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PRESERVATION ARCHIVES AND FILM OWNERSHIP: A CASE FOR A NEW DEAL

The nature of the problem

Since long, I believe that the future of film archives cannot but depend on the fact that we find some kind of solution to the major inceptive contradiction and shortcoming in our history, i.e., the separation between the material care and the legal control over most of the works that we collect, protect and promote.

Being inceptive and inherent to the nature of film business, this contradiction, however hard to face, was in a way also underestimated, certainly due to the fact that, before the real advent of an heritage market, there was a larger space to intervene, being that out of sheer indifference of film owners or easier pro bono authorizations and agreements. But the fact that many archives soon undertook limited acquisition or restoration agreements cannot hide the long-term problematic impact of the building of large collections preserved without the corresponding control over their use. Film heritage institutions grew to become the only modern museums that do not really possess, or control, the core of their “belongings” – and in fact in many countries a consolidated professional tradition, an established public service and a national film culture were all developed under that contradiction. The issue is general and structural – I am *not* referring here to specific isolated difficulties, like the “orphan works” problem, but to the core of our activity.

This being said, one can of course wonder, since the start, why should we now care about it, once there seems to be no point in questioning the present status quo. After all, things seem clearer than they were in the past (meaning that the development of the heritage market at least did increase the clarification of rights owners rules and conditions), the need to bilaterally negotiate is only natural according to international law, and, whatever difficulties we may face, the issue seems nowadays rather an economic one, not a legal one.

Not contesting the economic relevance of the problem, but believing that archives should not be left alone when facing the money issue – or, precisely, believing that there is an intrinsic injustice in regarding it as a plain money issue - I do not favour this “end of history” approach. Nor am I in favour of the conclusion (that I have also heard from some colleagues) according to which, in order to deal with this problem, one just has to learn from the experience of art museums. How could that be, given that, I insist, we have based our entire history upon the “ownership contradiction” and thus, by necessity but also by choice, followed a praxis very different from the one taken by those other entities?

History did not come to an end. And in fact I believe one must precisely start to question what I called the status quo and where it is leading us.

The present status quo. Evolution trends

Working in a context of drastic transition (where economical reframing coincides with the effects of the digital revolution) film preservation archives reached the present stage in their history without a specific, well differentiated and recognised status in face of the film industry. Certainly we are granted a moral status resulting from historical recognition. Coherently with this, we are also seen as privileged partners to launch new “heritage products” originated by

the industry itself – a task I do not underestimate and sincerely acclaim when our purposes do coincide. But we are also regarded as *clients* among the nowadays large institutional field of heritage *users*, in that case not very differently from the way others, of equal or larger public standard, are regarded. And, beyond anything else, in the eyes of many of the present holders of the rights of large amounts of deposited film materials, we are, at the most, tolerated as keepers of their belongings and providers of materials for their operations - often, nowadays, not even being allowed to freely exhibit positive prints originally deposited by previous holders of the same titles.

There are exceptions, and of course in many countries legal measures were taken for the protection of the national heritage – which however does *not* mean that, even in that case, preservation, restoration and exhibition may be automatically or smoothly carried out. Generally speaking, archives more and more play an awkward role, sandwiched between larger public access claims and tighter and tighter room for action from the film owners. Yes, we are granted a moral recognition; but we are seen as *users* of someone else's property rather than a real and relevant partner in the historical process of keeping that property alive both as a material good and an element of a collective imaginary.

Among all possible examples of this tighter room, one may stress the level of the fees required by the rights holders for the rental of prints and (or) just the license of screenings at public archives. Regardless of the discussion of their level (sincerely, in many cases, beyond reasonableness, considering the further expenses connected to shipment and subtitling and the financial scope of most public archives), thus beyond the strictly financial side of the matter, one may seriously wonder, or contest, the fact that in this respect preservation archives are treated like the remaining cultural users (i.e., non-theatrical *exhibitors*). This always seemed to me the key point – why should we be regarded the same way as other entities that also have a public relevance in the showing of the film heritage but do not invest in its physical safeguard? Is it because there is no real difference between the two groups as far as the interests of the rights holders are concerned? Is it just because this difference is not perceived by them? And in this case is it also because we ourselves let that difference fade away...?

A realistic answer to it is perhaps a mix of all three: present individual rights holders don't necessarily have significant experience of benefitting from archive historical work; having that experience or not, they don't necessarily feel any reason not to try and obtain as much revenue as possible from any user that is compelled to make use of their services; finally, archives did not necessarily stress their uniqueness themselves in their recent collective approach.

But before going any further in the discussion of these strategies, let us then try to see where the present environment leads to. Drifting in a legal world where they did not manage to obtain a clear status, competing in a larger and larger field of heritage players frequently beneficiary of bigger resources, film archives are now facing some obvious contextual trends that hardly can be regarded as positive. On the one hand, we witness an increasing gap between "rich" and "poor" institutions, where the differences in their relative budgets threaten to open an even bigger gap regarding not just the quantity but the quality of their museographic action. (One of the examples of *that* is the fact that some archives have decided to partially solve the problem entering the market themselves, becoming exploiters of rights.) On the other hand, except in the case of large, integrated entities (where the specific museographic tasks can nonetheless be relegated to a secondary position...) both the

restoration and the programming activities risk to confine to a narrower and narrower scope of intervention – a specialization – that will eventually alter the very nature of our institutions. Finally, the scope of our collections henceforth implying a decreasing advantage as far as programming is concerned - programming highly becoming a matter of budgetary strength -, we risk to witness an impoverishment of our cultural offer, again with significant effect on the external environment.

But again, is this really bad? Can't we live with these trends like a normal or inevitable evolution? I would start by saying that it is at least a real, maybe drastic change in our institutional field (change that will accumulate with those coming out of the digital turn, like the shrinkage of the international collections), and that before going too far in accepting it we should be more aware of what they mean. Putting it short, I believe that, unless we do something about it, in one or two decades the institutional archive field will be composed of a few large entities ("temples of the film heritage") with wide, integrated activity, together with a variety of small institutions that will have to concentrate or specialize, if not drastically reduce, their scope of cultural action. And this brings us back to the comparison with the history of art museums.

This specialization trend was indeed more natural, even largely inceptive in the traditional art museums. Traditional art museums were born out of concrete local collections or strategies to build them, most of them naturally with a high degree of specialization. Except for the few international art temples grown out of the memory and power of empires, also except for those born out of the sheer expression of financial strength, the majority always assumed their specialization as a major value – exactly on the assumption that their unique artifacts would basically not travel and thus the institution would gain its place in the international museum network. A very different story happened with cinémathèques, film archives or film museums. Working with reproducible and inherently widespread objects, since their beginnings they generally assumed the task of showing, in their venues, at least some basic part of the world film history. Naturally, we have also built the concept of the "local treasure"; but not only even many of these treasures were eventually reproduced but also, and mainly, our collections and our programming praxis always had a larger scope. Following the industrial circulation of film, we have built a tradition of museum circulation – both through internal networking and the collaboration of rights holders – that was at the origin of many national *film cultures*. This is therefore, precisely, what we now risk to lose – and that must be seen, of course, together with our other cultural dimensions, like the relevance of the *film projection*, the relevance of *programming* itself, and the relevance of the *articulation* between the material care and the showing of films. All of these are part of our identity; all of these are driving forces I myself would not like to abandon.

Strategies to reach a new deal

Naturally, if I care to address this structural issue, it is not only because of its relevant historical effects but because I still believe we can do something about it. It is also because I believe that some kind of different global arrangement may be of interest to the film owners themselves. Moreover, it is because, frankly speaking, well-intentioned initiatives like the "FIAC Declaration on Fair Access", whatever their rightness, do seem to me of no practical effect (in this respect, a much more productive move, with real conceptual advance, has been done in Europe with the "ACE-FIAPF Framework Agreement", upon which further initiatives can be pursued). Finally, it is because I do believe that the solution, whatever its scope and impact, does not

only reside in further action but also in a new vision of the problem and a change in our own strategy.

How can we move forward? Certainly by starting to build some consensus on the relevance and the practical usefulness of the matter. Then, by a combination of different levels of initiative, some of them still on the legal domain, others in the negotiation field.

As to the former, I do believe archives should take the initiative regarding the international instruments addressing Author Right and Copyright. In these they should try to include some exception regarding their role and core activities, aiming to add it to the already existing exceptions applying to educational purposes. I think we owe this move to both the archive world and to the rights owners world, taking account of the historical dimension of the problem, the recognition of its uniqueness and the need to build a new environment for our mutual cooperation.

The move in the international legal domain must be regarded, however, as another framework to further negotiations rather than a solution itself. The nature of film property being definitely not compatible with the art museums approach (according to which we would henceforth just conserve and show basically what we might *fully possess*, together with restrict, eventful temporary shows...), I don't see any major, concrete evolution out of the negotiation sphere. Here, I know we have to take initiative. On the other hand, somehow I also believe the effort is worthwhile if we ourselves do alter part of our perspective.

The aim of this other path may be to reach a new global reference agreement between representative bodies – a new instrument either compulsory to the members of those collective bodies or open to voluntary signature by individual institutions. Its scope should be the overall cooperation and professional relation between rights owners and FIAF *preservation archives*, giving the latter a formal recognition of their own role and a clear positive discrimination in the access to legally protected films in their cultural activities. In short, a possible new deal between the two institutional fields regarding the safeguard and the museographic disclosure of the film heritage.

The new perspective should therefore be the assumption of a real negotiation path, claiming the recognition of archive rights and the referred positive discrimination from the rights owners, while giving in exchange *a better delimitation and material definition of our own space*. In fact one of my key points here is my belief that, against our objective interest, in the recent past we have ourselves frequently contributed to dilute our identity among the modern heritage players. Believing we can profit from the building of a larger heritage alliance, but confounding that with the protection of our own group interests, we therefore also weaken our voice in a potential dialogue. After all, if we do wish to be treated as privileged partners, we must rather state what makes us different, not equal, to the remaining players in that growing and very diverse field.

So this would be not just an external agenda but an internal one. The building of a “chart” for museum practices with clear and concrete statements regarding our core areas, from deposit agreements to public disclosure (archive screenings and other forms of access). Beyond a moral statement, a verifiable commitment regarding our aims, practices and limits, proposed to the rights owners in order to try and raise a new cooperative and complementarity environment.

Do we want to try it?