

Managing the contents of Indian Institute of Astrophysics (IIA) Archives - Copyright Issues

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Abstract. Archives and museums all over the world face challenges in facilitating the access to their contents and also protecting the rights of the author, more so, in the case of unpublished works. At the Indian Institute of Astrophysics (IIA), the archive was set up two years back comprising of all the archival material in various forms available within the Institute. Since IIA is more than 220 years old the collection includes more than 5000 items in various formats which are of historical importance and environmentally sensitive.

While the contents of many of the archival materials are available in digital form, and accessible from our open access repository, still there are some contents which are not digitized as we feel they need to be scrutinized for copyright compliance. Also there are issues concerning the use of contents in physical form available in the archives, such as fair use, transfer of ownership, ownership rights, exclusive rights and especially the copyright provisions for published and unpublished works etc. need to be addressed keeping in mind the existing archival policy. Since we intend that the IIA archival material will be used purely for academic and research purposes, we are in the process of designing our own guidelines as the Indian Copyright Act is inadequate to address these issues.

In this paper we have discussed some of the challenges faced by the IIA archives with reference to the use of both physical and digital contents and the attempts made to keep the balance of providing access and not infringing the copyright laws.

1. Introduction

The society of American Archivists, Glossary defines the term Archives as The 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 value. Historically, the term referred more narrowly to the noncurrent records of an organization or institution preserved because of their continuing value (Bellardo 1992). For the purpose of creating and maintaining the Archives at IIA, we have defined it as a collection of documents, manuscripts, correspondence datasheets, instruments, photographs, artworks, audio-visual materials belonging to the Madras and Kodaikanal observatories during the 18th, 19th and 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 persona l capacity (e.g. any drawings, paintings, photographs or personal letters) are segregated and permission is solicited from the living relatives of those individuals to whom the items belongs to enables us to re-use them in our archives. (Vagiswari, A., Christina Birdie 2007)

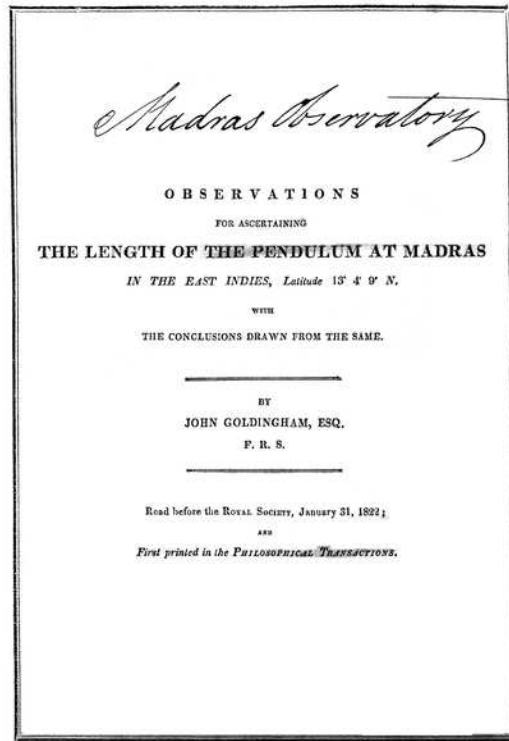


Figure 1. Madras Observatory Observations by J.Goldingham

There are more than 5000 items identified in the IIA Archives collection in different forms. These range from correspondence, manuscripts, printed documents, maps, handwritten observational data, photographs, sketches, paintings, instruments, glass plates with original observational recordings.

2. Contents and the Copyright

While creating the archives and the accessibility to its contents the role of copyright in selecting materials for digitization needs focus. Although a detailed discussion of copyright law with respect to the digital contents is beyond the scope of this article, we have attempted to address important issues within the content of Indian copyright law pertaining to the print format and apply it to the digital environment.

The contents in IIA archives can be broadly classified as published, unpublished and anonymous work or Orphan works.

Published works include Star Catalogues, Records of Observations, Monographs and some books authored by our earlier directors. (Eg.) Pogson's Catalogue of Variable Stars, Madras Observatory Observations by Goldingham, Kala Sankalitha by Warren(Figure1.)

Unpublished work refers to Log books, Observational data, Hand written manuscripts which are more than 200 years old. Unpublished work also includes Plates and Photographic negatives of astronomical observations.(Figure2.)

Madras Equatorial Observations, 1888, September 11.
 Sroughton & Simms Equatorial Declines 90°

Upper or Eastern Nucleus of Comet				Refraction
h	m	s	"	
6	20	10	0	0.000
6	20	11	0	0.000
6	20	12	0	0.000
6	20	13	0	0.000
6	20	14	0	0.000
6	20	15	0	0.000
6	20	16	0	0.000
6	20	17	0	0.000
6	20	18	0	0.000
6	20	19	0	0.000
6	20	20	0	0.000
6	20	21	0	0.000
6	20	22	0	0.000
6	20	23	0	0.000
6	20	24	0	0.000
6	20	25	0	0.000
6	20	26	0	0.000
6	20	27	0	0.000
6	20	28	0	0.000
6	20	29	0	0.000
6	20	30	0	0.000
6	20	31	0	0.000
6	20	32	0	0.000
6	20	33	0	0.000
6	20	34	0	0.000
6	20	35	0	0.000
6	20	36	0	0.000
6	20	37	0	0.000
6	20	38	0	0.000
6	20	39	0	0.000
6	20	40	0	0.000
6	20	41	0	0.000
6	20	42	0	0.000
6	20	43	0	0.000
6	20	44	0	0.000
6	20	45	0	0.000
6	20	46	0	0.000
6	20	47	0	0.000
6	20	48	0	0.000
6	20	49	0	0.000
6	20	50	0	0.000
6	20	51	0	0.000
6	20	52	0	0.000
6	20	53	0	0.000
6	20	54	0	0.000
6	20	55	0	0.000
6	20	56	0	0.000
6	20	57	0	0.000
6	20	58	0	0.000
6	20	59	0	0.000
6	20	60	0	0.000

Figure 2. Pogson's Logbook



Figure 3. Photograph of Pogson & Family from personal collection

52. Certain acts not to be infringement of copyright.--
1. The following acts shall not constitute an infringement of copyright namely--
 - a. a fair dealing with a literary, dramatic, musical or artistic work not being a computer programme for the purposes of--
 - i. private use including research;
 - ii. criticism or review, whether of that work or of any other work;
 - aa. the making of copies or adaptation of a computer programme by the lawful possessor of a copy of such computer programme from such copy--
 - i. in order to utilise the computer programme for the purpose for which it was supplied; or
 - ii. to make back-up copies purely as a temporary protection against loss, destruction or damage in order only to utilise the computer programme for the purpose for which it was supplied;
 - b. a fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events--
 - i. in a newspaper, magazine or similar periodical, or
 - ii. by broadcast or in a cinematograph film or by means of photographs.
 - c. the reproduction of a literary, dramatic, musical or artistic work for the purpose of a judicial proceeding or for the purpose of a report of a judicial proceeding;

Figure 4. Indian copyright act (1957) Section 52

- Indian Copyright Act(1957) Section 52
52. Certain acts not to be infringement of Copyright. - -
- p. the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access:
- Provided that where the identity of the author of any such work, or, in the case of a work of joint authorship, or any of the authors is known to the library, museum or other institution, as the case may be, the provisions of this clause shall apply only if such reproduction is made at a time more than fifty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than one is known from the death of such of those authors who died last;

Figure 5. Indian copyright act (1957) Section 52p

The archive also has a good collection of old photographs resourced within the institute. Some of the old photographs in the archives collection are donated by the living relatives of our earlier directors.(Figure3.)

There are also works which can be classified as anonymous Orphan works which require special attention. Eg. Kodaikanal Observatory Painting.

The archives is in possession of an old canvas painting of Kodaikanal Observatory dated 1908. We have made attempts to find out the author of the painting which remains anonymous till today. This painting has a close resemblance to a photograph of the Kodaikanal Observatory taken around the same time.

As far as the Copyright Clauses which govern the possession and use of these collections are concerned, we have taken adequate care to apply the existing Indian Copyright act of 1957 to those items for which our institute holds Copyright. We have also applied the fair use clause of the section 52 of the Indian Copyright act which does not constitute an infringement of copyright for use of those contents.(Figure4.)

As far as the unpublished material are concerned, Indian Copyright act (1957) section 52, sub clause "P" also gives guidelines to use them as long as the contents are within the copyright clause,(Figure5.)

Indian copyright act (1957) specifies that copyright for any work exists for 70 after the death of the author / creator. The act does not touch on orphan works.

3. Digitization

3.1. Selection Criteria

Many Archives would like to digitize their primary sources and put them in their repository. There are three aspects to the Archival contents which need to be kept in mind while selecting the contents for digitization.

3.1.1. The contents for which the Archives holds the copyright

In case of IIA Archives, most of the items in the form of publications, manuscripts, correspondence, photographs, observational data, hand-drawn sketches, and paintings were created by the individual scientists and employees of the Institute while they were employed in the institute. Digitizing these contents and uploading them in the institute's repository is well within the copyright norms.

3.1.2. The contents donated by relatives to the Archives

The Content created by our scientists while they were in the observatory but the originals were held by the families which were transferred to IIA Archives later by the family member, thus transferring the ownership and copyright to the Archives.

Examples,

- a. Some of Evershed's hand drawn sketches, correspondence and manuscripts were transferred to IIA Archives by Mrs. Evershed when she visited IIA much later after Evershed's death.
- b. Pogsons papers and photographs in original were transferred to IIA Archives from the family's personal collections-transferring the ownership and copyright to the IIA Archives. We have digitized most of these contents and we will be uploading them in our repository soon.
- c. Some of the items belonging to Bappu's collection, both the ownership rights and copyrights were transferred to the IIA archives. We are in the process of digitizing these contents and will upload them in the repository.

3.1.3. The contents created elsewhere

The materials received from outside sources, but created by our scientists while they were elsewhere. For the purpose of digitization of these contents, the IIA Archives has classified these contents under transfer of ownership and copyright rights and accommodated it in our archives for display and access. (e.g.)

- a. Evershed papers transferred to IIA from RAS but not copyright. Hence the access to digital content are restricted however the metadata are uploaded in the repository

As far as the ownership and copyright is concerned, we have taken care to get the ownership transferred to our archives and by the usually copyright norms, we have retained the copyright with IIA Archives.

4. Archives Access Policy

As a policy IIA has decided to give access to most of these archival contents for research purpose. We have formulated our Archival Access Policy which is available in the website http://www.iiap.res.in/facilities/library/library_archival_policy while access to

most of these items is available in the institute premises traditionally, we have also created the Open Access Repository to include these historical contents to make them accessible via the Internet.

The Access Policy has created a host of challenges when they are in the digital form. We have to take a closer look at the existing copyright act. As Indian Copyright Act (1957) does not make adequate provision for the use of historical contents in digital form, we have formulated our own display access policy based on the access permit to historical contents in print form. In doing so, we have taken care to protect the interests of the creator/author and the copyright owner.

These are some published volumes of government of India survey reports and maps, while these reports have already digitized, we have not uploaded them in the repository since the government has restricted us to put it on the internet for security reasons.

5. Challenges and Restrictions

Even though IIA archives has a liberal access policy, in certain cases it has restricted the free use of some archival material due to certain policy decisions of the archival committee and other authorities.

Access Restrictions

5.1. Ownership rights alone transferred to the Archives

In case where ownership rights alone are transferred to the archives, the copyright owner still has the right to decide whether the material can be used. Hence the consent of the copyright holder is necessary to use that information. In many cases the applicant has to give an undertaking that no document or substantial portion of a document will be published or produced without the permission of the author or his legal representative.

5.2. Contents out of copyright-Use permitted only for research purpose

In cases where the contents is out of copyright the archives permits the use of the material only for purposes private study scholarship or research. Use of these materials for commercial purpose is restricted.

5.3. Permission granted to republish in a book/journal sold commercially

The IIA archives committee does not normally permit the republishing of an material for commercial purpose held by it, but we have encountered a situation where the committee had to take a decision on translation and republishing a monograph held by IIA archive. Republishing/reprinting of those contents is permitted only with the approval of IIA Archives Committee.

Example: The scientific monograph written by one of our scientists in 4 different languages were digitized and uploaded in our repository with the disclaimer that this monograph can be downloaded for research purpose only.

There was a request from a scientist to translate the monograph from English to vernacular language stating that the contents are useful to the local people who can un-

derstand the language. There are 2 issues to this request

1. One is that IIA Archives did not assign the translation work to this individual
2. There was a request later from the individual to print the translated version and distribute it for a fee.

Since there was no provision in Indian copyright act to address the situation of re-publishing scientific contents for a fee, and at the same time the argument put forward by the individual who has translated it that this scientific content in the vernacular language is an important and useful document was reviewed by IIA Archives committee. As a policy the committee has come forward with a decision that the translated monograph can be re-published jointly by the individual organisation and IIA Archives.

5.4. Sensitive contents digitized but withheld for uploading security reasons

These are some published volumes of government of India survey reports and maps, while these reports have already digitized, we have not uploaded them in the repository since the government has restricted us to make it accessible on the internet for security reasons.

5.5. Contents in physical/part form in fragile condition

IIA archives sometimes restrict the use of archival material when the condition of the book or manuscripts is in a fragile condition. Access may be restored when the manuscript/book is repaired under the supervision of the Archivist.

6. Recommendations

Copyright Act of other countries like USA, UK, Australia have special clauses to cover the access to archival contents from the archives in both print and digital form (US, UK, Australia Copyright). Indian copyright Act (1957) does not include neither section nor clause for access and use of these archival contents.

- Indian copyright act should include the term "Archive" wherever appropriate in addition to Libraries and Museums. (Section 52)
- As archival contents are unique and not available in multiple copies
 - The provision should be made in our copyright act to include the access to these contents under "fair use" for free download.
 - A distinction to be made between published and unpublished works especially if they are to be digitized. Access to unpublished work should be facilitated and treat it as the published work used for scholarly purpose.
- Also special efforts should be made to digitize the unpublished work in the archives to facilitate easy access to physically challenged and those in the rural areas who would otherwise find it difficult to approach the archives due to financial reasons.
- Give permission for students enrolled in distance education related to Archives study, to use information freely. Copyright act should be amended to facilitate the use of archival material without awarding unprecedented control over copyrighted material in all forms under the fair dealing clause.

References

- Bellardo, Lewis J., & Bellardo, Lynn Lady (comp.,) 1992, in A glossary for archivists, manuscript curators, and records managers, (Chicago: The Society of American Archivists), 3
- Vagiswari, A., & Christina Birdie, 2007, in International Conference on Semantic Web & Digital Libraries, ed. A.R.D.Prasad & Devika P.Madalli (Bangalore: Documentation Research & Training Centre, Indian Statistical Institute),559
- US Code: Title17, 108 Limitation on exclusive rights: Reproduction by libraries and archives.
- UK Copyright designs and patents act 1988: libraries section 37-43
- Australia, Copyright act 1968. Division 5 copying of works in libraries and archives.