

**PACC in
Berlin, 14-15
February 2010**

COMMISSION FOR PROGRAMMING AND ACCESS TO COLLECTIONS
MEETINGS IN BERLIN, 14-15 FEBRUARY 2010

MEMBERS OF THE COMMISSION

Head of the Commission:

Antti Alanen, Kansallinen audiovisuaalinen arkisto, Helsinki

Members:

Elaine Burrows, Consultant, London

Stefan Droessler, Filmmuseum im Münchner Stadtmuseum, München

Luca Giuliani, Museo Nazionale del Cinema, Torino

Meg Labrum, National Film and Sound Archive, Canberra

Patrick Loughney, George Eastman House, Rochester

Sungji Oh, Korean Film Archive, Seoul

Jon Wengström, Cinemateket – Svenska Filminstitutet, Stockholm – Deputy Head of the Commission

The membership of Sungji Oh, Korean Film Archive, was confirmed by the EC in Toulouse, 13 Nov 2009. (Wasn't it?)

PACC MEETINGS IN 2009 AFTER BUENOS AIRES

After Buenos Aires, the PACC has had three official meetings in Bologna (Il Cinema Ritrovato, July 2009) and three in Pordenone (Le Giornate del Cinema Muto, October 2009).

PACC MEETINGS IN OSLO

Sunday, 2 May 2010, at 15.00-17.00

Workshop, 5 May 2010, at 14.00-16.00

THE FIAF SECOND CENTURY FORUM IN OSLO 2010

The PACC has been appointed to prepare a proposal for the Second Century Forum in Oslo 2010, to be dedicated to the relations between FIAF archives and film studio archives.

From the main decisions of the EC in Toulouse, 13-15 Nov, 2009:

"In Toulouse, the EC resumed the discussion initiated in Pordenone in 2008 about the possibility of offering to organizations that do not qualify for FIAF membership (corporations, industries, etc.) a forum (for example, an "Industry Forum") during the FIAF Congresses, in order to tighten cooperation between FIAF and organizations which pursue objectives similar to those of the Federation. As a follow-up to the discussions in Buenos Aires, the PACC has summarized the topics related to the 2009 Second Century Forum and Open Forum requiring active follow-up by the EC (in particular the revision of the FIAF Statutes and Rules, the improvement of FIAF symposia and congresses, collection policies, etc.). The proposed title for the Oslo Second Century Forum is: "Crisis of Identity: Collection Policy, Placement, Position, Partners, Preservation, and Presentation".

Interlocutor for the Second Century Forum is Patrick Loughney, who will coordinate with assistance from PACC and the EC.

A special place in the JFP will be dedicated to the Second Century Forum (SCF) as a follow-up to the subjects developed in Buenos Aires. This should be a clear signal that the SCF is not just a place for exchanging ideas, but an instrument to produce follow-ups and deliverables."

THE SECOND CENTURY FORUM IN THE JOURNAL OF FILM PRESERVATION. Luca 17 Nov 2009: "It was also decided to publish a little section on the JFP about the SCF activities ongoing from BA to oslo. it is very important to give visibility to FIAF efforts in answering affiliates' concerns and complaints. the section should include the main papers

PPPP

from BA (david francis, roger smither and my introductory text to BA) and giving so the chance to write an introductory text to the SCF in oslo. deadline is end of january, we'll have to work via email. pat offered to ask francis because of other issues the are corresponding about."

PROGRESS IN THE MATTERS OF RIGHTS

1: THE FIAPF / ACE FRAMEWORK AGREEMENT. The FIAPF / ACE framework agreement has been accepted by the two partners in the summer 2009. In Europe, this will replace the 1971 model agreement. FIAPF covers most of the important film producers' organizations, such as the MPAA, but for instance France is absent from it. **Q: The framework agreement appears on the FIAPF website, but has it been formally signed by the FIAPF?**

2: THE MEMBERSHIP. The Executive Committee has discussed the PACC suggestion of film industry archives' membership and appointed Patrick Loughney to draft a proposal to recommend specific action confirming the importance of ongoing sustained relationships with the film companies, engaging them in our meetings on a regular basis, and eventually revising FIAF rules.

3: WIPO. There is a need to create new high level platforms for the meeting of rightsholders and archives. A WIPO (World Intellectual Property Organization) information meeting on audiovisual archives and education should be pursued, to be realized in Geneva this or next year. **In January, 2010, Mr. Jukka Liedes reported that he has been pushing this with the WIPO, with no progress so far.**

5: THE NETWORK. The situations of film archives are very different from region to region. Each archive and region needs to pursue developments with film companies, rightsholders and their associations and recommend best practices. Many of us already have good legal counsel. It would be a good idea to develop a FIAF network of house lawyers, and we already have a group of good ones in Brussels, Washington, London, Paris... In the future there might even be a legal commission of FIAF?

5: THE TERMINOLOGY. In the FIAF Paris Congress The FIAF Declaration on Fair Use and Access was passed unanimously. However, the U.S. American term "fair use" is not understood very well among lawyers outside the United States, and we propose to revise the terminology: to replace "fair use and access" with "fair access". See in more detail in the attachment "Further Proposals". **Q: Was this discussed at the EC, and was there a decision?**

*Fair access... !!
re-evaluate*

6: MPAA. In Paris, FIAF took a new step in its relations with The Motion Picture Association of America, and it will be of top significance for FIAF to pursue this.

THE FIAF LEGAL HANDBOOK. Authorized by the EC, we have made progress with the FIAF Legal Handbook project. We have asked Paul Klimpel (Administrative Director, Deutsche Kinemathek), himself a lawyer and an expert in film legislation, to be the editor. Please see Mr. Klimpel's proposal as a separate attachment. There are three documents in Mr. Klimpel's proposal: the concept, the contents, and a breakdown of the expenses (as an Excel document). The remaining PACC budget of 2009 shall be used for the financing of the FIAF Legal Handbook. **From the EC Main Decisions of Toulouse, 13-15 November 2009: "The EC examined with interest Paul Klimpel's Legal Handbook project submitted by the PACC. The concept is still to be developed further. Concept, title, and financial implications will be examined by the EC in Oslo." "The EC deduced to extend the unused 2009 budgetary commission resources for 2010, subject to the assessment of global results of the 2011 budget. To be confirmed in Oslo." - Q: On 24 Nov, 2009 Luca, however, reported, that the legal handbook has been greenlighted, and details are to be confirmed with Pat. What is the status of the project?**

THE SECOND CENTURY FORUM FOLLOW-UP. As a follow-up of the Second Century Forum in Buenos Aires, Jon Wengström at PACC has drafted for the consideration of the EC a proposal of

a FIAF Collection Policy, included in this report as a special attachment. Was Jon Wengström's paper discussed at the EC, and what were the opinions?

FIAF SYMPOSIUM GUIDELINES AND NOTES ON THE SELECTION OF THE CONGRESS VENUE. In Bologna and in Pordenone, 2009, the PACC devoted a lot of time to consider FIAF symposium guidelines and aspects of the selection of the Congress venues to ensure optimal circumstances for all. Elaine Burrows crystallized these thoughts in two papers that are attached to this report for the consideration of the EC. From the Main Decisions of Toulouse, 13-15 November 2009: The EC thankfully acknowledged the report submitted by the PACC on the organization of future symposia. It was, in particular, decided to pay special attention to the composition of panels and to leave enough time for the debates. - Comment: according to Luca, this topic was not really discussed due to lack of time.

THE JOINT TECHNICAL SYMPOSIUM (JTS) AT THE FIAF CONGRESS IN OSLO 2010
The Technical Commission is planning a joint technical symposium "How to Present Films in the Digital Era", utilizing Oslo's state-of-the art equipment and the presence of Torkell Saetervadet, and to arrange one of Oslo's famous 70mm festivals during the Congress. The PACC is highly interested to contribute. Luca Giuliani 17 Nov 2009: "the interlocutor for the TC, Michael Loebenstein, reported that there are still several slots available for proposals of intervention especially on the side of film (digital seems to be already programmed). MLoe offered his availability to collaborate with PACC in order to propose topics for the JTS. he already came out with some proposal, probably we want to contact him. i've already proposed the idea of having somebody from labs or from US TV broadcasters to explain their choice of preserving digital native materials on 3 color separation film stock. the second idea is to have Haghefilm presenting their new test for color restoration (presentation in Pordenone)."

THE ELECTRONIC SUBTITLING NETWORK

The FIAF electronic subtitling network keeps expanding. It is important to remember to 1) treat the translators well, 2) keep the translations and clear archival rights, 3) keep the original dialogue lists, 4) to prepare for D-Cinema, where subtitles can be selected from the digital projector's server menu. With the development D-Cinema all our collective work will have a new significance. - Discussions with Federico Spoletti are continuing, meeting on 13 Feb 2010.

BETTER EXCHANGE

Serge Toubiana's made the initiative in Tokyo in 2007 on better exchange of touring shows and exhibitions. Such exchange becomes more topical every year as availability of 35mm prints gets more scarce. It would be an excellent idea to develop for the General Assembly a general round of presentations of touring initiatives available to affiliates. *Not a good experience... Experience was expensive. "A waste..."* *2 different approaches: 1) exchange of programs and 2) circulation of packages => work shop.*

THE UNIVERSAL PROJECT. Peter Langs in Berlin 2010.

Stefan: to make list of deposited prints that are available in Europe.

THE FIAF INTERLOCUTOR FOR THE EUROPEAN UNION. Luca 17 Nov 2009:

among the most consuming time topic it was the confirmation of the position of FIAF interlocutor for European Union. Has been clearly stated that FIAF can and at this present time should have a direct contact with the EU. All the actions have to be communicated to the ACE interlocutor, Vladimir Opela.

next actions to be undertaken are:

- § FIAF president answers Claudia Dillmann's email where she is asking for clarifications and reasons for FIAF having a EU interlocutor; ✓ *[copy to LG and PACC]*
- § FIAF president writing EU and communicating FIAF has an interlocutor; ✓ *[Hirakli => inform Ms Gines that LG is interlocutor of the EU.]*

Ruea → Pacc

§ FIAF president writing EU commenting on the recent Recommendation CM/Rec(2009)7 of the Committee of Ministers to member states on national film policies and the diversity of cultural expressions. I believe PACC needs to drafting it.

§ to organize a dinner at the latest in oslo between FIAF and ACE representatives in order to dissipate any kind of misunderstanding and to finding a way of real and mutual collaboration for the sake of film archives;

PAUL KLIMPEL: THE FIAF LEGAL HANDBOOK – THE CONCEPT

Film archives all over the world, no matter whether they are public or private organisations, need to have exchange with other archives in different countries to archive their mission: The preservation of the worlds audiovisual heritage. But the legal framework of archives, particularly the copyright regulations, differ from country to country. On the other hand, several multinational treaties harmonize intellectual property law.

The international legal handbook for film archives will give a general idea of different legal frameworks for archival work. This is important especially for international cooperation. The handbook has the limited aim to give an overview and makes no claim to be complete. The volume is going to be approximately 200 pages.

It will start with a brief history of international intellectual property right. Different traditions and developments of copy right law in continental Europe and in common law countries will be illustrated. Multilateral copyright treaties should be explained as well as legal restrictions of pornography, religious offence, racism or other issues.

In another step the handbook will explain, how multilateral treaties affect the work in film archives – work like preservation, copying, restoration, reconstruction, digitalisation and – last but not least, access to the collections by the general public as well as for scientific research.

History and significance of the Fair Access Declaration and of the FIAF and the Model Agreement between FIAPF and ACE will be explained.

Copyright regulations are changing continually. Another chapter will explore future prospects. What is going to be the future of copyright regulation in the digital age? How will legal changes affect film archives? Are there ways for archives to assure their future ability to work within an changing legal framework through contracts?

A glossary will complete the legal handbook, as a very important tool for archivists to find explanations to the legal terminology, which is hardly to understand for many people.

In order to keep the productions costs low, the legal handbook should be published as print on demand.

There is a great demand for a international legal handbook for film archives. Goal of this project is to end the editing and publishing of the book within two years.

Paul Klimpel, 23.10.2009

PAUL KLIMPEL: THE FIAF LEGAL HANDBOOK: THE CONTENTS

I. Introduction

II. The legal framework of film archives

1. The history and the evolution of copyright law

- Intellectual property traditions: Copyright vs Authors rights
- Bern convention
- WIPO Copyright Treaty 1996
- USA: Digital Millennium Copyright Act (DMCA), 1998
- EU: Information Society Directive, 2001/29/EG
- Agreement on Trade-Related Aspects of Intellectual Property Rights, TRIPS

2. Other legal restrictions on films

- Censorship
- Pornography
- Religious offence, ethnical discrimination

3. The archival approach:

- Legal deposit
- International conventions on audiovisual heritage
- Fair access declaration
- Model agreement between FIAPF and ACE
- Differences and parallelism of film archives and other cultural heritage legislation

III. Practical application in film archives

- Preservation, Copying
- Restoration, Reconstruction
- Digitalisation, DRM
- Access to collections
 - of the Public
 - for Scientific research
 - Online and offline
- Presentation
- Orphan works

IV. Future prospects

V. Glossary

Paul Klimpel, 27.10.2009

FOLLOW-UP TO THE SECOND CENTURY FORUM AT THE BUENOS AIRES CONGRESS

The FIAF Programming and Access to Collections Commission (PACC) was appointed with the task to draft a follow-up to the Second Century Forum of the 65th FIAF congress in Buenos Aires, held on May 27th, 2009. Many things were discussed during the forum, focusing on issues of selection, digitization and lending policies (archival control).

As a result, after meetings in Bologna and Pordenone, the PACC has decided to bring the following proposals to the FIAF Executive Committee for consideration at its next meeting in Toulouse in November:

- Each FIAF affiliate must have a written, publicly available Collection Policy, covering acquisition, preservation and access (should be included in the FIAF Statutes and Rules as a condition for membership). The Collection Policy should also be made available in one of the three official languages of the federation.

A Collection Policy should include

- selection criteria for what kind of elements of what kind of films are collected by the archive
- priorities made in duplication and restoration
- the following principles in relation to giving access to the collections:
 - An affiliate should strive to only give access to a film in a non-original format if the film has been properly preserved (with the exception for individual consultations at the affiliate's own premises).
 - If viewing copies in original format of a film that has been properly preserved exist in the collections, public screenings of the film by the affiliate on its own premises should be made in the original format (which does not exclude other kinds of access in other formats).
 - The lending of film elements from an affiliate's collections to any non-FIAF entity should only be executed after a signed Loan Agreement has been returned to the lending archive, wherein the borrower guarantees to a) physically handle the elements correctly, b) respect the elements' characteristics such as speed, aspect ratio, sound, colour etc, and c) duly credit the lending archive. (It can optional whether a Loan Agreement should also be in use when lending elements to a fellow FIAF affiliate.)
 - Any presentation of a film from an affiliate's own collections, disregarding in what format, should to the largest extent possible be accompanied by written information of the displayed element's origins, and if and how it deviates from the film's presentation at the time of its original release.

At the Buenos Aires Second Century Forum, the membership also proposed the federation to formulate a paragraph expressing the commonly shared view that digitization today does not equal preservation. This paragraph should be written in non-technical terms, easily understood by fund providers, legislators and the general public:

- *Films on undamaged film stock have a life-expectancy of several centuries if kept in good conditions. A digital file has a life expectancy of less than a decade, and a digital tape less than three decades. Digitization of a film existing on film stock is a means of potentially providing*

greater access to the content of the film, but is irrelevant to the preservation or safe-guarding of the film, and information is lost in the process. The great challenge for the future is to ensure the long-term preservation of films born digital.

PACC acknowledges that the paragraph suggested above is somewhat simplifying the issue, as digitization is the only viable method of preserving films only existing on various analogue or digital tape formats. Furthermore, digitization can be a valuable (but expensive) tool in certain restoration processes (where photochemical means are inadequate), which still however requires the recording back onto film stock before the film in question can be said to be properly preserved. But PACC believes the suggested paragraph covers the essential aspects of its intended use.

Jon Wengström, Stockholm, October 25th, 2009

FURTHER PROPOSALS FOR THE CONSIDERATION OF THE EC

- PACC recommends the Executive Committee to initiate a revision of the FIAF Statutes and Rules, along the lines discussed during the Open Forum of the General Assembly at the 2009 Buenos Aires congress.
- PACC also strongly feels that that action should be taken by FIAF in relation to those affiliates that do not follow its Statutes and Rules, and to those who fail to adhere to its Code of Ethics.
- At its meetings in Bologna, the PACC decided to change the title of the fair use declaration to *FIAF Declaration on Fair Access*. The reason for changing the declaration's name was to avoid any confusion, particularly at political level, since the term *fair use* have a different meaning in different contexts. The aim of the FIAF declaration is to regulate archive's rights to use unaltered versions of original films, whereas the term *fair use* in some other contexts refers to a use where an existing work (in parts or in whole) is used in the creation of a new work.

The name change should be executed as soon as possible, and communicated to all affiliates and the name should be changed on the FIAF website immediately.

- The *Declaration on Fair Access* should be more actively communicated to the external world (mainly towards rights holders and at political levels), and PACC would like to be authorised by the Executive Committee to initiate contacts in this respect with the World Intellectual Property Organization (WIPO), the Motion Picture Association of America (MPAA), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the European Union (EU); thus living up to expectations expressed at the end of the 64th FIAF congress in Paris in 2008.

FIAF SYMPOSIUM GUIDELINES

A proposal for the consideration of the EC based on discussions at the PACC in Bologna and Pordenone, 2009, written by Elaine Burrows.

- The main Symposium subject is chosen by the host archive, and endorsed by the EC.
- If possible, one of the Commissions is delegated to assist with producing the Symposium outline, suggesting speakers on topics relating to different aspects of the subject, etc.
- Where the subject of the Symposium doesn't fall readily into the remit of a single Commission, the EC should consider asking members of more than one Commission to work together in a specially convened organising committee. They should also consider asking if individual (non-Commission) staff of member organisations have particular knowledge or interest in the subject and would like to join such a committee.
- The organising group itself should probably consist of not more than three or four people, though it should be free to bring in additional people to help with practical arrangements, etc.
- The host archive and the Commission or committee work together on planning the Symposium.
- The Congress Interlocutor will monitor the preparations for the Symposium and will arbitrate (with reference to the rest of the EC if necessary) in the event of differences of opinion between the host archive and the members of the Commission involved.
- Any decisions made by the Interlocutor are binding, and all the Symposium organisers will abide by them.

Based on past experience, there should also be guidelines as to the general structure of a Symposium, e.g., the maximum number of speakers appropriate for any one day, the optimum length of any one presentation, the geopolitical balance of speakers, timing of Q&A sessions, etc.

NOTES ON THE SELECTION OF FUTURE FIAF CONGRESS VENUES

Thoughts for the consideration of the EC based on discussions at the PACC in Bologna and Pordenone, 2009, written by Elaine Burrows.

- The existing Congress checklist should be revised to provide space for archives to propose one or more subjects for the Symposium at the Congress they wish to host. The checklist thus becomes an application form.
- Archives wishing to host future Congresses should complete the application form and submit it to the EC in advance of their autumn meeting.
- Information on their proposed Symposium topics should be as full as possible, perhaps including specific aspects of the general topic as well as suggestions for speakers.
- The EC should discuss submissions at the autumn meeting and pre-select not more than two or three of them to be presented to the next General Assembly. Where appropriate, an EC member or member of, e.g., the Technical Commission, should have visited a proposing archive to confirm that facilities – for film or video presentation, etc. – are up to FIAF standards, or will be made so by the time the Congress is to take place.
- The names of those archives pre-selected by the EC should be listed in documentation circulated to members before the next Congress or, at the latest, at the opening of the next Congress.
- The EC brings the proposals to the GA where they are discussed and voted on in the GA in the usual way.

Question: Should there be an opportunity for delegates to talk in private to (members of) the EC before the GA if they have concerns about the venues proposed? If so, how should these concerns be investigated and what information should be given out at the GA?

Please print out here also Paul Klimpel's breakdown of the FIAF Legal Handbook expenses, from a separate Excel document.

Legal handbook budget

	Basic budget		Intended budget I		Intended budget II
FIAF	5.000 €		5.000 €		5.000 €
Public funding	0 €		5.000 €		15.000 €
Total		5.000 €		10.000 €	20.000 €
Translation costs	3.000 €		6.000 €		8.000 €
Traveling	1.000 €		1.000 €		3.000 €
Autors	0 €		0 €		5.000 €
Editing, proofreading	1.000 €		3.000 €		4.000 €
		5.000 €		10.000 €	20.000 €