



**Licensing Comes to Podcasting
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KENNEALLY: Podcasting is big and it is getting much bigger. Right now there are more than one million active podcasts and more than 30 million available podcast episodes. According to Apple, these numbers were a little more than half that in 2018. The rapidly expanding market has attracted some of the world's biggest celebrities, from Will Ferrell to Michelle Obama to Malcom Gladwell, Chelsea Handler, and Shonda Rhimes.

In May 2020, Spotify agreed to an exclusive \$100 million deal with Joe Rogan, the biggest licensing agreement ever made in podcasting. The \$900 million Blackstone Media paid in August for Reese Witherspoon's Hello Sunshine production company includes notable film and TV properties, as well as a burgeoning podcast network targeting women listeners.

Our panel has experienced negotiating such deals from both sides of the contract, representing content producers and content providers. And I'll bring them to you now.

Welcome first, Alexia Bedat. Alexia, good to see you, welcome. Alexia Bedat is a legal associate at Klaris Law, a boutique media and entertainment technology and intellectual property law firm based in New York City. She's also a management consultant for Klaris IP.

Also on the program today is Conal Byrne, Conal, welcome, good to see you. Conal is Chief Executive Officer of the iHeartMedia Digital Audio Group, which includes the company's fast-growing and high profile podcasting business, as well as the industry-leading iHeartRadio digital service, the company's digital sites, newsletters, and magazines – and programs, rather – and a digital advertising technology company. Prior to joining iHeartMedia, Conal Byrne was President and CEO of Stuff Media, which pioneered the podcast space with leading shows including *Stuff You Missed in History Class*, and *Stuff You Should Know*. Byrne joined iHeartMedia when the company acquired Stuff Media in October 2018.

Also with us to day is Chelsea Kreps, Chelsea, welcome. Chelsea is a digital agent at WME focusing on digital talent and podcast representation. WME is the world's longest running talent agency, represents 6,000 clients. Chelsea's own extensive client roster includes top podcaster Bailey Sarian, Tyler Cameron, Watsford Crappins, (sp?) *RedHanded*, *Sisterhood* – or *Sinisterhood*, excuse me, and Rabia Chaudry.



Conal Byrne, I would like to start our discussion today with you because there are two basic business models in podcasting, and of course those would be subscription driven walled gardens and advertising supported. IHeartMedia has chosen the latter, and done very well indeed.

BYRNE: Yeah, there's two business models at work in podcasting, and they're different enough that they may be two separate industries. The first is the subscription business model using podcasts to put behind a paywall to drive or convert into a subscription. The second is what I would call the audience business model, and that is iHeartMedia's business model. It's very simple. For us it has worked because it, I think, reflects total alignment where we want to work with the best creators in the world, we want to get them the biggest audiences they can possibly get by widely distributing their content anywhere where people want to listen to their content.

We're fairly agnostic on whatever platform you pick up a podcast on that we distribute. Why? Because the economics of podcasting flow back to the publisher, not the platform that you're listening on, at least today. Why? Because podcasts are distributed through RSS feeds, and RSS feeds flow back to a centrally controlled publisher that determines what episodes, and also what ad loads go into those RSS feeds and episodes, wherever they're consumed. So back to our model, we want the biggest audiences possible for the best creators in the world, and so we widely distribute. Why do we do any of that? To deliver that scale back to brands. Brands need scale, and they need targetable scale, or you will never see this ramp that new mediums need to see. Podcasting is just starting to see that because of all the above.

I think this is the most exciting medium in the world, and certainly one of the fastest growing. To be rattling off numbers like 120 million Americans a month listen to podcasts, or for me, more impressively, 80 million plus Americans a week listening to podcasts, so really a regular part of people's media diets, if you will. It puts us at a pretty awesome time to be having a conversation like this one.

KENNEALLY: We want to be sure to give people an idea of just the extent of the offering that you have at iHeartMedia – 300 million downloads last month. What kinds of programs are we talking about?

BYRNE: We have an overall podcast deal with Shonda Rhimes and Shondaland Audio, a separate division that she launched in partnership with this deal. We have a company with Will Ferrell that we've launched called Big Money Players Network.

We like to be the house for these creators to feel like they have a long runway to, yes, ramp monetization on their stuff, but also make a lot of new stuff. I think what you see a lot of creators feeling when they jump into podcasting these days is a creative freedom that maybe they haven't had in a long time in other mediums. As long as it's audio, podcasting allows a creator to really be as creatively free as they feel like they need to. And so whether it's the Ron Burgundy



podcast using pre-existing IP, or totally new podcasts, the likes of which we roll out every quarter with Shonda Rhimes. That, I think, more than anything else is what's accelerating what we'll call A listers from other mediums jumping into this one, and that's driven the medium for us, too.

KENNEALLY: You were talking about creative freedom, that was important to the people who are coming to iHeartMedia's other platforms. What else are they looking for in the deals that they make? And what are you looking for, as well?

BYRNE: I think creators want to use podcasting in different ways. But recurring themes we see is, yes, creative freedom, but also they see a medium where they can make content that is fast, cheap, and good. The adage sometimes, for those of us who've worked in video at all, is fast, cheap, and good, pick two. In podcasting, you don't have to.

The truth is, we're agnostic how you want to use the medium, because all of this throws off great podcasts in the meantime.

KENNEALLY: And for iHeartMedia, talk about some of the element there that are most important to you. You want, for example, some approval over derivative works. When Hollywood comes calling, you want to be part of that deal?

BYRNE: Yeah, I think it's important to us that if we have a hand in funding, developing, producing, distributing, marketing, and monetizing the first manifestation of an IP in the world, that yeah, it's important to us to participate if that becomes a derivative work. We've seen that happen into film, TV, books, live tours, now virtual live tours. Yes, we do.

What we don't, candidly, ever do is stranglehold a property, or make it difficult to move into derivative works. Sometimes we're better at that than the creator because we may have more leverage in TV and film. Sometimes the creator may be better at that than us, because that's the world they come from, and we'll lean into whoever's got the lead on it. But no, it is important to us to participate in that.

KENNEALLY: So I think it's a theme we're going to come back to, which is collaboration between the various partners here. It's interesting to me with a background in book publishing to hear all of this because there has been a sense of a kind of rights – let me be careful what I say here, but the kinds of rights the publishers are looking for have grown over time. They want everything now, and it is, for many authors, seen as less of a partnership, less of a collaboration. But it sounds like that's still possible in podcasting.

BYRNE: I think podcasting grew up as a very creator-friendly medium, what I would say now, a publisher-friendly medium, the person making/distributing the content. The reason for that is



interesting – it’s really driven by technology. Podcasting, early on, used the technology, again, I’ve referred to it already, but it’s using technology called RSS feeds. It borrowed this tech from blogs. RSS is Real (sic) Simple Syndication, it’s the simplest form of distributing content on the Internet.

When you think about YouTube, and you launch a YouTube, you don’t own your YouTube channel. You are on YouTube’s platform running a YouTube channel. Podcasting is different. You have an RSS feed that you can unbolt and carry with you down the road and do with as you see fit as a creator or publisher. All of that back to your question of yes, it sets it up where naturally there is inherently – naturally – more collaboration between the power that be and the creator to actually take an IP out into the world, which I think is a good thing.

KENNEALLY: Alexia Bedat, the rise of podcasting had to do a lot with the pandemic.

BEDAT: It was a great time to make deals looking forward. To Conal’s point, podcasts are in and of themselves a great form of IP, but they’re a great starting form of IP. They’ve been called Hollywood IPeepholes (sp?) for a reason. And so we really saw an increase. People were at home and making deals, and deals for rights to be sold to be able to make TV shows based on podcasts. So they have really been, during the pandemic, able both to continue making the podcast themselves, but an opportunity with a view to making deals when the world was going to reopen, and all that because it’s such a rich source of IP.

KENNEALLY: Right. Let’s talk about that IP pie/ What makes it so appealing, both to the creators and to the producers, the distributors? I think you called it, it has never been so clean as in podcasting, that IP pie. What do you mean by that?

BEDAT: It’s a very creator-friendly medium, so to get to the table and say you own nothing, we own everything, you’re not going to get very far in this business, and the places who’ve taken that line have gotten a lot of pushback from the community generally. So like all IP, and in podcasting generally, there’s a lot of ways to look at it because you’ve got the IP in the podcast, itself – who gets to make the decisions on how you distribute what you have today? Who gets to make decisions about how derivatives are made in the future? And then you can split that even further. Who’s making the decisions can be one person, but you can have more than just that one person that’s participating in the revenues from the TV show that’s then made on the podcast. Or people are participating in the revenues and the podcasts, but they’re not the same people that are making decision on how it’s distributed.

A good deal is a deal where everybody feels invested in some way in the success of the show. A happy host is a host who promotes the show, and show that’s well promoted has a larger audience. And a show that has a larger audience or more subscriber does well for the people who have funded in it.



KENNEALLY: What are the differences when approaching a subscription service versus a platform such as iHeartMedia? Those are very different providers, and I'm sure technology make the different deals.

BEDAT: For the perspective of the creator, they're approaching from the business and the legal side. The business as the creator that's getting into bed with a partner, you want to think, what are they really buying? Are they really buying your content, and do they want to drive listeners to your content, or are they buying you as a way to drive listeners to something else? So that's also something that you're thinking about in terms of the direction that you're going. And probably one of the biggest things you're thinking about when you're going subscription versus ad is also going to be the kind of exclusivity you're agreeing to. If you're going the subscription route, the exclusivities are longer. And so as a creator, you want to be thinking not only about what's the business model of the place I'm working with now, but how can it evolve, and as it evolves? What does that mean for me? And have I planned for that in my agreement with them?

KENNEALLY: So we have talked about RSS feeds, that Real (sic) Simple Syndication, and the importance of ownership there. How realistic is it for creators to think they can get ownership of that. Is that a tough nut to crack for them?

BEDAT: It really depends. In terms of how realistic is it for them to think they can keep it? It depends. Again, this is kind of like where the pie goes back into play to the RSS feed, too, because it's not because a third party controls your RSS feed right now, but (inaudible) it's always that. So it might be unrealistic to ask for control right now, but it may be realistic to put a term at which it goes back to you. Or you may want to think about ownership in a nuanced way. If you're entering into a deal where it's non-negotiable for the ownership to rest, not with you, the creator, but you're giving it up, well, what else can you do? Can you negotiate promotional rights for your show and other content for X amount of time? Are you building in some kind of if it's not control, what kind of benefits are you keeping in the RSS feed?

I think it's always realistic to have a discussion as a creator, well, if I don't own it, what benefit am I keeping? And an RSS feed is never something you will want walk away from without having really carefully thought about it. What are you getting if you're walking away from it? There's got to be a good reason.

KENNEALLY: And defining a good deal can be defined in all kinds of different ways, and some of it would be around rights, but also around production support, supports for marketing once the program's available, that kind of thing, as well. That should be in the contract, too.

BYRNE: There's no good deal in a vacuum, so it depends, and that's often something you'll think about as a creator – what do I need most right now? Do I need cash because I need the ability to make shows? You often see statements from people who have entered into exclusive



deals, we're so happy to be able to do the thing we love for the next few years because they have bandwidth and they have financial support for a few years. You may need someone who's really going to help you promote and get your podcast out there, and that's the most important to you. Or you may need actual, physical production support. So a good deal will depend on what it is that you need right now to be able to keep creating content.

KENNEALLY: Alexia Bedat with Klaris Law and Klaris IP, thank you so much.

At this point, too, I want to welcome our final panelist today, Chelsea Kreps, a digital agent at WME. Chelsea, welcome.

KREPS: Thank you for having me.

KENNEALLY: I have to call out an important part in your bio, Chelsea, which is that you started in the mailroom. So that kind of working your way up the ladder really still happens in 2021.

KREPS: It still happens. Somebody just walked by with a mailcart, it's very much part of the day to day at WME, and something that I did, luckily for not that long, but did deliver plenty of mail.

KENNEALLY: we've been hearing about the other panelists about it being an artist-friendly medium. Is that how you see it, as well?

KREPS: A hundred percent. We work with a lot of traditional podcast creators, you referenced some of them earlier, and everybody on this call works across a lot of them as well, but we also have specifically during the pandemic, I would say, seen a lot of our traditional talent suddenly really want to get involved in the space. I can't tell you how many times they get on phone calls or Zooms with our talent that they're like, wow, I'm so excited to start getting involved in a medium that I actually consume, which has been a really interesting takeaway.

With everything slowed down during the pandemic, podcasting did not. So a lot of our more linear traditional talent are going to be rolling out shows and they're really excited about this opportunity to build off of this IP that we were talking about before. I think because it remains artist-friendly, there is that 360 degree business that you can build off of this property, to what Conal was saying earlier, with touring, book derivatives, all of that.

KENNEALLY: Right, and let's also talk about that. Compare and contrast the experience working on your side of things at WME with a Spotify, for example, as against, say, an iHeartMedia. The difference there is in the business model, and I'm sure in the negotiation there's lots of differences, too.



KREPS: When you're working with a company like a Spotify, for example, talent doesn't walk away with a lot of ownership or ad revenue. So it really comes down to educating the client. Because what Alexia was saying earlier, it's what does the talent want to get away from this experience? So when you're working with a wonderful company like iHeart, your talent does get to have kind of a larger opportunity to build a bigger business, whereas sometimes with Spotify or Amazon or any of these platforms, you're capping your upside because the model's so different. It's not as driven. It's, I would say, a megamarketing tool for a lot of our clients, but it purely depends on what you want to get out of it.

KENNEALLY: That upside, as you talk about it, is largely on the advertising models, the ad reads there, and the potential is tremendous, really.

KREPS: Oh, yes. It's amazing what we've seen through the ad-supported model, I think. The Spotify wouldn't have acquired Joe Rogan or licensed Joe Rogan if it wasn't for his ability to be openly distributed and accessed everywhere to amass all these followers on an ad-supported model. So I think that for a lot of people, they can see that, and they also know it does help with that long term business, because your growth isn't limited when you're on a platform. Or not on a platform.

KENNEALLY: So with regards to negotiating those deals, there's always negotiable and non-negotiable. Can you give us a picture of what that looks like? What are some things that you wouldn't advise a creator to let go of, and some things you just know you can never get.

KREPS: I think for us, when we're working with our creators, we want to make sure they're retaining ownership or at least co-ownership over their IP. And importantly, their RSS feed. I think for some of these networks that are openly distributed, making sure that you can bring your audience with you where you go at the end of a term is really important. So when you can't get that, to Alexia's point, you have to be able to negotiate maybe some sort of long term promotional value that you can include in that. But I would say those two things, specifically, are the things that we want to always hold onto in some capacity. That's where the meaningful business comes into play.

KENNEALLY: And the notion of podcasting as an IP originator, it seems to be pulling up on books as the place where IP seems to be born. It's now much more podcasting as a source for everything from *Dr. Death* to *Dirty John* and so forth.

KREPS: Yes, yeah.

KENNEALLY: Right. So talk about that. Talk about how podcasting is seen by creators and by WME, really, as a starting point for an IP house, if you will.



KREPS: Yeah, 100%. I think like I was saying earlier with a lot of our traditional talent, they're really passionate about projects that they can't necessarily get made in TV or film right away for X amount of reasons – budgets are too high or whatever it may be, there's a real opportunity for you to come into the podcast space and create a really great, highly produced piece of content that can be flipped into something, and we can use that in various ways. I think we've done a good job of it with *Dirty John* and we've done iterations of that with *Slow Burn* and that sort of thing. So I think that it's going to continue to grow as creators realize that there's a relatively low lift to get into the podcast space and create this content while still maintaining a decent amount of ownership.

KENNEALLY: Well, Chelsea Kreps with WME, thank you so much.

I want to thank Bill Rosenblatt, President of GiantSteps Media Technology Strategies and chair of the Copyright and Technology Conference for inviting me to host this program. Thanks as well to Kaitland Kubat, he's a director of the Copyright Society of the USA. My name is Chris Kenneally, have a great day.

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