

Ken Loach's controversial *Save the Children* film is finally seen after 40 years' enforced storage at the taxpayers' expense

Leo Enticknap examines the legal and moral issues behind the BFI's breakthrough screening

In the only full-length work to have been written dealing specifically with the ethics of moving image archiving, Ray Edmondson defines the 'ultimate ethical issue for the audiovisual archivist' as 'discouraging or suppressing access to 'politically incorrect' and 'inconvenient' material.¹ This summer it emerged that the British Film Institute (BFI) has had to address that issue for the last four decades, in the form of a documentary directed by the firebrand leftist filmmaker Ken Loach in 1969, commissioned by the charity Save the Children to promote its work.

Save the Children doubtless thought at the time that the broadcast of the resulting film planned by London Weekend Television would prove a PR coup and boost donations. However, when its executives screened the answer print, they were in for a shock. Far from a cuddly, feel-good hour celebrating the life-enhancing work of a brand instantly recognisable on collection tins across the country, they were given a vintage Loach, tub-thumping Marxist broadside – with both barrels.

His film, which opens with a quote from Engels and closes with a condemnation of capitalism, accused *Save the Children* of presiding over child abuse at an orphanage in Essex and of 'exporting colonialism' to a school in Kenya, in which pupils were forced to speak English and banned from using their native language. The film elicited, as Loach put it, 'steam coming out of the ears' of its sponsors, who stormed out of the preview theatre and immediately sued his production company for breach of contract.²



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After a protracted legal wrangle, a court order was imposed whereby the cut camera negative and master sound elements would be, in the words of its producer, 'put in aspic at the BFI forever'. In other words, the National Film Archive (as it was then known) was told by a judge to preserve the film, but that it could not grant access to anyone, in perpetuity, without *Save the Children's* permission.

It seems reasonable to speculate that at the time, the BFI had little hesitation in complying in the pragmatic belief that within a generation or two the fuss would have died down, the controversy dissipated and the title would become just another in their vast television non-fiction holdings. If so, they were vindicated. When the BFI approached *Save the Children* for permission to show it at the National Film Theatre in a Loach retrospective earlier this year, both parties were at pains to stress in their press releases that it was granted without hesitation.

This has not always been the outcome of such cases, however, and it does raise a complex ethical dilemma for public sector archive institutions. They have traditionally defended the acquisition of copyright-restricted material on the grounds that eventually that copyright will expire and the holdings will become true public records. But this justification does not apply in cases where a depositor attempts to dictate the terms of access for non-commercial reasons; in this one, the fear that the deposited material will portray them in a bad light.

No bootleg copies!

Once again, there are precedents in some aspects of the issue. In the last decade, a major oil company refused permission for environmentalists to use footage from a 16mm promotional film from the 1970s in a campaign video, and threatened a lawsuit



Save the Children (1969) – Marching band at Starehe school, Kenya

1 Edmondson, *Philosophy of Audiovisual Archiving*, Paris, UNESCO (1998), p. 46.
 2 Interviewed at the National Film Theatre on 1 September 2011 – for video see <http://www.bfi.org.uk/live/video/700>.



Save the Children (1969) – Manchester Street scene

if they went ahead claiming Fair Use. The Hollywood studios have declined to re-release or sanction the publication of titles considered problematic due to racial and other stereotypes, of which Disney's *Song of the South* is probably the most widely cited example. And the screening of some anti-Semitic Nazi propaganda films, notably *The Eternal Jew*, is actually outlawed by the modern German constitution.

But what makes the archival history of the *Save the Children* film unique is that, in effect, taxpayers were being ordered to foot the bill to preserve material, that, in the terms of the original agreement, they would never be able to see. Furthermore, there is also a pragmatic factor in play. Most of the examples above are widely available through 'unofficial' (read bootleg) sources, including, in many cases, YouTube. In particular, Hollywood's attitude to its ideologically problematic past appears to be not to promote it (hence the reason you won't be seeing a BluRay box set collector's edition of *Scrub Me Mama With a Boogie Beat* anytime soon), but taking no active steps to suppress it either: legal action against the private use of unauthorised copies is almost unheard of.

In effect, Hollywood is saying: 'This stuff is embarrassing and with hindsight we wish we'd never made it, but we realise that we can't rewrite history.' But in the case of Loach's film, there were no unauthorised copies in circulation. The BFI held the only elements, and therefore were in a position to be able to suppress the film effectively.

The BFI's management were clearly mindful of their unsolicited responsibility to the public as well as the depositor and the court: its creative director, Heather Stewart is quoted as stating that permission for the 2011 public screening was only granted 'after many years of trying'.³ Furthermore, even if the deposit had been

accepted voluntarily rather than on the instruction of a judge, the alternative would almost certainly have been the destruction of the original elements and thus the total loss of the film. As against which, the precedent set is surely a problematic one.

One of the fundamental principles of Britain's unwritten constitution is that no parliament shall bind its successor: in other words, that the government should never make a policy decision that is intended to be inherently irreversible. By ordering the taxpayer-funded preservation of a record that those taxpayers might never have access to, the judge was indeed binding the BFI archivists' successors, and in effect mandating taxation without representation into the bargain. Should not either the filmmaker and/or its sponsor have been obliged to foot the bill? After all, even in the case of sensitive and restricted government documents held by the National Archives under the 100-year rule, there is a clear understanding between taxpayers and their elected representatives that the evidence of the latter's activity will enter the public domain eventually.

In this case, all was well that ended well. The immediate controversy was defused, the film was preserved and, as the judge probably intended, the ideological climate has now shifted to the point at which the film can be screened without the originally feared consequences. But it might not have ended that way – there are a lot of much older films that also fit Edmondson's definition of politically incorrect – and this is a dilemma that film archivists working for the taxpayer are likely to have to face in the future: though I would hope, voluntarily.

The author wishes to thank Patrick Russell at the British Film Institute for his comments on an earlier draft of this article.

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3 <http://www.savethechildren.org.uk/en/16249.htm>, retrieved 19 October 2011.

Huntley Archives discovers Disney's Lucky Rabbit

A long-lost cartoon film featuring a rabbit that was the forerunner to Mickey Mouse has been discovered in an archive in rural England. The only known copy of *Hungry Hobos* starring Oswald the Lucky Rabbit was found at the Huntley Film Archives in Herefordshire. It's expected to fetch up to \$40,000 (£25,000) at Bonhams' entertainment memorabilia auction in Los Angeles on December 14.

Oswald was created by Walt Disney and Ub Iwerks in 1927. *Hungry Hobos* was made in 1928. Later, Disney and Iwerks transferred many of Oswald's traits to Mickey Mouse.

No one knows how the five-minute cartoon came to be sitting on a shelf at Huntley Film Archives, which specialises in social history films. Amanda Huntley, who runs the company, said a colleague stumbled upon it and out of curiosity searched its name on the internet and realised it was a lost classic.

Huntley said: "My colleague took the film from the shelf and Googled it – I don't really know why. We quickly realised it was one of the great lost films. We posted the news on specialist web forums and everybody was very excited.

"How we ended up with the film, I don't know. It was probably collected by my father who started the company and it has been sitting on our shelves for decades.

Stephanie Connell, from auctioneers Bonhams, said: "*Hungry Hobos* is an incredible find, a lost masterpiece and a cartoon with a unique and vital place in animation history."

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