

Legal Issues in Podcasting: What Broadcasters Need to Know

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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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