

## VENDOR DATA BREACH - NOT JUST THE VENDOR'S PROBLEM

### ISSUE

**ABSOLUTE SECURITY FOR FINANCIAL DATA IS IMPOSSIBLE.**

The hackers keep coming. Financial institutions and credit card payment processors build walls, such as the Payment Card Industry Data Security Standards (PCI-DSS) and end-to-end encryption of credit card data. The hackers break through. A recent reminder came on January 12, 2009, when Heartland Payment Systems, the U.S.'s fifth largest credit card processor, learned hackers had installed malicious software that potentially allowed data to be stolen as it crossed Heartland's network.

### IMPACT

**FINANCIAL INSTITUTIONS MAY FACE A VICARIOUS LIABILITY FOLLOWING A VENDOR DATA BREACH - EVEN IF THEY BEAR NO DIRECT RESPONSIBILITY.**

As a data owner, you may be required to respond to a vendor's breach, even if you had nothing to do with the breach incident. This is called vicarious liability. Most state security breach laws hold you responsible to notify potentially affected customers, regardless of where and how it occurs. You will likely have to offer affected customers credit protection services. The loss can add up to several

million dollars quickly. In 2008, only 11% of reported privacy breach *incidents* involved a vendor or third party, but they accounted for 42% of all records breached. (Source: Open Security Foundation, [www.datalossdb.org](http://www.datalossdb.org))

### ACTION

**THE RISKS CAN BE MITIGATED BY PROACTIVE ATTENTION TO THE VENDOR'S INSURANCE COVERAGE AND BY THE FINANCIAL INSTITUTION'S PRIVACY & NETWORK SECURITY INSURANCE.**

Several steps can be taken to mitigate the financial impact of a vendor data breach:

1. Include strong **vendor contractual wording** to indemnify the financial institution in the event a breach of customer data due to the vendor's negligence or security failure.
2. Require vendors to evidence (via **certificates of insurance**) available coverage for losses due to the vendor's error or omission, breach of data or network security failure.
3. **Purchase a Privacy and Network Security** (Cyber risk) **insurance** policy that covers liability losses and consumer notification and credit monitoring expenses incurred following a breach of the institution's data, *including a breach by a vendor*. This layer of protection may prove crucial, because the vendor's own insurance may be insufficient if many of the vendor's clients are affected. Heartland, for example, has thousands of clients.

### CONTACT

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