

Insuring Innovation: Protecting Your Organization in the Age of Generative AI



Devin Bates
dbates@mwlaw.com
(501) 688.8864

04/08/2024

The decision to integrate Generative AI (“GAI”) into an organization is one that occupies significant space these days in many corporate board rooms. In today’s rapidly evolving business landscape, the adoption of GAI technologies holds immense promise for driving innovation, enhancing productivity, and gaining a competitive edge. However, along with the opportunities presented by GAI, organizations also face a myriad of risks and uncertainties. From data breaches to algorithmic errors, the integration of GAI into business operations introduces unique challenges that require careful risk management and mitigation strategies. One crucial aspect of risk management is securing appropriate insurance coverage tailored to the specific risks associated with GAI adoption. This blog post will explore some of the types of insurance that can be implicated in GAI related disputes and litigation that may arise.

Commercial General Liability (CGL) Insurance. Commercial General Liability (“CGL”) insurance often serves as the foundation of a comprehensive insurance program for businesses. CGL insurance provides coverage for third-party bodily injury, property damage, and advertising injury claims arising from the operations of the business. In the context of GAI adoption, CGL insurance can offer protection against liability claims stemming from accidents or incidents related to the deployment and use of GAI systems, such as property damage caused by AI-powered machinery or equipment.

Cyber Insurance. Cyber insurance has become increasingly essential in today’s digital landscape, where even the best protected organizations can become the victim of cyber threats and data breaches. Cyber insurance provides coverage for expenses related to data breaches, including forensic investigations, data restoration, notification costs, and legal expenses. Given the significant reliance on data in GAI applications, cyber insurance is critical for protecting against the financial and reputational damage resulting from cyberattacks, data breaches, and unauthorized access to sensitive information.

Errors and Omissions (E&O) Coverage. Errors and Omissions (“E&O”) coverage, also known as professional liability insurance, is designed to protect businesses and professionals against claims of negligence, errors, or omissions in the provision of services. In the context of GAI adoption, E&O coverage can provide financial protection against claims arising from errors or inaccuracies in GAI-generated content, recommendations, or decisions. This coverage is essential for mitigating the risk of liability claims related to the performance or functionality of GAI systems.

Malpractice Insurance. For doctors, accountants, lawyers, and some other professions, E&O coverage is often referred to as malpractice insurance. This often plays a critical role in offering a layer of protection for a range of possible claims. Depending on how GAI related harms manifest and become the subject of litigation, malpractice insurance can offer protection for the targeted professional.

Business Interruption Coverage. Business Interruption coverage is designed to protect businesses against financial losses resulting from disruptions to normal business operations. In the context of GAI adoption, business interruption coverage can provide reimbursement for lost income, ongoing expenses, and additional costs incurred as a result of unforeseen interruptions or downtime caused by GAI-related incidents, such as system failures, cyberattacks, or data breaches. This coverage helps businesses mitigate the financial impact of operational disruptions and maintain continuity during challenging times.

Directors and Officers (D&O) Insurance. Directors and Officers (“D&O”) insurance provides coverage for the personal liability of directors and officers of a company arising from their managerial decisions and actions. In the context of GAI adoption, D&O insurance can offer protection for directors and officers against claims alleging mismanagement, negligence, or breaches of fiduciary duty related to decisions about GAI adoption, implementation, or oversight. This coverage aids in the attracting of top talent to leadership positions and protecting key decision-makers from personal liability risks.

Call to Action

Some GAI related harms could be covered by existing insurance policies such as some of those outlined above. GAI adoption and integration has become ubiquitous enough that carriers could implement exclusions for an insured using GAI. At the time that they are making GAI adoption decisions, it will be prudent for organizations to contact their broker and/or review existing policies to look for clauses that address GAI or carve out exclusions. But absent such exclusionary language, depending on the type of harm stemming from GAI adoption, a variety of types of insurance such as those outline above can aid an organization the wants to pursue GAI transformation, but do so with the added reassurance that there is insurance to cover the cost of harms.

Conclusion

As businesses embrace the transformative potential of GAI technologies, proactive risk management and insurance planning are essential for safeguarding against potential liabilities and disruptions. By securing comprehensive insurance coverage tailored to the specific risks associated with GAI adoption, businesses can protect their assets, mitigate financial exposure, and foster confidence in their AI investments.

Partnering with experienced insurance providers and risk management experts is critical for designing a robust insurance program that addresses the diverse and evolving risks of GAI adoption. By staying informed, proactive, and well-prepared, organizations can navigate the complexities of GAI-related liabilities and thrive in the GAI age.