

7. LEGAL ISSUES

Simulcasting represents a partnership formed for business reasons between the Host and the Guest. As with any entrepreneurial endeavor, there needs to be an evaluation of risk vs. reward. The risk portion should not be lightly regarded. Misfeasance or malfeasance by Host or Guest can and will cost one or the other financially or in terms of consumer confidence or damaging publicity.

Federal Law

There are several federal laws that may pertain to racetrack and simulcasting activities. Among them are: the U.S. Wire Act of 1961, the Bank Secrecy Act of 1970, and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act). These laws govern illegal wagering and money-laundering activities. In addition, there are Internal Revenue Service requirements with which pari-mutuel operators must comply under liability for federal prosecution.

Your corporate counsel should review these laws and your obligations under them to ensure complete compliance.

The Contract

This is the beginning of the partnership. It also is the time to address the fundamental terms of the partnership and responsibilities of each partner.

If operational matters were identified and agreed upon as part of the contractual procedure, communication and execution of the simulcast would be greatly enhanced.

At the 1993 TRA Simulcast Conference in Dallas, two problems with simulcast contracts were identified:

- They sometimes lack clarity.
- They are not read.

There is a cause and effect relationship between those two items. There was a strong sentiment for a standard simulcasting contract whose main body would cover the legal considerations of a simulcast, while any points specific to a particular contract were to be contained in Exhibits and Schedules to the standard agreement.

Specific provisions in a simulcast contract

- Which Races
- Type of Pools (separate versus common).
- Simulcast Fees (Percentage of Gross, Percentage of Net, Other)
- Other Mutuel Parameters (Types of wagers, etc.)
- Satellite/Decoder Requirements

- Telephone/Modem Requirements
- Liability Issues
- Settlement Requirements and Procedures
- Indemnification
- Terms of Agreement
- Guest Reporting Requirements
- Satellite Association Agreements and Requirements
- Interface Fee Responsibilities
- Mandated Disclosures
- List of Receiving Sites Agreed To By Host

Specific provisions that should be relayed as part of the contractual process include:

- Exchange of Contacts Between Host and Guest
- Emergency Procedures

Hubs

When the Guest is in effect a hub for more than one other receiving facility (or is in turn re-transmitting signals to other receiving sites for which it is the host track, or to cable television), this raises issues of whether the contract in question grants the Host track's consent for simulcasting to all parties in the hub (or retransmission). The contract needs to spell out which facilities the Host tracks has consented to for the distribution of its signal and wagering on its races.

Track/Commissions

Interstate simulcasting requires state regulations and commission rules be compatible between Host and Guest.

Ideally each state would use the ARCI Model rules, thus guaranteeing uniformity. The other method to minimize conformity problems between jurisdictions is for every commission to allow the adoption of Host state rules.

Simulcast Coordinators need to have copies of the racing and wagering rules for any jurisdictions from which they receive simulcasts. Any special rules (e.g. - the New York rule for the scratching of parts of entries or the rules governing a manual merge) should be noted and be available to help answer questions from patrons.

The Racing Industry Uniform Simulcast Wagering Agreement - Version 002

The TRA's 2020 Committee has created the enclosed "Racing Industry Uniform Simulcast Wagering Agreement - Version 002" to simplify the contract process. Since its release in early 1997 and revision in 1999, it is becoming the standard contract throughout the pari-mutuel industry.

This contract was prepared with the following objectives and assumptions:

- No Host Track or Guest Track would be bound to use the language of the Standard Agreement without the opportunity and right to make any and all changes required or desired.
- Using the **Standard Agreement** as a starting point, all Host and Guest tracks will be familiar with the overall conditions and can concentrate on the new language added by the parties. Also, since most Host tracks are also Guest tracks, this standardization will prove beneficial every time they enter into a new contractual relationship.
- All track executives will become familiar with the basic elements of the simulcast agreement and the other terms and conditions will be organized in a format to which they are accustomed and familiar.

The agreement consists of three parts:

1. The **Body of the Agreement** (Version 002, 1-18) is always the same for all Hosts and all Guests. Because it does not change, **there should be no need to mail it out**. Any changes will be contained in the Accompanying Exhibits and Schedules, which incorporates it by reference.
2. The **Exhibits to the Agreement** are unique for a given **Host** track, containing its simulcasting terms and conditions for contracts issued as a Host track. The Host track will develop language for its Exhibits detailing its changes to the standard language; it will have to do this **one time only**. (Note: Under this approach, where Exhibits never change from Guest to Guest, any amendment to the Host's "normal" Exhibit provisions will be addressed in the Schedules that follow.)
 - There also is an "**Exhibit N**" containing the changes a particular host might want to always make in the standard language of the Body of the Agreement (for instance, particular clauses that track counsel insists upon with regard to Indemnity, Intellectual Property, etc.)
3. The **Schedules to the Agreement** contain information with respect to the particular **Guest** Track, variations that either the Guest **insists upon** to the Body of the Agreement (a counterpart to Exhibit N) or changes that both parties agree to in modification of the Host's standard Exhibits.

In negotiations, Guests will only have to review the Host's Exhibits and the Host will only have to review the Guest's Schedules, with any final language changes incorporated into the Schedules.

The "Racing Industry Uniform Simulcast Wagering Agreement - Version 002," including Exhibits and Schedules, can be found on this disc and also on the TRA's web site under "Contracts."