

Streamed Video Licensing: Issues and Challenges for Sellers and Buyers

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White paper developed by Gary Handman (UCB Berkeley) and Lawrence Daressa (California Newsreel)

The advent of the Internet and the continuing evolution of technologies for creating and delivering digital video content have posed both significant opportunities and challenges for film and video producers and distributors, as well as for their institutional clients. The technological hurdles and uncertainties faced in producing and delivering online video content have been matched by the need to rethink the nature of the video marketplace in an online environment, and to reinvent services, policies, and procedures geared to providing end-user access to digital media.

The past several decades have seen a widespread movement in libraries toward licensing online access to commercially produced information resources, in addition to or in lieu of acquiring collections of “traditional” physical artifacts, such as journals and books. Although the extent and speed of this movement have varied considerably among different types of libraries and library collections, online information in various forms and formats has become an almost universal library staple, a service expected by most library users.

The current players in the business of online information delivery tend to be large, well-established corporate entities with roots in print publishing. The commercial models that have been established for licensing online access to proprietary print-based library materials have been in play for several decades. While these models are varied (depending on the nature of the content, the content provider, and the institutional client), the general terrain is, by now, familiar to most libraries. The licensing of online, on-demand video

content (VOD), on the other hand, is a new and, at present, ill-defined concept and practice. While the economic models for VOD licensing may ultimately parallel or at least bear some relation to those developed for online print and data resources, it is likely that much about these models will be unique to the medium and to the nature of its delivery and use in libraries and educational institutions.

This discussion will focus exclusively on the licensing of VOD content currently being offered by educational and documentary video distributors, particularly independent distributors. With few exceptions, VOD delivery of theatrical feature films or home video titles exists in a separate market universe which, because of its size, corporate complexity, revenues, and target audiences, bears little relationship to documentary and educational video distribution, or to the library and school media marketplace. The economic models ultimately developed for delivery of features and other home video will almost certainly be geared to mass market, pay-per-view sales, and the future availability of institutional licensing for mass marketed titles is uncertain. Because librarians and educators are almost completely unlikely to have any say in the direction or practices of this industry, now or in the future, it will not be included in this discussion.

Institutional Uses of Video

Collection and uses of video content in academic and school libraries have historically taken one or more of the forms described below.

- “Just-in-Case” Collections: Comprehensive standing collections of print and online materials selected to anticipate a broad range of current and future teaching, research, and general institutional needs. While such collections may include materials requested to support specific curricula or programs, they also have broader and longer-term functions: fostering the discovery and use of valuable new resources, and providing and

preserving a range of unique materials not widely available in the information marketplace. Because of the expertise required to build “just-in-case” collections, the broad scope of such collections, and the high cost of financing them, this type of collecting is almost always the province of libraries --academic libraries in particular--rather than other institutional support units.

- “Just-in-Time” Collections: Materials acquired to meet specific and sometimes temporal teaching needs, both in the classroom and for individual study outside of the classroom.

As mentioned above, “just-in-time” collections may be incorporated in larger standing library collections. In some instances, “just-in-time” collecting (for course reserve viewing, classroom screening, etc.) is the only type of video acquisition supported by a library or learning center. Such collections may also be brokered by organizations outside of the library, such as IT and classroom support units or individual teaching departments on campuses, or by district or regional school media distribution centers.

- General Circulating Collections: Materials selected to meet the broad entertainment and educational needs of community users. Such collections, most commonly found in public libraries, rarely attempt to be comprehensive in scope or size. Currency and popularity of titles is frequently a primary criterion for selection and retention.

The above collecting modes are generally tied closely to the library’s overall service mission and to the needs of a specific clientele. In discussing potential economic models for VOD, it is, consequently, extremely important to keep in mind that some models are likely to be more conducive to some types of collections and collection aims than others.

Video-on-Demand and Libraries: New Vistas and New Solutions

For libraries and educational institutions, online video access potentially addresses a number of pressing problems and evolving needs:

- Increasing user expectations and demand for remote, 24/7 access to library resources. These expectations are, at least in part, being driven by the proliferation of open-access media on the web.
- The critical need to preserve and/or replace deteriorating collections of older media, such as videotape.
- Budget limitations on the purchase of multiple copies and replacement copies of vhs/DVD titles.
- Mounting pressures on library viewing facilities, equipment and services in the face of increasingly intense collection use.
- The common use of online teaching/learning resources, such as learning management systems (BlackBoard, WebCT, Sakai-compliant systems), which allow the incorporation of media content.
- Changing client demographics and changing educational programs to serve these clients (distance education; adaptive resources for disabled clients; remote library services, etc.)
- General trend toward resource sharing among libraries and other educational and cultural institutions.

The transition from the ownership of collections of physical media to a service-based model of access to licensed resources will entail major re-thinking by libraries of the budgeting process, the nature of services and staffing, and many of the traditional roles of the library or media center. On the distributors' side, a move toward VOD delivery may, depending on the nature of the delivery and licensing models developed, fundamentally alter relationships with institutional and/or individual end-users.

It is obvious, even in these early stages of VOD development, that the economic models that governed the sale and use of vhs and DVD titles will most likely undergo significant and far-reaching changes in the digital delivery environment.

Although it would be possible to simply adapt the cost model currently in place for educational and documentary DVD sales to a VOD context, and although most libraries would most likely welcome this model, this will very likely not be the common scenario. As will be discussed below, one of the significant reasons the traditional “buy once, use in perpetuity” model will most likely not fly has to do with existing filmmaker/distributor contractual arrangements. However, much of the current debates over VOD licensing models may stem more directly from significant differences between library and filmmaker/film distributor perceptions regarding the fair market value and market impact of online delivery.

Delivery Models

Unlike the delivery models for online print resources, which almost exclusively entail clients licensing access to content maintained on the provider’s remote server, VOD delivery models currently vary widely. Common models include the following:

- Digital files for individual titles produced by distributor, supplied to client (on disc, hard drive, FTP, etc.), maintained on and streamed from local server
- Digital files for individual titles encoded by client (or outsourced), maintained on and streamed from local server
- Streamed access to individual titles or a library of titles via remote distributor server (e.g. Films Media Group, Alexander Street Press).

In the models described above which entail maintenance of files on a local server, the license agreement generally

mandates user authentication via password, IP address, digital rights management software, etc.

- A fourth, less common model is largely geared toward limited-term, “just-in-case” delivery of course materials. This delivery model generally bypasses content licensing completely. (It should be noted that there is a fair amount of controversy and differing opinion about the legality of this model.) Client ships selected tape or DVD titles to vendor (purchased materials, locally produced titles, etc.). Vendor (e.g. CDIGIX) encodes and returns files to client for local delivery via proprietary delivery system that includes digital rights management. The obligation to interpret and comply with copyright/licensing terms is left up to the client.

Licensing Models

Term vs In-Perpetuity Licensing

Currently, most distributors of VOD content license access to individual titles for a fixed term--generally one, three, or five years. Renewal of the license is commonly contingent on the distributor’s contractual terms with the filmmaker.

The Librarian’s Perspective: Libraries have traditionally bought physical collections outright and in perpetuity: A book or DVD is purchased once and retained in the collection “forever,” barring physical disintegration. While libraries routinely pay annual subscription fees for print and online journals, the notion of repeatedly “re-buying” a monographic work in the collection--i.e., a single title that does not add content or value from year to year—is completely foreign.

It should be noted here that the licensing models for electronic books (ebooks) do not strictly parallel VOD term licensing. A common model for ebook acquisition is to annually license a catalog of titles (or a subset) which expands from year to year.

While this model is also possible for VOD, the typical number of annual new additions to most VOD vendors' lists is substantially lower than ebook vendors. In other cases, the cost of ebook access is based on use of individual titles, and it is often the case that when a certain use threshold is reached, the library "owns" the electronic book in perpetuity. Licenses with ebook providers increasingly include the right to maintain (but not deliver) an archival copy of the licensed titles on a local server.

The switch to a term licensing model for monographic works such as individual VOD titles holds serious implications for library budgets. This model would, in a sense, require making term licensed videos part of the library's serials budget—a continuing financial obligation that would diminish money available for the purchase of new titles. Term licenses are also likely to make periodic "weeding" or "turning off" of underutilized online video titles a necessity. It is also possible that valuable VOD titles will eventually be taken off-line because of filmmaker/distributor contractual agreements.

For academic libraries, these situations would be particularly problematic. Part of the mission of academic libraries—but only part—is to serve the specific and sometimes temporal teaching needs of individual curricula. The broader mission of the library is to build and maintain broad standing collections of materials that are responsive to the changing needs of teaching and scholarship over long periods of time. In a sense, term licenses run counter to this mission by potentially forcing the library to actually decrease access to selected titles over time.

The Distributor's Perspective: The contractual agreements between distributors and filmmakers are seldom signed in perpetuity. A primary reason for these finite contracts is the fact that filmmakers themselves are very often contractually obligated to periodically renew rights agreements with various intellectual property owners for stock footage, music, and other materials incorporated in their films.

The practice of term licensing of online video content is often at least partially based on certain assumptions on the part of distributors about the expanded audience for such material and the added value of online access. These assumptions will be addressed in the discussion of licensing models below.

Licensing Models

1. Flat-fee, In-Perpetuity Licensing

Parallels the current model of DVD and print media sales (“buy once, keep always”). VOD files maintained on client’s server. Cost of licenses may be based on whether institution currently owns DVD/tape copy of title(s) being licensed. “In perpetuity” generally means “life of file”; transfer to other formats or standards requires re-negotiation of license.

2. Flat-fee Term Licenses

In these early days VOD licensing, term licensing of individual titles seems to have arisen as a prevalent economic model. The term of the license is typically one to five years, and the cost of the license is a flat fee for the term. Currently, license costs for single-institution clients is similar to the institutional cost of the DVD for the title. This cost is almost always contingent on the institution having previously purchased a DVD copy of the title. The cost of purchasing digital rights exclusively is likely to be twice the cost of the DVD. (These pricing practices will ultimately need rethinking, as institutions move increasingly away from physical collections and toward access to content that is exclusively online). License costs are the same regardless of institution type or number of users within a single institution. Costs are adjusted for multiple-institution consortia and other broad-area use.

Distributor's Perspective: Some distributors argue that the value-added nature of VOD—its convenience, expanded access, etc.—may warrant license fees that are higher than the institutional price of the DVD. The argument is also made that market impact of VOD's expanded audiences may justify higher costs.

Charging less for licensing lesser-used or more obscure titles than for high-use, core curricular titles may be one way of spreading out the costs equitably. There needs to be a way to distinguish between "just in case" and "just in time" licensing--between archival and curricular use. This might be done by selling perpetual rights at low "archival prices" after selling them for high "curricular prices" for the first five-year license, or five years after a film's release. Alternatively, titles with little curricular use could be purchased at low prices for a low number of uses only, essentially a token system; more tokens could be purchased when and if necessary.

Librarian's Perspective: While acknowledging the benefits of expanded access and convenience provided by VOD access, the actual market impact of a switch to VOD is much less clear. Libraries currently buy limited numbers of DVD copies. These are circulated and watched repeatedly by individual patrons and shown to groups in multiple classes. The total number of sales of an individual title to an institution over the life of the DVD is limited. In most cases, the relatively high price of titles distributed by independent film/video distributors precludes purchase by individuals or by multiple departments on a campus. In the face of these factors, higher pricing (or term pricing) of a new format does not seem justifiable based on quantifiable market factors alone.

3. Graduated-fee Term License

An attempt to relate the cost of the license to particular user parameters, for example, total full-time enrollment; number of concurrent users; budget size, institution type, etc. In a sense, this model has some parallel in the “tiered pricing” model of VHS/DVD pricing, where non-profit institutions and public libraries are charged less for a title than academic and for-profit institutions.

4. Standing-Order Model

Provides libraries access to a distributor's entire video catalog, or a portion of that catalog for a fixed, renewable term. It is unclear, at present, how this model would practically be accomplished: remote access to materials maintained on a distributor's server would seem to be the most workable. There are a number of potential licensing models for this mode: Fees that remain fixed regardless of the collection size; licensing of a base collection with additional fees for each new addition; fees based on one or more of the criteria discussed in 3 above.

A variation of the above model is one currently in place for some ebooks. A basic fee would be paid for access to a specific title or group of titles available from a remote server. Once a title had been streamed a certain number of times, the library would "buy" the title for a supplement over the basic rate. This would allow libraries to "test" titles to see how frequently they were actually used. On the other hand it would not allow distributors to calculate or monetize uses above the threshold level.

Librarian's Perspective: Unlike journal databases, which regularly add new content, the catalogs of most video distributors increase at a fairly slow rate. Subscribing wholesale to a block of material short-circuits the collection development process, and presumes that everything in the catalog has equal value to users or continuing value over time. (See also: Distributor's Perspective under Flat Fee Term-licensing above)

5. Curated Collections Model

The curated model provides libraries access to a subject- or genre-based collection of third-party video titles selected by a distributor, sometimes in collaboration with experts in the particular field covered. Curated collections may remain either fixed in number, or may add titles annually. Such collections are generally hosted remotely (although there may also be provisions for local hosting of part or all of the collection). Various pricing options include annual subscription for remote access, or outright purchase of perpetual rights for local hosting.

Current examples of this model are the Alexander Street Press *Theater in Video* collection and *Dance in Video* collection, and *Opera in Video* collection (<http://alexanderstreet.com/products/drama.htm>)

Librarian's Perspective: As discussed in the section above on Standing Order Models, the purchase of "readymade" collections short-circuits the collection development process, and presumes that everything in the curated collection has equal value to users or continuing value over time. (Particularly for larger collections, the ability to pick and choose titles in a curated collection should be one option available from the distributor). On the other hand such collections do offer considerable benefits, including the convenience of licensing a body of materials from a single source. Some vendors (e.g. Alexander St. Press) also offer important indexing and search tools for such collections.

6. Pay-for-View Model

Individual users would stream and/or download videos directly from the distributor's server or a third party content aggregator (e.g., Amazon, Unbox, Jaman, Indiepix, iTunes,

et al.). Payment would be per download or stream; students or other users would pay a minimal market rate charge per stream for temporary access to a file. Distributors would have to find ways (such as digitally watermarking) to differentiate classroom rentals or downloads for permanent instructional use (excerpts etc) from low-cost student rentals. The model generally assumes that the files will be delivered from a distributor's server, rather than a local institutional server. This model is largely contingent on how the commercial Internet market and server technology develop, and how readily colleges will require students to pay for instructional media as they pay for textbooks and monographs. New Day Films is currently experimenting with this model, and California Newsreel currently streams some titles through Amazon Unbox, Indiepix, Jaman, some at under \$2 for the home market.

One alternative to a strictly pay-for-view model is a mixed distribution mode. In such a model the library would continue to build a broad, "just in case" collection of physical media or streamed media accessible within libraries and classrooms only, while individual, on-demand viewing outside of these venues would be pay-per-view.

Distributors' Perspective: As the means for commercial delivery of streamed video over the internet become more technologically and economically robust, the more incentive there is for independent distributors to circumvent libraries and adopt a pay-per-view model. Distributors have observed that the average Jaman.com user (often a student) pays \$2 for a stream; yet a university pays considerably less per capita to stream the same title, not for casual entertainment but as a serious instructional resource. In the view of many distributors, this means that products (especially the most popular products) have been seriously under-valued by the educational market, while the more esoteric titles may have been over-valued. If there is a mass market for educational titles, it is possible that educational media will be swept up

into that market, just like trade books, laboratory chemicals and pencils.

Librarian's Perspective Of the models discussed above, pay-for-view clearly represents the most radical departure from traditional library notions of service, collection development, and collection access. Pay-for-view models might take several different forms: a "textbook model" in which individual students are required to pay for individual course-assigned viewing; a "jukebox model" in which individual users pay for temporary online access to a library of titles; or institutional "rental" to serve a particular class for a limited term (in-class screening and/or VOD access by students in the class). While a college/university library or teaching department could in theory broker and/or subsidize pay-for-view, technical, accounting, budgeting, legal, and philosophical barriers would very likely exclude this option.

It is important to understand that because print and video resources still do not have equal academic valence in most curricula outside of visual studies disciplines, faculty may be reluctant to assign viewing, unless the cost per student is kept very low--in the \$1-5 range per viewing. The common student practice of viewing films in multiple sittings or viewing a film repeatedly for close study would also make low cost per view imperative. It should also be noted that it is patiently naive to assume that simply because a video (or text) is assigned as required for a class, the majority of students do the right thing. It is also important to recognize that the higher the cost per view, the greater the likelihood of piracy and illegal peer-to-peer sharing by students.

Pay-for-view would basically take libraries out of the VOD equation by putting immediate access to online video in the hands (and pocketbooks) of individual users. Depending on the costs involved, there might be definite benefits to this model. It potentially makes considerably more VOD titles

available to individual end-users than a library could possibly license. It bypasses many of the collection development uncertainties and missteps faced in building "standing" library VOD collections by pegging access and payment directly to immediate use. One could also say that VOD might very well increase the audiences for independently produced and distributed documentary and educational works beyond the current exiguous academic market. On the other hand, it is altogether possible that the net number of titles purchased by an institution would substantially decrease if this model were to predominate. The broad, standing, "just in case" collections built by academic libraries would be replaced by a much narrower range of titles assigned by selected faculty "just in time" (although distributors might argue that the money lost by the purchase of fewer titles would be recouped by the per-view payments for the more popular and frequently used titles).

In comparison to library-centered models for VOD delivery, the pay-for-view model also has considerable downsides from the library's perspective. By bypassing the library, pay-for-view also bypasses the role of librarians in serving as campus advocates and publicists for effective media use and for the work of independent filmmakers and distributors. The pay-for-view model would basically require distributors to market their works and to sell the idea of required student purchase of video content directly to faculty and academic departments. The tasks of carefully selecting, describing, and preserving culturally significant materials have always been at the core of the library's mission. Forms of information access such as pay-for-view which are purely commercial, ephemeral, and brokered outside of the library do not benefit from any of these important functions.

Lastly, although computer technology is widespread, it is not universal among student and researcher populations.

Information inequality is bound to continue for sometime to come, and a pay-for-view model may well contribute to this on-going problem.

It is clear that, even if the pay-for-view model does develop in the next decade, there will remain compelling reasons to build and maintain standing collections of video titles, either artifactual or online, in libraries. It is equally clear that while pay-for-view may serve certain specific needs of an academic or public institution, it is unlikely that that model—or any single models discussed above—will be sufficient to serve the broad scope of institutional types and institutional needs. It is consequently important for distributors to accept that they will probably have to offer a "basket" of licensing options. It is equally important for librarians and other information providers to accept that none of these options will probably duplicate the present DVD model.

A central goal of the September 2008 National Media Market meeting on licensing will be to help further define the nature of these various options. The meeting will attempt to explore the present and future feasibility of these models in various institutional settings, as well as to identify the advantages of disadvantages of each for both distributors and librarians.