

Moviecraft, Inc.

Production, Syndication, Stock Footage

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**TV's Magic
Memories.** Home Video

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FILM AND BROADCASTING
RECORDS SOUND DIVISION

National Film Preservation Board
Library of Congress

Dear Board Members:

My archive, Moviecraft, is a commercial archive located in the midwest. As chairman of the **FILM AND IMAGE PRESERVATIONISTS AGAINST AUTOMATIC COPYRIGHT RENEWAL** the sentiments I state here are felt by hundreds of businesses, archives, film makers, and individuals involved in commercial archiving and film preservation.

Moviecraft's collection is approximately 10 million ft. of film, primarily 16mm, with a small percentage of 35mm. Our subject matter covers abandoned educational, industrial, commercial, features, television, early short subjects...literally anything in motion pictures. Most of this type of material are discards...films of historical relevance, but outdated and no longer of use to the original maker.

We employ two people full time and some part time help. No external funds for preservation are used. We are a business. We look to the sale of footage to film makers, as well as our home video line, to support our efforts. Priorities are on more salable footage, but this does not hinder the archiving of more obscure industrial or educational films. Viewing copies are made on video. Original elements are usually lost in these types of films, so prints in some cases are pieced together from positive prints. We have converted approx. 100 reels of Nitrate 35MM that was refused by the National Archives due to lack of funds for transfer to safety in the 80's. These included parts of Tiffany features, Worlds War 1 footage, and Buffalo Bill Wild West Show footage. We presently have the reels on 16MM negative.

Our collection is available to researchers for study. We are in the process of entering the collection on data base. For a nominal charge (\$40 per hour) we offer our films on VHS

viewing cassette. Material in our home video line also allows for public access. The material in our library, covering 1900 to 1964, is primarily in the public domain. We use independent researchers, reference books, and the Library of Congress to verify the works are abandoned.

The most pressing preservation problems we face are the changes the copyright law through Public Law 102-307.

This new law causes extreme, if not insurmountable problems in areas of film archiving and preservation for abandoned works covering the years 1964 to 1978.

Registered works are now automatically renewed. In abandoned motion pictures, this is devastating. Abandoned motion pictures, which comprise approximately 50% of registered works (according to our study of 1950-1959 motion pictures), are now protected through copyright for 50 more years. Although abandoned, there is a potential lawsuit for anyone using this material. This includes ALL remedies under copyright law, i.e. costs and attorney fees, statutory damages, damages and profits, impounding of infringing articles (negatives and prints), irreparable injury, and injunctions. Try offering this material to a film maker or stock footage user while disclosing these facts!

Unregistered works are also automatically renewed, but the remedies of statutory damages and attorney fees are not available for any acts of innocent infringement that occur before registration of claim to copyright. All other remedies are still applicable.

The new copyright law includes a "prima facie" renewal that should still be registered by the copyright holder to validate their copyright. However, they still can claim copyright after the renewal period, putting any good faith user in peril of a lawsuit.

The new law has successfully eliminated public domain in our lifetimes, and will cause commercial archives to stop their collections with 1963 works. These businesses need a commercial application for the works they are preserving. There is no incentive to preserve if the new law allows for only the most trivial of uses of abandoned motion pictures after 1963.

The Association of Moving Image Archivists states there will be problems in three principal areas.

- Exhibition to groups on archive premises.
- Reproduction and sale for broadcast or other re-use.
- Distribution for loans or rentals.

We have been preserving important films that show the history of America and the world. The Miltons At the 1939 World Fair, Industry on Parade (circa. 1950), Fun & Facts About America (1940's Harding College), Encyclopedia Britannica, Coronet, McGraw Hill, Young American, and commercial and industrial films made by various companies comprise a sampling of our collection. These films, with limited life spans for the

original producer, show a particular time period, and when outdated, are abandoned. They no longer have use by the original producer, but they should be preserved. They are a treasure of film history.

The new law must be changed. There must be recognition of the importance of public domain archiving by the Copyright Office and the National Film Board. Those who supported the copyright change ignored the affect on our industry. Those lobbying for the new law primarily represented the publishing and music industry. The Copyright Office should have supported public domain to preserve abandoned motion pictures, but this problem was ignored in favor of some authors who were not astute enough to understand the copyright laws, and lost their copyright.

The copyright provisions for abandoned works must include a reasonable period for motion pictures to fall into public domain. Why the discrepancy between copyrights and other intellectual properties? Trademarks must be renewed in 6 years. Patents are for a term of 16 years. The terms for motion pictures are 75 years including renewal... too long to allow for abandoned motion pictures, since an author can claim a copyright under the new law at any time during this term. These motion pictures are "discards" NOW...they must be given clearances to be saved. Commercial archives cannot afford the luxury to keep them. There are not enough resources for government archives to keep them either.

We still contend there should be a limit on registered and unregistered works that is REASONABLE, and if a motion picture author does not register a "prima facie" renewal, or initial copyright...there must be a reasonable period to allow motion pictures to enter the public domain, say 3 to 5 years. Otherwise, there is no hope for the archiving and preservation of abandoned films in the 1964-1978 period.

The Copyright Office must support a "healthy public domain" climate in motion pictures. The current attitude is to avoid public domain at any cost. This serves the needs of special groups of copyright users, while missing the "big picture" of film preservation. Authors who want assurances that they may claim the copyright, even if there is no effort to maintain the copyright, are affecting the archiving and preservation of abandoned works. There should not be the option for 50 years to claim a copyright. It is just unfair. The Copyright Office must support that public domain is needed in this instance in a reasonable time period. Congress looks to the Copyright Office for guidance. A "healthy public domain" is a prerequisite for film preservation of abandoned works. The narrow class of motion pictures, 1964 to 1978, is all we are concerned with. We cannot archive this period under present copyright law.

Of course, these abandoned works cannot be cleared under the new law because the authors cannot be found. They are out of business, dead, or indifferent. The bulk of abandoned films were released by "corporate authors" who were dissolved long ago.

The National Film Preservation Board is preserving many films for future generations. So are the commercial archives, without a cent of taxpayers money. Our archiving...for

FREE...has been stopped in works from 1964-1978, because authors who were careless, indifferent, or claiming ignorance have changed the laws over our objections. Those authors who pushed for this change in copyright were authors of books, music, etc., and not motion picture authors.

We cannot have automatic renewal and abandoned film archiving side by side. We will lose a large part of film history because of the complainers. The Copyright Office has gone overboard with authors rights, and neglected the "good" public domain does in film preservation. We must have a "window" for renewal or claiming of an unregistered work, say 3 years, so abandoned works can be preserved and used by the public. Let the commercial archives continue to preserve abandoned works. Public Law 102-307 must be changed, even if it is just for motion pictures.

We are not supported by public funds. What incentive do we have to preserve abandoned works now? Business economics dictates we cannot use our funds to preserve films we cannot offer to the public freely through public domain. Some sacrifice is needed by authors who "want it all" with this excessive 50 year open window for claiming of copyright. Three years is fair for renewal, or claim of an unregistered work. If we cannot get your support on this, the National Film Board is more academic than realistic...and abandoned works from 1964 to 1978, those films really lost and in need of archiving and preservation, will be gone forever.

Sincerely,



Larry Urbanski
President, Moviecraft
Chairman, FAIPAACR