

RIMS Central Texas Chapter  
Meeting

Texas Association of Counties  
November 19, 2015  
11:30 am – 1:00 pm



Presenter:

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# Strategies for Mitigating Risk Management and Data Breach Losses Arising out of Social Media Activity

# WHO IS VULNERABLE?

## EVERYONE!

- **Home Depot's 56 Million Card Breach Bigger Than Target's**  
<http://online.wsj.com/articles/home-depot-breach-bigger-than-targets-1411073571>
- **Target: 40 million credit cards compromised**  
<http://money.cnn.com/2013/12/18/news/companies/target-credit-card/>
- **Yahoo resets passwords after email hack**  
<http://www.computerworld.com/article/2487133/cyberwarfare/yahoo-resets-passwords-after-email-hack.html>
- **Neiman Marcus Data Breach Worse Than First Said**  
[http://www.nytimes.com/2014/01/24/business/neiman-marcus-breach-affected-1-1-million-cards.html?\\_r=0](http://www.nytimes.com/2014/01/24/business/neiman-marcus-breach-affected-1-1-million-cards.html?_r=0)

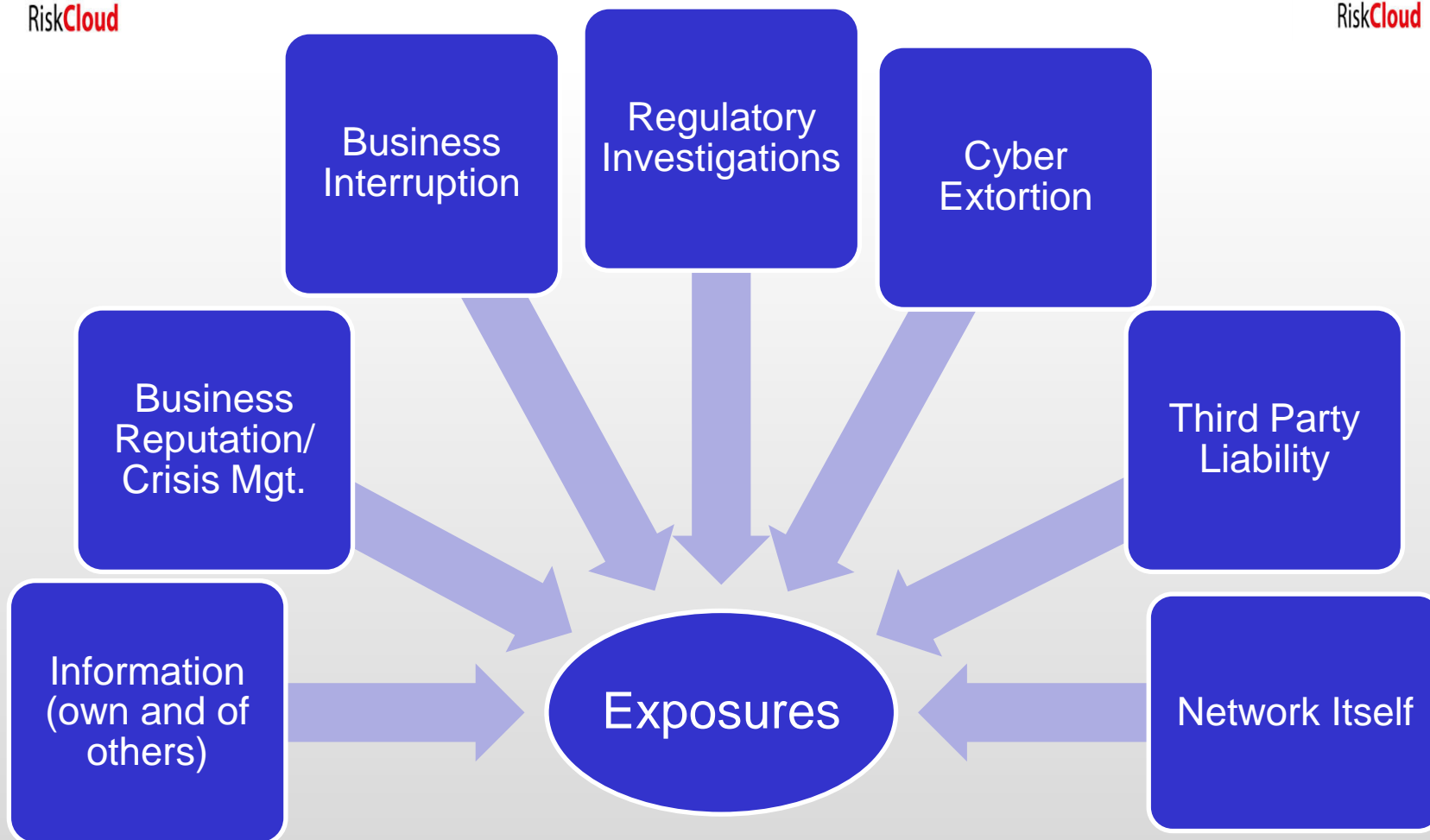
# Who Will Have a Data Breach

- Over the next 24 months, it is more likely a company will have a breach involving 10,000 or fewer records than a mega breach
- Most likely to have a mega breach - **public sector organizations & retail companies**



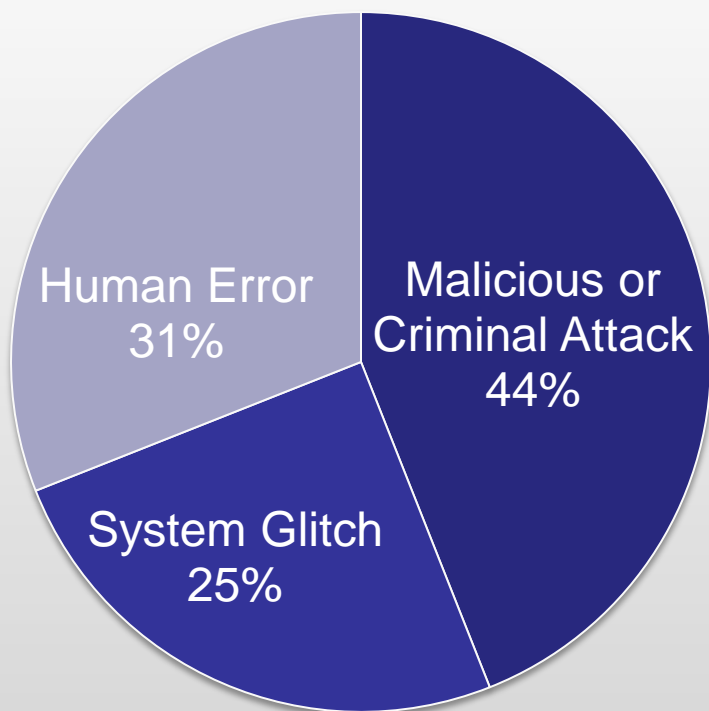
Source: 2014 Cost of Data Breach Study: United States, Ponemon Institute Research Report

# Potential Exposures

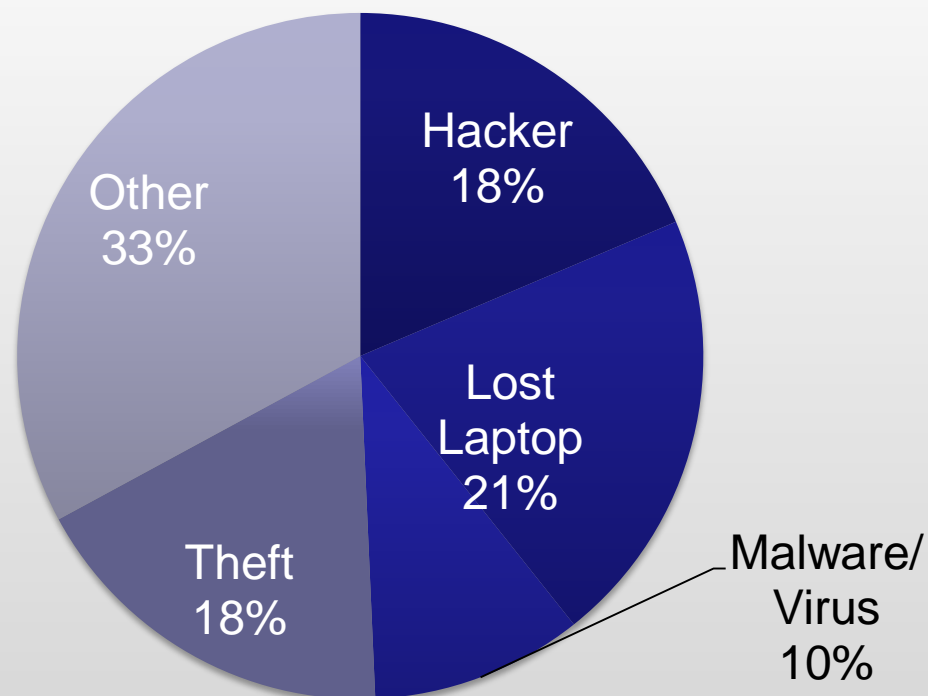


# Cause of Data Breach

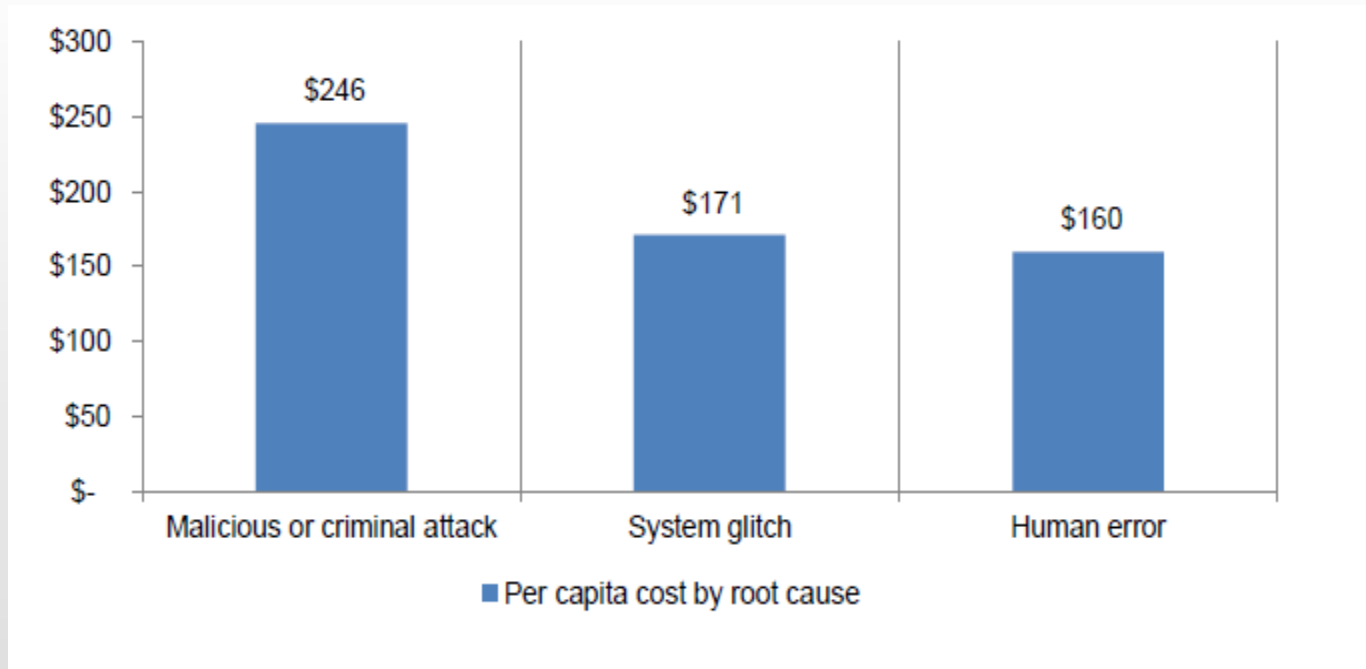
**Ponemon Institute**



**Net Diligence**



# Costs of Data Breach – Ponemon Institute



Source: 2014 Cost of Data Breach Study: United States, Ponemon Institute Research Report

# What is Social Media?







# Mitigating Social Media Risks

- Social Media Policies
- Enforcement, Monitoring and Response
- Insurance for Social Media Risks

# Create A Social Media Policy

- Broadly assess your company's social media activities
- Assign responsibility for development and execution of policy
- Make written policy simple, yet comprehensive
- Explain and train

# Create A Social Media Policy

- They are not “One size fits all”
- Ban all employee access
- All employees have total access
- Designated employees have access
- Limited to specific forms of social media
- Personal use

# What to do when disaster strikes

- Respond: To circumstances or claim
- Review: Could changes in social media policies have prevented the claim?
- Recover: Look to insurance and contracts; for defense and indemnity

# RISK MANAGEMENT

- Notice of Incident (even if your data is not disclosed)
- Cooperation with regulation authorities and law enforcement
- Periodic audit rights
- Notification costs responsibility
- Costs of computer forensic experts
- Use of sub-contractors
- Cloud Services Termination: How does hosted data get disposed of? / Who pays?
- Representations and Warranties about firm protecting data

# SECURITY & INSURANCE

- Encryption
  - Automatic red flag for AGs/FTC if data disclosed and not encrypted
- Contractual Indemnity/Hold Harmless
- Mandate insurance purchase by vendor
- Require additional insured status



# DEALING WITH A SECURITY BREACH

- Data Breach Team and Plan needs to be in place
- Compliance with State Notice
- Make sure your insurance provides cover where cloud used
- Notice all potentially applicable insurance



# Insurance for Social Media Risks: Cyber Policies

- New products
- Originated with technology-oriented business, now expanding
- Security breaches
- Damage to third-party's content or hardware
- May include libel, slander, defamation or intellectual property losses



# POLICIES COVERING LOSS

- Take Inventory of Policies
- GL, D&O, E&O, Crime, All Risk Property, Cyber Policies
- 1<sup>st</sup> Party, 3<sup>rd</sup> Party, Hybrid Coverage Issues



# COVERAGE UNDER CGL?

- IP Exposure
- Data Loss
- Business Interruption
- Third Party Losses
- Privacy



# WHEN CONVENTIONAL IS NOT ENOUGH

## CYBER POLICIES!



# CURRENTLY AVAILABLE CYBER INSURANCE

- Privacy Injury Liability
- Privacy Regulatory Proceedings and PCI Fines
- Network and Content Liability
- Crisis Management Fund
- Network Loss or Damage
- Business Interruption
- Electronic Theft
- Network Extortion



# THE INSURANCE POLICY

Exposure Category		Description
Network Security Liability		Promises liability coverage if an Insured's Computer System fails to prevent a Security Breach or a Privacy Breach
Privacy Liability		Promises liability coverage if an Insured fails to protect electronic or non-electronic information in their care custody and control
Media Liability		Promises coverage for Intellectual Property and Personal Injury perils the result from an error or omission in content (coverage for Patent and Trade Secrets are generally not provided)
Regulatory Liability		Promises coverage for lawsuits or investigations by Federal, State, or Foreign regulators relating to Privacy Laws
Breach Response / Crisis Management	Notification / Legal Expense	1st Party expenses to comply with Privacy Law notification requirements ; In many instances goodwill notification; Legal Advisory
	Credit Monitoring Expense	1st Party expenses to provide up to 12 months credit monitoring
	Forensic Investigations	1st Party expenses to investigate a system intrusion into an Insured Computer System
	Public Relations	1st Party expenses to hire a Public Relations firm
Data Recovery		1st party expenses to recover data damaged on an Insured Computer System as a result of a Failure of Security
Business Interruption		1st party expenses for lost income from an interruption to an Insured Computer System as a result of a Failure of Security
Cyber Extortion		Payments made to a party threatening to attack an Insured's Computer System in order to avert a cyber attack
Technology Services/Products & Professional Errors & Omission Liability		Technology Products & Services and Miscellaneous E&O can be added to a policy when applicable

# TIME SENSITIVE PROVISIONS

- Fear of Reporting Claims?
- Timely Notice
- Proofs of Loss
- Suit Limitation Clauses



# LITIGATION ISSUES

- Not a Ton of Precedent
- What Exists is Not Uniform
- Careful What Gets Disclosed During Discovery:
  - E.g., Sensitive Data, Customer Information, Network Security Blueprints



# QUESTIONS?





# Disclaimer

The views expressed by the participants in this program are not those of the participants' employers, their clients, or any other organization. The opinions expressed do not constitute legal advice, or risk management advice. The views discussed are for educational purposes only, and provided only for use during this session.

# Thank You



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