

## "The Story."

Some time about 1972 "HBO" came to the Cable TV Industry and launched one of the fastest growing success stories of our time. It is now 2006 and the Internet is about to hand over, to the Alarm & Communications Industry, "2-way Video" which will put new meaning into the words "Integrated Communications" and launch the world of IP Networks, System Integrators, Electronic Security, Medically Integrated and Tele-Communications Industries into the highs of Wall Street and far beyond the glory days of the Cable TV dynasties.

The Internet will bring cyberspeed for data, voice and 2-way video. Wireless (VoWiFi), cellular and radio (GPRS) networks will enable connecting clients to be "linked" to large, encrypted Internet Data Centers (IDC) nationwide and worldwide. Real time, 2-way video will link doctors to patients, baby sitters to moms and dads, grandparents to family members, Office to Office and verify ID access. Networks, over the Internet, will expand into Multimedia Services between Office and Clients and integration of emergency services from lifeline monitoring to healthcare support and '911'. Biometric systems will integrate health records, door access, computer, e-mail and web site control applications and help prevent unauthorized access by "rogue" employees and terrorists.

With the Internet evolution come the issues of Identity Theft, Electronic Data Exposure and Other CyberLiability. The FBI reports 9 out of 10 organizations in the country are the victims of some sort of computer security incident. Financial impact occurred to over 64% of the respondents. Losses were due to viruses, worms, spy ware and data sabotage causing risk managers, legislators and plaintiff attorneys to take notice and legal action. The defense costs of the "chain of breach" can be in the millions of dollars regardless of who is found liable. This affects any person or company with a web site, e-mail, monitoring, interfacing with or downloading from another computer causing damage to that computer's data or software including corruption of, inability to access or inability to manipulate electronic data.

Over the years, Insurance Companies, in response to this ever-growing increased exposure, have modified the Property and General Liability policies intending to restrict coverage in connection with loss of electronic data and Liability. Prior to 1966 the definition of "property damage" was not defined (except with the insuring agreements). The result of the revised language was to stipulate that "electronic data is not tangible property" which excludes coverage. Exclusionary language in endorsements CG 0437 and paragraph "p" of the CGL policy's Coverage A is aimed at restricting coverage for loss of electronic data. Other endorsements "per company" are also added to policies such as "electronic data liability exclusions", "computer data exclusions", "malicious code exclusions", etc. Keep in mind limits of coverage are following form. If it's excluded it's not covered under the Liability or Property policies. This means no DEFENSE OR INDEMNIFICATION.

Two precedent-setting law cases have rendered opinions: In Ward General Insurance Services v. Employers Fire Insurance, the California Court of appeals, in 2003, held that

data is not considered tangible property in the context of a PROPERTY POLICY. Therefore, a loss of data would not constitute a direct physical loss. Similarly, the 4th Circuit Court, in AOL v. St. Paul Mercury Insurance Co., that same year found that computer data is not tangible property under a GENERAL LIABILITY POLICY.

Clearly, solutions to mitigate Internet Liability (CyberLiability) need to take a high priority with management. It is necessary to build a check list and appoint a risk manager to follow up on the following issues and others.

1. Employees' training and policy statements on data use and disaster recovery need to be ongoing with monthly meetings and updates.
2. Implement anti-virus software, hub and firewall security networks and have Internal and external review of personal backgrounds.
3. Approve an IP and IT network department to keep up with all the changes in technology, legal, privacy-human resources risks and issues.
4. Other Issues of committees and/or management require review.
5. Review, with your Insurance agent or broker, coverages and exclusions in your existing General Liability, Professional Liability and Property Insurance Policies. It's important to review and identify and connect liabilities and loss of property including electronic data and tangible property exposures. Consider adding network or CyberLiability Insurance to include false or misleading advertising, personal injury, identity theft, Equipment Sales/Installation/Monitoring E & O, viruses in web site, e-mail, monitoring, and data storage both on and off line. Allegation of intentional wrongful conduct, unauthorized access, disconnect or viruses of "rogue" employees or 3rd party contractors, contingent BI/PD and prior acts coverage, Copyright/Trademark Infringement should all be a big part of your checklist of coverages.

Remember that Internet Liability is like looking at an iceberg. It may be deeper than it looks.

If any issue remains unclear, more home work is required. There is "no shelf life" to sound insurance coverage. That's why, after 27 years as the owner/founder of my Insurance Agency, I am writing this article.

Michael J. Kelly is the founder (1978 to Date) and Owner of Michael J. Kelly Insurance Agency Specializing in Electronic Security & Communications. From 1968 to 1977 he was a Cable TV Pioneer. He was Founder/President of Cable KOR Communication, one of the largest privately owned Cable TV Companies and Cable Contractors in California. The information in this article is not rendering legal advice or services. Before making any decision or taking any action, you should consult a trusted insurance broker or agent and legal advisors. Mr. Kelly can be reached at 800-329-5355, / [mjk@mjkinsurance.com](mailto:mjk@mjkinsurance.com), / [www.alarmchannel.com](http://www.alarmchannel.com).

Date: 2/23/06.