

MISSION-CRITICAL CYBERSECURITY: HOW LEGAL TEAMS ARE PREPARING FOR THE NEW ERA OF DIGITAL DEFENSE

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Section	Overview	Slide
1	Opening Introductions	3
2	Cybersecurity Threat Landscape	4
3	Four Corners of Cybersecurity: Key Considerations for Japanese Companies	6
4	Q&A	20



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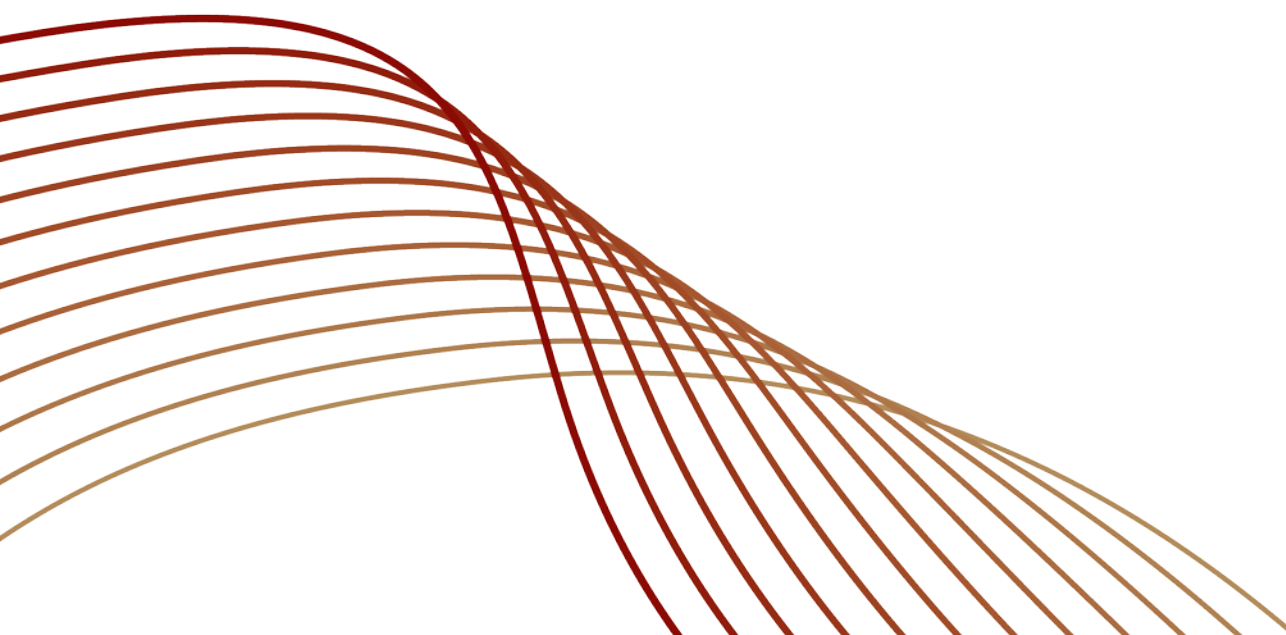
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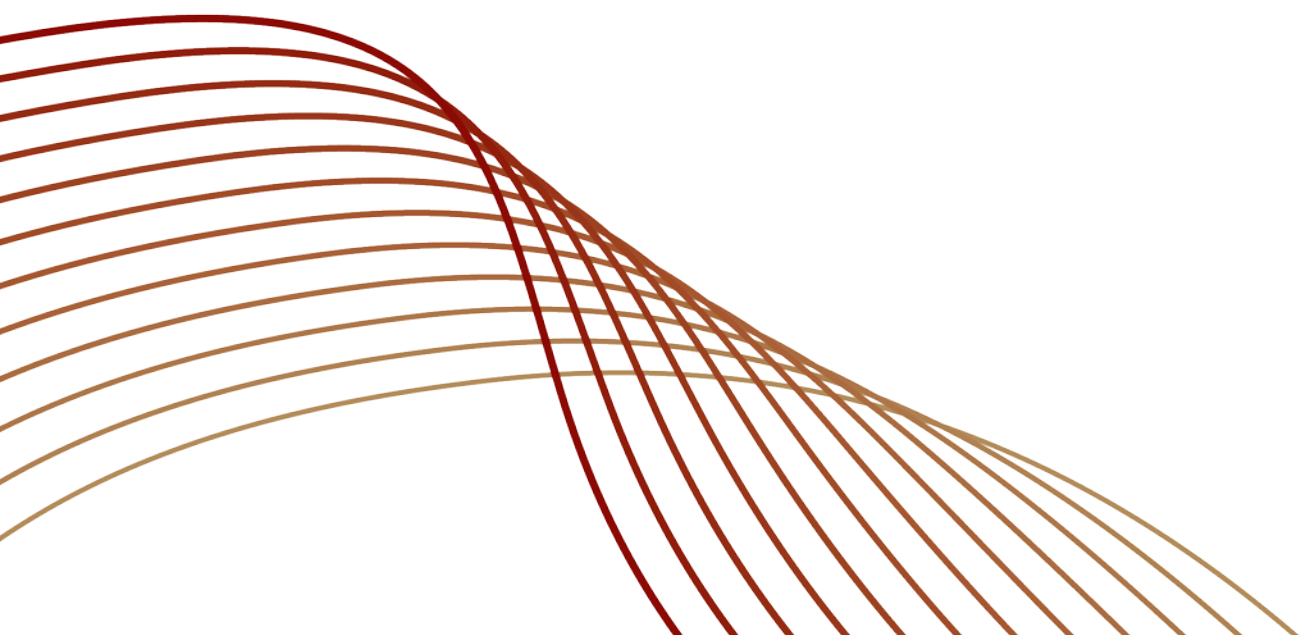
CYBERSECURITY THREAT LANDSCAPE



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- **Variety of Players:** Criminal actors, Nation-states, and Insiders
 - **Criminal Actors.** More of the same, but intensified
 - Hacks of payment data
 - Hacks of personal information
 - Hacks of IP and trade secrets
 - Business email compromise
 - Ransomware
 - Content extortion
 - **Nation-States.** A range of motivations
 - Espionage
 - Political aims: Sony Pictures
 - Profit motive: WannaCry? Bank of Bangladesh?
 - Critical infrastructure
 - **Don't Forget the Insider Threat.** Bad actors can include employees.

FOUR CORNERS OF CYBERSECURITY: KEY CONSIDERATIONS FOR JAPANESE COMPANIES



1. SHIFTING LEGAL LANDSCAPE

- **More Rules, More Expectations, and More Accountability**
- **Sharply Escalating Regulatory Interest and Enforcement**
- **Litigation Risk Remains High and Growing**

1. SHIFTING LEGAL LANDSCAPE (CONT.)

▪ U.S. Federal Regulators

- U.S. Federal Trade Commission (FTC)
 - Consent decrees and monitorships
- Sector-Specific Regulators
 - Securities and Exchange Commission (SEC)
 - Food and Drug Administration (FDA)
 - Department of Energy (DOE)
 - Banking Regulators (Federal Reserve, Office of the Comptroller of the Currency (OCC), Consumer Financial Protection Bureau (CFPB), others)

1. SHIFTING LEGAL LANDSCAPE (CONT.)

- **State Regulators in the United States**
 - An important area to watch
 - New York Department of Financial Services (NYDFS)
 - State Attorneys General (AGs)
 - State Data Breach Regulation
 - State Legislation

1. SHIFTING LEGAL LANDSCAPE (CONT.)

- **Consistent Challenge.** Data breach litigation continues to be an irritant, particularly accompanying the most damaging and highly publicized breaches.
- **Theories of Liability.**
 - **Negligence.** The most popular theory of liability—approx. 75% of litigation includes this count.
 - **Other Common Theories:**
 - Breach of express or implied contract
 - Violation of consumer protection laws
 - Unfair competition
 - Unjust enrichment
 - Breach of state data breach notification laws (in which there is a failure to timely provide notice of the breach)

1. SHIFTING LEGAL LANDSCAPE (CONT.)

▪ Sony Pictures Breach

- **Facts:** 2015 hack perpetrated by North Korean hackers in retribution for Kim Jong Un's portrayal in *The Interview*.
- **Causes of Action:**
 - Negligence
 - Breach of implied contract
 - State law claims
- **Settlement:**
 - Sony agreed to pay **¥220.96 – ¥497.18 million/ \$2 – \$4.5 million** to settle claims by a proposed class of employees whose personal information on the company's system was hacked.
 - Additionally, the court granted **¥285,886,925/ \$2,587,574** in attorney fees, **¥2,651,628/ \$24,000** in service awards for the eight named plaintiffs, and **¥994,360/ \$9,000** in service awards for the nine additional plaintiffs.

1. SHIFTING LEGAL LANDSCAPE (CONT.)

- **Sony PlayStation Breach**
 - **Facts:** 2011 data breach compromised 77 million PlayStation Network users' personal information, resulting in a 65-case multidistrict litigation.
 - **Causes of Action:**
 - Negligence
 - Unjust Enrichment
 - Bailment
 - State law claims
 - **Settlement:**
 - Sony gave plaintiffs **¥1.66 billion/ \$15 million** in games, online currency, and identity theft reimbursement.
 - Additionally, Sony paid **¥303.8 million/ \$2.75 million** in attorney fees.
- **Numerous Additional Breaches Affecting Japanese Companies**

1. SHIFTING LEGAL LANDSCAPE (CONT.)

- **Emerging Expectations – Regulatory and Litigation-Driven**
- **Governance**
 - Corporate Policies and Procedures
 - Designated and Empowered Organizational Leads
 - Regular Board Updates
 - Incident Response and Recovery Planning
 - Third Party Risk Management
- **Technical/Implementation**
 - Multi-factor Authentication
 - Encryption
 - Layered Defense Strategies
 - Employee and Administrative Access Controls

2. NINE STEPS THE MOST SOPHISTICATED COMPANIES ARE PROACTIVELY TAKING

- Comprehensive Cyber Assessments
- Comprehensive Corporate Cyber Policy
- Limiting Access Privileges – Employee and Administrative
- Secure Development Practices and Validation
- Internal Corporate Coordination
- Training (and Being Creative)
- Law Enforcement Relationships and Information Sharing
- Regular Reporting to the Board
- Incident Response Planning

3. EFFECTIVE INCIDENT RESPONSE

- **Plan Needed.** Companies need a plan that has been exercised.
- **War Games/Table Tops.** These are essential.
- **Coordination Is Key.** Numerous departments must come together, including IT Security, Legal, Compliance, PR/Customer Relations and HR.
 - **Reporting.** Coordinate reporting up to Board, C-Suite and External Reporting (as needed)
- **Fog of War.** Imperfect information; slow-developing facts.

3. EFFECTIVE INCIDENT RESPONSE (CONT.)

- **Key Early Lines of Effort.**
 - **Investigate/Remediate.** Conduct forensic investigation and technical remediation.
 - **Identify data.** Determine what data may have been accessed or acquired.
 - **Understand Legal Requirements.** Analyze regulatory requirements, including potential notifications to consumers and regulators (48 U.S. state laws, China's new law, plus other regulatory requirements).
 - **Coordinate with Law Enforcement.** Consider whether to call law enforcement.

3. EFFECTIVE INCIDENT RESPONSE (CONT.)

- **Evaluate Third-Party Obligations.** Identify obligations to third-parties (e.g., imposed via contract)
- **Determine Messaging.** Coordinate internal and external messaging, including to:
 - Customers;
 - Investors;
 - Media;
 - Regulators/Law enforcement; and
 - Commercial partners
- **Prepare for Internal Investigation.**

4. INTERNET OF THINGS

- **Emerging Phenomenon and Landscape**
- **Convergence of Threats**
 - Massive Privacy and Security Risk
 - Risk to Critical Infrastructure and Industrial Equipment
 - October 2016 attack
 - The Next Ransomware Wave?
- **Expanding Set of Regulatory Expectations**
 - FTC
 - U.S. Department of Homeland Security (DHS) – Strategic Principles for Security of the IoT
 - Civil Litigation
 - NISC

4. INTERNET OF THINGS (CONT.)

- **Emerging Best Practices (and the New Standard of Care)**
 - Security by Design
 - Security Updates and Vulnerability Management
 - Build of Proven Security Practices
 - Prioritize Around Risk and Potential Impact
 - Visibility: Know Your Supply Chain
 - Consider Connectivity Strategy for Internal Use

- **What to Do?**
 - Operational and legal risk assessments around IoT
 - Build best practices into product development guidelines
 - One step at a time, but it's important to take that first step

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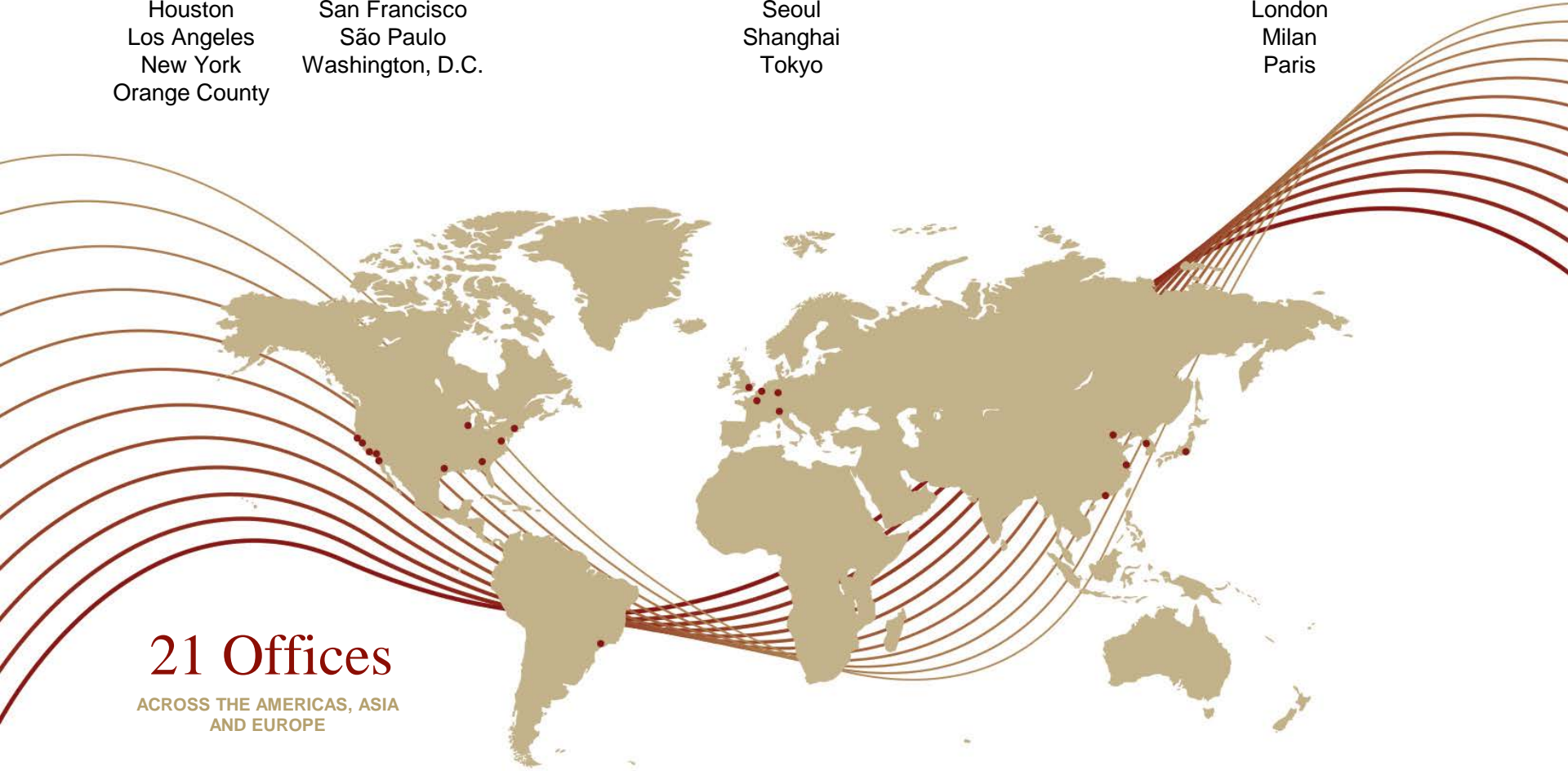
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