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Kathleen Carlisle Fountain, "Managing Expectations and Obligations: The Librarian's Role in Streaming Media for Online Education" (2011). *Proceedings of the Charleston Library Conference*.
<http://dx.doi.org/10.5703/1288284314954>

Managing Expectations and Obligations: The Librarian's Role in Streaming Media for Online Education

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Abstract:

Educational films have been a standard feature of classroom instruction for decades, but the growth of online education is challenging how librarians can support the media needs of their faculty. Legacy physical collections exist on library shelves, but license and copyright restrictions may limit their use in online courses. Streaming collections are available in the marketplace but may not be affordable to license. Free or subscription media sources may be available but do not meet the needs of some instructors. This paper describes the comprehensive approach taken by library staff to manage streaming media demand on the Vancouver campus of Washington State University. It also addresses fair use and TEACH Act interpretations that should inform and guide the work of librarians in streaming media management.

Educational films have been a standard feature of classroom instruction for decades, but the growth of online education is challenging how librarians can support the media needs of their faculty. Legacy physical collections exist on library shelves, but license and copyright restrictions may limit their use in online courses. At Washington State University's Vancouver campus, the reality of the complicated media purchasing and use environment emerged in 2010 with the growth of the university's online course offerings. This paper explores how the librarians at Washington State University Vancouver are working to clarify legal use of DVDs in streaming and modifying purchasing to support streaming needs more effectively. It will outline the process by which the librarians worked with campus constituencies to begin developing a uniform policy of streaming media support, the tools developed by librarians to communicate license restrictions and copyright limits, and the sources sought to help satisfy faculty film streaming needs. This paper is intended to provide ideas and strategies for other librarians who are struggling with how to provide support for streaming media legally.

Washington State University and the Vancouver Campus

Washington State University (WSU) Vancouver is one of three remote campuses of WSU, and it is located in Vancouver, Washington. As the only Bachelor degree-granting university operating in southeast Washington, the campus takes seriously its mission to support expanding access to higher education for local Washingtonians (Washington State University Vancouver 2011, Vision). Until

2006, WSU Vancouver offered only junior- and senior-level courses to help local community college students finish their undergraduate degrees. It now admits freshmen, grants advanced degrees, and continues its focus on access to education for the local community.

In the beginning of the campus's history, many students were considered "nontraditional" and place bound, so the university regularly offered courses in the evenings to help students manage their family and school lives. Because all WSU campuses operate as "one university, geographically dispersed," (Washington State University Vancouver 2011, Profile) the campuses share centralized degree requirements and students earn "Washington State University" degrees. This allows students to take courses on any campus to satisfy their graduation needs. In fact, there is a long history of supporting Vancouver students with closed circuit videoconferencing so they may take courses offered in Pullman. That flexibility now extends to online courses across campuses. This is further flexibility for nontraditional students to find courses that fit into their schedules.

For the faculty and staff of WSU Vancouver, operating within the WSU administrative structure but at a distance presents a number of opportunities and challenges. As a campus of approximately 3000 students, Vancouver faculty and staff can provide more personalized attention to our students and enjoy a more intimate campus feel than the parent campus in Pullman of 22,000 students. Campus administrators have some flexibility to adopt policies that differ from the main campus, but they can look to

their Pullman counterparts for advice and policy guidance to cope with local challenges. The drawback, particularly in the case of managing video in online classes, is that the main campus may have addressed the same problem but the solution was not codified or shared across the campuses. As a result, potentially simple solutions require more investigation, effort, and discussion than they would otherwise need.

The WSU Vancouver Library holds a small percentage of the total WSU media collection, with approximately 1300 VHS and DVD videos. The WSU holds more than 28,000 total media items across the WSU system that are available for loan to faculty and students in Vancouver. The short loan periods and long transit time for borrowing, however, regularly necessitate buying duplicate copies of important titles to be held locally. This paper focuses on how the librarians and library staff are managing the growing number of titles housed on the Vancouver campus.

Growth of Online Education

Nationwide, students are increasingly taking advantage of online classes as part of their overall educational experience. The latest figures from the National Center for Education Statistics report a dramatic growth in students enrolled in online education courses (Radford 2011). In the 2007-2008 academic year, 20% of undergraduates reported taking online courses compared to only 8% who took online courses in 1999-2000 (4).

Washington State University offers a roster of classes for students seeking their degree exclusively online. Those courses are administratively supported by WSU Online, which is located on the Pullman campus. WSU Online courses were historically the only online courses available, and that freed regional campus staff and librarians from determining how to support the students locally. With the adoption of the Angel course management system (CMS) system-wide, however, more courses have online elements even if offered as a strictly face-to-face class.

As a result of adopting Angel, the number of available online courses dramatically increased in the past two years at WSU Vancouver. During Fall 2009, the campus offered only five online courses, serving 177 students. Two years later, there are eleven

online-only courses, serving 426 students. In addition, there are seven hybrid courses with 303 students. These courses meet for face-to-face instruction every other week, with online instruction providing the rest of the class.

Additionally, most locally offered online courses are not part of the WSU Online course schedule, so the faculty do not benefit from support by WSU Online staff. In the case of streaming media, WSU Online arranges all licensing of copyrighted materials on behalf of WSU Online faculty. For text materials, they work with the Pullman libraries to secure permissions. For video materials, they contact distributors directly to buy streaming licenses when necessary. The costs of all licenses, whether for text or media, are borne by the WSU Online office.

Faculty teaching online courses at regional campuses such as Vancouver must either work with Vancouver's Videoconference Services (VCS), librarians, or secure copyright licenses themselves. At this point, it is unclear who is financially responsible for the cost of copyright licenses. This shift from Pullman-supported online education to Vancouver-supported courses is what triggered the need to more thoroughly consider what resources are needed for online education.

Although there are online courses in a variety of disciplines, the two programs that require the most video are in Foreign Languages and Cultures and Psychology. In both cases, individual faculty requested that VCS staff digitize films and stream them to students through Angel. The Foreign Languages and Cultures program, for example, regularly offers its "Introduction to the World of Languages" online, which relies heavily on foreign films to offer students an understanding of foreign cultures. Some sections of this course are taught through WSU Online, but the Vancouver class is taught independently and must be supported locally.

Negotiating Consistent Policies

The demand by faculty to use streaming video in their online courses has required librarians and VCS staff to define their interests, educate themselves on copyright, and consider how they could support these classes. Technically, VCS could use a DVD to create a streaming video, and they had a server on

which to store the streaming files. The library had an adequate collection of films to use in these online courses, but was also in the process of securing additional one-time funds to purchase “core” foreign language films for the Foreign Languages and Culture program. As novices in this process, a variety of ad hoc procedures were developed to provide streaming support, both with faculty-owned and library-owned films.

The library and VCS complied with faculty requests for streaming until summer 2011, at which point several factors triggered a re-examination of these processes. First, the librarians were already concerned with the quantity of films used in streaming, but they did not intervene in the process unless the library owned the requested films. Second, the library secured a one-time allocation from the campus to buy core films for the new Foreign Languages and Culture program. Third, another media labeling project for public performance rights already underway in the library gave the librarians a reason to reconsider how it identified licensed rights on owned DVD and VHS videos more broadly. Finally, a rereading of old terms of agreements for the library’s films unveiled a host of clauses prohibiting their use online under any circumstances.

The Head of Collection Development and the Foreign Languages librarian knew that the new foreign film acquisitions would likely be streamed online, so it became clear that the 1) the library needed to adopt a policy regarding streaming videos held in the library collection, and 2) its policies should also inform VCS practice with faculty-owned films. Earlier, in the summer of 2010, a group of librarians and VCS staff participated in Kevin Smith’s “Fair Use of Movies, Music, and Online Media” webinar together (Smith 2009). Given the nature of current copyright law, it is unsurprising that the librarians and VCS staff emerged from the webinar holding radically different interpretations of the campus’ right to stream documentary and entertainment films. Given this, the librarians knew they would need more information and outside counsel before approaching VCS with a plan for a new streaming policy.

Legal Considerations

Before adopting any policies and practices regulating streaming video, it was necessary to first review

how the law governs the use of video in online courses. Copyright law and contract law both apply, and the contract prevails when there is an agreement in place between the library and a distributor (Smith 2009). This agreement may be a negotiated contract or simply the standard terms of use that are issued by the seller. In many cases, these terms will explicitly prohibit streaming. Often, the seller offers streaming rights as an additional licensing option for an additional fee but prohibits streaming when only purchasing a DVD (Handman 2010; Russell 2010, 355-6).

When there is no contract in place, librarians and educators can look to copyright law to determine their use rights. Exemptions to the 1976 Copyright Act have long provided a specific protection for faculty showing films in class. As long as the instruction takes place at “nonprofit educational institution[s],” the video is “lawfully made,” and it is shown in a face-to-face classroom, videos may be used without worry of a copyright infringement (US Copyright Office 2011, §110(1)). Face-to-face classrooms should be interpreted as the physical location where a course, with currently enrolled students, occurs (Russell 2010, 351). Screenings at other locations on campus and that are open to a broad array of students are not exempt, and they require the purchase of public performance rights (351).

The Copyright Law explicitly allows for the performance or display of copyrighted works in face-to-face classrooms, but additional educational use of protected works is provided for under “fair use” considerations. Fair use allows for copyrighted materials to be used in teaching, research, and scholarship after consideration of four factors (§107):

1. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
2. The nature of the copyrighted work
3. The amount and substantiality of the portion used in relation to the copyrighted work as a whole
4. The effect of the use upon the potential market for, or value of, the copyrighted work

These factors together do not answer whether a use is fair, but instead provides a basis on which an individual or institution can argue that a given use is fair if challenged by a rights holder. Case laws helps define what might constitute as fair use, but each use is subject to challenge that requires a legal defense. For that reason, many educators and educational institutions supported the adoption of additional language in the Copyright Law to address online education specifically (Hutchinson 2003, 2217-8).

Until the adoption of the Technology, Education, and Copyright Harmonization (TEACH) Act in 2002, the transmission of video through the internet was not explicitly provided by exemptions in the Copyright Law. To deliver video online, typically a physical copy of a video needs to be digitized and delivered, which infringes on the “reproduction” and “distribution” rights exclusive to copyright owners as articulated in the Copyright Law (Kehoe 2005, 1043). Educational institutions needed to rely on fair use or secure licenses for the right to transmit content online in classes. Licensing proved unworkable as it was too time-consuming and expensive to provide for the delivery of content that was equitable to a face-to-face class (Hutchinson 2003, 2213-2216).

The TEACH Act modernized the copyright law and provided for the use of copyrighted materials in distance education, including online-only classes and face-to-face classes supplemented with material posted online (Simpson 2005). It provides rights of use in addition to assigning responsibilities to university agents for compliance with the act. Technology staff, for example, must ensure that streamed material is accessible only to enrolled students and cannot be downloaded or copied. The course instructors are responsible for complying with the TEACH Act’s content restrictions. As Simpson states, “Regarding copyrighted materials in a course, they may read stories, poems, and essays. They may play nondramatic music (not musicals or operas). An instructor may show ‘reasonable and limited’ portions of dramatic audiovisual works (movies and operas). The term ‘reasonable and limited’ is given no specific time-period...” (24)

Recent judicial decisions help inform the educator’s interpretation of fair use, but application of fair use to streaming video remains unsettled law. Librarians

across the country are watching the courts to see how cases against University of California-Los Angeles and Georgia State University will alter understanding of fair use and the TEACH Act (Perry and Howard 2011). In the meanwhile, legal scholars and educational advocates debate what and how much can be streamed in online courses. Two notable authors, Laura N. Gasaway and Carrie Russell, versed in copyright and friends of libraries differ substantially in their final verdict of what rights institutions have to transmit video. Gasaway argues that a license is required to transmit an entire motion picture within an online class (2010, 774). Russell, however, defends as fair use the right of educational institutions to stream the same type of videos (2010, 354-6). Further, an issue brief authored by the members of the Library Copyright Alliance supports Russell’s position, stating that [a court] “could find that a ‘reasonable and limited portion’ may well include an entire work in some contexts” (2010, 7).

After reviewing internal documents, the WSU Vancouver librarians discovered that the library and the VCS department sought legal advice from campus officials but did so from two separate offices and received two different interpretations of the TEACH Act. When this was discovered, they asked for clarification and learned whose advice prevailed. In this case, the Assistant Attorney General rather than the university’s Copyright Officer was the final authority, and she recommended a more conservative approach to applying fair use and the TEACH Act to streaming video.

After consulting with university counsel, the library and VCS are proceeding with the following guidelines and principles. The Copyright Act encourages institutions to license educational materials. Therefore, the library and VCS will license educational documentaries whenever possible and license motion pictures whenever necessary. Reasonable clips may be used from both sources even when the contract prohibits streaming because the TEACH Act provides for that use without violating contracts. These interpretations side more with Gasaway (2010) rather than Russell (2010) and the Library Copyright Alliance (2010). WSU Online follows the same guidelines set out by our counsel’s office, and all other WSU offices supporting online education will need to adopt this policy as well.

For practicing librarians, it is important to recognize that their institutions may be unwilling to embrace the liberal interpretations of streaming rights advocated by leaders in their profession.

There is a tremendous amount of uncertainty and gray area in this legal issue, so it is in the university's best interest to define what level of risk they are willing to assume. Therefore, university employees need to seek clarification from the university legal counsel before proceeding with any clear policy for streaming video to online courses.

Communicating Rights

While waiting to determine WSU's position on the TEACH Act, the librarians wanted to take immediate steps to communicate licensing limitations to the university community. A project was already underway to determine how to best label the DVDs and VHS videos with licensed public performance rights. All of the terms associated with the videos needed review for public performance statements, so the Head of Collection Development added her analysis of broadcast and streaming rights simultaneously.

The primary goals of this project were twofold. First, VCS needed immediate information in order to best respond to faculty streaming requests using library-owned DVDs. VCS staff intended to ask about terms each time they received a request, but the library

staff knew reviewing terms as needed would be unnecessarily time consuming. Additionally, they needed information at hand to justify why a streaming request could not be satisfied. Second, faculty needed an indication of whether streaming would be prohibited for videos they wished to use. Library staff hoped that faculty would notice a statement prohibiting streaming and decide to either find a new film or seek streaming licensing. The library staff wanted rights to be self-evident to VCS and to the faculty member making a streaming request.

To reach these goals, the Head of Collection Development created a three part public education plan on copyright and licensing. This involved the labeling of media boxes with one of six standard licensing statements (Figure 1). New messages will be added to this list over time as the library acquires streaming rights to specific titles. She also adapted a Copyright LibGuide created by Chris Le Beau at the University of Missouri-Kansas City (Le Beau 2010). The labels and LibGuide mutually reinforce the library's licensing messages. The labels on the media boxes refer to further information on copyright in the LibGuide, and LibGuide includes a description of streaming video with a summary of licensing terms by distributor (Fountain 2011). Once a streaming policy is adopted, it will be added to the LibGuide and advertised to faculty.

Figure 1: Licensing Statements for Media Labeling	
1.	Public performance rights granted; broadcast and streaming for distance learning prohibited. For more information, see: http://libguides.vancouver.wsu.edu/copyright
2.	Public performance rights granted. Apply fair use and TEACH Act to distance learning use. For more information, see: http://libguides.vancouver.wsu.edu/copyright
3.	Public performance rights granted; broadcast for distance learning only permitted over closed-circuit system in a geographically continuous location. Streaming for distance learning prohibited. For more information, see: http://libguides.vancouver.wsu.edu/copyright
4.	Public performance rights granted until mm/dd/year. [Add broadcast limits as appropriate] Apply fair use and TEACH Act to distance learning use. For more information, see: http://libguides.vancouver.wsu.edu/copyright
5.	No public performance rights. Apply fair use and TEACH Act to distance learning use. For more information, see: http://libguides.vancouver.wsu.edu/copyright
6.	No public performance rights; broadcast and streaming for distance learning prohibited. For more information, see: http://libguides.vancouver.wsu.edu/copyright

As longstanding policy, the library acquires public performance rights whenever they are available. The

final element of the plan is to include a statement affirming public performance rights for specific titles

in the library catalog. The recent dismissal of the case against UCLA by the Association for Information Media and Equipment indicates that courts may eventually find that public performance rights include the right to distribute video through online course management software (Kolowich 2011; Smith 2011). If this point is upheld in subsequent litigation, the WSU Vancouver library will already be providing information that indicates streaming rights to faculty.

Collection Considerations

Media in Libraries Historically

Universities have a long history of supporting film use on campus, initially through campus media centers and now in university libraries. A small number of universities began to acquire films to support teaching as early as the 1920s, but they were purchased and managed by media staff (Brancolini 2002, 49). Until the development of videocassette in the 1970s, many saw films in need of special technical support that was difficult to accommodate in a university library (51). Technological changes and the growth of film studies as a discipline spurred collection building within library collections, and nearly all libraries now house video collections (Walters 2003, 161). Not only do more libraries collect video, the size of the collections have grown rapidly in the past ten years (Bergman 2010, 340). Video collection development is now an accepted practice nationwide.

Collection Development of Media

Collection development in libraries can support an array of activities and is driven by the nature of the individual institution. Librarians may buy materials to support faculty research, classroom instruction, student research papers, or archive human knowledge. Media collection development, however, is viewed in the literature almost exclusively as support for classroom instruction. Much of this is related to the historical development of university media centers (338).

Purchases, consequently, are frequently driven by faculty requests, particularly in institutions without media librarians (Brancolini 2002, 63). This is for good reason. Educational videos are expensive to purchase (Franco 2002, 319), and librarians want to ensure that they will be useful to and used by the campus community. The data bear out this trepidation. Faculty requested titles circulate twice as often

as librarian selected-titles (Dykyj 2002, 205). Laskowski found faculty at the University of Illinois-Champaign Urbana rely heavily on media in their classroom instruction. Some faculty reported incorporating media into every lecture, while the majority used media 1-5 times a semester (2002-03, 83). These studies support WSU Vancouver's commitment to providing video needed by faculty for their course instruction, particularly for faculty teaching English, Foreign Languages, and History classes.

Librarians have sought to manage demand for video in a variety of creative ways. Bergman (2010) recounts a decision at the Minnesota State University, Mankato that reclassified films by country of origin of the director to better assist international and foreign language students seeking films from non-U.S. regions (345). Vallier (2010) describes three research institutions whose media centers integrated media editing equipment and facilities into their public services (384). Healy (2010) discusses her library's use of a Netflix subscription to meet faculty instruction needs, supplement the existing library collection, and provide an easy avenue of discovery for patrons. Bergman (2010) finds more libraries willing to share their video collections through interlibrary loan (342). Although these strategies make it easier for patrons to find and view media in a given library or network, they do not necessarily provide content that can be legally streamed for online courses.

Streaming Video Choices

To provide streaming, there are four solutions for libraries to use alone or in combination with one another. The choice of how to proceed should be driven primarily by the content needed, but libraries with small staffs and budgets may also need to consider how easy and affordable it is to work with various distributors.

The first solution is to rely on fair use and the TEACH Act to provide digitized access to videos in the collection that do not specifically prohibit libraries from streaming. This will require that the institution determine who is responsible for making a fair use or TEACH Act assessment. Would the assessment be conducted in the library, as the owner of the media? Would the professors seeking to use copyrighted material conduct it? Would technical staff decide as part of their role in digitizing works?

What guidelines does the institution require to determine if film streaming meets fair use and TEACH Act requirements? Does the institution offer its own limits for “reasonable” and “limited” portions? For WSU Vancouver, the message so far is that clips are ok and full length streaming without licensing should be very unusual. The university’s legal counsel is comfortable using clips from films even if a license prohibits streaming as long as the clips are limited to a course and only available for a short time. She points to the TEACH Act as the legal defense. The TEACH Act treats dramatic films differently, however. These films are those who rely on actors to deliver the content and may be called “motion pictures,” “performances,” or “movies.” Only clips of these films are permissible under the TEACH Act. To stream an entire film, the university would have to use a fair use argument, which university counsel says is typically only justified in film classes, or license the content.

Two solutions require permissions and licensing. Libraries can digitize and stream licensed material from their own servers, or they can license content delivered online to patrons by vendors. Brigham Young University (BYU) adopted the first option, establishing its own streaming server and relying on content already shelved in the library (Schroeder and Williamsen 2011). BYU librarians licensed content for as many of top 100 circulating films as possible, using free, flat fee for perpetual access, and flat fee for long term access models. What helped make this model successful was the creation of a separate allocation specifically for the project, technical staff who could produce a quality digital image on a protected network, and librarians who could shepherd the whole process.

Several distributors provide content online and do so either at the title- or collection-level. Individual titles can be licensed indefinitely or for a specific length of time, and collections can be subscribed on a yearly basis. Both Handman (2010) and Farrelly (2010) summarize the licensing options for educational films that fit this model.

Finally, libraries and instructors can rely on freely available video content online. As video becomes easier to produce and distribute, more high quality, educationally-relevant video will be accessible to

the public at large. The administrators of WSU Online noted that more and more faculty use free resources in their online classes, especially TED talks, YouTube educational videos, Hulu content, and video streamed by television networks.

Solutions for WSU Vancouver

Where does this leave WSU Vancouver in its solution to provide appropriate streaming services to meet the demand of local faculty? Though the question is not yet settled, several options look promising. First, the Foreign Language Librarian will work with faculty to determine which films need to be streamed in their entirety for an online-only class and seek appropriate licensing. Most of the educational films are available from Film Media Group and can be licensed individually. Additionally, librarians will license the dramatic films that cannot be streamed by relying on fair use. Swank provides term licensing for many such films, and 31 “core” foreign language films requested by the faculty are available for streaming from this vendor. The cost is discounted for volume and lease duration, so the Foreign Language Librarian will work to identify which of the titles will be used most consistently online and then lease those titles for a 3- or 5-year contract.

Second, the librarians and technology staff are actively encouraging the use of free online sources. At the moment, WSU Vancouver has no separate streaming budget or any prospect of supplemental funding. Given that the cost of streaming a film can far outstrip the cost of DVDs, the existing media budget is not sufficient to license even just the top 100 circulating titles. Librarians will point faculty to the long, free clips available from PBS, for example, to substitute for DVDs unable to be streamed.

Last, the librarians are seeking clarification from the administration to confirm whether the library is expected to license course-related video and, if so, whether a budget supplementation is forthcoming. Ideally, WSU Vancouver will follow BYU’s and WSU Online’s model and provide specific funding for licensing content required for online instruction. Ultimately, the library would like to subscribe to a large streaming collection such as Films on Demand (Film Media Group) or Academic Video Online (Alexander Street Press) that would negate the need to license a large number of individual titles on an ongoing basis.

In the meanwhile, Vancouver librarians and VCS staff are still in discussion about how to apply counsel's interpretation in local policy and procedures to support current streaming video demand.

At the time of this writing, the policies include the following:

- Faculty will be encouraged to seek out free video online or use clips, neither of which needs licensing. Options will be provided in the library's copyright website.
- Due to budget restrictions, faculty may request licensing only for classes offered exclusively online. Other faculty will be encouraged to place VHS and DVD videos on reserve in the library or show them in the face-to-face classroom.
- All locally created video streams must be provided to students within the campus course management system. If provided under the TEACH Act, they will be available for a limited duration appropriate for the course.

These policies, when finalized, will be shared with the Vice-Chancellor for Academic Affairs and Vancouver's academic leaders to endorse and implement the solution. Faculty campus-wide will need to be informed of the need to secure streaming licensing and who to contact. As part of this process, the author will recommend that the cost of licensing films be considered when determining which specific courses to move online. This will save on overhead costs and prevent faculty discontent if licensing funding is unavailable.

Advice to Librarians

Although this specific article addresses the concerns of one particular university campus, some lessons can be generalized more broadly. Most importantly, librarians should be working closely with other campus units to determine the demand for streaming media, to clarify copyright limits that affect how videos can be used, and to plan to accommodate the need for media in online instruction.

Tensions will exist between faculty demand and university counsel's risk management, so there is an opportunity for librarians to provide leadership on

the campus to fill the gap. Securing a subscription to a streaming video service, for example, can satisfy both parties if the content satisfies the faculty and the budget allows for it. Can faculty prioritize a limited number of titles to license and rely on free sources for the remainder? Are there sources in the collection that librarians can have digitized and streamed with free licensing permission?

Finally, librarians should develop educational materials that help their campus clientele understand how copyright applies to online education. Contract law rather than copyright most often dictates the use of media online, so it is important to find old terms of use and review their language for streaming application. Determine a funding plan for licensing streaming media. Then, help faculty understand when streaming licenses may be needed and encourage them to notify the library as soon as possible if licensing is necessary.

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