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## MARKETWATCH: LIABILITY

### Security challenged with new layers of liability

**Keeping pace with an increasing number of federal and legal compliance requirements expands the security role**

By Joanne Friedrich

From federal and state agencies to trade associations, nearly every organization in the post-Sept. 11 world is making security a component of its regulatory and voluntary compliance program.

As a result, security directors are going through their own re-examination process, determining what their role needs to be within their own organization as they seek to address this growing list of compliance issues and mitigate potential liabilities.

Robert Hayes, a former security director who is now a partner with Business Security Solutions, Marietta, Ga., said "what's coming down the road" for security directors is an increasing focus on security-related regulatory requirements from a host of governmental and non-governmental agencies. Those agencies range from U.S. Customs, the Department of Agriculture and the U.S. Postal Service to trade associations covering everything from heating, ventilation and air conditioning to shopping centers.

In most of these places, security was never an issue, but they are involved [with security requirements] now," Hayes said of the government agencies. And for the vast majority of trade groups, he added, security-related voluntary compliance programs are becoming the norm.

Richard Sem, principal in Sem Security Management, Trevor,



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Wis., and a former security director at a Fortune 100 corporation, agreed that since Sept. 11, most companies "are falling under a higher level of security," especially those related to critical infrastructure such as utilities, communications and defense.

The question that arises, Hayes said, is: "What's the role of security in light of this? Are we going to be the consultants or are we going to be the third-party validators? It goes back to the fundamental part of setting up a security department," Hayes explained. "What role do we play in the company?"

Hayes said security directors need to not only get themselves up to speed on new rules and regulations, but also interface with other departments within the company, including auditing and human resources, to stay on top of the changing regulatory picture.

"In some companies," Hayes said, "security isn't part of the team for compliance, but I think that will change."

In fact, he said, as new regulations or compliance issues come up, the security director is likely to be involved in reviewing how the corporation addresses them and to whom the responsibility for compliance ultimately falls. "You need to go through each one of these new laws," he said, using a matrix based on whether the security director will be responsible, accountable, consulted, informed or offer support.

Security consultant William Blake of Blake & Associates, Littleton, Colo., concurred that "the security director needs to assume a more proactive role" in protecting a company's people, property and reputation by setting up a liability defense against litigation.

While Blake said he wouldn't go as far as to put the responsibility for each department's compliance in the hands of the security director, he said the director "has to work as a partner...and has to have rapport with the other departments."

To do so, he said, the director needs to become an integral part of the organization. "They have to be involved in everything," he said, including corporate decision making. "Not someone on the outside looking in," he added.

Sem said security directors need to work closely with those departments with which security often overlaps such as human resources, safety and environment, and IT.

If a human resources guideline is inappropriate or oversteps its authority, it could open a company up to liability, he explained.

Blake said departments that are profit centers are often the focus within organizations. "But if [security directors] can show that what they do to protect the company will save money in the long run, it will be easier to work within the company."

For example, he said, a company that is viewed as unsafe not only may have difficulty finding employees, but also may lose customers, which translates into lost profits.

Another area in which security directors are finding they are

taking a larger role for compliance is with the requirements set down by the Sarbanes-Oxley Act, which mandates that chief executive and chief financial officers be held responsible for their companies' internal workings and financial disclosure.

Hayes said Sarbanes-Oxley "sets a new standard for business, auditors, security and management."

Furthermore, he said, requirements such as risk assessment, assignment of responsibility, awareness programs, incident reporting, written guidelines and procedures and third-party validation all impact the security director's position.

Howard Silverstone, principal with Kroll Zolfo Cooper of Philadelphia, a financial consulting subsidiary of Kroll Inc., said investigating internal financial fraud will be an important role for the security director under Sarbanes-Oxley.



"The director of security is an important position which has to safeguard the assets of the company," he said.

*Howard Silverstone*

Because of this, Silverstone concurred with others that the chief security officer or director needs to be involved in high-level decision making. "Whether you talk about physical security or IT [security], wherever there is a threat to a company, they need to be involved in the decision-making process," Silverstone said.

Citing a case he worked on recently involving "good old-fashioned embezzlement," Silverstone said the security director was involved from the beginning of the investigation.

Setting up and handling anonymous reporting — another compliance guideline under Sarbanes-Oxley — is an area also likely to fall under the purview of the security director, Silverstone said.

Sem said as a security director, he created an internal hotline program through which employees could report incidents anonymously. The key with anonymous reporting, Sem explained, "is you have to get employee trust up front and have adequate follow through."

Blake agreed such lines are vital. "What you're doing is using every available, legitimate measure to find out what increases risk in an organization. It's a method or a tool to determine if there is a risk," he said.

After all, Blake noted, the security director's role "is liability all around. Just about everything is liability oriented," he said. Even a security awareness program can become a liability if the information given puts an employee at risk.

In addition to hotlines, which can be run internally or through third-party providers, Silverstone said companies are also posting policies, guidelines or procedures on web sites, so employees have a clear understanding of what is expected of them.

"There is no point in having a policy or procedure if no one has any idea what it should do," he said.

In terms of liability, such information can support a company's claim that it has a set of policies or guidelines that are, as Sem noted, "reasonable and clear."

"What the courts look for," he said, "is reasonable, prudent, practical action" on the part of the company.

Hayes said companies need to assess risks, make a standard and then stick to it. "An awful lot of companies don't have a program based on specific goals," he explained. "So here's a role where the security director and the company have to be on the same page."

Silverstone said even the Patriot Act is impacting the security director's role as an assessor of financial risk and potential liability.

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