

Loss Scenarios for Intellectual Property, Privacy and Defamation



The cost of intellectual property litigation can be staggering, particularly for lawsuits alleging copyright and trademark infringements, defamation and violation of the rights of privacy. Most information and network technology companies cannot afford the financial burden of an intellectual property or communication lawsuit. If the adversary is larger and financially stronger, an organisation may be forced to settle rather than become embroiled for years in a prohibitively expensive legal battle.

Chubb's Liability Insurance solutions for Information and Network Technology companies can help mitigate the financial risks associated with intellectual property and communications exposures.

Consider the following loss scenarios and then ask yourself whether you have adequate insurance protection in place.

Copyright Infringement:

TRAINING MATERIALS

Potential Cost: A\$350,000

In an effort to raise awareness about a critical network application, a seller of switchgear reproduces and distributes, without permission, a manual and associated instructional video. The author of the material learns of this and sues to stop further distribution and seeks damages in the form of license fees.

GAME ICON

Potential Cost: A\$1M

A registered Australian company carries out the business of a computer games developer, their products are distributed internationally. They are sued by an American company claiming the design of one of the characters in a game infringed upon their copyright entitlements.

UNAUTHORISED USE OF AUDIO

Potential Cost: A\$250,000

With every new product sold, a manufacturer of internet routers included a CD that explains assembly details and how to use the product. In an effort to keep the attention of the user during the setup process, the manufacturer embeds music clips in the instructional CD. Learning of the unauthorised use of his music, the copyright owner sues for unrealised profits.

PUBLICATION

Potential Cost: A\$100,000

An employee of a software firm uses another firm's copyrighted research material in an article prepared for their firm's internal newsletter. An action by the owner of the copyrighted material is brought against the software firm for injunctive relief and royalties.

UNAUTHORISED DISTRIBUTION

Potential Cost: A\$100,000

A computer reseller has entered into an agreement with a software company to develop, market and support a brand of software. The reseller arranges for the software to be distributed in diskette format as a give-away inserted into a computer magazine. The software company claims the reseller infringed their copyright as this method of distribution did not form part of their agreement with the reseller.

UNAUTHORISED USE OF SOFTWARE

Potential Cost: A\$750,000

A software development company supplied an exclusive license of a computer program designed to be used in the insurance industry to monitor the status of motor vehicle claims to a third party. In an audit the developer found the third party had passed the software onto a subsidiary. The developer sued for breach of copyright, claiming the sub-license was not transferable.

TRADEMARK INFRINGEMENT - PRODUCT NAME

Potential Cost: A\$500,000

An emerging technology component manufacturer introduces a new product name. A national firm sues the manufacturer for trademark infringement because the new product name is similar to the firm's registered trademarked name.

TRADEMARK INFRINGEMENT - BUSINESS NAME

Potential Cost: A\$900,000

A small Australian ISP was sued by a US movie producer after registering a business domain name similar to that of a movie. The suit led to eventual bankruptcy of the ISP as they were forced to defend the matter through the US courts.

COPYRIGHT INFRINGEMENT - SOFTWARE FUNCTIONALITY

Potential Cost: A\$600,000

An Australian software company commenced legal action against a competitor claiming the competitor had infringed its copyright by reproducing part of its software code of a popular product without permission. The software company is alleging the code is reproduced in the competitors comparable product.

DEFAMATION

Potential Cost: A\$100,000

A media kit is distributed prior to a software product launch. During the presentation, a company executive reading from the kit makes defamatory comments about the executive officers of a competitor. The competitor sued for defamation.

PRIVACY

Potential Cost: A\$250,000

An ISP was sued by its customers for breach of privacy after it was found the ISP was collecting the Internet Protocol address of customer's computers as well as web pages they visited. The software they installed to collect this information was allegedly used to speed up service and cut costs by preloading clients 'favourites' sites. The ISP was ordered to delete the information and pay damages of \$250,000.

BREACH OF CONFIDENTIALITY

Potential Cost: A\$350,000

An employee was hired by a software development company for the purposes of developing software solutions for the company's clients. When the employee left the software company without notice he took a key element of source code with him. A third party sued the software development firm for breach of confidentiality as the solution the employee was working on was of a commercially sensitive nature.

COPYRIGHT INFRINGEMENT - PRODUCT DESIGN

Potential Cost: A\$1M

A gaming console manufacturer sued a competitor claiming that they had copied a substantial part of the design of four of its consoles. The only difference between the original manufacturer's products and the competitor's was the competitor's products were in a different language. The competitor was found to be in breach of Australian copyright laws and required to pay damages.

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