

STREAMING COMMERCIALS

ADVISORY from Shaw Pittman

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Recently, radio and television stations nationwide have been receiving notices from their ad agencies stating, in essence, that the stations may not "stream" the commercials of any of the agencies' clients over the World Wide Web without prior written approval. As a result of these notices, numerous stations have stopped, at least temporarily, the "streaming" of their stations over the Internet. Others have sought to delete or cover up the affected commercials.

The notice from the ad agencies is an outgrowth of contract negotiations between, on the one hand, SAG and AFTRA which represent the talent used in commercials and, on the other hand, the American Association of Advertising Agencies and the Association of National Advertisers over the issue whether the talent should be paid additional compensation when their commercials appear on the World Wide Web as a result of "streaming."

This dispute poses some potentially significant contract and liability issues for all radio and television stations which use the World Wide Web to expand the reach of their programming. Any station which engages in "streaming" (whether such streaming is viewed as "active" or "passive") should immediately review their contracts with all ad agencies and advertisers to determine whether each contract expressly authorizes the station to "stream" the commercials. If the contract is silent on the point, the station should immediately carefully weigh the potential for liability caused by continuing to "stream" the spots against the expense of removing the affected commercials from the "stream" (and substituting others) or the opportunity cost of removing the "streaming" altogether. Even if the agreement contains a provision expressly authorizing the station to "stream" particular commercials, that provision may not fully protect the station against liability since the talent can still sue the ad agency and the station. In either case, the station should contact the ad agency to determine the agency's position on the matter. The ad agency's position should be one important factor to be weighed. Hopefully, in all cases, the station's contract contains a strong provision whereby the ad agency has agreed (and has adequate financial resources) to hold the station harmless and to indemnify the station in this type of circumstance.

The AAAA and ANA continue their negotiations with SAG and AFTRA. What the outcome will be is unknown at this time.

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