

Code and Pre-Code: Barriers to Accessing Early Sound Film in the Digital Era

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Abstract:

Streaming video on demand (VOD) technology has the potential to enhance the experience of movie viewers; in theory, it could offer the user not just instant access, but also a near-infinite range of film choices. In reality, in the U.S., the selection from consumer services such as Netflix is skewed in favor of mainstream titles. Furthermore, legal and commercial constraints ensure that films offered by subscription drift out of print as licenses expire; YouTube hosts many Hollywood films online, but too many of them are non-authorized, copyright-violating copies that can be withdrawn by rights holders without notice.

While ordinary consumers may find these restrictions annoying, the ramifications for the academy are more serious; the commercial and copyright obstacles to access that impact commercial VOD services also threaten to disrupt pedagogical and scholarly activities at universities in the U.S. and around the world. Because of the importance of American films worldwide, the effects of U.S. copyright law reverberate internationally.

In this paper, the availability of one category of American film—the early sound film from the 1930s known as “pre-Code”—is analyzed as an example of how U.S. copyright restrictions, American business practices, and changing audiovisual formats affect the availability and public awareness of large swaths of film history.

Keywords: Streaming Video, Film, DVD, Academic Libraries, Pre-Code

Introduction

Since the initial enforcement of the Hays Production Code by the film industry's self-policing Production Code Administration, Hollywood has restricted access to the sexually and politically provocative films made in the early years of the sound era. Having been kept out of movie theaters in the 1940s and off television in the 1950s, so-called pre-Code films, with their subversive representations of the Great Depression, became inaccessible to most viewers and remain largely unknown to most Americans. This cultural amnesia was not due to a sudden rejection of these films by the public; if anything, the guardians of public morality thought that Hollywood films were too popular and influential (Doherty 1999, p. 319). Sklar (1994, p. 175) has described the Hollywood cinema of this period as "one of the most remarkable challenges to traditional values in the history of mass commercial entertainment." Doherty (1999, p. 20) writes, "For four short years ... pre-Code Hollywood entertained, even embraced, visions of immorality and insurrection."

In the 1990s, long after the demise of the Production Code, books such as Doherty's *Pre-Code Hollywood* signaled a revival of interest in this period of film. At roughly the same time, the Copyright Term Extension Act of 1998 (CTEA) passed, ensuring that all films made after 1923 would continue to be covered by copyright.

Without this copyright extension, YouTube might have been a viable way of providing a kind of open access to early sound film. With the CTEA in effect, the vast majority of pre-Code films that can be found on YouTube and similar services are there in violation of copyright. They are not authorized versions and there is no guarantee that they are complete and unedited. Furthermore, they may be removed at any time without warning. Most significantly, Crews (2012) has suggested that a professor could be held liable for using materials in instruction that were uploaded by a third party to the web in violation of copyright law. Needless to say, these conditions limit YouTube videos' pedagogical and scholarly use. Since most pre-Code films have not entered the public domain, the only legal way to use them is to purchase them.

In order to properly serve the academic community, research libraries must take steps to ensure the availability of important movies from all periods, especially titles that are little known. Achieving this goal will require an on-going commitment not just to physical media (including MOD titles such as those offered by Warner Bros. via the Warner Archive Collection) but also to the purchase of equipment that will support a variety of media formats—from NTSC DVDs to Blu-Ray to PAL to DVD-R. In spite of the growing importance of streaming video, libraries may need to continue to invest in physical media as they attempt to provide access to important cultural resources that are unlikely to be made available to the academic community via VOD.

Literature review

American early sound film is an especially relevant category of cinema for examining the issue of library access to movies, because "pre-Code" is a period of film that is in fact *defined* by its inaccessibility. At the time these films were made, they were, of course, readily available in movie theaters around the U.S. and the world. However, in 1934, Hollywood's power brokers decided to forestall the possibility of government regulation by beginning to enforce the Hays Code, a set of rules that had been drawn up several years earlier by

religious-conservative Hollywood watchdogs. These members of the Catholic and Protestant establishments wanted to counteract Hollywood's supposedly decadent tendencies by dictating what could and could not be portrayed on screen. Indeed the Hays Code has a reputation for being triggered by violations of traditional sexual morality (e.g., Mae West's raunchy repartee and the way Cecil B. DeMille's camera fixates on Claudette Colbert's naked flesh.) While censors frowned on sexual frankness, the fact is they wanted to improve the moral fiber of Americans in a variety of ways; they insisted that Hollywood films show audiences "that the church, the government, and the family were the cornerstones of an orderly society." (Black 1994, p. 39) The Code had the effect of limiting speech that criticized capitalism or advocated disobedience towards religious or governmental authorities.

The year that sound film fully supplanted silent was 1930. From that year until 1934, Hollywood nominally adopted the Code, but it was not strictly enforced. Some commentators (Maltby, 2003) may question whether it was the enforcement of the Production Code or a change in the zeitgeist that inspired the turn towards conventional propriety in American film starting around 1934. It could be that changes in the zeitgeist led to greater enforcement of the Code. Indeed, there were good reasons to support American political stability after the rise of Hitler in Germany in 1933, just as there was cause for Jewish film studio heads to suddenly fear an "anti-Semitism that was never too thinly veiled [that] lay behind at least some of the attacks on Hollywood as the Sodom on the Pacific" (Doherty 1999, pp. 320-22). Whatever the reason, movies did change starting in 1934, with the freewheeling films of the early 1930s supplanted by ones that were more circumspect and tame. The older films, full of raunch and rebellion were pulled from circulation, unless they could, like the 1934 Carole Lombard-George Raft vehicle *Bolero*, be re-edited to remove the taint of pre-marital sex. For Mae West, of course, removing the suggestion of sex proved fatal. Audiences eager for West's unique brand of ribaldry and sexual innuendo rejected her more subdued Code-approved persona, and her career fizzled (Doherty, pp. 331-38).

Segrave (1999, p. 50) documents the fate of pre-Code movies during the first great format migration from the big screen to the small one. His book notes that in the early years of television in the late 1940s and early 1950s, pre-Code had pariah status. Film studios were willing to sell such films to television, but the stations either didn't want to air the films or they wanted to bowdlerize the life out of them. Most movies from all periods were heavily (one could even say "ruthlessly") edited when shown on television: "Films shown on television were subject to various insult, from a complete banning due to content, to deletions due to content, to the more pervasive cut anything anywhere to make it fit a predetermined time slot, to a relentless onslaught of interruptions every few minutes for commercials."

Still, some films were subjected to more scrutiny and greater violations than others. Segrave (1999, p. 51) notes, "Features were banned on racial, sexual and good-taste grounds." This had an especially dramatic impact on pre-1935 films. Segrave adds that when the Los Angeles station KNXT purchased the full Paramount library in the late 1950s, it had no intention of showing all of the 1,400 movies it had at its disposal. The station's rejects "included virtually all movies which originated prior to the early 1930s installation by Hollywood of the Hays Office." Paramount wasn't the only studio whose early 1930s films were considered dated and undesirable. Segrave (1999, p. 59) says, "In 1960, Fox had about 300 pre-1935 movies still 'uncommitted.' Apparently because no buyer could be persuaded to take them." The end result is that today, pre-Code films such as *The Front Page*, *Waterloo Bridge*, and *The Maltese Falcon* (all from 1931) are not as well known their Code-compliant

remakes released a decade later—from 1940, 1940, and 1941, respectively. (*The Front Page*, of course, was renamed *His Girl Friday*.) The later films are generally regarded as more aesthetically and historic important, but this is not necessarily the case, and the virtues of the remakes doesn't justify the obscurity of the originals (Gates 2008).

In fact, the censorship imposed by the Code was so effective that even after the Code was dismantled in 1968, pre-Code films remained inaccessible. As Foster (2010, p. 388) writes, these films, “provide a blueprint or time capsule that can tell us what censors really wanted Hollywood filmmakers to *stop* making films about: the Depression, crooked authorities, vice, yellow journalism, prison injustice, human right issues, gender inequities, and the broad cynicism of an ethnically diverse populace who often displayed a really bad attitude toward authority.” She also asserts, “it remains astounding and unfortunate that so many important pre-Code films remain unreleased and unavailable [on DVD].” It stands to reason that those that have been released should be made more available and accessible to the public in general, and the scholarly community in particular, so that this entire period of filmmaking can become better known.

Tang (2009, p.80) is more sanguine in her assessment. She says that “The availability and low-cost of many pre-Code films make it easy for libraries to build a solid collection.” Still, she does concede that “a number of pre-Codes are available only on the VHS format.” She notes, “Many films awaiting restoration still lie within studio vaults until there is sufficient consumer interest to justify the expense of rights clearance, restoration, transfer, and marketing.” This statement identifies a maddening Catch-22; it is the release of films in home video formats that creates awareness of them, resulting in “sufficient consumer interest.” Without increased availability, it is hard to see how the public especially will know enough about the films to start demanding them.

Schauer (2012, p. 35) explains how Manufactured on Demand (MOD) discs have been a boon for those wishing to acquire pre-Code films on DVD. He notes, “MOD programs like the Warner Archive allow the studios to monetize the more obscure sectors of their film and television libraries, featuring titles that would no longer have much retail potential otherwise.” He qualifies his statement by observing that even though Warner Bros. has made these films available, it has calculatedly limited the avenues of access. He writes, “the use of artificial scarcity, which compels consumers to purchase rather than rent the discs, also serves to cannily position them as ‘rare,’ which increases their value to collectors.” Warner Bros. has allowed the Turner Classic Movies cable channel to periodically show the films; during those broadcasts, the Warner Archive discs are heavily advertised during commercial breaks (Schauer 2012, p. 41). While this promotional strategy is designed to maximize profits in the consumer market, it has special relevance for librarians. MOD discs of obscure titles (such as the pre-Code films in the Warner Archive Collection) may be individual researchers' only opportunity to view these films en masse. Priced at around \$20, Warner Archive MOD films are not offered by rental services such as Netflix. Libraries, however, are able to obtain these discs and make them available to patrons, making it possible that libraries are the only financially sustainable way for individual researchers to access most of pre-Code film.

Why is film important for research?

Even though movies have a longtime presence in libraries—starting with film in the 1970s—the importance of video materials for research is still not fully recognized (Widzinski 2010, p. 369). Surprisingly, perhaps, even media librarians have failed over the years to acknowledge

how important a resource film is to research in a variety of disciplines. In a 2004 survey of librarians working with media collections, Laskowski and Bergman (2004, p 90) discovered that while all respondents listed “classroom instruction” as a stated purpose of their media collection, only 79 percent agreed that the collection supported “student research” while a mere 59 percent believed that it supported “faculty research.” Emanuel (2011, p. 289) advocates for the importance of media collections in supporting academic research, saying, “Film studies offer an interdisciplinary approach that can complement almost any area of study, particularly in the humanities. While the production elements of film are frequently considered, more often than not the same theories of literary studies are applied to the study of a film title, including psychoanalysis, gender theory, anthropology, semiotics and linguistics.”

Pre-Code film perfectly demonstrates her point. While the formal elements of early sound film, and the pioneering work of filmmakers adapting to a new medium (that is, “the production elements” Emanuel mentions) are relevant to film studies, pre-Code has much to offer other disciplines. These include gender studies, African-American studies, sociology, social work, and American studies—just to name a few. Pre-Code offers unique insight into cultural attitudes about women, ethnic minorities, social problems, and the mores and customs of America in the early years of the Depression and in the final years of Prohibition. As Foster and Dixon (2010, p. 350) note, pre-Code cinema is important for artistic and even more importantly for historical reasons.

Pre-Code films offer a poignant view of America during the Depression. Some of these films are extravaganzas from the likes of MGM—for example, *Mata Hari* in which Greta Garbo, draped in an Adrian gown and wearing a jewel-encrusted headdress, gyrates in front of a mesmerized cabaret audience. MGM films like *Mata Hari*, *Grand Hotel* or *Dinner at Eight* offer the glamour and escapism that many moviegoers craved. At the other extreme are the films that Warner Bros. made during the period—gritty films like William Wellman’s *The Public Enemy*, *Safe In Hell*, *Heroes for Sale*, and *Wild Boys of the Road*, with their frank depictions of violence and vice. These films featured gangsters and their molls, prostitutes, dope fiends and street urchins. MGM’s movies allowed audiences to escape into sumptuous fantasy. Warner Bros. faced the Great Depression head on, finding ever more creative opportunities to titillate the audience with sex and machine guns (Doherty 1999, pp. 54-55). Films from both studios reveal much about the psyches and circumstances of Depression-era Americans.

It’s not that there hadn’t been gangsters or sexually active women in silent films, but pre-Code cinema, especially in the films of Warner Bros., took this frankness and exploited it for its full shock value in order to boost profits. After all, ticket sales had plummeted in the early years of the Depression. During the last two years of the Hoover administration, from January of 1931 to March of 1933, box office receipts reportedly dropped 60 percent (Bergman 1971, p.xxii). Unemployment stood at around 25 percent in 1933 (Bureau of Labor Statistics 2009, p. 1). By way of comparison, during the most recent American recession unemployment peaked at 10 percent (Bureau of Labor Statistics 2013).

This downturn in ticket sales was Hollywood’s first crisis. Hollywood wasn’t the mature industry and international juggernaut it is now, and the sense of desperation is palpable in many of these films. For that reason they are a valuable record of their time. The titles are evocative: *Wild Boys of the Road*, *Heroes for Sale*, *Our Daily Bread*, *Gabriel over the White House*, and *The Easiest Way* chronicle (in order) homeless adolescents, drug-addicted

unemployed veterans, communal living as an alternative to the dismal economic status quo, a benign dictatorship as an alternative to the dismal economic status quo, living as a kept woman as a viable alternative to the dismal financial status quo.

Even today, with the Hays Code long jettisoned, such material would be regarded as edgy. How many mainstream Hollywood movies praise communitarianism rather than individualism? How many try to inspire sympathy for poor, unwed mothers or offer some sort of admiration for sexual adventuresses seeking excitement rather than love and marriage? Seven years after the beginning of the recession of 2007, it is hard to think of a realist (rather than a science fiction) film that toys with the notion of armed insurrection against the ruling class. This is, however, exactly what 1932's *Cabin in the Cotton* does. That film implies that wealthy Southern planters deserve to have their property and businesses destroyed by the sharecroppers they have disenfranchised. The leadership of the Soviet Union enthusiastically showed the film to Russian audiences; it was the first American talkie approved for screening in the U.S.S.R. (Doherty 1999, p. 50).

The fate of pre-Code, after the Code

In spite of the popularity of these films in the 1930s and their artistic and historical importance, Pre-Code films are largely non-canonical, due to an unusual and remarkable set of events. In July of 1934, Hollywood started putting the Hays Code into practice in earnest. Much of what made pre-Code so distinctive and valuable is precisely what made these films anathema to censors. When the Hays Code was dismantled in 1968, thirty-four years after its enactment, one might have expected these films to come back into the public eye. After all, the young people of the Depression were now only middle-aged adults. In fact, however, pre-Code had been largely forgotten. The terror of the early years of the Depression was possibly not something the young people of the Depression wanted to revisit in middle age—or perhaps they felt it was irrelevant, never to return thanks to the post-War economic boom and the economic safeguards (e.g. the Glass-Steagall Act, the Federal Deposit Insurance Corporation, and the Social Security Administration) put in place by Franklin Delano Roosevelt (Doherty, p. 20).

Still, there is another matter to consider: the evolution of video storage formats. In the early 1930s, there was only one way to view films—in the theater. People went to see movies, and if they liked them, they went back to see them again (Vidal, 2006, p. 15). In the late 1940s, the medium of television began to change viewing habits. Hollywood sold films to a nascent television industry. At first the film industry resisted the idea of selling off their patrimony, but when it became apparent that television programming might supersede movies, the studios became interested in cashing in on these valuable properties. The problem with pre-Code became apparent: the content was too racy. Still, the stars of the early 1930s were in many cases even bigger stars in the 1940s—Stanwyck, Crawford, Davis, Hepburn, Gable, Cooper, and Grant were still in the ascendant. The late 1940s saw some of their greatest triumphs. The films they starred in in the 1930s would have continued to be of interest for this reason alone. Still, those films, when shown on television were heavily censored—or not shown at all. For example, *Red Dust*, which featured Clark Gable, Jean Harlow and Mary Astor, was still considered too transgressive (Segrave 1999, p. 51). In the 1950s, Hollywood went so far as to remake the film (under the title *Mogambo*) with the aging Gable reprising his 1930s role, Ava Gardner recreating the role originated by Harlow, and Grace Kelly replacing Astor; the story and the bare-chested male star were apparently still compelling, but

the presentation in the earlier version (with Harlow playing a prostitute, and Astor's character clearly committing adultery) was in violation of the Code.

Gable's early films give viewers a more nuanced view of him as an actor. Gable played a Rhett Butler-like rake in 1932's *Red Dust* but before that, in 1931's *Night Nurse*, he played a murderous thug. Without access to these early films, there was no way for the public to fully understand the career trajectories of some of Hollywood's greatest stars.

What is the current status of these films?

There's an unprecedented level of availability in the United States for pre-Code film. The availability is better than ever—better, perhaps even than 1930-1934 due to the availability of home video. Of course there have always been a handful of well-known pre-Code movies, such as von Sternberg's *Morocco* and Capra's *It Happened One Night*, both of which have been available in home video formats for years. Increasingly, however, obscure pre-Code movies—the ones that haven't been well served by home video—are having a renaissance and being released in greater numbers. The Warner Archive Collection is primarily responsible for this riches, but there are other releases as well, such as Warner Home Video's "Forbidden Hollywood" and Universal's "Pre-Code Collection." All of these pre-Code videos can be purchased by libraries, thereby making these films available to scholars worldwide.

While the Warner Home Video and Universal releases are traditional DVDs, Warner Archive pre-Codes are low-budget MOD discs that use DVD-R technology (which limits playback equipment options) and contain no special features. By comparison, Warner Instant, the company's streaming service has only a handful of the pre-Code movies the company offers on DVD-R. Furthermore, even if these films were available for streaming in the U.S., there is no guarantee they would be available in that format internationally.

Warner Bros. has adopted a policy designed to create scarcity and to drive viewers to buy rather than rent discs—or stream video (Schauer 2012, p. 41). Comparatively few pre-Code films are available via services such as Netflix, as the Netflix DVD-by-mail business is based on a model that requires that discs purchased at a very low cost, which certainly excludes MOD discs. Smith (2006, p. 9) insisted in his influential book that Netflix, Amazon, and iTunes were "impressed by the demand they were seeing in categories that had been previously dismissed as beneath the economic fringe." Eight years later, there is little evidence that Netflix is looking to the obscure items at the end of the Long Tail as a profit center. In a book-length report on Netflix, Keating (2012, p. 232-33) asserts that the company's DVD-by-mail success was based on providing access to blockbusters bought in bulk and rented out in vast numbers.

How will streaming video impact availability for researchers rather than consumers?

In the United States, at least, many librarians and university administrators are eager to introduce streaming video. Streaming video is a wildly convenient medium, well liked by young adult consumers (Chao and Zhao 2013, pp. 27-28). Why should there be cause for concern? As is so often the case with libraries, the problem is money—and space. DVDs offer great selection at a low price. Streaming video offers a less comprehensive selection but a more convenient and space-saving method of delivery—at a higher price.

At the moment, pre-Code films are largely unavailable in streaming institutional subscriptions. Silent films, especially those made before 1923, have been widely licensed and are available in the U.S. from multiple vendors (e.g., Alexander Street and Kanopy), but most pre-Code has not. (Again, some of the better-known pre-Code titles, such as *Morocco* and *It Happened One Night* are available in the U.S. from Swank Motion Pictures.)

This discrepancy of availability between pre-Code and silent films makes sense. Silent films haven't had the outlaw status of pre-Code film and are better known and more likely to be canonical. More relevant, perhaps, is the fact that many silent films are no longer covered by copyright (Library of Congress, 1993). (There are, of course, some pre-Code films that have fallen into the public domain due to the failure of rights holders over the years to renew copyright.)

Copyright status is an important factor in the availability of films in home video formats. In the United States, the period from 1927-1930 was a watershed for movies. Not only was it the period in which silent film was completely phased out, it was also the period in which Walt Disney introduced his most famous creation—Mickey Mouse. Why is Mickey Mouse germane to an article on movies in libraries? Lessig (2004, p. 218) notes that Disney was a potent lobbying force pressuring the U.S. Congress to extend copyright protection to films made before 1923 (Cornell University, 2014) at the moment when that protection would have otherwise ceased. For this reason the Sonny Bono Copyright Term Extension Act—named after the late pop-star-cum-Congressman who made copyright extension his signature issue—is colloquially known as the “Mickey Mouse Protection Act.” (Lessig, 2001, p. 1057) Although the bill will be up for renewal shortly, there is no reason to believe that Disney and the rest of the motion picture industry will stop lobbying to extend copyright indefinitely. Because Congress now permits automatic renewal of copyright, there is reason to think that no copyrighted works will ever be released by Congress into the public domain again (Lessig, 2004, p. 135; Pierce, 2007, p. 140).

The main obstacle for access to silent films tends to be preservation; seventy-five percent of silent films have been lost (Pierce 2013, p. 21). Of those that remain, however, many are freely available since silent films made before 1923 have passed into the public domain (Cornell University, 2014). Alternatively, all early talkies—from *The Jazz Singer* in 1927 to the pre-Code films of 1930-1934 are for the most part protected by copyright. Copyright can be advantageous for film preservation and access, as it in theory should provide an incentive for restoration and release. Still, unless there is a mainstream audience for a title, not enough money can be recouped from a restoration. And because pre-Code, with few exceptions, is not canonical, there is no mainstream audience for it. Due to pre-Code cinema's non-canonical and somewhat obscure status, there is little consumer demand for them, which means that many films are not available at all or only available on DVD-R discs.

In fact, Pierce (2007, p. 140) has demonstrated that being in the public domain makes a film more accessible, and does not serve as a substantial disincentive for restoring films or releasing high-quality home video versions. If the CTEA were permitted to expire, it would likely be a boon for libraries and those studying pre-Code film.

Pre-code in cyberspace

This should be a golden age of access for pre-Code cinema; sometimes it seems as if every week brings with it the announcement of a new DVD-R release. At the same time that MOD is revolutionizing access to early sound film, however, streaming video begins to present a

problem. These films are largely unavailable in streaming form in general, and are unlikely to be released very soon for institutional purchasers. Warner Bros, as was already mentioned, is committed to a model of scarcity. Warner Archive pre-Codes are usually only available as discs for purchase, not rental. In general, they cannot be streamed via the company's Warner Instant consumer service. If the physical academic library media center is dismantled, replaced by streaming video subscriptions, however, convenience will have triumphed—but the variety of films patrons currently have access to will most likely decrease. Again, it seems unlikely that Congress will widen access by permitting them to be released into the public domain.

As was mentioned before, MOD discs require actual DVD players—computer optical disc drives cannot read the information on the discs. Without a media center committed to having playback equipment, students (many of whom are forgoing DVD players and TV sets and streaming video on computers and mobile devices instead) will have no place to watch these films. It is easy to put books in off-site storage, but since media is inextricably linked to the equipment needed for playback it is harder to move media collections. The media can be moved, but the attendant electronic equipment required for viewing needs to remain on site.

Still, even this is a small problem compared with the larger question of money. Money is very much of a finite resource at universities. In the U.S. rapidly escalating costs haven't dampened enthusiasm for online article databases. What the cost inflation for article databases has done is weaken the market for scholarly monographs (McGann 2013, p. 55). Similarly, it is easy to see that the purchase of streaming media will take precedence over the purchase of physical media. Streaming video, like online articles, is exponentially more expensive than the DVD. Streaming video can only be licensed but not purchased. That increased cost will necessitate the purchase of fewer videos, regardless of format. When libraries have to absorb the increased costs associated with the streaming of educational media, it is hard to believe that they will make it a priority to buy little-known black-and-white feature films on DVD for a research collection. As for the handful of pre-Code movies sufficiently well known to have been made available for institutional streaming purchase, the cost quickly becomes prohibitive. At this writing, it would cost the present author's library nearly \$200 to purchase *Morocco* from Swank Motion Pictures for a one year subscription. On the other hand, she can at this writing go online and purchase Universal's *Marlene Dietrich: The Glamour Collection*—a box set that includes *Morocco* as well as four other films—from Amazon for \$8.57.

Can libraries support subscription-based media purchases and maintain a standing research collection? The answer, given academia's priorities and the current purchasing models, appears to be no. If films are not to be added to a collection and owned in perpetuity it is hard to see how rare, offbeat, and little accessed films can be collected, promoted and made available to researchers exploring the infrequently traveled byways of American film and American history.

Streaming video has important pedagogical applications, such as online learning. Furthermore, it is an ideal alternative to class reserves. But image quality may be poorer than for DVDs, and professors who do in-class screenings might still prefer physical media. Finally, all kinds of non-mainstream material from pre-Code on DVD-R to foreign films on PAL DVDs will have to be collected in tangible formats for the foreseeable future if current collection development policies and traditional library functions are not sacrificed as libraries adopt new technologies. If anything, these sorts of rare gems should remain a part of

academic library media collections—collecting them and making them available should be part of collection development policies—and making such items available should remain important. Furthermore, media librarians should be making these decisions, not university administrators with little knowledge of video formats or film history.

It is archives that preserve film of course, but it is libraries that are instrumental in canon formation. As mentioned earlier, the release of pre-Code films on home video will require consumer interest, and university classes and academic library availability are a part of making this period of film better known. As Cyzyk (1993) suggests, having a library as intermediary is not always benign, as library purchases can, for example, reinforce elitist attitudes. Still, thoughtful collection development on the part of knowledgeable professionals continues to be the best possible solution. Librarians have the professional ethics and training to mitigate elitism. Private corporations cannot be relied upon to demonstrate those sorts of scruples—or to go out of their way to introduce consumers to little-known items at the end of the “Long Tail.” Academic libraries should be part of the process of facilitating research and creating demand that will raise the visibility of these films and offer incentives to studios to make more of them available in more formats—including higher quality DVDs, Blu-ray, and streaming video.

Still, given the appeal of streaming video, it seems more likely that American libraries will choose to become brokers of online subscriptions rather than continue to be stewards of cultural heritage with permanent ownership of information objects. However, there is no real reason why the two roles should be mutually exclusive, or why one medium must be purchased at the exclusion of all others. Money can be allocated to support both formats. The fact is some movies will continue to require a substantial commitment to tangible media formats and playback equipment. Pre-Code movies fall into this category—how many thousands of other worthy films do, too?

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