

Commercial Insurance Update

Topics Affecting Buyers of Commercial Insurance

MSP C 12/00 – “Internet Liability Insurance— Do You Need It?”

December, 2000

Internet Liability Insurance: Do You Need It?

There was a time when it was easy to distinguish “media” organizations from other commercial businesses.

Media organizations were companies like newspaper or book publishers, broadcasters, and advertising agencies. These companies had obvious media-related exposures like defamation, copyright and trademark infringement, and invasion of privacy. Other companies, such as retailers and manufacturers, typically didn't have to worry about these exposures.

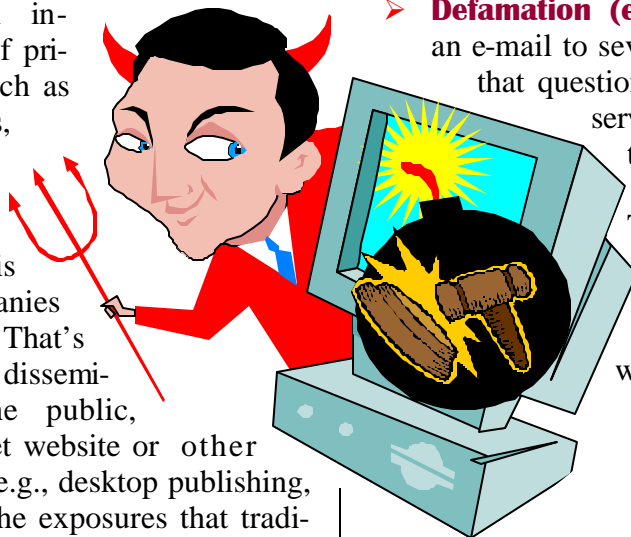
Today, the distinction is less clear, and many companies are understandably jumpy. That's because any company that disseminates information to the public, whether through an Internet website or other modes of communication (e.g., desktop publishing, e-mail), now faces all of the exposures that traditional publishers face.

Even worse, launching a website is technically complex. It involves an intricate system of networks, servers, data storage, and user interfaces, which often are designed and managed by independent contractors. The use of this medium increases the possibility of theft or loss of data by hackers and computer viruses, or lawsuits seeking injunctions to prevent alleged misuse of a trademark. Moreover, new legislation continues to create potential liabilities, particularly in the areas of user privacy and domain name infringement.

Can you imagine any of the following scenarios

happening to your company?

- **Copyright infringement** – A trade association posted files that contained copyrighted clip art on its web page. The company owning the copyright for the clip art sued the association for copyright infringement.
- **Defamation (e-mail)** – An employee sent an e-mail to several officers of his company that questioned the professionalism of a service vendor. The officers further distributed the e-mail throughout the organization. The vendor learned of the e-mail and brought suit against the employer, alleging that the interoffice e-mail was defamatory.



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- **Defamation (website)** – A company launched a website that included unfavorable remarks about a competitor. The competitor sued, alleging defamation.
- **Invasion of privacy** – A dance center listed a former employee's name as a contact person on its Internet website. The former employee brought suit against the dance center, alleging unauthorized use of her name for advertising purposes and invasion of privacy.
- **Trademark infringement (domain name)** – A bowling alley named "Rock 'N' Bowl" had an Internet website with the domain name of "rocknbowl.com." The operator of a bowling alley in another state, which held a federally registered trademark on "Rock 'N' Bowl," brought suit, alleging trademark infringement.
- **Trademark infringement (metatags)** – A perfume company put the names of famous perfume brands in its website's "metalanguage" – the hidden language that search engines read when responding to a search request. The perfume company did this in order to increase the number of hits to its website. The owner of one of the famous brands sued the perfume company for trademark infringement.

The truth is, although you may not intend to do anything wrong on your website, you can still be sued for a wide variety of claims. And even if you're innocent, you will still have to pay the costs of defending a claim.

Although some of these circumstances may be covered under your existing insurance program,



many of them will not. In order to cover this gap, several insurance companies have developed Internet liability insurance policies.

Chubb Safety'Net™ Standard Features

Chubb's entry in this arena is their Safety'Net™ product. Chubb claims that Safety'Net™ will provide the following benefits

- **Fills gaps in general liability coverage** – Some companies may mistakenly assume that their general liability (GL) insurance policy provides adequate coverage for the new on-line exposures – after all, doesn't a GL policy provide "advertising injury" coverage, and isn't a website primarily advertising?

Most GL insurance policies provide only limited copyright and trademark coverage for "advertising activities," and certain materials or activities on a website might not meet the GL policy's definition of "advertising." In contrast, Safety'Net™ is specifically designed to protect against the media exposures faced by companies operating in an on-line environment.

- **Offers comprehensive coverage** – As the Internet continues to evolve and expand at an incredible pace, the legal exposures generated by Internet activities continue to expand

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as well. In such an environment, it's nearly impossible to predict what the next wave of legal claims will be. For this reason, any GL insurance policy or any Internet liability insurance policy that is limited to a specified list of wrongful acts or named perils may be inadequate.

Chubb Executive Risk's Safety'Net™ policy solves this problem with its "all-risk" insuring agreement. Chubb provides coverage for any claim arising out of "Internet Activities," which is broadly defined as the dissemination or use of "matter" (content) on the policyholder's website, or the transaction of business over the site.

- **Policy language is easy to read** - Chubb's insuring agreement has the side benefit of being easy to understand. Coverage afforded by other carriers can be as complex as the World Wide Web itself. Just because the Internet is complex doesn't mean your Internet liability insurance has to be.
- **Includes expert claims handling** - Another problem with simply relying on a GL insurance policy for Internet coverage is that Internet claims involve cutting-edge legal issues that require specialized claims expertise. As a leading underwriter of both media and technology risks, Chubb Executive Risk has developed specialized claims expertise that a policyholder can only appreciate when a claim hits.
- **Insures all modes of communication** - If your organization has other modes of communication in addition to your website, such as brochures, catalogues, CD-ROMs, etc., coverage for these additional exposures can be added onto your Safety'Net™ liability insurance policy.

Safety'Net™ Optional Feature

- **Protection against domain name infringement by others** - If some other party uses your trademark in its domain name, consumers may be confused and significant damage may be caused

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Charitable Opportunities

Senior Community Centers, one of our charities, has been selected as the National "Point of Light" for December 7, 2000 by the Points of Light Foundation in Washington, D.C. (www.pointsoflight.org).

The Senior Community Centers opened its doors in 1970 to help meet the basic needs of high-risk seniors living in downtown San Diego, home to the highest percentage of low-income elderly in the region. Today, it is still the only existing provider of services to San Diego's urban elderly.

"Senior Community Centers is being honored for its exemplary service to seniors in need as well as for the outstanding commitment of its volunteers," said Kevin Casillo, Director of Community & Volunteer Relations. "This is a tremendous honor for the agency. Congratulations to all of you who have contributed time and resources to make our programs possible."

The Senior Community Centers sponsors such programs as "Serving Seniors," in which volunteers from local firms, including Cavnac & Associates, serve hot, nutritious lunches to seniors in need.

Senior Community Centers is currently sponsoring an "Adopt a Senior" program. Kevin reports that "\$32 feeds one senior for an entire month." For information about how you can help with this and other Senior Community Centers programs, access the Senior Community Centers website at www.servingseniors.org.

Cavnac & Associates employees contributed over \$2,000 to purchase Christmas gifts for children housed in the **Polinsky Children's Center** over the holidays. The Center provides services to children who have been abused, neglected, and/or have no parent or guardian.

Built through a private-public partnership between the Child Abuse Prevention Foundation and the County of San Diego, the Polinsky Center is the emergency shelter for children in San Diego County. Opened in 1994 to replace the over-

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Internet Liability Insurance

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to your company's reputation and its ability to do business on-line.

For example, say you have a trademark for the name "Product X," and you discover later that some other company has registered "productx.com" as a domain name. You might be compelled to seek an injunction preventing this infringement of your mark, which will cost you significant legal expenses.

Under the Safety'Net™ policy, you can purchase coverage for legal costs incurred in bringing such an enforcement action.

For a medium-sized commercial company, this coverage is available for about \$3,000 to \$4,000 per year. Based on the fact that this exposure could be significant, and as yet is not totally defined, this may be money well spent.

If you are interested in pursuing this coverage, please give us a call, and we can provide you with the appropriate application. *

Disclaimer: *This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.*

Charitable Opportunities

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crowded Hillcrest Receiving Home, the facility accommodates up to 217 abused, abandoned and neglected children a night in age-appropriate, home-like cottages.

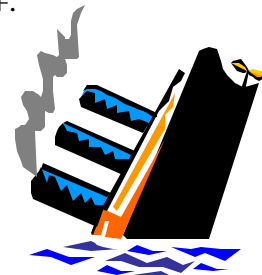
Each month more than 400 children, ages birth to seventeen, are brought to the Center after it has

Tough Times

for Some Insurance Companies!

The past several years have been rough for several major insurance companies.

- In the spring of 2000, **Superior National Insurance Group**, the nation's 11th largest workers compensation insurer (according to 1998 data) was taken over by the California Insurance Department, and is currently in the process of being liquidated.
- The **Reliance Group** has suffered successive downgrades by A. M. Best, from A- all the way to C, and their stock has dropped from over \$20 a share to less than \$1 a share.
- **Fremont Indemnity**, one of the largest workers compensation carriers in California, has been downgraded from an A- to a B++.
- **Frontier Insurance Group** has seen its Best's rating slide from A- to C++.
- Finally, the venerable **State Compensation Insurance Fund** has also been downgraded by Best's from an A- to a B++.



The lesson here is to pay careful attention to your insurance company's financial stability. *

been determined that the need for protection exists. Children are placed into a relative approved foster home as soon as possible.

A variety of innovative programs and services at the Center provide immediate and long-term benefits to the children brought there. For more information about the Center, access their website at <http://www.wic.org/orgs/polinsky.htm>. *