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Treasury Department Potentially Making Ransomware Payments More Complicated - and Costly

Companies impacted by ransomware often have to weigh the cost of the ransom against the long-term impact to business. But Treasury Department sanctions could potentially make the price of enduring such a cyber incident even steeper.

By **Frank Ready** (<https://www.law.com/legaltechnews/author/profile/Frank-Ready/>) | August 07, 2020 at 03:54 PM

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Ransomware attacks have often forced companies to weigh the business value of locked-out data against the price a bad actor is demanding for access. However, U.S. Department of the Treasury sanctions may be adding a whole new dimension of risk to the equation that requires a more diverse legal team to safely navigate.

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The Office of Foreign Assets Control, a financial intelligence and enforcement agency within the U.S. Treasury Department, maintains a Specially Designated Nationals and Blocked Persons List of groups or individuals that U.S. persons are “generally prohibited from dealing with,” which includes the payment of cryptocurrency ransoms. While OFAC has yet to levy penalties against businesses who pay ransom to an SDN list entity, companies in the midst of a cyber crisis may still have to proceed carefully.

Christopher Swift, a partner and white-collar litigator at Foley & Lardner who previously served at OFAC, noted that a business could very quickly see their financial exposure rise beyond a hypothetical million-dollar ransom.

“Not only have you paid a million dollars to a criminal group ... the penalties when the Treasury Department finds out about it and comes after you are going to be anywhere from \$300,000 to \$2 million on top of the ransom you just paid, plus the cost of attorneys fees,” he said.

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Oftentimes, a company may not even know the identity of the group attacking it, just the ransomware involved. Christopher Ballod, a partner at Lewis Brisbois Bisgaard & Smith, indicated that forensic agencies have begun to form theoretical links between individual types of ransomware and specific bad actors, but that doesn't necessarily make for concrete evidence.

“A couple of opinions on what's probably just open-sourced intelligence doesn't mean it's clearly tied,” Ballod said.

On the contrary, the consequences of refusing to pay a ransom often exist in clearer terms — and can be devastating to a business long term. Ballod advised that a company under assault by ransomware must often quickly weigh the relative value of the data that's being held captive.

“One case that I had, it [was] 45 years of intellectual property and the company was shut down for 6,000 employees overnight,” he said.

But the calculus that a company faces when deciding whether to pay a cryptocurrency ransom to an actor on the SDN list also extends beyond the financial considerations involved. Like many other types of cyber incidents, Swift pointed out that there's a reputational element that a business has to consider when being publicly seen as doing business with a criminal or potentially even a terrorist organization.

So what's a company facing a ransomware attack to do?

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Jason Short, an attorney at Kobre & Kim, thinks that businesses should endeavor to keep OFAC and government authorities apprised while also calculating the potential risk to the public at large. "Is this something that is going to effect thousands of consumers?" Short said.

Some businesses may also find unexpected value in consulting with their information technology departments about the full extent of their backups, which Swift thinks can often extend further than a business' leadership knows. "IT departments tend to save a lot of data. Their sort of culture and outlook is built around saving and sustaining data. They save stuff they don't need to save," Swift said.

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