

ARRB Staff Discussion Draft
September 26, 1996

Draft Agreement Among
the United States of America,
the National Archives and Records Administration, and
LMH Company

This is a discussion draft revised by the ARRB staff from the LMH August 2 draft. Portions that are bracketed and in bold signify those areas where the ARRB staff believes there may be a divergence among the parties or where further discussion may be warranted.

Neither the Review Board, LMH, nor NARA has taken any position with respect to any of the provisions below. The inclusion of any provision below does not signify that any party has impliedly accepted such provision or that it has waived any rights that it might otherwise possess.

This agreement made this __ day of October, 1996 (the Agreement) between the United States of America, the National Archives and Records Administration (NARA), and the LMH Company.

Part I: Subject of the Agreement, Parties, Definitions

1. The subject of this agreement is the out-of-camera original film of the assassination of President John F. Kennedy taken by Abraham Zapruder on November 22, 1963 (the Zapruder Film).
2. The following are parties to this Agreement:
 - a. The United States of America as represented by the Attorney General of the United States (Attorney General),
 - b. The National Archives and Records Administration (NARA), and
 - c. LMH Company, a partnership organized and operated under the law of the State of Texas, including its successors in interest, heirs, and assigns, that warrants that it is the sole legal owner of the Zapruder Film.
3. The following definitions shall apply:

- a. The term "Copies" shall mean and refer to tangible motion picture copies in VHS video format and to tangible 35 mm slides of single frames from the Zapruder Film and still photographic prints of single frames from the Zapruder Film. **[Issue 1: changes in technology and new formats. Issue 2: digital copies. LMH is concerned about digitized versions being pirated on electronic media such as the Internet. Can a digital copy be made that would include a code that would uniquely identify the original Zapruder Film and that would protect LMH's copyright interests?]** The term "Copies" shall not include any copy of the Zapruder Film or any portion thereof in any media or form not expressly herein identified.
- b. The term "Assassination Film Materials" shall refer to those items identified on Attachment __; however such materials shall not include the Zapruder Film.
- [c. Other definitions?]**

Part II: Storage Agreement, JFK Act

4. On or about July 10, 1978, a storage agreement (attached hereto as Attachment _) was entered into by LMH and NARA. The Zapruder Film was thereupon delivered to NARA where it has remained to this day.
5. On October 26, 1992 Congress enacted the President John F. Kennedy Assassination Records Collection Act of 1992, 44 U.S.C. Sect 2107 (Supp. V 1994) (the JFK Act), a copy of which (as amended) is attached hereto as Attachment _. The JFK Act created the President John F. Kennedy Assassination Records Collection (JFK Collection) to be housed at NARA.

Part III: Provision of Assassination Film Materials; Grant of Royalty free license

6. LMH agrees that following the execution of this agreement it will expend up to twenty thousand dollars (\$20,000) **[presumably adequate; should be verified]** towards the Review Board's acquisition of any or all of the materials set forth in Attachment _ for delivery to NARA for the inclusion in the JFK Collection prior to January 1, 1997.
7. LMH hereby grants to the United States a non-exclusive royalty free license to reproduce and distribute Copies (as defined in paragraph 8 below) of the Zapruder Film in perpetuity throughout the world, subject to the limitations set forth in paragraph 8.
8. LMH further grants to the United States, to be stored in the JFK Collection, certain materials to be called the "Assassination Film Materials" as defined above.

9. NARA shall comply and cause compliance with the following limitations:
- a. NARA shall deliver Copies to an individual or to an entity as required by the JFK Act. Such copies shall be provided only in response to a specific written request by such individual or entity. Delivery shall be made only by delivery of the tangible Copies and not by electronic **[Q: would this prevent a digitized tape?]**, telecast, micro-wave, satellite, wire, fiber optic, or other or similar means whether now existing or later developed.
 - b. NARA shall not create an inventory of Copies other than to the extent reasonably necessary in order to respond to written requests for Copies pursuant to the license granted in paragraph 7 hereof and shall not offer for sale or sell Copies through any bookstore, shop, or retail outlet.
 - c. For the purpose of this Agreement the recipient's right in any Copy received shall be limited to those afforded under Title 17, Sect. 109 (d) to individuals and entities who acquire Copies by rental, lease, loan, or otherwise without acquiring ownership of the Copies, and who are not authorized by a copyright owner to exercise the privileges prescribed by Title 17, Sects. 109 (a) and (c) as in effect with revisions to September 30, 1994 and as amended by amendatory acts of October 18 and December 8, 1994 (Attachment) and notwithstanding any modifications which may be thereafter enacted. **[This paragraph must be approved by DOJ. The paragraph presumably should not provide for expanding any rights of LMH beyond what it possessed prior to the JFK Act.]**
 - d. The rights and permissions herein granted are expressly conditioned upon the affixation to all Copies of the Notice "Copyright 1967 (Renewed 1995) LMH Company. All Rights Reserved. By receipt of this Copy the recipient agrees that the privileges appurtenant to this Copy are subject to the limitations and restrictions imposed upon individuals and entities who acquire Copies by rental, lease, loan, or otherwise without acquiring ownership as set forth in Title 17, Sect. 109 (d) (1994)." **[This paragraph must be approved by DOJ. The paragraph presumably should not provide for expanding any rights of LMH beyond what it possessed prior to the JFK Act.]**
 - e. Nothing contained herein shall be interpreted as a waiver. **[This paragraph must be**

approved by DOJ. The paragraph should not expand LMH's rights beyond what it possessed prior to the JFK Act.]

Part IV: Storage

10. LMH shall continue storage of the Zapruder Film either with NARA under the Storage Agreement or with NARA pursuant to a new storage agreement and such new agreement must be in conformity with the terms and intent of this Agreement.
11. Should the Zapruder Film enter into storage with NARA, NARA shall archive the Zapruder Film under the best reasonable archival conditions at its facilities in Washington, D.C.
12. NARA shall insure the Zapruder Film against loss, damage, destruction, harm and impairment in full amount of its fair market value. LMH shall be the named insured under the policy of insurance and NARA shall reimburse LMH for any loss attributable to any damage to the Zapruder Film while in storage with NARA to the extent not fully covered by insurance proceed received by LMH. **[ARRB has no independent objection to this paragraph; however, it is ARRB's understanding that such a provision may not be permissible under U.S. law and with the policies and practices of Federal institutions. NARA must approve.]**
13. LMH agrees that, as long as the Zapruder Film is in storage with NARA or with NARA, the United States may conduct any and all reasonable forensics test of the Zapruder Film provided that no test shall materially alter or destroy any images on the Zapruder film. The United States may, however, alter or destroy a small portion of the leader of the Zapruder Film for the purpose of conducting evidentiary or forensics tests provided that such alteration or destruction is made in accordance with sound forensic practice and if the United States exercises all reasonable efforts to preserve the greatest integrity of the film possible. NARA agrees to exercise diligence in the handling of the Zapruder Film and that any damage to the Zapruder Film beyond immaterial alteration permitted pursuant to the first sentence hereof shall be subject to the reimbursement provisions of paragraph 12. **[Paragraph 12 may be amended.]**
14. LMH and NARA agree that during the entire period the Zapruder Film is in storage with NARA or NARA or owned by LMH, no party shall intentionally alter, destroy, or impair the Zapruder Film in connection with testing, research, or in any other pursuit or for any other purpose except as permitted in paragraph 13.

Part V: United States Acquisition of the Zapruder Film

15. Sale and Contribution.

LMH intends to enter into discussions with the United States to provide the United States with an opportunity to acquire the Zapruder Film at a price that may be lower than the fair market value thereof. LMH agrees to leave the Zapruder Film on continuing deposit at NARA or to transfer it to NARA during those discussions . . .

[LMH Draft: . . . at least until January 1, 1998 or until a purchase agreement has been made with the United States (whichever period ends earlier). In the event the United States has not acquired the Zapruder Film on or before January 1, 1998 . . .]

[ARRB proposed alternative: . . . until LMH shall have received a bona fide offer to purchase as provided by this Agreement and the United States shall not have acted to purchase the Zapruder Film. Should LMH receive a bona fide offer to purchase the film and should the United States not make an offer to purchase the film consistent with the terms of this Agreement . . .]

. . . and NARA agrees to return the Zapruder Film to LMH within 30 days of receipt of a written request by LMH and NARA agrees to maintain the Zapruder Film on deposit under the terms and conditions of paragraph 11. Nothing contained herein shall be interpreted as requiring the United States or LMH to purchase or to sell the Zapruder Film except as may otherwise be provided in 16(b)(iii) below.

16. Notice of intent to sell

LMH may sell the Zapruder Film to someone other than the United States only: (a) after providing the United States with an adequate opportunity to obtain an appropriation pursuant to the federal legislative process (as hereinafter set forth) and (b) after providing the United States with an opportunity to purchase the Zapruder Film (as hereinafter set forth).

- a. LMH shall be deemed to have provided the United States with an adequate opportunity to attain an appropriation pursuant to the federal legislative process as referred to above if LMH has provided written notice to the Attorney General and to

[specifically identified] Congressional committees of its intention to offer the Zapruder Film for sale at least six months **[perhaps a longer period, depending upon outcome of discussions]** prior to concluding a sale to any party.

- b. LMH shall be deemed to have provided the United States with an opportunity to purchase the Zapruder Film as referred to above if LMH either:
- i. provides the Attorney General and to **[specifically identified]** Congressional committees with written notice of the time and place of an auction at least thirty (30) days **[__ months]** prior to such auction and provides the United States with a right of first refusal for the Zapruder Film for the same amount bid in the auction (plus one dollar) provided that the United States tenders a bona fide offer to LMH within **[__]** weeks after the auction, *or*
 - ii. provides the Attorney General and **[specifically identified]** Congressional committees with a statement that includes the price LMH would accept from the United States for purchase of the Zapruder Film together with a written copy of a bona fide contract for the purchase of the Zapruder Film together with an offer to the United States to purchase the Zapruder Film upon the same terms and conditions as provided for in said contract which offer shall remain open for acceptance by the United States at any time during a period 30 days **[__ months]** from the date of such written notice.
 - iii. The United States and LMH may agree to submit to arbitration to determine a purchase price for the Zapruder Film and that such purchase price will constitute the price for which LMH agrees to sell the Zapruder Film.

The Attorney General and/or NARA undertakes to keep LMH advised concerning whether it is seeking an appropriation and is considering acquisition of the Zapruder Film pursuant to the foregoing opportunities and to notify LMH promptly and to execute a waiver if it determines not to exercise such rights. LMH may independently seek to obtain information from Congress regarding the status of any deliberations it may conduct regarding the possible purchase of the Zapruder Film.

Part VI: Storage Agreement; Ownership rights

17. The Storage Agreement remains in full force and effect except as altered or affected by the terms of this Agreement. The United States does not assert that it has obtained ownership rights by virtue of the fact that it has had custody of the Zapruder Film for a period of years.
18. The undersigned warrant and represent that they have the authority to enter into this agreement.

Part VII: Flow Down Clause

[19. LMH Company recognizes that the Zapruder Film is a valuable evidentiary record of the assassination of President Kennedy and, accordingly, that the United States and the people of the United States have a substantial interest in the Zapruder Film's being preserved in a manner that best protects the physical integrity of the Zapruder Film. Accordingly, LMH agrees that it will never knowingly, intentionally, or with reckless disregard allow the Zapruder Film to be cut, destroyed, mutilated, or altered in any way that would effect its evidentiary value. LMH further agrees that should it sell, donate, or otherwise convey any ownership rights in the Zapruder Film to any other person or entity, that it will include as a necessary term to any such conveyance the following provision:

- "a. Any person or entity that purchases part or all of the Zapruder Film agrees that it will purchase the Zapruder Film subject to this provision.
- b. Any person or entity that should ever own part or all of the Zapruder Film agrees not intentionally, knowingly, or with reckless disregard to cut, destroy, alter, or mutilate the Zapruder Film.
- c. Any person having an ownership interest in the Zapruder Film who decides to sell an interest in the Zapruder film must include this provision and its terms as a necessary condition to any subsequent conveyance of ownership interests in the Zapruder Film. No other provision of an agreement to purchase or to sell the Zapruder Film may include any provision that would alter or affect the substance the terms of this provision.
- d. Recognizing the interest of the United States and the American

people in the preservation of the integrity of the Zapruder Film, any person (including any subsequent purchaser or seller of the Zapruder Film) who shall intentionally, knowingly, or with reckless disregard allow the Zapruder Film to be cut, destroyed, altered, or mutilated, hereby agrees to pay to the United States the full value of the Zapruder Film. Such value of the Zapruder Film shall be determined by a Federal court (or such arbitrator as the United States and the parties shall agree). The value may be ascertained by such factors as the most recent sale price of the Zapruder Film (provided that such sale was for the fair market value of the film), expert evaluation of the value of the Zapruder Film, and other factors as may reasonably be proposed.

- e. The good faith inclusion of this provision as a term in any future conveyance by the seller shall act as a presumption that the seller has complied with the terms of this provision and would not be liable for violation of this provision.
- f. All subsequent purchasers or sellers of the Zapruder Film shall agree to submit to the jurisdiction of the United States courts.”]

Part VIII: Release

20. LMH hereby releases, waives, and abandons all claims relating to the Zapruder Film that may have accrued against the United States prior to the date of this Agreement, including, but not limited to, claims arising in tort, copyright, or takings law. Such release is conditioned on the United States' performance under this Agreement. The United States shall hereinafter make no claim to ownership of the Zapruder Film based upon the JFK Act or on any event that occurred prior to the enactment of the JFK Act.

Part IX: Decision by the Assassination Records Review Board to Accept Copy in Lieu of Original

21. The Assassination Records Review Board has determined, in light of the provisions of the agreement and the purposes and provisions of the JFK Act, to issue a ruling containing the provisions set forth on Attachment _ hereto to the effect that the Assassination Film Materials and certain subsequently produced materials to meet researcher needs as set forth herein will

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be included as part of the JFK Collection and that the Zapruder Film will not be so included.

In witness whereof the parties set their hands and seals.

For the United States of America:

Attorney General of the United States
Date:

For LMH Company:

Henry G. Zapruder
Date:

For NARA:

John Carlin
Archivist of the United States
Date:

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