

## **KBOO LEGAL TRAINING**

### INDECENCY & OBSCENITY

The FCC's indecency standard is both amorphous and complex.

### HISTORY

- In 2001, KBOO was fined \$7000 for playing the hip hop song, "Your Revolution", by Sarah Jones. We won based, in part, on evidence that the performer, Sarah Jones, was invited to perform the song in high schools and junior highs. However, it cost us \$40,000 to fight the \$7000 fine.
  - "The rap song, 'Your Revolution,' " the notice states, "contains unmistakable patently offensive sexual references. . . . [T]he sexual references appear to be designed to pander and shock. . . ." " The FCC's characterization of the song betrays a deep political and cultural ignorance, argues the station."
- In 2006 Congress increased fines from \$7,000 up to \$350,000 per violation.
- At the beginning of 2006 we applied for KBOO's seven-year license renewal. Due to a pending complaint the license was suspended. In 2008 the FCC granted the renewal only on condition that the complaint is actionable anytime up to our 2013 license renewal. We have been granted our current license, which we will renew in 2020.
- In response to the increase in fines, KBOO got a "Dump Button" and increased our disciplinary actions. A first violation results in a suspension of one to eight shows, followed by up to 2 years probation. A second violation results in termination of all on-air privileges for minimum 5 years.
- In 2016, the FCC gave the fines a cost-of-living increase, and they are currently \$386,000

### DEFINITIONS

- Indecent language is defined as "the depiction of **sexual or excretory acts or organs**, patently offensive to the average listener, applying contemporary community standards."
  - the indecency standard is based on "contemporary standards for the broadcast industry," a national rather than local standard
  - the indecency law is enforced by the FCC, rather than criminal law authorities
  - Factors in determining indecent material are explicitness or graphic nature, the repeating or dwelling on sexual or excretory matters

(eliminated by the “fleeting use” FCC ruling from the Bono at the Golden Globe awards case), and whether the material panders, titillates or is used for shock value.

- Indecencies in song titles or band names, sexual innuendo, dirty jokes, puns are considered indecent.. Indecency in any language is a violation.
- Profanity is different from indecency or obscenity
  - The relevant statute prohibits the broadcast of “obscene, indecent, or profane” material. The Commission defined profanity as language that denotes “personally reviling epithets naturally tending to provoke violent resentment or denoting language so grossly offensive to members of the public who actually hear it as to amount to a nuisance.” The Commission will apparently regulate profanity during the same hours as indecency.
- Specific words of **Sexual or Excretory Acts or Organs** include: fuck, motherfucker, cocksucker, tits, cunt, piss, shit, dick, cock, snatch, clit, asshole, butthole, pissing contest, blow job.
- Special Grey Area Word #1 - Piss - Pissed off is an expression of anger, upset, is okay. Pissing contest implies urine - not okay.
- Special Grey Area Word #2 - Ass - Being an ass, kicking ass is okay, since neither refers to the ass as a sexual act or organ; If you are referring to your or someone else’s ass in a sexual or excretory way, that is INDECENT.
- Indecent language is allowed in some circumstances between the hours of 10:00 pm – 6:00 am. It’s referred to as the “Safe Harbor”.

#### WHAT THIS MEANS TO YOU AS AN ON-AIR VOLUNTEER

- One indecent word can be prosecuted as a violation.
- The FCC holds KBOO liable, not individual programmers.
- The burden of proof increases against the radio station. We may be presumed guilty until we prove otherwise
- A song labeled “radio edit” *does not* mean that it is safe. It may have been in the past before the crackdown but now could be considered a violation.
- Partial editing or masking may be a defense, but if a listener files a complaint the burden of proof is on you to prove the words were actually masked.
- We recommend reversing the edit, it keeps the beat in place, and is harder to be misheard than a partial edit.

- The FCC does not permit programmers or their guests to gratuitously use indecent words at any time. This applies after 10:00 pm as well.

#### KBOO PHILOSOPHY:

Oppressive content such as racist, sexist, homophobic and other demeaning material is not indecent by FCC standards, but KBOO's own mission statement does not allow it.

#### DISCIPLINARY ACTION - Why to Tell Us about Indecencies

The FCC doesn't ask stations to report indecent broadcasts, but it does expect us to take immediate action when they happen. Fines may be substantially reduced if we can show that we take regular and unprompted disciplinary action against those who aired indecent material.

#### KBOO FAQ

- *How do I know if material is offensive?*

Material is offensive if it offends the "average" broadcast viewer or listener. FCC staff, and ultimately the Commissioners themselves, decide what the average person finds offensive.

- *What if I'm not sure?*

Please ask the program director or morning or evening news directors before airing the material. We will get you a legal opinion.

- *What about language used in public affairs shows?*

Clinical descriptions are okay. Words such as penis, vagina, nipple, clitoris, menstruation, ejaculation, in the context of a health show, or discussion on teen pregnancy, prostitution, etc., would be defensible. The same words used in a gratuitous or pandering manner would not be.

- *What about news or live programming?*

The Supreme Court has ruled that indecent words used in news coverage are not a violation. This means that while someone is being interviewed, someone can use indecent language in the background. This does not mean that people being interviewed can use indecent language. This only applies to live news coverage so far, and does not apply to live music, such as the blues festival, or live broadcasts of poetry or prose readings.

- *My music genre never has indecencies.*

All music genres besides instrumentals have indecencies. ALL of them. EVEN INSTRUMENTALS!

- *If there is a program host and a board operator, who is responsible?*

The program host. If the host doesn't catch the indecency and the Board Op does, the host may still be suspended, depending on the circumstance. The Board Op is the back up, they should always have one ear listening for indecencies. They can tell if the Dump Button has been pushed, and should dump the indecency if the host does not.

- *What if I use an indecent word accidentally?*

There are no accidents in the world of indecency. If you do not dump the indecency in time, you will be and will be suspended and on probation.

- *What if my guest or a phone caller uses indecent words?*

If you catch it, you're fine. If you don't, you will be suspended and on probation. As the host of the show it is your responsibility to use the dump button, or to edit out all indecent words in your program. It's a good idea to prep your guests about language, as well as phone callers if possible.

- *What if I'm being funny or ironic?*

The FCC does not have a sense of humor, and does not accept humorous or ironic intent as a defense. They also do not accept the merit or value of a program as a defense. In fact, the Commission has emphasized that the broadcaster's intent is irrelevant. The only issue is whether the material is indecent.

## YOUR FRIEND THE DUMP BUTTON

- We have a delay system that gives you an opportunity to "dump" the offending word before it goes out over the air. The 40 second delay allows you to use the "Dump" button to edit up to ten seconds of indecent language so it isn't broadcast.
- When you hit the dump button it takes out about 10 seconds and splices the ends together, sounding like a CD skip, it right away.
- You can only use the dump button it 3 times.
- If a song surprises you, you can't take the chance it will surprise you again, so hit the dump button, and fade the song out.
- If a Guest swears, hit the dump button and don't draw attention to it. The second time it happens, go to music, and give the guest a talking to! Figure out if you can continue the program with them.
- If you run out of banked time on the dump machine, you have no safety net. It fills itself in immediately with pauses in speech and music.
- DO NOT use the dump button to edit your songs on the fly.
- DO NOT hit the dump button "before" you hear a swear, because it will not take out the indecency.

## OTHER LEGAL ISSUES

### PAYOLA AND PLUGOLA

- Payola is the illegal act of accepting money, services, or any other "consideration" in exchange for airing on the air content as if it was a normal part of the days broadcast, **without disclosure.**

- Think of a “consideration” as a kind of compensation. this can be receiving cash, concert tickets, CDs, travel, food, games, etc. anything of value
- Plugola is the illegal practice of mentioning on air of nonbroadcast activities that can result in a benefit or consideration to an individual or the station in exchange for promotion of things like products, services, venues, concerts, etc. again **without disclosure.**
  - Consideration in this context need not involve any actual monetary benefit, but can include merely increased exposure and attendance at an event a DJ will be involved in.
- Commercial radio sometimes has rules that gifts or lunches under \$25 do not have to be disclosed, but **non-commercial radio has higher ethical standards**, and **we can not use the broadcast signal for direct or indirect personal financial gain**
  - Playing your own band
  - Playing records on your label
  - Announcing your own DJ gigs
  - Performances can be announced as part of a community calendar - you can be included, but treat yourself like everyone else. No special consideration
- May not talk about your own Patreon/crowdfunding accounts on the air. You must cut off callers if they try to promote it for you.
  - Guests are allowed to talk about their crowdfunding,
- You can accept music, spots on guest lists for shows, books, etc, as long as it is EXPLICITLY KNOWN that you are not promising anything in exchange for the material. You’ll play it if you like it.
- During a live broadcast from a business you may mention where we’re at, but cannot promote the venue on the air (no opinions on the place, no talk about how great the food is, etc)

## POLITICAL BROADCASTING ON KBOO

IRS code forbids nonprofits classified as educational (e.g. 501(c)3) from endorsing candidates and ballot measures. We cannot endorse or oppose a candidate or ballot measures. Programmers can talk about the candidates’ stands and records on the issues, or interview activists working to pass ballot measures, but we cannot endorse or oppose.

The KBOO staff must keep a record of all requests for airtime by candidates and all time on the air by candidates. It is required to be in the Public File. If you have been asked by a candidate or their representative for airtime, or if you have asked candidates to be on KBOO, or if you have had candidates on your show, please give a record of that information to Derric or Zelos, so that it can be entered in the public file. We need dates, results of any requests for airtime, and amounts of airtime given to any candidates. This information will be entered in our political file for public record.

There are also rules regarding the need for a public station to provide “reasonable access to candidates for office.” This means that if time is given to a candidate, his or her opponent can demand equal comparable time. Because of this we ask that if you have a candidate on air, you also offer **all other candidates** the opportunity for comparable air time. We have been required to find equal time for candidates in the past. It can be very difficult.

These are the basics of what we need to remember regarding political broadcasting. If you have questions or information, please don't hesitate to call Derric , Rachel, or Erin.

## OTHER REGULATIONS

### EAS Tone

The Emergency Alert Tone, the specific tone used to signify emergencies, CANNOT be used in radio theater, promos, or have any other use besides in an emergency. Big fines for playing around with the tone.

### Calls to Action

We can't tell people what to do... from buying records, going to shows, or going to events. We have educational licenses, and we just give out information.

- You should go to this show, it's going to be awesome! (illegal)
- The show is at \_\_\_\_\_, here's a track from the artist performing (legal)
- Go to the protest at the Chase Bank (illegal)
- There's a protest at Chase Bank (legal)

### Advocating Lawbreaking

You cannot advocate breaking laws, or urge civil disobedience on the air. You and KBOO can be held jointly liable for lawsuits and recovery of damages. The station is considered a “willing vehicle” for your statements. You can give out information about civil disobedience, protests, illegal actions, etc., as long as you do not advocate action.

- Don't pay taxes (illegal)
- The Tax Resisters League will tell you how to avoid paying taxes (legal)

Your on air guests and phone callers can advocate action.

#### Phone Calls on the air

- a phone caller cannot use indecent language.
- a phone caller can advocate breaking laws, urge civil disobedience, etc. They do not represent KBOO and are usually anonymous.
- If you are concerned about what a phone caller is saying, challenge their position over the air. your objectivity or “lack of malice” is a defense.
- You cannot put someone on the air without their knowledge. You must inform them before broadcast that you are putting them on the air. The exception is a call-in talk show. They know, by calling in, that they will be on the air.

#### OPERATOR LOGS

The Operator Logs in the air room tell you what you have to play, but is also a place for you to log that you did, in fact, do what was required.

Time On	ID Time	Spot #	Messaging #	Underwriting	Program Title
8am		824 732	007	Radio Cab	More Talk Radio
9am		801	006		Old Mole Variety Hour

So, you would know you had to play the Radio Cab Underwriting at 8am, for instance, and do the Legal ID (Kay Be Oh Oh Portland) at the top of the hour, AND you would write down what time you did the ID in the ID time column. There is also a place on the Operator Log sheet for you to sign on and off. You’ll learn more about this during your Board Op training, if you choose that path.

I have attended a Legal Issues class and understand the Legal training material. During all KBOO broadcasts, I will stay within the guidelines presented in this training. .

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Signature

Printed Name

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Date

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Contact information (email or phone)

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Name of Program, or Department