

THE PAPER PRINT COLLECTION: HOW COPYRIGHT FORMALITIES AND HISTORICAL ACCIDENTS LED TO FILM HISTORY

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Prior to the 1912 Townsend Amendment in US copyright law, motion pictures could not be registered as such for copyright protection. Seeking protection against competitors, filmmakers in the formative years of the film industry printed their films to photographic paper and deposited them for copyright as a series of individual photographs. This method of complying with a technicality in the copyright law inadvertently led to the preservation of the earliest chapter in US motion picture history, a chapter that otherwise might have been lost. The so-called Paper Print Collection, still housed at the Library of Congress, encompasses approximately 3,000 film titles. This article examines the significance of the relation between copyright, archival practices and the consequences for the study of film history. It demonstrates how (circumventions of) mandatory copyright formalities were instrumental in the safeguarding of the film titles. In turn, they played a pivotal role in the 1978 International Federation of Film Archives (FIAF) Congress in Brighton, UK, the landmark event that constituted a turning point in film historiography. An examination of the Paper Print Collection provides new insights into the relationship between copyright, registration systems, and media historiographies.

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I INTRODUCTION

This paper tells the story of the particular circumvention of early 20th century US mandatory copyright formalities that led to the formation of the film collection we currently know as the Paper Print Collection. The collection of approximately 3,000 titles entered into the U.S. Copyright Office of the Library of Congress between 1893 and 1915, where it is still housed today. A focus on the reasons how the collection came into being reveals a combination of distinct legal origins and a series of historical ‘accidents’. The consequences of the collection’s origins, as well as its later availability for research, have been momentous for the study of early film and film historiography. The story of the collection is intended to provide a close look at the far-reaching consequences for other fields of research that the IP system eventuates. Bringing to light that this system does not consist of a set of rules that is applied mechanically, but that in a particular context it gets (selectively) ‘activated’ will be an essential part of that intention.

This article will initially sketch the specific (legal) landscape in which film emerged at the end of the 19th century and look at several historical archival ‘accidents’ in order to show how seemingly trivial bureaucratic decisions can turn out to be momentous. In the following part, the article will focus on some of the re-uses of the Paper Print Collection, focussing on the legal status of the titles as a collection of public domain material. In the penultimate section, the story of the Paper Print Collection will be seen as an illustration of the larger relationship between the film archival institution, copyright and historiography that this paper addresses. It will conclude with a look at how the legal status of the films plus a particular human agency has allowed them to easily shift from registration records to historical artifacts, a specific combination that is essential for the films’ potential for history making.

II THE PAPER PRINT COLLECTION

The arrival of film is often presented in a rather compressed and oversimplified manner. The story of the invention of film commonly starts with the first public screening at which admission was charged by the Lumière Brothers in

December 1895 in Paris.¹ The processes of invention and technological innovation, however, are infinitely more complicated. Film did not arrive as a ready-made invention: the landscape in which it emerged at the end of the 19th century saw a complex interaction of events and personnel in the fields of science, technology, art, education, and entertainment.² The idea that the invention of film was a process that took place over time is reflected in the changing experiments in registering copyright for its early productions.

A *Mandatory Formalities and the Emergence of Film*

During the 1908 Berlin Revision of the Berne Convention, mandatory copyright formalities—such as registration, renewal, notice and deposit—were abolished. They were gradually eliminated in all the signatory countries and copyright protection nowadays is automatic upon creation and exists separately of formalities. But just a mere ten years earlier, at the end of the 19th century when the new medium was taking shape, mandatory formalities were required in US copyright law. However, there was no specific provision allowing for motion pictures. Celluloid film was in the process of being invented and could not be registered as such until 1912. It took time to figure out whether film was an extension of existing media (as it was first seen) or whether it was a new medium that required new regulation (as it later came to be seen). The 1909 US Copyright Act was revised in 1912 with the Townsend Copyright Amendment to allow for express protection of motion pictures. Peter Decherney argues that the changing methods of applying for copyright ‘reflected the battles to define what film [wa]s, and to define standards of originality in filmmaking’, and more importantly, to ‘stem the tides of piracy’.³

In the US at the end of the 19th century, Thomas Edison attempted to devise ‘an instrument which should do for the eye what the phonograph does for the ear’.⁴ Before he entered the film market, however, Edison experienced widespread piracy in the phonograph industry: his phonograph records were proprietary and therefore regularly copied to bypass technologies that tied them

¹ As recent as 2011, the invention of cinema was portrayed this way in Martin Scorsese’s *HUGO* (US, Paramount Pictures).

² Michael Punt, *Early Cinema and the Technological Imaginary* (PhD Dissertation, Universiteit van Amsterdam, 2000).

³ Peter Decherney, *Hollywood Copyright Wars* (Columbia University Press, 2012) 21.

⁴ Thomas Edison, ‘Edison’s Invention of the Kineto-Phonograph’ (1894) 48(2) *The Century, A Popular Quarterly* 206, 206.

to the players.⁵ Early film formats were also proprietary: they only fitted in particular devices, which prevented an effortless exchange between the discrete apparatuses. Sprocket holes, for instance, were located in different places on the actual film strips. A film shot with a Biograph camera was 68mm wide with a distinct single centre sprocket hole. Edison films were 35mm wide with 4 perforations along the side of the film strip (and later would become the industry standard). The lack of standardisation was an important motivation behind the common film copying practices. Only by rephotographing each film frame—*duping*—could these proprietary systems be copied into each other. But it wasn't merely a lack of standardisation that led to the duping of existing films. Duping practices were less expensive than producing original film productions. Sometimes films were copied one to one and resold as such; sometimes they would be copied, re-cut and sold as a new story under a new name. In order to not repeat his previous experiences with the phonograph, Edison resorted to innovative ways to get protection for his work against competitors.⁶

The first paper print that *survives* at the Library of Congress is entitled EDISON KINETOSCOPIC RECORD OF A SNEEZE, colloquially known as FRED OTT'S SNEEZE, and dates from January 1894.⁷ The short film shows one of the Edison engineers, Fred Ott, putting a bit of snuff up his nose, which causes him to sneeze. Edison exposed the negative for a KINETOSCOPIC RECORD OF A SNEEZE on strips of bromide photographic contact paper and affixed them to a cardboard backing. This was done to illustrate the company's new motion picture technology for a promotional article in *Harper's Weekly*. Peter Decherney argues that it then must have occurred to someone that they had transformed a film into an object that could be protected by copyright.⁸ Edison's assistant W.K.L. Dickson sent the object to the Copyright Office to be registered. It was, however, not registered as a film, but as a *photograph*.

⁵ Decherney, above n 3.

⁶ A more detailed account of the period remains outside of the scope of this paper. For an excellent examination of the period, please refer to Decherney, above n 3. Pascal Kamina states that films raised *two* series of questions in terms of copyright protection. The first concerned the protection of films against infringement by competitors and unlicensed theatre owners. The second concerned the possibility of infringing pre-existing works, mainly novels or dramas, through cinematography. The second concern, however fascinating, remains outside of the scope of this paper. For a more elaborate exploration, please refer to Pascal Kamina, *Film Copyright in the European Union* (Cambridge University Press, 2004).

⁷ The production date of the film is 7 January 1894; the copyright registration date 9 January 1894.

⁸ Decherney, above n 3.

B *Historical Accident(s)*

When looking at the formation of the Paper Print Collection, it becomes evident that a chain of historical ‘accidents’ were crucial to the process. Some of these historical accidents must have seemed of trivial significance at the time, but stand out today. *First*, there was a Copyright Office clerk who decided that the paper print could be registered as a photograph.⁹ Moreover, the paper print was not just registered as a photograph; a *series* of photographs were registered as *one* photograph. *Second*, although there were experiments with other registration methods such as registering representative frames of each scene of a film,¹⁰ the practice of registering films as photographs went *unchallenged* for nearly a decade. *Third*, the Paper Prints were *kept*. They were handled in much the same way as other Library registration records: they were filed and put into storage in the basement of the Library’s Jefferson building. *Fourth*, upon opening the basement door many years later, someone saw the worth and potential of what they had found and made a case for the prints’ revival.

Another historical accident that should not be overlooked in the larger story of the Paper Print Collection, is what happened when around 1915 actual motion pictures started to be registered. Because of the inflammability of the nitrate stock motion pictures were photographed and printed on, the decision was made *not* to keep those. This policy changed in the late 1940s when the Library of Congress acquired appropriate storage facilities to keep the flammable nitrate.¹¹ As a consequence, there was initially a wealth of film material from before 1912 at the Library, as opposed to the period between 1915 and the late 1940s, which was less well represented. Undoubtedly, there are many more of such moments. These historical accidents are significant for the formation and the survival of the collection and we will return to them in the penultimate section of this paper.

⁹ Mike Mashon, ‘Early Motion Pictures’, *American Artifacts*, 27 March 2013 <<http://www.c-span.org/video/?313371-1/early-motion-pictures>>.

¹⁰ Comparably, the British Film Copyright Collection consists entirely of individual frame enlargements and representative frames of each scene. It cannot be used for the study of film (form) in the way that the US Paper Print Collection can be used. The UK frames are the only surviving records of the subjects and have unearthed the names of some previously unknown producers. The ‘collection’ has mainly been used to correct information about dates, titles and names. For more background on the British Collection, please refer to Richard Brown ‘The British Film Copyright Archive’ in Colin Harding and Simon Popple (eds.), *In the Kingdom of Shadows: Companion to Early Cinema* (Cygnus Arts, 1996) 240–5.

¹¹ Mashon, above n 9.

1 *Re-Discovery*

The story of the re-discovery of the Paper Print Collection is a story replete with serendipitous connections between credited and uncredited contributors.¹² It involves voluntary contributions to compiling an initial inventory, grant applications for restoration and external collaborations with other film archives, such as the UCLA Film Archive¹³ and the Academy of Motion Picture Arts & Sciences. It also involves a special Academy Award for the restoration efforts of the collection. As opposed to the films from which they were copied (and which are lost), the paper prints cannot be projected; they had to be copied back onto film. However, they had been kept rolled up for several decades, so the prints' pliability needed to be restored first. The lack of standardisation in early equipment mentioned above complicated the restoration efforts. The details of the frame-by-frame restoration of the 2,5 million feet of paper rolls remain outside the scope of this paper. In this paper we will focus predominantly on some of the legal issues of public accessibility of archival material. However, issues of restoration generally, as well as issues of funding, are significant to note as they also play an impeding or facilitating role in the issues of public accessibility of the film material.

2 *Content and Accessibility*

To detail the richness of the content of the Paper Print Collection within this paper would be an unfathomable task.¹⁴ The collection is not only an astonishing record of American industrial life at the turn of the 20th century, as it has preserved the pioneering chapter of film history and consists of the earliest examples of actualities—documentaries showing everyday life. The Paper Print Collection also provides exceptional insight into the evolution of narrative film. It shows us the major changes from what Tom Gunning has

¹² Whether the discovery of the collection should be called a 'discovery' at all is open for debate. Although there is some evidence that Library staff knew that these artifacts were in the Library's basement, nothing was really ever done with them (Charles Grimm, 'A Paper Print Pre-History' (1999) 11(2) *Film History* 204). What is important to notice in the context of this paper, is that when the titles were re-discovered—and re-used—(depending on which precise date is chosen), they had already fallen into the public domain. Information provided by Mike Mashon in personal email to author, 27 August 2015.

¹³ Now: UCLA Film & Television Archive.

¹⁴ For a descriptive analysis of the collection, please refer to Patrick Loughney, *A Descriptive Analysis of the Library of Congress Paper Print Collection and Related Copyright Materials* (PhD Dissertation, George Washington University, 1988).

termed the ‘cinema of attraction’ through to its ‘narrativization’ in the first few decades of the 1900s.¹⁵ Highlights of the collection include such landmark films as Edwin S. Porter’s *THE GREAT TRAIN ROBBERY* (US 1903), widely considered to be the first narrative feature length film, and a large part of the oeuvre of filmmaker D.W. Griffith.

An idea that is hardly surprising, but worth stating, is that we can only study films once they have survived and are (made) publicly accessible. We understand *film history* as the history of films whereas we understand *cinema history* as the history of film’s relations to society or culture.¹⁶ Cinema history can be told without the films; it is told, for instance, based on architectural records, patent registrations, or trade papers. Film history can also be told without the films, but once we focus on a critical understanding of a more aesthetic history, such as the evolution of (continuity) editing, the study of film form or the evolution of storytelling, the films themselves will have to play a key role. An individual researcher can consult a large majority of titles on the premises of an archive. However, what is at stake here, is the public accessibility of films so that they can go on and construct larger frameworks of meaning, a process that Janna Jones has termed the material’s ‘potential for history making.’¹⁷

III A NEW LIFE

After initial restoration efforts, the prints started to become available in the late 1960s and began to circulate in 16mm compilations to libraries and universities.¹⁸ The films have gone on to play a fundamental role as a staple of the American avant-garde in the 1960s and ‘70s. Filmmakers, such as Ken Jacobs, Hollis Frampton, and Ernie Gehr have questioned and explored dimensions of narrative, authorship and ownership in their artworks by re-using films from the Paper Print Collection. The films have also played a

¹⁵ Tom Gunning, ‘The Cinema of Attraction: Early Film, Its Spectator and the Avant-Garde’ in Thomas Elsaesser (ed.), *Early Cinema: Space, Frame, Narrative* (British Film Institute, 1990) 229, 232–3.

¹⁶ Punt, above n 2; Wanda Strauven, ‘Media Archaeology: Where Film History, Media Art, and New Media (Can) Meet’ in Julia Noordegraaf et al (eds), *Preserving and Exhibiting Media Art: Challenges and Perspectives* (Amsterdam University Press, 2013) 59–79.

¹⁷ Janna Jones, *The Past is a Moving Picture: Preserving the Twentieth Century on Film* (University Press of Florida, 2012) 109.

¹⁸ David Bordwell, *On the History of Film Style* (Harvard University Press, 1997) 102.

conclusive role as primary source material in a landmark conference that is ascribed a major role in film historiography. Both the archival and the academic film community see the 1978 International Federation of Film Archives (FIAF) Congress in Brighton, UK, as the starting point of what has become to be known as ‘New Film History’.

The gathering brought together a group of archivists and film scholars in a collaborative project for the first time. Over the course of several days, they watched hundreds of fiction films in chronological order from the period 1900–1906. The New Film Historians questioned the sources of their predecessors as well as the particular use of those sources. Prior to the event, film history was often recorded and handed down from recollection: ‘postwar historians [...] wrote their vast tomes on the basis of [...] memories, not intensive [...] viewing’.¹⁹ So, the idea behind the Congress was to return to the archival film as a primary source in order to challenge previously held ideas of what film was. On the one hand, the return entailed a revision of material that was deemed to be already well-known and on the other hand, the project was a wider exploration of the film archives in search of uncharted material. The films shown during the Congress were provided by several large international archival institutions, such as the Museum of Modern Art, but by far the largest number was supplied by the Library of Congress, from the Paper Print Collection of films submitted for copyright.²⁰

The screenings at the Congress and subsequent scholarship led to a fundamental re-evaluation and revision of the early silent film period. There is no other period in film history that has been subjected to revision so systematically based on the available filmic source material. Furthermore, the new approach to history—based on actually *watching* the films—changed the concept of the film archive from *terra incognita* to a repository of historical artifacts and filmic source material.

¹⁹ David Bordwell, ‘A Celestial Cinémathèque? or, Film Archives and Me: A Semi-Personal History’, in Cinémathèque royale de Belgique (ed.), *75000 Films* (Crisnée: Editions Yellow Now, 2013) 67, 73.

²⁰ Eileen Bowser, ‘The Brighton Project: An Introduction’ (1979) 4(4) *Quarterly Review of Film Studies* 509.

A *From-Film-to-Paper-to-Film-to-File-to...*

At the time of this writing, it is a little over 120 years after FRED OTT'S SNEEZE was captured on film. Recently, the film has been added to the National Film Registry,²¹ an initiative that was started in 1989. Annually, 25 films get added to the list for their cultural, historic or artistic importance.²² There is now little doubt that the oldest surviving paper print has historic worth, but at the time of the re-discovery of the prints in the early 1940s they had to 'transcend individual estimations of their significance as history'.²³

Although an 'ingenious method of complying with a technicality in the copyright law [...] became the inadvertent means for recovering film history',²⁴ the story of the Paper Print Collection is a constant work-in-progress. Film preservation is never done. The discovery and recovery of film history is also never done: it is an ongoing story of cultural re-interpretation. John Arnold argues that 'history is an argument, and arguments present the opportunity for *change*'.²⁵ Despite ongoing digitisation efforts, less than 20% of the collection is widely accessible for viewing: some 500 titles are available online, while for the moment all the other titles of the collection have to be consulted in Washington.²⁶ Only in being publicly accessible can the material be used for, as mentioned above, presenting an argument, the opportunity for change, and its potential for history making.

²¹ Mike Barnes, 'GHOSTBUSTERS, TOP GUN, SHAWSHANK Enter National Film Registry', *Hollywood Reporter*, 16 December 2015 <<http://www.hollywoodreporter.com/news/ghostbusters-top-gun-enter-national-849092>>.

²² The National Film Registry (NFR) is the United States National Film Preservation Board's (NFPB) selection of films for preservation in the Library of Congress. The NFPB was established by the US National Film Preservation Act of 1988.

²³ Gabriel Paletz, 'Archives and Archivists Remade: The Paper Print Collection and THE FILM OF HER' (2001) 1(1) *The Moving Image* 68, 79.

²⁴ *Ibid* 71.

²⁵ John Arnold, *History: A Very Short Introduction* (Oxford University Press, 2000) 122.

²⁶ Mike Mashon, 'Where It All Began: The Paper Print Collection' on *The National Audio-Visual Conservation Center Blog* (27 May 2014) <<http://blogs.loc.gov/now-see-hear/2014/05/where-it-all-began-the-paper-print-collection/>>. The other titles can be consulted at the Motion Picture Television Reading Room; Motion Picture, Broadcasting and Recorded Sound Division, Library of Congress, Washington, DC.

IV THEMES AND TENSIONS

There are three components of the story of the Paper Print Collection of particular interest in light of a larger relationship between the film archival institution, copyright, and film historiography: (A) the public domain status of the collection at the moment of its re-use; (B) the historical accidents that take place in the archival practice, which in the remainder of this paper I propose to call the ‘activation of IP’; and (C) the public accessibility of the material that leads to the films’ potential for history making, including re-interpretations of what has gone before.

A *Public Domain Status*

Mandatory copyright formalities have been instrumental in the preservation of the earliest chapter in US film history, a chapter that might otherwise have been lost. The legal context in which the films emerged, however, is only part of the story. For the films’ public accessibility and further study, the copyright status of the material at the moment of its re-use (public domain) plays a vital role and is perhaps as important as its fascinating content.

The two examples mentioned above, in which the films from the Paper Print Collection were re-used, share that the public domain status of the films was a crucial, yet underexposed, element to the events. The American avant-garde and the reasons for the importance of found footage to the movement are partially economic.²⁷ No need for a camera and no costs attached to purchasing or processing film kept the budget to these films relatively low. No costs for copyright permissions in the case of the Paper Print Collection as those films were in the public domain (aside from their marvellous content to ‘détourne’) was in line with the low-budget practice. No need and no costs for permission from rights holders also pertained to the films screened at the FIAF Congress. The Congress has often been framed in revisionist terms in regards to early cinema. As film and legal scholars have failed to notice it is the copyright status of the film material that also plays a crucial role in practices of re-use. The systematic revision of a particular period of film history was undertaken with material that was easiest to use legally. Revisions of other periods in the same

²⁷ Steve Anderson, *Technologies of History: Visual Media and the Eccentricity of the Past* (Dartmouth College Press, 2011).

manner, periods that would still be under copyright, would be significantly harder to prepare and organise.

B *Archival Practice, Historical Accidents and 'Activation of IP'*

Archival access is not only controlled by those who own the rights, but also by those who own the physical assets. Copyright can be seen as a guiding filter for archival access,²⁸ but it is enhanced by an important factor inherent to the institutional archival practice. The law does not consist of a set of rules that are applied mechanically; these rules need to be 'activated'. Archivists have a capacity to act; they can intervene. Sometimes they actively enforce access, for instance, to some of the collection's holdings despite apparent legal restrictions. Alternatively, archivists can decide to *not* make a film available *because* of its legal problems and dormant collections are the result. Ronan Deazley has termed this process the 'interplay between the ownership of the physical object [...] and the ability to control the subsequent use and dissemination'.²⁹

It is the archivists' capacity to intervene—their human agency—that is underdeveloped and underexposed as a factor in the network of players involved in the process of archival access, including processes of circumvention. Human agency is clearly expressed in the example of the Paper Print Collection: *someone* decided that a series of photographs can be registered for copyright as a single photograph; and *someone* decided to *not* keep the nitrate film copies once it was possible to deposit celluloid for copyright.

Most scholars exploring the concept of the archive share a notion of an archive as a repository and collection of artifacts.³⁰ Michel Foucault, however, has argued that the archive has to be seen as a site of knowledge production, realised specifically through a set of relations.³¹ For Foucault, individuals are the 'vehicles of power',³² and as an extension, the archive an active site of

²⁸ Emily Hudson and Andrew Kenyon, 'Digital Access: The Impact of Copyright in Digitisation Practices in Australian Museums, Galleries, Libraries and Archives' (2007) 30(1) *UNSW Law Journal* 12.

²⁹ Ronan Deazley, *Rethinking Copyright: History, Theory, Language* (Edward Elgar, 2006) 124.

³⁰ Marlene Manoff, 'Theories of the Archive from Across the Disciplines' (2004) 4(1) *Libraries and the Academy* 9.

³¹ Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language* (Pantheon Books, 1972).

³² Michel Foucault, 'Two lectures' in Colin Gordon (ed.), *Power / Knowledge* (Harvester, 1980) 80–105.

agency. In the light of the argument of this paper, the term archive is meant to signify a networks of relations through which history can be shaped, including its relations with a variety of stakeholders, such as archivists, rights holders, and users. The network of relations also include the technical, legal, social and economical methods and structures it can be seen to be part of and that help determine what can be archived.³³ In the dissemination of cultural content within the specific confines of an archival institution, I propose to term the seemingly insignificant historical accidents mentioned above, the ‘activation of IP’. It is specifically within the confines of an archival institution, that this activation can be discerned.

C *Potential for (Film) History Making*

Canonical (film) history is driven by an idea(l) of inclusivity and completism, but what the example of the Paper Print Collection makes clear is that history is also made up by archival lacunae. The films that have survived all were copyright-registered but it is not difficult to imagine there must have been many more films that were produced. The collection represents the ‘survivors’ of film history.³⁴ There is no accurate record of how many films were produced during the earliest days of film, nor is it known what particular percentage survives. Some of the most optimistic estimates suggest that of the worldwide silent film production, less than 20 percent survives in archives today.³⁵

The Paper Print Collection represents a significant portion of the percentage of titles that survive. As mentioned above, we can only study films once they have survived and are (made) publicly accessible. Some of the filmmakers and companies that are well-represented in the collection can be studied at all because that is the material that is available. And we can ascribe things (perhaps wrongly) to the material—there appear to be many ‘firsts’ in the collection—because it is the only material that is available. What the example of the Paper Print Collection makes clear is that, partially because of the archival lacunae, a critical attitude towards source material is essential. This is perhaps more important now—a time of ubiquitous access—in a time that the landscape

³³ What Jacques Derrida has termed *archivization*. Jacques Derrida, *Archive Fever: A Freudian Impression* (University of Chicago Press, 1998).

³⁴ Mashon, above n 9.

³⁵ Paolo Cherchi Usai, ‘The Early Years: Origins and Survival’ in: Geoffrey Nowell-Smith (ed.), *The Oxford History of World Cinema* (Oxford University Press, 1996) 6–12.

of the storage place for filmic sources is changing in response to digitisation and funding pressures. Contextualising source material historically and understanding what factors influence their accessibility, including their legal provenance, is important to understand why we are able to see what we see.

V FROM REGISTRATION RECORDS TO FILM HISTORY: CONCLUSIONS

The relation between copyright, archival practices and the consequences for the study of film history might initially seem like a local and an exclusively legal problem. But issues of public accessibility of archive material and its 'potential for history making' can be seen as an epistemological problem in terms of the larger constraints to history, and therefore resonate beyond the specific demarcation of the film archive.

Archives, and perhaps particularly public-sector archives with their specific mandates, are needed to safeguard and preserve material, but they are not neutral institutions. Extant material is not necessarily available and available material is not necessarily publicly accessible. A certain fragmentation takes place in the archive that results in a narrow(er) and fragmentary view of holdings, and as such, it can be seen as a mediator between intellectual property and the potential for history making. Both the institutional context and human agency are underexposed factors in that process.

The past decade has seen calls for a re-introduction of mandatory copyright formalities, to deal with problems pertaining to the digital realm. Digitisation has resulted in a decentralisation of production, access and consumption of works. Material can be re-used relatively easily by almost everyone, and on a potentially (online) global scale. In his PhD thesis, Stef van Gompel investigates whether a re-introduction of copyright formalities is legally feasible.³⁶ The author argues that the main reasons behind abolishing mandatory formalities in the course of the 20th century were predominantly pragmatic, whereas some others were more ideological. And more importantly, he argues that those historical rationales for abolishing copyright formalities

³⁶ Stef van Gompel, *Formalities in Copyright Law. An Analysis of Their History, Rationales and Possible Future* (PhD thesis, University of Amsterdam, 2011).

have largely disappeared in today's digital era.³⁷ Re-introducing mandatory formalities could have far-reaching consequences for archival collections. They could, for instance, lead to a comprehensive central record of legal metadata, which would improve future copyright clearance processes.

Technically, the Paper Print Collection came into being because of circumvention practices, and not exclusively because of mandatory formalities. Over several decades, the films have shifted from registration records to historical artifacts and primary source material for film historical efforts. We have seen that it was the legal context and copyright status of the material plus the human agency behind the 'activation of IP' in the processes of circumvention that made up the potential for further history making.

It is not only historic collections that can be seen in the light of this insight; even the current orphan works problem can be seen in the light of this equation. The orphan works problem is often framed in terms of its underlying legal problems but doing so masks important issues arising from the archival practice that influence the material's (in)visibility. The (film) archive needs to be seen as a surviving structure of past processes,³⁸ but through its actions also simultaneously as contributing to a new one. What the story of the Paper Print Collection shows us is that the lens of IP as a tool for analysis of archival access is a useful one, because it exposes those archival practice issues while the focus of the debate is, paradoxically, shifted away from an exclusively legal one.

³⁷ Ibid 258.

³⁸ John Lewis Gaddis, *The Landscape of History. How Historians Map the Past* (Oxford University Press, 2002).