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PROFESSIONAL INDEMNITY FORUM CONFERENCE

CYBER LIABILITY

3 July 2012

By Andrew Horrocks and
Lisa Payne-Lawrey
Partners at Clyde & Co LLP

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- What is Cyber Liability?
  - It is a breach of an organisation's security systems by:
    - Human error – loss of client information by:
      - Fraud / identity theft
      - Insider action
      - Failures of IT security and systems
    - External attacks – hackers or even blackmail attempts

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- Types of Cyber Liability
  - Physical losses
  - Economic losses
  - Reputational damage
  - Civil liability
  - Regulatory liability
    - FSA
    - Data Protection Act

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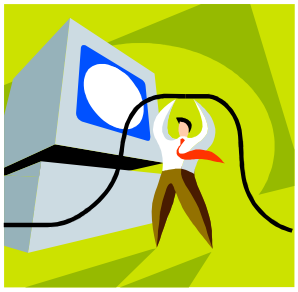
Data Protection Act 1998 (DPA)

- The jargon:
  - Personal data
  - Sensitive personal data
  - Data controllers / data processor
  - Data subjects



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Data Protection Act 1998 (DPA)

- Eight data protection principles:
  1. Processed fairly and lawfully
  2. Obtained only for specified lawful purposes
  3. Adequate, relevant and not excessive
  4. Accurate
  5. Not kept for longer than is necessary
  6. Processed in accordance with individual's rights
  7. Secure
  8. Not transferred to countries outside the EEA without adequate protection

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Data Protection Act 1998 (DPA)

- Sanctions and enforcement
  - Information Commissioner's Office (ICO)
  - Enforcement notices
  - Fines (up to £500,000)
  - Criminal offences
  - Civil claims
- Rights
  - Rights of access
  - Right to object to processing
- Notification to ICO?

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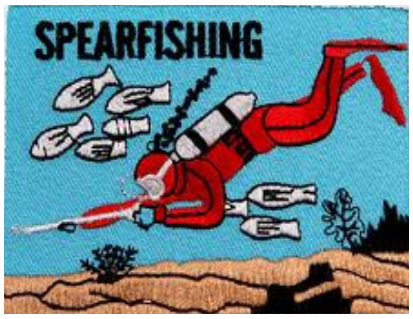
- Why are the risks associated with Cyber Liability expected to grow?
  - Technological advances
  - Growing threat of identity theft
  - Spear Phishing
  - The growing threat of extortion
  - The increase in Cloud Computing
  - The evolving Data Protection Laws



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USA data breach costs

USA data breach cost with mandatory client notification law (all costs in the chart below are in USD and are for cost per record breached)			
	2008	**2009**	**2010**
Detection and escalation	8	8	13
Notification	15	15	15
Response	39	46	51
Lost business	139	135	134
Total	**202**	**204**	**214**
Average cost to the organisation USD7.2m			

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UK data breach costs

UK data breach cost with voluntary client notification law (all costs in the chart below are in GBP and are for cost per record breached)			
	2008	**2009**	**2010**
Detection and escalation	11	12	18
Notification	3	7	15
Response	14	17	25
Lost business	32	29	45
Total	**60**	**65**	**103**
Average cost to the organisation GBP1.9m			

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- Aside from statistical evidence, why are cyber risks expected to increase?
  - Technological Advances
  - Identity Theft
    - The main causes of data theft:
      - 92% from external agents
      - 17% from business insiders
      - 1% from business partners
      - 9% involved multiple parties
    - The most common way in which data theft occurs is by hacking

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- The cost of global cyber crime last year was estimated to be US$388billion
- The cost of cyber crime in the UK is £27billion a year
- Cyber attack is placed as one of the four highest priority risks for the UK currently and over the next five years

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- Spear Phishing
- Extortion
- Cloud Computing

- The evolving laws on data protection and privacy

- The Draft European Regulation on Data Protection
  - Fines of up to 2 per cent of global annual worldwide turnover for companies and administrative sanctions of up to £1million for individuals
  - The "*right to be forgotten*"
  - Reporting and notification requirements
  - Private rights of action
  - Requires large businesses to appoint a Data Protection Officer
  - Applies to businesses – including those based outside the EU

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- Gaps in "traditional" insurance
  - E&O / GL – no first party cover
  - Crime / fidelity/theft – money / tangible assets
  - Terrorism – physical damage
  - Property / Business Interruption – damage to "property"

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BBC NEWS

Hackers claim they stole a million Sony passwords

SONY

- What first party losses does a typical Cyber Policy cover?
  - First party losses
    - Legal and professional costs
    - Notification costs
    - Loss of business
    - Computer virus/data software corruption costs
    - IT and forensic auditing
    - Crisis PR assistance and brand management

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LinkedIn


LinkedIn taken to court over 6 million stolen passwords

Published: 21 June, 2012, 23:11

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- What third party losses does a typical Cyber Policy cover?
  - Third party claims / civil liability
    - Data protection / privacy actions
    - Class actions?
    - Breach of confidentiality
    - Negligence liability e.g. professionals
    - Contract liability e.g. data processors, PCI

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Lost laptop leads to first Data Protection Act fine for UK firm

Current Issues (1)

- Fines and Penalties
  - FSA sanctions
  - ICO fines
    - s.55 Data Protection Act 1988
    - Safeway Stores Ltd v Twigger (2010) CA
    - Griffin v Hacker Young (2010)

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BP loses laptop containing personal data of oil spill claimants

BP sends letters to 13,000 Louisiana residents whose data was stored on computer, notifying them of potential security breach

Current Issues (2)

- Reputational Risk
  - PR costs
  - Loss of goodwill
  - Damage to brand
  - Revenue / share price?

Shoppers' details stolen by TK Maxx hackers

- Where next?
  - Implementation of the draft Data Protection Regulation
  - Insurers' response
  - Evolving policies
  - Timescale