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I have a broader definition of "orphan works" than I believe you do. There is yet another class of work whose copyright is extant and is unknown to the legal rights holder! Case in point: Paramount Pictures made home 16mm film prints of many of their movies in the 1920s. It is not particularly hard to come across such a print. Most of these films have been properly renewed by Paramount. There is virtually no market for these, but occasionally I can find someone willing to pony up enough money to pay for a public exhibition. Legally, I must contact Paramount, and they deny owning any film made prior to 1930! They send you to Universal, and Universal only owns the talkie Paramount library, not the silent. Universal, quite rightly, sends you back to Paramount.

The net effect is that one may find a print that could be exhibited if only the legal entities involved could agree on who owns the rights and what appropriate royalty should be paid. The time and effort required to clear the rights for a Paramount silent title make it unreasonable to even consider. Paramount does not stock or make available any of their films from this period, so it is left to those few surviving materials in the hands of collectors for them to be seen at all.

A second case in point. Foreign films are nightmarish beyond belief. I was given three "unusable" 35mm prints of *The African Queen* (1951). This is, despite what you may think, a foreign film. The domestic rights holder, Kit Parker Films, had gone out of business and I inherited their stock of "trashed" prints of the film. Knowing that there were no domestic prints of this film available for rental, I lovingly went through each print and salvaged one good copy from three junked prints, at a time expenditure of over 100 hours. The rest I will condense here for reasons of space, but searching the rights for this was nightmarish. When Kit Parker went out of business, the rights reverted to the production company in England. This company then re-licensed them to a company in the US, which turned out to be Paramount. Paramount Legal had heard of this, having worked on it, but Paramount Rentals had not, so the net result was that when I contacted Paramount Rental, they informed me that they did not own the film and that there were no prints. Some time later, Paramount Rental discovered that they DID in fact own the film, but that there were no prints. A local theater negotiated a rental fee to use my print, but Paramount Rental sent me a special paper to send to Paramount Legal in case they tried to sue me by accident.

I point out that *The African Queen* is on the AFI Top 100 films of all time. There is still a market viability for this film, and it's a mess. Imagine the horror of something in which the original rights holders are even more obscure, and the film is older and less popular.

I teach film history at several places and organize showings of older films for educational purposes. Here is a brief list of films that I have discovered but cannot show because I have no idea how to contact the rights holders, if they even exist.

Sanders of the River (1935) Paul Robeson sings. US rights renewed by GATT, but probably illegally (this is common). It is not worth \$200 of a lawyer's time to track down the legality of a claim on a film that 10 people will attend at a screening.

The Perfect Clue (1935) David Manners, star of Dracula, in a last-surviving film. Original owners of print out of business. Question about renewal status. No other prints of this film survive, but can they sue me for something they don't own? Not worth the risk.

I Married a Spy (1938) Neil Hamilton, star of Batman, the TV series. Released under this title in US, but the original is British. GATT status unclear. Since this was copyrighted in the US separately, is the lapsed copyright under this title legal or is the renewed copyright under GATT legal under the original title? Who knows? The US version may be different from the British version, but there is no way to compare the two. It would take at least \$1000 to find out, probably as much profit as the film would garner if you released it nationally on DVD.

The final nail in this argument is this: I have approached major archives with film prints that are the only surviving prints of a particular title. I wanted them to copy the films for preservation purposes, but they turned me away, saying that the rights issues were too intricate to track down. When an archive is unwilling to preserve unique titles because they can't risk annoying a rights holder who likely is unaware of their existence, you have a law that is really out of hand.

The short answer is that there are really only a few films made before 1940 that have real market value today. Gone With the Wind, The Wizard of Oz, the Shirley Temple films, some of the WC Fields films, some of the Laurel and Hardy films, the Universal horror films, and all the Disney pictures. There aren't more than 100 in total. There are thousands of films pre-1940 that could be shown to appreciative audiences if there were some way to remunerate the rights holders.

I am in sympathy with the studios who have spent precious money and time preserving their films. I really believe that they should be able to capitalize on their investments. When titles are available for

cable, theatrical rental or home video, the current system works very well. However, on more obscure titles, where the rights owners are understandably nervous about making materials available (in those rare cases when they even own materials), the copyright law acts as a stamp that disables access to worthwhile films.

Would it be possible to set up a fund like ASCAP or BMI that someone could just pay into for showings of most films? It seems that this is a reasonable thing to do and could be arranged so that everyone can get paid.