



# Producer's Legal Guide

DATV operates the community access channel as a public forum following applicable federal, state and local laws governing the right of free speech.

The First Amendment of the United States Constitution provides that “Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people to peaceably to assemble, and to petition the Government for a redress of grievances.” (While this amendment is directed at the U.S. Congress, the same free speech protection is provided citizens of each state via the Fourteenth Amendment to the U.S. Constitution.)

The Ohio Constitution provides “Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.” Article 11, Section 11.

The meaning and effect of these provisions has, of course, long been the subject of much debate and legal interpretation. However, it is reasonably clearly established that freedom of speech (and expression) is one of our most cherished and protected rights as Americans. Nevertheless, this right is not absolute and the debate continues as to what, if any, limits can be imposed by legislative bodies on the right of free speech.

Laws are developed to help people operate in a complicated society; they are the rules of the game. It is important for people to protect themselves and those with whom they work by knowing the laws that place limits on freedom of speech. This guide is merely a summary of some of the most typical laws and rules that community producers must face. It is not a complete listing of all laws that may affect you.

Since your programs are transmitted over cables rather than broadcast over radio or other airwaves, these cable television program presentations are referred to as “cablecasts.” The preparation of the programs and their cablecast to the audience involve many laws. In order to operate within the protection of the law, it is important to become familiar with some of the laws that affect you as a cable program producer/provider.



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## Definitions and examples of the most important legal issues are as follows:

### 1. Breach of Contract.

Simply stated, a contract is an agreement between two or more persons. It can be either a written agreement or a verbal one. You should be aware that a verbal contract can be enforceable. A breach of contract occurs when one of the persons who make the agreement refuses to do as he agreed to do, or prevents the other person from doing what the other person agreed to do.

For example, if you agree with DATV to borrow video equipment and return it in its original condition, you would breach the contract if you did not return the equipment or if the equipment was damaged when you returned it. When you sign a Program Release form to play a program on the access channel, you are entering into a legal contract that has serious consequences for misrepresentation or abuse. One key aspect is that you are affirming that the content of your program falls within the guidelines of protected speech and does not contain any illegal matter or unprotected speech.

### 2. Copyright

Copyrights protect the exclusive rights of authors and inventors to their writings and inventions. Anyone who uses copyrighted materials without permission of the copyright owner may have to pay fines or other penalties.

It is possible to use copyrighted material as long as you obtain permission from the person who owns the copyright. This permission may be limited to certain specific circumstances or it may be extremely broad, depending on the agreement between the copyright owner and you.

For example, copyrighted songs may be used in movie soundtracks with permission of the copyright holder. In this situation, the credits of the movie generally indicate that the song has been used with the permission of the copyright owner. Other examples requiring advance permission include using photographs printed in magazines, recording musical performances and using a portion of someone else's video production in your own video production. In each case, you need to obtain written permission in advance from the copyright owner (i.e. the magazine that published the photograph, the performing musician and the producers of the other video production).

### 3. Indemnification Agreement

An "indemnification agreement" is a contract by which you agree to pay for any damages resulting from your actions.

Automobile insurance is a type of indemnification agreement as insurance companies agree to pay for any damages resulting from accidents caused by the insured driver. In the context of cable programming activity, when you are certified to use DATV's facilities or channel time you will sign an indemnification agreement (the Request to cablecast form") with DATV so that if DATV is sued for something said in your program (for example, a libelous remark), you will have to pay for any damages. As another example, if someone trips and falls on a cable during one of your productions and then sues DATV, you will be responsible for paying for all damages and attorneys fees incurred by DATV.

### 4. Invasion of Privacy

Invasion of privacy generally deals with the unlawful disturbance of a person's privacy. The following are ways in which this may be done:



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## Public Disclosure of Private Facts

Public disclosure of private facts is the presentation of the intimate details of someone's private life to a large number of people without his or her permission. This may or may not apply to facts about people who are already well known in the community.

## Use of One's Name or Likeness

The unauthorized use of another's name or likeness may be an invasion of privacy. The unauthorized use of another's name or likeness for monetary gain is one of the most common examples of this. For example, Joan Smith could not name her fitness center "Michael Jordan's Fitness Center" unless Michael Jordan allowed her to do so as the celebrity name "Michael Jordan" is being used to attract people to the fitness center.

## Publicity Placing One in a False Light

Publicity that creates a false impression of another person may also constitute an invasion of privacy. You cannot lead people to believe that a person has views that he does not really have or has done things that he has not actually done. For example, you may not produce a show that discusses racial violence while showing a picture of John Smith on the screen unless John Smith is directly associated with such violence. The showing of the picture would unlawfully associate an innocent person, John Smith, with something with which he is not associated. You may also be sued for defamation, libel or slander (see section 5).

## Intrusion into One's Seclusion or Solitude

This last method of invading one's privacy involves a person intruding into places that are normally considered private. For example, cablecasting secret photographs of a person in his or her home is unlawful and transmitting conversations recorded with hidden microphones in a person's home would be unlawful. To avoid problems in this area, always identify yourself as a community producer and inform people that the videotape you are making may be cablecast. You should also obtain written permission of the subjects of your programming. DATV will provide a Personal Release form as an example for you to use.

## 5. Libel, Slander and Defamation

**Libel** is false material directed at the eye, usually in print or television. The false material must tend to injure or harm a person's reputation in order to be libel.

A false statement in a newspaper such as "John Smith stole money from the orphanage" would be libel, assuming that John Smith did not steal money from the orphanage.

**Slander** is similar to libel as both involve false material that tends to injure or harm a person's reputation. Slander, however, is directed toward the ear, such as verbal statements or statements over the radio.

If the statement "John Smith stole money from the orphanage" was broadcast over the radio, that statement would be considered slander, assuming that John Smith did not steal money from the orphanage.

**Defamation** includes either slander and libel or both and if it is against public figures, such as elected officials and candidates, the defamation must be made with malice and is not "fair comment".



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## 6. Obscenity

The United States Supreme Court has determined that "Obscene" expression is not protected by the First Amendment right to free expression. Therefore, governing bodies - such as the U.S. Congress, the Ohio Legislature and local communities - may prohibit obscene expression and impose penalties if such expression is published or broadcast or cablecast.

Obscene expression has been defined by the U.S. Supreme Court as material:

1. Which an average person, applying contemporary community standards, finds as a whole appeals to the prurient interest; and
2. Which depicts, in a patently offensive way, sexual conduct specifically defined by applicable law; and
3. Which taken as a whole lacks serious artistic, political or scientific value.

{Miller v. Ohio, 413 U.S. 15 (1973).}

Like many legal definitions, this definition is not clear. Rather than providing examples of obscene material, it may be best to remember the words of one Justice of the United States Supreme Court who remarked: "I cannot define 'obscene material,' but I know it when I see it." Community producers must also be able to "know it when they see it." If you cablecast obscene material, you are not only in violation of your agreement with DATV that may permanently suspend your access privileges, but you may be held liable for crimes punishable by fines and imprisonment. Both the federal government and the State of Ohio prohibit obscene expression.

## 7. Indecent/Harmful Matter

In addition to prohibiting obscene matter, the Federal government and Ohio legislature have taken additional steps to regulate permissible speech/expression. The U.S. Congress initiated a category titled "indecency" {18 U.S.C. 1464} and the State of Ohio addresses this in Title XXIX, Chapter 2907, dealing with criminal obscenity. The intent in each instance is that the community has a valid interest in protecting children from viewing indecent/harmful matter. The Federal Communications Commission (FCC) is the regulatory agency created by Congress to implement, and enforce when necessary, the rules limiting the cablecast of indecent material.

The FCC has determined that indecent material will be measured by a two-part test: 1) material can be declared indecent if it describes or depicts sexual or excretory organs or activities; and 2) the broadcast is patently offensive as measured by contemporary community standards for the broadcast medium. (The FCC has stated that this test is not a local one and does not encompass any particular geographic area. The standard is of the average broadcast viewer.)

Unlike obscene expression that is prohibited under all circumstances, indecent material is protected by the First Amendment and cannot be banned. It is restricted, however, to avoid broadcast periods when it is reasonable to assume children may be in the viewing audience. In the interest of protecting the children of our community, DATV would prefer not to cablecast any indecent material but may do so upon receiving written request from a producer. Under DATV Operating Policies broadcasts of indecent materials are restricted to the hours between 12:00p.m. and 6:00a.m.