New World Disorder:
E-Commerce Blurs Borders

By Robert C. Meder

As the New Economy claws its way out of its freshly hatched shell, the perils it presents are global. Once a company hits the bandwidth, it can no longer enjoy the ease of purely domestic risk and insurance expertise. Linked to a framework that ignores political boundaries, U.S. companies with an online presence are being forced to recognize the implications of being virtual multinationals. Insurance coverage and risk mitigation must now take on these worldwide implications.

Cyberextortion
"Due to the global nature of the Internet, both crimes and litigation can now arise from anywhere in the world, not just the country in which the organization is domiciled," says Jeremy Sharpe of Andrew Wallas & Marsh Ltd., a wholesale broker in London with expertise in financial institutions and e-commerce.

The recent virus epidemics that virtually paralyzed companies around the globe – affecting systems from the local Mom-and-Pop grocery to multinational insurance companies – illustrate this reality. Such intentional acts can be committed anywhere. "[Because] perpetrators don't need to be located anywhere near their targets, the Web is an ideal facilitator of extortion," Sharpe says.

Likewise, claims scenarios are arising today that could not have been anticipated just a year ago. Consider that according to a survey of fifty-five hundred businesses conducted by Ernst & Young, 31 percent of financial losses arising from the use of computers were the result of hackers, with nearly half of those attacks carried out by employees. Or, given that there is little legal regulatory cooperation between nations, registered domain names can be left unprotected outside the firm's country of origin.

Careful consideration of policy wording and coverage is vital to protecting companies with expanding exposures. But, while comprehension of the specific risks is increasing worldwide, awareness of the products to insure those risks may not be.
In a survey conducted at June's Association of Insurance & Risk Managers Conference, Lloyd's of London found that three-quarters of U.K. businesses lack coverage for damages resulting from cyberrisks, such as virus and hacker attacks, even though 12 percent said their systems had already been breached by hackers.

"This survey paints a very worrying picture of unprotected businesses beginning to count the cost of cybervandalism," says Lloyd's chairman Max Taylor in response to the findings. "This will continue until organizations learn that tighter security and closer relationships between IT professionals and risk managers are vital if revenues and costs are to be protected."

Culture Clash
Internet privacy is another issue that has not been consistently addressed globally, says William Savino, partner at law firm Rivkin Radler & Kramer LLP, in Uniondale, New York. "In the United States, Internet privacy is regulated for each type, such as driver's privacy or child online privacy. In Europe, however, privacy is treated on a more universal basis, with personal identifiable information remaining private unless you consent to its release and use," Savino says.

Integrating these approaches is not impossible, according to Chris Tait, European manager for Chubb's Technology Insurance Group. He says technology insurance products in Europe are different from those in the United States more in terms of format than content. Encompassing elements from multiple regions into a global insurance program is possible.

For example, in growing markets like the United Kingdom, Germany, Holland, France and Scandinavia, there are specific policies dedicated to, and underwriters specializing in, technology.

"[We have] found it very important to have expertise locally in Europe to deal with cybercoverage requests, as it allows us to more fully understand how our clients transact business," says Kenneth Chung, vice president at Chubb Insurance Company of Europe SA.

But despite the creative approaches to solve e-risks, the same dilemma exists regardless of location. Lack of loss experience, and more importantly, case law, in the global technology sector has presented unique challenges to lawyers trying to litigate the issues and insurers trying to cover them.

As companies expand over the Internet, the technical make-up and evolving exposures are not the only risks. Protection against directors' and officers' (D&O) exposures is becoming very important abroad. Even without a bricks-and-mortar establishment in a region, companies are susceptible to the governing D&O regulations in the countries where they have an Internet presence.

"D&O has become an issue for companies outside the United States, as laws have been changing within the last few years," says Urs Bannwart, senior account manager at Swiss insurance broker VZ VermogensZentrum, in Zurich. "[And] increased sums claimed in suits have raised premiums."

Howard McClure of broker Palmer & Cay, in Atlanta, finds that while D&O is a big issue in Europe, attention should be paid to local coverage terms. "German D&O policy forms are very broad," he says. "[For example,] in Germany, it's interesting that there is no insured-versus-insured exclusion – so the corporation can essentially sue itself and the policy will respond."

Chung observes that awareness of D&O issues has increased dramatically in western Europe, but not so much in the east. "Eastern European countries like Poland and the Czech Republic typically require smaller limits, anywhere from one hundred thousand dollars to one million dollars. Demand usually comes from the client's association with a multinational parent or business partners." Concerns over D&O insurance are increasing further east as well. McClure adds that, "even in a place like Australia, the legal climate has become much more severe," which has resulted in a substantial increase in claims activity. At present, most D&O policies issued in the United States contain worldwide policy territory wording. With the increased activity abroad, this may become more challenging in the future.

"Most stateside D&O contracts contain worldwide territory wording, so U.S. directors are covered," says A. Quentin Orza, vice president of RLI Insurance Company's Executive Products Group. "But borders are blurring, with a lot of intermingling on the boards. The policy wording should be examined." By the same token, foreign companies expanding presence in the Untied States should be aware of the unique D&O issues involved. "They may find themselves confronted with the complex and sophisticated securities laws of the United States," says Orza. "It can be a real nightmare. Consequently, they need to have their D&O coverage evaluated by proper counsel."

Moving Fast

Traditionally, when a U.S. multinational client began expansion outside the United States, it would rely upon the capabilities of its existing insurance companies and brokers to address its insurance needs. Many of the large multinational insurers such as Chubb, AIG, ACE and Zurich have the ability to provide local coverage, issue local policies and provide the necessary local services. Multinational clients could also depend on the non-U.S. networks of their insurance brokers, such as Marsh and Aon, to provide local client service. Or, companies could consult with their domestic advisers, lawyers and accountants who would then refer them to their European associates.
But the new age has created a new dynamic. These clients now face the possibility of outgrowing the capabilities of their insurers and brokers, who may have been chosen when the firms were much smaller and less sophisticated.

"We see firms moving into Europe without the introductions to traditional professional service experts, with a much greater role for the venture capitalists who fund the companies in the United States and then hold their hands when they enter into the European market," says Emma Jones, a principal at United Kingdom-based Techlocate.com. In many cases, these companies are also bypassing the Investment Promotion Agencies, which have been set up across Europe to specifically help investors who are new to a territory by introducing them to local professionals. "By not contacting locational agencies, the expanding company may also be losing out on considerable financial incentive packages," she says. "It pays to talk to the local folks."

The main driver in this process is speed. "Fast companies are unlikely to be concerned with talking to government agencies," Jones says. They can run the risk of moving into a country without fully understanding the regulations, which despite being a part of a single market, still differ from country to country in Europe. The right advice is critical, not just for insurance but taxes, law, real estate and a host of other considerations.

It is anticipated that as e-business continues to expand globally, new rules will be established to ease the transition. For example, recent passage of the Electronic Signature Law in the United States will allow businesses to do away with the traditional need for pen and paper in signing contracts and legal documents – opening a whole new can of worms for lawyers and insurers.

At this point, the best advice is to stay current. If your company fails to keep up, you might find yourself lost in the confusing maze of a meaner, rougher world.