

# "Preservation Without Access is Pointless"

LIBRARY OF CONGRESS

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MOTION PICTURE, BROADCASTING  
AND RECORDED SOUND DIVISION

Statement by

The Committee For Film Preservation and Public Access

before

The National Film Preservation Board of the Library of Congress

Los Angeles, California

February 12, 1993 \*

This statement is submitted on behalf of The Committee For Film Preservation and Public Access. Our members include motion picture screenwriters, directors, producers, distributors, historians and journalists. A full membership list is attached.<sup>1</sup>

### Summary

The National Film Preservation Act of 1992 directed the Librarian of Congress in consultation with the National Film Preservation Board of the Library of Congress to conduct a study on the current state of motion picture preservation and restoration in the United States.<sup>2</sup>

Our position is simple. We strongly support the creation of a national policy to preserve our motion picture heritage. At the same time, that program will be incomplete -- utterly pointless -- unless there is a guarantee of access to the films that are being preserved at public expense.

We believe that all films have historical significance and should be preserved, and we support the use of Federal funds for this effort. However, we also believe that with the use of public funds comes the responsibility to make the films available to the public. Upon expiration of copyright, those films whose preservation, cataloguing or storage has been supported in any way by public funds must become available without restriction.

Preservation is great, but preservation without access is pointless

Most films of significant commercial value are preserved by their owners and one or more film archives. If Federal funds are to support preservation of classics such as DRACULA, MR. SMITH GOES TO WASHINGTON, CITIZEN KANE or CASABLANCA, already preserved by their copyright holders, then there must be a compelling public benefit.

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<sup>1</sup> See Appendix 1.

<sup>2</sup> Public Law 102-307, the National Film Preservation Act of 1992, 106 Stat. 264, Section 203. See also: "Request for Information and Notice of Hearing," *Federal Register*, Vol. 57, No. 229, November 27, 1992, pp. 56381-3.

Similarly, if archives use public funds to preserve films that the owners decline to preserve themselves, then there must be a process to make these films available to the public.

## Introduction

Motion pictures are one of the common elements of the American experience in the Twentieth Century. Produced solely for profit, with little thought to their long-term significance, the importance of the cultural contribution of the commercial cinema was recognized just in time. Beginning in the 1960s, thousands of motion pictures were saved from loss through destruction or neglect. A combination of public, institutional and private interests worked together in this effort. They assured that many of the movies that shaped the Twentieth Century would survive for enjoyment, review and study.

Now, twenty-five years after these efforts recovered films not seen since their original release, it is time for review. When our entire motion picture heritage was at risk, it was sufficient to acquire and store the missing years of American cinema. We believe that Federal funding was appropriate for this effort.

However, the government has an obligation to the taxpayers to require access to motion pictures in the public domain if those motion pictures were preserved at taxpayer expense. **Public domain is meaningless without access.** If a book falls into the public domain, then any publisher can buy an old copy and reprint it. Films are different. Motion pictures are rented, not sold, and access to high quality materials is necessary for additional copies. One of the primary rationales for public support of film preservation should be to assure future wide availability when a motion picture falls into the public domain.

## Why is Federal Funding Involved?

There are five American film archives which are full members of FIAF, the International Federation of Film Archives: the International Museum of Photography at George Eastman House, the Library of Congress, the Museum of Modern Art, the

National Center for Film and Video Preservation at the American Film Institute, and the UCLA Film and Television Archive. With the National Archives, they constitute the largest archives of moving image material in the United States. There are several dozen smaller noncommercial institutions.<sup>3</sup>

The Library of Congress and the National Archives are Federal institutions and receive significant direct Federal appropriations for film preservation activities. In addition, Federal grants for private institutions are funded through the National Endowment for the Arts. From 1973 to date, the Endowment has awarded over \$13,000,000 toward film and video preservation activities.<sup>4</sup>

Regardless of the amount of Federal support involved, we believe that use of public funds for film preservation, cataloging or storage results in certain obligations.<sup>5</sup> These include informing the public of what films are at each archive, and establishing procedures to make those films widely available to the public after expiration of copyright.

Starting in the 1960s, most of the major studios donated their nitrate negative and master material to various American film archives. In widespread use before 1951 for

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<sup>3</sup> Addresses and telephone numbers for 56 additional major U.S. noncommercial film archives are listed in Anthony Slide, *Nitrate Won't Wait*, (Jefferson, NC: McFarland & Company, Inc., 1992), pp. 168-171.

<sup>4</sup> Telephone conversation with Laura Welsh, National Endowment for the Arts, January 13, 1993.

<sup>5</sup> The cost to taxpayers of various U.S. film preservation efforts may not be precisely calculable, but it is clearly significant. Direct government expenditures include the cost of the Library of Congress and National Archives film preservation programs since their inception, which clearly runs into the millions of dollars. In addition, the National Endowment for the Arts has given private archives film preservation grants for millions of dollars more.

Indirect costs to taxpayers include the tax-exempt status of private archives, the tax deductability of financial contributions given to these archives and, until the tax law was changed, the tax deductability of film donations made to the Library of Congress and private archives. These costs to taxpayers will clearly continue to mount as the number of films preserved, catalogued and stored by archives grows with each succeeding year.

negatives and prints, nitrate film stock is highly flammable and will eventually decompose. Long-term existence of these motion pictures requires copying them to safety film, and the preservation of a large number of titles is expensive. At that time, only M-G-M and Disney had made the investment to copy their entire film libraries, believing the films had long-term value.<sup>6</sup> By the early 1970s, the commercial market for black-and-white films had dried up, as television demanded color programming. The other studios had only battered 35mm and 16mm negatives, made quickly in the 1950s for television use.

By donating their nitrate negatives and master material to government archives or private institutions receiving Federal funding, the studios relieved themselves of huge ongoing expenses for storage, inspection, insurance and disposal. A 1986 survey documented 200,000,000 feet of nitrate film held in non-commercial archives, a significant portion donated by corporate concerns.<sup>7</sup>

The agreements that limit use of the donated materials were scrutinized three years ago when the United States Court of Appeals for the Federal Circuit disallowed a \$8,394,000 charitable contribution claimed in 1969 by insurance conglomerate Transamerica Corporation.<sup>8</sup> Its United Artists subsidiary had donated its entire collection of nitrate film elements to the government. This included over 1000 features and 2000 shorts and cartoons, primarily films produced by Warner Bros. and Monogram. While this included such classics as *THE MALTESE FALCON*, most of the films were the caliber of *MOONLIGHT ON THE PRAIRIE* with Dick Foran.

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<sup>6</sup> M-G-M spent \$30,000,000 toward the financial cost of preserving its film library in conjunction with the International Museum of Photography at George Eastman House. Slide, *Nitrate Won't Wait*, p. 156.

<sup>7</sup> Stephen Gong, "National Film and Video Storage Survey Report and Results," *Film History*, Vol. 1, No. 2, 1987, p. 127. The study notes that "almost one-half of the more than 200 million feet of nitrate film being held in archives remains uncopied."

<sup>8</sup> *Transamerica Corporation v. United States*, 902 F2d 1540 (Fed. Cir. 1990). The determination of the value claimed is given in *Transamerica Corporation v. United States*, 15 Cl.Ct. 420, 459 (1988).

The Court of Appeals saw no charity on the part of United Artists. Rather than ruling on the value of the gift to the government, the Court declared that the donation had no fair market value at all. **"The cost of the conversion to safety film which the Library undertook to make was well over \$1 million,"** the Court noted. The donor **"contributed nothing towards this cost, although it received the right, to the exclusion of other members of the public, to obtain access to the Library's safety film for commercial purposes in perpetuity."**<sup>9</sup> Any use of the films before or after expiration of the copyrights requires the permission of United Artists, or its successor.

All of the written agreements between the studios and the Library of Congress have these perpetual restrictions; other archives have similar arrangements with equally restrictive terms.<sup>10</sup>

The public policy considerations involved in the *Transamerica* case are equally relevant here. Film studios should not be able to obtain benefit from taxpayer expenditures unless the public gains eventual access. The Court of Appeals noted that the only public benefit gained was "the right to make preservation copies of the nitrate negatives. This benefit brought with it substantial expense."<sup>11</sup> We believe that this benefit is insufficient.

A number of the films included in the United Artists donation are already in the public domain, and remain completely unavailable more than twenty years after the film material became the physical property of the United States. For example, *FROM THE MANGER TO THE CROSS* (1912), filmed by the Kalem company on location in the Middle East, was one of the first American feature-length films. The donated material is the best surviving print of this title. In the public domain for over fifty years, this feature

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<sup>9</sup> 902 F2d at 1543 (emphasis added).

<sup>10</sup> See Appendix 2 for the Instrument of Gift for the United Artists collection.

<sup>11</sup> 902 F2d at 1543.

can still only be shown with the permission of the donor, which has announced no interest in making the film available commercially.

Also in the United Artists collection are many familiar public domain titles, including *SANTE FE TRAIL* (1940) with Errol Flynn and Ronald Reagan, and *ALGIERS* (1938) with Charles Boyer and Hedy Lamarr. Widely available in inferior copies, the best material is being preserved at public expense, but not for the public benefit.

At all archives, many films are preserved, stored or catalogued with Federal funds and no financial support from the copyright owner. Not only do the studios have exclusive access to the preservation material, but they receive all income from its exploitation. This is especially vexing when preservation materials are used to provide excerpts for documentaries or commercials. As noted in Anthony Slide's study of film preservation, *Nitrate Won't Wait*, "once the film has been preserved at public expense, the preservation elements are made available to the copyright owner, without charge, for his or its financial benefit... Such copyright owners charge as much as \$2,000 or \$3,000 for use of the clips."<sup>12</sup> The copyright holder gets 100% of the fees for materials provided by the archive and preserved, catalogued and stored at public expense.

More than twenty years ago, when the major studios deposited their nitrate materials, there was some chance the films might have ended up rotting in the vaults. Black-and-white films of the 1930s and 1940s had reached the nadir of their commercial value. However, several factors have caused a huge increase in their worth. The increased number of UHF television stations and cable networks, many owned by the studios, share a thirst for programming. Perhaps the greatest influence has come from the VCR revolution, which has seen the release of the most popular classics for home viewing.

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<sup>12</sup> Slide, *Nitrate Won't Wait*, p. 150.

## Preserved, Only to Vanish?

Now that the classic films have returned from their *Late, Late Show* oblivion to wider availability, how will they fare once they fall into the public domain? The copyright owners have shown every indication that once the 75-year copyright terms expire, they will prepare revised versions that qualify for new copyrights, **and the originals will be withdrawn from circulation.**

This is not idle speculation. One of the promised "benefits" of colorization is to artificially extend the copyright term.<sup>13</sup> For many films already in the public domain, distributors have prepared new versions with different music tracks, editing and content, and copyrighted the results as "new editions."

Indeed, the Walt Disney Company has announced plans to permanently withdraw FANTASIA (1940) in favor of a new version, with some new footage. This new version will qualify for a new and separate copyright and the original version of FANTASIA will disappear and be forever unavailable, even after the original falls into the public domain.<sup>14</sup>

In short, as their oldest films complete their 75-year term of copyright protection, the studios have considerable incentive to create new versions. Public domain is not going to lead to the widespread availability of the great films. Instead, it will be the cause of the disappearance of these motion pictures in their original versions.

Rather than have the most authentic versions disappear, we believe that when a film falls into the public domain, it should result in a renaissance. Just as audiences of the 1920s and 1930s awaited the release of the films when they were new, the 1990s and 2000s should see those films emerging from a long hibernation to become available again. The purpose of film archives is to assure that top quality copies of those films

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<sup>13</sup> See Appendix 3.

<sup>14</sup> See Appendix 4.

survive in their original versions to be seen by future audiences. To allow otherwise is to nullify the entire investment in film preservation.

### Public Policy

The purpose of the copyright law is to provide limited protection for a finite term to give creators incentive to create works. At the end of the term of protection, the works fall into the public domain for the widest possible dissemination. The United States Constitution grants Congress the power "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."<sup>15</sup>

The U.S. Supreme Court addressed this constitutional policy in *Twentieth Century Music Corporation v. Aiken*:

The limited scope of the copyright holder's statutory monopoly, like the limited copyright term required by the Constitution, reflects a balance of competing claims upon the public interest: 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.<sup>16</sup>

We believe that restricting access to works in the public domain which are preserved with public funds is contrary to the guiding public policy articulated by the Constitution and the Supreme Court, and contrary to common sense. We do not believe that preservation for the sake of preservation serves the public. If the films are being preserved for posterity, when does posterity begin?

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<sup>15</sup> United States Constitution, Article 1, section 8, clause 3 (emphasis added).

<sup>16</sup> *Twentieth Century Music Corporation v. Aiken*, 422 U.S. 151, 156 (1975). To reinforce the point, the Court continues, quoting an earlier Supreme Court case, "The sole interest of the United States and the primary object in conferring the monopoly lie in the general benefits derived by the public from the labors of authors." *Fox Film Corp. v. Doyal*, 286 U.S. 123, 127 (1932). See also: *Sony Corp. v. Universal City Studios, Inc.*, 464 U.S. 417, 429 (1984): "It is intended to motivate the creative activity of authors and inventors by the provision of special reward, and to allow the public access to the products of their genius after the limited period of exclusive control has expired."

## Model Arrangements

The government should not allow perpetual restrictions on access to films being preserved at public expense. To demonstrate that this does not have to be the case, there are several arrangements that should act as models for accessibility of preserved materials.

The Universal Pictures Newsreel library was donated to the National Archives in 1970. This included both nitrate and safety film. Four years later, Universal removed all restrictions on use, effectively abandoning its copyrights.<sup>17</sup>

As a result, the Universal Newsreels are the most widely used historical footage in this country, appearing in a wide variety of documentary, feature and educational productions. Preserved at public expense, and available to anyone on a "cost plus" basis from the National Archives, the films are providing great benefit to the public.<sup>18</sup>

The Hearst Metrotone News library was donated to the UCLA Film and Television Archive in 1981. This grant included all film materials and the copyrights, now administered by the Regents of the University of California. This has allowed UCLA Commercial Services to use income from sales of footage from the films to support preservation of the newsreel collection.<sup>19</sup>

Many archival agreements for donations of films by private collectors or independent producers and distributors provided for limited-term restrictions of 10 to 35 years. Since some of these agreements were made as long as twenty years ago, that means that access to these films is in sight.

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<sup>17</sup> U.S., Congress, House, *National Archives and Records Service Film-Vault Fire at Suitland, MD, Hearings Before a Subcommittee of the Committee on Government Operations*, 96th Congress, First Session, June 19 and 21, 1979, Appendix 4.

<sup>18</sup> For example, Turner Network Television's KATHARINE HEPBURN: "ALL ABOUT ME," cablecast on January 18, 1993, included Universal Newsreel footage to show the actual hurricane that once destroyed a Hepburn family home.

<sup>19</sup> Slide, *Nitrate Won't Wait*, p. 31.

We believe that agreements such as those discussed above offer a balance of benefit to the donor and the public. Films being preserved with public funds become widely available. **Immediate or eventual availability should be a requirement of all Federal funding for film preservation.**

Please remember that the underlying issue is availability. While the titles that immediately come to mind are the familiar classics, the eight major Hollywood studios released a new picture nearly every week for 35 years, and most of these titles vanished from sight soon after their original release. These include westerns, films without recognizable stars, pictures based on topical events or radio programs, or any film that reflects dated values. In addition, there were thousands and thousands of live action short films.

Produced on small budgets, these motion pictures have very little commercial value now, and will never be released on video or to television by their owners. The major home video labels have overhead expenses that result in minimum sales requirements for each title. These films are not commercially viable under those conditions. However, they are of enormous historical and sociological importance, and have much to offer about the people who made them and the times during which they were produced. Independent distributors with lower expenses, and lower expectations, can make these titles available to the audiences that await them. Under the present restrictions, these less known films that are unavailable now will remain unavailable even after they fall into the public domain.

We believe that the removal of restrictions will not result in significant competition for the classic films. If Turner Entertainment continues to make the original KING KONG widely available, then when that film falls into the public domain in 2009, there will be a very limited commercial market for copies from other sources. Few public domain video distributors will focus their resources on competing with a low-priced home video release from the original distributor.

## Films That Might as Well Be Lost

A review of the films of Gary Cooper will spotlight many of the effects of the current situation. Featuring one of Hollywood's greatest stars, a number of Gary Cooper films are in a legal limbo, being preserved by American archives at public expense, but unavailable to the public.

Gary Cooper started his career in silent films. *CHILDREN OF DIVORCE* (1927), with Clara Bow, is one of hundreds of silent films preserved, yet never to be seen. One of Cooper's first sound films, *THE SPOILERS* (1930), was never on television due to a rights problem with the story by Rex Beach. Although the story has been in the public domain for over 10 years, Paramount has not distributed the film, nor can anyone else when Paramount's motion picture copyright expires.<sup>20</sup>

*A FAREWELL TO ARMS* (1932) is a public domain staple and widely available. Based on the novel by Ernest Hemingway, it stars Gary Cooper and Helen Hayes, yet the copies in distribution are of the edited 1938 and 1949 reissue prints. The 35mm print donated by Paramount is the original release version; preserved at public expense, but rarely, if ever, shown to the public.

Based on a Broadway play, 1933's *ONE SUNDAY AFTERNOON* is carefully evocative of small town life of 1910, recreating that period only 25 years later. This low-key comedy represented a career shift for Cooper in a role played far differently by James Cagney in the 1941 remake. Preserved with public funds, *ONE SUNDAY AFTERNOON* is in the public domain, yet it is virtually never shown.

Paramount Pictures donated beautiful prints of these four films to the Library of Congress in 1971.<sup>21</sup> Although Paramount sold its rights to *A FAREWELL TO ARMS* and *ONE SUNDAY AFTERNOON* over 45 years ago, the archive is required by written

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<sup>20</sup> *THE SPOILERS* was not included in Paramount's sale of their film library to MCA in 1958, so it is still owned by Paramount.

<sup>21</sup> *Nitrate Won't Wait*, p. 161.

agreement to get Paramount's approval for access. The studio refuses to allow access to films like these by specialized distributors, nor will Paramount distribute these titles.

The Library of Congress has devoted substantial Federal resources preserving Frank Capra's MEET JOHN DOE (1941), starring Gary Cooper and Barbara Stanwyck. This public domain title is widely available in poor-quality, usually incomplete copies. However, restored to full length, the best quality edition stays in the vault, while the truly inferior material is widely available.

The most successful film of 1943 was Cooper's second Hemingway adaptation, FOR WHOM THE BELL TOLLS, co-starring Ingrid Bergman. Released at 170 minutes, but long available only in a version 40 minutes shorter, the UCLA Film and Television Archive restored the film to 157 minutes using funding from the David and Lucille Packard Foundation.<sup>22</sup> Despite this effort, the owner has not released the restored version on home video.

One of the biggest hits of 1946 was SARATOGA TRUNK. Again casting Gary Cooper and Ingrid Bergman, this film has been unseen since the 1950s, due a limited license to the story by Edna Ferber. This is a prime example of the type of film that archives should preserve, since there is no economic incentive for the copyright holder to do so. However the public will receive no benefit for warehousing the film until the story rights fall into the public domain, and the owner of the film can again distribute this long missing classic.

Gary Cooper is one of the great film stars in the history of American cinema, yet seven of his major films are currently unavailable to the public in their original or restored form. At the same time, all are being preserved by archives that receive Federal funds.

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<sup>22</sup> *Archival Treasures: Film, Television & Radio Preservation at UCLA*, 1985, p. 27.

The problem goes far beyond this sample of Gary Cooper films. The following list is representative of the problems of availability and access to films being preserved with public funds:

The silent W.C. Fields features that were prototypes for his classic sound comedies.

The Spanish-language films of Laurel and Hardy where they speak Spanish phonetically, and perform routines cut from the English language versions.

The Vitaphone shorts of the early sound period, which record vaudeville acts and opera performances of the 1920s. They provide indispensable insight into the live stage shows that the sound film brought to an end.

Fox Film Corp. -- the forgotten studio -- produced 50 films a year from 1914 to 1935, when it became Twentieth Century-Fox, ending a distinctive style of filmmaking. The films produced by this company were rediscovered in the early 1970s. Except for those films starring Will Rogers or Shirley Temple, they are only rarely shown. Their owner has shown no interest in the films, except to grant permission for occasional public showings.<sup>23</sup>

The 1200 features and 600 shorts from Columbia Pictures from the nitrate era. Remembered as a B-picture studio, Columbia bought up many other libraries for television distribution. The Universal serials and feature films from Pathe, Tiffany, Mascot, and other companies were purchased by Columbia. Out of distribution by Columbia for thirty years, many of these titles are already in the public domain. Being preserved with Federal funds, these are orphan films.

91 Paramount feature films from 1914 to 1943, including many unique prints of silent features. Paramount was the number one studio until the coming of sound, yet only a fraction of their films before 1928 survive in any form. The studio's productions from that era have virtually no critical reputation, while the M-G-M titles, preserved and made available by their owner, have set the current critical standard for the Hollywood silent film.

The 740 features produced by RKO Radio Pictures on nitrate film. These titles were released to television in the 1950s in poor quality copies, with the distinctive RKO tower logo removed. More significantly, the sharp photographic style of the studio was replaced with fuzzy, indistinct images. While copyright owner Turner Entertainment has produced new film and video masters of outstanding quality, when the films fall into the public domain, Turner and the archives will control all of the good quality prints.<sup>24</sup>

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<sup>23</sup> William K. Everson, "Film Treasure Trove: The Film Preservation Program at 20th Century-Fox," *Films in Review*, December 1974, pp. 595-610.

- Each of the 806 sound features, 54 silent features, 1507 shorts and 337 cartoons produced by Warner Bros. surviving from the nitrate era. The reputation of the studio stands on perhaps ten percent of its productions in the thirties and forties. The rest still sit on the shelf. One of those, THE DARK HORSE (1932), is described by Leonard Maltin as "just one of scads of worthwhile, yet unseen Warner Bros. movies from the early 30's" that is not on home video.<sup>25</sup>

These are some of an endless list of examples of films being preserved by American archives, which will never be available to the public under current agreements. The owners have limited their interest to the few films that promise significant returns. Given the considerable amounts of Federal funding supporting the preservation effort, we believe that the purpose of this preservation should be to assure that all of these films will be available to the public - now, if the owners have interest, and to everyone when they pass into the public domain.

### **Our Proposal**

Subject to further discussion and refinement, our proposal is along the following lines:

While we support preservation, we believe that preservation without eventual access is pointless. Availability for private viewing and occasional public shows is nice, but this does not provide sufficient benefit for the funds expended.

Preservation of films for the sole and exclusive benefit of the donor should be contrary to public policy.

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

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<sup>24</sup> All of these feature collections are recounted in *The American Film Institute Report 1967/71*, pp. 8-19.

<sup>25</sup> Leonard Maltin, "Leonard Maltin's Wish List," *Premiere*, February 1993, p. 90.

generated should be plowed back into film preservation efforts to reduce the need for Federal funding.

There is little point in preserving a film to the highest archival and quality standards if the commercially available copies will be of substandard quality. Policies for access and fees should be released for public comment.

The film archives have provided free storage and free preservation for the studios using public money. Congress should pass clarifying legislation that limits protection of donated works preserved, stored or catalogued with Federal funds to the copyright term, or 20 years after the gift, whichever is longer. This provides sufficient benefit to the donor, while providing reasonable access to the public.

All archives that receive Federal funds should prepare lists of their holdings with availability dates. Procedures for suitable protection of the original materials should be released for public comment.

### **Conclusion**

Just as a falling tree makes no sound if no one is around to hear it, preserving a film makes no sense if no one is allowed to see it.

Any recommendations made to Congress as a result of this proceeding must therefore deal not only with the preservation of films, but also with the question of guaranteeing public access to those films.

Our committee would be delighted to work closely with the National Film Preservation Board of the Library of Congress in developing recommendations for a comprehensive program that provides for preservation and public access.

Respectfully submitted,

THE COMMITTEE FOR FILM PRESERVATION  
AND PUBLIC ACCESS

### The Committee For Film Preservation and Public Access

JOE DANTE is a major motion picture director and producer. His films include THE TWILIGHT ZONE- THE MOVIE, GREMLINS, INNERSPACE and MATINEE. Mr. Dante is also a journalist, a member of the Directors Guild of America, and a member of Screen Actors Guild.

WILLIAM K. EVERSON is the leading film historian. Professor Everson is the author of numerous books including *American Silent Film*, *The Films of Laurel and Hardy*, *A Pictorial History of the Western Film*, and *The Detective in Film*. He is Professor of Cinema, New York University, archival consultant, journalist, film critic, lecturer, and winner of Best Film Book Award at the Venice Film festival for *The Western*.

ROBERT A. HARRIS is a film archivist/producer. He was responsible for the 1981 American release of Kevin Brownlow's restoration of Abel Gance's NAPOLEON, in concert with Zoetrope Studios. Active in film restoration and preservation, Mr. Harris reconstructed and restored David Lean's LAWRENCE OF ARABIA for Columbia Pictures in 1989, and Stanley Kubrick's SPARTACUS for Universal/MCA in 1991. With Martin Scorsese, Mr. Harris also produced THE GRIFTERS (1990).

ED HULSE is a journalist (founding editor of *Previews* magazine and contributing editor to *Video Review*), film historian, and author of *The Films of Betty Grable* and co-editor of *Leonard Maltin's Movie Encyclopedia*. His articles have also appeared in *Variety*, *Millimeter*, and *The New York Times*. A lecturer at the New School for Social Research and the American Museum of the Moving Image, Mr. Hulse is chairman of the annual Cinecon, the largest west coast festival of classic Hollywood films.

RICHARD T. JAMESON is Editor of *Film Comment* magazine. He is an author and a member of the National Society of Film Critics. He was Film Lecturer in Cinema Studies at the University of Washington from 1969-1980.

G. WILLIAM JONES, Ph.D. Founder, archival director, and professor of Cinema at Southwest Film Archives at Southern Methodist University, Dallas. Mr. Jones is author of *Talking with Ingmar Bergman* and *Black Cinema Treasures: Lost and Found*. Director and producer of the award winning film, *That's Black Entertainment*. Founding member of the Texas Film Commission, Mr. Jones was a member of the President's Commission on Obscenity and Pornography from 1969-1971, as a member of the EFFECTS RESEARCH PANEL.

ROBERT KING is Editor and General Manager of *Classic Images* magazine. He is an author, journalist and film historian.

TIMOTHY LUCAS is a journalist. Editor and publisher of *Video Watchdog* magazine, Mr. Lucas is a novelist, film historian, and film critic.

GREGORY LUCE is a film historian and archivist, and the owner of several copyrighted motion pictures. A theater owner in Oregon, Mr. Luce is also a distributor of motion pictures to home video, television, cable and stock footage markets. He is a former radio and television on-air personality.

LEONARD MALTIN is a television personality (seen weekly on the nationally syndicated ENTERTAINMENT TONIGHT as film correspondent, historian, and critic), author (*Leonard Maltin's TV Movies & Video Guide, Of Mice and Magic, Movie Comedy Teams, The Real Stars, The Disney Story*), journalist (articles appearing in *The New York Times, Smithsonian, T.V. Guide*, etc.), actor and video producer.

STEVEN NEWMARK is owner and president of Image Works Inc. Mr. Newmark is a film archivist, television and video distributor, and stock footage distributor.

L. RAY PATTERSON is a copyright scholar, Pope Brock Professor of Law, University of Georgia School of Law. Mr. Patterson is an author whose works include *Copyright in Historical Perspective, The Nature of Copyright*, plus many articles on copyright. He is a member of The American Law Institute.

SAMUEL A. PEEPLES is an author (works include THE MAN WHO DIED TWICE), screenwriter (the original Star Trek pilot WHERE NO MAN HAS GONE BEFORE, LANCER television series, dozens of others), motion picture and television producer (films include WALKING TALL, ADVANCE TO THE REAR), journalist and former monthly column writer for *Films In Review*, and a retired member of the Writers Guild of America, West, Inc.

DAVID PIERCE is a copyright consultant and writer. Mr. Pierce is the author of *Motion Picture Copyrights & Renewals: 1950-1959*, and his articles on film history have appeared in *American Film* and *American Cinematographer*. He also produces the laserdisc release of classic films. Mr. Pierce is co-producer of *The Age of Exploration*, a series of eight silent feature films. The series was selected by *Video Magazine* as one of the top ten video programs of 1992.

FRED OLEN RAY is an independent motion picture director and producer. His films include MOON IN SCORPIO, ARMED RESPONSE, CYCLONE, and COMMANDO SQUAD. He is president of American Independent Productions, Inc., a motion picture distributor. Mr. Ray is also a screenwriter, poet, journalist, film historian, actor, and member of Screen Actors Guild. He is a former member of the Florida Motion Picture and Television Association.

MICHAEL V. ROTELLO is an Illinois State Representative from the 67th District. Mr. Rotello served as chairman of the Legislative and Community Development Committees. Former Rockford, Illinois, City Councilman. County auditor, Winnebago County, Illinois, 1984-1990. Delegate, 1976, 1980 and 1992 National Democratic Conventions. Mr. Rotello is an active member of the Knights of Columbus.

BONNIE ROWAN is the author of the upcoming *Scholar's Guide to Washington, D.C. Media Collections*, published by Johns Hopkins University Press. Ms. Rowan is a founder of the Washington Archive Research Council, which supports greater access to public collections. As a researcher, Ms. Rowan has worked on numerous documentaries, including *Marion Anderson* for WETA. She taught film history at Towson State University for seven years.

ANTHONY SLIDE has authored or edited more than 40 books on motion pictures and popular entertainment. He was associate archivist at the American Film Institute and the first resident film historian of the Academy of Motion Picture Arts and Sciences. In 1990, Mr. Slide received an honorary Doctorate of Letters from Bowling Green University. At that time, Lillian Gish called him "the preeminent historian of the silent film."

GEORGE TURNER is the former editor of *American Cinematographer* and the magazine's historical consultant. He is the author of *The Making of King Kong* (with Orville Goldner), *Forgotten Horrors* (with Michael H. Price), and the editor of *The Cinema of Adventure, Romance & Terror*, and *The A.S.C. Treasury of Visual Effects*. He works in the film and television industries as a production illustrator and special effects artist.

- BILL WARREN is an author whose works include *Keep Watching the Skies*, volumes one and two. Mr. Warren is also a film historian, journalist, and a Contributing Research Editor for *Leonard Maltin's TV Movies & Video Guide*.

MATTHEW WEISMAN is a screenwriter, motion picture producer and Adjunct Associate Professor at The University of Southern California School of Cinema. He is also a member of The Writers Guild of America.

INSTRUMENT OF GIFT

United Artists Corporation (hereinafter: "Donor"), hereby gives, grants, conveys title in and sets over to the United States of America, for inclusion in the collections of the Library of Congress (hereafter: "Library") and for administration therein by the authorities thereof, the pre-print material of certain motion pictures owned by Donor described in Schedules "A-5", "C-1", "C-3", "C-5", "C-7", "C-9", and "C-11" annexed hereto (hereinafter: "Collection"), receipt of which is hereby acknowledged by the Library.

Use of said materials shall be subject to the conditions hereinafter enumerated:

1. This is a gift of the physical property contained in said Collection only, and except for the gift herein made, the Donor reserves all right, title and interest in and to all the property constituting the Collection, including, but not limited to the rights of commercial exploitation, reproduction, publication, exhibition, television broadcasting or transmission (or reproduction and transmission by any other means now existing or by future improvements and devices which are now or may hereafter be used in connection with the production, transmission or exhibition of motion picture materials), or any other intangible rights to which the Donor is entitled

throughout the world, whether by license, under copyrights, common law, or other laws now existing or which may exist or be passed in the future.

2. Use of the Collection shall be limited to private study on the Library's premises by researchers engaged in serious research, and no other use shall be permitted, except with the written consent of the Donor, or except as hereinafter provided.

3. The Collection is being donated to the Library by Donor as a means of assisting the Library in enriching the National Collection of Motion Pictures. To this end, Donor permits all or any part of the Collection which is on nitrate film to be converted by the Library to preservation safety pre-print material and prints, which pre-print material and prints will become the physical property of the Library. The reservation of commercial exploitation, reproduction and other intangible right and interests set forth in Paragraph 2 hereof shall likewise apply to the use of the pre-print material and prints produced by the Library pursuant to the second sentence of this Paragraph 3 and which are to become the physical property of the Library.

4. The Collection shall be physically transferred, as space becomes available, from Donor's present facilities to storage facilities provided by the Library at the sole cost and expense of the Library, which storage facilities shall be suitable for storage of the Collection. Until transferred to storage facilities provided by the Library as aforesaid, the Library shall, nevertheless, be owner of the Collection, and the Donor shall be deemed to be a gratuitous bailee of the Collection, and in the absence of gross negligence on the part of Donor, Donor shall not be liable to the Library for loss of or damage to the Collection or any part thereof.

5A. Access to the Collection shall be reserved solely as follows:

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for the purpose of converting the same to positive safety preservation prints. Donor agrees to reimburse the Library for the costs and expenses incurred by the Library in the transportation of such negatives and Donor further agrees to pay the cost of preparing such prints, including reasonable administrative expenses incurred by the Library.

(ii) To the University of Wisconsin upon demand. The Library will, at the request of the University of Wisconsin, direct and process orders for positive safety preservation prints to be made from nitrate negatives or preservation safety pre-print materials, as the case may be. All costs and expenses incurred by the Library in the preparation of such prints, including transportation costs and reasonable administrative expenses incurred by the Library, shall be borne solely by the University of Wisconsin.

(iii) To the staff of the Library for administrative purposes as provided herein.

5B. The parties agree, however, that the positive preservation safety prints produced by and for the Library from the nitrate materials in the Collection may be made available for private study, on the Library's premises, to researchers engaged in serious research and, together with any negative or fine grain preservation safety copies, shall

be administered in accordance with the Library's usual and special regulations for the use of motion picture materials, said regulations being enumerated in Appendix B, attached hereto and made a part hereof (except that no reproduction shall be allowed).

6. Donor agrees that, with its prior written consent, not to be unreasonably withheld, the Library shall have the right, from time to time, to transfer physical possession of a reasonably limited number of components of the Collection to other similar motion picture film archives, located anywhere in the world, in exchange for other comparable valuable motion picture material; provided, however, that each such transfer shall be subject to all of the terms and conditions of this Instrument of Gift, which terms and conditions shall be assumed in writing by each such other motion picture film archive.

7. Upon the relinquishing by Donor of copyright in all or any component of the Collection, or of other rights and interests therein as hereinabove described, the Library shall have the right with the prior written consent of Donor, not to be unreasonably withheld, to make such components of the Collection available to educational institutions for

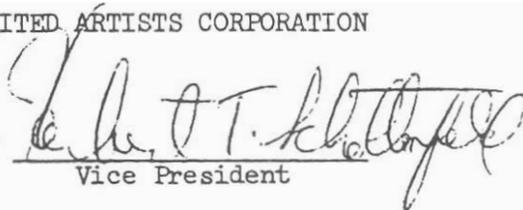
purposes of serious scholarly research in accordance with its usual and special regulations for the use of motion picture materials.

In witness whereof Donor has caused this Instrument of Gift to be signed in its corporate name by a duly authorized officer and its corporate seal to be hereunder affixed this 20<sup>th</sup> day of November, 1969.

(Corporate Seal)

UNITED ARTISTS CORPORATION

By

  
Vice President

Accepted for the UNITED STATES OF AMERICA:

  
Librarian of Congress (seal)

November 24, 1969  
Date

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# The Last Page

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## Fantasia-stein

In the July 15, 1991 issue of *Variety*, Disney studio chief Jeffrey Katzenberg boldly announced the destruction of a classic, and no one seemed to blink. In an article by Marc Berman entitled "Disney Plans Modern *Fantasia*," Katzenberg is quoted at the Video Software Dealers Association in Las Vegas, where he announced plans to create *Fantasia Continued*, which the article refers to as "a new theatrical version" of the 1940 classic.

Scheduled for release in 1996 or 1997, Katzenberg's proposed project "will include new segments and some from the original film." Katzenberg declined to comment on how many new animated segments would be added, nor how many of the original segments would be dropped, nor which of these were deemed no longer appropriate.

But the biggest bombshell was yet to come. Despite the fact that Disney spent several million dollars recently to restore the 1940 premiere release version of *Fantasia* to its original luster for its 50th anniversary, the article states that the studio plans to "retire" the old *Fantasia* permanently now that this new project is in development. To quote Katzenberg: "It will not exist in the form it exists in today. The film is being retired. I don't see a theatrical release or another video release." According to the article, Katzenberg doesn't see a cable or free TV release, either.

The article continues: "By promoting *Fantasia's* imminent 'retirement,' Disney stands to sell more videocassettes when they're released Nov. 1, at \$24.99 suggested retail price. To further create urgency in the market and boost sales, Disney will stop selling cassettes 50 days after the

Nov. 1 street date. It's expected that distributors will stockpile the title." Later, the article goes on to say that "in addition to the standard \$24.99 cassettes, Buena Vista Home Video will produce 150,000 boxed sets priced at \$99.99."



At last Disney's true intent becomes clear. Its mission appears to be twofold: to create a "panic buy" situation to boost sales of the *Fantasia* videocassette, and to be able to produce a new animated product without spending the money to make an entirely new film. The Disney Studio seems willing to destroy the integrity of what many consider the greatest animated film ever made just to line its pockets. Katzenberg's statements have the ring of the threats made by Dino de Laurentiis — who swore we'd never see the original *King Kong* again after he released his version — only worse. *King Kong* surfaced again because Dino didn't own RKO, the studio that produced the original *Kong*, but in this case, Disney can carry out its plan to let the original *Fantasia* rot in a vault.

And, like so many bad ideas, Katzenberg's Frankensteinian hybrid approach to *Fantasia* sets a terrible precedent. Will Rhett Butler decide to remain

with Scarlett at the end of *Gone With the Wind*? Will King Kong return to Skull Island instead of climbing the Empire State building? All of these scenarios would become possible if other corporations that own classic films decided to alter them as drastically as Disney wants to alter *Fantasia*.

The response to Disney's *Fantasia* ploy thus becomes crucial; the likelihood of widespread tampering would improve significantly if these "caretaker" corporations knew that film buffs would run to video stores if they leaked plans to significantly alter or "retire" favorite films. Is Disney really that cynical? The ramifications of such tampering make the ravages of colorization look positively benign by comparison.

These alterations are particularly irksome when one considers that the original Disney classics, crafted under Walt's supervision in the spirit of trying to achieve the highest artistic result, were the fulfillment of his lifelong dream to create quality animated films, of which *Fantasia* represents an almost unassailable pinnacle. Now the studio seems willing to rape the original Disney product while profiting from the good faith engendered by Walt's original films. If the new Disney Studio truly wants to follow in Walt's footsteps, it should plan to create more original products like 1989's excellent *The Little Mermaid* or a bona fide sequel to *Fantasia*.

Should Disney decide to make such a sequel, you'll hear no objections from this quarter. But to arbitrarily dismember a masterpiece and then keep the original film from the public is an act of artistic terrorism. *Fantasia* should be the first film considered for the National Film Registry's list of protected films this year so that the studio that bears his name cannot tamper with Walt Disney's original vision. *Fantasia* is a national treasure — it is vital that we ensure that the restored original version will always be available not just to film historians, but to future generations of filmgoers as well.

— Ron Magid