SUPER HIGHWAY OR COBBLE STREET?

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A lot has occurred in the year that has passed since the last *E-Commerce Market Survey* (April 2000). There is bad news, bad news and good news.

The Bad News First

Underwriters have experienced a great deal of frequency and severity arising out of "soft intellectual property" (trademark and copyright) claims. Two major factors have contributed to this trend. First, the cyber insurance policies are new, so they have only begun to be tested in the courts. Many of the policies were written and released so fast, in order to meet demand, that in some cases the coverage provided was substantially more than intended. The second reason for the soft IP claims frequency is the courts' interpretation of traditional copyright laws as applied to the Internet and the frequency of litigation brought for domain infringement, also known as "cyber-squatting". In retrospect, I believe most underwriters would say domain name infringement exposure was not the intent of coverage under the "media perils" section of their policy. The fact is a number of multimillion-dollar losses have resulted from this exposure.

Westport (General Electric), GenStar and Reliance (prior to its financial difficulties) pulled out of the cyber market in 2000. A few others have taken the position that they will only offer $250,000 to $500,000 in sublimits for intellectual property (media perils).

More bad news

Because of expanded use of the Internet, new exposures have increased during the past year. Jurisdictional issues have now become a "real" underwriting concern, with Yahoo! being found guilty in the French courts for violating local law. Hewlett Packard's lost litigation in Germany, also illustrates how countries are beginning to enforce "national" jurisdiction over the Internet. There is a question in underwriter's minds as to what extent each country will go to, to "nationalize" the Internet in the years ahead.

Hackers/crackers remain very active. This new generation of "pranksters" has grown quite a bit in the last 12 months. According to a recent CERT report, over 15,160 incidents were reported in the year 2000, a 53 percent increase over 1999. In addition, we have just begun to see how the Internet can be used in military/rebellious conflicts throughout the world. In December 2000, the F.B.I. issued a warning to U.S. corporations doing business over the Internet with customers in Israel or Palestine, to increase their Internet security. Both Israel and Palestine forces have gone global via Internet to "publicize" their cause. Both have hacked numerous sites.

The last big bad news of 2000 was the "demise" of the "dotcom". According to webmergers.com, 219 Internet-related companies ceased operations in 2000. The disturbing fact is that 121 closed in the fourth quarter alone and another 49 in January 2001. Estimates are tha,t in the year 2001, the number of dotcoms that ceasing operations could be twice as high as in 2000.

And the Good News

Although we saw a few underwriters withdraw completely and/or restrict coverage, more insurance companies than ever have begun to entertain cyber exposures. Companies like Hartford, Crum & Forster, and others entered the e-insurance market place. With the new carriers have come new approaches. Auditable policies have become popular again with some of the markets. Assessment requirements prior to binding coverage for both first and third party have started to emerge. A number of Internet security firms have opened their doors, and security in general has greatly improved in the last 12 months.

Pricing increases have been seen for the last few months and will continue throughout 2001. This should not necessarily be interpreted as bad news. The pricing has been substantially inadequate for the known and unknown perils that exist in this new economy. By price firming, we will all benefit from a stable and long-term market. As with all new products, there is a price-to-exposure ratio that over time is market driven. And the introduction of competition has a positive effect on reasonable pricing. We are still in the early stages of this process. As more underwriters enter the cyber insurance segment, this process will accelerate.

Another new and exciting development this past year is the broadening scope of "cyber insurance." Programs are now being created that not only address the perils arising out of e-commerce, but corporate internal computer systems, cellular exposure, satellite etc. The industry has expanded to keep pace with the increasingly changing technology that corporate America has begun to rely on that is not protected under traditional insurance products. The magnitude of a virus now extends not just to a website, but to almost all internal corporate functions (ie: accounting, record retention, purchasing, etc.) and external communications (ie. PDA's, cellular phones, laptops, etc.). This is an exciting time for underwriters, brokers, and insureds. We are all part of a rapidly changing and creative marketplace.

What can we expect in 2001? As the use of e-signatures increases, so will fraud. Traditional first-party underwriters will need to address this in an overt way and/or cyber property policies must be enhanced to keep pace with this new exposure.

Another controversial and litigation prone-exposure is the privacy issues that have begun to surface and sure to expand in the year ahead. We have already seen at least one underwriter endorse its cyber policy with a privacy exclusion. There is privacy legislation pending in Congress and a few state legislatures. The exposures relating to privacy will be substantial as more and more consumers utilize the Internet for banking, prescriptions, etc.

Education remains our greatest challenge in the year ahead. As many of us experienced with EPLI, the learning curve at a certain point shoots straight up. Publications such as the Betterley Report, insurance trade journal articles and publicized claims all contribute to the educational process that we all need.

Public awareness for the need of specific cyber perils insurance protection has greatly increased during the last 12 months. Our submissions continue to grow, as do others that are dedicated to this field.