

**BOOTING UP:
INITIAL THOUGHTS FOR THE PRACTITIONER
EVALUATING E-BUSINESS RISKS**

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I. Reviewing Your Risks

A. Inventory Your Technology Uses

What kinds of technology does the client have?
E-mail? Web Site? Online shopping?
Databases? Intranet?

How does the client use the technology?
Big legal differences - in law, jurisdiction, etc
Internal only? Commerce?
Local or worldwide?
Do you Market? Store databases?

What data does the client generate and store?
Sensitive content?
(Health records, financial records, trade secrets)
Sensitive persons?
(Minors, students, patients, employees)

B. What Types of Risks Are Created?

These types overlap:

“First Party” Harms - Virus, Hacking, Business Interruption,
Bad Contracts
Biggest = Proprietary Information

“Third Party” Harms - Someone Else’s Business Interruption,
Defamation, Hostile Environment, Spamming

“Regulatory Harms” - Export Controls, Trade Practices
Biggest = Privacy (HIPAA, COPPA, GLB)
COPPA - 13 yr olds (arbitrary age)

II. Reviewing Your Risk Prevention

A. Technology Solutions

Traditional and Obvious: Passwords and Firewalls - keep
outsiders away

New and More Flexible: Smart Cards and Biometrics
No longer want to keep outsiders away

B. Process Solutions

Technology Useless Without Good Implementation

Examples: filtering - VBS extensions

Never changing passwords

Training and Culture of Importance of Managing Risks

Not opening viruses, etc.

Trust but verify - can get software to help

A little Detective Work:

Google-ing around for IP and other violations

C. Legal Solutions

Biggest problem: people send tech issues to tech department.

Downplay the “E” in E-Business:

Approach Must be Multi-Disciplinary

Build a team:

Talk to Managers, IT, Legal Counsel Together

Most Important Not Tech, But HR/Employment
Vulnerability is the Employee
Accidental
Intentional - Departing

Yes, There is Computer Law:

Control jurisdiction and IP rights -
from first website development contract
Your web site doesn't infringe on others rights
Regulatory matters - privacy policies
Third-party vendors - marketing - Spam!

But Must Take "Holistic" View as Well -

Examples:

HR - Noncompetes, confidentiality,
Acceptable use policies, monitoring
Vendor Ks - limits on liability, disclaimers,
IP rights protection

III. Management - Not All Risk Can be Prevented

A. Insurance

Survey existing policies - E&O, D&O, CGL
New products for cyber-risks

B. Disaster Planning

Particular Attention Post Sept 11
Off Site Backup Hosting - contracts complicated
Avoid biz interrupt - yours and others
Backup in multiple technologies
Escrowing source code

C. PR Planning

Trust - particularly in privacy - is a big market issue

As you all know well, there is no magic shield - anyone can sue for anything. But you can minimize the risk for your client by first understanding it, and assessing it, then planning the steps you need to take to address the risk, if possible. Conducting this sort of evaluation can make sure that the new realities of the high tech work place and marketplace are positive tools for your client's business, not unforeseen headaches for their legal budget.

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