

Jay Summers, Producer  
Night Flight Films, Ltd

February 4, 2005

Reply of Notice of Inquiry

Orphan Works

Dear Distinguished Representatives;

I as an Independent Film Maker, and many others like myself, have a stake in any legislation imposed by the Inquiry on Orphan Works currently underway. I will give two specific examples of locating legitimate owners for obtaining rights of use has caused two entertaining and family related projects to currently be halted in their tracks. Secondly I will propose the value of some proposed legislation to prevent works from becoming extinct and possible methods of protecting works the owners intend to continue exploitation.

My first project is a retro project patterned after the Science Fiction "B" movies of the 1950's. It is set in the Great Lakes region in 1956. Per the script I have written I am required to have vintage stock footage, nearly 30 minutes worth, of the US Army, Navy and Air Force, in action battling the menacing monster in this film. Obtaining the footage in analog or digital format is easy, however tracking down the individual who owns the rights is nearly impossible. I have checked into the Library of Congress and the respective military agencies for determination of whether the footage is Public Domain or actually owned by someone, to no avail. These agencies have referred me to the National Archives, which requires me to go through an outside company to obtain and re-master the footage I'm inquiring about, sight unseen at an expense of nearly 50% of my entire production budget. For footage I already possess but can not determine ownership of rights to use. Therefore I have an Atomic Mutant Monster movie with no military to defend against. Having a workable, easy to use system for cataloging motion picture rights would make this process I'm facing much easier to navigate. Also making and entertaining film directed to all audiences on an extremely limited budget much easier to accomplish. Without determination of rights for ALL stock footage used in a film is a death mark as no distribution company would EVER distribute a motion picture without a full Rights and Exclusions Insurance Policy. No insurance company would even right a policy without full documentation of Obtaining Rights of Use from the rightful owner of such stock footage, therefore killing any project where the owner can not be determined, even in cases of public domain footage.

My second project is a Television show which I hope we can put into syndication. Along the same genre of my first project, hosting old classic Science Fiction and Horror movies.

Obtaining public domain films again is the easy part as I currently have nearly 50 in my personal collection. Proving they are public domain is the difficult part. Another problem arises when a film is no longer available as the master prints have been destroyed or disposed of or when a film is not available through any conventional commercial means. Case in point are vintage films which were produced on VHS tape in the late 1970's and early 1980's, which were of negligible financial worth. Many of these films were only seen for a short period during the advent of the Video Cassette Recorder and haven't been publicly seen since in any form, VHS, DVD nor on broadcast television. My second case in point is many of the production companies and distribution companies which had owned rights to thousands of films have since gone bankrupt and liquidated leaving their works orphaned without any way or means for a distributor or broadcaster to finitely determine who owns the rights. Again a Rights and Exclusions Insurance Policy is impossible to obtain.

Potential solutions are the cataloging of films, tapes, DVD's and all motion picture media in all forms by the rightful owner. Any conflicts could be immediately addressed by multiple parties claiming interest and they would have to show burden of proof to the legal system as to who the rightful owner is. If final ownership can not be proven than that ownership would be split into undivided shares. This should apply to any works newer than 20 years. Works with indeterminate rights older than 20 years than should be entered into the Public Domain.

All new works should have a copyright limit of 20 years from original copyright date with ten year extensions by the rightful owner or assigns, up to a limit of 50 years. These extensions are transferable only five times within the 50 year lifespan of the copyright protection. Productions must be made commercially available for the general population at least once every 10 years for rights to be continued. Unless the motion picture has some extraordinarily significant quality or identity, socially and publicly recognized and identified with it's producer. IE: Snow White and The Seven Dwarves and it's world wide association with The Walt Disney Company, who still owns the original rights to the film and characters. In such cases these films should be applied to a Special Trade Mark or Copyright status for the original owners, therefore ensuring continued protected status.

These measures will help ensure future generations will be able to view these films and footage even though to a large corporation they may be financially unviable for commercial exploitation, therefore forgotten and orphaned. To a small production house or broadcaster they are the means to preserve many films, no matter how bad, for future generations in many formats and to produce and commercially exploit quality content to entertain the general public both here and abroad. If these films are locked away in vaults of archives, preservation groups and libraries exclusively than the general public will have virtually no means by which to be exposed to these films. Only through limited commercial exploitation of small production companies through public domain rights will these films be exposed to the general populace.

Thank you for your time and patient consideration of my views.

Sincerely,  
Jay Summers  
Night flight Films, Ltd.