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Cyber Insurance Law and Policy

Internet Geneva session - Thursday 26 November 2020

Prof. Jacques de Werra

(Director of the Digital Law Center, Faculty of Law)

Dr. Yaniv Benhamou

(Senior Lecturer, Faculty of Law, Attorney-at-law)

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Jacques de Werra / Yaniv Benhamou

Cyberassurance : instrument utile pour la cybersécurité des entreprises ?

Analyse juridique et recommandations des mesures étatiques concernant les cyberassurances visant à protéger les entreprises (PME)

www.digitallawcenter.ch/publications

www.digitallawcenter.ch/sites/default/files/publications/article-jacques-de-werra-yaniv-benhamou-cyberassurance-jusletter.pdf

www.cybersecurity-liability.ch

AGENDA

I. CONTEXT OF THE REPORT

II. CYBER-INSURANCE & MARKET ANALYSIS

III. POLICY RECOMMENDATIONS

IV. DISCUSSION

I. CONTEXT OF THE REPORT



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Cyber insurance gains traction amidst Covid pandemic

By Sachin Dave, ET Bureau • Last Updated: Nov 17, 2020, 06:15 PM IST

THE ECONOMIC TIMES | tech

English Edition | E-Paper



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As threats grow, cyber insurance seen as more of a necessity

S&P Global

Market Intelligence

23 Nov, 2020



Author **Calvin Trice**



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RISK MANAGEMENT

Does Your Cyber Insurance Cover a State-Sponsored Attack?

by [Jon Bateman](#)
October 30, 2020

Harvard Business Review



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[Global Agenda](#) | [Insurance](#) | [Cybercrime](#) | [Cybersecurity](#)

Cyber insurance is only a few claims away from disaster. This is why it matters



WORLD ECONOMIC FORUM

09 Oct 2020

Thomas Johansmeyer
Head, Property Claim Services (PCS), Verisk



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ISO/IEC 27102:2019

Information security management – Guidelines for cyber-insurance

This document provides guidelines when considering purchasing cyber-insurance as a risk treatment option to manage the impact of a cyber-incident within the organization's information security risk management framework.



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THE
GENEVA
ASSOCIATION
INSURANCE FOR A BETTER WORLD

The Geneva Papers | Special issue on Cyber risks and insurance

Nov 02, 2020

The Geneva Papers on Risk and Insurance - Issues and Practice

Volume 45, Issue 4, October 2020

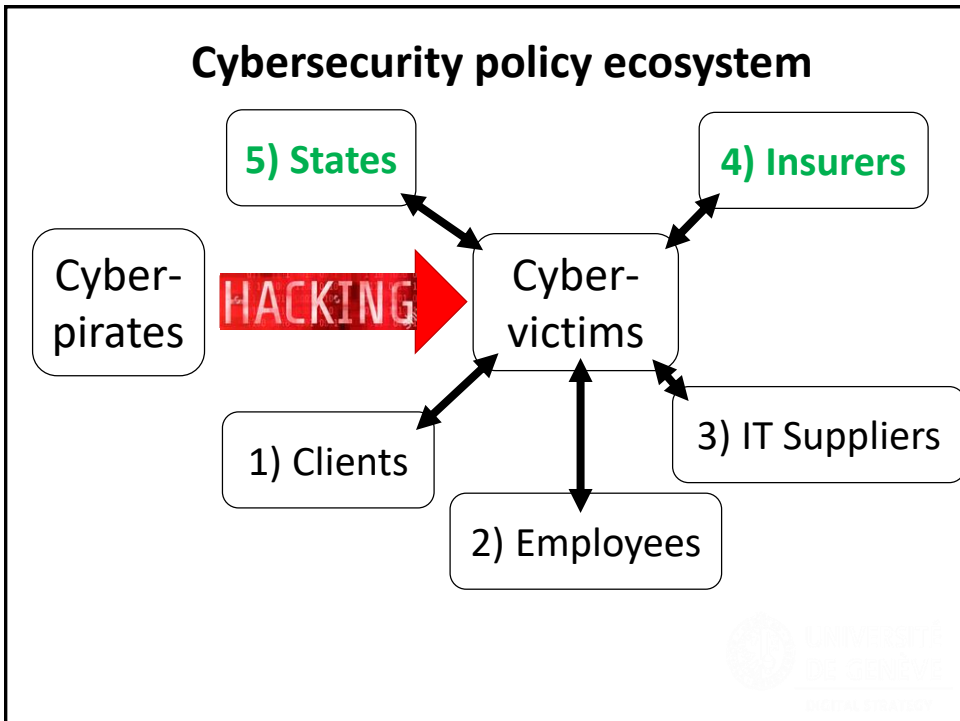
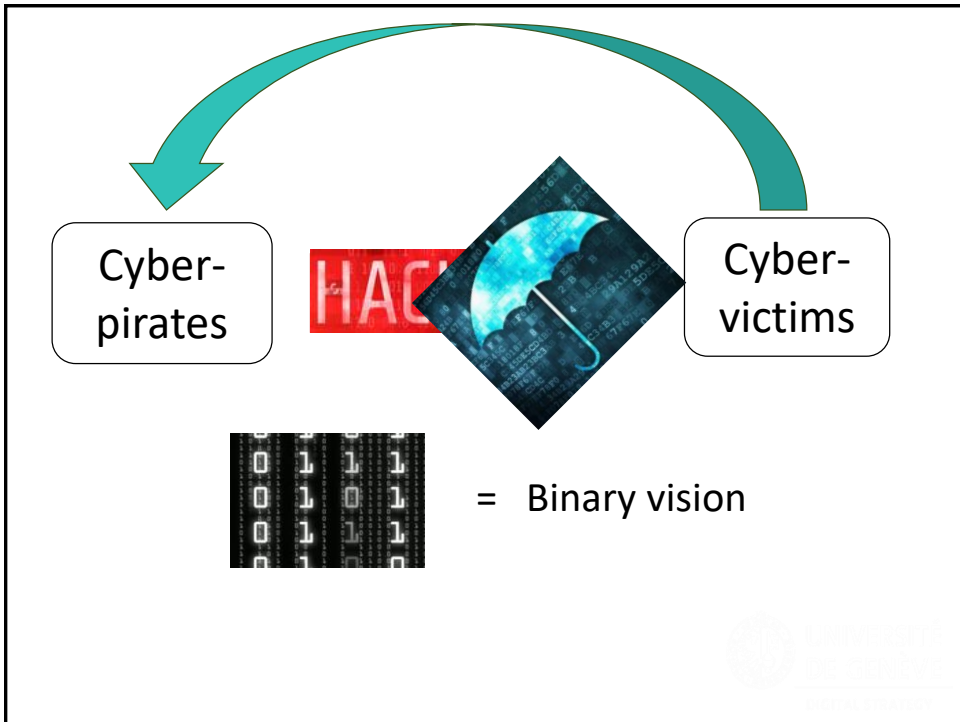
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SPECIAL ISSUE ON CYBER RISKS AND INSURANCE



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4) Insurers

Enhancing the Role of Insurance in Cyber Risk Management



essential component of countries' strategies for addressing digital security risks.



5) States

The need for a Digital Geneva Convention

Feb 14, 2017 | Brad Smith - President and Chief Legal Officer



Brad Smith at RSA 2017: The Need for a Digital Geneva Convention



A neutral Digital Switzerland

PLUS DE VIDÉOS



II. CYBER INSURANCE & MARKET ANALYSIS

CYBER INSURANCE & MARKET ANALYSIS

- Cyber risks



Lane Pearman (Creative Commons BY or BY-SA)

CYBER INSURANCE & MARKET ANALYSIS

Obligations & liability in cybersecurity

- Obligations
 - preventive measures (e.g. security, inventory, DPIA)
 - curative measures (e.g. data breach notification duty)
- Liability in the case of a cyber-incident
 - Civil & tort liability
 - Criminal and administrative liability
- Role of cyber-insurance

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CYBER INSURANCE & MARKET ANALYSIS

Terms of insurance coverage: distinctions (selection)

- Mandatory vs voluntary cyber-insurance regime (e.g. on-going discussions in the EU; see also Laws on Insurance Contract)
- Coverage of cyberrisks vs other services
- Express vs implied coverage ("*silent cyber risk*")
- Own damage (*Eigenschaden*) vs damage caused to third parties (*Drittschaden*)

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CYBER INSURANCE & MARKET ANALYSIS

Legal uncertainties relating to insurance coverage

- Diversity of cyber-insurance policies
- Uncertainty as to the duty of care
- Uncertainty as to the coverage of certain cyber risks

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CYBER INSURANCE & MARKET ANALYSIS

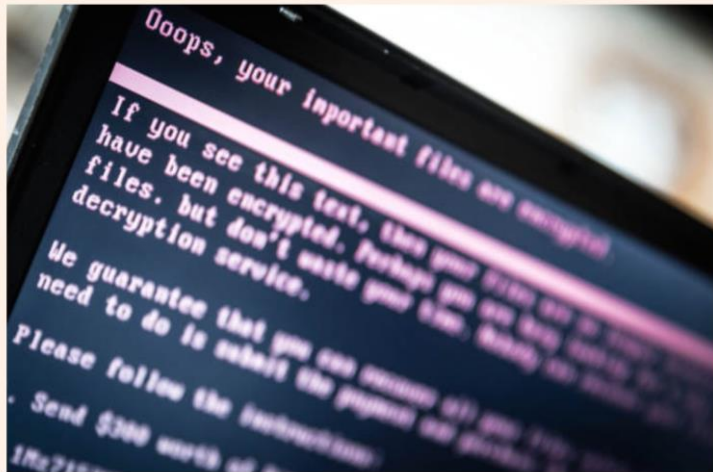
Zoom into specific policies relating to cyber risks

- Personal data protection
- Criminal fines
- Damage resulting from the payment of a *ransomware*
- Acts of cyber-warfare and terrorism
- Virtual currencies

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Mondelez sues Zurich in test for cyber hack insurance

Insurance group had refused to pay for NotPetya attack, invoking a war exclusion



Mondelez said it had been hit twice by NotPetya, with 1,700 of its servers and 24,000 laptops rendered 'permanently dysfunctional'
© EPA

MARKET ANALYSIS

Zurich insurance policy covering *“physical loss or damage to electronic data, programs, or software, including physical loss or damage caused by the malicious introduction of a machine code or instruction (...)”*

VS

Exclusion for damage resulting from *“a hostile or warlike action by a government or sovereign power; military, naval or air force; or agent or authority of any [of those parties]”*

III. POLICY RECOMMENDATIONS

POLICY-RECOMMENDATIONS

1. Awareness of companies w/ cyber-insurance (see lit. a Report)
2. Standardization of insurance policies (see lit. b Report; also US Cyberspace Solarium Commission 2020)
3. Increase data sharing about cyber-incidents (see lit. c Report)
4. Incentivize businesses to conclude cyber-insurances with offers (see lit. d Report) or listed cyber-insurances (lit. e Report)
5. Mandatory cyber-insurances (lit. f Report; also EP resolution of 20 October 2020 on legal recommendations for artificial intelligence, 2020/2014(INL))
6. Subsidies for the insurance costs (see lit. g Report)



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THANK YOU FOR YOUR ATTENTION

(QUESTIONS?)

jacques.dewerra@unige.ch

yaniv.benhamou@unige.ch