Orphan Works
Films and Recordings

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The White Shadow (1924)
National Film Preservation Board Study and Plan

- Library of Congress: National Film Preservation Board
  - Advisory board: “snapshot” study and plan on film preservation – see www.loc.gov
    - “Film Preservation: 1993”
    - “Redefining Film Preservation: A National Plan” (1994)
- Public hearings in Washington, D.C., Los Angeles and New York
  - 60+ organizations participated in proceedings
“Orphan” Works Defined

* Study and national plan focused on many issues
  * Technical, legal, financial, public policy issues

* One public policy issue in particular: how to rescue “orphans”
  * The term “orphan works” was coined by NFPB Chair Fay Kanin
  * Emmy award winning screenwriter -- “Friendly Fire”
1997 National Film Preservation Foundation (NFPF)

* Founded in Washington, D.C.
  * Annette Melville (Director) – staff of 5 in San Francisco
* Focus on “orphan” films
* Defining orphans as: films without “commercial benefactors”
  * “Culturally, historically or aesthetically significant”
  * www.filmpreservation.org
Orphan Films

- Documentaries
- Silent-era films (80% to 90% lost)
  - Pierce study (2012) on survivability
- Home movies
- Avant-garde films
- Newsreels
- Industrials
- Independent productions
Lost Hitchcock Film Discovered in New Zealand

The New Zealand Film Archive and the NFPF are thrilled to announce the discovery of a lost work by celebrated British/American filmmaker Alfred Hitchcock (1899-1980). The print is incomplete—only the first three reels survive—but what has been recovered reveals a master in the making.

The film is *The White Shadow*, an atmospheric melodrama starring Betty Compson, in a dual role as twin sisters—one angelic and the other "without a soul." With mysterious disappearances, mistaken identity, steamy cabarets, romance, chance meetings, madness, and even the transmigration of souls, the wild plot crams a lot into six reels. Critics faulted the improbable story but praised the acting and "cleverness of the production."

Hitchcock broke into the British film industry in 1920 as a title-card designer. Within three years, he was writing scripts, designing sets, and taking every production role thrown his way. *The White Shadow* appears to be the earliest surviving feature credited to Hitchcock, the film's entire, assistant director, art director, and editor. Commented David Sterritt, author of *The Films of Alfred Hitchcock*.
Resources are made available to American cultural institutions through competitive grants
- Private and (some) public monies
- Institutions must: (a) provide public access to their films and (b) properly store them
- Preserved 1,870 films to date
- At 239 institutions
States Served by the NFPF, 2011
Provide additional assistance to other educational and cultural institutions

  - Technical (and legal) issues in how to handle film materials
2009 New Zealand Film Archive invited NFPF to partner with them

Impractical to “ship” nitrate – costly, hazardous

Sent experts to examine the nitrate on site

- Identify and assess their condition
- Data that helped a team of scholars and archivists in US to figure out what titles were of the greatest value
New Zealand Project

* 224,000 feet of nitrate film
* Collected in the 1980s by New Zealand Film Archives
  * Explosion proof ammunition bunker
  * Wound through the films on a regular basis but no money to preserve/identify the film
  * In New Zealand as a result of copyright distribution
Leslie Lewis at the NZFA, with Kurt Otzen and Louis McCrone
John Ford’s *Upstream* (1927)
2011 Grant Recipients

* Duke Ellington and Mahalia Jackson at the first New Orleans Jazz & Heritage Festival
* George Wallace presidential campaign film
* 1925 newsreel profile of Buffalo Soldiers (Arizona)
* 1988 “The Drums of Winter” – Yup’ik of Alaska

* Subjects generally undocumented by mainstream media
Virginian Types (ca. 1926)
A Frontier Post (1925), to be preserved by Univ. of South Carolina
Intersection of Copyright Law and Orphan Works

- Preservation
- Cataloging
- Access
Preservation Issues

* Film
  * Preservation: analog (33mm film) v. “digitization”
  * Digital projection now commonplace
  * Studio conversion of borne digital to 35mm film for preservation
  * AMPAS “Digital Dilemma” (2007): digital is more expensive

* Sound recordings
  * Library of Congress and other sound archives projects
Access Issues

* Digital
  * Costs of conversion, uploading... and... streaming
* Hard copy - DVDs
  * NFPF: five boxed sets
  * Copies to all 50 state libraries
  * Used in classrooms (history, social sciences... and film)
  * Seeking funding for a New Zealand DVD set
* September 2010: “Upstream” – pristine new print, with live accompaniment at AMPAS (1,100 people)
  * Washington, D.C.; New York; dozens of other venues
Treasures 5: The West, 1898–1938
Access Costs

- U.S. Navy of 1915 (1915) [150,000+ hits to date]


*Production Company: Lyman H. Howe Company*

The film was made with the full support of the Secretary of the Navy, Josephus Daniels

...to convince isolationists of the importance of building a strong American navy.
Storage and Preservation Costs

* 1993 Study: temperature and humidity controls
  * Major rights holders have their own storage facilities
  * Smaller institutions and/or “orphan films” have public archives
    * Costs involved with vaults (esp. nitrate)
NFZA Nitrate Storage Vault
Copyright Law and Preservation

- Section 107 ("fair use")
  - Only reference to copying entire works in legislative history: transferring nitrate film to "safety" (acetate) film
    - House Rept. 94-1476 (Sept. 3, 1976), p. 73
- Section 108
  - Badly needs reform/updating
“A problem of particular urgency is that of preserving for posterity prints of motion pictures made before 1942 [1952?] ... printed on film stock with a nitrate base ... the making of duplicate copies for purposes of archival preservation certainly falls with the scope of ‘fair use.’”
Section 108(h)

* 108(h)
  * Added during term extension (1998)
    * Needed further “fixing” to apply to audiovisual works due to technical error (2005)
    * Last 20 years
  * Qualified libraries or archives
    * Works in their collections
    * Incentive to get materials to archives/libraries
Limits of 108(h)

* Only published works
* Three part test
  * Work is not subject to “normal exploitation”
  * Work cannot be “obtained at a reasonable price”
  * Work is not on USCO registry
* Does not apply to any “subsequent users or users”
“Demonizing” Copyright

* Preservation
  * Cataloging (and contextualizing)
  * Untouched by copyright law in reality
  * Except where $ for preservation is tied to “access”

* Access
  * On site: no copyright law repercussions
  * Distributed or remote access (Internet) is different
Copyright Office Study on Sound Recording Preservation and Access Issues (Issued Dec. 2011)

- Treatment of pre-1972 sound recordings
  - No record label – large or independent – and no archive or library, could recall a single letter of disapproval, and certainly no lawsuits, relating to preservation activities or on-site access
Cooperation

- Film archives are 15 years ahead in working with rights holders on large-scale cooperative agreements
  - Sound recordings
  - Literary materials
    - Google Book, HathiTrust
- Cooperation in activities
  - Revealing collections, cataloging, sharing materials etc.
  - $$ for preservation and access
Without cooperation...
The Kidnapper’s Foil (ca. 1936), preserved by the Texas Archive of the Moving Image
Cooperation Model
Sound Recordings

* Library of Congress “National Jukebox”
  * Sony Music (Victor)
    * Entire pre-1925 recording collection
    * On-line for free: streaming
  * In cooperation with U.C. Santa Barbara
    * Context: cataloging and commentary added by LoC partners (Sam Brylawski, UCSB etc.)
    * Click to: “the making of…” to appreciate labor, costs, technology by LoC and others to create the Nat’l Jukebox
The National Jukebox

Debuted (2011) by featuring more than 10,000 78 rpm disc sides issued by the Victor Talking Machine Company between 1900 and 1925
Victor Book of Opera


* Enrico Caruso et.al.
* Victor Book of the Opera (interactive history of opera and opera houses from 1919)
**National Jukebox: Rights & Access**

This recording is protected by state copyright laws in the United States. The Library of Congress has obtained a license from rights holders to offer it as streamed audio only. Downloading is not permitted. The authorization of rights holders of the recording is required in order to obtain a copy of the recording. Contact jukebox@loc.gov for more information.
Sample Recording

- Paul Whiteman Orchestra
- George Gershwin (composer)

“Fascinating Rhythm” -- Dec. 29, 1924
Recorded in New York City

http://www.loc.gov/jukebox/recordings/detail/id/10205/autoplaly/true/
Universal Music

* January 2011
  * Donation of master materials to Library of Congress
    * 1928 to 1948 materials
    * Including gratis license to LoC to upload recordings on National Jukebox
UMG: donation of over 200,000 master recordings to the Library of Congress

- Gift of physical material; gratis license for use of copyrights
- Examples: Billie Holiday, Louis Armstrong, Bing Crosby (“White Christmas” 1947)
  - Many long out-of-print or never released
  - Largest single audio donation ever received by the Library
Preservation and Access

- All five major studios funding project
  - Universal, Paramount, Columbia, MGM, 20th Century/Fox
  - Even of public domain titles
You can't keep a good girl down!

'Upstage' is an absorbing stage drama of one who was down— but never out!

Starring Norma Shearer.
Copyright Law and Orphans

* Orphan works legislation
  * Certainly should be a legislative priority
    * Either material is made available by rights holders, or, in the case of “orphan works” by libraries/archives, etc.
  * “SOPA” backlash
  * Reconciling legislation in a manner that is fair to photographers (and all rights holders)
  * Legislation is the long-term solution
    * Cooperation is the “now” solution or the “in addition to” legislation
*Olympiad* (1971), by Lillian Schwartz, to be preserved by Ohio State University and NYU’s Moving Image Archiving & Preservation Program