

Showing Movies At School: Fair Use Or Copyright Infringement

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Recently, school districts across the state have been contacted by organizations representing movie distributors offering a license to show movies and videos in school. According to these organizations, the showing of copyrighted motion pictures (videos and DVD's) outside of a classroom educational setting (including such uses as after school programs, student rewards, rainy days, lunch hour movies, summer camps, clubs, assemblies, staffing emergencies and idle periods between state testing) constitutes copyright infringement. The contact served as a warning that the districts may be violating the copyright holders' exclusive public performance rights absent obtaining an appropriate license. Whether a school's use of a copyrighted motion picture constitutes fair use or is copyright infringement depends on several factors. "Motion pictures and other audiovisual works" are copyrightable subject matter within the protective scope of the U.S. Copyright Act. One of the exclusive rights of the copyright holder is to "perform the copyrighted work publicly". A performance is 'public' if it takes place "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." Additionally, "[p]erformances in 'semipublic' places such as clubs, lodges, factories, summer camps, and schools are 'public performances' subject to copyright control." Thus, in the absence of an exemption, districts need permission from the copyright holder to show movies at school. The Copyright Act contains a statutory exemption from the performance right for instructional activities in the classroom. The classroom exemption is only available to "non-profit educational institutions" and is subject to the following requirements: (a) performances must be shown "in the course of . . . teaching activities" which involve "systematic instruction [and] whatever their cultural value or intellectual appeal", do not involve performances "given for the recreation or entertainment of any part of the audience", (b) performances must involve "face-to-face teaching activities" meaning that either an instructor must be present in the room or "in the same building or general area" and (c) performances must take place "in a classroom or similar place devoted to instruction" such as "a studio, a workshop, a gymnasium, a training field, a library, the stage of an auditorium itself, if it is actually used as a classroom for systematic instructional activities." The exemption does not apply to "performances in an auditorium or stadium during a school assembly, graduation ceremony, class play or sporting event where the audience is not confined to members of a particular class." If a performance of a copyrighted movie falls outside these parameters, it will not qualify for the classroom exemption. Your district may already have a policy regarding the reproduction and use of copyrighted written materials, such as books and periodicals. If your schools are showing motion pictures, that policy should be expanded to cover copyrighted movies. A properly drafted policy would include: (a) the state of the law regarding the unauthorized public showing of copyrighted movies, (b) the requirements necessary to meet the classroom exemption, (c) a prohibition of the unauthorized showing of copyrighted movies that do not fall within the classroom exemption and (d) the statutory penalties for copyright infringement. The policy should be distributed on a regular, periodic basis. Your district may determine that, along with such a policy, obtaining an annual public performance license is an appropriate undertaking and expense.



Alerts

If you have any questions about how these issues might impact your district directly, please contact Kathy Ossian via e-mail (ossian@millercanfield.com) or phone (313/496-7644). This message is for general information only and should not be used as a basis for specific action without obtaining further legal advice.