

Angela Vigil (Miami)

Pro Bono



How can I do pro bono work outside my area?



How can I help?



Do I have the expertise?



Can I really make a difference?



Do people need me?



Can I help in my area of law?



Do I have to leave my comfort zone?



WORLD ECONOMIC FORUM

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Economic Forum**

Global Privacy Update: California Consumer Privacy Act, GDPR, and More



7

SPEAKERS

Lothar Determann (Palo Alto)

Yann Padova (Paris)

Anne Petterd (Singapore)

Flavia Rebello (Sao Paulo)

Michaela Nebel (Frankfurt)

Vincent Schroder (Palo Alto)



1

Global Privacy Updates

One uniform global privacy notice?
Local notices?
Core notice plus supplements?

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GDPR
COMPLIANCE



Update from the EU



The end of uniform Privacy Notices

- Opening clauses: Local data protection law may result in, e.g. different legal bases and restrictions to data subject rights
- Guidelines from European Data Protection Board (WP 260 rev. 01) go beyond Art. 13 and 14 GDPR
- Language
 - Local language requirements?
 - European Data Protection Board (WP 260 rev. 01): "A translation (...) should be provided where the controller targets data subjects speaking those languages."

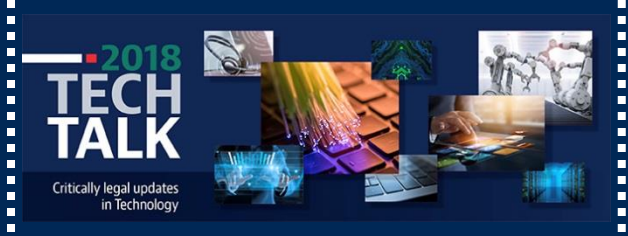
California Consumer Privacy Act (CCPA)



Update Privacy Policies to Include:

- Provide at or before collection: categories of personal information (PI) to be collected and underlying purposes (information may be provided elsewhere)
- Separate lists of categories of PI collected, sold or disclosed for a business purpose in the preceding 12 months (explicitly state if not sold or disclosed)
- Categories of sources of PI collected
- Business/commercial purposes for collecting or selling PI

California Consumer Privacy Act (CCPA)



Update Privacy Policies to Include:

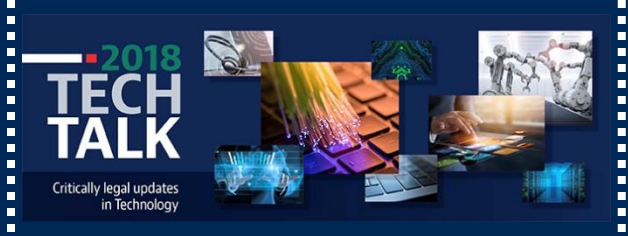
- Categories of third parties receiving PI
- Description of the rights to access, deletion, to obtain information about disclosures, to opt out of sales, and not to be discriminated against
- If PI is sold: Fact that PI collected may be sold and clear and conspicuous link, titled "Do Not Sell My Personal Information", to webpage that enables opt-out
- Method(s) for submitting requests including, at a minimum, toll-free telephone number and, where maintained by the business, website address



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Privacy Law Update Around the World

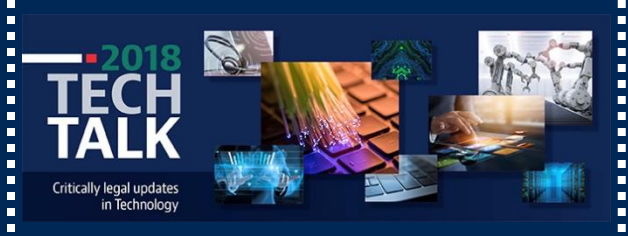
California Consumer Privacy Act (CCPA)



Requirements Applicable to Selling PI:

- "Selling" means communicating PI to another business for valuable consideration
- Where possible, avoid selling by (i) clarifying in written contracts with business partners that PI is not communicated for consideration, or by (ii) invoking statutory exceptions for service providers, M&A transactions, etc.

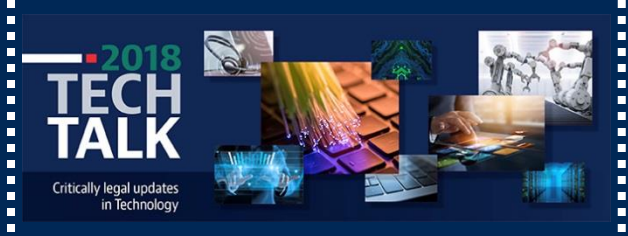
California Consumer Privacy Act (CCPA)



Requirements Applicable to Selling PI:

- To the extent PI is sold,
 - include necessary disclosures in privacy policies
 - provide clear and conspicuous link on Internet homepage, titled "Do Not Sell My Personal Information", to webpage that enables opt-out
 - obtain prior opt-in consent from minors under 16 years of age (and parental consent for minors under 13 years)
 - honor opt-outs and do not re-approach consumer to opt back in before at least 12 months have passed

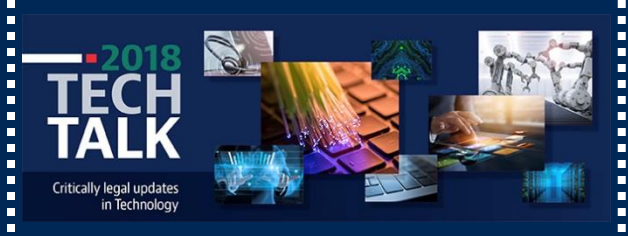
California Consumer Privacy Act (CCPA)



Additional Compliance Requirements and Considerations:

- Non-discrimination: California residents exercising their rights under the CCPA (e.g., access, deletion, opt-out of sales, etc.) must not be discriminated against by denying goods or services, charging different prices, providing a different level or quality of goods or services, or otherwise. Differences in price, rate, level or quality may apply only where they are reasonably related to the value of the PI

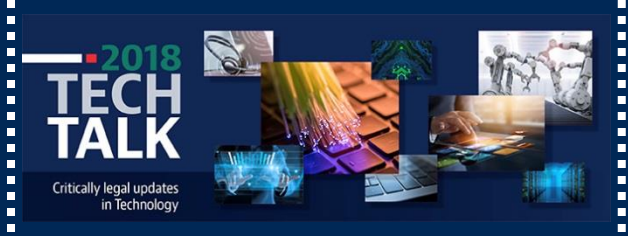
California Consumer Privacy Act (CCPA)



Additional Compliance Requirements and Considerations:

- Requests regarding the processing of PI: implement processes and policies to (i) verify the identity of individuals making requests, (ii) timely provide portable copies of PI or delete PI (unless statutory exceptions from such rights can be shown), and to (iii) obtain the assistance of service providers storing PI
- Processing of employee PI: consider necessary internal processes

California Consumer Privacy Act (CCPA)



Liability for Security Breaches and Breach Notifications:

- A California resident may claim (i) statutory damages between \$100 and \$750 per incident or actual damages, whatever is higher, (ii) injunctive or declaratory relief, and/or (iii) any other relief the court deems proper, if
 - their unencrypted or unredacted name or other PI as narrowly defined in Cal. Civ. Code § 1798.81.5(d)(1)(a)
 - was subject to an unauthorized access and exfiltration, theft or disclosure
 - that was caused by a business's violation of the duty to implement and maintain reasonable security procedures, and if

California Consumer Privacy Act (CCPA)



Liability for Security Breaches and Breach Notifications:

- where the claim is for statutory damages, the business has not cured the incident (where possible) upon 30 days' written notice
- California's existing breach notification laws remain applicable in addition to the breach-related damages provisions of the CCPA

Update from the EU



German Data Protection Authorities

- New rules for whistleblowing hotlines
- Tracking mechanisms and profiling cookies require informed consent via prior opt-in
- "Blacklist": Processing operations that are subject to a data protection impact assessment
- Joint controllership: to be expected more often



Konferenz der unabhängigen
Datenschutzbehörden
des Bundes und der Länder

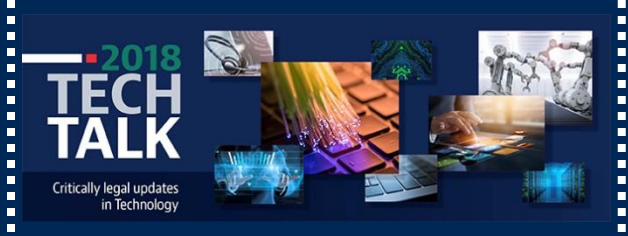
Update from the EU: Focus on enforcement trends in France



- A spectacular increase in the number of complaints before the CNIL: **+ 56 %**
- The rise of **class actions** (NGO / consumer associations)
- An increasing **focus on security**: 90 % of CNIL's sanctions over the last year are based on security breaches
- A tendency that will be even more prevalent in the coming years because of the GDPR's **security breach notification**
- The majority of these sanctions flow from insufficient security measure from the **processor**



Update from the EU: Focus on guidance trends in France



- **An ongoing renewal of CNIL's guidance:** the end of prior formalities means that the CNIL will transform into referentials its doctrine (previous recommendations or single authorisations): the first example is the use of Biometric technology on the workplace (public consultation launched on September the 3rd)

- **New tools for compliance:** online PIA



- **Is certification** a new opportunity for companies to differentiate themselves?

Personal Data Protection Act, 2018



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Indian Personal Data Protection Act, 2018 - Draft Bill and its History, Compared to EU GDPR and California Privacy Law -

19 Pages • Posted:

[Lothar Determann](#)
Baker & McKenzie LLP; Freie Universität Berlin; Berkeley School of Law; University of California Hastings College of the Law

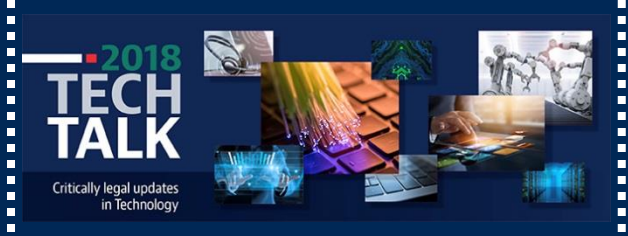
[Chetan Gupta](#)
Baker McKenzie LLP

Date Written: September 5, 2018

Abstract

2018 is a big year for data privacy and data processing regulation. On July 27, 2018, India published a draft bill for a new, comprehensive data protection law to "be called the Personal Data Protection Act, 2018," only a few weeks after the European Union General Data Protection Regulation (GDPR) took effect on May 25, 2018 and California enacted the California Consumer Privacy Act of 2018 at the end of June. Brazil already followed iw No. 13,709(2018) only a few weeks later, on August 14, 2018.

Update from Asia Pacific



Many new laws in APAC regulating data

Key topic is growth in data residency / localisation requirements

- **China:** Cybersecurity Law (effective 1 June 2017)
- **Vietnam:** Cybersecurity Law (starts 1 January 2019)
- **India:** Draft Personal Data Protection Bill and e-commerce policy
- **Indonesia:** Pending amendment to GR82 "strategic electronic data"
- Jurisdictions with narrow data residency requirement (eg, Australia health records)

Different government approaches to data regulation is hard for business

Update from Asia Pacific



Why engage with APAC law-makers?

- Many governments are poorly resourced and genuinely welcome input
 - Vietnam Cybersecurity Act - 16 public consultation drafts
- Views of investors into country carry weight
- Most jurisdictions take time to pass these laws
 - Thai privacy law is over 10 years in the making
- Laws are often broadly worded and use implementing regulations – multiple opportunities to influence
- Test sensitivities and unclear drafting

Brazil



- New law enters into force in February 2020
- “GDPR - inspired”
- Applies to foreign entities if processing occurred in Brazil, aims at offering goods or services in Brazil or if data was collected in Brazil
- All data controllers must have a DPO
- DPA has not been created yet
- Penalties – up to 2% of revenues in Brazil, limited to BRL 50MM (approx. USD 12.5) per breach

Lunch Keynote

Culture Risk: How to Build Healthy Cultures and Manage Culture Risk Before It's Too Late

8

Tatyana Mamut, PhD.

Tech Innovator, Keynote Speaker, Growth Advisor

Baker McKenzie Speakers



Kate Alexander
London
+44 20 7919 1908
kate.alexander
@bakermckenzie.com



Mike Brewer
San Francisco
+1 415 576 3026
michael.brewer
@bakermckenzie.com



Lothar Determann
Palo Alto
+1 650 856 5533
lothar.determann
@bakermckenzie.com



Susan Eandi
Palo Alto
+1 650 856 5554
susan.eandi
@bakermckenzie.com



Raffaele Giarda
Rome
+39 06 44 063 224
raffaele.giarda
@bakermckenzie.com



Creighton Macy
Washington, DC
+1 202 452 7098
creighton.macy
@bakermckenzie.com



Kirsten Malm
San Francisco
+1 415 591 3209
kirsten.malm
@bakermckenzie.com



Michaela Nebel
Frankfurt
+49 69 2 99 08 368
michaela.weigl
@bakermckenzie.com



Yann Padova
Paris
+33 1 44 17 59 23
yann.padova
@bakermckenzie.com



Carolina Pardo
Bogota
+57 1 634 1559
carolina.pardo
@bakermckenzie.com



Agapi Patsa
Brussels
+32 2 639 37 39
agapi.patsa
@bakermckenzie.com



Anne Petterd
Singapore
+65 6434 2573
anne.petterd
@bakermckenzie.com

Baker McKenzie Speakers



■ **Flavia Rebello**

Sao Paulo
+55 11 3048 6851
flavia.rebello
@trenchrossi.com



■ **Vincent Schroder**

Palo Alto
+1 650 856 5527
vincent.schroder
@bakermckenzie.com



■ **Joyce Smith**

San Francisco
+1 415 984 3851
joyce.smith
@bakermckenzie.com



■ **Alison Stafford Powell**

Palo Alto
+1 650 856 5531
alison.stafford-powell
@bakermckenzie.com



■ **Jennifer Trock**

Washington, DC
+1 202 452 7055
jennifer.trock
@bakermckenzie.com



■ **Angela Vigil**

Miami
+1 305 789 8904
angela.vigil
@bakermckenzie.com



■ **Julia Wilson**

London
+44 20 7919 1357
julia.wilson
@bakermckenzie.com

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