

NAR INSURANCE PROGRAM

QUARTERLY RISK REPORT

Q3 2023

IN THE SPOTLIGHT:

INTELLECTUAL PROPERTY

Intellectual property (IP) is protected by law and includes creations of the human mind, such as inventions (patents); literary and artistic works (copyright); and symbols, names and images used in commerce (trademark). The main purpose of IP law is to ensure that creators' works are not used by others for profit or personal gain, without recognition or financial benefit for the creator or owner. REALTOR® associations must take care when using the IP of others or undertaking activities that may have implications for IP liability.

Copyright

[Copyright](#) protects original works of authorship, and allows the copyright owner to dictate how a work is used. REALTOR® associations may encounter copyrights from both sides: as the creator of copyrighted material such as real estate forms, educational courses, or MLS databases, and as the user of copyrighted material like images for a website or music played at an event.

Each aspect requires a risk management strategy to protect an association's works, and to avoid copyright infringement. Improper use of copyrighted content can create legal problems for REALTOR® associations including cease and desist letters, demands for license payments, and litigation, with damages for willful infringement as high as \$150,000 per work.

Artificial Intelligence

The use of generative [artificial intelligence](#) (AI) platforms presents unique questions that could shape the future of IP. AI can create content—blog posts, video scripts, articles, images, and much more—in response to user prompts, after scanning its database of millions of pieces of content.

CLAIMS REPORTED: 16

11 active demands/lawsuits | 5 potential claims

- 5 Cyber
- 2 Employment
- 2 Professional Standards
- 2 Discrimination
- 1 Governance
- 1 Defamation
- 1 MLS
- 1 Crime Loss
- 1 Other

However, using AI platforms is not without risk. The output generated by generative AI is not currently protectable under US copyright law. Failing to review the AI's output for accuracy can lead to embarrassment and even legal liability if it infringes on someone else's IP. In addition, information the user provides is used to train the AI and may be used to create content for others.

Trademarks

[Trademarks](#) are unique terms, symbols, or combinations of terms and symbols that communicate a specific message to the public. REALTOR® is NAR's trademark and has only one meaning: a member of the National Association of REALTORS®. Pursuant to the three-way agreement, NAR grants each association the right to control the terms "REALTOR®" and "REALTOR®-Associate" (REALTOR® Marks) within their territorial jurisdiction.

In addition, NAR's Bylaws require REALTOR® associations to cooperate and coordinate with NAR to ensure the proper use of the marks by their members, and that their members use the NAR's trademarks in compliance with the NAR Constitution and Bylaws and the policies and guidelines set forth in the [Membership Marks Manual](#).

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BEST PRACTICES

COPYRIGHT

- Obtain ownership or a broad exclusive license for all content created by someone else, such as photos or graphics.
- Secure a performing rights license to play music at a live event and a synchronization and master recording license before incorporating music into a video (including the recording of a live event or webinar).
- Be sure to understand the rights granted in license agreements and consider any future use of copyrighted material when securing the license.
- Keep records of ownership, license, and other agreements to easily confirm rights if challenged.
- Comply with the [Digital Millennium Copyright Act](#) to protect against potential copyright liability.

ARTIFICIAL INTELLIGENCE

- Adopt an AI policy which explains the risks of AI and the steps to mitigate these risks. (See Sidebar.)
- Consider only allowing staff to use platforms which allow an “opt out” of using your input and data for training.
- Don’t use AI to create content you want to protect.
- Do not input confidential data into AI tools.
- Include details in vendor contracts how vendors may use AI in their delivery of products and services.
- Address IP risks via warranties and indemnification clauses.
- Comply with [data privacy laws](#).

TRADEMARK

- Review and maintain compliance with [NAR’s trademark policy](#).
- Educate association members on how to properly use the REALTOR® trademark.
- Assist NAR in enforcing trademark compliance by sending [cease and desist letters](#) for unauthorized use of the mark.

NAR RESOURCES

COPYRIGHT

[Risk Management Webinar: Copyright - Best Practices to Avoid Costly Claims](#)

[Window to the Law: Copyright Issues for Real Estate Professionals](#)

[Window to the Law: Using Images and Music in Your Business](#)

[Window to the Law: Copyright Best Practices for Listing Photos](#)

[Listing Photo Sample Agreements](#)

[How to Prepare Descriptive Statement for MLS Database Copyright](#)

[Make NAR’s Marks Remarkable & Quick Copyright Best Practices](#)

ARTIFICIAL INTELLIGENCE

[Window to the Law: Legal Tips to Use AI in Your Business](#)

[REALTOR® Magazine: Start Experimenting with AI Now](#)

[REALTOR® Magazine: What You Can Do That Artificial Intelligence Can’t](#)

[REALTOR® Magazine: AI Use in Real Estate Comes with Copyright Concerns](#)

[2023 PropTech Forecast: Generative AI](#)

TRADEMARK

[Membership Marks Manual for Associations](#)

[Membership Marks Manual for Members](#)

[Window to the Law: New Membership Marks Manual for REALTOR® Trademark](#)

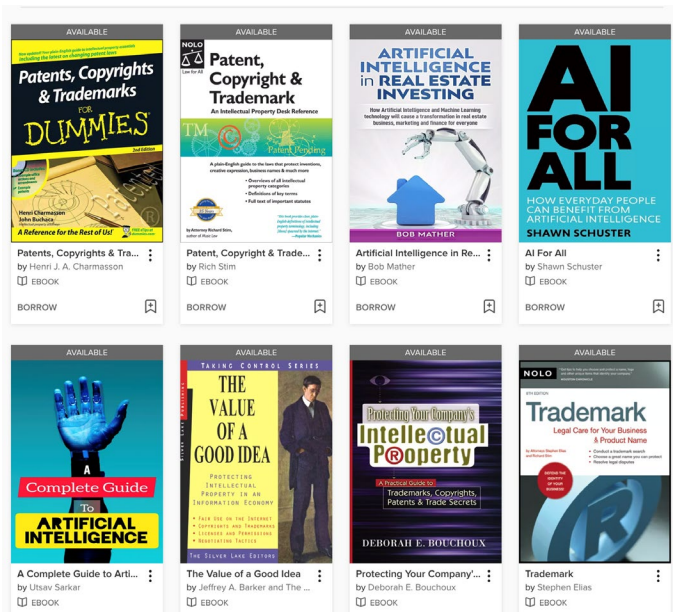
[Video: Why NAR Protects the REALTOR® Trademark](#)

[Video: Make Our Marks Remarkable](#)

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INTELLECTUAL PROPERTY EBOOK COLLECTION

The NAR Library & Archives has compiled a collection of eBooks about [copyright](#), [trademark](#) and [artificial intelligence](#). Share this [valuable collection](#) with your board members and remind them that they have access to these books, and many more.



To access these eBooks and the entire NAR library collection, log in to NAR's [eBooks site](#) using your NAR Member ID. Be sure to select "National Association of REALTORS®" as your primary library in the drop-down menu on the sign-in page.

The NAR Insurance Program provides professional liability and limited patent coverage to all eligible associations, affiliates, and MLSs.

EPL TIP

What tips can we give staff to negotiate icy conversations at our holiday party?

It's that time of year, when amidst holiday shopping and year-end budget reviews (and attending NAR NXT!), associations may be planning their in-person holiday parties. While these parties can build goodwill, they're also fraught with peril from an employment law standpoint. In today's environment, conversations fueled by spirits can spiral into heated and inappropriate interactions at work. This in turn can snowball into abusive patterns which employers need to avoid. So along with messaging about appropriate behavior, emphasize how to navigate conversations about hot button issues.

First, seek to thaw political divisiveness. If an issue must be addressed, consider responding with an attempt to understand. This doesn't mean you have to agree with the other person's point of view. Seek out the reasonable explanations for why someone holds a perspective they have. Lead with a phrase such as "I want to make sure I understand ..." and see if the icy chill can thaw rather than harden.

Next, resist the impulse to counter an opposing viewpoint. Indicate that you really heard someone by paraphrasing the core idea they have expressed. Instead of forcing your view, ask, "Would you be open to hearing a different perspective?" With this, hopefully you are positioned to build a bridge to civility. If you've gotten this far, look for common ground. Perhaps you can identify a shared concern or draw out an individual's motivation by asking simple questions that focus on positive change, like "What change would you like to see?" Unresolved issues can lead to fissures between co-workers. On the other hand, respectfully acknowledging our differences can be a catalyst for meaningful change.

This employment practices tip, and dozens more, are available to you on the [EPL Assist™ website](#). Be sure to take advantage of this [valuable benefit](#), which provides policy templates, sample documents, risk management resources, and advice and counsel on common employment law issues facing associations.

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CREATING AN AI POLICY

Mitigate potential risks with a generative AI policy. Here are 5 things to consider when drafting a policy for employees.

Acceptable uses. Think about what AI may be used for, who may use AI, and what platforms employees are allowed to use. Provide training, best practices and guidelines for employee use of generative AI.

Review and disclosure. Require review of all output for accuracy, and consider requiring employees to disclose when they use AI, or to document their use.

Data privacy. Data privacy should be a main focus for any AI usage. Limit employee access to sensitive information and require explicit permission to enter company data into AI platforms.

Consequences for misuse. Include disciplinary actions, up to and including termination, that employees may face if they violate the policy and misuse AI.

Legal requirements. Track [legal and regulatory developments](#) and adjust an AI policy as needed.

COVERAGE CORNER

ADDRESSING COMMON POLICY QUESTIONS

Q: Are we covered for defamation for something we posted on our social media accounts?

A: Yes. An association's online activities like engaging on social media sites, blogging and podcasting fall within the Policy's "Publisher's Liability" definition. As defined in the Policy, coverage is provided to the association for "utterances in the course of activities conducted by or on behalf of the Association", and covers claims such as defamation, trademark or copyright infringement, and/or invasion of privacy.

Have coverage questions?

Check out these [Professional Liability Policy FAQs](#).



RISK MANAGEMENT WEBINAR

EMPLOYMENT PRACTICES:

CONDUCTING INTERNAL INVESTIGATIONS

DECEMBER 11 | 2:00 PM CT

REGISTER NOW!