

# A Decentralized Model: The United States of America

## Politics and the Road to Preserving a National Film Heritage

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At the invitation of the *JFP* editorial staff, I wanted to share some information and insights about the National Film Preservation Board (NFPB), offering an overview of how the advisory body first came into being, noting some of its major achievements over the course of nearly thirty years, and reflecting on what makes this model of advocacy for film preservation uniquely American.

The many positive advances made to preserve the national film heritage of the United States of America have in fact taken various roads to reach their destination. The United States does not have a centralized national film archive, but, rather, the situation for film preservation is remarkably complex, operating on a decentralized model. Here, we have a dynamic ecosystem with activity happening in the non-profit sector, at government institutions, museums, universities, archives, libraries, and historical societies, as well as in the commercial sector, at the major Hollywood studios, independent production companies, and boutique film distributors, in conjunction with rights holders.

While the Library of Congress cares for the largest film archive in the world and operates a state-of-the-art facility at the Packard Campus for Audio Visual Conservation in Culpeper, Virginia, a significant amount of film preservation in the United States happens outside this federally-funded institution. Understanding the synergistic nature of the American public/private funding model helps explain the origin and structure of the NFPB and how initiatives related to fostering a national film heritage have developed in recent decades. Yet, it must be stated emphatically that it is thanks to the leadership role and lobbying efforts taken by the Library of Congress, public policy experts, and elected officials in Congress, that we have legislation in the United States that safeguards our film heritage and provides funding designated for preserving areas of our film history that are more marginalized.

### WHAT IS THE NATIONAL FILM PRESERVATION BOARD?

Established by the National Film Preservation Act of 1988, the NFPB is an advisory body of the Library of Congress. Its board mem-

bers work with staff of the Motion Picture, Broadcasting and Recorded Sound Division and the National and International Outreach Service unit to offer advice to the Librarian, including recommendations for the annual selection of works to be named to the National Film Registry. Its members also act as a sounding board, commenting on trends and policies in the field of film preservation. For most of its 29-year history, the NFPB was under the direction of Dr. James H. Billington, who served as the Librarian of Congress from 1987 to 2015. Appointed by President Ronald Reagan, Dr. Billington was instrumental in lobbying for the formation and development of the NFPB, which adopted its current board structure in 1992, and presided over the NFPB's activities for more than a quarter century. Dr. David S. Mao served as the Acting Librarian between 2015 and 2016, following Billington's retirement, until the recent appointment by President Barack Obama of Dr. Carla Hayden, who has been the Librarian since September 2016.

The film experts who are named to the NFPB come from different regions of the country and possess a diverse range of knowledge and experience. Appointed by the Librarian, members serve for four-year terms that are often renewed. Indeed, there are some board members who have served on the NFPB since its inception in the late 1980s. Film critic and MoMA's senior film curator Dave Kehr is such an individual, as is film director Martin Scorsese, a champion of film preservation who has led The Film Foundation and World Cinema Project initiatives, to name just two veteran NFPB members.

There is a total of 44 NFPB members and alternates, who help represent specialized areas of the film industry. The board structure, which has 17 member "seats" plus their alternates, allows for the representation of non-profit associations, academic institutions, and commercial sectors of the film industry. Some of the groups or associations represented include: the Academy of Motion Picture Arts and Sciences, American Film Institute, American Society of Cinematographers, Association of Moving Image Archivists, Directors Guild of America, Motion Picture Association of America, National Society of Film Critics,

National Association of Theater Owners, Screen Actors Guild, Society for Cinema and Media Studies, and the Writers Guild of America. In addition, there are five members-at-large and their alternates. The NFPB has had three Chairs during its history: screenwriter, playwright, and producer Fay Kanin from 1988 until 2005, was followed by film industry executive Roger Mayer, who served in this role until his death in 2015, while the current chair is John Ptak, another veteran board member, well known for his work with the American Film Institute, as a film talent agent, and as a financier for independent films.

As a personal aside, I was first appointed to the NFPB in 2005, and am now serving in my third term. I hold the seat that represents the U.S. member archives of FIAF – a position that was originally held by Mary Lea Bandy of The Museum of Modern Art's Film Department. Rajendra Roy of MoMA currently serves as the alternate to this position.

NFPB members meet at least once annually, generally at the Library of Congress's Jefferson Building in Washington, DC, but meetings have also been held at the Packard Campus for Audio Visual Conservation in Culpeper, Virginia, and at the Academy of Motion Picture Arts and Sciences, in Los Angeles.

#### HISTORY OF THE NFPB

NFPB has a storied history, especially surrounding the reason for why it first came into being. The 1980s brought the burgeoning era of post-theatrical uses of film including TV broadcast, home video, and the beginnings of specialty channels. That decade also evidenced the broadening marketplace for the studios' back collections, reissued on VHS and LaserDisc formats, as well as the increased use of in-flight presentation of films by the airlines. These new outlets demonstrated that exploitation of films would be undertaken in formats that would alter a film's original aspect ratio, aesthetic qualities, and artistic content. The advent of "panning and scanning" technology made it easy to modify aspect ratios and other original characteristics of a film for viewing on television-sized screens. When media mogul Ted Turner let it be known that he intended to colorize Orson



James H. Billington, the 13th Librarian of Congress

Welles's black & white masterpiece *Citizen Kane*, there was loud public outcry. Pressed by the creative artist (directors, writers, actors, cinematographers), the U.S. Government's National Film Preservation Act, created, with the establishment of the National Film Registry, a legislative measure to help protect and preserve at least some classic American films from being altered from their original form.

The National Film Preservation Act, passed in 1988 by the United States Congress as an appropriations bill for the United States Department of the Interior<sup>1</sup>, specified that it:

1. *Directs the Librarian of Congress to establish a National Film Registry to register films that are "culturally, historically, or aesthetically significant."*

1. <<https://www.congress.gov/bill/100th-congress/house-bill/4867>>.

2. *Prohibits any person from knowingly distributing or exhibiting a film to the public that has been materially altered, or a black-and-white film that has been colorized and is included in the Registry, unless such film is labeled with a specified disclosure label.*

3. *Directs the Librarian to establish in the Library of Congress a National Film Preservation Board (NFPB).*

Initially, the National Film Preservation Act had a three-year sunset clause because of opposition to the labeling provisions from studios and broadcasters. The compromise was to allow the entire Act, along with all the hotly-contested issues pertaining to the alteration of films, to end after this period. However, staffers at the Library of Congress, such as copyright lawyer Eric Schwartz, and film archivists Patrick Loughney and Stephen Leggett, saw the larger issue at hand – namely, the preservation of the physical elements surpassing any legal rights issues relating to the alteration of films. They convinced Dr. Billington to lobby Congress to move the NFPB from the Department of the Interior (as originally proposed) to the Library of Congress, and, from 1992, to undertake a national film preservation study, and then to develop a national film preservation plan covering a wide range of topics. Unlike the earlier "labeling" idea, this revised vision for safeguarding a national film heritage in the United, received near-unanimous support from studios, broadcasters, academics and the like. The legislation that was ultimately adopted in 1992, and is still in place today, created an open process that listens to and weighs the concerns of a diverse range of stakeholder groups.

As part of the US Government's decision to join the Berne Convention, Congress called for a legal study on colorization, authored by the Copyright Office, co-written by Register Ralph Oman and two Copyright Office attorneys, Eric Schwartz and Bill Patry, and delivered in 1989. Following the demise of the original NFPB and its labeling requirement, Schwartz drafted a revised reauthorization bill for the National Film Preservation Act, with input from Leggett, Loughney, and others within the Library and film preservation community. The

bill had a broader focus on preservation issues beyond the National Film Registry in light of the breadth of such activities already under way in the non-profit and commercial sectors.

The National Film Preservation Act of 1992 reauthorized the National Film Preservation Board for four years (Public Law 102-307) and added the requirement for the Librarian of Congress to: “(1) study and report to the Congress on the current state of film preservation and restoration activities, including the activities of the Library of Congress and other major film archives in the United States; and (2) establish a comprehensive national film preservation program for motion pictures, in conjunction with other film archivists and copyright owners.”<sup>2</sup>

During the period 1992 to 1996, David Francis, then Chief of the Motion Picture, Broadcasting and Recorded Sound Division at the Library of Congress, recommended there be a National Study, and designated public policy expert Annette Melville and film scholar Scott Simmon to write it. Schwartz and Leggett managed the process of convening meetings with industry professionals in Washington, DC, and Los Angeles, who offered valuable input. The resulting study (June 1993) and national plan (August 1994), together with the accompanying record of testimony and written comments, created an invaluable record of preservation issues of the time. One that the plan prioritized was the preservation of “orphan” works, recommending a public/private partnership model for fundraising and grant-giving for preservation projects.

#### REAUTHORIZATION AND THE CREATION OF THE NATIONAL FILM PRESERVATION FOUNDATION

As a result of these efforts, the National Film Preservation Act of 1996 reauthorized the NFPB for an additional seven years (Public Law 104-285), and also created the National Film Preservation Foundation (NFPF) as a free-standing charitable organization, at arm’s length from the federal government<sup>3</sup>. While the NFPF is not a government agency, it does re-



Carla Hayden, the 14th Librarian of Congress

ceive some federal monies via the Library’s annual budget. After an interim period, Annette Melville became NFPF’s Executive Director, a post she held until her retirement in 2014. She was replaced by Jeff Lambert who, between 2002-2014, had been Assistant Director of the NFPF; in this capacity, he had been largely responsible for the development of its granting programs. These programs are based on the NFPF’s primary mission: to save orphan films – those without owners able to pay for their preservation – made outside the mainstream and representing productions most at risk of being lost: newsreels, silent films, experimental works, films out of copyright protection, significant amateur footage, and documentaries<sup>4</sup>.

*Orphan films are the living record of the twentieth century. Hundreds of American museums, archives, libraries, universities, and historical societies care for “orphaned”*

2. <<https://www.congress.gov/bill/102nd-congress/senate-bill/00756>>.  
3. <<https://www.congress.gov/bill/104th-congress/house-bill/1734>>.

4. The Foundation also engages in preservation projects in collaboration with other archives in the US and abroad; such projects are generally funded by those archives and/or right holders. These materials are accessible as preserved films and also via the Foundation’s website <[www.filmpreservation.org](http://www.filmpreservation.org)>.



*Killer of Sheep* (Charles Burnett, 1978), inducted to the National Film Registry in 1990

original film materials of cultural value. The National Film Preservation Foundation will work with these film preservation organizations to preserve orphan films and make them accessible to “present and future generations of Americans.” – Library of Congress website

Affiliated with the NFPB, the NFPF is a shining example of the important initiatives and goals generated from the national preservation plan. Amazingly, since 1997, the NFPF has raised cash and in-kind donations of more than \$14.5m USD, and has received several million dollars in match funding from the Library of Congress. Its involvement with archives, institutions, and organizations throughout America and overseas has been varied and diverse. To date, the NFPF has assisted 239 institutions in all 50 states, the District of Columbia, and Puerto Rico, and contributed to the preservation of 2,230 films. The NFPF received a millennial grant from the National Endowment for the Arts to produce its first self-published DVD box set, *Treasures from the American Archives*, with contributions from 21 archives; this was named “Best box set of the

year, 2000” by *The New York Times*. The NFPF has so far produced six *Treasures* DVD editions in an effort to make films preserved by US film archives more widely accessible to the general public, and has also posted several hundred (rights-cleared) films on its website.

Since 1996, the National Film Preservation Act has reauthorized the NFPB and NFPF three times, in 2005, 2008, and as recently as 2016, when it was renewed for an additional ten years. This reauthorization ensures it remains eligible to receive monies from the Library budget.

#### THE NATIONAL FILM REGISTRY AS IT FUNCTIONS TODAY

One of the high-profile activities of the NFPB is the annual announcement of the 25 films named to the National Film Registry. Each December, when the new slate of Registry films is released, it generates a significant amount of national press coverage. The announcement allows the Library of Congress a platform to advocate for the importance of film preservation.



Members of the National Film Preservation Board in 1999

As already discussed, the Registry was first intended as a way of protecting some of the classic Hollywood films threatened by the commercial trend towards colorization. Works named to the National Film Registry must be at least ten years old, and considered to be “culturally, historically, or aesthetically significant.” Over time, the Registry has developed to include a wider representation of the country’s film heritage, “recognizing works of enduring importance to American culture, that reflect who we are as a people and as a nation.”

As of December 2016, there are 700 films on the Registry. For the past fifteen years, there has been a concerted effort to make the National Film Registry more representative of both the wide spectrum of film production in the U.S. and the diversity of our culture. The process of considering which works will be named to the National Film Registry involves a deliberative process by the NFPB members and includes the allowance of input from the general public. Members of the NFPB offer recom-

mendations to the Library of Congress staff, who review those recommendations with the Librarian, who is the final arbitrator.

For NFPB members, the process involves two rounds of voting: first a nomination round, which brings forward ideas, including consideration of films nominated by the general public. Following the annual board meeting, each member submits his or her second round of voting – a list of 30 films, with the top recommendation listed at number 30. The second round of voting is informed by general discussion of film titles and presentations made by fellow board members, who are specialists in different areas of film history. The NFPB has instituted a number of study groups, each charged with the task of reviewing and considering areas of cinema deemed under-represented on the National Film Registry, namely Silent Cinema, Orphan Films, Avant-Garde & Experimental Films, Documentaries, and Student Films. The study groups have been effective in making the National Film Registry more reflective of the breadth and scope of film production in the United States.

A relatively recent initiative is the enhancement of the Library of Congress's website where, in an effort to help disseminate information about films on the National Film Registry, brief descriptions appear for each film, and 290 expanded essays on various titles have been written by knowledgeable experts. The intention is to annotate every entry with information on its cultural, historic, or aesthetic significance.

#### REPORTS, COMMISSIONED STUDIES, AND ADVOCACY FOR FILM PRESERVATION

Over the course of its history, the Librarian, and the staff of the Motion Picture, Broadcasting and Recorded Sound Division have engaged experts to prepare reports for the NFPB on different subject areas. Social historian and archivist Rick Prelinger gave a presentation on "Industrial and Institutional Films," which resulted in the publication by the NFPF of *The Field Guide to Sponsored Films* in 2006<sup>5</sup>. Film historian and archivist David Pierce researched, presented, and published a study entitled *The Survival of American Silent Feature Films: 1912 -1929*, that determined that 70% of the nation's silent feature films had been lost and only 14% exist in their original 35mm format. The Photochemical & Digital Preservation Study Group (comprised of Grover Crisp, Caleb Deschanel, Jan-Christopher Horak, Christopher Nolan, Eric Schwartz, and John Ptak), has lent its voice to stressing the importance of celluloid for production and preservation, issuing the following statement with the December 2016 press release announcement of films named to the National Film Registry:

*The National Film Preservation Board continued to focus much of its attention this year on the recognition of photochemical film as a distinct medium. Emerging digital technologies offer many alternative opportunities in capture and exhibition, but the board encourages the preservation of film on film. Film remains the best existing archival medium and the board encourages archives and rights-holders to continue to preserve titles on film as they have done in the past.*<sup>6</sup>

The annual meetings of the NFPB also offer opportunities for board members to hear from other government agencies. For example, in November 2016, we met with senior representatives from National Endowment for the Humanities, and the U.S. Copyright Office, in an effort to receive status reports from these government divisions, and have an opportunity to pose questions to these experts.

*Motion pictures document our history and culture and serve as a mirror of our collective experiences. With its expertise in the creation and preservation of motion pictures, the National Film Preservation Board helps the nation embrace the richness and diversity of film as an art form and celebrate the people who create the magic of cinema. – Dr. Carla Hayden, Librarian of Congress*<sup>7</sup>

Looking ahead, one anticipates that there will be goals and initiatives named by the newly-appointed Librarian, Dr. Carla Hayden, as she hears more from the senior staff members at the Library of Congress and from the NFPB advisory group. At the NFPB meeting on November 4, 2016, Dr. Hayden commented on the recent good news: the 2016 reauthorization of the National Film Preservation Act, passed by Congress for a ten-year period, the longest reauthorization yet, a measure that will give stability to the NFPB and the NFPF. Dr. Hayden indicated a new emphasis on the Library's National and International Outreach service unit with the mission of "broadening awareness and use of Library and its resources through outreach and external partnerships." Known for being responsive in her management and leadership style, we can anticipate that Dr. Hayden will ask the NFPB how we can continue to improve the preservation of and access to our national film heritage.

Since the November 2016 meeting, the political environment in the United States has gone through a dramatic upheaval, ushering in President Donald J. Trump's new administration. It's too soon to know how, or if, public funding for the Library of Congress, and incidentally, film preservation will be impacted, but it is important that America's national film

5. See <<https://www.filmpreservation.org/dvds-and-books/the-field-guide-to-sponsored-film>>.

6. <<https://www.loc.gov/item/prn-16-209>>.

7. From the Library of Congress press office.

heritage plan is structured as it is, built on public/private funding sources, involving a diverse range of constituencies and encouraging information sharing and new research. The well-developed NFPF partnership grant programs, supporting film preservation projects in all regions of the country, make perfect sense. Given the

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Institué par le National Film Preservation Act de 1988, le National Film Preservation Board (NFPB) est un organe consultatif de la Bibliothèque du Congrès. Ses membres travaillent avec le personnel de la division Motion Picture, Broadcasting and Recorded Sound et conseillent le conservateur, notamment dans l'établissement de la sélection annuelle des œuvres nommées au National Film Registry. Ses membres constituent par ailleurs un comité consultatif, apportant ses remarques sur les tendances et politiques en matière de conservation de films.

Depuis 2005, Susan Oxtoby est membre du conseil du NFPB, représentant les intérêts des archives américaines membres de la FIAF. Elle propose ici un aperçu de l'histoire du NFPB, revenant sur certaines de ses réalisations les plus notables sur près de trois décennies et tentant de cerner ce qu'il y a de spécifiquement américain dans sa façon de promouvoir la conservation de films.

Les nombreuses avancées positives effectuées dans la préservation le patrimoine cinématographique national des États-Unis ont en fait emprunté, avant de se concrétiser, des voies multiples. Les États-Unis ne possèdent pas d'archives nationales du film centralisées. Au lieu de cela, la situation de la conservation de films est excessivement complexe, opérant selon un modèle décentralisé. Nous avons là un écosystème dynamique dans lequel l'activité de conservation se situe à l'intersection du secteur à but non lucratif (institutions gouvernementales, musées, universités, archives, bibliothèques et sociétés historiques) et du secteur commercial (grands studios de Hollywood, sociétés de production et distributeurs indépendants, en lien avec les ayants droit). Grâce au rôle moteur et aux actions de lobbying de la Bibliothèque du Congrès, d'experts en politiques publiques et d'élus au Congrès américain, une législation a vu le jour afin de protéger le patrimoine cinématographique national et fournir des financements spécifiques destinés à la conservation des films "orphelins" via le programme de subvention de partenariats de la National Film Preservation Foundation. À ce jour, la NFPF a aidé 239 institutions dans chacun des cinquante États américains et contribué à la conservation de 2 230 films.

enormous output and diversity of the nation's film heritage, it is essential that all sectors of the film community – business, cultural, academic, governmental – be cognizant of each others' work to make certain that no area of our shared film heritage is neglected.

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Establecido por la Ley Nacional de Preservación de Cine de 1988, la National Film Preservation Board (NFPB) es un órgano consultivo de la Biblioteca del Congreso. Sus miembros trabajan con el personal de la División de Imágenes en Movimiento, Radiodifusión y Grabaciones de Sonido y ofrecen asesoramiento al conservador, incluyendo recomendaciones para la selección anual de las obras que se añadirán al Registro Nacional de Cine. Sus miembros actúan también como caja de resonancia, al comentar sobre las tendencias y políticas en el campo de la preservación cinematográfica.

Desde 2005, Susan Oxtoby ha ejercido como miembro de la junta para el NFPB, representando los intereses de los archivos estadounidenses miembros de la FIAF. Ella ofrece una visión general de la historia de la NFPB, señalando algunos de sus principales logros durante el transcurso de casi treinta años y reflexionando sobre lo que hace que este modelo de promoción de la preservación cinematográfica sea genuinamente americano.

De hecho, los numerosos avances positivos realizados para preservar el patrimonio cinematográfico nacional de los Estados Unidos de América han tomado varios caminos para llegar a su destino. Los Estados Unidos no tienen un archivo cinematográfico nacional centralizado: al contrario, la situación para la preservación cinematográfica es compleja, ya que opera en un modelo descentralizado. Aquí tenemos un ecosistema dinámico donde las actividades de preservación ocurren en el sector sin ánimo de lucro, en las instituciones gubernamentales, museos, universidades, archivos, bibliotecas y sociedades históricas, así como en el sector empresarial, en los grandes estudios de Hollywood, productoras independientes, distribuidores de películas, conjuntamente con los titulares de derechos. Gracias a la función de liderazgo y esfuerzos de presión realizados por la Biblioteca del Congreso y por expertos en políticas públicas y funcionarios elegidos en el Congreso de Estados Unidos, se ha desarrollado una legislación para salvaguardar el patrimonio cinematográfico de la nación y proveer fondos designados específicamente para la preservación de películas huérfanas a través del programa de subvenciones de la National Film Preservation Foundation. Hasta la fecha, el NFPF ha ayudado a 239 instituciones en cada uno de los cincuenta Estados y ha contribuido a la preservación de 2.230 películas.

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