

Can these Videos be Shown in a Classroom or a Library Setting?

How many times have you seen the phrase "For Home Use Only" on a videotape and wondered if it was really OK to show the program to students in a classroom or a library setting? While there has been a lot of confusion in this area, the U.S. copyright laws are quite clear in offering guidance on this question. The question can easily be answered by examining the context in which the video is being shown.

First, you'll need some background. The "public performance" of an audio-visual work is the exclusive right of the copyright holder to show their audio-visual work in public and charge for that performance. However, the U.S. Copyright Act of 1976, Section 110 (1) provides an exemption for certain performances of videos in the United States. This law has come to be known as the "classroom exemption" and provides the basis for responsible and legal use of videos in an educational setting, provided certain criteria are met.

There are four main criteria that must be met before an educator should feel comfortable in showing a videotape or DVD in their classroom. The Copyright Act states that the performance of an audio-visual work **"by instructors or pupils"** in the course of **"face-to-face teaching activities"** of a **"non-profit educational institution"** in a **"classroom or similar place devoted to instruction"** is exempt from the copyright holder's exclusive right to perform an audio-visual work.

The Report of the House Committee on the Judiciary, Report No 94-1476, which accompanied the passage of the Act in 1976, provides assistance in interpreting the four requirements of the classroom exemption.

1) The term **"instructors"** is defined as the designated teacher of a class and may also include a guest lecturer or substitute teacher. **"Pupils"** are members of the enrolled class.

2) A performance is only exempt if it occurs during **"face-to-face"** teaching activities. According to the House Report, instructors and pupils need to be in the same general place, but don't necessarily need to be able to see one another or be in the same room. Excluded from the exemption is broadcasting or other transmissions from a location into the classroom, whether by means of radio or television or open or closed circuit. *(In a future article, we will address the various types of technological devices used to play video in schools and what is commonly considered to be an acceptable use.)*

The **"teaching activities"** requirement is explained by the House Report to encompass systematic instruction of a wide variety of subjects, but does not include performances, regardless of their cultural value or intellectual appeal, that are given for recreation or entertainment purposes. The exemption, therefore, would not apply to non-instructional performances used as filler, for reward or for motivation.

3) According to Section 110(1), only performances by **nonprofit educational institutions** may take advantage of the classroom exemption. The House Report provides examples such as dance studios and language schools as profit-making institutions that may not take advantage of the exemption. Although the law states that profit-making institutions do not meet the explicit requirements of the classroom exemption, according to Nimmer on Copyright (1999), Section 8.15[B][3], a leading legal treatise on copyright law, the exemption may be interpreted to apply to private, nonproprietary educational institutions that charge tuition or other fees to meet operating expenses.

4) The House Report also explains that a performance is exempt only if it takes place in a **"classroom or similar place devoted to instruction"** in which the audience members are of a particular class. For example, performances in an auditorium or stadium during a school assembly, graduation ceremony, class play or sporting event are not exempt unless the audience members are of a particular class. If the performance is not in a classroom, then the "similar place" must be a place that is actually used as a classroom for systematic instructional activities like a library, studio, workshop, gymnasium, training field, and the stage of an auditorium or the auditorium itself.

So, if all of the conditions of the classroom exemption are met, it is permissible to show a legally obtained video or DVD in a U.S. classroom or school library without obtaining permission from the copyright owner even if labels like "For Home Use Only" appear on the outside of the video cassette. The "classroom exemption" supersedes these written warnings of the copyright holder.

Even if all of these conditions are not met, you still may have rights to use the audio-visual work in various settings under the doctrine of "fair use," which we will explore in a future article. Another alternative would be to obtain the copyright owner's written permission for the intended use.

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<<http://www.libraryvideo.com/articles/article6.asp>>.