



Introduction to Intellectual Property Insurance

Axis Insurance

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What is Intellectual Property Insurance?

Intellectual Property (IP) Insurance is a risk transfer solution that helps companies at all stages manage financial loss arising from disputes involving trade secrets, patents, trademarks and copyrights.

The policy provides coverage against IP-related disputes, including defense against infringement allegations, legal expenses to pursue those infringing on your IP, and broad contractual indemnity protection related to IP clauses commonly found in commercial contracts.

Benefits of IP Insurance

Intellectual property insurance provides critical protection and support for businesses; here are the key benefits to consider



**Attract Investment
Capital**



**Encourage
Innovation**



**Defense Against
Infringement
Claims**



**Protect & Assert
your IP Rights**



**De-Risk
Contractual
Indemnities**



**Balance Sheet
Protection**

Who Can Benefit from IP Insurance?

- Companies **Developing** Technology
- Companies **Deploying** Technology
- Companies **Licensing** Technology
- Companies **Entering** Commercial Contracts

Sources of Intellectual Property Disputes



External

- 1 Former employees & their employers
- 2 Joint partners, licensees & licensors
- 3 Competitors
- 4 Patents trolls
- 5 Contracted entities

Internal

- 1 Current employees
- 2 Partners

Common Intellectual Property Disputes



**Infringement
Allegations**



Title Disputes



**Invalidation
Challenges**



**Breach of
Contract
Allegations**

Coverage Comparison

Standalone Intellectual Property (IP) vs. Errors and Omissions (E&O) Insurance

Type of coverage	CFC 's Standalone IP insurance	A 'typical' E&O insurance
Defence of copyright infringement	✓	✓
Defence of trademark infringement	✓	✓
Defence of trade secrets misappropriation	✓	Sometimes
Defence of patent infringement	✓	✗
Defence of IP ownership disputes	✓	✗
Defence of IP validity disputes	✓	✗
Defence of IP oppositions	✓	✗
Pursuit of copyright infringement	✓	✗
Pursuit of trademark infringement	✓	✗
Pursuit of trade secrets misappropriation	✓	✗
Pursuit of patent infringement	✓	✗
Business interruption for lost profits arising out of a covered claim	✓	✗
Refund of costs incurred maintaining IP rights that are lost in a covered claim	✓	✗

What Constitutes a Claim?

Third Party Claim Means

- a. A written demand for compensation.
- b. A cease-and-desist notice.
- c. A threat or initiation of a lawsuit; or
- d. An express allegation of infringement of intellectual property rights.

Made by a third party against you or against any other third party who you are contractually obliged to indemnify as a direct result of their infringement.

Invalidation Means

An invalidity or revocation action filed by a third party against your intellectual property right.

Opposition Action Means

An opposition action filed by a third party at an intellectual property office against your intellectual property right before the intellectual property right has been granted or registered.

Title Dispute Means

A dispute initiated by an employee or a third party in respect of entitlement to a right, title or interest in an intellectual property right owned by you.

Pursuit Claim Means

- a) A written demand for compensation
- b) A cease-and-desist notice
- c) A threat or initiation of a lawsuit; or
- d) An express allegation of infringement of intellectual Property rights.

Made by you against a third party.

Counter Claim Means

Any action in a court or administrative body, including an intellectual property office, to challenge the registration, validity or ownership of an intellectual property right.

Be Aware of Contractual Indemnities Related to Intellectual Property

What is it?

Contractual indemnities are provisions in most commercial contracts where one party agrees to assume the legal liability of another, effectively transferring risk. These provisions act like insurance for the indemnified party and impose financial responsibility on the indemnifying party. Properly understanding and negotiating these clauses is crucial to avoid unexpected liabilities and ensure they align with risk tolerance and insurance goals.

Why is it important?

Liability insurance policies have specific coverages and exclusions, making it essential to work with legal counsel and an insurance broker to align indemnity language with the insurance program's scope and coverage limits. Failing to do so can result in out-of-pocket expenses for uncovered losses. Offering unlimited contractual indemnity without restrictions is comparable to an insurance company offering unlimited coverage without exclusions—something no insurer would do, so why would any business?

Importance of Contract Review



Risk Identification

Contractual liabilities, though clearly outlined in agreements, are often overlooked. Ironically, parties frequently only recognize these risks when a problem arises.



Risk Assessment

A comprehensive analysis of the potential threats and liabilities associated with the agreement.



Risk Mitigation

Implementing strategies to minimize the probability and severity of the identified risks manifesting into a legal liability or a direct financial loss.



Risk Transfer

The process of shifting identified risks to another party, often through insurance contracts.

Deploying Technology

Licensed & Proprietary IP



Internal

Current Employees & Partners

External

Competitors, Patent Trolls, Joint Partners, Former employees, Contracted entities, Licensors, Licensees

Risk

Infringement Allegations

- Against you.
- Against a 3rd party you agree to indemnify.
- Breach of Contract, such as NDA.
- Your non-payment of licensing fees or royalties

IP Title Disputes

- 3rd party invalidation action.
- 3rd party opposition action.
- 3rd Party title challenge.

Infringement Allegations

- Against you.
- Against a 3rd party you agree to indemnify.
- Breach of Contract, such as NDA.
- Your non-payment of licensing fees or royalties

Infringement Allegations

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Coverage Response

Infringement Allegations

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Defense

Pursuit

Developing Technology

Licensed & Proprietary IP



Internal

Current Employees & Partners

External

Competitors, Patent Trolls, Joint Partners, Former employees, Contracted entities, Licensors, Licensees

Risk

Infringement Allegations

- Against you
- Against a 3rd party you've agreed to indemnify in contract
- Breach of Contract, such as an NDA
- Your non-payment of licensing fees or royalties

- **Obligation to indemnify employees from former employers.**
- **Non-Solicitation of Employees.**
- **Trade Secret Misappropriation.**

- **External party infringing licensed IP you're improving.**
- **External Party breaching your contract.**

Coverage Response

- Contractual Obligation Defense.
- Patent Infringement Defense.
- Filing of Counterclaims.

Employment Contract Breach.

- **Infringement Pursuit.**
- **Breach of Contract Pursuit.**

Defense

Pursuit

The Axis Advantage

Unlike traditional IP Insurance products, which are costly and require a cumbersome underwriting process, Axis Insurance Managers provides an affordable, comprehensive solution featuring a streamlined underwriting process backed by Lloyd's of London.



Contract Review to help you understand your risks.



Development of unique strategies to help mitigate your risks.



Streamlined underwriting with no application required.



Comprehensive coverage.



Policy written in plain, easy-to-understand language.



Affordable coverage for startups to midsize enterprises with revenues of \$250M+

About Axis

Axis Insurance is an award-winning brokerage serving local, national, and international clients with risk management and insurance services. Our professionals analyze business and personal risk to provide advice and solutions that mitigate, reduce, or transfer those risks.

With roots dating back to 1928, Axis has grown into a leading national brokerage with over 350 employees, making it one of the fastest-growing insurance brokerages in the country.

At the core of our mission lies a guiding principle: we transform risk into avenues for opportunity and growth. We believe in strategically leaning into risk for business expansion, balanced by Canada's best-in-class risk management.

Our values are the foundation of everything we do.

Client Focus

Teamwork

Integrity

Innovation

Expertise

Ownership

Exceptional Growth

10

350+

30% up

National Presence

10 physical offices and over 350 employees throughout Canada.

Revenue

We've achieved over a 30% increase in revenue over the last three years.

150

\$400M

Market Representation

150+ leading insurance markets

Gross Written Premium

Over \$400 million

No.1

Assurex

Tech Assure

Industry Leadership

We are recognized across Canada as leading the Aviation, Mining, and Professional Liability industries.

CRIMS

Key Memberships

Memberships to several industry associations

Additional Resources

Ctrl + Click on the image to open the article

1



"An outline of the contract review process."

2



"IP Insurance as an effective way to defend against lawsuits from non-practicing entities."

3



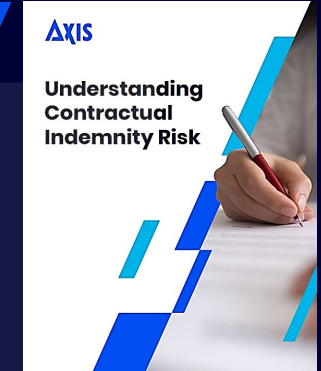
"White Paper discussing IP-related risks & strategies to mitigate them."

4



"A summary of the Intellectual Property Insurance policy."

5




"A review of the interaction between contractual indemnities and insurance."

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