

## ARCHIVAL ACCESS IN THE 21ST CENTURY

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This module assesses the state of access to archival moving images in a time when the landscape and practices of moving image archives are changing quickly and unpredictably. We will attempt to take a snapshot of the contours of access as they appear at the time of writing, and we'll also outline and evaluate new directions in which access is now heading or may head.

Within this module, we'll focus on access as a spectrum of services provided to those outside institutional walls, as distinct from the provision of access to members of an institutional community. In addition, we will avoid considering such legacy archival practices as projection and print loans, which are treated elsewhere in ample detail.

Most of the statements in this module are relevant to U.S. practice, law and customs, though there are references to non-U.S. institutions and projects.

The module is divided into five topic clusters. Each is designed to be the basis for a lecture, a class, or a topic for independent study.



## CLUSTER ONE

Cluster one situates the current state of archival access to moving images in several contexts:

- public and user perceptions of archives and their purposes;
- discourses and practices of libraries, textual/visual archives and digital media;
- "classical" (i.e., legacy) paradigms of access to archival moving images.

### **Archival access is an urgent priority**

Archives ultimately derive legitimacy and garner the support they need to survive through social and cultural consensus. Whether spoken or unspoken, this consensus rests upon the perception that archives constitute important cultural and heritage institutions and that their existence contributes to and enriches culture. In the past, archives typically functioned as departments of larger organizations, such as government agencies, educational institutions, corporations or associations. These affiliations conferred importance and legitimacy and buffered them from public demands and calls for access and accountability.

This has now changed. In recent years archives have gone retail. Their erstwhile patrons — researchers, scholars, historians — have been augmented by members of the public, independent scholars, an aggressive army of commercial users, a growing cadre of "archival fans," and genealogists (arguably the largest group of users of textual archives). At the same time, a disconnect is arising between many archives and those that use them. These emerging user communities see little reason why their ability to access collections should be limited by institutional priorities, low budgets or online unavailability. They come from a world that increasingly works on Internet time, where knowledge is rapidly being made freely available in digital form at little or no apparent cost. To these users, whose numbers are growing, there is little reason why archival access should be a sticky door.

This has put great pressure on archives to quickly expand access to their records, to revisit access restrictions and limitations imposed by scarcity of resources, and to become more technologically adept. While not every call for openness may be reasonable and not every access solution achievable, it has become imperative for archives to address this pressure rather than ignoring it. Like it or not, archives are part of the system of cultural production. They will flourish or stagnate in proportion to their relationships with their patrons, their parent organizations, and the cultural and social spheres. If archives don't move towards openness, they may rapidly be seen as irrelevant, and the attention of society could pass them by. This would not bode well for their survival.

This module therefore sees expanded archival access as an urgent priority. We will review how this need has evolved, where it now seems to be situated, and what roads we might follow to make it happen.



## **Libraries, textual and visual archives – some touchpoints**

Though the culture and practice of moving image archives have generally evolved in their own space, as distinct from the discourses of library science, textual/visual archives and digital media, it is increasingly clear that these disciplines offer much that is essential for moving image archivists to consider.

To archivists concerned with enabling more expansive access to archival moving images, the library field offers many case studies of highly proactive, even populist access initiatives. Many of these have occurred within the public library community, but academic and special librarians should also receive credit for their efforts to push the materials they control out to their user communities. Librarians in many nations also have a long tradition of advocacy in service of such causes as freedom of access to information, unfettered research and inquiry, and fair use. In recent years many librarians have also argued against the abridgement of usage rights we take for granted with textual materials as these rights weaken with digital and/or proprietary resources.

Textual and visual archivists, though often unschooled in technical and curatorial issues surrounding moving image collections, also have much to offer their moving image colleagues. Textual archivists have focused on the contradictions between preservation and access for many years. They have articulated codes of ethics, which are just now emerging in the moving images field, and kept up a spirited discussion on ethical issues. In recent years a rich and challenging discourse on archives and their role in struggles for social justice has arisen, notably in post-apartheid South Africa and Eastern Europe. The dialogue between textual archivists and historians both predates and outpaces that which occurs in the moving image field (admittedly still a young discipline), and many textual archivists are active theorists and debaters on questions of history, memory and heritage.

Digital technology has disrupted many of the worlds we inhabit over the last fifteen years. Its manifestations are now influencing the archival moving image field technologically, culturally, economically and philosophically. Moving image archives have lost their singularity — we are no longer the only institutions collecting, preserving and providing access to motion media. We are also losing our specificity, as the nature and extent of our activities changes, largely due to the imperatives constantly posed by the digital wave. Many issues posed by the ascendancy of digital media and the challenges of digital culture will be part of this module.

My intention here is not to advocate that moving image archivists turn back the clock and recycle the experiences of librarians, textual archivists and digital media experimenters, but rather that we see ourselves as all moving in similar directions and addressing kindred issues. The benefits of doing so are clear, while the risk of isolation is increasing irrelevancy.



## The legacy

Though we cannot fully review the history of libraries, textual and iconographic archives here, it is worth pointing to a few issues that may help moving image archivists focus on the specifics of who we are and what we do.

Some key distinctions:

— Archives typically trace their origins to the institutions or organizations out of which they arise, and exist to fulfill the mandates or agendas of their parent entities. Though many libraries are components of larger organizations (such as universities or government agencies), they espouse a tradition of greater independence than do archives, and also tend to be somewhat more outward-facing. Many moving image archives have also been established within production and distribution companies to collect their output and are thus subordinate to their parent company's interests.

— Archives have historically privileged preservation of records over access to them, though the relationship between access and preservation is now much less one-sided. However, anti-access traditions still exist and flourish in many archival institutions, and in some cases may be hardening in reaction to the anxieties of the digital era and widespread calls for universal access. Though libraries often contain divisions where access is limited or problematic (e.g., special collections, corporate or private libraries), access tends to be at the center of librarians' ethical map. For many years, moving image archives maintained and promoted an absolute primacy of preservation over access, and it is unclear to what degree this has really changed.

— Textual and visual archives lean towards collecting unpublished materials; libraries toward published. (In the moving image field, of course, this distinction collapses, as archives collect many works that have been formally distributed and stock footage libraries largely collect unpublished media segments.)

— Archives typically organize records in fonds according to their origin and provenance. Libraries add value through cataloging and arrangement according to constructed criteria, although this attribute is currently under some dispute. Moving image archives, depending on their nature, work both ways. However, it is unclear how cataloging and arrangement of moving image archives will be affected by digitally-based trends such as folksonomies, tagging, full-text search and nontextual interfaces.

— Libraries tend to supply patrons, largely members of the public, with published materials that patrons consume directly (e.g., books, CDs, DVDs, journals, output from commercial databases). Archives have classically tended toward a more wholesale model, servicing patrons who might be researchers, scholars, writers, mediamakers or production companies. These classes of patrons typically use archival materials in the making of derivative works. This distinction is, however, fading, as primary materials become more attractive and accessible to public users. Archives now find themselves



fielding demands for public access to primary materials in ways no longer mediated by third parties. As we will see, this form of disintermediation can give archivists pause.



## "Classic" access paradigms

We must sometimes applaud guardianship at the same time we criticize its details. This might be one way to think about the world of film archives that began to evolve in the 1930s and whose model remained dominant until very recently. The earliest FIAF archivists were cinephiles who dared to collect physically endangered works or films of uncertain provenance, ignored cultural disdain for the populist medium, courted severe punishment for saving and hiding politically discredited films, flouted copyright laws whose interpretation was even more Draconian then as now, and risked nitrate fires. They loved cinema and achieved much despite the limitations placed on their activities.

In such a problematic context, collecting took priority over preservation and preservation over access. Access was reserved for trusted parties under controlled conditions. Aside from loans to other FIAF members or carefully-controlled theatrical screenings, access was granted only to qualified parties, always in house, restricted to materials printed from preservation intermediates, and limited by countless conditions. There were reasons for all of these limitations, no matter how anachronistic they may seem to those who came to the field more recently, and that is why many of them still survive today.

When moving image archives finally began to achieve cultural legitimacy, they were recognized as partners of a sort by producers and studios and no longer needed to collect in such secrecy. Since then, the proponents of access (both within and outside archives) have been chafing at the bit, trying to articulate the importance of expanded access to those who come out of a more restricted tradition. Some expanded-access advocates simply wish to augment access in ways that are already familiar to most institutions; in other words, do more of the same, but better. Others feel that expansive access is no longer a choice but a necessity, if moving image archives are to take their rightful place in the culture and survive the current period of flux.

Many traditional access restrictions stem from the complex ownership structure surrounding many moving image materials. Though the United States has huge libraries of government-produced moving images, most not subject to copyright, and many hundreds of thousands of moving image works are in the public domain in this country, the same is not true in other nations. In addition, many of the highest-profile moving images, such as fiction feature films, television news, sports and entertainment, remain predominantly protected by copyright. Even in situations where copyright is not at issue, other contractual or legal restrictions may inhibit the reuse of moving images. But the fact remains that U.S. moving image archives hold tremendous quantities of material that might be (1) in the public domain, (2) whose copyright is under the control of the archives or (3) an orphan work that could be reused contingent on a reasonable risk assessment. For these categories of works, archives have, quite often, the power and certainly the opportunity to make these works accessible.

While we may criticize some moving image archives for what we perceive as a lack of openness regarding access, it's important to note that many current access policies are creatures of an earlier era when there was much less interest in archival holdings. Since



the late 1970s, there has been continuous proliferation of distribution outlets for moving images and an explosion of scholarly and public interest in all records that can be deemed "archival," all of which has caused increasing demand for access to archival moving images. Many institutions possess inadequate budgets, staff and infrastructure to fulfill even well-established functions, and scarcity has limited their ability to visualize and implement innovative practices. It's fair to say, though, that the disconnect between the manifest public interest in accessing archival holdings and many archives' ability to meet this interest squarely and imaginatively has grown to the point that it must be addressed not simply by individual institutions but by the field.

FIAF's *Manual for Access to Film Collections* expresses the contradictions and dilemmas facing the legacy moving image archives:

"The present document thus covers what we have termed passive access; i.e., the access requested by different categories of users, or the access which we are obliged to grant given our status as public institutions. Granting students, historians, universities, festivals, television stations, etc. access to the primary sources vital to their work is one of an archive's most important tasks. It is essential that we show them, under the best possible conditions, those films which will form the basis of their dissertations, studies, compilations, etc.

"Complex and often contradictory rules govern access to collections. In the majority of cases, archives wish their collections to be exhibited, exposed to the scrutiny of informed users who will aid in the task of identifying them, developing them along the most profitable lines, uncovering their hidden treasures, pinpointing their gaps and, in a more general sense, bringing them to the attention of a wider audience (through publication, for example). Yet immediately limitations are forced upon the archive in terms of both preservation and copyright. Granting access is therefore a matter of funding a subtle compromise between these two seemingly opposing demands....

"...There is no point in denying that granting access to its collections is often perceived by archives as a burden. The priorities of preservation work, potential conflicts with the depositors and copyright holders, the administrative and technical strain, the additional load placed on an already overworked staff, major financial investments; all these problems are very real and it is worth the extra time necessary to take them into account."<sup>1</sup>

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<sup>1</sup>Gabrielle Clae, introduction to *Journal of Film Preservation* 26 (No. 55, Dec. 1997), pp. 3-4. (Special Issue: *Manual for Access to Film Collections*).



## CLUSTER TWO

Cluster Two focuses on the recent past, present and proximal future of moving image archival access. It begins with an historical outline spanning the last thirty years or so, moves to a discussion of new uses of archival moving images and the user communities that are proliferating, and ends with a brief assessment of the "access as a spectrum of uses" idea.

### Archival moving image access in recent historical context

Compared to what's demanded of archives today, relatively little was asked of archives prior to the 1970s. Relatively few institutions held significant moving image collections, and of those that did, even fewer publicly identified as media archives. The handful of established U.S. public and nonprofit film archives focused on preservation to the extent that their budgets permitted, granted access to holdings in heavily circumscribed situations, and served a small number of researchers, scholars, exhibitors and producers. Though arguably the culture of theatrical film exhibition was richer prior to the explosion of the home video market in the 1980s, it would appear (though this needs further research) that archives received many fewer exhibition requests.

Use of archival images in pre-1970 films and TV programs was heavily focused on wars, disasters, oddities and show business. These are, of course, evergreen categories — countless programs on these subjects are still being produced — but the difference between then and now is that most archival footage that surfaced before the public's eyes was from the newsreel libraries, network television news collections or from "official" sources such as the National Archives. The editing was usually prosaic and driven by narration, and there was little focus on regional issues or daily life and culture.

Beginning in the 1970s, use of moving image archives began to broaden and diversify. A short-form history of archival emergence would include the following points and trends:

— The mid-1970s saw an emerging tradition of compilation documentary films such as Philippe Mora's *Swastika* (1973) and *Brother, Can You Spare A Dime?* (1975), Jayne Loader, Kevin Rafferty and Pierce Rafferty's *The Atomic Café* (1982) and Howard Smith's *Gizmo!* (1977). These features and others that followed used archival footage in new ways, often eschewing voiceover narration and strict historical continuity for associative editing and absurd or surreal juxtaposition of images/sounds. They frequently foregrounded archival film segments as primary components, letting them run with little or no editing interference. At least in the cases of *The Atomic Café* and *Gizmo!*, I would assert that the treatment of archival clips in these films has heavily overdetermined the manner in which archival material of the atomic era and strange inventions is perceived in the public imagination.



— The films mentioned above were part of a growing public interest in the 1970s in documentary expression, especially film and photography. That decade saw the revival of the Farm Security Administration photographs, the return to distribution of Depression-era leftist films such as those made by the Workers Film and Photo League, theatrical screenings of preserved Hearst Metrotone newsreels, and the reformatting of key Fox Movietone stories into the series *Lowell Thomas Remembers* (1974-75), which played on television and was marketed to home projector owners in Super 8mm and 16mm. Raymond Fielding's groundbreaking books *The American Newsreel, 1911-1967* (1972) and *The March of Time, 1935-1951* (1978) were the first scholarly studies of U.S. theatrical newsreels in many years. Universal Studios donated the *Universal Newsreel* to the National Archives over 1970-74, placing the collection in the public domain, and publicity surrounding this brought many to NARA either out of curiosity or in search of affordable imagery. Fox Movietone News, perhaps the greatest surviving American newsreel library, was donated in part to University of South Carolina in 1980. All of these events and more increased interest in moving image archives, not simply as a source of interesting historical footage but as a sector of film culture that could awaken mainstream interest.

— History, often mediated through pop cultural nostalgia, itself became a much greater part of mass media starting in the late 1970s. The Fifties cultural craze launched with *Grease* in the movies and *Happy Days* on TV, which were followed by heavy "retro" marketing in all areas of pop culture.

— Beginning in the very late 1970s, two new distribution media emerged that in just a few years began to cause massive disruptions in entertainment industry business models: cable/satellite TV and home video. By the early 1980s, a significant amount of programming was produced for these new media. Since it took over a decade for the cable and satellite industries to reach most households, audiences were built slowly and incrementally, and programming budgets were kept low. As has often been the case, producers on limited budgets turned to archival material to avoid the high costs of talent, and commercial stock footage libraries found themselves doing a great deal of business with a new group of customers.

— In the cultural sphere, ubiquity equals value. When archival images became more prominent in media culture, demand for them increased and they moved from documentaries to music videos to advertising and then to feature films. This is not a precise progression but describes the trajectory of archival materials from the late 1970s to the 1990s, a movement from fairly marginal to mainstream status. In a similar way the sources accessed by producers broadened from being primarily the venerable newsreel libraries, accessible government collections, television news sales libraries and major stock footage houses into a wide spectrum of moving image repositories, ranging from FIAF members to private collectors.

— What some have described as postmodern visual culture began to characterize mainstream television, movies and advertising throughout the 1980s. One of the most emblematic examples was MTV (Music Television), which launched in 1981 with a very



small library of music video clips, repeated at frequent intervals. Since the service was one of an increasing number of channels in the consumer's entertainment menu, and since it needed to grab the attention of Madison Avenue media buyers and television critics, MTV constructed a visually striking on-air look to bracket the music clips and commercials. Since the usual low budgets prevailed, their producers made heavy use of archival footage, beginning with Universal Newsreel clips sourced from the National Archives, principally stunts, gags and oddities. Since MTV lawyers were worried about talent issues in newsreel footage, all recognizable individuals in the newsreel clips sported black "censor bars" covering their eyes. In the mid-1980s, MTV's stable of on-air promotion producers drew heavily from many more sources, notably Prelinger Archives in New York. Concurrently, many music video producers also made heavy use of archival footage or footage that appeared to be archival. MTV's heavy use of archival material influenced TV commercial producers and feature film makers (*Natural Born Killers*). It wouldn't be an exaggeration to give MTV much of the credit for mainstreaming archival material in world media culture.

— As makers asked more of collections, more collections were created. Patrick Montgomery started Archive Film Productions in 1979; several collectors organized what would become Streamline and later F.I.L.M. Archives in the early 1980s; Prelinger Archives was organized in 1983; Petrified Films, Inc. in 1984; White/Janssen (later WPA Film Library) in the mid-1980s and many more. These companies initially focused on discovering, rescuing and disseminating film material that had been ignored by established stock footage companies, mostly 16mm ephemeral films and sometimes unedited footage. Very quickly, the collectively held sense of what archival imagery might be broadened to include complete films rather than fragments, color rather than just black and white, ephemeral material unseen since its period of greatest use, and amateur films and home movies, exemplars of personal (rather than corporate or institutional) expression. Today, footage depicting everyday life and personal experiences is a key component of most documentaries; amateur film and personal documents have supplanted film shot by official and corporate authors.

— Technical developments also made it easier to work with footage that once would not have been considered usable. High-quality film-to-videotape transfer equipment such as Rank Cintel and Bosch machines replaced old photoelectronic film chains, meaning that for the first time any film element, whether negative, finegrain master or old release print, could be considered a "master" for the purposes of film-to-tape transfer, thus bringing many film collections onto the stock footage market and a richer repertoire of imagery into the culture. Similarly, the availability of high-end digital production equipment by the mid-1980s made it possible to combine archival and non-archival images in both literal and figurative ways, opening up a huge new market for preexisting imagery.

— Revisions in federal copyright law effective January 1, 1978, clarified the copyright situation relative to pre-1977 motion pictures, extended the renewal term of existing copyrights and called attention to the vast treasures in the U.S. public domain.



After 1978, the exploitation of public domain moving image materials (as well as materials erroneously thought to be in the public domain) reached a new high.

— The advent of multimedia production in the late 1980s and early 1990s on videodisc, CD-ROM and DVD was highly touted, both as an oncoming bonanza for stock footage houses and as the means by which vast archives of rarely seen media would finally become publicly accessible. Both of these things did happen, but on a comparatively small scale. Stock footage companies gained a smallish new market for their offerings, and a number of archives forged partnerships with publishers and distributors, but archives as a whole remained relatively inaccessible. The Voyager Company issued 18 laserdiscs and CD-ROMs in partnership with Prelinger Archives, Video Resources New York, and the Video Data Bank, some of which functioned as interesting presentations of highly contextualized archival material, but Voyager ceased doing business 1997 and their products have fallen victim to format obsolescence.

— If there is a recent archival access success story, it would probably be DVD. Though vast portions of studio libraries and archival collections still remain unreleased in any consumer formats, the DVD market has assimilated a large number of interesting archival film and video works that were not easily accessible beforehand. The DVD market has successfully exerted pressure on archives and rightsholders to make many works accessible. Though commercial DVD publishers continue to release quite a number of archival works, a most encouraging development has been the entry of nonprofit organizations such as the National Film Preservation Foundation (NFPF) into the market. NFPF released its first multi-DVD set, *Treasures from American Film Archives*, in 20xx, following it with *More Treasures from American Film Archives* in 20xx. Two more sets, on social issues (1900-1934) and American avant-garde films, are in preparation. All contain a large number of thematically linked films drawn from a number of nonprofit and public archives, plus a thick volume of program notes and credits. The critical and consumer response to these titles has been overwhelmingly positive, and the projects illustrate what can happen when a respected organization forges a partnership of archives, funders and distributors.

— Beginning in the mid-1990s, the Internet built itself out as infrastructure capable of delivering rich media, such as moving images, on a near-universal basis. Technology to deliver video online came into the mainstream in 1992 with Apple's QuickTime technology, and online video, albeit low-bandwidth and poor quality, was a frequent sight by 1997. By the early 2000s, streaming video in various formats was ubiquitous.

— Though much remains to be done to provide access to archival moving images, the commercial world has jumped into hosting and serving up digital video as if archives never existed. Such services as YouTube have not only disrupted the world of the Web, but have dramatically altered public perceptions of what online archives are and expectations of what they might be (see below). The last thirty years has seen archives moving from being "wholesale" suppliers of raw material to makers of derivative works into dealing directly with members of the public. Roles have switched; public collections



have gone into the stock footage business, while commercial stock footage collections find themselves custodians of rare archival materials. Whether archives can continue to restrict themselves to fulfilling traditional roles and providing traditional forms of access is now, more than ever, an open question.

But even as archives risk irrelevancy through obscurity, they have come to play a strategic role in the cultural economy. With the emergence of new distribution media like the Internet, the practical elaboration of Long Tail business models, and increased public interest in raw (as distinct from heavily produced and contextualized) content, the perceived value of archival holdings is increasing. Archives are now strategic repositories, and archivists have in fact become de facto gatekeepers to valuable collections. The prototypical narrative of this change is the transition of the Hollywood studio libraries from quiet bunkers in neglected corners of the lot into secure, temperature- and humidity-controlled vault buildings filled with "media assets" whose book value figures prominently on the corporate balance sheet. Though most archivists would applaud the new interest in the materials they've safeguarded for so many years, the price of prominence is increased attention and scrutiny. This means that in a great many cases, perhaps most, decisions affecting archives are not made by archivists.



## Uses and user communities proliferate

Archival moving images are used today in ways that would be unimaginable to the archivists of the 1970s. Similarly, archives are accessed by new communities of users, many only partly imagined in earlier years. A brief outline of new and evolving user communities follows.

— Production. Archival-based programming has become an established sector of TV production. A group of producers, researchers and rights/clearance consultants specialize in what the industry calls "clip shows." Though most archival-based shows are targeted at cable, satellite and homevideo markets, archival footage occupies a much more prominent place than it did in earlier years in higher-profile media such as feature films and primetime TV. Archival material is also heavily used in nonbroadcast production, especially corporate and institutional videos and multimedia productions. Though most of this production is invisible to the public, it generates considerable income for stock footage suppliers and would do so similarly for the most established moving image archives if these institutions found ways to fulfill its needs.

The nature of archival footage research has also changed in the past fifteen years. Classically, archival film researchers were a small and select breed, part historians and part negotiators, well-versed in the peculiarities of the few major collections that enthusiastically welcomed them, able to distinguish each newsreel company's camera angles in coverage of major events, and vessels of vast unrecorded knowledge about the previous uses and abuses of archival images. With the growth of archival-based production and the decline in budgets, experienced researchers often proved too expensive and were replaced by associate producers and interns. This often meant that the quest for the perfect image turned into a search for expedient solutions, the faster and cheaper the better.

— Education. Though archival material has always been a component of educational media production, recent developments are more interesting. Archival moving images in relatively unaltered form are finding their place in classrooms, labs, studios and as resources for independent work. Teachers are presenting integral archival segments drawn from DVDs or download sites to classes, and students are using footage obtained from both sanctioned and unsanctioned sources to fulfill assignments and in class presentations. The more accessible a collection is, the more likely it will be used for such purposes. This is, of course, one of the principal anticipated uses of the BBC Creative Archive collection. Archival material from diverse sources is widely used in the media literacy field; an example is the *Scanning Television* project [explain more]./ Archival footage is also being used by homeschoolers; several have told me of their interest in the 1950s-era educational films available on the Internet Archive site. These films are seen to impart unchanging truths in the context of a simpler, less problematic and less multicultural era, and as such are attractive to certain conservative wings of the homeschool movement.



Inspired by Seattle's *Stockstock* film festival (first organized in 2002), contests are being held, mostly within university walls, in which entrants are given a body of footage, usually from thirty to sixty minutes and challenged to make a short archival-based film, each drawing from the same material as everyone else. Embodying the notion that artistic freedom arises out of observing strict limits, such contests have been held at Johns Hopkins University as part of their "Lost and Found Film" course, the University of Tennessee (Knoxville), the True/False Film Festival in Columbia, Missouri, and elsewhere.

— Homevideo, DVD, video on demand. The use of archival material in productions intended specifically for home use recalls the pioneering work of Eugene W. Castle and his Castle Films, which began in the late 1930s. More recent incarnations began with such series as *Time Was* (1970s). The work of producers in this area forks into two general trends: "cut shows" in which heavily edited archival material appears in context with audio, narration, music, interviews and more, and compilations, in which lightly-edited archival material is aggregated into collections of varying tightness. Examples of the latter include the numerous video compilations of cult films from Something Weird Video, the *Ephemeral Films* collections from Rick Prelinger and The Voyager Company, and the *Treasures From American Film Archives* and *More Treasures from American Film Archives* from the National Film Preservation Foundation. What these and other compilations prove is that there is a consumer market for archival material without significant editing and narration, and that desirable context can be established through careful selection and arrangement. Such compilations have been one of a number influences encouraging the growth of an archival "fan community."

— Resurgent silent film movement. A creature of the last decade and a half, this movement has brought new (and especially younger) audiences back to silent films, especially restored titles, screened in theaters. In a way that may seem counterintuitive to some archivists, the growth in silent film audiences seems to have been encouraged by the more ready availability of silent films on videotape and DVD, as well as by innovative and unorthodox film music composed in recent years. New silent film festivals and new venues have proliferated in recent years and rely on archives for a continuing flow of new old material.

— Architectural, design and ambient use. Though the community of users in this area and this market is hardly developed at this writing, I believe these will grow to be a major category of moving image reuse. By this category I mean the use of moving images and sounds as a design or architectural element in houses, buildings, environments and leisure and entertainment environments. This is not a new kind of use — its ancestry stems from the era of videowalls and clubs employing pioneer VJs, both architectural, environmental or ambient uses of video. Its future development will be assisted by the development of larger flat-panel screens, cheaper projectors and display media yet to be imagined. It is reasonable to think that many homes and places of business will display moving images on walls or as walls, and this may drive a retail market for moving image licensing. Interestingly, Bill Gates's privately-owned image licensing Corbis, now one of the two biggest grossers in its sector, began as a company



named Interactive Home Systems, whose business plan involved licensing fine art images for display on wall-mounted devices in homes.

— Independent, experimental and avant-garde. Though collage, appropriation and quotation have been frequent attributes of avant-garde and experimental film for generations, makers have considerably stepped up their use of preexisting footage since the 1980s and it is now a familiar ingredient of those cinemas.

— Remixers, samplers, appropriators, mashers-up. Arising out of the arts and activist communities as much as film culture, this group has grown greatly since 1985, when affordable desktop video digitizing and editing tools first became available for Amiga computers, and even more since 1992, when QuickTime tools were introduced. A detailed survey of the aesthetics and politics of remixing is beyond the scope of this module, but suffice it to say that remixing as a practice embraces theories of appropriation and expresses a critique of the cultural industry and its modes of distribution.

Though such audio/video remixers as Christian Marclay, Brian Joseph Burton (aka Danger Mouse), Vicki Bennett (aka People Like Us) and Paul Miller (aka DJ Spooky) are now considered fine arts practitioners, Craig Baldwin (a collage filmmaker himself) has argued that remixing should be seen not primarily as a technologically based practice, but as a vernacular art, a practice akin to and arising out of folk culture. Baldwin himself cuts films from his personal collection into his work, and has often furnished stock footage to filmmaker comrades for \$3 per shot, supplying segments cut from his prints. With the coming of the 21st century, Baldwin's assertion proved to be prescient, as millions of family scrapbookers were joined by an unknown (but large) number of amateur video editors who combined traces of mass culture and whatever archival materials they could put their hands on into hybrid, usually unsanctioned works made for family, friends and whoever might stop and watch. Of some seven million videos uploaded to the videosharing service YouTube by early 2007, certainly some hundreds of thousands and perhaps more included elements drawn from other preexisting works. And arguably, YouTube constitutes the most significant populist archival experiment ever (see below for discussion of YouTube and other similar services).

At the same time, remixing (in various forms) has also entered the mainstream. Such television shows as *Dream On* (1980s), and more recently *Mystery Science Theatre 3000* make use of archival materials without attempting to efface their "archivalness," much as documentaries might. *Mystery Science Theatre* takes cult films and unusual shorts, including ephemeral films, and adds a commentary track spoken by puppets on a spaceship.

The community of remixers has shown no hesitation to employ archival images and sounds, regardless of who may own or control them. In a few cases, such as the BBC Creative Archive residencies, they have been invited directly into archives to explore and exploit their contents. And when aggregations of archival material have been made available online without restrictions, they have rushed in. I estimate that some 80,000



derivative works have been produced using material from the online Prelinger Archives collection at the Internet Archive.

Until recently, remixers seemed more like outlaws than members of an identifiable constituency. I would argue that this is no longer true. Proprietors of established media institutions like public broadcasting in the U.S., media funders and the BBC have all begun to recognize and, in some cases, promote the importance of remix culture to cultural and media literacy in general. Cory Doctorow's statement to the UK Department of Culture, Media and Sport in support of the BBC Creative Archive, drafted on behalf of the Electronic Frontier Foundation, eloquently lays out a vision of a "Creative Britain." Doctorow's vision remaps Britain's history of innovation in architecture, music, design and fashion into the emerging digital media, and suggests that enabling millions of new creators by liberally supplying them with reusable content enhances Britain's economic viability for the future.

— Viewer/makers. Remixing has followed a trajectory from high art to low art to amateurism and morphed into user-generated content (UGC), one of the hot terms heard around today's entertainment industry. If we include mainstream pop cultural material used without permission (a major component of amateur production), archival material is a key part of UGC, and will play a larger role in years to come. This will probably occur whether or not the underlying footage can be licensed.

— Archival "fan" community. The past several years have seen the emergence of an identifiable fan community focused on archives and their holdings. I am unaware of any scholarly examination of this community, but my firsthand experience indicates that it is out there and growing. This group comprises film buffs whose interest in particular genres or areas of film extends past the films themselves to the archives that house them. Their curiosity focuses not simply on what films are available, but what films remain to be seen or released, and they express fascination and strive for personal engagement with the institutions that hold them. Fans of the Prelinger Archives, for example, have started a blog on LiveJournal, and a band in São Paulo has named itself "Prelinger Archives Orchestra."

Influences encouraging this community include:

- the evergreen *Mystery Science Theatre 3000*, which enjoys a huge and loyal fan base
- the online collections at the Internet Archive, including AV Geeks, a collection of ephemeral films; the Feature Film collection, currently 829 public domain feature films; and Prelinger Archives, currently 1965 titles. Active communities exist around all of these (and other) collections
- the Living Better Cinematically blog and its fans. Blogger Christine Hennig has reviewed thousands of ephemeral films from online collections and commercially available DVDs.



- other assiduous reviewers, including Bill Taylor
- the alt.movies.silent Usenet newsgroup, which often includes postings relating to archives and archival activity

### **Prognostications and extrapolations**

Stimulated in part by an incrementally increasing mass of available digital video content online, public expectations of universal access to cultural content are increasing. Since most members of the public know little about media archives, it is likely that their attention will gravitate to what they find most accessible online, and many will ignore collections that do not offer a significant degree of online access. This may force many worthy institutions and collections into a marginalized position vis-à-vis more open resources. In short, the Internet may reward joiners and penalize skeptics and laggards, even if the latter are acting wisely and with principle.

How to transcend this dilemma? One suggestion, simple to state and difficult to implement, would be for archives to address difficult access questions and plan online projects in concert. An organized group of archives, assisted by the funding community, could articulate common interests, set standards, draft and maintain best practices, and even build websites and online collections. A group of nonprofit and public archives could also bargain with commercial services and quite possibly negotiate more advantageous business relationships. Thinking even further, a consortial approach could achieve economies of scale in business operations, such as footage and program licensing. This is nothing new in the library world, where regional cooperatives such as SOLINET bargain with vendors for better terms on electronic resources and also license library-developed resources to third parties. Though the Internet makes it easier for small entities to address the world by themselves, it may well be that aggregation and collective bargaining translates to increased strength and militates against marginality.

It is likely that pressure for universal access to archives will increase in coming years but also likely that funding sources will be inadequate to enable it. This will leave the door open for commercial services to digitize and serve archival content, as is now happening with the Google Book Search project. There is nothing wrong with public/private or commercial/nonprofit partnerships; structured properly, they can be excellent solutions to difficult problems. That said, it will be tremendously important for the archival field to think and act in concert and with care if archives' interests are to be protected. This has not yet happened. It will be crucial for archives to develop sustainable digital "archives of last resort," as the library field is with the LOCKSS project.<sup>2</sup>

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<sup>2</sup> LOCKSS, standing for "Lots Of Copies Keep Stuff Safe," at <http://www.lockss.org/lockss/Home>.



## Access as a spectrum of uses

Today, it is most appropriate to move beyond legacy definitions of access, perhaps as exemplified in the FIAF Manual for Access to Film Collections<sup>3</sup> and reconceive access as a continuum of possible uses. Thinking of access as a continuum is a conceptual strategy that doesn't address the reasons why access may or may not be limited, but does allow archivists to assess access gaps and to imagine further expansion.

Perhaps it is a worthwhile provocation to imagine access at its most expansive and work backward, rather than beginning at the restrictive end of the spectrum and adding on privileges. What might be a working definition of archival access at its most expansive?

Expansive access might be imagined to mean universal access by all people to all materials for any purpose at any time without limitation subject only to prevailing laws, preexisting restrictions and preservation considerations. This is a grand statement, but it is also a basket of intertwined riddles. "Universal access" is a powerful term because it is all-encompassing, and potent because it is vague; no one nor any conceivable use is written out, but on the other hand nothing is made clear. An archives with a large reference print collection and an active research and study staff might offer "universal access" to its prints for on-site flatbed viewing. The terms "all people," "all materials," for any purpose," "at any time," and "without limitation" all demand further definition. Finally, the exceptions — "prevailing laws, preexisting restrictions and preservation considerations" — potentially limit the promise of universal access (whatever that may be) to such a degree as to render it meaningless.

Instead of vague statements of universality, it might be best to characterize access as a continuum along which we locate specific rights and opportunities. This continuum is likely to change over time as technology, user expectations evolve along with the missions of archives. Here is a sketch that attempts to place certain modes of access along a scale of relative openness. Since many of these modes are themselves complex, this scale should be considered quite approximate.

[LEAST OPEN]

content archived and unavailable  
content available for in-house research access with permission  
content available for in-house research access without permission  
content circulates within controlled world (e.g., print loans)  
low-resolution streaming video copies available online  
high-resolution streaming video copies available online  
content not interoperable with content in other collections  
quotation allowed without reproduction

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<sup>3</sup> *Journal of Film Preservation* 26 (No. 55, Dec. 1997). (Special Issue: Manual for Access to Film Collections).



quotation allowed with reproduction (e.g., frame grabs)  
reference-quality, time-coded, Elmo, defaced study copies furnished  
broadcast-quality or projectable copies furnished  
user-controlled copying in-house  
low-resolution downloadable copies available online  
high-resolution downloadable copies available online  
content interoperable with other collections  
content freely available for reuse with restrictions (e.g., noncommercial use)  
content freely available for sharing online  
content freely available for any reuse without restriction  
component parts of works (e.g., shots, segments, audio tracks, edit lists) available freely  
online without restriction

[MOST OPEN]



## Resources

Jayne Loader, co-director of *The Atomic Café*, on the genesis and production of the film:  
<http://www.publicshelter.com/main/tac.html>

The Voyager Company's *Our Secret Century* webpage at the Internet Archive:  
<http://web.archive.org/web/19961121233613/www.voyagerco.com/cdrom/catalogpage.cgi?osc>

The Voyager Company's *Ephemeral Films* webpage at the Internet Archive:  
<http://web.archive.org/web/19961122001938/www.voyagerco.com/cdrom/catalogpage.cgi?ephemeral>

National Film Preservation Foundation's DVD sets are described at  
[http://www.filmpreservation.org/sm\\_index.html](http://www.filmpreservation.org/sm_index.html); click on "DVD Collections".

Stockstock Film Festival: <http://www.stockstock.org/>

Three studies of found footage films, appropriation and recycling of moving imagery, each with filmographies:

Wees, William C. *Recycled Images: The Art and Politics of Found Footage Films*. New York: Anthology Film Archives, 1993.

Bonet, Eugeni, ed. *Desmontaje; Film, Vídeo/Apropiación, Reciclaje*. Valencia, Spain: Institut Valencià d'Art Modern, 1993.

Sjöberg, Patrik. *The Workd in Pieces: A Study of Compilation Film*. Stockholm: Aura förlag, 2001.

Cory Doctorow, written testimony on behalf of the Electronic Frontier Foundation to Select Committee on Culture, Media and Sport, September 11, 2004, at  
[http://www.eff.org/IP/BBC\\_CMSC\\_testimony.php](http://www.eff.org/IP/BBC_CMSC_testimony.php).

On remix culture in general, see Jonathan Lethem, "The Ecstasy of Influence: A plagiarism," *Harper's Magazine*, February 2007, 59-71, also available at  
<http://www.harpers.org/TheEcstasyOfInfluence.html>.

Living Better Cinematically blog at <http://livingbettercinematically.blogspot.com/>.

2,663 Internet Archive films reviewed by archival fan Bill Taylor (aka Spuzz, Spuzzlightyear) at <http://www.archive.org/search.php?query=reviewer:%22Spuzz%22>.

alt.movies.silent newsgroup as hosted at Google Groups:  
<http://groups.google.com/group/alt.movies.silent/topics?hl=en>.

"Prelinger Archives" group page at Live Journal:  
[http://community.livejournal.com/pre\\_archives/](http://community.livejournal.com/pre_archives/)



## **CLUSTER THREE**

Cluster 3 reviews recent developments in the intellectual property (IP) field, without which it is impossible to discuss the current state of archival access. Though a detailed discussion of IP is well beyond the scope of this module, an overall review points to many developments that have a significant impact on archival access.

### **New intellectual property paradigms and controversies**

Until the 1990s, the IP arena was a relatively quiet place populated principally by attorneys; it has now moved into the media mainstream, and IP issues now concern a broad spectrum of the public: creators, technologists, librarians, archivists, the media and information industries, and consumers of culture.

The seeds for IP's emergence as a prime cultural, social and economic issue were laid in the 1970s, when Congress passed the 1976 Copyright Act (effective 1978), which modernized a long-quiescent body of law and brought many copyright issues to the attention of the public. In the 1990s, major copyright proprietors (e.g., Hollywood studios and the recording industry) became concerned over two emerging issues: the imminent introduction of digital recording, reproducing and transmission technologies and the upcoming expiration of many copyrights still under exploitation (e.g., Gershwin and Mickey Mouse). These concerns brought about two key pieces of legislation: the 1998 Copyright Term Extension Act (also known as the Sonny Bono Copyright Act) and the Digital Millennium Copyright Act. In the early 2000s, several court cases have also awakened wide attention: *Eldred v. Ashcroft*, a challenge to Congress's extension of copyright terms, and *MGM v. Grokster*, an attempt to declare peer-to-peer (p2p) networking illegal.

One consequence of this legislation and litigation was that copyright and IP issues have escaped the confines of legal and technology discourse and become big news, and, in the case of digital rights management (DRM) occasionally even consumer issues. There are pluses and minuses to all of this publicity. Though increased public awareness of these issues is certainly positive, the heated and polarized debates have not always been reality-based. And perhaps the most disturbing consequence for our field is that the interests of archives and libraries are rarely considered or discussed.



## **A timeline of recent events in the evolution of copyright law**

1976: Passage of new copyright act, which lengthens terms and codifies fair use doctrine

1992: Copyright renewal requirement eliminated

1994: Uruguay Round Agreements Act causes restoration of large number of copyright in non-U.S. works that had previously entered the public domain

1998: "Sonny Bono" Copyright Term Extension Act passed, extending many copyrights 20 years

1998: Digital Millennium Copyright Act (DMCA) becomes law, prohibiting unauthorized access to works through circumvention of technological protection measures

2003: Supreme Court rules in *Eldred v. Ashcroft*, affirming the constitutionality of copyright extension

2003: Supreme Court rules in *MGM Studios, Inc. v. Grokster, Ltd.* that peer-to-peer filesharing software violates copyright law

2005: Copyright Office solicits comments on orphan works; legislation introduced to address reuse of these works in 2006 fails to pass but will probably be reintroduced in 2007

2007: U.S. Court of Appeals for the 9th Circuit in *Kahle et al. v. Gonzales* rules that the 1992 elimination of the copyright renewal requirement is constitutional

## **Copyright maximalism breeds resistance**

Critics of copyright term extension and the accelerating proliferation of controls over intellectual property term these trends "copyright maximalism." This, plus the advent of technological copyright protection measures (such as DRM) and aggressive copyright enforcement on the part of trade associations and some copyright holders, has sparked conspicuous resistance to copyright law on the part of activists, Internet users and some creators. This resistance occurs on a spectrum, from the reuse of copyrighted works in ways that probably constitute fair use all the way to mass duplication of works for commercial sale in such a manner as to constitute piracy.

*Eyes on the Prize I and II* (1987 and 1990) were 6- and 8-hour television documentaries on the history of the African-American struggle for civil rights between 1954 and 1985. produced by Blackside, Inc. and aired by PBS. Because the producer had not been able to obtain perpetual licenses for all content within *Eyes*, in part because some licensors refuse to license their material in perpetuity, the programs became unavailable after 2000 and used VHS videotape copies were selling on the secondhand market at wildly inflated prices. The situation surrounding this program became a widely publicized example of the leverage that rightsholders maintained over culture and history when Downhill Battle, an IP-activist organization, joined civil rights activist Lawrence Guyot in calling for civil disobedience. Advocating widespread downloading of versions of the documentaries by means of BitTorrent filesharing software, they also planned "Eyes on the Screen," a campaign of nationwide screenings to commemorate Black History Month in February,



2005. In the meantime, the Ford Foundation had granted initial funds to re-clear certain material (including the copyrighted song *Happy Birthday to You*) and the family of deceased producer Henry Hampton asked activists to recant their call for civil disobedience out of worry that a profusion of bootlegs would prevent future legal distribution of the series. Downhill Battle issued a statement of recantation. The series is now available for educational use on DVD and VHS, but not yet for home use. As of March 4, 2007, used boxed sets of VHS tapes are being offered on Amazon.com for prices ranging from \$219 to \$1500.<sup>4</sup> The *Eyes* dispute publicly illuminated the little-known fact that archives, archival footage licensors, and perhaps more prominently music publishing companies, had a potential stranglehold over the distribution of culturally significant materials, and gave increased credibility to the movement to expand fair use for documentary makers (see below).

At present (early 2007) the social aspects of IP law are in flux, and it is difficult to imagine that many attributes of the current picture will remain as they currently are. In addition, opposing forces are highly polarized and have a high propensity for making rhetorical statements. Given that archives by definition focus on the long haul, it would be imprudent to craft long-term plans on the basis of short-term conditions and antinomies. On the other hand, it would be self-defeating for archives to resist moving towards greater openness.

## Orphan works

Orphan works have in recent years emerged as a significant issue for archives and libraries. As defined by the U.S. Copyright Office, orphan works are copyrighted works whose owners may be impossible to identify and locate. In the United States, these works certainly number in the hundreds of thousands, perhaps even millions. Since there is always the possibility that copyright holders may surface, archives and users risk incurring liability if they copy these works. The orphan works problem is exacerbated by copyright term extension and the elimination of the copyright renewal requirement, as both of these changes in copyright law cause copyrights to last longer, even if there is no claimant or interest to protect.

Archives holding orphan works in need of preservation or that are potentially reusable risk liability if they pursue normal preservation or access activities with these works. In the same way, reuse of orphan works poses risks for makers of derivative works. Widespread awareness of the problem (and an Internet petition drive) led the U.S. Copyright Office to study the orphan works issue in 2005. A report was issued in early 2006 after over 700 initial and 140 reply comments were received. The number of comments demonstrates great public concern over this issue, and the comments illustrate

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<sup>4</sup> Katie Dean, "Bleary Days for *Eyes on the Prize*," Wired News, Dec. 22, 2004, at <http://www.wired.com/news/culture/0,1284,66106,00.html>. The "Eyes on the Screen" homepage is at <http://downhillbattle.org/eyes/>. Downhill Battle's recantation statement is at <http://www.downhillbattle.org/eyes/statement.php>.



the plurality of opinions in great detail. Legislation was introduced in 2006 but failed because of opposition from illustrators, graphic arts and photographers, whose work often appears within other works without specific attribution.

### **Resources on orphan works**

The Copyright Office's page on its orphan works study, including links to its final report and all public comments, is at <http://www.copyright.gov/orphan/>.

Stanford law professor Lawrence Lessig has been active in the campaign to make orphan works more accessible. His counterproposal to legislation that was introduced in 2006 is at <http://www.lessig.org/blog/archives/003696.shtml>.

### **Copyright term extension**

Until the 1990s, U.S. archives and their users relied heavily on the steady progress of works out of copyright and into the public domain. Classically, works entered the public domain because of the copyright holder's unwillingness or failure to renew copyrights, noncompliance with formalities such as affixing proper notice of copyright, and other technical consideration. Since the vast majority of creative works have no revenue-producing potential for their creators or owners after a period of years, this system assured that the public domain would be enriched by a regular flow of content and that makers of derivative works could roam freely in the public domain to find materials to repurpose.

In 1992, renewal formalities were ended in the United States. This meant that all copyrights in effect as of 1992 would continue for their full term (see Hirtle for specifics on duration of copyright), and that nothing entered the public domain because of failure to renew. Two years later, passage of the Uruguay Round rendered it possible for copyright owners in other countries to restore copyrights that had lapsed in the U.S. In 1998, the Sonny Bono Act added 20 years to the terms of many copyrights. The Supreme Court ruled in 2003 that copyright extension was constitutional, and other cases since then have affirmed this.

This legislation and these decisions have effectively slowed growth of the public domain to a trickle. The consequences for archival access are profound. Archives now find themselves holding quantities of moving images whose copyright status, if not uncertain, is likely to render them unusable in most contexts for a very long time. Though there is an exception in copyright law permitting archives to make preservation copies of endangered works that are not commercially available in the last 20 years of their term, this does not permit archives to offer a high degree of access to most copyrighted works in their collections. The histories of entire generations remain under copyright control. Though many works documenting the early baby-boomer era are now in the public domain and enjoy fairly extensive distribution, the same is not so for works documenting



the life and culture of so-called Generation Xers. Since the perennial atmosphere of fiscal austerity often renders it necessary for archives to derive income from providing some kind of access to their holdings, continual copyright extension affects their financial stability.

Further challenges to copyright term extension in the legislative and judicial spheres are likely. However, much attention has shifted towards addressing the orphan works problem, and we may see some form of resolution in this area before too long.

### **Resources on copyright term extension**

Berkman Center for Internet and Society, Harvard University. Openlaw page of resources on *Eldred v. Ashcroft* at <http://cyber.law.harvard.edu/openlaw/eldredvashcroft/>.

Hirtle, Peter. "How to Find Out What is in the Public Domain." At <http://www.centerforsocialmedia.org/rock/backgrounddocs/copyrightterm.pdf>.

U.S. Copyright Office. *Circular 15t: Extension of Copyright Terms*. At <http://www.copyright.gov/circs/circ15t.html>.

### **Digital Millennium Copyright Act (DMCA)**

The DMCA amended U.S. copyright law in 1998 by making it illegal to make or distribute circumvention technology — technology created primarily to defeat access controls on copyrighted works — and also to circumvent an access control, whether or not copyrights were infringed in the process. Though DMCA is a complex issue, it would be accurate to say that it will pose significant barriers to archival access in the digital age, as archives will be inhibited from breaking electronic "locks and keys" on many born-digital and digitized works (including DVDs, many downloads and other material protected by digital rights management (DRM) technologies) and thus unable to offer customary access to them. Librarians and many archivists consider DMCA a serious erosion of fair use.

Every three years, the U.S. Copyright Office is empowered to issue DMCA exemptions as it sees fit. The November 2006 exemptions permitted several classes of users to circumvent access controls on copyrighted works for noninfringing uses for a three-year period. Two exemptions relevant to archival works includes:

"1. Audiovisual works included in the educational library of a college or university's film or media studies department, when circumvention is accomplished for the purpose of making compilations of portions of those works for educational use in the classroom by media studies or film professors.



"2. Computer programs and video games distributed in formats that have become obsolete and that require the original media or hardware as a condition of access, when circumvention is accomplished for the purpose of preservation or archival reproduction of published digital works by a library or archive. A format shall be considered obsolete if the machine or system necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace."<sup>5</sup>

The first exemption was widely criticized for its limitations, especially because it limited compilations to "media studies or film professors," leaving out archives, elementary and secondary schools and professors whose fields were outside media or cinema studies. The next three years (2007-2009) will demonstrate how this exemption is employed and what uses result.

### **Resources on DMCA**

American Library Association's DMCA resource page is at <http://www.ala.org/ala/washoff/WOissues/copyrightb/dmca/Default2515.htm>.

Electronic Frontier Foundation's compendium of criticism on DMCA is at <http://www.eff.org/IP/DMCA/>.

Library of Congress, "Rulemaking on Exemptions from Prohibition on Circumvention of Technological Measures that Control Access to Copyrighted Works", rev. January 22, 2007, at <http://www.copyright.gov/1201/>.

Litman, Jessica. *Digital Copyright*. Amherst, N.Y.: Prometheus Books, 2001. Describes the background of DMCA, including the interests, lobbying and legislative process behind its passing.

Wikipedia on DMCA — an example of a contentious article — at <http://en.wikipedia.org/wiki/DMCA>.

### **Fair use: a resurgence**

In the last several years, copyright maximalism and escalating licensing costs for images (and especially music) have encouraged fair use advocates and documentary filmmakers to come together in an attempt to codify best practices for fair use. Though four factors for fair use of copyrighted material are codified in U.S. copyright law, they do not

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<sup>5</sup> Library of Congress, "Rulemaking on Exemptions from Prohibition on Circumvention of Technological Measures that Control Access to Copyrighted Works", rev. January 22, 2007, at <http://www.copyright.gov/1201/>.



constitute rights, but are rather factors for evaluating a judicial defense. This means that a user of copyrighted material who wishes to claim her use as fair must either live in uncertainty or successfully defend her claim in court. Neither situation is ideal, and neither one makes distributors and errors-and-omissions insurance carriers happy.

Mediamakers and the Center for Social Media at American University elaborated best practices for fair use within documentary projects in 2005, and have circulated their findings widely. In February 2007, the Fair Use Project at Stanford Law School's Center for Internet and Society teamed with an insurance broker and announced that they would provide insurance coverage and pro bono legal representation to certain filmmakers who comply with these best practices.<sup>6</sup> Though we have yet to see how this works out in practice, it is a promising development for mediamakers and an ambiguous one for archives.

We can expect archives to be divided on the fair use issue. Many proprietary collections that hold copyrighted material or rely on stock footage income to survive will be under pressure to defend their rights as they see them. Others may tacitly or openly support efforts by others to claim fair use over their holdings because they wish for holdings to see the light of day, even though they do not control their copyrights. This could raise ethical concerns if donors or depositors have placed material in the archives with the implied or expressed understanding that archives will support their claims to copyright.

### **Resources on fair use**

Association of Independent Video and Filmmakers, Independent Feature Project, International Documentary Association, National Alliance for Media Arts and Culture, and Women in Film and Video (Washington, D.C. chapter) in association with Center for Social Media, School of Communication, American University. *Documentary Filmmakers' Statement of Best Practices in Fair Use*. Washington, D.C.: Center for Social Media, 2005. At [http://www.centerforsocialmedia.org/resources/fair\\_use/](http://www.centerforsocialmedia.org/resources/fair_use/).

Center for Social Media's fair use page at [http://www.centerforsocialmedia.org/resources/fair\\_use/](http://www.centerforsocialmedia.org/resources/fair_use/).

### **Open content, open access, open source**

Though the terms "open content," "open access" and "open source" all sound alike, they have each accreted a specific (if disputed) meaning and galvanized their own groups of supporters. Each term comes in many flavors, and it will be beyond the scope of this module to describe any of them in detail; we are instead referring the interested reader to the many available web resources.

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<sup>6</sup> Press release, February 27, 2007 at <http://cyberlaw.stanford.edu/node/5210>.



"Open access" and "open source" are presently defined in a more codified manner than is "open content." "Open source" was elaborated around computer code, while "open access" is currently being elaborated around scholarly and scientific literature. But perhaps the question most worth considering for archivists is what constitutes "openness." "Openness," like "access," is a term that lacks a specific definition; it is generally defined by degrees or in opposition to something perceived as "closed." It is also important to point out that openness is not necessarily a characterization of copyright status, but refers to the entire access situation that may surround the work or collection at issue. The section "Access as a spectrum of uses" in Cluster 2 attempts to propose a tentative spectrum of openness for media archives.

### **Resources on Open content, open access and open source**

Wikipedia is a reliable resource and point of departure on these three terms and the discourses that have grown up around them:

Wikipedia on open access, at [http://en.wikipedia.org/wiki/Open\\_access](http://en.wikipedia.org/wiki/Open_access).

Wikipedia on open content, at [http://en.wikipedia.org/wiki/Open\\_content](http://en.wikipedia.org/wiki/Open_content).

Wikipedia on open source, at [http://en.wikipedia.org/wiki/Open\\_source](http://en.wikipedia.org/wiki/Open_source).

### **Permissive licensing: Creative Commons**

Creative Commons (CC), a San Francisco nonprofit organization, arose out of a critique of copyright law elaborated, among others, by Eric Eldred and Lawrence Lessig. Eldred was a computer programmer and independent Hawthorne scholar who suggested an "intellectual property preserve" in the late 1990s. Lessig was a law professor who critiqued the "permission culture" that had arisen in tandem with the domination of modern culture by large content companies. CC was founded not as an anti-copyright organization, but rather to make it simpler for copyright owners or custodians of content to share certain rights to their materials as they desired.

CC enabled "permissive licensing" by drafting a set of licenses that copyright owners could place on their works. If, for instance, a filmmaker wished to make their work available for noncommercial use with credit, the maker could affix a "Non-Commercial-Attribution" license to the work. The licenses were available in human-readable (skeletal) form, in full legal language, and also in machine-readable form. (RDF/XML data)

CC has gained significant traction in a number of domains, especially online, where millions of webpages carry a CC license. Many musical compositions and short films have also been CC-licensed, and the Prelinger Archives online collection at the Internet Archive carries a CC "Public Domain" dedication. CC licenses have been legally upheld



in the Netherlands,<sup>7</sup> and many authors are publishing books and journal articles under CC licenses.

CC is a useful option for archives who own copyright to material or wish to warrant its public domain status to potential users. By using a CC license, an archives can retain its rights while giving implicit permission to its patrons to use the material in certain specified ways. Google, Yahoo and Yahoo's photo-hosting and sharing site Flickr all offer CC searches, enabling their users to easily find CC-licensed material for reuse.

### **Resources on Creative Commons**

Creative Commons website at <http://www.creativecommons.org>.

David Berry and Giles Moss, "On the "Creative Commons": a critique of the commons without commonalty," *Free Software Magazine*, online at July 15, 2005, at [http://www.freesoftwaremagazine.com/articles/commons\\_without\\_commonality/](http://www.freesoftwaremagazine.com/articles/commons_without_commonality/).

### **Code as law: digital rights management (DRM)**

DRM is a term, often poorly defined, for technologies that control access to or restrict the usage of digital content, software or hardware. Though it was probably inevitable that copyright holders would seek to deploy protective measures as digital reproduction and transmission technologies proliferated, DRM has become an extremely controversial issue. Though at this point DRM is much more present in commercial content ventures than in non-profit archival projects, it will increasingly become an issue for archives that (1) are part of commercial enterprises utilizing DRM as part of an enterprise-wide strategy; (2) partner with entities using DRM in content delivery situations, such as Apple's iTunes and Google Video; or (3) use commercial media management or delivery systems that employ DRM by default. Grace Agnew's two articles on the OCLC website form a brief but excellent introduction on the basic attributes of DRM and ways in which it may affect libraries, and by extension archives.

Cory Doctorow's famous Microsoft Research talk makes 5 points: that DRM systems don't work; that DRM systems are bad for society; that DRM systems are bad for business; that DRM systems are bad for artists; and that DRM is a bad business-move for Microsoft. It's very much worth reading to assess whether his argument still holds after two and one-half years.

### **Resources on DRM**

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<sup>7</sup> "Creative Commons License Upheld by Dutch Court," *Groklaw*, March 16, 2006, at <http://www.groklaw.net/article.php?story=20060316052623594>.



Agnew, Grace. "An Introduction to DRM: Part 1." At <http://www.oclc.org/community/topics/rights/perspectives/archives/agnew1.htm>.

Agnew, Grace. "An Introduction to DRM: Part 2." At <http://www.oclc.org/community/topics/rights/perspectives/default.htm>.

Doctorow, Cory. "Microsoft Research DRM Talk," delivered at Microsoft's Research Group, Redmond, Washington, June 17, 2004, at <http://www.craphound.com/msftdrm.txt>. Considered to be one of the canonical critiques of DRM.

Wikipedia on DRM at [http://en.wikipedia.org/wiki/Digital\\_Rights\\_Management](http://en.wikipedia.org/wiki/Digital_Rights_Management).

### **Beyond copyright consciousness**

I have argued that many critics of copyright maximalism and many creators who take exception to aspects of current copyright law have focused on the technicalities of copyright to the exclusion of other important considerations. In the essay "Beyond Copyright Consciousness" I propose that copyright critics also focus on the difficulties of access to works. The essay, though somewhat dated, characterizes access as a form of openness whose importance ranks as high as copyright.

### **Resources on access as openness**

Prelinger, Rick. "Beyond Copyright Consciousness." *Bad Subjects* 52 (Nov. 2000), at <http://bad.eserver.org/issues/2000/52/prelinger.html>.

### **Unsettled issues**

Several unsettled copyright and copyright-related issues are likely to dog archives in coming years.

*Who will control user-generated content, and will consensus move towards a paid or royalty model?*

At the moment, a great deal of commercially-served and driven Internet content is created for free by users who stand to get little more than publicity, fleeting fame and perhaps community status. The business models of countless companies, especially those that have been characterized as pursuing participatory "Web 2.0" models, depend upon free user-generated content. There is currently disagreement as to whether the Web will move beyond this business model towards one in which content creators receive compensation and retain greater control over their creations. If this movement occurs, it is likely to



create a class of millions of new moving image objects that are subject to increased control and perhaps to residual and royalty payments.

*Is copyright the primary IP issue with which archives need to be concerned when assessing how accessible content should be?*

Not necessarily. Many works are subject to non-copyright restrictions that have been generated outside of the archival context, such as contractual limitations, union contracts, guild agreements, and other underlying issues. In some cases, such as with many television programs, a given work can carry a bundle of restrictions that may effectively limit its access in perpetuity, despite expiration of the basic copyright.

This scenario is currently playing out in U.S. public television, where pressure is mounting from leading stations and especially from funders to make archival programming and other media assets more accessible. Most programming is encumbered by preexisting contracts that will have to be renegotiated for material to be, for instance, placed online for reuse. Television executives are loath to put new issues on the table in union negotiations, and unions and guilds have historically been loath to concede their control over content when potential future profits are at issue. Further developments in this area will be interesting to follow.

## **Summing up**

Clarification and reconciliation of copyright issues are absolutely central to archival access and to the continuation of archives' canonical functions. Unfortunately, moving image archives and archivists have too often behaved as followers rather than as leaders, reacting to legislation after it has passed, drafting access policies that express short-term perspectives, rather than taking long-term cultural interests into account. If archives are to maintain and expand their customary cultural roles, they will have to find their ways to being players in this area. One starting point might be for archives and archivists to try to articulate the kinds of copyright regimes that make it possible for them to pursue their legitimate agendas — to imagine the contours of law that best serve the interests of education, cultural production and scholarly inquiry. Though it is probably true that the generational divide that currently exists regarding attitudes toward IP protection may result in a mellowing of attitudes on various sides of the "IP wars," this cannot be taken for granted, and archives are likely to gain much more by being proactive instead of reactive.

## **Other resources**

Balazs Bodo, at Budapest University of Technology's Center for Media Research and Education, has prepared a bibliography on copyright that contains numerous citations and links to a number of interesting academic papers, focusing especially on the economics and politics of copyright. It can be found at <http://www.warsystems.hu/?p=67>.



## CLUSTER FOUR

Cluster 4 focuses on the Internet, discussing theoretical and practical issues that it raises for moving image archives, and assesses the upside of online distribution for moving image archives. It concludes by discussing access innovations developed by regional moving image archives.

### **The internet as a distribution platform and new distribution paradigms it has introduced**

This section examines the emerging distribution platform for archives – the Internet – in some detail, and also discusses homevideo and other sell-through formats.

The notion of an archival "distribution platform" presupposes that distribution is a component of archival access. Though this may not have been considered true in earlier years, as distribution generally took place through non-archival entities, it has become a pertinent issue for the 21st century archive, and is being treated here as a natural and appropriate development.

Though archivists (especially those on the commercial end of the spectrum) closely track the emergence of new distribution platforms, few of these have turned out to directly benefit archives or the archival field. The multimedia explosion of the early-to-mid-1990s brought us CD-ROM, for example, which was highly touted in its time but may now be on its way to becoming a "dead medium."

The Internet, which occasionally shows signs of exhaustion but so far no indications of death, is one distribution platform that seems likely to affect, perhaps profoundly, access to archives in the 21st century. It is also possible that the Internet's emergence as a near-universal communications and distribution medium will affect other archival functions, notably preservation. We are already seeing pressure to digitize analog materials for access rather than first preserving them. This is a clear case of access trumping preservation, as we arguably have no consensus on standards and practices that may constitute digital preservation. Though this path is understandable and may make some sense for certain collections in the short term, preservation is a core mission of any entity that calls itself archival and must not be confused with access-oriented digitization.



## How the Internet is affecting archival access

There is no doubt that the Internet presents tremendously exciting prospects to archives and archivists. Rather than seeing it as inherently good or evil, it would probably be most productive to examine how moving image archives and the Internet currently interact and where their interaction is heading. This may help archivists find ways to articulate their interests in the face of rapidly changing technologies.

Some considerations regarding archival access that the Internet is moving to the center include:

— Digitization. Since the Internet provides a channel for sending and receiving born-digital or digitized information, there is pressure to digitize analog holdings. This pressure has an immediate impact on the fiscal state of many organizations, and may in some institutions upset an already uneasy balance between preservation and access programs. Digitization, though undeniably important, can also raise complex technical issues that not all archives are prepared to deal with. And since it is currently considerably easier and cheaper to digitize from video than from film, we are already seeing a skewed pattern wherein video collections are making it to the Web more quickly than film-based ones.

For many archives, funding digitization is the price of entry into the online world. Though textual and visual collections have found funding to embark upon discrete digital projects, this in general has not yet been true with moving image collections. It is therefore possible to speak of a "digitizing divide" that impacts many moving image archives. It is worth looking at the example of the library world, where commercial and proprietary issues currently complicate the picture. While funding for mass digitization of research library holdings is now materializing, the bulk of it comes from Google, who retains a high degree of control over the distribution and use of the digital surrogates. It would be unfortunate if mass digitization of moving image materials resulted in undue commercialization or a high degree of centralized control over digital copies. In sum, the promise of digitization needs to be weighed against the difficulties of funding it and the question of who is doing the digitizing and for what purpose.

Digitization, of course, can benefit archives even when they do not choose to place holdings online, and digital preservation (or preservation of analog objects using digital technology) is now an everyday activity. Digitization can also materially aid in making relatively inactive collections into revenue centers for archives and their owners. It is likely that archives holding massive digital collections will face great pressure to make them as accessible as they can without undue delay.

— Disintermediation. It is now common for users to interact directly with online collections, metadata or documentation without the intervention of an archivist. To some users (and some archivists), this is a welcome development; to others not. Many archivists worry that they will be considered redundant if most archival material becomes available online, and also fear that the quality of patrons' research will suffer if patrons do



not receive professional assistance. This may mean that certain collections where gatekeepers play a key role are unlikely to be presented online. It may also make for more difficult searches in cases where expert guidance helps to make sense of a complex collection. Also characteristic of today's climate is another form of disintermediation, in which members of the public now directly access records that in the past would largely be used primarily by intermediaries such as writers, media producers and scholars. Typically such intermediaries have been the ones who craft books, films, or television documentaries (all derivative works) from archival documents. Some archivists find the use of documents outside of what they consider coherent and contextualized works to be troubling.

— Duplication. Aside from oral tradition, the Internet is the first distribution channel that readily implies the possibility of uncontrolled duplication. This naturally carries both promising and frightening implications. While some archivists celebrate wide distribution of their collections, others deplore unauthorized duplication, even to the point of seeing it as a harbinger of the end of archives. The fear of "loss of control" is widespread. Interestingly, the positive aspects of duplicating archival records are rarely examined, though they have received much attention among librarians.

— Decontextualization. Description and contextualization of collections is a key component of classical archives practice. Frequently the entry point to a collection is through a finding aid written by a trained archivist, a collection-level inventory, or a database. Some archivists fear the consequences of making isolated and decontextualized segments of moving images or collections available to users, believing that they will circulate, perhaps for a long time, without the references and dependencies that historicize and anchor archival documents. There are also fears in some quarters that members of the public lack the mindset or qualifications to reuse archival material in appropriate contexts, and that such reuse should be restricted to "authorized" users who have demonstrated the ability to use material acceptably. In addition, when archival material is presented or "mashed up" without attribution, citation or differentiation from non-archival material, some feel that historical documents are being used inappropriately. This, of course, is not simply an Internet issue — archivists and historians have for years remarked that historical documentary films and television programs don't, as a rule, cite sources of images and sounds, and frequently use them in contexts that are historically inaccurate or misleading.

— Deattribution. Digital material that's downloaded from the Net has a way of turning up elsewhere online or in other formats devoid of attribution. For instance, films downloaded from the online Prelinger Archives collection at the Internet Archive quite often find their way onto YouTube or for sale as cheap DVDs on eBay without any indication of where they have come from, or bearing misleading indications of origin and provenance. Though this is perhaps less of an issue in a consumer environment where material is distributed for entertainment purposes, deattribution could create a potential quagmire in cases where provenance or the chain of integrity of historical records proved importance.



Most successful commercial online video sites are controlled by large corporations and are moving in the direction of exclusive content partnerships with networks and studios. It is quite likely that the ownership and content profiles of major online video sites will soon mirror the corporate taxonomy of the entertainment industry. This means that the quasi-archival functions fulfilled by online video sites today may be regarded as temporary. No corporation, not even a Google or a Disney, can be regarded as permanent, and quite often no one takes responsibility for maintaining corporate assets when ownership changes or companies disappear. The online sites that today function as near copyright-free zones are likely to tighten up their access and collections policies as they become more integrated into mainstream media. DRM (digital rights management) is becoming more pervasive as well, and it is well-established that electronic locks and keys are inconsistent with archival preservation and access. Interoperability between collections is a growing concern: the near-future scholar or mediamaker should be able to intermix materials from, say, YouTube, the BBC Creative Archive, the Library of Congress American Memory Project, and the Internet Archive, but it is not yet clear that this will be possible. The few active nonprofit repositories, such as the Internet Archive, have adopted many of the positive practices of offline libraries and archives, but are poorly capitalized and dropping behind in the race for content.



## Upside of archives going online

Along with these complex and ambiguous considerations, great advantages (not all of which we can anticipate at this point) undeniably await archives that choose to make holdings available online.

— Online availability of holdings allows archives to reach patrons directly without intermediaries. In cases where archival websites are well-known or well-publicized, such as the Library of Congress's American Memory Project, the number of users can reach billions. The Internet Archive hosts about 100,000 visitors per day, according to founder Brewster Kahle.

— Archives that make materials available online have the opportunity to experiment with providing different modes of access and different kinds of user experience. Examples of different access modes currently available from different online archives include:

- "Instant-play" Flash videos (YouTube)
- Freely downloadable and reusable video files (Internet Archive)
- Medium-to-low resolution time-coded video for editing, available at a charge (Getty Images)
- CD-quality music files either for consumer purchase or for reuse in production with customized license agreement (Magnatune.com)
- Raw footage, selected scenes, outtakes, and all audio for user re-editing (The Digital Tipping Point Project, *A Swarm of Angels*, *Open Road Trip* and others)<sup>8</sup>

(The choice of examples is not meant to imply that others do not offer similar access or similar materials).

— Many archival holdings are of greatest interest to small groups of users, who would be difficult or impossible to reach or service in an offline environment. The Internet excels at making specialized resources available to groups of people sharing non-mass interests.

— Online availability makes it possible for archives to monetize their collections through direct sales of products such as DVDs, videotapes or digital downloads of stock footage, either on their own or through intermediaries. Since most archives tend to hold considerable amounts of "long-tail" information — specialized content whose ratio of popularity to inventory is low — online sales or licensing to targeted groups can be an ideal way to reach potential markets. Bringing collections out into the open enhances their visibility and publicizes them, enhancing their sales potential. The Internet Archive case study (below) describes how online availability has increased revenue for Prelinger Archives.

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<sup>8</sup> At <http://www.archive.org/details.php?identifier=digitaltippingpoint>;  
<http://www.aswarmofangels.com/>; <http://openroadtrip.net/>



— By opening up collections to large numbers of potential patrons, online availability permits archives to redefine their relationships with users and the public. Institutions primarily focused towards local or regional constituencies can address national and international users, increasing their visibility and the visibility of the region they serve. At Prelinger Archives, we found that the existence of our online collection leapfrogged us into a quasi-collaborative relationship with those using the collection in education, exhibition and production. We found ourselves collaborating on projects and presentations with some of our online patrons and entered into an active dialogue with our users that is now in its seventh year.



## Other considerations

If we perceive archives to be part of a cultural and social framework, we should consider mirroring this framework in our archival activity. In the field of access, this may well mean incorporating social networking, communications capabilities and other conversational and participatory tools into our online efforts. The sensibility underlying this idea has been associated with the phrase "Web 2.0,"<sup>9</sup> but these tools are already entrenched beyond any notion of trendiness. Such highly successful quasi-archival web services as YouTube and Flickr already have social networking and messaging built into their core, and many online archival efforts currently in development plan to do the same. These services also support "folksonomies" — user-generated "tags" that are subject headings not vetted as part of a controlled vocabulary. I would propose that these tools and features, as well as others yet to be developed, may be integral to the experience of archival access. And since tool use seems increasingly generationalized, supporting emerging tools is a means of encouraging diversity of access by patrons of all ages.

Archival interoperability is a key issue that's too often ignored by system architects. An archivist would not consider providing a researcher with photocopies of textual records that could not be read and edited along with the researcher's other notes. Yet most online archives are not concerned with whether their downloadable material can be edited with material from other collections, and streaming video cannot be edited by users unless they breach terms of service and hack their way around limitations. Material is delivered in incompatible formats, at varying framerates, image sizes and resolutions. Ultimately, this is an openness issue; it is important that users can compare, contrast and concatenate material from any archives that have decided to make it freely available.

Though we may find ourselves ready to agree that online collections are a good idea whose time has come, we should be aware that we lack clear knowledge of who their constituencies may be, and even more important, who they may become. The social consensus that supports legacy archives and libraries is venerable and still in existence, even though it may be undergoing change. Online digital archives, and moving image archives for that matter, are still young. This argues, I believe, for openness — for a pluralistic, wide-ranging and receptive attitude towards a user base that we can't yet define — and for experimentation. In short, we should accept that there are limits to "futureproofing." We should not try to seek or to build long-term solutions before we understand the problems we are trying to address.

Another way of looking at this issue relates to our understanding of trends and transitions. In insecure times, it is tempting to structure plans for the future around our sense of the present. This might mean, for instance, that an institution might respond to the perceived threat of unauthorized usage by trying to deploy technological limitations on the use of its content, such as digital rights management (DRM). What this kind of response neglects to take into consideration is that we are living and working in a transitional period for archives. It doesn't necessarily behoove us to respond as if our

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<sup>9</sup> See the definition of "Web 2.0" at [http://en.wikipedia.org/wiki/Web\\_2.0](http://en.wikipedia.org/wiki/Web_2.0).



current experience is going to last a long time. This is especially true when it comes to archival access issues. Our audiences, digital technologies, the consensus on what constitutes fair use, copyright law, the funding picture, corporate players, web services — all are evolving with great speed. We should be careful not to eternalize the present if we don't want to eternalize it all over again in a few years.



## Regional and community-based archives

For 20 years many regional and community-based moving image archives and archival projects have exemplified archival work at its most inclusive and imaginative. While organized to serve specific regions and localities, they have also exerted great influence over the programs and directions of established, nationally-focused institutions, and they have had a permanent impact on the course and culture of American moving image archives. Innovation, in other words, has flowed from the periphery into the center, rather than the other way around. Their persistent localism confirms a link between collecting as a community-based activity and prioritizing access within the regions these collections serve. At present, over 100 regional archives appear to be in operation.<sup>10</sup>

The regional archives movement originated among state historical societies and library special collections focusing on specific geographical areas, but in the 1970s and 1980s spawned moving-image-specific collections such as Northeast Historic Film, which focused on material relating to Northern New England. NHF quickly undertook a number of projects that were innovative in their time (many still are), such as publishing a newsletter, organizing a membership program, starting up and maintaining a video loan service and sales operation, purchasing and renovating a theater, running an annual summer academic symposium, mounting a capital campaign for endowment and to construct a state-of-the-art conservation center which serves a consortium of nonprofit organizations.<sup>11</sup> Not all regional collections have been able to achieve what NHF has, but many have pursued their own paths to excellence.

In addition to the traditional modes of access that nationally-focused archives provide, regional archives excel at providing what we might call "retail" access to their collections. I use the term "retail" to describe community-centered or patron-centered access, as opposed to institutionally-focused access (such as print loans to other institutions or theatrical venues). Some, but not all of these forms of direct access include:

— Public screenings, especially in nontraditional or innovative situations.

Northeast Historic Film puts on outdoor screenings in its parking lot during the Maine summer, and early in their existence began taking moving images to senior citizen group residences and county fairs. These last two kinds of venues provided opportunities to gather stories and documentation relating to the events, locations and personalities featured in the material, and also furthered collection development, as owners of moving images (especially amateur films and home movies) became aware of NHF's existence and activities. Another innovative form of screening was initiated by the Florida Moving Image Archive at the Wolfson Center, Miami-Dade Public Library, in which buses equipped with video screens toured the Miami area, showing archival film and video

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<sup>10</sup> See Karan Sheldon and Karen Glynn, "Regional Moving Archives, United States," June 2006, at <http://www.oldfilm.org/nhfWeb/about/RegionalArchives.pdf>.

<sup>11</sup> A chronology of NHF's history can be found on their website, at <http://www.oldfilm.org/nhfWeb/about/ourHistory.htm>.



relating to the areas through which the buses were traveling. Rephotography of places always draws audiences and can be a provocative activity, and dynamic motion-based rephotography is of even greater interest.

In many communities regional archives may also be the only venue focused on the presentation of non-studio moving images. This has often meant that they become by default a venue for community gatherings and entertainment. In fact, NHF's Alamo Theater also shows entertainment feature films, a practice that has endeared them to their community.

— New audience development and, in Lucy Lippard's words, "the lure of the local." The South Side Home Movie Project (<http://southsidehomemovies.org/>) seeks to "create an alternative historical archive by preserving and exhibiting 8mm, Super8mm and 16mm home movies shot by South Side residents." Based at the Center for the Study of Race, Politics and Culture at the University of Chicago, the Project inspects films, interviews makers and subjects, and is building an online digital archive. The Project deals directly with community residents, negotiating with them for collections and bringing them back to the neighborhood for screening events.

— Special events. Regional archives have formed the backbone of Home Movie Day (<http://www.homemovieday.com/>) celebrations, a conspicuous and well-publicized example of community access to archival material. In 2006, there were 56 Home Movie Day screenings around the world, many of them at regional archives and regionally-oriented media arts centers and special collections libraries. This "worldwide celebration of amateur films and filmmaking," as their website puts it, functions as an archival intake process, as public education about preservation, and as a populist celebration of access to popular expression.

— Online access as part of regional or local educational initiatives. A number of regional archives are putting materials online primarily for use within the regions they serve, though they may be accessible outside.

Although they generally don't define themselves as regional archives, it would be remiss not to mention the role of microcinemas and informal screening venues in providing certain varieties of archival access on a local basis. Many individual collectors of archivally significant film and video screen it at local venues or even on their own premises. In San Francisco, there are several "outsider" screenings a year of unique film or video material that has historical or cultural significance. Activity of this kind flies beneath almost all archival radar, although regional archivists typically maintain relationships with collectors that may result in acquisition of their collections.

## Resources



## CLUSTER FIVE

Cluster 5 discusses a number of current online archives projects, and analyzes convergences and divergences of interest between nonprofit and public archives and commercial Internet companies. It also includes a case study of the Internet Archive's online moving image activities.

### **Slowly but surely, collections are finding their way online**

Though many would prefer that it happen more quickly, archival moving image collections are indeed finding their way online, and the move online is accelerating after a slow start. This section lists and describes a number of key initiatives that have brought archival material online in a significant way or had some effect on archival access. Because this is a tremendously dynamic area, the list makes no pretense of being complete.

— Library of Congress. LC's American Memory project began as a pilot program in 1990-94 and was formalized in 1994. It is still flourishing, although the pace of additions has slackened in recent years. American Memory describes itself as "a digital record of American history and creativity." It is a heavily curated, collections-based project consisting of some 100 historically and culturally significant collections containing over 9 million items, divided between textual, visual, audio and moving images. The moving image collections are all pre-1923 public domain materials for which physical elements are held by the Library. Both streamable and downloadable formats are offered, but the choice of formats reflects the repertoire of the 1990s: MPEG-1, QuickTime, and RealMedia. Extensive searchable metadata is provided through the site. In 2004, LC stated that American Memory handles 63 million transactions per month.<sup>12</sup>

— The Television Archive is a nonprofit organization based in the Presidio of San Francisco. Its primary programmatic activity is to collect a longitudinal sample of television programs from both U.S. and international broadcasters. Using a farm of satellite dishes to capture 20 channels 24x7, TVA collects programs in MPEG-2 format and holds them on removable hard disk drives. TVA began operations in spring 2001 and has since then captured over 1 million hours of video, together with closed-caption data when it exists. TVA is probably the largest collection of on-air television material in the world outside the intelligence community, and as such must be considered a significant cultural asset.

Because of copyright considerations, there is currently no access of any kind to this collection. On October 11, 2001, TVA built a publicly accessible online collection that consisted exclusively of news coverage of the 9/11 attacks and their aftermath as

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<sup>12</sup> Lamolinara, Guy, "The National Digital Library at 10." *Library of Congress Information Bulletin* 63 (No. 10, 2004), at <http://www.loc.gov/loc/lcib/0410/ndl.html>.



presented by 20 international broadcasters. This collection was greeted by intense public interest and was tolerated by the broadcasters themselves. It was taken down due to a restructuring of data centers but is now being prepared for availability once again. It is hoped that the very fact of its existence will help to bring about greater accessibility, but this is likely to take time.

— Google Video launched in January, 2005 as a searchable index, primarily to the contents of local television programs in Silicon Valley. At that time it featured frame grabs plus text harvested from the closed-caption feed. It soon spawned backlash from local broadcasters and was taken down. In early 2006, Google Video relaunched with great fanfare as a site that featured viewer-generated content plus proprietary programming segments from TV networks and other content providers. A number of stock footage companies, including Getty Images and Thought Equity, signed confidential deals with Google to host reference-quality copies of portions of their stock libraries. Google Video also entered into discussions with many archives, universities and holders of archival video, but these discussions all took place under nondisclosure agreements and it is difficult to summarize them. Press reports indicate that Google generally offers content partners a 70% split of net income, which may be gained either from contextual advertising or sales of downloadable clips.

During 2006, Google received considerable publicity from an announcement of a partnership with the U.S. National Archives and Records Administration to digitize and host its moving image collections. As it happened, this partnership simply involved purchasing video copies of 101 classic U.S. government films held at NARA and getting them commercially digitized; it appears not to have proceeded further. Throughout 2006 the service became involved in business disputes with several entertainment companies, and appeared to be falling short of the hopes people had for it, until fall 2006, when Google announced its acquisition of YouTube (see below). Though events may prove predictions wrong, it now appears that Google's main video activities are focused around YouTube. However, Google Video continues to offer streaming and downloadable video files in a number of formats.

— YouTube launched in December 2005, and ten months later was acquired by Google for a reported \$1.65 billion. With YouTube, Internet video hosting and delivery became a mass medium for the first time. Eschewing downloading and high quality in favor of low-resolution Flash videos, YouTube quickly became the world's preeminent online video source, with estimated holdings of 7 million videos by the end of 2006.<sup>13</sup> YouTube did many things right. Since its Flash videos played through a standard web browser, its users didn't have to download and maintain a client player. There was little wait for a video to begin. The service encouraged users, especially bloggers, to embed its videos within other websites, so quickly gained traction.

YouTube challenged the entertainment industry and quickly was seen as a rival. It policed uploads very loosely and quickly became known as a place where viewers

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<sup>13</sup> Unofficial estimate from confidential source, January 2007.



could find segments of their favorite programs, ranging from Monty Python sketches to last night's *Colbert Report*. We may speculate that this sense of entitlement regarding access to copyrighted material arose partly because users felt they might be entitled to receiving something in exchange for the user-created videos they and others were uploading. Pressured by the industry, it began to negotiate licensing (and advertising revenue-sharing) agreements with rightsholders. In February 2007, Viacom, one of the world's largest media companies, sent YouTube a DMCA takedown notice for an estimated 300,000 clips and quickly signed a distribution deal with Joost, a new Internet video service that has not yet launched publicly at the time of this writing. Joost is reported to use peer-to-peer technology to replicate the traditional TV-watching experience over the Internet. It isn't yet clear whether YouTube (and its parent Google) will prevail in delivering video in the face of extreme resistance from the entertainment industry, but it has recently been reported that YouTube has signed deals with over one thousand small content providers and on the point of signing with the BBC to distribute program segments from their library.<sup>14</sup>

YouTube's emergence raises extraordinarily important issues for archives and archival access. As I posted to AMIA-L on October 19, 2006:

So, just to get it out of the way, there's absolutely no question that YouTube isn't an archive.

On the other hand, YouTube challenges existing moving image archives as they have never before been challenged. It would be worthwhile for us to think about it, what it does, how the public uses it, and how we might take the point and look inward at our own culture and behavior.

YouTube is a giant video hosting service, just sold to Google. Rumor has it that they hold somewhere between 1 and 1.5 million video objects, all less than 10:58 in duration. As many of you know, it ranks high on usability -- no complicated players and software, no downloads, no registration. You simply search for the video you want, and it starts playing. It presents visually degraded videos, so it doesn't really seem like you are stealing from copyright holders, as you are in permanent preview mode. So far, most rightsholders in fact seem to have winked and turned the other cheek, because they know that YouTube functions as a promotional vehicle for their properties and franchises.

You can easily paste a YouTube screen into your own website or blog and essentially possess the video as part of your own page. This is wonderful for people making political webpages, as they can include video from candidates they support or disdain. For the first time, it is easy to "quote"

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<sup>14</sup> Helft, Miguel. "Google Courts Small YouTube Deals, and Very Soon, a Larger One." *New York Times*, March 2, 2007 at <http://www.nytimes.com/2007/03/02/technology/02google.html>.



video, and TV clips can be used in the context of making broadcasters accountable for their coverage. This is new, and I think an important positive indicator for civic discussion.

Everything seems to be on YouTube. You can see video of Malcolm X's complete speeches, most of Monty Python (conveniently segmented into individual skits and sketches), yesterday's local news, hundreds of thousands of commercials, and almost 100 videos that boast of using material from Prelinger Archives (there are an uncountable number of others that don't, and that's their prerogative). It seems complete, or basks in a sense of completeness. People regard it as complete, and they have contributed many unauthorized (and legal) uploads to make it even more so. This sense of completeness is one of the reasons I imagine Google bought the company.

Best of all, it allows users to upload almost anything and annotate preexisting videos. It is not a full-fledged social network, but it allows people to be gregarious and convene around videos they like or want to point attention to. You can participate, and you don't have to be content with metadata that was made before you were born.

I could go on, but here's the point: YouTube has fashioned itself into the world's default media archive. As I said, it isn't an archive, but people think it is, and this means that all of us become less-than-an-archive in the public mind. Everything anyone does to bring archives online is now going to be measured against YouTube's ambiguous legacy.

Some of us will immediately jump on the YouTube bandwagon; some already have. But I have a hunch that we're all going to have to collaborate in some manner. It seems to me that this resembles the advent of homevideo. Some archives protested, but ultimately just about everyone started to make materials available on tape/disc/DVD. Now DVD is the primary means of public access to materials held in archival institutions. It's too bad that archives have to rely on a flawed and inefficient commercial distribution system to get works out to audiences, but that's the breaks.

We may choose not to play in this sandbox. It is possible that the YouTube way will prove so objectionable to archives and gatekeepers that there will be a reaction against online video distribution in all its forms. I'd understand that. The problem is that audiences are much more sophisticated now than they used to be, and they expect archives and archival materials to be accessible. Retrenchment will equal obscurity.

Alternatives between hiding in the vaults and going with GooTube? Well, there are more publicly-minded entities out there, like the Internet Archive



(where I work), which might perhaps morph into the PBS of online video sites. There are also walled gardens, like the British online cinema studies site. ARTstor might spin off a FILMstor (if so, I hope it will be accessible to the public and to secondary-school students). Alternatively, archives might leverage mass digital distribution systems already in existence and use them to their own ends. Of course, we already have the Internet, and it is proving difficult to "use it" as we please.

We need to be talking about this ourselves so that we can find the best way to expose our holdings to the public. Active discussions on similar issues abound in the music world (see pho at <http://www.onehouse.com/pho.htm>) and in the library world. It would be a pity if powerful externalities limited the freedom of archives to craft our own destiny.

These issues remain. To summarize: YouTube leapfrogged ahead of many efforts to forge consensus on what constituted best practices for online access to archival moving images. Rightly or wrongly, almost any future archival initiatives in this area are likely to appear disappointing by comparison (although at least they may deliver higher-quality video). After YouTube, archives are relegated to playing catch-up. Additionally, it would be wrong to think that YouTube will be the last disruptive innovation of this kind. Others will arise to challenge the archival world.

A number of significant nonprofit and public initiatives are in varying stages of progress. Brief summaries of key projects follow:

— The MIC (Moving Image Collections) project, at <http://mic.imtc.gatech.edu/>, is a broad-based initiative to build two databases, a Union Catalog and an Archives Directory, both of which are searchable through a variety of portals. The Catalog presents detailed information (308,000 records) on the holdings of 14 participating archives, while the Directory contains entries on 232 institutions and descriptions of their holdings. MIC presently receives some 4,000 hits per day, and has been visited 4.3 million times (statistics as of March 1, 2007).

MIC is at present a source for metadata, but does not hold digital moving images on its own. It can, however, link directly to online digital files. In the event that this becomes widespread, it is likely that MIC will become a significant gateway to online digital collections and perhaps a provider of enhanced search and indexing services.

— The British Film Institute operates Screenonline (<http://www.screenonline.org.uk>), a collection of educational resources relating to moving images, which contains a significant collection of richly contextualized digitized moving images available to the UK educational community by license. A BFI-led consortium has also recently received funding from JISC (Joint Information Systems Committee) for a new online initiative entitled "Voices: Moving images in the public



sphere"

([http://www.jisc.ac.uk/whatwedo/programmes/programme\\_digitisation/voices.aspx](http://www.jisc.ac.uk/whatwedo/programmes/programme_digitisation/voices.aspx)). *Voices* plans to digitize and deliver 600 hours of moving images, plus contextual documents to the education sector and the UK public, in an intensely curated format. Its focus will be on how key social, political and economic issues have been represented, illustrated, expressed and debated through moving image media forms. The material will come from BFI, The UK National Archives at Kew; the Parliamentary Recording Unit; the BBC; ITN; Open Media; Northern Region Film & Television Archive; South West Film and Television Archive; the Media Archive for Central England and the East Anglian Film Archive.

— Folkstreams.net, directed by filmmaker Tom Davenport, describes itself as "a national preserve of hard-to-find documentary films about American folk or roots cultures," and an attempt "to give them renewed life by streaming them on the Internet." At present the online collection comprises 78 films, presented in RealMedia and QuickTime formats. The website contains substantial contextualization for the films, including interviews, transcripts and other documents. It is a streaming-only collection, but contains links that refer viewers to sources for purchasing video copies and licensing stock footage if desired. Folkstreams is well worth the attention of archivists, and time will tell whether it can successfully generate value for filmmakers and archives through its referral services.

— British Pathé (<http://www.britishpathe.com>) placed digital surrogates online beginning in 2002. The entire newsreel and short subjects collection, totalling 3,500 hours, was digitized at a cost of £50 million. Funded by the UK National Lottery New Opportunities Fund Program, the site offers free downloads with watermarks in very low-resolution, and sells higher-resolution downloads for web or presentation use online. Offline use still must be licensed through their stock footage representative. This site has generated much publicity and traffic, but initially raised questions because of the expenditure of public funds for digitization when there was reason to believe that digitization would largely serve a commercial interest.

— BBC is involved in a number of online archival access projects. One, which has unfortunately not received the attention it deserves, is the mounting of an experimental prototype public interface for their Programme Catalogue (<http://open.bbc.co.uk/catalogue/infax>). Members of the public can now search 75 years of programming (almost 1 million separate programs), over 500,000 subject categories and 1.24 million contributors' names. Though BBC emphasizes that the programs themselves are not available, this is an exciting experiment in open metadata.

BBC's Creative Archive initiative (<http://creativearchive.bbc.co.uk/>), though it is quite early in its development, poses perhaps the most interesting paradigmatic issues for archives and online access. The Creative Archive was conceived, among other reasons, to offer the British public additional benefits for their compulsory television receiving set license fee, which benefits the BBC. The notion is to offer a vetted selection of BBC archival clips to the public and to educational users for viewing and repurposing under a



permissive license very similar to Creative Commons licenses. The initial selection consisted of 500 clips, full programmes, audio tracks and images, and other clips have been added from BFI, Channel 4, the Open University and other repositories. After the project finished its trial phase, it was withdrawn pending a public value test by the BBC Governors, and it is not yet clear what its future may be.

The philosophy behind the Creative Archive project is that content produced with public funds should be made available to the public to the maximum extent possible. This simple thought is, of course, very difficult to execute, as much BBC content is encumbered by rights and clearance issues. Even footage of non-union animals requires residual payments to cinematographers and sound people for reuse, and the Creative Archive actually had to clear all of its offerings in a laborious and costly process. In the future, it may be easier to look forward than backwards, and we may express the hope that current and future BBC productions are fully cleared for open access. The project ran into resistance from some of BBC's TV industry competitors, including ITN, who worried that aggressive BBC digitization, funded publicly, would give BBC's sales division (BBC Motion Gallery) an unfair advantage in the stock footage market.<sup>15</sup>

A number of interesting derivative works were made by members of the public and sent to BBC, and BBC also sponsored competitive Creative Archive residencies with artists who were given near-unrestricted access to BBC collections. The project has also inspired or informed similar initiatives in the works at WGBH and elsewhere. Cory Doctorow's statement to the UK Department of Culture, Media and Sport in support of the BBC Creative Archive, drafted on behalf of the Electronic Frontier Foundation, describes the potential of this project for British culture and society.<sup>16</sup>

Several other international efforts are worthy of mention (and many others are omitted from this discussion for reasons of space). VideoActive (<http://videoactive.wordpress.com/the-consortium/>) is a consortium of 11 European broadcast and national archives, universities and technologists organized to create access to European audiovisual collections for academic and educational purposes. INA (Institut National de l'Audiovisuel), the French national audiovisual archives, launched Inamedia.com in spring 2006, putting a reported 150,000 hours of television and radio online. Films From the Home Front (<http://www.movinghistory.ac.uk/homefront/>) is a recently-launched project of 7 U.K. regional archives, showcasing significant films of homefront life in Britain during World War II. The collaboration between regional institutions is an exciting development. Moving History, launched in 2003, by the AHRB Center for Film and Television Studies and the 12 public sector moving image archives in

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<sup>15</sup> See United Kingdom, House of Lords, Select Committee on BBC Charter Review, Minutes of Evidence, Memorandum by ITN, at <http://www.publications.parliament.uk/pa/ld200506/ldselect/ldbbr/50/5070602.htm>.

<sup>16</sup> Cory Doctorow, written testimony on behalf of the Electronic Frontier Foundation to Select Committee on Culture, Media and Sport, September 11, 2004, at [http://www.eff.org/IP/BBC\\_CMSC\\_testimony.php](http://www.eff.org/IP/BBC_CMSC_testimony.php).



the U.K., is an in-depth guide to their holdings and a jumping-off point for access. It includes about 100 archival clips.<sup>17</sup>

Many other online video services are oriented towards user-generated content. The list below is incomplete, but provided to show the number of (mostly commercial) entrants into this dynamic field. Some of them will be remarkable for their relatively short lifespans.

video.yahoo.com, blinkx.com, streamick.com, getdemocracy.com, grouper.com, ifilm.com, veoh.com, revver.com, television.aol.com/in2tv,channelchooser.com, chooseandwatch.com, live-online-tv.com, channelking.com, singingfish.com, cbc.ca/video, shozu.com, stickam.com, peekvid.com, flurl.com, metacafe.com, videojug.com, geotiser.com, blip.tv,videoegg.com, dailymotion.com, jumpcut.com, eyespot.com, fliqz.com, guba.com, openvlog.com, clipshack.com, motionbox.com, eefoof.com, myspace.com, vimeo.com, gofish.com, homemovie.com

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<sup>17</sup> Gray, Frank and Sheppard, Elaine. "Moving History: Promoting Moving Image Archive Collections in an Emerging Digital Age." *The Moving Image* 4 (No. 2, Fall 2004), 110-118.



## Case study: Internet Archive

Internet Archive (IA), a nonprofit organization based in the Presidio of San Francisco, seeks to "build an Internet library, with the purpose of offering permanent access for researchers, historians, and scholars to historical collections that exist in digital format."<sup>18</sup> Its public collections include some 80 billion webpages, 122,863 audio recordings, approximately 186,000 texts and a large collection of obsolete computer software. IA's moving images collection went live on December 29, 2000 with some 270 downloadable files and now holds some 229,000 moving image objects organized in 63 distinct collections. Brewster Kahle, IA's founder, indicates that IA serves some 150,000 users daily.

IA's first publicly available collection consisted of some 270 films from Prelinger Archives, later expanded to 1001 and ultimately to 1965 items. The collection was digitized both in-house and by outside contractors using off-the-shelf software and hardware running on PCs. The IA paid the costs of digitizing the Prelinger collection, but since then has generally partnered with other entities to cover digitization costs. As video digitization has become an easier and cheaper proposition, the barriers to digitizing small collections appear to have largely melted away; these collections are generally digitized by their owners or donors. Digitizing larger collections, especially if they are large film or analog video collections, is a more difficult proposition. There are a number of significant collections that would be visible today on the IA if funds could be found to support their digitization.

IA's media collections are under the jurisdiction of a Director of Collections, whose staff includes a collections program manager, a project leader and a software engineer. This small staff receives engineering and administrative support from other IA staff, who also maintain the website and IA's huge data repositories. Much of the curation, uploading and metadata entry is handled by volunteer curators. IA's users form a vocal and active community. There are forums for each collection, which host discussions of varying depth, and users have posted many thousands of reviews and annotations.

Unlike most online collections, IA does not restrict online access to streaming media files. Rather, it prefers to supply downloadable and, quite often, reusable material under Creative Commons licenses, and encourages its users to pick the most permissive licenses that they can countenance. Over 7 million copies of Prelinger films, for example, have been downloaded since early 2001. These films are unrestricted as far as reuse (a handful of restrictions originally levied on the films were dropped in 2003) and I estimate that some 80,000 derivative works have been produced using footage drawn from them. The primary "digital master" format IA holds is MPEG-2, which it selected because it was a consortially developed format rather than the property of a single company, and because of its compatibility with worldwide satellite television. Though MPEG-2 is showing its age and is no longer as efficient as more recently emerging

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<sup>18</sup> Internet Archive website, at <http://www.archive.org/about/about.php>



formats such as H.264, it is still relatively high quality and can easily be converted to editable digital video formats such as DV or MPEG-4. Other formats are, of course, held, depending on what contributors have uploaded.

A key attribute of IA's services is that IA welcomes others relying on it as a backend provider of video hosting. If, for instance, a content owner wishes to upload material to the Internet Archive, they may then build their own webpage or website that deeplinks into the IA's collections to retrieve the material. In other words, they can shift the expense of hosting and bandwidth to IA, who actually delivers the video or other rich media content, while appearing themselves to be the host of the material. Considerable deeplinking into IA's media collections exists; IA doesn't even know how much traffic this generates, as deeplinking currently bypasses IA's download counters.

Partnership with IA proved to be a rewarding and lucrative experience for Prelinger Archives. Though it was unclear at the start of the partnership what it would mean to provide the same stock footage for free online and for license fees through Getty Images, it turned out that free online availability spurred increased sales. After the films were made available for free downloading and reuse, stock footage users (including many new customers) continued to license footage through Getty, though they often used the Internet Archive free site to pursue their research. Between 2001 and late 2006, stock footage revenue to Prelinger increased by 85%. Not all of this rise can be attributed to the Internet Archive, but IA has certainly played a role.

In effect, IA and Prelinger collaborated to craft a two-tier strategy for their shared collection. On the free tier, users were on their own; they could roam freely in the online collection and download as they pleased, but received no research services and could not receive physical elements, such as videotape or digital files on disk. Use of the materials they downloaded was covered by a Creative Commons Public Domain license, but IA declined to furnish any other statements regarding rights to the footage. In the event that users wished to have the use of a physical element for editing (or for the best quality), or if they wished to secure a license agreement with their names at the top and the usual representations, warranties and indemnifications, they were directed to Getty Images, who furnished these value-added services for a fee. Getty also performed enhanced research services and secured other clearances, such as talent releases, if needed. After several years, Getty began to refer their own clients to the Internet Archive for viewing and research purposes. This two-tier strategy has been successful for both partners, and they believe that it has similar implications for other archives who wish to offer material online while retaining the capability to earn revenue through licensing.

In sum, the IA is a pioneering collection that seeks to collect born-digital and digitized materials in great volume. It provides a set of tools to make these collections accessible, but these tools are often in an early stage of development. Its tools and user interfaces are designed by programmers rather than user-interface specialists, and can be difficult to use. These issues are under continual discussion and debate, both within the IA and between the IA and its users. It might be most reasonable to characterize its significance in the example that it sets for the Internet community and for online libraries



and archives: it stands for unrestricted public access to its collections without charge to the maximum extent possible within the law, and it is free of advertising and commercialism.

The Internet Archive's future as a collector and distributor of rich media is unlikely to be decided by the Internet Archive alone. Although hardly anyone else was distributing downloadable digital video files in the early 2000s, this is now a crowded space and the IA finds itself competing with other services, many of them for-profit, for attention and funding. Perhaps IA will reconceive itself as a sort of "PBS" for online video, or perhaps it will become less important as a repository.



## Lessons to be learned

What's to be learned from a review of these online projects and business ventures? Quite a number of questions arise.

*What's in it for archives?*

At best, quite a lot, as we have said above. A partnership with an external online entity can help an archives distribute material without its having to invest in software development, infrastructure, bandwidth and hosting. It can provide a ready-made context for archival material at little or no incremental cost, and aggregate holdings from a number of collections in such a way that togetherness equals higher visibility and profile. It can permit search of metadata (and, in the future, of audiovisual material itself) in ways that an archive might not itself be able to offer.

*Can commercial services offer archives distribution solutions that are consistent with archives' mission and appropriate to their culture?*

This is very much an open question. So far, it appears that no commercial service has built its offerings around the needs of archives. This resembles the situation with video and digital recording, editing and storage equipment and media, whose manufacturers take little notice of archives' special needs because of the small size of the market. There is a history of commercial stock footage companies acting as sales representatives for nonprofit and public archives. In some cases this has worked to the advantage of all parties, in other cases not. If there are to be productive win-win partnerships between archives and commercial services, it will require flexibility and a keen sense on the part of archives as to what they desire from such arrangements.

*Are confidentiality agreements and exclusive contracts appropriate for public and nonprofit collections?*

At present, commercial websearch companies are entering into discussion with archives with the objective of hosting their holdings and providing certain value-added services like hosting and segment sales. Because the Internet sector is extremely competitive and fast-moving, a culture of confidentiality has arisen and now dominates business discussions and alliances. An archivist or librarian must now sign a nondisclosure agreement (NDA) simply in order to pursue discussions with many Internet or technology companies. Most of these agreements prevent the archivist from comparing notes with other professional colleagues or from sharing information of interest to the field, as has long been the tradition. They also tend to inhibit or prevent public disclosure of information that is properly in the public interest, especially when publicly owned or publicly supported collections are the subject of discussion. At the current time (early 2007), for instance, many research librarians who might otherwise be actively participating in discussions regarding Google Book Search and its effects upon libraries and institutions are unable to do so because they have signed NDAs. This situation



renders it difficult for archivists to come to informed decisions on what may be crucially important matters for their archives.

Although many contracts between archives and commercial services are nonexclusive, others may potentially lock access to archival holdings in one or more media into exclusive relationships for some period of time. Without a keen sense of the potential benefits and costs of a specific partnership, it is difficult to argue that exclusive contracts serve the interest of public and nonprofit collections.

Collaboration between noncommercial archives to develop best practices governing partnerships between archives and commercial services is long overdue, and it should not be held hostage to nondisclosure agreements.

*Are there long-term common interests shared by archives and commercial services?*

It seems that this may be so. Commercial services can be appropriate vehicles for licensing "long-tail" content, something most archives have in abundance and might love to monetize. In an ideal world, commercial and noncommercial entities would collaborate openly and transparently on vexing issues such as data storage longevity, media management and metadata standards, to name a few. Nonprofit organizations have certain legal flexibilities that for-profit corporations may not, such as the ability to make archival preservation copies of materials that are under copyright. Nonprofits also partake of a tradition of longevity that is not often characteristic of commercial enterprises, and may be the most appropriate kinds of repositories for long-term information retention. All of these issues argue for public/private, for-profit/nonprofit partnerships, as each does certain things better than the other.

*Do qualitative factors, such as user experience and the degree of historical or cultural contextualization, play a decisive role in the online archives experience?*

Though many educators, scholars and archivists might immediately answer yes to this question, the answer is not obvious. Some well-designed and well-contextualized online collections may see little traffic. Other collections that are not particularly well-designed and contain little or no contextual information or metadata are deluged with users; examples might be the sparse, flat directories at the Internet Archive and YouTube. The point here is to suggest that the attributes by which we define a successful online archives effort are not yet completely clear. It may be that factors like editability and social-networking capabilities may outrank archival description and cultural contextualization when it comes to measuring quality of user experience.



## Resources

Anderson, Chris. "The Long Tail." *Wired* 12.10, October 2004, at <http://www.wired.com/wired/archive/12.10/tail.html>

"The Long Tail" at Wikipedia: [http://en.wikipedia.org/wiki/Long\\_tail](http://en.wikipedia.org/wiki/Long_tail)

American Memory at the Library of Congress: <http://memory.loc.gov/ammem/index.html>

Internet Archive, "Why the Archive is Building an 'Internet Library,'" at <http://www.archive.org/about/about.php>

