

Legal Tips for the New Year

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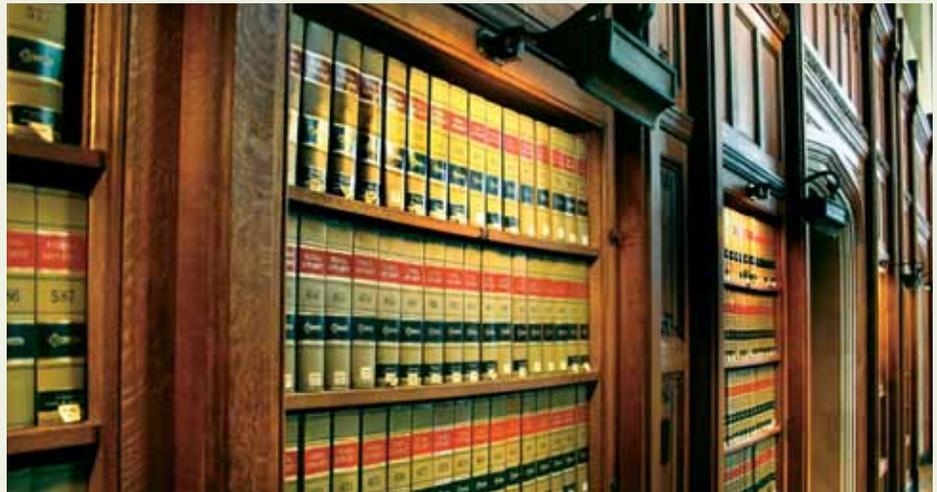
Q: Any year-end tips to help us start the New Year right?

A: We always are happy to provide a few tips and reminders. Here are some areas to focus on during the New Year:

- **Tax.** Review your activities to be sure that you are properly classifying income and expense — and maximizing the amount of tax-free income. Activity and revenue that might be categorized as unrelated business income — and subject to tax — often can be transformed into tax-free royalty income. So, for example, be sure that any sponsorship activity is established as a license for the use of your name, logo and/or mailing list and for which you receive income in the form of a royalty. Properly structured royalty income always is tax-exempt.

Be sure not to provide any “return benefits or services” for the royalty, other than the use of the licensed intellectual property. Otherwise, the income might, again, become taxable. If the sponsor requires a return benefit, set that up under a separate agreement with a separate income stream.

- **Corporate governance.** Review your bylaws. Do they comply with your organization's articles of incorporation and the state act under which the organization was incorporated? Also, review policies and procedures to confirm that they comply with the bylaws. If they don't, either the bylaws or the policies and procedures must be changed. Further, be sure that the organization has proper policies and procedures in place, especially those that address corporate governance and liability issues (e.g., conflict of interest, authority to speak and act, whistleblower protection, record retention, antitrust, employment and the like).
- **Intellectual property.** Review the use of your name and logo. Be sure that those marks are properly registered and in the correct trademark class.



Also be sure that the marks are used in a manner that is consistent with their classification with the Patent and Trademark Office. If you haven't already done so, establish policies on the use of your name and logo, or review and update your existing policies. Make sure that you are supervising — and enforcing — usage in accordance with your policies. If your members are creating copyrightable content that the organization wants to own or thinks it does own, make sure you have adopted appropriate policies that enable the organization to own its member-created content.

- **Records retention.** If you haven't yet adopted a records retention (i.e., records destruction) policy, do so to start the New Year. More important, resolve to implement the policy. That is, assure that only those records that are supposed to be retained under the policy are being retained. Make it a point at least once a year to destroy everything else. It is essential to remember that the organization's records are not just its paper files. They include all of its electronically stored information, as well — including records created and maintained by members. In addition, remember that the first element of a good records retention policy is to create

good records in the first place. Only include in minutes that which must be included: what was done, not what was said. Be extremely careful with email communications. They are records, too, and they often are not as thoughtfully prepared as other more formal communications.

- **Reflections.** Year-end is a good time to take a breath and think about where you have been and where you want to go. Does the organization have the right people on its board and in its leadership? What can you do to improve the board? Does the organization have the right people on staff? Review existing relationships with other organizations, vendors, etc. Review the organization's existing policies in light of its current activities. What can be done to improve your association — make it a better place to work and improve its ability to carry out its mission?

Here's hoping you have a great 2013! 🍀

The answers provided here should not be construed as legal advice or a legal opinion. Consult a lawyer concerning your specific situation or legal questions.