Insurance POST

Spotlight on professional indemnity: Media and technology sectors

By Sam Barrett 15th December 2017

Taking risks is in the DNA of many media and technology firms and insurance should be the enabler that allows them to do this effectively. The technology, media and telecoms sector makes a considerable contribution to the UK economy, with figures from the CBI showing that it employs some 2.3 millon people and generates £126bn a year. But the nature of many of the businesses in this sector means they face significant and ever-changing risks. Although they're often lumped together, an incredibly diverse range of companies fall within the media and technology sectors, ranging from international advertising agencies through to technology start-ups keen to develop the next big thing. "These sectors are constantly changing as new areas emerge," says Tracey McCreath, director for media arts and entertainment at La Playa. "But, while recent additions have included bloggers, vloggers and online digital content providers, the basic risks remain broadly the same."

Risk radar

Good, old-fashioned breach of contract is the main risk faced by these businesses, with as much as three-quarters of claims falling under this area. Patrick Hearn, head of professions at Jelf, isn't surprised. "We're seeing much more nuanced contracts, where the onus is shifted increasingly on to the professional," he explains. "Expectations are also high and, with people taking on too much work, this can result in a supplier failing to deliver." On top of this, the number of companies involved in production of media and technology items has increased significantly. As an example, Hearn points to the BBC's Blue Planet II series, where numerous production companies and freelance professionals are involved. "Contract management is a big thing now," he adds. "This has driven a trend where companies use breach of contract as a loophole to get out of a contract." Intellectual property rights can also be a major issue in these creative industries. Edel Ryan, partner in special risks at JLT Specialty, says: "Cases can either involve a third party claiming a client's idea was theirs or a client seeing their own intellectual property used by another party. It's a fairly common issue." As an example, she points to the recent case involving the screenplay for the film Florence Foster Jenkins. In this case, the author's former girlfriend claimed that she deserved a share of the income as she had contributed to the script. However, after seeing correspondence where she congratulated him on his work, the judge ruled in his favour. Another important aspect is reputational risk, with a firm's livelihood on the line in the event of any sort of dispute. Juliet Williams, group SME director at Circle Insurance, says this is an area where professional indemnity can provide support. "Policies can include cover for public relations costs and this can really help to repair a firm's reputation," she adds.

Going international

International work introduces additional risks, with the CBI's statistics showing that these businesses export a significant amount: exports total £65bn a year, 44% of which is to the European Union. But whether dealing with Lisbon or Los Angeles, cross-border activity can add complexity to insurance requirements. McCreath explains: "With an overseas contract, a client could be signing up to clauses that simply don't translate to UK insurance cover. UK and US wordings are different and you'd struggle to meet contract requirements if you can't access a local policy." While this can be frustrating, it's an area where a broker's insight can be invaluable. For instance, McCreath says that where there is this mismatch, she advises her clients to renegotiate the contract terms. "It adds complexity but it's usually something that can be addressed," she adds. Alongside the terminology mismatches, insurance requirements can also increase. Williams explains: "When a firm's dealing with overseas companies, you need to make sure that both the client and the insurer are aware of the different laws and regulations that are in place. We'd also check they have adequate limits of indemnity to cover where they could be sued."

Brexit

The amount of international work carried out by clients in these sectors means the insurance industry is closely watching the negotiations surrounding the UK's withdrawal from the EU. Oliver Leyens, director of insurance at Heath Crawford, doesn't expect it to cause too much of an issue for his clients, but with so much yet to be decided, he's keeping a watching brief. "If and when Brexit does happen, clients will ride the wave," he says. "They'll still need to trade, so we'll be here to ensure they have the correct insurance in force." Depending on the deal that's struck, there could be additional headaches for brokers. Hanna Beaumont, director, science and technology at La Playa, says that if the freedom to provide services goes, it will become more complicated to look after clients working in the EU. "We may have to consider local policies, providing our clients with basic cover through these and topping it up with a broader policy," she explains.

Emerging risks

New risks are also emerging, especially around the breach of personal data. This is set to become more of an issue next May when the General Data Protection Regulation is introduced. Leyens explains: "Media and technology clients will see greater threats of third parties bringing claims against them for data breaches. In particular, fines have increased significantly from a maximum of £500,000 to £20m or 4% of worldwide turnover. If GDPR had been in operation at the time of the Talk Talk breach, experts say it could have wiped the company out." As well as managing their own GDPR risk, firms in the technology sector may find themselves picking up additional risk from their clients. Williams explains: "GDPR puts more responsibility on data processors, including where it is an external firm handling data on behalf of another company. Technology firms providing this service could find themselves liable if there is a breach at their client's firm." As new risks emerge, McCreath would like to see PI policies evolve to accommodate them. "Some insurers provide cyber cover as an extension to PI while others offer it as a separate policy. Even where it's included, it won't necessarily cover everything that people see as cyber risks." To illustrate this, she points to the growing phenomenon of fraudulent invoices being used to dupe people into sending money to criminals. "This is often covered under a crime policy," she adds. "It would be much easier to sell if all of these elements were included within one policy."

Location risk

Location can also be a risk for these firms, especially as they tend to be concentrated in certain areas. For example, Silicon Fen refers to the region around Cambridge where Acorn Computers made its home in 1978. It's since been a popular location for high-tech businesses specialising in software, electronics and biotechnology. Today, there are some 1500 technology companies based there, employing more than 53,000 people. This aggregation can cause issues where there's a loss of power or an attack on the grid. Although the primary claim will be for business interruption, it could have a knock-on effect on PI. For example, although the number of potential claims wouldn't be as high, a power supply failure in the region could result in missed deadlines or the failure to provide a service, leaving the firms on the end of a breach of contract claim. Although there's risk, Hearn says that the way like-minded firms cluster together also presents opportunities. "It can make it easier to visit these clients but I also believe there is room for them to come together, like a council, to present their needs to the insurance industry."

Sector dynamics

Specialising in these sectors can make sound business sense for brokers. Insurance is rarely top of any firm's considerations, but this can leave businesses in these sectors dangerously exposed. As well as the potential for rapid growth that is often seen in technology start-ups, these firms can win contracts in new territories that completely change the risks they face. Ben Rose, insurance director at Digital Risks, explains: "Many technology start-ups and software-as-a-service companies are designed to be scalable. Often they work on a subscription basis enabling them to transform themselves from a small UK start-up to a huge international businesses without having to increase staffing or infrastructure." Likewise, as new risks emerge, they can find themselves without the cover they need. This is especially an issue for technology firms. Often working with, or even creating, the latest innovations, they can find themselves subject to new cyber risks and regulations. Staying abreast of these changes requires a different approach to that of brokers looking after the insurance requirements of the more traditional professional services firms. Leyens explains: "We keep up to date with the changing needs of these businesses by focusing on the regulations and economic factors influencing them as part of our continuing professional development obligations. We also meet monthly with insurers to gain greater insights. And our compliance team provides us with information regarding what's happening in the market."

Regular dialogue

Having this insight into the sector can make a significant difference to the approach adopted by a broker. For example, Rose says he often sees firms where the turnover suggests a very different insurance requirement to their actual needs. "A firm's insurance requirements might be dismissed because, on paper, it only has a turnover of £10,000," he explains. "But it could be a fast growing business that's just closed a £5m investment round. You need to dig deeper to understand these firms properly." As well as understanding the nature of these firms, brokers in these sectors need to keep in regular contact with their clients. "We like to have an ongoing conversation with our clients, especially when they're in start-up mode," says Beaumont. "They can change direction a lot and their insurance needs to reflect this." As a bare minimum, she looks to speak to them at least once a quarter but will have a more regular dialogue where required. "We try to look at their business plans where possible," she adds. "This gives us a good idea of the direction of the business so we can ensure their insurance can grow with them." The insurance model adopted by Digital Risks also fits the need for regular contact perfectly. Rather than the traditional annual contract, it offers cover on a monthly subscription basis. "This means that, as a minimum, there's a monthly touch point," says Rose. "This enables us to send them information about emerging risks or some details of what we're doing but it's also a good opportunity to check things that would trigger an insurance review. Have they won any new contracts? Is their turnover the same?"

Insurance partner

The importance of these firms understanding how their insurance requirements might change means some brokers look to highlight this from outset. Nathan Hankin, account executive specialising in the technology sector at Jelf, says that, wherever possible, he'll look to develop a relationship that seeks to educate his clients about the value of insurance. "We make ourselves as available as possible when we take a new client on," he explains. "We'll also provide them with guides and health and safety advice to help them understand how insurance can support them. Where a client gets this, they are much more likely to call us to discuss any changes to their business." Cutting out the jargon is another approach that can help brokers gain their clients' trust and ensure the right cover is in place, how ever the business evolves. Rose says that a lot of what his firm does is educational. "There is so much jargon in insurance it makes it really difficult for businesses to understand what cover they have and why they need it," he explains. "We do find that these businesses want to know: many technology people have an attention to detail." Ensuring that firms in these sectors understand why they have cover benefits brokers, but it can also make a significant difference to their own fortunes. "Taking risk is very much a characteristic of many of the firms in these sectors," says Hankin. "Having the right insurance enables them to do this more effectively."