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Demystifying Cyber Insurance

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Introduction

- What is cyber?
- Nomenclature

What specific risks does cyber insurance cover?

- **First party risks** - losses arising from a data breach

Breach response

- Forensic costs,
- Notification of data subjects
- Credit monitoring/call centre
- Legal costs and PR costs

- **First party risks** - losses arising from a failure of network

Business Interruption (add-on)



- **Third party risks**

1. **Security liability**

- Claims arising out of unauthorised access to/use of an organisation's computer network e.g.:
 - TPLs arising from loss of personal data, for example, credit obtained under stolen identities
 - TPLs arising out of Point of Sale terminal, for example, the skimming of credit cards
 - Network security TPLs, for example, employee vendettas
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2. **Privacy liability** (breach of data protection legislation, e.g. Data Protection Act 1998, Privacy and Electronic Communications Regulations 2003) e.g. claims arising out of:

- Invasion of privacy
- Damages arising out of identity theft
- Actions from connected third parties e.g. banks, retailers
- Regulatory actions brought by the ICO resulting in fines and penalties (not presently insurable under domestic law)

What are the threats? Understanding the exposures

- Theft or loss of physical records
- Theft or loss of laptops/memory sticks
- Hacking for financial gain/activism/state sponsored
- Planting of malware in order to access network

- Denial of Service attacks
 - Third party suppliers responsible for organisation's data e.g. cloud service providers
 - Employees (with or without vendettas) including insider-assisted data loss
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The Data Protection insuring clause in focus

- Forensics – identifying and closing the vulnerability (where necessary); identifying the data subjects affected by data breach
 - Legal – specialist lawyers to advise on the response required by relevant law and to draft appropriate notification correspondence
 - Notification – the cost involved in notifying all affected data subjects
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- Credit monitoring/call centre – may be offered to affected individuals as part of PR exercise and to mitigate against any potential claims
 - PR – perhaps the most serious threat to business following a breach
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Quantifying the loss of a data breach/network failure

- Business interruption – loss of income if computer system down for a period of time following a hack attack
 - In the US, the average cost of a data breach is \$214 per record
 - In the UK, the average cost is £71
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What is and isn't covered under a cyber policy?

- **Third party losses**

Standard E&O analysis – wrongful acts which gives rise to liability for:

- Breach of duty
 - Infringement of IP rights
 - Defamation
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- **First party losses**

- ✓ Forensics
 - ✓ Notification
 - ✓ Legal fees
 - ✓ Credit monitoring/call centre
 - ✓ PR
 - ✓ Business interruption (add-on)
 - ✓ Data loss recovery (add-on)
 - ✓ Cyber extortion (add-on)
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What is and isn't covered under a cyber policy? contd

- First party losses under a cyber policy are traditionally triggered by an “event”
 - No requirement of a “claim” for “damages” arising out of a “wrongful act” type analysis
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What is and isn't covered under a cyber policy? contd

- × The cost incurred by management dealing with enquiries from affected data subjects (not easily quantifiable)
 - × Virus software upgrades
 - × Security consultants
 - × Replacement or repair of physical item e.g. stolen laptop, failed server
 - × Data loss recovery (unless purchased as an add-on)
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Do other policies cover data breaches?

- × Property (data not property)
 - × EL/PL
 - × Crime/Bond
 - × K&R (expect maybe extortion or threat – rarely reported by policyholders in any event due to adverse publicity)
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Managing Risk

- Cyber insurance should compliment the risk management program of any business, not be purchased instead of
 - Businesses should have procedures implemented in the event of a data breach, and they should be updated on a regular basis
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Emerging Risks

- Cybersecurity is a fast evolving area
 - Recent attempt by hackers trying to access confidential information in respect of xbox 720 highlights the risk to business – access to such information could take entire company down. Can insurance assist?
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EU draft Regulation – why it matters

- Mandatory notification to national regulator
 - Requirement to notify affected data subject in the event of a breach
 - Imposes requirements that businesses may find costly to comply with
 - Increased demand for cyber insurance in the UK?
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