

## FIAF COPYRIGHT COMMISSION

### FILM COPYRIGHT AND FILM ARCHIVES

(Draft Report prepared by Neville March Hunnings and Ernest Lindgren and revised at the Cop\_yright Commission Meeting in Oslo, on 25th February, 1972)

#### WHAT COPYRIGHT IS

##### I. National

Copyright is a protection legislated by governments primarily for the benefit of their own nationals in their own countries, to enable them to have the exclusive right to use, to lease and to receive payment for the use of, any original ideas which they have created and expressed in any identifiable form, and to enable them to take legal action for the recovery of damages against anyone infringing this right. The term copyright (or author's right) covers both copying and performing rights.

##### 2. International

By agreement between national governments, e.g. in the form of international conventions, this protection can be partially or wholly extended to countries beyond the copyright-owner's own country. The major international copyright conventions are the Berne Convention (1886), the Pan American Copyright Conventions, and the Universal Copyright Convention (1952).

#### FORM OF COPYRIGHT

##### 3. A national government can determine for its own country :

- (a) the forms of expression of an original idea to which copyright shall apply.
- (b) the duration of copyright.
- (c) the dealings or acts which shall be covered by copyright.
- (d) exemptions from copyright which are not to be regarded as infringements (e.g. privileges given to universities, to research workers and students, to libraries and archives, etc...)

These decisions are embodied in its Copyright Law.

It can also determine :

- (e) the international copyright conventions to which it shall adhere.

#### COPYRIGHT IN RECORDING

- 4. Certain forms of mechanical recording (e.g. photography, soundrecording ) can also be the subject of copyright.

COPYRIGHT IN THE MOVING PICTURES (FILMS, TV)

5. Films and television productions, both as the expression of original ideas and as forms of recording, are covered by copyright. Furthermore, because they are normally co-operative productions, to which many people contribute, the copyright can sometimes be complex.

6. Different concepts of copyright protection of films.

Certain basic differences of approach exist between continental Europe, U.K. and U.S.A.

A. Authorship

Anglo-American doctrine places authorship in the producer of a film (company or person). Continental law emphasises the creative authors, e.g. the director, script-writer, musical composer.

B. Moral rights

Continental law (and the Berne Union) recognises that the author (who must be an actual person) has certain rights which cannot be alienated, e.g. right to acknowledgement of his authorship, right not to have his work mutilated. Anglo-American law does not have such a separate principle.

C. Formalities.

U.S. law requires certain formalities, e.g. registration, as a precondition for copyright protection. Continental and English law grant automatic protection without any formalities.

7. How to determine a Copyright.

In order to determine the copyright position of a film or TV production, it is necessary to know :

A. The creative and contractual history of the production

This requires an answer to such questions as :

- (a) Who and of what nationality were the persons whose copyrightable creative and technical contributions enabled the production to be made, and in what countries, and at what time did these contributions originate, and where was the work first published ?
- (b) Did any of them work from material already in copyright (e.g. a script-writer adapting from someone else's published novel), and if so under what conditions, and for how long, were they permitted to use the previously existing work ?
- (c) As far as their own original creative or technical contributions were concerned, did they agree to co-operate as employees, or sell their rights by contract, and if the second, for how long did they sell them, and under what conditions ?



- (d) Who was the principal producer, what right did he acquire, and what rights (if any) did he eventually dispose of, for how long and under what conditions?
- (e) What has been the history of the ownership of the production from its origin to the present day, and to what legal agreements, leases, assignments, etc., has it been subject ?

Obtaining all this information is a question of historical research, not primarily of law. It is often the most difficult part of a copyright investigation, requiring examination not only of public records (e.g. copyright registration, etc., commercial registration, etc.), but also documents and correspondence in the files of private companies or individuals, and it can be greatly impeded if these papers have been lost, or if the companies and individuals refuse to make them available for inspection.

If such information is difficult to obtain in one's own country, it is immeasurably more difficult to obtain from other countries. This is a matter in which FIAF members must be willing to help each other.

#### B. The Copyright Law or Laws under which it falls

In the main, this will be not only the copyright law of the country in which the production is made or published, but also that of any country in which it is sought to copy or show the film.

Where the production includes copyright elements of foreign origin, (as, for example, where a British film has been made from a script adapted from an American novel), it may be necessary to refer also to the copyright law of such countries.

It is impossible within the limits of this Report to provide a complete guide to copyright laws throughout the world, or in the countries of FIAF members. The standard text-book on British copyright law, for example, is a large volume of 836 pages, and even this cannot avoid the necessity to consult legal experts on difficult questions of interpretations. To attempt to provide a very brief guide to copyright law in all countries could be misleading.

The best FIAF solution is for each FIAF member to become as familiar as possible with its own national copyright law, and to have access to its own legal experts, so that it can advise other FIAF members in case of necessity.

#### 8. Archival and Research Privileges

If national film archives and other approved film archives were allowed the privileges already accorded to book libraries, to make use without infringing copyright of the films in their collections for preservation, showing on the premises, research and study, most of the legal difficulties which they face at present would disappear, and the necessity to ascertain the copyright position of each film would not arise. These privileges do not exist at present because hitherto film copyright legislation has been influenced by predominantly commercial interests. There has been no one to fight for the interests of the archive, the research worker and student. Under English law, (and the same is doubtless true in other countries), for an archive even to replace a decaying nitrate film in its collection with a new acetate copy made from it solely in order to continue its preservation is technically a breach of copyright. By contrast,



an approved book library can under certain conditions make a duplicate copy of a copyright work even for sale to a student for private research, without infringing copyright.

9. FIAF should therefore take every possible opportunity to urge governments to introduce into their national copyright legislation, and into international copyright conventions, certain agreed uses of films in approved film archives, to be accepted as permissible without infringing copyright. These uses might include any or all of the following :
- (a) the copying of a film for preservation purposes ;
  - (b) the making of copies for showing on the premises of the archive ;
  - (c) the exchange of copies between approved film archives, and the making of copies for such exchanges ;
  - (d) the supplying of an extract from any film for use outside the archive for purposes of study and research ;
  - (e) the supplying of a copy to an approved university or other institution of learning for private study and research on its premises ;
  - (f) in addition, legislation provisions should be devised to clear old films from copyright restrictions where the present copyright holder cannot be traced, even after reasonable search and inquiring has been made.
10. In order to allow FIAF to urge the reforms set out in paragraph 9, it is desirable that it should have available an overall survey of the present national copyright laws as they affect the work of the member archives. FIAF members are asked therefore, in extension of the proposals in paragraph 7, each to prepare a report, as and when they are able to do so, setting out the existing copyright laws in their respective countries, using the attached scheme for guidance (Appendix I). These reports will in due course be co-ordinated by this commission and made available to all members.

- II. Reforms of copyright laws will not suffice on their own to effect all the changes that are desirable. Archives may achieve such ends through other means, such as contractual or tacit arrangements with film companies, or the use of administrative rules and practices such as those related to film registers or national film catalogues. Statutory deposit of films may be linked to branches of legislation other than copyright. Film aid systems and even censorship systems, when operated primarily for classification purposes, may also have possible relevance. It is therefore desirable that the present Commission extends its interest to all these other areas, and that its name be changed to the legal and copyright Commission.

#### CONCLUSION.

12. To summarise, we suggest :

- (a) That FIAF should work to secure the enactment of provisions to enable film archives to use the films in their collections for their own legitimate purposes without infringement.

- (b) That pending such legislation, individual FIAF members should equip themselves to assist each other on questions concerning their own copyright law, and the contractual history of films produced in their own countries.
- (c) That individual FIAF members should try to prepare national reports on their respective copyright laws for co-ordination by this Copyright Commission. (See Appendix I).
- (d) That individual FIAF members should explore and contact other groups in each country - librarians, historians, general archives, museums - already interested in greater access to copyright works.
- (e) That , while the present copyright Commission continues to have as its main task the study of problems relating to acquisition and use of films by film archives and the recommendation of reforms, it should expand its field of concern to cover the critical examination of national and international laws and administrative practices relating to the cinema, with particular reference to copyright laws, registration rules, legal deposit, film aid systems, standard-form contracts and censorship administration.

February 1972.



FILM COPYRIGHT AND FILM ARCHIVES : Draft Report

APPENDIX I.

Suggestions for national reports by all members of  
FIAF on Film Copyright Laws.

It is almost certainly essential that the report be drafted by a legally qualified expert. Since it will usually not be feasible to offer anything more than a nominal fee, if any at all, for the work the most likely source to approach will be the universities ; scholars are accustomed to writing papers for publication or for conferences without fee; and it may be possible to persuade such a one to prepare a report simultaneously for the archive and for publication in an appropriate law review. The main task of the archive would then be to make suitable contacts and exercise persuasion. If desired, the writer may contact the FIA Copyright Commission directly if he needs technical guidance. It will be helpful if reports are submitted in French or English, but any language will be acceptable, so long as the reports are written.

I. FILM COPYRIGHT IN GENERAL

The following scheme is given as an aid to the writers. It is not a questionnaire, and reports are best written in the form of an article. The points which need covering include the following :

1. If the film is a copyrightable form in itself, who is regarded as its author(s) ? What separate additional copyright co-exists in the film ? Do they have independent existence during the copyright life of the film ? and after the film has fallen into the public domain ? To what extent are companies permitted to be authors or to hold copyrights ?
2. To what extent are non nationals of your country able to hold and protect copyrights in works of their authorship ? To what extent are are films first published outside your country subject to copyright protection inside it ? What constitutes publication for this purpose ? To what international copyright unions is your country a party ? Apart from these, are there any other provisions in your law permitting works first published in another country to be protected ?
3. Are the various contracts assigning copyrights to the producer to enable him to make and exploit the film subject to any legal reservations (e. g. droit moral )?
4. What is the copyright life of a film ? What happens on expiry ? What is the copyright life of the additional copyrights ? What happens to them on expiry ? What formalities are required (if any) before copyright protection in a film can be brought into existence ?

II. FILM COPYRIGHTS AND FILM ARCHIVES.

- I. What permissions are required in order to strike a print of a film or of a still from a film ( frame enlargement or otherwise) ?  
What permissions are required in order to exhibit the film in public, on television, in semi-private (e.g. film societies, schools, factories), in private (e.g. in the home, in a hired hall to friends, neighbours or likeminded poeple, in a research institution to students or to scholars) ?
  2. What is the positions with regard to the actions listed in paragraph 9 of the Report ?
-