Plenary Session 3: Accountability, Legal Enforcement & Roadmap of the Data Privacy Law

Legal Enforcement / Accountability

The CHAMBER Connects

Atty. Jeff E. Datingaling
CIPM (IAPP)


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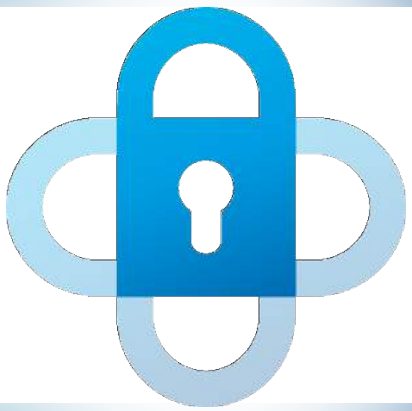
LAST CALL BREACHES

Personal data breach



Security incident

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TYPES

Availability Breach

Due **to loss or accidental and unlawful destruction** of personal data

Integrity Breach

Due to **alteration** of personal data

Confidentiality Breach

Due to **unauthorized disclosure of or access** to personal data

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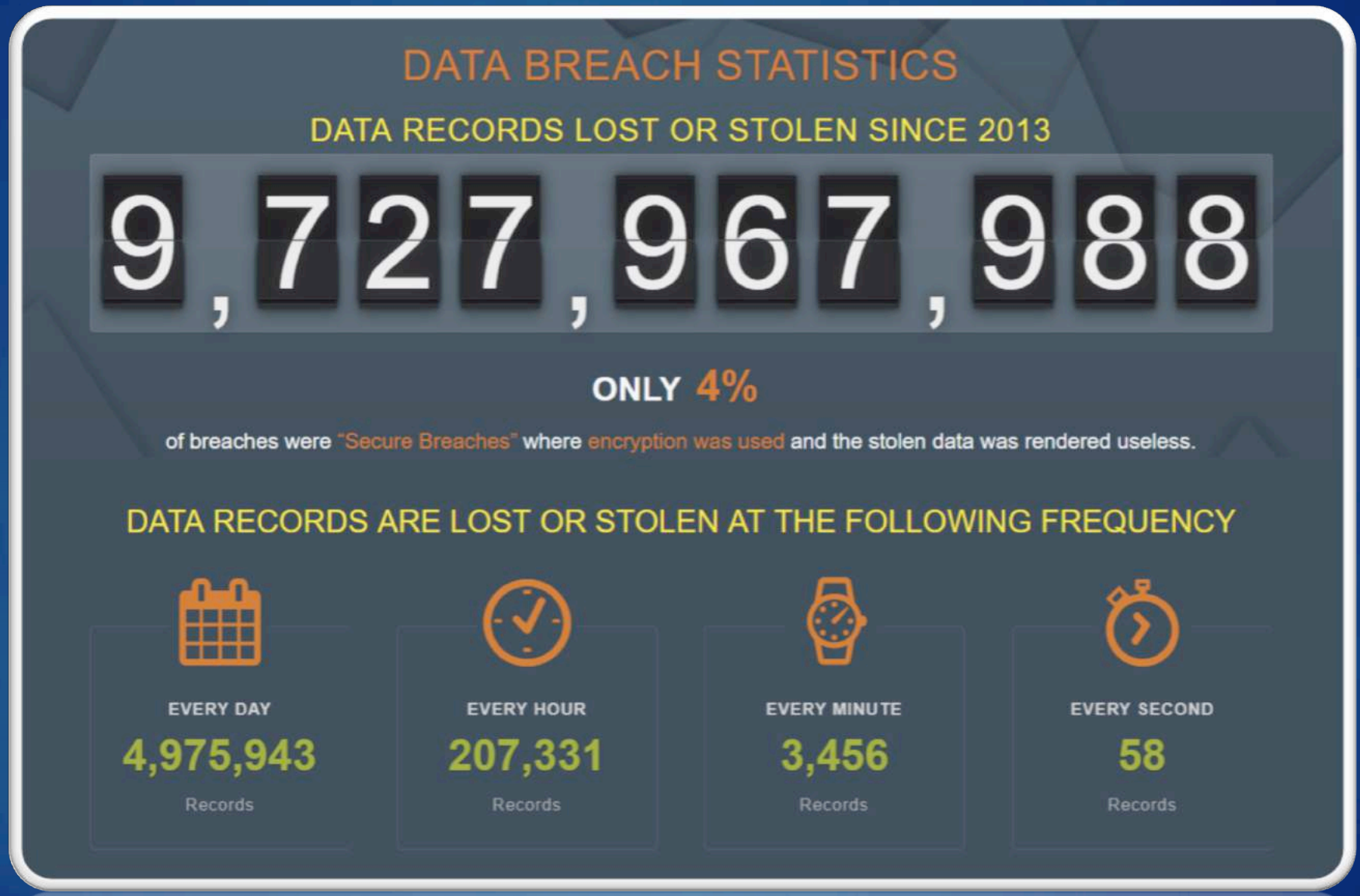

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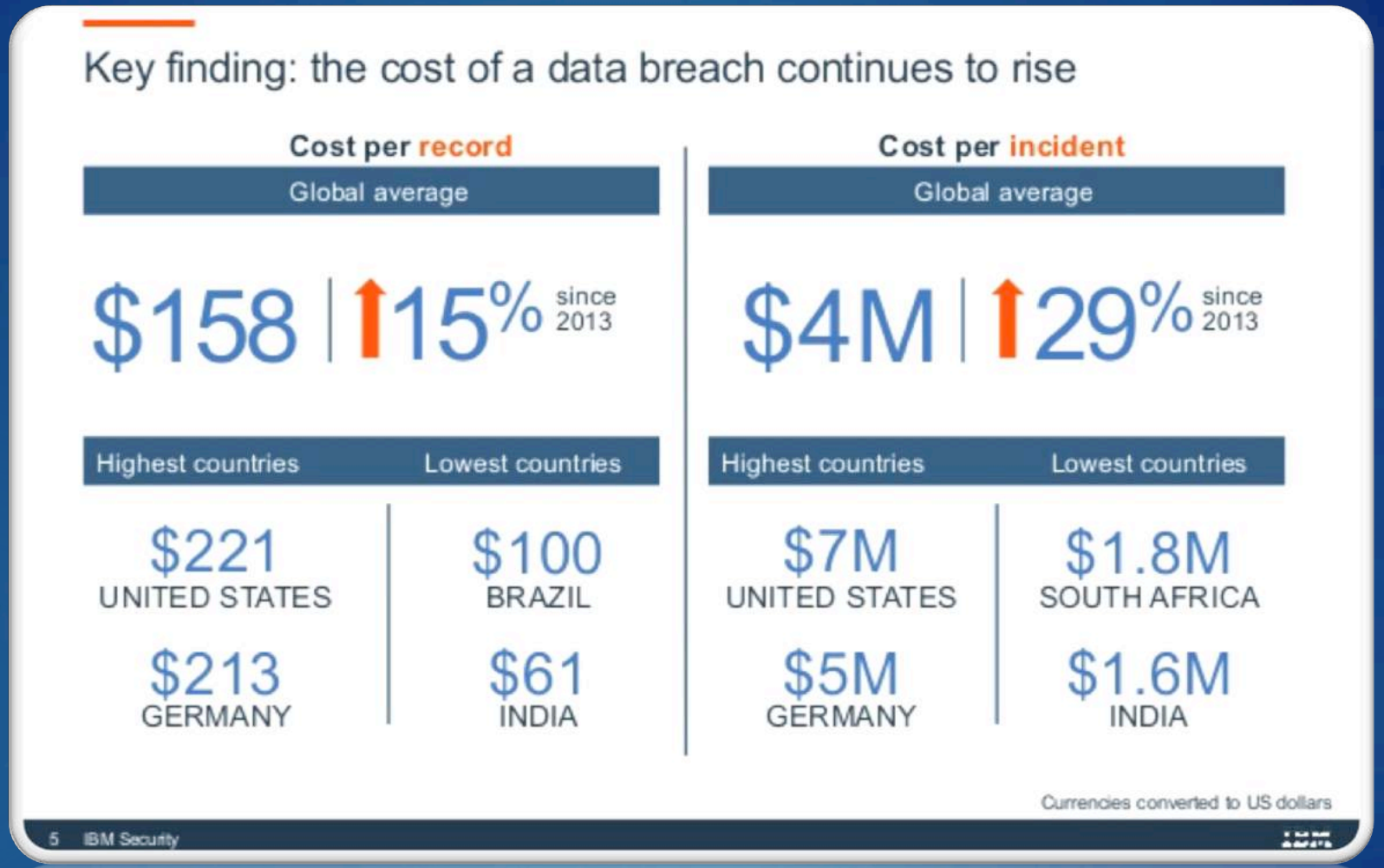
Source: https://breachlevelindex.com/



Source: IBM Security
https://www.slideshare.net/ibmsecurity/the-2016-ponemon-cost-of-a-data-breach-study

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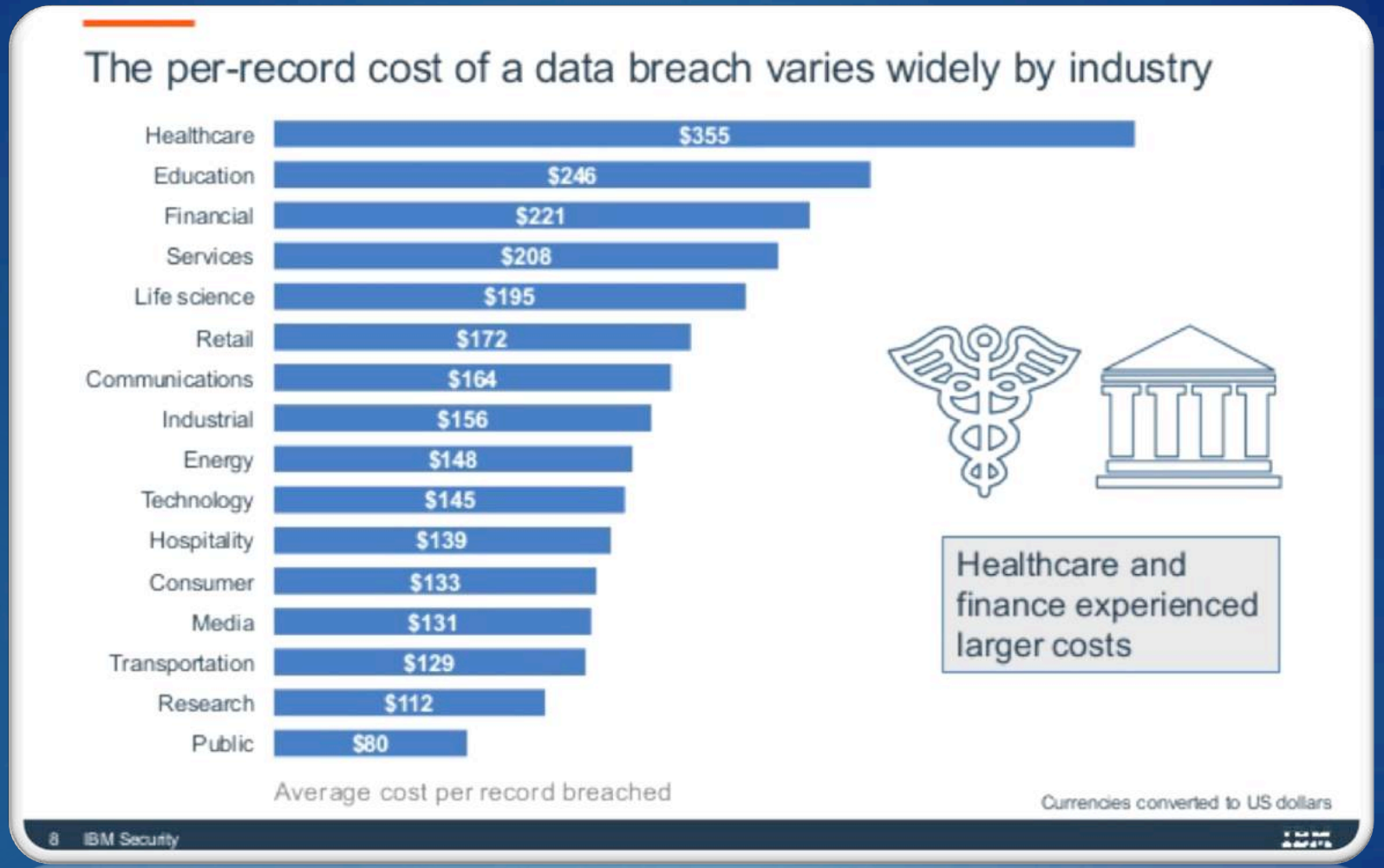

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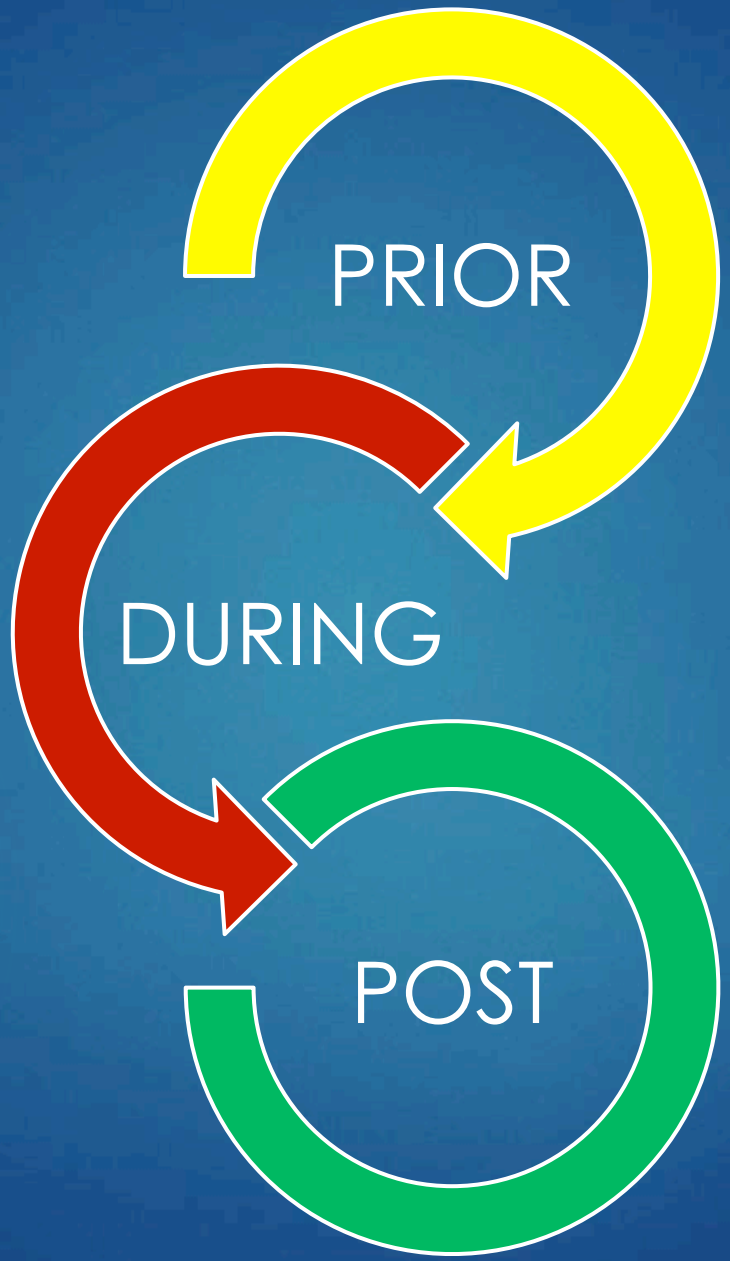
Source: https://breachlevelindex.com/

Beauty and the Breach

HOW TO MANAGE BREACHES



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SECURITY INCIDENT MANAGEMENT POLICY

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https://goo.gl/images/XVdHBf

The data breach response team must have at least one member with the authority to make **immediate decisions on critical actions**.

The team shall be responsible for:

- Compliance with the security incident management policy
- Management of security incidents and personal data breaches
- Compliance with the data privacy law and other issuances

**This may be outsourced by the Personal Information Controller or Processor*

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PROTECT DATA SUBJECTS

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1. Conduct a **privacy impact assessment**
2. Have a working **data governance policy**
3. Implement **security measures**
4. Make sure personnel are **trained**
5. Regularly **review policies and procedures**
6. Be **aware** of threats

BEST PRACTICES

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https://goo.gl/images/fPRgK2

Breached?

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Notification of a data breach is **mandatory** when:

1. Data involves a. sensitive personal information or b. any other information that may be used to enable identity fraud.
2. There is reason to believe that the information may have been acquired by an unauthorized person; and
3. Gives rise to a real risk of serious harm to any affected data subject.

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WHO SHOULD NOTIFY?

The **Personal Information Controller** through the data breach response team.

Note: The obligation to notify remains with the Personal Information Controller even if the processing of information is outsourced or subcontracted to a Personal Information Processor.

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WHEN SHOULD NOTIFY?

The notification must be made within 72 hours upon knowledge of, or when there is reasonable belief that a personal data breach has occurred.

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WHO SHOULD BE NOTIFIED?

Notification must be made to the Commission and to any affected data subjects.

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HOW?

Notification to the Commission may be done through e-mail at complaints@privacy.gov.ph or through delivering a hard copy to the NPC office.

Upon receipt of the notification, the Commission shall send a confirmation message/e-mail to the Personal Information Controller.

A report is not deemed filed without confirmation.A read receipt report is not sufficient confirmation.

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HOW?

Notification may be made on the basis of available information within the 72-hour period if the personal data breach is likely to give rise to a real risk to the rights and freedoms of data subjects.

May be supplemented with additional information at a later stage on the basis of further investigation.

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HOW?

Notification to affected data subjects may be done electronically or in written form, but must be done individually.

The notification must not involve a further, unnecessary disclosure of personal data.

If individual notice takes disproportional effort, NPC authorization is required for alternative means.

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CONTENTS

- Nature of the Breach
  - Description of how the breach occurred and the vulnerability of the data processing system that allowed the breach
  - Chronology of the events leading up to the loss of control over the personal data
  - Approximate number of data subjects or records involved
  - Description or nature of the personal data breach
  - Description of the likely consequences of the personal data breach
  - Name and contact details of the data protection or compliance officer or any other accountable persons.

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CONTENTS

- Personal Data Possibly Involved
  - Description of sensitive personal information involved
  - Description of other information involved that may be used to enable identity fraud

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CONTENTS

- Remedial Measures to Address Breach
  - Description of the measures taken or proposed to be taken to address the breach
  - Actions being taken to secure or recover the personal data that were compromised
  - Actions performed or proposed to mitigate possible harm or negative consequences, and limit the damage or distress to those affected by the incident
  - Action being taken to inform the data subjects affected by the incident, or reasons for any delay in the notification
  - The measures being taken to prevent a recurrence of the incident.
  - Contact information or website containing information on how to mitigate damage arising from the data breach

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DELAY

Can’t make the 72-hour deadline?
Ask the NPC for an extension.

The NPC can also exempt you from data subject notification if notification is not in the public interest; or in the best interest of the data subjects.

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FULL REPORT

The full report of the personal data breach must be submitted within **five (5) days**, unless the Personal Information Controller is granted additional time by the Commission to comply.

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CONCEALMENT

An intention to conceal is presumed if the Commission does not receive notification from the personal information controller within five (5) days from knowledge of or upon a reasonable belief that a security breach occurred.

Concealment is a crime!

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SECURITY INCIDENT REPORT

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ANNUAL REPORT

DEADLINE: **JUNE 30, 2018**

NOT AS COMPREHENSIVE AS A DATA BREACH NOTIFICATION

CONTAINS SECURITY INCIDENTS INCLUDING DATA BREACHES

DATA BREACHES MUST INCLUDE ALL REQUIRED INFOR UNDER THE NOTIFICATION REQUIREMENTS

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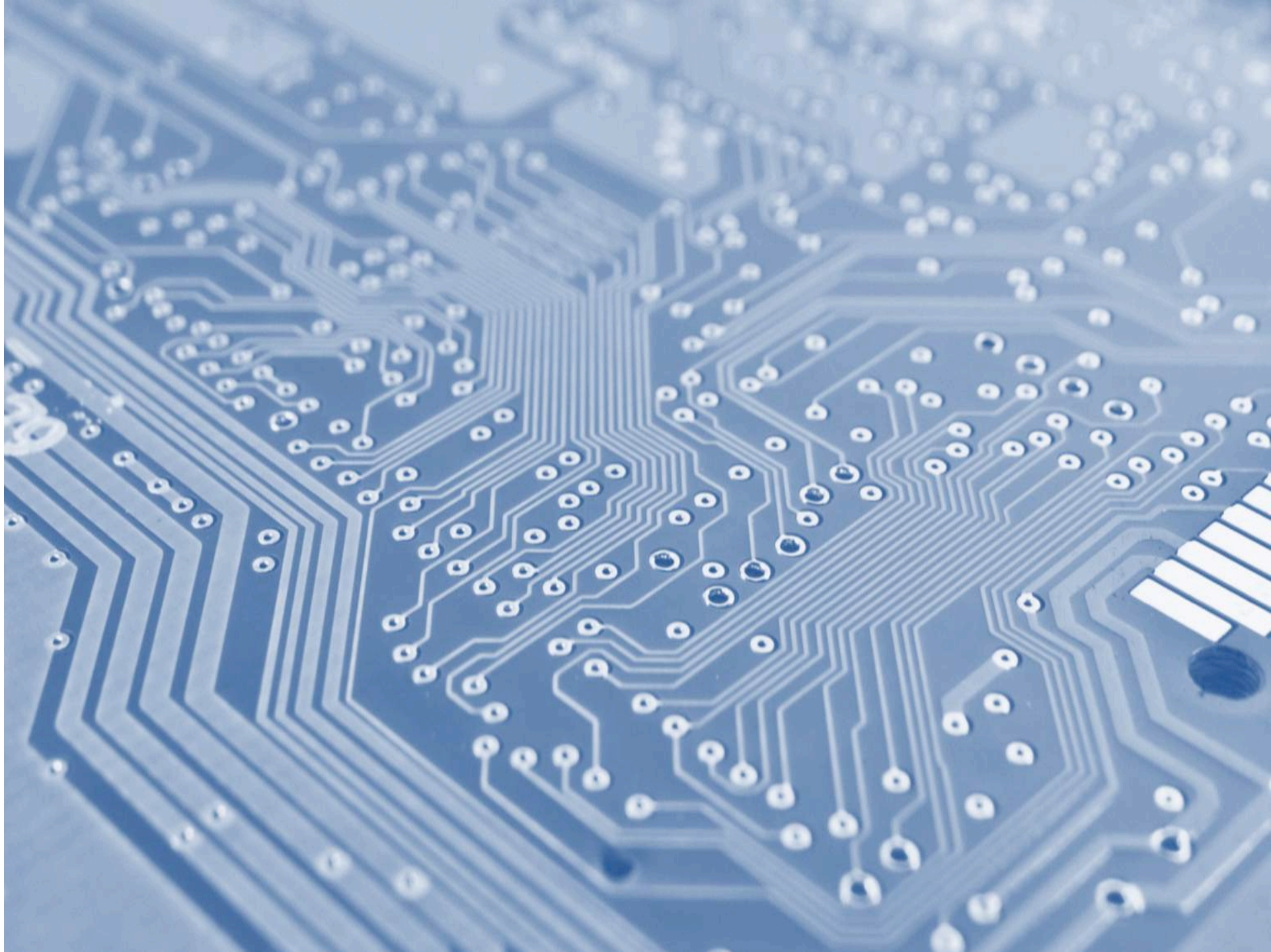
ENFORCEMENT



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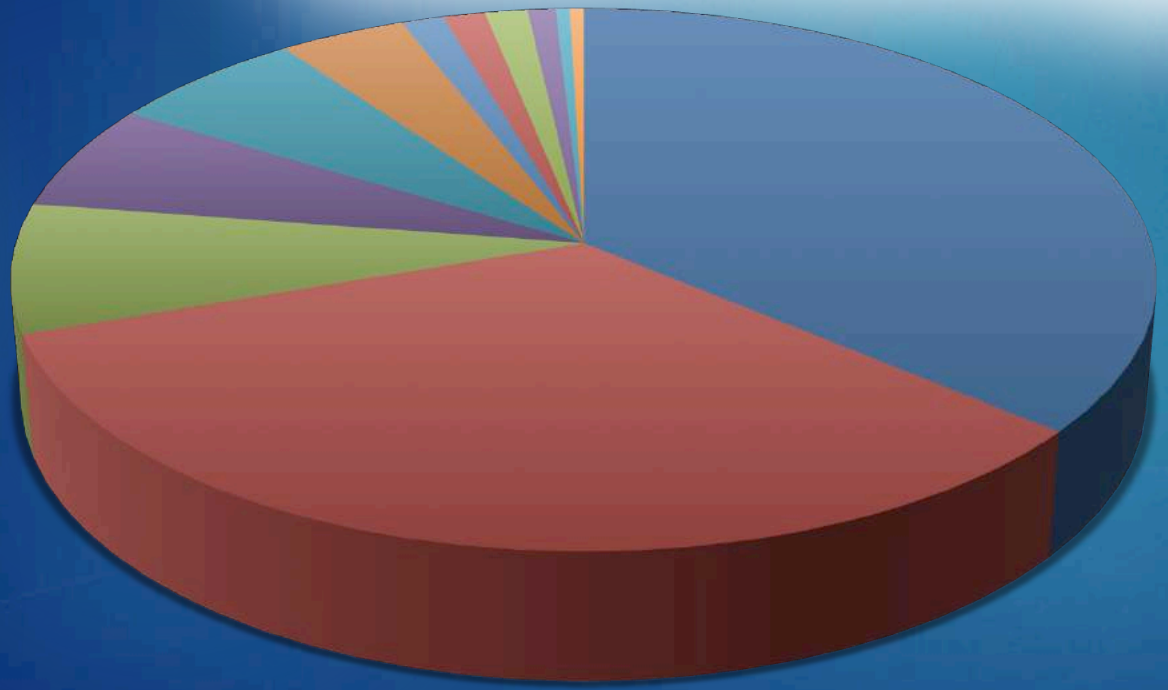
221 Complaints



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CRIMES

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CRIMES

7 years IMPRISONMENT
95,000 USD Max Fine
ADMINISTRATIVE FINES NOT YET INCLUDE

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FIRST CONVICTIO

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STOP PROCESSING ORDERS.

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Cross-border enforcement

CPEA APEC Cross-B
Enforcemer

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REMINDERS

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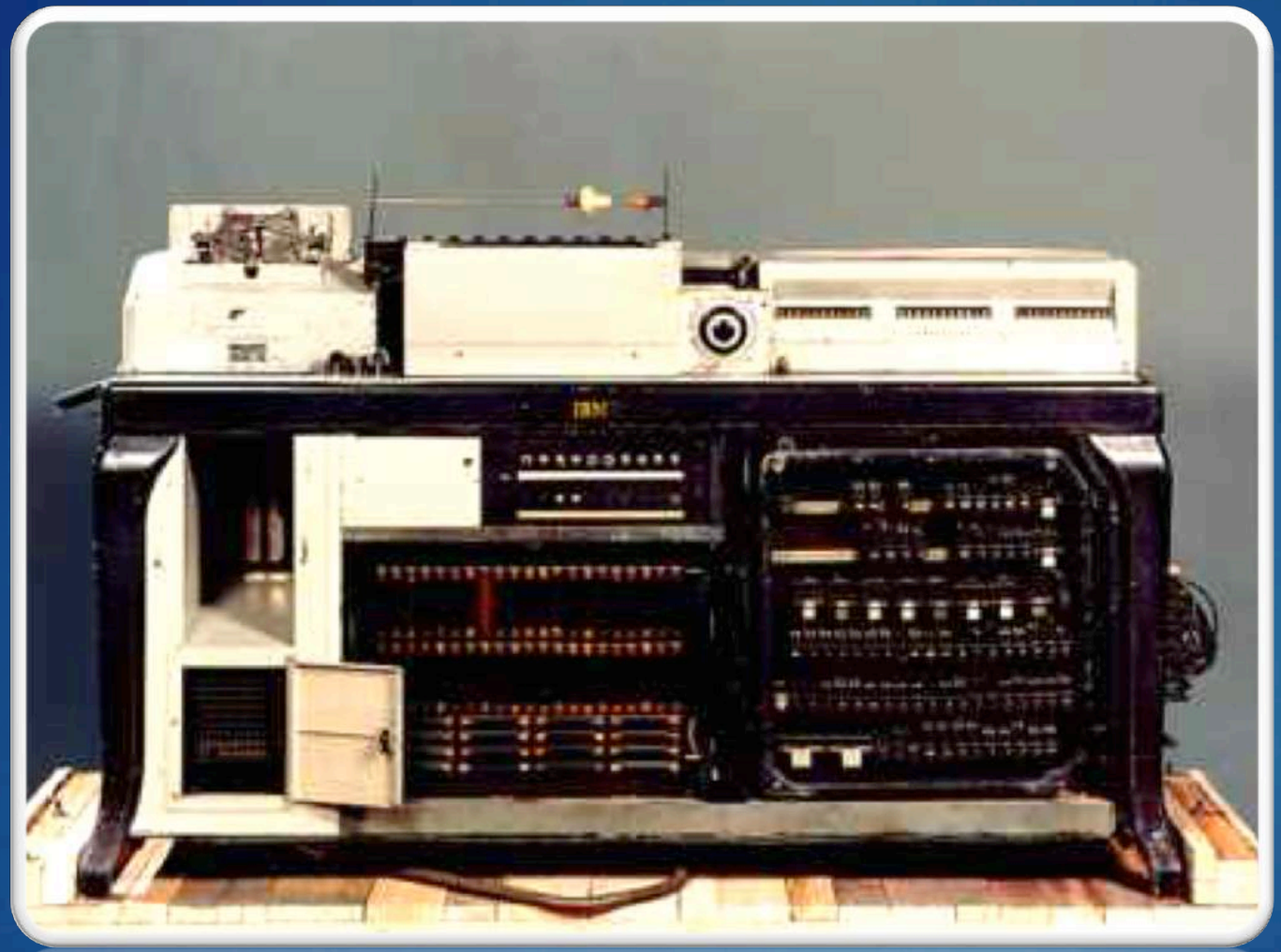

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SAVING PRIVACY