

Why Academic Libraries Hate Netflix:
Digital Copyright and the Challenge of Acquiring and Providing On-Demand Streaming Media
for Classroom Use

by

Michelle Krause

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Introduction

This thesis explores the use of streaming media in the classroom, a technological format that has become the standard for viewing video, while simultaneously analyzing the challenges university libraries face regarding acquiring streaming media. In the past five years, the availability of streaming media has expanded dramatically, both in libraries and on the internet; as a result, student interest regarding streaming video has also increased. For example, many universities have started to acquire streaming media to their audiovisual collections since incorporating streaming video into educational programs has obvious advantages, such as 24/7 access and unlimited use. Unfortunately, due to copyright law, the process of acquiring streaming media for university library collections and providing access to the material for classroom educational use is unnecessarily difficult; however, since commercial streaming services provide their members access to on-demand streaming media, the question arises regarding the legality of utilizing personal accounts in the classroom.

Chapter 1: Library Video Acquisitions and the Digital Age: Changing Technology

In the 1980s, when the home video market expanded, libraries began acquiring and collecting audiovisual materials; this practice became a necessary, fundamental, and permanent development system for libraries in the 1990s.¹ As a part of society's cultural heritage, audiovisual materials provide significant and valuable information to patrons, information that possibly cannot be obtained through the utilization or study of other sources. As a result, the increase in popularity and demand of these materials by patrons propelled the advancement of video collections in academic, public and school libraries. In addition, due to the many positives that resulted from the use of implementing moving images in the classroom as an instructional tool, such as "effective improvement in students' cognitive capacities for learning,"² the use of video in teaching and learning increased, gradually becoming a standard within the average school's curriculum.

In 2004, a study was published by Jane Johnson Otto, the Media and Music Metadata Librarian at Rutgers University which specifically analyzed the use of moving images by faculty in teaching and learning and their understanding of the academic library's position in said use. Otto determined that moving images play a vital role in higher education, especially as a tool to generate discussion and increase understanding among students. "We live in a media-centric culture where video creation and consumption are increasing at dramatic rates, and moving images are playing an ever-expanding role in teaching and learning."³ However, the act of integrating moving images into the classroom is dependent upon library reserves. For instance,

¹ James C. Scholtz, *Video Acquisitions and Cataloging: A Handbook*. Westport, CT: Greenwood Press, 1995, 1.

² Jonah Bossewitsch and Michael D. Preston, "Teaching and Learning with Video Annotations." *Learning Through Digital Media: Experiments in Technology and Pedagogy* (blog), March 8, 2011. Accessed October 1, 2015. <http://learningthroughdigitalmedia.net/teaching-and-learning-with-video-annotations>.

³ Jane Johnson Otto, "University Faculty Describe Their Use of Moving Images in Teaching and Learning and Their Perceptions of the Library's Role in That Use." 2014. MS Cr112-399, Rutgers, The State University of New Jersey. Accessed December 10, 2015. <https://rucore.libraries.rutgers.edu/rutgers-lib/39038/>.

due to copyright law, instructors are only permitted to access copies of audiovisual materials that the institution physically owns or has access to (i.e., license). Furthermore, this places a limit on the quality and quantity of video materials that instructors can select and show in the classroom due to the challenges librarians encounter regarding acquiring, collecting and managing audiovisual collections.

Technology is rapidly changing, thus, libraries are forced to regularly update and maintain their media reserves and collection formats. As libraries undergo changes and challenges, faculty must also face complications regarding access to new material. Moving images are a necessity in the classroom, but, unfortunately, it can be difficult for instructors to identify and access the video resources they require due to insufficient library resources. For example, “Faculty need assistance to find streaming content, to understand the associated intellectual property rights, and to navigate complex issues of technology, infrastructure, and video delivery, for both classroom and courseware.”⁴ Unless addressed, these problems concerning access will only continue, especially as technology and digital formats continue to evolve. Most importantly, close communication between faculty, students and the library regarding collections, tools, and services should take place to ensure complete understanding of library resources.

In an academic library, the role of the media librarian is to acquire and provide audiovisual materials to patrons as well as access to said materials. An important aspect of the acquisition process is to comprehend the broad array of physical formats available in regards to video and to determine which format is best for the library. “A book, regardless of size,

⁴ Ibid.

language, binding, type of paper, or subject is still largely recognizable with print materials”⁵ (and can be preserved for thousands of years in the proper environment). On the other hand, accessibility of audiovisual materials is entirely dependent on playback equipment; therefore, obsolescence is of utmost concern to the librarian. For example, companies stopped manufacturing playback equipment for U-matic tapes in the 1990s and for Betamax tapes in 2002.⁶ Of course, playback equipment is still available to purchase (i.e., eBay or other third party outlets), however, only a handful of companies rebuild the video heads for 3/4” machines (without video heads, the format cannot be played).⁷ In addition, manufacturer JVC stopped producing VCRs in 2008 and at the beginning of July 2015, the company announced they would cease production of VHS tapes.⁸ Currently, the only physical video format available for library acquisition is the DVD, since manufacturers are still producing the format as well as playback equipment.

How can the library provide access to audiovisual materials if it does not contain the necessary playback equipment? Since physical formats are constantly changing and evolving as technology shifts, (3/4” U-matic, Betamax, VHS, DVD, on-demand streaming), ultimately, in order to provide patrons access to content, the library would need to acquire previously owned titles, but in new formats. Unfortunately, the majority of operating libraries function under a strict budget, thus they cannot afford to continuously purchase previously owned materials. In addition, librarians can become conflicted between satisfying faculty and student expectations

⁵ Mary S. Laskowski, *Guide to Video Acquisitions in Libraries: Issues and Best Practices*. Chicago, IL: ALCTS Publishing, 2011, 6.

⁶ Mike Casey, *Indiana University Bloomington: Media Preservation Survey*. Report. Edited by Alan Burdette. Compiled by Patrick Feaster. Bloomington: Indiana University Bloomington, 2009. Accessed December 1, 2015. http://www.indiana.edu/~medpres/documents/iub_media_preservation_survey_FINALwww.pdf, 56.

⁷ Ibid.

⁸ Monique Marczyinke, "VHS Cassettes – The End of a Success Story." *MAGIX Magazine* (blog), August 21, 2015. Accessed December 20, 2015. <http://magazine.magix.com/en/end-vhs-cassette/>.

and developing appropriate collection management policies (i.e. how to acquire and maintain current video materials).

Recently, there has been a fundamental shift regarding the nature of acquisition and collection management of audiovisual materials in academic libraries. Physical media is being pushed aside in favor of on-demand streaming video, a favorable format by patrons due to commercial services such as Netflix, iTunes and Amazon Video. In order to comply with patron demand, academic libraries have been re-accessing the value of acquiring physical content simultaneously introducing streaming video collections into circulation. Most importantly, as technology continues to rapidly develop and change, future content a library wishes to obtain may only be available via digital outlets. "As we progress into increasingly web-based delivery systems, streaming may become the only way to acquire content relevant to curricula."⁹

Eventually, DVDs will be the next format at risk of obsolescence. In 2014, a study was conducted by PwC (PricewaterhouseCoopers) which indicated that in the future consumers will stream or download video instead of purchasing DVDs. "The study projects that electronic home video revenue will exceed that of physical home video in 2016. Meanwhile, DVDs are looking increasingly imperiled, with PwC estimating that physical home entertainment revenue will fall more than 28% from \$12.2 billion last year to \$8.7 billion in 2018."¹⁰ As we continue to expand further into the digital age, physical media will only continue to become obsolete, making it a necessity to acquire and collect material digitally.

⁹ Tony Bremholm, Lisa Hooper, Sally Krash, and Josh Lupkin, *Streaming Media Collections: General Guideline for the Selection & Acquisition of Streaming Media for Tulane Libraries*. Report. New Orleans: Howard-Tilton Memorial Library, Tulane University, 2014. Accessed December 15, 2015. https://library.tulane.edu/sites/library.tulane.edu/files/documents/CollectionDev_StreamingMediaGuidelines_2015_02.pdf, 3.

¹⁰ Brent Lang, "Digital Home Entertainment to Exceed Physical by 2016, Study Finds." *Variety*, June 3, 2014. Accessed December 15, 2015. <http://variety.com/2014/digital/news/digital-home-entertainment-to-exceed-physical-by-2016-study-finds-1201207708/>.

Streaming Media

Streaming media can be defined as video or audio digitally delivered to a computer or mobile device via the internet¹¹ (the user plays the video data as it is received, as opposed to completely downloading the data before viewing). “Streaming media” was first recognized in 1922 when George O. Squier was awarded a patent for efficiently utilizing signals over wires (this was the “first successful attempt to multicast media, i.e., transmit a signal over a cable to several receivers).”¹² In the 1920s, broadcast media was in the developmental stage, concurrently granting Squier the opportunity to identify the need to simplify the process; however, this technology remained virtually unchanged until the 1990s. In 1992, an experimental network called Mbone, was developed that allowed data to be streamed from one server to several receivers simultaneously.¹³ The invention of computers, particularly personal computers, significantly affected the development of streaming since computers had the software and hardware necessary to play audio and video, i.e., digital streaming. At the dawn of the 21st century, modern society was first introduced to this format, and by the late 2000s, streaming video had completely consumed physical formats.

In today’s digital age, streaming has become the dominant form of delivery for video, books, and music due to the unlimited access opportunities streaming presents. For example, with streaming media, two, one hundred or even one thousand users can access the same file simultaneously via separate platforms, a feat impossible with physical formats. Most importantly, a streaming file can be accessed instantaneously from any location as well as an infinite amount of times, assuming there is an Internet connection. Unlike the limitations presented by physical media, streaming allows convenience, flexibility and unlimited access,

¹¹ Julian Bucknall, "The History of Streaming Media," *PCPlus*, August 324, 2012: 72.

¹² *Ibid.*

¹³ *Ibid.*

ultimately proving it to be the best method regarding viewing video.

Since streaming media is a growing aspect of everyday life, many academic libraries have integrated this format into circulation simultaneously enhancing the curriculum and educational opportunities for students and faculty. Acquiring streaming media collections in academic libraries offers countless pedagogical advantages for future users, specifically in terms of convenience and accessibility. Incorporating streaming media into the curriculum also increases student engagement and participation due to instant access to content and an overall increase in user expectation.¹⁴

Most importantly, the use of streaming media in academic libraries permits faculty and students greater flexibility regarding when and how they access video content outside of class. Introducing streaming media into practice also allows instructors additional flexibility regarding when and how they access content for classroom instructional use. "Streaming video is one of the best methods for introducing ICT (for the first time content) in every day school practice."¹⁵ For instance, streaming media can easily be implemented into an instructor's PowerPoint presentation. A necessary requirement of every teacher's role is to have the capacity to be flexible due to the inability to predict classroom outcomes and the unpredictable nature of students. It is the teacher's obligation to remain flexible throughout the lecture or teaching hour in order to properly function between interruptions or unexpected questions. "The perfect technology is the one adaptable enough to serve different didactical tactics, and streaming media

¹⁴ Tony Bremholm, Lisa Hooper, Sally Krash, and Josh Lupkin, *Streaming Media Collections: General Guideline for the Selection & Acquisition of Streaming Media for Tulane Libraries*. Report. New Orleans: Howard-Tilton Memorial Library, Tulane University, 2014. Accessed December 15, 2015. https://library.tulane.edu/sites/library.tulane.edu/files/documents/CollectionDev_StreamingMediaGuidelines_2015_02.pdf, 3.

¹⁵ V. G. Angelopoulos, D. M. Garyfallidou, and G. S. Ioannidis, "Streaming Media in Education." Proceedings of Proc International Conference ICL 2004: "Interactive Computer Aided Learning", The Science Laboratory, School of Education, University of Patras, Rion, Greece. 2004. Accessed December 12, 2015. <http://www.ro.feri.uni-mb.si/razno/icl2004/pdf/aggelopoulos.pdf>.

does offer such flexibility.”¹⁶

In order to acquire physical content for classroom presentations or pre-screenings, an instructor is required to request the item beforehand, pick up the item whenever he or she is available (and when the item is available) and return the item back to the library. This is a time-consuming process which simultaneously introduces the possibility of many ruinous scenarios. For example, if the library does own the requested title, it may already be checked out by another faculty member, thus, the instructor must patiently wait for the item or change his or her lesson plan. On the other hand, if the library does not own the title, the instructor is forced to wait for the item to arrive, as well as wait for the library to catalog and process the title (also a slow process). A faculty member stated, “ ‘It’s not hard to get videos from the library, but sometimes that extra half hour is more than I have, and I opt for something online instead. Whatever I can stream from my laptop is by far the easiest option.’ ”¹⁷

Since incorporating streaming video into educational programs has distinct student engagement advantages, such as 24/7 access and unlimited use, many universities have started to add streaming media to their audiovisual collections. Despite the numerous advantages that emerge when an academic library acquires and maintains streaming media collections, the act of acquiring said media is a difficult and challenging process for librarians due to copyright law, licensing agreements and accessibility issues. Copyright law has only grown increasingly difficult since it was first implemented, yet it is the librarian’s responsibility to fully understand the law, as well as learn how to provide appropriate copyright information for faculty. “On many campuses, librarians are the answers to all things copyright- no matter how comfortable they feel

¹⁶ Ibid.

¹⁷ Jane Johnson Otto, "University Faculty Describe Their Use of Moving Images in Teaching and Learning and Their Perceptions of the Library's Role in That Use." 2014. MS Cr12-399, Rutgers, The State University of New Jersey. Accessed December 10, 2015. <https://rucore.libraries.rutgers.edu/rutgers-lib/39038/>.

in the role that comes their way by default. This has grown increasingly more complex in the online environment.”¹⁸ Due to these responsibilities, librarians can feel overwhelmed throughout the acquisition process of streaming media. However, in order to succeed in providing patrons access to streaming media, it is necessary to understand the current copyright law pertaining to digital materials as well as to develop a proper acquisition model.

Chapter 2: Copyright and Intellectual Property in the Digital Age

¹⁸ Kay Cunningham, "Current Issues with Copyright and Higher Education: Lawsuits, Legislation, and Looking Forward." *IL Internet Learning* 2, no. 2 (September 2013): 4-15. Accessed December 2, 2015. doi:10.18278/il.2.2.1, 4.

In today's digital environment, an academic librarian most likely encounters an abundance of copyright-related inquiries from faculty, staff, and students which relate to every division of library services, but in particular, streaming media and accessibility. Unfortunately, most librarians do not contain the necessary qualifications to properly answer or help patrons with issues regarding copyright concerns. Most importantly, as technology continues to evolve and society continues to rely on digital formats, it is vital that librarians comprehend the significant role copyright plays in the library.

According to Title 17, Chapter 1, § 102 of the United States Copyright Act of 1976, copyright is a form of intellectual property given to an author who creates "original works of authorship" that are "fixed in a tangible medium of expression."¹⁹ The author of a work is automatically granted copyright protection once he or she creates a work. In addition, copyright protection is awarded to the copyright holder for his or her entire life plus seventy years after death. If the copyright has expired, the work belongs to the public domain, thus librarians are not required by law to obtain permission before using said work. Works that fall into the public domain are either: (1) works whose copyright protection has expired or (2) works that were never protected by U.S. Copyright Law.²⁰

(a) Copyright protection subsists, in accordance with this title, in original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Works of authorship include the following categories:

- (1) literary works;
- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;

¹⁹ K. Matthew Dames, "Using Copyrighted Works in Teaching: A Guide for Syracuse University Faculty." December 2013, 1-27. Accessed October 20, 2015. doi:10.14305/00-00.rt.2013.1.

²⁰ "Copyright Basics: What Is Copyright Law?" The Campus Guide to Copyright Compliance. 2008. Accessed January 2, 2016. <https://www.copyright.com/Services/copyrightoncampus/basics/law.html>.

- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

(b) In no case does copyright protection for an original work of authorship extend to any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work.²¹

The U.S. Copyright Law also grants the copyright holder broad and exclusive rights to authorize how and when the public may use their work.

Subject to sections 107 through 122 [which provide certain exceptions, defenses and limitations], the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) to reproduce the copyrighted work in copies or phonorecords;
- (2) to prepare derivative works based upon the copyrighted work;
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and
- (6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.²²

Due to the exclusive rights awarded to the copyright holder, librarians should assume that all materials he or she encounters in the future are protected under copyright, even if a copyright notice cannot be located. This presents a frustrating dilemma for the library community since libraries are supposed to provide a plethora of information for patrons simultaneously connecting patrons to new, valuable resources. How can a librarian access and provide information when he or she is constantly suffering from the demands of copyright?

²¹ 17 U.S.C.A § 102. <http://www.copyright.gov/title17/92chap1.html#102>.

²² 17. U.S.C.A. § 106. <http://www.copyright.gov/title17/92chap1.html#106>.

One of the most significant areas of copyright law, known as fair use, permits non-owners the opportunity to use copyright protected works without the prior authorization of the copyright holder; however, fair use can only be applied in certain circumstances. In addition, attempting to implement fair use is difficult since a clear definition of the term or what specifically constitutes the act of fair use does not exist.

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.²³

Fortunately, all four factors which constitute fair use do not have to be satisfied for the use to be considered fulfilled. Since a concrete definition does not exist for the term, the majority of the time fair use is the result of interpretation. In fact, the absence of an explicit definition of the term provides the foundation for any librarian to argue fair use in their library. For example, the first factor, purpose and character of the use, supports a libraries' educational concept of nonprofit use. Factors two and three, the nature of the work and the amount and substantiality used, are more detail oriented than the other two factors; however, librarians can argue that the nature of the work is specific to educational needs as well as the amount used. The fourth factor,

²³ 17 U.S.C.A. § 107. <http://www.copyright.gov/title17/92chap1.html#107>.

effect on the market, is the most difficult factor for librarians to argue and legally provide evidentiary use. For instance, since the library does not earn a profit on the copyright work in question, therefore in the eyes of the content owners, it is a “lost sale.” On the other hand, a librarian can argue that the initial purchase of the copyrighted work excludes this argument.²⁴ According to Deborah Gerhardt and Madelyn Wessel, “When the first and fourth fair use factors favor a finding of fair use, as they will in many educational contexts, a finding of fair use is nearly assured.”²⁵ Ultimately, teaching and research, as well as scenarios in which the use is not-for-profit and noncommercial, are all legitimate examples of fair use, regardless if fair use is decided on a case-by-case basis.²⁶

On October 28th, 1998 President Clinton signed into law the Digital Millennium Copyright Act (DMCA) which combined two 1996 World Intellectual Property Organization (WIPO) treaties: the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The DMCA act addresses a number of significant issues directly related to digital copyright, such as the protection of digital copyright management information.

The anti-circumvention provisions prohibit the unauthorized circumvention of technological measures which control access to or restrict the use of a copyright-protected work. Such technological measures may involve a password or encryption; breaking the password or encryption is illegal. Copyright management information includes the title of a work, the name of the author or copyright holder and other identifying information. Intentionally removing or altering such information violates a provision of the DMCA.²⁷

²⁴ William M. Cross, "Restoring the Public Library Ethos: Copyright, E-Licensing, and the Future of Librarianship." *Law Library Journal* 104, no. 2 (2012): 195-217. Accessed January 14, 2016. <http://www.aallnet.org/mm/Publications/lj/LLJ-Archives/vol-104/no-2/2012-18.pdf>, 200.

²⁵ Deborah Gerhardt and Madelyn Wessel, "Fair Use and Fairness on Campus." *North Carolina Journal of Law & Technology* 11, no. 3 (April 23, 2010): 461-530. Accessed January 17, 2016. http://www.ncjolt.org/sites/default/files/Gerhardt_Deborah_i11v3_461_530.pdf, 499.

²⁶ Abigail J. McDermott, "Copyright: Regulation Out of Line with Our Digital Reality?" *ITAL Information Technology and Libraries* 31, no. 1 (March 03, 2012): 7-19. Accessed December 10, 2015. doi:10.6017/ital.v31i1.1859, 200.

²⁷ "Copyright Basics: The Digital Millennium Copyright Act." *The Campus Guide to Copyright Compliance*. 2008. Accessed January 2, 2016. <https://www.copyright.com/Services/copyrightoncampus/basics/dmca.html>.

Before the DMCA, if a librarian needed to copy a DVD file or a PDF file he or she probably claimed fair use; however, the enactment of the DMCA has changed how librarians can access and share information. “While the act of copying the file may be legal according to fair use, breaking through any DRM technology that prevents that copying is now illegal.”²⁸

Unfortunately, DMCA protects the copyright holders of digital content but deters libraries from accessing and sharing said content.

On November 2nd, 2002, President Bush signed the Technology, Education and Copyright Harmonization (TEACH) Act which amended sections 110 (2) and 112 (f) of the U.S. Copyright Act. The act was created specifically for online education and provided guidelines for the educational sector in regards to online distance learning and course management systems.

In order for the use of copyrighted materials in distance education to qualify for the TEACH exemptions, the following criteria must be met:

- (1) The institution must be an accredited, non-profit educational institution.
- (2) The use must be part of mediated instructional activities.
- (3) The use must be limited to a specific number of students enrolled in a specific class.
- (4) The use must either be for 'live' or asynchronous class sessions.
- (5) The use must not include the transmission of textbook materials, materials "typically purchased or acquired by students," or works developed specifically for online uses.
- (6) Only "reasonable and limited portions," such as might be performed or displayed during a typical live classroom session, may be used.
- (7) The institution must have developed and publicized its copyright policies, specifically informing students that course content may be covered by copyright, and include a notice of copyright on the online materials.
- (8) The institution must implement some technological measures to ensure compliance with these policies, beyond merely assigning a password. Ensuring compliance through technological means may include user and location authentication through Internet Protocol (IP) checking, content timeouts, print-disabling, cut & paste disabling, etc.²⁹

²⁸ Rachel Bridgewater, "Tipping the Scales: How Free Culture Helps Restore Balance in the Age of Copyright Maximalism." *OLA Quarterly* 16, no. 3 (Fall 2010): 18-22. Accessed January 17, 2016. doi:10.7710/1093-7374.1293, 19.

²⁹ "Copyright Basics: The TEACH Act." The Campus Guide to Copyright Compliance. 2008. Accessed January 2, 2016. <https://www.copyright.com/Services/copyrightoncampus/basics/teach.html>.

With the enactment of TEACH, instructors are permitted to use an abundance of additional materials in distance learning education simultaneously providing new information in the digital atmosphere. Students have the opportunity of participating in distance learning sessions from any location further signifying the convenience and flexibility that distance learning presents 21st century education. Although initially designed for instructors, TEACH also affects the role of the librarian in an academic library. Fundamentally, it is the librarian's goal to manage and provide unlimited access to information resources for patrons. "The growth and complexity of distance education throughout the country have escalated the need for innovative library services. Distance education is simply another form of exactly that pursuit."³⁰

Despite the many positive benefits TEACH provides the educational environment in regards to copyright and accessing information, the act does not apply to:

The new exemptions under TEACH specifically *do not* extend to:

- (1) Electronic reserves, course packs (electronic or paper) or interlibrary loan (ILL).
- (2) Commercial document delivery.
- (3) Textbooks or other digital content provided under license from the author, publisher, aggregator or other entity.
- (4) Conversion of materials from analog to digital formats, except when the converted material is used solely for authorized transmissions and when a digital version of a work is unavailable or protected by technological measures.

It is also important to note that TEACH does not supersede fair use or existing digital license agreements.³¹

Unfortunately, according to the TEACH Act and the Digital Millennium Copyright Act, the use of video in distance education is restricted in regards to physical format and quantity. Under the

³⁰ William M. Cross, "Restoring the Public Library Ethos: Copyright, E-Licensing, and the Future of Librarianship." *Law Library Journal* 104, no. 2 (2012): 195-217. Accessed January 14, 2016. <http://www.aallnet.org/mm/Publications/llj/LLJ-Archives/vol-104/no-2/2012-18.pdf>.

³¹ "Copyright Basics: The TEACH Act." The Campus Guide to Copyright Compliance. 2008. Accessed January 2, 2016. <https://www.copyright.com/Services/copyrightoncampus/basics/teach.html>.

DMCA, a college or school is not authorized “to circumvent any anti-piracy measures embedded in DVDs and other media, which often is the only way to access, copy and digitize content therein.”³² Furthermore, the TEACH Act states that only a moderate and limited amount of a “dramatic work may be digitized for use in distance education.”³³

Despite all of the restrictions set forth by copyright law, it is still the academic librarian’s responsibility to provide content for the faculty and students. As technological advancements continue to develop and change, the challenges that currently exist concerning acquiring and accessing streaming media will only deepen, fundamentally harming the future of accessible content. Ultimately, the library community must remain educated regarding the inevitable changes of copyright law in the digital age while continuing to advocate for future developments pertaining to library access.

Chapter 3: Acquiring Streaming Media Collections in University Libraries

³² Christine Ross, "Copyright on Campus: Coordinating the Confusion." *Proceedings of the Charleston Library Conference*, 2012, 626-30. Accessed October 15, 2015. doi:10.5703/1288284314799, 628.

³³ Ibid.

Despite the fact that streaming video is the standard form of viewing video in today's culture, the use of this medium in academic libraries remains a conservative, unconventional, practice. Unfortunately, acquiring a streaming media collection at an academic library is a challenging and frustrating journey for a media librarian due to the specific difficulties, inconveniences, and unanswered questions that surface. Throughout the process of selection, acquisition and choosing (and understanding) an appropriate licensing model, as well as the desire to satisfy and provide video access for all faculty and students, many complicated decisions are formulated; therefore, a librarian can become overwhelmed unless he or she is educated regarding the necessary protocol to accurately acquire and provide this medium to faculty and students.

Selection

How can an academic librarian adequately and efficiently select titles to acquire for his or her streaming media collection at a library? Should the librarian choose titles based on subject, genre or vendor?³⁴ Should he or she buy a subscription package or purchase content via a title-by-title basis? There are many options available to librarians regarding selection; therefore, the process initially appears daunting and confusing. However, in order for the librarian to appropriately select and acquire future streaming media purchases, it is important that the faculty and librarian develop a relationship and both regularly communicate their media demands. In order for the librarian to understand the demands of the university, the faculty must remain an active part of the academic library.

Before acquisition, the librarian should conduct a proper evaluation of future titles in regards to content level. In particular, a title's relevance to the curriculum is of utmost concern

³⁴ Cheryl J. Duncan and Erika Day Peterson, *Creating a Streaming Video Collection for Your Library*. London: Rowman & Littlefield, 2014, 1.

before determining whether or not one should acquire the title. For example, “If the work does not support or enhance the curriculum, then it is less likely to be acquired.”³⁵ Another factor to consider is the predicted use of the streaming title by faculty and students. Will students watch the title? Will the title only be used for one course or can it be used in future courses as well? How have similar titles in the past circulated among patrons? Finally, librarians should choose titles that derive from companies with excellent reputations within the library community and that provide high-quality content.

Unfortunately, major production studios purposely prevent libraries from purchasing the streaming rights to their titles; thus, mass-market titles are not available for library acquisition (major studios choose to sell the streaming rights to their titles to commercial services, such as Netflix, Amazon, or Hulu). “The creators of mass-market titles are not particularly concerned with the needs of libraries or their patrons and are focused exclusively on making a profit through the largest amount of sales.”³⁶ The absence of popular and in-demand streaming titles introduces a predicament for an academic librarian because patrons visit the library for current information and resources. If libraries cannot acquire prevalent media, patrons will become unsatisfied and seek other, more efficient outlets for the necessary media they require. Fortunately, independent film distributors actively collaborate with libraries in regards to the acquisition of streaming media titles, thus, a minimal selection of popular titles is available for library acquisition and patron access.

³⁵ Susie Bossenga, Chris Bulock, Luann DeGreve, Carol Doyle, Tom Goetz, Ruth Lindemann, Stephen McMinn, and Charles Uth, "Streaming Video in Academic Libraries." Proceedings of CARLI Annual Meeting, Chancellor Ballroom, Champaign, IL. 2014. Accessed October 20, 2015. <http://www.carli.illinois.edu/carli-annual-meeting-1>.

³⁶ Mary S. Laskowski, *Guide to Video Acquisitions in Libraries: Issues and Best Practices*. Chicago, IL: ALCTS Publishing, 2011, 28.

Librarians can acquire streaming media via educational streaming vendors, through a variety of delivery models and licensing models (both will be discussed in detail later). Due to the options afforded to librarians regarding delivery models and licensing, an academic librarian encounters many issues when attempting to choose the best streaming media vendor while acquiring said media, such as pricing options, licensing terms, and collection availability. Since each vendor offers unique and various content, librarians will most often discover the urge to subscribe to many different vendors using various models in order to acquire the necessary titles faculty request. However, due to the high-cost of a single subscription package to a streaming media collection, this procedure will only increase library spending and elevate budget concerns. Before beginning a relationship with streaming media vendors, each potential vendor should be carefully studied regarding content titles and pricing options. Luckily, “vendors are usually more than happy to arrange a trial for their products. These generally last 30 days and are an opportunity not only to assess how the product performs but to build excitement and interest among users.”³⁷ Academic libraries should take advantage of this opportunity before officially subscribing to a subscription service.

Inopportunately, sometimes one size does not fit all; thus, in various cases, it may be necessary to subscribe to more than one vendor. One cannot simply purchase a single subscription package from a vendor and automatically obtain access to an abundance of in-demand streaming titles concurrently satisfying every single faculty member at the school. For example, Women Make Movies is the leading distributor of women’s films and videotapes in North America and contains a collection of over five hundred titles of documentary,

³⁷ Cheryl J. Duncan and Erika Day Peterson, *Creating a Streaming Video Collection for Your Library*. London: Rowman & Littlefield, 2014, 2.

experimental, animation, dramatic, and mixed-genre work.³⁸ While the Academic Video Store provides access to thousands of streaming video titles, regrettably the Academic Video Store does not offer films produced by Women Make Movies. It is vital that the vendor a librarian subscribes to satisfies all necessary components of the school curriculum and does not ignore essential academic departments.

The various pricing models vendors offer is another obstacle the librarian faces in determining vendor selection. Frustratingly, if content is available via vendor A for a particular sum, it most likely will be available for a different sum at vendor B, further complicating matters. “An issue to be aware of is that sometimes the same educational content is available from different vendors at widely varying prices and license terms, and in some cases available from the same vendor with a structured pricing model that differs by type of library or use.”³⁹ Not only does the academic librarian have to determine what content to choose, and which vendor is the best, he or she must compare and contrast the pricing options for subscription packages between the different educational vendors. Ultimately, if the academic librarian understands the requirements of the faculty and the budget restrictions of the library he or she will be able to investigate and discover viable streaming options that will benefit the library.

Some frequently used vendors within the educational sector are:

1. Academic Video Store: Part of Alexander Street Press, provides thousands of exclusive videos from Filmmakers Library, California Newsreel and Microtraining. Offers streaming video on a variety of subjects via subject-based collections.
2. Ambrose Video: Offers streaming video on a variety of subjects, such as history, literature, science, and art.
3. DocuSeek2: Exclusive academic streaming for films from renowned leaders in documentary film distribution including, Icarus Films, Collective Eye Films, and Bullfrog Films.

³⁸ "WOMEN MAKE MOVIES | HOME." WOMEN MAKE MOVIES | HOME. Accessed January 10, 2016. <http://www.wmm.com/>.

³⁹ Mary S. Laskowski, *Guide to Video Acquisitions in Libraries: Issues and Best Practices*. Chicago, IL: ALCTS Publishing, 2011, 18.

4. Films on Demand: A large video delivery platform which provides access to many titles from Films Media Group (titles are available in subject-based packages). Films Media Group is the umbrella organization for Films on Demand.
5. Kanopy: Hosting site for videos from California Newsreel, Criterion, Kino Lorber, National Film Board of Canada, and more. Order titles a la carte or in collections.
6. New Day Films: A filmmaker-run distribution company with over 230 educational films. Most available for streaming as well as DVD purchase. Offers interactive advice from a film professor on films suited for a subject area.
7. Insight Media: Offers streaming video on a variety of subjects via subject-based collections. Subjects include: humanities, nursing, social work and health.
8. Media Education Foundation: Offers high-quality documentary titles which focus on media and culture.
9. Women Make Movies: Offers documentary titles by and about women.⁴⁰

Delivery Models

Streaming video is available to academic libraries via a wide selection of delivery models; therefore, it can be confusing to determine which model to choose in order to obtain said media. Furthermore, pricing and licensing options vary from vendor to vendor depending on the specific title the library is interested in purchasing. Although the library community is familiar with some of these models, new acquisitions models are frequently offered by existing and emerging vendors in the market.⁴¹ For example, vendors have introduced recent delivery models into the library market, which include local hosting of content and limited term licensing. In order to effectively acquire streaming media for the academic library collection, it is vital for the academic librarian to understand the various types of delivery models vendors offer in regards to streaming media acquisition.

In terms of acquiring streaming media, an academic librarian has two choices:

- (1) Whether to purchase or lease content.

⁴⁰ "Video @ Goucher College Library." Goucher College Library. Accessed January 10, 2016. <http://libraryguides.goucher.edu/videos/videopurchasing>.

⁴¹ Susie Bossenga, Chris Bullock, Luann DeGreve, Carol Doyle, Tom Goetz, Ruth Lindemann, Stephen McMinn, and Charles Uth, "Streaming Video in Academic Libraries." Proceedings of CARLI Annual Meeting, Chancellor Ballroom, Champaign, IL. 2014. Accessed October 20, 2015. <http://www.carli.illinois.edu/carli-annual-meeting-1>.

- (2) Whether to acquire a package of titles or to purchase titles individually.⁴²

Thus, an academic librarian has four choices regarding acquiring streaming media:

- (1) Whether to purchase individual titles.
- (2) Whether to rent or subscribe to an individual title.
- (3) Whether to purchase a package or database of titles.
- (4) Whether to rent or subscribe to a package or database of titles.

If the library chooses to purchase individual titles or collections, they have the opportunity to choose from a variety of different delivery models, such as:

- (1) Subscriptions: Lease or purchase the streaming rights to a streaming file or collection that is hosted on a vendor's site.
- (2) Third-party hosted: Purchase the digital file for individual titles from the distributor or film producer and maintain and stream the files using a vendor.
- (3) Locally encoded and locally hosted: Digital files for individual titles are locally encoded by the client and maintained and streamed using the library's server.⁴³

Subscriptions

The first delivery model for acquiring streaming media consists of a vendor-hosted solution. In this option, streaming media is sold through subscription packages, which are available through convenient subject areas, such as humanities, mathematics, business, or social sciences. Large vendors, such as Alexander Street Press or Films on Demand offer subscription packages that include additional features and are able to provide access to streaming content from the vendor's server. By providing the library access to large collections at a moderately low cost per title, academic libraries ultimately save time implementing the system into library circulation. Unfortunately, purchasing and leasing selections vary between vendors, and "few vendors provide the option to purchase the entire hosted collection, which ensures perpetual access to the videos within the collection. In this case, a small annual hosting fee usually

⁴² Ibid.

⁴³ Ibid.

applies.”⁴⁴ Most vendors also offer a collection package as a one-time purchase, with the one-time cost usually between five to seven times the yearly subscription costs. “Usually, these packages have some minimal reoccurring cost often termed maintenance, platform, or hosting fees.”⁴⁵ On the other hand, some vendors do offer subscription packages via a title-by-title basis which includes permanent access.

Purchasing or subscribing to substantial academic collections through a vendor, such as the Academic Video Store provides numerous benefits for academic libraries. For example, these subscriptions usually include a large amount of streaming video content which pertain to select subjects that are of significant importance to the institution. Furthermore, since the content is hosted on the vendor’s platform, “licensing and contractual issues are negotiated and managed as a single entity, and discovery issues are typically simplified because users can quickly locate films of interest via the online catalog or vendor’s site.”⁴⁶ On the other hand, titles can fluctuate over time as the vendor acquires new content; therefore titles can be removed or added from the collection randomly.

Third-Party Hosted

In some cases, libraries do not contain the necessary resources required for in-house hosting of streaming media; as a result, libraries can seek third-party providers to accomplish these duties. In this scenario, the library would provide the streaming video content, but it would be managed and hosted on a vendor site. Vendors such as the Academic Video Store, Kanopy, and Swank Motion Pictures offer third party hosting models to libraries as well as flexible

⁴⁴ Mary S. Laskowski, *Guide to Video Acquisitions in Libraries: Issues and Best Practices*. Chicago, IL: ALCTS Publishing, 2011, 9.

⁴⁵ Susie Bossenga, Chris Bullock, Luann DeGreve, Carol Doyle, Tom Goetz, Ruth Lindemann, Stephen McMinn, and Charles Uth, "Streaming Video in Academic Libraries." Proceedings of CARLI Annual Meeting, Chancellor Ballroom, Champaign, IL. 2014. Accessed October 20, 2015. <http://www.carli.illinois.edu/carli-annual-meeting-1>.

⁴⁶ Ibid.

pricing options.⁴⁷ “When using a third-party solution, it is important that the license from the original content provider includes language to permit such hosting and the storing of files off-site.”⁴⁸ Due to the mandatory cost required in creating and preserving locally hosted streaming media collections, libraries have increasingly selected this option as their solution regarding providing streaming media for patrons. As vendors continuously learn the best procedures for managing and maintaining library streaming content, in the future, selecting a third-party hosting model will likely become the library standard.

Locally Encoded and Locally Hosted

The final acquisition model libraries can choose is to locally encode and host the streaming content via the library’s server. “This is often licensed directly with the producer or distributor whose content is not available from a hosting vendor or for which the library might be seeking special terms.”⁴⁹ For example, a library contains numerous copies of physical content such as DVDs and VHS tapes; however, the library does not contain the digital rights to this content as well. If the library wishes to digitize said physical content, the library is legally required to follow certain steps and procedures before proceeding with the encoding process. In this model, in order to encode a digital file for streaming, the library must first obtain permission from the copyright owner of the DVD. In addition, the library must acquire the copyright holder’s authorization to host the digital file on the library’s secure server, which will then be

⁴⁷ Jesse Koennecke, Susan Marcin, and Matthew Pavlick, "The Devil Is in the Details: Managing the Growth of Streaming Media in Library Collections." *Proceedings of the Charleston Library Conference*, 2014, 398-404. Accessed October 15, 2015. doi:10.5703/1288284315646, 398.

⁴⁸ Becky Albitz, Christine Avery, and Diane Zabel, eds, *Rethinking Collection Development and Management*. Libraries Unlimited, 2014, 223.

⁴⁹ Jesse Koennecke, Susan Marcin, and Matthew Pavlick, "The Devil Is in the Details: Managing the Growth of Streaming Media in Library Collections." *Proceedings of the Charleston Library Conference*, 2014, 398-404. Accessed October 15, 2015. doi:10.5703/1288284315646, 399.

accessible to faculty and students.⁵⁰ After the library determines the accurate copyright holder of the physical medium, the streaming license must be negotiated and acquired. After the terms of the streaming license have been discussed, the library can encode the DVD and host it on the secure server.

If an academic library chooses to locally encode and host streaming video titles, the library will need to have the ability to manage and maintain a hosting platform to put the files for users to access them. “Several products and platforms are available for hosting library streaming collections, including Kaltura, ShareStream, Kanopy, Ensemble Video, Helix, Wowza, Media Amp, Avalon, and Video47.”⁵¹

Out of the three delivery models available to libraries, this final method is considered the most difficult and time-consuming method due to the amount of steps required for the process to be fulfilled. Furthermore, the process most likely will take place over many weeks since it involves many departments, faculty, and staff.

If the library is acquiring a license to stream a title that it already holds and if the intent is to digitize that copy, the entire process can take less than a day. If the library is acquiring rights from a distributor that it has never worked with before and if the distributor is new to offering streaming licenses, negotiation alone can take many weeks or even months. Expect the process to take between two to four weeks, and know that sometimes it can happen much more quickly or take much longer.⁵²

In specific cases, a library will forgo the choice of subscription databases from a vendor or third-party hosting, thus choosing to locally encode and host titles on a secure server. For instance, if the library continuously receives requests from the faculty to acquire certain

⁵⁰ Kathleen Fountain, "Managing Expectations and Obligations: The Librarian's Role in Streaming Media for Online Education." *Proceedings of the Charleston Library Conference*, 2011, 497-505. Accessed October 15, 2015. doi:10.5703/1288284314954, 502.

⁵¹ Jesse Koennecke, Susan Marcin, and Matthew Pavlick, "The Devil Is in the Details: Managing the Growth of Streaming Media in Library Collections." *Proceedings of the Charleston Library Conference*, 2014, 398-404. Accessed October 15, 2015. doi:10.5703/1288284315646, 401.

⁵² Cheryl J. Duncan and Erika Day Peterson, *Creating a Streaming Video Collection for Your Library*. London: Rowman & Littlefield, 2014, 8.

streaming video titles, that are unavailable via the first two options, the library will choose to locally encode and host content.

Licensing Models

The licensing of streaming video content is a relatively new concept and practice that simultaneously produces frustration within the library community. In the past, a library would purchase a DVD or VHS cassette from a distributor, thereby owning the physical copy of the item. Since the library owned the copy, when the library wished to loan items out to patrons, the library was adhering to federal copyright law. On the other hand, streaming media is not purchased; it is licensed by the copyright holder, ultimately “locked behind onerous contract terms that make effective educational use impossible.”⁵³ While directly purchasing a DVD or VHS cassette eliminates any potential copyright confusion, purchasing a licensing agreement for streaming media presents many challenges for libraries. For example, “Licensed works are not sold, they are granted through contracts, and contracts can change suddenly and negate fair-use provisions of U.S. copyright law.”⁵⁴ Furthermore, as digital technology rapidly changes, current digital licenses will also continue to evolve in order to adapt to the digital environment. How should a library negotiate the best license agreement for the library? What are the variety of license agreement models available to libraries? Who has permission to access the content that the library licenses? This is only a sample of some of the questions and issues that surface when libraries are interpreting, negotiating and entering into a digital license agreement with a vendor. “It is important to note that a license agreement that works for one library may not fit the needs

⁵³ Christopher Harris, "Fact or Fiction? Libraries Can Thrive in the Digital Age." *Phi Delta Kappan* 96, no. 3 (November 13, 2014): 20-25. Accessed December 10, 2015. doi:10.1177/0031721714557448, 23.

⁵⁴ Abigail J. McDermott, "Copyright: Regulation Out of Line with Our Digital Reality?" *ITAL Information Technology and Libraries* 31, no. 1 (March 03, 2012): 7-19. Accessed December 10, 2015. doi:10.6017/ital.v31i1.1859, 11.

of another library. It may not even fit the needs of the same library in two different licensing situations for different digital content.”⁵⁵ Ultimately, every licensing agreement must be carefully reviewed and considered in regards to terms and conditions.

Libraries can choose from the following licensing models:

- (1) Flat-fee, in-perpetuity licensing
- (2) Flat-fee term licenses
- (3) Graduated-fee term license
- (4) Standing-order model
- (5) Curated collections model
- (6) Pay-per-view model⁵⁶

The most difficult issue concerning all of these licensing models is whether or not the license provides the library access for a limited amount of time or in perpetuity. Unfortunately, “the majority of distributors of VOD content license access to individual titles for a fixed term—generally one, three, or five years. Renewal of the license is very frequently contingent on the distributor’s contractual terms with the filmmaker.”⁵⁷

Flat-fee, In-Perpetuity Licensing

In regards to streaming media, in-perpetuity can be translated into “life of file;” therefore, the library is buying the streaming file once, but keeping it forever. “Customers pay a one-time signup fee for the service, which varies, depending on institution type and the number of concurrent users (titles are purchased for a flat-fee per title, which also varies depending on the type of institution).”⁵⁸ The streaming file is either purchased from the vendor or encoded locally using the library’s server. Regardless of either option, the streaming file is controlled and

⁵⁵ Lesley Ellen Harris, *Licensing Digital Content: A Practical Guide for Librarians*. Second ed. Chicago: American Library Association, 2009, xii.

⁵⁶ Cheryl J. Duncan and Erika Day Peterson, *Creating a Streaming Video Collection for Your Library*. London: Rowman & Littlefield, 2014, 10.

⁵⁷ Gary Handman, "License to Look: Evolving Models for Library Video Acquisition and Access." *Library Trends* 58, no. 3 (Winter 2010): 324-34. Accessed October 20, 2015. doi:10.1353/lib.0.0094, 329.

⁵⁸ Ibid.

managed on the library's server.

Flat-Fee Term Licenses

In this model, the library will purchase the rights to the streaming video file at a flat-fee for a pre-determined duration, which is usually one to five years (terms may vary: one time, one week, one month, one semester, one year, etc.). Unfortunately, the price of the license is the same for all institutions, regardless of the size (number of users within the institution) or the type of the institution. Currently, both flat-fee term and in-perpetuity license costs “per title for single institution clients generally parallels the institutional cost of the DVD for the title-anywhere from \$100 to \$400, assuming that the licensing institution owns or will purchase the DVD.”⁵⁹

Graduated-Fee Term License

When purchasing a graduated-fee term license, the cost of the license is determined based on the qualifications of the particular institution purchasing the license; for example, the total amount of students enrolled at the institution, the number of concurrent users, the type of institution, and the institution's budget size. Ultimately, in this model, academic and for-profit institutions are charged a higher fee for the license to titles than public libraries and non-profit institutions.⁶⁰

Standing-Order Model

With a standing-order model, the library obtains access to a vendor's entire video catalog (or sections of the catalog) for a fixed, renewable term. The content is hosted by the vendor, however in certain circumstances, the vendor may allow for local hosting of part or all of the

⁵⁹ Ibid., 330.

⁶⁰ Gary Handman, “White Paper on Digital Video Licensing in Libraries.” Accessed October 23, 2015. <http://www.lib.berkeley.edu/MRC/whitepapercomments.pdf>.

collection. There are various licensing options a library can choose from within a standing-order model; for example, “fees that remain fixed regardless of the collection size, licensing of a base collection with additional fees for each new addition, and fees based on one or more of the criteria discussed in graduated-fee term licensing.”⁶¹

Curated Collections Model

In this model, the academic library obtains access to particular subject-or genre-based collections which have been carefully designed by a vendor or distributor. In this scenario, the titles in the collection have already been pre-selected by the vendor; the library simply selects and purchases the appropriate collection required (collections are usually hosted using the library’s secure server). These collections are carefully crafted to provide scholarly information on one subject and are usually composed by experts in their designated fields. Most importantly, as the vendor acquires new content, the number of items in the collection as well as the specific titles will increasingly fluctuate over time (potentially affecting the value of the streaming collection to the library). Finally, this model presents libraries with several pricing possibilities, which include, “annual subscription for remote access or outright purchase of perpetual rights for local hosting.”⁶²

Pay-Per-View Model

In the pay-per-view model, individual users purchase titles per download or stream and stream or download videos from the distributor’s server or a thirty-party (iTunes, Indiepix, Unbox, Amazon). In this scenario, the responsibility of acquisition is placed on individual users (or the students at the university) instead of the library due to copyright control; as a result, this

⁶¹ Ibid.

⁶² Gary Handman, "License to Look: Evolving Models for Library Video Acquisition and Access." *Library Trends* 58, no. 3 (Winter 2010): 324-34. Accessed October 20, 2015. doi:10.1353/lib.0.0094, 331.

model is not widely implemented in academic libraries. The future of this model depends on whether or not “colleges will require students to pay for instructional media as they pay for textbooks and other assigned texts.”⁶³

Regardless of the particular licensing model or delivery method a library chooses when acquiring streaming video titles, when negotiating the license agreement with the vendor, the terms and conditions must be carefully studied.

- (1) The date of the agreement and a clear indication of the two parties entering into the agreement.
- (2) A list of definitions for the major terminology or expressions used with the license. Each definition should be transparent, with no ambiguity. The library should ask for clarification of any definitions that are unclear or for the inclusion of definitions for any ambiguous terms. For example, who does the vendor consider to be “authorized users?” Are walk-in patrons included in this definition?
- (3) A statement of what is being provided or what the license is granting. For instance, is the vendor hosting the content and providing access to a set of streaming files, or is the vendor granting the library the right to digitize and cache the files for viewing? How does the vendor define “life of format” if the phrase appears in the license?
- (4) Allowable uses. What can the library and its patrons do with the content? It should allow for distance learning education, classroom use and offsite use.
- (5) Limits and restrictions on use. What restrictions is the vendor placing on the content or use of that content, platform, and so on?
- (6) The term of the license. Is the vendor granting perpetual rights, or must the license be renewed periodically for a fee?
- (7) A full description of the content being leased or purchased, the format of that content, and the method of or mechanism for delivery.⁶⁴

Although negotiating license agreements initially appears daunting and confusing, and a task reserved for lawyers, this practice has become a standard part of the librarian’s role due to the increase in demand for streaming media in academic libraries. Fundamentally, all license agreements will differ and need to be adapted to meet the evolving requirements of the institution or organization.⁶⁵

⁶³ Ibid.

⁶⁴ Cheryl J. Duncan and Erika Day Peterson, *Creating a Streaming Video Collection for Your Library*. London: Rowman & Littlefield, 2014, 9-10.

⁶⁵ Lesley Ellen Harris, *Licensing Digital Content: A Practical Guide for Librarians*. Second ed.

Purchasing Subscription Packages vs. Individual Titles

Purchasing or subscribing to large academic collections from a vendor, like the Academic Video Store, versus purchasing streaming video on a title-by-title basis presents many advantages to an academic library. By purchasing a large package from an accredited vendor, the library will obtain access to a substantial amount of video content which will be hosted on the vendor's platform (the library does not have to waste time hosting the content on its secure server). In addition, these vendors provide exclusive packages which focus on subjects, such as the humanities, business, and social sciences that have been specifically customized for the educational sector by scholars. Most importantly, since the content is controlled through the vendor's site, user's can quickly search for films via the online catalog, thus eliminating any potential discovery problems.⁶⁶ Finally, since the library is purchasing the rights to a large collection, the price for the collection is relatively low, especially when compared to purchasing the rights to individual titles.

For example, the Academic Video Store offers thousands of exclusive videos from many publishers, such as Alexander Street Press, Filmmakers Library, and Insight Media. Their collection of award-winning documentaries, independent non-fiction films, training and instructional videos, foreign films and shorts, as well as other educational titles is always expanding and is also available via DVD. The site boasts, "The Academic Video Store offers educators and librarians an easy one-stop shop for educational video needs."⁶⁷ By using a vendor a librarian will save valuable time and resources due to the vendor's vast supply of educational

Chicago: American Library Association, 2009, 31.

⁶⁶ Susie Bossenga, Chris Bullock, Luann DeGreve, Carol Doyle, Tom Goetz, Ruth Lindemann, Stephen McMinn, and Charles Uth, "Streaming Video in Academic Libraries." Proceedings of CARLI Annual Meeting, Chancellor Ballroom, Champaign, IL. 2014. Accessed October 20, 2015. <http://www.carli.illinois.edu/carli-annual-meeting-1>.

⁶⁷ "Academic Video Store." <https://www.academicvideostore.com>. Accessed January 1, 2016.

streaming video titles, as well as its well-designed user interface.

On the other hand, there are also a few disadvantages that surface in regards to purchasing a subscription package to a streaming media collection. It is important to note, if libraries choose to purchase or lease subscription packages they will mostly likely also be purchasing/leasing content that they do not need or content that has no relevance to the curriculum of the academic institution (vendors usually do not permit library's to personally select and create subscription packages). Furthermore, despite the cost of subscription packages at educational vendors, titles can be removed from their collections (similar to Netflix) due to their licensing agreements with the copyright holder.⁶⁸ As a result, librarians should continue to acquire physical copies of titles, thereby guaranteeing patrons in-house access to content.

In some circumstances, the library might choose to forgo the option of subscription packages and choose to purchase content on a title-by-title basis. The fundamental advantage associated with purchasing content individually is that the content acquired directly caters to the curricular demands of the faculty.⁶⁹ Instead of acquiring content in a package and receiving access to titles that the library does not need, in this scenario, the library personally picks the titles required on an individual basis. However, this option presents many disadvantages such as technical difficulties, licensing negotiations and cost.

If a library chooses to locally encode and host streaming video content, it must also have the appropriate technical capabilities associated with providing and managing streaming media in this context. In order to provide patrons access to streaming content, the library will need the correct infrastructure associated with streaming media as well as the accompanying security

⁶⁸ Cheryl J. Duncan and Erika Day Peterson, *Creating a Streaming Video Collection for Your Library*. London: Rowman & Littlefield, 2014, 67.

⁶⁹ Sarah Mccliskey, Christine Fischer, Steven Milewski, and Jim Davis, "You've Licensed It. Now What?" *Proceedings of the Charleston Library Conference*, 2014, 527-32. Accessed October 20, 2015. doi:10.5703/1288284315643, 531.

system prepared to handle future technical support issues. “Even when licenses are purchased, technical difficulties beyond the library’s control may make work unavailable.”⁷⁰ Alternatively, all technical issues that arise associated with video content that is hosted on a vendor’s platform are the responsibility of the vendor, not the library. Regardless, in both scenarios, the video is unavailable to patrons.

When a library purchases a subscription package from a vendor, the library negotiates the terms of the license agreement once, simultaneously obtaining access to content for a designated amount of time. On the other hand, if the library purchases streaming rights on a title-by-title basis, the library will have to negotiate license agreements for every single title the library acquires. Unfortunately, negotiating license agreements with vendors can be a long and complicated process simultaneously wasting valuable library resources.

Unfortunately, it is more expensive and time-consuming to purchase individual DVDs with streaming rights versus purchasing subscription packages. If a library decided to purchase the streaming rights of an individual DVD, the price would most likely be a few hundred dollars. For instance, “The streaming rights are often the same cost as the DVD, so the cost for one documentary is usually no less than \$300 and commonly in the \$500 range.”⁷¹ Although, if the library decides to negotiate with the vendor, the library might be able to acquire the streaming rights for a reduced price. Small vendors most likely do not have the necessary equipment required to digitize content, which is why libraries can acquire physical copies for a reduced price (although, still expensive) or the vendor may not be aware that the library is even interested

⁷⁰ William M. Cross, "Restoring the Public Library Ethos: Copyright, E-Licensing, and the Future of Librarianship." *Law Library Journal* 104, no. 2 (2012): 195-217. Accessed January 14, 2016. <http://www.aallnet.org/mm/Publications/lj/LLJ-Archives/vol-104/no-2/2012-18.pdf>, 204.

⁷¹ Susie Bossenga, Chris Bulock, Luann DeGreve, Carol Doyle, Tom Goetz, Ruth Lindemann, Stephen McMinn, and Charles Uth, "Streaming Video in Academic Libraries." Proceedings of CARLI Annual Meeting, Chancellor Ballroom, Champaign, IL. 2014. Accessed October 20, 2015. <http://www.carli.illinois.edu/carli-annual-meeting-1>.

in acquiring the digital rights.⁷² Furthermore, small vendors are normally happy to work with libraries and eager to have their products examined and studied by larger markets; therefore, the library should always advocate for library policy while negotiating contract terms. “Even the smallest vendor is often willing to sell or lease the digital rights to a library, especially if authentication and educational use are emphasized in the request.”⁷³

There are numerous variations hidden within the current licensing and delivery models available to libraries, thus acquiring a streaming media collection is a challenging and frustrating process. Since each academic library is different in regards to the type of institution, the institution’s budget size, and the number of concurrent users, each institution has separate demands and needs relating to streaming on-demand video. As a result, vendors and academic libraries have not implemented the use of “standard licensing agreements or delivery models” concerning acquiring streaming media. In the future, vendors and libraries should work together to improve licensing and delivery models, which meet the demands of both vendor and library. Furthermore, library’s need to communicate with vendors any demands pertaining to effective acquisition practice, thus contributing to the overall process of streaming video collection development.

⁷² Cheryl J. Duncan and Erika Day Peterson, *Creating a Streaming Video Collection for Your Library*. London: Rowman & Littlefield, 2014, 5.

⁷³ Ibid.

Chapter 4: In-Class Use of Netflix and Amazon Prime: Illegal? Why?

Netflix and Amazon Video are two of the largest and most popular commercial video providers in the world that provide customers with unlimited streaming services from their large collection of streaming files (audio-visual entertainment). For example, as of December 2015, Netflix reported 74 million subscribers worldwide (43 million United States subscribers)⁷⁴ and Amazon Video reported over 40 million United States subscribers.⁷⁵ Streaming subscriptions to Netflix or Amazon Video are extremely convenient for customers, especially in terms of cost, access and content delivery. On the other hand, in regards to the educational environment, unfortunately, copyright continues to be the barrier between access and rejection regarding how university libraries acquire streaming media collections for faculty use. In an effort to provide the faculty and students better flexibility regarding when and how they view video content, university libraries continue to struggle against copyright law to acquire streaming media collections. Since the use of Netflix and Amazon Video is, for lack of a better word, so simple, what is the legality regarding professors using personal streaming accounts as teaching aids in the classroom?

All films and television shows are protected under copyright law, granting the originator of the work the legal right to make copies, distribute and license the work,⁷⁶ therefore, one must obtain permission from the copyright holder before attempting to use the work. According to Title 17, Chapter 1, § 110(1) of the United States Copyright Act (also known as the Classroom Use Exemption) teachers are permitted to show all or part of a film in a face-to-face classroom if

⁷⁴ "Q3 15 Letter to Shareholders." Netflix to Shareholders. October 14, 2015. Accessed January 09, 2016. http://files.shareholder.com/downloads/NFLX/1275486366x0x854558/9B28F30F-BF2F-4C5D-AAFF-AA9AA8F4779D/FINAL_Q3_15_Letter_to_Shareholders_With_Tables_.pdf.

⁷⁵ Neal Ungerleider, "It Has 40 Million Subscribers. Now Amazon Prime Is Eyeing The Competition." Fast Company. July 09, 2015. Accessed January 09, 2016. <http://www.fastcompany.com/3048366/it-has-40-million-subscribers-now-amazon-prime-is-eyeing-the-competition>.

⁷⁶ Bethany Klein, Giles Moss, and Lee Edwards, *Understanding Copyright: Intellectual Property in the Digital Age*. London: SAGE, 2015, 4.

the film was made legally and is only used for educational purposes; however, this right only applies in limited situations.

The following are not infringements of copyright: (1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title, and that the person responsible for the performance knew or had reason to believe was not lawfully made.⁷⁷

In other words, this section of the United States Copyright Act allows teachers to show legally made films, television shows, or clips of films in a face-to-face classroom without obtaining specific permission from the copyright holder, even if the copyright holder has placed limits regarding how his or her work can be used (as long as the film was legally acquired). It is recommended that the teacher show 10% of the total work or three minutes (whichever is less), but he or she is allowed to show the entire video to the class, as long as the act takes place in the classroom. It is important to remember that the Classroom Use Exemption does not apply outside the nonprofit, in-person, classroom teaching environment. For example, in regards to a university library's streaming media collection, "The exception would cover the streaming of a film from a media lab to the classroom where it is viewed, but it would not reach the streaming of a film to students' residences for homework."⁷⁸ In addition, "Public performances using any medium viewed in the physical classroom are fine. There is nothing in the law that says the copy of the video must be in the classroom, just that the performance takes places in the classroom."⁷⁹ Since the films and television shows that Netflix and Amazon Video provide on their service are

⁷⁷ 17 U.S.C.A § 110. <http://www.copyright.gov/title17/92chap1.html#110>

⁷⁸ American Library Association. "Performance of or Showing Films in the Classroom." News release, September 10, 2009. Association of Research Libraries. Accessed January 10, 2016. <http://www.arl.org/storage/documents/publications/films-in-classroom10sep09.pdf>.

⁷⁹ Carrie Russell, "The Best of Copyright and VideoLib." *Library Trends*, 3rd ser., 58 (Winter 2010): 349-57. Accessed January 11, 2016. doi:10.1353/lib.0.0095, 353.

lawfully acquired, according to section 110 (1), an instructor should, in essence, be allowed to use his or her personal streaming account associated with Netflix or Amazon to stream videos in his or her classroom. The instructor is not going to copy the film or redistribute the film, but simply show the film to the class for educational purposes. On the other hand, when one signs up for a membership to Netflix or Amazon Prime, he or she is forced to agree to the terms of the agreement of the service, which may conflict with the rules of copyright.

First, Netflix and Amazon Video do not outright own the content that is provided on their services (Amazon does own its original series', for example, *The Man in the High Castle* and *Transparent*, but Netflix does not own its original series, like *House of Cards* and *Orange is the New Black*. Netflix licenses both shows from the copyright owners, meaning, eventually, they will be available on other services);⁸⁰ instead, Netflix and Amazon purchase new and renew old licensing agreements from the companies that own the content. "Licensing in the realm of online streaming content is defined as the process of obtaining permission from the owner of a TV show or movie to stream its content through a service such as Netflix."⁸¹ In order to maintain customer satisfaction and compete with the other streaming services available in today's market (Hulu), Netflix and Amazon consistently negotiate new licensing contracts with television shows, studio networks, and filmmakers, simultaneously updating their streaming video library monthly. Due to the overwhelming demand of streaming media, licensing agreements are extremely expensive; for example, Netflix paid \$45 million for the streaming rights to *Lost*, \$26 million for the streaming rights to *Scrubs*, and \$12 million for the rights to *Desperate Housewives* (Netflix only

⁸⁰ Singleton, Micah. "Netflix Doesn't Own Its Shows, But That Could Change Soon." *The Verge*, April 21, 2015. Accessed January 12, 2016. <http://www.theverge.com/2015/4/21/8463743/netflix-ownership-tv-shows>.

⁸¹ Investopedia. "How Netflix Pays for Movie and TV Show Licensing (NFLX)." Investopedia. June 25, 2015. Accessed January 09, 2016. <http://www.investopedia.com/articles/investing/062515/how-netflix-pays-movie-and-tv-show-licensing.asp>.

owned the streaming rights for one year).⁸²

To sign up for a Netflix account, one must first agree to the services' ten-page "Terms of Use" which is stated on the website and application.

The Netflix service, and any content viewed through our service, are for your personal and non-commercial use only. During your Netflix membership, we grant you a limited, non-exclusive, non-transferable, license to access the Netflix service and view movies and TV shows through the service on a streaming-only basis for that purpose. Except for the foregoing limited license, no right, title or interest shall be transferred to you. You agree not to use the service for public performances. You agree not to archive, download (other than through caching necessary for personal use), reproduce, distribute, modify, display, perform, publish, license, create derivative works from, offer for sale (except as explicitly authorized in these Terms of Use) content and information contained on or obtained from or through the Netflix service without express written permission from Netflix and its licensors. In addition, you may view a movie or TV show through the Netflix service primarily within the country in which you have established your account and only in geographic locations where we offer our service and have licensed such movie or TV show.⁸³

After one reads and agrees to Netflix's Terms of Use, there is a software license agreement that users must also agree to in order to use the service.

Netflix, Inc. grants you . . . a non-exclusive, limited, personal and nontransferable license, subject to and conditioned on your compliance with the restrictions set forth in this License Agreement, to install and use the Software, in object code form only, provided to you by or on behalf of Netflix in connection with your use of the Netflix service. The license grant above includes the right to use documentation accompanying the Software for the sole purpose of using the Netflix service and the right to make one (1) backup copy of the Software, provided that (i) the Software is installed on only the number of Netflix ready devices authorized by Netflix; (ii) the Software may NOT be modified; (iii) all copyright notices are maintained on the Software; and (iv) you agree to be bound by all the terms of this License Agreement. The Software is only for your own personal, non-commercial use and not for use in the operation of a business or service bureau, for profit or for the benefit or any other person or entity. As a condition of the limited license for the Software granted to you in this License Agreement, except as and only to the extent expressly permitted in this License Agreement or by applicable law which cannot be waived by this License Agreement, you may NOT: (a) publish, display, disclose, rent, lease, modify, loan, distribute or create derivative works based on the

⁸² Ibid.

⁸³ "Netflix Terms of Use." Netflix. September 15, 2014. Accessed January 09, 2016.
<https://help.netflix.com/legal/termsofuse>.

Software or any part thereof...⁸⁴

As with Netflix, when signing up for an Amazon Video membership, one must first agree to the services' "Terms of Use" which is stated on the website and application.

Amazon grants you a personal, non-exclusive, non-transferable, non-sublicensable, license, during the applicable Viewing Period, to access, view, use and display the Digital Content in accordance with the Usage Rules, for Non-Commercial, Private Use. "Non-Commercial, Private Use" means a presentation of Digital Content for which no fee or consideration of any kind (other than that which you pay to us to view the Digital Content) is charged or received, which takes place in your private home or apartment or, if outside your private home or apartment (e.g., in a hotel room, dorm room, office, or airport waiting lounge) is limited to a private viewing for you and your invitees. Non-Commercial, Private Use specifically excludes any public presentation (e.g., a presentation in a dorm lounge) and any presentation by a place of public accommodation or other commercial establishment (e.g., a bar or restaurant), even if no fee is charged for viewing the Digital Content. To simplify your viewing and management of Digital Content that has a limited Viewing Period (such as Rental Digital Content and Subscription Digital Content), we may automatically remove that Digital Content from your Compatible Device after the end of its Viewing Period, and you consent to such automatic removal. You may not transfer, copy or display the Digital Content, except as permitted in this Agreement. In addition, you may not: (i) sell, rent, lease, distribute, or broadcast any right to the Digital Content to any third party; (ii) remove any proprietary notices or labels on the Digital Content; (iii) attempt to disable, bypass, modify, defeat, or otherwise circumvent any digital rights management system used as part of the Service; or, (iv) use the Service or Digital Content for any commercial or illegal purpose. Lastly, at this time, due to restrictions, the service is only available to customers in the United States.⁸⁵

As previously mentioned, if one ignores Netflix and Amazon's subscription agreements, according to copyright law, it is legal for professors and teachers to use their personal streaming accounts to stream films in a classroom environment. Under the Copyright Act, a film is only required to be lawfully made and used for educational purposes in order for a teacher to show it to the classroom. Unfortunately, even though instructors are obeying the federal copyright law, due to contract law, the subscription agreements one signs with Netflix and Amazon Video must

⁸⁴ "End User License Agreement." Netflix. July 12, 2011. Accessed January 09, 2016. <https://help.netflix.com/legal/eula>.

⁸⁵ "Amazon Video Terms of Use." Amazon.com Help: Amazon Instant Video Terms of Use. Accessed January 09, 2016. <https://www.amazon.com/gp/help/customer/display.html?nodeId=201422760>.

also be taken into consideration.

It is vital to recognize the difference between copyright law and Netflix and Amazon Video's Terms of Use agreement that members are forced to sign. For instance, "When an instructor signs up for a streaming service account, the instructor is essentially waiving all rights under copyright law, and agreeing to be bound by the subscription agreement, which is governed by contract law."⁸⁶ Legally, a contract is an agreement between two or more parties supported by an offer, acceptance, and consideration.⁸⁷ By signing Netflix or Amazon Video's subscription agreements, the instructor is entering into a contract with Netflix or Amazon Video, thereby agreeing to the terms written in the contract.

According to Netflix and Amazon's Terms of Use, the service is for, "Your personal and non-commercial use only...you agree not to use the service for public performances."⁸⁸ Unlike Netflix, Amazon's agreement dissects the meaning of public performance, clearly stating that the service is solely designed for one's private home or apartment (or if one is outside the home then a hotel room/dorm room). The service forbids "Public presentations in a dorm lounge and any presentation by a place of public accommodation or other commercial establishment (a bar or restaurant)."⁸⁹ Considering that Netflix's Terms of Use do not unequivocally define what constitutes a "public presentation/performance" (like Amazon's Terms of Use do), perhaps Netflix would be more lenient if presented with the question of instructors using personal streaming accounts as aids in the classroom?

⁸⁶ Gary Hunter, *Can an Instructor Stream a Movie into the Classroom Using His or Her Personal Streaming Account, Such as Netflix?* July 28, 2015. Minnesota.

⁸⁷ "Breach of Contract & Quasi Contract." GANA LLP. Accessed January 10, 2016. <http://www.ganalawfirm.com/breach-of-contract-quasi-contract.html>.

⁸⁸ "Netflix Terms of Use." Netflix. September 15, 2014. Accessed January 09, 2016. <https://help.netflix.com/legal/termsofuse>.

⁸⁹ "Amazon Video Terms of Use." Amazon.com Help: Amazon Instant Video Terms of Use. Accessed January 09, 2016. <https://www.amazon.com/gp/help/customer/display.html?nodeId=201422760>.

The word “classrooms” is excluded from both Netflix and Amazon’s Terms of Use agreement; however, one can safely assume by the word “public performances,” that classrooms are also included. For example, a performance is considered "public" when the work is performed in a "Place open to the public or at a place where a substantial number of persons outside of a normal circle of a family and its social acquaintances are gathered."⁹⁰ Even though classrooms are considered a private area that are specifically reserved for enrolled students and faculty, the students gathered in the classroom are not family; as a result, according to the law, the classroom is a public venue. Finally, in Netflix’s End User License Agreement, it clearly states that the “Software is for your own personal, non-commercial use, and cannot benefit any other person or entity.”⁹¹ If an instructor uses his or her personal account in the classroom to stream video content, the act of streaming would be considered educational since the students would be learning from the material; thus this would benefit all parties involved, thereby breaking Netflix’s agreement.

The act of streaming in the classroom using one’s personal account on Netflix or Amazon adheres with U.S. copyright law since the films in Netflix and Amazon’s streaming library are lawfully acquired and since instructors only use the account for educational purposes; however, performing this act would violate the Terms of Use agreement the instructor signed with either streaming service concurrently breaching both contracts. “A breach of contract is simply a failure by one side to perform its obligations under the terms of the contract.” For example, the components of a breach of contract claim are: “the existence of a binding contract, one or more

⁹⁰ Daniel A. Tysver, "Rights Granted Under Copyright Law." BitLaw. Accessed January 10, 2016. <http://www.bitlaw.com/copyright/scope.html>.

⁹¹ "End User License Agreement." Netflix. July 12, 2011. Accessed January 09, 2016. <https://help.netflix.com/legal/eula>.

parties materially breach the contract, and damages that result from that breach.”⁹²

Unfortunately, when one signs a licensing agreement (also known as Terms of Use) with Netflix or Amazon, he or she is giving away his or her rights under copyright law, ultimately agreeing only to use the service for his or her private and personal use. When an instructor signs into his or her account and shows a film to the classroom, this task automatically becomes “public,” simultaneously violating both Netflix and Amazon’s terms of “private and personal use only.” The classroom is interpreted as a public area and streaming the film to its body of students would be considered a beneficial act since the students would be able to study and learn from the presentation.

According to Mark Cheramie Walz, an attorney who specializes in the use of technology in education at Sweet, Stevens, Katz & Williams LLP in New Britain, Pennsylvania, instructors should consider two questions before optioning to use his or her personal account to stream a film in the classroom: does the use violate copyright law and does the use violate the Terms of Use? “If it violates either, it really should not be used in the classroom. But the potential legal implications from copyright law violations are far more consequential, so that is why attention should be focused on copyright law.”⁹³

If an instructor ultimately decides to stream a film in the classroom using his or her personal account, he or she will have violated the Terms of Use of Netflix or Amazon. As a result, the instructor will most likely receive a warning from Netflix or Amazon or have his or her personal account suspended for violating the Terms of Use agreement. Andrew Horbal, the Media Resources Librarian at the Hornbake Library at The University of Maryland stated, “It is highly questionable for a professor to use their personal Netflix account to stream a film for their

⁹² "Breach of Contract & Quasi Contract." GANA LLP. Accessed January 10, 2016.
<http://www.ganalawfirm.com/breach-of-contract-quasi-contract.html>.

⁹³ E-mail from Mark Cheramie Walz, January 4, 2016.

class. That said, Netflix is almost famously non-litigious. Especially if the professor takes the precaution of explaining to their class that the film they are about to see is protected by copyright and should not be copied and/ or redistributed in any way, I think this is an extremely low-risk activity.”⁹⁴ (Please note: This is Andrew Horbal’s personal opinion, as a media librarian. He is not a lawyer). On the other hand, it is important to remember that when an instructor streams a film using a personal account associated with Netflix or Amazon, these services can identify where the request initiated from by the Internet Protocol (“IP”) numerical address of the computer that can then be matched to the physical location of the network.⁹⁵ Even though Netflix and Amazon have not prosecuted a school, university or instructor for violating their Terms of Use, this does not necessarily insinuate that either service never will in the future. Furthermore, if either service chooses to proceed with a lawsuit against an institution regarding breach of contract, all of the required proof is in their database.

Is an instructor *absolutely* forbidden to use his or her personal Netflix or Amazon streaming account to stream films to students in the classroom without breaking contract law? Nothing is absolute- there is a “gray” area. The final option is to call Netflix and Amazon, speak with a representative and ask for verbal permission. For example, I called Netflix and pretended to be a teacher, asking if they would grant me permission to use my personal streaming account to stream films in my classroom for educational purposes only. I spoke with a woman named Brianna who immediately granted me verbal permission to stream the content to my classroom (as long as the film was age appropriate), however she would not put that permission in writing. Brianna also proceeded to explain that many other teachers have called and asked if they could

⁹⁴ E-mail from Andrew Horbal, January 6, 2016.

⁹⁵ Jonathan I. Ezor, "Streaming While Teaching: The Legality of Using Personal Streaming Video Accounts for the Classroom." *Albany Law Journal of Science and Technology* 23 (March 20, 2013): 221-36. Accessed December 10, 2015. <http://www.albanylawjournal.org/Documents/Articles/23.1.221-Ezor.pdf>, 235.

use their personal accounts to stream films to their class and Netflix has also granted them permission.⁹⁶ Apparently, Netflix has turned a blind eye towards teachers using personal streaming accounts as an educational tool in the classroom. On the other hand, what if I was a full-time Cinema Studies Professor and called Netflix every single day to ask them if I could stream a film to my class? Maybe Netflix will agree to occasional requests, but it is safe to assume that they would not grant permission to regular callers.

Ultimately, if teachers decide to call and ask permission to stream films in the classroom, Netflix will agree to the act; however, they will not commit to said act in writing, simultaneously presenting a catch-22 scenario. Why would Netflix verbally agree to the use, but deny the act in their Terms of Use? I called Netflix again to clarify this debate. “We abide by a don’t-ask-don’t-tell policy. Legally, it is against the Terms of Use, which is why we will not, and never, change the Terms of Use to say ‘teachers can stream films from their personal accounts in the classroom.’ It is a legal issue with our distributors. But we (Netflix) don’t care.”⁹⁷

Next, I called Amazon. Again, I pretended to be a teacher and asked if the company would grant me permission to use my account to stream films to my classroom for educational purposes. I did not catch this woman’s name because she simply explained that I should read Amazon’s Terms of Use, which explicitly states that it is against company policy to stream a film in a public place, like the classroom.⁹⁸ By including an extremely detailed definition of the word “public performance/presentation,” Amazon has ultimately prevented members from using the service in any public manner. Fortunately, Netflix does not specifically define “public presentation/performance,” and, evidently, the service is willing to cooperate with educators, leaving instructors with a small piece of hope.

⁹⁶ Brianna (Netflix Representative) in discussion with the author, January 2016.

⁹⁷ Larry (Netflix Representative) in discussion with the author, April 2016.

⁹⁸ Amazon Representative in discussion with the author, January 2016.

Every day teachers face copious challenges in the classroom, such as classroom behavior and etiquette, classroom motivation and student learning disabilities; the complexity behind acquiring materials to teach students should not be one of the countless issues consuming their thoughts. "Teaching is a live process and no matter how carefully the teacher has planned the lesson he/she never knows what else might be needed during the course."⁹⁹ For example, a student may ask a question which requires the need of a film clip that is only accessible via Netflix. Netflix and Amazon have thousands of streaming titles available for immediate access but due to both services' strict Terms of Use, instructors cannot access these titles via his or her personal account in the classroom. Ultimately, Netflix and Amazon deliver convenience and flexibility regarding streaming media in the classroom; thus, both services should re-evaluate their Terms of Use agreement and consider the educational sector.

Hypothetically speaking, if Netflix or Amazon did allow one to use his or her personal account in the classroom, how would this affect a Cinema Studies professor? For a graduate film course, each class is designed around viewing a film in its entirety (but only films that the university library has access to) and analyzing said film. Currently, instructors acquire course materials from their university library. To prepare for class, film professors must request a copy of the film at the university library or media center and follow proper procedure for content delivery. Since the university library owns a copy of the material, the professor can safely assume that he or she will have a copy of the film come class day and the film will be accessible for use in the classroom.

⁹⁹ V. G. Angelopoulos, D. M. Garyfallidou, and G. S. Ioannidis, "Streaming Media in Education." Proceedings of Proc International Conference ICL 2004: "Interactive Computer Aided Learning", The Science Laboratory, School of Education, University of Patras, Rion, Greece. 2004. Accessed December 12, 2015. <http://www.ro.feri.uni-mb.si/razno/icl2004/pdf/aggelopoulos.pdf>.

If a professor is teaching a course devoted entirely around Alfred Hitchcock's filmography simultaneously utilizing his or her personal Netflix streaming account as the sole source of access, what happens if the film required for viewing come class day disappears from Netflix's video library? Unfortunately, the television and film titles on Netflix and Amazon consistently change over time due to the licensing agreements Netflix and Amazon have with the companies who own the streaming rights to the content.

As previously mentioned, Netflix and Amazon do not own the content that is offered on their service. In order to obtain television series or movies to their service, they first must acquire a licensing agreement from the content providers (production studios who own the distribution rights to the films). In the licensing agreement, there is a unique clause, which states the amount of time that Netflix and Amazon are legally allowed to stream the content (or provide the content via DVD in the case of Netflix).¹⁰⁰ Most importantly, since Netflix and Amazon do not legally own the material, all licensing agreements will expire. For example, a certain content might be available to stream all the time on Netflix, thus the licensing agreement was either for a very long length of time (a year) or Netflix has continuously renewed the licensing agreement for that particular film or program. On the other hand, a film may only be available to stream on Netflix for a few months and then it never appears again. In this scenario, Netflix has elected against renewing the licensing agreement or perhaps the content owners decided to raise the price of the content's streaming rights. Sometimes content can be available on many different streaming services (known as a non-exclusive licensing deal), or the content will only be available on one streaming service. "Under an exclusive licensing agreement, content is only available through a

¹⁰⁰ Wheeler W. Dixon, *Streaming: Movies, Media, and Instant Access*. Lexington: University Press of Kentucky, 2013, 100.

single streaming service, such as Netflix for a set period of time or into perpetuity.”¹⁰¹

Competition among the major streaming networks, like Netflix, Amazon, and Hulu is fierce, with both content owners and the streaming services understanding the importance of owning content’s exclusive streaming rights.

Netflix or Amazon are two excellent streaming services that should be allowed in the classroom because they provide the instructor with a convenient and accessible outlet to streaming media collections; however, professors and university libraries cannot rely on these services alone as their sole source for media reserves. Due to the strict licensing agreements that Netflix and Amazon sign with content owners, the content disappears from their streaming collection randomly, and sometimes this occurs without warning patrons. This fact would have a profound impact on a Cinema Studies professor; for example, *The Birds* could be available for streaming on Netflix or Amazon in September, but a professor cannot rely on the film to remain available for streaming in December when he or she intends to stream the film in class. In addition, although thousands of titles are accessible for streaming on Netflix and Amazon, the specific title the professor needs for the course may not be available. “Netflix re-emphasizes the fact that it is more of a channel than a library of every film that has ever been made. Netflix wants you to think of it as more of a curator of content...with a limited library of films, that's rotated periodically...”¹⁰² Professors need to rely on the university library’s streaming media collection, which has the potential to increase in size over time. Netflix and Amazon’s streaming collections do not increase over time, but simply change titles over time.

¹⁰¹ Investopedia. "How Netflix Pays for Movie and TV Show Licensing (NFLX)." Investopedia. June 25, 2015. Accessed January 09, 2016. <http://www.investopedia.com/articles/investing/062515/how-netflix-pays-movie-and-tv-show-licensing.asp>.

¹⁰² Tambay A. Obenson, "Netflix Explains Why It Doesn't Always Have That Film or TV Show You Really Want to See (Video)." *Indiwire* (blog), July 13, 2013. Accessed January 12, 2016. <http://blogs.indiewire.com/shadowandact/netflix-explains-why-it-doesnt-always-have-that-film-or-tv-show-you-really-want-to-see-video>.

In the future, not only should the use of an instructor's personal streaming account be allowed by the Terms of Use in the classroom, but Netflix and Amazon, as well as other streaming services, need to establish institutional subscription accounts for university's, colleges, and primary and secondary schools. When creating the institutional account for colleges or universities, Netflix and Amazon need to explicitly state that the institution has the right to stream the film in the classroom and that the service is intended for public (educational) use. "The language in the terms of service or subscription agreement for any movie streaming service needs to be carefully reviewed to determine if public performances are permitted in the classroom."¹⁰³ By creating institutional accounts for colleges or university's, Netflix or Amazon will be entering a contract with the institution stating that each party agrees to the abiding terms, specifically that the institution is allowed to stream the films under their service. Not only will this save instructors and the educational world an enormous amount of time and money, but students will have easier access to the material and future material. Unfortunately, as of today, Netflix and Amazon do not offer educational accounts and do not intend on creating any in the future. Unless one asks permission, Netflix streaming is reserved for a personal and private setting, while Amazon streaming is entirely restricted to this act.

¹⁰³ Gary. Hunter, *Can an Instructor Stream a Movie into the Classroom Using His or Her Personal Streaming Account, Such as Netflix?* July 28, 2015. Minnesota.

Chapter 5: Academic Libraries and Netflix Subscriptions: Case Studies

The use of Netflix membership services within an academic library is not a foreign concept within the library world; in fact, beginning in 2007, this practice became popular among a few academic libraries and public libraries. It is not a coincidence that the use of Netflix services within academic libraries began during the same time that the country was undergoing one of the worst financial crisis' since the Great Depression. Due to the nature of funding in education, academic libraries have limited financial resources; as a result, librarians are forced to strictly budget how they acquire audiovisual media in order to create an audiovisual collection that the university will benefit from. Unfortunately, some universities or public libraries may not be able to afford an audiovisual collection at all. In a time of financial struggle, especially between the years of 2008 and 2010, instead of eliminating audiovisual media to save their university funding, a few librarians discovered a practical solution via Netflix. On the other hand, is it ethical for an academic library to utilize Netflix, thus saving the university money but still granting the students the opportunity to learn?

Despite the possible ethical or legal ramifications, academic libraries began incorporating Netflix subscriptions into their library, simultaneously taking advantage of the service's unlimited number of DVD rental's per month and unlimited access to streaming media (at the end of 2008, Netflix reportedly stocked over 100,000 DVD titles and had more than 12,000 content choices licensed for streaming, concurrently establishing revenue sharing relationships with several studios and distributors).¹⁰⁴ "The appeal of the Netflix services is clear, providing easy, quick, and inexpensive access, to a wide variety of titles that libraries may not be able to

¹⁰⁴ *Netflix Form 10-K Annual Report*. Report. February 25, 2009. Accessed January 7, 2016. <http://ir.netflix.com/secfiling.cfm?FilingID=1193125-09-37430>.

afford to purchase.”¹⁰⁵ Obviously unafraid of getting “caught,” by Netflix, a few public and academic libraries purposely chose to ignore Netflix’s explicit terms of “personal and public use,” ultimately incorporating Netflix into the library’s circulation.

Although Netflix has changed their DVD and streaming plans over the course of the past few years, in 2008, the company had many DVD pricing options for members that fluctuated, depending upon the amount of DVDs a member wished to have access to at one time. The most expensive plan, and the best option for an academic library was their eighth plan; at \$55.99 a month, users were entitled to have eight DVDs rented out at once along with an unlimited number of DVD rentals per month.¹⁰⁶ For access to over 100,000 titles, at a measly price of \$55.99 a month, how could a library resist?

Not only did academic libraries utilize Netflix memberships but, in 2008, a few small public libraries also began to incorporate Netflix into circulation, specifically as an interlibrary loan substitute. One notable case is the Sanbornton Public Library, a small public library located in New Hampshire which caters to a population just under 3,000. Beginning in March of 2008, library director Cab Vinton began to use the \$16.99 three-discs-at-a-time membership service. Interestingly, Mr. Vinton, “Tried contacting Netflix about instituting a library subscription, but he never received a response.”¹⁰⁷ According to Sanbornton Public Library’s current director, Marcia Haigh, the Netflix “interlibrary loan” service was an attractive service with many patrons at the library. First, a patron would request a movie (either via the library’s website or by completing a form at the library), and Mr. Vinton would submit the request to Netflix. After the DVD had arrived at the library through the mail, the patron borrowed the Netflix DVD from the

¹⁰⁵ Cris Ferguson, "Technology Left Behind-The Temptations of Netflix." *Against the Grain*, 43rd ser., 22, no. 6 (December/January 2010): 83-84. Accessed October 1, 2015. <http://docs.lib.purdue.edu/atg/vol22/iss6/43>, 83.

¹⁰⁶ Ibid.

¹⁰⁷ E-mail from Cab Vinton, January 15, 2016.

library using his or her library card. Finally, the patron returned the DVD to the library and Mr. Vinton would mail it back to Netflix.¹⁰⁸

The Netflix service remained active at the Sanbornton Public Library for five years (2008-2013), until Mr. Vinton left his position at the library to become the director of the Plaistow Public Library in New Hampshire. When Mr. Vinton resigned from the Sanbornton Public Library, the credit card associated with the library's Netflix membership was canceled, simultaneously discontinuing the service. The service operated smoothly and efficiently throughout the five years it remained active at the library; not once did Mr. Vinton receive a warning from Netflix informing him to cancel the library's membership. " 'I don't see it as a negative for them,' Vinton said about libraries as customers. We're basically marketing the product for them.' ”¹⁰⁹

While public libraries, such as the Sanbornton Public Library, incorporated Netflix into the library as an interlibrary loan operation, thus allowing patrons to check out DVDs for personal use, academic libraries strictly reserved the service to faculty and staff at the university (DVDs never left the university campus). For example, in 2007, Ciara Healy, the media librarian at Wake Technical Community College, which is located in Raleigh, North Carolina, implemented a Netflix program within the college. Interestingly, Ms. Healy did not begin the Netflix subscription based on monetary concerns; instead, the decision was established due to the library's disorganized media collection and the presumption that a Netflix subscription could help build a new collection for the library. The Film and Television department at the community college had acquired over 1,000 audiovisual items, mostly on VHS format, which were housed in various locations throughout the community college. Although these items were essential to the

¹⁰⁸ E-mail from Marcia Haigh, January 7, 2016.

¹⁰⁹ Lynn Blumenstein, "Small Libraries Start Using Netflix." *Library Journal*, April 15, 2008, 1. Accessed October 15, 2015. <http://lj.libraryjournal.com/2008/04/ljarchives/small-libraries-start-using-netflix/>.

film and television courses that the community college offered and could not simply be ignored, they were not a circulating part of the library's media collection. Instead of acquiring and re-circulating these items back into the departmental collection, simultaneously disturbing the film and television faculty and staff, Ms. Healy (and others) decided to ignore these items, thus acquiring new copies of in-demand or needed titles for the departmental collection in the process.¹¹⁰

Before beginning the Netflix subscription, Ms. Healy called Netflix to discuss specific questions concerning queue access, for example, how many people could access/interact with the online queue, and the representative she spoke with completely accepted how she and the college were planning to use the service. Interestingly, when she was speaking to the representative, she did not particularly ask his permission to use the service at the library; instead, Ms. Healy simply asked him questions relating to the service. Regardless, the Netflix representative did not inform Ms. Healy that the college's use was illegal or unethical.¹¹¹

To begin, Ms. Healy signed up for Netflix's three-DVDs-at-a-time subscription, for \$15.99 a month, using a Wake Technical Community College credit card paid for by the library. To request a DVD, the faculty were required to fill out a form in which he or she indicated when the DVD was needed as well as the amount of time desired (the patron's request was added to the Netflix queue based on the date requested). "Once a Netflix DVD arrived, it was placed in an empty DVD case that was barcoded and banded with a paper Netflix sleeve."¹¹² Finally, the DVD was delivered to the requested faculty member; after the faculty member had finished with the DVD, he or she returned it back to the library, who subsequently returned it back to Netflix.

¹¹⁰ Ciara Healy, "Netflix in an Academic Library: A Personal Case Study." *Library Trends* 58, no. 3 (Winter 2010): 402-11. Accessed November 1, 2015. doi:10.1353/lib.0.0089, 403.

¹¹¹ E-mail from Ciara Healy, January 8, 2016.

¹¹² Ciara Healy, "Netflix in an Academic Library: A Personal Case Study." *Library Trends* 58, no. 3 (Winter 2010): 402-11. Accessed November 1, 2015. doi:10.1353/lib.0.0089, 404.

Most importantly, Ms. Healy designed intense restrictions regarding access to the Netflix material; for example, “DVD loans were restricted to faculty members who planned to use the materials in the classroom, not for at-home entertainment. She allowed students to access streaming video from the Netflix website, but only under supervision on a computer in the college library.”¹¹³

Netflix, popular among users due to excellent content discovery and delivery, was incorporated into the library as a collection development tool. For example, “If a single title was requested via Netflix more than twice, the library would purchase that title and add it to the collection.”¹¹⁴ In addition, faculty members were encouraged to watch films via streaming on Netflix and inform the library if said films should be purchased for the library’s collection. Acquiring “preview copies” of educational media used to be a difficult task for media librarians; he or she needed to pay upfront for the item requested, and upon receiving the preview copy, return the physical item back to the company (the librarian would have to request a reimbursement from the distributor later). “At a state school, this was untenable as no purchase request would be approved for a maybe item and refunds created more work for the people in procurement.”¹¹⁵ Through the library’s Netflix subscription, faculty members had the opportunity to easily stream hundreds of titles; as a result, the librarian did not have to order as many physical preview titles.

In general, not only was the use of Netflix at Wake Technical Community College

¹¹³ Travis Kaya, "Academic Libraries Add Netflix Subscriptions." *Wired Campus. The Chronicle of Higher Education*, September 18, 2010. Accessed October 15, 2015. <http://chronicle.com/blogs/wiredcampus/academic-libraries-add-netflix-subscriptions/27018>.

¹¹⁴ Ciara Healy, "Netflix in an Academic Library: A Personal Case Study." *Library Trends* 58, no. 3 (Winter 2010): 402-11. Accessed November 1, 2015. doi:10.1353/lib.0.0089, 405.

¹¹⁵ E-Mail from Ciara Healy, January 12, 2016.

helpful as a collection development tool, but it also guaranteed that faculty and students had unlimited and easy access to an abundance of necessary materials. Fundamentally, the service proved to be an excellent resource for the library in regards to acquiring audiovisual materials, as well as establishing guidelines for future collection development. However, the Netflix subscription within the library was strictly a supplementary method of acquiring materials for classroom educational use and did not completely eliminate the use of the library's media collection. Even though the service flourished at the college, the faculty still continued to take advantage of the library's current media collection, which was specifically designed for instructional objectives. For example, the majority of faculty members requested educational films for classroom use; however, Netflix's library mostly consists of entertainment titles (of course, this is a necessary requirement for the Film and Television Department). Even though Netflix does have many documentaries available, Netflix may not always offer the necessary film a faculty member might request. "To expect Netflix to solve fundamental problems that may beset a collection, such as budgetary problems, is ill-advised."¹¹⁶

The Netflix service remained active at Wake Technical Community College for two semesters (Spring, 2007 and Summer, 2007)¹¹⁷ until Ms. Healy left her position at the library to become the librarian for Psychology and Neuroscience at Duke University in North Carolina. Shortly after Ms. Healy resigned from the library, the college (not the library) canceled the Netflix subscription. The subscription functioned moderately, yet efficiently throughout both semesters that it remained active at the library; not once did Ms. Healy receive a warning from Netflix informing her to cancel the library's membership. "I was not contacted by anyone at

¹¹⁶ Ciara Healy, "Netflix in an Academic Library: A Personal Case Study." *Library Trends* 58, no. 3 (Winter 2010): 402-11. Accessed November 1, 2015. doi:10.1353/lib.0.0089, 409.

¹¹⁷ E-Mail from Ciara Healy, January 12, 2016.

Netflix during the time I had the subscription, nor have I been since; no call, no email, no cease and desist, no contact at all.”¹¹⁸

Due to the success of the use of Netflix within Wake Technical Community College, Ciara Healy published an article, years later, in the January 2010 issue of the popular journal, *Library Trends*, which outlined how she successfully incorporated Netflix into the library for faculty and student use. When the article was released, Netflix still did not penalize Wake Technical regarding their unethical use of the service. Ms. Healy stated, “As far as I know, Netflix had no reaction to the publication of the article.”¹¹⁹

In 2010, the Mortvedt Library, at Pacific Lutheran University in Washington also began a subscription with Netflix. Director of Library Services, Fran Lane Rasmus signed up for Netflix’s six-DVDs-at-a-time subscription as well as the service’s streaming options. In 2010, the Mortvedt Library provided information regarding its Netflix program on the library website, which explained that the use of Netflix was strictly reserved for faculty and classroom use. “Guidelines were provided as to the type of movie that is suitable for ordering via Netflix, and the checkout policies were clearly defined.”¹²⁰ Operating in a similar manner as Wake Technical Community College, the subscription at the Mortvedt Library was enforced as a supplementary method of acquiring audiovisual materials; the library’s original media collection remained a strong and reliable source for the faculty. Netflix also served to be an excellent source regarding future collection development; for example, if a faculty member requested a film title via Netflix more than once, the library decided to purchase the title for the library’s collection (also similar to the practice at Wake Technical). Unfortunately, the faculty and staff did not enjoy or

¹¹⁸ E-mail from Ciara Healy, January 8, 2016.

¹¹⁹ Ibid.

¹²⁰ Cris, Ferguson, "Technology Left Behind-The Temptations of Netflix." *Against the Grain*, 43rd ser., 22, no. 6 (December/January 2010): 83-84. Accessed October 1, 2015. <http://docs.lib.purdue.edu/atg/vol22/iss6/43>, 83.

thoroughly take advantage of the Netflix subscription, therefore, in 2012, the library reduced the subscription to three-DVDs-at-a-time. Currently, the service still remains active at the Mortvedt Library, but it is barely used by the faculty. For example, in 2014, fifteen DVDs were requested via Netflix and in 2015, only five DVDs were requested. Interestingly, even though the service is still active within the library, the library has not received any repercussions from Netflix regarding the use.¹²¹

In September 2009, Rebecca Fitzgerald, Acquisitions Librarian at the Scheele Memorial Library at Concordia College in New York implemented a Netflix plan at the college's library, which was specifically designed to save the college money (the college has a very limited budget in regards to purchasing new content for their media collection). After a year (September 2009-September 2010) of initiating a Netflix subscription within the library, the college saved approximately \$3,000 on film purchases. During the first semester of the experiment (fall, 2009), the library was subscribed with Netflix under one account, which allowed for eight DVDs out at once; however, due to the popularity of the service among the faculty, the library needed to subscribe to two accounts during the second semester (spring, 2010).¹²²

The library took advantage of both the DVD and streaming services that Netflix provided, but (of course) they only requested educational material, such as the educational documentaries offered by PBS. The Netflix DVDs and streaming services were strictly reserved for library or classroom use; therefore, the DVDs always remained on the college campus. For example, instead of waiting for a copy of one DVD on reserve, students had the opportunity to

¹²¹ Fran Lan Rasmus in discussion with the author, January 2016.

¹²² Rebecca Fitzgerald, "Using Netflix at an Academic Library." Web blog post. *Tame the Web*. Library Innovators, 9 Sept. 2010. Web. 20 Oct. 2015. <http://tametheweb.com/2010/09/09/using-netflix-at-an-academic-library-a-ttw-guest-post-by-rebecca-fitzgerald/>.

go to the library's film viewing room where a Roku player was stationed and access the video via streaming (this was only an option if the title was available via streaming). Ms. Fitzgerald stated, "The amount we save just having the instant play is significant; it's almost like having multiple copies of the movie on reserve."¹²³

The use of Netflix within the Scheele Memorial Library did not replace the physical act of buying audiovisual material for the library media collection; instead, it simply acted as an additional method of acquiring audiovisual material. For instance, Ms. Fitzgerald stated, "Even though we have this program at our library, we have still exhausted our DVD budget."¹²⁴

Although, since the library was able to save money by establishing a Netflix account, Ms. Fitzgerald had the opportunity to use her low budget to acquire high-quality academic titles, from Insight Media and Films for the Humanities and Sciences,¹²⁵ that would benefit current and future students enrolled at the college.

The Netflix subscription increased access to content, decreased spending, and provided students with additional educational opportunities (access to material previously unavailable to them). A year after the Scheele Memorial Library had been effectively utilizing Netflix, Ms. Fitzgerald stated, "I hope many libraries, who are facing hard economic times, consider Netflix as a valuable option. It continues to be cost-effective and easily accessible for the students. It is very rare when you see faculty and students praising a new library program."¹²⁶

As of today, it is unclear if the Scheele Memorial Library still continues to implement a

¹²³ Megan Delockery, "Library Cards: Now Saving You \$8.99/Month!" *JETLaw: Vanderbilt Journal of Entertainment & Technology Law* (blog), September 29, 2010. Accessed January 10, 2016. <http://www.jetlaw.org/2010/09/29/library-cards-now-saving-you-8-99month/>.

¹²⁴ Rebecca Fitzgerald, "Using Netflix at an Academic Library." Web blog post. *Tame the Web*. Library Innovators, 9 Sept. 2010. Web. 20 Oct. 2015. <http://tametheweb.com/2010/09/09/using-netflix-at-an-academic-library-a-ttw-guest-post-by-rebecca-fitzgerald/>.

¹²⁵ Ibid.

¹²⁶ Ibid.

Netflix subscription within their library for faculty and student use. After stubbornly sending Ms. Fitzgerald numerous emails and receiving no response, I decided to call her, determined to initiate contact and understand how Netflix functioned within Concordia College. Unfortunately, she refused to comment on the status of the library's relationship with Netflix, either past or present and abruptly ended our brief thirty-second phone call; therefore, one can only assume that the Netflix subscription still remains active within the Scheele Memorial Library.¹²⁷

Theoretically, how would the public and media become aware of an academic library's unethical use of Netflix? For example, if an academic library was committing this act (knowingly violating Netflix's Terms of Use), wouldn't said library keep the operation a secret? A year after Ms. Fitzgerald implemented the Netflix subscription within the Scheele Memorial Library, in 2010, she contributed as a guest blogger to the *Tame the Web* blog simultaneously sharing with the world the use of Netflix at her library. Within hours after Ms. Fitzgerald posted her blog on *Tame the Web*, comments were pouring in, from people who questioned the legality and ethics of her operation. Some commenters supported her, encouraging the idea and even asked additional details about the function; however, others specifically described how her use was against the law. "Library lending is not a "personal" use, and the fact that you save so much money is arguably a commercial use. You have put your institution at great risk for contract and copyright infringement."¹²⁸ In response, Ms. Fitzgerald, stated, "There have been no legal repercussions involving our Netflix's accounts. No one from Netflix has questioned this. Our library is not the first to use this program. In an article, Ciara Healy, talks of all the benefits of a

¹²⁷ Rebecca Fitzgerald in discussion with the author, January 2016.

¹²⁸ Willard, Comment on "Using Netflix at an Academic Library." *Tame the Web* (blog), September 9, 2010. Accessed January 11, 2016. <http://tametheweb.com/2010/09/09/using-netflix-at-an-academic-library-a-ttw-guest-post-by-rebecca-fitzgerald/>.

Netflix subscription.”¹²⁹

After *Tame the Web* published Ms. Fitzgerald’s blog, there was a significant amount of backlash from the community (library world, media, and Netflix); for example, a week later, dozens of articles surfaced in the media concerning the use of Netflix in academic libraries. Furthermore, the world became aware of Ciara Healy’s case study regarding the use of Netflix in her library, which was published nine months earlier. Perhaps, since Ciara Healy reserved her case study to an academic journal, she did not receive any repercussions from the media or Netflix upon its initial release? Despite the fact that Wake Technical Community College terminated their Netflix subscription in 2007, Ms. Healy (who was now employed at a different institution) as well as the community college were both interviewed regarding the subscription years later. Now, both Ms. Healy and Ms. Fitzgerald had to defend the legality of the use of Netflix in their libraries to reporters and the media. Both women said that they acted according to federal copyright law which allows faculty members to share legally acquired material in face-to-face instruction.¹³⁰

Even though Netflix “ignored” the use of Netflix at Wake Technical Community College and at the Scheele Memorial Library, since this was now a public issue, Netflix issued a statement regarding said practice. According to Steve Swasey, Netflix’s Vice President of Corporate Communications, Netflix “frowns upon”¹³¹ academic libraries subscribing to their service. Netflix is reserved for personal and private use and allowing faculty members to screen Netflix DVDs in the classroom or permitting students to watch streaming video from a library

¹²⁹ Rebecca Fitzgerald, "Using Netflix at an Academic Library." Web blog post. *Tame the Web*. Library Innovators, 9 Sept. 2010. Web. 20 Oct. 2015. <http://tametheweb.com/2010/09/09/using-netflix-at-an-academic-library-a-ttw-guest-post-by-rebecca-fitzgerald/>.

¹³⁰ Travis Kaya, "Academic Libraries Add Netflix Subscriptions." *Wired Campus*. *The Chronicle of Higher Education*, September 18, 2010. Accessed October 15, 2015. <http://chronicle.com/blogs/wiredcampus/academic-libraries-add-netflix-subscriptions/27018>.

¹³¹ Ibid.

Netflix account is violating said personal and private use. Furthermore, despite the fact that Netflix is fully aware that academic libraries were utilizing the service, Mr. Swasey explicitly stated, “We just don’t want to be pursuing libraries. We appreciate libraries, and we value them, but we expect them to follow the our Terms of Use.”¹³²

Due to the abundance of media attention devoted to this issue, either academic libraries chose to remain silent regarding their use of Netflix or libraries decided to terminate their Netflix subscription. Ms. Healy stated, “I think that Kaya’s *Chronicle* article killed the use of Netflix in academic libraries (it is always easier to say ‘no’ than to figure out a way to move forward). Any libraries that were using Netflix or were considering it decided not to use it.”¹³³ Perhaps if both institutions remained silent concerning the use of Netflix in their library, they both could have continued to use the service. In the future, libraries intending to pursue a Netflix subscription maybe should consider adopting a policy of, “Don’t ask, don’t tell.”

Colleen Harris, Head of Access Services at the University of Tennessee, has raised a fascinating question, “Is it the responsibility of librarians to push for the broadest possible application of service, to widening the normally restrictive boundaries of legal agreements in the best interest of getting materials to our users?”¹³⁴ If so, how can librarians remain within their fixed budget yet still fulfill their responsibility of acquiring a worthy collection of audiovisual material that the faculty and staff can benefit from? Purchasing a Netflix membership might possibly be the best solution for academic libraries since through Netflix’s content delivery, accessibility and streaming services, students and faculty are granted unlimited access to content.

¹³² Megan Delockery, "Library Cards: Now Saving You \$8.99/Month!" *JETLaw: Vanderbilt Journal of Entertainment & Technology Law* (blog), September 29, 2010. Accessed January 10, 2016. <http://www.jetlaw.org/2010/09/29/library-cards-now-saving-you-8-99month/>.

¹³³ E-mail from Ciara Healy, January 8, 2016.

¹³⁴ Colleen S. Harris, "Terms of Service, Cramped Budgets, and Good Library Citizenship: The Netflix Dilemma." *The Bottom Line: Managing Library Finances* 23, no. 4 (October 30, 2010): 212-14. Accessed January 11, 2016. doi:10.1108/08880451011104045, 212.

Do academic libraries have an ethical obligation to abide by service agreements, such as Netflix's? "Choosing to willfully violate terms of service agreements in order to provide better service to our patrons (and less impact on our budgets) in the short run may benefit us."¹³⁵ If Netflix is informally consenting to libraries taking advantage of their service, do librarians have an ethical obligation to abide by Netflix' Terms of Service Agreement?

On the other hand, some librarians have recognized the obvious hypocrisy regarding academic libraries conscious violation of Netflix's Terms of Use. For example, Meredith Farkas, the librarian at Portland Community College in Oregon, specifically questioned these librarian's ethical obligations to their library, students, and faculty, simultaneously emphasizing the librarian's role as a moral compass to the university. According to Farkas, it is beneath a librarian to willingly violate a Terms of Use agreement regardless of the potential turnout. How can a librarian ethically and in good conscious violate a Terms of Use agreement? Although Netflix might be the "cheaper" option, it is, ultimately, the unethical option. "We are supposed to be the ones helping faculty stay on the straight-and-narrow regarding copyright. What kind of an example are we setting when we show such flagrant disregard for a company's Terms of Service?"¹³⁶ Furthermore, Farkas stated that there are many resources available to academic libraries in regards to purchasing and acquiring audiovisual media; as a result, libraries do not need to resort to taking advantage of Netflix.

Immediately after Meredith Farkas published her article online, she received many responses from the public. Although some were in favor of her argument, interestingly, most of the comments consisted of people informing her of his or her personal experience with a Netflix

¹³⁵ Ibid., 214.

¹³⁶ Meredith G. Farkas, "Netflix in Libraries and Hypocrisy." *Information Wants to Be Free* (blog), September 18, 2010. Accessed December 13, 2015. <http://meredith.wolfwater.com/wordpress/2010/09/18/netflix-in-libraries-and-hypocrisy/>.

program at his/her academic library. For example, one commenter, named AB, described how the library he worked at implemented a Netflix account strictly for faculty members and staff personnel. "This account was only started after library personnel, and the college's lawyer discussed this with Netflix, who gave us the go ahead. We also talked to other libraries who had created a similar service, and they too had checked with Netflix before starting it."¹³⁷ Another commenter, Tina, posted underneath Farkas' article explaining how her university library called Netflix and asked if they could use the service for educational use. "The customer service rep said that was fine; he knew that many educational institutions were doing it, and Netflix did not have a problem with this. When we asked where in the Terms of Use agreement it said that, he could not point to it, and would not put it in writing for us."¹³⁸ Not only did librarians post on her article, but a Netflix representative also felt inquired to post as well.

Having worked at the Netflix Customer Service Call Center years ago, this issue has come up internally at Netflix. The official word we got was basically a don't-ask-don't-tell policy. We were told if asked about the idea of a library lending Netflix discs to tell the caller that it was against the Terms of Use, and they should contact their legal department. Basically, Netflix will cover its butt with the studios and say it's a violation of the Terms of Use, but libraries can get away with it unless someone draws too much attention to it. So far, the studios haven't made a fuss. Netflix is making money off of the library accounts, so it certainly doesn't mind.¹³⁹

Regardless of the ethical obligations, Meredith Farkas brought to light, which libraries should consider, the consensus among the library community appears to be that the use of Netflix in academic libraries is an excellent, and cost-efficient solution regarding acquiring and accessing audiovisual materials.

¹³⁷ AB, Comment on "Netflix in Libraries and Hypocrisy." *Information Wants to Be Free* (blog), September 18, 2010. Accessed January 13, 2016. <http://meredith.wolfwater.com/wordpress/2010/09/18/netflix-in-libraries-and-hypocrisy/>.

¹³⁸ Tina, Comment on "Netflix in Libraries and Hypocrisy." *Information Wants to Be Free* (blog), September 18, 2010. Accessed January 13, 2016. <http://meredith.wolfwater.com/wordpress/2010/09/18/netflix-in-libraries-and-hypocrisy/>.

¹³⁹ Joe_Netflix, Comment on "Netflix in Libraries and Hypocrisy." *Information Wants to Be Free* (blog), September 18, 2010. Accessed January 13, 2016. <http://meredith.wolfwater.com/wordpress/2010/09/18/netflix-in-libraries-and-hypocrisy/>.

As demonstrated, a few years ago the use of Netflix in academic libraries was a common practice, which was explored by libraries as a way of potentially saving the university money as well as increasing access to audiovisual content. Apparently, Netflix verbally permitted some academic libraries (and public libraries) to utilize their service, as exhibited by the case studies and comments described above; however, Netflix refused to put this permission in writing. The ultimate issue appears to be that Netflix decided to verbally allow some academic libraries to use their service, yet refused to change their Terms of Use agreement or refused to establish an academic library subscription account, which would specifically address these issues. Interestingly, it appears that Netflix, not the library, is the hypocritical candidate in this scenario. If Netflix' Terms of Use explicitly states that the service is reserved strictly for "personal and private use," why does Netflix grant verbal permission for the service to be used at an academic institution? Obviously, the subscription will be used for public use, thus, violating their Terms of Use agreement, yet Netflix turns a blind eye to libraries using the service. If Netflix truly believed in their Terms of Use agreement, they should not verbally permit libraries to violate the Terms of Service agreement. Furthermore, if Netflix does not take their own agreement seriously, why should academic libraries?

Regardless of verbal permission, libraries do not have a contract with Netflix or a legal written agreement allowing them to use the service at their institution; therefore, academic libraries should proceed with caution before violating Netflix's Terms of Use agreement and potentially opening themselves up to a lawsuit.¹⁴⁰ Since Netflix is aware of the use of their service in academic libraries, librarians should consider speaking with Netflix to collaborate some sort of "plan" regarding an institutional account (but the plan should be in writing). "Given

¹⁴⁰ Jonathan I. Ezor, "Streaming While Teaching: The Legality of Using Personal Streaming Video Accounts for the Classroom." *Albany Law Journal of Science and Technology* 23 (March 20, 2013): 221-36. Accessed December 10, 2015. <http://www.albanylawjournal.org/Documents/Articles/23.1.221-Ezor.pdf>, 236.

the potential risks that a Netflix lending program entails, though, I would only enter into such a program with the full support of my institution's legal department."¹⁴¹ Furthermore, if a library does intend to establish a Netflix subscription it is probably best to keep the use of the service a secret (like Rebecca Fitzgerald).

Ignoring the possible legal ramifications, a Netflix subscription within an academic library allows faculty and students the opportunity to easily access content that may not be available via other outlets. A Netflix subscription also acts as a collection development tool, simultaneously improving patron's library browsing experience.¹⁴² With that said, it is important to emphasize the use of Netflix within an academic library as only a supplementary resource for acquiring audiovisual material. A Netflix subscription cannot provide the library with access to all of the necessary educational titles faculty require for classroom use; as a result, the library must obtain additional methods for acquiring audiovisual material. Despite Netflix's enormous collection, the service does not have access to every single possible title, and in particular, the service has a small collection of educational titles. In addition, content consistently changes on the service due to licensing agreements with Netflix and the production studios of the content. Thus, Netflix cannot guarantee content availability.

Although Netflix offers fast and easy access to a tremendous amount of material, the library does not own the material. Owning the material simultaneously permits students and faculty the opportunity to use the material for research outside of the classroom, a necessary requirement at any university or college. "Owning a DVD on the shelf encourages extended, repeated, and transformative use that result in a range of benefits for both professors and

¹⁴¹ Peter Hirtle, "Using Netflix in a Library." *LibraryLaw Blog* (blog), September 18, 2010. Accessed January 13, 2016. <http://blog.librarylaw.com/librarylaw/2010/09/using-netflix-in-a-library.html>.

¹⁴² S. Craig Finlay, Michael Johnson, and Cody Behles, "Streaming Availability and Library Circulation: An Exploratory Study." *LIBRES EJournal* 24, no. 1 (2014): 1-10. Accessed November 2, 2015. <http://libres-ejournal.info/wp-content/uploads/2014/10/LIBRESv24i1p1-10.Finlay.2014.pdf>, 3.

students. Ownership also gives a measure of stability and control over a media collection that cannot be had merely through access to a service such as Netflix.”¹⁴³ Ultimately, Netflix should be implemented within academic libraries as an additional method for acquiring audiovisual material, assuming that the academic institution’s legal department agrees that violating the service’s Terms of Use is an acceptable, appropriate, and necessary risk.

Chapter 6: Future of Streaming Media Collections in Academic Libraries

In the past five years, streaming video has become the standard for viewing media, since it provides users convenience, flexibility and easy access. Although a useful format, physical

¹⁴³ Ciara Healy, "Netflix in an Academic Library: A Personal Case Study." *Library Trends* 58, no. 3 (Winter 2010): 402-11. Accessed November 1, 2015. doi:10.1353/lib.0.0089, 409.

media presents many limitations, such as, risk of obsolescence, while streaming media provides patrons with 24/7 accessibility to titles, along with the opportunity to view titles from various platforms at any location. Due to streaming media's popularity among students, recently, the presence of streaming media has increased dramatically in academic libraries; however, the methods regarding acquiring and accessing said material for faculty and student use still remains a difficult challenge for media librarians. Unfortunately, this challenge will only continue due to the copyright restrictions and licensing agreements academic libraries must abide by when purchasing streaming material.¹⁴⁴

Should academic libraries be permitted to subscribe to Netflix? In today's economic climate, libraries are forced to operate with significantly smaller budgets yet are still expected to provide exceptional services to students and faculty. Due to the exceptionally low cost for access to an abundance of content, libraries have been using commercial services, such as Netflix, in order to provide affordable and accessible streaming media to patrons. Ultimately, by supplying fast, easy and inexpensive access to a broad array of content, implementing a Netflix subscription at an academic library as a supplementary tool can potentially save the university an enormous amount of money. Not only does the service save the university money, but it also benefits the library in terms of acquiring future titles. By having access to Netflix via streaming, faculty can easily view educational titles and inform the library of future titles that the library should purchase for the collection. Several libraries have implemented a Netflix subscription into their library, such as Wake Technical Community College, the Mortvedt Library, and the Scheele Memorial Library, and have had enormous success with the service. "Despite the fact that legal scholars uniformly agree that this practice violates the Netflix Terms of Use, libraries

¹⁴⁴ Rue McKenzie and Leetta M. Schmidt, "Isn't Everything Online Yet? Streaming Media and Electronic Reserves." *Journal of Interlibrary Loan, Document Delivery & Electronic Reserve* 22, no. 3-4 (November 12, 2012): 175-80. Accessed January 14, 2016. doi:10.1080/1072303x.2012.732923, 175.

seem to be responding to patron demand in this way either intentionally or based on misunderstanding or ignorance of the law.”¹⁴⁵

Although a convenient and easily accessible service for personal use, Netflix was designed specifically for personal and private use, simultaneously forbidding the service in public institutions. On the other hand, by reserving the service strictly to classroom use, libraries are adhering with federal copyright law (classroom use exemption), yet violating Netflix’s Terms of Use agreement (personal and private use only). Is a violation of Netflix’s Terms of Use agreement a distinguishing factor to terminate the Netflix subscription? How are libraries supposed to supply information to patrons if they have to agonize over acquiring said information to begin with? The service’s Terms of Use agreement is making it unnecessarily difficult for academic libraries to distribute content in an educational environment.

In the future, Netflix should consider offering institutional subscriptions specifically for academic libraries and public libraries. If Netflix is aware of the amount of libraries utilizing the service, shouldn’t they simply offer an educational subscription? In addition, the Terms of Use agreement needs to be amended to include the use of institutional subscriptions. As of now, Netflix does not intend to change their Terms of Use agreement or include institutional subscriptions even though they are completely aware that academic libraries are using their service. As a result, libraries are forced to use the service “under the radar” or struggle to acquire material elsewhere.

Whether or not an institution establishes a Netflix subscription, acquiring a streaming media collection in an academic library is a complicated process especially due to the copious amount of decisions a librarian has to ultimately make. For example, between choosing the

¹⁴⁵ William M. Cross, "Restoring the Public Library Ethos: Copyright, E-Licensing, and the Future of Librarianship." *Law Library Journal* 104, no. 2 (2012): 195-217. Accessed January 14, 2016. <http://www.aallnet.org/mm/Publications/lj/LLJ-Archives/vol-104/no-2/2012-18.pdf>, 213.

correct streaming media delivery model (subscriptions, third-party hosted, or locally encoded and locally hosted) as well as the appropriate licensing agreement (flat-fee, in-perpetuity licensing, flat-fee term licenses, graduated-fee term license, standing-order model, curated collections model, and pay-per-view model)¹⁴⁶ by the end of the day a librarian can feel overwhelmed and exhausted if he or she does not fully understand the correct procedure. Regardless, there are many advantages and disadvantages associated with acquiring a streaming media collection.

Arguably the most difficult factor in the equation regarding acquiring streaming media collections is the expense. Deg Farrelly, Streaming Video Administrator and Media Librarian at Arizona State University stated, "Regardless of the source of the title for streaming, you are going to pay much more for the streaming file than for the hard copy."¹⁴⁷ In general, acquiring streaming media is expensive, however it is more expensive and time-consuming to purchase content via a title-by-title basis versus purchasing subscription packages. Unfortunately, both scenarios present independent advantages and disadvantages, therefore academic libraries need to fully understand the positives and negatives of both options as well as the media needs of their faculty and students in order to successfully determine which purchase option will best benefit their library.¹⁴⁸

While streaming media is a widely accepted practice regarding viewing video, due to copyright law, it has produced understandable frustration within the library and academic community. As the librarian, it is his or her duty to educate the faculty regarding copyright,

¹⁴⁶ Susie Bossenga, Chris Bulock, Luann DeGreve, Carol Doyle, Tom Goetz, Ruth Lindemann, Stephen McMinn, and Charles Uth, "Streaming Video in Academic Libraries." Proceedings of CARLI Annual Meeting, Chancellor Ballroom, Champaign, IL. 2014. Accessed October 20, 2015. <http://www.carli.illinois.edu/carli-annual-meeting-1>.

¹⁴⁷ Deg Farrelly, "A Baker's Dozen (and More): Issues in Streaming Media." Proceedings of ALCTS Preconference Workshop, San Francisco, CA. June 26, 2015.

¹⁴⁸ Cheryl J. Duncan and Erika Day Peterson, *Creating a Streaming Video Collection for Your Library*. London: Rowman & Littlefield, 2014, 2.

licensing, and contract restrictions that directly affect how streaming media can and cannot be used in the classroom. “Contract law rather than copyright most often dictates the use of media online, so it is important to find old terms of use and review their language for streaming application.”¹⁴⁹ Confusion among faculty still exists concerning the legality of streaming media in the classroom, thus librarians need to remain educated regarding this issue and a proper source for faculty to turn to.

In the future, academic librarians should advocate for hybrid collections, one in which librarians acquire streaming media from an abundant of sources, such as Netflix and regular licensed vendors. In addition, it is essential for librarians to understand their institution’s underlying needs regarding acquiring, accessing and managing streaming video. Furthermore, the librarian has to acquire a streaming media subscription that will successfully satisfy the demands of the faculty; however, to accomplish this goal, both the faculty and the library must work together to guarantee that all needs are met. For example, the faculty should work closely with the librarian in regards to researching and communicating future academic titles for acquisition. This will help the librarian comprehend the current academic demands of the university and fully understand which streaming titles are necessary to the library’s collection. The difficulties concerning acquiring streaming media collections for academic libraries can be reduced if librarians and faculty work together to determine what content is best suitable.

¹⁴⁹ Kathleen Fountain, "Managing Expectations and Obligations: The Librarian’s Role in Streaming Media for Online Education." *Proceedings of the Charleston Library Conference*, 2011, 497-505. Accessed October 15, 2015. doi:10.5703/1288284314954, 504.

Sources Consulted

17 U.S.C.A § 102. <http://www.copyright.gov/title17/92chap1.html#102>.

17 U.S.C.A. § 106. <http://www.copyright.gov/title17/92chap1.html#106>.

17 U.S.C.A. § 107. <http://www.copyright.gov/title17/92chap1.html#107>.

17 U.S.C.A § 110. <http://www.copyright.gov/title17/92chap1.html#110>.

AB. Comment on "Netflix in Libraries and Hypocrisy." *Information Wants To Be Free* (blog), September 18, 2010. Accessed January 13, 2016.

<http://meredith.wolfwater.com/wordpress/2010/09/18/netflix-in-libraries-and-hypocrisy/>.

"Academic Video Store." <https://www.academicvideostore.com>. Accessed January 1, 2016.
<https://www.academicvideostore.com>.

Albitz, Becky, Christine Avery, and Diane Zabel, eds. *Rethinking Collection Development and Management*. Libraries Unlimited, 2014.

Amazon Representative in discussion with the author, January 2016.

"Amazon Video Terms of Use." Amazon.com Help: Amazon Instant Video Terms of Use. Accessed January 09, 2016.
<https://www.amazon.com/gp/help/customer/display.html?nodeId=201422760>.

American Library Association. "Performance of or Showing Films in the Classroom." News release, September 10, 2009. Association of Research Libraries. Accessed January 10, 2016. <http://www.arl.org/storage/documents/publications/films-in-classroom10sep09.pdf>.

Angelopoulos, V. G., D. M. Garyfallidou, and G. S. Ioannidis. "Streaming Media in Education." Proceedings of Proc International Conference ICL 2004: "Interactive Computer Aided Learning", The Science Laboratory, School of Education, University of Patras, Rion, Greece. 2004. Accessed December 12, 2015. <http://www.ro.feri.uni-mb.si/razno/icl2004/pdf/aggelopoulos.pdf>.

Blumenstein, Lynn. "Small Libraries Start Using Netflix." *Library Journal*, April 15, 2008, 1. Accessed October 15, 2015. <http://lj.libraryjournal.com/2008/04/ljarchives/small-libraries-start-using-netflix/>.

Bossewitch, Jonah, and Michael D. Preston. "Teaching and Learning with Video Annotations." *Learning Through Digital Media: Experiments in Technology and Pedagogy* (blog), March 8, 2011. Accessed October 1, 2015.
<http://learningthroughdigitalmedia.net/teaching-and-learning-with-video-annotations>.

"Breach of Contract & Quasi Contract." GANA LLP. Accessed January 10, 2016.
<http://www.ganalawfirm.com/breach-of-contract-quasi-contract.html>.

Bremholm, Tony, Lisa Hooper, Sally Krash, and Josh Lupkin. *Streaming Media Collections: General Guideline for the Selection & Acquisition of Streaming Media for Tulane Libraries*. Report. New Orleans: Howard-Tilton Memorial Library, Tulane University, 2014. Accessed December 15, 2015.
https://library.tulane.edu/sites/library.tulane.edu/files/documents/CollectionDev_StreamingMediaGuidelines_2015_02.pdf.

Brianna (Netflix Representative) in discussion with the author, January 2016.

Bridgewater, Rachel. "Tipping the Scales: How Free Culture Helps Restore Balance in the Age

- of Copyright Maximalism." *OLA Quarterly* 16, no. 3 (Fall 2010): 18-22. Accessed January 17, 2016. doi:10.7710/1093-7374.1293.
- Bossenga, Susie, Chris Bullock, Luann DeGreve, Carol Doyle, Tom Goetz, Ruth Lindemann, Stephen McMinn, and Charles Uth. "Streaming Video in Academic Libraries." Proceedings of CARLI Annual Meeting, Chancellor Ballroom, Champaign, IL. 2014. Accessed October 20, 2015. <http://www.carli.illinois.edu/carli-annual-meeting-1>.
- Bucknall, Julian. "The History of Streaming Media," *PCPlus*, August 324, 2012: 72.
- Casey, Mike. *Indiana University Bloomington: Media Preservation Survey*. Report. Edited by Alan Burdette. Compiled by Patrick Feaster. Bloomington: Indiana University Bloomington, 2009. Accessed December 1, 2015. http://www.indiana.edu/~medpres/documents/iub_media_preservation_survey_FINALwww.pdf.
- "Copyright Basics: The Digital Millennium Copyright Act." The Campus Guide to Copyright Compliance. 2008. Accessed January 2, 2016. <https://www.copyright.com/Services/copyrighthoncampus/basics/dmca.html>.
- "Copyright Basics: The TEACH Act." The Campus Guide to Copyright Compliance. 2008. Accessed January 2, 2016. <https://www.copyright.com/Services/copyrighthoncampus/basics/teach.html>.
- "Copyright Basics: What Is Copyright Law?" The Campus Guide to Copyright Compliance. 2008. Accessed January 2, 2016. <https://www.copyright.com/Services/copyrighthoncampus/basics/law.html>.
- Cross, William M. "Restoring the Public Library Ethos: Copyright, E-Licensing, and the Future of Librarianship." *Law Library Journal* 104, no. 2 (2012): 195-217. Accessed January 14, 2016. <http://www.aallnet.org/mm/Publications/llj/LLJ-Archives/vol-104/no-2/2012-18.pdf>.
- Cunningham, Kay. "Current Issues with Copyright and Higher Education: Lawsuits, Legislation, and Looking Forward." *IL Internet Learning* 2, no. 2 (September 2013): 4-15. Accessed December 2, 2015. doi:10.18278/il.2.2.1.
- Dames, K. Matthew. "Using Copyrighted Works in Teaching: A Guide for Syracuse University Faculty." December 2013, 1-27. Accessed October 20, 2015. doi:10.14305/00-00.rt.2013.1.
- Delockery, Megan. "Library Cards: Now Saving You \$8.99/Month!" *JETLaw: Vanderbilt Journal of Entertainment & Technology Law* (blog), September 29, 2010. Accessed January 10, 2016. <http://www.jetlaw.org/2010/09/29/library-cards-now-saving-you-8-99month/>.
- Dixon, Wheeler W. *Streaming: Movies, Media, and Instant Access*. Lexington: University Press

of Kentucky, 2013.

Duncan, Cheryl J., and Erika Day Peterson. *Creating a Streaming Video Collection for Your Library*. London: Rowman & Littlefield, 2014.

E-mail from Andrew Horbal, January 6, 2016.

E-mail from Cab Vinton, January 15, 2016.

E-mail from Ciara Healy, January 8, 2016.

E-Mail from Ciara Healy, January 12, 2016.

E-mail from Marcia Haigh, January 7, 2016.

E-mail from Mark Cheramie Walz, January 4, 2016.

"End User License Agreement." Netflix. July 12, 2011. Accessed January 09, 2016.

<https://help.netflix.com/legal/eula>.

Ezor, Jonathan I. "Streaming While Teaching: The Legality of Using Personal Streaming Video Accounts for the Classroom." *Albany Law Journal of Science and Technology* 23 (March 20, 2013): 221-36. Accessed December 10, 2015.

<http://www.albanylawjournal.org/Documents/Articles/23.1.221-Ezor.pdf>.

Farkas, Meredith G. "Netflix in Libraries and Hypocrisy." *Information Wants to Be Free* (blog), September 18, 2010. Accessed December 13, 2015.

<http://meredith.wolfwater.com/wordpress/2010/09/18/netflix-in-libraries-and-hypocrisy/>.

Farrelly, Deg. "A Baker's Dozen (and More): Issues in Streaming Media." Proceedings of ALCTS Preconference Workshop, San Francisco, CA. June 26, 2015.

Ferguson, Cris. "Technology Left Behind-The Temptations of Netflix." *Against the Grain*, 43rd ser., 22, no. 6 (December/January 2010): 83-84. Accessed October 1, 2015.

<http://docs.lib.purdue.edu/atg/vol22/iss6/43>.

Finlay, S. Craig, Michael Johnson, and Cody Behles. "Streaming Availability and Library Circulation: An Exploratory Study." *LIBRES EJournal* 24, no. 1 (2014): 1-10. Accessed November 2, 2015.

<http://libres-ejournal.info/wp-content/uploads/2014/10/LIBRESv24i1p1-10.Finlay.2014.pdf>.

Fitzgerald, Rebecca. "Using Netflix at an Academic Library." Web blog post. *Tame the Web*. Library Innovators, 9 Sept. 2010. Web. 20 Oct. 2015.

<http://tametheweb.com/2010/09/09/using-netflix-at-an-academic-library-a-ttw-guest-post-by-rebecca-fitzgerald/>.

- Fountain, Kathleen. "Managing Expectations and Obligations: The Librarian's Role in Streaming Media for Online Education." *Proceedings of the Charleston Library Conference*, 2011, 497-505. Accessed October 15, 2015. doi:10.5703/1288284314954.
- Fran Lan Rasmus in discussion with the author, January 2016.
- Gerhardt, Deborah, and Madelyn Wessel. "Fair Use and Fairness on Campus." *North Carolina Journal of Law & Technology* 11, no. 3 (April 23, 2010): 461-530. Accessed January 17, 2016. http://www.ncjolt.org/sites/default/files/Gerhardt_Deborah_i11v3_461_530.pdf.
- Handman, Gary. "License to Look: Evolving Models for Library Video Acquisition and Access." *Library Trends* 58, no. 3 (Winter 2010): 324-34. Accessed October 20, 2015. doi:10.1353/lib.0.0094.
- Handman, Gary, "White Paper on Digital Video Licensing in Libraries." Accessed October 23, 2015. <http://www.lib.berkeley.edu/MRC/whitepapercomments.pdf>.
- Harris, Christopher. "Fact or Fiction? Libraries Can Thrive in the Digital Age." *Phi Delta Kappan* 96, no. 3 (November 13, 2014): 20-25. Accessed December 10, 2015. doi:10.1177/0031721714557448.
- Harris, Colleen S. "Terms of Service, Cramped Budgets, and Good Library Citizenship: The Netflix Dilemma." *The Bottom Line: Managing Library Finances* 23, no. 4 (October 30, 2010): 212-14. Accessed January 11, 2016. doi:10.1108/08880451011104045.
- Harris, Lesley Ellen. *Licensing Digital Content: A Practical Guide for Librarians*. Second ed. Chicago: American Library Association, 2009.
- Healy, Ciara. "Netflix in an Academic Library: A Personal Case Study." *Library Trends* 58, no. 3 (Winter 2010): 402-11. Accessed November 1, 2015. doi:10.1353/lib.0.0089.
- Hirtle, Peter. "Using Netflix in a Library." *LibraryLaw Blog* (blog), September 18, 2010. Accessed January 13, 2016. <http://blog.librarylaw.com/librarylaw/2010/09/using-netflix-in-a-library.html>.
- Hunter, Gary. *Can an Instructor Stream a Movie into the Classroom Using His or Her Personal Streaming Account, Such as Netflix?* July 28, 2015. Minnesota.
- Investopedia. "How Netflix Pays for Movie and TV Show Licensing (NFLX)." Investopedia. June 25, 2015. Accessed January 09, 2016. <http://www.investopedia.com/articles/investing/062515/how-netflix-pays-movie-and-tv-show-licensing.asp>.
- Joe_Netflix. Comment on "Netflix in Libraries and Hypocrisy." *Information Wants to Be Free* (blog), September 18, 2010. Accessed January 13, 2016. <http://meredith.wolfwater.com/wordpress/2010/09/18/netflix-in-libraries-and-hypocrisy/>.

- Kaya, Travis. "Academic Libraries Add Netflix Subscriptions." *Wired Campus. The Chronicle of Higher Education*, September 18, 2010. Accessed October 15, 2015. <http://chronicle.com/blogs/wiredcampus/academic-libraries-add-netflix-subscriptions/27018>.
- Klein, Bethany, Giles Moss, and Lee Edwards. *Understanding Copyright: Intellectual Property in the Digital Age*. London: SAGE, 2015.
- Koennecke, Jesse, Susan Marcin, and Matthew Pavlick. "The Devil Is in the Details: Managing the Growth of Streaming Media in Library Collections." *Proceedings of the Charleston Library Conference*, 2014, 398-404. Accessed October 15, 2015. doi:10.5703/1288284315646.
- Lang, Brent. "Digital Home Entertainment to Exceed Physical by 2016, Study Finds." *Variety*, June 3, 2014. Accessed December 15, 2015. <http://variety.com/2014/digital/news/digital-home-entertainment-to-exceed-physical-by-2016-study-finds-1201207708/>.
- Larry (Netflix Representative) in discussion with the author, April 2016.
- Laskowski, Mary S. *Guide to Video Acquisitions in Libraries: Issues and Best Practices*. Chicago, IL: ALCTS Publishing, 2011.
- Marczynke, Monique. "VHS Cassettes – The End of a Success Story." *MAGIX Magazine* (blog), August 21, 2015. Accessed December 20, 2015. <http://magazine.magix.com/en/end-vhs-cassette/>.
- Mccleskey, Sarah, Christine Fischer, Steven Milewski, and Jim Davis. "You've Licensed It. Now What?" *Proceedings of the Charleston Library Conference*, 2014, 527-32. Accessed October 20, 2015. doi:10.5703/1288284315643.
- McDermott, Abigail J. "Copyright: Regulation Out of Line with Our Digital Reality?" *ITAL Information Technology and Libraries* 31, no. 1 (March 03, 2012): 7-19. Accessed December 10, 2015. doi:10.6017/ital.v31i1.1859.
- McKenzie, Rue, and Leetta M. Schmidt. "Isn't Everything Online Yet? Streaming Media and Electronic Reserves." *Journal of Interlibrary Loan, Document Delivery & Electronic Reserve* 22, no. 3-4 (November 12, 2012): 175-80. Accessed January 14, 2016. doi:10.1080/1072303x.2012.732923.
- Netflix Form 10-K Annual Report*. Report. February 25, 2009. Accessed January 7, 2016. <http://ir.netflix.com/secfiling.cfm?FilingID=1193125-09-37430>.
- "Netflix Terms of Use." Netflix. September 15, 2014. Accessed January 09, 2016. <https://help.netflix.com/legal/termsfuse>.
- Obenson, Tambay A. "Netflix Explains Why It Doesn't Always Have That Film or TV Show

- You Really Want To See (Video)." *Indiwire* (blog), July 13, 2013. Accessed January 12, 2016. <http://blogs.indiewire.com/shadowandact/netflix-explains-why-it-doesnt-always-have-that-film-or-tv-show-you-really-want-to-see-video>.
- Otto, Jane Johnson. "University Faculty Describe Their Use of Moving Images in Teaching and Learning and Their Perceptions of the Library's Role in That Use." 2014. MS Cr112-399, Rutgers, The State University of New Jersey. Accessed December 10, 2015. <https://rucore.libraries.rutgers.edu/rutgers-lib/39038/>.
- "Q3 15 Letter to Shareholders." Netflix to Shareholders. October 14, 2015. Accessed January 09, 2016. http://files.shareholder.com/downloads/NFLX/1275486366x0x854558/9B28F30F-BF2F-4C5D-AAFF-AA9AA8F4779D/FINAL_Q3_15_Letter_to_Shareholders_With_Tables_.pdf.
- Rebecca Fitzgerald in discussion with the author, January 2016.
- Ross, Christine. "Copyright on Campus: Coordinating the Confusion." *Proceedings of the Charleston Library Conference*, 2012, 626-30. Accessed October 15, 2015. doi:10.5703/1288284314799.
- Russell, Carrie. "The Best of Copyright and VideoLib." *Library Trends*, 3rd ser., 58 (Winter 2010): 349-57. Accessed January 11, 2016. doi:10.1353/lib.0.0095.
- Scholtz, James C. *Video Acquisitions and Cataloging: A Handbook*. Westport, CT: Greenwood Press, 1995.
- Singleton, Micah. "Netflix Doesn't Own Its Shows, But That Could Change Soon." *The Verge*, April 21, 2015. Accessed January 12, 2016. <http://www.theverge.com/2015/4/21/8463743/netflix-ownership-tv-shows>.
- Tina. Comment on "Netflix in Libraries and Hypocrisy." *Information Wants to Be Free* (blog), September 18, 2010. Accessed January 13, 2016. <http://meredith.wolfwater.com/wordpress/2010/09/18/netflix-in-libraries-and-hypocrisy/>.
- Tysver, Daniel A. "Rights Granted Under Copyright Law." BitLaw. Accessed January 10, 2016. <http://www.bitlaw.com/copyright/scope.html>.
- Ungerleider, Neal. "It Has 40 Million Subscribers. Now Amazon Prime Is Eyeing The Competition." *Fast Company*. July 09, 2015. Accessed January 09, 2016. <http://www.fastcompany.com/3048366/it-has-40-million-subscribers-now-amazon-prime-is-eyeing-the-competition>.
- "Video @ Goucher College Library." Goucher College Library. Accessed January 10, 2016. <http://libraryguides.goucher.edu/videos/videopurchasing>.
- Willard. Comment on "Using Netflix at an Academic Library." *Tame the Web* (blog), September 9, 2010. Accessed January 11, 2016. <http://tametheweb.com/2010/09/09/using-netflix-at-an-academic-library-a-ttw-guest-post-by-rebecca-fitzgerald/>.

"WOMEN MAKE MOVIES | HOME." WOMEN MAKE MOVIES | HOME. Accessed January 10, 2016. <http://www.wmm.com/>.