



Copyright Strategies

for the New Millennium



An update on the rules for taping and a look at how Cable in the Classroom makes it easy.
By Jeff Carter

WHETHER IT'S CABLE, VCRS, THE INTERNET, OR MULTIMEDIA, the wealth of new technologies that have come of age in recent years has been a boon—and a burden—for educators. The wired classroom of 1999 has access to more media resources than ever before, and technology allows teachers and students to easily create their *own* productions. These new opportunities, however, mean that teachers and media specialists have their hands full when it comes to ensuring that they are using copyrighted materials legally.

While most educators are aware that copyright is important, many are confused by the myriad rules and guidelines associated with this increasingly complicated part of the law. And new legislation such as the Digital Millennium Copyright Act, which has important implications for online media, hasn't changed any of the long-standing guidelines regarding videotaping for the classroom. Teachers would love a simple rule, says Hope Botterbusch, an educational copyright specialist and former district audio-visual and television supervisor, "They want to tape anything and keep it forever." Unfortunately, the law is not that simple. But it is navigable. Here, then, is a primer on some of the common issues associated with television taping and copyright. Thankfully, as you'll see, Cable in the Classroom can be a big help when developing your taping strategy.

Taping Television: The Basic Rules

Let's say you are interested in taping a TV program and showing it later in your classroom. Like other creative works, TV shows are protected by copyright law from unauthorized duplication and distribution. It isn't illegal to *tape* the program—just to show it in a public place (which includes school) or make copies for others. One always has the option to ask

the copyright owner for authorization, but for busy teachers, that simply isn't practical every time you want to tape a TV show. There is also the long-standing *fair use doctrine*, which gives educators the right to use copyrighted materials *without* the specific consent of the author or producer.

To determine whether or not a program you want to tape falls under fair use, you'll need to consider the *source* of the program: Are you taping from a *broadcast* station or a *cable* network? The distinction is important. In the late 1970s, a set of guidelines (specifically, *Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes*) was agreed upon by a group of media producers and educators. These guidelines are *not* the law. But because they were agreed upon by so many in the field, and read into the Congressional Record, they represent a "safe harbor" for teachers who want to tape broadcast television programs.

However, the guidelines are restrictive and precise. They permit educators to use videotaped broadcast programs within the first 10 days of the program's first broadcast, and to keep the tape up to 45 days for evaluation purposes. The recordings are to be shown only in "face-to-face" teaching situations, are to be made only at the request of a teacher, and must be used for "instructional purposes." In addition, the guidelines refer only to *broadcast* TV—programs that are transmitted by television stations over the air for free. Cable networks do not fall under this definition, and may or may not have chosen to adopt the off-air taping guidelines.

That's where Cable in the Classroom comes in. In fact, copyright experts who work with educators agree that the easiest

way to make sure that you're taping legally is build your library with Cable in the Classroom programs. "For broadcast media, nothing has ever changed," says Dr. Rosemary Talab, Kansas State University associate professor of classroom technology and author of *Commonsense Copyright: A Guide for Educators and Librarians*, "but Cable in the Classroom has very liberal clearances."

In order to be designated as Cable in the Classroom, a program must have copyright clearance of at least one year for educational use. If the programs are not altered, are used for instructional purposes, and their copyright clearances (noted at the beginning of each program, as well as in the listings section of this magazine and on CIC Online) are followed precisely, a school can feel confident that no copyright infringements are taking place. Cable in the Classroom programs also offer other advantages over the off-air taping guidelines: They may be used an unlimited number of times during the period of the copyright clearance, and you don't need a teacher request to tape the program. Thus, Cable in the Classroom offers the opportunity to begin to build a video library in *anticipation* of need.

An easy way to find out if you can tape an upcoming program is to visit the Cable in the Classroom Web site (<http://www.ciconline.org>). You can search the listings database for the name of the program or by topic, using a keyword. If you narrow your search to "CIC Programs Only," then you know it's a Cable in the Classroom program, and therefore is cleared for at least a year. If you leave "CIC Programs Only" blank and check the "1 year or better" button next to "Copyright," your search will find CIC programs as well as those that have extended clearance, but were not designated as Cable in the Classroom because they contain commercials.

Retransmission

What happens if you want to tape and rebroadcast legally taped programs over the closed-circuit system within your school building? Under the off-air taping guidelines, says Gary H. Becker, copyright consultant and author of *Copyright: A Guide to Information and Resources*, "Nothing in the list of privileges indicates that once taped, [a program] may then be rebroadcast again through a closed-circuit system." That's not to say that such a rebroadcast is *not* fair use, just that the guidelines are silent on the issue. However, the rules are clear for Cable in the Classroom programs: They may be shown on an internal, closed-circuit system within a school building as long as that system is not accessible to the general public.

Guidelines vary regarding retransmission to multiple school buildings; to be safe, get permission.

Compilations

Teachers often ask whether they can make a compilation tape using clips from different programs. The off-air taping guidelines explicitly state that "programs may not be altered from their original content" and that they "may not be physically or electronically combined or merged to constitute teaching anthologies or compilations." This doesn't mean that off-air recordings can only be shown in their entirety, just that you can't change the program's content. It is permissible to record more than one show onto the same tape if you are not editing them. The guidelines also apply to Cable in the Classroom programs, although it makes sense to record only programs with the same copyright clearances on one tape.

Changing Times: Multimedia

The ability to incorporate video clips into multimedia projects was not much of a concern back when the off-air taping guidelines were crafted. So in 1996, educators and media producers convened again to draft guidelines on the fair use of copyrighted material in multimedia projects. Although these guidelines are not as widely accepted as the off-air taping guidelines, the copyright experts interviewed for this article agree that educators and students who apply them in noncommercial educational use can be reasonably sure that they are staying safely within the confines of fair use.

Unlike the off-air taping guidelines, under the multimedia guidelines the source of the material (or motion media, to use the guidelines' terminology) is unimportant. "Basically, it is a blanket, open permission to access any motion media source and use it in a production within the time limits and the quantity limits that are there," says Becker. In other words, it is permissible for an educator to extract a clip from any legally obtained source and use it in class. However, the limits of that use are narrowly defined.

According to the multimedia guidelines, such projects may be used by

Cable in the Classroom Web Sites

The Digital Millennium Copyright Act of 1998 officially recognizes that Web sites are fully copyright protected. A thorough examination of all of the issues regarding the fair use of Web materials is beyond the scope of this article. For example, Becker notes that the fair use of copyrighted materials in a teacher or student Web site presents a new challenge for educators because Web sites traditionally go beyond the classroom walls. "When you take that material, turn it around, create your own Web site, and then publish it," he notes, "it's a large-scale transmission—you're into large-scale publication. All of the other exemptions for education under the law are classroom oriented. They're not for you to redistribute this in large scale, which means, you really need to turn around and get permission."

Since *Cable in the Classroom* has traditionally offered more liberal copyright clearances, many educators wonder about *Cable in the Classroom* members' Web sites. There is currently no uniform copyright policy for *Cable in the Classroom* member sites. Until new guidelines are developed, teachers who are interested in using Web-based materials from *Cable in the Classroom* member sites should ask permission from the copyright owners. However, Web-based support materials specifically designed to accompany *Cable in the Classroom* programs are almost always free to copy and distribute.



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educators for up to two years, and students may save their own projects in portfolios for later evaluation. In any one semester, educators and students are permitted to use a maximum of three minutes or 10 percent (whichever is smaller) from any one program. For songs or music videos, the limit is 30 seconds or 10 percent. In addition, the use of such multimedia projects is limited to either face-to-face instruction, an assignment to students for directed study, in presentations to other educators, or in remote instruction over *closed* and secure networks. (In other words, using a clip in a multimedia project that is published on the Internet is a no-no.)

Also, remember that a multimedia production, as defined by the guidelines, is a project that is created and presented on a *computer*. Recently, Becker was asked whether a multimedia production that uses copyrighted video clips could be transferred to video. "The multimedia guidelines were designed so that you use a computer to create the production, and you use a computer to present the production," warns Becker. "If you're going to do a video production, you've got to get permission for all of the video and other material you want to incorporate into it."

While there are not yet any different rules regarding multimedia use of *Cable in the Classroom* programs, they may offer a steady source of clips for multimedia projects because it's so easy to build a library of *Cable in the Classroom* tapes. All of the copyright experts interviewed for this story agree that *Cable in the Classroom* offers many advantages in developing school copyright policies. Back in her days as a district supervisor, Botterbusch says she went through the magazine "religiously" as part of her efforts to encourage teachers to tape responsibly. "That's the only source we have for [cable] information without picking up the phone and calling somebody," she points out. While copyright needs to be taken seriously, she says, copyright concerns shouldn't discourage schools from looking to cable as a partner in their efforts to build a first-class video library. ■

The information presented in this article is not legal advice. It consists of general guidelines and interpretations by educators of a complex area of law.

Resources

Becker, Gary H. *Copyright: A Guide to Information and Resources*, 2nd Edition. To order, call 1-888-333-2037.

Botterbusch, Hope R. *Copyright in the Age of New Technology*. To order, write Phi Delta Kappa, Publications Dept., P.O. Box 789, Bloomington, IN 47402. Include "Fastback #405" and the title in your order.

Talab, Rosemary. *Commonsense Copyright: A Guide for Educators and Librarians*, 2nd Edition, McFarland Publishers. To order, call 1-800-253-2187.

Hope Botterbusch's Copyright Web Site: <http://www.marine.usf.edu/~hopeb/>

The complete *Fair Use Guidelines for Educational Multimedia* can be found at <http://www.indiana.edu/~ccmc/mmfairuse.html>.

***Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes* are available online (<http://www.utc.edu/MediaResources/CopyPolicy.html>).**