

PERSPECTIVES

An attorney's guide to insurance and risk management

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Law Firm Web Site Risks Continue to Grow

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In today's increasingly litigious society, it should surprise no one that the Internet – that technological wonder of worldwide communication – has spun a whole new "web" of liability exposures.

As more companies disseminate information to the public via Web sites and other electronic media, the distinction between "media organizations" and other commercial companies is becoming less clear. Commercial businesses – including law firms – that operate Web sites now have many of the same liability exposures once reserved only for book publishers, broadcasters, and advertising agencies.

The situation has perhaps been summed up best by James F. Brelsford, an Internet attorney with the law firm Perkins Coie (Menlo Park, California): *"The relatively low barriers to entry have led to an explosion of Web sites on the Internet. This has, in turn, conferred the legal status of 'publisher' on literally thousands of people, most of whom have no concept of their resulting legal rights and responsibility."*

A 1997 survey found that 61% of law firms with 75 or more attorneys used the Internet as a marketing tool. That number is certainly much higher today, and no doubt even many of the smallest law firms operate Web sites.

Law firms face the same liability exposures as other commercial organizations doing business on-

line, exposures that often usually are not covered under traditional general liability insurance policies: copyright infringement, defamation, invasion of privacy, patent infringement, technology failures, trademark infringement, and others (such as contests, errors and omissions in content, etc.).

In addition, law firms face exposures that are unique to the practice of law. For example, because a law firm Web site is theoretically subject to the jurisdiction of any state in which the site can be accessed, the firm may be subject to lawyer advertising regulations, unauthorized-practice-of-law rules, and other ethical rules in all 50 states.

The potential risks of operating a Web site are expanding fast. New legislation continues to create potential liabilities, particularly in the areas of user privacy and domain name infringement. Just setting up a Web site means tapping into an intricate sys-

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tem of networks, servers, data storage, and user interfaces – often designed and managed by independent contractors. The very use of this medium increases the possibility of theft or loss of data by hackers and computer viruses, or lawsuits.

The volume of recent litigation arising out of Internet activities is staggering. For example, litigation has resulted over the use of domain names; “metatags” to increase the number of hits to a Web site; copyrighted material like music, photographs, or artwork; and deep-linking to proprietary material on third-party Web sites.

Potential Liability

What is the potential liability? It’s enormous and increasing every day. Hundreds of millions of people around the globe have access to the Internet and, according to IBM Research, the Internet revolution is less than 10% complete in terms of number of users.

If one thing is clear, it’s that the potential liability associated with Web site content is already great and still rapidly growing. Mark Grossman, a Florida lawyer, wrote in *Gigalaw.com* in July 2000: *“Today, any business that uses the Internet for any reason exposes itself to new risks that could have potentially devastating consequences.... Try some of these on for size: If a court finds you guilty of improperly using someone’s trademark on-line, you could face a fine of up to \$100,000 per infringement. If you use someone’s patented idea on your web site, you could pay damages up to three times the amount of profits that you made from the site.”*

Lawyers and law firms are by no means immune to this exposure. Indeed, in April 2002, a California jury ordered an attorney to pay \$1 million to another lawyer who claimed that he was defamed by statements on the defendant lawyer’s Web site.

On-line privacy issues are also a paramount concern for law firms, in light of the special legal protection that is afforded to attorney-client confidences. Law firms also face tricky unauthorized-practice-of-law issues when they take their businesses on-line.

A law firm need not be large to be perceived by the public as having “deep pockets.” Settling an

Internet-based lawsuit can run into the tens or hundreds of thousands of dollars. The defendant law firm may be innocent of any wrongdoing; nonetheless, lawsuits can still arise and, when they do, they can result in embarrassing publicity and must be defended.

The need for insurance coverage for these kinds of exposures is immense, given the number of people using the Internet. Unfortunately, many law firms that are on-line today are simply not as aware as they should be of their legal obligations and gaps in their insurance programs. A standard general liability policy might not extend coverage for these types of web-based exposures, and a typical lawyer’s professional liability policy might not respond unless the claims arises out of the provision of professional services.

Available Solution

Fortunately, Internet liability insurance is an available solution to the Internet liability problems of many law firms. Unfortunately, Grossman estimated that 95% of businesses operating Web sites don’t have Internet liability coverage. The reason is probably either because they erroneously believe they are already covered for Internet liability risks, or because Internet liability insurance is such a recent development that they have not yet considered it.

When searching for a policy, pay special attention to the policy’s breadth of coverage. If the policy limits coverage to a specified list of “named

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perils,” then coverage is limited to only those liability risks named in the policy.

Technology and legislation are constantly converging to create new potential liabilities every day. Given the uncertainty of the legal rules governing the Internet and the types of legal claims that will be generated by Internet activities, an insurance policy that is limited to specified “named perils” is a risky proposition. It is therefore advisable to

search for Internet liability coverage that is not limited to a list of named perils but instead offers coverage for all modes of communication.*

*Leib Dodell is underwriting manager for Chubb’s Internet liability insurance policy called **Safety’Net**SM, which offers coverages specially developed for law firms’ website exposures. He works out of Chubb’s San Francisco branch and can be reached at 415-954-0422 or dodelll@chubb.com. For more information about **Safety’Net**, contact Chubb at 800-432-8168 or e-mail csi-info@chubb.com.*

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