

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



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- 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



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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

