



**International
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Copyright & cross-border challenges in preservation: empirical evidence

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Introduction

This short paper highlights how cross border cooperation is a central part of the work of libraries and cultural institutions as they preserve and provide access to materials, and how copyright creates challenges through restrictive or ambiguous laws. It presents the results of a survey and interviews with library professionals, as well as a collection of news stories.

Copyright aims to balance rightholders' and users' interests, enabling works to find audiences. Short-term commercial exploitation of works is therefore compatible with the work of libraries, archives and museums to ensure these works are accessible into the long-term. Yet overly restrictive or ambiguous laws can nonetheless make this difficult. Given the threats of climate change, accidents, disasters and conflict, the need to overcome these barriers is pressing.

Archival projects are frequently international, posing challenges that need to be resolved with clear, flexible, and expansive guidance and legal protection to enable the preservation of works. Expertise and technical infrastructure is sought abroad for the specialized work of analyzing, preserving, cataloguing large physical collections, as well as ensuring the readability of digital multimedia content recorded on diverse formats¹. In these collaborations, small countries and their institutions may depend on larger institutions and the IP laws of the countries where they are based. Where there are differences and disparities between copyright laws, institutions are likely to avoid risk, even if this means that vital preservation work is delayed – perhaps indefinitely.

The point of preservation is to enable access. Yet historically, people have often had to 'leave a country to study it' due to censorship within or colonial resource extraction, resulting in the largest archives about many countries being outside their borders. Cross-border access enables people within countries to access preserved materials pertinent to their lives and history, and diverse international scholars (including those in diasporas) to access materials without the expenditures and environmental impact of global travel. At the same time, the Internet opens increasing avenues to share material with wide audiences.

As such, 'small places' can act on small scales locally, but must coordinate with larger countries and institutions - and navigate their laws - for access to large collections and the tools and expertise they hold. Even institutions with large collections must also rely on other institutions with specialized knowledge and infrastructure - particularly for digital collections - and negotiate what to do with collections from elsewhere. This points to the need for clear, international-level guidance.

¹ Even popular digital formats - such as CDs or DVDs – have limited lifespans and become difficult to access as newer formats become dominant. They require migration to other formats for preservation and accessibility.

Overly restrictive copyright laws (and interpretations thereof) therefore endanger content - which can be lost to natural disasters or poor storage, or left locked away indefinitely in 'dark archives' awaiting a distant point when rights issues are resolved. In the intervening years, inaccessible material is vulnerable, and does not serve the interests of rightholders or the public.

This paper includes:

- **This introduction**
- **The results of a survey and interviews with library professionals on cross-border preservation issues**
- **Recent news stories highlighting challenges and successes in international collaboration**

Study results: survey and case studies

Survey results

In February 2023, IFLA conducted a survey of libraries and related institutions on copyright and cross-border preservation issues. 23 responses were received from 13 countries. The case studies are drawn from interviews conducted online. Responses have been edited for clarity.

68% of respondents indicated their work had a cross-border element, and 77% believed their institutions would benefit from more cross-border work.

40.9% indicated copyright was either a 'top' or 'very much' a priority in preservation projects, 9.1% said it was 'somewhat' a concern, and 50% said it was 'not very' or 'not at all' a concern.

Survey responses further indicated that while copyright expertise is available, the complexity of working with materials from other countries often led to uncertainties which led to restricting access to content beyond what might be allowed by law or they might prefer.

Among the responses:

Due to limited budget, primarily we choose to digitise (for preservation) works that are not protected by copyrights - because we can publish those.

For the most part, we stick to materials that are of low risk of copyright infringement (likely to be in the public domain). Because a lot of the materials we work with are newspapers and other publications with multiple authors or unknown authors, we have to use estimates based on average lifespans, etc.

We often skip digitization of materials that are not published in the US, despite the possibility that they may actually be in the public domain, as we have no sure, quick means of checking international copyright law.

Our legislation empowers us to digitise and preserve materials in our collection. However, access to digitised materials that are still subject to copyright will not be offered to the public unless permission/copyright has been cleared.

Case study: Aruba

Aruba is a small island (180 km³) with a population of around 100,000, and does not have as easy access to large collections as bigger places might. It is linguistically diverse, with English, Dutch and Papiamentu. Many "Aruban" publications were not published on the island at all, but in (bigger) neighboring countries, the United States, or the Netherlands. This often means relying on knowledge of the copyright laws of the countries in which they were published. Peter Scholing of the [Biblioteca Nacional Aruba](#) (National Library of Aruba), described an example of the work of the library:

Today we were trying to figure out if a specific set of newspapers published in the 1800s were available. It was published in [the nearby island of] Curacao. In 2013, the Dutch Royal Library digitized everything they had - but the things that might be interesting for Aruba, like when they found gold, weren't necessarily there. But a historian had access to them [meaning: they existed once], so I've been calling around and asking if anyone has access. It often goes like that.

Limitations of access came to a potential crisis point when the COVID closures coincided with the high school exams, but the Internet Archive – [as described in this blog post](#) - proved to be crucial to provide books in the necessary languages. Closed or 'dark archives' would not have served these purposes. The island has since been experimenting with Controlled Digital Lending (CDL)-like processes, to make available items that are out of print on the island. [Aruban Collections are also available online](#). The library has sought collaboration with international partners including The Internet Archive, Creative Commons, The Royal Library of the Netherlands, the Dutch Institute for Sound and Vision, and the Wikimedia Foundation of the Netherlands.

Yet a difference emerged between preservation and access domestically and internationally. The small community of the island means it is easy to contact local publishers for permission in ways it may not be for larger or international environments. For preservation priorities, Scholing noted "We choose because of preservation purposes, uniqueness, and other factors. The next step is based on requests, and we decide is it worth it to invest time to figuring out copyright or contacting the rights holders. In many cases it's quite easy to do that for the local newspapers and magazines. Some of those are digitally born, most published in the last 15 years, during the pandemic we made them available for download on the permission of the publishers."

"We make the contact on a case by case basis," Scholl stated, noting that even if companies no longer exist or creators have died, their descendants are often around or logical calls can be made.

After he died, the first historian of the island donated the entire collection to the library in his will. He didn't have kids. The only copies of his books on the island are in the library. You cannot buy them any more. They were under copyright, but we made a decision to make them available. We made it publicly known that we were planning to do that for educational purposes, under Controlled Digital Lending.

Such a process is unlikely to work at scale or across borders. Scholing also noted the international factors in scholarship and the diaspora, and the importance of being able to provide access:

If you finish high school in Aruba, you have limited options to go to college, so most go to the Netherlands or US and a lot don't come back. When they write their theses, they want to access local materials.

Case study: US land grant university

Another case comes from a US land grant university with large collections from America and elsewhere. Due to the scope of the library, many unique or rare items that might have been classified as 'special collections' elsewhere are housed among the main collections.

According to a digital preservation services coordinator:

Sorting out rights issues is challenging. A lot of things come from countries that no longer exist: for example the Persian Empire, the USSR, Nazi Germany, or the United Arab Republic.

In these processes, the library generally finds it easiest to work with public domain material. However, complexity of rights issues around older material *not* clearly in the public domain increases workload challenges, decreases access options, and leaves the work vulnerable.

We generally defer to the publishing date and treat them as if they were from the US. Anything published before 1928 is public domain. We have a takedown process with our items on the Internet Archive focused on privacy, but we've never received a takedown notice. If something is open access or public domain – that makes my eyes pop out. A good project is pre-1920s. My first question is when it is published, and if we get a good answer from there I'll send it to be digitized. If it's not, that gets confusing quite quickly.

Copyright is a challenge and the stakes are high, because we're too busy surviving. The low hanging [legal] fruit - those items that are from 1910, the early age of mass publication with really brittle paper - we usually digitize those before asking about some documents from the 1950s. Since there is no copyright expertise in our preservation workflow, we assume that if something isn't in that magic year, we're not able to digitize and provide open access to it in the way we would other things.

While calculations on what items to prioritize are made using a number of factors - including the state of the item - books clearly outside of copyright are better candidates for preservation. The key factor is the investment required, given that the work operates at scale:

Copyright changes dramatically the timeline, the cost, and the staff time required to carry out preservation and reformatting work on the item. It unquestionably adds a layer of complication. Because we're doing it at scale, we don't have time to check every country's legal definitions or copyright. Public domain for me is one of the most significant means of triaging something.

Adding in the international dimension multiplies the level of complexity.

The university in part must rely on the judgement of their institutional collaborators who manage related digital infrastructure. Nonetheless, these organizations can make conservative calls:

I've had law professors say 'I use the content from your library in my research, it should be open access,' but it's not my decision. Many files will go into an access black hole until whatever year comes up they're [assumed to be] in the public domain.

Case study: Southern African Development Community (SADC) legal deposit library

Another place where copyright and cross-border factors meet is a legal deposit library in sub-Saharan Africa. The library preserves documentary heritage within national borders - including local, historically independent administrations - and international material from other African countries. These collections are maintained in part through relationships with universities in the US and collections they hold. It is presently involved in digitization projects while identifying and cataloguing an influx of material - all amid developing laws nationally and in other countries connected to its collections.

As with other libraries, amid uncertainty the library has often prioritized projects with clear guidance and available resources. Among them are projects informed by the UK [Endangered Archives Programme](#). The library's director described the project as:

a UK initiative to assist disadvantaged communities in Africa and elsewhere to protect their cultural heritage, where they have vulnerable collections in analogue formats, to preserve these valuable records for scholarly research and long-term preservation. Institutions and communities are trained on how to do digitization, without purchasing expensive machinery. Those are the issues that will help those communities to protect their own IP, and if willing will share to the entire world.

In this - and other projects - digitization efforts are a way to document local heritage and collections, and democratize access to those collections with foreign collaboration. The resources, and clear legal guidance, help make the projects possible. Further latitude to work with collections would enable greater democratization of access. Rights issues, however, could remain a hindrance.

My belief is those who digitize should be willing to share these things without any restrictions. We want to democratize knowledge that has been hidden for a long time. Modern technology allows us to share those things and make them widely available. That's my personal opinion.

If a library has this collection, why can't we collaborate and make it freely available to everyone? Universities use public funding to do research. Why can't we, for example, access past theses without restrictions, if they are housed in their portals and their repositories?

This underlines how core cross-border access is to preservation work, from a professional and public interest perspective.

Preservation in the news

This section collects recent news stories which underline how commonplace international collaboration is in preserving collections and making them available to relevant audiences. It is vital that rights restrictions and the complexity of international copyright does not hinder preservation work. This section is not intended to be comprehensive.

Collections across borders

[Vietnam – France joint website of archive photos launched](#) (2023)

“A joint website featuring archive photos from the [French School of Asian Studies](#) (EFEO) and the Institute of Social Sciences Information at the [Vietnam Academy of Social Sciences](#) was officially launched on February 15.

The website, <https://collection.efeo.fr/ws/issi/app/report/index.html>, is available in Vietnamese, French, and English. It gathers nearly 70,000 photos, comprising 57,000 from the [Institute of Social Sciences Information](#) and over 10,000 others from the EFEO.”

[A nonprofit battles the ‘magnetic media crisis’ by digitizing aging movies before they vanish](#) (2018)

“these motion pictures that are being saved by [Moving Image Preservation of Puget Sound, or MIPoPS](#) (pronounced “me-pops”).

The tiny nonprofit and its two audiovisual archivists, Libby Hopfauf and Ari Lavigne, are currently hustling to preserve a set of 800 videotapes from the [Vi Hilbert Collection](#).

Hilbert was a renowned elder with the [Upper Skagit Indian Tribe](#), whose people live north of Seattle...

For the Hilbert project, which started this year and will finish in 2020, the team has secured grants from the National Endowment for the Humanities and the National Historical Publications and Records Commission.

Some of the oldest tapes in the collection are from the mid-70s, featuring multiple Lushootseed speakers.”

[Africa's heritage restitution debate extends to audio and visual archives](#) (2022)

“Over 90 percent of the material cultural legacy of sub-Saharan Africa remains preserved and housed outside of the African continent, [experts believe](#)... Sadly, similar stories to that of Chemirocha — that tell of the successful and joyous restitution of Africa’s audio or visual heritage [are hard to come by](#).

The hardest part of this process of restitution has been knowing who is holding what, and where, [noted](#) Jim Chuchu and Njoki Ngumi from The Nest Collective while speaking to DW. Their initiative, the [International Inventories Program](#), has built a digital and online database of 32,000 Kenyan cultural items held in the “Global North.””

[Anthropologist digitizes a changing culture from half a world away](#) (2020)

“Dobrin has found a way to address Narokobi's concerns while giving this story a public, interactive place for the Arapesh people of Papua New Guinea, many of whom have moved away from their ancestral village, and making it accessible to researchers. With a year-long National Endowment for the Humanities-Mellon Fellowship for Digital Publication, she will make this "remarkable cultural and historical resource" available online. The site, put together with help from programmers in UVA's Institute for Advanced Technology in the Humanities, will include links to dialog boxes, audio, video and maps to explain parts of the history and provide alternate or additional information. This format allows users to interact with the story in a way that fits with traditions of oral history and public discussion in Papua New Guinea villages.”

Sharing preservation skills and expertise across borders

[In Senegal, in search of lost films](#) (2020, translated)

“Two Italian researchers have taken in hand the restoration of more than 400 Senegalese newsreels dating from the 1960s destined for destruction... These eight to twenty minute films, shot in 16mm, were shown in cinemas in Dakar, showing national and international news, at a time when television only entered the wealthiest homes. It was the beginning of African independence and pan-Africanist bubbling...”

[Qatar National Library and Partners Unite in Effort to Restore Libraries and Cultural Institutions in Beirut](#) (2021)

“To support the rebuilding of Lebanon’s cultural capacity that was damaged by the 2020 explosion in Beirut’s port, Qatar National Library, ALIPH, UNESCO and partners will help key cultural organizations and school libraries across Lebanon reconstruct their premises and restore their archives.

In parallel to the Library’s plan for the rehabilitation and restoration of libraries, the International Alliance for the Protection of Heritage in Conflict Areas (ALIPH), based in Geneva, Switzerland, is providing complementary funding.”