CyberSecurity Legislation

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Overview

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CyberSecurity

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CyberSecurity

CFAA

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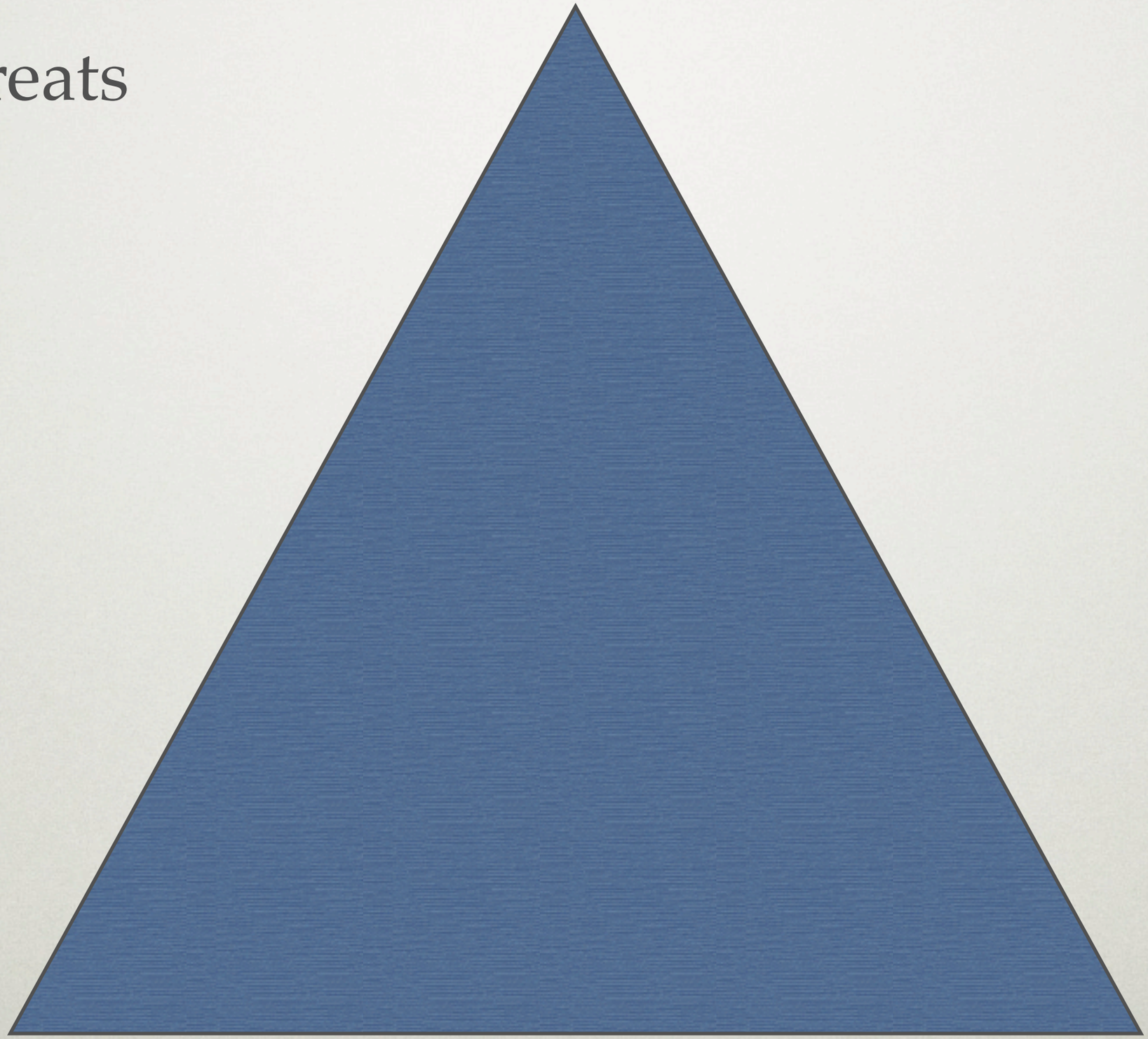
CFAA

Seizure & Forfeiture

CyberSecurity

The Threats



The Threats

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Sophisticated
Threat Actors
Opportunistic Threat Actors

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ATA
Sophisticated Threat Actors
Opportunistic Threat Actors

The "Other" Current Situation

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- Employment trends add to pressure

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- Prevalence of Flame, Stuxnet & progeny illustrate inadequacy of corporate and government defenses
- Government has concluded that US is vulnerable to cyberwarfare

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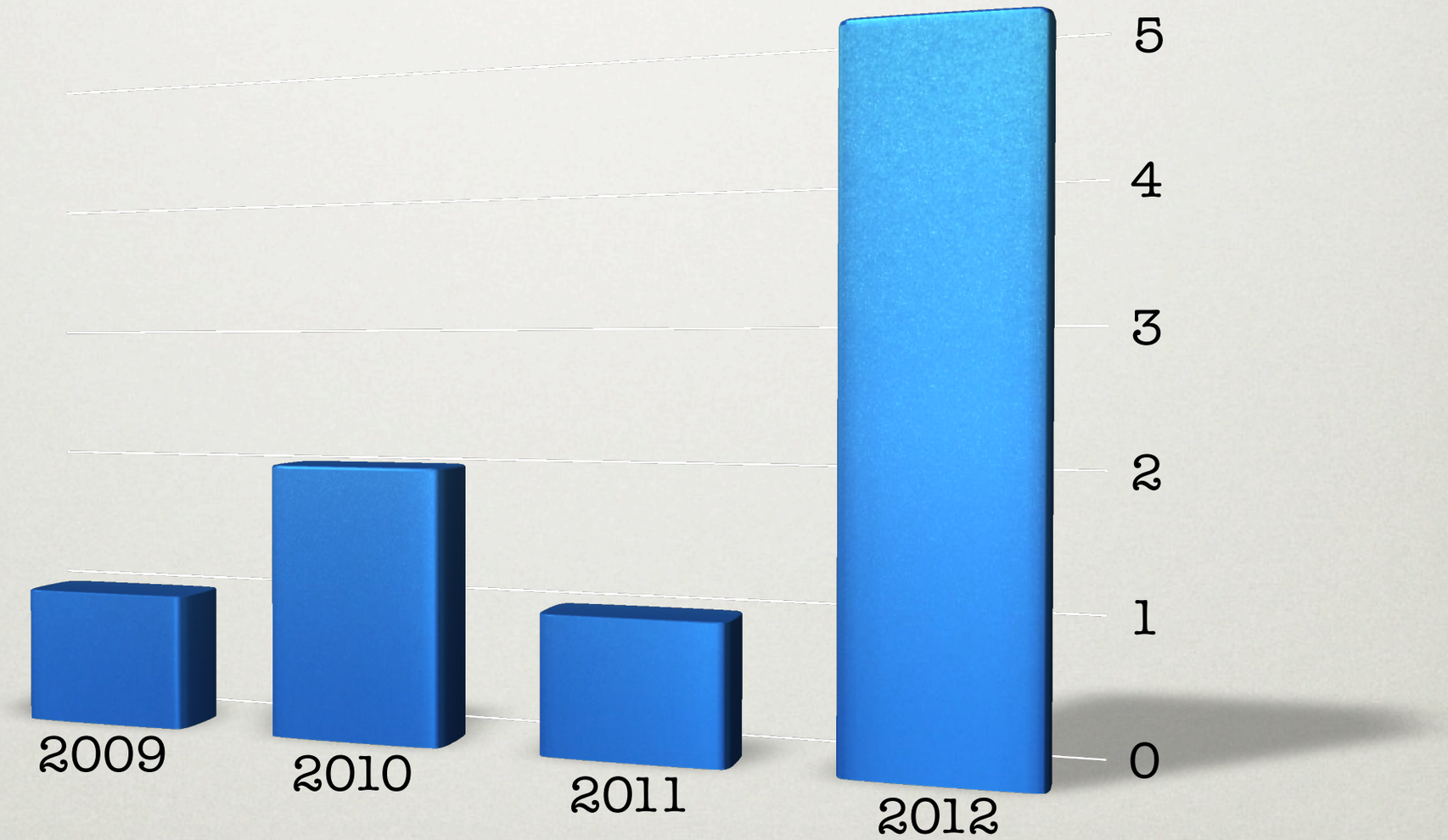
- Solution: Regulation
- Legislation working to control Internet activities through corporations

CyberSecurity Bills



2013 CybeSecurity Bills

- CISPA
- CyberSecurity Act of 2013
- SOPA / PIPA (?)
- CFAA

Cyber Intelligence Sharing and Protection

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  - Dems wanted “mandatory security standards for critical infrastructure”

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  - Internet "kill switch" off the table
  - First President was, then Congress was, now DHS might promulgate the regulations
  - Expect limited ability to stop your designation as "critical infrastructure"

Upcoming Obligations

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- Planning & Infrastructure

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  - Probably through Executive Branch
- **Certifications**
  - Promulgated by DHS via CFR
- **Enforcement**
  - Loss of Certification = No Internet

An Example

2011

SEC Disclosure Guidelines

http://www.sec.gov/divisions/corpfin/guidance/cfguidance-topic2.htm

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- May need to file reports on Form 6-K or 8-K for costs/consequences of incidents

More Risk

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More Enforcement

Another Example:

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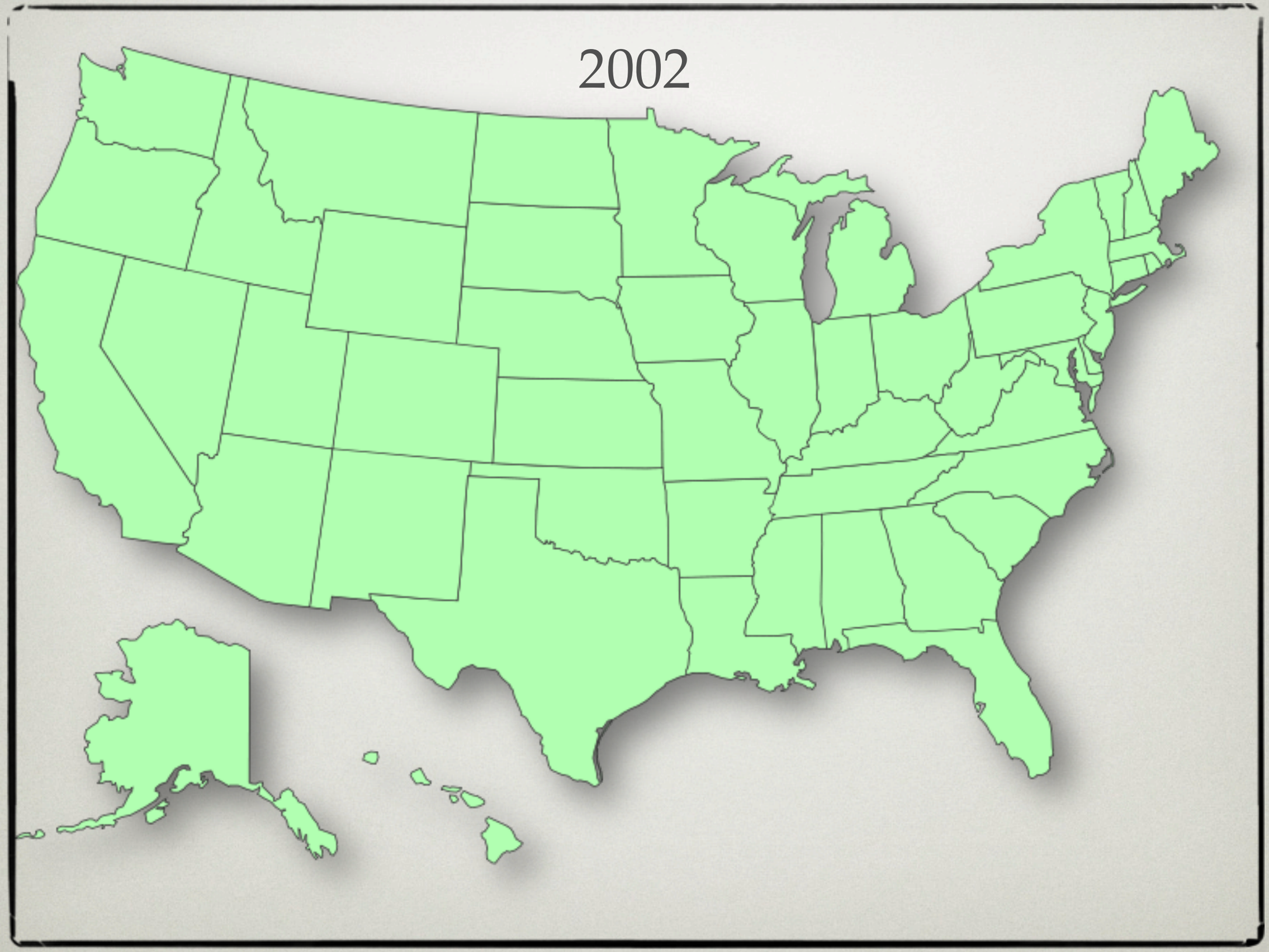
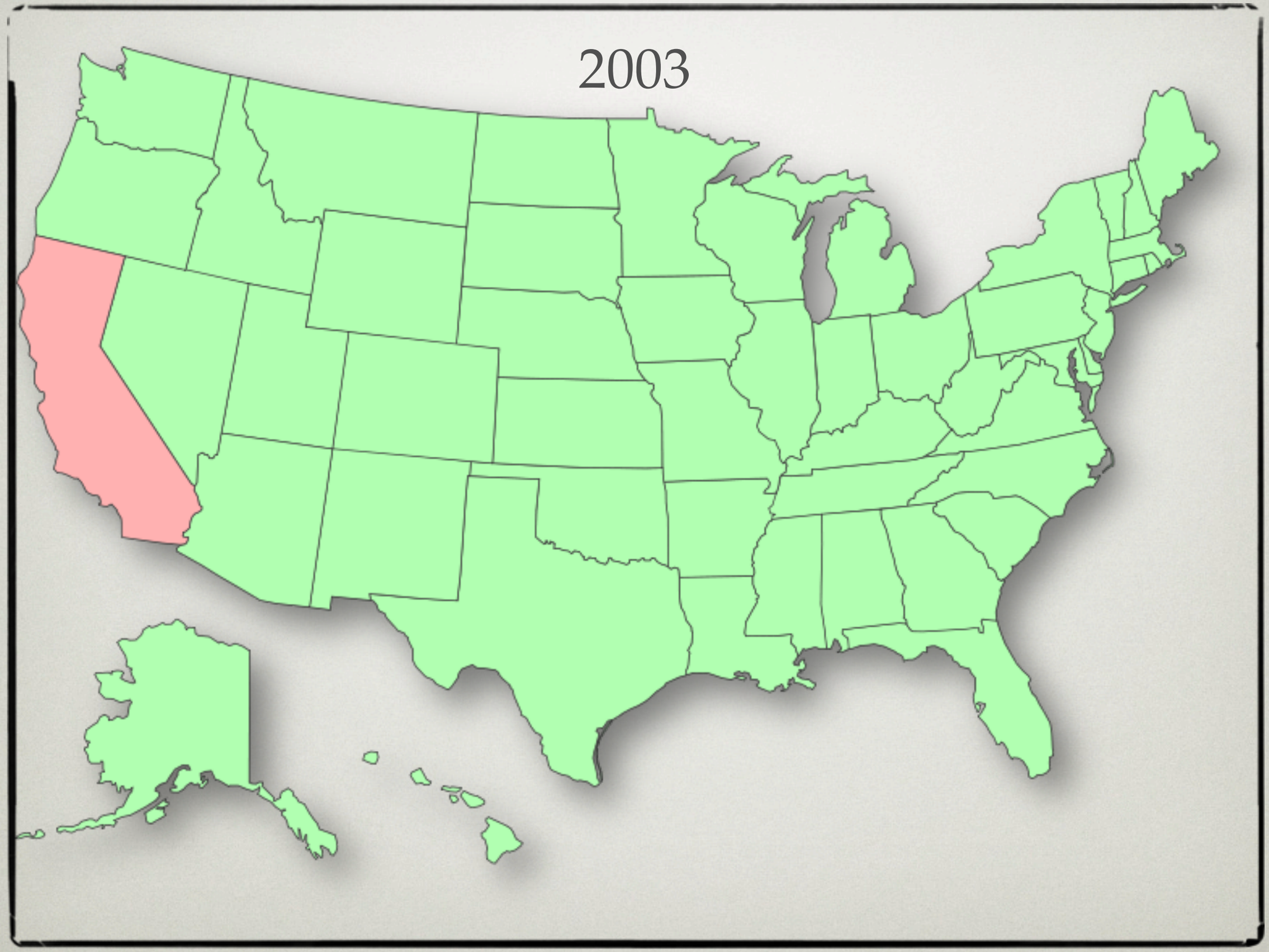
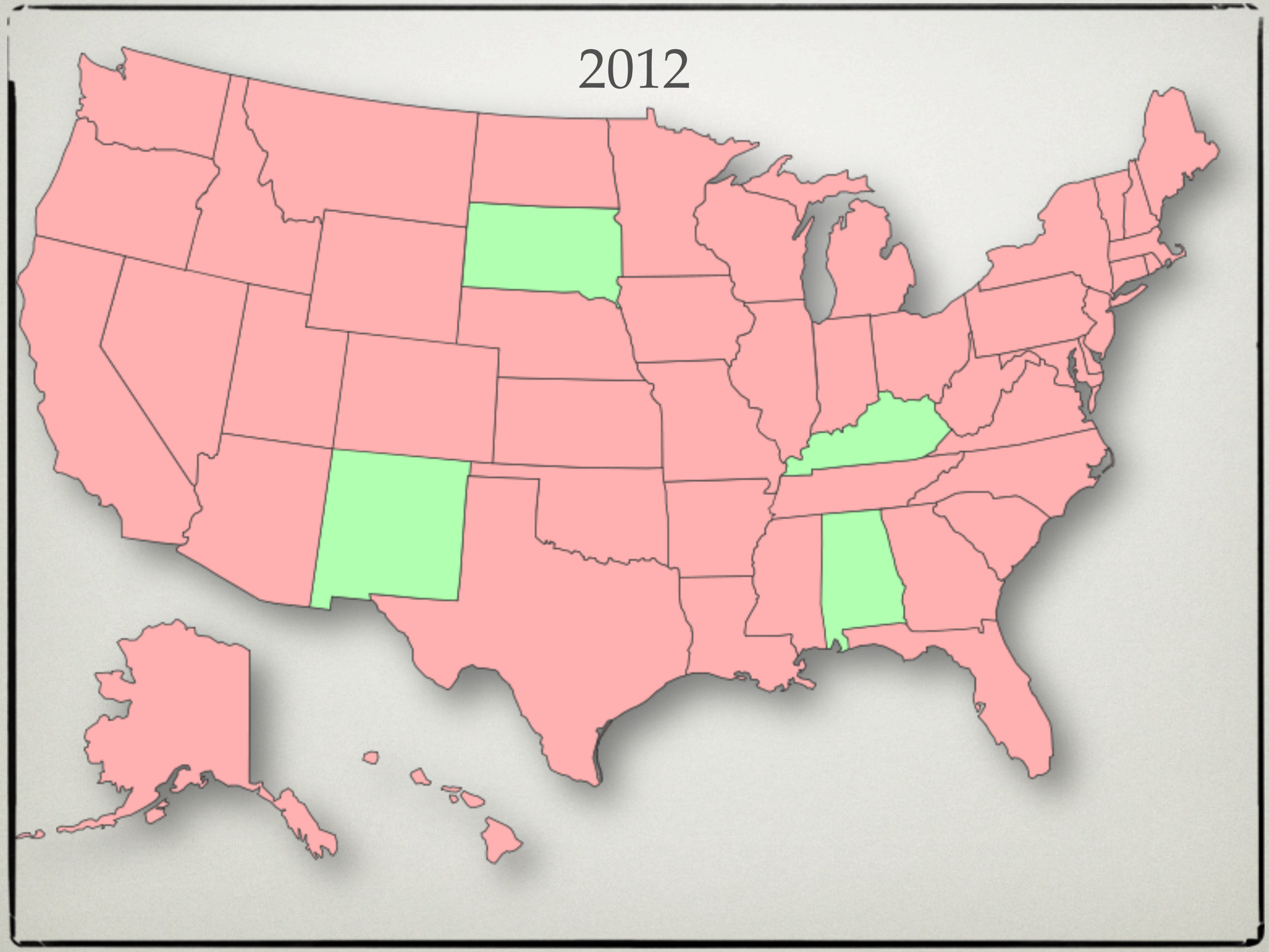
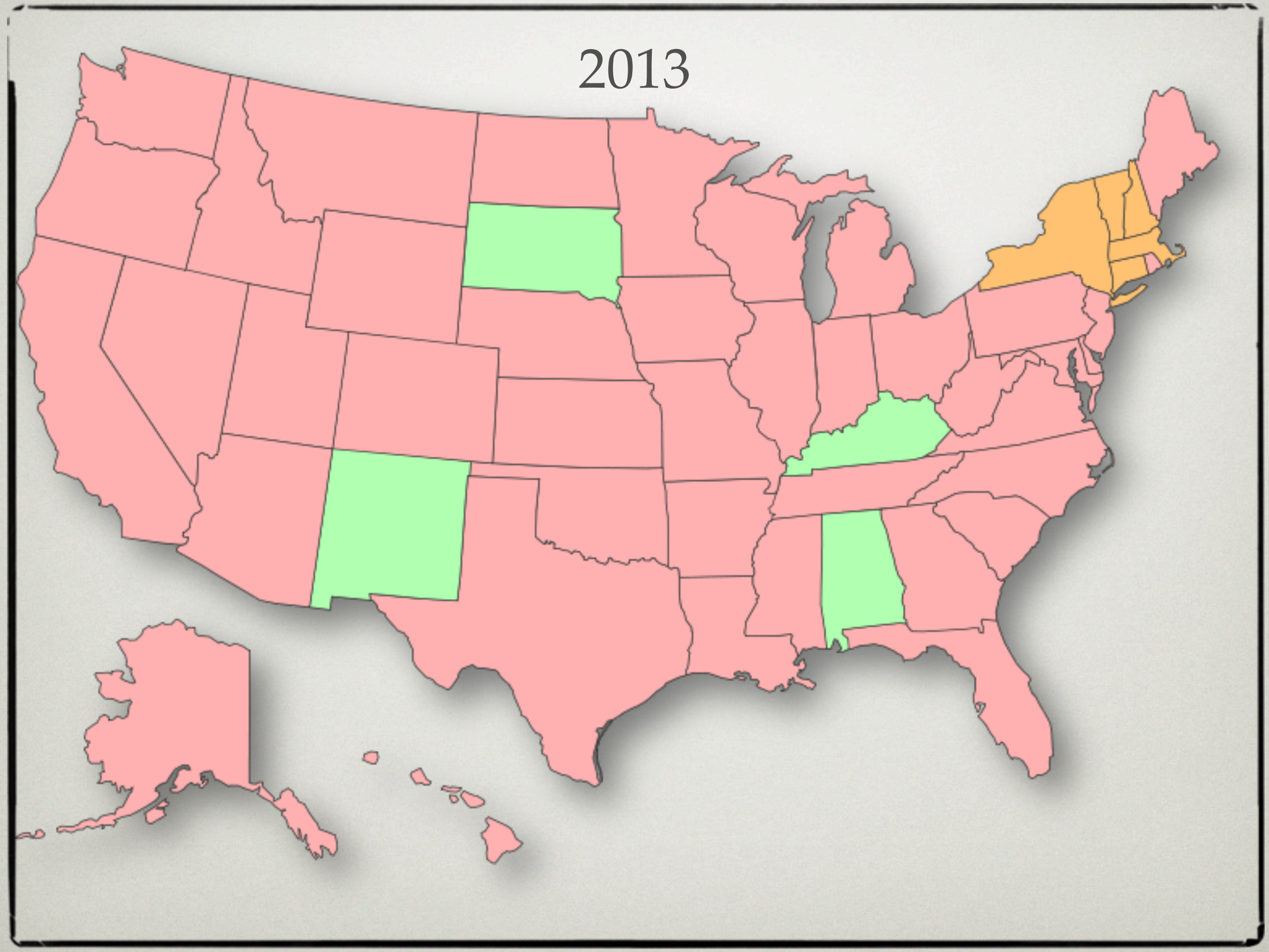
State

Breach-Notification Laws


2002


2003


2012


2013

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FEDERAL TRADE COMMISSION ★ UNITED STATES OF AMERICA ★ MCMXV ★

FTC v. Cbr Systems Inc.

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- Privacy policy thus deceptive under FTC Act (15 U.S.C. § 44)

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- Company agreed to settle, but had to...
  - Establish, implement and maintain a "comprehensive security program"
  - Designate accountable employees
  - Make biennial assessments and reports for 20 years by CISSP, CISA or GIAC professionals

FTC v. Franklin Toyota

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- Because Franklin offered financial products (like loans and leases), the FTC alleged that the dealership was a financial institution under the Gramm-Leach-Bliley Act, 15 U.S.C. § 6809(3)(A)

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- Frankin had a privacy policy, but still did not provide customers with annual privacy notice with clear opt-out ability

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- FTC contended that having P2P file-sharing on network was evidence of lack of "reasonable measures"

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- See also *FTC v. Wyndham Worldwide Corp.*, 2:12-cv-01365-SPL (D. Ariz. filed June 26, 2012) (Co. violated own policies)

Conclusions

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  - Law Firms!

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- Law expanded several times (1989, 1994, 1996, 2001, 2002, and 2008)
- Another revision now before Congress
- Multiple controversies, most surrounding "authorization" and criminalization

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- See, e.g., *United States v. Morris*, 928 F.2d 504 (2d Cir. 1991)

Type 2 Activity

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- Second modus of accessing information illegally -- by violating a Terms of Service restriction

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- Questionable but definitely possible in civil cases

Type 2 Activity

- Second modus of accessing information illegally -- by violating a Terms of Service restriction
- Questionable but definitely possible in civil cases
- Recently tried in criminal cases

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- *United States v. Nozal*, 642 F.3d 781 (9th Cir. 2011) (No criminal prosecution for violating employer's Terms of Service)

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- *United States v. Nozal,* 642 F.3d 781 (9th Cir. 2011) (No criminal prosecution for violating employer's Terms of Service)
- Congress considering expressly allowing criminalization (or not) of Type 2 activities by amending the CFAA

Forfeiture and Seizure Cases

United States v. Arnold

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- 523 F.3d 941 (9th Cir. 2008)

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- @ border crossings

United State v. Cotterman

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- Reasonable Suspicion Required
- Broadly interpreted

Questions?

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