



TECHNOLOGY AND NEW PRODUCTS UTILIZATION OF TECHNOLOGY - - THE NEED FOR LEGAL PROTECTION

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Associations have adopted a leadership position in implementing new technologies to enable the organization to enhance communications with members and better market the products and services offered by both members and the association. However, associations need to examine whether they are adequately protecting the intellectual property that they are creating when adopting technology solutions. They also must comply with laws regulating how they use technology to communicate. Let's look at some everyday legal issues raised by technology.

1. Marketing

- a. **Antispam Regulations** - - The FTC has issued regulations that restrict spam marketing. There are certain exemptions for associations. Are you familiar with these rules and regulations? If you market by email, even if the marketing is limited to your members, you should be familiar with the FTC requirements.
- b. **Do Not Call Registry** - - The FTC and the FCC have established a system whereby consumers can register to avoid telemarketing calls. Does your association engage in

telemarketing? If so, do you know what these rules require?

2. Standard Setting

Many industries are engaged in standard setting as means of establishing a uniform platform for the implementation of new industry technology. An example would be a standard format for DVD's from various providers. If your association participates in standard setting activities you must comply with antitrust restrictions. You should also adopt policies to require that those who provide technologies to be incorporated into the standard give up any property rights that they may have in such technologies to the standard setting body.

You should recognize that standards limit the right of vendors to market non-compliant products and thus raise significant antitrust issues. Uniform activity by competitors engaged in standard setting is generally judged under the antitrust laws "rule of reason." Standards that are "unreasonably restrictive" could result in antitrust liability. Antitrust counsel should review your standard setting procedures.

If you develop a standard based on patented technology and do not have the right to use that technology without cost or other restrictions, you may find that the owner of the technology will require a

license and royalty fee from any and all potential users of the standard. Obviously, this is something to be avoided.

3. Establishing Web Sites.

In establishing a new website you may wish to utilize software developed by an outside vendor and/or use an outside web platform developed by an outside vendor. As an example, assume that the Widget Manufacturers Association develops a Widget Manufacturers Professional Training Website. Click on the Widget Manufacturers website; then click on Education and Training; then click on Widget Production Worker Safety Course. You can open up a course description and purchase a specialized interactive industry focused training program including a comprehensive test for those who complete the program. In reality the program is a modification of a standard program developed by a vendor of safety training programs that has been licensed to the association by the program developer. The program is hosted on the server of an educational testing vendor which has developed the test, and has contracted to

administer and grade the test for the Association.

Who owns the software for the training program and the tests? Who has the right to continue to use the software and the testing program in the event of a dispute between the Association and the vendors? Who owns the rights to use membership lists and lists of persons who have inquired about the programs? Who owns the rights to publish summaries of the test results or modify the tests?

These are some of the issues facing every association today. In the past, associations were concerned with the ownership of the copyright on magazine articles and the content of presentations made at meetings. Today, associations must be concerned with Webinars, virtual classrooms and materials distributed solely in electronic format.

Have you considered the legal issues involved with new technology? If not, make such a review a top priority. If you don't, you may find out that you do not own or control valuable association assets.