



Dataleaks: who pays for the damage?

Not the business liability insurance!

The introduction of the GDPR has made us more aware of the importance of safe and careful handling of personal data and the prevention of cyberattacks and dataleaks. That the GDPR also involves serious (liability) risks against which many entrepreneurs are not (sufficiently) insured, is not commonly known.

RISKS

A lost USB-stick, a stolen laptop, a hacker who captures personal data or an email with privacy-sensitive data sent to the wrong person; all examples of dataleaks and an offence against the GDPR. The consequences of this vary from high fines (see box) and lost profits because of stoppage of operations to costs for crisis management, legal assistance and, last but not least, liability for damages.

LIABILITY GOES TOO FAR!

The main rule is that the 'causer' is liable and must fully indemnify for the damage. As Controller (process responsible) you

can then be held liable for the damage incurred by, for instance, your client. For example reputation damage, fines, etc. But someone who has fallen victim to identity fraud because of your dataleak can hold you, as Controller or process responsible, liable for his damage.

CASE OF BUSINESS LIABILITY INSURANCE?

As a rule, a business liability insurance only covers loss resulting from an injury and (to third parties) damages to goods. That is not the case in the event of a dataleak. Besides it is unusual to exclude fines. Therefore a business liability insurance does not offer any cover in this case.

Fines

In the Netherlands the Autoriteit Persoonsgegevens (Authority Personal Data) can impose companies a fine that may run to 20 million euros or 4% of the annual worldwide turnover of the Controller. So if you, as event or congress organizer (i.e. process responsible) has caused a dataleak because of which personal data from clients and/or employees of those clients is hacked, you are in serious trouble.

AND NOW?

You can try to exclude liability by contract. But that does affect the willingness of parties to do business with you. Limiting the liability is more common, you then prevent unlimited liability. That can be a limitation of the amount of the claim, of the maximum amount covered by the insurance or of specific costs; for instance damages but no fines. Your risk is then (more) limited, but still present. A cyber insurance offers a solution for this. These can now be taken out quite easily and are rather affordable.