

From the AACT Knowledge Base

Can We Photocopy Copyrighted Scripts?

It's done every day. And for the most part, it's illegal.

By Stephen Peithman

The photocopying of scripts--rented, purchased or borrowed--is a confusing area to most, so we asked play publishers to shed some light on what is permissible and what isn't, and what options there are. We sent questionnaires to a cross-section of the royalty business, from small to large. We presented them with five scenarios, drawn from real-life situations in community, educational and regional theater. Ten publishers answered our questionnaire: Anchorage Press, Baker's Plays, Broadway Play Publishing, Contemporary Drama Services, Eldridge Publishing Co., Encore Performance Publishing, I.E. Clark, Music Theater International, Pioneer Drama Service, and Samuel French. We thank each of them for their participation.

While there was general agreement on some of the issues raised by our scenarios, in some cases there were also significant differences in policy. This only underscores how important it is for a director or producer to read (and understand) copyright and contractual language. When in doubt, request permission.

Here are the scenarios and publisher comments.

Scenario One:

A community theater company's play-selection committee will be reading scripts as possible productions for the next season. To expedite the selection process, photocopies of each play are routed to members of the committee.

Score: Yes: 0 No: 10 Maybe: 0

The response was unanimous on this one: All said no. Said Clark: "Making copies of copyrighted material is illegal unless permission in writing is received from the publisher/agent. We would not give permission in this case." "That is what our preview copies are for," said Contemporary Drama. "They are inexpensive and may easily be ordered for a committee." Music Theatre International (MTI): "We allow for each script to be held for a three-week period on perusal. This time period allows for all parties to read each script." Eldridge took a slightly different tack: "Surely the play committee can buy several copies which committee members may take turns reading." And in a similar vein is Pioneer's comment: "If there are several people involved in the selection process and they did not leave sufficient time to circulate copies among themselves, then they need to purchase multiple reading copies." Enlarging on this, Encore suggested that most companies can afford several copies of plays for reading purposes. "If you choose not to do the play," it says, "donate the copies to a library or school, or keep them on hand for future decisions. Or donate to a theater organization. The Ohio Community Theatre Association maintains a library of loaner scripts for this reason, available to all its members statewide." [So do many regional theater alliances.]

Scenario Two:

A company has received perusal copies of a script and orchestral scores of a musical and decides to do the show. Production dates are mid-November, and arrival date for the materials is eight weeks prior to opening. However, the musical director wants to work with the cast on the music over the summer months, so he photocopies the perusal score. (The company has already sent in a check for royalty and rental.)

Score: Yes: 1 No: 7 Maybe: 0 Not Applicable: 2

Only one company, Contemporary Drama Services, said yes: "If the royalty has been paid, then no problem."

Seven publishers said no. However, all would provide or consider special arrangements. Baker's said it would "happily extend rental time-frames and adjust to specific needs of a producer/director. An in-advance request in writing from a producing organization will be carefully considered." Likewise, MTI will "always provide the score ahead of time, at no extra rental charge, when the performance license has been received." And Eldridge invites customers "to contact us for early release of scripts and scores. Many times we ship books in the summer with bills dated for September."

Samuel French noted that "Most rental periods can be extended to fit each individual requirements and all there needs to be done is to speak to the head of the appropriate licensing department. There could be an additional charge, depending upon the length of time, and/or other circumstances."

Two companies (Pioneer and Clark) do not rent. Said Pioneer: "They are available for purchase only, which our customers strongly prefer. All our prices are very competitive with rental fees, yet allow directors the freedom to purchase materials as they need them, rather than according to our schedule."

Scenario Three.

A director is considering one of your plays. She is unsure, however, if she can cast it. At auditions, she provides the actors with photocopied pages of selected scenes. If she can cast the show successfully, she will order scripts for everyone.

Score. Yes: 2 No: 5 Maybe: 3

As the scoresheet indicates, this is a gray area. Two companies--Contemporary Drama Services and Pioneer Drama Service--said yes to this scenario. Pioneer said the practice is acceptable "as long as *all* photocopies are destroyed immediately after casting the show, and each and every actor has an original script from which to work."

Five publishers said absolutely not. Baker's Plays: "It is illegal, it sets a bad example, one which may be imitated and limits the financial gains due the author (book royalty)." Eldridge noted that "Most actors need time to study and enrich their roles. Buy several scripts in advance of auditions and let the actors have time to check them out." MTI said that "For auditions we can

provide perusal material (usually one or two copies of the full show) prior to the shipment of the full set of books."

Three said they might consider such a request. Encore: "[We may] authorize you to go ahead provided that copies will be destroyed after use." Anchorage said it might grant a request for "a single page or two at most, but not to copy every page and pass out." Likewise, I.E. Clark: "We always try to accommodate our customers. If she will explain her situation, we will consider giving permission to copy a few pages. But she must not copy any part of a play without permission."

Scenario Five.

An instructor provides students with photocopies of selected scenes from one of your plays for classroom use (no performance).

Score: Yes: 0 No: 5 Maybe: 5

The doctrine of fair use [see sidebar] is clearly open to interpretation. Five companies voiced a flat no, citing ethical, as well as legal, concerns. Said Samuel French: "Federal copyright laws protect the rights of an author as the owner of the material. What better place to demonstrate the respect for the rights of others, and acknowledgment of laws that govern, than in our educational institutions?" Baker's agreed with this assessment: "One communicates [to students] through such behavior that an author's work is valuable as an educational tool, but not worth the book royalties due for the privilege of its use. How is this reasoning fair?"

Eldridge points out that "Our material is still being used, even though it is not on a traditional stage. Rather than photocopy, buy more scripts or use resource books especially designed for classroom work." MTI "can provide the required number of scripts under the terms and conditions of our 'classroom license.' The fee for the rental of these books is usually at a greatly reduced rate."

Five companies said that classroom use might be permissible under certain circumstances, and some of their statements conflict with the above statements. Encore, for example, said "Providing you own a copy of the playbook, this is legal educational use."

Said Pioneer: "Though this is not an infringement of copyright laws, it is strongly preferable for students to see that the individual scenes are part of an entire play, which they should have the opportunity to read, if they desire. Since royalties are not charged for classroom use, the nominal cost of a classroom set of scripts is more than offset by the fact that the scripts can be used for many years." And Contemporary Drama Service pointed out that many of its books of scripts give permission to photocopy. "If there is no permission given we prefer that you check with us first. We evaluate on a case-by-case basis."

Scenario Five.

The script offered by your company is available for rental only. A company receives the rental materials from you, but needs extra copies of the script for the stage manager, assistant to the

director, light board operator, prop person, etc. Since blocking and cues will be written (and rewritten) on these, photocopies are made, three-hole punched, and put into binders.

Score: Yes: 0 No: 2 Maybe: 2 N/A: 6

Six of the companies (Broadway, Clark, Contemporary Drama Services, Eldridge, and Pioneer) do not rent materials. Of the four that do, two said the above scenario was unacceptable. "We can provide additional copies to the standard package at a small additional rental fee," MTI said. And French suggested that since almost all its plays and musicals have the acting edition and/or libretti for sale, "One of our scripts may be pasted into a binder and used as a stage manager's book."

Two publishers said maybe. "Requesting an exception to the norm well in advance in writing under the above circumstances will assure our careful consideration," Baker's said. "But photocopies under no circumstances should be made without permission, and the agent/publisher's decision, under the law, must be respected." Likewise, Encore: "Call or write first and obtain permission. If the scripts are destroyed or returned to the publisher for destruction afterwards it may be all right."

More Thoughts

We invited our respondents to share any additional thoughts on the subject of photocopies.

"If permission to photocopy is not expressly granted in the copyright statement," said Contemporary, "we prefer that you check with us first." We think that this is a good general rule of thumb with any publisher.

"Our responses may make us appear rapacious--no, Virginia, Scrooge was not a drama publisher--but unfortunately, our materials are easily stolen," explained Eldridge. "Because we serve a large school drama market we are especially sensitive to photocopies being handed out to students. Those illegal copies give the unspoken message that theft is acceptable. We feel that too many people already are unaware of this important law."

"With express delivery services, materials can reach you quickly," was the comment of Encore. "Oftentimes it is cheaper to buy legal copies from the publisher than make illegal ones."

"We urge producers to tell us their problems," said Clark. "We always help if we can." MTI, too, said it would work with a theater company or school to resolve any of the scenarios we presented.

Several publishers made strong statements that we think underscore the <real> reason for copyright and contractual constraints.

"The theater's existence depends on the written word," said Baker's. "Playwrights attempt to earn a living from the writing of that written word. Illegal use of the playwright's work steals from his capacity to earn a livelihood. There are no 'gray areas' regarding photocopying. The law is the law, and 'no' means 'no.'"

Echoing this was French's statement that "It is only reasonable that an author be compensated for his/her efforts in creating the play or scene under consideration To photocopy all or part of a play is to deprive an author of the money he or she would otherwise earn from the sale of the published acting edition of the play."

Pioneer Drama Service agreed: "We try to provide excellent customer service, but we must also represent our playwrights as best we can and protect the rights of their materials. It is only by doing this that we can continue to attract quality writers to publish their plays with us."

"Generally, publishers of plays print such small quantities that script sales are break-even or at a loss," said Broadway Play. "Photocopying undermines this even more. If people want us to publish plays, they have to support us."

This point, it seems to us, is too often overlooked. Aside from the legal and ethical issues presented here, there is the matter of supporting those whose creativity feeds our own.

Copyright Law & "Fair Use"

The copyright law grants owners of copyright (authors and other creators) the sole right to (or allow others to) reproduce all or part of the work, distribute copies, prepare new versions based on the original work, and to perform and display the work publicly. (See our separate article on copyright basics.)

Copying an entire play not only violates copyright law (including the "fair use" doctrine, below) but your contract with the publisher/agent. While copyright violations are sometimes difficult to prove and prosecute, contractual violations are not. After all, your signature, attesting to your agreement with the terms of the contract, is there on the dotted line

What is "fair use"? The use of copyrighted materials in a classroom setting is sometimes referred to as "fair use." However, the doctrine of "fair use" under the U.S. copyright laws permits only the use of copyrighted work in limited situations, and normally only portions of that work, if the copyright owner's permission has not been received.

Section 107 of the Copyright Act establishes four basic factors to be examined in determining whether a use constitutes a "fair use" under copyright law:

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

Note that no one factor determines your right to use a copyrighted work without permission. For example, "educational use" alone is not sufficient to make a use a "fair" one.

The following guidelines appear in "Questions and Answers on Copyright for the Campus Community," a booklet published by the National Association of College Stores, Inc., the Association of American Publishers, Inc., and The Association of American University Presses, Inc.

1. Unauthorized copying may not be used to create, replace or substitute for anthologies, compilations or collective works, whether or not such unauthorized copies are collected and bound together or are provided separately.
2. Unauthorized copying may not <substitute> for the purchase of books, publisher's reprints or periodicals.
3. The same teacher cannot copy the same item without permission from term to term.
4. No charge shall be made to the student beyond the actual cost of photocopying.

Copies of this booklet are available from the National Association of College Stores, 500 East Lorain St., Oberlin, OH 44074-1294. The Library of Congress has much valuable information about copyright: The Library of Congress, Washington, DC 20559 (Request Circular 2, "Publications on Copyright"). You also can download any of this information, and do more extensive copyright research via the Library of Congress website [www.loc.gov/copyright/].

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