

THE Reciprocal

The Internet: *What are the Risks?*

It's fascinating, and sometimes a little frightening, to consider how the world of cyberspace has already changed our lives.

Via the Internet, we can communicate instantly with other users in almost any part of the world. We can approach the largest audience over the Internet and can conduct business transactions with greater economy.

But everything comes with a price. With cyberspace, the price – at present – is uncertainty for all that use it.

The question remains, how does one construct a simple web site without running the risk of infringing on someone else's rights – rights of privacy, of trademark, of copyright?

These dangers are not new outside of cyberspace. But with the Internet, the rules – while not changed – are somewhat in abeyance. This new delivery system is expanding rapidly, and regulators and legislators are finding it hard to keep pace. Even though the Internet is in its infancy, it has already spawned litigation.

Consider the following:

- An on-line, direct marketing company sent e-mail solicitations for its clients to all users of a commercial on-line service provider. The commercial on-line service provider sued the marketing company for trespassing. The court found that the on-line marketing company was liable for trespass and damage to the service provider's good will.
- A commercial on-line service allowed a famous author to advertise

his book in one of its forums. The on-line service was sued for copyright infringement by an artist who claimed that the author used certain artwork on the cover of the book without the artist's permission. The cover of the book was digitally displayed in the on-line service's forum.

These are just some of the kinds of disputes that are coming out of the cyberspace arena. Other potential torts that may arise include:

Defamation: Exposure can include negligent or intentional infliction of emotional distress, outrageous conduct or breach of duty not to harm.

Libel: An example often cited is trade libel, which occurs in the comparison of one product to another. Similarly, instances of product disparagement, in which a false statement is made about a particular product, can also lead to a dispute.

Invasion of Privacy: Invasion of privacy claims can fall into any of four major categories:

- Intrusion or seclusion (e.g., a photographer or reporter may intrude on the private space of a person);
- Private facts made public (e.g., a short story or photo brings attention to an embarrassing fact that a person has the right to keep private);
- False light in the public eye – similar to libel, but the offending statement need not be as bad as required for libel);
- Commercial appropriation –

unauthorized use of a person's name or likeness for commercial purposes.

Intellectual Property: Intellectual property torts involve taking another person's ideas or work without permission or compensation. These include copyright infringement, infringement of trademark, misappropriation of ideas, infringement of titles and slogans, and unfair competition.

Errors and Omissions: Errors and Omissions exposure is an area of increasing concern. It covers liability for economic loss, property damage, or bodily injury that may be caused by the words and pictures in the media. Claims can allege injury following faulty instructions in a "how-to" book or article, or from being directed to try out something the claimant has read about or seen on the Internet.

Loss Prevention Strategies

There are steps you can take toward loss prevention. For instance, develop procedures that detail what is acceptable information that can be accessed on the Internet. Ensure that you have adequate firewalls on computer systems to prevent hackers

continued on page 2

In this Issue...

MEARIE's Prudential Requirements Program

Directors' & Officers' Policy

Battling Burnout

How to Use This Publication

The Reciprocal is for information purposes only, intended for the benefit of MEARIE members. Any information provided by *The Reciprocal* shall not represent confirmation of coverage for specific circumstances, incidents and claims. Individual cases of coverage interpretation are dealt with external to this publication and shall be solely determined by MEARIE policy wordings. Members wishing assistance on specific matters are invited to consult with MEARIE staff directly. (E. & O.E.)

The Internet

continued from page 1

from gaining access. And purchase and maintain the latest software to aid in the prevention of computer viruses. Advising staff not to open e-mail messages from unrecognized sources could also aid in curtailing the spread of viruses.

You should also ensure that the computer system is password protected, and that passwords are changed periodically, or immediately after any staff is no longer employed by your organization.

If your organization is presenting factual or technical information on its web site, have legal counsel review it to ensure the information doesn't prejudice the organization or lead to potential claims of defamation, copy-

right, libel, slander, etc.

The corporate web site is ubiquitous. There are unanticipated consequences for the non-information business that finds itself in the information business.

MEARIE Coverage

With respect to legal claims and the Internet, the general areas of media-related exposure are defamation, invasion of privacy, newsgathering torts, intellectual property torts and errors and omissions.

Members should be aware that the MEARIE liability policy provides coverage for these kinds of exposures under Insuring Agreement 1.5, Coverage E: Errors and Omissions Liability. Sections 6.10 (Personal Injury) and 6.14 (Wrongful Act) also deal with such exposures for claims

that may arise from Operations that are normally covered by the Policy. Please note that coverage for all claims will be determined on a case-by-case basis, according to Policy wording.

Although there is a higher probability of risk for businesses that exist mainly to sell information (i.e., newspapers, magazines and consultants), we live in an age where information, or the appearance of processing information, opens doors to opportunity and profit.

This phenomenon is changing the way Canadian businesses operate. Part of being in business today involves processing, controlling, digesting and disseminating information. Uncertainty exists in all new frontiers and organizations need to be aware of the exposures when doing business via the Internet.

Battling Burnout:

Budget cutbacks; increasing workloads; laying off employees; facing a legal suit; anxiety due to organizational restructuring; having to change jobs after a number of years with one company...

There *is* Life Outside the Office

In today's fast-paced work environment, many of these situations have become commonplace. Unfortunately, they can also be major contributors to employees' stress levels and lead to what has commonly been termed "burnout".

Tips for avoiding burnout:

Exercise: The first step is to have the strength to cope with stress. Just 20 minutes of aerobic exercise, three times a week, can go a long way in providing the strength to deal with stressful situations. An easy and convenient way to get a break from the daily grind and get some aerobic exercise is a daily walk during your lunch hour. Your exercise regime need not be fancy. The most important factor is to find an activity that is easily maintained and enjoyable!

Decompress: Skimping on sleep wears you down, compromising alertness that is critical to an individual's effective decision making. Allowing

time for your body to decompress by getting adequate time for rest and sleep will allow you to deal with daily tasks more efficiently and effectively.

Family Time: Making time for family, friends and self is also key to battling stress. The rewards of interacting with others, undistracted by professional concerns, are invaluable.

Vary your routine: This can be accomplished by altering habitual routines. Surprisingly, a break from daily rituals can work wonders at lifting your spirits. Although routines have pluses – predictability and reliability – it is sometimes this "predictability" that leads us to feeling like we are in a rut. Varying the routines, from time to time, can be very refreshing for mind, body and soul.

Other Strategies To Battle Burnout:

- Plan a realistic work schedule – keep two lists: a master to-do list and a today to-do list. This will help you keep tasks organized and manageable.

- Tackle priority and tough work early in the day, when you are normally more alert.

- Set reasonable targets for project completion to allow adequate time to refine and polish.

- Tackle high-anxiety tasks right away so that problems don't fester.

- Seek help when needed by brainstorming with others as they may have the same issues to contend with. Seeking help is not a sign of weakness – being too proud to ask for it is!

- Annually assess what makes your work fulfilling. List obstacles to that fulfillment – workload volumes, the quality and support of staff and the level of professional development. Being aware and in control of obstacles will allow you to make appropriate changes to regain an enjoyable and fulfilling career.

Change is good for development. Look upon change as a healthy opportunity to develop and learn from new experiences.

Employing practical and achievable methods to avoid burnout will help you to take a fresh look at each day's new challenges, thus providing the tools to be successful at conquering those challenges.

MEARIE's Prudential Requirements Program To be Ready for Market Opening

We are pleased to announce that MEARIE's Prudential Requirements Program is well underway and will be ready for market opening.

As you know, market rules and legislation around utility restructuring have been under constant review and change.

MEARIE has been following the rule changes diligently and working closely with the IMO to finalize a product that is acceptable to it. The delay in market opening and possible further rule changes require MEARIE

to keep product design flexible to ensure the final product will meet the needs of the market.

MEARIE's program is an insurance solution that will bring a very large and highly rated underwriting capacity to customers, with low rates and excellent administration support. At the IMO level, it has the unique advantage of a simple application process, which will respond to margin calls within pre-approved limits, with no collateral requirement or impact on your credit limits.

MEARIE's Prudential Requirements Program will operate at three levels:

- A **Wholesale Package** to provide a simple and less expensive way for LDCs to meet their obligations to the IMO.
- A **Retail Package** to protect LDCs against the risk of default by third-party retailers.
- A **General Package** for LDCs and Retail Affiliates that can be used to satisfy third-party (non-IMO) prudential requirements.

MEARIE will continue to keep you updated in the coming months. In the interim, if you would like more information, please contact Umit Ulusoy at the MEARIE office.

Directors' and Officers' Liability:

Clarification of Coverage

MEARIE has received many inquiries recently regarding coverage for Directors and Officers under the MEARIE General Liability Policy. This article is intended to clarify the coverage for Directors and Officers under the current policy and update all members on recent developments that will see enhancements to the policy with respect to Directors' and Officers' coverage.

Put simply, the MEARIE policy includes as an Insured, by virtue of definition, any Officer and Director of the Named Insured. A Named Insured is defined in the Policy as "the Named Insured as stated in the Declarations".

With this in mind, Officers and Directors of MEARIE clients are entitled to the coverages which are presently available under the terms of the Policy, including coverage for "Errors and Omissions". The "Errors and Omissions" coverage itself is very broad in its scope and provides protection to Insureds for errors and omissions related to operations covered by the policy, in addition to the specific coverages provided elsewhere in the Policy, subject to certain exclusions set out in the Policy document.

As most members are aware, the MEARIE Policy is very comprehensive in its scope, providing members with coverage under the following general categories:

- A) Personal Injury Liability;
- B) Property Damage Liability;
- C) Property Damage Liability (Leased Property);
- D) Environmental Impairment;
- E) Errors & Omissions Liability;
- F) Conflict of Interest Expenses (liability limited to \$100,000);
- G) Occupational Health & Safety Expenses (liability limited to \$100,000);
- H) Legal Expense Reimbursement (liability limited to \$100,000).

In terms of the restructuring of the electricity industry and requirement for members to become corporations under the OBCA, any Director or Officer of a newly formed corporation **that becomes a Named Insured under the MEARIE Policy** will be considered an Insured under the Policy and afforded the same coverages as currently available to Insureds.

Many corporations today purchase stand-alone Directors' and Officers' Liability insurance ("D&O Insur-

ance") which is separate and in addition to the comprehensive general liability or other liability policies which the corporation may have. These policies typically require payment of a substantial premium. The MEARIE Policy already provides many of the coverages offered by such policies.

Enhanced Coverage Options Coming

Recognizing that the issue of D&O coverage is important to many of our clients, MEARIE is pleased to announce that, in addition to the current coverage for Directors and Officers, enhanced coverage options will be available in the near future. MEARIE has been developing a coverage enhancement endorsement to include coverage for the following:

- **Enhanced Directors' and Officers' Liability;**
- **Corporate Reimbursement;**
- **Employment Practices Liability;**
- **Benefits Administration Liability; and**
- **Outside Directorship Liability.**

More detailed information on the above will be provided in the Fall of 2000. In the meantime, should you have any questions or concerns, please do not hesitate to contact Al Friesen or Magdalena Nagy at the MEARIE office.

Risk Management Services:

Water Operations Policy Renewal Changes

As a loss-prevention strategy and in light of the Walkerton issues, MEARIE is investigating a plan that would require all customers with Water Operations coverage to provide evidence that the water operations are being maintained, and complying with any associated maintenance procedures, as mandated by recent legislation.

Although in draft form at this point, renewal of water operations coverage may become contingent upon evidence of a customer's conformance with regulations set forth by the government or a commitment to comply within specified timelines.

MEARIE will continue to update all members on this issue as developments occur.

A New Addition to the MEARIE Team

MEARIE is pleased to announce the addition of Al Friesen to its staff team. Al joined MEARIE on July 31, 2000 as our Claims and Insurance Services Officer. Al will have overall responsibility to manage MEARIE's claims department, including the activities of MEARIE's adjuster.

Please contact Al for claims- or coverage-related inquiries at (416) 484-5315 or 1-800-668-9979. Al can also be reached via e-mail at afriesen@mea.on.ca.

In the Know: MEARIE Answers Your Questions

This question-and-answer column is intended to provide subscribers with responses to commonly asked questions regarding risk management or coverage issues.

The responses provided in this article are for information purposes only, and are not intended to represent MEARIE's insurance coverage position. MEARIE assumes no responsibility for claims incurred by any member utilities that arise out of their decision to either apply or reject, in any form, the responses provided herein.

Q How does MEARIE apply the Policy deductible for claims that have more than one claimant?

A This question is best answered using the following example: There is a power outage affecting a residential street. In this example, 10 homes are affected. For claim-filing purposes, the utility would complete a claim for each claimant. However, only one deductible would be applied. The incident would be treated as one claim caused by a single occurrence – the power outage – that affected more than one claimant.

Q What amounts will the MEARIE Liability Insurance provide to additional insureds listed on a Certificate of Insurance?

A Many of our customers provide services for other organizations or municipalities that request

to be added as an additional named insured on the MEARIE policy.

This is done via a Certificate of Insurance that essentially shows evidence of liability insurance coverage and compliance with the agreement between the parties. The organizations or municipalities often request that a minimum limit of insurance be listed on the Certificate of Insurance, ranging anywhere from \$2 million to \$10 million.

In the event of a claim for damages, the MEARIE Liability Policy would only respond to the amount listed on the Certificate of Insurance on a per-claim occurrence for the related services. Please refer to section 6.4 Insured - 6.4.4 of the MEARIE Policy.

An aside – it is best practice to require a Certificate of Insurance as evidence of insurance in order that all parties involved are aware of the available limits of insurance.

Should you wish to see specific issues addressed in future Q&A columns, please contact Magdalena Nagy, MEARIE's Risk Management Analyst, at (416) 484-5355 or 1-800-668-9979. Magdalena can also be reached via fax at (416) 483-2841 or e-mail at: Mnagy@mea.on.ca.



Municipal Electric Association Reciprocal Insurance Exchange

Chair
Brian Hollywood

Vice-Chair
Pauline Storcks

CEO/Attorney-in-Fact
Charlie C. Macaluso

The Reciprocal is published by the Municipal Electric Association Reciprocal Insurance Exchange for its members – some 250 municipal electric utilities. MEARIE is a reciprocal insurance exchange for members of the Municipal Electric Association. The MEA is the utilities' voice to government, Ontario Hydro and others in the industry.

For further information or material submission, please contact the Executive Editor at 20 Eglinton Avenue West, P.O. Box 2004, Suite 500, Toronto, Ontario M4R 1K8. Telephone: (416) 483-7739; WATS: 1-800-668-9979; Fax: (416) 483-9039; E-mail: mearie@mea.on.ca.

Executive Editor
Andrea Greto

Editor
Sheree Bond