

## COPYRIGHT, OWNERSHIP RIGHTS AND THE PRESERVATION CONUNDRUM

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### *Synopsis*

Speaking of intellectual property rights, the Indiana University copyright legal scholar Kenneth Cruz has stated: "If we do not manage them to our advantage, they will manage us and dictate how we conduct our scholarly work."

This presentation will explore the tension between protections granted to the creators of intellectual property, other rights that may come into force as a result of "ownership" of that property, and the relationships between these rights and the notion of "fair use"<sup>1</sup> in the research library context. I will argue that the balance between these rights is being severely tilted in favour of an exclusivity of both authorial and ownership rights, in ways that damage the notion of public access protected in the concept of "fair use." I would like to suggest that librarians and archivists bear a critical responsibility in demonstrating through our own copyright practices our willingness to uphold those principles of fair use.

### *What is Copyright?*

To use Kenneth Cruz's synopsis: "Copyright law now generously provides automatic protection for printed works, software, art works, photographs and videos, and nearly everything you can find on the Internet. The term of protection is also extensive. In general, copyright lasts for a long time: the life of the author who creates the work, plus fifty years."<sup>2</sup> Copyright protects 'original works of

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<sup>1</sup> Fair use: broadly allows library copying for teaching and scholarly use. Fair-use statute gives no exact parameters. Fair use depends on the circumstances of each case. The law offers four factors to evaluate and to balance in any determination of fair use: 1 the purpose of the use, including a non-profit educational purpose; 2 the nature of the copyrighted work; 3 the amount of the copying; and 4 the effect of the copying on the potential market for, or value of, the original work.

<sup>2</sup>Duration of copyright: Under US law, works published prior to Jan 1978 are covered for 75 years. For those after 1978, cover is life of the author, plus 70 years; works published before 1923 are considered to be in the public domain; published after 1923, are assumed to be 23 years + 67 if "renewed"; works for hire and ambiguous authorship, 120 years.

authorship<sup>3</sup> that are 'fixed in any tangible medium of expression'. The 'original work of authorship,' in order to be eligible for copyright protection, must also be 'fixed' in some physical form capable of identification and having an existence of more than 'transitory duration.'"

The application of copyright law, and I would argue all other rights presumed by dint of "ownership" within a public repository setting, should be consistent with the overall objectives of libraries: the enhancement of learning and access to information for all. Richard Schockmel<sup>4</sup> emphasizes that copyright seeks to enhance progress in the arts and sciences by granting *limited* protections to the exclusive rights of authors, in order to protect and promote an economic environment in which further creative production is rewarded. This principle is established in the U.S. Constitution: " ..by securing for limited times to authors and inventors, the exclusive rights to their respective writings and discoveries.." The ambiguity of this language shows the tension between authorial rights and public need, with the limitation of such rights being a clear acknowledgment of this tension.

The rights embraced by the U.S. constitution are reflected in other national<sup>5</sup> and international instruments, such as the Berne Convention,<sup>6</sup> and more recently the World Intellectual Property Organization's Copyright Treaty,<sup>7</sup> which broadly aim to protect rights of the creators of literary and artistic products.<sup>8</sup> The details of these instruments, their interactions and interpretations are arcane, and not within the scope of this presentation. It is probably sufficient to say that all libraries are aware of the intent of these legal codes and broadly seek to uphold them, whether or not they are technically legally enforceable,<sup>9</sup> based on a common understanding of both the concept of fair revenue return for intellectual work and fair use for teaching and research.

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<sup>3</sup> The U.S. Supreme Court ruled in 1991 that "garden variety," alphabetical, white-pages telephone books lack the minimum creativity to be copyrightable. You may have copyright protection for your original compilations of facts, but not for the facts themselves. Authors generally own the copyrights to their works, although an employer may be the lawful copyright owner under the work-for-hire doctrine.

<sup>4</sup> Writing in the *J. of Academic Librarianship*, Jan 1996:15-25.

<sup>5</sup> The Acts most relevant to the preservation question are the Copyright Act of 1909, which was in effect for 69 years and the current Copyright Act of 1976, which took effect January 1, 1978.

<sup>6</sup> See Appendix II.

<sup>7</sup> See Appendix III.

<sup>8</sup> Foreign copyrights: works which are copyright in the country of origin may fall into public domain in another because they do not comply with the formal requirements of the second country. Under the "Restoration of copyright" concept the Uruguay Round of GATT and WTO seek to redress this.

<sup>9</sup> The Berne Convention substantially expands the number of countries [54] having reciprocal relations with the United States. However, the Convention, which became effective on March 1, 1989, is entirely prospective.

### *Challenges to Fair Use*

In recent years this delicate balance has shifted towards affirming enhanced rights for copyright "owners," usually meaning commercial publishers. Although this shift is taking place primarily in the arena of scholarly publishing and electronic access, our efforts to preserve original printed texts are no less instrumental and momentous in establishing legal precedence upon which future world copyright code may be established. The question is: Are libraries going to allow themselves to be victims of this new environment imposed upon them by their lawyers, who are nervously accepting the dictates of the publishing industry? I argue that if we do not keep up the pressure to assert our rights to "fair use," which have guaranteed the public access which lies at the heart of library services, we will lose them. The Association of American Publishers is claiming exclusive rights which would seriously diminish fair use. Under the models proposed, copyright holders can claim fees even for the copying of out of print works -- at a level established by the copyright holder. Other blatant attempts at intimidation by the publishing industry include copyright notices on some published materials which clearly have no basis, at least in U.S. copyright law. The American Library Association has suggested that such misleading copyright notices be over-written with something to this effect: "All materials in this publication subject to copyright may be photocopied for the non-commercial purpose of scientific or educational advancement."

Worse, are libraries being forced by the shifting economics of what has in the past been a richly tax-based public sector to compromise their own commitments to free access through the imposition of fees which cannot be realistically met by their sister libraries? Although a presentation on copyright may not seem a likely venue to address the wider issues of the decline in public sector funding in such fields as education, libraries and museums, it should be kept in mind that the former GATT has used the rubric of the Trade Related Aspects of Intellectual Property (TRIPS) provisions in what might be seen as a broad-based assault on these tax-subsidized public service institutions. As IFLA negotiators to the WTO Ministerial Conference have noted, GATT and its successor organization, WTO, see these institutions as unfairly competing with the private sector information providers. WTO's provisions on services seek to force public service institutions into competition with private providers. Enhanced profitability for these commercial sector companies is then guaranteed through new copyright protections imposed by the World Intellectual Property Organization.

As Duane Webster, Executive Director of the Association of Research Libraries, has stated -- "Fair use and the economic incentive to publish are both recognized in the copyright law as integral to social discourse and the general benefit of society; market share and profitability of the publisher are not."

I argue that the notable shift from what used to be considered reasonable limits on exclusive rights of copyright owners comes not only from the erosion of public information assets in the face of global privatization, but also in part from the dominance of new forms of intellectual property in the discourses of copyrights--most notably from software, entertainment products and digital products. The enormous economic power of these industries (and their lobbying power in the U.S. Congress), the fact that these are copyrights owned by corporations, the ease with which those products can be copied, and the "absolute" nature of making such a copy, have undermined the balance between fair use in the public good and protection of intellectual property, in the interests of encouraging scientific and cultural production. The protection of intellectual property has become a commercial imperative, to the detriment of public access. These economic shift are ominously alluded to in the preamble to the WIPO Copyright Treaty, which refers to the "new economic, social, cultural and technological developments" which the treaty seeks to address.

Through the vigilance of library and scholarly association in the United States, this assault on the language of fair use has been warded off for now, although new attacks on the intentional ambiguities of the copyright law are launched almost daily. Most recently these attacks have been launched under the guise of the *Digital Millennium Copyright Act*, which sought to eliminate fair use considerations from almost all clauses dealing with digital copies.<sup>10</sup> The U.S. Congress has cleverly used both the World Intellectual Property Organization<sup>11</sup> and the Word Trade Organization to reinforce the exclusive protections of profitable corporate copyrights at home and in the world arena, when such provisions were repeatedly defeated in the domestic legislative process. An example is WIPO's protection of databases, which had never enjoyed protection under U.S. copyright law.

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<sup>10</sup> A "tangible medium" may be print or electronic. It may be a Web server or a floppy disk. Therefore, copyright protects almost everything on the Web. Copyright-protected material on the Web is also subject to fair use and other "limitations" on the rights of the copyright owner. The circumstances of unrestricted, unconditional public access to materials voluntarily placed on the Web by the copyright owner may easily tip some of the four factors in favor of fair use in some situations.

<sup>11</sup> In principle the WIPO agreement updates the Berne Convention, reinforcing the notion of natural protection of intellectual property and specifically extending its provisions to include new media. 119 countries are signatories of the Berne Union. These rules and principles include conditions for protection, the basic principle of national treatment, principles of automatic protection and independence of protection and a mechanism for identification of the country of origin of a work. Since these principles are definitely established and such a great number of States have adapted their laws and legislative practices to them, it seems feasible and well-founded to build new protection for literary and artistic works upon these same principles.

### ***Reclaiming our Rights for Preservation Copying***

Based on these principles of fair access, what do we need to consider when evaluating rights governing the preservation copying of texts, and what rights and commercial values can we assume to confer on the facsimile products of our preservation efforts? To quote Robert Oakley, "Since one of the key elements of fair use is the market value of a work, it is reasonable to inquire at what point the market value is sufficiently diminished to permit a generally desirable activity such as preservation copying to go forward". He introduces the concept of a "half-life" where the value diminishes exponentially with age. He also raised the question of "compulsory licenses" allowing preservation copying of materials over 10 years; this would also allow for distribution of preservation copies to other research libraries without penalty. A royalty fee of 0.1 cents per page was suggested as a reasonable rate for such a license.

The clear right to create a preservation copy<sup>12</sup>--now 3 copies under the *Digital Millennium Copyright Act*<sup>13</sup> --becomes complex when libraries need to produce multiple service copies derived from that preservation negative at the request of other libraries, which also seek to replace their aging paper originals. Libraries regard this as sensible coordination of preservation efforts, but what are the implications for copyright? Considering this question in conjunction with the right of libraries to make copies of out-of-print materials for their collections, provided that they have taken "reasonable" steps to acquire an unused copy, most libraries have accepted this kind of not-for-profit distribution of preservation copies as a sensible and pragmatic interpretation of the law. The Center for Research Libraries in Chicago, which is home to a number of area microfilming project, including the Southeast Asia Microform Project, microfilms a number of newspapers from around the world. The Center has a letter of request to newspaper publishes which informs them of its intention to film, seeks their consent and offers them a service positive. In most cases the Center is able to retain the camera negative, and a print master, and is able to obtain permission to sell copies on a non-commercial, cost-recovery basis. Sometimes the Center will enter into agreements involving royalty payments, which may be between \$2.50 to \$5.00 on each reel sold.

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<sup>12</sup> Preservation copying is protected under Sect. 108 of the US code: limitations on exclusive rights: reproduction by libraries. Under this provision libraries are permitted to make copies for inter-library borrowing; it allows for single copy for research use, provided copyright notice is given; and for replacement copies. The *Digital Millennium Copyright Act* revises the law of preservation copying in two important respects. First, it expands the list of permissible circumstances for making preservation copies by allowing the library to preserve the work if its "format" has become obsolete. It also provides that the library making a preservation copy in any medium may make up to three copies of that work, instead of just the single copy previously allowed.

<sup>13</sup> See Appendix 1 for synopsis.

In the case of a serial which is still being published, and when relatively recent issues are under consideration for preservation -- this scenario is one most commonly faced with newspapers, which have such a short useful life in paper form -- it is possible that the publisher may require a royalty fee for the copies made in excess of the permitted preservation copies. Commercial micropublishers, such as Norman Ross and UMI routinely engage in negotiations with such publishers as the Los Angeles Times, for which they become a distributor of back files, with a royalty fee being paid.

### ***Ownership Rights***

As noted above, we cannot claim copyright of a piece simply because we own it, although a library may indeed own a copyright, by purchase or deed of gift.<sup>14</sup> Under the concept of transformative value<sup>15</sup> some reformatting activity, if it also entails extensive indexing and organization, may qualify as copyrightable. Presumably WIPO's extension of copyright to database creation has implications on how preservation products will be treated, particularly if they are in a digital medium and include an access component.

What most repositories could claim is a right of ownership which entitles them to an acknowledgment as the original holding institution and monetary remuneration, at least on a cost-recovery basis for the copying of their materials. Clearly this remuneration varies a great deal with the nature of materials in question. Much of the material held in research libraries in and on Southeast Asia has little commercial value, with the exception of manuscripts and photographs which could be reproduced in a commercially published collection, and which may have some commercial value in the art market. As in the case of copyright law, repositories have long made a distinction between the commercial use of high quality copies and research use of the contents. This same principle is now recognized in the digital environment where even for-profit companies, like Corbis, make available low quality digital images over the web for research use, and as an enticement to researchers to pay the very high price of commercially viable reproductions.

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<sup>14</sup> Selling of Copyright: Copyrights can be bought, sold, willed to someone, or simply given away. A transfer of the copyright or an exclusive grant or license to use the work is a transaction, however, that must be in writing, and the writing must be signed by the party making the transfer or granting the exclusive right to use the work.

<sup>15</sup> Transformative value typically covers such products as indexes, concordances or other works involving substantial value-added creative work.

In other words, we should keep in mind that our microfilm output has really no commercial value, in the sense that film has no potential to be reproduced in a manner that could be commercially useful. Film copies have no intrinsic art value; they are only a convenience for the storage of content, which would otherwise be lost to the research community.

I would suggest that the interests of libraries can be best served by recognizing the primacy of preservation filming as a pragmatic response to the urgent problem of physical deterioration. Libraries engaging in this activity should establish working guidelines which recognize real copyright requirements, ensuring that copyright notices are included in their facsimile copies, acquiring permissions only for those works which are clearly still subject to copyright and if distribution beyond the allowable preservation copy is involved. At the same time, repositories should be mindful of their commitments to providing public access, not only to their own users, but to the greater research community, and ensure that preservation copies are made available at realistic prices.

### ***PROPOSED PRESERVATION COPYRIGHT DECLARATION***

The Chiang Mai Declaration upholds the right of libraries and archives to copy published or unpublished works for the purpose of preservation. This right is protected under Title 17 of the U.S. Code, section 108 and in international law. Repositories will observe the following conditions before reproducing library materials for preservation purposes:

1. Material comes from collections that are open to the public.
2. Reproduction is made with no purpose of commercial advantage.
3. Notice of copyright is included in the reproduction.
4. For published works not in the public domain, a suitable replacement at a fair price will be sought, and reproduction undertaken only if an acceptable replacement is unavailable.

Abiding by these guidelines, The repositories which are signatories of the Chiang Mai Declaration will engage in preservation reproduction in the full range of formats, whether produced in house or at the Libraries' request through cooperative projects or by commercial vendors.

## **CULTURAL PROPERTY PRESERVATION THE UNESCO MEMORY OF THE WORLD PROGRAM**

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Documentary heritage in libraries and archives constitutes a major part of the memory of the peoples of the world and reflects the diversity of peoples, languages and cultures. But that memory is fragile. A considerable proportion of the world's documentary heritage disappears through "natural" causes: acidified paper that crumbles to dust, leather, parchment, film and magnetic tape attacked by light, heat, humidity or dust.

It would take a long time to compile a list of all the libraries and archives destroyed or seriously damaged by acts of war, bombardment and fire, whether deliberate or accidental. The Library of Alexandria is probably the most famous historical example, but many other known and unknown treasures have vanished in other countries.

### ***Preservation and Access***

Recognising that urgent action was required to stem the disappearance of vast parts of the world's documentary memory, eight years ago in 1992 UNESCO launched the "Memory of the World" Programme to protect and promote that heritage.

The first objective of the Programme is to ensure the preservation, by the most appropriate means, of documentary heritage, which has world significance, and to encourage the preservation of documentary heritage, which has national and regional significance. A twin objective is to make this heritage accessible to as many people as possible, using the most appropriate technology, both inside and outside the countries in which it is physically located.

Another important element of the Programme is to raise awareness in the Member States of their documentary heritage, in particular aspects of that heritage which are significant in terms of a common world memory.

Finally, the Programme seeks to develop products based on this documentary heritage and make them available for wide distribution, while ensuring that the originals are maintained in the best possible conditions of conservation and security.

### *Programme scope and structure*

The scope of the Programme is, therefore, vast and involves a variety of partners, ranging from students, scholars and the general public to owners, providers and producers of information and manufacturers of end products. An International Advisory Committee for the "Memory of the World" Programme was appointed by the Director-General of UNESCO to guide the planning and implementation of the Programme as a whole and make recommendations concerning fund-raising, fund allocation and the granting of the "Memory of the World" label to selected projects.

At the national level, it is recommended that a committee be appointed to identify the most significant documentary heritage, to select projects according to the criteria agreed upon and to submit them to the International Advisory Committee.

### *Memory of the World Register*

The participants in the Second Meeting of the International Advisory Committee, held in Paris in May 1995, agreed that a "Memory of the World" Register be developed. This Register will list all documentary heritage which has been identified by the Committee as meeting the selection criteria for world significance, similar in some ways to UNESCO's World Heritage List. However, the nomination and registration of documents under the "Memory of the World" label will have no legal or financial implications.

Individual countries are encouraged to set up their own documentary heritage registers in parallel to the "Memory of the World" Register. National registers identify the documentary inheritance of the nation. The national registers will increase awareness of the importance of the national documentary heritage and the need for a co-ordinated and integrated policy to ensure that endangered documentary heritage is preserved.

The criteria for documentary heritage to be entered on National or Regional Registers are to be decided by the relevant National or Regional Committees. It is recommended, however, that the World Register criteria be used as a model. Restrictions on access to documentary heritage will not systematically prevent entry

on a Register but may reduce the possibility of receiving support through the "Memory of the World" Programme.

### *Technical framework*

The two basic principles which guide the "Memory of the World" Programme are the preservation of documents, holdings and collections and the democratisation of access to them. The two principles are intrinsically linked, since access is conducive to protection and preservation ensures access.

The essential steps for carrying out any project in the "Memory of the World" programme are: selecting and preparing the documents, ensuring that they are placed in a suitable physical environment, photographing them where necessary, digitising them, describing and annotating them, providing the staff to perform these tasks with appropriate ad hoc training where necessary, translating bibliographical descriptions or even the texts themselves where necessary, and ensuring that the resulting product is distributed as widely as possible.

Provision has been made for the establishment of two sub-committees, the first to make regular assessments of the technology that might be used by the Programme and the second to study methods for marketing and selling the Programme's products throughout the world. The first Committee held four meetings devoted to preservation and digitisation of documents. It reviewed recent developments in digitisation and prepared technical guidelines with a table showing, for each type of carrier (texts, still images, sounds and moving images) the recommended digitisation standards for access.

The Sub-Committee has emphasised that the Memory of the World Programme is not a programme for digitisation. In the early days of the Programme there was much pressure from commercial interests to make the central issue the production of CD-ROMs. This pressure had been strongly resisted. The Programme remained

“platform-free”. The primary aims were still the preservation of the world’s documentary heritage and the improvement of access to it. Preservation is the prerequisite of access: access the reason for preservation. The two factors are in a symbiotic relationship.

The Sub-Committee has also discussed the role of microfilm in preserving and providing access to textual material. The Sub-Committee was split about the continuing use of microfilm. One group within the committee argued that

microfilm was a more stable medium than a digital carrier. The medium was well understood and the machinery required was simple. In emergencies, a simple magnifying glass was all that was needed to access a microfilm.

A second group within the committee accepted that microfilm offered good quality images of documents but felt that its use for access was limited compared to a digital copy. In addition, the stability of microfilm is the same as any other photographic medium ie. both the image and the carrier steadily decayed in storage. The rate was dependent upon the storage parameters. Factors such as the Vinegar Syndrome may affect the claims of Life Expectancies of 150 years for microfilm. In addition, the life of microfilm in tropical countries with poor storage conditions may be shorter than the life obtainable in temperate climates.

A digital carrier does decay, however, unlike the analogue image on a microfilm, the digital image could be restored to its original condition by means of error detection and correction algorithms built into the coding. More research and a major debate are needed to clarify thinking about the relative roles of microfilm and digitisation.

The Sub-Committee on Technology agreed that the reasons previously given by the Sub-Committee for the use of digital technology as part of the Programme were still valid. Digitisation was a valuable tool and its use should be considered by custodians of collections for access copies of documents and, in some cases, for preservation copies. It was suggested that a programme for digitisation of documents is the best compromise between the conflicting demands for wider access to collections and for greater protection of the documents.

The Sub-Committee also considered a draft recommendation that digital copies of manuscripts and old printed material under "Memory of the World" use the Hypertext Mark-up Language (HTML 2.0) as the basic presentation tool in order to provide the widest possible access. Through HTML discs can be searched using any Internet search software. The technology can also be adapted for use on other carriers (sound recordings, photographs, newspapers, etc.) and, of course, for documents placed on the World Wide Web.

As to the preservation of the originals, a 'Guide to Preservation Standards' which is available both in paper edition (CII-98/WS/4) and on the Web site provides a compilation of the most relevant standards. It covers the following sections:

- Paper and other traditional materials (such as leather, parchment, palm-leaves, etc.)
- Photographic materials
- Mechanical carriers (including phonograph cylinders, microgroove discs, etc.)
- Magnetic materials (such as magnetic tapes and disks)
- Optical media (audio CDs, CD-ROMs, video discs, optical tapes, etc.)
- Electronic publications (off-line and on-line publications)
- Electronic records and virtual information (such as E-mail messages and personal computer files)

Each section introduces the general problem, draws the list of relevant standards, relating them to each other and pinpointing gaps, provides implementation guidelines and checklists and discusses Third World issues such as climatic and financial conditions, grassroots and traditional preservation techniques and minimum standards.

### ***Financial context***

All projects carried out so far were funded under the UNESCO Regular Programme or its Participation Programme. More projects are awaiting funding. These include, for example the restoration and preservation of 7000 hours of audio material of Chinese folk music, preservation of Tamil palm-leaf manuscripts in India, preservation of Vietnam film heritage, preservation of Lao manuscripts, etc. Extra-budgetary funding for some of these projects has been pledged.

An international fund is being set up within UNESCO to finance some of the Programme's projects. These will include, as a priority, projects with a regional or international dimension. Other projects which meet the agreed criteria could use the "Memory of the World" label without necessarily receiving aid from UNESCO or the fund.

### ***Conclusion***

Each "Memory of the World" project is an entity in itself, especially as far as finance is concerned. While profit can never be a prerequisite for carrying out a project, each project must strike a financial balance between, on the one hand, the investment needed for digitising, reproducing, and distributing products and for preparing the reproduced collections and holdings for conservation and, on the other, initial contributions from local or outside funds and royalties from possible sale of products. This balance will not be achieved without the participation of sponsors

and technical and financial partners. The search for partners is an important, not to say decisive, phase of all "Memory of the World" projects

### ***Annex 1***

Sources: *"Memory of the World" Programme - Second Meeting of the International Advisory Committee, Paris, France, 3-5 May 1995. Final Report. Paris, UNESCO, 1995 (CII-95/CONF.602/3)*

*"Memory of the World" - General Guidelines to Safeguard Documentary Heritage. Paris, UNESCO, 1995 (CII-95/WS-11)*

*"Memory of the World" - Lost Memory - Libraries and Archives destroyed in the Twentieth Century. Paris, UNESCO, 1996 (CII-96/WS/1)*

*"Memory of the World" - A survey of current library preservation activities. Paris, UNESCO, 1997 (CII-96/WS-7)*

*"Memory of the World" Programme.- Safeguarding the Documentary Heritage: A Guide to Standards, Recommended Practices and Reference Literature Related to the Preservation of Documents of All Kinds. Paris, UNESCO, 1998 (CII-98/WS/4)*

*For further information please visit UNESCO's web site:*

<http://www.unesco.org/webworld>

### ***Annex 2***

***Practical Methods of Digitisation suggested by the Sub-Committee on Technology for MoW in Madrid, Spain. January 1999***

The first publication of the Sub-Committee was the *Technical Aspects of Preservation: Recommendations of the Sub-Committee on Technology* in the *General Guidelines for the Safeguarding of the Documentary Heritage*. This publication was in need of revision because of the changes in technology and the wider acceptance of the role of digitisation as an access and preservation tool. The Recommendations need to be addressed from first principles rather than be just a re-write of the existing document. A request had been received from Catherine Pinion of IFLA asking for practical advice about the basic methods to be employed when digitising various categories of material. After some discussion, the Sub-Committee agreed to include this proposal in the new edition of the Recommendations.

The work will consist of an introductory chapter on the arguments for and against the use of digital techniques. There will be a chapter for each group of carriers giving basic methodological advice on how to digitise and the minimum technical parameters for both access copies and preservation copies of documents.

The Sub-Committee discussed a number of points concerning the parameters to be used for digitising documents. Dietrich Schüller said that there were two clear strands in the discussions. The audiovisual world has different requirements to the textual world. The textual world was looking to digitisation to improve access to documents without simultaneously increasing the stress on the originals caused by more users. The audiovisual world was seeking a preservation medium to preserve information that is endangered by the decay of carriers and/or the obsolescence of machinery.

### *Textual Materials*

Cornell University have published guidelines for digitisation that recommend scanning textual documents at 600 dpi. Michael Alexander said that the cost of scanners able to scan at this level of resolution is, currently, high. It can only be justified for making facsimile copies of documents on acid-free paper as part of a book rescue programme. For the Memory of the World Programme, a range of scanning resolutions should be provided. The standard chosen should be dependent on the original material and the purpose of the copy. A higher standard should, perhaps, be used for manuscripts to reduce the number of occasions that access to the original document is required.

For determining the scanning resolution to be used for photographic images, the use of the ISO charts is recommended.

For documents with a mixture of text and images, it is recommended that the whole document be scanned at the standard required by the text and additional scans be made of any sections requiring a higher standard.

The use of compression and the problems that this can cause were discussed. It was noted that compressed image files can lose definition at sharp edges. It was pointed out that the use of compression on material digitised at a high standard was a waste of time and resources. It was better to use a lower digitisation resolution and, thus, avoid the need for compression.

## **ESTABLISHING PRIORITIES IN THE PRESERVATION AND CONSERVATION OF MATERIALS AT UNIVERSITY LIBRARIES IN MALAYSIA: THE UNIVERSITY OF MALAYA LIBRARY EXPERIENCE**

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### ***Introduction***

Preservation is an issue, critical to libraries worldwide but even more so in developing countries where collection development has become an extremely expensive undertaking even without the problems brought on by the economic recession. To libraries that need to prioritise their strategic objectives preservation would probably be at the bottom of the list. Faced with increasing prices of materials from the developed world, depreciating currency at home and not producing enough indigenous publications (especially for academic purposes) developing countries have had to review their preservation programmes and focus only on the most urgent conservation activities. Malaysia is no different.

In Malaysia, preservation and conservation activities are undertaken by the National Library, the National Archives, the National Museum and all university libraries—with each organisation having its own strategies and procedure. Co-operation among libraries however is effected through a Standing Committee on Microform (SCOM), details of which are provided in this volume by my colleague, Salbiah Mohammed Yusof.

This paper is not a country report. It will only focus on the conservation activities at one university library, the University of Malaya Library which by virtue of its age, has the longest history of preservation and conservation in an academic library in the country. However, since whatever activities undertaken by University of Malaya Library are representative of those undertaken by other university libraries, I hope this paper can provide an insight into preservation and conservation activities in academic libraries in Malaysia.

### ***Understanding The Core Business Of The University***

The importance of preservation and conservation of materials must be seen in the context of the library's role in providing support for the University's core business--teaching, learning and research. In the case of the University of Malaya,

the oldest university in the country, its mission statement clearly expresses its aim to remain the premier university. To ensure that the University of Malaya can retain and sustain its premier status, the University must not compromise on the quality of teaching, learning and research undertaken by its staff and students. And how does this affect the Library?

Among other things, the Library has to ensure that its collection is second to none--and this would include instituting preservation and conservation programmes that would not only prolong the life-span of its collection but also ensure that the intellectual information contained the sources remain intact and can be accessible years after they are published or until replaced by new information.

### ***Rationalising The Need For Preservation And Conservation***

The University of Malaya Library has a collection of 1,275,868 volumes, in various forms and formats. Prior to 1992, the collection consisted mainly of monographs and journals in paper and print format and audio-video materials in film format.

Since 1992 however, with the installation of IT systems, the collection now comprises materials of paper and print format, film format and digitised format. The problem of preserving library materials has become more complex with certain basic issues needing rationalisation, such as:

- (a) Why do we need to preserve the collection?
- (b) What should we preserve?
- (c) What conservation methods would be most effective

#### *(a) Reasons for preservation*

Unlike the National Library, the National Archives and the National Museum, which have been entrusted with the task of preserving the nation's heritage in all medium, university libraries are more concerned with prolonging the life-span of their collection for various reasons such as:

- (i) intensity of use
- (ii) misuse and abuse of materials
- (iii) preservation of indigenous sources
- (iv) ensuring durability of materials
- (v) ensuring optimum use of materials purchased
- (i) intensity of use

The collection in the University library is normally heavily used, especially monographs and journals to support the courses offered.

It is the usual practice in any university library to buy a limited number of copies of prescribed texts and limit loans to a few hours at a time (for limited access) or a few weeks for open access books. The intensity of usage is normally reflected in the duration of the loans--the shorter the loan period the greater is the demand for the book. No academic library in Malaysia can afford to buy everything in all subject areas that are published in the market.

As such, with regard to acquisitions, it has always been a case of priorities -- this or that is the rule of thumb, never this, this and that! In such a situation, when books tend to be heavily used, there is bound to be wear and tear, making it crucial for conservation procedures to be applied. In other words too much handling of one book by too many people (by users and staff) will damage the book. Photocopying pages from the book will aggravate the situation, causing book spines to be damaged and pages loosened.

At its inception in 1959, the University of Malaya Library occupied a small building of 9,000 sq. ft., with 126 seats, 8 staff and a collection of 10,000 volumes. Today, the University of Malaya Library has a registered membership of 30,313 of which 25,922 are students (excluding those from distance learning programmes), 1,641 lecturers, 1,274 support staff, 757 external members and 899 short-term users. With a relatively large clientele, it is to be expected that certain collections would be heavily used and prone to damage. In the University of Malaya Library, these would constitute books from the Redspot area (limited access), theses and academic exercises, newspapers, conference proceedings and the Malaysiana collection.

(ii) Misuse and abuse of materials

Writing in between lines and margins of pages, tearing pages out of books, leaving books warped in cars on hot days (temperature of 32°C in Malaysia on an average day) getting books wet in the rain, using books as legs for TV or radio, etc.--are some of the ways in which library materials have been misused and abused. Since it is not easy to replace many of them, conservation is often seen as the only possible solution.

(ii) Preservation of indigenous primary sources

All Malaysiana materials (written by Malaysians, published in Malaysia and written about Malaysia) are preserved for teaching, learning and research purposes but conservation is enforced to certain selected

sources like theses, conference papers, manuscripts and newspapers. In university libraries, these materials are invaluable for research by local and foreign scholars. In the case of foreign scholars it is inconceivable that the scholars from the US or UK should look for sources about America or the UK in Malaysian libraries. The high research value attached to Malaysian materials in university libraries makes them top in the list of priorities for every library's conservation programme and this is also the case in the University of Malaya Library.

(iii) Ensuring durability of materials

The high cost of quality papers, the high value attached to research sources such as theses, the flimsy nature of materials such as newspapers and the frail conditions of manuscripts have prompted the University of Malaya Library and most libraries to convert the paper format of such materials to film format to ensure durability at affordable prices.

(iii) Ensuring optimum use of materials purchased

The cost of purchasing materials from abroad is extremely expensive. For example, at the University of Malaya Library for 1999, less than 10,000 titles of monographs were added to stock but the total sum spent was almost RM1.5 million because the average cost of a monograph in the field of Arts & Social Sciences is RM150. Bearing in mind that only RM1,000,000 is usually allocated for the purchase of monographs a year (and depending on the rate of exchange), the Library will have to ensure optimum use of the books by students and staff. Book selection policies must be carefully formulated to ensure that books are purchased for the benefit of the many. The luxury of buying titles for one person, however critical they are to his research must be measured against the needs of the greater number. It is again, a question of priority.

*(b) Selection of Materials*

The University of Malaya library has a total collection of 1,275,868 volumes comprising print and non-print materials, including monographs, journals, manuscripts, Braille materials, audio-video and CD-ROMs.

With 92% of its budget spent on collection development, it is not possible for the whole collection to be preserved so conservation of selected materials had to be the only solution. As a policy therefore, the Library selects theses, newspapers, manuscripts, special collections and conference papers for conservation.

*(c) Conservation Methods*

The preservation and conservation programmes of the University of Malaya library began in 1959, focussing on 2 methods (i) Binding and (ii) Micrographics. However, since 1998, scanning was introduced, beginning with the special Za'ba collection.

*(i) Binding*

Priority is given to binding journals. The Bindery was setup in 1959 and still exists. Starting with 14 binders, it now has 9. The 'binders' were pioneers and are mainly responsible for training binders from other libraries. This unit also repairs damaged books but they are not given priority.

With 9 binders, it is not possible to bind all the journal titles of approximately 5,000 subscribed by the library. This excludes  $\pm$  3,000 titles received on exchange or as gifts. The output of 9 binders average about 8,730 volumes a year making it imperative for the rest to be outsourced to commercial binders.

In 1998 for example, a supplementary sum of RM157,160 was applied for and approved by the University Finance Committee for this purpose. There is no doubt that outsourcing could be the trend henceforth because it is financially viable to outsource the binding of journal than to employ 'binders' on a permanent tenure.

*(ii) Microfilm and Microfiche*

From its early years the University of Malaya Library embarked actively to acquire materials to support the teaching and research projects carried out in the University. Books and journals in the traditional printed form or in microform and unpublished materials such as official files, government records, special collections and manuscripts were purchased. The Library was greatly concerned that these valuable materials were protected against natural hazards, fire, theft, the humid conditions and insects. A preservation and conservation plan was inevitable. The Library turned to micrographics.

The use of microfilm in libraries and the banking industry was in vogue at that time. A Microfilm Unit was set up in 1965 in the basement of the Library. Three microfilm operators with skills in the field had to undertake the tasks of microfilming and microfiching valuable Library materials. The following equipment were at their disposal: a Recordak Microfile camera for filming newspapers in 35mm roll film, a Fuji

Microfilm camera for filming items with a smaller format, a Recordak microfilm camera using 16 mm film, a Fuji microfiche camera/processor, a processor, a continuous printer, a densitometer and a Bell and Howell microfilm/microfiche reader-printer. The Library identified the types of materials that had to be preserved. These were usually items of significant research value, old and impossible to be replaced, or were delicate and brittle and if damaged would be irreplaceable.

The most popular items microfilmed are the local newspapers. The interest shown by other university libraries in preserving the newspapers in film, in subsequent years, led to the formation of the Sub-Committee on Microforms (SCOM). An account of the activities of this Committee is the subject matter of the paper of my colleague from Malaysia. And as such I will not elaborate on it.

The other important materials which the Library had identified for the microfilming project are the Malay manuscripts, many in the Jawi script, rare and out of print Malaysiana texts and journals which the Library had managed to borrow from individuals or other libraries. Unpublished research papers, academic exercises, theses and dissertations, all submitted to the University of Malaya are as a matter of policy microfiched instead of filmed because of their book-like nature. Lately unpublished local conference and seminar papers are also included.

The Library instituted well defined steps and procedure in the preparatory and filming process so as to ensure high quality output and a successful programme. The microform are catalogued and properly labeled and stored in cabinets close to the microform reading rooms. The negatives however are kept in cabinets in the microfilm unit with 24 hours air-conditioning. Although there are special rules pertaining to the use of microform there is easy access.

The library had to provide efficient and reliable microform readers and reader printers. Selecting the correct reader for the microform system in the library was important for instance is it for reading the roll film in 35mm or 16mm. Since these equipment are expensive the Library could only afford a few and users had to make reservation for the use of the readers. Even the best of equipment if not properly maintained will eventually suffer breakdown. To prevent this from happening a schedule of routine maintenance was instituted.

## (iii) Scanning

Scanning began in 1998, starting with the Za'ba special collection. It is now temporarily put on hold due to new developments in digitisation initiatives at national level.

### ***Critical Issues in Preservation and Conservation***

#### *(a) Funds*

Lack of funds is the fundamental issue in whether or not preservation and conservation programmes can succeed or even be exposed. In university libraries that lack even the funds to buy books and journals there is very little chance of conservation programmes to be undertaken on a comprehensive and systematic basis. The simplest of conservation policies would require funds to support the activities. For example in binding, the quality of materials used would depend on the funds.

#### *(b) Qualified manpower*

Unless the Library has personnel who are knowledgeable about conservation methods and technical skills to be able to supervise the work of the technicians, not only will the quality of work be compromised, irreparable damage can be caused to the book. For example, at the University of Malaya Library, when an inferior buckram was supplied, it cause some of journals to be infected by fungus.

In any library you can never have enough staff, adequately trained, to undertake conservation work so the problem of lack of manpower will always occur. One solution that libraries have resorted to is to digitise the materials, thus circumventing the problem of having to recruit staff and provide training for them.

#### *(c) Facilities*

The conservation unit at the University of Malaya Library is located at the basement of the library building. Lack of proper ventilation and safety features has prompted the library management to request for the renovation of the area. Although there is some improvement, a lot more needs to be done to make the conservation technicians feel appreciated. The newer universities have learnt from University of Malaya Library's shortcomings and their conservation laboratories are aesthetically as well as technically superior.

*(d) Lack of support from Library management*

It is important that the library management understands and supports conservation activities. These activities should be viewed as part of the management duties and as an integral part of collection development and management. Unless there is support from the very top, conservation will always be relegated to being last on the list of library priorities.

## ***THE FUTURE***

(a) Review the preservation and conservation policy. This is the first and important step that the Library should take in order to institute a more active preservation programme. The Library management does realise that preserving and maintaining the collection is just as important as acquiring them. With this in mind a special committee was set up to look into the administration and needs of the Microfilm Unit.

(b) Allocate sufficient funds for the programme.

(c) Manpower and management.

The preservation activities will be under the management of a senior official, the deputy chief librarian who had the opportunity recently to observe and be trained at the Department of Preservation and Conservation, Cornell University Library. Another Library staff received training in conservation at the British Library, London. Manpower for the preservation project will include the 3 microfilm technicians and 9 binders.

(d) Cooperate and coordinate with other local university libraries, the national library, the national museum and national archives to raise awareness of preservation issues, eg. Calling for the mandatory use of permanent paper in publishing.

## General Discussion

### Policy Questions:

#### Topic 2: Formulating Fair and Effective Copyright Agreements

##### *Paper Presenters*

*Judith Henchy*

*Susanne Ornager*

*Rashidan Hakkam*

*Moderator: Alan Feinstein*

##### Moderator

Two of the speakers addressed directly the issue of copyright. I was about to take upon myself the right to ask the first question to Judith Henchy of how she would relate the points that she was making about balancing fair use and the economic incentive to publish, which is the basis for the copyright legislation, and how she would relate this issue or challenge to the specific context of Southeast Asia and specifically to the preservation challenge here. I understand it is a challenge for SEAM and for other foreign libraries that are attempting to collect materials from Southeast Asia and to preserve them there and to distribute them to scholars for use. But how do you see this as relating to the job of local libraries in the region. To some extent this has been addressed by Rashidan, who spoke in the last part of her paper about attempts to influence local legislation and to address this need for libraries to have the right to make copies for fair use, preservation copies. So, perhaps the Malaysian model explains to some extent what you were speaking of. Susanne Ornager's paper addresses less directly, it seems to me, the copyright question, and is a kind of more general description of the UNESCO Memory of the World Program. If I could also help the discussion along, I would wonder how you see this UNESCO Memory of the World Program as fitting into the sorts of concerns that have been discussed or are being discussed at this meeting here, and to invite others in the audience to explain how they see what UNESCO's role could be in this effort. So, I hope you will allow me, audience, to ask these questions and get some comments, and then I will open up the floor for questions.

##### Judith Henchy

Yes, Alan, you raise a good point here. I think what I am trying to say is really two things. One, when we are doing preservation work, we need to be mindful of how we are setting precedent. I think that Rashidan's point about inserting a preservation provision into Malaysian law is very important because I think we

should be looking towards inserting preservation into other international legal instruments, if they are not already there. I have to say I am not a legal scholar, [and] I don't quite know whether that is true or not. I think we need to be really mindful of these changes that occur in copyright [law], we just need to be vigilant, because, as in the U.S., things can be snuck into legislation that are very detrimental to us. That is one thing. The other thing is the issue of, I think, the notion of claiming an ownership right of an object. When you duplicate that object and you sell it, what kind of expectation of remuneration can you have? Firstly, producing a reel of microfilm is not a copyrightable act itself, so that is not an issue of copyright, although with some digital creations, digital preservation with added value of access tools may well be copyrightable, and indeed probably are under the new WIPO treaty. So, I would just like people to be mindful of the notion of copying or preserving this cultural material for the common good, and with the notion of distributing them within the notion of fair value and fair use.

Susanne Ornager

Actually, what I did was true. I talked about the Memory of the World Fund. But I did not, in order to make a kind of example, because the Memory of the World Fund actually cares about archives and their libraries. In doing so, they set up the two sub-committees, where I talked about the one for technology. This one is not, as I said, a legal issuing body, but it has made guidelines. Now, UNESCO is not going to tell any country in this region what to do, but we can make guidelines and present them and ask what the countries think about the guidelines, and if they want to follow them. If they want to follow them, if they think they are actually good guidelines, then we can set up committees, either regional or national, but mostly regional. When I say set up, it means that UNESCO will provide small funds for setting up these committees. These committees are not UNESCO committees, but they are actually national or regional committees, and they can then submit legal suggestions to the different nations. Also, in our guidelines, we have recommendations, but these are only recommendations. Again, because UNESCO is not going to force or tell any nation in this region what they are going to do. But we can suggest, and this is what this technical committee, under the Memory of the World Fund is doing. Thank you.

Moderator

I will now open the floor up to further questions.

Peter Arfanis

My question is to Susan. Regarding UNESCO, I can't say I am a great UNESCO fan the last couple of years. I have found the UNESCO office in Phnom Penh and their regional office in Bangkok very unsupportive of archives and libraries. We

get very little feedback from our requests, and we are constantly referred to apply under the Memory of the World Program. It is a very good program, but in some ways I think it is an inflexible program. It seems to me, I may be wrong, to support institutions with trendy collections and impressive sounding names, and doesn't really make allowances for supporting institutions for long-term low cost capacity building and institutional building, especially in the library and archive sectors. I am wondering if there is some sort of shift that UNESCO has made from what it used to do previously, [which] was [to] support capacity building and research into archives and libraries in the developing regions. Because there is no way Cambodia can really apply under the Memory of the World Program, and I think it does really need that institutional sort of support.

Susanne Ornager

Thank you Peter. Yes there is, actually. I came three months ago. My post was vacant for two years. So, actually I think this explains your question, because there was nobody in Bangkok, and nobody in Phnom Penh, but now I am here. To start with, Alan asked what CII/INF/BKK meant, and I explained it. I am in charge of information and informatics. Two years ago, my predecessor Mrs. Torrijos, many of you may know her, retired, and since then the post has been vacant. I know that Cambodia cannot apply for the Memory of the World Program; I realize that. But Cambodia can apply for another program within the information program because the information program is back in Bangkok now. I am not saying that UNESCO is rich in funds—we are not a funding agency. Actually, we are rich in intellectual capacity, I would say, but we do have a small amount of money, seed money as we heard before, and this can be used for capacity building, for instance, small projects. If these projects evolve and become big projects, then we can try to help to find donors, or to submit them to the Memory of the World Fund.

Moderator

Can you just explain why Cambodia can't apply for the Memory of the World Program?

Susanne Ornager

Because usually the Memory of the World Program, as I explained before, does not have much funds. It is under the regular program. So, Memory of the World is actually searching funding bodies outside UNESCO. I am sorry to say that, but I have to say it, because it is true. Palm leaves are not very glamorous, and funding bodies are looking for more glamorous things. So, if palm leaves can be combined with something else, then there is a greater chance for preservation of palm leaves to get funding.

Moderator

So, I think you have actually made the same point that Peter is trying to make which is that you are interested more in the flashy, trendy sort of things because that is what appeals to donors, since archives or manuscripts are not flashy or glamorous, you won't succeed in finding funds. So there is no purpose in involving a country like Cambodia in the Memory of the World Project. This is obviously a problem for us here.

Susanne Ornager

I agree. I don't want to look into Peter's eyes because they look so sad. [Laughter] Sorry. Of course, Cambodia can apply. As I said before, I talked about the Memory of the World Program. This is a world program, a global program. Besides this, we have also information programs, both in Paris headquarters and in this region, in the Bangkok office. The information program is actually supposed to support the minor programs, like archives, like libraries. We will be (I say we, talking about UNESCO) happy to receive proposals in Bangkok. I cannot say that we would say yes; it depends on the projects. But of course, if we do not receive anything we cannot do anything.

Peter Arfanis

Do you have some guidelines for that program?

Susanne Ornager

Actually, the UNESCO guidelines are also the guidelines for this program. If you read the C-5... sorry, I will come back to that...

Moderator

Any other questions?

Jaffe Yee Yeow-Fei

I have some general questions on copyright, especially the issues of artwork; because I am organizing a symposium and copyrights are one of the topics. Now, I think very often the understanding of copyrights between the creators and the owners is very ambiguous. For example, an artist that painted the painting, he sold the painting to someone, and this person took the painting to make it into a calendar or a poster or whatever, and sell them. So, the owner might not be aware, but the creator thinks that he owns the copyrights, so the creator is going to take legal action against the owner, so there is a dispute coming up. When you have a dispute coming up like that, how would it get settled? I am interested to know if there is an international court, or do you go to your local court where the owner might be in the United States, but the creator might be here in Thailand.

That is something I would like to find out. Another thing is about the copyright of artwork between the others, like books, copyright on the Internet, etc. Is there a big difference or in general is copyright very detailed? I am not a lawyer, I don't know if anybody here is a lawyer, but I am interested in knowing about the differences between those copyright [situations]. Another thing is that I often find that getting good, detailed information on copyright [law] is always very difficult. We all know that law books and law journals are all very expensive, and lawyers are very expensive; it will cost you I don't know how much per minute. Are there any resources we can go to get more information, perhaps on the internet, if anybody would know anything. Another very brief question for Susanne is I knew Delia [Torrijos] very well before. I was aware that PGI [General Information Program] used to be handling all of this, but I don't see PGI anymore. What happened to PGI? Thank you.

Moderator

I assume the first two questions are addressed to Judith.

Judith Henchy

Thank you Alan. I am not a lawyer. I really would not know how to answer that, where to go, although it is a very good question and perhaps one that we should address. You are right that there is a lot of misunderstanding about certain objects that are sold. Copyrights can also be sold, but they have to be explicitly done so in writing. There is a lot of misunderstanding in terms of rights to reproduction. I think perhaps we might add this to our agenda, to not only ensure that whatever legal instruments govern copyright, we should also have some advisory body that can give us the answers to those questions, because it is very complex. This is a very complex area of law, certainly in the United States, and very conflicted. Really all you can go on is the case law, as it emerges. What was the second question, or did I answer it?

Moderator

The second question was in terms of the copyright of artworks on the one hand and books, Internet and others; is there a big difference?

Judith Henchy

I would say that no, there is not a big difference between books and Internet. Intellectual work that is in a fixed tangible form can also be on the Internet, so practically everything on the Internet that is the product of someone's intellectual work is in fact copyrighted. Even if you don't put copyright on it, if you write it down and you consider it to be your work, it is your work. The notes that you

write in front of you are your copyrighted materials, whether or not you register them anywhere. At least that is true in the U.S. law.

Jaffe Yee Yeow-Fei

My webmaster told me the wrong thing. He said that if you don't have the copyright there, you are not protected by that webmaster.

Moderator

Get a new webmaster. I have a question though. I understand that when the book "Illuminations" was produced, the Lontar Foundation brought in professional photographers from the British Library, who helped to film images at the National Library. Now those films, which were made by the Lontar Foundation, are held by them, and they have the rights to reproduce them and copy them, not the owner of the original material, the National Library...

Judith Henchy

Because the original materials are outside of copyright, presumably. As a photographer, they have some kind of rights that take precedent, and that is their artistic creation having photographed the material.

Moderator

But that is different from microfilm?

Judith Henchy

Is that different from microfilm? Yes, I suppose that is a good question, isn't it?

Moderator

Is there a lawyer in the house?

Melvin P. Thatcher

Well, I thought that Judith made the comment that producing microfilm is not a copyrightable act. So perhaps filming does not come under copyright protection. But I think we can make a distinction between copyright ownership and rights of usage. I think that with rights of usage, if you are filming documents, or you are filming published materials or whatever, it isn't that you are assuming copyright, but that you do want to have certain rights of usage, and that is what has to be clarified. When you are doing cooperative projects or filming the materials where the copyrights are owned by another party, [what you need to do] is to clarify what rights of usage you are obtaining.

Susanne Ornager

Can I answer the second question? It is true that PGI stands for General Information Program in English, and it has deceased. I am sorry to say that, but you know the bird Phoenix coming out of the ashes? So, we are all looking for the new program. Actually, PGI is going to be combined with the International Integrated Participation Program, because there were two different programs before, and now they are being one program. For the time being, we don't have any name for that, and since we have no name I use the department's name, which is CII-Communication, Information and Informatics-and I stress information and informatics, information meaning the contents, and informatics meaning the framework, the computers. That's it.

Barbara Berger Eden

To clarify the copyright question about microfilm, it is governed under—I forget the number of the act, I think it is 109. Anyway, you can make a copy of a Cornell microfilm if you are using it for educational purposes, but, for example, Bell and Howell could not buy the collection and start selling it. This governs the same rules for making a photocopy in the library.

Judith Henchy

So you are saying that actually making a microfilm gives you a copyright. What kind of a copyright is that?

Barbara Berger Eden

On the microfilm, there is a copyright statement, saying that you can use this film for educational purposes, but a commercial publisher could not buy the film and start making copies and selling them.

Judith Henchy

Right, but if you have filmed, let us say, an Indonesian journal, the copyright on that journal is held by the journal publisher, and not by Cornell, even if you have filmed it. It is not an act of intellectual expression to microfilm.

Barbara Berger Eden

Right. I think that would depend upon the agreement that was made between the publisher of the newspaper and whatever institution is doing the filming.

Judith Henchy

But in some of the projects that I have seen the term 'reproduction rights' has been used in terms of copyright, because it does seem to me that copyright is not an appropriate concept in this case. Although, Alan raises a very good point—is the

act of artistically photographing a cultural object in some way different from the technical act of creating a microfilm? I don't know if this has been tested in law.

Moderator

More of my own opinions, I am sorry the moderator is being very active here, but I can't help myself. I have the microphone. [Laughter] There seems to be beyond the legal question the moral one, or the ethical one, particularly when outsiders are coming in to film something, that would seem to bind them ethically at least to make some sort of agreement about how the films will be handled, how they will be copied and how they will be used, and to allow also ethically the owner of the material to have some say—or have the say—in how those materials will be used. I know that when the private manuscript collections of the Sultans of central Java were being filmed, when those collections were being filmed, in order to get permission to do so, we had to agree to the wishes of the holder of the materials, which seemed appropriate, whether or not it was legal. I had no idea about the legal standing of those agreements, but it seemed right that first Cornell University and later other bodies that were doing the filming would make such agreements. So, I think we also need to consider the ethical standards as well as the legal ones.

Blasius Sudarsono

With what Barbara just mentioned about it depending on the agreement, would somebody explain more about the agreement [process], from their experience? Because from my experience I have never had an agreement with the publisher, I want to learn more if you have a clearer agreement or something like that. Thank you.

Moderator

Anyone want to help out with that? How about Rashidan? You said that your library made some agreements with the *Straits Times* and *Utusan Melayu*.

Rashidan Hakkam

As regards the microforming, which was of the newspapers, we wrote to the New Straits Times and asked for permission to microform, and they gave us that permission. Of course they also gave us the condition that we cannot use it for any commercial purpose, but only for scholarly and educational research. So you have got to restrict your activity within that perimeter designed by the person who gave you the copyright.

Blasius Sudarsono

Ok, that is for non-commercial. But say, with an exchange of collections, you will duplicate more, and economically, you will receive more from the other party. How about that?

Moderator

I don't think that is commercial, is it? I mean it is not for profit, it is for research or educational purposes. If you were trying to make a profit from the sale of it, that would presumably be commercial. Judith, would you agree with that?

Judith Henchy

Yes, I would agree with that, but of course it is a very thin line. We have noted that, as Rashidan said, duplicating films for which they have permission from the New Straits Times for non-commercial purposes, but they are selling them at a cost that presumably has to be justified in terms of their production costs. Otherwise, it becomes a commercial operation.

Tim Behrend

Just a few comments about what we have done and what we did in the past in Indonesia when filming manuscript collections. In the early days, the agreements that were made were with the individual institutions. They were usually framed in such a way that each institution held a sort of absolute right over who could make even photocopies from the microfilms that were stored overseas. Let us say that the film was in the Cornell Library. In principle you weren't allowed to photocopy using a reader printer unless you had written permission from the original library in central Java, which normally would not respond to correspondence. You might write and write and write, and never know. My sense is that people just now photocopy those, and there was a reason for doing that—it was an effort to give a very high respect to the heritage of each of those courtly collections. Later on what we did was to arrange with the institutions that owned the manuscripts that we filmed to allow rights of reproduction to be held by the repository, either the National Library in Jakarta or the National Archives in Jakarta, so that it became a much simpler process to order and get copies of films or of prints from the films. At first there were some problems with that because those institutions were not sure if they were free to do that or not, and so forth, but I think it eventually worked out fairly well. With our microfilming, each document had a descriptive bibliographic target framing it at the beginning and at the end. The terms of use were spelled out, and once again I don't know if it was legal or not, but in them we said that you may order copies, microfilm or print, from the National Library, but only for use in educational or research activities, that if you are going to use them for commercial purposes you must contact the owner of the material and

negotiate with them, and likewise, and this we copied from our experience as scholars using the collections in the Netherlands, if you use a manuscript as a significant resource in something that you write, then you must send a copy, say an off-print of an article or a copy of the book, to the institution as part of their documentation of the collection. In addition, we actually copy a text, transliterated or translated or something; that also was something that had to be negotiated.

Moderator

Thank you Tim. I think the point is that these were not based, perhaps, on existing law, but we were working out these agreements based on what we intuitively thought was fair, and what was agreed to by all parties. But perhaps the lesson we can draw is that whether there are laws are not, and certainly we should find out, there ought to be protocols for how these sorts of microfilms are used. That could be included perhaps in our agenda as well.

Kwek Chew Kim Gek

This discussion on copyrights has led me to think of another aspect of legality. I was just thinking whether are librarians not concerned about legality of microfilms? Because in the case of archives and records management practices, often we film records and destroy the original records, and we just preserve the microfilms, and we are often asked whether microfilm is legal or not. What are your thoughts? Are librarians not concerned about this issue, because there has not been any discussion on this?

Moderator

You mean microfilms used in a court of law? Is that the question?

Kwek Chew Kim Gek

Yes. When you use microfilm as a preservation media, you destroy the original records. Are librarians not concerned about whether your microfilm can be admissible in a court of law?

Judith Henchy

Yes. I think that microfilm is admissible in a court of law, but digital copy is not. That is my understanding of that. I am trying to think of a case. I was thinking about the case in the United States with compensation to Japanese-Americans who were interned during the Second World War, and the National Archives was brought in to provide documentation of that. I believe some of those records were microform, but they were admissible.

Rashidan Hakkam

I just want to add that even in Malaysia microforms are admissible as evidence.

Chu Tuyet Lan

My first question goes to Susan. You just mentioned that the Memory of the World Project is not a funding agency, but you can [give] support to the minor projects relating to the library or archives. Do you have any interest in supporting the project of bibliographic database creation for such a unique and rare collection as ours? The second [question is] for Judith. Presently, you are running SEAM program filming material in Vietnam. I knew that you are faced with difficulties. You have worked out the agreement with Vietnam in copyrights, since the copyright in Vietnam is unlike in the U.S. I knew that after the author is dead for 70 years, the user can freely use the books, but in Vietnam it is quite different. For example, in our case the older the book, the more precious [it is], so they want to keep it secret. So you see, when you come to our institute and you want to sign a contract to microfilm the materials, you meet difficulties. So I think that you can work with the Ministry of Culture and Information and work out the agreement of copyright. Can you say something about that?

Susanne Ornager

It is true that the Memory of the World is not a funding agency. It is also true, as I told Peter earlier in this session, that smaller projects can be addressed to the Bangkok office or to any of the offices in the home countries, like in Cambodia, in Vietnam, in China, in India, and all the other places.

Judith Henchy

I will try and answer Lan's question about the Vietnam project. We are actually filming materials mainly from the 1920's and 1930's, which are probably not considered particularly old by Vietnamese standards. I understand that there are restrictions on those older materials and it could be problematic trying to get permissions to copy them. What we have worked out with the National Library is that they have all duplication rights over those materials, and the camera negative resides in Vietnam. Any subsequent copies that anyone might desire from that original preservation copy has to be referred to the National Library of Vietnam, because they hold all rights of duplication. I would say that that agreement, in my mind, falls within the concept of fair use, and our right to make a preservation copy. I don't know, again, whether or not such a legal instrument really exists in Vietnam.

As Rashidan has said, Malaysia has been making preservation copies without having such a provision within their copyright law. I believe Vietnam has a fairly

new copyright law, and I am not sure what those provisions are. But I think I would just like to affirm our right to make these preservation copies wherever the endangered material may reside. If there aren't those protections in law already, we really ought to try and ensure that they are put in there. Materials do need to be filmed if they are deteriorating, or copied in some way. If an outside agency approaches a repository in another county, then I think it is up to the repository to affirm their own rights over those materials to whatever degree they see fit.

