



## LEGAL CONSIDERATIONS

### Codes of Practice, Copyright, Defamation, Privacy

#### 1. RULES, LAWS AND REGULATIONS ABOUT WHAT WE CAN BROADCAST

**Can I broadcast what I like, when I like, about whoever I like (or dislike)?**

No. -

#### **Who regulates me and the station?**

The Australian Communications and Media Authority (ACMA) is our regulator. Broadcasters agree via the ACMA licence to abide by the Codes of Practice of the Community Broadcasting Association of Australia (CBAA). The station regulates your behaviour through our policies and procedures, which comply with the requirements of the licence and the Codes of Practice. You have a duty to ensure the material you are broadcasting has been legitimately obtained and that it complies with station policies and the Codes of Practice.

For example Code 3 related to General Programming states (inter alia):

Our community radio station will not broadcast material that may:

- a. incite, encourage, or present for its own sake violence or brutality,
- b. mislead or alarm listeners by simulating news or events,
- c. present as desirable the use of illegal drugs, the misuse of tobacco or alcohol as well as other harmful substances, and
- d. glamorise, sensationalise, or present suicide as a solution to life problems. In particular, broadcast material should not provide explicit details about the method and/or location of a suicide attempt or death

and also:

We will follow applicable privacy laws by:

- a. respecting people's legitimate right to protection from unjustified use of material which is obtained without consent or through an invasion of privacy,
- b. only broadcasting the words of an identifiable person where:
  - i. that person has been told in advance that the words may be broadcast, or
  - ii. it was clearly indicated at the time the recording was made that the material would be broadcast, or
  - iii. in the case of words that have been recorded without the knowledge of a person, that person has indicated his/her agreement prior to broadcast.

#### **Responsibility and Liability**

Note that both Eastern Community Broadcasters Inc hereafter referred to as Radio Eastern fm 98.1 and presenters are responsible and liable for all material they broadcast, including material sourced externally.

## How does the station obtain approval to broadcast?

We operate under a licence granted to us by the ACMA, part of the Federal Government. **We have held a permanent licence since 24 January 1991**, which was **renewed for 2016 to 2021**. The current status is that we **reapplied in January 2020 for renewal from 2021 to 2026**.

The ACMA requires, and we provide, **a heavy focus on Community Engagement and Community Content**.

## 2. COMPLYING WITH COPYRIGHT LAWS

### The reason for copyright

Copyright is a legal right that grants the creator of an original work exclusive rights to its use and distribution, usually for a defined but significant period of time, with the intention of enabling the creator (e.g. the composer of a song or the author of a book) to receive compensation for their intellectual effort.

It is a form of intellectual property and dictates rights includes reproduction of the work, derivative works (for example, cover songs), distribution, public performance and "moral rights" such as attribution.

In Australia, copyright law is contained in the Copyright Act 1968 and is automatically applicable to all creative works, regardless of the format in which they are recorded.

### Why you need to know about copyright

Community broadcasters generally need permission to broadcast material protected by copyright, such as music.

Rather than needing to approach each individual rightsholder, this permission can be obtained via two licenses: one from the Australasian Performing Right Association, and the Australasian Mechanical Copyright Owners Society (APRA AMCOS), and one from the Phonographic Performance Company of Australia Limited (PPCA). One of each license covers your whole radio station.

The reason that you need to hold two licenses is because there are at least two copyrights in most recordings and music videos:

- The copyright in the song (lyrics, composition etc.) – covered by APRA AMCOS broadcast licences
- The copyright in the recording and/or music video of the song (a particular recorded performance) – covered by PPCA broadcasting licences.

### Licenses that enable us to comply with copyright laws - APRA AMCOS Licenses

APRA AMCOS represents authors, composers and music publishers, licensing organisations to play, perform, copy, record or make available their members' music, and in turn distributes these royalties to their members.

Community radio stations can apply for a combined broadcast, reproduction and online license, available on an "opt-in" basis, so stations only pay for what they need. Find out more.

Our license with APRA/AMCOS entitles our presenters to play standard commercial recordings on air at all times, with the exception that:

- you may **not play more than 20 minutes** at any one time of a complete stage show (musical, straight play, opera etc)

- unless that stage show is out of copyright.

A show comes out of copyright and “enters the public domain” when the last of its authors (composers and librettists) has been dead for 70 years. Hence you are not entitled to play more than a 20 minute segment of “Cats”, but may play the complete “*Madame Butterfly*” or “*The Merry Widow*” any time you like, as these works are now in “the public domain”.

### **Licenses that enable us to comply with copyright laws - PPCA Licenses**

The PPCA represents the interest of record companies and Australian recording artists. The PPCA grants licenses for the broadcast, communication or public playing of recorded music and music videos and, in turn, distributes the license fees collected to the record labels and Australian recording artists.

The PPCA has an industry-based agreement with the CBAA (of which Radio Eastern FM 98.1 is a member) that offers a 50% discount on PPCA fees to members.

### **Online Broadcasting**

Community broadcasters who wish to augment their traditional terrestrial broadcast with various online distribution channels are required to obtain the additional relevant licenses.

### **Other Copyright Organisations**

The Australian Copyright Council is an independent, non-profit organisation that represents the peak bodies for professional artists and content creators working in Australia’s creative industries and Australia’s major copyright collecting societies.

### **Background to Copyright Laws**

The copyright laws of the land (Commonwealth legislation) are intended to protect the interests of people who create literary, musical and artistic works, and to enable them to receive payments for their labours.

Any standard commercially made CD or record will bear a warning like “*Unauthorised public performance, broadcasting and copying of this recording is prohibited*”. This is a reminder of the artists’ entitlements.

### **Radio Eastern FM 98.1 has an APRA/AMCOS license**

Radio Eastern FM 98.1 maintains a license with The Australian Performing Rights Association (APRA) and the Australian Mechanical Copyright Owners Society (AMCOS), for which we pay a substantial annual fee. These bodies exist to collect license fees from radio stations, shopping centres, cafes and restaurants, clubs and societies, any organisations that wish to play recorded music in public. These fees are then distributed among the various composers, arrangers and musical performers in proportion to the extent that their works are being played in public.

### **How APRA/AMCOS calculate the payments**

In order to determine how to share out the money they collect, APRA/AMCOS use a sampling technique to measure the extent that each of their musicians’ work is being played in public.

### **What APRA/AMCOS require from the audits**

Each year, a sample of community radio stations (and separately, samples of commercial stations, and of restaurants, and of dance clubs, etc) are identified. In a year when it is our turn to be included, every presenter at the station will be required to fill in forms for APRA during four one-week periods during that year. These forms have to show every example of music each presenter put to air in the chosen weeks, regardless of the duration.

All presenters are required to list the title of every piece of music (eg. song, instrumental) or narrative (eg. comedy sketch, poem) put to air, the names of the performers, the composers and the arrangers, the "label" of the CD, record or internet music source, and the catalogue number.

In addition, all presenters are required to list the number of minutes and seconds of each piece of music that went to air. Thus, if you play a few bars of a particular recording as the theme tune at the start and end of your program, it is the number of seconds you played of that piece that week that matters. APRA and AMCOS computerise all the data they receive this way, and then extrapolate them to decide how to apportion the collected fees to the artists concerned.

Music purchased from iTunes or any other digital source is included in the same way as ordinary CDs.

### **Legal recordings only**

**You must not put to air on this station any recorded music that has been pirated or obtained illegally.**

Our licence agreement specifically states that we may copy on to any other format that suits us (hard disc, minidisc, CD, USB memory stick, etc) any music from a record, CD or legitimate online source, **so long as that copy is used solely for broadcasting.** We would also be entitled to use it for podcasting or streaming on line if they were services provided by this station.

### **Unsigned musicians**

Unsigned and beginning musicians often make private CDs of their music, maybe selling them from their home base or at their live performances. Such recordings may not have been registered with APRA/AMCOS, and therefore our licence does not confer on us the right to broadcast such private recordings. If you wish to broadcast such music, you need the written permission of the musicians concerned, which you must obtain, and which sets out their consent to their artistic work or recording to be broadcast. Any presenter obtaining such written consent must provide a copy of that consent to Radio Eastern FM 98.1 for retention and must retain the original written consent, **which needs to be kept filed in case it will be needed in future.** Sometimes a musician will send the station or a presenter an unsolicited copy of a CD of their music with a request that it be put to air or given air play. Any presenter receiving such a request and CD must provide a copy of that request to Radio Eastern FM 98.1 for retention and must retain the original request which needs to be filed in case it will be needed in the future. If you make sure you file away that written request you should be on safe ground.

### **Distributing recordings to the public**

It is quite illegal to distribute to any member of the public a recording of part or all of any Radio Eastern FM 98.1 program if any part of that recording contains copyright music. It is perfectly legitimate however to make recordings of your on-air programs for self-evaluation purposes.

## **3. COMPLYING WITH DEFAMATION LAWS**

**There is no licence available to enable us to broadcast defamatory remarks.**

You may expose yourself and the station to litigation if you offend in the area of defamation.

You defame someone if you broadcast any material which:

- a) identifies a person,

And

- b) has content that may "damage the reputation of that person in the eyes of a right-thinking member of the Australian community".

Because of this factor (b), what would be considered defamatory would be expected to vary with time, with changes in the norms of society, and the only way this can ever be determined is through court cases.

**The only safe course is to take care to refrain from making any comment which could be construed as defamatory about any identifiable person on air. Not ever.**

You can even defame someone if what you said was really intended to refer to someone else altogether. For example, if you broadcast a comment that you consider that at least one of our local councillors has been lying about some matter or other, you could hardly be sued, because you have not identified which councillor you had in mind.

On the other hand, if you said that Rex Dog of Croydon lied, by which you meant to impugn Mr Rex A. Dog, you could be successfully sued by Mr Rex T. Dog of Croydon, because the remarks you made could be construed by listeners to have been about Rex T, and Rex T's reputation could have thereby been damaged.

Under recent changes to Australian law, large companies and organisations are no longer able to sue for defamation.

### **Defence against defamation**

It is possible to mount a successful defence against a defamation suit if you can prove that your remarks are justified by being true. Mr Rex A. Dog will not win that defamation case against you if you can *prove* that he really did lie about the matter you referred to. **The problem is that you can only find out if you are able to prove your remarks true by going through a court hearing**, and that costs money, time and anguish.

Additionally, if Radio Eastern FM 98.1 or any presenter is subject to a court action for defamation and is unsuccessful in defending that action, substantial awards of damages may be made by the court against Radio Eastern FM 98.1 **and** the presenter. Such court orders, when made by a court, are usually "joint and several" so that both Radio Eastern FM 98.1 and the individual presenter is each liable severally and each liable jointly, for payment of damages. Also, an unsuccessful defendant to a court action will usually have an order by the court made against that defendant for payment to the plaintiff of the plaintiff's costs in bringing the court action.

It is no defence against a charge of defamation to say that you "didn't intend to harm" the person's reputation!

### **Exceptions apply, but not to Radio Eastern FM 98.1**

There are a few places in society where the laws of defamation simply do not apply, the justification being that nothing must be allowed to inhibit the gathering of evidence in those places. This "privilege" applies to proceedings in parliaments, courts and certain court-like bodies like Royal Commissions and official enquiries. The media are entitled to report on what someone in parliament or a court has said, so long as the reports make it clear where these things were said and who said them.

## **4. PROTECTING THE COMMUNITY – THE VULNERABLE AND CONSUMERS**

A presenter must never reveal the name of the victim in any sexual assault court case, nor of a child appearing in a children's court, nor of parties participating in family court proceedings.

In broadcasting sponsorship messages, the station could be charged with an offence against the Trade Practices Act if we were to air messages containing false or misleading claims about the goods or services being promoted.

A presenter must not broadcast a listener's surname, address, phone number, email address, or any other information that may specifically identify them. A presenter may broadcast a caller's first name and the suburb from which they are calling.

## **5. RADIO EASTERN FM 98.1 POLICY POSITIONS**

### **Contentious issues**

Although this is not something legally binding on us, the management of this station has long held the position that we do not wish to offend listeners who may hold certain views very strongly. Presenters are therefore requested to refrain from making comment on **any** controversial political, sexual or religious issues.

### **When mistakes in content or language happen – responsibility for content**

All Radio Eastern FM 98.1 personnel have an obligation to uphold copyright and defamation laws and the Codes of Practice in all on-air content.

This includes when engaging with the community. Always prepare, prepare, prepare. Explain the station obligations to the station's guests. It is the presenter's obligation and responsibility to control what goes to air that is said by you, by a guest, or in the content of a song.

If a guest says something inappropriate, or if the lyrics of a song surprise you, act swiftly to remedy the wrong on air by saying:

“Radio Eastern FM 98.1 wishes to unreservedly apologise for any offence that may have been caused and should you wish to lodge a complaint, please feel free to contact us...”

The presenter must report the matter to the Committee of Management without delay. The report detailing the fact that inappropriate content was broadcast to air will include:

- Name and details of the person who broadcast the inappropriate content to air
- The time and date, and who the presenter was
- Details of the inappropriate content, including the words
- An explanation of whether the incident was deliberate or inadvertent
- Whether or not a complaint was received and the name and details of any person who complained.

Volunteers must maintain an awareness of the policies of Radio Eastern FM 98.1. If in doubt always, always ask, or read the policies.

Volunteers must always remember that a radio licence and access to the open airwaves is a privilege that can easily be revoked by the controlling authorities.

### **Sponsorships and Consumer Affairs**

The CBAA advises its members, including Radio Eastern FM 98.1, that they are subject to the consumer laws and regulations of their state or territory government – in our case that means Consumer Affairs Victoria.

Under Radio Eastern FM 98.1's licence the station may:

- Broadcast sponsorship announcements that are appropriately tagged and do not exceed hourly sponsorship limits according to the broadcast licence (no more than five minutes in each hour)
- Broadcast station promotions
- Broadcast community information or promotions.

All laws and rules about copyright, defamation and privacy, and all Radio Eastern FM 98.1 policies about content, also apply to these kinds of broadcast items.

## 6. SOURCES

- (1) CBAA Community Radio Broadcasting Codes of Practice (accessed 28 October 2020):  
[www.cbaa.org.au/resource/community-radio-broadcasting-codes-practice](http://www.cbaa.org.au/resource/community-radio-broadcasting-codes-practice)
- (2) Steve Ahern (2013), Editor. *Making Radio: a practical guide to working in radio in the digital age*, 3<sup>rd</sup> Edition. North Ryde, NSW: Allen & Unwin. ISBN 9781742372075.
- (3) ACMA (September 2016). *Privacy guidelines for broadcasters*:  
[www.acma.gov.au/sites/default/files/2019-12/Privacy%20guidelines%20for%20broadcasters.pdf](http://www.acma.gov.au/sites/default/files/2019-12/Privacy%20guidelines%20for%20broadcasters.pdf)

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