

Debates and Forums: Recording and Airing

LEGAL and PRACTICAL CONSIDERATIONS

The purpose of a League debate or forum is to let candidates or policymakers present information about themselves and/or their positions to the voters. Accordingly, the wider the audience, the better; the LWVCT strongly favors not only live broadcasts of our debates but also their being taped for later broadcasting, cablecasting, and/or on-line presentation.

However, candidates and League members have raised questions about the proper use of tapes of LWV debates: who should be allowed to tape? Who can/should broadcast, cablecast, or webstream such recordings? Is it ever proper to show selected excerpts? While one can argue that the LWV should never object to anyone's recording or playing any part of any of our debates, if we don't set a few reasonable limits we run the risk of looking partisan, or, worse, actually being in a position where, by furnishing material to a campaign, we are, despite our best intentions to the contrary, partisan in effect.

Who Can Tape a Debate?

If you are holding a debate in a TV studio, whether cable or broadcast, you have effectively limited the taping and distribution to the studio's personnel and have excluded all other potential tapers/distributors, unless the studio permits those other tapers in their premises during taping — but the limit lasts only until and unless the studio webstreams the debate, at which point anyone can lift it off the internet and use it, or until it is shown on TV, at which point anyone with a tape or DVD recorder can copy all or part, and distribute or rebroadcast the recording.

If you are holding a debate in a public venue, the following people can tape:

- anyone to whom you've given prior permission, such as a local cable or broadcast channel.
- any member of any legitimate news organization, whether or not they've asked you in advance.
- all members of the audience, unless you take certain stringent precautions (see below).
- members of any candidate's staff, unless you get the candidates' agreements to refrain from doing such recording.

Who Should Be Authorized to Tape a Debate?

Many Leagues have long-term debate-recording arrangements with their local educational access cable station and/or community access cable station; Leagues in major metropolitan areas can sometimes arrange for a broadcast station to make and show the recording. Some Leagues do their own recording and furnish the resulting tape or DVD to a cable or broadcast station or

post the recording online. All of these arrangements are completely acceptable.

Your League may choose to offer such recording opportunities on an exclusive basis. If you do, the candidates and members of the public should be told that you have made such an arrangement, and you may take reasonable steps to see that no one else (except news organizations) brings a camera into the debate.

If your League has not made an exclusive arrangement and is approached by a would-be recorder who asks for permission to record and show your debate, you have a right to ask

- does he/she work for a particular party or candidate?
- does he/she intend to show the debate in full?
- does he/she intend to offer the resulting recording or excerpts for sale, and if so, to whom?

Depending on his or her answers, your League may request him/her not to bring a camera into the debate and may request him/her to leave if he/she does bring in a camera anyway.

How Can You Stop Unauthorized Taping?

You cannot confiscate anyone's camera or cell phone, but you may eject from the room:

- anyone who has agreed to refrain from recording, including candidates' staff members;
- any audience member, if you've announced, before the debate starts, that recordings will not be permitted.

Realistically, however, if the hall is large and the person doing the unauthorized recording is using a very small hand-held camera, you may not know about the taping until you see it on line, or, worse, in a TV ad. Also, consider whether ejecting someone will be an unacceptable distraction from the debate once it starts.

Who Can Link to a Debate On Line?

If your debate will be available on line, anyone (including candidates) can link to it. Although it is considered polite to ask for permission to link, nothing requires a linker to do so.

What's Wrong With Using Excerpts?

It depends on the use. Under federal law, news media are encouraged to use excerpts from debates in their broadcasts, and have nearly-absolute protection for doing so. Similarly, if a League wanted to use excerpts from recordings of debates to show trainee moderators how to recognize and avoid certain problems, there ought not to be any problems. However, if the League were to permit candidates to use excerpts in their advertizing, the League would run certain risks:

- we would be encouraging sound-bite responses during the debate.
- we could be seen by the public as being in favor of the candidate who used our material.
- we could be seen by the federal government as providing campaign material to one or more candidates (which is legal for 501(c)(4) organizations using their own money, but flatly prohibited for 501(c)(3) organizations and for organizations using 501(c)(3) funds.).

These considerations would apply whether the candidate is showing his own debate performance or whether he's taking an opponent's answer and showing that to the public.

Accordingly, the LWVCT strongly encourages Leagues to announce, at the beginning of each debate that we sponsor or co-sponsor, that the League strongly objects to the replaying of excerpts of debates, and that we encourage audience members to tell their friends and families that the debate will be shown in full on station X at time Y. If your League has asked the candidates to refrain from recording and the candidates have agreed, this should also be included in the up-front announcement.

What Can You Do to Limit Unauthorized Uses?

You can ask the audience not to record.

You can ask the candidates not to record; more strongly, you can demand that the candidates sign a no-recording contract as a condition of participating in the debate (samples follow). (Modifiable versions of these contracts are available from the LWVCT office as e-mail attachments in Word format, and can be customized for particular situations.)

You can copyright the recording.

If The Recording Is Going To Be Copyrighted

If you copyright a recording, you have to be prepared to pay the copyright fee, file the copyright form, and enforce the copyright; if you don't, it becomes void, and the recording goes into the public domain, where anyone can use all or part of it.

If you copyright you should place a copyright notice on all copies of tapes and transcripts. The notice consists of the word "copyright" or the letter "c" in a circle (©), the name of the copyright owner and the year of publication.

Some people have placed a "common law" copyright notice on recordings even when they don't intend to actually file a federal copyright. It is legal to do so, but the LWVCT does not advise it.

If your copyright is infringed, you should immediately consult an attorney who specializes in "intellectual property" enforcement.

SAMPLE



CANDIDATES' VIDEO/AUDIO RECORDING POLICY AGREEMENT

I understand that the debate in which I have agreed to take part will be recorded by _____ on behalf of the League of Women Voters of _____, that the resulting video recording(s) of the debate will be and are owned exclusively by the League of Women Voters of _____, and that the said video recording(s) may not be reproduced in whole or in part under without the written permission of the LWV of _____.

I understand that the League of Women Voters of _____ intends to limit audio and video recording of the debate to

1. news services that have been given permission to record by the League of Women Voters, and/or
2. the above-listed TV producer.

I agree that my campaign staff, employees, affiliates, agents, subcontractors and/or assigns will not make any audio or video recording of the debate.

I agree not to use any segment(s) of the recording to promote my candidacy, positions, or political party, and I further agree to direct my employees, affiliates, agents, subcontractors and/or assigns not to use any segment(s) of the recording to promote my candidacy, positions, or political party.

I hereby agree to abide by the above policy.

Candidate:

signature _____

name (print or type) _____

Date _____

SAMPLE



CANDIDATES' VIDEO/AUDIO RECORDING POLICY AGREEMENT

I understand that the League of Women Voters of [Connecticut Education Fund, Inc.,] does not support or oppose any candidate, and that when League-sponsored debates are videotaped, the League expects that the event will be shown in its entirety, without editing or commentary.

I agree not to use any segment(s) of the tape to promote my candidacy, positions, or political party, and I further agree to direct my employees, affiliates, agents, subcontractors and/or assigns not to use any segment(s) of the tape to promote my candidacy, positions, or political party.

I hereby expressly grant to the League of Women Voters of [Connecticut Education Fund, Inc.,] and to its employees, affiliates, agents, subcontractors and assigns, the right and permission to videotape and/or otherwise record me in connection with the [date], candidates' debate at [place].

I hereby certify and represent that I have read the foregoing and fully understand the meaning and effect thereof, and, intending to be legally bound, I have hereunto set my hand this _____th day of [month] 2011.

Candidate's signature: _____

Candidate name (print or type): _____

SAMPLE



RELEASE TO SELL VIDEO RECORDING
TO A CANDIDATE

The League of Women Voters of ____ agrees to sell the undersigned [an audiotape][CD][videotape][DVD] of the [date] Candidates' Forum with the understanding that it will be for personal use only or, if viewed by anyone other than the purchaser, it will be shown unedited and in its entirety.

[The said recording is copyrighted and may not be reproduced in whole or in part under any circumstances whatever without the written permission of the President or Voter Service Chair of the LWV of ____.]

Candidate

Date: _____

Voter Service Chair / President of LWV of _____

Date: _____



TV PRODUCER CONTRACT

[Name of Organization doing the TV Production] has read and agrees to abide by the League of Women Voters of ____'s Policy For TV Productions.

The League of Women Voters of ____ gives [Name of Organization doing the TV Production] permission to record, whether by audiotape, videotape, or other method, the candidates' forum to be held on [date].

for LWV of ____

[name] President

Date: _____

or

[name] Voter Service Chair

Date: _____

for [Name of Organization doing the TV Production]:

Signature of TV Producer _____

Date _____