



**Spreading The Word –
Rights, Royalties And Collections For Podcasts And Spoken Word Audio**

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KENNEALLY: Our appetite for digital media is growing fast. US consumers 18 and older spend almost 12 hours each day engaging with media. According to a Nielsen report from February 2020, as options like streaming and podcasts mature, US consumers are opting to add them to their daily routines instead of simply replacing traditional fare. Podcasts and other types of spoken-word content are a rapidly growing category of streaming and downloadable audio. According to Spotify user statistics, 72% of all weekly Spotify users are millennials, with podcasts making up 10% of all content that millennials listen to.

When the coronavirus pandemic began a year ago, it all but ended drivetime, the prime time for podcast listening. Yet audience numbers soon recovered, as podcasts, especially comedy, provided welcome distraction from the lockdown. Every day now looks like the weekend, Spotify said in a letter to shareholders.

As part of this RightsTech track for this year's 2021 virtual Digital Entertainment World, our panel will look at why comedians and other spoken-word creators are missing out on revenues in this growing marketplace and why, even in 2021, managing rights and collecting royalties for spoken word remain unrealized opportunities.

And with that, I want to open the program with our presentations. We'll open with Lawrence Griff. You'll tell us a bit about this overview of royalties and collections and just what are the elements involved.

GRIFF: Perfect. I appreciate it, Chris. I thought it was good to put on one page just summarizing what we're talking about. You can see the verticals, and they also look very familiar with the music industry. I've been involved with the music industry over the last 30 years with performers and music companies.

So you can see with the verticals, the revenue streams are very similar. Also, the distributors of the podcasts and spoken word are also very similar to the music industry. A lot of the names that you see, like Pandora, SiriusXM, Apple, Amazon, YouTube, also TV and movie studios – a lot of them are also fairly new in the context of media, and they



don't have as robust royalty systems and processes. Also, historically, what you've seen in the music industry is the big distributors have not been overly aggressive, shall we say, in distributing royalties to the content providers, so there's always this back and forth somewhat battle to make sure that the content providers do get what they're legally entitled to have.

And as you can see, over time, the music industry has seen collective rights management organizations come into existence like SoundExchange, which was founded in 2003 to collect on behalf of the content music providers. You've also seen trade organizations have developed, like the National Music Publishers, who has been a strong advocate for music content providers and will lobby Congress. In fact, Congress passed legislation in 2018 to modernize copyright-related issues for music and audio recordings due to new forms of technology, such as digital streaming. So the MMA became operational this year. It's headquartered in Nashville.

I think with podcasts and spoken word, it's also along that journey or path trying to catch up to the different verticals and the revenue streams to ensure that the money is collected to all the content providers. I know on this panel, Jim King, for example, who leads Spoken Giants – they're focused on licensing their members' creative works, trying to get the best and most competitive rights for the work that they administer. So it's a journey with any new media and distribution to ensure that the content providers are getting their fair share to help the verticals be successful and help the content providers – I mean, help the distributors who rely on the content. To have rich content and to have that great content, they really need to pay the content providers. Hopefully, this one-page little overview would be helpful in framing our discussion today and giving you a little context.

KENNEALLY: Thank you, Lawrence Griff with Grant Thornton. And I want to turn to Michele Cobb with the Audio Publishers Association and have a look at the marketplace, because those kinds of rights that Lawrence is speaking about are a growing piece of the digital media world. Michele, please tell us about that.

COBB: Sure. So we're looking at two different things in the spoken-word audio realm, podcasts and audiobooks. I have some figures up here that are from Edison Research, the first being from the Infinite Dial, where we see 55% of people in the US who are 12 and up have ever listened to a podcast, versus 44% of adults – so that's 18 and up – have ever listened to audiobooks. So it's not an apples-to-apples number, as it were.

But we have so much content happening in both arenas. So there are approximately 2 million podcasts and over 90 million podcast episodes in the world. And we saw in 2019 about 60,000 titles produced as audiobooks. So we're talking about a lot of content that we're looking at, and this is starting to have some overlap in terms of rights.



Let's talk about what happened during the pandemic, because we all know we went home – and Chris sort of mentioned it – we had some changes in consumption. Both in podcasts and audiobooks, we saw this change of not so much during the commuting time, but people still listening during the day. It was just, again, a flatter curve.

What there was some concern in the industry about was whether or not production would be impacted. The good news in the audio world was that people figured it out. In audiobooks, many people were recording in their home studios prior to the pandemic, and they went on with a perfect socially distanced work. And then in podcasting, there were a number of people that were recording in studios that kind of had to figure it out. Despite all of this, we saw a huge increase in the amount of podcasts being produced, and that all speaks to the overall health of spoken word in both industries.

Now, obviously, when we're dealing with podcasts versus audiobooks, these are two entirely different business models. Chris, if you can move to the next slide, please? In these business models, you have podcasts, which are generally ad supported, and then you have audiobooks, which are generally kind of a pay-per-listen type scenario, with some movement into the unlimited consumption, like the Netflix model.

With those changes in models, it's going to be interesting to see how everything comes together. But in the publishing world, when audio started becoming big – gosh, well over 30 years ago now – people started to have to go back and gain those audio rights. So they were getting abridged audio rights and then unabridged audio rights.

When you bring podcasts into the mix, you start to actually see some things colliding in an interesting way. You might bring something out in a podcast and then later bring it out as an audiobook with some additional materials. You might take a book that has been produced and do an unabridged audiobook and then later on do a dramatization that becomes used as a podcast. These are things that we have to be thinking about.

Additionally, the spaces have come together. It used to be that you knew where to go to listen to audiobooks and to listen to podcasts. Well, we've seen, in the last couple years especially, places like Amazon and Spotify starting to offer both types of formats and bring everything together. So there's some potential competition there, but then you also are running into potentially different versions of the same title as well.

Obviously, there's plenty of production crossover. Someone who can make an audiobook can probably make a podcast, and vice versa. There's some learnings to do, but I often see teams that were for a long time producing audiobooks now starting to produce podcasts, which is great.



Let's talk a little bit about those rights complications. When we think about getting a book and buying the rights for it, it was very kind of straightforward in the old days. Now, as you're starting to acquire rights, you have to think not just about audiobooks and unabridged versus that dramatization, which could be a podcast or could be an audiobook, but also about the different business models. People are building into the contracts things like streaming and podcast versions. So what was once in book publishing a fairly straightforward contract – it's now becoming more and more complicated, and publishers and podcast producers are thinking about how they can exploit the rights. A title is an intellectual property, but if you have the opportunity to dramatize a book and sell it again, whether it be as a podcast or even as a movie, things like that, you have to consider that as you're acquiring rights to any title. And I'm seeing a lot of encouraging news from both book publishers and podcasters who are finding ways to make their original material available in a different way, thus increasing the revenue for themselves and the author.

KENNEALLY: Well, thank you, Michele Cobb. And as I'm fond of saying at Copyright Clearance Center, when it comes to copyright, if you're confused, you're beginning to understand the problem. I think you've put your finger on the real issue here. There is a very complicated layering of rights, some of which have been, as Jeff Price is going to tell us, not getting the payments for royalties that they richly deserve. So Jeffrey Price with Word Collections, please tell us more.

PRICE: Sure. So I'm Jeff. I ran a record label for about 20 years called spinART. I'm the founder of TuneCore, which became the largest music distribution company in the world, changing the global business model of the music industry, and launched a global publishing administration division a couple years into that.

And then I left TuneCore, and I created Audiam. Audiam worked for music songwriters and music publishers to ensure they were being properly licensed and collected from the streaming services. At this point, I've gotten over \$2 billion – and that's with a B – \$2 billion back into the pockets of the artists, songwriters, comedians, and other performers.

I left Audiam in July of 2020, realizing that comedians are the new musicians. In other words, we are now at a point where you can upload a video to YouTube and end up becoming a member of Saturday Night Live's cast. Comedy is everywhere, and technology companies use comedy like they did music to attract a whole bunch of people. And their business goal is market share, typically. Take an entity like Spotify, which makes no money and loses over a quarter billion dollars every three months but is traded on the stock market publicly with a market cap of over \$40 billion. This comes from market share. So the way technology media companies these days typically tend to



generate their financial value is through aggregation of a whole bunch of people – pornography, music, movies, comedy, right? And we kind of run out after that.

Well, comedy works just like music. There are two copyrights each time something is recorded. So the minute a copyright gets recorded or written down, it gets a copyright. This copyright comes with rights types. Anybody that wants to use that copyright needs to get the appropriate licenses and make the appropriate payment back, and that just wasn't happening for comedians. So Word Collections – I launched it to be the ASCAP BMI of the collection world to represent spoken word and ensure that comedians, much like musician, are going to be properly licensed and collected on.

Let's just start with something very simple – radio play. Just as there are two copyrights for recorded music – let's go through those very quickly. Arista Records hired Whitney Houston to sing the song "I Will Always Love You." The sound recording – the recording of the song – that's owned by Arista Records. Dolly Parton wrote the lyric and the melody. That's called the musical composition. Those are the two copyrights. So whenever Spotify wants to play that recording, it needs one license from Arista Records for the recording – and it pays a royalty for that – and a second separate royalty from Dolly Parton for the lyric and the melody, called the musical composition.

But what happens if it's not music? If you go to the next slide, that's what happens. When it's not music, it's subject to different rules. If it's music, it's got one set of rules, because that's the way the law works. And if it's not music, it's subject to a second set of rules, but it's still the same concept of a copyright.

So George Carlin records the words there's no such thing as a civil war. The recording is owned by the record label, but George Carlin wrote the words. But it's not music, so we're going to call it a literary work. But those are the two copyrights. Anybody that wants to use that recording of those words needs those two license grants. That's the foundation of copyright for music or spoken word or even Amanda Gorman of the Martin Luther King estate – anyone that wants to use those recordings needs those two rights.

The prior speaker was very astute in pointing out how lines get blurred between podcasts and audiobooks and radio. This is where copyright law isn't keeping up with technology and consumer adoption, so we got to make sure this shakes out correctly.

KENNEALLY: Well, Jeffrey Price, thank you for that. Indeed, as you mentioned, Jim King is CEO of Spoken Giants, which indeed represents a number of the same types of holders of literary works. Jim, tell us about the way you approach it.



KING: Spoken Giants was founded in early 2019 from three co-founders, visionary leaders. We already mentioned Ryan Bitzer and Damion Greiman – they manage the largest label in the comedy world, called 800 Pound Gorilla. Myself, I was the head of business and business operations and technology for BMI.

We worked for the first 18 months of our existence with copyright leaders, IP rights advisors, legal firms, the top entertainment agencies, previous legal counsels for the DSPs, managers, comics themselves, book publishers, podcasting network owners, and more. And we have now created what we believe is a world-class platform, along with our partners Muserk and Exactuals, to be that BMI – as Jeff said – that BMI, ASCAP, SESAC, GMR, and the other global PROs for the spoken-word industry.

What we did is over the first 18 months of our existence, we piloted everything. We built everything. We started our membership. We acquired a publishing company – the largest publishing company in the comedy world. And we have brought those capabilities together to solve for this issue about spoken-word assets, which we’ve already talked about – standup, podcasts, speeches, audiobooks.

As Michele was saying, audiobooks are an interesting one. Well, they’re all interesting, by the way. But when you go to YouTube, and you see how many times *Goodnight Moon* has been read by someone to the world, it’s millions of performances of the book *Goodnight Moon*. Those are performances on YouTube. How are we managing that?

So music creators, composers, lyricists, songwriters – as we’ve already heard, they participate under the protection of US copyright law and global copyright law for decades and decades. At BMI, I had the honor to work for hundreds of thousands of those members. We are focused on delivering the same US copyright protection for our domestic and international members.

In fact, though, what we’re doing is we’re not trying to recreate the wheel here. Spoken Giants is modeled after the music industry’s efforts helping the creators of underlying composition rights for comedy, podcasts, speeches, because they’re all protected under copyright law, as we’ve already discussed.

The processes that we use to manage and administer the rights of our members and distribute their earned royalties from their creative work – it’s straightforward, but it’s very complex. Our responsibility is to manage our expanding membership base and to map their works to the performances and distribution for many of the digital radio and other platforms. Spoken Giants is a highly credible, global in scale, standardized rights admin platform for the industry.



We're based in Nashville, Tennessee. We're also working closely with a company called Muserk and their CEO, Paul Goldman, who is a member of our board. We have built a platform that processes billions of records. It will take processing capability as significant as any PRO. At BMI – BMI is the largest PRO in the world, practically – and processing trillions of transactions of records to understand where performances are occurring, we have to work closely with our licensees. With YouTube, for example, they have content ID, but the other performance providers have to provide that data to us so we can mine and find the performances to map royalty payments to our membership.

Our repertoire and our catalog is growing every week. Our membership is growing every week. Our royalty payments are going up by double digits every quarter. This is an exciting time. It's nascent. It's at the beginning. Comedy has been our first focus. We have podcast owners as members. We have book owners or rightsholders as members. We even have music owners as members. They are all passionate. They're all creative. And their content, their rights must be protected.

KENNEALLY: Jim King, CEO of Spoken/ Now, we want to finally introduce Peter Rafelson, who is the founder of ElectraCast. Peter?

RAFELSON: So ElectraCast is designed to be a media network, primarily audio first. The mission is to inspire and connect people through story, but also to generate IP from either the production or the licensing of preexisting content for the purpose of exploitation and other media rights.

We focus on three categories of content, first being what we call refreshed content. That's taking legacy talk shows from television and converting them to audio, adding new context. So those are preexisting. The second category is talk show. It's what Joe Rogan and Howard Stern and everybody else most commonly does. The third category, which is maybe the most interesting long tail, is scripted content. This is content that is literally written, directed, produced, acted, structured the way, say, film docuseries and dramatic content is produced. Those are the ones that generally, hopefully, will translate beyond strictly audio. Also, vodcasting is sort of the new podcast. You ask young people, where do you listen to podcasts, and they all say on YouTube.

Now, one thing that I just wanted to address – and I think this is something that applies to everybody – is the technology that provides and distributes these different formats varies. RSS feeds, which is commonly how podcasts have been delivered, is completely different than, say, audiobooks, right? So the question now is you look at – as Michele was saying – the difference between audiobooks and podcasts, and content-wise, very little difference. Close your eyes, listen, use your ears, you wouldn't be able to tell the difference. But whether they're being delivered through a proprietary app or a platform or Amazon or a television set or through an RSS feed that is hosted by one company, published by one



company, distributed by another company, and played back by a platform – yet a fourth company – all of these technical issues may affect the way licensing and the collection and administration of those underlying rights are valued.

The goal is to have enough content out there and enough audience that we as a company can cross-promote and collateralize all of those assets and that underlying IP. It's interesting, because coming from the music background and the licensing background, I am deeply and intimately familiar with what every one of you were talking about and that pain point. And because of the lack of your companies, I had to change my business model with our partners, and we create, basically, what are production partnerships, and we just do splits on all revenue generated. That way, there's not a disparity between what our creators and our publishers and our distributors and our hosts are all looking to find.

We would love to collect those extra royalties that you guys are speaking of and share those with our partners, and that's basically what we're doing. We're optimizing our audiences. We're building verticals. We're aggregating all those rights and repurposing them and sharing them with the partners, developing and producing and expanding the relationships with our talent. We have a number of shows now that have top film actors in them, and the cool thing about that is they're attached not only for the podcast but for any ongoing exploitation – TV series, film, etc. That's our model. And I am very much looking forward to connecting with the rest of you guys, because there's a lot of uncharted territory yet in this world.

KENNEALLY: Well, Peter, thank you for that.

A question for the panelists – seeing more interest in adopting – or sorry, adapting podcast series for television. Are there any specific rights issues there when moving from podcasting to other types of media – in this specific case, TV adaptation? I don't know if anyone wants to try to take that. Is that something, Michele, you can talk about?

COBB: Well, as with anything else, it's a different right, so you get good legal counsel and make sure that you're working with people that know specifically about those rights.

KING: But I think the one thing that I'd stress in this conversation is as the music industry learned – and painfully by some over time – do not give up your copyrights for the underlying compositions. Whether you're a podcast owner, whether you're a musician, whether you're a comedian, whether you're giving a speech, maintain your ownership of your underlying compositions, because that is where US copyright will protect you, as Jeff was saying, with those rights. And that's what we're here for. We're here to protect those.



PRICE: To Michele's point, it's a very sticky wicket. What's occurring is we're in a nascent industry, as Jim has pointed out. When you go and you do a Netflix special and you're a comedian, you want that, because you want the exposure, because you monetize your fame in other ways. But what rights grant are you giving to Netflix when you do that?

So Jim is right. Be really careful of what you're assigning and understand it before you do it. If you can't understand it, don't sign it.

KENNEALLY: Thank you all. Paul, do you want to wrap things up for us?

SWEETING: Yes. Yes, I'd like to thank Chris and all of the panelists. That was a really interesting and provocative panel. But this is an area that we're going to keep digging into here at RightsTech, and I hope some of you could come back on some of our future things and drill down a little more.

KENNEALLY: Well, I want to thank you, Paul, for organizing it. Paul Sweeting is the RightsTech track organizer for the program today. Appreciate your bringing everybody together. Thank you.

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