



Universität St.Gallen

Institut für Medien-
und Kommunikationsmanagement

Data Protection in Swiss Law Firms

Innosuisse Innovationcheck: Research Report Summary

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Prof. Dr. Veronica Barassi
Kimberley Kernbach
Rahi Patra

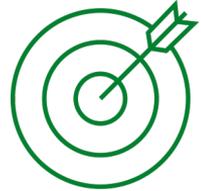
From insight to impact.

Research Project & Method

Overview

New Challenges & Need for Research

Data protection regulations & rising cyberthreats



Research Aim

- give voice to the day-to-day experiences, beliefs and practices of legal practitioners in Switzerland
- gain a more nuanced knowledge of the potential challenges and constraints affecting data protection practices in Swiss law Firms
- explore how Swiss law practitioners currently deal with raised standards of privacy and security at the international and national level
- understand what solutions and strategies legal practitioners envisage

Legal and Ethical Requirements to Data Protection

- **Obligation to professional secrecy for Lawyers**
*Art. 15 of the Swiss professional ethics by the Swiss Bar Association;
enforced by Swiss Criminal Law Art. 321 StGB*
- **General Data Protection Regulation (GDPR)**
implemented by EU and EEA in 2018
- **ePrivacy Regulation (ePR)**
*currently under review in the European Parliament,
expected for 2023*
- **New Swiss Data Protection Law (nDSG / E-DSG)**
*accepted by Swiss federal council in September 2020
will come into force by September 2023*

Rising Cyberthreats for Law Firms

Increasing cyber-attacks and data breaches in Law Firms:

- reported by *Legal Technology Survey Report of the American Bar Association (2021)*
- number of cyber during the height of the Covid-19 pandemic was up to three times higher than normal (*Swiss National Cyber Security Centre, 2020*)

Data breaches can have a significant impact on law firms:

- Clients will leave law firms
- High costs of data breaches:
 - \$3.92 million on average (*IBM Security/Ponemon Institute, 2019*)
 - \$150 on average per record (*Fischer, 2020*)

Research Method & Sample Recruitment

Overview

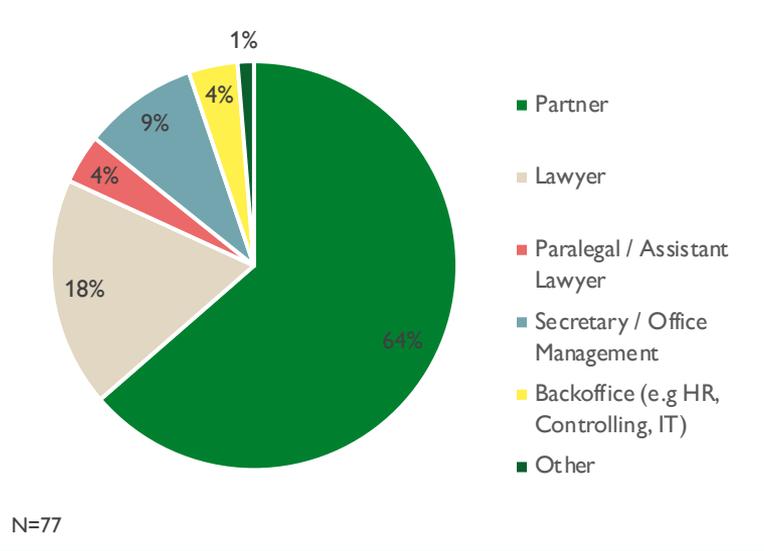
Areas of investigation & Survey Structure

General Information about participant and law firm					
		I	II	III	IV
Method	Online survey Mixed methods approach (quan. & qual.) among Swiss law firm employees (50-100 participants)	Understandings of Data Protection and Regulations	Data Protection and File Sharing Practices	Data Training Experience and Literacy	Understandings of Legal Technology Solutions
Field period	14th of February – 18th of May 2022	How aware are legal practitioners of data privacy regulations and security risks? How much do they know about data protection regulations?	What are the day-to-day practices and behavioural patterns of data sharing amongst legal practitioners? What technologies and strategies are used? In which way?	How far do legal practitioners feel that they have received sufficient training? How much training did they receive? Did the training made them feel more confident in their data protection practices?	How would legal practitioners feel if their firm used Privacy by Design/ Default technologies? Have they ever used Privacy by Design? How was their experience?
Sample recruitment	> 4000 law practitioners contacted <ul style="list-style-type: none"> 344 law firms / 1199 individual contacts via personalized emails >3000 reached via law networks/ newsletters Recruited: 160 participants (brutto) Finished: 77 participants (netto)	How confident do they feel about their everyday data protection practices?	How useful are these technologies?		

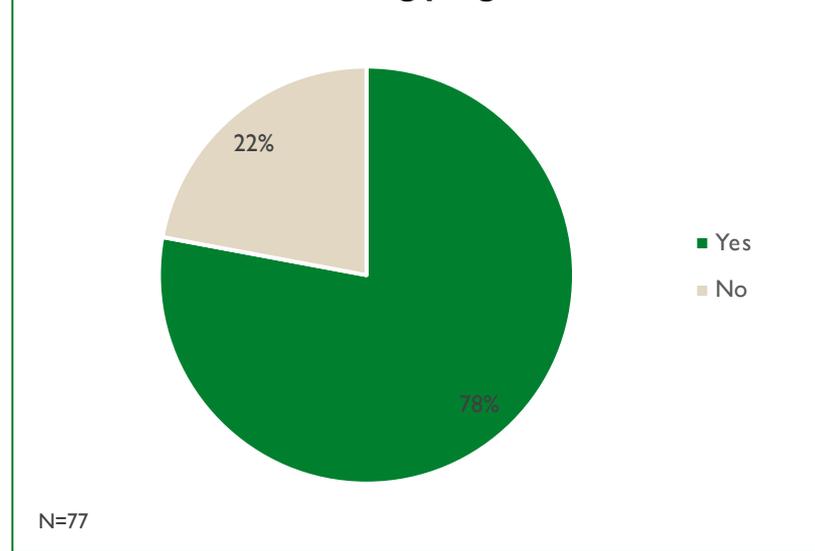
Sample Description

Survey Participant Characteristics

Participant's role within law firm



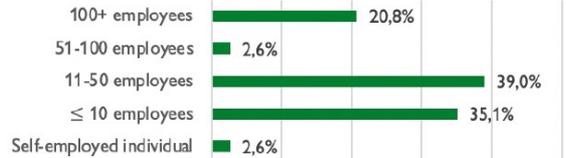
Part of decision-making progress IT Tools



Sample Description

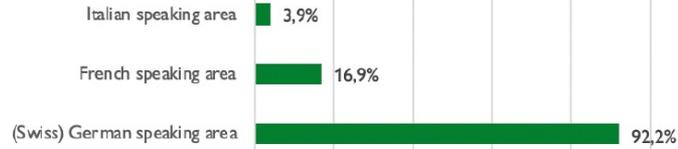
Law Firm Characteristics (1/2)

Size of law firm



N=77; Single choice

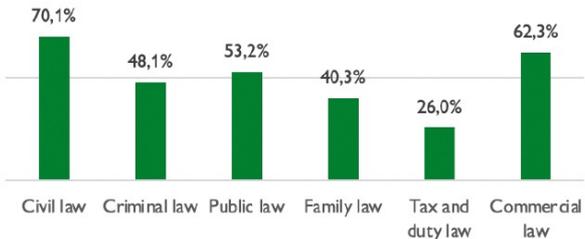
Swiss location(s) by language area



N=77; Multiple choice

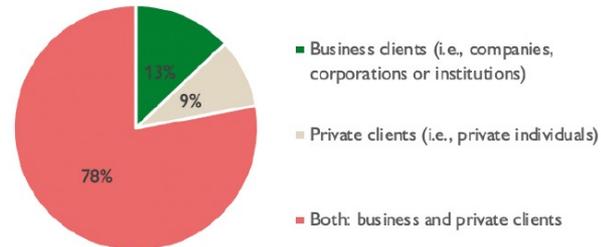
Note:
German is spoken by about 63% of the population, French by about 23%, and Italian by about 8%

Field(s) of law



N=77; Multiple choice

Kind of client(s)

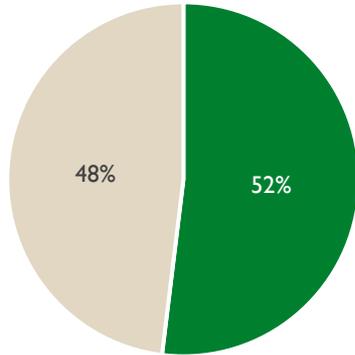


N=77; Single choice

Sample Description

Law Firm Characteristics (2/2)

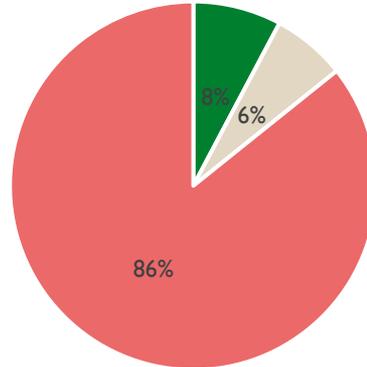
Amount of office(s) in CH



- We only have one office located in Switzerland.
- We have several offices located in Switzerland.

N=77; Single choice

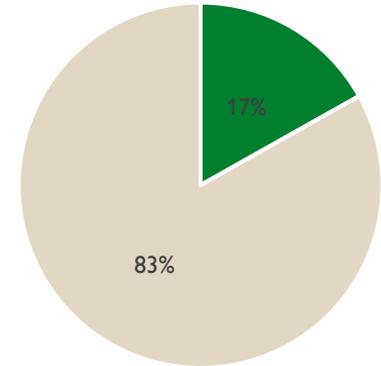
International office(s)



- We have additional offices located in the EU.
- We have additional offices located worldwide.
- We do not have any offices located outside Switzerland.

N=77; Single choice

Internationality of client(s)



- We only serve Swiss clients.
- We do also serve international clients.

N=77; Single choice

Data Protection in Swiss Law Firms

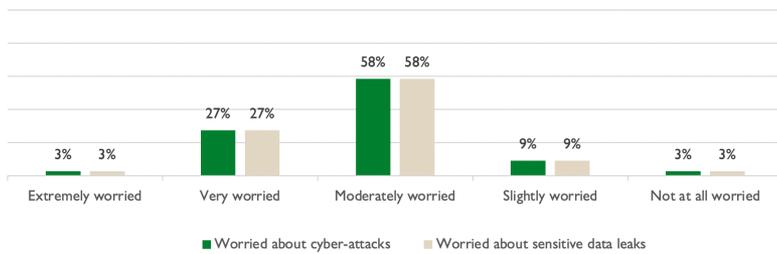
Findings & Analysis

Raising Awareness

towards data protection amongst Swiss Legal Practitioners

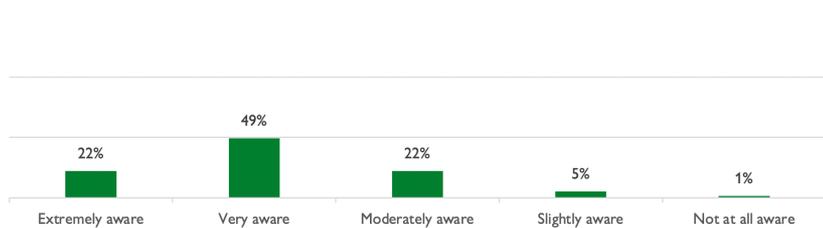


Worry about cyber-attacks & data leaks



N=77

Awareness towards data protection



N=77

Reasons for Awareness

Data protection as tightly interrelated to their duty of professional secrecy:

- Data protection is not only demanded “by law” but also an “[e]ssential part of [their] professional activity” or even the “foundation of lawyer’s work”.

Regulatory frameworks as driving forces:

- “data protection law forces us to adopt internal policies [...] for better protection”
- The need to “live up to rules and regulations” and “execute data protection measures precisely”.

Client requirements as driving force:

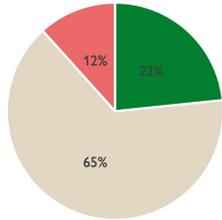
- “For a good relationship of trust between the client and the law firm, it is essential that the client can trust [the law firm] to handle his or her data with care. The issue of data protection is therefore a high priority in day-to-day work.”

Fear of consequences due to data breaches and cyber-attacks

- “[a] leak in data could lead to a massive reputation risk [and a] cyber-attack could force the firm to shut down the services for some time - which would be very costly”

Implementation of Good Data Protection due to increasing cyberthreat and sense of worry

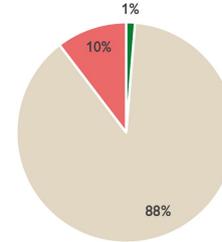
Cyber-attack victim



- Yes, our firm has experienced cyber-attacks (e.g., through hacking or phishing).
- No, as far as I know we have never experienced a cyber-attack.
- I don't know.

N=77

Data leak victim



- Yes, our law firm has experienced sensitive data leaks.
- No, as far as I know we have never experienced sensitive data leaks.
- I don't know.

N=77

Surveyed law practitioners see implementation of good data protection practices in their law firms

- *“relevant systems are in place and updated from time to time”*
- *“regular awareness trainings are conducted”,*
- *“passwords must meet certain requirements”*
- *“home office [would] only be possible in a very limited way”*
- *a “strong frontend” or a “state of the art antivirus software” would be in place*
- *Trainings on how to handle or recognize “phishing e-mails” have been conducted*
- *development of “certain tools to mitigate the risk of data leaks and restrict the access to information”*
- *“work[ing] exclusively using a very secure cloud” and with “certified” or “encrypted” emails*



Still: Room for Improvement

Ambivalent Views on Effectiveness of Data Protection

Perceived effectiveness of data protection: Different opinions



- “very effective”,
- on a “professional standard”
- or “top level”



- “rather effective”
- „sufficient”
- or “quite safe”



- “pragmatic approach on a rather low level”
- “the choice of tools and process are not focused on compliance”

Room for Improvement

“There is certainly room for improvement. We are currently doing bits and pieces - not bad, to begin with, but not enough. We lack a proper strategy.”

“Unfortunately, much less effective than what we advise and recommend to clients.”

“I think it could be much better. For instance, everybody has access to every file on the cloud, even if we don't need it at all.”

Outsourcing data protection? – Ambivalent views

Positive: Proof of the effectiveness of data protection

- “We are working with a reliable IT-partner which complies with the applicable laws.”
- “As we have a cloud provider we trust that he takes care of the data protection practice; we are regularly informed about his activities“.



Negative: Fear of lost control

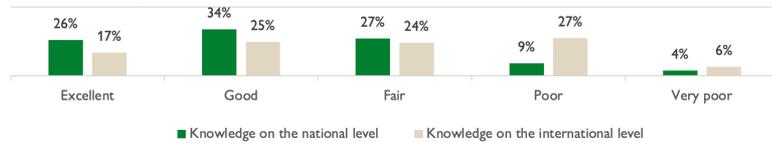
- Some feared “high-end technological solutions”, because these were often complex solutions which escaped their understanding and control
- “Data security falls mostly with fancy solutions and a dependency on third party support”

Further Ambivalences

as reflection of survey participants' different law firm backgrounds

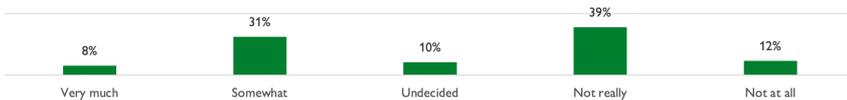
Knowledge on data protection regulations

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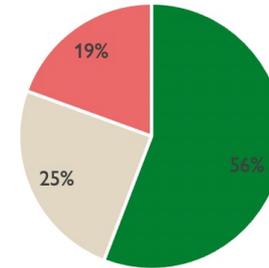


Covid-19 effects on compliant data handling

N=77



Awareness of security measures: Security audits



- Yes, we go through security audits.
- No, we do not go through any security audits.
- I don't know.

N=77

Key Challenges to Data Protection in Swiss Law Firms

Respondents identified five key challenges



Operationality

Data protection measures are seen to affect operationality:

“makes business sometimes complicated”

“is working against the need for efficiency, speed, ease of communication”

“we must find a working middle ground”

“clients prefer easy communication and exchange”



Complexity & Lack of knowledge

Data protection is perceived to be complex issue

“requires knowledge about how IT works”

“Data security is a wide area and developing as fast as technology itself”

“technical race in a changing environment to which the human factor has to keep up”



Lack of Resources & Outsourced Solutions

Data protection as too resource intense

“too time consuming”

more and more firms rely on outsourced technical solutions, however for small firms not affordable

“too costly”



Role of Clients

Data protection must also be understood and acted upon by clients

law practitioners did not know how to address the fact that many of their clients used weak means of communication

variety of practices and means of communication used by clients “hindered the law practitioners’ ability to establish a proper, coherent practice.”



Organizational Cultures

Respondents pointed out that several hindering mindsets prevail in their firms

law firms tend to be “overly confident”

or even “ignorant” of the topic

“law firms politics” standing in the way

Strategies & Solutions for Data Protection in Legal Sector

Key Insights

Key Strategy

to better data protection in Swiss law firms

Behavioural Change
through more and better
data protection training



Legal Technology Solutions
Supporting secure file sharing
And Privacy by Design



“As I’m not only a lawyer but also an IT nerd and data protection enthusiast, the topic itself as well as appropriate practices are high on the agenda.

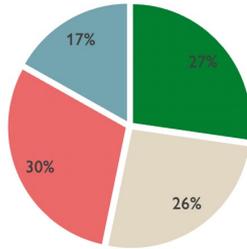
With IT and behaviour, we ensure a high level of protection.”

Data Protection Training

How can we improve? (1/2) – More regular and better trainings

Received any data training in the past

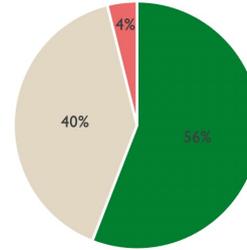
- Yes, I received an internal firm training.
- Yes, I received an external training.
- No, but I have tried to teach myself (e.g. through readings, videos or online-courses).
- No, I have never received any data training.



N=77

Room for improvement within data training

- Yes, a more regular and/or better training would be appreciated.
- No, I feel well trained.
- No, I don't have time for more trainings.



N=77

*“Data protection is not only about up to date IT [it is also] **mainly an educational issue.***

To protect data in an effective way every person in the company:

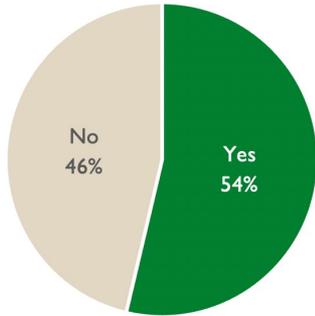
- *must know that we treat sensitive data*
- *must know how to deal with different classes of data*
- *must know how data thieves work (spoofing, phishing, social engineering) to recognize potential attacks*
- *must know how to act in - case of a potential data breach.”*



Data Protection Training

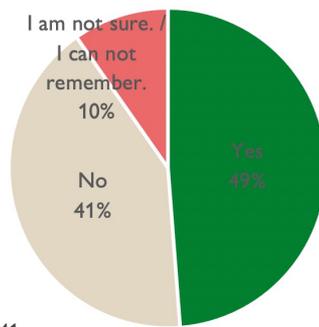
How can we improve? (2/2) – Arrangement and content of trainings

Mandatory training



N=41

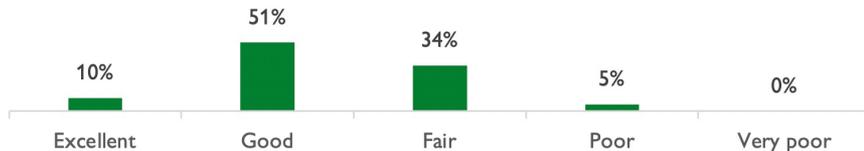
File sharing part of data training



N=41

Rating of experienced data training towards own confidence in data handling

N=41



Suggestions for improvement

More user-friendly & easy to understand

- “Any training on data protection should be easy to understand and show the user how he/she can easily implement actions to better protect data. Very often, trainings are overloaded, and people switch off because they think they’ll never be able to do all that...”

Integration of more case studies / real examples

- Participants suggested that sharing of experiences and showing examples on cybersecurity attacks like, “phishing attacks or...ransomware attacks”

Support by the Swiss Bar Association

- Through provision of “guidelines on best practices/ approved solutions” or provision of industry-based solutions for medium and small offices

„On-the-Job Test“

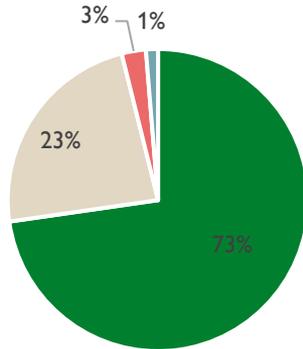
- to identify whether the training sessions are aiding good data protection practices

Legal Technology Solutions

File sharing and vulnerabilities (1/3)

File sharing: How often

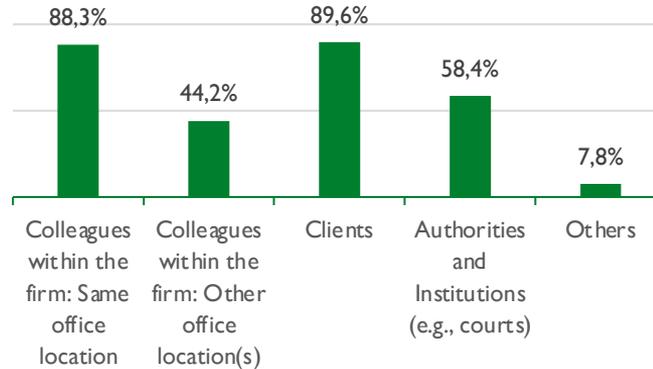
N=77



- Each day
- A few times a week
- Once per month
- Almost never

File sharing: With whom

N=77; Multiple Choice

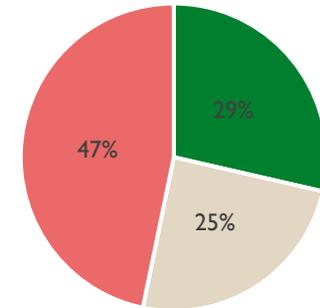


Others:

Public ; Associations; Universities (Researchers); Opponents (Lawyers); Third parties (e.g., Trustee); Other lawyers

File sharing across borders

N=77

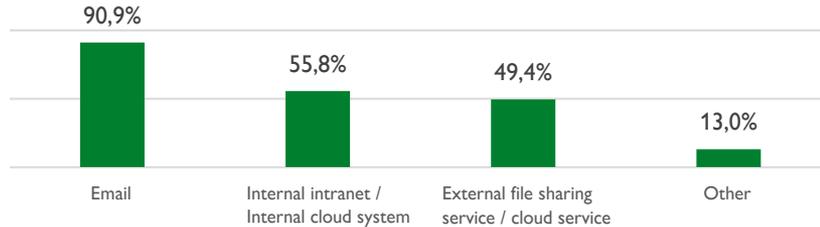


- No, only in Switzerland.
- Yes, I have European clients which involves file sharing across the swiss borders.
- Yes, I have clients all over the world which involves file sharing across the swiss borders.

Legal Technology Solutions

File sharing and vulnerabilities (2/3)

Tools used for file sharing



External services used

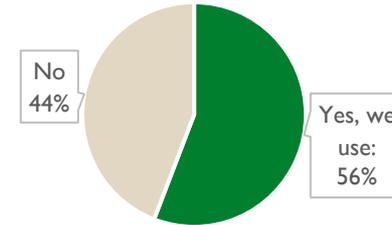
- Google Drive
- Dropbox
- Microsoft One Drive
- MS Teams
- MyDrive
- WeTransfer
- Arcano
- Tresorit
- Incamail
- Swisstransfer
- Hubshare
- WebTransfer.zh
- Sharefile bx Citrix
- Next cloud
- Hin
- Cofex
- Filr
- Confluence
- external file sharing services provided by the federal administration

Other

- Secured Email: (e.g. SeppMail)
- Traditional Post Office: printed or secured CD/USB
- Services used by clients

N=77, Multiple Choice

Specific tools for sensitive data



External services used

- Internal cloud/server solution
- Incamail
- Secured Email /SEPPMail
- Arcano
- Dropbox
- Microsoft One Drive
- MS Teams
- WeTransfer
- Tresorit
- Swisstransfer
- Nextcloud (internal)
- VDR (Virtual Data Room)
- Hubshare
- MyDrive
- USB locked by password
- External service provided by federal administration

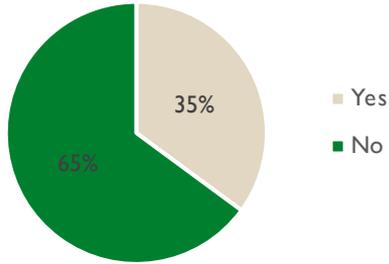
Further comments

- Additional encryption (pgp, ssh)
- Clouds with high user authentication (2FA)
- Certificated emails
- Client's system
- On clients request encrypted
- Confidential
- Restricted user rights / password protected

Legal Technology Solutions

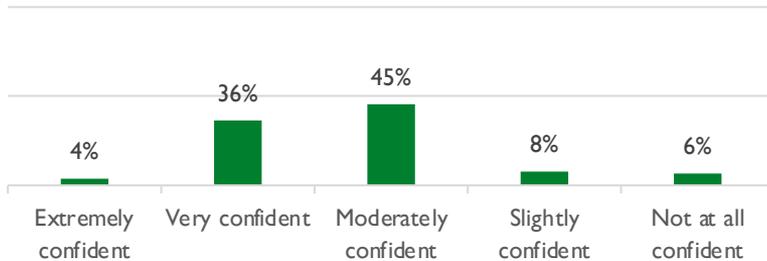
File sharing and vulnerabilities (3/3)

Any concerns on file sharing tools



N=77

Confidence towards sensitive file sharing practices



N=77

Concerns

Emails are widely used to transfer files

- “Too often, files are sent via normal e-mail (i.e. no secure transmission)”
- “99% of our e-mail and sharing traffic is not secure at all.”
- “Often we use normal e-mail which is not a secure way of sharing data.”
- “As Emails aren't always as protected as it may seem it's vital to check to not send any sensitive data unencrypted.”
- “I am not sure it is really safe. It seems to be a simple mailbox as everyone has. I think lawyer should use more secured tools.”

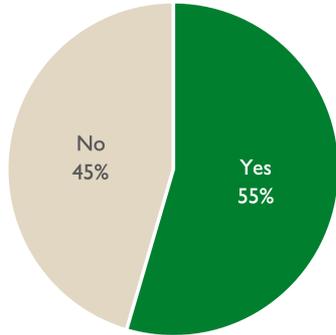
Client malpractices

- “Additional security measures should be taken to communicate certain files and information (like encryption) but recipient[s] often lack the technological tool to allow for encrypted communication.”
- “I am not a fan of sharing files via e-mail, because I know, that's not really safe. So I only use it, when the clients want it that way and clarify the risk of data leaks.”
- “Certain divisions in our firm use, based on client requests, dropbox or other popular filesharing tools.”
- “Clients not only consent to unsecure e-mail correspondence, they ask us to do so. We offer a secure file sharing platform (PrivaShare), which is used by clients 2 - 3 times per year.”

Legal Technology Solutions

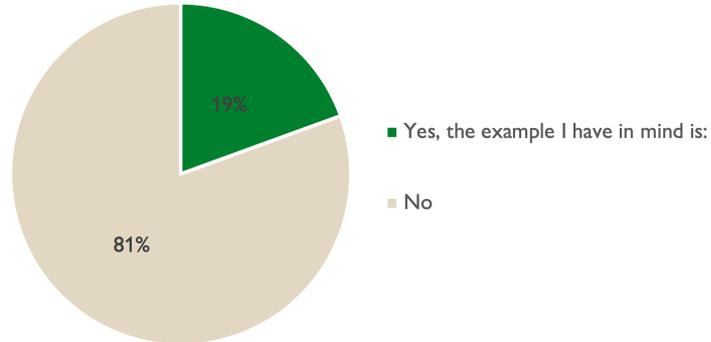
High potential in more Privacy by Design/Default solutions

Have you ever heard of Pbd?



N=77

Can you think of any Pbd settings in place at your law firm?



N=77

A **crucial solution** for law firms could be to invest in appropriate **legal technology solutions** and thus to support safe file sharing and Privacy-by-Design.



Key Take Aways

on data protection in Swiss law firms



Awareness and Practices

Rising awareness and implementation of good data protection practices in surveyed law firms

Still: Room for Improvement

Ambivalence of attitudes and first-hand experiences



Key Challenges

Problem of operability

Complex field and lack of knowledge

Lack of resources and outsourced solutions

Role of clients

Organizational cultures



Key Strategy & Solutions

Behavioural change:
more and better data protection trainings



Legal technology solutions:
supporting secure file sharing and Privacy by Design

Thank you.

Prof. Dr. Veronica Barassi

Director Media & Culture
+41 71 224 21 11
Veronica.barassi@unisg.ch

Kimberley Kernbach

Research Assistant
+41 71 224 21 11
Kimberley.kernbach@unisg.ch

Rahi Patra

Research Assistant
+41 71 224 21 11
Rahi.patra@unisg.ch

Universität St.Gallen (HSG)
Institut für Medien- und
Kommunikationsmanagement
Blumenbergplatz 9
9000 St.Gallen

mcm.unisg.ch

Akkreditierungen

