MOSTLY LOST: ORPHAN WORKS IN THE FILM ARCHIVE

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Still images from Library of Congress public online collections
Orphan Works Case Study: Home Movies

Amateur home movies
• Generally impossible to determine ownership
• low risk to provide access
• Privacy concerns
Orphan Works Case Study: Mostly Lost

Crowdsourcing film identification of silent films

• Use for partial films that have lost their identifying reels
  – From multiple film archives
• Presently a symposium of experts in a theater watching together shouting out clues
  – 4th annual symposium coming up
• Could do online but lose the synergy
• ___ films identified to date
Orphan Works Case Study: Marketplace Orphans

- Works that have a known owner – so not legal orphans - but no commercial or marketplace value
  - Little rightsholder incentive to exploit
  - Little rightsholder incentive to preserve or restore

- Ideal: gratis license for noncommercial uses
  - Licensor gets goodwill & good PR
  - Example: National Jukebox
  - Downside: hard to get rightsholders to focus where no $$

- U.S. 108(h) allows exploitation if “not subject to normal commercial exploitation” in last 20 years of copyright

- May be low risk to provide access
Orphan Works Case Study: American Archive of Public Broadcasting

Digitized archive of publicly funded television and radio
• Stations issue quitclaim release
• Ownership of underlying programming unknown
• Large collections make rights assessment more difficult
• Strategies:
  – Crowdsourcing identification of unknown programming
  – Works into content "buckets" for fair use assessment
  – Some works available under fair use/fair dealing
  – Some works cleared or licensed
  – Some premises-only
Orphan Works Strategies

- fair use/dealing for making orphan works accessible
  - see, e.g., http://www.cmsimpact.org/fair-use/best-practices
- use of archival exceptions
- risk management
- negotiation with stakeholders regarding marketplace orphans
- regulatory and legislative reform efforts
Sources of images

Slide 1: http://www.loc.gov/item/00694416/
Slide 2 http://www.loc.gov/item/mp73006300
Slide 3  http://www.loc.gov/item/00694367/
Slide 4 http://www.loc.gov/item/00694377/
Slide 5 http://www.loc.gov/item/00564537/
Slide 6 http://www.loc.gov/item/00694347/