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# Corporate Liability for Privacy Failures – Avoiding Risk through Board Education

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## Program Outline

- I. Welcome and Introductions
- II. The Current Environment
- III. Evolving Board and C-Suite Ethics/Expectations
- IV. Practical Considerations
- V. Panel/Audience Q&A

# Welcome and Introductions

# Speakers



**Dave Cohen**

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Chief Ethics & Compliance Officer  
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**The Current  
Environment–**

**Industry Examples**



FEDERAL TRADE COMMISSION  
PROTECTING AMERICA'S CONSUMERS

## FTC Takes Action Against Drizly and its CEO James Cory Rellas for Security Failures that Exposed Data of 2.5 Million Consumers

Order requires company to destroy unnecessary data, restricts future data collection and retention, and binds CEO to specific data security requirements

October 24, 2022



*“Our proposed order against Drizly not only restricts what the company can retain and collect going forward but also ensures the CEO faces consequences for the company’s carelessness,” said Samuel Levine, Director of the FTC’s Bureau of Consumer Protection. “CEOs who take shortcuts on security should take note.”*

Federal Trade Commission, October 24, 2022

<https://www.ftc.gov/news-events/news/press-releases/2022/10/ftc-takes-action-against-drizly-its-ceo-james-cory-rellas-security-failures-exposed-data-25-million>

# “Gartner Warns CEOs Will be Personally Liable for Breaches by 2024”

[Gartner Warns CEOs Will be Personally Liable for Breaches by 2024](#)

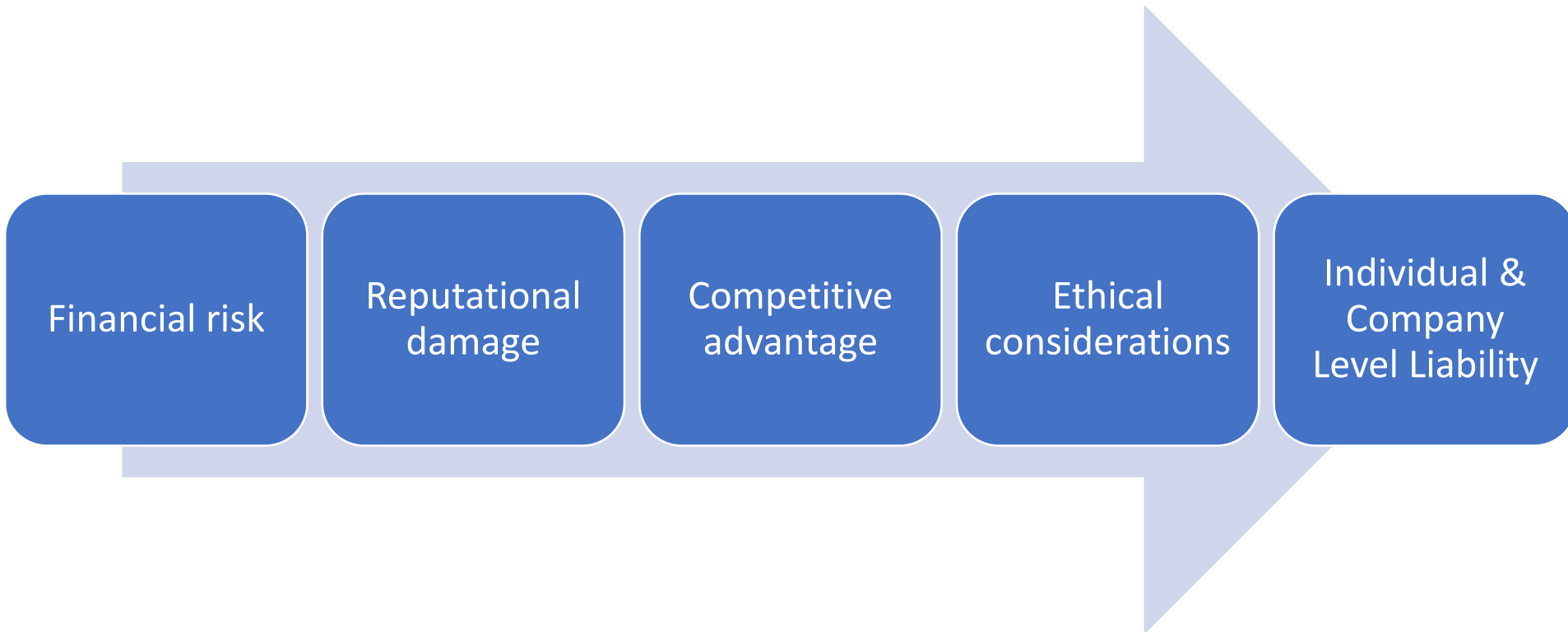
*“Changes in the regulatory climate could have CEOs and other senior executives being personally liable for not adequately securing connected systems [Gartner said](#). By 2024, as many as 75 percent of CEOs could be held liable for data breaches if it is found that the incidents occurred because the organization did not focus on cybersecurity or invest sufficiently in security, and a security breach or incident led to actual physical consequences, the research firm said in a research note.”*

Decipher, September 2, 2020

# The Current Environment– Why Does this Matter?



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### UK Moves to Hold Negligent Executive Liable for Privacy Failures

- Online Safety Bill expands the scope of criminal liability for senior managers of regulated services ***that fail to protect children online.***
- Applies to senior managers who ***“have consented or connived in ignoring enforceable requirements, risking serious harm to children”.***

### Irish Online Safety and Media Regulation Act Imposes Criminal Liability

- If the Online Safety Commissioner determines that a regulated company has not complied with binding online safety codes, it will ***issue a notice specifying the steps to rectify its non-compliance.***
- Senior managers can be held ***personally criminally liable*** for the company’s failure to comply with the terms of the notice

**The U.S. has introduced similar laws, like Senator Warren’s  
Corporate Executive Accountability Act**

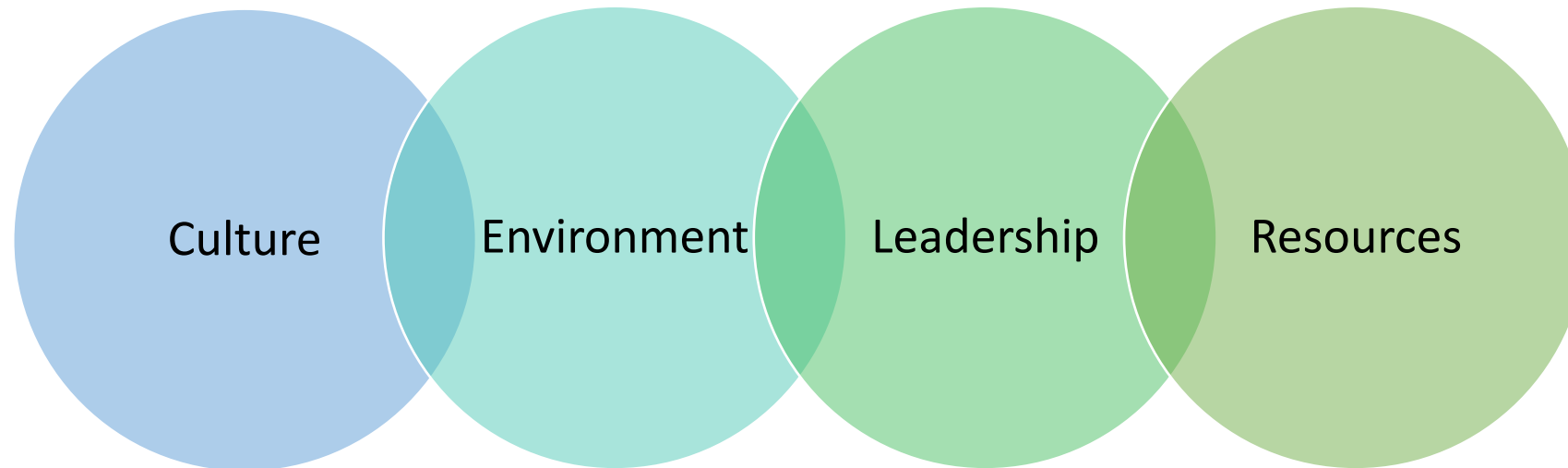
## *Privacy????*



# Evolving Board and C-Suite

## Ethics and Expectations

## Pillars of Influence in Organizational Priorities





Culture

- Respect for privacy as a value within the organization supported by the code of conduct
- Privacy to build and preserve trust
- Privacy as an element of social responsibility and governance in ESG and sustainability reporting
- Fairness, transparency, non-discrimination and privacy as supporting factors for DEI
- Data ethics as a moderator for data-inspired and technology-driven change




Environment

- Geographic location
- Industry sector
- Regulatory climate
- Privacy's share of the regulatory agenda
- Privacy as an integrated component of a comprehensive compliance and ethics program
- Privacy impact of data incidents and complaints
- Privacy risk as an element of enterprise risk
- Stakeholder expectations



Leadership

- Business priorities
- Risk appetite
- Competition
- Influence of culture
- Personality, style, and character
- Governance dynamics
- Proactive versus reactive
- External environment
- Prior experiences



Resources

- Size
- Financials
- Public, private, non-profit
- Cost
- Business enablement
- Sustainability driver
- Loyalty factor
- Differentiator



- Emerging ESG and DEI conversations, requirements and expectations are good places to build awareness for personal information stewardship practices.
- The current energy around AI corporate responsibility dovetails nicely with conversations around personal information stewardship.
- Developing or enhancing a strong mission statement that is endorsed by the board and embraced by the C-Suite provides support for operational initiatives.

# Practical Considerations - Board Communication Strategies

- **Key to avoiding potential executive liability is C-Suite and board awareness and education**
- **Best accomplished over time, beginning with high level awareness. Privacy and IT security program assessments and audits provide great vehicles for furthering executive awareness**
- **Implement regular internal privacy and IT security awareness employee education** (obtain support and buy-in from executive management)

- **Carrot and Stick approach**

**Carrot:** Increased organizational utility of data through privacy program development and maturity, particularly data mapping exercises. Potential cost savings from eliminating inefficient and redundant systems.

**Stick:** Potential enforcement fines and brand reputation damage. Individual executive liability and cost to the organization to remediate



## **Meet the C-Suite and Board at their current level of understanding**

- **Do they need foundational privacy and IT security education?**
- **If more advanced in their understanding – Provide current program state and recent legal development updates**

# Panel Discussion



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# Questions and Answers

# Questions & Contacts



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