



Jury News

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How Copyright Law Impacts Movies as Entertainment in Jury Assembly Rooms

Over the past several decades, courts around the country have made significant improvements in the conditions of jury service both in and out of courtrooms. Many jurisdictions have made efforts to make the jury assembly room a more inviting area by providing coffee, having artwork on the walls, or showing prospective jurors major motion pictures. Although these efforts can have a positive impact on the public's perception of jury service, jury managers and court administrators need to comply with the law while implementing these improvements into their systems. This article describes the impact of the Copyright Act on showing jurors movies as entertainment in jury assembly rooms and provides practical information to ensure that courts don't find themselves in an indefensible position in a Copyright Act violation allegation.

Movies are copyrighted material and protected by Title 17 of the U.S. Code. Title 17 USCS § 106 states,

...the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

(4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and **motion pictures** [emphasis added] and other audiovisual works, to perform the copyrighted work publicly;

Additionally, the definitional section of Title 17 defines "publicly" as "to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered." So, it is clear that as the whole purpose of the jury selection process is to bring in a fair cross-section of the public, any movie shown to a group of prospective jurors is a public performance of the movie and is a covered activity under the Copyright Act. It is important

to note that whether a fee is charged is not a consideration in determining whether a movie is copyrighted, nor is it a consideration in determining whether a movie has been shown "publicly." Likewise, a movie can still be shown "publicly" even though the doors to the screening are closed and locked.

However, the Copyright Act does contain a few exceptions, which are worth exploring to determine if there is a lawful way to show movies to prospective jurors without violating the law. Title 17 USCS § 107 is popularly called the "fair use exception" to the Copyright Act. This section allows for works to be used for "purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research" without infringing the copyright. However, it is clear that showing movies to prospective jurors for entertainment does not fall under the fair use exception.

There is another possible limitation of the Copyright Act, which might allow for movies to be shown to prospective jurors, and it is in 17 USCS § 110(4), which states:

- (4) performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, if —
- (A) there is no direct or indirect admission charge;

The definitional section of Title 17 does not define "nondramatic literary work." However, in the history section of the statute it states:

Scope of exemption. — The exemption in clause (4) applies to the same general activities and subject matter as those covered by the "for profit" limitation today: public performances of nondramatic literary and musical works. However, the exemption would be limited to public performances given directly in the presence of

an audience whether by means of living performers, the playing of phonorecords, or the operation of a receiving apparatus, and would not include a “transmission to the public.”

Movies are outside the scope of the exception as they cannot be classified as nondramatic performances. Therefore, showing movies to prospective jurors is an activity that is covered under the Copyright Act, and there isn't an exception to the statute that would allow courts to avoid getting approval in the form of a license. In fact, the Motion Picture Association of America's interpretation of the Copyright Act as it applies to showing movies is as follows:

The Federal Copyright Act (Title 17 of the U.S. Code) governs how copyrighted materials, such as movies, may be used. Neither the rental nor the purchase of a copy of a copyrighted work carries with it the right to publicly exhibit the work. No additional license is required to privately view a movie or other copyrighted work with a few friends and family or in certain narrowly defined face-to-face teaching activities. However, bars, restaurants, private clubs, prisons, lodges, factories, summer camps, public libraries, daycare facilities, parks and recreation departments, churches and non-classroom use at schools and universities are all examples of situations where a public performance license must be obtained. This legal requirement applies regardless of whether an admission fee is charged, whether the institution or organization is commercial or non-profit, or whether a federal or state agency is involved.

Although one may argue that the Motion Picture Association of America's interpretation of the Copyright Act is overly broad, there is nothing that they state that is clearly wrong. So, what does a court do that wants to show movies to prospective jurors and also wants to be compliant with the Copyright Act? The answer is simple, buy a license. Licenses to show movies can be purchased “a la carte” to show a specific movie or a court may purchase an “Umbrella License.” The latter would cover all movies shown in a specific location from a broad range of production companies. There are several companies that offer this type of service, and jury managers may wish to contact a few to find one that best meets their needs in terms of the cost and the scope of the license.* The author contacted one company, the Motion Picture Licensing Corporation (MLPC), who provided the following information for illustrative purposes.

The MLPC sells a product they call an “Umbrella License.” This product would permit a courthouse to show movies from a broad range of production companies for a period of one year. They report that they have already licensed a number of courthouses who intended to show movies to prospective jurors. The typical cost for this license is about \$1 a day or \$365 a year, based on an annual contract. Once a court is licensed, they can procure movies from any lawful source and show them to prospective jurors. This may include buying, renting or borrowing VHS or DVD movies, or streaming movies online. The only requirement is that the movie was lawfully procured. The licensed court would also need to ensure that the movie was produced by a covered production company. However, most Hollywood movies will be covered and many other movies produced elsewhere will be covered as well. Additionally, under the terms of the license, the licensed court is precluded from charging a fee to view the movie or from advertising the specifics of screenings to the general public. However, notifying summoned jurors of upcoming titles would be permissible. Last, licensed courts have no requirement to record or report the movies they show.

Providing prospective jurors with entertainment in the form of movies is a great way for a jury manager to make jury service a more enjoyable experience. Movies have an advantage over television for jury managers in that the content is controlled and there is no risk that prospective jurors may be exposed to information regarding a pending case. However, it is important to remember that movies are copyrighted, and an appropriate license must be obtained to avoid the potential embarrassment and other consequences of violating the Copyright Act. The cost of being compliant is relatively low. Courts may also wish to see if a local business or business group may be willing to donate the necessary funds to purchase an annual license.

ABOUT THE AUTHOR

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*The companies below offer movie licensing.

Criterion Pictures
www.criterionpicusa.com
(800) 890-9494

Motion Picture Licensing Corporation
www.mplc.com
(800) 462-8855

Swank Motion Pictures, Inc.
www.swank.com
(800) 876-5577