Copyright Issues and Information

This information is intended for Denver Public School employees. Because the ERS Video/Multimedia Library (ERS_Video_Film_Library@dpsk12.org) receives numerous questions about copyright issues, a number of points have been condensed here for your information. The following information is a work in progress and is meant as a general guide to copyright issues concerning audiovisual media. The opinions expressed are the product of research and not meant as legal advice. If you need legal advice please contact your attorney. If you need further technical information on copyright issues, call the Association for Information Media and Equipment Hotline, (800) 444-4203, or the Library of Congress Copyright office, (202) 707-3000.

The Nature of Copyright

When libraries purchase a video recording, they purchase the physical object as distinct from purchasing the copyright to the content. Copyright regulations, therefore, determine what libraries can and cannot do with the videotapes they own without infringing upon the copyright they do not own. Libraries need to remember that when they want to use a videotape in such a way that would infringe upon copyright, permission must be sought from the copyright owner or steps taken to ensure that the videotape is leased or licensed for the specific purpose of a public performance. As educators, we naturally want to bring the highest quality materials to the classroom. In the face of restrictive school budgets and high video costs, it may seem justifiable to be unconcerned about copyright issues. Educational institutions have already been granted generous exemptions to some copyright provisions. If we wish to have quality media products available in the future, we must set an example in helping protect vendors’ rights.

Audiovisual Copyright Terms and Definitions

Public Performance Rights

Most (not all) programs produced by mainline educational vendors bears public performance rights. A "public performance" is a showing in a place open to the public, or at a place where a number of people outside the normal circle of the family and friends are gathered, such as a classroom. In general, materials rented or purchased from home video stores do not posses public performance rights. Most Video/Multimedia Library materials bear these rights and may be utilized in non-profit settings by district schools. The higher cost of items with public performance rights is one reason that V/M Library items are so expensive. Public performance rights do not permit duplication or broadcast of programs.

Home Use Video

Most video obtained from rental outlets is licensed for home use only. Such videos are restricted to use by the family or a small group of friends in the home. However, educational institutions are permitted, under certain conditions, to utilize home use video for teaching purposes. See Classroom Use of Videotapes.

Theatrical Rights

Theatrical rights include the ability to publicly perform a work and charge an admission. V/M Library does not purchase theatrical rights.

Educational Site Licenses

Some educational vendors sell titles at discounted rates to individual schools. These items are restricted to use at that particular school. If your school has purchased such materials, they are not available for interlibrary loan. Any school in the district may legally show all V/M Library media.
"Educational Rights"

This term is sometimes advertised by low-cost educational vendors. Legally the term is meaningless. Videos marked with this label are actually home use titles and are therefore subject to "home use" restrictions.

Duplication Rights

Two issues are involved, the copying of selected portions of a copyrighted work and reproduction of a work in its entirety. Under the concept of "fair use" limited duplication of audiovisual media is permitted under certain conditions. Legal copying of an entire work requires the purchase of a special duplication license from the copyright holder. See "fair use in copying". V/M Library does not purchase duplication rights and copying in its entirety, any V/M Library media item is a violation of copyright law and V/M Library policy.

Off-Air Taping

The U.S. Supreme Court has held that off-air taping by individuals for home use is legal in most cases. The same is not true for taping programs for use in a classroom setting. The use of off-air taped materials by teachers is permitted under the "fair use" concept, only under certain restricted conditions. See "fair use" the Kastenmeier guidelines.

Broadcast Rights and Distance Learning

Transmission of an audiovisual program from one building to a separate location requires the purchase of broadcast rights. The cost of such licenses, usually renewed annually, varies among vendors and fees usually increase with the size of the audience. Transmission of video programs from a central building site to classrooms via closed circuit in the same building is currently a legal gray area. In the absence of purchased broadcast rights, transmission of public performance media is probably safe while similar broadcast of home use media is legally more problematic. No V/M Library materials bear broadcast rights.

Classroom Use of Videotapes

Classroom use of a copyrighted video is permissible only when all of the following conditions are met.

- The performance must be by teachers or pupils.
- The performance is in connection with face-to-face teaching situation as a regular part of the systematic instructional activities of the institution. Use must be directly related to the lesson content.
- The entire audience is involved in the teaching activity.
- The entire audience is in the same room or same general area.
- A non-profit education institution conducts the teaching activities.
- The performance takes place in a classroom or similar place devoted to instruction. Not a lunchroom, library or auditorium unless the room is regularly used for academic instruction.
- The person responsible for the performance has no reason to believe that the videotape was unlawfully made.

Fair Use in Copying

In determining whether use of copyrighted materials without permission in a particular case is "fair use," the following criteria are necessary considerations:
The purpose and character of the use, including whether it is for nonprofit/public educational purpose(s). The user must be sure the item will be utilized in a non-commercial setting.

The nature of the copyrighted materials. The user must consider the nature and format of the work; in particular, the size of the potential audience (i.e.) “fair use” of audiovisual materials is more limited than books.

The amount and substantiality of the portion used as compared to the copyrighted material as a whole. Obviously copying all or most of a program is not "fair use", but an extraction of a short segment, which is the most significant portion of the work, also may not be "fair use".

The effect of the use on the potential market for, or value of, the copyrighted materials. Usage, which would cause a potential loss of sales of the work, is not "fair use".

"Fair Use" in Off-Air Videotaping: Kastenmeier Guidelines

The United States copyright laws do not address the question of legality of videotaping television programs for instructional use. The U. S. House of Representatives has issued a series of widely accepted suggestions, known as the Kastenmeier Guidelines, relating to the "fair use" of off-air videotaping. Any instance of off-air taping not meeting the standards of the Kastenmeier Guidelines is certainly in violation of the law.

The Guidelines were developed to apply only to off-air recordings by non-profit educational institutions.

A broadcast program (including cable programs) may be recorded off-air and retained by a non-profit educational institution for a period not to exceed the forty-five (45) consecutive calendar days after the date of recording.

Off-air recording may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary in classrooms and similar places devoted to instruction within a single building, cluster, or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar day retention period. “School days” are school session days—not counting weekends, holidays vacations, examination periods, or other scheduled interruptions—within the forty-five (45) calendar day retention period.

Off-air recordings should be done by a school official, not the teacher, and may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each additional copy shall be subject to all provisions governing the original recording.

After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes. i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without permission.

Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

Examples of Permitted and Prohibited Usage

Permitted (or Probably Legal):

- Off-air taping of a broadcast program by an authority from an educational institution at a location removed from the site of the institution, as long as all of the Kastenmeier Guidelines apply.
- Rental of a video from a home video store for classroom use where all the face-to-face teaching limitations apply and where the video store agreement does not preclude such usage. See Classroom Use of Videotapes.
- Closed circuit transmission of an AV item within a building with the permission of the producer/distributor.
- May tape programs off local cable as long as programs are of an instructional nature and are simulcast on broadcast T.V., special permission is granted (e.g.) Cable in the Classroom or a license fee has been paid. All Kastenmeier Guidelines must still be met.
- Viewing “public library” videotapes at school as long as all Classroom use of Videotapes restrictions is met.

Prohibited (Questionable or Illegal)

- May not tape programs not being broadcast simultaneously (CNN, Discovery, Disney, HBO, etc.) unless prior approval or license obtained from cable network.
- May not show cable programs of a musical, dramatic, or entertainment nature.
- Showing purchased or rented videos for entertainment, rewards, snow days, filler or non-instructional purposes.
- Showing a “home use only” video copy such as “Mulan” in the auditorium/lunchroom before school or during lunch hour for entertainment or filler (this is a direct violation of Federal Copyright Law under “fair use” as non-educational, and because the viewing does not occur in a classroom or similar instructional locale).
- Backup of a deteriorating, out-of-print 16mm film to video format without permission of the producer (audiovisual works are specifically excluded from archival copying privileges or converting one medium to another without permission).
- Off-air taping of a PBS program by a teacher at home for use in the classroom (violates Kastenmeier Guidelines which specify the taping be done by a school official).
- Off-air taping of satellite transmissions by a teacher at home or by the school media center for use in the classroom. Federal law considers satellite transmission to be private communication, which cannot be recorded for viewing by others in an institutional or business setting.
- Copying any audiovisual work in its’ entirety (except off-air taping).
- If you think something may be illegal, it probably is illegal.

EGAD-Copyright Compliance (DPS Policy, 1993)

It is the intent of the Board to adhere to the provisions of copyright laws in all areas, e.g., print, computer software, audiovisual materials, music, etc. Though there continues to be controversy regarding interpretation of copyright laws, the Board’s intention is to make known that all employees shall be
expected to adhere to the provisions of law, rules and regulations concerning the use of copyrighted materials. Legal or insurance protection of the district shall not be extended to employees who violate copyright laws.

There shall be made available at the district level as well as at the respective building levels information on copyright infringement and "fair use" guidelines for copyrighted materials.

- Schools no longer need to apply to the Department of Curriculum and Instruction to use non-adopted videos in the above situations. Rather, principals are now responsible for approving the use of non-adopted videos and supplementary materials. Approval should be based on the extent to which the video:
  - Aligns with Denver Public Schools Standards for Success, Curriculum Matrix and District Goals;
  - Provides assessment skills practice;
  - Addresses workplace competencies;
  - Includes activities and resources to meet the educational goals of special needs students;
  - Presents major concepts that build upon one another and are reinforced;
  - Reflects diversity in such areas as ethnicity, gender, national origin and handicapping conditions;
  - Makes available ancillary materials to support instruction, and may include, but is not limited to, workbooks, visual aids, software, literature and resource supplements and activity kits.

**Bibliography**

- www.benedict.com (the copyright web site)
- U.S. Library of Congress copyright office. (http://lcweb.loc.gov/copyright/)
- Copyright guidelines, 1997 Cherry Creek Schools (pp. 1-11)
- Copyright Guidelines, Jefferson County Schools (pp. 3-5)
- Copyright Guidelines Library University of California, Berkeley, 1995
- American Library Association copyright facts sheet # 7(video and copyright)
- U.S. Congressional Record, October 14, 1984
- The Copyright Primer for Librarians and Educators Second Edition by Janis H. Bruwelheide. (pp. 50-63)
- EGAD-Copyright Compliance (DPS Policy, 1993)

A packet containing numerous flyers and extensive information about copyright issues, particularly with regard to audiovisual media, is available for purchase from AIME, The Association for Information Media and Equipment, P.O. Box 1173, Clarksdale, MS, 38614. Telephone (800) 444-4203