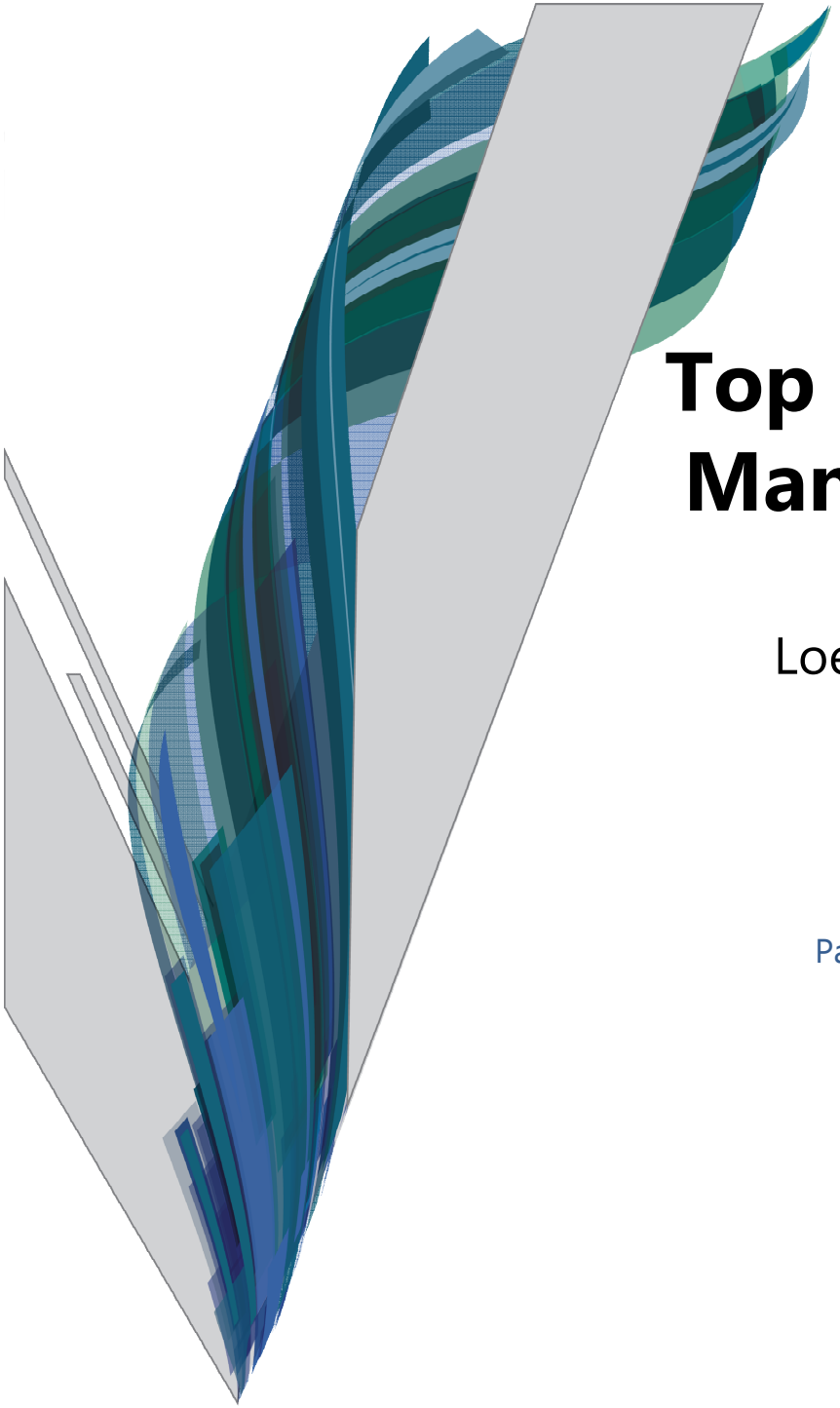

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Top Five Cybersecurity Tips: Managing Your Legal Risks

Legal Council Meeting
Loews Madison Hotel, Washington, DC

July 17, 2017
4:00 PM ET

Julia Kernochan Tama, Esq.
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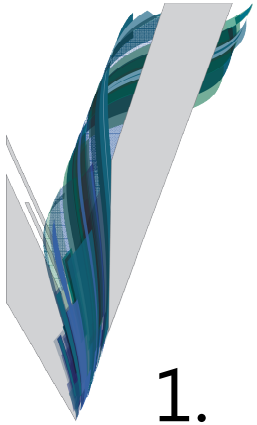

Cybersecurity Tips for Lawyers

1. Know the Legal Rules
2. Assess Your Risks
3. Know Your Vendors
4. Prepare for the Worst
5. Stay Up-to-Date

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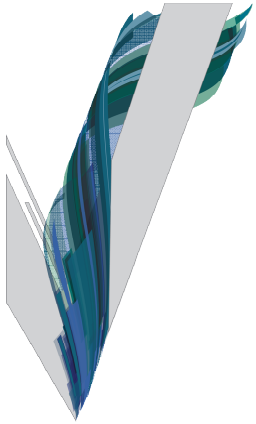

Cybersecurity and Data Security

- Cybersecurity and data security are related concepts
- Cybersecurity focuses on protecting networks and infrastructure from attacks and bad actors and can include personal information
  - Networks, communications backbone, financial systems, etc.
- Data security focuses on securing personal information (*e.g.*, names, payment card numbers, Social Security numbers, etc.) from being accessed and/or acquired by unauthorized individuals
  - Consumer data breaches, lost laptops, etc.
- Different agencies and laws regulate different types of incidents, often with overlapping interests

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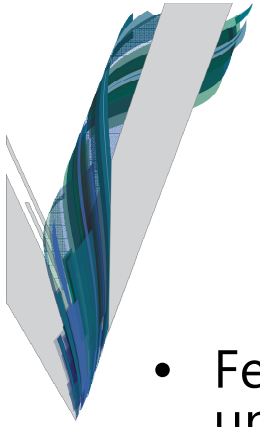

1. Know the Legal Rules

- Federal Trade Commission (FTC) enforces federal law prohibiting unfair or deceptive acts or practices. The FTC interprets the law to require reasonable security for personal information.

- Practices that the FTC has identified as factors in reasonable security:

  - Minimizing the collection of personal information;
  - Failure to implement and enforce appropriate password policies;
  - Failure to use encryption to protect consumer information in storage and in transit;
  - Failure to perform due diligence of and oversight of service providers' cybersecurity practices;
  - Failure to provide employees with adequate cybersecurity training;
  - Failure to implement policies and procedures to detect and respond to a breach.

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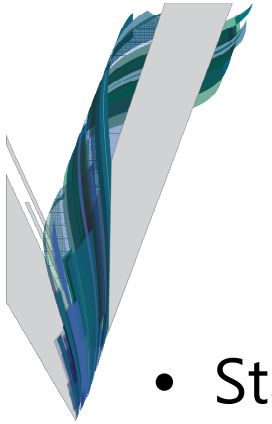

1. Know the Legal Rules

- State Data Security Laws
  - Nine states require that companies implement sufficient policies and procedures to maintain reasonable data security.
  - Typically apply based on individuals' residence, not the entity's location.
  - AR, CA, FL, CT, IN, MD, OR, TX, UT
- Massachusetts Standards for the Protection of Personal Information
  - MA has implemented detailed data security requirements that apply to associations and other legal entities.
  - Requires a written comprehensive information security program, with specific components and technical requirements.

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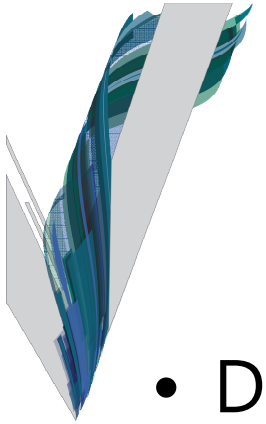
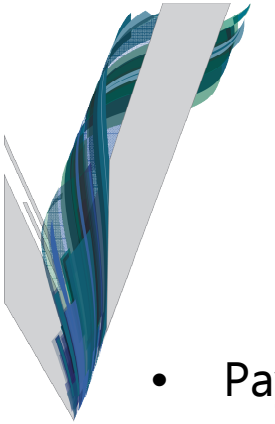


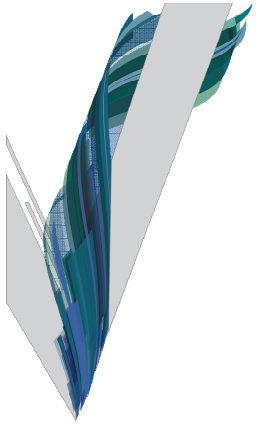
1. Know the Legal Rules

- Data Disposal
  - About 30 states impose legal obligations on companies to properly dispose of records that contain personal, financial, or health information.
  - Laws vary by state and specific methods of disposal are not specified, but a common formulation is that the data must be made "*unreadable or indecipherable through any means*." Kans. Stat. Ann. § 50-7a03.
  - Federal secure disposal rules apply to specific types of data, such as nonpublic personal information held by financial institutions.



1. Know the Legal Rules

- Payment Card Industry Data Security Standards (PCI DSS)
  - Regularly updated security standards created by the credit card industry
  - Practices and policies to protect accountholder data
- Implementation
  - Compliance steps for merchants depend on card processing volume
  - Qualified Security Assessors (QSAs) can assist
  - Information security policy is required
  - Service providers should be PCI DSS compliant
- Enforcement
  - Credit card brands require merchant banks to enforce compliance by their clients
    - Fines imposed on banks can be passed on to companies
  - States have enacted statutory requirements similar to PCI DSS



2. Assess Your Risks

Legal Risk

- Sector-Specific Enforcement (*e.g.,* energy, financial services, health care, advertising, retail, etc.)
- FTC Enforcement
- State Attorney General Enforcement
- Congressional Investigations
- Class Action Lawsuits

Legal Assessment

- Policies/Procedures
- Governance
- Incident Response Plan
- Vendor Selection and Contracts
- Training
- Data Mapping

Legal Risk Management

- Reporting and Decision Making
- Legal and Regulatory Compliance Framework

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2. Assess Your Risks

- Security program should be proportional to:
  - Data handled
  - Size and nature of business

- Administration began to focus on cybersecurity in earnest beginning in 2013
  - Executive Order 13636 directed the National Institute of Standards and Technology ("NIST") to develop a baseline cybersecurity framework
- NIST released the Cybersecurity Framework in February 2014
  - **Voluntary** methodology and process for assessing and reducing cybersecurity risks in critical infrastructure sectors
  - Draft updated v. 1.1 released for comment on January 10, 2017; comments were due in April.

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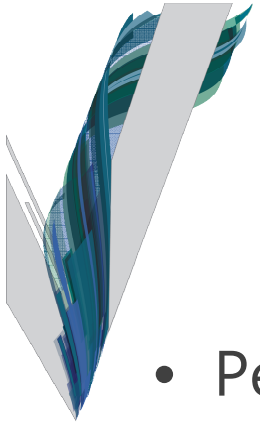
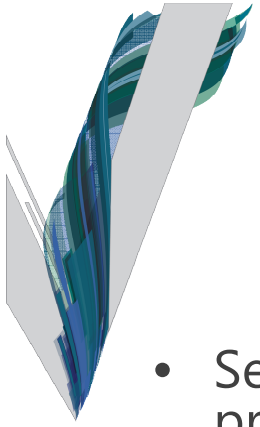


2. Assess Your Risks

- Perform an enterprise-wide vulnerability assessment
- Implement a comprehensive information security program that addresses any identified vulnerabilities
  - Periodically review and update the information security program
- Implement appropriate data security policies, such as:
  - Data Classification Policy
  - Password Strength Policy
  - Access Control Policy
  - Encryption Policy
  - Data Disposal Policy
  - Patch Management Policy
- Implement an Incident Response Plan



3. Know Your Vendors

- Select and oversee service providers with reasonable security programs (or you may be a service provider)
- Adequate cyber insurance coverage
- Consistent contract provisions related to security and breach response
  - Audits and audit reports
  - Insurance and indemnification
  - Notifying data owner of breach
  - External notifications / credit monitoring / responding to investigations
  - Restrictions on use/disclosure of data
  - Reps and warranties of compliance with privacy and security obligations
  - Data return and disposal

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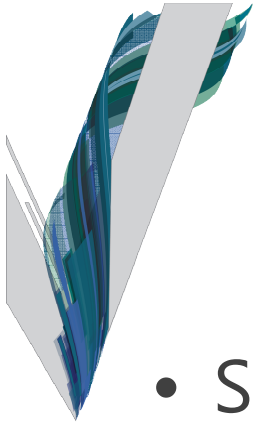

3. Know Your Vendors

- Specific concerns for vendors hired to help with security assessment and services for your business
- Security findings can be sensitive, and may create liability risks for the organization
- Consider structuring the engagement to ensure products are protected by attorney-client privilege to the extent possible

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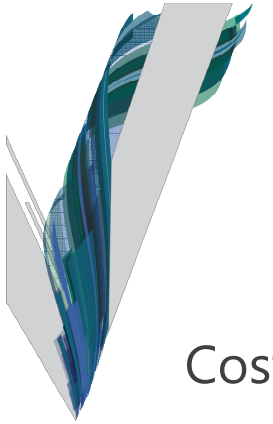

4. Prepare for the Worst

Cost of a data breach

- Many factors contribute to total costs:
  - Breach response efforts
    - Delivering notices, credit monitoring, legal costs, etc.
  - Reputational Costs
    - Customer and employee goodwill, media scrutiny
  - Litigation and/or Regulatory Defense

- Projected average cost of a breach:
  - 1,000 records: $52,000 - $87,000
  - 100,000 records: $366,500 - $614,600
  - 10 Million records: $2,100,000 - $5,200,000
  - Source: 2015 Data Breach Investigations Report, Verizon (2015), available at http://www.verizonenterprise.com/DBIR/2015/

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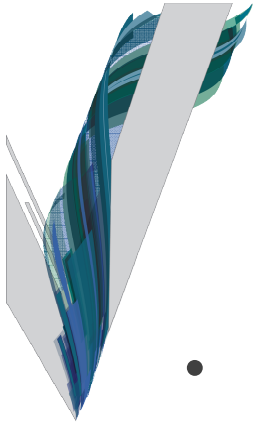

4. Prepare for the Worst

- Service providers face pressure or contract obligations to shoulder costs and/or tasks for data owners

- An effective incident response plan will facilitate:

  - Prompt detection, investigation, recovery;
  - Notification of and cooperation with law enforcement officials, if deemed necessary;
  - Notification to external parties affected by the incident, if any, such as customers, associates, or credit card companies;
  - Notification to cyber insurance provider, if necessary;
  - Notification to affected individuals, if required;
  - Notification to state or federal regulatory agencies, if required;
  - Review of security policies and procedures to prevent a reoccurrence.

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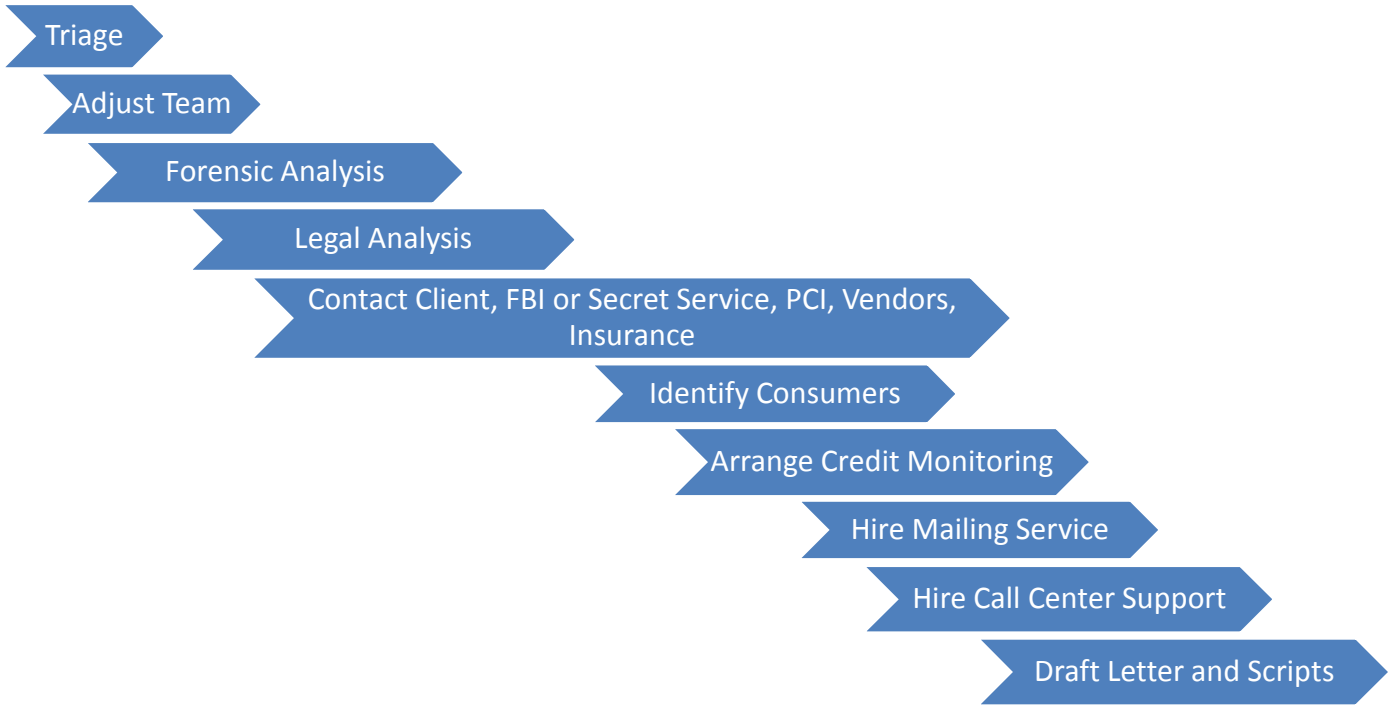
4. Prepare for the Worst

Breach Response Timeline: "Sprinting a Marathon"



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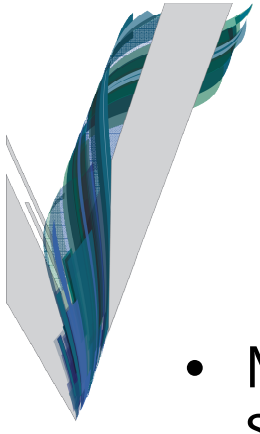

4. Prepare for the Worst

- Most states have implemented a data breach notification statute; federal legislation is being considered
- The requirements for notification can vary widely by state; many states require notice to state authorities and individuals
- Not all security incidents require notification
  - where a "breach" did not occur
  - where the information involved was not "personal information"
  - where there is no risk of harm to affected individuals
- Data owner typically has legal duty to notify affected individuals and government agencies; service provider notifies data owner

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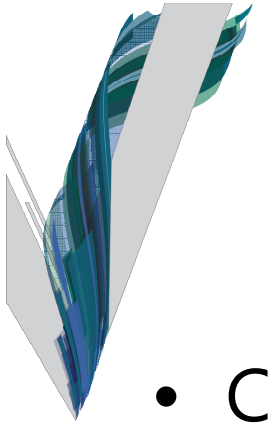
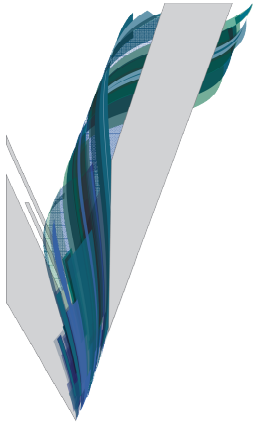


5. Stay Up-To-Date

- Cybersecurity risk management is not a "one-time" effort
- Legal standards and security threats are constantly evolving
- Consider periodic review and reassessment, particularly following a breach



Questions?

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