

**IS THERE LIABILITY HIDING ON YOUR
WEBSITE OR IN YOUR COMPUTERS?
By Jay Bender, SCBA Legal Counsel**

For the last several years I have surveyed my students, both in the Journalism School and Law School, regarding their downloading of music from the Internet. You would not be surprised to learn that almost all students have engaged in “file-sharing” as a means of obtaining copyrighted music without paying for it.

During that same period I have talked with a number of students and professionals who seem to believe that if there is an image you like on the Internet you may download it and use it.

Perhaps more troubling is the notion that there is no risk of liability for material posted on the Internet by a station’s employees under the mistaken belief that federal law provides immunity from liability for material posted on the Internet.

Each situation provides an opportunity for liability for a station.

With respect to the downloading of music and images from the web, a station could be found to have infringed copyrights even if the material is not for use by the station. In the most extreme case, if your computers are being used to download music or videos, and your station is unable to determine who was using the computer at a particular time, the station may be found to have infringed.

A more likely situation would involve the downloading of copyrighted material that is used by the station without a license for such use. In some situations, such as including the material in a news broadcast about the material itself, there is a defense to the use. But, if copyrighted material is used in advertising or promotional activities, this defense will not be available.

As for the practice of having your news staff post material to the web in addition to preparing a package for broadcast, you need to understand that this web material needs to be edited as closely as the material going on the air. If you can post from what you broadcast, then you might be confident that nothing was lost in the translation. On the other hand, if the material is re-written, someone other than the person doing the re-write needs to look at it prior to posting.

A station will have liability for things like libel and invasion of privacy for material posted on the website by station employees just as the station has liability for such torts with its broadcasts.

The only material that is subject to protection under federal law is that which is posted on an interactive website by persons not employed by the station. If your station operates an interactive site where third-persons can comment on stories or post their own material, the station may remove offensive or inappropriate material without being deemed the publisher of the site with the attendant liability for publishers. Additionally, the station does not become a publisher by declining to remove material posted by a third party about which someone complains.

What is my recommendation? Review your computer use and web practices. Develop a policy to avoid copyright infringement, and enforce it. Structure your employee web posting operation so that everything on the web is edited prior to posting. And, if you run an interactive site, become familiar with the requirements of the law so you don't become an accidental publisher.