Shedding Light on the Dark Side of Voiceover

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Introduction by James R. Alburger

One of the least understood areas of voiceover lies in the shadows of the legal world. Yes, lots and lots of laws directly apply to our work as voice actors. Understanding how these laws might affect our work is very important. And, as with most laws, ignorance is not an acceptable excuse.

Now, I have extensive experience with legal matters, and I've been told that I can write "legalese" with the best, but I'm not a lawyer. However, I did once play the role of an attorney in a commercial. So, as accurate and well-intentioned that any legal ideas I provide in this book may be, the fact remains that I cannot be considered an authoritative source.

So, I asked voice actor and attorney, Robert Sciglimpaglia to discuss the legal side of voiceover and dispel some of the many myths that surround our business. Robert's knowledge of the law and his legal expertise far exceed mine, and the fact that he is a practicing attorney means that the information contained in the pages that follow may be considered as accurate. However, as with anything legal, a review and confirmation from your own attorney would be wise.

I'll admit this chapter will not be the easiest to read and it may take a few times through to comprehend all that is here. However, the information contained within these pages is critical if you are going to be successful in voiceover. Take your time with this one, and if your brain starts to hurt, just take a short break. Or, maybe read a good book… out loud, of course.

About Robert J. Sciglimpaglia

Robert J. Sciglimpaglia, Jr. is a practicing attorney, an author, a voiceover artist and on-camera actor in the New York City area. He helps voiceover artists and actors with business and legal issues through his company All in One Voice, LLC (**allinonevoice.com**).

Robert has appeared in numerous national voiceover projects, including commercials, promos, and narrations, plus on-camera appearances for television and feature films. For more about Robert, visit his website at **robertpaglia.com**.

Much of the information in this chapter has been taken from Robert's book "Voiceover Legal," published by **VoiceOverXtra.com**. Although the recommendations and advice in this chapter are based on Robert's knowledge of the law and experience as a practicing attorney, it is highly recommended that you consult your own attorney or qualified tax professional with any questions you might have regarding legal, business, or taxation questions.

Legal and Business Issues in the Voiceover Industry

Due to the growing popularity of the home studio, the voiceover industry is quickly becoming a legitimate and extremely fun way to generate income from one's home. The growth of the home studio has also allowed a diverse cross-section of the population to get involved with the fun. In this writer's experience, many people are now entering this field in retirement, or as a second career.

Fun aside… just like any other home-based business, the "business" side must not be ignored or some serious tax and legal consequences can result. This is especially true for those entering voiceover as a "second career" who may have built up some assets during their prior career.

Like many other businesses, the voiceover industry has its own set of legal and business issues, which this chapter will examine. Of course, this chapter is not meant to be an all-inclusive discussion of every legal and business issue associated with the voiceover industry. Rather, it merely scratches the surface, and some of the issues discussed herein are common to any business regardless of the industry.

Although there are no requirements to actually take an exam and become "licensed" to do voiceover work, as there are for other professionals like attorneys or doctors, there are many jurisdictions

that require any business to obtain a license to operate within that jurisdiction. Voiceover, if one is undertaking it as a business and not a hobby, is no different. These licenses are more of a general license where you need to register with either a local or State authority, usually by paying a fee or tax, and filing annual or other regular reports.

In addition, another regulatory compliance that must be investigated by a voice talent starting a voiceover business are the local zoning regulations. If a voiceover artist plans to record from their home, then they must check to see if businesses are allowed to be run from their home. Some jurisdiction's zoning laws are very strict and do not allow *any* form of business being run out of certain residential zones. If that is the case where the voice talent lives, then they will either have to ask for a variance, or set up a studio somewhere outside of their home by renting space in a mixed or commercial use zone. This is obviously something a voiceover artist will need to know so they will know how much capital they will need to start up their business.

Due to the local nature of business licensing and zoning laws, the author highly recommends a voice talent either research this on their own with their local authorities, usually the Department of Revenue or Taxation Board and local zoning boards, or hire competent legal advisors to assist in this process. Many States also have special departments you can contact that assist small businesses with start-up issues such as these

To Incorporate... or Not

The question about whether or not to incorporate has been subject to much debate in the voiceover community. It is this writer's firm belief however, that there should be no debate about it whatsoever. The question should not be *whether* to incorporate, but *how best* to incorporate.

Just like engaging in any type of business venture, a decision needs to be made about what "form" the business will operate. Will it be a sole proprietorship; a Limited Liability Company (LLC); a C Corporation; or an S Corporation? Normally, voiceover artists don't even consider their business formation and commence operating as what this writer terms "a sole proprietorship by default" as they just jump into the business, willy-nilly, without a plan. They will start sending out their wonderful professionally produced demos as soon as they receive them, set up their websites, MySpace pages, sign up for one of the many online audition sites, commence auditions, and so on, without even giving a second thought as to how their business

is structured. This may be because some people getting into voiceover treat it as more of a hobby than a business.

The logic is “until I start to earn some money at this, what’s the point?” However, this same logic doesn’t prevent many of those voiceover artists from doing business under a “trade” or “stage” name, like “ABC Terrific Voice”, or some other catchy phrase. This is what is referred to in the legal world as a “DBA” or “Doing Business As.” Nor does the logic prevent voice talent from spending thousands of dollars on home studio equipment, training, production of their demos and marketing efforts. All expenses that the talent believes will pose no problem deducting from their income taxes.

Even after many voiceover artists do start to earn income in the business, they still don’t get around to setting up a more formal structure and they only think about such things around tax time, or if they are ever subject to a legal action.

In this writer’s opinion, the cost of setting up a formal entity, like an LLC or Corporation, far outweighs the potential cost involved in defending a lawsuit or action by the IRS and, in some cases, will also result in tax savings, depending on the revenues generated from the voiceover business. In fact, an LLC is extremely simple to set up in almost all States and, unless a voiceover artist has employees working for the LLC, it doesn’t even require a separate Employer Identification Number (EIN) like a corporation would need.

Further, the IRS makes a very serious distinction between a “hobby” and a “business.” If the IRS determines that someone is pursuing voiceover as a hobby, then it will *disallow* any deductions for any voiceover related expenses, like production costs of the demo, home studio costs, workshop or conference expenses and so on. The number one factor that the IRS says you should ask yourself concerning whether an activity is considered a hobby or a business is “Do you run the activity in a businesslike manner?” In this writer’s opinion, operating your voiceover business as an LLC or Corporation *certainly* would go a long way in convincing the IRS that your voiceover activity is a bona fide business rather than just a hobby.

One of the many other advantages of setting up an LLC applying specifically to voice talent is that, in most States, it eliminates the need to file a “Trade Name Certificate” or “Fictitious Name Certificate.” Most States require individuals who are operating under a name other than their proper legal name as a sole proprietor to file a form with a designated governmental entity. This includes names like “ABC Terrific Voice” or a “stage name” the voice actor uses that is different from their legal name.

Filing an LLC eliminates this requirement in most jurisdictions because the LLC paperwork is filed with the Secretary of State and is deemed to be notice of a “trade name” in that State. This would

equally apply to doing business as either an S or C corporation. The failure of a sole proprietor to file such a "trade name" certificate can result in punitive damages, and can even result in criminal proceedings in some jurisdictions.

In short, some form of corporate structure should be the first step in protecting a voiceover artist's personal assets in the unfortunate event that they are sued, and eliminates the problems mentioned above concerning operation as a "DBA." To gain maximum protection, I would recommend operating under a corporation rather than an LLC, but either of these entities is much preferable to operating as a sole proprietor.

As a voiceover artist I agree, in theory, with the statement I often hear from other voiceover artists that "this is a liability-free industry." As an attorney, however, I *know* better than that! The sad fact in the United States these days is that whenever money changes hands or an injury occurs the potential for a lawsuit exists.

Potential Liability Issues Specific to the Voiceover Industry

CELEBRITY IMPERSONATING

One area of the industry that voiceover artists should be cognizant of is celebrity impersonating. Celebrity impersonating falls under the auspices of the area of law known as "right of publicity" laws. The right of publicity is the right of an individual to commercially exploit their name, voice, signature, photograph or likeness. A handful of States have specific laws concerning the "right of publicity" and some other States that do not have a statute follow the common law rules concerning the right of publicity.

"Right of publicity" laws would allow a celebrity to sue a voice talent who impersonates their voice for commercial purposes. Nevada's statute, however, specifically exempts impersonators from liability for infringement of a celebrity's right of publicity.

Such an exemption does not exist in other State's statutes, however, so a voiceover artist must always be alert when asked to impersonate a celebrity as to how the impersonation will be used. In general, the First Amendment allows certain uses of impersonations, but generally not when those impersonations are meant to generate profits. Such profit-making use most certainly can expose both the voice talent, and the producer to a lawsuit.

This goes for impersonating celebrities who are either alive or deceased, as many Statutes provide a protection to the celebrity for some years after they have died. For instance, in Nevada, the

celebrity is protected for 50 years after death, where in Indiana the protection remains for 100 years. For deceased celebrities, their heirs will be the ones deciding who is able to use their loved one's likeness and who cannot.

PRODUCT ENDORSEMENTS

Another potential snake pit for the voice actor is product endorsements. Product Liability laws in the United States are generally designed to protect the consumer from dangerous or defective products. These laws are usually couched in terms of "strict liability" rather than "ordinary negligence." This means that anyone involved with the manufacture, sale, or distribution of a product that causes an injury to the end user can not only be sued by the injured party, but will also be held strictly liable without the need for the injured party to prove that the defendants did anything negligent. The fact that the product was put into commerce and caused an injury, in many jurisdictions, is enough for the injured party to recover.

In addition, there are a variety of consumer protection laws, unfair trade practice statutes and Federal Trade Commission (FTC) regulations and guidelines designed to protect consumers from being ripped off by false and misleading advertisements.

This raises an interesting question concerning whether a voiceover artist is hired to record a commercial that says something like: "This drug is *the* best out there for the prevention and cure of this disease, and I personally guarantee it will work for you" and the drug ends up killing the user, whether the voiceover artist could be held liable for that "guarantee."

If the voiceover artist were a celebrity, then they certainly could be sued under a number of theories, including product liability, but also consumer protection statutes, and Federal Trade Commission (FTC) guidelines against false and misleading advertising. One is reminded of the series of lawsuits against Robin Leach back in 1999 where at least a dozen Attorney's General across the country sued him for endorsing vacation packages in both television and radio ads that turned out to be bogus.

Although one must wonder if such lawsuits would be brought against non celebrity voice talent who are not so "high profile," one of the functions of an Attorney General is to discover collectable assets that could be attached to pay back "victims" of false and misleading ads, or to pay back "victims" of dangerous products, so the possibility certainly exists that such a lawsuit could be brought against a voice actor that has some assets.

LIBEL AND SLANDER, AND INTERFERING WITH A BUSINESS RELATIONSHIP

Although I like to believe our business is filled with nice and great people who are never dishonest (and in my experience, for the most part this is true), as more voiceover artists enter the fold, the competition is bound to increase, and thus, dishonest individuals are bound to sneak in; individuals who will do anything to build their business, including stealing clients and bad-mouthing other talent.

I have witnessed this type of behavior in the legal business in certain areas over the years as more and more attorneys have entered the market. From what I have seen, it tends to happen in large areas where the likelihood of doing business with that particular attorney again is slight. In smaller areas where attorneys have to deal with each other repeatedly, this rarely happens.

I do believe, however, the potential for dishonesty exists as the voiceover field grows and the geographical area of the field expands, and I can see the potential for voiceover artists "bad-mouthing" other talent, who they may never meet, to a producer or client with words like: "that guy/gal is a terrible voiceover artist" or "that guy's nickname is Multi-Take Mike." With the amount of sensitivity and insecurity in this business on the part of advertising agents, and others, it is certainly foreseeable that statements like these could cause a producer to "jump ship" and switch to another voice talent.

I truly wish that this never happens in this field, but if it does, this could give rise to defamation lawsuits for libel and slander or lawsuits due to the tortuous interference of a business or contractual relationship.

Contractual Issues and Considerations Relating to the Voiceover Industry

The voiceover industry is a contractual based business. The unions that represent voiceover talent have gone through painstaking processes to ensure that voice talent are protected in the contracts they sign with producers and that they are fairly compensated for the work they do. On the other hand, the unrepresented non-union or Financial Core talent are on their own when it comes to negotiating their fees and protecting their interests contractually for non-union jobs.

All agreements as to what is to be recorded and delivered and the cost of same should be in writing, and equally as important, the usage of the spot being recorded should be *clearly* spelled out. It would be a great idea for a talent to have a standard contract that

he/she gets signed for every job, like an attorney has a standard retainer agreement that gets signed at the commencement of each case. Keep in mind that it has been said that the true purpose of a contract is "to keep an honest man honest."

However, due to the often fast-paced nature of the voiceover business, written contracts are not always practical. At a minimum, emails should be exchanged between the client and talent indicating the price, usage and delivery requirements for the final sound files.

It can be as easy as the talent writing a simple email like: "I will FTP the final .wav files to you for this 30-second TV spot by X date, which you can air for a year in the State of X, and you shall pay me the amount of X dollars. Please reply to confirm." Once you get that reply, you have a binding, written contract that is enforceable in a court of law.

Of course, for larger jobs where you are being hired as a "voice" of a company where you will be doing repeated work, a more detailed contract should be signed either prior or simultaneously to work being done.

First, if a contractual term is greater than one year, it *must* be in writing to be enforceable under every States' Statute of Frauds. Second, not only should the contract lay out all the above basic information, but it should also have a provision in there that allows the talent to terminate the arrangement after a certain period of time should things not work out, and it should cover situations such as the sickness or death of the talent.

A talent's standard contract should also have a clause in it so that the talent can get a copy of the finished spot. The contract should also have a clause that allows the talent to use the finished spot on the talent's demo or website, and if a standard contract is not signed, the talent should again, at a minimum, use email to get specific permission from the client to use that finished spot for marketing purposes.

Although it is customary for a talent to use the final spot for marketing purposes, a talent should never assume it is OK to use the spot without getting the client's permission as the client may not agree, and such would be actionable against the talent as a violation of copyright law.

Another very important point concerning contracts is that, now that the voiceover industry is a global business, even if you have an enforceable written contract, it may not be worth the paper it is written on due to jurisdictional issues. For instance, if you as the talent are in New York, and the client is in California, and you record in New York while the client never steps foot out of California, the New York Courts would have no jurisdiction over the dispute because the individual you are suing resides in California.

Thus, you would have to take a trip out to California, or hire local counsel there in order to collect your money; hardly worth it for the average non-union voiceover job. As such, it is extremely important to get at least part of the payment sent to you upfront by either PayPal™ or by credit card. If a talent is doing work from around the country, signing up to accept credit card payments will be well worth the expense.

Another specific provision of contract law voiceover artists need to be familiar with is the confidentiality clause, or non-disclosure agreement (NDA). Voiceover artists will often be working on projects that have not been released to the general public. If that is the case, then the producer or owner may request that the talent sign a "non-disclosure agreement" which states that the talent agrees to keep the nature of the work confidential until such time as it is aired, or until the talent receives written permission from their client to release information about the project. The thing to keep in mind here, is such an agreement will prevent the voice talent from displaying the finished spot on their websites, or otherwise, until the piece airs, or until the client gives them permission to display the material.

Non-disclosure agreements or confidentiality clauses are very common in the business, but nonetheless, if a voice talent is uncomfortable with the terms, especially the penalties if they breach the agreement, then they should run that agreement by a competent entertainment attorney, or their agents, to make sure nothing overbearing is being requested.

Intellectual Property Issues Copyrights and Trademarks

INFRINGEMENT OF COPYRIGHTS AND TRADEMARKS

Voiceover artists have to consider both sides of intellectual property issues, meaning, they have to be concerned with infringing on others copyrights or trademarks, and they also need to protect their own ideas and creations through copyrighting and/or trademarks. The most common area where voiceover talent can run into copyright infringement issues is through their demos. Another common area this author has witnessed concerning infringement are infringement of trademarks in voiceover artist's branding or logos, and unlawful use of trademarked logos on talent's websites.

It is very important that the music used on the demo is properly licensed by the copyright owner. It is very important for the talent to have proper permission from the producer of a spot to use the spot on their demos. The voice talent does not automatically have the

right to use a spot on their demo as that spot has been copyrighted by someone other than the voice talent, unless of course, the voice talent also produced the spot, then they may have copyrighted it.

This author has heard stories of voice talent receiving “cease and desist” letters from companies objecting to either the music on the artists demos, or the use of a particular spot on their demo. Cease and desist letters usually demand a voice talent cease using the copyrighted material immediately or face further legal action, like a lawsuit for infringement.

The cease and desist letter is actually the first step in the legal process and one of the reasons it is employed is to set up a “willful infringement” cause of action. If one uses material they know is copyrighted, then the author and/or copyright owner of the material can sue in Federal Court for statutory damages which go as high as $150,000 for each act of willful infringement. A defense to this willful infringement is that the user was “innocent” in that they did not know the material was copyrighted. That is why the cease and desist letter is sent out because that defense becomes impossible upon receipt of that letter as the receiver of that letter cannot argue they were innocent after they are informed with such a letter.

Similarly, those who produce voiceover demos, commercials or other material that will be broadcast must be cognizant of copyright law. For producers, there are a few things that must be kept in mind. First, using a copyrighted song on a commercial, for example, is an infringement of the copyright owner’s rights and that producer could be sued by that owner for willful or negligent infringement, which results in statutory damages ranging from $200 per use up to $150,000 per use for willful infringement.

In addition, organizations like ASCAP and BMI, which regulate royalty payments to artists and publishers, will seek payments on behalf of the owner of the publishing rights to that music for royalties that are supposed to paid each time the song is played over the airwaves, or “displayed publicly.” These are actually two separate and distinct rights; one bundle given to the copyright owner, and one bundle given to the publisher, which may or may not be the same.

PROTECTION OF YOUR WORK THROUGH COPYRIGHT

Voice talent also need to understand how to protect their creative works through copyrights. Voice talent are most certainly hired to do most voiceover jobs as a “work for hire,” meaning that whoever hires the voice talent is retaining the right to copyright the finished product with the talent’s voice on it. This is normal and customary.

However, if a voice talent produces commercials, creates music for commercials, or drafts copy for commercials, that voice talent

should do whatever is necessary to retain rights to that spot, meaning, they should specifically state in their contract that their services will not be considered a “work for hire” and that the talent has the right to copyright the spot.

Copyrighting is a very powerful protection as it prevents others from infringing on the work for the entire life of that author, plus 90 years after the authors death. Civil penalties can be as high as $150,000.00 for the willful infringement of a copyrighted work. This provision is probably not going to apply to most commercial spots that are produced as the practical life expectancy of the spot is limited. The provision, however, will prevent another company from stealing the spot, and also allows your heirs to continue to protect your work for you after you have passed away so it can continue to generate income after the author’s death.

TRADEMARKS AND SERVICE MARKS

Voiceover artists also need to be aware of trademark law to protect the business names under which they operate. Once a voiceover artist picks a name for their business, like “ABC Terrific Voice,” a trademark search should be done to insure that no one else is using the name. A search can easily be done on the United States Patent and Trademark Office at their website: **uspto.gov**. A search prior to using the name is wise so as to avoid any legal action for infringement of the trademark by the holder of the trademark.

If available, it would be wise for a voiceover artist to “trademark” the name by registering it with the USPTO. This will help to ensure that the talent will not have to use a different name later on to avoid confusion if someone else starts to use it. However, filing of a trademark can be a very confusing task for the uninitiated so this is something a voice talent would probably want an experienced intellectual property attorney to handle. Technically, since voiceover artists render services, the name would be “servicemarked” rather than being “trademarked.” Like copyrights, trademarks also survive the death of the trademark holder and thus your heirs can ensure no one infringes on the use of the name.

This author has also seen several voice talent infringing on famous trademarks through the talent’s branding and/or websites. I have seen several instances where voice talent will take a famous logo, for example, Coca-Cola, and use the logo and name and say something like: Coca-Cola Voiceovers: There Is Nothing Sweeter” or something like this. Not only does the voice talent generally use the name, but also uses the logo and artwork and just replaces the trademarked product name with their own. In this author’s opinion, this is complete infringement of the trademark, subjecting the talent

to payment of statutory royalties and penalties to the mark's owner, that is Coca-Cola.

I find this both ironic and really bad business. It is ironic because if, for example, this voice talent was asked to do a voiceover audition for Coca-Cola, and Coca-Cola "used" the audition for a commercial or other purpose without the talent's permission, I am sure the talent would be the first to be upset about that, as I have heard this concern many, many times from talent doing online auditions. Yet, these same talent think nothing of using Coca-Cola's intellectual property for their commercial purposes.

It is bad business because if Coca-Cola, for instance, did not do anything about the infringement for a number of years, so that the brand *did* become associated with the voice talent, and then Coca-Cola decides to send a "cease and desist" letter as described above, then where does that leave the talent? They are either going to have to abandon all of that work with their "brand" and "rebrand," or take on a multinational corporation in Federal Court, which has exclusive jurisdiction of United States trademarks.

Likewise, this author has seen numerous examples of voice talent "taking" trademarked logos from websites, for example, Coca-Cola, and putting those logos on their own websites representing clients that the voice talent has done work for. If this is done without permission of the trademark's owner, this is also an infringement that I have personally heard resulted in receipt of "cease and desist" letters. Again, this is the first step in litigation and there is nothing to stop a trademark owner from suing the talent even if the talent agrees to remove the trademark voluntarily.

A Few Words on Business Insurance: Is it Really Necessary?

For voiceover artists that have employees, and/or have a separate studio space outside of their home, the answer to this question is a resounding *yes*! For those who have employees, virtually every State in the Nation requires that you carry worker's compensation insurance to cover injuries to employees sustained while on the job. Most insurance companies sell worker's compensation insurance as part of a business policy. Likewise, if you have a separate studio outside of your home, then you should certainly have business insurance to cover losses from theft and fire, and to protect you in the event that someone is injured while inside your studio.

For voiceover artists who have no employees and work out of a home studio where people occasionally enter their home to use the

studio, it would probably be an excellent idea to obtain business insurance, as home insurance policies often contain exceptions from covering “business uses” of your home.

Finally, for voiceover artists who have no employees and work out of a home studio where no one ever enters to use the studio, the business insurance is optional. One advantage for any voice talent to obtain business insurance is that most policies cover “personal and advertising injuries,” which will cover claims for certain offenses you commit in the course of business such as libel, slander, disparagement, or copyright infringement in your advertisements, discussed earlier in this chapter.

For solo voice talent with a home studio and no employees, these business policies are likely to be very inexpensive as the risk of loss is very low for insurance purposes.

Generally, if a voice talent has any personal assets, it would be an excellent idea for the talent to work under some form of corporate structure, like an LLC, and to obtain business insurance. This will provide the greatest protection to the talent so that their personal assets will not be at risk. It would take quite a catastrophic loss to exceed these safeguards, and such a loss is very unlikely to occur in this business in this author’s opinion.

Tax Tips and Considerations

A question I am asked frequently by voice talent, as well as producers, is “Do I have to charge and collect sales tax for my work?” The answer to this question is very State specific. However, a few generalities exist concerning sales tax. In general, voice talent do not need to charge or collect sales taxes for performing. Producers, or voice talent selling production services or studio time, may have to charge and collect Sales taxes for renting of their studio spaces or other production services. This is controlled by each State, so the producer should check with their local and State Department of Taxation or Revenue to answer this question specifically.

However, another generality, sales taxes only needs to be charged and collected for work performed for clients within the State where the production facility is located, not for work performed outside of the State. For instance, a production facility or studio that is located in New York will only have to charge and collect sales taxes from clients also located in New York.

Are You a Business? Or Just a Hobby?

The quicker the voice talent treats voiceover as a money-making venture, the better off they will be, in this author's opinion, not only for tax purposes, but also in obtaining clientele and increasing income. As discussed in the first section of this chapter, if the IRS determines that an activity is a hobby and not a legitimate business, it will not allow any deductions for any expenses of the "business."

Also, a voice talent, in treating the "business" as a "business", must keep detailed records for all expenses, including receipts. A separate checking account should be set up for the voiceover activities, and a talent should *never* "commingle" fees received from voiceover with personal funds. Any automobile travel should be logged in a book recording the trip, the total mileage, and the business reason for the trip, such as an audition or session.

Of course, equipment purchased for the home studio can be deducted. The talent has the option of depreciating the equipment over time, or can take a "Section 179" depreciation deduction, which allows deduction of up to $125,000 in equipment purchases in the year of purchase. $125,000 can build a *really* nice home studio!

Finally, one deduction to be particularly cognizant of is the "home office" deduction. This deduction has traditionally raised a red flag for the IRS due to past abuses by taxpayers. To take the home office deduction, the home office must be used *exclusively* for business.

For instance, if a home studio is set up in the living room where the family also gathers to watch television, then the IRS will generally not allow a taxpayer to deduct the use of the living room as a "home office." If, on the other hand, the studio is located in a segregated area of the house, like a basement or attic, which has a sound booth or acoustic improvements, then a home office deduction will most certainly be allowed as clearly the studio is being used exclusively for the voiceover business.

A SECOND CAREER

Many people are taking on voiceover as a second career, or as a "side venture." If this is the case, it is very important that this be done properly or a bulk of the expenses will not be tax deductible.

The IRS does not allow deductions for entering into a "new trade or business." Publication 970 from the IRS states: "Education that is part of a program of study that will qualify you for a new trade or business is not qualifying work-related education. This is true even if you do not plan to enter that trade or business."

However, start up expenses are deductible up to the first $5,000. IRS Publication 535 reads as follows: "Business start-up and

organizational costs are generally capital expenditures. However, you can elect to deduct up to $5,000 of business start-up and $5,000 of organizational costs paid or incurred after October 22, 2004. Start-up costs include any amounts paid or incurred in connection with creating an active trade or business or investigating the creation or acquisition of an active trade or business. Organizational costs include the costs of creating a corporation."

This is another very compelling argument as to why to form an LLC or Corporation *prior* to undergoing training and working on your demo, as all of these expenses can be classified as start-up expenses. It is extremely important such expenses are couched in these terms, rather than as "tuition," as "tuition" for voiceover training could certainly be held by the IRS to be a non-deductible expense qualifying one for a "new trade or business," whereas training to prepare one to record a demo could be classified as a start-up cost.

The factors that the IRS says you should weigh to decide if your voiceover activities are a business or hobby are:

- Do you run the activity in a businesslike manner?
- Does the time and effort you put into the activity indicate an intention to make a profit?
- Do you depend on income from the activity?
- If there are losses, are they due to circumstances beyond your control or did they occur in the start-up phase of the business?
- Have you changed methods of operation to improve profitability?
- Do you or your advisors have the knowledge needed to carry on the activity as a successful business?
- Have you made a profit in similar activities in the past?
- Does the activity make a profit in some years?
- Can you expect to make a profit in the future from the appreciation of assets used in the activity?

Final Thoughts

The author of this chapter has done his best to identify many of the legal issues facing the voiceover artist in today's environment. It is not intended, however, to cover every possible situation under all circumstances. Laws may vary from State to State, and many business, tax, and legal issues are unique to the individual and require specialized attention. The author urges the reader to seek out specific advice from legal and tax professionals concerning their specific situation prior to undertaking ANY action.