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ICC Sydney

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TO DISCLOSE OR NOT DISCLOSE: EMERGING CONSIDERATIONS FROM THE UNITED STATES, EUROPE AND AUSTRALIA IN LEARNING ABROAD PROGRAMS

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- Introduction
- Australian Privacy Laws
- Balancing Privacy Issues and Disclosure and the Clery Act
- ‘The Minnesota Law’ (2014 Minnesota Session Laws)
- European Union General Data Protection Regulation (GDPR)

Introduction



- How are we all managing this space currently and what are some best-practices we can share?
- What happens when one of these policies / laws are in direct conflict with your own institution?
- Who is the person on your campus / in your organisation that interprets these policies / laws? Do they understand the international element?
- How do we constructively bring our legal teams into this space?
- Where is the 'wriggle room'?
- What are some of the common tactics we employ to try to resolve agreement and operational reporting impasses we face?
- **What are some of your big questions / critical issues for today...?**

- Strong culture of privacy in Australian law – 30 years since first federal privacy act and privacy commissioner
- Mix of federal and state/territory privacy landscape
- Federal: 13 Australian Privacy Principles (APPs)
- State and Territory (except SA and WA): Individual privacy laws (with their own Information Privacy Principles – IPPs)
- State and Territory (except SA, WA, QLD, TAS and NT): Individual health privacy laws
- **Not as simple as being either a 'federal' or a 'state/territory' entity** – Australian universities all will meet the qualifying criteria to come under the jurisdiction of the Commonwealth Privacy Act, as well as their own state/territory acts
- Significant duplication, but some key points of difference exist

APPs (Key concepts)

- Open and transparent management of personal information
- Anonymity and pseudonymity
- Collection of solicited personal information
- Dealing with unsolicited personal information
- Notification of the collection of personal information
- **Use or disclosure of personal information**
- Direct marketing
- **Cross-border disclosure of personal information**
- Adoption, use or disclosure of government related identifiers
- Quality of personal information
- Security of personal information
- Access to personal information
- Correction of personal information

Some crucial points:

- APPs cover *Personal, Sensitive and Health Information*
- Notification, and informed, voluntary consent to collection (where applicable – usually required for personal sensitive or health information)
- Levels of security of storage of personal information (stricter for health records)
- ‘Reasonable steps’ to be taken to ensure overseas organisations don’t breach APPs in any cross-border disclosure (**does not apply where countries have own laws and mechanisms to protect privacy**)
- Individuals’ right to access records
- Mandatory breach notifications (from 2018)

Balancing Privacy Issues and Disclosure and The Clery Act

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Balancing Privacy Laws and Health and Safety Concerns

- Having Students Disclose Information (voluntary and release form)
 - Physical Health & Special Needs
 - Mental Health
 - Conduct Issues
- Having Public Security Officials Disclose Information/Violations
 - Requirement of Columbo Plan – Other Students?
- Having Campus Officials Disclose Information
 - Conduct Violations
 - Student Affairs/Dean of Students/Campus Security
 - Residential Halls

Balancing Privacy Laws and Health and Safety Concerns

- Having Students Disclose and Obtaining Release of Information
 - Choosing the law suit or bad press for denying participation or negative incident abroad?
 - Student participates in study abroad program in rain forest and needs dialysis, which is not available and becomes seriously injured or dies:
 - ***Get information and deny participation in that program –
- possibly find another study abroad option?***

Balancing Privacy Laws and Health and Safety Concerns

- Having Students Disclose Obtaining Release of Information
Choosing the law suit or bad press for denying participation or negative incident abroad?
 - Student has been found guilty of sexual harassment of students on campus and has been suspended from student clubs and organization participation. Allowing participation may result in your other students or others in the international location be sexually harassed.
 - *Get information and consider denying participation?*   #aiec2018

What are the things you need to know that might require crossing into areas protected by privacy rights by your university or your international partners?

- **What should you find out?**
- **What should you share with your students, faculty, staff and international partners?**

Privacy Issues and The Clery Act



The Handbook
for Campus Safety
and Security Reporting
2016 Edition



<https://www2.ed.gov/admins/lead/safety/handbook.pdf>

History of the Clery Act

Jeanne Clery, a 19-year-old Lehigh University freshman was tortured, raped, and murdered while asleep in her residence hall on April 5, 1986.



What is the Clery Act?

- All public and private postsecondary institutions that participate in federal student financial aid programs under Title IV of the Higher Education Act of 1965, as amended, must comply.
- Purpose is to inform parents, students, and employees about campus security and crimes.
- Enforced by the U.S. Department of Education (DOE).

Clery Act Requirements

1. Collect, classify and count Clery crimes, that occur on Clery geography, and report statistics at the end of the year in an Annual Security Report (ASR) and to the DOE
2. Count fires and report at end of year in ASR and DOE
3. Keep a crime/fire log
4. Issue timely warnings & emergency notifications

Non-campus Buildings or Property

Two Types:

1. Student Organization

- Student organization that is officially recognized by the institution



2. Other Non-Campus

- Owned or controlled by the institution
- Used in direct support of, or related to, the institution's educational purposes
- Used frequently by students; AND
- Not reasonably contiguous to campus



Study Abroad Program Reporting

- If your institution sends students to study abroad at a location or facility that you don't own or control, you don't have to include statistics for crimes that occur in those facilities.
- However, if your institution rents or leases space for your students in a hotel or student housing facility, you are in control of that space for the time period covered by your agreement.
- Host family situations do not normally qualify as noncampus locations unless your written agreement with the family gives your school some significant control over space in the family home.

2016 Clery Act Update

<https://www2.ed.gov/admins/lead/safety/handbook.pdf>

Study Abroad Program Reporting

Under the Clery Act, any postsecondary institution that participates in federal Title IV student financial assistance programs is required by law to:

- issue an annual security report that discloses campus crime statistics to current and prospective students, employees and the U.S. Department of Education.
- advise students and employees of Clery crimes and issue timely safety warnings and emergency notifications for crimes that pose a serious or continuous threat to the campus community.
- make available its campus security policies.
- maintain a public, daily log of reported crimes.

Designating Campus Officials to Report

Campus Security Authorities (CSAs) Could Include:

- Vice presidents, vice chancellors, vice provosts, deans, department heads, directors and coaches
- Employees in supervisory or management roles
- Faculty members
- Student affairs professionals
- Residential life staff
- Study abroad program faculty and staff

Study Abroad Program Reporting

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- Clery defines “controlled” as schools directly or indirectly renting, leasing or holding a written agreement, formal or informal (including an email!), for use of at least some of a property, regardless of whether or not the school is paying for that space.

Campus Safety Magazine, November 5, 2017

<https://www.campussafetymagazine.com/university/clery-act-study-abroad-field-trips-tournament/>

- The second field trip consideration relates to Clery’s “frequently used by students” stipulation. If your school sponsors students on an overnight field trip, and the students rent hotel rooms, you don’t have to report crime statistics in those rooms because they don’t meet the “frequently used by students” criterion.
- If, however, your school rents rooms at the same hotel every year for an annual field trip, the [Clery Act](#) requires you to include portions of the hotel in your non-campus geography. The 2016 Handbook elaborates on this point with the following example:

Campus Safety Magazine, November 5, 2017

<https://www.campussafetymagazine.com/university/clery-act-study-abroad-field-trips-tournament/>

- You must include in your statistics any crimes that occur in the rooms used by your students and any common areas used to access the rooms (lobby, elevators, etc.) for the times and dates specified in the rental agreement.
- Note that what matters here is repeated use of a location that is owned or controlled by the institution, not the number of days it is used, or whether it is used by the same students or different students.”

Campus Safety Magazine, November 5, 2017

<https://www.campussafetymagazine.com/university/clery-act-study-abroad-field-trips-tournament/>

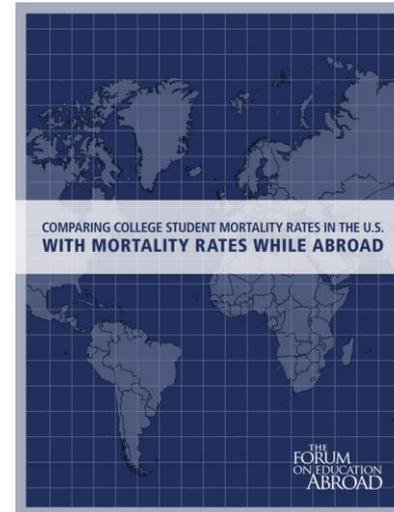
Reporting for Clery Act vs What Information Should We and Students Know

One of the critical issues in responding to the Clery Act is to report only for locations that include a formal connection to colleges and universities that operate programs abroad. You should work with your legal counsel and student affairs and campus security offices to deal with sexual harassment, assault, fire-safety, and others issues. Outreach about safety issues abroad and how to report and respond to incidents is critical.

Challenge... if most of the incidents are in bars, taxis, public areas, housing students found themselves, etc., should we be collecting and disseminating that information as well?

What are the safety incidents that are impacting the more than U.S. and Australian study abroad for credit and students other students going abroad on non-credit programs each year?

- **Forum on Education Abroad Effort**
- **Other US Federal Reporting Requirements**
 - **Title IX (Sexual Harassment and Assault)**
 - **VAWA (Violence Against Women Act)**

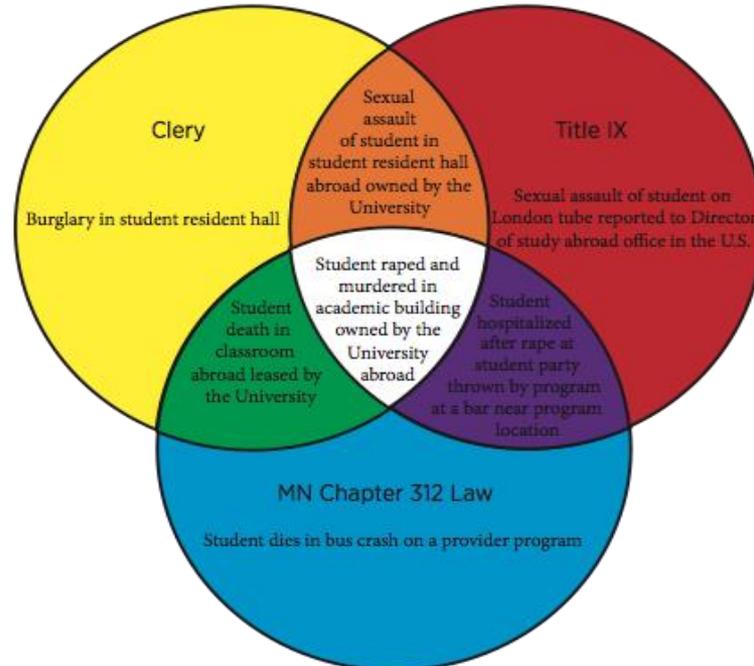


WHY do we want to know about incidents in which our students are involved?

- Legal issues/reporting
- Parents/Upper Administration/Media (will the issue go up the chain of command)
- Implications for future students
 - Advising future students on program choice
 - Pre-departure preparation
 - Potential safety concerns of location
- Relationship with program/university/partner abroad
 - Confidence in program's ability to handle health and safety issues
 - Do we want to continue to approve program?
- Perhaps most important: duty of care/best interest of student/ethical responsibility

Legislature--NOT Clery and Title IX, rather the Minnesota Law

- **To be reported, the incident must:**
 - be on credit bearing programs
 - be during the program dates
 - be a result of program participation
- **Deaths and hospitalization**
- **Required to disclose the safety of college programs abroad**



- **Overview of GDPR**
 - Broadly
 - Institutional interpretation
 - Definitions
- **Questions and considerations**
- **Partnership expectations**
- **Future directions**

- **What is the 'General Data Protection Regulation (GDPR)'?**

The General Data Protection Regulation (GDPR) is a legal framework that sets guidelines for the collection and processing of personal information of individuals within the European Union (EU). The GDPR sets out the principles for data management and the rights of the individual, while also imposing fines that can be revenue-based. The General Data Protection Regulation covers all companies that deal with data of EU citizens, so it is a critical regulation for corporate compliance officers at banks, insurers, and other financial companies. GDPR came into effect across the EU on May 25, 2018.

- **Why does GDPR matter?**
- **Why it matters to Syracuse University**

- **Partnership expectations**

- What does this mean for Syracuse partnerships, in and outside of the EU?

- **Future directions**
 - **Crystal ball – any fortune tellers among us?**