Hi Carl,

Issue number one regardless of copyright. Please share this with David Ferriero. I am so glad you know him personally.

This film *Island of Hope Island of Tears*, produced and directed by my father Charles Guggenheim in 1989 is not abandoned, or orphaned or out distribution but an active living film in two theaters at Ellis Island. We made it for the National Park Service as a destination signature film. It has played for over 28 years to the public. It was made to be seen in a theater and created in 35mm with stereo sound.

The digitization that was created and posted acquired or created by your organization was poor is quality and misrepresents our work. It is not acceptable to our standards or our approval even if this is deemed as a Government film.

We spend years creating a fine film using Gene Hackman's voice and battling committee after committee. It should be conveyed and seen in the highest standards possible.

We also spent years digitizing the film using the original elements provided us to by the National Park Service so a closed captioned DVD would be for sale at the site to benefit the Foundation.

It seems to be counter intuitive to delutes the value the site as a destination and the National Park Service revenue in addition to the quality and texture of a film that moves and has meaning to so many citizens around the world.

Considering all National Park Service sites are loosing funding from the Government this seem like a poor decision from my perspective.

I think this should apply to all National Park Service sites that have active living film still playing in theaters.

I will copy David Ferriero on our correspondence.

Grace Guggenheim
On Nov 28, 2017, at 6:15 PM, Carl Malamud <carl@media.org> wrote:

Hi Mary (and Grace) -

The DMCA notice was retracted and I've moved the video to private status. That means it is not viewable by anybody but me. I have a FOIA request into NPS asking them for any paperwork they have on the film, happy to delete the video when I get documentation on copyright from either you or them.

I sent David Ferriero a note and let him know what's going on. Sorry for the confusion. As I mentioned, it was sent to me by NTIS and they requested that I digitize it for them and post it per the terms of our no-cost agreement. It looked like a work of government and the government seemed happy about this, so I just assumed it was ok.

Thanks very much for your responsiveness.

Best regards,

Carl

---------- Forwarded message ----------
From: YouTube <copyright@youtube.com>
Date: Tue, Nov 28, 2017 at 2:27 PM
Subject: Re: [3-6800000020048] New Copyright Counter-Notification
To: carl+google@resource.org

Dear PublicResourceOrg,

In accordance with the Digital Millennium Copyright Act, we've completed processing your counter notification.

The following videos are no longer removed for copyright infringement:

- [http://www.youtube.com/watch?v=qh5CWbTDsuQ](http://www.youtube.com/watch?v=qh5CWbTDsuQ)

They may still be removed for other reasons. You may visit your Video Manager to see why the video was removed.

- The YouTube Team

Help center • Email options • Report spam

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Grace, it is a totally fine beautiful amazing film and should DEFINITELY be presented in a more appropriate way. I totally agree.

This was in a big stack of films that they asked us to post. This was one of them. Most of them were training films on VHS, a few of them were on beta or umatic, For the vast majority of those 6,000 videos we processed, it was a really good thing. 70 million people have looked at the videos.

Among that stack, there were a handful that were originally in copyright. There were others that needed more than a VHS master because it simply didn’t do the work justice, such as the works of John Ford. Island of Hope is a masterpiece, and a beautiful piece of work. We simply had no idea that this was an issue until you brought it to our attention just before Thanksgiving.

My only objection was to the way the issue was finally presented to us. This video has been online for years. There have been 80,000 views on YouTube and the Internet Archive. The National Park Service had it on their web site. Teachers were using it in classes at the suggestion of the government. We are totally noncommercial, we did this with the government's blessing, at their request, and at no cost.

But, instead of knocking on our door, somebody filled out a form on YouTube that said, ON PAIN OF PERJURY (you have to fill out a form click five check boxes and it in fact has that phrase in all uppercase), that we were breaking the law. That put our account on alert status, what YouTube calls a “copyright strike.” The vast majority of these kinds of discussions occur without somebody going all nonlinear and calling us criminals. You could have simply reached out to us.

So, to be clear. I think Island of Hope is a beautiful film. I am full of admiration that it was made and that it was made for the benefit of the government, and I’m very impressed with your continued support for NARA. I just wish you’d realize that we’re all trying to do what we can with the best of intentions. This was not a question of ill will, and I’m not thrilled with your implication that we have done something wrong, either legally or from an aesthetic point of view. This film got posted many years ago and we would have been happy at any point during that time to remove the video. All you had to do was say something.

Carl

btw, please take a quick second to look at our channel ... this is the kinds of videos we’ve posted:

https://www.youtube.com/user/PublicResourceOrg/videos?sort=p

As you can see, the videos are mostly government training films, historical films, and such. Our most popular videos are about bulldozer safety and shrimp farming. You got mixed into that pile.

I understand.

The process and thought is very sloppy. The NARA and the NPR should have higher standards.

Grace Guggenheim

Guggenheim Productions Inc | 3121 South ST NW | Washington DC 20007
Grace Guggenheim <g.guggenheim@gpifilms.com>  
To: Carl Malamud <carl@media.org>  

I understand. It is not your fault.

Grace Guggenheim

Carl Malamud <carl@media.org>  
To: David Ferriero <David.Ferriero@nara.gov>  

Hey David. You're going to like this. Grace Guggenheim and I both think this is all your fault. ;)

I've voluntarily retired the film we were arguing about (for the time being) on both the Internet Archive and YouTube and she has withdrawn the DMCA notice. But, I definitely want to see some paperwork on copyright or licensing at some point, and am hoping my FOIA to NPS will reveal that information or perhaps your motion picture division has that information. But, for now, I believe Grace that this is their film and they only granted limited use, and I am grateful that they don't think I did this with ill intent.
Grace does have a good point, however, about the quality of the reproduction of their film. I received my copy from NTIS, so this really isn't NARA's fault, but I suspect you have the same low-quality print in your vaults. And, neither NARA nor NPS has a high-quality version of this online, which it really should be given the message. It's an invaluable resource for students studying civics and the 80,000 views we clocked is evidence that this resource needs to be available to a broader audience than simply those who can make it to Ellis Island. I note that there is a DVD version for sale, so this is not simply shown in theaters at 35mm, it is shown in homes. It should also be shown on the Internet. It is an important story.

I know this matter is between Guggenheim Productions and the National Park Service, but I note that you've shown the film at NARA and have a relationship with them. And, you helped us make the FedFlix program a reality. I was hoping that instead of simply disappearing this film from the Internet, maybe we could use this occasion to figure out how to do something really is high quality and meets with the approval of the filmmakers. It really is a beautiful piece of work, and I'd hate to see it simply disappear.

Would it perhaps make sense to bring a dozen people together in DC to talk about this? Can you maybe help bring us all together on what I'm pretty sure is a common aim? You have some other treasures in your vault. Our mutual friend Rick Prelinger has done a nice job on some of those films, but there are many other issues of how to make these things available, both technically and legally.

There are some real gems of audio, video, and images in the federal archives, and we really have not risen to the task of presenting this material the way it should be. If instead of a mpeg rip of a VHS tape, something was done in 2k or even 4k, and if that high-quality video was able to reach millions more people, wouldn't it be worth at least exploring? The goal of the filmmakers was to help the National Park Service (and they continue to help NARA). If there was an attempt to present their material much more effectively on the Internet, isn't that worth exploring?

Just a thought. I'd be willing to do a few trips to DC if you thought a group exploring this issue might be helpful in moving the ball forward.

Carl

[Quoted text hidden]

Carl Malamud <carl@media.org> Fri, Dec 8, 2017 at 11:50 AM
To: Grace Guggenheim <g.guggenheim@gpifilms.com>

Dear Grace -

The National Archives furnished me with a copy of the contract between Guggenheim Productions and the National Park Service. I note that you received a sum for the production of this work and in return agreed to Article X of the contract which is very specific that this is a work of government and that “the Contractor retains no rights to this film.” You will find the contract attached.

I will assume that when you filled out the form on YouTube, that you simply were unaware of these facts when you swore an oath that stated “UNDER PENALTY OF PERJURY, I am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.”

I will also assume you did not understand what you were doing when you swore an oath that stated “I acknowledge that under Section 512(f) of the DMCA any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability for damages.” The law in question, Section 512(f), gives both YouTube and Public Resource a cause of action against “Any person who knowingly materially misrepresents under this section.” You can read the law for yourself here:

https://www.law.cornell.edu/uscode/text/17/512

In case you did not fill out the YouTube form yourself but delegated that task to a subordinate, I would encourage you to look at the form more carefully:

https://www.youtube.com/copyright_complaint_form

I can’t speak for YouTube, but I have no intention of suing you. I'm not a lawyer and have not retained counsel
on this matter. To me, this is not a legal issue.

However, I hope you will read this note carefully and will take this situation to heart. After you forced me to take the video down from both YouTube and the Internet Archive, depriving teachers and students all over the country from access to a video which they had a right to see and use, I did a little digging around.

The National Archives informed me that they were familiar with the low-quality NTIS print of the film to which you objected and have offered to share with me their own digitization. I have accepted their offer. In addition, I bought a copy of the film from Amazon:

https://www.amazon.com/Island-Hope-Tears-immigration-experience/dp/1933233036

I noted that the DVD which you sell for $15.97 on Amazon includes the following notice on the back: “Program Guggenheim Productions Inc. Packaging ©2015 Guggenheim Productions, Inc. All rights reserved.” I will again assume you are not familiar with Works of the U.S. Government, and call your attention to Section 403 of the Copyright Act, which states that that for works “consisting predominantly of one or more works of the United States Government” that such works should “includes a statement identifying, either affirmatively or negatively, those portions of the copies or phonorecords embodying any work or works protected under this title.” Again, you can read the law for yourself here:

https://www.law.cornell.edu/uscode/text/17/403

As a result of this new information I received, I have made the original YouTube and Internet Archive videos public again. In addition, I have uploaded a higher-quality version of the video and have included subtitles. If you wish to make an even higher-quality version of the video available, I would be more than happy to post that as well. You can find those copies here:

https://www.youtube.com/watch?v=qXfXFbdd7eo
https://archive.org/details/ntis.ava15996vnb1

I would be happy to hear any suggestions you might have as information that should be present in the video descriptions.

As I wrote to you earlier, I wish to stress that I have nothing but admiration for the high quality of your work and of the work of your father. The film is a wonderful creation and lesson about the importance of immigration in the United States. However, it is a Work of the U.S. Government and while I sympathize with your views on how the work should be displayed, it was not right for you to claim ownership of this video and accuse me of an illegal action.

Grace, I believe we share common values on the importance of the National Park Service, on the importance of telling our history to our children, and on the importance of supporting our government and especially the civil servants that work so long and hard to serve our country. I hope we can get beyond this episode and that perhaps we could meet at the National Archives and discuss ways to make our government’s amazing video heritage more broadly available with the highest standards of quality and accessibility.

Again, I hope we can put this episode behind us and will consider this an inadvertent mistake on your part. Let’s focus on making more information available to the public instead of removing such compelling and important information from view.

Best regards,

Carl Malamud
1005 Gravenstein Highway North
Sebastopol, CA 95472
Phone: 1-707-827-7290
Carl Malamud <carl@media.org>  
To: Daniel Rooney <Daniel.Rooney@nara.gov>  
Cc: "Cummings, Ann" <ann.cummings@nara.gov>, "Bergman, Hannah" <Hannah.Bergman@nara.gov>, Gary Stern <gary.m.stern@nara.gov>, David Ferriero <David.Ferriero@nara.gov>  

Dear Daniel -  

FYI. If you have a higher-quality digitization available, I'd love to look at a copy. I understand it is my responsibility to do any rights assessment.  

How can you get that to me? Do you have dropbox or google drive? If not, can you send me a USB drive?  

Thanks for your helpful information. I do hope Ms. Guggenheim takes me up on my offer to initiate a discussion on how we can better assist the government in making these valuable productions more broadly available.  

Best regards,  

Carl  

---------- Forwarded message ---------  
From: Carl Malamud <carl@media.org>  
Date: Fri, Dec 8, 2017 at 11:50 AM  
Subject: Re: Motion Picture Distribution Issue  

Grace Guggenheim <g.guggenheim@gpifilms.com>  
To: Carl Malamud <carl@media.org>  

Carl  

I think it would be really nice if you could work with the National Archives to retain an acceptable copy of the film. Currently you have uploaded a poor quality version that hurts us professionally. Our creation was meant to be seen with a higher standard  

If you plan not to seek a better copy I will get the National Oark Service involved to work with the National Archive  

As I mentioned to you before our concern and I would very much like that wish and the respect towards our work respected  

Does that work for you?  

If not I will request this with the Archivist and the National Archives Motion Picture Division  

Sent from my iPhone  

[Quoted text hidden]
The version now online is significantly better than the old NTIS print you originally saw. Look at the two links I sent you and you will see what I mean:

https://www.youtube.com/watch?v=qXfXFbdd7eo
https://archive.org/details/gov.ntis.ava15996vnb1

It’s still a straight NTSC 480p picture, so we can definitely do much better, but definitely better than what we had from NTIS.

I have a request into the Motions Picture Division at NARA for their digitized version. We’ll see if that’s any better. I’ve also suggested to David Ferriero that we spend some time asking what we can do to increase the quality of a number of these kinds of historical films. I have a colleague that does frame by frame digitization of 35mm and I know NARA has some capabilities to do that but has not aggressively deployed it. "Island of Hope" is an important enough film that perhaps this will motivate them to do more.

Best regards,

Carl

[Quoted text hidden]

Good Morning, Carl,

Thank you for the follow up. We are happy to share with you the results of NARA’s digitization work. By tomorrow I can give you a listing of the file specs that we have in storage for this title, and we can further discuss the best method of sending large files to you, probably via external hard drive that we could loan or you could supply. In the meantime, we will share with you our reference file via Google Drive, which you should be able to download. This file type is the spec that we typically use for delivery in the National Archives Catalog. So, look out for a separate email from me this afternoon or tomorrow morning.

I’m happy to discuss our file types and collaboration opportunities further, just let me know. NARA will also consider the online posting of this title for all of the public on NARA sites in the near future, after further assessment of our own with respect to the rights issues.

Best, Dan

Daniel Rooney, Supervisory Archivist
Special Media Archives Services Division (RDSM)
National Archives at College Park
8601 Adelphi Road
College Park, MD 20740
Daniel.Rooney@nara.gov

[Quoted text hidden]

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Daniel Rooney, Supervisory Archivist