BROADCASTERS ONLINE

A Guide to the Cyber-Jungle

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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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