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Cyber Threats and Legal Consequences

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EVENTS AND BUZZ WORDS

- Hacking
- Cyber Attacks
- Identity Theft
- Cybersquatting
- Spear Phishing
- DDOS
- Malware
- Cyberterrorism
- Spying
- E-mails

Regulatory

Federal statutes regulate privacy for certain industries:

- FERC Regulations
- HIPAA
- Fair Credit Reporting Act
- Economic Growth, Regulatory Relief and Consumer Protection Act
- CAN-SPAM Act
- Sarbanes-Oxley
- Federal Privacy Act
- Information Technology Management Reform Act
- Computer Fraud and Abuse Act
- Paperwork Reduction Act
- Family Educational Rights and Privacy Act
- Gramm-Leach-Bliley
- Drivers Privacy Protection Act

Regulatory

State privacy and consumer protection laws

All 50 states now have mandatory disclosure laws for data breach

- Alabama was the last to enact
- California first (2002)
- Illinois, California, Florida, Massachusetts, New York trend-setters

- Patchwork of different criteria, standards, notification details, deadlines, requirements, and penalties

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AL Data Breach Notification Laws

- Requires:
  - Covered entity to take reasonable security measures
  - Covered entity to notify individuals of data breach if sensitive personal identifying information acquired by unauthorized person and reasonably likely to cause substantial harm to individual
  - Other notification obligations
  - Daily penalties for noncompliance

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What is a Covered Entity?

- Sole proprietorship
- Partnership
- Government entity
- Corporation
- Trust
- Estate
- Cooperative association
- Other commercial entity that acquires, maintains, stores, or uses personal information

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What is "Personal Information"

- Resident
  - First name or first initial and last name in combination with one of more of the following with respect to the same resident:
    1. Social security number
    2. Driver's license number or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity
    3. Financial account number, credit or debit card number in combination with any security code, access code, expiration date, or password, that is necessary to permit access to an individual's financial account
    4. Information regarding medical history, mental or physical condition, medical treatment, or diagnosis
    5. Health insurance policy number or subscriber identification number and any unique identifier used by health insurer
    6. User name or email in combination with a password or security question and answer that would permit access to an online account that is reasonably likely to contain or is used to obtain sensitive personally identifying information

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Reasonable Security Measures

- Implement and maintain "reasonable security measures"
  - Designate employee(s) to coordinate security measures
  - Identify internal and external risks
  - Adopt appropriate safeguards and assess effectiveness
    - **TRAIN AND EDUCATE**
  - Retain service providers
  - Keep management updated

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Reasonableness

- Factors for consideration
  - Multiple or systemic breaches
  - Size of the entity
  - Budget
  - Type of activity
  - Amount of SPII used/maintained/stored
  - Cost to implement and maintain

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What is Required After a Breach?

- Good Faith Investigation and Evaluation
- Notice to Affected Individuals
- Potentially (depending on size and circumstances):
  - Notice to Attorney General
  - Notice to Credit Reporting Agencies

What if a Third Party Vendor Suffers a Breach?

- Must notify covered entity within ten (10) days following discovery or reason to believe breach occurred
- Must cooperate with covered entity
- Contractual delegation of notice requirements

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Penalties and Enforcement

- Violation of the notification obligation subject to civil penalty of $5,000 per day
- Up to $500,000 for willful/reckless breach
- Attorney's fees and actual damages of individual
- Not establish a civil cause of action

BUT……

Civil Liability

Standard of care?

- ✓ employee training?
- ✓ policies?
- ✓ response plan?

Intentional/reckless/wanton breach?

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Real-Life Example #1

- RANSOMWARE

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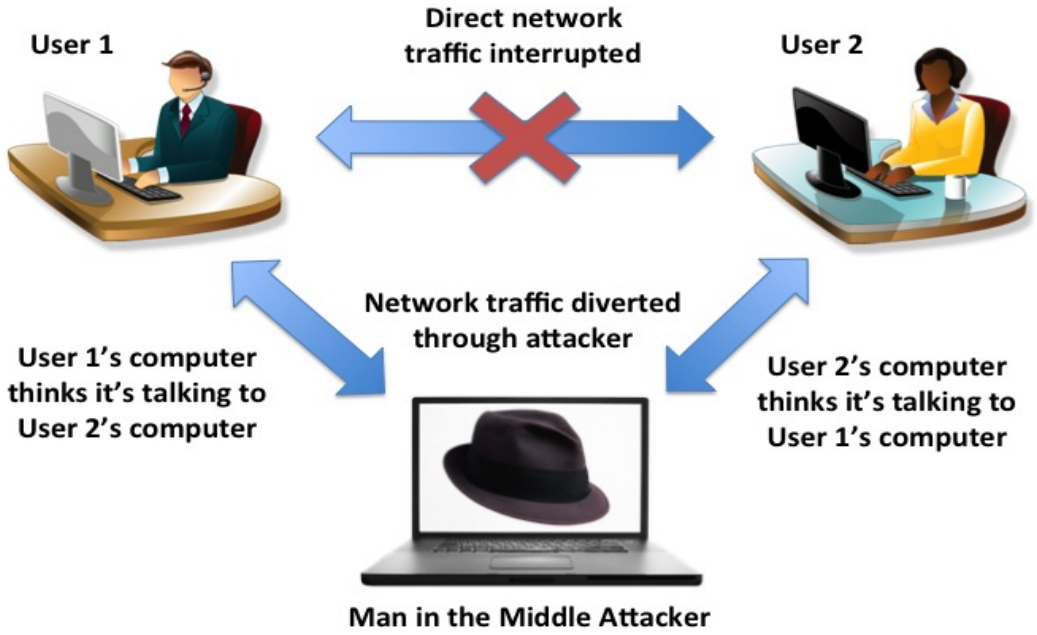
Real-Life Example #2

- Man-in-the-middle e-mail schemes with wire instruction fraud



Financial Transactions

- Multi-factor authentication
- Confirmation
  - Validate transaction above certain dollar threshold
  - Verify change in authorized user
  - Verify change in security settings
  - Verify change to confirmation phone number
- Pin number, password, security questions, text code
- Access key

Real-Life Example #3

- Spear phishing e-mails

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Phishing

- Fed-Ex/UPS/Amazon Delivery Notice
- Attorney confidential communications
- CEO/CFO request
- Invoice/Remittance
- Accountant/tax preparer
- Pre-paid cards

- Always sense of urgency
- Typos
- Peculiar word choice
- Odd Greeting
  - Salutations
  - To whom it may concern
  - Full name or wrong name
- Transposed phone numbers

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Sophisticated Attacks with Preparation

- Sources of Information:
  - Website
  - Facebook
  - Public records
    - Litigation
    - Corporate Documents
    - Real Property Records
  - Media
  - Compromised Third-Party Systems
    - Clients
    - Vendors

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DON'T TAKE THE BAIT

- Be skeptical
- Hover over sender email address
- Call and verify for unexpected attachments/downloads
  - (using known legitimate phone number, not the number in the email)
- If you do not know what it is, do not trust it
- Helpdesk notification to block sender
- Red flags

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Incident Response Plan

- Breach counsel
- Importance of policies/procedures/training
- Identify and contain the breach
- Eradicate malicious content and restore systems
- Preserve the evidence
- Notify
- Disclosure (if necessary)
- Learn from past mistakes

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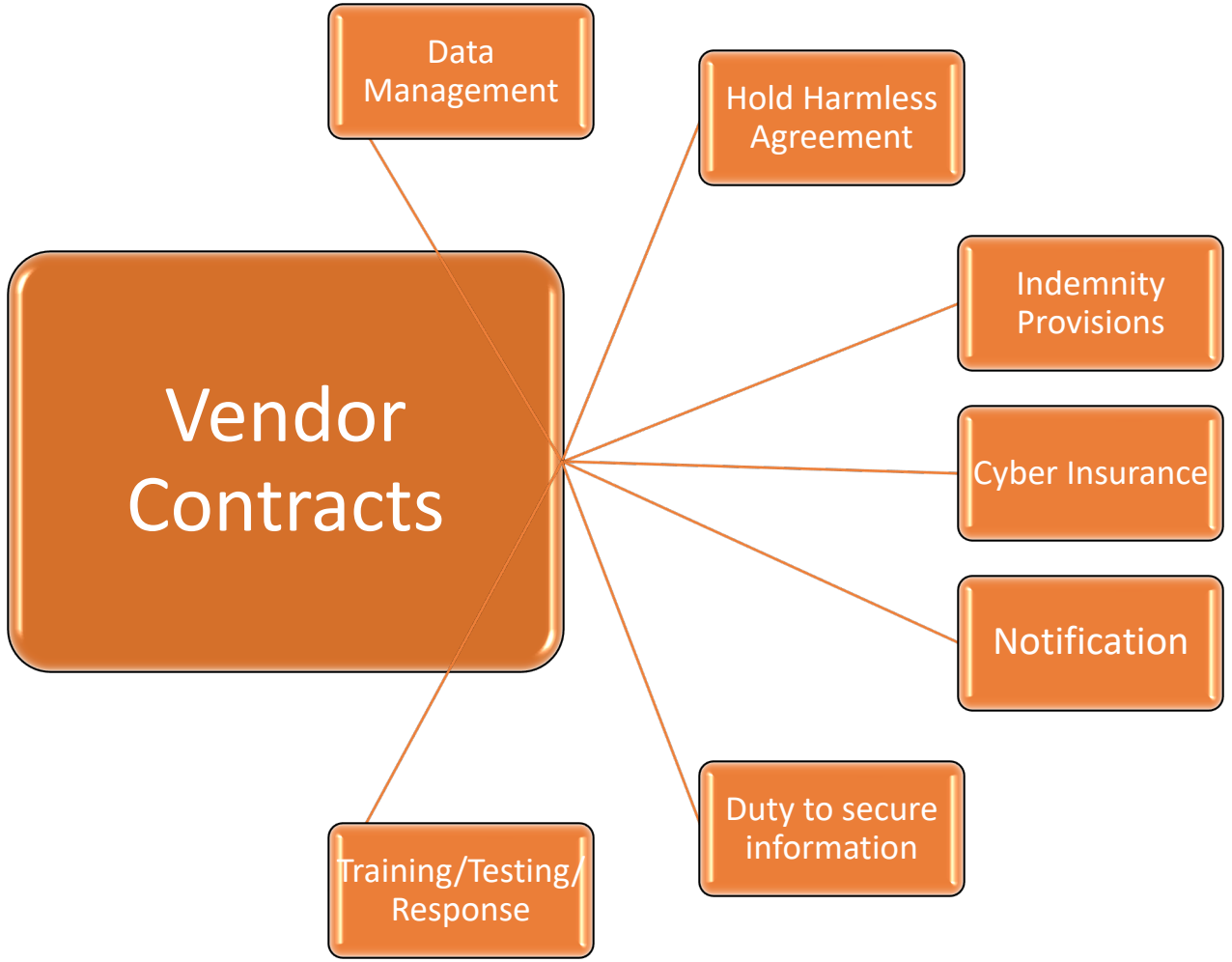

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QUESTIONS?

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