

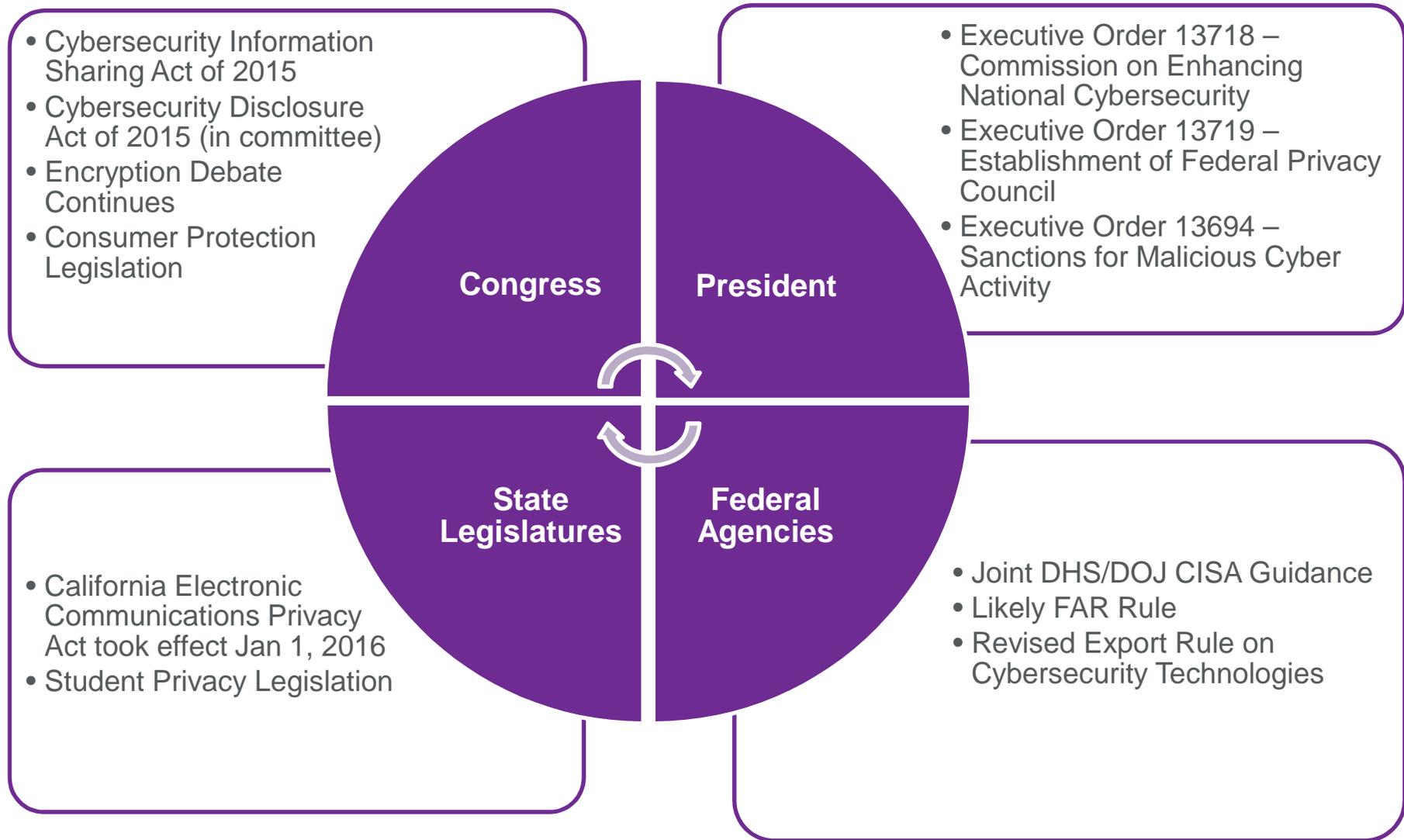
# Cybersecurity Outlook: Predictions on Cyber Policies in Federal Procurement

Erin B. Sheppard

# Agenda

- Legislative Developments & Predictions
- Recent Cybersecurity Executive Orders & Next Steps
- Federal Agency Developments & Predictions
- State Trends & Predictions
- Global Trends & Predictions

# Current Cybersecurity Developments and Trends



# Legislative Developments & Predictions

- **Cybersecurity Information Sharing Act / Cybersecurity Act of 2015**
  - Aim = Increased information sharing between private and public sectors.
  - Groundbreaking language with respect to the authorization for monitoring networks for cybersecurity purposes: “notwithstanding any other provision of law”.
    - But **only** grants this exception for cybersecurity monitoring purposes.
  - Information Sharing.
    - Permits sharing without waiver of attorney client privilege– very rare.
    - Clarifies relationship with antitrust law (no violation).
  - Liability Protection for Information Sharing.
  - Contemplates DHS Portal for Information Sharing.
  - Requires DHS and DOJ to provide relevant guidance.

# Legislative Developments & Predictions (continued)

- **Cybersecurity Disclosure Act of 2015 (S. 2410)**

- Would require publicly traded companies to include in their SEC filings a discussion of their corporate cybersecurity expertise (by either identification of which board members have such expertise or experience or what the company is doing to identify such expertise).

- **Encryption Debate**

- Whether companies should be required to provide law enforcement access to encrypted consumer data in response to a court order.

- **Other proposed legislation**

- Energy Policy Modernization Act
- Data Security and Breach Notification Act
- Security and Privacy in Your Car Act (S. 1806)
- Children's Online Privacy Protection Act (COPPA)

# Recent Cybersecurity Executive Orders

- EO 13718: Commission on Enhancing National Cybersecurity
  - Released in conjunction with President Obama's Cybersecurity National Action Plan (CNAP).
  - Establishes Commission within the Department of Commerce, charged with promoting and improving cybersecurity awareness and protections throughout private sector and government.
  - Charged with making detailed recommendations for the following:
    - Bolstering protection of systems and data;
    - Ensuring cybersecurity is a core element of the internet of things and cloud computing;
    - Furthering investment in cybersecurity enhancing research and development;
    - Improving (in quantity, quality, and expertise) the cybersecurity workforce in both the public and private sectors;
    - Improve broad-based, practical cybersecurity practices for the general public;
    - Any other issues the President or Secretary of Commerce requests the group to consider.
  - Also charged with developing governance, procurement, and management processes for Federal Civilian IT Systems.

# Recent Cybersecurity Executive Orders

- EO 13719: Establishment of Federal Privacy Council
  - Second prong of CNAP.
  - Creates an interagency support structure charged with ensuring privacy protections in all agencies that collect, maintain, and use citizens' information and data.
  - Each Agency head is required to designate a Senior Agency Official for Privacy.
  - Deputy Director of OMB shall chair the Council.
  - Council Objectives:
    - Develop and recommend new government-wide privacy recommendations;
    - Coordinate and share ideas, best practices, and approaches for protecting privacy and implementing appropriate privacy safeguards;
    - Assess and recommend methods to address the hiring, training, and professional development needs of the Federal Government's privacy knowledge base;
    - Other privacy related functions as designated by the Chair.

# Federal Agency Developments & Predictions

- Department of Homeland Security / Department of Justice CISA Guidance (February 16, 2016)
  - CISA requires DHS and DOJ to establish a voluntary cybersecurity information sharing process that encourages the public and private sector to share threat indicators and defensive measures.
  - Required DHS and DOJ to issue guidance to that end within 60 days of passage of the Act.
  - Four key publications:
    - Interim Procedures Related to the Receipt of Cyber Threat Indicators and Defensive Measures by the Federal Government
    - Interim Guidance on Sharing of Cyber Threat Indicators and Defensive Measures by the Federal Government
    - Guidance to Assist Non-Federal Entities to Share Cyber Threat Indicators and Defensive Measures with Federal Entities under the Cybersecurity Information Sharing Act of 2015
    - Privacy and Civil Liberties Interim Guidelines: Cybersecurity Information Sharing Act of 2015

# Federal Agency Developments & Predictions

- OMB Draft Guidance (August 2015) – Next Steps?
- FAR Rule– Basic Safeguarding of Contractor Information Systems
- Export Control Regulations
- Increased Regulation in Securities and Commodities Markets
- FCC to Develop Privacy Rules for Internet Service Providers
- December 2015 Economic Sanctions Regulations for International Hackers

# State Trends & Predictions

- California Breach notification statute revisions.
  - Expands and clarifies existing notice requirements.
  - Specifies forms for notices.
- California Electronic Communications Privacy Act took effect Jan 1, 2016.
  - Requires warrant before accessing digital records, including e-mails, text messages, and information on smart phones (with exceptions).
- Student privacy legislation.
  - California, New Hampshire, and Oregon each passed laws limiting use of identifiable information from students in grades K-12.

# Global Trends & Predictions

- Multinational Businesses face an increasingly complicated international regulatory landscape.
- Cross-border data flows raise additional security concerns even for domestic companies.
- International discussions continue to focus on cybersecurity and data privacy issues:
  - e.g., Discussions between US and China in 2015; Iran Cyber indictments.

# Global Trends & Predictions (continued)

- **EU / Safe Harbor Decision**

- October 6, 2015: The European Court of Justice (ECJ) issued a key decision addressing the fundamental right of EU citizens to the protection of personal data (as protected in the Charter of the Fundamental rights of the European Union).
- Invalidated the EU-US Safe Harbor Framework for the transatlantic transfer of data.
- Requires national supervisory authorities to have the ability to examine with due diligence whether a transfer of personal data provides an “adequate level of protection.”

- **Status of Safe Harbor Negotiations**

- Currently ongoing.
- Current pillars: contractual solutions; corporate rules for multinational companies; informed individual consent.

# Global Trends & Predictions (continued)

- **EU General Data Protection Regulation**
  - Extraterritorial
  - Right to be Forgotten
  - Breach Notification
  - Privacy by design
  - Data Portability
  - Governance
- **EU Cyber Security Directive:** requires operators in certain sectors to maintain minimum standards on network security and ability to withstand cyber-attacks.
  - Some similarities to Critical Infrastructure Cybersecurity Executive Order.

# Questions?

# Thank you



Dentons US LLP  
1900 K Street, NW  
Washington, DC 20006-1102  
United States

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