



Copyrights, Trademarks & Websites: 10 Things Every Association Needs to Know

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Presented by:
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Jeffrey S. Tenenbaum is a partner with the Association Practice Group of Venable LLP and is one of the nation's leading association and nonprofit attorneys. He is also an accomplished and respected author, lecturer and commentator on nonprofit legal matters. Based in the firm's Washington, D.C. office, Mr. Tenenbaum concentrates his practice exclusively on association and nonprofit law. He counsels his 300+ clients on the broad array of legal issues affecting trade and professional associations and other nonprofit groups, and regularly represents clients before Congress, federal and state regulatory agencies, and in connection with governmental investigations, enforcement actions, and other proceedings.

In 2006, Mr. Tenenbaum was presented with the American Bar Association's Outstanding Nonprofit Lawyer of the Year award, and in 2004, he was an inaugural recipient of the *Washington Business Journal's* Top Washington Lawyer award. Mr. Tenenbaum was recognized in the 2005-06 edition of *Who's Who in American Law*, and received the distinguished Chairman's Award in 1997 and again in 2004 from the Greater Washington Society of Association Executives and The Center for Association Leadership, for his leadership efforts in the association community. He serves as special counsel to ASAE & The Center for Association Leadership.

Mr. Tenenbaum is the author of the popular book, *Association Tax Compliance Guide*, published by the American Society of Association Executives, and is a contributor to numerous ASAE & The Center books, including *Professional Practices in Association Management*, *Association Law Compendium*, *Essentials of the Profession Learning System*, *Generating and Managing Nondues Revenue in Associations*, and several Information Background Kits. In addition, he is a frequent lecturer and author for ASAE & The Center and most of the major association industry organizations, conducting over 25 speaking presentations each year – including many with top IRS, FTC, DOJ, FCC, and other governmental officials on legal topics affecting associations – and having written approximately 200 articles on nonprofit legal topics. He served on the faculty of the ASAE Virtual Law School, and is a regular commentator on nonprofit issues for *The Washington Post*, *The Washington Times*, *Washington Business Journal*, *Legal Times*, *Association Trends*, *USAE*, *The Baltimore Sun*, *The New York Sun*, *CBS MarketWatch*, and other periodicals.

Mr. Tenenbaum is an active participant in the association community who currently serves on the Editorial Advisory Board of ASAE's *Association Law & Policy* legal journal and the ASAE Public Policy Committee. He previously served as Chairman of the *AL&P* Editorial Advisory Board and has served on the ASAE Legal Section Council, the ASAE Association Management Company Accreditation Commission, the GWSAE Foundation Board of Trustees, the GWSAE Government Affairs Advisory Council, the Federal City Club Foundation Board of Directors, and the Editorial Advisory Board of *Nonprofit Tax & Financial Strategies*.

Comprised of nearly 600 lawyers, Venable LLP provides legal counseling to and advocacy for over 500 nonprofit organizations, and is widely regarded as one of the nation's premier legal practices of its kind. Prior to practicing law, Mr. Tenenbaum served as Legal Section Manager and Government Affairs Issues Analyst for ASAE, and as a legislative assistant to Congressman Peter Kostmayer in the U.S. House of Representatives, responsible for tax, budget, trade regulation, and banking issues. Mr. Tenenbaum is a member of the District of Columbia Bar. He received his J.D. from the Columbus School of Law at Catholic University in Washington, D.C. He holds a B.A. in political science from the University of Pennsylvania in Philadelphia, Pennsylvania. Mr. Tenenbaum is AV Peer-Review Rated by Martindale-Hubbell.

Untangling the Web - Internet Legal Issues for Associations

By [Jeffrey S. Tenenbaum](#) and [George E. Constantine](#)

Mar 25, 2004

As associations' reliance on the Internet and electronic communications continues to increase, association executives must keep informed not only of cutting-edge technological developments, but also the manner in which such new developments could increase association legal risks. Just as technology continues to change and develop, so does the law governing the use of such technology.

Association executives should not expect to know all the statutes, regulations, and case law that may be implicated when they utilize new technologies to carry out their activities. Still, it is important that executives know generally when their activities — such as the publication of materials on their websites, the use of email listservers and electronic bulletin boards, and contracting with software providers — could raise legal “red flags.” To that end, we will discuss below certain technology-age activities that are common to associations and will describe briefly the potential legal risks that may accompany such activities.

Association Websites

There's no getting around it — an association's website is *the* place where members, potential members, representatives of the media, and others all invariably turn for all types of timely information. While at one time an association's website was nothing more than a starting point for such individuals, it is fast becoming a starting and ending point. Savvy association executives already have figured out that their ability to deliver more, better, and more timely information via the website can vastly improve members' satisfaction with the association while at the same time cut down on staff time and expense related to member services. However, in the rush to provide more, better, and more timely information, association executives should not ignore the significant legal risks that could arise. For instance:

- Articles and other information provided by association members, the trade press, and other sources are very likely not “owned” by the association. Indeed, even articles and other items that were previously published by the association (say, for example, in its magazine) very well may remain the intellectual property of their authors. In order to limit legal risk in this regard, association staff must be certain that copyright to all materials published on their websites is either owned by the association or owned by an individual or entity who has provided a valid, continuing license to the association for the material to be published on the website. In general, materials created by association staff will be presumed to be owned by the association, even absent any written copyright transfer. However, be careful about materials that were produced (either for a fee or on a volunteer basis) by non-employees and provided to the association for the purpose of publishing in the association's print magazine, for distribution at an association event, or for some other purpose — it is possible that the permission to publish that was granted to the association in such instances was one of limited scope. (And if no express written license was granted, then a court generally would construe the implied permission very narrowly.) In order to avoid confusion, associations

should routinize the practice of obtaining — in writing — broad licenses and/or copyright transfer agreements from authors and speakers.

- In addition to obtaining copyright transfers and/or licenses from third-party authors, associations should take care that they have appropriate permission before reproducing works that were initially published in other publications (such as, in trade publications). In order to avoid the necessity of obtaining permission in such instances, some associations will decide to merely “link” to the web page that contains those other works. While usually there is no requirement that an association obtain permission for most such links, associations that frequently link to sites outside their website should consider doing so. The law is still developing in this area, and organizations have been subject to litigation in the past for failure to obtain permission to link to others’ web pages.

Email Communications

Electronic mail has been both a blessing and a curse to the association community. On the blessing side, associations that have integrated email as a primary form of communication with members have undoubtedly saved significant dollars on postage and printing expenses. Further, email communication cuts down turnaround time immensely. However, in this age of email, members now expect responses within minutes rather than days. In addition, now that members are able to communicate with one another (such as through association listservers and membership bulletin boards) quickly and at all times of the day, there is little ability for associations to prevent legally risky communications from being broadcast. Specific potential problem areas connected with email communications include:

- Listservers and bulletin boards are often breeding grounds for inappropriate, offensive, and, at times, legally risky communications between association members. Of particular concern with many associations is the potential for such communications to be cited in legal challenges involving antitrust, copyright infringement, or defamation liability. And even though an association and its staff were not involved in making, receiving, and/or acting on a particular listserv posting, the association could find itself forced to defend a lawsuit merely by virtue of the fact that the discussion took place on an association facility. In most associations it is impossible to screen every message that is destined for a listserv or bulletin board before it is posted to the list, and most associations are thus only able to monitor postings *after* they have been posted. In order to limit liability, associations that sponsor listservers and/or electronic bulletin boards should: (1) require that all participants follow established rules and conditions of participation (and make participants take some affirmative step (such as clicking, “I agree”) to state that they agree to comply with such rules); (2) make certain that such rules disclaim all warranties and guarantees, disclaim liability for damages, prohibit posting of defamatory and offensive material, prohibit the posting of material that infringes on another’s intellectual property rights, provide the association a license to use posted materials in other formats, prohibit all posts regarding price or price-related topics, prohibit all posts that encourage or discourage doing business with one or more entities or within one or more territories or markets, and allow the association to terminate access to members who do not follow the rules; (3) make certain that responsible staff is in charge of monitoring the postings; and (4) make certain that staff takes prompt corrective action in the event that inappropriate material is posted.

- A new federal anti-spam law was enacted late last year. While the breadth of its impact on communications between associations and their members is still difficult to determine (regulations are expected to be issued shortly which should help to clarify its impact), associations should be aware that there could be a significant impact on email communications to members and nonmembers alike when such emails promote the sale of a product or service. Space does not permit us to delve into the nuances of the law here, but you should recognize that the law has been enacted and — if you have not already done so — consult your legal adviser to determine how the law affects your association's capability to promote products and services electronically. On a related note, be familiar with the federal statute and related Federal Communications Commission rules on unsolicited fax advertisements as well.
- Many associations are incorporating email into their governance activities. For instance, associations may allow members to vote electronically and even may be considering allowing board members to act via electronic ballot on certain between-meeting issues. Note that many states effectively prohibit nonprofit corporations from allowing such electronic membership ballots and most states prohibit boards to act via electronic ballot outside of a board meeting. The applicable law will be determined by where the association is incorporated (not where the association is located), and is unaffected by whether the communications are intra- or interstate. Some statutes (notably, the District of Columbia's statute) have been revised in recent years to allow membership (but not board) votes to be conducted electronically, and others are silent as to what form of delivery would be acceptable. Thus, association executives should consult their particular state statutes to ascertain whether an electronic membership ballot is permitted. As for actions taken by an association's board of directors, most state nonprofit corporation statutes only permit boards of directors (and committees of the board, such as executive committees) to act through a meeting (in-person and/or via teleconference) or through unanimous written consent (essentially, all board members vote in writing, and all vote the same way). Mail, fax and electronic balloting is not permitted per se in most states for such board actions — unless, of course, all board members vote and all vote the same way (otherwise called "unanimous written consent").

Internet-Related Contracts

From the run-of-the-mill application service provider agreements to complex joint ventures with third parties, associations often contract with companies for any number of Internet-based services. The following is a brief list of certain key legal issues to pay special attention to when your association negotiates such agreements:

- **Conduct due diligence and ensure quality control.** Avoiding negligence in the vendor selection process — and on an ongoing basis — is a key step in avoiding liability for the errors and omissions of the vendor.
- **Consider a confidentiality agreement before negotiations begin.** While not essential (particularly for agreements in which an association is only licensing software), it often is prudent for an association to enter into a confidentiality agreement with a potential vendor with which it seeks to do business *prior* to beginning negotiations with the vendor. Such an agreement can help ensure that the association will not be damaged or put at a competitive disadvantage by the disclosure or improper use of sensitive information or documents.

- **Consider business structure options.** While it is certainly permissible for your association to structure an Internet initiative as a partnership or joint venture, if you do, you may be liable for virtually everything that happens in connection with the venture.
- **Review the agreement relative to intellectual property and links to other sites.** Be sure that the contract provides for: the assignment (or at least perpetual, irrevocable license) to your association of all key copyright, trademark, patent, and domain name rights created under the agreement; your association's ownership and control of the "look and feel" of the Internet site or portions of the site and all content on the site; restrictions on the use of your association's name, logo and membership list by the vendor; the confidentiality and security of association membership data and other information; and a warranty by the vendor that it will use no infringing or otherwise illegal material in the creation or operation of the site.
- **Spell out specifics of contract terms.** As in all contracts, provisions that define the initial term of the contract, whether and how the term will automatically renew, and when and how the agreement can be terminated are critical. Associations are frequently in the position of being bound to unfavorable agreements for long periods of time. While both parties may have the best of intentions to have a long relationship together, an association should insist on a provision that allows it to terminate the agreement relatively easily and without penalty. Also be sure to define what rights each party has post-termination.
- **Pay attention to data control.** Be sure that the contract provides that your association will be the sole owner of all data generated under the agreement (*e.g.*, valuable information about your members and their purchasing habits) and that all such data will be subject to strict confidentiality requirements.
- **Set quantifiable standards of Internet site performance and technical support.** The contract needs to be very clear about the precise obligations of both the vendor and your association under the agreement. Err on the side of being *more*, rather than *less*, specific.
- **Minimize liability risk through representations and warranties, indemnification, and insurance.** An effective contract includes sufficient representations and warranties by the vendor that its software, Internet site, and other elements that it brings to the venture do not infringe any intellectual property or other rights of third parties, do not violate any applicable laws and regulations, and will perform as promised.

Conclusion

The concerns raised above represent only a portion of all the legal concerns that can arise from an association's use of technology. There are potential tax implications with providing advertisements and sponsorship acknowledgments on websites, privacy and contractual concerns related to the use of "cookies," employment and privacy law issues related to the monitoring of employee email and Internet use, and a host of other issues to keep in mind. As with any association activities, there are important legal rules of the road that must be followed when associations use technology to further their missions and purposes. Being able to implement common-sense protections and recognize potential pitfalls will serve association executives well as they continue to utilize new technologies.

Executive Update

Associations and Copyright: Practical Tips for Success

By [Jeffrey S. Tenenbaum](#)

June 2004

Despite great potential to use intellectual property to raise non-dues revenues and better serve members, many association leaders fear that the "hassles" or "mistakes" surrounding copyright issues in the past preclude new knowledge-based product development. One lawyer's response? Do something about it.

Your association wants to launch a new online educational service. The association's staff develops a wonderful, innovative proposal. The service would hinge on taking years' worth of association-"published" materials on every aspect of your industry and reformulating it into a user-friendly, searchable database.

Or perhaps the idea is to take past articles on select topics from your magazines or newsletters, or past speaker handouts from your conferences, and repackage them into a new, more-accessible online service for members. Or maybe the concept is to create a "best practices" online library, culling sources from your association's publications, meetings, and other resources. These potential revenue-raisers might even involve another industry association.

In all of these instances, your association's ability to engage in the exciting new venture hinges on its ownership – or at least right to use – the intellectual property (i.e., copyrights) in the relevant materials. If association employees created all of the materials, the copyright issues would be simple and likely non-existent. Unfortunately, in the world of association management – where staff has no choice but to rely on the invaluable input of and content from volunteers and outside contractors – the legal analysis is far from simple.

In fact, due to a basic, straightforward, yet very misunderstood concept of our copyright law – that the paid or unpaid creator of the work is the owner of the copyright in that work (except for an employee acting within the scope of his or her employment and certain other very limited circumstances) – the realities of this law can throw a big monkey wrench into your association's well-conceived plans. Some associations are so fearful of copyright law and its implications that they shy away from even attempting what could be highly successful ventures.

All of this is terribly unfortunate – and very unnecessary. Once understood, this simple tenet of copyright law can be quickly used to the association's advantage. For instance, by obtaining brief, one-paragraph copyright "assignments" (transfers of ownership) or "licenses" (permission to use, which can be drafted broadly and perpetually) from volunteer authors, speakers, and committee members, as well as from all paid contractors and consultants, the association can ensure that it has the rights to do with "its" publications whatever it chooses, without restriction, without fear of reprisal from copyright holders, and without having to pay royalties to hundreds of "joint authors." And even if your association may not have been as proactive as it should have been over the years – you would be shocked at how many have not – all is not lost. These problems are solvable – easier at the outset than later on, to be sure – but solvable nonetheless.

In short, an even rudimentary understanding of the basics of copyright and trademark law can go a long way toward giving your association the flexibility it needs and wants to engage in the activities it desires, to launch the new ventures it conceives of, and to otherwise act in the best interests of the association rather than let intellectual property laws be the tail that wags the dog.

Below are 11 tips that will, if followed, go a long way toward protecting and maximizing your association's intellectual property and avoiding the infringement of others'. The following guidelines should provide the framework for effective association policies and practices in the copyright and trademark area:

- 1. Use copyright and trademark notices.** Use copyright notices (e.g., © 2004 The Center for Association Leadership. All rights reserved.) on and in connection with all creative works published by your association and trademark notices on all trademarks, service marks, and certification marks owned and used by your association (e.g., TM for non-registered marks and ® for registered marks). While copyright and trademark notices are not required, their effective use can significantly enhance your intellectual property rights, including eliminating an "innocent infringement" defense.
- 2. Register your trademarks.** Register your association's name, logos, slogans, certification marks, and all other important marks with the U.S. Patent & Trademark Office. While federal registration of your marks is not required to obtain and maintain trademark rights, it can be extremely helpful in enhancing and enforcing them. In addition, obtain domain name registrations for all available names you plan to use in the future, and try to obtain registrations from others if your association has superior rights to the domain name.
- 3. Register your copyrights.** Register your association's Web site, publications, and all other important, original, creative works that are fixed in any print, electronic, audio-visual, or other tangible medium with the U.S. Copyright Office. Again, although such registration is not required to obtain and maintain a copyright in a work, it is a prerequisite to filing suit to enforce your rights, and it confers other valuable benefits. Copyright registration is a very simple, inexpensive process that can be done without the assistance of legal counsel.

- 4. Police use of your intellectual property.** Police the use of your copyrights and trademarks by others and enforce your rights where necessary. Use periodic Web searches, among other means, to do so. Enforcement does not necessarily involve the filing of a lawsuit.
- 5. Codify all licenses in writing.** Whenever your association lets others – such as members, chapters, affiliated entities, or endorsed vendors – use your name, logos, copyrighted works, and other intellectual property, put the terms and conditions of the license in writing. Note that an assignment (transfer of ownership) must be in writing to be valid, as must an exclusive license (permission to use). While oral or implied non-exclusive licenses can exist, they can be difficult to interpret, difficult to enforce, limiting in nature, and otherwise problematic for your association. If a copyright owner will not assign a copyright to your association, simply obtain a broad, permanent license instead. A perpetual, irrevocable, worldwide, restriction-free, royalty-free license to use a copyright holder's work in any medium – whether exclusive or non-exclusive – can be virtually as good as ownership and typically much easier to obtain.
- 6. Make sure you own or have permission to use all intellectual property.** Ensure that your association owns or has appropriate permission to use all intellectual property (e.g., text, graphics, photos, video) that appears in its publications, on its Web site, and in all other media. More copyright problems arise in this area than any other. You may have conceived the idea, supervised the work's creation, and paid for it, but that does not mean you own the work. You may have only a limited license for a specific use. When you wish to use the work on another project or in another medium, you may learn that a separate fee and permission is required.
- 7. Maintain agreements with contractors.** Maintain written contracts with all contractors to your association, such as software developers, lobbyists, and other outside consultants and contractors, to ensure that your association is assigned the ownership rights (or at least sufficient, irrevocable license rights) to all intellectual property created by the contractor under the agreement. Without something in writing, the basic rule in copyright law is that the person who creates the work is the one who owns it, regardless of who paid for the work to be created. This rule does not apply to employees, ownership of whose work (that is within the scope of their employment) automatically vests in the employer. If your association is a joint author with another party (e.g., association employees working side-by-side with technology consultants to write software for your association), seek to obtain an assignment from the co-author(s) to your association.
- 8. Negotiate agreements with authors and speakers.** For the same reason stated previously, obtain a written and sufficiently broad license or assignment from all non-employed writers and speakers for your association, including members. Be sure that, for licenses, the permission is irrevocable, worldwide in scope, royalty-free (if applicable), exclusive (if applicable), covers all possible uses of the work in all media, contains a release to use the author or speaker's name and photograph, and contains appropriate representations and warranties.
- 9. Don't forget to collect agreements with board and committee members.** Again, for the same reason, obtain a written assignment from every member of your board of directors and committees that assigns ownership of all intellectual property they create (within the scope of their service to the association) to the association. Such a form also can be used to impose confidentiality obligations on members, to require conflict-of-interest disclosure, and to impose noncompetition restrictions.
- 10. Protect your membership database.** Since names, addresses, and other contact information contained in your membership directory, mailing labels, and membership list are generally not protected by copyright because they usually don't possess the minimum level of originality required, it is imperative for your association to use a "shrinkwrap" license, click-and-accept feature, or other form of contractual commitment to place explicit, binding limits and conditions on the use of your membership list by members, vendors, and others. Failure to do so may leave your association with little or no recourse to prevent unrestricted use of this most-valuable information by those who obtain a copy of it.
- 11. Rules for interactive online services.** As part of your association's chat rooms, bulletin boards, e-mail exchanges, and other member-interactive online services, regularly distribute rules that prohibit the posting of any copyright-infringing materials (along with other rules). In addition, be sure to immediately remove infringing material if it comes to your association's attention.

The bottom line is that a fear of copyright infringement should not prevent association leaders from seriously considering new knowledge products as a way to better serve members, develop non-dues revenues, and forward the organization's mission. However, they should expect to devote significant time and effort to both clearing up any copyright confusion, securing all necessary copyright rights, and ensuring that intellectual property processes and policies are in place and followed.

Top Ten (Actually Eleven) Copyright and Trademark Tips for Associations

By [Jeffrey S. Tenenbaum](#)

Jan 1, 2001

Whether it is protecting your own intellectual property or avoiding the infringing of others', copyright and trademark law should play an important role in the typical activities of every association. Fortunately, the well-informed association can go a long way toward protecting its interests in this area without the involvement of lawyers. While the advice and guidance of counsel is recommended in formulating and implementing your association's intellectual property policies, the following (non-exhaustive) guidelines should provide the framework for effective policies and practices in the copyright and trademark area:

- 1. Use Copyright and Trademark Notices.** Use copyright notices (*e.g.*, © 2002 ABC Association. All rights reserved.) on and in connection with all creative works published by your association and trademark notices on all trademarks, service marks, and certification marks owned and used by your association (*e.g.*, ™ for non-registered marks and ® for registered marks). While copyright and trademark notices are not required, their effective use can significantly enhance your intellectual property rights, including eliminating an "innocent infringement" defense.
- 2. Register Your Trademarks.** Register your association's name, logos, slogans, certification marks, and all other important marks with the U.S. Patent & Trademark Office. While federal registration of your marks is not required to obtain and maintain trademark rights, it can be extremely helpful in enhancing and enforcing them. In addition, obtain domain name registrations for all available names you plan to use in the future, and pursue obtaining registrations from others if your association has superior rights to the domain name.
- 3. Register Your Copyrights.** Register your association's Web site, publications and all other important, original, creative works (that are fixed in any print, electronic, audio-visual, or other tangible medium) with the U.S. Copyright Office. While such registration is not required to obtain and maintain a copyright in a work, it is a prerequisite to filing suit to enforce your rights and confers other valuable benefits. Copyright registration is a very simple and inexpensive process.
- 4. Police Use of Your Intellectual Property.** Police the use of your copyrights and trademarks by others and enforce your rights where necessary. Use periodic Web searches, among other means, to do so. Enforcement does not necessarily involve the filing of a lawsuit.
- 5. Codify All Licenses in Writing.** Whenever your association lets others -- such as members, chapters, affiliated entities, or endorsed vendors -- use your name, logos, copyrighted works, and other intellectual property, put the terms and conditions of the license in writing. Note that an assignment (transfer of ownership) must be in writing to be valid, as must an exclusive license (permission to use). While oral or implied non-exclusive licenses can exist, they can be difficult to interpret, difficult to enforce, limiting in nature, and otherwise problematic for your association.
- 6. Make Sure You Own or Have Permission to Use All Intellectual Property.** Ensure that your association owns or has appropriate permission to use all intellectual property (*e.g.*, text, graphics, photos, video) that it uses in its publications, on its Web site, and in all other media. More copyright problems arise in this area than any other. You may have conceived the idea, supervised the work's creation, and paid for it, but that does not mean you own the work. You may have only a limited license for a specific use. When you wish to use the work on another project or in another medium, you may learn that a separate fee and permission is required.
- 7. Agreements with Contractors.** Maintain written contracts with all contractors to your association -- such as software developers, lobbyists and all other outside consultants and contractors -- to ensure that your association is assigned the ownership rights (or at least sufficient, irrevocable license rights) to all intellectual property created by the contractor under the agreement. Without such a writing, the basic rule in copyright law is that the person who creates the work is the one who owns it, regardless of who paid for the work to be created. This rule does not apply to employees, ownership of whose work (that is within the scope of their employment) automatically vests in the employer. If your association is a *joint* author with another party (*e.g.*, association employees working side-by-side with technology consultants to write software for your association), seek to obtain an assignment from the co-author(s) to your association.
- 8. Agreements with Authors and Speakers.** For the same reason as stated above, obtain a written and sufficiently broad license or assignment from all (non-employed) writers and speakers for your association, including members. Be sure that, for licenses, the permission is irrevocable, worldwide in scope, royalty-free (if applicable), exclusive (if applicable), covers all possible uses of the work in all media, contains a release to use the author or speaker's name, photograph, etc., and contains appropriate representations and warranties.
- 9. Agreements with Board and Committee Members.** For the same reason as stated above, obtain a written assignment from all association board of directors and committee members assigning ownership of all intellectual property that they create (within the scope of their service to the association) to the association. Such a form also can be used to impose confidentiality obligations on members and to require conflict of interest disclosure.
- 10. Protect Your Membership Database.** As the name, addresses and other contact information contained in your

membership directory, mailing labels, and membership list are generally are not protected by copyright -- as they usually do not possess the minimum level of originality required -- it is imperative for your association to use a "shrinkwrap" license, click-and-accept feature, or other form of contractual commitment to place explicit, binding limits and conditions on the use of your membership list by members, vendors and others. Failure to do so may leave your association with little or no recourse to prevent unrestricted use of this most valuable information by those who obtain a copy of it.

11. Rules for Interactive Online Services. As part of your association's chat rooms, bulletin boards, e-mail exchanges, and other member-interactive online services, regularly distribute rules that prohibit the posting of any copyright-infringing materials (along with other rules). In addition, be sure to immediately remove infringing material if it comes to your association's attention.

Licensing Your Association's Logo to Others

By [Jeffrey S. Tenenbaum](#)

1999

Whenever an association permits others to use its logo - be it members, chapters and other affiliated organizations, endorsed vendors, or others - it is imperative for the association to put strict conditions and limitations on the use of its logo. Failure to do so can jeopardize the association's trademark rights in its logo, create potential liabilities for the association, damage the association's reputation and goodwill, create the false impression of an association endorsement or guarantee where one does not otherwise exist, and result in a host of other significant problems for the association. The following model license is designed to be used by associations in conjunction with the distribution of their logo to association members who are permitted to use it on their business cards, stationery, storefronts, Web sites, advertisements, etc. The license can be easily modified for application to chapters, affiliates, endorsed vendors, etc., and an appropriately modified version of the license should be incorporated into contracts with these entities where a logo license is a part of the agreement. Finally, for a variety of important reasons, it is strongly advisable for associations to register their logo, as well as their name, as service marks with the U.S. Patent & Trademark Office.

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Model License of Association Logo to Members The attached logos are the property of the ABC Association ("ABC") but may be used by ABC members in good standing in accordance with the terms and conditions set forth below. Use of one or more of the logos shall constitute consideration for, agreement to, and acceptance of the following terms and conditions of this license by the user:

1. The attached logos are the sole and exclusive property of ABC. These logos may be used only by ABC members in good standing if and only if such use is made pursuant to the terms and conditions of this limited and revocable license. Any failure by a user to comply with the terms and conditions contained herein may result in the immediate revocation of this license, in addition to any other sanctions imposed by ABC. The interpretation and enforcement (or lack thereof) of these terms and conditions, and compliance therewith, shall be made by ABC in its sole discretion.
2. As set forth on the Attachment, the logos are made available to ABC members in good standing in camera-ready, printed form in color and/or black [modify accordingly for electronic media]. The logos may not be revised or altered in any way, and must be displayed in the same form as produced by ABC. The logos are a single color. The official color of the logos is Pantone Matching System (PMS) _____. The logos must be printed in their official color or in black.
3. The logos may be used in a professional manner on the user's business cards, stationery, literature, advertisements, storefront window, Web site, or in any other comparable manner to signify the user's membership in ABC. The logo may never be used independent of the term "MEMBER," as set forth on the Attachment. Notwithstanding the foregoing, the logos may not be used in any manner that, in the sole discretion of ABC:

discredits ABC or tarnishes its reputation and goodwill; is false or misleading; violates the rights of others; violates any law, regulation or other public policy; or mischaracterizes the relationship between ABC and the user, including but not limited to any use of the logos that might be reasonably construed as an endorsement, approval, sponsorship, or certification by ABC of the user, the user's business or organization, or the user's products or services, or that might be reasonably construed as support or encouragement to purchase or utilize the user's products or services.

4. Use of the logos shall create no rights for users in or to the logos or their use beyond the terms and conditions of this limited and revocable license. The logos shall remain at all times the sole and exclusive intellectual property of ABC. ABC shall have the right, from time to time, to request samples of use of the logos from which it may determine compliance with these terms and conditions. Without further notice, ABC reserves the right to prohibit use of the logos if it determines, in its sole discretion, that a user's logo usage, whether willful or negligent, is not in strict accordance with the terms and conditions of this license, otherwise could discredit ABC or tarnish its reputation and goodwill, or the user is not an ABC member in good standing.

5. Any questions concerning use of the logos or the terms and conditions of this license should be directed to the ABC Executive Director.

Are Your Association's Membership Directory and Mailing List Protected by Copyright? Think Again.

By [Jeffrey S. Tenenbaum](#)

1999

The alphabetical listings of members contained within most membership directories of trade and professional associations are valuable property. They are so valuable that many associations sell such information through mailing list "rental" programs to, among others, suppliers of products or services to the association's members. Moreover, association membership lists are being pursued with tremendous vigor by scores of dot.com companies seeking to make headway into various industries and professions. Yet, it is surprising for many associations to learn that, without the association taking certain preventive measures, suppliers, dot.coms, and others are free to scan such listings from the association membership directory into a computer database and then use such information to generate mailing labels (or fax or e-mail databases) for their own marketing purposes - without paying the association a dime!

While the association membership directory may, as a whole, be protected by copyright, the alphabetical listings of members found within the directory - containing members' names, addresses, telephone and fax numbers, and possibly e-mail addresses - generally are not subject to copyright protection by the association, as they do not possess the minimum originality of expression required by copyright law. Copyright only protects original expressions of ideas - not the underlying facts or data. Thus, unless the information is organized and set forth in an original, creative manner, copyright holds no bar to someone freely utilizing those facts or data, despite the intensive efforts the association may have undertaken to compile such information, and despite the fact that the overall directory may be protected by copyright.

Consequently, while state unfair competition statutes may or may not offer a remedy, all of the copyright notices and registrations in the world will not provide copyright protection for mere alphabetical listings of member names and addresses.

All is not lost, however. There is a simple and cost-effective way to provide the desired protection for this valuable intellectual property of the association. Through what is essentially a contract, the association can place strict limitations and preconditions on the use of the information contained in its membership directory, thereby preventing a supplier, for instance, from scanning the directory into its computer system and utilizing the resulting mailing list at will and without payment to the association.

While a written agreement between the association and each user of the directory would be the ideal medium, from a legal perspective, in which to codify such limitations and would ensure the maximum protection for the association, this is not a particularly feasible option. Borrowing a page from the software industry, the most practical way to effect the limitations is through a "shrinkwrap license," whereby the directory is wrapped in plastic and a label affixed to the front of it which provides that the opening of the plastic and use of the directory shall represent the user's agreement to the terms of the "license" set forth on the label. Such terms may include provisions limiting usage to personal reference only and prohibiting

distribution, resale, copying, and use as a mailing list, among other conditions. This license also provides a vehicle through which the association can disclaim any implied endorsements or guarantees of the association's members merely from their presence in the directory.

Set forth below is a sample legal notice and disclaimer suggested for use by associations as a "shrinkwrap" license on their annual membership directory. It is recommend for use in connection with all sales and distributions of the directory, both to members and non-members alike. An appropriately modified version of the license also is recommended for use in connection with an on-line (Internet-based) or CD-ROM version of the association's membership directory, as well as with all rentals of the association's membership mailing list. In the on-line context, a "click and accept" feature for the license generally is recommended. Of course, the license in each case should be tailored to the individual association and should be reviewed by legal counsel prior to use to help ensure its enforceability.

Finally, despite the lack of copyright protectibility for alphabetical listings contained in membership directories, the directory as a whole likely is subject to copyright protection. Thus, it is advisable to place a copyright notice on the cover or title page of the directory. Such a notice might read: "All contents © 2002 ABC Association. All rights reserved."

* * * * *

Model "Shrinkwrap" License for Association Membership Directory

All Contents © 2002 ABC Association, Inc. All rights reserved. ABC will license to you the contents of this Directory only if you accept all of the terms and conditions contained in this non-exclusive, non-transferable, limited license agreement. Please read this license agreement carefully before opening the sealed Directory. By opening this Directory, you hereby accept and agree to be bound by the following terms and conditions: This Directory shall be used for individual, personal and confidential reference purposes only, and may be used only pursuant to the terms of this license agreement. This Directory and the contents hereof are proprietary products of ABC. The contents of this Directory may not, in whole or in part, be reproduced; copied; disseminated; entered into a computer database; used as part of or in connection with the preparation, revision or confirmation of a mailing, telephone, fax, email, or other marketing list; or otherwise utilized, in any form or manner or by any means, except for the user's individual, personal and confidential reference. Contained herein are the names, addresses, telephone numbers, fax numbers, email addresses, and contact persons of ABC members as of the printing of this Directory. Their presence in this Directory represents only that these companies, organizations, institutions, or individuals are members in good standing of ABC; it does not represent their consent to receive any marketing or related communications. ABC does not endorse these members and makes no representations, warranties or guarantees as to, and assumes no responsibility for, the products or services provided by these members. ABC expressly disclaims all liability for damages of any kind arising out of the use or performance of the products or services provided by these members.

Model Association Listserv Rules and Conditions

By [Jeffrey S. Tenenbaum](#)

1999

The following are the rules and conditions of participation in the ABC Association listserv. By subscribing to and participating in this listserv, users hereby agree to be bound by and warrant their full compliance with the following terms of participation:

This listserv is a service provided by the ABC Association ("ABC") in furtherance of its nonprofit and tax-exempt purposes. This listserv may be used only by ABC members and only for the purpose of discussing matters related to or arising out of the industry/profession represented by ABC.

ABC accepts no responsibility for the opinions and information posted on this listserv by others. ABC disclaims all warranties with regard to information posted on this listserv, whether posted by ABC or others; this disclaimer includes all implied warranties of merchantability and fitness. In no event shall ABC be liable for any special, indirect or consequential damages, or damages of any kind whatsoever, resulting from loss of use, data or profits, arising out of or in connection with the use or performance of any information posted on this listserv.

Do not post any defamatory, abusive, profane, threatening, offensive, or illegal information or material, and do not utilize the listserv in any illegal manner. Do not post any information or other material protected by copyright without the permission of the copyright owner. Do not use any words, logos or other marks that would infringe upon the trademark, service mark, certification mark, or other intellectual property rights of the owners of such marks without the permission of such owners. Do not post any confidential information or any information that would infringe upon the proprietary, privacy or personal rights of others.

By posting material, the posting party warrants and represents that it owns the copyright with respect to such material, has received permission from the copyright owner, or that the material is in the public domain. The posting party further warrants and represents that it otherwise has the full and unencumbered right to post such material and that such posting will not infringe any rights or interests of others. In addition, the posting party grants ABC and users of this listserv a non-exclusive, irrevocable license to display, copy, publish, distribute, transmit, print, and use such information or material in any manner, without payment to the posting party.

This listserv shall not be utilized in any manner that violates federal or state antitrust laws or other laws prohibiting anticompetitive practices. The antitrust laws generally prohibit any agreement or understanding inconsistent with the right and obligation of competitors to exercise independent business judgment in pricing their products or services, dealing with their customers and suppliers, and selecting the markets in which to compete. No express agreement or understanding is required; one can be inferred from statements or conduct. Do not post any information regarding specific prices or fees charged or paid, and do not post any information concerning prices, pricing practices, discounts, or other terms or conditions of sale either obtained by or offered to another entity. Do not post any information concerning market shares, salaries, costs, sales territories, profit margins, or encouraging the selection or rejection of customers or suppliers.

All postings shall be of an informational nature and for informational purposes only. Commercial use or any other unauthorized use of this listserv is prohibited. Do not use the listserv to solicit or conduct business, including the direct or indirect marketing of users' products or services, in any manner. The listserv may not be used to provide information, materials, products, or services in exchange for compensation of any kind.

ABC does not generally monitor this listserv for inappropriate postings, and does not on its own undertake editorial control of postings. However, in the event that any inappropriate posting or unauthorized use of the listserv is brought to ABC's attention, including but not limited to prohibited posting and usage as outlined herein, ABC will take all appropriate action, in its sole discretion. ABC reserves the right to terminate, without prior notice, the listserv access of any user who does not abide by these guidelines.

Federal Law Immunizes Associations from Liability for Online Member Messages: Disincentives for Screening and Monitoring Postings Removed

By [Jeffrey S. Tenenbaum](#)

1999

Until now, most association legal counsel have advised their clients that the more they monitored messages, articles and other content posted by members on their association Web sites and discussion groups, the more they risked being held liable for that content. Existing case law led to the conclusion that if a member participating in an association-sponsored listserv sent a message which defamed another member, and if the association had a policy of periodically monitoring listserv discussions, then the association might be held liable (along with the message's author) for the derogatory statement - even though no officer, director or employee of the association had any role in making or editing the statement. Two widely-cited cases involving Prodigy and CompuServe were largely responsible for shaping our legal advice - until now.

A new federal law, buried in the Communications Decency Act of 1996 ("CDA"), has changed all that by providing new legal protections for associations and other Web site, discussion group, and bulletin board sponsors. Most recently, two courts - one federal and one state - have upheld the validity and efficacy of these new protections. While the CDA has gained considerable prominence because of its provisions which criminalize the transmission of "indecent" material over computer networks - provisions which were struck down by the U.S. Supreme Court this June on First Amendment grounds - it is Section 230 of the CDA (47 U.S.C. Section 230) that represents, in its own right, a landmark development in the law of cyberspace. (Section 230 is unaffected by the recent Supreme Court decision.) Moreover, Section 230 will have a wide-ranging impact on the way associations monitor, screen, edit, and otherwise regulate content transmitted by members over their Web sites, bulletin boards, discussion groups, chat rooms, listservs, and other interactive computer services.

In a section entitled, "Protection for 'Good Samaritan' Blocking and Screening of Offensive Material," Section 230 provides that "No provider ... of an interactive computer service (i) shall be treated as the publisher or speaker of any information provided by another ..., or (ii) shall be held liable on account of any action voluntarily taken in good faith to restrict access to or availability of material that the provider ... considers to be ... objectionable." An "interactive computer service" is defined as "any information service [or] system ... that ... enables computer access by multiple users to a computer server, including ... such systems operated or services offered by ... educational institutions." Finally, Section 230 says that "No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section."

In short, Section 230 bars defamation and other tort lawsuits, as well as certain other types of claims, that might otherwise be brought against associations and other "interactive computer service" providers for injury caused by material transmitted by others via such services. Moreover, the CDA's conference report analysis of Section 230 states that one of its purposes is to overturn the 1995 *Stratton Oakmont v. Prodigy* decision, in which a New York court said that the Internet access provider Prodigy could be held liable for defamatory messages posted on its service by third parties, because of Prodigy's policy of prescreening messages for objectionable content. The Prodigy court had applied classic publisher liability in holding that if an interactive computer service provider had a policy of prescreening on-line messages, then, by definition, it "knew or had a reason to know" of any defamatory material that traveled over its service, and thus could be held responsible for "negligently distributing" any defamatory material that slipped through the screening process.

The Prodigy decision drove fear not only into the hearts of Prodigy, America Online ("AOL"), and other Internet access providers, but also associations and other sponsors of interactive computer services such as listservs, discussion groups, and bulletin boards. The decision led most associations to adopt a "hands-off" to such services because it favored on-line service providers that kept themselves totally ignorant of the third party content on their systems.

Congress recognized that this legal regime created disincentives for voluntary "good Samaritan" actions to detect and eliminate objectionable content. So it enacted Section 230, immunizing associations and other interactive computer service providers from most liability for third party content. Through this mostly unnoticed but landmark law, Congress has removed the principal disincentives for associations to monitor, screen, edit, or otherwise regulate content posted by members.

In March and again in June of this year, two courts - the U.S. District Court for the Eastern District of Virginia and the Florida Circuit Court, 15th Judicial Circuit - have invoked Section 230 in finding AOL not liable for statements transmitted by others over its service. In the federal case (*Zeran v. AOL*, 1997 U.S. Dist. LEXIS 3429), AOL was sued for negligently failing to delete certain defamatory statements after being notified of their malicious and fraudulent nature. In the Florida case (*Doe v. AOL*, No. CL97631AE, June 13, 1997), AOL was accused of negligently failing to enforce its prohibitions on the posting of obscene and illegal material. In both cases, the courts ruled in favor of AOL, pointing to Section 230's liability protections, even for state claims like defamation and other torts.

As a precautionary note, associations should be aware that Section 230, by its terms, expressly provides no liability protections in the intellectual property area, and no immunity from any federal criminal statute. For associations, this means, among other things, that contributory copyright or trademark infringement should remain a very real concern of associations. If a member posts material via an association's on-line service that infringes someone else's copyright or trademark rights, and if the association "knew or had reason to know" of the infringement, it may be held contributorily liable for the infringement - with all of the damages that can flow therefrom. In addition, the principal federal antitrust law is a criminal

conspiracy statute. For their own protection, associations must remain vigilant to ensure that their on-line facilities are not used by members to fix prices, boycott suppliers, allocate markets, or otherwise breach the antitrust laws. Section 230 provides broad protections for associations in the tort realm (including defamation), and possibly other legal areas as well, but intellectual property and antitrust remain hotbeds of potential liability for associations in cyberspace.

As a further caveat, if an association is made aware of the defamatory nature of on-line material and makes a conscious decision not to remove it, it is not clear that Section 230 would immunize the association from defamation liability, because under such circumstances, the material initially placed on-line by a third party (such as a member) might be deemed to be material provided by the association itself, thereby rendering Section 230 inapplicable. The court in the Zeran case left open this possibility, despite AOL's claim that it should be immune from liability for any information appearing on its system unless that information was provided by AOL itself.

In conclusion, while the rest of the CDA has received most of the press, it is Section 230 that has tremendous beneficial implications for associations. If an association wants to moderate a discussion group, monitor its listservs, or screen bulletin board postings, it no longer has to refrain for fear of being held liable for injurious material that "slips through." At the same time, if a defamatory message sent by a member damages someone else's reputation, the injured party is not without recourse; he or she can pursue the ultimate wrongdoer - the person who created and posted the material in the first place - without punishing the intermediary (the association).

Section 230 is a landmark development in technology law which has strengthened the foundation for continued development of the new electronic medium. It has also provided much needed and deserved protections to AOL, CompuServe, and other Internet access providers. But most important for the association community, it gives associations the freedom to shape their electronic communication policies not on the basis of liability fears, but on the basis of what best suits their members and the industries and professions they represent.

Does Your Association Own the Work Product of Your Contractors, Authors, Speakers, Officers, Directors, and Committee Members?

By [Jeffrey S. Tenenbaum](#)

Mar 1, 2002

Except for employees acting within the scope of their employment and certain other limited cases, the basic rule under U.S. copyright law is that the creator of an original work is the owner of the copyright in that work (regardless of who paid for the work to be created), barring a written assignment of the copyright to another party. This widely misunderstood rule applies with equal force in the association community, and it applies not only to outside contractors such as consultants and lobbyists, but also to your association's volunteer or paid authors, speakers, officers, directors, and committee members. Failure to understand this rule can have devastating consequences for your association.

It is critical for your association to ensure that it owns, or at least has appropriate permission to use, all intellectual property (*e.g.*, text, graphics, photos, video) that it uses in its publications, on its Web site, and in all other media. Your association's staff may have conceived the idea and supervised the work's creation – with your association paying for it – but that does not mean your association owns the work. You may have only a limited license for a specific use. When you wish to use the work on another project or in another medium, you may find the work's creator demanding a separate fee or other consideration – or you may be precluded from using it at all.

Contractors. Maintain written contracts with all contractors to your association – such as software developers, lobbyists and all other outside consultants and contractors – to ensure that your association is assigned the ownership rights (or at least sufficient, irrevocable license rights) to all intellectual property created by the contractor under the agreement. If your association is a *joint* author with another party (*e.g.*, association employees working side-by-side with technology consultants to write software for your association), seek to obtain an assignment from the co-author(s) to your association.

Authors and Speakers. Obtain a written and sufficiently broad license or assignment from all (non-employed) writers and speakers for your association, including members. Be sure that, for licenses, the permission is irrevocable, worldwide in scope, royalty-free (if applicable), exclusive (if applicable), covers all possible uses of the work in all media, contains a release to use the author or speaker's name, photograph, and biographical information, and contains appropriate representations and warranties.

Officers, Directors and Committee Members. Obtain a written assignment from all association officers, directors and committee members assigning ownership of all intellectual property that they create (within the scope of their service to the association) to the association. Note that when a work has numerous creators (such as a set of standards or a report produced by a committee, perhaps in conjunction with association staff), each of the individual contributors (including the association) may be a joint owner of that work, each with the right to use the work and each with a proportional right to share in all proceeds from the work. Below is an abbreviated version of a sample assignment form for use with association committee members (more comprehensive versions of such forms are sometimes used):

Copyright Assignment Form for the ABC _____ Committee

As a member of the _____ Committee (the "Committee") of the ABC Association ("ABC") that assists ABC staff members and others in the development, modification and refinement of _____ and related material for its _____ (collectively, the "Intellectual Property"), I, _____, hereby completely, exclusively and irrevocably assign and agree to assign to ABC in perpetuity ownership of all of the copyrights (and all rights subsumed thereunder) in and to all of my contributions to the Intellectual Property (the "Contributions"), both those Contributions that have been made in the past and those that will be made in the future. I hereby grant, convey, assign, and set over unto ABC, its successors and assigns, on an exclusive basis, all of my right, title and interest in and to the copyrights in the Contributions, including, without limitation, copyrights and renewals and/or extensions thereof, for all territories of the world in perpetuity. Good and valuable consideration has been provided to me for the assignment of these rights. In addition, I hereby waive any and all rights of attribution and integrity with respect to ABC's use of the Contributions.

Signature _____

Date _____

**MODEL COPYRIGHT LICENSE FOR ARTICLES
IN ASSOCIATION PUBLICATIONS**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, _____ (hereinafter referred to singularly and collectively as the "author," regardless of whether one or more individuals are named), hereby grant(s) to _____, including all subsidiaries and affiliates thereof (hereinafter referred to singularly and collectively as the "Association") a non-exclusive, perpetual, irrevocable, royalty-free license and release to exercise all rights of whatever kind or nature now or hereafter protected by the Copyright Laws of the United States of America and all foreign countries in and to the article entitled _____ and attached hereto (hereinafter referred to as the "work"). Without limiting the generality of the foregoing, the author further grants to the Association and its designees the rights to edit, publish, reproduce, reprint, distribute, sell, and otherwise make use of the work, and authorizes the Association and its designees to use the author's name, likeness, photograph, and biographical data in connection with their use and promotion of the work.

It is understood that, other than the good and valuable consideration received for this license and release, the author has received and will receive no royalty or other monetary compensation from the Association or its designees for the rights granted hereunder and the subsequent use of the work by the Association and its designees.

The author represents and warrants to the Association that the work is the author's own original work; that the author is the sole owner of the work and all of the rights herein granted; that the author has the full right and power to make this license and release; that the work does not violate any copyright, proprietary or personal rights of others; that the work is factually accurate and contains no matter libelous or otherwise unlawful; that the author has not previously in any manner disposed of any of the rights herein granted to the Association nor previously granted any rights adverse thereto or inconsistent therewith; and that there are no rights outstanding which would diminish, encumber or impair the full enjoyment or exercise of the rights herein granted to the Association.

The author agrees to indemnify and hold harmless the Association and its officers, directors, members, employees, and agents, from and against any and all claims, actions, losses, demands, costs, attorneys' fees, and all other expenses relating or incidental to, or arising directly or indirectly from, the inaccuracy or breach of any of the aforementioned warranties and representations.

The author represents and warrants to the Association that the author has the authority to bind the author's employer (as defined below) to this license and release agreement.

On behalf of the author's employer, and in the author's individual capacity:

Signature: _____

Name: _____

Title: _____

Employer: _____

Date: _____

**MODEL COPYRIGHT LICENSE FOR PRESENTATIONS
TO ASSOCIATIONS**

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned author/program presenter, _____ (the "undersigned"), hereby grants to _____, including all subsidiaries and affiliates thereof (hereinafter referred to singularly and collectively as the "Association"), a non-exclusive, perpetual, irrevocable, royalty-free license and release to exercise all rights of whatever kind or nature now or hereafter protected by the Copyright Laws of the United States of America and all foreign countries in and to the program authored by the undersigned and presented at the Association's [Name of Meeting/Conference] held at [Location] on [Date], said program entitled, [Name of Program], including but not limited to the spoken words of the undersigned, any accompanying audio-visual or electronic presentations, and any accompanying written or electronic handout materials (hereinafter referred to singularly and collectively as the "work"). Without limiting the generality of the foregoing, the undersigned further grants to the Association and its designees the rights to edit, film, record, publish, reproduce, reprint, distribute, sell, and otherwise make use of the work, and authorizes the Association and its designees to use the undersigned's name, likeness, photograph, and biographical data in connection with their use and promotion of the work.

It is understood that, other than the good and valuable consideration received for this license and release, the undersigned has received and will receive no royalty or other monetary compensation from the Association or its designees for the rights granted hereunder and the subsequent use of the work by the Association and its designees.

The undersigned represents and warrants to the Association that the work is the undersigned's own original work; that the undersigned is the sole owner of the work and all of the rights herein granted; that the undersigned has the full right and power to make this release and license; that the work does not violate any copyright, proprietary or personal rights of others; that the work is factually accurate and contains no matter defamatory or otherwise unlawful; that the undersigned has not previously in any manner disposed of any of the rights herein granted to the Association nor previously granted any rights adverse thereto or inconsistent therewith; and that there are no rights outstanding which would diminish, encumber or impair the full enjoyment or exercise of the rights herein granted to the Association.

The undersigned agrees to indemnify and hold harmless the Association and its officers, directors, members, employees, and agents, from and against any and all claims, actions, losses, demands, costs, attorneys' fees, and all other expenses relating or incidental to, or arising directly or indirectly from, the inaccuracy or breach of any of the aforementioned warranties and representations.

The undersigned represents and warrants to the Association that the undersigned has the authority to bind the undersigned's employer (as defined below) to this license and release agreement.

On behalf of the undersigned's employer, and in the undersigned's individual capacity:

Signature: _____

Name: _____

Title: _____

Employer: _____

Date: _____

AUTHORIZATION AND RELEASE

1. For good and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, I hereby give and grant in perpetuity to ABC Association ("ABC") and its representatives, successors, assigns, licensees, employees, and any person, corporation or entity acting under its permission or with its authority, or for whom it might be acting, including anyone distributing or disseminating communications by or regarding ABC (hereinafter collectively referred to as the "Licensed Parties"):

the irrevocable right, permission and license to publish, reproduce, distribute, and/or otherwise use: (i) my name; and (ii) any still or moving photographic image, likeness or sound recording of me (the "Performance").

2. I hereby waive all rights of inspection or approval with regard to any recording, taping, reproduction, proposed printed, audio or video publication, and/or other use of my name and the Performance. I also hereby release, discharge and agree to hold harmless the Licensed Parties from and against any and all liability to me or any third parties resulting from their use of my name and the Performance. I agree that my participation herewith is voluntary and I assume complete responsibility for my actions in connection herewith.

3. Nothing herein shall constitute any obligation on the part of the Licensed Parties to make any use of any of the rights granted herein.

4. This Authorization and Release shall be binding upon my heirs, successors, assigns, and personal representatives, without regard to whether it is expressly acknowledged in any instrument of succession or assignment.

5. I am eighteen (18) years of age or older.

IN WITNESS WHEREOF, I hereby execute this Authorization and Release as of the date and year first below written.

Signature Date

Printed Name Telephone Number

Street Address

City State Zip

Social Security Number

CONTENT LEADER LETTER OF AGREEMENT

1. I agree to present the following program:
 - a. Program Title: _____
 - b. Name of Conference: _____ (if applicable)
 - c. Date: _____
 - d. Time: _____ to _____
 - e. City and State: _____ (if applicable)
 - f. The program will cover information/topics requested by The Center and agreed to by me.
2. I agree to comply with all program-related deadlines provided to me by ASAE & The Center for Association Leadership, including but not limited to deadlines for handouts, A/V requests, etc.
3. During my presentation, I will not engage in any type of promotional marketing or selling of any product or service, and I will not disparage ASAE & The Center in any way.
4. I agree to notify ASAE & The Center's program manager immediately in the event that an emergency should prevent me from meeting my obligation as a content leader.
5. I grant to The Center a royalty-free license to use, reproduce and distribute my presentation (including all handouts and PowerPoint presentations) in any way in the future, with appropriate attribution to me. I understand that this license does not change the fact that I retain copyright ownership of my presentation, and does not prohibit me from using my presentation in any way or from allowing others to use it.
6. I agree to use the PowerPoint and handout templates and logos provided to me by ASAE & The Center for any PowerPoint presentation and/or handouts I may utilize in connection with the program, and I agree not to use these templates and logos in any way except in connection with this or other ASAE & The Center programs.
7. To the best of my knowledge, my presentation does not violate any proprietary or personal rights of others (including any copyright, trademark and privacy rights), is factually accurate, and contains nothing defamatory or otherwise unlawful. I have the full authority to enter into this agreement and have obtained all necessary permissions or licenses from any individuals or organizations whose material is included or used in my presentation.
8. I authorize The Center to use my name, likeness, photograph, and biographical data in connection with the use and promotion of the program.
9. I provide consent for The Center to record my presentation in audio and/or visual form. I understand that The Center will be the sole copyright owner of the recording and can distribute and sell it, along with any supporting materials. Upon request, The Center will provide me with one complimentary copy of the recording, however, I agree not to sell, distribute, stream over the Web, or otherwise use the recording in any way other than for my personal, archival use, except with the prior written consent of The Center.
10. I will be responsible for all travel arrangements and expenses that I incur. I understand that I will not receive any royalties, honoraria, reimbursement of expenses, or other compensation from ASAE & The Center in connection with the program or the rights granted above.

By signing this Content Leader Letter of Agreement, and based on mutual consideration, I understand and agree to the above terms and conditions.