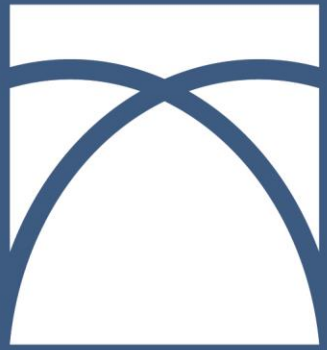


IAPP GLOBAL PRIVACY SUMMIT 2017

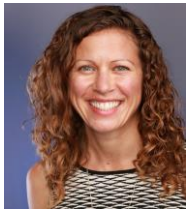
April 19, 2017

KEYS TO MANAGING PRIVACY AND SECURITY RISK IN B2B/VENDOR CONTRACTS

April 19, 2017

#GPS17

SPEAKERS



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The views presented in these slides and expressed during this panel are the personal views of the panelists and should not be attributed to their employers.

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INTRODUCTION

- Many factors affect privacy and security negotiations with vendors:
  - Sophistication of counterparty
  - Sensitivity of the vendor's service
  - Relative bargaining power
- These considerations are relevant whenever vendors have access to:
  - Confidential, proprietary, or otherwise sensitive business information
  - Regulated information (PII, PCI, PHI, GDPR)

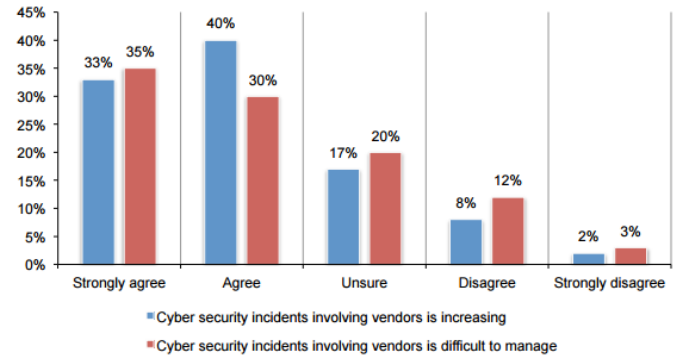
CASE STUDY — TARGET

- Bottom line: data security depends on the weakest link in the chain
- Vendor (refrigeration, heating, and air conditioning subcontractor) suffered its own breach; thieves stole VPN credentials the vendor used to connect to Target's network
- Consequences: 40M cards compromised, PII of up to 110M people exposed, ~$250M in expenses (or ~$160M after insurance)

SPECIFIC RISKS

- Breaches
  - Breach at vendor
  - Breach at vendor's subcontractor or agent
  - Breach at your company caused by your vendor or its agent
- Reputational Risk / Customer Trust

Figure 3. Cybersecurity incidents are increasing and difficult to manage



Source: Ponemon Institute Research Report, "Data Risk in the Third-Party Ecosystem" (Apr. 2016)

SPECIFIC RISKS

- Regulatory Exposure
  - Privacy Shield
    - Contract must limit processing to the term of the data subject's consent and hold third parties to the same standards promised by the certified organization
  - GDPR (effective May 2018)
    - 72 hour breach notification requirement to DPAs
  - U.S. Federal Trade Commission
    - Section 5 Unfairness/Deception Authority
  - U.S. state laws and regulations
    - E.g., Massachusetts data security regulations

COSTS

- Breaches / Cyber Attacks
  - Notification expenses
  - Outside legal, forensics, and PR
  - Investigations and litigation costs
  - Loss of reputation and trust
- Regulatory Exposure
  - GDPR / Privacy Shield liability
  - FTC / State AG settlements
  - PCI DSS

WHAT CAN BE DONE?

YOUR OWN DUE DILIGENCE

Goal: develop a nuanced understanding of vendor-specific risks to address via the contract

- NDAs
- Sources: Google / Twitter / LinkedIn / State reports
  - Breaches? Suspected security incidents? Fraud?
  - FTC or other regulatory enforcement?
- Wikipedia / Investor Sites
  - Company age? History? Capitalization? Sophistication?

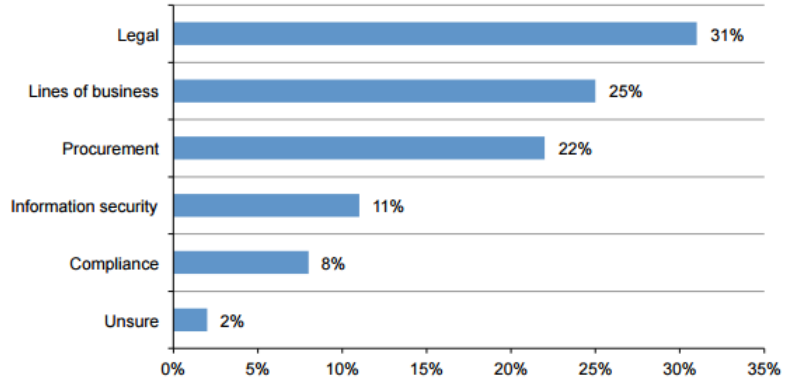
DUE DILIGENCE QUESTIONS

- Location, Location, Location
  - Where… is PII processed? are servers located?
  - What EU data transfer mechanisms do you use?
- Regulatory and Certifications
  - What sectoral / country-specific laws apply? How do you comply?
  - Which orgs do you self-certify to? Any certifications?
- Insurance
  - What cyber coverage do you have?
  - Is your data covered / excluded?

DUE DILIGENCE QUESTIONS

- Security Diligence Tips
  - Use questionnaires
  - Ask questions relevant to your company
  - Involve your InfoSec folks

Figure 7. Which department or function is responsible for ensuring that appropriate privacy and security language is included in all vendor contracts?



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DUE DILIGENCE QUESTIONS

- Security Questions
  - Privacy and security measures in place
  - Confirm formal policies
  - Disaster recovery and business continuity
  - Compliance monitoring and reporting
  - Incident reporting (any prior breaches?)
  - Security measures for data in transit / at rest
  - Role-based access controls

CONTRACT PROVISIONS — DEFINITIONS

- "Security Incident"
  - Actual or suspected disclosure, loss, or unauthorized access of confidential data, including personal data caused by vendor or agents and their employees
- "Personnel" — screen & train personnel to be hired
- "Subcontractors"
  - Must abide by same data security provisions
  - Vendor liable for third party breach

CONTRACT PROVISIONS — REPS & WARRANTIES

- No Defects
  - Products / software free from viruses, defects, malware, etc. that may affect performance of any product
- Compliance With Laws
  - Vendor has obtained appropriate notices, consents, & privacy policy complies with applicable laws
  - Each party agrees to comply with international data transfer regulations
  - Vendor guarantees that data is collected, accessed, used, stored, processed, disposed of, and disclosed in compliance with applicable laws, self regulatory schemes and contract

CONTRACT PROVISIONS — REPS & WARRANTIES

- Security Safeguards
  - Administrative, physical and technical safeguards; at least industry standard
- Material Change Notices
  - Notification if material change to architecture, privacy, or security measures
- Training
  - Stringent hiring and training requirements (background checks)
- Prohibition on Commingling Data
  - Separate your company's data from other companies' data

CONTRACT PROVISIONS — REPS & WARRANTIES

- Physical Security
  - Deploy physical security systems
- Use Limitations
  - Restrictions on onward data transfers
- Duty of Care
  - Confidentiality; use for purposes of agreement (restrictions on use, sale, renting, transferring, analyzing, distributing, disclosing); no disclosure, even to affiliates, without written consent
- Government Requests
  - Best efforts to notify; responsible and liable

CONTRACT PROVISIONS — OTHER KEY TERMS

- Use of Data
  - Vendors agree to use data for agreed upon purpose
  - Limit access to those who need it
  - Can't sell, rent, or lease data
- Audit Rights
  - Company may audit vendor with reasonable notice
  - Vendor is obligated to remediate within a given timeframe
- Certificates
  - Vendor delivers copies of relevant certifications or audits

CONTRACT PROVISIONS — OTHER KEY TERMS

- Confidentiality
  - Vendor will not disclose confidential data
  - Obligation to train employees & agents on limited access and appropriate security
  - Transfer data in encrypted format
- Termination
  - Who keeps the data after contract term?
  - Vendor will destroy / return data following termination of contract or upon request in a reasonable period of time
- Insurance
  - Mandatory cyber coverage – beware exclusions!

CONTRACT PROVISIONS — OTHER KEY TERMS

- Security Incidents
  - Notification of known or suspected incident in specified time (~24 hours), even if not required by law
  - Clear chain of command after discovery of breach
  - Cooperation in the event of a breach
  - Right to control response, defense, settlement
  - Evidence preservation
  - Vendor to pay all legally required fines, penalties, costs, including costs of notification, credit monitoring, lawsuits, regulatory investigations, etc.
  - Vendor will indemnify for third party claims
  - Vendor report (specify contents)

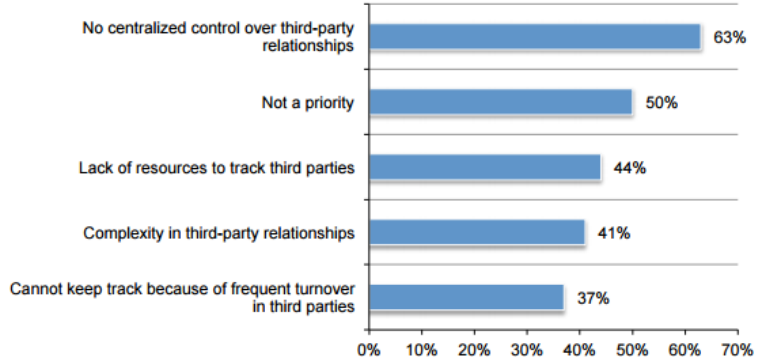
CONTRACT PROVISIONS — OTHER KEY TERMS

- Damages and Limitations of Liability
  - Unlimited liability for data breach and related costs (described in detail)
  - Unlimited liability for privacy failures, including class actions, state AG actions, regulatory fines, etc.
- Indemnification
  - Indemnification for privacy and security failures
  - Defense for not only lawsuits arising from privacy or security failures, but government / regulatory investigations as well

EXISTING VENDORS

- Not just for new vendors!
- Map your data
- Helps you prioritize key contracts and uncover risk

Figure 10. Reasons companies do not have a comprehensive inventory of all third parties
More than one response permitted



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(WE REALLY WANT TO KNOW)

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