

MAR 15 1993

MOTION PICTURE, BROADCASTING
AND RECORDED SOUND DIVISION

To: The National Film Preservation Board of the Library of Congress

For years, the Library of Congress has been using taxpayer money to make preservation copies of motion pictures. This is a splendid idea, one that more countries should adopt.

For years, the Library of Congress has been allowing such films to remain under the rigid control of some of the companies that initially registered the movies for copyright -- *even when the copyright has expired and the films have passed into public domain.*

This is sheer lunacy.

What's the point of preserving the films if those paying for the preservation will *never* be allowed access to them? What's the meaning of "public domain" in this case? If the films are in the public domain, the public *must* be granted access to the films. Why are the studios granted this enormous power over the U.S. government, as represented by the Library of Congress? Publishers aren't.

Which brings up an analogy -- a pretty exact analogy, as it happens. Let's say there was a publisher that happened to print works from a wide spectrum of authors, great writers, hacks, and the everyday, workmanlike writers who make up the majority of authors. This publisher has registered these works for copyright. By an odd fluke, this is one of those old-fashioned publishers who retains sole copyright in the books, without the rights ever reverting to the authors. Unlikely, of course, but possible, since that did happen in the past. (And still does, occasionally: cf Tom Clancy and *The Hunt for Red October.*)

So here are some books by, say, Ernest Hemingway, Ernest Thompson Seton and Ernie Pyle, all of which have passed into public domain. Except that because of a bizarre arrangement between the LC and the publisher, these books are unavailable to anyone. No researcher can read them, no casual reader can peruse them for pleasure, and no new publisher can reprint them -- while at the same time the original publisher not only doesn't intend to reprint the books now, but *never will*. The books might as well not exist.

This, of course, is madness. It could never happen

With books.

But it does with films. Why? I don't know all of the reasons -- perhaps some studios heavily endowed the campaigns of prominent politicians and they put pressure in the right places. But it's really more likely due to the artificial hierarchy in the arts, and the way films and books have long been regarded in this country. (And

only in this country of all Western countries.)

Books are seen as being more *worthy* than films, and therefore more worthy of being preserved in the first place, and more worthy of being made available to future generations. Many of the films we're concerned with are minor by anyone's standards -- but that does not mean they should be made invisible, inaccessible, unreachable. It is quite impossible to do a thorough study of the output of a given studio without access to the majority of the films made by that studio. (And you can substitute "director," "star," "writer," "producer," etc., for the word "studio.")

The importance of films is growing in this country -- it's been long established elsewhere -- and by walling these films up in an ivory tower film history is being falsified. There is no justifiable reason why movies, of all art forms, are granted this particular and peculiar exemption from true public domain status.

Also, unlike films, copyright in books generally rests with the actual writer or writers of the books, not with the publisher; it's easy to see that Ernest Hemingway wrote *For Whom the Bell Tolls*.

But who created, say, the early 1950s version of *20,000 Leagues Under the Sea*? Obviously, it wasn't Jules Verne, author of the original novel. Nor was it Richard Fleischer, who directed the movie, nor was it the various writers who worked on the script. Nor was it even the producer, Walt Disney. No, for reason that are now lost in the mists of time, it was the *movie studio itself* (Walt Disney Productions) that was regarded as the "true author" of the film. In short, because it is difficult to credit any one person with being the creator of that movie, the "author" is said to be a corporate entity.

For any number of reasons, that's not likely to change, even though in some cases (the films of John Ford, for example), it's clearly preposterous. But what happens *after* the registration has been filed can, and must, change.

The rallying cry of The Committee for Film Preservation and Public Access is "Preservation without access is pointless." That, of course, doesn't have the glorious ring of "I have not yet begun to fight" or "Damn the torpedoes, full speed ahead" or even "Fifty-four forty or fight." But it's true, nonetheless.

It is not only time, it is well past time, for the US government and the Library of Congress to revise their rules regarding the true ownership of films that have passed into public domain. There is no justification whatsoever for allowing the initial copyright holder to retain control over films after they have passed into public domain.

It is not in the interests of the studios to allow access to these films for dozens of reasons. The most important seems to be simply a variation on spite: they won't make any money off the films any more, so there's a dog-in-the-manger attitude automatically.

And while I have your ear, let me say that the concept of granting a new copyright for a film that's merely been colorized is ludicrous. That should not have been allowed to happen, because it simply gives studios *further* reasons to oppose access to films that have passed into public domain, but which, because of this loophole, they still control. Now they can colorize, say, "Six Lessons from Madame LaZonga" and charge a huge price for its purchase on videotape while preventing the film from being shown in 16mm or 35mm -- or in *any* format, except the colorized version.

Simply because motion pictures appeal more to the masses than do books, they've often been regarded as disposable, essentially worthless. Movies, many people believe, are no more art than a matchbook cover -- but others disagree. Simply because it's often difficult (if not outright impossible) to pinpoint the *artist* in the case of a movie does not mean that that movie is not itself art. Movies are usually a collaborative art form -- but they are an art form. It is impossible to study an art form without access to it.

In conclusion, there are two main points I wish you to consider: allowing studios to retain control over their films *after* they have passed into public domain is inconsistent with other laws of copyright, and is not in the best interests of the public.

Secondly, movies are an art form, one whose history is more intensively studied with each passing year, and for scholars to be prevented access to so many of these films is counter to the basic intention of the Library of Congress.

I urge you to change this provision. Preservation without access is indeed pointless.

Bill Warren

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A handwritten signature in cursive script that reads "Bill Warren". The signature is written in dark ink and is positioned to the right of the typed name.