Privacy Breach Response

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Improper disclosure of personal information
- Without consent of the person whose information has been disclosed

Functionally, Personal Information leaks out
United States

Personal information means information that identifies an individual or can be linked to a particular identifiable individual.

Examples: Social Security Number, photograph, name, address

United Kingdom

“personal data” means data which relate to a living individual who can be identified—

(a) from those data, or
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions . . . of any person in respect of the individual.

Examples: type of job you do, the things you buy and the place you went to school.

Japan

Information about a living individual, which can identify the specific individual by name, date of birth or other description.

Examples: cell phone number, passport number, photo, email address
Information Leaks . . .
Improper disclosure of personal information
- Without the consent of the person whose information has been disclosed

Personal Information leaks out

And is gone!

Or is it?
Leaks of personal information

- About a human person
- Electronic digital data
- Kept in a database
- Containment through
  - Agreement
  - Promise
  - Law
  - Technology
  - Physical barriers
  - Intended processes
Many Sources of Privacy Breaches

- Technical failures, errors and accidents
- Hackers and crackers
- Hardware lost or stolen
- Espionage
- Human mistakes
- Misunderstanding or disagreement about whether or not information is personal
- Human misconduct
- Carelessness - negligence/laziness
Privacy Breach

Many Paths

- Technical failures, errors and accidents
- Hackers and crackers
- Hardware lost or stolen
- Espionage
- Uncertainty: Information is/is not personal?
- Human misconduct
- Human mistakes
- Carelessness, negligence/laziness

Uncertainty: Information is/is not personal?
Consequences of Privacy Breaches

- Mostly BAD

- Unfortunate for both
  - Person who leaked the personal information
  - Person whose personal information was leaked
Legal Consequences of Privacy Breaches

May include:

- Notification requirements
- Monetary liability (damages)
- Criminal penalties
- Administrative action

Depending on where you are in the world
- or in cyberspace
US experience

- 46 state laws require notice to person whose data was disclosed

- Federal statutes
  - Sarbanes-Oxley Act and Implementing Regulations
  - HIPPA

- Federal regulatory action
  - Federal Trade Commission
  - HHS Privacy Rule
Europe - E-Privacy Directive

(Directive on Privacy and Electronic Communications)

- Notice to relevant national regulatory authority

Asia-Pacific Economic Cooperation

- Cross-Border Privacy Rules
Monetary Liability

- **US Court-ordered damages**
  - Statutory Damages
    - E.g., under Drivers Privacy Protection Act
  - Common Law damages
    - Identity theft

- **Japan apology payments**
Administrative Sanctions

- UK Information Commissioner
  - Data Protection Act prohibits “secondary uses”

- Japan complaint process
  (to relevant Ministry)

- US Federal Trade Commission enforcement
  HHS Unsecured PHI Interim Final Rule
  (August 2009)
Social/Reputational Sanctions

- Often monetized in the US

- In Japan, self-regulation
  - corporate responsibility to respect personal information
Responses to Privacy Breaches

Avoidance in future
- Minimization
- Anonymization
- Retention restrictions
- Robust data security

Transparency
- Publicly admit
- Report to oversight agency

Litigation

Self-regulation
One response does not fit every privacy breach

- Anticipation and prevention
- Social/Societal context creates expectations
- Litigation a last resort
Thank You!

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