

#1 International Best Seller

COVER YOUR ARSE ONLINE



**A Guide to Protecting Your Online
Business Assets**

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Chapter 12

Risk Management

"I have learned that nothing is certain except for the need to have strong risk management, a lot of cash, the willingness to invest even when the future is unclear, and great people."

Jeffrey R. Immelt

Risk Management Basics

Risk management doesn't have to be difficult. It's simply a matter of identifying the key areas of your business and then looking at what risks might affect you in those areas, and putting in place something to manage the impact.

People can get completely overwhelmed trying to identify every last risk that could impact their business, and this leads to avoidance of risk management processes, simply because they seem so hard.

With an online business selling products your key areas might look like this:

- Business structure
- People working in or on the business
- Technology
- Payment processes
- Reliability of supply
- Customers
- Legal compliance

Taking people as an example, the risks you might look at could be:

- Employee behaviour causing loss to the business like poor customer service, negligence or even fraud
- Employee taking legal action against the company for discrimination, bullying or unfair dismissal
- Workplace health and safety injury resulting in less than one day away from work through to a death in the business

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- Lost corporate knowledge due to departure of employee, expected or otherwise

As on online business, technology might also be a priority and require more specific risks to be considered, particularly where access to systems is the key to productivity and sales, for example:

- No internet access for one or more staff members for more than one hour
- Primary system (access to files, emails, customer details, accounting) down for more than one hour
- Ransomware attack
- System hack
- Loss or theft of intellectual property
- Registrant or hosting provider goes out of business
- Personal information accessed or stolen

And so on.

As you can see, there is a broad range of things that you consider but before you stress about trying to come up with all the risks you could potentially be exposed to, get some context. Think about your realistic exposure. If you run a manufacturing plant your health and safety risks are likely to be more than if you have an office.

Realistically look at the likelihood of risk in your business and focus on those that you think are more likely than others rather than chasing down the rabbit hole after every risk.

In the United States, there is a demonstrated potential for unexpected and seemingly random shootings in workplaces. However, when looked at in the context of all the places of business in the U.S. it is a tiny percentage and therefore a very rare chance of occurrence. Rather than specifying that as a risk, it is better to address it more broadly so that you can put controls in place that can cover a number of different scenarios.

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This could be done by categorising risks as:

- event giving rise to multiple injuries in the workplace
- reputational damage arising from publicised event involving the business
- event causing closure of the workplace for more than one day through to permanent closure
- event causing damage to the workplace so that future work is disrupted by repairs

A control is simply a way to manage and reduce a risk. Your objective should be to put in place as a control that reduces the risk as to the least acceptable risk as much as reasonably possible in the context of your business operations. It is unrealistic to think that every single risk can be avoided. Controls include:

- Policies and procedures
- Training
- Insurance
- Work methods
- Barriers (like guards on machinery)

The kind of controls you might put in place around technology are:

- Policies for account creation and access including:
- who can establish an account and what identification is required?
- protocols for passwords and frequency of when they are changed
- limits on what programs can be downloaded and installed
- access and use of 'bring your own device' BYOD
- what systems staff have access to (not everyone in the business needs access to the financial systems)
- when staff can have access (some businesses enable 24/7 remote access, others might limit access to social media or games to certain time periods)
- sourcing an appointment of third party providers
- backup systems
- disaster recovery and business continuity plans
- system security

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- data security, storage, access, and destruction

Don't reinvent the wheel. When you are creating a risk management plan do some online research to find out what other people are doing and what you can mirror and adopt for your own business. Otherwise get help from someone experienced in risk management who is able to invest some time in understanding your business and where the real risks might be.

Insurance

Some people think that insurance solves all problems. It doesn't. I saw a comment recently that claimed insurance companies would do everything possible to avoid paying. That is not my experience, but you do need to be clear on the limits of the policies you have in place and what circumstances might lead to the refusal of a claim.

Getting to know a good insurance broker is worthwhile. Get someone who understands the nature and history of your business, responsive and prepared to negotiate premiums on your behalf. Good insurance brokers can save you a great deal of money in avoiding unnecessary policies or premiums and helping you to manage claims if you need to make one.

When looking to purchase business insurance there are three types of people that you will come across:

1. An insurance Broker
2. An insurance Agent
3. A direct employee

The insurance broker - A broker is someone you hire to search for the most suitable insurance policy for your particular circumstances, at the best price. They tend to have a broad knowledge of what is available which enables them to find a tailored solution.

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While some brokers may charge you a fee for their services, the broker is generally paid a commission from the insurance company whose policy you end up purchasing.

The broker's responsibility is to look after you and your interests which means if you later have an issue with a claim, they should be able to help you.

The insurance agent - An agent tends to work as a representative for a group of insurance companies. They will often represent a small group. Their responsibility lies with these companies. Given an agent only represents a specific group of insurance companies, they have a more in-depth knowledge of the insurance policies offered by those companies.

A direct employee - Dealing with a direct employee of an insurance company means you are really dealing with the company itself. An employee should have the best knowledge of the policies offered by their insurance company and may have some understanding of the offers provided by direct competitors.

Choosing the right professional

If you decide that an insurance broker or insurance agent is better suited for your needs, then the next step is to ensure to choose the right one. If you know other people within your industry, then it is often useful to ask who they used and what they thought about them. By asking around, you will find out who has a good reputation.

It is also very important that you trust and feel comfortable with your insurance professional. A high level of trust and comfort generally comes from the professional demonstrating they possess a good working knowledge of your business and insurance needs. Your level of comfort is also closely linked with how they conduct themselves as a professional i.e. are they easily accessible, do they answer your questions in a prompt manner etc.

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Finally, you must feel confident that they will support you if you need to make a claim against the insurance policy. It is good sense to ask what level of assistance they will provide shall an issue arise with a claim.

Buying insurance online might be cheap, but unless you really understand the policy wording, and you are confident in making a claim, you might not be achieving the protection you aimed for.

Even though insurance does not solve all problems, it is worthwhile in helping to reduce the impact of a problem affecting your business. The key to getting the right insurance is in first completing the risk assessment exercise we were talking about earlier. There may be some areas you are comfortable 'self-insuring' and others you simply are not.

Self-insurance is either keeping a reserve of funds that will cover the costs of repair or replacement of damaged goods, or simply deciding that if something is damaged to a point where it needs to be replaced, you will wear that cost.

It is not uncommon for companies with significant hard assets, like machinery, property or vehicles, to self-insure for part of the value of those assets, or in the case of assets that may have been fully depreciated in value, be prepared to wear the cost. However, when doing this exercise always consider how you are using your assets and what the replacement value might be.

A piece of machinery that is 30 years old and no longer has a book value, but carries out an important function in your business, might have a high replacement value. In that instance, you might actually be prepared to pay a higher premium to have replacement cover, even though the machinery being covered has no value of itself.

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Some or all of the following may be relevant to the type of business you have:

- Product liability
- Professional indemnity
- Public liability
- Income protection
- Life insurance
- Business interruption
- Cyber risk

Other Controls

There are situations where you need something other than insurance to protect your business.

In a consultancy business, for example, you might be asking people to pay you money without any guarantee of results. Part of the reason you may not be able to guarantee results is that you are reliant upon the business you are advising to be actually following your advice. Even with the best intentions in the world, a business might reject or change your recommendations.

So, let's consider some of the risks:

1. Client not happy, they want their money back.

Insurance is not going to protect you in this situation. The control that you would put in place is a clear written agreement that sets the terms of engagement.

What you need to do is be very clear at the start of the relationship on what it is that you are providing. As an example, if you use a set monthly fee, paid in advance, and that fee entitles the client to a certain amount of time with you, not their results, and that results will vary based upon the actions they take.

Have something in writing for your client before starting any work so that they understand what they are paying for and what you will do in exchange for that payment.

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Never promise what you can't deliver. Be mindful of who you choose to work with and be prepared to provide a refund. Ultimately it will be a learning experience for you and of greater value to your business to investigate and learn from the complaint and move on.

Where services are provided to support a business, then you may be able to include a limitation of liability in your terms of service to the cost of providing the service again.

The law is different depending on where you are in the world, what laws apply and whether you are working under common law or a civil law system. In some jurisdictions, you can exclude all liability and in other jurisdictions, like Australia, if you attempt to exclude all liability your limitation will be void. In Australia consumer law prohibits you from excluding liability for breach of consumer guarantees listed in the legislation, and for losses a business might suffer as a result of your services, even if you did not cause that loss directly.

2. Your client does something stupid, and you get the blame.

That might sound flippant, but you really have no control over the actions of another person. It is possible that you could end up on the receiving end of a complaint resulting from your work with a client.

There are loads of traveling education programs where a bunch of people get up on stage and talk about what they are doing as the next best way of doing something. It might be presented as a sure-fire way of making money. This is not uncommon and sales made from the stage during workshops and seminars can exceed six figures in a session, depending on the product and the audience.

So what if someone invests in an education program or property or trading system and they lose money. Can they go after the presenter, and if you were the presenter what would you do to protect yourself? Some form of professional indemnity insurance may assist you in these circumstances.

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Be clear on the terms of your insurance policy and what it covers and what kind of evidence the insurer will require from you in the event of a claim. Additional controls would be:

- ensure that invitations and event promotions let participants know that offers will be made during the event
- have clear terms and conditions for any program offered
- have clear and simple release forms for all participants to complete before they start
- retain a percentage of payment received for refunds

In any situation where you are acting as an advisor, have a system for recording what advice you give and when, and specific responses from your client. Records like this can assist you in demonstrating what you have done without having to rely on memory alone.

3. Injury in your premises

If you are going to run a business from home or any premises, you might consider getting public liability cover so that a claim from anyone tripping over a bump in the carpet and losing a tooth on the door frame will be covered.

Other controls you would put in place include a physical assessment of hazards in the workplace, and taking action to reduce or remove those hazards. Trips and falls are apparently the most common category of workplace injuries. You might:

- remove trip hazards like power cords draped across the floor
- repair damaged carpet
- have a policy not to pile boxes higher than one metre off the ground
- train staff on correct lifting procedures
- train staff on appropriate use of ladders in the workplace
- test and tag all electrical equipment

and so on.

Reduce Your Legal Risk

Unless you let the world know otherwise, you are assumed to be responsible for everything that happens on and as a result of using your website. We're making a broad generalisation here. There are legal technicalities that could change that position, but you will be better protected if you start with the assumption that you are responsible.

Practically, what does this mean?

If your website is hacked and malware is attached without your knowledge, then each visitor to your website might be affected. This may or may not be picked up for some time. If someone else suffers a loss as a result of getting malware through your systems, then potentially they could claim against you for their losses.

Most people probably wouldn't be able to identify your website as the problem but any forensic investigation of the affected person's system might identify your website.

So how do you limit your liability?

Two things:

- have terms of use that limit your liability for losses occurring as a result of your systems
- you may have an email disclaimer that notifies recipients that they are responsible for their own virus protection and system security
- put in place security and checks appropriate to your business.

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What is appropriate to your business will depend on your industry, the demographic of your users, your website traffic and possibly also your revenue. People are more likely to take action against you if they think you can afford to pay a claim.

If you have appropriate controls in place, you might then also look at cyber security insurance.

Be creative in the ways that you look at reducing risk. Humour is often more memorable than reams of policies and procedures. Virgin lead the way in using humour in their legal terms to make them easier for people to digest, and to encourage people to read them. I've seen terms and conditions put together in simple infographics that are very easy to follow.

Don't be afraid to get away from legalese or academic language. As long as the meaning is clear, making policies, instructions or procedures as short and simple as possible means that they are most likely to be remembered and used.

So, have a think about what you want to protect and what your risks and opportunities are, then work out what steps you need to take.

As professional website investors, we know the importance of protecting our online assets and this book is essential reading if you own a website, or about are to invest in one!

- Matt and Liz Raad, Website Investors and Educators



Legal structures, contracts and forms aren't always the first thing you want to deal with when starting business or moving your business online. It's important to get set up and earning. You might not have thought about the legal stuff, or realise you need to sort it out without making it a priority straight away. BUT, you do need to think about it before you get in to situations where you could lose your business.

The object of this book is to help you recognise where there might be risks to your business, and then to make an informed decision about what you can do to protect it.

It's so much easier to put strategies in place before you get sued, than to go through the headaches and heartaches of legal proceedings. But where do you start if you don't even know what legal issues could affect your business? Right here!

You won't find a whole lot of references to cases or legislation. Instead, there are specific examples and case studies you can relate to. No matter what country you live in, the principles described in this book will help you to protect the business you've invested so much time and energy in building.

Jeanette Jifkins is an Australia qualified lawyer who has been working to understand what is most important to business owners, and providing practical steps on how to achieve their legal needs easily. Since 2010 she's worked mainly with people doing business in the digital space as well as operating a variety of websites with her husband. When not online, she's in the pool, on the golf course or riding motorbikes.