

Showing Movies in Churches

It's becoming more common. Churches host special event movie nights. Pastors use movies to enhance sermon points. Sunday School teachers and childcare workers often use DVDs to educate and entertain the kids. Youth leaders show the latest videos. Educators use movies to train and inspire. But all of these church workers may be, unknowingly, breaking the law.

What is a "Public Performance?"

Suppose you invite a few friends over for dinner and a movie. You buy or rent a movie from the local video store and view the film in your home that night. Have you violated the copyright law? Probably not. But suppose you took the same movie and showed it to patrons at a club or bar (or church group) you happen to manage. In this case you have infringed the copyright of the movie. Simply put, movies obtained through a video store are not licensed for exhibition outside of the home. Home video means just that: viewing a movie at home by family or a close circle of friends.

Why is the creative community concerned about such performances?

The concept of "public performance" is central to copyright. If filmmakers, authors, computer programmers and musicians do not retain ownership of their work, then there is little incentive for them to continue creating high-quality products in the future.

What does the Law say?

The Federal Copyright Act (Title 17 of the U.S. Code) governs how copyrighted materials, such as movies, may be used. Neither the rental nor the purchase of a home video copy of a movie carries with it the right to show the movie outside the home. No additional license is required to view a movie 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, daycare 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.

Legal Sanctions

"Willful" infringement for commercial or financial gain is a federal crime carrying a maximum sentence of up to five years in jail and/or a \$250,000 fine. Even inadvertent infringement is subject to substantial civil damages, ranging from \$750 to \$30,000 for each work illegally shown.

Using Video Clips for Instruction

Scenario:

An instructor creates a "digital library" of movie scenes from several films for her students to review. She obtains digital versions of the films, burns selected scenes onto a DVD, and distributes them to each of her students.

Response:

Using digital versions of audiovisual materials for instruction depends on a careful four-factor fair use analysis. And, because fair use (<http://www.lib.umn.edu/copyright/fairuse.phtml>) requires case-by-case analysis the

instructor would need to consider separately each movie clip included on the DVD, paying attention to the size of each clip and its relationship to the essence of the film. In general, films are creative in nature and this would weigh against fair use at the second factor (i.e., "nature of the work"). However, if the instructor uses only small, discrete portions necessary for the instructional purpose, this could weigh in favor of fair use at the third factor (i.e., "amount and substantiality of the portion used"). After conducting a four-factor fair use analysis, if the instructor chooses to proceed with the use, she should advise her students against further distribution and the copyright status of each of the works on the DVD.

What is Fair Use?

To create a balance between the interests of those who develop intellectual and creative works and those who benefit from accessing and using those works, copyright law includes exemptions that limit the exclusive rights of copyright holders. One such exemption is fair use, which allows users of copyrighted works to exercise some rights under certain circumstances without seeking permission or paying royalties. The Fair Use Doctrine is probably the most important exemption to copyright protections for educational settings, allowing many uses of copyrighted works for the purposes of teaching and research.

Section 107 of the Act (see below) allows someone who is in lawful possession of the copyrighted material (e.g., someone who purchased a DVD) to use the work for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research. Such use would not require a license from the copyright owner and is not an infringement of copyright. Additionally, performances or display of the work in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom, or similar place devoted to instruction is allowed without the need to acquire a license.

A diocese or other judicatory body, such as a Resource Center, (for the use of DVDs or movie clips) would be a fair-use exemption and those bodies that lawfully owned such material would not need a license to use the clip during a workshop that they host. They would not generally be allowed to charge a fee for, or receive any other financial benefit from the showing of the movie. Fair use does not generally apply to use of the material by someone who borrows the work/DVD and displays it even for the purposes mentioned above (i.e., they would not have the "fair use" argument.)

The Fair Use Doctrine

U.S. Copyright Act, 17 (U.S.C. Section 107. Limitations on Exclusive Rights: Fair Use) Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phono-records or by any other means specified in that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

- (1) The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) The nature of the copyrighted work;
- (3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) The effect of the use upon the potential market for or value of the copyrighted work.

The Good News! It's Easy 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 audiences. Most licensing fees are based on a particular performance or set of performances for specified films. The major firms that handle these licenses include:

Swank Motion Pictures, Inc.

<http://www.swank.com>

(800) 876-5577

Church Video License

<http://cvli.com>

(888) 771-2854

Criterion Pictures

<http://www.criterionpicusa.com>

(800) 890-9494

Wing Clips

<http://www.wingclips.com>

Motion Picture Licensing Corporation
(MPLC)

<http://www.mplc.com>

(800) 462-8855

Movie Licensing USA Public Libraries

<http://www.movlic.com/library/copyright.html>

(888) 267-2658