

BROADCASTERS ONLINE

A Guide to the Cyber-Jungle

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DEFINING SUCCESS TOGETHER

The Cyber Jungle

A Traveler's Guide



- Digital Changes Everything – Unlimited Platforms to Exploit
- Unlimited Possibilities
- Unlimited Competition
- Wireless Is here, bringing digital media everywhere
- But lots of legal uncertainties
- So plan your digital safari carefully....

The Cyber Jungle



- Uncharted Territory
- It's Not Clear Who Is In Charge
- The Natives Are Restless -- New Law Is Arising Every Day
- Expectations of users, employers, employees and others are often contradictory and can present problems.

Protect the Farm Your Digital Broadcasts



- FCC Digital Obligations Growing for Radio and TV
- On-line public files may be coming
- Potential FCC regulation of website material directed to children – even when not tied to over-the-air material
- FCC examining the Future of Media – including on-line media, and this could result in obligations on new media companies

Protecting Your Sheep

Call Letters, Slogans and Program Titles



- Don't Risk Your Existing Identity
- The Internet Makes Information About Your Station Available Worldwide -- And the Predators Are Watching
- Make Sure You Have the Rights To Your Content Before You Put It On-Line
- Protect slogans, positioning statements and other station identifiers through trademark protection
- New domain names coming all the time – protect your brand!

Remember Who You Are

Domain Names



- Domain Names are registered, but registration doesn't give you protection for names and slogans
- Trademarks give protection
- Even If you've registered a Domain Name, a similar Trademark can force you to stop using your name
- Search first -- Before you start branding
- Protect your trademark and domain names as domain naming possibilities expand

Buy The Right Maps

Internet Service Providers and Consultants



- Know What You Need
- Check References
- Beware Of Long Term, Non-Negotiable, Preprinted Contracts
- Make Sure They Have Rights to Materials They Provide

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 rights you get carry over all digital platforms – not just your website
 - Pictures
 - Programming
 - Background music and themes
- **Check Your Insurance Coverage**

Purchase The Right Supplies

Music Rights



- For many uses, it's not entirely clear who you pay for music licenses
- Compulsory License v. Negotiated Fee
- Remember the Music Publishers
- ASCAP and BMI for radio have applied to some on-line uses of music, but that may change as both radio and TV negotiate new licenses
- Music Publishers will also need to be paid for on-demand content (e.g. podcasts)
- Specific permission needed from performer or record company for use of songs in podcasts or on-demand streams

Purchase The Right Supplies

Streaming Rights -- DMCA Compulsory License



- Only for “non-interactive” streams of music – i.e. Internet radio, where user can’t choose songs he or wants to hear, and not on-demand programming where user can keep coming back to the same place and hearing the same song
- Can’t Promote In Advance When You Will Play A Song
- Restrictions on How Often You Can Play Songs By an Artist
- Some possibilities for Archived and Looped Programs – but very limited
- Website Must Provide Text Identifying the Artist, Song and Album While the Song is Playing

Streaming Royalties – Broadcaster Settlement



Royalties for Broadcasters – Per Song Per Listener

▪ 2006	\$0.0008
▪ 2007	0.0011
▪ 2008	0.0014
▪ 2009	0.0015
▪ 2010	0.0016
▪ 2011	0.0017
▪ 2012	0.0020
▪ 2013	0.0022
▪ 2014	0.0023
▪ 2015	0.0025

Broadcaster Settlement on Streaming Fees



- Minimum \$500 per channel
- Must provide “census reporting”- all songs played and how many times they played
 - Exceptions allows ATH reports for up to 20% of programs now, down to 8% in 2015 – just provide playlists and number of hours streamed
 - Small broadcasters – 27,777 ATH per year – pay \$600 a year and no reporting obligations
- No bills sent to you - you must seek out forms and reports, and make payments to SoundExchange
- SoundExchange is sending dunning notices now to stations that have not paid
- Noncommercial stations get 159,125 hours per month for \$500 a year, except for CPB stations – CPB pays

Internet Radio – What's It Mean?



- At 2009 rates, assuming 12 songs an hour – about 2 cents per listener hour
- By 2015 – 3 cents per listener hour
- About \$13 monthly if you average 1 listener, 24-7
- \$21.60 monthly for 1 average listener in 2015

Hire The Right Porters and Guides

Employee Issues



- Watch Overtime Issues
- Employees v. Independent Contractors--Who Owns the Website They Create?
- Beware of Using Existing Material Created By Independent Contractors On Your Site
- Non-Compete Agreements
- Social networks
 - Issues of when employees are speaking for themselves and when they are speaking for the station

Remember Who Is In Charge of the Safari



- Facebook, twitter and the social media – necessary but can cause issues
 - Adopt a policy for employees and enforce it – especially if posts can be attributed to employees by authority or by implication
 - How does it mesh with Unions contracts and other employee agreements?
 - 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 reference is made to trade secrets policies and securities issues
 - Identify Station Source for information about policy
 - No oral modifications of policy to avoid issues of interpretation
-

Volunteers Welcome?

User Generated Content



- Stations can allow postings by third parties – 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
 - 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



- 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
- Specific disclaimers on any sort of testimonial advertising – not just “your results may vary”

No random smoke signals

- Email and fax issues

- Laws on unsolicited faxes and emails
- Can't fax person without permission or existing business relationship
 - Must get permission – no negative options
 - Must be voluntarily given fax number
 - Can be terminated by either party
 - Statutory penalties for even single violation, plus attorneys fees
 - Conspicuous language for free opt out on cover page and first page of any unsolicited fax – even to company with relationship
- Emails a bit more forgiving
 - Must have accurate subject lines
 - Must state it is an ad
 - Must identify the sender
 - Must provide opt-out email or online opportunity

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 Without Prior Parental Consent
- Information Includes Name, Address, Phone, Email, or Cookies

Watch For Lurking Tigers

Privacy - FTC Guidelines



- Notice/Awareness - notice of a company's online information practices.
- Choice/Consent - a choice about the use and dissemination of information revealed to a company.
- Access/Participation - access to information collected to ensure accuracy and completeness.
- Integrity/Security - personal information collected adequately secured from outside parties and from corruption of the data.
- Enforcement/Redress - a way to ensure that the company complies with these core privacy principles.

Watch For Lurking Tigers

Linking Issues



- Link With Permission
- Link With Care
- Be careful with framing

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- **Safari Carefully**

For More Information



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