Project Runway: Preserving the Fashion Institute of Technology Audiovisual Collection

By

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Abstract

The audiovisual collection at the Special Collections and College Archives (SPARC) of the Fashion Institute of Technology (FIT) comprises approximately 4,000 items on the topic of fashion created by FIT, fashion houses, television stations, and professional associations since the 1970s. This project is a preservation plan for streamlining the preservation process with the ultimate goal of increasing access to the SPARC audiovisual collection. The objective of this project is to assist SPARC in establishing plans to standardize, preserve, and provide wider access to the analog audiovisual assets. The written report for the project contains an overview of the collection, recommended work plans for video and digital preservation, and research on copyright issues and suggestions. The appendices include an application profile of recommended metadata fields, as well as a text transcript of a consultation session on the copyright issues of the collection. The goal of this project is to develop a workplan that can be implemented at SPARC, as well as similar collections, to preserve the audiovisual heritage on analog videotapes.

Part 1: Introduction

Today, fashion occupies a center ground in the popular understanding of modern culture. It is displayed both in the shop windows and the art museums, defining the tenor of urban life like no other visual medium.[1] Academic libraries with fashion-related collections play a crucial role in the study of both the designs and the theories, providing continuity as well as "a source of solid information and reliable data" in an ever-shifting world of visual extravaganza.[2] The focus

[1] Christopher Breward, *Fashion* (Oxford: Oxford University Press, 2003), 9.
[2] Jean Dartnall, *A Most Delicate Monster: The One-professional Special Library* (New South Wales: Center for Information Studies, 1998), 2.

of this project is a collection of fashion-related audiovisual items that needs to be preserved for the benefit of fashion design studies.

The Fashion Institute of Technology (FIT) is a public college located at 227 West 27th Street, New York. It was officially founded in 1944 and became a part of State University New York in 1951. The college dedicates to the education of subjects in fashion, fine arts, and liberal arts. Many of its offered programs focus on the art, design, business, and technology within the fashion industry.

SPARC is the abbreviation for the Special Collections and College Archives, a department of the Gladys Marcus Library at FIT. SPARC comprises approximately 8,000 rare books, 547 serial titles, 420 manuscript collections, 100 linear feet of archives, more than 500,000 works of art on paper, and about 4,000 audiovisual items. It is a highly-specialized resource repository for the fashion industry and scholars of design history. The manuscript collections at SPARC are especially strong in their documentation of American fashion design, costume design, and the history of New York City's Garment District. The mission of the special collection is "to foster original research across and beyond the FIT community by acquiring, preserving, and providing universal access to primary research materials including College archival records."[3]

The audiovisual items at SPARC are all stored on-site and separated into two sections by the types of contents. The first section is a part of the College Archives that is stored in a vault named SPARC Two, consisting of videos that document the institutional history of FIT. This collection of audiovisual materials includes many oral history and interview recordings

[3] "Special Collections and College Archives," FIT Library, Fashion Institute of Technology, 2020. www.fitnyc.edu/library/sparc/index.php.

conducted by FIT with industry professionals. The processing of this collection is more advanced and therefore, it is not of concern to this project.

The subject of this thesis project is a collection of videos that used to be in the general circulating collection at the Gladys Marcus Library. They are currently stored in the Rare Book and Periodicals Vault at SPARC. Both vaults are located within the SPARC reading room on the 4th floor of the library.

1.1 Overview of the Project

In March 2020, I conducted a collection assessment on the SPARC audiovisual collection for the MIAP Collection Management course. The in-person assessment was brought to a halt due to the COVID-19 pandemic lockdown. In the process, 101 videotapes were inspected and inventoried, and they are used as samples for investigating the status of the collection. This thesis project is a continuation of my previous work to help provide more extensive preservation plans for SPARC. All works and communications with SPARC staff members were done remotely due to the restrictions of access to the library. In this process, I am in communication with Samantha Levin, the Digital Assets Curator and associate of SPARC. A large portion of the information that is be presented on the collection status is extracted from interviews with Levin.

Based on my original assessment, I found that the collection can be helped at the level of intellectual control, digitization plan, digital preservation plan, and copyright clearance. In this project, I worked with SPARC to create a customized preservation workflow that can be implemented after the pandemic.

Part 2: Collection Status

This section presents the current status of the SPARC audiovisual collection. The range of contents in the collection is introduced with a specific case study of certain rare items. This section also covers the descriptions, properties, and collection care status of the analog and digital video assets. The current procedures on intellectual control and metadata collection are specifically addressed for their needs of enhancement.

2.1 Collection Content

This audiovisual collection contains primarily videos recorded on consumer-grade magnetic tapes and optical discs. The videos were mostly acquired by the library from the 1970s to the early 2000s. No current library staff member has worked on the acquisition and the institutional records were extremely inadequate[4]. Therefore, there is limited to no information available on the origins and sources of these items. In 2008, the video collection was transferred from the circulating library to the special collection. Even before the transfer, the videos were not browsable on the shelves in the library; the patrons could request the videocassettes from the access service desk and watch them onsite. Now, when a video is requested by a researcher, the SPARC staff will transfer the video using an on-site transfer station and provide a DVD access copy to the patron. This collection of analog videotapes still exists partially in the circulating library; both departments are working collaboratively on moving rare and fragile items to the special collection.[5]

[4] According to Levin, some donor information may have been recorded on the original catalog cards. Yet, the catalog cards are not accessible at the time of writing due to the pandemic lockdown.
[5] Samantha Levin (Digital Assets Curator, SPARC), interviewed by Zoe Yang, New York, NY. Mar. 6, 2020.

The SPARC audiovisual collection consists of a wide variety of contents, mostly reference materials for the study of fashion. The collection covers runway shows, interviews, fashion events, instructional videos, commercial productions, and much more. The runway shows constitute a large portion of the collection; among them are runway recordings of many internationally renowned fashion houses, such as Christian Dior, Comme des Garçons, Balenciaga, and many more. The library staff members believe that there are many unique and rare videos among the show recordings. Therefore, the series currently hold the highest preservation priority. Yet, SPARC is in need of a more comprehensive inventory to determine the exact number and range of unique items. The details are further explained in the later sections.

Based on my preliminary inspection of the collection, the media formats are mostly VHS, U-matic, and DVDs. The graph and table below are based on an existing SPARC inventory spreadsheet, yet its accuracy and clarity have to be improved to provide a complete picture of the collection.

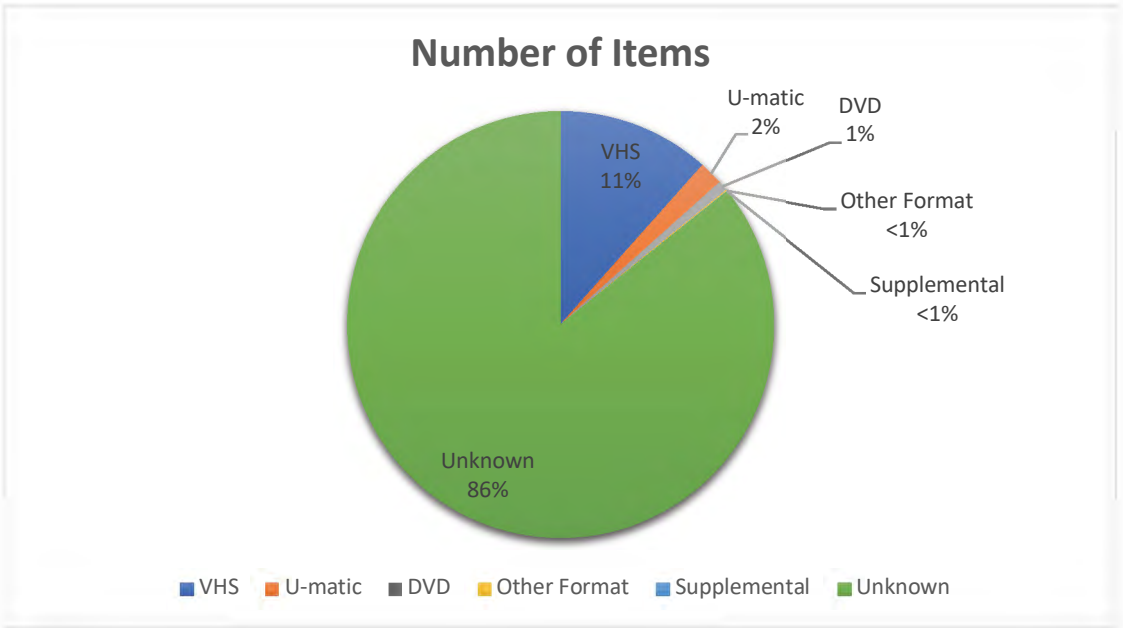

Figure 1. Formats existing in the collection based on the 2019 inventory.

Media Format	Number of Items	Percentage
VHS	409	12%
U-matic	64	2%
DVD	27	<1%
Other Format	3	<1%
Supplemental	1	<1%
Unknown	3029	86%
Total	3533	-

Figure 2. Numbers of each format based on the 2019 inventory.

2.2 Case Study of Rare Items

Due to the inability to access the physical collection during the COVID-19 pandemic, discussions on rare items happened through email threads with FIT library staff members. In an email conversation, Paul Lajoie, who joined the FIT library in 1985 and currently holds the position of the Evening Access Services Manager, pointed out that two videotapes about designer Karl Davis should have a high preservation priority. According to the library catalog, the two videos are titled 'Karl Davis fall/holiday '85 collection at White Columns' and 'Karl Davis interviewed by Elsa Klensch of Cable News Network's "Style".' Both videos were recorded in 1985 on U-Matic videocassettes.[6]

As a fashion designer, Karl Davis "was an integral part of the downtown fashion mafia" in the mid-1980s.[7] He was born and raised in Brooklyn and attended FIT for one semester. He then worked as an assistant to Carol Fertig, a sculptor-designer who works with fabric as her art medium.[8] Davis also worked as a design assistant to renowned designer Bill Blass. In 1984, Davis established his own collection of classic women's clothing. His sophisticated design styles

[6] "Karl Davis fall/holiday '85 collection at White Columns'," FIT Library, https://suny-fit.primo.exlibrisgroup.com/permalink/01SUNY_FIT/13piqov/alma990000105990204829.
"Karl Davis interviewed by Elsa Klensch of Cable News Network's Style," FIT Library, https://suny-fit.primo.exlibrisgroup.com/permalink/01SUNY_FIT/13piqov/alma990000105980204829.
[7] "Karl Davis, 25, Dies; A Designer of Fashions," *The New York Times* (New York, NY), May 5, 1987.
[8] Bernadine Morris, "Nonconformists who Create for Individualists," *The New York Times* (New York, NY), June 29, 1982. www.nytimes.com/1982/06/29/style/nonconformists-who-create-for-individualists.html.

took influence from fashion houses including Chanel, Dior, and Emanual Ungaro. In 1986, the New York Times stated Davis as one of "New York City's most promising young designers."[9] Davis died of pneumonia in May 1987 due to complications from HIV/AIDS. Though brief, Davis's career in fashion design was highly praised and of impressive achievement. Davis' designs were also featured in FIT Museum's *Black Fashion Designers* exhibition in 2016 and 2017.

The two videos are not available as digital files, and the original U-Matic tapes cannot be accessed on-site due to COVID-19. The content descriptions were available in the library catalog. The 'fall/holiday '85 collection' video contains the runway fashion show, which was held on August 5, 1985, at White Columns Gallery, New York City. The show recording was followed by "Karl Davis' contribution to the Fashion Aid benefit for Ethiopian famine relief."[10] The duration of the tape is approximately 19 minutes in sound and color recording. The second tape, 'Davis interviewed by Elsa Klensch' was recorded immediately following the runway show of his fall/holiday '85 collection. The interview was conducted by CNN's program 'Style with Elsa Klensch,' a show that explored fashion and design from around the world. The duration is approximately 7 minutes in sound and color recording.

The New York Fashion Aid was a fundraising social event held at the Palladium on November 6, 1985. The event follows a similar initiative in London on the previous night to raise funds for the relief of the Ethiopian famine. About 500 staff members worked backstage for the fashion show and it had an audience of 3,500. Many celebrities in the fashion, film, and music industries joined the event, including Calvin Klein, Brooke Shields, and Debbie Harry. The event

[9] Michael Gross, "From Two Young Designers, Two Fashion Views," *The New York Times* (New York, NY), May 9, 1986.
[10] "Karl Davis fall/holiday '85 collection at White Columns'," FIT Library.

started with a 35-monitor video show of the London Fashion Aid, which was followed by a runway show featuring "60 young New York designers." According to the New York Times, Karl Davis' "white crepe de chine gown" was presented during the event. The presentation is very likely recorded on one of the videotapes held by SPARC.[11]

There are chances that both tapes may also be collected by the CNN archive, yet it is still very helpful for researchers to be able to access the material in a specialized fashion library.[12] The two exact tapes were explicitly mentioned in Davis' Wikipedia page as references, showing the significance of them in studying the designer, as well as the accessibility of SPARC's resources to the general public.[13] Although the videos are not available to view online, the metadata on the library catalog page displays basic information including content descriptions, formats, durations, and publisher. The subject headings, however, can certainly be expanded. Currently, the entries only have general headings such as 'costume designer,' 'fashion show' and Davis' name. More subject headings can help improve the searchability of the materials.

2.3 Analog Video Assets Status

During my initial assessment in March 2020, the physical conditions of the 101 videotapes and some metadata were collected through visual inspection. The selection of material contains 6 U-matic tapes and 95 VHS tapes. In this process, every item was entered into an inventory spreadsheet that included fields for administrative, descriptive, and technical metadata. No playback was conducted for the safety of the materials and because of the lack of playback devices.

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[11] "In New York, Fashion Aid Has a Downtown Look," *The New York Times* (New York, NY), Nov. 8, 1985. Karyn Snead, "A Star Parade at New York's Fashion Aid," *Sun Sentinel* (Fort Lauderdale, FL), Nov. 24, 1985.
[12] Information on these two videos cannot be found using the CNN video archive search tool.
[13] "Karl Davis," Wikipedia, May 22, 2020. https://simple.wikipedia.org/wiki/Karl_Davis#cite_ref-6.

SPARC TT502 Video Selection

Format	Number of Items	Percentage
VHS	95	94%
¾” U-matic	6	6%
Total	101	-

Figure 3. Formats of the 101 items assessed in 2020.

Video Home System (VHS), introduced in 1976, and U-matic, launched in 1971, are both videocassette formats oriented for the consumer market. VHS was used for both commercial distribution and amateur video recording, and had become one of the most popular commercial video formats from the late 1970s till the early 2000s. U-matic, due to its relatively higher cost of equipment and tapes, was marketed towards industrial, professional, and educational markets. The analog magnetic tape is composed of a polyester base coated with binder material containing magnetic particles. As commercial formats, VHS and U-matic were not designed for either high-resolution imagery nor archival purposes.

Almost all of the 101 tapes inspected are of a good physical condition from visual inspection. A number of the VHS tapes are mildly dusty on the shell, possibly due to being stored in the circulating collection. Other than this, all tapes and cassette shells show no visible sign of foreign particles, tears, mold, shedding, or other external damage that is prevalent for videocassettes. However, magnetic tapes are also subjected to problems such as (1) loss of signal over time, caused by the demagnetization of magnetic particles in the coating, or (2) degradations of the gelatin binder that show no obvious symptom. In this particular case, it is also unknown if (3) the dust particles have yet entered the shell and contaminated the tape.

Therefore, we cannot be sure if the tapes are indeed in good condition without viewing them on playback decks.

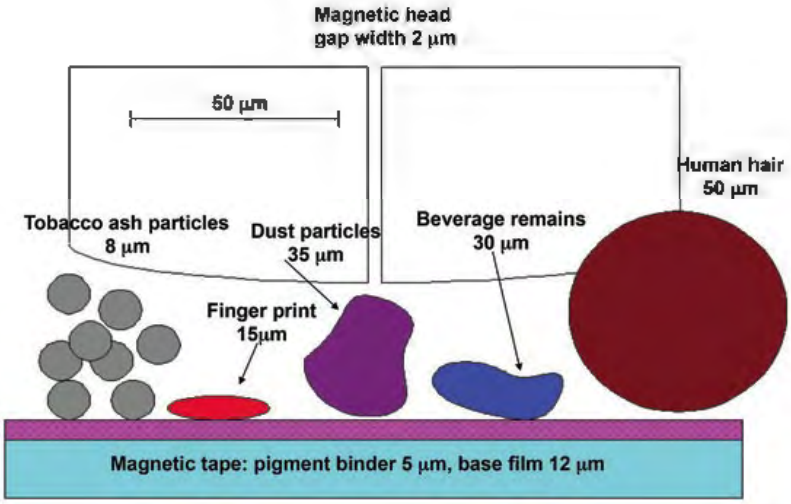


Figure 4. Proportion of foreign particles of different size obstructing intimate tape-to-head contact.[14]

In addition to the common hazards that may affect magnetic tapes, 13 videocassettes in the selection have not had their recording tabs removed. The protection tab is a piece of plastic on the long side of the cassette. For U-matic tapes, it is a red button on the back of the cassette. If they are not removed, these tapes can be still be erased or recorded-over with a functional deck, and the original content will be lost. This also indicates that a large number of tapes (which could be over 10%) in the collection may not have had the recording tabs removed.

2.3.1 Analog Video Collection Care

The collection of videos was stored in the Gladys Marcus Library until being transferred to SPARC in 2008. Based on the information provided by Levin, the library was not designed with climate-controlled storage for audiovisual materials. Although no further information about the previous situation at the circulating library could be obtained, the area was likely air-conditioned to accommodate the visitors' comfort. In this way, the temperature might be much

[14] "Dust, foreign matter, (air) pollution, pests," IASA, International Association of Sound and Audiovisual Archives, accessed Apr. 12, 2020. www.iasa-web.org/tc05/35-dust-foreign-matter-air-pollution-pests.

higher than the ideal preservation temperature for magnetic tapes (40–54°F). Besides, it is unknown if the tapes had been exposed to strong light, magnetic field, or situations that involve high humidity. After being transferred to SPARC, the materials were again stored in another non-climate-controlled space until 2017. Presumably, most of the videotapes have been stored in such conditions for decades.[15]

The current space of SPARC was newly established in 2017. The department consists of a reading room, an office, and two vaults. The vaults store both paper material, such as rare books and periodicals, and audiovisual material. The videotapes are all stored upright on the shelves and arranged by call numbers. The types of cassette containers seen in the selection are cardboard sleeves, plastic sleeves, and plastic cases. Many of the containers are slightly dusty from storage; some plastic containers show cracks and sheds plastic particles when handled (e.g. item with barcode 39698001283544), which may containment the tape.

The vaults use an HVAC system to keep the temperature at 65°F and relative humidity at 40%. The temperature is slightly higher than the acceptable storage temperature for videotapes (see Figure 5).

Recommended Storage Environment for Magnetic Tapes

	Ideal	**Acceptable**
Temp.	40–54°F	55–60°F
RH	30–50% RH	

Figure 5. Storage environment requirements for videotape material based on the ISO 18923:2000 standard. (University of Illinois.)

[15] Levin, interview.

2.4 Digital Video Assets Status

SPARC has not yet developed a workflow regarding the preservation of digitized videos. At this moment, the on-site digitization procedure consists of directly transferring VHS and U-matic tapes into digital files stored on DVDs for access purposes. For digital assets other than this collection (mostly images and born-digital videos), SPARC uses Omeka Classic as the digital asset management system (DAMS) and the framework for their two online access platforms, one is SPARC Digital for images, and the other is Archive on Demand for video contents.[16] Archive on Demand is not an archive but an instance of Omeka that delivers videos from FIT's YouTube channels. These videos are not from the videotape collection and are mostly born-digital videos provided by other college departments. The original files of these (mostly born-digital) videos are still maintained by the departments that created them. The library is now in the process of building a new digital depository, which will be used to compile and archive digital assets from all departments across FIT.

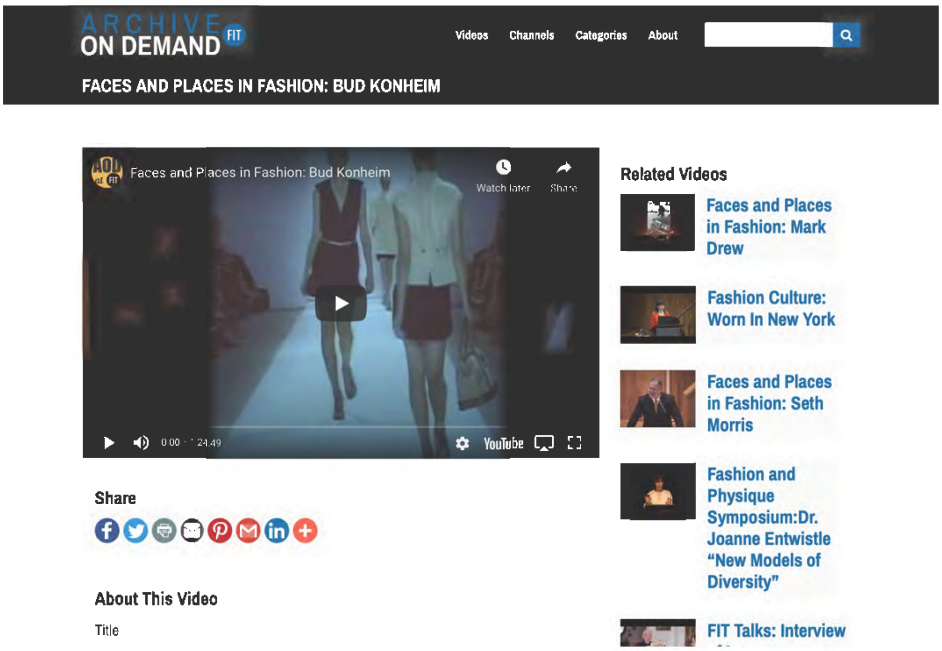


Figure 6. Video streaming page on Archive on Demand. (FIT.)

[16] SPARC Digital homepage: sparcdigital.fitnyc.edu.
Archive on Demand homepage: https://archiveondemand.fitnyc.edu.

Omeka Classic is an open-source platform that can publish accessible collections and exhibitions utilizing the Dublin Core metadata standard. First launched in 2008, it offers easy-to-use administrative interface, syndication for sharing content online, plugin extensions, as well as website API designs. It is used as the content management system for many libraries, archives, and museums.

The digital video assets in the SPARC audiovisual collection are now mostly stored on writable DVD discs that can carry data or video, presumably DVD-R or DVD-RW. The specific type cannot be determined as the format detail was not yet cataloged, therefore, both types are addressed in this section. The DVDs contain videos that are reformatted from analog tapes using an on-site video transfer unit for researcher access. The difference between the two formats is that DVD-R can only be written once and DVD-RW can be written multiple times. Writable DVDs are not designed for long-term or archival use, especially DVD-RW, because the metal alloy film used in such format degrades faster than the dye used in DVD-R discs. The numbers of times of rewriting also shorten the life expectancy for DVD-RW discs. DVD-RW is also susceptible to the loss or alteration of data as a result of the rewriting. DVD-R, which can only be written once, is relatively more stable. Based on these factors, the current digital storage format used at SPARC has to be replaced when long-term digital preservation is considered. [17]

[17] Fred R. Byers, *Care and Handling of CDs and DVDs: A Guide for Librarians and Archivists* (Washington, D.C.: CLIR, 2003), 15. www.clir.org/wp-content/uploads/sites/6/pub121.pdf.

Figure 7. The video transfer unit at the FIT library. (FIT.)

The digitized videos in the collection were only reformatted for access purposes, therefore, there are technically no preservation copies created. The videotapes are digitized on patron's demand at a makeshift video digitization unit on-site. The unit consists of a SONY VP-9000 U-matic SP videocassette player, a SONY RDR-VX560 VHS VCR/DVD recorder, and a CRT monitor. The VHS/DVD recorder enables recording (a.k.a. 'dubbing') contents from a VHS or U-matic videocassette to a DVD disc automatically. It is a very simple setup and only fulfills the task of reformatting U-matic and VHS videocassettes to DVD with CRT playback in real-time. The diagram below shows the digitization station signal path.

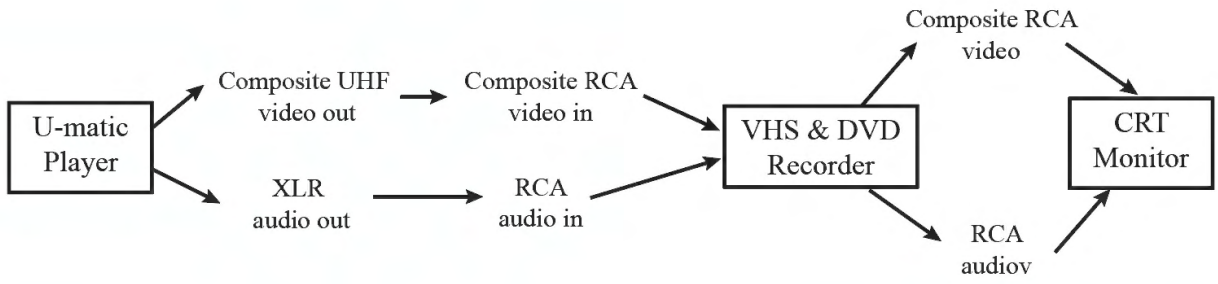


Figure 8. The signal path set up of FIT library's digitization unit.

Figure 9. Screenshot of a video digitized using the unit. (FIT.)

Two digitized videos were transferred from DVDs and shared by Levin. The technical properties of one video generated by MediaInfo are listed in Figure 10. According to these results, the formats are adequate as access copies but not as preservation copies, because DV is a compressed video codec and the bit rates are relatively low for preservation purposes. Most

preservation copies of digitized videotapes are now encoded using 10-bit YUV 4:2:2 uncompressed codec. Therefore, these videos still need to be digitized again in the future to create appropriate preservation copies.

Video Properties

Wrapper	Codec	Aspect Ratio	Frame Rate	Bit Rate	Color Space	Bit Depth	Scanning
MOV	DV	4:3	29.97	24.4 Mb/s	YUV 4:1:1	8 bits	Interlaced

Audio Properties

Codec	Bit Rate	Bit Depth	Channels	Sampling Rate
PCM	1.5 Mb/s	16 bits	2	48 kHz

Figure 10. The technical specifications of a video digitized using the transfer unit.

2.5 Intellectual Control

The earliest records of this collection are paper catalog cards that are created upon acquisition. Yet, I was not able to access these cards due to pandemic restrictions. No current library staff has worked on the acquisition and cataloging, therefore, the knowledge of how this collection came into being is likely lost over time. The information on these catalog cards is likely migrated into the now digital library management systems. As the audiovisual items used to belong to the circulating collection, the FIT library cataloged them as bibliographical records based on the Library of Congress Classification system. For example, if a fashion show consists of two parts on two individual VHS tapes, they were cataloged as one bibliographical entry. In addition, because of the lack of institutional standards in cataloging audiovisual materials, items under the same bibliographic record are sometimes marked as one video format (e.g., VHS) when they are indeed different formats of video or paper materials. SPARC is currently

conducting an inventory project on all audiovisual materials in the Rare Book and Periodicals Room to reconcile the properties of the physical items with the catalog and enhance the accuracy of metadata.

The FIT library currently has a library catalog using the Alma library service platform, which was implanted recently in 2019. Before Alma, FIT used Oliver Library Software to manage its library functions. Alma is developed by Ex Libris Group and was initially released in 2011. It is a widely used library services system that unifies library assets and provides API for functions such as acquisition, administration, analytics, metadata management, cataloging, and resource sharing. Alma supports modern metadata and open standards, allowing shared catalogs in library communities.[18] All of the SUNY schools currently employ the Alma system as their library platform.

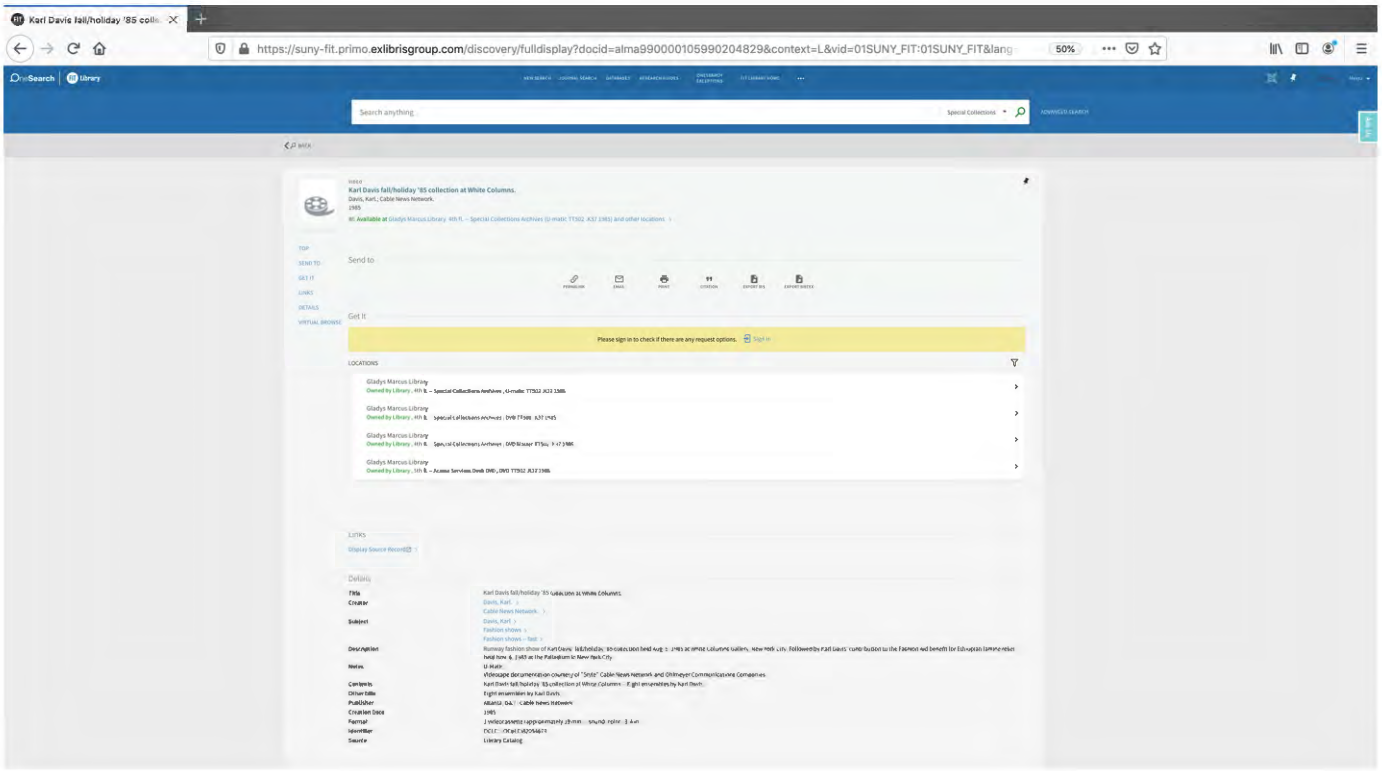


Figure 11. A sample item record page in the FIT library catalog system. (FIT.)

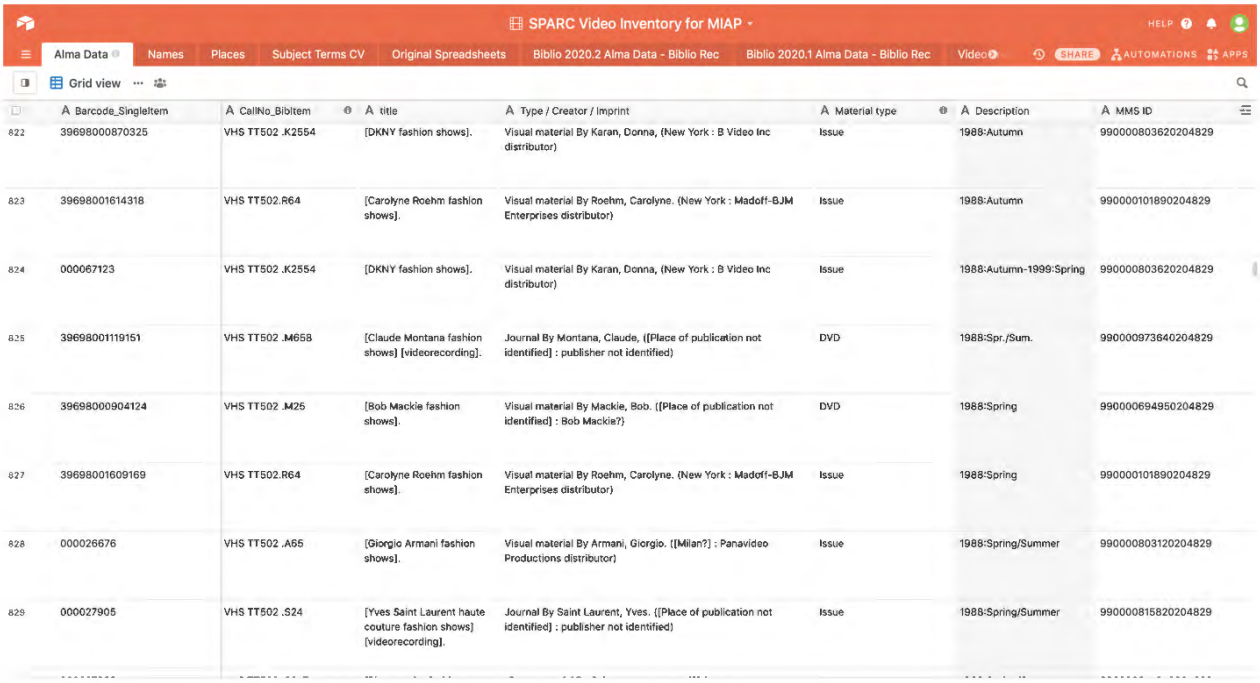
[18] "Alma Library Services Platform," Ex Libris. www.exlibrisgroup.com/products/alma-library-services-platform/.

The library catalog allows users to limit the range of searches to the special collection by clicking the drop-down list next to the search bar. According to Levin, the catalog is considered the most comprehensive inventory that SPARC has for the audiovisual collection. Yet, she also pointed out that some metadata in the catalog, such as the audiovisual format, is not completely accurate and requires further verification in the future.[19]

As mentioned before, the Alma catalog is that the items are cataloged based on the Library of Congress Classification system, which was designed mostly for books, not audiovisual materials. As Levin explained, when the items were first cataloged, some library catalogers would call the bibliographic record 'VHS,' and every item under the bibliographic entry, whether it is a U-matic, DVD, or a printout of the transcript would be cataloged as a 'VHS.'

A new inventory project was initiated in late 2019 to create a more accurate database for the videos at SPARC. The library uses Airtable as a "pseudo relational database" to manage the metadata collected in the process. The video inventory was extracted from the Alma library catalog, and the SPARC team is working on Airtable to make adjustments to the data, and will eventually ingest the metadata back into Alma. The inventory process was again put to a halt because of the COVID-19 pandemic and only a portion of tapes are cataloged. Before the pandemic, the team was working on collecting more administrative, descriptive, and copyright metadata at the item level. [20]

[19] Levin, email message to author, Jan. 16, 2021.
[20] Levin, interview.



	Barcode_SingleItem	CallNo_BibItem	title	Type / Creator / Imprint	Material type	Description	MMS ID
822	39698000870325	VHS TT502 .K2554	[DKNY fashion shows].	Visual material By Karan, Donna, (New York : B Video Inc distributor)	Issue	1988:Autumn	990000803620204829
823	39698001614318	VHS TT502.R64	[Carolyne Roehm fashion shows].	Visual material By Roehm, Carolyne. (New York : Madoff-BJM Enterprises distributor)	Issue	1988:Autumn	990000101890204829
824	000067123	VHS TT502 .K2554	[DKNY fashion shows].	Visual material By Karan, Donna, (New York : B Video Inc distributor)	Issue	1988:Autumn-1999:Spring	990000803620204829
825	39698001119151	VHS TT502 .M658	[Claude Montana fashion shows] [videorecording].	Journal By Montana, Claude, ([Place of publication not identified] : publisher not identified)	DVD	1988:Spr./Sum.	990000973640204829
826	39698000904124	VHS TT502 .M25	[Bob Mackie fashion shows].	Visual material By Mackie, Bob. ([Place of publication not identified] : Bob Mackie?)	DVD	1988:Spring	990000694950204829
827	39698001609169	VHS TT502.R64	[Carolyne Roehm fashion shows].	Visual material By Roehm, Carolyne. (New York : Madoff-BJM Enterprises distributor)	Issue	1988:Spring	990000101890204829
828	000026676	VHS TT502 .A55	[Giorgio Armani fashion shows].	Visual material By Armani, Giorgio. ([Milan?] : Panavideo Productions distributor)	Issue	1988:Spring/Summer	990000803120204829
829	000027905	VHS TT502 .S24	[Yves Saint Laurent haute couture fashion shows] [videorecording].	Journal By Saint Laurent, Yves. ([Place of publication not identified] : publisher not identified)	Issue	1988:Spring/Summer	990000815820204829

Figure 12. Entries in the SPARC Airtable inventory. (FIT.)

Airtable is a management system launched in 2013. Its framework is close to a collaborative spreadsheet, yet it also allows views such as calendar and gallery. It has more functions than Google Sheet while providing linked and integrated data across different spreadsheets. Because of its simple yet diverse functions, Airtable is used for all sorts of planning and management purposes in businesses and institutions.[21] For example, in SPARC's case, all subject terms used in the inventory are collected in a separate spreadsheet. Each term in this list is linked to all applicable items in the master inventory.

[21] "Product," Airtable. airtable.com/product.

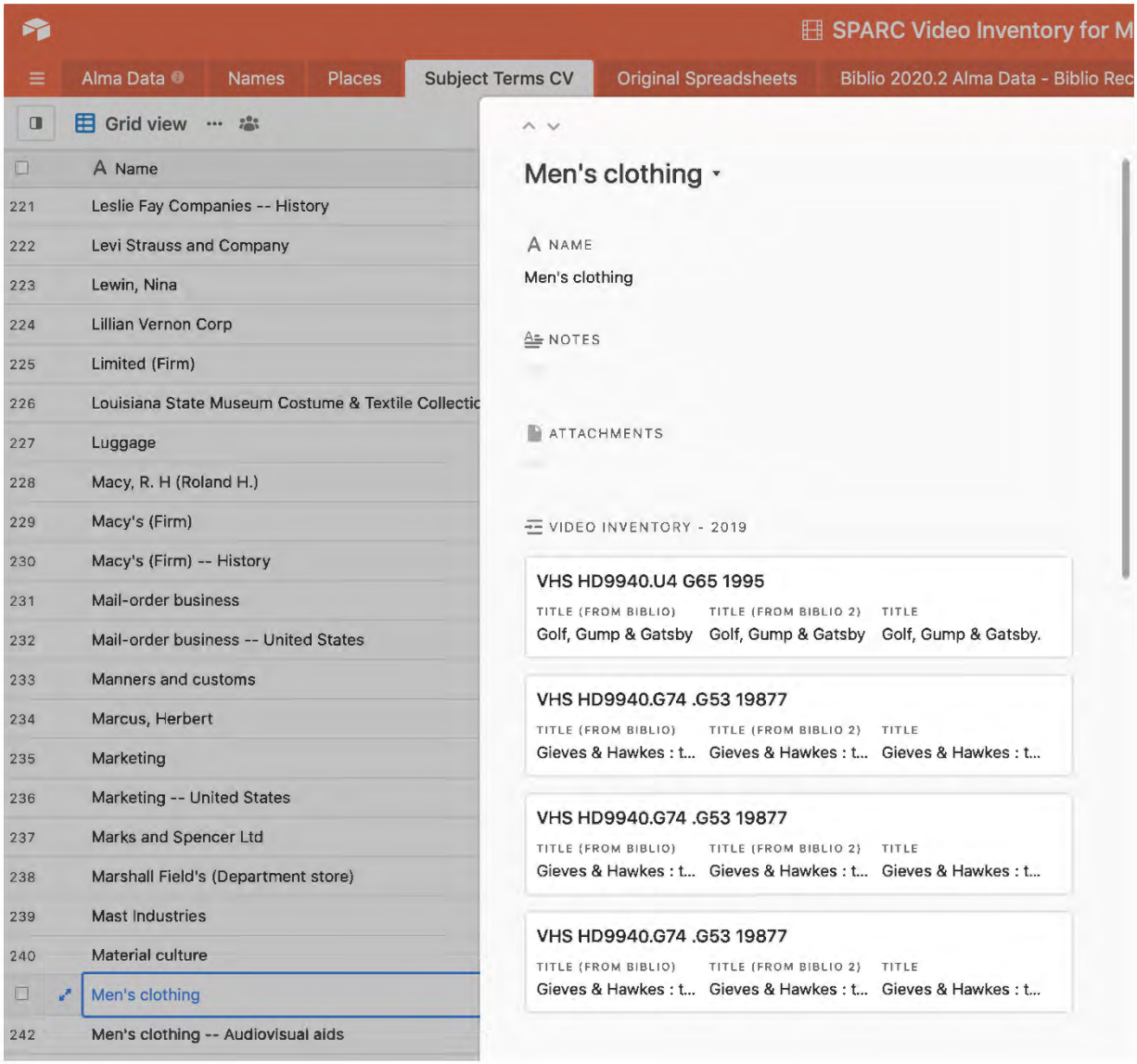


Figure 13. By selecting an entry in the 'Subject Terms' spreadsheet, the user can view all records in another inventory linked to this subject. (FIT.)

In 2019 and early 2020, Venessa Watson worked at SPARC to conduct research on rights owners and inventoried a small portion of the collection. Watson was a fashion business student at FIT and did not have library science or archiving experience. She created a revised videotape collection inventory labeled 'Video Inventory - 2019' in the Airtable database. Comparing to the original catalog, the new inventory has more administrative and descriptive metadata, which are also linked by fields such as subject terms and creators. Yet, the information is not cataloged using any metadata standards and the definitions of each of the properties are very limited (see

Figure 14). This poses difficulties for current staff members to effectively use and develop the inventory. During her inventorying process, Watson focused on collecting administrative and descriptive metadata that can help enhance the accessibility and accuracy of the library catalog, as well as rights information for copyright clearance. In comparison, the records on technical metadata are relatively lacking.

SPARC 2019 Video Inventory Metadata Fields (Selections)

Administrative	Descriptive	Technical	Preservation	Rights
Call Number	Contents	Extent (duration, sound, color)	Tape Condition	Copyright Owner
Title	Description	Media Format	Priority Appraisal	Other Entities
Barcode	Volume			
Physical Location Correct in Library	Creator			
Major Catalog Updates Needed	Subject Terms			
Notes	Publication Date			
Item Not Listed	Creation Date			
Alma Biblio Records	Publisher			

Figure 14. Main metadata properties used in 'Video Inventory – 2019.'

Part 3: Preservation Workplans

In this section, considerations, goals, and workflows for future preservation works are discussed in detail. The section is divided into two parts: the video preservation plans and the digital preservation plans, targeting two different types of contents in the collection separately.

3.1 Video Preservation

As described in the previous sections, the video assets in the collection are stored in an acceptable environment and show minimal visible signs of tape degradation. The preservation issues that need to be considered and addressed in planning are (1) the deterioration of magnetic

media that cannot be found by visual inspection, (2) the inaccuracies of metadata in the collection catalog, and (3) minor issues of the physical tape conditions, such as damages plastic cases.

3.1.1 Short-term Goals

The short-term goals in video preservation should focus on increasing intellectual control over the collection and minimize deterioration due to handling and storage. If SPARC considers accommodating a student intern from the NYU Moving Image Archiving and Preservation program to conduct the assessment, the team may have good progress on updating the inventory within a school semester. An estimated time for a trained intern archivist to finish the inventory would be 400 hours.

Continuing the collection-wide item-level assessment can lay the cornerstone for any future digitization initiatives. Some basic preservation actions can also be executed during this process, including cleaning of cases and cassette shells, removing record tabs, secure peeling-off labels, and replace damaged housings.[22]

The main goal of the assessment should be updating the collection inventory, a task that needs to be prioritized for video preservation at SPARC. Updating the existing inventory will be a crucial step to correct the inaccuracies, identify duplicates, and gather descriptive, technical, and rights metadata to prepare for future preservation actions.

Rights now, the assets are cataloged by their call numbers. For example, if one fashion show consists of two videotapes, the show is cataloged as one entry with two volumes. I recommend SPARC to catalog the assets by physical items instead of bibliographical entry. It

[22] It is recommended to house these tape cassettes in archival-standard cases/sleeves, such as this model of polypropylene case: www.gaylord.com/Preservation/Media-Preservation/Storage-Boxes-&-Cases/Single-Videocassette-Case/p/U1-31A. A guide for locating and removing record tabs on different tape cassettes can be found here: psap.library.illinois.edu/collection-id-guide/recordprotection.

will be a better method to keep track of individual items and their digital copies, especially in the digitization process.

It is also recommended to add more fields of descriptive and technical metadata for preservation purposes. With an updated catalog, the SPARC team will be able to determine the preservation priorities of items and proceed with digitization when possible.

To update the inventory, SPARC can consider adding more metadata fields using the PBCore standard.[23] PBCore is a metadata standard developed for audiovisual assets and collections. It is widely used in public broadcasting, moving image archives, and media organizations. Figure 15 shows the current metadata properties with more recommended fields that will provide the user more information on the content and preservation needs. See Appendix I for a conceptual application profile with descriptions of all recommended metadata elements.

Recommended SPARC Analog Video Metadata Fields (additions in blue)

Administrative	Descriptive	Technical	Preservation	Rights
Call Number	Contents	Media Format	Condition	Copyright Owner
Title	Description	Material Type	Preservation Priority	Copyright Notes
Barcode	Volume	Color	Preservation Action	
Physical Location	Creator	Duration		
Notes	Creator Role	Tape Capacity		
	Additional Contributors			
	Subject Terms			
	Publication Date			
	Creation Date			
	Publisher			
	Publish City			
	Type			

Figure 15. Recommended metadata properties for SPARC's analog video inventory.

[23] PBCore metadata elements and controlled vocabulary can be found on the official website: pbcore.org.

3.1.2 Long-term Goals

As the assets are currently stored in an adequate environment, SPARC's main long-term goal in video preservation will be digitization. As VHS and U-matic were developed for the mass consumer market, they were not designed to have long life expectancy or to be used as preservation formats. Therefore, it is necessary to transfer the content to digital files for preservation and easier access as soon as the resources allow. Obsolescence is another risk that many magnetic tape formats are facing. According to Jim Wheeler's *Video Preservation Handbook*, VHS has an obsolescence rating of "OK," and U-matic has a rating of "threatened." The Preservation Self-Assessment Program recognizes the U-matic format to be at "high preservation risk" due to media and hardware obsolescence.[24]

In order to ensure that the evaluation of preservation needs is conducted in a consistent and orderly manner, it is necessary to establish an evaluation criterion. The digitization priority at SPARC may be set considering the following factors: mission alignment, the value of the content, copyright status, physical condition, format obsolescence, and the cost of preservation. At this moment, the domestic runway recordings with copyright releases have the highest priority. They may be the first batch to be digitized once the preservation tasks resume after the pandemic lockdown. Besides the rights status, the library also needs to identify duplicate copies through assessment, and maybe inspect with a playback deck only if necessary, to select the best copy for digitization.

It is recommended for SPARC to use a vendor service to digitize the collection. The previous section shows that the on-site video transfer unit lacks some essential components (e.g.

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[24] Jim Wheeler, "Videotape Preservation Handbook," AMIA, The Association of Moving Image Archivists, 2002. https://amianet.org/wp-content/uploads/Resources-Guide-Video-Handbook-Wheeler-2002.pdf.
"Videotape," Preservation Self-Assessment Program, University of Illinois, accessed Apr. 12, 2020. https://psap.library.illinois.edu/collection-id-guide/videotape#umatic.

time-base corrector, waveform monitor, vectorscope, audio mixer, and computer) in producing preservation-level captures. Building an on-site digitization station will require training of current staff members or employing an audiovisual archivist, which is not a feasible option for the SPARC administration right now. In this case, using vendor services may be a more efficient and cost-effective choice for SPARC. For the previously preserved oral history collection, SPARC has worked with George Blood LP to digitize the videotapes. Therefore, SPARC should have adequate experience in collaborating with vendors and providing documents such as a Request for Proposal.

3.1.3 Videotape Assessment Workflow

The following proposed workflow can be conducted during a physical assessment of the items. It is a prototype and is close to my inspection workflow in spring 2020. While this examination may not identify all the problems that can occur, if a tape fails any one of these inspection criteria, it can be considered as in danger and in need of further attention. Attempts to play such tapes before treatment can place both the tapes and the playback machinery at risk.

1. Wipe the video cassette container and shell of dust.
2. Inspect the outer container for damages and plastic shedding if it is a plastic box. Note preservation needs in the inventory and replace housing if needed. If the container, reel, or cassette is damaged, the tape inside also is likely to have suffered damage or contamination.
3. Examine the outer container and shell for detaching labels. Reattach labels using acid-free archival adhesive if needed.
4. Remove the record protection tabs if needed. A guide for locating and removing record tabs on different tape cassettes can be found here: psap.library.illinois.edu/collection-id-guide/recordprotection.

5. Inspect the videotape for odor. If a musty odor is detected, the inspection shall be terminated and the tape needs to be isolated as this inspection may indicate the presence of fungus. Tape binder hydrolysis creates distinctive odors but dissipate quickly, therefore they may not be detectable for tapes in paper containers. The most common odors can be characterized as "waxy," "dirty socks," "astringent" or "pungent," depending on the types of binder.[25]
6. Inspect the tape edge for white powder or crystalline residue; inspect the interior of the container for black or brown flakes of oxide. These symptoms are caused by a variety of conditions and indicate that the tape has started to degrade. Tapes with binder hydrolysis are in the process of automated deterioration and the particles can stick in the machine during playback, causing additional damage.
7. Update descriptive (e.g. publisher, creation date), technical, and preservation metadata according to outcomes of the inspection.
8. Update descriptive (e.g. subject terms) and rights metadata after content research.

3.1.4 Videotape Digitization Preparation Workflow

The following proposed workflow is designed to be conducted after updating the video inventory and prepare for a video digitization project.

1. Determine digitization priorities using the updated inventory. Select the items to be digitized. For duplicated items, see if a better copy can be chosen based on visual inspection. Playback devices should only be used when there are no other choices, because degrading tapes may contaminate the deck, and the deck machinery can damage the tape too.

[25] Jim Wheeler, Peter Brothers, edited by Hannah Frost, “Video Preservation Fact Sheets,” AMIA, 2002. amianet.org/wp-content/uploads/Resources-Video-Preservation-Fact-Sheets-2002.pdf

2. Determine digital file specifications and requirements (discussed in detail in Section 3.2.2).
3. Create an inventory for the vendor, noting any special tape conditions (e.g. visible deterioration). Draft and send out Requests for Proposal.[26]
4. Choose a vendor. Communicate with the vendor for shipping logistics.
5. Note the items sent out in the inventory, including the shipping dates. Securely pack the tapes and ship.

3.2 Digital Preservation

As stated in the previous section, SPARC is still at a preliminary stage in terms of digital preservation. The current storage and preservation procedures have to be replaced with a standardized workflow that will enhance the longevity, accessibility, and control over the digital items.

3.2.1 Short-term Goals

At the time that this paper is written, the SPARC team members are still working on building a digital repository for the archive. This task has a high priority in SPARC's preservation initiatives. The repository will effect change on the current inefficient method of storage on optical media, providing storage and physical control for the digital packages in future videotape digitization projects. Although other forms of digital storage (e.g. individual hard drives) can be used in digitization projects, having an institutional digital repository can be fundamental for any long-term digital preservation efforts at SPARC.

[26] "Guide to Developing A Request for Proposal for the Digtization of Video" by Chris Lacinak at AVP can be a very helpful template when drafting an RFP: www.weareavp.com/wp-content/uploads/2017/07/AVPS_Digitization_RFP_Guide.pdf.

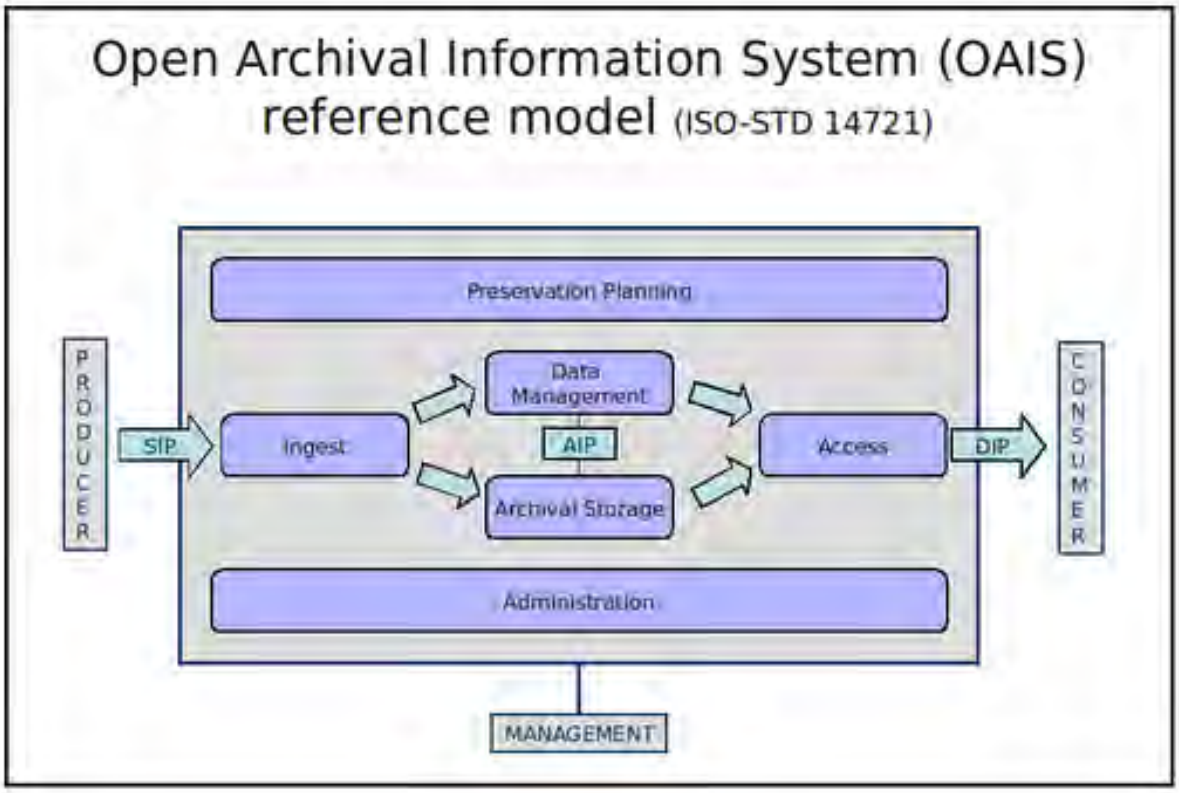

Figure 16. OAIS reference model implemented by Archivematica. (Archivematica.)

The SPARC digital repository will be built based on an Archivematica framework with cloud storage. Archivematica is an integrated suite of open-source software tools that allows users to process digital objects from ingest to access. The design of Archivematica complies with the ISO Open Archival Information System (OAIS) reference model, which is used to standardize the lifecycle of digital information packages. An OAIS is an archive responsible to preserve information and make it available to a 'Designated Community.' The OAIS model is sometimes considered as a workflow for organizing information and architecting archival systems. The archive first receives a Submission Information Package (SIP) from producers and vendors. It then verifies the SIP and creates an Archival Information Package (AIP) from it. The AIP is stored, monitored, and migrated as needed in long-term storage spaces. When a user

requests to retrieve information from the archive, it generates a Dissemination Information Package (DIP) from the relevant AIP and delivers it to the user. [27]

In Archivematica, the information packages are processed using a series of micro-services provided by a combination of Python scripts and software tools bundled in the system. The primary function of Archivematica is to process digital transfers, creating SIPs, apply format policies, and create repository-independent AIPs. It can also upload DIPs, containing metadata and access copies, to several different access platforms. Archivematica provides a web dashboard that allows multiple users to process, monitor, and control the workflow processes.[28]

Similar to the current procedure, Omeka S, a new version of Omeka Classic, will be used as the system API to publish access copies from the repository. The available access copies and metadata will be uploaded to the FIT Archive on Demand website and possibly YouTube. The videos and metadata will be searchable and browsable for users on these platforms.

In terms of storage, SPARC will use Amazon Glacier as a long-term storage space for the AIPs. The Glacier service is a cloud service often used for data archiving and long-term backup. It is relatively low-cost with delayed retrieval service options. Amazon Simple Storage Service (Amazon S3), on the other hand, provides a general type of cloud storage with faster retrieval speed and higher cost. It will be used to store assets that may need to be retrieved more frequently, such as the access copies of digital videos. However, because retrieving files from Amazon S3 will generate a fee for every access, which is not cost-effective for storing publicly available videos, the SPARC team is considering using Google Drive or YouTube to host

[27] "Home," OAIS Reference Model (ISO 14721), ISO, accessed Mar. 1, 2021. www.oais.info.
[28] "Overview," Archivematica, Mar. 9, 2017. wiki.archivematica.org/Overview.

'thumbnail' copies for users to browse. These copies can be generated by Archivematica and have even smaller sizes than the actual access copies.[29]

The metadata standard for all digital archival assets will be mainly based on Dublin Core since it is used across the FIT library system. Yet, some fields from the Metadata Object Description Schema, also known as MODS, will be incorporated to specify the role of personnel or organizations related to an entry. As stated in the previous sections, it is recommended for SPARC to also incorporate fields from PBCore for technical specifications. The recommended digital video metadata fields are listed in the next section in Figure 18 and Appendix I.

With a newly-established digital repository and DAMS, SPARC then needs to standardize the digital preservation workflow for digitized video content. SPARC may refer to documents such as NDSA Levels of Digital Preservation (LoDP)[30] and Digital Preservation Handbook[31] in developing the details of the workflow to adhere to the best practice possible.

The intellectual control over the digital assets may also be increased along with the analog collection, as the records on DVD assets also lack accuracy. Yet, in terms of the overall process of digital preservation, this task does not have a high priority as the DVD storage format will be eventually replaced and the videos may need to be digitized again to produce preservation copies.

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[29] "Amazon S3 Glacier & S3 Glacier Deep Archive," AWS, Amazon. aws.amazon.com/glacier/
"Amazon S3," AWS, Amazon. aws.amazon.com/s3/.
Levin, Interview.
[30] "Levels of Digital Preservation," *NDSA*, 2018. ndsa.org/publications/levels-of-digital-preservation/.
[31] "Digital Preservation Handbook, 2nd Edition," Digital Preservation Coalition, 2015. www.dpconline.org/handbook.

3.2.2 Long-term Goals

Functional Area	Level			
	Level 1 (Know your content)	**Level 2 (Protect your content)**	**Level 3 (Monitor your content)**	**Level 4 (Sustain your content)**
Storage	Have two complete copies in separate locations Document all storage media where content is stored Put content into stable storage	Have three complete copies with at least one copy in a separate geographic location Document storage and storage media indicating the resources and dependencies they require to function	Have at least one copy in a geographic location with a different disaster threat than the other copies Have at least one copy on a different storage media type Track the obsolescence of storage and media	Have at least three copies in geographic locations, each with a different disaster threat Maximize storage diversification to avoid single points of failure Have a plan and execute actions to address obsolescence of storage hardware, software, and media
Integrity	Verify integrity information if it has been provided with the content Generate integrity information if not provided with the content Virus check all content; isolate content for quarantine as needed	Verify integrity information when moving or copying content Use write-blockers when working with original media Back up integrity information and store copy in a separate location from the content	Verify integrity information of content at fixed intervals Document integrity information verification processes and outcomes Perform audit of integrity information on demand	Verify integrity information in response to specific events or activities Replace or repair corrupted content as necessary
Control	Determine the human and software agents that should be authorized to read, write, move, and delete content	Document the human and software agents authorized to read, write, move, and delete content and apply these	Maintain logs and identify the human and software agents that performed actions on content	Perform periodic review of actions/access logs
Metadata	Create inventory of content, also documenting current storage locations Backup inventory and store at least one copy separately from content	Store enough metadata to know what the content is (this might include some combination of administrative, technical, descriptive, preservation, and structural)	Determine what metadata standards to apply Find and fill gaps in your metadata to meet those standards	Record preservation actions associated with content and when those actions occur Implement metadata standards chosen
Content	Document file formats and other essential content characteristics including how and when these were identified	Verify file formats and other essential content characteristics Build relationships with content creators to encourage sustainable file choices	Monitor for obsolescence, and changes in technologies on which content is dependent	Perform migrations, normalizations, emulation, and similar activities that ensure content can be accessed

Figure 17. NDSA Levels of Digital Preservation. (NDSA.)

The National Digital Stewardship Alliance (NDSA) developed the first version of the NDSA Levels of Digital Preservation in 2013. The tiered set of recommendations were meant to be used as a lightweight tool for users to deepen their understanding of preservation issues, as well as to focus on technological considerations. The approach of the LoDP features multiple levels and functional areas and is intended to allow for flexibility according to the user's needs and resources. The recommended activities are focused on specific preservation actions and are designed to offer a practical blueprint. The LoDP can be used both as a guide when establishing a digital preservation workflow and as an assessment tool to analyze the current state of a digital

repository. Therefore, it is beneficial to constantly refer to the LoDP when developing, implementing, and evaluating digital preservation plans.[32]

When establishing the long-term preservation goals for this collection, SPARC should aim to achieve and maintain the highest preservation level that the institution's available resources can sustain.

In terms of storage, SPARC should have two to three complete copies stored separately, preferably in different geographic locations and on different storage media types. As the main repository is based on Amazon Cloud Services, SPARC can consider using an LTO tape storage vendor service to store back-up copies of the collection. Having a complete copy of files on a local server or hard drives can be another option is resources allow.

Regarding data fixity, most video digitization vendors are capable of generating checksums, which will be delivered in the SIPs with the transferred video files. The AIPs collected by SPARC should contain these checksums, which should be verified during any form of transfer and migration. When transferring files, the administrator should use command-line tools instead of the drag-and-drop action. Backing up integrity information, documenting the verification processes, using write-blockers, and running checksums at fixed intervals can be planned to achieve a more advanced stage of integrity control.

It is also necessary to determine, and preferably document, the authorized human and software agents who can read, write, move, and delete content in the digital repository. This will ensure better control and protection over the collection.

SPARC should create a separate inventory for the digital video files, which should be backed up separately from the content. Adequate administrative, technical, descriptive,

[32] Levels of Preservation Revisions Working Group, "Using the Levels of Digital Preservation: an overview for V2.0," NDSA, 2019.

preservation, and structural metadata has to be collected. The user should be able to know the location and content of the files based on the inventory. As the digital depository's main metadata standard will be Dublin Core, which is not created specifically for audiovisual materials, SPARC may need to incorporate metadata elements from standards such as PBCore to catalog properties that are unique to digital videos.

Table 18 below shows the recommended fields that will provide the user information on the digital video and its preservation needs. Appendix I is a conceptual application profile with descriptions of all recommended metadata elements.

Recommended SPARC Digital Video Metadata Fields

Administrative	Descriptive	Technical	Preservation	Rights
Call Number	Contents	Media Format	Preservation Priority	Copyright Owner
Title	Description	Material Type	Preservation Action	Copyright Notes
Barcode	Volume	Color		
Physical Location	Creator	Duration		
File Name	Creator Role	Dimensions		
File Location	Additional Contributors	File Size		
Notes	Subject Terms	File Size Units		
	Publication Date	Data Rate		
	Creation Date	Data Rate Units		
	Publisher			
	Publish City			
	Type			

Figure 18. Recommended metadata properties for SPARC's digital video inventory.

The digital content formats should be documented, verified, and possibly monitored for obsolescence. It is best to keep the file specifications consistent through RFPs and communications with the vendors. Usually, the preservation files should be as close in properties

as to how the video was transferred, using a lossless or uncompressed codec and high bit rates, which also need large storage spaces. The access files are files with a lossy and widely adopted codec (e.g. MPRG-4) and low bit rates, optimized for video players and streaming sites. The smaller sizes of access files ensure that the users can access and browse videos quickly and conveniently. The mezzanine files are files to be used in future video editing or productions. Its specifications are between those of the preservation files and access files. If the institution does not consider using these videos for production, then the mezzanine files are not necessary and can be omitted to save storage space.

The Library of Congress: Sustainability of Digital Formats[33] provides detailed information on the preservation sustainability of all prevalent audiovisual wrappers and codecs. Using this document as a reference, some recommended digital formats for SPARC's collection are listed in the Figure 19 below.

Recommended Video Codecs

	Usage	**Documentation**	**Licensing**	**Compression**	**Decoders**	**User Adoption**
FFV1	Preservation	Yes	Open	Lossless	Yes	Modest
V210	Preservation	Yes	Proprietary	Uncompressed	No	OK
ProRes 422 HQ	Mezzanine	No	Proprietary	Visually Lossless	Yes	OK
MPEG-4	Access	Yes	Proprietary	Lossy Compression	Yes	Good
H.264	Access	Yes	Proprietary	Lossy Compression	Yes	Good

[33] "Sustainability of Digital Formats: Planning for Library of Congress Collections," *Library of Congress*. www.loc.gov/preservation/digital/formats/.

Recommended Audio Codecs

	Usage	Documentation	Licensing	Compression	Decoders	User Adoption
PCM	Preservation	Yes	Open	Uncompressed	Yes	Good
AAC-LC	Mezzanine, Access	Yes	No use-based fees	Lossy Compression	Yes	Good

Recommended Video File Wrappers

	Usage	Documentation	Licensing	User Adoption
Matroska (.mkv)	Preservation	Yes	Open	OK
QuickTime (.mov)	Preservation, Mezzanine	Yes	Proprietary	Good
MPEG-4 (.mp4)	Access	Yes	Proprietary	Good

Figure 19. Recommended formats for digitized videos.

The element of access also needs to be considered when developing digital preservation procedures. According to Shira Peltzman's "Expanding NDSA Levels of Preservation"[34], the archive should first be able to ensure the security of the material during access and identify and redact sensitive material if there is any. Catalogs, finding aids, or inventories should be available for users to search and discover the material. The Reference Model for OAIS[35] should also be consulted to enhance digital access. SIPs and AIPs should be created upon ingest to a digital depository. SPARC can also aim for the ability to generate DIPs possibly with functions that Archivematica can offer.

[34] Shira Peltzman, "Expanding NDSA Levels of Preservation," *Library of Congress*, Apr. 12, 2016. https://blogs.loc.gov/thesignal/2016/04/expanding-ndsa-levels-of-preservation/.
[35] "Reference Model for An Open Archival Information System (OAIS): Recommended Practice," The Consultative Committee for Space Data Systems, June 2012.

Access Tiers in Expanded NDSA Levels of Preservation

	Level One (Protect Your Data)	Level Two (Know Your data)	Level Three (Monitor Your Data)	Level Four (Repair Your Data)
Access	Determine designated community. Ability to ensure the security of the material while it is being accessed. This may include physical security measures (e.g. someone staffing a reading room) and/or electronic measures (e.g. a locked-down viewing station, restrictions on downloading material, restricting access by IP address, etc.). Ability to identify and redact personally identifiable information (PII) and other sensitive material.	Have publicly available catalogs, finding aids, inventories, or collection descriptions available to so that researchers can discover material. Create SIPs and AIPs upon ingest.	Ability to generate DIPs on ingest. Store Representation Information and Preservation Description Information. Have a publicly available access policy.	Ability to provide access to obsolete media via its native environment and/or emulation.

Figure 20. The levels for access based on Peltzman's addition. (Library of Congress.)

Part 4: Copyright Clearance

SPARC is concerned with this videotape collection because of the uniqueness of the content, as well as the complexities in the clearance of rights. The issue of copyright has been a problem in initiating SPARC's video digitization project. The wide variety of contents within the collection results in a very complicated situation of seeking rights releases, and also requires much effort in conducting due diligence and research on the copyright owners of the assets. This section covers the problems, considerations, and suggestions on the copyright issues when preserving this collection.

On April 23rd, 2021, I participated in a Pop-Up Clinic event held by the Fashion Law Institute. The Fashion Law Institute is a non-profit organization dedicated to the education and consultation to law and the business of fashion. It is headquartered at Fordham Law School in New York City, offering students to gain legal knowledge and practical expertise.[36] The Pop-Up Clinic is an event in which students from the Fashion Law Institute offer free 45-minute consultation sessions to people who have fashion-related legal problems. During my session, I had a very informative conversation with Jennifer Gibbins, a student of the institute, on the copyright situation of the SPARC video collection. An excerpt of the transcript is included in Appendix II.

4.1 Library and Archives Exceptions

Section 108 (a) of the US Copyright Act states the following:

[36] "About," *Fashion Law Institute*. fashionlawinstitute.com/about.

"**(a)** […] it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work […] if—

(1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and

(3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section."

The US Copyright Law Section 108 (c) also states:

"**(c)** The right of reproduction under this section applies to three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if—

(1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

> **(2)** any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy."

These two passages address the exceptions for libraries and archives in reproducing contents in their collections. In SPARC's case, it may be argued that VHS and U-matic are obsolete formats, and therefore, according to Section 108 (a) and (c), SPARC can legally make three analog or digital copies of a videotape if (1) the copies are not for commercial use, (2) the reproduction includes a copyright notice, (3) the digital copies can only be accessed on-premises. Therefore, without copyright releases, SPARC can still proceed with digitization projects and provide on-premises access to researchers. However, without effective rights releases or evidence of ownership, it will be more difficult to apply for preservation grants for digitization. Therefore, the following sections address considerations and suggestions as SPARC intends to distribute the videos on public platforms for wider user access.

4.2 Copyright Releases

As Levin explained, if an event was recorded on the FIT property or was ran by FIT, the rights likely belong to the institution. Yet, a large portion of the collection consists of material that was acquired through other methods, and the institution did not have clearances at the time of acquisitions. Many acquisition records on these materials are also lacking. Therefore, SPARC faces potential risks if they intend to publish the contents online, as Section 108 does not cover the public distribution of copyrighted works.

Researching for rights owners and conducting due diligence remain a prioritized task for SPARC. In 2019 and early 2020, student worker Venessa Watson worked at SPARC to research the rightsowner information on a small portion of the collection. She assessed some videotapes

and collected creator and publisher information from the labels on the tapes and research. The right metadata is now recorded in the Airtable video inventory and will be used in the requests of rights releases in the future.

As mentioned before, the SPARC team reckons that the runway video recordings have the highest preservation priority. In 2018 and 2019, SPARC sent out letters to domestic fashion houses asking for permission to digitize and publish their runway videos on the Internet Archive. So far SPARC received permissions from nine fashion houses, including Bill Blass, Anna Sui, Calvin Klein, and more. Thirty-three more brands still need further contact to cover the entire domestic runway recording collection.

However, technically, it is almost an impossible task to be totally sure of the copyright owners of a video without identifying the copyrightable elements in the content. If it is a situation where the fashion house if the organizer of the show and is the creator of the video, then the rights of the recording belongs to the fashion house. On the other hand, if it is another party made the video, the copyright might belong to the said creator.

Besides the video itself, content such as music might be a separate copyrightable element to consider. For example, if X fashion house obtained licenses to use a copyrighted music piece in their show, it does not own the rights to the music and therefore is not eligible in granting an effective release to SPARC. Other copyrightable elements that may present in a fashion show can include unique fabric designs, specific decorations on clothing, stage design, and more. If these elements are works created by the fashion house or personnel employed by the fashion house, the release would be effective as long as it also mentions the other copyrightable elements.[37]

[37] Jennifer Gibbins (Fashion Law Institute), meeting with Zoe Yang, New York, NY. Apr. 23, 2021.

During my meeting with Gibbins, I inquired about the change of terms in the release letters. The letters stated that SPARC will be publishing the videos on the Internet Archive, but now SPARC intends to publish them on Archive on Demand through Omeka S or YouTube. Gibbins states that, according to the contract law, which is very strict on the literal language, the releases are not technically effective if such terms are changed. In reality, the odds that the fashion houses would sue because of such an issue are very small.

4.3 Fair Use

Fair use is an argument often used when copyright release or licensing are not available. Section 107 of the Copyright Act provides a framework for determining whether something is a fair use. The section states:

> "[…] the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—
> **(1)** the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
> **(2)** the nature of the copyrighted work;
> **(3)** the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
> **(4)** the effect of the use upon the potential market for or value of the copyrighted work.

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

According to Gibbins, when weighing the risks according to such measures, SPARC does not hold a particularly strong argument on fair use. SPARC will publish the videos for non-profit educational use, yet sharing the original videos in their full length does not change the nature and amount of the copyrighted work. In other words, the use is not transformative nor selective.

In regards to the potential market, there are several commercial streaming and licensing services for fashion show videos, including Bloomsbury Fashion Video Archive and Videofashion. It is difficult to determine the overlapping titles between SPARC's video collection and their collections without a complete catalog or inventory from the other parties. Such overlaps should also raise attention in the choice of titles to be digitized.

When addressing the arguments for fair use, Gibbins used three legal cases that concern institutions digitizing and publishing materials that do not belong to them. In Author's Guild v. HathiTrust and Author's Guild v. Google over the mass-digitization of books, both HathiTrust and Google were ruled as fair use and did not cause copyright infringement. The arguments were that digitized books are searchable by keywords, and therefore, a transformative use from physical books. Google Books also only displays selected pages or sections with keywords instead of the entire book. In Fox News v. TVEyes, a service that enables the search and streaming of 10-minute news clips, TVEyes lost the court case when appealed for fair use. Gibbin's analysis on the cases can be found in Appendix II.

Gibbins believes that SPARC's position weighs towards HathiTrust and Google because of its educational nature, yet the fair use argument is not very strong when publishing full-length videos.

4.4 Conclusion and Suggestions

From the previous sections, we can briefly conclude the current copyright situation of this collection. Firstly, according to Copyright Section 108, which is the library exception, SPARC can legally make three digital copies of a videotape; the copies can only be accessed on-premises. Secondly, when considering uploading the videos to public platforms, the copyright releases from the fashion houses are only effective for copyrighted elements owned by the fashion houses. Releases to licensed music and other copyrightable elements will have to be obtained separately. It is difficult to determine the copyrightable elements in a video and conduct due diligence without playback of the content. Lastly, SPARC does not have a particularly strong argument on fair use if full-length videos are going to be published online without rights permission.

If SPARC decides to publish full-length videos without copyright releases, Gibbins believes that the chances that SPARC will be sued are low, yet still possible. FIT may still be liable if the copyright owner sees the act as an infringement.

One action that can be taken is to employ a 'take-down policy' as many other libraries and archives did, especially those that have orphan materials.[38] After uploading the videos, if a rights owner reaches out to SPARC against the publication of the material, SPARC can then restrict the public access as needed. Another option suggested by Gibbins is to put up curated and commented excerpts of the videos as a 'transformative use.' In this way, SPARC will have a better argument in fair use, as the videos are not in their full portion and are used to create new entities.

[38] Orphan materials are materials of which the owner cannot be identified or found.

According to SPARC's mission statement, the institution should strive for the most access possible beyond the FIT community. The actions to be taken in publishing the videos will be dependent on FIT's risk assessments and the available resources at SPARC. FIT will need more professional copyright law consultations and assessments on this issue.

Conclusion

Located in an archive that specializes in fashion research, the SPARC audiovisual collection holds enormous value for students, designers, and scholars to study fashion designs and the presentation of fashion events. The collection provides a consolidated, unique, comprehensive, and significant resource in the education and research of the fashion industry. By enhancing the intellectual control, conduct video digitization, and establish digital preservation procedures, SPARC will be able to achieve a higher level of stewardship and provide better access following to its mission.

This project illustrated the current status and challenges in SPARC's preservation efforts, as well as the recommended workflows and goals that can be implemented in the post-COVID era. I also hope this project can be helpful to institutions that face similar problems in preserving their analog and digital video collections.

Appendix I. Collection Metadata Application Profile

This conceptual application profile describes the metadata elements for item-level asset records within the SPARC videotape collection housed by the Fashion Institute of Technology. This profile has been established in order to document the metadata elements implemented alongside the controlled vocabularies and catalog procedures.

This profile was developed loosely based on Dublin Core as it is used as the main standard in the library systems. The elements outlined below represent the metadata deemed necessary by the user needs to describe and make accessible the assets within the collection. These elements represent descriptive, administrative, preservation, rights, and technical aspects of both analog and digital videos.

This profile is created for reference purposes only and is open to modifications in the actual implementation. More fields and requirements can be added in the implementation based on needs, such as the following:

1. Obligation: Specifies if this property is required, recommended, or optional.
2. Repeatability: Specifies if this property can be used more than once.
3. Range: The expected data type: string | integer | date | boolean | URL | entity.
4. Domain: The class with which this property is used.

Terms Definition

Terms	**Description**
Property	Name of the property/field
Definition	A concise definition of what this property is
Dublin Core Property	The property mapped to Dublin Core
PBCore Element	The property mapped to PBCore

Controlled Vocabulary	Specifies whether a controlled vocabulary is recommended for this property, if applicable
Application Type (or 'Domain')	The type of contents to which the property can be applied (analog video | digital video | supplemental).
Example	An example of this property

Administrative Metadata

Property	**Title**
Definition	Title of the item, derived from the physical item or Alma catalog
Dublin Core Property	dc:title
PBCore Element	pbcoreTitle instantiationTitle
Controlled Vocabulary	N/A
Application Type	Analog Video, Digital Video, Supplemental
Example	Vivienne Westwood fashion shows

Property	**Barcode**
Definition	Barcode of the physical item
Dublin Core Property	dc:identifier
PBCore Element	pbcoreIdentifier instantiationIdentifier
Controlled Vocabulary	N/A
Application Type	Analog Video, Digital Video, Supplemental
Example	39698000680732

Property	**Call Number**
Definition	Call Number of the Bibliographic item derived from the Alma catalog
Dublin Core Property	dc:identifier
PBCore Element	pbcoreIdentifier
Controlled Vocabulary	N/A

Application Type	Analog Video, Digital Video, Supplemental
Example	VHS TT502 .W47

Property	**Physical Location**
Definition	The location of the item in the vault
Dublin Core Property	-
PBCore Element	instantiationLocation
Controlled Vocabulary	Applicable
Application Type	Analog Video, Supplemental
Example	

Property	**File Name**
Definition	File name of the digital file
Dublin Core Property	dc:title
PBCore Element	instantiationTitle
Controlled Vocabulary	N/A
Application Type	Digital Video
Example	TT505.G5-I5-1982-Interview-with-Jim-Brady-Hubert-deGivenchy-19820510.mov

Property	**File Location**
Definition	File location of the digital file
Dublin Core Property	-
PBCore Element	instantiationLocation
Controlled Vocabulary	Applicable
Application Type	Digital Video
Example	

Property	Notes
Definition	Notes from the cataloging process
Dublin Core Property	-
PBCore Element	instantiationAnnotation
Controlled Vocabulary	N/A
Application Type	Analog Video, Digital Video, Supplemental
Example	Damaged videocassette case needs to be replaced immediately

Preservation Metadata

Property	Preservation Priority
Definition	The priority of the item in conducting preservation actions
Dublin Core Property	-
PBCore Element	-
Controlled Vocabulary	Applicable
Application Type	Analog Video, Digital Video, Supplemental
Example	High, Medium, Low

Property	Condition
Definition	The condition of a physical item
Dublin Core Property	-
PBCore Element	-
Controlled Vocabulary	Applicable
Application Type	Analog Video, Supplemental
Example	Good, Fair, Poor

Property	Preservation Action
Definition	Preservation actions conducted on the item

Dublin Core Property	-
PBCore Element	-
Controlled Vocabulary	Applicable
Application Type	Analog Video, Digital Video, Supplemental
Example	Shipped to vendor

Descriptive Metadata

Property	**Type**
Definition	Type of the content
Dublin Core Property	dc:type
PBCore Element	pbcoreAssetType
Controlled Vocabulary	Applicable
Application Type	Analog Video, Digital Video, Supplemental
Example	Fashion show

Property	**Volume**
Definition	The volume number of the item if applicable
Dublin Core Property	-
PBCore Element	-
Controlled Vocabulary	N/A
Application Type	Analog Video, Digital Video, Supplemental
Example	2 of 4

Property	**Creator**
Definition	Creator of the content
Dublin Core Property	dc:creator
PBCore Element	pbcoreCreator

Controlled Vocabulary	Naming Authority
Application Type	Analog Video, Digital Video, Supplemental
Example	Westwood, Vivienne

Property	**Creator Role**
Definition	The role of the creator in producing the item
Dublin Core Property	(MODS: roleTerm)
PBCore Element	creatorRole
Controlled Vocabulary	Applicable
Application Type	Analog Video, Digital Video, Supplemental
Example	Production

Property	**Additional Contributors**
Definition	Contributors other than the creator(s)
Dublin Core Property	-
PBCore Element	pbcoreContributor
Controlled Vocabulary	Library of Congress Name Authority File Institutional Name Authority
Application Type	Analog Video, Digital Video, Supplemental
Example	Fashion Institute of Technology (New York, N.Y.)

Property	**Description**
Definition	A brief description of the item content
Dublin Core Property	dc:description
PBCore Element	pbcoreDescription
Controlled Vocabulary	N/A
Application Type	Analog Video, Digital Video, Supplemental
Example	Runway fashion show of work by Charles James held in conjunction with the exhibition at the Brooklyn Museum.

Property	Subject Terms
Definition	Subject terms relating to the content assigned by cataloger
Dublin Core Property	dc:subject
PBCore Element	pbcoreSubject
Controlled Vocabulary	Library of Congress Subject Headings
Application Type	Analog Video, Digital Video, Supplemental
Example	Clothing trade--Finance

Property	Creation Date
Definition	The date on which the content is created
Dublin Core Property	dc:date
PBCore Element	pbcoreAssetDate
Controlled Vocabulary	yyyy-mm-dd
Application Type	Analog Video, Digital Video, Supplemental
Example	1997-03-22

Property	Publication Date
Definition	The date on which the item is published
Dublin Core Property	dc:date
PBCore Element	instantiationDate
Controlled Vocabulary	yyyy-mm-dd
Application Type	Analog Video, Digital Video, Supplemental
Example	1997

Property	Publisher
Definition	The publishing organization of the item
Dublin Core Property	dc:publisher

PBCore Element	pbcorePublisher
Controlled Vocabulary	Library of Congress Name Authority File Institutional Name Authority
Application Type	Analog Video, Digital Video, Supplemental
Example	Cable News Network

Property	**Publish City**
Definition	The publishing city of the item
Dublin Core Property	-
PBCore Element	-
Controlled Vocabulary	Applicable
Application Type	Analog Video, Digital Video, Supplemental
Example	New York, N.Y.

Technical Metadata

Property	**Material Type**
Definition	The general nature of the item.
Dublin Core Property	dc:type
PBCore Element	instantiationMediaType
Controlled Vocabulary	Applicable
Application Type	Analog Video, Digital Video, Supplemental
Example	Moving Image, Supplemental

Property	**Media Format**
Definition	The specific format of the item.
Dublin Core Property	dc:format
PBCore Element	instantiationPhysical instantiationDigital
Controlled Vocabulary	PBCore

Application Type	Analog Video, Digital Video, Supplemental
Example	VHS, U-Matic, MP4, QuickTime, Booklet

Property	**Duration**
Definition	The duration of the moving image item.
Dublin Core Property	-
PBCore Element	instantiationDuration
Controlled Vocabulary	Applicable
Application Type	Analog Video, Digital Video
Example	25 min

Property	**Color**
Definition	The color attribute of the moving image item.
Dublin Core Property	-
PBCore Element	instantiationColors
Controlled Vocabulary	Applicable
Application Type	Analog Video, Digital Video
Example	Color, Black and White

Property	**Tape Capacity**
Definition	The total possible dutation of the analog video tape.
Dublin Core Property	-
PBCore Element	-
Controlled Vocabulary	N/A
Application Type	Analog Video
Example	30min, 60min

Property	**Dimensions**

Definition	The dimensions of the digital video.
Dublin Core Property	-
PBCore Element	instantiationDimensions
Controlled Vocabulary	N/A
Application Type	Digital Video
Example	720x486

Property	**File Size**
Definition	The file size of the digital video.
Dublin Core Property	-
PBCore Element	instantiationFileSize
Controlled Vocabulary	N/A
Application Type	Digital Video
Example	322

Property	**File Size Units**
Definition	The units used to measure the file size.
Dublin Core Property	-
PBCore Element	unitsOfMeasure
Controlled Vocabulary	Applicable
Application Type	Digital Video
Example	MB

Property	**Data Rate**
Definition	The data rate of the digital video.
Dublin Core Property	-
PBCore Element	instantiationDataRate
Controlled Vocabulary	N/A

Application Type	Digital Video
Example	3.5

Property	**Data Rate Units**
Definition	The units used to measure the data rate.
Dublin Core Property	-
PBCore Element	unitsOfMeasure
Controlled Vocabulary	Applicable
Application Type	Digital Video
Example	mbps

Rights Metadata

Property	**Copyright Owner**
Definition	The copyright owner of the item
Dublin Core Property	-
PBCore Element	-
Controlled Vocabulary	Applicable
Application Type	Analog Video, Digital Video, Supplemental
Example	Sui, Anna

Property	**Copyright Notes**
Definition	Notes on the copyright status of the item
Dublin Core Property	-
PBCore Element	rightsSummary
Controlled Vocabulary	N/A
Application Type	Analog Video, Digital Video, Supplemental
Example	Copyright release from the fashion house obtained in 2019.

Appendix II. Transcript: Consultation with the Fashion Law Institute

[Greetings]

Gibbins: These videos are normally produced by a fashion house?

Yang: Yeah. That's where the special collection teams think their copyright belongs to.

Gibbins: Okay. But it sounds like in some cases it's not entirely clear.

Yang: Yes. The records on this collection are all over the place and lacking. Some of them are from the seventies and eighties and maybe lost.

Gibbins: Okay. So I think you are right in what you said in the beginning, that the copyright situation was a little dicey. For instance, let me just make it clear that this advice is just based off of limited information. I can't make any categorical statements about it. Yes, there will be liability but I'm just going to give you submitted, fill in questions. And if you have questions, please jump in.

Yang: Yeah, of course.

Gibbins: If I'm not being clear or if you have more information to add, please just let me know. It sounds like it's very unclear who would own the copyright. If it's a situation where the fashion house is the one who put on the show and is the one who made the video, then the copyright is pretty clear. It belongs to the fashion house. But it sounds like there are a lot of situations where you're not entirely sure who might have made the video, whether that was an employee of the fashion house, or somebody contracted to make a video there at the fashion house, or if it was someone who happens to be in attendance, or somebody... I think you mentioned in the materials, you said that sometimes they were filmed on location at FIT or at events where FIT was the sponsor putting the event on.

Gibbins: And so without knowing more about the details so for each individual video, it's very hard to say who is going to own the copyright end of it. So I think the idea of contacting the fashion houses and getting permission where possible is a good idea. And if they can confirm, yes, that was our film, yes, we made that video, then it sounds like the copyright belongs to them. And the permission that they give to you will be filing it. If they also don't know who owns the copyright, then that copyright release isn't really doing it. It's also important to think about how there might be other elements with the videos that could also be copyrightable independently.

Yang: Yes. That's one of my questions.

Gibbins: If music is playing, probably the fashion house got a license to use the music. But a license to use the music at the event isn't the same as a license to put the music in a video that you then put online. It seems like you've done some background research. It seems like you have some basic understanding of copyright law, but just to make it clear, I can't give copyright rights that I don't have. I am the fashion house and I don't own the copyright for the music. I just had a limited license for it. Any release that I give you, isn't going to be effective against whoever owns the copyright to the music. So that's not ideal. Having not seen the videos, I don't know what else in there might be copyrightable. Generally clothing designs aren't copyrightable.

Yang: Are not?

Gibbins: Yeah. There are exceptions to that. So, clothing is generally considered a useful article and useful articles are not copyrightable. But there are exceptions to that, like a unique design on fabric, the design could be copyrightable or specific decorations on clothing. Those could be copyrightable. So again, it would depend on the exact content that's in the videos that could be copyrightable.

Gibbins: In that case, if the fashion house is giving you a release, then you're probably okay. As long as it also mentions the clothing and not just the video. I don't know, having not seen the videos, I'm not sure what other elements might be present? But if somebody made a backdrop for the stage, it was very artistic, that could be copyrighted. If it was made by someone who works for the fashion house, then again, you're fine. But if we don't know who made it, then you might not be fine. It can get very complicated and it's very hard to say that even with a release from the fashion house that you'd be in the clear to post these online. It's a very different system... We'll get into this in a little bit, but it's a different situation if you're just making a digital copy to preserve it and then keeping it for reference. But posting it online could make it further away from what looks like fair use. So we'll talk about that in a moment. Any questions right now?

Yang: Yeah. But I'd love to hear more about fair use and publishing first.

Gibbins: I'll just keep going and then I'll follow up questions.

Yang: Yeah, of course.

Gibbins: In the materials, you mentioned FIT maybe posting things but being willing to take them down if you got notice that the copyright holder objected. That might be a factor in stopping a lawsuit before it gets going. Most of the time, if somebody requests for something to be removed and it's immediately removed, it saves everyone time and money if they don't have to go to federal court. Nobody really wants to go to federal court. So if you are immediately taking things down, saying, you're sorry, promising everybody never to do it again, the odds that somebody would actually bring a suit are relatively small. That doesn't mean that they couldn't though. They still could. It just probably wouldn't be worth their time or money.

Gibbins: You've probably heard about notice-and-takedown system for sites like YouTube or other sites where users are posting content. In those contexts, it can prevent liability because the

idea is that YouTube is a service provider and they don't have control of what is being posted. So if I go on YouTube and I post an infringing video, YouTube didn't actually do anything to make that happen, so they shouldn't be held liable. And that's why the DMCA, the Digital Millennium Copyright Act, set up these systems to prevent liability there, because I'm the one who put the infringing content up. YouTube didn't know about it. That only works if it's a situation where users are the ones posting the infringing content and the service provider isn't directly profiting from that, isn't encouraging it, and isn't aware of it. So if this is a situation where you're the one posting it, the notice-and-takedown system isn't going to keep there from being liability for you.

Yang: Okay. I think in the archive and library context, it's more of a courtesy other than to avoid liability. Especially for archives that have orphan materials and they can't get hold of the copyright owner, can't really find any information about them. Then they will implement this policy if anyone comes up to show copyright ownership.

Gibbins: So I think you're right and that oftentimes is very effective. Nobody really wants to sue the library. But it doesn't come through in quite the same way where it cuts off liability. It just makes it a whole lot less likely that somebody is going sue. So it's a good idea, if you do decide to post these things online, it's a good idea to have that system. But you should do so knowing that that's not going to be a hundred percent of buffer to anyone having a problem with it. It's just going to make it a lot easier to resolve any situation where somebody has a copyright issue and they can easily bring it up with you, and you will take the material down.

Gibbins: But it doesn't... I don't think that I've done that much research about the specific ways that copyright law functions for libraries. I maybe mentioned that you can make one copy for preservation, but other than that, I'm not super familiar with different standards for libraries. In general, copyright law applies. It's just that nobody really wants to sue the library. Those aren't

really the deep pockets. Those aren't... That's not good PR. You don't look great suing the library, so if the situation is resolved, let's just walk away and not bring a lawsuit.

New Speaker: So I think that brings us to the fair use. I think you're right, that there's an argument there. There's definitely a valid argument that it would be fair use. It's a little blurry, but I see it. So I'm just going to quickly talk you through a couple of cases involving digitization of works. So there was this case called Author's Guild v. HathiTrust?

Yang: Yes, I've learned about it.

Gibbins: And that won the second circuit on fair use. Massive uploads of digitized information. But the key was that it was searchable, which made it transformative. This isn't the same use as a physical book. You can type in a word or phrase in any book that's using that word or phrase, so that's different from my bookshelf over there. I can't do that. And the other part that made it different was that the search function would only display a small snippet of the book, or it would only display which books and which page numbers, but I could get into the text. And it sounds like what you would be doing is putting the full videos up.

Yang: Yes.

Gibbins: So at that point, it's not really changing it something from one medium to another. That's not generally going to be a kind of transformative use, just in and of itself, you need other facts. You need facts like, they didn't have access to the full book. They just see the page numbers. There was also a case, Authors Guild v. Google, again, fairly similar, mass digitization, but only small bits of the pages were displayed.

Yang: Yeah.

Gibbins: This is the one where it's the snippet. Because it's searchable and because it doesn't disrupt the market, because what Google is doing is not the same as providing you the book to read. For those reasons, the court found that it was fair use. It feels like I'm a little bit talking in circles here. Is what I'm saying making sense?

Yang: Oh yes, of course.

Gibbins: Okay. And it sounds like you did some background readings. Then we get to Fox News v. TVEyes. And the Internet Archive.

Yang: Ok? I don't know about that one.

Gibbins: It's probably a little harder to find because the lawsuit is currently taking place. I think the complaint was filed. So there's no decision yet, but Fox News v. TVEyes? It sounds like maybe you've heard of that one?

Yang: No.

Gibbins: Okay. So TVEyes was a service that basically took as much broadcast and cable material as it could get, like basically all TV that it could access and made it into 10-minute clips that were searchable. So if I want to see how news organizations have been covering a certain issue, I can type in some keywords and get like, oh, here's a 10 minute clip on CNN that was talking about it. Here's a 10-minute clip on MSNBC. Here's a 10-minute clip on Fox News.

Gibbins: So I can see everybody's talking about this topic. And in that case, the court found that it was only minimally transformable because yes, it was searchable and that's a useful function, but it wasn't really transformative, it's not commenting on it, it's not like making anything out of it. It's just kind of slicing it out. So it was all available. So it wasn't, oh, here are three shows from last week that I've talked about it, go see those broadcasters, go see those cable channels

and see if you can get access to those shows. It was, oh, here are the three shows that have talked about it. Now watch it right here on my service and don't pay them, pay me.

Gibbins: So the court felt that it was usurping their licensing. Apparently, there's a market for small 10-minute clips of shows. That market rightfully belongs to the broadcasters, to people who own the copyright. So yeah, those three cases kind of show that there are situations where digitizing and uploading will a hundred percent be a fair use. I think you kind of fall in the middle. We have Authors Guild v. HathiTrust over here and Fox News v. TVEyes over here. And you're probably about, maybe closer to [TVEyes'] side, because you are doing this for a profit. Oh, you aren't doing it for a profit?

Yang: No we are not.

Gibbins: Good. Maybe like a minimal, small fee, but you know, you're not like trying to get their money?

Yang: No, they are looking to publish the videos online for free access.

Gibbins: See that's not necessarily going to change the outcome, but it is going to tip the scales a little bit in your favor. On the other hand... And also, the HathiTrust, I think, was not for profit. Google is obviously for profit. They aren't charging people for the service, but we all know how Google makes their money, through advertising and data. And so just because I'm not getting charged for the service doesn't mean that they're not making money off of it. So HathiTrust, nonprofit. Google was for profit and still held to be fair use. So it doesn't necessarily dictate the result, but not being for profit helps you out. But then there's the fact that you're putting up the entire content.

Yang: Yeah.

Gibbins: You're not putting up a little snippet and then directing people where they can get from there. You're putting up the whole thing. So I don't know that there was a licensing market for fashion shows from the 70s and the 80s, but there could be. And if that market does exists, then putting that up online, freely available, would be fully taking that market.

Yang: Okay.

Gibbins: So you have some facts in your favor, you have some facts against you on fair use. Fair use is notoriously very slippery. The number of times that a decision comes out at the district court level, and half the people are mad about it - half the copyright scholars are like, this is ridiculous. I can't believe this. And then on the appeal, it goes the other way. And the other half of people are so mad. This is ridiculous. How could this be? It's very hard to pin down. It's very fact dependent. So it helps a lot that you're nonprofit. It doesn't help that you're posting the full video. If you could maybe consider, posting small clips?

Yang: Yeah. That's certainly something I'll be thinking about too.

Gibbins: If you're able to determine who would own the copyright, but you're not able to get permission, you could post a little bit of information about it. Maybe a couple of short clips, some commentary, and then say, for the full video go talk to X fashion house.

Yang: Okay.

Gibbins: That might be an option. And then I did also want to bring up the case with the Internet Archive, especially since you're doing this with the help of Internet Archive. Is that correct?

Yang: Oh, FIT is considering using other platforms.

Gibbins: Okay.

Yang: Ok but I'd like to hear about it.

Gibbins: That's helpful to know. So, Internet Archives is being sued for two things right now. The first thing is that in the early days of the pandemic, there was a period where they were just kind of freely letting people view lots and lots of non-public domain, full-text books online. And their argument is there is a pandemic and normal access to books wasn't happening. And people needed entertainment and special circumstances, essentially. I don't think it's a great argument.

Gibbins: And then the other thing that they're being sued for is that they have physical copies of books that they have then digitized and are making available to people online. And their argument is, yeah, we're a library. We have one digital copy. We have a one-to-one ratio, a digital copy and physical copy. We lend out one digital copy at a time. We didn't make one copy and then let everyone use it. And yeah, this is what a library does. Why should it matter? But it's a digital copy rather than a physical copy. We bought a copy. Why shouldn't we be able to lend it out like any other library.

Gibbins: The publishers feel that digital copies are different from physical copies, that there's a market for physical books and a market for eBooks. And just because I own a physical copy of something doesn't mean I get to scan it, turn it into a digital form. And then lend it out. We don't know how this case is going to go. I think they both have some interesting arguments on fair use. As you said, it helps that they are not charging for it. This isn't a for-profit service, that they really seem genuinely interested in providing access to as many people as possible rather than making money off of selling these books. But then you have Fox News v. TVEyes, where, nope, you made it available and it's a substitute for what the actual owner of the copyright may also be able to make available. And just because you're not profiting off of it, doesn't mean that the copyright holder doesn't have a right to profit off of it. If there's a profit to be made, it doesn't really matter that you're not trying to make it, if that makes any sense.

Yang: Yeah, it does.

Gibbins: There's good arguments on both sides in that case. We'll see how it shakes out. It's hard to say at the moment, but the fact that that case isn't over makes me nervous about putting full length videos up online for free, without copyright permission. And I know that it's very frustrating, not knowing who the copyright holder might be. It's like, how am I supposed to get permission? How am I supposed to get a license, if I don't know who the copyright holder is? Knowing that, a lot of time, they probably wouldn't care, but sometimes they might. And if you don't get permission from someone who decides to care, then you could be in some trouble.

Gibbins: This is a big problem in copyright law that people are very frustrated about. If books are out of print, why shouldn't people be able to publish them in digital copies online? If there's no other way to access something, why shouldn't people be able to provide access to it? That makes sense.

Yang: Yeah.

Gibbins: Unfortunately, making sense is not the same as being legal. If only. Okay. So it seems like you understand a lot, enough to have done a little bit of research to follow up on any of this if you feel like you want to explore it a little bit more, but, as I said up front, I don't know all the facts. And I don't know that much about copyright law as specifically pertains to libraries. So this is just a very broad and general perspective. But based on what you've told me, based on the little bit of research I was able to do, the odds that you get sued are pretty small. The odds that somebody might ask you to take something down, higher. And if you really want to avoid liability, you'll need to do something more to really bring that fair use under control.

Gibbins: If you're putting up a couple clips and commenting on it, if you're putting up three clips from three different shows and comparing them. That looks a lot more like classic fair use. If

you're just putting up the videos so that anyone can access them and you're not adding anything of your own and you're putting up the full video, that's further from classic fair use.

Gibbins: It looks like you're not in much danger if you're just getting content for your own purposes. Where you start to get into trouble is where you're digitizing and then providing it to other people in its full form, without commentary, without any transformative use, just digitizing to make it a little more accessible. Whether that should be the way the law works? That's up for debate, but unfortunately, just digitizing something isn't usually enough to get you to fair use.

Yang: Okay. I have one more quick question about the permissions that FIT sent out a couple of years ago. They said they're going to put the videos on the Internet Archive. But now they're thinking of putting them on their own streaming platform that's for free streaming and maybe YouTube. Do those releases still apply in this case?

Gibbins: I'd probably needs to do some research to give you a definite answer. Let's see. I'm just taking a look real quick at the form. It wouldn't technically be effective. It is a slightly different use. And contract law is all about the literal language of the contract. It sounds like the people that you contacted before probably wouldn't have an issue with the modified use. So again, there are two answers to every legal problem. The actual legal answer, this is the law, and the practical answer, which is will I get sued?

Gibbins: Odds that one of these fashion houses would sue you because the release said I would put it on the Internet Archive and actually I put it on my own site. The odds that anybody would actually sue you over that are really small. If they didn't care about it being on the Internet Archive, I don't see why they would care about you putting it on your own site anyway. Especially since it's, again, not for profit. It's clearly available for people to do these things. It's generally for the same purposes. That said, by the terms of the contract, those releases do not

allow you to. But if they said yes once, it's probably very easy to contact them again and say, hi, we contacted you before, you signed this release, thank you so much, our plans have changed a bit, would you please sign this new release?

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