

Orphan Works Films and Recordings

Eric J. Schwartz

Partner, Mitchell Silberberg & Knupp LLP
Founding Director/Board Member, National Film
Preservation Foundation



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



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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."



Betty Compson in Alfred Hitchcock's *The White Shadow* (1924). [CLICK HERE](#) for more images.

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 writer, assistant director, art director, and editor. Commented David Sterritt, author of *The Films of Alfred Hitchcock*:

Preserved Films

Films Preserved Through the NFPF

→ [International Partnerships](#)

↓ [Screening Room](#)

[Saved Through the NFPF](#)

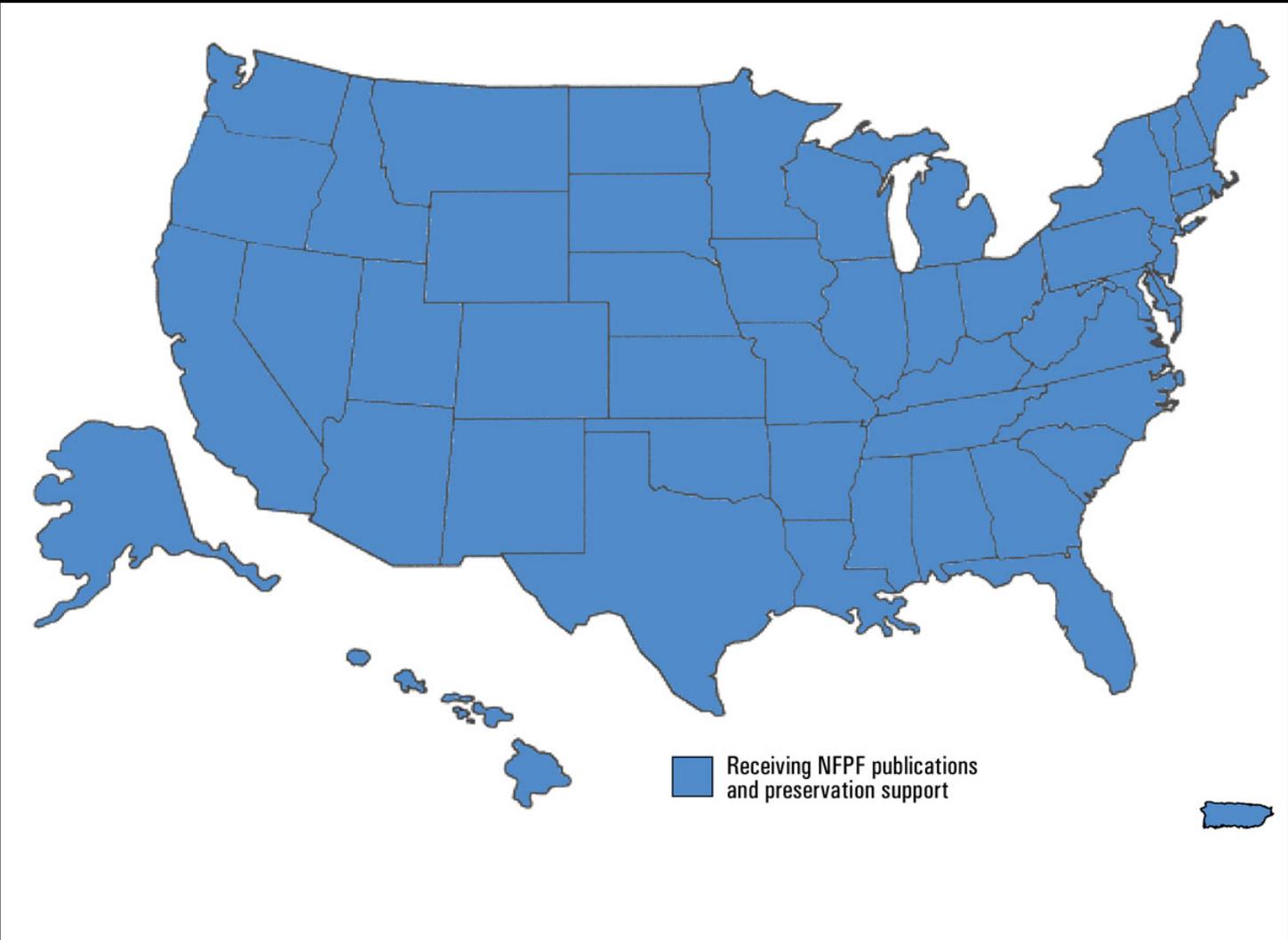
[Lost and Found](#)

[Treasures DVDs](#)

[DONATE NOW](#)

NFPP Track Record

- * 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

Film Preservation Research Materials

- * Provide additional assistance to other educational and cultural institutions
 - * The Film Preservation Guide (2004)
 - * Technical (and legal) issues in how to handle film materials
 - * The Field Guide to Sponsored Films (2006) by Rick Prelinger

NFPF-New Zealand Project

- * 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**



T.E. Lawrence and Lowell Thomas (Marist College)

Intersection of Copyright Law and Orphan Works

- * Preservation
- * Cataloging
- * Access

Preservation Issues

- * Film

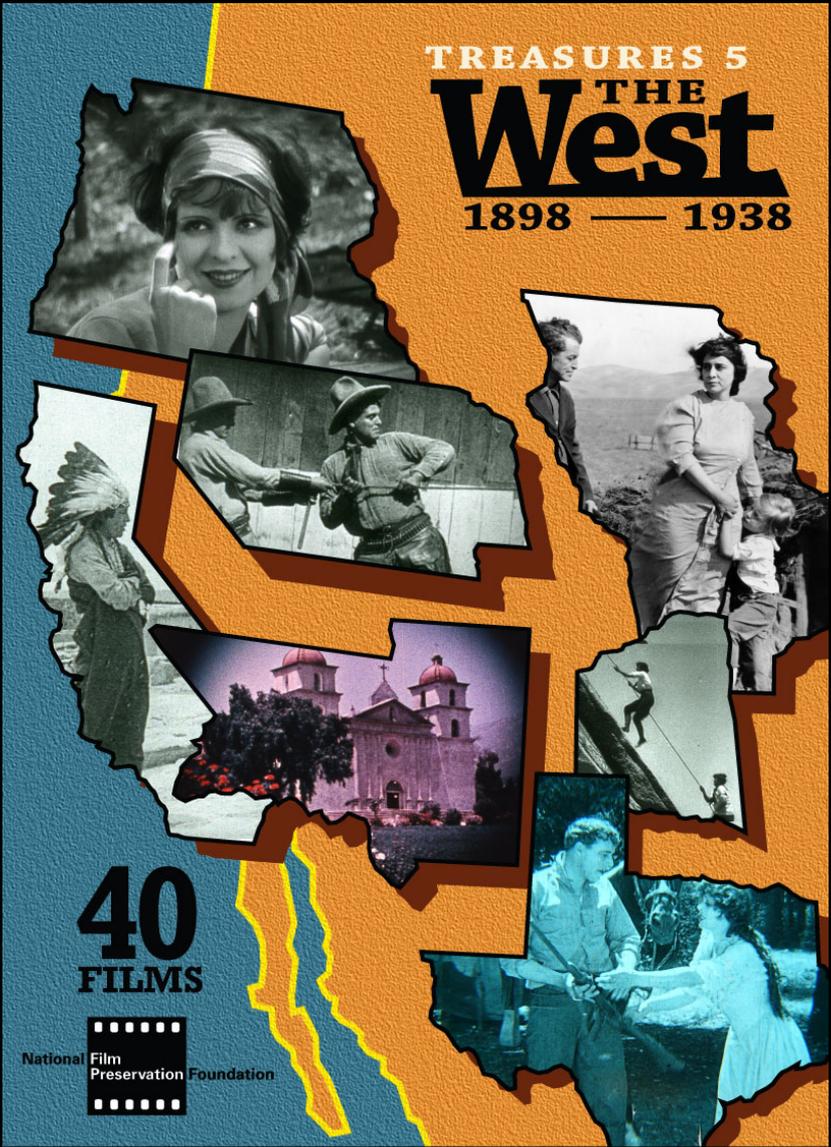
- * Preservation: analog (35mm film) v. “digitization”
- * Digital projection now commonplace
- * Studio conversion of born-digital to 35mm film for preservation
- * AMPAS “Digital Dilemma” (2007): digital is more expensive

- * Sound recordings

- * Library of Congress and other sound archives projects

Access Issues

- * Digital
 - * Costs of conversion, uploading... and... streaming
- * Hard copy - DVDs
 - * NFPP: 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

40
FILMS

National Film
Preservation Foundation

Treasures 5: The West, 1898–1938

Access Costs

- * **U.S. Navy of 1915 (1915) [150,000+ hits to date]**
- * <http://www.filmpreservation.org/preserved-films/screening-room/u-s-navy-documentary-1915>

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

H. Rept. 94-1476

- * “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 within 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

U.S. Copyright Office Roundtable

June 2011

- * 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



The Love Charm (1928)

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

National Jukebox

* <http://www.loc.gov/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

- * <http://www.loc.gov/jukebox/victor-book-of-the-opera/interactive>
- * Enrico Caruso et.al.
- * Victor Book of the Opera (interactive history of opera and opera houses from 1919)

Terms of Use

- * **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/autoplay/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

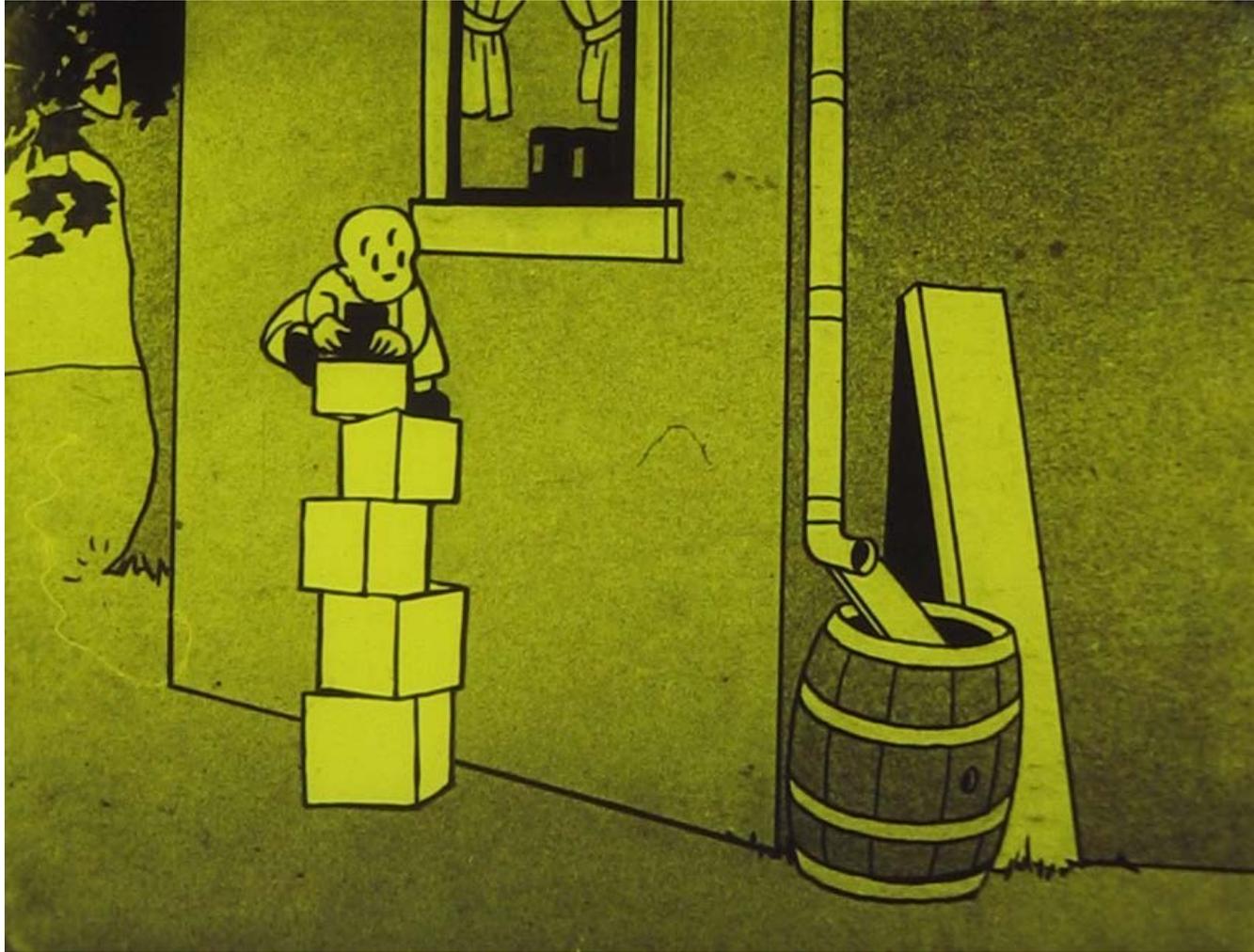
UMG Gift

- * 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







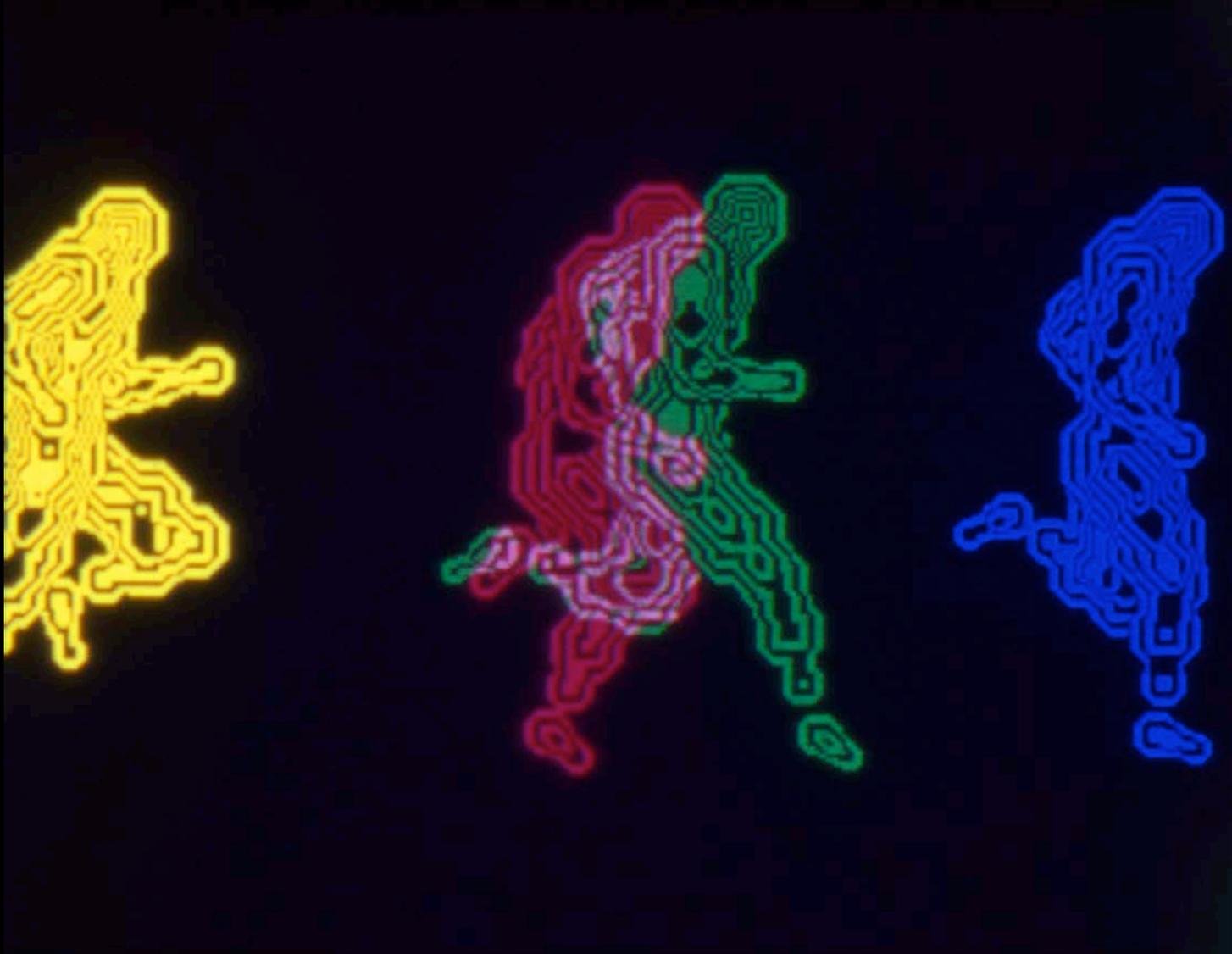
You can't keep a good
girl down!

'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**