

Stopped at the Border: Global Archives Frustrated by Copyright Localism

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Archives: Defined

- Archives are the documentary by-products of human activity maintained for their long-term value.
- Archives document all parts of society.
- Preserving for the future requires making copies.
- Documents of everyday life created by persons operating outside of commerce.
- Rare, one-of-a-kind documents.
- Archives exist to be used.

Archivists' Mission

- 1) to support open government and accountability of institutions and
- 2) preserve and make accessible intellectual and cultural heritage of humankind
- Without archives:
 - little accountability
 - little heritage
 - little memory, and
 - fewer cultural resources for creating new works

Archivists and Copyright

- Dual role
 - preserve the works of creators and
 - make those works available to users who,
in turn,
 - create new works

Archivists and Copyright

- Core work requires making of copies:
 - acquisition (especially electronic files)
 - preparation of inventories and indices
 - preservation when we must transfer items to more stable media
- Preeminent purpose of archives: Use
 - to assist researchers, we must make and deliver copies to answer their questions

Uniqueness of Archives

- By definition, archives hold rare and unique items that cannot be found anywhere else in the world. Thus:
 - each archivist is a global actor
 - 2014 international survey: 84 percent of archives regularly receive cross-border requests for research copies
- Modern telecommunications reach us, but...
- Unless ignore copyright, we cannot fulfill their need

Cross-border Research Requests

Example 1: US-AID Documents

June 16, 1959.

To: S.P. Swenson
Chief of W.S.C. Party

From: D. J. Emblen

Subject: Contract Continuation

During my two years in Pakistan I have been given considerable thought to the desirability of W.S.C. continuing its technical assistance to the University of the Punjab and its affiliated colleges.

As this assistance is part of the "cold war" strategy of our government, I think it would be a grave mistake to discontinue the Inter-College Exchange Programs. These programs are a perfect vehicle for showing people in foreign lands the American way of life. Our efforts are slow in producing results, and in many instances the results cannot be measured, but nevertheless I believe our impact on the teachers and students of our respective educational institutions has been very significant.

During the years that the Inter-College Exchange Program has been in effect, Washington State College has acquired a considerable amount of experience. If W.S.C. were to discontinue its participation that has been achieved, would be lost. This would be unfortunate. I believe that the program is of sufficient importance, that W.S.C. should continue to supply administrative and technical personnel, to further the objectives of the U.S. Government.

Cross-border Research Requests

- **Example 1: Reversing Cold War Appropriation**
- US-AID- funded US university projects to bring “development” to countries in Africa, Asia, and Latin America
- “Assistance” sometimes overrode the local cultural identity
- Now those countries need US-held documents to reclaim their heritage
- Without clear exceptions, those in the US or the requesting country cannot take advantage of today’s technology to rebuild local culture

Example 2: Music-the International Language

Harry Partch, *Revelation at the Courthouse*

(14) Heavenly days sketch (Do not overshoot this! it just came out of a deep freeze)

1-88 to 92

Heavenly days - one million years years (Zoh) Heavenly days from shore to shore

Transposed all to GM

Man always advance

Heavenly days Dead or a - there Truly heavenly day for ever and ever en en en for

The happy way Rhin man GM/GM GM Ant-GM

breathe in their hearts - 12 people doing this in union will make an audible heart

Mongeson - "fencer more"

transposed down whole ton

not here

Heavenly days accent but don't open lips

Fencer or m-m-m-m-more m-m-m-m-more m-m-m-m-more m-m-m-m-more

The audience will consider this a parody of popular singing styles and lyrics if it chooses to. But it must never feel that the actors are thinking of it as a parody. The must be done straight with great will and enthusiasm. Keep the audience guessing. There must be no break in the momentum. The actors applaud and shout for themselves and each other, as though the audience didn't exist. In a constant measured rhythm values this off with conviction, Dion Isus, Mom, and the Chorus of Right face upstage (backs to audience) just as frequently as they face front. Movement and pseudo-dance must be constant

double time at end?

Ma 12 3 4 5 6 7 12 3 4 5 6

Cross-border Research Requests

- **Example 2: *Music-the International Language***
- Cuban graduate student in Madrid
- For a dissertation on Latin-American composers of 1930-60 music for percussion ensembles. . . .
 - sought copies of some of unpublished music manuscripts from a deceased composer on the faculty of the University of Illinois
 - educational purpose suggests such copying would be appropriate, but
 - without knowledge of Cuban and Spanish law, and laws of other countries, our response became unclear

Cross-border Research Projects

Example 3 Orphans:

Personal Archives of US Missionaries

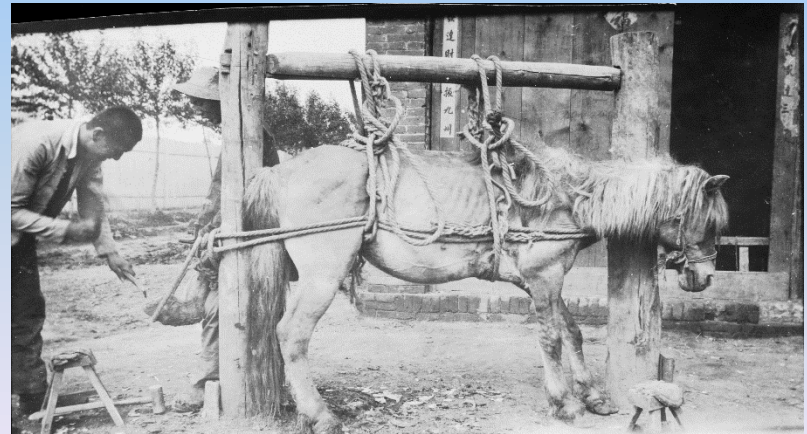
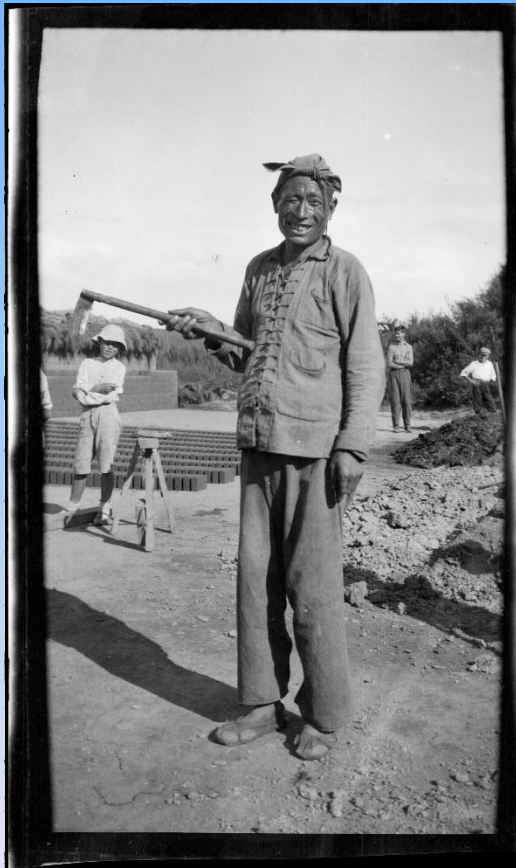


Harbin, Manchuria (now
Heilongjiang Province China),
1920-22



Cross-border Research Projects

Example 3: Missionaries as Ethnographers

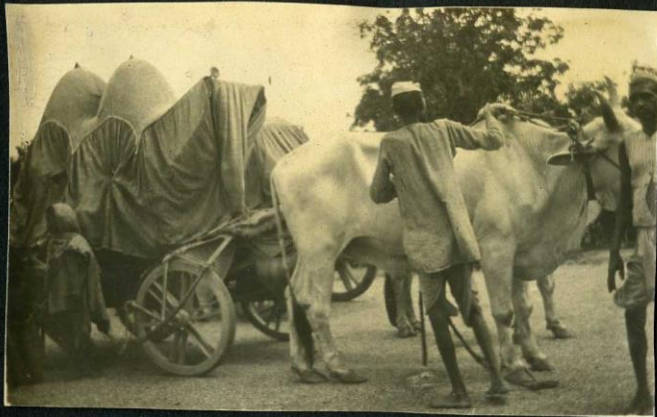


Harbin, brick maker, farmers, blacksmith

Cross-border Research Projects

- **Example 3: Orphan Works & Collaboration**
- Missionaries chronicled local populations
- Their diaries, letters, photographs now found in archives around the world
- US archives holding records of missionaries to China have been asked to supply copies of their photos because these collections are the only source for a visual record of places outside of the popular tourist attractions
- Copyright a problem for cooperative archival projects to assemble a good record from originals spread across the globe

Collaborative Documentation



The "bride-groom's cart" -
just starting to his wedding.



Water women.

Cross-border Project— Identify Orphan Works

- **Example 4: *Missionary work, (Etah, Uttar Pradesh, India)***
- “Orphan” photo album: over 150 circa-1920 photographs showing rural India village and agricultural life
- Reflects the provincial perspective of a white, Protestant American
 - provides rare insights into two societies, but
 - “Orphan” donation, lacks identifying information
- Candidate for “crowd-sourcing” via Internet, yet copyright without exceptions is a barrier

UN Human Rights Council, 28th Session
*Report of the Special Rapporteur in the Field
of Cultural Rights*

- “human knowledge . . . a global public good . . . States should guard against promoting the privatization of knowledge to an extent that deprives individuals of opportunities to take part in cultural life” (¶ 14)
- “Copyright exceptions and limitations . . . constitute a vital part of the balance that copyright law must strike between the interests of rights-holders in exclusive control and the interests of others in cultural participation.” (¶ 61)

Stark Choice

- Crews (2015): only 32% of 188 WIPO member states have an exception to allow copies of archives for research
- Without uniform basic exceptions, either:
- Violation of the law is essential to our business process or
- Must walk away from our mission
- As UNESCO correctly asserts, access to archives is a basic human right
- Archivists must remain global actors

Patchwork of National Laws

- What archivists can do is governed by local laws but archivists need to be global actors.
- Primary mission—to preserve invaluable materials and make available to users anywhere in the world.
- Can archivists just accept violating copyright as part of our business model?
- No, we must protect donors' copyright interests, and we cannot become liabilities for our institutions.
- Exceptions would balance need for both access and rights.

Concluding Thoughts

- Archives' need is immediate
- The need will only grow and become more difficult to solve
- Everything may become archives someday
- In global environment, piecemeal national provisions do not work
- Needs an international solution
- If WIPO and SCCR do not take on this difficult task, who will?