What Every Lawyer Should Know About Insurance Coverage for Intellectual Property Risk in the Age of Gen AI

By Micah E. Skidmore | August 12, 2026

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Companies in the technology, manufacturing, energy and research industries — those enterprises likely to have significant IP portfolios — have long understood the risks associated with enforcing and defending intellectual property ("IP") claims. With the ubiquitous utilization of generative artificial intelligence ("gen AI") applications, many more businesses, large and small and across all industries, now have IP risk. Generative artificial intelligence tools can create text, code and/or images that are substantially similar to protected works. Companies reliant on gen AI applications for their operations might expect copyright, trademark or patent infringement claims. Companies whose protected works may be included in large language models, training data or the databases on which others rely for gen AI content should be mindful of the need to enforce IP claims against others.[1] For companies on either side of this risk equation, our clients often seek the best insurance or other risk transfer mechanisms to address and minimize this exposure.

Some businesses may take comfort in the fact that subcontractors or vendors, whose operations may expose the contracting party to IP risk, are required to indemnify the contracting party for this contingency. But while most indemnification obligations are supposed to be supported by a corresponding insurance obligation, what subcontractor insurance obligation ensures that the subcontractor has the financial wherewithal to defend and indemnify a contracting party for an infringement claim?

The fact is, there is insurance coverage for IP risks, but, particularly in the context of the emerging risk created by AI, it is not well understood by many lawyers, underwriters, insurance claims handlers or the judiciary. For counsel and risk managers grappling with this emerging exposure, here are five points that every lawyer should understand about insurance coverage for IP risks:

- **Commercial General Liability ("CGL") Insurance.** The traditional CGL insurance coverage maintained by most businesses includes some coverage for advertising-related copyright and trade dress claims. In addition to covering damages for "bodily injury" and "property damage," CGL policies also protect insureds against claims for "personal and advertising injury." In many Insurance Services Office ("ISO") CGL forms, "personal and advertising injury" includes "[i]nfringing upon another's copyright, trade dress or slogan in your 'advertisement.'" The same form excludes coverage for "personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other IP rights, along with excluding coverage for actual IP infringement itself; provided that such other IP rights do not include the use of another's advertising idea in the insured's "advertisement," which includes "a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters." For purposes of this definition, "[n]otices that are published include material placed on the Internet or similar electronic means of communication." While this coverage requires navigating a number of terms, insureds should understand that copyright, trade dress and

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potentially other IP claims involving an insured's advertising may find coverage under a traditional CGL policy. *See, e.g.*, *Cincinnati Ins. Co. v. Select-Tech, Inc.*, 2026 U.S. Dist. LEXIS 7275, at *12, 2026 WL 98760 (E.D. Tenn. Jan. 14, 2026) ("In this case, Cincinnati Insurance has a duty to defend Select-Tech in the Grover action because Grover's Lanham Act claim for false designation of origin alleges an advertising injury that is potentially not covered by policy exclusions."); *Liberty Mut. Fire Ins. Co. v. ACI Int'l, Inc.*, 2025 U.S. Dist. LEXIS 98929, at *25, 2025 WL 2376697 (C.D. Cal. May 21, 2025) ("The FAC clearly alleges that Defendants, including ACI, infringe upon Vans' trade dress in connection with advertising and injure Vans and the public by doing so. Under the broad duty to defend standard, these allegations are sufficient."); *Mountainville Commerce, LLC v. Auto-Owners Ins. Co.*, 778 F. Supp. 3d 1186, 1199 (D. Utah 2025) (holding that a general liability insurer had a duty to defend underlying unfair competition, trade dress infringement and related intellectual property claims). This is particularly important given the fact that defense costs under a CGL policy are typically accounted for outside the policy limit.

Note that in January 2026, ISO introduced a new endorsement (CG 40 47 01 26), which purports to exclude coverage under the CGL policy for bodily injury, property damage and personal or advertising injury arising out of, or attributable to, gen AI. Corporate counsel and risk managers should be wary of agreeing to a broad CGL exclusion, in this endorsement or any other, limiting or excluding coverage for gen AI risk.

- **<u>Errors & Omissions/Professional Liability Insurance</u>.** Apart from CGL coverage, many companies maintain some form of errors & omissions ("E&O") or professional liability insurance coverage. In some cases, particularly with regard to technology E&O policies, such insurance may include some coverage for copyright, trademark or even patent infringement claims. Unlike CGL insurance, these policies are most often written on manuscripted forms, whose terms may vary significantly in scope, conditions and limits. Nevertheless, insureds should not overlook the significant value that this insurance can provide in the event of a claim for substantive IP infringement beyond merely advertising-related injuries. Professional liability policies often broadly insure "wrongful acts" arising out of the rendition of some defined "professional service," and not all E&O policies contain IP exclusions. *See, e.g.*, *Nichole Sliney Realty Team, Inc. v. Mount Vernon Fire Ins. Co.*, 2026 U.S. Dist. LEXIS 27127, at *11 (D. Mass. Feb. 10, 2026) (holding that a liability insurer had a duty to defend underlying copyright infringement claims under a professional liability policy insuring claims arising out of any negligent act, error or omission, but excluding "conversion, misappropriation, commingling, improper use, theft, embezzlement or defalcation of funds, account information or other property"). As a result, insureds may be able to obtain both defense and indemnity coverage for underlying IP claims under such policies. *See, e.g.*, *CivilGEO, Inc. v. Hiscox Ins. Co.*, 2026 Bankr. LEXIS 1156, at *20-22 (W.D. Wis. Bankr. May 8, 2026) (finding that Hiscox had a duty to defend underlying copyright infringement claims under a professional liability coverage form with a technology services/IT consulting services endorsement); *Scholastic Inc. v. St. Paul Fire & Marine Ins. Co.*, 2025 U.S. Dist. LEXIS 179713, at *17, 21 (S.D.N.Y. Sept. 15, 2025) (ordering Travelers to pay Scholastic's settlement and defense of underlying trademark infringement litigation under a professional liability policy).
- **<u>Cyber/Network Security/Privacy Liability Policies</u>.** Like E&O or professional liability coverage, so-called "cyber" insurance policies may also include specialized coverage grants addressing certain IP risks. *See, e.g.*, *Ill. Cas. Co. v. Kladek, Inc.*, 792 F. Supp. 3d 930, 937, 940 (D. Minn. July 23, 2025) (construing ambiguities in a cyber endorsement in favor of the insurer's duty to defend underlying Lanham Act claims). Importantly, cyber insurance coverage includes both first-party and third-party components. In addition to providing

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coverage for potential liability claims arising out of a breach event, some cyber policies provide coverage for lost profits/income sustained during the period that operations are completely or partially suspended because of a cyber or security incident. In some policies, what qualifies as a cyber or security incident may include nothing more than unauthorized access to a computer system or network. While most cyber policies have some form of IP exclusion, some do not. Those that do may limit the exclusion to third-party claims or to certain types of IP (e.g., patents, software copyrights or trade secrets), without excluding first-party losses or other IP (e.g., trademarks or other, non-software-related copyrights). In short, depending on the facts and loss relating to a specific claim, a cyber policy may provide some coverage for either first-party or third-party loss and liability. Policyholders should carefully consider this coverage in the event of an IP loss or claim.

- **Crime/Fidelity Bonds.** Although individual terms may vary, most crime/fidelity bonds provide coverage for loss resulting from theft, dishonesty or fraudulent acts committed by an employee of the insured, whether committed alone or in collusion with others. Not all crime/fidelity bonds limit this coverage to the loss of tangible property. *See, e.g.*, *WSFS Fin. Corp. v. Great Am. Ins. Co.*, 2019 Del. Super. LEXIS 265, *6 (Del. Super. Ct. May 31, 2019) (addressing a bond insuring "Loss resulting directly from dishonest or fraudulent acts committed by an Employee, acting alone or in collusion with others"). Likewise, not all such crime/fidelity bonds contain exclusions for IP infringement. Consequently, corporate insureds faced with loss from IP infringement caused by an employee should not overlook potential coverage afforded by a crime/fidelity bond.
- **Dedicated Intellectual Property Insurance.** Apart from the more "traditional" insurance products outlined above, some insurance companies also offer stand-alone insurance policies specifically designed to address IP claims. IP coverage is often classified as: (1) defensive; (2) offensive; or (3) contingent. Defensive IP coverage provides defense and indemnity coverage for third-party liability claims alleging IP infringement. This may include coverage for the insured's defensive inter partes review ("IPR") proceedings challenging the validity of the claimant's patent(s). It may also include coverage for contractual indemnity claims brought by licensees embroiled in litigation over the insured's licensed IP. If the insured is required to withdraw products based on the result of an IP infringement proceeding, some policies may also provide coverage for lost profits/income and/or the cost of withdrawal. Offensive IP insurance, while more unusual, provides coverage for the insured's enforcement of its own IP, such as affirmative IP infringement claims against an unlicensed third party. Some policies also provide ancillary coverage for reputation and brand protection arising from underlying IP violations. Contingent IP coverage is like other litigation risk products, which attempt to limit the insured's exposure to outcomes in existing IP litigation beyond a defined set of boundaries. Many commercial insurers now offer some form of dedicated IP insurance coverage, and with continued underwriting experience and loss histories, the cost of procuring this coverage is increasingly competitive.

In the era of gen AI, IP risk — for both the owners of IP and the users of gen AI applications — is evolving in unpredictable ways. Fortunately, there are a number of insurance tools in the market available to mitigate this potential exposure. Depending on a given set of facts and circumstances, CGL, E&O/professional liability, cyber policies, crime/fidelity bonds, and dedicated IP insurance products can provide significant defense and indemnity coverage for a range of liabilities and losses related to IP-associated risks. With a correct understanding of these products, counsel and risk managers can leverage these resources to address emerging IP threats. We often recommend seeking, and help clients negotiate, tailored insurance coverage terms related to such IP risks in various types of policies. If you have any questions about intellectual property coverage or about

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insurance recovery in general, please contact a member of Haynes Boone's Insurance Recovery Practice Group.

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[1] *See, e.g.*, Andrew Flanagan, Suno Loses Landmark AI Lawsuit to German Performing Rights Society GEMA, Variety (July 31, 2026), *available at* https://variety.com/2026/digital/news/suno-loses-ai-lawsuit-gema-1236825010/.

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