

What is Technology, Media and Professional Services (TMPS) Coverage?

TMPS is written to:

- Protect the company from errors and omissions that occur in the company's rendering or failure to render professional services;
- Protect the company from Technology and Media related perils; and
- Help the company monitor and provide defense costs associated with responding to lawsuits; and investigations.

Why Companies Should Consider Buying TMPS Coverage?

- Cost of defending corporate lawsuits may exceed the net worth of most companies;
- Judgments can be financially crippling;
- Web sites, on-line services, email, and software programs have new exposures that are not covered by a standard Miscellaneous Professional Liability policy;
- Errors and Omissions can cause irreparable harm to a company's reputation;
- Downtime to your server caused by a virus or hacker attack could impair your obligations to third parties;
- Ever increasing complexities in technology enhance the chances of an Error or Omission;
- Errors and Omissions can quickly impact the finances and operations of a company;
- Commercial General Liability policies are not adequate to respond to Technology and Media matters; and
- Companies will have a difficult time attracting new clients without TMPS coverage.

Current Business Trends Point to Purchasing TMPS Coverage

- Increasing virus and hacker attacks;

- More complex technologies;
- Increasing demand by clients; and
- Economic uncertainty.

What are the Sources of TMPS Claims?

- **Clients:**

- Error or Omission
- Intellectual property (i.e. copyright/trademark infringement, trade name, etc.)
- Breach of contract
- Negligence in the performance of professional services
- Failure to render professional services
- Personal injury (i.e. libel/slander, defamation, invasion of privacy, etc.)
- Misrepresentation
- Breach of security (i.e. unauthorized access, virus, etc.)

- **Competitors:**

- Personal injury (i.e. libel/slander, defamation, invasion of privacy, etc.)
- Intellectual property (i.e. copyright/trademark infringement, trade name, etc.)
- Breach of security (i.e. unauthorized access, virus, etc.)

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Sample TMPS Claims: *(The following examples are for illustrative purposes only.)*

Web Hosting:

Insured agreed to provide website hosting services for client's e-commerce site pursuant to a three-year contract. Later the insured terminated the service agreement when the client failed to pay outstanding invoices. The insured assisted the client in transferring the website to a new hosting facility without service interruptions. Client demanded payment for costs incurred in transfer and for credits for poor or incomplete service under the contract. Insured declined payment. Client filed a lawsuit against insured for breach of contract, fraudulent misrepresentation, tortious interference with contract, and tortious interference with business relationships.

Client is seeking out \$700,000.

Software Developer:

The insured signed a software license agreement with a client for its supply chain software program. The client has objected to the price of the insured's proposed to charge client for implementation of an upgrade to the current version of the software program. The client has demanded that the insured provide the upgrade at no internal or external cost to client; supply all necessary personnel to accomplish the upgrade; reimburse the client for its internal cost to assist in the implementation process; and provide additional ancillary services.

Total defense costs and settlement exceed \$100,000.

Website Developer:

The client of the insured contends that the insured did not develop a website in a satisfactory manner and demands the return of the amount paid to the insured as well as being compensated for lost orders and other expenses.

Total defense costs and settlement exceeded \$100,000.

Telecommunications Company:



The insured entered into a contract with their client to provide telecommunications services including acting as an internet service provider. The client was having tremendous difficulties dialing in to connect; they were receiving fast busy signals and many other unacceptable problems. The client alleges that the insured breached their contract by failing to provide equipment and services by agreed upon date, improperly billing the client's account for equipment and services, and disclosing confidential information about the client's customers.

Complaint seeks unspecified damages.

Intellectual Property Claim:

Claimant filed a copyright infringement lawsuit against the insured. The lawsuit arises out of the claimant's published memoirs about an artist. The insured wrote a book about the same artist and granted movie rights to the book to a group of producers, who released a movie later that year. Claimant alleges the book infringes on the published memoirs, and also alleges the insured is contributory liable for infringing content in the movie.

Total defense costs and settlement exceed \$50,000.

Class Action Claim:

Plaintiffs commenced several class action lawsuits against the insured alleging that the insured's advertisements, stating that it provided complete internet access and was the equivalent of computer access to the internet, were false and misleading. Specifically, plaintiffs alleged that the insured did not give users full capability to display Web pages, open e-mail attachments or access files. The plaintiff class consists of those who purchased the insured's system and subscribed to the service over a 4 year period. The lawsuits were consolidated and the lawsuit was certified as a class action. The plaintiff alleged negligence and sought declaratory and monetary relief.

The case settled for \$2.025 million.

Intellectual Property Claim:

Insured replicated software and printed manuals and certificates of authenticity for the claimant. The insured's managers entered into verbal agreements to ship materials to a company not authorized by the claimant. Claimant alleged theft of software goods and certificates of authenticity by an employee of the insured in violation of copyright and trademark protections.

Plaintiff sought damages in excess of \$1,000,000.

Implementation Claim:

Claimant purchased several dozen auto recycling facilities and formed a new company to operate these centers across the country and abroad. Claimant then hired a consulting firm to advise it on the appropriate enterprise resource planning software (ERP) to tie its auto recycling yards together. The consulting firm recommended use of a nationally-known human resources software product. Once claimant obtained the software license, it hired the insured to implement the software so it would meet its business needs, especially the need for sales people to process customer orders quickly. The installation and implementation project for this enterprise involved millions of dollars and many thousands of labor hours. After more than one year of implementation work by the insured, the system was launched and experienced some functional issues that needed correction. Claimant terminated the ERP and decided to abandon the enterprise. The claimant then filed suit claiming the failure of the enterprise was due to poor performance.

Claimant sought damages of \$9.7 million.

Failure to Perform:

A provider of e-business infrastructure services retained the insured software company to create a critical software program that would enable its global offices to proactively manage customers and potential sales leads. It is alleged that the insured held itself out as a leader in the area of software systems but repeatedly missed deadlines and was unable to deliver a workable solution. As a result, the client's relationships with existing customers suffered and additional business was lost. Despite efforts to salvage the project and the relationship, the client asserted that the system failed to perform as represented. The client then retained legal counsel who provided a draft complaint alleging negligence and demanded \$6 million.

The client thereafter demanded \$2 million to settle but ultimately accepted \$400,000.