

January 2021 IP Risk Intelligence Memo

Intellectual Property Infringement Risk: Don't I already have insurance for that?

Intellectual property (IP) infringement liability risk is an exposure that traditional and financial lines of insurance are not intended to fully cover. However, it can be confusing to determine the limited coverage that is provided. These coverage gaps can lead to claims that are partially or fully denied. Here, we walk through several examples so you can better understand the coverage limitations of standard lines of insurance and how a separate IP infringement liability policy can address these coverage gaps.

These coverage gaps can be filled by purchasing an IP infringement liability policy that covers defense costs and settlement/damages for infringement of all forms of IP and for both the operation of your business and the products/services you are selling. The challenge is determining the coverage that best fits your IP risk profile because there are appetite and wording differences among the available IP insurance products offered.

Example 1

Risk: Software Copyright Infringement
Existing Insurance Coverage: Tech E&O, general liability
Industry: Software Company
Aren't I covered if...: my software is accused of copyright infringement by another software company?
Coverage Gap: E&O coverage is primarily intended to protect the insured against claims brought by the recipient of the services provided by the insured. Therefore, most tech E&O policies will not cover software copyright infringement suits brought by copyright holders solely against the insured. General liability (CGL) policies in the US limit copyright infringement claims to advertising activities and generally exclude software copyright.

Example 2

Risk: Trade Secret Misappropriation/Theft
Existing Insurance Coverage: Crime, general liability
Industry: Food and Beverage
Aren't I covered if...: my food flavorings company is accused of stealing trade secret-protected food flavoring formulas from a competitor?
Coverage Gap: Crime policies are intended to cover theft of tangible property. Because a trade secret is considered intangible property, most crime policies exclude coverage for trade secret theft. US CGL policies include an express exclusion for trade secret misappropriation claims.

Example 3

Risk: Patent Infringement
Existing Insurance Coverage: Combined Tech E&O/ Media/Cyber, D&O
Industry: Shipping
Aren't I covered if...: my company, which provides cargo tracking systems, is sued for patent infringement?
Coverage Gap: All standard lines of insurance for US-based companies expressly exclude coverage for patent infringement claims.

Example 4

Risk: Trademark/Trade Dress Infringement
Existing Insurance Coverage: Media liability, general liability
Industry: Fashion/Retail
Aren't I covered if...: my company, a chain of well-known higher-end clothing stores, is sued for trade dress infringement because of a purse we sell?
Coverage Gap: The purpose of media liability insurance and of the advertising injury clause of CGL insurance is to cover infringement claims arising from advertising and media activities. Therefore, if a product itself is accused of trademark/trade dress infringement, there is no coverage.

PIUS partners with insurance brokers and risk advisors to provide insurance solutions that best address the financial impact of IP risk on your business. PIUS team members have 20+ years of experience placing IP insurance with all the primary IP insurers.

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