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Pete Davidson's Stand-Up NDA May Be "Effective Deterrent" Even If It Won't Hold Up in Court



James Devaney/Getty Images

Pete Davidson

Legal experts are dubious about whether the 'SNL' star's contract is enforceable — especially since fans had no ability to negotiate the terms.

If Pete Davidson tests a joke and decides to never publicly perform it again, he reportedly expects his fans to keep it to themselves — forever.

The *Saturday Night Live* star has allegedly made audience members sign a nondisclosure agreement before watching his latest stand-up set — complete with the threat of a million dollars in damages for sharing details about his show — and offered refunds to those who refused.

Legal experts are dubious about whether Davidson's contract is enforceable — especially since fans had no ability to negotiate the terms — but its mere existence could be effective even if he never actually intends to sue.

"Assuming it's real, I don't think there's any judge in this country who would enforce the \$1 million liquidated damages provision," says Lavery & Singer partner Andrew Brettler. "That said, having patrons sign an NDA like this one — even if unenforceable in court — could be an effective deterrent."

The [one-page contract](#) says the performance includes "works-in-progress" content and bans fans from disclosing or confirming any details until Davidson himself releases it to the general public. It also gives his company, Cowardly Dog Inc., permission to "seize and destroy the contents of" smartphones or other devices that are snuck into the performance. It also asks for Instagram and Twitter handles in addition to basic contact information.

Reps for Davidson didn't respond to a request to verify a confidentiality agreement that was posted by a fan on Facebook, but litigator Ricardo Cestero tells *The Hollywood Reporter* he wouldn't be surprised by such a move, especially if the comic is testing out new material.

"Performers are going to start thinking about taking these kinds of precautions," Cestero says. "If they tell a joke that bombs that people deem socially unacceptable it could have devastating career impacts given today's cancel culture."

Eisner partner Jeremiah Reynolds says convincing a court jokes told to a large group continue to be "confidential" could be a tough sell. "It's common now to require people to check in their phones at comedy shows so there's no recording," he says. "But I'm unaware of anyone trying to prohibit people from commenting on the content or even posting descriptions of the jokes."

While the underlying premise of a confidentiality agreement seems reasonable enough, asking fans to keep quiet in exchange for seeing exclusive material, the NDA has its issues.

First and foremost, experts consulted by *THR* agree it's a contract of adhesion, meaning the signing party had substantially less bargaining power. That doesn't necessarily mean its not enforceable, but a court may invalidate terms that are beyond what a reasonable person would expect of the contract.

Reynolds argues the agreement is unreasonable on several fronts, including scope, subject matter and duration. For example, seeking damages from someone who filmed the show and posted it online is one thing, he says, "but it doesn't make sense for repeating one of the jokes in a bar to a buddy, which is a technical breach of this agreement given how broadly it is drafted."

There's also potentially no end to the agreement, given the requirement that the content remains confidential until Davidson releases it himself. "Conceptually, you can agree that you won't disclose anything you saw in the show for the rest of your life," says Cestero. "But what's the remedy if you breach it 10, 15, 20 years from now? Who knows."

If he did choose to sue a patron for leaking his set, Brettler says he'd have to prove his actual damages because "an automatic million-dollar penalty is unconscionable."

Meanwhile, entertainment litigator Bryan Freedman suggests that the reported timing of the NDA demand could cause trouble for Davidson. "It is ludicrous to think that, as a customer, you have to take on significant legal exposure that you were not informed of prior to purchasing your ticket for the show," he says. "The customers may end up having a better claim against him and the venue than he would ever have had against them."

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