

LEGAL UPDATE



COPYRIGHT INFRINGEMENT

Legislation surrounding the use of copyrighted media in buildings is clear – who is responsible often isn't. Gill Morris of the Motion Picture Licensing Company explains

Media Copyright infringement has been widely documented over recent years, particularly with the rise of media content streaming online through free-to-use, illegal sites. These infringements are generally clear to most people. The confusion lies more commonly with legally obtained media content, and where the media is being used. This issue is prevalent particularly with businesses, rather than in the household.

All types of media players allow for the use of film outside the home, such as via computers, laptops, projectors, TV's and DVD players that are present throughout facilities. The Copyright, Designs and Patents Act 1988 (CDPA) at Part I, Chapter II, §19, requires that such use in public be licensed.

A performance in public means a performance to an audience which is not domestic or quasi domestic in character. (*Jennings v Stephens* [1936] 1 All ER 409). The question depends "solely upon the character of the audience" and factors such as whether visitors are present, whether an entrance fee is charged, or the number of people in the audience are not decisive.

Yet, who is responsible for the infringement of copyright when an individual pushes play in a facility and watches a copyrighted work?

Responsibility

If a company presses 'play' then it has broken the law without a public performance licence. If the FM, or the outsourced third party FM, is aware or has reason to believe that

screenings take place, they have a liability as a 'secondary infringer' as well as the tenant who is managing the screening on site, who is the primary infringer.

Almost every employee has access to capture and display movies. It is up to employers to either make sure the movies and other audiovisual materials are not displayed for public performance on company property (which is practically impossible), or make sure that the copyright owners are compensated. Fortunately, licensing the use of copyrighted media is easy and cost effective.

Key point

Company directors also have a personal liability in certain situations, too. According to §26 of the CDPA, the facilities management company can be liable if it either provided the equipment on which the film is viewed, or gave permission for the apparatus to be brought on to the property and had reason to know copyrighted material would be viewed.

Licensing options

The Media Picture Licensing Company (MPLC) licenses and invoices to individual locations. It has structured an Umbrella Licence with a simple two-tier

pricing mechanism to suit corporate business users: identifying and paying for the 'visible' areas of specific employee use, for example, purely a waiting reception area or staff room, a seat auditorium or a named training event.

The alternative is to arrange one central agreement (with the head office of a group of companies or with a FM consultancy group on behalf of clients), also known as 'blanket licensing'. This is where a licensing company bundles public performance rights from multiple rights holders (the copyright owners) and offers an annual license, or MPLC Umbrella Licence®.

This central agreement has the multiple site names and addresses identified on a schedule A list. The database is regularly checked by licensee name and address by FACT and by the studios directly, and MPLC also supplies ID registration number stickers or copy licenses for each local site to produce on demand.

With blanket licensing, the licensee can view any movie, any time, without any reporting back to the licensing company. This is preferred by most organisations as it allows unlimited screenings across all company locations and activities, including both 'visible', accountable, 'authorised' use and also incidental 'unauthorised' use, where the employees may simply be watching iPlayer at their desktop pc during break times.

The limitations for this type of license are that you cannot charge admission to view the movie and

cannot advertise the title of the movie beyond the scope of the intended audience. The company is also responsible for obtaining the movie (usually by renting or buying a DVD or obtaining a legal copy online).

Key point

The risk of turning a blind eye to the explosion of technology in the facility can be costly. The CDPA under §107 allows for substantial fines and penalties, including criminal penalties of up to a £5,000 fine and/or up to six months imprisonment per infringement, so that even for a casual infringer the cumulative liability may be significant.

No matter how you look at it, using media on company property requires your attention. Acts of infringement – even if unauthorised by the company – can create liability.

What should you do?

- Analyse your use – the regulations are stringent and the punishment is costly. Check your current licencing and cross-reference with what you actually use, paying particular attention to more recent upgrades/purchases
- Contact MPLC for any queries or if you are unsure about what licences would best suit your usage

Summary

In practice, most people are aware that there are some directives surrounding the use of media in public, but the specifics are rarely defined clearly. Once the issue over responsibility within the business is identified, adhering to regulations will not be an issue. **FM**

Gill Morris is licensing VP Europe, at the Motion Picture Licensing Company

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