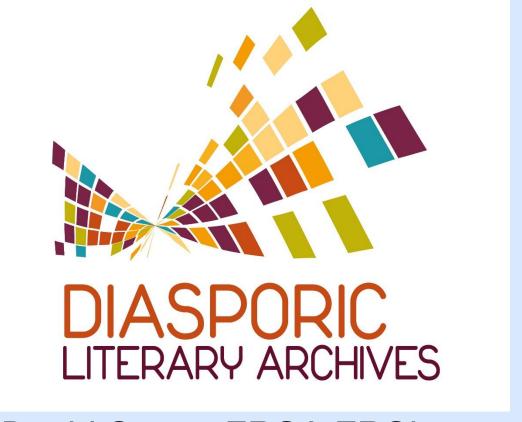
### **Archives and Copyright**

The principal themes of the Background Paper

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### WHY A "BACKGROUND PAPER"?

- What the Background Paper aims to do
- No typology for Archives as yet
- But opportunities for Archives to draw upon the methodologies and typologies developed for Libraries and Museums
- Possibly fewer areas of contention in the intersection of Archives and Copyright

### THE MEANINGS OF "ARCHIVES"

In many languages, the word for archives has multiple meanings:

- Archives as documents (archival collections)
- Archives as buildings (archival repositories)
- Archives as organizations (archival institutions)
- A descriptive definition of archival collections is provided by the **Universal Declaration on Archives** (as adopted by UNESCO)

### **ARCHIVAL INSTITUTIONS**

- Archival institutions may charge for some of their services (especially copying), but they are essentially not-for-profit organizations.
- Archival collections may be held in many types of institutions
- These include archives, libraries and museums (often grouped as a trio)
- But also: universities, hospitals, private foundations, authors' houses, religious organizations, charities, arts bodies, community groups, businesses and government departments
- Archival collections are thus not restricted to institutions known as "Archives"

### CATEGORIES OF ARCHIVES

The Background Paper enumerates a wide range of types of archives, as follows:

- Archives of archaeology
- Architectural archives
- Business archives
- Archives of community groups
- Archives of disability
- Educational archives
- Film archives
- Archives of folklore and traditional beliefs
- Archives of foundations, societies, clubs and associations
- Archives of heraldry, vexillology and sigillography
- Archives concerned with human rights and liberation struggles
- Archives of indigenous people
- Labour and trade union archives
- Legal, judicial and notarial archives
- Archives of lesbian, gay, bisexual and transsexual (LGBT) movements
- Archives of literature, art and the theatre
- Archives of local, municipal and territorial governments

### CATEGORIES OF ARCHIVES, CONTINUED

The enumeration of this wide range of types of archives continues (M-Z):

- Medical and hospital archives
- Military archives
- Mixed media archives
- Archives of museums
- Music archives
- Archives of national governments and their departments
- Oral history archives
- Parliamentary archives
- Photographs
- Archives of political parties
- Religious archives
- Archives of science, technology and mathematics
- Sports archives
- Archives of transport and travel
- Archives concerning women and women's rights

### "SPLIT COLLECTIONS"

Although archival items are usually unique, archival fonds may be divided across several institutions, and sometimes across several countries. For example:

- The papers of the St Lucian poet Derek Walcott are divided between the University of the West Indies (Trinidad) and the University of Toronto
- The papers of Wilson Harris (Guyana) are in four principal locations: the University of the West Indies (Jamaica), the Universities of Texas and Indiana, and Cambridge University Library in the UK
- The papers of the author Claribel Alegría (Nicaragua / El Salvador) are partly in the Biblioteca Nacional de Chile and partly in Princeton University (USA)
- Split collections are often held in different countries under different copyright regimes
- The correspondence of any particular cultural creator or public figure is **always** split between multiple institutions (normally in the archival collections of the recipients, not those of the creators)

### DIASPORIC ARCHIVES

Certain types of cultural archives are diasporic in nature and often cross boundaries. Examples of Caribbean and Latin American literary authors include:

- Papers of Rubén Darío (Nicaragua) in Arizona State University
- Papers of Gabriel García Márquez (Colombia) in the University of Texas
- > Papers of Carlos Fuentes (Mexico) controversially acquired by Princeton University
- Papers of Mario Vargas Llosa (Peru) also in Princeton University
- Papers of V. S. Naipaul (Trinidad and Tobago) in the University of Oklahoma, Tulsa
- Papers of his younger brother Shiva Naipaul in the British Library, London
- Many other "diasporic" literary archival collections are identified at <a href="https://www.diasporicarchives.com">www.diasporicarchives.com</a>, notably Jorge Luis Borges and Julio Cortázar (Argentina) and Samuel Selvon and Earl Lovelace (Trinidad and Tobago)

# BORN-DIGITAL ARCHIVES AND DIGITIZED ARCHIVES

These are the two types of digital archives.

- Most archivists see born-digital archives as simply archives in another format, to which all the normal rules of archives apply
- Digitization, by contrast, refers to making digital copies of bornanalogue archival materials and is fraught with copyright challenges

# THE IMPORTANCE OF MAKING COPIES OF ARCHIVES

- Preservation copying (analogue and digital)
- Bringing together complementary collections by copying
- Reconstituting archival collections which have become split
- Copies for exhibitions
- Copies for safety and security, including "archival safe havens"
- Making copies rather than originals available to users
- Copying for users' research purposes
- Copying for teaching purposes

### WAYS IN WHICH ARCHIVES CROSS BORDERS

- Archival rescue
- International cooperation to preserve unique archival collections
- Digital preservation across borders
- Exhibitions and other loan arrangements
- Copies for research
- Sharing copies to consolidate or re-unite "split collections"
- Copies for preservation, safety and security

### "ORPHAN WORKS" IN THE WORLD OF ARCHIVES

- "Orphan works" are commonplace in archives
- Archival copyright holders can be especially difficult to trace
- A key reason for this is that the archival collections generally have little exploitable financial value
- This is still more true of individual archival items
- Archives are therefore especially susceptible to the "orphan works paradox"
- The "orphan works paradox" indicates that the lower the financial value of a work, the less likely it is that the copyright owner can be traced

### THE PARTICULAR EXAMPLE OF CORRESPONDENCE COLLECTIONS

- Correspondence collections present a strong example of the difficulties faced in clearing archival copyright
- One correspondence collection may include several thousand copyright holders
- The copyrights have little or no commercial value
- Copyright holders are very difficult to trace
- Even when traced, the copyright holders are often unaware that they own these copyrights
- A single letter [one piece of paper with no commercial value] may have its copyright shared between 20 or more heirs
- Correspondence collections are consequently an under-exploited part of cultural heritage

### COPYRIGHT LEGISLATIONS AND ARCHIVES

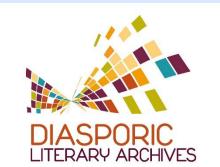
- Published and unpublished works
- Wide variation within national legislations
- Variations in duration
- Special clauses for unpublished works in some legislations
- The importance of the public domain
- The limited relevance of Extended Collective Licensing in respect of archives

### IN A NUTSHELL...

- Archival institutions exist for the public good, and are non-commercial
- Archival institutions need to make copies of their holdings for purposes of preservation, access and scholarly research
- Archivists wish to promote access to their collections, but are often troubled and thwarted by copyright uncertainties
- Copyright risk-assessment is an important part of the work of archivists; attitudes and approaches, however, vary from country to country
- Some collections, notably correspondence collections, remain under-used and under-exploited because of the difficulty of tracing copyright owners
- When traced, archival copyright owners are usually happy to grant permissions and do not usually expect remuneration

### IN A NUTSHELL...

- Archival documents are unique in nature
- They are not generally created for financial gain
- Depending on the nature of material and national legislations, they maybe subject to copyright law, often under the heading "unpublished works"
- Rules for copying archival materials vary from country to country
- Component parts of any archival fonds may be held in several institutions in several countries, and hence subject to different copyright legislations
- Individual archival collections may have hundreds and even thousands of copyright owners
- Many archival materials therefore come into the category of orphan works; to conclude, "archival orphanages" need WIPO's assistance





Thank you. The Background Paper is a work in progress. Your comments, questions and suggestions will be very welcome.

David Sutton