

# Game Industry Roundtable

## *Privacy Developments for the Game Industry*

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September 24, 2008

Since January 2005 over 218 million data records of U.S. residents have been exposed due to security breaches.

Source: Privacy Rights Clearinghouse, [www.privacyrights.org](http://www.privacyrights.org)

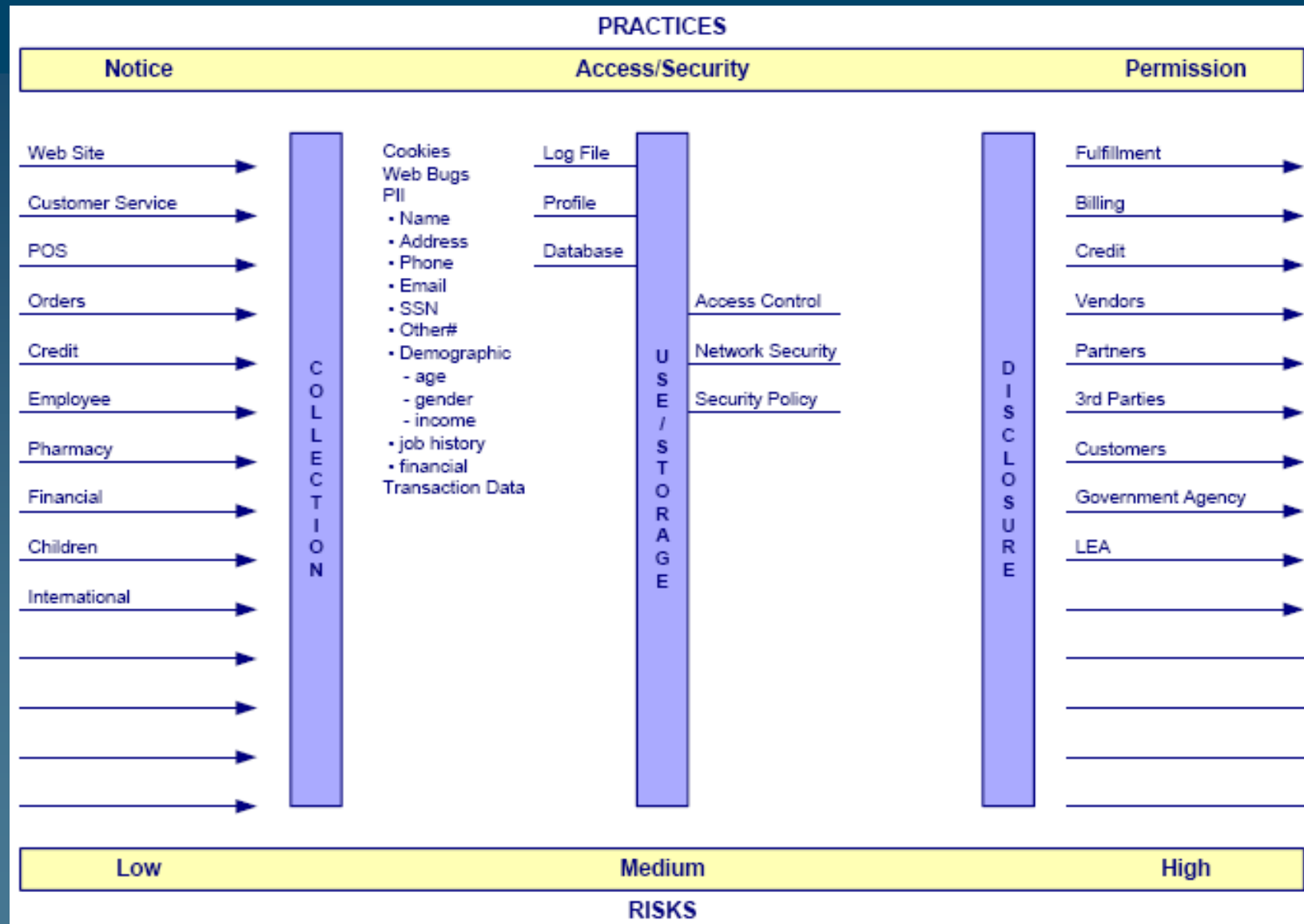
# What are the Costs?

- Ponemon Institute's 2007 Annual Study:  
U.S. Cost of a Data Breach
  - [pgp.com/downloads/research\\_reports/index.html](http://pgp.com/downloads/research_reports/index.html)

# What is the Legal Landscape?

- Regulatory and payment rules (FTC, breach notice laws, ECPA, PCI, GLB, etc.)
- Privacy policy
- Privacy framework—what is happening in the organization?

# Privacy Framework



# Retail Cases: Some Lessons Learned

- Protections are not just privacy policy based: BJs
- Merchants and financial institutions are not on the same side: TJ Maxx

# Preparation

- Breach response plan
- Contract strategies

# Minimum Contract Strategies:

*For third party sources of risk: data hosts, processors, advertisers, marketing partners, storage companies, etc.*

- Define and deal with "personal information"
- Due diligence
  - Past audits
  - Past breaches
  - Ongoing audits

# Minimum Contract Strategies

- Notice
  - Vendor shall immediately notify Retailer of any actual, probable or reasonably suspected breach of security of the Vendor Systems and of any other actual, probable or reasonably suspected unauthorized access to or acquisition, use, loss, destruction, compromise or disclosure of any Confidential Information of Retailer, including without limitation any Personal Information (each, a "Security Breach").

# Minimum Contract Strategies

- Cooperation

- In any notification to Retailer required under this Addendum, Vendor shall designate a single individual employed by Vendor who must be available to Retailer 24-hours per day, 7-days per week as a contact regarding Vendor's obligations under this Addendum. Vendor shall (a) assist Retailer in investigating, remedying and taking any other action Retailer deems necessary regarding any Security Breach and any dispute, inquiry or claim that concerns the Security Breach; and (b) shall provide Retailer with assurance satisfactory to Retailer that such Security Breach or potential Security Breach will not recur. Unless prohibited by an applicable statute or court order, Vendor shall also notify Retailer of any third-party legal process relating to any Security Breach, including, but not limited to, any legal process initiated by any governmental entity (foreign or domestic).

# Minimum Contract Strategies

- Standard of Care
  - Vendor is fully responsible for any authorized or unauthorized collection, storage, disclosure and use of, and access to, Personal Information.
  - Vendor shall implement and maintain administrative, physical and technical safeguards ("Safeguards") that prevent any collection, use or disclosure of, or access to, Personal Information that this Agreement does not expressly authorize, including, without limitation, an information security program that meets the highest standards of best industry practice to safeguard Personal Information.

# Minimum Contract Strategies

- Indemnity
  - Vendor will defend and indemnify Retailer, its parent, subsidiaries and affiliates, and each of their respective officers, shareholders, directors and employees from and against any third party claims, losses, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses) that relate to any failure to comply with any obligation enumerated in this (1) Agreement relating to Personal Information, or (2) this Addendum.
  - Which costs are covered?

# Minimum Contract Strategies

- Limitation on Liability
  - Vendors typically seek to exclude indirect and consequential damages. These damages are, however, precisely the type of damages that Retailer might incur from the disclosure, theft or destruction of data.
  - Therefore, seek to carve out (i) all damages arising from breaches of this Addendum and (ii) all indemnification obligations (or, if absolutely cannot get (ii), all indemnification obligations arising out of breaches of confidentiality or security provisions--i.e., all breaches of this Addendum).
  - Similarly, carve out (i) all damages arising from breaches of this Addendum and (ii) all indemnification obligations (or, if absolutely cannot get (ii), all indemnification obligations arising out of breaches of confidentiality or security provisions—i.e., all breaches of this Addendum) from the overall cap on damages.

# New Developments

- "Rebate" cards
- Loyalty programs
- eCommerce partners: Whose customer is it?

# Questions?

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