

Copyrights and Your Rights

“PUBLIC PERFORMANCE” (from www.mpa.org)

Unauthorized public performances refer to situations where an institution or commercial establishment shows a tape or film to its members or customers without receiving permission from the copyright owner. This includes “public performances” where an admission is charged as well as those that are simply offered as an additional service of the establishment.

“The Congress shall have power... To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings or discoveries...”
Article I, Section 8, The United States Constitution

“FAIR USE”

In some instances, it is not required to obtain a Movie Copyright Compliance Site License when exhibiting copyrighted materials such as videocassettes or DVDs.

This “face-to-face teaching exemption” applies only IF: A teacher is in attendance and the showing takes place in the classroom setting and the movie is used as an essential part of the current curriculum being taught. Examples of situations where a Movie Copyright Compliance Site License must be obtained are: public libraries, day-care facilities, discussions and workshops used for cultural value and enrichment, and non-classroom entertainment movies being used at school for after school activities.

This legal requirement applies:

- Regardless of whether an admission fee is charged;
- whether the institution or organization is commercial or non-profit;
- whether a federal or state agency is involved.

WHAT THE LAW SAYS (from www.copyright.org)

The Federal Copyright Act (Title 17 of the United States Code) governs how copyrighted materials, such as movies, may be used. Neither the rental nor the purchase of a videocassette carries with it the right to show the tape outside the home.

In some instances no license is required to view a videotape, such as inside the home by family or social acquaintances and in certain narrowly defined face-to-face teaching activities. Taverns, restaurants, private clubs, prisons, lodges, factories, summer camps, public libraries, day-care facilities, parks and recreation departments, churches and **non-classroom use at schools and universities are all examples of situations where a public performance license must be obtained.**

This legal requirement applies regardless of whether an admission fee is charged, whether the institution or organization is commercial or non-profit, or whether a federal or state agency is involved.

What Are “Public Performances?”

Suppose you invite a few personal friends over for dinner and a movie. You purchase or rent a copy of a movie from a local video store and view the film in your home that night. Have you violated the copyright law by illegally “publicly performing” the movie? Probably not.

But suppose you took the same videocassette and showed it at a club or bar that you happen to manage. In this case you have infringed the copyright of the movie. Simply put, videocassettes obtained through a video store are not licensed for exhibition. Home video means just that: viewing of a movie at home by family or a close circle of friends.

Penalties for Copyright Infringement

“Willful” infringement for commercial or financial gain is a federal crime punishable as a misdemeanor, carrying a maximum sentence of up to one year in jail and/or a \$100,000 fine. Even inadvertent infringers are subject to substantial civil damages, ranging from \$500 to \$20,000 for each illegal showing.

How to Obtain a Public Performance License

Obtaining a public performance license is relatively easy and usually requires no more than a phone call. Fees are determined by such factors as the number of times a particular movie is going to be shown, how large the audience will be and so forth. While fees vary, they are generally inexpensive for smaller performances. Most licensing fees are based on a particular performance or set of performances for specified films.

The major firm that handles the majority of licensing is:

Swank Motion Pictures, Inc. (800) 876-3344

Swank Motion Pictures, Inc. (www.swank.com)

Walt Disney Studios

Hollywood Pictures

Paramount Pictures

Columbia Pictures

Miramax Films

Universal Studios

Metro-Goldwyn-Mayer

Lions Gate Films

Touchstone Pictures

Warner Bros.

Paramount Classics

TriStar Pictures

HBO Films

DreamWorks Pictures

United Artists

Focus Features (USA Films)

By law, as well as by intent, the pre-recorded videocassettes and DVDs (“Videos”) which are available in stores throughout the United States are for home use only – unless you have a license to show them elsewhere. Rentals or purchase of Videos do not carry with them licenses for non-home showings. Before you can legally engage in non-home showings, you must have a separate license which specifically authorizes such use. These simple, straightforward rules are embodied in the federal Copyright Act, as amended, Title 17 of the United States Code. Any institution, organization, company or individual wishing to engage in non-home showings of Videos should be aware of the Copyright Act’s provisions governing the showing of Videos, which are highlighted below.

- The Copyright Act grants to the copyright owner the exclusive right, among others, “to perform the copyrighted work publicly.” (Section 106)
- The rental or purchase of a Video does not carry with it the right “to perform the copyrighted work publicly.” (Section 202)
- Videos may be shown without a license in the home to “a normal circle of family and it’s social acquaintances” (section 101) because such showings are not “public.”
- Videos may also be shown without a license for non-profit educational purposes and in certain narrowly defined “face-to-face teaching activities” (Section 101.1) because the law makes a specific, limited exception for such showings. Attendance is limited to the instructors and registered pupils. Combined sections do not apply. (Sections 106 and 110(1))

- Other showings of Videos are illegal unless they have been authorized by license. Even “performances in ‘semipublic’ places such as clubs, lodges, factories, summer camps and schools are ‘public performances’ subject to copyright control.” (Senate Report No. 94-473, page 60; House Report No. 94-1476, page 64)
- Institutions, organizations, companies or individuals wishing to engage in non-home showings of Videos must secure licenses to do so – regardless of whether an admission or other fee is charged. This legal requirement applies equally to profit-making organizations and non-profit institutions (Senate Report No. 94-473, page 59; House Report No. 94-1476, page 62)
- Showings of Videos without a license, when one is required, are infringements of copyright. If done “willfully and for purposes of commercial advantage or private financial gain,” they are a federal crime and subject to a \$150,000 penalty per exhibition (Section 506)
- In addition, even innocent or inadvertent infringers are subject to substantial civil damages (\$750 to \$30,000 for each illegal showing) and other penalties. (Sections 502-505)

FREQUENTLY ASKED QUESTIONS

Q. *We own the Video, do we still need a license to view or show it in public?*

A. Yes. The location requires a license regardless of who owns the Video. While you may own the actual Video, you are only granted the right to view it in your home, no to perform in public.

Q. *We do not charge admission. Do we still need a license?*

A. Yes. Regardless of whether an admission fee is charged, a license is required.

Q. *We are non-profit. Do we still need a license?*

A. Yes. The legal requirement to obtain a license applies equally to non-profit and for-profit organizations.

Q. *We show Videos on our closed-circuit system. Do we need a license?*

A. Yes. The Copyright Act provides that closed-circuit transmissions are automatically deemed public performances.

Q. *We are not open to the general public. Do we still need a license?*

A. Yes. Any location outside of the home is considered public for copyright purposes.

Q. *We rent out our facility to other groups. Can we be liable for copyright infringement?*

A. Yes. The facility owner can be held vicariously liable or as a “contributory infringer.”