

Over the past 25 years, millions of tax payer dollars have been spent on the preservation of thousands of filmworks donated by the major studios and other various parties. These films have been stored, preserved, and restored fully, or in part at the expense of the American tax payer. Yet the public, for all their financial support, has received only the smallest of benefits in return for this arrangement. Even films that have fallen into the public domain are being withheld from general public usage, all because of perpetual donor contract restrictions.

This committee feels that preservation without eventual, *unrestricted*, availability is a waste of taxpayer money. It only makes sense that if public funds are used for the preservation of filmworks, the responsibility of which has been passed on by the copyright owners themselves, then the public must be allowed eventual access to them. The Library of Congress and the other major film archives cannot be allowed to evolve into private film storage warehouses for the major studios with the public footing the bill in perpetuity. The obligations of public funding demand that systems be implemented to inform the public of what films are stored at each archive and to establish procedures to allow general public access to these films after their copyrights have expired.

The evolution of this problem started during the 1960s when studios began donating their original nitrate negatives and other film materials to various archives. These archives were then and are now funded or supported in whole or part by American taxpayer dollars. There are five of primary note: the Library of Congress, the Museum of Modern Art, the George Eastman House, the UCLA Film and Television Archives, and the National Archives. There is also the collection of the American Film Institute which is stored for the most part at The Library of Congress.

First of all, it was attractive to the archives because of the opportunity to properly and painstakingly preserve and restore an immense piece of American heritage, the importance of which is unquestionable both culturally and historically. This was a job which the archives were undoubtedly better suited for and more willing to do. The reference and study value of these works to the archives was tremendous. Not only that, but federal money was at a surplus during this pre-deficit era of our history, and funding was readily available.

On the other hand, the studios weren't enjoying the best of financial times during this period. Their older film properties, mostly black and white works whose commercial value had been decreasing steadily over the years, had become a sizable financial burden. By the early 1970s the studios found that the demand for color product on television had caused the distribution of their older black and white films to drop off considerably. TV stations avoided these types of films (especially 'B' films) and began regulating them more and more into late night time slots. By the mid 1980s it wasn't uncommon to find television stations that wouldn't even play black and white product. The theatrical re-release value of these films, as far back as the late 60s, was almost non-existent. It's easy to understand then the willingness of the major studios to be relieved of this tremendous financial burden and responsibility. Their original nitrate materials would eventually decompose and the cost of transferring them over to safety film would cost a small fortune (only MGM and Disney ever did this to their own libraries). They would also no longer have to pay for storage, inspection, taxes on prints, disposal, and all other expenses incurred in the housing of such physical properties. In addition to this, the studios were also granted huge tax deductions for making these 'donations', many of which are now being disallowed by the U.S. court system.

Almost all of the major donor agreements contain provisions which give the studios the right to approve or disapprove any access to outside parties, not just for the limit of copyright, but in perpetuity. The cost of all preservation, restoration, and storage, of these 'donations' is paid for by the archives. The studios however, have the right in perpetuity to have *exclusive* access to these properties. Furthermore, any profits made from the use of donated materials when access is requested by the donor, goes 100% to the donor while the archive receives nothing.

If these donor agreements are left unchanged then the question must be asked, what does the future hold for U.S. film heritage? The answer appears to be rather bleak, with a large portion of America's film heritage seemingly destined to remain unseen for a long, long time. However, there are many good reasons why this not need happen.

First of all, we must look at the overall purpose of copyright, which the Constitution says, is to "promote the progress of science and useful arts by securing for *limited times* to authors and inventors the exclusive right to their respective writings and discoveries". In *20th Century Music vs. Aiken*, the Supreme Court noted, "Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting **broad public availability of literature, music and the other arts**". Perpetual donor agreements which limit forever the public's access to films now and eventually in the public domain, which are preserved at the public's expense, are no way in accord with the above, long standing Constitutional and Supreme Court edicts. There are no generations of Americans more deserving of eventual access to these filmworks than the ones that grew up with them. The ones whose taxpayer dollars are paying to preserve them. The ones that watched them on television on Saturday afternoon when they were kids. The ones that paid money to buy movie tickets to see them in the theaters when they were first released. The ones that made these films worth making to begin with. *These* generations of Americans can truly claim that these films are more a part of *their* culture than any generations to come.

Practically speaking, the studios don't really even have a *viable* reason for denying access to donated, public domain works. When the 'great' (and still commercially viable) films of the 1920s, 30s and 40s start falling into the public domain, the studios will have at their disposal the means to artificially extend their copyrights for an additional 75 years. That means is Colorization. Colorization will not only allow an extension of copyright, but will also rejuvenate a film's mass market commercial attractiveness to a present day public that generally shuns black and white product. Whether you approve of it or not, Colorization is here to stay, but remember, if eventual public access is granted, no one will ever be forced to watch *only* the Colorized version of a film.

For those older films that were made in color, the studios will have the prerogative of publishing copyrightable, new versions with never before seen footage, or versions that boast added or rearranged music or effects tracks. MGM, for example, was known to have saved many pieces of unpublished footage over the years, particularly musical numbers that never made it into the final cuts. *THE WIZARD OF OZ*, *AN AMERICAN IN PARIS*, and *FANTASIA* are just a few examples of films that have the potential of being re-edited into copyrightable, derivative works.

However, when these older, 'big' pictures do fall into the public domain, they will take along with them thousands of other, much less commercially attractive works. This huge body of other films, comprised mainly of lesser known features, shorts, serials, etc., has virtually no value to the major studios on the levels of commercial expectancy that they're normally used to dealing with in today's mass television, home video, cable, and theatrical markets. It's probably not unrealistic to say that 90% or more of the copyrighted filmworks from the 1920s, 30s, and 40s fall into this category.

However, just because these lesser known works don't have ageless, mass market, commercial potential, doesn't mean they deserve the eternal oblivion that will be brought on by these perpetual donor agreements. These films have an enormous educational, historical, cultural, and entertainment value that simply mustn't be suppressed. Schools, libraries, film societies, archives, private individuals, would all reap great rewards from the benefits of unrestricted public access. Smaller companies that deal in cable TV and video distribution, whose operation costs are much lower and whose commercial expectations of such products are not nearly so high, can once again make these forgotten treasures readily available to the general public where their former copyright owners could not. Indeed, the eventual falling into the public domain will not only open the door to the rediscovery of these presently confined works, but also may signal a renaissance of American film heritage. There can be no better example of this than the movie, *IT'S A WONDERFUL LIFE*, which, before its copyright lapsed in 1975, was a fairly well thought of but only occasionally seen film from 1946. After it entered the public domain and access became widely available, the film was basically 'rediscovered' by the American public. It's only been *since* that time that it's become established as one of the all-time American film classics. This isn't to say that every forgotten film from the golden age of Hollywood will eventually become an American Classic, but it certainly shows that widespread availability encourages widespread appreciation which

results in a work becoming more permanently engrained into our culture. We believe the entire film history of Hollywood deserves this consideration.

Another thing to consider is that when these lesser known films eventually do fall into the public domain, many of them will certainly be made available to the general public anyway, regardless of donor restrictions. Outside parties possessing privately owned film prints will make them available to cable TV, home video, even theatrical and festival showings. However, these outside editions will generally be vastly inferior to the best known editions currently housed at the major archives. It seems ridiculous that the public will be forced to enjoy these films in visually inferior, often incomplete versions, while they pay for the preservation of the best known editions, yet are denied access to them. It doesn't make sense.

This committee vigorously believes in the necessity of continued federal funding for film preservation. It gives the highest praise to the job done by the hundreds of hardworking scholars, technicians, and archivists who have painstakingly preserved these works through the use of these funds. However, it also feels that immediate or eventual public access should be a mandatory requirement of all such funding. There's simply not enough taxpayer benefit to warrant the funds expended if the only privilege the public receives is the availability of *certain* films for *occasional* public or private showings, while thousands of others sit in the vaults unseen, perhaps forever.

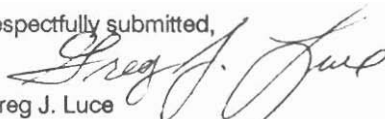
This committee makes the following recommendations:

1. Preservation of films for the sole and exclusive benefit of the donor should be contrary to public policy.
2. Congress should be encouraged to pass legislation that will retroactively limit the protection of donated works preserved, stored, or catalogued with Federal funds. This protection should be limited to the term of copyright, or 20 years after the gift, whichever is longer. This arrangement would allow satisfactory benefits to the donor, while providing reasonable access to the public.
3. All public funding of film preservation should be contingent on eventual public access to the preserved films. Public access should include the availability of first quality prints and video masters on a cost plus, or reasonable fixed fee basis. Revenues generated should be funneled back into film preservation efforts to reduce the need for Federal funding.
4. Policies should be formulated to detail access procedures and fee schedules. These policies should then be made available for public comment and feedback.
5. Any archive receiving Federal funds should be required to prepare and make available lists of their film holdings and their availability dates, and to keep such lists in an updated form.

After these proceedings conclude, we feel that any recommendations made to Congress as a result of these hearings must deal not only with the subject of film preservation, but also with the question of guaranteeing future, public access to those films.

This committee offers its services to the National Film Preservation Board of the Library of Congress in developing recommendations for a comprehensive program which provides for continued preservation and public access.

Respectfully submitted,

  
Greg J. Luce

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LIBRARY OF CONGRESS

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