
Contract Survey

Prompted by a discussion at the July 2011 AREPS meeting in Pittsburgh, NPR and USA asked university, college, school system, and state agency-licensed stations to provide feedback related to contract issues. Some stations are “units” within their state-funded licensees and governed by state law. Some state statutes prohibit unit contracts specifying indemnification, the word “warrant,” and/or out-of-state legal venues.

92 stations responded.

# Stations	Response Ratio
52	57% Yes, this issue has affected my station.
37	36% No, this issue has not affected my station.

Comments:

- This has always been a problem with us, and with the change of licensee Legal Counsel, is now a very big problem for us. We have found that other program producers will change their contract on these items -- PRI, APM, others -- but NPR will not.
- Some wording is changed in nearly every contract that requires a legal signature, but it's never stopped us from doing what we want. Just slows the process down some. Not that big of a deal.
- The vendor either changes the contract to state that disputes will be resolved according to the laws of the State, or we're denied the ability to enter into an agreement with the vendor, and we seek out an alternative.
- This issue has come up with my university. We have had to change the wording on several contracts to get around this.
- It has affected us in the sense that we have had to strike, or negotiate verbiage which both entities can accept. We have prohibitions based on State Constitution and state law. Most contracts currently have language such as, "...as allowed by state law, or regulation."
- Every contract is unique. Our licensee generally always changes the venue to local which at time causes delays in contracts.
- In a contract negotiation with a potential transmitter site owner.
- My licensee typically strikes indemnification, hold harmless, non-local jurisdiction, etc.
- This does tap a grey area here because if it's really just for the radio station, I have permission to sign contracts, but if it clearly establishes an extensive

obligation to my licensee, then I have it signed by them. Depending on who reviews it determines the level of scrutiny given the contract.

- Indemnification and out of state legal venues are prohibited by state law. We've somehow managed to "tiptoe" around it when it comes to our NPR contract (but only after the University General Counsel's office and NPR's general counsel have reached some kind of "agreement". But with others, the other party has either "backed off" or we simply were prohibited from doing business with that vendor. I wasn't at the AREPS meeting and would like to know exactly what this refers to.
- Deal with NPR nearly didn't go through. New state procurement law means NPR needs to sign off on many certifications. Word is this year the state may be tougher. We have indemnified in certain instances and the university gave in on legal venue, but procurement office found NPR lacking needed flexibility. Procurement doesn't care if NPR rejects. We need NPR to sign off on this stuff.
- The University Legal Counsel always tries to get the venue changed to our state and is always careful to check the indemnification. There's no state law that prohibits us from signing.
- It's a big fat royal pain in the ____ .
- Indemnification and state of law clauses are always problematic.
- This could affect my station if the college asked for legal review...fortunately they have avoided the problem...but that could change.

I have reacted by obtaining contract modifications that satisfy state law.

# Stations	Response Ratio
16	17% Always
24	26% Most of the time
8	9% Occasionally
1	1% Not a problem
43	47% No Response

Comments:

- As noted above, other vendors will change their contract/agreement for this, but NPR will not. Only once has NPR modified the agreement -- for [NAMED AGREEMENT], and then I was specifically questioned as to whether I (i.e. the university) was going to ask to modify the program agreement signed in 2010. We said no, but we will need future agreements to reflect state law.
- It depends on who the agency is and who's working in University Legal Council that day.

- New contracts always go. Annual renewals go when (1) there are significant revisions to previous contracts, or (2) every few years, just to keep my review process relevant in front on University Counsel.
- No choice. All contracts must go through appropriate institutional legal counsel.
- All contracts are reviewed/modified either by our university procurement department officer or the office of General Counsel legal staff.
- The university is more and more reluctant to be flexible because of the auditors and new procurement laws.
- Sometimes it works, most often it's a take-it-or-leave it response.
- "Back in the day" these things seemed to just slip through unnoticed. However, there seems to be a heightened sensitivity to this issue in our state, where our governors serve two terms (in office, and then in prison). Go figure.
- If we can't get these clauses killed off, the University council gives me hell and insists that a university officer makes the decision to allow it. While most of the time it comes down to a business decision, I spend a good couple of weeks on every contract that contains these clauses.

I have reacted by convincing licensee official to sign the agreement as written.

# Stations	Response Ratio
0	0% Always
7	8% Most of the time
16	18% Occasionally
6	5% Not a problem
18	20% Other
45	49% No Response

Comments:

- In 1999, my university would only sign the NPR program agreement after an exchange of letters that agreed the legal choice of venue (D.C.) in the agreement really didn't mean what it said. In 2010, again the University signed based on those 1999 letters. But recently, a new legal counsel said the letters mean nothing and the university would lose in a court decision on the choice of legal venue question because we had accepted the D.C. designation in the agreement. The future looks bleak.
- University legal makes the changes and the party we're contracting with accepts the changes.
- It depends on who's working in University Legal Council that day.

- Only NPR has prompted us to sign the agreement as written, even though the University's General Counsel has issue with legal jurisdiction being out of state.
- My university has become increasingly reluctant to sign these agreements, due to legal concerns.
- All contracts signed by a legal signatory of the licensee must comply with state law.
- All contracts must be reviewed as to legal form by the University General Counsel, prior to signing by authorized official. I am not authorized to sign any contract.
- Technically, I do not have the authority to sign a contract on behalf of the university. The General Counsel's office has finally agreed (on rare occasion) to sign "as written" and then followed up with a letter of amendment.
- That's a good way to get fired!
- I have to guarantee to pay legal fees if a contractual matter goes to court (with CPB, for instance) in DC.

I have reacted by convincing the Foundation to sign the agreement.

# Stations	Response Ratio
1	1% Always
2	2% Most of the time
8	9% Occasionally
1	1% Not a problem
28	29% Not applicable
8	9% Other
46	49% No Response

Comments:

- As an entity governed by the Board of Regents, we are committed to be compliant with the State and protocol from the Attorney General. This has in no way prevented us from achieving contract goals - we work to amend the language to ensure compliance.
- It depends on who's working at the Foundation that day.
- Our office of Sponsored Programs wants to count these grants as part of the university's overall grant funding for the year. At my university, grants that relate to funding cannot be attributed to the University Foundation because they are not considered purely philanthropic.

- While we have a foundation and can occasionally use it to make purchases, the approach isn't applicable to transactions which are clearly the province of a licensee (such as program purchase contracts or memberships).
- Licensee General Counsel also works as same for Foundation.
- This is an option of very last resort, which may place the Foundation in the awkward position of being at odds with the University and its state-mandated contracting guidelines.
- Maybe I missed something (and can't go back to look at the first question. "Foundation" is not relevant to my previous answers. I was thinking about contracts with the likes of NPR and SoundExchange.
- "Back in the day" these things seemed to just slip through unnoticed. However, there seems to be a heightened sensitivity to this issue in our state, where our governors serve two terms (in office, and then in prison). Go figure.
- It depends on the type of business. If it relates to the asset then it is state side and a pain. If it's fundraising, I can sometimes get it into the foundation.

Thanks to all participating stations.

The *University Station Alliance (USA) is a grassroots organization founded in 2001 to assist university-licensed stations with the challenges and opportunities associated with their licensees. University-licensed stations make-up 63-percent of the public radio system. *University is a generic title that includes colleges, school systems, and state agencies. More information about the USA can be found at www.us-alliance.org.

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