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# What Law Applies In "the Cloud"?

***And how far into the Cloud does Massachusetts law extend?***

***A CloudCamp Boston Unconference Presentation***

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# A Basic Template for Federal and State Data Security and Privacy Laws

- Define the type of “non-public personal information” (“NPI”) that is being regulated
- Provide that NPI must be protected from disclosure to unauthorized holders unless “anonymized” or “aggregated”
- Requires the development, implementation, maintenance and monitoring of comprehensive, written information security programs:
  - Collect only needed information
  - Retain only as long as necessary
  - Provide access only to those with a legitimate business purpose
  - Implement specific administrative, physical and electronic security measures to ensure protection
- Require prompt notice to individuals whose NPI is compromised
- Provides for the imposition of penalties for breaches by NPI custodians
- Requires the disposal of personal information in such a way that it cannot be read or reconstructed after disposal

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# For example, the Massachusetts Data Security Law

- Most recent law in the area of data privacy and security – Mass. Gen. L. ch. 93H.
- Enacted after the TJX data breach was made public.
- Intended to protect Massachusetts residents from identity theft.
- Applies to any business entity that owns, licenses, maintains or stores the **"personal information"** of a **Massachusetts resident, wherever that data is**.

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# What is "Personal Information" under the Massachusetts law?

**"Personal Information"** is:

- A person's first name and last name (or first initial and last name) **PLUS** any **one** of the following:
  - Social Security number
  - Driver's license number (or other state issued ID card number)
  - A financial account number, or credit or debit card number, with or without any required security code, access code or PIN that would allow account access

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# Preparing for and Responding to a Breach

- Compliance / developing information security programs
- Incident response and investigation
- Breach notification and resolution
- Litigation
- Government Investigation

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# Things to look for in 2011:

- Increased federal regulation in array of "hot" areas:
  - Cybersecurity
    - Malicious code directed at military and manufacturing targets
    - Cyber-criminal incursions focused on theft of intellectual property and other "industrial espionage"
  - Comprehensive breach notice
  - File-sharing risk control
  - Subjecting the SEC to Dodd-Frank Wall Street reform style FOIA obligations; amending SEC filings to require cyber-breach/cyber-risk disclosures
- Battle within government to see who regulates the area
- Increased government focus on national security aspects of security and privacy
- Increased corporate focus on internal cyber security programs
- More security breaches

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# RESOURSES

- FTC: http://www.business.ftc.gov/privacyandsecurity
- Department of Commerce: http://www.commerce.gov/node/12471
- Advanced Cyber Security Center: http://www.massinsight.com/initiatives/cyber_security_center/
- Our blog: http://www.securityprivacyandthelaw.com