

News and information from Media/Professional Insurance, the global leader in media, cyber, technology and miscellaneous professional liability insurance.

MPI Source



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Express Yourself! Protecting Corporate Expression

By Scott Swift

Would you give a client a cup of coffee with a large hole in the bottom? Of course not. No one wants to see a client burned. Nonetheless, with the ever-changing media landscape, many companies (and their agents) may find themselves burned by their commercial general liability ("CGL") policies when they are sued for their promotional activities. Indeed, as companies develop new and exciting ways to express themselves in the marketplace, innovative promotional activities and other new types of "corporate expression" are often not covered under traditional insurance policies.

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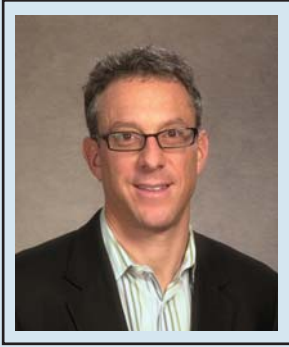
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A Letter from the CEO

It's a Blog!

I'm very excited to announce that Media/Professional Insurance has launched a blog, M/PI Source Online. It can be found at <http://www.mediaprof.com/blog>. Our blog is hosted and monitored by Russell Hickey, our "blogmaster," who is an attorney in M/PI's claims department with a wealth of experience in media, First Amendment and intellectual property law.

M/PI Source Online is a tool to share and discuss trends in our lines of business with our colleagues throughout the professional liability insurance community. As the market leader in media, miscellaneous, cyber and technology E&O, we handle almost 30,000 submissions and manage over 1,500 complex professional liability claims every year. As a result, we have an unparalleled expertise in these product lines and a great wealth of information on underwriting issues and legal and regulatory developments. We are committed to partnering with all of you by sharing our expertise and information to help you be even more effective and grow your business.

Our blog is also a way to get your feedback on issues relevant to our business. We are committed to listening thoughtfully to our partners in the industry, and having the flexibility and energy to make changes in response to the needs of our constituents. M/PI Source Online is a fully interactive blog. We encourage you to take advantage of the opportunity to post comments. We promise that those comments will be passed along and discussed among our senior management.

Of course, M/PI is not the only organization to launch a blog. Other insurance organizations, and a great many other commercial and non-commercial organizations, are also getting into the blogging game. Law firms, political campaigns, retailers and many others are finding blogs to be a great new vehicle for engaging with their audiences. In addition, many individual "citizen journalists" are now empowered to participate in mass communications. None of these organizations or individuals probably thinks of itself as a media outlet. Yet they are essentially launching global, interactive digital magazines.

So as we celebrate the launch of our blog at M/PI, this is also a good opportunity to reflect on the impact of blogs on the professional liability landscape. Many organizations and individuals now face new and different types of exposures like defamation, invasion of privacy and copyright infringement. These developments force our industry to create new and innovative insurance solutions. I will be hosting a panel discussion on this subject at the PLUS International Conference in Chicago in November and hope to see you there.

A handwritten signature in black ink that reads "Leib Dodell". The signature is written in a cursive, flowing style.

Leib Dodell
President and CEO
Media/Professional Insurance

<http://www.mediaprof.com/blog>



Who's Minding the Data?

By Russell Hickey

Horror stories of lost data are becoming all too common, with seemingly no one safe. Recently, the Veterans Affairs Department lost data on 26.5 million veterans – data that included Social Security numbers, birth dates, addresses and phone numbers.

According to the Federal Trade Commission, there were 255,565 identity theft complaints made in 2005 – up from 246,847 complaints in 2004.

As more companies collect increasing amounts of data, securing that data has become crucially important. Securing data also requires an understanding of the various laws and regulations that fall within the umbrella of “privacy law.”

In March, the American Bar Association’s Forum on Communications Law and the Federal Communications Bar Association co-sponsored a continuing legal education seminar titled “Privacy & Data Security for Communications and Media Companies.”

The central theme of the seminar was that any company with a phone, computer or fax machine is impacted by numerous laws, regulations and enforcement decisions on a local, state and national level.

On a national level, the FTC has enforcement and administrative responsibilities under 46 laws. Broadly speaking, one of the FTC’s missions is to protect consumers. One method for consumer protection is to bring action under Section 5 of the FTC Act, which prohibits unfair or deceptive acts by a company.

In 2005, pursuant to its authority under Section 5 of the FTC Act and the Fair Credit Reporting Act, the FTC

brought an action against an Atlanta-based consumer data broker whose data had been compromised.

As a data broker, ChoicePoint obtains and sells consumer data to more than 50,000 businesses. The data often include names, Social Security numbers, birth dates, employment information and credit histories. The FTC alleged ChoicePoint sold data to people who did not have a “permissible purpose to obtain them.”

According to the FTC, ChoicePoint also violated the FTC Act by making false and misleading statements in its privacy policies.



In January, the FTC announced a settlement with ChoicePoint. The settlement included \$10 million in civil penalties and \$5 million for consumer redress. The settlement also required ChoicePoint to implement new procedures to ensure it was providing data only to legitimate businesses for lawful purposes. ChoicePoint also had to establish and maintain a compre-

hensive information security program. Finally, ChoicePoint had to submit to third-party audits every other year until 2026.

In addition to the FTC Act, other federal laws impact data security and privacy. The Children’s Online Privacy Protection Act, the CAN-SPAM Act, Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Fair and Accurate Credit Transactions Act and the Health Insurance Portability and Accountability Act all impact privacy and data security in different manners.

From an on-line marketing perspective, the Children’s Online Privacy Protection Act regulates the collection of information from children under age. To collect that data, a company must obtain verifiable parental consent. Once obtained, of course, a company should have a clear retention practice to prove parental consent was obtained.

On the state level, “Little FTC Acts” govern privacy law. In addition, various states have a collection of laws that impact data security. California, for instance, has laws governing security breach notice, information-sharing disclosure and destruction of customer records.

As the number of identity thefts continues to grow, more states are certain to enter the fray with laws governing the collection, retention and destruction of data. The end result will certainly be a more complicated web of laws governing privacy.

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Feedback or story ideas? Please send to mpisource@mediaprof.com.



Cyber Liability Policy Buying Tips

By Stephen Madden

Remember when a worm was just fishing bait? Now, a worm isn't only "a small creeping animal with a slender elongated body," it is also "a malicious program that replicates itself until it fills all of the storage space on a drive or network." (Definitions compliments of www.dictionary.com)

The Internet and new technology have had dramatic impact. The ever-changing and varied exposures of the cyber and technology world present unique challenges for risk managers, agents, brokers and insurers alike.

Some companies that traditionally have done business in brick and mortar environments have ventured cautiously onto the Web with e-brochure sites, while others have completely changed their business models to conduct all of their business on the Web.

The exposures inherent within just one risk classification, Application Service Providers can range from those associated with basic accounting or human resource applications to those that arise from applications used by stock brokerage firms to transact trades and transfer money.

Even the word "cyber" can be confusing as many people associate it with being Web-based. In fact, "cyber" refers to anything computer related. Thus, for example, IT/computer consultants and Web hosting services are both considered cyber risks.

As varied as all these cyber activities are, they all have one thing in common — they all have cyber liability exposures that need to be covered. Traditional insurance policies are inad-

equated, which has given rise to myriad new products offered by a plethora of different insurers. It's enough to make an insurance professional's head spin!

To make sense out of this complicated and rapidly evolving environment, it can be very helpful to be aware of the key provisions to look for when purchasing a cyber liability policy.

Given the great diversity of the cyber world, flexibility is an important quality to look for in cyber liability policies. A customized and carefully crafted definition of "cyberspace activities" for each insured is essential. For example, a Web site developer offering graphic design services, IT consulting and custom software development needs a policy that clearly covers each of these areas in its schedule of insured services.

Although most cyber liability policies have titles that contain words such as "cyber" and "net," the real world should not be forgotten. Such policies should cover both content and services, and coverage should be provided for both on-line and off-line distribution and provision.

Professional liability policies typically exclude coverage for intentional wrongful acts, and some states may prohibit such coverage on public policy grounds. Nonetheless, the most comprehensive cyber policies protect innocent insureds from intentional unauthorized access or other wrongful conduct by "rogue" employees. Policies should also provide for coverage and defense of insureds facing allegations of intentional wrongful acts until such conduct is established by a final


adjudication.

A cyber liability policy should cover copyright and trademark infringement, invasion of privacy and defamation in addition to errors and omissions and negligent acts. Intellectual property and personal injury claims are inherent exposures of cyber activities.

Be sure to look for policies that provide for universal or worldwide coverage because in addition to bringing businesses closer to the rest of the world, the Internet can also expose them to global jurisdiction.

Last, but not least, be sure that any cyber liability coverage that is purchased is backed by a knowledgeable claims staff with expertise and experience in handling the complex claims that can result from cyber activities. It is one thing to issue a cyber form, it is often quite another to properly service it.



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<http://www.mediaprof.com/blog>

Partnering for Success

Relationships Vital to Hallmark's Risk Management

By Lou Scimecca

Hallmark Cards, a privately held company headquartered in Kansas City, is the largest developer and producer of greeting cards in the world. Bill Johnson has worked in the Risk Management Department of Hallmark for 29 years and has been its Risk Financing Manager for the past 17. This summer, I sat down with Bill to discuss his role at Hallmark and risk management today.

At Hallmark

Hallmark's Risk Management department is split into two areas: loss prevention / loss control and risk financing. Bill's responsibilities on the risk financing side include "post-event" (post-loss) risk funding for traditional property and casualty exposures for the entire Hallmark organization, both domestically and internationally. Bill's group handles loss forecasting, loss development and budgeting, claim administration and working with Hallmark's various companies and subsidiaries on budgeting for retained losses that are allocated to them.

"We have a significant staff in the loss prevention / loss control area that does a good job in preventing and mitigating loss," Bill explained. "But if the loss control end doesn't work, then people look to me to see if we're protected. My responsibilities include all forms of funding losses such as the transfer of risk through an insurance vehicle or contractual transfer to the development and management of formalized funding mechanisms for risks that we retain."

Relationships with Insurers

Relationships with insurers are extremely important to Bill. For example, when Hallmark sold a major subsidiary, the buyer threatened to pull out of the deal because the property and casualty insurance was not part

of the transaction. Bill had five days to put together a program for the buyer, or the deal would be dead. Working with his broker, Bill succeeded in putting together a competitive program for the buyer by calling on his existing relationships. The sale succeeded and the hard work of building and maintaining relationships paid off.

Bill highlighted two attributes that he looks for in his relationships with insurers: stability and flexibility. Stability includes staying power, being in the business for the long haul and having adequate financial resources to deliver on the "big promise."

"We like to identify companies that have core areas of expertise, and then we build relationships with them by getting to know the key people, meet on a regular basis and work in a partnership kind of environment. Our cyclical markets subject us to fluctuations regarding pricing and terms, regardless if Hallmark's individual experience contributes to such fluctuations. While I can't insulate Hallmark completely from such fluctuations, I feel that my relationships with insurers can soften the blow. Relationships are two-way streets, and as the market pendulum swings up and back, the value of the relationship promotes stability."

Regarding the second attribute, flexibility, Bill added, "We look for underwriters that we can sit down with to describe our needs, some of which may be outside the norm, and have



Bill Johnson, Hallmark Cards

that underwriter willingly address our needs in a meaningful way because it makes good sense."

Risk Management Today

"The one major change of the risk management role today compared to my early years is the evolution from being an 'insurance traditionalist' to that of being a 'risk financing' person," Bill continued. "Years ago, the likely solution for funding loss exposure was through an insurance policy, and the role of the risk manager was much more of an insurance-oriented position where a sound insurance background, knowledge of the contracts and coverages, and relationships with insurers were the usual traits. Today, while the use of insurance policies to transfer risk is an instrumental part of the job, there are more financial implications to consider, such as tax issues, due to a greater degree of retained risk. As a consequence, I now interact with our finance and treasury people on a regular basis."

Editor's Note: Hallmark and M/PI have partnered on media liability coverage for over 20 years.

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Feedback or story ideas? Please send to mpisource@mediaprof.com.



Protecting Corporate Expression

(continued from front cover)

With the proliferation of broadband Internet, video games, TiVo, blogs, and user-generated content Web sites such as YouTube and MySpace, consumers are spending more time bouncing from one form of media to another. As companies try to grab consumers' attention, they must develop new methods of getting their message out. For instance, an episode of "The Apprentice" included several CEOs participating in the interview process of the show's finalists. While the CEOs appearing on the show did not market their companies or products in the traditional sense, they obviously appeared for promotional purposes. Another example is the use of links to a company's homepage within a news article about the company, its product or industry.

As companies have developed increasingly creative ways to market their products and services, CGL policies have narrowed the scope of their coverage for such activities. The Insurance Services Office ("ISO") is a national organization that provides standard insurance policies to CGL insurers. These policy forms include coverage for alleged offenses arising out of the insured's advertising. Unfortunately, the ISO CGL policy forms have increasingly tightened the scope of coverage for claims under their advertising injury provision.

Traditionally, CGL policies required

only that an offense occur "in the course of" the insured's advertising activities. Beginning in 1998, the ISO's CGL policy forms have stipulated that a covered event must occur "in your advertisement" — a much narrower coverage. Under this new wording the definition of "advertisement" became crucial in determining coverage for a company's promotional activities. Accordingly, in 1998, the ISO included in its CGL form a definition of "advertisement" that reads: "Advertisement means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters."

Since 1998, there have been hundreds of reported insurance coverage cases relating to this issue.

With the ever-changing marketing practices of companies, disputes can, and often do, arise between an insured and a CGL insurer as to whether the activity that resulted in a lawsuit constituted an advertisement. Insureds are frequently left at the mercy of the courts to decide this important question. Since 1998, there have been hundreds of reported insurance coverage cases relating to this issue.

In addition to the narrowing of advertising injury coverage, the ISO CGL policy now excludes all claims arising out of copyright, patent, trademark, trade secret, or other intellectual property. With the increase of various forms of media that bombard consum-

ers with advertising and information, the importance of a company's intellectual property becomes imperative to a company's fiscal health. Often, a company only has a few seconds to catch a person's attention as he or she is surfing the Web or flipping through a blog. A catchy slogan or instantly recognizable mark is often the only way the company can communicate its message to the easily bored consumer ready to switch to the next Web page. Protecting these slogans and marks is crucial to a company's success, and businesses have become increasingly more litigious to prevent their competitors from diluting the value of their intellectual property. Companies faced with defending such suits are likely to have to pay the attorney fees and costs of these expensive intellectual property lawsuits because their CGL policies probably won't cover them.

So, what can you do to avoid the CGL burn and provide products to your clients that protect their corporate expressions? Brokers and insurance professionals need to recognize that their clients may not have the insurance protection they need in today's ever-changing marketing and media landscape. A new type of insurance product is required. Coverage for the new promotional and intellectual property exposures faced by Main Street commercial companies is in transition from being a question mark in CGL policies to the focus of a new, carefully constructed, stand-alone professional liability policy.

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<http://www.mediaprof.com/blog>

Risky Business

Amusing but true stories from today's insurance world



Thinking Outside the Box

A Florida judge was evidently fed up with the bickering of two attorneys throughout a lawsuit. To resolve an insignificant but heated dispute between the parties over the location of a future meeting, the judge ordered the attorneys, accompanied by a paralegal serving as a witness, to meet at a neutral location to "engage in one (1) game of 'rock, paper, scissors.'" The winner of the engagement was entitled to select the location of the meeting, provided it was within the local county. To ensure fairness, the judge also provided the parties the opportunity to appeal his order or the outcome of the "engagement" if they felt compelled to do so.

Delegate, Delegate, Delegate

We received an application that included a question asking the applicant to describe its policies and procedures for handling complaints of defamation, invasion of privacy, copyright infringement or other disputes over the applicant's Internet activities. To this the applicant pragmatically responded, "Contact our lawyer, tell her what's going on, and let her deal with it."

Um... Excuse Me?

M/PI's Accounts Receivable Department received a response email from a client regarding information needed on an invoice. The response from the client to M/PI's request for information was a little delayed, and the client apologized for "any incontinence it may have caused." Not even spell check could clean up that typo!

Forward with Caution

Recently, an underwriting executive at M/PI caused quite a stir in the office when he sent an email to everyone in the company with a subject line that read, "I am retiring next week." This came as quite a surprise to those who received the message because this employee had not previously mentioned anything about a new life plan. Once the dust settled, we learned that the sender was NOT retiring; he was just forwarding a message on from one of our brokers who was.



If you have an amusing story to share, please send it to mpisource@mediaprof.com

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