



Fine Print

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INSURANCE FOR E-COMMERCE RISKS

by Alan F. Berliner

Moving your business on-line brings new and dramatically different risks. Evolving technology, while beneficial, provides new possibilities for business damage. Whether done intentionally or unintentionally, damage may not be covered unless your policies have been specifically updated to cover these risks. As technology changes the way business is transacted, few consider the effects on their insurance. Even if you only have a Web site or your employees send Internet e-mail, you need to review your coverage.

Assess your risks

What if your system goes down or data is corrupted? Consider, for example, the effect on your order entry system, including damages ranging from the costs of repairing your equipment to damage to your reputation.

While business interruption insurance may cover some losses, the language in these policies was written before "hackers" and "denial of service attacks" were concerns. Reviewing policies with an independent insurance

professional may help you discover coverage gaps or claims not previously considered. Specific items to consider would be:

■ **Liability to Others.** Your business damage is only one concern. The courtesy and convenience of supplying links to other sites on your Web site increases exponentially the potential for third-party liability. Links raise potential liability issues including

possible patent or trademark infringement. Make sure your errors and omissions coverage covers everything you do now and may do in the future.

Carefully review your general liability policies, property damage coverages (first party), business interruption insurance and errors and omissions policies.

Electronic data processing policy endorsements may not be enough since the standard form has not been updated.

■ **Damage to Your Property.** Business interruption policies should be updated to cover partial shutdowns of your business, such as when your on-line system is incapacitated, but your brick-and-mortar business remains open. Requirements of "physical harm to tangible property" are outdated given the intangible nature of your data stored electronically. In many cases,

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FRANCHISE LAWS PROTECT INVESTORS

By G. Jack Donson Jr.

Q: I am interested in buying a franchise. Are there laws that protect me in this situation?

A: The Federal Trade Commission (FTC) has a rule which requires a franchisor to provide detailed written disclosures to prospective franchisees. The franchisor must deliver these disclosures at least 10 days before you sign the franchise agreement and pay any money.

Q: What type of information must the franchisor provide?

A: There are over 20 categories of information covered by the FTC rule. This includes history of the franchisor, fees the franchisee will owe, the investment required to start the business, training, the franchisee's obligations, the franchisor's obligations, termination, transfer, dispute resolution and other matters.

Q: Does the FTC check the accuracy of the franchisor's disclosures?

A: No. The FTC makes no review of the written disclosures. You will need to study the disclosures carefully. You also should consult with an advisor, such as your lawyer.

Q: What can I do to gather more information?

A: The written disclosures must list current franchisees and persons who

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electronic data processing endorsements will not overcome this gap in coverage.

■ **Security Exposure.** Insurance is available for many of the damages that can be caused by hackers and viruses, etc. You should consider extending directors' and officers' liability insurance coverage to include claims for failure to provide adequate security.

Next Steps

■ **Talk with your agent.** Ask about recent updates and specific cyber-liability products. Be wary of exclusions. Make sure all coverages are coordinated, including intellectual property and media coverages, fidelity and surety bonds, and excess and umbrella policies.

■ **Revisit your computer security policy.** How vulnerable is your company? Determine where insurance is appropriate.

■ **Check your privacy policies and procedures.** Consumers and other businesses expect confidentiality. Make sure you are taking proper steps to protect others' confidential information.

■ **Think globally.** Determine not only your back-up plan, but also the back-up plans of those upon whom you rely.

■ **Stay current.** Changes will continue as risks develop and litigation ensues.

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ceased to be franchisees within the past year. You definitely should contact both current and former franchisees to obtain information and the benefit of their experiences.

Q: Does the FTC regulate the terms of the franchise relationship?

A: No. The FTC does require the franchisor to provide the franchise agreement five days before signing, but the FTC does not review the agreements. Because the franchise agreement will govern your franchise, you should study it carefully with an advisor.

Q: Can I rely on oral promises made by the franchisor?

A: No. Nearly every franchise agreement states that it is the entire agreement and there are no other promises or agreements.

Q: How then can I make certain I have the benefit of oral promises?

A: You will need to negotiate the franchise agreement with the franchisor. You should insist that the franchisor include in the franchise agreement all promises that are important to you.

Q: Are there other documents I should review?

You should insist that the franchisor include in the franchise agreement all promises that are important to you.

A: Nearly all franchisors have an operating manual. The franchise agreement usually requires the franchisee to do what is in the operating manual. Before buying a franchise, you should obtain and review the operating manual.

Q: Does Ohio have a law to protect me in buying a franchise?

A: Certain states have laws requiring franchisors to make disclosures. Certain states regulate aspects of the franchise relationship such as termination. Ohio does not have a specific franchise law, so the FTC rule governs in Ohio.

Ohio does have a business opportunity law. This law requires persons who offer others the opportunity to start a business of selling goods or services to make certain disclosures. The law prohibits misleading statements. The law allows persons who are misled to recover damages. This law applies to many, but not all, franchises.

Also, if a franchisor makes misrepresentations in selling the franchise, the franchisee may be able to sue to recover damages resulting from the misrepresentation.

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IN THE HOPPER

2001 pending or enacted state legislation that could affect small business

House Bill 287 would specify provisions for the enforcement of a computer information agreement where the party against whom enforcement is sought is an Ohio resident or has its principal place of business in Ohio.

Substitute Senate Bill 8 would prohibit transmitting e-mail advertisements without including the transmitter's name and address, along with a notice and procedure for allowing the recipient to decline future e-mail advertisements.

Substitute Senate Bill 110, which takes effect February 20, 2002, provides additional tools for Ohio-based corporations to fend off unsolicited takeovers.

To review these bills, visit www.legislature.state.oh.us/

From the OSBA Office of Government Relations