

#insuringsocialmedia: Media Companies

This is Part I of a three-part series about insuring social media. This part addresses media companies. Part II looks at non-media companies, and Part III will examine coverage for individuals.

News media organizations have embraced social media to disseminate news in real time, track trending topics and build contacts and sources. Tweets and posts made on the fly – and without editorial oversight - can easily expose journalists and their organizations to defamation and invasion of privacy lawsuits. While most media companies already have media errors and omissions insurance policies in place to cover claims from media content and activities, many policies were drafted before the emergence of social media, thus giving rise to uninsured claims.

Media liability insurance policies must be reviewed by a knowledgeable risk management team to ensure that coverage is available for social media. If an insurance broker has advised that a media company's commercial general liability policy ("CGL") provides coverage for social media activities – or any publishing or advertising activities – he or she needs to read "Insurance for Dummies" and be un-friended immediately by the risk manager. CGL policies specifically exclude coverage for personal and advertising injury for any company in the business of publishing, broadcasting or advertising. This significant coverage gap is the reason for the specialty media liability market.

Many media liability policies do not address social media because they were drafted more than five years ago, which is a long time when compared to the speed in which technological advances are being made. It's expensive for insurers to develop new forms and file them with state departments of insurance. For this reason, many forms are updated every ten years or so with endorsements developed and filed more frequently to address emerging issues. So, if a policy form goes back further than a Facebook timeline, it should be reviewed to ensure that the company's social networking is covered. In fact, whenever a media company embraces a new technology to disseminate content, it is a good idea to discuss coverage implications with an insurance broker to make sure that there is coverage.

Most media policies provide coverage for an act, occurrence or other event relating to "scheduled" or "covered" media. In this regard, there are a couple of places to check the policy wording. First, good media policies will define "act," "occurrence" or "event" – the action word giving rise to the claim - to include the insured's online dissemination of content. Better and newer media policy definitions will also specifically include social media activities committed by or on behalf of the insured. Second, and often the sticking point of an older form, is the

definition of “scheduled” or “covered” media. That definition is often product-specific and requires the act giving rise to the claim to have been disseminated in media that is owned or operated by the insured. For example, if the insured is a newspaper publisher, its newspapers will be specifically listed in the Declaration’s Page or by endorsement, as well as its website(s). Social media, however, takes place over a third party’s server, i.e. Twitter, Facebook, LinkedIn, etc., which are not entities owned or operated by the insured and are not “covered” or “scheduled” media under media policies. Therefore, unless social media activities are specifically referenced in the definition of “act,” “occurrence” or “event” or specifically scheduled in the Declarations or by endorsement as “covered” or “scheduled” media, social media activities may not be subject to coverage.

It’s also worth noting that some policies may specifically exclude coverage for “chatrooms” or “unedited chatrooms” in the body of the policy or by endorsement. This exclusion would likely be broad enough to bar coverage for any claim arising from social media, as well as any online communications between the insured and any third parties. If this type of exclusion appears, it is possible that the underwriter will remove it upon request; otherwise, coverage with another media insurer should be sought.

Even if the policy wording covers social media, coverage issues may still arise. For instance, in a claim involving a Tweet by an employee, there may be a dispute about whether that employee was acting within the scope of employment. Situations like this should be addressed by careful employment rules of conduct with respect to social media and other internal risk management. Such guidelines should address in what context employees can use social media to break news, comment on news stories and post personal matters. There should also be rules regarding criticism of colleagues, competitors, advertisers and the employer.

As technology continues to shape the way news, information and entertainment is communicated, risk managers and insurance brokers need to be vigilant that relevant insurance policies are keeping pace. Social media is an important component of expression and needs to be subject to the same breadth of coverage as more traditional communication outlets.

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