

# Multimedia Liability Insurance Publishing

With publishers constantly updating their methods of content dissemination to ensure maximum global distribution, spanning radio podcast or newspaper to SMS news updates, content providers have never been more at risk.



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# Multimedia Liability Insurance – Publishers

## Policy overview



**Digital content  
engagement  
increased 18% in  
the last year<sup>2</sup>**

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### Advantages

- Occurrence form
- Open perils form
- Worldwide coverage
- Coverage for content in any form including but not limited to, podcast, blog or mobile phone messages
- Acquisitions can be automatically covered
- Final adjudication fraud or dishonesty coverage
- Coverage for insured advertising of their own products and services.

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### Benefits

- One comprehensive policy with optional coverages:
  - privacy and network security liability
  - technology activities
  - miscellaneous professional services
  - hacker damage (first-party loss).
- 25 years experience underwriting Media Liability worldwide
- Underwriting bench strength – lead underwriters with 20+ years
- Bold and creative underwriting solutions to meet even the most complex needs
- Admitted policy form; Hiscox Insurance Company Inc. is rated A (Excellent) by A.M. Best.<sup>1</sup>

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### Who we cover

- Book publishers
- Newspaper publishers
- Magazine/periodicals publishers
- Trade journal publishers
- Online publishers.

# Multimedia Liability Insurance – Publishers

## Comparative checklist

Use the checklist below to spot any gaps in your clients' coverage.

Coverage	Current?	Hiscox
Open perils' protection (not just specific named torts) including, but not limited to traditional libel, slander, invasion of privacy, breach of confidentiality, copyright, trademark perils and also defamation, injurious falsehood, trespass and publicity rights violations.		✓
Occurrence form coverage all media activities which occur during the policy periods, regardless of when the claim is made.		✓
Claims brought anywhere in the world.		✓
Plagiarism, piracy of breach or an implied contract to use a third-party's creative idea.		✓
Breaches of the scope of a license your insured has acquired to use a third-party's material.		✓
Misappropriation of content, formats, characters, trade names, character names, titles, plots, musical compositions, voices, slogans, graphic material or artwork.		✓
Negligence arising out of content.		✓
Coverage for the insured's disclosure of a trade secret within a newsworthy publication.		✓
Costs of prosecuting your insured's own declaratory relief actions in the face of an infringement claim.		✓
Content in any form whether it is on the internet, a podcast or mobile phone message.		✓
Broad definition of media activities ranging from gathering to exhibition of content.		✓
Coverage for our insured's website content and also unauthorized access to this content resulting in a claim for defamation, IP infringement, breach of privacy, outrage, infliction of emotional distress or negligent publication.		✓

# Multimedia Liability Insurance – Publishers

## Comparative checklist

Coverage	Current?	Hiscox
Insured's negligent transmission of a computer virus or malicious code.		✓
Coverage for your insured's own advertising.		✓
Carve back for fraudulent or dishonest conduct where it has not yet been established by a final adjudication.		✓
Affirmative coverage for punitive and exemplary damages (where insurable by law).		✓
Duty to pay coverage with choice of defense counsel (with approval, not to be reasonably withheld).		✓
Prevent the insurer from forcing your insured to accept a settlement.		✓
Enable your insured to to: <ul style="list-style-type: none"> <li>– settle within the retention</li> <li>– control decision to correct or retract content</li> <li>– protect anonymity of a news-gathering source</li> <li>– extend coverage to third parties including but not limited to freelancers, correspondents, stringers, photographers, volunteers and 'leased employees', commissioned or engaged to provide media content</li> <li>– extend coverage for liability assumed under agreement where claims arise out of your insured's content</li> <li>– extend coverage to past, present or future directors, officers, trustees, partners in, or employees</li> <li>– automatically cover new acquisitions with you to 10% of insured's revenues.</li> </ul>		✓
Provide severability as to conditions of or obligations under the policy for persons or entities who are not board members, executive offices, in-house counsel, or risk managers of your insured.		✓

## Multimedia Liability Insurance

### Claims scenarios

Complex claims requires a clear strategy and an insurer on your side. Hiscox specializes in Insurance for the media industry and our dedicated claims team specializes in the exposures that are unique to the media industry. We pride ourselves on handling sensitive indemnity issues with professionalism and tact.



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# Multimedia Liability Insurance – Publishers

## Copyright Infringement



Loss  
scenario

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### What went wrong?

A large reference-book publisher produces and distributes an illustrated biography of a famous American counterculture band that includes, according to the book's jacket, "rare and unseen photography" as well as "seminal posters, memorabilia, and ephemera," along with personal essays and a comprehensive timeline of the band's history. Included within the book's historical timeline are seven reduced-sized images of concert posters for which the publisher did not obtain reprint permission.

The copyright holder sues the publisher for infringement, seeking an injunction against further distribution of the book, the destruction of all unsold books, and actual and statutory damages. Following nine months of discovery, the publisher files a motion for summary judgment conceding both that plaintiff owns the copyright in the posters and that the publisher copied the works without authorization but contending that the use of the images in the book constitutes non-actionable "fair use" of the works.

### The outcome

The trial court agrees and grants the publisher's motion, concluding that the book's use of the copyrighted works was protected because it was sufficiently transformative, made only minimal use of the posters, and did not affect the market for the posters themselves. On appeal, the judgment of the trial court is affirmed.


Defense cost payment	\$525,000
Indemnity payment	\$0
<b>Total loss</b>	<b>\$525,000</b>

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# Multimedia Liability Insurance — Publishers

## Public disclosure of private facts



Loss  
scenario

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### What went wrong?

The editor of a politically oriented gossip blog learns of an online diary written by an unidentified staff assistant who purportedly works in the office of an unnamed U.S. Senator. The diary, which is available on a publicly accessible Web site, contains detailed discussions of the staff assistant's sexual activities, including intimate liaisons with a colleague in the Senator's office, who is identified by his initials ("S.R.") and several physical attributes. The blog editor publishes an item revealing the existence of the diary, quoting excerpts from it, and linking to the Web site where it is posted. The resulting publicity causes the diary's author to reveal her identity.

S.R. sues the diary's author for invasion of privacy based on the public disclosure of private facts and intentional infliction of emotional distress, and he later amends his complaint to assert the same claims against the publisher and editor of the blog. The parties conduct nearly seven months of discovery (including discovery motions practice) and engage in extensive briefing on issues relating to the blog's potential liability.

### The outcome

The court grants summary judgment for the publisher and editor of the blog on the grounds that the suit was time-barred by the applicable statute of limitations. The plaintiff does not appeal.

Defense cost payment	\$325,000
Indemnity payment	\$0
<b>Total loss</b>	<b>\$325,000</b>

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# Multimedia Liability Insurance — Publishers

## Errors and Omissions



Loss  
scenario

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### What went wrong?

As part of its Internet-only content, available only to subscribers who have passwords, a suburban newspaper publishes an online column called “Technology Investing.” The column regularly offers assessments of the relative value of stocks in tech companies. At the end of each column, in small type, is a disclaimer: “Technology Investing’ is not a substitute for individualized financial advice. Readers should make personal investing decisions based upon an independent analysis of value and risk or in consultation with a professional adviser.” To attract subscribers to the Web site, the newspaper promotes the column through “house ads” as a value-added feature. A reader who wants to become a more savvy investor sees an ad and subscribes so he can access the “Technology Investing” column online. He makes investment decisions consistent with the columns’ recommendations and analysis. In particular, the reader holds onto stock in a large software company when the price is dropping because of growth projections in the column that prove to be overstated. As a result, his shares lose value and he eventually sells at a significant loss. The reader sues the newspaper in state court for breach of contract, negligence, negligent misrepresentation, deceptive trade practices and fraud. The complaint alleges that plaintiff relied on the column for research and information in making investment decisions and that he followed the column’s advice believing he would realize substantial returns on those investments.

### The outcome

Following almost a year of discovery, the trial court grants the paper’s motion for summary judgment. The court holds that, because the column is offered to the general public (albeit for a fee) and provides information that is not specifically tailored to the financial situation of any individual subscriber, the First Amendment precludes liability for publication of nondefamatory, negligently untruthful information. The plaintiff appeals the decision, raising a variety of procedural and substantive objections. The appellate court affirms the summary judgment order and denies the plaintiff’s subsequent motion for rehearing.

Defense cost payment	\$630,000
Indemnity payment	\$0
<b>Total loss</b>	<b>\$630,000</b>


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# Multimedia Liability Insurance – Publishers

## Misappropriation of name/likeness



**Loss  
scenario**

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### What went wrong?

A former professional hockey player, whose nickname while playing was “Gary Goon” (based on his reputation as an enforcer on the ice), files a lawsuit for misappropriation of his identity against the publisher of a comic book series that features a mobster character of the same name. The comic includes several other characters named after hockey players and is heavily marketed to hockey fans, including through game-night giveaways of hockey pucks emblazoned with the comic’s logo.

### The outcome

The parties engage in extensive discovery over the course of more than a year, and the case proceeds to trial. After the jury returns a \$24.5 million verdict for the plaintiff, the court sets aside the judgment, finding that the evidence presented was legally insufficient. On appeal, the state’s Supreme Court determines that, to succeed on such a misappropriation claim, a plaintiff must establish that the product “predominantly exploits the commercial value of an individual’s identity,” and it remands the case for a new trial. The jury in the second trial also returns a verdict for the plaintiff and awards \$15 million in damages. The publisher appeals again, and the state’s intermediate appeals court affirms, finding that, despite the fact that the book’s character bore little physical resemblance to the plaintiff, there was evidence to support a conclusion that the publisher intended to create the impression that the plaintiff was associated with the comic.

Defense cost payment	\$2,100,000
Indemnity payment	\$15,000,000
<b>Total loss</b>	<b>\$17,100,000</b>

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**Hiscox is a leading specialist insurer with roots dating back to 1901. For more than 40 years, Hiscox has provided insurance to US businesses through Lloyd's of London, and since 2006, we have expanded our local presence in the US.**

Our diverse portfolio includes media and entertainment, executive risks, financial services, professional liability, and property and specialty products like Terrorism and Kidnap and Ransom. Our underwriting and claims teams provide flexible solutions designed to meet your clients' evolving needs.

**Contact Information**

Insurance brokers are welcome to contact us. Two ways to find your regional contact:

[hiscoxbroker.com/contact-us](http://hiscoxbroker.com/contact-us)

<b>Northeast</b>	<b>Northwest</b>	<b>Southeast</b>	<b>Southwest</b>	<b>Midwest</b>
646 452 2353	415 814 1455	404 410 2800	213 412 1210	312 380 5555

**About Hiscox in the US**

Underwritten by Hiscox Insurance Company Inc., a Chicago-based insurer, which is admitted or licensed to do business in all 50 states and the District of Columbia. Coverages are subject to underwriting and the terms, limits, and conditions of an issued policy, and may not be available in all states. In the event the actual policy forms are inconsistent with any information provided herein, the language of the policy forms shall govern.

Inquiries as to insurance or other products or services should be directed to an insurance agent or broker licensed to conduct business in the relevant US state. Insurance agents or brokers should contact a Hiscox underwriter.

<sup>1</sup> A.M. Best rating date as of October 23, 2014.

<sup>2</sup> Newspaper Digital Audience Hits New Peak, Newspaper Association of America; September 29, 2014