

Copyright Law and the Use of Audiovisuals in the Classroom

Carroll County Public Schools
Audiovisual Guidelines
November 2013



What is Copyright?

Copyright Law– 17 USC § 102 . Subject matter of copyright: In general

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

What is Copyright?

17 USC §106 grants the copyright holder “exclusive rights to do and to authorize any of the following:

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;

(5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly;

What Publicly Mean?

17 USC §101 Definitions:

To perform or display a work “publicly” means—

(1) 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;

What is an Audiovisual Work?

17 USC § 101 - Definitions:

“Audiovisual works” are works that consist of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

Audiovisual Works

Audiovisual (A/V) Works Include:

- motion pictures
- documentaries
- TV shows
- instructional videos
- online videos
- videogames
- filmstrips
- DVDs

Ways to Legally Show an A/V Work

1. Get permission from the copyright holder
2. Acquire a public performance license
3. Rely on 17 USC § 107 -- “Fair Use”
4. Meet one of the 17 USC § 110 Exemptions
 - Show it under the “Face-to-Face Teaching Exemption”
 - Show it under the “Distance Education Exemption”



Permission from the Copyright Holder

- Contact the copyright holder directly;
- Maintain written documentation of permission to show the work in the main office for 7 years.



Acquire a Public Performance License

- Contact the licensing service representing the particular studio or production company;
- Purchase a license for public performance rights;
- Maintain written documentation of the license in the main office for 7 years.



Rely on the “Fair Use” Doctrine

17 USC § 107 -- For purposes such as criticism, comment, news reporting, teaching, scholarship, or research.

- Factors to Consider:
 - the purpose and character of the use;
 - the nature of the copyrighted work;
 - the amount and substantiality of the portion used;
 - the effect of the use upon the potential market.

“Fair Use” Guidelines

- Factors to Consider:
 - Brevity;
 - Spontaneity;
 - Cumulative Effect.
- It Shall Not:
 - Substitute for Purchase;
 - Be Directed by Higher Authority;
 - Be Repeated.

“Fair Use” Doctrine Summary

- There is no bright line test for “Fair Use;”
- “Fair Use” is a legal defense;
- “Fair Use” cannot be used to show an entire work.

The “Face-to-Face Teaching Exemption”

17 USC § 110 provides exemptions for instructors in the course of face-to-face teaching activities.

The following criteria must be met in order to use an A/V work:

- Face-to-face instruction must be involved;
 - The showing takes place in a classroom with only the regular class of students attending;
 - The work is a part of the curriculum;
 - The work being used is a legitimate copy, not taped from a legitimate copy or taped from TV.

The “Distance Education Exemption”

- 17 USC § 110 provides exemptions for transmission via a digital network of “nondramatic literary or musical work or reasonable and limited portions of any other work”

The “Distance Education Exemption”

- The exemption is only applicable if:
 - Under the actual supervision of an instructor as an integral part of a class session offered as a regular part of the systematic mediated instructional activities;
 - the performance or display is directly related and of material assistance to the teaching content of the transmission;
 - the transmission is limited to students officially enrolled in the course

The “Distance Education Exemption”

- The exemption is only applicable if:
 - The transmitting body or institution institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in connection with the course may be subject to copyright protection

Section 110 Exemptions

- Legislative history on the Copyright Law stresses two key concepts:
 - Systematic mediated instructional activities
 - directly related and of material assistance to the teaching;

Summary

- There is no legal way to show a full length video in a classroom unless it is included in a curriculum or public viewing rights have been granted.
- There is no legal way to show a full length video via streaming or a distribution system unless public viewing rights for broadcasting via a digital network have been granted.

Summary

Carroll County Public Schools does not permit:

- A full-length video to be shown for reward or entertainment purposes;
- Teachers to leave a movie to watch as a substitute activity;
- Showing a video after testing as a break or to provide planning time;
- Showing a video because only a small number of students are in class on a given day.

Summary

Without prior approval, teachers are permitted to use their professional judgment when selecting video clips to use with their classes provided that the clip:

- Is of limited duration;
- Is intended to be used only one year.

Summary

A building principal does not have the authority to permit the use of a full-length video in a building without acquiring public performance rights.

Summary

Remedies for Infringement:

- Statutory Damages up to \$150,000;
- Up to two times the license fee;
- Costs and attorney's fees;
- No immunity for acting in official capacity.

POSTSCRIPT: Copyright Law and the Use of Audio in Video Productions



Audio in Video Productions

- Background music in a video is not viewed as educational or fair use;
- Posting a video to a network or public website which incorporates copyrighted music for which you do not have written permission to use is a violation.
- Legally purchased music is for personal and home use.