

Cybersecurity Breaches and Private Law – Taking Stock and Looking Ahead

Title: Breach Notification: What is it Good For

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Abstract:

Notifications of both data subjects and data protection authorities in the case of substantial data security breaches are now mandates under Israeli Law, the EU GDPR and almost all U.S. states. Furthermore, bills to expand these rights are introduced in various jurisdictions. These laws are applauded as enhancing the rights of individuals and policing entities amassing personal data.

Yet implementing and enforcing these rights is not without costs or consequences. Therefore, it is always important to critically assess: what are these rules good for? Following up on recent scholarship addressing this matter directly and indirectly (Schwartz & Janger, Sunstein, Cate), this talk will strive to offer a realistic (and somewhat pessimistic) view of the benefits and utility of these regulatory requirements. It will focus on the potential futility of such disclosures in some context and the possibility that they would be misunderstood and lead to unintended, chilling and even dire outcomes in others. This inquiry is of greatest importance in Israel today, given the move to implement security notification regulation in the coming months. The outcome of the talk is that these rules must be tailored with greater care, while accounting for a broader array of considerations.