



Snapshot Brochure

for Archives, Ethics and the Law in India



Highlights from the Archives Ethics and Law Guidebook
<https://milli.link/ethics-law/> or scan the QR code

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Copyright & Custody



Who Has Copyright?

- Person who created the work, the first author(s) / or their legal heir
- For works made under a magazine or publication, first owner of magazine
- For government works, the respective government body
- For works made under employment, the employer



If the archive holds the documents, does it also hold copyright?

- An archive may have objects in its custody without having copyright
- If the archive holds an object but does not own the copyright, usage permissions have to be acquired



How do I acquire permission to use copyrighted material

- Get a license to get limited use of the material
- Get copyright 'assigned' to the archive. An assignation can transfer copyright to the archive
- Explore fair use exemptions available to archives under the Copyright Act

Fair Use Exemptions under the Copyright Act, 1957

Section	Type of Use	Works	Purpose
52(1)(a)	Any	Literary, Dramatic or Musical	Private Use, research, criticism or review or reportage
52(1)(n)	Digitisation	Any	Preservation
52(1)(o)	Reproduction	Books	For the use of the institution
52(1)(p)	Reproduction or Publication	Previously unpublished Literary, Dramatic or Musical	For publication or private use including research
52(1)(z)	Reproduction	Broadcast work	Archival purpose
52(1)(zb)	Reproduction or Communication	Any	Providing access to persons with disabilities



Digital Reproduction and the Law

- Archives may digitize and use any records over which they have copyright
- Digital reproduction for the purpose of providing 'links, access or integration' to a work is exempt under the Copyright Act.
- Archives should have in place mechanisms to respond to the risks posed to privacy and copyright in the course of digitisation



Should we digitize our collections to save space?

- Yes, if digitization will prevent physical degradation through handling of fragile material, or improve access to the collection, or enhance use¹.
- While seeking to preserve digital objects against obsolescence, archivists should also take note of the dangerous propensity to destroy original archival objects once they are digitized



How does copyright apply to communities?

- Indian law is unclear on how legal rights apply for works that belong to communities.
- On ethical lines, community archives should be built with informed community consent.
- Consent and access to the archives should be in languages accessible to the community.

Access



How can we maximize access for collections?

- Utilize copyright exemptions to make collections available to public
- Allow digitized records to which the archives have copyright to be used under a Creative Commons license



Can access affect people or material adversely?

- Fragile material can be affected by physical access in which case other alternatives such as surrogates may be considered
- Radical open access can adversely affect vulnerable persons or communities. Archives need to consider the sensitivity of such material

¹ [Digital Preservation Coalition Handbook is a useful resource for archives of digital materials](#)



Distinguishing Access and Accessibility

- Access to the archives ensures a fair approach to use the collection of records at the archives.
- Accessibility makes it easier and makes more people feel empowered to access the archives.
- Widening access may include exploring translations, multimedia interpretations, or visual aids to make the archives more accessible.
- Accessibility creates archives and archive spaces that include people with disabilities, the aged, the neurodivergent, and those who require additional support



How do we make our archives equitable for those working in them?

- Be accountable and exhibit professional conduct in all our practices
- Find diverse users, nurture multiple narratives and perspectives
- Act in the interest of public and social justice
- Evolve into spaces that foster ethical archival practice

Public Law and the Archives*



How does the Digital Personal Data Protection Act affect archives?

Note: The Act is not yet in effect (as of 7th June, 2024); its commencement date is pending notification.

The Digital Personal Data Protection Act, 2023 (DPDP Act) governs data protection in India, focusing on personal data processed digitally. Any information identifying an individual directly or indirectly may be personal data.

Organizations handling personal data will have to adhere to regulatory requirements such as

- Processing personal data with consent for specific legitimate purposes
- Consent must be freely given, specific, informed, unconditional, and unambiguous
- Persons whose data is processed have rights, including correction/ updating of data and complaint redressal.

The Act exempts certain processing for research, archiving, or statistical purposes, subject to prescribed standards although the scope of these terms is unclear.





Right to Information

The Right to Information (RTI) Act, 2005, requires 'public authorities' to disclose all 'information' under their control.

Is my archive subject to RTI?

- Yes, if the archive is a part of a government department, partially or fully funded by the government, or is under an institution fully or substantially controlled by the government.
- Yes, if the archive holds records deposited by public authorities.



Public Records Act

The Public Records Act, 1993, applies to the 'public records' of any 'records creating agency'. According to Section 2(f) of this Act, these agencies include only:

- any Ministry, Department or Office of the Central Government or Union Territory Administration;
- the offices of any statutory body or corporation wholly or substantially controlled or financed by the government

Legal/Process Records for the Archive



A quick scan of 'records' that allow an archive to record and evidence its activities for itself and for legal purposes. Refer to the guidebook for details.

1. Gift deeds/Donor agreements
2. Deposit agreements
3. Records of transfer of custody
4. Records of transfer of title
5. Records of transfer of intellectual property rights
6. Copyright licenses
7. Purchase agreements
8. Informed consent for collections/collection with sensitive personal data relating to living persons
9. Accession records
10. Loan agreements
11. Deaccessioning records



Milli Archives Foundation is a collective of individuals and communities passionate about nurturing archives in South Asia. Archives enable diverse stories. This aim guides the work of the collective, the purpose, form and content of an archive, and what environments it could nourish in the future. It is set up as a Section 8 non-profit company in India, with 12A and 80G tax exemptions under the Income Tax Act. It relies on donations to make its work possible. Please do consider supporting this movement, at any level.

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