



**Remarks of
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**before the
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"Pandora's Box: Film Archives and the Question of Rights"
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Thank you, Valerie, and a most heartfelt thanks to Eva Orbanz and Boris Todorovich for inviting me to participate in this very important and timely symposium.

I must begin with several disclaimers and admissions. Most importantly, I am not here to represent positions of MPA member companies on specific film preservation issues. I am by no means an expert on the subject of film preservation and I will undoubtedly learn infinitely more during this symposium than anyone will learn from me. I am here to reach out to a very important segment of the international film community, to learn more about your problems and aspirations, and to potentially serve as a communications bridge between the archive and preservation community, and MPA member studios.

I also must confess to being a lawyer, which places me within the group that is probably the most significant impediment to solving your problems. Change is a dangerous concept to many lawyers. The safest response to any proposal to change the way rights are dealt with is "no." But I promise to make every effort to keep an open mind and display enlightened flexibility rather than dogmatic rigidity.

Although I am no expert on the subject of film preservation, I do know that FIAF is the principal force in this critical endeavor and is to be greatly admired for its good works. Much of our global film heritage, including many films produced by MPA studios during their early, more careless years, would not be available today but for the foresight of dedicated film preservationists such as are represented in this room. And I am also generally aware of some of the issues of paramount concern to the preservation community, including the ability to copy materials in their collections for preservation purposes, and the ability of archives to publicly display those materials.

That said, I know I have a lot to learn, and that is what I am here to do. I also hope I can make some modest contribution to the discussion at this symposium. I have had valuable experience, going back some 30 years, reconciling the interests of film owners with the interests of various groups that have a legitimate need to copy, display, publicly perform or transmit films for various public purposes that do not conflict with normal exploitation. In many cases those interests have been worked out through face-to-face negotiations and implemented by legislation or non-legislative "best practices." For instance, in the early 1980s educators and representatives of the film production and broadcast industries negotiated guidelines for the recording without specific permission of off-air broadcast material for classroom use. A decade later, guidelines were negotiated for using—without specific permission—copyrighted material in multimedia presentations for non-commercial, educational uses, and in 2002 industry-to-industry negotiations resulted in amendment of the U.S. Copyright Act to extend the existing limitation on rights for instructional purposes to distance learning.

The pace of such efforts to work out reasonable accommodations between rights holders and users has increased in recent years. Principles for user generated

content were released by several leading U.S. UGC services and copyright owners last fall. Consensus has been reached among most U.S. copyright owner and user groups on orphan works legislation that may be enacted this year. Just last month a cross-industry study group issued recommendations for changes to U.S. law governing library and archival uses. Here in France, President Sarkozy has promoted an agreement among copyright owners and digital networks aimed at limiting the transmission of infringing content over such networks.

These industry-to-industry, negotiated agreements make a lot of sense in an age where technology is rapidly advancing and there is an acute need to take advantage of new opportunities for legitimate uses, as well as to protect content increasingly exposed to misuse.

I refer to these industry-to-industry efforts because there is a history of similar efforts between the film industry and archivists. MPA studios have engaged in voluntary deposit programs in a number of countries where the legitimate needs of local archives have been met while avoiding unreasonable burdens on companies like MPA members that distribute films over the entire globe.

Perhaps there is a need for more of this type of owner/user consensus building between the film production and preservation communities. As I try to absorb the wealth of information presented at this Congress, that is what I will be thinking about. Are there guidelines, or principles or best practices that could be agreed to that would advance the mission of archives to preserve our film heritage for future generations, while preserving the ability of producers to fully exploit the economic value of their works?

Thank you for your attention. This is a most valuable learning experience for me and I trust that it will enable me to contribute to workable accommodations between your interests and those of the studios I represent.