



The Channel Syndicate

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Cyber Heads of Cover – Non-physical damage

- ▶ Liability
 - ▶ Data protection: obligations which may arise under statute, contract or civil/common law. Typically, the theft or accidental release of commercially valuable data which harms a third party, and/or private/personal details
 - ▶ Media liability: defamation and intellectual property infringement
 - ▶ Regulatory proceedings/fines
- ▶ First Party Costs arising from Data Breach
 - ▶ Response services: Crisis management, legal assessment
 - ▶ Forensic investigation of the Loss
 - ▶ Mitigation: notification, remediation
- ▶ Business Interruption – arising from a breach of network security
- ▶ Business Interruption caused by Insured's own errors ('system failure')
- ▶ Digital Asset Restoration
- ▶ Network Extortion

Global Market

- ▶ Commentary suggests global premium volume for Cyber Insurance ~USD3bn; I think a more realistic figure is +/- USD 1bn
- ▶ Global leaders are AIG and Beazley; significant market share held by XL, Chubb, Zurich
- ▶ Market penetration strongest by far in US, where mandatory notification laws have resulted in continuing publicity of data breaches: geographic share ~90% US/Canada
- ▶ Dominant industry verticals: Finance, Professions (incl. healthcare), Retail, Technology (eCommerce, Social Media)
 - ▶ These have recognised, or have had forced upon them, significant data protection risks
 - ▶ Emerging appetite in Utilities/critical infrastructure sectors
- ▶ Nascent market for Physical Damage cover

Market Losses by Type

- ▶ Data Protection:
 - ▶ Theft of financial data for resale on black market:
 - ▶ Target, Home Depot = losses in excess of insurance programmes
 - ▶ Uninsured financial sector losses
 - ▶ Numerous losses within programme limits – some of which have resulted in publicised coverage disputes
 - ▶ Theft of medical data for resale to ???
 - ▶ Anthem, Premera = losses in excess of insurance programmes
 - ▶ Frequency and severity across the sector
 - ▶ Substantial penalty regimes in place, fines on a per-record basis
 - ▶ General data breach events
 - ▶ All sectors but arguably the most significant in Tech sector: Adobe, LinkedIn, Yahoo [?]
 - ▶ Have presented novel theories; lots of litigation
 - ▶ Business Interruption
 - ▶ Relatively rare but several in the market presently
 - ▶ Cyber Extortion
 - ▶ ‘Sideways’ activity within retentions/primary layers: Cryptolocker et al

Elements of Loss

- ▶ Investigation*
 - ▶ Proof of Loss**
 - ▶ Basis of Liability
- ▶ Response
 - ▶ Disaster Recovery
 - ▶ Crisis Management
 - ▶ Legal Assessment
- ▶ Clean-up
 - ▶ Reconstitution
 - ▶ Mitigation
 - ▶ Liability*
 - ▶ Indemnity**

*Indicates the most volatile elements in losses seen so far

**Indicates the most disputed elements of cover to date

Loss Adjustment Challenges

- ▶ What factual event(s) trigger coverage?
 - ▶ Most policies are on a claims-made basis; some offer a mix of claims-made or occurrence depending on the heads of cover
 - ▶ Example of a loss discovered on the eve of policy renewal: Is the claim made when a breach takes place? When it is discovered? When it is disclosed?
- ▶ How is the loss valued?
 - ▶ Forensic investigation commissioned by or on behalf of the Insured is meant to establish the cause and extent of a breach
 - ▶ This presently serves to establish what happened, but does not address the Financial impact on the Insured
 - ▶ Example of network interruption that disrupted flu vaccine dispensation
- ▶ How are clauses applied?
 - ▶ Example of war/terrorism exclusion where the identity of the perpetrator is unknown/disputed
- ▶ Discontinuity between primary and excess markets
 - ▶ No loss adjuster appointed for the market

Underwriting Complexity

- ▶ Dynamic nature of the subject: Technological innovation > new business models > rearrangement of values at risk > legal responses: legislation, regulation, contract > Insurance
 - ▶ 12-month contract based upon a snapshot view of risk in a context of continually-evolving threat
- ▶ Paucity of historical/actuarial data
- ▶ Conceptual pricing models are feasible, but multiple elements are typically present in the same risk: Media, Data Protection, 1st Party dependencies and values, Liability risks etc.
- ▶ Novelty of clauses and lack of practical experience
- ▶ Difficulty identifying and assimilating risk information

Underwriting Challenges

- ▶ Underwriters need:
 - ▶ An understanding of the Insured's business model in order to conceptualise the risk;
 - ▶ Exposure data [of various types] in order to price the risk;
 - ▶ Risk control information to assess the risk; and
 - ▶ Sense of the loss context to undertake the risk.
- ▶ The present market placement process is built around high-level presentations of risk controls; other necessary elements do not receive the attention they deserve
- ▶ A transactional placing model suits the established market leaders and the big brokers, but I would argue that it is stifling innovation