

College Media Online A Legal Guide to the Cyber-Jungle

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The Cyber Jungle

A Traveler's Guide

- Digital and Social Media Change Everything – Unlimited Platforms to Exploit
- Unlimited Possibilities
- Unlimited Audience
- Unlimited Competition
- Wireless brings digital media everywhere
- But lots of legal uncertainties
- So plan your digital safari carefully....

The Cyber Jungle

- Still uncharted legal territory – relatively new medium, legally speaking
- Legal issues for digital media are all relatively new compared to traditional media – and the law hasn't had time to develop to address all the issues that come up
- It's not always clear who is in charge
- The Natives Are Restless – new law is arising almost every day, and it is not always consistent
- Expectations of audience and users, management, staff, college administration and others are often contradictory and can present problems – need to keep them all in mind in making your digital plans

No Easy Answers to Digital Media Legal Questions – A Little Perspective

- Facebook started 2004 (open to everyone in 2006), Twitter in 2006
- Pandora and YouTube started 2005
- Netflix started streaming about 2007 and Amazon did in late 2006
- Craigslist (1995 in San Francisco and 2000 nationwide) and Monster.com (1994)
- Compare this with broadcast regulation – around since 1934, and copyright since the 17th century

Protect the Farm

Your Digital Broadcasts

- FCC Digital Obligations Growing for Radio and TV – new captioning requirements for TV programs used on-line
- On-line public files are here for TV, and are coming for radio
- FCC regulation of website material directed to children – when promoted by over-the-air programs, no links to commercial material
- FCC looking more and more at on-line aspects of traditional media, and this could result in obligations on media companies
- Lots of other government agencies involved when you look for online legal answers
- Different obligations for same program on different platforms can create issues

Protecting Your Sheep

Call Letters, Slogans and Program Titles

- Don't Risk Your Existing Identity
- The Internet Makes Information About Your Media Outlet Available Worldwide -- And the Predators Are Watching
- Make Sure You Have the Rights To Your Content Before You Put It On-Line as, once online, rightsholders can find violations from across the country – or across the world
- Protect slogans, positioning statements and other station identifiers through trademark protection – trademark searches are important!
- Search first -- Before you start branding

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Remember Who You Are

Domain Names

- New domain names coming all the time – no longer just .com, .net, .edu and even .fm - protect your brand!
- Domain Names are registered, but just registering your domain doesn't give you protection
- Trademarks give some protection
- Even if you've registered a Domain Name, a similar Trademark can force you to stop using your name
- Protect your trademark and domain names as domain naming possibilities expand – especially important for in a world of .xxx and .radio – don't want your brand confused – Trademark Clearinghouse and aggressive enforcement are warranted
- Watch as new domains come online – and think about grabbing ones that relate to your current brand

Hire the Right Guides, Buy The Right Maps

Internet Service Providers and Consultants

- Know What You Need – don't pay for services you will never use
- Check References
- Beware of non-negotiable, preprinted contracts
- Make sure suppliers have rights to materials they provide- and that they indemnify you if it turns out that they don't – lots of recent patent cases against users of software from established vendors
- Make sure that they are up to date on the services that they provide
- Think about what you are getting and how long it will be good for – as technology changes fast, don't get tied into a long-term contract for a short-term fix

Purchase The Right Supplies

Existing Relationships

- Program Agreements May Not Give You On-Line Rights
- Rights to All Sorts of Information May Not Carry Over On-Line, e.g. Syndicated programs for Radio, Most of the Rights to TV Programs
- Make sure the rights you get carry over to all digital platforms – not just your website
 - Pictures – who owns rights to professional photos? – the photographer unless specifically assigned to you
 - Programming
 - Background music and themes
- Check Your Insurance Coverage

Be Careful With What You Find in the Jungle

- Just because something is on the Internet, you don't have a right to use it on your website
- Assume that pictures, videos and articles found online are copyrighted – so you usually need permission to reproduce them on your own website
- Lots of lawsuits over online pictures repurposed for someone else's websites
- If you are doing summaries of articles with links, keep the summaries very short, and describe the article in your own words – not those from the site
- Colleges are great targets for rightsholders – as they often pay rather than fighting

Be Careful With What You Find in the Jungle

- Lots of demand letters based on improper use of pictures
- Demands for tens of thousands of dollars in damages
- Don't ignore these letters
- Recent suits against big broadcasters for improperly using pictures found on the Internet on their own websites, without permission from the photographer
- Recent case where big photo company found liable for millions
- Be careful even with “creative commons” works – make sure you follow all limitations on use of the works

Purchase The Right Supplies

Music Rights

- For many uses, it's not entirely clear who you pay for music licenses
- ASCAP, BMI, SESAC, SoundExchange give you rights for noninteractive uses of music, e.g. Internet radio – like standard uses of music by radio – the “public performance right” – but there are far more issues in the digital world
- Rights to on-demand music, “synch” rights and other uses are not covered by payments to these organizations – you need to reach out and specifically negotiate with copyright holder for these uses

Purchase The Right Supplies

On Demand Music Basics

- Two copyrights in most music, and you usually need clearance from holders of both
 - Sound recording
 - Musical composition
- Copyright holder has many different rights in each piece of music – often licensed by different groups
 - Public Performance
 - Reproduction
 - Distribution
 - Derivative Works
- Need to look at what you are doing to decide what rights you need, and then figure out where to get them

Purchase The Right Supplies

Music Rights – Public performance right

- ASCAP, BMI and SESAC – you pay them for the public performance right to use musical composition in an over-the-air broadcast – and that is all that you get
- But need “new” license if you are streaming – in a digital world, you also need rights to the public performance of the sound recording – SoundExchange
- Some colleges get blanket licenses for public performance rights across the whole campus – make sure they cover broadcast and streaming as sometimes they don’t, especially if license is not held directly by the college

Purchase The Right Supplies

Music Rights – Sound Recording Public performance right

- Same right as is in issue for over-the-air performance royalty (“performance tax”)
- Now applies to digital, noninteractive audio performances – does not apply to audio-visual productions
- Rates set by Copyright Royalty Board, collected by SoundExchange – rates on next slide – new rates for 2016-2020 for most colleges set by CBI settlement – rates for big streamers to be set by CRB decision coming soon
- You need to register with Copyright Office and sign up with SoundExchange before you stream music – they won’t come find you
- Lots of different rates for broadcasters, other commercial webcasters, and other noncommercial entities

SoundExchange Public Performance Rights

- CBI rates for 2016-2020 - \$500 per channel, up to 159,140 ATH monthly (about 212 average simultaneous listeners)
- Full recordkeeping obligations only kick in after 80,000 ATH *per month* (average of about 110 simultaneous listeners)
- For less than 80,000, pay an extra \$100 a year to be excused from SoundExchange recordkeeping
- If you have more listeners than 159,140 – unclear what you will pay (unless you get CPB money, as CPB/NPR have their own deal)
- Decision on rates for big streamers to be reached by CRB by mid-December

Buy the Right Supplies

Beware of Local Customs – Music Rights for other uses

- Need permission directly from copyright holders for most other uses of music:
 - Downloads
 - Use in podcasts
 - Use of music in productions, or where it is otherwise “fixed” with words or video – music videos, even promotional announcements, TV video productions recorded and used on the web
 - Taking musical composition and putting new words to the music
- Sometimes the copyright holder asks for money, sometimes *lots* of money – but you need to find the right person to give you permission

No Bullet Proof Vests – Fair Use

- Don't rely on "fair use" too much
- Difficult to apply conclusively – several factors to review
 - Amount of work used
 - Whether the use is for profit or not
 - Effect of use on ability of copyright holder to make money
 - The nature of the work being used
- No 5, 10, 20 or 30 second automatic exceptions
- "Parody" can be fair use, but parody is not just something funny, it must actually be a commentary on the original work
- Fair use is not easy to apply

Be Social With Care – You Never Know Who You’ll Meet

- Facebook, twitter and the social media – everybody’s doing it, but can cause issues
- Look at content policies of social media sites, as use of social media can give up some of your exclusive rights to content you create
- Some social media sites can claim use of all the content that you post – and they can repurpose it as they like
- Others have restrictive policies as to what you can and cannot do without buying a commercial license
- Think about the degree of interaction that you are ready to take on too – as some sites can generate lots of comments – some that you’d rather not see depending on your content (and your administration’s tolerance)

Limits on Being Social

- If use social media, think about a policy for employees and enforce it – especially if posts can be attributed to employer by authority or by implication
- Don't just copy someone else's policy, work out your own for your circumstances, and be aware of legal issues
- Issues to address in the policy:
 - No defamation
 - No harassment
 - Employees are personally responsible for posts
 - Not disparaging comments
 - No references to clients and customers without consent
 - Disclaimers on private sites that employee is not speaking for employer – make sure this is observed
 - Make sure reference is not made to internal station plans without permission
 - Identify Station in-house source for employees to ask for clarification of the policy
 - No oral modifications of policy to avoid issues of interpretation

Volunteers Welcome?

User Generated Content

- You can allow postings on your websites by third parties with limited liability – if you follow the rules
- Most user-generated content is generally without liability to you, if:
 - Your site has a policy against intellectual property infringement and other legal issues
 - You do not encourage illegal conduct like copyright infringement
 - You notify the Copyright Office of who can be notified when there is copyright infringement (and post it on your site)
 - You take down offending material when properly notified
 - You're not profiting from the infringement or legal violations

Watch the Journal Entries

Blogging and Sponsorship ID

- Sponsorship ID applies on-line just like it does on-air, perhaps even more strict
- FTC issues for bloggers and other social media use
 - disclose financial relationships for products that are mentioned
 - Warn employees about posting comments about station or clients without attribution
 - Recent \$250,000 fine for website paying affiliate websites to promote its services and their quality without disclosing the payments
- Specific disclaimers on any sort of testimonial advertising – not just “your results may vary”

Watch For Lurking Tigers

COPPA

- Protects Children Under 13
- Applies to Any Site Directed to Kids or Where Site Owner Know Kids Are Present
- Can't Collect Personal Information from kids without prior Parental Consent
- Information Includes Name, Address, Phone, Email, Cookies, Persistent identifiers, pictures

Watch For Lurking Tigers

Privacy Issues Coming

- A developing area of concern
- Incorporate privacy protections into business practices
- Protections include
 - Reasonable data security – be careful taking credit card information
 - Reasonable data collection limits (collect only what you need)
 - Sound retention policies
 - Data disposal policies
 - Data accuracy
- Be very careful about your privacy policies – more and more concerns about these policies in Washington, and there can be legal trouble:
 - Don't promise more security than you can deliver
 - Don't put restrictions on what you will do with private information and then do something else

Watch for Lurking Tigers

- Privacy also a big issue in states
- Recent California law that requires disclosures of all data collection by sites – including third party data collection – like ad networks
- Another coming that allows minors to delete information from social media sites
- Since so many users in California, the laws may have national application
- Be especially careful in taking credit card information, or listener clubs with personally identifiable information, or collecting any other sensitive information with personal identities – keep information secure, use it only for disclosed purposes

Watch For Lurking Tigers

Linking and Aggregation Issues

- Link With Permission
- Link With Care
- Be careful with framing
- Be careful with news aggregation – limit excerpts – many recent cases of concern with giving too much of someone else’s story on your site
- Don’t exploit other’s content in a way that impairs their ability to profit from it

The Cyber Jungle

- Uncharted Territory
- It's Not Clear Who Is In Charge
- The Natives Are Restless -- New Law Is Arising Every Day
- And it's not only US laws that apply....
- **Safari Carefully**

For More Information

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