

Buying General Liability and Errors & Omissions Insurance – What You Need to Know

Risk managers and business owners of technology companies are often confused or misinformed about the differences between General Liability (GL) and Errors & Omissions (E&O) insurance. This misunderstanding could prove costly in the event of a claim. In this *Best Practice*, we provide an overview of these two types of insurance, explain the differences, and point out why both types of protection are critically important for technology businesses.

General Liability – A Primer

The two primary coverages in a GL policy are for claims of **bodily injury** and **property damage** arising from your products, services and operations. To illustrate this, here are two common scenarios for GL claims:

- A visitor to your office trips over an exposed wire and breaks a leg – bodily injury claim on your premises/operations
- Your product short circuits and causes fire damage to a building – products liability claim

Although technology businesses need GL protection, GL does not cover every type of liability exposure.

What GL Doesn't Cover

Take a look at the following exposures that are not covered in a GL policy:

- **Intangible Property** – Coverage for property damage normally does not extend to intangible property, such as computer data. So, if your business is found responsible to a third party for the loss or corruption of their data, your GL policy would not cover it.
- **Economic Harm** – GL does not cover claims that allege economic harm to a third party arising from your products or services. Let's say your company's product promises to route calls more efficiently, but instead allegedly drops calls, resulting in lost customers or lost sales for your client. Because this scenario does not involve bodily injury or property damage, your GL policy would not provide coverage.

We encourage you to develop a basic understanding of the differences between GL and E&O policies, and to discuss your coverage needs with an insurance professional who has experience working with technology companies.

- **Impaired Property** – There is an exclusion in most GL policies for loss of use of tangible property that is rendered useless or less useful simply because it contains your product. In other words, if the only thing wrong with another product is that your defective product is part of it, this does not constitute property damage and is not covered.
- **Product Recall** – Another important exclusion is coverage for the costs associated with recalling defective products from the market. This coverage can be added through endorsement or by purchasing a separate product recall policy.
- **Professional Services** – If your GL policy contains a professional liability exclusion – and almost all do – you may have no coverage for bodily injury or property damage arising from your technology products (software, programming, etc.) or services (data processing, communication services, etc.). These exclusions create a gap in coverage between the GL and E&O policies because E&O policies typically exclude all bodily injury and property damage.

As an insurance buyer, you might argue that your technology products or services are much more likely to cause economic damages than actual bodily injury or property damage to a third party. And you may be right. However, that is even less reason to accept this gap in coverage. In other words, if there isn't much exposure, it should be easy to cover.

Many insurers do not understand the technology industry and its exposures.

That's why it's important to choose an insurance company that knows the risks your business faces and offers the coverage you need.

- **Personal and Advertising Injury** - This coverage is lesser known, but it's very important protection for technology companies. It may vary from one insurance company to another, but generally it can:
 - Address allegations such as false arrest, malicious prosecution and wrongful eviction
 - Protect firms from suits alleging other personal injuries such as libel, slander, defamation and invasion of privacy
 - Provide some limited coverage for intellectual property infringements, primarily arising from a firm's advertising activities

In addition, the type of business you're in makes a difference. There is another exclusion that **eliminates most personal and advertising injury coverage** (except for false arrest, malicious prosecution and wrongful eviction) **for traditional media companies**. This is due to the presumption that these firms need - and should be purchasing - full media liability protection. As the technology industry has evolved and become more closely aligned with specific types of media, this exclusion has been extended to:

- Web site designers
- Search engines
- Internet service providers

Insurers may further extend this exclusion to other technology companies and operations by endorsement, so **it is critical that you determine the actual extent of coverage that your insurance company provides.**

Technology E&O (Professional Liability) - A Primer

Technology E&O coverage should be a core part of an insurance program for most technology companies, but it is often overlooked or purchased only when required by contract.

Although it has been available for more than 25 years, technology E&O coverage is not well understood. There

is no standard insurance form, so coverage comparisons are difficult. That's why it's extremely important for you to work with an agent and an insurance carrier that has the necessary experience to evaluate your exposures and align coverage accordingly.

What E&O Covers

Typically, E&O policies are designed to cover:

- Liability associated with pure economic loss arising from a third party's use of a technology company's goods, products or services
- Damages to a third party arising from loss, damage or corruption of intangible property, such as data, and loss of use of tangible property that is not physically injured arising from your defective product or work

What E&O Doesn't Cover

There is generally no coverage on an E&O policy for bodily injury, property damage, or personal and advertising injury. These exposures are assumed to be addressed by the GL policy. However, in situations where professional services coverage is excluded from, or limited on, the GL policy, you may be able to purchase contingent bodily injury or property damage coverage by endorsement or through a specialty insurance market. However, this is not the optimal solution, since the E&O coverage:

- Is written on a claims-made basis
- Is subject to a deductible or retention
- Has defense costs reducing the limits of liability
- Only applies to covered damages arising from your technology products or services, while a GL policy normally covers damages arising from all products, services and operations

Ideally, E&O coverage will dovetail with the GL policy, closing coverage gaps that would otherwise exist.

How Technology E&O Coverage Differs from GL

Technology E&O coverage differs from GL coverage in a number of important ways:

- **Claims - A GL policy** can apply to a claim that is brought many years, sometimes decades, after the policy expires. This can be done as long as the injury is alleged to have **occurred during the policy period**. **An E&O policy**, however, is typically sold on a claims-made basis. This means that coverage applies only for claims that are made during the policy term for wrongful acts that were committed on or after the

policy's retroactive date and before the policy's expiration. A retroactive date is:

- Sometimes referred to as the “prior acts” date on a claims-made policy
 - Typically the date the claims-made coverage was originally put in place
 - Utilized to allow a claims-made policy to cover a claim during the policy period for a wrongful act that was **committed prior to the policy period**
- **Deductible/retention** – *An E&O policy* typically has a deductible or retention. *A GL policy* typically does not. Deductibles or retentions are a fixed amount that your company is responsible for, such as \$10,000 per claim, before the insurer pays for losses or claims expenses.
 - **Defense costs** – *With an E&O policy*, defense costs reduce the limit of liability available for a claim. This includes legal and other expenses that the insurer incurs to defend your company against a claim, whether or not a judgment is made against you. Defense costs can be a significant portion of the costs for an E&O claim, so it's important to select an appropriate E&O limit of liability for your company. *With a GL policy*, defense costs normally do not reduce the limit of liability available for a claim; they typically are provided in addition to the liability limit – until the limit has been exhausted by payment of a claim.

Additional Professional Liability Exposures

Professional liability exposures for technology companies extend beyond the realm of simple economic loss from failure of goods, products or services to perform as intended. For example:

- Software developers and programmers also have exposures to intellectual property claims, such as copyright or trademark infringement.
- Many technology products are designed to secure information, which may give rise to allegations of invasion of privacy.
- Your own Web site activities may give rise to additional liability exposures.

While these additional exposures are not typically covered by technology E&O policies, often they can be added by endorsement. Be sure to evaluate your business' specific E&O exposures and to purchase coverage that is consistent with your needs.

Good Reasons to Buy Both Coverages from the Same Company

Purchasing GL and E&O coverage from the same insurance carrier helps ensure that there are no unintended gaps in coverage between the GL and E&O forms. It also eliminates the issue of coverage disputes between carriers if a claim triggers both policies.

Summary

At The Hartford, we recognize that insurance is not your day-to-day business. That's why we encourage you to develop a basic understanding of the differences between GL and E&O policies, and to discuss your coverage needs with an insurance professional who has experience working with technology companies.

For More Information

For more information on how to manage risks for your business, contact your local Hartford agent, or visit www.thehartford.com.

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