

CROP-CIRCLES

A COPYRIGHT REGIME OF PRACTICES
WITHIN FILM ARCHIVES



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ABOUT THIS ZINE

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This zine was created by Dr Melanie Stockton-Brown, of Bournemouth University, 2021.
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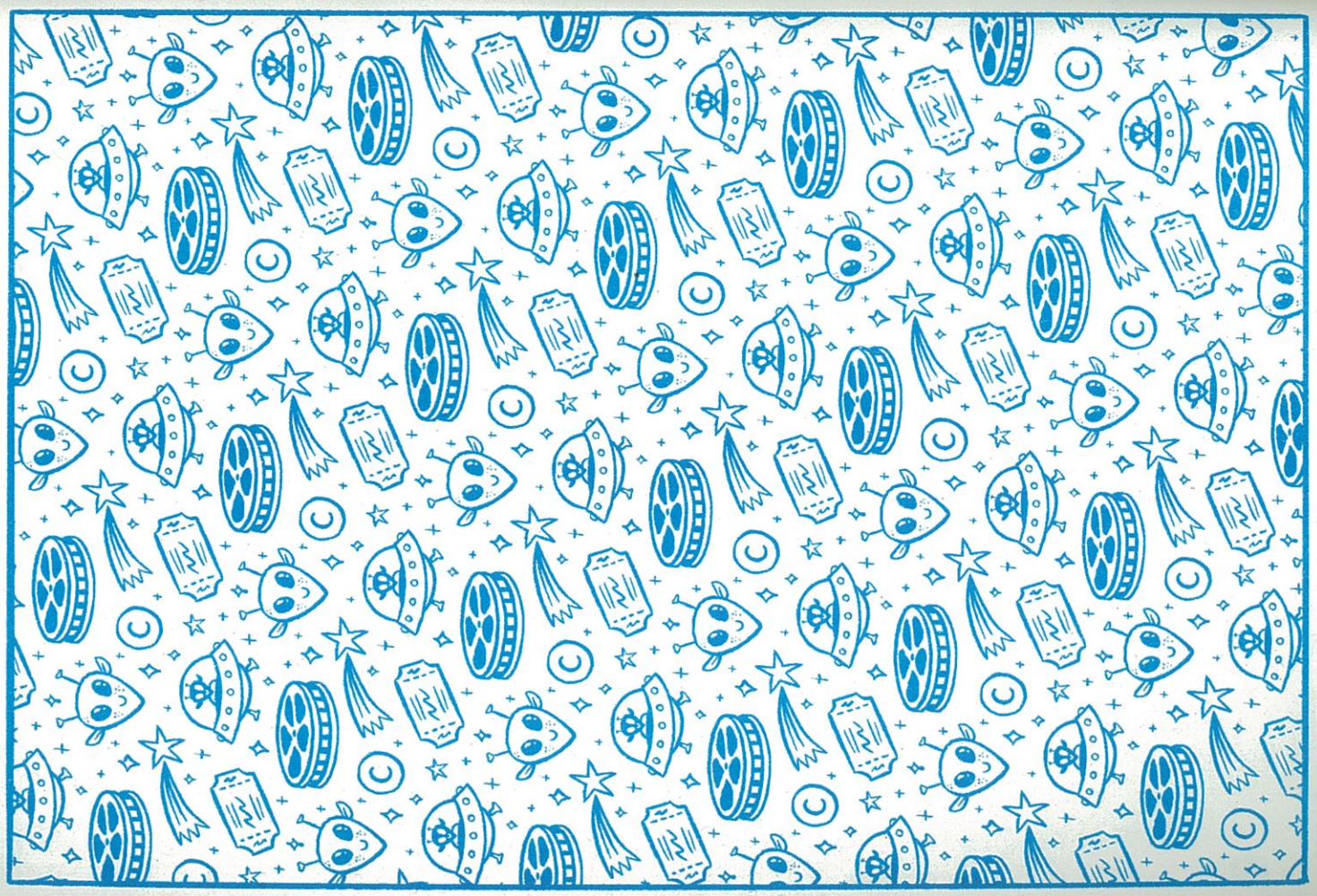
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WHO IS THIS ZINE FOR?

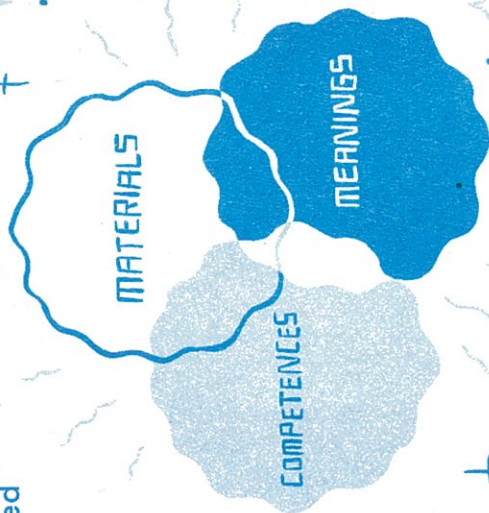
This zine is for anyone interested in film archives and archiving practices; widening access to cultural heritage; copyright practices within archives; copyright scholars; and anyone interested in the EU's CDSM [Copyright in the Digital Single Market] Directive 2019.

The zine aims to be informative and helpful through proposing a copyright theory in relation to the daily practices of film archives and film archivists, to understand how copyright impacts on film heritage work.

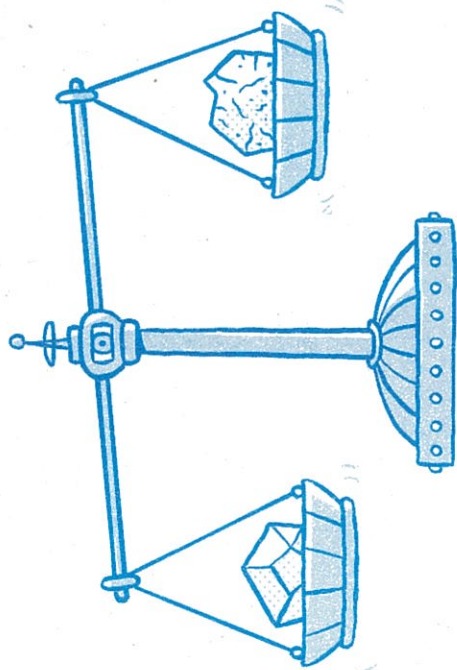
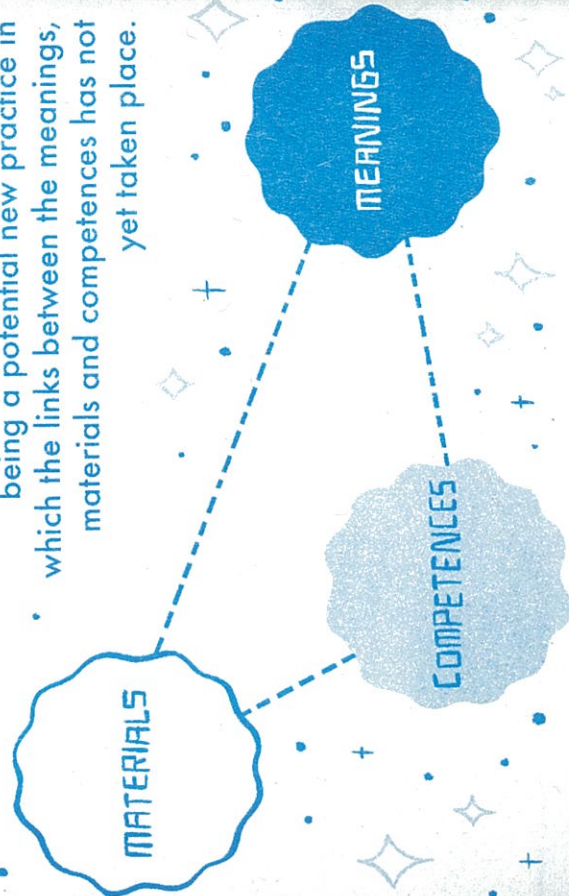


The CROP theory utilises the components of practice theory formulated by Shove, Pantzar and Watson (2012) and utilises the Foucauldian concept of a regime of practices (see Foucault quoted in Faubian, 2002).

The components borrowed from Shove et al. are: materials, competences and meanings.



They also refer to the "proto-practice", being a potential new practice in which the links between the meanings, materials and competences has not yet taken place.



Foucault defines "practices" as "places where what is said and what is done, rules imposed and reasons given, the planned and the taken-for-granted meet and interconnect." Foucault's regime of practices therefore relates to the informal and formal rules of the archives in relation to copyright, which behaviours are deemed acceptable, and which copyright meanings are dominant and which materials or objects are engaged with, and how. They prescribe what copyright conduct or behaviour is acceptable ("jurisdiction"), and what knowledge is true ("veridiction").

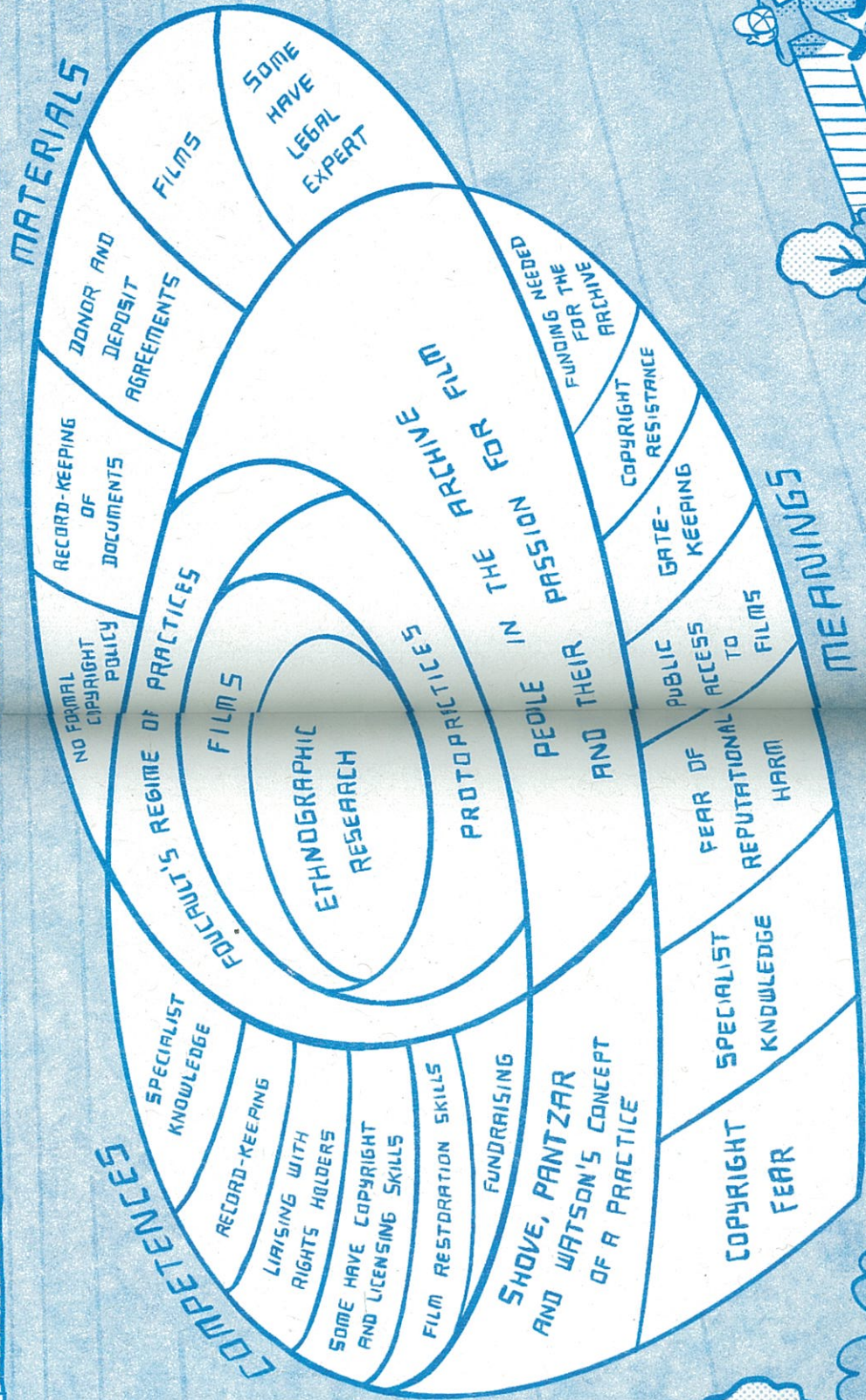


COPYRIGHT REGIME OF ARCHIVAL PRACTICES

The research has proposed a copyright regime of archival practices ("CROP"), that offers a theoretical understanding of the way film archives engage with copyright law, and what copyright practices are carried out.

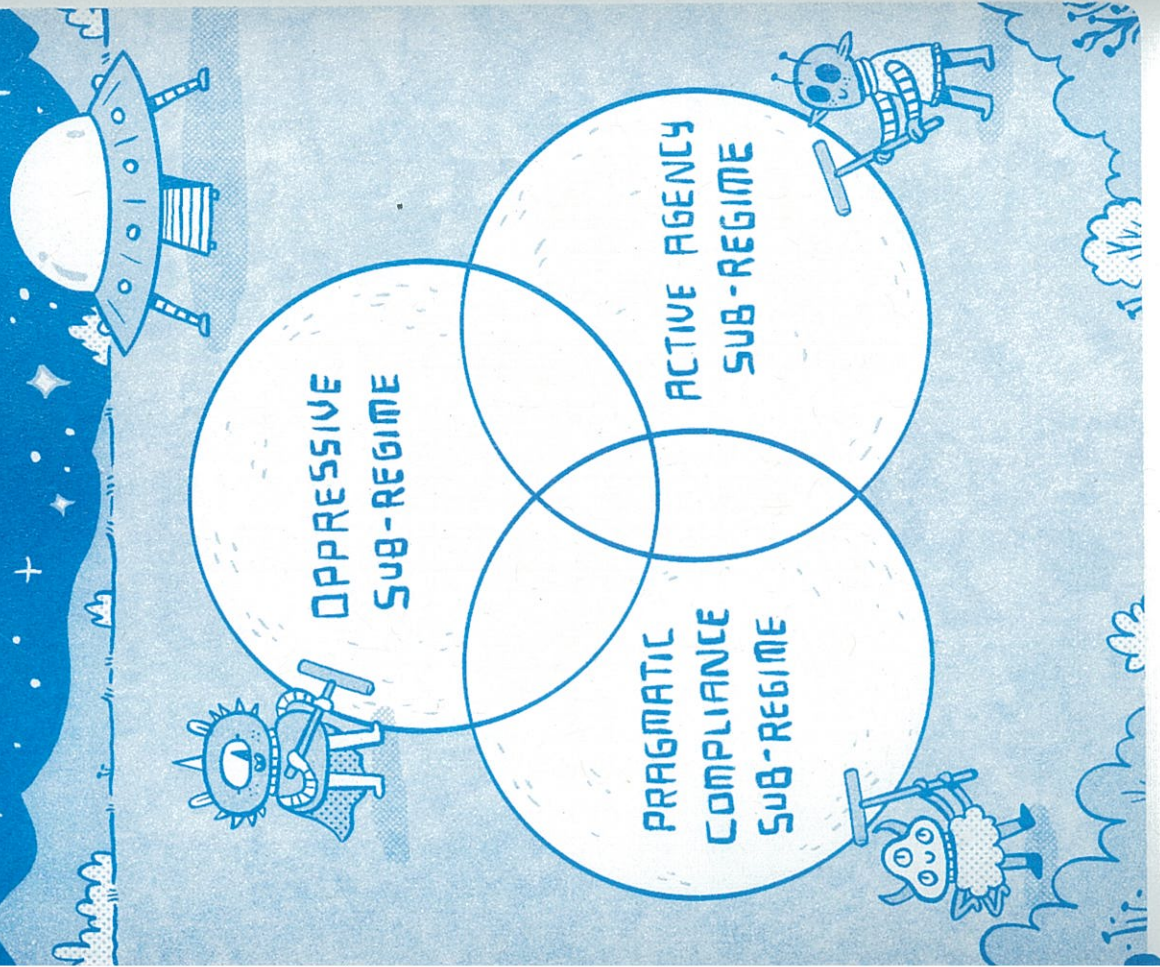
"Meanings" refers to the spoken, written, unwritten, explicit and implied narratives that are present within the film archives. They are situated in a wider socio-historical context.

Materials are the objects that are involved in the practice. Competences refers to the technical skills, knowledge and abilities of the individuals within the archive, such as knowledge of copyright law, and film restoration skills.



+ Within the copyright regime, three distinct sub-regimes were apparent:

- the copyright as "Oppressive" sub-regime;
- "Pragmatic Compliance" sub-regime;
- and the "Active Agency" sub-regime.



There is a dominant meaning in the archives of a fear of reputational harm. The individuals or archives who do not adhere to the discourse of copyright compliance are aware of the "penalty" or "punishment" that reputational harm to the archive could bring. This fear of causing any reputational harm was observed to be a self-regulating mechanism that individuals placed upon themselves, which in turn shaped their archival practices. All archives and archivists in this research regarded any potential reputational harm to the archive as very serious. Reputational harm was observed as having a very negative impact on the film archive in a financial and professional sense.

The fear of reputational harm with the following 4 groups of stakeholders:

<p>Current or future financial donors;</p>	<p>Current or future donors of material to the collection;</p>
<p>Members of the public or users of the collection;</p>	<p>and other CHIs or partner institutions.</p>

OPPRESSIVE SUB-REGIME

Copyright Regime	<p>Oppressive - Copyright is experienced as oppressive and restrictive on other activities.</p> <p>Strict legal compliance</p>
Materials	<p>Contracts</p> <p>Policies (no formal copyright policy)</p> <p>Records, spreadsheets and index cards</p> <p>Physical film materials and equipment</p>
Meanings	<p>Copyright fear</p> <p>Copyright compliance</p> <p>Fear of reputational harm</p> <p>Strong concern for the archive's longevity</p> <p>Commercial licensing focus due to limited funding</p> <p>Public access</p> <p>Gatekeeping</p>
Competences	<p>Limited specialist copyright knowledge</p> <p>Avoidance of copyright activities deemed 'risky'</p> <p>Specialist knowledge of staff within their roles</p> <p>Record-keeping</p> <p>Liaising with rightholders</p> <p>Technical archiving skills (digitising, preserving, restoring, etc.)</p> <p>Fundraising skills</p>

Copyright orchestrates the archival practices considerably. From a jurisdiction perspective, copyright impacts on what activities are to be performed, and which films can be made accessible to the public or for reuse. Only the films with a clear and known copyright status were allowed to be reused. Also, copyright compliance led to a strong copyright fear within the regime. This in turn culminated in a practice of always re-seeking rightholder permission when access or reuse is requested by a third party, to avoid reputational harm. This practice limited the available films for reuse and public access.

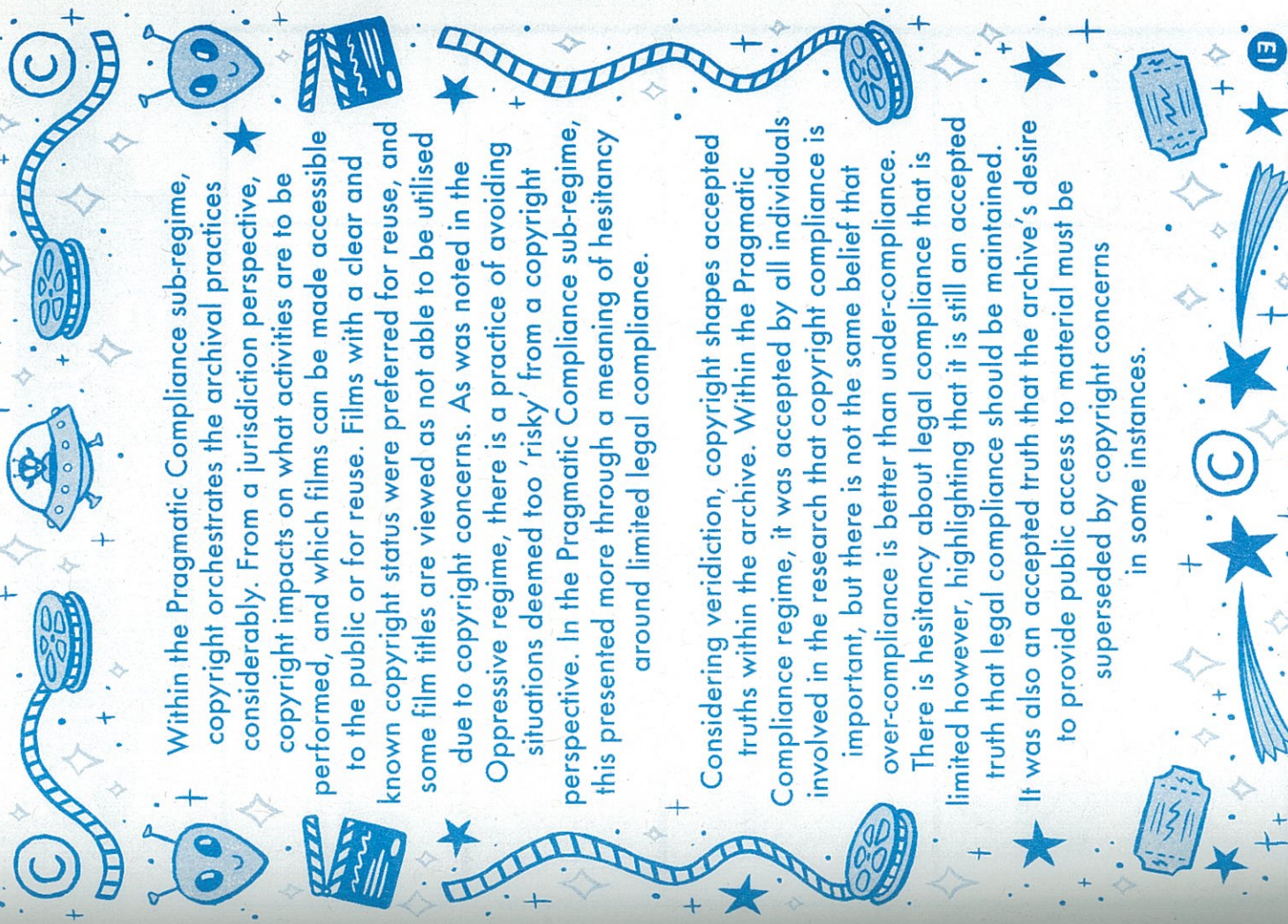
Considering veridiction, copyright shapes accepted truths within the archive. Within the Oppressive regime, it was accepted by all individuals involved in the research that copyright compliance is very important, and that over-compliance is preferable to under-compliance and consequent potential liability. It was also an accepted truth that the archive's desire to provide public access to material must be superseded by copyright concerns.

PRAGMATIC COMPLIANCE SUB-REGIME

Copyright Regime	Pragmatic Compliance - Copyright is restrictive, but more a logistical barrier than oppressive. Legal compliance is adhered to, with some limited exceptions where staff lack confidence or knowledge.
Materials	Contracts Policies (no formal copyright policy) Records, spreadsheets Internal documents and information memos to staff Emails containing information Physical film materials and equipment
Meanings	Copyright fear (some staff) General copyright compliance Hesitant about legal compliance that is limited Fear of reputational harm Limited concern for the archive's longevity Public access Gatekeeping
Competences	Specialist copyright knowledge Avoidance of copyright activities deemed 'risky' Specialist knowledge of staff within their roles Record-keeping (historically lax) Liaising with rightsholders Liaising with national government Technical archiving skills (digitising, preserving, restoring, etc.) Fundraising skills Commercial revenue generating

Within the Pragmatic Compliance sub-regime, copyright orchestrates the archival practices considerably. From a jurisdiction perspective, copyright impacts on what activities are to be performed, and which films can be made accessible to the public or for reuse. Films with a clear and known copyright status were preferred for reuse, and some film titles are viewed as not able to be utilised due to copyright concerns. As was noted in the Oppressive regime, there is a practice of avoiding situations deemed too 'risky' from a copyright perspective. In the Pragmatic Compliance sub-regime, this presented more through a meaning of hesitancy around limited legal compliance.

Considering veridiction, copyright shapes accepted truths within the archive. Within the Pragmatic Compliance regime, it was accepted by all individuals involved in the research that copyright compliance is important, but there is not the same belief that over-compliance is better than under-compliance. There is hesitancy about legal compliance that is limited however, highlighting that it is still an accepted truth that legal compliance should be maintained. It was also an accepted truth that the archive's desire to provide public access to material must be superseded by copyright concerns in some instances.

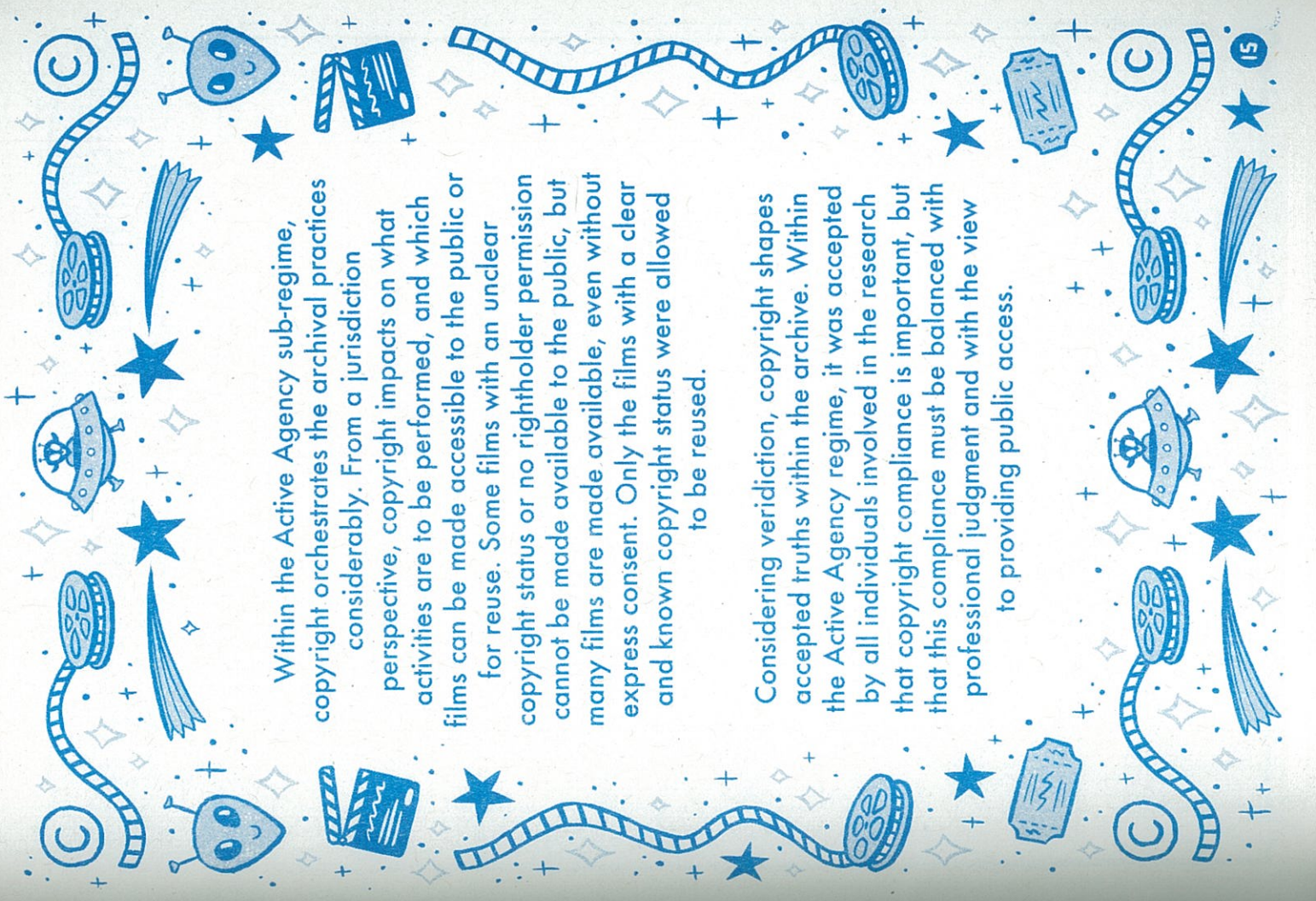


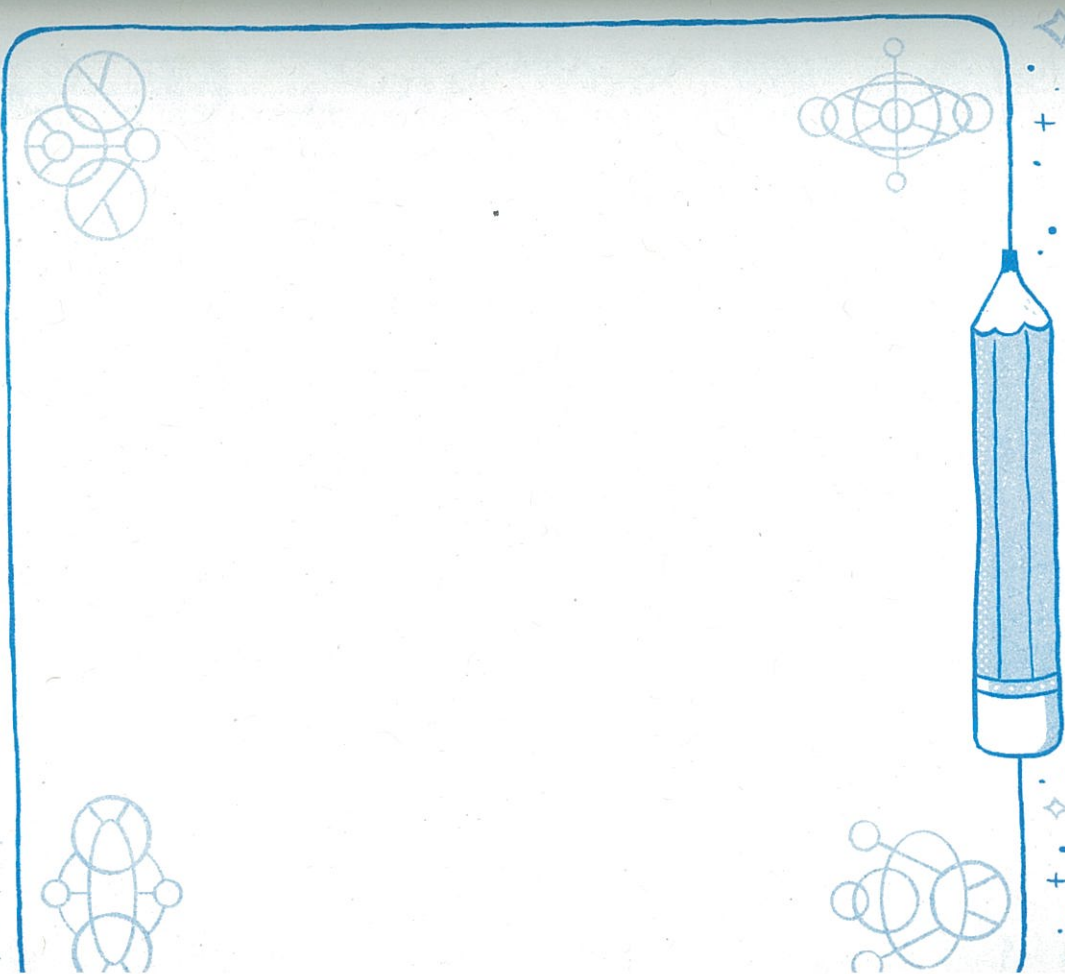
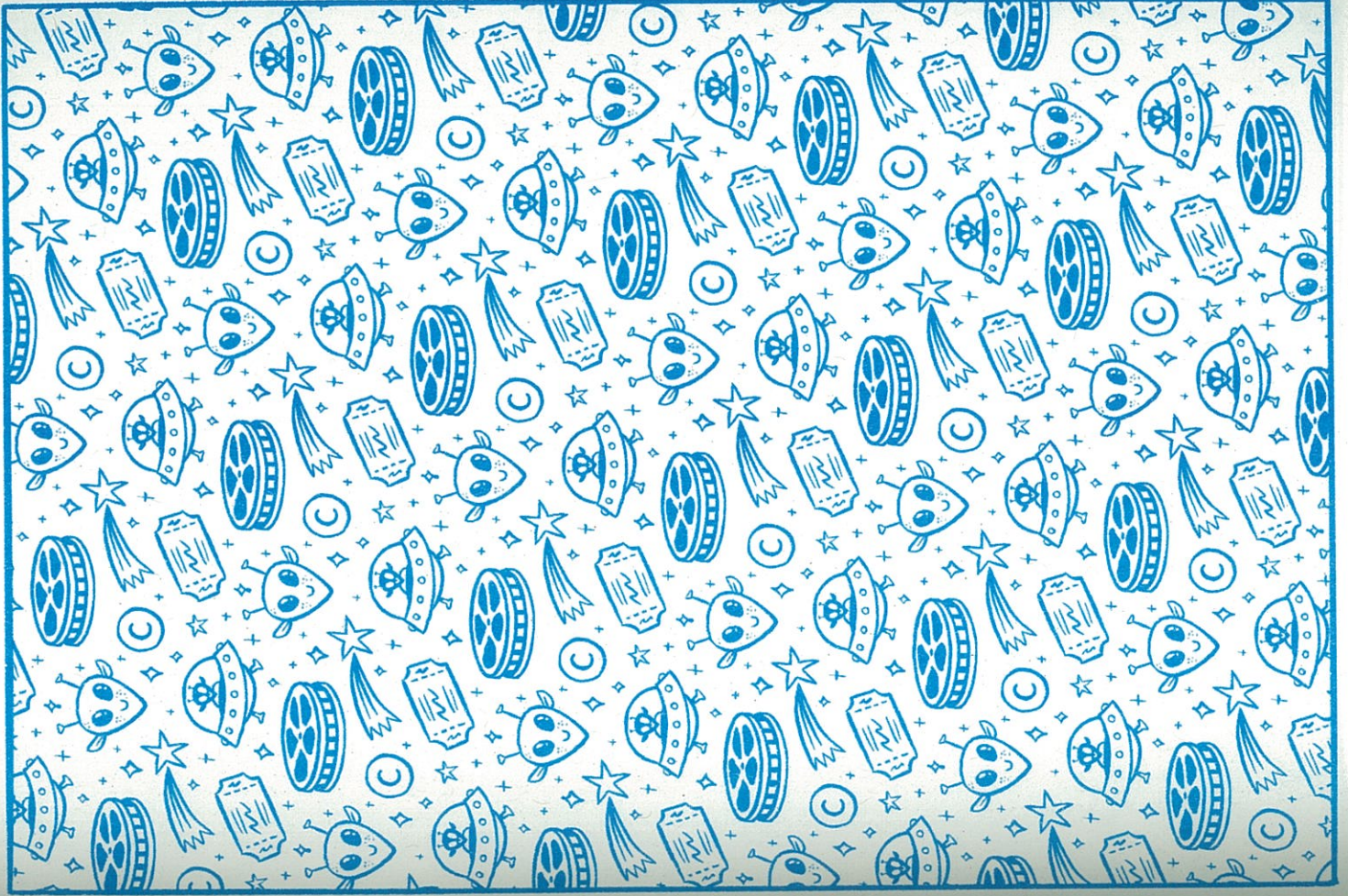
ACTIVE AGENCY + SUB-REGIME

Copyright Regime	Active Agency - Copyright is restrictive, but not oppressive. Legal compliance to the extent that it is deemed necessary, and some active departure from copyright.
Materials	Contracts Policies (no formal copyright policy) Records, spreadsheets Physical film materials and equipment
Meanings	Copyright compliance that is balanced with professional judgement, some active departure Fear of reputational harm Confidence in the archive's longevity Public access Gatekeeping
competences	Specialist copyright knowledge Specialist knowledge of staff within their roles Record-keeping Liaising with rightholders Liaising with national government Technical archiving skills (digitising, preserving, restoring, etc.) Fundraising skills

Within the Active Agency sub-regime, copyright orchestrates the archival practices considerably. From a jurisdiction perspective, copyright impacts on what activities are to be performed, and which films can be made accessible to the public or for reuse. Some films with an unclear copyright status or no rightholder permission cannot be made available to the public, but many films are made available, even without express consent. Only the films with a clear and known copyright status were allowed to be reused.

Considering veridiction, copyright shapes accepted truths within the archive. Within the Active Agency regime, it was accepted by all individuals involved in the research that copyright compliance is important, but that this compliance must be balanced with professional judgment and with the view to providing public access.





Please send a photo of your own drawings about
copyright/ this zine/ additions to the CROP theory to:
mstocktonbrown@bournemouth.ac.uk,
or tweet them to @MelCopyright.



This zine is based on my PhD research (2017-2021) into out-of-commerce works. A free ezine relating to this research and to out-of-commerce film works can be downloaded through this QR Code.