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New Media, Same Exposures

By: Mary Schust

The media liability market looks very different today than it did in the early part of the century. Media companies have diversified to remain relevant in a changing environment where media and technology worlds have become interchangeable. Traditional media outlets are being replaced by online digital interactive platforms, and it has been many years since the core clients of media liability were newspapers, magazines and broadcast stations.

There is more content being created, and media exposure should be of concern to all businesses, not just media companies. There are many combinations of content that are being distributed through digital platforms in different mediums. Content providers are all seeking ways to reach the end user — whether by traditional means or through a smart phone, smart watch, computer or other personal device.

Some of the newer types of exposures that are developing include:

- **Influencers** are individuals who have large followings and become social media personalities by discussing experiences from products to medical issues on behalf of advertisers who pay them to tweet or blog about their experiences.
- **Bloggers** are people who discuss issues on social media networks. They may assume they are being covered under their homeowners policy or a general liability policy; however, in many cases, they may find they need specialized media coverage.
- **YouTube channels** can be created by anyone and be used to monetize video.
- **Livestreaming** of all types of events and content is becoming the norm.
- **Digital distribution**, also referred to as content delivery, online distribution or electronic software distribution, is the delivery or distribution of digital media content, such as audio, video, software or video games.
- **Social news aggregation sites** allow anyone to submit content through links, texts, posts and images.
- **Virtual Reality (VR)** is total immersion into an interactive computer-generated experience. VR allows users to have the ability to manipulate objects, perform actions or test products. VR is finding its reach in all sorts of entertainment — music, cinema and gaming. It is also surfacing in many verticals in various capacities, including job training or the introduction of a new concept or product.

The types of claims that media companies should consider that arise from these new media exposures are really no different than they have been in the past. Some of the claims that companies should consider include:

1. **Defamation** is a civil remedy for harm to reputation or livelihood.
   a. **Libel** — written or published untrue defamatory statements.
   b. **Slander** — defamation that is spoken.
2. **Invasion of privacy** is a public disclosure of private facts, publicizing a person in false light, intrusion upon seclusion and appropriation of a person's name or likeness for personal gain.

3. **Intellectual property** is a work product. Intellectual property coverage is more commonly sought today than ever before:

    a. **Copyright infringement** — the unauthorized use of literary and artistic works such as books, videos, games, artwork, data, digitized content or other information.

    b. **Trademark infringement** — the unauthorized use of a trademark, trade name, service mark on competing or related goods and services.

4. **Misappropriation of ideas** are ideas that are appropriated or used without permission.

5. **Piracy** is the unauthorized copying, distribution and selling of works that are copyrighted.

6. **Errors & Omissions for negligence** arising out of service-related disputes.

When securing media liability coverage, companies need to also consider the following:

Don't assume a general liability or tech policy covers it.

A common misconception is that media coverage will be provided by a commercial general liabilty policy; however, the CGL form has undergone many revisions, and new personal injury and advertising injury exclusions eliminate coverage for media content. The older forms often provided coverage for intellectual property claims. In addition, the older forms do not define advertising, and courts have sometimes used expansive definitions to find coverage for trademark or copyright infringement claims.

The 2001 ISO CGL form defines advertisement to include internet activity; however, it limits coverage specifically to that part of the website that is about products, good or services. This means that many parts of a website, such as blogs, interactive chat rooms, informational content, and links to other sites may not be protected. Because of these restrictions, businesses should consider purchasing specialty insurance products designed to specifically cover these risks.

Select a policy form that broadens the way content can be distributed.

At the turn of the century, it would have been difficult to imagine the popularity of a content-sharing platform like Instagram. As modes of content dissemination continue to push the boundaries of traditional publishing, the media liability policy should not place restrictions on types of distribution. The producer or distributor of the content must make sure that media liability coverage intends to cover all forms of content being distributed. Content should include information in any form — whether in writing, digital or electronic, regardless of the method of dissemination.

Place all professional exposure with one insurance carrier.

As the media and technology risks change and overlap, the policies need to make sure that they cover all exposures. Many carriers are starting to write coverage on modular policies that include media, professional services for both technology and miscellaneous services, and cyber coverages. It is important for insurance professionals to place coverage for their clients with a company that has a full suite of products that will adequately cover the insured to avoid any grey area in the event of a claim. Bundling coverage with a single carrier will allow the carrier to determine where the claim falls.

In addition, simply endorsing a media policy with a technology endorsement may not adequately insure the risk. It is beneficial to have full professional services coverage to adequately insure this exposure. ■

Mary Schust is head of media and entertainment liability at CapSpecialty. She can be reached at (816) 298.1311 or mschust@CapSpecialty.com.