



# Ifrah Law

Hands-on Counsel, Gloves-off Litigation

## Update on State and Federal Legislative and Regulatory Developments in Cybersecurity and Breach Law

### PART I: Federal Legislative and Regulatory Trends



# Speaker



## Michelle W. Cohen, Member Ifrah PLLC

- Over Two Decades Of Privacy And Marketing Law Experience
- Certified Information Privacy Professional – U.S.
- Counsels On Data Privacy And Security And Has Handled Data Breaches, Including Notifications And Attorney General Inquiries
- Has Written Articles On The Legal Issues Simultaneously Developing Along With Big Data, Cyber Security, Data Privacy And E-commerce
- Has Been Named By American Lawyer As A Top Technology Lawyer

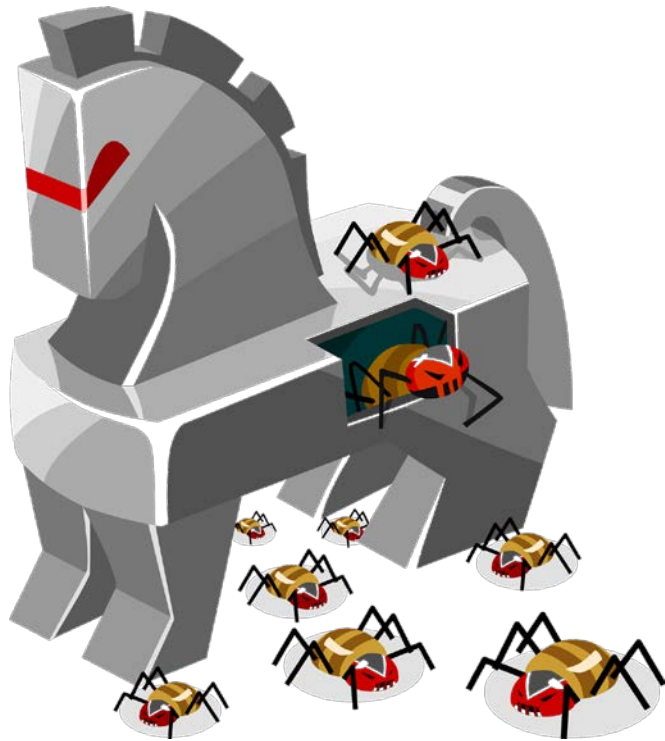


# Cybersecurity Act of 2015

- **We Have A New Cybersecurity Law!**
  - Included In Massive Government Omnibus Spending Bill, Signed By President On Dec. 18, 2015
  - Department Of Homeland Security Leads/But Shares With Other Federal Agencies
  - President May Appoint Another Federal Entity If Makes Appropriate Certification To Congress That Supplemental Agency Necessary
  - Protection From Liability If Act In Accordance With The Law



# Key Terms



- **“Cyber Threat Indicator”** – Info Necessary To Describe Or Identify:
  - Malicious Reconnaissance
  - A Method Of Defeating A Security Control Or Exploitation Of A Vulnerability
  - A Security Vulnerability
  - Malicious Cyber Command And Control
  - Certain Others Situations, Including “Any Other Attribute Of A Cybersecurity Threat.”
  
- **“Defensive Measure”** – An Action, Device, Procedure, Technique Or Other Measure Applied To An Info System/Info On An Info System That Detects, Prevents, Or Mitigates A Known Or Suspected Cybersecurity Threat Or Security Vulnerability

# Voluntary Process

- **There Is No Requirement To Share A Cyber Threat Indicator Or Defensive Measure**
  - Voluntary Process:
    - Specifically, Federal Entities Cannot Require Private Entities To Provide Info.
    - Can't Condition Federal Grants, Contracts, On Provision Of Cyber Threat Indicators.
    - No Liability For Non-participation.



# Key Provisions I – Sharing Info with Federal Government

- Requires Dir. Of National Intelligence, Sec. Of Homeland Security, Sec. Of Defense, And The Attorney General, In Consultation With Heads Of Appropriate Federal Entities To Issue Procedures To Promote:
  - Sharing Of Cyber Threat Indicators And Defensive Measures
  - Periodic Sharing Through Outreach Of Cybersecurity Best Practices



- Procedures Should Ensure That Federal Government Has Capability To Share Cyber Threat Indicators And Defensive Measures In Real Time.
- Federal Entities Must Review and Remove Any Information Not Directly Related To A Cybersecurity Threat That Is Known To Be Personal Information.
- Include Procedures For Notifying Any U.S. Person Whose Personal Information Has Been Shared By A Federal Entity (In Violation Of Requirement Not To Share).



## Key Provisions II – Sharing Info with Private Companies



- Private Companies May Share With, Or Receive From, Any Other Non-Federal Entity Or The Federal Government A “Cyber Threat Indicator Or Defensive Measure.”
- Required To “Utilize A Security Control To Protect Against Unauthorized Access To Or Acquisition Of Such Cyber Threat Indicator Or Defensive Measure.”
- **Prior To Sharing** – Should Remove Any Personal Information Or Other Information That Identifies A Specific Individual
- **Antitrust Exemption** - Allows Two Or More Private Entities To Exchange Private Cyber Threat Indicator Or Defensive Measure Or Provide Assistance Relating To Prevention/Investigation/Mitigation Of A Cybersecurity Threat.



# Key Provisions III – Disclosures and Further Proceedings

- **Disclosures Limited**

- Solely For Cybersecurity Purposes:

- Of Identifying A Cybersecurity Threat/Vulnerability, Including The Source Of Such Threat;
    - Of Responding To, Preventing, Or Mitigating A Specific Threat Of Death, Serious Bodily Harm, Serious Economic Hard, Including Terrorist Act Or Use Of A Weapon Of Mass Destruction;
    - Of Responding To, Investigating, Prosecuting Or Otherwise Preventing/Mitigating A Serious Threat To A Minor; Or
    - Of Preventing, Investigating, Disrupting, Or Prosecuting An Offense Arising Out Of Certain Threats Including Fraud And Identify Theft.

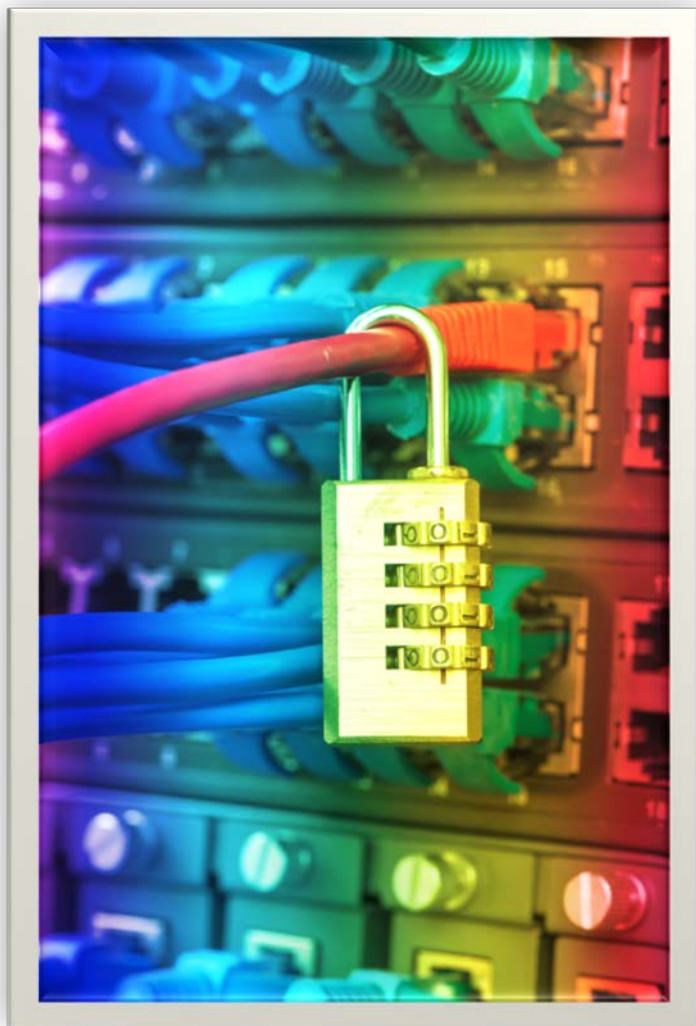
- **Further Proceedings**

- Certain Interim And Final Policies (60/180 Days).
  - Guidelines Required To Limit Effect On Private Individuals And Civil Liberties By Federal Government.





# Key Provisions IV – Protections, Regulations & Congress



- **Key Protections**
  - No Waiver Of Privilege, Including Trade Secret Protection.
  - Cyber Threat Indicator Or Defensive Measure Provided To The Federal Government = Commercial, Financial And Proprietary Info When So Designated.
  - Exempt From FOIA-Type Laws.
- **Increased Federal Agency Cybersecurity Regulations**
- **Congress Funding Cybersecurity**
  - National Institute Of Standards And Technology – Cybersecurity Research Fully Funded Including \$31.5 Million For Expanded National Cybersecurity Center Of Excellence



# Other Recent Initiatives

- **FTC – Settled Wyndham Lawsuit**
  - Requires:
    - Wyndham Obtain Annual Security Audits
    - In The Event Wyndham Suffers Another Large Data Breach, Must Obtain An Assessment Of The Breach
- **CFTC – Proposed Amendments To Existing Cybersecurity Regulations**
  - Includes 5 Types Of Essential Testing:
    - Vulnerability
    - Penetration
    - Controls
    - Security Incident Response Plan Testing
    - Enterprise Technology Risk Assessment
- **FDA– Mobile Health Security – Concerns With Hacking Of Devices**
  - 2014- FDA Guidance Recommends That Device Companies Submit Documentation About Risks Identified And Controls In Place To Mitigate Cybersecurity Risks
  - Another Workshop On Cybersecurity Planned In January 2016
- **SEC– Cybersecurity Risk Disclosures For Public Companies**
  - Senate Bill Introduced To Mandate Disclosure Of Whether Any Member Of Board Is Cybersecurity Expert
- **NY Dept. of Financial Services – Potential New Regulations**
  - Wants To Coordinate With State And Federal Agencies.





Questions?  
Thank you!

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