

## Clicking Confidential: Practical Guidance to Protect Cybersecurity and Ensure Cross-Border Data Privacy Compliance in Arbitration

### ABA Dispute Resolution Section Spring Meeting 2019

*Speakers:*

**Stephanie Cohen**, Independent Arbitrator  
**Diana Didia**, Senior Vice President/CIO AAA-ICDR  
**Mark C. Morril**, Independent Arbitrator & Mediator

#### Ethical Opinions & Cybersecurity Resources

- Formal Opinion 477R (May 22, 2017), [Securing Communication of Protected Client Information](#)
- Formal Opinion 483 (Oct. 17, 2018), [Lawyers' Obligations After an Electronic Data Breach or Cyberattack](#)
- NYC Bar Formal Opinion 2017-5: [An Attorney's Ethical Duties Regarding U.S. Border Searches of Electronic Devices Containing Clients' Confidential Information](#)
- The ABA Cybersecurity Handbook: A Resource for Attorneys, Law Firms, and Business Professionals (2d ed. 2018)

#### Cybersecurity in International Arbitration

- [ICCA-CPR-New York City Bar Association Draft Cybersecurity Protocol for Arbitration](#) – 2019 revision forthcoming
- [Debevoise Protocol to Promote Cybersecurity in International Arbitration](#) (July 2017)
- Transnational Dispute Management, Stephanie Cohen and Mark Morril, Editors, [Special Issue on Cybersecurity in International Arbitration](#) (2019) (introduction accessible for free; subscription required to access articles)
- 2018 CPR Non-Administered Arbitration Rules, Rule 9.3(f) – at the administrative conference, parties may consider “the possibility of implementing steps to address issues of cybersecurity and to protect the security of information in the arbitration”

- HKIAC Administered Arbitration Rules, Article 3.1(e) – recognized means of communication may include “any secured online repository that the parties have agreed to use”
- Stephanie Cohen & Mark Morril, [A Call to Cyberarms—The International Arbitrator’s Duty to Avoid Digital Intrusion](#), 40 Fordham International Law Journal 981 (2017)
- [IBA Cybersecurity Guidelines](#) (emphasis on law firms) (2018)

### **Cross-Border Data Privacy Compliance in International Arbitration**

- [ICC Note to Parties and Arbitral Tribunals on the Conduct of Arbitration under the ICC Rules of Arbitration](#), effective 1 January 2019, includes new guidance on data protection (see ¶¶ 80-91) which the ICC summarized as follows in its [announcement to the press](#):

“An entire new section of the Note is devoted to compliance with European Union General Data Protection Regulation (GDPR) regulations. In particular, the Note clarifies that by accepting to participate in an ICC Arbitration, parties, their representatives, arbitrators, the administrative secretary, witnesses, experts and any other individuals that may be involved in any capacity in the arbitration accept that their personal data will be collected, transferred, archived and as the case may be, published.

The Note further reminds parties of their duty to ensure that said individuals are aware and accept the use of their personal data. Arbitral tribunals shall to that effect, at an appropriate time in the arbitration, remind the parties and other participants in the arbitration that their data may be used, as well as of their right under the GDPR Regulation to seek the correction or suppression of the same. It is in particular encouraged to include a clause to the effect in the Terms of Reference and the Secretariat is available to recommend a model clause.”

- Press Release, [ICCA and IBA Establish Task Force on Data Protection](#) (Feb. 2019)
- Kathleen Paisley, [It’s All About the Data: The Impact of the EU General Data Protection Regulation on International Arbitration](#), 41 Fordham International Law Journal 841 (2018)