Mitigating the Legal Risk of Data Collected at Airports

November 8, 2022

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Today's Learning Objectives

- Recognize developing practices in airport data collection and utilization

- Define national and international trends related to data collection and use by airports

- Identify established practices to mitigate legal risk associated with data use

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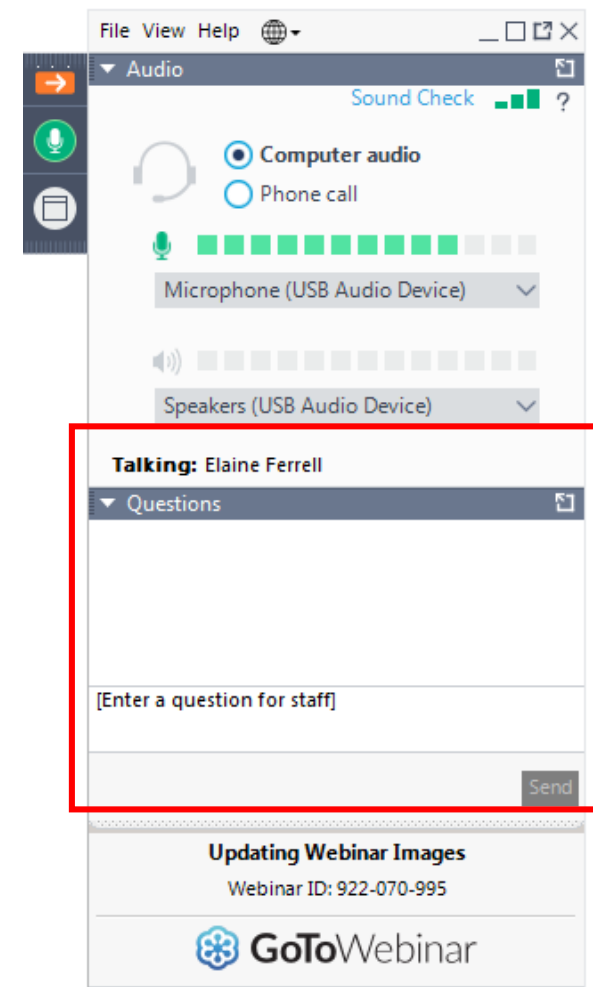
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Questions and Answers

Please type your questions into your webinar control panel

We will read your questions out loud, and answer as many as time allows

#TRBwebinar

Elizabeth Smithers, J.D., Panel Chairperson--Moderator

✈ Senior Assistant City Attorney advising Charlotte Douglas International Airport (focused on intellectual property, technology finance, procurement and public art and records

✈ Chair ACRP Legal Panel

✈ 2022 Young Professional for ACI Legal Committee Steering Group

✈ Steering Group Member ACI Young Professionals Committee.

ACRP-LDR 42 Research Team

- Don Zoufal, CrowZ Nest Consulting, inc. , Chicago, IL, **Principal Investigator**

- Sean Cusson, Del Rey Solutions, LLC, Alexandria, VA, Subject Matter Expert

- Honorable, Diane J. Larsen, (Ret.) Circuit Court of Cook County, State of Illinois, Chicago, IL, Subject Matter Expert

- Tobias Person, Von Oxon, LLC, Los Angeles, CA, Subject Matter Expert

- Daniel Hantman, Data Privacy Counsel, Publicis Groupe, Chicago, IL, Subject Matter Expert

- Austin Maliszewski, Austin, TX, Technical Assistance

ACRP-LDR 42 Oversight Panel

- **Elizabeth Smithers, Charlotte Douglas International Airport, Charlotte, NC, Panel Chairperson**

- Monica R. Hargrove, Metropolitan Washington Airport Authority, Washington D.C.

- Joseph Huber, Cincinnati/Northern Kentucky Airport, Cincinnati, KY

- D. Scott Knight, Tampa International Airport, Tampa, FL

- Sarah Meadows, University of Arizona, Tucson, AZ

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- Pablo Neusch, Liaison with Airports Council International

- Justin Barkowski, Liaison with American Association of Airport Executives

- Robert J. Shea, TRB Liaison

- Theresa Schatz, ACRP Staff

ACRP-LDR 42 Introduction

- Welcome/Introduction

- Developing Airport Practices in Collection of Data (Examples from LRD 42)

- Development of Legal Trends Concerning Data Collection

- Measures to Mitigate Risk

- Final thoughts/Q&A

Don Zoufal, J.D., C.P.P., ICAO AVSEC PM
Principal Investigator--Panelist

- ✈ Independent Safety & Security Consultant CrowZ Nest Consulting, Inc.

- ✈ Former General Counsel, Chicago Police Department

- ✈ Former Chief Assistant Corporation Counsel, Chicago Law Department

- ✈ Former Deputy Commissioner for Safety & Security, Chicago Department of Aviation

Sean Cusson, J.D., Subject Matter Expert--Panelist

- ✈ Del Ray Solutions, LLC
- ✈ Former Director of Public Safety and Security at Airports Council International North America
- ✈ Former Congressional Liaison at U.S. Customs and Border Protection

# Daniel Hantman, J.D., CIPP/US, Subject Matter Expert--Panelist

✈ **International Data Privacy Counsel with Publicis Groupe**

✈ **Supports businesses in multiple industry lines that operate within the US and internationally**

✈ **Certified Information Privacy Professional (United States)**
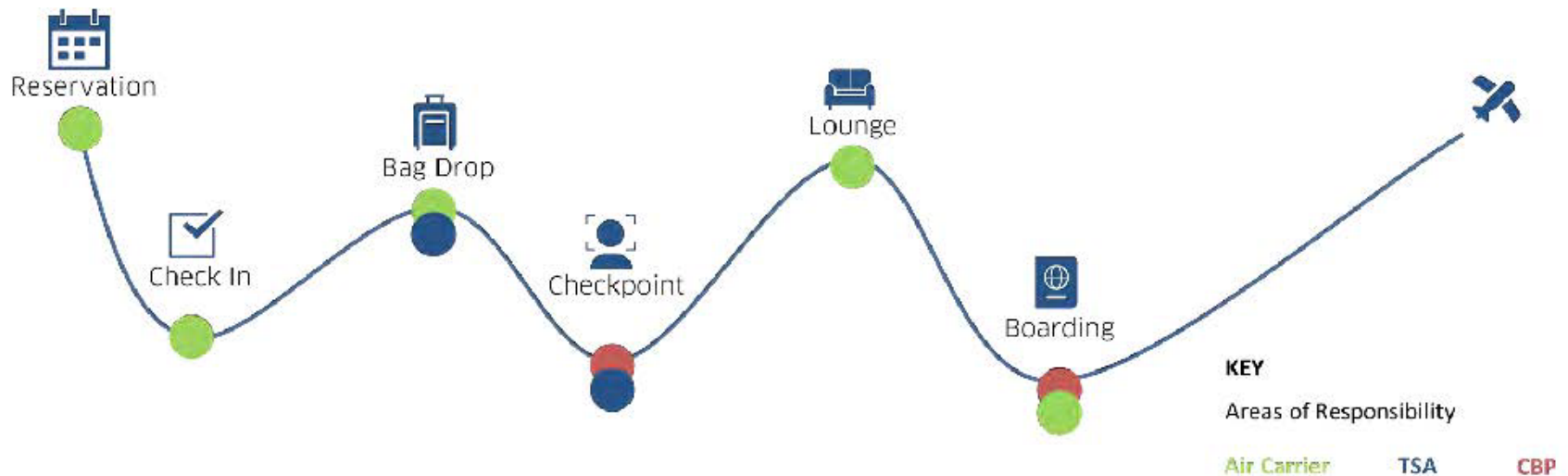
ACRP-LDR 42 Introduction

WHAT'S IN LRD 42

- Case Studies of Airport Data Use

- Federal, State, & Local Legal Concerns

- International Implications

- Privacy and Open Records

- Payment Card Industry, Data Security Standards

- Policy Considerations

- Contract Considerations
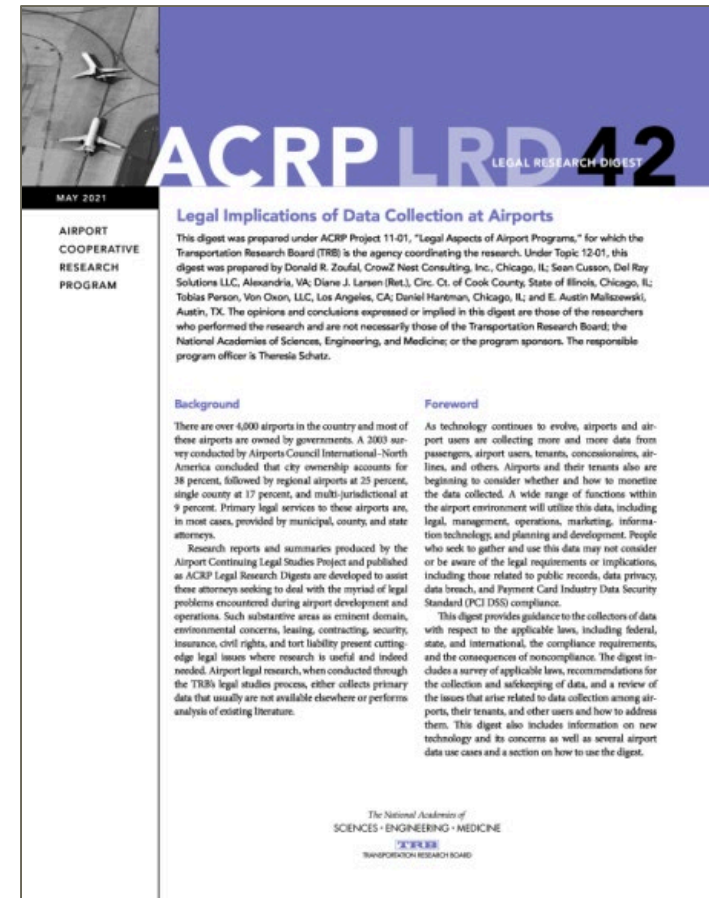
ACRP-LDR 42 Case Study Examples

## Combined Commercial/Security Use: "The Future Airport Experience"

Source: United States Department of Homeland Security, "Transportation Security Administration. TSA Biometrics Roadmap : For Aviation Security and the Passenger Experience" (September 2018) P 18. Cited at https://www.tsa.gov/sites/default/files/tsa_biometrics_roadmap.pdf
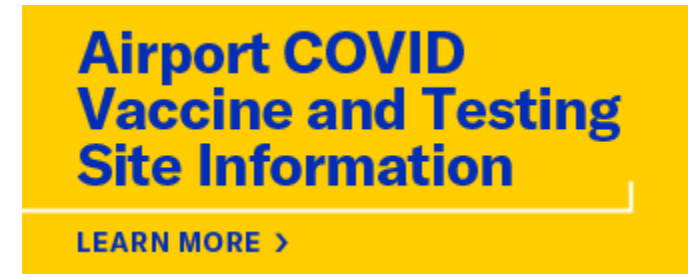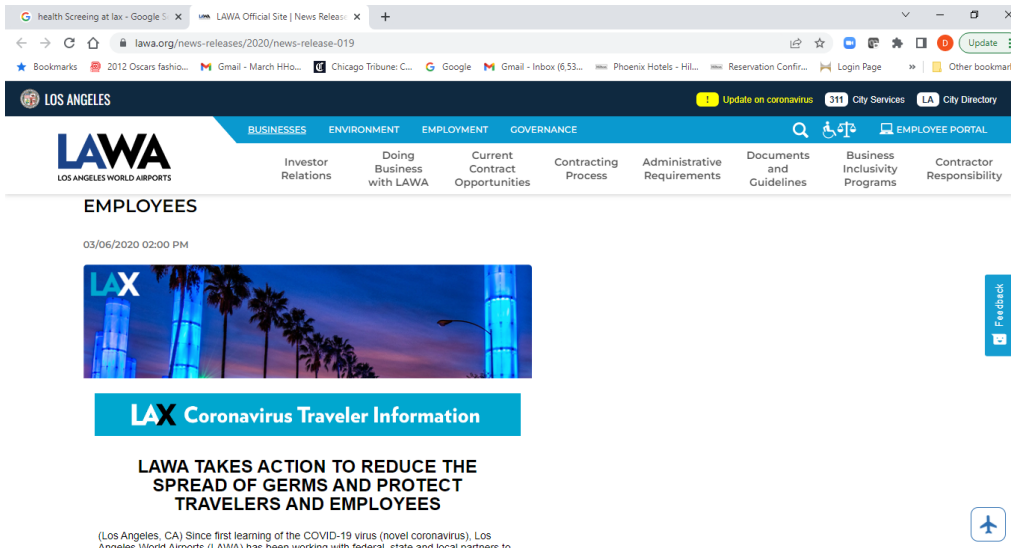
ACRP-LDR 42 Case Study Examples

Digital Landscape

Websites. Mobile Apps., E-Commerce, Wi-Fi, & CRM
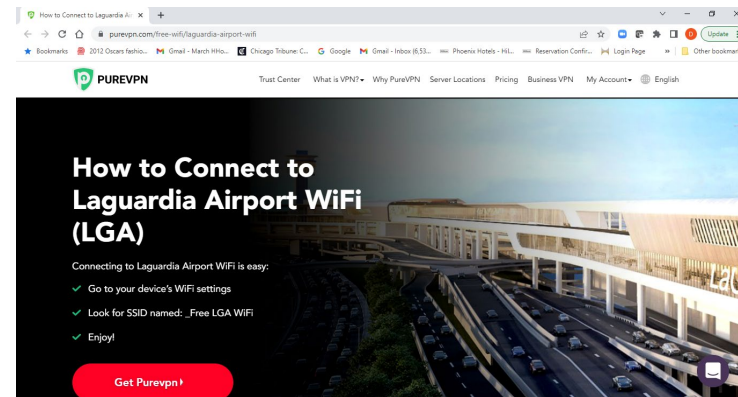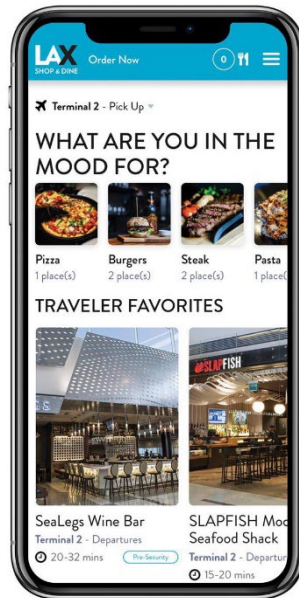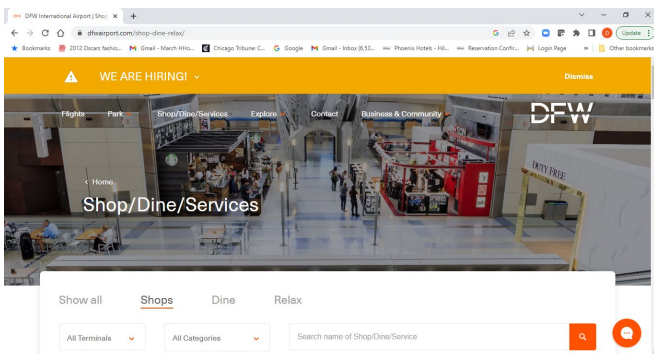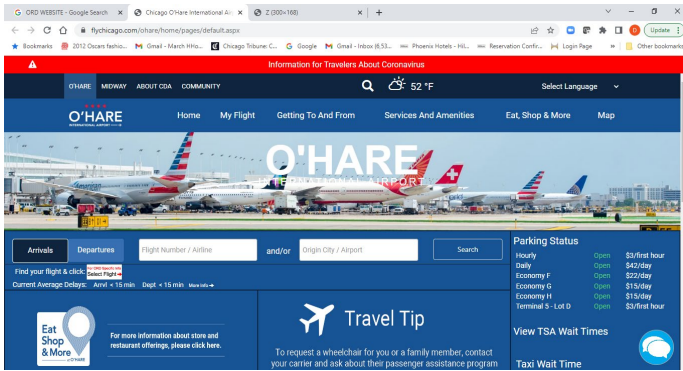
ACRP-LDR 42 Case Study Examples

Health Checks/Medical Data

Temperature Screening/Vaccine Passports

Overview of Legal Structures for Privacy Management

Statutory and Legal Protections for Privacy

- Decentralized & Sectoral Approach in the U.S.

- Centralized & Comprehensive Approach in EU and Canada

- Growing Interest in Privacy Protections (Brussels & California Effect)

Overview of Legal Structures for Privacy Management

Common Legal Concerns

- Technology is Outpacing the Legal Systems Ability to Respond

- Lack of Legislative Input

- Changing Understanding of Privacy & Privacy Threats

- Lack of Standards for Technology

Current State Law Landscape

✈ <u>California Consumer Privacy Act/California Privacy Rights Act</u> (CCPA/CPRA), eff. 1-1-23

  ▪ <u>Draft Regulations by the CPPA</u> (Enfoncement Agency)

✈ <u>Colorado Privacy Act</u> (CPA), eff. 7-1-23

  ▪ <u>Draft Regulations by the State Attorney General</u>

✈ <u>Connecticut Data Privacy Act</u> (CTDPA), eff. 7-1-23

✈ <u>Utah Consumer Privacy Act</u> (UCPA), eff. 12-31-23

✈ <u>Virginia Consumer Data Privacy Act</u> (VCDPA), eff. 1-1-23

NOTE: All these statutes have become effective after the publication of LDR 42.

Growing State Protections
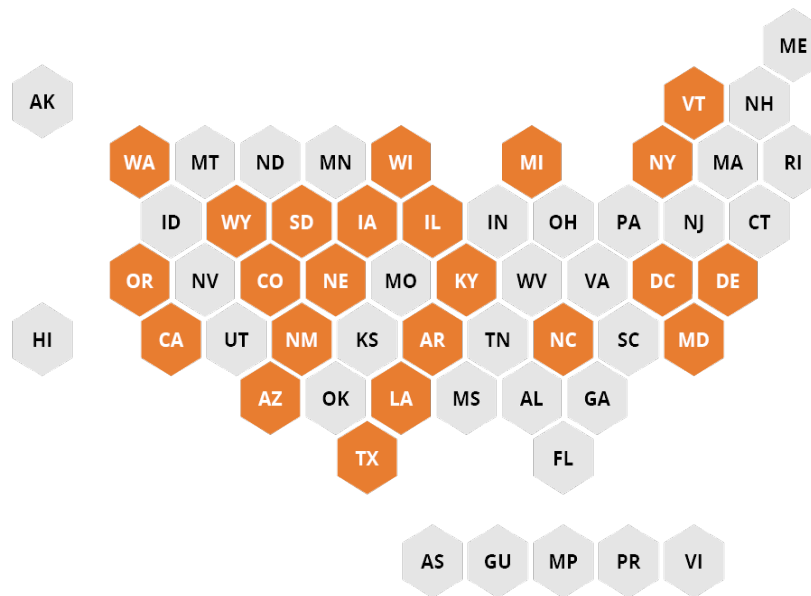
Expanding State Privacy Legislation

Security breach notification laws in at least 22 states and the District of Columbia expressly include biometric information in their definitions of covered personal information.

■ Expressly include biometric information

Source: NCSL, 2020

Source: Pam Greenberg. "Spotlight: Facial Recognition Gaining Measured Acceptance." *National Conference of State Legislatures* (September 2020) cited at *https://www.ncsl.org/research/telecommunications-and-information-technology/facial-recognition-gaining-measured-acceptance-magazine2020.aspx*

ACRP-LDR 42 Legal Trends

State Law Comparison of Sensitive PI

	Gov't ID #	Financial Login w/Creds	Precise Geoloc	Race, Ethnic, Religion, Philosophy	Union	Genetic, Biometric, Health	Texts/ Emails+	Sex Life/ Orient	Citizen/ Immigr Status	Collected from Child
CA	X	X	X	X	X	X	X	X		
CO				Race, Ethnic, Religion		X		X	X	X
CT			X	Race, Ethnic, Religion		X		X	X	X
UT			X	Race, Ethnic, Religion		X		Orient.	X	
VA			X	Race, Ethnic, Religion		X		Orient.	X	X

* Definitionally, SPI is a category of personal information that excludes deidentified or aggregated information, or information that is "publicly available."
+ Texts/Emails aren't sensitive personal information if the intended recipient of the communication is the controller.
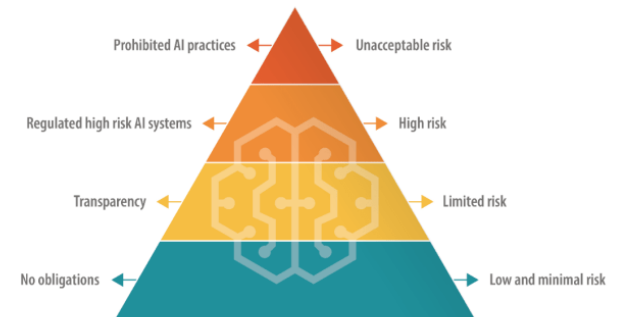
ACRP-LDR 42 Legal Trends

International Regimes
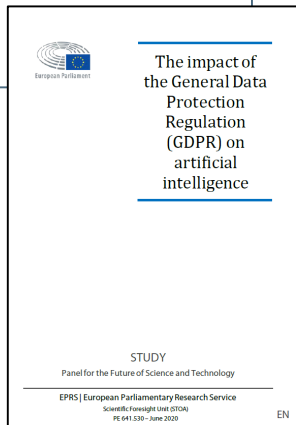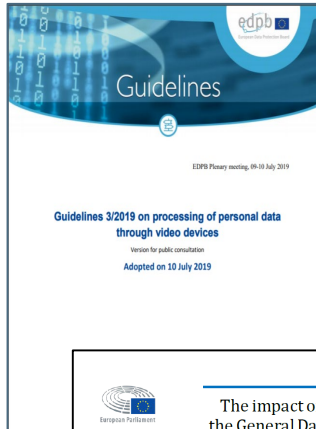
Growing Influence Across National Borders

- Limits on video use

- Limits on AI use

- Safeguards for data collection and sharing

FTC & the "Common Law of Privacy"

- Common Law of Privacy
- FTC Enforcement
  - Deceptive Practices
  - Unfair Practices
  - International Agreement Enforcement
  - Joint Federal & State Actions
- Rulemaking Authority
- Advocacy & Education

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PCI & Data Security

Six Objectives of PCI DSS

- Build and Maintain a secure network
- Protect cardholder data
- Maintain a vulnerability management program
- Implement strong access control measures
- Regularly monitor and test networks
- Maintain an information security policy

Source: National Academies of Science Engineering and Medicine. 2010. *Helping Airports Understand the Payment Card Industry Data Security Standard (PCI DSS).* Washington D.C. The National Academies Press. cited at https://nap.nationalacademies.org/download/14436

FOIA & Open Records

- **State by State Approaches**

    - National Association of Counties Report (2010Cited at https://www.governmentecmsolutions.com/files/124482256.pdf.

    - Reporters Committee for Freedom of the Press Open Government Guide (2019) Cited at https://www.rcfp.org/open-government-guide.

- **Specified Retention Periods**

    - Record Retention Schedules by State. Cited at https://brechner.org/records-retention-schedules-by-state/.

- **Concerns Over Protections for Commercial Information**

    - *Food Market Institute v. Argus Media Leader*, ___U.S. ___, 139 S. Ct. 2356 (2109)

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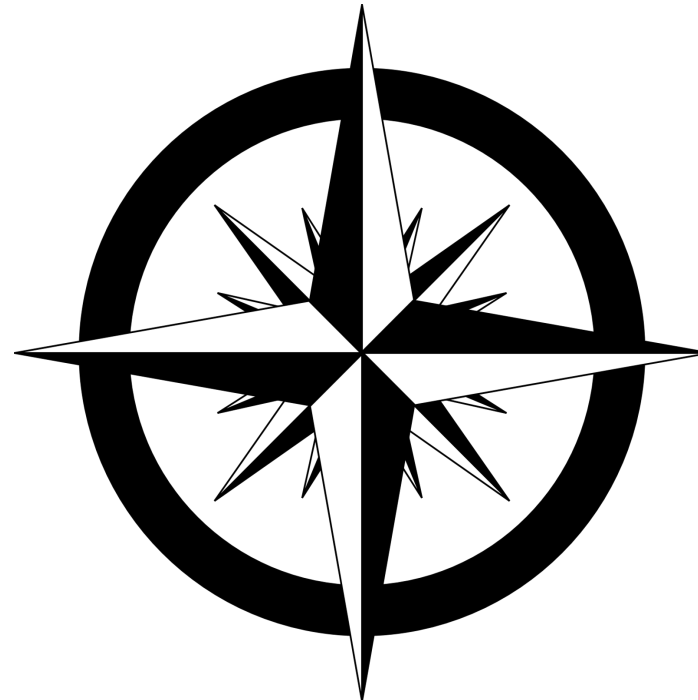
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Recent Developments

- FTC Rulemaking

- Proposed Legislation - ADPPA

- Office of Science and Technology Policy RFI

- Executive Order to Implement the European Union-U.S. Data Privacy Framework

Policy Considerations
PURPOSE
SECURITY
PRIVACY
TRANSPARENCY

NIST Privacy Framework

Problem
arises from data processing

Individual
experiences direct impact (e.g., embarrassment, discrimination, economic loss)

Organization
resulting impact (e.g., customer abandonment, noncompliance costs, harm to reputation or internal culture)

Source: U.S. Department of Commerce, National Institute of Standards and Technology, *NIST Privacy Framework, a Tool for Improving Privacy Through Enterprise Risk Management* (January 15, 2020). Cited at https://www.nist.gov/system/files/documents/2020/01/16/NIST%20Privacy%20Framework_V1.0.pdf.

ACRP-LDR 42 Mitigation Measures

NIST Draft AI Framework

Trustworthy AI: Risks & Characteristics

Technical	Socio Technical	Guiding Principles
Accuracy	Explainability	Fairness
Reliability	Interpretability	Accountability
Robustness	Privacy	Transparency
Resilience or Security	Safety	
	Managing Bias	

FINAL THOUGHTS

&

QUESTIONS

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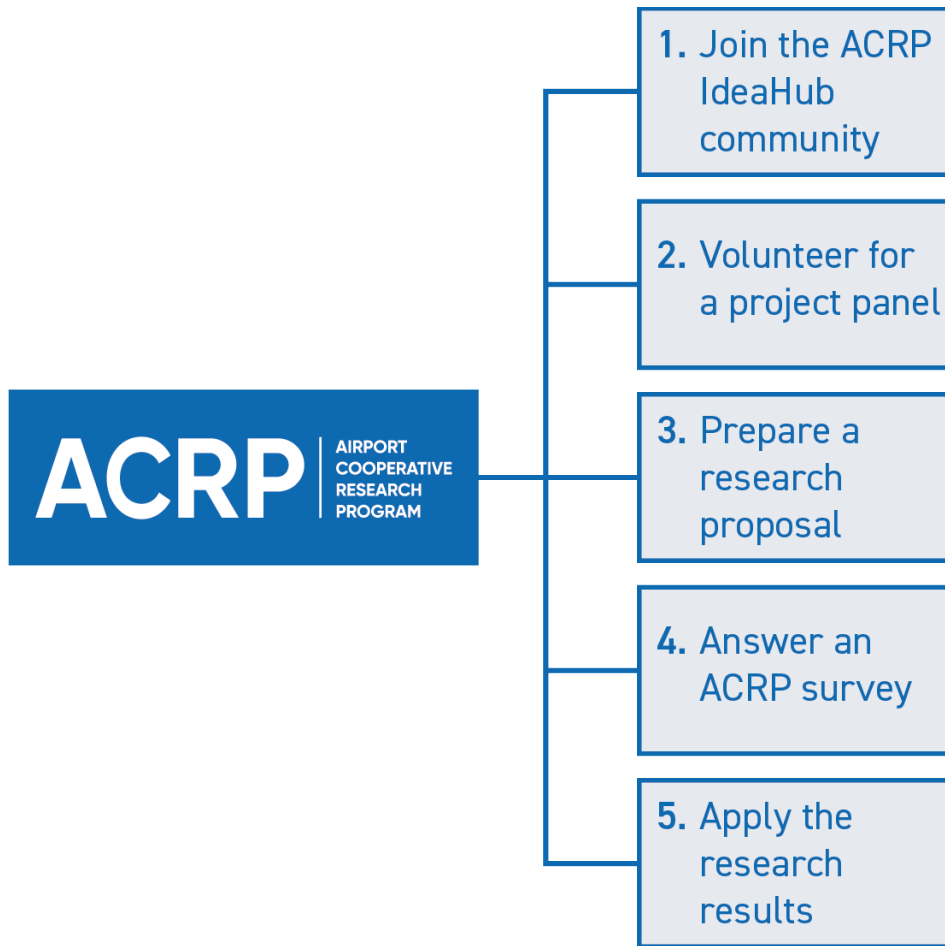ACRP | AIRPORT COOPERATIVE RESEARCH PROGRAM

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