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Biz of Acq — Views from the Edge: Commercial Sources for Video Weirdness and Ephemera

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Column Editor's Note: *I not only learned but I laughed! To my great delight, Gary Handman's article on off-beat and ephemeral videos is not only educational and well-written, but includes the words "perverts," "wantonly," "reefer," and "sex," and a handful of other tasty tidbits that you won't usually find in ATG. But don't let this fool you — occasional dabbling in purchasing in these marginal areas will be far easier with Gary's sources in hand. — MF*

I love the Internet. Not because of **Facebook** (certainly!!); nor for the fact that it empowers me to abuse my credit card any time of day or night; nor for the opportunities it affords to waste embarrassing amounts of time wallowing in pop culture trivia. No, as a video librarian, the reason I love the Internet is the unprecedented number of sources it has provided for collecting on the rickety margins and in the murky gray zones of cinema history. Let me explain.

Screening Schlock

Commercial moviemaking has always comprised a number of distinctly parallel universes. Along with A-list offerings of the Hollywood mainstream, there has, since fairly early in movie history, also existed a seamy netherworld of lurid, quick-buck toss-offs; strange and misbegotten genre riffs and rip-offs; and titillating, sensation-packed potboilers. We're talking here about the stuff of drive-ins, downtown grindhouses, and cheap, double feature Saturday matinees: Hopped-up juvenile delinquents on a hot-rod rampage. Wantonly seduced and brutally abandoned bad girls. Coke fiends and reefer maniacs from hell. Ravenous, papier mâché-headed mole people from Planet X. The continuing, bargain basement adventures of scantily-clad **Oomo The Ape Boy** and **Boona The Tiger Woman**. All slapped together with cheap film stock, tin-eared script writing, inept acting, and less than exalted expectations.

While print catalog sources for acquiring movie marginalia have been around since the dawn of VHS, the Internet and the advent of DVD have really opened this tacky territory — much to the joy of cult film fans and other aficionados of cinematic schlock and camp. Although this article will concentrate on small independent sources for acquiring "out-back" films, one measure of the growing popularity of such works is the number of titles also available from **amazon.com** and other online mega-marketers. In other words, the guilty pleasures of yesterday have become the mainstream pleasures of today.

Why would any responsible, cinema collecting librarian purchase this sleazy and oddball stuff? For public libraries, one answer may be that much of it offers a harmless and fun escape into the kitschy, pop culture past. There's a naiveté and a kind of nostalgia about those hot-rodding JDs; fedora-wearing, drug-pushing perverts; and bug-eyed monsters from outer space that is, well, sort of charming. There may even be lessons to be learned about how much the movies and American culture have changed since the 1940s, 50s, and 60s heyday of these films.

For academic libraries, although the above holds true, the full answer to "why collect weirdness" may be considerably more complex. All movies, good and horrible, are cultural artifacts and historical documents. They reflect the cultural and political milieu of the times in which they were produced and first watched. While mainstream Hollywood can provide such sociological insights and cultural clues, the strictures of the **Production Code** (The "**Hays Code**") that existed from the early 1930s until the 1960s severely limited the kinds of behavior and sentiments that could be shown on the screen. Under the **Code**, overt

representations of even the mildest of socially transgressive behaviors (from divorce to addiction to irreligiousness and political liberalism) were consistently left on the cutting room floor. Compare these films to the unabashedly exploitative films discussed above, in which spectacles of sex, violence drugs, and other social taboos were thrown roughly on the screen for the delectation of anyone with the dime admission fee.

From the standpoint of the 21st Century viewer, marginal movie cheapies often tell us considerably more about the secret fears and fetishes of the viewing public, and about the complexity and diversity of the cultural times than any big-budget Hollywood production. As **Peter Stallybrass** and **Allison White** have commented in their book *The Politics and Poetics of Transgression*, "what is socially peripheral is so frequently symbolically central." (as quoted in *Schaefer*, 1999, p. 13)

Screening the Ephemera

If the Internet has engendered numerous sources for purchasing the output of Hollywood's strange outback, it has also spawned a cottage industry in packaging and selling even more marginal types of non-theatrical moving images. Nearly two decades ago, "media archaeologist" and cultural historian **Rick Prelinger** coined the term "ephemeral films" to describe non-fiction films made for educational, industrial, or promotional purposes. To this list could be added time-sensitive content, such as newsreels, historical television broadcasts, political spots, propaganda, and commercials. Because these specialized films were, for the most part, never intended for commercial exhibition in theaters, they tended ultimately to end up in dumpsters (or, at best, in selected archives) when their effective screen life was over. Fortunately for students and teachers of cultural history, DVD has given new life to a vast amount of moving image ephemera (a large portion of which is currently in the public domain). Key acquisition sources for this type of primary source media are described below. It should also be noted that **Prelinger** has played a key role in preserving ephemeral moving image documents by mounting a large collection of these

films in the invaluable **Internet Moving Image Archive** (<http://www.archive.org/details/movies>).

Exploitation and Other B Films

Shocking Videos — <http://www.revengeismydestiny.com> — Wonderfully goofy, and probably only of interest to larger and more specialized and intrepid academic collections. **Shocking Videos** offers a panoply of cinematic weirdness and obscurity, much of it potentially offensive to general audiences (it's certainly not for those with faint hearts or delicate sensibilities). An often jaw-droppingly scurrilous (and hilarious) roster of z-grade offerings: evil biker epics and women in prison films, shockumentaries, racist animated cartoons, science fiction soft-porn (see for e.g., *Invasion of the Bee Girls* (1973) aka *Graveyard Tramps*), profoundly obscure films noir...and much much more, too "out there" to describe in detail in a family publication of this sort.

Sinister Cinema — <http://www.sinistercinema.com/> — Although the **Sinister Cinema** catalog offers perhaps the most mainstream titles of those sites listed here, the territory covered is still pretty much off the beaten track. A great source for obscure serials (both silent and sound), forgotten horror movies, jungle films, B westerns and sci fi films, and juvenile schlock. One of the only online catalogs mentioned to include wonderfully lurid original poster art for most films sold.

Something Weird — <http://www.somethingweird.com/> — The

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name pretty much says it all. Another mind-boggling collection of peculiarity. You name it: cheesy sword and sandal epics, TV rarities, vintage grindhouse and burlesque teasers, and — my personal favorite — “wrasslin she-babes”. And that’s just the tame stuff. One could easily construct a semester-long Women’s Studies course around the titles in this catalog. (Come to think of it, one could probably do the same for abnormal psychology courses).

Video Beat — <http://www.thevideobeat.com/> — A hip and groovy source for hard to find 1950s & 1960s U.S. and U.K. rock ‘n roll movies and TV shows. **Video Beat** also offers an ample store of cinematic, JDs, beatniks, hippies, hot-rodders, bikers, and beach blanket bimbos. Many of the music and performance documentaries are incredibly rare and important pop culture artifacts. **Video Beat** is, for example, the ONLY source I know that sells **Robert Frank’s** documentary (with an unprintable title) of the **Rolling Stones** 1972 tour.

Primary Source Moving Images and Movie Ephemera

A2ZCDS — <http://www.a2zcds.com/> — **A2ZCD’s** catalog offers a large number of primary source and ephemeral films packaged in topic collections, ranging from films broadly related to race relations and American urban development, to collections of Cold War propaganda and international travel films. Although there’s quite a bit of overlap in the **A2ZCD** catalog with the offerings of other primary source and film ephemera vendors, there is an equal amount of footage that is absolutely unique. Like all of the distributors described here, the quality of the DVD transfers in the **A2Z** catalog is often less than sterling, but the prices are exceptionally reasonable.

Earthstation.1 — <http://www.earthstation1.com/> — The brainchild and meal ticket of redoubtable New Jersey media packrat **J.C. Kaelin**, **Earthstation1** is one of my all-time favorite (and most reliable) sources for primary source media. **Kaelin** offers a catalog of both moving image and sound resources that runs a huge gamut of genres, including commercials, animation oddities, newsreels, historical audio recordings, educational and “social guidance” films, TV rarities, propaganda, and bushels of unclassifiables. **Kaelin’s** radio offerings are alone a good reason for checking out this site. Like most of the Web catalogs described here, **J.C.’s** site ain’t going to win any prizes for organization or graphic inventiveness. But where else can one find the WW II

pro-Axis broadcasts of British Citizen and Nazi sympathizer **William Joyce** (aka **Lord Haw Haw**)?

International Historic Films — <http://www.ihffilm.com/> — **IHF** has been in the business of marketing military, political, and social history film on video since the 1970s, making it one of the oldest marketers of moving image ephemera around. The **IHF** catalog includes newsreels, long out-of-distribution documentaries, and other rarities. Particularly impressive and important are the primary source materials from various wars and military engagements, including footage captured by cameramen on both the “winning” and the “enemy” sides. There’s also a good collection of Nazi feature films and propaganda, and German musicals from the 1930s-1950s.

Quality Information Publishers — <http://www.qualityinformation-publishers.com/> (also available via amazon.com) — Despite its blandly generic name, **Quality Information Publishers** offers an enormous and exciting catalog of film ephemera and rarities. One could easily get lost browsing the amazing finds in this list: reels of beauty and barbershop films from the 1940s; vintage cooking & baking films; Spanish Civil War newsreels and propaganda films, rhythm and blues shorts from the 1940s and 50s, and **Lucky Strike** cigarette commercials featuring **Frank Sinatra**. Very cool!

Conclusion

There’s an often-repeated story about **Alfred Hitchcock** gently scolding **Ingrid Bergman** for obsessing about her role during the filming of *Under Capricorn*. “**Ingrid**, dear,” drawled **Hitch** laconically, “it’s ONLY a movie!” Well, **Hitch** was wrong. Movies are seldom “only movies”; they are also potent cultural artifacts and social indicators with meaning and impact that extends far beyond the action on the screen. Library video collections wishing to represent the full range of movie history and to provide a sense of the ways in which movies have documented, mirrored, and shaped the cultural times and the cultural psyche should consider venturing beyond the comfortable Hollywood mainstream into darker and less well-known cinematic waters. Intrepid collection builders will find that the weird, the unique, and the wonderful territory on Hollywood’s fringe is increasingly only a mouse click away.

Recommended Reading

Goodall, Mark. *Sweet & Savage: The World Through the Shockumentary Film Lens*. London: Headpress, 2006.

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From the University Presses — What Is Educational Fair Use?

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In December 2007 the **ARL** released a white paper titled *Educational Fair Use Today* by **Jonathan Band**, a well-known lawyer based in Washington, DC, who specializes in intellectual property issues related to technology law and policy. In its press release accompanying the posting of the paper at the **ARL's** Website (<http://www.arl.org/news/pr/ed-fair-use-12dec07.shtml>), the **ARL** presented the value of the paper in this way: “**Band** discusses three recent appellate decisions concerning fair use that should give educators and librarians greater confidence and guidance for asserting this important privilege.” I would like to suggest that educators and librarians are ill advised to use this paper as a basis for such “greater confidence.”

The paper analyzes three recent appellate court decisions, one in the **Ninth Circuit** and two in the **Second Circuit**. With **Band's** analysis of the two latter cases, *Blanch v. Koons* and *Bill Graham Archives v. Dorling Kindersley*, I have no argument. These are what might be regarded as classic fair-use cases fully in conformity with the long tradition of jurisprudence in this area. If there is anything controversial at all about the second of these two cases, it would be that the seven images of posters about the **Grateful Dead** owned by the **Archives** and included in the book published by **DK** were reproduced in their entirety, albeit in reduced size. But I don't think there are any copyright experts today who would argue that use of an entire work, especially an image, would automatically not be fair if used in a “transformative” way. So comfortable do most attorneys feel about such use these days that the counsel for **Penn State** are allowing our press to publish a book on the philosophy of black film using 35 film stills without permission

from the rightsholders on the grounds that their use for purposes of scholarly comment and criticism in our book is exactly what fair use has traditionally been meant to allow. University presses have perhaps been too timid in the past about testing the limits of fair use, shackled as they usually are by the risk-averse attitudes of university attorneys, but core uses like this are so clear-cut that the risks seem very minimal indeed.

The other case, *Perfect 10 v. Amazon.com*, decided in the **Ninth Circuit** is quite different and readily distinguishable from the **Second Circuit** cases in a way that **Band** obfuscates by emphasizing instead that, “in all three cases, the courts found commercial uses to be fair.” True, but it has been firmly established at least since the **Supreme Court** decided the landmark fair-use case of *Campbell v. Acuff Rose* in 1994 that the commercial nature of the use can be trumped by the “transformative” purpose of the use. This is what allows commercial publishers to rely on fair use just as nonprofit presses do, when they are publishing books and journals that quote passages or reproduce images from previous works in the process of advancing scholarship, the paradigmatic application of fair use that is undergirded by the Constitutional language of **Article 1**, which affirms the purpose of copyright protection to be “promoting the Progress of Science and the Useful Arts” or, in the words of the first U.S. **Copyright Act of 1790**, “the encouragement of learning.”

Before pointing to what importantly distinguishes the **Ninth Circuit** from the **Second Circuit** decisions, it may be useful to say a word about the differences between these two circuits themselves. The **Second Circuit** has long been regarded as the premier circuit for the adjudication of copyright

cases. Such landmark cases as *Texaco* and *Kinko's* were decided in the **Second Circuit**, for example, and the *Google* case is currently in progress there. One reason, of course, is that the publishing industry in the U.S. is heavily concentrated in New York City, and it is therefore no accident that so many copyright cases end up in this Circuit. Another reason is that the **Second Circuit** boasts probably the leading expert in copyright law in **Judge Pierre Leval**, long a district court judge (as he was in presiding over the *Texaco* case) but now a member of the **Court of Appeals** there. **Leval** is the author of what is perhaps the most widely cited article on fair use, “Toward a Fair Use Standard”, *Harvard Law Review* (March 1990). In it he argues strongly for the proposition that “transformative” use is “the soul of fair use.” The **Supreme Court's** ruling in *Campbell* embodies the spirit of **Leval's** argument as it viewed “transformative” use as the decisive element in weighing the four factors in this case involving a parody. So, too, do the two rulings in the **Second Circuit** cited by **Band** in his white paper, not surprisingly because **Judge Leval** sits on the appeals court that decided these cases!

The **Ninth Circuit**, by contrast, has been out on a limb in many ways in this area of jurisprudence, espousing theories that have no support in other circuits and little support among academic experts either. A good example is an extension of the *Perfect 10* case, *Perfect 10 v. Visa International*, which is now on appeal to the **Supreme Court**. In this case, *Perfect 10* is seeking to hold **Visa** and **Master Card** liable for vicarious and contributory infringement because they service offshore businesses that are known by these credit card companies to be illegally reproducing and selling images copyrighted by *Perfect 10*. The question presented on appeal is this: “Did the **Ninth Circuit** err in holding, contrary to long-established principles of secondary copyright liability, that financial institutions and credit card companies cannot be liable, as a matter of law, for the services they provide to Websites that traffic in stolen copyrighted works, even if they know the Websites are engaged in massive infringement, they profit from each infringing transaction, they have both the contractual right and the practical ability to stop or limit the infringing activity, and the infringing Websites cannot viably function without the services these companies provide?” In a sharp dissent commenting on the tortured reasoning his colleagues used to arrive at their decision, **Judge Kozinski** wrote that the court has made “very new — and very bad — law,” which “conflicts with every material assistance case that I know of” and “will prove to be no end of trouble.” He added: “If such active participation in infringing conduct does not

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