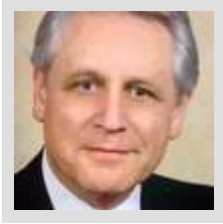


Payola And Plugola (FCC Fines Made Easy!)



[Gregg Skall](#)
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Can You Be On The Take? Sure, But ... Let's Review In Case You Forgot

So, the record promoter comes by the station and offers you two box seats on the first base line to the Giants game, and a really cool Pink leather jacket. Nothing in return; "Just play our records," he says. Okay? Can you take this? It's not money. Will you play his records?

You probably don't need me to tell you that this is what's perceived to be "payola" ... and payola, **of** course, is bad! But the questions persist You probably don't need me to tell you that this is what's perceived to be "payola" ... and payola, **of** course, is bad! But the questions persist post-Spitzer, " **Just** what is it and how do you know what is acceptable, and what is not?"

Just what is it and how do you know what is acceptable, and what is not?

"Payola" is really a violation of the sponsorship identification rule. The Communications Act and FCC rules require that the public be informed whenever someone pays for having their message broadcast. Payola occurs when anything of value is accepted, or agreed to be accepted, in return for the broadcasting of records or any other material without disclosing that the payment was made. Payment does not have to be money; it could also be services, a limousine ride, baseball tickets, or ... a really cool leather jacket.

It's not a violation of the law to take any of these for playing the record; it's a violation of the law to take it for playing the record, without disclosing the payment to station management before broadcast. And, oh yeah, violations are subject to fines of up to \$10,000, one year in jail, or both.

Then there's "Plugola," which is promoting the non-broadcast activities of the station licensee or an on-air personality on the air. Plugola occurs only when the financial interests are those of persons "responsible for including promotional material in a broadcast."

The real violation occurs not from taking the product or plugging your own nightclub on the air, but from failing to disclose it to the station management and the listening or viewing audience that the record was played or the plug was mentioned for a payment or benefit.

There are some things that you can take with such disclosure. A business lunch with a record executive, or a trivial gift with a value of under \$25, is not considered a problem. Anything more, and you are in trouble unless you inform management. It then becomes management's responsibility to provide a sponsorship announcement that conforms to FCC rules.

By the way, you do not have to actually air the record or make the plug to violate the rule. The matter never need be broadcast. So long as it can be shown that the consideration was taken for the purpose of making the broadcast without the required disclosure, a violation has taken place, whether the broadcast took place or not.

The FCC has also held that it is management's responsibility to exercise "due diligence" to discover an employee's possible pecuniary interests in broadcast content, and that duty may be higher on stations with formats that might pose a higher "susceptibility" to payola.

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