

# KPSQ-LP

## FCC AND LEGAL GUIDE

### THE FCC

**The FCC is the Federal Communications Commission**, established by Congress with the Communications Act of 1934. The FCC (among other things) **regulates content, ownership, and rules for using the airwaves**, which technically belong to the public. Radio and television stations broadcasting over the air are granted licenses to use the public radio wave spectrum by the FCC and must periodically renew their license and **prove that they are serving the public and following the FCC's rules**. **KPSQ-LP is a non-commercial, educational Low Power FM (LPFM) station**, generally following the same rules as most public radio or college stations.

**The FCC enforces rules by occasional random inspections and by investigating any and all public complaints. Each individual violation of an FCC rule can subject a station to a \$10,000 fine, up to a maximum \$325,000 for each violation of profanity/indecency rules!** There are also myriad other federal laws that come into play such as copyright and slander.

The following are some of the rules that you'll need to know and comply with in order to produce programs for KPSQ-LP:

### LEGAL ID

**The FCC requires broadcast stations to identify themselves in a unique way at the top of the hour, during a "natural break" in programming as close to the hour as possible.**

**Our official legal ID is exactly:**

**"KPSQ-LP Fayetteville"**

Just call letters and city of license together, no extra stuff in the middle. You can (and should) add things before or after the legal ID, though. Things like our tagline (TBD), the frequency (97.3 FM), our website (kpsq.org), request line, etc.

You should aim to air the legal ID as close as possible to the top of the hour by playing a recorded spot or saying it yourself. **If the ID can't be given exactly at the top of the hour because it would break the continuity of your program, it should still be given somewhere in the a ten minute window from 5 minutes before the top of the hour to 5 minutes after the hour.**

## **PROFANITY, INDECENCY, OBSCENITY**

According to the FCC, there are three types of prohibited language on public airwaves:

- It is a violation of federal law to air **obscene** programming at any time.
- It is also a violation of federal law to air **indecent** programming or **profane** language during certain hours.

In ascending order of severity:

**1) Indecent material depicts or describes acts or organs that are sexual or excretory in nature that the national “contemporary community standards” find to be “patently offensive.”** You can get fined just for puerile, lewd comments or jokes that go too far. Something like the show Loveline if there was no legitimate medical component to the show.

**2) Profanity is offensive language that amounts to a “nuisance”. There is no complete list of profane words from the FCC, but the following are definitely profane: shit, fuck, cunt, cock, tit, piss (as in, “take a piss,” not “pissed off”), pussy, clit, and twat – and any variation or combination thereof. There is no exception for “fleeting” expletives – i.e. Bono saying “fuck” at the Grammys – so any of these words airing even once could result in a fine.**

**3) Obscenity is not protected by the 1<sup>st</sup> Amendment and cannot be broadcast at any time. There is a 3-part test from the Supreme Court that is used to determine whether material is obscene:**

- A. The average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest;**
- B. Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and**
- C. Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. (This is called the LAPS test).**

**This essentially means something like pornography/porn audio or explicit erotic stories. Obscenity can be enforced by state criminal law – not just the FCC fine – so criminal penalties including jail time are possible for disseminating obscene material over the air.**

## **LANGUAGE**

Note that the FCC makes no distinction about the language of the broadcast, so whether you are airing something in English, German, French, Spanish, or any other language you must still follow the rules above.

## SAFE HARBOR

The courts have said that profanity and indecency cannot be banned entirely, but can be relegated to times when it is unlikely that children or those easily offended will be listening.

**Between the hours of 10pm to 6am, profanity and indecent material MAY be broadcast over the air without risk of an FCC fine. However, obscenity is NEVER allowed to be broadcast.**

This is known as “**Safe Harbor**,” a time when children are unlikely to be listening and the rules are relaxed.

If your show is late night/overnight **between the hours of 10pm and 6am**, you **may** air profane or indecent material, but **only with the prior approval of the programming committee**. DJs must apply for this exemption and be approved **before** airing any profane or indecent material.

## DISCLAIMER

If you are approved for an exemption to air material with profanity/indecency content during safe harbor, you must include the following disclaimer at the **top of each hour**:

***“The following program may contain content some may find offensive. Listener discretion is advised. If you have any concerns about this broadcast, please call our program manager at \_\_\_\_\_”***

## PAYOLA/PLUGOLA

**It’s very important that anyone affiliated with KPSQ does not engage in (or even appear to engage in) any kind of payola, plugola, commercial kickback, or any kind of financial or personal benefit as a result of their influence over programming at KPSQ.**

**KPSQ is a not-for-profit, non-commercial entity serving the community and we do not want to tarnish our or Omni Center’s image. Any use of KPSQ for financial gain without going through the underwriting process and DJs/producers clearly disclosing any conflicts to management is prohibited.**

## PAYOLA

Payola is the act of accepting money, services, or any other “consideration” in exchange for airing anything on the air without disclosure or following underwriting rules. Think of a “consideration” as a kind of compensation – this can be receiving cash, concert tickets, CDs, travel, food, games, etc. – anything of value - in exchange for broadcasting anything on the air. Typically this refers to music but it can be any content.

## **PLUGOLA**

Plugola is any mention on air of non-broadcast activities that can result in a benefit or consideration to an individual or the station in exchange for promotion of things like products, services, venues, concerts, etc. – again without following underwriting rules or disclosure.

Consideration in this context need not involve any actual monetary benefit, but can include merely increased exposure and attendance at an event a DJ will be involved in.

## **DISCLOSURE**

If you become aware of, or participate in, any activities that may even have the potential to run afoul of the payola/plugola rules either on air, you must bring it to the attention of station management in a timely manner as far in advance as possible so that KPSQ management can ensure that no one is engaging in payola or plugola, even unintentionally.

## **UNDERWRITING (NOT ADVERTISING)**

Underwriting is a form of sponsorship that non-commercial broadcasters use as an alternative to traditional commercial advertising so we can avoid fines from the FCC. Underwriting is essentially an acknowledgement or mention of a sponsor in return for their monetary donation to the station that is explicitly disclosed on air.

The biggest way it differs from commercial advertising is that it cannot use language the FCC calls a “call to action” – language that directly asks or commands the listener to go somewhere, do something, or otherwise act based on the sponsor’s message.

If you are looking into finding sponsors for your programs you need to be aware of the following rules about underwriting.

On-air acknowledgement of an Underwriter **can only include:**

- 1) Name of Business or Person
  - 2) Address
  - 3) Phone Number and/or Website
  - 4) Hours of Operation
  - 5) Value neutral, factual descriptions of a product line or service that is part of their regular business
  - 6) Logo Phrase (only if it is not a call to action or other qualitative/comparative statement)
- There are additional exemptions for non-profits.

Note that all **underwriting must be approved by the KPSQ underwriting sub-committee.**

## PROHIBITED LANGUAGE

**Calls to Action** - saying things like "you should go to the concert at Flubadub's" or "go buy this cd"

**Qualitative or Comparative Language** - saying things like "Pizza Plaza has the best pizza in town" or any other wording that seeks to make a business sound better than their competition

**Price Information or Specials** - saying things like "\$1.49 longnecks at Shadow Gorge tonight" or even saying that they have specials

**Editorializing About For-Profit Entities** - saying things like "KPSQ loves Scotch Bonnet's"

It also **cannot include** music beds/background music, any lottery promotion or political endorsements, and is generally less than 30 seconds.

## CALLS TO ACTION

One of the major differences between a non-commercial station like KPSQ and commercial stations is that we are prohibited by the FCC from issuing calls to action. A call to action is when a programmer asks, urges, or suggests that the listener should perform some task that could result in a for-profit business making money.

Calls to action include:

The host urging the listener to buy a record

The host urging the listener to go to a concert or performance

The host mentioning the price of a record or concert ticket

The host urging the listener to go to a certain store or venue

The host urging listeners to boycott a company, event, etc.

The host urging listeners on the air to take a specific political action

Calls to action are especially important to watch out for when doing an in-studio interview with a band or event planner. You are allowed to give basic information about an event, but not directly tell listeners to attend. Below are examples of what does and does not constitute a call to action. Some examples are to help illustrate what is legal or illegal, and why:

*"This is the latest single from The Future Kings of Nowhere." – Legal. You are just pre-selling a song.*

*"That was the Avett Brothers. Their new album comes out next Tuesday." – Legal. You are only providing information.*

"That was Annuals. Their new album comes out next Tuesday. You should go buy it at School Kids Records." – *Illegal on several levels. You are urging the listener to make a purchase, as well as mentioning a specific business.*

"That was Future Islands. They are playing tonight at Cat's Cradle." – *Legal. Again, you are only providing information.*

"That was Inflowential. I saw them last week at Cat's Cradle and they were awesome." – *Legal. You can mention a business on the air in this way. But if you find yourself constantly mentioning a business, you are bordering on plugola.*

"I have the Rosebuds here with me in the studio. They're playing at the Lincoln Theatre and we have a pair of tickets to give to the second caller." – *Legal. This is just a giveaway.*

These are the speakers who will be at the event. – *Legal. You are just pre-selling an event.*

"That was Jane Doe. She will be speaking more about this topic next Tuesday at a fund raiser for Free the Animals, and you should go support the cause." – *Illegal on several levels. You are urging the listener to make a donation, as well as mentioning a specific business.*

**Mentioning the price of a concert ticket or the existence of discounts (such as student discounts) is prohibited by the FCC. This is true even if an event is free.** Free is considered a price by the FCC. It is important to keep this in mind for everyday broadcasting – it is an easy slip to make in the course of interviews or announcements during programs.

**However, it is permissible to give price information for an item or event benefiting KPSQ alone.**

**KPSQ does not actually "sell" things or tickets – funds obtained this way are legally considered donations to KPSQ and should be referred to as that.**

**KPSQ can air public service announcements for other noncommercial organizations but cannot air calls to action for support or solicitations on their behalf.**

**If KPSQ is listed as a co-sponsor of an event,** consider who the primary beneficiary is before issuing any calls to action.

## **DEFAMATION OF CHARACTER, LIBEL, SLANDER**

**Defamation of character is essentially making false statements that harm someone's reputation.** This is a potentially litigious matter and both you and KPSQ could be sued in civil court if you break these rules. So potentially libelous statements should be avoided.

Defamation can fall under **libel** – generally this refers to printed words, but is also the term used for defamation over broadcast, or under **slander** – spoken defamation.

These are defenses to defamation:

- **Truth** – something cannot be libel/slander if it is true.
- **The allegedly defamatory statement was merely a statement of opinion.** If a statement can't be proved or disproved it is an opinion and is protected speech so long as the opinion isn't just a thinly veiled way to make a defamatory statement.
- **Consent to the publication of the allegedly defamatory statement.** Someone can't consent to publication of something and then also try to sue for defamation.
- **Absolute privilege** – only in judicial or legislative contexts, or in spousal situations.
- **Qualified privilege** – fair criticism e.g. in movie/music reviews, other lower governmental/legislative proceedings, statements to warn others about a harm or danger, etc.
- **Retraction of the allegedly defamatory statement.** Retraction of the defamatory statement may be a defense but let's not ever get to this stage with any KPSQ content.

If untrue things are said, a potential suit would have to show "actual malice" or negligence to succeed.

Note that private citizens enjoy far more protections against defamation than do public figures or corporations. **Never air any dirty laundry on KPSQ and never use public airwaves to target a private citizen or business.**

Any opinion-based shows will be required to air a disclaimer saying "**This program does not necessarily represent the opinions of KPSQ or the Omni Center for Peace and Justice.**"

For those who are going to be engaged in any journalistic pursuits or investigative news on KPSQ, we hope to provide more training on how to conduct high-quality journalism.

## **ELECTION BROADCASTING**

Both the FCC and the IRS impose strict regulations on election broadcasting due to our status as a non-commercial radio station. *We will prepare an Election Broadcasting rules addendum before KPSQ goes on the air. For now, there are three important points to know.*

No non-commercial educational broadcasting stations may support or oppose any candidate for political office. **Never endorse or oppose a candidate or ballot initiative on the air!**

Non-commercial stations are prohibited from airing political ads but may broadcast election material for which they charge nothing.

Broadcasters will give all candidates "equal opportunities" to use broadcast stations.

## **CONTESTS**

The FCC has strict rules on contests or any chance-related giveaways or drawings. Any contest or giveaway must be cleared with the programming committee or other appropriate committees before being aired or posted online. Typically you must read the full contest rules at the start of any contest and at regular intervals throughout the contest. Contest rules may be referred to online (e.g., at [kpsq.org/rules](http://kpsq.org/rules)) outside of these regular intervals and outside the beginning of the contest.

All rules must be clearly stated and defined on air. State/federal law and entities like the FTC (Federal Trade Commission) also requires even off-air/online contests to follow certain rules such as not requiring people to “like” a Facebook post to enter a contest.

More to come on this as we get on the air, just be aware that any contests, drawings, giveaways, or any other chance or skill-based contests need to be cleared with the programming committee prior to any attempts to do them.

## **PUBLIC INSPECTION FILE**

The FCC mandates that we have a Public Inspection File available to the public at our main studio location once we start broadcasting. This file will have our license, by-laws, and other information in it for anyone in the public to view in person, for any reason, at our main studio location.

This will likely only be asked for during the course of an FCC inspection but anyone may ask to see it at any time by providing only their name and we are legally required to show it to them without requiring any further information. They may only view it at the station itself, so provide a seat and desk for them to read at and immediately call the station manager, program manager, or operations manager after providing the file to someone to read at the station.

The FCC has been going after full-power stations and fining them very heavily for any failures related to the public inspection file so it's important to allow the public to view this and keep it updated properly to avoid any risk of \$10,000+ FCC fines.

## **STREAMING MUSIC LICENSE RULES**

Per federal law/Sound Exchange streaming music license rules, we have to follow restrictions on streaming online thanks to a 1998 law called the Digital Millennium Copyright Act (DMCA):

- No pre-announcing when a specific song will play (next upcoming song/artist is OK, but not more than that and no advance playlists)
- No more than 3 songs in a row by the same artist
- Not more than 4 songs by same artist in a 3 hour period



- Not more than 3 songs from the same CD in a 3 hour period
- No more than 2 songs from same CD in a row
- We must identify the song, artist and CD title in writing on the website/media played as the song is being played. If we have a playlist log system, that means you must enter your tracks live in real time during your show.

## **PODCASTS**

Podcasts containing music are not allowed to be shared without express approval of each recording copyright holder. You would be required to obtain both mechanical rights and master use rights in order to distribute music via podcasts, and neither you nor KPSQ have the financial or time resources to do this.

**Only 100% talk shows may be distributed via podcast.**

## **HOAXES**

You may not broadcast any hoaxes on air – think of the 1938 War of the Worlds broadcast about an alien invasion that caused panic across the country.

## **CONSENT**

Anyone on air must consent to being on air prior to being on air. You must get their approval in writing or verbally in order to use their aural likeness in any form. If doing an interview, get them to say and spell their name and say they understand and consent to the recording being used on air. Minors may require parental approval in addition to their consent in order to be on air.

If you want to take phone calls on air, you must get prior approval from the programming committee. If approved and you take calls, it is understood that callers intend to be on air but you must say **“you’re on the air”** when taking any live calls on air. Any call-ins waiting to be placed on air should be given a cue and told that when they hear that cue they will be on air.

**IN CONCLUSION: YOU CANNOT AIR ANYONE’S VOICE, WORDS, OR MUSIC WITHOUT THEIR CONSENT.**

## **EMERGENCY ALERT SYSTEM (EAS)**

All low-power FM stations (LPFMs) like KPSQ are required to receive emergency alerts from other stations and forward them on air. We will also be forwarding any National Weather Service (NWS) alerts for tornado warnings and other extremely serious alerts affecting our area.

This will be set up to happen automatically, but you need to be aware that we are legally required to forward alerts for federal and state emergencies and any attempts to tamper with EAS equipment will be grounds for immediate dismissal from KPSQ.

For further questions concerning FCC rules you can go to [broadcastlawblog.com](http://broadcastlawblog.com)

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