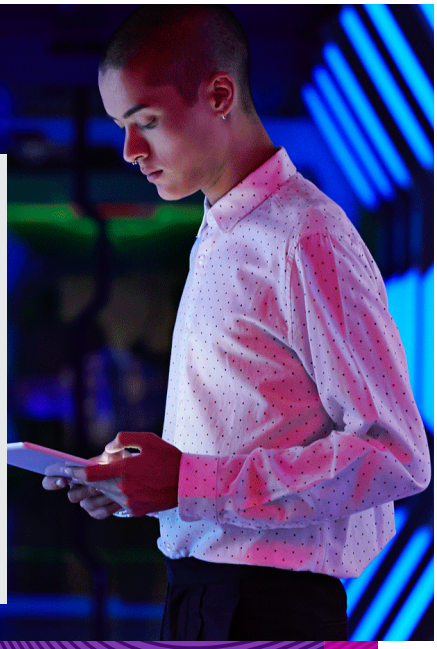


Directors' Liability Survey 2022

Cyber attack, data loss, cyber extortion

John Moran and Marc Voses, Clyde & Co

A robust 67% of respondents worldwide believe risks to their organisation's business operations presented by cyber attacks are second only to those created by the economic climate. Respondents in Europe rank cyber attack risks solidly in first place, while it is tied for first with economic climate by North American respondents, with Australasian respondents ranking the risk second behind COVID-19 and lockdown measures.

With the daily barrage of media reports on high-profile cyber events, it is unsurprising the three categories of cyber risk put to respondents account for the top three risks: with the first being cyberattacks, second, data loss and third, cyber extortion.

With this backdrop, global regulators continue to urge directors to step up and ensure cyberrisk is well examined and addressed by their businesses, from safeguarding data 'crown jewels', to implementing good cyber hygiene and ensuring management are primed and ready to respond to and recover from a cyber attack.

2021 was a wakeup call for businesses operating in core critical infrastructure sectors in particular, as governments, including China, Australia and the U.S., joined the E.U. in implementing regulatory regimes to protect core critical infrastructure assets from cyber attacks. Existing regulatory regimes are also being enforced with more regularity that are oftentimes accompanied by statutory fines and penalties for non-compliance.

A global risk unconstrained by borders

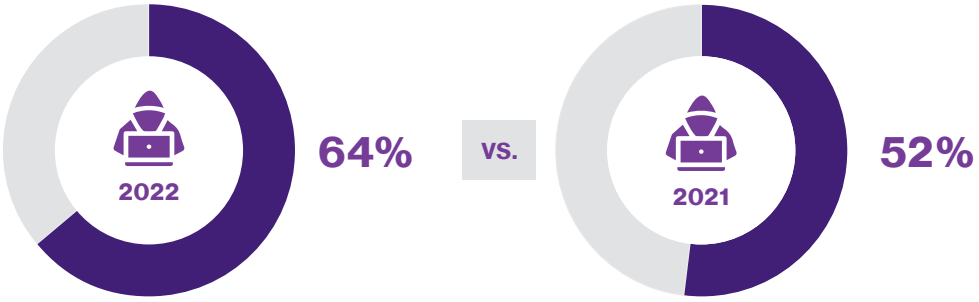
Whilst the perception of this risk differs from region to region, this year's results clearly point towards an intensifying concern of cyber attacks and data risk across the globe. Off the back of the Colonial Pipeline, JBS and Microsoft Exchange attacks, North American respondents reported a significant shift in concern about the risks of cyber incidents for directors: 64% of respondents in 2022 perceived the risk of cyber attacks as 'very significant' or 'extremely significant', as opposed to 52% in 2021.

Even higher figures were reported in Europe and Asia, however just 57% of Australasian boards judged the risk of cyber attacks as either very or extremely significant, which may be explained by the less mature regulatory environment and the less frequent targeting of companies in the region.

Future predictions

It is likely regulators will continue to assert more power in developing regimes. In Australia for example, the Office of the Australian Information Commissioner has increased activity over the last 12 months, a trend likely to continue in light of the recent litigation and may set the groundwork to commence the class action landscape for breach of privacy claims within Australia.

North American respondents reported a significant shift in concern about cyber incidents:



Perceived the risk of cyber -attacks as 'very significant' or 'extremely significant'

Evolving landscape of risk

The changing risk landscape is likely to increase concerns about cyberrisk, especially in uncertain geopolitical times. We have already seen an increased recognition of this risk, with 65% of respondents globally now recognising the threat of cyber attack as 'very' or' extremely significant', compared with 56% last year.

The threat of ransomware, for example, has become more sophisticated and this is explored more in the article: Cyber Extortion - ransomware and payment of ransoms.

In North America, state governments are increasingly enacting data privacy laws that require organizations to take control of their data and inform the public what data they collect and how they use it. Regulators, including those overseeing public companies and financial institutions, are becoming more active in pursuing those entities that suffer data breaches as a result of a failure to implement or adhere to a cybersecurity program.

We predict a continued uptick in regulatory enforcement actions, along with significant monetary fines for those organizations that suffer a cyber attack because of a failure to maintain an adequate cybersecurity program.

From the standpoint of cyberinsurance, we predict stricter underwriting requirements and increasing premiums could result in businesses being underinsured or uninsured.

In some respects, the visibility of the risks presented by cyber attacks and increased regulation have resulted in businesses improving their cybersecurity programs and addressing data collection practices.

We believe the entry of additional cyberinsurance capacity, coupled with assessing and monitoring an organizations' cybersecurity, will help reduce cyber attacks on those organizations using these products and services.

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