

### Who Owns the Images? The Paradox of Archives, between Commercialization, Free Circulation and Respect

Lindeperg, Sylvie; Szczepanska, Ania; Chassigneux, Nathalie; Lalou, Serge; Magnien, Agnès; Mondzain, Marie-José; Périot, Jean-Gabriel; Sené, Xavier

Veröffentlichungsversion / Published Version

Sammelwerk / collection

#### Empfohlene Zitierung / Suggested Citation:

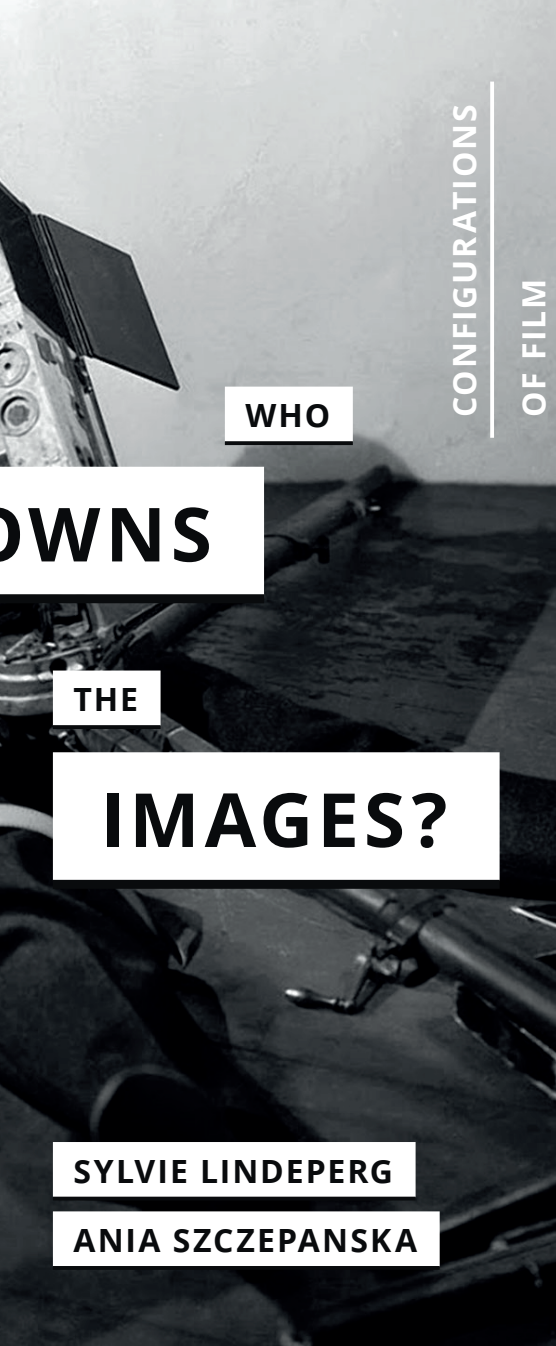
Lindeperg, S., Szczepanska, A., Chassigneux, N., Lalou, S., Magnien, A., Mondzain, M.-J., ... Sené, X. (2021). *Who Owns the Images? The Paradox of Archives, between Commercialization, Free Circulation and Respect*. (Configurations of Film Series). Lüneburg: meson press. <https://doi.org/10.14619/0146>

#### Nutzungsbedingungen:

Dieser Text wird unter einer CC BY-SA Lizenz (Namensnennung-Weitergabe unter gleichen Bedingungen) zur Verfügung gestellt. Nähere Auskünfte zu den CC-Lizenzen finden Sie hier: <https://creativecommons.org/licenses/by-sa/4.0/deed.de>

#### Terms of use:

This document is made available under a CC BY-SA Licence (Attribution-ShareAlike). For more information see: <https://creativecommons.org/licenses/by-sa/4.0>



WHO

OWNS

THE

IMAGES?

SYLVIE LINDEPERG

ANIA SZCZEPANSKA

CONFIGURATIONS

OF FILM



C

μ



## **Who Owns the Images?**

## **Configurations of Film Series**

### *Editorial Board*

Nicholas Baer (University of Groningen)  
Hongwei Thorn Chen (Tulane University)  
Miriam de Rosa (Ca' Foscari University of Venice)  
Anja Dreschke (University of Düsseldorf)  
Bernard Dionysius Geoghegan (King's College London)  
Andrea Gyenge (University of Minnesota)  
Jihoon Kim (Chung Ang University)  
Laliv Melamed (Goethe University)  
Kalani Michell (UCLA)  
Debashree Mukherjee (Columbia University)  
Ara Osterweil (McGill University)  
Petr Szczepanik (Charles University Prague)

# **Who Owns the Images? The Paradox of Archives, between Commercialization, Free Circulation and Respect**

**Sylvie Lindeperg and Ania Szczepanska**

**with Nathalie Chassigneux, Serge Lalou, Agnès Magnien,  
Marie-José Mondzain, Jean-Gabriel Périot, Xavier Sené**



**meson press**

# KONFIGURATIONEN DES FILMS

**DFG** Deutsche  
Forschungsgemeinschaft

GOETHE  
UNIVERSITÄT  
FRANKFURT AM MAIN



## **Bibliographical Information of the German National Library**

The German National Library lists this publication in the Deutsche Nationalbibliografie (German National Bibliography); detailed bibliographic information is available online at <http://dnb.d-nb.de>.

Published in 2021 by meson press, Lüneburg, Germany with generous support from the Deutsche Forschungsgemeinschaft  
[www.meson.press](http://www.meson.press)

Design concept: Torsten Köchlin, Silke Krieg  
Cover design: Mathias Bär, Torsten Köchlin  
Cover image: *The Cameraman* (1928) © Getty Images

ISBN (PDF): 978-3-95796-014-6

DOI: 10.14619/0146

The digital edition of this publication can be downloaded freely at [www.meson.press](http://www.meson.press).

This publication is licensed under CC BY-SA 4.0 (Creative Commons Attribution-ShareAlike 4.0 International). To view a copy of this license, visit <https://creativecommons.org/licenses/by-sa/4.0/>.



# Contents

Series Foreword 7

Acknowledgements 9

## **Dialogic Encounters – Thinking through Archival Images 11**

*Amrita Biswas, Johanna Laub*

## **At the Archive’s Borders 23**

*Sylvie Lindeperg and Ania Szczepanska*

## **The Strange Fate of Archival Images 35**

*Sylvie Lindeperg*

## **The Archives in Disarray 51**

*Interviews conducted by Sylvie Lindeperg and Ania  
Szczepanska*

Images Protected by Law? 53

*with Nathalie Chassigneux*

The Dilemmas of an Archive Institution 64

*with Xavier Sené*

Archives Like Any Other...or Almost 73

*with Agnès Magnien*

The Historical Documentary on Television: Keys to  
the Dispute 86

*with Serge Lalou*



The Film as Counter-History Factory 100  
*with Jean-Gabriel Périot*

Images Without an Owner: For an Ethics of Use 110  
*with Marie-José Mondzain*

**The Words of the “Dispute”** 123  
*Ania Szczepanska*

References 135

Bibliographical Annex 137

Authors and Participants 141

## Configurations of Film: Series Foreword

Scalable across a variety of formats and standardized in view of global circulation, the moving image has always been both an image of movement and an image on the move. Over the last three decades, digital production technologies, communication networks and distribution platforms have taken the scalability and mobility of film to a new level. Beyond the classical *dispositif* of the cinema, new forms and knowledges of cinema and film have emerged, challenging the established approaches to the study of film. The conceptual framework of index, *dispositif* and canon, which defined cinema as photochemical image technology with a privileged bond to reality, a site of public projection, and a set of works from auteurs from specific national origins, can no longer account for the current multitude of moving images and the trajectories of their global movements. The term “post-cinema condition,” which was first proposed by film theorists more than a decade ago to describe the new cultural and technological order of moving images, retained an almost melancholic attachment to that which the cinema no longer was. Moving beyond such attachments, the concept of “configurations of film” aims to account for moving images in terms of their operations, forms and formats, locations and infrastructures, expanding the field of cinematic knowledges beyond the arts and the aesthetic, while retaining a focus on film as privileged site for the production of cultural meaning, for social action and for political conflict.

The series “Configurations of Film” presents pointed interventions in this field of debate by emerging and established international scholars associated with the DFG-funded Graduate Research Training Program (Graduiertenkolleg) “Konfigurationen des Films” at Goethe University Frankfurt. The contributions to the series aim to explore and expand our understanding of configurations of film in both a contemporary and historical perspective, combining film and media theory with media history to address key problems in the development of new analytical frameworks for the moving image on the move.



## Acknowledgements

This book is the result of work carried out by the research group “Who owns the images?” created under the auspices of *Labex création art et patrimoine* (CAP) (Laboratory of Excellence Creation, Arts and Heritage) all of whose participants we would like to thank: Michel Alavoine, Victor Barbat, Christa Blümlinger, Hélène Fleckinger, Christophe Gauthier, Catherine Gonnard, Barbara Mutz, Catherine Roudé, Michèle Lagny, Béatrice de Pastre, Nathan Réra et Marie-Luce Viaud, sparing a special thought for Agnès Devictor, who was a source of constant encouragement in this project.

This research program was made possible thanks to the support of Philippe Dagen and Zinaïda Polimenova.

Our warmest thanks to our publishers Julien Ténéodos et Michel Wieviorka for including this volume in their series, as well as Pamina Guyot-Sionnest and Pascal Rouleau.

Finally, we should like to express our profoundest gratitude to those people with whom we had discussions and who enriched the book with their reflections: Carine Chichkowsky, Gérald Collas, Pierre Daubigny, Christophe Gargot, Béatrice Houplain, Rebecca Houzel, Arouna Lipschitz, Anita Perez, Nora Philippe, Mila Turajlic and Annette Wieviorka.



## Introduction: Dialogic Encounters – Thinking through Archival Images

Amrita Biswas, Johanna Laub

March, 2019: Tens of thousands of people take to the streets in Germany, Poland, Portugal, and other European countries. What is going on? They are protesting the European directive for the adaptation of copyright rules about to be voted on in Brussels (and which will be approved with a slight majority a few days later). This directive represented a long-overdue update of European copyright law and its adaptation to the digital age. It especially sought to ensure fair remuneration for creators. To enforce this, however, the EU also obliged providers such as YouTube to ensure that the material uploaded on their platforms is in accordance with copyright regulations. This provoked heated debates about the possibility of tech companies resorting to the use of upload filters, which could pave the way for censorship. Protesters feared for the protection of what they saw as the core of contemporary Internet culture: the unencumbered circulation and use of images, clips, and films.<sup>1</sup>

When Sylvie Lindeperg and Ania Szczepanska initially published *Who Owns the Images?* in 2017, these discussions still lay ahead. Yet the title of the book already posed the question that would later animate the debate. While the legal template of copyright suggests that the author or rights holder of an image is also its owner, the strong reactions to the EU directive made it clear that the public equally lays a claim on images and other media objects – as basic forms of communication, education, entertainment as well as cultural heritage. By problematizing the normative connection of ownership and copyright, this publication equally

1 June 2021 marked the deadline for the EU states to transfer the new copyright rules into their national law. It remains to be seen what effects this will have on the public's everyday use and access of and to (moving) images, the rights of authors and freedom of expression on the Internet.

- 12 thinks about other ways in which the status of images is not only determined by their existence as commodities, but also by their existence in the public domain.

Who owns the images, then? Is it the author, or is it rather – or equally – the public, the state, the archival institution, even no one? To what extent can we even apply the notion of ownership to an image? One of the merits of this publication is that it mobilizes an interdisciplinary perspective to theorize images in conjunction with the set of concrete practices and processes that delineate their institutional conservation in audiovisual archives. To ask ‘who owns the images?’ thus posits the slipperiness that the idea of owning images constitutes, teasing forth a critical investment into the precarity of the archival image. By confronting the anxieties that the media object invokes, the book provides the critical substrate to engage with the specific challenges of the audiovisual archive and the vulnerability of its material. Locating archival images within the coordinates of public knowledge, copyright, cultural heritage, and ethics of use and access, this book offers a productive engagement with the ‘collective fears’ that mark the status of the archival image in the digital age. If this publication articulates an observation of the current state of audiovisual archives, it must equally be understood as a call for action: “Laboring in this way under an ambivalent status, defined in a persistently juridical grey-area, submitted to the conjoined laws of commerce and spectacle, audiovisual archives lack protection” (21).

The publication is structured in four parts, of which *At the Archive's Borders* can be understood as a prologue. Here, the editors outline some of the central motivations of the book from their perspective. At its core lies an invitation to a debate that brings forth dialogues from different professions and disciplines surrounding the audiovisual archive. Such a relational approach to the archive makes apparent that its images and sounds are hardly contained by its borders, which prove to be rather permeable. In *The Strange Fate of Archival Images*, Sylvie Lindeperg

further elaborates on the historiographical value of audiovisual archives, but also the somewhat peculiar position they occupy vis-à-vis archives of written records. Lindeperg addresses what is to be gained from a historiographical investment in audiovisual sources, but also what is at stake if a sense of their integrity is lost through unethical circulation and manipulation. This is especially discernible in the contemporary trend of integrating audiovisual footage into documentary productions, through which archival material is not only subjected to certain aesthetic choices, but in which it also becomes part of a set of economic negotiations and tacit agreements between institutions, producers, and authors. Following up is *The Archives in Disarray*, a series of six interviews with practitioners and scholars from the fields of law, conservation, production, and philosophy. They constitute the core of the book by providing rich and at times conflicting views on the debates over authorship and copyright, digitization and distribution, or ethics of use. With *The Words of the 'Dispute,'* Ania Szczepanska teases out the common concerns of this debate, but also the disagreements and tensions within it. Her essay sums up the main anxieties, controversies, and common goals, while also pushing towards concrete propositions for establishing an ethical use of the archival image and sustainable relations between public, researchers, and institutions. It is here that the book also becomes most explicit about its own standpoint within this debate.

It is fitting that the English edition of this publication should appear in the book series of the research group "Configurations of Film." Not only does it pertain to central questions about the epistemological value of the audiovisual archive for film and media studies, it also shares an important methodological approach with the research group. The publication displaces notions of the archive as an enclosed institution and of the archival image as a stable entity by placing them within a network of different actors, locations, and usages. This mode of positioning a 'relational' way of thinking aligns with



- 14 the “entangled” method of historiography that focuses on “exchanges” and “encounters,” to understand the “interaction, interdependence and complexity” between different potent force-fields (Hagener 2014, 4). This enables the shattering of any one dominant mode of reading, instead opening up horizons that help to critically reflect on the transactions of the media object with other entities that co-constitute it. It is this relational mode of thinking that helps the book to situate and read archives in conjunction with issues that are critical to their functioning and structure.

### **From “Traces of the Past” to “Historical Agents”**

Audiovisual archives contain rich historical sources that warrant a reflective and critical interpretation. However, if images and sounds are considered entry points to an understanding of the past, this needs to come with a historiographical interrogation of their context, aesthetics, and politics. Especially the understanding of filmed images as “traces of the past” can become counterproductive to this endeavor, when indexicality is conflated with automatic truth-value and representation taken as a transparent window onto the past. As Lindeperg points out, the affective dimension of seemingly experiencing the past as a quite literally *reanimated* presence must not short-circuit the necessary labor of interpretation (13). This also means countering an old desire: for film to store an untouched and “mummified” past, rivaling written history through its vivacity. Of course, this hinges on a reductionist idea of writing history, one that fails to understand it as an interpretative, constructive, and narrative practice. If film studies has started to revise some of the realist strands of theory in recent years, it has been congruent with a reflection on historiographical methodologies within the field. “Configurations of Film” is very invested in fostering such a self-reflexive approach to history writing. The projects of the group

members not only recount histories of media objects, but are equally attentive to the politics of historiography.

In a kindred spirit, this publication pushes for an understanding of the relationship between film and the past that does not over-emphasize the dominance of indexicality, but reframes moving images as “agents of history” (12). Of course, audiovisual material still remains relevant as a potentially documentary source, which can even allow us to write counter-histories. However, instead of solely understanding the value of film and video as storage media, they must equally be conceptualized as historical forces and subjects in their own right. As cultural texts, they contribute to the collective memory of historical moments and are also actively involved in the situations they mediatize. Lastly, moving images can also be considered historical subjects in terms of their materiality – along with their scratches, pixels, and glitches – through which they refer us back to their own history of media configuration and circulation (Gitelman 2006, 20–21). As Lindeperg argues, “audiovisual archives are not, then, content with making history visible; they shape it and give it a new legibility” (12).

## **Policies / Politics of the Archive**

If we consider the audiovisual archive as a place from which to think, write, and contest historical narratives, *with* and *for* its collections, scholars also need to be attentive to the particular way the archive operates. Through discussions and debates, “Configurations of Film” seeks to question the practices, politics, and *modus operandi* of institutional structures that shape knowledge building. This approach renders significance to the norms and conventions of archival practices as well as the challenges they experience in their conservation efforts. Such issues are recurrently explored throughout the publication, especially through the perspective of practitioners. What enters the archive, and why? How is its material categorized and made

16 navigable? Who gets to access the collections and how is their conservation funded?

Archives have to navigate the “contradictions of access policy,” where different interests and worries collide. Access is a particularly rich term for thinking about the significance of archival practices. It already plays into the issue of object description and metadata, which lends a certain legibility to the “illegibility” of audiovisual material. It thus facilitates accessibility for researchers, but also shapes it on an integral level, for example by privileging certain keywords over others (35, 40–42). Moreover, while the notion is largely accepted that archives hold a cultural heritage that should be accessible to all, researchers and media professionals are often privileged over the general public, especially when the archive can expect sales revenues or publicity out of such collaborations. Granting remote access also comes with a set of problems. It enables a wider user base to low-threshold access to the collections, but also leads to issues with copyright and the risk of losing control over content. It can also be misleading in the sense that the importance of tactility is neglected, or in that what is accessible online is often but a fraction of the entire collection.

One also needs to consider the extent to which the practices of archives are structured by funding policies and economic constraints. As the editors note, this is often obscured by a “law of silence” (9), although financial capacities exert a distinct influence on how material is conserved, made accessible, and for what usage the archive will allow its distribution. How can archival institutions be funded in a way that is coherent with their task to conserve cultural heritage and serve the public? By envisioning “parallel modes of financing,” (78) the editors provide clues to constructing cooperation between different public and private actors. They offer the opportunity to lay out policies that would reconcile responsible conservation practices and notions of “public good” with the challenges of finding sustainable funding models, made all the more urgent by the digital ecosystem.

## Digital Infrastructures: Navigating through Abundance and Precarity

The conservation policies of archives have definitely been rendered more complex by digital technologies in recent decades. Digital tools have accelerated the circulation and reformatting of archival images, thereby providing a leverage for the exploitation of the same. This has triggered not only a distortion of the historicity of the archival original, but also an oblivion of its provenance with multiple altered copies in free circulation. Anxieties thus arise from the traveling nature of images. The *entry* into the archive is often not the end of their circulation; they continue to exist outside of it and also often *leave* the archive in the form of (digital) copies, only to re-enter it as part of a new film production, thereby building up layers of remediation within and beyond the archive. It is this porousness of the borders of the archive (7) that causes anxieties over how this will affect the integrity of images and their inherent historicity.

What is rendered visible by the travel of images is the manner in which legal frameworks fail to meet the challenges posed by the contemporary dynamic media environment. Claims for free access of data, developed on the notion of animating a culture of exchange that capitalizes on digital infrastructures, has problematized monolithic notions surrounding the copyright of data. Questioning the “contours of poetic license” (11), the authors call for creating an alignment between respect for historicity, creative freedoms, and the ownership of images. The authors do not argue against the reuse and even alteration of archival images per se, but against attempts to increase their commercial attraction and squeeze their affective potential in the process. Such practices are negligent or downright dismissive of the epistemic value that the integrity of an image possesses as a historical source and subject. If the audiovisual archive is to stay a significant place that future generations can consult with their questions about the past, a better protection of its

- 18 material becomes paramount. A first step towards this could be to decouple moral rights from the notion of authorship and to attribute them to images themselves (66).

Digitization has also provoked other tensions, complicating the operations of audiovisual archives. While digitization of archival images has greatly facilitated their accessibility and wider circulation, it has also led to a veritable “massification” of material. How can archives continue to process and conserve gigantic amounts of audiovisual data and provide access? Paradoxical as it may be, the challenges posed by digital infrastructures can only be tackled by productively applying digital tools to practices of object description and database building. Such critical concerns of this publication intersect with the research methodologies explored by “Configurations of Film.” How can digital tools intersect with the archival space, cumulatively acting as a fulcrum for enabling critical research as well as navigation through the archival database? Engaging with the methods of Digital Humanities, the research group reflects on digital software that can not only help recalibrate archival data along visual coordinates but also make possible diverse templates of data analysis and cataloguing. The data mining of the visual features of the archive is still underdeveloped, since computational methods have largely (though not exclusively) focused on text-based data. While artificial intelligence technologies, such as image recognition, are gradually evolving and becoming more and more precise, it is questionable as to what extent they will be able to recognize the historical and cultural significance of material beyond the identifiable content of an image. The analytical part of the object description of archival images will therefore most likely remain in the hands of “human” employees for at least the near future. However, efforts are being undertaken to expand the semantic approach to metadata and to explore options beyond the text-based search function, such as interfaces that structure archival material along their visual properties, such as color, patterns, or movement (Masson et

al 2020). Digital tools are opening a horizon of opportunities to foster a knowledge network that manifests diverse modes of the researcher's engagement with the archival space. This makes possible different templates of data usage, archiving, and access.

Turning to the other side of the coin, as Szczepanska points out in her closing essay, a paradoxical fear of amnesia, either through loss or through overload, marks the status of images in a digital media environment (73–76). On the one hand, there are reasonable concerns for the fate of images that exist outside of the archival realm, but have potential historical value. Such sources might easily be lost, simply due to their ephemeral and quotidian existence on countless cell phones, or due to the lack of support for private, non-institutionalized archives. On the other hand, it is necessary to reign in the urge to conserve *every* image, as amnesia equally becomes a prospect once the sheer amount of material becomes unmanageable. Loss is inevitably a part of archiving, and Szczepanska finds clear words for those who feel paralyzed by the responsibility of making a selection: “We are deluding ourselves with the illusion of limitless conservation out of a fear we might be making a false prophecy” (76).

## **Networks of Collaboration and Dialogue**

Let us take the creative freedom here to tweak the question “Who owns the images” to “Who uses the images?” to emphasize the different actors who interact with the audiovisual archive. Vis-à-vis the challenges that archives face, the authors envisage ways of building networks of co-operation that will help dissipate some of their constraints, such as collaborations with researchers, which would enable a better exploitation and understanding of archival materials. This call for extensive and inventive research alliances with archival institutions resonates with the pursuits of “Configurations of Film.” The research group fosters critical modes of interaction and collective knowledge-building exercises between archives and researchers, as manifested by its

20 partnership with the Deutsches Filmmuseum (DFF). Such a symbiotic interaction between archives and researchers will not only work to the benefit of the researchers but will also be fruitful to the archive since the researchers can be a valuable aid in contributing to database building. This is in congruence with the notion that archives are not institutions that operate in isolation. Rather, they act as significant nodal points in knowledge infrastructures that configure historiographies, manifesting critical linkages with other significant elements, such as cultural institutions or media productions.

The publication thus provokes an interdisciplinary debate that unbuilds the idea of monolithic compartmentalized knowledge domains and brings forth a multiplicity of perspectives that create an active field of tension. It opens up a dialogic space through multiple interviews, which think through the legal, economic, and ethical frameworks that structure the archive. Thus, *The Archives in Disarray* begins with an interview with a legal specialist in intellectual property, Nathalie Chassigneux, who comments on the limited protection of archival images by French law, which hinges on the attribution of authorship and a subsequent definition of images as “works of the mind.” Questions of copyright and moral right also inform the work within audiovisual archives, as the interviews with the conservators Xavier Sené (ECPAD<sup>2</sup>) and Agnès Magnien (INA<sup>3</sup>) make clear. An insight into how archival footage is actually used in film productions is offered by producer Serge Lalou and filmmaker Gabriel Périot, who comment on their respective approaches to the material.

- 2 ECPAD (L'Établissement de communication et de production audiovisuelle de la Défense) is an organization that is tasked by the French ministry of Defense with the creation and conservation of audiovisual productions related to the French military. Its history dates back to the establishment of units for photography and for cinematography in the French army in 1915.
- 3 INA (L'Institut national de l'audiovisuel) was charged in 1974 with archiving audiovisual material, especially French radio and television productions, and distributing it for broadcasting. It has been one of the forerunners in the field of digitization and providing digital access to its collection.

Lastly, philosopher Marie-José Mondzain reflects the temporality of archives, moral rights, and the paradox between liberal use and protection. These exchanges facilitate the possibility for building theoretical templates that recognize the specificity of the archival space and the challenges that it confronts and entails.

"Configurations of Film" echoes this engagement with interdisciplinarity by stimulating a debate on what constitutes the space of the archive and how the researcher engages with it. Through workshops devoted to archives in May-June 2021, the research group brought together multiple perspectives from various researchers and media practitioners to pose the questions: What could be the possible methods for engaging with the material or immaterial objects in the archive? What are the technologies that are crucial for the functioning of the archive? How can state policies and cultural specificities configure the archival space? Problematizing the power dynamics of the institution and dwelling on complexities that mark the same, the mini-cluster sessions stimulated interrogations of the value of archives in models of writing history.

*Who Owns the Images?* is a significant call to push the debate on the value, role, and status of audiovisual materials out of the respective disciplinary fields and into the public domain. It throws open possibilities for integrating "the political figure of a citizen who is both a contributor and co-director of the audiovisual heritage" (80) into acts of archiving, thus providing agency to the public in the mapping of cultural heritage. It therefore establishes avenues that help strike a balance between critical historical pursuits, public ownership of images, and the freedom necessary for artistic creation.



## References

- Gitelman, Lisa. 2006. *Always Already New: Media, History, and the Data of Culture*. Cambridge, MA: The MIT Press.
- Hagener, Malte, ed. 2014. *The Emergence of Film Culture: Knowledge Production, Institution Building and the Fate of the Avant-Garde in Europe, 1919–1945*. New York: Berghahn Books.
- Masson, Eef, Christian Gosvig Olesen, Nanne van Noord, Giovanna Fossati. 2020. *Exploring Digitised Moving Image Collections: The SEMIA Project, Visual Analysis and the Turn to Abstraction*. In *Digital Humanities Quarterly* 14 (4). <http://www.digital-humanities.org/dhq/vol/14/4/000497/000497.html> (last accessed July 8, 2021).

# At the Archive's Borders

Sylvie Lindeperg and Ania Szczepanska

Filmed images are infinitely precious for thinking about and interpreting the past, for writing and transmitting history. In recent years, the attraction they exert has grown exponentially. It can be seen in creative works as well as audiovisual programs, in the way these images help shape our memory and imagination of the past. The use of archival images raises historical, political and ethical questions: their transformations sometimes threaten their integrity; their legal definition suffers from a persistent imprecision; and their extremely high cost has hampered documentary production and experiments with innovative forms of historical writing.

These interrelated issues call for a debate that would bring together different professions and disciplines: historians, philosophers, archivists, legal experts, directors, editors, producers and distributors...These professions work with the same objects without always sharing the same language or logics. Compartmentalization of expertise and experience often produces delusions and misunderstandings. The resulting tensions create a demand for theoretical tools that would allow

- 24 us to think about practices in a state of constant evolution. They make it necessary for us to reflect on the status of archives.

## Archives of the Future

The value of moving images for writing history was felt immediately after the invention of the cinematograph by the first admirers of this machine capable of “embalming time” (Bazin [1967] 2005, 14; Bazin [1962] 1976, 16) and reproducing movement. In 1898 the Polish photographer Boleslas Matuszewski proclaimed the necessity of filming “slices of public and national life” (2006, 7-10). He proposed a system of accreditations to allow the camerapersons to record “public acts whose preservation can be useful for history” such as official trips, meetings of Heads of State, departures of troops or naval squadrons. They should be preserved by creating a depository of historical cinematography so as to give them “the same authority, the same official existence, the same access already enjoyed by existing sources” (2006, 323). Although History cannot be reduced to organized ceremonies posed for the cameras, the sources Boleslas Matuszewski wants to preserve are all associated with the exercise of political power. Establishing them is an affair of State. In his eyes, it depends on an institutional and sovereign act.

From the first appearance of moving images, then, cinematographic archives were envisaged as tools of knowledge and progress, and, at the same time, as instruments of control. Archiving is indissociable from what Jacques Derrida defines as “operations of power” (2014) that consist of “controlling the archive,” that is to say, establishing, selecting, classifying and communicating it. In this sense, the idea of an archive appears in keeping with the etymology of the Greek word *arkhè*, which means both ‘commencement’ and ‘command’ (Derrida 1996, 1; Derrida 1995).

The idea that the State should establish an archival collection of film found its first application during the Great War. In 1915, the

French Government was inspired by a German initiative to create a cinematographic and photographic unit in the French Army. Its images were given the mission of informing opinion and supplying war propaganda. They were to offer proof of destruction when the time came to justify demands for reparations and, beyond that, to establish archives of the conflict for future ages. This particular mission led the military cameramen to film shots that were not intended to be brought to the attention of the public immediately, especially those whose projection would risk demoralizing public opinion or delivering information to the enemy (Veray 2011, 35). These "archival documents" (Veray 2011, 45) were ordered to be preserved "in the greatest secrecy" before being provided for viewing to those whose task it would be to interpret them at some later date.

At around the same time, a different conception of the archive appeared, outside of any institutional framework and far removed from the spirit of the war effort. In 1909 the philanthropist banker Albert Kahn launched and financed the ambitious project of the Archives of the Planet. His goal was to "fix once and for all those aspects, practices and modes of human activity whose disappearance is now just a question of time" (cit. by Margerie 1993, 92). This project resulted in the creation of several thousand photographic plates and a hundred or so unedited moving images with the intention of contributing to human knowledge and promoting mutual understanding and concord between peoples. Since these images worked in the blind spots of official history and were animated by a long-term vision, they were radically distinct from the newsreels shown in theaters. Albert Kahn's photographers and camerapersons turned their gaze on the multifarious aspects of everyday life. They were contributing to the production of what Paula Amad has defined as "counter-archives" (2010).

These first initiatives, one public the other private, were the result of very different, sometimes contradictory, projects. On the one hand, they were serving the interests of the powers

26 that be, on the other, those of a counter-power embodied by the defenders of humanist utopias. What they have in common is that they are imbued with the intention to create an archive. They are seeking to establish documents for history, to consider the gesture of recording and preservation as something addressed to researchers and future generations. This shows that the idea of the archive is inseparable from speculation about the documentary value the coming years will grant to images. The archive is “an irreducible experience of the future” (Derrida 1995, 109).

## **Becoming an Archive**

However, this genealogy of audiovisual sources hardly offers a full account of the immense continent of what is known as archival images. In addition, there is the proliferating mass of images that are not thought of as archival but become so over time as they are used in different ways. The boundary of the archives is constantly being enlarged by the set of questions addressed to them. These questions induce historians to reinvent their sources, leading them to elevate to the rank of archive traces whose original purpose was in no way to speak for history. Historians can sometimes resemble the ragpicker described by Walter Benjamin, loading rags of paper and scraps of film into their carts (Benjamin 2005, 310).

The same is true of the filmmaker who exhumes shots in order to give them new meaning. It is this reworking and grafting that establishes them as archival images, whatever their initial status, aim, or original form. The reuse of images is not limited to unedited rushes. We see filmmakers drawing extensively on preexisting forms from which they take fragments: newsreels, family films, documentaries, fictions, televised programs, etc. Indeed, it was with the idea in mind that they could be reedited and marketed that the preservation of these materials originated. Gaumont and Pathé’s catalogues were established for

the purpose of in-house reuse and the sale of images produced by both companies, well before government agencies became concerned about protecting them in the interests of heritage preservation.

## The Heritage Craze

Conservation policies were developed by France in the 1970s. They enabled moving images to be progressively integrated into French national heritage. In the wake of François I's registration of copyright for printed materials (1537), then that of photographs and sounds (1925), copyright was put in place for video recordings (1975), films (1977), audiovisual materials (1992) and the internet (2006). These successive extensions adhered to the principle of a heritage collection aiming to provide materials for the study and understanding of French society that comprises all the documents in public circulation.

These public policies for the audiovisual domain developed in the wake of a memorial wave<sup>1</sup> and an infatuation with heritage that was also experienced beyond the borders of France. In 1974, following the 18th General Conference of UNESCO, professional groups—amongst them the International Federation of Film Archives (FIAF)—proposed resolutions for protecting cinematographic, photographic and audiovisual heritage. Relying on these propositions, in 1980 UNESCO issued a recommendation to ensure the protection and preservation of moving images. It defines them as “important and often unique testimonies, of [...] the way of life and cultures of the peoples of the world” (United Nations 1980).

1 [TN. A broad historical and media wave of interest in reassessing France's past that began after 1968. It was often critical of widely accepted myths of French heroism (in the Second World War say) but just as if not more interested in appreciating the positive role of myth itself and therefore images in shaping national consciousness than had heretofore been the case, as in Pierre Nora's notion of the *lieux de mémoire*.]

28 Applying these widely agreed-upon principles turned out to be a complex matter, however, because of the specific characteristics of audiovisual documents. UNESCO emphasized how vulnerable they are due to “the nature of their material embodiment and the various methods of their fixation” (United Nations 1980) The costs of preserving them have only increased as technological developments required archivists to migrate their collection from one type of medium to another. The legal ownership of the filmed images has made their preservation an even more complex task to achieve. The rights governing access as well as circulation are different depending on their status. Their level of protection varies according to whether they are recognized as “intellectual works.”<sup>2</sup>

An equally contentious source of disagreements that have been the subject of public debate in France are the choices made by organizations tasked with their conservation. This is the case for the audiovisual copyright entrusted to the *Institut national de l'audiovisuel* (National Audiovisual Institute, henceforth Ina). Its hybrid status led it to sell its images in order to finance the technical costs of preservation. A *député* of the National Assembly, Bruno Bourg-Broc was sufficiently worried about this during a parliamentary session that he observed<sup>3</sup> “it is not normal for a public body of an industrial and commercial nature to be entrusted with the management of copyrights” (1992, 1332). Currently, the fear that images might be commercialized is shared the world over by a number of professionals working in archives, in the audiovisual domain and in research. Moving forward, Ina represents an exemplary model at a time when private agencies—like *Getty Images*—are buying up entire swathes of the international patrimony with the aim of selling them for a high price while showing no concern for their provenance or identity.

2 [TN. Term used by UNESCO referring to works of historical and cultural significance that should for that reason fall into the public domain: <https://unesdoc.unesco.org/ark:/48223/pf0000117569>.]

3 *Journal officiel*, n. 30, 19 May 1992.

The control and legitimation of audiovisual sources also runs up against the absence of a certifiable status for archival images whose scope remains ill-defined and their borders porous. Because they are not mentioned in so many words in the laws as written, they do not benefit from a status equivalent to written archives nor indeed to that enjoyed by cinematographic works. This semantic imprecision has promoted a legal imprecision that French jurisprudence is struggling to correct proceeding by proceeding. Rights holders no longer hesitate to step through the courthouse doors and wage long battles against large institutions. An example of this can be seen in the recent suits brought against the *Musée national de la Marine* (The National Maritime Museum) and ECPAD<sup>4</sup> (Center for Military Audiovisual Communication and Production).<sup>5</sup> These actions have at least had the benefit of bringing about an evolution in the legal status of archival images. They induced the institutions who preserve them to undertake a more thorough identification of their collection in order to recognize, if their specific characteristics fit the criteria, the preserved image's authors and their potential rights. It is in this way that the EPCAD, conscious of the necessity to lend support to these legal developments, has recently started reflecting on the status of war camerapersons and the criteria that would justify them aspiring to the position of author.

## Envy and Conflict

The "attraction" (Blümlinger 2014, 7-16) felt for archival images expresses itself both in the areas of creative works and research and in audiovisual programs emanating from the culture

4 [TN. Etablissement de Communication et de Production Audiovisuelle de la Défense, the main French Military Film Archive].

5 As a result, in 2013 EPCAD was condemned by the High Court of Paris for having sold a photograph of General de Gaulle taken by Guy Mas, who worked in the cinematographic section of the Army, to the publishing house Fayard. The photographer's nephew had asserted the moral and heritage rights of his uncle.



30 industry. This trending phenomenon can be seen most clearly in television. Encouraged by the success of certain historical documentaries, television programmers have urged production companies to propose films based on audiovisual archives. With each large wave of commemoration, they have maintained the taste for history with a wide audience. This editorial direction has been bolstered by all those active in the audiovisual world who find it works to their benefit. Producers who want to sustain the economic stability of their company are eager to respond to the channel's orders—whether they are public or private. Although these projects are often onerous and require higher budgets than the average documentary film, they can obtain supplementary funds for them—though the rules for the distribution of this aid have provoked heated discussion within the profession.<sup>6</sup> This general enthusiasm also extends to the filmmakers who have recourse to archival images in a more systematic way. When their budget allows, they turn to archivists who can give them access to the collection and negotiate the price of the images.

As a consequence, this type of production gives rise to complex transactions with the archival institutions who have the media in their possession. The requests are treated on a case by case basis, without a clearly indicated price scale, and suffer from an endemic lack of transparency that often lends itself to dubious practices. The result is that there is a great temptation to foster confusion between the cost associated with the image's copyright and the cost of its reproduction. In fact, the price for a minute of archives that has fallen into the public domain frequently varies according to how widely it has been circulated, whereas it ought to be stable given that these images are legally free.

6 In 2015 using archival images became one of the relevant criteria for obtaining supplementary financial aid from the *Centre national du cinéma et de l'image animée* [National Centre for Cinema and the Moving Image], henceforth CNC. This "subsidy for historical and scientific [film]" was established within the framework of the General Regulations for funding (Book III) [[https://www.cnc.fr/cinema/etudes-et-rapports/reglement-general-des-aides-financieres-rga\\_215802.](https://www.cnc.fr/cinema/etudes-et-rapports/reglement-general-des-aides-financieres-rga_215802)]

The buyers do not always complain about these abuses since the deals struck rely on tacit agreements, reciprocal understandings or bonds of interdependence. Producers of historical documentaries cannot easily bypass the archival institutions on which they depend. For their part, the institution's personnel have to reconcile their long-term economic viability with their mission of conserving and disseminating images to diverse audiences. These dilemmas are particularly acute in archives whose mission is to serve the public. Those responsible for conservation sometimes clash with their counterparts in marketing because they have different objectives. These kinds of tensions raise the fundamental problem of deciding which mission must be prioritized in a context of economic fragility. Nevertheless, if these conflicts are regularly discussed behind the scenes, any mention of them is suppressed in public debates. This law of silence extends to other delicate subjects too.

In order to bypass fee schedules they judge exorbitant, certain producers and filmmakers have not hesitated to resort to acts of bootlegging. They take the risk of not paying for the rights to use images when they possess a copy. Researchers are also tempted to bypass the regulations. The use of moving images, which has become a general practice at all levels of research and teaching, continues to take place in a zone of lawlessness. Academic works are no longer confined to writing. Amongst the new generations of researchers, the desire has grown to lay out their thoughts in filmic form. The university as an institution, wary as it is in the face of these new forms of writing, will not, however, have any other choice but to support this type of work and to confront the problems about rights they create.

## **The Digital: Remedy and Poison**

Tensions connected to the use of images have been greatly exacerbated by the digital environment and its new practices. For archive storage facilities, the era of widespread digitization

32 presents an opportunity as well as a burden. It has facilitated the opening up of the collections, their accessibility and consultation. But digital recording capacities have also multiplied the audiovisual archives to be collected and preserved, inventoried and indexed to a vertiginous degree. This massification raises formidable epistemological, methodological, technical and financial questions. It poses no less of a major challenge to researchers. For a long time, historians' methods were grounded in the consciousness that traces allowing us to grasp the past were scarce. History, writes Paul Veyne, is a "mutilated knowledge" (Veyne 1971, 151). But if this incompleteness remains intrinsic to the discipline, the massification of sources adds the challenge of abundance and "too much." This paradigm change requires the establishment of new methods as well as research tools. In this sense, as Bernard Stiegler has remarked, technology is both the poison and the remedy (Stiegler 2014, 62).

The digital environment has also caused tensions between the author's rights and the turmoil disrupting the socio-economic model on which they have for so long been grounded. Like the musical sector before it, the audiovisual world has found itself confronted with a radical redefinition of the ways in which the market value of images and films was allocated. The circulation of unauthorized copies has provoked defensive reflexes in response. As a result, new conflicts have opposed the right of copyright to those of users. The latter's claims in the name of a culture of exchange and free access are made with particular vehemence by those who have grown up in the digital era.

Traditional forms of copyright have equally been put in question in the name of the freedom to create using existing images. New practices of reuse, like the *mash-up*, have multiplied on the internet. Drawing on the idea of "cultural poaching" so dear to Michel de Certeau, (1984) some creators are now campaigning for a new right to innovate and experiment. They propose that exceptions to copyright be expanded and the right of quotation adapted to cover images. For example, one French collective

launched a petition to “promote a renewed ethic and practice of making images accessible”<sup>7</sup> presented as a positive alternative “to the theft and misappropriation of intellectual property.” The petitioners propose a considerable reduction in the fees charged for the reuse of images and making their rights to royalties proportionate to the profits generated by the use made of the work. The sharpness of the exchanges attests to the tensions produced by these new web practices as well as the belatedness of the law as it struggles to adapt itself to a fluid and constantly changing environment.

## Towards an Ethic of Use

Digital technologies have sparked other equally animated debates on transformations of images from the past because they have made the transformation of the audiovisual archives submitted to operations of reformatting, addition of sound and color so much easier. It was in *prime time* television that these procedures were systematically employed in response to broadcasters’ desire to adapt images to contemporary tastes and bring them in line with present-day viewing habits. These practices were, moreover, anticipated by some archival institutions and so American index cards frequently add the note that they are “suitable for colorization.”

Any distortion of traces from the past gives rise to particularly acute ethical questions when they are displaying the wounded or dead or preserving the imprint of victims at the threshold of annihilation. Voices were raised to protect this sensitive and spectral material against the excesses of the society of the spectacle. There is certainly nothing new about these debates on the propriety and integrity of the image. But digital remodeling

7 “Pour une charte du xxi<sup>e</sup> siècle sur la circulation des archives audiovisuelles” [For a twenty-first century charter on the circulation of audiovisual archives], started by Arouna Lipschitz, Prune Berge, Jean-Louis Langlois et Jean-Claude Marchand.

34 and the massive circulation of images on the internet have only exacerbated the conflicts. They have made reflection on the conduct of archival use all the more imperative.

The aim of this book is precisely to launch a debate by confronting points of view and opening up professional horizons. It questions the forms in which history is written, the contours of poetic license, and the nature of the pact between creators and viewers. The dialogues presented in the book reflect on the conservation and the business of audiovisual archives. They imagine ways of reconciling respect for historicity and the ownership of images with the freedoms necessary for creation.

# The Strange Fate of Archival Images

Sylvie Lindeperg

Since the turn of the last century, archival images have become the subject of growing enthusiasm. This has become apparent in both creative works and academic research as well as in the culture industry. While this general fervor is to be welcomed, it is incumbent on us to reflect on the contradictions such multiple uses sometimes engender.

The belated invention of the cinematograph, the technical specificities of archiving it, the market value of filmed images, the legal questions they raise, have all meant that they exist on the margins of the rules currently in force for the conservation and communication of archives. For while they are indispensable sources for history, they do not benefit from a status equal to written archives, not do they enjoy all of the protections accorded to works of art. Archival images have certainly had a strange fate...

## On the Margins of History

After long years of neglect by historians, filmed images have gradually become recognized as precious sources. They can shine a physical light on events, renew our points of view and reopen perspectives on them. They bring to light forgotten facts and subjects. Images from the archives are also symptoms of an epoch's *mentalités*, of its ways of seeing and thinking, of shaping opinion, constructing memories and leaving their mark on the imagination. Film and audiovisual materials are "agents of history" (Ferro 1993) equal to any other. By filming the world, camera operators are helping to modify it. Techniques for capturing and transmitting images conspire to produce a meta-event manufactured as a function of the very possibilities of its inscription in the medium of film. This technology also removes the temporal gap between the occurrence of a fact and the creation of a record that it happened, a profound modification of the structural conditions of history writing.

Audiovisual archives are not, then, content with making history visible; they shape it and give it a new legibility. Any assessment of their significance must therefore go well beyond the field of cultural history. They form a precious material for any political, social and symbolic history of contemporary worlds.

Even if such an understanding is gaining ground amongst historians, it does not mean that all resistance and every obstacle have been overcome. These go back to a time when cinema itself had not yet crossed the threshold of the laboratory. In France it took until the end of the 1960s for pioneering historians to embrace film. Precursors like Marc Ferro, Pierre Sorlin, Michèle Lagny had to overcome the reservations of their peers who continued to hold that film was an illegitimate and tainted subject of study because it possessed neither the nobility of the written word nor the unquestionable aura of a work of art. In those days, access to films was limited to cinemas and their documentary value seemed hard to discern. As for archival images, preserved

by institutions like Ina or ECPAD, they remained largely inaccessible to researchers. While it is true that nowadays today those prejudices are a thing of the past and access to those sources has become much easier, thanks especially to the Inathèque, contemporary French historians have remained reluctant to fully integrate filmed images in their research and teaching. With some isolated exceptions, historians specializing in film and audiovisual materials are still kept on the fringes of history departments. Even if their work is less systematically ignored than before, they exercise their Magisterium outside of their discipline, in Departments of Film Studies, where until recently their position was marginal.

This slow and belated realization has hampered the indispensable development of a theoretical and methodological pedagogy dealing with these very specific types of source because the interpretation of film images has to be submitted to rules that must be all the more rigorous given that they have to be handled with sensitivity.

## **The Image as Trace: Confronting the Intelligible with Loss**

With their ability to make visible a past that is no more, audiovisual archives have been at the origin of numerous deceptions. In *L'Absent de l'histoire* (The Absent of History), Michel de Certeau compares the position of the historian to that of Robinson Crusoe on the shores of his island when he discovers the "the print of a man's naked foot upon the shore":

The historian travels along the borders of his present; he visits those beaches where the other appears only as a trace of what has happened. That is where he sets up his workshop. From imprints now permanently mute (what is past will never return, and its voice is lost forever), a staging [*mise*



*en scène*] is constructed of the operation that confronts the intelligible with this loss.

A filmed image is charged with a greater quotient of reality than a written trace. It therefore seems to limit the loss that is at the heart of historical work. Capture by the cinematographic machine, because it seems to retain both the imprint and the foot, offers a surplus of the real that can produce numerous illusions. A recorded voice is no longer quite the same, but is already not quite lost anymore. This effect of presence gives the feeling that something of what is past has *returned* so that it can be fully restored to us. In this sense it is a trap that short circuits the work of interpretation.

At the end of the 19<sup>th</sup> Century, Charles Seignobos and Charles-Victor Langlois, at the same time as they were laying the ground for historical method and fixing the rules of expertise in documents, were warning their contemporaries about the fact that history could never aspire to have the status of a science because it was not derived in any way from observation. At that same moment, the Lumière Brothers' invention was being greeted enthusiastically by some of their contemporaries. In their eyes it marked the dawn of a new era when, thanks to the cameras, knowledge of the past would become an exact science. The critic of the *Journal des débats* was predicting that chairs in history would soon "all be occupied by mere presenters of magic lanterns," and specified further that many errors would thereby be avoided for future generations. A journalist writing in the *Petit Moniteur* compared these images to "slices of the past in bottles" that you would just need to age, like a fine vintage wine, to make bygone centuries "live again." These images would not be traces requiring interpretation but facts in boxes. Their preservation would permit future generations to observe them. History would be rendered to us in the plenitude of the real. The camera would become a "veridical and infallible eye-witness." The exactness of mechanical reproduction would overcome the failures and evanescence of memory and oral testimony.

The idea according to which filmed archives enjoy the status of “absolute proof” delivering a completely unassailable truth, incontestable and intangible, has never gone out of date. Not without paradox, for the whole of the twentieth century this belief has existed side by side with more and more sophisticated forms of image manipulation, amplified by the advent of sound cinema and the effects of editing. Consequently, each era has projected its psyche, dreams and fantasies on its views of the past, enrolled them in the service of propaganda, forced their meaning, appealed to them and treated them without restraint.

Filmed archives find themselves caught, therefore, between a rock and a hard place: interpretation suffering a short circuit of faced with the illusion of a past that *returns*; the commentary that distorts them, turning them into pure projection surfaces reflecting the ideologies and gaze of the present.

Faced with this fact, historians ought to recall, in both their texts and their teaching, that their profession requires them to establish sources and *interpret* documents—whether they are written, filmed or photographic—to advance our knowledge of the facts and understanding of the past. It behooves them to be especially rigorous when reflecting anew on the division at play between visibility and legibility in the moving image. This sort of attention requires familiarity with film and audiovisual culture, a knowledge of techniques and ways of filming, a reflection on the context in which a shot was taken and its relationship to the space off camera. Because, it bears repeating, the cinematographic image only offers a portion of the real that has been given a form and framed. It is the expression of a point of view at the same time that it is an archive of various ways of filming, of apprehending the world, of bringing one’s gaze to bear on one’s contemporaries. It reflects less the events themselves than it is a witness of them and bears the marks of their time and place.

40 The audiovisual archive is also a sensitive plate where the looks and emotions of the men and women of the past are deposited. In this archive and by means of it, the intelligibility of the facts is enriched by "an experience of history." (Zabunyan 2015, 191-201). To the documentary value of the images a spectral power is added: they gather the traces of those who have come before us, they give body and voice to the absents of history. This passage through the visible also leads into unknown territory. The filmed images sometimes dispossess us of what we know or thought we knew; they shake up our certainties. Developing this history presupposes that we penetrate into the shots' depths, paying attention to details, to secondary characters, to backgrounds. Although art historians have long practiced this "closer look" at images, (Arasse 1992 [1996]) contemporary historians are less accustomed to do so.<sup>1</sup>

Given this, there remains much to do if we want to give audiovisual sources their full place in history and illuminate their role in producing what affects the senses and emotions, and in constituting the imaginary and transmitting events and beliefs.

Now whereas filmed archives have been slow to completely to conquer their full place in research and teaching bodies, they have benefited from a growing attraction on the part of filmmakers, producers and distributors who have actively recruited out historians to be authors or consultants. Although having recourse to historical advisers is nothing new, at present it is frequently a required condition for securing financial aid.

These collaborations, at once fruitful and conflicted, take a great variety of forms. They occupy the whole spectrum from televised documentaries on prime time to the most experimental of creative films. TV productions broadcast when the largest audience is watching have become one of the principal avenues

1 Fixed images have, on the contrary, occupied an important place in the work of classicists, medievalists and modernists.

for transmitting history. In this regard, they deserve to be examined with special attention.

## Abused Images

These historical documentaries frequently operate a disjunction between the history of the events and that of the images that make it visible. The former would justify the appeal to historians, presented as the guarantors of an “objective” exposition of the facts; the latter would be the domain reserved to the filmmaker. From this perspective, the historians generally have as their sole task to validate how the narrative is parsed and the historical exactness of the commentaries, without having any influence on the way in which archival shots are arranged, interpreted, or the way in which their historicity, their nature, and their status are or are not taken into account.

This division of tasks poses a problem: can one respect “historical truth” if the history of the images is falsified, their meaning abused, and their technical and ideological determinations ignored, indeed denied? There is only one history and forms are active participants in it, as Jean-Louis Comolli has said: “the history of cinematographic techniques is that of their historical limits, which are not separate from the history of societies.” (2013, 197).

The division of labor between historians and filmmakers allows audiovisual productions to profit from an academic label. It sometimes leads to the legitimation of ahistorical practices that our understanding of images, as it is constantly progressing, have rendered increasingly questionable.

A number of films on the events of the twentieth century events existed in an age of innocence that preceded the era when images had a history. The first documentaries on the camps had to depend on a historical expertise still in its infancy and a deficient knowledge of photographs and archival shots. They

42 were made at a time when the political, social and symbolic demands made on images were quite different. Today the horizon of reading has radically changed. To use a fictional shot to show the arrival of a convoy of deported Jews at the ramp of Birkenau or to illustrate them waiting in front of the gas chamber with photos of executions by units of the *Einsatzgruppen* betrays the meaning of the images and distorts our comprehension of the event because historical understanding established over the years has clarified the successive steps of the extermination of the Jews and distinguished the concentration camps from the killing centers, including in terms of their visibility. The desire to destroy all trace of the gas chambers and to make the murder of the Jews invisible has been the object of numerous reflections. It was at the origin of the foundational work of Claude Lanzmann, *Shoah* (1985). What the filmmakers of the years from 1940 to 1950 could not know or understand has been brought to the attention of their successors, by historians as well as filmmakers. The fact that certain of them have reintroduced these kinds of misuse now depends on deliberate deception or a barely excusable ignorance. These practices are particularly worrying when these same filmmakers are claiming to transmit the historical truth and are brandishing the images as proofs.

## **Everything and its Opposite**

Digital technology adds a new dimension to this exploitation of archives because it has facilitated their reformatting and colorization. These practices have become par for the course in the most highly rated programs of network TV. Champions of these processes present them as the “only solution” capable of raising the broader public’s awareness of history. It would be, in this sense, a necessary evil, a concession made to the audience’s new habits. This justification is aimed most specifically at the young, supposedly incapable of watching black and white images. Such a claim, however peremptory and condescending, deserves to be considered and debated seriously by teachers and education

specialists. But it turns out that the argument for the lesser evil is frequently contradicted by a more specious assertion: colorization would also be a technological must-have in the service of the truth. Such contradictory explanations are at the center of the promotional language of the series *Apocalypse la 2ème Guerre mondiale* (Apocalypse: the Second World War), produced by France 2.<sup>2</sup> The marketing campaign of the TV channel—largely focused on the beneficial effects of the “color reproduction”—represents in this regard a textbook case. It is worth pausing to look at it even though it is only one symptom amongst others representing the denial of the principles governing history writing at work in this series.

Taking their cue from the fact that the camera operators and filmmakers saw the world in color, the series creators Isabelle Clarke et Daniel Costelle assert that digital technology allows the “flaws” of black and white images to be corrected, to repair their technical insufficiencies, to make them “more true.” In the name of a technicist discourse, absence finds itself transformed into mutilation, the real confused with its recording. If the camerapersons and filmmakers involved in the Second World War saw the world in color, they were perfectly conscious they were filming in black and white. On the contrary, when they were using—very rarely—color film, they made the choice explicitly, and judged themselves responsible to their viewers for it. This was the case for John Ford when he filmed the battle of Midway in 1942, adding colors to create a hymn to the American nation. In a perfect chromatic continuity, the filmmaker plays on the gleams of the setting sun to illuminate marines at rest before the decisive battle. Then he shows them hoisting the star-spangled flag whose red lights up, before ending his film with a “V” for Victory written in letters of blood. Ford is not therefore content to record colors, he thinks about them and aligns them with one another. When the production team on *Apocalypse: la 2ème Guerre*

2 [One of France’s major television networks.]

44 *mondiale* arbitrarily colorized the shots of *Triumph of the Will*, it did not make the film “more true.” On the contrary, it created a forgery. The filmmaker Leni Riefenstahl participated, at Albert Speer’s side, in the staging of the 1934 Nazi Party Congress; she coproduced the event in order to film it better and convey its full size for the cinema viewer. There is no doubt that just like Ford she would have thought about and carefully chosen her chromatic effects if her film had been shot in Agfacolor.

In the War, camerapersons were not simple recording machines. Their images bear the trace of technical, political and military limits that were imposed on them at the same time as they reveal the imprint of their personality, choices and vision of combat. Colorization systematically camouflages the identity of the images. It prevents us understanding the differences between the majority of shots of the conflict filmed in black and white and those, infinitely less numerous, filmed in color. Nor does it allow us to distinguish between images made by professionals from those of amateurs—German and American—who had color film available for their compact cameras the chromatic nuances of which have very little to do with the palette of *Apocalypse*. Smoothing by means of color, therefore, artificially closes the gap between these amateur films and “official” archives whose characteristics it renders indistinguishable. Like the films of Leni Riefenstahl, the newsreels were filmed in black and white and shown in cinemas. They helped to create forge an imaginary of an event for the contemporary audience. They *acted* in the present of history. For if the Second World War was in color before it was recorded, the mental universe, the representations of the conflict, the collective imaginary of the great nations at war was transmitted in black and white. In the same period, images shot by amateurs were restricted to their own private circle; they were not seen by any audience. Amongst these sequences, we must also distinguish images of war filmed by “non-professionals” and their “home movies.” The filmmakers of *Apocalypse Hitler*, who mix indiscriminately images of the Führer’s inner circle with

official film of the Nazi regime, are sowing confusion between the public and private spheres. They are feeding the old cliché of the ordinary man hidden behind the monster's grab, personalizing to the nth degree the viewer's perception of the driving forces of history and distorting the full comprehension of the political foundations of the exercise of Nazi power. There is no question here of banning these images nor of denying the interest they might have. Instead, we should be conscious that they must be handled with sensitivity, and invent a critical apparatus allowing us to distinguish them so that we can confront them with the official archives. What gets abolished through systematic colorization are all these differences in characteristics and status, imposing a false visual continuity between images filmed from dissimilar points of view. It also allows the filmmakers of *Apocalypse* to make their amalgamation of archive documents and fictional plots less discernable and maintains the audience's illusion that every event of the past had been filmed.

## The Historian's Seal

In the case of *Apocalypse: la 1ère Guerre mondiale*, the uniformity achieved by color was carried out with the help of specialists in military history. This collaboration does not make it either more true or more legitimate. It is even possible that it aggravates the deception. Because these historians, presented as the guarantors of authenticity, permit the filmmakers to certify that the added colors are the "true colors" of the past. Leaving aside the fact that their expertise does not go further than the military accessories shelf—armaments, flags, uniforms—it is useless for "rediscovering" the nuances of a winter sky, the shade of a soldier's hair, the eye color of a passerby, or the skin tone of a mutilated corpse. The true problem of this kind of cosmetic makeover lies elsewhere: the historical consultants, whatever the extent of their knowledge, are not restoring their "true colors" to the images, they are subjecting them to the artifice of an *enhanced reality*. Because this colorization 'certified in compliance' does



46 nothing but revive the old illusion of the past returned to us in all its fullness. Cinematographic shots are not considered there as witnesses, points of view on the world, but rather as the “visible reality of things, the truth of history itself in so far as it appears in evidence on the screen.” (Niney 2009, 116). This truth emerging fully-armed from an image confers in *its* turn the authority of what is seen on the most arguable commentary and narrative choices: the great historiographical debates of the day are ignored in favor of a simplifying tale, without uncertainty or gaps; the commentary defends a hackneyed conception of “history as battles;” and the series relies on a teleological, personalized and psychologized history. It also constructs the “illusion of a smooth, straight and unbroken time. As if the present, by a feedback effect, was returning to the past in order to align it with the present’s forms.” (Comolli 2013, 195).

In this way, the consultants for *Apocalypse* find themselves caught unwittingly in another contradiction of the marketing pitch that presents colorization as the ideal means of “modernizing” the conflict by presenting the audience with images that are “closer to them.” As Isabelle Clarke explains, their avowed goal is to “resemble current news programs.” (Psenny 2014). This strategy displays all the symptoms of “presentism.” It flattens the temporal separation from the past, abolishes our distance from it and annuls its articulations. When the past is revisited in this way it is forcibly driven into an completely expanded present to whose moral judgments, ways of seeing, speaking, feeling, sensitivities it weds itself: a “enormous present, invasive, omnipresent, that has no other horizon than itself, manufacturing daily the past and the future that it needs day after day.” (Hartog 2003, 200). This a-historical dimension represents the major problem of a series of which colorization is only its most visible aspect. It places itself in opposition to the historical approach whose lessons it claims to be transmitting. History requires a constant labor on time scales that envisages the past through a dialectical adjustment conjoining distance and proximity. The archive—written or

filmed—allows us to understand these gaps, to trace their frontiers. Foucault speaks of it as a “border of time” that surrounds and “overhangs our present” and “indicates it in its otherness.” The archive is “that which outside of us, delimits us.” (2002 [1969], 147).

It is this dialectic of times that confers its evocative power on the work of Yervant Gianikian and Angela Ricci Lucchi. In their films, they do not display any purist respect for the archive. The images are slowed down, enlarged, tinted, perforated without respite. But these formal experiments are placed at the service of a desire to see and question the traces of the past. They are animated by the will to reveal the ideology that undergirds them, to discover in the texture of the images the hidden violences of history. Exposed in its crossings-out, its alterations, its wounds and its “sufferings,” the shot is not artificially remade to fit current tastes, it is revisited from a present that is on the alert. The image, seen in its otherness, is examined through the metamorphoses of time that has led it on its tangled path down to us. In Gianikian et Ricci Lucchi, as with other filmmakers, poetic and plastic experimentation allows them to reflect on history through cinema, by a vigilant and interrogative reuse of images from the past.

It is not, then, the formal work on the archives or colorization in itself that causes the problem in *Apocalypse* but rather what the filmmakers make the images say in the name of a supposed truth, the way in they have forced the meaning, the anachronism that presides over their transformation. By subordinating the shots to contemporary ways of seeing and thinking, the people who conceived *Apocalypse* robbed them of any sense of historicity and submitted them to a totalitarian ideology that dares not speak its name. “Modernized” in this way by the makers of the series, the events and images of the last century present the same digitally operated face-lift, with a commentary by Mathieu Kassovitz, submitted to the stylistic tics of the authors, dressed in the graphic charter of the “brand.” Each episode, whatever the subject, offers the viewers a deep-dive in the image and sound, a hectic editing

48 that pulverizes the length of the shots, a perception of history governed by an exclusive appeal to affect. Under the *Apocalypse* banner, the events of the twentieth century convey this same eschatological vision of the past that reaffirms the fatalism of peoples faced with catastrophe and the “madness of tyrants” rather than illuminating the multiple causes of their rise to power, awakening the critical intelligence of the citizen before history, arming the gaze of the viewer as they confront the image. These missions would befit a public service respectful of its audience. In this regard the fact that the series was co-produced by France 2 only makes matters worse.

Beyond this, these programs have numerous repercussions that go well beyond the framework of their broadcast on television.

## Ethical Questions

Shots from *Apocalypse(s)* are used in class by certain college and high school professors. Some see in them simply ease of access, others a means of offering their students an appetizing, formally more attractive, history lesson. These distorted views are also disseminated on the web, deprived of any reference to the source images, without any mention of the transformations they have undergone. Doctored shots like these, detached from their original media supports, are substituted for them in the imagination of the viewers.

In this sense, digital technologies have accelerated the ubiquitousness of archival images, the loss of their authenticity, the oblivion of their point of origin. The disappearance of the *hic et nunc* of the archive has deprived it of the place where it could still “practice its history.” (Benjamin 2006, 103).

It also happens that certain conservation institutions succumb to the temptation to do a cosmetic makeover of their images. In 2014, under the leadership of Mathieu Gallet, Ina envisaged setting up a colorization unit that would have allowed it to make

money from its stock by selling “updated” images produced in-house. Could anyone imagine the National Archives giving itself over to touching up the documents entrusted to them to make them more attractive? Certainly, colorization is not carried out on the originals, which remain as they were. It nevertheless seems strange that an institution whose task is the conservation of the archives—and therefore should preserve their integrity—could have considered setting such a bad example.

Public bodies storing audiovisual archives are, however, less culpable than the regulations which submit them to opposing injunctions, pulling them one way for their heritage mission and the other to make money. In a, a public institution both industrial and commercial in nature, is therefore constrained to finance itself in part through the sale of its documents. This other difference from written documents and the operations of the National Archives gives a good idea of the strange treatment reserved for filmed images.

Laboring in this way under an ambivalent status, defined in a persistently juridical grey-area, submitted to the conjoined laws of commerce and spectacle, audiovisual archives lack protection. They are sometimes relegated to the sad fate of merchandise that can be transformed in any way one pleases once the rights have been sold, the buyer considering they are freed from any obedience to history and ethics demanded by their status as traces from the past.

There is no doubt that technical innovations will always allow for further transformations of images. After 3D photos, acoustic research now allows for the recreation of the voices of great historical figures from the past and lets them speak on the silent documents. If digital technologies offer precious instruments for analyzing images like this, they also make it possible for their transformation to be boundless. In that case, should not they make us undertake an ethical reflection parallel to that which accompanies medical advances? If these technical innovations

50 cannot be challenged as such, historians have a responsibility to criticize how they are used on a case by case basis, a duty to point out the perverse effects when they lead to a travesty of the truth and falsify the perception of the past. For the legitimate conquest of the public cannot be achieved in defiance of history, by the mistreatment of images.

What is needed most urgently today is to encourage the diversity of forms, promote media presentations both demanding and respectful of the audience, and discuss in public the use of filmed archives. They raise eminently political questions; they are of vital interest for the future; they prefigure the conditions under which tomorrow's history will be written.

This text is a fuller and updated version of Sylvie Lindeperg's article "Le singulier destin des images d'archives: contribution pour un débat, si besoin une «querelle» [The strange destiny of archival images: contributions to a debate, if necessary a 'polemic.'" in *L'Extension des usages de l'archive audiovisuelle*, Ina, E-Dossiers de l'audiovisuel (June 2014).

# The Archives in Disarray

**Interviews conducted by  
Sylvie Lindeperg and Ania Szczepanska**

with Nathalie Chassigneux, Serge Lalou,  
Agnès Magnien, Marie-José Mondzain,  
Jean-Gabriel Périot, Xavier Sené

To launch a debate about the conservation and the uses of archival images we started a dialogue in 2016 and 2017 with representatives of archival institutions, researchers in the humanities, legal scholars and key figures in the fields of film and television production. Certain producers, particularly some working in television, preferred not to discuss these delicate issues in a public forum.

All the dialogues published in this section are transcriptions of oral exchanges, which were edited and validated by our interlocutors. The exception is the text of philosopher Marie-José Mondzain, which is based on an e-mail exchange.

The conversations with Agnès Magnien and Xavier Sené had the purpose of making transparent the policies of two major audiovisual archives in France : The INA (Institut National de l'Audiovisuel) and the ECPAD (Etablissement de communication et de production de la Défense, the audiovisual archive of the armed forces). These two centers provide archival images for

- 52 a significant number of historical documentaries produced in France and other parts of the world.

After a series of preliminary exchanges with legal scholars we led a longer conversation with Nathalie Chassigneux, a specialist in intellectual property law with a focus on still and moving image rights.

The trajectory of Serge Lalou and the longevity of his company, Les Films d'ici, allowed us to offer a diachronic view of the evolution of television from the 1970s to today. The film of Jean-Gabriel Périot provided the occasion to inscribe our argument in a European perspective and to compare the archival practices of different countries. Discussions with other producers as well as filmmakers helped us to further develop our questions and better understand the singularity and variety of their experiences.

Marie-José Mondzain was an obvious choice because of her work as theorists of the image. Through her many contributions she has shaped the debate about the ethics of the gaze and the place of the spectator and moved it forward.

## Images Protected by Law?

Interview with Nathalie Chassigneux, Attorney-at-law,  
specialist in intellectual property

*People often go to court to protect the integrity of films and the rights of their authors. Audiovisual archives, which in their case exist in a certain legal grey-area, do not enjoy such guarantees. In what context and under what conditions could they claim the same protections as films?*

For an audiovisual archive to be protected it has to be defined as a “work of the mind” by the intellectual property code. To do that you have to demonstrate its originality so that it can benefit from the protection guaranteed by copyright.

*It seems that historically the recognition of a ‘work’s’ quality has experienced some vicissitudes. At first denied to technical (photographic and filmed) images, it had been largely recognized before being once again placed in doubt. How do you explain these developments?*

The recognition of the photograph as a work was not immediate due to its technical nature. The first photo considered to be a work was a portrait of Oscar Wilde, taken in 1882 by Napoléon Sarony.

The rules developed in the course of the twentieth century. The law of 11th of March 1957 on literary and artistic property—which legislated on the copyright—held that photographs were protected if they were “artistic” or “documentary.” But when it proved difficult to assign photos to one or other of the categories, the rules changed with the law of the 3rd of July 1985. Since then, photos are considered as works as long as their originality can be established.

For some years now, the problem we have to face is with the multiplication of images, whether they are photographic or



54 filmed. Judges are tired of us constantly turning to them to ask for the protection of some image or other. Currently, they tend to refuse protection, if not for every photo taken spontaneously, at least those taken in burst mode, using an automatic procedure. This is the case for photos taken by the paparazzi, where judges tend to think that the camera does the work by itself. The same applies to certain filmed images considered as pure captures. A good example is the suit brought by the journalist and paparazzi Jean-Claude Elfassi (Delbard 2016). In 2009, he filmed a horse that had broken away from a parade of the Republican Guard running along the banks of the Seine. After the video was sold to Le Parisien daily newspaper it was then broadcast on a competitor's site without his authorization. In its judgement of the 6th June 2012, the appeals court of Paris was of the opinion that Jean-Claude Elfassi had simply "placed himself in the path" of the animal by making choices dictated solely "by the circumstances." According to the judge, the filmed images were not the result of clearly identifiable choices and therefore did not bear the mark of an author. In this light, they were not recognized as works of the mind and could not benefit from the guaranteed protection by copyright. Before a court, the taker of the image must therefore clearly prove the originality of a photo or a shot if she wants her images to be protected.

*How does the law define originality?*

According to French jurisprudence, originality is "the imprint or reflection of the personality of the author," meaning the existence of a relationship to the personality of the latter. The Court of Justice for the European Union repeats this condition in its decision on Infopaq stating that "copyright can only be applied in relation to an object that is original in the sense that it is an intellectual creation belonging to its author."<sup>1</sup>

1 Court of Justice of the European Union 16th July 2009, aff C-5/08.

This condition was specified in the case of photographs in the Painer ruling:<sup>2</sup> originality is recognized by those “free and creative choices” through which the author imprints the work with her personal touch, as much before its realization (staging, positioning, lighting) as at the moment it is taken (framing, the atmosphere created) or after the picture has been taken (developing, touching-up). These points are equally applicable to the audiovisual work.

*Let us stay with the moment the photo is taken. The law seems to make a rather radical contrast between “staged” images and photos taken “spontaneously.” Now, war cameramen, for example, have often practiced both of these modus operandi, filming combat when they could and reconstituting scenes that could not be recorded or that corresponded better to their conception and their imagination of the fighting. These two categories of images made by the same cameraperson are not therefore protected in the same way. The more spontaneous, those recorded without any prior intervention in the reality that is put in the frame, enjoy a lower level of protection with regard to the law. Still, they too bear the imprint of a personality. Reality, even if it is captured “on the fly,” even if it takes us by surprise, can be filmed in a thousand different ways.*

The fact is that from the moment it is filmed, reality is always framed and composed by the cameraperson. This is a question that is amongst the most pressing issues of the day and not always clearly defined by the law. Because these matters are treated in a case by case basis, it is necessary to examine the jurisprudence.

When you go before a judge with the declaration that your work has been stolen or spoiled, you have to be able to prove that the capture of the image was determined by artistic or intellectual choices. In the case of facts recorded spontaneously, the

2 CJEU 1st December 2011, E-M. Painer/A. Springer aff C-145/10.

56 proof is always more difficult to furnish. You can argue your case by saying yes you filmed a public event over which you had no influence but in choosing very precisely the place where you had positioned yourself because from there you would see this rather than that, that the light would fall in such a way, that you had chosen such and such a moment to move the camera rather than zoom in. In short, that you had consciously proceeded to make choices. All of this would depend on the imprint of the author's personality, and in this case, the law can validly protect your images.

*From reading certain legal decisions, it seems that judges rely on a definition of the work founded on its artistic value and the merit of the author—effort and conscious labor versus automatic technical recording processes. Isn't the law venturing onto difficult ground here, pertaining more to the field of morality and aesthetics?*

We are really dealing here with considerations to do with the judge's personal taste, which ought not to be the case. Numerous decisions denying that certain photos possess the quality of works state they are badly taken and framed whereas that could be considered to be a choice of the photographer, implying originality.

*So, the criterion of originality, but also artistic or aesthetic value, is being left to the necessarily subjective appreciation of the judge?*

Yes. But wait, the idea of a work does not mean that it is an "artistic" work because since the 1957 law was abandoned, all the "photographic works and those created with the aid of techniques similar to those of photography"<sup>3</sup> can be considered as "works of the mind." Archival images could therefore be recognized as

3 Article L. 112-2 of the Intellectual Property Code (CPI).  
<https://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTL000006278875&cidTexte=LEGITEX000006069414>

works of the mind. Saying that amounts to affirming that these images are protected because they are an *original* production.

If the judge decides to rule that it is not a work, she has to justify it. In France, there are three degrees of jurisdiction. The procedure begins before a court that is going to examine if there is originality or not, and why. In case that is denied, it is possible to go before an appeals court that will reexamine everything. It is going to look again at the photos and films. If that denied in turn, the third possible step is the Court of Cassation. The latter is not going to study the images, it is just going to review the decisions that were handed down to verify whether the judicial reasoning was good or not, if the law had been properly applied.

The majority of decisions made by the Court of Cassation are rather elliptical. This procedure discourages many people: to lodge an appeal is an expensive matter, and to go before the Court of Cassation, you have to wait for a long time. If we take into account the state of the justice system in France, between the filing of a motion before the court and the Court of Cassation's decision, the wait can last up to six or seven years.

*Is the only way to legally protect an audiovisual archive to grant it the status of work?*

In a sense, yes. The right to use the audiovisual archive belongs to the holder of the rights, whether it be the author, her inheritors or the transferees of rights for heritage rights. In case of a violation, legal action can be initiated uniquely by the holder of the rights. As soon as there is no work, there is no author.

The right of the author is made up of property rights and moral rights. Heritage right denotes the right to reproduce (that is say to copy) and the right to represent (that is to say to show). To project a film in a cinema you need the right to reproduce (and therefore possess a copy) but also the right to screen it (authorization to project the film for an audience). For a book, on the other hand, you only need the right to reproduce it.

58 Heritage rights are of limited duration: seventy years after the death of the co-authors. As for moral right, it is inalienable, imprescriptible and perpetual. It is perpetual so long as someone is prepared to defend it. This right concerns the respect for the name of the author, of his quality and his work: making reference to the author's name guarantees the right of paternity; respect for integrity means that no-one can spoil or distort the work. It is the contract that determines the conditions of use for the work, namely the possibility or not to modify it (colorization, cuts etc.) or to accompany it with music or a commentary.

Audiovisual sequences can also be protected under the heading of associated rights applying to creators and producers of videotapes and communications companies. But this protection would only cover recent archives because it expires fifty years after the fixation of the sequence.

*French law often serves as reference in the matter of "protecting the integrity" of cinematographic. What are the reasons for that?*

Relative to other bodies of legislation, French law is one of the most protective and it is the moral right of the author that offers films protection these days. Once the parties to the contract have decided in which version the film was going to be projected, no-one has the right after that to alter it without the agreement of the author and producer.

Respect for the work's integrity has the consequence that there is no right to colorize, to add sound or to cut it without their accord, pursuant to article L. 121-1 of the [French] Intellectual Property Code.

John Huston's film, *The Asphalt Jungle* (1950), was colorized in the United States without the author and his heirs being able to intervene. But it was also sold and broadcast in France, in its colorized version. Now according to the rules of international civil law, the law that applies is that of the country in which the protection is requested. The rights holders therefore demanded that the

broadcast of the colorized film be forbidden for breach of moral right. The Court of Cassation judged that, under French law, moral law forbade the film to be modified without the agreement of the author or the rights holders. The broadcast of the colorized film in France was therefore prohibited.

If the audiovisual archive is considered to be a work of the mind, its author is equally the bearer of a moral right. This imposes the respect for the work on all parties and forbids that any modification whatsoever be made without the author's agreement. And this still applies even if the property rights have been ceded to the producer.

Another point to take into account when reflecting on respect for the work's integrity concerns changes in format that are justified for purely technical reasons. In this case, authorization must be requested from the authors. They can certainly refuse these modifications, but in that case they will not be able to sell it anymore, or at least it will be more difficult. It is the same thing for accepting or refusing cuts for ads. Currently, in contracts, producers use every recourse protect themselves by stipulating present and future technical necessities that might infringe on the work's integrity. But this is defined in the contract. The rights we are speaking about only belong to authors. If they do not defend them, no-one can do it in their place.

*There is another way to threaten the integrity of a work or audiovisual archive: falsifying it through editing. Let us take the examples of the filmed recordings of the Adolph Eichmann trial in 1961. It is not a question of unedited rushes but in-camera video tape recorded by the filmmaker Leo Hurwitz. In his film, The Specialist, the filmmaker Eyal Sivan re-edited UHHurwitz's images by mixing and matching selected images from various moments of the trial; he disconnected a shot from its reverse shot to create an imaginary trial which sometimes totally transforms the meaning of the protagonists' exchanges. When these falsifications were discovered by the former director of the*

*Steven Spielberg Jewish Film Archive, the matter was brought before the attorney general of the State of Israel by lawyers from the Hebrew University in Jerusalem. This institution did not proceed to file a suit because there was a precedent affirming the right of a filmmaker to relay “historically false information” in their works. With this case in mind, we can ask who has the right to bring a matter like this before a court complaint like this before a court, in the name of what principle, and, equally, if it properly falls to the justice system courts to decide this kind of dispute?*

In the first place, the witness who is filmed can sue for injury to her image and her dignity or for defamation. Then, there are grounds to know if the right to the image of this person survives her death or not and if another person—for example the owner of the physical medium or archives—can file a suit or not.

In the case of Hurwitz’s film, if the film is produced for American television, the situation is different from the French or Israeli cases. In the United States, the filmmaker is considered to be an employee. She does not really have any moral right because everything she does is under contract. The Americans consider the producer to be the author.

The best solution for protecting archival images from falsification would be to require registration of copyright. Copyrighting the rushes would allow the parties to certify the archive is in the same form it had when it was borrowed and that would constitute an infallible proof in case it went to court.

*The hypothesis of a systematic copyright for rushes poses the question of whose property the image is. The audiovisual section of the French National Library (BnF)<sup>4</sup> has for example recently proposed to certain production companies about to be liquidated that they donate the rushes of their catalogue’s films as well as the films themselves. But the status of these images*

4 Bibliothèque nationale de France.

*is not clearly defined. To whom do the rushes of a film belong? And what about the rushes that were not used in the finished film? Could the status of rushes help to legally define that of audiovisual archives?*

Rushes have no legal status. That is why one section in many contemporary contracts is the cessation of rights over the rushes to the producer and the authorization to use them in a CD's bonus features for example.

*Let us take the issue of falsification and the legal possibilities of fighting against this type of practices a bit further. Let us take the case of a historian whose ideas have been used in a way that does not suit him, indeed contrary to her meaning. The medieval historians Colette Beaune and Olivier Bouzy protested against the use made of their interviews in the film by Martin Meissonnier *Vraie Jeanne, fausse Jeanne* (2008; *The Real Joan of Arc*). They criticized the filmmaker for having manipulated their words in order to justify false but media-friendly theses. Does a historian have the right to appeal to the integrity of her ideas and to assert that right, even if she has previously signed a contract with the producer?*

Yes, but she will have to prove it precisely by confronting the editing with the rushes. On the other hand, reckless disregard for historical truth, can only, for its part, exist within the framework of memory laws which state that no-one has the right to deny certain facts, like the genocide of the Jews (the Gayssot Act 1990), the Armenian genocide or slavery as a crime against humanity (the Taubira Act 2001).

*Let us go back to the case of reusing extracts of someone else's work. In certain European countries like Poland there is a "right of collage," this is to say, the right to reuse extracts or fragments of works, on the condition that it is in order to integrate them in another work that is original. How does French law legislate about the question of reusing others' images? In France people often mention the "right of quotation." Now the latter seems*



*poorly defined by the law; what is more, lawyers hesitate to refer to it, noting that judges don't recognize it. These matters are all the more thorny because the reappropriation and circulation in fragments of others' works has become a mode of expression unto itself on the internet, as the practice of the mash up can attest for example.*

In France, there is a principle which says that if you use one work in another, you must have the authorization of the author of this first work with whom you must sign a contract. A decision rendered by the Court of Cassation in a dispute between the fashion photographer Alix Malka and the painter Peter Klasen has posed new problems. Klasen used one of Malka's pictures in its totality: the photographer therefore charged the painter with forgery and unauthorized usage of her work. Generally, once one has judged a photograph to be the original, the question is barely discussed. As it happens, it was a matter of a fashion photograph, therefore posed and staged. However, on the 15th May, the Court of Cassation decided that it was necessary to determine in this case whether freedom of expression or copyright ought to prevail. The matter was referred back to the court of appeals at Versailles.

What is possible as regards the quotation of one work in another is specified by the Code for intellectual property and by jurisprudence: the quotation must be short (in both the work quoting and the work quoted from), and be justified by the critical, polemic, pedagogic, research character of the work in which it is incorporated. Furthermore, the name of the author and the source must be clearly indicated. The reproduction of a pictorial work in its entirety is not allowed because it does not rely on a short quotation.

*Isn't copyright in contradiction nowadays with those technical developments that facilitate and encourage free circulation and reuse of images? They have led some people to think of audiovisual archives as "a public good" to which one ought to*

*have unfettered access and that one could reemploy in contemporary forms of writing, for artistic or scientific ends. In April 2015, a petition was launched by film industry professionals to demanding a charter for the twenty-first century to cover the circulation of audiovisual archives. In this context, do you think that the law needs to catch up with these new practices? Should copyright be reconceived in order to keep up with technological developments? And if so, in what way?*

The problem caused by the circulation of archives is not the result of copyright but of the exorbitant demands made by the owners of the media. New technologies currently demonstrate that it is not the free circulation that is motivating the desire to modify copyright but the commercial model that permits the monetization of content without acquiring the rights.

The planned European directive on copyright aims to remove the territorial constraints for digital distribution (a work purchased in one country can be viewed in another) and to extend the exceptions in the areas of research, teaching and conservation. However, these exceptions are very limited as regards on the one hand the conditions under which a work is distributed (not the entire work) and on the other the persons authorized to make use of them (libraries, museums, universities etc.)

The real question that ought to be asked would consist in creating distinct rights according to whether the work is used commercially or not, but in practice making such a distinction is no easy matter.

## The Dilemmas of an Archive Institution

Interview with Xavier Sené, conservator, director of the conservation and development unit of the ECPAD archives.

*What are the missions of ECPAD in the area of conservation and the circulation of audiovisual archives?*

Our institute has the missions of collecting, preserving, classifying and broadcasting fixed and moving images from the Ministry of Defense or related to Defense.

In 2001, ECPAD became an Administrative Public Body (EPA).<sup>5</sup> That means it is subsidized by the State, which covers around 85% of its budget, and therefore has to generate the rest from its own resources. But this funding is provided in a precise and strict framework that corresponds to our mission. According to what is known as the “specialty” principle specific to EPAs, ECPAD can only engage in commercial activity in its two main areas of activity: audiovisual education and production on the one hand, the preservation and development of the archives on the other.

*Does it follow the logic of “development” and self-financing that ECPAD participated in the production of the Apocalypse series broadcast on France 2?*

Yes, ECPAD is the coproducer and main supplier of images for the episodes on the First World War. The series generated substantial sales because it was broadcast in prime time and attracted an excellent audience. The fact that we were a coproducer allowed us to garner high revenues and gain visibility.

*As a conservator, what is your position on the way audiovisual archives are treated in Apocalypse?*

5 [TN. Établissement public administrative.]

As a conservator, I am very attached to the integrity of audiovisual archives, this is to say, the obligation to respect the image source. Colorization must therefore not be on the table when it is a matter of heritage. In contrast, it can be for the purpose of broadcasting. ECPAD must be able to participate in every kind of film, for the general public as well as limited release, and colorization is one response to the expectations of certain television networks who feel it attracts viewers.

*Following debates sparked by Apocalypse, FIAF (The International Federation of Film Archives) adopted a strict position on the matter: in 2014, its members passed a motion against colorization. Although it belongs to the FIAF, ECPAD has not followed this recommendation. Conversely, the Imperial War Museum, your British equivalent —although it is endowed with the status of a national museum—, has followed these guidelines and refuses to let its images be colorized.*

The statement voted on by the FIAF was only a recommendation that was not binding on its members. The position of ECPAD is to support all types of clients, whether they are for or against colorization, as can be seen in the most recent films we have coproduced.

However, ECPAD is changing. From April 2016, the responsibility for the commercial division of our establishment is now in the hands of other departments. It was agreed by the cabinet of the Ministry of Defense that EPCAD was not an institution of a commercial nature and in future should therefore concentrate on its public service functions: audiovisual production and conservation development. This is the framework in which archival images will now be promoted. It is still too early to say whether this structural change will have any effect on the decisions of the administration with regards to colorization or not, but it has already had one on the way in which images are sold. Our work procedures have certainly been revised and allow us to support a

66 great variety of editorial and audiovisual projects by adapting our prices to every budget, whether they are modest or larger.

*You spoke of the "promotion and development" of your images. Yet, in the case of Apocalypse, your archives that had a "cosmetic makeover" have circulated well beyond the format in which they were broadcast on TV. In the eyes of the viewers, these colorized shots tend to replace the source images that you have preserved. How do you define the status of an 'original' in the context of audiovisual archives?*

In the first place, the "cosmetic makeover" you are referring to was not our doing. We always supply a straight copy, with no retouching, of the images we are preserving.

We play the role of conservator of the original medium that allows users to be referred to an authentic, undistorted document, and then to allow them, whoever they are, to use it for their own ends, whatever they are. It is then up to them to indicate, if it is appropriate, that the original document has been subject to a transformation.

If it is a case of argentic film, the source images are the rushes, this is to say images taken in the field by the cameraperson, without editing, retouching or censorship. They allow us to determine what has been omitted in the edited and broadcast films. Comparing the rushes with the edits of the period is a precious source for historians.

We retain the original medium even if it has been digitized because the norms governing international conservation recommend that the original document, the most recent copy and the one preceding it be preserved. One could potentially do without all the intervening copies but one must at least keep those three states.

If we preserve the original medium, it is also because the formats and techniques of digitalization are evolving very rapidly. The first digitizations were made in standard definition (SD) whereas today

norms have imposed high definition (HD), indeed 2K or 4K.<sup>6</sup> You cannot go from an SD document to upgrade to HD or in 2 K; you have to go from the original.

Finally, we preserve the original medium quite simply because preservation is more secure in analog because artificially accelerated aging tests have proved that polyester—an analog medium to which cellulose nitrate and acetate films are transferred nowadays—had a life span of at least one hundred years; and we still have films in cellulose that are more than a hundred years old! Conversely, other tests in the national test laboratory or the acoustical musical laboratory, for example, have shown that whatever the medium on which digital information is inscribed (hard disc, server, magnetic tape), its lifespan is about five years, which requires heritage institutions to migrate digital information from one medium to another every three to five years to ensure that no data is lost. Extended over a century, the cost of these migrations of digital media (and formats) will be far greater to the cost of transferring a nitrate film to a polyester medium.

The aim of digitization is always to make broadcasting easier not preservation better. A digital document can be put on the internet and made accessible to everyone, whereas an argentic/analogic copy is only accessible on site. This is why we preserve the original copy, eventually transfer to a more long-lasting argentic/analogic medium, and create digital copies for broadcasting.

For media that were originally made digitally, there again we follow international conservation guidelines. It is a matter of keeping the raw net file, the raw file, which is the original document. Then, because these raw, original, files evolve as a function of technology, devices and therefore time, we preserve

6 2K and 4K refer to the number of pixels in a digital image. The number is equal or superior to 2048 wide for the first and 4096 for the second.

68 them, we transcode them in a single master preservation format, currently “jpeg 2000.” And from this format we create formats for broadcast, which vary according to the needs of the broadcaster.

But we should differentiate delivery (on site) to broadcast (online). There are sometimes conflicts between the Heritage Code and the Intellectual Property Code. An archive agency is obliged to furnish for consultation documents that it holds when needed for administrative dissemination and research. The goals of an archive agency are to manage rights as well as the conservation of archives with historical and research value. Administrative, historical and research utility is therefore fundamental for determining the fate of archives. You can deliver everything on site but you cannot broadcast everything on the internet. Watching something on site requires an authentication of the reader and it is done on computer terminals that are not connected to the internet. This provision of the Code of Intellectual Property, which constitutes an exception to copyright, allows heritage institutions to open their archives for the public to consult.

*Has the digital revolution led to any developments in the profession of librarian and archivist?*

Digital technology has not fundamentally changed our work. We still have to collect, preserve, classify and disseminate the documents entrusted to us. We have to proceed with the non-material documents just as we have up to now with the material documents. If we can speak of revolutions here, it comes primarily from the mass of documents we have to process, which is colossal. We are currently receiving around a million photos and tens of thousands of films and videos a year. Fortunately, digital technology is also giving us the tools to process this mass of documents, and even make up for the backlog of material documents that has accumulated over the years.

In the future, we could similarly envisage participating in the work of description in collaboration with researchers thanks to new tools like automatic transcription or text recognition in images.

That would allow us to concentrate more on indexing and the development of the collections in the service of all of our users, notably researchers and students.

*Have your descriptive practices evolved and changed as a function of different categories of users (filmmakers, researchers, the general public)?*

We describe all the documents—fixed images and moving images—in the same way, whichever public they are aimed at. The difference derives rather from the granularity of the treatment and the description, for example because certain documents are about military operations abroad or present a particular historical interest (in the context of major commemorations for example) they can be described in a more detailed way than the others.

Nevertheless, the change in ECPAD's status should modify our practices in the future. Our unit, which had been a documentation center for fixed and moving images up to that point, is soon going to become a center for permanent archives in the Ministry of Defense. This development will probably have an influence on our descriptive practices, which will be less documentary (a description of content) than archival (description of the tree structure of a collection and the relations that the parts of a collection have with one another).

*Let us get back to the issue of the author's rights. At ECPAD you have both the rushes and edited films. The definition of an author and therefore of the rights of an author is tied to the necessity of proving that these documents bear "the imprint of the personality" of the person who created them. According to you are rushes "works of the mind"? what is ECPAD's position on this question?*

We do consider our rushes to be "works of the mind" although they are edited products—even if many of the rushes from the First World War were filmed in-camera by the cameramen. The



70 cameraman often had few instructions; sometimes he was told just to go and film at a certain place but he was the one who chose what he was filming, when he was filming it, and how he was filming it. And still today, if the cameraperson receives instructions from the Army Chief of Staff's communications officer for the theater of operations, that person remains in control of his choice of filming, framing, shots and the mise en scène.

*The camerapersons of ECPAD are working for the State; what rights do they have over the rushes that they film and the films they make in the context of their work?*

The law of 1957 on copyright pertaining to public servants states clearly that they are the authors of their work. However, in 1972, the *Conseil d'État*<sup>7</sup> issued a notice, called "OFRATEME" according to which an author-public servant cannot earn royalties for "works of the mind" created while they are at work, with materials provided to them by their establishment. But it was only a notice and did not have the force of law. In 2006, the law on copyright and related laws in the information society, known as DADVSI, reiterated with clarifications, the dispositions of the law of 1957.

*But this law that had no application decree has not been immediately applied. In recent years, however, many heritage institutions like the Louvre Museum, ECPAD or the National Navy Museum of the Louvre have been condemned by the Courts for having profited commercially from the works of paid employees.*

Yes, the Courts considered that the law was sufficiently precise to be applied as it stands. As a result, since 2013, ECPAD has undertaken measures to ensure legal certainty and reconstitute the copyright chain.

7 [TN: "The Conseil d'État (Council of State) advises the Government on the preparation of bills, ordinances and certain decrees" and also "the final arbiter of cases relating to executive power, local authorities, independent public authorities, public administration agencies or any other agency invested with public authority." <https://www.gouvernement.fr/en/other-key-bodies>]

Currently it is commercial exploitation that poses a problem because one has to ask for authorization from the author, given that the department itself only has a preferential right, which means the author will have to propose such exploitation to their employer as a matter of priority before any commercial exploitation can occur. In contrast, for any non-commercial exploitation, the department is completely autonomous from the moment it respects the moral right of the author, this is to say essentially their right to paternity.

Amongst the documents covered by the laws the question of orphan works also comes up, this is to say works whose author is unknown or, when they are known, we have not managed to locate them. But as soon as one can prove that serious, diligent and demonstrable research has been undertaken according to well-defined criteria, good faith is attested and the department has the right to exploit these audiovisual images.

*Several recent petitions have advocated for a freer circulation of images in order to encourage a creative use of audiovisual archives. What do you think of that?*

It is necessary to differentiate between, on the one hand, commercial projects realized in the global image economy, whose promoters are fully able to pay the costs charged by the photo and video agencies to give up their rights, and, on the other, pedagogic and scientific projects, which require an adapted price schedule. So ECPAD has a specific set of prices for projects of this type in order to encourage them, and has just recently signed, with the principal sources for audiovisual archives (Ina is one) and the professional organizations for producers (SPI, USPA, SATEV), an agreement intended to encourage the consistent exploitation of audiovisual works that contain archival images.<sup>8</sup>

8 This agreement, signed between three syndicates of documentary producers and thirteen sources of audiovisual archives, provides for the "renewal of expired archival rights for a given work, the sources of archives

- 72 The initiatives you are referring to propose that the rights to the image be governed by the profits generated by the exploitation of the work. It is a discussion that the Ministry of Culture ought to have with the authors, the rights holders or their representatives: if some people wish that the projects succeed other will doubtless want their work to be paid for what it is worth.

## Archives Like Any Other...or Almost

Interview with Agnès Magnien, conservator, deputy director of the Ina collections.

*You are a conservator and you were the director of the National Archives before joining Ina. In your opinion, are audiovisual archives just like any other?*

I think they are archives defined in the strict sense of archives. Archives are documents produced or received by any public or private institution in the exercise of their activity.

For a conservator, managing audiovisual archives, whatever their medium, leads us to ask exactly the same questions as we do for paper archives. Questions about selection, public or private status, processing, access. It is especially true today in the context of the progressive digitization of archives. But if the questions are the same, the responses might be a little different because audiovisual archives are not immediately readable. The medium in which they are read and their evolution must be taken into account. Responses in terms of access must therefore take this initial technological unreadability of the audiovisual document into account.

*What is the image and place of Ina in the archive network?*

Our institute has some specific characteristics in relation to more classical archives (National, departmental,<sup>9</sup> local archives etc.). Ina was organized separately and created its own tools, notably when copyright was established. From the day it was created in 1975, it adopted a policy of self-reliance, developing its own tools, ways of doing things, procedures, professions. This conservation policy was not necessarily envisaged in strict accordance with

9 [TN. *departmental*; roughly equivalent to the state level in the US. [https://en.wikipedia.org/wiki/Departments\\_of\\_France](https://en.wikipedia.org/wiki/Departments_of_France)]

74 archival norms, but it was carried out in a rigorous manner and a good deal of originality, for instance by bringing together researchers developing tools for consulting archives with those working on problems of description. Ina is therefore something of a world unto itself. In the archive milieu, our establishment has a rather particular image.

When I first arrived in this institution, I realized that Ina was never mentioned in legislation concerning archives, in the regulations and decrees of the last few decades. The same fate was suffered by the French Film Archives [AFF] that had been founded even earlier, in 1969. The only time the AFF is mentioned is in the Heritage Code in reference to copyright. But the laws and decrees on archives<sup>10</sup> that list centers authorized to preserve public or private national archives cite neither the National Film and Moving Image Center nor Ina. That shows how these two worlds are considered separate, whereas the definition of an archive incorporates that of audiovisual archives and we are tasked with archiving public TV channels. It would be fair to say that these archives' existence is being denied.

We need, then, to do two things: Ina has to proactively integrate itself with other archival institutions, and open a dialogue with them at the national and international level. For their part, these same institutions should think of Ina as a fully-fledged partner. It is a matter of taking note of the responsibilities it has, of recognizing the place of the nation's audiovisual archives, providing the same contents, responding to the same problematics, involving the same conservation issues. This process is well underway. Just recently, Ina and the BNF became members of the *Conseil supérieur des archives* (Higher Archives Council). This is not yet the case for the CNC, but the time is coming. It is certainly not an end in itself but this kind of dialogue will advance the cause of audiovisual archives and an awareness of their status.

10 Laws of 3 January 1979 and 15 July 2008 incorporated in the Heritage Code.

*How do you explain why it has taken so long for Ina to be recognized?*

First, these are closed universes. If the CNC, the BNF, Ina and the National Archives are all under the supervision of the Ministry of Culture, they depend on different directors and these worlds do not speak to one another. Moreover, when the legislation and regulation were put in place from 1970 to 1980, everyone was mostly concentrating on their own survival. In short, the archive network preferred policies of decentralization that aimed to preserve their own different missions whereas Ina was fighting to get established and be recognized. Despite that, I am not sure that there is a desire to deny audiovisual archives a status, but rather the situation is an effect of ignorance and insularity.

*Don't this ignorance and this distance also come in part from its EPIC<sup>11</sup> status which includes a commercial dimension? ECPAD and Ina, despite their differences, are distinct from the traditional world of archives because they have to sell documents in their charge in order to self-finance a part of their missions?*

Yes, it is true, this is an important point and it will let me make my answer a little more complete. The question of status is perhaps one of the factors that has preserved this distance. Outside of ECPAD, the traditional archive network is made up of national institutions that are not public establishments but institutions with national competence, be it the Historical Department of the Defense Ministry or the National Archives or decentralized agencies (*départemental* or local archives). These establishments do have autonomy as research institutions and for operational functions but no administrative or financial autonomy.

As a consequence of its EPIC status and its missions, Ina, as it was starting out, was responsible for archiving public television

11 [TN. Établissement public à caractère industriel et commercial, i.e. A Public Enterprise.

76 channels, but also delivery, and supply of images and sounds to those same channels. The landscape has changed since the 1980s. Following the privatization of a certain number of channels, Ina had to confront the question of revenue and new fields of operation. This meant finding new buyers outside of the public channels and collecting archives outside of those same channels. Now this problematic of revenue and sales is completely foreign to the domain of written archives in the network of public institutions.

However, it seems to me that for Ina, whose heritage mission has certainly never been denied, this problematic of revenue has also been an engine of activity and development. The need to sell, which is added to the work of audiovisual heritage collection, has allowed, I think, for us to work and accelerate the process of making the archive available. In the 2000s, the presidents of the institution decided to undertake an intensive digitization in order to facilitate access to the documents but also to enlarge the circle of potential clients. This desire to sell images was in part the engine of the digitization process.

So while EPIC status can explain the distance from more classical archive institutions, still, it has been and remains one of the factors driving the opening up of the collections and their accessibility, which reflects Ina's heritage mission.

*Which leads us precisely to the choice of digitization, indexing, making documents available. Ina is responsible for copyright, professional archives and mandates. When we compare the indexing for these different collections, we see how the descriptions are not always identical: the description of the image for example is far more extensive in the database of the professional archives, doubtlessly because it is meant above all for channels and all those who want to buy, to reuse them, shots preserved by Ina. What are the criteria for indexing and description within your establishment and do they still vary today depending on the collection?*

That is a real question: must collections be described differently when their uses are different? I am well aware that databases are organized that way; but even so, I am not persuaded that use ought to determine description nor that it is necessarily to predict uses that are impossible to anticipate. I never encountered such a principle during my time in the National Archives nor in the state archives where the elements of any description do not differ according to the user. What I did find, on the other hand, were variable levels in the thoroughness of the description but governed by the same indexing grid, the same terms of reference. We are currently building what is called a data model that will serve as a reference for what will be found in the descriptions. In this model, we now make rather little differentiation between archives collected through mandates and copyright.

But it is not possible to describe everything that comes from *dépôt légal* [legal deposit]<sup>12</sup> (more than 120 radio and television channels) and what we archive and deliver to France Televisions with the same precision. It is a matter of workload because we are confronted with the challenge of massification, with an annual growth of a million hours that we have to process and make accessible.

In the future, the tools of description will continue to evolve thanks to new technologies. For example, automatic transcription, if it improves, ought to be able to replace some of the work of description. As a result, the contribution of the librarian will essentially consist of making better use of the collections, contextualizing them, writing guides and syntheses that will facilitate the work of researchers and clients. In the near future, the challenge of description will perhaps be centered more on a more analytical presentation of this mass. In my opinion, out of

12 [TN. *Dépôt légal* is the legal requirement in France that materials such as books, photos, films, audio tapes and so on be submitted to the appropriate national depositories such as the Bibliothèque nationale Française or the CNC.]



78 the fourteen million hours we have currently preserved, barely 20% are really being exploited by clients or researchers.

In the future, the value added by librarians will therefore be found more in their ability to guide, illuminate, synthesize, indeed editorialize the collections that will have been described.

*Let us go back to the issues of description and analysis of archives. Could not researchers participate in the description in so far as describing something often presupposes precise knowledge of certain areas.*

Yes, of course that can certainly be envisaged nowadays. We do not have the technical tools yet that would allow it, but it is not hard to imagine that researchers and students will supply and enrich the notices or, additionally, study the history of our indexing. There was an amusing example recently with a winner of the Inatheque prize who was working on "the duty of memory." He looked for this expression on our databases and found the first occurrence a few years after the war, in 1948-1949. But as he went further in his research studying the practices of Ina's librarians and their plans for description, he realized that this notice, which had first been made in 1948-1949, had been taken up again and completed at the end of the 1980s, at the very moment when the expression became a leitmotif.<sup>13</sup>

*Let us stay with terms for describing collections. Do norms exist in the milieu of audiovisual archives that are common to all the conservation sites? And are they equivalent to those in institutions dealing with written archives?*

Currently the methods of description we employ for audiovisual archives are identical to those for paper documents in the public

13 [TN. *devoir de mémoire* (duty of memory, duty of remembrance) has a similar resonance to the English expression "never forget," a public call not to forget particularly horrific and shameful events of the national past. In France, the specific expression used here became current in the early 1990s arising from French historians' discussion of the Holocaust.]

archives. The norm for description remains the same: provenance, date, author, subject. To this we add supplementary norms related to making a record of the support media.

But in the network of public audiovisual archives, Ina is distinct by virtue of the on-site viewing and “time coding” that allows this external description to be transcended. One of our particularities is to describe, in a literary or indexed form, the subjects appearing on the screen, indeed to “time code” them and sequence them. In my opinion, this systematic work is not carried out anywhere else in the public archive network.

*What trade-offs get made when you are processing your collections and have they varied each time the presidency at Ina changed? Certain collections of great interest to researchers are not necessarily money makers because the research value of a collection is not necessarily an index of its commercial value. Apart from copyright, does a commercial criterion play a preponderant role in defining priorities?*

We must clearly distinguish *dépôt légal* for professional archives from that of mandates. For legal deposit we are obliged to make choices due to the great number of documents in the collection. At present, we receive a hundred television channels and around sixty radio channels 24 hours a day. So, we are already talking about a sample, a preselection. If we wanted to be exhaustive, as the BNF does for editions of books, the corpus for copyright ought to be made up of about 400 channels. This growth in the scope of our activities would necessarily have an effect on our processing capacities. To go from 100 to 400 channels would really represent a significant addition to our workload. And at present we are unfortunately not in a developmental phase for training employees in description, whether it be technicians or librarians, and such exhaustiveness would doubtless not present a heritage interest given the programs of certain channels. With regard to professional archives, it is different. There are obviously priorities that are connected to public channels and mandates,

80 especially broad mandates like those at TF1 but also commercial and heritage mandates. If our colleagues in charge of content think that it is a money maker, we will allocate resources to do descriptions accordingly.

So I think that the criteria, which have never actually been clearly stated as such, comprise sales potential, historical interest, the state of preservation and assessment of the quantity of documents. Are we going to tackle an enormous collection in an exhaustive manner or take instead a sample, or maybe privilege less voluminous collections? We are trying to combine different criteria while taking our human and material resources into account. In practice, there are also the wishes of the different presidents of Ina who emphasize one priority or another.

Lastly, we must come to terms with what is called precedence. There are still old collections, in particular radio broadcasts, that have been very poorly described. We have the heritage mandates that individuals have granted us and that we have not yet processed, including on periods like the Second World War. We are behind, but this backlog of processing is the lot of every archive institution. Despite that, I am not particularly worried; I think that there is no cause for alarm in so far as we are preserving what we have in good condition. The danger is elsewhere, in everything that is not yet in Ina and that is preserved in a most precarious manner outside of our institution, such as the audiovisual archives of producers and directors. Precarious because preservation of audiovisual archives requires specific means and their survival is very limited. Here there is truly a danger and risk of a loss of memory.

*Let us go back to what you call the "illegibility" of audiovisual archives. What does the specificity of each of the media imply in terms of reading, conservation and transfer?*

Whether they are digital or analog, audiovisual archives confront us with the fragility of the media that requires very restrictive conditions for their preservation. I will spare you the exact

temperature in degrees and the hygrometric level necessary for the preservation of films, photos, sounds, which vary according to the medium—analog or digital, roll film, cassettes or tapes, etc. Certain specific conditions for preservation can be draconian. On the recommendations of the FIAF, Ina established standards that make it possible to preserve its documents and require a high level of monitoring in terms of hygrometry and temperature. These constraints are naturally much more severe for audiovisual materials than for paper.

The other constraint concerns the survival of the collection. Even preserved without too much light and under the conditions I just mentioned, the media are perishable in that reading instruments for them might no longer exist. One of the challenges for audiovisual archive conservation is therefore to migrate the media but also to preserve adequate reading instruments.

Finally, the digital medium perishes rapidly. We therefore undertook, in our performance contract, to proceed to a transfer from one digital medium to another at least every five years. When migration is done regularly it is also fair to ask if we know whether it is necessary to preserve all the generations of media for the same data: VHS cassette, DVD, video tape etc. Should we preserve everything or proceed to elimination, at least from intermediate eras? That is one big question being asked today. At Ina our tendency is to preserve a lot. But we are faced with problems of space and we are going to be forced to get rid of some intermediate versions. Purists contend that the fifth copy of a document of which we have kept the masters will never have the quality of the master. But we still have to be able to read it, at least!

*So how do you define the master? Does the idea of an original enter into the definition?*

Everything depends on what we have received. It does happen that we get the master copy from the producer and director who simply kept a copy for themselves. But most often we only have

82 high-quality digital or analog copies. Other copies are preserved elsewhere. In the audiovisual world the idea of an original is therefore largely relative.

*Under the presidency of Mathieu Gallet, there was talk of setting up an agency with the task of colorizing certain images in your collections. What is your position as a conservator on the question of respecting the integrity of images?*

A document comes to us with a content and a form. Both bear witness to its history and how it was created. If we receive a film in black and white, in 8mm or in 16mm, it is because it was made that way and this format is an integral part of its history. The role of conservators is certainly not to make it more acceptable, more visible, more up to date. No, on the contrary, our mission is to preserve it in the state it was received, to reconstitute its genealogy if possible, to understand why it was received in that form and, finally, to make it accessible. Colorization is certainly not a proper thing for an institution responsible for heritage to do.

My position is less firm and less categoric when the desire for colorization comes from the directors or producers. In the final analysis, if they are not claiming to be doing it for the sake of truth and want to do something creative, they are free to transform it, like any other artist using an image. But this transformation must not be carried out in the name of a greater veracity for the images as the publicity campaigns for certain television channels have claimed.

*Technological developments offer ever greater means for the transformation and metamorphosis of images. Other than colorization, we could mention 3D and the addition of sound to silent shots. For example, tools for sound modelling devised at IRCAM<sup>14</sup> allowed the filmmaker Philippe Sarda to recreate the*

14 Institut de Recherche et Coordination Acoustique/Musique [The Institute for Research and Coordination in Acoustics/Music].

*protagonists' voices in the trial of Pétain whose images are preserved by Ina. What is your position on these experiments?*

It all depends which of our services are being requested and for what mission. If the addition of sound is done in the context of conservation, the answer would be no. If these experiments are being carried out in the context of an Ina coproduction it can be considered, so long as we are not the ones modifying the documents.

I do not want to speak for my colleagues but we are not the owners of our archives. They belong to the national heritage. I would not necessarily be shocked that Ina produced a film featuring colorized newsreels, if it were done by someone from outside who was responsible for the colorization and addition of sound and obviously if she respected the rights of the author and rights of use. Personally, I am not sure that these processes are offering anything of interest or comprehension of the past to the public.

*Let us return to questions of the promotion and analysis of archival images. Some people have the impression that there is a persistent mistrust towards researchers in certain departments in Ina. Could more extensive and inventive forms of cooperation be imagined between these two worlds?*

Yes, we must go and meet with teacher-researchers, their students, in their laboratories, from every discipline (history of course but there is also political science, sociology, etc.). We have to step outside of our four walls in order to show them all the possibilities on offer. The teacher-researchers need to feel welcome, because while we are very proud of our total of 14 million preserved hours, it can be a little intimidating for them.

We are also working on other avenues such as the revival of workshops for creating tools for description and exploiting resources with researchers, notably with copyright on the web. We are also

- 84 reflecting on a more extensive exploitation of researchers' work in different forms.

*Legal deposit and the Inatheque have always been places where exchanges with the academic community took place. But what is the situation with other sectors of activity in Ina? Currently the work done by students and researchers can give rise to documentary work that circulates outside of the University walls and laboratories, in festivals and sometimes—more rarely—on television. For all these new forms of cinematographic writing, cooperation with Ina's different departments would be invaluable. It would allow people to imagine not only new ways of accreditation for degrees and a better circulation of knowledge, but also a more extensive exploitation of Ina's collections on the part of researchers from all the disciplines. Indeed, that was the ambition of the Research Department headed by Pierre Schaeffer from 1960 to 1974 and that was unfortunately abandoned.*

Yes, I think we have to invent new forms of cooperation between Ina and the world of research. We are not obliged to restrict ourselves to a preestablished role. We must truly be very open to everything that can promote the exploitation of the archives and the work of researchers whose forms and relationship to the image have never stopped evolving.

I experienced something like this in the National Archives when we threw the doors wide open, in all the senses of the word, in fact. And we realized that our interlocutors in the research world and higher learning were thrilled when that happened and were responsive to our invitation.

At Ina, it would no doubt be a lot of work to respond to requests concerning the use of the archives. We can certainly lend out documents for an exhibition or a colloquium but it could be just as worthwhile to create multimedia objects. Things are a little more complicated than at the National Archives because at Ina so we are naturally constrained by the matter of copyright.

So we need to be inventive to make people aware of our magnificent collections—now so accessible— and to exploit all of the work carried out by the scriptwriters, directors, producers, but also the audiovisual technicians, the archivists and the librarians by demonstrating how these professions complement one another. Similarly, we have to undertake the dissemination of the immense fount of themes evoked in these collections and spread the idea that the archives are a source for history, for understanding and finally that they are at the heart of our communication society.



## The Historical Documentary on Television: Keys to the Dispute

Interview with Serge Lalou, producer at Films d'ici

*Since you arrived at Films d'ici in 1987, have you noticed a growing attraction to archival images on the part of filmmakers and broadcasters? And if the answer is yes, how do you explain it?*

This enthusiasm is a reality amongst the decision-makers in television. It is felt above all about the “unpublished archive” which became a major selling point, especially for the Second World War. “Have you got something new for us?” broadcasters ask us. The archive also appears as a convenient way to bolster programs of a certain length.

As far as I'm concerned, that is not the issue. I think we always have to ask ourselves how the archive is being used and seek the most appropriate form for the project. For a historical film, the archive option will be one amongst others like fiction, animation and even false archives. The field of possibilities is immense. In our series—*14 – Des armes et des mots (Weapons and Words)*, we worked a lot on the idea of interweaving fiction with the archives.

When you work with archive images, it is right to ask oneself about their history and the way we use them today. I was excited by what you write in “The Strange Fate of Archival Images” on the subject of the progress in historical consciousness: any practice that used images could be honest when the history of images had not yet been written but that same practice can no longer be so today. I think it is essential to be aware of that. That is why it seems impossible to me to just give a pass to conceptions of the image and visions of history like those conveyed by *Apocalypse*.

During the broadcast of the different parts of the series, there was a lot of discussion about colorization. But as I see things, that is a distraction from the more fundamental questions raised by this production. Colorization is not a process that I would rule out because I am not a fan of preestablished principles, so long as I knew why I was colorizing and that it was clear and legible for the public. What is questionable in *Apocalypse* is, rather, the historical discourse it is conveying and the fact that this discourse is being transmitted on a public channel. In fact, this series is saturated with a visceral anti-communism and offers a totally deterministic vision of the course of events. It seems to ignore the way history is written and invests heavily in the viewer's impulses without appealing to their intelligence.

*For some producers, the role of historian is restricted to that of advisor. They also serves a guarantee for procuring funds when their disbursement is conditional on the credits listing the presence of a historical consultant. How does a producer like yourself envisage the forms of cooperation between the filmmaker and the historian as well as the delimitation of their respective areas of competence? How do you act as a referee if the historian appears to be an obstacle to the "poetic license" of the filmmaker?*

For me, the question of the historian's place is very important. But they are not all capable of grasping the film in every aspect of its production, which means not only the writing of the commentary but also the way in which the whole sound-image arrangement has been organized, an arrangement that creates the meaning and is placed at the service of the film's subject.

I am currently working with two historians, Johann Chapoutot and Patrick Boucheron, who play different roles in the writing of the films. We called on the former to produce *18-39* for Arte,<sup>15</sup> which

15 [TN. French-German TV channel specializing in cultural, arts and literary programming]

88 is the sequel to our *14* series. Johann Chapoutot is an academic advisor not an author. We asked him primarily to track down historical falsehoods. He also gave his opinion on the choice of the central characters and when fiction had crossed a red line and distorted the truth or not. Because you can't do whatever you like with history. But this red line requires the ability to understand what fiction is. Is it the reality of the facts that counts or is it their plausibility? On this point I think the jury is still out. It depends on who you are working with. I don't have any firm convictions on the subject. Johann Chapoutot did not have a hand in authoring the scenes but he helped us to understand from a historical point of view what we were doing, its particularity and its relevance. He is also its guarantor.

It does happen as well, too, that the historian is an author and that he is central to the whole project. This is the case for the original series I am producing with Patrick Boucheron which putting his ideas into action. This series of ten 26-minute episodes, also produced with Arte, is called *Quand l'histoire fait dates* (*Great Dates of History*). Patrick Boucheron is the author of the film, not only because he chose the dates, but because the series is based on the manner in which he problematizes them, the way he imagines the journey from the past to the present. He is the one writing the text; he even reads it himself.

But other functions are equally possible. We recently produced *Léon Blum, haï et adoré* (*Léon Blum, hated and loved*) with the historian Julia Bracher, who was at the origin of the whole project. She had written a book on the Riom trial<sup>16</sup> and she made the film with Hugo Hayat. The role of the historian therefore also depends on the project's starting point and their place in the creative process.

16 [TN. The trial of Léon Blum, the Socialist Prime Minister from 1936 to 1938, and other leading Ministers of the Third Republic staged in 1942 by the Vichy Government, attempting to blame Blum, amongst others, for the debacle. When it failed to produce the desired propaganda victory, it was abandoned in the following year and the defendants sent to a concentration camp.]

The historians, writers and filmmakers with whom I work generally manage to find agreement with one other. But if there is some conflict, rare though it is, then I am obliged to arbitrate after listening at greater length to the arguments of both parties.

The recent reform of the Support Account<sup>17</sup> of the CNC introduced a “History” increase in funding in the event that a historical advisor is called in. The goal here was to take into account the elevated cost of films on history, especially because of archives, and also to encourage this type of production. These arbitrary, short-term measures strike me personally as somewhat dubious. Who can legitimately support production in one area rather than another? Following what political directives, as per discussions in which particular circles? How can we coordinate a political directive and technical reform without risk of perverting the process?

*You have expressed yourself on many occasions on the issue of the role played by the audiovisual as a public service, the choices and mode of financing it demands. You want the public channels to take on the challenge of a veritable “editorial ambition.” In your opinion, what would the principles of this challenge be?*

The only point of view I can defend and that seems fundamental to me is that of diversity. If people think that all ideas should be expressed, I will answer them then: fine, make *Apocalypse*, but in that case, also make other programs proving that you inhabit the world of diversity, a diversity of forms, propositions, stories, opinions. If a public channel can show Yann Arthus-Bertrand,<sup>18</sup> that is not a problem for me so long as it shows other things by way of documentaries. On the other hand, if public television is dominated almost exclusively by the magazine format, it is failing

17 Compte de Soutien à l’Industrie des Programmes Audiovisuels (COSIP) [Account in support of the audiovisual programmes industry], funds derived from a tax paid by the TV channels.

18 [TN. Popular French photographer and filmmaker who is known for his spectacular nature imagery.]

90 in its mission. It is this diversity that I have courted assiduously throughout my professional and union life.

When I am producing historical documentaries, what interests me is to escape from a certain determinism by telling the history at the moment when people still have a choice between possible outcomes. It is a question of understanding how they expressed their choices, revealing, through highly varied perspectives, the way in which they perceived their environment. The challenge of our series *14* was to follow the trajectories of fourteen European people during the Great War and to see how they were gradually transformed as the conflict unfolded. This took things in a completely different direction from telling a story whose end we already know.

*That is an idea defended by Paul Ricoeur when he urges the historian to "reopen the uncertainty of the past's present." (Ricoeur 1998, 29)*

Yes, that is right and that is a preoccupation of mine because it is exactly the situation in which we find ourselves currently. We know that our period is confused, complex, uncertain and that the fear of the future can wreak havoc. Shouldn't our commitment and our usefulness be to question our way of confronting the present, to traverse it by taking history as a starting point, rather than brooding, alarming or predicting?

*In 2008, in an interview in TélÉrama, you insisted on the necessity of redefining the identity of each public channel. What is your view today on this question and how would you define the mission of each of them?*

The identity of the channels is defined as function of their target publics and their goals, depending on whether they privilege knowledge, entertainment or the expression of a new and

individual point of view. Arte and France télévisions<sup>19</sup> do not have the same audience or the same mission. France 2's purpose is to aggregate. In its documentary slot it is targeting two to three million viewers if not more and you cannot bring such an audience together with purely creative works. We often hear that public television isn't creative enough. But it is not meant to be! At least that part of public television where entertainment dominates.

The situation is different for Arte, whose primary mission should be creative. But on France 2 or even on France 3, it is useless to try and broadcast the films of Rithy Panh, Wang Bing or Yervant Gianikian and Angela Ricci Lucchi. I would be very happy if France 2 broadcast Mograbi's films because that would earn me more money than on Arte. But it would not make any sense because it would be a different form of writing, a different length of time, a different approach. If that were not the case, it would be useless to have several channels.

On the other hand, it is regrettable that, under the pressure of certain producers and public authorities, sometimes French television is dominated by a sort of conservatism of forms. It goes hand in hand with timidity in the choice of filmmakers and producers who they think will be able to make a television station "safe." But should we be making things "safe"? Probably yes, given the large volume of programs broadcast on these channels. But this share, supposed to reassure broadcasters, seems to be too large at present. It leads to the reproduction of what we

19 [TN. France Télévisions is the French public national television broadcaster. It is a state-owned company formed from the integration of the public television channels France 2 and France 3. France 2 competes with the private channel TF1 for the same demographics; dramas (including American imports), game shows and light entertainments form the dominant mix on both channels. France 3 has a smaller audience, is less constrained by commercial considerations and has more regional, cultural and specialized programming than France 2. (adapted from [https://en.wikipedia.org/wiki/France\\_2](https://en.wikipedia.org/wiki/France_2); [https://en.wikipedia.org/wiki/France\\_3](https://en.wikipedia.org/wiki/France_3))]

92 have already seen before and does not encourage renewal. For example, social criticism can have its place on France 2 later on in the evening, but in forms that derive more from sociology than film. As for France 3, it ought to fulfil its mission in the regions before anything else. Right now, it is completely failing to do that.

*You seem to oppose creation to entertainment and think that programs aiming to enrich knowledge are reserved for the late evening slot. Isn't the mission of a public service to create and innovate for the largest number possible, including in prime time? Beyond the definition of the area each channel does not venture beyond, is it not the role of a television station financed by television licenses to come up with programs that join intelligent subjects with the invention of ambitious forms without necessarily being austere? This expectation was met by people like Rossellini or Schaeffer in the 1970s and later by heads of programming like Thierry Garrel and Pierre Chevalier, often associated with the "golden age" of Arte. Don't you think, like Yves Jaigu who worked both at ORTF and France 3 in the 1980s, that "the public is only large when you make it large"?*

We are not talking about the same television. Thierry Garrel and Pierre Chevalier, like Gabrielle Babin-Gugenheim did a remarkable job as programmers and producers that made a decisive contribution to forging the identity of Arte, but it is a channel with around a 2 or 3% share of the market not 13% to 15%. How many channels were there when Rossellini or Schaeffer were making innovative television?

Currently we must proceed according to the individual TV station and not systematically oppose entertainment and knowledge. But I must insist that genuine creation, the unknown, is impossible for the majority of people. Intelligence, know-how, engagement, yes. And if, exceptionally, a work emerges that reconciles all these elements, like *Waltz with Bashir* did in the cinema, all the better, but in television urgency and the volume

produced and broadcast as well as the development of its modes of communication forbid us from making it the rule.

*You brought up the role that intellectuals ought to play in a detailed criticism of television. Does this kind of practice, exemplified by thinkers like Serge Daney, still exist?*

In the final analysis, there is not much television criticism, perhaps in the first place because of the volume of television's output that makes the conditions for practicing such criticism more complex. But another reason is the fact that intellectual circles are totally uninterested in television and consider it a degraded realm, closed to the world of thought. In some respects that is true. But it is up to us to make this territory ours again and engage in that debate, as you are doing in this book.

That means knowing the world of television and not succumbing to clichés and illusions. The way people speak about public channels in certain author-filmmakers' petitions is pathological in so far as it reveals a total misunderstanding of the programming constraints and broadcasting institutions.

For their part, producers and makers of so-called creative works must make the territory of popular television their own again rather than turning their backs on it. What I enjoyed about making docu-fictions for France 2, was the idea of presenting programs of sterling quality in prime time that could be of interest to every generation. I have never claimed that our *Versailles* series, for all its great success, was a great work of art. Nor does it have a strongly committed political point of view but it is based on pretty solid know-how. It was an offering made to a broad public on a public service channel and that is the claim I can make about it. It is possible to criticize the project, but in the proper context: that of an offering made in good faith to France 2, accepted in good faith by the channel that has found its public in good faith.

What you hear being said about television is often the product of pure fantasy. I always try and put myself in the place of those



94 who have to decide: what would I decide in their place, given all the parameters that have to be taken into consideration? The sole reproach I have for those in charge of programming is they want to make a career out of it. Television is not an industrial sector like any other, yet they adopt social behavior much like that of a classic business. These are institutions where you should not make your career because if you do you lose your freedom of choice to a certain degree.

*How would you respond to small-scale producers, or those who are starting out, who think that your view of those in charge of programming and on television in general can be explained by your privileged position in this field?*

I would say that it's true, but that it didn't happen all by itself. When I arrived at Films d'ici, we had a single room for the four of us and I was unpaid. Over time, we developed privileged relations with a number of professionals that was different from what had been possible twenty years earlier. But it is the films I produced that let me build up this relationship.

As for the obstacles to production, I must say that I never had a project on my hands for which I would have said to myself: "that ought to be have been done but it wasn't done." Because whenever we have to deal with a production problem, there are always several solutions. Today most French producers stick with the same plan for financing films, they stay loyal to a single French broadcaster, benefit to a degree from their subsidized CNC account (*compte de soutien*), ask on occasion for help from *la Société des producteurs de cinéma et de télévision* (Procirep) and from their region, and that's all. So, they have made themselves totally dependent on this system, and since there are 750 who go about it the same way ...

*What then would be the other possible financing plans for films like historical documentaries that require the use of costly archival images? Knowing that the recent reforms in CNC (COSIP) and the parallel disappearance of local television channels has*

*made producers even more dependent on production schemes based on a single model.*

If you are claiming 'creation' then you have to show some imagination. Possible sources of financing are in fact pretty varied: international, the private sector, crowdfunding, institutions or associations, regional funds with more cultural and less economic logics, etc. True independence in production means not depending on a limited number of financiers. Enlarge one's network, convince, invent, and never stop moving. Local channels will not be the ones providing financing for costly archives. Those who lament these reforms are presenting themselves as victims. But the marginalization of a fringe group of productions is unavoidable in the current context in which television is undergoing rapid transformation.

*Let us pursue the question of archival images. In the context of the big prime time documentaries on public channels, a sizable budget is devoted to research on images by archivists who are often highly competent. These images are only partially used in the edit. Is it not possible to imagine a dual cooperation with the world of research? It would consist on the one hand in putting rediscovered images at the disposition of researchers so that they could become the object of an in-depth analysis, which would give them a new added value, and on the other hand, to recreate these audiovisual archives in a little less costly format, in the form of supplements to programs that would treat for example the history of images and their uses.*

That is a complex question; your proposal is interesting but it remains utopian for now. In fact, it depends on two parameters. Firstly, documentary production functions in an economically fragile system. When a film is finished and you have paid the crew and more or less covered general expenses, that is already a minor feat. Secondly, if the project is not inscribed in a firm economic track, it will have to be made thanks to a tenacious will and obtaining financing from outside the world of film production,

96 perhaps within the framework of European research projects. In any case, as I see things, the ball is the court of the research milieu and notably that of historians or the world of education.

But there is a third factor explaining these blockages and that is totally taboo in our country: that is the matter of copyright, put in place in an era that no longer has much to do with our own. To my mind, the system of copyright ought to be completely remade, especially in regards to the circulation of images. Even if, of course, we have to safeguard creators' income.

*In the recent debates on copyright, a number of filmmakers have stressed that these rights make up more or less a half of their earnings and therefore make their activity possible by allowing them to compensate for salaries that are often very low. To threaten the existence of copyright seems unacceptable to them in an already fragile economy.*

Annulling copyright is currently impossible and not desirable. It all comes down to the same problematic: the deficit in financing works is partially compensated by *le contrat de travail intermittent*<sup>20</sup> and copyright. This is not healthy and obscures the actual functioning of the production economy. The realm of film is vast and there are many ways to get into it.

*The claims being made are also about the ownership of the rushes. How do you preserve the rushes of the films you produce? Can they be reused by the filmmakers who filmed them in the framework of other films?*

The rushes are handed back to the filmmakers and are preserved in various conditions, sometimes in barns and cellars. Unfortunately, we do not have the means to take on the task of preserving them ourselves. An agency like Films d'ici, that people assume to be a large company in the market, has still not found

20 [TN: A special contract in France under the labor laws that provides regular income for certain types of work like film production that experience severe seasonal variations]

its balance after thirty years in existence. Sometimes it loses money, sometimes, more exceptionally, it makes money and it is these rare successes that allow us to compensate for losses on other films. Which means that we could never generate our own funds to enable us to invest in digitizing the rushes. Anyway, between the rights pertaining to the medium, copyright and moral right, the reuse of rushes is complex and very onerous from the logistical point of view.

*The question of the cost of archives is often opaque, shrouded in mystery. How do you negotiate the price of images whose rights you have bought? Following what parameters does it vary? When you have reached the point of negotiating the rates, what is the difference between archival images and extracts from fiction films?*

The issue of purchasing archives is a complex and delicate one. The purchase of rights from archival institutions is always subject to a time-limit and must be renegotiated when the time period expires. As a consequence, a number of documentaries get held up. The recent agreement signed in June 2015 between the producers' syndicate and the principal archival sources has, however, simplified one aspect of the problem.<sup>21</sup> But it remains unresolved as regards fiction films.

*This agreement concerns those archival images inserted into films but not those elements whose use is governed by copyright, like music, screenplay etc. and the requires a renegotiation when the rights expire. Would the overhaul of copyright that you alluded to improve this system?*

The legislation governing copyright puts a veritable brake on the circulation of films, but to open this Pandora's Box remains difficult because the interests involved diverge considerably and there is always a risk that financial speculation wins out over the desire to serve the public. I am not only in this profession to keep

21 For more details on the agreement in question see: 37.

98 a production company going, but to produce films that enjoy wide circulation. Why can't high schools show the documentaries I produced? When people see our catalogue, they find it impressive before discovering that often they cannot get access to it because we were not able to renew all the rights, for images, music etc.

Well, copyright companies fight tooth and nail to maintain this system of rights. You cannot even bring it up in a colloquium without being accused of committing "social treason." The film and television milieu is, in fact, an extremely conservative milieu. It is a leftist milieu when it comes to signing petitions, but it is very conservative when it comes to its own practices. It is world that celebrates "Nuit debout"<sup>22</sup> but is totally pyramid-like in its organization and has not managed to harmonize its individual practices and its collective points of view. One might have hoped for the world of cinema and television to be a little more progressive than others. You cannot both sustain your production company by playing on copyright and effectively defend a transformation of this system in the collective interest.

Today the problem comes, too, from the fact that an extremely vague status is being defended. Now we really should begin by naming names and defining them: a filmmaker does not always make a creative work. In reality, 90% of what television produces or broadcasts cannot be categorized as creative. Three quarters of history programs on TV are not creative works but are simply the product of competence. The competence of people who find good historians, discover interesting archival images and, have them put together by a good editor. These filmmakers, who are at bottom good artisans, are viewed in the same light as creators who invent new artistic forms. But here again, to broach this debate is very dangerous because this idea of creation has allowed for the establishment of a production support system

22 [TN. "*Nuit debout* is a French social movement that began on 31 March 2016, arising out of protests against proposed labor reforms known as the El Khomri law or Loi du travail." [https://en.wikipedia.org/wiki/Nuit\\_debout](https://en.wikipedia.org/wiki/Nuit_debout)]

that avoids the pressures of the market. We aspire to the best but are resigned to the least bad. For how long? 99

*Let us go back to audiovisual archives from the perspective of financing. What happens when the cost of images becomes an obstacle preventing you from realizing certain projects?*

That can slow us down considerably. Some heads of production have explained to me that their “archive” budget does not allow them to pay for all the images their project needs and that during the editing they are obliged to gradually reevaluate certain sections of it. Another option is to just brazen it out and not pay for the rights by invoking the right of quotation, but that is a risk you are taking. Each film is a prototype and even if you manage to make it, it is often by tamping down our initial ambitions.

*Have you already been led to invoke this right of quotation defended by certain lawyers? Most judges do not recognize it in their decisions and only invoke copyright as the sole defense? Shouldn't we distinguish the modes of quotation as a function of the types of work produced, the context of their broadcast and the revenue generated?*

I do not have any memory of having had to invoke it before a court but there too I think it would be necessary to link the price of the archive to the work's potential market value. In short, pay a small amount at the start and more if the film sells.

I am not a specialist of copyright but my combined experience and intuition makes me think that current thinking is too stagnant and privileges short-term interests to the detriment of the collective interest.

## The Film as Counter-History Factory

Interview with Jean-Gabriel Périot, filmmaker, director of the feature-length film *Une jeunesse allemande* (2015; A German Youth)

*Une jeunesse allemande, your documentary on the history of the RAF (Red Army Faction) movement is made up exclusively of archival images, with no accompanying commentary. These audiovisual documents come from quite a variety of collections, television and radio programs—mostly German but also French—, works from the German Film and Television Academy of Berlin (DFFB), militant films, and the private collections of former members of the RAF. How did you hit upon this form?*

This form is nothing new in my work. I have already made quite a few of my shorts using archival images without any accompanying commentary.<sup>23</sup> The choice I made for the archives seemed obvious to me given the particular history I wanted to relate because images played a vital role in the trajectory of the RAF members. To my knowledge, it is really the only group engaged in armed struggle in the twentieth century whose members had access to film and television, even before they founded the RAF. Some of them were filmmakers, journalists, and photographers; others were well-known enough to be invited to a television studio. These unique archives allow us to make a very particular choral portrait of these militants before they laid down the pen, the mike or the camera in order to devote themselves to armed struggle.

My project was not, then, so much to make a film on the history of the RAF as on the way in which it had been told. It was by using

23 Amongst which are *Eût t-elle été criminelle* (2006; *Even if she had been a criminal*) on the images of women with their heads shaved for collaboration with the Germans or *The Devil* (2012) on the Black Panthers.

images produced at the time—both those of the founders of the RAF as well as of their adversaries (the police or politicians speaking on television)—that I was able to examine the way in which the story had been constructed. I let myself be guided by the questions the images put to me before letting them unfurl in my film. What is more, *Une jeunesse allemande* begins with a quotation from Jean-Luc Godard: “Is it possible to make film today in Germany?” This question, crucial at the time, is redeployed in a different register in my documentary, forty years later.

*The heart of the film is, as you say, the battle of images and words that precedes them going from words to deeds. What type of questions did these images ask you?*

I see the work of the cinema as a thought process that takes shape in the questions more than in the responses. What triggers it often derives from something I read by chance where I discover some historical fact that resonates powerfully with the present I am in, an event of which I was ignorant of and that to my mind I ought to have known about.

Today we know next to nothing about the RAF. In France barely anyone even has the vaguest memory of the “Baader-Meinhof” gang. Even in Germany, it is rare for people to know the history of the group’s founders. Who are they? What were the politics in whose name they acted even before they graduated to armed struggle? Now what you find out about them is very removed from the fantasized image generally associated with the word ‘terrorists,’ that of a mindless creature born with a knife clenched between their teeth. That was a knot that I could begin to work from, a knot where all the questions of previous era are entangled but also more contemporary reflections.

Documentaries on the RAF always employ the same images. Conversely, those preceding the group’s foundation and give the events in all their complexity and historical depth have disappeared. They have been rendered inoperative for constructing any memory of the event. How is it that these



102 audiovisual archives have remained in boxes for more than forty years whereas the televised images produced after the group's founding and showing that history through the lense of the police and politicians are used ad nauseam?

I have read a lot of biographies on Ulrike Meinhof. All of them provide details of her career in radio and television. But none of their authors went to get the films she made or the programs she appeared in. These visual archives on Ulrike Meinhof and the founders of the RAF are really precious. They give us access to the portrait they sketched of themselves and society in which they lived. They allow us to examine the violence under a different light as well as the history of television and militant cinema.

*The process of researching in the German and French archives lasted more than ten years. It let you exhume neglected images and sounds. How did you find out about their existence and how did you locate the places where you could get hold of them?*

In the early years I worked without an archivist for financial reasons. German-speaking assistants facilitated relations with the channels. The archivist Emmanuelle Koenig joined the team in the final year of production. Her role was important because it allowed us to find certain films thought lost or those the channels did not want to give me because they did not have confidence in me or did not believe in the project.

If Ina has made these images accessible, this is far from being the case in every country, particularly notably in Germany. There exist monopolies with control of audiovisual archives which make it almost impossible for anyone to write a counter-history, the construction of stories differing from the official history. This impossibility is due to financial reasons linked to the very high cost of the archives but also to ideological motives. Finally, there are practical issues of the state of the archives, often in disarray, lacking sufficient personnel or training in skills.

When I was looking for films or programs whose existence I had discovered with certainty, it wasn't uncommon that I was told that these archives did not exist. It takes energy and persistence when you do research of that sort! I had to proceed like a historian—chasing down the slightest lead, the tiniest clue in biographies and newspaper articles. At the *Deutsche Kinematek*, for example, I watched all the films from the German Academy of Film and Television (DFFB), from 1965 to 1968. The films by students—like those of Holger Meins who joined the RAF in 1970—weren't categorized or indexed on the whole. I had enough information to know what was in those films and who had taken part in them. I also watched a good number of programs made by the NDR (a North German television channel in the north of Germany) for which Meinhof had worked. I also made contact with witnesses—her former colleagues as well as Meins'—who confirmed for me that it was a film made by one or the other. I even used payslips from the time to identify certain audiovisual documents.

To edit the film without commentary, I had to use documents that could provide the knowledge and elements of context absent from the German archives. For example, when the events took place in West Germany, every TV viewer knew who Alex Springer, the press magnate, was. That is no longer the case today and so it was necessary to introduce him by using documents and a point of view from outside of Germany. I found them at Ina. French TV at that time was still rather anti-German. The documentaries and programs I chose attracted me because of their 'acid' and critical tone towards Germany.

*What was the economic and financial framework in which you carried out this extremely costly research?*

We were awarded research and development grants from the CNC and MEDIA (a funding program of Creative Europe). They allowed me to pay for research that was, as you said, very expensive, up to 150 euros for some copies of the programs and

104 pieces, to which you have to add transport and especially the translations, because I do not speak German.

This archival material is totally inaccessible outside of a very well-financed film project. Usually the documentaries that can afford such research tend to be big television co-productions. We were lucky to be able to do it in the framework of a creative documentary, and a political one at that, by combining different sources of financing. Our research expenditures were considerable. We spent between 100,000 and 150,000 Euros on it out of a total budget of 700,000 Euros. It was Emmanuelle Koenig, who was also the production director, who negotiated the prices for the archival images within the framework of the allocated budget. I was very privileged because Nicole Brevière, who produced the film, always supported me in making the film I wanted. I never had to give up on an image from the archives because it was too expensive. That is the advantage of making a film for the cinema: a producer who takes on a film believes in the director's work to the point of accepting that it might be a troublesome operation from a financial point of view. Producers in television are often much stricter about the cut that has to be taken by the production company.

*Did your point of view on this history evolve as you were in the process of discovering these audiovisual archives? Did the images alter your perspective?*

Yes, they did. For example, I came to realize that all the images of Ulrike Meinhof and her comrades were political images, in the sense that every utterance they made was answering a desire and necessity to take a position. I didn't think that militant activity had occupied their lives to such an extent. I also underestimated how much of German television can still be seen. Perhaps because in France we have quite a different history. In the 60s West German television was very liberal and covered a very wide political spectrum. It made rather more pro-student documentaries than you would have been able to see, let alone

imagine, on ORTF.<sup>24</sup> West German channels had an open-mindedness that meant someone like Meinhof could work there. Almost every Land had its own TV channel, corresponding to the regional political government, which encouraged a true diversity amongst the channels and their editorial staff. But all that became considerably less flexible in the course of the following decade. All the channels increasingly started to say the same thing, in the same way. I had not foreseen the extent of this standardization and how rapidly it happened, which had a funnel effect.

*Let us go back to gaining access to the archives. How did German Television Stations and the different rights holders of the images react to your requests? Was the fact you were French an obstacle or an advantage?*

At first, the fact of being French did me a disservice with the German television channels who dragged things out: they said that the French were always asking for archives but never did anything with them! Since I was not working with a true archivist in these first years, I did not seem very serious to them. But that finally worked to my advantage because I did not get entangled in the German memorial disputes about the history of the RAF. My position as an outsider helped me gain access to private collections thanks to which I discovered previously unseen archives on Meinhof or Meins. It also allowed me to collaborate with colleagues of the RAF founders or their rights holders who normally refuse to work with each other.

*You received already edited images from television programs or militant films. In *Une jeunesse allemande* we see black screens, slow motion, and freeze frames. One can imagine you had to work through very heterogeneous materials to integrate it into a new filmic form and resolve the narrative problems it raises. It would require creating a rhythm and grammar specific to your*

24 Office de Radiodiffusion-Télévision Française (ORTF), the French public television channel in the 1960s.

*film. Were you sometimes led to modify the original form of the audiovisual archives? And if so, did you have any scruples about “working” on these images?*

The “translation” of the original work into my film sometimes forced me to be unfaithful to the original, precisely so that I could respect it. Some extracts could not be integrated in the body of the film as they were. That makes me feel uncomfortable though not to the point of feeling it was a “betrayal” because I was always careful to preserve the grammar of each one of the archives, to keep their individual qualities and mark their differences. In *Une jeunesse allemande*, certain extracts are inserted without the least retouching, others are slightly edited. Most of the time the reediting is imperceptible because the way the fragment was reedited remains very close to the original film, it always retains its specific quality. For example, I reedited Meinhof’s documentaries a little so as to create a rhythm in the movement from one section to another. It was necessary to take into account the broadcast venue for which these films had been made. Meins’ films for example were often silent—they were frequently meant to be projected in lecture halls and not on television or in the cinema. So I often asked the rights holders whether I could add music to some of the films when they created a rhythm problem in my own documentary.

At the start of *Une jeunesse allemande*, I used freeze frames in the sequences introducing the main figures. The viewers had to recognize them and have the time to look at them. I decided to proceed like Stefan Aust, an old colleague of Ulrike Meinhof who made a number of documentaries on the RAF and always began his films like that. The only difference was that the voice-over he uses belongs to a well-known actor—meaning expensive!—in Germany. So we had to re-record it. The second sequence I had to “re-create” concerned the attacks in 1972 of which very few images had survived: 1 minute 20 seconds in total for five major attacks! The TV channels kept some images but they are silent

because the commentary was lost. We used the radio archives to add sound.

As for sound, I had to use archives which, conversely, were not accompanied by images. Usually, these sound archives are illustrated by filmed images or photos. We “filled” the void. To take one example, I found some news reports devoted to the trial of the Frankfurt arsonists<sup>25</sup> which included fragments of a sound recording made by Gudrum Ensslin explaining why they had set fire to stores. This audio was “covered” with images of students during their trial. Looking at these first attempts, I realized that these images interfered with us listening to the sound archives because they created a distraction attenuating the archive’s force. So I decided to keep the sound pure by reverse engineering Ensslin’s voice-over so that it could really be heard. The black screen, which lets the voice stand out, allows for the creation of a very powerful emotional space-time.

Finally, I fought a lot with the calibrators who wanted to “clean up” the images, “integrate” them into the film, for example by adding contrast. I thought, on the contrary, that it was important for the archives to be “dated” and correspond to the technical conditions of the recording. Same thing for the sound. Just because it has glitches, you do not always have to clean it up! The sound track has to be audible of course, but with the sound texture of the time.

*From the beginning of the film, you propose a reading pact to the viewer but you do not point out the origin of the materials you are using. What were the reasons you chose not to indicate their provenance?*

The introductory line from Jean-Luc Godard—“Is it possible to make a film today in Germany? —lays out its cards for the viewer:

25 Four students including Andreas Baader and Gudrun Ensslin planted incendiary bombs in department stores in the Spring of 1968 as a reaction to the Vietnam War.

108 “you are entering into a film that tells a history of images, a history in images.” Throughout *Une jeunesse allemande* I try to recall that beyond the history of the RAF this is also above all a film about the cinema and television.

To indicate the sources of each archive would sometimes have provided interesting information but it would have weighed the film down to the point of making it illegible and interfered with the story. I went for economy on this point because what was important to me above all was the narration itself. As a function of their historical, political and visual culture each viewer of *Une jeunesse allemande* will identify different things and reads the film in their own way. If they don't recognize Godard's voice at the beginning, that doesn't matter. It is enough if they hear someone French questioning German cinema and whether it is even possible, as he is watching images on an editing table. The metaphor functions independently of the fact whether you can recognize Godard or not. The question he is asking is more important than the fact he can be identified.

However, I did have to indicate things about certain films that the viewer could not without in order to understand the extracts on display. For example, the pieces Ulrike Meinhof did for television or some of Holger Meins' films did not have credits I could use. For these extracts it was imperative to know that it was precisely them who had made those pieces. Sometimes it was also necessary to indicate who the protagonists were appearing in the image. At those moments I used “classic” captions to give the necessary indications. But I did it sparingly!

There was only one time that my decision not to indicate the sources used caused a problem. The rights holders of *Zabriskie Point* refused to let me use an extract from Michelangelo Antonioni's film. They did not understand that you can still claim to respect a work without adding captions or clearly identifying the author (and yet we are dealing here about a Hollywood studio). To convince them, I had to send them a working version

of my film. They got a better understanding of the project and ended up giving us permission.

*How do you understand the role of the historian in the process of writing and editing?*

When you are looking for money to make a historical documentary, you need to create a space of legitimacy. Now, from this perspective, the filmmaker is not considered to be "legitimate." For this very contingent reason, a historian has to be taken on by the team, whether you need one or not. As far as I'm concerned, the historian can be an advisor who validates the way I have chosen to tell a story they know in depth. I feel reassured in so far as my partners feel reassured. But fundamentally, I do not think we need any. For each one of my films I do as much research as possible and I spend years at it. In my view, that is what is needed to understand the images. No historian of the RAF has examined this history from the point of view of its images. In *Une jeunesse allemande*, there is nothing new but the events have never been recounted like this, with images that had been neglected. I experienced the pleasure of the historian but also the archeologist as I exhumed these forgotten images in order to give them renewed meaning.



## Images Without an Owner: For an Ethics of Use

Interview with Marie-José Mondzain, philosopher, image specialist

*Archival images are at the heart of the tensions going through the world of research, conservation as well as cinematographic and audio production. However, it is rare for anyone to try and define this notion. Can philosophy help us to think about archival images?*

By all accounts, archival images do not exist in nature. Only the act of making an archive can give images the status of archives. The act of the professional known as an archivist does not consist in recognizing those images designated to become archives, but creating the status of archive for any image, whatever it might be. An image becomes an archival image from the moment it is preserved to be examined for its value as a source of testimony and information.

More than this, images can provide answers to questions that are asked only despite the images' intention and their explicit and deliberate contents. It is therefore the constitution of a corpus of questions that produces, after the fact, a return to the images by conferring on them the value of archives in the sense that a visual document is naturally exhaustible and will always exceed any description that might claim to be exhaustive. The archive informs, that is to say builds its "archiving" power on an uninterrupted basis of the questions that are put to it, in a renewal of its problematics to which no limits can be assigned.

In consequence, the constitutive problem of the archive is none other than that of the repertory of the entries by which you get access to it. In the case of written documents, the question resolves itself because the entries, beyond any determination

of their date and place, can be constructed by means of the words they contain and by the overlap between those words and those of the questioning properly speaking. The written archive remains inseparable from the operations of language, including in the transformations of the language itself. Things get complicated and interminably so, when we are dealing with visual archives, meaning images.

*One of the missions of an archivist is to inventory and describe documents in their care in order to make the image into an archive and facilitate access to it. What specifically is unique in the description of images?*

The image in itself is susceptible, like visual perception, to an infinite number of descriptions. What this really means is that the image is, by its very nature, a radically indeterminate site. An image be dated, placed, attributed, and the way it was produced specified. What is more, it is easy to describe what it is showing explicitly and to the extent we can say what it is: it can have a title, in a word, a primary level allows us to list everything that is recognizable or already recognized.

In this sense, the archive is nothing but the indelible and legible trace of the already-read, already-seen and recognized.

It is precisely this readability, in visual matters, that is problematic and even fallacious, because what is called the reading of an image has nothing to do with the experience of reading.

The image retains against all comers an "unreadability" that is historically determined precisely because its supposed readability is itself historically determined. The image exceeds its present readability because it naturally has an infinite potential readability, proportionate to the infinity of possible questions to which it could respond. This is not to say that the written archive is not susceptible to infinite interpretations, but its actual material, namely language, puts up a semantic resistance despite everything that is not the case for images.

112 The archive is the result of a creative act by the archivist who changes the status of a perishable image into a trace to be preserved; but it is also the result of the modalities of this preservation on which the potential power of all these “readings” depends, that is to say, the questions that one asks it today and will ask it later on.

Currently, any attempt to preserve all the images we have that might seek to discard any waste material is unacceptable because unrealizable. Choices therefore have to be made which, as we undertaking this process, preserve the possibility of a maximum of future readings.

*Do these specific characteristics of description and reading of images allow us to rethink the question of property and the reuse of audiovisual archives?*

It is the modalities of preservation that start us reflecting on the problem of property in relation to images, of the freedom those who make cognitive use of them can or cannot enjoy.

The archivist is necessarily associated with the totality of all those disciplines and all the cognitive operations that allow us to reflect on the conservation of images in terms of the indeterminate layers of information that are renewed every time the questions and fields of knowledge get redistributed.

The archivist's concern cannot be restricted to questions regarding provenance, on the contrary, it is essential that they take into account the requirements dictated by its destination. Provenance can be treated juridically as much from the heritage as from the moral point of view. But the destination is the decisive and the most delicate question because it is determined by the freedom that is given to those who are going to make use of the archives.

In other words, the respect owed to the archive, in the unchanged and invulnerable form of its provenance, is the absolute condition for the infinity of cognitive resources that it contains, beyond any

present state of questioning it might undergo. The question of property ought to be submitted to the judicial conditions defined by the law for all future uses.

*From that perspective, how does philosophy envisage the distinction between heritage right and moral right jurists have established?*

As far as the image is concerned, we ought never to claim a property relationship over it such as it is defined relative to a material object and therefore as material possession. The material preservation of an image can only be justified as a function of its immaterial, meaning symbolic and cognitive value.

Heritage right is a property right to which limits can be set juridically, on the condition that the image has conferred on it the status of an archive susceptible of animating questions and taking a place in a cognitive framework.

Moral right stipulates that “the author enjoys the right to respect for their name, their quality and their work.”<sup>26</sup> To give the maximum potential to a corpus of images, it is necessary that a contract be established as we pass from the heritage origin of the images to their entrance into the public domain that respects the rules of moral right. So, if indeed the property of the image is alienable nevertheless respect for the document endures, independently of any material right, as is the case for works. Now the problem of the archive is that it does not necessarily have an author—to whom the moral right attaches—that justifies the rules of transmission of the moral right to the public domain. Juridically speaking, moral right necessarily concerns objects that have their authors and their rights holders. It does not concern the property of a material object but the totality of non-material values attached to it in its original state.

114 In principle, the status of archive ought to be indifferent to the status of author in so far as archives gather visual documents with or without an author. However, it is only a principled position because the need to renounce heritage right (alienable) to the benefit of the public domain does not imply that we are renouncing moral right (inalienable). When there is an author, moral right is immediately invoked so that all the indices of provenance (author, date, place, technical medium) are respected. But perhaps we ought to turn the question around by elaborating on the necessity of applying the rules of moral right to all images whether or not they have an author prepared to insist that they be respected. In other words, respect for all the data pertaining to provenance, the nature of the image, its content and its mode of production ought to preserve the archive from any manipulation that might degrade the data about provenance.

This makes an apparent contradiction inevitable since on the one hand we are defending the principle according to which the use of the archive must enjoy the greatest freedom in interpretation and treatment, and on the other we are vigilant in maintaining the integrity of archive as regards criteria of provenance. From this perspective, we would have to redefine moral right not as a function of an "immaterial property" which remains faithful to the to the concept of property, but as a function of a general principle of respect for all the characteristic facts about an audiovisual document. At that point, the term property itself, by revealing its ambivalence, would no longer designate the rights of an owner, but the properties of the image itself. As a result, this moral right would derive from the obligations of those who make use of a visual document and not from the prerogatives of an owner.

There is a real problem, then, concerning the regulation of use that is entangled with two requirements: the respect owed to the preserved object and the freedom owed to the use made of them. This regulation derives neither from heritage right nor from moral right but, no doubt, from a third level of regulation, that of ethics. This presupposes the creation of a regulatory

authority made up of professional archivists, historians, archive users and of donors and depositors. This authority would draw up a charter for which it would assume the responsibility. The committee would be in charge of tracking the development of the problems posed by archiving, use and reuse of images.

Any professional activity that makes use of archival images ought to be able to enjoy the greatest freedom in its treatment of those images on the condition that it submits to a regulatory code governing these uses. The object of this internal set of rules would be to encourage the filmmaker to declare—in the film or in the documents that accompany it—any modification and transformative treatment of the nature of the audiovisual document so that the viewer is clearly informed of the operations exercised on the archive and can at any moment have access, if they so desire, to the archive in the original state of its provenance.

The goal of this ethical obligation is not only to protect the integrity of an archive, but in this way to open up for the viewer and user of the document the critical space that will allow them to legitimate or contest the modifications carried out on the original document. The archivist does not only have a care for the objects they are preserving and classifying but also for all those women and men who are likely to make use of these archives. The issue here is the preservation of a relationship of good faith between people through the circulation of objects for which the stability of provenance has been preserved whatever the instability of the destination.

*Archival images often have a very high market price. How can we think of their value beyond their price? Would it be necessary, in certain cases, to campaign for an expropriation of heritage by invoking the idea of a common good?*

What gives an object its price is its market value, meaning its value in the market. Behind the idea of heritage right a completely different problem is hidden, that of the property of the image considered as one object amongst others for sale. I have

116 already outlined one part of an answer to this question. However, in such a reflection it is absolutely necessary to take into account the exceptional situation that both is enjoyed and suffered by audiovisual production, which means agreeing on what is understood by the term image and ceasing to confer on it a mode of existence based on a quasi-ontological substantiality.

The idea of property applied to an image has become the focal point for the treatment of the image in public space and in the various communication industries. Property for an image must designate what properly belongs to the image and not whose property it is. The situation is completely paradoxical. On the one hand, the production and exponential diffusion of images of oneself and others in a deregulated interpersonal trade has invaded the networks, and on the other, we are witnessing, under the aegis of asserting our rights to the image, a voracious demand for earnings concerning the capture and dissemination of images in all the sectors where the business of the spectacle can generate profits.

A documentary filmmaker or journalist can no longer film or photograph without paying for the rights before disseminating its images and conversely without trying to make profits if he was able first to negotiate the use and dissemination of what he has photographed or filmed. What Guy Debord denounced by calling it the "society of the spectacle," typifying the global market of capitalism, also has consequences with respect to archives. Thus the archivist, just like the user, has no other recourse than to transform themselves either into an avid salesperson or a pirate when they no longer have the means to pay enormous and unjustified sums. The image has essential properties, the principal one being not to be owned by anyone. In all those areas where there is a market for images, including that of art, it is by becoming something marketable that it loses that property and that the archival image has, in its turn, a price. Now the archivist is not running a business that sells goods. He should not be buying or selling what makes up the substance of their profession, namely

the choice, classification and protection of anything that can nurture present and future memory and knowledge. Is it already too late to teach this and make it understood?

*Certain filmmakers, producers and historians are advocating for a new delimitation of copyright that would broaden the possibility for the reuse of archival images. In this case how can we define the right of quotation or fair use in philosophical terms?*

Once the specific property of any images has been defined in the terms I have just indicated, it will surely be at the crossroads of a fundamental principle of non-commercialization and an ethical regulation of dissemination that use will find its rules. If the principle of gratuitousness is connected to the definition of common good or of a public service, it is still the case that authors have the right to recompense. The ethical charter ought to determine the market value of an archive according to a symbolic regime that permitted all users to have access. Estimating this market value is inseparable from the nature of these uses and projects supporting these uses. Quotation is only a particular case of usage. For some people respecting provenance and being responsible for its destination can legitimize the recourse to ethical rules.

Nevertheless, we should use the term “ethical” prudently and be wary of a moralizing interpretation. The point is not to make reference to ethics as the distinction between good and evil, about which the archivist cares little and the artist even less. The question is one of truth. Not the truth of an image, which by definition does not have one, nor that of a relation to reality, the criteria of which vary with history, but rather a relation of trust between those women and men who are displaying images, analyze them and employ them in their cognitive and creative practices, and the public they are addressing by showing them the images. *Fair use* resembles *fair play*,<sup>27</sup> that is to say, a relation

27 [TN the italicized words are in English in the text.]



118 between two people sharing a look at something. It is clearly a matter of a “game” whose rules must be known by all the players and from which a cheater’s acts are, by definition, excluded.

It is here we find the ethical rules protecting the playing field and the players’ freedom in the framework of precise rules.

*The reuse and circulation of filmed archives also poses particular ethical questions when the images are showing the victims of violence in war, genocide or acts of terrorism. In this case, the freedom of expression can run up against the issue of a person’s dignity. To take one example, the Abounaddara collective observes that the Americans were able to protect the victims of September 11 whereas there are images circulating on the net and in the media of Syrians reduced to the role of extras in a “spectacle of humiliation and abjection.” (Zabunyan 2016, 84). Beyond the question of victims’ dignity, what ethical limits can be opposed to the use of images filmed by the witnesses or the executioners?*

In images of crimes, torture and humiliating treatment what must be constructed is not the relation of the spectator with the victims but the spectator with the image of these victims and violence. We must constantly renew the necessity of recalling that the relation being analyzed concerns the image and not the thing or the person. This relation engages the one showing and the spectator. The violence exercised on the spectator is that of the one showing not that of the torturer or the criminal. When the person showing is the criminal themselves, as is the case for the terrorist filming or for ISIS, the aim is to exercise their violence on the spectator in the dual form of terror and fascination. The women with their knitting sitting around Grève Square are not there to witness the criminality of the executioner but to enjoy the spectacle of the decapitation.<sup>28</sup> What horrifies us, what

28 [TN The Place de Grève was the main site for public executions by Guillotine during the French Revolution.]

terrifies us and makes us the specific victims of the spectacle given to us, is the result of a communications strategy whose aim can be analyzed politically: to produce in the spectator the fear, hatred, demand for security, the feeling of impotence or the unleashing of vengeance, the desubjectivising nightmare or the unavowed pleasure of atrocity porn.

Refusing to see what puts us in these different states derives from our freedom. Refusing to display also derives therefore from the preservation of this freedom that alone ensures the protection of our critical analysis when faced with atrocity. The more a spectator is in a situation of fragility the more this freedom must be protected. This is the case for children. The current environment of global and immediate communication of atrocities via our networks has made it a matter of urgency for us to carry out the critical training and education of our ways of looking earlier than ever before. While the qualified institutions and the directors of their pedagogical and television programs expect a collective acquiescence in the decisions they took regarding the use that they make of horror.

The so-called state “of emergency”<sup>29</sup> reveals to the nth degree that under the banner of security the limitation of public freedoms takes precedence over the effective and efficient protection of citizens. The simultaneous stigmatization of criminals and compassion-inducing iconicity of the victims derives from the choices made by the political communications industries far more than any desire to inform and analyze critically. The springs of impulse and the emotions they provoke suspend any critical distance and shared verbalization. The film *Salafistes* (Jihadists) by François Margolin and Lemine Ould Salem is the crudest and most inept example that you could imagine for disseminating “atrocity” under the pretext of showing “harsh reality

29 [TN A state of emergency was declared in France after the Bataclan night-club massacre in Nov 2015 that gives the police and courts additional powers in controlling public space, arrest and curfew.]

120 in all its naked truth" in order to respect the "freedom of the spectator." Which amounts to saying that the filmmaker denies any responsibility for his relation to the viewer in order to give the "greatest authenticity to the relation between viewer and image." The image becomes a truth-telling ore. This is at the antipodes from any ethical framework by leaving all the power to the executioner and presenting a hateful and unanalyzable object. The image is then given the task of doing whatever the government asks it to do in its place, that is, in the event, declaring war, declaring a state of war. That was what Bush was able to orchestrate with the dissemination of images of September 11, with whose consequences we are familiar and whose effects we are now suffering. It is all about displaying the savagery of the enemy to be killed and to maintain a clean and dignified image of American citizens. The choices made by the government are strategic and not moral. Which simply means that to the question asked the answer is political and encompasses political choices to do with education and the construction of many types of knowledge in its wake. The professions connected to images and archives are always confronted with regimes of freedom that govern the totality of the community in the construction of collective memory, effective knowledges and of the critical freedom shared by this same community.

*New technologies facilitate the transformation of images that were made at a time when these technologies did not exist. They often tend to deny the coordinates of the images and the intentions of the cameraperson. What is your point of view on these operations —colorization, addition of sound, changing formats?*

As I said, anything is possible when it comes to images. You can show anything, transform anything, so long as respect for all the characteristics of provenance remain accessible, and above all as long as the viewers themselves are informed about the modifications that, whether technically or in terms of narrative, convey an archive that documents things into the realm of

fiction. Making people see something always means making it be believed and this “making believed” must never be separated from “making known.” When manipulating belief amounts to breaking the link between faithfulness to the facts and the critical demands made by cognitive functions, it is fair to talk of a political will to deceive and get consensus at the lowest level so as to prevent any debate in the name of the evidence. It is because there is an absolute break and sometimes contradiction between image and evidence that the directors of archive institutions, like all those who construct collective memory and knowledge, are clearly exercising a political profession and that they are the guardians and guarantors of cognitive functions. The archive is not and ought not to be raw material for trickery and the psychological manipulation of belief and knowledge. The whole range of new technologies are, in themselves, “not guilty” on the condition that they do not become strategic tools for the manipulation of belief claiming to “make it known.”

*Should we adapt images to the sensibilities of the present time in order “to get young viewers” and “the general public interested” in the events of the past?*

Why not, if at the same time we teach young viewers to manipulate their own images, in every possible direction, including those that suit them the least and destabilize their immediate acceptance of the images of themselves. Collective experience of contradictory and upsetting productions is extremely fruitful as much on the cognitive level as on the political! We must provide the tools for and then sustain and reinforce further these practices.

However, the “low” hypothesis according to which the “general public” and “the young viewers” are resolutely in search of distraction at the most elementary level of exhibition is only the result of communications policies that for more than twenty years have replaced any education of our ways of seeing and any intellectual curiosity. It is not the viewers who invented

122 and imposed the rules of the market for the spectacle, but the institutions and businesses who have been running it in with profit in mind. You only have to consult the programming rules to recognize the language of supply and demand, the statistics of TV ratings and the box office, the reductions of budgets for the dissemination of knowledge and various kinds of works. There is no evidence whatsoever that a quality program only induces boredom and disgust. On the contrary, what is at stake is in fact the place of the word within the experience of what is sensed, in particular what is seen.

It bears repeating that the fight we are engaged in is political and it is grounded on the place to be given to the dissemination of works and the sharing of knowledge. Any reflection on archival images and the attention given to them derives from what is important in public service and this means it concerns the whole community.

The market for images is associated with the cult of silence under the pretext that the silence of images would justify the silence of the viewers. Learning to see means learning to speak about what one sees. Moreover, and in the same vein, the mass association of pleasure with what is easy is infantilizing although children have no taste for regression, quite the opposite. The visual archive is the most powerful trampoline for the exercise of speech.

# The Words of the “Dispute”

Ania Szczepanska

*When it was announced that the Library contained all books, the first reaction was unbounded joy. All men felt themselves the possessors of an intact and secret treasure. [...] That unbridled hopefulness was succeeded, naturally enough, by a similarly disproportionate depression. The certainty that some bookshelf in some hexagon contained precious books, yet that those precious books were forever out of reach, was almost unbearable (Borges 1999, 141).*

This book grew out of numerous discussions taking place on the margins of public debates, in the corridors of archive institutions, research laboratories, by the exits of editing and projection rooms, often off the record. To the interviews published here can be added numerous exchanges that complete, and sometimes serve as a counterpoint, to the positions expressed. As a result, beyond the anxieties that archival images provoke and despite some real disagreements, the outlines of some proposals have emerged. They encourage us to imagine remedies for warding off

124 collective fears. By way of a conclusion, the “words of the dispute” offers a framework for this dialogue that many people feel is necessary.

## **Collective Fears**

A for Amnesia

F for Falsification

M for Massification

P for Privatization

Whatever our professions and the use we make of images, we feel some trepidation when we realize how fragile the media are that are supposed to preserve the traces of the past and save us from general amnesia. The immateriality of digital images is terrifying because it carries within it the specter of a sudden disappearance, unforeseeable and irreparable. This fear grips all of the actors in cultural life. It particularly affects conservation professionals who, even though they have mastered the waltz of regular migrations between different media are conscious of their vulnerability. Even if they have effective responses in an institutional setting, they know that the danger lies elsewhere: where conservation is carried out in a precarious setting, undertaken by producers or filmmakers who have neither the means nor the know-how to guarantee the permanent conservation of the shots they produce. This danger exists, in a way that is still more troubling, for images that are condemned to disappear at the outset, notably those filmed on cell-phones. This is, for example, the case for uprisings, produced to be put online immediately, without any thought for their preservation, and then disappear even before they become archives. This evanescence is a cause for concern because images described as “amateur” do not offer a simple representation of events: they are a “force capturing energies that are passing through consciousnesses and bodies in situation” they determine our “relation to the struggles of History” (Zabunyan 2016, 10 and 25).

This profusion of poorly preserved or ephemeral images is a harbinger of the irreparable loss of memory in the future.

The anxiety is all the greater in that it is not uniquely a question of losing images. The threat extends now to the data that makes their traceability and their comprehension possible. This loss of identity sometimes presents itself as an editorial program. This is the case for new American image libraries that privatize and have made a business from their collection without caring about their provenance or their characteristics, and are happy with a classification system limited to key-word thematics. If you consult the data base of Getty Images for the term “revolution” more than three thousand one hundred come up. On the same page, images of the fall of the Bastille, taken from an undated televised fiction, rub shoulders with anonymous images of crowds protesting in Maidan Square, whereas a third sequence shows, in a close-up, fireworks exploding over a Libyan flag, all of it to be “put in your shopping cart.” Nowhere are the technical details of the images pointed out. Buyers will find themselves at a loss if they want to know the date and provenance. The meaning is reduced to the subject represented—the revolution—with no historical perspective or aesthetic depth. Such practices, based on the rules of communication in advertising, makes a fair and honest use of audiovisual archives impossible. They are inscribed in the logic of the market that is increasingly being imposed on the entire world. This way of managing images operates to the detriment of the French model that emerged in the 1980s and, more generally, of an archival ethic that tied the conservation of images to a meticulous work of indexing and cataloguing. Producers and filmmakers are privileged witnesses to these purchases of collections that they denounce without being able to stop them. How can you use images you know nothing about with any accuracy? The transfer of property into the hands of manager-investors is dangerous for two reasons: it threatens State heritage policies and favors an untrammelled circulation of images bereft of any identity.



126 This loss of identity takes on a still more pernicious aspect when it is due to the distortion of the image in the name of “augmented reality” (Lindeperg 2014). There is a great risk, then, of seeing the counterfeit be imposed in the place of the original. In this business of falsification, it is not the metamorphoses of images that is worrying, but rather a process of substitution that dare not say its name. Even if it does not aim to suppress the original version, the surplus of visibility of a retouched image can put the original archive in danger, sometimes making it useless, sometimes less “credible,” because these doctored shots have imposed themselves with great force in the imagination of viewers. Some archive directors share this fear and have even gone so far as to envisage that the hijacking becomes its own truth” (Borenstein 2016). Those who are upset by it would like to appeal to the law to regulate these practices and guarantee the safeguard of the originals, without necessarily limiting the variety of their uses. But the law has revealed itself to be powerless to protect the integrity of archival images, because it continues to attach their protection to the notions of a work and an author, the sole holder of moral right. Yet the archival image does not always have an author in the sense the law understands it. Individual cases of jurisprudence certainly provide a safeguard, but the absence of a clear juridical framework reinforces the collective disarray.

Finally, these fears are accompanied with a feeling of powerlessness faced with the impossibility of keeping everything, whereas the technological developments encourage us to think the opposite. People who have the onerous responsibility of guaranteeing reasonable access to audiovisual sources are conscious that only an accurate description allows for an efficient circulation amidst a veritable magma of images. As for the creators and producers whose task it is to manufacture the archives of tomorrow, they are feeling more than ever suffocated by the mass of rushes, this material of a potential film that can become a burdensome waste product once the work is finished.

The desire to keep *every* image is also explained by a new way of writing history and a growing taste for the genesis of works. By making a place for rushes in their workshops, running counter to the habits of their colleagues, a handful of historians have revealed the value of phantom-images. Thanks to their work, these rejected “shreds” that haunt the final form of the film, now constitute vital items for researchers, to the same degree as the paper archives and the works themselves. For the following generation, it goes without saying that “leftover film stock” and “tenuous traces” (Lindeperg 2007, 10) are an integral part of any serious historian’s tools, and it is even difficult to imagine that it could ever have been otherwise. This assumption goes well beyond the limits of the discipline of history alone. Anyone who reflects on images will now be sure to “scratch the surface of a film so as to find its thickness and layers of writing, to shed light on the bifurcations and regrets” (Lindeperg 2014, 13) In this new intellectual horizon, the collection, conservation and accessibility of images conditions the writing of history “from the present that is ours” (Zabunyan 2015, 194). They allow us to “sketch an intelligibility of the event and find again an experience of history” (Zabunyan 2015, 194).

The desire to keep *everything* does nevertheless have other, more ambivalent, aspects. It is sometimes fueled by the tyranny of numbers and upward curves, that have become the daily lot of every institution. If the act of archiving transforms any image into an archive worthy of being conserved, no brake can be opposed to archive fever, fascinated by a “power of memory unparalleled in history” (Hoog 2003, 168). As a result, image professionals are suffering the pressure of contradictory injunctions, based on a twofold illusion: on the one hand, that of being able to keep images forever, without always adapting the human and financial resources that the massification of data entails; on the other hand, the illusion that this total archiving would ensure the existence of a “never-before-seen” global patrimony, the ideal of any civilization solicitous of its history and memory. Such vertiginous

128 impulses make us forget that any conservation necessarily implies sorting and choice, and that these two actions cannot avoid relying on projecting ourselves into the future. Our qualms about the conservation of images are therefore the same as any archivist's: foreseeing how people in the future will use them is impossible, preserving all such remains according to a principle of exhaustiveness is not desirable and even if it were, today it has shown itself to be impossible to realize. This fear of electing to conserve the wrong images is that of a present that shrinks from anticipating the looks and questions of the coming generations, in the name of a necessarily inadequate projection. We are deluding ourselves with the illusion of limitless conservation out of a fear we might be making a false prophecy.

## Points of Contention

A for Access

P for Public (service)

S for Spectator (imaginary)

Faced with legitimate fears, there is a great temptation to designate the guilty parties. In the first place, the State and the institutional policies that govern access to images, sometimes considered to be insufficient. In the 1990s, the law establishing legal deposit (1992) represented a big step forward: its application nevertheless provoked impatient reactions. As soon as access to the archives had become the right of every citizen, it seemed "completely normal for the state to guarantee, *without delay* [...] not only the formal right, but the technical conditions of access to this archive" (Derrida and Stiegler 2002, 35). In France, the situation has evolved. Consultation rooms have become more and more efficient and inviting; consultation platforms now permit remote access to audiovisual collections. In this area, Ina was a great forerunner and serves as a reference abroad. Despite these undeniable improvements, frustrations persist. Access to the platform Ina Mediapro, reserved for users with a certain profile, essentially journalists, producers and filmmakers—has

therefore raised hackles. Conceived at the beginning according to model of sales to potential clients, it has created today a feeling of exclusion for those who want to view these images, to know them and to understand them, without necessarily having the intention of acquiring the rights. This mode of functioning gives rise to backroom arrangements based on a network of alliances that only aggravate the reproaches of those who do not have access to them.

This policy is all the more unjustified as it relies on a sometimes sterile distinction between “professionals of the image” and “users” who nevertheless contribute actively to the valorization of the collection. Other countries, following the United States, have understood that by exhuming archival images and studying them, researchers—they are not the only ones—allow for unknown collections to be discovered and thus increase their value, including their market value. It is not therefore surprising that these institutions have formed privileged partnerships with American universities, not only by facilitating access online, but by recognizing the essential contribution of their works in the conservation policies of archival images. In France—at Ina as with ECPAD—the directors of the collections are beginning to develop types of cooperation, but in a punctual way and often in opposition to the directors in charge of sales for the collections. It is, for example, an aberration that certain commercial agencies deny the economic value of academic research and work. It is just as incomprehensible that they do not to see the interest there might be in promoting access to these images for pedagogic or museum ends. If this type of valorization does not result in higher sales figures immediately, it is assuredly a good long-term investment since it certainly increases the desire and curiosity of those who would like to acquire rights to images.

The tensions linked to audiovisual archives have also become more intense as practices are in a state of constant evolution. The result is that the majority of institutions are working on providing remote access to reading rooms, at the same time they

130 are concerned about the fall in visits. It is now a fact that users have lost the habit of physically going to the archive locations and that they find it increasingly normal to have personal access to the collections from their home computer. The documentalists and archivists are the first to register these developments. They must also confront the contradictions of access policy. They have to negotiate between the desire to disseminate the collections on platforms consultable at a distance and the necessity of not losing control of the images. That is why access to the audiovisual archives is inscribed in a more global reflection on space in libraries, embodied notably by the concept of a "third place" so highly developed in the Netherlands, Denmark and England. It urges us to reconsider the monumental vision of libraries, now conceived not only as places for consultation, but also for sharing knowledge.

The disagreements animating these debates constantly run up against the definition of public service and the heritage mission of the state. The issue of archival images as property is at the very heart of this delicate political and economic question: can the state continue to preserve and give increasing access to these collections whose conservation is so onerous, while leaving the owners, who no longer have the responsibility for looking after them, all the financial benefits? How can we imagine parallel modes of financing, based on patronage and private initiatives, while guaranteeing the norms of conservation and the modalities of access appropriate for a public good?

The role of television, particularly that of public television, is the one that stirs the greatest passions. It does seem difficult to escape a binary logic that opposes easily identifiable camps. Some see in television "a black hole," the "garbage can of our collective unconscious," "a generalized quote on the stockmarket that became the liturgy" (Daney 2005, 153). Others see it as a field subject to divergent logics, conjoining the role of teaching as well as entertainment, and obliged to adapt to the expectations of a diverse public. Both of these two camps measure the other by

their own convictions and certainties. But any reflection on ownership and property and uses of archival images will first have to tackle this conflicted history of the audiovisual landscape.

In the first place, these tensions focus on the broadcasters and heads of programming, who are regularly accused of shaping television according to the dictates of the ratings, to the detriment of a more ambitious policy. Some professionals say they understand these unavoidable constraints, that for example of “making the channel safe” by ensuring a fragile equilibrium between “inclusive” programs and other more “provocative” ones reserved for a smaller public. While we can take these imperatives into account, and whatever conception one has of television’s role, it is still possible to regret that the central key players in the audiovisual industry often refuse to take part in the debate. They often take refuge behind ready-made rhetorics they feel obliged to defend. Is it not telling to note that the majority of programming directors will only explain their point of view and the constraints of their profession once they have left their jobs?

Voices have been raised saying that mythifying a golden age of television cannot help us to imagine the television of tomorrow. The times have changed, the audiovisual field has been radically transformed by the multiplication of channels and new ways of watching television. The constraints on contemporary programmers are clearly not those of their predecessors. Nevertheless, remembering the great figures of yesterday’s television and their choices is not totally without merit. They recall for us that a different television was possible, that the formatting of programs is not set in stone, that the “expectations” of the television viewer do not exist except as a media construct influenced by marketing. To defend “courage” against “resignation” (Lettre de Thierry Garrel 2015) need not be a pure indulgence. Taking this position would oblige us to rethink the roles of a public service solicitous of citizens, while bearing in mind that “television stations are always more primitive and conservative than the societies and publics that it is their mission to serve” (Lettre de

132 Thierry Garrel 2015). These debates encourage us to shift the habitual terms of the dispute, so that they are no longer revolve around the “expectations” of the public or the possibilities of “expanding” it, but on the means of developing its critical faculty: the public “is only large when we make it larger.” (Garrel 2015)

## **Ahead to Unanimity**

B for Common Benefits

C for Contribution

E for Ethics

H for Heritage

Beyond collective fears and numerous discordant voices, converging lines can nevertheless be discerned. The professionals who are responsible for archival images wish to define the rules to ensure a reasonable use of these precious collections, without making the further claim that they should be laying down the law for anyone’s practices. It is clear that we need to draft up a code of ethics. That would require us to redefine the ownership of the archival image, taking stock of the juridical void that is holding up the guarantee of its integrity. For all that, it is not desirable to write the Ten Commandments in order to distinguish good practices from bad. What would be feasible, on the other hand, as some have proposed, is to create commissions whose task it would be to debate current projects, on a case by case basis, within the institutions themselves. That is what the CNC does when it distributes public money and no one criticizes it for applying criteria based on personal, meaning necessarily subjective, taste. Today then, why could not we also imagine this type of procedure in bodies in charge of those public goods that are audiovisual archives? Made up of representatives of the disciplines and various professions, these consultative or legislative commissions could be the guarantors of a new moral right that “would derive from the obligations of those who are make use of a visual document, and not from the prerogatives of an owner” (Mondzain 2018, 68). The clear identification of

sources, the possibility for the viewer to find again the original form of the images she is being shown; so many “obligations” that many judge inapplicable in the case of the editing room. This redefinition of moral right, decoupled from personal property, is, however, not incompatible with the reaffirmed practice of poetic license. The user’s obligation toward archival images can and must be materialized in the most varied aesthetic forms, as a function of the grammar of the film that has incorporated them, of the artistic act that employs them and the pact that they form with the viewer.

A second point of convergence concerns the value of archival images, understood no longer as material objects, having a market value, but as common goods. Heritage policies, which have acknowledged this since the 1980s, have not yet drawn all the consequences. To archive is “to be conscious of the political, economic or other set of criteria...that govern these stocks” (Derrida and Stiegler 2002). It can seem biased, then, to “favor preferential mechanisms as a function of researchers and / or archivists’ current desires” (Hoog 2003). But isn’t taking one’s cues from the supposed expectations of the “wider public” or web surfers’ tastes, measured by the number of clicks and likes, even more so? We cannot formulate criteria for conservation and indexing unless we do it in tandem with those who understand them and are experienced in their use, in the first place from those in the worlds of research and the audiovisual. Indeed certain archival institutions are doing this already. Another exciting horizon opens up when we rethink archiving as a process of collective participation with citizens. This is what is suggested by the concept of the “enlightened amateur” that has gained attention through the works of Bernard Stiegler and the pioneering innovations of the Institut de recherche et d’innovation (IRI).<sup>1</sup> This new way of conceiving the enrichment of data by an enlightened public has the advantage of breaking with

1 See the work of Vincent Puig carried out at the IRI.



134 the opposition between professionals and non-professionals, between producers and consumers. It promotes the political figure of a citizen who is both a contributor and co-director of the audiovisual heritage.

In order that these dialogues not become “a fight between several movements of appropriation” (Derrida and Stiegler 2002) we should re-examine, in the name of the collective interest, the laws of silence imposed by strange alliances and by the reticence (so French) to talk about money. All the participants in the debate seem to be appealing for a redefinition of what is called common heritage in as much as it “implies a decision, a responsibility, an answer and in consequence a critical selection.”<sup>2</sup> They also demand a clearer recognition of the pedagogical, scientific and artistic use of archival images and their encouraging their development by raising public and private funds. Finally, they all agree in asserting that this is the price to be paid for a modern State to have international influence. The diplomacy of representation, which has characterized the French model for centuries, is clearly of limited value at present. In other countries the strategies for exerting influence now take the form of particular forms of expertise, notably in the area of managing memorial policies, in which audiovisual sources occupy a central place.<sup>3</sup> The attractiveness of archival images does not necessarily lead, therefore, to the frenzy of an irrational accumulation. On the contrary, it pushes us to coordinate the exponential acquisition of archives with processes that slow it down, necessary to the professional and academic exploitation of the collection and political cooperation. This rational heritage enthusiasm offers an outline for the conditions of a collective reappropriation of images elevated to the level of a common good.

2 *Ibid.*

3 Ina's policy of mandates applied abroad, recently in Cuba and Kuwait, are examples of this. It proves that managing archival images is a sign of a wealthy country's power.

## References

- Amad, Paula. 2010. *Counter-Archive: Film, the Everyday, and Albert Kahn's Archives de la Planète*. New York: Columbia University Press.
- Arasse, Daniel. [1992] 1996. *Le Détail: pour une histoire rapprochée de la peinture*. Paris: Flammarion.
- Bazin, André [1962] 1976. *Qu'est ce que le cinéma?* Paris: Cerf.
- . [1967] 2005. *What is Cinema. Vol. 1*. Translated by Hugh Gary. Berkeley: University of California Press.
- Benjamin, Walter. 2005. *Selected Writings. Vol. 2, pt. 1. 1927–1930*. Translated by Michael W. Jennings and Harold Eiland. Cambridge, MA: Harvard University Press.
- . 2006. *Selected Writings, Vol. 3*. Edited by Howard Eiland and Michael W. Jennings. Cambridge, MA: Harvard University Press.
- Blümlinger, Christa. 2014. "Présentation." *CINÉMA* 24 (2-3): 7–16.
- Borges, Jorge Luis. 1999. "The Library of Babylon." In *Collected Fictions*, translated by Andrew Hurley. London: Penguin.
- Comolli, Jean-Louis. 2013. "Spectre de l'histoire: dialogue avec Jean-Louis Comolli." In *La Voie des images: quatre histoires de tournage au printemps-été 1944*, edited by Sylvie Lindeperg, 193–222. Paris: Verdier.
- Daney, Serge. [1992] 2005. *Trafic*. Paris: Petite bibliothèque des Cahiers du cinéma.
- De Certeau, Michel. 1980. *L'Invention du quotidien I: arts de faire*. Paris: Gallimard.
- . 1984. *The Practice of Everyday Life*. Translated by Steven Rendall. Berkeley: University of California Press.
- Delbard, Nathalie. 2016. "L'originalité photographique: inadéquation de l'art et du droit," *artpress* 2, 41.
- Derrida, Jacques. 1995. *Mal d'archive*. Paris: Galilée.
- . 1996. *Archive Fever: A Freudian Impression*. Translated by Eric Prenowitz. Chicago: University of Chicago Press.
- . 2014. *Trace et archive, image et art*. Bry-sur-Marne: Ina.
- Derrida, Jacques, and Bernard Stiegler. 2002. *Echographies of Television*. Translated by Jennifer Bajorek. Oxford: Polity.
- Ferro, Marc. 1988. *Cinema and History*. Translated by Naomi Greene. Detroit: Wayne State University Press.
- . 1993. *Cinéma et Histoire*. Paris: Gallimard.
- Foucault, Michel. [1969] 2002. *The Archaeology of Knowledge*. Translated by A. M. Sheridan Smith. PLACE: Routledge.
- Hartog, François. 2003. *Régimes d'historicité: présentisme et expériences du temps*. Paris: Seuil.
- Hoog, Emmanuel. 2003. "Tout garder: les dilemmes de la mémoire à l'âge médiatique." *Le Débat*, 125.
- Journal officiel*, 30, 19 May 1992.
- Lettre de Thierry Garrel, *Télérama*, 13 April 2015.
- Lindeperg, Sylvie. 2007. *Nuit et brouillard: un film dans l'histoire*. Paris: Odile Jacob.

- 136 —. 2014. *Night and Fog: A Film in History*. Translated by Tom Mes. Minneapolis: University of Minnesota Press.
- . 2014. *Les Écrans de l'ombre*. Paris: Seuil.
- Margerie, Emmanuel de. 1993. "Deux témoins de leur temps: Albert Kahn et Jean Brunhes." In *Jean Brunhes: autour du monde, regards d'un géographe, regards de la géographie*, edited by Jeanne Beausoleil, 92. Boulogne: Musée Albert Kahn.
- Matuszewski, Boleslas. 1995. "A New Source of History." *Film History* 7 (3): 322–324. Translated by Laura U. Marks and Diane Koszars.
- . 2006. "Une nouvelle source de l'histoire." In *Écrits cinématographiques*, edited by Magdalena Mazaraki, 12–88. Paris: Association française de recherche sur l'histoire du cinéma/Cinémathèque française.
- Niney, François. 2009. *Le Documentaire et ses faux-semblants* [The Documentary and its deceptions]. Paris: Klincksieck.
- Psenney, Daniel. 2014. "Apocalypse ravive la Grande Guerre en couleurs" *Le Monde*, 13 March 2014.
- Ricoeur, Paul. 1998. "Histoire et mémoire." In *De l'histoire au cinéma*, edited by Antoine de Baecque, 17–28. Bruxelles: Editions Complexe.
- Stiegler, Bernard. 2014. "Le remède et le poison." In *Le livre militant*, edited by Philippe Lefait, 60–64. Paris: Le Cherche Midi.
- Veray, Laurent. 2011. *Les Images d'archives face à l'histoire: de la conservation à la création*. Paris: Scérén/CNDP-CRDP.
- Veyne, Paul. 1971. *Comment on écrit l'histoire*. Paris: Seuil.
- . 1984. *Writing History*. Translated by Mina Moore-Rinvulcri. PLACE: Wesleyan University Press.
- United Nations Educational, Scientific, and Cultural Organization. (October 27 1980). *Recommendation for the Safeguarding and Preservation of Moving Images*, (Programme and Meeting Document 21 C/Resolutions). Retrieved from the United Nations Educational, Scientific, and Cultural Organization website: [http://portal.unesco.org/en/ev.php-URL\\_ID=13139&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13139&URL_DO=DO_TOPIC&URL_SECTION=201.html).
- Zabunyan, Dork. 2014. "La voie des images, la traversée de l'histoire." *Critique*, 814: 191–201.
- . 2016. "Le droit à l'image est-il égalitaire?" *artpress*, 2: 41.
- . 2016. *L'Insistance des luttes: images, soulèvements, contre-révolutions*. Saint-Vincent-de-Mercuze: De l'incidence éditeur.

# Bibliographical Annex

## The Pioneers

### *Boleslas Matuszewski*

Boleslas Matuszewski was the first person to have formulated the idea of setting up a film depository. This project followed in the wake of initiatives by Léon Vidal who had launched a campaign in 1894 to promote the creation of a documentary photography museum in Paris.

- Carou, Alain. 2021. "Une nouvelle source de l'histoire du cinéma, de Boleslas Matuszewski (1898)." *Bulletin des bibliothèques de France*, 1 . Accessed November 3, 2021. <https://bbf.enssib.fr/sommaire/2012/1>.
- Matuszewski, Boleslas. 2006. "Une nouvelle source de l'histoire." In *Écrits cinématographiques* . Edited by M. Mazaraki, 12–88 . Paris: Association française de recherche sur l'histoire du cinéma/Cinémathèque française.

### *Albert Kahn and the Archives de la planète*

The main architect of the Archives de la planète was the geographer Jean Brunhes. The idea of using images to make an inventory of the planet was part of the tradition of the great Encyclopedist dream. The Archives de la planète came to an end in 1931 as a result of Albert Kahn's financial difficulties, faced with the consequences of the economic crash in 1929.

- Amad, Paula. 2010. *Counter-Archive: Film, the Everyday, and Albert Kahn's Archives de la planète*. New York: Columbia University Press.
- Beausoleil, Jeanne, and Mariel Delamarre, eds. 1993. *Jean Brunhes: autour du monde, regards d'un géographe, regards de la géographie*. Boulogne: Musée Albert-Kahn.
- Castro, Teresa. 2008. "Les Archives de la planète et les rythmes de l'Histoire, 1895," 56–81. Accessed November 3, 2021. <https://doi.org/10.4000/1895.2752>.
2002. "Le cinéma d'Albert Kahn: quelle place dans l'histoire?" *Les Cahiers de la cinémathèque*, 74.

Two Units, one Photography, one Film were first created in 1915; they were amalgamated in 1917 to form the Army Photographic and Cinematic Unit (Section photographique et cinématographique de l'armée, SPCA).

Sébastien, Denis, and Sené Xavier, eds. 2015. *Images d'armées: un siècle de cinéma et de photographie militaires, 1915-2015* (Paris: ECPAD/CNRS Éditions, 2015).

Véray, Laurent. 2011. *Les Images d'archives face à l'histoire: de la conservation à la création*. Paris: ScÉrEn/CNDP-CRDP.

### **Status and Use of Archival Images**

Blümlinger, Christa. 2014. "Présentation." *Attrait de l'archive*, *CiNÉMA* 24 (2-3) : 7-13.

—. 2013. *Cinéma de seconde main: esthétique du remploi dans l'art du film et des nouveaux médias*. Paris: Klincksieck.

Didier, Isabelle, and Philippe Raynaud, eds. 2014. "L'extension des usages de l'archive audiovisuelle." *E-Dossiers de l'audiovisuel*, June.

Guyot, Jacques, and Thierry Rolland. 2011. *Les Archives audiovisuelles : histoire, culture, politique*. Paris: Armand Colin.

Lindeperg, Sylvie. 2007. *Nuit et brouillard: un film dans l'histoire*. Paris: Odile Jacob.

Maeck, Julie, and Matthias Steinle, eds. (2016). *L'image d'archives: une image en devenir*. Rennes: Presses universitaires de Rennes.

Niney, François. 2000. *L'Épreuve du réel à l'écran: essai sur le principe de réalité documentaire*. Bruxelles: De Boeck University.

Laurent Véray and Odette Martinez, eds. 2008. "Écritures filmiques du passé : Archives, témoignages, montages." *Matériaux pour l'histoire de notre temps*, 89-90.

### **Archives and digital technologies**

Bachimont, Bruno. 2017. *Patrimoine et numérique: technique et politique de la mémoire*. Paris: Ina.

Blom, Ina, Trond Lundemo, and Eivind Røssaak, eds., 2016: *Memory in Motion: Archives, Technology and the Social*. Amsterdam: Amsterdam University Press.

Chambat-Houillon, Marie-France, and Évelyne Cohen, eds. (2013). "Archives et patrimoines visuels et sonores." *Sociétés & Représentations* (35).

Derrida, Jacques, and Bernard Stiegler. 1996. *Échographies de la télévision*. Paris: Galilée/Ina.

Hoog, Emmanuel. 2003. "Tout garder? Les dilemmes de la mémoire à l'âge médiatique." *Le Débat*, 125 : 168-189.

Stiegler, Bernard. 1994. *La Technique et le Temps 1: la faute d'Épiméthée*. Paris : Galilée.

Treleani, Matteo. 2014. *Mémoires audiovisuelles: les archives en ligne ont-elles un sens?* Montréal: Presses de l'université de Montréal.

The decree of 1977 concerning the legal deposit of film, includes all French films; it is completed by the decree of 1993 that extends legal deposit to all films (French and foreign) distributed in France. The application of legal deposit to cinematographic works might seem belated. The idea was formulated a half century earlier by Jean Zay who had tried to have it apply without success under the Popular Front (1936-1938). For several decades the government preferred to subsidize the Cinémathèque française, created in 1936.

Callu, Agnès, and Hervé Lemoine, eds. 2005. *Patrimoine sonore et audiovisuel français : entre archives et témoignage, guide de recherche en sciences sociales*, vols. 1 to 7. Paris: Belin

Legal Deposit for the Internet was passed into law in 2006 and made applicable in 2011. The two designated depository institutions are Ina and the BNF.

Cohen, Évelyne, and Julie Verlaine. 2013. "Le dépôt légal de l'internet français à la Bibliothèque nationale de France." *Sociétés & Représentations*, 35: 209–218.

Saby, Frédéric. 2013. "Approche historique du dépôt légal en France." *Sociétés & Représentations*, 35: 15–26.

The French Law on archives of 3rd Jan 1979 (*Journal officiel*, 5 January 1979) acts to extend the domain of the archive. Because remains worthy of being conserved are no longer written but are acoustic and visual, the idea of the archive has been extended to all documents "whatever their form and their support material/medium" produced by any public or private service or organ in the exercise of their activity." Still, the fact is that the use of the term "archival images" is virtually absent in French archive institutions.

Bartholeyns, Gil. 2016. "L'ordre des images." In *L'Image d'archives: une image en devenir*, edited by Julie Maeck and Matthias Steinle, 21–42. Rennes: Presses universitaires de Rennes.

- 140 Marcilloux, Patrice. 2016. "Images archivées, images d'archives : fortunes terminologiques." In *L'Image d'archives : une image en devenir*, edited by Julie Maeck and Matthias Steinle, 53–64. Rennes: Presses universitaires de Rennes.

### Archive Colorisation

- Belot, Robert. 2010. "Apocalypse, un documentaire sur la Seconde Guerre mondiale." *Vingtième siècle : revue d'histoire*, 107 : 171–175.
- Bonzon, Thierry. 2010. "Usages et mésusages des images d'archives dans la série *Apocalypse*." *Vingtième siècle : revue d'histoire*, 107: 175–179.
- Didi-Huberman, Georges. 2009. "En mettre plein les yeux et rendre *Apocalypse* irregardable." *Libération*, September 22.
- Ekchajzer, François "Les images d'archives peuvent-elles mentir?" *Télérama*, 3114, September 16.
- Gunthert, André. 2011. "Apocalypse ou la truille de l'histoire." Accessed April 4, 2017. *L'Atelier des icônes*, November 7. <http://histoirevisuelle.fr>.
- Lindeperg, Silvie. 2013. *La Voie des images: quatre histoires de tournage au printemps-été 1944*. Paris: Lagrasse.

## Authors and Participants

### Authors

**Sylvie Lindeperg** is a historian, professor at the University of Paris I Panthéon-Sorbonne and member of the Institut universitaire de France. She is the author and co-editor of fifteen books exploring the connections between film, memory and history amongst which are: *Clio de 5 à 7* (Paris: CNRS Éditions, 2000); *Nuit et brouillard: un film dans l'Histoire* (Odile Jacob, 2007) [Night and Fog: A Film in History. Tr. Tom Mes (Minneapolis: University of Minnesota Press, 2014)]; *La Voie des images* (Verdier, 2013), *Les Écrans de l'ombre* (Paris: Seuil, 2014); *Le Moment Eichmann* (Albin Michel, 2016), coedited with Annette Wieviorka; her most recent work is: *Le procès de Nuremberg: la bataille des images* (Payot, 2021).

**Ania Szczepanska** is a graduate of the École normale, film historian and Lecturer at Paris 1 Panthéon-Sorbonne. Her works deal with Eastern European Film and Documentary Film. She made the documentary *Nous filmons le peuple!* (We Film the People!), produced by Abacaris films (broadcast on Ciné+ and TVP Kultura, released on DVD by Aloest), about the political involvement of filmmakers in Communist Poland. She is the author of: *Do granic negocjacji. Historia Zespołu filmowego X Andrzeja Wajdy (1972-1983)* (Cracow: Universitas, 2017) [At the border of Negotiation. History of the Andrzej Wajda's Production Group X (1972-1983)]. In 2019 she made the film *Solidarnosc, la chute du mur commence en Pologne* (*Solidarnosc, how Solidarity changed Europe*) produced by Looksfilm for Arte/NDR; her most recent work is *Une histoire visuelle de Solidarnosc* (MSH, 2021).



**Nathalie Chassigneux** has been a lawyer at the Paris Bar since 1988. She also has positions in teaching and training that address a diversity of students and professionals and has participated in different colloquia dealing with intellectual property.

**Serge Lalou** is a producer of documentaries. It was after he had studied to be a vet and numerous travels that he joined the staff of Films d'ici, one of the largest production companies for documentaries in France, in 1987. He has produced more than 500 documentaries and feature there that have enjoyed general release in the cinema and been shown on television channels throughout the world.

**Agnès Magnien**, General Curator of Heritage, is currently Deputy Director of Collections at Ina. A graduate of the l'École des chartes, she began her career as a conservator in the Missions Section of the National Archives. She then became the director of the State /Departmental Archives of Seine-Saint-Denis, where she was the Assistant Director General for nine years before becoming Director of the National Archives from 2011 to 2014.

**Marie-José Mondzain** is a philosopher, Research Director emeritus at the CNRS. Specialist of relationships to the image, she has done research on iconoclasm since the Byzantine period. Her recent work discusses the nature of the gaze, ways that we say what we see and the violence of images. She is the author of numerous books including: *L'Image naturelle* (Paris: Le nouveau commerce, 1995); *L'Image peut-elle tuer ?* and *Homo spectator* (Paris: Bayard, 2002 et 2007); *Le Commerce des regards* (Paris: Seuil, 2003); *L'Image, une affaire de zone* (D-Fiction, 2014); *Confiscation. Des images, des images et du temps* (Paris: Les Liens qui libèrent, 2017).

**Jean-Gabriel Périot** has made many shorts on the borders of documentary, animation and experimental. He has developed his own style of editing that examines violence and history using

film and photo archives. His films, such as *Dies Irae, Eût-elle été criminelle* (Even If She Had Been A Criminal...)..., *Nijuman no borei (200 000 fantômes)* (200, 000 Phantoms) or *The Devil* have garnered awards in numerous festivals across the globe. His first feature-length film, *Une jeunesse allemande*, opened the panorama section at the Berlin festival in 2015 before its general release in Germany, Switzerland and France and winning numerous prizes in festivals.

**Xavier Sené**, archivist-paleographer and Library Conservator, is currently director of the conservation and development unit of ECPAD after having been head of the conservation unit and then of the multimedia service in the Audiovisual Department of the Bibliothèque nationale de France.



Sylvie Lindeperg, Ania Szczepanska (eds.)

Who owns the images?

**Digitization carries the utopian promise of archival access unlimited by constraints of space and time, and with it, of new forms of research and historiographies. In reality, digital image archives pose a complex set of technical, legal, ethical and methodological challenges, particularly for film and media studies and adjacent fields. In a series of studies and interviews with practitioners, scholars and theorists, this volume draws a detailed map of these challenges and offers perspectives for further research and creative practice.**

[konfigurationen-des-films.de](http://konfigurationen-des-films.de)

**KONFIGURATIONEN  
DES  
FILMS**

**DFG** Deutsche  
Forschungsgemeinschaft

**GOETHE**  
UNIVERSITÄT  
FRANKFURT AM MAIN



**μ** meson press