

ASSOCIATION DES
CINÉMATÈQUES
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Orphan Works: The Film Archives Perspective

Cinema Experts Group meeting
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Scale and impact of the orphan problem is huge:

- Film heritage is locked up and public archives are prevented to serve the public interest
 - Orphan works contribute to create the “20th century blackhole“
 - No legal certainty: A low risk approach does not prevent archives from prosecution
- The situation will aggravate, since film archives don't have the resources to clear rights



Key criteria for an orphan film

The film cannot be identified:

- missing title
- translated title of an unknown foreign film
- no marks on the material, no clue within the film
- no information about the source of the material

The rights holder(s) cannot be identified:

- production company no longer exists
- or was dissolved without a clear disposition of assets
- trans-national co-production, all companies lost
- tracking the rights chain not possible



ACE Survey on Orphan Works 2009/2010

Purpose of the Survey (Internally)

- to estimate number and impact of orphan works deposited in ACE member archives
- to update the results of the 2005 survey „The rights issue“
- to see how film archives handle the request for these works
- to try a classification of orphan works in terms of production year, country of production, and genre.



ACE Survey on Orphan Works 2009/2010

Purpose of the Survey (Externally)

- To give input to the EUCOM's /DG Internal Market Services impact assessment on orphan works
- To give input to DG Info's „Assessing the orphan works issue“ (published in June 2010)
- To demonstrate that the orphan works problem concerns Europe's film archives as well
- To stress the need for EU-wide and cross-sector-solutions to facilitate the use of orphan works



Key Findings of the Survey

Out of a total n° of 1.064.000 films held in 24 archives:

- 31% or ca. 325.000 films with unknown rights
- 12 % or ca. 129.000 films = orphan works (rights researched but not found)
- 21% or ca. 225.000 films = presumed orphan works
- 45 % or ca. 100.000 of presumed orphan works could be made available via EFG and Europeana if a pragmatic or legal solution for rights clearing existed.



Key Findings of the Survey

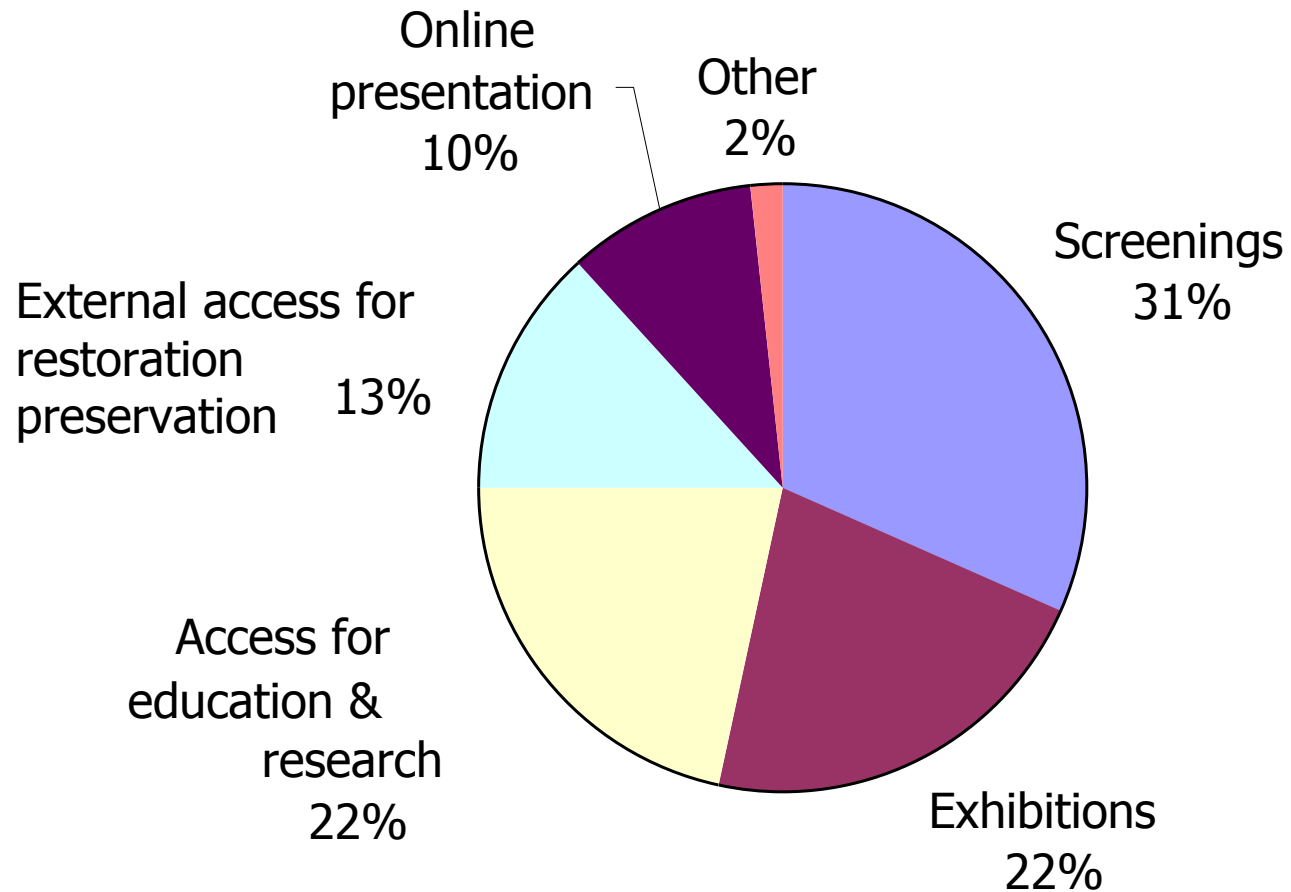
Requests for presumed orphan works per year:

- Total n° = 4416
- For cultural purposes: ca. 55 % (= 2436)
- For commercial purposes: ca. 44% (= 1950)
- (Unspecified: 1%)



Key Findings of the Survey

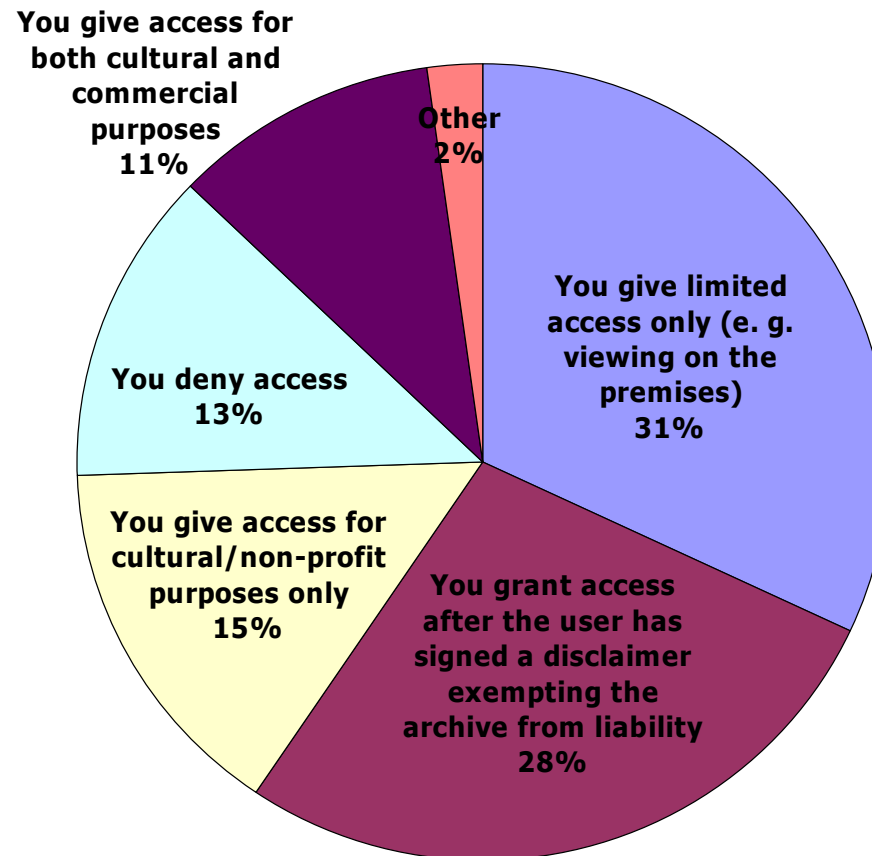
Requests for cultural purposes





Key Findings of the Survey

If the rights holder cannot be located after a search





Key Findings of the Survey

Classification of presumed orphan works:

- 60% produced before 1950
- 49% national productions
- 34% non-fiction films, 31% feature films, 11% short films, 25% unspecified.



First solutions: Consensus between stakeholders

- HLEG Subgroup Copyright (2006-2008):
Key principles for Rights clearance Centres and Databases for orphan works and out-of-print works
- Sector specific working groups (2007-2008):
Definition of due diligent search criteria for orphan works in the audiovisual sector
- Memorandum of Understanding on Orphan Works (2008)



What we want: Legal solutions

Mandatory exceptions of Directive 2001/29/EC for cultural institutions should include the following rights:

- Duplication/digitisation for preservation purposes
- Screening on the premises
- Publishing of non-film material
- Quotation rights for films
- Online access for education & research purposes



What we will get: Contractual solutions

Changes to the Copyright Directive unlikely to happen, instead:

- Agreements with collective management societies
- Expanded licensing
- Simplification of the due diligent search criteria

Question:

- Is this a solution for ACE ?

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Thank you!
Questions?

