
The Role of Orphan Films in the 21st Century Archive



by Dan Streible

At the end of the twentieth century, a virtual paradigm shift took place in the world of U.S. film preservation. The term “orphan film” emerged as the governing metaphor among archives and preservationists, replacing the “nitrate won’t wait” slogan of the 1980s. Three dictionary connotations of orphan were analogous to what film archivists meant by the label: one deprived of protection (orphans of the storm); an item not developed because it is unprofitable (an orphan drug); and a discontinued model (an orphan automobile). The migration of the term from a colloquialism among archivists to federal legislation to actual preservation practices to copyright reform has had significant impact for archives. Indeed, the multi-valent phrase has also entered scholarly discourse, but not just because researchers and educators have new access to neglected archival films. Media scholars’ deep interest in the varieties of alternative or nondominant media resonates with the epithet “orphan film.” In turn, the orphanage has broadened its nominating rules, taking in videotape and digital formats, as the field increasingly unites film, video, and digital artifacts as “moving images.” In this respect, we can fairly say that in the twenty-first century all film [celluloid] is becoming an orphaned technology. Well beyond the study of film history, advocates for public rights in digital culture (publicknowledge.org) have also adopted the orphan rubric, seeing it as a key to moderating the excesses of copyright and intellectual property law.

The term “orphan film” has uncharted vernacular origins. In research for Rick Prelinger’s *Field Guide to Sponsored Films* (NFPPF, 2006), Alex Thimmons found it used in the October 1950 issue of *Industrial Marketing* magazine as a warning about the obsolescence of 16 mm industrial sales movies. An archive-specific use of it appeared as early as 1992 in the *Los Angeles Times*, which quoted film restoration doyen Robert Gitt on silent features, newsreels, kinescopes, and two-inch videotapes as at-risk, unpreserved objects.

In 1993 the phrase peppered the hearings that preceded publication of *Redefining Film Preservation: A National Plan*, which formally categorized orphan films as a problem child for archives.¹ The publication’s coauthor, Annette Melville, steered into existence the National Film Preservation Foundation, born in 1997 to fund preservation of and access to orphan films housed in American archives and libraries. The foundation’s success—as a nonprofit funder, DVD and book publisher, and public advocate—has made it easier for everyone interested in cinema beyond the contemporary Hollywood feature to discuss, even to legitimize, their

work in wider forums. NFPP's broad valorization of films "outside the scope of commercial preservation," including "documentaries, 'silent' movies, newsreels, ethnic films, avant-garde works, home movies, animation, anthropological footage, industrial films, and other independent works" (filmpreservation.org), continues to have a salutary impact for scholars as well as archivists.

This eclectic listing of neglected categories of motion pictures informed the conception of the Orphan Film Symposium. Since 1999, this ongoing academic-archival gathering has brought together scholars and archivists, as well as media makers, curators, and technical experts, to screen and study previously forgotten or marginalized material. The discoveries and partnerships that have sprung from these meetings speak to the utility and flexibility of the term.

Among the lessons that may be taken from these symposia: (1) the orphan film concept has international resonance, (2) the professional boundaries between academic, archivist, and artist are best blurred, and (3) the term attracts both mainstream and outsider uses.

Although the English phrase "orphan film" came from American parlance, its equivalent is being used internationally. The Nederlands Filmmuseum, for example, has been doing significant research, preservation, and presentation of what Nico de Klerk has called "foundling films" via its "Bits and Pieces" series of unidentified film fragments. He has programmed material at each of the five Orphan Film symposia, sometimes in collaboration with contemporary media artists (Gustav Deutsch, Ernie Gehr, Bill Morrison). In 2001, archivist Ivo Sarriá spoke about how he and his colleagues at the Cinemateca de Cuba had been using the same metaphor—*huérfanos*—to conceptualize the lost and abandoned works of Cuban film history, its *huerfanidad*. At that same symposium, Mexican documentarian Gregorio Rocha breathlessly reported news of his discovery of reels of previously unidentified nitrate films he found at the University of Texas El Paso Library. Since then, these films about the Mexican Revolution have been preserved and Rocha has released *The Lost Reels of Pancho Villa* (2003), in which he documents his archival search and his 2001 visit to the "congress of the orphans." The UTEP collection, it turned out, included unique prints from the teens and 1920s, including something labeled *La Venganza de Pancho Villa*, a remarkable silent movie compilation assembled circa 1930 by a border exhibitor, composed of fact and fiction material in both Spanish and English...an orphan film stitched together from older orphan films...Craig Baldwin meets Esfir Shub, with preservation brought to you by the American Film Institute and Mexico's Filmoteca U.N.A.M.

The second lesson can also be derived from Rocha's case and others like it. The blurring of professional boundaries is evident in everyday practice. In ideal cases, an *orphanista* such as Rocha brings to found footage a scholar's knowledge, an archivist's understanding of material, and the interpretive vision of an artist. Those who valorize orphan films in their work often have a zeal that allows them

to stretch in interdisciplinary directions. Media scholars have much to learn from the working archivists who advocate for their collections, who have become historians by virtue of their immersion in the material. Lab technicians have historical insights as well, particularly those experienced hands who have seen celluloid in its many gauges and stocks, or videotape in its myriad formats. When such professionals collaborate on an obscure piece, their mutual insights can bring about new knowledge and give us access to works previously on no one's research agenda. For the 2006 Orphan Film Symposium, historian Devin Orgeron sought a series of shorts that Edgar G. Ulmer directed for the National Tuberculosis Association. With the help of archivist Leslie Waffan at the National Archives, he was able to authenticate a filmography of eight tuberculosis films directed by Ulmer (including one stray title that had been overlooked because of a typo decades earlier). Based on a VHS reference copy, one of the titles unique to the National Archives collection, *They Do Come Back* (1940), was selected for screening at the 2006 Orphan Film Symposium. The archives and partner Colorlab struck a copy from the preservation negative. However, the shiny new 35 mm print was quite a different movie than the one on the videotape: different credits, narrator, plot, score, running time. Finding variable prints is routine for large archives, but not always something scholars consider. Determining how and why differing prints with the same title came to be in the vault is best assessed by researcher and archivist working in tandem.

At one symposium, boundary-blurrier Melinda Stone—filmmaker, curator, historian, activist, and University of San Francisco professor—referred to “the orphan film movement.” Partnerships have become regular enough and so tied to the niche of orphan films that her description is clearly apt. The passionate devotion to rescuing, studying, and creatively reusing ephemeral media led me to refer to such devotees as *orphanistas*. After introducing a twin screening by Gregorio Rocha and Bill Morrison (the movement's cine-poet laureate) at the 2003 Margaret Mead Film Festival (another key institution embracing the concept), I was surprised to find the playful nickname rendered scholarly in Emily Cohen's “The *Orphanista* Manifesto: Orphan Films and the Politics of Reproduction” in *American Anthropologist*.²

However, lesson three is that the term “orphan film” has been embraced across partisan lines. Certainly advocates of, for example, small-gauge amateur cinema, undistributed documentaries, censored outtakes, obsolete medical films, porn, government surveillance footage, and kindred ephemera fight an uphill battle against mainstream commerce and culture. Yet pleas to save “heritage” in the form of silent Hollywood films, wartime newsreels, training films, or Mrs. Calvin Coolidge's home movies also invoke the empathetic orphan label. A conservative institution by nature, the Library of Congress is perhaps the most active purveyor. Its National Film Registry now names as many orphan films to its annual list as it does Hollywood features.

Although orphans are multipartisan, clearly there has been one front that has adopted the name for a particular aim. Advocates of U.S. copyright reform and “open source” philosophies of intellectual property have extended the mainstreamed term broadly to “orphan works.” In this respect, the issue is specifically American, drawing on the constitutional precepts that copyright must be for a limited time and that a vital public domain exists beyond it. The orphan dilemma—how to preserve a film abandoned by its copyright owner?—gained traction for film archives. Films were disintegrating not because no one wanted them, but because their legal guardians failed them and preservation-minded archives were handcuffed by copyright restrictions. Others took up the orphan film banner and raised it over all forms of cultural production. Duke University’s Center for the Study of the Public Domain made a direct plea with its *Access to Orphan Films* (2005), submitted to the U.S. Copyright Office during a period of public input. Pat Aufderheide and Peter Jaszi’s *Untold Stories: Creative Consequences of the Rights Clearance Culture* (2004) argued for reform based on the testimony of documentarians paralyzed by restrictions on footage and music.³ And initiatives such as The Open Video Project, Folkstreams.net, Open Content Alliance, the Internet Archive, and iBiblio.org have conceptualized the digital frontier as a repository for orphan films, a “conservancy” or a “preserve” for free information and culture. Not only was this a space for materials that had fallen into the public domain due to expired copyright, it was a place to push for content that might still be under copyright but whose legal owners could not be found.

Even as we have witnessed the expansion of media conglomerates and their successful lobbying for extended copyright terms, the orphan rubric survives. In 2005, the Family Entertainment and Copyright Act became law including its “Preservation of Orphan Works Act.” This amended U.S. law so as to permit archives and libraries to preserve moving images during the last 20 years of their copyright term. The more potent “PRO-USE” Act (Preservation and Restoration of Orphan Works for Use in Scholarship and Education) failed to pass. SCMS members Peter Decherney, John Belton, and, as president, Stephen Prince petitioned for the modest legislation, which would have legalized routine classroom uses of DVD clips previously construed as violations of copyright. However, in November 2006, the Librarian of Congress announced what was a small victory for SCMS and others. An exemption to restrictions on some copyrighted material was granted for a three-year period ending October 27, 2009. The Librarian defined the first exempted category as: “Audiovisual works included in the educational library of a college or university’s film or media studies department, when circumvention [of technological “locks” on access] is accomplished for the purpose of making compilations of portions of those works for educational use in the classroom by media studies or film professors.”⁴ (Federal policy tailored to film and media studies professors!?) Similar exemptions were made for software, ebooks, video games, and sound recordings.

Whatever political fate befalls pending orphan works legislation, the archivist and the scholar will be well served by the orphan film phenomenon. Rather than focus narrowly on an artifact's copyright status to define its orphanhood, we do better to apply the orphan concept to the study of media and culture writ large. By sharing the expertise and passions of all those devoted to saving, studying, and creatively using all manner of neglected media, we tap into a powerful intellectual model. We also become more complete scholars, since most films and media produced throughout history now fall into at least one orphan category. Until theory and historiography account for lost works, nontheatrical movies, routine industrial productions, uncelebrated films, and the like, they remain incomplete. For sheer documentary value, as James Boyle argues in the report "Access to Orphan Works" (2005), these collectively "comprise the majority of the record of 20th century culture."⁵

One final indication of the mark orphan films are making in scholarship and education is found in the world of textbook publishing. In discussing the impact that research on orphan films was having on conceptions of film history, a colleague noted that no matter how much enthusiasm was evident among the faithful, it could not really be said to have broad impact until mainstreamed into college-market textbooks. This has now begun with a modest but important section in Timothy Corrigan and Patricia White's *The Film Experience: An Introduction*. The text, study guide, quiz bank, and glossary reiterate the term (e.g., "Films that have survived, but have no commercial interests to pay the costs of their preservation are called orphan films."⁶)

The study of "film" may not long remain dominant in the postcelluloid age ahead, but the concept of "orphan" should continue to serve as an incisive metaphor for archivists and scholars in the twenty-first century.

Notes

1. The full text of the plan is available at <http://www.loc.gov/film/plan.html>.
2. Emily Cohen, "The *Orphanista* Manifesto: Orphan Films and the Politics of Reproduction," *American Anthropologist* 106, no. 4 (December 2004): 719–31.
3. The full report is available at http://www.centerforsocialmedia.org/rock/backgrounddocs/printable_rightsreport.pdf.
4. Statement of the Librarian of Congress Relating to Section 1201 Rulemaking, <http://www.copyright.gov/1201>.
5. The text of the report is available at <http://www.law.duke.edu/cspd/pdf/cspdorphanfilm.pdf>.
6. Timothy Corrigan and Patricia White, *The Film Experience* (New York: Bedford/St. Martin's, 2004), 392.