

FREQUENTLY ASKED QUESTIONS

WHAT IS A COPYRIGHTED VIDEORECORDING?

Copyright is a property right that gives the copyright owner of an original work a bundle of exclusive rights, which include the right to authorize or prohibit reproduction, derivative works, distribution, and public performance or display of that work.

Under present law, copyright exists automatically from the moment a work is fixed in a tangible medium of expression. The work may be published or unpublished. It is not necessary that the copyright be registered with the Copyright Office. As of March 1, 1989, a notice of copyright on the work is optional and its absence does not necessarily mean that the work is in the public domain.

The rights of copyright apply to videorecordings as well as to other works. It should be assumed that all videorecordings are protected by copyright unless verified otherwise.

WHAT IS "PUBLIC PERFORMANCE"?

- To perform or display a work "publicly" means-- to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered;
- to transmit or otherwise communicate a performance or display of the work to a place specified by clause (1) or to the public, by means of any device or process,
- whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.

(Title 17, U.S.C., Copyrights, Section 101, Definitions)

WHAT DOES "HOME USE ONLY" MEAN?

In the case of motion pictures, including videorecordings, and of other audiovisual works, one of the exclusive rights of the copyright owner is to perform or display the work publicly. Unless videorecordings are sold or rented with public performance rights or are licensed for public performance, they should be considered "home use only" and should be restricted to private showings in the home to a "normal circle of a family and its social acquaintances." The only exception to this is the "face-to-face teaching exemption."

WHAT IS THE "FACE-TO-FACE TEACHING EXEMPTION"?

The copyright law contains an exception, which allows the lawful use of "home use only" videorecordings for public performance or display without the permission of the copyright owner. Section 110 (1) of the law appears to allow the classroom use of video programs that have not been cleared for public performance if, and only if, all of the conditions set forth by the law are met.

Notwithstanding the provisions of section 106, the following is not an

infringement of copyright: (1) performance 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;...

(Title 17, U.S.C., Copyrights, Section 110 (1), Limitations on exclusive rights: Exemption of certain performances and displays)

DOES THE FACE-TO-FACE TEACHING EXEMPTION APPLY TO DISTANCE EDUCATION?

No, the Technology, Education and Copyright Harmonization (TEACH) Act provides a more limited right to use copyrighted material in distance education by accredited nonprofit institutions providing certain conditions have been met. The law permits the performance of nondramatic literary and musical works and “reasonable and limited portions” of dramatic and audiovisual works “in an amount comparable to that which is typically displayed in the course of a live session.” Educational materials marketed as “mediated instructional activities transmitted via digital network” may not be used.

In order to take advantage of these exemptions there are many requirements including: 1) Access must be limited to enrolled students within class sessions; 2) Technological protection measures must be put in place to prevent recipients from further distributing the works; and 3) Institutions must institute copyright policies, provide information on copyright compliance, and provide “notice to students that materials used in connection with the course may be subject to copyright protection.”

The TEACH Act was enacted in October, 2002, and is a completely revised version of Section 110(2) of the U.S. Copyright Act.

It should be noted that the TEACH Act does not restrict the law of fair use, which may allow performances beyond those allowed by the TEACH Act.

WHAT ARE SOME OF THE WAYS TO FIND OUT IF A VIDEORECORDING HAS PUBLIC PERFORMANCE RIGHTS OR HOME USE RIGHTS?

- Determine what rights are attached to a videorecording at the time it is purchased or acquired, and document that information. Know that the videorecording is a legal copy and know if the source of purchase or acquisition has the right to grant or convey public performance rights or not.
- .Look for rights information on the video label, container, or on the screen.
- Videorecordings with "home use only" rights usually, but not always, have statements indicating home use. Do not assume that a videorecording has public performance rights if "home use" or wording to that effect is not indicated, however.
- Videorecordings with public performance rights rarely have that information specifically stated.

- Contact the copyright owner or the owner's authorized representative for rights information.
- If the rights cannot be determined, it is advisable to assume that a videorecording does not have public performance rights.

WHEN MIGHT SCHOOLS OR LIBRARIES CONSIDER OBTAINING LICENSING IN ORDER TO USE "HOME USE ONLY" VIDEORECORDINGS FOR PUBLIC PERFORMANCE?

When they want to show videorecordings in any situation outside of the definition of "home-use-only" or, in the case of schools, outside of the definition of the "face-to-face teaching exemption." For example, a public library would need public performance rights to show a videorecording to staff in an in-service workshop, to children during story hour, or to a community group meeting. A school would need public performance rights for a videorecording to be shown for entertainment in place of recess on a rainy day, or for after-school programs, or as a reward.