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Special Copyright Issue of the ALA Washington Newsletter

Off-Air Recording Guidelines

After two years of negotiating, an ad hoc committee of educational users and copyright proprietors has reached agreement on "Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes." The guidelines reflect the Negotiating Committee's consensus as to the application of "fair use" to the recording, retention and use of television broadcast programs for use in classrooms and similar places devoted to instruction.

The Negotiating Committee was established in April of 1979 by Rep. Robert Kastenmeier (D-WI), chair of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, with the cooperation of the Register of Copyrights. The guidelines were transmitted to Rep. Kastenmeier on September 28, and are expected to be appended to a later House Judiciary Committee report on other copyright-related issues. The transmittal letter from co-chairs Eileen Cooke of the ALA Washington Office and Leonard Wasser of the Writers Guild of America, East, notes:

The Negotiating Committee has concurred that these guidelines reach an appropriate balance between the proprietary rights of copyright owners and the instructional needs of educational institutions. The Negotiating Committee recognized that beyond these guidelines, specific licenses or permissions from copyright proprietors may be required under the Copyright Law. The Committee believes that these guidelines should be reviewed periodically at reasonable intervals.

In accordance with what we believe was your intent, the Negotiating Committee has limited its discussions to nonprofit educational institutions and to television programs broadcast for reception by the general public without charge. Within the guidelines, the Negotiating Committee does not intend that off-air recordings by teachers under fair use be permitted to be intentionally substituted in the school curriculum for a standard practice of purchase or license of the same educational material by the institution concerned.

The text of the guidelines is attached for your ready reference. An October 14 Congressional Record reprint is also attached with the text of the guidelines and additional material.

GUIDELINES FOR OFF-AIR RECORDING OF
BROADCAST PROGRAMMING FOR EDUCATIONAL PURPOSES

In March of 1979, Congressman Robert Kastenmeier, Chairman of the House Subcommittee on Courts, Civil Liberties and Administration of Justice, appointed a Negotiating Committee consisting of representatives of education organizations, copyright proprietors, and creative guilds and unions. The following guidelines reflect the Negotiating Committee's consensus as to the application of "fair use" to the recording, retention and use of television broadcast programs for educational purposes. They specify periods of retention and use of such off-air recordings in classrooms and similar places devoted to instruction and for home-bound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

1. The guidelines were developed to apply only to off-air recording by non-profit educational institutions.
2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable re-transmission) and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.
3. Off-air recordings may be used once by individual teachers in the course of relevant teaching activities, and repeated once only when instructional reinforcement is necessary, in classrooms and similar places devoted to instruction within a single building, cluster or campus, as well as in the homes of students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar day retention period. "School days" are school session days -- not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions -- within the forty-five (45) calendar day retention period.
4. Off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.
6. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.
7. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.
8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.
9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

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House of Representatives

GUIDELINES FOR OFF-AIR RECORDING OF BROADCAST PROGRAMMING FOR EDUCATIONAL PURPOSES

A negotiating committee of interested parties has reached agreement on guidelines for off-air taping and the applicability of "fair use" to this activity in classroom situations. Rep. Robert Kastenmeier (D-WI), chair of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, has inserted the guidelines in the Congressional Record, along with the list of members of the negotiating team, their transmittal letter, and letters explaining the differing positions of the Motion Picture Association of America, and the Association of Media Producers.

GUIDELINES FOR OFF-AIR TAPING OF COPYRIGHTED WORKS FOR EDUCATIONAL USE

HON. ROBERT W. KASTENMEIER

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 14, 1981

● Mr. KASTENMEIER. Mr. Speaker, the most notable feature of the 15-year effort to revise the Nation's copyright laws, which was largely completed in 1976, was the cooperative nature of that effort.

Of course, there were fierce struggles over particular issues. However, in the last analysis, almost every affected group desired that the revision effort succeed, and contributed to that success by modifying and compromising their initial positions.

This spirit of cooperation was expressed most visibly in efforts on the part of proprietors and users in working out a series of guidelines defining fair use in certain situations. Three sets of guidelines were ultimately agreed upon and were published as part of the official legislative history of the act.

These guidelines covered classroom copying of books and periodicals in nonprofit educational institutions, educational uses of music, and photocopying by libraries.

One area in which parties had been negotiating, but in which guidelines were not forthcoming, was off-the-air taping of copyrighted broadcast programs.

I am pleased to announce today that a negotiating committee of interested parties, developed by the Judiciary Committee, has drafted guidelines for use by copyright owners and educators which will go a long way toward resolving the lingering problems associated with off-air videotaping of copyrighted works for educational purposes. I thank, and congratulate, the negotiating committee for their efforts which will, I believe, greatly assist in clarifying the procedures which educators may follow in their use of broadcasted copyrighted materials. These guidelines will help solve an important problem, hopefully without further legislation and litigation. As chairman of the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice, which has jurisdiction over our copyright system, I share the view of the negotiating committee that these guidelines reach an appropriate balance between the proprietary rights of copyright owners and the instructional needs of educational institutions. I recognize that beyond these guidelines specific permissions from copyright proprietors may be required under the Copyright Law. I am pleased to insert the guidelines in the Record for printing in order to assist in their widest possible dissemination.

AUGUST 31, 1981.

HON. ROBERT W. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil
Liberties and Administration of Justice,
Committee on the Judiciary, U.S. House
of Representatives, Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: We are forwarding herewith the "Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes," developed by the Negotiating Committee appointed by your subcommittee.

The negotiating Committee has concurred that these guidelines reach an appropriate balance between the proprietary rights of copyright owners and the instructional needs of educational institutions. The Negotiating Committee recognized that beyond these guidelines, specific licenses or permissions from copyright proprietors may be required under the Copyright Law. The Committee believes that these guidelines should be reviewed periodically at reasonable intervals.

In accordance with what we believe was your intent, the Negotiating Committee has limited its discussion to nonprofit educational institutions and to television programs broadcast for reception by the general public without charge. Within the guidelines, the Negotiating Committee does not intend that off-air recordings by teachers under fair use be permitted to be intentionally substituted in the school curriculum for a standard practice of purchase or license of the same educational material by the institution concerned.

Sincerely,

EILEEN D. COOKE,
Co-Chairman.
LEONARD WASSER,
Co-Chairman.

(over)

MEMBERS OF THE NEGOTIATING TEAM

- Eugene Aleinikoff, Agency for Instructional Television.
- Joseph Bellon, CBS.
- Ivan Bender, Association of Media Producers.¹
- James Bouras, Motion Picture Association of America.²
- Eileen D. Cooke, American Library Association.
- Bernard Freitag, National Education Association.
- Howard Hitchens, Association for Educational Communications and Technology.
- Irwin Karp, Authors League of America.
- John McGuire, Screen Actors Guild.
- Frank Norwood, Joint Council on Educational Communications.
- Ernest Ricca, Directors Guild of America.
- Carol Risher, Association of American Publishers.
- James Popham, National Association of Broadcasters.
- Judith Brester, ABC.
- Eric H. Smith, Public Broadcasting Service.
- Sheldon Steinbach, American Council on Education.
- August W. Steinhilber, National School Boards Association.
- Leonard Wasser, Writers Guild of America, East.
- Sanford Wolff, American Federation of Television and Radio Artists.³

GUIDELINES FOR OFF-AIR RECORDING OF BROADCAST PROGRAMMING FOR EDUCATIONAL PURPOSES

In March of 1979, Congressman Robert Kastenmeier, Chairman of the House Subcommittee on Courts, Civil Liberties and Administration of Justice, appointed a Negotiating Committee consisting of representatives of education organizations, copyright proprietors, and creative guilds and unions. The following guidelines reflect the Negotiating Committee's consensus as to the application of "fair use" to the recording, retention and use of television broadcast programs for educational purposes. They specify periods of retention and use of such off-air recordings in classrooms and similar places devoted to instruction and for homebound instruction. The purpose of establishing these guidelines is to provide standards for both owners and users of copyrighted television programs.

1. The guidelines were developed to apply only to off-air recording by non-profit educational institutions.

2. A broadcast program may be recorded off-air simultaneously with broadcast transmission (including simultaneous cable retransmission) and retained by a non-profit educational institution for a period not to exceed the first forty-five (45) consecutive calendar days after date of recording. Upon conclusion of such retention period, all off-air recordings must be erased or destroyed immediately. "Broadcast programs" are television programs transmitted by television stations for reception by the general public without charge.

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students receiving formalized home instruction, during the first ten (10) consecutive school days in the forty-five (45) day calendar day retention period. "School days" are school session days—not counting weekends, holidays, vacations, examination periods, or other scheduled interruptions—within the forty-five (45) calendar day retention period.

4. Off-air recordings may be made only at the request of and used by individual teachers, and may not be regularly recorded in anticipation of requests. No broadcast program may be recorded off-air more than once at the request of the same teacher, regardless of the number of times the program may be broadcast.

5. A limited number of copies may be reproduced from each off-air recording to meet the legitimate needs of teachers under these guidelines. Each such additional copy shall be subject to all provisions governing the original recording.

6. After the first ten (10) consecutive school days, off-air recordings may be used up to the end of the forty-five (45) calendar day retention period only for teacher evaluation purposes, i.e., to determine whether or not to include the broadcast program in the teaching curriculum, and may not be used in the recording institution for student exhibition or any other non-evaluation purpose without authorization.

7. Off-air recordings need not be used in their entirety, but the recorded programs may not be altered from their original content. Off-air recordings may not be physically or electronically combined or merged to constitute teaching anthologies or compilations.

8. All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

9. Educational institutions are expected to establish appropriate control procedures to maintain the integrity of these guidelines.

MOTION PICTURE ASSOCIATION OF AMERICA, INC.,

New York, N.Y., August 24, 1981.

Re Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes.

Mr. LEONARD WASSER,
Writers Guild of America, East, Inc., 555 West 57th Street, New York, N.Y.

DEAR LEN: This is to advise you that, although we were a party to the discussions which led to their formulation, the Motion Picture Association of America, as such, will take no position on the above-styled guidelines.

However, we are authorized to advise you that the following individual MPAA member companies assent to the guidelines:

- Aveo Embassy Pictures Corp.
- Columbia Pictures Industries, Inc.
- Filmways Pictures, Inc.
- Metro-Goldwyn-Mayer Film Co.
- Paramount Pictures Corp.
- Twentieth Century-Fox Film Corp.
- Universal Pictures, a division of Universal City Studios, Inc.

I would appreciate it if a copy of this letter could be included in any transmittal which you and Eileen Cooke make to Congressman Kastenmeier so that it is made part of the record.

Kindest regards.

Very truly yours,

JAMES BOURAS.

ASSOCIATION OF MEDIA PRODUCERS,
Washington, D.C., September 17, 1981.

HON. ROBERT C. KASTENMEIER,
Chairman, Subcommittee on Courts, Civil Liberties and the Administration of Justice, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN KASTENMEIER: The Association of Media Producers, the national trade association representing the producers and distributors of educational media materials, has appreciated the opportunity to participate as a member of the Negotiating Committee to establish guidelines for off-air taping of copyrighted works.

This is to advise you that the AMP Board of Directors recently voted not to endorse the "Guidelines for Off-Air Recording of Broadcast Programming for Educational Purposes," now being submitted to the Subcommittee on Courts, Civil Liberties and the Administration of Justice.

The guidelines are not in keeping with the principal objectives of our industry, and we are fearful that they may seriously jeopardize the future well-being of the small but vital educational media industry, its market, and the availability of a broad variety of instructional materials essential to maintaining quality education programs.

Sincerely

GORDON L. NELSON,
President.

FILMS INC.,

Wilmette, Ill., September 15, 1981.

Mr. GORDON NELSON,
President, Association of Media Producers, 1101 Connecticut Avenue, Washington, D.C.

DEAR GORDON: As you know since approximately January 1, 1980 I have represented the Association of Media Producers on the Committee to Negotiate Fair-use Guidelines for Off-air Videotaping For Educational Uses. At that time James LeMay, formerly of Coronet Instructional Media, also represented AMP. Prior to the time I began serving on the committee Mr. Gale Livengood of Films Inc. was in that capacity.

I have steadfastly recommended adoption of the guidelines to the Board of Directors of AMP and since becoming a member of the Board earlier this year, continued to take that position. I believe that adoption of the guidelines would be a positive development in the educational audio-visual industry. My recommendation to the Board also reflects the overwhelming opinion throughout my company on this issue.

As you also know, my recommendation was continually made during the actual voting by the Board on this matter but that in spite of my recommendation and vote in favor of adoption of the guidelines, the question was narrowly defeated.

I wish to have this letter become a part of the materials you transmit to Eileen Cooke of the American Library Association regarding AMP's decision. You should also know that Films Inc. intends to transmit its own views on this issue directly to Congressman Robert Kastenmeier.

Sincerely yours,

IVAN R. BENDER,
Vice President and General Counsel. ●

¹ See attached letters from Association of Media Producers and Films, Inc.

² See attached letter.

³ As a result of a summer hiatus, the guidelines have not yet been submitted to the AFTRA National Governing Board.