FRAMEWORK AGREEMENT TO ESTABLISH PROCEDURES FOR VOLUNTARY DEPOSITS OF FILMS WITH PRESERVATION ARCHIVES

Between

1. The International Federation of Film Producers Associations, referred to by the acronym FIAPF, having its registered office at 9, rue de l'Echelle, 75001 Paris, France

acting through ...

And:

2. The Association of European Film Libraries/Cinémathèques, referred to by the acronym ACE, having its registered office at Hôtel de Clèves, 3 rue Ravenstein, 1000 Brussels, Belgium

acting through ...

Whereas

The FIAPF drew up a model contract in 1971 for voluntary deposits of films which was widely circulated and is still in use.

The parties concerned – FIAPF and ACE - have been invited by the European Commission DG Information Society and Media, and it is their wish, to update this document and take forward their partnership with the aim of preserving the film heritage, ensuring its distribution and making it accessible to the public while adapting it to the digital environment and the enlargement of the European Union.

They are therefore resolved to draw up a new framework agreement between film producers and their duly authorized right holders (hereafter called collectively Producers) on the one hand, and the film preservation archives that are members of the ACE (hereafter called Preservation Archives), on the other hand.

This framework agreement is for the voluntary rather than mandatory deposit of film heritage material.

This framework agreement preserves the respective rights of Producers and of film Preservation Archives.

This framework agreement is based on the mutual recognition that preservation of the film heritage, but also improved distribution of works, can be achieved only through a close collaborative relationship between Producers and Preservation Archives.
Producers shall work to promote and support action by Preservation Archives that serves the cause of proper Conservation of Deposited Film Materials and Preservation of Non-Film Materials in the Archives' collections.

The framework agreement shall be compliant with:

- international treaties and European Community provisions and national legislation in force on copyright and related rights;
- the Code of Ethics of the International Federation of Film Archives (FIAF) which the Preservation Archives referred to in this agreement must adhere to; and
- Producers' commercial and artistic interests.

Neither the ACE nor the FIAPF have any power of compulsion over their members. Accordingly, this framework agreement shall serve as a reference for voluntary use by the members of each party and as a basis for bilateral contracts. Its use is recommended by the undersigned associations.

[Signatures]

FÉDÉRATION INTERNATIONALE DES ASSOCIATIONS DE PRODUCTEURS DE FILMS
9, rue de l'Echelle - 75001 PARIS
Chapter I

General provisions

1. Scope

The framework agreement is intended for Producers on the one hand and Preservation Archives on the other hand that are able properly to carry out the tasks of film heritage Preservation as defined below.

2. Objectives

The framework agreement aims to encourage the systematic voluntary deposit of Film and Non-Film Material with ACE member Preservation Archives, and to regulate the conditions of deposit, the obligations of the parties, Preservation, Conservation and Restoration of works deposited and the use of materials.

This model lays down a standard framework with reference to the following specific objectives:

I. the long-term survival of the maximum possible number of films

II. continued public access to the film heritage in each country

III. access by Producers to their deposited works through the ongoing contribution of Preservation Archives subject to mutual compliance with stringent rules.

3. Definitions

In this agreement:

Producer means the natural or legal person - or the duly-authorized right holders (such as the distributor) thereof - who voluntarily makes and assumes the financial and technical responsibility of making a deposit in accordance with the provisions of this framework agreement.

Preservation Archives (also referred to as Archive) means a public law or private non-profit-making body that is a member of the ACE and whose activities as stated by its Articles pursue general museum objectives from Conservation to access, and which is able properly to carry out the tasks of Preservation and Restoration while offering the necessary assurances of respect for copyright.
Deposited Film Material means all types of material on celluloid or digital media that have been deposited with the Preservation Archives in accordance with the provisions of this framework agreement.

Non-Film Material means written or iconographic materials (photographs, posters, models, advertising materials, etc.) related to the production or distribution of a film.

Deposited Material means the Deposited Film Material in addition to the Non-Film Material, if any.

Cinematographic Work means the original work contained on the medium forming the Deposited Film Material.

Archive Material means the only or, in the case of a multiple batch, the best quality material of a Cinematographic Work deposited by the Producer.

Preservation Material means new materials on celluloid or digital media produced by the Preservation Archives from the originally deposited material, in accordance with the rules herein defined for the purposes of long-term Preservation and access.

Conservation means storage of celluloid or digital materials in technically appropriate conditions in accordance with the Preservation rules laid down by the International Federation of Film Archives, as regularly updated on its website.

Preservation means the active preservation of a Cinematographic Work, including its duplication for the purposes of long-term survival and access.

Restoration means the reconstitution of a film existing only on damaged and/or incomplete media in order to produce a new version as close as possible to the original.
Chapter II

Deposit and obligations of the Archive

1. Premise

In this agreement, a voluntary deposit is a deposit with or transfer of possession to a Preservation Archive of any Deposited Film Material or Non-Film Material (on any medium) in accordance with procedures freely agreed between the parties for the purposes of proper Preservation and access thereto.

A deposit is fundamentally seen as a reciprocal undertaking based on mutual interest, collaboration and responsibility.

2. Subject-matter

2.1. Deposited Film Material

The Deposited Film Material may include:

(i) national films (or deemed to be so) not subject to a legal deposit requirement in the country where the Archive has its registered office.

(ii) national films subject to a legal deposit requirement for which both parties deem it appropriate to supplement the material required for the legal deposit by other film material.

(iii) foreign films whether or not distributed in the country where the Archive has its registered office;

2.2. Non-Film Material

The deposit shall so far as possible include the Non-Film Material relating to the Cinematographic Works concerned.

3. Title

The Producer shall retain full ownership of the Deposited Material.
4. Obligations of the Archive

4.1. Responsibility for Conservation and Preservation

The Preservation Archive shall keep the Deposited Material in the best physical condition possible as long as permitted by the media lifetime, in proper storage conditions and in compliance with the general preservation standards laid down by the FIAF and the ACE.\(^1\)

The Preservation Archive shall keep the Deposited Material in optimal conditions of security such that it cannot be reproduced, loaned out, borrowed or communicated unlawfully and generally in any conditions other than those provided for in this framework agreement and the bilateral agreement between the Producer and the Archive.

4.2. Duty to collaborate with the Producer

The Archive shall ensure that the Producer has the requested access to the Deposited Material and related information. The Archives shall not object to any reasonable controls which the Producer, as owner of the material, may require of the Archive in connection with the storage standards and handling and Preservation methods.

4.3. Cataloguing

The Preservation Archive shall list and catalogue all elements deposited such as to be able to locate them and inform the Producer about their condition at any time.

The Archive undertakes to comply with international standards for cataloguing as may be designated by FIAF or ACE.

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\(^1\) **Important:** it must be pointed out that since all celluloid film material consists of unstable chemical substances, and their lifespan depends not only on the storage conditions but also their original composition, laboratory processing and pre-storage handling, the Archives may undertake to delay the decomposition process but cannot be held responsible for inevitable chemical decomposition which may result in the total loss of the material.

Likewise, because digital material is too recent, it is impossible at this time to lay down with certainty rules that will ensure its stability and long-term survival. The Archives cannot be responsible for its deterioration if they have taken the steps compliant with prevailing professional technical standards to preserve it.
Chapter III

Preservation/Restoration

1. Tasks of the Preservation Archives

In order to discharge the responsibility stipulated in Chapter II, clause 4.1., and over and above that, the proper Preservation of the Deposited Material, the Archive is authorized to carry out additional Preservation and Restoration measures.

These involve duplicating the Deposited Material by means of new prints or transfers designed to ensure the necessary survival and view-ability of the film concerned.

2. Decision and methods for restoring and preserving the Deposited Material

a) The decision to initiate Restoration and/or Preservation measures, and choice of methods, shall be taken only after consultation between the Archive and the Producer.

If the Producer is identified, the Archive shall inform the Producer of the nature of the proposed Preservation and/or Restoration measures, and the outcomes thereof.

The materials may include positive and/or negative prints or digital transfers, deemed essential to extend the life of the film and preserve the originally Deposited Film Material.

b) Exceptionally, the Archive may of its own volition and at its expense carry out Preservation and/or Restoration measures in the two following cases:

- if consultations with the Producer are deadlocked, in particular due to the Producer's express or implied refusal. Where applicable, the Producer shall state the reasons for its refusal.

or

- if, after having used its best efforts to no avail, the Archive has been unable to identify and/or locate the Producer.

In the circumstances referred to in subparagraph b) above, the Archive may only carry out the said works of its own volition:

- if they are justified strictly by the necessary survival and view-ability of the materials; and

- after having ascertained that no material of like quality is kept by a member Archive of ACE;

c) The Producer may decide to undertake the Restoration and/or Preservation of the material himself subject to compliance with Chapter IV, below, on the use of the Archive Material.
3. Possession of the Preservation Material

The new materials produced from the material intended for Preservation of the work shall remain on deposit in the Archive.

Chapter IV

Access/use and withdrawal of the material

1. Producer's sole access

1.1. The originally Deposited Material

The temporary withdrawal of the originally Deposited Material may be effected without payment of fee to enable the Producer to carry out works or to screen the Deposited Film Material in particular for requirements of exploitation.

The Producer shall have unrestricted access at all times to all the Deposited Materials, in accordance with the procedures and time lines laid down in the bilateral agreement between the Producer and the Archive.

However where the Archive Material (as defined in Chapter I, clause 3) is concerned, the Producer shall have access to such material only for the purpose of long-term Preservation, and if need be, Restoration work. The works shall be carried out under the supervision of the Archive and must not in any way jeopardize the quality, state and integrity of said material.

1.2. New prints produced by the Archive

If the Archive has produced Preservation Material from the elements deposited for the purposes of preserving and/or restoring a work, access to it shall be provided for the Producer to make new copies or transfers, subject to the works being carried out under the supervision of the Archive and not in any way jeopardizing the quality, state and integrity of the Preservation Material.

Furthermore, the Producer shall pay the Archive reasonable financial compensation for the substantiated costs incurred for Conservation and Restoration. This may consist in particular of a fixed refund or one pro-rata to the operating profits, as the Producer and Archive shall decide.

The cost of the Restoration and Preservation works, and the conditions of reimbursement referred to above, shall be determined on a case-by-case basis in
the bilateral contract drawn up between the Producer and the Archive.

2. Use of the material by the Archive

Unless otherwise restricted pursuant to clause 1 of this Chapter or by the Producer, access may be granted to the positive copies deposited with the Archive or to the Preservation Material as referred to in Chapter IV-point 1.2.

The bilateral agreement between the Producer and the Archive shall set forth the authorized usage of the Deposited Materials and/or Preservation Material.

The following framework applies for the modalities of authorized uses:

a) consultation by individuals for educational or research purposes on the Archive's premises, on a table or screen or over an Intranet on the Archive's premises.

b) remote access over the Internet:

Such access shall be permitted only through the use of an appropriate personalized security procedure/mechanism. The Archive has a duty to identify each person authorized to consult who shall not be able to make copies of the works consulted.

c) Public screenings:

The Archive may give public screenings of Deposited Film Material in the Archive's film theatres (or those placed under its direct control) identified in bilateral contracts made between the Producer and the Archive.

Where such screenings are without financial gain to the Archive and do not compete with or conflict with the normal exploitation of the film, they may be given without payment of royalties.

The Producer may set specific conditions with regard to such screenings (e.g., to limit the number of film theaters).
d) Circulation between ACE members

i) For public screening

Unless the Archive has only one copy of the Deposited Film Material, the material deposited with the Archive pursuant to this agreement may be loaned to other ACE members for public exhibition thereof provided such members have themselves signed this model agreement.

The Archive must supply full details of such loan to the Producer beforehand. The Producer may verify the conditions of circulation of films loaned out.

ii) For Restoration

If the Archive has only one copy, it may not loan out the Deposited Film Material for Restoration purposes other than with the Producer’s consent.

In all other cases, the Archive shall notify the Producer of the loaning-out for Restoration and the conditions thereof.

3. Permanent withdrawal of Deposited Material

a) The Producer may permanently withdraw the Deposited Material subject to giving a reasonable period of advance notice of his intention to the Archive.

The Producer shall reimburse the substantiated costs incurred for Conservation of the material, when requested by the Archive, in accordance with the rate provided for by the bilateral contract.

b) If Deposited Material in respect of which no Restoration or Preservation work has been carried out is permanently withdrawn, the Producer shall authorize the Archive to create archive master material for the purposes of preserving the film heritage. No use shall be made of such master material unless approved by specific contractual agreement between the parties.

c) In order to permanently withdraw Archive Material (as defined in chapter I, clause 3), the Producer must prove that the Archive has failed to fulfill its obligations under this framework agreement.
Chapter V

Miscellaneous provisions

1. This framework agreement shall apply from the date of its execution. Producers and Archives may apply its provisions to previously deposited material.

2. This framework agreement is not applicable when the natural or legal entity depositing the material does not own the rights. In that event the FIAPF recommends that ACE Members accept the material to guarantee the preservation of the Cinematographic Work. However any use or decision of Restoration/Preservation shall be subject to the signature of a specific contract with the Producer or his duly authorized representative.

3. The modalities of breach of contract shall be set out in the bilateral agreement between the Producer and the Archive based on this framework agreement.

4. In the event of dispute between a Producer and an Archive, the parties shall defer their disagreement to the law and courts of the country in which the Archive has its registered office or to the courts and tribunals of Brussels or Paris – as the complainant chooses. They may also refer a dispute to arbitration.

In the event of arbitration, the parties may call upon experts appointed respectively by: the FIAPF and the ACE.

4. The framework agreement shall apply without prejudice to bilateral agreements and the rights of third parties.

Executed in Berlin, this 13th day of February 2010

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