

F.I.A.F. AND FILM COPYRIGHT

INTRODUCTION

In the relationship between a film archive and its national film industry friendliness and goodwill are more important than a correct legal position, and one may sometimes have to forego a legal right in order to maintain that goodwill.

Nevertheless it is important for us all to know what our legal rights and obligations are, and what privileges we may legally enjoy, because this often has a bearing on goodwill itself. Goodwill is endangered when film companies suspect archives of acting illegally or improperly, and if it can be established and internationally accepted that certain procedures and practices are legitimate for all archives, actions which are at present a danger to goodwill, because they are misunderstood, may be so no longer.

COPYRIGHT

These considerations apply particularly where copyright is concerned. The Statutes and Rules of F.I.A.F. require all F.I.A.F. members to respect the rights of the copyright owners of films held in their collections. In the case of recent films whose copyright ownership is well-known, or can be easily discovered, no difficulty should arise. It is to be remembered, however, that copyright in a film can be extremely complex. In addition to the author's copyright (especially where the film is made from a literary work already published) other collaborators may also have a copyright interest; for example the scenarist, the composer, etc. A copyright in the total film may exist, and is normally owned by the producer, but this film copyright is in turn dependent on the subsidiary copyrights of collaborators, and if the producer's lease of these copyrights has expired, it will be necessary to obtain the separate permissions of the producer, collaborators of the producer, and the author of the source, before a film can be shown without infringement of copyright.

The older a film, the greater these difficulties become, either because the production records have been lost, or because the owners cannot be found, or because the copyright laws of the past have changed or were obscure. In England, for example, cinematograph films were not specifically mentioned in copyright legislation until 1956, and the application of previous copyright laws to films is in important respects ambiguous; similar difficulties may exist in other countries. The copyright position of foreign films is often different from that of a country's own films, and the system of treaties and conventions which govern international copyright is extremely complex. Most importantly of all, the work of film archives is too new to have had any influence so far on copyright legislation, which does not recognise any special privileges for film archives.

It is important that F.I.A.F. members, for their own protection, should at

least be informed of the copyright position in their own countries, and it is also important that F.I.A.F. itself should seek an international clarification of the privileges to which its members should be legitimately entitled, in pursuit of their proper aims, and which cannot injure the moral or financial rights of the copyright owners.

It has therefore been agreed by the Executive Committee of F.I.A.F. that the subject of Film Copyright should occupy an important place on the agenda of this year's Congress in Oslo, and all members are requested to be as fully informed as possible in order to take part in this discussion. The purpose of this paper is to clarify the problems which require to be considered.

TWO MAIN PROBLEMS

Every film archive is faced with two main problems with regard to copyright, namely :

1. How should it deal with requests from outside the archive for the use of archive material ? What steps must it take to safeguard the interests of the real copyright owners in dealing with such requests ?
2. What use can the archive legitimately make of films in its collection for its own purposes without infringement of copyright ?

Outside Requests

As an example of the first of these problems, an archive may have in its possession a film originally produced in 1925, perhaps in another country, which it acquired from a private collector in 1957. Suddenly, in 1965, a person appears claiming to own the copyright in the film, and asks to have all the copies delivered to him, or insists that they are destroyed, or instructs the archive to supply copies to a third party for commercial use, or threatens to sue the archive for damages because his copyright has been infringed, etc. etc. What should be the archive's reaction to such a situation ?

For this to be decided, two factors have to be considered :

- a) What is the status of the claimant ? Is he truly the owner of the copyright, and does he have documents (deeds of sale etc.) to prove this fact ? What documents are required in order to give the archive full legal protection ? (These questions are important, because if the claim is a false one, and the archive acts on it, for example by selling copies for commercial use to a third party, it may then be attacked by the true copyright owner for having acted irresponsibly).
- b) What is the copyright law in the country, and what rights at law does the claimant have (assuming him to have established his ownership of the film) ? It may be, for example, that although he is or was the rightful owner, the law does not entitle him to exact what he demands, either because the copyright has expired, or because it is qualified in some respects.

The answers to these questions can only be given by competent legal authorities and advisers in each country, and all members of F.I.A.F. are strongly urged to obtain legal advice in their respective countries. If they can provide a summary of the

position in their country for the Oslo Congress, it will be extremely helpful.

Use for the Archive's Own Purposes

Turning now to the second of our two problems, and in many respects it is, perhaps, the most important one, the following questions arise, and must be of urgent interest to all F.I.A.F. members :

- a) Can an archive, with no other purpose than preservation, legally acquire a film either by gift or by purchase, from a source other than the copyright owner or his accredited representative, and successfully retain it against all claimants ?
- b) If an archive copies a film in its possession solely to continue its preservation, does it infringe copyright ?
- c) If an archive copies a film in its possession in order to send it to another archive solely to enable the second archive also to preserve it, is this an infringement of copyright ?
- d) Can the owner of a film in the possession of an archive compel the archive to destroy, or to deliver to him the film and all copies thereof ?
- e) Can an archive use a film in its possession for other purposes than preservation (for example, showing to single research students, showing to private audiences on other premises, etc.) without infringing copyright ? If so, how far may such purposes extend ?

It is essential for members of F.I.A.F. that there should be clear, and satisfactory answers to these questions, and the main purpose of our discussions in Oslo will be to draft a code of privileges which F.I.A.F. members might legitimately expect to enjoy without injuring the proper interests of copyright owners, and which we can put forward for international acceptance as being not an infringement of copyright.

Ernest LINDGREN
London, May, 1965.