

Volunteer Speaker Agreement Provisions

Q: What provisions should be included in a volunteer speaker's agreement?

A: Whether an association is securing a volunteer or paid speaker, it is important that the parties enter into a written agreement, prior to the presentation, that addresses the parties' use and ownership of the materials being presented, as well as the speaker's responsibility for the appropriateness of those materials. Here are the major issues:

Permissions and Ownership. A presenter owns the copyright in his or her presentation the moment it is created in a tangible form. Therefore, for an association to publish and/or record a speaker's materials, it must receive the speaker's permission. The organization may obtain permission either through a transfer of the speaker's copyright in the materials or through a license agreement to reproduce or otherwise use the materials. Copyright assignment transfers ownership; a license affords the organization the right to use the materials, but the speaker retains ownership. The license should define the scope of use and, by so doing, avoid later claims that the association used the presentation without authority. Typically, associations obtain a royalty-free right to record, transcribe and use a speaker's presentation in any format, including the right to combine it with other materials into a course syllabus or other compilation. Under those circumstances, the presenter would retain the copyright in the individual presentation, but the association would own the copyright in the compilation.

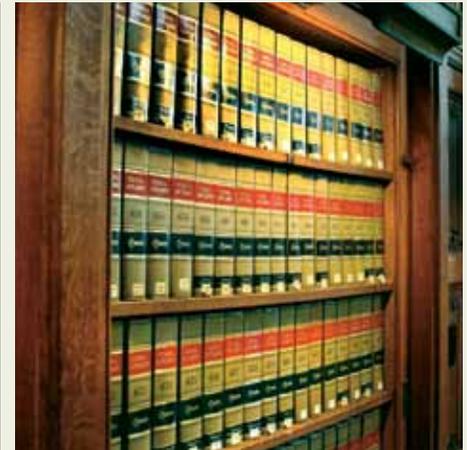
Representations. Presenters are in the best position to know whether the content of their program materials is accurate, non-infringing of others' rights and appropriate. As a result, organizations usually ask presenters to make representations regarding their presentations. Specifically, presenters should represent

that: (i) the materials in their presentations are their original works or materials they have permission to use, distribute and publish; (ii) the materials are accurate to the best of their knowledge and do not violate the rights of any third parties, including, without limitation, any privacy rights; and (iii) their presentations do not defame or disparage any person, product or service. Such representations are important in limiting the sponsoring organization's liability in that they demonstrate the organization took reasonable steps to assure the program content was appropriate and third-party rights were not violated.

Often, an organization also will obtain representations from speakers that their presentations will be educational in nature, rather than serve as a promotion for commercial products or services. For example, continuing medical education program sponsors typically require their speakers to use generic or trade names rather than brand names when discussing therapeutic options during a presentation. Such an approach is intended to promote a balanced presentation. To comply with accreditation standards, as well as their own policies, most health care-related organizations also require presenters to make written disclosure of any conflicts of interest and/or commercial interests prior to leading a continuing education course. Knowledge of such conflicts and/or interests allows the sponsoring organization to make any required disclosures to the audience or, if a considerable conflict exists, determine whether the speaker should be replaced.

Indemnification. For a presenter's representations to be meaningful, they should be supported by his/her agreement to indemnify the sponsoring organization for any damages resulting from a breach of those representations. Indemnification is a means by which one party holds another harmless because of the first party's actions. From the association's per-

This Law Review was written by Susan Feingold Carlson and edited by Jed Mandel, both of whom are founding members of Chicago Law Partners, LLC. CLP serves as the Association Forum's general counsel.



spective, it is important that its speaker agreements include indemnification provisions. The association sponsoring the educational program is not in control of the presenter's material. Indemnification helps to ensure that presenters will confirm the accuracy of their material as well as their representations regarding copyright, privacy, potential defamation and other requirements. Moreover, the association cannot conduct an independent investigation of every presentation to ensure protection of third-party rights. Indemnification is used to protect the association and its assets against claims brought by third parties for the actions of its presenters. Because most presenters are knowledgeable and confident about the content of their materials, they generally are not hesitant to sign an agreement with an indemnification provision.

No matter how much an association may want to schedule a particular presenter, it should make no exceptions for presenters unwilling to sign a speaker agreement. Requiring such agreement is a reasonable and prudent position for the association to take. Presenters who don't agree should not be part of the program. ■

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.