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## Technical Advisory

TA 253

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### **Subject: Insuring Dick Tracy's Toys in the 21<sup>st</sup> Century**

**Background:** Science fiction of the early to mid-20<sup>th</sup> century has often become reality in the 21<sup>st</sup> century. Few imaginary devices of half century ago have the instant recognition even today like the "Dick Tracy wristwatch." Avid readers of cartoonist Chester Gould's Chicago crime-fighting detective always maintained an awed fascination with Dick Tracy's futuristic devices, such as the magnetic energy hovercraft, tiny ring camera, voice recognition machine, and especially the two-way video wristwatch.

Fast forward fifty years, and it seems that half the population on the planet has an iPod, MP3 player, Blackberry or other PDA, and cell phone with a camera. It is estimated that there have been over 50 million iPods and similar musical devices sold, along with over a billion songs and tens of millions of videos downloaded for use on them.

For the insurance veteran, one of the things that makes this business so interesting is that it continually keeps up with the times, and insuring these "Dick Tracy toys" is a classic example.

At the same time, insurance coverage is not always updated and modernized as quickly as would be preferred, so matching existing coverage terms and conditions with new inventions is often challenging.

A typical loss illustrates the problem. An insured's iPod is damaged, lost or stolen. On it were 1,500 songs, each costing about \$1 to download. While the device itself is a routine Coverage C Personal Property item, it is unclear what coverage if any applies to the \$1,500 worth of music.

Another element present in many loss situations involves the loss of business information from a PDA. Actually, the iPod can contain regular data files, as it is not limited to just music, so the issue of business data could be a component to many losses.

**Main Points:** Below is an excellent article on the subject from the “Virtual University” of the Independent Insurance Agents & Brokers of America. The Virtual University contains hundreds of technical articles, with more being added every day. In addition, the “Ask An Expert” feature allows members to ask questions of the VU faculty, comprised of some of the top insurance professionals in the country.

The VU is password protected, but all member agencies are provided free passwords for all employees. See the VU home page for more details.

**Necessary Action:** Circulate this Technical Advisory to all appropriate staff. In addition, remember to take advantage of the great resource articles in the Virtual University.

## **“Covering PDAs, MP3 Players, and Other Gadgets”**

**Source: IIABA’s Virtual University**

### **Abstract**

If you're a typical American business person with a family, chances are you have one or more PDAs, MP3 players, or other electronic media gadgets in your household. Needless to say, these devices can cost several hundred dollars, not to mention the value of the information, songs or other media, and the cost to restore this electronic information if damaged or destroyed. Just what coverage does your HO policy afford, if any?

**Here is a recent question received by our "Ask an Expert" service:**

*"I know I am getting old when I don't use (understand) the technological gadgets that are coming on the market and am concerned, as an insurance broker, if this lack of understanding is leaving my clients uninsured.*

*"With that being said, what are the appropriate ways to properly insure MP3 players, Ipods, or any handheld device (Palm Pilots) where our clients may be paying for downloaded information from the internet. If an Ipod holds 2,500 songs at 99 cents per song there is potentially a good sized exposure.*

*"Obviously there is the cost of the device, but what about the lost data? What about the cost in time of the insured to download 2,500 songs onto the replaced electronic device? Can these type of devices be backed up by the user? What about a mechanical breakdown that causes the loss of all data? How does one deal with the varying value of downloaded data over a period of time?*

*"Obviously a named peril (homeowners policy) does not cut it. Are underwriters willing to insure these items on an inland marine policy? Your ideas are appreciated."*

**Answer.** This is a great question. No doubt there are thousands of consumers with thousands of dollars worth of downloaded music on their MP3 players, not to mention PDA users with important data on their handheld devices.

Needless to say, insurance is not the only solution to risk exposures, though it's the risk management technique that we'll focus on here. In many, if not most, cases, electronic information is downloaded to a PC, then to the handheld device. So, there is naturally some spreading of risk by automatically creating a backup. On top of that, it is probably a good idea to maintain a secondary backup off-site. In addition, other loss control techniques can be used to safeguard the device and the data. Again, though, here we'll focus on the insurance implications.

We ran this question by our faculty and their opinions were pretty much consistent. Below are a couple of representative responses:

**Faculty Response:** First you must have damage from a covered peril. With the standard ISO [HO-3](#), you're limited to the 16 named perils. Using the [HO-5](#) (or [HO-15](#) endorsement in the HO-91 program) converts the named peril to "special causes of loss." The device itself is covered, and I'll assume here it's used for personal use and not for business. That could limit coverage if it is. Clearly the "lost time" to download isn't covered since the policy only covers "direct damage." And as far as the songs go....I'll plead ignorance and would have to ask my kid exactly what an MP3 player is!

**Faculty Response:** Interesting question. Clearly, the devices are covered property and full Coverage C applies worldwide with no specific limitations unless they are used for business. If that's the case, the on/off premises Special Limits would apply. You'd also have to have damage caused by a covered peril, which would be limited under an unendorsed HO3...you'd need to endorse broader coverage unless an [HO-5](#) is in place. In either case, there'd be no mechanical breakdown coverage.

The other questions are harder to answer. The [HO-3](#), by and large, only covers DIRECT damage to property, not the value of the "download time." In addition, the policy only covers "direct PHYSICAL loss." I would interpret that NOT to include electronic data. There is a specific exclusion, under Property Not Covered, for "business" data other than the cost of blank media and retail "computer programs."

So, I suspect the only coverage that can be assured is for direct physical damage to the device itself if caused by a covered peril. That being the case, the insured will need to employ alternative risk management techniques such as making a backup copy of the "data" and safeguarding it.

**Subscriber Response:** Regarding the article in the about insuring PDA's, Ipods and the like, I am in agreement with your team of experts, except for one possible area that may have been overlooked:

Under the Special Limits of Liability (HO 00 03 10 00), item b. (see below), the policy provides \$1,500 coverage for certain types of personal data (we know that there is no coverage for business data). Do you think it's possible that this coverage could be extended to cover the lost data on a PDA or songs on an MP3 player? Your thoughts? Thanks. Mike – Subscriber in Massachusetts.

b. \$1,500 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps. This dollar limit applies to these categories regardless of the medium (such as paper or computer software) on which the material exists. This limit includes the cost to research, replace or restore the information from the lost or damaged material.

**Faculty Response:** Mike...mea culpa. This is something we entirely overlooked in our analysis. Whether MP3 songs qualify for the types of "records" indicated above is perhaps debatable, but there is little doubt that PDA records would certainly qualify for this coverage IF damage results for a covered peril. Thanks for keeping us honest!

**Another Subscriber Question:** "Hypothetical situation: An insured has their computer stolen. They have downloaded lots of music over the internet at a certain price per song. Are the downloaded songs they paid for included in the final claim payout? If not, where is it excluded under the unendorsed [1991 ISO HO3](#)? If they had the Special Computer Coverage endorsement would that change the situation?"

**Faculty Response:** So far, I've personally downloaded 1,148 songs and 4 video clips from iTunes, for a total of \$1,144.48. I have a copy on my PC, on a portable 300GB hard drive, and on my Ipod, so I use the risk management technique of segregation of exposures.

As for HO coverage, the best argument for **denying** the claim is the Coverage C perils requirement that damage involve "direct physical loss":

We insure for **direct physical loss** to the property described in Coverage C caused by any of the following perils unless the loss is excluded in Section I - Exclusions.

The argument would be that the loss of electronic information doesn't constitute a physical loss. At least that's what ISO claims is the case with regard to electronic data in their CGL.

The best argument for **covering** the claim would be that, under Property Not Covered, there is a specific exclusion for "business" data:

"Business" data, including such data stored in:

- (1) Books of account, drawings or other paper records; or
- (2) Computers and related equipment.

We do cover the cost of blank recording or storage media, and of prerecorded computer programs available on the retail market;

That might imply that *personal* data, unless otherwise excluded, is covered...or at least creates an ambiguity. This basis for coverage is supported by this Special Limit:

\$1,500 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, **personal records**, passports, tickets and stamps. **This dollar limit applies to these categories regardless of the medium (such as paper or computer software) on which the material exists.**

**This limit includes the cost to research, replace or restore the information from the lost or damaged material.**

Clearly, this indicates that there is at least \$1,500 of coverage for "information" that consists of "personal records." So, you could argue that this implies that "information" IS covered, and it's limited only if it is "personal records" (e.g., information on a PDA that isn't subject to the "business" data Property Not Covered exclusion) or one of the other restricted categories; otherwise, there's no limitation.

As to what's correct or how a court would uphold it, you've got me. That's why I have two backups, not counting a ton of songs on my kid's PC that I've shared with him (iTunes allows you to make 5 copies of a song or video). Insurance is not always the only (or the best) way to treat exposure to loss.