



Intellectual Property, Privacy and Communications Liability

Risk Management Checklist

The threat of an intellectual property, privacy or communications lawsuit is commanding the attention of corporate America these days. While the Internet and other electronic media have opened up exciting avenues of doing business, they have also created areas of risk that didn't exist years ago. As a result, companies are being forced to establish management practices to protect their assets from an intellectual property or privacy lawsuit, with litigation costs averaging \$1 million or more.

We've prepared a checklist you can use to help assess your company's management practices and the likelihood of your being exposed to an expensive lawsuit or regulatory enforcement action. There are separate sections covering Privacy and Reputation Injury, Copyright, Trademark and Service Mark, Trade Secret and Patent.

You'll notice the checklist uses circles and squares for your Yes or No answers. There are no "wrong" answers, but answers checked in the squares could indicate there is a heightened possibility of a regulatory enforcement action or a lawsuit against the company. Due to the complexity and breadth of the questions, no single resource may be qualified to answer these questions. You should consult with your legal counsel, human resources, marketing and information security business units and your board of directors, as appropriate. You can complete the checklist electronically and save it for discussion or future reference.*

To take the checklist one step further, we have published the *Intellectual Property, Privacy and Communications Liability Risk Management Handbook*, which provides in-depth recommendations and suggested best practices for reducing any risks identified in the checklist. The handbook also identifies the business areas likely to be qualified to implement the suggested risk-reduction techniques. In addition, the handbook includes a glossary that provides definitions of technical terms used in this liability arena. Contact your Chubb-appointed agent or broker for a copy. No company should be without it!



Privacy and Reputation Injury

Question	
1. Does your Web site collect information from visitors?	<input type="checkbox"/> Yes <input type="radio"/> No
2. Do you have a company-wide privacy policy?	<input type="radio"/> Yes <input type="checkbox"/> No
3. Is your online privacy policy consistent with your corporate privacy policy?	<input type="radio"/> Yes <input type="checkbox"/> No
4. Have you obtained third-party privacy certification?	<input type="radio"/> Yes <input type="checkbox"/> No
5. Does your online privacy policy give the visitor (a) notice of the policy with user-friendly access (b) a choice to opt in (c) access to his/her collected information (d) assurances of adequate security (e) information-sharing policies? (check "No" if one or more do not apply)	<input type="radio"/> Yes <input type="checkbox"/> No
6. Do you collect nonpublic financial information, such as billing, collection, legal and accounting?	<input type="checkbox"/> Yes <input type="radio"/> No
7. Do you have a system of authenticating the identity of individuals who access information, whether online or in traditional form?	<input type="radio"/> Yes <input type="checkbox"/> No
8. Do you have a comprehensive, fully implemented security plan to protect all information assets, including privacy-related information, from both accidental and unauthorized disclosure?	<input type="radio"/> Yes <input type="checkbox"/> No
9. Do you have a protocol for updating antivirus software and security technology on a regular basis?	<input type="radio"/> Yes <input type="checkbox"/> No
10. Do you obtain indemnification and hold harmless agreements from third parties?	<input type="radio"/> Yes <input type="checkbox"/> No
11. Do your employee manuals instruct employees (or those acting on your behalf) on "best practices" when disclosing confidential, personal or financial information, as well as how to avoid libel or slander claims?	<input type="radio"/> Yes <input type="checkbox"/> No
12. Do you electronically monitor employee computer or telephone use?	<input type="radio"/> Yes <input type="checkbox"/> No
13. Do you have a Privacy Officer?	<input type="radio"/> Yes <input type="checkbox"/> No
14. Do you ever transmit medical information?	<input type="checkbox"/> Yes <input type="radio"/> No
15. Do you use objective testing for all product and service comparisons?	<input type="radio"/> Yes <input type="checkbox"/> No
16. Do you have a document retention and destruction protocol?	<input type="radio"/> Yes <input type="checkbox"/> No
17. Does your Web site attract visitors under the age of 13?	<input type="checkbox"/> Yes <input type="radio"/> No
18. If you are collecting personal information, do you inquire at the time of registration the date of birth of your visitor?	<input type="radio"/> Yes <input type="checkbox"/> No
19. Do you provide the name, street address, e-mail address and telephone number of a contact person for privacy or Web site usage?	<input type="radio"/> Yes <input type="checkbox"/> No
20. Have you taken advantage of immunities under the law for your Web-based activities?	<input type="radio"/> Yes <input type="checkbox"/> No
21. Do you do business in foreign markets?	<input type="checkbox"/> Yes <input type="radio"/> No

Privacy and Reputation Injury *(continued)*

Question	
22. Does your Web site hyperlink to other Web sites?	<input type="checkbox"/> Yes <input type="radio"/> No
23. Does your Web site have disclaimers limiting damages for Web site content, representations and operation?	<input type="radio"/> Yes <input type="checkbox"/> No
24. Do you allow third parties to post material on your Web site?	<input type="checkbox"/> Yes <input type="radio"/> No
25. Do you ever depict real people on your Web site?	<input type="checkbox"/> Yes <input type="radio"/> No
26. When subpoenaed, does legal counsel arrange for a protective order before disclosing private/confidential information obtained from others?	<input type="radio"/> Yes <input type="checkbox"/> No
27. Does your site operate giveaways, sweepstakes, games of chance or contests?	<input type="checkbox"/> Yes <input type="radio"/> No
28. Do you distribute unsolicited e-mails (sometimes called "SPAM") or other unsolicited electronic communications?	<input type="checkbox"/> Yes <input type="radio"/> No
29. Do you use metatags?	<input type="checkbox"/> Yes <input type="radio"/> No

Copyright

Question	
1. Do you research and document the source of all content your company distributes (including advertising content)?	<input type="radio"/> Yes <input type="checkbox"/> No
2. If you operate an interactive Web site, do you have a subscriber termination policy?	<input type="radio"/> Yes <input type="checkbox"/> No
3. Do you have an established plan for posting updated legal notices to your Web sites?	<input type="radio"/> Yes <input type="checkbox"/> No
4. Do you utilize copyright notices to alert viewers to the company's claim of content ownership?	<input type="radio"/> Yes <input type="checkbox"/> No
5. Does your Web site copy information from other Web sites and redisplay that information in the same or new formats?	<input type="checkbox"/> Yes <input type="radio"/> No
6. Does your Web site hyperlink to other Web sites?	<input type="checkbox"/> Yes <input type="radio"/> No
7. Do you publish compilations?	<input type="checkbox"/> Yes <input type="radio"/> No
8. Do you have a formal employee or third-party training and supervision program for e-mail and Internet usage?	<input type="radio"/> Yes <input type="checkbox"/> No
9. When you receive copyrighted products, such as computer software, do you record their site limitation and terms of use provisions?	<input type="radio"/> Yes <input type="checkbox"/> No
10. When redistributing digital graphics, do you check for watermarks that indicate another company's claim to that graphic?	<input type="radio"/> Yes <input type="checkbox"/> No

Trademark and Service Mark

Question	
1. Do you conduct searches to see if your intellectual property, including trademarks and service marks, are already claimed by another individual or business?	<input type="radio"/> Yes <input type="checkbox"/> No
2. Have you obtained registered trademarks or service marks for your logos, names, domain names, trade names and graphics?	<input type="radio"/> Yes <input type="checkbox"/> No
3. Do you have a procedure to record dates of first use of your logos, names, domain names, trade names and graphics?	<input type="radio"/> Yes <input type="checkbox"/> No
4. Do you have a policy to protect all trademarks and other forms of intellectual property from misappropriation?	<input type="radio"/> Yes <input type="checkbox"/> No
5. Do you license or franchise your products, services and trademarks to others?	<input type="checkbox"/> Yes <input type="radio"/> No
6. Do you inventory your marks and logos to ensure continuous usage in the marketplace?	<input type="radio"/> Yes <input type="checkbox"/> No
7. Are your products or packaging reviewed to ensure that they are not similar in appearance to other products or packaging in the marketplace?	<input type="radio"/> Yes <input type="checkbox"/> No
8. Have you ever received a cease and desist letter from another company claiming infringement?	<input type="checkbox"/> Yes <input type="radio"/> No

Trade Secret

Question	
1. Have you inventoried your trade secrets and placed "confidential" notices or other similar markings on all inventory?	<input type="radio"/> Yes <input type="checkbox"/> No
2. Do you have an inventory of all nondisclosure agreements with employees, subcontractors, consultants, business partners and affiliates?	<input type="radio"/> Yes <input type="checkbox"/> No
3. When hiring a competitor's employee, do you confirm that the employee has no obligations to the prior employer in the form of employment/nondisclosure/noncompete agreements?	<input type="radio"/> Yes <input type="checkbox"/> No
4. Does your nondisclosure agreement require employees and subcontractors to return all company documents classified as trade secrets when they have been terminated or work is completed?	<input type="radio"/> Yes <input type="checkbox"/> No
5. Do you have e-mail and Internet usage policies, giving employees notice of their duty to protect trade secrets online?	<input type="radio"/> Yes <input type="checkbox"/> No
6. Do you encrypt or otherwise protect trade secrets that are transmitted electronically?	<input type="radio"/> Yes <input type="checkbox"/> No
7. Have you taken steps to protect your customer list from misappropriation by others?	<input type="radio"/> Yes <input type="checkbox"/> No
8. When negotiating an acquisition or sale of assets, do you have a policy protecting the disclosure of proprietary information that survives the negotiations?	<input type="radio"/> Yes <input type="checkbox"/> No

Trade Secret *(continued)*

Question	
9. Do you have a policy on accepting unsolicited invention ideas or marketing plans from the general public?	<input type="radio"/> Yes <input type="checkbox"/> No
10. Is your industry frequently involved with trade secret litigation?	<input type="checkbox"/> Yes <input type="radio"/> No

Patent

Question	
1. Have you evaluated your copyrights, trademarks and trade secrets to determine if they qualify for patent protection?	<input type="radio"/> Yes <input type="checkbox"/> No
2. Do you identify core patents in your audit and inventory procedures?	<input type="radio"/> Yes <input type="checkbox"/> No
3. Do you have branding strategies and licensing programs that will safeguard "core" technology while selectively licensing noncore technology?	<input type="radio"/> Yes <input type="checkbox"/> No
4. When licensing your product to another party, or accepting a license from another party, do you provide indemnity to or obtain indemnity from the other party?	<input type="radio"/> Yes <input type="checkbox"/> No
5. Does your general counsel have a protocol for the selection of patent counsel?	<input type="radio"/> Yes <input type="checkbox"/> No
6. Does your general counsel have access to and monitor a multimedia diary to alert inventors, in-house counsel and outside counsel of statutory dates for appropriate filings and renewals?	<input type="radio"/> Yes <input type="checkbox"/> No
7. Do you have an overall training program in place to implement a unified enterprise-wide intellectual property strategy?	<input type="radio"/> Yes <input type="checkbox"/> No
8. Do patent counsel and top management provide a summary of each approved patent, in plain English, to the appropriate business units that will use the new technology?	<input type="radio"/> Yes <input type="checkbox"/> No
9. Does your general counsel provide management with a report identifying patent and other intellectual property risks when entering new geographic markets or producing new products?	<input type="radio"/> Yes <input type="checkbox"/> No
10. Does your general counsel provide management with a report on all pending patents or newly issued patents that cite your patented technology?	<input type="radio"/> Yes <input type="checkbox"/> No
11. Has senior management been made aware of the attendant intellectual property risks and rewards during any merger & acquisition (M&A) due diligence process?	<input type="radio"/> Yes <input type="checkbox"/> No
12. Do you have programs (e.g., employee rewards) to encourage employee disclosure of new ideas, processes, devices and improvements that may be patentable?	<input type="radio"/> Yes <input type="checkbox"/> No
13. Do you have an employee retention program for technical staff?	<input type="radio"/> Yes <input type="checkbox"/> No
14. Do all employees and subcontractors sign an agreement to transfer ownership of patent rights and other inventive technology to you?	<input type="radio"/> Yes <input type="checkbox"/> No

Patent *(continued)*

Question	
15. When considering a patent filing, does your patent counsel (a) provide a written patentability report to management and (b) provide a written report on the likelihood of infringement claims? <i>(check "No" if one does not apply)</i>	<input type="radio"/> Yes <input type="checkbox"/> No
16. Do you meet with patent counsel to review options and risks when discovering potential infringement?	<input type="radio"/> Yes <input type="checkbox"/> No
17. Are your patents to be used on a global basis?	<input type="checkbox"/> Yes <input type="radio"/> No
18. Does your patent development staff have a regularly scheduled review with management on the progress of the patent prosecution?	<input type="radio"/> Yes <input type="checkbox"/> No
19. Do your counsel and technical staff have a record-keeping protocol that includes witnessed logbooks and retention and archiving of documents that show the step-by-step development of the invention?	<input type="radio"/> Yes <input type="checkbox"/> No
20. Do any of your patents cite "no prior art" or "little prior art"?	<input type="checkbox"/> Yes <input type="radio"/> No
21. Do you place patent markings on all products that have current registered patents?	<input type="radio"/> Yes <input type="checkbox"/> No

*** To complete and print the checklist, Adobe® Reader® is required. Full version of Adobe® Acrobat® is required to save the checklist.**

Disclaimer

Chubb refers to the insurers of the Chubb Group of Insurance Companies: Federal Insurance Company, Vigilant Insurance Company, Great Northern Insurance Company, Pacific Indemnity Company, Northwestern Pacific Indemnity Company, Texas Pacific Indemnity Company, Executive Risk Indemnity Inc., Executive Risk Specialty Insurance Company, Quadrant Indemnity Company, Chubb Custom Insurance Company, Chubb Indemnity Insurance Company, Chubb Insurance Company of New Jersey, Chubb National Insurance Company, Chubb Lloyds Insurance Company of Texas. Not all insurers do business in all jurisdictions.

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