



Insurance in the video game sector

Guide prepared by

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Introduction to the **Guide**

Insurance contracts are found anywhere in life where there is an insurable interest, such as, in this case, the development and exploitation of a video game. Insurance consists of a contract based on an unpredictable future event because it is not known when the risk will occur.

This guide will help you understand the contents of insurance contracts, since they are essential for providing security against risks that could compromise the future of your project by offering adequate coverage that serves as an indirect prevention mechanism. Consequently, insurance is now also associated with gaming and the video game sector, where it can play a crucial role.

This guide will also explain the different types of insurance contracts and the risks that each one covers. This is especially important because choosing the right insurance is crucial to cover the riskiest elements of your project.

Specifically, this guide will be useful regarding the following:

→ Understanding the importance of insurance contracts: *What is the purpose of insurance in the video game sector?*

→ Knowing the different types of insurance: *What types of insurance cover video game development?*

→ Choosing the most appropriate insurance: *Which insurance should I take out depending on what I want to protect?*



1. What is the purpose of insurance in the video game sector?

The development of a video game is one of the most complex phases in the production of this type of media, and that is why insurance plays a fundamental role in ensuring its success.

The difficulty of this process leads to the following problems:

- » Short deadlines that must be met as a result of tight schedules.
- » Unintended repercussions for publishers, such as those discussed below.
- » Unexpected compensation obligations that cannot always be met, especially in the case of small companies or independent or even individual developers.

2. Key risks encountered in the video game sector

Risk	Reason	Possible legal consequences	Which insurance to take out?
Failure to meet delivery deadlines	Computer errors or bugs. Delays in the pace of work.	Claims for contractual liability and commitments made to third parties or for financial damage to third parties .	• Professional Liability Insurance (PLI) • Errors & Omissions Insurance (E&O)
Transmission of computer viruses	File exchange and transmission.	Claims for pecuniary damage to third parties .	• Professional Liability Insurance (PLI) • Errors & Omissions Insurance (E&O)
Data protection breaches	Unauthorised intrusions (<i>cyberattacks</i> or <i>hacking</i>).	Operational expenses . Claims for reputational or pecuniary damage to third parties . Spanish Data Protection Agency penalties.	• Cybersecurity Insurance • Professional Liability Insurance (PLI)
Intellectual property infringements	The failure to hold sufficient intellectual property rights from third parties.	Claims by third parties .	• Professional Liability Insurance (PLI)
Infringement of the right to privacy, honour or self-image, including defamation and slander	Unauthorised references to public figures in games or extensive use of their image without permission.	Claims by third parties .	• Professional Liability Insurance (PLI)
Damage caused by employees	Malicious acts by employees.	Operational expenses . Claims by third parties .	• Professional Liability Insurance (PLI)

A. Failure to meet delivery deadlines

Problems that can arise in the development of a video game:

Problem	Consequence	Solution
Computer errors or bugs, delays due to a slow pace of work.	Involuntary breach of contract, claims for contractual liability.	PLI, E&O insurance.
		

For example, the publisher of a video game spends a lot of financial resources on its promotion. Thus, a delay in its release could lead to substantial economic damage.

To mitigate these risks, there are both PLI and E&O insurance. Both forms of insurance cover policyholders in those cases in which a breach of contract has occurred involuntarily, either due to mistakes made by the developers themselves or due to carelessness or negligent acts. Both forms of insurance cover both compensation for non-performance and legal defence costs.

B. Transmission of computer viruses

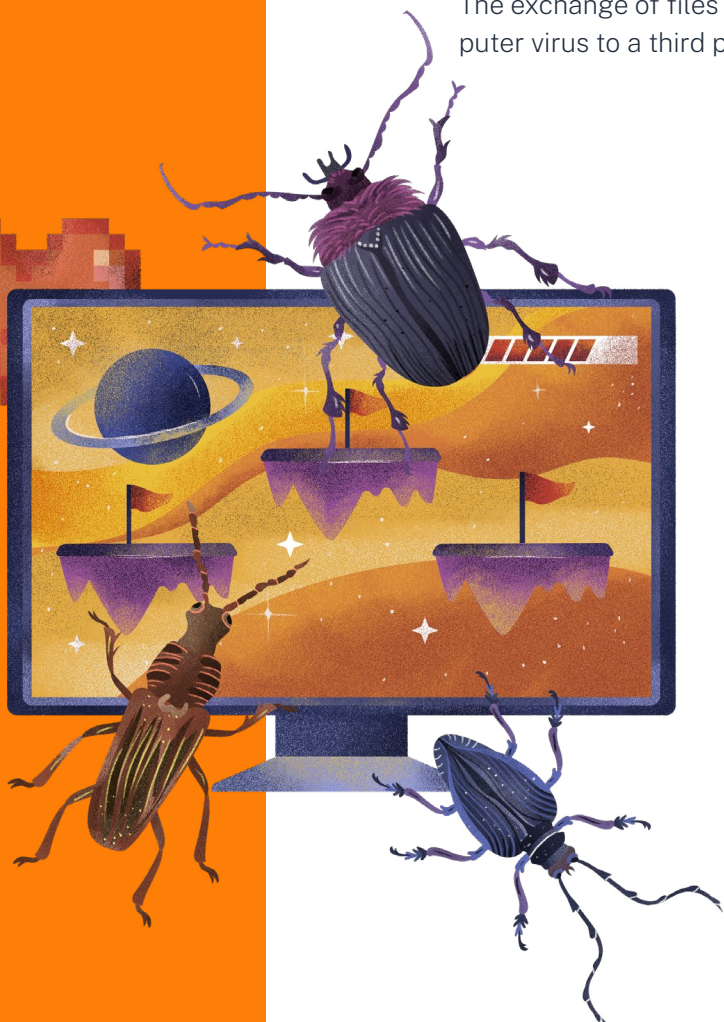
The development of a video game is not always carried out by a single company, and the transfer of files is very common.

The exchange of files and information may result in the transmission of a computer virus to a third party, leading to:

- » The virus in question damaging other developers' files or affecting the software;
- » This would result in damage to a third party due to an error or professional negligence attributable to the developer, and;
- » As a consequence, an obligation to compensate the injured third party would arise.
- » To protect against this risk, we recommend taking out one of the abovementioned insurance policies that cover professional errors, omissions or negligence.

C. Unauthorised intrusion

Another danger faced by video game developers is *cyberattacks* or *hacking*, which can have a wide range of undesirable consequences:



⚠ Data manipulation or the infection of computer systems can lead to the interruption of production, or in the worst case, the loss of the work carried out up to that point.

The loss of confidential data:

- » **Company-owned:** this may give rise to operational costs to the company; or
- » **From clients:** this may cause reputational damage to the company with the consequent loss of profits, in addition to the potential claims for compensation that may be filed by injured third parties.

To mitigate these dangers:

D. Intellectual Property

As we have already discussed in Guide No. 1 on Intellectual and Industrial Property, video games can include a multitude of protected elements, including:¹

A

Cybersecurity insurance

- Coverage for the unintentional breach of data protection regulations: covering both legal defence and possible compensation to be paid;
- Coverage for cybercrime attacks: covering the costs necessary to repair the damage caused to the company + (in some cases) covering the loss of profits.

B

PLI

Coverage for loss of documentation as a result of hacking: covering own damage + damage caused to third parties.

What happens in the case of a claim by a third party that one of these elements has been infringed?

Certain public liability insurance policies offer coverage for this type of infringement: the studio or publisher would be covered for any expenses that may be incurred in changing or removing the infringing

Images



Words



Characters



Music



Voices



Concept Art



content, as well as any legal defence costs that may be necessary in relation to such third parties, together with the payment of the corresponding compensation, if applicable.

1. See Guide 1 on Intellectual and Industrial Property

E. Defamation or slander

There are numerous cases in which video games refer to or even imitate public figures in order to set the scene or add a humorous touch to the game. In these circumstances, the third parties concerned may pursue claims of all kinds, including legal action.

- » The appearance of negative, pejorative or unfounded content about public figures may cause the aggrieved party to seek compensation or sue the author, seeking redress for his or her right to honour and self-image.
- » In these cases, certain PLI policies offer coverage for this type of risk, covering both the legal defence costs of the insured and any compensation that may be payable.

F. Acts by employees

What happens if an employee of a video game development company maliciously causes damage to the company or one of its clients?

- » PLI provides a company with protection against harmful or damaging acts by one of its employees.
- » There are even insurance policies that protect companies against the departure of key employees, a particularly sensitive issue in this sector, which can result in a company incurring numerous expenses or a project being seriously compromised.

3. Which insurance policies exist for video game development?

The aforementioned risks that are likely to appear in the course of the development of a video game must be prevented and mitigated through the subscription of appropriate policies, for which the following types of insurance exist:



A. Professional Liability Insurance (PLI)

Currently, there are various Professional Liability Insurance policies for Technology and IT on the market, which protect video game developers from personal, material and consequential damage that may be caused in the course of their work.

These insurance policies usually include the following coverage:



B. E&O (Errors and Omissions) insurance

E&O insurance is intended to cover both legal defence costs and possible compensation arising from damage caused to third parties as a result of an error or negligence committed by a developer on a project or job.

In the vast majority of cases, such insurance will be framed as a stand-alone guarantee within the sector's PLI. It covers, among others, the following risks:

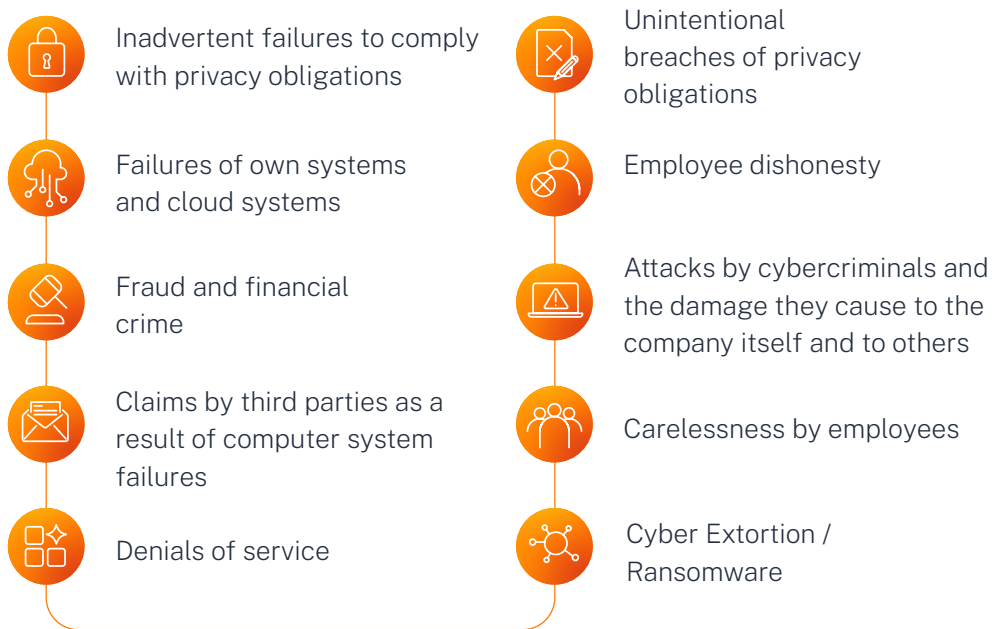
- 1_ Defective products
- 2_ Unauthorised use of licences
- 3_ Infringement of intellectual and industrial property rights
- 4_ Infringements of privacy
- 5_ Defamation



C. Cybersecurity Insurance

Cybersecurity insurance covers risks related to damage that may be suffered by a company or third parties as a result of failures or illegal interference with IT equipment (hacking).

This type of insurance coverage can also be found independently in PLI policies. The following are typical types of cybersecurity insurance coverage:



Finally, insurance products that are customary in the activity of any company or worker, regardless of the sector, should also be taken into account. By way of example, we briefly mention the following:

A

Multi-Risk Insurance

This covers a wide range of risks that are likely to occur in most businesses, such as office risks and civil liability claims, water damage, fire, theft, explosion, or loss of profits or business interruption. These policies would be aimed at studios or companies involved in the development of video games.

B

General Civil Liability Insurance

This is aimed especially at freelancers or for cases of remote work, it covers various types of civil liability, including the legal defence of the insured against any claim that is covered by the insurance.

4. Which insurance should I choose, depending on what I want to protect?

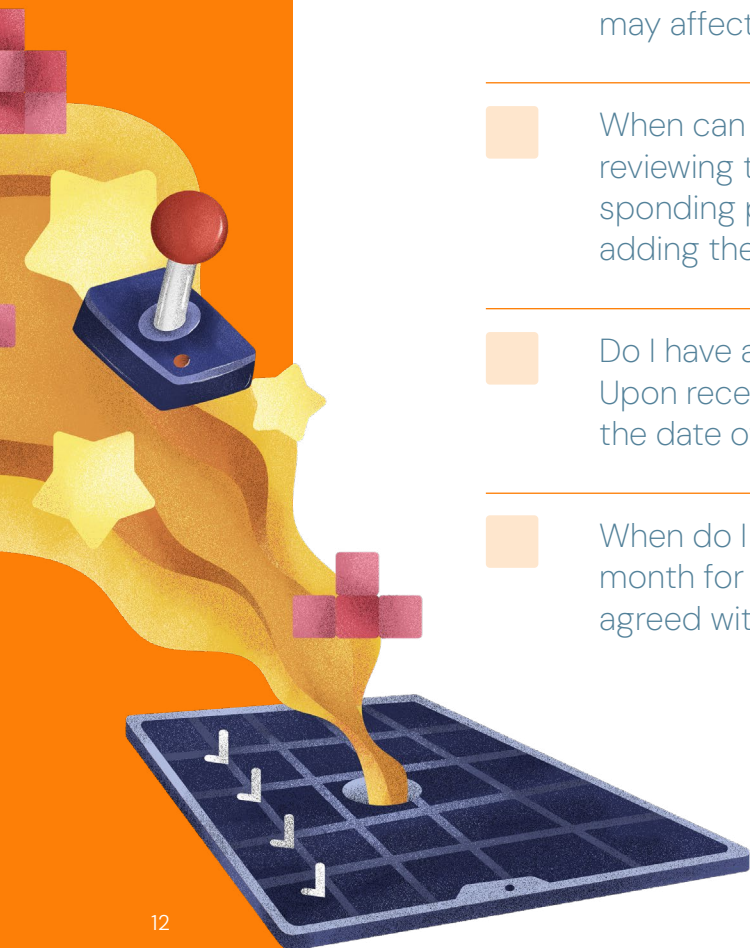
What risk do I want to cover?	Which insurance covers that risk?	What does it specifically protect?
Risk of an obligation to pay compensation arising from a liability, whereby the insured party's assets are subject to an encumbrance.	General Civil Liability Insurance.	• The creation of a debt arising from contractual or non-contractual liability. • A debt aimed at rectifying the damage caused. • Compensation in favour of the injured third party. • A harmful event expressly provided for in the contract. • Civil liability of the insured. • Legal defence of the insured.
Risk of damage caused to the client by errors or omissions resulting from the exercise of the profession.	PLI or E&O Insurance.	Damages and economic losses caused by the insured in the exercise of his professional or business activity.
Risk threatening devices and tools specifically intended for the development and production of video games.	Insurance with coverage for equipment (including own equipment, third-party equipment and software platforms).	Although not an exhaustive list, the insurance may cover the following regarding equipment: • Theft by force. • Fire damage. • Water damage. • Damage due to deterioration.
Loss of profits due to the interruption of the activity carried out.	Coverage for loss of profits.	Loss of economic performance due to cessation or reduction of the insured person's activity due to specific reasons foreseen and described in the policy (fire, explosion, etc.).
Civil liability for damage caused by a defective product placed on the market.	Product and post-work liability insurance.	Coverage for defects in products placed on the market.
Risk of cyberattacks such as hacking, ransomware, viruses and other similar threats.	Cybersecurity Insurance.	Damage that a company or third party may suffer as a result of failures or unlawful interference with IT equipment.
Risks arising from the infringement of intellectual and industrial property rights.	Intellectual and industrial property insurance	• Investigation of possible infringements. • Contacting the perpetrator of the infringement and requesting that they refrain from continuing with the infringement. • Legal fees. • Loss of profits that may result from the infringement.

Summary

Essential checklist

How to choose and take out the right insurance?

- What risks affect my business? Developers must ask insurance companies or insurance brokers for risk assessments to compare types of coverage appropriate to the video game in question and premiums.
- Which specific types of coverage are best suited to my needs according to insurers and brokers? We recommend using insurance brokers, who can analyse the developer's activities, market trends, and changes in the insurance world in greater detail, as well as periodically review the conditions of insurance contracts and handle claims directly.
- Complete the insurance application form provided by the insurance company. The details of the policyholder and the insured must be included. (!) Any information omitted may affect the validity of the policy.
- When can I get the policy, and what will it cover? After reviewing the application, the insurer will issue the corresponding policy, including the coverage requested and adding the exclusions it deems necessary.
- Do I have a deadline to request changes to my policy? Upon receipt of the policy, you will have one month from the date of delivery to request changes from the insurer.
- When do I have to pay the first premium? After the month for requesting changes has elapsed, the premium agreed with the insurer must be paid.



Glossary of definitions

Insurance brokers

Insurance brokers are companies or individuals who act as intermediaries between the insured and the insurer. Their primary function is to help clients find and manage insurance policies that fit their needs and budget.

Financial loss

Financial loss refers to the loss or reduction in the economic value of a person's property or rights as a result of an unlawful act or breach of contract. This type of damage can include both the direct loss of property (e.g. the destruction of property) and the loss of economic opportunities (e.g. loss of earnings).

Defamation and slander

False statements that damage a person's reputation. Defamation refers to written or published statements, while slander refers to verbal statements.

Exclusions

The exclusions in an insurance policy are specific situations or conditions that are not covered by the policy. These exclusions are clearly detailed in the insurance contract and may include events such as war, acts of terrorism, and intentional damage, among others.

Freelancer

A self-employed person who is not permanently employed by a company. Instead, a freelancer offers their services to multiple clients and projects, usually in areas such as graphic design, copywriting, programming, or consulting, among others.

Operational costs

Costs that a business incurs in the normal course of business to maintain its day-to-day operations. These expenses are essential for the ongoing operation of the business and are not directly related to the production of goods or services, but to the maintenance of the infrastructure and the general administration of the business. Common operational expenses include salaries, rent, office supplies and insurance.

Insurable interest

An essential requirement in insurance contracts, which means that the insured must have a legitimate financial interest in the preservation of the property or life that is insured. This interest justifies the need for insurance, as the insured would suffer a direct financial loss if the insured event were to occur. Without an insurable interest, an insurance contract could be considered void.

Glossary of definitions

Contractual liability

The obligation of one party to a contract to repair the damage caused to the other party due to the breach of the obligations established in said contract. This liability arises when one party fails to comply with the agreed terms and conditions, either by act or omission, and as a result causes damage to the other party.

Ransomware

A type of malicious software used by cybercriminals to block access to computer systems or encrypt victims' data. Once ransomware has infected a system, attackers demand a ransom, usually in cryptocurrencies, in exchange for providing a decryption key or restoring access to the data.

Cybersecurity Insurance

A policy designed to protect companies and organisations against the risks associated with cyber incidents, such as computer attacks, data breaches and loss of confidential information, which covers the costs of responding to incidents, data recovery, notification of those affected, legal defence costs and possible compensation for liabilities arising from the security breach, as well as financial losses resulting from business interruption, with specific exclusions and limitations according to the terms of the contract.

Civil Liability Insurance

A policy that protects the insured against third-party claims for loss and damage caused by the insured's actions or omissions, which covers both material damage and personal injury, and includes legal defence costs and compensation up to the limit established in the policy, with specific exclusions and limitations according to the agreed terms.

Coverage simulations

Comparisons of different insurance policies to determine which offers the best protection for the insured's specific needs. These simulations allow policyholders to evaluate the options available, considering factors such as premium cost, coverage limits, exclusions and additional benefits.

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