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**Warning: This handbook contains words and material that are offensive.**

## **The Federal Communications Commission**

### **What is the Federal Communications Commission?**

The Federal Communications Commission (FCC) is the governmental regulatory body that oversees the media. A small station like KOOP, with a limited budget, pays close attention to such rules due to the severe penalties incurred when infractions occur. **It is essential for programmers and volunteers to be well versed in FCC rules and regulations.**

### **FCC Rules and Regulations**

This section is intended to serve as a guide to the FCC's rules regarding the operation of a non-commercial radio station and how KOOP interprets these rules. This is not a legal document. Programmers are encouraged to read through the FCC rules and regulations themselves, which can be found online at [www.fcc.gov](http://www.fcc.gov). A more accessible interpretation of the FCC regulations is available in the form of the *Public Radio Legal Handbook*, which is listed under the Files section of the KOOP Yahoo Groups page.

## Obscenity, Indecency, & KOOP Policy

Note: This section uses language which some may find offensive. KOOP uses this language to educate KOOP volunteers on FCC requirements, not to offend.

Every radio station interprets FCC regulations in a way it thinks is most compatible with its operations and understanding of the law. KOOP, with its small budget and relatively small size, interprets FCC rules more cautiously than other non-commercial stations. As a KOOP programmer, you are expected to follow KOOP's policies, even if other non-commercial stations do things differently.

The federal law, which makes it a crime to broadcast indecent or obscene material, reads as follows:

“Whoever utters any obscene, indecent, or profane language by means of radio communications shall be fined not more than \$10,000, or imprisoned not more than two years, or both.” (18 U.S.C., Section 1464).

**Recent fines have exceeded \$500,000.**

### What is Obscenity and Indecency?

#### Obscenity

Merriam-Webster defines obscene as “repulsive by reason of crass disregard of moral or ethical principles.”

Synonyms – smutty, raunchy, crude

Obscenity is defined by the Supreme Court as “material that depicts or describes sexual or excretory acts in an offensive or especially descriptive way, that isn't moral in light of 'contemporary community standards,' and has no serious literary, artistic, political or scientific value.

The law is clear: **Obscene material can never be broadcast on the radio.**

#### Indecency

Merriam-Webster defines Indecent as “grossly improper or offensive.”

Synonyms –Profanity, Lewd, Vulgarity

Indecent material is “language or material that depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs, at times of the day when there is a reasonable risk that children might be in the audience.”

It is legal to **broadcast indecent material only during “Safe Harbor”**

## What is the Difference between Obscenity and Indecency?

Indecencies and obscenity have similar definitions, but indecencies are generally a single word, often also considered a profanity but not always. For something to be deemed obscene it needs to have an overall sense or intention of sexuality or moral offensiveness.

An obscene song may contain indecent words.

For something to be considered obscene, the content has to be taken as a whole, so critics can't simply point to one section (a nasty or a particularly offensive part), if, in fact, the work has artistic value.

Obscenity standards are set by federal, state, or local governments. There is no first amendment protection for obscene speech.

Community standards are obviously different in different communities. The FCC doesn't decide what Austin's community standard is, but the FCC will investigate any and all complaints from the Austin community about radio content. It's best to play it safe.

Indecency is more loosely defined than obscenity, but there are important distinctions

- There is no first amendment protection for obscene speech
- There is a right to indecent speech
- There is no right to broadcast indecent material to children
- One word in a song can be indecent, and that's all it takes for a fine

## The Seven Indecent Word Myth

The FCC has *never* provided a list of "indecent" words that might be subject to fine. Instead, there are court rulings that give an overview of what the FCC has, in the past, found indecent. The general rule for indecent language is the seven "Pacifica words", which are so-called because of the court case that defined FCC policy on obscenity and indecency.

The words are *shit, piss, fuck, cunt, motherfucker, cocksucker, and tit*. Any song containing these words is considered indecent, but indecency is not limited to these seven words. In the interest of being safe, KOOP does not allow the following words to be used on air *asshole, cock (when it implies "penis"), dick (when it implies "penis"), pussy (when it implies "vagina"), snatch (when it implies "vagina"), and twat*.

In addition, KOOP would like programmers to be careful in the use of the following words: *ass, damn, bitch, bastard, goddamn, hell, and racial epithets*.

Gratuitous use of these words can be construed as indecent or obscene.

So KOOP policy is to use them sparingly, if at all.

About Indecent Words – The reason that words are considered "indecent" is they refer to graphic sexual acts, excretory functions, or describe/name the sexual organs. As you have read in the law above, they can be subject to fines and imprisonment.

### **Social Awareness and Slurs**

At KOOP, we embrace the diversity of our members, listeners, and volunteers. We encourage a harassment free environment and strive to reflect this in our programming. It is critical that programmers carefully consider all the material they air. The use of slurs which denigrate a group or individual are deemed offensive and unacceptable. Like constraints on obscenity and profanity, KOOP requires that programmers be responsible for editing or dumping any slurs in the recordings they air, or in the speech of on-air guests. If you have any questions or concerns about specifics, please contact the Executive Director.

### **Other Languages**

The FCC acts on specific complaints; an obscenity or indecency in any language is illegal. If a programmer is broadcasting songs sung in a foreign language they should be aware of what the lyrics are, more likely than not someone listening will understand them.

### **Safe Harbor**

The time period, called “Safe Harbor,” is when indecent, but never obscene, material may be legally played i.e. between 10PM and 6AM. This doesn’t apply to KOOP since we are never on the FM airwaves at these times. In effect, **indecent material can never be played on KOOP.**

### **Wordplay and Double Entendre**

The FCC has fined broadcasters for talking about sex or excretion (or, sometimes simply naming the body parts); programmers must be careful about jokes or spoofs, which imply sexual or excretory activities. An example of a prohibited double entendre is:

*Liberace was great on the piano, but he sucked on the organ.*

KOOP broadcasters should be aware that songs that have this kind of wordplay, as well as programmers or guests using such language, are subject to FCC rules.

An important distinction is that something can be **obscene** without being **indecent**. For example, a song can describe excretory function or sexual activities without using any indecent language.

KOOP’s musical library contains “reviews” on the materials that point out if FCC violations occur. Programmers must always listen to their own materials prior to playing them on the air, to see if they violate FCC rules.

Indecencies can be edited out of songs before being broadcast using either a computer with audio software at home or KOOP’s production studios.

## **Guests and Indecencies**

Remember, every programmer is personally responsible for the behavior of their guests while in the KOOP studios including what they may say over the air. Always brief your guests (both those live in the studio and those you are interviewing over the phone) on the FCC regulations and KOOP policies discussed here (obscenity, indecency, calls to action, non-commercialism, plugola, slander, etc.) before putting them on the air.

## **Worst Case Scenario**

What if a programmer plays a song with or a guest says something indecent or obscene?

- Use the profanity delay (dump button) to prevent it from being aired.
- Log the occurrence on the Program Log in the Error section.
  - Indicate the time of the error and how you corrected it i.e. used the dump.
  - If the FCC investigates KOOP will be worse off if there is not a record of the infraction.
- Do not draw attention to the mistake. Don't immediately get on the air to apologize about it. Write it down and don't mention it again. Specifically, if one bad word is said, don't stop the record. But if another one is played, fade it out, and play another song.
  - Do not identify the station after the mistake. If it happens in a song, play another song before going back on air or before giving a station ID.
  - Do not play an underwriting announcement after airing an indecency or obscenity.

If a guest lets a bad word slip and you believe it's an honest mistake, make sure to log it and don't draw attention to it. Again, attempt to prevent it from airing by using the profanity delay (dump button) feature. If you think the guest did it deliberately, or if the guest repeats it, take him or her off the air immediately.

Always remember to write any infraction in the Program Log. This shows the FCC that we tried in good faith to prevent the infraction.

## **KOOP as a Non-Commercial Station**

### **What Non-Commercial Means**

KOOP has a non-commercial license, which means we cannot run advertisements or other commercial-oriented material. In the United States, the FM band between 88 and 92 MHz is allocated for educational and non-commercial use.

### **What Makes Something Non-commercial**

Providing only factual, unbiased information is non-commercial. If a for-profit or non-profit organization other than KOOP will directly make money from the support or announcement, we cannot air or say it. This is information that must be passed on to visitors or guests of the station.

### **Call to Action**

This is the common term for an announcement, recorded or spoken, which constitutes support or promotion, leading to profit, for an entity other than KOOP. This means urging listeners, through on-air breaks or through guests, to patronize any establishment, for-profit or non-profit, which will result in monetary gain for that establishment.

#### Components of Calls to Action

A call to action has three components:

- Qualitative Language – Language you hear in commercials, words like “best” or phrases like “the creamiest butter,” “a taste sensation,” “everything goes better with beer”
- Imperative Sentences – “Check it out!” “Don’t miss it!” “You better be there!”
- Price – Also including “free” or equivalents thereof. “Open bar”, “happy hour”, “unpaid admission”, “no cost to get in”. Qualifiers like “low”, “cheap”, “affordable”, “discount”, etc. are similarly not allowed.

#### Underwriting

KOOP can air a kind of advertising called underwriting. The FCC components of underwriting are:

- Logograms and slogans that identify, but do not promote: “Austin-owned and independent”
- Location and contact information
- Value-neutral descriptions of a product line or service “organic”
- Names, trade names, and product service listings

You’ve heard underwriting announcements before. They usually begin, “Support for KOOP comes from. . .” and are entirely legal.

**KOOP can:**

- Air unpaid announcements regarding for-profit entities. If KOOP determines these announcements are in the public interest (e.g. calendar events).
- Air unpaid or paid announcements regarding nonprofit entities. (Of course, any trade or monetary exchange must be cleared with KOOP management.)
- Air the price information of any of KOOP's own products, events and services.
- Announce the fundraising activities of nonprofit entities without substantially altering the regular programming of the station.

**KOOP Cannot:**

- Air price information (including announcing something as "free") of any entity (profit or nonprofit) outside KOOP. This includes announcements concerning the rate of interest, happy hours, or other indications of savings or value associated with a product.
- Urge the listener to patronize business or attend a function not sponsored by KOOP.
- Air announcements containing an inducement to buy, sell, rent or lease.
- Air announcements containing comparative or qualitative language.
- Conduct fundraising activities for any entity other than the station itself.

**KOOP Studios**

- Cannot be used to make profits for people/groups other than of KOOP
- KOOP has been given grants to buy and build much of the broadcast studios. Conditioned by these grants KOOP's equipment cannot be used for outside commercial gain. Audio produced on KOOP equipment is the property of KOOP and cannot be sold by anyone but KOOP
- KOOP can rent studio time and use of the equipment, but this must be arranged with the Executive Director

**What's A Programmer to Do?**

There seem to be a lot rules about what a programmer can or cannot say. A programmer can do one thing with impunity – give information. A programmer can play a song or pass along information about an event without qualifying it.

For example, talking about a band and telling where the band is playing without saying, "You should go." This announcement would not be a call to action: "Sasquatch Algebra Teacher is playing tonight at Antone's, doors open at 8:00 pm and the show starts at 9:00. Antone's is located at 213 West 5th Street and the show is all ages. For more information or to get tickets you can visit [antones.net](http://antones.net). For those who have never heard the Sasquatch Algebra Teacher before here's their song 'Practice Party.'"

## **Programmers & The Public**

### **Programmer as Critic**

Playing a song you really like by a performer that's in town or extolling the virtues of an album are generally free of call to action restrictions because it qualifies as criticism. The same goes for institutions and organizations. The thin line is when such criticism accompanies information and the criticism implies support. If what you as a programmer are saying, even in just giving information, would not be out of place in a commercial, it may be a call to action.

### **Unfair Advantage**

Programmers have a high degree of visibility and access to people and organizations that may be exploited for personal gain. If a programmer is paid to participate in an event or activity outside the station the station may provide only "ordinary publicity" (one or two mentions) to the event or activity. The programmer may not use the "unfair advantage" of broadcast involvement to gain publicity for the event/activity. This means not plugging bands you're in or organizations you belong to if you make money from those activities.

### **Plugola**

Plugola is the use or promotion on the air of goods or services in which the person responsible for including the promotional material in the broadcast, such as the licensee itself or a program producer or performer has a financial interest.

KOOP's policy is that an announcer must clear with the station airing any material which he or she has a financial interest in outside the station. Please talk to the Executive Director for any clarification you might need. The Executive Director can suspend or cancel a show that is using the airwaves to make money for the programmer or any organization he or she is involved in.

In addition, KOOP encourages programmers to inform listeners if they are somehow involved in the music they're playing or the organization, event, or website they're supporting. KOOP policy encourages openness to everyone about our actions in the communities we're supporting

### **Payola**

Accepting cash, travel, meals or other benefits in exchange for on-air promotion of an outside entity. There is a large fine (\$10,000 and up to one year in jail) for committing payola. Legendary disc jockey Alan Freed (who is credited for calling the music he liked "Rock & Roll") is the greatest example of this. Though he claimed record companies were giving him money for "consultation," Freed was charged (and ultimately fined) for accepting money to play certain records. This is payola.

## **Slander and Libel**

These terms constitute “defamation.” Defamation is the publication or broadcast of untrue statements about someone else that injure that person's reputation or character. Slander is oral defamation and libel is written defamation.

Libel is also used to refer to defamation that is in picture or any other permanent visual form. Obviously slander is KOOP's main concern, but libel can come into play with flyers you might make for your show or a benefit involving KOOP. Slander in general tends to apply mainly to non-public figures.

Here is some information to consider:

A public figure may be an elected or appointed official (a politician) or someone who has stepped into a public controversy (e.g., movie stars, TV stars, star athletes). Public figures have a "harder row to hoe" than the average person since they must prove that the party defaming them knew the statements were false, made them with actual malice, or was negligent in saying or writing them. Proving these elements makes the chance of a successful lawsuit slim. This explains why satires on public figures are popular and don't get too many courtroom responses.

## **KOOP's Policy on Slander**

- If you have any question about the authenticity or verity of information you intend to broadcast, don't broadcast it. Period!
- Pay attention to what callers or guests say. If you think it constitutes slander, get them off the air immediately.
- If something happens, write it down! Like with obscenity or indecency, show that we were aware of the infraction and made a good faith effort to stop it.

## **Insults and Epithets**

The law has generally seen an isolated insult or an epithet (defined in the present context as a disparaging or abusive word or phrase) as an outburst of emotion, with no real substance except to show dislike. Generally they do not constitute slander.

The important thing about all this is that you have a right to express your opinion, but it has to be simply that, an opinion, and cannot contain specific facts that can be proved untrue.

## **Not the Opinion of KOOP**

### **Disclaimers**

If you're going to express views or have guests that are expressing their views, you need to make it perfectly clear that those views are not necessarily the views of KOOP. KOOP itself will not express editorial views without the consent of the Board of Directors. You will want to use a disclaimer, if you do express your own views:

*"The views expressed here are not necessarily the views of KOOP Radio or its Board of Directors, volunteers, staff, or underwriters."*

Saying this before, during, and after one's show is always a good idea. If you think the subject matter of your show may be controversial, a disclaimer might also be necessary:

*"The following program contains subject matter that some people might find objectionable. It is solely the responsibility of the show and does not necessarily reflect the views of KOOP. Sensitive listeners may wish to tune out at this time."*

### **Editorials**

KOOP does not editorialize as a station. We cannot endorse a political candidate or pending legislation. As an individual, you can make editorial statements, as can your guests or callers, but in cases like this, a programmer should air a disclaimer so KOOP as a station is not thought to hold the particular view.

### **Lotteries and Giveaways**

Lotteries are prohibited by the FCC "except where lotteries authorized are not otherwise prohibited by the state in which they are conducted, and which are conducted by a not-for-profit organization".

Additionally, the Texas State Charitable Gaming law states that "a qualified organization may conduct a raffle" in accordance with certain conditions. Due to these complexities of state law and FCC policy regarding lottery announcements and broadcasts, all such activity should be presented to the Executive or Development directors before airing, unless their approval is implicit, such as a KOOP raffles or fundraisers.

How is a lottery different from an on-air, call-in giveaway? If properly conducted, they are not considered lotteries. You can increase some element of chance (such as saying the fourth caller will win) as long as there is no financial consideration involved.

## Copyright & The Broadcast World

### Copyright Laws

Most material programmers play or read on the air is commercially released and is protected by copyright law. When published material, written or recorded, has a copyright it cannot be broadcast without permission from the copyright owner. Purchasing or owning a physical copy of a commercially released CD, record, or digital download constitutes permission for broadcasting.

Online broadcasters are not allowed to broadcast more than three consecutive tracks from any album or artist; this includes soundtracks and compilations.

With print media such as books and news articles, excerpts or passages maybe read on air but generally not the entire piece. Material published before 1923 are copyright free and considered in the public domain.

### Fair Use

Fair use is a U.S. doctrine that considers the broadcast, parody, or use of copyrighted media such as audio, written, film, television, etc., without getting the copyright holders consent to not be a copyright infringement. For a media usage to be considered "fair use" it must not negatively affect the copyright holder's ability to sell or market the media in the community.

### Non-Commercial Recording

Demos and bootlegs are the most common non-commercial recordings. These can be used if the artist on the recording has given you permission, and the songs performed are their own original works (not covers). Receiving a demo in the mail from the artist can be considered permission. Found recording and field recordings can also be broadcast, anytime that someone knowingly records themselves; this is considered legal consent for the recording to be broadcast i.e. answering machines, but KOOP radio would prefer that any such recordings not be used to insult or defame anyone.

### Broadcasting Telephone Calls

The FCC's policy on airing telephone calls is:

"Before recording a telephone conversation for broadcast or broadcasting a telephone conversation live, a station must inform any party to the call of its intention to broadcast the conversation. However, this does not apply to conversations whose broadcast can reasonably be presumed (for example, telephone calls to programs where the station customarily broadcasts the calls)."

KOOP requires that you either ask the caller *before airing the call* whether he or she minds being put on air or announce it as you take calls. "KOOP, you're on the air" is considered adequate announcement that the call is being broadcast.

## **Public Officials & You**

### **Interviews with Candidates for Public Office**

If you have an interview with, or broadcast information about, a candidate for federal office, you are required by law to offer equal time to opposition candidates on the ballot for the same office. Such equal time offers must be documented, preferably by letter, and the letters must be retained by the station for two years in the Public File.

Because of this requirement, it's a good idea to conduct interviews after primary elections, so you won't have to interview every candidate for office.

### **The Fairness Doctrine**

The FCC abandoned the Fairness Doctrine in the late 1980's, but KOOP still thinks it's a great idea, so we encourage programmers to follow it. News and public affairs programmers are encouraged to invite people with differing viewpoints to come to the station and air their views to present a balance of opinion on controversial issues. These invitations should include an offer of "equal time," about the same time of day, the same day of the week, and the same length of airtime.

## **Playlist Logging & Quarterly Reports**

### **KOOP's Playlist Logging Policy**

KOOP is required by federal law (not FCC) to keep records of music played on the airwaves and webstream and submit reports quarterly. To facilitate these reporting requirements, KOOP uses Radioactivity.

All programmers are required to log the music they play either before, during or after each show. Each KOOP programmer presenting a show is known as the “programmer of log” and is responsible for the timely reporting of their playlists in accordance with KOOP policy. Programmers will receive a warning if they do not post playlists, and be suspended at the end of the quarter if not corrected.

Programmers can receive up to fifteen minutes of volunteer time for a one-hour program or thirty minutes for a longer program, for each playlist they enter.

### **Quarterly Programming Reports**

Every three months, every programmer who hosts a News & Public Affairs show must prepare a report listing community issues covered during the preceding three months. The report must briefly describe both the issue and the date and time that each such program was aired. A quarterly report looks similar to this:

2008Q2 Report for “A Neighborly Conversation” airing Wednesdays from 12PM to 1PM unless otherwise noted.

Apr 2: City Council - Place 3 Candidates Forum

Apr 9: City Council - Place 4 Candidates Forum

Apr 16: 12:30 PM to 1:00PM: Climate Change in Austin

Apr 23: B.E.A.T. A Discussion on Racism

This report must be submitted to the Executive Director every quarter. A reminder of this will usually be sent to the mailing list. It's a good idea to keep an ongoing list similar to this and update it after each show so that you're prepared to submit it at the end of each quarter. Once these reports are submitted to the Executive Director, KOOP will keep them (“issues/programs lists”) in its Public File until the next grant of the station renewal application has become final.