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Data Breaches

Panelists Offer Tips to Companies on ‘Mending Fences’ Following a Data Breach

Good communication with customers, regulators, and others is critical following a data breach, panelists emphasized March 8 at the International Association of Privacy Professionals Global Privacy Summit.

Sixty-three percent of the cost of a breach is attributable to lost business, according to a 2010 study by the Ponemon Institute (10 PVLR 418, 3/14/11). That percentage includes both lost customers and the failure to acquire new customers, Joanne B. McNabb, chief of the California Office of Privacy Protection, explained.

Lisa J. Sotto, partner and head of the Privacy & Information Management Practice at Hunton & Williams LLP, in New York City, added that the Securities and Exchange Commission disclosure guidance urging companies to include data security risks and security incidents in their reports to the SEC (10 PVLR 1495, 10/17/11) could hurt a company’s stock value.

McNabb advised companies to prioritize data security issues, saying they should “next week” review their identity theft protection products and data breach notice templates.

Sotto added that she would like to see every company have an incident response toolkit. Prepare press releases and notice letters to customers, state attorneys general, and reporting agencies in advance, and develop an incident response plan, she advised.

Notice Is Not a Marketing Tool. The timing of the breach notification is important, McNabb said. According to the panelists’ presentation materials, the notice should be “not too soon, not too late.” Additionally, consider the delivery date and avoid sending multiple notices, they advised.

McNabb explained that if a notice arrives on a four-day weekend, no one will be manning the call center to address customer concerns.

Sotto said that a notice is a communication tool that needs to satisfy legal standards but emphasized that it is not a marketing tool.

The tone of the notice is important, she added. Be objective and ensure that a senior-level person signs the notice, she said.

Think about using websites, email, and social media for distributing the notice, but be careful not to be too broad, Sotto said. Ensure that only the people who need to know about the breach receive the notice, she advised.

Sotto said to explain what happened, what you are doing to fix the problem, how the consumer is impacted, and how the consumer can contact you.

McNabb encouraged companies to keep the notice simple and written at a level that is accessible to most readers. Companies “don’t have to put consumers through the same pain they were going through,” Sotto added.

Good Communication Strategies. Sotto offered several good communication strategies:

- use outside communications firms;
- train employees, including call center staff and the sales force;
- communicate about the breach with employees, making sure that “internal communications are consistent with external communications”;
- communicate with regulators; and
- reach out to the media.

She emphasized the importance of training both external and internal call center staff, calling them the “first line of defense.”

Additionally, “don’t neglect the privacy advocates,” she said.

Restoring What Was Lost. Taking action to restore what was lost is a key step in making amends with customers, Susan Grant, director of consumer protection for the Consumer Federation of America, said.

When choosing a “make-good product,” she advised looking for a service that makes clear what it guarantees, has a clear privacy policy, and has good internal security procedures.

Avoid companies that overstate what they do, and ensure that the service is not auto-renewed at the customer’s expense, she advised.

When Litigation Is Inevitable. According to the speakers’ materials, “a contrite word may forestall litigation.” Sotto suggested that a company “strike a balance between being contrite but not risking litigation later on.”

If you give a gift card to one customer, you may have to give it to all of your customers, she said.

All communications should be vetted through a legal team if litigation is inevitable, Sotto commented. “Keep the circle small,” she added.

BY KATIE W. JOHNSON

Further information on the International Association of Privacy Professionals is available at <https://www.privacyassociation.org/>.