

What Every IP Lawyer Should Know About Insurance

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What Types of Liability Coverage Do Your Clients Need?

Basic Coverages

- Commercial General Liability
- Directors and Officers Liability
- Errors & Omissions Liability

IP and Industry-Specific Coverages

- Technology Errors and Omissions
- Media Liability
- IP Defense
- IP Abatement
- New Forms?

Network Security and Privacy Policies

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Commercial General Liability ("CGL") Policies

1. The most basic type of lawsuit insurance
2. Covers only claims for ***damages***
3. Provides defense for ***suits***
4. Generally provides limited coverage for IP-related claims
5. Provides coverage for claims alleging "property damage," "bodily injury," "personal injury" and "advertising injury"

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CGL Policies: Coverage for infringement?

CGL policies cover claims for "personal and advertising injury," which includes "[i]nfringing upon another's copyright, trade dress, or slogan in your "advertisement."

But…

"Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

e. Oral or written publication, in any manner, of material that violates a person's right of privacy;

f. The use of another's advertising idea in your "advertisement"; or

g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

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CGL Policies: Coverage for infringement?

Most CGL policies also specifically exclude most infringement claims.

i. **Infringement Of Copyright, Patent, Trademark Or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

So, what DOES the policy cover?

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CGL Policies: Coverage for infringement?

- Courts have held that the infringement and alleged injury must actually arise from the insured's *advertising activities*
- Just because an infringing product is advertised does not necessarily trigger coverage
- Sales ≠ Advertising
- Patent infringement least likely to be covered, unless advertising technique itself is patented.

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