

Intellectual Property Management in an Ethnomusicology Archive

An Empirical View from India

Prepared for the
World Intellectual Property Organisation (WIPO)
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ACRONYMS

ARCE-AIIS: Archives and Research Centre for Ethnomusicology of the American Institute of Indian Studies

IASA: International Association of Sound and Audiovisual Archives

ICTM: International Council for Traditional Music

SEM: Society of Ethnomusicology

UNESCO: United Nations Educational, Scientific and Cultural Organization

WIPO: World Intellectual Property Organization

INTRODUCTION AND METHODOLOGY

This is a survey of intellectual property (IP) issues faced by archives and museums in India, with a specific focus on IP management during the documentation, digitization and dissemination of elements of the intangible cultural heritage.

The survey was carried out through meetings and visits to institutions and telephonic and email communications, using a questionnaire as a basis for conducting interviews. The questionnaire is attached in Annex 1. A range of individuals including musicians, curators and other professionals were interviewed. Annex 2 contains a list of other persons consulted for purposes of this survey.

Furthermore, in the preparation of this survey, the Archives and Research Centre for Ethnomusicology of the American Institute of Indian Studies (ARCE) and the World Intellectual Property Organization (WIPO) organized a consultation workshop in New Delhi on March 7, 2007. The results of this consultation are integrated into this survey and also reported on in more detail in Annex 3.

WIPO also facilitated the participation of the author of this survey in certain international meetings of key professional bodies such as World Conference of the International Council for Traditional Music (ICTM), which took place in Vienna, Austria, from July 4 to 11, 2007¹, and the Annual Conference of the International Association of Sound and Audiovisual Archives (IASA), which took place in Riga, Latvia, from September 15 to 20, 2007². The survey refers to relevant codes and statements issued by international bodies such as the IASA and the Society of Ethnomusicology (SEM). Annex 4 reports on important policy documents and other initiatives of such international bodies. The findings of the survey and the work of WIPO on these issues within WIPO's Creative Heritage Project were also presented at the ICTM Symposium "Culture: Mapping, Knowing, Safeguarding, Performing"³ organized by the ICTM and the Australian National University and "Communities and Memories: a Global

¹"Towards Best Practices: Revisiting Issues of ICH in the Field and in the Archives", paper presented at ICTM, 2007.

²"Archival Policies, Ethics and the Law: Balancing the Needs of Archives, Performers and Communities", Paper presented at IASA, Riga, 2007.

³Paper presented "Intangible Cultural Heritage and the WIPO Cultural Heritage Project".

Perspective”⁴ at the Third International Conference of the UNESCO Memory of the World in Canberra in February 2008⁵.

Part One of the Survey comprises a general overview of audiovisual archives and, to a lesser extent, ethnographic museums, in India, and how they have dealt with IP issues.

In Part Two, the survey presents a detailed case study of the Archives and Research Centre for Ethnomusicology of the American Institute of Indian Studies in India, of which the author is the Director, and refers also to certain other practical projects in which the ARCE is involved.

⁴Paper presented “Memory of the World and Intellectual Property Issues”.

⁵Support for participation in these was from the ICTM and the Memory of the World Australia. See also <http://www.amw.org.au/mow2008/mow/mow2008.htm>

AUDIOVISUAL ARCHIVES AND ETHNOGRAPHIC MUSEUMS IN INDIA

GENERAL OVERVIEW

Audiovisual archives are the largest repositories of intangible cultural heritage in India. These collections of recordings range from what are termed as the classical music traditions of India, or art music encompassing a range of genres from Hindustani Classical music and Karnatak music to regional genres of music and other performing arts. Archival collections of dance and theatre are more recent as the visual media of film and video were a later development. However, there are many collections today that include dance and theatre traditions. What has been called folklore, folk music and folk dance range from highly professional forms to those which are more participatory in nature and tend to be performed by all members of a particular community or at times, performed across a cultural area. All of these are part of what was termed “expressions of folklore” and more recently “traditional cultural expressions”⁶. These range from stage performances and those performed for entertainment, to those, which are part of ritual or ceremonies. Recordings of these, which are held in archives, are often of events performed for documenting and archival use, or recorded live – of stage performances or in the actual community and cultural context. IP issues that are difficult to resolve are largely relevant to the latter.

Audiovisual archives in India do not have a long history. They are, for the most, part of the post-Independence, post-colonial impulse, to present a national identity and provide a representation of the cultural diversity of India.

Audiovisual archives include governmental archives, such as the archives of the Sangeet Natak Akademi, which functions as an arts council for the performing arts, and, more recently, the archives of the Indira Gandhi National Centre for the Arts. The largest audiovisual archives are those of the national broadcasting services – that of Akashvani or the All India Radio - and, more currently, the archives of the national television – Doordarshan. An important fact is that there is no audiovisual archive based on compulsory deposit in India. The National Archives of India does not deal with audiovisual documents and is the repository of Governmental records. The National Film Archives of India is the only national governmental audiovisual archive. However,

as it is an archive of cinema, it has not been included in this survey. Though the national broadcasting archives mentioned above were included in the general survey, the issues for broadcasting in terms of IP are formalized and fixed by national policy which is not relevant to that of other audiovisual archives.

The National Centre for Performing Arts and the Archives and Research Centre for Ethnomusicology of the American Institute of Indian Studies (discussed in detail in Part Two) are the only non-governmental archives operating on a national scale, which have performing arts from all over India in their purview. Other archives, such as that of the Sangeet Research Academy, or the Saptak archives with their collections of Hindustani classical music, and the Music Academy and Sampradaya with their collections of Karnatak classical music, are archives with specialist collections of the classical music traditions of India and consist of concert recordings and or documentation projects on these traditions containing interviews and performances. The Natya Shodh Sansthan is an example of a theatre archives on a national scale.

There are, however, all over India a significant number of archives of what may be called “folklore” collections or those that focus on particular performing art forms on a regional level. Since the early 1980s there has been a rising consciousness of preserving the oral and performing cultural heritage, which has led to many institutional initiatives that focus on documentation and research as well as performance. Many of these have developed archives as part of their activities. In addition to these there are archives which have had their origins in private collections such as is the case in many parts of the world.

The Archives Resource Community (ARC) is a network of archives of expressive culture, which was supported by the Ford Foundation from 1998 to 2005. It had an active program of meetings, symposia and training workshops and among other issues worked towards creating an awareness of IP rights issues especially copyright. The members are now part of an “e-group” where the membership now includes all those interested in audiovisual archiving in India. Recent discussions have mainly been around issues of archives and IP rights and reflect ongoing concerns of musicians and archivists⁷.

⁶ See also WIPO, “National Experiences with the Protection of Expressions of Folklore/Traditional Cultural Expressions in India, Indonesia and the Philippines”, written by Mrs. P.V. Valsala G. Kuttu.

⁷ See http://groups.yahoo.com/group/arc_india/

Ethnographic museums are often holders of intangible heritage and as such are involved with issues such as community ownership and use of traditional motifs in contemporary craft forms. The National Museum has ethnographic collections of tribal arts and musical instruments. However, the best known governmental national museum of ethnographic materials is the Rashtriya Manav Sangrahalaya (The National Museum of Man) in Bhopal and the Crafts Museum in Delhi. There are museums of folk and tribal arts in many parts of India including those, which are part of the State government Tribal Research Institutes. However, they have collections of artifacts, textiles and jewelry and thus have not been included in this survey, as they do not have holdings of what may be called intangible cultural heritage in a direct sense.

It is necessary to point out that the survey excludes consideration of a large amount of intangible cultural heritage held in private collections and local institutions, as these are not considered archives as such.

THE INDIAN COPYRIGHT LAW

To put the aspects of copyright and other IP rights into perspective, it is necessary to point out that the Indian Copyright Act, 1957, does not have any provision for the protection of expressions of folklore. There are two provisions, however, that have implications for this survey – one relates to performers’ rights and the other to fair dealing – both of which are relatively recent and introduced in 1997. They are described below to provide further background to the survey and to place the issues in context:

Who is a performer?

A “performer” includes an actor, singer, musician, dancer, acrobat, juggler, conjurer, snake charmer, a person delivering a lecture or any other person who makes a performance.

What is a performance?

“Performance” in relation to performer’s rights, means any visual or acoustic presentation made live by one or more performers.

What are the rights of a performer?

A performer has the following rights in his/her performance:

- Right to make a sound recording or visual recording of the performance;
- Right to reproduce the sound recording or visual recording of the performance;
- Right to broadcast the performance;
- Right to communicate the performance to the public otherwise than by broadcast.

What is the term of protection of performer's rights?

Performer's rights subsist for 25 years.

What are the rights of a performer in a cinematograph film?

Once a performer has consented for incorporation of his performance in a cinematograph film, he shall have no more rights to that performance.

During the continuance of a performer's right in relation to any performance, any person who, without the consent of the performer, does any of the following acts in respect of the performance or any substantial part thereof is deemed to have violated the right:

- (a) makes a sound recording or visual recording of the performance; or
- (b) reproduces a sound recording or visual recording of the performance, which sound recording or visual recording was-
 - (i) made without the performer's consent; or
 - (ii) made for purposes different from those for which the performer gave his consent; or
 - (iii) made for purposes different from those referred to in section 39 from a sound recording or visual recording which was made in accordance with section 39; or
- (c) broadcasts the performance except where the broadcast is made from a sound recording or visual recording other than one made in accordance with section 39, or is a re-broadcast by the same broadcasting organisation of an earlier broadcast which did not infringe the performer's right; or
- (d) communicates the performance to the public otherwise than by broadcast, except where such communication to the public is made from a sound recording or a visual recording or a broadcast,

Acts not infringing broadcast reproduction right or performer's right

No broadcast reproduction right or performer's right shall be deemed to be infringed by-

- (a) the making of any sound recording or visual recording for the private use of the person making such recording, or solely for purposes of bona fide teaching or research; or
- (b) the use, consistent with fair dealing, of excerpts of a performance or of a broadcast in the reporting of current events or for bona fide review, teaching or research; or
- (c) such other acts, with any necessary adaptations and modifications, which do not constitute infringement of copyright under section 52.

AUDIOVISUAL COLLECTIONS OF INTANGIBLE CULTURAL HERITAGE: SPECIFIC ISSUES

Materials and Media

Archival collections of audiovisual recordings all seem to comprise a range of media, including open reel recordings, cassettes and, more recently, various kinds of digital media. Many archival collections that were started in the mid 1908s used audio cassettes as the primary media. These are, as is known, not considered safe for archival storage and are thus part of the endangered documentary heritage. There are a few small collections of film, but since the mid 1980s video recordings became a major part of the

holdings of audiovisual archives. Collections of open reel recordings in most archives have been transferred in some cases to cassette and more recently to digital media.

Most archives, which are part of research institutions, have supporting collections of photographs and slides, publications and artifacts such as masks and costumes, musical instruments in some cases, manuscripts and ephemera. Collections of artifacts such as musical instruments are also part of the collections of regional and national archives like the Sangeet Natak Akademi and museums, such as the National Museum and the Crafts Museum.

There are no significant collections of older media such as cylinders and wire recordings. This is because such collections were largely made in the colonial era by foreigners and thus held in collections outside India. There are accounts that these older media have perished with time due to poor preservation. In addition to sound there are collections of still and moving images although to a smaller extent.

There is a range of archival standards used by the various archives and institutions. It remains an area where a lot of information and inputs are required. The import of equipment was difficult and expensive for many years with restrictions on the use of hard currency and high customs duties, which made access to professional equipment limited and available mainly to commercial enterprises. This has changed in recent times and though import is easier, equipment is not easily accessible.

There are no professional bodies of archives in India and only a few institutions belong to international bodies. Thus the creation and implementation of archival standards, be they related to recording, cataloguing and/or storage, remain very variable. This has led to large archival collections, which are threatened as they were made on non archival formats such as audio cassette and more recently on mini disks, and transfer to Video Compact Disks (VCD) and DVD, which are all highly compressed.

Most archives create and follow their own methods and procedures. Due to access of information on the Internet today, there is an increase in the exposure to international standards and there are training initiatives and workshops at the non governmental and governmental level to introduce archival standards which should improve the situation in the not too distant future.

Storage

Climate controlled storage for recordings is the critical need of the archives in India. Dust and extremes of temperature in many parts of India make it harder to have ideal conditions. Though air conditioning is installed in many institutions, it is not constant or uninterrupted. Inconsistent electric supply is also an issue in many places making it harder to maintain the necessary environmental control. The implementation of procedures that is needed to support storage for adequate preservation remains a problem in many places. There is, however, an increased consciousness of these issues, but well-preserved collections are the exception than the rule.

The cost of running full time air-conditioning and humidity control is one of the major deterrents for many institutions. Purchase of audiovisual equipment and maintaining audiovisual collections is expensive by Indian standards and thus there is a conflict in the financial priorities where storage often gets lower priority. Added to this is the fact that audiovisual recordings do not show damage caused by heat and humidity immediately. Thus there are many reports of collections having been damaged or destroyed due to poor storage.

Digitization and Computerization – and Growing Awareness of IP Issues

Archives and museums are all going in for digitization of their holdings – be they recordings or photographs and documents. It was found that here again there is a diverse range of standards being followed, from a few that aim to follow best practices, to those who are outsourcing their materials to commercial agencies at low costs. This leads to transfers being made to standards like mp3 and Video CDs (VCDs) which are highly compressed and unsuitable for archival purposes. Most institutions are not able to digitize their archival holdings at the required standards due to lack of trained personnel and funding. Thus there is a risk of a large amount of archival recordings remaining inaccessible due to hardware obsolescence.

Digitization is, however, changing the face of archives in India as in other parts of the world. One factor is the emergence of India in the information technology domain. As collections get digitized, systems for access and dissemination move into the hands of IT professionals and are thus more “mainstream”.

Digitization brings with it a demand for public dissemination and enhanced access due to the ease with which they can be done in the Internet age. It is this more than anything else that has created the consciousness of the need for creating policies and agreements for access, dissemination and use, including policies and agreements related to management of IP options. A lack of certainty and clarity about IP issues keeps most archives from putting up content on the Internet, and there are a few cases of materials being put up without the requisite permissions having been obtained. Though most archives have websites, few are being used to provide detailed catalogues or to facilitate access to archival holdings through electronic access and downloads.

Archives in India did not have a great tradition of issuing of recordings although there are cassettes and CDs that have been produced by archives. Documentaries based on archival holdings are also broadcast occasionally. In most cases, these involve making advance lump sum payments with the archives retaining copyright. As archives today seek to disseminate their holdings, for generating revenue and/or for providing access, IP issues are moving to the forefront.

In a few cases where recordings were already part of archival holdings, they have been published by the archives directly without any further negotiations with the performers or musicians concerned. This has caused a lot of controversy and discussion as publishing recordings which were made for “archival” purposes is seen as a violation of performers’ rights, as described above.

There is thus a need to ensure that archives and institutions either secure prior permission or renegotiate with artists if they wish to publish such recordings commercially. In addition to the details provided in the case study on ARCE below, the Doordarshan Archives of the national television service of India is also renegotiating its contracts with artists for publishing recordings based on prior broadcasts. There is a dearth of know-how in these cases for how IP rights and interests should be managed, and a consequent need for guidance and models.

Cataloguing and Access Systems

The advent of the personal computer (PC) in the early 1980s was a time when many regional archival documentation projects came into being. Thus the computerization of data made a fairly early beginning in India. The cost of software being prohibitive in

earlier years meant that most archives set up their own database systems on easily available database packages. However, even in this area there was a huge variation in the way computers were used – from making lists on word processing software to fairly detailed database systems.

Surveying samples of such data formats shows that tiered levels of access and information on rights do not feature. Names of communities or castes are occasionally included as a means of identifying a repertoire when it is community based, rather than acknowledging the community as “owner”. In music archives, it is seen that the terminology of the “classical” Indian traditions are used, such as raga and tal rather than an attempt to elicit and incorporate local terminology. In the case of non classical performances, many archives do not even list the members who are involved in a performance but merely list the group as a cohesive identity. This is particularly inappropriate as most of these are not formal groups or “bands” with a more or less fixed membership but a group of individuals from a community. Here again regional archives are able to work on more local models as they are working within a certain cultural and linguistic zone. The great number of languages and dialects in India from four major language families are a source of complication that does not lead to easy standardization or even the creation of a common set of needs and requirements. Though variation and diversity need to be celebrated, they do not lend themselves too easily to the creation of standards and representation.

There needs to be an attempt to develop a vocabulary for the cataloguing of regional traditions, and this would also assist in the management of IP issues. However, in the case of both national and regional archives, there are many instances of biographical information on individual performers being maintained.

Another part of metadata that is missing in many institutions is that of the recordists and other technical personnel, although this is included in some detail in a few institutions.

Inventory-making

The questionnaire used in the interviews (see Annex 1) included a question about the inventorying of intangible cultural heritage as required of States parties under UNESCO’s Convention on the Safeguarding of Intangible Cultural Heritage of 2003. There seemed to be no awareness of this within the institutions that were interviewed.

USE OF AND ACCESS TO COLLECTIONS

The issue of policies governing the use of and access to archival material remains a complex one. Acquisition in the case of archives is generally through the making of recordings as part of archival collections, research and/or documentation and donation of existing collections.

It is fair to state that in most institutions, rights-related forms and agreements have been introduced fairly recently, as consciousness about IP rights has been recognized in recent times. Many archives now have some sort of agreement and forms for permission to record, archive and provide access. However, policies regarding access and dissemination do not seem to be highly developed in most archives, although providing access for educational and scholarly use is a part of the mandate of all archives. There are forms for requesting access in some institutions. These, in most cases, require acknowledgement to the archives in case of publication. Thus access to archival collections is variable and tends to depend on current personnel. At most archives, there is little attempt made at systematic outreach. An indication of the degree of access can be judged from the fact that few if any have designated reference spaces, or working copies available for reference.

As archival collections have variable origins, most if not all archives do not have permissions or agreements for large parts of their holdings. In some cases there are also no records to show the source or ownership of the materials, which makes it difficult to acquire the information. The common explanation is that there was a low level of consciousness of these issues in earlier times. Uncertainty as to the IP rights landscape restricts the extent to which such archives can fully deal with their collections so as to better preserve, disseminate, share and re-use them.

RECORDING, FIELDWORK AND DOCUMENTATION

As most archives surveyed had a component of fieldwork, issues related to field recording emerge as central.

Permissions and Agreements

In the case of fieldwork, the most common problem faced by fieldworkers is that of acquiring permissions for recording and for various forms of subsequent use. The major drawbacks expressed were lack of or varying levels of literacy, situations where it may be culturally inappropriate to sign documents and large public events such as festivals where it is not possible to identify and find relevant stakeholders. There are situations of trance or possession where it would be impossible to seek permission to record at that time.

In addition to this, there is the genuine difficulty of identifying the appropriate rights holders and/or their representatives. This requires collaboration on the local level and ongoing work with the community to be able to identify the appropriate party with whom to negotiate.

The solution of recording permissions on tape is often discussed but not always carried out in practice. Rupayan Sansthan has forms in the national language Hindi which are easier to understand for the musicians they record. They also have a system of reading out and explaining the agreement.

Interviews carried out for purposes of this survey also revealed that there is a difference in how performers who are well known or belong to the urban classical or popular stage are treated as compared with rural musicians during “field recording”. There are institutions which have no agreements or permissions from such rural or “folk” performers.

Payment

In the case of most archives, agreements are largely focused on the question of payment. There seems to be an implicit but mistaken belief among many that payment confers ownership not only of the physical recording but also of the intangible IP rights. The issue of payments is also complicated as there is an appropriate level and way in which this can be done. It is often difficult to make payments for ritual performances or when the musicians and performers are playing the role of the host. It is then up to the fieldworker to find a way in which adequate compensation can be made. Archives face the problem in such situations of procuring receipts for what is termed as a gift and to attach conditions to such a gift.

However, it is clear that there are also many other issues, which are not linked to payment. It would be fair to say that there are far more grievances that are based on ethical and moral violations rather than inadequate payment.

Fair Use

A few archivists and field workers expressed difficulty in explaining the nature of educational and research use to those whom they recorded. It is only those performers who have had a long-term relationship with the institution in question or with other similar archives or institutions who are able to deal with this concept. In most cases the payment is expected to be the same regardless of the kind of use. Tourism is a factor that has increased expectations for payments in situations where this would have not been the case in earlier times. There are increasing cases of expectations of payment for interviews, especially if they are recorded.

Sharing of Materials

It is the experience of most fieldworkers that people who are being recorded want copies of their performances. In most cases, this is valued even more than remuneration; in fact, often return of copies is seen as a form of remuneration. Regrettably, this research showed that provision of copies is not honored in most cases. It is important that field projects make provision for this and include it in their plans. Where possible, recordings should be deposited in local archives where communities and individuals can have access to them. Digitization of archival collections, and their being made available online, can also enhance access by communities, as a form of “digital repatriation”, in the case of those communities which have access to the Internet and suitable hardware and software.

SPECIFIC PROBLEMS AND ISSUES IN THE IP DOMAIN

The major issue that has come to light through the survey and the IP workshop referred to earlier in the report, is that there is within most archival institutions great ignorance of the copyright law as well as of other IP rights. The Indian Copyright Office has in recent years made the law available on the Internet, as well as a useful handbook that seeks to make the law more accessible. It is clear that most archives and other such institutions are in favor of “doing the right thing” but need to be provided guidelines to be able to

do so. The discourse of law, and moral and ethical interests, is a recent one. The issues are complex and thus there are no easy fixes. There is also a great deal of misinformation about the legal and moral aspects regarding the acquisition, archiving and dissemination of intangible cultural heritage.

In many cases, curators and archive directors are more or less aware of the law but do not find it easy or practical to put the measures into place in practice. IP guidelines would therefore be very welcome.

The following issues emerged as major concerns and issues through the interviews and questionnaires.

Artists, Accompanists and Groups: This is an issue that recurs in various ways. Agreements for use are usually entered into with individuals. In the case of a group or community, there is often a tacit assumption that there is an individual who is the leader and negotiations are undertaken with him/her, but this can lead to misgivings amongst other members of the group or community. Precedents based on the prevailing situation in Indian classical music, which has perhaps been institutionalized by national broadcasting services have created the status of “main performer” and “accompanists”. This is borne out by most of the database structures in catalogs of archives. However, it is felt by accompanists that they are rarely consulted on matters of payments, rights or policies of use, although they are used to the concept of the main performer and accompanists. It is also observed that data on accompanists is often missing even when the field exists which shows the disparity in status.

This concept (of main performer and accompanists), however, is also often applied to community performances to which the concept is not applicable. Therefore, certain individuals get a “star” or main performer status as is seen in recent times and it follows that financial negotiation, attribution and recognition become identified with this individual rather than a group or the community.

Composer’s rights in tradition-based compositions: In traditional music, the composer’s rights are meant to be communally owned and, as such, are not recognized by copyright law. Copyright applies largely to the domain of popular and contemporary music where it is linked to an individual composer. However, in recent times, this issue of individual versus communal rights has been the topic of much debate. As many Indian musical

and other performing traditions are based on improvisation, there is a trend of practitioners claiming composer's rights for what may be regarded as an interpretation or improvisation. This is largely an issue related to publication of recordings, but in current times also appears in credits of public performances. As compositions are not written and notated as in Western music, the issue of composer's rights is emerging as a new and contentious one, where an individual can copyright a traditional composition. There is a trend in publishing a recording for a musician to copyright a composition that is based on traditional and hence technically "public domain" compositions.

The issue of ownership of compositions varies within many traditions. There is, for example, in some traditions for compositions within a certain school of performance, e.g. Gharana or akhara, to be taught to disciples only within that particular tradition. There were norms as to how these could be transmitted, and an ethical system of acknowledgement for the source of the composition. With the breakdown of such traditions, there is a lacunae as to how this can be handled within the new reality of commercial recordings and greater dissemination. Thus for a musician to copyright a composition based on traditional compositions is one that has raised a lot of controversy in the domain of Indian classical music.

Archives as a whole, however, do not deal with composer's rights in procuring permissions or making payments, and usually deal with the performer or group who has performed in the recording in question.

Community Rights

The issue of community rights is specific to many kinds of intangible heritage, which are perceived as being owned by the community. There is uncertainty as to how this question should be handled as there is a long history of cultural borrowings and influence that has created the richness of Indian culture today.

The issue of individual versus community ownership has different ramifications in regional traditions of so called "folk music". For an example, see the following case study below:

The Gazī Khan Case

Manganiars are a musician caste of Rajasthan (a state in India) and sing music which "belongs" to them. Though there are core repertoires that seem to engender a greater sense of ownership, musician castes

commonly sing songs that belong to other musician castes, or what are known as popular Rajasthani songs.

In a recent case that attracted a lot of press attention, a traditional musician Gazi Khan of the Manganiar caste was known within the community to have composed a song, which however was commonly sung by other Manganiars and other musicians in Rajasthan.

He enjoyed the publicity that this brought but when the song was adapted into a Hindi film song and copyrighted by the music director (the term for composer in the industry), it created a furor within the Manganiar community.

There are two issues here – it is not clear if the reaction would have been the same had it been a traditional song, not attributed to an individual. There is also the issue of whether this is an indication of a greater consciousness of IP rights among traditional musicians. There has been a long tradition of film music using traditional folk melodies without much reaction. On the other hand, it also needs to be noted that folk singers have, for many years, adapted film tunes and songs, which are normally copyrighted within their own performances with no legal ramifications.

In the field of crafts this has led to the use of geographical indications by various groups. At this point, most persons interviewed for this survey agreed that attribution and acknowledgment would be the appropriate means of dealing with this issue, and it would not be wise for communities to create or assert ownership. Awareness of moral and ethical concerns, actualized through attribution and acknowledgement, can prevent problems in this area. There is also a need to investigate what communities consider “ownership” to mean in order to be able to deal with this issue.

Through fieldwork and working with musicians in Rajasthan and Goa⁸, I have observed that community ownership seems to be more to do with the style of performance than actual repertoire. However, most musicians agree that they sing music of other communities. At most acknowledgment and attribution is expected and welcomed. There is a difference in the perception of ownership, however, when ritual music, dance or theatre is adapted for the stage and becomes known as a mere performing art.

When it comes to payments, most musicians supported the idea that payment should be made to those who performed and agreed with the fact that it was difficult to obtain permission from an entire community. However, there are situations such as community events and festivals where payments to individuals would not be considered appropriate.

Musicians interviewed for this survey did not seem to be concerned about compositions, which were typical of the region, being used in commercial productions such as films and the theatre.

⁸ See description of project Archives and Community Partnership in Part Two of the report.

Community Involvement

There seems to be little community involvement in the activities of most archives and museums. If one interprets “community”, however, as that of artists and performers, then we do find that they are represented on boards and are part of the decision-making processes. However it is not clear that any archives consult these stakeholders in framing their rights policies, codes and documents. Regional archives have closer ties with local communities, yet they are not on the whole involved in decision-making. However, it is seen that in institutions like Rupayan Sansthan in Jodhpur, to name one example, musicians do seem to have a sense of a stake in the organization and they do feel consulted and included. This is because advocacy of their rights has been a part of the institution’s profile, and the institution continues to support the musicians and their community in times of need. However, the consultancy is on purely informal lines and musicians are not included on any board and or panel.

This is a typical example of a regional archive where the proximity of the “field” area enables a different relationship. This is also possible as Rupayan Sansthan is a NGO not affiliated to any other body, which gives it more autonomy and flexibility. More formal structures do not enable this kind of involvement easily. It is also necessary to guard against a trend of including community representation in a formal sense without actually sharing authority or representation.

NGOs in the development sector in rural areas tend to have community representation on boards and committees and there is certainly scope for regional archives to learn from these models or collaborate with them.

Concerns and Queries

In addition to the ones discussed above, the following questions were raised in the survey through the questionnaires:

- ownership of sound and audiovisual recordings; to whom do they belong?
- appropriate payment and other forms of remuneration to be paid by users of recordings;

- payments to performers for non commercial use;
- what kinds of IP rights, if any, does an archive have over its holdings;
- how does copyright work in the case of multimedia productions where the original recording does not get acknowledged?

Museums

Most ethnographic museums have collections of artifacts that consist of ritual objects, objects of daily use and musical instruments. Some of these are national in scope, as mentioned earlier, but many are small local institutions based on private collections or attached to research institutions where objects were collected as part of field work research. Conservation and preservation practices vary greatly although there is formal training in museology available and there is a professional body of museologists in India. This is in contrast to archives of intangible cultural heritage. However, there are many which are run by those without adequate training. In the case of museums, inventories and records are maintained. However, as is the case with museums based on private collections, documentation of source and conditions of acquisition and provenance are not always complete.

It appears that even museums which are connected to academic fieldwork are not aware of, let alone recognize, the concept of community ownership or moral rights of a community in collections of their cultural expressions and artifacts and derivatives from them. As objects are purchased, the ownership is seen as purely being vested with the museum. In other words, there is not adequate appreciation of the distinction between physical ownership of an object and ownership of its intangible (intellectual) properties, such as its design, the know-how that went into its manufacture or artwork contained on the object. The example of museums where ritual objects are considered the property of the community in question and even loaned for ritual purposes is a far cry. This inadequacy is not universal, of course, and there may be regional museums where this is not the case. There are a few attempts at community museums such as the Korlai Community museum and the recently developing Arna Jharna Museum.

THE ROAD AHEAD: RECOMMENDATIONS AND REQUIREMENTS

Manual for IP

It was a unanimous view of those consulted that that a practical manual and guidelines on IP issues for archives, fieldworkers and museums was necessary and would be very useful. As it may not always be possible to provide forms and agreements for all kinds of uses as have been described, it was suggested by many that publishing case studies of how an archive, institution or individual has dealt with particular situations would provide practical help. Models from a range of communities and countries would also enrich the understanding of those who are working in the field.

Fieldwork and Ethics

Several recommendations on ethical issues emerged through the survey. It is recommended that fieldworkers be transparent about their work and future intentions. It is advisable to seek clear permission for possible future uses like publication, commercial use and communication over the Internet, even if these acts are not initially intended. In the case of lack of literacy, it is recommended that the project be explained and permission sought orally in the form of a sound or audiovisual recording. It is necessary that all attempts be made to act ethically and with due consideration for IP interests, although flexibility in application will always be necessary.

Fieldworkers also mention the need to stay involved and connected with the community after the fieldwork is completed and to maintain ties. There is a need to maintain ties on a human level, which is an irreplaceable part of field work, and should be incorporated into guidelines and manuals for fieldwork.

Acknowledgement and Attribution

The issue of acknowledgement and attribution emerged as a major issue in discussions with performers and with those who work with communities. This is not only through formal declarations, but should be through fair practices of acknowledging all members of a group, accompanists etc. not only on publications but as part of catalogs.

In the consultative workshop referred to in the Introduction, and described further in Annex 2, when participants were asked what is the one change they would like to see in the law, there was a unanimous appeal for acknowledgment and attribution.

Appropriate Use and Respect towards Communities and Culture

It is necessary not only to view the issue of IP as that which is connected with financial retribution. IP is also about ensuring that creators are acknowledged and that their works and cultures are respected and used in ways that are not inappropriate.

**CASE STUDY: THE MANAGEMENT OF IP AT THE ARCHIVES AND
RESEARCH CENTRE FOR ETHNOMUSICOLOGY, AMERICAN
INSTITUTE OF INDIAN STUDIES**

INTRODUCTION

The Archives and Research Centre for Ethnomusicology of the American Institute of Indian Studies (the ARCE) was established in India in 1982. Its principal aims are to create an archive where recordings made of Indian music and oral traditions could be at a centralized location where they could be preserved and made accessible in India. The rationale was that recordings made of Indian music, largely in colonial times, were held in archives and universities outside India and were not available to Indian scholars. In addition, there were no centers or archives in India which could serve as a repository for recordings made by foreigners who wanted to leave recordings in India. At that time, existing institutions were largely oriented to collections made by the institution, and were not equipped to take in large collections from the outside which implied archival storage and systems of cataloguing and access. At this time, UNESCO declarations also supported the concept of leaving research materials in the “field area” and sharing research in the country where the research was carried out.

The other major objective of the ARCE was “to stimulate the study of ethnomusicology in India”.

Repatriation

Consonant with the institution’s major objectives, repatriation of collections held in archives abroad has also been one of the goals. From the start, the archives began with the transferring of collections of the Founder Chair, Prof. Nazir Jairazbhoy of the University of California at Los Angeles, who was also responsible for the collection of the deposit of the collection of the Dutch ethnomusicologist Arnold Bake which was in archives in the UK and USA. Richard Widdess of the School of Oriental and African Studies in London also was instrumental in ARCE acquiring further materials belonging to the Bake collection. Many international scholars have contributed by their efforts in bringing collections to ARCE which were not their own. Of these, some significant contributions have been the Fox Strangways collection through the British Library Sound Archives with the help of the curator Janet Topp Fargion and the Gunther Sontheimer

collection from Heidelberg through Ann Feldhaus of Arizona University. The Coates Collection from Australia of Hindustani music was deposited with the help of Adrian McNeil Colin Berryman and John Napier. Other collections which were acquired for ARCE through the good offices and cooperation of ethnomusicologists themselves who raised funds for depositing their recordings in the archives are those of Edward J. Jay, Helen Myers, Roderic Knight, Regula Qureshi, Susan Wadley, Bonnie Wade, Laxmi Tewari, to name a few.

Current Status

To date, the ARCE houses 194 collections voluntarily deposited amounting to about 13000 hours of unpublished recordings. Scholars and collectors continue to deposit and donate their collections. The aim of having foreign scholars deposit their collections before leaving the country remains a focus even today after 25 years. However, many of the collections are donated and deposited by Indian scholars and even institutions who are not able to store and preserve their collections. The collections are supplemented with documentation such as field notes, logs, transcriptions and translations contributed by the collectors. It is important to state that ARCE does not acquire the collections through paying for them. The costs of making the archival copies are borne by the ARCE and an additional copy is made for the depositor or performers at no charge.

The sound archives are supported by a library with books, journals and ephemera as well as a large collection of commercial recordings. These include phonodiscs of the 78 rpm shellac era up to current publications in digital media such as audio CD, video CDs and DVDs, and CD ROMs.

ARCE has state of the art storage facilities with strict climate control and facilities for audio digitization in place, which has resulted in a third of the collections being digitized. Digitization of video has just begun. The collections have been catalogued on a home grown database system and are available for access in house. The databases are now being migrated to Oracle on a Linux server and will include automation of workflow as well as integration of audio visual objects. Though there are long terms plans for doing so, ARCE does not have the resources to put its catalogs on the Internet at this time.

Facilities also include a listening room with high quality audio and video playback systems as much of the collection is available for reference only.

Funding

The ARCE, as part of the American Institute of Indian Studies, was started with grants from the Smithsonian Institution and the Ford Foundation, which provided a starter grant for equipment and imported archival supplies. Today, the ARCE is funded by an endowment of the American Institute of Indian Studies for its core operations and through grants and project funding, of which the Ford Foundation has been a major source of support. Currently ARCE also has a grant from the Smithsonian Institution for the Smithsonian Globalsound Project (see further below).

A small but significant amount of income is also generated through consultancies and training activities from various bodies, such as UNESCO.

Projects and Programs

Though the development and administration of the archives continues to be its main activity, ARCE holds national and international symposia and conferences in the field of audiovisual archiving and the field of ethnomusicology. For example, in 1999, the archive organized an international symposium entitled “Preservation for the Millennium” which resulted in the publication “Archives for the Future: Global Perspectives on AudioVisual Archives in the 21st Century” (edited by Anthony Seeger and Shubha Chaudhuri, the author of this survey)⁹.

IP Management at the ARCE

The ARCE was unusual in that from the beginning of its existence it used legal agreements and forms dealing with rights issues. The institution has, therefore, considerable experience in these matters. Samples of the ARCE’s template agreements and forms are attached as Annexes 7 and 8. They were based on similar agreements used by ethnomusicology archives in the USA, and perhaps most closely modeled on the forms of the Archives of Traditional Music at Indiana, but adapted to address certain specific concerns of archives in the Indian context. The agreements and forms were also vetted by a lawyer in India who was experienced in international law and ensured the documents would be applicable across national boundaries.

⁹ The book has extensive chapters on rights issues including discussions and model forms that were drawn up in the course of the workshop. The book is available online and free downloads are available from www.seagullindia.com. This was made possible by a grant from the Ford Foundation.

For example, there is a formal agreement for deposit which allows the depositor or designee to choose between three options – one that allows no access for a fixed amount of time, one that allows listening or viewing in ARCE premises and a third that allows copies to be allowed for research and teaching, with no permission to make further copies. In this latter case, the ARCE charges a reasonable technical fee for making the copy with the media supplied by the requestor.

There are a few features that need to be pointed out. The first option allows for a maximum of 10 years after which the materials move to one of the other options. This avoids the problem of materials remaining inaccessible for perpetuity in the event the depositor cannot be contacted. The second option (that allows for listening and viewing) only has a provision for copies to be provided by specific permission from the depositor.

In addition, the agreement states that the ARCE assumes that the depositor has the right to deposit the recordings.

Another legal form used by the ARCE is used when requesting audiovisual material and the form indemnifies the ARCE against possible damage arising from misuse.

As mentioned, the forms are attached as annexes to this survey. They are also available as part of WIPO's Creative Heritage Database of Protocols and Codes¹⁰.

Using the Forms: Performers' and Community Rights

The forms are only “models” and the use of them has been changed over the years based on their practical application while running an archives, by mutual consent of depositors and the ARCE. These changes have not yet been made formally but will be done in the near future along lines discussed further on this case study under “Additions and Alterations”.

Though it was not stipulated directly, when no copies were authorized by the depositor this meant in practice that the performer was him/herself excluded from having access to copies. We now add the rider that this should not be the case and that performers can always have copies. As collections come into the ARCE after the recordings are made in most cases, we could not ensure that performers themselves were agreeable to the

¹⁰ The Database can be accessed at <http://www.wipo.int/tk/en/folklore/>

materials being deposited in the archives. However, we realized that as we have an agreement with the depositor the performer does not have a voice in stipulating access. We were thus forced to leave it to the good sense and ethics of the researchers to ensure that the right option was chosen with due regard to the wishes of the performers and the communities with whom the researchers worked. We also recommend that permissions be recorded on tape when it is not easy or possible to have written agreements.

When possible, the ARCE discusses the rights issues with researchers before they undertake fieldwork and in some cases helps them to create agreements and forms.

In a few cases, the ARCE has also provided letters to be given to performers that state that their recordings are in the archives of the ARCE in Delhi and can be accessed by them and their families whenever they wish to do so, and are being held for research purposes only. We also offer to make an extra copy for the performers or communities, waiving the dubbing charges for one complete copy and often undertake to mail or deliver them to encourage people to do so.

The Indian Copyright Act and Legal Ramifications for ARCE

At the time the ARCE came into being in 1982, “expressions of folklore”, as the term was then used and now more commonly referred to by WIPO as “traditional cultural expressions”, included all forms of traditional music which were not protected as copyright in any way. Thus at that time, the agreements used by the ARCE were the only legal instruments used and they provided forms of protection not granted by the law, demonstrating the usefulness in practice of agreements and practice in complementing the law. In 1997, the Copyright Act was amended to introduce two major changes: a performer’s right and a limitation related to “fair dealing”. These changes are described above.

Although these were major changes, the ARCE was able to continue using its agreements set up for non-commercial use. However, for commercial use, since 1997 we have had to follow the law in respect of performers’ rights. In practical terms this has meant that we are not free to provide copies based merely on the depositor’s discretion. As we are set up only to provide copies for research and teaching in any event, we are allowed to do so under “fair dealing” but now have added a stipulation of the need for documentation from a university or a more formal declaration of the need for the copy. This has

resulted in most materials being deposited under the option of reference permitted in the ARCE model agreement only.

Though this rather narrow definition makes it somewhat easier to administer the rights of a collection there is much that is left out and that needs to be addressed in the future and new forms and agreements to be drawn up. IP-related advice and assistance would be very helpful in this regard.

Additions and Alterations

There are certain issues and areas that are required to be addressed in changing and altering the existing agreements used by the ARCE.

For example, clearly stating that the performer, community or relevant body should always have access to the recordings and copies thereof. This means that performers should be able to access their own recordings. Putting it in the form also ensures that the depositor agrees to this rider.

Members of a community should also be able to access their traditional repertoire for teaching and dissemination within the community.

The recordist and researcher need to be identified in all cases. If it is not the depositor, this needs to be stipulated and thus a clear space for this in the agreement is desirable.

ARCE should have forms for making recordings including musical performances, lectures and seminars. These too can have provisions for use in reports, publications and the Internet.

Reference is currently restricted to ARCE premises and does not make provision for off-premises loans as a fair means of dissemination through other institutions. Off-premises loans, including by way of digital transmission, could also be made part of the agreement.

With the increase of material demand on the Internet, CD-ROMs and other media, it would be advisable to take advance permission for samples to be made available in these ways.

Though ARCE is a research organization and is set up for scholarly access, it is perhaps advisable to create a form for those who are not averse to possible publication with due

acknowledgement and attribution as well as sharing of revenue with the performers and/or their community.

If the forms are to be redone, it is advisable that we make them as open to use as possible keeping in mind that we are not aware of future technologies, and that this is possible only with the cooperation and legal and financial rights of those whose materials are recorded.

Internet and New Technologies

Like all archives that have their beginnings in the pre-digital era, the ARCE has had the difficulties that go with transition to digital media.

All archival procedures and workflow were previously around the physical tape or recording format. When a recording is represented by a file on a server, issues of access, unauthorized copying and movement are affected. Procedures, rules and regulations, access and dissemination were oriented to a “walk in” user and not to an anonymous user on the Internet. This also impacts how catalogues are created as we find that a lot of information is taken for granted in the case of a “walk in” user who can be provided orientation to use the archives.

Digital technology has become cheaper, more accessible and portable in the last decade. Thus it is possible to make good recordings at relatively low cost so that many more people are making them in all kinds of situations. The ease of access, though welcome in many ways, has perhaps trivialized the importance of recordings. We thus know that archival policies will have to incorporate and stay abreast of new technologies so that access and use remains fair and ethical.

The Internet offers great potential across regional and political boundaries for dissemination, in ways that could not be imagined. However publishing on the Internet has taken on a new dimension that is different from publishing and broadcasting. The “non commercial” nature of our holdings was thought of as being a kind of protection against misuse of archival recordings. However, today the trend of putting up recordings on the Internet with and without commercial implications is a force to contend with and requires that we rethink archival policies, including our IP policies.

“Broadcast quality” also is no longer a concept that has the same implications of technical quality as recordings made even on mobile phones are aired today.

“Sample recordings” was a concept that we did not have when the ARCE was established. In current times, there is an expectation of online catalogs, samples for use on CD ROMs and digital publications – all have created a need for treating samples as an entity different from the entire recordings although there is no legal basis for doing so. Thus the solution seems to be to take permissions for samples that can be used freely or not in terms of permissions and with and without revenue.

*Smithsonian Globalsound*¹¹

According to its mission statement, the Smithsonian’s “Global Sound” initiative is an “international network of music audio archives and an educational resource that delivers the world’s diverse cultural expressions in an informative way via digital media”.

From the mission statement of the Global Sound initiative:

“As a nonprofit endeavor, Smithsonian Global Sound is above all a mission rather than a commercial product, offering broad accessibility to the “smaller voices” of people all over the world. In pursuit of this mission, it harnesses the power of internet commerce to deliver recorded sound from many cultures around the world to the widest audience possible. Smithsonian Global Sound’s essence and purpose are fundamentally different from that of commercial digital music delivery services. It aims to heighten communication among and about people and cultures, accomplished principally through the culturally potent, meaning-laden medium of music, accompanied by informative notes and educational features. The content it delivers is the window through which Smithsonian Global Sound users may discover and appreciate other people, other value systems, and other realms of human accomplishment. And, in an increasingly mobile and culturally scattered world, it provides a link for the culturally estranged and isolated to connect with their own heritage through a curated, distilled collection of recorded sound.”

The ARCE was chosen to join this initiative at an early pilot stage. This has provided the ARCE with an unprecedented means to disseminate archival recordings. The ARCE had not ventured into publication up to this point as labels that were interested in the kinds of recordings were those that did not distribute in India. The Globalsound project offered a way to make recordings available to anybody with an Internet connection at a reasonable rate. Most important, it gave us the opportunity to do it in a fair fashion, by clearing rights and paying artists fairly.

¹¹ See www.smithsonianglobalsound.org

This was a major departure for an archive that had its target audience as scholars and students and had not entered the commercial realm. Globalsound, being part of the Smithsonian, also meant that this was not a “for profit” venture. Another important attraction was that the recordings would be made available with notes and photographs providing information as their cultural context.

The revenue model is that 50% of the download fees go to the Smithsonian, which incurs all the expenses of putting up and maintaining the site, 25% to the participating archives, and 25% to the performers.

For the ARCE, being part of this project was entering a new area in more ways than one. As has been mentioned, scholars and collectors had voluntarily deposited collections at ARCE. There were no existing agreements with performers. It was, therefore, decided that collectors would be approached for permissions to use their collections for Globalsound, giving them a choice as to whether they wished their recordings to be made available on Globalsound and to choose what material they wished to consider for this.

It was also decided that, in accordance with performers’ rights under Indian law and for ethical reasons, performer’s consents would be sought. As it would not be feasible to reach musicians in rural areas annually to pay them royalties it was decided that an advance for the first 125 downloads would be given to them up front at the time of receiving their written permission.

The ARCE received a grant from Smithsonian Globalsound towards purchase of digitizing equipment and storage, staff support for ARCE staff on the project and assistance for acquiring permissions and paper work. It also covered the advance for the advances to be paid to performers for 500 tracks. A small provision was also made for making field recordings in the event that sufficient permissions were not acquired to fulfill the obligation of providing 500 tracks.

After surveying the collections, it was decided to first contact the collectors who had active contacts in the field and could help in acquiring performer permissions. After that, letters were sent to all collectors as a second step.

The response from collectors has been very gratifying. Even collectors who had not allowed copies from their collections for research gave their permission. The main interest for most researchers seemed to be that performers' consents be sought and that they would be paid and acknowledged. As Globalsound had templates for metadata, many depositors worked intensively to provide the information, participated in the selection and gave generously of their time and not only permissions. We offered a small amount to collectors to cover costs of photographs and mailing of documentation but none availed of this offer! In some cases, performers have themselves participated in the selection of tracks and worked for providing additional information for the required metadata.

Examples of the forms used in the Globalsound project are contained in Annex 4, and are part of WIPO's Creative Heritage Database of Protocols and Codes. These kinds of forms are the basis of the permissions. Small changes were made from time to time as per need. In some cases, we have listed specific recordings if it was appropriate, or shared the download advance. In the cases where a collector had paid and sought permission for commercial release, the advance was shared, and the performer received the major part of the advance in any event. As may be seen from the forms, ARCE covered itself in the event of this project not working as planned so that fresh permissions would not have to be sought. At this point approximately 200 tracks are available on Globalsound. There are approximately 40 tracks more for which advances and permissions forms have been completed.

OTHER ACTIVITIES AND PROJECTS OF THE ARCE

The Remembered Rhythms Festival and CD Publication

The ARCE organized a festival entitled "Remembered Rhythms" that combined academic concerns with performances by groups representing the Indian diaspora and the music of India. A seminar on the issue of music and the diaspora set the stage in academic terms and the three groups – Sidi Goma of the little known Indian African Sidi community, D'Bhuyaa Saaj - a group of Chutney musicians of Indian origin from Trinidad and Rivers of Babylon – and, a group of Indian Jews - toured seven cities of

India¹². Each group was accompanied by an ethnomusicologist who was involved with the group in designing the program and who helped to explain and contextualize the music to the audience. As these were not commonly performed traditions and were not generally known to Indian audiences, this added to the value of the experience and enhanced the role of the performers. Though all costs were paid for the tour, each group also received performance fees for each of the performances.

The concert series led to a series of recordings being produced, which was the first audio visual publication of the ARCE. These were published independently for direct distribution. A set of 3 audio CDs and 1 video CD was made – as the video had selections from all three groups. Each CD was accompanied by detailed and illustrated notes and was priced low in India so as to reach students audiences.

An agreement was signed with each group whereby each would receive 10% of the CDs produced in lieu of royalty to sell at whatever price they chose. However, as two of the groups are based outside India they are able to sell the CDs at a much higher price, so that royalties are much higher than the 10% that the royalty indicates. Scholars who contributed their writings to the liner notes were also paid an honorarium.

Finally, the tracks on the CD were also contributed to the Globalsound site described earlier, for which the groups signed separate agreements and received the advance royalties for 125 tracks.

This was a model of a small project where the archives worked with academicians and musicians to successfully recognize their respective intellectual property interests through providing for acknowledgement and attribution and the sharing of financial benefits.

Archives and Community Partnership Project¹³

This project, which started in August 2007, seeks to create a model by which archives work in partnership with musicians and communities to document, preserve and disseminate musical and verbal traditions.

¹² This project was made possible by a grant from the Ford Foundation, and thus was not organized on a commercial basis.

¹³ The project is funded by the Ford Foundation.

It is by now a cliché to talk of how musical traditions are dying under the onslaught of media, tourism, urbanization and globalization. While many may be under threat, it is certain that most repertoires are changing and shrinking as audiences and patrons are also changing. This cannot be a new development as all oral traditions certainly must have constantly been in a process of change. While some traditions fade and repertoires shrink, new traditions are born, and new repertoire is created.

Among the agents of change are those who work for “safeguarding and preservation” such cultural traditions and are seldom aware of their role – such as archives and centers of documentation that function on the regional and national levels and which speak for dying cultures and attempt to preserve and safeguard them. The process of documentation and archiving itself is also an intervention in these traditions, often placing value on “authenticity” and tacitly giving credibility and support to the communities they document and the materials they record and preserve. In doing so, we as archives also take on the role of custodians not only of the tapes and recordings, but become in some way spokespersons for the cultures we seek to safeguard.

This project will attempt to establish a model by which we aim to reverse some of these trends by involving musicians and communities in the process of documentation as partners and not “informants”, work with them and their audiences to create rights documents that safeguard their IP interests in ways that take in account moral and ethical rights and work out ways for successful dissemination of the materials collected and documented¹⁴. It is proposed that this be seen as a partnership between the archives and the community – where not only financial gains are shared but the materials are also shared. The archive then becomes a centre not removed from the “field” but a part of it. Fair and appropriate management of IP rights and interests is an important part of establishing trust between archives and communities and therefore of the kinds of partnerships envisaged.

This pilot project will focus on two centers over a period of three years – Western Rajasthan and Goa. Rajasthan and Goa both share some interesting features as they are both highly successful tourist destinations. Cultural tourism plays a major role in both these areas and creates demand for cultural “goods”, presentation of a local culture and, in so doing, tourism becomes an important patron for the arts. This plays out differently

in both these areas. However, we do not know the role musicians and communities that they are part of, play in the cultural and tourism industry and to what extent the benefits percolate to them. Surveying existing traditions, investigating their place in society and culture today will strengthen them, and support musicians who are still marginalized in a variety of ways. Documentation and research are not restricted to the social and cultural context of music making but also to the perceptions of ownership and IP rights.

In short, we seek to reverse not only a top down approach to documentation but also to rights management.

In both areas there is a component of documentation, and working towards a dissemination strategy – using the internet, broadcasting, and publication of CDs which will be aimed at supporting the traditions in their area as well as to the outside with an economic model where the resources are fairly shared. Broadcasting will involve investigating low cost options such as internet radio, FM stations, time slots on AIR and private enterprises such as Worldspace.

ARCE-AIIS will have a partner institution in each of these areas and also work towards locating one or more group or organization, which can serve as a local archive, managed by the musicians for their own use.

The process of documentation takes into account what the musicians and communities see as important, what they associate with their identity, and how genres are perceived.

We will also aim to train a local documentation team so that there are long-range technical benefits that support local archives. Dissemination strategies will also be in consultation with the musicians though will obviously take into consideration practical considerations and available resources.

A website created for the project will be an important component. This can create the basis of internet broadcasting or paid downloads and pod casts in the second phase of the project. A web directory of musicians with contact information will be created, with notes on genres and musical instruments associated, and more general articles being featured in the later stage. A directory becomes an important means of recognizing

musicians and providing direct access to them can prove an important tool in the empowerment of local musicians and their traditions.

The rights agreements and model contracts that we seek to develop will also be made available through the project website. It is intended that the websites be handed over to the local archive or an interested group at the end of the three year project period. There is also a panel of advisers and or experts from each of the areas to widen the scope of the project, and create a bigger base for the partnership.

Though this does not affect the administration of collections and policies of access of the existing collections at ARCE, we can, through this project, create a body of materials that are recorded and used in a different and perhaps more ideal fashion. The project has had a successful beginning and is into its second year.

It might also be mentioned that the ARCE is planning a conference on “Issues of Intellectual Property Rights in Expressive Culture” (tentative title) which would be held in India in mid 2009. This conference would explore in more detail many of the issues raised in this survey.

ANNEX 1: QUESTIONNAIRE

WIPO's Creative Heritage Project Questionnaire	
<i>General Information</i>	
1.	Name of institution
2.	Name of parent or affiliating body, if any
3.	What are your institution's main objectives and mandate?
4.	What are the institution's sources of funding? Does your institution undertake fund-raising activities? If so, which?
5.	Which areas of intangible cultural heritage does your institution specialize in? i.e. performing arts, dance, music, rituals and ceremonies?
6.	From which regions, countries, areas or communities are the institution's collections gathered, or which areas do you seek to represent?
7.	What form are your collections held in objects/artifacts, recordings, photographs, manuscripts, publications, etc.?
<i>Acquisition/ Collection</i>	
8.	How are materials acquired at your institution? Purchase Fieldwork and documentation Compulsory deposit Donation Voluntary deposit
9.	Is your institution involved with documentation and collection?
10.	What kind of procedure or relationship is maintained if any with performers, communities, informants or others involved in the documentation and collection?
11.	What form of compensation or access is given to the performers or communities? What kind of formal or informal agreements are made?
12.	Do you work or deal with researchers/fieldworkers (such as anthropologists, ethnologists and folklorists) and other collectors of ethnographic materials? If so: Do you have general procedures or policies that govern your relationships with collectors and researchers? Do you have formal collection/deposit agreements? If not: Are the conditions governing use or ownership recorded in any other way?
13.	Do you discuss issues of archiving /access with your informants?
14.	What issues do you face with regards to rights in the case of making recordings, or carrying out your documentation?
<i>Preservation/ Cataloguing</i>	
15.	What form of preservation or conservation policies are followed at your institution?

16. Does the institution have digital collections? Is it digitizing its collections?
If so, with what objectives in mind:
Preservation
Access and dissemination
Research
Public use and entertainment
Educational programs
Internet Use such as institutional website.
Repatriation to the concerned community /family/individual
17. What form of cataloguing or retrieval system does the institution use?
18. Is your catalog or other materials available on the internet?
19. What are the major elements that your catalogue takes into consideration?
Area or regional representation
Community/Ethnic group
Genre or context
Media
Vulnerability or threatened
Fragility
20. What information about a particular element of Intangible Cultural Heritage is included in such a catalogue/index/inventory/registry? Is the catalogue etc simply a list, does it provide summary information or does it provide abundant information?
21. Do you incorporate the materials described in the catalogue? (For example, photographs, or sound recordings samples of music? As part of the catalogue)

Access and Dissemination

22. How do you disseminate your materials or information on your holdings?
23. Do you have...?
Publications (i.e. books, journal, brochures, newsletter)
Recordings (i.e. audio, video, film)
Website
24. Under what conditions, if any, are the institution's collections accessible to the general public?
25. What uses may the general public make of the collections (e.g. pure enjoyment? Copying? Research? Teaching? Commercial?)
26. Are your materials used for broadcasting? TV or radio? If so, under what kind of arrangement?
27. Is material from your institution available for commercial purposes? In that case, what kind of arrangement is made?
28. Is your institution open to all categories of users or is it restricted in any way?

Intellectual Property

29. Has your institution come across IP issues in the past? Does the institution have a history of dealing with intellectual property issues? What previous experiences are there?
30. To what extent, if any, do communities participate in the institution's management, activities, policy-setting etc.?
31. Does it operate under any protocols, guidelines or codes generally governing its relationships

- with communities?
32. Does the institution have codes, protocols or guidelines dealing with access by the general public or any other category of user?
 33. Do you have commercial holdings such as publications, published recordings, videos and films? What kind of access is provided to these and what are your policies regarding use of these?
 34. Do you attempt to educate users about the legal and ethical considerations in the use of materials in your holdings? If so, how is this done?
 35. What kind of problems if any do you face with rights, permissions in the management of your resources?
 36. To what extent does this hamper your functioning in terms of dissemination or other regular activities?
 37. Are you aware of the laws that govern the use of the materials in your archives in your country?
 38. What aspects if any are not covered by such laws in your opinion?
 39. Are there ethical and moral issues that you feel need to be addressed? How are you dealing with these at this time?
 40. To what extent do questions or rights or intellectual property feature in the daily activities of the institution (to the extent they are recognized as such)? Such as? Give examples if possible.
 41. To what extent do intellectual property issues form part of the institution's strategies, vision, future plans and objectives? Examples?
 42. Do concerns of communities, artists, performers feature in institutions' policies and practices? Any examples?
 43. How accessible do you find legal information and guidelines in the course of your work?
 44. Do you have plans for addressing such issues at your institution?
 45. Do you belong to a professional body, society or network where these issues are addressed?
 46. What would you consider an ideal situation in the area of your work in relation to these issues?
 47. In your opinion, should collection-holding institutions take into account such concerns? If so, how could this be done in practice? Would institutions find a compilation of "best practices" and IP-related guidelines useful in helping to address such concerns of source communities?
 48. Is your institution responsible or involved in the preparation of inventories of ICH in terms of the UNESCO Convention of 2003?

Additional Questions

49. Who do you think owns the materials in your collection?
50. Do you differentiate between physical and moral ownership?
51. Do you see yourself as a custodian or owner?
52. Has your institution got any ongoing means of interaction with the communities you collect materials from?
53. Do you provide any particular privileges to those whose materials are in your collections?
54. Do you know of any collections or archives that are maintained within the community? If you do, what kind of collaboration or interaction do you have with them?
55. Have you been involved in any programs to enable this?
56. Does your institution have a provision to provide materials such as copies of recordings, photographs etc to the concerned individuals or institutions?

ANNEX 2: INTERVIEWS

Individuals and Institutions interviewed for purposes of writing this survey:

<i>Individuals</i>	
1. Jyotindra Jain	10. Aneesh Pradhan
2. A.K. Das	11. Pratibha Agrawal
3. Usha Mallik	12. Rashmi Vajpeyi
4. Ritu Sethi	13. Gazi Khan Manganiar
5. Kuldeep Kothari	14. Chanan Khan Manganiar
6. S. Krishnaiah	15. Anwar Khan Manganiar
7. Joseph Dhariaraj	16. Amelia Dias
8. Himani Pandey	17. Louisa Fernandes
9. Shubha Mudgal	18. Elvis Goes and members of Kepechi Kirnnam.

<i>Institutions</i>	
1. Sangeet Natak Akademi.	10. Crafts Museum
2. Indira Gandhi National Centre for the Arts	11. Tribal Research Institute Museum, Bhubaneshwar
3. Doordarshan Archives	12. Arna Jharna Museum, Rajasthan
4. Natya Shodh Sansthan	13. Sanskriti Museum
5. Bhaddhvani	14. National Archives of India
6. Natrang Pratishthan	15. Sampradaya
7. Regional Resources Centre for Folk Performing Arts, Udupi	16. Members of the Archives Resource Community
8. Rupayan Sansthan	17. Members of the Research Archives Section, IASA
9. Crafts Revival Trust	

ANNEX 3: WORKSHOP

Consultation workshop on “Intellectual Property Issues for Archives and Museums in India: Towards Intellectual Property Guidelines for Recording, Digitizing and Disseminating Intangible Cultural Heritage”

This workshop was held on March 28, 2007, at the Archives and Research Centre for Ethnomusicology, at the American Institute of Indian Studies campus in Gurgaon with assistance from WIPO as part of the preparation of this survey.

The workshop objectives are summarized in the following statement:

“Those of us who work in the area of intangible cultural heritage such as oral traditions and performing arts face many knotty issues in the archiving of these traditions. Intangible cultural heritage includes oral traditions such as music and expressions of folklore as well as the intangible aspects of tangible arts such as motifs and designs of traditional crafts and knowledge systems.

For archives and museums, these problems include issues arising from acquisition of materials, processing and cataloguing them and most of all during any aspect of dissemination. Apart from the legal issues there are moral and ethical issues, which need to be addressed. Issues of ownership are different from those in the realm of tangible cultural heritage where possession of objects and artifacts are different from recordings of performances or use of traditional elements outside their context. Digitisation and the use of the internet in disseminating information and content have made these issues more urgent than ever before, as cultural content is more in demand. Archives and museums, which have the greatest repository of such materials, need to spearhead the debate and play a constructive role between performers, communities, scholars and patrons including the general public”.

As the workshop was held in Delhi most participants were from Delhi. However, two representatives from folklore archives – one in the North of India in Rajasthan and one from the south of India from Karnataka – were also invited.

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The participants of the workshop were :

Shubha Chaudhuri	Archives and Research Centre for Ethnomusicology. AIIS.
Himani Pande	Archivist, Indira Gandhi National Centre for the Arts
N.S. Mani	National Archives of India
Ritu Sethi	Crafts Revival Trust
Kamlini Dutt	Director Doordarshan Archives (National Television)
S. Krishnaiah	Regional Resources Centre for Folk Performing Arts, Udupi, Karnataka
Kuldeep Kothari	Rupayan Sansthan (Folklore archives), Jodhpur, Rajasthan
Rashmi Vajpeyi	Director Natrang Pratishthan (Theatre archives)
Gaizi Khan Manganiyar	Musician. Harwa, Rajasthan
Rohit Kansal	Registrar of Copyright, Government of India
Wend Wendland	WIPO

Observers:

Ravina Aggarwal	Ford Foundation
Moe Chiba	UNESCO

Dr. AK. K. Das, ex Ethnographic Curator of the National Museum of India, and Director of the Lal Bahadur Shastri Museum and Mrs. Usha Mallik of the Malliah Memorial Theater Craft Museum were not able to attend but had sent in their written responses to the issues which were included in the proceedings.

The workshop objectives and structure were explained by Shubha Chaudhuri and the group was addressed by Wend Wendland, who provided the perspective from WIPO and explained the rationale behind the survey. The Indian national perspective was provided by Mr. Rohit Kansal, who responded to issues raised by participants.

To facilitate summarizing issues at the end of the day, a series of common issues was made available through Power Point Slides, so that points emerging from the discussions could be added. All participants presented areas of their involvement with issues of intellectual property rights in the course of their work.

An important feature was the presence of Gazi Khan, a traditional musician whose case has been referred to earlier in the survey who was also invited as a resource person to represent his own view without intervention and interpretation as is often the case with rural artists.

The main headings under which the discussions were carried out are represented through the list that follows. They include concerns, issues and recommendations made by the group.

FIELDWORK, DOCUMENTATION AND RESEARCH

Issues and Problems

- Permissions and contracts
- Lack of literacy
- Culturally inappropriate to sign contracts
- Difficulty of identifying leaders of stakeholders
- Payments
- Individual vs. Community

Recommendations

- Long term commitment to community, not one time payment
- Need to share materials
- Transparency about the purpose and contract
- Fair percentage
- In kind rather than payment in monetary terms
- Permissions to cover all future use
- Need to define individual and community contribution
- Sensitivity and respect towards local beliefs and practices
- Attempt if possible “prior informed consent”

Archiving and Intellectual Property

Issues and Problems

- Legacy materials without documentation
- Lack of clear guidelines
- Unclear legal situation
- Rights of employer /employee
- Payments and rights – contract specific
- Is digitization an act that gives copyright?
- Issue of restoration copies
- Institutional policies and contradictions
- Performer rights
- Community rights
- Fair use
- Inability to control further use
- User expectations
- Outreach programs

Museums

Issues and Problems

- Policies of cultural ownership

Recommendation

- Access to be developed for community not only public

Creativity and Copyright

Issues and Problems

- Copyrighting of traditional materials
- Importance of compositional freedom
- Community vs. individual ownership
- Contemporary compositions / creations vs. traditional creations
- Shared / Borrowed traditions
- Geographic Indicators
- Migration and acculturation
- Traditional trade relationships
- Traditional patron client relationships
- Market forces s. Creative integrity

Ethics

Issues and Problems

- Legal vs. ethical considerations
- Moral rights

Recommendations

- Transparency about contracts and intentions
- Long term commitment
- Do not collect objects in use
- Educational use should not be used as a convenient excuse for misuse
- Access to documentation, archives museums and collections to be assured
- Proactive approach to access
- Help create local archives and museums
- Reciprocity
- Avoid condescension, paternalistic attitude, avoid terms like informant and subject
- Share economic benefits
- Be sensitive to local or community customs and protocols
- No derogatory use
- Good faith
- Uniform standards of payment
- No unfair exploitation

Fair Dealing

- Educational and research use

Recommendations

- Guidelines and Manual required
- Case studies of violations
- Make materials available in regional languages
- Create ethics charter with wide consultation

What should be made legally binding?

- Share profits
- Fair contracts
- Attribution of source /acknowledgment
- No misleading use

ANNEX 4: SAMPLES OF CODES, FORMS AND AGREEMENTS

International Association of Sound and Audiovisual Archives (IASA)

IASA Ethics Statement (work in progress)

The Research Archives Section of the IASA was charged with the responsibility of creating an ethics statement for IASA. The following draft of March 2008 is a work in progress, undergoing revision. The IASA contact for this Christiane Fennesz-Juhasz (Christiane.Fennesz-Juhasz@oeaw.ac.at) current Chair of the Research Archives Section.

Professional Ethical Principles for IASA

Introduction

Audiovisual archives engage in a number of different activities, including research, acquisition, cataloguing, preservation, and dissemination. No single existing statement of ethics from related archival organizations and institutions covers all of the activities of the IASA membership. But many distinct specializations within IASA already have at least one statement of ethics, and some IASA documents, including the revised TC-03, include statements of ethical principles.

The following is a statement of principles for each of the major activities undertaken by the different kinds of audiovisual archives found in IASA, with references to existing documents that serve as points of departure covering specific activities that might be helpful to IASA members working in each area.

Ethics and Audiovisual Archives

We perceive five different roles encountered in many archives: performers, depositors, archivists, technicians, and users. Generally speaking, *performers* are the individuals or groups -- including animals, plants or objects, in some cases -- whose sounds and movements are recorded. *Depositors* are individuals, groups, corporations, or institutions that deposit recordings of performers in archives. *Archivists* are employees of archives who organize collections and provide access to them. *Technicians* here are those responsible for the preservation of the audiovisual carriers and the migration of data from one carrier to another. *Users* are those who access collections held in archives. These roles are linked through their relationship to the audiovisual recordings and the data about those recordings that are at the heart of audiovisual archives. Users cannot use anything that has not been collected, acquired, organized, preserved, and made available. Most archives function in the expectation that their collections will eventually serve users. There are ethical issues related to each of these roles at various stages in the archival process.

Performers

The collections of some audiovisual archives depend heavily on the research activities of archive employees. This is true of the Vienna Phonogrammarchiv, the Archive of Folk Culture of the Library of Congress, the Traditional Music Archive at the University of Khartoum, the Institute for Ethnomusicology archive in Lima, and many others. Since they record performances for preservation and dissemination, their activities are similar to those of anthropologists and folklorists who do their own collecting. Aspects of their collection activities are addressed, for example, in the Ethics Statement of the American Anthropological Association, as well as in similar statements for the fields of folklore, ethnomusicology, and other areas of research that rely on audiovisual documentation. The paramount responsibility of archives' researchers lies with the people they record. If there is a conflict of interests, the recorded performers' interests must always come first.

Since recordings made of performers for archives are meant for long-term preservation and dissemination, an explicit agreement between the performers and the archive (or collector) is desirable. This agreement should document permission to record the performance, to preserve it over the long term, and specify whatever intentions there may be regarding access and potential dissemination. Such an agreement transfers the rights to safeguard and provide access to the materials to the archive. Without such a

document, the materials will be ethically difficult to justify, preserve, and access.

Depositors

Many audiovisual archives acquire collections from specialists who are collectors themselves, by compulsory deposit, or in other ways that do not involve interacting directly with performers. In these cases, however, it remains important for the archive to determine whether the materials being deposited include sufficient information about the collection to determine whether the archive's use of it safeguards the "rights, interests, and sensitivities" of those whose traditions, memory, or expressions are represented in the collection. The International Council of Museums [ICOM] ethics document addresses issues of illegally acquired materials donated to museums, which is important for audiovisual archives as well (sections 2.1, 2.2, 2.3, and 2.4). The ICOM document also addresses the ethical uses of materials that are considered sacred, secret, or meant to be accessed only by members of the originating community:

Section 2.5 on culturally sensitive material: Collections of . . . material of sacred significance should be acquired only if they can be housed securely and cared for respectfully. This must be accomplished in a manner consistent with professional standards and the interests and beliefs of members of the community, ethnic or religious groups from which the objects originated, where these are known (<http://icom.museum/ethics.html>, consulted 01/31/08).

Recordings made without the knowledge or permission of the performers -- especially recordings of secret and sacred materials -- probably should not be accepted by archives. If accepted, they need to be treated quite distinctly from other materials. Archives should require clear information from depositors regarding materials that might be sensitive in this way and those having no such restrictions. Just as collectors should obtain clear agreements from performers regarding permission to record, archive, and provide access to performances, archives should establish clear agreements with depositors stipulating the entitlement to archive and provide access to recordings and documentation as well as possible rights that might be transferred to the archive. When employees of the archive do their own collecting, such mutual arrangements can be carefully controlled. Some collectors, however, may have acquired their recordings without giving much thought to obtaining the agreements needed to archive and provide appropriate access to them. The lack of formal agreements between collectors/depositors and performers is not sufficient reason to refuse the collection, but that lack needs to be noted and addressed in internal archive policies.

Archivists

Many professional activities of archivists are covered in documents related to the codes of ethics of organizations of archivists and librarians. Good examples are the codes of ethics of the Society of American Archivists (http://www.archivists.org/governance/handbook/app_ethics.asp -- consulted 01/31/08), and the International Council on Archives (<http://www.ica.org/sites/default/files/Ethics-EN.pdf> -- consulted 01/31/08).

Certainly important to IASA is an ethical approach to appraising audiovisual materials. The ICOM code of ethics is relevant here, especially sections on the care of collections, 2.18-2.26.

Collection activities include more than just acquisition. All archives also dispose of recordings removed from the collections. While deaccessioning is done for a variety of reasons, as described in the ICOM document noted above (paragraphs 2.12-2.17), archivists need to observe paragraph 2.13:

The removal of an object or specimen from a museum collection must only be undertaken with a full understanding of the significance of the item, its character (whether renewable or non-renewable), legal standing, and any loss of public trust that might result from such action.

This is important, for example, in cases where a collector has promised a performer that recordings would be preserved in an archive, or when an archive has promised a depositor that his or her collection would remain intact.

Archivists' obligations also include the permanent care of accompanying materials (photographs, notes, etc.) and the handling of the description of the contents of the recordings (for metadata and catalogues,

and other publications).

Archives have an obligation to keep themselves and their employees updated on the best practices and processes related to their activities so they can act effectively and ethically in preservation, documentation, and access.

Technicians

The IASA Technical Committee document, TC03 Version 3, of December 2005, specifically proposes ethical considerations for technical processing and preservation of audio and video recordings. The document is available at < http://www.iasa-web.org/IASA_TC03/iasa_tc03.htm >

The preservation and migration of audiovisual content should be done in such a way as to avoid or minimize the loss of data on the original recording. In addition, ancillary information, which may be part of the original AV document (i.e., content *and* carrier) in manifold forms, should be safeguarded. The original carriers should be preserved in useable condition for as long as is feasible. All preservation actions, transfer and migration processes, should always be accompanied by careful documentation, in order to provide all relevant specifications that ensure the authenticity of the primary data and prevent the loss of primary, secondary, and contextual information constituted by the original AV document. Technicians working in an archival preservation setting must observe the need for documenting any alterations of sounds and audiovisual data that may be needed for other specific purposes such as types of dissemination.

Technicians whose work involves the creation of information systems for cataloguing audiovisual collections should also avoid data loss in those systems.

Users

As TC 03 states, "It is the responsibility of an archive to assess the needs of its users, both current and future, and to balance those needs against the conditions of the archive." There is no question that archives must balance the wear and tear, time commitment, and expense of providing access with their mission to preserve their holdings for the future. This is one of the distinguishing features of an archive.

Once preservation and institutional integrity are assured, however, many aspects of relations with users are covered by existing codes of ethics for librarians and archivists in their respective countries.

There are, however, some important ethical issues related to dissemination or repatriation that are particularly important for audiovisual archives. Some of these are especially evident when archives themselves become users of their collections, in publications, in websites, etc. These issues include the right of a community to access its own cultural heritage, possible community and customary rights over dissemination, and the importance of observing the agreements made at the time the original performers were recorded.

There have been cases in which depositors have made access to their collections so restrictive that members of the performers' community cannot access them. Such restrictions tend to create resentment toward researchers and archives.

When repatriation occurs as a transaction between archives, it should be accompanied by an agreement between donor archive and recipient archive to honor performers' and donors' original agreements regarding access and treatment of sacred materials.

It is important to recognize that the interests of nations and those of performers may differ. Copyright legislation generally refers to individual ownership and control over original content, but archives should recognize the possibility of community ownership and customary rights in addition to those recognized by national and international legislation.

Access to specific collections should follow the agreements established at the time of collection and/or acquisition of the recording from the performer. Archival policies should involve an actual or a de facto agreement between the archive and each user defining the specific ways the user can treat the materials; these agreements should follow from the original agreements with the performers. Users are expected to

behave ethically in their use of the materials.

Archival Rights and Responsibilities over Collections

Concern about intellectual property -- specifically individual copyright in the composition and performance of original works -- dominates most of the discussion of rights over performances today. It is important that archives observe national and international legislation on all collections. But it is equally important that archives observe other restrictions on use made by performers, depositors, archivists, and technicians.

Rights over performances are not coterminous with the current legislation. Even when a certain use of a creator's or performer's work is legal, it may not be ethical. The World Intellectual Property Organization (WIPO) has a document with draft provisions for traditional cultural expressions/folklore that is useful for consideration: http://www.wipo.int/tk/en/consultations/draft_provisions/draft_provisions.html (consulted 01/31/08).

Archives need to have the right to be able to preserve recordings for the future. In order to do so, they need to be able to obtain copies of commercial recordings without copy codes that prevent duplication. It is to be hoped that archival collections will endure beyond existing copyright periods—but if the sounds and images cannot be migrated to future carriers, such a premise is ultimately impossible to achieve.

Audiovisual archives face enormous financial costs in the storage, transfer, and migration of their collections. Copyright legislation, copy protection software, and the music business are additional challenges. The large number of “orphan works” in the 20th century, whose owner is not known, gives an indication of the problems to be encountered in the future with current recordings. Without data migration, most recording formats in the early 21st century will be unplayable in a few decades. IASA takes an active position on the importance of legislative and software changes that enable archives to do their part in enriching the cultural life of the future by preserving the life of the past and present. The ongoing costs faced by archives justify, in specific cases, charging fees for access.

Conclusion: The performers, depositors, archivists, technicians and users all have distinct ethical obligations regarding audiovisual archival collections. In its General Assembly of __DATE__ held in _____, Australia, the membership has ratified this statement of such responsibilities.

Appendix to Statement of Ethical Principles

The Ethics Documents of Other Professional Organizations

There is a wide variety of ethics statements related to professional activities on the Internet. Different professional organizations approach the subject somewhat differently. Some list a few general objectives related to ethical behavior; others provide extensive lists of recommended behaviors and descriptions of activities considered inappropriate for members of the organization. Some combine the two approaches. Most of those we examined were prepared by national organizations of archivists, researchers, and librarians. One of the most detailed statements of an international organization is that of the International Council of Museums (ICOM) at <http://icom.museum/ethics.html>

References and other sources:

Society of American Archivists ethics statement
http://www.archivists.org/governance/handbook/app_ethics.asp

American Library Association Code of Ethics
<http://www.ala.org/ala/oif/statementspols/codeofethics/codeethics.htm>

American Library Association Library Bill of Rights
<http://www.ala.org/ala/oif/statementspols/statementsif/librarybillrights.htm>

American Society for Information Science and Technology professional guidelines

<http://www.asis.org/AboutASIS/professional-guidelines.html>

American Association of Museums ethics

<http://www.aam-us.org/museumresources/ethics/index.cfm>

Ethical issues in conservation

<http://palimpsest.stanford.edu/bytopic/ethics/#codes>

Smithsonian Institution Archives bibliography of ethics-statements

<http://siarchives.si.edu/collections/ethics.html>

American Folklore Society

<http://afsnet.org/aboutAFS/ethics.cfm>

International Association of Sound and Audiovisual Archives – Technical Committee set of ethical rules in the field of technical processing and preservation of audio recordings

http://www.iasa-web.org/IASA_TC03/TC03_English.pdf

Society for Ethnomusicology

http://webdb.iu.edu/sem/scripts/aboutus/aboutethnomusicology/ethical_considerations.cfm

Oral History Association “principles and standards”

http://www.dickinson.edu/organizations/oha/pub_eg.html#Principles%20and%20Standards

UK Society of Archivists code of practice, accessed from:

<http://www.archives.org.uk/>

Revised Data Protection Code of Practice for records manager and archivists

http://www.archives.org.uk/resources/Codeofpractice_records%20managers_archivists&202006.pdf

UK National Archives “policy and legislation”

<http://www.nationalarchives.gov.uk/policy/dp/>

Standing Conference on Archives and Museums, on behalf of the Association of Independent Museums, the Museums Association and the Society of Archivists

A code of practice on archives for museums and galleries in the UK. 3rd ed., 2002.

<http://www.archivesandmuseums.org.uk/scam/code.pdf>

American Historical Association's “Standards of Professional Conduct”

<http://www.historians.org/pubs/Free/ProfessionalStandards.cfm>

Association of Social Anthropologists (UK)

<http://www.theasa.org/ethics.htm>

http://www.theasa.org/ethics/ethics_guidelines.htm

World Council of Anthropological Associations: Brazilian statement

<http://www.wcaanet.org/page/54>

WIPO has been gathering examples of existing practices, codes, related to cultural heritage, etc.

<http://www.wipo.int/tk/en/folklore/culturalheritage/index.html>

International Council of Museums Code of Ethics for Museums (new edition 2004)

<http://icom.museum/ethics.html>

The ICOM site includes also an interesting link list with other codes of ethics:

http://icom.museum/other-codes_eng.html#2

International Federation of Film Archives “Code of Ethics”

<http://www.fiafnet.org/uk/members/ethics.cfm>

International Federation of Library Associations Professional Codes of Ethics/Conduct
<http://www.ifla.org/faife/ethics/codes.htm>

Association des archivistes du Québec Code de déontologie
<http://www.archivistes.qc.ca/fonctionnement/deontologie.html>

Association of Swiss Archivists -- links to Codes of Ethics (taken over from the International Council of Archives site) <http://www.ica.org/biblio.php?pdocid=12>
<http://www.vsa-aas.org/index.php?id=225&L=1> (French)
<http://www.vsa-aas.org/index.php?id=225%L=2> (Italian)
<http://www.vsa-aas.org/index.php?id=225&L=0> (German)
http://www.vsa-aas.org/Code_of_Ethics.226.0.html (English)

Baude, Olivier (ed.): *Corpus oraux – Guide des bonnes pratiques* 2006. Paris: CNRS-Editions et Presses universitaires d'Orléans, 2006.

Deals with the legal aspects of oral archives (“Fishe juridique”—pp. 99-133). Precise definitions and principles as well as two examples of document release consent forms applicable to AV materials. A preliminary version (2005) is on the web:
http://www.culture.gouv.fr/culture/dglf/Guide_Corpus_Oraux_2005.pdf#search=%22Corpus%20oroux%20Guide%20des%20bonnes%22

Edmondson, Ray. *A Philosophy of Audiovisual Archiving*, UNESCO, 1998.
<http://unesdoc.unesco.org/images/0011/001131/113127eo.pdf>

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Society for Ethnomusicology (SEM)

The SEM Archiving Committee created a manual as listed below.

Though this is published, the section on ethical considerations is appended here for reference.

The Society for Ethnomusicology. 2001. *A Manual for Documentation, Fieldwork and Preservation for Ethnomusicologists*. 2nd Edition. Indiana University. Bloomington.

Ethical Considerations

The following document was approved by the Board of the Society for Ethnomusicology in 1998. As these "Ethical Considerations" will be reviewed periodically, SEM members are encouraged to comment on details of the text as well as on the general utility of the document. Send comments to Beverly Diamond, Chair, SEM Ethics Committee, bdiamond@Yorku.ca

I. General

The Society for Ethnomusicology, by addressing ethical concerns, hopes to stimulate ongoing dialogue and debate in order to get increased understanding of ethical perspectives, and thus to respond as necessary to ethical issues in the changing discipline of ethnomusicology.

The Society for Ethnomusicology acknowledges that ethical systems differ among ethnomusicologists and that the ethical values affirmed by these statements do not necessarily represent those of all practitioners of ethnomusicology everywhere.

The Society for Ethnomusicology also acknowledges that ethical systems and values may differ between ethnomusicologists and their field consultants.

These statements therefore serve as a formal acknowledgement of shared ethical standards of our profession. They recognize common ground while respecting differences in experiences and perspective.

II. Field Research

As one of the human sciences, ethnomusicology has a particular responsibility to deal ethically with the people and communities that work with ethnomusicologists.

Responsible conduct in field research in ethnomusicology is guided by the following obligations:

Honesty in the representation of oneself and one's work.

Cultivation of relationships based on informed consent, rights of privacy and confidentiality, and mutual respect.

Sensitivity to other cultures' and individuals' ethical values.

Sensitivity to proprietary concerns regarding recorded materials, photographs and other documentation.

Awareness of the connection between proprietary concerns and economic interests, as well as anticipation of future conflicts that may be caused by one's research activities.

Ethnomusicologists acknowledge that the responsibilities of field research extend beyond the fieldwork setting and often involve a long-term commitment to the rights and concerns of field consultants and the communities.

Ethnomusicologists acknowledge that field research may create or contribute to the basic considerations for future, unanticipated, possibly exploitative, uses of recordings and other documentation. They recognize responsibility for their part in these processes and seek ways to prevent and/or address misuse of such materials when appropriate.

Ethnomusicologists recognize the need to be informed regarding copyright and other laws pertaining to the ownership of intellectual and cultural property and to be aware of the potential protections and liabilities of contractual arrangements dealing with depositing, licensing and distributing musical sound and audiovisual recordings.

III. Publication

Ethnomusicologists acknowledge their responsibility to share research data and findings through publication via various media, and, in these endeavors, to continue to maintain confidentiality agreements as well as give credit to consultants, colleagues, students, and others where appropriate.

IV. Education

Ethnomusicologists accept their role as educators in both formal and informal teaching and training settings and, in their teaching, endeavor to include information about and discussion of ethical issues, particularly regarding field research.

Ethnomusicologists accept the necessity of preparing students and trainees to make informed judgments regarding ethical matters in field situations, by making sure they acquire sufficient knowledge to understand the social, cultural, political, economic, and legal realities of the communities in which they plan to work, as well as the potential impact of the processes and products of their work.

Archives and Research Centre for Ethnomusicology of the American Institute of Indian Studies (ARCE-AIIS)

Deposit Agreement

Archives and Research Centre for Ethnomusicology

of the

American Institute of Indian Studies

An agreement between _____ hereafter referred to as the Depositor, and the Archives and Research Centre for Ethnomusicology (ARCE), being a part of the American Institute of Indian Studies.

1. The ARCE has received the following materials from the Depositor for deposit in its Archives:
(List of format and quantity)
2. The depositor acknowledges that the sole responsibilities of the ARCE are for the preservation and dissemination of the deposited materials, according to the options selected by the depositor, and that ARCE accepts no responsibility for the conditions under which the materials were originally collected by the depositor.
3. The Depositor agrees to the Archives producing as many copies as needed for the purposes of preservation, provided these copies are retained on one or more premises of the ARCE. Further, the depositor agrees to copies being produced for dissemination to bona fide scholars and institutions, should the appropriate options be chosen.
4. The Archives undertakes to protect the Depositor's interest in the materials under the following options selected by the Depositor :

Option 1. Restricted Deposit

The materials deposited under this option will not be made available in any form to any person or

institution, except to designated ARCE staff for purposes of preservation for a period not exceeding ten years. Upon the date of expiration of the period selected by the Depositor, materials will be placed in one of the following two options selected by the Depositor.

Materials designated for deposit under this option by the Depositor :

	Restricted Period	

Option chosen on termination of restricted period _____

Option 2. Controlled deposit

Audio visual materials and accompanying documentation assigned to this option would be made available for listening viewing within the premises of the ARCE, but no copies would be given nor would copies be loaned to any individual or institution without express permission of the Depositor. ARCE, however retains the right to publish general descriptions of these materials, but other publications including publication of records, tapes, cassettes, video recordings, broadcast and verbatim transcriptions of music or speech would not be published without authorisation.

When a copy of material under this option is given under written express permission of the Depositor, the recipient will be required to sign a document which will state the conditions specified by the Depositor and the ARCE will assume no further responsibility regarding these copies.

Materials designated for deposit under this option by the Depositor :

Option 3. Unrestricted Deposit

Audio visual materials and accompanying documentation deposited under this option would be in free circulation and would be made available to scholars and institutions on request, who may use these materials for research and publish verbatim transcriptions thereof. Those who acquire copies of these materials will, however be required to sign a document stating that the materials themselves may not be published in any form except as stated above without the consent of the depositor or his trustees and will not give further copies to either individuals or institutions without express permission from the depositor, his trustees or ARCE. The ARCE reserves the right to publish these materials in any form for educational purposes without further permission of the Depositor or his Trustee.

Materials designated for deposit under this option by the Depositor :

The depositor understands that the ARCE will take every reasonable precaution to preserve the materials deposited but that individual items will not be covered by insurance and that the ARCE assumes no responsibility in case of loss or damage by theft, fire or other Acts of God.

I, _____

deposit the materials listed under clause I under the options as designated.

Agreed upon this date _____

(Depositor or Agent)

(Address)

(For the A.R.C.E.)

(Title)

Agreement for Recording of Lecture

American Institute of Indian Studies

Archives and Research Centre for Ethnomusicology

I, _____ permit ARCE to record the
presentation/lecture/symposium on

_____ and

the discussion following the talk held under the Ethnomusicology Discussion Forum of ARCE.

I have no objection in granting permission for copies of the recording to be made available for research or educational use. I understand that all use will be acknowledged and excerpts will not be published without permission from the ARCE. Any publication arising from consultation of the materials should include a written acknowledgement of that consultation or use.

Special provisions if any

.....

_____ (Speaker)

_____ (for ARCE)

Date _____

Smithsonian Globalsound Project

Performer Permission Form

Archive and Research Centre for Ethnomusicology (ARCE)

American Institute of Indian Studies

22, Sector 32, Gurgaon, Haryana 122001

PERMISSION FOR PUBLICATION OF RECORDING

I, _____ (name) _____, authorize the Archive and Research Centre for Ethnomusicology of the American Institute of Indian Studies (ARCE) to allow the performances listed on the following page to be distributed for sale, along with my name, photographs, and other information about the performances. For each performance of mine that is distributed this way, I will receive an advance payment of Rs. 1,500/- (Rupees One Thousand Five Hundred Only). In addition, I will receive 25% of the sale or licensing price of these performances in the future, once the Rs. 1,500/- has been recovered by the archive.

My performances may be distributed in any format known or yet invented, without restriction, as long as my percentage is paid to me.

This agreement is non-exclusive. I may record the same music as often as I wish for others, and I am under no further obligation to ARCE.

I warrant that I have the right to authorize the distribution of this performance. No one else has any rights over this music or needs to be paid for it. If my address changes, I agree that I am responsible for notifying the Archive of the change. Otherwise the Archive will hold any payment due to me until I contact it. I understand the royalties will be calculated and paid once each year. I also understand that if there are no sales, there will be no royalties to be paid to me.

PLACE _____

DATE _____

NAME AND SIGNATURE

Address: _____

Attested: _____ (Signature)

Collector Permission Form

Archive and Research Centre for Ethnomusicology (ARCE)

American Institute of Indian Studies

22, Sector 32, Gurgaon, Haryana 122001

COLLECTOR RESPONSE FORM

Please check one and return to ARCE:

_____ I do not wish any of my collection to be made available for Internet distribution.

II. _____ I am interested in having some of my collection made available for Internet distribution.

PERMISSION FORM FOR THOSE WHO CHECKED OPTION II ABOVE

I, _____ (name) _____, authorize the Archives and Research Center for Ethnomusicology (ARCE) of the American Institute of Indian Studies to make my recordings available on the Internet for digital downloads, and other forms of digital subscription and licensing to be developed by the Smithsonian Institution GlobalSound Network Project for a period of 10 years, as long as the ARCE has obtained the appropriate consent from the artists recorded. Should Global Sound Network cease to operate, I authorize ARCE to find another partner that operates in the similar fashion for the distribution of these materials.

This agreement is non-exclusive. I understand that I have not forfeited any of my rights over my collection, and the agreement I have signed with ARCE continues to apply to all parts of the collection that I do not wish to have made available on the Internet.

I further understand that in signing this document I am only transferring those rights that I have obtained to these materials. I have indicated on Attachment A which rights I have obtained, and which need to be further investigated by ARCE. I understand that I will not receive any remuneration from this use, but that my recordings will be appropriately credited in the information downloaded along with the musical examples that I have provided.

In the event that I do not wish to make my entire collection available for Internet access, I will provide a list of those parts of the collection I wish to make available in this fashion on attachment A.

The credit line I would like to receive for my collection is as follows:

.....

.....name of place recorded, dates.
[Please correct this attribution. Remember that whatever you put here will be in place for at least 10 years].

After 10 years this contract will be automatically renewed for additional five-year periods unless either party wishes to cancel it. They must notify one another by some form of communication that includes a return receipt, six months before the next expiration date.

SIGNATURE _____

DATE _____

PLACE _____