What Are the Legal Issues for Private Sector Cooperation with Law Enforcement on Cybercrime Enforcement?

- Security breach disclosure
  - Obligations to disclose
  - Other reasons to disclose
  - Reasons not to disclose
- Security breach liability
  - Bases of liability
  - Practical risks
- Practical issues for private sector / law enforcement cooperation
Maury Shenk Bio

- 17 years at global law firm Steptoe & Johnson
  - London managing partner 2002-2006
  - Currently advisor to the firm

- Managing Director of Lily Innovation Advisors
  - Consulting firm handling legal, business and financing issues for technology companies
  - Raising VC fund focused on UK technology companies

- Non-executive director
  - Golden Orb – secure voice communications
  - MMIC Solutions – millimeter wave equipment
  - European subsidiaries of Stratos – satellite communications

- Leader of SANS Institute European legal programme

- Graduate of Harvard College and Stanford Law School

- Speaks eight languages
Security Breach Incidents

- **Estonia attacks (2007)**
  - Effects across government and private organisations
  - Law enforcement role is central

- **Heartland Payment Systems (2008)**
  - Up to 100 million credit cards compromised
  - Disclosure required by law
  - Albert Gonzalez convicted in 2010 and sentenced to 20 years in prison

- **Google China attacks (2010)**
  - Appears that Google source code was accessed
  - Disclosure appears to have been a strategic choice by Google

- **Lost laptops and other devices (all the time)**
  - Extent of damage often unknown
  - Disclosure is the exception
Security Breach Disclosure

Disclosure obligations
- Required in most US states for unencrypted personal information breach
- Some European obligations – Norway, Germany
- EU Privacy and Electronic Communications Directive – disclosure of breaches by communications providers effective May 2011

Cooperation with law enforcement can have investigatory, enforcement and deterrence benefits

Reasons not to disclose
- Damage to reputation
- Liability and other costs
Security Breach Liability

- Statutory / regulatory liability
  - EU Data Protection Directive and Privacy and Electronic Communications Directive
  - US – Federal Trade Commission Act, state law

- Contracts
  - Security commitments are becoming industry standard
  - Customer pressures

- Tort – negligence or intentional harm
  - Civil codes and common law
  - Standard of reasonable behaviour is evolving