

## **Guidance on the Public Display or Performance of a Copyrighted Work**

The following guidance on the public display or performance of a copyrighted work was prepared by the DOI Solicitor's Office. It is intended to help National Park Service staff understand the need to obtain permission from a copyright holder before publicly showing a film, film clip, playing music or performing or displaying other copyrighted works.

A note on the sample permission language (page 3): The sample wording assumes that a fee will be paid by the National Park Service, but a zero sum may be entered if the copyright holder allows free use. In many cases the copyright holder will have specific language it requires in a license agreement. If the copyright holder does not require specific language, use this sample language. Before signing any license agreement provided to you by a copyright holder, consult with your local or regional solicitor. The language in this sample is excerpted from the federal acquisition regulation, [FAR 52.227-17 Rights in Data, Special Works](#).

## Public Display or Performance of a Copyrighted Work

Federal copyright law provides the owner of a copyright the **EXCLUSIVE** right to publicly display or perform the copyrighted work. This includes the showing of a film or film clip. In other words, unless you are the copyright owner, or else have permission from the owner, a public display or performance of a film, film clip or other copyrighted work is considered infringement.

Infringement of a copyright can bring civil liability in the form of monetary damages and also, depending on the facts surrounding the infringement, can bring criminal fines and penalties.

The federal government does not enjoy any immunity or special treatment with regard to copyright infringement. We, as federal employees, will suffer the same consequences as anyone else who infringes a copyright. Likewise, not-for-profit copyright infringement is *still* copyright infringement. The nonprofit status of the infringer is irrelevant in determining whether a copyright infringement has occurred.

Allowing others to infringe a copyright within a park or for the benefit of a park is not permissible. The legal mechanisms of “contributory infringement” and “vicarious infringement” may be used to impose liability on the park in such a situation. Before issuing a site permit, or otherwise allowing a public display or performance of a copyrighted work, the park must exercise diligence in requiring and verifying that the appropriate permission from the copyright owner has been obtained. Additionally, the park should use indemnification provisions in the park use permits to further limit liability arising out of a copyright infringement in which the park is not directly involved.

No discussion about copyright infringement would be complete without some attention being paid to fair use. While it is true that there are certain defenses to copyright infringement, with the primary defense being fair use, relying on such a defense should occur only upon the advice of legal counsel. Legal advice is essential in such a situation because the necessary analysis is very fact specific and nuanced. It is absolutely imperative to understand that “fair use” is a defense to an infringement claim rather than a right or exception serving to circumvent a lawsuit. In other words, a favorable fair use analysis does not preclude an infringement claim but rather, assesses the likelihood of a successful defense to the claim. Many people incorrectly believe that educational and/or nonprofit use broadly provides an exception to copyright infringement. However, these circumstances are not infringement exceptions but rather, are considerations applicable to a fair use analysis and possibly, a fair use defense.

Relying on a fair use defense as a means to infringe a copyright always involves some sort of risk. For this reason, fair use should be used only as a last resort and never used to circumvent a readily available, reasonably priced license. With regard to popular films, licenses for most films may be obtained from one of the following:

Criterion Pictures  
[www.criterionpicusa.com](http://www.criterionpicusa.com)  
(800) 890-9494

Motion Picture Licensing Corporation  
[www.mplc.org](http://www.mplc.org)  
(800) 462-8855

Swank Motion Pictures, Inc.  
[www.swank.com](http://www.swank.com)  
(800) 876-5577

## Sample Language for Copyright Owner to Grant Permission to NPS

**INSERT GRANTEE NAME** grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for **INSERT NAME OF WORK** to (check as appropriate)

reproduce

prepare derivative works

distribute copies to the public

perform publicly and display publicly

by or on behalf of the Government.

A fee of \_\_\_\_\_ has been given to **INSERT GRANTEE NAME** to secure this permission to use **INSERT NAME OF WORK**.

**INSERT GRANTEE NAME** shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of **INSERT NAME OF WORK**; or any libelous or other unlawful matter contained in **INSERT NAME OF WORK**.