



Fédération Européenne des Réalisateur de l'Audiovisuel

Federation of European Film Directors

Representing the Rights of European Directors and
Defending the Cultural Significance of Audiovisual Works

**The European Library Initiative: the stakeholders' perspectives
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*The Audiovisual Authors' Perspective
Cécile Despringre, CEO of FERA*

FERA is a federation of 32 national associations of directors in 28 European countries which represents the rights of European directors and defends the cultural significance of Audiovisual works.

Introductory remarks

As it has already been pointed out, the report on Digital Preservation, Orphan Works and Out of print Works prepared by the Copyright subgroup of the high level experts group on digital libraries identifies and focuses on issues relevant to the book sector and proposes agreed solutions between rights holders and cultural institutions.

The item related to digital preservation mentions the specific needs and requirements of the cinematographic and audiovisual works and proposes to deal with it as a "second basket" of measures. Then, this seminar of today appears to be the starting point of a new process towards this second basket, trying to identify which solutions elaborated for the book sector can be used in other sectors and which further adaptations and discussions are needed.

I won't come back to orphan works, which has been extensively discussed this morning, but I will concentrate on the issue of out of print/commerce works in relation to the cinematographic and audiovisual works.

1. Out of print/commerce works concept

Whereas orphan works is an identified concept in the audiovisual and cinematographic sectors which has already been studied¹ and discussed in some forum, the out of print/commerce concept is totally unused and unknown in the audiovisual and cinematographic sectors. In most of the countries, the producer of a cinematographic or audiovisual work bear a lighter obligation of exploitation than the publisher of a book and the common practices of the sector may involve temporary interruptions in the exploitation of a cinematographic or audiovisual work.

The out of print notion is linked to the reproduction right whereas cinematographic and audiovisual works are not produced to be published or reproduced but to be represented. So the main right involved for cinematographic and audiovisual works is not the reproduction right but the right of communication to the public.

Contrary to a book which can be permanently available in a bookshop, a cinematographic or audiovisual work is usually exploited according to a hierarchy of media called media

¹ For example, IRIS plus 2007-4 of the European Audiovisual Observatory.

chronology: first the theatrical release, then release on DVD (rental and retail), then video on demand and/or broadcasting (pay TV and pay per view followed by free to air television). The purpose of this staggered release pattern is to optimize the return on the investment to rights holders both on the financial and the creative side.

Regarding these different modes of exploitation of a film, it is difficult, nearly impossible to decide, including from the rights holders' perspective, when a film is no longer commercially available. An audiovisual work may not be available in theatres any more but will be soon available on DVD sale and renting, or a new broadcasting transmission will be offered in a few months.

Taking into account the special features of the audiovisual and cinematographic works and in particular the different formats and modes of exploitation, one could conclude that the notion of out of print/commerce works does not exist because it has no relevance for this sector, especially in the context of the Digital Libraries' discussions².

Nevertheless, if we come back to the overall objective of the Digital Libraries initiative of the European Commission ("Europe's cultural heritage at a click of a mouse"), we know that cinematographic and audiovisual works will be addressed in one way or another at a certain stage. That is why it is still interesting to look at the Model Licence drafted for the book sector.

2. Key elements of the Model Licence

Above the specific issue of out of print/commerce works, the Model Licence is based on fundamental and interesting principles:

- This is a voluntary, non exclusive and non transferable licence for non-commercial purposes.
- The library is supposed to have a physical copy of the work in its collection.
- The rights holder is the one who decides and declares that the work is commercially available or not, without any further proof to give.
- The rights holder retains all intellectual property rights in the licensed material including the digitised version.
- The rights holder may decide to revoke the licence at any time to withdraw the material if he decides to re-commercialise the material.
- The access to the digitised material is restricted to authorised users on site or through secure networks (intranet).
- The licensee informs the rights holder of the frequency in which the digitised material is accessed.
- The licensee bears all costs relating to the agreement, etc.

3. Implementation in the cinematographic and audiovisual sectors

Taking into account the overall objective of the Digital Libraries initiative and above the specific issue of out of print/commerce works, FERA is in the view that there is an interest to discuss with cultural institutions the preservation, the restoration and the availability of the works to the public.

But to start any discussion on the subject matter, several points have to be clarified: who are we talking with and what are we talking about?

First, which kind of cultural institutions behind the "Digital libraries" wants to deal with cinematographic and audiovisual works and what do they want to do with these works?

² In certain countries, consequences are attached to default in the exploitation of a work or to the bankruptcy of a producer, which allow the authors to get their rights back, usually with a judicial procedure, but this is something different (there is no producer anymore, which goes further than the notion of out of print/commerce).

Audiovisual (broadcasting) archives, film archives (cinémathèques) or big national libraries don't have the same missions, don't pursue the same objectives and do not have the same interest.

Furthermore, what are the existing film collections in libraries? What kind of audiovisual material are we talking about and what kind of audiovisual works libraries are interested in? Any discussion should start with an inquiry on the extent of the collections currently held by the institutions. The challenges are very different whether we talk about historical non-fictional material created before 1950 or fictional works, including recent ones.

Then, the issues at stake regarding preservation, restoration, digitalization and making available to the public are technically different for a cinematographic work in 35 mm and for a film in a video format (including digital).

Regarding film archives in 35 mm, I know that there are already discussions between FIAPF and ACE on a model of contract for a voluntary deposit that address most of these issues.

What would be new would be to discuss more generally digitalization of films in other formats than 35 mm (even if they initially were in 35 mm) for the purpose of preservation and making available to the public online in certain conditions in line of the Model Licence.

Because commercial video on demand already exists in Europe for films and is developing progressively in Member States, what room would be left for an initiative that does not compete with these commercial offers? Europe's challenge is to ensure a wide distribution of European films while at the same time making sure that commercial and non-commercial services have clearly defined roles and scopes. This is the most important issue at stake.

Conclusion

In conclusion, this would be a brand new issue which would require an in-depth discussion with all interested parties in the cinematographic and audiovisual sectors. If the European Commission wants to pursue the discussion in that direction, it should set up a new group of experts with the relevant interested parties from the cinematographic and audiovisual sectors.

Thank you for your attention.