



Archives and Copyright

The principal themes of the
Background Paper

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DIASPORIC LITERARY ARCHIVES

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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.

- Authors’ papers – examples including Samuel Beckett, Léopold Sédar Senghor and “Miss Lou” (Louise Bennett-Coverley)
- 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)

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)
- Reconstituting archival collections which have become split
- Bringing together complementary collections by copying
- 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 strengthen “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

Copyright legislation 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

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 may have its copyright shared between 20 or more heirs
- Correspondence collections are consequently an under-exploited part of cultural heritage

Conclusion and summary: archival institutions

- 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

Conclusion and summary: archival materials

- Archival documents are unique in nature
- They are not generally created for financial gain
- They are, however, 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

