

“Insurance Aspects of E-Commerce”

By Michael Lent, Underwriting Director, Temple Legal Protection

This article accompanies the Insurance Institute of London’s launch of its latest Publication “Insurance Aspects of E-Commerce” by study group 256. It seeks to create awareness of some of the key issues affecting the insurance of E-Commerce.

When study group 256 set out on this journey, the aim was to encompass as much as we could about the impact of Information Technology (IT) upon the way in which the Insurance industry conducts business. As well as the new risks, there are old risks in new guises, which this IT revolution created for the insurance industry to insure.

Now I’m old enough to remember the time when as a lawyer the idea of having a PC on your desk was a novelty. What will one do with it? That was only 15 years ago. We have lived through revolution, IT has now become the very fabric of the way in which business is done and yet it still does not replace face to face contact and the importance of human relationships. One might argue that much of the IT revolution simply enables us to work harder for longer. As a result of emails being sent too easily and quickly, vast numbers are sent unnecessarily. But this minor carping won’t do. The business of insurance has been changed irrevocably, and for the better by the IT revolution.

Having said that, the revolution is continuing and one of the challenges for the study was to try to ensure that it was as current as possible, whilst recognising that it could never be fully up to date. To try to achieve that would almost certainly ensure that the study was never published. Therefore please forgive us if some places are a little bit behind the curve but new chapters and new editions of the book will doubtless be issued in due course.

The first chapter of the publication looks at consolidation of the London market, and addresses the effect of the IT revolution upon the operation of the London market. It describes inevitably how this has led to consolidation, how it has enabled much greater speed of transactions and assisted in the standardisation of policy wordings. It has been key to achieving one of the aims of the FSA at the beginning of the millennium, namely contract certainty. The chapter talks about the continued progress in reducing cost and improving service standards essential to the London Market’s future progress.

In the second chapter we move on to the Broker experience of placing e risks and what we mean by e risks. This means virtual businesses, businesses that are conducted purely as a presence on the internet or that aspect of a business that is conducted on the internet for example, by email. It was always astonishing how many companies used to think that email was not actually something to do with the E world.

When the study first set out in 2002 there was still not many online businesses being conducted in the UK, but that of course has increased enormously. Broadband speeds have increased as well as the reliability of connections and to an extent security, security of payments, and the amount of online business in the UK has grown very rapidly.

The chapter deals with how brokers are themselves using the internet to capture business and market themselves. There are of course certain types of insurance that ideally lend themselves to being marketed directly over the net such as motor, buildings and contents, travel etc which make it difficult for the traditional broker to compete in the old fashioned market. This has led to a growth of the different types of brokers, virtual brokers if you will, such as confused.com and beatthatquote.com and the chapter deals with these types of issues. It goes on to illustrate the benefits that the internet and IT provides for brokers, as well as the very substantial challenges.

Chapter 3 deals with E-Commerce security and we were very lucky to have Tom Fairfax, an IT security consultant join the group because he has been able to illustrate very clearly the issues that are involved in IT security. It is very helpful for insurers who are thinking about approaching this area of risk to have this kind of viewpoint because it gives some very valuable pointers as to how one might go about underwriting these types of risks. It also helps to identify the real issues, for example if a company is complying with the codes of practice and relevant British standards what kind of security does that provide?

The chapter also stresses that although you have IT systems, at the end of the day it is still all about people. A former senior partner of mine always used to say that 50% of his IT people were brilliant. The problem was that he had no idea which 50%. That remains true because IT people either through necessity or default have developed a language of their own and it is often very difficult for people who aren't familiar with that language to understand what they are talking about. One of the things we've actually strived in this book to do is to explain everything in plain language so that you aren't confronted with jargon, which the IT industry is all too good at.

The other kind of practical suggestions that this chapter deals with is the importance of personnel, how they are managed, how in particular their exit should be managed, and what systems a company should have in place when you are considering insuring it, such as the use of independent auditors to check systems, particularly complex ones. Sometimes the problem is that the person who created the complex system is also checking it. Is that sensible? Probably not; that person is unlikely to notice their own mistake.

This chapter highlights the various threats to IT systems and essentially stresses the importance of the management of risk in this area, with some useful pointers as to how they can be addressed.

Chapter 4 looks at the experience in underwriting E Risk. In particular dealing with the kind of issues that made insuring these types of risks initially so unattractive. The fear of viruses and these types of attacks and again how they could be dealt with. One of the interesting things about viruses that struck very early on is that they were so comprehensive and very few organisations could demonstrate that they actually suffered a loss having that kind of virus attack, because it hadn't stopped them from doing any business because it had stopped everybody else from doing any business.

The chapter also identifies some of the new risks that go with trading on the internet for example denial of service attacks where unscrupulous competitors or individuals can attack or overwhelm your system, as well as spam, although spam seems to be less of a problem these days. It goes on to deal in some helpful detail about how these underwriting challenges can be dealt with. Once again, there is the observation that often it is about people and risk managers within companies who have mistakenly regarded technology itself as the tool to be used for checking IT rather than combining this with Insurance products and managing IT personnel. This has to be looked at in the whole, you can't just address separate bits

In chapter 5 there is a useful discussion of online third party risks. This is an area where there are well established and known risks, but there is a much greater exposure to them because you are operating in the internet world or they can be completely new. It deals with the kind of problems that you have for contractual issues, the formation of contract over the net, and the problems that creates for jurisdiction because although one can trade globally on the internet there are issues about where the contract is going to be formed and what laws are going to apply to any dispute. It touches on regulatory risk and the types of issues that are existing but are now much more keenly felt because of business operating on the internet such as intellectual property rights, trade marks, passing off, defamation, discrimination, harassment, breach of confidence and privacy. The kind of new issues that turn up are things like unintentional transmission of computer viruses to your customers and those which could result in denial of service attacks, which are clearly unique to the IT world.

Chapter 6 identifies first party risks that are either more keenly felt in the internet world or are new. It deals with the kind of problems caused by understanding what is property. Under a traditional contents policy property is pretty clear, in the E world property is a very amorphous and difficult subject and it's a bit like nailing blancmanche to the wall.

This chapter discusses a case called Tektrol, where an insurer under a traditional policy thought that they had excluded a claim for computer hardware being wiped, but because of the way their policy had been structured in fact they ended up covering the risk.

The other kinds of difficult issues you have are website hijacking, again this is a new risk you could only have in the E world, credit card fraud, phishing and chargeback claims. If there is fraud, a credit card company, for example, will repay the person who has used their credit card to pay that debt, but the company who was the subject of that fraud innocently will still be subject to their bank charge, so those are kinds of new areas where insurance plays a part.

Then we come to chapter 7 regulation of online insurance. I can't say this is a good read unless you are suffering from insomnia but it is nevertheless essential as it is one of those things that we all have to be aware of because you dare not be in breach of the regulations. The chapter deals with the Insurance Conduct of Business (ICOB) rules. ICOB rules governs non investment insurance, and the regulation for both insurers and insurance intermediaries including managing agents is dealt with, together with territorial scope. It goes into some details about how you can and cannot have cancellation rights for consumers, what information is to be provided and when.

This is swiftly followed by chapter 8 on even more regulation, which interlocks with ICOB and the previous chapter. Unusually the Electronic Commerce EC directive regulations is actually quite sensible in its aim in so far as the thrust of the regulation is that if your business is established for example in the UK and your business complies with the ICOB rules and local (that is UK) regulations then the fact that this is in some way different to the regulations that operate in say Denmark or France or Spain matters not a jot; you are compliant. So it means that you have not, as a business, got to make sure that you comply with every different countries' regulatory regime, which would be a headache. It sets out the types of information that online businesses have to provide to their customers and it also points out how in certain circumstances businesses can contract out of these regulations. The rules are there primarily for the protection of consumers.

Finally, we move to chapter 9 E Commerce and the London Market covers. This provides an overview of the types of cover currently available in the London Market, and discusses how this is achieved either by specific stand alone policies or by wrap around policies to stand with the existing first and third party liability policies. It identifies the types of risk most commonly covered and has useful observations concerning the difficulties of certain definitions. Part of the problem is that many terms are treated as terms of art: computer systems, web sites, data for which insured are responsible. In fact these are not terms of art, and are real problems of definition and determining precisely what it is you are insuring.

The chapter also deals with business interruption and the kind of issues that turn up in increased cost of working and the third party covers and how insurers are seeking by large to exclude certain types of cover for viruses created by the insured or employees of the insured. It points to the fact that the market is clearly evolving and much engineering is still to be done for definitions. This was always a difficult area to insure because it was chicken and egg. When it first arose there was no claims experience so you're robbed of the usual actuarial information upon which you can base premium so it required some brave pioneers to go out there into the market and insure, dip their toe in the water and see how that worked.

So in conclusion, this is of necessity a brief run through of the headlines of the study. We hope that it will be regarded as an invaluable tool by relevant parties in the insurance business, tempered by the need to keep the study updated.