

Cyber Liability New Exposure to Old Risk



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History of Cyber Development

- ◆ 1958 Sputnik Project Department of Defense
- ◆ 1972 First E-Mail Program Developed
- ◆ 1978 IP Created
- ◆ 1983 Birth of the Internet
- ◆ 1992 Congressional Act Creates E-Commerce

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Types of E-Business

- ◆ Content Providers
- ◆ Service Providers
- ◆ Internet Tool Provider
- ◆ E-Commerce

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Why is Cyber Liability so Important?

- ◆ Slip-and-fall exposures of this millennium
- ◆ E-Commerce makes up more than 1/3 of all business on the WWW
- ◆ Number of intellectual property claims is exponentially greater than pre-Internet days
- ◆ Complex issues of international law and multi-jurisdictional disputes adds to the cost of defending a claim
- ◆ Assessing damages is difficult

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Is Cyber Crime Common?

- ◆ 90% of companies surveyed detected a security breach in the last 12 months
- ◆ 80% admitted that breach lead to new financial costs
- ◆ 44% (223 companies) reported total losses of \$455m as a result of cyber incidents
- ◆ 74% reported their Internet connection was frequently attacked
- ◆ 34% reported cyber attacks to law enforcement

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What are Some Cyber Perils?

- ◆ Hacking
- ◆ Privacy breaches
- ◆ ISP/ASP instability
- ◆ Unprotected wireless networks
- ◆ Server flood attacks that cause business outages

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Claims Examples

- ◆ Theft of Data or Property
 - Determining the Value of Data
 - Policy Coverage Options- Where to Find Coverage
 - Who has an insurable interest-URL Address
 - ◆ 1999 Anti-Cyber Squatting laws

- ◆ Virus Attack to a Network
 - Determining Who is Responsible-1st or 3rd Party
 - Clean Up Protection

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Claims Examples

- ◆ Shutdown of a Network or System (3rd Party)
 - Estimating Lost Time and Income
 - Can you Estimate Your Own Down-Time
- ◆ Infringement of Intellectual Property Rights
 - Who Receives Permission to Use?
 - Who owns a Website Design?

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Claims Challenges

- ◆ Lost or Destroyed Data or Property
 - Can Lost Data be Reproduced?
 - What about Electronic Disruptions?
 - Care Custody and Control- Property or GL?
- ◆ Transmission of Virus-200-300 new each month
 - Defining Property Damage- GL Policy

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Claims Challenges

- ◆ Infringement of Copyright, Trademark, Slogan
 - How many viewers will see the information?
 - Who Posts the Information
- ◆ Data in Transit- Un-named Location
 - What Locations does the Property Form Cover?
- ◆ What Challenges Exist with IP Applications?

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Policy Form Reviews-Property

- ◆ Valuations
- ◆ Power Surges and Interruptions
- ◆ Property of Others- Coverage and Valuation
- ◆ Transit
- ◆ Valuable Papers and Account Receivables
- ◆ Estimating Lost Income
- ◆ Perils Covered

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Policy Form Reviews-General Liability

- ◆ Property Damage Defined
- ◆ Contingent Liability for Professional Risk based upon Contextual Information
- ◆ Legal Liability
- ◆ Coverage Territory
- ◆ Common Exclusions-AI and PI
- ◆ Internal Communications- Manager or Employee to Employee

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Liability Average Claims Cost

- ◆ Copyright \$248,000
- ◆ Trademark \$300,000
- ◆ Trade Secret \$500,000
- ◆ Patent Infringement \$1,500,000

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Policy Form Reviews-Crime

- ◆ Employee Dishonesty 1st and 3rd Party
- ◆ Computer Fraud Coverage

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Policy Form Reviews-Cyber Liability

- ◆ Admitted or Non- Admitted Insurers
- ◆ E&O or Cyber Risk?
 - Based upon Business Activities

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Policy Form Reviews-Cyber Liability

- ◆ Typical Coverages:
 - Professional Liability
 - Personal Injury and Advertising Injury
 - Virus Transmission Protection

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Policy Form Reviews-Cyber Liability

◆ Key Terms:

- Claims Made Policy
- Duty to Defend
- Defense “in or outside” Limits of Coverage
- Retroactive Date
- Retention Options

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Why Would a Customer Sue a Company?

- ◆ An Error or Omission
- ◆ Intellectual Property (copyright/trademarks)
- ◆ Breach of contract (for professional services i.e. website design)
- ◆ Failure to render professional services (invasion of privacy, liable/slander)
- ◆ Breach of security (hackers, virus)
- ◆ Misrepresentation

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Cyber Liability Claims Examples

- ◆ In *Religious Technology Center v. Netcom On-Line Communication Services, Inc.* (907 F. Supp. 1361, N. Dist. Cal. 1995) the Court held that Netcom might be liable for contributory copyright infringement because of an infringing posting made by a BBS user to a newsgroup through Netcom. The post was on Netcom's computer for only 11 days, but Netcom had taken no action during that period after the plaintiff told Netcom that the post was infringing.
- ◆ The message is that if you are informed that a post is infringing, the safest course of action is to remove the post immediately. What if you do not want to remove the post? The Court did admit that there is no liability where one "cannot reasonably verify a claim of infringement, either because of a possible fair use defense, the lack of copyright notices on the copies, or the copyright holder's failure to provide the necessary documentation." However, in Netcom's case, the Court allowed the lawsuit to proceed to determine if Netcom had acted reasonably. In other words, if you decide to leave the post because you believe one of these defenses applies, you may well have to prove that your decision was reasonable.

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Cyber Liability Claims Examples

- ◆ In *Stratton Oakmont, Inc. v. Prodigy Services Co.* (1995 N.Y. Misc. LEXIS 229) the Court held that Prodigy was liable as a "publisher" for a defamatory statement posted by a user because Prodigy exercised editorial control over its bulletin boards by editing posts for "offensiveness and bad taste." However, the Court also found that bulletin-board operators who did not edit their boards would not be liable for defamatory postings made by their users.
- ◆ Clearly, the safest course of action is to not edit your bulletin boards or Web sites at all (except, of course, to remove any post that you have been told is infringing). Unfortunately, this means that you have to leave scurrilous material alone.



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Updated Risk Management

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Privacy Policy Breaches and Data Mismanagement

- ◆ Establish a privacy policy and post it on your homepage of your website
- ◆ Adhere to the promises your privacy statement makes

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Sample Privacy Policy

- ◆ Multimedia Risk gathers the necessary information from you and other public and insurance sources to execute the search and placement for the insurance coverages your needs/risk exposures require. In doing so, MMR will exchange information only with insurance related parties that are similarly obligated to keep all treatments and exchanges of your information within the requirements of the law. If you are uncomfortable with this policy, please do not submit any private information to this site.
- ◆ We may provide links to other Web sites, which are not under our control. These links are provided for convenience only and are not endorsed by the provider or an offer of warranty of the product , service, or information.

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Privacy Policy Breaches Examples

- ◆ Alexa/Amazon: class-action suit alleging Alexa (Amazon's internet subsidiary) collected personal data from web surfers without consent (violation of their policy); settled for \$1.9m and removal of the data
- ◆ Toys R Us: Used cookies to track information on customers, without giving them the opportunity to opt-out, and shared it with another firm

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Maintaining Customer Trust

- ◆ More and more, companies customize products, services, and technology to address individual customers' needs; so, they collect personal information
- ◆ Privacy practices should include: assessments of current protection practices, analysis and incorporation of relevant privacy/security laws, employee training, and periodic monitoring

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Privacy Policy Musts

- ◆ Once the policy is published, it absolutely must be adhered to
- ◆ Monitor the day-to-day compliance
- ◆ Conduct 3rd party audits to verify that the business is protecting personal information

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Create Standards

- ◆ There are no absolute industry standards for due care as relates to security
- ◆ But, ISO17799 (international network security methodology) sets some good standards
- ◆ Gramm-Leach-Bliley Act is designed to ensure the security and confidentiality of customer records/information

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Risk Management Challenges

- ◆ Will the ADA eventually apply to your company website also?
 - Federal Websites, like Federal buildings, must be mandated to have equal access for physically challenged people
 - Text-to-speech screen reading techniques
 - Larger fonts
 - Voice recognition
 - Video

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Website Publishing Risk Management

- ◆ Courts have held that the website publisher can be held liable for the material published on their site
- ◆ Example: A book written by a local author was promoted on the community web pages of a particular site. The author didn't get permission from the photographer of the picture on the front of the book, and both were held liable for copyright infringement
- ◆ Have a sign-off hold harmless agreement

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Sample Proof Sign-Off

Please read this proof carefully.

Although there are costs involved, alterations to your job can still be made at this stage. If you need to make a change, please mark clearly and boldly on the proof. Your signature provides us with **final approval** to print your job as it appears on the proof. Today's technology has created a new manufacturing system when errors can suddenly appear in the electronic transfer of data. Because of this factor, please check this proof very carefully. We will faithfully produce a printed/on-line version of this proof, so please be sure it is correct.

By submitting this file, I warrant that the document I submit is not protected under copyright or trademark laws or that I have the authority to print or reproduce the files. I hereby agree to indemnify and hold harmless _____ (telco name) from any suit, demand, or claim against _____ (telco name) by reason of breach of this warranty, and agree to any judgment or reasonable settlement offer resulting from such suit, demand, or claim. I agree that _____ (telco name) may provide a copy of this statement to anyone claiming infringement of copyright or trademark as relates to this file. By finalizing and submitting this proof, you are agreeing to the foregoing of indemnification of _____ (telco name).

____ I agree and submit my proof as ok as.

____ I agree and submit my proof as ok with changes. I don't need to see another proof.

____ I agree and submit my proof as ok with changes. I do need to see another proof.

_____ Sign/Date

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RM Examples of Network Security

- ◆ Firewalls
- ◆ Intrusion detection software
- ◆ Anti-virus software
- ◆ Off-site backups
- ◆ Passwords that must be changed (letters/numbers)
- ◆ Encryption
- ◆ Network security point-person

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5 Steps to Data Security (Midwest Data)

- ◆ Implement Virus Protection
- ◆ Install and Maintain your firewall
- ◆ Protect Windows operating system against vulnerabilities
- ◆ Password polices/procedures
- ◆ Develop effective security policies

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Implementing Virus Protection

- ◆ Prevent physical access
- ◆ Auto Updating:
 - Email scanning
 - Workstation monitoring
 - Secondary drive scanning
 - Network server synchronization

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Firewalls

- ◆ Allows only specific types of messages to flow
- ◆ Protects (slows down until you can discover) intruders and hackers
- ◆ Firmware/software updates are critical

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Protecting the Operating System

- ◆ Never use default installation
- ◆ Always service patch the operating system when updates become available
- ◆ Upgrade to the latest operating system when available (best security features)

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Passwords

- ◆ Use upper and lower case, numbers, letters, characters
- ◆ Require 6 or more characters
- ◆ Change passwords every 30-60 days
- ◆ Don't use the same password more than once in a year

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Security Policies

- ◆ Company reserves the right to read all email; it's company property
- ◆ Compliance and enforcement
- ◆ Procedures for review/updating
- ◆ What do you do when someone terminates employment?

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Remember

Risk management is about managing or minimizing the exposures to loss. Developing and incorporating policies and procedures is as important in the Cyber Liability arena as it is in the property and casualty arena!