



# New insurance to protect tech providers against risk of infringement indemnity claims

In technology contracts, software providers normally have to give an indemnity to their licensees to protect them against software infringement.

When you think about it, that makes sense. It's not the licensee's fault if the software infringes third party rights. But the licensee is in a position to be sued, so they need to be indemnified against that risk.

In the past, it has been very difficult for tech providers to insure against the risk of these indemnity claims. That's when a third party pursues the licensees for copyright infringement, and the licensees pass the cost to the licensor.

Any insurance cover has generally been prohibitively expensive, with most providers choosing to bear the risk themselves. Given the nature of these claims, they can be very expensive. There may be thousands of licensees, who each are being pursued by the third party for infringement. The tech provider is on the hook for those costs.

But now that is changing. New policies are available to insure tech companies against this risk.

## Typical insurance policies

Software or tech providers can usually take out insurance which covers:

- the cost of defending or pursuing IP infringement claims.
- the cost of defending issues arising out of media content, user-generated content, or their business activities.

PI insurance can cover some of the litigation costs and potential damages. To protect the insurance company from unlimited costs, there is usually a cap on the upper limit recoverable, or the wording will allow for 'reasonable' expenses.

These policies help tech providers pursue those who are infringing on their patent, copyright, or trademark.

## The insurance 'gap'

However, typical insurance policies don't cover the cost of indemnity claims. That's when a licensee is pursued by a third party for infringing the third party's IP. The licensee is entitled to bring an indemnity claim against the tech provider. But the insurance does not extend to these claims.

That leaves a gap in the insurance policy, which exposes the tech company to uninsured risks. The tech company may have to involve itself in wide-ranging and costly litigation with no financial safety blanket.

## Insurance is now available

Insurance is now available at an affordable price to cover the cost of these indemnity claims.

If you don't yet have cover for infringement claims, speak to us about the benefits of this insurance, and how to get a suitable policy.

**Call Ian Grimley: 0117 928 1915 or 07788 584308 or email: [Ian.Grimley@roxburghmilkins.com](mailto:Ian.Grimley@roxburghmilkins.com)  
[www.roxburghmilkins.com](http://www.roxburghmilkins.com)**