

INTERNATIONAL FEDERATION OF FILM ARCHIVES.

(FEDERATION INTERNATIONALE DES ARCHIVES DU FILM)

Memorandum for Milan,  
October 1972.

FILM ARCHIVES AND COPYRIGHT

A personal statement by the Chairman of the  
FIAF Copyright and Legal Commission.

I. FILM ARCHIVES AS SOURCES FOR NEW FILM/TV PRODUCTIONS

1. Film and television producers wishing to use old film of historical interest naturally turn to film archives, where such film is stored and preserved.
2. It is possible, in principle, for film archives to assist producers in two ways:
  - (a) by supplying information
  - (b) by supplying a copy or copies of the required film
3. The supply of information (for example, of the films held in the archive, of similar films held elsewhere, details of production, distribution, copyright ownership, etc.) is an extremely valuable archival function, to the film and television producer as much as to the student and research worker, and its importance must not be forgotten. There are normally no legal or administrative obstacles to the supplying of information; the chief limitation will be the informational resources of the archive concerned. Some film archives are given sufficient money to maintain good cataloguing and informational services; others are not.
4. An archive is not equally free to supply film copies because it does not own or control the copyrights of the films in its collection. For any use of these films outside the archive it must have first received the written authority of the copyright owner or owners, or of their legal representatives or agents.
5. It is the responsibility of the producer who wishes to use film from an archive to negotiate directly with the copyright owners, and to arrange for the necessary letter of authority to be sent to the archive, to which it must be addressed, and by which it must be retained. It is the responsibility of the archive to assure itself by whatever enquiries, investigations or proofs it judges necessary, that the letter of authority, and the copyright claims on which it is based, are legally valid.

/6. These formalities

6. These formalities are unavoidable. A film archive, itself non-commercial, stands between two commercial interests, namely the producer who wants to use its film, and the original producer or depositor of this film. In this situation an archive has no choice; however much it may desire to help the new producer, its responsibility to the original depositor or copyright owner is paramount. All other considerations apart, if an archive does not observe this responsibility most strictly, it will alienate its depositors, and so endanger its own existence as an archive. To protect its status, a film archive must reserve the right to refuse to supply film if it judges that to do so would be against its own interests.
7. If a film archive is able, subject to the above conditions, to supply film for use in a new film or TV production, it will normally require all its film copying costs to be met. It may in addition charge a service fee, on the principle that commercial users dependent on the services of film archives ought to contribute to the costs of their maintenance. This fee may be equivalent to the charge made by a commercial production library, since otherwise the archive could be accused of unfair competition against commercial libraries.
8. The procedures described above may differ slightly in countries where the official film archive is linked to a nationalised film industry, but the basic principles remain the same.

## II. DETERMINATION OF COPYRIGHT OWNERSHIP

9. Because a film is old, it cannot be assumed that copyright in it has lapsed. (In England, for example, film copyright under the 1956 Copyright Act lasts for 50 years; under the previous Copyright Act of 1911 several authors could claim copyright, and copyright could be exercised until 50 years after the death of the last surviving author, so that a film made in England in 1896 could still be copyright today).
10. To determine the copyright status and ownership of any particular film, one must know:
  - (a) the country and date of its production and first publication
  - (b) the contractual history of the film, in order to determine the nature and ownership of the copyright elements utilised or created by the original production agreements, and any subsequent assignments, leases or other agreements resulting in a change of ownership or control of these copyrights
  - (c) the Copyright Law or Laws applicable to the film (i.e. nationally, the copyright law of the country in which it was originally made or published, also that of any country in which the film is to be copied or shown; and internationally by the international copyright conventions to which such countries adhere).

/11. Copyright Laws are

11. Copyright Laws are complicated and vary considerably from country to country, not only in detail, but in such basic principles as length of copyright, authorship (e.g. Anglo-American law places authorship in the producer, whereas Continental law emphasises creative authors, such as the director, script-writer, composer, etc.), droit moral (not recognised as such in Anglo-American law), and formal registration (required in the USA, but not in European countries).
  
12. The FIAF Copyright Commission, which is at the beginning of its work, does not intend to produce a guide to all the copyright laws of the world, or even of the main film producing countries, which would occupy very many volumes. It will, however, amongst other tasks advise FIAF members of the basic principles of film copyright, and of the main differences between the copyright laws of different countries; it will also encourage each FIAF member archive to act as a centre for copyright information obtainable in its own country. In these ways it is hoped to assist all FIAF members to be of service to film and television producers within the limits of the inescapable moral and legal responsibilities which they owe to their depositors.

Ernest Lindgren.

Curator of the National Film Archive, London.  
Chairman, FIAF Copyright and Legal Commission.