To put shows online, the price is rights

By Sam Allis
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WGBH president Jon Abbott says it cost the station "seven figures" to reclear the rights for "The Presidents," its seven-part series for "American Experience." (Pat Greenhouse / Globe Staff / File)

It's only 30 seconds out of a 90-minute film, fleeting glimpses of then-President Jimmy Carter as seen in a 1976 Playboy magazine interview. But to secure the rights to use these five photos in the documentary series "The Presidents," which reaired last fall, WGBH had to pay Playboy $12,400.

That was all well and good for the show's broadcast and even for its release on video. But now, in the age of digital downloads - when TV networks are hungry to find new ways to attract larger audiences - the challenge has started all over again. WGBH has to go back and strike a deal for the digital rights to each photo of Carter.

Multiply that by the hundreds of film clips and images used for the show. Now multiply that by the hundreds of previously broadcast documentaries the station wants to put online.

Doing that math will help you understand why the unheralded task of clearances is arduous, costly, and often the difference between documentaries that you can summon at your fingertips and those you need to visit a research library to see again.
Reclearing, as this process is called, involves the hair-raising task of gaining permission to reuse every piece of material found in an earlier program that did not belong to WGBH.

At issue are the controlling rights of each writer, singer, actor, voice, musician, network, union, every source of still photography and archival stock footage, literary work, you name it. (A song may need two clearances: one for the composition itself and one for the owner of the master recording.) This means contacting and negotiating with every source.

Documentary producers of all stripes must endure the same process, but in most cases don't face the breadth and depth that WGBH does for its historical programs, particularly its series.

"We re-rent the rights to use these elements in our program that are controlled by other people," explains Susan Kantrowitz, the veteran WGBH general counsel and the station's Yoda of rights clearing.

Consider what WGBH had to do to both reclear rights for the rebroadcast of the acclaimed "American Experience" series on 20th century presidents that first aired in 1990, as well as obtain 10-year rights to stream the programs online.

"We started clearing for 'The Presidents' series two years ago," says Karen Cariani, head of the WGBH archives. There were 242 stills alone from Corbis, owner of a huge archive of film clips and stills, and 451 stills in all from 38 different sources. Then came 47 sources of stock footage that totaled 4 1/2 hours.

Surprises arise like flocks of birds: An original owner no longer owns the material, the original owner never owned the material in the first place, the original owner is dead. A photo agency no longer exists.

"I had film material from a man who is deceased, and his wife granted permission but said that the estate would not go under $20,000 for 50 seconds of material," recalls Cariani. "Definitely way overpriced, but we had to pay it."

Cindy Kuhn, who helped reclear rights for the rebroadcast of the great WGBH-based civil rights series "Eyes on the Prize," recalls her efforts to track down a photographer who had taken a great picture of a protest rally in Houston. It had appeared in The New York Times Sunday magazine and she wanted to use it in the series.

Kuhn looked closely and saw the photo was credited to a man named Richard Pipes, a photographer for the Houston Chronicle. But, it turned out, he shot the photo as a freelancer, and the agency for which he worked had gone out of business. He was given back his negatives at the closure and disappeared.

The detective work was positively Dickensian before the advent of Google, which has revolutionized rights clearing. So Kuhn began Googling and eventually found a Richard Pipes at the Albuquerque Journal, who had worked for the Houston Chronicle. She reached him at the paper and he turned out to be the same man. Pipes wanted a fee and licensing rights, and he and Kuhn reached an agreement.

Reclearing rights is a major priority today at WGBH because the station has seen the future and its name is streaming. This means putting online as many of its greatest hits as possible to snag more viewers who want to watch...
whenever they want.

The station has a trove of jewels aired over half a century that remain sequestered in its archives. WGBH wants to give them new life because it wants them to give WGBH new life.

"We're looking for windows," says WGBH president Jon Abbott. "We envision a move from TV or radio, where the asset is on Tuesday at 8, which is time-limited and platform-specific. It's harder to justify the work if it's just that night." Rather, he says, the station must become an accessible video library as well as a broadcaster.

Before any reclearing can begin, WGBH has to raise funds. "It's all about money," says Sandra Forman, an entertainment and copyright lawyer and former head of distribution at the station. Without serious money, WGBH can't pay the price to clear all rights to a previously aired program and the project is shelved.

What are we talking about here? "Seven figures," says Abbott about the seven-part "Presidents" series.

The old licensing agreements between WGBH and controlling parties have traditionally permitted four releases in three years. (A release permits a broadcaster to run a program as often as it likes within a seven-day period.)

But the station can't keep going back to reclear on those terms, so now it wants 10-year streaming rights. "The Presidents" and many of "Frontline's" reaired programs already have 10-year rights. (No owner of material in his right mind would ever give away perpetual rights.)

Reclearing rights for streaming is a bigger challenge than for broadcast because new technology has led to the emergence of new platforms that charge different fees for content. These include podcasts and mobile devices, as well as downloads for home use, to own, or to view once. The wireless world has opened a whole new arena.

Each of these new delivery platforms must be dealt with separately. While the streaming prices are generally lower than those for broadcast, they bring new burdens and complications to the station.

But will people really watch a two-hour program on a computer screen? "We'll learn if we think it's worth it," replies Abbott.

Depending on money, we should see a big increase of WGBH material online beyond the current roster. "Frontline" already has 94 programs with 10-year streaming rights available online, including its distinguished series on Iraq. "Nova" has 40 and "American Experience" another 38 programs.

That said, the trove of programs over the years in the WGBH archives has barely been touched. There are any number of ways to go. History always draws. Drama, too. Spy aficionados crave the return of Alec Guinness in "Tinker, Tailor, Soldier, Spy" and Sam Neill in the incomparable "Reilly: Ace of Spies." Others will want more science.

The next project will be to reair online the 13-part series on Vietnam that "American Experience" first ran in 1983. The fund-raising effort to pay for clearing rights has begun. Once again, the price tag is steep - about $1.3 million. Again, streaming will be a chief goal of the effort.
The success of this strategy will depend on the station's ability to raise money from foundations, private donors, and the parent Corporation for Public Broadcasting. Finding money for initial releases is hard enough. Getting money for rereleases in this economy will be brutal.

And then the fun begins.

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swineflu wrote:

as a non-profit, wgbh should get these free.

5/3/2009 8:08 AM EDT

jmaiewski wrote:
While I appreciate the author's raising these important issues, I'm conflicted because I fear that now more people will attempt to gouge public television.

5/3/2009 9:06 AM EDT

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