

## *“Cyber” Liability – An Insurance Smorgasbord*

By Todd D. McDonald and Jeanine Loomis

Insurance products for cyber/technology and privacy exposures have never been as accessible as they are today. The expansion of product offerings and competitive markets, however, has made it quite difficult for agents to find and select the right coverages for their clients.

Traditional Professional Liability coverages are complex and most often require specialized review. While difficult to master, the coverages are offered in streamlined policies with common terminologies and layouts. Technology Related Coverages (as they are commonly categorized) add new difficulties for agents in deciphering the variety of products that are offered. Technology related exposures are fairly new to the marketplace and are quite technical in nature, with vulnerabilities for clients evolving by the day. Carriers, one after the other, have attempted to brand their own terminologies and approaches to covering these risks, making it even harder for agents and their clients to shop responsibly on their own.

The original intent of technology coverage was to address the Errors & Omissions (E&O) exposures of those companies that provide technology services to third parties. Common candidates for coverage would be software developers, internet service providers, and network security consultants. As commercial use of the internet and business software grew in the 90's, the market was forced to adjust how it addressed business liabilities; technology exposures were no longer solely the concern of technology companies. The first answer by major insurance companies was the “Internet”, “E-Commerce”, and/or “Cyber” Liability policy. The goal of the coverage was to bridge the divide of traditional policies in how internet-specific exposures were to be covered. During that time period (remembered as the “Dot-Com Age”), the need to insure companies specifically for sales and services online was imperative.

Fast-forwarding to today, one of the most notable advancements in computer technology has been the integration of digital wireless networks into business culture and society as a whole. Relative to the world just a decade ago, the access we have to information and services is almost limitless. While this progression has led to greater efficiency and the broader availability of services, it is creating a growing liability for insurance agents. How does one make certain that their clients are properly covered?

The last two to three years have seen a significant increase in interest and responses to this growing concern. New and updated policy forms have been introduced, risk management information and services have been more plentiful, and the legal landscape regarding corporate due diligence has quickly evolved. The focus on the traditional business as a complex blend of technology and information risk is becoming the new norm.

The newest versions of coverages seek a more appropriate approach to protecting companies who are not internet and technology companies, but who have internet and technology related exposures. These products are more accurate and comprehensive in the way that they classify coverage, no longer using “Cyber Liability” as a catch-all phrase, which is often confusing and/or misleading for customers. Some carriers have chosen to delineate their technology services provider forms from their traditional company forms, and many others have followed the trend of offering individual modules to highlight key coverage parts. Despite the benefit of variety, the challenge is that each form is significantly different in the way it is organized and in the coverages it offers. Where a comprehensive blended technology policy with E&O coverage may be offered to a client, an internet-only coverage product with no E&O coverage may also be quoted as an “equal” alternate. Clients need to be advised of what their options are, and must understand the implications of the purchases that they make.

The primary components of Technology Related Coverage policies are:

Technology E&O – coverage for liability arising from services provided to others  
Network Security – coverage for liability arising from security breaches  
Media/Content – coverage for liability arising out of the use/dissemination of media  
Privacy Liability – coverage for liability arising out of one’s right to privacy  
Intellectual Property – coverage for liability arising out of the use of protected works

These “third-party liability” coverages seek to close many of the gaps created by traditional policies like General Liability (GL) which do not intend to fully cover technology and internet exposures. They can generally be purchased in any variety depending on an applicant’s exposures. As an example, one insured may already carry E&O coverage for their services so would only need to focus on the technology services not currently picked up by their E&O policy, or maybe just on their internet media and intellectual property exposures. Coverage in these cases is uniquely crafted for each risk. It is important to note that within each of these coverage components exist many nuances with respect to how broadly (or narrowly) each will apply. An illustration of this is in Network Security coverage. Depending on the policy form and risk, it would not be surprising to find one quote that covers liability resulting from being breached by an outsider, and then another that would include coverage for malicious code (viruses) transmitted to a third party. Going further, another quote could provide coverage for unauthorized access that occurred due to the acts of an inside employee. All three circumstances could be considered “network security” but all three circumstances may not be covered.

First-party coverages are not as widely available, but can be very important in closing many of the gaps of traditional policies like Property and Crime which focus more on physical loss to tangible items. Common coverages in this category are:

Business Interruption – coverage for lost income due to certain network security breaches  
Cyber Extortion – coverage for costs associated with network kidnap/ransom situations  
Data Loss – coverage for costs to recover/recreate maliciously ruined data

## Notification Costs – coverage for costs to report privacy breaches to customers

First-party coverages in combination with the third-party coverages mentioned above are a comprehensive approach to covering evolving exposures and have been a staple in insurance portfolios in many industries, most notably, banking. The demand in other industries will only continue to grow as exposures change, and new legislation following HIPAA and Gramm-Leach-Bliley dictates what responsibilities companies have to their clients. The most popular request today is for notification costs coverage. This is the direct result of new laws requiring companies to report potential breaches, and the resultant mass of information in the media about laptops being stolen, networks being hacked, and credit card number transactions being intercepted. The history of these privacy-specific coverages has just begun and the exposures will certainly reach beyond the bounds of the internet. The other technology coverages will simply follow as we are too far to turn back now.

So how can an agent best approach and explain these exposures to a client? There are a few key dynamics to expect: customers generally do not consider themselves to be vulnerable, management tends to consider their IT staff to be the only necessary line of defense, and most customers are not aware of the basic risk management procedures that should be implemented prior to pursuing insurance. Through the help of specialized brokers and carriers, an agent can instantly have the materials and assistance necessary to handle these obstacles. The more educated a client is, the safer they will be.

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