

ICA Copyright Declaration



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Archives comprise works that are subject to copyright law

Archival material consists of recorded information created, accumulated or received by an organisation, a person, or a family in the conduct of their affairs, and preserved because of the enduring value of the information it contains or as evidence of the functions and actions of its creator.

As recognised in the Universal Declaration on Archives:

Archives are a unique and irreplaceable heritage passed from one generation to another. ... They are authoritative sources of information underpinning accountable and transparent administrative actions. They play an essential role in the development of societies by safeguarding and contributing to individual and community memory. Open access to archives enriches our knowledge of human society, promotes democracy, protects citizens' rights and enhances the quality of life.

Archives comprise many different types of materials on which information can be captured. Some typical examples include textual records, drawings, photographs and audiovisual recordings. All of them can be in digital or analog formats and all are subject to copyright laws that affect how archives can be managed and accessed. To enable the widest possible access, those responsible for archives must apply copyright laws, taking into account all related factors that may affect how archives are selected, kept, preserved, accessed and used.

Unique quality of archives and its copyright implications

The vast majority of archival material is protected by international and national laws of copyright and related rights. Archival material is usually organized in aggregations of items documenting human correspondence and interaction. However, from the perspective of copyright, each item in an archival fonds is a separate work. Whilst the copyright-protected works preserved in the world's archives number in the billions, with potentially millions of copyright owners, materials selected for preservation as archival holdings were not, for the most part, created for commercial purposes or for dissemination to the public. Thus, archival materials are largely unpublished. Rarely do they include discrete published works or extracted published material in the form of enclosures.

The nature of most archival material has implications for the management processes that archives must implement to deal with them:

- Because archival materials rarely exist in multiple copies, they are unique and irreplaceable. They cannot be borrowed, unlike the published holdings of many libraries. Instead, copying must be permitted if archives are to fulfil their fundamental mission to preserve their holdings whilst also making them accessible off-site, necessitating permission by the rights owner(s) in accordance with copyright law.

- Because archival materials are largely unpublished and were not created for financial reward, copyright owners have rarely asserted their rights and it is often difficult to identify or locate rights holders. Thus, obtaining the necessary permissions is time-consuming, potentially costly, and may not even be possible.

Copyright challenges relating to born-digital and digitised archives

The digital environment provides new ways of creating the records that will be selected for tomorrow's archives, and opportunities for the conversion and accessibility of analog archival material. Although these opportunities are welcome, they multiply the complexity of the copyright issues facing archivists.

Today's users of archives expect archival institutions to make an ever-increasing wealth of content digitally available to wider audiences and to remote locations. Presenting digital content to users unable to visit the home institution or not adequately served by an analog copy requires new approaches.

Exceptions that provide for educational and private use by permitting limited creation of access copies of individual items only deal with a part of the challenges of the digital environment.

If archivists are to acquire digital material, they must be able to bypass any technological barriers such as digital rights management or encryption to select, keep, preserve, and give access to it. They must be able to do this at an early stage; otherwise unique material is at risk of being lost forever. Intellectual property rights in the encoding of software as well as content can also pose significant challenges.

Preserving both digital surrogates and born-digital archives requires the creation of copies and shifting of formats inside preservation systems to ensure the material continues to be available in the future.

Archivists as advocates for copyright change

To enable archives to overcome these challenges and continue to fulfill their public interest mission, an international approach to the exceptions applicable to Archival material is urgently required. The ICA calls on

- Its Members to advocate for changes to their national copyright laws consistent with the provisions and exceptions set out below; and
- The World Intellectual Property Organisation to conclude a binding international treaty to harmonize such provisions and exceptions across borders.

The following are the essential copyright provisions to support the archival mission:

1. Exceptions and limitations adopted in national laws that facilitate the public interest role of archives, maintaining the balance between the rights of authors and the larger public interest. In doing so, they must enable cross-border acquisition and uses.
2. Exceptions and limitations to apply to use of published and unpublished copyright works, in any format, without any purpose of direct or indirect commercial advantage or private gain.
3. Exceptions and limitations adopted that enable duly authorised staff of archives to carry out the following activities:
 - a. copying works to preserve the documentary heritage of the world's nations and peoples;
 - b. advancing research and knowledge by providing copies of materials to individual and other users, in any format;
 - c. reproducing and making available to the public any work for which the rights' owner cannot be identified or located after reasonable inquiry in accordance with national law;
 - d. translating works in their collections when those works are not available in a language required by users for the purpose of teaching, scholarship or research;
 - e. making and providing accessible format copies to persons with disabilities, including by import and export; and
 - f. facilitating text and data mining to analyse text and data to generate information such as patterns, trends and correlations to the extent permitted by national law;
4. In the exercise of the foregoing activities, any contractual provisions that override or restrict the agreed upon limitations and exceptions should be declared unenforceable.
5. Appropriate measures to be taken to ensure that legal protection and effective legal remedies against the circumvention of technological measures do not prevent libraries, archives, and museums from enjoying the agreed upon limitations and exceptions.
6. An archivist acting within the scope of his or her duties should be protected from claims for damages, from criminal liability, and from copyright infringement, when the action is performed in good faith: a) in the reasonable belief that the work is being used as permitted within the scope of a lawful limitation or exception, or in a way that is not restricted by copyright; or b) in the reasonable belief that the work is in the public domain or under an open content licence.



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