



**NAIR & CO.** 



**HEFFERNAN INSURANCE BROKERS**

A Member of the Heffernan Group

**Keeping Private Data Private**



HEFFERNAN INSURANCE BROKERS  
A Member of the Heffernan Group



## Agenda

- **US Regulations & Outside US**
- **Notable Breaches & Associated Costs/Penalties**
- **Insurance for Privacy Breaches**
- **Prevention / Loss Control**
- **Looking Ahead - Implications for Business Activities**
- **Q&A**



HEFFERNAN INSURANCE BROKERS  
A Member of the Heffernan Group



## US REGULATIONS

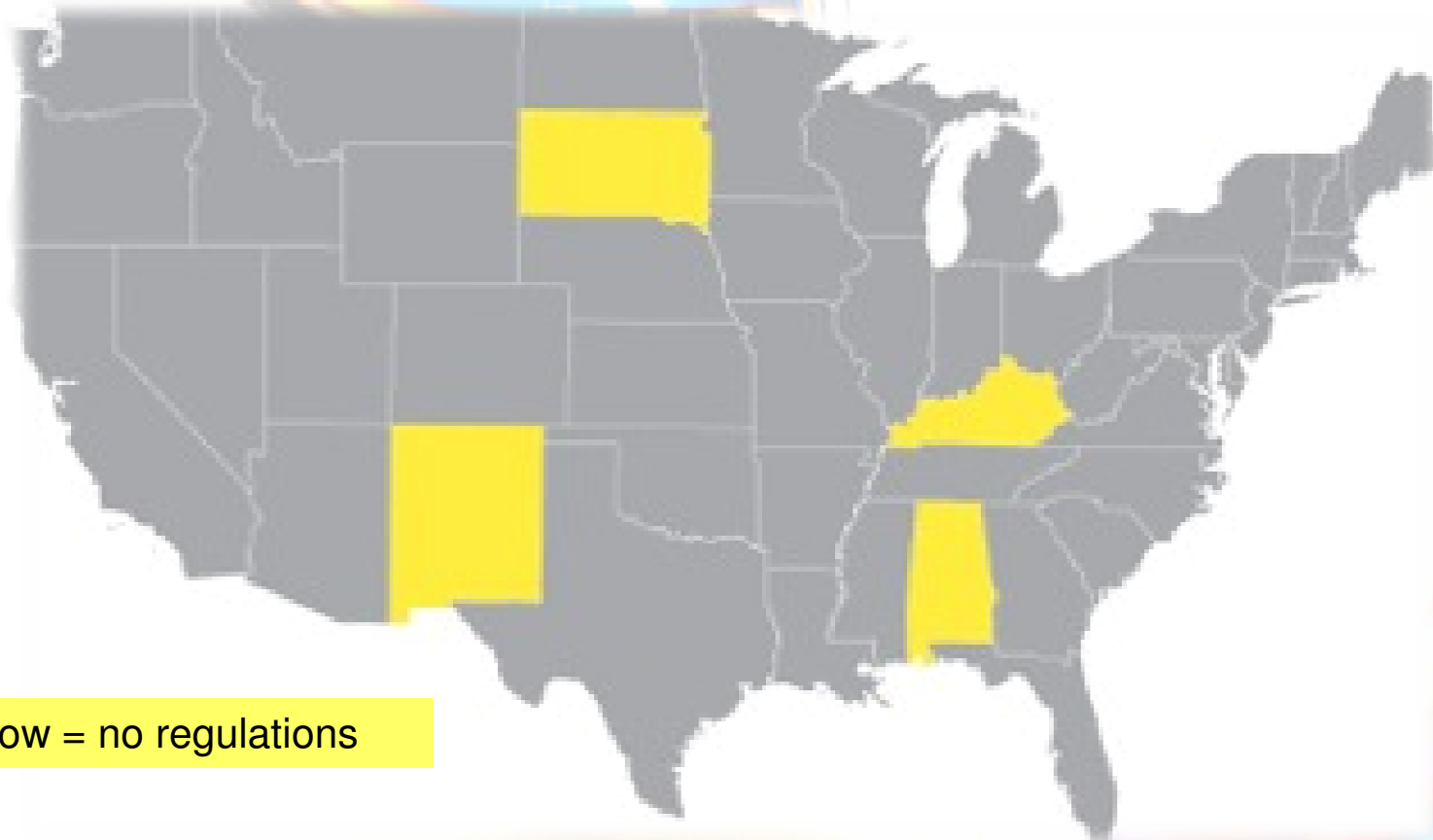
- State Regulations – Regulations in force or pending in all states, except (AL, KY, NM, SD)
- Common Law – libel, slander, invasion of privacy
- HIPPA (Health Insurance Portability and Accountability Act)
- HITECH (Health Information Technology for Economic and Clinical Health Act)
- California – Recent updates



HEFFERNAN INSURANCE BROKERS  
A Member of the Heffernan Group



## US States with Privacy & Notification Regulations



Yellow = no regulations



HEFFERNAN INSURANCE BROKERS  
A Member of the Heffernan Group



## Regulatory Changes in Data Privacy Outside US

Take as examples

- India
- China
- Brazil
- Russia
- Hungary
- Australia



HEFFERNAN INSURANCE BROKERS  
A Member of the Heffernan Group



## India

### The IT Rules 2011 Effective April 2011

- Need Information Security Policy and Program Published on Website
- Prior Consent, Purpose Disclosure, Relevant to Corporate Activity
- Need Grievance Officer/Publicize Name
- ISO 27001 if Audited Complies



HEFFERNAN INSURANCE BROKERS  
A Member of the Heffernan Group



## China

### Data Privacy Law Under Review, Not Enacted

- Need Information Administrator
- Need Personal Consent to Make Data Public
- Need Controls to Prevent Illegal Use
- Export Generally Not Allowed



## Brazil

Data Protection Bill Under Review, Not Yet Enacted

- Data Security Breach Can Create Liability
- Express Personal Consent
- Limitations on Collection, Especially on Biometric, Religious and Political Values Data



HEFFERNAN INSURANCE BROKERS  
A Member of the Heffernan Group



## Russia

### Personal Data Law

- Need License to Process Certain Data Types
- Outsourcing of Data Processing- Protective Provisions Required
- Cross-Border Transfer Only to Countries with Adequate Protection of Data Subjects' Information



HEFFERNAN INSURANCE BROKERS  
A Member of the Heffernan Group



## Hungary

Act CXII of 2011: In effect January 1<sup>st</sup> 2012

- If Legal Compliance is at Risk, Can Process Personal Data Without Consent
- New Agency With Powers to Audit and Prosecute
- Need Internal Data Protection Processes
- Personal Data Can be Transferred to Another Country so long as that Country's Laws Give Adequate Protection or if Data Subject Gives Consent



HEFFERNAN INSURANCE BROKERS  
A Member of the Heffernan Group



## Australia

### The Privacy Act 1988

- No Registration Required
- Transfers Allowed to Another Country if Data Subject Consents or if Recipient is Subject to Laws Requiring “Fair Handling”
- Small Enterprises Are Generally Exempt



## Notable Privacy Breaches

### Some Examples

- Cigna – HHS fine - \$4.3M – violations of HIPPA – Feb, 2011
- Sony Play Station – April, 2011
- Epsilon – March, 2011
- Heartland - 2008
- Yale, Purdue, NC State University, U of W – August, 2011
- Philly Teachers Fund vs CVS Caremark – HIPPA violation alleged  
March, 2011
- UnNamed – Employee stole private data, sold to identity theft ring  
– total paid on privacy policy \$2.6M March, 2011



## Penalties

### Some Examples

- Argentina – Fines Up To \$100,000, Erasure of Data
- Denmark – Fines, Imprisonment, Suspension of Business
- France – Fines, Imprisonment, Ceasing Processing Operations
- U.K. – Fines up to GBP 500,000 per infraction, Imprisonment, Erasure of Data
- Canada – Fines up to C\$10,000,000 on Corporations
- Russia – Fines up to RUB 10,000 for entities and up to RUB 3,000 for Individuals



## Insurance for Privacy Breaches

**My company is covered, right?**

**Where there may or may not be coverage for expenses and fines associated with a breach:**

- General Liability Policy
- Errors & Omissions Policy
- Property Policy
- Crime Policy
- Privacy / Media Liability policy
- Management Liability policy



HEFFERNAN INSURANCE BROKERS  
A Member of the Heffernan Group



## Specialty Privacy Insurance Policies – Marketplace in Transition

- Rapidly evolving regulatory and legal environment
- Insurance Product Life Cycle – Adolescent – unpredictable
- Many new entrants to insurance marketplace
- Terms and Conditions - Wide Spectrum
- Loss Control/ Incident Services Evolving
- Market penetration
- Claims / loss exceeding premiums
- Risk Transfer of Insurance – sustainable for expenses?
- Premiums / Rates in flux



## Negotiating Privacy Policy-What to Look for in Your Cyber/Privacy Policy...

- Regulatory Actions
- Forensic Expenses
- Crisis Management Expenses
- Notification Expenses
- Worldwide Coverage
- Broad “notification expense” wording
- Extend coverage for breach of private employee data
- Avoid notification expense exclusion on standard E&O policy
- Incident Response Team
- Adequate Limit selection for Liability and Expenses



HEFFERNAN INSURANCE BROKERS  
A Member of the Heffernan Group



## Prevention/Loss Control

- Data Privacy Policy for customers and employees
- Data Encryption before Transmission
- Management of Data at Vulnerable Points of Exposure



HEFFERNAN INSURANCE BROKERS  
A Member of the Heffernan Group



## Implications for Selective Activities

- Impact on Cloud Computing
- Employee Blogs
- Social Networking Sites



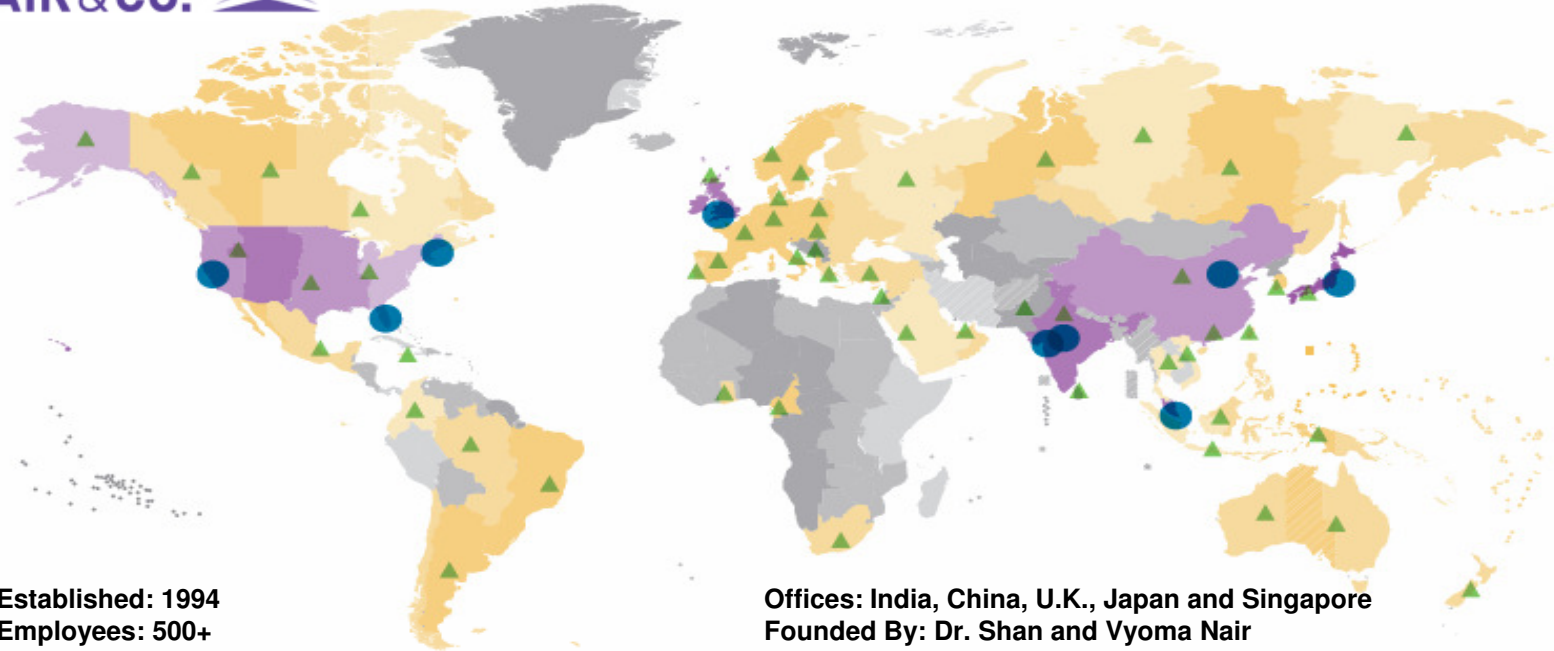
HEFFERNAN INSURANCE BROKERS  
A Member of the Heffernan Group



## Q&A

Dr. Shan Nair  
CEO and Co-founder  
Nair & Co.  
[Shan@nairusa.com](mailto:Shan@nairusa.com)  
Cell: 650-465-9300

Mary Castiglia  
Senior Vice President, Technology Practice Leader  
Heffernan Insurance Brokers  
[maryc@heffins.com](mailto:maryc@heffins.com)  
Direct: (415) 808-1307  
Cell: (415) 609-3027



Established: 1994  
Employees: 500+  
CEO: Dr. Shan Nair

Offices: India, China, U.K., Japan and Singapore  
Founded By: Dr. Shan and Vyoma Nair  
Team: Handpicked Experts from HR, Finance, Tax & Legal

- **4,000+ Client Operations in Over 50 Countries**
- **Team of experts includes tax and employment lawyers, accountants, compensation and benefit consultants qualified in a variety of countries**
- **Strong Tax Consulting, Accounts Compliance, Tax Compliance, Human Capital Consulting, and Corporate Governance groups spread out globally**
- **Nair & Co. recognized as a top 100 international outsourcing service provider by the International Association of Outsourcing Professionals**
- **[www.nair-co.com](http://www.nair-co.com)**



HEFFERNAN INSURANCE BROKERS

## Heffernan Insurance Brokers

- Formed in 1988
- Offering Commercial Insurance, Employee Benefits, Financial Services and Personal Insurance
- Unison Brokers member
- Named a “Best Place to Work” by the *San Francisco Business Times* for eight consecutive years
- Named 31st Largest Broker of U.S. Business by *Business Insurance Magazine*
- Offices in Walnut Creek, San Francisco, Palo Alto, Petaluma, Los Angeles, Orange, Portland, OR and St. Louis, MO, New York, NY
- 400 employees
- [www.Heffins.com](http://www.Heffins.com)