

Please Refer to  
File No.

June 10, 1986

ASSOCIATE CAMPUS COUNSEL DAN HUTCHINSON  
UCLA

Re: Use of Videotapes in Classroom for Instructional Purposes

On May 29, 1986, you requested my opinion on whether professors may use videotapes in classrooms as a part of their instructional activities. You referenced a memorandum dated January 7, 1983, from University Counsel Susan Amateau to William W. Nail, the Director of the Irvine campus' Audio Visual/Student Affairs Office, in which she concluded that such use without permission of the copyright owner would be a copyright infringement within the meaning of 17 United States Code section 106(4), which reserves the right of public performance of a copyrighted work to the copyright owner. In your opinion, section 110 of 17 United States Code would allow use of videotapes by professors in their teaching activities without obtaining permission of the copyright owners. This will confirm our conversation of June 10, 1986, in which I told you that I agree with your opinion.

Section 110 of 17 United States Code provides, in part, as follows:

"Notwithstanding the provisions of section 106, the following are not infringements of copyright:

- (1) performance or display of a work by instructors or pupils in the course of the face-to-face teaching activities of a non-profit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audio visual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made; . . . ."

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CHANCELLOR'S OFFICE

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This provision, which is typically referred to as the "classroom exemption," clearly allows the use of videotapes in the classroom provided that the display is part of a "face-to-face" teaching activity and that the copy used was lawfully made.

The use of the phrase "in the course of face-to-face teaching activities" is intended to exclude broadcasting or other transmissions from an outside location into classrooms.

(H.R.Rep.No. 1476, 94th Cong., 2d Sess. 58, (1976), U.S. Code Cong. and Admin. News 1976, p. 81; 2 Nimmer on Copyright, § 8.15 [B][2].) The instructor is not required to be present in the same room with the students, but must be in the same building or general area. (Ibid.) "Teaching activities" do not include displays that are given for the recreation or entertainment of any part of a student audience. (H.R.Rep.No. 1476, 94th Cong., 2d Sess. 58 (1976), U.S. Code Cong. and Admin. News 1976, p. 81.)

If the videotape used by a professor was originally lawfully made, the fact that it had been stolen or converted by another would not render such use a copyright infringement, even if the professor knew the tape had been stolen or converted. In addition, use of a videotape in violation of an agreement would not constitute copyright infringement if the copy had been lawfully made. This latter type of use would, however, expose the University (and the professor if he had acted outside the scope of his employment) to a breach of contract action. (H.R.Rep.No. 1476, 94th Cong., 2d Sess. 58 (1976), U.S. Code Cong. and Admin. News 1976, p. 82; 2 Nimmer on Copyright, § 8.15 [B][1].)

Finally, the classroom exemption requires that the performance be in a classroom or similar place. Thus, performances in an auditorium or stadium where the audience is not confined to the members of a particular class would fall outside the protective exemption. (Ibid.; 2 Nimmer on Copyright, § 8.15 [B][6].)

Please let me know if you have further questions.

  
Mary E. MacDonald  
University Counsel

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cc: S. Amateau  
M. W. Beal  
H. Mitchell  
W. W. Nail  
E. M. Opton