

TWO AREAS OF RISK MANAGEMENT TO CONSIDER AS IN-PERSON MEETINGS BEGIN TO RETURN

As the pandemic wanes and associations start hosting hybrid or fully face-to-face meetings, they must consider traditional issues of risk management when it comes to shifting insurance liability in contracts and intellectual property.

After 20-plus years in the business of insuring nonprofits, one thing I have learned is that sound risk management requires a consistent, sober look at the entire range of potential risks an association may face. While it can be enticing to talk about the latest risk trends like cyber, social inflation, ransomware, and COVID-19, it is equally important to re-examine the risks we think we understand well to ensure the most comprehensive risk prevention strategy.

As we move further into 2021, many associations have decided (or are strongly considering) a return to in-person or hybrid meetings. This makes it a good time for a quick refresher about a few old-fashioned risks that come with in-person conferences. With all the talk about COVID-19, vaccines, and herd immunity, keep in mind that issues like contract liability, intellectual property, and copyright concerns continue to pose threats to associations.

Insurance and Contract Liability

Recently a draft contract from a client caught my attention. What was particularly interesting was the attempt by a vendor to use contractual language to transfer blanket COVID-19 risk back to the association. In this case, a vendor was looking for the client to take on risk relating to personal injury claims relating to COVID-19 as a result of the vendor's activities or operations.

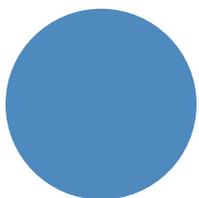
First, notwithstanding the significant challenges of establishing a nexus between COVID exposure and disease transmission and attaching liability to that, insurance coverage for communicable diseases is drying up in the marketplace. An association could be taking on an open-ended risk with no insurance coverage as a backstop. There are several questions associations should ask when reviewing a contract: Should my organization accept this risk? Why? And what are the implications if we do?

"Lack of attention to language in contracts results in a significant number of disputes, including lawsuits between contracting parties," said Kellie L. Newton, an attorney specializing in associations with Whiteford, Taylor & Preston. Newton points out that problems can occur when the drafting process uses a contract intended for another purpose or is not changed to meet the intentions of the contracting parties.

Another problem we see often is misinterpretation by exhibitors that the association is insuring their equipment and space. Associations need to make sure "Hold Harmless" contract language reads in their favor. In other words, associations are not covering exhibitor-owned booths and property and should not take on that liability exposure. Moreover, associations should look to be named on exhibitors' policies as "Additional Insureds."

Intellectual Property and Copyright

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A second major area of concern, both for in-person and virtual meetings, is the importance of managing copyright and intellectual property, which impacts content and presentations at meetings.

In a blog post, Delia Patterson, senior vice president of advocacy and communications and general counsel with the American Public Power Association, said “educating employees about the basic elements of copyright law and its relevance to day-to-day business practices is critical to every organization.” In particular, she said it is important to remember that copyright is “the legal and exclusive right of the author of a creative work to control how that work is reproduced, distributed, publicly displayed, publicly performed, and modified to create new works.”

One risk strategy associations might consider is reviewing conference slide decks prepared by speakers to check that photographs or cartoons are not being misused without permission. Like any business, associations are not immune from sophisticated “copyright trolls,” who use algorithms and other digital technology to search the internet for copyright violations. Such cases can result in costly defense and settlements.

“If a speaker does not own the images or have the right to use them, an association will be at risk of a copyright claim by the owner when the deck is posted to the association’s website or appears on the internet,” Newton said.

Associations might use speaker agreements to require speakers to warrant that they own or have the right to any images used in the deck and require a “hold harmless” clause protecting the association from financial payouts in a claim by the owner.

If the past is prologue, 2021 will keep us all on our toes. Risk never sleeps, and while we turn our attention to getting together in person, let’s keep an eye out for risks both old and new, and make sure adequate attention is paid to both. Even fundamentals like contracts and intellectual property need our constant attention.



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