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Understanding your Cyber Risk – A View From Canada

Blaney McMurtry LLP

At Blaney McMurtry, our clients and their policyholders regularly face the uncertainty of evolving cyber risk. While an element of chance is present in most business endeavors, cyber and electronic risks pose particular challenges as they are singularly difficult to predict and quantify. Breach by hackers was widely regarded the most significant electronic risk in Canada few years ago, before recently being supplanted in degree of concern by ransomware and denial of service attacks.

It is no longer simply the breach or attack itself which is of concern, but also the knock-on effects. Are businesses sufficiently protected against business interruption if their systems must be shut down for a few days (or more)? What if one of their key suppliers cannot operate due to a cyber event? Are they protected against such contingent business interruption? Are systems sufficiently secured and insured against physical results of cyber-attacks?

The scope of data-risk is also growing. Business now faces legal exposure arising not only out of loss of information, or access to systems. There is now growing concern relating to potential liabilities emerging from the way businesses use the personal identifiable and confidential information they have legitimately collected. Has their disclosure to their customers about what information they collect and how they intend to use such information been sufficiently transparent? Is the customer consent that they received sufficiently broad to allow them to make use of the collected data? Privacy laws in Canada are moving to reflect legal reforms elsewhere, including the GDPR. Privacy risk is expanding.

Management of these risks must now be regarded as a core business operation. Data security and privacy concerns must now be built into every facet of day to day business. This reality will only grow more clear as digitalisation of business operations increases.

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Big Data Means Big Challenges – And Opportunities – A View From Spain

LCRODRIGO ABOGADOS

In Spain, the Insurance industry is currently in the midst of a profound process of digital transformation. According to the latest studies carried out, three out of five companies have set in motion initiatives related to new technologies and about 44% of insurance entities have embraced Big Data in their processes. Although there is still a long way to go, the number of companies using new technologies in order to process huge amounts of data to develop or improve their business is growing all the time.

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The disruption of new technologies and the high data volume in the hands of companies explain the entry into force of the new General Data Protection Regulation (GDPR), which will replace the current domestic regulations in the European Union (EU) and will take effect on May 25, 2018. In Spain, a new Organic Law will replace the former Organic Law 15/1999 of December 13 on the Protection of Personal Data. On November 10, 2017, the Council of Ministers approved the submission to Parliament of the Data Protection Bill.

Companies will now need to take additional precautions while processing their clients' personal information and creating suitable protocols in order to live up to the responsibility that the processing of personal data entails.

Insurance companies with Big Data systems or wishing to implement a Big Data system, will need to pay close attention to this Regulation and raise their diligence standards if they wish to avoid penalties of up to 20 million euros or 4% of their revenues.

Nevertheless, in terms of data protection, Spain presents a higher degree of maturity compared to other Member States since the contents in the previous Data Protection Act did not differ significantly from the contents in the GDPR and the Spanish Agency of Data Protection (AEPD) ensured its strict compliance. Indeed, Spain is a benchmark for Data Protection in the EU and exerts great influence on Latin-American countries, such as Argentina or Mexico, who have developed their own data protection regulations using the Spanish Personal Data regulation as a reference.

Insurance companies should take the occasion that this new regulation provides to step into the Big Data era with strong strides and be aware of both the risks and opportunities that this technology presents.

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Autonomous Vehicles and Potholes on the Road to Prosperity – A View From the U.S.

MARSHALL DENNEHEY
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As we travel down the road to autonomous vehicles, many issues and potholes exist. Manufacturers, suppliers, business users, drivers and insurers, among others, are just beginning to grapple with the changes that progress toward autonomous vehicles requires. The insurance framework for autonomous vehicles will need to adjust.

We tend to view the idea of autonomous vehicles by looking to the end game - truly autonomous vehicles. However, there is much to be done to reach that point and issues to address regarding regulation and liability for accidents. Here in the U.S., the National Highway Traffic Safety Administration recently issued Automated Driving Systems 2.0: A Vision for Safety, which categorizes levels of automation and provides guidance for developing legislation for autonomous vehicles. In fact, many of our vehicles have levels of automation now, forward collision mitigation, adaptive cruise control, and lane change assist to name a few. We have had data in motor vehicle "black boxes" for several years. Variations in the levels of autonomy and the data involved in their use lead to discussions about how to determine liability among the manufacturers, suppliers, drivers, governments and infrastructure entities who will be part of this system.

"These are interesting times. The road before us soon will be well traveled. We will be wise to prepare for it."

When accidents occur, questions will arise. Why did the autonomous vehicle run the stop sign – programming error, failure to understand limitations of the system in inclement weather, failure of driver to take over controls, failure to maintain infrastructure necessary for operation? How do we obtain, and protect, the data autonomous vehicle operation will generate and how will a party in interest prove its position?

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