

Speaker Agreement Essentials



Q: We're doing a lot more webcast presentations. Will our standard speaker agreement work? Are the issues different?

A: Whether a presentation is to be given live, during an audio conference, or through a webcast, any organization that retains speakers should enter into written agreements with those speakers setting forth the organization's rights, limiting its liability for materials presented, and minimizing the risk that the speaker will cancel.

Specifically, to publish a speaker's materials an organization must obtain either a transfer of the speaker's copyright in his or her materials or explicit permission — a "license" — to reproduce and otherwise use the handouts and other materials. Copyright assignment transfers ownership, providing the organization with the greatest amount of control over the materials. A license agreement affords the organization the right to use the work, but the speaker retains ownership of the materials. If the license is exclusive, the organization has the exclusive right to publish the materials after the program is over, while a nonexclusive license allows speakers to use the materials themselves and to give others a right to use them.

When an organization receives a license to materials, that license should include rights to reproduce, excerpt, translate, distribute and sell the materials in all forms and media. And, along with either a copyright transfer or a license, organizations that plan to videotape or audiotape their presentations should obtain prior written

consent to disseminate the speaker's name, image, voice, title and other identifiable information in connection with the presentation. Such an approach provides the organization with the most flexibility, even if it isn't certain at the outset how the materials may be used. Having to go back later to obtain additional permission for uses not covered in the initial agreement is burdensome and provides no assurance that the desired rights will be secured.

There is a delicate balance between how much ownership and control an organization wants or needs, and what speakers may be willing to give up. It is important to note that the visibility associated with materials published over the Internet has caused certain presenters to become reluctant to sign a speaker's agreement. There is a recognition that virtual presentations reach more people and thus may become more valuable. Some who didn't hesitate granting a license for, say, a handout, now question whether they want their materials broadly disseminated on an organization's Web site. For the same reasons, others have begun to look more carefully at the representations they are required to make and seem to have a greater appreciation of the importance of confirming that they own, or have permission to publish, all the materials in their presentations. In a properly drafted speaker's agreement, an organization may address speakers' concerns by, for example, making representations back to the speaker that it will protect the speaker's rights in the materials (by including copyright notices) and/or will notify the speaker prior to republishing the presentation in a new form or media.

In addition to setting forth their rights in a presentation, organizations also should obtain representations from presenters regarding the content of the program. Speakers should represent that the materials they create are original, or that they have obtained necessary permission to use the materials, that the materials are accurate, and that the presentation does not defame or disparage any person, product or service. Organizations also may want to obtain rep-

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resentations from presenters that their programs will be educational in nature, rather than promotions for commercial products or services (this is especially important with continuing medical education programs). To make all such representations meaningful, they should be supported by the speaker's agreement to indemnify the organization for any damages resulting from a breach of those representations.

If the speaker will be paid, the agreement should outline the compensation terms, including the speaker fee and whether the speaker will be reimbursed for certain expenses. If the speaker is a volunteer, it may be prudent to include a provision that expressly provides that the speaker will receive an acknowledgement in the program and in any later publication of the materials, but will not receive a fee for the presentation.

The agreement also should include provisions minimizing the likelihood that the speaker will cancel at the last minute. While "personal service" agreements cannot force a speaker to present, an organization can deter cancellation by requiring the speaker to pay a predetermined cancellation fee or provide a substitute if he or she is unable to attend. In some cases, adding language that the speaker will use his or her best efforts to attend, or will notify the organization immediately if he or she must cancel, may be enough. Finally, the agreement should state that the organization has the right to cancel the speaker's presentation and/or the program, and it should outline what fees or expenses, if any, will be paid in the event of such cancellation.

While every situation is different, it is most important for each organization to determine what terms are necessary to protect its interests, now and in the future, and to make certain that the agreement reflects the parties' understanding of those terms. **■**

The answers provided here should not be construed as legal advice or a legal opinion. You are urged to consult a lawyer concerning any specific situations or legal questions you may have.