



MOSTLY LOST: ORPHAN WORKS IN THE FILM ARCHIVE

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Library of Congress

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/>