

Archives and Copyright

The principal themes of the
Background Paper

David Sutton

Director of Research Projects, University of Reading Library, UK

**Regional Seminar
Santo Domingo
4-5 July
2019**



Dr David Sutton FRSA FRSL

Director of Reading Research Projects (Location Register & WATCH)

Director of the Diasporic Literary Archives Network


Editor of the UK Location Register of Literary Manuscripts

Chair of the Group for Literary Archives & Manuscripts (GLAM)

Member, Executive Board, International Council on Archives

Chair of the ICA Section on Archives of Literature & Art

WHY A “BACKGROUND PAPER”?

- ▶ What the Background Paper aims to do
 - ▶ No typology for Archives as yet
 - ▶ But opportunities for Archives to draw upon the methodologies and typologies developed for Libraries and Museums
 - ▶ Possibly fewer areas of contention in the intersection of Archives and Copyright
- 

THE MEANINGS OF “ARCHIVES”

In many languages, the word for archives has multiple meanings:

- ▶ Archives as documents (archival collections)
- ▶ Archives as buildings (archival repositories)
- ▶ Archives as organizations (archival institutions)

- ▶ A descriptive definition of archival collections is provided by the **Universal Declaration on Archives** (as adopted by UNESCO)

ARCHIVAL INSTITUTIONS

- ▶ Archival institutions may charge for some of their services (especially copying), but they are essentially not-for-profit organizations.
- ▶ Archival collections may be held in many types of institutions
- ▶ These include archives, libraries and museums (often grouped as a trio)
- ▶ But also: universities, hospitals, private foundations, authors' houses, religious organizations, charities, arts bodies, community groups, businesses and government departments
- ▶ Archival collections are thus not restricted to institutions known as “Archives”

CATEGORIES OF ARCHIVES

The Background Paper enumerates a wide range of types of archives, as follows:

- ▶ Archives of archaeology
- ▶ Architectural archives
- ▶ Business archives
- ▶ Archives of community groups
- ▶ Archives of disability
- ▶ Educational archives
- ▶ Film archives
- ▶ Archives of folklore and traditional beliefs
- ▶ Archives of foundations, societies, clubs and associations
- ▶ Archives of heraldry, vexillology and sigillography
- ▶ Archives concerned with human rights and liberation struggles
- ▶ Archives of indigenous people
- ▶ Labour and trade union archives
- ▶ Legal, judicial and notarial archives
- ▶ Archives of lesbian, gay, bisexual and transsexual (LGBT) movements
- ▶ Archives of literature, art and the theatre
- ▶ Archives of local, municipal and territorial governments

CATEGORIES OF ARCHIVES, CONTINUED

The enumeration of this wide range of types of archives continues (M-Z):

- ▶ Medical and hospital archives
- ▶ Military archives
- ▶ Mixed media archives
- ▶ Archives of museums
- ▶ Music archives
- ▶ Archives of national governments and their departments
- ▶ Oral history archives
- ▶ Parliamentary archives
- ▶ Photographs
- ▶ Archives of political parties
- ▶ Religious archives
- ▶ Archives of science, technology and mathematics
- ▶ Sports archives
- ▶ Archives of transport and travel
- ▶ Archives concerning women and women's rights

“SPLIT COLLECTIONS”

Although archival items are usually unique, archival *fonds* may be divided across several institutions, and sometimes across several countries. For example:

- ▶ The papers of the St Lucian poet Derek Walcott are divided between the University of the West Indies (Trinidad) and the University of Toronto
- ▶ The papers of Wilson Harris (Guyana) are in four principal locations: the University of the West Indies (Jamaica), the Universities of Texas and Indiana, and Cambridge University Library in the UK
- ▶ The papers of the author Claribel Alegría (Nicaragua / El Salvador) are partly in the Biblioteca Nacional de Chile and partly in Princeton University (USA)
- ▶ Split collections are often held in different countries under different copyright regimes
- ▶ The correspondence of any particular cultural creator or public figure is **always** split between multiple institutions (normally in the archival collections of the recipients, not those of the creators)

DIASPORIC ARCHIVES

Certain types of cultural archives are diasporic in nature and often cross boundaries. Examples of Caribbean and Latin American literary authors include:

- ▶ Papers of Rubén Darío (Nicaragua) in Arizona State University
- ▶ Papers of Gabriel García Márquez (Colombia) in the University of Texas
- ▶ Papers of Carlos Fuentes (Mexico) controversially acquired by Princeton University
- ▶ Papers of Mario Vargas Llosa (Peru) also in Princeton University
- ▶ Papers of V. S. Naipaul (Trinidad and Tobago) in the University of Oklahoma, Tulsa
- ▶ Papers of his younger brother Shiva Naipaul in the British Library, London
- ▶ Many other “diasporic” literary archival collections are identified at www.diasporicarchives.com, notably Jorge Luis Borges and Julio Cortázar (Argentina) and Samuel Selvon and Earl Lovelace (Trinidad and Tobago)

BORN-DIGITAL ARCHIVES AND DIGITIZED ARCHIVES


These are the two types of digital archives.

- ▶ Most archivists see born-digital archives as simply archives in another format, to which all the normal rules of archives apply
- ▶ Digitization, by contrast, refers to making digital copies of born-analogue archival materials and is fraught with copyright challenges

THE IMPORTANCE OF MAKING COPIES OF ARCHIVES

- ▶ Preservation copying (analogue and digital)
- ▶ Bringing together complementary collections by copying
- ▶ Reconstituting archival collections which have become split
- ▶ Copies for exhibitions
- ▶ Copies for safety and security, including “archival safe havens”
- ▶ Making copies rather than originals available to users
- ▶ Copying for users' research purposes
- ▶ Copying for teaching purposes

WAYS IN WHICH ARCHIVES CROSS BORDERS

- ▶ Archival rescue
 - ▶ International cooperation to preserve unique archival collections
 - ▶ Digital preservation across borders
 - ▶ Exhibitions and other loan arrangements
 - ▶ Copies for research
 - ▶ Sharing copies to consolidate or re-unite “split collections”
 - ▶ Copies for preservation, safety and security
- 

“ORPHAN WORKS” IN THE WORLD OF ARCHIVES

- ▶ “Orphan works” are commonplace in archives
- ▶ Archival copyright holders can be especially difficult to trace
- ▶ A key reason for this is that the archival collections generally have little exploitable financial value
- ▶ This is still more true of individual archival items
- ▶ Archives are therefore especially susceptible to the “orphan works paradox”
- ▶ The “orphan works paradox” indicates that the lower the financial value of a work, the less likely it is that the copyright owner can be traced

THE PARTICULAR EXAMPLE OF CORRESPONDENCE COLLECTIONS

- ▶ Correspondence collections present a strong example of the difficulties faced in clearing archival copyright
- ▶ One correspondence collection may include several thousand copyright holders
- ▶ The copyrights have little or no commercial value
- ▶ Copyright holders are very difficult to trace
- ▶ Even when traced, the copyright holders are often unaware that they own these copyrights
- ▶ A single letter [*one piece of paper with no commercial value*] may have its copyright shared between 20 or more heirs
- ▶ Correspondence collections are consequently an under-exploited part of cultural heritage

COPYRIGHT LEGISLATIONS AND ARCHIVES

- ▶ Published and unpublished works
- ▶ Wide variation within national legislations
- ▶ Variations in duration
- ▶ Special clauses for unpublished works in some legislations
- ▶ The importance of the public domain
- ▶ The limited relevance of Extended Collective Licensing in respect of archives

IN A NUTSHELL...

- ▶ Archival institutions exist for the public good, and are non-commercial
- ▶ Archival institutions need to make copies of their holdings for purposes of preservation, access and scholarly research
- ▶ Archivists wish to promote access to their collections, but are often troubled and thwarted by copyright uncertainties
- ▶ Copyright risk-assessment is an important part of the work of archivists; attitudes and approaches, however, vary from country to country
- ▶ Some collections, notably correspondence collections, remain under-used and under-exploited because of the difficulty of tracing copyright owners
- ▶ When traced, archival copyright owners are usually happy to grant permissions and do not usually expect remuneration

IN A NUTSHELL...

- ▶ Archival documents are unique in nature
- ▶ They are not generally created for financial gain
- ▶ Depending on the nature of material and national legislations, they maybe subject to copyright law, often under the heading “unpublished works”
- ▶ Rules for copying archival materials vary from country to country
- ▶ Component parts of any archival *fonds* may be held in several institutions in several countries, and hence subject to different copyright legislations
- ▶ Individual archival collections may have hundreds and even thousands of copyright owners
- ▶ Many archival materials therefore come into the category of orphan works; to conclude, “archival orphanages” need WIPO’s assistance

