

§110 · Limitations on exclusive rights:

Exemption of certain performances and displays⁴³

Notwithstanding the provisions of section 106, the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made;

(2) except with respect to a work produced or marketed primarily for performance or display as part of mediated instructional activities transmitted via digital networks, or a performance or display that is given by means of a copy

or phonorecord that is not lawfully made and acquired under this title, and the transmitting government body or accredited nonprofit educational institution

knew or had reason to believe was not lawfully made and acquired, the performance of a nondramatic literary or musical work or reasonable and limited

portions of any other work, or display of a work in an amount comparable to that which is typically displayed in the course of a live classroom session, by or in the course of a transmission, if—

(A) the performance or display is made by, at the direction of, or under the actual supervision of an instructor as an integral part of a class

session offered as a regular part of the systematic mediated instructional activities of a governmental body or an accredited nonprofit educational institution;

(B) the performance or display is directly related and of material assistance to the teaching content of the transmission;

(C) the transmission is made solely for, and, to the extent technologically

feasible, the reception of such transmission is limited to—

- (i) students officially enrolled in the course for which the transmission is made; or
- (ii) officers or employees of governmental bodies as a part of their

official duties or employment; and

(D) the transmitting body or institution—

- (i) institutes policies regarding copyright, provides informational materials to faculty, students, and relevant staff members that accurately

describe, and promote compliance with, the laws of the United States relating to copyright, and provides notice to students that materials used in

connection with the course may be subject to copyright protection; and

(ii) in the case of digital transmissions—

(I) applies technological measures that reasonably prevent—

(aa) retention of the work in accessible form by recipients of the transmission from the transmitting body or institution for longer than the class session; and

(bb) unauthorized further dissemination of the work in accessible form by such recipients to others; and

(II) does not engage in conduct that could reasonably be expected

to interfere with technological measures used by copyright owners to prevent such retention or unauthorized further dissemination;

(3) performance of a nondramatic literary or musical work or of a dramaticomusical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly;

(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; or

(B) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright

owner has served notice of objection to the performance under the following conditions:

(i) the notice shall be in writing and signed by the copyright owner

or such owner's duly authorized agent; and

(ii) the notice shall be served on the person responsible for the performance at least seven days before the date of the performance, and shall

state the reasons for the objection; and

(iii) the notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe

by regulation;

(5)(A) except as provided in subparagraph (B), communication of a transmission embodying a performance or display of a work by the public reception

of the transmission on a single receiving apparatus of a kind commonly used

in private homes, unless—

(i) a direct charge is made to see or hear the transmission; or

(ii) the transmission thus received is further transmitted to the public;

(B) communication by an establishment of a transmission or retransmission embodying a performance or display of a nondramatic musical

work intended to be received by the general public, originated by a radio

or television broadcast station licensed as such by the Federal Communications Commission, or, if an audiovisual transmission, by a cable system or

satellite carrier, if—

(i) in the case of an establishment other than a food service or drinking establishment, either the establishment in which the communication

occurs has less than 2,000 gross square feet of space (excluding space

used for customer parking and for no other purpose), or the establishment in which the communication occurs has 2,000 or more gross

square feet of space (excluding space used for customer parking and for

no other purpose) and—

(I) if the performance is by audio means only, the performance is

communicated by means of a total of not more than 6 loudspeakers,

of which not more than 4 loudspeakers are located in any 1 room or

adjoining outdoor space; or

(II) if the performance or display is by audiovisual means, any

visual portion of the performance or display is communicated by

means of a total of not more than 4 audiovisual devices, of which not more than 1 audiovisual device is located in any 1 room, and no such

audiovisual device has a diagonal screen size greater than 55 inches,

and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which

not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;

(ii) in the case of a food service or drinking establishment, either the establishment in which the communication occurs has less than 3,750 gross square feet of space (excluding space used for customer parking

and for no other purpose), or the establishment in which the communication occurs has 3,750 gross square feet of space or more (excluding

space used for customer parking and for no other purpose) and—

(I) if the performance is by audio means only, the performance is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space; or

(II) if the performance or display is by audiovisual means, any visual portion of the performance or display is communicated by means of a total of not more than 4 audiovisual devices, of which not more than 1 audiovisual device is located in any 1 room, and no such audiovisual device has a diagonal screen size greater than 55 inches, and any audio portion of the performance or display is communicated by means of a total of not more than 6 loudspeakers, of which not more than 4 loudspeakers are located in any 1 room or adjoining outdoor space;

(iii) no direct charge is made to see or hear the transmission or retransmission;

(iv) the transmission or retransmission is not further transmitted beyond the establishment where it is received; and

(v) the transmission or retransmission is licensed by the copyright owner of the work so publicly performed or displayed;

(6) performance of a nondramatic musical work by a governmental body or a nonprofit agricultural or horticultural organization, in the course of an annual agricultural or horticultural fair or exhibition conducted by such body or organization; the exemption provided by this clause shall extend to any liability for copyright infringement that would otherwise be imposed on such body or organization, under doctrines of vicarious liability or related infringement, for a performance by a concessionaire, business establishment, or other person at such fair or exhibition, but shall not excuse any such person from liability for the performance;

(7) performance of a nondramatic musical work by a vending establishment open to the public at large without any direct or indirect admission charge, where the sole purpose of the performance is to promote the retail sale of copies or phonorecords of the work, or of the audiovisual or other devices utilized in such performance, and the performance is not transmitted beyond the place where the establishment is located and is within the immediate area where the sale is occurring;

(8) performance of a nondramatic literary work, by or in the course of a transmission specifically designed for and primarily directed to blind or other handicapped persons who are unable to read normal printed material as a result of their handicap, or deaf or other handicapped persons who are unable to hear the aural signals accompanying a transmission of visual signals, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of: (i) a governmental body; or (ii) a noncommercial educational broadcast station (as defined in section 397 of title 47); or (iii) a radio subcarrier authorization (as defined in 47 CFR 73.293–73.295 and 73.593–73.595); or (iv) a cable system (as defined in section 111 (f));

(9) performance on a single occasion of a dramatic literary work published at least ten years before the date of the performance, by or in the course of a transmission specifically designed for and primarily directed to blind or other

handicapped persons who are unable to read normal printed material as a result of their handicap, if the performance is made without any purpose of direct or indirect commercial advantage and its transmission is made through the facilities of a radio subcarrier authorization referred to in clause (8) (iii), Provided, That the provisions of this clause shall not be applicable to more than one performance of the same work by the same performers or under the auspices of the same organization;

(10) notwithstanding paragraph (4), the following is not an infringement of copyright: performance of a nondramatic literary or musical work in the course of a social function which is organized and promoted by a nonprofit veterans' organization or a nonprofit fraternal organization to which the general public is not invited, but not including the invitees of the organizations,

if the proceeds from the performance, after deducting the reasonable costs of producing the performance, are used exclusively for charitable purposes and not for financial gain. For purposes of this section the social functions of any college or university fraternity or sorority shall not be included unless the social function is held solely to raise funds for a specific charitable purpose; and

(11) the making imperceptible, by or at the direction of a member of a private household, of limited portions of audio or video content of a motion picture, during a performance in or transmitted to that household for private home viewing, from an authorized copy of the motion picture, or the creation or provision of a computer program or other technology that enables such making imperceptible and that is designed and marketed to be used, at the direction of a member of a private household, for such making imperceptible, if no fixed copy of the altered version of the motion picture is created by such computer program or other technology.

The exemptions provided under paragraph (5) shall not be taken into account in any administrative, judicial, or other governmental proceeding to set

or adjust the royalties payable to copyright owners for the public performance or display of their works. Royalties payable to copyright owners for any public

performance or display of their works other than such performances or displays as are exempted under paragraph (5) shall not be diminished in any respect as a result of such exemption.

In paragraph (2), the term “mediated instructional activities” with respect to the performance or display of a work by digital transmission under this section refers to activities that use such work as an integral part of the class experience, controlled by or under the actual supervision of the instructor and analogous to the type of performance or display that would take place in a live classroom setting. The term does not refer to activities that use, in 1 or more class sessions of a single course, such works as textbooks, course packs, or other material in any media, copies or phonorecords of which are typically purchased or acquired by the students in higher education for their independent use and retention or are typically purchased or acquired for elementary and secondary students for their possession and independent use.

For purposes of paragraph (2), accreditation—

- (A) with respect to an institution providing post-secondary education, shall be as determined by a regional or national accrediting agency recognized by the Council on Higher Education Accreditation or the United States Department of Education; and
- (B) with respect to an institution providing elementary or secondary education, shall be as recognized by the applicable state certification or licensing procedures.

For purposes of paragraph (2), no governmental body or accredited nonprofit educational institution shall be liable for infringement by reason of the transient or temporary storage of material carried out through the automatic technical process of a digital transmission of the performance or display of that material as authorized under paragraph (2). No such material stored on the system or network controlled or operated by the transmitting body or institution under this paragraph shall be maintained on such system or network in a manner ordinarily accessible to anyone other than anticipated recipients. No such copy shall be maintained on the system or network in a manner ordinarily accessible to such

anticipated recipients for a longer period than is reasonably necessary to facilitate the transmissions for which it was made.

For purposes of paragraph (11), the term “making imperceptible” does not include the addition of audio or video content that is performed or displayed over or in place of existing content in a motion picture.

Nothing in paragraph (11) shall be construed to imply further rights under section 106 of this title, or to have any effect on defenses or limitations on rights

granted under any other section of this title or under any other paragraph of this section.