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# Videotaping: An Inconvenient Truth

Here's how to make good choices that protect your company.

By Stephen Peithman

Is it legal to videotape a performance of a play or musical protected under copyright? In almost all cases, the answer is no.

Just check your contract—most include language that prohibits taping. And even if the contract does not state this explicitly, publisher/agents generally will not grant permission for videotaping a production or any part of it. In fact, they generally are *forbidden* to do so—and it makes no difference whether you plan to sell the tape, give it away, store it as an archival copy, or submit it as part of a grant application.

That's because the only authority that authors generally give publisher/agents is to license *performance rights*. (In the case of musicals these are known as “grand rights,” because they include book, music, and lyrics.)

However, separate from performance rights are “mechanical,” rights, which deal with capturing a production on tape, video, film, or any digital format. Authors often retain mechanical rights for themselves, or assign them to a different representative for each format. Thus, the cast recording might be controlled by a recording company, the print rights by a publisher, and the motion picture rights by a film company.

When assigned, the mechanical rights are *exclusively* those of that particular representative, and are not available to a publisher/agent like Samuel French, Dramatists Play Service, or Music Theatre International. And, since a publisher/agent cannot grant you permission to videotape, most performance contracts specifically prohibit copying, recording, reproducing, televising, videotaping, or broadcasting the production either in whole or in part.

This restriction applies to archival copies, cast member copies, educational copies and copies for foundations, competitions, or grants.

Since a publisher/agent controls *only* the rights to live stage performances, all other inquiries, such as videotaping, film, or audio taping, must be directed to the author's agent, who is typically listed on the copyright page of the script.

Some of these agents may sympathize with your reasons for taping—particularly if for archival or grant use. Dramatists Play Service notes that “the agents we deal with are increasingly open to this kind of request, but as usual you must get their permission first.”

However, such approval is still unusual. It is true that a few, smaller, publishers make different arrangements with their authors. An example is I.E. Clark, who specializes in plays for the children's, educational and community theatre market, and who does grant its customers the right to tape a show for archival purposes, and to tape scenes during rehearsals as an aid to directing the play. However, Clark does not permit a public showing of the tape without its specific permission and the payment of a royalty fee to compensate the playwright.

If you need to submit a videotape for purposes of a grant application, we suggest that you send a copy of a performance of a play whose performing edition is in the public domain—such as Shakespeare, Moliere, Ibsen, Wilde, or Gilbert & Sullivan.

Ultimately, the reason for the restrictions on recording a performance is simply one of control. Playwrights are protective of their work, and do not want a production that does not reflect their intent available for viewing by the public. Not only would this diminish the author's work, but the sheer volume of at-large copies could represent an enormous roadblock to any future use the authors might plan for their work.

There are other reasons, too. Publishers cite cases where a videotape—supposedly made so a grandmother who lives hundreds of miles away can see her only granddaughter perform—is reproduced and sold in the theatre lobby. Videotapes of community or school productions even have been used in court cases involving workers compensation, injury or liability suits. Cable or public access television stations have aired videotapes of local productions without even an attempt to clear rights. And at a community theatre festival, an order form was circulated offering a videotape of all the plays being performed there. (The illegal offer was discovered early and festival management destroyed all copies of the form.)

Civil penalties for copyright infringement can range from an order to stop using the material to monetary damages, including attorney's fees and court costs. The legal basis for such action is the 1976 Copyright Act, along with its amendments, court rulings and ties to international treaties. The Copyright Office of the Library of Congress administers copyright law, and its website [[lcweb.loc.gov/copyright](http://lcweb.loc.gov/copyright)] is an authoritative source of copyright information.

Of course, we all know that illegal videotaping does occur—sometimes in intentional violation, sometimes in ignorance of the law. Most of us also believe that some changes in that law are warranted, such as taping for grant or archival purposes. However, the current law *is* the law.

So we end with this simple rule of thumb: Except in the unlikely event that you are granted permission, do not create a video of any copyrighted play that is licensed for performance.

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