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## **Ephemeral for no good reason: the waste of documentary and independent films**

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### **1. SOCIAL-ISSUE, DOCUMENTARY AND INDEPENDENT FILMS COMPETE FOR VISIBILITY IN A CROWDED AND CHAOTIC MEDIA MARKET.**

The wide availability of inexpensive and user-friendlier production tools has finally brought us closer to the long-deferred dream of mass moving image authorship. But while many (though not all) obstacles to production have crumbled, distribution problems are escalating.

First, many more films (I'm going to use "films" to stand for all moving image media) are produced than can be effectively distributed. This is true in all sectors and at all levels of media production, from studio-distributed homevideo to independent and experimental work. On top of that, distributors and broadcasters can't effectively promote everything they take on. There simply aren't enough dollars or time. Second, though many new distribution outlets have emerged in the past two decades (free cable, satellite, pay TV in all its flavors, homevideo, local access) most are built around highly specific programming models, and tend to acquire films compatible with their businesses. Independent producers tend to begin their careers making films that reflect personal or individual points of view, and if their skills and sensibility match the desired sensibility of a cable network, they'll be offered opportunities to make new work crafted to play well on that network. But most makers don't rise to that level. This isn't necessarily true for local access, but local access doesn't enable broad visibility. Third, there's a dramatic disparity in bargaining power between people who produce films and the businesses that distribute them. Producers take big risks and make a few films for net dollars. Distributors spread their risks among many films, and collect gross dollars.

The press is full of simplistic pop sociology about America's shrinking attention span and the effects of media outlet proliferation. After subtracting

the loose thinking, there's still a problem. If people's attention and schedules are stressed by long work weeks, complex domestic responsibilities, the human need for gregariousness, and too many emails, it'll be harder for them to find time for place-based entertainment. This poses difficulties for media that doesn't come into the home or can't be found at a neighborhood video store.

## 2. MOST SOCIAL-ISSUE AND DOCUMENTARY FILMS HAVE A SHORT LIFE DUE TO UNDERSTANDABLE BUT UNREASONABLE CIRCUMSTANCES.

Many films are of topical interest, and even if they aren't, they're often treated that way by distributors. "What, another film about dementia? Too many already," a distributor might say. One of the virtues of independent films, that they may be permeated with a strong sense of time and place, may also work against their continued availability as time marches on. Television tends to license films for a few years at a time. The end of a broadcast window may plunge a film into obscurity. Alternatively, some films may be picked up under long-term contracts, which can render a film invisible if the distributor or broadcaster doesn't choose to promote or play it. If the distributor is a large corporation, it's easily possible that the market value of an independent or documentary film may be too low to make its distribution profitable and it is shelved. New work pushes older work off the shelf.

Much documentary or social issue work shares attributes with avant-garde or experimental work and is distributed by the handful of outlets that handle these sprawling genres. These distributors tend to be artist-run or more artist-friendly and are often nonprofit. Their catalogs often contain films that have remained in distribution for many years and will continue to do so as long as there are physical copies available. This is good, but these distributors often have little or no promotion budget. When funds are available, they often tend to go towards promoting newer and trendier work or "classics" that earn a reliable income for the distributor. It may not be in the distributor's interest to promote films whose audiences have narrowed, no matter how important or good the films might be.

Many films never get formally distributed. They may disappear from the public sphere after festival screenings. They may be student films by people

who don't identify as mediamakers after school. They may be available only through the filmmakers and promoted essentially by word of mouth, email or personal website.

Others may be unavailable for legal reasons. Many films contain licensed media assets such as archival footage, music or royalty-based performances. It's quite often unaffordable to license these for all media and markets in perpetuity. When a single license expires, it can infect a film and render it undistributable. Promising new media and markets (such as DVD or pay TV) may emerge, but new clearances may be needed to move films into new media.

Every year many thousands of documentaries, social-issue, experimental and personal films are made. How many find some sort of conspicuous distribution? One hundred? Two hundred? If it is two hundred, how many of these are available after five years? After ten years? This would be a good excuse for further study.

I've myself found that countless makers abandon their master materials in laboratories soon after they make their first release print or prints. Lab vaults are full of independent projects made over many years, few of which are ever retrieved for reduplication. This might not be so if it were easier for makers to distribute materials themselves without the intermediation of distributors.

### 3. SOME STAKEHOLDERS HAVE AN INTEREST IN INHIBITING THE CONTINUING AVAILABILITY OF CERTAIN FILMS. THIS MUST CHANGE.

It's not necessarily in everyone's interest that all films be easily available to everyone at all times. Stock footage houses, music publishers, record labels, unions, guilds and others earn additional income by charging for rights upgrades. It's in their interest to create new kinds of "billable events" and increase their number. This wouldn't occur if films were allowed to migrate to new media and markets without securing additional clearances.

Licensors often make life difficult for an existing film in order to reduce competition for a new project of their own. A maker seeking to renew a five-year license on a musical composition may find a renewal no longer

available because the original artist is now planning their own project or has promised an exclusive license to a higher bidder. Although disputes between collaborators are almost unknown (ha!) in the documentary and independent film fields, there have been cases where films are held hostage to disagreements or conflicts between their makers. Films may also be enjoined from distribution due to litigation or bankruptcy. It's important to point out that fears of legal exposure function to keep films in the can just as effectively as actual legal exposure, whether or not these fears are founded upon reality.

There's also a possibility that some smaller distributors have identified certain films or certain makers as "cash cows" and don't wish other works in their catalogs to compete with them.

Then there is the difficult issue of films disavowed by their own makers. Whether for artistic, political or personal reasons, some makers desire to keep some films out of the public eye.

Finally, makers may also wish to control the means and media by which works are distributed or presented. Some filmmakers won't allow their work to be presented or distributed on video. Others are anxious about possible unauthorized duplication that may occur if they release in video formats, or, God forbid, on the Net.

Some of these issues are easier to deal with than others, but they're all more or less intractable and limit access to the body of preexisting moving image work.

#### **4. TECHNOLOGICAL CONSTRAINTS NO LONGER LIMIT THE AVAILABILITY OF FILMS. WHAT'S NEEDED IS A CHANGE IN PERSPECTIVE AND A COMMITMENT TO ENCOURAGING AND SUSTAINING DIVERSE MESSAGES.**

Cable, pay TV, satellite, VHS, DVD and public access have brought a lot of documentary and social issue films to wide audiences. As we've seen, though, most films don't get distributed in these ways, and most films are unavailable after a short window.

But now we have the Net. It's very easy and quite inexpensive to host digital video files and make them available for streaming, or better yet, downloading. The three primary processes involved in making films available online (digitization, hosting, and transmission) are considerably less technically intimidating and significantly more affordable than they were even two or three years ago. Additionally, there exist a number of non-for-profit and commercial entities dedicated to hosting and presenting films online. These entities offer new distribution alternatives to independent makers and small production and distribution companies.

It's not unusual these days for technology to offer solutions for which people aren't prepared. And so it is in the film business. It would seem unequivocally good that all films should be available to anyone at anytime at moderate expense or no expense at all. But many disagree or consider this impossible.

I often hear these thoughts from makers:

*The quality of online films is poor, and won't communicate my original intentions.*

Was true, could be true in some cases, doesn't have to be true. Online films don't have to be little glowing postage stamps anymore, especially if they're downloadable rather than streamable. MPEG-2 or MPEG-4 files can be DVD- or near-DVD quality. Yes, they do take a lot of bandwidth to download, and they require a broadband account, but remember back to when VHS and DVD players were expensive luxury items? The availability of content will drive the availability of tools to play it.

*We will lose control of our material if it's available online.*

Did the onset of videotape cause makers to lose control of their material? No. It killed the 16mm distribution market, yes, lowered sale prices, but created a larger market for films – in other words, it was a market adjustment rather than murder. Will there be unofficial and unauthorized copying? Of course. There is now. What maker hasn't heard that teachers are renting his/her work at a video store and showing it in class, or duping their own copies from rental or sales tapes? The answer isn't trying to eliminate unauthorized duplication – this is extremely difficult – but selling more copies.

*I can't predict what'll happen if I put my work online, so I'd just as soon wait until there is more experience / a better business model / someone to pay me big money to do it / etc.*

The answer to this quite reasonable statement is to position oneself as an active force for change rather than a victim of unknown forces. True enough, no one knows. So why not take one or two films, get them digitized, and put them up for downloading? This will serve to promote you as a maker and your work, and keep your work in front of the eyes of the world. If this is a successful experiment, you can put more films online. If unsuccessful, you can let them stay up or take them down whenever you like.

*People won't buy (or rent) my work if they can get it online for free.*

This would seem like common sense, but it isn't necessarily true. Many studies point out that song-swappers also buy CDs, in many cases more than those who don't fileshare. Many people collect CDs and DVDs because of the added value supplied by packaging, booklets and supplementary material. Again, the issue is to create positive reinforcements to purchase rather than fighting difficult battles to prevent copying.

*I don't want to be the first one to do this.*

I've sold stock footage since 1984. This business is my primary means of livelihood. Like most other stock footage companies, we jealously guarded our material and made sure (as best we could) that no one got access to images and sounds in our collection except by contract.

In January 2001, we partnered with the Internet Archive, a California non-profit organization, to put up archival films from the our collection – at first, some 200 titles and now over 1,600. The collection is of interest to scholars, teachers and the general public, and a bonanza to media producers, as they may be downloaded and reused without payment of license fees. Few of the films have mass-market potential. The most frequently downloaded title is the legendary 1951 Civil Defense film *Duck and Cover*, which in the last year has been downloaded 70,000 times. Others, less famous, have just a few hundred downloads to their credit. This isn't so different than what might happen if 1,600 documentary and independent

films were put online for download. The collection might be compared to a university library – it isn't a repository of mass-distributed pop culture, but rather a collection of films that serve as evidence and primary source materials. The films are offered in a number of different formats and resolutions, but the best-quality files are in MPEG-2, which is near-DVD quality.

In two and a half years, something around a million and a half films have been downloaded. Our sales are up 15 to 20% over last year in the middle of a poorly performing economy, and our competitors' aren't. I can attribute this only to the easy availability of our films online and the concomitant publicity.

We rely on a two-tier system, and I think that there are lessons for others in this. If someone wishes a written license agreement, or if they desire access to a physical videotape element for duplication (which is somewhat higher quality than the MPEG-2 files we offer online), they have to pay. In other words, people who need value-added services are paying for them, and others who are willing to accept more basic access to the archives do so for free.

Hundreds of people have used this material in teaching and research, and hundreds more in the making of their own work. Downloaded footage from our collection has been used by such filmmakers as Angelo Sacerdote (*Fed Up!*), a feature-length documentary on sustainable agriculture; Winton-duPont Films (*Big Thinkers*, a documentary series for Tech TV); Laurie Kahn-Leavitt (a PBS documentary on Tupperware and its charismatic founders); Vicki Bennett (*We Edit Life* and *Remote Controller*, two collage films with original musical scores); Whispered Media (*Boom!* and *We Interrupt This Empire*), two social-issue documentaries set in San Francisco; numerous films produced for the "Stockstock" Film Festival in Seattle, and many more. What's common to all these projects is that they had little or no budget to license archival footage, and wouldn't have been able to use what they did without taking advantage of the Internet Archive's online collection.

We feel that the publicity resulting from this endeavor has helped us compete more equally with other collections whose promotion and marketing budgets are much greater. Additionally, this project has fed more archival film imagery into the culture, which is likely to result in increased demand for similar imagery over time.

*People shouldn't get my films for free. I need to eat, too.*

I can't dispute the latter, but there may be good reasons why the former is a good idea. I should say in passing that the Internet is very close to being able to charge small fees for downloaded content owned by small companies or individuals. It's already easy to buy just about any kind of software online. You download it, and it expires in two weeks or a month if you don't purchase an registration key. Downloadable video files aren't any different. But there are good arguments why downloading should be free.

The biggest reason to make material available online for free is that it feeds demand. Think of a free download as a trailer, a preview, an ad, as a way of stimulating DVD sales. Or, best of all, think of it as a gift to the world, an especially easy thing to do if you're putting a film up that's outlived its potential in ordinary legacy markets like VHS, DVD and cable.

As mentioned above, my company earns more in royalties than it did before we started putting films online for free. There are other, less tangible benefits as well – the satisfaction of knowing that "my" content is reaching into places where it otherwise would have not, and the endorphins that flow when a stranger accosts me and thanks me for the archives.

Two scenarios:

For the first, please excuse my oversimplification. I conceive a historical documentary, let's say a film on the little-known story of rebellions led by youth of color in Civilian Conservation Corps camps during the Great Depression. That's, by the way, a film I'd like to make one day. I weave together public domain stills from the National Archives, license period music, download a little license-free footage from the Internet Archive and buy some outrageously expensive newsreel material from stock houses. Besides that I shoot the usual interviews with participants and historians. The film is funded philanthropically and by public TV through a second-tier station, and makes the national PBS schedule. After several plays it vanishes from the air. Several hundred VHS copies are sold through PBS Video, and after their window expires (forgive me if I'm getting the sequence slightly wrong) another distributor picks it up and reissues it on tape, or now more likely on DVD. So now perhaps two thousand copies are in circulation. Perhaps my film cost \$100,000 to make. Just for laughs, let's



split this figure and allocate costs between TV and video, say \$80,000 to make this film for TV and another \$20,000 to make it for homevideo. This means that it's costing \$10 for each single tape or DVD that makes it into a library, a home or an educational institution. What's going on here? Everyone involved is practically working for nothing, except for the vendors of services, supplies and content, and it's still costing an arm and a leg to buy a tiny audience. It might be easier to put it online for free and publicize the heck out of it on the Web.

A second scenario: Whispered Media, an activist media collective in San Francisco, partners with other organizations and individuals to make *We Interrupt This Empire*, an energetic and imaginative 58-minute documentary about the U.S. attack on Iraq and the activist response in San Francisco and around the world. Whispered makes several hundred VHS copies for a few dollars apiece, gives most away to disseminate the film and sells the rest. They also ask the Internet Archive to digitize the film from a mini-DV master and host digital versions in various formats on their site. The Archive does this without charge. As of this date, the film had been downloaded 131 times. That's not many times, but then again no one has publicized its online availability yet. But that's 131 copies out there at no cost to the producer and at minimal cost to the Archive, who is a wholesale consumer of storage and bandwidth.

Why not expand this experimental model to hundreds or thousands of documentary, social-issue and independent films?

**5. ALL FILMS THAT RECEIVE PUBLIC OR FOUNDATION FUNDING SHOULD BE ACCESSIBLE BY DEFAULT. IF NOT ACCESSIBLE THROUGH LEGACY MODES OF ACCESS (DVD, REGULAR BROADCAST OR CABLECAST) THE FILMS SHOULD BE AVAILABLE ONLINE ON DEMAND, PREFERABLY AT NO COST.**

We need to introduce and sustain a new assumption for all media work that receives foundation or public funding. That assumption is that after the usual monopoly windows (TV, theatrical, etc.) have expired (if not before), all films should be in active distribution on DVD or similar media. If not available for such distribution (and, hopefully, even if so) they should be available online on demand, preferably at no cost. Publicly funded media should be publicly accessible. Period. This is the thinking behind the

BBC's recent announcement of a BBC Creative Archive, which will make much of their owned content available online for free downloading and reuse, reportedly only for noncommercial purposes. As a publicly supported institution, they are adopting the perspective that their productions should be freely available to the maximum feasible extent.

**6. RECOMMENDATION: ONLINE DISTRIBUTION RIGHTS (THROUGH PRESENT AND FUTURE MEANS) SHOULD BE CLEARED FOR ALL LICENSED MEDIA ASSETS, PERFORMANCES AND OTHER LICENSABLES AT THE TIME OF RELEASE. FUNDERS SHOULD ALLOW FOR THIS WHEN COMPUTING GRANT AMOUNTS. FUNDERS, PRODUCERS AND CONTENT OWNERS SHOULD SIT DOWN AND BARGAIN COLLECTIVELY TO MAKE THESE RIGHTS AFFORDABLE.**

Ultimately, the only answer to the third-party rights problem that inhibits the life of films is to consider rights clearance as part of the production process and clear necessary rights up front. This was the rationale behind the rights initiative championed by National Video Resources in the early 1990s – to get a number of archival footage companies to agree to charge a modest supplement for independent productions so as to enable their being released in homevideo.

In 1960, Ronald Reagan, president of the Screen Actors Guild, struck a bargain with the major movie studios that were signatories to SAG contracts. In the deal, SAG waived its rights to residuals on pictures produced before 1960, and received various concessions from the studios in return. This means it's a lot easier and cheaper to reuse pre-1960 films in new media. I'm advocating a similar kind of strategy today to enable increased distribution online.

People will respond to what they *can* see, not what they cannot. Films that are clear for mass distribution and easily available will work their way to viewers, and become key cultural reference points.

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