



New Risks In The Electronic Age

Reliance on technology spurs companies to consider insurance plans

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With today's ever-increasing dependence on information technology, computer network systems and the Internet serve as the backbone of the operation of many businesses.

However, the speed and efficiency at which businesses can now operate because of the benefit of IT does not come without a price. Computer network vulnerabilities and the Internet have created a whole new arena of exposure for businesses, and traditional insurance (e.g., commercial general liability and property) does not afford the coverage many businesses now need.

There are multiple risks associated with the new information technology age.

Issues can occur with respect to a business's computer network from the innocent glitch in software to the more ominous and intentional "denial of service attack" on a network through the Internet, precluding use of an entire system.

In some cases, these issues can completely shut down a business's network, and as a result, the business too. A complete network shutdown, depending on the business, can add up to millions of dollars in business interruption costs. Furthermore, the costs associated with replacing or restoring data or networks can come with a high price.

A business's property policy would not normally afford coverage in this instance since typically "physical injury to tangible property" is required for coverage, not just pure economic loss. In addition, property

policies can require loss to be caused by specific covered perils (e.g., fire, hurricane); a computer virus would not be a covered peril.

Businesses can also face liability to third parties if a business's network is used as a platform to launch a denial of service attack or virus against another business. Commercial general liability (CGL) policies would not provide coverage for this third-party liability as CGL policies require bodily injury or, similar to property policies, physical injury to tangible property. Also, damages arising out of the loss of data are now specifically excluded under most CGL policies.

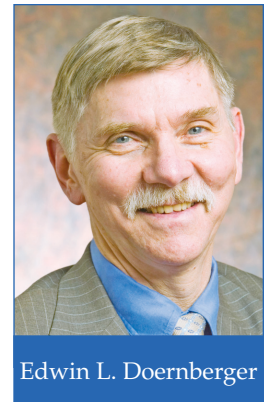
Personal Information

Special problems arise for those businesses that store large amounts of personal data on their network. In particular, retail businesses that maintain payment and personally identifiable information of their customers face serious exposure should such information fall into the hands of someone looking to misuse it.

Notably for example, the parent company of T.J. Maxx, a large chain consumer retail store, was exposed to millions of dollars of liability as a result of a massive breach of network security that allowed the theft of millions of credit and debit card numbers. Such a scenario causes a business to incur the costs of investigating the breach, notifying potentially affected customers, reimbursing fraudulent charges, credit monitoring and restoring customers' identities, to name a few.



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Again, both property and CGL policies require physical injury, not just economic loss, to trigger coverage.

Businesses in the health-care industry (e.g., doctors, hospital, insurers, pharmacies) are particularly vulnerable if the business is charged with the maintenance and protection of highly sensitive private information—patient health records.

As future health care will rely almost entirely on the electronic storage of health records, when a network security failure occurs, health-care businesses can find themselves defending against government action under laws regulating the protection of health care or other personal information, such as the Health Insurance Portability & Accountability Act.

Again, CGL insurance typically would not provide coverage for these types of claims.

Media Liability

Most businesses today have web sites through which they advertise or sell their services or products. As with any medium whereby information, images and ideas can be published or posted, web sites can

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BUSINESS



LITIGATION

expose businesses to claims such as libel, slander and violations of an individual's privacy rights.

In addition, the Internet can expose businesses to claims of trademark and copyright infringement. A CGL policy's "Personal and Advertising Coverage Part" may provide coverage for Internet media risks associated with web sites under some circumstances, but there are exclusions regarding infringement on intellectual property rights and "Internet Type Businesses."

Given the new risks posed by our in-

creased reliance on technology, businesses need to look past the more traditional insurance policies so that they can be assured protection against new business risks stemming from IT issues.

While it is in its relative infancy, Network Security and Privacy Insurance can afford businesses protection that other policies cannot. Therefore, businesses should work closely with their brokers to ensure they have the proper insurance coverage in place to cover all of their potential IT risk.

Businesses that rely heavily on outside

IT firms to provide services or products regarding their network or web site should ensure these firms also maintain insurance for IT risks. Because liability regarding a business's network or web site may arise out of the work or product provided by an IT firm, it is not unreasonable to expect such firm to bear the risk of loss.

Accordingly, businesses should consider requiring outside firms to name them as additional insureds on their policies, as well as requiring indemnity from them regarding the products or services provided. ■