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Article

Behind The Mic – Safeguarding Your Podcast from Risk

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Podcast popularity has skyrocketed over the last few years, emerging as a powerful platform for storytelling, education, and entertainment. In 2019, there were 274.8m podcast listeners globally[1]. Fast forward to 2023, that number is estimated at 464.7m, and by 2025, global listeners are expected to surpass 500m - around 23.5% of all internet users[2].

The number of listeners has exploded because podcasts can exist in such a wide variety of formats, and there are no limits to the topics and niches they can cover. However, such a spectrum of content gives rise to a multitude of different risks. As the distribution of a podcast expands, so too does the potential for libel, slander, privacy violation, intellectual property infringement, and other forms of media liability risk. With podcast production showing no sign of slowing, producers, distributors, and marketers will increasingly require tailored insurance policies and the advice of a media liability risk specialist before hitting the airwaves.

A less-trodden path

Compared to television, podcasting is a relatively new media. As with any emerging industry, it can be difficult to determine the right insurance coverages, especially when risks fall under overlapping categories. For example, television programmes and films that run for defined seasons typically require Errors & Omissions (E&O) insurance, with a single policy lasting between three and five years and cover for each season clearly defined. Meanwhile, broadcasters, which show new content for an undefined period more regularly, must renew their insurance policies annually. Podcasts can follow either pattern and therefore require a careful assessment of their unique risks to ensure the most appropriate cover. There is also a tendency to think that

because podcasts often have low production budgets, that they also have low risk exposures. However, often the opposite is true - a low budget just means less money to spend on suitable and timely legal advice.

A wide variety of risks

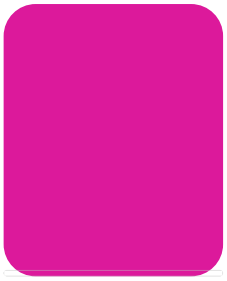
The content of podcasts varies hugely, from political commentary to deep dives into global crises to true crime stories. With this variety comes the potential for misinformation as well as inflammatory and discriminatory content. Depending on your jurisdiction, such content can lead to legal liability. For example, in 2020, Indigenous football player Nicky Winmar contemplated legal action under Australia's Racial Discrimination Act, against the creators of the podcast 'You Cannot Be Serious'[3]. The controversy stemmed from an episode on which it was implied that Winmar's famous gesture, in which he displayed his skin in defiance of racist fans during a football match, was actually intended as a nod to his athletic performance and only later cast as a statement of Indigenous pride and defiance, for political purposes[4]. The dispute was resolved out of court with a public apology from the podcast hosts and the payment of a six-figure settlement[5].

Other significant risks in podcasting include the potential for libel and slander, where verbal defamation can lead to legal consequences. Indeed, a podcast can be found liable for the defamatory statements of its hosts and guests, even if the host or guest merely repeats statements published elsewhere.

Beyond misinformation, inflammatory statements and defamation, intellectual property risks also loom large, especially when incorporating third-party content, such as 'stock' graphic and audio materials, without permission. And not to be ignored, privacy concerns can arise when podcasts reveal sensitive information about individuals, such as their sexual orientation or health status, potentially leading to legal claims.

The role of specialized media liability insurance

Libel and slander have long been a hallmark of traditional media liability cover, but the media liability risk landscape continues to evolve. As the popularity of podcasts continues to boom, and the number of podcast creators, producers and distributors grows, brokers should consider not only libel and slander but also intellectual property, privacy, negligence and breach of contract (perhaps by failing to deliver a podcast on time or of the right quality) and more. Insurance is a pivotal tool to help protect against the severe financial risks that can arise from a single sentence. Platforms, producers and the insurance industry can work together to support the continued growth of this nascent and popular media format.



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[1] https://www.insiderintelligence.com/content/global-podcast-listener-forecast-2021-2025

[2] See Note 1

[3] https://www.theguardian.com/australia-news/2020/jul/04/nicky-winmar-accepts-apology-and-six-figure-settlement-over-racist-comments-in-podcast

[4] See Note 3

[5] See Note 3

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