

Podcast and copyright: good practices in the academic context

The particularities of podcasts:

The term "podcast", originally a composite of "Ipod" (Apple branded digital music player) and "broadcast" refers to several particular media items. From the "video capsules" for educational purposes in the 2000s to "vodcast", "webcast" and other "audiocasts", all these new media for educational purposes are subject to copyright. We will take a look at the legal framework applicable to them.

Concretely, a podcast is an audio file, delivered to a user via a podcast application through an automated information stream (RSS feed). This uses what is called syndication (automatic enrichment of content) and the user can subscribe thanks to a feed aggregator software.

Which law is applicable?

The law applicable to the podcast will depend on the place of use. If the podcast is broadcast exclusively in Switzerland, Swiss law applies. But if the podcast is intended for distribution on the Internet, the podcast being accessible on a public site, foreign law may apply if someone consults the podcast outside Switzerland.

What protection for the podcaster?

A podcasts, as an intellectual creation with individual character is a work and benefits from an automatic protection as soon as it is created, without any particular formality, like any other work and in accordance with the Federal Act on Copyright.

If you are the only creator, you have all the prerogatives conferred by copyright on the podcast, but you must ensure legal authorization for any works that may be used.

If it is a creation in collaboration with another professor/student, we talk about co-authors. All co-authors have a right to the work and must exercise it by mutual agreement.

If a professor has assigned his or her copyright to the institution that employs him or her (which is not the case for the Institute): the latter may broadcast the podcast without the professor's consent. Otherwise, it is not possible.

In order to enforce your rights, it is advisable to associate an address or any other contact to which a request for authorization can be addressed to your podcast. The mention of your name is not necessary.

If you wish to authorize any use of your podcast, you can give it an open license (e.g. CC license).

To be able to broadcast a podcast of which you are not the author, you must obtain the authorization of the creator(s). For example, a professor who wants to broadcast a podcast created for a course must first obtain the authorization of the students who created it.

Can I use the pedagogical purpose exception for podcasting?

In theory, the pedagogical purpose exception allows

- the incorporation of excerpts of protected works in a podcast and its representation by the broadcasting of the podcast to students by a professor subject to the mention of the author of the work and the source.
- The broadcasting of excerpts of the podcast in class
- On-line intranet (with regulated access)

But what the pedagogical purpose exception does not allow is the diffusion of the podcast containing these extracts in free access on the Internet, and this is where a problem arises: the very nature of the podcast is to be diffused by means of rss streams through an Internet platform (thus public) to a large public, which contradicts the conditions of application of the pedagogical purpose exception, which is the strictly limited diffusion within a course (and more specifically, in Switzerland)!

If the creator of the podcast cannot control its diffusion, the use of the pedagogical purpose exception is clearly not recommended.

A podcast is intended to be consulted by the greatest number of people, and cannot be private, because it uses an RSS feed, which is by definition public...

What about the right of quotation (art. 25, para. 1 LDA)?

As in any work, it is possible within the framework of a podcast to insert quotations from pre-existing works, provided that the author and source of the cited work are cited. The quotation must be brief and must serve either as "comment, reference or demonstration", according to copyright law. It is possible to use a few seconds of copyrighted music to illustrate a statement (this does not include use for background music or credits).

Where can I find music for my podcast?

Music is an essential part of a podcast, but you can't just use any music. In general, music by artists is copyrighted and licensed. In order to use them you need the permission of the artist and producer, and often must pay a license fee. The safest way is to use royalty-free music.

What is royalty-free music?

It is music that is not deposited with a copyright collection society. In Switzerland, SUISA is the organization responsible for collecting copyright royalties from songwriters and music publishers when works are used.

Authors who are not members of SUISA or another collecting society are said to have their music royalty-free. This does not mean free of charge! In general, depending on the platform, you only pay once for a license and you don't have to pay royalties afterwards when the music is broadcast.

For links to royalty-free music platforms, see the libguide.