SQUIRE PATTON BOGGS

Privacy Assessments

A Discussion of Requirements and Risks and Practical Discussion with In-House Privacy Counsel

Speakers

Kyle Fath

Partner
Squire Patton Boggs
Los Angeles

Beth Jacobs

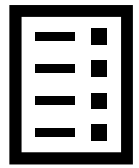
Managing Counsel,
Global Privacy
Little Caesars Enterprises

Alexandra (Sasha) Kiosse

Associate
Squire Patton Boggs
New York

Agenda

SQUIRE PATTON BOGGS

1. Legal Background 
2. Data Protection Assessment Content and Other Requirements 
3. Practical Implementation of Data Protection Assessment Requirements, Discussion with Beth Jacobs, Little Caesar Enterprises, Inc. 

SQUIRE PATTON BOGGS

Legal Background

Comprehensive State Consumer Privacy Laws

SQUIRE PATTON BOGGS

- There are 20 U.S. states with comprehensive consumer privacy laws.

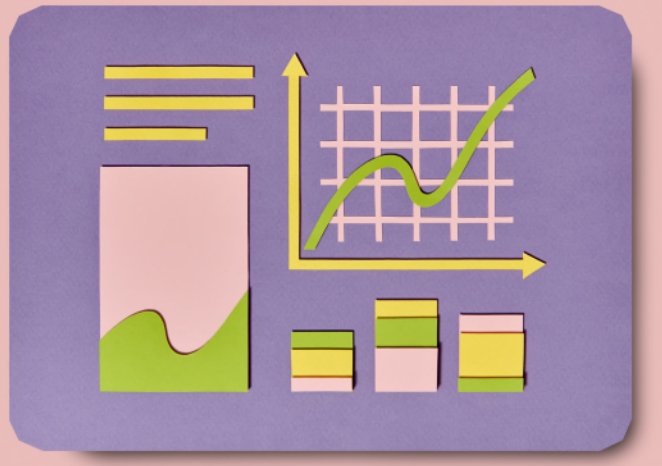
 California (Timing TBD)	(January 1, 2025) Texas 
 Colorado (July 1, 2023)	(July 1, 2023) Florida 
 Connecticut (July 1, 2023)	(July 1, 2024) Oregon 
 Virginia (January 1, 2023)	(July 1, 2025) Delaware 
 Utah	Iowa 
 Indiana (December 31, 2025)	(October 1, 2025) Maryland 
 Tennessee (July 1, 2024)	Nebraska 
 Montana (January 1, 2025)	Minnesota 
 Kentucky (June 1, 2026)	Rhode Island 
 New Jersey (January 16, 2025)	(July 1, 2024) New Hampshire 

- All require data protection assessments, inspired by GDPR and EDPB, **EXCEPT Utah and Iowa**

Other Laws Requiring Data Protection Assessments

SQUIRE PATTON BOGGS

- Children's Privacy Laws:
  - California Age-Appropriate Design Code Act (enjoined and actively litigated)
  - Connecticut SB3 (effective October 1, 2024)
- AI Laws
  - Colorado AI Act (effective February 1, 2026)
  - California Draft Regulations (TBD)
- Laws that don't require assessments, but it is helpful to conduct them:
  - Children's Online Privacy Protection Act
  - Washington My Health My Data Act
  - Illinois Biometric Information Privacy Act



When are Assessments Required Under the Comprehensive State Consumer Privacy Laws?

SQUIRE PATTON BOGGS

- Assessments are required when any of the following high-risk processing activities occur:
  - **Processing Sensitive Data** (*gov't ID #s, race or ethnicity, religious beliefs, health information, biometric or genetic data, children's data, etc.)*
  - **Selling Personal Data**
  - **Targeted Advertising**
  - **High-Risk Profiling** *(profiling in furtherance of decisions with legal or similarly significant effects: housing, education, insurance, essential services, etc.)*
  - **Other High-Risk Processing Activities:**
    - Monitoring publicly accessible area, or monitoring students and personnel (CA Draft Regs)
    - Training Artificial Intelligence or Automated Decisionmaking Technology (CA Draft Regs)
- A single assessment can satisfy several comparable processing activities, and can be valid for multiple state laws (as long as all requirements are met)

SQUIRE PATTON BOGGS

Data Protection Assessment Requirements

Content of a Data Protection Assessment

SQUIRE PATTON BOGGS

- Generally, assessments should include:
  - Summary of the processing activity
  - Description of the personal data involved
  - Context and purpose(s) of processing
  - Risk-benefit analysis *(Do the benefits outweigh the risks?)*
  - Measures taken to mitigate the risks
  - Identification of external and internal actors involved in processing
- And…Other specific requirements enumerated in laws:
  - Colorado requires **12 specific questions** to be answered + **12 additional questions if profiling**
  - California draft regs – additional requirements not contemplated by Colorado

Other Requirements

SQUIRE PATTON BOGGS

- Assessments must include all relevant internal actors and relevant external parties to address the data protection risks
  - CO Rules 8.03
- Processors: Required to provide necessary information to controllers to enable them to accurately conduct assessments
- Some states require retention of completed data protection assessments and updating.
  - Oregon (must retain for at least 5 years)
  - California (must retain for at least 5 years (proposed))
  - Colorado (must retain for at least 3 years, and review annually for profiling)

Be Prepared to Disclose Assessments!

SQUIRE PATTON BOGGS

- The state laws require that controllers provide completed assessments to state regulators upon request.
- Under California Draft Regulations, the following may be required:
  - **Certification of Compliance** (written certification that business complied with requirements)
  - **Abridged Risk Assessments** (on a form provided by the regulator)
  - **AND**, full unabridged assessments upon request (within 10 business days)

- States generally provide that disclosure of assessments does not negate attorney-client privilege or work product protection
  - And assessments do not become public.

Additional Resources

SQUIRE PATTON BOGGS

Law & Policy Hub

Privacy World
Keeping you informed on the evolving law on data privacy, security and innovation.

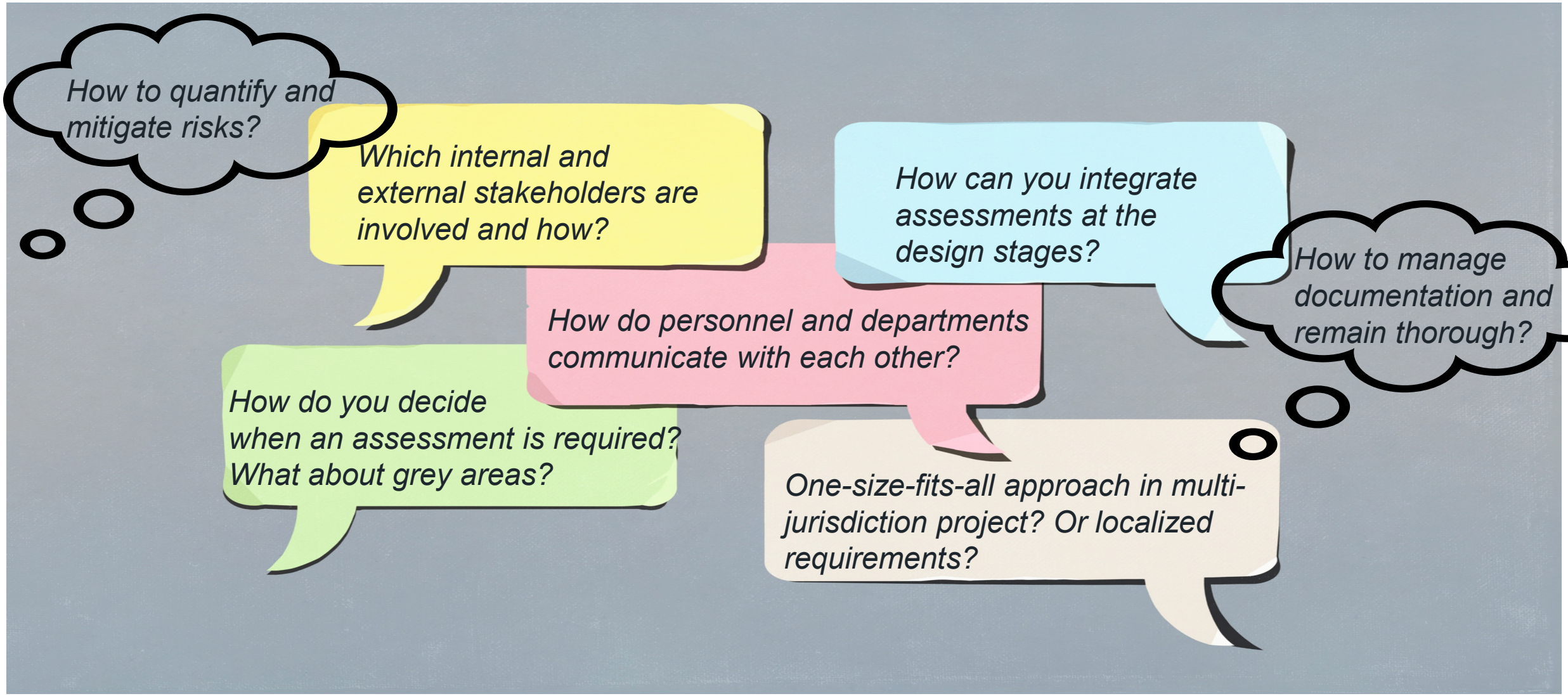
SQUIRE PATTON BOGGS

Practical Implementation

Discussion with Beth Jacobs, LCE

What is the Process by which Assessments are Actually Conducted?

SQUIRE PATTON BOGGS



We are where you are

Over 40 Offices Across Four Continents

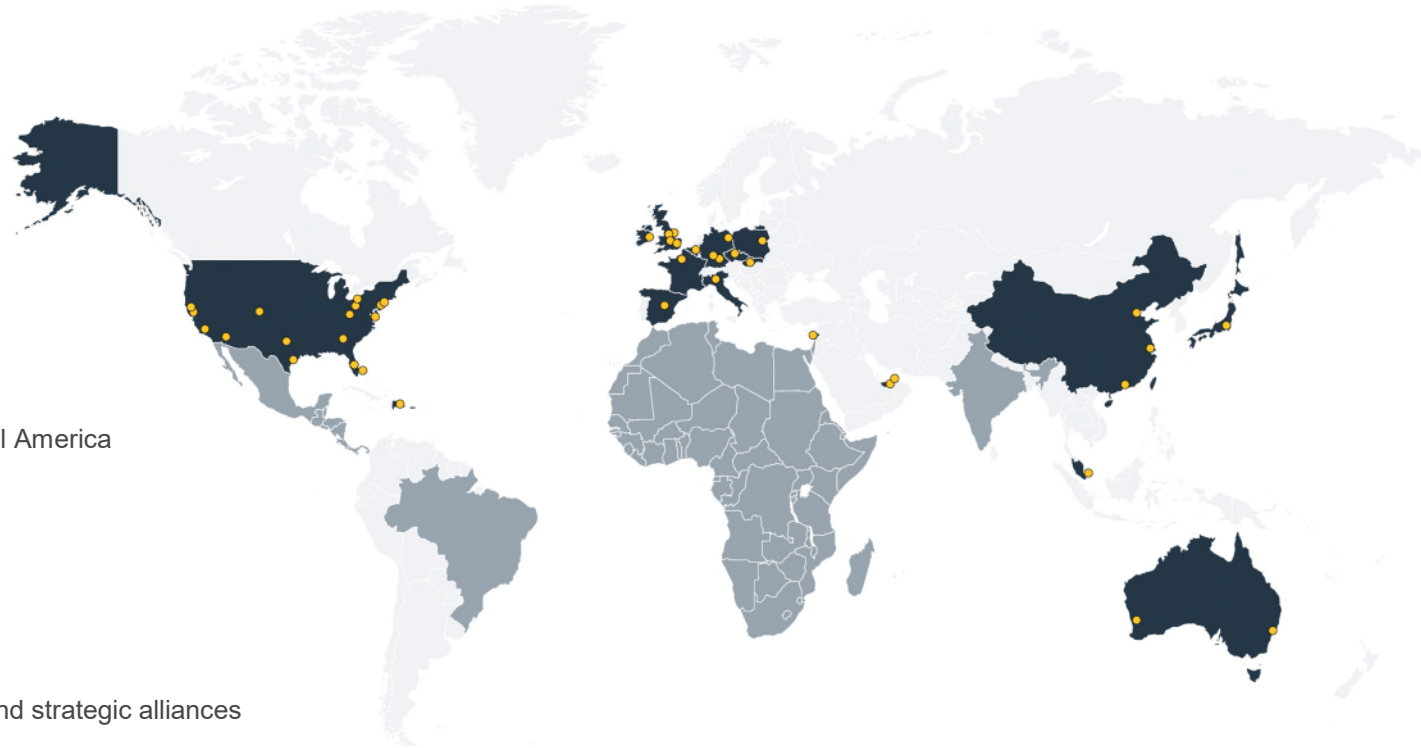
SQUIRE PATTON BOGGS

Abu Dhabi
Amsterdam
Atlanta
Beijing
Beirut
Berlin
Birmingham
Böblingen
Bratislava
Brussels
Cincinnati
Cleveland
Columbus
Dallas
Denver
Dubai
Dublin
Frankfurt
Hong Kong
Houston
Leeds
London
Los Angeles
Madrid
Manchester
Miami
Milan
New Jersey
New York
Palo Alto
Paris
Perth
Phoenix
Prague
San Francisco
Santo Domingo
Shanghai
Singapore
Sydney
Tampa
Tokyo
Warsaw
Washington DC

Africa
Brazil
Caribbean/Central America
India
Israel
Mexico

Office locations

Regional desks and strategic alliances



Ranked "Elite" Global Top 20 by Global Data Review 2023
"Quick, pragmatic and business-savvy advice." Learn more here.