

Copyright Ownership to Historical Contents in the Open Access Repository (OAR) – Case Study of Indian Institute of Astrophysics (IIA) Repository

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Abstract. In this paper we discuss the various steps followed while creating an open access repository of historical material available at the Indian Institute of Astrophysics using DSpace. While uploading these materials we have come across various copyright issues, which are not clearly addressed by the Indian copyright act of 1957. Moreover the Indian copyright act pertaining to digital contents is still not complete to include the historical contents. Some of these issues are understood in the context of copyright laws prevalent in other countries. Archival collections of IIA Open Access Repository are classified under the communities; (1) Archival collections, (2) Research papers in journals where IIA is the publisher (3) News paper clippings, (4) Photographs. This paper mainly elaborates on the procedure followed according to the ownership of the materials available with us and also those, which are transferred to us by the relatives of the original authors. The procedures also include the efforts made to trace the possible owners of the contents for copyright clearance. This paper also focuses on the basic principle, that holding an archival material does not automatically give the library copyright ownership. It creates an awareness among library personnel regarding the legal aspects of archiving historical contents like old newspaper cuttings, photographs, letters and hand-written manuscripts.

Keywords: Copyright Ownership, Historical Contents, IIA Open Access Repository, Orphan Works

1 Introduction

Awareness of issues relating to copyright is not just important but also essential to librarians and informational professionals in the present scenario of widespread availability of sources of information due to largely in part to developments in digital and communication technology.

Librarians as information providers were always concerned with copyright issues even while providing print copies of articles to their clientele. Now with the development of digital technology, which allows a large quantity of information to be copied with minimum effort it is important that they become aware as to what can be copied and disseminated without violating the copyright of an author. It is all the more necessary if the contents distributed are of historical nature where most of the time the authors are not alive.

This paper looks at the copyright issues, which the librarians and information centers have to tackle while digitizing the historical material. Even though copyright is technology neutral, the vast amount of information, which is freely accessible on the net, has brought forth new issues, which were not applicable in the print media. Historical materials are old materials available in a library and if we do not preserve and digitize them they will be lost to the posterity. Librarians as custodians of these works have moral responsibility to take care of them and make them available to the users. These have to be preserved physically and also digitally.

While most of the issues relating to digitization are the same whether they are historical or current. But the nature of the documents available in the archival collection requires a different treatment. Digitization is one of the ways of preserving the brittle and faded documents, which may not survive after a few years. Hence certain special provisions would be required to digitize these materials and protect them from loss.

The digital repository of Indian Institute of Astrophysics historical collection, Bangalore, has been developed to capture, disseminate and preserve the archival material available in the institute. This repository has been created using D-Space open access software.

We have attempted to focus on the copyright issues pertaining to historical contents. Though the copyright guidelines in general pertain to any digital material, we feel it necessary to address the legal issues exclusive to historical contents in digital form. Many archives all over the world have digitized their historical contents but these repositories do not give free access to their full historical contents to the users. Some repositories have given the list of historical records with a link only to their metadata and in some cases with additional abstracts. They have taken proper care to follow the copyright guidelines prevalent in their own countries. When we proposed to archive our historical contents we had to periodically consult our faculty and historians about the importance and relevance of those materials to the public at large. This gave us an opportunity to re-analyze the existing copyright act to find the suitable clauses, which could address the legal implications while digitizing our print historical materials. We found that the Indian Copyright Act does not address many issues relevant in the digital regime and also does not

clearly state anywhere the do's and don'ts of digitizing and providing access to them.

2 Digital Repository of Indian Institute of Astrophysics

Indian Institute of Astrophysics traces its origin to Madras Observatory established in the year 1792. The library has rich collection of printed documents of historical importance in various forms, dating back to 17th century.

These historical collections are broadly categorized to be included as various communities in the Open Access Repository of Indian Institute of Astrophysics as mentioned below.

2.1 Archival Collection

This collection has around 100 items, which include old catalogues, records, manuscripts, letters, file noting and datasheets belonging to the Madras and Kodaikanal observatories during 18th, 19th and early 20th century. The ownership of most of the items lies with the institute since the contents were created by our own past directors and scientists and also the facilities belong to the institute which were utilized to create these contents. The contents created in the personal capacity (e.g. any drawings, paintings or personal letters) are segregated and permission is solicited from the living relatives of those individuals to those items to re-use them in our archives.

2.2 Indian Institute of Astrophysics Publications

This collection includes the Kodaikanal Observatory Bulletins and Kodaikanal Observatory Memoirs which are the two institute's journals started during the early 20th century. Since they are our own publications the copyright lies with the Institute.

2.3 Newspaper Clippings

There is a section, which holds the newspaper clippings taken from the institute collection according to the date of reporting. They have been broadly classified as events, the facilities available in the institute, and also some relating to scientists. For all newspaper clippings we have extended the clauses applicable in print medium to digital media. In the absence of any separate copyright law for electronic media this seems to be the best course for uploading and making copies without violating copyright laws.

2.4 Photographs

This collection holds photographs of past directors and a few relating to other scientists. Some of the photographs are part of Indian Institute of Astrophysics collections and family members of the institute's staff have donated some, with a permission to the IIA Archives to use them for preservation and research purpose.

Contents	Terms of Copyright	Remarks and Guidelines for use
<p>1. Archival collection Consists of catalogues, records, manuscripts, letters, file noting and datasheets belonging to</p> <p>a) Madras Observatory (1786-1899) b) Kodaikanal Observatory (1899-1971)</p>	<p>The contents in this community belong to IIA and the copyright lies with IIA. Some of the contents are uploaded from the personal collections of individuals, donated to IIA Archives. Most of these have the copyright consent from a living close relative. Efforts are made to trace the descendants of these individuals to get the copyright consent.</p>	<p>The contents from archival collection can be used under fair use clause, with due credits given to IIA archives.</p>
<p>2. Kodaikanal Observatory Bulletins and Memoirs of the Kodaikanal Observatory</p>	<p>For publications of IIA copyright lies with the Institute.</p>	<p>Full text can be downloaded with appropriate reference given.</p>
<p>3. Newspaper clippings</p>	<p>Copyright permission is granted by the individual publishers of the newspaper for uploading in the OA Repository.</p>	<p>The Newspaper items can be downloaded for use, with proper credits given to the publisher</p>
<p>4. Photographs</p>	<p>1. Photographs which are part of IIA's collection and copyright lies with the institute. 2. Photographs donated by individuals are uploaded with their permission</p>	<p>The photographs can be used with proper acknowledge –ment given to IIA archives. Proper credits to the donor and also to IIA archives is expected</p>

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Table 1. The table presented here given the contents of historical collection in IIA Repository and terms of Copyright

3 Some guidelines while uploading historical material

1. Librarians/managers creating a repository of historical material in their possession must be aware that although the institute physically owns all the archival and manuscript material, it does not necessarily own the copyright associated with all items. Ownership of copyright is distinct from ownership of materials and objects.
2. So while creating the repository of the archival material, copyright of each work should be examined on "Case by Case" basis. Permission should be sought from the publishers, authors and any other person holding the copyright. (Gasaway, 2003) Sometimes, a person who is actually not the copyright owner donates the archival material. For example letters written by a celebrity is in the custody of a recipient and he donates it to the library. Unfortunately the copyright still belongs to the person who has written the letter, unless the donor is the heir or a beneficiary of the author. In such cases permission should be sought from the owner of the letter or his legal heirs.
3. Instructions should be clearly stated in the repository as to who should receive the credits against each work.
4. Librarian should be aware of the importance of written permission. Forms should be designed for taking permission from the copyright owners. The form should clearly state whether the full text can go online or only a portion of it. In cases where authors wish to grant copyright transfer after a particular date this has to be stated in the form.
5. In cases where authors are willing to transfer their ownership rights to the library, it is advisable to take permission to hold the works in all formats for both print and electronic media. Even in the electronic media, written permission can be sought for CDs, DVD, hard disk and other electronic formats, this may be necessary as in the digital media each format may have different copyright value. The length of copyright protection may also vary for each format. This may save the time of the librarian who may have to go back to the author several times.

4 Digitization & Copyright in India

In India we are governed by the copyright act of 1957 and its amendments. An understanding of this act reveals that the act has incorporated several principles, which makes this act to be in par with the laws prevalent in UK and US. However we find a lacuna in the Indian act when we take up the process of digitization. There is no separate digital copyright act or a section,

which can give us guidelines for digitization without violating the copyright laws.

At present the Act of 1957 to some extent does take care of two rights namely the right of reproduction and adaptation, which come into play while digitizing. (James, 2005). Section 14(a) of the copyright act states that the copyright rests with the author of the original work, it is a copyright violation to reproduce the work in any other form including the storing of it in any medium of electronic means. Electronic medium could be a CD, a DVD or disk of a computer.

While digitizing a work, the clause on adaptation also applies. One may tend to alter the work so as to suit the Internet presentation. Matter may be organized in such a way it is easy to search. A metadata sheet may be added to it for giving it a unique identity and aid in searching. Here Section 14 (aVI) of the act comes into play. This section forbids any adaptation of the work with out formal permission of the author.

5 Need for Digital Copyright Act

While the presence of well-defined digital copyright act can guide the users about the correct usage of those materials, it also helps the libraries and repositories to be more responsible which uploading the contents.

Do we need a separate copyright act for digitization? This is a debatable question and here we present a few reasons, which may warrant a separate act or section relating to digitization.

In the conventional library, which has books and other printed material, librarians have to worry about copyright issues, which are different from the ones pertaining to digital material. The existing copyright law has several fair use clauses and knowledge of these clauses protected the librarians from getting into legal hassles. But digitization requires more careful interpretation while using the fair use clause.

The following issues need to be carefully addressed while designing of digital copyright act in India;

5.1 Speed of replication

Once a work is uploaded on the website it is very easy for the users to view and download the text. Material can be captured by million other sites in matter of seconds. Librarian should be aware of the magnitude of the situation while uploading. In the case of historical materials uploaded in any Open Access Repository, it is of great concern that these materials can be captured and reused even without proper acknowledgement or credit to the origin of resources as most of the times the authors are not alive to object or the person who has uploaded may not keep track of the status of their own

content. From our website, we find the photographs of the past directors which we have uploaded in our repository have been used in wikipedia site, with due credit given to our repository. There may be websites, which could have downloaded our contents without proper acknowledgement. A well-defined 'Digital Copyright Act' in place can minimize these problems to some extent.

5.2.1 Adaptation

A work on the Internet can be easily adapted into another form. It may be translated into several other languages, it can be abridged, it could be embellished with pictures and presented in a totally new format. Apart from storing and downloading hard and soft copies can be made and circulated. The digital copyright act should take care to address this issue correctly.

5.2.2 Technology Skills

Technology comes in handy in protecting the digital material from misuse. It not only restricts the access, but also warns the users with various options while copying/downloading. The digital copyright act should utilize the technology capability while designing the clauses and guidelines.

5.2.3 Orphan Works in Digital World

Historical contents include 'Orphan Works' which need special attention. Information on this collection remains inadequate in most of the countries except in US. "Orphan Works" refers to works for which an owner cannot reasonably be located. An orphan work can be a book, private letter, a painting or any other work covered by a copyright law. A work can be said to be orphan when the author dies, and the heirs do not know about the work or it could be a photograph or a painting where the artist's name is not given. According to a statistics provided by Carnegie Mellon University that 22 percent of the works fall into this category of orphan works in the US. (Carlson, 2005)

The orphan works in the print media have not posed a huge problem to the librarian, since these works are available in the physical format and can be copied to research scholars and student under fair use clause. But in the electronic format, the librarians find it convenient to digitize the orphan works, and upload them since they tend to believe, as these works do not have a copyrighted author they can easily go into the public domain, which needs proper understanding.

In the US, there is a request from the organizations, which are into digitization of books in a big way, to their copyright office to deal adequately the cases of orphan work. They would like to find a way where the author of the 'Orphan Work' is not deprived of his rights at a later date and at the same time the access to this valuable material is not denied to genuine users. In his

paper (Godwin, 2005) explains “If congress does not address the orphan works problem, many abandoned works will continue to be unavailable to the public because they will “simply fall through the cracks”. Copyright owners who abandon their copyrighted works chill creativity by forcing creators and disseminators who seek to make use of orphan works into a guessing game over whether or not they will find themselves in court. The problem is a severe one that deserves immediate legislative attention.”

In the Million Book Project of Carnegie Mellon University, it was common knowledge that books published in US prior to 1923 are in public domain. For works published between 1923-1963 are copyrighted only if the copyright author has renewed the copyright for his work.

Identifying and locating the copyright owners, is a stupendous task. It is not only time consuming but also expensive. This problem is even more severe in the case of ‘orphan works’. An example of hardship faced by the Internet Archive who is the partner with CMU, National Science Foundation and governments of India and China in hosting a fully readable online library of one million digitized books is worth mentioning here. The Internet Archives wanted to include many orphan works, which they call as ‘nether’ works, which are not commercially viable but still not available to public because of continuing copyright protection. Due to the difficulties in obtaining permission on these works they have confined themselves to government documents, old texts, and books from China and India where copyright laws are not very stringent. (<http://cyberlaw.stanford.edu>2004)

In a discussion on copyright issues pertaining to orphan works in various countries, we found that in India there is no equivalent of US orphan works and also there is very little debate on this topic. (Gillesen, 2005)

In our collection at IIA we have come across a few orphan works. One example is an old painting of the Kodaikanal Observatory dated 1909, other than the date there are no other details available about the painting. So we are still debating whether it should be a part of the open access repository? There can be two approaches to this problem, a) either we upload the image file of the painting in our repository and invite any feed back or response to our action of uploading a material which we term it as ‘orphan work’ or b) wait until we completely exhaust all our attempts to trace the author of the work and upload it with proper permission. In the first approach, we may succeed in getting some response and also the purpose of uploading in Open Access Repository will be meaningful. Alternatively if we have to wait to trace the owner of the painting, we are not convinced whether we could succeed in any reasonable time to achieve it.

6 Conclusion and Recommendations

In this paper we have come across many unanswered questions, which need to be debated and clarified. In course of our work we have searched several archival databases both in UK and USA and it is our common experience that in these archives we have not found a database where full text is available. However they all provide a long list of finding aids. These aids point to us whether the information we need is available in that particular archives. If located, we are expected to write to the concerned person for a copy of the article or letter or any other information. Usually the archives charge a fee for reproduction of the information and a hard copy or a microfilm is sent. It is not very clear if the material requested is still under copyright or the institute who is the owner has restricted its use or the individual owning the copyright has forbidden its free access. As a proponent of open access, one is tempted to recommend that all historical material be freely available to the users. The library schools in India should focus the topic of “Digital Copyright” in their curriculum and also work closely with policy makers to design a well-defined “Digital Copyright Act” in India. The experience and the expertise of the working librarians in the digitizing work of library contents should be properly utilized in this. Workshops and seminars should be organized on this to create awareness and importance of the need and utilization of the need and utilization of ‘ethic’ in collecting and disseminating information.

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