

Avoiding Legal Landmines When Sourcing Association Educational Content

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Introduction

- What is intellectual property?
 - Copyrights, trademarks, patents, and trade secrets
- How does this relate to association educational content?
- What are other legal issues that come into play?
- What are the practical steps you can take to protect your association?

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Legal Basics

- Difference between copyrights and trademarks
- Copyright law basics – both protection and avoiding infringement (including contributory copyright infringement)
- Difference between licenses and assignments (and works-made-for-hire)
- “Fair Use” (both copyright and trademark)
- Right of privacy and right of publicity
- Tort liability risk in this context (e.g., defamation, tortious interference, negligence for providing professional advice)
- How does this play out in the context of associations’ educational programs?

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Why is this an issue – Where does it come up?

- Speaker unknowingly uses material that is not their own or that they do not have actual or legal permission to use
- Speaker uses material that they believe is OK to use (e.g., Internet, YouTube)
- Speaker uses examples from the real world to illustrate a point that potentially slanders another person/entity

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Speaker Agreements

- Why?
- Protects the speaker and protects the association from liability risk and damage to their or the organization's reputation
- What to include? It's not just about copyright
- Require presenters to commit in writing that the content is their own or they have explicit permission to use in this instance
- Other "representations and warranties"
- How to enforce?

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Education – *They Just Don't Know*

- Don't assume they know what can and can't be used in presentations
- Even with paid speakers, push back, even if they say no one has ever questioned them before!
- What's ok to use and what isn't
 - Photos
 - Intellectual Property
 - Videos
 - Logos
 - Slander
 - Music
- How to find royalty free content

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Copyright Law

Text, art, graphics, music, photos, videos, and other creative expressions of ideas fixed in a tangible medium

- Basics
- Contributory Copyright Infringement
- Creative Commons
- YouTube Videos
- Practical Solutions

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Copyright Law (cont.) – Fair Use

- “Fair use” under U.S. copyright law allows limited use of copyrighted material without needing permission from the copyright owner. This doctrine is designed to balance the interests of copyright holders with the public’s interest in the dissemination of information and ideas. It is rooted in the First Amendment.
- The U.S. Copyright Act outlines four factors to determine whether a use qualifies as fair use; no one factor is determinative:
 - **Purpose and character of the use:** Non-commercial, educational, or transformative uses (such as commentary, criticism, or parody) are more likely to be considered fair use.
 - **Nature of the copyrighted work:** Using factual works is more likely to be fair use than using highly creative works.
 - **Amount and substantiality of the portion used:** Using smaller, less significant portions of a work is more likely to be fair use.
 - **Effect on the market:** If the use negatively impacts the market for the original work, it is less likely to be considered fair use.

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Trademark Law

Names, acronyms, logos, slogans, and other brand identifiers

- Basics
- Fair Use
- Practical solutions

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Rights of Privacy and Publicity

- Basics
- Distinguish between right of privacy and right of publicity
- Distinguish from copyright law
- Practical solutions

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Generative AI

- Primary legal risks and how to mitigate them
- Importance of human vetting of content that comes out of a generative AI platform, e.g., to avoid legal risks for providing negligent advice of guidance, defamation, tortious interference, and copyright and trademark infringement

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Defamation

Making untrue statements of fact (not opinions) about a person, company, product, or service that harms their reputation

- Basics
- Slander and libel
- Practical solutions

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Creative Commons

- Creative Commons are licenses for creators to use to make their work available to the public
- You **STILL** need to:
 - Attribute the work
 - Get permission to do anything that goes beyond the terms of the license

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Creative Commons on YouTube

I searched “workplace culture” on You Tube

The screenshot shows the YouTube interface with a search bar containing 'workplace culture'. The search results are filtered to 'Videos'. The top result is a sponsored video titled 'Great Workplace Culture Guide - #1 Guide To Positive Culture' with a thumbnail showing people in a meeting. The second result is a TEDx talk by Chris White titled '3 ways to create a work culture that brings out the best in employees | Chris White | TEDxAtlanta' with a thumbnail of the speaker. The third result is a video titled 'Positive Workplace Culture' with a thumbnail of people working at computers. The left sidebar shows navigation options like Home, Shorts, Subscriptions, and a list of subscriptions including TEDx Talks and SPOKENproject. The bottom of the screenshot shows a Windows taskbar with a weather widget indicating 94°F.

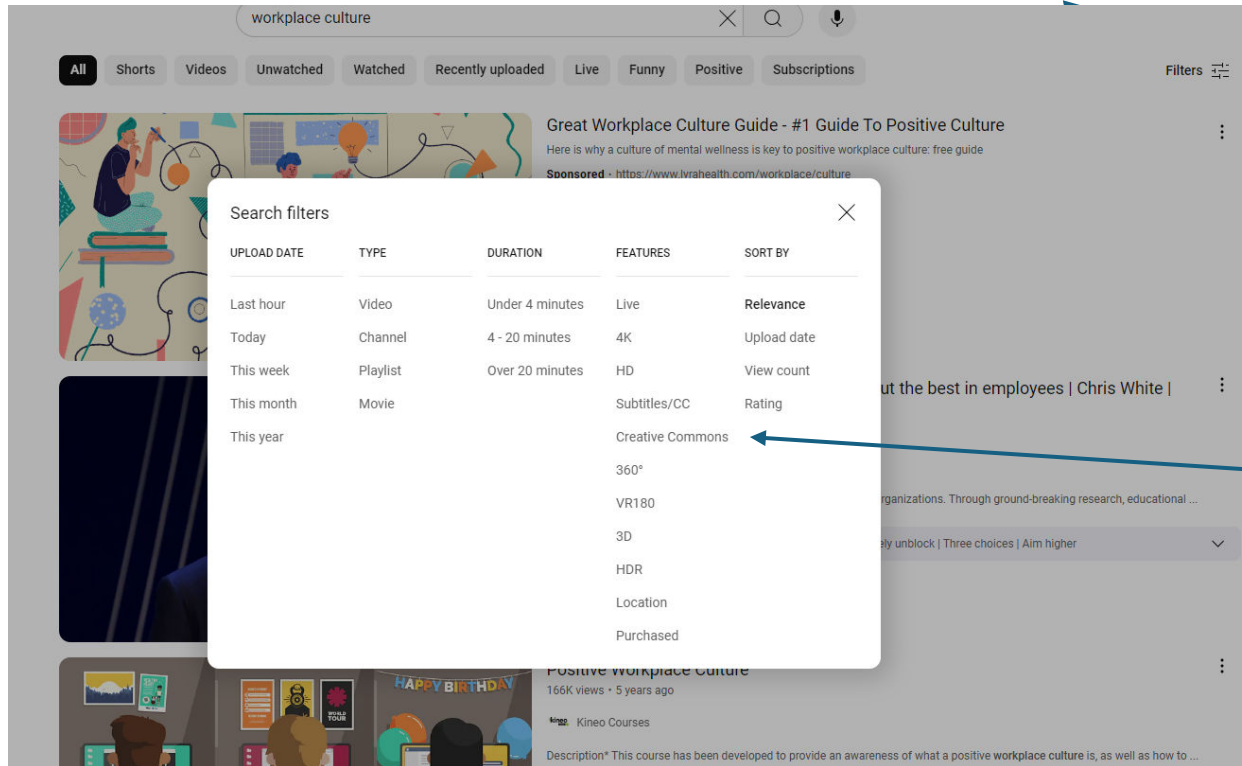
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Creative Commons on YouTube



Then I clicked “filters” on the top right

Next, I clicked “Creative Commons” under Features

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Creative Commons on YouTube

workplace culture

#1 Guide To Positive Culture - Great Workplace Culture Guide
Here is why a culture of mental wellness is key to positive workplace culture: free guide
Sponsored - <https://www.lyrahealth.com/workplace/culture>

Igniting creativity to transform corporate culture: Catherine Courage at TEDxKyoto 2012
234K views • 11 years ago
TEDx Talks
Design leader Catherine Courage challenges us to drive innovation in the workplace by igniting our innate creativity from ...
9 chapters Introduction | How do we ignite creativity | How do we change | Environments | Experiments | Prototypi...

Building positive workplace culture and leadership
3.5K views • 4 years ago
Safe Work Australia
Find out how the National Return to Work Strategy is supporting workplaces to reduce stigma and promote positive relationships ...
CC

Some of the entries stayed the same, others disappeared, and new entries populated

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Creative Commons on YouTube



I clicked on the second entry (the first was an ad) and a full description pulls up. When you scroll ALL THE WAY TO THE BOTTOM you find this

Transcript
Follow along using the transcript.

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This is the KEY (btw not all TEDx Talks have this) This was a lucky find

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Action Items

- Educate your meetings and education staff on these issues
(e.g., through occasional trainings, including on the effective use of Creative Commons)
- Utilize appropriate written speaker agreements
- Implement best practices for vetting speaker content
- Use releases to avoid invasions of the right of privacy
- Develop an AI usage policy for speakers
(distinguish from an AI usage policy for association staff)

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