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Details: Public Hearing (10/18/2007) on WisconsinEye license agreement

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Senate Special

(Assembly, Senate or Joint)

Committee on ... Oversight of Senate Broadcasting (SSC-OSB)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Gigi Godwin (LRB) (November/2011)

- ORDER & ROLL
 - EALLY → EDOC.
-

CHRIS LONG - Wk Eye

DAVID LOVELL - Leg Counsel

ROS MERCHANT - Chief Clerk

TED BLAZEL - Sgt. at Arms

Agreement → Review in 6 mos.

Recommendations to SEN, OLG,
Protocol changes

Consensus or formal motion

Report to OLG. - Share 4 R's

- CHAIR LONG - VID. CONF.

- ROB M.

SOLICIT
SEN, FEEDBACK

- TED B.

PUBLIC HANG. vs. PROTOCOL

- DICK UNDER

- FOIC

- SPW/RPW

- COPYRIGHT ENFORCEMENT IN COURT

- ASK CHARIS RE: SIGNAL USE + ENFORCEMENT

- CONF. CONTR. ?

- USER AGREEMENT

- KILL SWITCH ?

- CEILING SHUT OFF

KRZ
LEW
WATH
PHIL

million
ERP
PK

* WISC. EYE NOW ARCHIVE

IS

CAPITAL FUNDING

CURRENT FUNDING

Mike Flaherty
Fundraising + Marketing
w/ EXEC B.D. of Dir. - active

APP!

SPOT	News	Signal ownership
Dx	13.2	-rs-
PR	Fair use	public ownership
Comm	X	of govt
		J CLO
		Assy.

Open Rev - ~~their~~ product

- CAMERAS IN GALLERY?

BLAY - 202

Agency to Org. - sep. from protocol
Internal



10-15-07 WISEYE CMTE. PREP

- ~~NOTICED?~~ SEN. DRB. MAY UNILATERALLY MODIFY PROTOCOLS
- CHRIS LONG VIDEOCONFERENCE OR WRITTEN
 - ~~CONTACT MEMBERS~~ FITZ - LEIBHAM - BROTHMAN / MILLER - ERP.
 - CONTACT PHIL MONTGOMERY
 - CONTACT PICK WAKELER
 - ~~DAVID LOVELL, LEG. COUNCIL ST. ANALYST~~

NOTES

- HAS IT BEEN PROFESSIONAL, DIGNIFIED & NON-PARTISAN
- FAIR REPRESENTATION TO ALL CMTE. MEETINGS
- HAS STAFF SELECTION BEEN CONSISTENT & DIGNITY & SECURITY OF SENATE
- ANYTHING EMBARRASSING OR SENSATIONAL
- ANYTHING INVASIVE TO PRIVATE MATERIALS OR CONVERSATIONS
- IS AUDIO SHUT OFF + CAMERA AT POODUM OR CEILING
- * HAS WISEYE ESTABLISHED A FRI-DAY SCHEDULE
- * HAS 567. OF ALMS POSTED SIGNS + NOT COVERED ANYTHING NOT SIGNED
- CAMERA INDICATOR LIGHTS WORKING
- PRESIDING OFFICER HAVE A CODE PHRASE TO TERMINATE TRANSMISSION
- DOES SEN. DRB. HAVE A USER AGREEMENT FORM PROHIBITING AOL/COMM.
- ARE ON-SCREEN ATLAS WORKING, CORRECT, NEED CHANGES OR ADDITIONS
- DOES WEBSITE HAVE SUFFICIENT BANDWIDTH → SUBJECT
- PRESS PLACARDS ON TABLES
- FILLER PROGRAMMING



Rob Marchant -

Meet & Formulate

Reviewing Ops of WI Eye

- protocol
- recommend changes to Sen Org
- Nov. 15 Senate Org Deadline

David Lovell ✓

Chris Long

Rob Marchant

Margaret Farrow (Board's Prez)

Ted Blazel

Leibem : 18th

Fitz : 24th

Grothman? 18th Good

u

Chris Long

316-6850 (wk)

658-7901 (cell)

> Submit Written Report Oct 15/16

> call in from GB



Larry Conopake
(Assb. Leg Council)

Comte on Broadcast Oversight

- > Written Report to Senate Org.
- > Move fully
- > Memo to comte that summarizes protocols
- > Chris Long

Teleconference

Written Testimony

- > Chris Long

- How do they intend to

- > User Agreement (Chris or Rob)

Where are we @
w/ where this
signal be

- > Termination of Broadcast

> Violence

- > Lights on Cameras

~~Cameras~~ Cameras point to ceiling when off

- > Notice of Filming

> Chris Long: Friday Schedule

> Chief Senate: Post Notice

- > Do you want this to go further

Sargent tell members of comte prior to hearing
in conjunction w/ Friday Notice

- > Continued Legislative Review

> Could be called in future

> Comte done after 1st 6 mo.

Code Word for Termination
• Working w/ Chief Clerk

Chris Long

Financial Status (Leibham)

- > Operations funded next few months
- > Getting Ready to launch next Fund. Drive
 - > Next 18 mo.
 - > 2009 Commercial Distributors
- > Goal One: Have 'product' to sell. → now that product is legit working on \$
- > Charter & Time/Warner not paying.

Staff (Leibham)

- > 11 FTE
- > Field Camera
- > Production
- > Management (4)

Viewership

- > No word from Charter & Time/Warner on Viewers

Marketing Campaign

- > Legis wk w/ WIEyc to get msg. out to constituents → sample press release, columns, newsletters

Duel Live Programming

- > Both on Website
- > Cannot on cable channels
- > Max is 4 live events on website.
- > WI Public Radio → Run live audio w/ them?
 - > Can look into that

BCN / Badger Network

- > Distance Learning (Schools, Library)
- > Jan. 15, 2008
 - > Access to same vid. as on website
- > Testimony thru BCN Feeds?
 - > Not right now: possibilities in the futur.
 - > Initial is one-way

Staff: Fundraising (Erp)

- > Working to bring a 'consultant' on
- > Wleye board

Public TV Timeline (Erp)

- > Waiting for them to reengage discussion
- > What can legis do to nudge Public Radio

User Agreement (~~PK~~)

- > Rob Marchant spearheading convos
- > Current Draft board seems okay w/
- > Current Practice for Request
 - > Have to turned people down b/c no US
 - > Loss marketing
- > Spot news use of Wleye signal
- > Push back from Broadcasters? (PK)
 - > Working w/ Broadcasters Assn.
 - > no push back as of now
 - > trying to be proactive

David Lovell Comments:

- > Termination of cmte after 6 mo.
- > DOA can terminate if problems not corrected
- > Sch. org. can also terminate ↗

User Agreement : Rob Marchant

- > Policy by JCLD
- > Majority Leader in Senate : Assb. holding up
- > Open Records Law w/ Sen. Staff
 - > not subject to open records → point to Wleye
 - > not certain if will be legally upheld

Termination

- > Stand informal : does not shut off, just shows to presence not content

> Code Phrase

> Termination

- > Presiding Officers gives phrase to Wleye
- > Compromise

> Nothing to point to, to say a change is needed → Wleye has been aware of termination thus far.

PK : Instant message window b/t chief clerk & Wleye → gavel

Production Company / Public Taping

> Policy & Statute

> Policy need Senate approval

> Statute open meeting laws

no internet in control rm @ Wleye : would include additional cost

Recess vs. Standing Informal

- > Distinction of call
- > Rob work w/ Presiding officer in which way to handle the request.

Report to Senate Org:

Leibham: as long as advisory to Sen Org.

Miller: Early in development ~~is~~ ^{is} so would be helpful → continue @ least thru this session

David: Senate can always have cmte, w/o changing the agreement



WISCONSINEYE PUBLIC AFFAIRS NETWORK, INC.
USER AGREEMENT

This User Agreement ("User Agreement") sets forth the entire understanding between you (an individual, representing yourself, or if applicable, acting as an authorized representative for a school, group, government entity, news organizations, association, business entity or corporation) (referred to as "you" or the "User") and WisconsinEye Public Affairs Network, Inc. (referred to as "we," "us" or "WisconsinEye") regarding coverage of State of Wisconsin State Senate and/or Assembly proceedings made available by WisconsinEye (our "Content").

WisconsinEye makes our Content available through (i) broadcasting signals or a direct signal, and (ii) our website (the "Site"). The term "broadcasting" as used herein, means in the general sense of transmission by any means possible, including via cable or air, and shall not be limited by any federal or state legal definitions.

1. License and Access

Subject to the terms of this User Agreement, WisconsinEye grants you a limited, revocable, nontransferable, nonsublicensable, non-exclusive license to access and view our Content, provided that unless otherwise expressly provided herein, no portion of our Content may be recorded, reproduced, reprinted, republished, modified, duplicated, copied, sold, resold, distributed, redistributed, publicly displayed or publicly performed in any form without the express written permission of WisconsinEye.

2. Explicit Prohibition For Political or Commercial Use

You acknowledge and agree that you will not use our Content for commercial purposes or for political purposes. For this User Agreement, our Content is used for political purposes if any of the following apply:

a. The Content is disseminated in any way for the purpose of influencing the election or nomination for election of any individual to federal, state or local office, for the purpose of influencing the recall from or retention in office of an individual holding a federal, state or local office, for the purpose of payment of expenses incurred as a result of a recount at an election, or for the purpose of influencing a particular vote at a referendum.

b. The Content is disseminated in any way during the period beginning on the 60th day preceding a general election, special, spring or primary election and ending on the date of that election and the dissemination includes a reference to or depiction of a clearly identified candidate whose name is certified to appear on the ballot for election or nomination to an office to be filled at that election.

c. The Content is disseminated in any way that expressly advocates the election, defeat, recall or retention of a clearly identified candidate or a particular vote at a referendum.

d. The Content is disseminated in any way for the purpose of influencing an endorsement or nomination to be made at a convention of political party members or supporters concerning, in whole or in part, any campaign for federal, state or local office.

For this User Agreement, our Content is not used for political purposes if the Content is disseminated for the purpose of supporting or defending a person who is being investigated for, charged with or convicted of a criminal violation of state or federal law, or an agent or dependent of such a person.

3. Legal Compliance

You agree to comply with all applicable federal and state laws and regulations in connection with this User Agreement.

4. School, Government and Library Use

In addition to and subject to the limitations of the license granted in Section 1, Users who are schools, higher education institutions, State of Wisconsin agencies, libraries and municipalities are authorized to record, reproduce, internally transmit, publicly display and perform our Content to their respective students, employees, or patrons for educational, training, research and other non-commercial and non-political purposes (as defined herein), provided such Users comply with all other provisions of this User Agreement, keep all copyright, trademark, and other ownership notices in the Content intact, and include the following statement in the Content (unless waived by WisconsinEye): "This copyrighted content is used with permission from Wisconsin Eye's gavel to gavel coverage." Such Users' rights to record, reproduce, internally transmit, publicly display and perform are limited to the purposes expressly described herein, and such Users do not have the right to reprint, republish, modify, sell, resell, distribute or redistribute our Content in any form without the express written permission of WisconsinEye. No use under this Section shall in any way distort or misrepresent the Content.

5. Wisconsin Legislature Use

In addition to and subject to the limitations of the license granted in Section 1, Users who are members or employees of the Wisconsin Legislature are authorized to record, reproduce, internally transmit, post on official state legislative websites, publicly display and perform our Content for non-commercial and non-political purposes (as defined herein) in Senate-produced or Assembly-produced communications and educational materials, provided that (i) all such use of our Content is approved by a member of the applicable legislative leadership (the "Legislative Leadership"), (ii) Users comply with all applicable policies of the Legislature and their respective house with regard to use of our Content, (iii) Users comply with all other provisions of this User Agreement, including but not limited to the restrictions and requirements under this Section 5, and (iv) Users keep all copyright, trademark, and other ownership notices in the Content intact. Such Users' rights to record, reproduce, internally transmit, post on official state legislative websites, publicly display and perform are limited to the purposes expressly described herein, and such Users do not have the right to reprint, republish, modify, sell, resell, distribute or redistribute our Content in any form without the express written permission of WisconsinEye. Users who are members or employees of the Wisconsin Legislature must comply with the following when using our Content:

a. Any Content that is not used in its wholly original format, that is gavel-to-gavel coverage as provided by WisconsinEye, must (i) continuously display an editor identification statement ("Editor Identification Statement") identifying the person, group, or entity responsible for the edited version of the Content in at least twelve point font size, and (ii)

display bookend editor statements at the beginning and end of the production of Content (“Bookend Statement”). The Editor Identification Statement should display, at a minimum, the following: “Produced by staff of Wisconsin State [Senate or Assembly]. Video with WisconsinEye trademark excerpted from WisconsinEye’s gavel-to-gavel coverage.” For the purposes of this Agreement, continuously display means the Editor Identification Statement must be displayed on the Content or the accompanying “skin” of the media player at all times during the display of the Content. The Bookend Statement should display, at a minimum, the following: “This video production was produced by the staff of the Wisconsin State [Senate or Assembly]. The content displaying the WisconsinEye trademark was excerpted from WisconsinEye’s gavel-to-gavel coverage. WisconsinEye does not endorse any view contained in the following production.”

b. Under this Section 5, Users may use our Content on official legislative websites that discuss the legislative accomplishments or legislative agenda of an elected official provided our Content is not used to facilitate use of the Content in campaign communications including, but not limited to, campaign communications in coordination with third parties and the use is made in compliance with §11.33, Wis. Stats.

c. With regard to any Content that contains a reference to or depiction of an elected official who becomes a candidate for national, state, or local office, Users are prohibited from using that Content in any way after the first day authorized by state or federal law for circulation of nomination papers as a candidate for that office, provided this prohibition does not require any Content previously posted to an official legislative website to be removed and does not prohibit communications authorized under §11.33 (2), Wis. Stats.

d. No use under this Section 5 shall in any way distort or misrepresent the Content. The Legislative Leadership shall have the duty and obligation to enforce this Section 5 with regard to any User who is a member or employee of the Wisconsin Legislature and WisconsinEye shall have no liability for any breach of this Section 5 by such User.

Notwithstanding the foregoing, WisconsinEye, at its option, may exercise any additional rights it has under this User Agreement.

6. Spot News Gathering Use

In addition to and subject to the limitations of the license granted in Section 1, Users who are individuals or news organizations possessing a valid, permanent or temporary registration card issued by the Wisconsin Capitol Correspondent’s Association (“Bona Fide News Gatherers”) are authorized to record, reproduce, edit, transmit, publicly display and perform our Content for Spot News Gathering, provided such Users comply with all other provisions of this User Agreement, keep all copyright, trademark, and other ownership notices in the Content intact, and include the following statement in the Content (unless waived by WisconsinEye): “This copyrighted content is used with permission from Wisconsin Eye’s gavel to gavel coverage.” Spot News Gathering shall be defined as timely, editorial information for public consumption relating to daily legislative events or actions and does not include use in opinion pieces or commentary. Such Users’ rights to record, reproduce, edit, transmit, publicly display and perform are limited to the purposes expressly described herein, and such Users do not have the right to reprint, republish,

modify, sell, resell, distribute or redistribute our Content in any form without the express written permission of WisconsinEye. Full length coverage by Bona Fide News Gatherers of individual event state proceedings will be permitted only with prior written approval from WisconsinEye, and if applicable, the Wisconsin State Senate or Assembly. No use under this Section 6 shall in any way distort or misrepresent the Content.

7. Ownership of Content

User acknowledges that WisconsinEye owns and retains all rights, title and interest in our Content, including but not limited to copyrights, and User shall not, by virtue of this User Agreement or by virtue of its access to or use of our Content, obtain any rights, title or interest in our Content other than the license rights granted herein.

8. Fair Use

Nothing in this User Agreement or any exhibits attached hereto, is intended to affect any person's right to make a "fair use," as that term is defined under the U.S. Copyright Act, of our Content.

9. Public Records Requests

User acknowledges that our Content is covered by federal copyright laws and should be treated as non-records under the Wisconsin Public Records Law.

As such, WisconsinEye requests that our Content not be accessible under the Wisconsin Public Records Law. If User is a governmental entity subject to the Wisconsin Public Records Law, User agrees to notify the records custodians that they may not disclose our Content pursuant to requests received under the Wisconsin Public Records Law.

10. Representations of User

By accepting this User Agreement and/or using our Content, you represent to WisconsinEye that you are authorized to enter into this User Agreement for your school, group, government entity, news organizations, association, business entity or corporation, or if you are an individual, you are of legal age to enter into contracts in your jurisdiction and have all rights, approvals and/or consents necessary to agree to the terms provided herein. You agree to all of the terms and conditions of this User Agreement and agree that if you breach this User Agreement, WisconsinEye may discontinue your access to our Content immediately and pursue any and all legal claims and remedies available to us, including but not limited to claims for federal copyright infringement. The U.S. Copyright Act provides for statutory damages not less than \$750 and up to \$30,000 per copyrighted work, all of which can be substantially increased if the infringement was willful. Infringers can also face federal criminal charges.

11. User Agreement Updates

You acknowledge that WisconsinEye may periodically publish on our Site updates to the User Agreement and you agree to comply with any such updates.

12. Site Terms of Use and Policies

Users who access our Content from our Site agree to be bound by the Terms of Use and other policies periodically published on our Site.

13. Disclaimer of Warranties

a. You acknowledge that the availability of our Content and operation of our Site may from time to time encounter technical or other problems and may not necessarily continue uninterrupted or without technical or other errors, and WisconsinEye shall not be responsible to you or others for any such interruptions, errors or problems or any discontinuance of our Content or our Site. Access to our Content may be discontinued at any time, with or without reason. YOU EXPRESSLY UNDERSTAND THAT OUR CONTENT, IS PROVIDED "AS IS," "AS AVAILABLE," WITH ALL FAULTS, AND WITH NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. YOU ASSUME TOTAL RESPONSIBILITY AND RISK FOR YOUR USE OF OUR CONTENT. WE MAKE NO WARRANTY THAT OUR CONTENT WILL MEET YOUR REQUIREMENTS OR BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. WE DO NOT ENDORSE ANY OF THE VIEWS EXPRESSED IN OUR CONTENT. Accessing our Content and our Site is at your own risk. You are advised to take adequate precautions to minimize any loss to your system caused by malicious programming (e.g. virus, worms), including use of anti-virus programs and proper backup of files. Posting malicious programming to our Site is prohibited.

b. Notwithstanding subsection (a) in this Section 13, WisconsinEye is not released from any duty it is required to perform under the terms of (i) the License Agreement between WisconsinEye and the State of Wisconsin (Senate) dated July 5, 2005, and any renewals or extensions thereof, and (ii) the License Agreement between WisconsinEye and the State of Wisconsin (Assembly) dated July 6, 2005, (each a "License Agreement," and collectively, the "License Agreements"); nor does subsection (a) limit WisconsinEye's liability for breach of any License Agreement or limit the remedies available to the State of Wisconsin for any violation of such License Agreement.

14. Limitation and Release of Liability

a. You hereby release WisconsinEye (and our employees, directors, officers, donors, agents, users, parent, subsidiaries, affiliates and other partners) from any loss, cost, claim, damage, liability and/or expense, of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, including reasonable attorneys' fees arising out of or in any way connected with our Content or Site or resulting from your use of our Content or our Site. Unless you are a State of Wisconsin agency, governmental entity, or a member or employee of the Wisconsin State Legislature signing this User Agreement in your official capacity, you waive the provisions of any state law limiting or prohibiting a general release. IN NO EVENT SHALL WISCONSINEYE BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS IN OUR CONTENT OR FOR ANY DIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR ANY LOSS OF PROFITS OR REVENUE, REGARDLESS OF WHETHER WE KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH INTERRUPTIONS OR ERRORS.

b. Notwithstanding subsection (a) in this Section 14, WisconsinEye is not released from any duty it is required to perform under the terms of the License Agreements; nor does subsection (a) limit WisconsinEye's liability for breach of any License Agreement or limit the remedies available to the State of Wisconsin for any violation of any License Agreement.

15. Indemnity

Except as otherwise provided in this Section 15, you agree to indemnify, defend and hold WisconsinEye and (as applicable) our employees, directors, officers, donors, agents, users, parent, subsidiaries, affiliates and other partners, harmless from and against any loss, cost, claim, damage, liability and/or expense, of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, including reasonable attorneys' fees arising out of or in any way connected with our Content or Site, resulting from your use of our Content or our Site, your access to our Site, your breach of this User Agreement or violation of any law or third party's rights. This Section does not apply to any User who is a State of Wisconsin agency, governmental entity, or a member or employee of the Wisconsin State Legislature signing this User Agreement in his or her official capacity.

16. Copyright Notice

All of our Content, such as, but not limited to, text, graphics, logos, button icons, images, audio clips, video clips, data compilations, video feeds, produced segments, and software, is the property of WisconsinEye or its suppliers and protected by United States and international copyright laws. Additionally, the illegal use of copyrighted Content will be prosecuted to the fullest extent of the law. You shall be fully responsible for any violation of this User Agreement, including without limitation the representations made to WisconsinEye under this User Agreement. You shall sign and deliver to WisconsinEye any additional documents that WisconsinEye may request to confirm WisconsinEye's rights under this User Agreement.

17. Trademark Notice

"WisconsinEye," "WisconsinEye.org," and other marks indicated on our Content or Site are trademarks of WisconsinEye (the "Marks"). WisconsinEye hereby grants you a limited, non-exclusive, nontransferable, nonsublicensable license to use the Marks solely as necessary to the exercise of your rights hereunder. You agree in connection with the rights granted herein not to use the Marks in connection with any product or service that is not WisconsinEye's, in any manner that is likely to cause confusion among the public, or in any manner that disparages or discredits WisconsinEye.

18. Miscellaneous

a. In the event of any dispute concerning this User Agreement, Wisconsin law shall apply and all legal proceedings, if any, shall take place in state or federal courts sitting in Dane County, Wisconsin. You waive any jurisdictional, venue or inconvenience forum objections to such courts. No agency, partnership, joint venture, employment or franchise relationship is intended or created by this User Agreement.

b. If any provision of this User Agreement shall be held void, invalid or inoperative, no other provision of this User Agreement shall be affected as a result thereof, and,

accordingly, the remaining provisions of this User Agreement shall remain in full force and effect as though such void, invalid or inoperative provisions had not been contained herein.

c. The headings and captions used herein are inserted for convenience of reference only and shall not affect the construction or interpretation of this User Agreement.

d. We may assign our rights and obligations under this User Agreement at any time without notice.

e. Any notices sent to WisconsinEye shall only be deemed given if and when actually received by WisconsinEye by email or in writing to WisconsinEye Public Affairs Network, Inc., P.O. Box 949, Madison WI, 53701 Attention: Customer Service (or such other address or addresses as may be designated by WisconsinEye).

USER

**WISCONSINEYE PUBLIC AFFAIRS
NETWORK, INC.**

COMPANY NAME:

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

mn309558_13





WISCONSIN LEGISLATIVE COUNCIL INFORMATION MEMORANDUM

How Will WisconsinEye Affect Legislative Proceedings? Questions and Answers for Members of the Wisconsin Legislature

WisconsinEye launched its coverage of the Wisconsin State Legislature on May 16, 2007, carrying the proceedings of the State Assembly and Senate live on its website.ⁱ For the time being, WisconsinEye will cover all Senate and Assembly sessions and all meetings of the Joint Committee on Finance. WisconsinEye will also cover at least one meeting of each joint, standing, and statutory committee of the Legislature each biennial session. WisconsinEye is in the process of arranging coverage of the Executive and Judicial branches as well, and plans to expand its scope to include broader aspects of community and public life.

WisconsinEye's stated mission is, in part, to "provide access to the public policy debate and decision-making process without editing, commentary, or analysis and with a balanced presentation of points of view...." Under agreements between WisconsinEye and the state, described below, WisconsinEye is required to "strive to present gavel-to-gavel and unedited coverage [of legislative proceedings] without editorial comment, so as to accurately present, without augmentation, what would be seen and heard by a visitor to a chamber gallery or committee hearing room during a floor session or meeting." The idea is to replicate the experience of a visitor to the State Capitol observing a floor session or committee meeting.

This memorandum provides answers to questions that have been raised by legislators and their staff in anticipation of the startup of WisconsinEye coverage.ⁱⁱ

WHAT ARE THE "AGREEMENTS"?

In August 2005, WisconsinEye, the Legislature's Committees on Senate Organization and Assembly Organization, and the Department of Administration executed agreements that specify many aspects of the relationship between the state and WisconsinEye (the Agreements).ⁱⁱⁱ The Agreements establish detailed protocols for the recording and broadcast of legislative proceedings. They also address how equipment is to be installed in the Capitol, deadlines that must be met by WisconsinEye, coverage requirements, how the footage is to be stored, processed, and made accessible to the public, and many other rights and duties of the respective parties. Most of the answers to the following questions draw on specific provisions in these Agreements.

WHEN AM I ON CAMERA? HOW DO I KNOW?

All floor sessions of the Assembly and Senate will be covered. WisconsinEye will also cover at least one full hearing of each legislative joint, standing, or statutory committee while striving to give fair representation to all committee meetings. WisconsinEye must also strive to provide gavel-to-gavel coverage of those proceedings it covers.

WisconsinEye is responsible for the day-to-day decisions about which committee hearings and other Legislative proceedings will be covered on a particular day. WisconsinEye is required to provide a weekly schedule of the legislative proceedings that it intends to record during the following week to the Presiding Officers and the Assembly and Senate Chief Clerk each Friday by noon, and to post this schedule on its website. WisconsinEye intends to follow this schedule except when proceedings are cancelled, proceedings are noticed too late for the Friday noon deadline, or unforeseen circumstances require schedule alteration. WisconsinEye is working with the Chief Clerks to set up a system to notify members of changes to the weekly schedule.

For each proceeding listed on WisconsinEye's posted schedule, the Assembly or Senate Sergeant-at-Arms must post a sign at the entrances of the hearing room providing notice that WisconsinEye is covering the proceeding. The notice must be posted no later than five minutes before the scheduled start time of the meeting, and no recording may begin until a sign is in place.

The Agreements require WisconsinEye cameras to be equipped with indicator lights that must be illuminated any time the camera is recording. The indicator lights must be visible to all persons participating in the proceeding, and to others in the room, where feasible. WisconsinEye reports that all remotely-operated and manually-operated^{iv} cameras have been equipped with such lights.

WHEN CAN WISCONSINEYE FILM?

The protocols contained in the Agreements specify in detail when WisconsinEye is permitted to record, including the following limitations:

- WisconsinEye may not begin recording more than five minutes prior to the noticed starting time, except for setup or testing purposes, and must delete material taped more than five minutes prior to the actual start time from archived proceedings.
- Signal transmission must terminate within 10 seconds after the proceedings are adjourned or recessed. During these 10 seconds, only background audio may be covered and video coverage must be limited to a general view of the room without close-up shots.

WisconsinEye has expressed confidence that it will be able to fully comply with these very precise requirements.

WHAT CAN WISCONSINEYE FILM?

The Agreements specify that WisconsinEye has the responsibility to cover legislative proceedings in a professional, dignified, and non-partisan manner. The coverage must always be consistent with the dignity and decorum of the Legislature. To this end, the protocols specify that WisconsinEye must select its camera shots as follows:

- The "primary focus" of WisconsinEye cameras must be on the Presiding Officer and those called on or recognized by the Presiding Officer.

- WisconsinEye may not intentionally select any shot in which materials on a legislator's laptop computer screen or desktop are discernible.
- WisconsinEye must specifically avoid audio or video, not of designated speakers, which "may be considered in WisconsinEye's judgment to be embarrassing or selected as to be sensational or invasive to private materials or conversations."
- WisconsinEye is prohibited from focusing audio coverage on a person who has not been recognized by the Presiding Officer.
- The camera must focus on the podium or voting board whenever the body is standing informal or is in recess.
- Any recorded background audio should not communicate the content of any discussion conducted at normal levels.

WisconsinEye indicates that, while primarily focusing on the Presiding Officer or the recognized speaker, it intends to use some wide view shots and intends to cover "reaction shots" of legislators not speaking but directly involved in the matter at issue. For example, reaction shots may be taken of a member who has yielded the floor, a member to whom the floor has been yielded, or any member who is being directly addressed by the Presiding Officer or recognized speaker. WisconsinEye does not intend to display footage of legislators not involved in the discussion.

WisconsinEye reports that it has discussed the protocols in detail with its production staff and has internally discussed methods that will be used to avoid violating any of these requirements.

WHAT OVERSIGHT FUNCTION DOES THE LEGISLATURE HAVE?

WisconsinEye Public Affairs Network, Inc., is not a state agency. It is a private, non-profit corporation run by a 12-member board of directors. The Legislature's oversight of WisconsinEye is, in general, governed by the Agreements. Legislative oversight applies only to WisconsinEye's coverage of legislative proceedings, and not to any other WisconsinEye programming.

Under the Agreements, the Senate and the Assembly are each required to appoint a six-member Oversight Committee to monitor the operation of the protocols in the Agreements. These Oversight Committees must review the protocols during the first six months of operation, which began May 16, 2007, and report their findings to the Committees on Assembly and Senate Organization, including present recommendations for modifications to the protocols.

The Committees on Assembly and Senate Organization are also required to review the Agreement protocols in the first six months of operation. The committees may unilaterally modify any of the protocols in the Agreements during this review period.

Finally, additional changes to an Agreement may be made at any time by consent of all of the parties to the Agreement, or as part of negotiations to renew the Agreements after their seven-year term expires.

HOW WILL FOOTAGE OF LEGISLATIVE PROCEEDINGS BE USED?

WisconsinEye will make its coverage of legislative proceedings available several ways, including an on-air WisconsinEye broadcast channel, a media pool feed, and the WisconsinEye website. WisconsinEye material can also be purchased for other limited purposes.

On-Air Broadcast Channel

WisconsinEye is required to offer its content to broadcasters on a non-exclusive and nondiscriminatory basis and at a reasonable price. WisconsinEye has already finalized agreements to launch digital channels on the Charter and Time Warner cable systems, and expects those systems to be broadcasting the WisconsinEye channel in the upcoming weeks. WisconsinEye reports that it is working toward achieving statewide access to its programming and is pursuing additional means of distribution to all state residents.

Pool Feed

In accordance with the Agreements, WisconsinEye has made a pool feed available in the Capitol press room for spot news gathering by news organizations and other video and information providers. The pool feed provides these groups with access to the content that WisconsinEye is covering at that time. WisconsinEye must provide access to the pool feed at no charge and on a nondiscriminatory basis.

WisconsinEye Internet Site

WisconsinEye is required to have a website on which it provides live streaming media files for events that it covers. The site must include indexes and archives of all of its coverage of legislative proceedings. The streamlining video and archives must be made available to the public at no cost.

WHAT LIMITATIONS HAVE BEEN PLACED ON THE USE OF WISCONSINEYE MATERIAL?

Under the terms of the Agreements, WisconsinEye is the sole owner of its signal. WisconsinEye material is copyrighted and is the intellectual property of WisconsinEye Public Affairs Network, Inc. WisconsinEye will require any party seeking to access WisconsinEye coverage of legislative proceedings to enter into a user agreement. WisconsinEye is in the process of creating a standard user agreement with the Assembly and Senate Chief Clerks and expects it to be ready for review by the Committees on Assembly and Senate Organization in the near future.

Among its terms, the user agreement must include a prohibition on the use of WisconsinEye material for commercial or political purposes. Under the Agreements, "political purpose":

...has the meaning set forth in section 11.01 (16), Stats., and also includes communication that is made during the period beginning on the 60th day preceding a general election, special, spring or primary election and ending on the date of that election.

Section 11.01 (16), Stats., provides a lengthy definition of "political purposes." The essence of that definition is captured in its first sentence:

An act is for "political purposes" when it is done for the purpose of influencing the election or nomination for election of any individual to state or local office, for the purpose of influencing the recall from or

retention in office of an individual holding a state or local office, for the purpose of payment of expenses incurred as a result of a recount at an election, or for the purpose of influencing a particular vote at a referendum.

WisconsinEye is required, at its own expense, to sue to enforce any violation of a user agreement and its copyright. WisconsinEye has indicated that it is committed to enforcing its copyrights against unauthorized users. While the material filmed, edited, and broadcast by WisconsinEye is protected by federal copyright laws, all copyright owners and broadcasters are limited by an exception to copyright protections called "fair use," which may permit the use of copyrighted material without WisconsinEye's permission. Uses that may fall under the fair use exception include uses for the purpose of criticism, comment, news reporting, teaching, scholarship, and research. This means that despite WisconsinEye's commitment to enforcing its copyrights, there may be certain uses that WisconsinEye cannot legally prevent. For example, WisconsinEye may not be able to prevent people from using clips of its material on internet sites or in campaign materials when the clips are being used for the purpose of criticism or comment.

WHAT SECURITY MEASURES AND OTHER ASSURANCES HAVE BEEN IMPLEMENTED?

The Presiding Officer may terminate transmission if a person not associated with the proceeding presents a risk of bodily harm to those present. The Agreements call for the establishment of an emergency phrase that the Presiding Officer can use to terminate the signal. The details of how the Presiding Officer will direct WisconsinEye to terminate coverage are still being developed.

Employees of WisconsinEye and any of its contractors are required to submit information for security background checks prior to working within the Capitol and sign a confidentiality agreement with respect to the Capitol security, HVAC, and electrical systems. In addition, people working on WisconsinEye equipment in the Capitol are required to attend an orientation to educate them about the importance of the materials in the Capitol.

Under the Agreements, WisconsinEye agrees to indemnify the state for any liability caused by WisconsinEye, to maintain an insurance policy, and to post a performance bond equal to the cost of materials installed in the Capitol and related to labor costs.

WHAT IS THE STATUS OF THE INSTALLATION OF WISCONSINEYE EQUIPMENT?

WisconsinEye has installed the infrastructure necessary for remotely-controlled recording throughout the Capitol, specifically, in the Senate and Assembly Chambers and Parlors, all legislative hearing rooms, the Governor's Conference Room, the Attorney General's Conference Room, the Supreme Court Hearing Room, and the Capitol Rotunda. When WisconsinEye launched its operations on May 16, 2007, it had "commissioned" the equipment (that is to say, the equipment was fully functional for remotely-controlled recording) only in the Senate and Assembly Chambers and the Joint Finance Hearing Room. It expects to have the equipment in the remaining legislative spaces commissioned later this year.

The only legislative spaces that will have permanently mounted cameras are the Senate and Assembly Chambers. These cameras are in place now. Recording in all other legislative spaces will be done using portable, remotely-controlled cameras mounted on tripods. Until any given room is commissioned, WisconsinEye will use manually-controlled cameras in that room.

Under the Agreements, WisconsinEye must begin broadcasting the proceedings of either the Judicial or Executive Branch by May 2008, by which time the equipment in the respective spaces will be commissioned.

WHO IS PAYING FOR WISCONSINEYE, AND WHO OWNS WHAT?

The Agreements each state: "WisconsinEye shall be responsible for all costs associated with this Agreement. There shall be no costs to the state for the term of this Agreement." Under the Agreements, the state owns all signal transmission equipment installed in the Capitol. WisconsinEye owns its cameras, but must turn them over to the state when the Agreements end. WisconsinEye is granted exclusive use of this equipment and is required to repair, maintain, and, where practical, upgrade the equipment at its own expense for the seven-year term of the Agreements.

As noted earlier, all audio and visual signals created by WisconsinEye are owned by WisconsinEye and protected under its copyright. If WisconsinEye is dissolved or liquidated, it must transfer its archives to the State Historical Society, at no cost. If the Agreements are terminated for any reason other than the dissolution and liquidation of WisconsinEye, WisconsinEye retains ownership of the archived material, but must continue to make it available to the Committees on Assembly and Senate Organization.

Ultimately, it is the people and organizations that contribute to WisconsinEye that are paying for this service. Information about WisconsinEye funding is available on its website.

Additional copies of this document can be obtained at the Legislative Council website at: www.legis.state.wi.us/lc.

This memorandum was prepared by David L. Lovell, Senior Analyst, Larry A. Konopacki, Staff Attorney, and Carlos Montoya, Law Clerk, on June 18, 2007.

ⁱ www.wisconsinseye.com

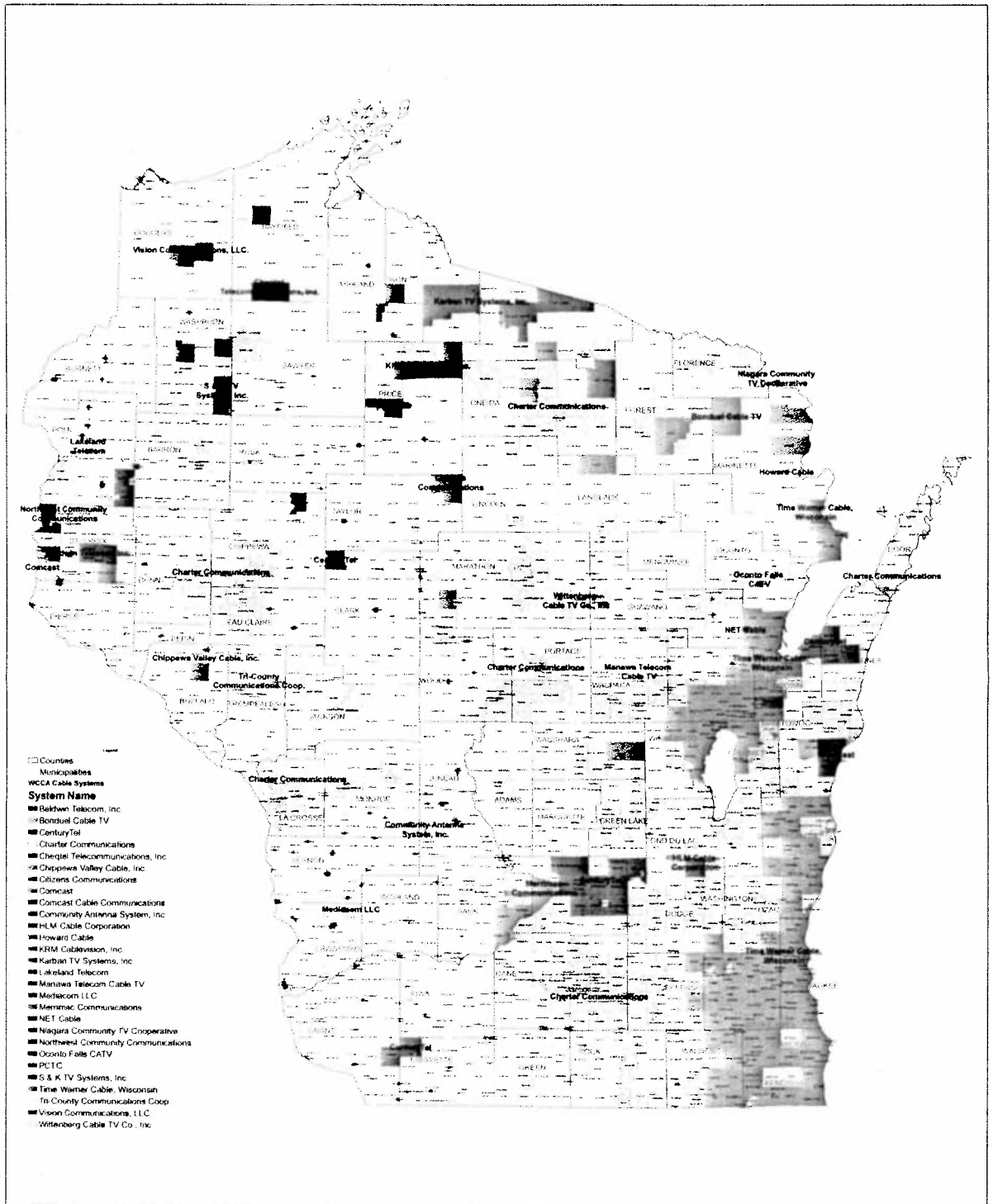
ⁱⁱ If you have any questions not addressed in this memorandum, please contact the Senate or Assembly Chief Clerk's office, Christopher Long, the President and CEO of WisconsinEye, or the Legislative Council staff offices. Mr. Long may be reached at (608) 316-6850 ext. 302 or by e-mail at: chris.long@wiseye.org.

ⁱⁱⁱ The Senate and the Assembly have executed separate Agreements, but they are virtually identical in terms.

^{iv} WisconsinEye will use its manually-operated cameras in rooms of the Capitol which are not yet ready for remotely-operated cameras and for events outside the Capitol. See the answer to the question "*What is the Status of the Installation of WisconsinEye Equipment?*", below, for information regarding rooms equipped for remotely-operated cameras.

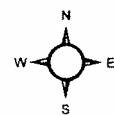






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