

Technology Liability update

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Introduction

- How technology risks affect businesses
 - Update on recent developments
- Key liabilities for technology businesses
- Why a specialist Technology cover?
- Emerging risks
 - Data loss: the next big risk



Key Technology Risks

- Spam
- Intellectual property infringement
- Website liability
- Breach of privacy
- Loss of data
- Defamation
- Technology services and contracts

Key Technology Risks – update

Spam

- Unsolicited Electronic Messages Act 2007 (a.k.a. Anti-Spam Act)
- Applies to all New Zealand businesses and organisations
- Applies to messages that are:
 - Electronic (email, text messages)
 - “Commercial”
- Requirements:
 - Consent
 - Accurate sender information
 - Unsubscribe facility

Key Technology Risks – update

Copyright

- Copyright Act section 92B – new “safe harbour” protection for businesses
- If a 3rd party uses your website or network to infringe copyright:
 - **You** are deemed **not** to have infringed copyright
 - It must not be assumed that you authorised the infringement
 - Unless a Court order is breached or you have “authorised” the copyright, you cannot be prosecuted
- Examples:
 - An employee using the office network to store infringing material
 - An employee sends infringing material through the company’s email
 - A user uploads infringing material to a company’s website
- Important to have internal processes for handling complaints

Key Technology Risks – Update **Website liability**

- Recent case upholding website disclaimer
- Key lessons:
 1. Have a disclaimer!
 2. Ensure website content is not misleading
 3. Don't neglect your website

“This is general information only, not advice. Seek independent advice before relying on any information.”*

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Key liabilities for technology firms

- Technology businesses are diverse
 - Software developers
 - Hardware providers
 - Website operators
 - Application Service Providers
 - Data hosts and ISPs
 - IT consultants
- Traditional businesses with an increasing online component
- Increased scope for damage
- Very high project failure rate



Technology project failure

- Early studies of project failures:
 - 31% of all IT projects cancelled
 - Average cost overrun: 189%
 - 78% of IT projects are downsized
 - 16.2% of IT projects on-time and on-budget
- Situation has improved, but still problematic
- Contracting and project management are critical, but often misaligned with best practice
 - Agile development
- NZCS ITCP accreditation process

Why a Specialist Tech Cover?

- Complexity of Products and Services
- The Data aspect
- The Media aspect

CLENDONS

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Why a Specialist Tech Cover?

- Complexity of Products and Services
 - New technologies and business models
 - Products vs Services
- The Data aspect
 - Explosion in data hosting services
 - Software as a Service / Cloud Computing
- The Media aspect
 - Copyright infringement
 - Trade mark infringement
 - Passing off
 - Defamation
 - Breach of confidence
 - Breach of privacy

Emerging Risks for Technology Firms

- Software Patents
- Copyright Infringement
- Data Loss – the next big risk

Data loss – the next big risk

- Massive data loss incidents world-wide
- 58% of NZ / Australian businesses have lost data
[Source: Symantec NZ / Australia survey May 2009]
- Destruction vs Disclosure
- Liabilities:
 - Breach of contract
 - Negligence (first and third party)
 - Breach of confidence
 - Breach of privacy
 - Significant consequential losses

Conclusions

- Don't assume a company has little or no technology exposure
- If company is involved in IT, understand all aspects of what it does
- Consider the key technology-specific risks
- Don't forget the data

Thank you