

# Copyright and Video in Libraries

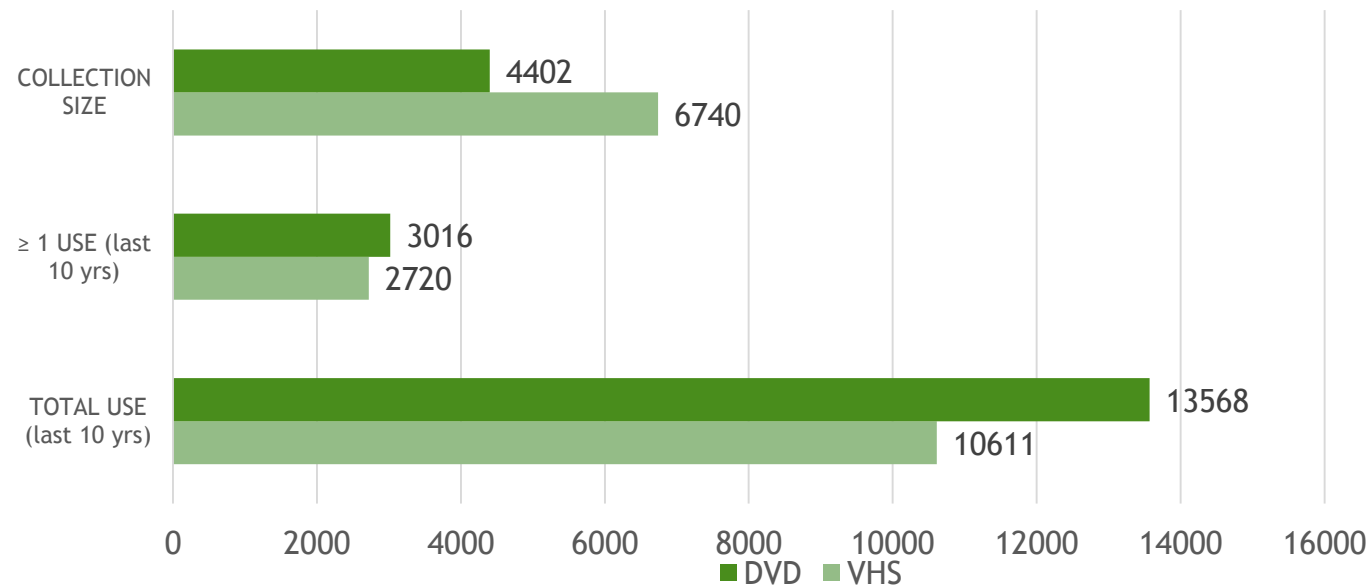
Preserving VHS content for the future

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# Does anyone still use VHS?

- ▶ VHS holdings of most academic libraries still give DVD holdings a run for their money in terms of size and usage.

PHYSICAL MEDIA COLLECTION  
Hofstra University Library



# Not available at any price

- ▶ When VHS content can be replaced with a DVD, (or perhaps in the future another usable, non-obsolete, non-deteriorating, physical\* format), everything is cool (at least in terms of copyright).
- ▶ What can a library do when that VHS content is unavailable for replacement in the commercial marketplace?
- ▶ Example from Hofstra: VHS with highest usage over past 10 years: “Anthropology on Trial” with 67 circs since 2007. It was acquired in 1989 ... How many uses did it have between then and 2006?

\* Do you think the availability of a streaming file counts? We should discuss!

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

- ▶ Non-profit libraries and archives may duplicate content that is lost, damaged, stolen, deteriorating, or in an obsolete format.
- ▶ A reasonable search must be conducted to determine that an unused copy of the title is not available at a fair price.
- ▶ Lost, damaged, stolen ... it's pretty clear what those terms mean.
  - ▶ But what about those other two ... ???

# Obsolete? What does that even mean?

- ▶ § 108 (c) qualifier: “For purposes of this subsection, 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.”
- ▶ Look what I found on amazon for \$99.99:



Funai Corp. DV220FX5 Dual Deck DVD and VHS Player

But note: It's unlikely that companies will continue manufacturing these machines forever. Who knows how long they will continue? They could cease manufacture in 5 years ... or tomorrow!

## Next up: Deteriorating?



- ▶ In 2013, Walter Forsberg wrote in his somewhat epic blog post [A Declaration of VHS Independence](#), “it is near-incontrovertible that VHS tapes are deteriorating from the perspective of human-perceptible visual and audio quality and ... from those perspectives when assessed using laboratory-measurable original manufacturer quality control metrics such as dropout counts, signal-to-noise ratios, and frequency response.” [Media Preservation blog](#), Indiana University Bloomington.
- ▶ Shout out: Forsberg, Walter, and Erik Piil. "Tune In, Turn On, Drop Out." Annual Review of Cultural Heritage Informatics: 2012-2013 (2014): 213.
- ▶ And this: Besser, Howard. [Video at risk: strategies for preserving commercial video collections in libraries](#). New York University Libraries, 2012.

# Investigating your § 108 preservation decision: conduct a reasonable search

- ▶ Section §108 says that you must conduct a reasonable search to determine that an **unused copy** of the title is not available at a fair price.\*
- ▶ Common elements of a reasonable search:
  - ▶ Original distributor's website (and contacting original distributor about status)
  - ▶ Worldcat (looking for evidence of a DVD release, copyright owner, distributor)
  - ▶ Online retail sites (amazon.com, amazon.co.uk, moviesunlimited.com, etc.)
  - ▶ Google/search engine of your choice (title, director's name, distributor, etc.)
  - ▶ VideoLib (film/video professional listserv)

\*What exactly is a “copy?” Does a different edited version count? What about a new restoration, or a CGI-revamped director's cut? If you're interested in trying to figure out what a “copy” means, go down the internet rabbit hole searching for the original, unaltered version of Star Wars from 1977!

# Investigating your § 108 preservation decision (if you're really, really into it!)

- ▶ IMDB.com for key names; IMDBpro for production companies and distributor contact information
- ▶ For Public Television productions, original PBS station may have information
- ▶ Auction sites (ebay.com) for evidence of a DVD release (beware of bootlegs)
- ▶ Business search through original distributor's Secretary of State website (for example, <http://kepler.sos.ca.gov/>) for contact information and to see if the business is still, well, in business ...)
- ▶ NEW! Try the [Section 108 Due Diligence Project](#). Did you see deg farrelly's poster session about it yesterday??



# Keeping Up With The ~~Kar~~ Documentation

- ▶ I recommend using a handy fillable PDF created by Chris Lewis (American University). Email me if you want a blank copy.

As author, choose Distribute from the Forms panel in the Tools Pane on the right to send it to your recipients.

VHS DISTRIBUTOR/COPYRIGHT SEARCH LOG

**VHS Title/Distributor/Year of Release:**  
Bushmen of the Kalahari/National Geographic/1974 (directed by John Marshall)

This checklist is for documenting efforts to locate current distribution and/or rights holders of a given VHS tape prior to making a preservation copy under Section 108 of the U.S. Copyright law. These steps represent recommended avenues to prove that a "reasonable effort" has been made as described in the law.

Complete these steps to a point of satisfaction to confirm the item's availability or lack thereof. Any and all communications with distributors, filmmakers, etc. should be documented and attached to this form.

1. Worldcat.org searched for evidence of a DVD release and/or name of publisher or distributor or copyright owner. Include number of copies. Date: 3/17/15  
Notes: 3 libraries own DVD; appears to be a section 108 copy done by U of Mississippi
2. Major online retail sites, such as Amazon.com and MoviesUnlimited.com, searched for DVD copies of the title. Date: 3/16/15  
Notes: available on VHS used from amazon uk
3. Title, director's name, producer's name, and/or distributor searched on internet search engines. Date: 3/16/15  
Notes: in IMDB. Director deceased 2005
4. Attempted to contact the original distributor noted on the library's physical copy of the video and/or the catalog record for that copy. Date: 3/16/15  
Notes: Pierson, David <dpierson@ngs.org> from Nat Geo informed me via email this title is not available to stream.
5. IMDB.com searched for key names. IMDBPro searched for contact information for production companies and distributors. Date: 3/16/15  
Notes: not necessary. Producer/distributor is Nat Geo

**VHS Title/Distributor/Year of Release:** Bushmen of the Kalahari/National Geographic/1974 (

# Best Practices for Cataloging a § 108 copy

- ▶ Document in the OCLC and local catalog record. This assists others who are investigating and documenting a § 108 decision.
- ▶ This example offers clues but does not explicitly state that a § 108 copy was made:

**Bushmen of the Kalahari**  
David L Wolper, Leslie Nielsen, John Marshall  
2005, 1974  
English Visual Material : Videorecording : © DVD video 1 videodisc (52 min.) : sd., col. : 4 3/4 in.  
Washington, D.C. : National Geographic Society [production company] ; University, Miss. : University of Mississippi Media Production Services [publisher].  
Follows a visit made by filmmaker-anthropologist John Marshall to Bushmen of the Kalahari. Shows how they are adapting to cultural change, becoming herdsmen on reservations after centuries of being unrestricted hunters and food gatherers.

GET THIS ITEM  
Availability: Check the catalogs in your library.  
• Libraries worldwide that own item: 3  
• Search the catalog at Hofstra University Libraries

External Resources: • Request via Hofstra ILL  
• Cite This Item

FIND RELATED

More Like This: Search for versions with same title and author | Advanced options ...  
Find Items About: Wolper, David L. (3); Nielsen, Leslie, (max: 24); Marshall, John. (2,170); National Geographic Society (U.S.) (609); Wolper Productions. (3)

Title: **Bushmen of the Kalahari**

Author(s): Wolper, David L.  
Nielsen, Leslie, 1925-  
Marshall, John.

Corp Author(s): National Geographic Society (U.S.) ; Wolper Productions.

Publication: Washington, D.C. : National Geographic Society [production company] ; University, Miss. : University of Mississippi Media Production Services [publisher].  
Year: 2005, 1974

Description: 1 videodisc (52 min.) : sd., col. : 4 3/4 in.  
Language: English

Abstract: Follows a visit made by filmmaker-anthropologist John Marshall to **Bushmen of the Kalahari**. Shows how they are adapting to cultural change, becoming herdsmen on reservations after centuries of being unrestricted hunters and food gatherers.

SUBJECT(S)  
Descriptor: San (African people) -- Civilization.  
San (African people) -- Social life and customs.  
Documentary television programs.

Note(s): DVD transfer from 3/4 inch videocassette./ Originally released as a documentary special in 1974.

Class Descriptors: LC: DT1058.S36

Responsibility: National Geographic Society and Wolper Productions. Producers, Dennis B. Kane, Nicholas Clapp; directors and photographers, Robert M. Young, John Marshall ; narrator, Leslie Nielsen.

Material Type: Videorecording (vid); DVD video (dvv); Videodisc (vdc)

Document Type: Visual Material  
Entry: 20050218  
Update: 20150126  
Accession No: OCLC: 57685928  
Database: WorldCat

University, Miss. : University of Mississippi Media Production Services [publisher]

DVD transfer from ¾ inch videocassette

WorldCat Detailed Record

Click on a checkbox to mark a record to be e-mailed or printed in Marked Records.

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WorldCat results for: (ti= "Meiji revolution") and (au= "Gibney, Alex"). Record 6 of 16.

6 Mark:

**The Meiji revolution**  
 Alex Gibney; Peter Bull; Alan Poul; Peter Coyote  
 2010, 1992  
 English Visual Material : Videorecording : DVD video 1 videodisc (60 min.) : sd., col. and b&w; 4 3/4 in.  
 S. Burlington, VT : Annenberg/CPB Project, ; ISBN: 1559464100 9781559464109

Discusses Commodore Perry's invasion of Tokoyo Bay and the ensuing trade treaty with the U.S. which ended Japan's 250-year seclusion. Mobilized by the charismatic leader, Emperor Meiji, Japan reorganized its society and cast aside centuries of tradition to become the first industrially under-developed nation to become a modern world power.

GET THIS ITEM

Availability: Check the catalogs in your library.  
 • Libraries worldwide that own item: 2  
 • Search the catalog at Hofstra University Libraries

External Resources: Request via Hofstra ILL  
 • Cite This Item

FIND RELATED

More Like This: Search for versions with same title and author | Advanced options ...

Find Items About: Gibney, Alex, (13); Bull, Peter, (10); Coyote, Peter, (34); Jigsaw Productions, (1); Nihon Hoso Kyokai, (386); KCTS (Television station - Seattle, Wash.), (18); Annenberg/CPB Project, (6)

Title: **The Meiji revolution**

Author(s): Gibney, Alex.  
 Bull, Peter.  
 Poul, Alan.  
 Coyote, Peter.

Corp Author(s): Pacific Basin Institute. ; Jigsaw Productions. ; Nihon Hoso Kyokai. ; KCTS (Television station - Seattle, Wash.) ; Annenberg/CPB Project. ; Teleac/NOT.

Publication: S. Burlington, VT : Annenberg/CPB Project.  
 Year: 2010, 1992  
 Description: 1 videodisc (60 min.) : sd., col. and b&w; 4 3/4 in.  
 Language: English  
 Series: The Pacific century ;; 2; Annenberg/CPB collection; Variation: Pacific century ;; 2; Annenberg/CPB collection.  
 Standard No: ISBN: 1559464100; 9781559464109

Abstract: Discusses Commodore Perry's invasion of Tokoyo Bay and the ensuing trade treaty with the U.S. which ended Japan's 250-year seclusion. Mobilized by the charismatic leader, Emperor Meiji, Japan reorganized its society and cast aside centuries of tradition to become the first industrially under-developed nation to become a modern world power.

SUBJECT(S)

Descriptor: Civilization -- American influences.

Named Person: Meiji, Emperor of Japan, 1852-1912.  
 Meiji, Emperor of Japan, 1852-1912.

Genre/Form: History.

Time: 1868-1912

Geographic: Japan -- Civilization -- American influences.  
 Japan -- History -- Meiji period, 1868-1912.  
 Japan.

System Info: DVD.

Note(s): Documentary / Originally issued in 1992 as a videocassette release of the college-level telecourse produced by the Pacific Basin Institute in association with KCTS/Seattle / Title on cassette label: Meiji : Asia's response to the West / Recorded in August, 2010 for archival purposes in compliance with section 108 of the U.S. Copyright Act / Participants: Peter Coyote.

Class Descriptors: LC: DS503.4 Dewey: 950

Other Titles: Meiji : Asia's response to the West; Asia's response to the West

Responsibility: a co-production of FBI/Jigsaw Productions in association with NHK-Japan, KCTS/Seattle and Teleac/Holland ; produced by Peter Bull, Alan Poul ; directed by Alex Gibney ; written by Peter Bull, Alex Gibney, Executive producer, Alex Gibney.

Material Type: Videorecording (vid), DVD video (dv), Videodisc (vdc)

Document Type: Visual Material

Entry: 20100901  
 Update: 20160331  
 Accession No: OCLC: 660033997  
 Database: WorldCat

WorldCat results for: (ti= "Meiji revolution") and (au= "Gibney, Alex"). Record 6 of 16.

English | Español | Français | العربية | 日本語 | 한국어 | 中文(繁體) | 中文(简体) | Options | Comments | Exit

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 Terms & Conditions

Recorded in August, 2010 for archival purposes in compliance with section 108 of the U.S. Copyright Act.



Title **The Eskimo [videorecording] : fight for life / directed and photographed by Robert Young ; producer, Quentin Brown ; a production of Education Development Center.**  
Publication Info. [Montreal, Québec] : National Film Board of Canada, [2006] ©2006



Film

Location	Call No.	Status
Memorial Hall - Film and Media Library	E99 .E7E72 VD-3797	AVAILABLE

Description 1 videodisc (approximately 52 min.) : sound, color ; 4 3/4 in.  
Type of Content two-dimensional moving image tdi  
Type of Media video v  
Type of Carrier videodisc vd  
System Details DVD (NTSC).  
Credits Ethnographic supervisor and narrator, Asen Balikci ; editor, Michael Calufour ; second cameraman, Kenneth Poste.  
Note Originally produced as a documentary film in 1970.  
Originally issued as a videocassette in 1970. Recorded as a DVD in March 2014 for archival purposes in compliance with section 108 of the U.S. Copyright Act.  
Summary This documentary portrays the life and hunting skills of the Netsilik Inuit at a seal hunting camp on the Arctic Sea near Pelly Bay in northern Canada. Shows six families trekking across the sea ice and setting up camp, building a ceremonial igloo, dividing a seal, playing games, and packing up to search for game in another area. "In celebration of Nunavut" is a collection of videos comprising 107 films, made between 1942 and 1996, documenting life in the Arctic from first contact to today.  
Local Note VD-3797  
Note Narration in English, dialogue in Natsilingmiutut.  
Subject Eskimos -- Social life and customs.  
Inuit -- Social life and customs.  
Netsilik Eskimos -- Social life and customs.  
Eskimos -- Northwest Territories.  
Eskimos -- Canada.  
Anthropology -- Canada.  
Added Author Young, Robert.  
Brown, Quentin.  
Balikci, Asen, 1929-  
Education Development Center.  
National Film Board of Canada.  
Music # DVD-R 0199129 ONF NFB

Originally issued as a videocassette in 1970. Recorded as a DVD in March 2014 for archival purposes in compliance with section 108 of the U.S. Copyright Act.

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WorldCat results for: (ti: global and ti: assembly and ti: line) and kw: dvd and dt="vis". Record 5 of 5.

5 Mark:

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**The global assembly line /**  
Lorraine Gray, Anne Bohlen, Maria Patricia Fernández-Kelly  
2016, 1986  
English Visual Material : Videorecording : DVD video 1 videodisc (32 min.) : sound, color ; 4 3/4 in.

Portrays the lives of working men and women in the "free trade zones" of developing countries and North America, as U.S. industries close their factories to search the globe for lower-wage work forces. From Tennessee to Mexico's northern border, and from Silicon Valley to the Philippines, this film "emerges as the definitive statement on the international division of labor and the growing importance of women in the industrial workforce."

GET THIS ITEM

Availability: **Check the catalogs in your library.**  

- Libraries worldwide that own item 1
- Search the catalog at Hofstra University Libraries

External Resources: [Request via Hofstra ILL](#)  
[Cite This Item](#)

FIND RELATED

More Like This: [Search for versions with same title and author | Advanced options ...](#)

Find Items About: [Bohlen, Anne, \(2\) New Day Films, \(9\)](#)

Title: **The global assembly line /**

Author(s): [Gray, Lorraine, - director, producer](#);  
[Bohlen, Anne, - producer](#);  
[Fernández-Kelly, Maria Patricia, 1948- ; producer](#)

Corp Author(s): [Educational TV and Film Center, - New Day Films](#)

Year: 2016, 1986  
Description: 1 videodisc (32 min.) : sound, color ; 4 3/4 in.  
Language: English

Abstract: Portrays the lives of working men and women in the "free trade zones" of developing countries and North America, as U.S. industries close their factories to search the globe for lower-wage work forces. From Tennessee to Mexico's northern border, and from Silicon Valley to the Philippines, this film "emerges as the definitive statement on the international division of labor and the growing importance of women in the industrial workforce."

SUBJECT(S)

Descriptor: [Corporations, American -- Developing countries -- Employees](#);  
[Women -- Employment -- Developing countries](#);  
[Industrial hygiene -- Developing countries](#);  
[Labor -- United States](#);  
[Labor -- Philippines](#);  
[Labor -- Mexico](#);  
[Offshore assembly industry -- Social aspects](#);  
[International business enterprises -- United States -- Employees](#);  
[Industries -- Social aspects -- United States](#);  
[International business enterprises -- Social aspects -- United States](#);  
[Corporations, American -- Employees](#);  
[Industrial hygiene](#);  
[Industries -- Social aspects](#);  
[International business enterprises -- Employees](#);  
[International business enterprises -- Social aspects](#);  
[Labor](#);  
[Offshore assembly industry -- Social aspects](#);  
[Women -- Employment](#)

Genre/Form: [Feature films -- United States](#);  
[Nonfiction films](#);  
[Documentary films](#);  
[Feature films](#);  
[Documentary films](#);  
[Feature films](#);  
[Nonfiction films](#)

Geographic: [Developing countries](#);  
[Mexico](#);  
[Philippines](#);  
[United States](#)

System Info: **DVD-R**  
Note(s): **VHS to DVD transfer /** Originally published by New Day Films on VHS in 1986 / Preservation copy of out of release and deteriorating videotape made under protection of Section 108 C of the U.S. Copyright. This item is restricted from use by the public outside of the library / Audience: General

General Info: **Produced:** United States  
Responsibility: Educational TV and Film Center ; director, Lorraine Gray ; producers, Lorraine Gray, Anne Bohlen, Maria Patricia Fernández Kelly, Music, Steven Gray, editors, Mary Lampson, Sara Fishko, cinematography, Sandi Sissel, Baird Bryant, Lorraine Gray.  
Material Type: Videorecording (vid); DVD video (drv); Videocassette (vca); Videodisc (vdc); VHS tape (vhs)  
Document Type: Visual Material  
Entry: 20160519  
Update: 20160520  
Accession No: OCLC: 949930021  
Database: WorldCat

WorldCat results for: (ti: global and ti: assembly and ti: line) and kw: dvd and dt="vis". Record 5 of 5.

English Español Français 日本語 한국어 中文(繁體) 中文(简体) Options Comments Exit

VHS to DVD transfer. / Originally published by New Day Films on VHS in 1986. / Preservation copy of out of release and deteriorating videotape made under protection of Section 108 C of the U.S. Copyright. **This item is restricted from use by the public outside of the library.**



## § 108: The fine print\*

\*or, what did “restricted from use by the public outside of the library” mean???

- ▶ § 108 (c)(2) says that any such copy that is reproduced in digital format may not be made available to the public in that format outside the premises of the library or archives in lawful possession of such copy.\*
- ▶ Is this open to interpretation? Who is “the public?” What are the “premises?”
- ▶ In May 2005, the Copyright Office convened a [§ 108 Study Group](#) to make recommendations to the Librarian of Congress for possible alterations to § 108 that would reflect current technologies.
- ▶ In March 2008, the §108 Study Group recommended (among other things) that “The prohibition on off-site lending of digital replacement copies should be modified so that if the library’s or archives’ original copy of a work ... can lawfully be lent off-site, then it may also lend for off-site use any replacement copy reproduced in the same or equivalent physical digital medium.”

\*that part about the “public” and the “premises” was added in 1998 as part of the DMCA.

# The upshot?

- ▶ In about 2011, the Register of Copyrights “prioritized” resolving issues related to § 108. (See [Priorities and Special Projects 2011-2013](#)).
- ▶ On its “[Revising § 108](#)” web page (last updated in February, 2013) the Copyright Office outlined plans to formulate a discussion document and preliminary recommendations on amending § 108. They stated that “the Office will engage with stakeholders through a variety of meetings and public discussions.”
- ▶ NEW! Copyright office notice published in Federal Register today calling for input on a revision of 108. As Kenny Crews said, “This is gonna be good!”
- ▶ Shout out: [Hansen, David R. "Copyright Reform Principles for Libraries, Archives, and Other Memory Institutions."](#) Berkeley Technology Law Journal, 29 (2014): 1559.

# Best Practices for Making a § 108 copy available for use ... relying on § 107!!

- ▶ § 107 outlines the “fair use” doctrine.
- ▶ In January 2012, the Association of Research Libraries published the [Code of Best Practices in Fair Use for Academic and Research Libraries](#).
- ▶ This document was devised specifically by and for the academic and research library community, and it enhances the ability of librarians to rely on fair use by documenting the considered views of the library community about best practices.
- ▶ Professor Peter Jaszi (American University Washington College of Law), one of the co-facilitators of this document, has said “The flexibility of fair use can lead users to wish for clearer rules or brighter lines. But the flexibility of fair use is its strength.” “Fair Use Today,” [Code of Best Practices in Fair Use for the Visual Arts, College Art Association](#), 2015, p. 14).



# The Code of Best Practices addresses preservation and access

## ▶ PRINCIPLE

- ▶ It is fair use to make digital copies of collection items that are likely to deteriorate, or that exist only in difficult-to-access formats, for purposes of preservation, and to make those copies available as surrogates for fragile or otherwise inaccessible materials.

## ▶ LIMITATION

- ▶ Libraries should not provide access to or circulate original and preservation copies simultaneously.
- ▶ Off-premises access to preservation copies circulated as substitutes for original copies should be limited to authenticated members of a library's patron community, e.g., students, faculty, staff, affiliated scholars, and other accredited users.

(Above are excerpts from the [Code](#), p. 18.)

# Wrapping it all up with some more questions!

- ▶ What about making that § 108 content available via a streaming server?
  - ▶ What does the TEACH Act say about that? What about fair use?
- ▶ Would you lend that § 108 copy through Interlibrary Loan?
- ▶ Do you have a mechanism in place for a rights holder to contact your library if/when that § 108 content becomes commercially available?
- ▶ How will you prioritize content for § 108 preservation?
- ▶ How will you pay for the preservation copying?
- ▶ Can you outsource digitization to a commercial company once you've made the § 108 decision?
- ▶ Other questions??

Thank you!

