

By Steve Schoenberger, VP & Technology Liability Practice Leader

## Network Privacy and Security Risk

Almost every week there is another story about a company in trouble because of a leak of confidential information. Most companies have some type of information in their system that, if released, would create a potential for litigation. When considering this risk, think about all of the information across your network such as client information, patient or medical information, financial information or employee information. Second, think about where the information resides and how it might be distributed through and between your company and others. Mobile equipment and PDAs are often high risk because they are mobile and can be physically stolen. ASPs can concentrate the risk and make a release more catastrophic. Keep in mind that there are times even the best technology can not stop a “social engineer,” and that most unauthorized access is through the eyes of a current or former employee.

Strong information security is the best course of protection. However, even the best technology and most committed management team with the strongest policies and procedures can not guarantee information security. If you have not specifically discussed your concerns with your insurance broker, and if your broker has not conducted a review of each of your insurance policies, don’t assume you have privacy and security coverage. Most insurance packages are designed to respond to liabilities arising out of physical bodily injury and tangible property damage claims. (Physical bodily injury does not include “personal injury” such as emotional distress arising out of the release of confidential information.) Standard liability programs have in the past included a narrow scope of coverage for “personal and advertising” injury, which has sometimes included privacy-related claims. However, insurers have been badly burned by this coverage, and over the last couple of years further restrictive language has been added to exclude claims arising out of the types of incidents most recently in the news.

Errors and omissions or professional liability programs purchased by software, BPOs or other professional service companies may provide coverage for network liabilities such as the transfer of a virus, infringing or offending emails, or the release of confidential information; but the policy should be carefully reviewed. There is often policy language that effectively excludes claims arising out of network security breaches, social engineering or acts by rogue employees. The release of certain classes of information may be excluded, such as financial information or trade secrets. In addition, errors and omissions coverage is generally limited to claims arising out of the delivery of a specific service. Errors and omissions coverage may not respond to claims arising out of a network unrelated to the delivery of a product or a service, such as a release of confidential employee information.

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Depending on the nature of your business and the severity of risk, a creative insurance broker can often find the right insurance carrier and fine-tune your current insurance program to address your needs. However, in many instances the only way to secure robust coverage for network security and privacy risk is through a stand-alone specialty product. If you consider a stand-alone privacy or security policy, make sure that you find a broker who understands your business and takes the time to carefully review the policy language.

Specialty insurance programs designed to protect against network liabilities and/or the release of confidential information are relatively new to the marketplace. The scope of coverage and cost varies widely. Watch for policies that claim to protect against unauthorized access but exclude the acts of employees or “social engineering” or data in a hosted environment.

Hopefully, you will never need to test your coverage; but if you bought it, take the time to look under your security blanket and make sure it will work when you need it.

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