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Taking care of orphan works

The web site www.filmarkivet.se is a joint project between the Swedish Film Institute and the National Library of Sweden with the aim to give access to films in our collections that are not accessible elsewhere. Mainly shorts, non-fiction films, new-reels, commercials, informational films, other kinds of commissioned films, and amateur films. Each film is presented on the site with a short synopsis and production credits as far as we know them. Many of the films are also presented with a longer text to put them into context. Some 300 films were available when we launched the site in February, today around 400 and in the end of the year there will be more than 600 films online. The site is free of charge for all users and is not blocked for any IP-addresses but is entirely in Swedish with a few exceptions.

The project was not granted any extra money from the state so we financed it within existing budget. The films are scanned in standard definition and converted into MPEG2 files and streamed. The choice to scan in SD was both a practical one, we have a SD scanner in-house, and for juridical reasons; the films are not supposed to be blown up to the big screen. Rights are cleared with all known rights holders without any financial compensation. We make the material known and the rights holders have a potential to exploit the films by providing the scanned material for use in new productions, in exhibitions, etc. Since the launch in February we've had around 25 requests for using the material.

The main topic for this presentation is which model we consider appropriate to clear rights and facilitate online access to orphan works. For all rights clearances we adhere to the directive 2006/116/EC of the European Parliament and of the Council on the term of protection of copyright and certain related rights, implemented into Swedish legislation 2007.

We separate orphan works from anonymous works. We interpret anonymous works as identified films, with an identified production company, but with unknown authors, meaning that they are free to use 70 years after the first public screening. The orphan works we have made available on-line are not really any unidentified films, but films where the

rights holder is either unknown, or known but cannot be located in order to obtain authorisation.

We don't have legal solutions, contractual agreements or extended collective licensing for orphan works. We use what you call risk management. In "Final Guidelines on Copyright Clearance and IPR Management" under paragraph 4 seven steps are stated for a diligent search guidelines for rights holders. I have to admit that we are not following all steps for every film but in most cases we do. Except one thing: we don't document all research steps, only when a mail has been sent or a note after a phone conversation, web search or search in the local archive.

After a diligent search when the rights holder cannot be located we publish the work online with a general disclaimer: Rights are cleared with all known rights holders, but for some films we have been unable to trace any rights holder. Should anyone have legitimate claims to films available on filmarkivet.se, please contact us at filmarkivet.se@sfi.se.

In the Guidelines under f in Step 7: Obtaining Permission it's stated that you have to have a signature line for the copyright holder to sign. According to our legal counsel an email from the rights holder with their permission for publishing is sufficient.

For some of the anonymous works, with producer's rights expiring 70 years after the first public screening, we have informed the producer that we will post them on-line, but we have not asked for permission, as was the case for *Paramountjournalerna*, news-reels produced by Paramount in Sweden between 1925 and 1933. On these films we have no viewing elements in our collection, only nitrate negatives and acetate or polyester inter-positives; the only possibility to access them is on filmarkivet.se.

Best practice: no rights holders yet have denied publishing on filmarkivet.se, nor have they asked for money. The opposite: several of the directors wish to have all their films published online. Numerous of films have not been cleared with a production company but with another entity. In many of the commercials on the site there are well known, now living, people that have no legal rights but we are still asking for their permission to publish for the sake of their integrity. For many of the films the rights situation is unclear. There is no paperwork done or left that proves for example that the relatives own the rights. In those cases we take the decision to publish together with the family. We respect copyright laws and do our best to follow all steps in the guidelines but we rather publish an orphan work than not.

Finally I would like to conclude that our experience of working with filmarkivet.se has been enlightening since there are, as far as I know, no equivalent website (but a lot of other digital initiatives with archives on-line) and very rewarding both from the general audience and educational institutions and the media. Since the launch of the site we have learned that there is a huge interest for the kind of films available on the site, the lesser known films in our collection, that we for many years have preserved and restored but that rarely has been programmed or accessed in any other way before.

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