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Privacy Disputes and Data Breaches: Lessons for Dispute Resolvers

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Perth, 19 November 2015

About IIS

- Building trust and privacy through global thought leadership and consultancy work for a range of public and private organisations
- **Services:** privacy governance & strategy, privacy impact assessments and audits, regulator, customer & stakeholder engagement, strategic privacy advice, data breach recovery



Australian Government



Commonwealth Bank



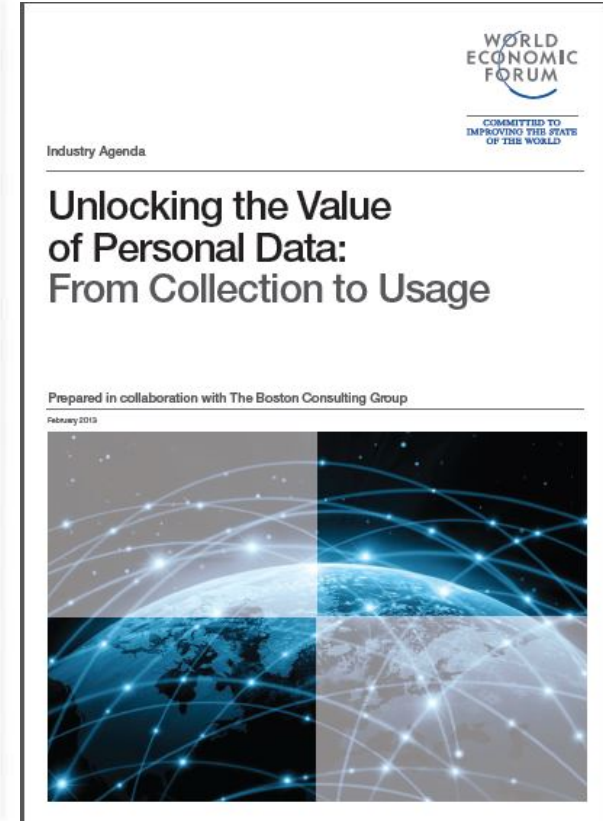
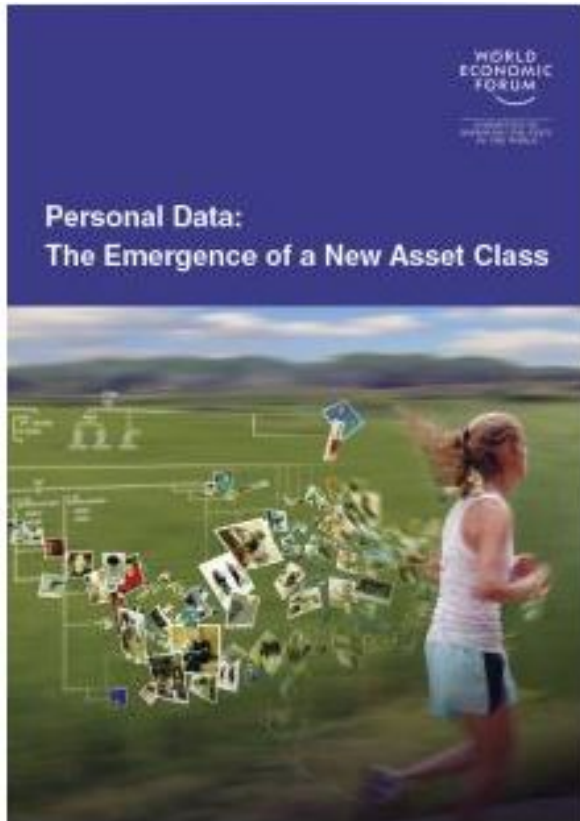
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Overview

- Landscape – information age
- Data as asset
- Strengthening of privacy regulation globally
- Data breaches – how are they caused and what's the cost?
- How to resolve and recover from a data breach
- Case study – Lessons for dispute resolvers
- Mandatory data breach notification legislation

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Landscape – information age



World Economic Forum Reports: www.weforum.org/issues/rethinking-personal-data

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Data as asset

Some day, on the corporate balance sheet, there will be an entry that reads, 'information'; for in most cases, the information is more valuable than the hardware that processes it."

Rear Admiral Grace Murray Hopper

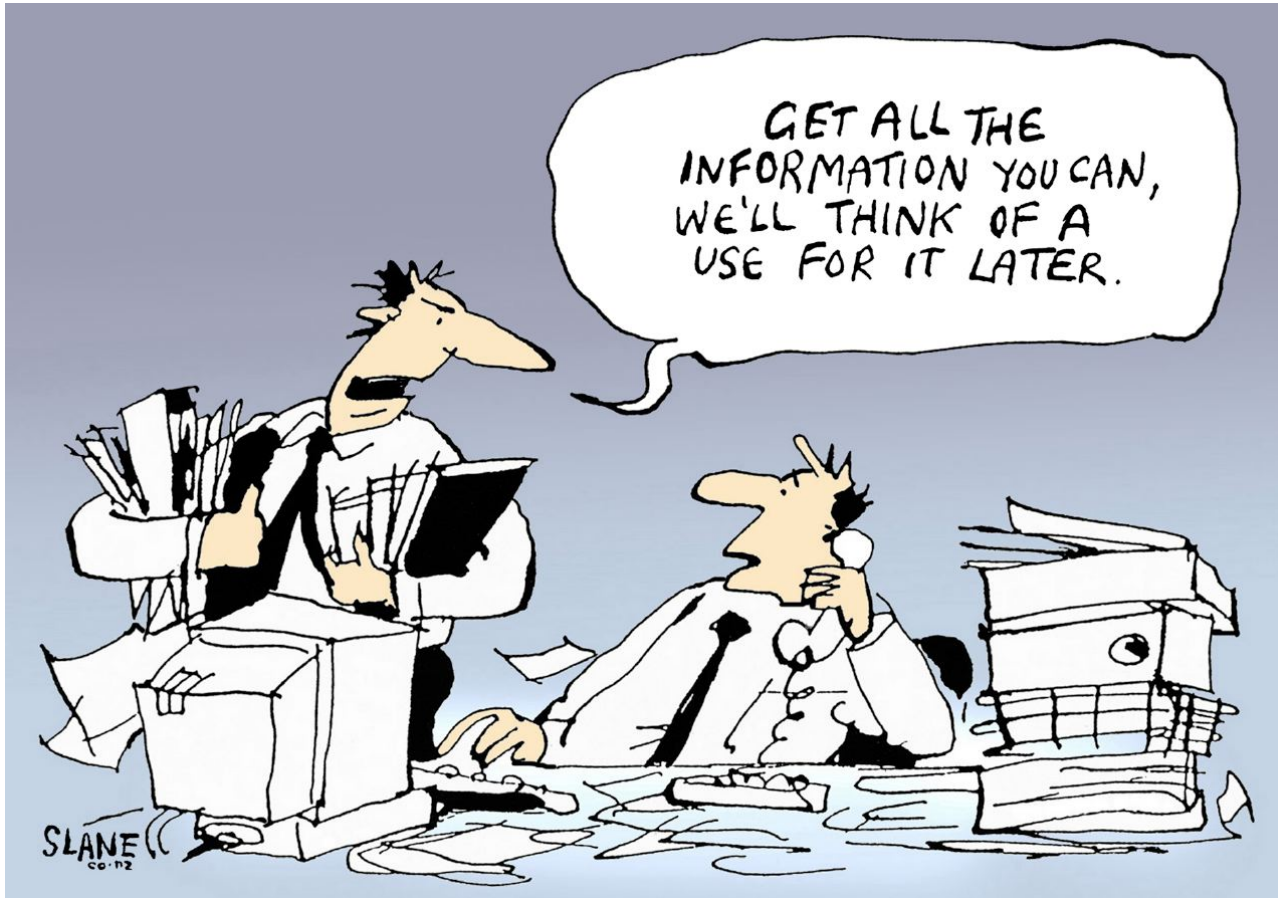
(American Computer programmer and Inventor of COBOL, 1906-1992)



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Data as liability

Short-sighted policies and practices increase privacy and security risks



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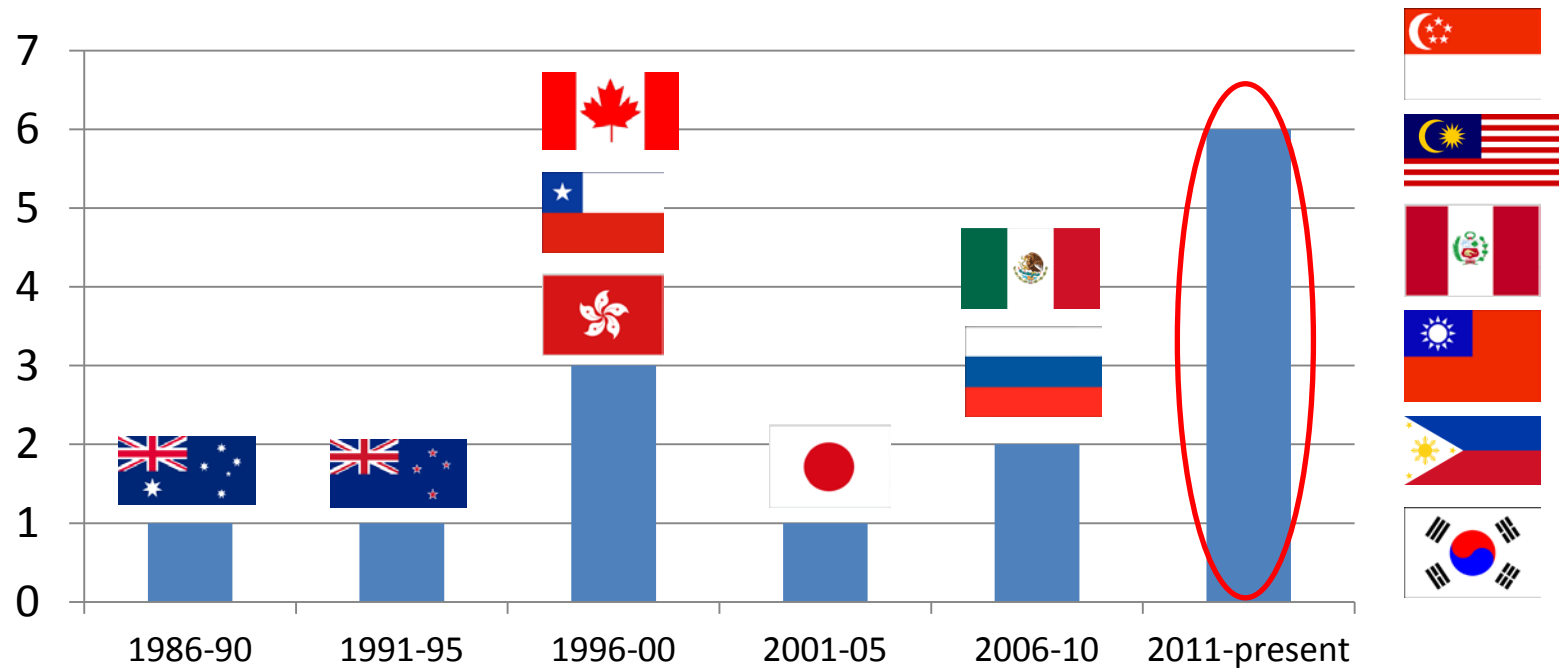
Privacy locally and globally

- **Australia** - amended Privacy Act commenced in March 2014 – significant enforcement powers
- **APEC** – 14 jurisdictions with privacy laws and Cross Border Privacy Rules system
- **USA** – sector based privacy legislation, invalidation of Safe Harbour
- **Africa and South America** – new laws
- **EU** – new regulation – one law for the entire EU

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Privacy in APEC

Rise of data privacy laws in the APEC region



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Data Breaches



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Data breaches are pervasive

RECORDS	DATE	ORGANIZATIONS
<u>220,000,000</u>	2014-08-22	Unknown Organization
<u>152,000,000</u>	2013-10-03	Adobe Systems, Inc.
<u>150,000,000</u>	2012-03-17	Shanghai Roadway D&B Marketing Services Co. Ltd
<u>145,000,000</u>	2014-05-21	eBay Inc.
<u>130,000,000</u>	2009-01-20	Heartland Payment Systems, Tower Federal Credit Union, Beverly National Bank, North Middlesex Savings Bank, Golden Chick
<u>110,000,000</u>	2013-12-18	Target Brands, Inc., Fazio Mechanical Services, Inc.
<u>109,000,000</u>	2014-09-02	Home Depot, Unknown Organization
<u>104,000,000</u>	2014-01-20	Korea Credit Bureau, NH Nonghyup Card, Lotte Card, KB Kookmin Card
<u>94,000,000</u>	2007-01-17	TJX Companies Inc.
<u>90,000,000</u>	1984-06-01	TRW, Sears Roebuck

Source: Largest Incidents: <http://datalossdb.org/>

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29 Adobe Breach Impacted At Least 38 Million Users

OCT 13



The recent data breach at **Adobe** that exposed user account information and prompted a flurry of password reset emails impacted at least 38 million users, the company now says. It also appears that the already massive source code leak at Adobe is broadening to include the company's **Photoshop** family of graphical design products.

Optus admits to three big data breaches

By Allie Coyne
Mar 27 2015
10:51AM



More than 300,000 customers affected.

Optus has admitted to three data breaches affecting more than 300,000 customers and promised the Australian Privacy Commissioner it will complete an independent review of its IT security systems and implement any recommendations.

Privacy Commissioner Timothy Pilgrim commenced an investigation into the security breaches in July last year after Optus voluntarily notified Pilgrim of the three incidents.



Australian Immigration Department in World Leaders' Security Breach

15 April 2015

For concise and recent immigration information [wa](#)

The personal details of world leaders including Cameron, Merkel, Modi, Obama and Putin, were accidentally sent to Asian Cup football tournament organisers. Despite the security breach, the [Australian Immigration](#) Department did not deem it necessary to inform world leaders of the incident.

In an exclusive report published by the Guardian newspaper, it was revealed that an employee of Australia's immigration agency sent passport numbers, visa details and other personal information of all the world leaders attending the G20 summit in Brisbane on November 7, 2014, to Asian Cup organisers.

By Paris Cowan
Jun 25 2014
11:12AM



Cupid Media found culpable password data breach

Passwords stored as plain text.

Australian online dating operator Cupid Media breached the Privacy Act last year when its lax security provisions were exploited by hackers and the personal details of up to 254,000 of its customers stolen, the Privacy Commissioner has found.

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Causes of data breach

Malicious or criminal attack - includes from insiders (43%)

- Hackers or criminal insiders (employees, contractors, cloud providers, business partners) typically cause the data breach
- Malware, phishing scams
- SQL injection

Human error - negligence (30%)

- Negligent employee or contractor
- IT and business process failures

System glitch (26%)

(Based on data breaches experienced by 23 Australian companies within 11 industry sectors in 2014 – Cost of Data Breach Study: Australia, Ponemon Institute LLC (sponsor IBM), May 2015)

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Cost of a data breach

- The average total cost per data breach in Australian organisations rose to \$2.82 million in 2014
- Having a data breach caused by a third party mistake cost on average 13% more per compromised record
- Malicious and criminal attacks are the main cause and are also the most expensive, at \$165 per record
- Organisations with extensive use of encryption reduced cost of data breach by on average 11% per record

(2014 – Cost of Data Breach Study: Australia, Ponemon Institute LLC (sponsor IBM), May 2015)

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Cost of a data breach

Two highest cost categories:

- **Direct costs** - Investigations/forensics (31% of cost); and
- **Indirect costs** – Reputation damage – (36% of cost) Includes - lost customer business (27%) and customer acquisition costs (9%)
- Other costs – audit and consulting, contact centres, legal services (defence & compliance)

Case Study

It is 5pm, 24 Dec 2014 when we get the call...

- Medium-sized insurance company hacked
- No data breach response in place – what to do?
- External team of experts assembled
- Multiple stakeholders to manage
- Subjected to media claims that hundreds of thousands of records compromised
- Our objective: Help client do the right thing by affected individuals while safeguarding our client's financial and reputational standing

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Case Study - continued

Team works closely over the next three weeks...

- Forensics – contain and determine what happened
- Business monitoring – sales volumes and customer complaints
- Media strategy reviewed daily
- Regulator and law enforcement engagement
- Outcome – only a handful of records actually compromised as most data corrupted on exfiltration. Only 4 individuals affected – notified. Agent portals closed down and replaced with a new platform. Comprehensive report to regulator. 6 months later regulator states does not intend to take any further action.

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Takeaway – Lessons for Dispute Resolvers

- Whilst prevention and detection important, just as critical if not more critical, is response
- Understand and respond to all stakeholder interests – whilst client interests are paramount – they are not the only player
- Get to the heart of the facts quickly – they may not be what they initially seem
- Keep regulators involved – they don't like to be ambushed by the press any more than the client

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What data breach response plans are in place?

1. Contain the breach and do a preliminary assessment
2. Appoint lead person to manage response team (internal or external)
3. Evaluate the risks associated with the breach
4. Consider breach notification
5. Review the incident and take action to prevent future breaches

Mandatory data breach notification legislation

- Many jurisdictions have mandatory data breach notification (USA, Europe, Colombia, Mexico, Philippines, Russia, South Africa, South Korea etc)
- Several bills have been put before Australian Parliament over the last few years
- When the Meta data retention bill was passed – Government agreed to implement mandatory data breach notification law by the end of this year
- Government now in discussions...Watch this space...

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Conclusion

- Privacy disputes and challenges increasing
 - Data protection regulation strengthening
 - Data breach is expensive
 - Prevention is better than cure, but expect a data breach to happen, so plan for it with clients
 - Detect and mitigate
 - Responding to a data breach – data breach response plan, learn from case studies, insurance
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Further Information

- Case study – Successfully navigating a data breach, Information Integrity Solutions Pty Ltd, October 2015,
<http://www.iispartners.com/downloads/IISDataBreachCaseStudy.pdf>
- Guide to developing a data breach response plan, Consultation Draft, October 2015
<https://www.oaic.gov.au/engage-with-us/consultations/guide-to-developing-a-data-breach-response-plan/>
- Data breach notification guide - A guide to handling personal information security breaches, Office of the Australian Information Commissioner, August 2014
<http://www.oaic.gov.au/images/documents/privacy/privacy-resources/privacy-guides/data-breach-notification-guide-august-2014.pdf>
- 2015 Cost of Data Breach Study: Australia, Ponemon Institute LLC (sponsor IBM), May 2015
<http://www-03.ibm.com/security/data-breach/>

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Questions?

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