



Intro/Background/Disclaimers

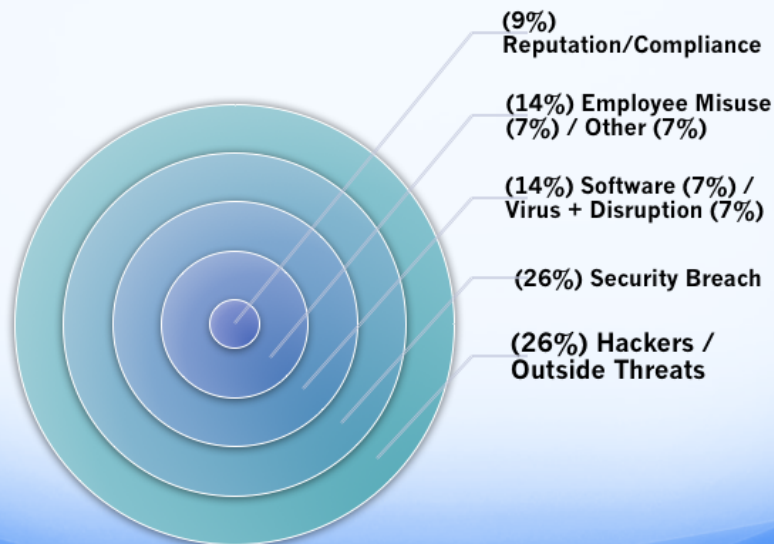
Goals/Objectives

Perspective: to give you an idea how fast the law is changing in these areas, you need look no further than the state of New Mexico. New Mexico joined 47 other states when it passed its own state data breach notification law in April 2017.

Data at Risk

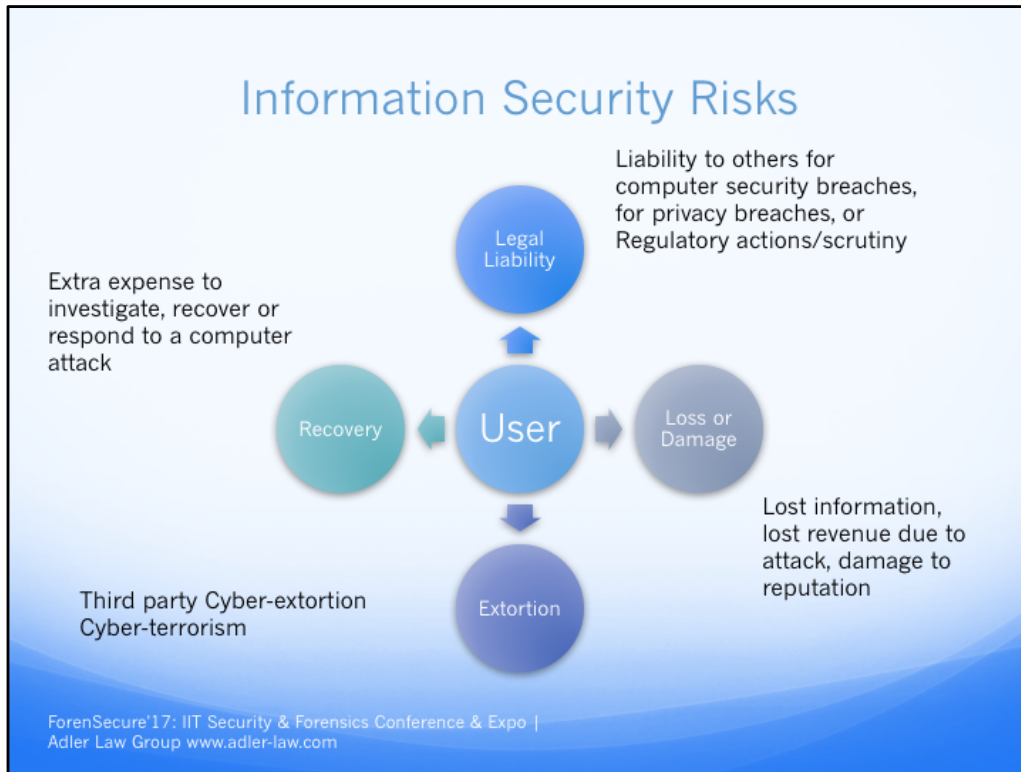
- High-profile data breaches = Scrutiny of Privacy.
- Staying safe requires an in-depth knowledge of laws, best practices, frameworks and regulatory models in U.S. and abroad.
- Includes data collection, use, storage and sharing, data protection, data retention, data security, and data breach rules.
- Looking at data retention, security, and breach rules - best approach is thorough legal review of data retention and management practices.

The Data Breach Landscape 2016



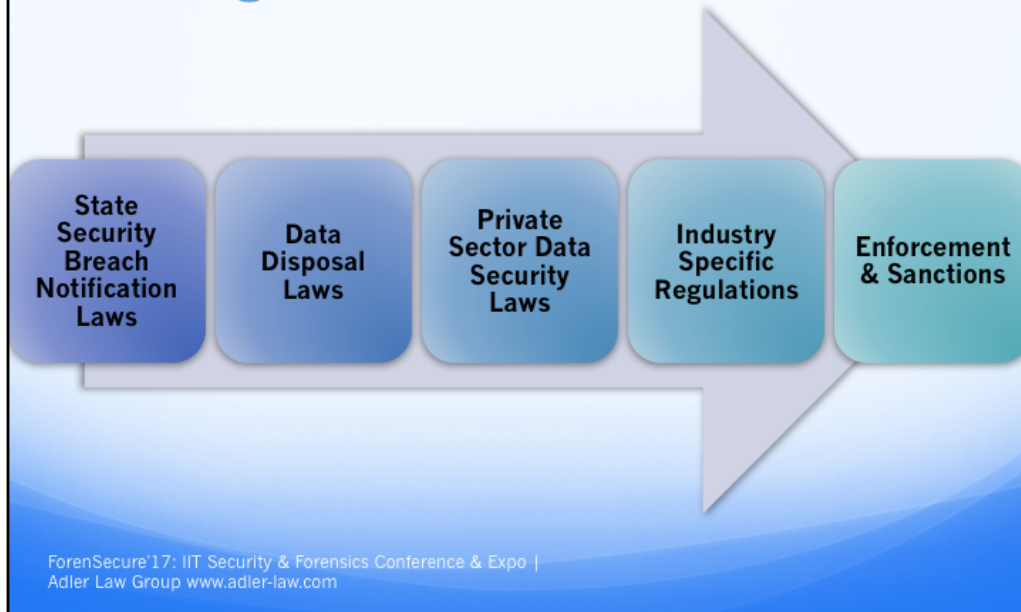
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- On March 7, 2017, the CIA got doxed by the anti-secrecy organization WikiLeaks. Nearly 9,000 documents appeared online
- 106 major healthcare data breaches attributed to hackers
- Fin Svcs – 3d overall security incidents, but first in number of incidents w/confirmed loss
- University of Central Florida announced a data breach affected approximately 63,000 current and former students, faculty, and staff
- Yahoo - general counsel resigned and the CEO lost 2016 cash payout as well as 2017 equity award.



- starting point is to understand information security risks.
- include many types of risk (e.g., management, investment, financial, legal liability, safety, logistics, supply chain, and security risk).
- Security risks for use of information - senior executives - ongoing risk management.

Obligations to Protect Data



Security Breach Notification Laws



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48 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands have enacted legislation requiring private or governmental entities to notify individuals of security breaches of information involving personally identifiable information.

NEW in 2017: New Mexico passed a law

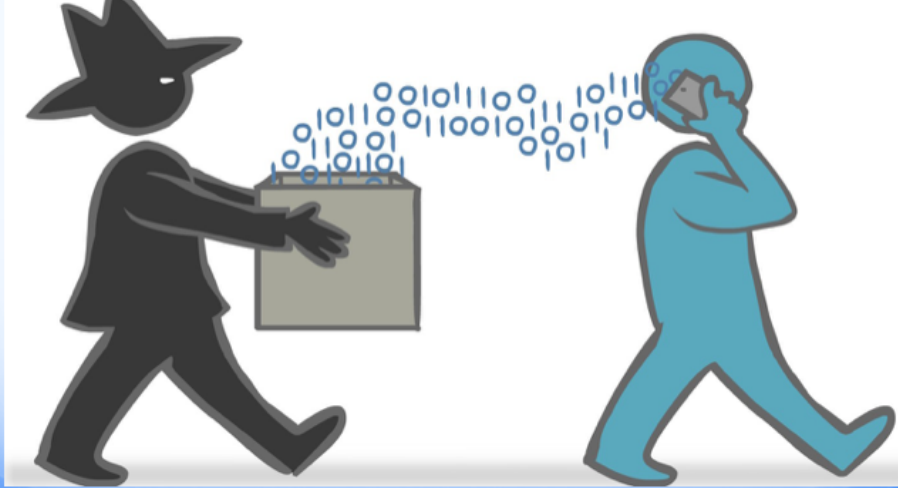
Security breach laws typically have

- provisions regarding who must comply with the law (e.g., businesses, data/information brokers, government entities, etc);
- definitions of “personal information” (e.g., name combined with SSN, drivers license or state ID, account numbers, etc.);
- what constitutes a breach (e.g., unauthorized acquisition of data);
- requirements for notice (e.g., timing or method of notice, who must be notified); and exemptions (e.g., for encrypted information).
- States with no security breach law: Alabama,, and South Dakota.

Example: Florida Information Protection Act of 2014 (SB 1524) into law, amending Florida’s breach notification statute effective July 1, 2014. The amendments include an uncommon statutory requirement to provide copies of forensic reports and “policies regarding breaches” to the Florida attorney general upon request; an expanded definition of “personal information” to include online account credentials; and a new, quite short deadline (30 days) for individual notice, which may be the

shortest deadline for state individual breach notification requirements, other than industry-specific ones. <http://ow.ly/Eauw309MrIA>
<http://ow.ly/Krhl309MrGe>

Data Disposal Laws



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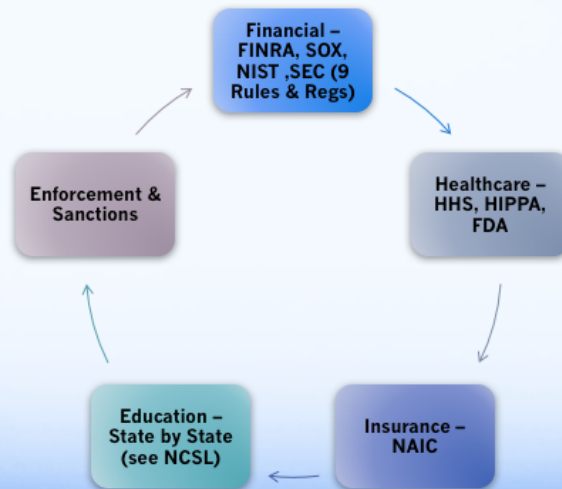
Private Sector Data Security Laws



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- At least 13 states (Arkansas, California, Connecticut, Florida, Indiana, Kansas, Maryland, Massachusetts, Minnesota, Nevada, Oregon, Rhode Island, Texas and Utah) have laws that address other aspects of data security.
- Most require businesses that own, license, or maintain personal information about a resident of that state to implement and maintain reasonable security procedures and practices appropriate to the nature of the information and to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.
- In addition to the laws listed above, states also have data security laws that apply to state agencies or other governmental entities.
- Other state and federal laws address the security of health care data, financial or credit information, social security numbers or other specific types of data collected or maintained by businesses.

Industry Specific Regulations



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Industry Regulators

Federal Trade Commission (FTC)

Department of Health and Human Services (HHS) Office of Civil Rights

State Attorney General (CA very active)

The Federal Trade Commission Act

Title V of Gramm-Leach-Bliley (GLB) Act

Health Information Privacy

FTC's Self-Regulatory Principles for Online Behavioral Advertising

Children's Online Privacy Protection Act

Legal Review

- **Scope:** Legal review of data retention and management practices
- **Threat Level Assessment:** threats to the organization or threats directed through third party entities
- **Vulnerabilities:** both internal and external to the organization
- **Impact:** (i.e., harm) to the organization and individuals that may occur given the potential for threats exploiting vulnerabilities
- **Likelihood:** balance the likelihood of the occurrence against the magnitude of the harm

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Why lawyer:

- Confidential/privileged
- Scope of rules/issues

Thank You!

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