

# Archives and Copyright: some issues

**Dr. Swapna Banerjee**

Head, Department of Library and Information Science  
University of Calcutta  
swapna.banerjee98@gmail.com

## Abstract

*Archives are gaining importance for their historical, evidentiary and cultural values in all the countries of the world. But the Indian Copyright Act does not reflect any special notation about the Archives. A comparison of Indian Copyright Act with that of UK, USA and Australian Copyright Acts in the domain of archives is very gloomy. This paper reflects this comparison and also brings a picture of the information dissemination scenario of some of the important archives of India in respect to this Copyright Act.*

**Keywords:** WSIS, Copyright Laws, Public Records, Fair use, Bonafide Research, Copyright compliance

## 1. Archives: the repository

An archive is an organized collection of resources selected on the basis of their cultural, historical and evidentiary values. According to the definition provided by the Society of American Archivists, “archival materials are documents created or received and accumulated by a person or organization in the course of the conduct of affairs, and preserved because of their continuing values”. Therefore traditional archival materials consists of manuscripts, correspondence, datasheets, legal papers, wills, letters, photographs, artworks, Government and private records and various types of documents. These may be published, unpublished or anonymous works. These are only the traditional archives; but apart from these there are audio, video, sounds, film archives, and of course the digital archives too. Knowledge society creates, shares and uses knowledge for posterity. Archives play the central role; in the development of a society as they collect, preserve and disseminate knowledge to the society. According to the principles of “National Strategy for Preservation of Estonian Cultural Heritage for 2004 – 07”, the Archives of a Knowledge –based society should satisfy the following conditions:

- The information contained in its must be accessible, and the cultural heritage treated as an integral part of the knowledge – based society;
- An infrastructure enabling the use and preservation of the cultural heritage collection on the basis of the relevant responsibilities and obligations;
- All relevant institutions must be able to cooperate, and their cooperation should be supported on a national level;

- The corresponding legislation and participating institutions must possess the required administration abilities;
- And, many other related themes which are very much applicable to the traditional archives.

## 2. Principles of Archives

The WSIS – World Summit on the Information Society has propounded some important principles of archives. The International Council on Archives (ICA)/ UNESCO Consultation in preparation for the World Summit on the Information Society, held in Beijing, 30 and 31 May 2002 stresses the need to take into account the essential role that should be assigned to archives and record management in the development of a global information society, and the preservation of its memory.

Among the recommendations made by ICA/UNESCO Consultation, certain principles and actions are highlighted:

- Archives are the most extensive and existing sources of publishing available information, and provides free and unlimited use of public domain information by citizen.
- Access to archives and records requires appropriate legislation and implementation.
- Archives promote virtual and traditional access.
- Archives promote implementation of effective records management in the public sector.
- Archives and records are crucial in order to have informed citizens – to promote literacy and wider access to information; promote access to and sharing of information and communication technologies.

These are vital points, and are applicable to all types of archives in all the countries of the world.

## 3. Copyright Act and Archives

The Copyright Act, 1957 governs the laws and applicable rules related to the subject of copyright in India. Copyright law in India was the extension of the British Copyright Act, 1911 to India, and borrows from the new Copyright Act of the UK of 1956. This Copyright Act is compliant with most international conventions and treaties in the field of copyrights. This Act of 1957 was amended a number of times, viz. 1983, 1984, 1992, 1994, 1999 and 2012. A number of addition and deletion were incorporated in this Act. A noteworthy feature of this Act is that there is no proper citation regarding Archives in this Act or in its Amendments. The new section 52(1)n of the Amendment of 2012 has a heading “Archival Storage and reproduction by libraries” and it allows the storing of a work in a medium by electronic means by a non-commercial public library, for preservation if the library already possesses a non digital copy of the work, and the scope of Section 52(1)(o) has been restricted to allow only non commercial public libraries to make not more than three copies of books unavailable for sale in India for their own use, as opposed to any public library as was the case earlier”. Special mention of any rule regarding the traditional documents in the ‘Archives’ is lacking in the Indian Copyright Act.

Though in the World Summit of Information Society of 2002, as discussed earlier, there is a vital point regarding “Access to archives and records requires appropriate legislation”, yet any directive regarding this matter is lacking. Side by side if we look at the Copyright laws of UK, USA or Australia, we find that there is clear and unambiguous reference to the Archives in those laws. In the UK Copyright & Patent Act 1988, the heading Libraries and Archives is in itself self explanatory [Libraries and Archives: section 37 – 43].

Similarly the US Copyright office (Copyright Law of US – Title 17, US Code) also gives the ‘archives’ its importance and states that :

**§ 108 · Limitations on exclusive rights: Reproduction by libraries and archives 41**

- (a) Except as otherwise provided in this title and notwithstanding the provisions of section 106, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than one copy or phonorecord of a work, except as provided in subsections (b) and (c), or to distribute such copy or phonorecord, under the conditions specified by this section, if—
  - (1) the reproduction or distribution is made without any purpose of direct or indirect commercial advantage;
  - (2) the collections of the library or archives are (i) open to the public, or (ii) available not only to researchers affiliated with the library or archives or with the institution of which it is a part, but also to other persons doing research in a specialized field; and
  - (3) the reproduction or distribution of the work includes a notice of copyright that appears on the copy or phonorecord that is reproduced under the *Subject Matter and Scope of Copyright § 108 20 Copyright Law of the United States* provisions of this section, or includes a legend stating that the work may be protected by copyright if no such notice can be found on the copy or phonorecord that is reproduced under the provisions of this section.
- (b) The rights of reproduction and distribution under this section apply to three copies or phonorecords of an unpublished work duplicated solely for purposes of preservation and security or for deposit for research use in another library or archives of the type described by clause (2) of subsection (a), if—
  - (1) the copy or phonorecord reproduced is currently in the collections of the library or archives; and
  - (2) any such copy or phonorecord that is reproduced in digital format is not otherwise distributed in that format and is not made available to the public in that format outside the premises of the library or archives.
- (c) The right of reproduction under this section applies to three copies or phonorecords of a published work duplicated solely for the purpose of replacement of a copy or phonorecord that is damaged, deteriorating, lost, or stolen, or if the existing format in which the work is stored has become obsolete, if—
  - (1) the library or archives has, after a reasonable effort, determined that an unused replacement cannot be obtained at a fair price; and

- (2) any such copy or phonorecord that is reproduced in digital format is not made available to the public in that format outside the premises of the library or archives in lawful possession of such copy. For purposes of this subsection, a format shall be considered obsolete if the machine or device necessary to render perceptible a work stored in that format is no longer manufactured or is no longer reasonably available in the commercial marketplace.
- (d) The rights of reproduction and distribution under this section apply to a copy, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, of no more than one article or other contribution to a copyrighted collection or periodical issue, or to a copy or phonorecord of a small part of any other copyrighted work, if—
- (1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and (2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.
- (e) The rights of reproduction and distribution under this section apply to the entire work, or to a substantial part of it, made from the collection of a library or archives where the user makes his or her request or from that of another library or archives, if the library or archives has first determined, on the basis of a reasonable investigation, that a copy or phonorecord of the copyrighted work cannot be obtained at a fair price, if—

**§ 108 Subject Matter and Scope of Copyright :**  
**Copyright Law of the United States 21**

- (1) the copy or phonorecord becomes the property of the user, and the library or archives has had no notice that the copy or phonorecord would be used for any purpose other than private study, scholarship, or research; and
- (2) the library or archives displays prominently, at the place where orders are accepted, and includes on its order form, a warning of copyright in accordance with requirements that the Register of Copyrights shall prescribe by regulation.
- (f) Nothing in this section—
- (1) shall be construed to impose liability for copyright infringement upon a library or archives or its employees for the unsupervised use of reproducing equipment located on its premises: *Provided*, That such equipment displays a notice that the making of a copy may be subject to the copyright law;
- (2) excuses a person who uses such reproducing equipment or who requests a copy or phonorecord under subsection (d) from liability for copyright infringement for any such act, or for any later use of such copy or phonorecord, -if it exceeds fair use as provided by section 107;
- (3) shall be construed to limit the reproduction and distribution by lending of a limited number of copies and excerpts by a library or archives of an audiovisual news program, subject to clauses (1), (2), and (3) of subsection (a); or (4) in

any way affects the right of fair use as provided by section 107, or any contractual obligations assumed at any time by the library or archives when it obtained a copy or phonorecord of a work in its collections.

- (g) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee—
- (1) is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one occasion or over a period of time, and whether intended for aggregate use by one or more individuals or for separate use by the individual members of a group; or
  - (2) engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material described in subsection (d): *Provided*, That nothing in this clause prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.
- (h) (1) For purposes of this section, during the last 20 years of any term of copyright of a published work, a library or archives, including a nonprofit educational institution that functions as such, may reproduce, distribute, display, or perform in facsimile or digital form a copy or phonorecord of such work, or portions thereof, ***Subject Matter and Scope of Copyright § 108 22 Copyright Law of the United States*** for purposes of preservation, scholarship, or research, if such library or archives has first determined, on the basis of a reasonable investigation, that none of the conditions set forth in subparagraphs (A), (B), and (C) of paragraph (2) apply.
- (2) No reproduction, distribution, display, or performance is authorized under this subsection if—
- (A) the work is subject to normal commercial exploitation;
  - (B) a copy or phonorecord of the work can be obtained at a reasonable price;
- or
- (C) the copyright owner or its agent provides notice pursuant to regulations promulgated by the Register of Copyrights that either of the conditions set forth in subparagraphs (A) and (B) applies.
- (3) The exemption provided in this subsection does not apply to any subsequent uses by users other than such library or archives.
- (i) The rights of reproduction and distribution under this section do not apply to a musical work, a pictorial, graphic or sculptural work, or a motion picture or other audiovisual work other than an audiovisual work dealing with news, except that no such limitation shall apply with respect to rights granted by subsections (b), (c), and (h), or with respect to pictorial or graphic works published as illustrations, diagrams, or similar adjuncts to

works of which copies are reproduced or distributed in accordance with subsections (d) and (e). It governs the making of photocopies or other reproduction of copyrighted material. Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. The Australian Copyright Act 1968, Division 5 states - copying of works in libraries or archives. In this Division, a reference to an article contained in a periodical publication shall be read as a reference to anything (other than an artistic work) appearing in such a publication.

Here archives means archival materials in the custody of

- a) National Archives of Australia, or
- b) The Archives office of New South Wales, or
- c) The Public Record Office, or
- d) The Archives office of Tasmania.

The Archives Act 1983 also clearly states that

- 49 Reproducing and communicating works by libraries and archives for users
- 50 Reproducing and communicating works by libraries or archives for other libraries or archives
- 51 Reproducing and communicating unpublished works in libraries or archives
- 51AA Reproducing and communicating works in care of National Archives of Australia
- 51A Reproducing and communicating works for preservation and other purposes
- 51B Making preservation copies of significant works in key cultural institutions' collections
- 52 Publication of unpublished works kept in libraries or archives
- 53 Application of Division to illustrations accompanying articles and other works

From the above it is noted that Copyright act of countries like UK, USA, Australia have special clauses to cover the access to archival contents from the archives in print form. Indian Copyright Act (1957) does not include neither section nor clearance for access and use of these archival contents.

#### **4. Important archives of India and Copyright issues**

In the light of the above, let us focus on some important archives of India and their method of disseminating information in compliance with copyright act.

The first and foremost among these is the National Archives of India, the prime body of Archives. It is the custodian of all 'Public' records of Government of India, and are available for use or 'bonafide' research. The National Archives, as reflected from this website ([www.nationalarchives.nic.in](http://www.nationalarchives.nic.in)) "gives duplication facilities, i.e. permits researcher to seek copies on payment basis in various forms like Xerox, microfilm, photo print etc." And also fixed the rate/charge for those as: -

---

No.	Research & Reference	Indian Scholar	Foreign Scholar
1	Negative Microfilm Rate Per Exposure Minimum Charges	Rs.6.00 Rs.100.00	Rs.40.00 Rs.150.00
2	Positive Microfilm Rate Per Meter Minimum Charges	Rs.46.00 Rs.100.00	Rs.300.00 Rs.150.00
3	Photo Copying Rate for Size 600 Sq Cm or part thereof Minimum Charges	Rs.46.00* Rs.100.00	Rs.500.00* Rs.500.00
4	Processing of 35mm Microfilm	Rs.145.00	Rs.400.00
5	Special copying:- As per estimate in each case depending upon cost. Labour and material		
6	plain paper Copies	Rs.3.00** per copy	Rs.6.00 per copy
7	Cost of 35 x 30 meter microfilm Spool & Can	Rs.30.00	Rs.30.00
8	Reader Printer Copy	Rs.7.00 per copy	Rs.30.00 per copy
9	Search Fee	Rs.125.00 per day	Rs.125.00 per day

\* The cost of making negatives when required will be extra.

\*\* Rs. 1.50 per copy for Individual Indian Scholar.

Other charges: An extra charge will be applicable for de tagging 100 pages @ Rs.25/- Postage and packing charges extra on case to basis.

The introspection into the library of this Archives tells that some government classified documents are sorted as for 'official use' only, 'confidential', 'security', 'secret', but these are not reflected through their current websites.

Since the Indian Copyright Act does not clearly notify the barriers to access to information in case of archives, therefore the National Archives has framed its own policy regarding this. Before supplying copies of the information available in the published material, the library takes an undertaking from the users not to sell, duplicate, or transfer copies supplied to him/her by the National Archive of India to any other person without prior permission of the Director General of Archives, and suitably acknowledge the materials if published and comply with the provisions of copyright, where applicable.

Another important archive of India is the Indian Institute of Astronomy Archive. This archive comprises of all the archival materials in various forms like which are historically important and environmentally sensitive. In order to preserve properly the IIA Archival collections for future use, make them available for current use, and honor the rights of copyright owners, the following display and access policy have been formulated.

1. No materials may be borrowed. All reproduction work is done through the archives. No attempt is made to provide archival quality prints.
2. Manuscript materials may be used only in the archival reading room. No manuscript can be taken out without the specific permission of the Officer in Charge of the archives.
3. All reproductions made are for personal reference use only and possession of a

reproduction does not constitute permission to publish it. To publish a reproduction from the IIA Archives collection, a request for one time use must be requested by filling up the **Archives Request form** downloaded, filled duly signed and submit to the [archivist@iiap.res.in](mailto:archivist@iiap.res.in) prior to the use. (If the request for one time use of Archival material has been submitted, multiple uses of the same cannot be permitted).

4. The IIA Archives reserves the right to refuse to grant permission and/or to provide photographic reproduction services to individuals who have not complied with filling up the copyright form, duly signed.
5. The collections are not allowed for commercial use and alteration, reproduction and resale.
6. The copyright Act of India (1957, Section 52) makes provision for making of photocopies and other reproductions of copyright materials under certain conditions. As per this, Archives are authorized to furnish a photocopy or other reproduction, provided it is used for private study, scholarship or research.
7. IIA reserves the right to refuse to accept a copying order for photographs/images in its collection, if in its judgement, fulfillment of the order would involve violation of copyright law.
8. As a policy, a reproduction fee may be levied according to the individual request.

Since the Indian Copyright law is very much restricted in the case of archives, therefore in this case too, the authorities have framed their own policy regarding 'fair use', and access to the information contained therein. They have classified the contents under transfer of ownership and copyright issues. IIA has restricted the free use of some archival material due to some policy decisions of the archival committee and other authorities. Many materials are to be scrutinized for copyright compliance.

The use is permitted only for research purpose, and not commercial purpose. Moreover, permission is given to republish the articles in a book or journal sold commercially. The access to documents which are in a fragile condition is restricted, and is provided only after the book is repaired.

### **5. Role of archivists and copyright**

The role of the archivists in complying with the copyright policy, and the doctrine of fair use is nonetheless important. It is the researcher's obligation to satisfy any regulation of the copyright when he or she is using any material from the archive; but more responsibility is shouldered on the custodians of the archives i.e. archivists, whose duty it is to make the researcher aware about the copyrighted material, the person responsible for the copyright, and the permissible limit of the researcher to use the copyrighted material. Therefore the archivists must be properly aware of the current status of the copyright law. As we have seen in the above discussion, there is no ideal or standard provision of fair use or restrictions of copyright in the Indian Copyright Act, therefore the archivists' responsibility becomes great. Archivists should consult the legal counsels, and develop clear cut policies which will permit fair use, and also prohibit infringement of copyright. In absence of clear laws, the archivists must act as the best counsellors in the copyright issue of the archives.



## 6. Conclusion

From the above discussion, it is clear that the Indian Copyright Act is inadequate to address many issues vital for the 'Archives'. The Copyright Act should be amended to facilitate the use of archival material without awarding unprecedented control over the copyright material in all forms under the fair clause. Then only can the access to information with restrictions be imposed on the archival materials, and all the Archives will be led by clear cut policy guidelines, and will therefore meet the Right to Information process aptly. ●

## References

- Vagiswari, A and Christina, B. (2007) – Managing the contents of Indian Institute of Astrophysics Archives – Copyright issues, 2007. *International Conference on Semantic Web and Digital Libraries*, ARD Prasad and Devika Madalli eds.(Bangalore : DRTC, ISI)  
[www.copyright.org.au/](http://www.copyright.org.au/) (Accessed on 25.2.13)  
[www.copyrightservice.co.uk](http://www.copyrightservice.co.uk) (Accessed on 24-2-13)  
<http://www.copyright.gov/> (Accessed on 24-2-13)  
[www.copyright.gov.in](http://www.copyright.gov.in) (Accessed on 22-2-13)  
Banerjee, Swapna and Majumder, S. (2010) - *Management of Archives. Infoconexion, Revista Chilena de Bibliotecología y Gestión de Información*. No.1 Noviembre 2010. Chile