

MAR 15 1993

MOTION PICTURE, BROADCASTING  
AND RECORDED SOUND DIVISION

February 26, 1992

This memo is offered as an attachment to the statement entitled "Preservation Without Access is Pointless" by The Committee for Film Preservation and Public Access.

As I have added my signature to the above mentioned statement, I am in general agreement with the ideas that it expresses. However, I would like to make the following annotations.

I believe that an agreement or legislation should be created which, although not restricting properly registered titles from going into the public domain at the end of their 75 year term, could lend added protection to studios and independent copyright holders who have donated their original materials to the Library of Congress or other accredited archives.

This added protection would automatically come into play if two things occur.

The owner of the materials would:

- A. Continue to create (at their own expense - not publicly funded) new preservation materials which would guarantee the survival of the works for the future, and;
- B. Continue to keep available in film and or video, top quality copies of the original work.

I would suggest that added protection received by the copyright holder be the continued restriction of public domain use of publicly held preservation materials.

If we allow prime contributed preservation materials to be used freely, the copyright holder would not only have little to gain by continued investment in preservation, but would be damaged by their own activities as donors. If, however, we give something back to the copyright holder for preserving their own material, it could ease the preservation onus on public funds.

I would further suggest that donors be given a window of use, possibly ten or fifteen years after the end of copyright protection, to access their original materials. In the case of the studios, the sheer number of titles to be accessed would prevent them from doing so over a short period of time. This window would remain open for their sole use as long as titles are accessed on a continuing basis.

To take a specific example, MCA / Universal recently accessed materials for their 1930 "Dracula" and 1931 "Frankenstein" among other titles. They produced superb quality restorations on films which are due to go into the public domain in only twelve years. In the face of this preservation activity, it would seem blatantly unfair to make their prime materials available for public domain use because the donor chose to allow them to survive outside of their own auspices.

How could we in good conscience or in good business ethics, take a position which would harm any donor, whose ultimate business might have been better served to junk their nitrate when they originally converted it to safety, rather than allow it to be deposited and preserved?

Access to materials deposited by donor corporations which either no longer exist or are in no way accessed or preserved by their owners on a continuing basis should be given to the public without restriction, provided that normal archival guidelines are followed.

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