

“CYBER-RISK”

With the Y2K bug safely behind us (for the most part), businesses are forging ahead with e-business plans at a rapid pace—and the courier industry is no exception. Company websites, many of which sport ever-more-sophisticated functionality, are proliferating. E-mail is pervasive. Several online services are attempting to establish themselves as “cyber-portals,” connecting shippers with couriers across the country or the world.

One thing remains the same from millennium to millennium: Opportunity is not without risk. With the expansion of your operations into cyberspace comes another dimension of uncertainty and liability. Some “risk exposures”—as we in the insurance industry prefer to call them—are familiar while others are as new as the latest CPU release.

Before venturing too far into the void, businesses would do well to consider their “cyber-risks” and the extent to which traditional insurance provides protection. For those whose insurance falls short, you can consider upgrading to a more Y2K-compatible insurance company or supplementing your coverage with one of the new “Cyber-Liability” policies that are beginning to sprout like peripherals on a PC.

The bottom line is that your business already entails plenty of risk, and you have already selected a variety of methods to cope, including insurance, safety procedures, limits of liability and just ‘taking a chance.’ E-commerce is no different, but you may not be as familiar with the risks, so you may not see the danger until it’s too late.

Cyber-Liability

Consider what would happen if someone hacked into your website or computer system. Could they access sensitive information about your business and especially your customers? What could be done with this information? To what extent could your business be held liable for lax security? If you are getting uncomfortable, you are not alone.

Meanwhile, what are you doing with the information that customers or visitors on your website provide? Have you thought of teaming up with other businesses and perhaps sharing or selling some of this data? Technology buffs see rich potential from this sort of activity. Attorneys see a rich new source of income from suing over breach of privacy. It has already happened.

Do you offer any services other than actual delivery on your site? A chat forum, perhaps, on the ins and outs of express shipping? A registered delivery feature? Question and answer? Information and links to other online sources of information? Then don’t think yourself immune if someone using these services is not happy with the result. Remember

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that often every entity in the chain gets sued.

Let's not forget libel and slander, copyright and trademark infringement and a host of other liability issues connected to the layout and content of your website, domain names, etc.

The point is that the establishment of a website and conducting business on the Internet embroils your business in an interconnected virtual universe where actions and decisions can have obscure, far-reaching and sometimes damaging effects on others—for which you can be held responsible in a court of law. At least you can be made to pay exorbitant attorney's fees to prove that you should be left alone.

General Liability, Meet Cyber-Liability

"Okay," I hear you say, "That's what I have liability insurance for!" Consider though that General Liability policies mainly cover bodily injury and property damage. How do these terms fit into the world of bits and bytes? Protection against errors and mistakes usually requires special Professional Liability or Errors & Omissions insurance.

Your General Liability insurance still may be part of the solution. After all, it usually covers so-called personal injury" liability, such as libel, slander and invasion of privacy. Of course, the drafters of these policies had the written and spoken words in mind and imagined landlords sneaking into tenants' apartments. Will policy language and Html communicate harmoniously?

The problem is that until some unlucky businesses are dragged through the legal process of being sued, having their claims denied and suing their insurance companies, we will not know how well or how poorly pre-Y2K insurance policies will stretch to fit Y2K liabilities. Even then, interpretations can differ depending on the jurisdiction, the policy wording and the circumstances of each case.

Some insurance companies are taking the lead in clarifying what their tra-

ditional policies will and will not cover. Others are adding amendments to their policies to restrict coverage. Finally, the cutting-edge carriers are beginning to offer special insurance to companies engaged in e-business. These usually cover errors and omissions, liability against misuse of customer data, trademark and copyright liability and various other sources of woe.

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For businesses actively using the Internet to grow, it may well be worthwhile to check out your options. While some new insurance programs are expensive and aimed at large risks, others are popping up that cost less and can be customized to provide only the protections you need now.

The More Things Change...

Not all risk associated with Internet operations is newfangled. Good, old-fashioned fire or water damage to your office could negatively affect your e-commerce if you can't download e-mail or process online orders.

Likewise, good, old-fashioned loss control techniques remain helpful. Instead of relying purely on insurance to cover your losses from an office fire, do everything possible to minimize those losses. For example, make sure you maintain a separate personal e-mail address and know how to forward your business e-mail to this secondary address (sort of like having a plan to forward your phones).

With e-commerce in place, the quality of insurance on your computer equipment becomes critical. At KBS, we still see many courier companies whose Electronic Data Processing Equipment is covered as general property ('EDP' — roughly the same as computer equipment in insurance-speak). Plain vanilla insurance may leave you without coverage for hazards such as electrical arcing, magnetic erasure, viruses, hacking and simple breakdown. It may be wise to check the extent of your coverage, even if your policy covers EDP equipment using a more appropriate Inland Marine, EDP or Computer policy form.

To a large extent the value of the damaged computer equipment is the least of your worries. Check if your insurance would pay for the extra expenses of implementing an emergency plan to keep your e-commerce operations up and running. If you generate significant income from these operations and this source of business is cut off for a time, would your insurance policy make up for the lost income? Better to know now.

One fairly new twist is that your computer network/e-commerce could be disrupted without any so-called physical damage to your insured computer equipment. Neither viruses nor hackers leave a visible trace, except perhaps the output on your computer screens. Experts disagree on whether or not damage to electronic code—the zeros and ones that make e-commerce happen—constitutes physical damage as covered in a typical insurance policy. While we believe that policyholders will ultimately prevail, it would be much better not to be the guinea pig. Confirm the intent of your insurance carrier ahead of time.

The Downside of "Paperless"

A further source of risk from e-commerce is that courier companies may forget to set terms and conditions of carriage for Internet-generated business. Already, many companies using modern data entry and telecommunications systems have failed to find substitute ways of limiting their liability for valuable shipments—especially when these shipments are not declared as such.

It is grossly unfair to have to pay thousands or even tens of thousands of dollars because, as rotten luck would have it, a shipment that was damaged or stolen turned out to be quite valuable, especially when you were never notified of this fact in advance. Either your balance sheet or your insurance record will be marred, and yet all might have been prevented had you had the chance to assign a veteran driver, specify non-stop delivery, demand special packaging or securing or assign a second helper.

If your online customer interface makes no mention of declared values, limits of liability, consequential loss and valuable such as jewelry, art or even cash, you can be held responsible for any loss that arguably involves negligence on the part of your people.

It is important not only to communicate your terms and conditions, but also to obtain from the customer a legally binding agreement to abide by those terms. In the "non-virtual" world, the legal norm is a signed receipt or agree-

ment where the customer keeps a copy for reference. In cyberspace, various substitutes are being tried but their adequacy remains uncertain. Will "click here if you accept these terms" hold up in court?

KBS spends a lot of time counseling clients on these types of matters and providing model policies, but we never claim to function as a substitute for legal opinion. An attorney's advice and assistance is invaluable, but even the lawyers are treading over new ground. Certainly something is much better than nothing.

A Final Thought

After discussing e-commerce plans with so many couriers and other business owners, I am struck by one other risk that has little to do with insurance or even traditional risk management. The risk is that the dynamics and pressures of conducting business over the Internet will undermine the professionalism that still characterizes much of the courier industry.

The Internet promotes both quick-and-easy communication and price shopping. Most established courier companies, however, know that express delivery means more than just being the fastest and cheapest. Price may win over new customers, but service keeps them, and delivering consistent quality service requires a lot of knowledge and talent.

In trying to design websites that reduce the "friction" of doing busi-

ness, some will be tempted to minimize the number of clicks necessary for a package to be picked up and delivered. As a result, important issues like declared values and special handling requirements may be neglected. The result is likely to be a lot of preventable customer disputes.

Many others will use their home pages to hype low rates, but how will other measures of value be communicated? How can couriers who have built their businesses on service and a fair price reap the rewards of e-commerce? Hopefully the industry, collectively and individually, will develop professional standards that can be communicated to e-shippers so that the Information Superhighway does not become the track on which couriers race to the bottom.

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