Videotaping: The Ugly Truth

By Stephen Peithman

Is it legal to videotape a performance of a play or musical protected under copyright? In virtually 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 authors generally give publisher/agents only the right to act on their behalf in licensing live stage 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, computer, or print. Authors often retain mechanical rights for themselves, or assign them to a different representative for each format. Thus, the cast recording would 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 publisher/agents 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. In essence, the blanket restriction is based not only on the appropriate copyright language, but also on the publisher's knowledge that the rights holders will *always* deny permission for creation of a videotape because of mechanical rights restrictions.

In essence, then, 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 noted on the copyright page of the script.

There is little or no wiggle room here, even if it sympathizes with your reasons for taping. The way the law is written, it doesn't differentiate between how something is used. It does not, for example, differentiate between a tape used for archival or grant application purposes and one sold at your neighborhood Blockbuster Video.

The reason is simply one of control. Among other things, 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 have the potential to diminish the author's work, but the sheer volume of copies at large would 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 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.)

Almost all the large publisher/agents—including Samuel French, Dramatic Publishing, Dramatists Play Service, Tams-Witmark, and MTI—forbid videotaping a production licensed by them, for any reason. If you need to submit a videotape for purposes of a grant application, 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.

That said, 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.

Final Thoughts

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 videotape—in whole or in part—any copyrighted play that is licensed for performance.

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