

# technology report

VICTOR O. SCHINNERER & COMPANY, INC.

Information and Risk Management Ideas for Technology Professionals

## DATA SECURITY AND MITIGATING RISK

### Is Your Company Covered If a Hacker Strikes or a Laptop Disappears?

RUN a Google News search for “data breach,” and on any given day of the week you’re likely to find a lot of companies with public relations problems. A disgruntled Fannie Mae employee planted a worm in the company’s software system that, had it been successfully activated, would have wiped out millions of mortgage records. Columbia University, Choice Point, Kaiser Permanente, Domino’s Pizza, Anheuser-Busch, and others have also had to alert customers to breaches involving credit card accounts, Social Security numbers, patient information, and other data. While the causes vary—including lost or stolen computers, unencrypted hard drives, and hacking—the cumulative damage done is considerable.

The best-known case may be retailer TJ Maxx, which announced in 2007 that hackers had broken into its system. The breach affected as many as 94 million credit card accounts. More recently, in January 2009, Heartland Payment Systems announced that someone had hacked into its systems and planted malicious software that can read keystrokes. The company handles more than 100 million transactions per month, so this has the potential to be the largest breach yet.

If you’re a small technology firm; a systems designer, programmer, or Web designer; or own a hardware design, data processing, or manufacturing company—or are otherwise involved in providing tech services—what happens if one of your clients has a data breach? “Cyber liability is real,” says Joseph Monteleone, a partner with Tressler

Soderstrom, LLP, in New York City. “If you are handling a company’s or an individual’s private information and it gets stolen, you could be on the hook for their losses.”

That cost can be considerable, especially as more and more states pass laws requiring organizations that suffer a data breach to notify anyone who may have been affected. Led by California, which passed its landmark data breach legislation in 2003, 43 states and the District of Columbia now have such laws on the books. Estimates have put the cost

**‘A tech insurance policy. . . . is designed to kick in if your client’s system is compromised.’**

to a company per person affected at anywhere from \$90 to \$140.

#### Ensuring Peace of Mind

Your best protection, of course, is to mitigate the risk of a breach by implementing sound business practices. These include using encryption, password protecting your customer’s data, restricting who gets access to third party information, automated anti-virus and security scanning, and securing movable equipment and devices (e.g. laptops and external hard drives). But a determined hacker can break into

almost any system. Such incidents happen—and they could happen to your customers who then could hold you responsible for their loss.

Did you know that your basic business insurance will rarely cover technology breaches? The good news is that there are specific policies designed to protect technology companies. To safeguard your business assets, your firm should consider purchasing a technology errors and omissions policy that includes coverage for data breaches suffered by your clients if they arise out of the professional services you provided to them.

A well written insurance policy designed for technology firms should cover claims for the failure to prevent unauthorized access to a customer’s system and the failure to prevent the introduction of computer viruses and malicious code into a client’s network. “A company can suffer a denial of service or Trojan horse attack because of an error or omission of the technology professional they hired to install or update their network” says John Ajello, program manager of the TechVantage program. Their software might include a virus they did not know about, or their network security may have a crack that permits malicious code to enter and replicate. Damages due loss of income from the interruption of their business, not to mention the legal costs, can be considerable, and the technology firm responsible for the network may be held liable for those damages.

Also look to see if a technology E&O policy includes coverage for

## DATA SECURITY AND MITIGATING RISK (cont. from front)

the removal, disclosure, or copying of clients' personal or confidential data. Beyond denial of service attacks or the introduction of a virus, security breaches like the ones above might cause a company to lose their customers' data. The technology firm that worked on their network may be held liable for the data breach. While many policies exclude this coverage, carriers will consider granting it for an additional premium via endorsement.

"The losses from a third-party claim can be considerable," stresses Monteleone. "In addition to immediate damages from the initial data breach, there can also be almost unlimited consequential damages. Why take the risk? The whole purpose of buying insurance is to have security and peace of mind." ♦

*TechVantage thanks Joseph Monteleone, partner in the law firm of Tressler, Soderstrom, Maloney & Priess, LLP, for his assistance:*

*22 Cortlandt Street 17th floor  
New York, New York 10007  
tel: 212/430-4500  
email: JMonteleone@tsmp.com*

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*The program is available to technology companies that perform types of services such as:*

- Custom Programmers
- IT Consultants
- System Designers
- Software Developers
- Web Site designers and hosters
- ISPs and ASPs
- Tech Support, Maintenance and Administrators
- Value Added Resellers

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Victor O. Schinnerer & Company, Inc.  
Two Wisconsin Circle  
Chevy Chase, MD 20815-7022

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SCHINNERER  
& COMPANY, INC.

