

PUBLIC TV 23



628-6099

ManchesterTV.org

Approved Policies & Procedures for PUBLIC ACCESS PROGRAMMERS

Introduction – Public Access Producership Policies, Responsibilities & Privileges

The City of Manchester and the Manchester Public Television Service, Inc. has implemented publically accessible cable television origination for citizens to utilize and present individual and community-based programming. Public Access opportunities do not include “Government or Education Access”. Cable television access is currently made available by the City/Comcast cable franchise agreement. Manchester Public Television Service, Inc. and all services and associated policies that pertain to PUBLIC ACCESS are heretofore reference in this document. Manchester Public Television Service [referred here as TV23] approved policies and procedures, as of July 1, 2010.

The US Congress enacted the Cable Communications Policy Act of 1984 (“Cable Act”), 47 U.S.C. §521, et seq. The Cable Act provides that a “franchising authority,” (the City of Manchester), may require a cable operator (Comcast) to make channel capacity available for “PEG access programming”, as part of the franchise agreement pursuant to which the cable operator provides services to a community.

See 47 U.S.C. §531. The Act further allows a franchising authority to “require rules and procedures for the use of the channel capacity designated” for PEG programming and to “enforce any requirement in any franchise [agreement] regarding the providing or use of such channel capacity.” Id. §531(b),(c). The City of Manchester’s cable franchise agreement, adopted in October of 2000 (renewed in 2003), states that the Access Provider will establish rules, procedures and guidelines for use of the PEG Access Channels. Article 7.1 (5)

Public Access is designated to channel 23 [analog] on the Comcast cable system in Manchester, New Hampshire. All Comcast subscribers in Manchester and south Hooksett can received this channel at all price tier levels.

FACILITY INFO: TV23 is located at 1045 Elm Street in Manchester, NH (also know as the Chase Building). The main offices are located on the 3rd Floor, the studio is located on the 4th Floor. Hours of operation are noted on the official website www.ManchesterTV.org

Section 1 - Producership Responsibilities & Privileges

1.01.1 - A Producer is the primary provider of content on the channel. Members, Live Hosts, and Residents may also provide content. Producership at TV23 is required to fully use public

access services. Any level of use is conditioned on compliance with all of these Policies & Procedures, including, but not limited to: Residency in Manchester, NH - Eighteen (18) years of age or older - Attendance of a training session -Completion of a signed Statement of Compliance -Payment of the required fee.

1.01.2 – Producers and their guests have normal workday access to the designated studio/production space for the creation of programs

1.01.3 - A Producer may use, on loan, designated production equipment outside the facility for the purpose of program creation.

1.01.4 – Any Producer may submit pre-taped programming for the channel; only a Producer is eligible for a designated timeslot.

1.01.5 - A Producer may utilize designated computer workstations for the creation of programs for the channel.

1.01.6 - A Producer shall receive technical or production assistance from the staff when available and appropriate.

1.02 - Producership Tiers

1.02.1 - Regular Series Producer: includes 30 minute weekly program slot + special long-form program submissions, studio use (with staff assistance), training and full use of field production equipment, training and use of computer editing systems or a LIVE program slot (where/when available). The fee schedule is posted, renewable annually.

1.02.2 - Access Producer Producerships last for one calendar year from the first month joined. Members will receive notices in-hand or in the mail regarding Producership renewal.

Section 2 - Programming and Scheduling

“First -come” and “Free speech” are abstract concepts that require implementation and, unfortunately, everyone cannot do whatever they wish, in the same space, at the same time, forever... the law of physics prevents such endeavors and access organizations are the arbiters of “fair use of limited resources” Access to channel space will be accepted on a fair and non-discriminatory basis. Once submitted, the TV23 staff may schedule programming with the goal of presenting a consistent schedule to the Manchester viewing audience.

2.01 - Personal responsibility

2.01.1 - Anyone who submits programming for playback on the access channel is personally responsible for the content of the programming. Each submission must be accompanied by a Cablecast Request form, which includes a clause indemnifying TV23 from legal action resulting from the cablecast of the program.

2.01.2 - Additionally, the form will include a signed statement attesting to the fact that the program contains no illegal material. Illegal material includes, but may not be limited to
(a) any unlawful use of copyrighted material
(b) any advertising material that promotes a commercial product or service (c) any material that violates local, state or federal law relating to obscenity or indecency (d) any material that is libelous, slanderous or defamatory in character or (e) material that is an unlawful invasion of privacy.

2.01.3 - TV23 encourages producers to obtain release forms from each person appearing in their program.

2.01.4 Names and contact info of the submitter of content may be released as requested.

2.02 - Submitting a program for playback

To submit a program for playback, please include the following:

2.02.1 - A video tape or disc of the program which adheres to all standards outlined in this section

2.02.2 – A Cablecast Request and Statement of Compliance form. Also see Section 2.14

2.02.3 - Technical Requirements for cablecast transmission: Programs must meet minimum audio and video technical standards or they will be returned to the producer as un-playable.

2.02.4 - TV23 will accept programs on VHS, S-VHS, MiniDV, and DVD, DVD-R—other formats may be accommodated.

2.02.5 - Video Tapes or Discs must be clearly labeled with producer's name to aid in returning of the tape.

2.02.6 - Programs are generally scheduled in slots at the top and bottom of the hour.

2.02.7 – Viewer Warning: Programs submitted under Adult/Mature content guidelines may be preceded by a disclaimer: “This program contains Adult/Mature Content. Viewer Discretion Advised.” These programs will play after Midnight and before 5:00AM.

2.02.8 - Only after staff has encoded and cablecast a submitted tape, should the producer remove his/her tape from the facility.

2.02.9 - Producers tapes/DVDs will be placed in the designated area for retrieval.

2.03 - Scheduling Playback

Successful programming is a symbiotic relationship between the creator and the viewer. The TV23 schedule will reflect a fair and practical day and time assignment for each program to

organize shows into useful categories. Programs will be organized and scheduled into specific day-parts with each night reflecting a program type, such as (a) religious, faith-based, (b) political, news, editorial/opinion (c) arts, non-profits, cultural, & innovative. The scheduling categories apply only to regular series programs.

2.03.1 - Regular Series Programs: Individual program submissions will be issued a regular cablecast timeslot. TV23 requires the Producer to tape and deliver their program at least one business day prior to the scheduled playback; every effort will be made to present the program in a timely manner. [See Section 2.05 for more details]

2.03.2 - TV23 will schedule no more than one regular series program in a (7) seven-day period from any individual.

2.03.3 - Each regular series program submitted for cablecast will be scheduled to play at least once. When space permits programs may be scheduled for an additional play.

2.03.4 - Producers that maintain an active schedule by submitting at least two (2) programs per month will be cablecast weekly. Producers that submit only one (1) or fewer programs per month may be located in a rotating timeslot, cablecast biweekly.

2.03.5 - Single-Feature Programs: Individual program submissions will be scheduled on a first come, first serve basis, upon delivery of the tape, in an available timeslot by staff assignment. TV23 requires the producer to tape and deliver their program at least two business days prior to the scheduled playback; every effort will be made to present the program in a timely manner. [See Section 2.06 for more details]

2.03.6 - TV23 staff will select times for single-feature programming and Resident submissions and will attempt to honor requests for specific dates or times on a first-come, first served basis.

2.03.7 - Each single-feature program or Resident submission will be scheduled to play at least once. When space permits programs may be scheduled for an additional play.

2.04 - Safe Haven & Community Standards

The First Amendment to our US Bill of Rights: “Congress shall make no law 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 peaceably to assemble, and to petition the Government for a redress of grievances.” The US Supreme Court held that the Due Process Clause of the Fourteenth Amendment applies the First Amendment to each state, including any local government.

2.04.1 - Adult Programming: Obscenity and Pornography are Constitutionally unprotected and prohibited at all times. Indecency and Profane Language may NOT be prohibited, but will be played ONLY between the hours of Midnight and 5AM.

Note that obscene material only concerns sexual organs and sexual acts. Indecent material includes sexual or excretory functions or organs, and so-called profane words. The FCC's regulations concerning safe harbor or safe haven concern only indecent programming, which is defined by the FCC as follows: "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community broadcast standards for the broadcast medium, sexual or excretory organs or activities. Indecent programming contains patently offensive sexual or excretory references that do not rise to the level of obscenity. Indecent programming may, however, be restricted in order to avoid its broadcast during times of the day when there is a reasonable risk that children may be in the audience".

Bearing in mind that it has not necessarily been established that these rules apply to cable access TV, but only to broadcasters, the FCC traditionally refers complaints about programming under these rules back to the municipality that regulates the access center. Most municipalities have adopted the FCC standards on obscenity and indecency and enforce local community standards for cablecast.

2.04.2 – TV23 will work in partnership with citizen groups, businesses, and community organizations to provide progressive, responsible and diverse programming based upon local community standards

2.04.3 - Producers are expected to alert TV23 staff to programming that may be inappropriate for younger viewers. TV23 reserves the right to restrict cablecast programming with excessively violent material, offensive language, nudity, or sexually explicit material in order to preserve a safe haven for viewing by "all audience members". Mild Adult: intended for mature audiences only: may be aired between the hours of Midnight to 5AM. This category of programming intended for adult audiences may include frequent profanity, hard violence, and brief frontal nudity of a non-sexual or non-erotic nature. This category is similar to what viewers are generally accustomed to seeing in stronger MPAA* PG-13 rated material, and some R rated material, or on some network broadcast and cablecast television (TV-MA) after Midnight. Strong Adult: intended for mature audiences only that may include constitutionally protected "indecent" speech: may be aired between the hours of 1am to 4am. This category includes any uses or harsh depictions of violence or nudity that is persistent or otherwise goes beyond brief or infrequent uses. This category is similar to what viewers are generally accustomed to seeing in stronger MPAA* R, NC-17 and X rated material, or in some cable TV pay-channels or pay-per-view channels.

TV23 believes that when it comes to controversial (not illegal) content in programming, the response should be to encourage more speech, as opposed to enforcing silence. Furthermore, TV23 is forbidden by law from censorship, or content control. TV23 encourages anyone who disagrees with a program to produce counter-programming presenting an opposing point of view, or otherwise responding to the program in question. Upon receipt of a Request for Cablecast for any program, TV23 reserves the right to inform the public of a local Producer of Record's intent to cablecast a particular program to which it believes a segment of the community may wish to respond.

2.04.4 - Violation of the Safe Haven policy for adult programming will be considered a Major Offense (see Section 5.04.5 Failure of Disclosure). The City of Manchester, the cable franchiser, and TV23 encourage you to consider: your program will be cablecast into households throughout Manchester. There are situations where children in many of these households, and their television habits may not be closely supervised. You have the opportunity to make a responsible decision to limit the time of day your program will be scheduled by voluntarily stating any controversial content on your program. Any program that the Producer deems contains the controversial content noted below should make every effort to notify the staff prior to cablecasting.

- a. Adult Language: Language or slang references which refer to sexual situations, or human excretory functions.
- b. Extreme Violence: Extreme acts of violence against people, graphic depictions of violent acts, images or sounds of violent human or animal mutilation, torture or death
- c. Nudity: Human nudity of a socially unacceptable nature.
- d. Sexual Content: Sex acts or depictions in any context.

2.04.5 - Illegal Programming (also see Section 8.) Please note: the courts have determined that material that is so-called “XXX” or “hardcore” pornography is legally obscene and is not permitted to be cablecast on public access. At no times may such constitutionally unprotected material be cablecast on the channel. Producers of such material may be subject to prosecution. Public Access Programming may not be used for illegal purposes. TV23 assumes no legal responsibility or liability for Public Access programming. Users responsible for illegal programming or programming containing information defrauding or intended to defraud the viewer shall forfeit their right to use Public Access facilities or air-time and be subject to disciplinary actions of a Major Offense (see section 5.05)

2.04.6 - The following are examples of types of illegal programming which are prohibited:

- a. Information about any lottery, gift enterprise, or similar scheme offering prizes gained by lot or chance or any whole or partial list of prizes awarded by lottery, gift enterprise or similar scheme is prohibited. (Violation of this rule is subject to criminal liability under federal law, Title 18, U.S.C. Sec. 1304.) For example, a program violates this if it is connected with a valuable prize awarded to any person selected by lot or chance, if the winner is required to furnish anything in exchange for the prize, or if the winner is required to buy or have any product from a sponsor of the program.
- b. Material which is intended to defraud the viewer or designed to obtain money by false or fraudulent means is prohibited. (Violation of this rule is subject to criminal liability under federal law, Title 18, U.S.C. Sec. 1464.)
- c. Indecent or obscene matter is prohibited. (Violation of this rule is subject to criminal liability under federal law, Title 18, U.S.C. SEC. 1464.)

2.04.7 - Any Producers providing Public Access programming shall be required to advise TV23 whether or not their programs involve the use of copyrighted material or material subject to other ownership or royalty rights. If so, the Producer may be asked to provide written evidence of all necessary clearances and arrangements with the program owners, copyright, trademark logo or service mark owners and owners of any performing or royalty rights before the program may be produced in TV23 facilities. Also see Section 8.0 of this document.

2.05 - Regular Series Programming

2.05.1 – Shows submitted by Producers to TV23 will be given “series status”, which provides a consistent timeslot for the duration of the season.

2.05.2 – Actual Time Length: Half-hour series programming may not exceed 29:30 minutes in length; Hour series programming may not exceed 59 minutes in length, and both must be submitted at least one business day prior to cablecasting.

2.05.3 - Series status will be constantly reviewed for activity. Maintaining a consistent timeslot from season to season, or even month to month, is not guaranteed. If you fail to maintain your minimum series commitment, as stated above, your slot may be revoked or reclassified without notice. If demand requires it, TV23 may reallocate timeslot assignments.

2.06 - Single-Feature Programming

2.06.1 - Shows exceeding the producer’s current program category limitation submitted to TV23 by Producers with or without a current series program will be provided a first come, first serve timeslot by staff assignment.

2.06.2 – Single-feature programming should not exceed four hours in length and must be submitted at least two business days prior to cablecasting

2.06.3 - Single-feature programming must originate from outside the TV23 studios.

2.06.4 - Each slot for Single-feature is limited to the actual and real length of the event or program.

2.07 - Live Programming

2.07.01 - Definition/Explanation of Live Programming: Live productions are those that are cablecast simultaneously as they are created in the “live” studio of TV23. Telephone equipment for call-ins is available. TV23 reserves the right interrupt for station ID midpoint through the program for up to two minutes. Hosts have total responsibility for all guests, crew, talent and callers on the program. A delay system is available for live cablecast productions.

a. Hosts/Producers will be considered in default of their live reservation for any of the following reasons:

-Lateness (Arriving less than 10 min. before the live studio time.)

-Demonstrating a consistent inability to begin and end programming in scheduled/required time
If a Producer is in default, TV23 staff may cancel the production.

2.07.3 - Content violations occurring during live programming: The Host/Producer is responsible for all program content and a live-cablecast request form prior to the production.

a. No commercial advertising or programming prohibited by the FCC Regulations (see Section 8 of this document)

b. No programming which does not have clearances, releases, or other assurances, or programming, which in the judgment of TV23 raises serious risk of legal liability, (such as copy right infringement, pornography, obscenity, etc.) may be prohibited.

c. Live shows may be terminated in progress or delay-activated for violation of rules outlined above

d. Live programs may be recorded at the time of cablecast in order to be replayed later and in case of disputes arising from content.

2.07.4 - Phone Management for Live Productions. Hosts may answer calls with or without screening, depending on available crew. All calls are automatically logged by time and phone number, callers with unacceptable behavior will be blocked.

2.07.5 - Delay Management for Live Productions. All live shows are time-delayed by approximately 30 seconds. In the event a Host deems fit to engage the delay to prevent any offensive utterances or actions from cablecasting throughout the city, they must alert a staff member using the designated device install at the Host desk. All Live Hosts will be trained on the location of this alert-device, and how and when to engage it.

2.07.6 - Remember: Live programming is an involved and dynamic undertaking; any mistakes or indecisions will be apparent in real-time, for everyone to see and hear; for all its innate problems and potential pitfalls, however, comes an immediacy of communication that makes all of that worthwhile and distinctly valuable to the Producer and his/her viewers: Willful cooperation of the live- production policies and consideration for “accidental viewers” is important to the success and continuation of live programming at TV23.

2.09 - Duplication

2.09.1 - Producers may use TV23 facilities to make DVD duplications of their own programs, as long as the copies are not sold for profit (the number of copies may be limited by the staff).

2.09.2 - TV23 stores programs in a computer drive in MPEG2 format and on DVD. Please state the exact taping date(s) of the programs you want to duplicate. There is no guarantee that the program will be available. It is recommended that every producer keep a master copy of any show that they intend for duplication or cablecast re-submission.

2.09.3 - Producers may purchase blank DVD stock from TV23 for duplication or recording of their studio program. Prices are posted.

2.10 – Failure to Play, Pre-Emption & Graphics-Insertion

2.10.1 - If a program fails to play due to mechanical failure or otherwise, it will be rescheduled in a commensurate timeslot. TV23 will note time change notices on the automated bulletin board.

2.10.2 -TV23 reserves the right to preempt scheduled programs on any channel to present special or time-sensitive programming. TV23 will attempt to notify the producer of an affected program prior to such a pre-emption.

2.10.3 - TV23 may insert or overlay scrolling text or graphics script in the lower-third of the television screen with special or time-sensitive programming or public safety news or information. All pre-emption or text overlays will be done in a consistent and nondiscriminatory time, place & manner.

2.10.4- TV23 may reduce the aspect-ratio of your program during non-prime time hours to insert or overlay text or graphics regarding community announcements or sponsors. All overlays will be done in a consistent and nondiscriminatory time, place & manner.

2.11 - Program Ownership

Producers maintain ownership of the content of the programs they produce. TV23 reserves the right to excerpt any program that has been cablecast, for submittal to competition or contests, or for review by a formal complainant or legal authority.

2.12 - Re-runs

Due to the digital storage capacity of our master control playback, TV23 reserves the right to limit or deny regular series programming re-runs within two months of the original playback. If a Producer has any intention of re-running a program beyond that point, TV23 encourages that the Producer make a copy of that program for re-submission.

Section 4 – Equipment loans and Responsibility

Production equipment is made available for the creation of programming to present on TV23's cable channel. Private or commercial use is not allowed. To that end, the following rules apply.

4.01 - Showing or Cablecasting Programs produced with TV23 equipment must have their first-time showing on TV23's channel.

4.02 - Access Producers may use only the access equipment for which they are certified and take full responsibility for any loss or damage. A Producer must have a valid phone number and copy of their government-issued identification on file with TV23 while borrowing equipment.

4.03.1 - Requests are scheduled on a first come, first served basis. Equipment will not be considered reserved until a staff member approves an Equipment Request.

4.03.2 - Reservations, pick-ups and returns may be made during those hours designated by the TV23 staff.

4.04 - Field Production Equipment

4.04.1 - Producers are encouraged to make only one or two field reservations at a time. A normal field equipment reservation should be no longer than a 48-hour use of equipment.

4.04.2 - Field equipment should be reserved at least one business day in advance of pickup and no more than six weeks in advance of use for a single program.

4.04.3 - One set of field equipment per producer making the request will be authorized depending on availability and the equipment maintenance and repair schedule.

4.04.4 - Field equipment is limited to a maximum of three uses per program. The production manager must approve any exceptions.

4.04.5 - Access Producers are responsible for notifying staff if there are any problems with equipment.

4.04.6 - A Producer may be required to furnish proof of insurance for the value of the field production equipment, or make a deposit for a portion of the value of the equipment.

4.05 - Post-Production Equipment

4.05.1 - Producers are allowed to make two post-production suite reservations at a time. Use may be limited to four hours per session.

4.05.2 - Reservations should be made at least one-day in advanced of proposed use. Each Producer will be designated a file on a specified computer workstation. The Producer will make every effort to maintain their entire program at the same workstation. File storage is limited. Facility management will monitor file storage use and make any Producer aware of concerns.

4.05.3 - A person may not change wiring or connections, or use outside accessories without prior approval of staff. This includes the use of any software not currently installed on a given computer.

4.06 - Taking Care of Access Equipment

Equipment users agree to take full responsibility for equipment used by them and take every precaution to protect the equipment in their care.

4.06.1 - Never leave field equipment unattended.

4.06.2 - Never leave equipment in a car overnight.

4.06.3 - Never leave equipment visible through car or van windows, cover it or place it in your trunk.

4.06.4 - Never allow anyone to borrow your TV23 equipment.

4.06.5 - Never attempt to use equipment in hazardous environments.

4.06.6 - If equipment is stolen, file a police report immediately and notify TV23 by submitting a written report containing all the relevant details including a copy of the police report.

4.06.7 - It is the responsibility of the equipment user to reimburse TV23 for full replacement value of lost, stolen or damaged equipment.

4.07 - Main Production Studio

4.07.1 - Use is limited to 60 minutes per session for a half-hour program.

4.07.2 - Reservations will be accepted no more in advance than the TV23's posted production calendar allows.

4.07.3 - The studio may be used for all general taping purposes.

4.07.4 - The certified Producer who reserves the main-studio for production may be responsible for finding crew members to work in the various studio crew positions as required by the production. TV23 staff members are generally not "crew" but are available to help facilitate the program including technical direction/switching the tapings.

4.08 - LIVE Studio

4.08.1 - Producers are allowed to utilize the Live-studio on a first come/first serve basis as scheduled (see Section 2.07 of this document for more information on Live shows)

4.08.2 - Use is limited to scheduled appointment,

4.08.3 – Staff assistance will be extremely minimal, the producer is responsible for finding crew members to work as needed.

4.09 - Cancellations

In respect for and fairness to other producers, cancellations should be made as soon as a producer knows they will not be able to keep a given reservation.

4.09.1 - Producers failing to cancel before scheduled use will be given a written warning as a minor violation.

4.09.2 - Staff will cancel and reallocate facility and equipment use reserved by access producers who arrive more than 20 minutes past their scheduled use time.

4.09.3 - Abuse of the cancellation policy may result in suspension of access use privileges.

Section 5 – Code of Conduct

The facilities of TV23 are a day-to-day work and educational environment. It is expected that all participating individuals (Producers, Members, guests, and volunteers) will conduct themselves in a responsible manner at all times and not interfere with the orderly conduct of activities and programs. All participating individuals, including staff, are asked to respect others within the work environment and while on TV23 premises. We ask that each member and their guests work for the long-term success of Manchester Public Television Service, Inc. and its goals.

5.01 - Definitions

5.01.1 Facility Suspension: Loss of facility privileges to include:

- Entrance into TV23 facility - Studio Use - Equipment Use - Immediate return of all facility property and equipment

5.02 - Unacceptable behavior : The following actions are considered conduct that disturbs the work environment:

- Personal verbal attacks or harassment of individuals and or groups including, but not limited to, sexual, verbal or physical harassment. Yelling or loud and disruptive discussions - Loitering on facility premises. Any conduct which disrupts the workplace environment.

5.03 - Right to refuse service: To ensure that TV23 equipment and facilities remain in good working order, are available to the broadest range of producers, and that the resources are used solely for their intended purpose, TV23 reserves the right to refuse service on a temporary or permanent basis, or otherwise initiate suspension of services, disciplinary actions, or other legal action against groups or individuals interfering or jeopardizing TV23's operations or otherwise violating the rules and procedures.

5.04 - Requests to leave premises

TV23 staff may request that an individual leave the facilities immediately as follows:

5.04.1 - If an individual possesses, consumes, sells or dispenses alcohol or illegal substances in the TV23 facilities or premises, or

5.04.2 - If an individual appears to be under the influence of alcohol or drugs, or not in control of his/her faculties, or

5.04.3 - If an individual behaves in a threatening manner or interferes with the orderly conduct of TV23 activities, facilities or programs, or displays an inability to properly operate production equipment.

5.05 - Major Offenses: A Major Violation will bring immediate three month-(90 day) day suspension from using equipment and/or entering facilities. A second violation shall result in forfeiture of Producership (including your right to program playback).

These include, but are not limited to the following:

5.05.1 - Theft, vandalism, or willful damage to TV23 equipment or facilities, or willful injury to or theft of the personal property of any TV23 staff person, user or guest.

5.05.2 - Falsifying or providing misleading information on forms and/or documents.

5.05.3 - Use of facilities, channel, or equipment for private, commercial or any purpose other than for the production of non-commercial programming for cablecast on the TV23 channel(s).

5.05.4 - Transferring and permitting use of equipment by non-certified users without a certified user present at all times.

5.05.5 - Breach of signed Cablecast Request form or failure to inform staff of “controversial” programming as indicated on this form.

5.05.6 - Threat, assault, verbal or sexual harassment of staff or TV23 volunteers.

5.05.7 - False representation by user of him/herself as an employee, representative, or agent of TV23.

5.05.8 - Reconfiguring equipment, wiring, unauthorized attempted repair or attaching accessories without staff permission.

5.05.9 - Any disregard for TV23’s operating policies and procedures.

5.05.10 - Any action that could be considered illegal under NH law.

5.06 - Minor Offenses: Minor offenses can disrupt the operations of the TV23 facility and services, and will not be permitted.

5.06.1 - Minor violations include (but may not be limited to) (A) Failure to cancel an equipment or facility reservation. (B) Late pick-up or return of equipment without prior notification or approval (C) Mishandling of equipment (D) Smoking in the facility (E) Unauthorized entry into non-public or restricted areas of the facilities (F) Failure to clean up after facility use (G) Failure to vacate the studio in a timely manner (H) Return of functional but dirty/mis-packed equipment (I) Other violations of TV23’s rules and procedures

5.06.2 - Minor offenses that occur within a 12-month period from the date of the first violation shall result in action up to and including the following series of sanctions:

- (A) First Violation- Written Warning
- (B) Second Violation– Final Written Warning
- (C) Third Violation– 30 day facility/equipment suspension (see 5.03)
- (D) Fourth Violation– 60 day facility/equipment suspension (see 5.03)
- (E) Fifth or successive violations– 90 day facility /equipment suspension (see 5.03)

5.07 - Financial Responsibility

In addition to usership sanctions, members will be held financially responsible for the replacement and repair of any equipment lost, damaged or destroyed while in their care and responsibility. Complete restitution may be required before any additional facility use is authorized.

5.08 - Complaint Process

TV23 resolves to encourage members to attempt resolution of any difficulties at the staff level. Once a person is removed for a Major Offense, they may not enter the premises until a formal hearing is held. Any complaint against a Producer will be submitted to the Executive Director for action. A complaint may be filed by any Producer or staff of TV23. Any Producer may, however, appeal any disciplinary action using the following procedure:

5.08.1 - Once a complaint is filed, the Executive Director shall investigate the circumstances of the complaint and provide a written finding within 10 business day. This period may be extended for good cause shown.

5.08.2 - The Executive Director's written finding shall be presented to the Chair and Vice -Chair of the Board of Directors and a hearing shall be held within 10 business days of receipt of the written warning. This period may be extended for good cause shown.

5.08.3 - The decision of the Board shall be final and binding.

5.09 - Viewer Comment Procedure

5.09.1 - Viewer comments will be recorded and issued to each Producer as applicable, including the complainant's name and contact information (where available), description the program, the date and time of the program, and the nature of the comment. TV23 will provide the complainant with the program producer's contact information upon request.

5.09.2 - If the complainant alleges that the program contains illegal material, TV23 will follow up with the following procedure: If the complaint alleges that the content of the broadcast is obscene or otherwise illegal, TV23 staff shall forward a copy of the complaint, a copy of the program on tape and the producer's release to the Board of Directors. TV23 staff shall advise them that a community member has alleged that the program contains illegal content and pursue actions based on failure to disclose per the TV23 Policies & Procedures. The Directors may retain legal counsel for advice and direction.

5.09.3 - Only illegal content may be banned from a public access channel: libel or slander, obscenity/pornography, invasion of privacy, and copyright violations. Commercial content is banned by local agreements with the cable operators, not by NH or federal law. "Hate speech" is protected by the U.S. Constitution so long as it does not present a clear and present danger of imminent harm. Hate speech hurts! While public access stations are required to carry it, they are not prevented from reaching out to communities, acknowledging the hurt of those it is

directed, and encouraging counter-programming as a suitable response. In a First Amendment forum (such as public access television) the opinions and beliefs of the mechanical operator, such as TV23, must not be considered.

“Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the processes of popular government, no danger flowing from speech can be deemed clear and present, unless the incidence of the evil apprehended is so imminent that it may befall before there is opportunity for full discussion. If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence” — Justice Brandeis in Whitney v. California 271 U.S. 357 (1927)

Section 7 – Facility and Operation Information

7.01.1 - A Public file will be kept available which will include copies of request for playback forms and program logs. These files may be inspected during normal business hours by appointment.

7.03 - Fees

7.03.1 - TV23 shall make readily available; a current list of all fees that may apply to access services. This includes (but may not be limited to) Producership fees, tape costs, and special service fees.

7.03.2 - Any changes in fees will be announced at least 30 days prior to the effective date.

7.03.3 - TV23 cannot extend credit, and all applicable fees must be paid prior to delivery of service.

7.04 - Misrepresentation Access producers must not misrepresent themselves as employees of TV23 or as authorized to speak for the organization. Such actions may result in suspension of access privileges.

7.05 - Facility Upkeep

All users are expected to clean up each time they use the equipment or facilities.

7.06 - Indemnification

Users of the access channels shall indemnify TV23, the municipality of Manchester New Hampshire, and the cable provider of the Manchester Area Community against any liabilities arising out of any use of facilities and resources or out of any breach of the Operating Rules and Procedures.

7.07 - Interpretation The Executive Director and his/her designees are authorized to interpret this Access Provider Board’s Operating Policies and Procedures.

(1) - Amendments The Access Provider Board reserves the right to amend these policies as necessary. Producers, members, volunteers and staff will be notified of any changes. Changes will be posted to the public within 15 days of amendment approval.

Disclaimers and Addendum

The party signing the contract assumes liability for program content and warrants that the program(s) submitted to Manchester Public Television Service, Inc for cablecast contains none of the following:

Advertising material that in whole or in part, enacts a call-to-action or demonstrative selling of products, services, or business for the purpose and intent of profit making.

Commercial programming that in whole or in part, enacts a call-to-action or demonstrative selling of products, services, or business for the purpose and intent of profit making.

The direct solicitation or appeals for funds or other things of value for any and all purposes (exception: non-profit or charitable agencies registered in New Hampshire).

Material that is obscene as defined in New Hampshire RSA Chapter(s) 645 and 650:1. A cable operator may refuse to transmit all or a portion of “a public access program which contains obscenity, indecency, or nudity.” United States Congress Id. §§531(e), 544(d)(1).

- Any programming that constitutes or promotes any lottery or gambling enterprise that is in violation of any local laws.

Material which constitutes libel, slander, invasion of privacy or publicity rights, unfair competition, violation of trademark or copyright, or other unprotected speech which may violate any local, state, or federal law (see specific NH RSA Chapter(s) 91-A, 126, and 633).

Material that has a reasonable probability of creating an immediate danger or damage to property, injury to persons, or creating a public nuisance (see specific NH RSA Chapter 633).

Material that has a reasonable probability of causing the substantial obstruction of law enforcement or other governmental functions or services.

Section 8 - Know the Law, and know your Rights

Ownership & Responsibility

All editorial control and responsibility and ownership of content of Public Access programming lies with each program’s Producer. Congress has prohibited cable operators from exercising “editorial control” over PEG programming, except that a cable operator may refuse to transmit all or a portion of “a public access program which contains obscenity.” Id. §§531(e), 544(d)(1). 1974 Supreme Court case, Miller vs. California, 413 U.S. 15.24 defines obscenity as “A work which taken as a whole (1) appeals to the prurient interest, (2) depicts or describes sexual conduct in a patently offensive way and (3) lacks serious artistic, political or scientific value.” To be considered obscene, all three criteria must be met.

TV23 will not knowingly permit any of the resources under its control to be used for the production or cablecasting of any material that is obscene as defined in New Hampshire Title LXII Criminal Code Section 650:5 Obscene matter , or which willfully violates copyright, or libel laws. (Also see Section 2.04 of this Policies and Procedures manual.)

Congress enacted the Cable Communications Policy Act of 1984 The Act provides that a franchising authority may require a cable operator to make channel capacity available for “PEG access programming”, and that “(e) Subject to section 624(d), a cable operator shall not exercise any editorial control over any public, educational, or governmental use of channel capacity

provided pursuant to this section as part of the franchise agreement pursuant to which the cable operator provides services to a community. See 47 U.S.C. §531.

Leach v. Mediacom [2004] states, “Rather than conferring rights onto the producers of public access programs, sec. 531(e) only describes prohibited actions of cable operators. The Cable Act merely recognizes the preexisting practice of local franchise authorities conditioning the cable franchises on the granting of [public access] channels...[A]ny rights regarding the use of public access channels are not created by sec. 531, but stem from franchise agreements between cable operators and franchising authorities. Nothing in sec. 531 suggests that Congress intended to create a private right of action in federal court to remedy the rights of third party beneficiaries of these franchise agreements,” he said.

Copyright Abuse

- Title 17 U.S.C. § 101 “Copyright protection subsists ... in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated...” No program produced or shown at TV23 may break copyright law. This includes the use of copyrighted music, and/or TV and film clips without permission or whereas the Producer can show Fair Use i.e. Sec. 107. US Copyright Code

Limitations on exclusive rights, or said copyrighted material © may be used only if written permission has been obtained from the copyright owner (record company, film studio, TV station, etc.) by the Producer and submitted to TV23.

Copyright FAQs

Essential Rule: If you did not create it, you don't own it, therefore you can't use it.

What is intellectual property? Intellectual property is a legal concept under which we manage the protection and use of products of the human mind (as opposed to the human hand). Generally, movies, music, books, magazines, art or any physical, documented representation of unique thought is probably protected by copyright law.

Is copyright law the same for words, pictures, movies, music and software? Yes, for the most part. Sure, it's easy to download and reproduce materials that you might find on the Web, but that doesn't make it lawful. Is it hard to get a copyright? No, it's easy. Under U.S. law, anything original and creative - yes, even your diary, memos, personal correspondence - is protected by copyright. This protection is automatic, from the moment you create something, whether on paper or electronically.

If I see something and it doesn't have a copyright notice, does that automatically mean I can use it? No. A copyright notice is not required in order to have copyright protection. It is true that many things are not protected by copyright.

If I use somebody's work without permission but give credit to the author or publisher, am I still infringing on copyright? Probably. Giving credit is great, but nothing in the copyright law says that it somehow absolves you of infringement. If you are infringing, giving credit won't help you!

What about Fair Use? Sec. 107. US Copyright Code - Limitations on exclusive rights: Fair use Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include - (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work. The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors

Equal Opportunity

- Public Access is required to offer equal opportunity to the community it serves. Public Access is not required to offer equal time on its channel(s). Any trained Access Producer can create programming. Those Producers not wishing to be trained can submit programming that is within the guidelines of these policies and conforms to the Cable Act of 1984, and any federal, state, and local ordinances.

Defamation: Elements of Libel and Slander

I. WHAT IS DEFAMATION? Libel is written, slander is oral. Defamation consists of the following:

(1) a defamatory statement; (2) published to third parties; and (3) which the speaker or publisher knew or should have known was false.

What is a “defamatory” statement?

1 A statement which causes harm to reputation. A statement is defamatory if it “tends to injure the plaintiff’s reputation and expose the plaintiff to public hatred, contempt, ridicule, or degradation.

2 Defamation Per se. Some statements are so defamatory that they are considered defamation per se; and the plaintiff does not have to prove that the statements harmed his reputation. The classic examples of defamation per se are allegations of serious sexual misconduct; allegations of serious criminal misbehavior; or allegations that a person is afflicted with a loathsome disease.

3 What Constitutes Injury to Reputation? The plaintiff must establish proof of damage to reputation in order to recover any damages for mental anguish. However, a court will not dismiss a defamation action merely because the plaintiff already has a bad reputation. Rather the statement upon which the defamation claim is based should relate to the same matters upon which the prior bad reputation was founded, or to substantially similar matters.

4 The defendant knew or should have known that the communication was false. Defamation allows recovery for unfair damage to reputation. As a consequence, if true statements are made about a person that damages their reputation, they cannot maintain a lawsuit. Virtually all states require that the alleged defamatory statement be false before a defamation action may proceed. Truth is a complete defense to a defamation claim.

Public Officials/Public Figures

The First Amendment requires that a defamation plaintiff prove actual malice or reckless disregard of the truth when the plaintiff is a public official or public figure.

This is a much higher burden of proof for a public figure plaintiff. Instead of showing objectively that a “reasonable person” knew or should have known the defamatory statement was false, a public figure plaintiff must prove the intent of the defendant was malicious, or that they acted with reckless disregard for the truth. This allows the defendant to prove its good faith intent and efforts as a defense.

Actual Malice and Falsity must be shown by “Convincing Clarity.” Where the plaintiff is a public official, he must prove actual malice or reckless disregard of the truth with “clear and convincing proof”.

Who is a Public Figure?

A “public figure” is a person who is publicly prominent, so much so that discussion or commentary about that person amounts to a “public concern.” However, such persons are not necessarily public figures for any purpose: status as a public figure may only extend to the particular area in which they are publicly prominent.

(A) Involuntary Public Figure: become public figure through no purposeful action of their own, including those who have become especially prominent in the affairs of society;

(B) Always Public Figures: those who occupy position of such persuasive power and influence that they are deemed public figures for all purposes;

(C) Public Figures on Specific Issues: “those who have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved.”

The Opinion Defense.

The First Amendment protects statements of opinion, as distinct from statements of fact, against claims of defamation. However, the test is not the author’s mere characterization of the statement as “opinion.” A statement is an opinion when:

(A) the statement addresses matters of public concern; (B) the statement expressed in a manner that is not provably true or false; and (C) the statement cannot be reasonably interpreted as intended to convey actual facts about a person. In addition, the U.S. Supreme Court articulated some standards to assist in determining whether a statement is intended to convey an actual fact about a person, or not: (1) is the language loose, figurative, or hyperbolic, which would negate the impression that the speaker was seriously maintaining the truth of the underlying facts? (2) Does the general tenor of the article negate the impression that the speaker was seriously maintaining the truth of the underlying fact? and (3) is the connotation sufficiently factual to be susceptible of being proved true or false. Privacy (non-defamation) Privacy is defined as the right to be let alone.

Elements of Invasion of Privacy

- 1 Unreasonable intrusion upon seclusion (our expectation of privacy can given greater relevance based on out location: such as these decreasing levels of privacy: (a). Inside your home: high expectation of privacy (b)b. In your car: less privacy (c). Walking down Elm St.: even less expectation of privacy (d). Being video taped at TV23: extremely limited expectation of privacy
- 2 Public disclosure of non-newsworthy facts
- 3 False light
- 4 Misappropriation of name or likeness Sources: <http://www.abbottlaw.com/defamation.html>

Indecency & Obscenity Content

The Federal Communications Commission regulations concerning safe harbor or safe haven concern only indecent programming, which is defined by the FCC as follows: language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community broadcast standards for the broadcast medium, sexual or excretory organs or activities.

Indecent programming contains patently offensive sexual or excretory references that do not rise to the level of obscenity. Indecent programming may, however, be restricted in order to avoid its broadcast during times of the day when there is a reasonable risk that children may be in the audience. Bear in mind that it has not necessarily been established that these rules apply to cable access TV, but only to broadcasters.

The FCC traditionally refers complaints about programming under these rules back to the municipality that regulates the access center. Most municipalities have adopted the FCC standards on obscenity and indecency and enforce local community standards for PEG cablecasts.

TV23 does not preview or review public access programming, and will never exert “prior restraint” on a public access program. Producers are expected to act responsibly and alert TV23 staff to programming that may be inappropriate for younger viewers. TV23 reserves the right to restrict cablecast programming with excessively violent material, offensive language, nudity, or sexually explicit material.

The time will be determined by TV23 staff, generally after Midnight, and before 5:00AM, in order to preserve a safe haven for viewing by all audience members.

Types of restricted content:

Mild Adult: intended for mature audiences only: may be aired between the hours of Midnight to 5:00AM. This category of programming intended for adult audiences may include infrequent profanity, mild violence, and brief frontal nudity of a nonsexual or non-erotic nature. This category is similar to what viewers are generally accustomed to seeing in stronger MPAA* PG-13 rated material, and some mild R rated material, or on some network broadcast and cablecast television (TV-14 or TV-MA) after Midnight.

Strong Adult: intended for mature audiences only that may include constitutionally protected indecent speech: may be aired between the hours of 1:00AM to 4:00AM. This category includes any uses of ultra profane language or depictions of nudity that is persistent or otherwise goes

beyond brief or infrequent uses. This category is similar to what viewers are generally accustomed to seeing in stronger MPAA* R, NC-17 and X rated material, or in some cable TV pay-channels or pay-preview channels. When it comes to controversial (not illegal) content in programming, the response should be to encourage more speech, as opposed to enforcing silence.

Furthermore, TV23 is forbidden by law from censorship, or content control. TV23 encourages anyone who disagrees with a program to produce counter-programming presenting an opposing point of view, or otherwise responding to the program in question. Illegal or Obscene Programming: the courts have determined that material that is so-called XXX or hardcore pornography is legally obscene and is not permitted to be cablecast on public access. At no times may such constitutionally unprotected material be cablecast on the channel. Producers of such material may be subject to prosecution. Information about any lottery, gift enterprise, or similar scheme offering prizes gained by lot or chance or any whole or partial list of prizes awarded by lottery, gift enterprise or similar scheme is prohibited. (Violation of this rule is subject to criminal liability under federal law, Title 18, U.S.C. Sec. 1304.) For example, a program violates this if it is connected with a valuable prize awarded to any person selected by lot or chance, if the winner is required to furnish anything in exchange for the prize, or if the winner is required to buy or have any product from a sponsor of the program. Material which is intended to defraud the viewer or designed to obtain money by false or fraudulent means is prohibited. LOCAL Restrictions or Community Standards are part of John Hasnas' The Myth of the Rule of the Law paper (1995). He explains that legally, there are many ways to interpret laws. He gives many examples and comes up with the conclusion that national standards are trumped by community standards because community standards are more explicit and exact.

The Miller test is the United States Supreme Court's test for determining whether speech or expression can be labeled obscene, in which case it is not protected by the First Amendment to the United States Constitution and can be prohibited.

The Miller test was developed in the 1973 case Miller v. California. It has three parts: Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest, [PRURIENT; legal application, sick, morbid or shameless.]

Whether the work depicts/describes, in a patently offensive way, sexual conduct or excretory functions specifically defined by applicable state law, Whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. The third condition is also known as the SLAPS test. The work is considered obscene only if all three conditions are satisfied. For legal scholars, several issues are important. One is that the test allows for community standards rather than a national standard.

What offends the average person in Tulsa, Oklahoma may differ from what offends the average person in San Francisco. The relevant community, however, is not defined. Another important issue is that Miller asks for an interpretation of what the "average" person finds offensive, rather than what the more sensitive persons in the community are offended by, as obscenity was defined by the previous test, the Hicklin test, stemming from the English precedent: The test asks "whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences."

If yes, then such was declared to be obscene. Because it allows for community standards and demands “serious” value, some worried that this test would make it easier to suppress speech and expression. They pointed out that it replaced a stricter test asking whether the speech or expression was “utterly without redeeming social value”--a much tougher standard than “serious” value. As used, however, the test generally makes it difficult to outlaw any form of expression. Much pornography has been successfully argued to have some artistic or literary value.

Some critics of obscenity law argue that the existence of Miller proves that federal obscenity laws are in fact not defined, and thus unenforceable and legally dubious. In practice, pornography showing genitalia and sexual acts is not normally obscene according to the Miller test. For instance, in 2000 a jury took only a few minutes to clear Larry Peterman, Movie Buffs video store owner in Provo, Utah, which had often boasted of being one of the most conservative areas in the US. Researchers had shown that guests at the local Marriott Hotel were disproportionately large consumers of pay-per-view pornographic material, obtaining far more material that way than the store was distributing

First Come, First Served (FCFS)

- Regardless of whether states have codified it into statutes or regulations, the rule, FCFS had its genesis in an FCC regulation circa 1972 (that was struck down in *United States vs. Midwest Video* as beyond the reach of the FCC’s power), and some will say it was a product of the policies on the earliest public access channels, it is tacitly a condition in many, if not all, locales. Many franchise agreements use this language in discussing public access. To the extent that Congress understood FCFS to be an inherent part of public access, it may be argued that pursuant to *Denver Area Ed vs. FCC* (518 US 727), any public access channel that does not provide channel time to the public on a FCFS basis is not engaged in a “PEG use” of channel capacity as its practice does not comport with what Congress understood a public access channel to be when it enacted the Cable Act.

Statement of Non-Discrimination

- No Manchester citizen (18 years or older) or group shall be denied access to the TV23 channel or facilities on the basis of race, color, sex, disability, religious or political belief, or sexual orientation.

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