Legal Issues in Podcasting: What Broadcasters Need to Know

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Broadcasters Meet Podcasters, Podcast Movement 2018
July 25, 2018
The Issues for Today

• Music and Copyright
• Sponsorship ID
• The Permanency of Podcasts – Content Issues
  • Defamation, Rights of Privacy and Publicity, etc.
• Privacy
• Security
There is No FCC

- But that does not mean that there is no law
- It is developing, though there have been few lawsuits – yet – as money and attention has been elsewhere
- But issues are coming – from lots of sources
Music and Copyright

- Get permission for copyrighted materials in your podcasts – including music, but also articles you read during the show, sound clips from TV or movies
  - If you import program elements from radio, make sure that you have the rights to do so
- ASCAP, BMI and SESAC are not enough, but Alexa and Google Home make them relevant
- More than just a public performance

Where to get music?
- Direct negotiations for music rights (both sound recording and composition)
- Use music from licensed services where all rights are cleared
- Commission your own music
- Fair use is usually overstated – e.g. no exceptions for 30 (or 10 or 15) second clips of copyrighted material – all depends on the context
Advertising and Sponsorship

- Get to know the FTC
  - FTC is far less dependent on rulemaking than the FCC – it’s primarily an enforcement agency, bringing actions against specific companies when it sees actions it does not like
- FTC gets into all sorts of issues related to all sorts of digital advertising issues including:
  - Deceptive ads
  - Online sponsorship disclosures
  - Information collection about children
  - Data collection and security issues
Advertising and Sponsorship

• Sponsorship disclosure – make sure that your listeners know what was sponsored and who the sponsor was
  • Broad definition of sponsored – includes getting anything of value for something said on the air – including free stuff
• Make sure anything associated with your podcast discloses sponsors – think about host’s twitter feed and Facebook page
• Be careful with “celebrity endorsements”
• Be careful with suspect sponsor claims, especially if host is reading them
• Political ads need disclosure too – watch for FEC ruling as to what the disclosure needs to be
The Permanency of Podcasts

• Broadcasts are ephemeral – especially in radio – if you didn’t hear it when it was broadcast, it is gone
• Podcasts can be played and replayed over and over so evidence of problems are preserved
• Concerns:
  • Defamation
  • Rights of publicity
  • Invasion of privacy
  • Anything else that could give rise to liability – including trademark and branding issues and other IP claims
• Check your broadcast insurance policy – make sure that it covers podcasts and other digital products as well as your over-the-air broadcasts
Privacy

• If you are collecting information from subscribers, be sure you disclose what you are collecting and what you can do with data you collect
• Be sure to do what you say you are going to do in your privacy policy
• Lots of concerns from information collection about kids
• Opt-in good idea for any information about sensitive issues, e.g. about health issues
• Watch developments in California on Privacy rules that go into effect in 2020
• If you have European listeners and European operations, be especially aware of GDPR
Security

• Trend in disclosures about security is to be high-level and clearly disclaim any guarantee of security
• In absence of any claims about security, FTC can use its unfairness authority to hold companies to “reasonable security” standard
  • Doesn’t mean perfect security – a breach doesn’t mean the FTC will investigate or bring an enforcement action
  • Systemic failures, concrete consumer harm more likely to generate FTC interest
• Unreasonable security failures may include:
  • Weak default passwords
  • Easily bypassed authentication
  • Ignoring vulnerability reports
  • Failure to notify consumers of vulnerabilities
  • Exposing too much information by default
  • Failing to provide heightened security for sensitive data
  • Failing to exercise reasonable care in selection of vendors
For More Information

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