

**Let's go to the video tape: What in-house counsel needs to know about licensing music, videos and photos**

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**Sponsored by Foley & Lardner LLP**

**Moderator: Danielle S. Van Lier**

**Panelists:**

**John M. Carson, Victor A. Vilaplana  
& Julie S. Maresca**



## ■ John M. Carson

- **Foley & Lardner LLP, Of Counsel, Los Angeles**
- **Trademark, Copyright & Advertising, Intellectual Property Litigation, Electronics, and Mechanical & Electromechanical Technologies**
- **JCarson@foley.com**

## ■ Victor A. Vilaplana

- **Foley & Lardner LLP Partner, San Diego**
- **Bankruptcy & Business Reorganizations and International Practices and Automotive Industry Team**
- **VAVilaplana@foley.com**

## ■ Julie S. Maresca

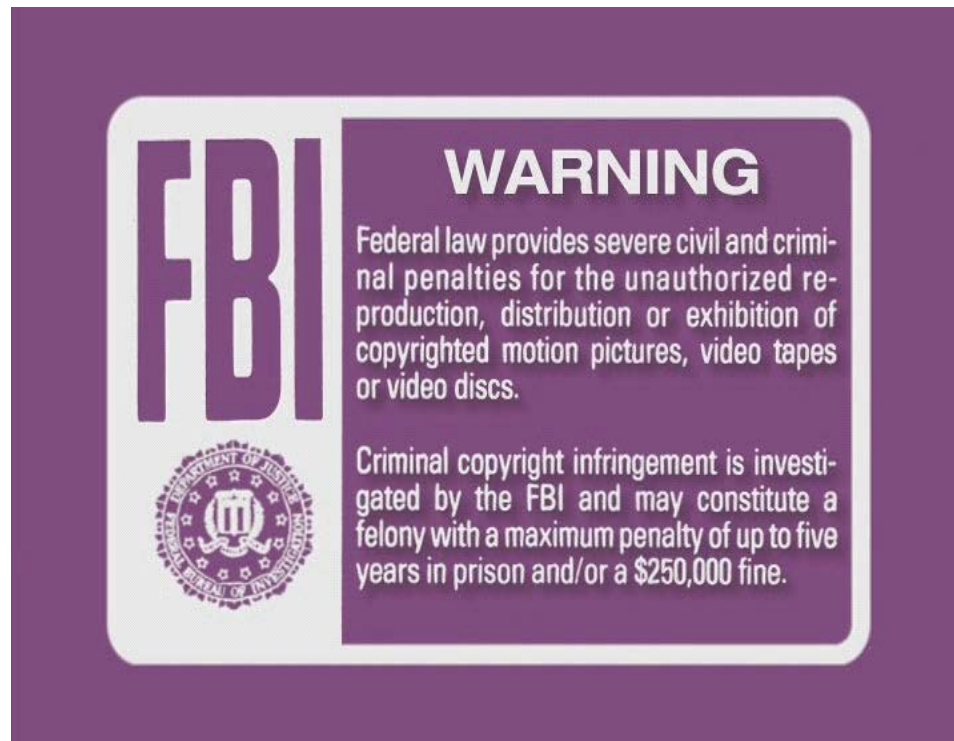
- **Sr. Vice President and General Counsel**
- **Motion Picture Licensing Corporation**
- **jmaresca@mplc.com**

# Copyright Basics

## **Copyright licensing agency for Videos**

- **Established 1986 by motion picture studio executives and an MPAA attorney**
- **In 2012, approximately 450,000 locations are licensed worldwide**
- **Markets include:**
  - **Fortune 1000 Companies**
  - **Federal Government Agencies**
  - **Child Care Centers**
  - **Off-shore Oil Platforms**

# Using Videos in the Workplace



■ **§ 106 • Exclusive rights in copyrighted works**

■ **Subject to sections 107 through 122, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:**

- (1) to reproduce the copyrighted work in copies or phonorecords;**
- (2) to prepare derivative works based upon the copyrighted work;**
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;**
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;**
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and**
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.**

■ In short, copyright owners have the following exclusive rights:

- Right to reproduce
- Right to prepare derivative works
- Right to distribute
- Right to publicly perform and display the copyrighted work

# Showing a Movie in a Private Company is a Public Exhibition



■ **17 USC §101 defines public to mean “a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered.”**

■ **Case law narrows that definition to a place where a individual members of the public have access, even if one at a time.**

–**Columbia v. Redd Horne**: videos shown in private screening rooms were held to be public exhibitions.

–**Columbia v. Aveco**: A telephone booth, taxi cab and even a pay toilet are commonly regarded as open to the public even though they are usually occupied only by one party at a time.



# Ways Companies Use Videos

## ■ Company endorsed showings:

- Movie night
- Employee Lounges
- Health Clubs
- Employee training

## ■ Employee Use

- Work stations during lunch
- Any access to internet allows employees access to copyrighted audiovisual material

- **Educational Exemption found in §110(1) of the Copyright Act applies to:**
  - **Face-to-face teaching activities**
  - **Non-profit educational institution**
  
- **An organization must be “primarily and directly engaged in instruction” thus foundations, associations or similar educational groups would not constitute educational institutions. Nimmer on Copyright.**

## Four Factors to Consider (§107)

1. Look to the purpose and character of the *defendant's* use.
  2. Look to the nature of the plaintiff's work.
  3. Amount and substantiality of portion used.  
(Qualitative not quantitative evaluation.)
  4. Effect of use on potential market or value of the copyrighted work.
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# Fair Use Examples

- **Criticism**
  - **Parody**
  - **News Reporting**
  - **Fair Use Found: Bill Graham v. Dorling. Posters transformed to small images in coffee book.**
  - **Fair Use Denied: American Geophysical v. Texaco. Photocopying individual articles from journal.**
-

- **17 USC §504(c)(1) prescribes statutory damages up to \$150,000 per violation for willful infringers**
- **Plus costs and attorneys' fees**
- **Companies have a legal and ethical obligations to license the use of copyrighted material utilized within the company.**

# Licensing Intellectual Property



*Andy Warhol*

# 1. *What is Licensed?*

**“Product” as used herein shall mean and include:**

- (a) any item utilizing the Intellectual Property described in Exhibit A attached hereto;**
- (b) any item utilizing the subject matter of the work performed under the joint development agreement described herein;**
- (c) any item utilizing the subject matter of Improvements or Information; and**
- (d) any method, apparatus or product useful with respect to any of (a), (b), or (c) above.**



## 2. *Licensed for What Purpose?*

### ■ To Distribute Under a Copyright

**LICENSOR grants to LICENSEE a non-exclusive (or exclusive ?), non-transferable, limited license to use LICENSOR's Copyright, as identified in Exhibit A ("Copyrights") in the Product and in LICENSEE's advertising and printed material for the Product to distribute the Product, provided that LICENSEE complies with the terms herein. LICENSEE acknowledges the ownership of the Copyrights by LICENSOR, agrees that it will do nothing inconsistent with such ownership, and that all use of the Copyrights will inure to the benefit of and be on behalf of LICENSOR. Nothing in this Agreement will give LICENSEE any right, title or interest in the Copyrights other than the right to use the Copyrights in connection with the Product in accordance with the license granted it herein.**

**Licensors are reluctant to give exclusive licenses to their works, since it ties up the work, and makes the licensor totally dependent on the quality of the product.**

## 2. *Licensed for What Purpose? Cont'd*

### b. **To Reproduce a Copyrighted Product**

**LICENSOR hereby grants to LICENSEE a non-exclusive, royalty free license for LICENSEE to reproduce the Product only for its internal purposes, throughout the United States, without the right to sublicense. LICENSEE may also copy the Licensed Product for archival or backup purposes.**

### c. **To Perform**

**LICENSOR grants to LICENSEE (i) a non-exclusive [or exclusive], non-transferable [or assignable], worldwide [or in a specified territory], royalty bearing [royalty-free] license to the LICENSOR's Intellectual Property Rights necessary to perform the Work. The license granted is sublicensable [or not sublicensable] to third parties for the purpose of enabling LICENSEE to perform the Work provided that (x) LICENSOR consents to the sublicense; and (y) the third party to which a sublicense is granted agrees that it will use LICENSOR Intellectual Property Rights solely for the Work, and that such sublicense shall terminate no later than the termination or expiration of this Agreement.**

## 2. *Licensed for What Purpose? Cont'd*

### d. Scope

- Does the grant of rights clause specifically mention “electronic,” “Internet,” or “online” rights?
- Does the grant of rights clause include a “future technology” provision?
- Does the grant of right clause include the right to use the licensed content in the promotion of the product?
- A typical, broad grant of rights clause might state:

The Licensor grants to the Licensee a license to all copyright rights, including the right to use, perform, modify, adapt, reproduce and distribute the Work, or any portion hereof, throughout the world during the full term of the copyright as part of and in connection with the Multimedia Work.

# 3. *Ownership*

## a. Assignments of the Intellectual Property

**LICENSOR shall assign to LICENSEE:**

- (i) all rights to Copyrights in the Product, including the right to file applications therefore in LICENSEE's own name, where possible;**
- (ii) all rights to Copyrights in all countries throughout the world on subject matter comprising or relating to the Product, belonging to LICENSOR or created by LICENSOR or LICENSOR's employees, prior to the signing of this Agreement or acquired or that may hereafter be acquired during the term of this Agreement, including the right to file applications therefor in LICENSEE's own name; and,**

**LICENSOR shall sign, and shall cause its employees, officers and agents to sign, all papers necessary to secure all such Copyrights and rights for LICENSEE, including treaty and Convention rights of all kinds, and in particular papers suitable for filing or recording in the respective countries to effect the transfer of record title of such Copyrights and rights to LICENSEE.**

### 3. *Ownership Cont'd*

#### b. Ownership of Company Intellectual Property

**I hereby assign to the Company my entire right, title and interest throughout the world that I may have or acquire in the Intellectual Property.**

## 3. *Ownership Cont'd*

### c. No Joint Division of Income for Copyright

**All joint authors in a work own an undivided interest in the work. Unless the joint authors have a written agreement to the contrary, any joint author, without the permission of the other joint authors, can grant a non-exclusive license to a third party to exploit the work provided that the other joint authors are entitled to an equal share of the licensing proceeds. No single joint author can give a third party an exclusive Copyright license.**

### 3. *Ownership Cont'd*

#### d. Ownership During the Term of the Agreement

**LICENSOR will retain Copyright ownership of the Product (including all prototypes) developed by LICENSOR under this Agreement. LICENSEE will make no modifications, enhancements, derivative works or improvements to the Product without LICENSOR's prior written authorization. LICENSOR grants to LICENSEE a non-exclusive, worldwide, non-transferable, royalty-free license to reproduce, distribute, and lease or license the Product for third party use. All Intellectual Property Rights in and to the Product, including but not limited to the algorithms and underlying technology provided by LICENSOR, are retained by LICENSOR. LICENSOR will provide no updates, service, or support of the Product to LICENSEE.**

### 3. *Ownership Cont'd*

#### e. Does Licensor Own Rights? Due Dilligence

**A copyright in a film clip may be owned by the licensor, but the background music may have been licensed.**

**A magazine publisher may own the copyright to the text of the article but may have obtained only a license to use the photographs.**

**If possible, a licensee should review all relevant contracts that may affect the licensor's rights to enter into the license.**



## 4. *License Grant*

### a. **Worldwide or Territory**

**“Territory” means the countries of Japan, France, and Germany.**

### b. **Markets**

**There are a number of markets today for interactive multimedia products, including the educational, corporate, and entertainment markets. These markets can be further divided into subcategories, such as direct, wholesale, catalog sales, and OEM.**

# 4. License Grant Cont'd

## c. Languages

**Rights can also be limited to specific language(s).**

## d. Platforms

**There are different types of platforms available for multimedia products and services today.**

- Videogame consoles and hand-held units
- Personal computers
- Set-top machines
- Online services
- Wireless

# 4. License Grant Cont'd

## e. Media

There are four media on which multimedia products are distributed today: videogame cartridges, floppy disks, CD-ROMs, and DVDs.

## f. Moral Rights

Whatever adaptation rights are granted should also include a waiver of any moral rights held by the artist and copyright owner in the licensed properties, particularly if the producer plans to market the resulting product outside the United States.

## 4. *License Grant* *Cont'd*

### g. Non-transferrable or Assignable

**Neither this Agreement nor any of the rights and obligations arising hereunder may be assigned or transferred by any of the parties without the prior written consent of the other party, which consent shall not be unreasonably withheld.**

# 4. License Grant Cont'd

## h. Sublicensing or No Sublicensing

**LICENSEE shall have [or shall not have] the right to grant sublicenses to third parties in the Territory who are not Affiliates or Subsidiaries of LICENSEE.**

# 5. *Royalty*

If **LICENSEE** sells each unit for \$100 and the cost to produce each unit is \$50, the **LICENSOR** can structure the payment in any of the following four ways to receive \$10 per unit:

- a. **LICENSEE** shall pay a royalty of Ten Dollars (\$10.00) for each unit of Product sold.
- b. **LICENSEE** will pay a royalty for each Product sold in the amount of ten percent (10%) of the actual Gross (wholesale) price invoiced (received).
- c. Licensee shall pay a royalty for each Product sold of twenty percent (20%) of the Net selling price (invoice price less freight and trade discounts actually allowed and taken).
- d. **20% of Net Profit**. Net Profit is gross sales less the cost of manufacturing.

## 5. *Royalty Cont'd*

### d. Minimum Annual Royalty

**LICENSEE will pay LICENSOR an annual license and maintenance fee of \$250,000 per Contract Year (“License Fee”). The License Fee will be payable in twelve (12) equal monthly installments of \$20,833.33, due on the last day of each calendar month during the Term, beginning the calendar month of the Effective Date. For any Contract Year having fewer than twelve (12) months, the License Fee will be pro-rated for such year.**

## 5. *Royalty Cont'd*

### e. Up-front Fee

**LICENSEE shall pay to LICENSOR a one-time license fee of \$100,000 (the “License Fee”), (in addition to the royalty payments specified herein) which amount shall constitute (an advance against royalties) full and complete payment for the license and other rights granted hereunder. Such payment shall be made upon execution of this Agreement.**



# 6. *Performance Standards*

## a. Number Manufactured or Sold by Volume

**LICENSEE shall sell [or manufacture] 100,000 units per year of Product in each of the Territories provided that if such quantities are not sold (manufactured) in any Territory, in any year, the license in that Territory shall automatically terminate.**

# 6. Performance Standards Cont'd

## b. Dollars Sold per Year

LICENSEE shall make minimum sales of each Product in each Territory as follows:

### Sales in Japan

Product	Year 1	Year 2	Year 3	Year 4
A				
B				
C				

### Sales in France

#### Product

- A
- B
- C

### Sales in Germany

#### Product

- A
- B
- C

# 6. *Performance Standards Cont'd*

## c. **Date of First Sale**

**First sale must be made by:**

- **January 1, 2010 in Japan.**
- **January 1, 2011 in France.**
- **February 1, 2011 in Germany.**

# 6. *Performance Standards Cont'd*

## d. Date of First Manufacture

**First product must be manufactured by:**

- **January 1, 2010 in Japan.**
- **June 1, 2010 in France.**
- **February 1, 2011 in Germany.**

# 7. *Restrictions on Use*

## a. **Marking**

**LICENSEE shall comply with LICENSOR's instructions regarding the marking of Products and documentation and packaging for such Products with a notice reflecting LICENSOR's Copyrights, including without limitation the labeling of all mask works, Product packaging, silicon dies and data sheets with the LICENSOR's Copyrights (as defined herein). LICENSEE shall mark all Products with the LICENSOR's Copyright Notice with a placement and sizing approved in advance by LICENSOR.**

**LICENSEE agrees to use the Copyrights only in the form and manner and only with appropriate legends as prescribed from time to time by LICENSOR, and not to use any trade name, business name or corporate name in combination with any of the Copyrights without in each instance obtaining the prior written approval of LICENSOR.**

# 7. *Restrictions on Use Cont'd*

## b. Quality Control

**LICENSEE will ensure that the Products comply with the quality control procedures and standards governing LICENSOR's products attached hereto as Exhibit A. LICENSEE shall promptly provide LICENSOR with samples of all materials, including the Products, that use the Copyrights for LICENSOR's quality control purposes. If in LICENSOR's sole discretion, LICENSEE's Products do not meet LICENSOR's then-current quality standards, LICENSOR may, at its option, either require LICENSEE to revise such Products and re-submit the Products prior to shipment, display, or release of the further Products.**

## 8. *Term*

- **The term of this Agreement and the licenses granted herein shall commence as of the date first above written and shall continue, unless previously terminated in accordance with other provisions of this Agreement, through the earlier of;**
  - (i) the date of the expiration of the last Copyright to expire or**
  - (ii) fifteen years from the date of this Agreement.**
  
- b. The term of this Agreement will commence on the Effective Date and shall remain in effect for five (5) years thereafter, unless earlier terminated in accordance with the terms of this Agreement. The parties may renew the Agreement for a successive five (5) year term upon mutual agreement.**

# 9. *Termination*

## a. For Cause

- i.** If either party materially defaults in the performance of its obligations hereunder, the defaulting party agrees to use commercially reasonable efforts to correct the default within thirty (30) days of written notice of default from the non-defaulting party; provided, however, that the cure period for a failure to make a payment when due shall be ten (10) days. If any such default is not corrected within the applicable cure period, then the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement immediately.
- ii.** In the event that either party commits or allows to be committed a breach of any of the covenants and conditions contained herein the other party shall be entitled to terminate this Agreement by giving sixty (60) days prior written notice to such effect to the breaching party; provided, however, that if such breach is capable of being cured within said sixty (60) day period and the breaching party cures such breach to the reasonable satisfaction of the party within said period, then this Agreement shall not terminate. Termination hereunder, or nullification of the termination by satisfactory cure of said breach, shall be without prejudice to the rights and remedies of the injured party with respect to any provisions or any of the covenants or agreements herein contained.
- iii.** Either Party may terminate this Agreement without penalty by providing written notice of termination to the other Party if the other Party materially breaches this Agreement and fails to cure such breach within thirty (30) days of receiving written notice thereof from the non-breaching party.



## 9. *Termination Cont'd*

### b. For Convenience

**LICENSEE may terminate this Agreement at any time for convenience without penalty upon ninety (90) days prior written notice to LICENSOR.**

**Either party may terminate this Agreement at any time for no reason or for any reason, upon 30 days written notice to the other party.**

# 10. *Statement of Work*

**LICENSEE will perform the services and provide the work set forth in the Statement of Work (SOW), attached hereto as Exhibit A, by the specified delivery dates and in strict accordance with the requirements and specification set forth in the SOW. BOTH PARTIES ACKNOWLEDGE TIME IS OF THE ESSENCE IN PERFORMANCE OF THE WORK ON OR BEFORE THE MILESTONES SPECIFIED IN EACH SOW.**

# 10. Statement of Work Cont'd

## a. Deliverables

**Deliverables means the tangible work product developed and delivered by LICENSEE under this Agreement, in accordance with the SOW.**

**LICENSEE will deliver the Deliverables to LICENSOR in accordance with the schedule in the applicable SOW. Such delivery shall be deemed effective as of the date such Deliverables are delivered to LICENSOR.**

# 10. Statement of Work Cont'd

## b. Acceptance

Unless otherwise specified in a SOW, LICENSOR will have 30 business days from receipt of the Work to verify conformance of the work to the SOW. Upon notice, LICENSOR may reject any nonconforming Work by providing notice of the nonconformity. LICENSEE will re-perform the Work so that the Work conforms to the SOW within (30 days) a commercially reasonable time period agreed to by the parties. The Deliverables will be deemed accepted by LICENSOR if LICENSEE does not receive written notice describing any Errors (non-conformance with the Specifications) discovered by LICENSOR (in an "Error Report") within thirty (30) days after delivery of each Deliverable to LICENSOR. The Error Report will state with particularity the Error discovered, identify where the Error exists, and identify the environment in which LICENSOR tested the Deliverable. In the event that LICENSOR submits an Error Report, LICENSEE will, at its option, repair or replace the affected Deliverable(s), (within 30 days) as soon as commercially practicable. The foregoing procedure will be repeated (a) until LICENSOR submits its final written acceptance of the Deliverable to LICENSEE, (b) until one of the parties terminates this Agreement, or (c) twice, whichever occurs first. Acceptance shall be defined as verifying that the work complies with the Specifications.

# ***11. Remedy for Nonconforming Work***

**As the sole remedy for Work not meeting the SOW, LICENSOR shall provide prompt notice to the LICENSEE identifying such non-conforming Work and the LICENSEE shall promptly: (i) re-perform the Work to correct the identified non-conformity; (ii) repair the Deliverables; (iii) replace the Deliverables; (iv) obtain the proper licenses or rights; or if (i) through (iv) are not commercially reasonable, then to (v) provide a refund in the amount equal to the diminished value of the Work but not to exceed the amount paid under the Work Order.**

# 11. *Remedy for Infringement*

**LICENSEE will defend, indemnify and hold the LICENSOR harmless from and against any Claim to the extent that the LICENSEE's work used in a Product, including LICENSEE's alterations or changes to LICENSOR's Intellectual Property Rights (including Derivative Works), were the proximate cause of the infringement of a third party's Intellectual Property Rights. If a third party enjoins or interferes with the reproduction, use, or distribution of a Product, LICENSEE will use reasonable commercial efforts to (i) obtain licenses which are necessary to permit LICENSOR to continue to use the Product; (ii) replace or modify the Product to permit LICENSOR to continue to use the Product; or if in LICENSEE's reasonable judgment (i) and (ii) are not commercially reasonable, then (iii) promptly reimburse LICENSOR any Fees paid to LICENSEE by LICENSOR.**

# Bankruptcy Issues in Licensing IP

# Bankruptcy of Parties to License

- **Bankruptcy is strictly federal law.**
- **Tension with IP law**
  - IP law concerned with encouraging innovation.
  - Bankruptcy law concerned with maximizing cash available to creditors.
- **11 U.S.C. 365 codifies effect of “executory contracts.”**
  - Any contract that has any remaining obligations at time of bankruptcy.
  - Debtors can assume or reject most executory contracts.
  - **Exclusive IP licenses are executory**
    - ◆ Non-exclusive IP licenses are generally held also executory



- Many licenses include provision similar to ***“Upon bankruptcy of the licensee, this license shall become null and void.”***
  - ◆ Called *ipso facto* clause in bankruptcy.
  - ◆ Such a provision is unenforceable.
- **11 U.S.C. 101(35)(A) defines “intellectual property” as virtually every kind of IP except trademarks.**

## ■ Licensor files bankruptcy.

- Licensee of most IP can demand continued performance.
- 365(n) protections – some obligations
- Trademark licenses can generally be rejected by licensor in bankruptcy without 365(n) protection.
  - ◆ But, some courts ignore exclusion of trademarks from definition of IP.

## ■ Licensee files for bankruptcy.

- May licensee assume

- Hypothetical test (Catapult, 165 F.3<sup>rd</sup> 747 (9<sup>th</sup> Cir. 1999))  
[9<sup>th</sup>, 3<sup>rd</sup>, 11<sup>th</sup> Circuits]

- Actual Test (Pasteur, 104 F.3d 489 (1<sup>st</sup> Cir. 1997)) [1<sup>st</sup>, 5<sup>th</sup> Circuit]

- **Bankruptcy entity has three choices under 11 U.S.C. 365(c).**
  - **1) Reject contract if license no longer valuable.**
  - **2) Assume contract without assignment**
  - **3) Assume Contract to Third Party Assign.**

## ■ Conditions on assignability.

### – Non-exclusive licenses.

- ◆ Generally considered “non-personal.”
- ◆ Non-personal contracts are generally assignable.
- ◆ IP law as “applicable non-bankruptcy law.” – Does IP law prohibit assignment?
- ◆ But patent law prohibits assignment without licensors consent
- ◆ Courts will generally follow IP law as “applicable non-bankruptcy law”

## ■ Exclusive licenses.

- Look to applicable non-bankruptcy law to determine assignability.

- **Conditions for assumption of contract without assignment.**
  - **Must cure all defaults.**
  - **Must provide reasonable assurance that future obligations can be met.**
    - ◆ e.g. provide balanced budget including expenses for license.
  - **Some courts require that assignability test be met.**
    - ◆ 9th Circuit 3<sup>rd</sup> and 11<sup>th</sup> most strictly requires assignability. Hypothetical test. Catapult decision.

- **Case study, *Institut Pasteur v. Cambridge Biotech Corp.***
  - **CBC and Institut Pasteur had cross-license agreement concerning patents to HIV test kits.**
    - ◆ Non-exclusive Licenses.
    - ◆ Neither party had right to assign or cross-license.
  - **CBC declared bankruptcy.**
  - **Reorganization plan involved sales of its stock to bioMerieux, direct competitor of Institut Pasteur.**



- **Institut Pasteur objects to plan on basis that sale of stock amounts to assignment of nonexclusive license.**
  - **1st Circuit – generally follows “applicable non-bankruptcy law” for non-exclusive licenses.**
    - ◆ IP law generally finds non-exclusive patent licenses non-assignable.
    - ◆ Agreement had explicit non-assignability clause.
  - **Held: sale of stock was not an assignment of license.**
  - **Thus, reorganization plan approved.**

## ■ Tips for Licensors.

- Try to impose strict limits on assignability.
- Consider whether license can follow sale of company.
- Keep eye on financial status of licensee.
  - ◆ Terminate for cause if possible before bankruptcy.
  - ◆ Reach back provisions might still find termination fraudulent.

## ■ Tips for Licensees.

- **Obtain right to assign.**
- **Object to ipso facto clauses as unenforceable.**
- **Ensure that any information needed from licensor remains available in event of bankruptcy.**
  - ◆ Place needed trade secret information of licensor, e.g. biological materials or sequences, in escrow.
  - ◆ Escrowed material becomes available upon bankruptcy of licensor.
- **Obtain security interest in licensed IP.**
  - ◆ Perfection depends on type of IP.



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**#IHCC12**

## JOHN CARSON



OF COUNSEL

JCARSON@FOLEY.COM

555 SOUTH FLOWER STREET SUITE 3500  
LOS ANGELES, CA 90071-2411  
(213) 972-4578

John Carson is of counsel at Foley & Lardner LLP. He is a member of the firm's Trademark, Copyright & Advertising, Intellectual Property Litigation, Electronics, and Mechanical & Electromechanical Technologies Practices.

Mr. Carson's practice includes all phases of eCommerce, patent, trademark, copyright, and trade secret law, including licensing and litigation. His technical experience is with computer hardware and software, electrochemical, optics and electromechanical systems.

Mr. Carson has been a trademark consultant to the California and Idaho Secretaries of State and often serves as an arbitrator and mediator, and as an expert on ethics and intellectual property issues.

Mr. Carson has been Peer Review Rated as AV® Preeminent™, the highest performance rating in Martindale-Hubbell's peer review rating system and was selected by his peers for inclusion in *The Best Lawyers in America*® (2007 – 2012) in the field of intellectual property law.

Mr. Carson attended Hastings College of Law (J.D., 1967) and the University of Santa Clara (B.S., engineering, 1964). He is admitted to practice in California and before the U.S. District Court, Central District of California, the Ninth Circuit Court of Appeals, the Court of Appeals for the Federal Circuit, the U.S. Supreme Court and the U.S. Patent and Trademark Office.

Mr. Carson's professional activities, memberships, and honors, along with his civic involvement include:

### AUTHOR OR CO-AUTHOR OF CALIFORNIA LEGISLATION

- *Anti-Counterfeiting Law*  
Civil - Business and Professions Code Sections 14340-14342; Criminal - Penal Code Section 350

- *Trade Secret Act*  
Civil Code Section 3426 et seq.; Code of Civil Procedure Section 2036.5 et seq.
- *Trademark Use on Collateral Products*  
Business and Professions Code Section 14330
- *Employee Rights in Inventions*  
Labor Code Section 2870
- *Prior Trademark Use*  
Business and Professions Code Section 14342

#### PROFESSIONAL ACTIVITIES AND MEMBERSHIPS

- American Bar Association
  - National Conference of Bar Presidents
    - Communications Committee, Chair (1983 – 1984)
- State Bar of California
  - District 7 Meetings between Board of Governors and Bar Presidents, Founder and Chair (1982 – 1985)
  - State Bar Conference, Vice-Chair (1983 – 1984); Executive Committee (1981 – 1984); Conference Parliamentarian (1982, 1983)
  - Legislation Committee, Chair (1982 – 1983)
  - State Bar Consortium on Competence (1984 – 1985)
  - Special Committee on Specialization, Chair (1982 – 1983)
  - Board of Legal Specialization (1979 – 1982)
  - State Bar Conference Resolutions Committee (1980 – 1981)
- Federal Bar Association, Board Member (1996 – Present)
- Los Angeles County Bar Association, President (1994 – 1995); Senior Vice-President (1992 – 1993); Vice President (1991 – 1992); Trustee (1981 – 1983, 2006 – 2007)
  - Senior Lawyers Division, Executive Committee (2009 – Present)
  - Plans and Policies Committee, Chair (2006 – Present)
  - Long Term Finance Committee (2006 – 2007)
  - Audit and Finance Committee (1999 – 2004)
  - Ethics 2000 Liaison (1999 – 2000)
  - Diversity in the Profession Committee (1995 – Present)

- Barristers' New Project and Future Planning Committee, Chair
- Intellectual Property and Entertainment Section, Executive Committee (1995 – 1999); Member
- Unlawful Detainer Assistance Project, Founder (1994)
- Diversity Roundtable, Founder (1994)
- Business Leaders' Roundtable, Founder (1994)
- Legislative Activity Committee, Chair (1989 – 1992); Member (1987 – 1992)
- Evaluation of Professional Standards Committee, Founder and Chair (1981 – 1986, 1989 – 1992); Member (1981 – 2007)
- Strategic Issues Committee, Chair (1989 – 1991)
- LACBA Special Membership Meeting re: ABA Pro-Choice Resolution, Parliamentarian (1990)
- Shattuck Price Committee (1990)
- Committee on the State Bar, Founder and Chair (1984 – 1987); Member (1984 – 1994)
- Planning Advisory Committee, Chair (1983 – 1985)
- Ad Hoc Committee on Size and Composition of Board of Trustees (1983)
- Professional Responsibility and Ethics Committee, Chair (1978 – 1980); Member (1973 – 2007); (2009 – Present)
- Delegation to the State Bar Conference, Chair (1979 – 1980); Executive Committee (1975 – 1980, 1987 – 1990); Member (1971 – 2000)
- Trustee Barristers (1976 – 1978)
- Trial Attorneys' Project, Founder and Chair (1977 – 1980)
- Coordinating Committee for Lawyer and Legal Services Committees, Founder and Chair (1976 – 1980)
- Barristers' Audit Jails, Juvenile Facilities and O.R. Project Committee, Founder and Chair (1974 – 1977)
- Lawyer Referral Services Qualifications Committee, Chair; Executive Committee; Barristers (1972 – 1976)
- Los Angeles Intellectual Property Law Association,

- Governor (1975 – 1977)
  - o Ethics Committee, Chair (1973 – 1975)
- U.S. Ninth Circuit Judicial Conference, Member (2000 – Present)
  - o Advisory Board, Chair (2003 – 2004); Member (1999 – Present)
  - o Historical Society, Director (2005 – Present); Strategic Planning Committee (2007 – Present); Governance Committee (2010 – Present)
  - o Judicial Feedback Task Force, Chair (2000 – 2001)
  - o Lawyer Representatives Coordinating Committee, Chair (1999 – 2000)
  - o Executive Committee (1997 – 2000)
  - o C.D. Cal Lawyer Representatives, Chair (1996 – 1997)
  - o Lawyer Representative (1994 – 2000)
- District Court, Central District of California
  - o Standing Committee on Attorney Discipline, Member (2001 – Present); Vice-Chair (2003 – 2005); Chair (2006 – 2009)
  - o Attorney Settlement Officer (1999 – Present)
- Southern California Chinese Lawyers Association, Advisor to Board of Governors (1994 – 1995)
- American Arbitration Association
  - o Arbitrator - Intellectual Property, Complex Litigation and International (1995 – Present)
- Los Angeles County Bar Foundation, President (1989 – 1990); Director (1983 – 1993)
- Los Angeles County Bench/Bar Coalition (1994 – 2001)
- State-wide Bench/Bar Coalition, Board Member (1993 – 2001)
- California Association of Local Bars, Co-Founder; Member (1989 – 2001)
- Los Angeles Complex Litigation Inn of Court Team Leader and Master (1992 – 1995)
- Loyola Law School (Los Angeles), Adjunct Professor on trademarks, copyrights and intellectual property (1978 – 1982)
- Whittier College School of Law, Lecturer on international intellectual property (1985 – 1987)
- Superior Court, Judge Pro Tem
- Municipal Court, Judge Pro Tem

## PROFESSIONAL HONORS



- Los Angeles County Bar Delegation to the State Bar Conference, Spirit Award (2001)
- Attorney Settlement Officer, Most Cases Handled; Most Cases Settled (1999 – 2000)
- Selected for inclusion in the *Southern California Super Lawyers®* List (2005, 2009 – 2011)
- Chambers - ranking (2007)
- *The Best Lawyers in America®* (2007 – 2011)

#### CIVIC INVOLVEMENT

- *Los Angeles Business Journal*, Editorial Advisory Board
- Los Angeles Area Chamber of Commerce
  - Law & Justice Committee
- Los Angeles Olympic Organizing Committee
- Pasadena Tournament of Roses
- Chancery Club
- Asia Society
- Caltech/MIT Enterprise Forum
  - Executive Committee
- Hastings College of Law Alumni Association, Governor (1972 – 1973); Los Angeles Chapter, Vice-President (1971 – 1972)

**Julie S. Maresca** is Sr. Vice President and General Counsel at the Motion Picture Licensing Corporation (MPLC), an international copyright licensing agency.

Julie S. Maresca, J.D./M.B.A., has been in-house counsel and corporate secretary for the MPLC since 2002 and oversees the U.S. and international legal matters related to intellectual property management.

She is a member of the Sports and Entertainment Committee of the ACC and can be contacted at [jmaresca@mplc.com](mailto:jmaresca@mplc.com).

**Danielle Van Lier** is Senior Counsel, Intellectual Property and Contracts at Screen Actors Guild, where she has worked since 2000. She is responsible for managing the Guild's intellectual property and third-party contracts as well as other efforts aimed at protecting the rights of SAG and its members. Ms. Van Lier has co-authored several amicus curiae briefs on behalf of SAG to various courts including the U.S. Supreme Court and the California Supreme Court on issues related to performer rights of publicity, copyright, and the California Talent Agencies Act.

Ms. Van Lier is also an adjunct professor of Entertainment Law and Sports Law at Western State University, College of Law.

Before joining Screen Actors Guild, Ms. Van Lier practiced law in Los Angeles dealing with corporate and intellectual property issues and a variety of litigation matters and has also worked with independent production companies and Internet ventures. Prior to entering practice, she served as a Legislative Fellow in the United States House of Representatives where she worked on subjects including intellectual property, the Internet, and international and judicial issues. Ms. Van Lier helped found, and now serves on the board of directors of Saving Wildlife International, a nonprofit wildlife education company that brings its Animal Ambassadors to classrooms and events throughout the Los Angeles area.

Ms. Van Lier earned her J.D. from Washington University School of Law, in St. Louis, MO, where she served on the Journal of Urban and Contemporary Law and also completed substantial coursework toward a Masters of Arts in East Asian Studies. She received a Bachelor of Arts Degree in Japanese Language, Literature, and Cultural Studies from the University of California at Santa Barbara. Ms. Van Lier has lived in Japan, and is conversant in the Japanese language.

## VICTOR A. VILAPLANA



OF COUNSEL

VAVILAPLANA@FOLEY.COM

402 WEST BROADWAY SUITE 2100  
SAN DIEGO, CA 92101-3542  
(619) 685-4651

*Victor A. Vilaplana is of counsel with Foley & Lardner LLP. He is a member of the firm's Bankruptcy & Business Reorganizations and International Practices and Automotive Industry Team. Mr. Vilaplana focuses his practice on the handling of insolvency matters, particularly complicated business bankruptcies and international transactions. His experience includes representing multiple industries with Chapter 11 cases.*

*Prior to joining Foley, Mr. Vilaplana was a shareholder of Seltzer Caplan McMahon Vitek and a managing partner of the San Diego office of Sheppard, Mullin, Richter & Hampton.*

*Mr. Vilaplana is a graduate of Stanford University (J.D., 1973), George Washington University (M.A., with highest honors, 1970) and San Diego State University (B.A., with honors, 1968).*

*He is a frequent lecturer for the California Continuing Education of the Bar, Practicing Law Institute, Law Education Institute, and National Institute of Trial Advocacy on the topics of insolvency, uniform commercial code, and various U.S./Mexico related issues, such as real estate ownership, commercial law, equipment leasing and debtor/creditor relations. He is also an ALI-ABA lecturer on practice under the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA).*

*Mr. Vilaplana has authored articles on the administration of multi-national bankruptcies and prepackage Chapter 11 plans of reorganization. He is co-editor of *Advanced Chapter 11 Bankruptcy Practice* for the American Law Institute.*

*Mr. Vilaplana is a member of the American Bar Association, the American Law Institute, and the State Bar of California. He is a fellow for the American College of Bankruptcy, a delegate to UNCITRAL on*

various international insolvency projects, and has been selected by his peers for inclusion in *The Best Lawyers in America*® (1993-2012) in the field of bankruptcy and creditor-debtor rights law. He has also been Peer Review Rated as AV® Preeminent™, the highest performance rating in Martindale-Hubbell's peer review rating system and was selected for inclusion in the 2007-2010 *San Diego Super Lawyers*® lists.

Mr. Vilaplana's community involvements include his of counsel position for the San Diego Regional Economic Development Corporation, board member for the San Diego Port Authority and the San Diego Children's Hospital and vice president and director of the San Diego Museum of Contemporary Art.

# FACE THE MUSIC:

## COPYRIGHT AND AUDIOVISUAL IN YOUR CORPORATION

BY JULIE S. MARESCA

### **Movies and other audiovisual material are routinely viewed by employees in corporate settings.**

At first blush, in-house counsel might assume that their company does not use films. “Our employees are paid to work, not watch movies.” Yet, now, more than ever, corporations are discovering that motion pictures and other audiovisual media (media) enhance corporate environments. Artwork enhances interior spaces, music soothes or energizes, and motion pictures educate, illustrate, motivate, entertain and very often inspire.

Media is routinely used in/on:

- corporate training, whether conducted in-house, or by a third-party guest speaker. Often, portions of movies are inserted into PowerPoint presentations to illustrate a point and/or enhance a presentation.
- break rooms, where the company facilitates the employees to watch media during down time.
- company computers with internet access, where employees may catch a quick TV show on their break time.

Employees have ubiquitous access to media, and can easily retrieve and distribute copyrighted material. However, this unbridled access can unexpectedly expose companies to copyright infringement liability.

## What's the law?

### Exclusive rights

Title 17, United States Code, Section 106 delineates the copyright owner's exclusive rights to their works as the (1) right to reproduce, (2) right to prepare derivative works, (3) right to distribute, (4) right to perform and (5) right to display. The copyright owner must grant permission before anyone else can participate in those actions in relation to the copyrighted work.

Have you ever really read the FBI Warning at the beginning of DVDs? It usually states: Federal law provides severe civil and criminal penalties for the unauthorized reproduction, distribution, or exhibition of copyrighted motion pictures and videotapes. (Title 17, United States Code, Sections 501 and 506). Criminal copyright infringement is investigated by the FBI, may constitute a felony and is punishable by up to five years in prison and a fine of \$250,000.

The three rights referenced in the FBI warning are: (1) reproduction or duplication rights, (2) distribution rights and (3) performance or exhibition rights. We all know that we can't make 100 copies of *The Dark Knight* and sell them on Madison Avenue. That would be an example of illegally negating the copyright owner's reproduction rights. An example of a violation of distribution rights would be for an apartment complex to hook up a DVD player to a central location and broadcast a movie throughout the complex. This re-transmission of that movie is illegal without permission.

The third right is the exhibition or public performance right, which is probably the least understood. This is the copyright owner's right to control when and where the copyright owner's media can be shown in public, such as in a corporate setting. Express permission from the copyright owner is needed before the media is exhibited in public. Often, copyright owners license the exhibition right to a third party who is responsible for further licensing or approving further exhibition.

### How can our company have a "public performance" when we are not "open to the public?"

The federal Copyright Act at 17 USC §101 defines public to mean "a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered. ..." Case law narrows that definition to a place where a substantial number of persons can gather, but does not require that substantial numbers of persons be present for a performance to be considered public.

In the case of *Columbia Pictures v. Redd Horne*, 749 F.2d 154 (3<sup>rd</sup> Cir. 1984), a video store (Maxwell's) was



JULIE S. MARESCA, J.D./M.B.A. is senior VP and GC at the Motion Picture Licensing Corporation (MPLC), an international copyright licensing agency. Maresca has been in-house counsel and corporate secretary for the MPLC since 2002, and oversees the US and international legal matters related to intellectual property management. Maresca, also a member of ACC's Sports & Entertainment Committee, can be contacted at [jmaresca@mplc.com](mailto:jmaresca@mplc.com).

sued for copyright infringement, because videocassettes were being viewed in private screening rooms at both of its two locations. In that case, the Court stated that the screening rooms served the same purpose as a movie theatre, "with the additional feature of privacy" and classified the showing of videocassettes in those private screening rooms as public performances. (Id. at 159) In addition, the Court in *Columbia Pictures v. Aveco*, 800 F.2d 59 (3<sup>rd</sup> Cir. 1986), further elaborated on the definition of a public place performance: "The Copyright Act speaks of performances at a place open to the public. It does not require that the public place be actually crowded with people. A telephone booth, a taxi cab and even a pay toilet are commonly regarded as 'open to the public,' even though they are usually occupied only by one party at a time." (Id. at 63)

### Aren't there exemptions to the Copyright Law?

#### Fair Use Doctrine

If applicable, the fair use doctrine (found in the Copyright Act of 1976 at §107) could allow for a portion of an audiovisual work to be performed without a license. The fair use doctrine is a defense in a court of law, so you will not know if the court accepts your defense until you are already sued and in court before a judge. Claiming fair use is tantamount to arguing that it is permissible for your company's product to be stolen, if only a little piece was taken without your consent or compensation. That argument was persuasive in *Bill Graham Archives v. Dorling Kindersley Ltd.*, 448 F.3d 605 (2<sup>nd</sup> Cir. 2006), when concert posters were reduced in size and reprinted in a coffee book for historical purposes. The court relied on the posters being transformed from large concert posters, to small images inserted in a book for their historical relevance.

On the other hand, the fair use argument was unpersuasive in *American Geophysical Union v. Texaco*, 60 F.3d 913 (2<sup>nd</sup> Cir. 1994). There, Texaco photocopied articles from journals. Texaco argued fair use in that Texaco had only used a piece/article of the journal (comparable to using a scene from a movie). Texaco appealed the order of the US District Court, which held that the photocopying of eight articles for use by one Texaco researcher was not fair use. The District Court's conclusion against fair use was affirmed. Ultimately, Texaco paid an undisclosed amount of money to settle the case.

Before claiming fair use, analyze the fair use "four factor test" found in §107 of the Copyright Act to guesstimate whether a court would find in favor of fair use, to avoid compensating the copyright owner for the use of its copyrighted media.

Factor #1: Evaluate the purpose and character of the defendant's (corporation's) use.

- Was the use commercial or noncommercial? Commercial use tends to be less fair and includes getting something for nothing. "The greater the private economic rewards reaped by the secondary user (to the exclusion of broader public benefits), the more likely the first factor will favor the copyright holder and the less likely the use will be considered fair." *Id.* at 922
- Was the use transformative? Have the scenes been transformed by adding new expression or meaning? A parody, for example, is transformative and leans in favor of fair use.

Factor #2: Look to the nature of the plaintiff's (copyright owner's) work.

- Is it a creative work or a factual work? Is it published or unpublished? Since the dissemination of facts or information benefits the public, you have more leeway to copy from factual works such as biographies, than you do from fictional works such as plays or novels.

Factor #3: Evaluate the amount and substantiality of the portion used.

- Even small portions will not favor fair use if it is taken from the heart of the work. It is a qualitative versus quantitative analysis. [See Section 107 of the Copyright Act, H.R. Rep. No. 94-1476 (1976) at page 65.] Taking a scene from a movie to illustrate a point, or having access to media for recreational activities, all use media for its intended purpose.

Factor #4: Assess the effect of the use on the potential market or value of the copyrighted work.

- The court is not going to look at the harm done if just one corporation shows a movie, but it will look at the harm done if every corporation engaged in the practice. In addition, the courts will look to whether there is an existing procedure to license the public performance of the copyrighted work. "Since the Copyright Act explicitly provides that copyright holders have the 'exclusive rights' to ... their works, ... and since there currently exists a viable market for licensing these rights, ... it is appropriate that potential licensing revenues ... be considered in a fair use analysis." *American Geophysical Union v. Texaco* at 930.

In relation to media that is intended only for personal, home use but is then used in the workplace, it is difficult

## A History of the MPLC

The Motion Picture Licensing Corporation (MPLC) is an international copyright licensing agency that was started 25 years ago by motion picture studio executives and an anti-piracy attorney from the Motion Picture Association of America (MPAA). At that time, the home videocassette was replacing the 16mm format. That was the first time a motion picture could be purchased for "home use only," and the founders of the MPLC (along with the rights holders) wanted to provide a legal means to "publicly perform" this new medium once the videocassette was taken outside the home. While technology has replaced the videocassette, the concept is the same: Media intended for personal use only needs to be licensed when performed in public.

The MPLC created the Umbrella License,<sup>®</sup> which grants permission to companies to show legally obtained media from its participating rights holders — whether rented, purchased or downloaded from a third party — without reporting titles, dates or times of exhibition. This licensing scheme replaced the older, more costly method of title-by-title licensing, where the movie studio needed to send the client the movie for a specific time, and then the client would return the movie.

to argue that fair use would apply. Media used in the workplace is used for the intended purpose: to entertain and educate. The licensing fee charged for the public performance of personal media is commensurate with incidental use. The copyright holders participate in a licensing program to capture the additional revenue for the public use of its media. The copyright holders have a process in place that offers access at a reasonable fee for public use of the media. It is up to businesses to understand and comply with the copyright law.

### *The education exemption*

The exemption, as found in section 110 (1) of the federal Copyright Act, requires that the display of the work be in the course of face-to-face teaching activities of a nonprofit educational institution, which is primarily and directly engaged in instruction. The performance would need to be a regular part of the systematic instructional activities of a nonprofit educational institution, and be directly related and of material assistance to the teaching content of the transmission.



## ACC Extras on... Copyright and Audiovisual Media

### ACC Docket

- *Back to the Drawing Board: Contract, Copyright and Trademark Law* (Sept. 2011). [www.acc.com/docket/drawing-board\\_sep11](http://www.acc.com/docket/drawing-board_sep11)

### InfoPAKs<sup>SM</sup>

- *Intellectual Property Auditing for Non-Technology Businesses* (Sept. 2010). [www.acc.com/infopaks/ipaudit\\_sep10](http://www.acc.com/infopaks/ipaudit_sep10)
- *Intellectual Property Primer — Patents, Trademarks, Copyrights, and Trade Secrets — An Introduction to Intellectual Property for In-House Counsel 3<sup>d</sup> Edition* (July 2008). [www.acc.com/infopaks/ipprimer\\_jul08](http://www.acc.com/infopaks/ipprimer_jul08)

### Presentations

- *The ABCs of Corporate IP* (Oct. 2009). [www.acc.com/abc-ip\\_oct09](http://www.acc.com/abc-ip_oct09)
- *Protecting Your Client's Intellectual Property* (May 2009). [www.acc.com/protect-client-ip\\_may09](http://www.acc.com/protect-client-ip_may09)

### Forms & Policies

- *Intellectual Property Overview FAQ* (May 2011). [www.acc.com/forms/ip-faq\\_may11](http://www.acc.com/forms/ip-faq_may11)
- *Model Copyright License for Presentations to Associations* (Feb. 2009). [www.acc.com/forms/copyright-license\\_feb09](http://www.acc.com/forms/copyright-license_feb09)

### Webcast

- *Online Social Media and Nonprofits: Navigating the Legal Pitfalls* (May 2011). [www.acc.com/webcasts/sm-np\\_may11](http://www.acc.com/webcasts/sm-np_may11)

### Compliance Training Portal

- *Patents, Trademarks & Copyright*. [www.acc.com/compliance/ptc](http://www.acc.com/compliance/ptc)

### Alliance

- Need help with your copyright questions? Copyright Clearance Center, an ACC Alliance partner, can help you use and share published content with ease and confidence. Find out more at [www.acc.com/alliance](http://www.acc.com/alliance).

ACC has more material on this subject on our website. Visit [www.acc.com](http://www.acc.com), where you can browse our resources by practice area or search by keyword.

### *Mythical exemptions to the copyright law*

Many uninformed employees may believe there are exceptions to the copyright law. Here are a number of common exemption myths:

- If you use less than two minutes of a film, it's OK.
- As long as I am teaching someone something, I'm fine, right?
- As long as I am not charging for it, it's allowed.
- But I am giving them free advertising and free exposure!
- All movie content on YouTube is legally posted there.

### *Penalties for copyright infringement*

The Copyright Act of 1976 under §504(c)(1) prescribes statutory damages of \$750 minimum to \$30,000 for each infringed work. If the court finds that the infringement was committed "willfully," it may increase the award of statutory damages to \$150,000 for each infringed work. Lastly, the court may award full costs, including reasonable attorney fees, to the prevailing party.

No matter how you look at it, using media on company property requires your attention. Acts of infringement

— even if unauthorized by the company — can create liability through vicarious or, more likely, contributory infringement, which carry substantial monetary penalties of up to \$150,000 per showing, and can even result in criminal charges. Truth be told, you can't monitor or control employees at all times. Every employee's computer has the ability to view media that may require a public performance license.

### **Types of licensing**

#### *Title-by-title licensing*

This type of licensing is basic. You pay for the film you are going to use. You pay one fee for one use of the title on one specific day. Sometimes, the licensing company delivers the movie to you.

#### *Blanket licensing*

A licensing company bundles public performance rights from multiple rights holders (the copyright owners) and offers an annual license. You can view any movie, any time, without reporting back to the licensing company. The limitations for this type of license are that you cannot charge admission to view the movie, and cannot advertise the title

## The **Copyright Act** of 1976 under §504(c)(1) prescribes **statutory damages** of \$750 minimum to \$30,000 for each **infringed work**.

of the movie beyond the scope of the intended audience. The company is also responsible for obtaining the movie (usually by renting or buying a DVD, or obtaining a legal copy online).

### *Either type of license*

Both the title-by-title and blanket licenses require that the audiovisual material you acquire (i.e., DVD or online version) be legally obtained. In addition, you are not permitted to go around the digital rights management (DRM) to capture the presentation.

### **Technology**

Technology has made access to movies easier than ever. Home videocassettes and videocassette recorder (VCR) machines were the first introduction of allowing the public physical access to media. The case of *Universal City Studios v. Sony Corp* 464 US 417 (1984) clarified that copying motion pictures and other programs from television for purposes of “time shifting” was a legal use of the VCR that allowed the user to watch the program later.

Since the videocassette, advances in technology have made access to media easier with the DVD and online services. Copyright holders cautiously embrace the wider access given to their content, and are allowing more legal access to their content than ever before. For instance, Apple’s “Quick-time” allows online access to media without hacking the DRM. It can even allow for portions of media to be captured if only a few minutes are needed. Previously, copyright holders attempted to prevent the illegal editing or capturing of segments of media by installing DRM on available media.

Recognizing that the technology used to store, transfer and play media continues to evolve, Europe is adapting and expanding the concept of “time shifting” to “technology shifting.” Exhibitions in public still require proper licensing.

Most every employee has access to capture and display movies. It is up to employers to either make sure the movies and other audiovisual materials are not displayed in public performance on company property (which is practically

impossible), or make sure that the copyright owners are compensated. Fortunately, licensing the use of copyrighted media is easy and cost effective. Most companies can obtain an annual public performance license to cover the incidental use of media in the corporation “per employee,” depending on the needs of the company.


### **Can we license the public performance of pirated audiovisual content?**

Sometimes copyrighted media is legally obtained — sometimes it is not. Along with the ease of content sharing, we have reached new heights of copyright violations in the workplace. Pirated material should never be allowed and there is no such use exemption for the exhibition of pirated media. The exposure is double-fold and should be avoided at all cost.

### **Ethics**

Movies and other audiovisual media need to be protected just like any other intellectual property. The rights holders want their media to be performed; they just want the user to do it legally. Blanket licensing is a great example of where the industry is providing an accessible and affordable legal option, rather than restricting the copyright and turning ordinary people into criminals. Employee training and education is recommended, and a company ethics policy or media use policy should explicitly prohibit unlicensed use.

### **Conclusion**

This article is the tip of the iceberg and is meant to be a starting guide for copyright law with respect to media in the corporation. For further questions or comments, please feel free to contact the MPLC at [www.mplc.org](http://www.mplc.org). 

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