



COMMUNICATIONS &  
INFORMATION TECHNOLOGY  
ALERT



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“LAWMAKERS, LAW ENFORCERS, AND REGULATORS ARE TURNING BRIGHT SPOTLIGHTS ON PAY-FOR-PLAY PRACTICES IN THE RADIO AND TELEVISION INDUSTRIES.”

RECENT DEVELOPMENTS UNDERSCORE THE IMPORTANCE OF COMPLIANCE WITH THE FCC’S PAYOLA AND SPONSORSHIP IDENTIFICATION RULES

*Sponsorship identification* is a legal requirement to inform the audience that airtime is purchased, and by whom. *Payola* is an undisclosed payment for airtime for which no sponsorship identification is given.

Under state law, payments for airplay, disclosed or not, may constitute bribery.

Lawmakers, law enforcers, and regulators are turning bright spotlights on pay-for-play practices in the radio and television industries.

Former New York State Attorney General Eliot Spitzer drew headlines with his investigation of record companies and broadcasters. Sony BMG, Warner Music Group Corp., Universal Music, and EMI Music North America entered settlements admitting that their employees made illegal payments to radio station staff in exchange for airplay. CBS Radio and Entercom Communications Corp. entered consent decrees to limit their activities and paid millions to be distributed to New York State non-profit entities to fund programs on music education. Those records have been turned over to the FCC.

At the time of this writing, the FCC was reported to be close to entering settlements with CBS Radio, Clear Channel Communications, Inc., Entercom Communications Corp., and Citadel Broadcasting Corp. that include anti-payola statements and their promise to provide a substantial amount of airtime to independent labels and local articles.

The FCC has issued the attached Fact Sheet on the payola rules. It requires licensees to exercise “reasonable diligence” to make themselves aware of employees’ possible pecuniary interests in broadcast content and to take continuing steps to discover and prevent payola. The Commission has pointed out that “reasonable diligence” is a standard that may vary among different stations. It could require a “higher duty of care” by stations whose formats or other situations make them more susceptible to payola. For example, stations that report to record charting services or use independent promoters need to be more diligent than stations with all-news formats.

Federal law requires any person who agrees to receive anything of value in return for broadcasting anything, to report it to his or employer before the material is broadcast. Failure to report can result in a fine of up to \$10,000 and up to a year in prison. The law exists to enable the broadcaster to comply with sponsor ID requirements.

As one control device, stations may consider monitoring and requiring station staff to report contact with suppliers of music and program material. Whether to monitor other means of communication, such as emails, may be considered. Additionally, stations may implement a regular policy designed to make certain that all staff are familiar with the law and are in compliance with its requirements.

One way to reflect the staff's familiarity and compliance with legal requirements is periodically to review the requirements with them and confirm such communications. Attached is a form of memorandum that may be distributed to employees responsible for airing broadcast matter, to secure information about their outside business interests and activities. The memorandum includes a sample affidavit for review and signature by such station employees each time the memorandum is distributed.

For further information, please contact GSB attorneys Melodie A. Virtue at [mvirtue@gsblaw.com](mailto:mvirtue@gsblaw.com) or 202.298.2527, or John Wells King at [jking@gsblaw.com](mailto:jking@gsblaw.com) or 202.298.2520.

**Attachments:**

1. FCC Consumer Facts: The FCC's Payola Rules
2. Sample Employee Memorandum on Payola
3. Form of Affidavit of Compliance with Payola Regulations
4. Sections 317 and 507 of the Communications Act of 1934, as amended
5. Section 73.1212 of the FCC's Rules and Regulations

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COMMUNICATIONS & INFORMATION TECHNOLOGY ALERT BY GARVEY SCHUBERT BARER.

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# FCC Consumer Facts

## Background

Federal law, including Federal Communications Commission (FCC) rules, requires that employees of broadcast stations, program producers, program suppliers and others who have accepted or agreed to receive payments, services, or other valuable consideration for airing material must disclose this fact. Disclosure provides broadcasters the information they need to let their audiences know if material was paid for, and by whom.

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## What the Rules Say

The Communications Act and the FCC's rules require that:

- When a broadcast licensee has received or been promised payment for the airing of program material, then, at the time of the airing, the station must disclose that fact and identify who paid for or promised to pay for the material. All sponsored material must be explicitly identified at the time of broadcast as paid for and by whom, except when it is clear that the mention of a product or service constitutes sponsorship identification.
- Any broadcast station employee who has accepted or agreed to accept payment for the airing of program material, and the person making or promising to make the payment, must disclose this information to the station prior to the airing of the program.
- Any person involved in the supply, production or preparation of a program who receives or agrees to receive, or makes or promises to make payment for the airing of program material, or knows of such arrangements, must disclose this information prior to the airing of the program. Broadcast licensees must make reasonable efforts to obtain from their employees and others they deal with for program material the information necessary to make the required sponsorship identification announcements.
- The information must be provided up the chain of production and distribution before the time of broadcast, so the station can air the required disclosure.
- These rules apply to all kinds of program material aired over broadcast radio and television stations. Some of the rules also may apply to cablecasts.

## What You Can Do if You Think the Rules Have Been Violated

The FCC recognizes that broadcasters play a critical role in providing information to the communities and audiences they serve.

If you suspect a broadcaster has violated the FCC's rules, you can file a complaint

with the FCC. To assist the FCC in its review, the complaint should include the following:

- Details of the content of the broadcast;
- The call sign of the broadcast station involved;
- The date and time of the broadcast;
- Why you believe that payment or other consideration was provided, requiring the airing of a sponsorship identification announcement;
- Whether any sponsorship identification was provided and, if so, what was stated; and
- Any documents that you believe establish any of the foregoing.

Send your complaint by mail to:

Federal Communications Commission  
Enforcement Bureau  
Investigations and Hearings Division  
445 12th Street, SW, Room 4-C330  
Washington, DC 20554

You can also e-mail your complaint to the  
FCC's Consumer & Governmental Affairs Bureau at

[fccinfo@fcc.gov](mailto:fccinfo@fcc.gov),

or

by telephone at

1-888-CALL-FCC (1-888-225-5322) voice

or

1-888-TELL-FCC (1-888-835-5322) TTY.

To assist the FCC in processing your complaint more quickly, we encourage you to make your submission in writing or by e-mail.

*For this or any other consumer publication in an accessible format (electronic ASCII text, Braille, large print, or audio) please write or call us at the address or phone number below, or send an e-mail to [FCC504@fcc.gov](mailto:FCC504@fcc.gov).*

*To receive information on this and other FCC consumer topics through the Commission's electronic subscriber service, click on [www.fcc.gov/cgb/contacts](http://www.fcc.gov/cgb/contacts).*

*This fact sheet is for consumer education purposes only and is not intended to affect any proceeding or cases involving this subject matter or related issues.*



Federal Communications Commission • Consumer & Governmental Affairs Bureau • 445 12th St. S.W. •  
Washington, DC 20554

1-888-CALL-FCC (1-888-225-5322) • TTY: 1-888-TELL-FCC (1-888-835-5322) • Fax: 1-866-418-0232  
• [www.fcc.gov/cgb/](http://www.fcc.gov/cgb/)

**SAMPLE MEMORANDUM TO EMPLOYEES**  
**REGARDING SPONSORSHIP IDENTIFICATION**

This memorandum and the attached affidavit are meant to remind all personnel of their obligations under the “payola” and sponsorship identification laws and to ensure that they are abiding by those laws. Payola is a serious crime, and it is receiving renewed interest both at the Federal Communications Commission (“FCC”) and among State Attorneys General. In order to protect the station and yourself from the consequences of a payola investigation and conviction, please read this memorandum and the attached affidavit carefully.

Sponsorship identification laws date back to the 1920’s. Then, as now, Congress’ concern was with the public’s right to know by whom it is being persuaded on the air. “Payola” typically refers to the practice of “pay-for-play” that developed in the 1950’s, when DJ’s received undisclosed cash payments from record companies in return for playing certain records. The purpose for enacting the payola law was to prevent corruption and the private gain of individuals using the public’s airwaves at the public’s expense.

Congress has given the FCC authority to punish broadcast stations and their employees with a fine of up to \$10,000 and/or up to one-year in prison for violating the payola and sponsor identification requirements. These are codified in Sections 317 and 507 of the Communications Act, and they state, in part:

All matter broadcast by any radio [or TV] 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.

The FCC implemented these statutes in its Sponsorship Identification Rule (Section 73.1212) which states in part:

The licensee of each broadcast station shall exercise reasonable diligence to obtain from its employees . . . information to enable such licensee to make the announcement required by this section.

Simply put, to avoid any violations of the payola and sponsor identification laws:

- Do not accept *any* money, services or other thing of value from any person including independent promoters for broadcasting anything on the station.
- Employees who have *any* responsibility for selecting broadcast matter must not engage in any outside business or economic activity that may provide an incentive to broadcast any material that may advance that outside interest.
- Employees who make on-air announcements must not promote over the air *any* activity or matter (except for commercial announcements that are appropriately logged and identified) in which you have, or *any other* employee of the station has, a direct or indirect financial interest.

Every broadcast station has an affirmative duty to ensure that the FCC's payola and sponsorship identification laws are followed. Attached to this memorandum is an affidavit for you to sign after reading the attached copies of Sections 317 and 507 of the Communications Act and the FCC's Sponsorship Identification Rule. Issuance of this memorandum does not mean that we believe that there have been infractions of these requirements. We simply wish to remind all personnel of their obligations under these laws and under the policies of the station. This memo and affidavit will serve as a guide to ensure compliance with the law and prevent fines and imprisonment.

**FORM OF AFFIDAVIT OF COMPLIANCE WITH “PAYOLA” AND SPONSORSHIP IDENTIFICATION LAWS AND REGULATIONS**

I, \_\_\_\_\_, an employee of Station \_\_\_\_\_, hereby certify and attest under oath that I have read and understand Sections 317 and 507 of the Communications Act, and the FCC’s Sponsorship Identification Rule, copies of which are attached to this affidavit. I have provided the information necessary for the station to make a proper sponsor identification announcement. Furthermore, to the best of my knowledge, the station has complied with all laws and regulations regarding payola and sponsorship identification. I have reported to management any potential violations that I have witnessed or been a party to.

I shall comply with the policies of the station that prohibit every employee who has any voice in the selection of broadcast matter from: (a) engaging in any outside business or economic activity that would create a conflict of interest in the selection of broadcast matter; (b) accepting any money, favor, loan, entertainment or other thing of value including sex or drugs, from any person who seeks in exchange the airing of any broadcast matter; or (c) promoting over the air any activity or matter in which the employee has any direct or indirect financial interest (except for appropriately logged and identified commercial announcements).

At no point have I accepted or solicited any money, favors, services or anything of value in exchange for influencing any decision as to what is aired by the station. Nor has my spouse or any family member received or solicited any money, services or anything of value in exchange for influencing any decision as to what is aired by the station. Any outside source of income received in the last six months is listed below:

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Any potential conflicts of interest have been reported to management. I affirm that neither I nor any member of my family has any ownership interest in, either direct or indirect (other than an investment in the stock of a publicly held company), or serves as an officer or director of, with or without compensation, of any person, firm or corporation engaged in:

- a. the publishing of music;
- b. the production, distribution (including wholesale and retail sales outlets), manufacture or exploitation of music, tapes, recordings or electrical transcriptions of any program material intended for broadcast use;



- c. the exploitation, promotion, or management of persons rendering artistic, production and/or other services in the entertainment field;
- d. the ownership or operation of one or more radio or television stations;
- e. the wholesale or retail sale of recordings intended for public purchase;
- f. advertising on the Station or any other station (excluding nominal stockholdings in publicly owned companies);

OR

If any such interest exists, the facts and circumstances relating to such are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I have agreed that I will abide by the Station's policies and instructions in regard to the matter dealt with in this affidavit. I further attest that I have abided by all payola and sponsorship identification laws and regulations. I understand that failure to do so will constitute good cause for termination of my employment or for other disciplinary action.

\_\_\_\_\_  
(NAME)

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(DATE)

Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## ANNOUNCEMENT WITH RESPECT TO CERTAIN BROADCAST MATERIAL

### Section 317 [47 USC §317]. Announcement with Respect to Certain Matter Broadcast

(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 507 of this Act, 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.

(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.

## DISCLOSURE OF CERTAIN PAYMENTS

### Section 507 [47 USC §508]. Disclosure of Payments to Individuals Connected with Broadcasts

(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 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.

## FCC SPONSORSHIP IDENTIFICATION RULE

§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:

(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."

(ii) In the case of any television political advertisement concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical picture height that air for not less than four (4) seconds.

(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 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 or 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 purposes 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 theatre exhibition.