

Special Advisory to Broadcasters

Communications Practice



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Payola Plugola Advisory

This **Advisory** has been prepared to give you and your employees a basic understanding of the laws and FCC policies and rules that govern payola and plugola. Payola, the undisclosed acceptance of or agreement to accept anything of value in return for on-air promotion of a product or service, is forbidden by Sections 317 and 507 of the Communications Act of 1934, as amended, and by Section 73.1212 of the FCC's rules. Plugola occurs when someone responsible for program selection promotes on the air a venture in which he or she has a financial interest. Plugola is forbidden unless certain required disclosures are made, and can also amount to an indirect violation of the FCC's sponsorship identification rule.

The penalties for payola violations can be high: a \$10,000 fine and up to one year's imprisonment for each offense. Violations of the payola rules and plugola policies can also call into question whether you are exercising sufficient control over the station, thereby affecting your qualifications to remain a Commission licensee. Failure to observe the sponsorship identification requirements can even result in the initiation of license revocation proceedings.

The importance of understanding and complying with these rules was confirmed by a payola investigation of the music and broadcast industries conducted by a Department of Justice strike force. After a lengthy investigation, multiple indictments for violations of Section 507 of the Communications Act, and for tax evasion, were handed down against record promoters and radio station personnel.

The indictments named employees of over a dozen radio stations across the country, alleging that they received cash and cocaine as inducements to play certain records on the air. Those charged faced maximum prison sentences of up to 23 years and fines of up to \$1,640,000. In response to these indictments, the FCC issued a Public Notice reminding licensees that payola is not only a violation of the United States Criminal Code, but can also subject broadcasters to sanctions under the Communications Act.

Although these indictments were ultimately dismissed because of prosecutorial misconduct, it is clear that they signal a continuing focus on the enforcement of the prohibitions on payola and plugola. The federal agents leading the strike force have refused to state officially whether more indictments are forthcoming, but a lead attorney on the force, who asked not to be named, has said that "we haven't seen the last of the indictments," and that the investigation is continuing. That source also admitted surprise at the widespread nature of the problem. The Department of Justice appears convinced that payola is a matter of great magnitude and is pursuing violations vigorously.

The FCC's 1988 *Public Notice* on this topic makes it clear that the Commission will cooperate in any payola/plugola investigation and impose sanctions of its

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own, if warranted. The Chairman of the FCC issued the following statement on November 30, 1989, starkly describing the Commission's perspective:

"The Commission has recently made clear that it will not tolerate drug traffickers among its licensees, and violations of the 'payola' provisions of the Communications Act are criminal violations and serious offenses. The combination of drugs and payola, when shown to exist among broadcast licensees, involves a violation of the public trust which cannot be tolerated. The Commission will act with respect to its licensees to assure that our communications system remains free of these totally improper influences. The Commission will be following this matter closely to see if there is licensee involvement."

It is therefore vital to your station's and employees' interests that everyone understands how to comply with the laws regulating these matters. We also recommend that you adopt a station policy that strictly prohibits payola and undisclosed plugola.

The premise underlying the payola rule, the plugola policy, and the sponsorship identification rule is that members of the public have a right to know when someone has a financial incentive to influence what the public hears or sees in the broadcast media. Thus, it is improper for a person or business to benefit financially from causing matter to be broadcast unless a full, over-the-air disclosure of the sponsorship is made. If a broadcast station or a station employee receives any money, product, or service, directly or indirectly in exchange for causing anything to be broadcast, that fact, as well as the identification of the sponsor, must be broadcast. The payola and plugola rules and policies, therefore, work with the sponsorship identification rule to expand the range of material that is considered "sponsored" and to require that the public be informed of any "sponsorship."

As a broadcaster you should be concerned about payola and plugola, not only because these practices can subject those involved to fines and imprisonment, but because they can provide ammunition to those who would attack your license at renewal time. Furthermore, they almost always result from someone improperly "selling" air time. Payola and plugola by employees of a broadcast station, when carried on without the owner's knowledge, are forms of employee theft. These practices are likewise unfair to station clients who pay standard rates in arms length transactions for advertising on your station.

Payola

In its 1988 *Public Notice* on the subject, the FCC defined payola as "the unreported payment to, or acceptance by, employees of broadcast stations, program producers or program suppliers of any money, service or valuable consideration to achieve airplay for any programming." Payola is always illegal. However, because the lack of disclosure is an essential element of payola, it does not exist when full disclosure is made. It is not the payment of money to influence a broadcast, but the lack of disclosure and sponsorship identification, that makes the transaction illegal.

Payola usually occurs when someone makes a gift or payment to a person involved in station programming in exchange for favorable exposure. Both the person making the gift or payment and the recipient are required to disclose the



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arrangement to the licensee, and both can face criminal sanctions if they do not. When told of such an arrangement, the licensee must exercise its judgment as to whether to allow the program to be aired under such circumstances and, if so, must give complete sponsorship identification over the air.

Thus, there are two required levels of disclosure. The employee and other person giving or receiving the benefit must disclose the existence of a "payment" to station management, and station management must then disclose the "sponsorship" on the air if the material is aired.

When a payment of any kind is made for the purpose of influencing what is broadcast, it does not matter who makes and who receives the payment. The material broadcast is considered "sponsored," and the public must be informed. In this regard, there is little difference between a standard paid commercial unit and a song that gets extra play only because somebody took the program director on a trip.

Our recommended station policy requires not only prior disclosure, but also prior written approval by the licensee, of any practices that could possibly involve the receipt of, or agreement to receive, anything of value for airing broadcast material. As discussed below, licensees are expected to exercise reasonable diligence to prevent payola.

Plugola

Plugola exists when someone responsible for program selection promotes (or "plugs") on the air goods or services in which he or she has a financial interest. Plugola is similar to payola, except that it need not involve an outside party or payment of any kind. It can be accomplished by a single station employee. For instance, if a local night club pays a radio announcer to spin records, and the announcer mentions these appearances on the air to bolster club attendance, plugola has occurred. Station management must be informed and the "sponsorship" must be disclosed on the air.

Likewise, if a station owner promotes a concert, even as a separate business venture, and instructs the program director or disc jockeys to increase airplay of the featured performer, he has engaged in plugola, and sponsorship identification must be given. Although it is less likely, even people who are neither station managers nor on air personalities can engage in plugola. For instance, the person who prepares program logs could schedule extra announcements for a company in which he has a financial interest. Like payola, plugola can take many forms and should be carefully guarded against.

Plugola is legal only when (1) station management is made aware of the nature and extent of the employee's interest that is being promoted and (2) required over-the-air sponsorship identification is given. Again, we recommend that you require your employees to obtain prior written consent of management, rather than merely giving notice, before engaging in plugola. Any employees who are in any way connected with station programming and have any outside interests that could create a conflict of interest with any present or future station programming should be asked to disclose these interests to management so that appropriate safeguards can be implemented.



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Recommendations

We cannot overemphasize the importance of adopting and implementing a station program to prevent payola and plugola at your station. The FCC has stressed that each licensee has an obligation to "exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals, information to enable the licensee to comply with the sponsorship identification requirements of Section 317 of the Act."

We recommend that, at a minimum, you (1) insulate employees with outside business interests from the process of program selection; (2) educate your employees about payola and plugola and make additional information available to them; (3) require employees to execute affidavits disclaiming involvement in payola or plugola; (4) keep a log of visits by record promoters to your station; and (5) adopt any other necessary procedures to prevent these practices at your station. This section elaborates on these steps.

To reduce the opportunities for employees to engage in plugola, those employees with potentially conflicting outside interests should be insulated from the process of program selection when there is any possibility that the outside interest could cause the employee to compromise objective programming in favor of the interest. Consider, for example, a disc jockey who works for or otherwise has an interest in an outside concert promotions company. Under the rules, he should not be allowed to choose records to be played on-air that would promote a concert his outside company is handling. This does not mean that the station cannot play records by bands appearing in a concert the jock's company is promoting, or even that station announcers cannot talk about the concert. Rather, it means that the disc jockey with the conflicting outside interest must not be permitted to make programming decisions that could promote his interest unless management has been informed, decides to allow it, and full disclosure to the public is made.

The best way to avoid accusations that you or your employees have engaged in payola or plugola is to adopt station policies that are at least as stringent as the rules, to educate your staff about the rules and your policies, and to enforce both strictly. Even staff members who are not connected in any way with programming should be made familiar with the rules and instructed to watch for violations.

The Commission expects reasonable diligence by each station to ascertain the financial interests of its owners, officers, directors, employees, agents, and persons who appear regularly on the station, and equal efforts to prevent such persons from compromising the programming selection process. When you discover that an employee who influences programming has a potentially conflicting outside interest, that employee should be insulated from the process of program selection to the extent necessary to prevent plugola. In the case of programs obtained from networks, syndicators, or other program suppliers, the station is still expected to use reasonable diligence to assure compliance when it knows, or has reason to believe, that plugola or payola may have influenced the program material.

We also recommend that you create a payola/plugola file that contains the following documents: (a) copies of Sections 317 and 507 of the Communications Act of 1934, as amended; (b) a copy of Section 73.1212 of the Commission's regulations; (c) a copy of the FCC *Public Notice* released September 3, 1975,



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which outlines 36 interpretations of these provisions; (d) a copy of the FCC *Public Notice* released May 18, 1988; (e) a "Statement of Station Policy"; and (f) payola/plugola affidavits.

Copies of these documents are included with this **Advisory**. You should give sets of these documents to all full and part-time employees who are in any way connected with station programming, and ask them to review the documents and execute the affidavits. Keep the executed copies in a secure file. You should require each employee to sign an affidavit once every six months. This will serve to remind them that the laws and policies in this area must be taken seriously.

We recommend that stations maintain a regular log that shows all persons who have visited the station or station employees for music or program promotion. The promoter's name, company affiliation, companies represented, and the names of the station staff visited should be logged. If the promoter gives anything to any station member, either for personal or station use, the gift should be noted in the log. The log should be reviewed periodically by upper level management.

While these steps are a good starting point, they may not be sufficient to demonstrate "reasonable diligence" in all cases. The FCC has stated that stations whose formats or other circumstances make them more susceptible to payola must exercise a higher degree of preventive care. For example, stations that report to record charting services, large stations with popular formats, or other stations whose personnel are frequently pressured to play certain records, are expected to take greater care to prevent payola than stations with news-talk formats. The Commission has specifically warned that stations which report their playlists to charting services may fall short of the reasonable diligence standard if they do no more than require employees to execute affidavits disclaiming payola and plugola. You should implement whatever measures you believe are necessary to prevent these practices at your station. If you believe that your program may be inadequate, we can review your plan and make suggestions.

The FCC recognizes that most licensees are not perpetrators, but victims of payola, and is willing to help concerned licensees investigate substantive allegations of payola. The Commission also cooperates with the Department of Justice in this regard.

This review should provide the general guidance to help protect you against potential rule and policy violations that could jeopardize your good standing with the Commission. If you are confronted with a sponsorship identification, payola, or plugola problem, we recommend that you ask us to review the situation with you.



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Statement of Station Policy

This statement concerns payola, plugola, and other conflicts of interest. These matters are regulated by the Communications Act of 1934, as amended, and by the Federal Communications Commission's rules and policies. This memorandum is circulated to remind all station employees of their obligations under the law, and of station policy to implement that law. After reading this memorandum and other material, you will be asked to sign an Affidavit stating that you will comply with the law and with the policies of this station.

In sum, this station's policy concerning payola, plugola, and other conflicts of interest is as follows:

No employee may accept any money, service, or anything of value from any person or business other than the station in exchange for or as an inducement to the station's broadcast of any material, without the prior written consent of top station management.

No employee who has any voice in the selection of broadcast matter may: (a) hold any outside interest or engage in any outside business or economic activity that would cause any conflict with that employee's selection of broadcast matter; (b) accept anything of value from anyone seeking the broadcast of any matter (other than paid commercial announcements) in exchange therefore, even if the employee does not intend to broadcast such matter; or (c) promote on the air any matter in which the employee has a financial interest, except with the prior approval of top station management or by means of an appropriate commercial announcement.

It is a criminal offense, subject to a fine of not more than \$10,000 or imprisonment of not more than one year, or both, for any employee to fail to disclose to the Station any acceptance or agreement to accept from any person, other than the Station, any money, service, or other valuable consideration in exchange for the broadcast of any material over the station. Acceptance by a station employee of any payment to include matter in a broadcast, other than paid advertisements, and "plugging" on the air any enterprise in which the employee has a financial interest, without the prior written consent of top station management, are serious violations of station policy. Failure to disclose such activity to station management is a serious violation of federal law.

Please read all of the materials about payola and plugola that you have been given, then sign the affidavit and return it to your supervisor. **If you have any questions about the meaning of anything in this policy statement or in the payola/plugola material, contact your supervisor before signing the attached affidavit.**



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Affidavit

I, _____, hereby state that I have read and that I do understand the following materials and will comply with the laws, regulations, policies, and rules contained therein:

- (a) Sections 317 and 507 of the Communications Act of 1934, as amended;
- (b) Section 73.1212 of the Federal Communications Commission's regulations;
- (c) The FCC *Public Notice* released September 3, 1975, which sets forth the Commission's 36 interpretations of Section 317 and Rule Section 73.1212.
- (d) The FCC *Public Notice* released May 18, 1988.

I have also read and will comply with the "Statement of Station Policy," which prohibits employees who are in any way responsible for the selection of broadcast matter from (a) engaging in any outside business that might create a conflict of interest in program selection; (b) accepting anything of any value from persons in exchange for the inclusion of matter in a broadcast without the prior approval of management; and (c) promoting on the air anything in which any employee has a financial interest, by any means other than a standard paid commercial announcement, without the prior written approval of management. If I am ever unsure as to whether a course of action is prohibited under these rules or policies I will discuss in advance my intent to pursue that course of action with station management and obtain the written consent of top station management before engaging in any such activity.

(Affiant)

Subscribed and sworn to before me this ____ day of _____, _____.

Notary Public

My Commission Expires:



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Section 317 of the Communications Act of 1934, as amended

Announcement of payment for broadcast Disclosure of person furnishing

(a)(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.

Disclosure to station of payments

(b) 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.

Acquiring information from station employees

(c) 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.

Waiver of announcement

(d) 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.

Rules and regulations

(e) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section. June 19, 1934, c. 652, Title III, §317, 48 Stat. 1089; Sept. 13, 1960, Pub.L. 86-752, §8(a), 74 Stat. 895.



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**Section 507 of the Communications Act of 1934, as amended
Disclosure of payment to individuals connected with broadcasts
Payments to station employees**

(a) 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.

Production or preparation of programs

(b) 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.

Supplying of program or program matter

(c) 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.

Waiver of announcements under section 317(d)

(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.

Announcement under section 317 as sufficient disclosure

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

Definition of "service or other valuable consideration"

(f) 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.



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Penalties

(g) 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. June 19, 1934, c. 652, Title V, §508, as added Sept. 13, 1960, Pub.L. 86-752, §8(b), 74 Stat. 896.



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**Section 73.1212 of the Rules of the Federal Communications Commission
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 either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of 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."

(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



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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 theater exhibition.

Note: The waiver heretofore granted by the Commission in its Report and Order adopted November 16, 1960 (FCC 60-1369; 40 FCC 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when §73.654, the predecessor television rule, went into effect.

(i) Commission interpretations in connection with the provisions of the sponsorship identification rules are contained in the Commission's Public Notice, entitled "Applicability of Sponsorship Identification Rules," dated May 6, 1963 (40 FCC 141), as modified by Public Notice, dated April 21, 1975 (FCC 75-418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports.



[40 FR 18400, Apr. 28, 1975, as amended at 46 FR 13907, Feb. 24, 1981; 49 FR 4211, Feb. 3, 1984; 49 FR 33663, Aug. 24, 1984; 50 FR 32417, Aug. 12, 1985]

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PUBLIC NOTICE
FEDERAL COMMUNICATIONS COMMISSION
SPONSORSHIP IDENTIFICATION RULES

Applicability

September 3, 1975

Revision of May 6, 1963 Public Notice, as modified by April 21, 1975 Public Notice.

With the development of broadcast service along private commercial lines, meaningful government regulation of the various broadcast media has from an early date embraced the principle that listeners are entitled to know by whom they are being persuaded. Thus, as far back as the Radio Act of 1927 and continuing with section 317 of the Communications Act of 1934 there has been an unvarying requirement that all matter broadcast by any station for a valuable consideration is to be announced as paid for or furnished, and by whom.

On September 13, 1960, a bill (S. 1898) was signed into law amending section 317 of the Act to redefine the situations in which broadcast licensees must make sponsorship identification announcements. In addition, the law (Public Law 86-752) added a new section 508 to the Act requiring disclosure by persons other than broadcast licensees who provide or receive valuable consideration for the inclusion of any matter in a program intended for broadcast. The persons to whom section 508 relates had previously not been directly subject to any previous provisions of the Act. Subsection (e) of the revised section 317 directs the Commission to prescribe appropriate rules and regulations to implement the Congressional intent expressed in the new wording of section 317. In adopting this legislation, the Congress also set forth a series of twenty-seven examples to illustrate the intended effect of the proviso clause in amended section 317(a).

In 1963, the Commission revised the sponsorship identification rules for the broadcast services (34 FCC 829) thereby implementing amended section 317. By *Report and Order*, adopted April 17, 1975, in Docket No. 19513, these rules were further amended (and consolidated as new section 73.1212) effective May 30, 1975 (FCC 75-417). When the 1963 rule revision was made, the Commission also adopted a *Public Notice*, entitled "Applicability of Sponsorship Identification Rules," which contained thirty-six illustrative interpretations (40 FCC 141), including the twenty-seven examples set forth by the Congress. These interpretations, except for Interpretation 33, are consistent with the 1975 rule revisions. To reflect the provisions of new section 73.1212, Interpretation 33 was revised by *Public Notice*, dated April 21, 1975 (FCC 75-418). The 1975 *Report and Order* also amended the sponsorship identification rules for origination cablecasting (section 76.221) to conform to the new section 73.1212 for broadcasting. The interpretations of the 1963 *Public Notice* as modified by the 1975 *Public Notice* are applicable to origination cablecasting as well as to the broadcast services. The present document is a revision of the 1963 *Public Notice*, incorporating both the 1975 rule changes and the revised Interpretation 33.

There follows hereafter section 317 and section 508 of the Act, the Commission's revised rules and the thirty-six illustrative interpretations.



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Section 317 reads as follows:

Sec. 317. (a)(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) In any case where a report has been made to a radio station, as required by section 508 of this Act, or 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) 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) 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) The Commission shall prescribe appropriate rules and regulations to carry out the provisions of this section.

Section 508 reads as follows:

Sec. 508 (a) Subject to subsection (d) 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) Subject to subsection (d) 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



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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) Subject to subsection (d) 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) 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) an announcement is not required to be made under section 317.

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

(f) 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) 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.

Section 73.1212 of the Commission's rules, applicable in common to the broadcast services, reads as follows:

§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: (i) That such matter is sponsored, paid for, or furnished, either in whole or in part, and (ii) 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 either without or at a nominal charge for use on, or in connection with, a broadcast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brand name beyond an identification reasonably related to the use of such service or property on the broadcast.

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



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(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 508 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 §1.526 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 §1.526 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



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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) Attach the list to the program log for the day when such broadcast was made; and

(3) Make this list available to members of the public who have a legitimate interest in obtaining the information contained in the list.

(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 theater exhibition.

NOTE: The waiver heretofore granted by the Commission in its Report and Order adopted November 16, 1960 (FCC 60-1369; 40 FCC 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when §73.654, the predecessor television rule, went into effect.

(i) Commission interpretations in connection with the provisions of the sponsorship identification rules are contained in the Commission's Public Notice, entitled "Applicability of Sponsorship Identification Rules," dated May 6, 1963 (40 FCC 141), as modified by Public Notice, dated April 21, 1975 (FCC 75-418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports.

Section 76.221 of the Commission's rules, applicable to cable television systems, reads as follows:

§76.221 Sponsorship identification; list retention; related requirements. (a) When a cable television system engaged in origination cablecasting presents 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 system, the system, at the time of the cablecast, shall announce (i) that such matter is sponsored, paid for, or furnished, either in whole or in part, and (ii) 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 either without or at a nominal charge for use on, or in connection with, a cablecast unless it is so furnished in consideration for an identification of any person, product, service, trademark, or brandname beyond an identification reasonably related to the use of such service or property on the cablecast.



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

(b) Each system engaged in origination cablecasting shall exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals directly in connection with any matter for cablecasting. Information to enable such system to make the announcement required by this section.

(c) In the case of any political origination cablecast matter or any origination cablecast matter involving the discussion of public controversial issues for which any film, record, transcription, talent, script, or other material or service of any kind is furnished, either directly or indirectly, to a system as an inducement for cablecasting such matter, an announcement shall be made both at the beginning and conclusion of such cablecast 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 system in connection with the transmission of such cablecast matter: Provided however, That in the case of any cablecast of 5 minutes duration or less, only one such announcement need be made either at the beginning or conclusion of the cablecast.

(d) The announcement required by this section shall, in addition to stating the fact that the origination cablecasting 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 (c) of this Section are furnished. Where an agent or other person or entity contracts or otherwise makes arrangements with a system 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 system, the announcement shall disclose the identify of the person or persons or entity on whose behalf such agent is acting instead of the name of such agent. Where the origination cablecasting material 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 matter, the system shall, in addition to making the announcements 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 local office of the system. Such lists shall be kept and made available for a period of two years.

(e) In the case of origination cablecast 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 purposes of this section and only one such announcement need be made at any time during the course of the cablecast.

(f) The announcement otherwise required by this section is waived with respect to the origination cablecast of "want ad" or classified advertisements sponsored by



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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 system 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.

(g) The announcements required by this section are waived with respect to feature motion picture film produced initially and primarily for theatre exhibition.

Note: The waiver heretofore granted by the Commission in its Report and Order, adopted November 16, 1960 (FCC 60-1369; 40 FCC 95), continues to apply to programs filmed or recorded on or before June 20, 1963, when §73.654(e), the predecessor television rule, went into effect.

(h) Commission interpretations in connection with the provisions of the sponsorship identification rules for the broadcasting services are contained in the Commission's *Public Notice*, entitled "Applicability of Sponsorship" Identification Rules," dated May 6, 1963 (40 FCC 141), as modified by *Public Notice*, dated April 21, 1975 (FCC 75-418). Further interpretations are printed in full in various volumes of the Federal Communications Commission Reports. The interpretations made for the broadcasting services are equally applicable to origination cablecasting.

The following are illustrative interpretations of section 317 and the Commission's rules, Interpretations 1 to 27, inclusive are incorporated without change from House Report 1800 (86th Congress, 2d Session):

A. *Free records.*¹

1. A record distributor furnishes copies of records to a broadcast station or a disc jockey for broadcast purposes. No announcement is required unless the supplier furnished more copies of a particular recording than are needed for broadcast purposes. Thus, should the record supplier furnish 50 or 100 copies of the same release, with an agreement by the station, express or implied, that the record will be used on a broadcast, an announcement would be required because consideration beyond the matter used on the broadcast was received.

2. An announcement would be required for the same reason if the payment to the station or disc jockey were in the form of cash or other property, including stock.



Pillsbury
Winthrop
Shaw
Pittman^{LLP}

¹ In view of the attention which has been given to the problem of free records, they are treated herein as a special category. It should be noted, however, that the same principles apply to records as to other property or services furnished for use on or in connection with a broadcast.

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3. Several distributors supply a new station, or a station which has changed its program format (e.g. from "rock and roll" to "popular" music), with a substantial number of different releases.² No announcement is required under section 317 where the records are furnished for broadcast purposes only; nor should the public interest require an announcement in these circumstances. The station would have received the same material over a period of time had it previously been on the air or followed this program format.

4. Records are furnished to a station or disc jockey in consideration for the special plugging of the record supplier or performing talent beyond an identification reasonably related to the use of the records on the program. If the disc jockey were to state: "This is my favorite new record, and sure to become a hit; so don't overlook it," and it is understood that some such statements will be made in return for the record and this is not the type of statement which would have been made absent such an understanding, and the supplying of the record free of charge, an announcement would be required since it does not appear that in those circumstances the identification is reasonably related to the use of the record on that program. On the other hand, if a disc jockey, in playing a record, states: "Listen to this latest release of performer "X", a new singing sensation," and such matter is customarily interpolated in the disc jockey's program format and would be included whether or not the particular record had been purchased by the station or furnished to it free of charge, it would appear that the identification by the disc jockey is reasonably related to the use of the record on that particular program and there would be no announcement required.

B. Where payment in any form other than the matter used on or in connection with the broadcast is made to the station or to anyone engaged in the selection of program matter.

5. A department store owner pays an employee of a producer to cause to be mentioned on a program the name of the department store. An announcement is required.

6. An airline pays a station to insert in a program a mention of the airline. An announcement is required.

7. A perfume manufacturer gives five dozen bottles to the producer of a give-away show, some of which are to be identified and awarded to winners on the show, the remainder to be retained by the producer. An announcement is required since those bottles of perfume retained by the producer constitute payment for the identification.

8. An automobile dealer furnishes a station with a new car, not for broadcast use, in return for broadcast mentions. An announcement is required; the car constituting payment for the mentions.

² A question has been raised with respect to a situation where a distributor furnishes to a station free of charge an entire music library with the understanding, express or implied, that only its records would be played on the station. To the extent that such an arrangement may run afoul of the antitrust laws or may constitute an abdication by the station of its licensee responsibility, an announcement under section 317 would not cure it.



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9. A Cadillac is given to an announcer for his own use in return for a mention on the air of a product of the donor. An announcement is required since there has been a payment for a broadcast mention.

C. Where service or property is furnished free for use on or in connection with a program, but where there is neither payment in consideration for broadcast exposure of the service or property, nor an agreement for identification of such service or property beyond its mere use on the program.

10. Free books or theater tickets are furnished to a book or dramatic critic of a station. The books or plays are reviewed on the air. No announcement is required. On the other hand, if 40 tickets are given to the station with the understanding, express or implied, that the play would be reviewed on the air, an announcement would be required because there has been a payment beyond the furnishing of a property or service for use on or in connection with a broadcast.

11. News releases are furnished to a station by Government, business, labor and civic organizations, and private persons, with respect to their activities, and editorial comment therefrom is used on a program. No announcement is required.

12. A Government department furnishes air transportation to radio newscasters so they may accompany a foreign dignitary on his travels throughout the country. No announcement is required.

13. A municipality provides street props on a program. No announcement is required.

14. A hotel permits a program to originate on its premises. No announcement is required. If, however, in return for the use of the premises, the producer agrees to mention the hotel in a manner not reasonably related to the use made of the hotel on that particular program, an announcement would be required.

15. A refrigerator is furnished for use as part of the backdrop in a kitchen scene of a dramatic show. No announcement is required.

16. A Coca-Cola distributor furnishes a Coca-Cola dispenser for use as a prop in a drugstore scene. No announcement is required.

17. An automobile manufacturer furnishes his identifiable current model car for use in a mystery program, and it is used by a detective to chase a villain. No announcement is required. If it is understood, however, that the producer may keep the car for his personal use, an announcement would be required. Similarly, an announcement would be required if the car is loaned in exchange for a mention on the program beyond that reasonably related to its use, such as the villain saying: "If you hadn't had that speedy Chrysler, you never would have caught me."

18. A private zoo furnishes animals for use on a children's program. No announcement is required.

19. A university makes one of its professors available to give lectures in an educational program series. No announcement is required.



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20. A well-known performer appears as a guest artist on a program at union scale because the performer likes the show, although the performer normally commands a much higher fee. No announcement is required.

21. An athletic event promoter permits broadcast coverage of the event. No announcement is required in absence of other payment by the promoter or agreement to identify in a manner not reasonably related to the broadcast of the event.

D. Where service or property is furnished free for use on or in connection with a program, with the agreement, express or implied, that there will be an identification beyond mere use of the service or property on the program.³

22. A refrigerator is refurnished by X with the understanding that it will be used in a kitchen scene on a dramatic show and that the brand name will be mentioned. During the course of the program the actress says: "Donald go get the meat from my new X refrigerator." An announcement is required because the identification by brand name is not reasonably related to the particular use of such refrigerator in this dramatic program.

23. (a) A refrigerator is furnished by X for use as a prize on a giveaway show, with the understanding that a brand identification will be made at the time of the award. In the presentation, the master of ceremonies briefly mentions the brand name of the refrigerator, its cubic content, and such other features as serve to indicate the magnitude of the prize. No announcement is required because such identification is reasonably related to the use of the refrigerator on giveaway show in which the costly or special nature of the prizes is an important feature of this type of program.

(b) In addition to the identification given in (a) above, the master of ceremonies say: "All you ladies sitting there at home should have one of these refrigerators in your kitchen" or "Ladies, you ought to go out and get one of these refrigerators." An announcement is required because each of these statements is a sales "pitch" not reasonably related to the giving away of the refrigerator on this type of program.

The significance of the distinction between the identification in (a) and that in (b) is, that in (a) it is no more than the natural identification which a broadcaster would give to a refrigerator as a prize if he had purchased the refrigerator himself and had no understanding whatever with the manufacturer as to any identification. That is to say, in situation (a), had the broadcaster purchased the refrigerator he would have felt it necessary, in view of the nature of the show, adequately to describe the magnitude of the prize which was being given to the winner. On the other hand, the broadcaster would not, where he had purchased the refrigerator, have made the type of identification in situation (b), thus providing a free sales "pitch" for the manufacturer.

³ Of course, in all these cases, if there is payment to the station or production personnel in consideration for the exposure, an announcement is required.



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24. (a) An airplane manufacturer furnishes free transportation to a cast on its new jet model to a remote site, and the arrival of the cast at the site is shown as part of the program. The name of the manufacturer is identifiable on the fuselage of the plane in the shots taken. No announcement is required because in this instance such identification is reasonably related to the use of the service on the program.

(b) Same situation as in (a), except that after the cameraman has made the foregoing shots he takes an extra closeup of the identification insignia. An announcement is required because the closeup is not reasonably related to the use of the service on the program.

25. (a) A station produces a public service documentary showing development of irrigation projects. Brand X tractors are furnished for use on the program. The tractors are shown in a manner not resulting in identification of the brand of tractors except as may be recognized from the shape or appearance of the tractors. No announcement is required since the identification is reasonably related to the use of the tractors on the program.

(b) Same situation as in (a), except that the brand name of the tractor is viable as it appears normally on the tractor. No announcement is required for the same reason.

(c) Same situation as in (b), except that a closeup showing the brand name in a manner not required in the nature of the program is included in the program, or an actor states: "This is the best tractor on the market." An announcement is required as this identification is beyond that which is reasonably related to the use of the tractor on the program.

26. (a) A bus company prepares a scenic travel film which it furnishes free to broadcast stations. No mention is made in the film of the company or its buses. No announcement is required because there is no payment other than the matter furnished for broadcast and there is no mention of the bus company.

(b) Same situation as in (a), except that a bus, clearly identifiable as that of the bus company which supplied the film, is shown fleetingly in highway views in a manner reasonably related to that travel program. No announcement is required.

(c) Same situation as in (a), except that the bus, clearly identifiable as that of the bus company which supplied the film, is shown to an extent disproportionate to the subject matter of the film. An announcement is required, because in this case by the use of the film the broadcaster has impliedly agreed to broadcast an identification beyond that reasonably related to the subject matter of the film.

27. (a) A manufacturer furnishes a grand piano for use on a concert program. The manufacturer insists that enlarged insignia of its brand name be affixed over normal insignia on the piano. An announcement is required if an enlarged brand name is shown.

(b) Conversely, if the piano furnished has normal insignia and during the course of the televised concert the broadcast includes occasional closeups of the pianist's hands, no announcement is required even though all or part of the insignia appears in these closeups. Here the identification of the brand name is reasonably



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related to the use of the piano by the pianist on the program. However, if undue attention is given the insignia rather than the pianist's hands, an announcement would be required.

28. (a) An automobile manufacturer or dealer furnishes to a producer of television programs a number of automobiles with the understanding that the producer will use them, or some of them, in some of his programs which call for the use of automobiles; and that the automobiles may be used for other business purposes in connection with the production of the programs, such as transporting the cast, crew, equipment and supplies from location to location or transporting executive personnel to business meetings in connection with the production of the programs. There is no understanding that there will be any identification on the television programs beyond an identification which is reasonably related to the use of the automobiles on the programs. No other consideration is involved. Under such uses, no announcement is required.

(b) If in addition to the facts stated in (a), it is understood between the producer and the supplier that one or more of the automobiles may be, and they are, used for other purposes not related to the production of the program, an announcement is required.

29. (a) A hotel permits a program to originate from its premises and furnishes hotel services, such as room and board for cast, production and technical staff, and also furnishes other elements for use in connection with the programs to be broadcast, such as electricity and cable connections, free of charge, and with no other consideration. There is no understanding that there will be an identification of the hotel on the program beyond that reasonably related to the use made of the hotel on the program. No announcement is required.

(b) If the hotel pays money or furnishes free or at a nominal charge any services or items which are not for use on or in connection with the program (e.g., furnishing fee or at a nominal charge room and board for the producer for any period of time not related to the production of the program at the hotel site), an announcement is required.

E. Effective Date.

30. Does section 317 as amended on September 13, 1960 apply to programs or portions of programs produced or recorded prior to September 13, 1960? No, unless valuable consideration was provided to a broadcast station (rather than to a producer or other person) for the broadcast of the program or the inclusion of any program matter therein and the program was broadcast after said date.

F. Nature of the announcement.

31. A station broadcast spot announcements which solicit mail orders from listeners. The sponsor is merely referred to in the announcements and in the mail order address as "Flower Seeds" or "Real Estate" or "the Record Man." Such a reference to the sponsor of the announcements is insufficient to constitute compliance with the Commission's sponsorship identification rules because it is limited to a description of the product or service being advertised. The announcement requirement contemplates the explicit identification of the name of



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the manufacturer or seller of goods, or the generally known trade or brand names of the goods sold. (See Commission's *Public Notice* entitled "Sponsor Identification on Broadcast Station," FCC 50-1207, 6 R.R. 835).

32. A station broadcasts "Teaser" announcements utilizing catch words, slogans, symbols, etc., designed to arouse the curiosity of the public by telling it that something is "coming soon." The sponsor of the announcements is not named therein, nor is any generally known trade or brand name given, but it is the intention of the station and the advertiser to inaugurate at a later date a series of conventional spot announcements at the conclusion of the "teaser" campaign. Announcements of this type do not comply with the Commission's sponsorship identification rules. All commercial matter must contain an explicit identification of the advertiser or the generally known trade or brand name of the goods being advertised. (See *Memorandum Opinion and Order In The Matter of Amendment of § 3.119(e) of the Commission's Rules*, FCC 59-939, 18 R.R. 1860.)

33. A station broadcasts an announcement or other material on behalf of a candidate for public office or on behalf of the proponents or opponents of a bond issue (or any other controversial issue of public importance). The station announces a "disclaimer" or states that the matter "was a paid political announcement." Such announcement per se does not comply with the sponsorship identification rule. The rule does not require that either of these type of announcement be made but rather that identification announcement be made which fully and fairly discloses the true identity of the person or persons or entity by whom or on whose behalf payment was made or promised, or from whom or on whose behalf services or other valuable consideration was furnished. If the station knows or by the exercise of reasonable diligence could know that a person or persons, or entity is acting on behalf of another, the announcement(s) shall identify the person(s) or entity on whose behalf such action is being taken. If the entity on whose behalf such action is being taken is a corporation, committee, association, or other group, the announcement(s) shall divulge the name of such group. Additionally, a station broadcasting any matter on behalf of such group shall make available for public inspection at the place which the station has designated that its file is available for inspection under Section 1.526 of the rules (the station's main studio or other accessible place in the community of the station's license) a list of the chief executive officers, members of the executive committee, or members of the board of directors of that entity. If the broadcast is network originated, the list may be retained at the network's headquarters office or at the location where the originating station maintains its public inspection file under Section 1.526.

34. Must the required sponsorship announcement on television broadcasts be made by visual means in order for it to be an "appropriate announcement" within the meaning of the Commission's rules?

Not necessarily. The Commission's rule does not contain any provision stating whether aural or visual or both types of announcements are required. The purpose of the rule is to provide a full and fair disclosure of the facts of sponsorship, and responsibility for determining whether a visual or aural announcement is appropriate lies with the licensee. (See *Commission Telegram to Mr. Bert Combs*, FCC Public Notice of April 9, 1959, Memo No. 71945).



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G. *Controversial Issues.*

35. (a) A trade association furnishes a television station with kinescope recordings of a Senate committee hearing on labor relations. The subject of the kinescope is a strike being conducted by a labor union. The station broadcasts the kinescope on a "sustaining" basis but does not announce the supplier of the film. The failure to make an appropriate announcement as to the party supplying the film is a violation of the Commission's sponsorship identification rules dealing with the presentation of program matter involving controversial issues of public importance. Moreover, the Commission requires that a licensee exercise due diligence in ascertaining the identity of the supplier of such program matter. An alert licensee should be on notice that expensive kinescope prints dealing with controversial issues are being paid for by someone and must make inquiry to determine the source of the films in order to make the required announcement. (See *KSTP, Inc.*, 17 R.R. 553 and *Storer Broadcasting Co.*, 17 R.R. 556a.) A station which has ascertained the source of kinescope is under an additional obligation to supply such information to any other station to which it furnishes the program.

(b) Same situation as above, except that the time for the program is sold to a sponsor (not the supplier of the film) and contains proper identification of the advertiser purchasing the program time. An additional announcement as to the supplier of the films is still required, for the reasons set forth above.

(c) Same situation as in (a) or (b), above, except that only excerpts from the film are used by a station in its news programs. An announcement as to the source of the films is required. (See *Westinghouse Broadcasting Co.*, 17 R.R. 556d).

36. A church group plans to film the proceedings of its national convention and distribute film clips "dealing with numerous matters of profound importance to members of (its) faith" in order to "disseminate to the American people information concerning its objectives and programs." The groups request a general waiver under section 317(d) of the Communications Act so that it need not "waste" any of the short periods of broadcast time donated to it by making sponsorship identification announcements. In the below-cited case, the Commission did not grant such a waiver because of the absence of information indicating that the subject matter of the clips was not controversial and because the alleged "loss" of a few seconds of air time was not of decisional significance vis-a-vis Congressional and Commission policy relating to issues of public importance. (See *Petition of National Council of Churches of Christ*, FCC 60-1418).

Adopted: May 1, 1963, and modified April 17, 1975.

FEDERAL COMMUNICATIONS COMMISSION
[SEAL]
VINCENT J. MULLINS, Secretary
[FR DOC 75-23720 Filed 9-8-75; 8:45 a.m.]



Pillsbury
Winthrop
Shaw
Pittman^{LLP}

Special
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PUBLIC NOTICE
Federal Communications Commission

FCC 88-175
37377
May 18, 1988

**COMMISSION WARNS LICENSEES ABOUT PAYOLA
AND UNDISCLOSED PROMOTION**

On February 25, 1988, four persons were indicted in United States District Court in Los Angeles, California, as a result of a two-year investigation of "payola" practices in the broadcast industry. One of those indicted is charged with having made "undisclosed payments from 1980 to 1985 in the form of cash and cocaine" to station personnel in order to secure airplay for certain records. These indictments make this a propitious time for us to remind broadcast licensees that payola is not only a violation of the United States Criminal Code, but may also subject broadcasters to sanctions under the Communications Act.

Payola is the unreported payment to, or acceptance by, employees of broadcast stations, program producers or program suppliers of any money, service or valuable consideration to achieve airplay for any programming. Section 507 of the Communications Act requires those persons who have paid, accepted, or agreed to pay or accept such payments to report that fact to the station licensee before the involved matter is broadcast. In turn, section 317 of the Act requires the licensee to announce that the matter contained in the program is paid for, and to disclose the identity of the person furnishing the money or other valuable consideration.

Both section 317(c) of the Act and section 73.1212(b) of the Commission's rules require that each licensee "exercise reasonable diligence to obtain from its employees, and from other persons with whom it deals" information to enable the licensee to comply with the sponsorship identification requirements of section 317 of the Act. The "reasonable diligence" standard can require a higher duty of care by stations whose formats or other circumstances make them more susceptible to payola. Thus, for example, we would expect stations that report to record charting services to demonstrate greater diligence to prevent improper conduct by its principals and employees than would a station with an all news format. It may fall short of "reasonable diligence" if the licensee of such a reporting station does nothing more than require its employees to execute affidavits stating that they will not violate laws and regulations prohibiting payola.

Failure to make the reports required by section 507 of the Act can subject the violator to criminal penalties of a fine of up to \$10,000 or imprisonment of up to one year, or both. Thus, the Department of Justice has primary jurisdiction for the enforcement of the law. See, e.g., *United States v. Vega*, 447 F.2d 698 (2d Cir. 1971). The Commission is cooperating with the Department of Justice by referring pertinent evidence that comes to our attention.

The Commission notes that licensees play a critical role in preventing payola, and the Commission's enforcement staff will investigate substantive allegations of payola that come to its attention. In many situations a station may be a victim of payola practices. Therefore, the Commission is willing to assist concerned



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stations by informally advising them as to whether a particular situation constitutes a potential rule or statutory violation. The Commission emphasizes, however, that a broadcaster's failure to comply with section 317 of the Act and 47 C.F.R. section 73.1212(b) may result in the imposition of administrative sanctions, including monetary forfeiture or initiation of revocation proceedings.

Action by the Commission May 18, 1988. Commissioners Patrick (Chairman), Quello and Dennis.



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