

EHL's Draft of FIAF - FIAPF Agreement

Considering:

*This follows your own draft almost exactly.*

- (a) the desire of FIAF and its member Archives to preserve for posterity films of an artistic, historic or sociological interest, and to make them accessible for purposes of research and study without injury to the commercial interests of those who own or control the rights in these films.
- (b) the advantages which this work of preservation and this diffusion of film appreciation may have for the film industry in general, and for the copyright owners in particular, by promoting an interest in the art of the film amongst the public, in schools and in universities.
- (c) the willingness of the member Archives of FIAF to respect in all circumstances the legitimate interests of the copyright owners, and the reciprocal willingness of the members of FIAPF to assist film archives in carrying out their work of film preservation.

it is hereby agreed between FIAF and FIAPF as follows:

*National or individual Agreements must override any international agreement.*

1. Where the deposit of a film copy by a film Producer in a member Archive of FIAF is governed by a contract between the said Producer and the said Archive, whether such contract be a written one entered into voluntarily, or one implicit in the law of the country of the said Archive, or a combination of both, the said contract and the conditions imposed by it shall take precedence over anything contained in this present Agreement.
2. Unless the contrary is provided for in any such contract as specified in clause one above, the deposit of a film copy by a member Producer of FIAPF in a member Archive of FIAF shall be subject to the conditions set out in this present Agreement.

e.g. When you say: "Comment allez-vous?"  
do you really want me to give you a  
medical report on my health? No. It's  
just "a friendly noise"

This is a statement  
of the obvious,  
I agree. It is intended as  
a friendly noise.

Yes but this  
excludes legal  
deposit?

3. The decision as to whether a copy of any particular film shall be deposited in a member Archive of FIAF shall be solely at the discretion of the Producer.

4. Any member Archive of FIAF which has received a film from a FIAPF member shall be entitled to use it for the following purposes:

Positive!

(a) to ensure its permanent preservation as a cultural and historic document.

(b) to make it available for private study and research on the premises of the Archive.

(c) to project it on the premises of the Archive, or in such rooms as the Archive habitually uses for its own performances.

5. No member Archive of FIAF shall use or enable others to use any film which it has received from a member Producer of FIAPF for any other purpose than those stated in Clause Four above without the written consent of the Producer or copyright owners of the film having been previously obtained.

6. No member Archive of FIAF shall send a copy of any film received from a member Producer of FIAPF or any duplicate copy thereof to any third party, including any other film archive, without having previously received the written permission of its Producer or its copyright owners.

7. This is important. We cannot agree to report every copy we make. We are thinking in London of making magnetic tape copies for student viewing, and then wiping the tapes for re-use, to protect our master copies. Must we report this every time? It would be ridiculous. FIAPF must trust us to keep within our conditions, and provided we do this, they have nothing to worry about, however many duplicates we make.

A member Archive of FIAF shall be entitled to make or acquire duplicate copies of any film received from a member Producer of FIAPF, provided these are solely and exclusively for the furtherance of the purposes set out in Clause Four above, and for no other purpose without the previous written consent of its Producer or copyright owners.

This means a Producer cannot rely on us to do his preservation work for him eg. by giving us his only copy, destroying all his own copies, and then if we have a fire, claiming damages against us of \$1000 000 because of loss of future commercial exploitation.

- 8. While it is of the essence of <sup>a</sup>film archive's work that it will take every possible precaution to preserve the films in its care, the deposit of a film by a member Producer of FIAPF in a member Archive of FIAF shall not imply any obligation on the part of the said Archive to preserve the film in the interests of its Producer or to have any responsibility to the Producer in the event of loss or damage to the film.
- 9. Any member Archive of FIAF which has received a film from a member Producer of FIAPF shall at any time on request make available to the said Producer or to the copyright owners of the film at laboratory cost such duplicate copies of the deposited material as they may require for their own use.
- 10. If any member Archive of FIAF should at any time request the assistance of FIAPF in discovering the owners of the rights in a film in their possession, or in verifying the bona fides of any claiming to own or control such rights, FIAPF shall immediately provide any help or guidance within their power.
- 11. Any member Producer of FIAPF who has deposited one of his films in a member Archive of FIAF shall retain the right to require the return of the deposited material, provided that this right is exercised only in case of extreme necessity, and that the said Archive has the right to ensure its continued preservation of the film by having a duplicate copy of it made at its own expense either from the deposited material or supplied by the Producer, before the deposited material is withdrawn, to which duplicate copy the present clause will not apply.  
(ie. the copy we have paid for cannot be withdrawn.)
- 12. FIAF and FIAPF shall exchange for the common benefit of their members all the information and experience at their disposal on the best techniques of film preservation.
- 13. Any complaint of infringement of this Agreement made by either of the contracting Federations against the other shall be examined by the Federation receiving the complaint within the shortest possible time and in any case not later than its next ensuing General Meeting, and any decisions made or actions taken in respect of such complaint shall be communicated to the complaining Federation without delay.

If the Producer is willing to supply a substitute print at our expense from his negative, why not?