

PAYOLA AND SPONSORSHIP IDENTIFICATION RULES

Payola is receiving renewed interest from the Federal Communications Commission ("FCC") and State Attorneys General. This memorandum and the attached affidavit remind all on-air personnel of their obligations under "payola" and related "sponsorship identification" rules. These rules encompass activities that range from outright bribery to personal conflicts of interest.

The Communications Act requires broadcast stations to tell the public when a matter is "sponsored," that is when it is broadcast in exchange for something of value. Stations airing sponsored material must air a "sponsoring identification announcement" which discloses the identity of the sponsor. The FCC has authority to punish broadcast stations with fines of up to \$10,000 per violation. In addition, the Department of Justice can bring criminal actions against companies and *individuals* involved in payola schemes. Criminal violations are punishable by up to one-year in prison, in addition to fines.

To avoid violations of the payola rules:

- Do not accept money, services or other thing of value from any person, including independent promoters, for broadcasting anything on the station. Inform station management when you are made any such offers.
- Do not use airtime to promote any outside business or economic activity in which you are involved without clearing the matter with station management.

Every broadcast station has a duty to ensure that the FCC's payola and sponsorship identification laws are followed. Stations carry out this duty by advising their on-air personnel including volunteer announcers, of the payola and sponsorship identification rules and asking personnel to execute statements concerning their understanding of and compliance with these rules.

Attached to this memorandum is a declaration for you to sign after reading the attached copies of Sections 317 and 507 of the Communications Act and the FCC's Sponsorship Identification Rule.

**DECLARATION OF COMPLIANCE WITH "PAYOLA" AND
SPONSORSHIP IDENTIFICATION LAWS AND REGULATIONS**

I, _____, an employee or volunteer on Station _____, under penalty of perjury, hereby declare that I have complied with the requirements of Sections 317 and 507 of the Communications Act, and the FCC's Sponsorship Identification Rule, copies of which are attached. To my knowledge, the station has also complied with these payola and sponsorship identification requirements. I have reported to management any potential violations that I have witnessed or been a party to.

I will comply with station policies that prohibit anyone who has any voice in the selection of broadcast matter from: (a) accepting any money, favor, loan, travel or entertainment, benefits, or other thing of value, from any person who seeks in exchange the airing of any broadcast matter; or (b) promoting over the air any activity in which I have any direct or indirect financial interest. Potential conflicts of interest have been reported to management.

Neither I nor any member of my family has any ownership interest in, either direct or indirect (other than an investment in the stock of a publicly held company), or serves as an officer or director of, with or without compensation, any company or organization engaged in:

- a. the publishing of music;
- b. the production, distribution (including wholesale and retail sales outlets), manufacture or exploitation of music, tapes, CDs, recordings or electrical transcriptions of any program material intended for broadcast use;
- c. the exploitation, promotion, or management of persons rendering artistic, production and/or other services in the entertainment field;
- d. the ownership or operation of one or more radio or television stations;
- e. the wholesale or retail sale of recordings intended for public purchase;

OR

If any such interests exist, the facts and circumstances relating to such are as follows:

(NAME)

(SIGNATURE)

(DATE)

**ANNOUNCEMENT WITH RESPECT TO
CERTAIN BROADCAST MATERIAL**

§ 317

Announcement of payment for broadcast

(a) Disclosure of person furnishing—

(1) All matter broadcast by any radio station for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, at the time the same is so broadcast, be announced as paid for or furnished, as the case may be, by such person: Provided, That "service or other valuable consideration" shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification in a broadcast of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property on the broadcast.

(2) Nothing in this section shall preclude the Commission from requiring that an appropriate announcement shall be made at the time of the broadcast in the case of any political program or any program involving the discussion of any controversial issue for which any films, records, transcriptions, talent, scripts, or other material or service of any kind have been furnished, without charge or at a nominal charge, directly or indirectly, as an inducement to the broadcast of such program.

(b) Disclosure to station of payments—

In any case where a report has been made to a radio station, as required by section 508 of this title, of circumstances which would have required an announcement under this section had the consideration been received by such radio station, an appropriate announcement shall be made by such radio station.

(c) Acquiring information from station employees—

The licensee of each radio station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any program or program matter for broadcast, information to enable such licensee to make the announcement required by this section.

(d) Waiver of announcement—

The Commission may waive the requirement of an announcement as provided in this section in any case or class of cases with respect to which it determines that the public interest, convenience, or necessity does not require the broadcasting of such announcement.

(e) Rules and regulations—

The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

DISCLOSURE OF CERTAIN PAYMENTS

§507

Disclosure of payments to individuals connected with broadcasts

(a) Payments to station employees—

Subject to subsection (d) of this section, any employee of a radio station who accepts or agrees to accept from any person (other than such station), or any person (other than such station) who pays or agrees to pay such employee, any money, service or other valuable consideration for the broadcast of any matter over such station shall, in advance of such broadcast, disclose the fact of such acceptance or agreement to such station.

(b) Production or preparation of programs—

Subject to subsection (d) of this section, any person who, in connection with the production or preparation of any program or program matter which is intended for broadcasting over any radio station, accepts or agrees to accept, or pays or agrees to pay, any money, service or other valuable consideration for the inclusion of any matter as a part of such program or program matter, shall, in advance of such broadcast, disclose the fact of such acceptance or payment or agreement to the payee's employer, or to the person for whom such program or program matter is being produced, or to the licensee of such station over which such program is broadcast.

(c) Supplying of program or program matter—

Subject to subsection (d) of this section, any person who supplies to any other person any program or program matter which is intended for broadcasting over any radio station shall, in advance of such broadcast, disclose to such other person any information of which he has knowledge, or which has been disclosed to him, as to any money, service or other valuable consideration which any person has paid or accepted, or has agreed to pay or accept, for the inclusion of any matter as a part of such program or program matter.

(d) Waiver of announcements under section 317(d)—

The provisions of this section requiring the disclosure of information shall not apply in any case where, because of a waiver made by the Commission under section 317(d) of this title, an announcement is not required to be made under section 317 of this title.

(e) Announcement under section 317 as sufficient disclosure—

The inclusion in the program of the announcement required by section 317 of this title shall constitute the disclosure required by this section.

(f) "Service or other valuable consideration" defined—

The term "service or other valuable consideration" as used in this section shall not include any service or property furnished without charge or at a nominal charge for use on, or in connection with, a broadcast, or for use on a program which is intended for broadcasting over any radio station, unless it is so furnished in consideration for an identification in such broadcast or in such program of any person, product, service, trademark, or brand name beyond an identification which is reasonably related to the use of such service or property in such broadcast or such program.

(g) Penalties—

Any person who violates any provision of this section shall, for each such violation, be fined not more than \$10,000 or imprisoned not more than one year, or both.

FCC SPONSORSHIP IDENTIFICATION RULE

§73.1212 Sponsorship identification; list retention; related requirements.

(a) When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce—

(1) That such matter is sponsored, paid for, or furnished, either in whole or in part, and

(2) By whom or on whose behalf such consideration was supplied: Provided, however, That "service or other valuable consideration" shall not include any service or property furnished broadcast unless it is so furnished in consideration for an identification or any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.

(i) For the purposes of this section, the term "sponsored" shall be deemed to have the same meaning as "paid for."

(ii) In the case of any television political advertisement concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four percent of the vertical picture height that air for not less than four seconds.

(b) The licensee of each broadcast station shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any matter for broadcast, information to enable such licensee to make the announcement required by this section.

(c) In any case where a report has been made to a broadcast station as required by section 507 of the Communications Act of 1934, as amended, of circumstances which would have required an announcement under this section had the consideration been received by such broadcast station, an appropriate announcement shall be made by such station.

(d) In the case of any political broadcast matter or any broadcast matter involving the discussion of a controversial issue of public importance for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a station as an inducement for broadcasting such matter, an announcement shall be made both at the beginning and conclusion of such broadcast on which such material or service is used that such film, record, transcription, talent, script, or other material or service has been furnished to such station in connection with the transmission of such broadcast matter: Provided, however, That in the case of any broadcast of 5 minutes' duration or less, only one such announcement need be made either at the beginning or conclusion of the broadcast.

(e) The announcement required by this section shall, in addition to stating the fact that the broadcast matter was sponsored, paid for or furnished, fully and fairly disclose the true identity of the person or persons, or corporation, committee, association or other unincorporated group, or other entity by whom or on whose behalf such payment is made or promised, or from whom or on whose behalf such services or other valuable consideration is received, or by whom the material or services referred to in paragraph (d) of this section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a station on behalf of another, and such fact is known or by the exercise of reasonable diligence, as specified in paragraph (b) of this section, could be known to the station, the announcement shall disclose the identity of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the material broadcast is political matter or matter involving the discussion of a controversial issue of public importance and a corporation, committee, association or other unincorporated group, or other entity is paying for or furnishing the broadcast matter, the station shall, in addition to making the announcement required by this section, require that a list of the chief executive officers or members of the executive committee or of the board of directors of the corporation, committee, association or other unincorporated group, or other entity shall be made available for public inspection at the location specified by the licensee under § 73.3526 of this chapter. If the broadcast is originated by a network, the list may, instead, be retained

at the headquarters office of the network or at the location where the originating station maintains its public inspection file under § 73.3526 of this chapter. Such lists shall be kept and made available for a period of two years.

(f) In the case of broadcast matter advertising commercial products or services, an announcement stating the sponsor's corporate or trade name, or the name of the sponsor's product, when it is clear that the mention of the name of the product constitutes a sponsorship identification, shall be deemed sufficient for the purpose of this section and only one such announcement need be made at any time during the course of the broadcast.

(g) The announcement otherwise required by section 317 of the Communications Act of 1934, as amended, is waived with respect to the broadcast of "want ad" or classified advertisements sponsored by an individual. The waiver granted in this paragraph shall not extend to a classified advertisement or want ad sponsorship by any form of business enterprise, corporate or otherwise. Whenever sponsorship announcements are omitted pursuant to this paragraph, the licensee shall observe the following conditions—

(1) Maintain a list showing the name, address, and (where available) the telephone number of each advertiser;

(2) Make this list available to members of the public who have a legitimate interest in obtaining the information contained in the list. Such list must be retained for a period of two years after broadcast.

(h) Any announcement required by section 317(b) of the Communications Act of 1934, as amended, is waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.