

The Sedona Conference

Commentary on Ephemeral Messaging

(January 2021 Public Comment Version)

The Sedona Conference Working Group 6 on International Electronic Information Management, Discovery, and Disclosure (WG6) developed the *Commentary on Ephemeral Messaging* (“*Commentary*”) to address the tension between (a) the role of ephemeral messaging in complying with cross-border data protection mandates and information governance best practices to minimize data and (b) meeting law enforcement and regulatory requirements to capture communications, and litigation obligations to preserve data.

Section I is the introduction to the *Commentary*. Section II of the *Commentary* defines the nature and scope of ephemeral messaging, while Section III provides a detailed sketch of the tension and competing demands facing organizations that wish to use these tools.

Section IV encompasses a series of guidelines that provide direction to organizations on how to navigate the landscape of uncertainty surrounding the use of ephemeral messaging. The guidelines also offer recommendations to regulators and judges for evaluating good-faith uses of corporate ephemeral messaging. The guidelines are as follows:

- **Guideline One:** Regulators and Courts Should Recognize that Ephemeral Messaging May Advance Key Business Objectives
- **Guideline Two:** Organizations Should Take Affirmative Steps to Manage Ephemeral Messaging Risks
- **Guideline Three:** Organizations Should Make Informed Choices and Develop Comprehensive Use Policies for Ephemeral Messaging Applications
- **Guideline Four:** Regulators, Courts, and Organizations Should Consider Practical Approaches, Including Comity and Interest Balancing, to Resolve Cross-Jurisdictional Conflicts over Ephemeral Messaging
- **Guideline Five:** Reasonableness and Proportionality Should Govern Discovery Obligations Relating to Ephemeral Messaging Data in U.S. Litigation

The full text of The Sedona Conference *Commentary on Ephemeral Messaging*, Public Comment Version, is available free for individual download from The Sedona Conference website at

https://thesedonaconference.org/publication/Commentary_on_Ephemeral_Messaging.

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