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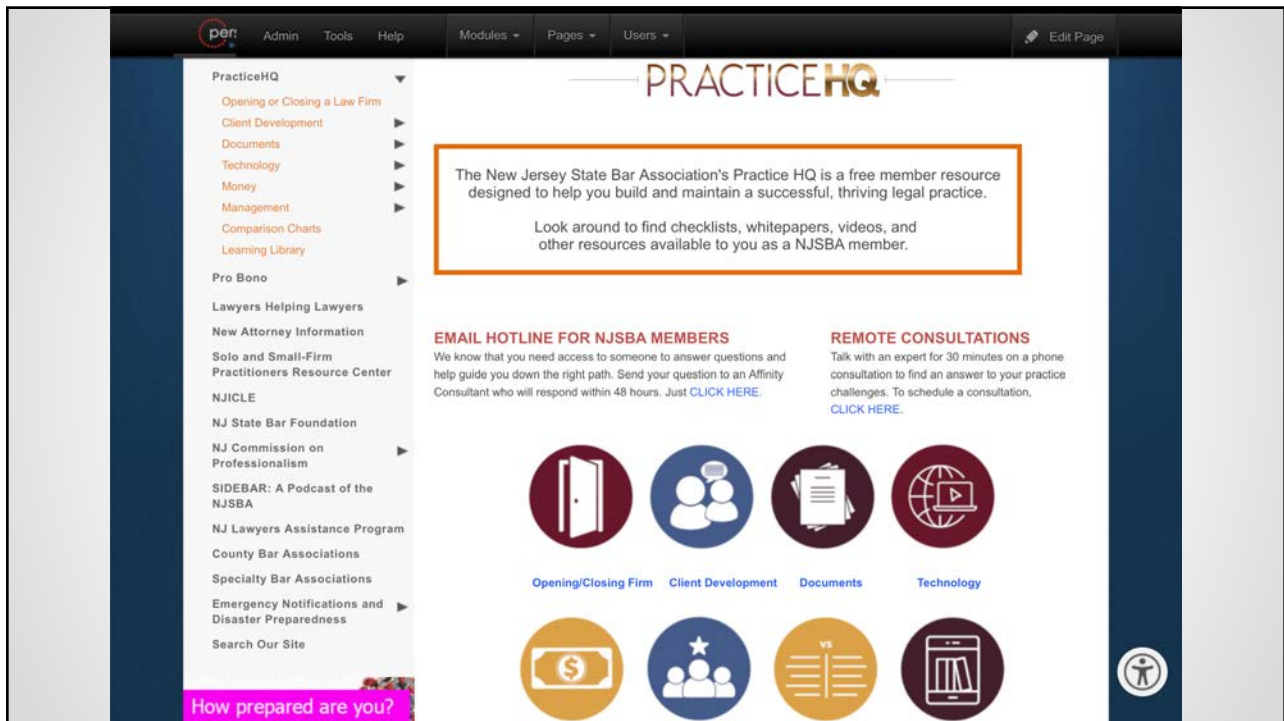
EXPERIENCED. CREATIVE. CONNECTED.

Avoiding Malpractice: The Good, the Bad, and the Ugly

Presented By: Jeffrey Schoenberger, Esq.
jschoenberger@affinityconsulting.com
(614) 602-5491

SMART BUSINESS STRATEGIES FOR THE LEGAL WORLD.

1



Perf Admin Tools Help Modules Pages Users Edit Page

PracticeHQ

- Opening or Closing a Law Firm
- Client Development
- Documents
- Technology
- Money
- Management
- Comparison Charts
- Learning Library

Pro Bono

Lawyers Helping Lawyers

New Attorney Information

Solo and Small-Firm Practitioners Resource Center

NJICLE

NJ State Bar Foundation

NJ Commission on Professionalism

SIDEBAR: A Podcast of the NJSBA

NJ Lawyers Assistance Program

County Bar Associations

Specialty Bar Associations

Emergency Notifications and Disaster Preparedness

Search Our Site

PRACTICEHQ

The New Jersey State Bar Association's Practice HQ is a free member resource designed to help you build and maintain a successful, thriving legal practice.

Look around to find checklists, whitepapers, videos, and other resources available to you as a NJSBA member.

EMAIL HOTLINE FOR NJSBA MEMBERS
We know that you need access to someone to answer questions and help guide you down the right path. Send your question to an Affinity Consultant who will respond within 48 hours. Just [CLICK HERE](#).

REMOTE CONSULTATIONS
Talk with an expert for 30 minutes on a phone consultation to find an answer to your practice challenges. To schedule a consultation, [CLICK HERE](#).

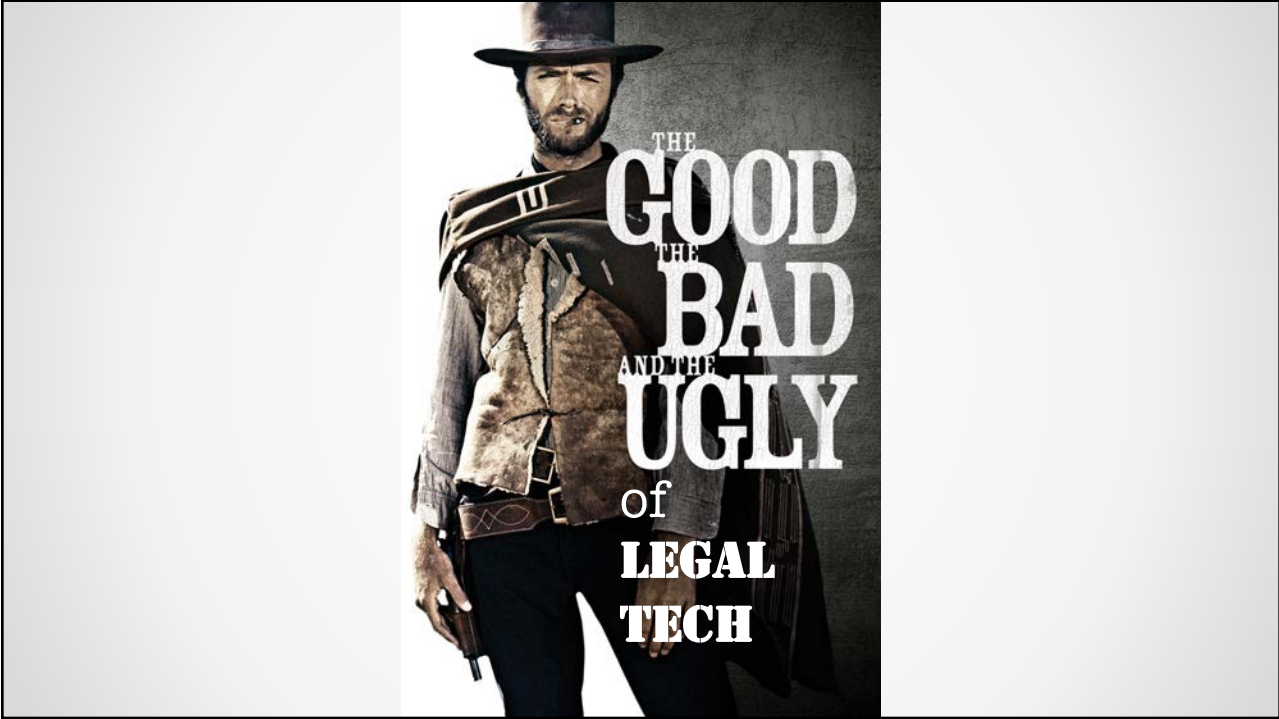
Opening/Closing Firm Client Development Documents Technology

How prepared are you?

4



5



10

Business Disasters

Photo by [Kelly Sikkema](#) on [Unsplash](#)



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What is a Business
Disaster?

12



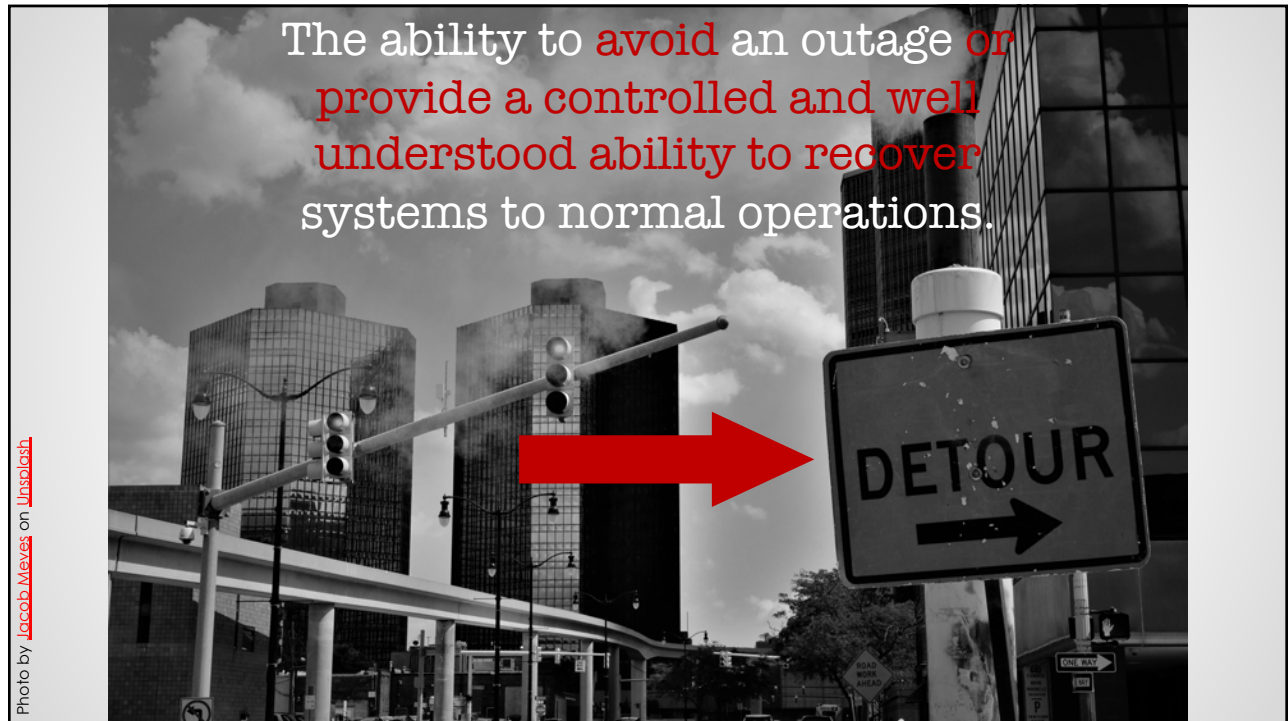
Any Event that
Makes the
Continuation of
Normal Functions
Impossible



13

Severity = How Long
Normal Function
Remains Impossible
& the Degree of
Impairment

14



15



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Causes of Business Interruption



Photo by [NOAA](#) on [Unsplash](#)

17

Fire



Photo by [Amy Mccormick](#) on [Unsplash](#)

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Natural Disasters

Deadly ice storm turns Atlanta into parking lot, strands thousands **REUTERS** By David Beasley
January 29, 2014 6:45 PM

Detroit snow breaks records, topples power lines, creates flooding risk

Detroit snow record: A spring storm broke Detroit's 133-year-old record for snowfall totals: This winter, Detroit got 94.8 inches of snow, topping the previous record from 1880-1881 by more than an inch.

By Associated Press / April 15, 2014



A stop sign is covered in snow in Detroit, Tuesday, April 15, 2014. A spring storm left roads slippery across Michigan and shattered seasonal snowfall records in Detroit and Flint. Paul Gancy/AP
In Pictures: Coping with the weather in 2014

[Enlarge](#)

Swarm of Tornadoes Tears Across the South

Denver Nicka @DenverNicka April 29, 2014

Dozens of twisters across Mississippi, Alabama and Tennessee pushed the death toll from this week's storms to at least 35 as the system moves east

Updated 4:58 p.m. ET

At least 16 people were killed Monday as deadly tornadoes ripped through sections of Alabama, Mississippi and Tennessee, bringing the death toll for the storm system that




Photo by NOAA on Unsplash

19

Power Failure




<https://pic.kr/9/81Lcov>

20




21

Embezzlement


NBC29.COM HOME NEWS WEATHER SPORTS COMMUNITY INSIDE 29 HEALTH

TOP STORY

Court Filing: \$500K embezzled from Charlottesville law firm by former employee



A Charlottesville law firm is out \$500,000 as a result of an embezzlement scheme perpetrated by a former employee, according to federal court filings. (Source: wvir)

By **CJ Paschall** | June 22, 2020 at 10:06 PM EDT - Updated June 22 at 10:45 PM

CHARLOTTESVILLE, Va. (WVIR) - A Charlottesville law firm is out \$500,000 dollars as a result of an embezzlement scheme perpetrated by a former employee, according to federal court filings.

22

Loss of Key Lawyer or Employee

Prestigious Lancaster law firm Hartman Underhill & Brubaker is closing its doors



SUSAN BALDRIGE | Staff Writer Sep 4, 2015 (5)

Hartman Underhill & Brubaker, one of the largest and most prestigious law firms in Lancaster County, will dissolve after nearly four decades in business, its managing partner said Thursday.

The announcement follows the exodus of several key attorneys, staff and clients in recent years and caught many in the legal community — and even some at the East Chestnut Street firm — by surprise.

23

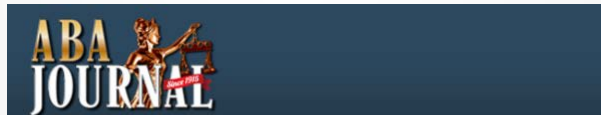
Theft

Thieves Leave Behind 'White Sticky Goo' After Law Firm Break-In

By STACI ZARETSKY

22 Comments / 20 Shares / Oct 10, 2014 at 3:45 PM

To have all of this happen in such a safe and nice community, it's just very shocking.



CRIMINAL JUSTICE

Attorneys wonder if law firm break-in was politically motivated

POSTED JUL 08, 2013 04:05 PM CDT

BY MARTHA NEIL

24

Data Loss or Disclosure



Photo by [BermixStudio](#) on [Unsplash](#).

25

'Cryptolocker' Virus Holding Law Firm Data For Ransom

By Y. Peter Kang

Law360, Los Angeles (March 9, 2015, 6:49 PM ET) -- A California law firm was the victim of a "Cryptolocker" cyberattack in which unknown hackers attempted to hold data for ransom, according to a notice recently filed with the California Attorney General's office.

Law Firm Pays \$2500 to Get Data Back After Ransomware Attack

Categories: ABA TECHSHOW



Thomas Brown of The Brown Firm in Florida was yet another victim of a ransomware attack which encrypted his data, leaving him out of business and without access to his data. The cybercriminals demanded \$2500 in bitcoin for the decryption key. The firm said that they had to pay up or lose all their data so they paid up -- and got the decryption key.

Lawyerist.com

Home Topics Newsletter Law Firm Websites Podcast Q&A Forum

Ransomware Hackers Hit Law Firm, Demand Bitcoin, Get Paid

By Sam Harden on February 17th, 2016

THE AMERICAN LAWYER

DLA Piper's Hack Attack Could Cost 'Millions'

James Booth, Legal Week
July 7, 2017 | 0 Comments



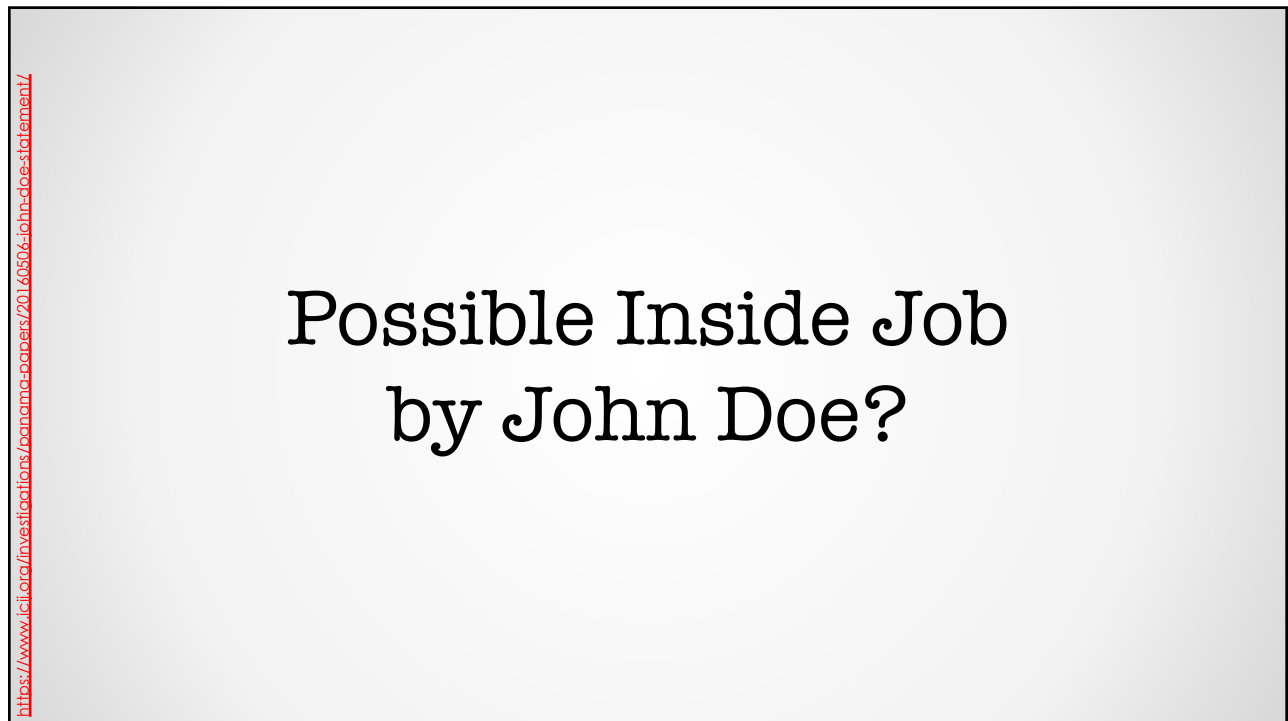
Photo: Diego M. Radomski/ALM

DLA Piper is still recovering from last week's massive cyberattack, with insurance brokers claiming that the resulting upheaval could lead to costs "in the millions" for the firm.

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THE LAUNDROMAT

Critics Consensus
The Laundromat misuses its incredible cast by taking a disappointingly blunt and unfocused approach to dramatizing the real-life events that inspired it.

 **41%**  **41%**

TOMATOMETER **AUDIENCE SCORE**
Total Count: 165 User Ratings: 862

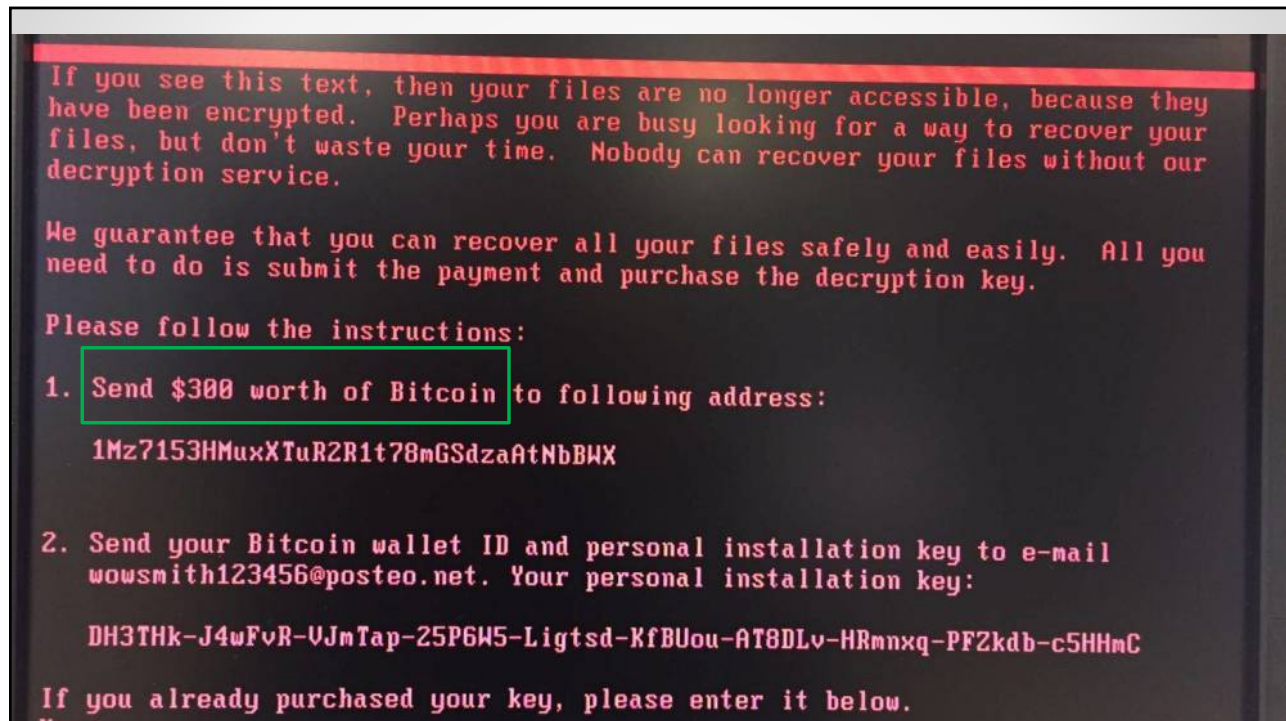


NETFLIX

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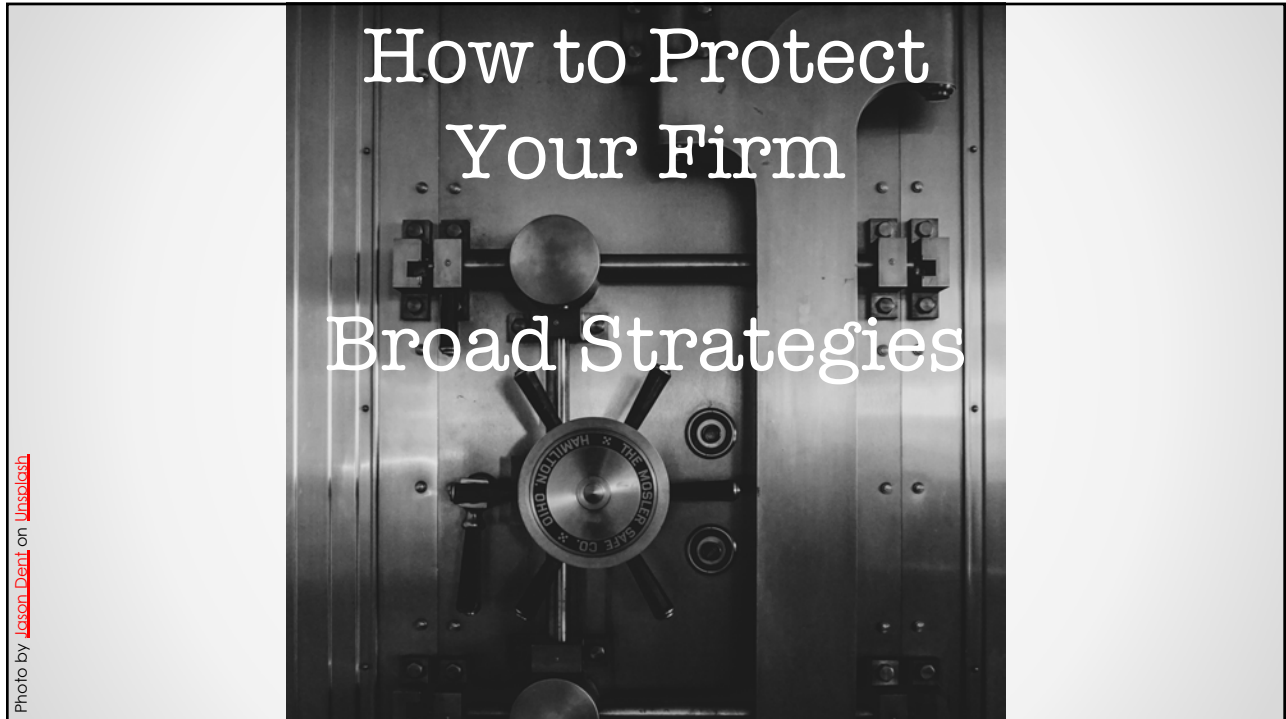


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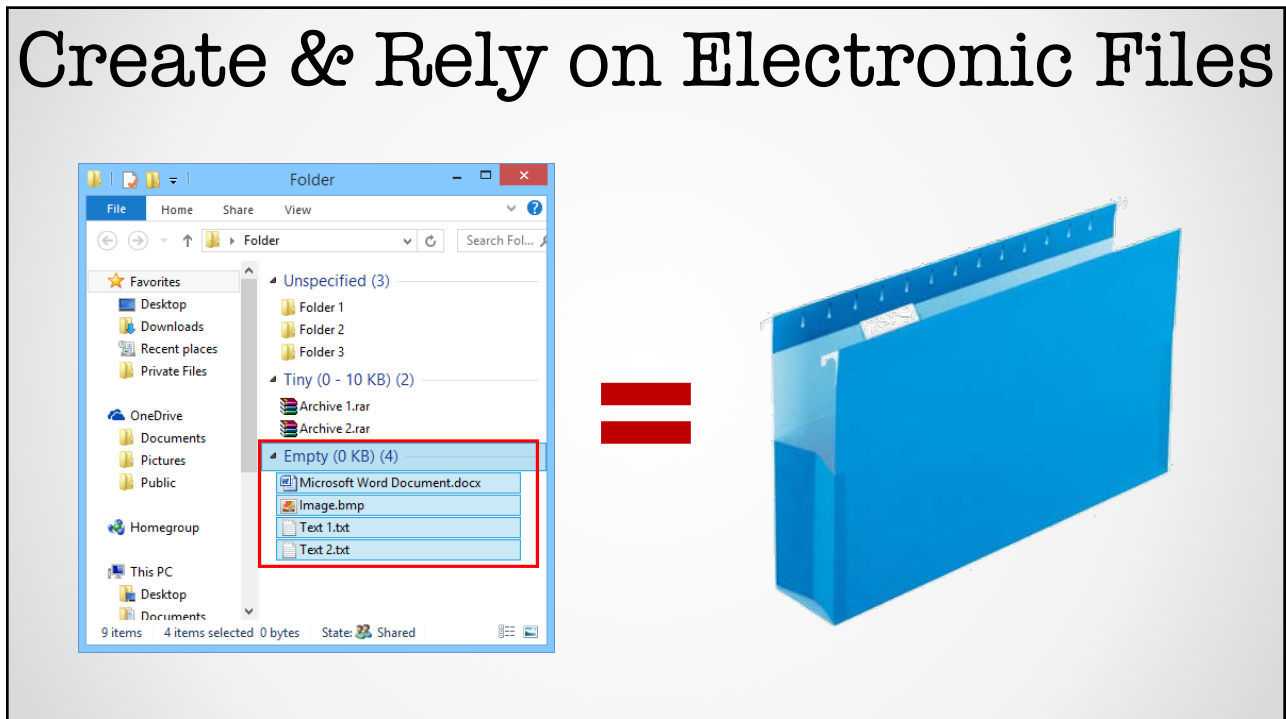
Data Loss or Disclosure

- Human Error
- Hardware Failure - Flaw or Defect
- Fire or Natural Disaster
- Temperature
- Virus / Ransomware / Malware
- Synchronization Issues
- Criminal Acts of Others (hackers, etc.)
- Malicious Acts of Employees

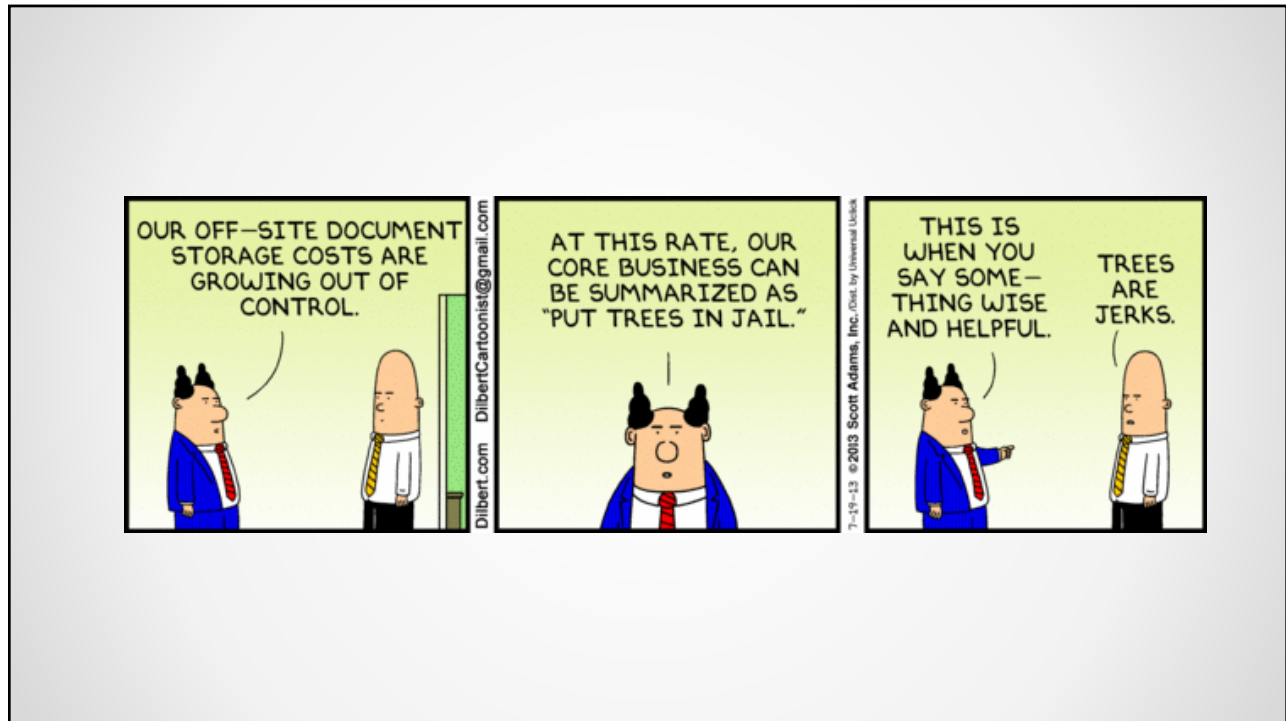
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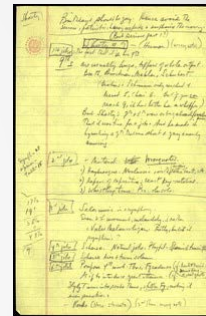
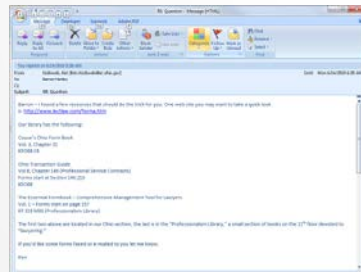
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Electronic Files Must Hold...

- Documents created internally
- Documents received
- Email
- Email attachments
- Faxes
- Notes



36




Default to Laptop




Apple MacBook Air - \$999 (8GB RAM, 256GB SSD)



Lenovo X1 Carbon - \$1,085 (8GB RAM, 256GB SSD)

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<https://www.njsba.com/personal/business/members/memberbenefits/BusinessofPractices.aspx>



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Mobile Communications & VOIP



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Photo by [johndavies](#) on [iStock](#)

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Photo by [Dallas Reedv](#) on [Unsplash](#)

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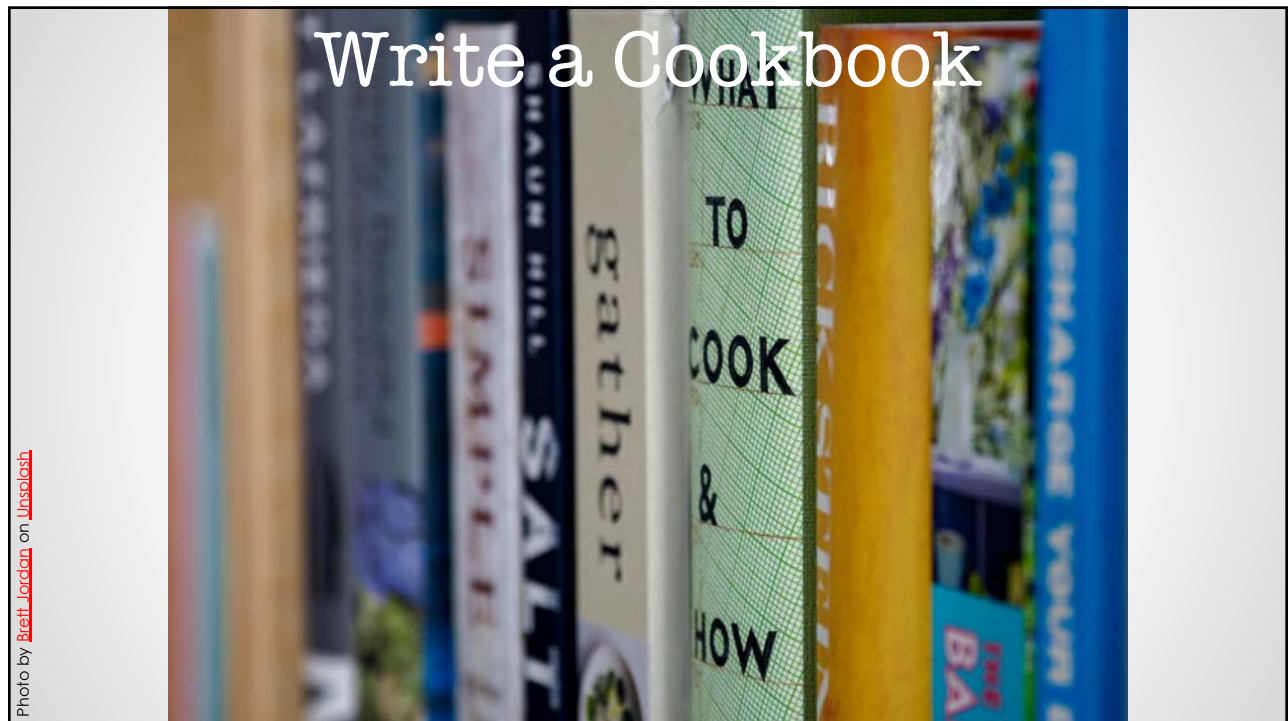


Photo by [Brett Jordan](#) on [Unsplash](#)

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Document Substantive Processes

- Description
- Who?
- How long?
- Decisions?
- Tools?

Dissecting processes: How to create a legal process improvement program

By Kim R. Craig, global director, legal project management office, and Andrew M. Baker, global director, legal technology innovations office, Seyfarth Shaw

THE PRACTICE of law is a process. It may be an incredibly complex process with a large number of variables, but it is a process. The complexity of some legal work can skew practitioners' views of what they do, causing them to see the law largely as an art, rather than having some relation to science.

Nevertheless, the general mindset in law firms has started to change over the past few years. Clients are focused on how legal work is going to be done. Processes are relevant. As a result, a few law firms are taking this process-centric view of the practice of law very seriously. Flowing from that evolved view of legal work, firms are beginning to implement legal process improvement (LPI) programs.

of experience, predictability in spend, and transparency to the attorney-client relationship.

The first key step is understanding the current state of a specific legal process. This requires sitting down with your legal teams and getting a handle on a specific scope of the work. Ask yourselves questions like:

- What tasks make up this type of work?
- Who handles those tasks?
- What precedential materials and tools are used in a given task?
- How much time is necessary to execute a specific task?
- What decisions do we have to make?

It all needs to be catalogued and made digestible for those who are not experts in the area.

At Seyfarth Shaw, this is done through process mapping exercises. First, a particular piece of legal work is pinpointed for the

43

Document Administrative Processes

- Accounting (run invoices, post payments, bank reconciliation, pay bills, etc.)
- Payroll
- Benefits (retirement plan, health insurance, life insurance, etc.)
- Taxes (retirement plan, health insurance, life insurance, etc.)

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3-2-1 Backup Rules

1. No Excuses – Every Day
2. Should be Unattended
3. Check the Log
4. Off-Site Storage
5. Run Test Restores
6. Have a Secondary Method

1 Off-Site

2 Media Type

3 Backups

45

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	billed annually	billed annually	billed annually
	Buy now	Buy now	Buy now
Features			
Automatic cloud backup	✓	✓	✓
Award-winning support, 7 days/week	✓	✓	✓
External Hard Drive backup	Optional	✓	✓
Remote file access to computer files	✓	✓	✓
Encryption	128-bit	128-bit	128 or 256-bit
FERPA, GLBA & HIPAA support		✓	✓
Centralized management & admin controls		✓	✓
Image Backup and Bare Metal Restore			✓
Backup for databases & applications			✓
	Start home trial	Start business trial	Start business trial

<https://www.carbonite.com/backup-software/buy-carbonite-software>

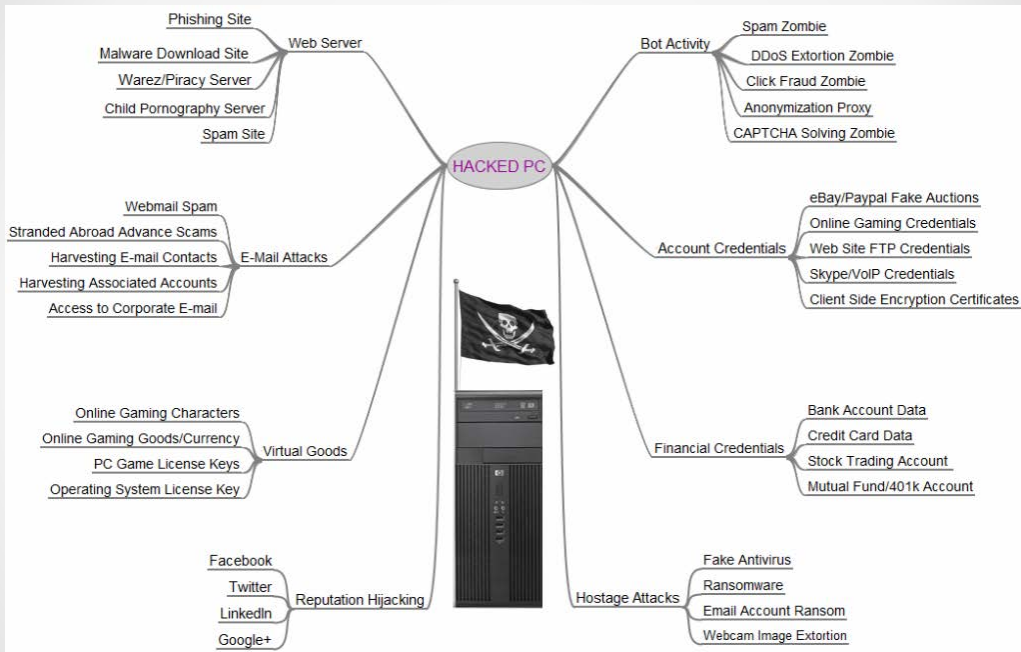
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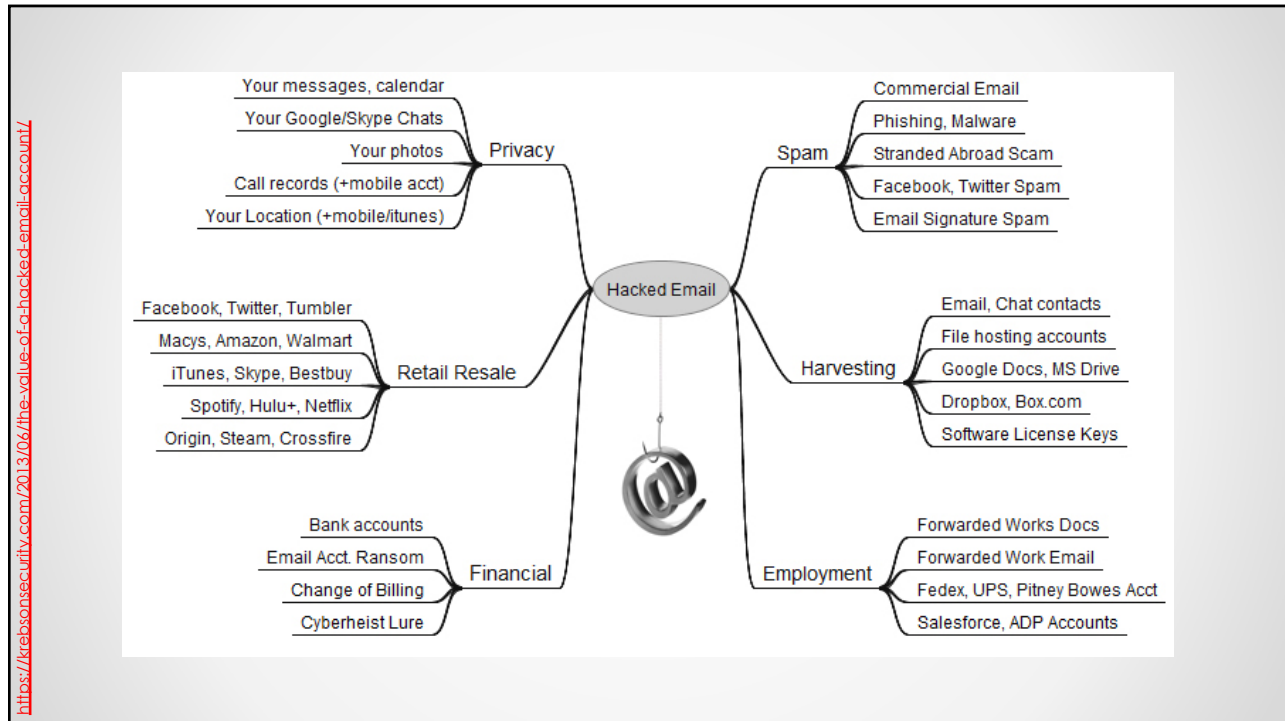


47

<https://krabonsecurity.com/2019/10/the-scrap-value-of-a-hacked-pc-revisited/>



48



49



67

RPC 1.6(a) – Confidentiality

A lawyer shall not reveal information relating to the representation of a client unless the client consents after consultation, except for (1) disclosures that are impliedly authorized in order to carry out the representation, (2) disclosures of information that is generally known,

68

RPC 1.6(f) – Confidentiality

A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

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RPC 1.6 – Comment

Paragraph (f) requires a lawyer to act competently to safeguard information, including electronically stored information, relating to the representation of a client against unauthorized access by third parties and against inadvertent or unauthorized disclosure by the lawyer or other persons or entities who are participating in the representation of the client or who are subject to the lawyer's supervision...

70

RPC 1.6 – Comment (cont.)

The unauthorized access to, or the inadvertent or unauthorized disclosure of, confidential information relating to the representation of a client does not constitute a violation of paragraph (f) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer's efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use)....

71

RPC 1.6 – Comment (cont.)

...A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent in writing to forgo security measures that would otherwise be required by this Rule...

72

Rule 5.1 – Responsibilities

(a) Every law firm, government entity, and organization authorized by the Court Rules to practice law in this jurisdiction shall make reasonable efforts to ensure that member lawyers or lawyers otherwise participating in the organization's work undertake measures giving reasonable assurance that all lawyers conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

73

Rule 5.1 – Responsibilities

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or ratifies the conduct involved; or

(2) the lawyer having direct supervisory authority over the other lawyer knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

74

Rule 5.3 – Nonlawyer Assistance

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) every lawyer, law firm or organization authorized by the Court Rules to practice law in this jurisdiction shall adopt and maintain reasonable efforts to ensure that the conduct of nonlawyers retained or employed by the lawyer, law firm or organization is compatible with the professional obligations of the lawyer.

75

Rule 5.3 – Nonlawyer Assistance

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

76

Rule 5.3 – Nonlawyer Assistance

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or ratifies the conduct involved; or

(2) the lawyer has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; or

(3) the lawyer has failed to make reasonable investigation of circumstances that would disclose past instances of conduct by the nonlawyer incompatible with the professional obligations of a lawyer, which evidence a propensity for such conduct.

77

What Constitutes...

- Reasonable Efforts
- Acting Competently



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Confidentiality

- Information is Either Confidential or Not (It's Not a 1 to 10 Scale)
- Lawyers are Not Qualified to Judge Sensitivity of Client Data or Likelihood of Disclosure
- If lawyers find it too expensive or difficult to protect client data, then they shouldn't be in possession of it.

79



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Ask Your Clients...

From: [REDACTED]
Sent: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: Re: [REDACTED]

First, I am hugely concerned by the total disregard by your office for my confidential personally identifiable information (PII) contained in this document, unsecured, unencrypted and dalled about the Internet in plain text. This is a flagrant disregard for privacy laws and has exposed me to potential identity theft.

I must instruct you to immediately cease and desist. You are not to expose my full contact information, date of birth and social security number to the Internet again for any purpose. You are to immediately take every reasonable commercially available precaution to protect my PII from misuse.

If you do not know or understand your privacy violations in this matter, please contact me separately.

Do not share this document with anyone - including me - via the Internet, including email transmissions, without either 1) removing confidential PII, and/or 2) encrypting these contents to commercially reasonable levels.

[REDACTED]
[REDACTED] First Set of Interrogatories.DOCX>

81

Ignorance is No Defense...

Most States Now Require Tech Competence for Lawyers. What Does That Mean For You?

February 9, 2017 by Sarah Andropoulos

Conclusions

The constantly evolving world of technology may seem like an overwhelming new frontier, especially as it relates to the already complex ethical rules that attorneys must follow. The challenge of complying with new ethics and technology standards can seem even more difficult given the somewhat general wording of applicable rules. However, and while the discussion above does not provide an exhaustive guide to compliance in this area, the clear takeaway for today's lawyers is that they will be unable to claim ignorance in the event of a technology-related ethical lapse, and must undertake reasonable efforts to use technology in a manner that is consistent with their professional responsibilities.

82

Reasonable Steps

You need to understand
the risks & benefits of relevant technology.

1:38-7. Confidential Personal Identifiers

(a) Definition of Confidential Personal Identifiers. A confidential personal identifier is a Social Security number, driver's license number, vehicle plate number, insurance policy number, active financial account number, or active credit card number, or information as to an individual's military status.

(e) Redaction of Required Personal Identifiers. When confidential personal identifiers as defined in R. 1:38-7(a) are required by statute, rule, or court order to be included in documents or pleadings, such identifiers shall be redacted before public inspection is permitted. This redaction requirement, however, does not apply to driver's license numbers that the New Jersey Motor Vehicle Commission requires in documents pertaining to the suspension and reinstatement of licenses.

83

Reasonable Steps (cont.)

- Do you have the right software?
- Are the instructions written down?
- Does the person doing it know how?

84

Reasonable Steps (cont.)

If you're a supervising lawyer, you must ensure that:

- All subordinate lawyers are following protocol (Rule 5.1)
- All non lawyers associated with you are following protocol (Rule 5.3)

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86

PDF Files are Editable

Not Changeable...
Only if You Lock Them.

Permissions

Restrict editing and printing of the document. A password will be required in order to change these permission settings.

Change Permissions Password:

Printing Allowed:

Changes Allowed:

Enable copying of text, images, and other content

Enable text access for screen reader devices for the visually impaired

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Reasonable Steps (cont.)

Tech Competency Training:

- How to remove **metadata** from a Word file
- How to **redact** something on a PDF
- How to run a **redline**
- How to **e-file**
- How to **Bates number** documents
- How to **edit** complex documents
- How to conduct electronic **legal research**
- How to **look up information** on internal systems

88

Some Statistics

Percentage of lawyers who use mobile devices for law-related tasks while away from primary workplace:

- **91%** use a smartphone
- **49%** use a tablet
- **84%** use a laptop

89

Cell Phones

36% of people have lost a smartphone due to theft or carelessness



90

Encryption Defined

Encryption is the process of converting data to an unrecognizable or 'encrypted' form. It is commonly used to protect sensitive information so that only authorized parties can view it. This includes files and storage devices, as well as data transferred over wireless networks and the Internet.

...

An encrypted file will appear scrambled to anyone who tries to view it. It must be decrypted in order to be recognized. Some encrypted files require a password to open, while others require a private key, which can be used to unlock files associated with the key.

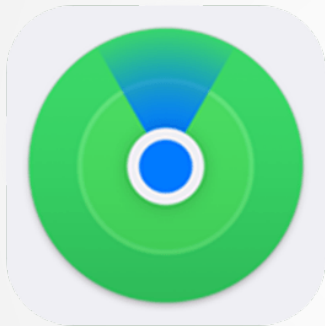
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Lockdown Your Phone

- Enable Encryption
- Anti-Malware software
 - Lookout
 - Kaspersky
 - McAfee
- Geo-Locate & Remote Wipe
- Backup Your Data

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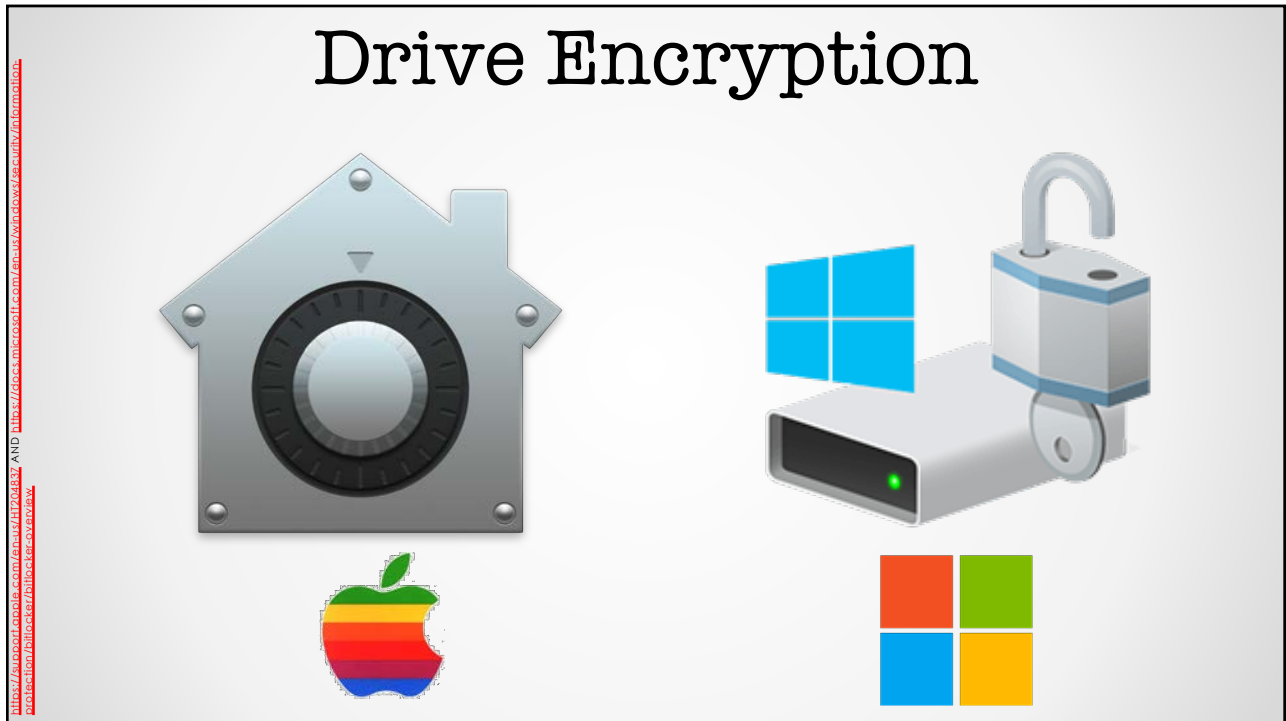
Free “Find My”



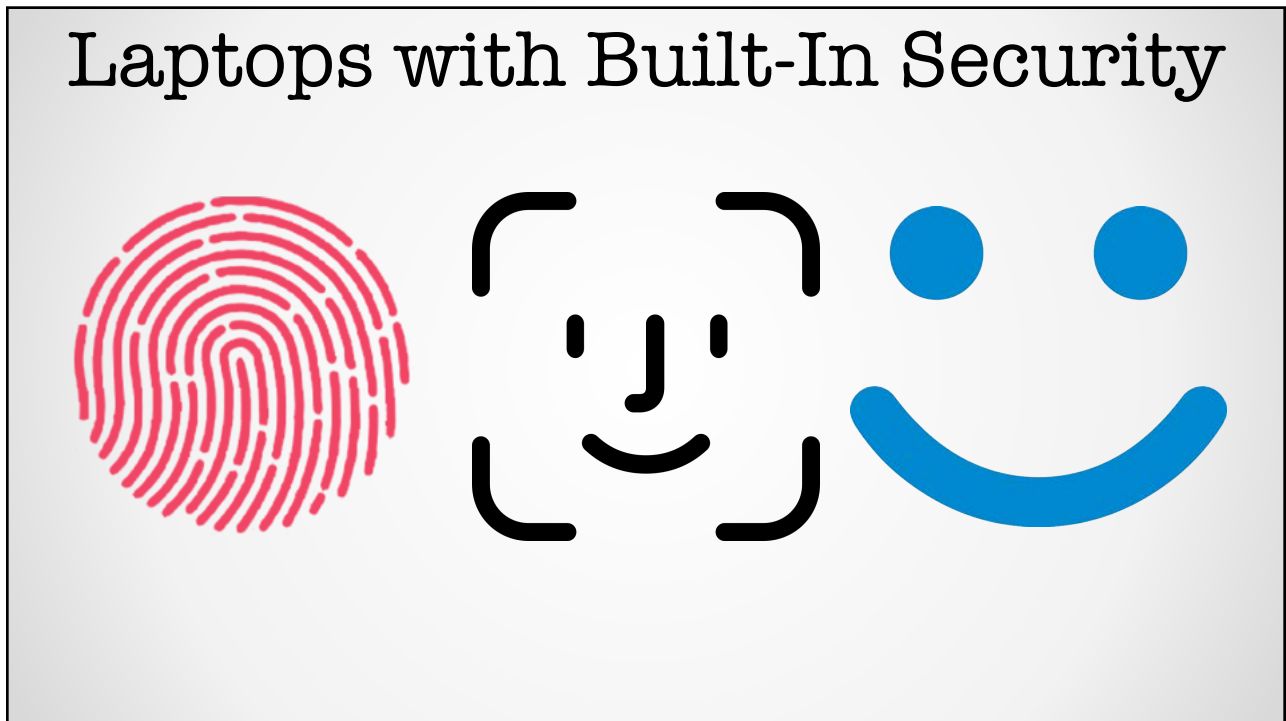
Google

<https://support.apple.com/exlore/findmy> AND <https://www.google.com/android/find/>

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https://www.kensington.com/products/technology/secure-protective-productivity/devices/secure-laptops/28110101000

96

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https://homeoffice.absolute.com/features/#locate

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Asset / Recovery Tags

https://returnmelocks.com

ReturnMe STORE PACKS LUGGAGE KEYS MOBILE TOUCH-AID English

ReturnMe Packs

Protect more of your items with ReturnMe packs, which bundle many of our most popular recovery tags while offering you valuable savings.

- Gadget Pack – \$19.99
- Starter Pack – \$19.99
- Travel Pack – \$59.99

98

3M Privacy Screens

https://www.3m.com/3M/en_US/3m.com/en-us/3m/privacy-screens/250

250 Results

Filter Results By

Product Family

- Framed Black Privacy (13)
- Gold Privacy (37)
- High Clarity Privacy Filter (26)
- Black Privacy (167)
- Anti-Glare (3)
- Ultra-Clear (5)

Device Type

- Monitors (94)
- Laptops (90)
- Tablets (16)
- Smartphones (2)

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Remote file access to computer files	✓	✓	✓
Encryption	128-bit	128-bit	128 or 256-bit
FERPA, GLBA & HIPAA support		✓	✓
Centralized management & admin controls		✓	✓
Image Backup and Bare Metal Restore			✓
Backup for databases & applications			✓
	Start home trial	Start business trial	Start business trial

<https://www.carbonite.com/backup-software/buy-carbonite-safe>

100

1Password 

LastPass ●●● |

<https://1password.com> AND <https://www.lastpass.com>

101

Password Managers

- Too many passwords and logons to track
- Strong passwords
- Use different passwords for different services
- Holds credit cards
- Holds any kind of personal info

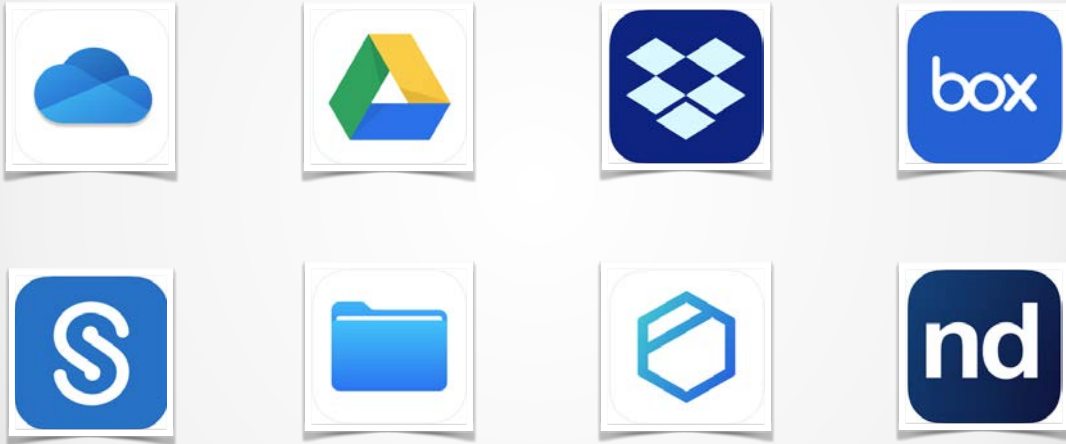
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<https://abovethelaw.com/2020/07/the-simple-practice-expensively-keeping-your-computer-safe/?f=1>

Don't Share Files via Email

103

Pick a Cloud, Any Cloud to Share



104

Encrypt Your Cloud

**boxcryptor****Sookasa**

<https://www.boxcryptor.com/en/> AND <https://www.sookasa.com>

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Best to Track File Sharing



<https://www.sharefile.com>

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Citrix ShareFile 10 percent discount for life

Citrix ShareFile is a cloud-based storage service offering fast, easy and secure file sharing on any device anywhere. This customizable solution integrates with tools you already use and provides law firms of all sizes with unlimited storage, instant notification and access to files from any smartphone or tablet with a secure mobile app. Robust tracking and reporting features let you know and control who is viewing your files and when. To save time and money, use Citrix ShareFile.

CITRIX®
ShareFile

New Jersey State Bar Association members receive a 10 percent discount for life with ShareFile, as well as:

- Free 30-day trial
- Live one-on-one web demo
- 24/7 customer support via phone or email

[Click here to visit us and for more information](#)

<https://ems.nisba.com/personal/business/Members/MemberBenefits/BusinessofPractice/citrix>

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Wireless Encryption



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VPN



<https://encrypt.me>

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Additional Tips

- Don't share your computer with anyone.
- Don't work in a public area.
- Don't go to strange websites.
- Do purchase malware protection.

<https://abovethelaw.com/2020/07/the-simple-practice-receptive-to-keeping-your-computer-safe/?l=1>

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(Brian) Krebs on Security



<https://krebsonsecurity.com/about/>

111

Kreb's 3 Basic Rules for Online Safety

<https://krebsonsecurity.com/2011/05/krebs-3-basic-rules-for-online-safety/>

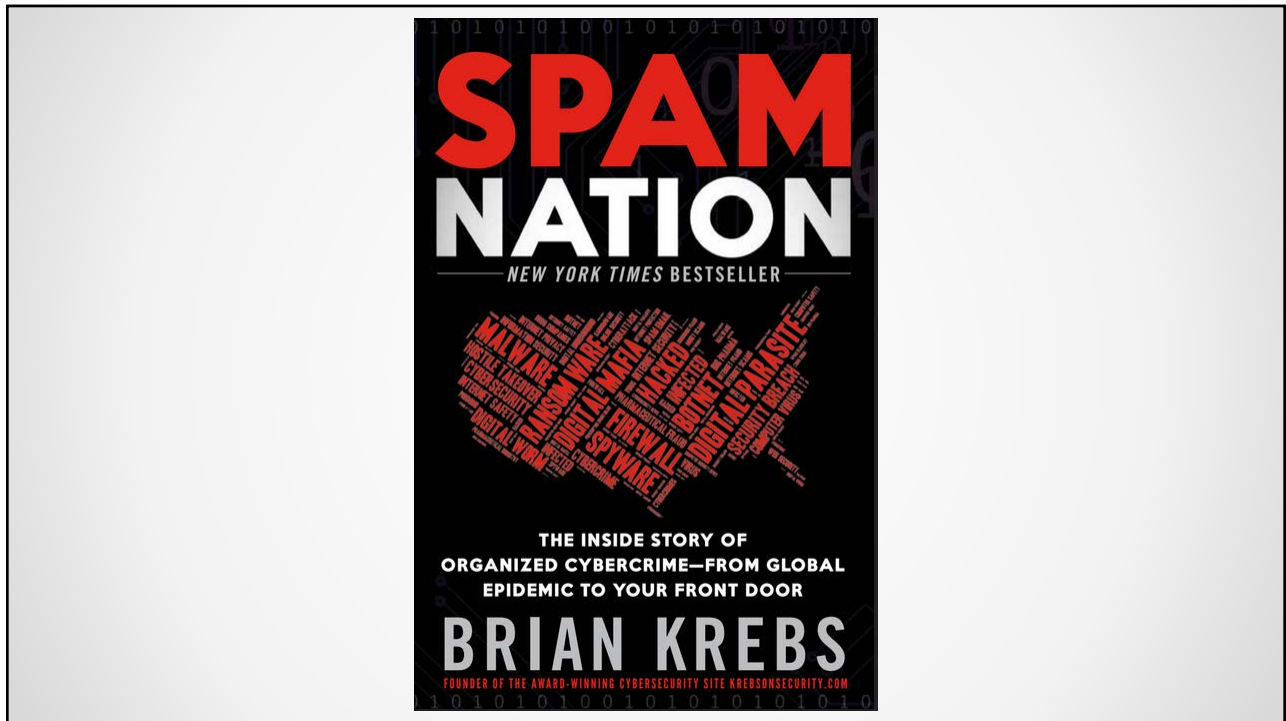
112

Three Rules

1. If you didn't go looking for it, don't install it!
2. If you installed it, update it... especially for Windows and macOS
3. If you no longer need it, remove it.

<https://krebsonsecurity.com/2011/05/krebs-3-basic-rules-for-online-safety/>

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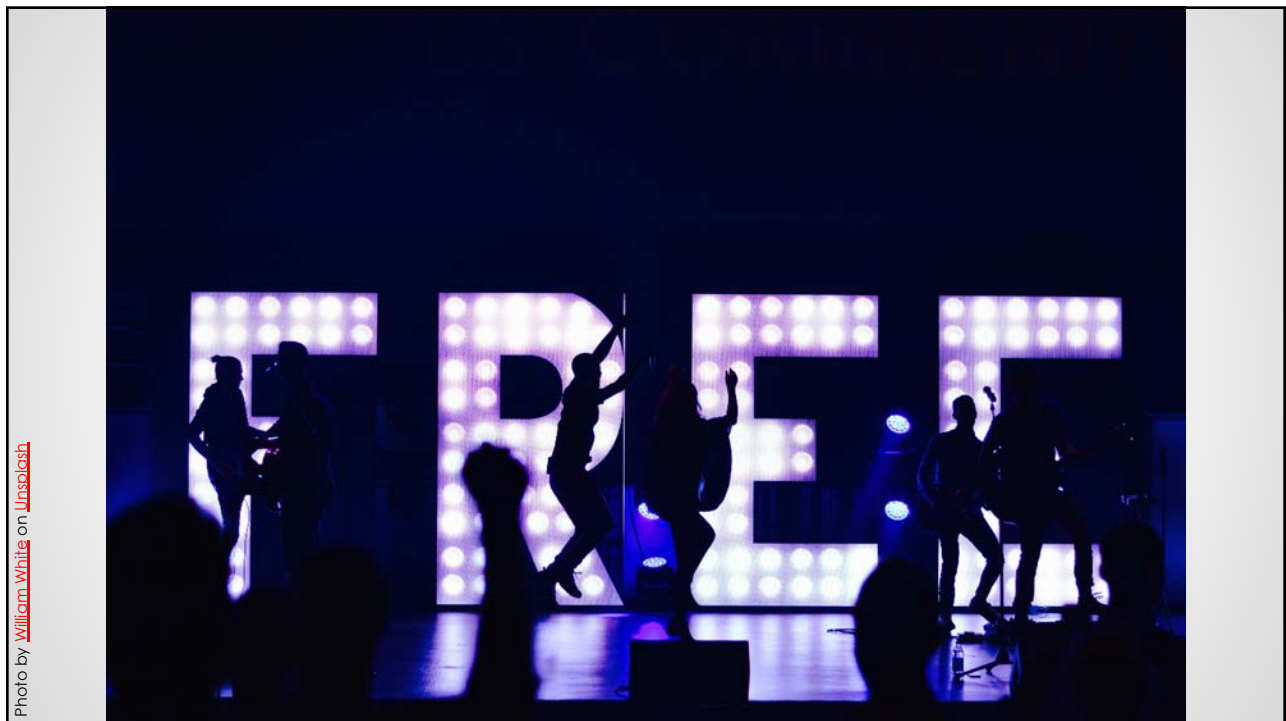
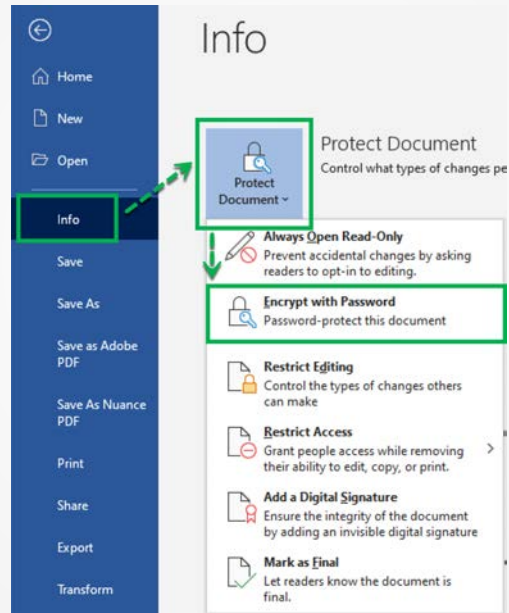


Photo by [William White](#) on [Unsplash](#)

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Encrypt with Microsoft Word

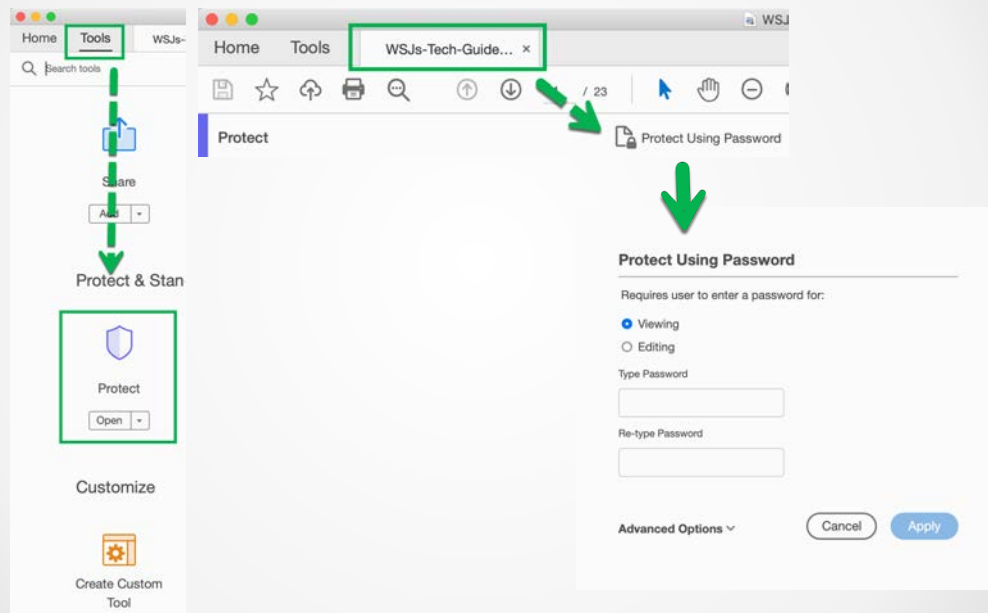
<https://support.microsoft.com/en-us/office/protect-a-document-with-a-password-in-word-3904e14e-8414-4848-8766-927411d0f6aa?ui=en&rs=en&ad=us&rsid=927411d0f6aa>



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Encrypt with Adobe Acrobat

<https://acrobat.adobe.com/us/en/acrobat/how-to/protect-a-pdf-file-with-a-password.html#:~:text=How%20to%20protect%20a%20PDF%20file%20with%20a%20password,Adobe%20Acrobat%20Reader,Adobe%20Acrobat%20Reader%20DC>



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2-Factor Authentication

Requires 2 authentication factors to verify identity

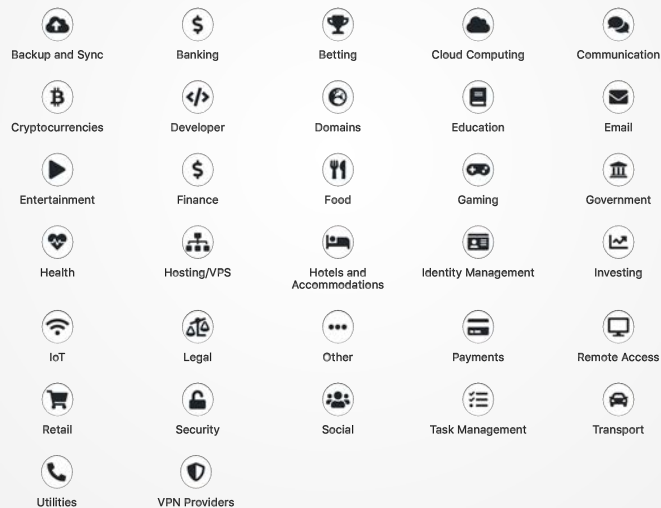
- **Knowledge** factors – something you know
- **Possession** factors – ID card, security token or smartphone
- **Inherence** factors – biometrics

<https://www.sharefile.com>

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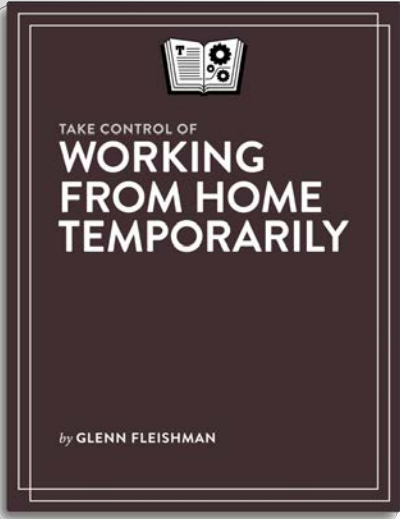
2-Factor Authentication

(<https://twofactorauth.org>)



<https://www.sharefile.com>

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Build productivity amid sudden change

**Take Control of
Working from Home Temporarily**
Glenn Fleishman

We're in a time of unprecedented uncertainty. In the middle of a global viral outbreak, you were told or asked to work from home—and you've never or rarely had to be productive where you live before. What to do? We're here to take some stress out of your life with a new, free book that details how to set up a home office and balance work and home life for those not accustomed to it.

All Take Control books are delivered in three ebook formats—PDF, EPUB, and Mobipocket (Kindle)—and can be read on nearly any device.

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<https://www.takecontrolbooks.com/working-from-home/>

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