



Litch's Law Log

Hollywood in Your Office

C. Scott Litch

Chief Operating Officers and General Counsel

It is not an uncommon practice for a pediatric dental office to run movies in the waiting area or treatment rooms, be it Disney movies or other child-friendly features. While this is a sensible strategy to make the wait more pleasant, legally this is different than showing movies to friends and families in your house. Under copyright law there is a fair-use exception for private viewings; however, a dental office or other health care office or clinic is considered a public area.

Naturally, Hollywood likes to get returns on their expensive undertakings, so their licensing agency has contacted some dental offices warning about playing background movies in the office. You may question their logic, since the dental offices are providing free promotion for their movies. If the movie snippet viewed in the dental office was particularly entertaining, one likely result will be the parents going out to rent or purchase the full movie. However, providing free publicity of someone else's copyrighted work is not considered a "fair use" or otherwise permissible under copyright law.

The licensing agency looking for fees is the Motion Picture Licensing Corporation or MPLC, which can be accessed at <http://www.mplc.org>. They offer the following copyright guidance on their website:

"Motion pictures and other audiovisual works that are available for rental or purchase are intended for personal, private, home use only. If you wish to show the work in any other place, you must have a separate license that specifically authorizes the public performance of that work.

These rules are detailed in the federal Copyright Act, as amended, Title 17 of the United States Code.

According to The Copyright Act, only the copyright owner holds the exclusive right, among others, "to perform the copyrighted work publicly." (Section 106)

The rental or purchase of a motion picture or other audiovisual work does not bear the right to perform the copyrighted work publicly. (Section 202)

Films may be shown without a separate license in the home to "a normal circle of family and its social acquaintances" (Section 101) because such showings are not considered "public."

Films may be shown without a license to non-profit educational institutions for "face-to-face teaching activities" because the law provides a limited exception for such showings. (Section 110(1)).

All other public performances of motion pictures and other audiovisual works are illegal unless they have been authorized by license. Even "performances in 'semipublic' places such as clubs, lodges, factories, summer camps and schools are 'public performances' subject to copyright

control." (Senate Report No. 94-473, page 60; House Report No. 94-1476, page 64).

Both for-profit organizations and non-profit institutions must secure a license to show films, regardless of whether an admission fee is charged. (Senate Report No. 94-473, page 59; House Report No. 94-1476, page 62)

Non-compliance with the Copyright Act is considered infringement and carries steep and significant penalties for both the exhibitor and anyone that contributes to the infringing conduct. Unlicensed public performances are federal crimes and can be subject to a \$150,000 penalty per exhibition and other penalties (Sections 502-506).

The AAPD's outside legal counsel, the law firm of Barnes and Thornburg in Chicago, advises that "fair use" will not cover the typical showing of movies in pediatric dental offices. Even if patients and parents/guardians are moving in and out of the room, it is a public performance, and those are prohibited as stated right on the cover of any video or DVD.

Some members have asked if the AAPD could negotiate with MPLC on a group rate licensing fee. At this juncture, we believe that the MPLC Umbrella License fee is pretty modest (see <http://www.mplc.org/page/umbrella-license-andreg>), and that it is unlikely the AAPD could negotiate a better group rate. However, we will continue to monitor and assess the situation.

Therefore, you need to consider the importance of showing movies in your office in order to determine whether the MPLC fee is a good business decision. Obviously, there are other alternatives to keeping children entertained in the waiting area and treatment rooms rather than the movies.

For further information contact Chief Operating Officer and General Counsel C. Scott Litch at (312) 337-2169, ext. 29, or slitch@aapd.org.