

You, Utopia and the Law

A practical guide for *everyone*
involved in the
University of Sunderland's
on-line and RSL broadcasts.

Revised by Guy Starkey, University of Sunderland, May 2004

Introduction

This guide is not intended to be intimidating or to spoil the considerable fun of being on air and making radio 'for real'. It is, however, very important that you – and we – all get these matters right, because the penalties for making mistakes in these areas are high.

You need to pay particular attention to the following areas:

- *Criminal matters and especially court proceedings*
Contempt of court is a serious criminal offence and can result in fines or imprisonment. Very strict rules apply to the reporting of criminal cases – even if done flippantly – and this includes talking about something said in court. If someone has been charged or is being sought by police in connection with a criminal matter, you would do best to seek advice, read *McNae's Essential Law for Journalists* or just leave the item out altogether, until a final verdict has been given on the case. (See also libel.)
- *Libel* – see separate section on libel.
- *Copyright* - see separate section on copyright.
- *Incitement to racial hatred*
This is a serious criminal offence under the Public Order Acts, and refers not just to what you might say on air, but also to what your programme includes – eg your interviewee, or your recording of a BNP rally – whether you personally support what is said or not.
- *Election periods*
If there is an election or a by-election pending in our area during the RSL, special rules apply about the inclusion of *candidates* in programming. You are also expected to be fair, accurate and impartial in discussing election issues. Election day itself is a special case and very little may be said on air about the election. The law has yet to be clarified regarding the position of the on-line service (ie there may be a by-election in Kent, and someone may listen to us in Kent), but this is unlikely to attract controversy.
- *The Ofcom codes*
For the RSL (but *not* the on-line service at other times) we are expected under the terms of our broadcasting licences to adhere to the Ofcom code on a range of issues including balance, taste & decency, blasphemy, children, advertising and more. Please read through them and take note!
- *You must not be involved in pirate radio or have any previous convictions*
- *Highways Act 1980* Flyposting of any kind – including attaching flyers to lampposts – is banned. You may, however, ask permission from owners to display signs on their property.

Avoiding Libel

A quick survival toolkit for on-line and FM Utopia broadcasting

Libel is a highly contentious issue, on which many experienced members of the legal profession have made fortunes at the expense of others. Many unfortunate journalists and broadcasters have helped them make these fortunes! It is to be avoided wherever possible, as it can be costly and raise questions about your own suitability to be behind the microphone.

Ten things you need to know about libel:

- 1) Libel is about *reputation* – if you risk damaging someone's reputation, that person *or organisation* could sue you personally and/or the station for damages.
- 2) Reputation may be damaged in many ways – having affairs, sex, dishonesty, stealing, being HIV-positive, being boring, being violent, are just some of the kinds of allegations that might provoke libel actions.
- 3) You may *know* something to be true, but if your evidence is not strong enough to convince a possibly hostile jury, simply knowing you are right will not save you.
- 4) In court, the other side may present evidence you didn't know existed.
- 5) Inserting the weasel words 'alleged' or 'allegedly' does not grant immunity from a libel action, because to repeat a libel can be said to be as damaging as the original allegation (or *more* damaging).
- 6) You may cause a libel through the words of others: that recorded interview you use, that live guest, that phone-in caller you put to air (so screen callers very carefully before putting them to air and continue to *listen* to what callers and guests are saying).
- 7) 'Engage your brain before opening your mouth' is a well-worn phrase, but it's as valid today as the day it was first said.
- 8) Another one: 'if in any doubt – leave it out'. Refer upwards, to a member of the radio staff. You may have some hot news, but it'll keep until the next bulletin or the next programme, and you'll still be on the air when it comes!
- 9) 'Fair comment' is allowed – 'Sunderland (or Newcastle) didn't play very well last night' is a personal opinion you are allowed to voice. Note, though, the difference between saying an actor wasn't right for a role (in your view) and he/she was too drunk to remember the lines!
- 10) You can find out much, much more about libel (and, more widely, defamation) – starting with *McNae's Essential Law for Journalists*.

Copyright for on-line and RSL broadcasts by Utopia FM

The Copyright, Designs & Patents Act 1988 allows free use of most copyright works for student assessments, under an 'education' loophole. This does NOT extend to broadcasting on the web or the FM radio band, which clearly goes further than the normal requirements of assessment. The following guidelines explain what we have obtained licences to use, under the Act.

- *Commercially-sold music (chart, new releases, back catalogue, etc – all generally distributed via the retail trade)*

PRS (for the composers) and PPL (for the artists) have licensed us to use this on a live 'needle-drop' basis – ie you play it, or part of it, in your programme either on its own or with something mixed over or under it (eg your voice, recorded idents etc). You may *not*, however, incorporate this into trails, idents, or suchlike if it means editing it – because that is *not* 'live needle drop'. You may *not* use this in adverts or sponsorship messages at all, because the copyright bodies do not license stations for this kind of use, and the copyright owners would have to be approached individually for permission – and, of course, to negotiate a price!

- *MCPS members' music*

Some commercially-sold music may bear the letters MCPS on the label, meaning the copyright owners have assigned certain rights to this organisation, which we, in turn, have bought from them for the limited period of the licence. You may use this in an edited form as well as for live needle drop, for promos, idents, beds, etc. You may *not*, however, use it in adverts or sponsorship messages for the reasons explained above.

MCPS also license 'library' music, created specifically for the purpose of audio and video production. They allow us to record and edit this music, use it in idents, trails etc. They also allow us to use it in advertisements and sponsorship messages – *but* we must declare it on their form *and* pay to use it in this extra way. If you are making an advert, you *must* fill in the MCPS form.

We have no licensing agreements in place to use the following:

- *sound effects discs unless they are licensed by MCPS or they specifically state on the label that they may be used for broadcasting without further payment (this is called 'buy out')*
- *production music not licensed by MCPS – again, unless they specifically state on the label that it may be used for broadcasting without further payment ('buy out')*
- *other radio stations or television channels, either broadcast or cable*
- *video soundtracks (look for the album of the soundtrack on CD or vinyl!)*
- *CD-ROMs*
- *audio files on web sites*
- *games consoles*

FURTHER READNG

Ofcom website has guidelines relating to radio licencees-see
<http://www.ofcom.org.uk/radio/ifi/>

Starkey. G. (2004) Radio in Context, Palgrave
<http://www.palgrave.com/products/Catalogue.aspx?is=140390023X>

Welsh, T., Greenwood, W. Banks, D. (2005) McNae's Essential Law for Journalists ,
Oxford