

January 2023

Atlanta's Technology Executives Roundtable

**Critically Important 2023 Legal, Tax & Accounting
Issues for Tech CEOs, CFOs & GCs**

*Please hold until
the session begins*

TEER | Technology
Executives
Roundtable



John Wichmann

Incoming President 2023

Technology Executives Roundtable

Founder & CEO, Gather Sciences

Your Forum

Candid discussion

CEOs, CFOs, CTOs & Investors

Subject Matter Experts

Complex leadership issues

Share, challenge & test ideas

Technology
Executives
Roundtable

TER

ZOOM Etiquette

- “Pin” the TER video box on your Zoom feed
- Please mute audio/video during presentations.
- Chat if you want to ask a question.
- We are recording for educational purposes; this is not specific legal, accounting or tax advice; consult your advisor

Thank you to our generous ATL sponsors

- **Arketi Group:** Digital marketing for B2B tech companies
- **CLRE Advisors:** Real estate advisors for high growth companies
- **Corps Team:** Professional staffing and recruitment agency
- **Dualboot Partners:** On-demand product design and software engineering
- **Frazier & Deeter:** Accounting & advisory
- **Morris, Manning & Martin:** Full-service law firm
- **Sterling Seacrest Pritchard:** Insurance and risk management services

SPONSORS



The logo consists of the letters 'MKII' in a bold, white, sans-serif font. The 'M' is stylized with a diagonal cut on its left side. The 'K' is also stylized with a diagonal cut on its left side. The 'I' and 'I' are simple vertical bars. The logo is centered horizontally and positioned in the middle of the frame.

MKII

**The South's Startup
Studio**

Experienced Founders

Patrick Cooney started his career in finance working for a family office. Patrick then joined Blink Health (a startup disrupting the pharmaceutical supply chain) as its 3rd employee. As Director of Business Development, he helped scale Blink into the \$4B success it is today, raising over \$175M in capital along the way. He then moved back to Alabama where he co-founded Simpeo (tech-enabled HR company) in 2018. Patrick successfully exited Simpeo in November of 2022.



Glenn Clayton launched his first startup in college. He successfully exited that company in 2013 (Appleton, acquired by N'genius). Glenn then started Spur (an HR tech company) which he successfully scaled up to \$40M in ARR and profitability. Along the way, he has raised over \$35M in early-stage capital including one of Alabama's largest Series A rounds of venture capital. In 2021, he hired a professional CEO to take over Spur and began actively seed investing and mentoring other founders.

MKII is a startup studio that serves as an “**institutional co-founder**” of startups and offers aspiring founders with access to:

experienced team of startup builders

+

vetted network of talent to hire

+

proven startup playbooks

The results in the first 6 months with a part-time team...

Ideas Pitched	145 (20+ still in backlog)
Concepts Researched In-Depth	45
Prototypes Developed	3
Companies Launched	3
Seed Rounds Raised	1
Studio Operating Costs	approx \$400,000
Est. Value of Studio-held Equity*	\$15M

**Discounted based on the probability of raising a Series A in the next 24 months*

What We're Looking For

Vertical SaaS / marketplace products

Subscription or transaction fee business models

\$1B+ TAM

Proven underserved markets

Strong "Founder-Market Fit"

Objectives

This will provide the necessary capital to achieve the following objectives over the next 36 months

- Evaluate 600+ concepts
- Develop and test 18+ prototypes
- Launch 15+ additional portfolio companies
- Spinout 10+ companies with successful seed rounds



Unlock the value of your cards





Problem

Maximizing value from credit cards is tedious and complex, costing consumers billions in lost value



Complex reward & benefits programs



High friction to unlock full value



Time-consuming

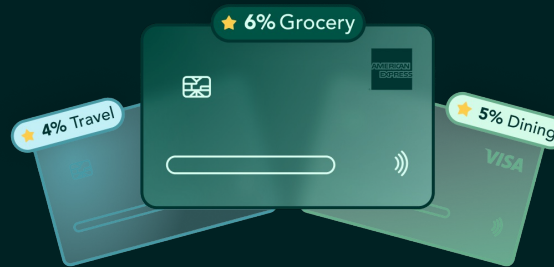


Solution

MaxRewards automates managing credit cards and maximizing rewards, cash back and benefits



**Auto-activation
of hidden
offers and
benefits**

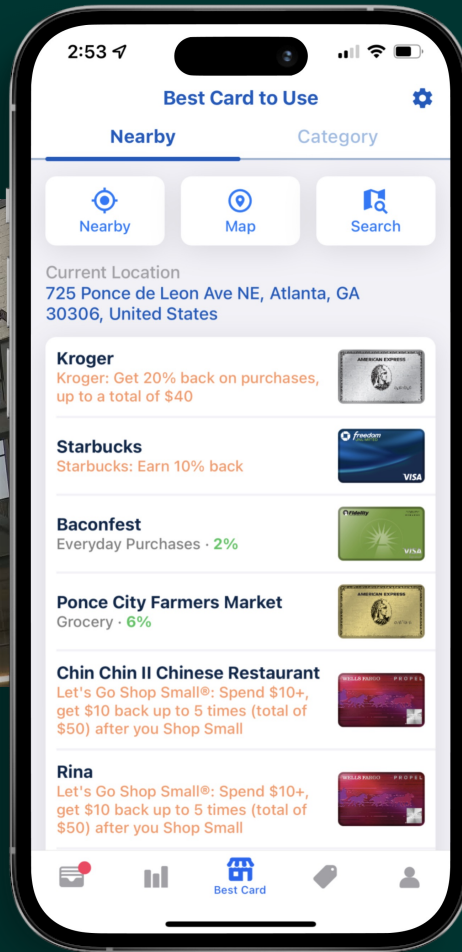


**Geolocation based
recommendation for
best card**



**Most comprehensive
view of your credit
card accounts**

Personal Savings



\$255 in extra cash back in just Dec

Redemption History

December 2022

KROGER 90110001 Blue Cash Preferred® - 51007 Redeemed Dec 26, 2022	\$25.00
MACY'S EAST 129 Blue Cash Preferred® - 51007 Redeemed Dec 26, 2022	\$10.00
INKIND CARDS INC Platinum - 11000 Redeemed Dec 14, 2022	\$50.00
INKIND CARDS INC Business Gold - 91007 Redeemed Dec 14, 2022	\$50.00
INKIND CARDS INC Bonvoy Amex - 73002 Redeemed Dec 9, 2022	\$50.00
INKIND CARDS INC American Express Gold - 01000 Redeemed Dec 9, 2022	\$50.00
FUBO TV Business Gold - 91007 Redeemed Dec 7, 2022	\$20.00

Offer

inKind.com - 500+ Restaurants

Activated by MaxRewards

Spend \$50 or more, get \$50 back

START Nov 14, 2022	END Feb 28, 2023	REMAINING 47 Days
--------------------------	------------------------	-----------------------------

Get a one-time \$50 statement credit by using your enrolled eligible Card to make a single purchase of \$50 or more online at pass.inkind.com/amex-special by 2/28/2023. See terms.

100% off at great restaurants like Le Bon Nosh

anik@maxrewards.com

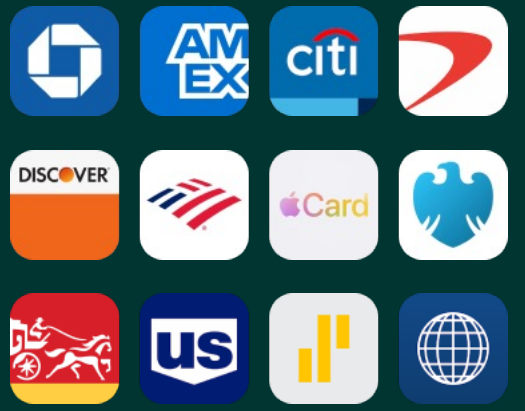


Competitive Advantage

MaxConnect, our proprietary connector technology, gives us exclusive functionality

90%+

Coverage of Credit Cards



+ Dozens More

	MAXCONNECT	PLAID
Current Balance	✓	✓
Transactions	✓	✓
Rewards	✓	
Offers	✓	
Benefits	✓	
Credit Scores	✓	
Auto-Activate Offers, Benefits & Bonus Categories	✓	



Traction

250K

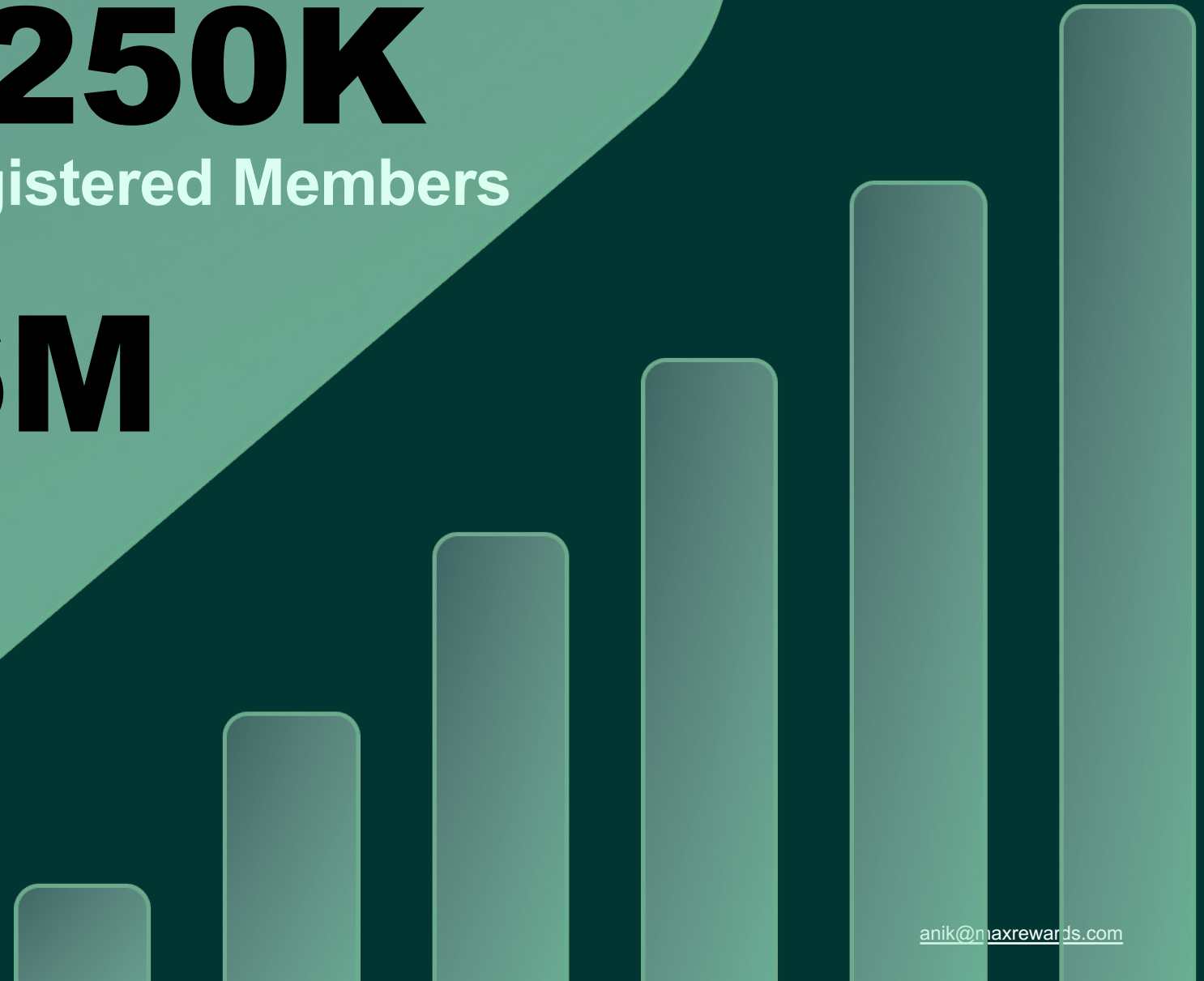
Registered Members

\$1.6M

ARR

473%

2022 Revenue Growth





\$18B

 US Opportunity

We need to achieve just 1% penetration of U.S. credit card holders to achieve \$100M ARR

\$164B

 US Credit Card Industry Revenue



Ask

Plan to raise \$10M Series A later this year, and would love to connect with potential investors

TE

MaxRewards banks \$3M to reveal best payment methods that reap the most rewards

Christine Hall @christinemhall / 9:00 AM EDT • September 10, 2021

Key Current Investors



FINTECH VENTURES FUND

techstars_

Panelists



MODERATOR:
John Yates
Partner
Morris Manning Martin



Mike Whitacre
Partner
Frazier & Deeter, LLC
(Tax)



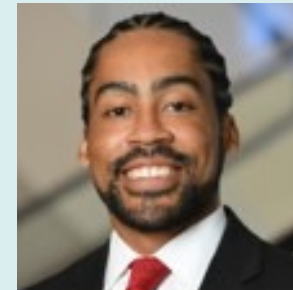
Kelli Church
Associate
Morris Manning Martin
(Employment)



Mike Cheng
National Professional Practice
Partner
Frazier & Deeter, LLC
(Accounting)



Michael R. Young
Partner
Morris Manning Martin
(Privacy)





Nathan Miles
Associate
Morris Manning Martin
(Litigation)

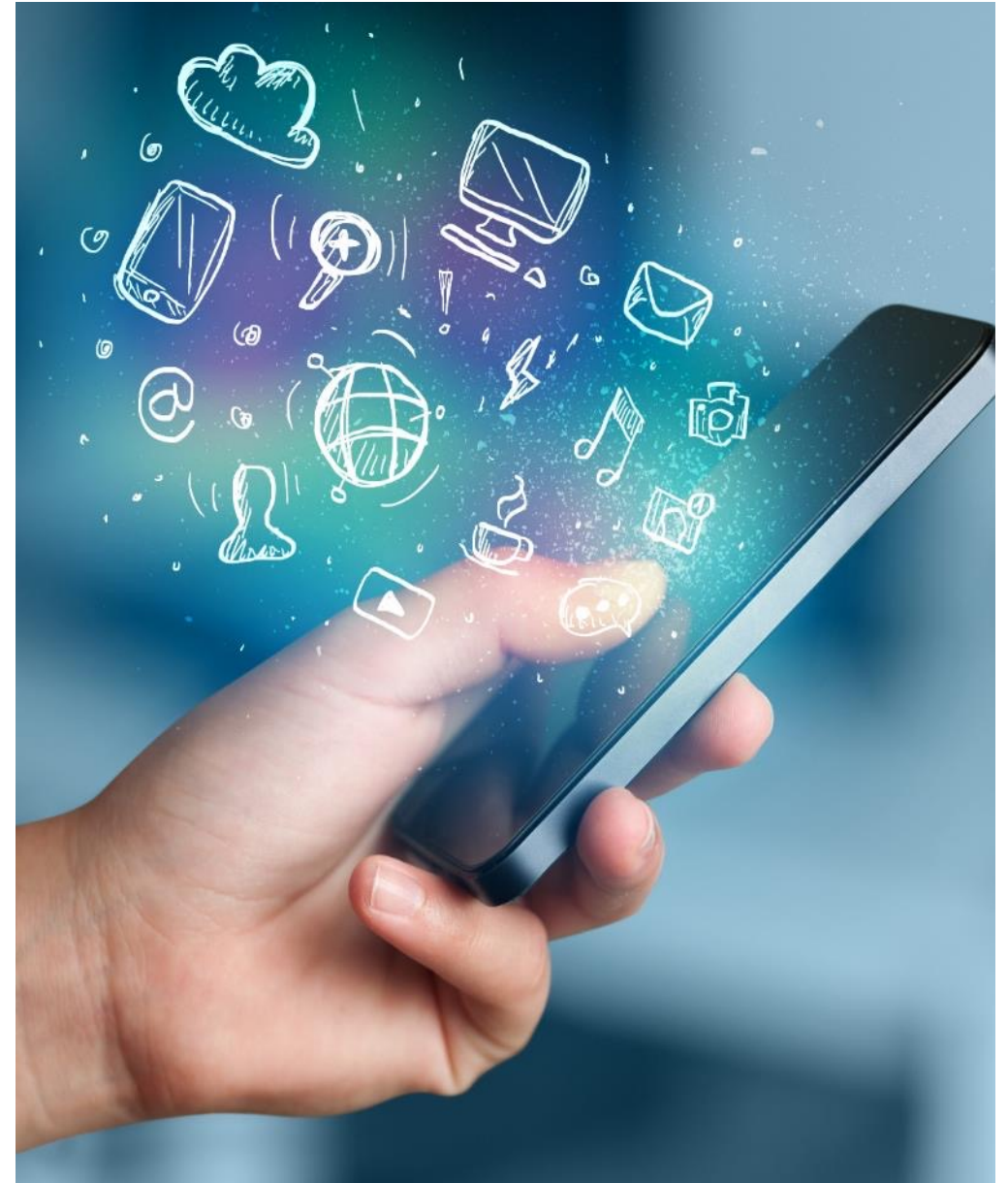
CRITICALLY IMPORTANT 2023 TAX ISSUES

- Qualified Small Business Stock [“QSBS”]
- R&D expense changes
- Employee retention tax credit expiration [“ERTC”]
- Sales tax / economic nexus
 - Internationally - VAT
- International digital service taxes
- TJCA [2017 tax act] sunseting in 2025
- Inflation Reduction Act of 2022
- CHIPS & Innovation Act of 2022

CONTACT INFORMATION

Mike Whitacre

- mike.whitacre@frazierdeeter.com
- 404.253.7512 (ofc); 404.210.7116 (cell)
-  @whitacremr
-  [linkedin.com/in/michaelwhitacre](https://www.linkedin.com/in/michaelwhitacre)





2023 Employment Developments

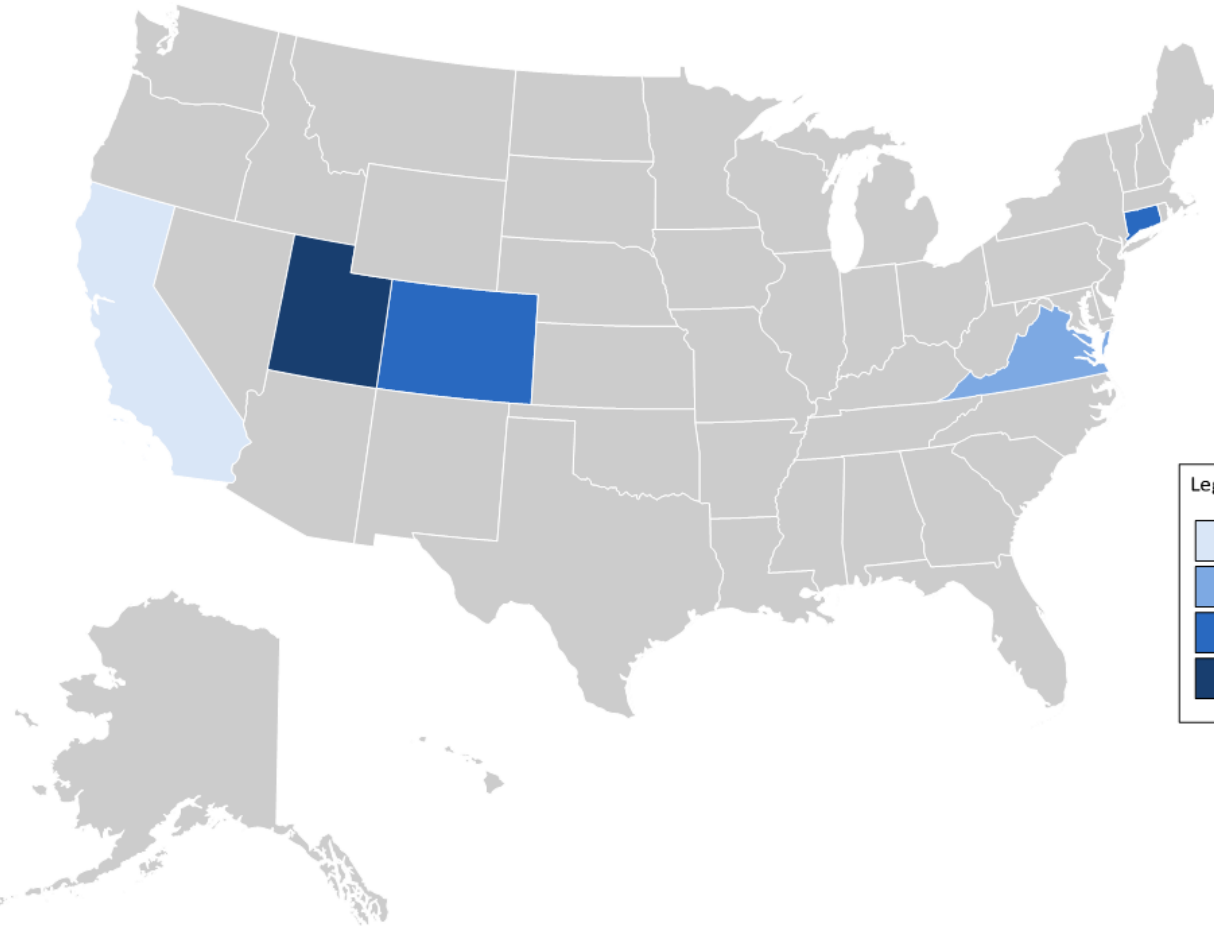
- Pitfalls to Avoid
 - Pay Transparency Laws
 - May cover you even if most of your employees are in one state
 - Business Restructurings
 - Notice requirements
 - Monitoring Remote Workers
- Keep an Eye Out
 - DOL Proposed Independent Contractor Rule
 - FTC Proposed Non-compete Rule

2023 Privacy and Cybersecurity Key Considerations for the New Year







Michael Young, Partner
Morris, Manning & Martin, LLP

New Privacy Laws



Legend

-  Already-active privacy law expanded on 1/1/23
-  New privacy law taking effect on 1/1/23
-  New privacy law taking effect on 7/1/23
-  New privacy law taking effect on 12/31/23



Applicability by Law

	California (CPRA)	Virginia (VCDPA)	Colorado (CPA)	Utah (UCPA)	Connecticut (CTDPA)	
1	Revenue Threshold	>\$25MM	None	None	>\$25MM	None
	Purpose of Revenue Threshold	One equal criterion for applicability	N/A	N/A	Must meet threshold and one of below	N/A
2	Numerical Threshold per Year	>50,000	>100,000	>100,000	>100,000	>100,000
	General Household Data Included	Yes	No	No	No	No
	Excludes Payment Processing Data	No	No	No	No	Yes
	Counted in Threshold If	Bought, Sold, or Shared	Processed	Processed	Controlled or Processed	Controlled or Processed
3	Data Sale Revenue Threshold	50% of annual revenue	50% of gross revenue	Any revenue or discount	50% of gross revenue	25% of gross revenue
	Numerical Threshold for Data Sale	Any amount	>25,000 consumers	>25,000 consumers	>25,000 consumers	>25,000 consumers



New Data Rights

Right	California (CPRA)	Virginia (VCDPA)	Colorado (CPA)	Utah (UCPA)	Connecticut (CTDPA)
Notice/Information	✓	✓	✓	✓	✓
Access	✓	✓	✓	✓	✓
Portability	✓	✓	✓	✓	✓
Correction	✓	✓	✓		✓
Erasure	✓	✓	✓	✓	✓
Opt-Out of Sale or Sharing	✓	✓	✓	✓	✓
Opt-Out of Targeted Advertising		✓	✓	✓	✓
Opt-Out of Profiling		✓	✓		✓
Limit Use & Disclosure of Sensitive PI	✓				

Contracting Customer-Side

Understand ‘sale’, ‘business/controller’ vs. ‘service provider/processor’

- Appropriate contracting = avoiding regulated ‘sale’
- Appropriate contracting = independent compliance
- Appropriate contracting = legal protections for your business



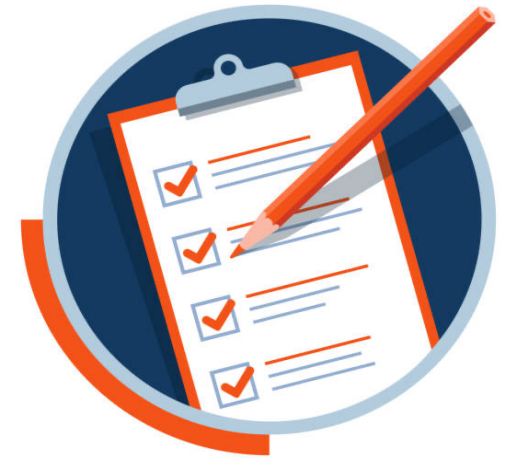
Contracting Customer-Side: Typical Cases

- Treat customer as business/controller
- Treat data transferee as service provider
- Impose contractual obligations on service provider



Contracting Vendor Side: Strategies/Tactics

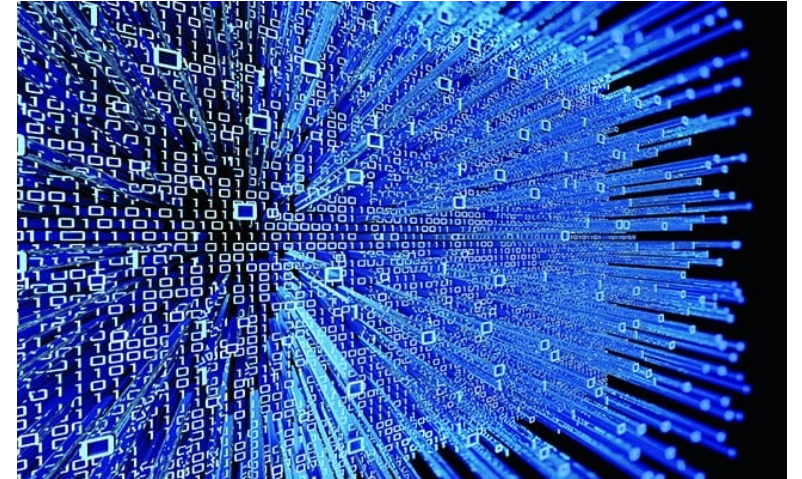
- If possible, avoid collecting PI from customers
- If only PI is limited business contact, position as not a processor/service provider
- Accept general obligations to do/provide X “as follows” or “by doing” and specify concrete process you can live with
- Add “as commercially reasonable” qualifiers
- Offer bank-of-hours concept
- Shift costs outright
- Recognize that indemnity, cost, and risk-shifting provisions are not required for your customer’s compliance
- Consider subprocessing: not every third party is your subprocessor (e.g., platform data exchanges)



Data Sales and Brokering

You may be selling or brokering data if you are:

- Renting/selling lists for money
- Operating a data platform (exchange with third parties)
- ‘Enriching’ or ‘enhancing’ data
- Rich reporting to your customers
- Third party cookies/analytics tracker on your website(!)
- Running an ad network in and of itself
- Secondary use of data beyond the provision of services





New Lawsuit Lessons

- Data Privacy Fines—Regulators Clamping Down
 - If you collect user/customer personal information, ensure it is stored and protected in a way that complies with state and international requirements.
- ADA Compliant Websites—Pitfalls and Penalties
 - Plaintiff's firms are riding a wave of ADA compliance issues to come after business with public facing websites, make sure you're compliant.



New Lawsuit Lessons

- Enforceability of Auto Renewal Contracts
 - Although they seem standard, make sure they follow state disclosure requirements to ensure enforceability.
- Data Scraping from Public Websites—Still Permissible
 - You can only protect sensitive information, even from competitors, if you ensure it is not publicly available.



New Lawsuit Lessons

- Boon to Defending a Patent Lawsuit
 - It is easier to fend off patent trolls in Georgia since you can make them show their work on a motion to dismiss prior to getting into discovery.
- Mutual Consent Hinders Efficacy of Georgia's State-wide Business Court
 - Designed to provide certainty and efficiency for complex business disputes, the Legislature needs to remove mutual consent so a party cannot profit from intentional delays.

CURRENT US GAAP ISSUES

- If there is an economic downturn..
 - Exit and disposal costs
 - One-time involuntary employee termination benefits
 - Contract terminations other than leases (under 842)
 - Asset impairment
- Deferred revenue in an acquisition (business combination)
- Commissions on sales
 - Capitalized?
 - What about the liability?
 - Amortized over what period?
- Leases (time permitting)

COMMON ACCOUNTING PITFALLS

- Accounting for Simple Agreement for Future Equity (SAFE)
 - Equity treatment is rare
 - Liability treatment (mark to market treatment)
- Accounting for certain conversion features in debt (most common in “bridge” loans):
 - Outstanding debt balance of **\$1,000** with 20% discount of lowest purchase price in round of financing:
 - If share price is **\$1.00** then debt settles at 1,250 shares ($\$1,000 \text{ DIVIDED BY } \0.80) which equals a **FV of 1,250** ($\$1.00 \times 1,250$ shares)
 - If share price is **\$2.00** then debt settles at 625 shares ($\$1,000 \text{ DIVIDED BY } \1.60) which equals a **FV of 1,250** ($\$2.00 \times 625$ shares)
 - If share price is **\$0.50** then debt settles at 2,500 shares ($\$1,000 \text{ DIVIDED BY } \0.40) which equals **FV of 1,250** ($\$0.50 \times 2500$ shares)
 - THEN this is a liability with marked-to-market treatment
- Software development costs (*Currently being addressed by FASB*)
 - Is it R&D? -> Expense unless there’s alternative use
 - Is it software to licensed or sold? -> Expense until there’s technical feasibility
 - Internally Developed Software -> Expense unless in “application development stage”
 - Software development due to a customer contract

Panelist Contact Information

John Yates
Partner
Morris Manning Martin
jcy@mmmlaw.com

Mike Whitacre
Partner
Frazier & Deeter, LLC
Mike.Whitacre@frazierdeeter.com
(Tax)

Kelli Church
Associate
Morris Manning Martin
kchurch@mmmlaw.com
(Employment)

Michael Cheng
National Professional Practice Partner
Frazier & Deeter, LLC
Mike.cheng@frazierdeeter.com
(Accounting)

Michael R. Young
Partner
Morris Manning Martin
myoung@mmmlaw.com
(Privacy)

Nathan Miles
Associate
Morris Manning Martin
nmiles@mmmlaw.com
(Litigation)

Fund of the Month/Company of the Month

Contact Information

FUND OF THE MONTH:

Patrick Cooney
Founder
Mark Two Ventures
Patrick@Mk2v.com
205.901.5034

COMPANY OF THE MONTH:

Anik Khan
Co-Founder & CEO
MaxRewards
anik@maxrewards.com

PLEASE
STAY AFTER FOR

Q&A
with today's panel

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Please join us for our
February 2023 event
(in-person and virtual)

**Venture Capital – NEW Issues for Raising
Your Next VC Round in 2023
(and BIG Challenges)**

February 21, 2023

TIER | Technology
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