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Podcasting Legal Issues: How to Avoid Infringement with Your Podcast

In this special memo we are covering many of the potential legal issues associated with podcasting and intellectual property, and offering advice on how to avoid infringement while telling your story.

A myriad of issues can arise when you create and publish a podcast. The legal issues around podcasting essentially come from use of any third party material that you include in your podcast, such as a logo you use to sell or advertise your podcast, a song that you use in your podcast's introduction, a poem that you read aloud, from interviewing people without the proper releases in place, and much more.

The main legal principles that are at play with podcasts are **copyright**, **publicity rights**, and **trademark**.

Let's take a look at what these legal principles mean, how they're applied in podcasting, and how you can avoid the trouble in the first place.

Copyright and Podcasting: What is it and how does it apply?

Copyright is meant to protect original works of authorship that are fixed in a tangible form of expression, such as a physical copy, videotape, film, vinyl, cd, or mp3 file. It does so by giving the creator of the fixed work exclusive right to display, perform, make copies or, distribute, and/or prepare derivative works of the original work.

Why is it relevant?

There are many fundamental production elements, content elements, and transition elements to a successful podcast: intros/outros; artwork and logo; the story/interviews; promotional spots/underwriting; etc. All of these pieces of the podcast puzzle carry varied risk of infringement.

- **Intros and Outros:** Most intros and outros typically consist of some mix of music and and speech. Music, in its many forms, is copyrightable once recorded. This means that you cannot simply search the internet for music or sound that you like and splice it in. You will need artist consent for any music that you use, preferably in writing in the form of a music license agreement. If you'd rather avoid asking an artist for their music directly, there are several sources for music that have been specifically licensed for media use on [Creative Commons Search](#) or [Freesound.org](#). For advice on procuring music for your podcast and how to use music in your podcast, check out [Alex Blumberg's Class on Powering Your Podcast with Storytelling](#).

- **Artwork:** Like music, any artwork or photography that you use to market your podcast (like, on a blog featuring your podcast, for instance) will either have to be either your original work or be licensed for use from the creator/copyright owner. A great place to find artwork that is ready to be licensed is if you're not artsy but you don't want to necessarily license artwork, you can get graphics created fairly easily by browsing [Creative Market](#) and licensing a ready-made graphic or hopping on [Dribbble](#), finding an artist you resonate with and asking them to create a graphic for you. As with any work-for-hire, you will want to be sure that your agreement with the designer or artist gives you full rights to register the copyright for the art.

How to Avoid Copyright Infringement with Your Podcast

Original Content: Fancy yourself an artist or composer? Perfect. Make original works and use those. This is by far the easiest way to avoid infringement because you are the creator. Make sure to include a copyright notice on your work. If the work is art, the proper notice is: © 2015 John Johnson. If the work is music/a composition, the proper notice is: © 2015 CL Records, Inc.

Permission: It never hurts to ask a rights-holder/creator for permission to use their work. Preferably, the request would be in writing, clearly and concisely defining the intended use of the work(s) and the assent to the use would be in writing and unequivocal.

Even better, would be to have a more formal, written licensing agreement signed by both parties. We can provide you with a simple licensing agreement, if necessary.

Permission is NOT required to use the following in your podcast:

- Use of works that are in the [public domain](#);
- Use of works owned by the U.S. Government;
- Use of a fact, idea, theory, slogan, title, or short phrase;
- Use of [creative commons licensed content](#); and/or
- You are making a “fair use,” as discussed in further detail below.

Fair Use: A fair use is any use of copyrighted work done for a limited and “transformative” purpose, such as to comment upon, criticize, or parody the work. If your use qualifies as a fair use, then it would not be considered an illegal infringement and the work can be used without the permission of the rights owner. This is a very grey area. Examples of uses that may be considered fair use are the following:

- Displaying a work of art to critique it during an art class or podcast related to art; or
- Quoting a few lines from a song while doing a music review on your podcast.

Publicity Rights and Podcasting: What are they and how do they apply?

The right of publicity is the right to control the commercial exploitation of a person’s name, image or persona to sell products or services. Images, signature, likeness, discernable voice, and appearance in a video/broadcast/on the radio are all included within a person’s publicity rights.

Why are they relevant?

Whenever you have someone make an appearance on your podcast and/or feature images of them on an accompanying blog or website about your podcast, you will need to get their permission to do so.

How to Avoid Publicity Rights Infringement with Your Podcast

Releases ... releases ... releases.

Before you feature anyone on your podcast and/or accompanying website, they need to sign a written release of their publicity rights in connection with your podcast. It is very important to have a release template that you can use at will. Such a document would include verbiage such as this:

I _____ grant [Podcast Entity], its successors and assigns a universal, irrevocable, unconditional, royalty-free, right and license (with full rights to sublicense through multiple tiers) to: (1) use my picture, voice (including all written or verbal statements), appearance, name, likeness, actions, statements, performance, and biographical information (such as my twitter handle) (collectively, my "Publicity Rights"), and (2) copy, distribute, perform, display, modify, and generally to exploit, my Publicity Rights, including without limitation to advertise, promote or market all or portions of the Course and related programs and courses (e.g., compilations, mini-series or best-of).

It should be noted that there are many variations on the above language and each type of appearance may require an additional release.

Further, you may want the ability to create derivative works of the podcast or using photographs taken during the recording session. Be sure to add notations reflecting such, within your release.

Trademark and Podcasting: What is it and how does it apply?

A trademark is generally a word, phrase, symbol, or design, or a combination thereof, that identifies and distinguishes the source of the goods of one party from those of others, typically a brand name or logos that appear on goods. We do a modest amount of federal trademark work, and we can discuss these matters in more detail with you.

Why is it relevant?

Title & Name: The first step is to make sure that your podcast name is not already associated with a registered trademark in the media space and/or includes registered logo mark. A trademark search to insure you have first right to the mark is a high priority.

Further, to submit your podcast to the iTunes Podcasts store, your content cannot contain “[T]hird-party content or trademarks without legal authorization or usage rights.” In other words, you will be held liable for any infringement based on your logo, even if you have submitted it to the Apple Podcast team for review and they have already approved it.

Logo & Artwork: Obviously, a logo is a very important asset to any brand and you don’t want to be lazy or skimp here. Your logo will be featured in the the Apple Podcast store, on Facebook, or anywhere else you will be marketing and/or selling your podcast. You will be held liable for any infringement based on your logo. You will be responsible for such infringement, rather than Apple.

How to Avoid Trademark Infringement with Your Podcast

Title & Name: After you confirm that the title for your podcast is a word that is not a registered or common law trademark owned by someone else, you’re in the clear. To avoid people infringing on your mark, successfully register your mark and use the ® symbol to denote that your trademark is registered. Even if you do not register your trademark, you can and should use the TM to give notice that you are claiming the trademark.

Logo: As with copyright, creating an original logo is the easiest and safest way to go to avoid trademark infringement. Once you have determined that you are all clear on using the word to describe your podcast or brand that you want, there are many designers out there to help you create an amazing logole on [Dribbble](#).

If you use the services of a designer to create your logo, make sure that the agreement between you and the designer gives you full and exclusive rights to trademark the logo. As with the name of your podcast, consider registering the logo as a trademark to be able to enforce your rights.



These are some of the most important legal issues regarding podcasting and intellectual property law. Please do not hesitate to call or email us if you have any questions or concerns.