Movie Night - License Information

SBA - Movie Nights

Organizations of the SBA often host movie nights. The SBA needs to obtain the appropriate license to show the film. The Storrs Student Organization Accounting office has indicated that the Law School has been in violation of the law and that reimbursement for film rental cannot be made without obtaining the necessary license.

Following is some useful information to be sure the Federal Copyright law is followed.

_The Following information provided by Sarah Cox, Reference Librarian, spring 2008_

This site is for a company that sells "blanket" licenses:
http://www.swank.com/college/index.html

The following Uconn site is helpful with information on contact for performance rights:
http://www.lib.uconn.edu/copyright/videorecordings.html

_Following information provided by Professor McLean, spring 2008_

**Federal Copyright Law, Title 17, Chapter 1**

**Section 101** 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;

**Section 110** Limitations on exclusive rights: Exemption of certain performances and displays
Notwithstanding the provisions of Section 106, the following are not infringements 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;

**General Film Usage Restrictions under the Federal Copyright Act**
Restaurants, prisons, summer camps, public libraries, day-care facilities, parks and recreation departments, churches, and non-classroom use at schools and universities are all examples of screenings 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.
Businesses, institutions, organizations, companies or individuals wishing to engage in non-home showings of home videocassettes or DVDs must secure licenses to do so - regardless of whether an admission or other fee is charged (Section 501). 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).

*Following information provided by Professor McLean, spring 2008*

**Video Copyright Information**
The rules governing the showing of copyrighted videotapes are the same as those governing any other copyrighted performance.

**Copyright Statement:**

**Classroom Use**
In order to show videotapes in classes, the screening must conform to the exceptions of Section 110(1) for dramatic work. The law limits the use of videos to classroom settings in conjunction with face-to-face instruction, as in the case of any performance.

Copying television programs off the air for classroom use is permitted, with some restrictions:

- The broadcast must be erased 45 days after the date of recording.
- The recordings may be used only once by teachers in the course of "time shifting" the program in order for it to be seen by the class.
- The broadcast should be shown in the classroom or similar places of instruction.
- Limited copies may be made (for example, copies are made for a number of sections of a particular class). Copies are subject to all other restrictions. Recordings do not have to be used in their entirety, but they may not be altered. They may not be physically or electronically merged to create teaching anthologies or compilations.

**Library Use**

Screenings in libraries do not usually constitute "face-to-face teaching activities". However, they may be viewed as non-public performances. Probably, individuals and small groups of individuals may view a video tape in a study carrel or viewing room, and it will be characterized as a non-public viewing.

**Student Use for Entertainment**

Students may want to rent or borrow video tapes to view singly, with friends, with groups or the public. These guidelines are written to assist the institution and students in understanding and evaluating when a video screening become "public", thus requiring a license and the payment of a licensing fee to the copyright holder. These guidelines also address the vicarious liability the institution may have for facilitating public performance by students where a license and fee is required. There are several principles in copyright issues, however we need to concern ourselves with two of these principles in particular. The first is that only performances which are not
"public" are exempt from the requirement of a license from the copyright holder. The second is that "noncommercial" or not-for-profit performance or use is NOT a reliable indicator of whether a license is required. When a performance is "public", even if it is "not-for-profit", a license may be required.

Whether a performance is "Public" is defined as either:

- a) performance at a place open to the public
- b) performance at a place where a substantial number of people who are not family members or friends is gathered. "Friend" is somewhat loosely defined as "having a social relationship" with another person.

Both prongs of this definition are dependent upon the specific circumstances of any given "performance". It is important to note, when a performance is literally open to the public, it may be considered a public performance, even if only a few people attend. Conversely, performance in a private setting becomes "public" only if a "substantial" number of persons who are unrelated as family or friends is actually present.

The ways in which students can use videos for private or public entertainment covers a broad spectrum, and at each end there are clear answers "yes" and "no" as to whether a license fee is required. However, in between are some gray areas, where students and administrators will need to evaluate the individual circumstances. To illustrate how the above principles apply, some hypothetical scenarios and answers follow.

- Student rents video and views/shows it with friends in own dorm room. Is this a performance requiring a license? No. This use falls within "private use" - it is in a student's own room (private place), only friends are invited to attend.
- Student rents video and views/shows it with friends in lounge/living room of dorm. Is this a performance requiring a license? No. Again, this not public. The dorm is the student's house", and the people who are invited to view it are friends. Even though a stranger or two may wander in, the circumstances are not such that substantial numbers of people who are not friends can attend.
- instead of the lounge of the dorm, the film is shown in the Student Center. How does this change things? This may not really change the "private use", given the context that only friends are invited. Even if a few others watch, it is still probably not public viewing.
- Student rents video and views/shows it with friends in lounge/living room of dorm. S/he collects money from the friends to cover the rental costs and refreshments. Is this a performance requiring a license? No. Same as (2), above. This is not a public performance, so the collection of money is not relevant.
- Student rents video and views/shows it in lounge/living room of dorm. S/he advertises in the campus newspaper and posters on campus that the video is going to be shown - anyone can come to see it. Is this a performance requiring a license? Yes. Because it is advertised, the circumstances are such that it is "open to the public" and a substantial number of people who are not family members or friends can attend. The College as a whole is not a sufficiently related group, and this would constitute a "public" screening. This outcome would be the same for a screening regardless of where it was held.
• Student rents video for a screening on campus for the next Glee Club meeting. S/he advertises the meeting in the campus newspaper and posters on campus and says that the video is going to be shown. Members are urged to attend and donations are suggested - this is fund raiser for the Glee Club. Is this a performance requiring a license? No, because this is a group of "friends" - persons with a "social relationship". The principle is the same as (2) above. The donation does not elevate it to a public performance.

• What if it is a Five College group, but instead of the Glee Club, it is advertised as a screening for "Trekkies"? This probably would be considered a public screening, because the group is formed of people who have only a common interest, not necessarily a social relationship. Whether or not it is a social group formed by members outside the college is not relevant.

• Student rents video and views/shows it in lounge/living room of dorm. S/he advertises in the campus newspaper and posters on campus that the video is going to be shown - a charge is made for all attendees, and the student pockets the profits. Is this a performance requiring a license? Yes. It is both public and commercial.

• How does the relationship that the College has to the activities described above change when the College is providing the Student with the equipment to show the video and/or the money to rent it? If the performance is public, the College could most certainly be drawn into a suit because its property is being used to screen the video.

• Student is a film buff and rents video(s) and views/shows it with friends in the Student Center every Friday night at 8 p.m. People begin to hear about it and more and more non-friends start showing up. Is this a performance requiring a license? Probably, yes. The performance is open to the public and is now being shown in circumstances where a substantial number of people who are not family members or friends can attend. Even though there is no advertising, it has become "public".

• Is there any difference between a group of students sitting lounge-style around a TV set, or if the set is on a stand and seating is arranged like a theater or movie house? What if the viewing is in the school auditorium instead of the student lounge? There are not really any differences here. Again the issue is one of "public" versus "private". Is the performance open to the public or shown in circumstances where a substantial number of people who are not family members or friends can attend?

• What case law, if any, exists on this subject in Massachusetts? Other states? This is a matter of Federal Copyright Law. Section 101 of the Copyright Act, revised substantially in 1976. Defines public performance. There are not a lot of cases decided on this point since 1976. A few are: Columbia Pictures Industries, Inc. v. Professional Real Estate Investors, Inc. 866 F.2d 278 (9th Cir. 1989); Columbia Pictures Industries, Inc. v. Redd Horne, Inc. 748 F2d 154 (3rd Cir. 1984); and On Command Video Corp. v. Columbia Pictures Industries, Inc.777 F. Supp. 787 (N.D. Cal. 1991).