

THE NATIONAL ALLIANCE FOR INSURANCE EDUCATION & RESEARCH

# **CYBER SOLUTIONS – INTANGIBLE PROPERTY RISK FINANCE ALTERNATIVES**

January 24, 2012

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## **INTRODUCTION – Purpose of Seminar**

- **Offer Risk Finance Alternatives that Risk Management Professionals should consider for a comprehensive First and Third Party Coverage Program.**

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## INTRODUCTION – Purpose of Seminar

- **Traditional Standardized First and Third Party Risk Finance Coverage Products do not respond to the growing list of loss exposures related to an Enterprise's Intangible Property Exposures.**

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## INTRODUCTION – Purpose of Seminar

- **Provide general information about Named Intangible Property Loss Exposures and Risk Finance Solutions.**
- **Provide information about potential gaps or shortfalls for consideration.**


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## Invasion of Privacy Offense and Related Identity Theft Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p>Provide coverage for <u>privacy offenses resulting from unauthorized access or excessive access</u> to personal or confidential information for <u>customers, employees and enterprise data</u> in the named insured's care, custody and control.</p> <p>Include <u>digital and paper</u> information.</p>	<p>Coverage may be limited to: "E-Commerce Activities Only" or "Your Web-Site Activities Only" or "Your Internet Banking Activities" or "Your Merchant Credit Card Activities" or "Your Professional Services"</p> <p><u>May cover only digital stored</u> information.</p>




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## Invasion of Privacy Offense and Related Identity Theft Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p>Provide coverage for the <u>failure to comply with any "Privacy Law"</u> anywhere in the world.</p> <p><u>Security Breach</u> Trigger</p> <p><u>Unauthorized</u> Employee Act Trigger</p> <p><u>Mistakes</u> or errors or omissions</p>	<p>Coverage may be limited to "<u>Breach of Security</u>" or <u>Failure of Your Security</u>" which limits coverage.</p> <p><u>Operational errors</u> in programming exclusion limits coverage.</p> <p>Limited to <u>specific privacy laws</u> – HIPAA, GLBA</p>




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## Invasion of Privacy Offense and Related Identity Theft Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p>Provide <u>coverage for the failure to comply</u> with any “Privacy Law” anywhere in the world.</p>	<p>May <u>not provide coverage for Privacy Statements</u> posted on web-sites.</p> <p>May not provide coverage for <u>written contracts between Named Insured and its vendors including third parties</u> concerning stored credit card information. (Payment Card Industry Data Security Standard)</p>




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## Invasion of Privacy Offense and Related Identity Theft Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p>Do not provide <u>exclusions for information collected using cookies, bugs, beacons, key-stroke loggers, web search logs, clicks, or other similar invasive monitoring techniques.</u> (Video or GPS)</p> <p>Insured <u>can be liable for these hostile tracking devices</u> even if they did not install them.</p>	<p>Key Exclusions to avoid: “Use of Cookies” or “Spy Ware” or “Key-Stroke Loggers” or “Click Logs” or “Skimming” or “Side Jacking” or “Smishing”</p> <p>Remember these devices are used to <u>harvest information for Identity Theft.</u></p>




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## Invasion of Privacy Offense and Related Identity Theft Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p><u>Do not exclude private action</u> arising from the Named Insured's failure to comply with applicable privacy law for the insured's operations.</p> <p>Coverage for <u>notice and disclosures as required under statutory and regulatory requirements.</u></p>	<p>Failure of the Named Insured to <u>provide adequate notice or disclosure notice Exclusion</u> regarding: 1) purpose for collecting private information; 2) contact information for inquiry for complaints; 3) identification of to whom information will be disclosed; (4) opt out choices; and (5) how insured will protect information.</p>




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## Invasion of Privacy Offense and Related Identity Theft Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p>Do not exclude private action arising from the Named Insured's failure to comply with applicable privacy law for the insured's operations.</p> <p>Coverage for notice and disclosures as required under statutory and regulatory requirements.</p>	<p><u>Avoid Exclusions for claims related to:</u></p> <ol style="list-style-type: none"> <li>1) accuracy, completeness, reliability or integrity of private information; and</li> <li>2) inability to access or failure to provide access to private information.</li> </ol>




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## Invasion of Privacy Offense and Related Identity Theft Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p>Provide coverage for <u>Insured Versus Insured</u> since employees can sue their employer for invasion of privacy.</p> <p>Covers <u>Emotional Distress</u> created by the invasion of privacy or theft of identity. This is a typical compensatory damage request in privacy injury complaints.</p>	<p><u>Insured versus Insured Exclusions</u>.</p> <p><u>Bodily injury exclusions</u> may apply and they may include no coverage for emotional distress.</p>

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## Invasion of Privacy Offense and Related Identity Theft Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p>Provides coverage for <u>All Information and Media</u> in the Named Insured's Care Custody and Control for Online and Off Line Data and includes vendors.</p> <p>Remember to <u>cover the backup data</u> on and off premise storage and it should include the paper as well.</p>	<p>Limitations may exist that state that "<u>On Your Premises</u>" information is only covered.</p> <p>No coverage for <u>Off-line information or back up data</u></p>

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## Invasion of Privacy Offense and Related Identity Theft Standard Exclusions

- Charge Backs
- Prior Acts
- Contractual Liability
- Cost Guarantees
- ERISA
- Failure or Fitness of goods or services
- Gambling
- Inadequate server capacity
- Pollution and Bodily Injury
- Internet Infrastructure Failure
- PCIDSS Failed Implementation
- Programming Errors
- Prior Acts and before Retro Date
- RICO and SEC Violations
- Telecom Power Failure
- Willful or dishonest acts by Directors & Officers

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## Removable Media Coverage Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
Removable Media covers <u>privacy injury</u> resulting from theft or loss of media, tapes, laptops, PDA's, I-Phones, I-Pads, Tablets, Thumb Drives, CD's, DVD,s Zip Drives, impeded chips, sensor devices, and all forms of portable storage including "The CLOUD" .	Exclusions <u>may exist</u> and it may be limited by type of device or specify no coverage for "The Cloud".
Extends to <u>third party hosting sites</u> .	Covers " <u>on premise</u> " only.


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## Removable Media Coverage Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p>Covers <u>Network Security</u> and includes the theft of corporate confidential or <u>Trade Secret Information</u> in the Named Insured's Care, Custody, and Control including client trade secret information. (Necessary for Accountants and Lawyers)</p> <p>Covers <u>anywhere and any media storage device</u>.</p>	<p>Covers "<u>on premise</u>" only and it may not include other parties trade secrets or confidential information.</p> <p><u>Does not cover trade secrets</u> received prior to joining the named insured's enterprise.</p> <p><u>Excludes</u> media or laptops.</p>




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## Regulatory Defense Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p><u>Regulatory defense expenses</u> for actions brought by regulators for alleged violation of applicable privacy law or regulation.</p> <p>Includes <u>payments for fines and penalties</u> that may be assessed by the regulatory entity.</p> <p>Cover <u>all privacy laws</u>.</p>	<p>Some coverage forms will <u>provide only sub-limits of up to \$250,000</u></p> <p>Some coverage forms list the <u>types of fines or penalties or limits</u> through an exclusion</p> <p><u>Do not limit to Privacy Breach Notice Laws</u>.</p>



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## Regulatory Defense Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
Cover all privacy laws.	Some coverage forms <u>list the applicable laws</u> like the California Data Protection Act.
Coverage <u>for any regulator</u> that brings the action.	<u>Exclusions that may apply</u> to HHS, FCC, OCR, FTC, state statutes, and/or local government ordinances.
Coverage should apply <u>regardless of a potential civil action</u> .	Do not <u>link regulatory defense to defense of a pending civil action</u> .

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## Regulatory Defense Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
Should include a <u>duty to defend</u> clause	Some coverage forms <u>will only reimburse for incurred expenses</u> .
	Insured <u>may limit selection of counsel</u> .
	Insurer may <u>have the right to defend but not the duty to defend</u> .
	Some have a <u>hammer clause that applies</u> .


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## Regulatory Defense Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p><u>No reimbursement of defense costs required if final regulatory decision determines the enterprise violated applicable regulation as permitted by law.</u></p>	<p>Some coverage forms require the <u>enterprise to reimburse the insurance company if the regulator determines that the enterprise is in violation of the regulation or statute.</u></p> <p>Generally required for breach of a privacy law.</p>




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## Content Injury or Media Liability Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p>Coverage for <u>contents, media, and advertising offenses</u> for information published in any readable digital format.</p> <p><u>Not limited to just web sites.</u></p> <p>Not limited to just advertising the enterprises goods and services.</p>	<p><u>Limitations on covered content may exist</u> – “We cover content prepared by you or for you about your goods and services.”</p> <p>Limitation that coverage applies to <u>only scheduled media activities</u> like electronic catalogs, blast e-mails, or web pages only. [As per the application may be stated.]</p>




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## Content Injury or Media Liability Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
No limitations to source content as long as properly acknowledged.	May not cover <u>material published in CDROM or other internet formats.</u>
Covers <u>copyright infringement.</u>	<u>May not cover "Shrink Wrap" distribution methods for licensing intellectual property.</u>
Covers <u>plagiarism and privacy</u>	
No Exclusions for the <u>failure of security</u>	<u>May contain failure of security exclusions.</u>




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## Content Injury or Media Liability Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
No Exclusions for the failure of security	Security Exclusion <u>limits coverage for content modification</u> that creates a media injury.
	Remember that the <u>enterprise's network is the conduit for the hijacking the publishes the offense that creates the liability.</u> The enterprise is responsible for the offense even if the information was not theirs.




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## Content Injury or Media Liability Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p>No Exclusions for <u>Spyware, Adware, pop ups, spam, phishing, smishing, or other invasive methods</u> of content being forwarded.</p>	<p>Exclusions for <u>Spyware and Adware are common.</u></p> <p>If the enterprise's <u>web site or network is hijacked by an attacker and is used to trespass or cause a violation of right of private occupancy</u> to push unsolicited content to others, these exclusions would eliminate coverage.</p>

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## Content Injury or Media Liability Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p>May cover <u>specifically libel, slander and defamation</u> as a named offense.</p> <p><u>Can be expanded</u> to cover enterprise activity that may include all publishing venues such as TV, Radio, Cable Cast, Webinars, You Tube Videos, electronic newsletters, and printed publications.</p>	<p><u>Excludes</u> libel, slander and defamation.</p> <p>Coverage can be <u>limited to just web-site activities or network activities or internet activities.</u></p> <p>This limitation may need modification.</p>


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## Network Security or Breach of Security Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
Coverage for claims arising from <u>others' inability to rely upon accuracy, completeness, integrity, source, authenticity of information on the enterprise's network.</u>	Exclusions <u>may exist that limit coverage for the accuracy and integrity</u> of the network.
Coverage for others <u>inability to access or use</u> the enterprise's network.	Exclusions <u>may exits concerning the inability to access</u> the network by third parties.




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## Network Security or Breach of Security Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
Covers <u>Theft or unauthorized access and disclosure of other's confidential information in the care, custody or control of the enterprise.</u>	<u>Exclusions for theft may exist.</u>
Covers all network operations.	Can be <u>limited to just e-commerce activities or web-site activities, online banking activities or professional services.</u>




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## Network Security or Breach of Security Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<u>Security Breach Trigger</u>  <u>Unauthorized Employee Act Trigger</u>  <u>Mistakes Trigger</u>  <u>No broad "Catch all" exclusions for failure to maintain the enterprise's network</u>	<u>Limited to "Failure of your security" or "Breach of Security"</u>  <u>Operational errors and omissions exclusions may apply limiting coverage.</u>  <u>"Failure to Properly Maintain their networks" exclusions will apply.</u>

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## Business Income and Extra Expense Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<u>Lost revenue from the failure to access computer functions or applications or records for generating sales.</u>  <u>Lost revenue from electronic sales and advertising.</u>  <u>Extra expense for diagnostic costs and repair costs to fix the denial of access</u>	<u>May be limited to designated premises and does not include vendor servers.</u>  <u>May not cover advertising revenues.</u>  <u>Diagnostic and rectification costs excluded.</u>


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## Computer System Damage Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p><u>Pays costs for retrieving, restoring or replacing computer records</u> that are owned or under the care, custody or control of the enterprise.</p> <p><u>Pay costs for repair, restoring, or replacing computer systems</u> that have been damaged, destroyed or altered.</p>	<p><u>May be limited to designated premises</u> and does not include vendor servers.</p> <p><u>Might be covered under the EDP Coverage Forms or Broad Property Coverage Forms.</u> Need to coordinate coverages.</p>




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## Computer Hacking and Transmission Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p><u>Pay the forensic expenses to repair, restore or replace enterprise computer systems</u> damage from hacking attack.</p> <p><u>Pay third party lost income and forensic expenses</u> directly caused by a transmission of virus or hacking attacks from enterprise computer systems.</p>	<p><u>Might be covered under the EDP Coverage Forms or Broad Property Coverage Forms.</u> Need to coordinate coverage.</p> <p><u>Generally excluded or not included.</u></p>




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## Computer Hacking and Transmission Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p><u>Failure of enterprise clients to access their data, records, applications, or functions</u> on enterprise systems because of a hack or virus attack.</p> <p>Pays the <u>lost financial revenues</u> for the enterprise's client.</p>	<p>Generally <u>excluded or not included</u>.</p>




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## Computer Hacking and Transmission Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p><u>Virus attack or hacking attack to enterprise computer systems</u> allows enterprise client data, records, applications, or functions to be stolen.</p> <p>Will <u>cover the financial losses to the enterprise's</u> clients because of the hack or virus attack.</p>	<p>Generally <u>excluded or not included</u>.</p>



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## Crisis Management and Privacy Breach Notification Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p>Covers the <u>cost to comply with the "Duty To Notify"</u> in statutes and regulations for security breaches or invasion of privacy.</p> <p><u>Limit Selection ranges from \$50,000 to \$250,000</u></p> <p><u>First Dollar with no deductible or SIR</u></p>	<p>Coverage generally <u>has sub-limits that can be very low.</u></p> <p>Avoid limits <u>below \$50,000</u></p> <p><u>\$25,000 Deductibles or SIRS mandatory or 25% of the sub-limit may apply.</u></p>

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## Crisis Management and Privacy Breach Notification Loss Exposures

COMPREHENSIVE FORMS	POTENTIAL ISSUES
<p>Covers the <u>cost to engage a Public Relations Firm or Crisis Management Team</u> to protect Brand and Reputation.</p> <p>Covers the <u>costs to procure a Credit Monitoring Service</u> to set up call centers and web-page operations to answer questions.</p>	<p>Coverage generally <u>has sub-limits that can be very low.</u></p> <p><u>Credit Monitoring Costs are excluded or not included.</u></p>

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## Crisis Management and Privacy Breach Notification Loss Exposures

### COMPREHENSIVE FORMS

Covers the cost of regulatory compliance expenses such as the actual cost to hire forensic experts to determine the breach of security and the actual costs to implement the new computer system security systems. Covers costs for additional procedures for accounting, auditing and reporting.

### POTENTIAL ISSUES

Coverage generally not provided.

Check to see if endorsements available.

May only pay forensic expenses to determine the breach but will not pay the costs to rectify the security failure.

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## Cyber Crime Loss Exposures

### COMPREHENSIVE FORMS

Coverage for transferring paying or delivering any funds or property, establishing any credit, debiting any account or giving any value directly caused by the fraudulent input, fraudulent destruction or fraudulent modification of electronic data in enterprise computer system.

### POTENTIAL ISSUES

Coverage generally not provided.

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## CONCLUSION

- **The presentation is designed to introduce the attendee to the varied named perils that an enterprise faces concerning its computer system operations and information storage.**



## CONCLUSION

- **Thank you for your time and questions in this webinar.**



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**Thank You!!!**

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