



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.

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.wisconsineye.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.