

ATTACHMENT 25: ALA VIDEO & COPYRIGHT (FACT SHEET #7)

ALA Library Fact Sheet Number 7

This fact sheet contains information from two sources:

- The Copyright Primer for Librarians and Educators, Second Edition by Janis H. Bruwelheide (ALA/NEA, 1995), and
- A response by James C. Scholtz (then AV Consultant for the Northern Illinois Library System) to a question in American Libraries' "Action Exchange" regarding copyright and video (see the January 1992 issue, pp. 45-46).

Please note that ALA cannot give legal advice. If you need legal advice, you should contact an intellectual property attorney.

For general information and guidance, you may contact ALA's Copyright Specialist, Carrie Russell, at phone number 800-941-8478 (or 202-628-8421), or by fax to 202-628-8424, or via e-mail to copyright@alawash.org.

Also, you can contact the United States Copyright Office, at phone number 202-707-3000 (Monday through Friday, 8:30 am to 5:00 pm, Eastern Time only). The web site of the U.S. Copyright Office resides at <http://www.copyright.gov>. Many questions are answered on the Frequently Asked Questions About Copyright page at <http://www.copyright.gov/faq.html> and the Copyright Basics page at <http://www.copyright.gov/circs/circ1.html>.

Information is also available at the web site of the Friends of Active Copyright Education (FA©E) at <http://www.face-copyright.org>.

The Copyright Revision Act of 1976 governs the rights of reproduction, adaptation, distribution, public performance, and display. Several sections of this act have implications for video cassettes (see Bruwelheide, pp. 50-63).

When libraries purchase a videocassette, 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 the 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. (See #4 below.)

Various Uses of Videotapes

1. Loan/Rental of Videotapes

Libraries may loan/rent videos to patrons for their personal use. This is true even if the video is labeled "For Home Use Only." According to Bruwelheide (p. 51), "a library or school that resells,

rents, or lends a copy of a copyrighted videotape, which it owns, is not infringing on the copyright owner's rights." Some guidelines to follow when loaning/renting a video to a patron:

- Libraries should not obscure (i.e., cover or deface) the copyright notice as it appears on the producer's label.
- Libraries should not knowingly loan a video to groups for use in public performances. If a patron inquires about a planned performance of a videotape, he or she should be informed that only private uses of it are lawful.
- Libraries can charge a nominal fee for use of videos. According to Bruwelheide, "The fact that a fee is charged is irrelevant; the right to distribute a copy includes the right to rent it -- for a fee or deposit or otherwise."

2. 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 instructors or by pupils.
- The performance is in connection with face-to-face teaching activities.
- The entire audience is involved in the teaching activity.
- The entire audience is in the same room or same general area.
- The teaching activities are conducted by a non-profit education institution.
- The performance takes place in a classroom or similar place devoted to instruction.
- The person responsible for the performance has no reason to believe that the videotape was unlawfully made.

3. Library Use of Videotapes

Most public performances of a videotape in a public room (including library meeting rooms), whether or not a fee is charged, would be an infringement. Such performances require a performance license from the copyright owner. The only exception would be educational programs meeting all seven requirements listed above.

Libraries which allow groups to use or rent their public meeting rooms should, as part of their agreement, require the group to warrant that it will secure all necessary performance licenses and indemnify the library for any failure on their part to do so.

Libraries that permit patrons to watch videotapes in private viewing rooms must strictly limit the viewing to one individual or a very small group and should not levy charges or fees.

Previewing a videotape before borrowing it could be considered by some to be an infringement if done in public areas of a library. Therefore previewing should be done in a private space.

Notices may be posted on video recorders or players used in the library to educate and warn patrons about the existence of the copyright laws. Such a notice might read: