

A Running Start:
A Crowd-Sourced Database
of Due Diligence
to Invoke
Section 108

deg farrelly – Arizona State University
Charleston Conference – November 4, 2016

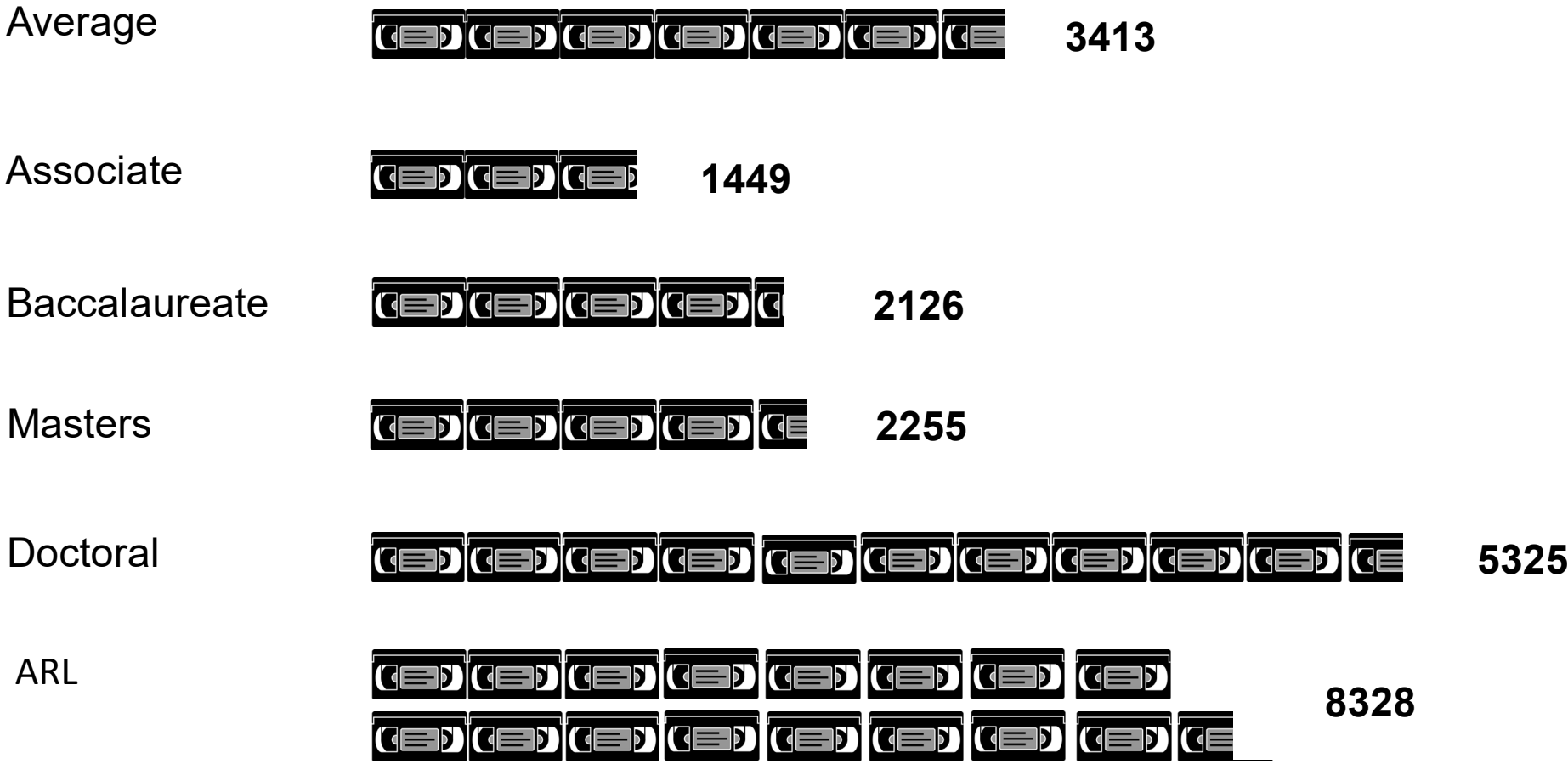
Scope of the Issue





Scope of the Issue

 = 500 VHS Tapes



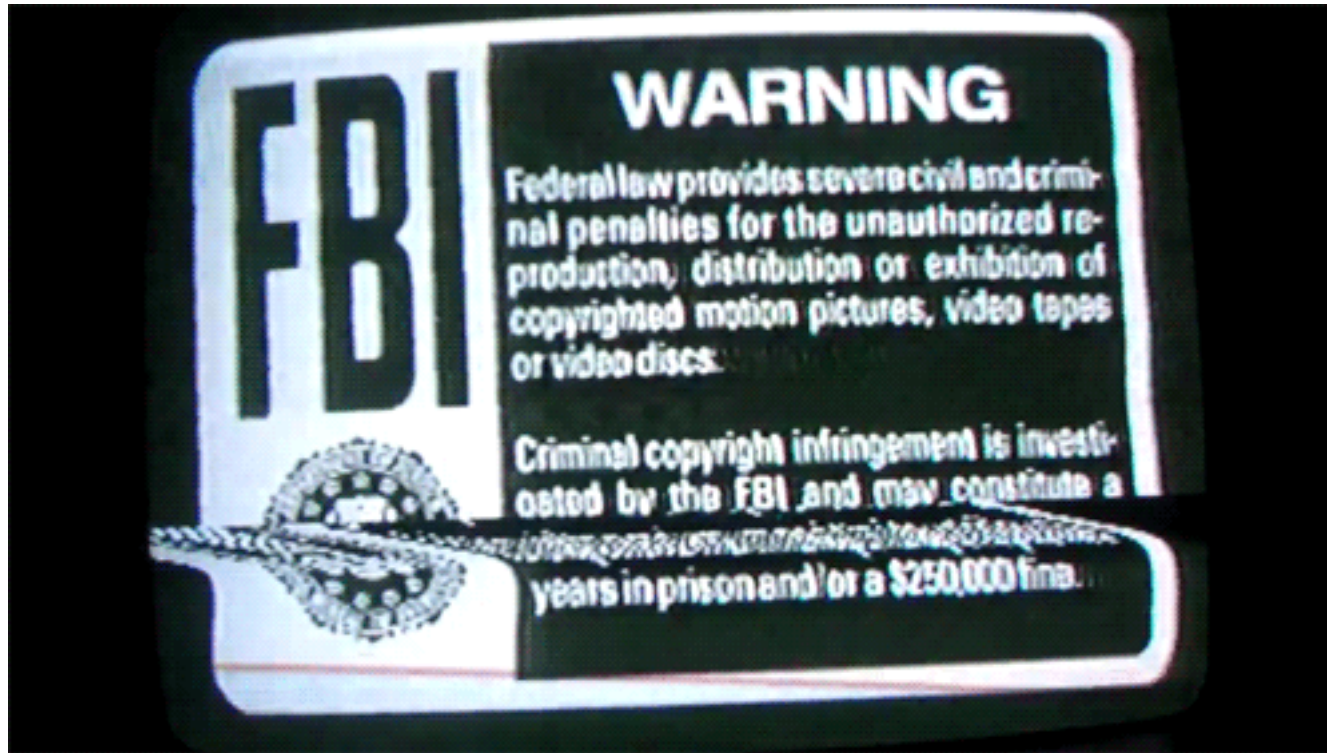
Source: farrelly, d. & Hutchison, J. (2013) Survey of academic library streaming video [Data file].
Provided by authors

17 U.S. Code – Section 108 – limitations on exclusive rights:
Reproduction by libraries and archives.

- What does it allow?
- What does it require?
- What are the limitations



Section 108





17 U.S. Code § 108 - Limitations on exclusive rights: Reproduction by libraries and archives

<https://www.law.cornell.edu/uscode/text/17/108>

- (c)** The right of reproduction under this section applies to **three copies** or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is **damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete**, if—
- (1)** the library or archives has, after a **reasonable effort**, determined that an **unused replacement cannot be obtained at a fair price**; and



In Brief

You can make up to 3 digital copies of items that are:

- Lost
- Damaged
- Stolen
- Deteriorating
- Obsolete format





Provided.....

You have conducted:

- A **reasonable** search
- For an **unused** copy
- At a **fair** price



Limitations of Section 108

- 3 copies
- Digital copies cannot be:
 - (c) (2) ... **made available to the public** in that format **outside the premises** of the library or archives in lawful possession of such copy.









But...

(f) **Nothing** in this section—

(4) in any way **affects the right of fair use** as provided by section 107...



Deteriorating or Obsolete?



Section 108 defines “obsolete”

(c) (2) ...a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.





Last manufacturer of VHS players - Funai Corp discontinued production in July 2016



FUNAI



13

Tune In, Turn On, Drop Out

Section 108(c) and Evaluating Deterioration
in Commercially Produced VHS Collections

Walter Forsberg and Erik Piil

ABSTRACT

Analog videotape, an imperfect moving image technology format since its introduction, is reaching the end of its life cycle. However, large quantities of out-of-print and irreplaceable VHS titles still comprise significant portions of library and archival collections and circulations. Given the need to preserve this content, this study investigates the use of the "dropout" metric (counts of disruptions in the video signal) for determining whether libraries and archives can invoke their rights of reproduction under the United States Copyright Act. Videotape technology and deterioration problems are explained and prior deterioration studies are reviewed. Dropout tests of four pairs of commercially produced VHS titles are conducted and relationships between videotape deterioration as measured by dropout counts, circulation statistics, and manufacturing quality control standards are evaluated. Offering noninvasive evidence of videotape deterioration, quantified dropout counts appear to provide libraries and archives with an objective measure to meet the vague "deterioration" standard of the Copyright Act.

INTRODUCTION

Particularly among research-level university institutions, circulating library collections still consist of large amounts of VHS videotape. With the advent of "peak-VHS" sales in 1998, and the 2008 announcement of commercial discontinuation by its "final supplier" (wholesaler Distribution Video and Audio), university libraries defaulted to become some of the most significant North American entities still

Forsberg, W. & Piil, E. (2014). Tune in, turn on, drop out. In S. Hastings (Ed.) *Annual Review of Cultural Heritage Informatics* (pp.213-242). Lanham: Rowman & Littlefield Publishers.



Urgency

ARTICLE

WHY MEDIA PRESERVATION CAN'T WAIT: THE GATHERING STORM
Mike Casey, *Media Digitization and Preservation Initiative, Indiana University, USA*

1. Introduction

Once upon a time there lived a king and queen who ruled the land of Media. The kingdom of Media was a peaceful land. Its subjects — maybe we should call them objects — lived happy analog lives where preservation, access, and the means of production all revolved around the physical object. But the king and queen had felt the winds of change blowing across their lands. They had heard rumors of an unspeakable evil lurking about their borderlands and they knew that the old ways could not hold much longer...

Media preservation has reached a crisis point for content carried on physical audio and video formats as the world has transitioned to the digital age. Archival media collections could soon be considered highly endangered. It might help to invoke the power of narrative to aid in understanding the critical issues facing media archives and to spark us to imagine solutions to seemingly intractable problems. Outside of the fairytale, in our own world, the signs are ominous. Witness these disquieting statements made in past years by the National Recording Preservation Board in the United States and by international colleagues in IASA:

...it is alarming to realize that nearly all recorded sound is in peril of disappearing or becoming inaccessible within a few generations.⁹

In the mid-to long-term there is a major risk that carrier degradation combined with playback obsolescence will defeat the efforts of archivists...¹⁰

Both of these are older statements and most media preservationists today believe that the potential peril is within less than a generation and that major risk lies in the near-to-mid-term. Add these statements to the fact that the Library of Congress has recently reported that "Audiovisual materials are the fastest-growing segment of our nation's archives and special collections"¹¹ and you have what appears to be a gathering of the perfect storm.

2. What is the problem?

The problem can be effectively summarized with a few keywords: large numbers, obsolescence, degradation, high research value, and short time window. In other words, archives hold very large numbers of analog and physical digital recordings on obsolete audio and video formats that are actively degrading, some of which contain content with high research value. We have a relatively short time window to save these recordings. Briefly considering each keyword will shed some light on the basic issues. My focus in this article is on cultural heritage collecting institutions and materials since that is what I know best.

9 Council on Library and Information Resources and the Library of Congress, sponsored by the National Recording Preservation Board, *Capturing Analog Sound for Digital Preservation: Report of a Roundtable Discussion of Best Practices for Transferring Analog Discs and Tapes*, accessed October 22, 2014, <http://www.cilir.org/pubs/report/pub137>.

10 Majella Breen, Gila Flam, et al. (Ed.) International Association of Sound and Audiovisual Archives, IASA Editorial Group, *Task Force to establish Selection Criteria of Analogue and Digital Audio Contents for Transfer to Data Formats for Preservation Purposes*, accessed October 22, 2014, <http://www.iasa-arch.org/task-force>.

11 Council on Library and Information Resources and The Library of Congress, *The Library Of Congress National Recording Preservation Plan*, (Washington DC, December 2012), 6.

14

iasa journal no 44 – January 2015

Whether that of obsolescence or deterioration, the issue is critical and urgent.

Casey, M. (2015). Why media preservation can't wait: The gathering storm. *IASA Journal*, 44, 14-22.



Arguments against taking action

- There are players still available at Walmart.
- We will be able to repair our VHS players with parts made with 3D printers.
- We lack expertise and/or funds





Don't kick the can down the road!





What constitutes "Reasonable" effort?

17 U.S. Code § 108 (c) (1)

"The library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price."





What constitutes "Reasonable" effort?

For searching:

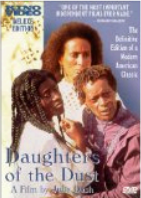
- WorldCat
- Original publisher/distributor
- Google
- Amazon





What constitutes "fair" price?

[Return to product information](#) | [Have one to sell?](#) | Every purchase on Amazon.com is protected by an [A-to-z guarantee](#). | [Feedback on this page?](#) [Tell us what you think](#)



Daughters of the Dust (2000)

[Cora Lee Day](#) (Actor), [Alva Rogers](#) (Actor), [Julie Dash](#) (Director) | Rated: Unrated | Format: DVD

★★★★☆ 103 customer reviews | [Share](#) [✉](#) [f](#) [t](#)

Refine by [Clear all](#)

Shipping

Free shipping

Condition

New

Used

Like New

Very Good

Good

Acceptable

Price + Shipping

\$345.00
+ \$3.99 shipping

Condition [\(Learn more\)](#)

New

Out of print, Brand new dvd/Will ship first class with tracking.


Delivery

- Arrives between May 2-17.
- Ships from CA, United States.
- [Domestic shipping rates](#) and [return policy](#).

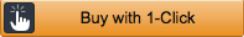
Seller Information

embae
★★★★★ 99% positive over the past 12 months. (758 total ratings)

Buying Options

 Add to cart

or

 Buy with 1-Click

Ship to:

James Troutman- YORK [⌵](#)

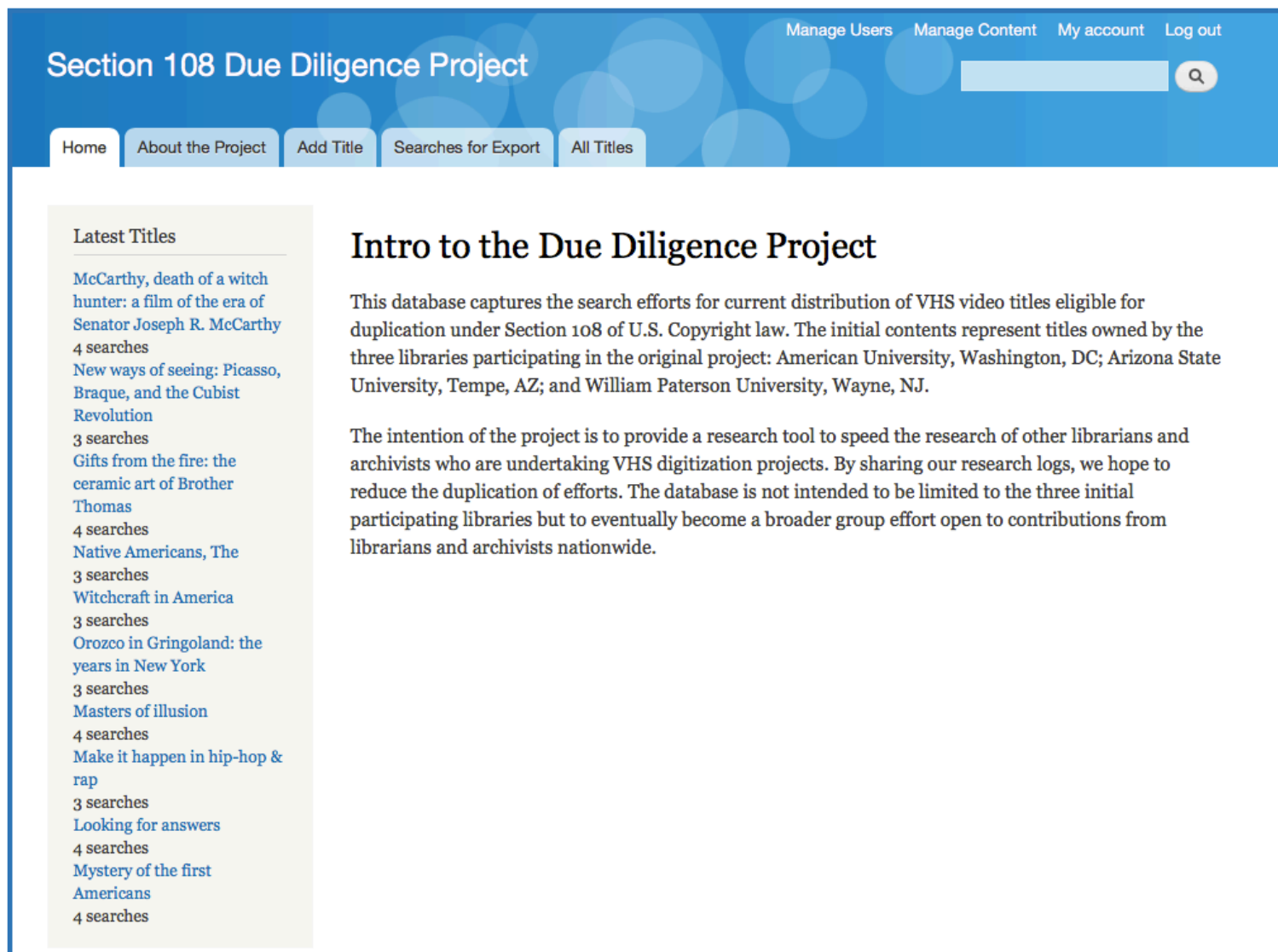




Section108video.com Database



Section108video.com Database



The screenshot shows the website's header with navigation links: Manage Users, Manage Content, My account, and Log out. The main title is "Section 108 Due Diligence Project" with a search bar. Below the header are tabs for Home, About the Project, Add Title, Searches for Export, and All Titles. The main content area features a "Latest Titles" sidebar with a list of video titles and their search counts, and a central "Intro to the Due Diligence Project" section with descriptive text.

Section 108 Due Diligence Project

Manage Users Manage Content My account Log out

Home About the Project Add Title Searches for Export All Titles

Latest Titles

- [McCarthy, death of a witch hunter: a film of the era of Senator Joseph R. McCarthy](#)
4 searches
- [New ways of seeing: Picasso, Braque, and the Cubist Revolution](#)
3 searches
- [Gifts from the fire: the ceramic art of Brother Thomas](#)
4 searches
- [Native Americans, The](#)
3 searches
- [Witchcraft in America](#)
3 searches
- [Orozco in Gringoland: the years in New York](#)
3 searches
- [Masters of illusion](#)
4 searches
- [Make it happen in hip-hop & rap](#)
3 searches
- [Looking for answers](#)
4 searches
- [Mystery of the first Americans](#)
4 searches

Intro to the Due Diligence Project

This database captures the search efforts for current distribution of VHS video titles eligible for duplication under Section 108 of U.S. Copyright law. The initial contents represent titles owned by the three libraries participating in the original project: American University, Washington, DC; Arizona State University, Tempe, AZ; and William Paterson University, Wayne, NJ.

The intention of the project is to provide a research tool to speed the research of other librarians and archivists who are undertaking VHS digitization projects. By sharing our research logs, we hope to reduce the duplication of efforts. The database is not intended to be limited to the three initial participating libraries but to eventually become a broader group effort open to contributions from librarians and archivists nationwide.



All Titles

Section 108 Due Diligence Project Log In

[Home](#) [About the Project](#) [All Titles](#)

All Titles

Currently 1391 titles in the database

Filter by...

Title **Series Title** **Publisher/Producer** **Distributor**

Title	Series	Publisher/Producer	Distributor	Institution	Updated/commented date		
Cabra Mareado Para Morrer: A Man Listed to Die			Cinema Guild	American University	2016-10-25 13:30	3 searches	0 comments
Indians, Outlaws, and Angie Debo	The American Experience	WGBH Boston	PBS Video	American University	2016-10-25 13:29	3 searches	0 comments
Ironclads- The Monitor & The Merrimac			Atlas Video	American University	2016-10-25 13:27	3 searches	0 comments
Belory- The Belovs		Len doc Studios	First Run/Icarus Films	American University	2016-10-25 13:23	3 searches	0 comments
Too Many People, Too Few Jobs: The New Welfare Trap			ABC News	American University	2016-10-25 13:22	3 searches	0 comments



Title Record

Section 108 Due Diligence Project

Manage Users Manage Content My account Log out

Home About the Project Add Title Searches for Export All Titles

Institutions

William Paterson University
(Owner)

Angel on death row

View Edit

Bibliographic Information

Title: Angel on death row
Series: Frontline
Distributor: PBS Video
Publisher/Producer: Ben Loeterman Productions, Inc.
Publication Date: 1996
Format: vhs
Local Identifier: VC 3735



Title Record, Search Data

Search Data

Additional search

	Date Checked	Checked by	Notes
Additional search (Edit)	April 13 2016	Jane Hutchison Surdi	Checked WGBH, BBC, web

Amazon search

	Found	Date Checked	Checked by
Amazon search (Edit)	No	April 13 2016	Jane Hutchison Surdi

Distributor search

	Found	Date Checked	Checked by
Distributor search (Edit)	No	April 13 2016	Jane Hutchison Surdi

WorldCat search

	Found	Date Checked	Checked by	WorldCat Record
WorldCat search (Edit)	Yes	April 13 2016	Jane Hutchison Surdi	Number of Libraries: <ul style="list-style-type: none">• 94 WorldCat Record: 35094331

[Add new comment](#)



Title Record, Search Data

Search Data

Additional search

	Date Checked	Checked by	Notes
Additional search (Edit)	April 13 2016	Jane Hutchison Surdi	Checked WGBH, BBC, web

Amazon search

	Found	Date Checked	Checked by
Amazon search (Edit)	No	April 13 2016	Jane Hutchison Surdi

Distributor search

	Found	Date Checked	Checked by
Distributor search (Edit)	No	April 13 2016	Jane Hutchison Surdi

WorldCat search

	Found	Date Checked	Checked by	WorldCat Record
WorldCat search (Edit)	Yes	April 13 2016	Jane Hutchison Surdi	Number of Libraries: <ul style="list-style-type: none">• 94 WorldCat Record: 35094331

[Add new comment](#)



My Institution Option

The screenshot shows a web interface for a library project. At the top, there is a blue header with the text "Section 108 Due Diligence Project" and navigation links: "Manage Users", "Manage Content", "My account", and "Log out". Below the header is a search bar and a row of buttons: "Home", "About the Project", "Add Title", "Searches for Export", and "All Titles".

The main content area is divided into two columns. The left column, titled "Institutions", lists "William Paterson University (Owner)". The right column features the title "Angel on death row" with "View" and "Edit" buttons. Below the title is a "Bibliographic Information" box containing the following details:

- Title:** Angel on death row
- Series:** Frontline
- Distributor:** PBS Video
- Publisher/Producer:** Ben Loeterman Productions, Inc.
- Publication Date:** 1996
- Format:** vhs
- Local Identifier:** VC.3735

Below the bibliographic information is a button labeled "My institution owns this!", which is circled in red. Underneath this button are several links: "Add new WorldCat search", "Add new web search", "Add new Distributor search", "Add new Amazon search", and "Add new additional search".



Your Institution

Section 108 Due Diligence Project

Manage Users Manage Content My account Log out

Home About the Project Add Title Searches for Export All Titles

Please enter local information

Local Identifier

Notes

Institution





Section 108 Due Diligence Project

Manage Users Manage Content My account Log out

Home About the Project Add Title Searches for Export All Titles

Institutions

- William Paterson University (Owner)
- Arizona State University

Angel on death row

View Edit

Bibliographic Information

Title: Angel on death row
Series: Frontline
Distributor: PBS Video
Publisher/Producer: Ben Loeterman Productions, Inc.
Publication Date: 1996
Format: vhs
Local Identifier: VC 3735



Add Record, Part 1

Section 108 Due Diligence Project

Manage Users Manage Content My account Log out

Home About the Project **Add Title** Searches for Export All Titles

Institutions

Add a Record

This is a series

Bibliographic Information

Title *

Series

[Show row weights](#)

Distributor

+

[Add another item](#)

[Show row weights](#)

Publisher/Producer

+

[Add another item](#)



Add Record, Part 2

Publication Date

Ex: 1983, 195-, 193?

Publication/Version Notes

Format *

- VHS
- 3/4"
- Laserdisc
- 16mm
- Other

ISBN

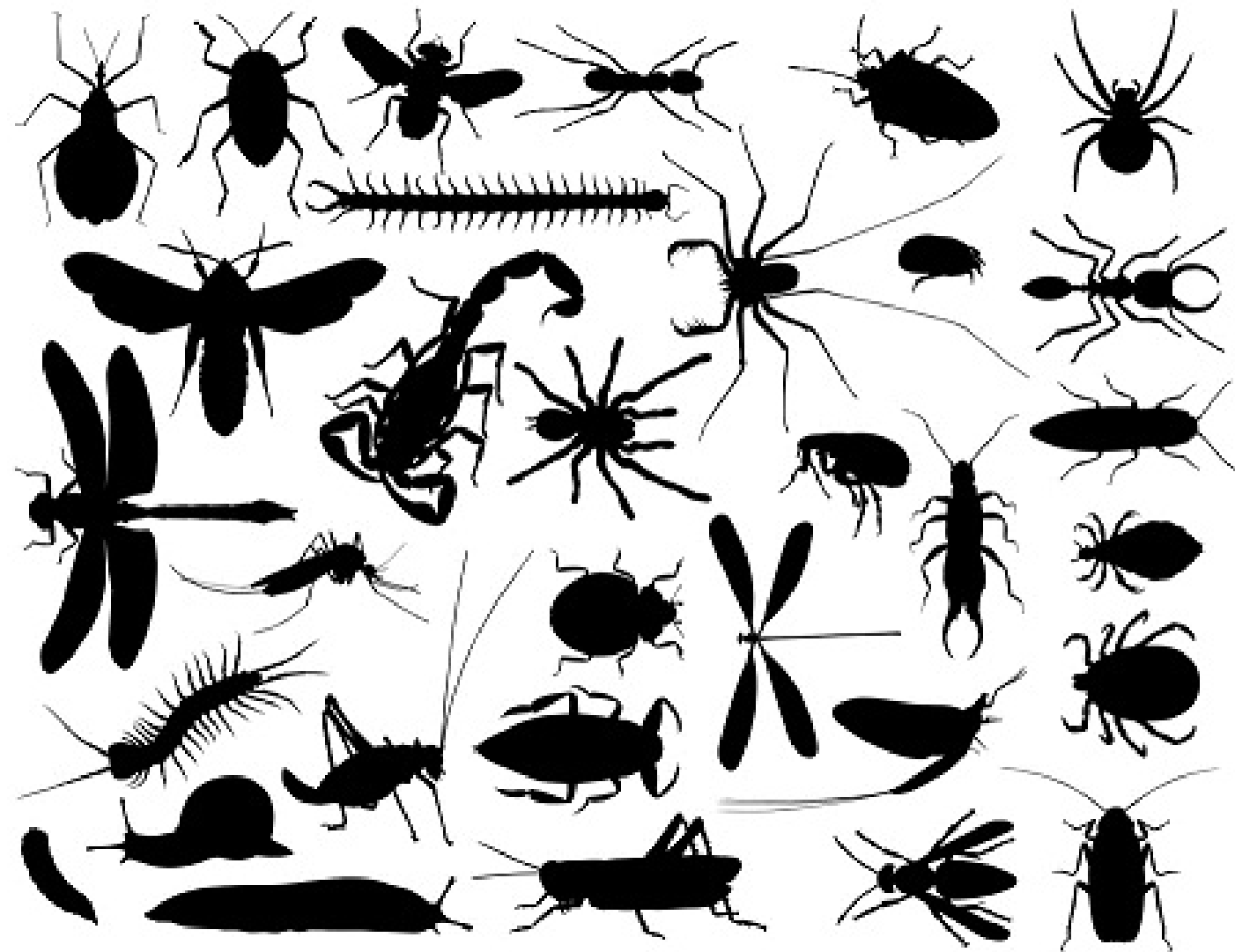
Local Identifier

Call number, barcode, bib/item number, etc.

Comment settings
[Open](#)

- Open
Users with the "Post comments" permission can post comments.
- Closed
Users cannot post comments.





Next steps

- Database available now for anyone to view
- Making available for others to add titles or metadata
- Data entry is not automatic, you need to request a user account





Pipe Dream

Potential for a large scale preservation effort akin to
The HathiTrust or WEST



In the meantime...

Don't wait to get started with your own collection:

- Run a report of your VHS holdings - and take an inventory of what has been replaced, what is available for replacement, and what is out of distribution
- Using a log form, document your searches for out-of-distribution titles
- Join the section108video.com effort
- Become familiar with outside digitizing options
- Develop a long-term preservation strategy
- Evaluate cost-effectiveness of building an in-house digitizing station
- Learn about implications of long-term digital preservation of video files



A few more suggestions

- Before discarding low-use VHS recordings, offer them to other institutions
- Prolong your tapes' lives by storing in a climate-controlled environment: 65F +/- 3 degrees, rel humidity 40% +/- 5%
- Laserdiscs? CD-ROMs? If you don't have playback equipment, buy it on ebay now!
- After digitizing, do not discard the originals. You may need to go back to them in a worst-case scenario.



Finally:

The Andrew W. Mellon Foundation has awarded the Council on Library and Information Resources (CLIR) \$2.725 million for a regranting program to digitize “at risk” audio and audiovisual materials of high scholarly value.

The program will run four competitions between January 2017 and September 2018, awarding a total of \$2.3 million.

Visit <https://www.clir.org/recordings-at-risk>



References

- Besser, H., Brown, M.A., Clarida, R., Forsberg, W., Righter, M., & Stoller, M. (2012). Video at risk: Strategies for preserving commercial video collections in libraries. Section 108 Guidelines. Retrieved from <http://www.nyu.edu/tisch/preservation/research/video-risk/>
- Casey, M. (2015). Why media preservation can't wait: The gathering storm. *IASA Journal*, 44, 14-22. Retrieved from http://www.avpreserve.com/wp-content/uploads/2015/04/casey_iasa_journal_44_part3.pdf



References

- Enis, M. (2016). Please rewind: Preservation. *Library Journal*, 141, 10, 45-47 Retrieved from: <http://lj.libraryjournal.com/2016/06/technology/please-rewind-preservation>
- Forsberg, W. & Piil, E. (2014). Tune in, turn on, drop out. In S. Hastings (Ed.) *Annual Review of Cultural Heritage Informatics* (pp.213-242). Lanham: Rowman & Littlefield Publishers.
- New York University. (2012, September 25) Video at Risk: Strategies for preserving commercial video collections in research libraries. Retrieved from <http://www.nyu.edu/tisch/preservation/research/video-risk/>



References

Marcum, D. (2016). Due diligence and stewardship in a time of change and uncertainty. Ithaka S+R Issue Brief. Retrieved from http://www.srithaka.org/wp-content/uploads/2016/04/SR_Issue_Brief_DueDiligence_Stewardship042616.pdf

U.S. Copyright Office (2014, July 23). Copyright law of the United States of America and related laws contained in Title 17 of the United States Code. Retrieved from <http://www.copyright.gov/title17/92chap1.html#108>



Questions?

**BE KIND
REWIND**



Contact:

deg farrelly

deg@asu.edu

602.332.3103





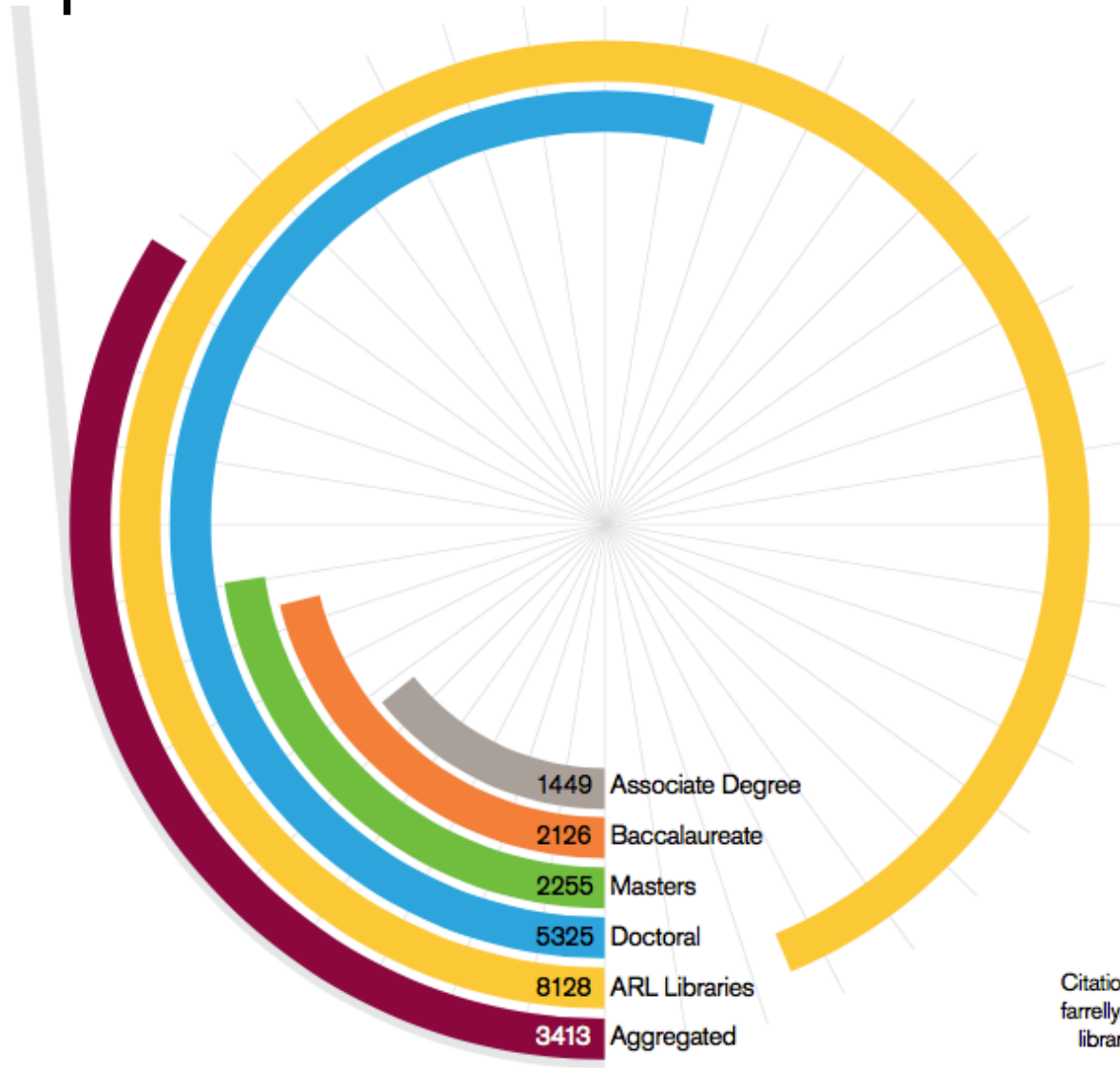








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