



Public Performance Rights Management in Academic Libraries

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Abstract

This paper will provide an overview of public performance rights for using audiovisual media in academic libraries. Public performance rights is an important issue because performing or displaying audiovisual media in the context of classroom instruction is the primary use of audiovisual media at George Mason University Libraries. This overview will begin with an introduction to the Copyright Law of the United States' definitions of publicly performing or displaying a work. Then, examples from distributors' websites describing the rights to display audiovisual works will be used to illustrate the difference of language both between distributors and in the language used by the Copyright Law of the United States. Finally, the workflow George Mason University Libraries created for cataloging public performance rights will be explained. It is hoped that this overview of public performance rights will create an interest in educating and sharing information about public performance rights both to other library professionals and to general users.

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The proliferation of media formats, their licensing and copyright options, and the increased ease with which media formats can be transformed, such as embedding a still photograph into a moving image displayed online, have resulted in a growing need for librarians working with media to analyze the right to use media on a case by case basis. One component of the right to use media works is colloquially referred to as public performance rights. This paper will provide an overview of public performance rights in the context of academic libraries. To begin this overview, it is important to understand what displaying or performing a moving image means in the language of the *Copyright Law of the United States*. Later, examples from distributors' websites will be used to show the variance among moving image distributors' descriptions of public performance and institutional rights, which also differs from the language in the *Copyright Law of the United States*. Finally, I will explain a workflow George Mason University Libraries created for cataloging and managing public performance rights.

1. Displaying a work publicly

Public performance rights is a colloquially used term referring to the right to display or perform an audiovisual work publicly as described in *Copyright Law of the United States*:

To perform or display a work “publicly” means —

(1) to perform or display it at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered... (Definitions, §17 U.S.C. § 101 (2009))

Since classrooms are places with “a substantial number of persons outside of a normal circle of a family”, this definition is very important in academic library media collections. The media purchased by George Mason University Libraries is primarily for instructional use either in classrooms or for individual screening in the libraries. Thus, much of the media at George Mason University Libraries is being displayed publicly as according to the definition in U.S.C. § 101.

Fortunately, Section 110 of the Copyright Law provides the following exemption for face-to-face teaching:

...the following are not infringements of copyright:

(1) performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom or similar place devoted to instruction, unless, in the case of a motion picture or other audiovisual work, the performance, or the display of individual images, is given by means of a copy that was not lawfully made under this title...(§17 U.S.C. § 110(1) (2009))

Thus, since the media being purchased by the University Libraries is purchased for instructors to use in the course of face-to-face teaching activities in the classroom, or in the individual library screening carrels which can be considered “a similar place devoted to instruction,” the Libraries should not need seek the permission of an audiovisual work's copyright holder in order to use these items for instruction.

2. *Displaying a work publicly versus institutional pricing*

While U.S. Copyright Law defines performing and displaying works publicly, distributors of audiovisual works use different language to describe the same set of circumstances. Often, they employ the colloquial and not legally defined term “public performance rights”. Moreover, distributors use this term and similar language in a way that differs from the face-to-face classroom exemption defined by U.S.C. Section 110(1).

Examples from distributors’ websites help illustrate how their language differs from that of U.S. Copyright law. (These examples can also be found in the Appendix and are included as a handout during the presentation). Clicking the link on Universities, Colleges & Institutions on the *Women Make Movies* website shows:

“List price applies to universities, colleges, corporations and government agencies, and includes public performance rights for classroom, organizational or library use by the acquiring institution for non-paying audiences only.” (Women Make Movies. (n.d.). Pricing (Universities, Colleges & Institutions).

The phrasing “public performance rights for classroom” is interesting because U.S.C. Section 110(1) has shown that “face-to-face teaching activities of a nonprofit educational institution, in a classroom” is an exemption for the need of author’s permission. Furthermore, the language from the Women Make Movies website implies that the rights are only for “classroom, organization, or library use” and indicates that an additional form of public performance rights is required for other circumstances.

Here is another example from Direct Cinema Limited’s website:

If you buy or rent a film or a videotape, you always have permission to show it in your home. However, you are not allowed to show it in a classroom, library or any other public place without a Public Performance License.” (Direct Cinema Limited, n.d.)

Not being allowed to show a film in a classroom contradicts U.S.C. Section 110. While a distributor such as Direct Cinema could require that a contractual agreement enforce certain types of showings, the general tone of the language here implies that libraries always need public performance licenses for classroom screenings.

Here is one final example from Bullfrog Films’ website. Bullfrog Films’ *Order Information* page states:

“A ‘public performance’ is any performance of a DVD or videocassette which occurs outside of the home, or at any place where people are gathered who are not family members, such as in a school or library...All of the prices listed on the individual film pages include public performance rights, EXCEPT those listed as “Home Use Versions”. For further details, read the license agreement.” (Bullfrog Films, “Order Information,” 2009).

The Bullfrog Films' License Agreement states:

“2f. Home Use Sale...NO PUBLIC PERFORMANCE OF THE PROGRAMS IS PERMITTED, except that permitted under the “face-to-face” exemption (Section 110 (1)) of the U.S. Copyright Law.” (Bullfrog Films, “License Agreement”, 2009.)

Taken in sequence of how a user might access this information, the Order Information page first describes performing a work publicly and directs the reader to the License Agreement; Section 2f of the License Agreement acknowledges U.S.C. Section 110 and directs the reader to Home Use Sale. Yet, under the Home Video Section of the Bullfrog Films' website is the following statement: “Bullfrog has a policy of NOT selling home videos to public libraries or educational institutions.” (Bullfrog Films, “Home Video,” 2009).

The previous three examples of distributors' language show how they have created the term “public performance rights” and that this is not the same as the U.S.C. Section 101 definition of “to perform or display it at a place open to the public.” In addition, the distributors do not encourage institutional buyers to exercise the face-to-face classroom exemption described in U.S.C. Section 110(1). While face-to-face instruction as defined in Section 110(1) is a right that does not need to be bought in order to be exercised, including these public performance rights in a price for buyers from institutional organizations might imply to the users that these rights must always be bought. In actuality, it seems that what a distributor is charging for is institutional use.

The Women Make Movies website provides an example of user type charging because it has three separate prices for Universities, Colleges & Institutions; K-12, Public Libraries & Select Groups; and Public Screenings. Yet the Pricing Info for both Universities and K-12 receive some form of public performance rights. (Women Make Movies, “Pricing (Schools)” and “Pricing (Universities, Colleges & Institutions)”, (n.d.)).

Academic libraries may choose to exercise their U.S.C. Section 110(1) rights by simply purchasing a home use version of a film whenever possible from a resource such as amazon.com or Midwest Tape. Yet this may not be possible where distributors are exclusive retailers of a film. This is often the situation when a film is independently created outside of the studio system. If distributors would express that institutions are being asked to pay a higher cost for these works than for those more commercially available because an institution such as a library can provide greater access to one copy of a work than an individual would, and request that the works be used in a way which is contractually agreed upon between all parties, this might be a clearer message than charging libraries for unrequested and unnecessary rights to perform or display a work publicly in a classroom setting. Independent and self-distributed audiovisual works, just like books, are purchased by academic libraries in order to promote the goals of fostering intellectual freedom and promoting diversity of perspectives critical to the academic environment; not primarily for access to public performance rights.

3. Creating a workflow for documenting public performance rights purchases

The intricacies involved in purchasing media as described in the previous section, combined with a basic knowledge of U.S. Copyright Law as was described in the first section of this paper, show that there is a growing need to understand and exercise copyright laws. Filling this growing need is a task suited to librarians working with audiovisual materials.

Not only can librarians be leaders in understanding the relationship between the systems of copyright law, the commercial market, and their users, but they can also be leaders in communicating this information back to their end users.

As the purchase of public performance rights for videorecordings has often been included with the content of the videorecordings purchased by George Mason University Libraries, in 2009 I decided to explore sharing this information publicly in George Mason University Libraries' catalog. The goal of doing this was multifold: first, to increase access to moving image information for those seeking to organize screenings in a public environment; second, to promote these purchased performance rights resources to the community, rather than spend university resources to unnecessarily purchase the same content in different departments; and third, to provide outreach to the George Mason University community on the need for public performance rights for public display of works.

Using information I compiled from listservs such as OnLine Audiovisual Catalogers electronic discussion list (OLAC-L) and emails from a few librarians, the Multimedia Cataloger, the Copyright Librarian, and my supervisor decided to create a process for managing the cataloging of these rights. Acquisitions staff is now informed by the Media Services Librarian when an item selected for purchase includes public performance. The acquisitions staff then communicates this through a note in the catalog, so when the item arrives the following 540 MARC record note can be included:

Note: This video has limited public performance rights and may be shown in a classroom, screened by a public group that is not charged for the viewing, or transmitted on a closed-circuit system within a building or single campus.

In 2011, I realized that we needed to re-examine this process. Our efforts seem to have been successful in at least creating awareness regarding the need for public performance screening rights because subject librarians were increasingly being asked if they could use videorecordings for public screenings outside of classroom setting, such as student groups hosting screenings and faculty who were organizing events around films. Now that an awareness had been created, users needed to be taught how to begin researching public performance rights and we needed to communicate our policy on buying public performing rights.

It was decided that a publicly viewable website would be created to communicate the University Libraries' guidelines on the purchase of public performance rights, and provide a basic guide on how to find public performance rights of media through the University Libraries' catalog and elsewhere. In creating this website, consultation with other library staff was critical. Since subject librarians may purchase media on their disciplinary collection budget, a publicly viewable website would address the need for subject librarians to find the guidelines on purchasing public performance rights for media items in the University Libraries' collection. Collaboration with a subject librarian who frequently is asked about public performance rights by users helped to ensure that the document created serves the need for internal guidelines for the University Libraries' staff.

To help users to understand why some media items owned by the University Libraries have notes about public performance rights and others don't, an explanation of the process begun in 2009 was added to the website. Additionally, the steps in researching distributor information when the University Libraries' does not own public performance rights teaches

users that distribution is a key component in how media is disseminated. The draft policy which has been created is included in the Appendix.

While the team working together at George Mason University Libraries has now shared information about the need to seek permission of copyright holders when works are being publicly shown, there are still questions remaining to be explored.

These questions include:

1. When subject librarians order media, should they or the Acquisitions team be responsible for understanding and communicating public performance rights?
2. How do we express terms of sale that allow for public performance rights which differ from our 540 note?
3. How are streaming media and born digital media going to be distributed for public performance?

My final question for the profession of librarians is, Is rights management going to become an inherent part of collection development in the future, and who will be responsible for this? Should this task fall to an e-resources specialist, or become part of a changing job description of a librarian who is an audiovisual specialist? Regardless of who is responsible for managing rights within a library, it seems that the complexity in the details of these rights will continue to grow.

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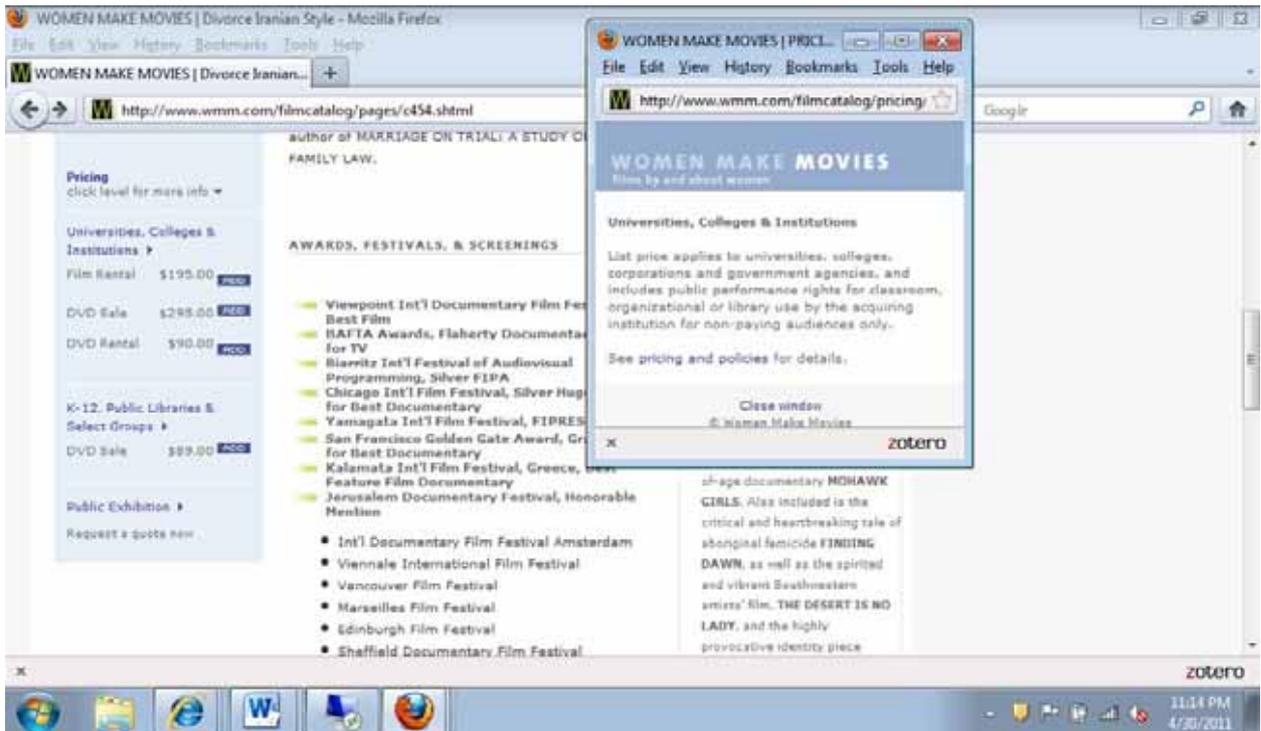
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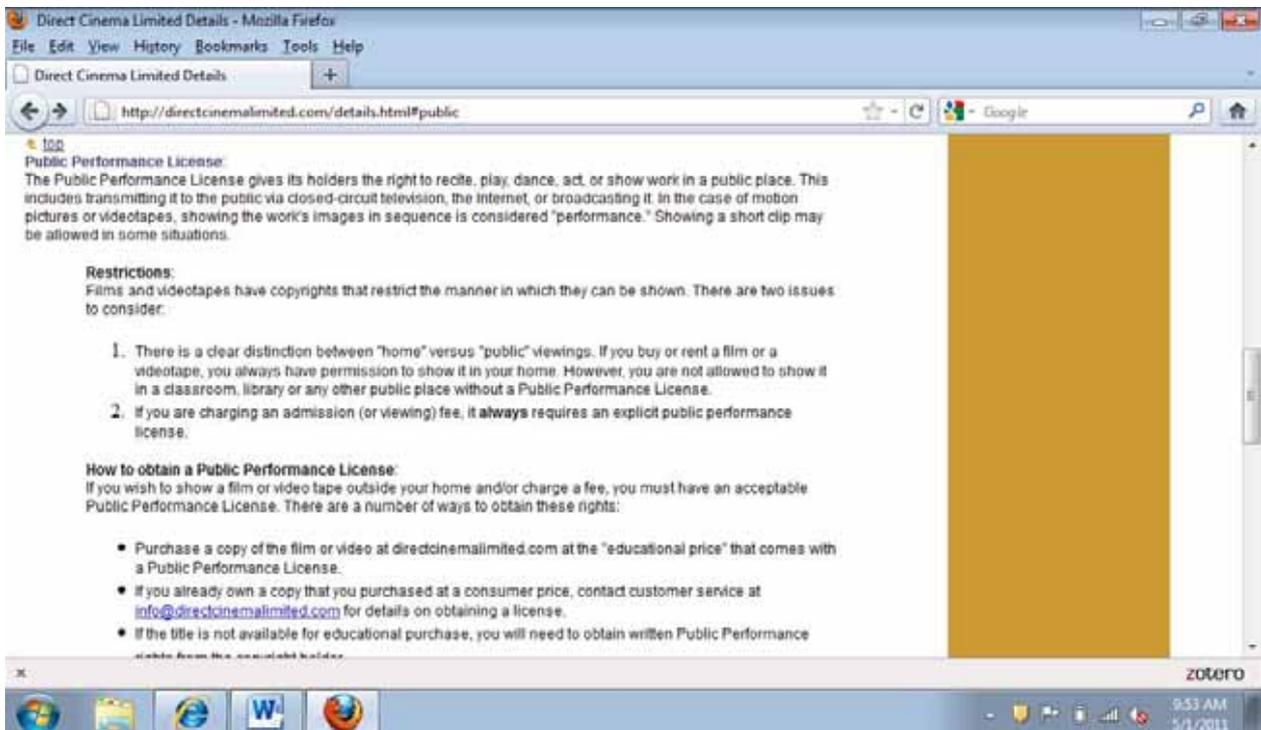
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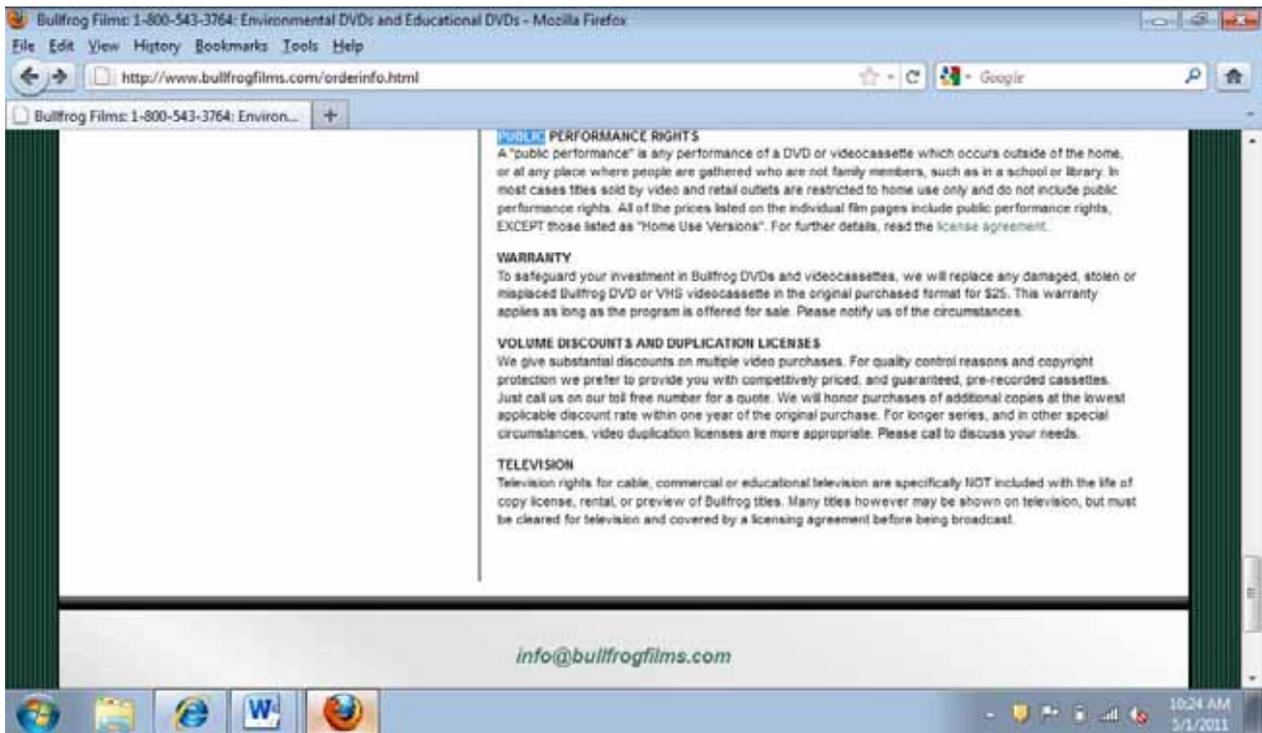
Appendix



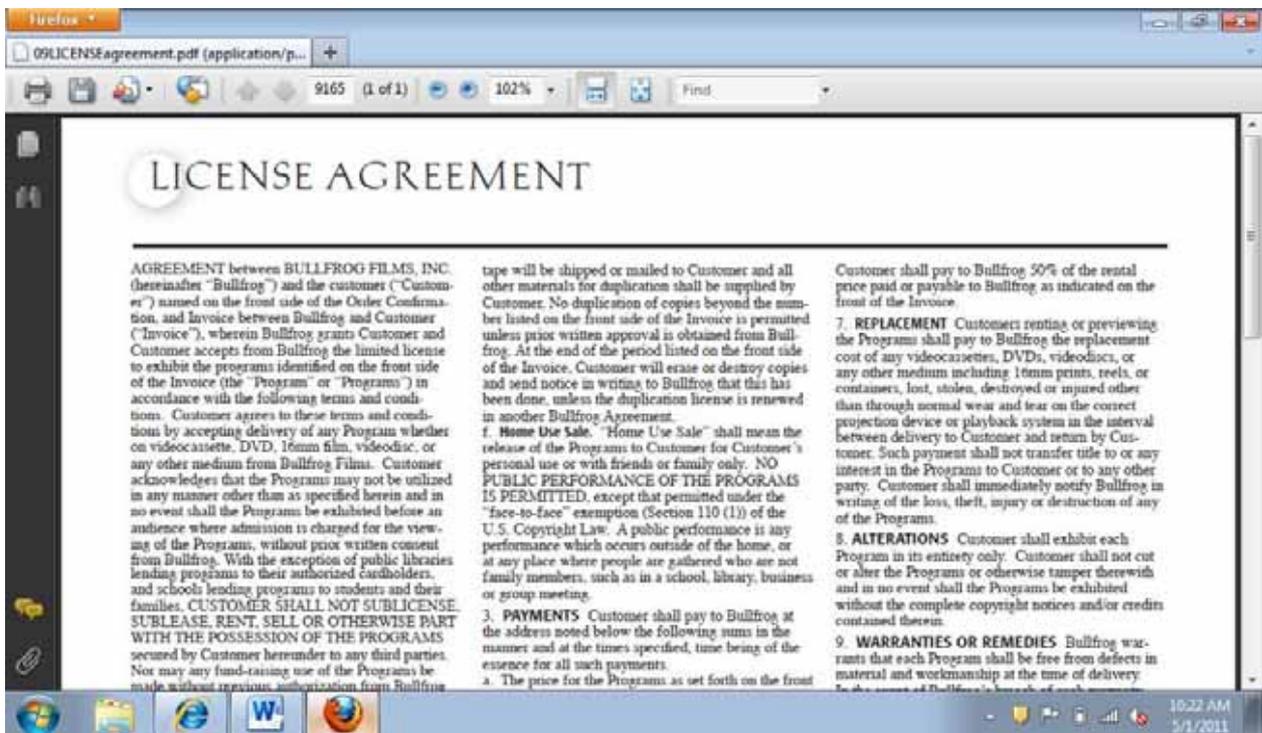
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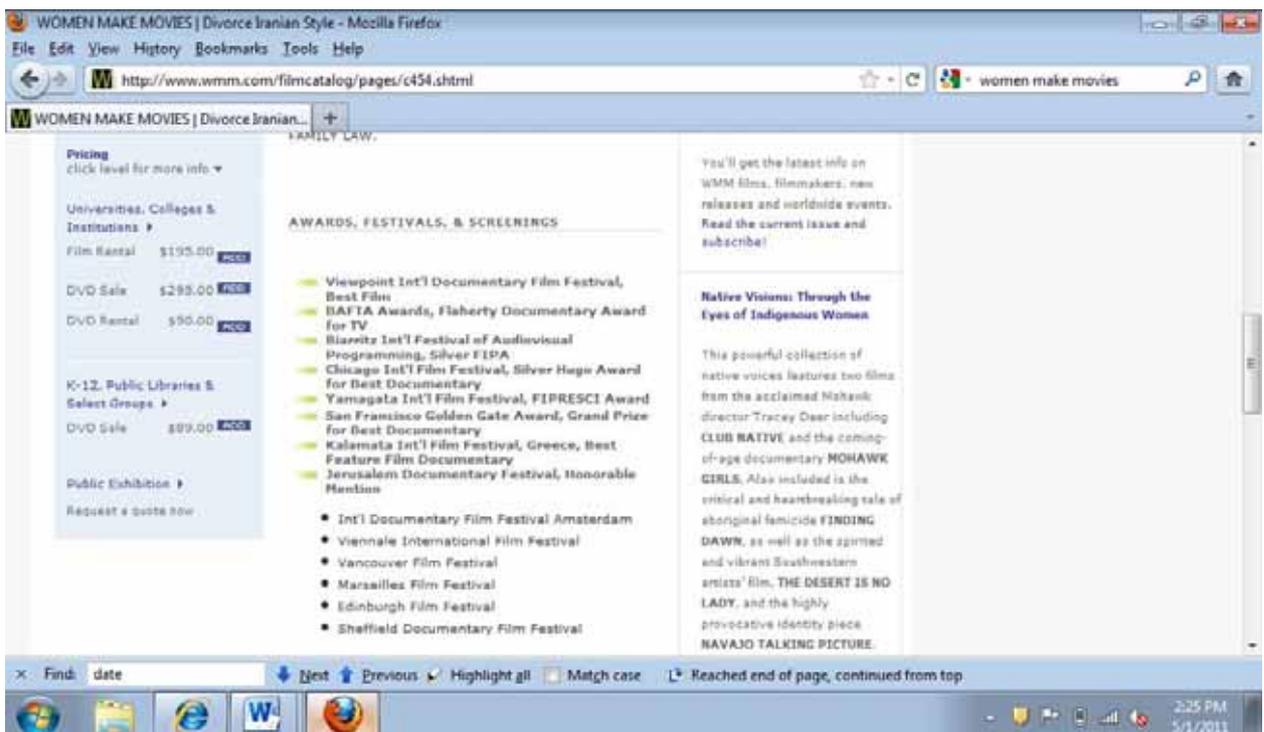
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Public Performance Rights of Library Media

Guided by the University Library's collection development policy and [Section 110, Copyright Law of the United States of America](#), the *University Libraries does not purchase public performance rights* unless it is included by distributors for face-to-face teaching activities or similar places of instruction.

Public performance rights are needed for events outside of the face-to-face teaching activities listed in Section 110, U.S. Code. Common campus activities where public performance rights are needed include: a departmental sponsored free film screening, or a film series hosted by a student organization.

If you would like to use an item that the library does not list public performance rights for, you will need to purchase your own copy of the item with public performance rights.

Finding Items with Public Performance Rights

The University Libraries began documenting the purchase of public performance rights in 2009. In the Library's catalog, bibliographic records for items with public performance rights contain the following note:

Note: This video has limited public performance rights and may be shown in a classroom, screened by a public group that is not charged for the viewing, or transmitted on a closed-circuit system within a building or single campus.

To locate items in the catalog with public performance rights:

1. Go to the [Catalog homepage](#).
2. Enter this search: Find this: "public performance" and Quick Limit: Videorecording.

Over 300 titles will be retrieved, so you may wish to narrow your search.

To find distributors for items without public performance rights:

1. In the catalog, the Publisher field lists the distributor of items.
2. Alternatively, in [imdb.com](#), go to the item's Company Credits, then to Distributors.
3. Once you have done this, you can contact the Distributor to purchase media with public performance rights.

For More Information

For questions regarding public performance rights, please contact:

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