

Can Librarians Still Be Preservationists?  
Streaming Video Licensing in Libraries

by  
Manon Gray

A thesis submitted in partial fulfillment  
of the requirements for the degree of  
Master of Arts  
Moving Image Archiving and Preservation Program  
Department of Cinema Studies  
New York University  
May 2017

## Introduction

In the 20th Century, with the advent of new technologies, libraries expanded their collections beyond the written word. Libraries provide many types of media to their patrons, including moving images and recorded sound. Compared to print materials, moving images change distribution formats frequently. Library film collections were replaced with VHS, which in turn were replaced by DVD. The home video formats held by libraries follow the consumer market, both because those formats are what are available to buy and because they match with the equipment their patrons are likely to know and own. Each transition has its pains, as libraries have to decide how long to maintain old formats and whether or not to replace titles. However, the process is unavoidable as long as formats continue to change.

It is easy to predict the next great format change for consumer video: streaming. Librarians already collect digital video, but streaming represents the untethering of digital from physical carriers like film, tape, or optical disks. Evidence for the imminence of this shift is mounting. In 2016, consumer spending on subscription video services such as Netflix surpassed the amount spent on DVDs for the first time.<sup>1</sup> While consumer streaming services such as Amazon and Netflix do not sell institutional licenses to libraries, it is clear that libraries that wish to provide video will have to find a way to stream to reach their patrons. Library-specific streaming services such as Hoopla, Kanopy, and Alexander Street Press have emerged to fill this gap.

---

1. Wallenstein, Andrew. 2017. "Home Entertainment 2016 Figures: Streaming Eclipses Disc Sales for the First Time." *Variety*, -01-06T18:31:29+00:00. <http://variety.com/2017/digital/news/home-entertainment-2016-figures-streaming->

The introduction of streaming is more than a technology shift. It is a new business model. Instead of selling ownership in discrete copies, movies are licensed individually or in subscription packages. I became interested in how this model might affect libraries because of how much streaming changed my behavior as a consumer. The introduction of Netflix's streaming service changed that way that I access movies more than the introduction of DVDs. For both DVDs and VHS tapes, I would go to a video rental store. I often went with a specific title in mind because the store's selection was predictable based on the home video release date. In contrast, when I sign into Netflix, I do not assume I will find a specific title. Their selection changes frequently based on the titles that they license from the studios. While I could digitally rent specific titles from iTunes or Amazon, I usually do not because Netflix feels more cost-effective. As a result, I will often settle for a title on Netflix rather than the one that I truly wanted to see. The titles available from library streaming services also fluctuate. While my entertainment choices are swappable, the needs of academic library patrons often are not. In the world of academic libraries, professors and students rely on specific titles for teaching and research. Streaming video business models present a challenge to collection management.

This thesis will focus on the implications of streaming for the ability to maintain collections in the long term. For context, Chapters 1 and 2 will discuss the library's role in preservation and relevant copyright exceptions. Chapter 3 considers the challenges that streaming video will present for preservation, with respect to the digital nature of streaming and its licensing model. Chapter 4 contextualizes video streaming through consideration of other media types that are also distributed digitally. Chapter 5 presents a case study in license evaluation by assessing Alexander Street Press's sample license.

Chapter 6 discusses the results of a survey of librarians about streaming video licensing.

Chapter 7 concludes with recommendations for improving library control over digital video collections in the future.

## Chapter 1:

### The American Library's Role in Preservation

The public trusts libraries as custodians of cultural heritage. Libraries operate with long-term strategies, maintaining their collections for future generations. They are concerned not only with those resources that are popular in the moment, but also works that may be useful in the future. Preservation is one of “Core Values of Librarianship” enumerated by the American Library Association (ALA).<sup>2</sup> Their Preservation Policy describes preservation as an integral part of “ensuring access to information in a usable and trustworthy form.”<sup>3</sup>

In their statement on “Research Libraries Enduring Responsibility for Preservation,” the Association of Research Libraries (ARL) states, “Historically the act of collecting has been the first and most significant step in preservation.”<sup>4</sup> Libraries passively preserve cultural heritage by collectively holding many copies of published works. Librarians point to Thomas Jefferson as an early proponent of this preservation strategy. In a letter to a historian compiling a book of historical documents, Jefferson wrote,

Time and accident are committing daily havoc on the originals deposited in our public offices. The late war has done the work of centuries in this business. The lost cannot be recovered; but let us save what remains: not by vaults and locks

---

2. "Core Values of Librarianship." Advocacy, Legislation & Issues., last modified -07-26T11:15:55-05:00, accessed Jan 7, 2017, <http://www.ala.org/advocacy/intfreedom/statementspols/corevalues>.

3. "ALA Preservation Policy 2008." Association for Library Collections & Technical Services (ALCTS)., last modified -09-18T01:33:06-05:00, accessed Jan 6, 2017, <http://www.ala.org/alcts/resources/preserv/08alaprespolicy>.

4. ARL Board of Directors. 2007. *Research Libraries' Enduring Responsibility for Preservation*. Washington, D.C.:.

which fence them from the public eye and use, in consigning them to the waste of time, but by such a multiplication of copies, as shall place them beyond the reach of accident.<sup>5</sup>

In the pre-digital world, multiple copies of resources had to be purchased to satisfy library patrons. Collections between different library systems overlap significantly, and a single library might purchase many copies of a popular resource. In this way libraries have contributed to the proliferation of copies that makes the complete loss of the work unlikely. Libraries promote the preservation of cultural heritage by keeping their collection objects long after their initial publication. Passive preservation is important because libraries have very limited funding for preservation. According to the Heritage Health Index Report, 78% of libraries allocate less than \$3,000 in their budgets annually towards preservation, with over half of these libraries allocating nothing.<sup>6</sup>

A library's role in preservation differs from that of other cultural heritage institutions because their focus is on informational content rather than object. Archives and museums typically collect rare and unique records or artifacts. The inherent value of the object often warrants the conservation of individual pieces. Standard preservation practice at archives and museums limits handling to staff or vetted researchers. While some libraries, particularly academic, may have special collections that operate as archives, most collections are intended for circulation. Libraries acquire mass-produced

---

5. "From Thomas Jefferson to Ebenezer Hazard, 18 February 1791," *Founders Online*, National Archives, last modified December 28, 2016, <http://founders.archives.gov/documents/Jefferson/01-19-02-0059>. [Original source: *The Papers of Thomas Jefferson*, vol. 19, 24 January–31 March 1791, ed. Julian P. Boyd. Princeton: Princeton University Press, 1974, pp. 287–289.]

6. Heritage Health Index. 2005. *A PUBLIC TRUST AT RISK: The Heritage Health Index Report on the State of America's Collections*. Washington, D.C., 74.

copies of published materials such as books, serials, CDs, and DVDs. Since the objects libraries collect are often not valuable as objects, libraries prioritize access over minimizing wear and tear. Damaged items that are still in print can simply be replaced. The priority is to maintain the information content within the collection. Items can be removed from circulation and placed in special collections if they become rare or difficult to replace.

If necessary, libraries can maintain their collections through active interventions such as preservation reformatting and conservation treatment of individual objects. Since libraries strive to maintain access to content over the conservation of artifactual elements, reformatting has long been an accepted preservation strategy for non-rare works in library collections. In the middle of the 20<sup>th</sup> Century, libraries started microfilming newspapers because of the deterioration of the original paper stock. Looking at microfilm is a significantly different experience from flipping through a newspaper. However, microfilm deteriorates more slowly than acidic paper and requires less shelf space. Access to the greatest possible number of newspapers was chosen over higher quality preservation of individual editions.

Active preservation projects often focus on saving specific types of content or media. Harvard University Library began one of the first large microform projects in 1938, the Foreign Newspaper Project. Harvard used microforms to preserve the content of quickly deteriorating newsprint and to save space.<sup>7</sup> Similarly, in the 1980s libraries

---

7. Canepi, Kitti, Ryder, Becky, Stiko, Michelle and Weng, Catherine. "Ch. 1. Microforms in Libraries and Archives | Managing Microforms in the Digital Age." Association for Library Collections & Technical Services (ALCTS)., last modified -08-16T16:11:45-05:00, accessed May 2, 2017, <http://www.ala.org/alcts/resources/collect/serials/microforms01>.

turned to microfilm again for the “brittle books” crisis. After librarians educated lawmakers and the public about the risk that acidic paper created to the cultural record, Congress authorized the National Endowment for the Humanities to fund paper preservation projects.<sup>8</sup> The NEH gave libraries across the country grants to create microfilms of endangered books and with the goal of saving over 3 million volumes. The allocation of funding by Congress demonstrates that lawmakers can be convinced of the need to preserve cultural heritage. As a result of their historical role in preservation, libraries were among the chosen institutions to carry out this work.

---

<sup>8</sup> Hammer, John. "National Endowment for the Humanities Funds Increased for 1989." *PS: Political Science and Politics* 22, no. 2 (1989): 272-74. doi:10.2307/419607, 273.



## **Chapter 2:**

### **The Historical Relationship between Preservation and Copyright**

Not everyone is comfortable with libraries providing free access and preserving works. Over the past 20 years in general, publishers and other content distributors have developed a fear that libraries will diminish the market for their products by providing free copies and creating reproductions instead of their patrons purchasing more copies. In contrast, librarians worry that relying exclusively on commercial access to works will price some out of the information market. They also fear losing access to works when they are not commercially exploitable.

Copyright law attempts to balance these competing interests. It grants the creators of intellectual property certain exclusive rights with the intent of incentivizing them to share their works. At the same time, copyright law includes exceptions to creators' rights that allow some library activities. The Copyright Act of 1976 introduced sections 107, 108, and 109 to Title 17 of the U.S. Code. Section 108 allows reproductions by libraries and archives in limited cases, while Sections 107 and 109 codify fair use and the concept of first sale, respectively. These exceptions allow libraries to make limited copies for research and preservation and provide the legal justification for the lending of materials.

Historically, conflict between libraries and the content industry has increased with the advent of technology that makes reproducing content easier and faster. Early library practices developed prior to explicit copyright laws. According to the "Overview of the Libraries and Archives Exception in the Copyright Act," a report released by the U.S. Copyright Office, the practice of hand-copying text from a work in a library's collection

was considered permissible according to the common-law doctrine of fair use.<sup>9</sup> The onerousness of copying by hand prevented it from reaching a scale that concerned publishers. However, the practice set the stage for conflict when photographing and later photocopying became viable options for researchers and preservationists. While libraries saw these tools as extensions of handwritten transcriptions, publishers saw technology that would reduce the incentive for individuals to purchase books. Conflict over photocopying eventually led to the creation of Section 108 in the Copyright Act of 1976.<sup>10</sup>

Today, the ability to directly duplicate digital works presents an even greater perceived threat to the profitability of the content industry than photocopying. At the same time, digital works require duplication for preservation. Revisions have been made to the Copyright Act of 1976 to try to address the changes brought about by digital technology, though arguably more to the satisfaction of the content industry than librarians. In 1998, the Digital Millennium Copyright Act amended Section 108 subsections (a), (b), and (c) to allow the creation of three copies for replacement and preservation instead of one.<sup>11</sup> It also added obsolescence to the list of allowable reasons for preservation reproduction. However, the DMCA restricted the distribution of digital reproductions to the library's premises. Some librarians have interpreted this to refer not only to a library's physical location, but also to online resources limited to password-authenticated users. The location restriction was intended to prevent digital copies from

---

9. Rasenberger, Mary and Chris Weston. 2005. Overview of the Libraries and Archives Exception in the Copyright Act: Background, History, and Meaning. Washington, D.C., 2.

10. Ibid., 10

11. Ibid., 24

being widely distributed in such a way that would reduce a copyright holder's market.<sup>12</sup> However, particularly in an age where most people deal with library services remotely, this prevents libraries from being able to lend reproductions as widely as the original copy.

Another copyright bill from 1998, the Copyright Term Extension Act, increased the duration of copyright protection by twenty years. In compromise, Congress added Section 108(h) to allow libraries to reproduce, distribute, display, and perform works during the last twenty years of their copyright terms if it is an "orphan work."<sup>13</sup> Orphans are copyrighted works for which the rights holders cannot be found. Time limited orphan works present a problem for preservation because deteriorating materials often have a limited time period in which reformatting or reproduction can occur. The objects may not survive long enough to enter the public domain, which is why libraries would like more freedom in reproducing works still under copyright.

Although copyright laws can be revised in response to changing technology, the slow pace of legislation prevents copyright from quickly adapting to current realities. Subsection 108(i) of the Copyright Act of 1976 called for reports by the Copyright Office every five years to evaluate whether or not Section 108 was achieving its purpose. An early report recommended that subsequent reports explicitly consider changes in technology; however, the recommendation was not enacted and the five-year reporting requirement was discontinued in 1992.<sup>14</sup> No legal mechanism exists to encourage responsiveness to technological changes.

---

12. Ibid., 26

13. Ibid., 30

14. Ibid., 22-23.

While U.S. copyright law acknowledges the public benefit of library preservation, it does not provide libraries complete legal support to fulfill this charge. While this is true across all media, audiovisual materials are particularly challenging to preserve under existing law.

### **Chapter 3:**

#### The Impact of Streaming Video On Preservation

Although circulating DVD collections are still in wide use at libraries, everyone knows that the days of physical media are numbered. Increasingly people prefer to consume video through streaming online. Librarians are well aware that the need to provide streaming video services will present challenges. Video streaming is a hot topic, and many librarians have written about it in the past decade. However, much of the literature has understandably focused on questions of current access and collection development. Guides to the different payment models and hosting options for streaming video help librarians decide what video services work with their budget.

Another commonly identified concern with streaming video is that a significant number of popular titles are unavailable for libraries to legally license. Netflix and Amazon have become major producers with their original content, yet their consumer licenses prohibit institutional use. This makes it impossible for libraries to legally provide their patrons with access to titles such as *Transparent*, *Stranger Things*, and *The Crown* until they are released on DVD. This is especially frustrating for academic libraries trying to support faculty who wish to show and discuss the programs in class. While some programs are eventually released on DVD after the end of a series, the delay can make it impossible to provide the materials at the height of their academic relevance. Additionally, libraries will not have recourse to DVDs once the format becomes obsolete. With the difficulties facing library adoption of streaming video, it is understandable that most of the focus has been on access in the current moment. However, streaming will present significant challenges to long-term preservation as well.

My interest in the preservation of streaming video was inspired in part by the *Video at Risk (VAR)* project, which demonstrated the vulnerability of commercial VHS collections. *VAR*, led by New York University (NYU), with participation from the University of California Berkeley and Loyola University, examined the processes by which widely distributed commercial video titles can become rare and endangered. By looking at catalog records for VHS tapes, they found many titles that appeared to be held by only one library. At NYU alone they found 2,122 uniquely held commercially released videotapes.<sup>15</sup> Many of these titles were irreplaceable because they had never been re-released on DVD or were not in distribution. While *VAR* highlighted the potential loss of content in the switch from analog tape to digital disk, some of the risks considered apply equally well to streaming video. *VAR* included a case study on the replacement of PBS titles. Since PBS typically licensed videos from producers for 5-7 years, whether or not those titles were still available often depended on the original content producer. Of unique PBS titles at NYU, “only 34% of titles originally obtained through PBS were actually still in-print and available from marketplace vendors.”<sup>16</sup> The question of out-of-print (or rather, out of distribution) videos is more problematic for streaming videos than other formats. The reasons for this are twofold: (1) Streaming media is treated differently under copyright law because it lacks a discrete physical carrier; (2) Streaming media is licensed, not owned. These two aspects of streaming video are discussed separately below for clarity.

---

15. Forsberg, Walter. *Video at Risk: Strategies for Preserving Commercial Video Collections in Research Libraries*. New York City, 3.

16. *Ibid.*, 7-8.

*Implications of the 'Digital-ness' of Streaming Video*

The Copyright Act of 1976 was written in an analog age when content was usually distributed locked onto its own carrier, whether a book, record, or film. Section 108, which details copyright exceptions for reproduction by libraries and archives, refers to circumstances that do not apply as well to the realities of digital preservation. In particular, the justifications for the reproduction of published works are analog focused. Obsolescence is defined as the end of manufacture or availability of a “machine or device.” Digital files are more likely to become obsolete because of software rather than hardware advances. Previous video formats had mechanical players unique to them. A streamed or downloaded video’s player is a computer, which is used for many other tasks. Obsolescence is harder to define for digital objects.

Another problem with applying Section 108 to digital files on a computer is that damage and deterioration justifications require observing something wrong. Since we do not directly observe the bits comprising a file, it is difficult to detect deterioration. Files seem intangible. As a result, it is not immediately obvious why digital files require active preservation. Outside of the library world, it is common to read that digitization solves the preservation problem because digital files do not degrade. In theory, unlike analog documents, digital files can be reproduced exactly without any loss of quality. However, it is an oversimplification to believe that a digital file will last forever without intervention. A variety of problems can prevent a file from being useable. Being able to create multiple copies is an integral part of digital preservation. Like all files, digital video is susceptible to gradual data degradation. Data degradation, or bit rot, refers to a change in the electrical charge in computer memory or a storage device. This can change

values in the binary code that create a file. When a bit flips from 0 to 1 or vice versa, the data can become corrupted. Depending on the importance of the bit, a visual disruption can occur or the file can become unreadable. To restore corrupted data, a new copy must be made from a backup file. However, the backup copies must have been made before the corruption occurs.

Another reason why a file may become unusable is the obsolescence of software. Video files contain codec information and a wrapper that indicate to video playback software how to interpret and present a file. Playback software such as QuickTime or Windows Media Player can only read a limited number of file formats. Additionally, as developers create new software, older codecs and wrappers may become obsolete and unreadable. Beyond software, digital storage technology may also become obsolete or merely not match a user's equipment. If a valid video file is trapped, for example, on a flash drive with a USB Type-A connector, but most computers only support USB Type-C, then the video file will not be useable. Since such devices are not necessarily integral to playing the video, it is unclear if they count as obsolescence under Section 108. However, "moving" a file from one device to another requires making a new copy.

Files may also be lost because of human activities. Human error might result in someone accidentally deleting a video that they host. The storage networks could also lose data if it becomes infected with malware. Although digital information can last for an extended period of time, it is naïve to think that it will require less active preservation than analog materials. To fulfill their responsibility to preserve documents of cultural heritage, which are increasing distributed online, librarians need an updated Section 108.



Section 109, the first sale doctrine, is another exception to copyright whose use by libraries has been limited for digital files. The Capitol Records, LLC vs. ReDigi, Inc. case in 2013 determined that first sale does not apply to digital downloads. ReDigi was a platform for re-selling downloaded content purchased on iTunes. In order to sell a file, a user would upload it to ReDigi. ReDigi would then delete the file from the user's computer. Then it would transfer the file to the new buyer. U.S. District Judge Richard Sullivan ruled that first sale did not apply to digital downloads because, "ReDigi is not distributing such material items; rather, it is distributing reproductions of the copyrighted code."<sup>17</sup> First sale only applies to digital files with their own carrier like a DVD. Without recourse to first sale, libraries cannot freely lend digital files through interlibrary loan. There is also no secondary market through which they can attempt to obtain digital files that are out of print. While this example is ostensibly about downloaded, not streamed files, it applies in situations where the library itself hosts streaming video.

Streaming video from an outside service also prevents libraries from contributing to their passive preservation role of proliferating copies. File copies are centralized on a vendor's server. This can make it difficult to access videos that are no longer in regular distribution. If a vendor stops streaming a video, access to the hosted file ceases. Since the streaming process does not download full videos to the viewing computer, additional copies are not created.

---

17. Davis, Wendy. "ReDigi Renews Battle with Capitol Over 'used' iTunes Tracks." MediaPost., last modified Feb 9, accessed May 2, 2017, <https://www.mediapost.com/publications/article/294850/redigi-renews-battle-with-capitol-over-used-itun.html>.

*The Impact of Licensing on Streaming Video Preservation*

Unlike past video format changes, streaming comes with a dramatically new business model. Rather than sell copies, the content industry has adopted licenses as the primary means of distributing content in order to maintain their market. Businesses feared that the ease of making digital copies would prevent people from individually paying for content as they would for physical copies. However, licensing is fundamentally different from selling ownership to a copy. Licensing creates an ongoing relationship in which the business always has a say in how the client uses a product. In effect, everything licensed is a rental. While this difference may not be too noticeable to individual consumers, it is dire for librarians who rely on copyright exceptions to legally protect their activities.

Both Section 108: Reproduction by Libraries and Archives and Section 109: First Sale require ownership, not licensing. Section 108 allows reproduction only if “the copy or phonorecord reproduced is currently in the collections of the library or archives.”<sup>18</sup> This has been interpreted to mean that the library must own a copy of the work it wishes to reproduce.<sup>19</sup> Similarly, Section 109 does not “extend to any person who has acquired possession of the copy or phonorecord from the copyright owner, by rental, lease, loan, or otherwise, without acquiring ownership of it.”<sup>20</sup> Libraries do not own videos that they license for streaming. As a result, they do not have recourse to the copyright exceptions designed for their use.

---

18. 17 U.S.C. § 108(b)(1).

19. Hirtle, Peter. "Digital Preservation and Copyright." Stanford Copyright and Fair Use Center., last modified -11-10T18:44:46-07:00, accessed May 2, 2017, [http://fairuse.stanford.edu/2003/11/10/digital\\_preservation\\_and\\_copyright/](http://fairuse.stanford.edu/2003/11/10/digital_preservation_and_copyright/).

20. 17 U.S.C. §109(d).

The trend towards the irrelevance of copyright is happening internationally. In an article for the magazine of the World Intellectual Property Organization, Ben White, Head of Intellectual Property at the British Library argues that, “contracts are systematically undermining copyright law in that existing statutory limitations and exceptions often become null and void under contract law.”<sup>21</sup> As evidence he presents statistics from the British Library’s 2007 contract review, including the fact that only 23 of 100 contracts allowed the Library to archive materials for which they had paid. Streaming video licenses frequently prohibit archiving to create an incentive to renew licenses.

However, relying on licenses has unintended consequences for libraries. Libraries object to licenses not so much because they do not want to pay to renew them, but because they worry there will be no one from whom to renew the licenses. In general, libraries license video not from the actual copyright holder, but from a vendor who has licensed the video from a distributor who has licensed it from a producer. If a title is unpopular, the vendor may choose to not renew the license, making the title unavailable for libraries. Similarly, the title will become unavailable if the distributor or copyright holder ceases to support the file.

Previously, buying a copy insulated libraries from this complex chain of licensing. Libraries could keep their hard copies on the shelf even if the video distributor dropped their license. With few exceptions, out of distribution streaming titles simply disappear.

---

21. White, Ben. "Guaranteeing Access to Knowledge: The Role of Libraries." [www.wipo.int](http://www.wipo.int/wipo_magazine/en/2012/04/article_0004.html), accessed May 2, 2017, [http://www.wipo.int/wipo\\_magazine/en/2012/04/article\\_0004.html](http://www.wipo.int/wipo_magazine/en/2012/04/article_0004.html).

Even though some contracts may be more favorable to library preservation than others, the diversity of conditions makes evaluating what is permissible more difficult for libraries. Previously, the same copyright exceptions applied to most print and analog objects. In contrast, current digital licenses are not standardized. Every company may have their own standard, and additionally tailor it for specific clients. License restrictions upstream, from distributors or producers, can lead to different license restrictions for certain titles. This results in “a situation equivalent to one in which, in the analogue world, every book on a shelf comes with a different contract allowing different things.”<sup>22</sup> Though licenses may use similar or identical phrases, concepts are not always explicitly defined. This results in a situation in which the same words may have different implications in different licenses. The more librarians need to evaluate contracts, the less time they have for the core projects of access and preservation.

The previous analysis applies to most streaming licenses. However, a variety of streaming models exist with different implications for preservation. Common licensing models include collection subscriptions, short-term title licenses, and perpetual or life-of-format licenses. For subscriptions, libraries pay to access an entire collection of streaming videos. Individual title licenses give libraries the ability to pick and choose which titles they would like to license. The duration of the license can vary and is frequently measured in years. Longer term licenses also exist under a variety of names including life-of-file, life-of-format, and perpetual licenses.

Libraries have the most control over video files for which they purchase perpetual rights. However, it is important to acknowledge that librarians have mostly purchased

---

22. Ibid., 23

subscription and term licenses. In a survey on streaming practices in academic libraries conducted by deg farrelly and Jane Hutchinson Surdi, subscription services were the most broadly adopted form of streaming by survey respondents.<sup>23</sup> 91.7% of librarians who responded to the question indicated that they had obtained streaming video content for their library through subscription services. In contrast, only 55.4% reported purchasing licenses in perpetuity. The survey also found that, on average, libraries term license 1,859 titles, compared to 738 titles licensed in perpetuity.<sup>24</sup> Subscriptions and leases are significantly less expensive on a per-title basis than purchasing perpetual access licenses.<sup>25</sup> There are preservation issues specific to each licensing model.

### *Subscription*

While collection subscriptions are the most common streaming services available at libraries, they offer the least control over the availability of titles. Vendors are not required to maintain specific titles within a subscription collection. It is common for the collection to change over time. Contracts do not always require vendors to provide notice of the removal of individual titles from their service.<sup>26</sup> This can make it difficult for libraries to know to which titles it has access. The larger the collection, the less likely libraries will be able to monitor what is in it. Without advance notice of dropped titles, libraries are unable to look for alternative sources of a title. This makes it difficult to maintain consistent access to individual titles.

---

23. farrelly, deg and Jane Hutchinson Surdi. 2016. *Academic Library Streaming Video Revisited*. Orlando: American Library Association Annual Conference, 34.

24. Ibid., 39

25. Ferguson, Jennifer and Erdmann, Annie. "Streaming Video in Academic Libraries." *American Libraries Magazine*., last modified -09-21T13:05:10-05:00, accessed May 3, 2017, <https://americanlibrariesmagazine.org/2016/09/21/streaming-video-academic-libraries/>.

26. Hathcock, April. "Personal Interview." 2016.

Subscription services frequently aggregate videos from many distributors. As libraries rely on the small group of streaming vendors, an unintended consequence is increased uniformity of the titles available at different libraries. Since streaming vendors license content themselves, they must evaluate which titles to offer in large part according to general popularity. An individual title that inspires intense local interest, but little elsewhere, will likely not be renewed for collections that are offered nationally. If the title is unavailable to re-license, libraries that accessed the video through subscription will be unable to maintain the title in their collection.

### *Individual Title License*

Licensing titles on an individual basis gives libraries more control over their streaming offerings today. However, license contracts frequently specify that vendors are not obliged to offer libraries the opportunity to renew a license. This protects vendors who may not choose or be able to renew their own licenses. The most common durations for title licenses are one to three years.<sup>27</sup> At the end of each license it is possible that the video will be unavailable. Preservation is often described as access in the future. However, streaming licenses place this future in few years rather than decades.

Perpetual, life-of-file, and life-of-format licenses market themselves as a solution to this problem. Libraries are allowed to maintain access to a video even if it is out of distribution. However, the licenses can end. The duration of these licenses are not defined in terms of time, but rather by technical considerations. The life of the license may be tied to the length of time that the file is readable or to whether the vendor still distributes in that file format. Vendors argue that this is analogous to physical media, where a librarian

---

27. See Appendix B, page 53.

might buy a second copy of a work because their existing copy was lost, damaged, or made obsolete. However, these licenses do not restore old models of preservation unless they allow libraries to reproduce files or migrate them when vendors do not make them available for relicensing. There is no guarantee that videos will be available to relicense after a file dies or format changes. Alexander Street Press's perpetual license, which is not life-of-file or –format based, does appear to allow file reproduction and migration. The specifics of their model will be further discussed in Chapter 5. However, even that model does not allow libraries the full breadth of options allowed by copyright exceptions for analog materials. For example, their license is non-transferable, which means that the library cannot lend via interlibrary loan nor give their license to another institution if the library closes. While the perpetual access model has potential, it is not currently a complete solution. Furthermore, perpetual licenses are only available for some titles.

For extended licenses, libraries are still vulnerable to vendors going out of business unless they take custody and host the files themselves. Licenses may or may not allow this. Even when licenses do, many libraries are unprepared to host large collections of streaming video. One reason for libraries to use a vendor is to outsource streaming platform infrastructure. Libraries that host their own streaming videos might not be able to offer the same quality of streaming that is offered by a distributor's platform. Many professional streaming services are able to respond, either dynamically or manually, to a

user's Internet speed by adjusting the file size.<sup>28</sup> Libraries will need more advanced digital infrastructure to maintain large collections of streaming videos on site.

*Whose responsibility is preservation?*

The existing obstacles for library preservation require reliance on the content industry to preserve and archive their videos. Unfortunately, this is a risky position. Businesses are not repositories of cultural heritage; they rightly do not have a responsibility to ensure that media continues to exist after it has ceased to be profitable. Preservation costs money, and companies that go out of business will not have the financial resources for preservation. Libraries have provided a public good by engaging in preservation. If the law will not allow them to continue in this role, perhaps new organizations should be created and funded to preserve born-digital works.

---

28. Bossenga, Susie, Chris Bullock, Luann DeGreve, Carol Doyle, Tom Goetz, Ruth Lindemann, Stephen McMinn, and Charles Uth. 2014. *Streaming Video in Academic Libraries: A White Paper*. Illinois: Consortium of Academic and Research Libraries in Illinois, 3.



## Chapter 4:

All media is experiencing the shift towards digital licenses

Although this thesis focuses on video, the issues raised by digital distribution extend to nearly all media types that libraries collect. Libraries now offer online access to electronic journals, e-books, and music. Despite all digital formats being subject to licensing, the differences between their business models have created divergent license terms and library responses. Examining the developing library reactions to each prior media type gives insight into possible outcomes and strategies for video preservation.

Serials collections in academic libraries were the first to begin the digital transition. Journal publications started offering digital subscriptions in the 1990s. According to Karla L. Strieb and Julia C. Blixrud in “Unwrapping the Bundle: An Examination of Research Libraries and the “Big Deal,”” publishers embraced e-journals as a way to encourage libraries to subscribe to an entire catalog of titles rather than a few that were individually-selected.<sup>29</sup> Once the journals were digitized, publishers were able to offer more titles for lower production costs while simultaneously justifying higher prices by offering more content. Large journal subscriptions became known as “big deals.” Since serials were already subscription-based, the main departure from the print market was in changing ownership to licensing. With paper journals, libraries could hold on to copies after unsubscribing as well as share through interlibrary loan. Switching to e-journals threatened these and other traditional library practices.

---

29. Strieb , Karla L. and Julia C. Blixrud. 2014. "Unwrapping the Bundle: An Examination of Research Libraries and the "Big Deal"." *Portal: Libraries and the Academy* 14 (4): 587-615. doi:10.1353/pla.2014.0027.  
[http://muse.jhu.edu/journals/portal\\_libraries\\_and\\_the\\_academy/v014/14.4.strieb.html](http://muse.jhu.edu/journals/portal_libraries_and_the_academy/v014/14.4.strieb.html), 588.

As the market matured, libraries were able to negotiate for modifications to e-journal licensing that help them maintain long-term access and preservation. Unlike other types of digital content such as e-books and videos, libraries are the main consumers for academic serials. This allowed libraries to negotiate with journal publishers from a position of relative strength. Consortia of research libraries were formed to negotiate licensing terms for e-journals.<sup>30</sup> Today, some “big deal” journal packages allow libraries to keep back issues of journals after ending their subscriptions.<sup>31</sup> Libraries continue to improve preservation for serials. At a recent NASIG (North American Serials Interest Group) conference, librarian Anne R. Kenney argued for the creation of a “social compact” between libraries, publishers, and third-party archives to maintain electronic journals.<sup>32</sup>

Although journal publishers and librarians have different aims, the overlap between library patrons and scholarly writers encourages cooperation more than with other types of media. The purpose of academic libraries is to provide resources that will help scholars write the essays that the journals will sell. This common ground is perhaps part of why libraries and publishers have been able to work together to create third-party preservation archives such as LOCKSS, CLOCKSS, Portico, and Scholars Portal. While these preservation services have varying terms and mechanisms, they generally rely on publisher permission to preserve content. When journals become inaccessible (for example, the publisher goes out of business), participating libraries can retrieve

---

30. Ibid., 594

31. Simon, Jason C. 2014. "E-Book Purchasing Best Practices for Academic Libraries." *Journal of Electronic Resources Librarianship* 26 (1): 77, 71.

32. Kenny, Anne R. and Kathryn Wesley. 2016. "Building a Social Compact for Preserving E-Journals." *The Serials Librarian* 70 (1-4): 84.

preservation files from the archive as part of a “rescue” mission. Third-party digital repositories are currently an integral component of e-journal preservation. However, only a fraction of existing publications have been preserved in that way.

The relative success that libraries have had negotiating e-journal subscriptions frequently makes it a model for media librarians working with other digital content. When trying to establish licensing conventions for e-books, ARL consciously made the decision to focus first on university presses, whose content produces and consumers resemble those for academic journals.<sup>33</sup> However, libraries are also interested in e-books from commercial publishers. Libraries negotiate from a weaker position in market dominated by individual consumers. For example, while journal publishers encouraged digital subscriptions for libraries, the Big Six (now Five) book publishers had to be convinced to allow e-book library lending at all. Much like video distributors, book publishers feared that the lack of natural barriers to digital file sharing would destroy their market. If everyone could get e-books for free, simultaneously, there would be no need for individual consumers to pay for content. To allay these fears, librarians had to accept a number of restrictions that reduce their ability to offer access to and preserve e-books. For example, some publishers force the deterioration of e-books by causing the files to expire after a designated number of reads.<sup>34</sup> Despite the fact that the digital copy costs less to reproduce than print, publishers typically charge more for e-books.<sup>35</sup>

---

33. Lowry, Charles B. and Julia C. Blixrud. 2012. "E-Book Licensing and Research Libraries— Negotiating Principle and Price in an Emerging Market." *Research Library Issues: A Quarterly Report from ARL, CNI, and SPARC* (280): 19, 11.

34. Simon, Jason C. 2014. "E-Book Purchasing Best Practices for Academic Libraries." *Journal of Electronic Resources Librarianship* 26 (1): 77, 71.

35. Sanchez, Joseph. 2014. "Forecasting Public Library E-Content Costs." *eContent Quarterly* (March 2014): 17.

Common services used by libraries for e-book lending include OverDrive, B&T Axis 360, and 3M Cloud Library. These platforms enforce the limited duration of borrowing.

The ALA has made e-book lending a priority for advocacy. In 2012 the ALA Digital Content and Libraries Working Group decided to focus on e-books.<sup>36</sup> As part of this initiative, the ALA has created several resources on problematic e-book licensing terms for librarians, including a media toolkit to encourage advocacy, a “Scorecard” to conceptualize the relative values of different license terms, and a document comparing the terms and availability of e-book licenses from the Big Five publishers. The ALA has emphasized access rather than preservation. In contrast, ARL has focused more on e-book preservation, creating e-book purchasing best practices that include preservation requirements so that “archival preservation, refreshing, or migrations ensure continued use and/or retention of the data.”<sup>37</sup> ALA and ARL publications on e-books could serve as potential models for streaming video advocacy.

Like video, a long-term challenge for the preservation of e-books will likely be the obsolescence of file formats. Currently, it is common to see libraries offer commercial e-books in both EPUB and Kindle formats. Sometimes, only one file type is offered. EPUB is an open format used by many e-readers, while the Amazon Kindle uses a proprietary file format, AZW.<sup>38</sup> The Kindle is currently the most widely purchased e-reader, although designated e-readers have been losing popularity due to the proliferation

---

36. "E-Book Media and Communications Toolkit." Libraries Transform., last modified -11-20T14:41:37-06:00, accessed May 3, 2017, <http://www.ala.org/transforminglibraries/ebooktoolkit>.

37. Lowry, Charles B. and Julia C. Blixrud. 2012. "E-Book Licensing and Research Libraries— Negotiating Principle and Price in an Emerging Market." *Research Library Issues: A Quarterly Report from ARL, CNI, and SPARC* (280): 19, 12.

38. Simon, Jason C. 2014. "E-Book Purchasing Best Practices for Academic Libraries." *Journal of Electronic Resources Librarianship* 26 (1): 77, 71, 74.

of tablets.<sup>39</sup> The multiplicity of e-book file formats contrasts with academic journals. Databases typically offer HTML text in browser and PDFs for download. With respect to format obsolescence, digital video has more in common with e-books than e-journals.

Initiatives from libraries to offer streaming or downloaded music lag behind other media. The pressing preservation concern with online music is that libraries cannot collect music that is only licensable to individuals. Some music is only licensed online through iTunes and Amazon, not sold on CDs or vinyl. Additionally, services such as Spotify and Tidal, who offer subscriptions rather than individual title downloads, have increasingly sought high-profile exclusives with artists. Such services do not offer institutional licenses. This is similar to video content that is only offered through Netflix or Amazon Video. There is currently no legal way to offer such titles to patrons, much less preserve them. Judy Tsuo and John Vallier, in their essay, "Ether Today, Gone Tomorrow," describe several failed attempts to license music offered only on platforms such as iTunes and Amazon. They tried asking Apple and Amazon for a library exception in their end-user license agreements, but were told that the record labels dictated the terms.<sup>40</sup> Tsuo and Vallier also recount the breakdown of negotiations with Universal Music Group, who wanted over \$500 to license 25% of the Los Angeles Philharmonic's performance of Berlioz's *Symphonie Fantastique*.<sup>41</sup> The recording is currently available

---

39. "The E-Reader Device is Dying A Rapid Death." Just Publishing Advice., last modified -12-19T15:55:28+00:00, accessed May 3, 2017, <https://www.justpublishingadvice.com/the-e-reader-device-is-dying-a-rapid-death/>.

40. Tsou, Judy and John Vallier. 2016. "Ether Today, Gone Tomorrow: 21st Century Sound Recording Collection in Crisis." *Notes - Quarterly Journal of the Music Library Association* 72 (3): 461-483. <http://search.proquest.com/docview/1784408837>, 464-465.

41. Ibid.

on iTunes for \$5.99. Librarians have been prevented from lending music through excessive costs.

However, music differs from videos, e-books, and journals because so much content is available online for free. Services such as Spotify and Pandora, while selling subscriptions, also offer more limited free versions. Record labels also frequently publish music videos to Youtube. Additionally, musicians and composers may give access to recordings on their personal websites. Some existing preservation projects for music focus on archiving a website that contains music, rather than the recording as a discrete unit. New York University has a preservation grant for the Archiving Composers' Websites project, intended to facilitate capture of dynamic content such as music online.<sup>42</sup> Tsuo and Vallier also developed a partnership with the Internet Archive to create a dark archive of online-only music for preservation purposes.<sup>43</sup> The creation of a dark archive in particular may be a preservation strategy for video.

Web archiving is a relatively new practice. The technology for it is still being developed. While web crawlers are able to capture a lot of text on the web, they struggle with more dynamic content such as music and videos. However, preservation practices for web archiving may help normalize library preservation of digital content with ambiguous copyright ownership. As a result of the vast amount of content online, many archives collect publically available web pages without first securing permission. Instead, they allow copyright holders to opt-out of collection by accepting robot exclusions and

---

42. Besser, Howard. 2017. "Archiving Websites Containing Streaming Media." In *Archiving 2017 Final Program and Proceedings*, Riga, May 15-18, 2017, 11-13. Latvia: Society for Imaging Science and Technology.

43. Ibid., 481.

takedown requests.<sup>44</sup> Since the archived web pages are free to access, their market value is not at risk by preservation. This makes it possible that web archiving would be accepted as a fair use by the courts. Indirectly, accepting preservation copying as a fair use for web archiving might encourage similar interpretations of preservation copying and reformatting for digital videos.

---

44. Niu, Jinfang. 2012. "An Overview of Web Archiving." *D-Lib Magazine* 18 (3-4). <http://www.dlib.org/dlib/march12/niu/03niu1.html>.

## Chapter 5:

### License Case Study: Alexander Street Press

To illustrate how license terms may affect video preservation in libraries, this chapter is a case study in examining a license. Reading the text closely provides some answers for what is possible, but also leaves ambiguities. For this case study, I chose a license from Alexander Street. I chose their license not to endorse it or single it out for criticism, but because I have more knowledge of their licensing model than others. I am thankful that they are transparent and provide a generic sample license on their website, which David Parker, the Video Licensing and Distribution representative at Alexander Street, confirmed is current.<sup>45</sup> He generously answered some of my questions about the license, which informs this assessment. I was also able to briefly speak to a couple of distributors who license videos to Alexander Street.

Alexander Street, a ProQuest company, is known for their streaming video offerings, though they also have text and audio collections. They offer streaming video access through several sales models, including collection subscriptions, perpetual access purchase, patron-driven acquisition, and evidence-based acquisition. The sample license available on their website covers all of these models. The main body of the license contains 21 numbered sections and two appendices. I will not describe every section in detail, but will highlight points of interest for the question of maintaining titles in the long term. This is an outline of the license agreement.

---

45. Alexander Street Press. 2015. Alexander Street Press Sample Customer License Agreement.

Parker, David. 2017. Personal Interview, edited by Manon Gray.



## Alexander Street Press Customer License Agreement

1. The Parties
2. The products(s)
3. User License
4. Authorized Use
5. Restrictions
6. Authorized Users
7. Delivery/Access
8. Customer Support
9. Pricing and Term
10. Product Updates
11. Performance
12. Limitation of Warranties and Liability
13. Termination
14. Force Majeure
15. Applicable Law
16. Dispute Resolution
17. Indemnification
18. Entire Understanding
19. Amendment
20. Enforceability by IP
21. Severability

Appendix A: Defines “Customer” and “Site”

Appendix B: List and Description of Alexander Street Products

The license specifies both authorized uses and users for their “product,” which includes both the platform and the titles available on it. Uses and users are more restricted than they would be under copyright exceptions for purchased physical copies. Section 4: Authorized Use includes language about Fair Use: “the Customer is hereby granted a non-exclusive license to use the Product(s) in a way that is consistent with U.S. Fair Use Provisions or any equivalent law in the country of the territory where the Customer is based, provided that in no circumstances may the Product be used for any commercial purpose.”<sup>46</sup> While the license in general allows for Fair Use, it limits it to non-commercial purposes. This is more restrictive than the four factors test requires, which

---

46. Ibid., 1.

looks to market impacts on a commercial work, not at whether or not the new use is commercial. The section demonstrates that copyright exceptions can be trumped by licenses.

The license restricts practices that were previously allowed by the First Sale doctrine. For example, Section 5: Restrictions, prohibits licensees to “transfer, assign, or sublicense this license.”<sup>47</sup> This restriction applies not only to subscriptions but also to purchases of perpetual access rights. One can imagine a situation in which a library is forced to close. While it could donate its physical collection to another library, it would not be able to do so with titles licensed in perpetuity according to this license. The point of access provided by that library would simply end.

Interlibrary loan is another library practice enabled by First Sale that is limited by the terms of Alexander Street’s license. The license only allows Interlibrary Loan for “text portions of the Product(s)” excluding video. This prevents libraries from being able to share resources as widely as they would in the past. Section 6, Authorized Users, explicitly limits users to people directly affiliated with a library or the occasional walk-in. For an academic library, authorized users are “the Customer’s currently enrolled full- or part-time students, employees, faculty, staff, affiliated researchers, distance learners, and visiting scholars.”<sup>48</sup> This prevents libraries from being able to offer a temporary credential to a researcher from another institution unless they visit the library in person. This restriction is understandable, since it prevents a single library from being able to provide simultaneous access to everyone, destroying the market. However, it reduces library cooperation, which is important because no one library has access to everything,

---

47. Ibid.

48. Ibid.

and many libraries rely upon interlibrary loan as part of cooperative collection development policies.

The wording of Section 7: Delivery/Access helps us understand the streaming model, which does not generate copies for each licensing library. It reads, “The Product(s) will be stored by ASP at one or more locations in digital form. If the customer has paid for a Web subscription, Authorized Users will be granted access to the location(s). If the Customer has purchased perpetual rights to the Product(s) and has paid the owner’s access fee, Authorized Users will be granted access to the locations.”<sup>49</sup> Since a single hosted file is enough to grant access to all libraries with a license, multiple copies do not need to be created. If relying on Alexander Street’s streaming platform, libraries will not necessarily have geographically separate holdings, making the videos more susceptible to natural disasters and other threats. The lack of copies removes libraries from the diverse ecosystem of owners who have historically kept works from going extinct through the “multiplication of copies.”

It is possible for libraries purchasing perpetual rights from Alexander Street to request copies of files. According to Section 7: Delivery/Access, “ASP will provide the Customer, upon request and when the Product(s) reach completion, the data contained in the Product(s) either on a digital storage medium (for a fee of \$500 per Product requested) or through a third-party vendor of archiving services.” According to David Parker, hardly any libraries request files to hold themselves.<sup>50</sup> This is unsurprising, given the resources required to maintain the files at the library. While this section of the license allows libraries to host perpetual rights videos on a local server, local hosting is subjected

---

49. Ibid.

50. Parker, David. 2017. Personal Interview, edited by Manon Gray.

to additional restrictions. The license states, “In the case of audio or video, such access must be restricted by DRM and be limited to one (1) simultaneous user.”<sup>51</sup> In contrast, unlimited simultaneous users can access files hosted by Alexander Street so long as they are authenticated library patrons.

The “\$500 per Product requested” is an example of potential ambiguity in the license. It is unclear to me if the fee would be per collection or per title. Appendix B describes “Product(s)” as “any of the following items for which the Customer has been invoiced...”<sup>52</sup> before listing their collections. However, Appendix B also includes a description of Patron-Driven Acquisition (PDA), which seems to be on a per-title basis. This is an example of a potential ambiguity in the license that would be helpful to clarify before signing.

Section 14: Force Majeure, specifies that “Neither ASP nor the IP will be responsible for any delay or failure in performance resulting from any cause beyond their control.”<sup>53</sup> This is a reasonable provision to protect Alexander Street, since problems such as Internet service failures would be beyond their control. However, the section does serve as a reminder of how many more parties are involved in a networked service like online streaming. In the event of a disaster affecting streaming video, libraries will not have control over Alexander Street’s response, in contrast to their ability to implement disaster plans to protect physical collections. The responsibility remains Alexander Street’s.

---

51. Alexander Street Press. 2015. Alexander Street Press Sample Customer License Agreement, 2.

52 Ibid., 5.

53 Ibid., 2.

Appendix B contains more information about the composition of Alexander Street's products, and some information about the Patron-Driven Acquisition (PDA) model. PDA is a model in which titles are not chosen by librarians but rather automatically licensed based on the number of patron views. Library patrons have access to an entire PDA catalog, but libraries are only billed for a title after a trigger mechanism has been activated, e.g. a video has been viewed four times. This allows libraries to avoid licensing titles that will not be used by their patrons. For Alexander Street, the standard license length for a PDA-triggered title is one year, but can be increased to three years or perpetual access. The fact that they are able to license a title in perpetuity does not imply that Alexander Street will always retain the rights to that title. Rather, it means that they have been authorized, for a limited time, to sell perpetual access rights. Alexander Street's license specifies "Alexander Street reserves the right to add or remove videos within PDA and update prices at any time."<sup>54</sup> If Alexander Street drops a title, they will continue to host it for libraries with perpetual access, but those with a 1 or 3 year license will lose access at the end of that period. Additionally, some titles offered in PDA collections are subscription only because "the rights holders won't release the content for ownership."<sup>55</sup>

Alexander Street reserves the right to swap out titles in their subscription collections. Many of the collections listed in Appendix B include a similar sentence at the end, "ASP reserves the right to swap out up to ten (10) percent of this content if required to do so by third-party copyright holders."<sup>56</sup> This is because distributors or producers may

---

52. Ibid., 11.

53. Ibid., 14.

54. Ibid., 7.

decide to stop licensing their videos or raise prices beyond what Alexander Street is willing to pay. Dropped titles are obviously a concern for librarians who want to know exactly what titles they have access to and when. Reading the license, I was not sure how to interpret the 10% figure. My guess was that 10 percent could change within a year, and another 10 percent the next year, and that Alexander Street would still be meeting the terms of the license. However, when I asked David Parker about the requirement, he clarified that Alexander Street did not have guarantees from distributors that fewer than 10% of the titles would change. Rather, if the contents of a collection changed more than 10%, Alexander Street would stop offering the collection. This highlights the need to ask clarifying questions when reviewing a license. A library cannot assume that they will have access to a streaming collection indefinitely, even though the titles within it are allowed to change.

The license is also interesting for what is not in it. I was intrigued by the perpetual rights model because of the ways in which it tries to replicate some of the benefits of copy ownership. However, the license did not have a detailed description of what perpetual rights allow. Some vendors offer video licenses for the “life of file” or “life of file format.” I thought perpetual rights might be similar. When I asked David Parker to explain perpetual rights, he described it as “unlimited, perpetual life of file.”<sup>57</sup> As a result of my background in the Moving Image Archiving and Preservation program, I wanted an explicit definition of “life of file.” I could imagine several different scenarios that might mark the death of a file, from a file failing a checksum test to obsolescence of the codec or wrapper used. However, when I asked Parker for a definition of “life of file,” he

---

57. Parker, David. 2017. Personal Interview, edited by Manon Gray.

replied that “life of file” is not a term that Alexander Street uses officially, but rather that it was helpful for explaining to librarians more familiar with that model. In Parker’s view, the technical question is an outdated focus coming from physical media. His explanation of perpetual rights transcends format; he said that Alexander Street will upgrade its platform and improve compression and bit rates as new file formats arise. This explanation matches with a license I saw between a distributor and Alexander Street. The grant section of the license reads:

The Licensor grants to ASP the worldwide rights to reproduce, incorporate and distribute the Work(s) listed on Appendix A, using the Sales Models above, in and/or on any format or media now in existence or hereafter developed, including local storage, and as part of ASP’s database products and/or services, including future editions, to its customers for their search, retrieval, display and viewing.<sup>58</sup>

The distributor also grants Alexander Street the ability to sub-license. Since Alexander Street requests the rights for future formats, it is able to offer perpetual access rights beyond “life-of-format.”

The initial license between Alexander Street and the distributor lasts for five years, before switching to a yearly, automatic renewal unless the contract is terminated. If the license is terminated, the license indicates:

In the event of termination, ASP shall retain the rights set forth herein to utilize the Work(s) in any product and/or service published and distributed by ASP prior to the effective date of termination; and reserves the right to fulfill its obligation

---

58. The source of this contract did not want to be identified.

to customers of the Work(s) as part of its services in accordance with their then current subscription and purchases made during the term of the agreement. This allows ASP to continue to provide titles obtained through perpetual access licenses.

Of course, this leaves the question of what happens if Alexander Street closes. We were not able to get much into specifics during our conversation, but Parker explained that they use a third-party escrow service, a law firm in Washington, DC, to guarantee access in the event that Alexander Street ceases operation. Of course, this leaves the question of what happens if the third-party goes out of business. Parker compared the escrow arrangement to using CLOCKSS or Portico, third-party archiving services for electronic journals. Although it may be a trade secret, it would be helpful from a preservation perspective to know more about how their arrangement works. For example, would the escrow service give the files directly to the perpetual access customers on hard drives, or would they maintain a server for a time?

Planning for the long-term preservation of a collection requires preparing for many eventualities. The purpose of this case study is not to criticize Alexander Street's license (which likely is similar to that of other vendors), but to draw attention to the complexities of licensing compared to copy ownership. Licenses will contain ambiguities and different provisions. In order to plan for preservation, librarians need to study their licenses closely. If unsure of how to interpret a section, librarians should be comfortable asking for clarification.



## Chapter 6:

### Survey on Library Video Streaming Licensed Content

Since streaming is an increasingly popular way for libraries to deliver video, more librarians are writing about the state of streaming today. The existing literature primarily focuses on present options and questions of cost and immediate access. Cheryl J. Duncan and Erika Day Peterson's, *Creating a Streaming Video Collection for Your Library*, offers an extensive list of different options, from subscription to self-hosting. Though not the main focus of the book, they touch on some matters of preservation such as the possibility of asking for archival rights and copying for acquired files.<sup>59</sup> Jane Hutchinson Surdi and deg farrelly's surveys on academic libraries streaming video, provide an extensive view of on the state of streaming in academic libraries today. The surveys ask questions about topics such as selection, funding, hosting, and licensing.<sup>60</sup> Of particular interest from a preservation standpoint are types of licenses used. Hutchinson Surdi and farrelly report that 91.7% of respondents have subscribed to collections, 67.3% have term licensed, and 55.4% have purchased or licensed in perpetuity.<sup>61</sup>

As discussed in Chapter 3, different types of licenses have different implications for long-term access and preservation. Additionally, licenses of the same type from different vendors can vary greatly in their requirements and permissions, making it challenging to generalize about them. To get a sense of the trends, I decided to conduct a survey focused on preservation and streaming video contracts.

---

59. Duncan, Cheryl J. and Erika Day Peterson. 2014. *Creating a Streaming Video Collection for Your Library* Rowman & Littlefield, 21.

60. farrelly, deg and Jane Hutchinson Surdi. 2016. *Academic Library Streaming Video Revisited*. Orlando: American Library Association Annual Conference, 3-4.

61. Ibid., 34.

The survey consisted of 21 questions with free-text fields for responses. My adviser, Howard Besser, helped me to distribute the survey through relevant lists such as Videolib. The questions, which can be found in Appendix A, addressed common streaming services used by libraries, existing video preservation projects, and license durations. Additionally, several of the questions focused on perpetual access and life-of-file licenses, as I was particularly interested in the extent to which those models resembled physical copy purchases. Librarians from 38 different institutions responded to the survey. 36 of the libraries were academic, including research universities, liberal arts colleges, and community colleges. One response was from a public library system, and another from a K-12 public school system.

Most respondents filled out the survey through Google Forms, though I also provided the option to submit a Word document via email. As mentioned previously, all response fields were free-text to invite narrative responses. Since limited research has been made of the preservation implications of licensing streaming video, I wanted to allow responses beyond what was covered in current research.

### *Findings*

All 38 respondents indicated that they offered streaming video to their patrons. The most common way that libraries obtained streaming video was through subscription to vendor video collections, with 94.7% of respondents mentioning this service. The second most reported method was through the license of individual titles, at 57.9%. Individual title licenses are usually for a specified length of time. When asked about common license durations for video at their libraries, most respondents mentioned term licenses of 1 and/or 3 years (57.9% and 52.6%, respectively.) Fewer reported licenses of

5 years (10.5%) or life-of-file (18.4%). This result suggests that libraries frequently have to relicense content, with the potential each time that titles have fallen out of distribution or had their licensing terms changed. Aggregators of large video collections may or may not notify librarians of titles dropped from their subscription plans or title license lists. The survey asked if providers are required to give notice of the changing availability of titles in subscription packages. 42.1% of librarians said “yes,” 26.3% indicated “no,” and 5.3% mentioned that practices varied. 26.3% of librarians were unsure if notifications were required or not. The mixed results on dropped title notifications are disturbing because they suggest librarians may not know that a title is no longer available until a patron asks for it. Advance notification of dropped titles is important so that librarians can find alternate sources for essential titles used in courses or research.

Whether or not libraries will be able to relicense titles is a significant question because most of the libraries in this survey reported that the majority of their streaming video titles were only available in that format. 39.5% of respondents estimated that they did not have physical copies of 81-100% of their streaming video collections. In the immediate future, libraries may be able to seek out physical copies of titles dropped by streaming vendors; however, the possibility of recovering titles in this manner will become rarer as more titles are only offered through streaming.

In the survey, I asked a trio of questions about projects undertaken by the libraries to preserve different video formats, VHS, DVDs<sup>62</sup>, and file-based digital video. Most respondents had undertaken VHS preservation (63.2%), but few had for optical disks (18.4%) or video files (15.8%). Librarians have significantly more experience preserving

---

62. DVDs contain digital video on a physical carrier.

analog media, which falls comfortably within Section 108, than digital media, which faces additional 108 restrictions.

Libraries cannot rely on Section 108 for reproducing licensed video. Instead, libraries must look to the language in their licenses for guidance. The survey included several questions designed to gauge to what extent libraries have licenses that allow or prohibit preservation activities. When asked if they had streaming licenses that explicitly denied or granted archival rights, 39.4% said “no” and 13.2% said “yes.” However, the most common response was “unsure,” at 42.1%. It is likely that many libraries in fact do have licenses that prohibit archiving, as two of the sample licenses I examined, including one from the popular Kanopy service, did list “archive” as a disallowed activity under “Restrictions on Use.” To look for more specific language, the survey also asked if libraries had licenses that contained provisions for archival reproduction or transcoding. Similarly to the question about archival rights, many respondents (42.1%) were unsure about whether or not they had licenses that allowed archival reproduction or transcoding. 39.4% responded that they had no licenses that contained provisions for archival reproduction or transcoding. Another question asked more generally if the library had contractual permission to duplicate any licensed video files for preservation purposes. Only 34.2% of libraries had licenses that granted permission to duplicate licensed video for preservation. Of these, many indicated that they had permission for life-of-file licenses or digital objects acquired by special collections. The frequent uncertainty over how to answer these questions suggests that preservation is not a significant consideration for most libraries when deciding whether or not to sign a licensed video contract.

Although still a license rather than ownership model, perpetual access, life-of-file, and life-of-format licenses are marketed as offering insulation from titles falling in and out of distribution. Several vendors offer licenses in this vein, though their models are not necessarily the same. However, the model is frequently compared to that of purchasing a DVD. As the library has access to a DVD until it breaks or becomes obsolete, so too does it have access to a digital video file. However, the comparison does not immediately reveal the meaningful differences between analog and digital media. I asked several questions about library use of these models because it was unclear to me to what extent they address the preservation crisis for streaming media. Of the libraries surveyed, 57.9% had purchased perpetual rights for a video file. Libraries employed different strategies for delivering perpetual rights titles, with a close to even split between self-hosting, using the original vendor's platform, and using a third party video platform.

Since digital preservation requires active management of files, I was interested in learning more about what life-of-file and life-of-format models entail. The survey asked librarians if their licenses had explicit definitions of these phrases, and, if not, how their library interpreted them. 36.8% of librarians indicated that there were no explicit definitions for these terms in their licenses, while an additional 10.5% were unsure. Only 15.8% believed there were explicit definitions. However, whether because of a lack of consistency between vendors or because of a lack of clear definitions, the explanations librarians offered for these terms varied greatly. There was no consensus on what life-of-file or -format means. The most technical responses indicated that life-of-format was tied to the encoding and wrapping of the file, for example, a file encoded with the H.264 codec and wrapped in .MP4. Many explanations relied on comparison to physical media,

for example, “As long as the format can be supported by the platform (such as DVDs, they will be used until DVD players are no longer made).” Others referred to the ability to keep backup files in the library. Some answers focused on specific vendors. The diversity of responses inspires more questions than answers. Without clear understanding of these terms, it is impossible to plan a preservation strategy for these files. The potential extended duration of life-of-file and life-of-format licenses should not be considered a substitute for active preservation by libraries.

When discussing digital file preservation, some librarians mentioned files acquired for special collections. It is not surprising that libraries have greater ability to preserve digital objects that are acquired for special collections. Special collections operate like archives, and custodianship of unique materials is built into their standard mission. Archives and special collections often ask for the rights to a work in order to enable its long-term preservation, and owners are more likely to agree because their desire to donate or sell a collection is motivated by the desire to contribute their works to the cultural record. However, the preservation model for special collections is different from that of circulating collections. The fact that a library was able to undertake preservation projects for digital videos in special collections does not translate to the ability to preserve circulating collections. Respondents to the survey sometimes included special collections projects in their answers. This means some of the already low numbers for digital preservation questions such as, “Has your library undertaken any preservation projects for file-based digital video?” are likely too high for our focus on commercial titles.

Where files are hosted also have implications for preservation. Usually the vendor hosts the streaming files when libraries subscribe to a collection. However, libraries may choose to self-host some licensed videos. Self-hosting is more common with videos generated by the institution the library belongs to, such as a university. When asked if they self-hosted any streaming video, 57.9% of respondents indicated that they did. This number is based on what the libraries are doing currently; several libraries indicated that they had self-hosted in the past but quit, or that they had plans to self-host in the future. Self-hosting gives libraries the most amount of control over their streaming media, but requires resources and maintenance.

To close the survey, I asked the respondents if they felt that they had robust legal support. Legal advice can give libraries more confidence when making decisions about whether or not they can legally preserve a work through fair use, Section 108, or according to the terms of a license. 47% felt that they did and 36.8% felt that they did not. Based on the elaborated responses, it appears that while many responding libraries have some access to legal help, it is not necessarily at the same organizational level. A couple respondents mentioned legal help available at the consortia level. Many respondents had some access to their university's general counsel. A few respondents mentioned having access to copyright specialist, whether a librarian or lawyer. Whether or not the source of legal advice is tied to the library can affect the nature of the advice. One respondent indicated that his or her university's general counsel was reluctant to approve any kind of media preservation project, including the accepted practice of digitizing video tape based on Section 108 obsolescence. With the variability and

nuances of licenses, legal support may be even more important in the future for assessing the legality of preservation projects.

### *Conclusion*

The survey demonstrates that librarians lack confidence when discussing video licenses. Nearly every question in the survey garnered unsure responses. When asked if his or her library had licenses with provisions for archival reproduction or transcoding, one respondent wrote, “We have never tracked this term so would have to review ALL licenses.” That is the crux of the problem. Like all of us who click through end-user license agreements without reading the fine print, librarians do not have time to study and remember all of the nuances of the video streaming contracts that they sign. Even if they did, the need to provide the desired titles often outweighs the restrictions that licenses impose. However, basic collection management is impossible without understanding the rules governing access and preservation. To review some of the more notable findings of the survey:

- **The most common title license durations are one and three years.** Vendors do not guarantee that titles will be available to renew at the end of a license term.
- **39.5% of respondents estimate that they do not have physical copies of 81-100% of their streaming video collections.** Without physical copies, most of these titles will not be eligible for Section 108 preservation reproduction.
- **Only 42.1% of respondents indicate that vendors give notice of the changing availability of titles in subscription packages.** Without notice, librarians cannot seek alternate sources for key titles.



- **42.1 % of librarians are unsure if their streaming licenses grant or deny archival rights.** In fact, many licenses explicitly deny archival rights. The high level of uncertainty suggests that preservation issues are not a significant consideration before licensing videos.
- **Only 15.8% of librarians report that “life-of-file” licenses have explicit definitions.** As a result, librarians offer a wide range of possible interpretations.
- **15.8% of responding librarians have undertaken preservation projects for digital files.** However, a significant proportion of these projects were for owned videos in special collections.

## **Chapter 7:**

### **Conclusion and Recommendations**

Since ancient times, libraries have collected works of scholarship and cultural expression. Today's libraries provide access to more information than most private citizens would be able to collect on their own. By maintaining their collections across time, libraries usher historical thought into the future. However, business and government response to the replicability of digital media will make long-term preservation of commercial works significantly harder, if not impossible. In order to protect content industry markets, the Digital Millennium Copyright Act and judicial opinions have limited the applicability of copyright exceptions to digital works. Additionally, businesses have moved towards licensing models that bypass copyright exceptions entirely.

This thesis has focused on streaming video in libraries, but the effects of digital distribution also apply to electronic journals, books, and music. However, contemporary video is particularly vulnerable because it is inherently born-digital. Additionally, DVDs are losing market share to subscription streaming. In the near future, physical carriers for video will undoubtedly become obsolete.

An examination of existing licenses from vendors of streaming services for libraries demonstrates how they pose a challenge to preservation in libraries. The variability of licenses prevents libraries from creating general preservation policies for their video collections as a whole. Subscription and term license models prohibit archiving outright, while perpetual access and "life-of-format" models are untested in the

long-term. Digital licensing is pushing both libraries and private consumers into a reality where only videos in active distribution are available.

My survey shows that libraries overwhelmingly used license models that only guaranteed short-term access, like subscriptions and temporary title licenses. While video librarians are concerned with the future preservation on their collections, many lack confidence in managing their licenses in relation to longevity and preservation issues. Across most survey questions, respondents indicated that they found it difficult to generalize about their licenses. Contracts are not standard across different streaming vendors. Libraries rarely had the contract right to duplicate digital video files, a necessary step in digital preservation.

However, the currently impossibility of preserving commercial collections of streaming video does not have to dictate the future. Existing business models can be changed to make preservation possible, and to that end, below I make several recommendations. While no librarian will be able to solve this problem on their own, I have split my recommendations between actions implementable by an individual library and those requiring profession-wide collaboration.

### *Profession-Wide Recommendations*

#### 1. Organize at the Association Level

In order to make streaming video preservation possible, either existing business models or laws must change. Since libraries are relatively small consumers of commercial media, it is essential they magnify their voices by working collaboratively.

Effective advocacy requires talking to representatives of video producers, distributors, and aggregating streaming vendors. This can most credibly be done through existing organizations such as the American Library Association (ALA) or the Association of Research Libraries (ARL). Such associations can develop official best practices that the profession as a whole will follow. They can also speak to the public about the importance of libraries for preserving culture.

## 2. Look to Other Media Types (Journals)

Although library associations have not yet made streaming video a priority, inspiration can be found in how they have addressed digital distribution of other media types, particularly print. Libraries are furthest along in digital preservation for e-journal articles. They have a strong footing for negotiations with publishers of scholarly journals because libraries are their primary market. Libraries have been able to negotiate for license permissions that resemble the physical serials market. For example, some e-journal vendors allow libraries to keep access to serials obtained during a subscription period even if they later cancel subscription to the electronic service that delivered them.<sup>63</sup>

Academic libraries have also created shared preservation repositories such as LOCKSS (Lots of Copies Keeps Stuff Safe) and CLOCKSS (Controlled LOCKSS). CLOCKSS in particular is an interesting model for video because it is a collaboration between libraries and publishers. CLOCKSS is a dark archive of e-journals that are released to the public if commercial distribution of the materials cease. The CLOCKSS

---

63. Simon, Jason C. 2014. "E-Book Purchasing Best Practices for Academic Libraries." *Journal of Electronic Resources Librarianship* 26 (1): 77, 71.

board is split equally between representatives of libraries and publishers. Distributors of educational videos, where libraries make a larger percentage of their market, could possibly be interested in such a partnership. Considering how libraries have approached the preservation of other media types provides inspiration for video initiatives.

### *Individual Library Recommendations*

#### 1. Ask for Definitions of License Concepts

Looking at licenses inspired many questions. The correct way to interpret a clause was not always evident, and different vendors can interpret similar phrases differently. This can lead to libraries agreeing to conditions they ordinarily would not, or acting in ways that violate their contracts. Misunderstanding a contract is not a legal defense in the event of a dispute between a vendor and a library. Librarians, like those of us who click through EULAs unread, may feel that it is a waste of time to read contracts they must agree to for a service already deemed important. However, understanding licenses is an important part of modern collection management. Asking questions will let the librarian know what is and is not permissible for their titles. Additionally, vendors may be willing to modify the license in response to concerns. The responses to all questions should be documented in writing.

#### 2. Create a License Database

A recurring theme in the survey results was librarians' uncertainty about the provisions of their licenses. The nature of licenses is that every company's will likely be

different. Re-reading licenses is time consuming, and it may be difficult to remember how certain sections were described at the initial signing (or that librarian may no longer work for the library). Libraries should create and maintain a license database in order to survey information quickly. Possible database fields include duration/ending-date of license, policies for dropped titles, definitions of concepts such as ‘life-of-file’, who is included in the library’s authorized users, and vendor responses to questions. Such a database would help librarians understand their streaming offerings more quickly and enable more confident collection management. Although creating a database will require a significant amount of staff time to set-up, it should be relatively easy to maintain by the librarian responsible for evaluating and signing contracts. Such a database would likely prove useful for the library’s non-video licenses as well.

### 3. Define and Evaluate Return on Investment

Collection subscription is currently the most common licensing model for streaming video in libraries. Per-title, their cost will likely always be lowest. However, libraries need to decide if title cost is the most important metric for evaluating a service. Subscriptions offer the least control over the availability of specific titles. If the subscription titles are unpopular, the expense of the collection may not be justified. Libraries need to decide how to measure the return on investment for streaming services. Obtaining a perpetual rights license for a movie taught every year might be a better use of a limited media budget.

*Closing Thoughts*

While I hope that librarians will find a way to keep their preservation role, it may be impossible for the near future. Libraries are a small part of the video market and the content industry has more powerful lobbies. However, the more videos are lost, the more people will believe digital preservation is necessary. Historically this can be seen in the response to the brittle books crisis. In the 1980s, Congress began funding the National Endowment for the Humanities' Brittle Books Program. This was possible in part because of library advocacy appealing to fears of losing decades of culture. If licensing models create huge numbers of orphan works that are lost, Congress may be inspired to take legislative action.

The content industry would also do well to remember that few people would feel bad about pirating works that are commercially unavailable. Borrowing from libraries is a legal way to obtain out of distribution materials. If licensing models lead to many titles being unavailable, people may pre-emptively pirate works in anticipation. Producers and distributors should ask themselves if they want the pirates they malign to be the heroes who save moving image history. At least libraries pay before sharing. Allowing libraries to maintain long-term collections supports the health of the video market.

## **Appendix A:**

### **Survey Instrument**

#### ***Survey on Library Video Streaming Licensed Content***

##### ***Introduction***

***Thank you for participating in this survey on streaming video licensing in libraries. Video streaming licenses assert restrictions that are not placed on purchased physical copies, so these require libraries to develop new approaches for preservation and access. This survey focuses on streaming services used by your library, contract terms, and video preservation projects.***

***The responses to this survey will inform a thesis on streaming video preservation. It is my hope that the results will provide insight into the extent of variability or standardization in licensing terms and their impact on preservation.***

***Survey response deadline: March 7, 2017***

***If you have questions about the survey, please contact:  
Manon Gray <manon.gray@gmail.com>***

##### **Survey Questions**

1. Library Name
2. Library Type (Academic, Public, Special, School, ...)
3. Does your library provide streaming video services to your patrons, whether through a subscription service, self-hosting, or other method?



4. Please list the different types of streaming services offered by your library (Examples: subscription, pay-per-use, locally created content).
5. For subscription streaming services, is the provider required to give notice of the changing availability of titles?
6. For titles licensed individually, what is the typical duration of the license?
7. For contracts that offer "life of file" or "life of format" licenses, is there an explicit definition of what "life of file" or "life of format" means? If yes, please write that definition. If not, please describe your institution's interpretation of the term and indicate that it is not wording from the contract.
8. Has your library purchased "perpetual rights" to any digital video files?
9. Does your library have the contractual right or permission to duplicate any licensed video files for preservation purposes?
10. If your library has purchased perpetual rights to any digital videos for streaming, where are the files hosted?
11. Does your library have digital video licenses that explicitly deny or grant archival rights?
12. Do any of your licenses contain provisions for archival reproduction or transcoding?
13. Roughly what percentage of streaming files offered by your library do you not also hold in physical copies such as DVDs?

14. Has your library purchased or executed perpetual licenses for digital video files rather than just executed standard license agreements?
15. Does your library self-host any of its streaming video?
16. Has your library undertaken any preservation projects for VHS tapes?
17. Has your library undertaken any preservation projects for DVDs?
18. Has your library undertaken any preservation projects for file-based digital videos?
19. Has your library undertaken digital video preservation projects for content that was purchased or licensed?
20. Does your library have robust legal support?
21. Please use this space for any additional comments.

## Appendix B:

### Methodology and Analysis Notes

#### Survey on Library Video Streaming Licensed Content

##### Survey Questions

##### 1. Library Name

[redacted]

##### 2. Library Type (Academic, Public, Special, School, ...)

Of 38 responses

36 academic libraries (including research universities, liberal arts colleges, and community colleges) – 94.7%

1 K-12 library system – 2.6%

1 Public library system – 2.6%

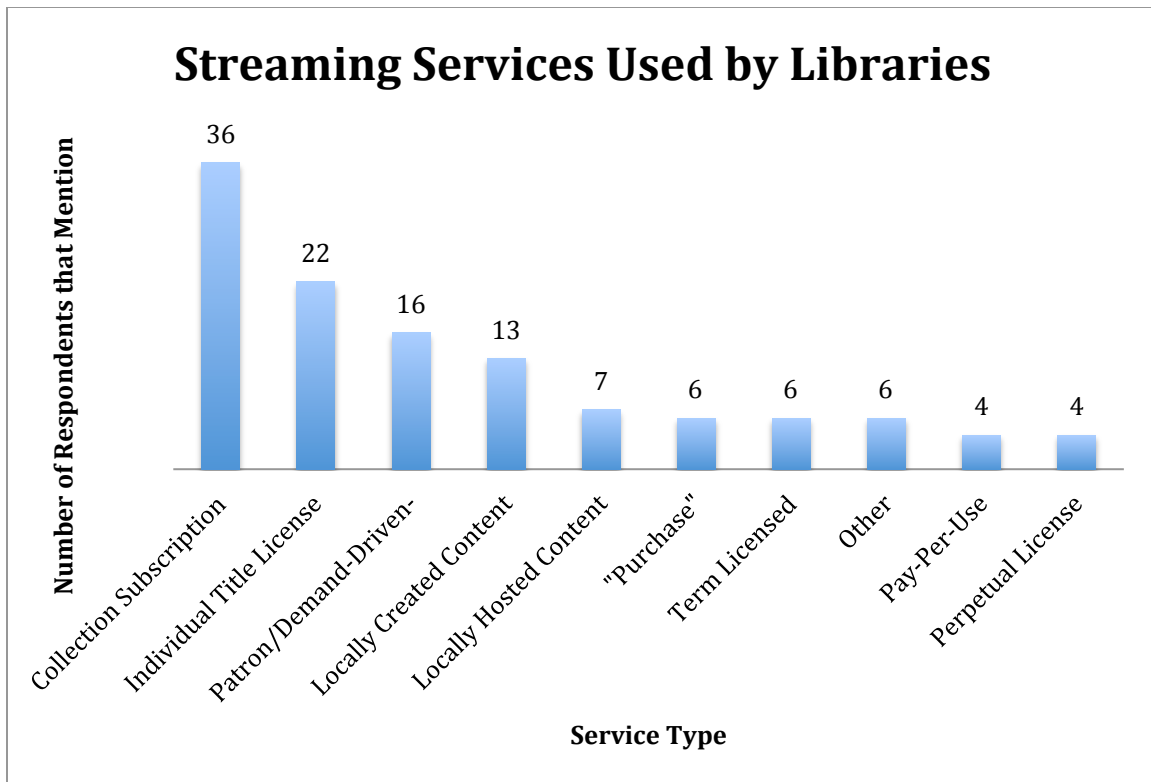
##### 3. Does your library provide streaming video services to your patrons, whether through a subscription service, self-hosting, or other method?

Of 38 responses, all indicated that they offer some type of streaming service.

##### 4. Please list the different types of streaming services offered by your library (Examples: subscription, pay-per-use, locally created content).

Assigned Categories:

Collection Subscription, Patron/Demand-Driven-Acquisition, Individual Title License, Term License Perpetual License, Pay-Per-Use/On Demand, Purchase, Other



Streaming Service Type	Number of Respondents that Mention	Percentage of Respondents that Mention
Collection Subscription	36	94.7%
Individual Title License	22	57.9%
Patron/Demand-Driven-Acquisition	16	42.1%
Locally Created Content	13	34.2%
Locally Hosted Content	7	18.4%
"Purchase"	6	15.8%
Term Licensed	6	15.8%
Other	6	15.8%
Pay-Per-Use	4	10.5%
Perpetual License	4	10.5%

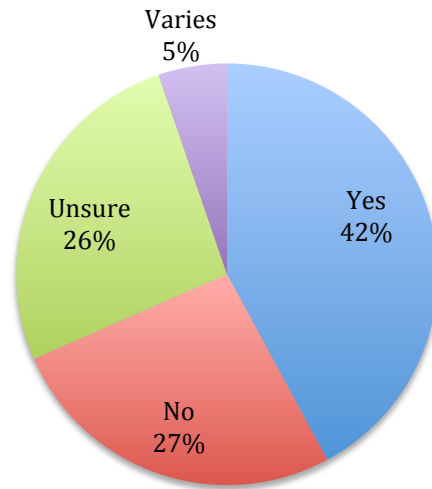
Some categories may overlap in instances, such as "Term Licensed" and "Individual Title License." Some answers were ambiguous and may have meant different things to different libraries, such as "Purchase." Subscriptions were by far the most popular service that libraries used, followed by individually licensing titles.

5. For subscription streaming services, is the provider required to give notice of the changing availability of titles?

Answers coded as:

Yes, No, Varies, Unsure

### Subscription Streaming: Is the provider required to give notice of the changing availability of titles?



Response Category	Number of Respondents	Percentage
Yes	16	42.1%
No	10	26.3%
Unsure	10	26.3%
Varies	2	5.2%

These answers are more nuanced than the categories allow. For example, some people report that vendors inform them of changing titles even though they are not required, while others report the opposite, that vendors are required to report but do not do it well.

#### Sample Responses:

“Yes-some do a better job than others.”

“It varies, but generally no. Whether contractually required or not, providers are usually very good about announcing new titles and slack about letting us know of removals.”

“For packages we expect that we would get notified, via bibliographic files. For one off we have active negotiations.”

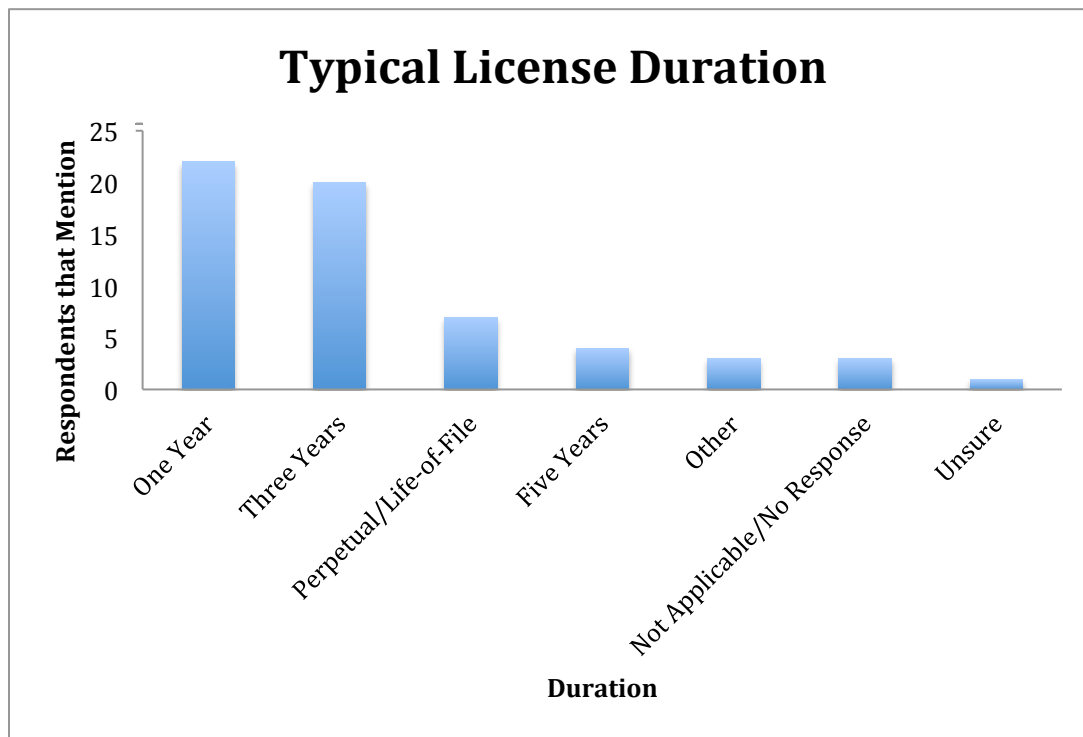
“I don't know if it is required, but the vendors I work do this.”

“I know if they are not required by the license but I'm not really sure. But in general those announcements to come often times after the changes have been made.”

6. For titles licensed individually, what is the typical duration of the license?

Assigned Categories:

One Year, Three Years, Five Years, Perpetual/Life-of-File, Other, Unsure, Not Applicable/No Response



Response Category	Number of Respondents that Mention	Percentage of Respondents that Mention
One Year	22	57.9%
Three Years	20	52.6%
Perpetual/Life-of-File	7	18.4%
Five Years	4	10.5%
Other	3	7.9%
Not Applicable/No Response	3	7.9%
Unsure	1	2.6%

Most respondents listed multiple typical durations. Some indicated that they were only willing to select perpetual access licenses.

Sample Responses:

“Unsure, which is a big problem in my mind.”

“Used to be for 6 years, but for the past 2 years we only will entertain licensing in perpetuity.”

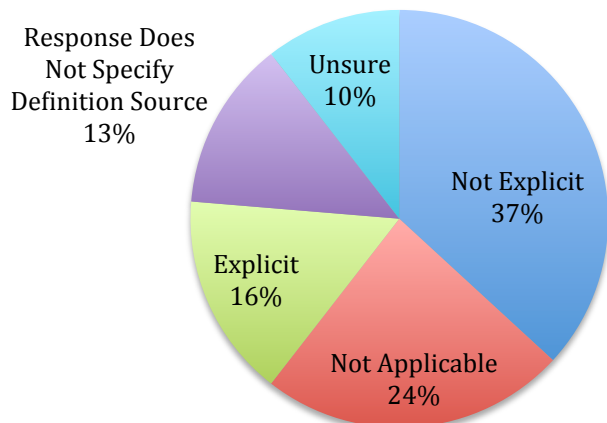
“generally 1 year or 3 years, but varies a lot.”

7. For contracts that offer “life of file” or “life of format” licenses, is there an explicit definition of what “life of file” or “life of format” means? If yes, please write that definition. If not, please describe your institution’s interpretation of the term and indicate that it is not wording from the contract.

Assigned Categories:

Explicit, Not Explicit, Unsure, Response Does Not Specify Definition Source, Not Applicable

### Do your licenses have explicit definitions for "life of file" or "life of format"?



Response Category	Number of Respondents	Percentage of Respondents
Not Explicit	14	36.8%
Not Applicable	9	23.7%
Explicit	6	15.8%
Response Does Not Specify Definition Source	5	13.2%

Unsure	4	10.5%
--------	---	-------

#### Sample Responses:

“I do not know the contract language for this definition. We only have a few life of file streaming videos, which we host locally. Our interpretation is that this is equivalent to the life of the DVD that we must own in order to stream those videos locally.”

“Yes: A type of license valid for the life of the H.264 codec provided in the .MP4 file format.”

“No, we do not have an explicit definition. We interpret that we have the right to stream as much as we want for the life of the file or for as long as we have rights to the file.”

“We have not opted for any “life of file” purchases yet so we do not have an official, specific definition. However, one of our vendors who offers life of file licensing has described it this way: Life of file = an annual server fee dependent upon number of files stored, never to exceed \$1,000/year. And a copy of all files on ‘a disk’ that we keep onsite as a backup.”

“Yes. It can vary a bit from license to license, but generally is something like “life of file format” or “life of file””

“No definition. Our take: If a file is provided from the vendor and they upgrade to a newer, better standard, we'll need to re-purchase if we want that format. Likewise if we license a DVD rip and something better becomes available, the current license will not cover whatever the new format (hologram?) entails.”

“No. The institution defines it as the ultimate total sum of years it will allow the file to exist; ordinarily 20.”

“Yes. “Life of file” allows that digital file to be used as long as file lasts/is usable.”

“No, for life of file licenses I try to make sure we are self-hosting on our Kaltura instance so I can control access & backups. I also try to get a DVD copy for a backup as well.”

“Perpetual access, not subject to distributors pulling rights.”

“This is interpreted differently by different publishers and libraries. Internally, this is life of format according to ALA obsolescence guidelines. Life of file would also include the end of life for the platform as well. This is our interpretation, not wording from the contracts.”

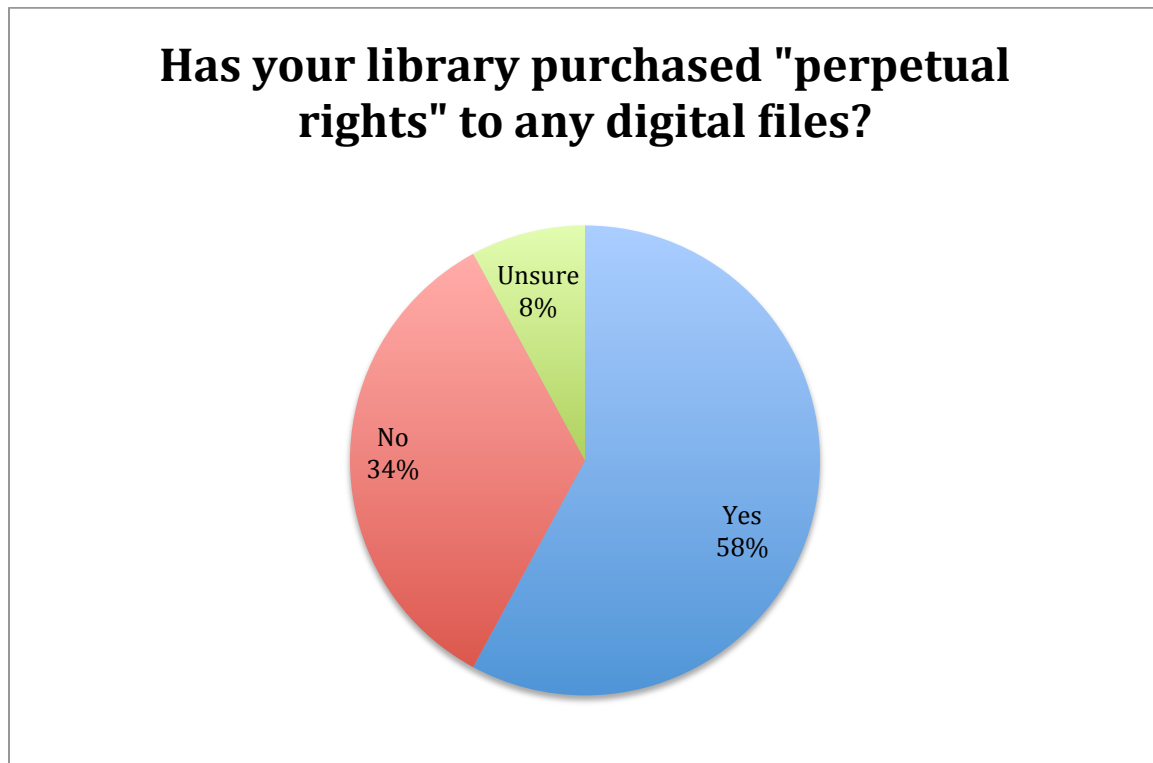
“As long as the format can be supported by the platform (such as DVDs, they will be used until DVD players are no longer made).”



8. Has your library purchased “perpetual rights” to any digital video files?

Assigned Categories:

Yes, No, Unsure



Response Category	Number of Respondents	Percentage of Respondents
Yes	22	57.9%
No	13	34.2%
Unsure	3	7.9%

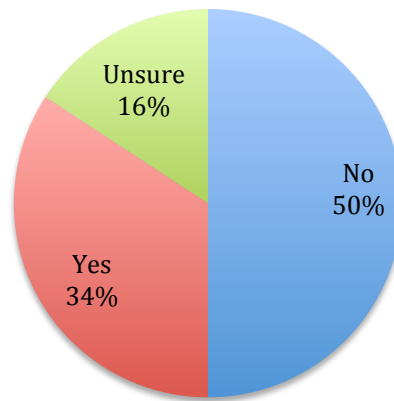
Of the ‘No’s, one library had received donations of perpetual rights, but not purchased.

9. Does your library have the contractual right or permission to duplicate any licensed video files for preservation purposes?

Assigned Categories:

Yes, No, Unsure

**Does your library have the contractual right or permission to duplicate any licensed video files for preservation purposes?**



Response Category	Number of Respondents	Percentage of Respondents
No	19	50%
Yes	13	34.2%
Unsure	6	15.8%

Many of the 'Yes' respondents specified that they had permission for life-of-file licenses or Special Collections objects. Of the 'No's, two expressed that they believe they can duplicate based on copyright law.

**Sample Responses:**

"Not contractual rights. We duplicate based on Section 108"

"Yes, for life-of-file. No, for subscription or short-term licenses."

"Only special collections items; nothing commercial."

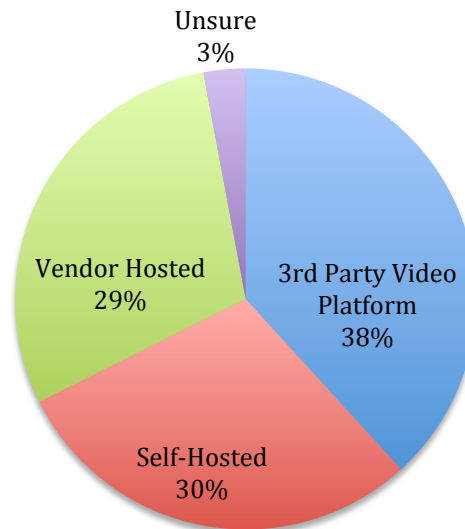
"No. We rely on copyright law for this"

10. If your library has purchased perpetual rights to any digital videos for streaming, where are the files hosted?

Assigned Categories:

Self-Hosted, Vendor Hosted, 3<sup>rd</sup> Party Video Platform, Unsure, Not Applicable

### Where are videos licensed perpetually hosted?



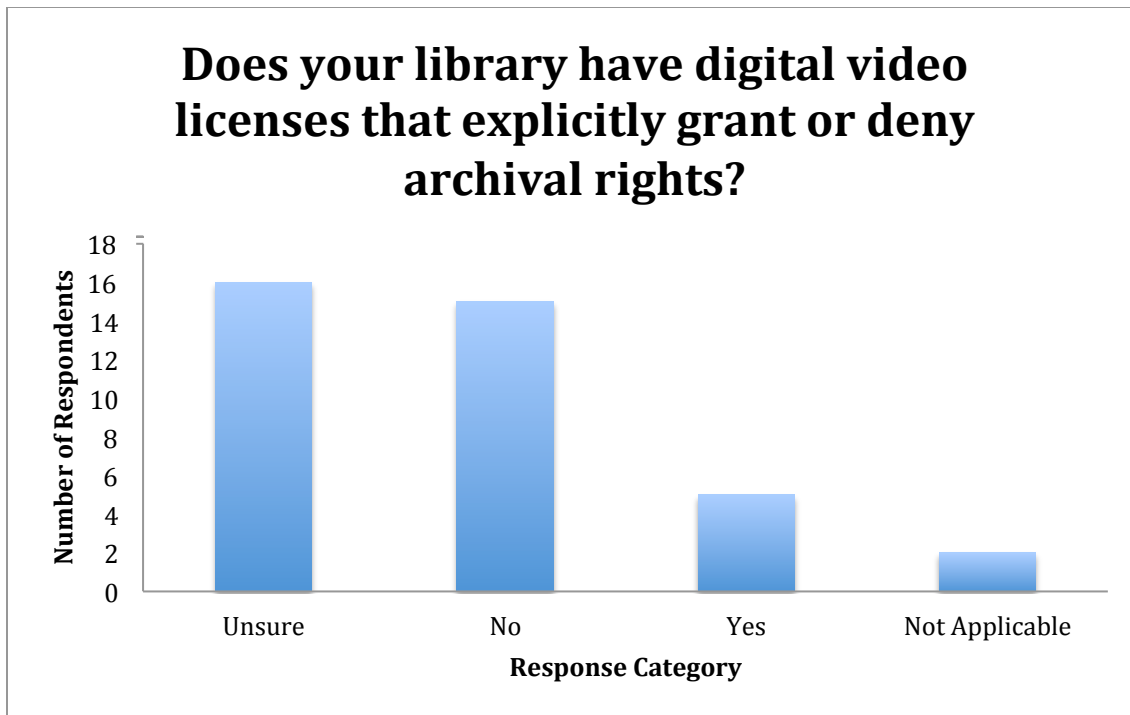
Response Category	Number of Respondents that Mention	Percentage of Respondents that Mention
3 <sup>rd</sup> Party Video Platform	13	34.2%
Self-Hosted	10	26.3%
Vendor Hosted	10	26.3%
Not Applicable	9	23.7%
Unsure	1	2.6%

“Vendor Hosted” refers to hosting by the company that made the licensed video available. In contrast, “3<sup>rd</sup> party video platforms” refers to businesses or non-profit consortiums that offer video solutions for content the library provides. 3<sup>rd</sup> party video platforms often offer both their own hosting service and platform for self-hosting.

11. Does your library have digital video licenses that explicitly deny or grant archival rights?

Assigned Categories:

Yes, No, Unsure, Not Applicable



Response Category	Number of Respondents	Percentage of Respondents
Unsure	16	42.1%
No	15	39.4%
Yes	5	13.2%
Not Applicable	2	5.2%

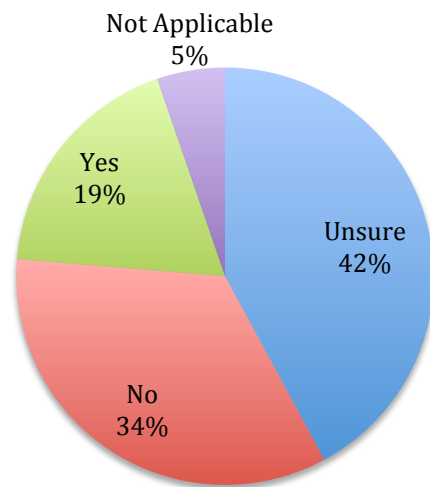
Most are “unsure,” but quite a few think “no.” I have seen licenses that explicitly deny archival rights.

12. Do any of your licenses contain provisions for archival reproduction or transcoding?

Assigned Categories:

Yes, No, Unsure, Not Applicable

## Do any of your licenses contain provisions for archival reproduction or transcoding?



Response Category	Number of Respondents	Percentage of Respondents
Unsure	16	42.1%
No	13	34.2%
Yes	7	18.4%
Not Applicable	2	5.3%

Many unsure but would guess not. I am not sure how to interpret this response, “We have never tracked this term so would have to review ALL licenses. Approximately 90%.”

### Sample Responses:

“yes, for life of file. In perpetual licenses where content remains hosted by the vendor, the vendor takes responsibility for maintaining the files. In subscriptions or time-limited licenses, the vendor takes responsibility for maintaining the file for the duration of the subscription/license.”

“no. I'd try to negotiate or consider not licensing if I saw that in an agreement.”

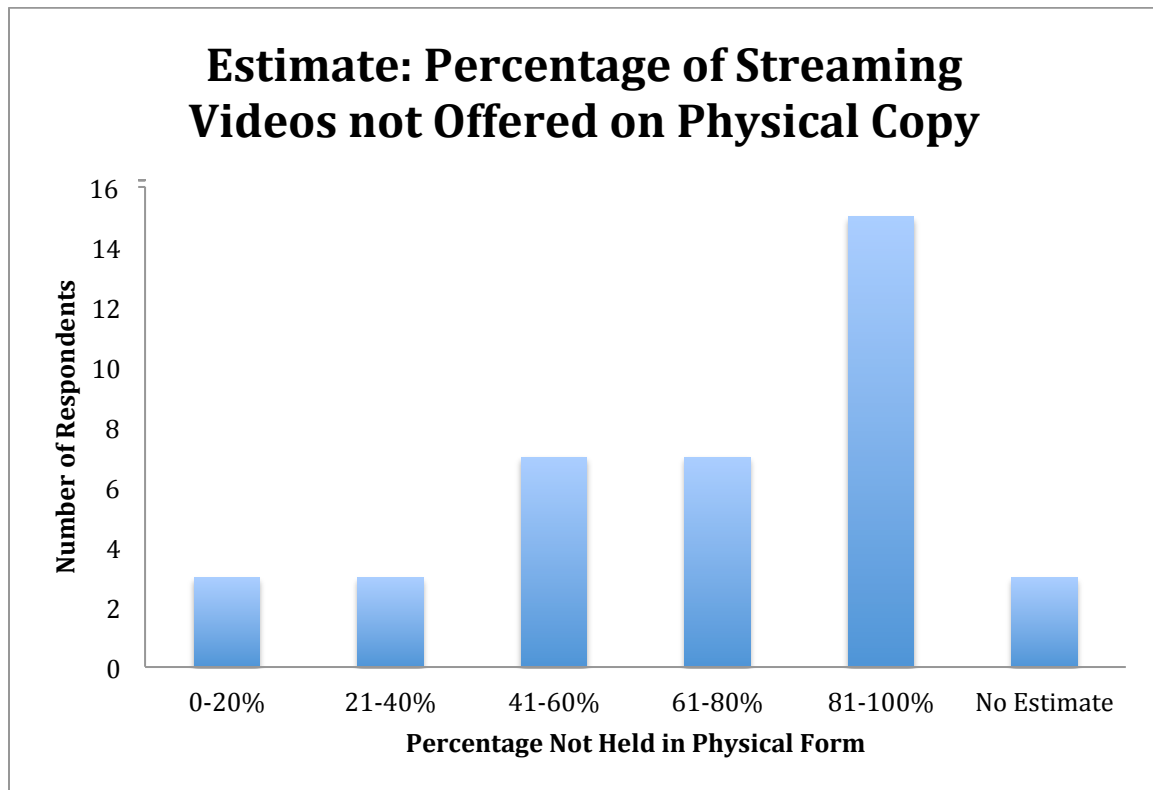
“We have never tracked this term so would have to review ALL licenses. Approximately 90%”

“We may have licenses that limit transcoding to a certain window of time.”

13. Roughly what percentage of streaming files offered by your library do you not also hold in physical copies such as DVDs?

Assigned Categories:

0-20%, 21-40%, 41-60%, 61-80%, 81-100%, No Estimate



Response Category	Number of Respondents	Percentage of Respondents
0-20%	3	7.9%
21-40%	3	7.9%
41-60%	7	18.4%
61-80%	7	18.4%
81-100%	15	39.5%
No Estimate	3	7.9%

I changed one response because it was clear from context that she'd given the percentage of videos held on both video and DVD: "Probably less than 10%. That percentage is probably shrinking each year as we add licensed digital materials, while purchasing fewer physical copies (and noting that playback equipment for physical copies is becoming increasingly less accessible for our library users)."

Sample Responses:

“Uncertain. Anecdotally, we do try to license the rights to digitize a lot of our DVDs that are currently used in courses (i.e. course reserves). As our courses move more and more online, films used in courses have become a real problem.”

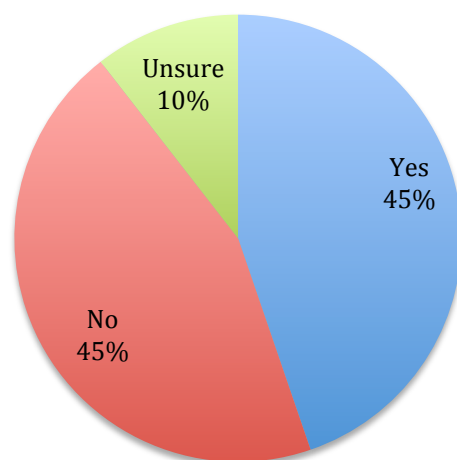
“About 85%?? we have about 11,000 DVD/VHS and over 70,000 streaming”

14. Has your library purchased or executed perpetual licenses for digital video files rather than just executed standard license agreements?

Assigned Categories:

Yes, No, Unsure

### Has your library purchased or executed perpetual licenses for digital video files?



Response Category	Number of Respondents	Percentage of Respondents
Yes	17	44.7%
No	17	44.7%
Unsure	4	10.5%

Several respondents found this question unclear.

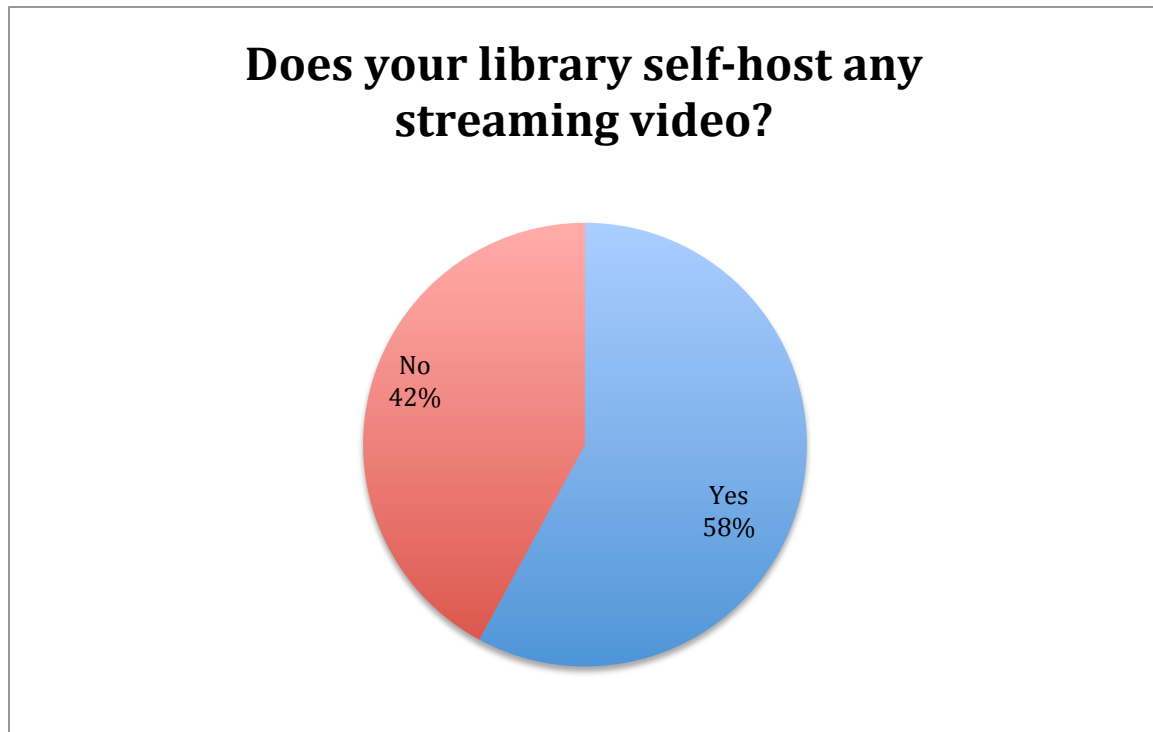
Sample Response:

“Generally, we use the publisher's license with modifications. We do have perpetual licenses for some video collections and the option to purchase life-of-file content. I'm not sure I really understand this question.”

15. Does your library self-host any of its streaming video?

Assigned Categories:

Yes, No



Response Category	Number of Respondents	Percentage of Respondents
Yes	22	57.9%
No	16	42.1%

Some libraries mentioned that they had self-hosted, but stopped. Others mentioned that they had plans to self-host in the future. I calculated responses based on what the libraries were doing now.

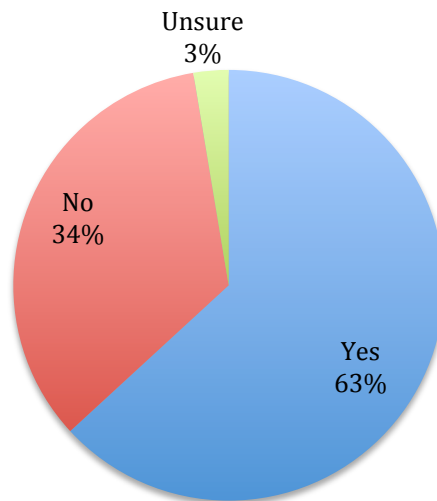
16. Has your library undertaken any preservation projects for VHS tapes?

Assigned Categories:

Yes, No, Unsure



### Has your library undertaken any preservation projects for VHS tapes?



Response Category	Number of Respondents	Percentage of Respondents
Yes	24	63.2%
No	13	34.2%
Unsure	1	2.6%

Several libraries indicated that they had digitized individual titles, but not large projects. I coded these as “yes” responses. A couple indicated that they had not digitized tapes but had plans to in the near future. These I coded ‘no.’

Sample Response:

“No, we just weeded them.”

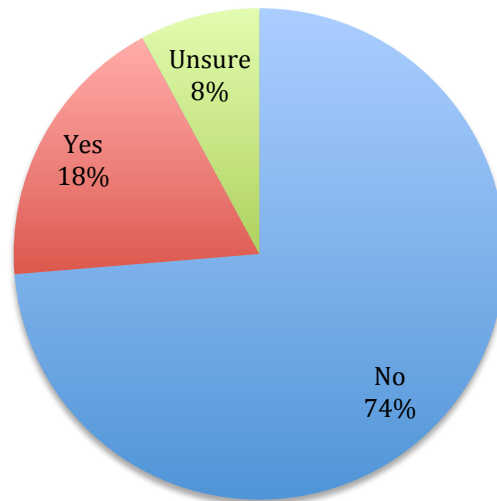
“Statewide consortial project”

#### 17. Has your library undertaken any preservation projects for DVDs?

Assigned Categories:

Yes, No, Unsure

## Has your library undertaken any preservation projects for DVDs?



Response Category	Number of Respondents	Percentage of Respondents
No	28	73.7%
Yes	7	18.4%
Unsure	3	7.9%

Some libraries indicated that they had preserved individual titles, but not larger projects. I coded these “yes.” One respondent mentioned that they add DVDs from multi-format archival collections to their digital repository, but not as a preservation-level file format. I coded this “no.” One library mentioned that they used to preserve some DVDs but financial constraints have stopped the practice for the time being.

### Sample Responses:

“DVDs that come to the library as part of a multi-format archival collection are accessioned into our Library Digital Repository as external drives, but content is not converted to preservation quality video format.”

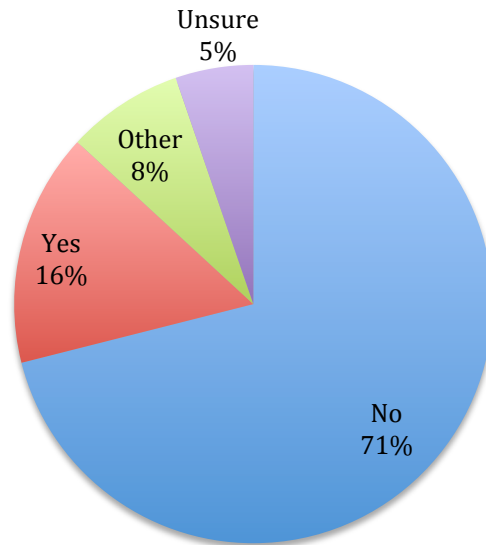
“At one point yes, but financial constraints deferred current video preservation projects”

18. Has your library undertaken any preservation projects for file-based digital videos?

### Assigned Categories:

Yes, No, Unsure, Other

## Has your library undertaken any preservation projects for file-based digital videos?



Response Category	Number of Respondents	Percentage of Respondents
No	27	71.1%
Yes	6	15.8%
Other	3	7.9%
Unsure	2	5.3%

Answers coded other were, “No, not as a preservation project, however, we have 2 or 3 file-based works we purchased directly from artists that are part of our collection. They are backed up and part of our file management and preservation workflow,” “N/A,” and “I do not believe we have undertaken a preservation project for digital videos per se, and certainly not instructional video. I believe the theatrical performance digitization project (which was undertaken by George Blood) includes digital file storage redundancy, with at least access and mezzanine level formats created inspired by the Video At Risk RFP template.”

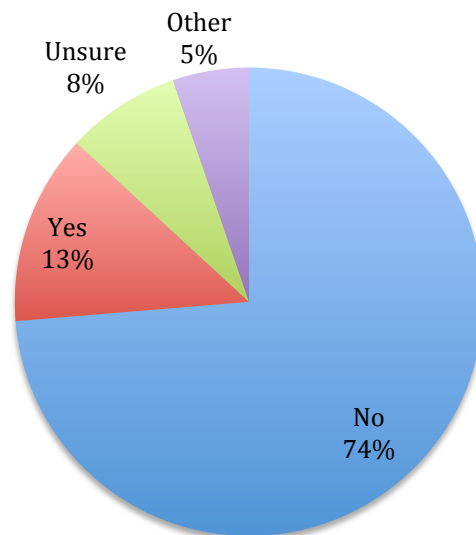
### Sample Responses:

“Yes - we upload full fidelity files, usually video\_ts folders, to an archival server”

19. Has your library undertaken digital video preservation projects for content that was purchased or licensed?

Assigned Categories:  
Yes, No, Unsure, Other

**Has your library undertaken digital  
video preservation projects for content  
that was purchased or licensed?**



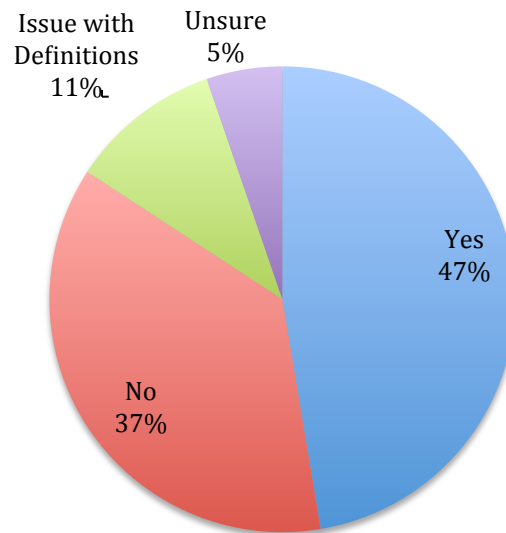
Response Category	Number of Respondents	Percentage of Respondents
No	28	73.7%
Yes	5	13.2%
Unsure	3	7.9%
Other	2	5.3%

Responses coded “other” were, “In the process of acquiring a preservation tool” and “yes, film or vhs, negotiated with licenses.”

20. Does your library have robust legal support?

Assigned Categories:  
Yes, No, Unsure, Issue with Definitions

## Does your library have robust legal support?



Response Category	Number of Respondents	Percentage of Respondents
Yes	18	47.4%
No	14	36.8%
Issue with Definitions	4	10.5%
Unsure	2	5.3%

### Sample Responses:

“Yes. The institution’s legal staff includes a specialist in intellectual property. All contracts must pass through legal review before signing, and many times require renegotiation of terms initially presented in a contract.”

“I am not sure how one would define "robust" legal support. We do have a stellar nationally recognized Copyright Librarian who is a lawyer, Nancy Sims, who provides guidance on legal issues (as do I on media related copyright to a lesser extent). That said, given the nature of much of the library related legal support (e.g., copyright, publishing, etc..) often this support is led and informed heavily on our campus by our General Counsel and frankly, to some extent individual risk assessment as well. Certainly, both our Copyright Librarian and General Counsel are considered in for example, discussion on areas related to potential video licensing as well as digitization and preservation policy/programming under fair use.”

“I guess that depends on what is meant by "robust" (and "support", for that matter!)”

21. Please use this space for any additional comments.

Sample Responses:

“Copyright and Fair Use as they pertain to film is often viewed from two opposing perspectives and can place librarians in a very difficult position when trying to balance the user's needs and the creator of the content. I've had to deal with this for almost 20 years and still dread these conversations.”

“We have one perpetually licensed streaming video package (that we regret) and very few individual perpetually licensed titles for which we have made archival preservation copies, most of them for out of print material with the license obtained directly from the filmmaker. We prefer short-term licensing and PDA based on our media budget, usage patterns, and DVD circulation data. That said, we are a relatively small institution with constrained budgets, and "large research libraries have a greater responsibility for collection development, ownership, and preservation of the human record of knowledge than do smaller, non-research institutions" like ours.”

“While [redacted] owns a large collection of physical, commercial video releases, we have not been a major player in the streaming world. What our patrons have access to are essentially the by-products of licensing agreements we have with vendors who provide us with other content. (For example, Overdrive's video collection.) While we/I have made approaches to streaming content providers such as Netflix to see what they could offer libraries, none of those providers have responded favorably. (Spotify [the music streaming service] hadn't even thought about it, and I was the first librarian from whom they had heard, although to be fair, this was years ago.)”

“Is difficult to extract all the answers without thorough review of all licenses.”

“We have been alarmed at the removal of licensed films, mostly at Films on Demand, which are regular parts of curricula. Then we have to attempt to purchase a DVD or even a VHS copy and keep it locally. It is not confidence inspiring. It seems to us that it is much better to have a physical copy when possible. Also, budgets are stretched thin and much of the budgets go to these digital platforms, but the content is not so great and not up to date, in general.”

“The length of licenses for films is of great concern to people who develop courses here on campus, as the possibility of licenses being removed / revoked makes them cautious in adding links to films into any courses and/or syllabi.”

## Bibliography

- "ALA Preservation Policy 2001." Association for Library Collections & Technical Services (ALCTS)., last modified -09-29T09:55:53-05:00, accessed Jan 6, 2017, <http://www.ala.org/alcts/resources/preserv/01alaprespolicy>.
- "ALA Preservation Policy 2008." Association for Library Collections & Technical Services (ALCTS)., last modified -09-18T01:33:06-05:00, accessed Jan 6, 2017, <http://www.ala.org/alcts/resources/preserv/08alaprespolicy>.
- "Core Values of Librarianship." Advocacy, Legislation & Issues., last modified -07-26T11:15:55-05:00, accessed Jan 7, 2017, <http://www.ala.org/advocacy/intfreedom/statementspols/corevalues>.
- "E-Book Media and Communications Toolkit." Libraries Transform., last modified -11-20T14:41:37-06:00, accessed May 3, 2017, <http://www.ala.org/transforminglibraries/ebooktoolkit>.
- "The E-Reader Device is Dying A Rapid Death." Just Publishing Advice., last modified -12-19T15:55:28+00:00, accessed May 3, 2017, <https://www.justpublishingadvice.com/the-e-reader-device-is-dying-a-rapid-death/>.
- "Founders Online: From Thomas Jefferson to Ebenezer Hazard, 18 February 1791." University of Virginia Press, accessed Jan 7, 2017, <http://founders.archives.gov/documents/Jefferson/01-19-02-0059>.
- Alexander Street Press. 2015. *Alexander Street Press Sample Customer License Agreement*.
- Algenio, Emilie and Alexia Thompson-Young. 2005. "Licensing E-Books: The Good, the Bad, and the Ugly." *Journal of Library Administration* 42 (3): 128. doi:10.1300/J111v42n03\_08.
- ARL Board of Directors. 2007. *Research Libraries' Enduring Responsibility for Preservation*. Washington, D.C.:
- Besser, Howard. 1993. "Future Trends in Library Video and Film Collections." In ***Video Collection Management & Development***, edited by Gary Handman: Greenwood Press.
- Besser, Howard. 2017. "Archiving Websites Containing Streaming Media." In *Archiving 2017 Final Program and Proceedings*, Riga, May 15-18, 2017, 11-13. Latvia: Society for Imaging Science and Technology.
- Bossenga, Susie, Chris Bullock, Luann DeGreve, Carol Doyle, Tom Goetz, Ruth Lindemann, Stephen McMinn, and Charles Uth. 2014. *Streaming Video in Academic*

*Libraries: A White Paper*. Illinois: Consortium of Academic and Research Libraries in Illinois.

Canepi, Kitti, Ryder, Becky, Stiko, Michelle and Weng, Catherine. "Ch. 1. Microforms in Libraries and Archives | Managing Microforms in the Digital Age." Association for Library Collections & Technical Services (ALCTS)., last modified -08-16T16:11:45-05:00, accessed May 2, 2017, <http://www.ala.org/alcts/resources/collect/serials/microforms01>.

Davis, Wendy. "ReDigi Renews Battle with Capitol Over 'used' iTunes Tracks." MediaPost., last modified Feb 9, accessed May 2, 2017, <https://www.mediapost.com/publications/article/294850/redigi-renews-battle-with-capitol-over-used-itun.html>.

DeCesare, Julia A. 2014. "The Mass Market and Consumer Tools." *Library Technology Reports* 50 (2): 33-39.

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

farrelly, deg. 2014. "Streaming Video." In *Rethinking Collection Development and Management*, edited by Becky Albitz, Christine Avery and Diane Zabel, 215-229. Santa Barbara: ABC-CLIO, LLC.

farrelly, deg and Jane Hutchinson Surdi. 2016. *Academic Library Streaming Video Revisited*. Orlando: American Library Association Annual Conference.

Ferguson, Jennifer and Erdmann, Annie. "Streaming Video in Academic Libraries." American Libraries Magazine., last modified -09-21T13:05:10-05:00, accessed May 3, 2017, <https://americanlibrariesmagazine.org/2016/09/21/streaming-video-academic-libraries/>.

Forsberg, Walter. *Video at Risk: Strategies for Preserving Commercial Video Collections in Research Libraries*. New York City.

Hammer, John. "National Endowment for the Humanities Funds Increased for 1989." *PS: Political Science and Politics* 22, no. 2 (1989): 272-74. doi:10.2307/419607.

Hathcock, April. 2016. *Personal Interview*.

Heritage Health Index. 2005. *A PUBLIC TRUST AT RISK: The Heritage Health Index Report on the State of America's Collections*. Washington, D.C.

Hirtle, Peter. "Digital Preservation and Copyright." Stanford Copyright and Fair Use Center., last modified -11-10T18:44:46-07:00, accessed May 2, 2017, [http://fairuse.stanford.edu/2003/11/10/digital\\_preservation\\_and\\_copyr/](http://fairuse.stanford.edu/2003/11/10/digital_preservation_and_copyr/).



- Kenny, Anne R. and Kathryn Wesley. 2016. "Building a Social Compact for Preserving E-Journals." *The Serials Librarian* 70 (1-4): 84.
- Lowry, Charles B. and Julia C. Blixrud. 2012. "E-Book Licensing and Research Libraries– Negotiating Principle and Price in an Emerging Market." *Research Library Issues: A Quarterly Report from ARL, CNI, and SPARC* (280): 19.
- Niu, Jinfang. 2012. "An Overview of Web Archiving." *D-Lib Magazine* 18 (3-4).  
<http://www.dlib.org/dlib/march12/niu/03niu1.html>.
- Parker, David. 2017. *Personal Interview*, edited by Manon Gray.
- Rasenberger, Mary and Chris Weston. 2005. *Overview of the Libraries and Archives Exception in the Copyright Act: Background, History, and Meaning*. Washington, D.C.
- Reese, Ruth Anthony. 2003. "The First Sale Doctrine in the Era of Digital Networks." *Boston College Law Review* 44: 577.
- Sanchez, Joseph. 2014. "Forecasting Public Library E-Content Costs." *eContent Quarterly* (March 2014): 17.
- Simon, Jason C. 2014. "E-Book Purchasing Best Practices for Academic Libraries." *Journal of Electronic Resources Librarianship* 26 (1): 77.
- Strieb, Karla L. and Julia C. Blixrud. 2014. "Unwrapping the Bundle: An Examination of Research Libraries and the "Big Deal"." *Portal: Libraries and the Academy* 14 (4): 587-615. doi:10.1353/pla.2014.0027.  
[http://muse.jhu.edu/journals/portal\\_libraries\\_and\\_the\\_academy/v014/14.4.strieb.html](http://muse.jhu.edu/journals/portal_libraries_and_the_academy/v014/14.4.strieb.html).
- Tsou, Judy and John Vallier. 2016. "Ether Today, Gone Tomorrow: 21st Century Sound Recording Collection in Crisis." *Notes - Quarterly Journal of the Music Library Association* 72 (3): 461-483. <http://search.proquest.com/docview/1784408837>.
- Underwood, Kent. 2016. "Personal Interview."
- University of Minnesota Libraries. "Exceptions & Limitations: Classroom use, Fair use, and More." University of Minnesota Libraries, accessed 05/09, 2016,  
<https://www.lib.umn.edu/copyright/limitations>.
- Wallenstein, Andrew. 2017. "Home Entertainment 2016 Figures: Streaming Eclipses Disc Sales for the First Time." *Variety*, -01-06T18:31:29+00:00.  
<http://variety.com/2017/digital/news/home-entertainment-2016-figures-streaming-eclipses-disc-sales-for-the-first-time-1201954154/>.

White, Ben. "Guaranteeing Access to Knowledge: The Role of Libraries."  
[www.wipo.int](http://www.wipo.int/wipo_magazine/en/2012/04/article_0004.html), accessed May 2, 2017,  
[http://www.wipo.int/wipo\\_magazine/en/2012/04/article\\_0004.html](http://www.wipo.int/wipo_magazine/en/2012/04/article_0004.html).