

Facts About Unlicensed Use of 1/2" Videocassette Productions in the Classroom

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Abstract: The purpose of this article is to inform educators about Canadian Copyright Law as it applies to the use of 1/2" home video movies in the classroom. It has become an issue because numerous schools now possess 1/2" videocassette recorders. Many teachers are not aware of a copyright problem with using home video in the classroom and video distributors are often no better informed.

The fact is, and producers stand firm on this, that a public performance license must be obtained from a designated distributor to show *any* 1/2" video home movie in the classroom.

With copyright law needing major revisions over the next few years, the article also raises questions about fair prices to schools for the use of 1/2" video home movies in the classroom. It is certain that the schools cannot be considered as part of the "home use" market, so what special considerations, if any, should schools receive from producers?

The purpose of this report is to give information on a copyright issue concerning the use of theatrical film productions in the classroom. The problem stems from the fact that many schools now have 1/2" videocassette recorders and teachers are anxious to use materials in this convenient format. This paper outlines the steps we undertook to study the issue and some conclusions that can be drawn. Whenever possible, related sections of the existing Canadian Copyright Act are cited to clarify the arguments.

The catalyst in this study was an advertisement originating from a video distributor in Thornhill, Ontario. This company was selling 1/2" format videocassettes of well known film classics at attractive prices and implying they were ideal for use in the schools. Film titles were subdivided under the headings "videotapes suitable for secondary and post-secondary levels" and "videotapes suitable for elementary level." The legality of this was questioned because 1/2" videocassettes of this type have traditionally been designated "For Home Use Only." A call to the company to see if they had clearance from the producers enabling them to sell these to schools elicited a vague no, with the explanation that as long as no admission was being charged they saw no legal problems. In the process of making similar inquiries to the same company, the Nova Scotia Department of Education, received another interesting reply. They were told by the distributor that although the major produc-

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tion companies that owned the films were not interested in "granting any kind of licensing or duplication rights," and that although duplication of the tapes would be prohibited, it would be possible for the schools to buy multiple copies. Purchase of videotapes from this company ranged from \$53 to \$147 per cassette.

Not satisfied with these answers, our next step was to contact local video distributors for the addresses of the major production companies for their point of view. In the process of doing this, it was surprising to find that all four of the local distributors contacted were now renting to schools and saw no problems, once again, as long as no admission was being charged. From conversations with these people it became obvious that the Canadian Copyright Act as it now stands is open to broad interpretations.

A call to Canadian Consumer and Corporate Affairs did little to shed light on the situation. I was told what I would hear repeated many times; that the Act is currently under revision and reports on the recommendations are available. For the moment, it would appear that the only way to prove the law is to establish legal precedent.

The possibility of various interpretations becomes obvious when one reads the Canadian Copyright Act and tries to apply it to present-day situations. Enacted in 1924, the present Act has had amendments over the years, but requires an entire revision to include guidelines for technologies that have since come into existence. Equipment did not have the duplicating capabilities it has now, and a home market for VCR systems was not envisaged.

The underlying philosophy of copyright law is to foster and protect authors' creative works captured and preserved on any medium so that their ideas will be of benefit to society. The flip side is that authors will make their works available to society, and this they are usually more than willing to do for a price. In section 3 (1) of the Copyright Act (Statutes of Canada, 1970), being the author of a work means having the sole right to produce or reproduce the work in any form desired, along with the sole right to adapt it or perform it in public. In the current Act, performance is defined as: "Any acoustic representation of a work or any visual representation of any dramatic action in a work, including a representation made by means of any mechanical instrument or by radio communication." (p. 1278) The medium of television is conspicuous by its absence here until one recalls that in 1924 television was not yet in existence. Copyright protection is accorded *whether or not* the work is officially registered and the term of protection generally extends to 50 years after the demise of the author.

In relating this part of the law to our inquiry regarding the use of theatrical film productions in the classroom, there is certainly a strong case for the production houses to which these films belong. Although the Copyright Act does not specifically cover home-video, it emphasizes control of the owner to reproduce the work within the format desired. When production companies license 1/2" format videocassette copies for the home market they specify so by labelling their films "For Home Use Only". Section 17 (1) of the Copyright Act states: "Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything that, by this Act, only the owner of the copyright has the right to do ." (p. 1290) Current philosophy is that any action which prejudicially affects the owner is considered a violation of copyright and usually, this means damage in the monetary sense. In relating this to the issue of home-licensed video being used in the classroom, it can be argued that such distribution in the schools takes away from a potential market quite different from the home market for which the material was intended. The production houses contacted feel that a fairly priced, wide selection of their materials is available under alternative options. Several Canadian companies now issue public performance licenses to cover the use of popular films on 1/2" videocassette format for non-theatrical uses. Education falls into this category of use along with

clubs, summer camps, taverns, lounges, institutions, libraries, churches, and private business. The terms and conditions of this type of use are clearly outlined. Figure 1 is a warning copied from the final page of one film catalogue we received. It emphasizes the distributor's attitude about school use of videocassettes without a license to do so.

Figure 1.
*A Public Warning Regarding the Unlicensed
 Use of 1/2" Format Videocassette Films.*

WARNING

"FOR HOME USE ONLY" MEANS JUST THAT!!"

The pre-recorded video cassettes and videodiscs available in stores are **FOR HOME USE ONLY**.

Sales of pre-recorded video cassettes and videodiscs do not confer any public performance right upon the purchases. A performance which is not given in a private home, may be considered a public performance. Showing in hotels, bars, clubs, lodges, factories, summer camps, and schools are public performances, subject to copyright control.

S.3 of the Copyright Act R.S.C. 1970 c.55 grants the copyright owner the exclusive right to perform the work in public. Accordingly, without a separate licence from the copyright owner, **IT IS ILLEGAL** to exhibit pre-recorded video cassettes and videodiscs in a public place, **regardless** of whether or not admission is charged. Ownership of a pre-recorded video cassette or videodisc does **not** constitute ownership of a copyright.

Companies, organizations and individuals who wish to properly exhibit copyrighted motion pictures and audio-visual works **must** secure licences to do so. The purchase of pre-recorded video cassettes and videodiscs **does not** effect this legal obligation.

If **your** legal rights were violated, **you** would insist upon seeking appropriate redress. So will the undersigned companies who are members of the:

CANADIAN MOTION PICTURE
 DISTRIBUTORS ASSOCIATION
 Astral Films Limited
 Columbia Pictures of Canada
 MGM-UA TV Canada Limited
 Paramount Pictures Corporation (Canada)
 Limited
 Twentieth Century-Fox Film Corporation
 United Artists Film Corporation
 Universal Films (Canada)
 Warner Bros. Distributing (Canada) Limited

HOME VIDEO BOARD - CANADA
 Columbia Pictures Home Entertainment
 MGM/CBS Video Enterprises
 Paramount Home Video
 James K. Rayburn Inc. - (representing
 Walt Disney Productions)
 Twentieth Century-Fox Video (Canada)
 Limited
 Universal Films (Canada)
 WEA Music of Canada Limited

Suite 1703, 22 St. Clair Avenue East,
 Toronto, Ontario, M4T 2S4, Canada.

*Note: This is a facsimile of the back cover of Astral Bellevue Classics 1983/84
 Non - Theatrical Catalogue. Used with permission.*

The prices companies charge schools for short term rental and long term lease of public performance rights to use video in the classroom have fluctuated over the past two years. One company has lowered its prices enough to make schools consider lease or rental of properly licensed video as a feasible alternative to the use of video licensed for home use. This company offers weekly rentals of \$8 per tape, as well as long term lease at \$100 per year, per video. On the other end of the scale, another company offers its rentals at approximately \$55 per video, with long term lease possible at \$150 to \$250 per video for the life of the cassette or 5 years, whichever comes first.

At one point in this study, it was suggested that perhaps education would be able to justify use of home-video under the "fair dealing" section of the Act, an exemption which allows use of all works for purposes of private study, research, criticism, review or news-

paper summary. It would be presumptuous indeed to categorize viewing in a classroom of thirty students as private study or research and this has been established in Canadian Case Law.

Responses from the two major production houses contacted produced an emphatic *no* to the unlicensed use of 1/2" videotapes in the classroom. Walt Disney Telecommunications and Non-Theatrical Company (B. Tenn, personal communication, June 14,1984) replied: "...It is our position and the position of other motion picture distributors that videocassettes licensed and sold for private home use, may not be used in a classroom or school situation." The representative of CBS/FOX Video (Canada) Ltd. stated, "I have to advise that the use of videotape movies in the classroom is definitely a violation of Canadian copyright laws" (J. Bowerbank, personal communications, May 28,1984).

Through Disney we were encouraged to contact the Home Video Board of Canada for their comments. One should note that this board is entirely comprised of major production houses and video distributors across Canada and the U.S., and that it is affiliated with the Canadian Motion Picture Distributor's Association. In their correspondence to us, the Home Video Board included the copy of a letter to Gordon Jarrell of the Scarborough Board of Education written by their lawyer Bernard Mayer Q.C., summarizing the legal basis for the stand taken by the Canadian Motion Picture Distributor's Association (H. B. Mayer, personal communication, March 15,1984). One of the important points drawn out in Mayer's letter is as follows: "The Copyright Act does not contain any definition of the term performance in public.' It is, however, in the opinion of the Canadian Motion Picture Distributor's Association clear that a performance in the course of face-to-face instruction in a school is a public performance."

Mayer goes on to say: "In determining what is a performance in public, the courts have drawn a distinction between a public and a domestic or quasi-domestic performance. No performance has ever been held to be for a domestic or quasi-domestic purpose where the principal members of the audience did not reside under one roof." He then adds, "The fact that no profit is derived from any performance does not mean that it is not a public performance." It is interesting to note that many of the people the author questioned about copyright insisted that as long as no admission was being charged there was no infringement.

Regarding public performance, it should be noted here that the revised copyright acts of the United States and United Kingdom both contain limited specific exemptions from the exclusive right of public performance for educational purposes in classroom instruction. Present Canadian copyright law does not contain such a provision for education, but it has been recommended in the previous Liberal government's white paper on copyright (Government of Canada, 1984) and the recent Report of the Sub-Committee on the Revision of Copyright (Government of Canada, 1985).

The Home Video Board (M. Roth, personal communication, June 29,1984) included in its letter to us, a copy of a memo that the Ontario Scarborough Board of Education circulated to its principals, warning about the misuse of video film features in the classroom.

In April, 1984, the P.E.I. Department of Education issued a memo warning against showing "For Home Use Only" videotapes in the classroom. Most principals and teachers were not aware of copyright infringement, especially in cases where the video distributors were willingly renting to them.

CONCLUSIONS

Given the inadequacies of the present Copyright Act and the fact that it may be some

time before we have a more comprehensive one, it is necessary that educators be well informed on copyright issues if they are to have any say on the laws that will be affecting all sectors of the educational system. After having waded through numerous intangible reports and proposals for revision just to get information on one issue, the author realizes how complex this task can be. Copyright is so broad a topic that the majority of the general public, including educators, find it very difficult to interpret properly.

What do proposed revisions hold in store for educators? In the most recent Report of the Sub-Committee on the Revision of Copyright, entitled *A Charter of Rights for Creators* (Government of Canada, 1985), it is proposed that the Copyright Act not be changed substantially where education is concerned. It does recommend an exemption in the course of teaching activities to "perform a work in public," and to "transmit and retransmit a work within the confines of a single educational institution." The terms "public performance" and "perform" are liable to cause considerable confusion for educators unless they are more clearly defined under a new Act. This author's interpretation of the exemption suggested for education in the white paper and the Report of the Sub-Committee on the Revision of Copyright, is that this would permit teachers and students to legally perform a copyright play in the classroom, to videotape it and to transmit it within the confines of the school. However, it is unclear whether the exemption would cover the classroom showing of a "For Home Use Only" film on video.

It is obvious that the production houses have consolidated to take a firm stand on the issues, and they are being heard. The question is, in the preparation stages of a new Copyright Act, are the views of educators also being taken into consideration? Who is our common voice? What role should AMTEC play? For the moment, a large number of films are available to us through public performance licensing for "non-theatrical" uses, but should we stand in the same price category as clubs, taverns, lounges, summer camps, institutions, churches, and private business? Is access easy enough and are the pricing formulas fair? These are questions which come to mind when one thinks of how convenient and economical it is to see any number of these films in the comfort of our own homes for just a few dollars.

One must not forget, however, the right of producers to a fair price for their materials. The costs and risks involved in any production are great and if we as educators want to foster the development of a good educational market we must be willing to give reasonable compensation. Otherwise, we will be completely overlooked as a market of any influence.

The president of one production company (Fisher, personal communication, July 25, 1984) summed up his point of view on copyright and education in the following way:

Unfortunately most educational authorities have until recently disregarded the rights of producers and creators on this issue, and left both teachers and producers to fend for themselves...! have long believed that the educational community will act in a responsible manner once informed of the facts, and providing the producers are reason able in making the materials accessible and at reasonable prices.

It has become apparent to this author that schools are willing to use properly licensed materials as long as they can get good service, variety and reasonable prices.

In conclusion, the author believes that one of the more positive side effects of all the hoopla concerning copyright is that producers and educators are finally talking to one another and working out a common ground for negotiation.

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