

**Report on investigation of misuse of KPFA email addresses
April 15, 2011**

I. WHAT'S AT STAKE

At issue is whether a private party should be given possession and use of a membership list belonging to Pacifica even if that private party is a member of a station's or Pacifica's board.

What has happened in this instance is that Tracy Rosenberg and/or Media Alliance, the organization for which she works as the volunteer director and likely sole staff member, obtained the 2010 KPFA email list used by the election supervisor(s) in the recent board election. This list was used to send at least two emails to KPFA members that appear to come from KPFA itself and which promote, absent any decision by KPFA management, a single, and controversial, program. One that even Ms. Rosenberg has said will not be on the air long. Ms. Rosenberg, coincidentally, also played a substantial role in creating the program in question.

The email promotional blasts appear to have been done without any official Pacifica or KPFA sanction, and without the knowledge of anyone in authority in either body. There does not appear to be any board or committee on either the local or national level that authorized Ms. Rosenberg to perform these tasks.

The use of the list in this manner has already added to dissension within the organization and raises concerns that range from questioning who is in charge of various aspects of the organization to how else the list might be used in the future. It is an unauthorized use of KPFA's email list, a use of the station's resources to promote the agenda of one faction in an internal struggle. Even if the use of the list had been unconnected to any internal issue, however, it would be wholly inappropriate for the reasons detailed below.

There are other times and ways in which KPFA's resources have been used to promote agendas and the interests of a faction. This is not meant to sanction such actions, but neither should the actions of others be used to excuse or ignore the improper use of KPFA's member list.

Here are just a few of the problems that can result.

Members' Expectations and Right to Privacy

Our membership has the right to expect that their personal information will only be used by the organization and that their address, phone number, and email address will not be given to other organizations or individuals, even those that

might be somehow connected to the station, for unauthorized use. They have not sanctioned, and do not expect, the use of their personal information for anything other than official KPFA business.

In addition, as reported by Ms. Rosenberg during the March 19 Local Station Board meeting, 175 people responded by opting out of the email list. The email blasts offered members the option of asking that member's names be removed from receiving what appeared to be KPFA email. The names of those opting out needed to be passed on to KPFA in a timely manner. To date, KPFA has not been advised who should be removed. And why should KPFA be deprived of the possibility of email communication with those who opt out of receiving KPFA's communications because of receiving spurious email communications?

The email blasts that were sent could be considered spam. This is not meant in the technical or legal sense, but once our members learned that their email had been given to an unauthorized individual, they would likely feel they had in fact been spammed.

Marketing

Decisions on what and when to market is a management decision. When handled professionally, such marketing would likely be based on a plan. Promotion decisions would take the future into account. Professionals would promote what is deemed to be the best programming offered and highlight special events. They would try to give members the most positive impression of KPFA that would emphasize the value they receive from their membership and voluntary monetary support of our organization.

It is unlikely a professional would promote just a single program unless that program was doing something extraordinary that week. Focusing attention on a single program that is currently the subject of controversy and strong feelings, and that many acknowledge may not be permanent would not likely be deemed in the station's best interests by public relations professionals.

Governance

The use of this list, and its existence out of KPFA control, calls into question the validity of future elections and our entire system of governance.

Clearly this unauthorized use, and loss of station control of the KPFA subscriber list, makes it possible for one individual or group to have an unfair advantage in future Local Station Board elections. In fact, it could be said that it would now behoove anyone running for the board to try to get a copy of the email list to have a fair chance of being elected.

Our system of democratic governance may be seriously challenged as a result.

Another Problem

The list is in the hands of a non-profit that is in a financially precarious position. It has no paid staff and little sources for new revenue. What is to stop that non-profit from using KPFA's list in an attempt to raise funds?

Furthering the Divide

The unauthorized use of the list by one individual, or an outside organization controlled by one individual, who is an active participant in controversies and disagreements within both the KPFA and Pacifica boards furthers the factional divide that threatens our existence.

Institutional Responsibility

KPFA and Pacifica's boards need to determine how this list was obtained, rectify any security breach, create ramifications for the unauthorized use of the email list and other member information, as well as establish a privacy policy for members.

Pacifica needs to better define board member responsibility to the organization as a whole rather than specific interests within the organization.

In addition, Pacifica needs to assure its stations and local boards that its national board members will not be allowed to make and act independent of group decisions.

Further, Pacifica needs to obtain assurance from Media Alliance's Board of Directors that their organization will not allow use of KPFA's list for their own or other's purposes nor condone the actions of their Director or any other staff in any future use of KPFA's subscriber list. Indeed, we need assurances that all copies of the list, in whatever form or format have been/will be destroyed and that no copies exist.

II. WHAT HAPPENED

In July, 2010, Chris Stehlik, KPFA's Database Manager, created a list of KPFA subscribers eligible to vote in the listener election for the LSB. That list was emailed to both the local election supervisor (Oriana Saportas) and the national election supervisor (Renee Asteria). The list contained approximately 5,700 email addresses (out of approximately 21,000 subscribers). No one else was given that list and no one else had access to it or the ability to gain access to it. The list had the word "election" in its title. Pacifica did not require either the local or the national election supervisor to sign an agreement protecting the confidentiality of the list.

Early this year, two emails (that we know of so far) appeared in the (email) boxes of the more than 5,000 people on that elections list. These posts purported to come from KPFA, and promoted the Morning Mix program. In fact, despite their appearance, they came instead from Media Alliance, of which LSB and PNB member Tracy Rosenberg is Executive Director. It appears that these emails were not authorized by anyone in authority at KPFA. The sender appeared to go to great lengths to conceal their true origin. The LSB Chair asked Sasha Futran, Mal Burnstein and Craig Alderson to try to find out what happened. This is our report. The following is a chronology of what occurred in 2011:

March 3: Immediately after the first spurious KPFA email, Antonio Ortiz of KPFA's IT department, was contacted by a subscriber who wanted to know where the email originated. Mr. Ortiz contacted Salsa Labs to investigate the unauthorized email. Salsa Labs, the "mailing house" that actually sent the emails, confirmed that the email came from Media Alliance's account and that the Media Alliance logins with Salsa Labs were Anna Realini, "ma_temp," and Tracy Rosenberg

March 8: Jake Patoski at Salsa Labs confirmed that the messages were sent using the login for Anna Realini. He gave Ortiz the email address for her: anna@media-alliance.org.

March 11: Ortiz emailed that address to ask how she had gotten KPFA emails and sent her the KPFA email policy. He reported to Salsa Labs that the email hadn't gone through and asked them to email Realini, which they did on March 11. A week later, Ortiz emailed Salsa Labs because he hadn't received a response. He said, "If I don't hear back, I will have to ask you to close this list down because we fear our email list contacts were taken without our permission." On March 21, Patoski emailed Realini again. We later learned that Ms. Realini had long ago left Media Alliance, and we conclude that someone else used that login.

March 19: The email issue was raised at the LSB meeting. Tracy Rosenberg stated that the list "was given to me by the Morning Mix folks... but according to them the list that I believe they were given on request of, I guess, KPFA newsletter subscribers..." She said there were 5111 names on the list. She indicated that the KPFA email list is in a segregated group on Salsa Labs' server, isn't mixed with any other Media Alliance list, and it's there for use by KPFA staff when they have email to send, with her permission.

March 20: In response to inquiries about the email to KPFA subscribers, Arlene Engelhardt said, "The only 'blast' that Tracy has sent for Pacifica thru Media Alliance was the Al Jazeera press release. That was sent under the name of

Pacifica to a press list which Media Alliance graciously allowed us to use.” Which, of course, was not the question asked of her; that question was not answered -- then.

March 21: Engelhardt wrote to Sasha Futran, “I do not have the KPFA membership list and have not given it to anyone.” In an email exchange with Antonio Ortiz, she wrote, “No, the Al Jazeera announcement went to her [Tracy’s] press list from Pacifica, not to the KPFA list. To the best of my knowledge she does not have the KPFA mailing list.” Given her statement to Ms. Futran on April 6 (see below), either this was untrue, or her later assertion was false; the statements are mutually inconsistent.

Also on March 21st, Ms. Engelhardt sent an email to Mr. Ortiz reading: “To the best of my knowledge she [Tracy Rosenberg] does not have the KPFA mailing list. . . I totally believe in the privacy of lists and the importance of controlling them [mailing lists].” This statement is likewise irreconcilable with her April 6 comments to Ms. Futran.

On the same day, in an answer to an email from Ortiz asking where she had obtained the “election” list, Ms. Rosenberg said, “Al-Jazeera's press list which they entrusted with Pacifica and was appropriately handled. As with all Pacifica data, it was subject to the numerous confidentiality statements I have signed over the years as an employee, independent contractor, local board member and national board member.” As that did not answer his question, Ortiz asked her again whom she had gotten the email list from. She did not respond.

March 21: Engelhardt wrote to Salsa Labs and asked that Media Alliance’s account be restored immediately. “Ms. Rosenberg – the director of Media Alliance – is a member (and officer) of the Pacifica Foundation’s National Board of Directors. . . . Her actions were performed at the request of KPFA staff and in accordance with her duties as a board member and there was nothing unauthorized about her actions. . . . I regret that one of my employees harassed you regarding the matter, but it is his actions that were unauthorized, not those of Ms. Rosenberg.” Until this past week, Ms. Engelhardt had ignored requests to release that letter. Never having first talked to Mr. Ortiz, we consider this attack on him a highly disingenuous and unconscionable act by an officer of Pacifica.

March 24: Mr. Ortiz wrote to Salsa Labs again to say that he had not received a response from Anna Realini. He says that he spoke with Ms. Rosenberg and that she told him the issue had been closed several days earlier. He asked why he hadn’t been notified that it had been closed.

Jake Patoski from Salsa Labs wrote back and reported that Salsa Labs had received calls earlier in the week, emails, and a fax, concerned that Media Alliance's account had been shut down.

March 28: Salsa Labs confirmed that the file uploaded to their server with the KPFA emails, and used to send the Morning Mix messages, was called "members_KPFA_Elections_Dec_18_2010.csv." It was uploaded twice, and had 5112 records.

March 29: Salsa Labs confirmed that the file had been deleted from Media Alliance's account with them. Ortiz still had not received a copy of the fax from Arlene or Salsa Labs. In response to another request, Salsa Labs wrote, "No I cannot provide that fax because it was actually completely unrelated to this matter. The fax was regarding the fact that MA and Pacifica wrongly assumed that we had taken action against their account due to your initial interaction with Salsa Labs. In fact, they had accidentally locked themselves out of their account. So that fax is moot."

March 31: Mr. Ortiz wrote to the Morning Mix and the elections supervisor stating that the elections email addresses had been uploaded to Media Alliance account with Salsa Labs, and that Rosenberg said the Morning Mix people had given the list to her. He asked who had given Rosenberg the list; he got no response.

March 31: Oriana Saportas replied and told him to stop wasting her time. Ortiz wrote back to her and explained the file name, noted she's on the Media Alliance board, and asked her again. Ms. Saportas didn't reply to Mr. Ortiz, but emailed Sasha Futran that she didn't give it to Media Alliance and doesn't know how Media Alliance got it.

On April 6, Sasha Futran met with Ms. Engelhardt. The Pacifica Executive Director told her that she (Ms. Engelhardt) asked Ms. Asteria, the 2010 national election supervisor, for the election list and the Ms. Englehardt sent it to Ms. Rosenberg so that she could send out a negotiated apology for what Pacifica had said about Brian Edwards-Tiekert in 2010 with reference to his termination. It should be noted that Pacifica and the union representing Mr. Edwards-Tiekert did not agree on an apology until December 21 and the list to be used for it was not agreed to until January 21; yet the email list that was used for the Morning Mix mailings has the date "December 18." We would further note that no apology has yet been sent.

It must be here noted that KPFA has a newsletter email list that listeners can choose to be on via the KPFA website. That list has approximately 4,000 email addresses. It is administered by Miguel Guerrero. No one asked him to send out

the messages concerning the Morning Mix; nor did anyone request Antonio Ortiz or Carrie Core, who has been sending out messages to that list, do so.

From that chronology, while it is impossible to be absolutely certain of exactly what transpired, or who did what, it is clear to us beyond a reasonable doubt that the KPFA mailing list, containing confidential information of our members, was misused and was used for improper purposes. Further, it is clear that an effort was made to conceal and cover up those facts. To that end, deliberate misstatements were made to the LSB, and elected members of this board.

The motive behind the foregoing drama was, we postulate, an attempt to secretly bolster the sagging Morning Mix, a highly controversial daily program established by Ms. Engelhardt that had recently appeared in place of the Morning Show – a program terminated by Ms. Engelhardt in November, 2010, to a storm of controversy. Ms. Rosenberg was highly invested in recruiting for the Morning Mix, and was known to have advocated the termination of the hosts of the Morning Show.

Some listeners resented the emails and attempted to unsubscribe from the list because of the content. Thus, KPFA listeners were asking to get off the stations email list because they didn't like the content of emails they erroneously assumed were from the station.

Here, we must go back to a little history. In November 2010, Pacifica discharged Brian Edwards-Tiekert and Aimee Allison, the hosts of the Morning Show, claiming lack of funds. CWA, the union representing paid staff at the station, grieved those discharges, and, on approximately December 22 of last year, Pacifica agreed in principle to reinstate Mr. Edwards-Tiekert with full back pay, and to send out an apology for something Pacifica had disseminated to its subscribers across the country.

Arlene Engelhardt, after first denying in writing any knowledge of the list, or the origin of the Morning Mix emails, recently changed her story, and now claims that, in order to disseminate the apology to Mr. Edwards-Tiekert, obtained the 2010 list from the 2010 national elections supervisor, Ms. Asteria, and gave it to Ms. Rosenberg to do the sending. This very late explanation, even if it were credible, leaves open a plethora of issues.

Both Ms. Engelhardt and Ms. Rosenberg have indicated that they were well aware of the importance of Pacifica non-disclosure procedures. Such agreements apply to all of us and cover the confidential list of subscribers.

Salsa Labs now says they have destroyed the copy of the list in its possession. What about copies the list in the possession of Media Alliance and Ms.

Rosenberg? How many copies of the list are still extant? Were copies given to other people and organizations? Media Alliance, and any other person or entity found to have had a copy of the list must assure KPFA that all such copies have been destroyed.

A process currently exists for promoting programs. However unsatisfactory this process may be, the desire to promote any program does not justify the improper use of confidential mailing lists.

How should such misuses of KPFA proprietary information be handled? Let us merely restate the obvious: next time the intentions of the actors may not be benign. Furthermore, what if the partisanship of the actors had been reversed?

Confidential information needs to be kept confidential because of the nature of the information and the purpose of the confidentiality. Therefore, we propose that, at the very least, those who improperly used the station's proprietary information should be censured by this body. And that the LSB should set a policy to firmly discourage future lapses.

Respectfully submitted:

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