



# the Policy Page

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## Showing Movies at School

Benjamin J. Ferrar and Michael L. Dodd, Ferrara, Fiorenza, Larrison, Barrett & Reitz, P.C.,  
East Syracuse, New York

A teacher shows *Schindler's List* to a high school history class. The PTA holds a movie night as a fundraiser. An after-school childcare program shows movies brought in by students every Friday afternoon. MTV videos are flashed on screens at the school dance.

May a school district allow any of these activities? The answer is yes, but it must first ensure that it is not violating copyright laws. In general, video recordings are protected by federal copyright law which grants the copyright owner the following exclusive rights:

- to reproduce, sell or distribute the work
- to publicly perform the work
- to display the work
- to license the work to others
- to create derivative works.

17 U.S.C. § 106. If a school district exercises one of these rights without the owner's permission, it could be considered an unlawful infringement unless the use falls into one of the categories of permissible use.

### INSTRUCTIONAL USE

Section 110 of the Copyright Act allows teachers to show video recordings to students in a classroom setting under the following conditions:

- the work must be shown by the instructor or pupils;
- the instructor and pupils must be in the same place/room;
- the work must be shown for an instructional purpose, not recreation or entertainment;
- the work must be shown as part of a class activity offered by a nonprofit educational institution;
- the work must be shown in a classroom or area used for systematic instructional activity; and
- the copy of the work displayed must have been legally made and purchased.

### DISTANCE LEARNING

Separate rules apply to distance learning where the instructor and students are not in the same place and the material may be transmitted to several sites. Video recordings may be used for distance learning under the following rules:

- the video recording must be of a "nondramatic literary or musical work," (not a movie, although documentaries or lectures may be permissible);
- display of the video must be a regular part of the instructional activities of the institution;
- performance or display of the video must be directly related and of material assistance to the educator on his instructional duties; and
- transmission must be made to classroom or similar places normally devoted to instruction or to persons with disabilities which prevent their attendance in such places. 17 U.S.C § 110(2).

## FAIR USE

Copyright law also allows selected portions of video recordings to be used in the classroom or for criticism, comment, news reporting or research without permission if the use can be considered “fair use.” Four factors are used to determine fair use:

- purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- nature of the copyrighted work;
- amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- effect of the use upon the potential market for or value of the copyrighted work.

No one factor is determinative although the latter two receive the most emphasis. This means that fair use would not permit the display of an entire video recording. 17 U.S.C § 107.

## LICENSES

Public showings of video recordings at school that do not satisfy the standards for instructional use, distance learning or fair use should occur only as permitted by a valid license agreement with the copyright owner or its agent. This is true regardless of whether or not an admission fee is charged by or on behalf of the school.

Some companies that produce educational videos sell their products with public performance rights granted to the purchaser, but a school should not assume such a license accompanies the recording simply because it is of an educational nature. Entertainment videos, whether purchased, rented or recorded from television, may be displayed only for home viewing unless a broader license is obtained. All public performances of these recordings permitted on school facilities should be consistent with any license granted or with federal copyright law.

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### **\*\*\* FOIA Has Moved – Spread the Word!\*\*\***

Please make everyone in your division aware that several statutes effecting school boards were recodified effective October 1, 2001. No substantive changes were made, but the statutes were moved in an attempt to better organize the portions of the Code of Virginia addressing government. The statutes are as follows:

The Freedom of Information Act formerly appeared at Va. Code § 2.1-340 et. seq. It now appears at Va. Code § 2.2-3700 et seq.

The State and Local Government Conflict of Interests Act formerly appeared at Va. Code § 2.1-639.1. It now appears at Va. Code § 2.2-3100 et seq.

Virginia Public Procurement Act formerly appeared at Va. Code § 11-35. It now appears at Va. Code § 2.2-4300 et seq.

You can access the Code of Virginia by going to the VSBA website ([vsba.org](http://vsba.org)) and then selecting Research and Information Services. The Code of Virginia is listed under the Index of Topics.

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