

01

What is Bitcoin?

New York Inn of Court
CLE-July 2020

What is Money?



- Functions as a medium of exchange.
- Forms the basis of the credit system.
- Acts as a store of value.
- Can be used as a unit of account.

03

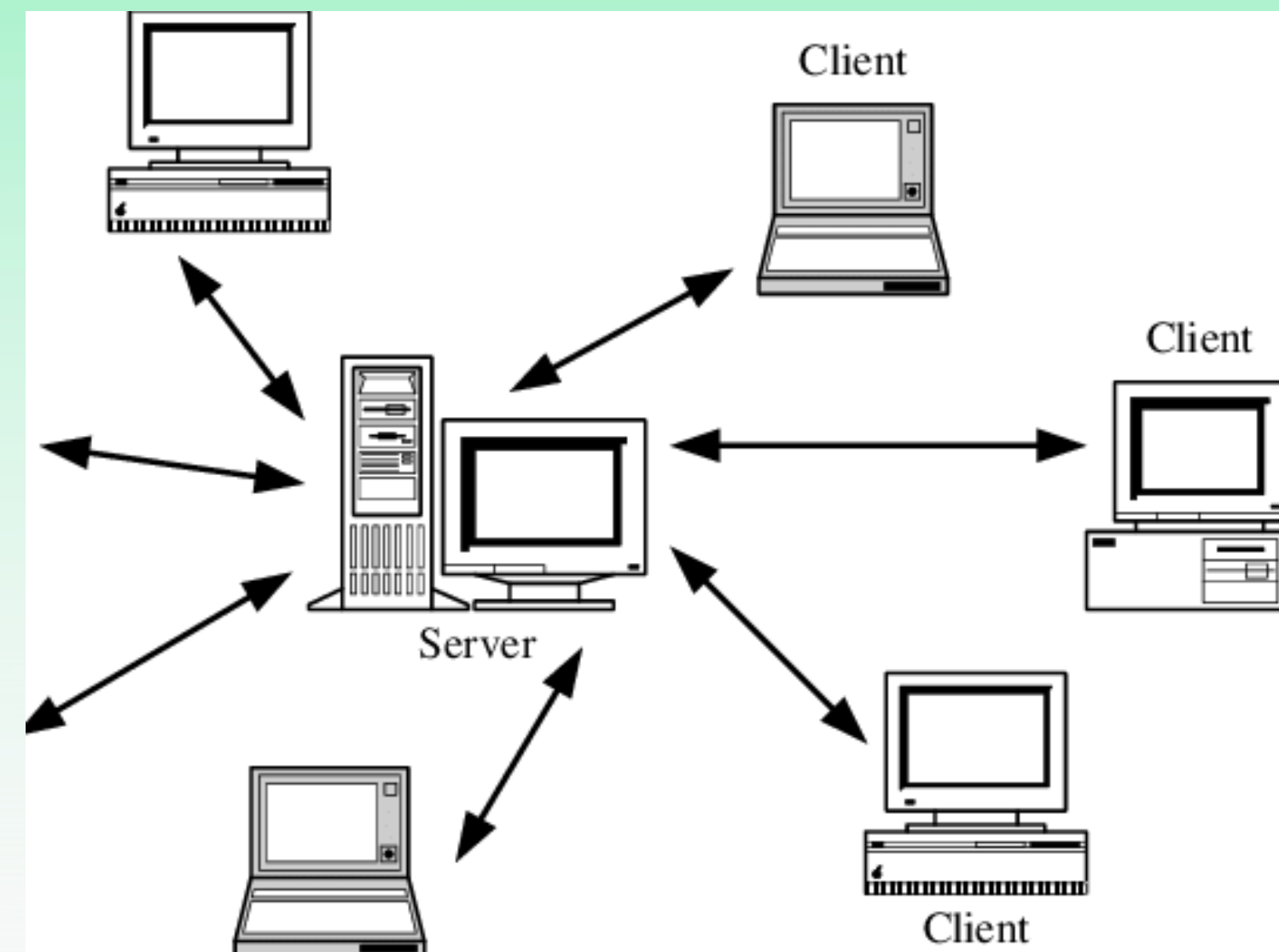
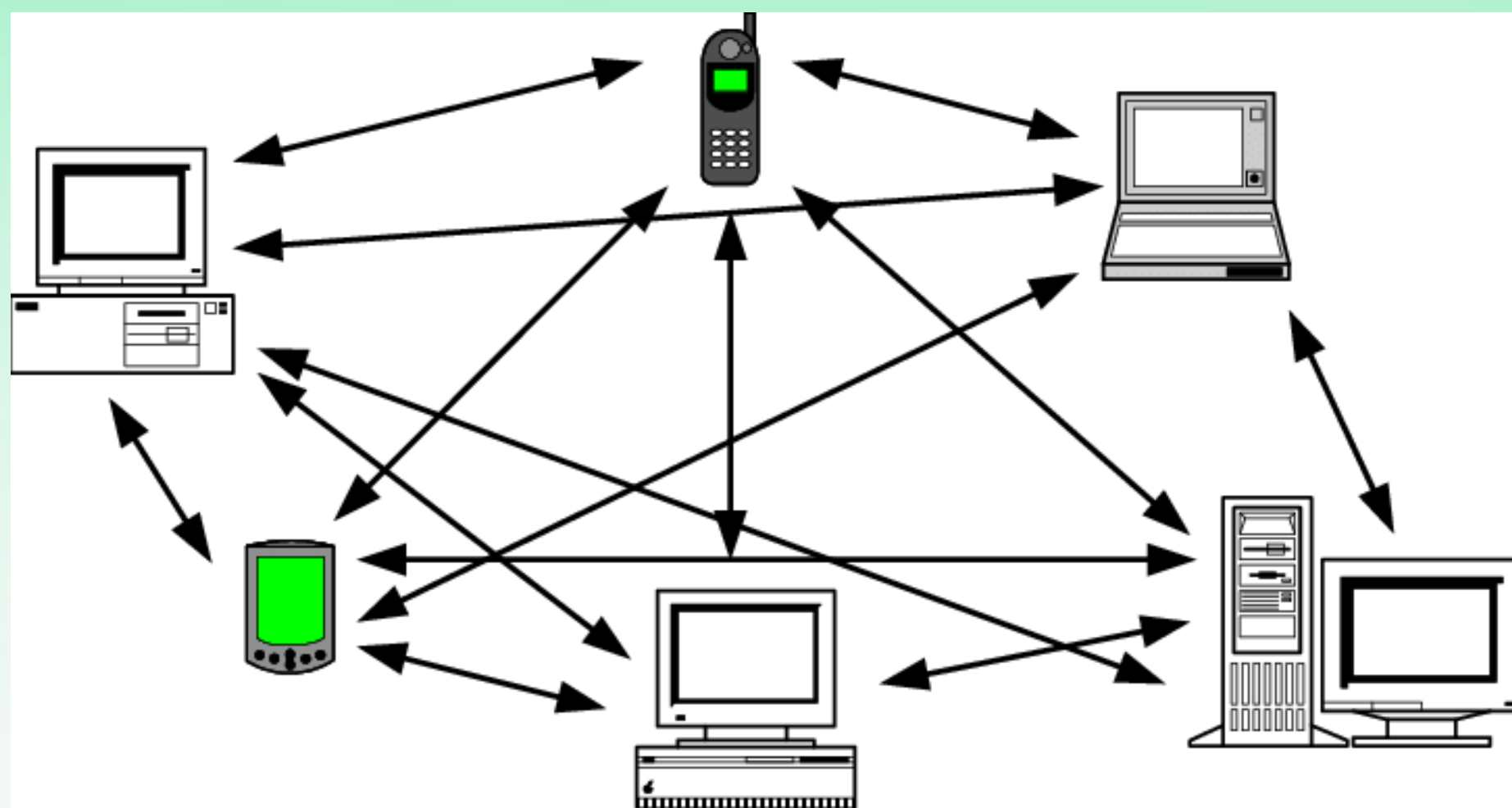
Why is Bitcoin Different?

- Digital Currency
- Not attached to a State/Government
- No Issuing or Regulatory Authority
- No Central Bank
- Near Instant Global Transactions

How Does Bitcoin Work?

Peer-to-Peer Networks

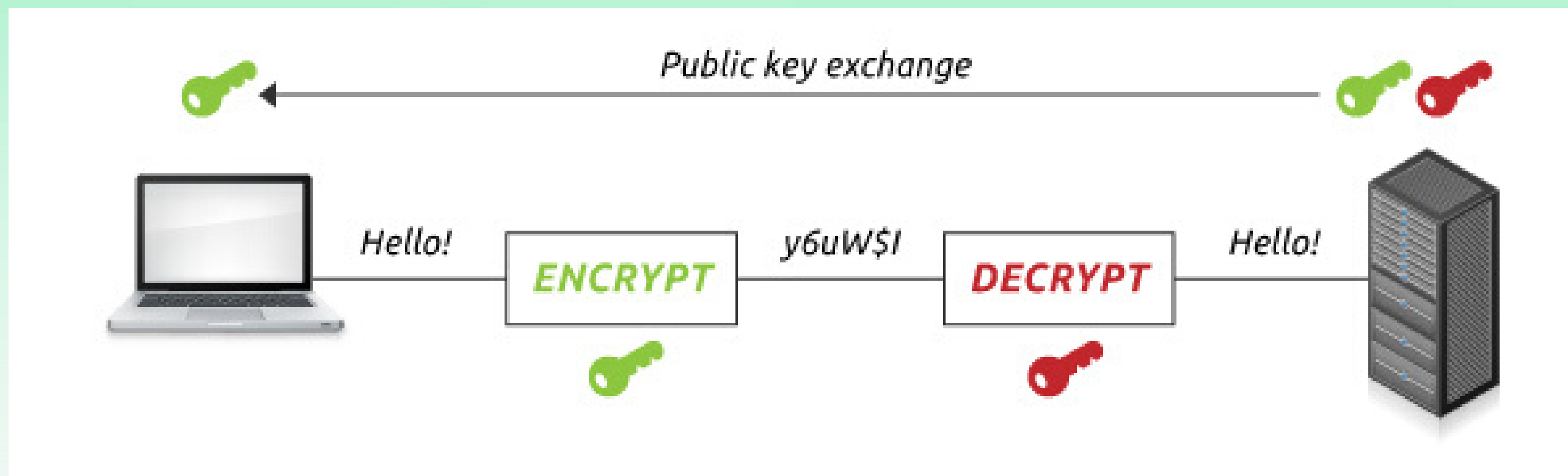
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How Does Bitcoin Work?

Cryptography

05



How Does Bitcoin Work?

Consensus

06



Use Cases

-Moving onwards and upwards

07

Supply Chain

The "Unbanked"

Financial Services

Healthcare

Payments

Voter Verification



08

"I-CO" or
"I.C.O."?

The image features a large, vibrant green circle that occupies the upper two-thirds of the frame. The background is a lighter shade of green. A thin, vertical white line runs down the center of the image, starting from the bottom edge of the large green circle and extending to the bottom of the frame. The text "Thank you!" is centered within the large green circle.

Thank you!

The Three Stages of an ICO

Private Sale

Pre Sale

Crowdsale

THE PITCH: SCAMCOIN

Coins, Not Shares

Utility Tokens

Anonymous Payment

IS SCAMCOIN A SECURITY?



SEC ENFORCEMENT ACTIONS

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SEC's Token Issuer Case May Help Define Crypto Market

By Teresa Goody G

On May 8, the
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The SEC v. Kik
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Telegram case,

On May 8, the U.S. Securities and Exchange Commission and Kik Interactive Inc. finished briefing their cross motions for summary judgment, which were previously filed on March 20, with opposition briefs filed on April 24.

The SEC v. Kik briefing totals more than 400 pages of arguments by the parties in the SEC's court challenge to Kik's actions in raising funds through simple agreements for future tokens, or SAFTs, and Kik's 2017 public sale, valued at approximately \$100 million, of Ethereum-based ERC20 tokens, known as Kin.

This raises the stakes in the Kik case, with the Kik court's decision now set to either affirm, reject or alter the Telegram court's analysis.

Jonathan Forman

REGISTRATION OF SECURITIES REQUIRED PURSUANT TO THE SECURITIES ACT

Section 5(a) provides that, unless a registration statement is in effect it is unlawful for any person to engage in the offer or sale of securities in interstate commerce.

Section 5(c) provides a similar prohibition against offers to sell, or offers to buy, unless a registration statement has been filed.

Violations of Section 5 do not require scienter.

But there might be a fraud here

Definition of Security

- Security defined in Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act as a number of possibilities
- What is an investment contract?

The Howey Test

- It is flexible test, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits
- In analyzing whether something is a security, “form should be disregarded for substance,”
- “emphasis should be on economic realities underlying a transaction, and not on the name appended thereto.”

Cryptocurrencies typically analyzed under the *Howey* test – *See, e.g.* SEC Release No. 81207 (the “DOA Report”)

- Investment of Money
- Common Enterprise
- With a Reasonable Expectation of Profits
- Derived from the Managerial Efforts of Others

Common Enterprises

- There are three ways of showing the existence of a common enterprise.
 - Horizontal commonality
 - Vertical commonality
 - Narrow vertical commonality

With a Reasonable Expectation of Profits

- The Supreme Court has recognized an expectation of profits in two situations.
- These situations are to be contrasted with transactions in which an individual purchases a commodity for personal use or consumption.

Derived from the Managerial Efforts of Others

- The central issue is “whether the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.”
- The requirement satisfied if “the efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise.”

Law Offices of Darke Webb & Malwarre LLP

Legal Consultation on Ransomware Attacks and Related Issues



Your computer Files Have Been

Encrypted ! You Have 24 hours

to PAY 100,000 USD in Bitcoins

to GET Your DATA unLocked.

HURRY UP OR it WILL BE DELETED !

Reporting Requirements – Overview

- Reporting Requirements can vary across several areas
 - Sources of Reporting Requirements
 - Time Frames
 - What Constitutes a Reportable Event
- Sources of Reporting Requirements
 - There are various federal, state, and international sources of reporting requirements, including
 - Federal (GLBA, HIPPA)
 - States (All 50)
 - International (GDPR)

Sources of Reporting Requirements (State)

- Each of the 50 states has its own breach notification requirements.
 - Notable states include NY and California
- In fact, NY has two different data breach notification requirements.
 - 23 NYCRR 500 (Part 500)
 - NY SHIELD Act



Time Frames/Reportable Events

- Examples of Time Frames
 - NY-DFS and GDPR
 - No later than 72 hours
 - NY SHIELD Act and California civil code
 - The disclosure shall be made in the most expedient time possible and without unreasonable delay
- What Constitutes a Reportable Event
 - Data + encryption key
 - State data breach notification laws commonly provide an exception to breach notification where the data is encrypted and only the data, but not the encryption key, has been compromised.
 - See e.g., (Cal Civ Code § 1798.82)

Case Study - 23 NYCRR 500.17

- NY-DFS as an example
 - Must report a Cybersecurity Event that is either of the following:
 - (1) Cybersecurity Events impacting the Covered Entity of which notice is required to be provided to any government body, self-regulatory agency or any other supervisory body; or
 - (2) Cybersecurity Events that have a reasonable likelihood of materially harming any material part of the normal operation(s) of the Covered Entity.
 - *Cybersecurity Event* means any act or attempt, successful or unsuccessful, to gain unauthorized access to, disrupt or misuse an Information System or information stored on such Information System.

Many Companies obtain specific insurance policies targeted to cover:

- Cyber extortion / ransomware (covers the demanded payment itself)
- Computer hardware / software / data loss
- Privacy and data breach liability
- Business interruption / denial of service attack / lost income
- Loss of business reputation
- Media or web content liability

What's the Password?



<https://youtu.be/a6iW-8xPw3k>

Ransomware/Incident Response Overview

- (1) Ransomware Lifecycle
- (2) Mitigating Controls
- (3) Incident Response



Early Ransomware

- Appeared around 2012
- “Retail” – one computer at a time
- Mass targeting – spam emails, automated attacks, etc.



2016 “Enterprise” Ransomware

- Samsam Ransomware
- Attacks organizations
- Sophisticated hacking techniques



Ransomware Today

- Many Ransomware Groups (Maze, Ryuk, Lazarus, Evil Corp. . .)
- More resources, more expertise = more attacks
- Ransomware costs still on the rise
 - The average cost of a ransomware attack doubled from Q4 2018 to Q4 2019.
 - The potential cost of ransomware in the United States in 2019 was over \$7.5 billion.
- New in 2020: Data theft becomes common

Ransomware Lifecycle

- Step 1: Get access to victim network.
- Step 2: Escalate privileges.
- Step 3: Deploy ransomware and encrypt victim network.
- Step 4: Arrange payment via digital currency.
- Step 5: Profit!

Don't be a Victim: Stopping a Ransomware Attack

- Prevent Them from Getting in (Deny Initial Access)
 - Employee Awareness and Anti-Phishing Training
 - Perimeter Security (Network Monitoring and Intrusion Detection)
 - Ensure Systems/Network up-to-date (Patch Management)
- Prevent Hackers from Escalating Privileges
 - Password/Access Management
- Most of all: An empowered CISO, governance, and controls!

Mitigating and Recovering from an Attack

Start before the attack!

- Offline and secure backups of data/systems
 - Make sure you backup everything you need, and test it
- Access logs/audit trails
 - Need to identify what systems/data were impacted
- Incident Response Plan
 - Comprehensive & test it!

After the attack:

- Investigate how the cyberattack occurred, repair vulnerabilities, remove backdoors
- Restore systems

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janetsanchez@velaw.com

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Questions?