

Viewing of Videotaped Motion Pictures in the Classroom and in the Library

The use of videotaped movies is essential to teaching some classes and enriches the teaching of others. Videotaped motion pictures, whether purchased or rented, are typically accompanied by warnings on the video cassette and in the opening section of the videotape that they are restricted to personal viewing by the purchaser/renter and family members/guests. This restriction is set out to make it clear that the copyright holder is reserving the rights to the public performance of the motion picture.

It is possible to obtain videotaped motion pictures, usually at a higher cost, sold or rented with licenses expressly permitting their being viewed in classroom settings. The presence of the personal/family use restrictions on the typical videotape of a motion picture and the availability of videotapes that are expressly licensed for classroom showing raises the question of what uses may be made of videotaped motion pictures in the teaching of a class.

As a starting point, the Copyright Act of 1976 (the Act) provides that ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object. 17 U.S.C.S. §202. In other words, the purchaser of a videotape of a motion picture does not by the mere fact of purchasing that videotape have the right to permit anyone he/she wishes to view it.

In particular, the owner of the videotape, unless there is a license stating to the contrary, has no right to conduct a public viewing of the motion picture. Subject to exceptions established by §§107 through 121, the Act provides that the owner of copyright in a motion picture has the exclusive rights to publicly perform and to authorize public performance of that motion picture. 17 U.S.C.S. §106(4). In this regard, the Act provides that to 'perform' a work, in the case of a motion picture, means to show its images in any sequence or to make the sounds accompanying it audible. To perform a work 'publicly' means to perform it at a place open to the public or at any place where a substantial number of persons outside the normal circle of a family and its social acquaintances is gathered. 17 U.S.C.S. §101. Absent a license providing to the contrary (such as a classroom viewing license), purchasing or renting the videotape of a motion picture only gives the right of personal, not public, viewing. A viewing by those beyond a normal circle of a family and its social acquaintances would constitute a public performance.

The Act sets out nine specific exceptions to the general grant of exclusive rights to restrict the public performance of

motion pictures provided for under §106(4). If it were not for these exceptions, it would be necessary to obtain a special license to show videotaped movies in a classroom, since such a showing would be a "public" showing. The exception that, if its conditions are met, allows such a showing is §110(1), which permits the following:

[P]erformance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made.

In interpreting the provisions of §110(1), the comments found in the General Guide to the Copyright Act of 1976 (the Guide) may be useful. Although the Copyright Office expressly states in its introduction that the Guide does not necessarily reflect the views of either its office or the Library of Congress, the interpretations and explanations therein have been given great credence over the years. The Guide takes on even more practical significance since there is no parallel provision in the Code of Federal Regulations that provides any "official" guidance from the Copyright Office regarding the interpretation of §110. The Guide provides the following explanatory material at page 8:10:

1. The "face-to-face" limitation was placed in the statute to exclude broadcasting or other transmission from an outside location into a classroom. Students and instructors are within the "face-to-face" limitation so long as they are in the same building or general area.

2. The "teaching activities" limitation is intended to mean systematic instruction. This excludes showing a videotape of a motion picture for recreational or entertainment purposes.

3. The "classroom or similar place" limitation is intended to include those places devoted to instruction. The legislative reports indicate that such a place might be a studio, workshop, gymnasium, or library, as long as that place is actually used as a classroom for systematic instruction.

Accordingly, there is no violation of copyright if a lawfully obtained (whether by purchase or rental) videotape of a motion picture is played in a classroom, assuming that the motion picture is an integral part of the course concerned. Likewise,

there is no copyright violation if a lawfully obtained videotape of a motion picture is placed in the University's library on reserve for viewing there as long as certain conditions are met: (1) the viewing of the motion picture must be an integral part of the course concerned; (2) the instructor must coordinate with the library staff to ensure that only members of the class are allowed to check out the motion picture; and (3) the instructor must inform students and coordinate with the library staff to ensure that any motion picture on reserve for the class is viewed only by students in the class. In regard to this last condition, it would be improper for those who are not members of the class to view the motion picture, even in the company of a member of the class, while it would be proper for more than one member of the class to view the motion picture together in the library.

So long as the requirements outlined above are met, faculty members will be in compliance with applicable copyright law in the instructional use of videotaped motion pictures incident to face-to-face classroom instruction conducted on the campus. It should be remembered that §110(1) pertains to face-to-face instructional activities and has no application to the use of videotaped motion pictures in a distance learning setting.