

NATIONAL FILM PRESERVATION ACT OF 1996

MAY 6, 1996.—Ordered to be printed

Mr. MOORHEAD, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 1734]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1734) to reauthorize the National Film Preservation Board, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

TITLE I—REAUTHORIZATION OF THE NATIONAL FILM PRESERVATION BOARD

SEC. 101. SHORT TITLE.

This title may be cited as the “National Film Preservation Act of 1996”.

SEC. 102. NATIONAL FILM REGISTRY OF THE LIBRARY OF CONGRESS.

The Librarian of Congress (hereafter in this Act referred to as the “Librarian”) shall continue the National Film Registry established and maintained under the National Film Preservation Act of 1988 (Public Law 100–446), and the National Film Preservation Act of 1992 (Public Law 102–307) pursuant to the provisions of this title, for the purpose of maintaining and preserving films that are culturally, historically, or aesthetically significant.

SEC. 103. DUTIES OF THE LIBRARIAN OF CONGRESS.

(a) POWERS.—

(1) **IN GENERAL.**—The Librarian shall, after consultation with the Board established pursuant to section 104—

(A) continue the implementation of the comprehensive national film preservation program for motion pictures established under the National Film Preservation Act of 1992, in conjunction with other film archivists, educators and historians, copyright owners, film industry representatives, and others involved in activities related to film preservation, taking into account the objectives of the national film preservation study and the comprehensive national plan conducted under the National Film Preservation Act of 1992. This program shall—

(i) coordinate activities to assure that efforts of archivists and copyright owners, and others in the public and private sector, are effective and complementary;

(ii) generate public awareness of and support for these activities;

(iii) increase accessibility of films for educational purposes; and

(iv) undertake studies and investigations of film preservation activities as needed, including the efficacy of new technologies, and recommend solutions to improve these practices;

(B) establish criteria and procedures under which films may be included in the National Film Registry, except that no film shall be eligible for inclusion in the National Film Registry until 10 years after such film’s first publication;

(C) establish procedures under which the general public may make recommendations to the Board regarding the inclusion of films in the National Film Registry; and

(D) determine which films satisfy the criteria established under subparagraph (B) and qualify for inclusion in the National Film Registry, except that the Librarian shall not select more than 25 films each year for inclusion in the Registry.

(2) **PUBLICATION OF FILMS IN REGISTRY.**—The Librarian shall publish in the Federal Register the name of each film that is selected for inclusion in the National Film Registry.

(3) **SEAL.**—The Librarian shall provide a seal to indicate that a film has been included in the National Film Registry and is the Registry version of that film. The Librarian shall establish guidelines for approval of the use of the seal in accordance with subsection (b).

(b) **USE OF SEAL.**—The seal provided under subsection (a)(3) may only be used on film copies of the Registry version of a film. Such seal may be used only after the Librarian has given approval to those persons seeking to apply the seal in accordance with the guidelines under subsection (a)(3). In the case of copyrighted works, only the copyright owner or an authorized licensee of the copyright owner may place or authorize the placement of the seal on any film copy of a Registry version of a film selected for inclusion in the National Film Registry, and the Librarian may place the seal on any film copy of the Registry version of any film that is maintained in the National Film Registry Collection in the Library of Congress. Anyone authorized to place the seal on any film copy of any Registry version of a film may accompany such seal with the following language: “This film was selected for inclusion in the National Film Registry by the National Film Preservation Board of the Library of Congress because of its cultural, historical, or aesthetic significance.”

SEC. 104. NATIONAL FILM PRESERVATION BOARD.

(a) **NUMBER AND APPOINTMENT.**—

(1) **MEMBERS.**—The Librarian shall establish in the Library of Congress a National Film Preservation Board to be comprised of 20 members, who shall be selected by the Librarian in accordance with this section. Subject to subparagraphs (C) and (N), the Librarian shall request each organization listed in subparagraphs (A) through (Q) to submit a list of 3 candidates qualified to serve as a member of the Board. Except for the members-at-large appointed under subparagraph (2), the Librarian shall appoint one member from each such list submitted by such organizations, and shall designate from that list an alternate who may attend at Board expense those meetings to which the individual appointed to the Board cannot attend. The organizations are the following:

- (A) The Academy of Motion Picture Arts and Sciences.
- (B) The Directors Guild of America.
- (C) The Writers Guild of America. The Writers Guild of America East and the Writers Guild of America West shall each nominate three candidates, and a representative from one organization shall be selected as the member and a representative from the other organization as the alternate.
- (D) The National Society of Film Critics.
- (E) The Society for Cinema Studies.
- (F) The American Film Institute.
- (G) The Department of Film and Television of the School of Theater, Film and Television at the University of California, Los Angeles.
- (H) The Department of Film and Television of the Tisch School of the Arts at New York University.
- (I) The University Film and Video Association.
- (J) The Motion Picture Association of America.
- (K) The Alliance of Motion Picture and Television Producers.
- (L) The Screen Actors Guild of America.
- (M) The National Association of Theater Owners.
- (N) The American Society of Cinematographers and the International Photographers Guild, which shall jointly submit one list of 3 candidates from which a member and alternate will be selected.
- (O) The United States Members of the International Federation of Film Archives.
- (P) The Association of Moving Image Archivists.
- (Q) The Society of Composers and Lyricists.

(2) **MEMBERS-AT-LARGE.**—In addition to the Members appointed under paragraph (1), the Librarian shall appoint up to 3 members-at-large. The Librarian shall also select an alternate for each member-at-large, who may attend at Board expense those meetings which the member-at-large cannot attend.

(b) **CHAIR.**—The Librarian shall appoint one member of the Board to serve as Chair.

(c) **TERM OF OFFICE.**—

(1) **TERMS.**—The term of each member of the Board shall be 4 years, except that there shall be no limit to the number of terms that any individual member may serve.

(2) **REMOVAL OF MEMBER OR ORGANIZATION.**—The Librarian shall have the authority to remove any member of the Board, or the organization listed in subsection (a) such member represents, if the member, or organization, over any consecutive 2-year period, fails to attend at least one regularly scheduled Board meeting.

(3) **VACANCIES.**—A vacancy in the Board shall be filled in the manner in which the original appointment was made under subsection (a), except that the Librarian may fill the vacancy from a list of candidates previously submitted by the organization or organizations involved. Any member appointed to fill a vacancy before the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term.

(d) **QUORUM.**—11 members of the Board shall constitute a quorum but a lesser number may hold hearings.

(e) **BASIC PAY.**—Members of the Board shall serve without pay. While away from their home or regular places of business in the performance of functions of the Board, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5701 of title 5, United States Code.

(f) **MEETINGS.**—The Board shall meet at least once each fiscal year. Meetings shall be at the call of the Librarian.

(g) CONFLICT OF INTEREST.—The Librarian shall establish rules and procedures to address any potential conflict of interest between a member of the Board and responsibilities of the Board.

SEC. 105. RESPONSIBILITIES AND POWERS OF BOARD.

(a) IN GENERAL.—The Board shall review nominations of films submitted to it for inclusion in the National Film Registry and consult with the Librarian, as provided in section 103, with respect to the inclusion of such films in the Registry and the preservation of these and other films that are culturally, historically, or aesthetically significant.

(b) NOMINATION OF FILMS.—The Board shall consider, for inclusion in the National Film Registry, nominations submitted by the general public as well as representatives of the film industry, such as the guilds and societies representing actors, directors, screenwriters, cinematographers, and other creative artists, producers, and film critics, archives and other film preservation organizations, and representatives of academic institutions with film study programs. The Board shall nominate not more than 25 films each year for inclusion in the Registry.

(c) POWERS.—

(1) IN GENERAL.—The Board may, for the purpose of carrying out its duties, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Librarian and the Board consider appropriate.

(2) SERVICE ON FOUNDATION.—Two sitting members of the Board shall be appointed by the Librarian, and shall serve, as Board members of the National Film Preservation Foundation, in accordance with section 203.

SEC. 106. NATIONAL FILM REGISTRY COLLECTION OF THE LIBRARY OF CONGRESS.

(a) ACQUISITION OF ARCHIVAL QUALITY COPIES.—The Librarian shall endeavor to obtain, by gift from the owner, an archival quality copy of the Registry version of each film included in the National Film Registry. Whenever possible, the Librarian shall endeavor to obtain the best surviving materials, including preprint materials. Copyright owners and others possessing copies of such materials are strongly encouraged, to further the preservation purposes of this Act, to provide preprint and other archival elements to the Library of Congress.

(b) ADDITIONAL MATERIALS.—The Librarian shall endeavor to obtain, for educational and research purposes, additional materials related to each film included in the National Film Registry, such as background materials, production reports, shooting scripts (including continuity scripts) and other similar materials.

(c) PROPERTY OF UNITED STATES.—All copies of films on the National Film Registry that are received as gifts or bequests by the Librarian and other materials received by the Librarian under subsection (b), shall become the property of the United States Government, subject to the provisions of title 17, United States Code.

(d) NATIONAL FILM REGISTRY COLLECTION.—All copies of films on the National Film Registry that are received by the Librarian under subsection (a), and other materials received by the Librarian under subsection (b), shall be maintained in the Library of Congress and be known as the “National Film Registry Collection of the Library of Congress”. The Librarian shall, by regulation, and in accordance with title 17, United States Code, provide for reasonable access to the films and other materials in such collection for scholarly and research purposes.

SEC. 107. SEAL OF THE NATIONAL FILM REGISTRY.

(a) USE OF THE SEAL.—

(1) PROHIBITION ON DISTRIBUTION AND EXHIBITION.—No person shall knowingly distribute or exhibit to the public a version of a film or any copy of a film which bears the seal described in section 103(a)(3) if such film—

(A) is not included in the National Film Registry; or

(B) is included in the National Film Registry, but such film or film copy has not been approved for use of the seal by the Librarian pursuant to section 103(a)(1)(D).

(2) PROHIBITION ON PROMOTION.—No person shall knowingly use the seal described in section 103(a)(3) to promote any version of a film or film copy other than a Registry version.

(b) EFFECTIVE DATE OF THE SEAL.—The use of the seal described in section 103(a)(3) shall be effective for each film after the Librarian publishes in the Federal Register, in accordance with section 103(a)(2), the name of that film as selected for inclusion in the National Film Registry.

SEC. 108. REMEDIES.

(a) JURISDICTION.—The several district courts of the United States shall have jurisdiction, for cause shown, to prevent and restrain violations of section 107(a).

(b) RELIEF.—

(1) **REMOVAL OF SEAL.**—Except as provided in paragraph (2), relief for violation of section 107(a) shall be limited to the removal of the seal of the National Film Registry from the film involved in the violation.

(2) **FINE AND INJUNCTIVE RELIEF.**—In the case of a pattern or practice of the willful violation of section 107(a), the United States district courts may order a civil fine of not more than \$10,000 and appropriate injunctive relief.

SEC. 109. LIMITATIONS OF REMEDIES.

The remedies provided in section 108 shall be the exclusive remedies under this title, or any other Federal or State law, regarding the use of the seal described in section 103(a)(3).

SEC. 110. STAFF OF BOARD; EXPERTS AND CONSULTANTS.

(a) **STAFF.**—The Librarian may appoint and fix the pay of such personnel as the Librarian considers appropriate to carry out this title.

(b) **EXPERTS AND CONSULTANTS.**—The Librarian may, in carrying out this title, procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum rate of basic pay payable for GS-15 of the General Schedule. In no case may a member of the Board or an alternate be paid as an expert or consultant under this section.

SEC. 111. DEFINITIONS.

As used in this title—

(1) the term “Librarian” means the Librarian of Congress;

(2) the term “Board” means the National Film Preservation Board;

(3) the term “film” means a “motion picture” as defined in section 101 of title 17, United States Code, except that such term does not include any work not originally fixed on film stock, such as a work fixed on videotape or laser disk;

(4) the term “publication” means “publication” as defined in section 101 of title 17 United States Code; and

(5) the term “Registry version” means, with respect to a film, the version of a film first published, or as complete a version as bona fide preservation and restoration activities by the Librarian, an archivist other than the Librarian, or the copyright owner can compile in those cases where the original material has been irretrievably lost.

SEC. 112. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Librarian such sums as may be necessary to carry out the purposes of this title, but in no fiscal year shall such sum exceed \$250,000.

SEC. 113. EFFECTIVE DATE.

The provisions of this title shall be effective for 7 years beginning on the date of the enactment of this Act. The provisions of this title shall apply to any copy of any film, including those copies of films selected for inclusion in the National Film Registry under the National Film Preservation Act of 1988 and the National Film Preservation Act of 1992, except that any film so selected under either Act shall be deemed to have been selected for the National Film Registry under this title.

SEC. 114. REPEAL.

The National Film Preservation Act of 1992 (2 U.S.C. 179 and following) is repealed.

TITLE II—THE NATIONAL FILM PRESERVATION FOUNDATION ACT

SEC. 201. SHORT TITLE.

This title may be cited as the “National Film Preservation Foundation Act”.

SEC. 202. ESTABLISHMENT AND PURPOSE OF FOUNDATION.

(a) **ESTABLISHMENT.**—There is established the National Film Preservation Foundation (hereafter in this title referred to as the “Foundation”). The Foundation is a charitable and nonprofit corporation and is not an agency or establishment of the United States.

(b) **PURPOSES.**—The purposes of the Foundation are—

(1) to encourage, accept, and administer private gifts to promote and ensure the preservation and public accessibility of the nation's film heritage held at the Library of Congress and other public and non-profit archives throughout the United States;

(2) to further the goals of the Library of Congress and the National Film Preservation Board in connection with their activities under the National Film Preservation Act; and

(3) to undertake and conduct other activities, alone or in cooperation with other film related institutions and organizations, as will further the preservation and public accessibility of films made in the United States, particularly those not protected by private interests, for the benefit of present and future generations of Americans.

SEC. 203. BOARD OF DIRECTORS OF THE FOUNDATION.

(a) **ESTABLISHMENT AND MEMBERSHIP.**—The Foundation shall have a governing Board of Directors (hereafter in this title referred to as the “Board”), which shall consist of 9 Directors, each of whom shall be a United States citizen and at least 6 of whom must be knowledgeable or experienced in film production, distribution, preservation or restoration, including 2 who shall be sitting members of the National Film Preservation Board. These 6 members of the Board shall, to the extent practicable, represent diverse points of views from the film community, including motion picture producers, creative artists, nonprofit and public archivists, historians, film critics, theater owners, and laboratory and university personnel. The Librarian of Congress (hereafter in this title referred to as the “Librarian”) shall be an ex officio non-voting member of the Board. Appointment to the Board shall not constitute employment by, or the holding of an office of, the United States for the purpose of any Federal law.

(b) **APPOINTMENT AND TERMS.**—Within 90 days after the date of the enactment of this Act, the Librarian shall appoint the Directors of the Board. Each Director shall be appointed for a term of 4 years. A vacancy on the Board shall be filled, within 60 days after the vacancy occurs, in the manner in which the original appointment was made. No individual may serve more than 2 consecutive terms as a Director.

(c) **CHAIR.**—The initial Chair shall be appointed by the Librarian from the membership of the Board for a 2-year term, and thereafter shall be appointed and removed in accordance with the Foundation's bylaws.

(d) **QUORUM.**—A majority of the current membership of the Board shall constitute a quorum for the transaction of business.

(e) **MEETINGS.**—The Board shall meet at the call of the Librarian or the Chair at least once a year. If a Director misses 3 consecutive regularly scheduled meetings, that individual may be removed from the Board by the Librarian, and that vacancy shall be filled in accordance with subsection (b).

(f) **REIMBURSEMENT OF EXPENSES.**—Members of the Board shall serve without pay, but may be reimbursed for the actual and necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Foundation.

(g) **GENERAL POWERS.**—

(1) **ORGANIZATION OF FOUNDATION.**—The Board may complete the organization of the Foundation by—

(A) appointing, removing, and replacing officers, except as provided for in paragraph (2)(B);

(B) adopting a constitution and bylaws consistent with the purpose of the Foundation and the provisions of this title; and

(C) undertaking such other acts as may be necessary to carry out the provisions of this title.

(2) **LIMITATION ON APPOINTMENT OF EMPLOYEES.**—The following limitations apply with respect to the appointment of employees of the Foundation:

(A) Except as provided in subparagraph (B), employees of the Foundation shall be appointed, removed, and replaced by the Secretary of the Board. All employees (including the Secretary of the Board) shall be appointed and removed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no individual so appointed may receive pay in excess of the annual rate of basic pay in effect for grade GS-15 of the General Schedule. Neither the Board, nor any of the employees of the Foundation, including the Secretary of the Board, shall be construed to be employees of the Library of Congress.

(B) The first employee appointed shall be the Secretary of the Board. The Secretary shall be appointed, and may be removed by, the Librarian.

(C) The Secretary of the Board shall—

- (i) serve as its executive director, and
- (ii) be knowledgeable and experienced in matters relating to film preservation and restoration activities, financial management, and fund-raising.

SEC. 204. RIGHTS AND OBLIGATIONS OF THE FOUNDATION

(a) **GENERAL.**—The Foundation—

- (1) shall have perpetual succession;
- (2) may conduct business in the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States;
- (3) shall have its principal offices in the District of Columbia; and
- (4) shall at all times maintain a designated agent authorized to accept service of process for the Foundation.

The serving of notice to, or service of process upon, the agent required under paragraph (4), or mailed to the business address of such agent, shall be deemed as service upon or notice to the Foundation.

(b) **SEAL.**—The Foundation shall have an official seal selected by the Board which shall be judicially noticed.

(c) **POWERS.**—To carry out its purposes under section 202, the Foundation shall have, in addition to the powers otherwise given it under this title, the usual powers of a corporation acting as a trustee in the District of Columbia, including the power—

- (1) to accept, receive, solicit, hold, administer, and use any gift, devise, or bequest, either absolutely or in trust, of real or personal property or any income therefrom or other interest therein;
- (2) to acquire by purchase or exchange any real or personal property or interest therein;
- (3) unless otherwise required by the instrument of transfer, to sell, donate, lease, invest, reinvest, retain, or otherwise dispose of any property or income therefrom;
- (4) to borrow money and issue bonds, debentures, or other debt instruments;
- (5) to sue and be sued, and complain and defend itself in any court of competent jurisdiction, except that the Directors of the Board shall not be personally liable, except for gross negligence;
- (6) to enter into contracts or other arrangements with public agencies and private organizations and persons and to make such payments as may be necessary to carry out its functions; and
- (7) to do any and all acts necessary and proper to carry out the purposes of the Foundation.

A gift, devise, or bequest may be accepted by the Foundation even though it is encumbered, restricted, or subject to beneficial interests of private persons, if any current or future interest therein is for the benefit of the Foundation.

SEC. 205. ADMINISTRATIVE SERVICES AND SUPPORT.

The Librarian may provide personnel, facilities, and other administrative services to the Foundation, including reimbursement of expenses under section 203, not to exceed the current per diem rates for the Federal Government, and may accept reimbursement therefor. Amounts so reimbursed shall be deposited in the Treasury to the credit of the appropriations then current and chargeable for the cost of providing such services.

SEC. 206. VOLUNTEER STATUS.

The Librarian may accept, without regard to the civil service classification laws, rules, or regulations, the services of the Foundation, the Board, and other officers and employees of the Board, without compensation from the Library of Congress, as volunteers in the performance of the functions authorized in this title.

SEC. 207. AUDITS, REPORT REQUIREMENTS, AND PETITION OF ATTORNEY GENERAL, FOR EQUITABLE RELIEF.

(a) **AUDITS.**—The Foundation shall be treated as a private corporation established under Federal law for purposes of the Act entitled “An Act to provide for audit of accounts of private corporations established under Federal law.”, approved August 30, 1964 (36 U.S.C. 1101–1103).

(b) **REPORT.**—The Foundation shall, as soon as practicable after the end of each fiscal year, transmit to the Congress a report of its proceedings and activities during

such year, including a full and complete statement of its receipts, expenditures, and investments.

(c) RELIEF WITH RESPECT TO CERTAIN FOUNDATION ACTS OR FAILURE TO ACT.—If the Foundation—

(1) engages in, or threatens to engage in, any act, practice, or policy that is inconsistent with its purposes set forth in section 202(b), or

(2) refuses, fails, or neglects to discharge its obligations under this title, or threatens to do so,

the Attorney General of the United States may file a petition in the United States District Court for the District of Columbia for such equitable relief as may be necessary or appropriate.

SEC. 208. UNITED STATES RELEASE FROM LIABILITY.

The United States shall not be liable for any debts, defaults, acts, or omissions of the Foundation, nor shall the full faith and credit of the United States extend to any obligation of the Foundation.

SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—There are authorized to be appropriated to the Library of Congress such sums as may be necessary to carry out the purposes of this title, not to exceed \$250,000 for each of the fiscal years 2000 through 2003, to be made available to the Foundation to match private contributions (whether in currency, services, or property) made to the Foundation by private persons and State and local governments.

(b) ADMINISTRATIVE EXPENSES.—No Federal funds authorized under this section may be used by the Foundation for administrative expenses of the Foundation, including for salaries, travel, and transportation expenses, and other overhead expenses.

(c) NATIONAL FILM PRESERVATION BOARD FUNDS.—Notwithstanding subsection (b), the Librarian is authorized to use any funds not expended under title I for any of the purposes of this title.

PURPOSE AND SUMMARY

The purpose of H.R. 1734 is to reauthorize the National Film Preservation Board in the Library of Congress, and to establish, under the Library's auspices, the National Film Preservation Foundation, to continue the protection and preservation of America's motion picture heritage.

First created in 1988, the National Film Preservation Board was reauthorized in 1992 for four years. Its mission in 1992 was two-fold: To conduct a national study of the film preservation problems facing the nation (completed in June 1993),¹ and to prepare a national preservation plan (released in August 1994)² to address the problems posed by the study.

The study identified the critical need to develop a coordinated national strategy to address the loss of film materials used and enjoyed especially for historical and educational purposes. The national plan recommended the creation of a federally chartered Foundation to serve as a public-private partnership to help implement these proposals.

The national plan suggested that the preservation efforts focus on those films without commercial viability or (clear) copyright ownership, but which are educationally and historically significant and therefore most in need of maintenance for future generations.

¹ Film Preservation 1993: A Study of the Current State of American Film Preservation, June 1993, A Report of the Librarian of Congress (submitted June 25, 1993 to Congress), ISBN: 0-8444-0803-4. The Report was prepared by the Librarian of Congress in consultation with the National Film Preservation Board.

² Redefining Film Preservation: A National Plan, Recommendations of the Librarian of Congress in consultation with the National Film Preservation Board (August 1994). ISBN: 0-8444-0819-0.

The Librarian of Congress and the National Film Preservation Board coordinated and prepared this plan. They brought together all the parties interested in film production, preservation and dissemination into the preparation of the study and the national plan and recruited the participation of dozens of organizations and individual participants in public hearings and drafting sessions.

H.R. 1734 will reauthorize the Board to allow it to continue to implement the recommendations found in the national preservation plan. The Librarian and the Board have already begun the implementation of that plan, although authorization for the Board expires in June 1996. H.R. 1734, by reauthorizing the Board, will allow it to continue to implement (and refine as necessary) the national plan, while the newly-established Film Foundation will enable this plan, through a public-private financing arrangement, to be properly funded to ensure its success. The Foundation, by eventually using very modest federal funds to match contributions from the motion picture industry, creative artists, other foundations and interested parties, will finance projects to conserve and make publicly accessible (in full compliance with the rights of copyright owners) films made in the United States, particularly those not already protected by private interests, for the benefit of present and future generations of Americans.

BACKGROUND AND NEED FOR THE LEGISLATION

Motion pictures are quite possibly the 20th Century's preeminent art form, currently celebrating their first 100 years of existence. As Librarian of Congress Dr. James Billington said:

Throughout its history, film has been a powerful force in American culture and national life, often shaping our very notion of contemporary events. Our challenge now is to appreciate its fullness and diversity and to protect our rich heritage for the study and enjoyment of future generations.³

Key to the production of cinema this past century has been the effort of American filmmakers, who have crafted works which have educated, entertained and enthralled Americans and the world. This indigenous American art form however is, as Dr. Billington calls it, a "heritage at-risk." The 1993 study showed that of America's feature films of the 1920s fewer than 20 percent survive; and for the 1910s, the survival rate is about 10 percent. By creating and reauthorizing the National Film Preservation Act in 1988 and 1992, Congress has taken steps to ensure the preservation of these important cultural and historical materials.

The American film heritage encompasses a wide body of work, from well-known Hollywood classics to an even larger but equally vital other portion—documentaries, independent films, short subjects (including animation), newsreels, films by or documenting minority or ethnic groups, and historical and educational films of regional importance. Unfortunately, our commitment to preserving motion pictures has rarely matched our enthusiasm in watching them. This heritage is in great danger, for the simple unassailable

³ Redefining Film Preservation: A National Plan, Preface p. ix.

reason that film, no matter its staying power and importance in American history and culture, is a fragile medium because of its unstable chemical properties.

The 1993 study documented that a majority of films produced before 1950 have already been lost, while even recent films are deteriorating slowly but completely at an alarming rate. Color films continue to fade, pre-1950 films continue to deteriorate to powder because of nitrate found in their base, post-1950 films begin to decompose owing to a malady known as "vinegar syndrome." Costs for preserving a single color feature film can run to \$40,000 or more. The 1994 study and the 1994 national plan recommended that the best way to prolong the life of film is to store it in low-temperature, low-humidity storage conditions to extend its useful life. Combining proper storage with selective duplication and restoration are the keys to the maintenance of our film heritage according to the study and national plan.

The Library of Congress as authorized by the 1988 and 1992 Acts took the lead in the preparation of the most important and comprehensive study ever undertaken on film preservation problems and solutions. It is being used as the model for other countries confronting similar indigenous film preservation problems. The recommendations found in the 1994 plan addressing storage, duplication, restoration, public access and similar issues have already helped the preservation effort (and are being duplicated in a separate preservation study on television and video materials currently underway by the Library).

The federal government assumed the role of the development of a coordinated study and strategy to address the policy and technological problems, share information and resources for possible solutions, and avoid duplication of effort by and within public and private entities. The Committee believes that it is not the responsibility of the federal government to assume the primary role for funding the preservation of commercially viable films, such as Hollywood feature films, which are protected by copyright and thus have "preservation benefactors." The film industry should—and to a large degree is—preserving the works it controls, thanks to the continuing economic incentives available for the distribution of this medium via new broadcast and other technological media such as videocassettes, laserdisc, cable, pay-per-view, etc., and due to collaborative ventures with private archives often in possession of the best surviving physical material.

But clearly falling through the cracks is the vast non-Hollywood portion of America's motion picture heritage, commonly called "orphan" films. These materials are the focus of this legislation. Despite the valiant efforts of the Library of Congress, the Museum of Modern Art, the UCLA Film and Television Archive, the George Eastman House, and many other large and small institutions throughout the 50 states, saving these films has become a matter of hard choices, a daily sad ritual of triage. Many film collections of local historical importance are improperly stored in high temperature, high humidity conditions in local libraries or private collections.

The Committee feels that H.R. 1734 is necessary to continue to focus on and support the private preservation efforts for these film

collections. This includes the continued efforts and important work of the National Film Preservation Board in coordinating the public and private sectors, to avoid overlap, to share technological and other information among large and small archives and film producers, and to permit the mostly private funding of this work through the Film Foundation.

The purpose of this legislation is to make certain that future generations will experience films because they were preserved. The best means to do this is to foster collaborative ventures between the motion picture industry and film archives, and, more importantly, to create a public-private funding partnership involving these groups and the federal government by establishing the Foundation. These were all recommendations of the 1994 national plan prepared by the Librarian and in many cases are already enjoying ongoing implementation under the 1992 Act.

Responsibility for preserving the American film heritage is shared by the motion picture industry, the public and nonprofit film archives, and the American public. H.R. 1734 will help save our film heritage by continuing and expanding the important work of the Library of Congress and its advisory group, the National Film Preservation Board to further implement the recommendations in the 1994 national plan. The Foundation will raise the money necessary to fund via grants, these recommendations, and the film preservation efforts at public and non-profit institutions throughout the 50 states.

Congress originally established the National Film Preservation Board with passage of the National Film Preservation Act of 1988 (Pub. L. 100-446). This legislation created a 13 member National Film Preservation Board to advise the Librarian of Congress on the selection of up to 25 films per year for placement on a National Film Registry, and mandated that the Librarian seek to obtain archival copies of each film selected for a special collection in the Library of Congress.

The 1988 Act further directed the Librarian to develop labeling guidelines to determine when these films had been "materially altered." The National Film Registry proved an immediate success in focusing public interest on the need for film preservation of the physical materials. Further, the Librarian, through his efforts and the generosity of many film owners, has been successful in collecting and maintaining preprint and other archival materials for each film title on the National Film Registry which is part of the Library's collection.

Labeling, however, proved a far more problematic matter, with the Library's efforts at guidelines ultimately pleasing no one—neither the film producers, the broadcasters, the creative community of directors, screenwriters or cinematographers, nor the scholarly community. Congress decided that these contentious issues should be removed from the activities of the Library and Film Board, enabling the Librarian and Board to focus on the physical preservation problems.

The National Film Preservation Act of 1992 (Public Law 102-307) retained the National Film Registry, reauthorized the National Film Preservation Board while increasing its size from 13 to 18 members. It removed the labeling provisions found in the 1988

Act. Most importantly, it placed the bill's focus squarely on the universally accepted goal of film preservation. The Act mandated a study examining the current state of American film preservation efforts, to be followed by development of a national film preservation plan to address any problems.

A. NATIONAL FILM PRESERVATION BOARD AND REGISTRY

To date, the Librarian of Congress after consultation with the National Film Preservation Board, has selected 175 "culturally, historically or aesthetically significant films" for inclusion in the National Film Registry. This film collection is a part of the holdings of the Library of Congress. Films selected for the Registry have included not just well-known Hollywood classics but landmark documentaries, independent films, silent movies and other less well-known but equally vital segments of the American film heritage.

Thousands of public nominations are received each year and reviewed by Board members, the Librarian, and his staff. The American public, with each year's announcement, gains a better appreciation both of the vibrant richness and diversity of American cinema, and, more importantly, of the critical preservation problems remaining. Owing to their selection to the Registry, many of the 175 titles now face a far brighter preservation future. Copyright owners and others have continued their generosity in providing archival copies of Registry titles to the Library.

B. NATIONAL FILM PRESERVATION STUDY AND PLAN

Public Law 102-307 mandated that within one year of enactment (in June 1992) the Librarian in consultation with the Board: (1) conduct a study on the current state of American film preservation activities, and (2) subsequently establish a comprehensive national film preservation program for motion pictures, in conjunction with other film archivists, copyright owners and others in the film community. The Library of Congress, as the nation's largest film archive and largest preserver of film (and situs of the Copyright Office), was the proper authority on the subject matter to lead this undertaking. The study was prepared in a collaborative, open and thorough process and delivered to Congress in June 1993. Entitled "Film Preservation 1993," this report persuasively demonstrated an American film heritage at risk. Among its major findings:

(1) Fewer than 20 percent of feature films from the 1920s survive in complete form; for features of the 1910s, the survival rate falls to about 10 percent. Of films made from 1895-1950, less than half survive.

(2) Films made after 1950 (on supposedly "safe" acetate film stock) face major preservation catastrophes from "color fading," "vinegar syndrome" (an irreversible film base decay), and soundtrack deterioration.

(3) Many "lost" American films can be found only in foreign archives.

(4) Funding for film preservation programs has fallen to half its 1980 level, when adjusted for inflation.

Preparation of the national plan began after a lengthy comment period on the study. Six months of negotiations and consensus

building resulted in the national plan (entitled “Redefining Film Preservation”) which was released in August 1994.⁴ The plan recommended several key actions, including:

(1) Redesigning preservation policies to underscore the importance of low-temperature, low-humidity storage in retarding film deterioration, thus ensuring that films, once duplicated, can last for centuries.

(2) Increasing film availability for education and public exhibition.

(3) Developing public-private partnerships to restore key films, share preservation information, and repatriate “lost” American films in foreign archives.

(4) Creating a new Federally-chartered Foundation to raise money to preserve films, particularly newsreels, documentaries, independent and avant-garde films, socially significant amateur footage, regional historical materials, and other motion pictures of cultural and historical importance that will not survive without public intervention. The Foundation (modeled on other successful foundations created by Congress) would be eligible to match private donations with limited federal funds.

At the fundamental core of the plan, were several principles: first, a partnering of public and private national and regional interests; second, the importance of “preventive medicine”—the knowledge that the most effective way to ensure the survival of film (both in terms of cost and long-term durability) is through cold-and-dry storage facilities; third, the comprehension, earned through past failures, that successful implementation of a national plan and the survival of film require active participation from all in the film community; fourth, an understanding that studios bear primary responsibility for preserving their own films, enabling the archives to focus their efforts primarily on those films falling outside the commercial mainstream—documentaries, independent films, newsreels, silent films, avant-garde works, and significant amateur footage—as well as other works whose copyright owners prove unable or unwilling to guarantee their preservation; and fifth, to ensure that preservation is also linked to the goal of greater public access to film, whether through theatrical exhibition, videocassette/videodisc, cable transmission, or more non-commercial avenues such as archival circulating libraries, all consistent with the rights of copyright holders.

The study and plan compellingly demonstrated that America’s film heritage (particularly films not controlled by the major companies) is clearly at risk and that new collaborative approaches are required. The size of the problem by anyone’s measure is enormous—100 million feet of uncopied film on volatile nitrate film stock constitutes one of many current preservation problems. By the most conservative estimate, any project to copy all of this footage to more permanent stock would cost \$200–300 million.

⁴The August 1994 plan included input from the major and independent film studios, individual filmmakers of feature, short subject, non-fiction films (newsreels and documentaries), avant-garde films, creative artists (directors, screenwriters, cinematographers etc.), large and small public and non-profit archives and film libraries, broadcasters and repertory theaters, film and sound laboratories, educators and historians, and others interested in film preservation and access issues.

The legislation offers a two-part solution: first, continue the policy making and coordinating role of the National Film Preservation Board by reauthorizing the Board and its activities within the Library of Congress; second, establish a Foundation that will combine public and private monies to fund projects to address the solutions proposed by the Librarian and the Board. H.R. 1734 by reauthorizing the Board will permit the continuation of the implementation of the national plan, with its many ongoing cooperative ventures between copyright holders and the archives, and, create a funding mechanism via the Foundation.

The legislation describes the charter of the Foundation in two parts: (1) to promote preservation of and public access to the American film heritage, concentrating on those films not preserved by commercial interests, and (2) to further the national film preservation plan and related activities.

The Foundation will be a 501(c)(3) nonprofit organization in the District of Columbia. Working with the film preservation community, the Foundation will raise private gifts (both cash and in-kind contributions) and ultimately be eligible for limited federal matching funds. Subsequently, the Foundation will establish grant programs to make its assets available to non-profit institutions throughout the United States. The grants will go to fund actual preservation work, not administrative overhead. Grants will help fund projects such as the archival preservation and restoration of film collections, or the establishment of regional storage facilities to house endangered film collections from many institutions in archival conditions. Also, the Foundation will work to make materials more accessible in ways fully consistent with copyright laws, perhaps focusing on public domain collections important for educational and historical research.

HEARINGS

The Committee's Subcommittee on Courts and Intellectual Property held a field hearing on H.R. 1734 (and other legislation) on June 1, 1995 in the main courtroom of the Richard H. Chambers U.S. Court of Appeals Building in Pasadena, California. Testimony was received from Edward Richmond, Curator, UCLA Film and Television Archive, and President of the Association of Moving Image Archivists. Other witnesses, Martha Coolidge (Director's Guild of America) and Michael Weller (Writers Guild of America, East), although focused on the other legislation subject of the hearing (H.R. 989 and 1248), also voiced strong support for the legislation.

COMMITTEE CONSIDERATION

On July 27, 1995, the Subcommittee on Courts and Intellectual Property met in open session and ordered reported the bill H.R. 1734, without amendment, by a voice vote, a quorum being present, no objections being heard. On March 12, 1996, the Committee met in open session to consider H.R. 1734. During its consideration, the Committee adopted by voice vote an amendment offered by Mr. Moorhead to reduce the authorization for the National Film Preservation Board and the National Film Preservation Foundation from

10 years to 7 years, and to reduce the funding for the National Film Preservation Foundation from \$2 million a year to \$250,000 a year for fiscal years 2000 through 2003. The Committee then ordered reported the bill H.R. 1734, as amended by a voice vote, a quorum being present, no objections being heard.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1734, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 29, 1996.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1734, the National Film Preservation Act of 1996 and the National Film Preservation Foundation Act, as ordered reported by the House Committee on the Judiciary on March 12, 1996. Because enactment of H.R. 1734 would not affect direct spending or receipts, pay-as-you-go procedures would not apply to the bill.

The bill would impose no intergovernmental or private sector mandates as defined in Public Law 104-4 and would have no direct budgetary impacts on state, local, or tribal governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE, MARCH 29, 1996

1. Bill number: H.R. 1734.
2. Bill title: The National Film Preservation Act of 1996 and the National Film Preservation Foundation Act.
3. Bill status: As ordered reported by the House Committee on the Judiciary on March 12, 1996.
4. Bill purpose: H.R. 1734 would extend authorizations of appropriations for the National Film Registry of the Library of Congress and the National Film Preservation Board through fiscal year 2003. The bill would also create the National Film Preservation Foundation to further the goals of the National Film Preservation Board and other archives for films made in the United States. The National Film Preservation Foundation would be authorized for fiscal years 2000 through 2003, with federal funds made available on a matching basis. The Foundation would be overseen by a Board of Directors and would not be an agency or organization of the United States.
5. Estimated cost to the Federal Government: The following table shows spending under H.R. 1734.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
National Film Registry							
Authorizations of Appropriations Under Current Law:							
Appropriations	0.25	0	0	0	0	0	0
Estimated Outlays	0.25	0.04	0.01	0.01	0	0	0
Total Proposed Change							
Estimated Authorization	0	0.25	0.25	0.25	0.25	0.25	0.25
Estimated Outlays	0	0.21	0.24	0.24	0.25	0.25	0.25
Authorizations of Appropriations Under H.R. 1734:							
Estimated Authorization	0.25	0.25	0.25	0.25	0.25	0.25	0.25
Estimated Outlays	0.25	0.25	0.25	0.25	0.25	0.25	0.25
National Film Preservation Foundation							
Authorizations of Appropriations Under Current Law:							
Estimated Authorization	0	0	0	0	0	0	0
Estimated Outlays	0	0	0	0	0	0	0
Total Proposed Change							
Estimated Authorization	0	0	0	0	0.25	0.25	0.25
Estimated Outlays	0	0	0	0	0.25	0.25	0.25
Authorizations of Appropriations Under H.R. 1734:							
Estimated Authorization	0	0	0	0	0.25	0.25	0.25
Estimated Outlays	0	0	0	0	0.25	0.25	0.25
Total							
Authorizations of Appropriations Under H.R. 1734:							
Estimated Authorization	0.25	0.25	0.25	0.25	0.50	0.50	0.50
Estimated Outlays	0.25	0.25	0.25	0.25	0.50	0.50	0.50

The costs of this bill fall within budget function 500.

6. Basis of estimate: The spending that would occur under H.R. 1734 would be subject to the availability of appropriated funds. For the purposes of this estimate, CBO assumes that the bill will be enacted on September 30, 1996, and that the full amounts authorized in the bill will be appropriated. Estimated outlay patterns are based on historical spending patterns of the Library of Congress and on considerations of the process outlined in the bill for making funds available to the newly created National Film Preservation Foundation.

Title I of H.R. 1734 would reauthorize the National Film Registry of the Library of Congress and the National Film Preservation Board for seven years from the enactment of the bill, or for fiscal years 1997 through 2003. These programs are currently authorized through fiscal year 1996. The bill would authorize \$250,000 for each year, for a total of \$1.75 million over the 7-year period.

H.R. 1734 would extend the work of the National Film Preservation Board, which selects American films to be included in the National Film Registry. Under H.R. 1734, board member would represent a variety of film and arts organizations and would not be paid. The Board would select up to 25 films for inclusion in the National Film Registry each year. The Librarian of Congress would, upon consulting with the Board, work to preserve the films in the Registry and increase accessibility for educational purposes.

Title II of H.R. 1734 would establish the National Film Preservation Foundation to further the efforts of the National Film Registry of the Library of Congress and other archives of films made in the United States. The Foundation, headed by a Board of nine directors, would work to improve the accessibility and preservation of films made in the United States. The bill would authorize appropriations of \$250,000 a year on a matching basis for fiscal years 2000 through 2003, for a total of \$1 million.

H.R. 1734 would repeal the National Film Preservation Act of 1992, which authorizes appropriations of \$250,000 a year through fiscal year 1996 for the National Film Registry of the Library of Congress and the National Film Preservation Board. The repeal has no budgetary impact.

7. Pay-as-you-go considerations: None.

8. Estimated impact on State and local governments: CBO estimates that this bill would impose no intergovernmental mandates as defined in Public Law 104-4, and would have no direct budgetary impact on state, local, or tribal governments.

9. Estimated impact on the private sector: This bill contains no private sector mandates as defined in Public Law 104-4.

10. Estimate comparison: None.

11. Previous CBO estimate: None.

12. Estimate prepared by: Justin Latus.

13. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 1734 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS (LEGISLATION, AS AMENDED)

TITLE 1—NATIONAL FILM PRESERVATION BOARD REAUTHORIZATION

Section 101 sets forth the short title of Title 1, the “National Film Preservation Act of 1996,” and reauthorizes the National Film Preservation Board.

Section 102 directs the Librarian of Congress to continue the National Film Registry, established and maintained under the Na-

tional Film Preservation Act of 1988 and the National Film Preservation Act of 1992, pursuant to the provisions of this title, to maintain and preserve films that are culturally, historically, or aesthetically significant.

Section 103 sets forth duties and powers of the Librarian under this title, including continued implementation, in consultation with members of the National Film Preservation Board, of the comprehensive national film preservation plan prepared under the 1992 Act; establishment of criteria under which films may be included in the National Film Registry and procedures for titles to be nominated by the general public; publication in the Federal Register of each film selected for inclusion in the Registry; and instructions for usage of the National Film Registry seal on film copies of Registry titles.

Section 104 sets forth requirements for the National Film Preservation Board, including selection of members by the Librarian. This section further specifies the composition of the Board and sets forth provisions relating to the appointment of Board members as well as the functioning of the Board, including selection of a chairperson, quorum requirements, meetings, basic pay, and terms of office. Under H.R. 1734, membership increases by two members from the 1992 Act. The National Association of Broadcasters have agreed to forego participation on the Board (and focus on the work with the Library on a separate TV/video preservation study currently underway). Three new members are added to the Board: one more at-large member, and one representative each from the Society of Composers and Lyricists and the Association of Moving Image Archivists.

Section 105 sets forth the Board responsibilities and powers, related largely to its role in advising the Librarian of Congress on the selections of up to 25 films a year for inclusion in the National Film Registry, including consideration of film nominations by the general public, as well as by representatives of specified types of film industry, preservation, and academic groups.

Section 106 sets forth requirements relating to the National Film Registry Collection of the Library of Congress, including acquisition of archival quality copies and additional materials.

Sections 107–109 make clear who may or may not use the seal of the National Registry and when the use of the seal is inappropriate; and set forth remedies of violations and limitations of such remedies that are available against persons who misuse the seal.

Section 110 authorizes the Librarian to appoint such staff as appropriate and to procure the services of experts and consultants.

Section 111 provides definitions for terms found in the legislation.

Section 112 authorizes appropriations of up to \$250,000 per year for seven years, beginning on the enactment date of this Act.

Section 113 makes this title effective for seven years beginning on the enactment date of this Act. It makes this Act applicable to all copies of films selected for inclusion in the National Film Registry, including those selected pursuant to the provisions of the National Film Preservation Acts of 1988 and 1992.

Section 114 repeals the National Film Preservation Act of 1992.

TITLE 2—NATIONAL FILM PRESERVATION FOUNDATION ACT

Section 201 sets forth the short title of Title 2, the “National Film Preservation Foundation Act.”

Section 202 establishes the Foundation as a charitable, 501(c) nonprofit organization, and states the purposes of the Foundation to: (a) encourage, accept and administer private gifts to promote and ensure the preservation and public accessibility of the nation’s film heritage held at the Library of Congress and other public and non-profit archives throughout the United States; (b) further the goals of the Library of Congress and the National Film Preservation Board in connection with their activities under the National Film Preservation Act; and (c) undertake and conduct other activities, alone or in cooperation with other film-related institutions and organizations, as will further the preservation and public accessibility of films made in the United States, particularly those not preserved by private interests, for the benefit of present and future generations of Americans.

Section 203 sets forth requirements relating to the Foundation’s Board of Directors, specifically that Board will consist of 9 members, including two members from the National Film Preservation Board, who shall serve fixed 4-year terms. Board members will serve as volunteers, paid only for Foundation travel. The Librarian of Congress, shall appoint the Board’s initial chair, and serve as an ex officio non-voting member of the Board. This section further sets forth provisions relating to the appointment and functions of the Board.

Section 204 sets forth the Foundation’s rights and obligations.

Sections 205–206 authorize the Librarian to: (1) provide, and accept reimbursement for, administrative services and support to the Foundation; and (2) accept services of the Foundation, the Board, and other Board officers and employees as volunteers.

Sections 207–208 set forth provisions relating to audits, reports, and petitions by the Attorney General for equitable relief for certain Foundation acts or failures to act.

Section 209 authorizes appropriations for the Foundation. Originally authorized at \$2 million per year for 10 years the Foundation, under the legislation as amended by the full Committee, will be authorized at \$250,000 per year beginning in fiscal year 2000. Also, it authorizes the Librarian to use unexpended funds from Title 1 for Title 2.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets):

NATIONAL FILM PRESERVATION ACT OF 1992**[TITLE II—NATIONAL FILM PRESERVATION****[SEC. 201. SHORT TITLE.**

[This title may be cited as the “National Film Preservation Act of 1992”.

[SEC. 202. NATIONAL FILM REGISTRY OF THE LIBRARY OF CONGRESS.

【The Librarian of Congress (hereinafter in this title referred to as the “Librarian”) shall establish a National Film Registry pursuant to the provisions of this title, for the purpose of maintaining and preserving films that are culturally, historically, or aesthetically significant.

[SEC. 203. DUTIES OF THE LIBRARIAN OF CONGRESS.

【(a) STUDY OF FILM PRESERVATION.—(1) The Librarian shall, after consultation with the Board established pursuant to section 204, conduct a study on the current state of film preservation and restoration activities, including the activities of the Library of Congress and the other major film archives in the United States. The Librarian shall, in conducting the study—

【(A) take into account the objectives of the national film preservation program set forth in clauses (i) through (iii) of subsection (b)(1)(A); and

【(B) consult with film archivists, educators and historians, copyright owners, film industry representatives, including those involved in the preservation of film, and others involved in activities related to film preservation.

The study shall include an examination of the concerns of private organizations and individuals involved in the collection and use of abandoned films such as training, educational, and other historically important films.

【(2) Not later than 1 year after the date of the enactment of this Act, the Librarian shall submit to the Congress a report containing the results of the study conducted under paragraph (1).

【(b) POWERS.—(1) The Librarian shall, after consultation with the Board, do the following:

【(A) After completion of the study required by subsection (a), the Librarian shall, taking into account the results of the study, establish a comprehensive national film preservation program for motion pictures, in conjunction with other film archivists and copyright owners. The objectives of such a program shall include—

【(i) coordinating activities to assure that efforts of archivists and copyright owners, and others in the public and private sector, are effective and complementary;

【(ii) generating public awareness of and support for those activities; and

【(iii) increasing accessibility of films for educational purposes, and improving nationwide activities in the preservation of works in other media such as videotape.

【(B) The Librarian shall establish guidelines and procedures under which films may be included in the National Film Registry, except that no film shall be eligible for inclusion in the National Film Registry until 10 years after such film’s first publication.

【(C) The Librarian shall establish procedures under which the general public may make recommendations to the Board regarding the inclusion of films in the National Film Registry.

【(D) The Librarian shall establish procedures for the examination by the Librarian of prints of films named for inclusion in the National Film Registry to determine their eligibility for

the use of the seal of the National Film Registry under paragraph (3).

[(E) The Librarian shall determine which films satisfy the criteria established under subparagraph (B) and qualify for inclusion in the National Film Registry, except that the Librarian shall not select more than 25 films each year for inclusion in the Registry.

[(2) The Librarian shall publish in the Federal Register the name of each film that is selected for inclusion in the National Film Registry.

[(3) The Librarian shall provide a seal to indicate that a film has been included in the National Film Registry and is the Registry version of that film.

[(4) The Librarian shall publish in the Federal Register the criteria used to determine the Registry version of a film.

[(5) The Librarian shall submit to the Congress a report, not less than once every two years, listing films included in the National Film Registry and describing the activities of the Board.

[(c) SEAL.—The seal provided under subsection (b)(3) may be used on any copy of the Registry version of a film. Such seal may be used only after the Librarian has examined and approved the print from which the copy was made. In the case of copyrighted works, only the copyright owner or an authorized licensee of the copyright may place or authorize the placement of the seal on a copy of a film selected for inclusion in the National Film Registry, and the Librarian may place the seal on any print or copy of the film that is maintained in the National Film Registry Collection of the Library of Congress. The person authorized to place the seal on a copy of a film selected for inclusion in the National Film Registry may accompany such seal with the following language: “This film is included in the National Film Registry, which is maintained by the Library of Congress, and was preserved under the National Film Preservation Act of 1992.”

[(d) DEVELOPMENT OF STANDARDS.—The Librarian shall develop standards or guidelines by which to assess the preservation or restoration of films that will qualify films for use of the seal under this section.

[SEC. 204. NATIONAL FILM PRESERVATION BOARD.

[(a) NUMBER AND APPOINTMENT.—(1) The Librarian shall establish in the Library of Congress a National Film Preservation Board to be comprised of up to 18 members, who shall be selected by the Librarian in accordance with the provisions of this section. Subject to subparagraphs (C) and (O), the Librarian shall request each organization listed in subparagraphs (A) through (P) to submit to the Librarian a list of not less than 3 candidates qualified to serve as a member of the Board. Except for the members-at-large appointed under paragraph (2), the Librarian shall appoint 1 member from each such list submitted by such organizations, and shall designate from that list an alternate who may attend those meetings to which the individual appointed to the Board cannot attend. The organizations are the following:

[(A) The Academy of Motion Pictures Arts and Sciences.

[(B) The Directors Guild of America.

[(C) The Writers Guild of America. The Writers Guild of America East and the Writers Guild of America West shall each nominate not less than 3 candidates, and a representative from 1 such organization shall be selected as the member and a representative from the other such organization as the alternate.

[(D) The National Society of Film Critics.

[(E) The Society for Cinema Studies.

[(F) The American Film Institute.

[(G) The Department of Theatre, Film and Television of the College of Fine Arts at the University of California, Los Angeles.

[(H) The Department of Film and Television of the Tisch School of the Arts at New York University.

[(I) The University Film and Video Association.

[(J) The Motion Picture Association of America.

[(K) The National Association of Broadcasters.

[(L) The Alliance of Motion Picture and Television Producers.

[(M) The Screen Actors Guild of America.

[(N) The National Association of Theater Owners.

[(O) The American Society of Cinematographers and the International Photographers Guild, which shall jointly submit 1 list of candidates from which a member and alternate will be selected.

[(P) The United States members of the International Federation of Film Archives.

[(2) In addition to the Members appointed under paragraph (1), the Librarian shall appoint up to 2 members-at-large. The Librarian shall select the at-large members from names submitted by organizations in the film industry, creative artists, producers, film critics, film preservation organizations, academic institutions with film study programs, and others with knowledge of copyright law and of the importance, use, and dissemination of films. The Librarian shall, in selecting 1 such member-at-large, give preference to individuals who are responsible for commercial film libraries. The Librarian shall also select from the names submitted under this paragraph an alternate for each member-at-large, who may attend those meetings to which the member-at-large cannot attend.

[(b) CHAIRPERSON.—The Librarian shall appoint 1 member of the Board to serve as Chairperson.

[(c) TERM OF OFFICE.—(1) The term of each member of the Board shall be 3 years, except that there shall be no limit to the number of terms that any individual member may serve.

[(2) A vacancy in the Board shall be filled in the manner in which the original appointment was made under subsection (a), except that the Librarian may fill the vacancy from a list of candidates previously submitted by the organization or organizations involved. Any member appointed to fill a vacancy before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term.

[(d) QUORUM.—9 members of the Board shall constitute a quorum but a lesser number may hold hearings.

[(e) BASIC PAY.—Members of the Board shall serve without pay. While away from their home or regular places of business in the performance of functions of the Board, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5701 of title 5, United States Code.

[(f) MEETINGS.—The Board shall meet at least once each calendar year. Meetings shall be at the call of the Librarian.

[(g) CONFLICT OF INTEREST.—The Librarian shall establish rules and procedures to address any potential conflict of interest between a member of the Board and the responsibilities of the Board.

[SEC. 205. RESPONSIBILITIES AND POWERS OF BOARD.]

[(a) IN GENERAL.—The Board shall review nominations of films submitted to it for inclusion in the National Film Registry and shall consult with the Librarian, as provided in section 203, with respect to the inclusion of such films in the Registry and the preservation of these and other films that are culturally, historically, or aesthetically significant.

[(b) NOMINATION OF FILMS.—The Board shall consider, for inclusion in the National Film Registry, nominations submitted by the general public as well as representatives of the film industry, such as the guilds and societies representing actors, directors, screenwriters, cinematographers and other creative artists, producers, film critics, film preservation organizations, and representatives of academic institutions with film study programs. The Board shall nominate not more than 25 films each year for inclusion in the Registry.

[(c) GENERAL POWERS.—The Board may, for the purpose of carrying out its duties, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Librarian and the Board considers appropriate.

[SEC. 206. NATIONAL FILM REGISTRY COLLECTION OF THE LIBRARY OF CONGRESS.]

[(a) ACQUISITION OF ARCHIVAL QUALITY COPIES.—The Librarian shall endeavor to obtain, by gift from the owner, an archival quality copy of the Registry version of each film included in the National Film Registry. Whenever possible, the Librarian shall endeavor to obtain the best surviving materials, including preprint materials.

[(b) ADDITIONAL MATERIALS.—The Librarian shall endeavor to obtain, for educational and research purposes, additional materials related to each film included in the National Film Registry, such as background materials, production reports, shooting scripts (including continuity scripts) and other similar materials.

[(c) PROPERTY OF UNITED STATES.—All copies of films on the National Film Registry that are received by the Librarian and other materials received by the Librarian under subsection (b) shall become the property of the United States Government, subject to the provisions of title 17, United States Code.

[(d) NATIONAL FILM REGISTRY COLLECTION.—All copies of films on the National Film Registry that are received by the Librarian and other materials received by the Librarian under subsection (b)

shall be maintained in a special collection in the Library of Congress to be known as the “National Film Registry Collection of the Library of Congress”. The Librarian shall, by regulation, and in accordance with title 17, United States Code, provide for reasonable access to films in such collection for scholarly and research purposes.

[SEC. 207. SEAL OF THE NATIONAL FILM REGISTRY.

[(a) USE OF THE SEAL.—(1) No person shall knowingly distribute or exhibit to the public a version of a film which bears the seal described in section 203(b)(3) if such film—

[(A) is not included in the National Film Registry; or

[(B) is included in the National Film Registry, but such copy was not made from a print that was examined and approved for the use of the seal by the Librarian under section 203(c).

[(2) No person shall knowingly use the seal described in section 203(b)(3) to promote any version of a film other than a Registry version.

[(b) EFFECTIVE DATE OF THE SEAL.—The use of the seal described in section 203(b)(3) shall be effective for each film after the Librarian publishes in the Federal Register the name of that film as selected for inclusion in the National Film Registry.

[SEC. 208. REMEDIES.

[(a) JURISDICTION.—The several district courts of the United States shall have jurisdiction, for cause shown, to prevent and restrain violations of section 207(a).

[(b) RELIEF.—(1) Except as provided in paragraph (2), relief for a violation of section 207(a) shall be limited to the removal of the seal of the National Film Registry from the film involved in the violation.

[(2) In the case of a pattern or practice of the willful violation of section 207(a), the United States district courts may order a civil fine of not more than \$10,000 and appropriate injunctive relief.

[SEC. 209. LIMITATIONS OF REMEDIES.

[The remedies provided in section 208 shall be the exclusive remedies under this title, or any other Federal or State law, regarding the use of the seal described in section 203(b)(3).

[SEC. 210. STAFF OF BOARD; EXPERTS AND CONSULTANTS.

[(a) STAFF.—The Librarian may appoint and fix the pay of such personnel as the Librarian considers appropriate to carry out this title.

[(b) EXPERTS AND CONSULTANTS.—The Librarian may, in carrying out this title, procure temporary and intermittent services under section 3109(b) of title 5, United States Code, but at rates for individuals not to exceed the daily equivalent of the maximum rate of basic pay payable for GS-15 of the General Schedule. In no case may a member of the Board be paid as an expert or consultant under such section.

[SEC. 211. DEFINITIONS.

[As used in this title—

[(1) the term “Librarian” means the Librarian of Congress;

[(2) the term “Board” means the National Film Preservation Board;

[(3) the term “film” means a “motion picture” as defined in section 101 of title 17, United States Code, except that such term does not include any work not originally fixed on film stock, such as a work fixed on videotape or laser disks;

[(4) the term “publication” means “publication” as defined in section 101 of title 17, United States Code; and

[(5) the term “Registry version” means, with respect to a film, the version of the film first published, or as complete a version as the bona fide preservation and restoration activities by the Librarian, an archivist other than the Librarian, or the copyright owner can compile in those cases where the original material has been irretrievably lost.

[SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated to the Librarian such sums as are necessary to carry out the provisions of this title, but in no fiscal year shall such sum exceed \$250,000.

[SEC. 213. EFFECTIVE DATE.

[The provisions of this title shall be effective for four years beginning on the date of the enactment of this Act. The provisions of this title shall apply to any copy of any film, including those copies of films selected for inclusion in the National Film Registry under the National Film Preservation Act of 1988, except that any film so selected under such Act shall be deemed to have been selected for the National Film Registry under this title.

[SEC. 214. REPEAL.

[The National Film Preservation Act of 1988 (2 U.S.C. 178 and following) is repealed.]