



Risk Management: Bar Associations

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Top 5

1. Employees
2. Data
3. Fraud
4. Intellectual property
5. Antitrust

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Employment-Related Risks



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Sexual Harassment

- Policies
 - Understanding / Training
 - Communications
 - Investigations
 - Enforcement
- Damage Control
 - Not always just unwanted advances
 - Hostile work environment
 - Adverse employment actions
 - Don't blame it on the a a a a alcohol ...
 - Harassment can take place digitally

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Discrimination

- Policies
 - Understanding / Training
 - Communications
 - Investigations
 - Enforcement
- Damage Control
 - Race/color, gender, age, disability, religion, national origin, genetic information, pregnancy
 - Sexual orientation/ gender identity, marital status, political affiliation/beliefs
 - Recruiting, hiring, compensating, discharging, promoting

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Data



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Cyber Risks

- Theft or unintentional release of membership/client data
 - Personally identifiable information (“PII”)
 - Credit card numbers
 - Other confidential information
 - Trade secrets (membership lists)
- Theft or unintentional release of employee data
- Business interruption
- Data damage

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Mitigate!

- Develop, implement, enforce policies
- Limit access
- Establish data security practices
- Consider cybersecurity with respect to third party access
- Train
- Insure

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Cybersecurity - Data

- What data about people is collected?
- What is done with such data?
- Where is such data stored?
- Who has access to such data?
- Who is responsible for such data?

get rid of data
you don't need!

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Breach!

- Identification of scope and extent
- Repair of vulnerabilities
- Plan for business continuity
- Data breach notification requirements
 - Affected persons
 - Authorities
- Risk of harm analysis
- Management of public relations

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Cyberliability Insurance

- Losses affecting
 - The association's information
 - Other parties' information
- Types of costs/expenses that may be covered
 - Notifying other parties
 - Repairs to site
 - Consulting fees to mitigate reputational damage
 - Business interruption

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Fraud



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Scary stats

- Typical organization loses 5% to fraud each year
- Median losses for nonprofits totaled \$100,000
- Reported frauds last approximately 18 months before detection
- Approximately 85% of fraudsters are first-time offenders

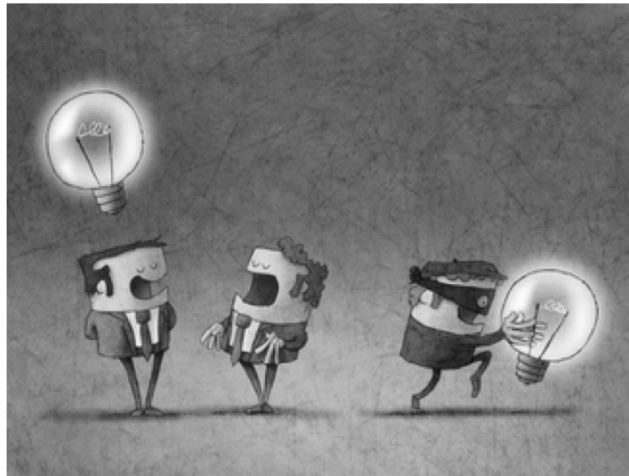
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Tips

- Tone at the top
- Identification of weaknesses
- Development and enforcement of policies
 - Internal control, expense reimbursement, contract approval, check signing, whistleblower
- Consideration of insurance
- Audited financials
- Understand and comply with disclosure requirements

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Intellectual Property



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Intellectual Property

- Copyright
- Trademark
- Patent
- Trade secrets

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IP Infringement



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Copyright: Fair Use Exception Factors

- The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
- The nature of the copyrighted work
- The amount and substantiality of the portion used in relation to the copyrighted work as a whole
- The effect of the use upon the potential market for, or value of, the copyrighted work

17 USC §107

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IP Protection

- Identify
- Work-for-hire
- Terms of use
- Registration
- Monitoring
- Enforcement



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Antitrust



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Sherman Antitrust Act – Section 1

“Every contract, combination ..., or conspiracy, in restraint of trade or commerce ..., is declared to be illegal.”

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Agreement

- Action of association = agreement among its members?
 - Communications with competitors
 - Be careful of discussions related to:
 - Pricing
 - Deciding whether to do business with vendors, competitors

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Restraint of Trade or Commerce

- Anti-competitive *per se*
 - Price fixing
 - Through shared reporting
 - Through communications among members
 - Group boycotts
 - Through membership requirements & expulsions
 - Through self-regulation, codes of ethics
 - Through set industry standards, certifications
 - Market allocation
 - Bid rigging

**Possible
criminal
violations**

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Restraint of Trade or Commerce

- Rule of reason
 - Nature and character of agreement
 - Actual and probable effects of the restraint
 - Objective rules
 - Consistently applied
 - Purpose/rationale of the restraint
 - Market power of the members entering into the agreement
 - Procompetitive justifications for the restraint

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