

Taking on the Internet

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The technology industry in the last decade has seen its share of business flameouts, including the widely publicized failures of dot-com and technology-related companies. Reuters reported in 2002 that one in five dot-com companies became "dot-bombs." Many Internet and solutions providers also suffered the same operational hurdles, but their difficulties in the last few years stemmed more from economic conditions than the 2000-2001 dot-com crash.

The failure of these start-up ventures paved the way for future entrants into the technology sector, especially for solutions and Internet providers. The door was opened for traditional telcos to offer services others had not, and it allowed them to learn from failed ventures. Many rural telcos went from POTS (plain old telephone service) to PANS (positively amazing network systems) to a blend of POTS and PANS, by analyzing risks, learning from the past, and implementing sound business plans.

The benefits of concentrating on Internet business is clear when one considers the way American households historically have embraced telecommunications products and services. According to the national law firm of Thelen Reid & Priest LLP, it took 35 years for 25% of American households to have a telephone, and it took 26 years for 25% of American households to have a television, but it only took five years from the time the Internet became available outside of government and academic settings for 25% of American households to have Internet access.

Assessing Internet Risk

The embracing of the Internet by businesses and residents has opened up opportunities on a variety of levels, from Web site designers and hosts to Internet service providers (ISPs). Regardless of the business venture, however, care must be taken to understand the multiple risks associated with the respective businesses.

● **Designing and hosting webpages:** A webpage is subject to damage from natural and manmade disasters, unforeseen accidents and human error. It can be rendered inoperable due to failure of the ISP, programming mistakes or a failed network system. It also is possible, and recent attacks against large, well-



known companies have shown, that malicious misconduct by employees or a third party can disable a site by corrupting data or introducing viruses. Hacking into and disabling a webpage has become a growing hobby, and to some, a profession.

A webpage that is not active can result in property and liability claims by first and third parties. The company that owns the site may have property coverage that protects it for loss of data and lost income, and provides relief from the costs associated with removing the virus. A third party that relies on someone to host, design or maintain its site may seek different levels of indemnification based on the function of the Web site.

The owner of a site (or its customer) that finds inaccurate or inappropriate information on the site after having contracted with a host to monitor content could seek damages, including copyright and trademark infringement and defamation. This risk is increased for sites that post content provided by third parties in areas like chat rooms or boards. Errors and omission insurance protects businesses when Internet liability endorsements have been applied to the policy.

● **Offering advice:** Sites providing customer service or "advice" can open themselves up to potential claims based on negligence when bad information posted on the site causes injury to someone who relied on that information. Such liability is a significant concern for companies that provide individualized advice and ►►

information, such as sites that offer network design or product-use consultation. Liability coverage for this exposure is not generally provided by a standard commercial liability form, unless the advice is considered incidental or customary to the operation. Errors and omission insurance protects businesses from this exposure.

● **Malfunctioning sites:** In such cases, a Web site malfunctions, and a third party that provides goods or services cannot collect the data it expects to receive, such as entertainment content or stock market information. The liability could be substantial, if the site provides a service that businesses rely on in the course of their

own revenue-producing operations. For an ISP with a homepage that broadcasts the local weather, this generally is not a grave concern, but for those that design a site for e-commerce businesses, this could open the company up to serious allegations of liability. Design flaws and the ensuing financial consequences are not covered by most general liability forms, and specialty insurance is required to transfer the risk to an insurance company.

● **Information gathering and privacy issues:** Many sites gather personal information about visitors, including financial data obtained in the course of payment for goods and services, personal preference information based on online behavior, and information related to other personal matters. The misuse of such data because of company policy, an accident or the misconduct of employees or third parties, could result in liability for the site sponsor. In addition, a Web site can cause injury to third parties through the functioning of the site itself, by transmitting a virus to a third party.

● **ISP downtime:** Failure of an ISP can cause significant financial losses to a company that relies on the Internet for a significant percentage of its revenue. Errors and omission insurance can protect businesses from this type of exposure.

The Internet offers many businesses economic opportunity, whether they have sites on the World Wide Web or have developed operations to serve the needs of their communities. However, these opportunities are accompanied by new risks and uncertainties regarding the scope of insurance coverage.

An evaluation of a company's insurance coverage program is an important component of any overall assessment of its risk exposure from Internet activities, and it should be part of any solid business plan. ■

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