Legally Defensible, Proactively Protected

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GEMINI SECURITY SOLUTIONS

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“Just the Facts”

- Not if, but when
- Mounting legal costs
- Increasing regulatory burden

SECURITY PROS WILL HAVE TO DEFEND THEIR DECISIONS IN A FOREIGN REALM: THE LEGAL WORLD

The Gap is Acute

- Collision of the legal and information security worlds
- More regulations, more lawsuits, more contract obligations
- Making decisions that have legal implications and interpreting legal requirements
- Conversation is lacking or non-existent

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RESULT:

INCREASED LEGAL RISK FOR ORGANIZATIONS!

Multiple Legal Regimes

- State, Federal, International (e.g. E.U.)
  - Evolving & Overlapping laws, jurisdictions
  - Regulator / private enforcement
- Contract law
- Tort law
- Securities law

Legal Defensibility

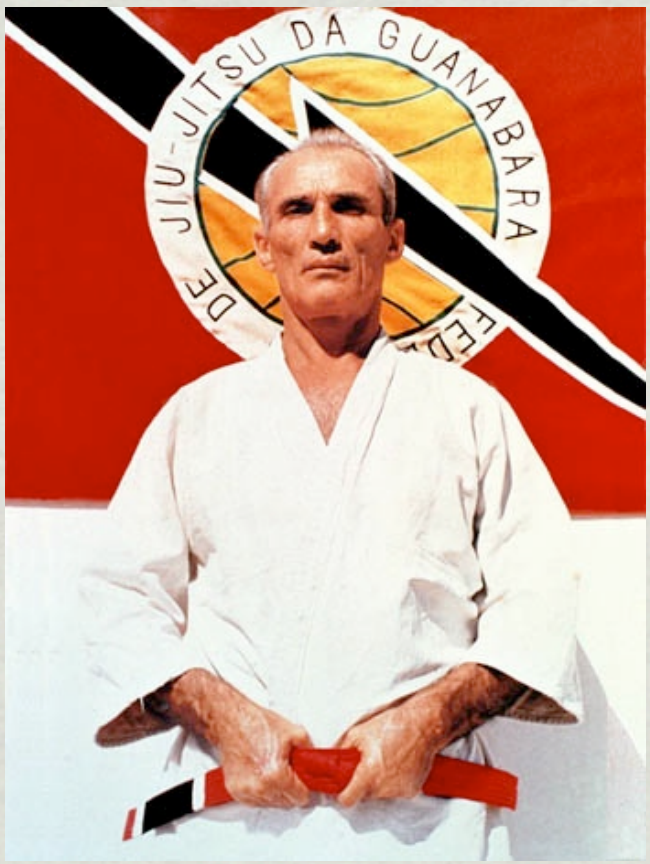
- Viewing requirements from an external legal perspective (plaintiff, judge, jury, regulator)
- Security choices become legal positions
- Security decision-making process with legal baked in
- The goal is to anticipate reasonably foreseeable (legal) consequences and reduce legal risks

Using Legal Defensibility...

- Key Attributes
- Real-World Examples
- Recommended Steps
- Action Plan

Sidebar: LegDef Origins

- Survivability
  - Defensibility
  - Recoverability
- Resilience
- How to codify?



Key Attributes

- Risk Management
  - Awareness, Understanding, Translation
    - Collaboration
      - Documentation of... decision-making processes... key infosec decisions with potential for legal impact.
        - Attorney-client privilege

Real-World Examples

- HHS: investigations v. actions
  http://www.hhs.gov/ocr/privacy/hipaa/enforcement/data/historicalnumbers.html#seventh
- Online banking
  - Shames-Yeakel v. Citizens Financial Bank
  - EMI v. Comerica
- Guin v. Brazos Higher Education Service Corp. Inc.

PCI Interpretative Variances

12.8 If cardholder data is **shared** with **service providers**, maintain and implement policies and procedures to manage service providers, to include the following:

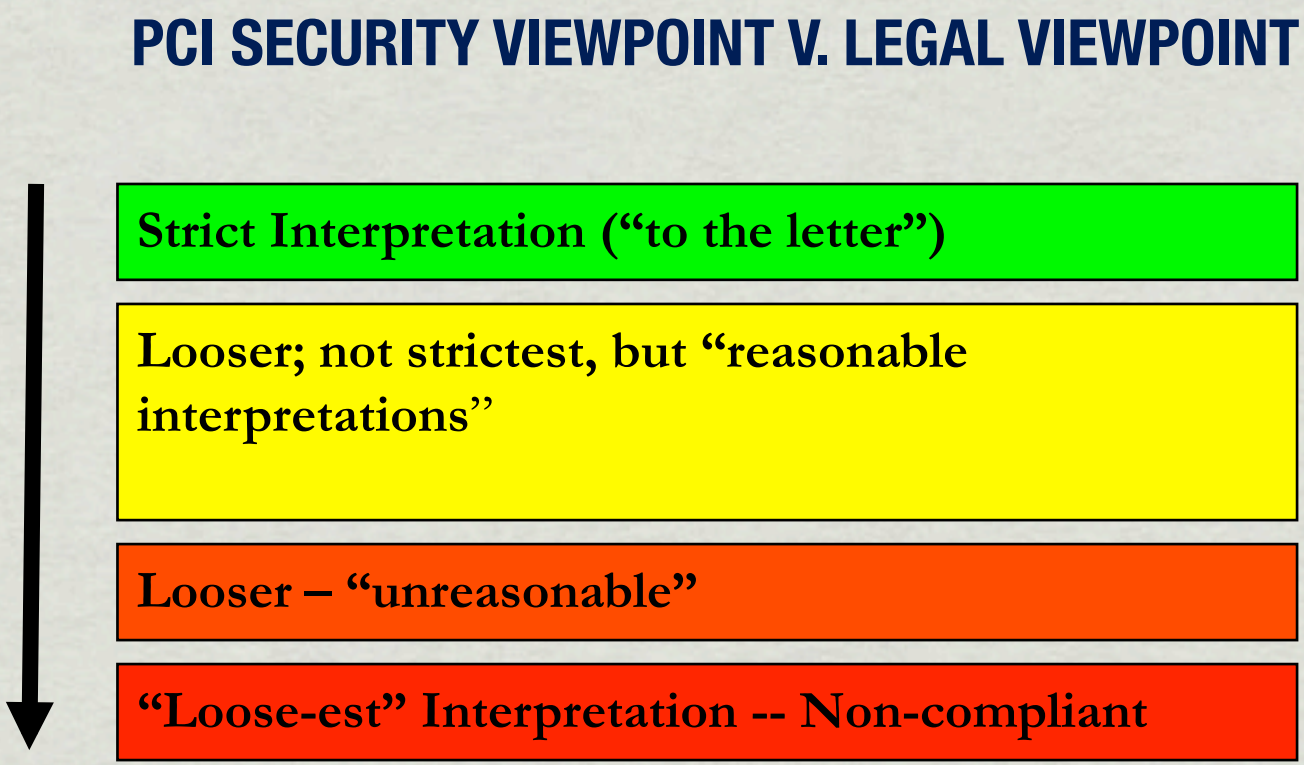
12.8.1 Maintain a list of service providers.

12.8.2 Maintain a **written agreement** that includes an acknowledgement that the service providers are **responsible for the security of cardholder data** the service providers possess.

12.8.3 Ensure there is an **established process** for engaging service providers including **proper due diligence** prior to engagement

12.8.4 Maintain a **program** to **monitor** service providers' PCI DSS compliance status.

Security v. Legal Viewpoint



Key Legal Issues

- “Reasonable” “Appropriate” “Comprehensive” “Adequate”
- Risk-based factors
  - Size, scope, type, complexity of organization
  - Nature and scope of activities
  - Resources of company
  - Sensitivity of data
  - Volume of data
- Third-party security assessments – matching risk tolerance

Key Legal Issues

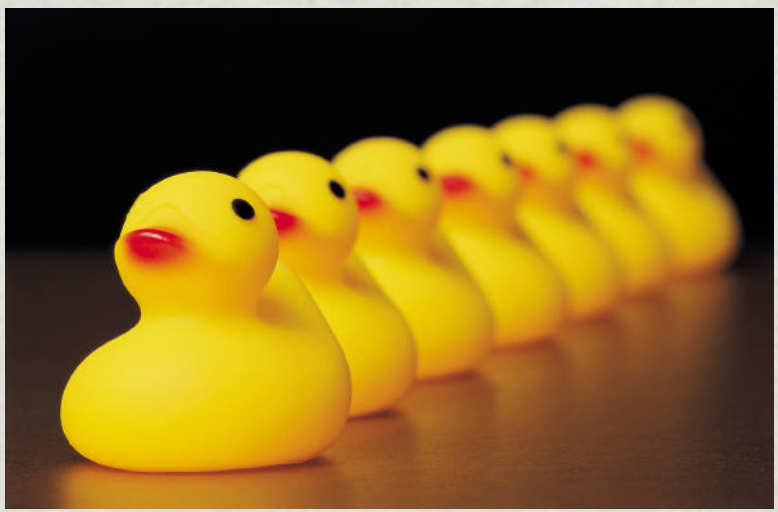
- What legal obligations?
- Interpretation by courts/regulators
- Foreseeability!
- Plaintiff attorney strategies
- Litigation strategy and procedure

Examples of Legal Obligations

- Security “standards” under the law
- Contract obligations
- Service providers and outsourcing
- Document retention and preservation

Indicia of Legal Compliance

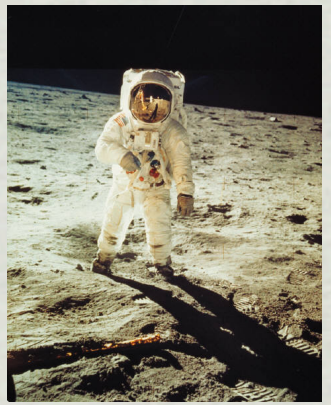
- Risk analysis and remediation
- Comply with own policies
- Misrepresentations
- Specific controls
- Vendor management
- Compliance with standards



Recommended Steps

- A champion arises!
- Find your allies
- Perform analysis
- Create your strategy
- Execute (w/ documentation!)

Action Plan



1. Hold key stakeholder meeting(s) and collaboration
2. Conduct information security legal audit
   - ★ What legal requirements apply?
   - ★ Do current security measures address those legal requirements?

Action Plan

3. Conduct legal defensibility analysis:

   - ★ Develop security decision process formally incorporating legal analysis
   - ★ Address areas of non-compliance
   - ★ Develop legal positions on high risk legal requirements
   - ★ Develop legal positions for “gray area” legal requirements

Action Plan

4. Memorialize positions and proof:

   - ★ Document indicia of legal compliance (e.g. identify standards compliant with, documentation of due diligence, etc.)
   - ★ Document applicable legal positions under attorney-client privilege

Q & A

THANK YOU!

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