

# Privacy and Data Security for Your Nonprofit: Understanding Your Legal Obligations and Insuring against Risk

Wednesday, August 13, 2014, 12:30 p.m. – 2:00 p.m. ET  
Venable LLP, Washington, DC

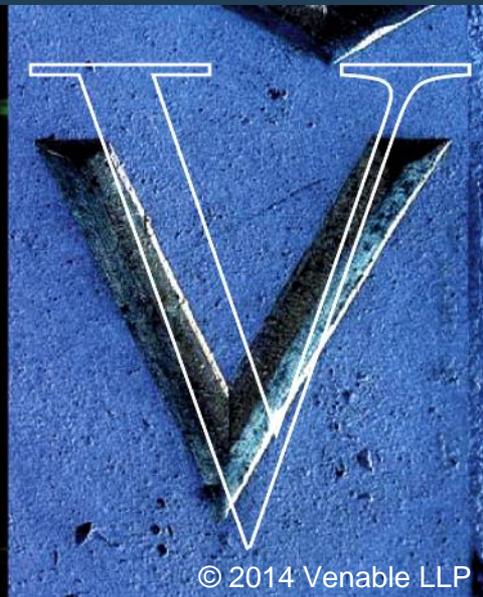
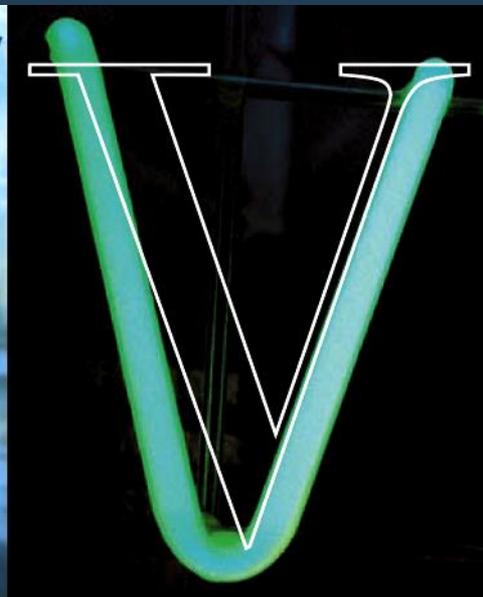
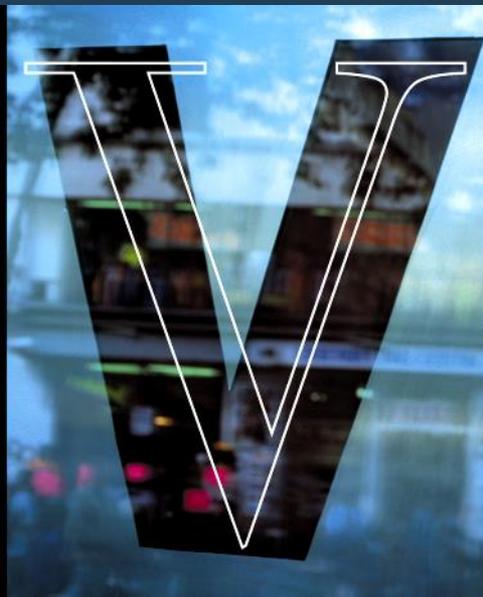
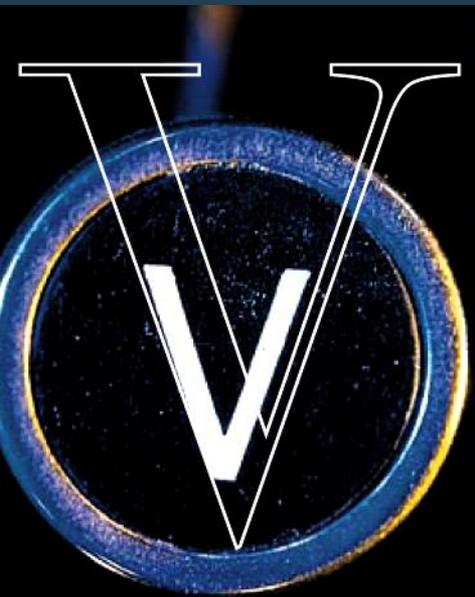
Moderator:

Jeffrey S. Tenenbaum, Esq., Venable LLP

Panelists:

Emilio W. Cividanes, Esq., Venable LLP

Benjamin N. Beeson, Lockton Companies





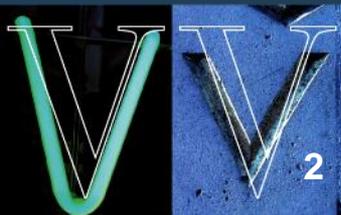
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# Agenda

- The Cyber Threat Landscape
- Top 4 Risks to Nonprofits
- Risks Are Getting Riskier...
  - Part 1: Top 4 Industry Trends
  - Part 2: Top 4 Legal Developments
- Ten Steps to Mitigating Privacy and Data Security Risks
- Cyber Insurance
- Cyber Risks on the Horizon

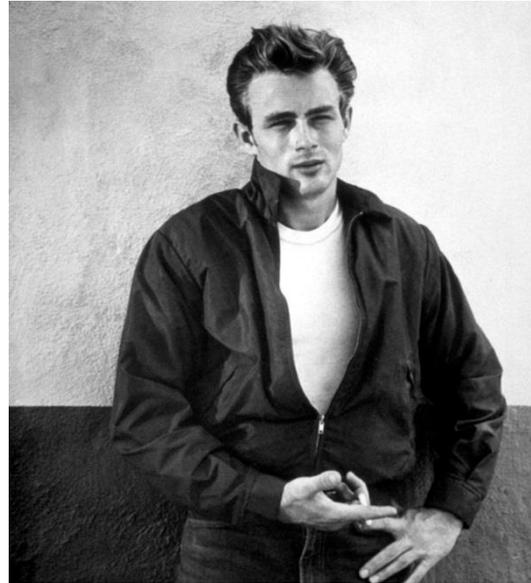


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# The Cyber Threat Landscape

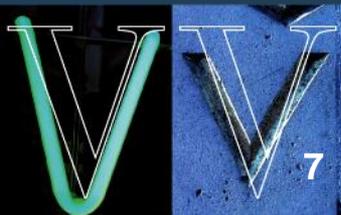
# Four Horsemen of the “Cybocalypse”



# What's the "Catch"?

## Information Targeted by Attackers

Category	Objective	Examples
Financial	Personally Identifiable Info	Identity Theft Or Inadvertent Loss
	ATM Withdrawals	RBS Worldpay \$9.3M
	Payment Card Data	TJX, Hannaford, Heartlands
	ACH Transactions	Finance Person Targeted
Intelligence	Intellectual Property	Corporate Misdeeds
	Corporate Strategy	Senior Exec E-Mail
	Attorney/Client Comm	Gipson Hoffman & Pancione
	R&D Material	Many Industries
	Government Plans	Democratic Nat'l Committee
	Military Secrets	F35 Lightning Fighter Jet
Other	Energy Infra Architecture	Rumored Data Collection
	Destruction/Disruption/Leaks	Insiders, Hacktivists





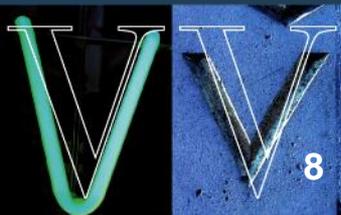
# But I'm Just a Nonprofit...What Do I Have to Fear?

TECHNOLOGY | NYTNOW

## Russian Hackers Amass Over a Billion Internet Passwords

By NICOLE PERLROTH and DAVID GELLES AUG. 5, 2014

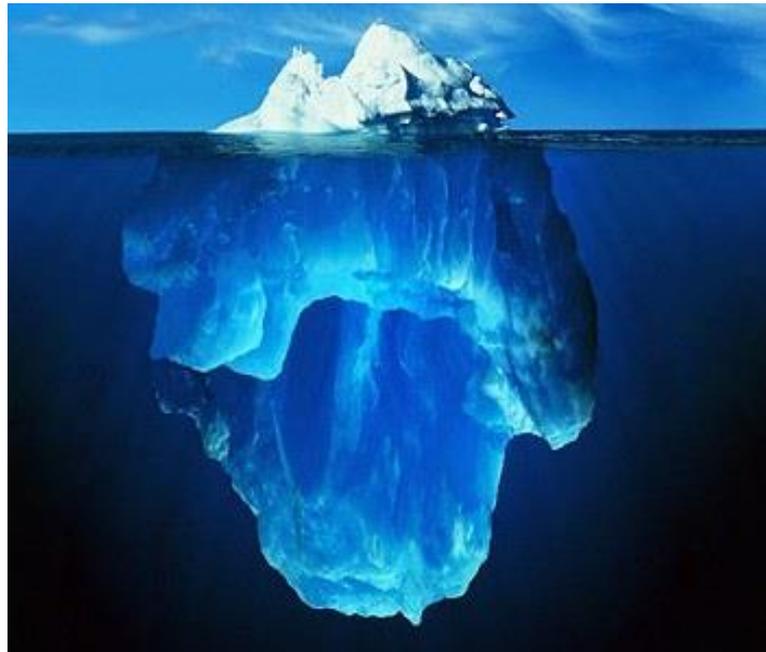
A Russian crime ring has amassed the largest known collection of stolen Internet credentials, including 1.2 billion user name and password combinations and more than 500 million email addresses, security researchers say.



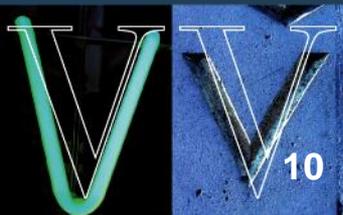
# Top 4 Risks to Nonprofits



# Financial Costs of a Data Breach



- Forensic consultants
- Lawyers
- Call centers
- Credit monitoring
- Public relations crisis response and repair





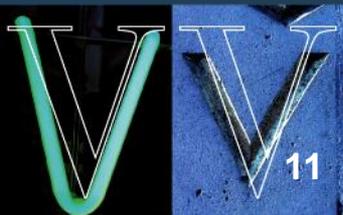
# Reputational Damage

- Front page news
- Notifying donors, employees, consumers, government agencies
- Public outcry
- Erosion of donor trust
- Antipathy of service constituency; boycotts



**Data breach at Indiana University may affect 146,000 students**  
February 26, 2014 | Reuters

**StarTribune**  
**Goodwill, feds investigate possible data breach**  
Associated Press  
July 22, 2014 - 11:27 AM





# Government “Fine”-Tuning

- Watchdogs have a lot to watch in today’s nonprofit world:
  - Electronic solicitations (CAN-SPAM)
  - Donation platforms (breach laws)
  - Donor list management (privacy policies)
  - Social media outreach (COPPA)
  
- Government handing out fines to nonprofits



**Md. nonprofit serving disabled reports data breach**  
 By DAVID DISHNEAU - Associated Press - Monday, March 17, 2014

For Immediate Release - July 23, 2014

**Women & Infants Hospital to Pay \$150,000 to Settle Data Breach Allegations Involving Massachusetts Patients**

Hospital Allegedly Failed to Protect Personal Information and Protected Health Information of More Than 12,000 Massachusetts Patients





# A Not-So-Class Act: More Privacy/Data Security Lawsuits

- Organizations have been sued for:
  - Failing to maintain reasonable data security
  - Collecting personal information with payment
  - Sharing data with third parties
  - Mobile device practices



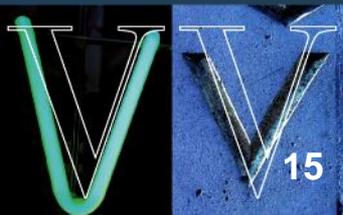
# Risks Are Getting Riskier...

## Part 1: Top 4 Industry Trends



# Data Collection: Turn up the Volume of Data Flow

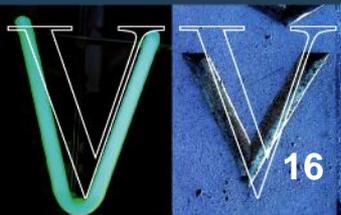
- Online giving: fastest growing fundraising channel for nonprofits
- Social media: key to donor and constituent engagement
- Move to mobile and “internet of things”: geolocation and more





# The Growing Uses of Data: More of It, More from It

- Big Data: Opening the door for analytics and predictive modeling
  - Boost donor network and fundraising opportunities
  - Extend reach of services and solicitations
  - Develop new products and services



# Data Transfer and Storage: All Systems Cloud and Clear

- Nonprofits gain from hosted IT services and cloud-based solutions that cut costs and free up resources.
- More vendors means more third-party access to data.



- Data sharing fosters collaboration within and beyond the organization.

# The Growing Value of Data



1994



2014

- Data revolution driving all decision-making for entities and individuals alike
- Growing dependence on data boosts ROI for cybercriminals

# Risks Are Getting Riskier...

## Part 2: Top 4 Legal Developments

# Legislative and Enforcement Push after High Profile Breaches





# Security Standards for a New World



- Data security
  - Duty of care: Be **REASONABLE**
- Cyber security
  - NIST framework for *critical infrastructure*
  - *De facto* standard of care for everyone else?
- Preparation
  - Incident response planning a must





# State Government Watchdogs: Lots of Bark and Lots of Bite



- Innovation means new practices
- New practices mean more scrutiny
- Privacy policies, terms of use, types of data

# Expect the Unexpected: The Evolving Privacy Landscape

- Government surveillance revelations driving public sensitivities



- Expansion of PII (geolocation, biometric) transforming nature of privacy



# Summary

- Top 4 Risks to Nonprofits
  - Cost of a breach
  - Reputational damage
  - Government fines
  - Class action lawsuits
  
- Risks Getting Riskier: Industry Trends and Legal Developments
  
- Top 4 Industry Trends
  - Data collection; use; transfer/storage; value
  
- Top 4 Legal Developments
  - Legislative/enforcement push; data/cyber standards; UDAP enforcement; shifting expectations of privacy





# Ten Steps to Mitigating Privacy and Data Security Risks

# Ten Steps to Mitigating Privacy/Data Security Risks: #1

- 1) Accept that this is an enterprise-wide risk, not just an IT issue.
  - Stakeholders include but are not limited to the Boardroom, HR, Audit, IT and Legal.



# Ten Steps to Mitigating Privacy/Data Security Risks: #2

- 2) Establish technical expertise in or reporting to the board.
  - This is primarily a governance issue that must be addressed from the top down in any organization.
  - Establish a line of sight into the board, translating in layman's terms both technical and legal jargon.



# Ten Steps to Mitigating Privacy/Data Security Risks: #3

- 3) Identify your organization's most critical data assets.
- Where do these assets reside?
  - Who has access to these assets?



# Ten Steps to Mitigating Privacy/Data Security Risks: #4

4) Identify vendors used for business functions involving critical data assets.

- Seek to transfer risk contractually.
- Understand where data is stored.
- Understand the level of vendor security.
- Require vendor to buy cyber insurance.



# Ten Steps to Mitigating Privacy/Data Security Risks: #5

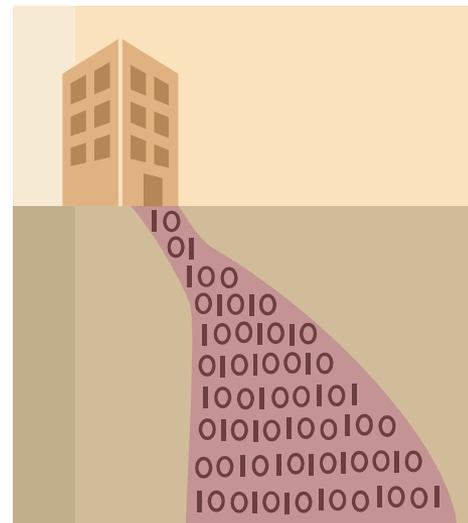
- 5) Defense in depth – assume attackers will penetrate your network.
- Firewalls to protect perimeter
  - Intrusion detection systems
  - Two factor authentication
  - Anti-virus
  - Encryption



# Ten Steps to Mitigating Privacy/Data Security Risks: #6

## 6) Encrypt portable devices.

- Payroll PHI or PII
- Customer PHI or PII
- Corporate confidential information



# Ten Steps to Mitigating Privacy/Data Security Risks: #7

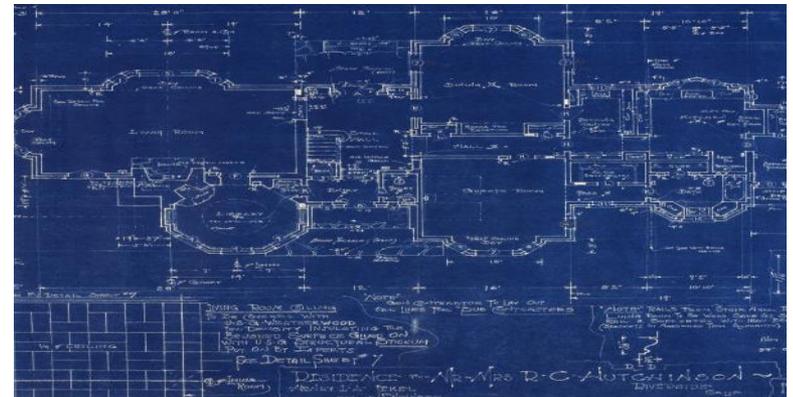
## 7) Understand your legal obligations.

- PCI DSS – Credit card data
- HIPAA – PHI
- State data breach laws – PII / PHI
- FTC – Privacy policy
- EU – Cookies consent



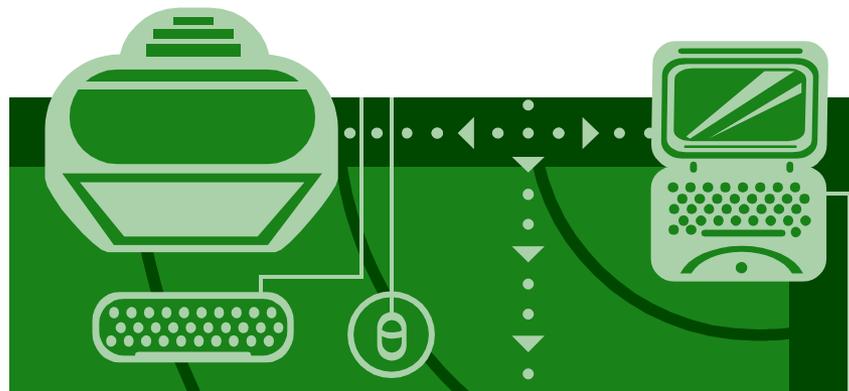
# Ten Steps to Mitigating Privacy/Data Security Risks: #8

- 8) Establish a data breach incident response plan.
- Identify the legal department as quarterback.
  - Establish a reporting structure to legal.
  - Set up key legal, IT, forensic, and PR vendor relationships.



# Ten Steps to Mitigating Privacy/Data Security Risks: #9

- 9) Consider an intelligence-led approach on security.
- Active network monitoring
  - Understand who your attackers are and what they want.



# Ten Steps to Mitigating Privacy/Data Security Risks: #10

10) Consider buying cyber insurance.

## WHY?



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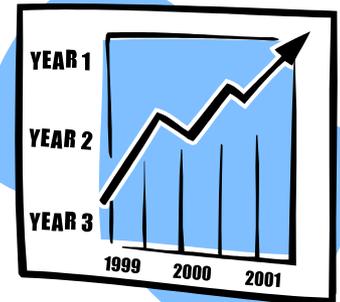


# Cyber Insurance



# Why Buy Cyber Insurance?

- Despite your best efforts to mitigate, it is impossible to prevent a breach. This is about resilience.
- You are liable in the event of a vendor breach of your employee or customer PII or PHI. Insurance will address.
- PCI DSS compliance is not a panacea.
- Balance sheet protection



# What Does Cyber Insurance Cover?

- Data breach response costs

Notification

IT Forensics

Public Relations

Credit Monitoring





# What Does Cyber Insurance Cover?

- Privacy regulatory action

Defense costs and civil fines from a regulator such as the FTC or state attorney general.





# What Does Cyber Insurance Cover?

- Civil litigation

Defense costs and damages from a civil action – class action from employees or customers, for example.





# Top Ten Questions to Ask Your Broker

- 1) How much insurance should I buy?
- 2) Which insurance carriers do you recommend and why?
- 3) Does the insurance carrier require you to use their own vendor panel or not? If so, who are these vendors, and what is their experience?
- 4) Are you able to use your own outside counsel in the event of litigation? If so, does the insurer still seek to cap the hourly rate?
- 5) What is the claims experience of the carrier?





# Top Ten Questions to Ask Your Broker

- 6) How does the policy form define personal data?
- 7) Are there any privacy exclusions such as wrongful collection of data or unsolicited email?
- 8) Are data breach response costs sublimited?
- 9) Is there any limitation on coverage for vicarious risk to vendors?
- 10) Is knowledge and notice of a claim restricted to the executive team?





# State of the Insurance Market

- Over \$1 billion in gross written premiums
- \$350,000,000 total insurance capacity
- Approximately fifty insurers between the US and London insurance market underwriting data security and privacy risk
- All policy forms are not the same
- Indemnity versus vendor approach





# Cyber Risks on the Horizon

- “Internet of Things” – Property damage and bodily injury
- Big Data
- The Cloud



# Questions?

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