When You Need a “Pound of Cure”: Insurance for Cyber and Data Privacy Risks

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Presented by: Dana Lumsden and Ben Milam

®Bradley Arant Boult Cummings LLP

Agenda

1. Cyber and data privacy threats in 2022
2. Key insurance coverages to mitigate risk
3. Exclusions, conditions, and traps for the unwary
4. Case law developments
5. Securing insurance requirements in commercial contracts

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INCREASING CYBER AND DATA PRIVACY RISKS

Cyber Threats

- Ransomware and malware
- Denial-of-service attacks
- Business email compromise
- Supply chain attacks
- Insider threats

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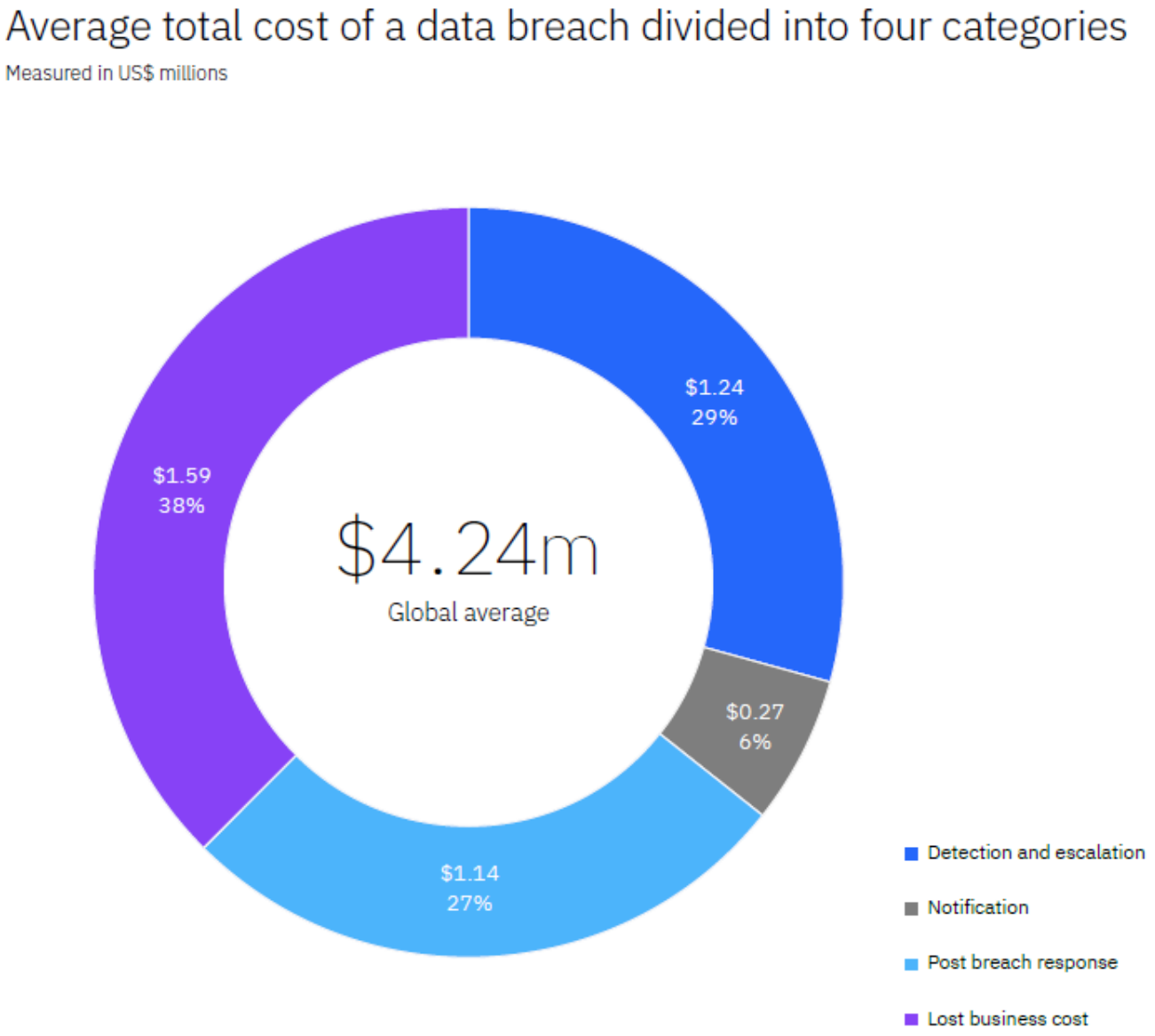
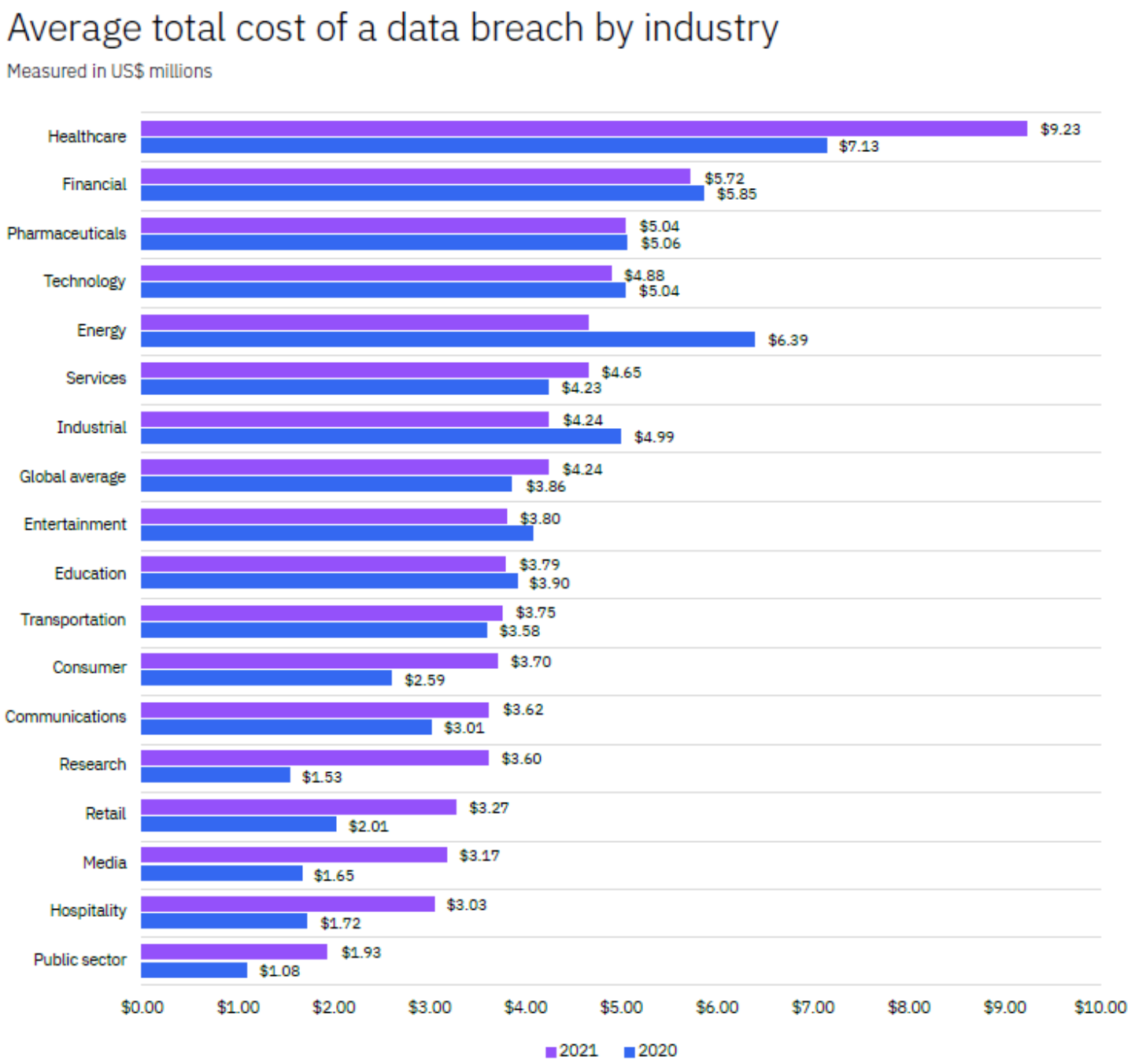
Cost of a Data Breach

- Global average cost $4.24 million – 10% above 2020
- $180 cost per record with personal data
- Costs significantly lower for companies with a mature security posture:
  - Security AI Deployment
  - Zero Trust Principles
  - Regulatory Compliance
  - Incident Response Plan and Testing
  - Time to identify/contain data breach



Source: Ponemon/IBM Cost of a Data Breach Study (July 2021)

Cost of Data Breach by Industry



Source: Ponemon/IBM Cost of a Data Breach Study (July 2021)

Regulatory Risk

- State, federal, and international governments enforce laws to ensure consumer data privacy
- Cost of responding to investigation by regulatory agency
- Fines imposed for data breaches
  - British Airways hit with £183 million fine for 2018 breach
  - Equifax settled with Federal Trade Commission for up to $700 million for 2017 breach
  - July 2020 – NY Dept. of Financial Services announced enforcement action against First American related to negligent disclosure of nearly 900 million records – action carries potential for $1,000 per violation

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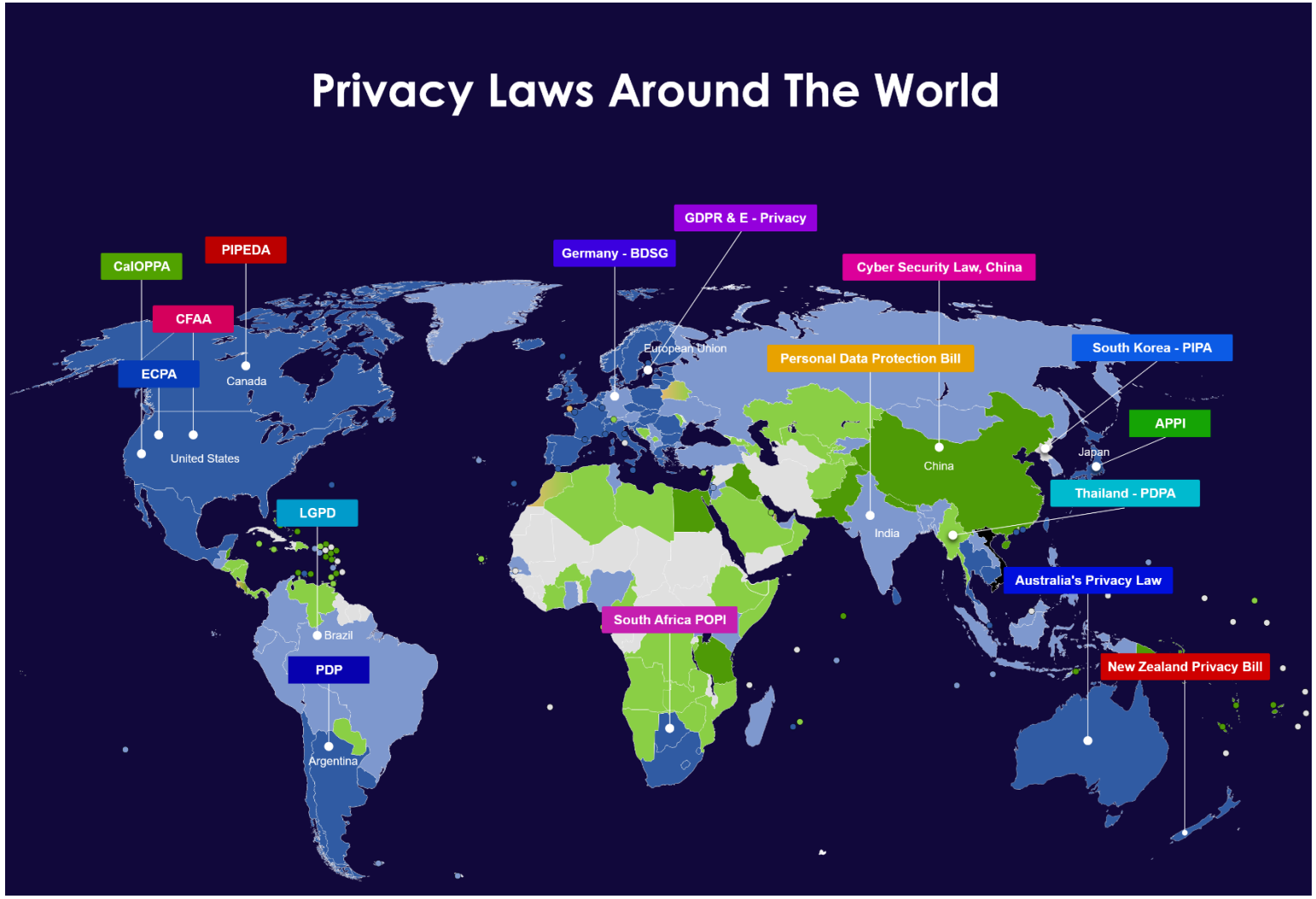
Global Data Privacy Regulation



Source: https://medium.com/blocksurvey/is-your-digital-privacy-lawfully-protected-5de26745619c

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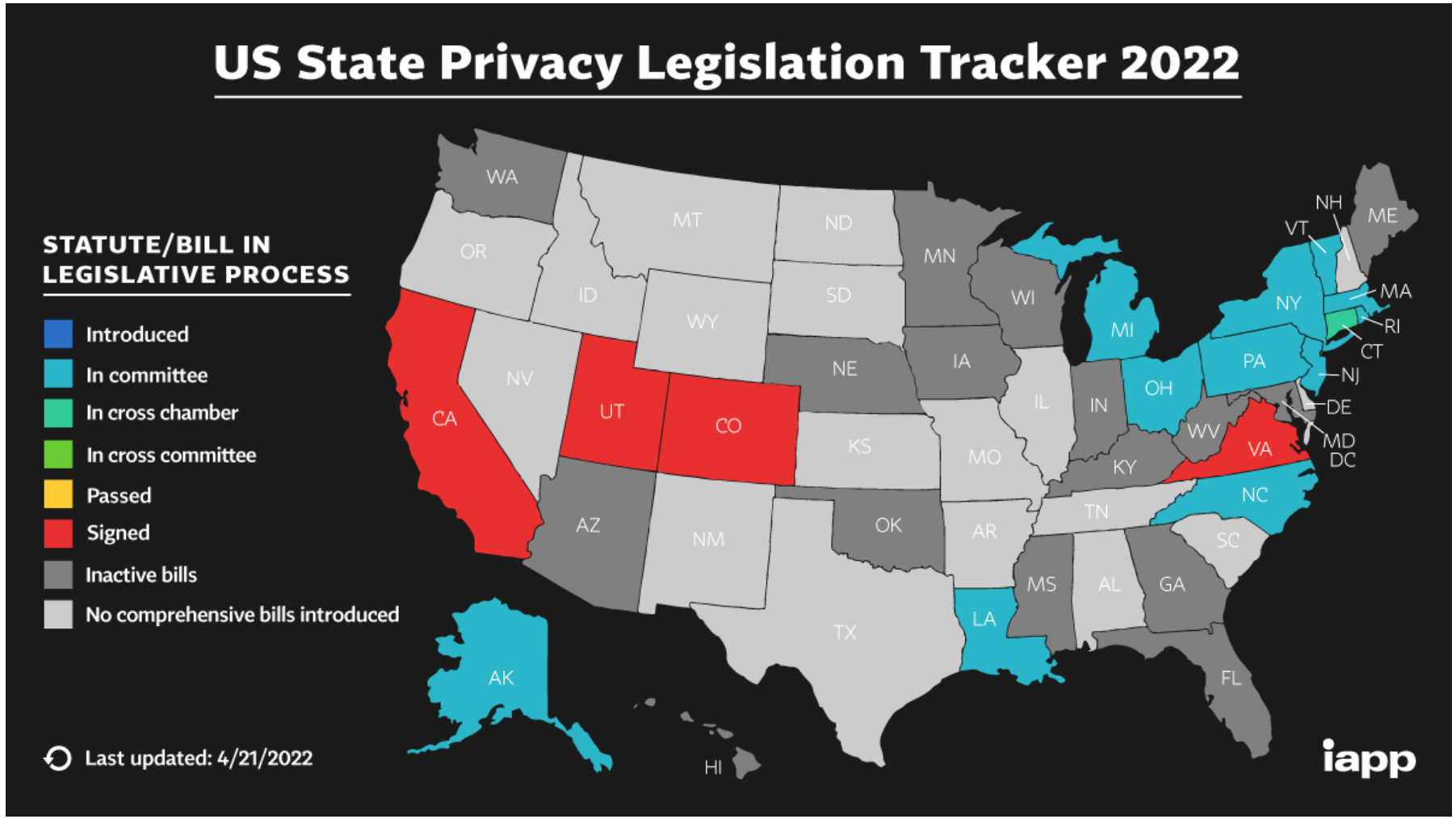
State Data Privacy Regulation



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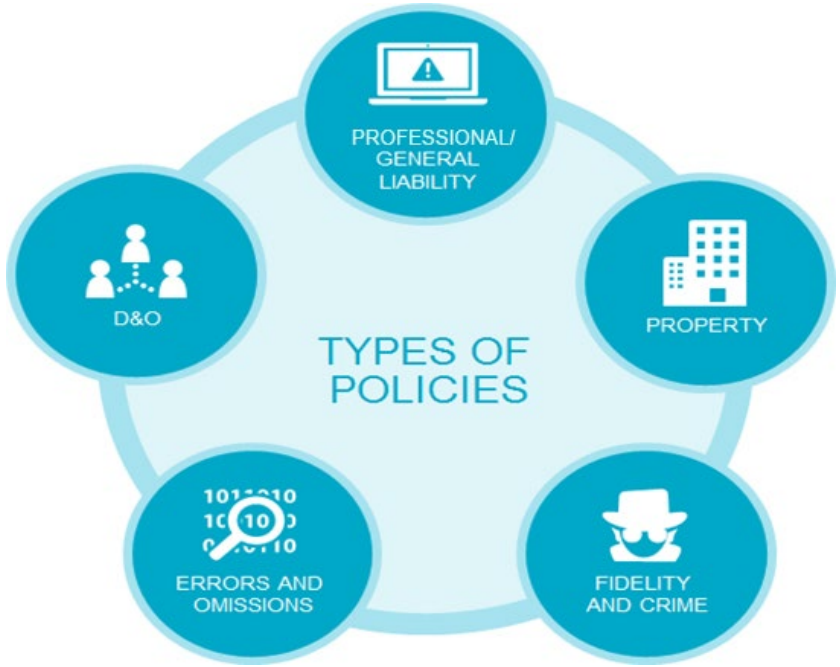
AVAILABLE COVERAGES FOR CYBER AND DATA PRIVACY

Standard-Form Policies Not Adequate for Cyber/Data Privacy Risk

- May include Cyber-risk or data breach exclusions
- Exclusions for claims brought by regulatory agencies
- Cyber BI attack not an accidental loss
- Loss of electronic data not covered physical loss



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Property Policy – Definition of "Covered Property"

2. Property Not Covered

Covered Property does not include:

n. Electronic data, except as provided under the Additional Coverage, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, **n.**, does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system;

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Regulatory Exclusion in Professional Liability Policy

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Key Cyber and Data Privacy Coverages

First Party Coverages

- Post Breach Response
  - Crisis management
  - Privacy notification
- Time Element
  - Business interruption
  - Extra expense
- Theft of Property
  - Data assets
  - Cyber extortion
  - Computer fraud
  - Funds transfer fraud
  - Social engineering/fraudulent

Third Party Coverages

- Liability
  - Information security and privacy liability
  - Regulatory defense and penalties
  - Payment card industry fines and assessments
  - Website media liability
  - Bodily injury and property damage

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First Party Coverages: Post Breach Response

- Direct costs necessary to respond immediately after a data breach
- Allows organization to contain and minimalize losses
- Specific costs may include:
  - Hiring computer forensics experts to help secure the insured's information system, determine the cause of the breach, and prevent future breaches
  - Engage a PR firm to communicate with the public
  - Notification to affected customers whose data may be compromised
  - Set up a call center for customers to receive updates and information
  - Credit monitoring
  - Identity monitoring
  - Notification to banks and credit card companies whose customer information may be compromised

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