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LIBRARY OF CONGRESS

The National Film Registry
The Library of Congress
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MOTION PICTURE, BROADCASTING
AND RECORDED SOUND DIVISION

Members:

I consider the National Film Registry to be an excellent vehicle to publicize the many issues of film preservation. I support the statement of the Committee for Film Preservation and Public Access submitted for the preservation hearings.

I will use this opportunity to comment on the preservation study required by the Congressional Reauthorization of the National Film Preservation Act of 1988. I believe that this study offers an opportunity for the Registry to make recommendations that, if implemented, will lead to better understanding and support for the archival community.

I base my comments on my experience. I am a researcher of copyrights, a freelance writer on film history, and a commercial user of archival resources. I am also a copyright owner and licensee of films, and produce the laserdisc release of classic motion pictures. I have had extensive discussions on preservation issues with the directors and staff of four of the five United States FIAF archives. I try to see all sides of the issues, although I have a prejudice for greater public exhibition and increased public access to collections.

I. Questions

When the American Film Institute was founded in 1967, their preservation mandate was to acquire, preserve and make available the missing years of the American cinema. The acquisition efforts of the AFI in its first ten years, the increase in interest in old film, the qualified cooperation of the studios and the increase in public and private funding for film preservation have resulted in a situation where most of the important films are now preserved in some form by either an archive or the rights holder.

I referred to the "important films." However, tens of thousands of motion pictures were produced in this century. Beyond the acknowledged important titles, there are many more films that share greatness, and others that are important examples of a film genre or filmmaking style. All films reflect the time and era of their production.

Many questions need to be addressed in the preservation study.

How do you judge what are the important films? Should all of the less important films be preserved? What are the standards of preservation? Is full preservation, including masters, always required, and is it being performed when the title warrants? What is the difference between preservation and restoration? Is it worthwhile spending more money preserving a film than it may have originally cost to produce? What responsibilities do the owners have to archives that have spent public or private funds?

What material is available to the owners or licensed distributors for future distribution? What of the orphan films, those in the public domain or without traceable owners? Who is responsible for their preservation, and how can these films be shown?

To what extent is it necessary for archives to preserve films that have been preserved by its owners? Will Federally funded preservation material be available to the public without restriction once the motion picture falls into the public domain? Is it possible (or even legally binding) for an agreement between a donor and a publicly funded archive to extend in perpetuity? If so, then what is the role of archives? When films become 75 years old, will they become available in inferior copies, while the publicly funded preservation material is inaccessible?

What educational or outreach obligations do archives have? Should they be encouraged to send films from their collection to non-profit theaters to create an interest in old film and to spread the benefit of the public funds that pay for the preservation?

II. Reaching the Public

The third part of the AFI goal was making the rescued films available. One scholar once pointed out that all films should be preserved, but not necessarily shown. He meant that some films are of academic interest only. But what of the other films?

I believe that public funding of the preservation of copyrighted works requires that the public get something in return. Making viewing copies available in one location weekdays from 9 to 5 solves a small part of that problem, and provides access for those who are most determined to see the films. Allowing access to the best material for the donors or copyright holders is another step.

What of the orphan films, whose owners cannot be traced and those films that the donors have not released and have no plans to do so? The burgeoning public domain video business encompasses some 200 suppliers, working almost exclusively from 16mm. They distribute titles that are in the public domain and are often not otherwise available. What is the point of archives preserving a film in 35mm if the public will only see the title in copies of inferior quality?

This approach to preservation has frequently led to the nightmare of an archive spending money on the preservation of a film, only to have the owner refuse permission for the film to be shown. Very seldom have archives worked with owners to their mutual benefit: allowing the archive to show a film for favorable publicity and to recover its investment, while the owner gains from increased public awareness and later commercial distribution.

III. Access

The existence of a system where public funds support the preservation and storage of motion pictures while owners reserve all rights in perpetuity would not withstand congressional scrutiny. A copyright provides protection for a limited term with the understanding that upon expiration, the work will be available to the public without restriction.

If a library has a first edition of "Huckleberry Finn," then after the copyright expired the volume could be used as the basis of a facsimile edition to make the book more widely available. Motion pictures should be treated the same way, as long as wear on the original materials is controlled. Since nitrate materials will decompose eventually, more wear should be allowed. Written policies need to be developed and issued for public comment.

A system that uses public funding should be investing now for future public access. All archives rely on public funds and should be held to the same standards for total availability following expiration of copyright.

I am continually amazed that preservation and availability do not go hand in hand. A grant for the writing of a novel would include an expectation that the work be published, while a grant for a work of music would stipulate that the work be performed and recorded. Why would a film be preserved if not to be shown?

IV. What is the Size of the Problem?

The 1991 Senate report on the Reauthorization of the National Film Preservation Act of 1988 notes that "Congress finds that ... because of deterioration or loss, less than one-half of the feature-length films produced in the United States before 1951, including only 20 percent of the silent films, still exist...."

That is a sobering prospect, but this "fact" dates back to the early 1970s, referring to the situation in 1967 before the founding of the American Film Institute. Thousands of films have been rescued in the interim. What was the basis of this "fact" and what are the accomplishments of the last twenty-five years?

I have talked to many people about this figure, and it appears to be a rough estimate developed by Larry Karr for the AFI. This is a critical issue. While we know how much nitrate sits in the vaults waiting to be copied, we do not know how much has been

accomplished already. To recommend solutions, you first need to be able to measure the problem. The study should document how many of the films produced in the nitrate era survive in any form, how many have received full archival or corporate preservation, how many are available in distribution from public domain or licensed sources, etc.

The basis for a statistical analysis exists with the AFI Catalogs for the teens, twenties and thirties. There are 5189 teens and 6606 twenties feature motion pictures listed in the published catalogs, and the thirties book will soon be available. The forties could be derived from the *Film Daily Yearbooks*. These lists could be used intact or as the basis for a random sample of titles to determine the survival rate of these films. That would address the quantitative issue.

To investigate the qualitative issues, you could check the preservation status of one hundred nitrate-era films of acknowledged historical importance. A suggested list is attached. This would be a useful appendix to show that many films are preserved in many ways by different organizations and companies. It also would provide specific examples that would be lacking from an overview.

The titles selected by the National Film Registry would not be appropriate because they are not a random sample. This list is balanced by archive, studio, year and genre. Many of the titles were chosen because they exist in multiple versions or only incomplete materials survive.

V. Conclusion

The archive movement has performed an important function. Because of the archives, despite decades of neglect by their owners, many old films survive and have now found a new audience. Many copyright holders are unwilling to invest the funds for more than the minimal preservation necessary to assure their ability to continue video distribution of their inventory.

However, the artistic and sociological benefits of archival preservation of the studio libraries do not justify the use of public funds, unless the copyright holders make an active effort to keep those films in distribution. Preservation for continual availability is an arguable benefit; preservation for perpetual unavailability is not.

Mechanisms need to be developed to enable archives to recover some of their investment in their film holdings. The efforts of the UCLA Film Archives Commercial Services division, selling stock footage from the Hearst Metrotone Newsreel library, and the George Eastman House Film Archive making selected titles available on laserdisc and homevideo allow the films to reach a larger audience, while supporting additional preservation efforts.

In tight economic times, archives need to develop broader constituencies. Increased availability of reference prints for public screenings at museum or festival showings is a start. Alliances with the studios whose permissions are required is the crucial next step.

I believe that America's film archives are at a crossroads. The advent of cable and videocassettes has made classic films more widely available than at any time in the past. Many films that ten years ago could only be viewed at archives are now on cable television, cassette or laserdisc. Archives need to show the public why they are still needed.

Archives need to expand their constituencies beyond those people who are already interested in film. Motion pictures that address a given topic should be as readily available to researchers as a book on the same subject. Only by expanding availability of archival resources to film users beyond the immediate vicinity of the archives, reaching those who do not now see film as relevant to their research, and expanding the interest of the general population in old film, will the film archives continue to grow in influence and importance.

I hope that these ideas are helpful in development of the preservation study, and I look forward to discussing these issues further in the future.

Yours sincerely,



David Pierce

One Hundred Nitrate-Era Films

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|-----|------|-----------|-------------------------------------|
| 1. | 1903 | Edison | The Great Train Robbery |
| 2. | 1912 | Kalem | From the Manger to the Cross |
| 3. | 1913 | Biograph | The Battle of Elderbush Gulch |
| 4. | 1913 | Universal | Traffic in Souls |
| 5. | 1914 | Fox | A Fool There Was |
| 6. | 1914 | Ince | The Italian |
| 7. | 1916 | Ince | Civilization |
| 8. | 1917 | Metro | Blue Jeans |
| 9. | 1918 | Metro | Thais |
| 10. | 1918 | Universal | The Heart of Humanity |
| 11. | 1918 | Fox | Drag Harlan |
| 12. | 1918 | Artcraft | Pride of the Clan |
| 13. | 1919 | UA | Broken Blossoms |
| 14. | 1919 | First Nat | The Last of the Mohicans |
| 15. | 1920 | UA | The Mark of Zorro |
| 16. | 1921 | Metro | The Four Horsemen of the Apocalypse |
| 17. | 1921 | First Nat | The Kid |
| 18. | 1921 | Universal | The Virgin of Stamboul |
| 19. | 1922 | Fox | Just Tony |
| 20. | 1923 | Paramount | The Ten Commandments |
| 21. | 1923 | Sennett | The Extra Girl |
| 22. | 1924 | Metro | Romola |
| 23. | 1925 | Warners | Lady Windermere's Fan |
| 24. | 1925 | Pathe | The Freshman |
| 25. | 1925 | First Nat | The Lost World |
| 26. | 1925 | UA | Tumbleweeds |
| 27. | 1925 | MGM | The Big Parade |
| 28. | 1925 | UA | The Eagle |
| 29. | 1925 | Universal | The Phantom of the Opera |
| 30. | 1927 | Pathe | The King of Kings |
| 31. | 1927 | MGM | Beverly of Graustark |
| 32. | 1927 | Fox | Sunrise |
| 33. | 1927 | First Nat | Lilac Time |
| 34. | 1927 | Warners | The Jazz Singer |
| 35. | 1927 | Universal | The Cat and the Canary |
| 36. | 1928 | MGM | The Flesh and the Devil |
| 37. | 1928 | UA | The Garden of Eden |
| 38. | 1928 | Fox | Street Angel |
| 39. | 1928 | Paramount | Docks of New York |
| 40. | 1928 | MGM | The Cameraman |
| 41. | 1928 | Disney | Steamboat Willie |
| 42. | 1928 | Warners | The Singing Fool |
| 43. | 1929 | Paramount | The Letter |
| 44. | 1929 | UA | The Trespasser |
| 45. | 1930 | Universal | All Quiet on the Western Front |
| 46. | 1931 | MGM | Anna Christie |
| 47. | 1931 | Warners | The Public Enemy |
| 48. | 1932 | Paramount | Blonde Venus |
| 49. | 1932 | RKO | A Woman Commands |
| 50. | 1932 | Warners | I Am a Fugitive From a Chain Gang |

51.	1932	Hughes	Scarface
52.	1932	Paramount	The Sign of the Cross
53.	1933	Fox	Cavalcade
54.	1933	MGM	Dinner at Eight
55.	1933	Columbia	A Man's Castle
56.	1933	Paramount	Love Me Tonight
57.	1933	RKO	King Kong
58.	1934	UA	Our Daily Bread
59.	1934	Columbia	It Happened One Night
60.	1934	UA	The Count of Monte Cristo
61.	1935	MGM	A Night at the Opera
62.	1935	Universal	The Bride of Frankenstein
63.	1935	MGM	Mutiny on the Bounty
64.	1935	RKO	Top Hat
65.	1935	20th Fox	Steamboat 'Round the Bend
66.	1936	Warners	The Charge of the Light Brigade
67.	1936	Columbia	Theodora Goes Wild
68.	1936	MGM	Fury
69.	1936	Universal	Showboat
70.	1936	Goldwyn	Dodsworth
71.	1937	US Gov't	The Plow That Broke the Plains
72.	1937	Halperin	A Nation Aflame
73.	1937	MGM	The Good Earth
74.	1938	20th Fox	In Old Chicago
75.	1938	Columbia	Holiday
76.	1938	Warners	Jezebel
77.	1938	Paramount	The Buccaneer
78.	1939	RKO	Love Affair
79.	1939	Universal	Destry Rides Again
80.	1939	Selznick	Intermezzo
81.	1939	UA	Of Mice and Men
82.	1939	UA	Stagecoach
83.	1940	UA	Our Town
84.	1940	20th Fox	The Grapes of Wrath
85.	1941	Selznick	Rebecca
86.	1941	RKO	Citizen Kane
87.	1942	UA	To Be Or Not To Be
88.	1942	RKO	The Magnificent Ambersons
89.	1942	Warners	Casablanca
90.	1943	UA	Hangmen Also Die
91.	1946	Columbia	Cover Girl
92.	1944	20th Fox	Laura
93.	1946	Monogram	When Strangers Marry
94.	1946	PRC	Strangler of the Swamp
95.	1946	Universal	The Killers
96.	1946	Goldwyn	The Best Years of Our Lives
97.	1947	20th Fox	Nightmare Alley
98.	1948	Warners	The Treasure of the Sierra Madre
99.	1948	UA	The Time of Your Life
100.	1949	Republic	The Sands of Iwo Jima