

Higher Education Digital Video Summit

Canadian Consulate General, New York City

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Meeting Notes

Organizers: Jane Hutchison (William Paterson University), Carleton Jackson (University of Maryland), Eleonore Martin (Icarus Films), Sarah McCleskey (Hofstra University), Dylan McGinty (National Film Board of Canada), Meredith Miller (Icarus Films) and deg farrelly (Arizona State University).

Attendees: 55 individuals representing 20 distributors, 18 higher educational representatives, one association and three filmmakers.

Introductory Comments - Jane Hutchison

Jane Hutchison introduced the organizers, nicknamed the Gang of 7. They are not representing any particular group, just themselves. As ground rules, attendees were asked to focus on interests not positions, and to agree on what important words (for example "in perpetuity") mean. Participants were asked to explain reasons behind statements, disagree openly, invite questions/comments, and discuss the "undiscussable." Everyone should participate, and make decisions (if any) by consensus.

State of the Union/Environmental Scan - Carleton Jackson

State of union sounds way more formal than what Carleton is covering. Many of us know things in our own areas, and we've met in various meetings to talk about these issues so he's not going into great detail of the past. But if you don't know what we're talking about, ask again. First, there were films, then videos, and discussions concerning their use have occurred at National Media Market (NMM), ALA, and CCUMC. In 2000 at NMM a person with Films Media Group (FMG) asked Carleton if his institution was thinking about doing anything digital. In 2001, FMG offered digital rights; they were the one vendor that did this. By 2005, a number of distributors offered digital rights, and we moved to where all hell broke loose ... some companies offered digital rights, some hosted services, some sold rights to a collection of products, some offered everything that vendor held, picking up other products, etc. In 2010 everybody who sells video usually offers a digital way of using those materials. Some titles are born digital, some are subscription, some have bundled rights, for some rights are sold separately: the whole industry is new again. In 2009 / 2010 schools started doing things differently. People are using Content Management Systems (CMS); often computers are used as a player in classroom (computer instead of DVD player). Online and/or hybrid classes started. At some schools every class MUST use a CMS, every class must be able to go online or be hybrid so that if a class is missed, if people are out, they

can get to course materials online. With this requirement to make all things accessible all the time ... professors were going crazy, and those of us who support teaching are confused, with vendors wondering how they'll provide materials and librarians wondering what to do (subscriptions? Who buys? Who pays for permissions? Can you use your own legal copy, etc.). How can it be done? Our hope today is to bring together people who buy things for libraries or universities, film vendors (middlemen and creators), professors (people who teach), and people representing associations, since we all share these concerns. Looking forward to next 10 MONTHS, what will be happening then that we can work with? Filmmakers may be wondering how they talk with vendors about what rights they can/should protect, how, and the relationship between filmmaker and educational film distributor. We've moved beyond I buy it, I may get some PPR, it may be a home video; I put it in my collection. What do we do with those materials we purchased in that way? Whatever we do with them, it is for our educators. Faculty are teaching and they need to use our materials, where the digital realm is understood and the classroom is expanded beyond the physical location.

The agenda has a list of items categorized as purposes, current practices, and challenges. We see a circle: in trying to use digital media we develop practices, realize hoped-for practices, and deal with challenges. Then we see new purposes, practices, and challenges.

Warm up Exercise - deg farrelly

This warm up exercise is about "Crossing the Line". With a line drawn through the middle of the room half of participants stand on one side, half on the other side. Your goal is to try to get the person across from you to cross the line to your side. We did this exercise to try to get us into some area of understanding. We are all equals and encourage everyone to get their comments heard.

Debriefing: about half the participants got people to cross. Some straddled the line. One said "the bathroom on my side", one said "I'll buy your entire collection and write a PO", tempted with information and knowledge that they knew the person wanted. People sought a bargaining chip. Those who straddled the line realized there was something to both sides and they straddled so that they could see everything. No two participants criss-crossed.

What did not work: lunch was offered (food), stalemate ... threats and intimidation didn't work. "Together we'll be considerably more successful reaching for the same objectives rather than standing apart to see who will be first." Participants recognized the relevance of the exercise. In conversation they considered what they would have to give up to step across the line (lunch or door to bathrooms) = winners/losers. Those who straddled reached a consensus rather than a compromise (no one gave up anything). Someone asked, "Does having less mean you've lost?" In the big picture does that make you a loser? People with less are supposed to be happier. Those who did not cross were asked why. Some weren't compelled. Since the exercise was "to get somebody to cross" as opposed to "see what happens" some were still negotiating. What would compel you to cross? Good arguments/propositions on both sides.

First Breakout Session - Meredith Miller

For the first session participant broke into 6 smaller groups where everyone's ideas can be heard. Buyers sat with other buyers, filmmakers with filmmakers, and distributors with distributors. Moderators encourage participants to sit with people they don't know instead of the people they came with/colleagues. Each group selected a recorder, someone to take notes, and a reporter. Instructions for this session were to discuss what you **want** from your perspective in the context of digital media for higher education. What do you want in digital realm from the point of view you represent in this discussion? Be specific so that other groups will know what exactly you want. This will make it easier later to come up with more tangible guidelines/goals we can try to agree on or come to some kind of consensus. Refer to the environmental scan to help guide the discussions.

From these discussions, each group was asked to select 5 key "wants" or the 5 most important items from their discussion, and to write each of those on a separate post-it note. They were also asked to document "outlying" questions, as well as things they hadn't heard of before.

Before breaking for lunch, the groups posted their notes to the wall, in separate areas for distributors, buyers, and filmmakers. Then participants were directed to use the lunch break to read all of the notes from all the groups, and to cluster similar notes (in that group) together on the wall.

Lunch Break

Following lunch the participants reconvened to quickly review the notes from each of the categories (Distributors, Filmmakers, Buyers) before proceeding with the second breakout session.

Report from Distributors:

("Wants" Post-Its clustered under broadly named categories)

Revenue:

- Stay in business
- DVD and/or streaming revenue
- We want each other to stay around (both buyers and distributors)
- We want to have a revenue stream for the content we produce, so we can sustain the organization and the production of content.
- We want people to recognize the difference between independently produced media (independent filmmakers) and commercial media. If you don't pay for content, independent filmmakers won't make any more films.
- We want people to be able to access the content in a way that is appropriate to them but not for free.
- We want people to value the quality of content that was produced specifically for the educational market.

Copyright Concerns:

- Accountability (monitoring use versus misuse)
- Customer clarity about rules for copying/streaming video content

Distribution/Delivery:

- A business model that makes sense for filmmaker, librarian, and distributor
- Provide more usability for video content to faculty/students through technology
- Support librarians in their curatorial (i.e. collection development) role
- A simple streaming delivery solution that integrates with library management systems
- Standardization from the schools in terms of a few file formats and a few licensing terms. Standardization of rights, formats, and pricing. Standardization of accepted practices.

Next Steps:

- Establish a small committee of librarians and distributors to establish best digital practices

Questions from the Group and Clarification:

- What is the difference between independently produced media and commercial media? In the Hollywood model, big conglomerate helps support production/media, lots of arms to support and fund projects (advertising, theatrical, broadcast), also has potential for much bigger sales; independently produced material has a different funding model so pricing structure has to be different.
- What do you mean by support for librarians in a curatorial role? Is there a distinction between curatorial role and other things librarians do. This means in a sense that we (librarians) curate collections, they (distributors) would like to help us curate it, make it accessible to our community in the format that we need (not meaning in a preservation/archival mode but rather in collection development). They want libraries to collect and not just access media. But increasingly we collect/access the materials we provide to our content. Point was that distributors need librarians and want to support us as librarians so that we stay around, librarians also need distributors; we support them so that they stay around.
- What is a collection in the digital realm, how does that affect our answers to questions?
- How do you acquire a collection without purchasing it? It may be produced in-house, open access, archives, records, digital assets created on campus, learning objects, data sets. There is a lot more to our (library) collections than the things we buy. Also there is a difference between 'selection' (we want this item) and acquiring packages that include things we might not have selected but we acquired through a package (the long tail ... items that are bundled into collections that we may not have selected if choosing on a title-by-title basis. They may have low usage, but are important to people who use it). Example of buying big package of journals of get the ones we want, but we also get a lot of other titles we didn't necessarily want. This issue will be replicated with licensing/purchasing digital media assets.

Report from Filmmakers/Content creators:
(“Wants” Post-Its clustered under broadly named categories)

Content:

- How can we make our content more useful in teaching and learning?
- How would you like to learn about our content?
- How do librarians want to buy our content?

Distribution/Delivery:

- What is a fair and reasonable price?

Next Steps:

- Forum for an on-going dialogue is needed

Questions from the Group and Clarification:

- When they ask how to reach out to libraries, do they mean direct sales to libraries? Not necessarily. A cooperative group of filmmakers works well.
- Concerns are for films produced for educational market; are these filmmakers distributing films themselves? Some are in a co-op, they just want to know more of what’s useful to the end user (librarian, professor, student); untapped educational potential across disciplines, how do you tap that and make your content most relevant for whatever the educational needs are.
- 90-minute film (director’s cut); 60 minute (international TV sales); what would be most useful for a class? A 20-minute version??
- In seeking common definitions ... what is educational content? What is “not educational”? If it’s important, has insight, documents things, even the worst stuff is educational. Anything that survives long enough becomes an artifact that may be educational. How much of the content is geared exclusively at the higher education market, or do you make a documentary and hope it sells to PBS, higher education, Discovery, etc. Those distributors all have different criteria. Some producers find education is the primary audience, some find education is ancillary, and seek another opportunity to push content out to that environment. The question is how to reach out to that market.

Report from Buyers:

(“Wants” Post-Its clustered under broadly named categories)

Copyright:

- Contract language should not preclude Fair Use
- Usable products not burdened with DRM
- CMS (Course Management System) should be equivalent to physical classroom
- Option to buy streaming rights instead of Public Performance Rights

Content:

- MARC Records
- Own and host content, or subscribe as different institutions have different needs.
- Permanent access to “the thing” to support role/mission of the library (i.e. ability to make a preservation copy, etc.)

Distribution/Delivery:

- Instant, immediate streaming on demand
- Make streaming part of license
- Clarity about difference between sales and license
- Perpetual license
- Transparent and reasonable pricing structure
- Efficient, fairly priced, responsive market
- Flexible, bundled a la carte collection (with semester by semester option)
- Quality online previewing and production
- Image quality

Next Steps:

- Could we discuss more as members of the same market rather than opponents? Can we create a forum for future discussions?
- Recognition that teaching and learning are evolving and we need to as well.
- To be considered more than buyers – we provide services beyond that.

Questions from the Group and Clarification:

- Why would buyers rather have streaming rights than PPR? Right now PPR comes w/institutional price, and buyers don’t need PPR most of the time (often funded by someone else on campus when it is needed, on a case-by-case basis, and is not needed at all for face-to-face instruction – under US

copyright law). We would rather pay for streaming rights and have the PPR be separate. Point of purchase would include streaming.

- What is streaming? Is it all the same? Related to a course, password protected for semester, not to everyone in the universe. Blackboard and E-Reserve are examples of class management tools.
- Why is it too much to ask for a campus-wide streaming license? Each university has different sizes, FTE, etc., some classes are smaller, why should we pay for the entire university for every film? Some schools are only interested in a “reserve” situation, for a particular class to have access for a particular semester.
- If distributors did a streaming tier instead of a home and/or PPR tier, what kind of license would we want? (We’re migrating into the next discussion)
- If restricted to IP you’re protected within the campus anyway. Would be campus wide. This goes into “concerns.”
- How do librarians view/define PPR? Anything shown outside face-to-face instruction. Outside a course that’s in the course catalog. If a school group, club, professor wants to invite community, etc., then we need PPR. But the instances of us needing PPR we could buy as needed and instead would rather pay the extra costs for the digital rights. Many campuses have another unit that handles PPR licensing. Normally PPR is not connected to library budget. We don’t need PPR because of the 110(1) exemption. Real world example: University is having Romeo and Juliet film series, inviting community, advertising, etc., had to purchase PPR.
- Clarification around e-reserve/CMS: at end of course what happens to the content? It goes away; you lose access. No longer accessible. Video reserves could be parallel to e-reserves. Streaming would give 24/7 access for that course only, would go away after that.
- Do all universities use Blackboard? Yes, or something like it. Accessible from your laptop, Internet, etc., and is password protected and authenticated.
- Distributor wants to know how many want to stream themselves and how many want distributors to provide streaming. It varies.

Concerns

Participants were asked to record issues arising during the first breakout group session that didn’t fall into the category of a “want” or desired outcome. Whether concerns came from buyers, distributors, or filmmakers was not recorded.

Copyright:

- Concern about digitizing films under fair use/teach without paying rights.
- Concern about generalized misapplication of Fair Use to simply rip dozens/hundreds of DVDs to CMS without weighing of four factors.
- Tendency of librarians to impose greater restrictions than the law requires.
- How will the changing expectations of students/faculty impact copyright?

Content/Distribution:

- Digital licensing does provide greater accessibility and value; quality material won't continue to be available if films can't be made.
- What is the funding model for independent filmmaking? What is the financial arrangement between the creator and the distributor?
- Need a way to vet a title to see if is available in different formats.
- Can there be a model of a physical copy with a digital stream permit that can be only used in a CMS?
- What constitutes "educational" content?
- Untapped educational potential
- Download vs. Stream?

Next Steps:

- What is future role of the librarian?
- We're not stealing don't treat us like thieves.
- Pricing models?
- Evolving use of mobile technologies

Questions from the Group and Clarification:

- Is a CMS the only place we're looking at physical streaming use? No.
- Are we only talking about streaming, not downloading? No. Streaming should protect from downloading but there are situations where downloading a portion is desirable.
- A distributor reports that download requests have increased (for mobile devices especially). Library administrations are very interested in mobile devices because it's sexy. Professors and students may drive that. There is something in between; there is an interest in downloading for clips. If a student is just viewing for a class assignment they have no interest in keeping the content. Where they want a copy is for a class assignment or if they want to do a remix, use a historical clip, etc., not the whole thing, just a clip from here, a clip from there, in that context there needs to be ability to keep something more than a stream.
- Mobile devices are not online all the time and students want to download materials and view when offline.
- What about Kindle, iPhone, and nook? Formats are a problem; the iPhone doesn't support Flash, for example. "Portability" of material could be forever or for a limited amount of time. The model for downloadable audio books, where you get access to material for 14 days and then it goes away, should be considered.
- Do libraries just want ability and price to stream for one course per semester? Answer is that libraries generally want streaming rights instead of PPR.

Second Breakout Session

Distributors, buyers, filmmakers, and association representatives reconvened self-divided into 6 mixed groups. For this session instructions were to look at the issues raised in the first breakout session and try to come up with hypothetical best practices that might serve as models for the future. As with the first session a designated recorder captured the key points from the discussion so another member of the group could report out to share those ideas with the other participants.

Reports

Group 1:

- Define acceptable pricing structures, something simple that goes across the board.
- Facilitate the process of finding licensing information by making it widely available and transparent. What if there was a central location/database librarians could go to, publishers could register content with pricing models, avoid anti-trust, publishers have their own models so that rights and pricing are clear. The transaction can take an amount of time that is greater than the value of the transaction. Simplify that piece of the equation as best we can and provide an opt-in model for vendors.

Questions from the Group and Clarification:

Question: Are you talking about a centralized shopping cart? No. Multitude of questions distributors have to answer to filmmakers before they can answer rights questions, would be good to have this in a central location.

Group 2:

- There is no simple business model.
- The pay per view model for students, like the iTunes model seems to be one way to go. Looking at the difference between the big package of videos you license, and those titles you need that fall outside the scope of your big package. If sellers could go through some kind of iTunes model, faculty could direct student to buy that video for that specific course so that library doesn't have to pay for it anymore. It's an option, a model, an alternative, an "extra" since most of budget has gone toward content purchase.
- Buyers don't want to pay for PPR rights. They want to substitute streaming. That might be the practice, but is there something else of value (other than streaming)? Comment: PPR is irrelevant. Institutions don't need it, by and large. Create a digital licensing model but it's not one for the other. Is there something else? Maybe there's nothing. In lieu of PPR is there something else that can be offered? CMS rights?? Buyers buy for content.

- Seems to be a feeling that buyers want streaming rights included in purchase price, so perhaps the principle price in the future will be for electronic streaming rights and the secondary price will represent the hard copy DVD. That may be the way the wind is blowing. That's how the journal model moved.
- Could there be an option to purchase PPR instead of streaming rights?
- Libraries licensing large database packages of streaming video content spend a lot of money on those products. There should be an a la carte option for students to buy their own copies for class. The library cannot afford both.

Group 3:

- We need to have flexible pricing models
- We should have a best practices committee or forum to keep the dialog going.
- We should have some sort of MARC records best practices. The committee could talk about this.
- The group presented a hypothetical model for pricing. These are the caveats: What is "perpetuity" not clear on definition; model assumes vendor hosting not institutional hosting. Didn't go into digital rights; in this model the library buys, and the content is hosted by the vendor for the institution limited by IP address. (Note: One distributor participant in this group protests.)

Model: 4 baseline-pricing options: (individual prices)

- A. DVD, no PPR, no stream \$95-195
- B. Full campus, 3 year stream no physical copy: DVD price parity, B=A
- C. DVD + E-Reserve: 2 x A (DVD plus right to put in BB) no time limit because physical has been purchased
- D. Full campus perpetuity stream 3x DVD price

Group 4:

- Hypothetical: Construct a licensing model that has different price points with components that take into account different needs of different users.

Examples: hard copy DVD with PPR, hard copy with CMS rights, hard copy with no PPR or CMS rights, pay per use for students, streaming license for entire institution with PPR included (price based on FTE). The licensing model must take all the possibilities into account, with hosting available for the institution or by vendor.

Questions from the Group and Clarification:

Question: Why FTE? Current pricing models take FTE into consideration and that's how pricing is generated. It's a database model.

Group 5:

- Hypothetical: Purchase a DVD at a higher cost, get 5-year rights to stream for course specific uses such as CMS or e-reserve. Full campus streaming rights would be another purchase, as would PPR. The license would be time-limited to 5 years instead of "perpetuity" because there's a question of how long distributors have distribution rights. Some distributors can't provide perpetual rights.

Questions from the Group and Clarification:

Question: Is this kind of like a standing order? Or would whole thing be revisited every 5 years? There was concern that an institution would buy content once and the vendor would never hear from the institution again. A long limit (5 years) seemed reasonable, then you decide if you want to "purchase" the content again.

Group 6:

- Hypothetical: Per semester stream hosted by institution, does not include DVD, \$89-400. Digital does not create a viable revenue stream at the moment. The higher price (\$400) might include DVD. How much revenue will people see from digital, what is a viable model?

Questions from the Group and Clarification:

Question: How will you not realize revenue from digital streaming? One vendor says last year streaming rights made up only 2% of revenue. This will not sustain vendors. Those distributors who provide value-added service of hosting streams are probably seeing a revenue from that stream, but they are still selling DVDs. So for those who have not launched their own server, libraries have to provide the technology.

Summing Up/Comments

Most of the groups are basing models on user needs. We have heard about e-reserves/CMS, PPR not needed; content is sometimes needed for a specific course, other times for the entire institutional community. The idea was raised of a central repository of licensing and rights information for vendors. (Perhaps another organization such as the National Media Market could establish such a clearinghouse. Several suggested a best practices committee, and the need for MARC records came up a couple of times. It seems an appropriate library-related organization might want to consider those suggestions.

The group was asked, in terms of what you've heard today, what agreement do we have? Or do we have more differences?

Responses:

- There was consensus that distributors will work towards better access; they are not sure what the model will be. Buyers have expressed that there is a variety of ways they want to get/use/pay for content, and those needs aren't being met today.
- A common theme from the library perspective is that a lot of these uses we need may be permitted as fair use or 110(1). There is uncertainty, and given the uncertainty it might make sense to license some uses even if you think maybe you could do them under fair use. In general, the perspective that libraries have as their starting price point is lower than what distributors think is reasonable. Licensing is more efficient than litigation but there's still an enormous disparity in perception of what is a reasonable price. Libraries may have a different interpretation of the law and that informs what is reasonable to us.
- A common thread is budget: everyone has budget issues.
- From users/buyers and distributors perspective we seem to be getting close to a tipping point between hard copy and digital, we are coming to point where people may buy rights and get DVD along with it. In the home market for theatrical releases it is already becoming common that the buyer gets a DVD, a blu-ray disc, and some digital access/content.
- We're assuming that digital rights will expand (one company said 2% of revenue last year) but it's different for everyone. Since 2001 we have moved considerably forward ~~a lot~~. The multiplicity of uses that streaming allows is at the heart of what we're discussing.
- A common theme emerged in all of us seeking a simpler process for acquiring digital rights. One of the reasons digital streaming may not be more of business revenue is that much more energy goes into licensing, modifying, and signing the contract, than placing an order for a hard copy online. If we can figure out a standardized model that takes into account the various needs we have (budgets, etc), that will help. We don't have to wipe out PPR to have streaming. Some libraries aren't going to use digital content, aren't investing in infrastructure. Making it simpler for people to know what's going on, who provides what; make it easier for both parties to do this purchase.
- It was noted that in the recent weeks leading up to this meeting there was a lot of discussion of the issues surrounding UCLA's streaming practice but it didn't come up a lot in the meeting.

- There was a “second” for the suggestion that we see if we can form a committee to develop a best practices standard while that case is in litigation.
- Most universities are doing strategic planning and transitioning from the hard copy to the digital environment. Partly what we can do is dependent on what vendors will allow us to do, what they can do to give us value that catches up with pricing, etc.
- One participant reported that their college is doing a periodicals (journals) study. Three years ago, the print collection had 10,000 uses. Last year it had 1000 uses. Print periodical collection is dying off. The librarian there feels that media is transitioning this way also. For people who just produce a hard copy DVD, the content may be left behind if it isn’t available via streaming.
- One participant who is a member of AIME but is **not** representing AIME reported that AIME is **not** looking for more defendants to sue. They don’t want to sue UCLA. AIME wants to settle with UCLA, instead of going through courts. It’s in all our interest for groups like this to come up with models that work. UCLA stopped streaming, there was a furor among their faculty, and they reversed their decision. The situation doesn’t need to be litigious; it’s both sides working together to come up with solutions. People here at this meeting are not targets. All AIME wants is clarity about what the rules are, how content is being used, and if a fair use analysis is going on, what does that analysis look like.
- We’re here today to talk about issues, open and honest dialogue, we know everything is unclear right now. The waters are muddy, but this meeting today gives us a chance to learn from each other, have a similar frame of reference. So it’s important to have this dialogue.
- Agreement with above statement, whether one is a buyer or distributor or a filmmaker this is a time of self-preservation. Distributors are trying to stay in business; buyers are transitioning to digital mode. The only way we’ll all get there is by working together.

Next Steps

- The Gang of 7 will meet, distribute these meeting notes to the participants, and meeting summaries widely. Hopefully we will send releases to organizations (ALA, CCUMC, NMM, etc), and post to discussion lists. We also want ideas from the group. What else, besides form a committee, do we need to do to move forward?
 - There was concern that the information asked for on the registration form for this event would be used inappropriately. The attendees agreed to keep that information private. None of the participants' names (beyond the organizers) would be distributed in the minutes.
- Distributors want to know what directions librarians are going (a survey to a much broader group to find out how soon they're going to digital, what the potential market is.) The Gang of 7 will help with this.
- MARC records standardization is needed
- Clearinghouse of licensing models and pricing information (perhaps a task for the NMM)
- Another voice to speak for a small committee to decide what's acceptable and what's not acceptable. Suggested that three individuals from each "side" look at whether it's fair use to stream complete works. Hopes that's what comes out of this meeting.
- A minimal step is to identify what is new to you, a concept that you hadn't heard before. This opens lines of communication about what people are doing. Go back, talk to your colleagues so that more of us are on the same page in our different areas, so that we know what the concerns are.

In closing the group thanked the Embassy of Canada for their generosity in providing the venue for the meeting and lunch arrangements, and to Dylan McGinty for coordinating arrangements with the Canadian Consulate General.

Recorded by Sarah McCleskey