

Intellectual Property

Judy Shoaf
University of Florida

Adventures in the Mist

Exploring a copyright "grey area": playing foreign DVDs

For many years language labs have been taking responsibility, or working with other campus entities who take responsibility, for seeing to it that foreign videos can be viewed. For VHS tapes, the problems posed could be fixed by having the right equipment to play the tapes; for DVDs, unfortunately, the right equipment to play the discs may be (here the mists rise) illegal.

The VHS situation has to do with different television broadcast standards used in different parts of the world: the U.S. standard, NTSC, is somewhat inferior in picture quality to the PAL and SECAM standards adopted elsewhere. Two solutions were available for handling foreign video.

–First, making an NTSC copy of the PAL/SECAM original; this is of dubious legality unless the video in question is public domain; sometimes it is morally justified by destroying the originals so that only one copy remains. It is also impractical, since it involves a dramatic loss of picture quality (possibly a digital copy would retain more of the original quality, though).
–Second, purchasing multi-standard VCRs and TV monitors which would allow proper playback of the original tape in its original glory, or a multi-standard VCR with an internal or separate converter to play tapes on a U.S. TV (with a slight loss of quality). The advent of data projectors changed this game for classroom teaching: a multi-standard VCR without converter can play any tape directly into the projector, with no conversion needed and excellent picture quality.

Ah, how simple it all was. I get misty thinking about it.

Back around the year 2000, a DVD player began to be a useful item to have in the lab. DVDs, like VHS tapes, are designed to the television broadcast standard (NTSC, PAL) for the area where they are sold, although a data projector or computer monitor will play any standard. In addition, many DVDs have a "region coding" corresponding to one of 6 geographical areas

worldwide. The sole purpose of region coding is to limit the machines which can play a given physical DVD, so that film distributors (some of which control the big DVD player brands) can manipulate the pattern of release of a given film in different parts of the world. This seemed a dreary and even despicable plan to many in the early days of DVD, and of course it posed an obstacle in language labs, where students and instructors might walk in with discs purchased abroad, innocently optimistic that we would have the equipment to play them.

So region encoding is the 500-lb gorilla lurking in the intellectual property mists.....

As with VHS tapes, there seemed to be two possible solutions: the "grey" one of copying the original to get a generally playable version (or fiddling around with software to get around the codes), and the straightforward one of purchasing equipment that would play the DVDs properly, popularly known as "code-free" players. Judi Franz discussed her tribulations looking for a good all-region DVD player in fall 2000 on the LLTI email list, praising the Infinity, which would play any disc on any TV. In December 2000, Jeff La Favre of John Carroll University responded to Barbara Sawhill's question about Regional Coding Enhancement (RCE), a new coding designed to foil "code-free" players; discs with this new coding would play on the Infinity player, Jeff noted, but one had to manually select the region.

Thus there seemed to be a distinction between a code-free player which skipped the codes (which would be stopped by the RCE) and a player which actually read the codes and satisfied the disc. In the meantime, a computer DVD player could switch from one region to another, though only a limited number of times (usually 5 times, though there are rumors that manufacturers can enable up to 25 switches). This would seem to be the function of a "true" multi-region player (as opposed to a code-free player). But since those early days, I have not heard any more about the distinction between commercial DVD players designed to read any code and those which simply skip all codes.

On the third hand, it became apparent that it required only a minimum amount of amateur jiggery-pokery to turn certain brands of Region 1 DVD players into code-free DVD players. These DVD players came with built-in converters to play PAL DVD on an NTSC machine, and apparently kept pace with the demands of the RCE. I hear that there is one brand that can be

re-set to play any region DVD by using the remote control. All one needs is to know what to do.... and there are plenty of websites to explain it.

A good recap of the history of region codes is available at DVD Demystified, <http://doddemystified.com/dodfaq.html#1.10>—though I think this text contains older information embedded in updates.

The problem with all these solutions is that they are (maybe, in the mists of intellectual property legislation) illegal. The Digital Millennium Copyright Act of 1998 was percolating into policy, and the RCE, it turned out, was an attempt to exploit the DMCA's prohibitions against overriding any encoding designed to prevent—well, to prevent whatever those copyright holders who coded it wanted to prevent. Unfortunately for language instructors, the encoding is often meant to prevent playing the DVD in the U.S. According to an extremely strict interpretation of the DMCA, the only legal player for a foreign DVD is a player made to play that region, and that region only!

Note that, strangely enough, it is legal under fair use for educators to override copy protection codes and copy a segment of a digital video or other item. What is forbidden is precisely overriding access codes. (See Carrie Russell, *Complete Copyright: An Everyday Guide for Librarians*, ALA 2004, p. 90-91.) It makes sense to outlaw hacking of password-protected websites and other access restrictions, yes. It is more difficult to see how DVD region codes belong in this group.

In 2001, our language lab acquired a couple of Odyssey players (the “new” version of the Infinity) and I recommended the brand to our head of university-wide Classroom Support, who was busy installing video equipment in classrooms around campus. He shook his head. It turned out that he was going by the strict reading of the DMCA provisions. Classroom Support at U.F.—and, I presume, plenty of other places—would not, on principle, include support for foreign-language DVDs. This was a “grey area” and it seemed safest to stay out of it. More recently, I asked him whether or not he would be willing to reconsider, and he said, “If you can show me I won't get sued.....”

The LLC has a few multi-region (or are they code-free?) players available for walk-in viewing of reserve or personal DVDs from anywhere in the world. Two or three rooms tended by Film

Studies and colleges have such equipment. But most classrooms do not have such players, nor can an instructor ask to have them delivered. The “best” solution for an instructor who wants to play a Spanish or French DVD is to bring in a personal laptop or altered DVD player and patch it into the projector in the room.

I have tried to help individual instructors in various ways, but that gorilla keeps looming. It turned out that the language lab where I could personally install a DVD player is badly lit—VERY badly lit, I have been informed—for the purpose of watching films. Non-Film Studies instructors scheduled into the Film Studies classroom are not allowed to access the Film Studies equipment, even if they happen to be teaching a film class. The conference room with multi-regional equipment is too heavily booked to allow for regular class meetings. Where is fair use when you need it?

I ran across a useful summary of the current legislation touching this problem in Winter 2004 issue of the Consortium of College and University Media Centers Leader, available in pdf format online at <http://www.ccumc.org/pubs/leader.html> (pp. 20-21).

The Leader article, by Jeff Clark, implies that if anyone is likely to get sued, it will be those who sell the DVD players. The article also includes a reminder that the DMCA provides for changes: “every three years the Librarian of Congress... should determine whether this prohibition on circumventing access controls is a substantial obstruction to ‘non-infringing uses’ of particular ‘classes of works.’” Non-region-1 DVDs were in fact proposed in 2003 as such a class, but not accepted as an appropriate exemption to the law. Currently the U. S. Copyright Office sees multi-region players as violating the DMCA, but points out that playing or watching a non-Region 1 DVD in America is perfectly legal, if you use a computer or a non-Region 1 player. See <http://www.copyright.gov/1201/>. Unfortunately, the Copyright Office’s conclusions imply that the reason the law will not be changed is that there’s no need to change it—those whom it obstructs ignore or get around it anyway.

I was surprised to see that one of the assistant editors of the Leader, smiling in a photo on page 12, is the very director of classroom support to whom I had recommended the Odyssey a few years ago. I brought the article to his attention and pointed

out that Jeff Clark's conclusion is that if anyone does start suing anyone else over multi-region DVD players, universities are not likely to be the target (and might even be able to show the Copyright Office real evidence of harm). We looked at the Motion Picture Association website, <http://www.mpaa.org/home.htm>—entirely devoted to copyright problems!—and found no mention of the use of multi-region DVD players as a threat recognized by the industry (though region coding is discussed in the last question on <http://www.mpaa.org/Press/>). Still, he amended his original comment to, "I don't want to break the law...." In other words, there will still be no multi-region DVD players in the classrooms.

The law on multi-region DVD players is not written in stone... nor, alas, in water. It is there to worry us, but it is possible that the DVD industry will prefer to maintain the region codes while ignoring the industry that circumvents them; any confrontation would certainly bring out cases where non-infringing uses are being obstructed. Until then, we will have to try to get along with the gorillas. In the mist. ♦

