

FILMS AROUND THE WORLD, INC.
Long Island City Art Center
44-02 23rd Street - Studio 407
Long Island City, New York 11101
Telephone: (212) 599-9500/(631) 604-2424
Facsimile: (212) 599-6040/(631) 324-8589
E-mail: alexjr@pipeline.com
www.filmsaroundtheworld.com

October 22, 2012

Hon. Maria A. Pallante
Register of Copyrights
Copyright Office
Library of Congress

Re: Orphan Works Comment

Dear Register Pallante,

It appears to me that the bulk of the orphan works comments which are being submitted to you relate to books and other written works; my comments relate to audiovisual works which are embodied in film or audiotape materials.

We own or distribute a large entertainment content library. As the copyright owners or agents for the copyright owners, we usually start out with primary source materials – in the case of motion picture photoplays, negatives and prints; in the case of audio works, magnetic reel-to-reel tapes. As distribution arrangements are made, duplicates are created.

A movie that was exhibited theatrically in the 1940s, required a number of 35MM release prints, which made their way into various storage facilities rented by the distributors who had acquired exhibition rights. With the advent of home video, analog or digital masters were made from the initial print or preprint materials; again, they remain the property of the licensor, and are to be returned when the licenses expire. In theory, all such materials remain the property of the licensor, to be returned on expiration of the license; in reality the licensor frequently loses track of them.

In the real world, distributors and other licensees go out of business; the failure to pay ongoing storage facility charges results in the storage facility liens being foreclosed, and the physical materials being either sold at public auction or destroyed. In recent years, numerous storage facilities have gone out of business; frequently, the physical materials change hands several times. Sometimes they end up in the hands of speculators who attempt to extort money from the copyright owners when they try to reacquire their properties; sometimes they get into the hands of what we in the trade call “pirates,” who frequently cut off the copyright notices and then sell them as supposedly public domain videos; sometimes they are just destroyed.

For the most part, it makes little practical difference what happens to the duplicates; however, in many cases, particularly with kinescoped early television programs, the destroyed materials may be the only surviving materials for historically important works. (I note that the Library of Congress has long functioned as a kind of archive-of-last-resort, but only in the case of registered audiovisual works; kinescopes were rarely registered for copyright, and even more rarely have a copyright notice on them.)

In the past, there was a magazine publication which serviced the collector market; companies like ours perused every issue, looking for offerings of kinescope and movie prints that could be purchased for duplication use. Unfortunately, the publication, *Big Reel*, is no longer in business; the closest thing to such a resource today, is eBay, but given the myriad ways in which items can be listed, it is not always possible to identify materials before they are actually sold.

It would be immensely helpful if there was some kind of online database for what we can call “orphan audiovisual materials” that can be regularly checked by copyright owners. Virtually every storage facility and archive has digital inventories of their orphan titles; it should not be all that difficult to set up a central voluntary online registry with the LOC, in which they could be listed. The facilities would benefit by being able to reach out to distant copyright owners who would be interested in purchasing the materials privately, for a negotiated price; the copyright owners would benefit from a vastly-simplified way of looking for lost or misplaced materials for their owned works; the public would benefit from the possibility that works worth preserving, might be saved from extinction.

Respectfully submitted,

Alexander W. Kogan, Jr.
President

Electronically Submitted