Risk Management for a Newsroom in Crisis
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Media Coverage Trigger

A look at the policy "trigger"
(Hiscox version)
The performance of media activities by you or anyone on your behalf during the policy period results in a claim against you that arises from covered media or advertising, regardless of when such claim is made or where such claim is brought, and including but not limited to any claim for any actual or alleged:

-torts will be listed........
Dissecting the coverage “trigger”

“The performance of media activities”

look for broad definition of media activities

“Media activities” means:
- the gathering, acquisition, investigation, collection, researching, creation and compilation of media content;
- any broadcast, transmission, dissemination, telecast, cablecast, syndication, serialization, podcast, streaming, or production of media content;
- any publication, republication, or dissemination of media content including any special editions or supplements to such content;
- any digital, online, or electronic dissemination of media content;
- The release, distribution, licensing, sale, lease, or exhibition of media content:
regardless of the mode or method of communication of such media content.

Dissecting the coverage “trigger”

“by you or anyone on your behalf”

covers freelancers, volunteers, leased employees, etc.

“during the policy period”

activities occur during the policy period

“results in a claim against you that arises from covered media or advertising,”

covered media must be carefully defined on the declarations page
Dissecting the coverage “trigger”

“regardless of when such claim is made or where such claim is brought,”

worldwide cover

“and including but not limited to any claim for any actual or alleged:”

“open peril”/“all risk”

Typical covered media perils

- **Any defamation including libel, slander or trade libel**
  - for libel or slander to occur the information has to be false, communicated to a third party and have caused damage to one’s reputation or business (Libel, Slander, Trade Libel)

- **Any disparagement or harm to character, reputation or feelings**
  - a broadcast or publication that damages a person’s position in the community or business environment in which he/she interacts
Media Perils, con’t

- Infringement of copyright, title, slogan, trademark, trade name, service mark or service name
  - unauthorized copying, reproduction, distribution or performance of copyrighted work without the consent of a copyright owner
  - unauthorized use of a title, phrase, mark, name, jingle or symbol associated and identified with a particular product or service

Media Perils, con’t

- Any invasion of privacy or publicity including intrusion, public disclosure of private facts, false light or use of name or likeness for commercial gain
  - Right of privacy – right of a person to be left alone
  - Intrusion – usually associated with newsgathering activities (use of tape recorders, cameras or other electronic devices to record a person’s private activities)
  - Disclosure of private facts – generally involved in sensational disclosure of information w/o consent (e.g. disclosure of private facts about person’s sexual activity, health, etc.)
  - Name or likeness for profit – appropriating a person’s name or likeness for advertising or commercial purpose for one’s own use or benefit
Media Perils, con't

- **Outrage, outrageous conduct or infliction of emotional distress**
  - behavior that exceeds expectations, resulting in public humiliation or excessive ridicule (e.g. "shock jocks" or editorial cartoons)

- **Trespass, false arrest, wrongful entry, unlawful detention, false imprisonment, wrongful eviction, eavesdropping, or malicious prosecution**
  - typical occur in the collection or acquisition of content

- **Negligent content**
  - Negligent misstatement, error or omission in content

Typical Exclusions

Generally exclusions fall into two categories:

- exposures that are in the insured's control
  (e.g. false advertising of own product)

- exposures that are against public policy to insure
  (e.g. fires, penalties and criminal acts)

Note: "all risk" forms will have more exclusions than named perils
Common Media Exclusions

Exclusion samples:

- ... or dishonest conduct or violation of law...
  (however, look for a carve back)
  - final adjudication or your own admission
  - conduct was approved in advance by your legal counsel on the basis of a good faith belief that it would be protected from liability by the First Amendment of the US Constitution

- for or arising from any act that a jury or court finds to be dishonest, fraudulent or criminal

- "Damages" or "loss" does not include:
  - civil, regulatory or criminal fines, sanctions, taxes or penalties, including those imposed by any federal, state, or local governmental body

Optional Coverage for Media products

Note - 1st Party enhancement coverage
(vs. 3rd party liability)

Subpoena defense (sub-limits, coinsurance?)

Pays reasonable and necessary attorney's fee and legal costs the insured incurs in proceedings to quash or challenge the scope of a subpoena ordering the insured to disclose or produce any information or material gathered, acquired, collected, created or compiled

Provided such information or material was gathered, acquired, collected, created or compiled for the purpose of the creation, production or dissemination in a publication, broadcast or transmission.
Optional Coverage for Media products

Reporters Shield (sub-limits w/ coinsurance)

- any court ordered fines and/or court ordered penalties that are imposed against for your in good faith failing to comply with an order to disclose or produce any information or material gathered, acquired, collected, created or compiled by you, provided such information or material was gathered, acquired, collected, created or compiled for the purpose of the creation, production or dissemination in a publication, broadcast or transmission.

Media Checklist

- Key considerations:
  - ✓ Occurrence (as opposed to claims-made)
  - ✓ Open perils/all risk (as opposed to limited named torts)
  - ✓ Worldwide cover
  - ✓ Affirmative cover for punitive damages (where allowed by law)
  - ✓ Broad additional insured cover – allows insured to cover at own discretion
  - ✓ Carve back for fraud or dishonesty where not yet established by a final adjudication
  - ✓ Severability as to board members, executive officers, in-house counsel or risk managers