

ASSOCIATIONS AND AI: MANAGING LEGAL AND OTHER RISKS

The flip side of AI's unprecedented potential? Unprecedented levels of risk. But don't write it off just yet. Your organization can still harness its power—if you understand how to mitigate the legal risks and other vulnerabilities involved.

BY HOLLY E. PETERSON

Artificial intelligence (AI) is ubiquitous. While its promise presents transformative opportunities, its use presents legal and other risks that must (and can) be managed. Primary risk areas include copyright, privacy, discrimination, and tort liability. Legal and reputational risks are born from a complicated web of evolving federal, state, and international laws and emerging norms.

Risk mitigation measures can reduce legal exposure and reputational risk, enabling associations to leverage AI to carry out strategic endeavors. Here's an overview of risks related to AI use and practical risk mitigation tips.

COPYRIGHT OWNERSHIP

Because AI-generated content is not subject to copyright protection, associations should require human authors to substantially and materially contribute to any association work product. Associations should revise existing author and speaker agreements to require a written attestation from employees, contractors, and volunteers representing and warranting that any submitted content bears more than a *de minimus* human imprint such that the author/creator has all necessary rights to assign or license the work to the association, and the submitted content does not infringe the IP rights of any third party. In some circumstances an indemnity provision is also advisable.

THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS

If embedded AI content infringes someone else's copyright, that party may have an actionable IP claim

against an association that publishes the work. Ultimately, an infringement claim will hinge on the facts, focusing on the extent of the infringement and evaluating any claims of "fair use." Risk can be mitigated by requiring human authors to indemnify the association for works that infringe upon third-party intellectual property rights.

PRIVACY AND DATA SECURITY

Personally identifiable information ("PII") is heavily regulated. Unauthorized disclosure triggers significant legal consequences. Generally, associations should not allow staff, contractors, or volunteers to input PII into AI applications unless comprehensive compliance measures are intact, including ensuring that the inputs are not used to train the AI platform's algorithms. Similar expectations should be set with respect to proprietary and confidential information. If it is not possible or practicable to segregate PII or other confidential information—for example, if an association uses targeted advertising to tailor member or donor experiences—the organization, in consultation with data privacy counsel, should implement robust compliance safeguards.

DISCRIMINATION

Because AI relies on preexisting inputted data, it can inadvertently replicate and perpetuate bias and discrimination. While discrimination only creates legal exposure in certain contexts (e.g., employment), algorithmic bias may also have consequences. Imagine an AI "peer review" service for an association's scholarly journal. Quite possibly, generative feedback

may rely on outdated nomenclature or data. Further, an AI application of this sort may privilege existing content over novel theories, which could result in stale scholarship. Humans should always review AI processes and outputs for bias and/or discrimination and should record efforts to test for bias, where applicable.

TORT LIABILITY AND REPUTATION

AI-generated content may be inaccurate or defamatory. Again, sufficient human vetting is the best risk mitigation strategy to capture and correct factual inaccuracies. In addition, associations should consider requiring authors to affix a conspicuous disclaimer to any submissions incorporating AI-generated content signaling that the author used AI to create the work, reviewed the work, and is responsible for all content.

THE BOTTOM LINE

Associations should consider the benefits and perils of AI and craft thoughtful policies that appropriately circumscribe use in a legally compliant and ethical manner that, in all instances, aligns with the association's values, ethics, policies, and unique circumstances. Be sure to revisit such policies on a regular basis, as this is, without question, a rapidly evolving area for every association.

HOLLY E. PETERSON is an attorney at Tenenbaum Law Group in Washington, D.C. Email: hpeterson@TenenbaumLegal.com.