Security Breaches, Identity Fraud, and Credit Cards

Fred H. Cate
Distinguished Professor
C. Ben Dutton Professor of Law
Director, Center for Applied Cybersecurity Research
Director, Center for Law, Ethics & Applied Research in Health Information
fcate@indiana.edu

February 13, 2012
Source: Privacy Rights Clearinghouse Chronology of Security Breaches
Educational Institutions' Information Security Breaches

Source: Privacy Rights Clearinghouse Chronology of Security Breaches
Educational Institutions' Information Security Breaches

Source: Privacy Rights Clearinghouse Chronology of Security Breaches
Educational Institutions' as a Percentage of Total Information Security Breaches

Source: Privacy Rights Clearinghouse Chronology of Security Breaches
Victims of Identity Fraud

Source: Javelin Strategy & Research
Est. Total Cost of Identity Fraud

Source: Javelin Strategy & Research
Good News

- Even these numbers are likely to be inflated
  - Self-reported.
  - Small sample.
  - Conflating identify fraud with other issues.
  - Ask consumers to estimate business loss.
  - A substantial minority of self-reported victims say they reported the fraud to no one.
  - Higher than Department of Justice and Federal Trade Commission figures.

• One-half to two-thirds of self-reported identity fraud is credit and debit card fraud.

• Federal law limits consumer liability to $50 if reported. (15 U.S.C. § 1643(a); 12 C.F.R. § 226.12).

• As a practical matter, even that $50 is universally waived unless fraud by the consumer is suspected.

• Most breaches result in no incidents of identity fraud.
In early 2005 ChoicePoint reported that thieves had deliberately targeted sensitive personal data on 163,000 individuals. The company paid a $10 million fine and established a $5 million restitution fund. In June 2008, the government closed the fund after only 131 consumers had presented valid claims for a total of $141,753. The actual fraud rate was therefore 1 per every 1,244 individuals who had data breached—less than the “ambient” fraud rate in the United States.

The GAO reported in summer 2007 that of the 24 largest breaches publicly reported in the United States between January 2000 and June 2005, in only three was there evidence of any resulting misuse of an existing account, and in only one was there any evidence of true identity theft. (GAO, Report to Congressional Requesters, Personal Information, GAO-07-737, 2007.)
Bad News

- Breaches are not without cost.
- Breaches lower public confidence and are inconsistent with good stewardship of data.
- Breaches can trigger legal liability.
- Although identity fraud affects few people, and imposes little burden on those it does affect, it can be devastating for some.
- While the U.S. continues to have the lowest per capita credit card fraud rate in the world, it is increasing.
- We don’t actually know what is happening to stolen data.
• Too much security can be as costly as too little.
• The goal—and it isn’t easy—is to find the right balance between:
  o Appropriate security for data in general, and financial transactions in particular, and
  o Competing interests (including cost, convenience, speed, and consistency with educational mission).
• Achieving the goal is even harder with inadequate or low quality data.

Good luck.