

Legal and Policy Framework for Promoting Equitable Access to Documentary Heritage

Report Submitted to UNESCO

By

National Mission for Manuscripts, India

31 March 2008



Legal and Policy Framework for Promoting Equitable Access to
Documentary Heritage: *Report Submitted to UNESCO by National
Mission for Manuscripts, India*

Principal Researcher: Sudhir Krishnaswamy

Research Team: Sudha Gopalakrishnan
C. K. Nandakumar
Ananth Padmanabhan

Editors: James Baer
Anup Kumar Das

National Mission for Manuscripts <http://namami.org>
<http://namami.nic.in>
<http://namami.gov.in>

© UNESCO, 2008

Published by:

The United Nations Educational Scientific & Cultural Organization (UNESCO)

UNESCO House

B-5/29, Safdarjung Enclave

New Delhi – 110029, India

Phone: +91-11-26713000

Fax: +91-11-26713001/2

Email: newdelhi@unesco.org

Website: <http://www.unesco.org/newdelhi>

Disclaimer

The authors are responsible for the choice and the presentation of the facts contained in this publication and for the opinions expressed therein, which are not necessarily those of UNESCO and do not commit the Organization. The designations employed and the presentation of materials throughout the publication do not imply the expression of any opinion whatsoever on the part of UNESCO concerning the legal status of any county, territory, city or area or of its frontiers or boundaries.

INTRODUCTION

1.1 Our understanding of who and what we are — our cultural identity — is largely built around the physical objects and cultural practices which connect us to the social and intellectual history of our society. Till recently the conservation of historically valuable artefacts on which our cultural memory rests has been left to institutions such as archives, museums, research and academic libraries as well as private collections. The obstacles faced by such methods of conservation are several. First, there is a serious limit on the funds and resources available to establish these centres and maintain them. Second, these artefacts are invariably fragile and decayed by time. Third, and most importantly, as our culture expands and the knowledge of our cultural heritage increases, the range of publicly accessible display space becomes more limited. The conventional response to these three concerns, by traditional methods of conservation, has been to cull the collections, preserving important artefacts, and discarding or destroying unimportant ones. Collection centres have therefore become increasingly selective about the kinds of artefacts they will preserve, leaving a large range of cultural heritage out of the ambit of their protection (D.L. Zimmerman, 2006). These concerns around the preservation of cultural heritage have generally been accentuated when it comes to preservation of the manuscript wealth of India.

1.2 At the start of the 21st century the preservation of cultural artefacts is confronted with two significant challenges: first, the emergence of digital technologies of preservation and conservation, which reverses several of the core premises around which cultural preservation was hitherto built. Second, the expansion, strengthening and greater awareness of intellectual property law has become a serious restraint on the adoption of a strategy of digital conservation. While previous legal regimes on the ownership and control of cultural artefacts imposed significant restraints on the activities of cultural preservation, intellectual property law threatens to enhance the character of restraints to such an extent that

cultural preservation may well become prohibitively expensive and therefore beyond the reach of publicly funded institutions.

- 1.3 This Report critically examines the work of the National Mission for Manuscripts (hereafter ‘the Mission’) to create a digital database of manuscripts in India from a legal perspective. At a preliminary level we examine whether the practices adopted by the Mission comply with the present legal regime which governs their activities. We then go further to identify and prescribe legal policy arrangements which are likely to enable the Mission to carry out its tasks while preserving the legitimate interests of the manuscript holders. While the study examines the work of the Mission, several of its recommendations apply with equal strength to all efforts at cultural preservation—both in public and private institutions.

National Mission for Manuscripts

- 1.4 The National Mission for Manuscripts was set up by the Ministry of Culture under the 10th Five Year Plan with the following objectives. First, the Mission would locate, enumerate, preserve and describe all Indian manuscripts in India and abroad. Second, the Mission would enhance access to manuscripts, improve awareness about our cultural inheritance and encourage their use for educational and research purposes. The Mission began in 2002 and has made considerable progress in achieving these objectives. As the Mission faces several legal and policy challenges while cataloguing and digitizing the existing manuscripts in India, it is essential to carry out a detailed examination of the statutory framework and the practices adopted by the Mission in fulfilling these responsibilities.
- 1.5 The United Nations Educational, Scientific and Cultural Organization (UNESCO) has been keen to support the Mission in carrying out this important study to aid the protection of manuscript wealth in India.

Hence, UNESCO commissioned a research study with the following terms of reference:

- 1.5.1 Develop legal and policy frameworks for manuscripts and other documentary heritage and examine the existing national/regional frameworks and draw insights from international best practices.
 - 1.5.2 Develop protocols on access to manuscripts and other documentary heritage and examine the existing national/regional/ international protocols and standards.
 - 1.5.3 Develop protocols on conservation, preservation and digitization of manuscripts and other documentary heritage and examine the existing national/regional/international protocols and best practices.
 - 1.5.4 Develop protocols on access to databases of manuscripts and other documentary heritage and examine the existing national/regional/ international protocols and standards.
 - 1.5.5 Design metadata structure and template for database of manuscripts and other documentary heritage.
 - 1.5.6 Make necessary technical and logistical arrangements for the different phases of the project, in terms of premises, computers, equipment, personnel, etc. as the case may be.
 - 1.5.7 Publish final report and recommendations with a view to future use by archives, manuscripts, libraries and other memory institutions, incorporating developed frameworks and protocols in monograph and electronic format on NMM website/UNESCO Web World portal.
- 1.6 This study was carried out by the Principal Researcher, Sudhir Krishnaswamy, who was assisted by C. K. Nandakumar and Ananth Padmanabhan, working with the Director and staff of the Mission. The study was carried out in 4 phases. In the first phase, the Research Team submitted a secondary literature survey covering the law and policy literature on the issues identified by the terms of reference. The second phase of the project saw the Research Team visiting the Mission to understand and document the existing practices followed by the Mission

team and to gather first-hand information and data from Mission staff on the conditions in which they carried out the Mission's objectives. A draft chapter-wise outline of the report was presented to the Mission for review and comments. The third phase of project saw the development of draft protocols and licenses on the three core activities of the Mission: access to manuscripts, databasing and digitization, and access to the database. These protocols were circulated among the Mission staff for review and comments. The fourth, final phase of the project required the Research Team to collate comments and criticism and prepare final drafts of the protocols as well as to submit a legal and policy framework paper to be used by the Mission in its future advocacy work.

- 1.7 This Report explores the legal and policy issues that the Mission is confronted within the process documenting and conserving the manuscript heritage of India. The Report follows the terms of reference set out above but does not present metadata structures or documentary database design as this is a technical matter not within the legal domain. The principal legal problem this report responds to is that of ownership and custodianship of manuscripts in India. This problem has several dimensions—with respect to the manuscript in its physical form as well the intangible property rights which reside in them. In this Report we examine the complex interplay between tangible and intangible property regimes and carefully assess the legal terms and conditions under which the Mission could access and have control or possession of these manuscripts. The process of storing of manuscript information in digital databases and the reproduction of manuscripts into digital forms requires temporary custodianship over manuscripts, which in turn raises complicated questions on the bailment or loaning of these manuscripts. Finally, we assess whether the best manner to respond to these legal issues is to develop a new policy framework which would provide State institutions with special rights over manuscripts so that the Mission may proceed with its tasks unimpeded by the ordinary law of property. Such a law may take into account the diverse range of manuscripts and the conditions of their storage and through a process of public ordering

render unnecessary a series of private transactions with multiple manuscript holders.

Background Legislative Framework and Policy Debates

- 1.8 In the last two decades, there has been an explosion of scholarship exploring the intersections between law and culture. Scholars in the field of law and culture have two divergent approaches: some investigate legal culture in its many forms and practices, while others study law as a cultural phenomenon. These studies include the representations of law and lawyering in celluloid and television formats, the linguistic practices of the legal profession and detailed ethnographic accounts of law in everyday life. The historical analyses of legal events in India have given us particularly deep insights into the categories of law and legality in our collective life. However, not as much attention has been bestowed upon the legal regulation of culture and the regulation of physical objects, as well as the intangible property regimes which critically shape the practice, distribution and vitality of our cultural lives.
- 1.9 This Chapter examines the ongoing debates on the protection and preservation of traditional knowledge and traditional cultural expressions in India and abroad. This debate is motivated by multiple concerns: the preservation and revitalization of traditional knowledge for ecological or cultural reasons; the transformation of traditional knowledge into commercially exploitable forms; using traditional knowledge as an asset of the poor and underprivileged which may be leveraged to ensure development and finally, to prevent the continuance of practices of neo-colonial misappropriation or piracy. In the first section of this paper we will explore the trajectories of this debate and identify the key lessons which we may integrate with the Mission's work.
- 1.10 In the second part of this Chapter we identify the legislative framework which operates in India to regulate cultural institutions and initiatives. We will outline the various legislations which create cultural institutions

and govern the collection and preservation of cultural artefacts. While we are primarily concerned with documentation and preservation of manuscripts, it is useful to identify the broader context of the legal regulation of culture as this may provide us with helpful comparisons and viable models for legislative reform.

Themes in the Traditional Knowledge Debate

- 1.11 The debate on protecting traditional knowledge in India reflects the multi-dimensional character of the debate on the regulation of information, knowledge and cultural resources. We may usefully isolate two strands of this debate on the basis of the policy frameworks they offer to resolve the problem. First, there are those who locate the policy debate on the protection of traditional knowledge in colonialism, where wealthy Western nations and multi-national companies are seen to be expropriating 'our' indigenous knowledge for immense profit. The moral panic around neem, basmati and turmeric, among others, bears testimony to this view. These biopiracy agitators fail to interrogate the nationalist premise on which this argument stands. Is the threat of biopiracy merely one that comes from without? Would we be content if it were established that Indian pharmaceutical companies exploited this knowledge? The nationalist character of this view prompts a regulatory response which transfers control over traditional knowledge resources to an elite state bureaucracy.

- 1.12 The nationalization of traditional knowledge would rival the nineteenth- and twentieth-century transfers of natural resources such as forests to the hands of the colonial forest department. Madhav Gadgil and Ramachandra Guha have explored the scale and perversion of this expropriation, whereby state bureaucrats developed into a breed of rent-seekers over forest lands, to the exclusion of tribal communities (Gadgil and Guha, 1993). The enactment of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is a belated recognition of the failure of state regulation of forests to the

exclusion of their original inhabitants, and is an attempt to correct this wrong.

- 1.13 There is little evidence to suggest that the state bureaucracies constituted by the recently enacted Biological Diversity Act of 2002 will conduct themselves any differently. Moreover, the number of filings for Geographical Indications by state agencies such as Handloom Promotion Corporations and Agricultural Export Promotion Agencies will result in quasi-governmental agencies claiming intangible property rights over a wide range of traditional knowledge products ranging from seeds to handicrafts. Our recent history teaches us that ‘nationalizing’ resources in the name of ‘our’ common heritage has a troubled legacy, and notwithstanding the emotive appeal of the biopiracy debate, we must resist such an option with traditional knowledge.
- 1.14 A second strand to the debate avoids the clutches of the self-aggrandizing state and argues for a regulatory response which facilitates individuals and communities acting in their own interest by securing conventional intellectual property protection or a suitably designed *sui generis* property regime. It diagnoses the problem with traditional knowledge as merely one of accommodating these knowledge forms within pre-existing legal formats, or if that proves too difficult, of devising new, stronger property regimes which iron out these difficulties. By focusing on communities and individuals who operate out of the spotlight of urban intellectual property lawyers, organizations such as Sristi and the National Innovation Foundation attempt to secure to innovators the fruits of intellectual property protection and venture capital funding, which nurtures enterprises to scale. Such an approach supposes the problem to be not with a property regime per se, but only with who the beneficiaries of such a regime are and the terms and conditions under which one secures legal protection. Therefore, if the Indian state or other civil society actors were to develop facilitating structures which allow previously excluded peoples to access these property regimes, the market would take care of the rest. Ironically, the

role of intermediaries like the Traditional Knowledge Digital Library and the Foundation for Revitalization of Local Health Traditions in generating databases of traditional knowledge or ex situ and in situ conservation sites for biodiversity, whether motivated by developmental or ecological concerns, may have inadvertently obviated the possibility of protection under existing patent rules.

- 1.15 Setting aside such crucial problems which arise with the extension of property protection to traditional knowledge, the success of this approach would be measured by the number of innovators earning financial rewards. There is no significant evidence of this as yet, but in the event of such success there are likely to be serious issues relating to individual innovators laying claim to communal creations, or the need for trusts and societies representing communities of creators. This would call for a great deal of legal ingenuity and insight into the political economy of communal creations. The battles between the powerloom weavers and traditional handloom weavers with respect to the geographical indication filing for Pochampalli sarees are an example of the kinds of issues that we will confront using such an approach.

- 1.16 Both approaches to traditional knowledge discussed above fail to satisfy key policy objectives in the protection of traditional knowledge. While a state regulation model fails to deliver on both access-maximizing and sustainable production standards, the property model will almost certainly fail to satisfy the latter standard. Art historians remind us about how active borrowing (read copying!) from existing weaving and art traditions such as *ikat*, as well as the influence of political movements such as Vinoba Bhave's Bhoodan movement, moulded the aesthetic practices of the Pochampalli silk weavers. By freezing this tradition within an intellectual property format, we will arrest this rich process of creativity enabled by a culture of sharing and borrowing. A property strategy threatens to ossify cultural creativity and starve the commons on which such knowledge is built. In order to develop such a policy

strategy we must first situate this debate in the existing policy framework which regulates culture.

LEGAL REGULATION OF CULTURE

- 1.17 First, we will map out the legal regulation of cultural objects—the physical, tangible artefacts that possess and communicate cultural meaning. Second, we will survey the proprietary and non-proprietary legal regimes governing intangible aspects of cultural products and practices. We will conclude by briefly evaluating whether the recent UNESCO Convention on Cultural Diversity offers us an interesting normative framework which may assist in developing a suitable policy to regulate NMM's work.
- 1.18 The historical development of law regulating culture has tended towards specialized normative frameworks for each cultural form or product. As a result we have developed multiple complex legal regimes to govern cultural institutions. In this section we will attempt to identify the key legislations that establish legal norms in these fields. An accurate and exhaustive analysis of the legal regulation of cultural objects may only be possible on a case by case analysis of discrete areas of cultural practise. The best we can do at this point is to signpost some significant legislation that any enquiry into the legal regulation of culture must take into account.
- 1.19 The legal regulation of tangible cultural products may usefully be divided into four categories: Textiles; Jute, Silk and Khadi; Museums and Monuments; Antiquities and Art Treasures. We will examine each of these in turn to identify the motivations for the statute and its scope and operation.
- 1.20 In the field of textiles, the Central Government has the exclusive legislative and executive powers. The legislations in the field may be organised into two categories: first, the development related statutes and second, the nationalization statutes. We are concerned in this section

with developmental statutes in this sector and will briefly set out the central objectives of these legislations.

A. The Textile Committee Act, 1963

- 1.21 The Textile Committee Act is an overarching statute that aims to ensure standards and quality of textile and textile machinery for domestic and export markets. To this end the Committee constituted under this Act may undertake scientific, technological and economic research to achieve these objectives as well as establish standard specification for textiles or packing materials.
- 1.22 The Textile Committee and its associated Inspectorate and Tribunal were empowered to carry out these varied objectives and to enforce the Act. The Textile Committee focuses primarily on the powerloom sector and other institutions are given responsibility for the handloom sector.

B. The Handloom (Reservation of Articles for Production) Act, 1985

- 1.23 The Handloom (Reservation of Articles for Production) Act, 1985 (hereinafter referred to as the Handloom Act) was motivated by the need to preserve the non-industrial production of textiles in India by reserving certain articles for exclusive production by handlooms. Once such articles have been so reserved, the Committee has the power to enforce this exclusion by conducting search and seizure, entering and inspecting premises it suspects to be housing/storing articles in violation of its orders. The Handloom Act has only been modestly successful at promoting handloom products in the two decades of its existence.

1. Jute, Silk and Khadi Legislation

- 1.24 The Central Government has enacted legislations to deal with specific natural textiles like jute, silk and khadi. The policy that drives this

legislation is the promotion of the use of these textiles and the support and development of a market for them textiles through a central authority.

A. Jute

- 1.25 There are two legislations to deal with jute and jute products. The Jute Manufacturers Development Council Act, 1983 provides for the establishment of a council for the development of jute products by increasing the efficiency of such production. The Development Council set up under the Act channels government resources to improve the cultivation of jute, its marketing and sale, and to monitor and develop the jute industry.
- 1.26 The Jute Packaging Materials (Compulsory Use in Packing Commodities) Act, 1987 seeks to increase the production of jute and jute products by compulsorily requiring the use of jute in the supply and distribution of certain commodities. The Standing Advisory Committee is empowered to determine the commodities for which jute packaging is compulsory. This committee is endowed with the power to enforce its orders.

B. Khadi

- 1.27 The Khadi and Village Industries Commission Act, 1956 establishes a commission for the development of Khadi and Village industries by planning, and promoting the development of Khadi and Village industries in rural areas. It was envisaged that the work of the Commission would contribute to rural development in tandem with other related developmental efforts. This commission is expected to develop an all-round policy that ensures the increased production and use of Khadi. This policy includes the stocking of material and implements which are accessible at reasonable prices, promoting research in technology related to Khadi production, financing

institutions or persons engaged in the development and operation of Khadi and Village industries and ensuring quality and standards in Khadi production.

C. Silk

- 1.28 The Central Silk Board Act, 1948 sought to provide for the development of the silk industry under a central government board. This board was empowered to promote the silk industry by undertaking or assisting scientific, technological or economic research. The board may take initiatives at all levels of the silk industry: mulberry cultivation, developing and distributing silkworm seeds and improving the marketing of raw silk.
- 1.29 The Board has the power to require those subject to the Board's jurisdiction to furnish all information to be submitted to the Board. The failure to submit information or the submission of incorrect information is punishable under the Act.
- 1.30 The second category of legislation that we enquire into relates to Museums and Monuments. The Central Government has enacted legislations for the preservation and maintenance of particular museums and ancient monuments of national importance. The museum laws are not applicable to the regulations of the activity of museums generically and set up particular institutions with a specific mandate.

A. Monuments

- 1.31 The Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the Ancient Monuments Preservation Act, 1904 are the legislation that deal with ancient monuments in genera; the Victoria Memorial Act, 1903 deals specifically with the preservation and maintenance of the Victoria Memorial in Kolkata.

- 1.32 The Ancient Monuments and Archaeological Sites and Remains Act, 1958 and the Ancient Monuments Preservation Act, 1904 seek *inter alia* to preserve ancient and historical monuments and archaeological sites and remains of national importance and regulate archaeological excavations. The Central Government is, by virtue of such legislation, vested with the power to declare any ancient remains and archaeological site to be one of national importance and to acquire rights in a protected monument from its owner for the preservation and maintenance of the monument at the expense of the Central Government. The Government also has the power to acquire a protected monument under the provisions of the Land Acquisition Act if it apprehends that it is in danger of being destroyed, injured, misused, or allowed to fall into decay, as if the preservation of the ancient monument were a public purpose. The Government is given the responsibility of maintaining every protected monument.
- 1.33 The Ancient Monuments and Archaeological Sites and Remains Act places restriction on enjoyment of property rights and regulates excavation and other activities in protected areas. Finally, the Government is vested with the power to enforce and to prohibit contravention of the provisions of the Acts.
- 1.34 The Victoria Memorial Act, 1903 was enacted for the sole purpose of the erection, maintenance and management of the Victoria Memorial in Kolkata. The Act establishes a body corporate by the name 'The Trustees of the Victoria Memorial' for this purpose and vests with them all the money and property in the custody of the Provisional Executive Committee which had been appointed to take custody of the large sums of money subscribed by the princes and the people of India for the erection of the Victoria Memorial. The Government has been vested with the power to make rules for the functioning and the regulation of the trustees and to carry out the purposes of the Act.

B. Museums

- 1.35 The Central Government has enacted two pieces of legislation for the purpose of maintenance of two specific museums: the Indian Museum in Kolkata and the Salar Jung Museum in Hyderabad. The Indian Museum Act, 1910 seeks to consolidate and amend the law relating to the Indian Museum. The Act provides for the incorporation of a body corporate by the name of 'The Trustees of the Indian Museum' for the purpose of maintenance and preservation of the Indian Museum. The trustees hold the property of the museum in trust and have the power to lend, exchange, sell or destroy the articles in the museum's collection, make bye-laws for execution of the trust and appoint officers and servants for the care and management of the trust property. They are responsible for preserving all articles in the collection of the museum and preparing an inventory of the same. The trustees are entrusted with the duty of maintaining and publishing the financial accounts of the museum.
- 1.36 The Salar Jung Museum Act, 1961 declares the Salar Jung Museum, together with the Salar Jung Library at Hyderabad, to be an institution of national importance and establishes the Salar Jung Museum Board for the maintenance and the administration of the museum. The Board has the duty to manage the museum efficiently and plan, organise, promote and implement programmes for the development of the museum and also provide for instruction, research, learning and dissemination of knowledge in matters connected with the museum and the library. Apart from the powers necessary to discharge its duties effectively, including the power to make Regulations for this purpose, the Board also has the power to purchase and acquire articles for preservation in the museum and exchange, sell or destroy articles of the museum. The Board is duty-bound to furnish reports of its activities and financial accounts of the museum every year.

2. Antiquities and Art Treasures

- 1.37 The Central Government has enacted legislation for the protection and preservation of and for regulation of trade in antiquities and art treasures. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 along with the Ancient Monuments Preservation Act, 1904 provides for the preservation and protection of sculptures, carvings, images, bas-reliefs, inscriptions or like objects of archaeological, historical or artistic interest.
- 1.38 The Indian Treasure-Trove Act, 1878 provides for the procedure to be followed by any person who finds a treasure and provisions for settling disputes of claim over such treasure. The Act vests with the Collector the power to acquire the treasure on behalf of the Government in case the treasure is declared ownerless. The Collector can settle disputes over claims over the treasure and for such purposes has the power of enquiry as vested in a civil court for trial of suits.
- 1.39 The Antiquities and Art Treasures Act, 1972 seeks to regulate the export trade in antiquities and art treasures, prevent the smuggling of, and fraudulent dealings in, antiquities, and provide for the compulsory acquisition (with adequate compensation) of antiquities and art treasures for preservation in public places. The Act prohibits the export of any antiquity or art treasure by any entity or agency other than the Central Government or entity or agency authorized for the same by the Central Government and provides for registration of antiquities appointment of licensing authorities to issue licenses for export trade in the same. The Government has the power to determine whether or not any article, object, manuscript, record or document is an art treasure or an antiquity for the purposes of the Act. Any officer authorised by the government to ensure compliance with the provisions of the Act is vested with the power of search and seizure. As NMM is primarily concerned with manuscripts, the legal regulation of manuscripts as tangible property is regulated under this Act. However, as the major part of this

Report is concerned with intangible property interests in manuscripts we do not explore this issue in greater detail.

- 1.40 This preliminary survey of the law regulating tangible cultural objects confirms that there are no common principles or policies which animate this field of legal regulation. While some statutes are primarily concerned with export control, others are oriented towards the preservation, display and conservation of artefacts and monuments, while a third category of statutes set up development agencies to formulate policies for the entire sector. It is certainly useful for us to interrogate the policy foundation which drives these varied agendas in these cultural sectors. It may be said that the existence of these several pieces of legislation and institutions indicate that the Central Government views these sectors to be of national importance and worthy of legislative time and executive resources. However, any attempt to suggest greater coherence in these varied policies is likely to fail.

Intangible property and Culture

- 1.41 The law of intangible property has a seminal impact on cultural practices and commercial arrangements in which these take place. These laws are constitutive of culture as we know it and are in turn shaped by the cultural norms and values with which we endow the world we inhabit. These laws, unlike the laws regulating cultural products, are generic in character – they apply to all cultural practices that satisfy the scope and definition which control how the law operates. So while the Khadi and Village Industries Commission Act 1956 seeks to promote the use of Khadi, the law of copyright protects artistic designs in textiles in the same fashion irrespective of whether the textile is Khadi, silk or jute. This generic character of intangible property law does not allow it to be fine tuned to respond to particular policy objectives we may seek to achieve in different cultural sectors.

1.42 This aspect of intangible property law has generated a wide ranging and contentious debate focusing on whether it should be applied indiscriminately across all cultural sectors. Moreover, intangible property laws embrace a particular view of the nature of creativity and the relationship of the individual creator and the culture and society they inhabit. These debates are particularly strained in the field of traditional knowledge and folklore. In this section we will assume a working knowledge on the part of the reader of the scope and application of intangible property law. We assume in other words that readers are familiar with the bare contours of copyright, trademark, patent, design, geographical indications and trade secret laws. Hereafter we will explore the controversies which have emerged from the application of these laws in the field of traditional knowledge and folklore. By paying attention to these controversies we will sharpen our understanding of the cultural politics and political economy in which debates about the regulation of knowledge should be conducted.

1.43 In the last two decades there has been a sustained political, policy and academic debate on the best mode of legal regulation of valuable information, knowledge and cultural products. The emergence of a significant computer software industry has resulted in calls for protecting intangible property that may be created in Indian industries. At the same time there has been continuous pressure to clean up the ‘rampant piracy’ of computer software developed and marketed by big corporations. Bollywood’s global ambitions have fuelled a need to find ways of protecting its movies and music using copyright law, while Hollywood accuses the Indian government of ignoring the protection of its movies and music. The culturally vibrant and commercially successful remix music cultures in India operate in the interstices of the strict prohibitions against copying and adaptation in copyright law. The recent amendments to the Indian Patent laws to accommodate our TRIPS obligations have prompted wide debate and criticism on the likely impact of such laws on the access to drugs and the health of the country at large. Simultaneously, we insist that ‘our’ traditional knowledge

should not be pirated by big pharmaceutical companies who will misappropriate this knowledge to put new drugs on the global market. So we have proposed stronger, wider and longer property protections for traditional knowledge to undo these potential harms.

- 1.44 These varied policy and academic responses in the field of intangible property law in India present us with difficult puzzles: first, we are uncertain whether we need more property or less property in the cultural sphere. We may suggest that the problem goes away if we see that the problem is not intangible property law itself but the contours of such a law and who it enables. Hence, more property is good in sectors where we have the property and bad in sectors where we don't. It may well be that a policy guided by such distributive concerns may be the best that we can achieve in this complicated cultural and economic arena. But our inability to articulate this vision of distributive justice continues to plague us.
- 1.45 Second, we are unclear whether we can identify a single knowledge regulation principle that achieves distributive ends while preserving and developing the cultural practice we seek to regulate. While a commons-based strategy responds to a particular vision of a communitarian, non-individualist, networked model of cultural production, a proprietary strategy imagines an individualist, commercially literate and enabled participant creating culture in a complex market economy. These models of cultural production and knowledge regulation are interrelated in intricate ways that may only be usefully explored in particular contexts. We may find that there can never be a uniform intangible property policy across the varied cultural sectors in India. For example, the intangible property principles that we apply in the digital sphere could be distinguished from the non-digital spheres of our culture. So while Creative Commons and Open Source initiative may have a role to play in the realm of software, these initiatives may have little to teach us on knowledge policy in the field of traditional knowledge.

1.46 The policy debate on traditional knowledge has been vigorous at national and international levels. At the national level, the Ministry of Science and Technology, Ministry of Environment, Ministry of Commerce and Ministry of Culture have at various points adopted policy positions on the protection of traditional knowledge and taken initiatives for the preservation and conservation of these knowledge forms. At the international level, the Inter-Government Committee process at the World Intellectual Property Organisation (WIPO) has now completed its 12th Session and stands at the threshold of creating an international regime on the protection of ‘Traditional Knowledge’ and ‘Traditional Cultural Expressions’.

1.47 The multiple policy objectives sought to be achieved by the protection of traditional knowledge debate are best framed by Carlos Correa as set out below:¹

- equity considerations,
- conservation concerns,
- the preservation of traditional practices and culture,
- the prevention of appropriation by unauthorised parties of components of traditional knowledge,
- promotion of its use and its importance in development

Hence, the ‘protection’ of traditional knowledge often requires the offensive use of Intellectual Property law to secure the full scope of property rights protection. At other times protection requires the defensive use of Intellectual Property law to ensure that others may not misappropriate traditional knowledge. Where neither of these approaches is successful, advocates protecting traditional knowledge have proposed *sui generis* forms of protection.

1.48 The preservation and conservation of traditional knowledge is one of the primary concerns of organizations working in this field. The ecological concern for preserving biodiversity has driven the conservation agenda

¹ C Correa *TK and Intellectual Property* (UNQO 2001)

to the forefront of environmental movements' concerns all over the world. With increased attention to the beneficial use of biodiversity resources by local communities, the conservation agenda came to be extended to this traditional knowledge. This is a particularly serious issue with the erosion of un-codified folk medicinal knowledge along with the social systems of patronage which support these traditions, and a breakdown in the inter-generational transfer of this knowledge as fewer younger practitioners take up this practice.²

- 1.49 India has been host to several initiatives to document traditional knowledge. The Traditional Knowledge Digital Library supported by the Ministry of Science and Technology and the Ministry for Indian Systems of Medicine developed a database where codified texts of Indian systems of medicine are translated into Western pharmacological categories so that these databases act as a prior art in the patent search process. Further, such a database may catalyze research into traditional knowledge by scientists. The National Innovation Foundation database developed by the Honey Bee Network and the Farmers Rights Information System developed by MSSRF are prominent examples of informal, NGO led centralized databases. A third form of database is the local community controlled traditional knowledge database. Examples are the development of biodiversity databases at the village level by the National Biodiversity Authority acting under the Biological Diversity Act, 2002 and the efforts of FRLHT to create Community Knowledge Registers to document local health practices in order to revitalize these traditions by promoting their vigorous practice. A secondary objective for these Registers is that they may serve as prior art in patent examinations. Thirdly, the Register may serve as the foundation for further scientific research in these fields. The efforts of NMM under the Ministry of Culture to develop a bibliographic database of manuscripts over 75 years of age with aesthetic, intellectual or medical features that merit preservation is another effort at the preservation of traditional

² D Shankar and PM Unnikrishnan *Challenging the Indian Medical Heritage* (Foundation Books 2004 Delhi) pp.10-12.

knowledge. Further, NMM seeks to digitize select manuscript collections to aid their preservation.

International Law and Policy on Traditional Cultural Expressions and Manuscripts

1.50 The international debate on the protection of traditional knowledge and traditional cultural expressions finds its expression at the World Intellectual Property Organisation (WIPO) in Geneva, one of the pivotal bodies operating in the field of intellectual property law and policy. Since the different dimensions of this debate are amply borne out by the deliberations and the policy statements that find their origin at WIPO, this Report limits itself to the activities of WIPO in this area. We conclude this section by briefly reviewing the efforts of UNESCO to develop the Cultural Diversity Convention to secure objectives distinct from that pursued by WIPO.

1.51 WIPO first began examining the relationship between Intellectual Property (IP) and the protection, promotion and preservation of traditional cultural expressions / expressions of folklore (TCEs) several decades ago.³ It has an ongoing and active program of policy development, legislative assistance and capacity building in this area, in close coordination with parallel work on traditional knowledge and know-how. Policy development and norm-building mainly take place, within the scope of the WIPO Intergovernmental Committee, on Intellectual Property and Genetic Resources and Traditional Knowledge and Folklore (the Intergovernmental Committee).

1.52 The main issues, among several others, that lie at the heart of intense and ongoing discussions between the Member States of WIPO,

³ In this context, ‘traditional cultural expressions’ refers generally to any forms, whether tangible or intangible, in which traditional culture and knowledge appear, are expressed, or are manifested, and which are the products of creative intellectual activity, including individual and communal creativity, characteristic of a community’s social and cultural identity and heritage, and maintained, used or developed by such community, or by individuals having the right or responsibility to do so in accordance with the customary law and practices of that community.

representatives of indigenous peoples and traditional communities and other stakeholders are first, whether the existing regime for protection of intellectual property suffices in the case of TCEs or a separate *sui generis* system is needed to provide ample protection; second, who, if anyone, owns the property rights over such expression and consequently, possesses the right to commercially exploit the same; third, how should assertions of exclusivity and proprietorship be reconciled with a balanced policy approach that encourages cultural exchange, promotes creativity and cultural development, and serves other legitimate goals such as research and education; fourth, what makes knowledge or a cultural expression, ‘indigenous’ or ‘traditional’; and finally, what are the appropriate boundaries and role of the ‘public domain’?

- 1.53 More recent sessions, of the above-mentioned Intergovernmental Committee have examined draft principles and objectives that could shape *sui generis* instruments on Traditional Knowledge and TCEs. This approach to protection recognises, amongst other things, collective interests in traditional know-how and expressions of traditional cultures which are ‘characteristic’ of a distinct cultural identity.
- 1.54 These drafts include, among their objectives, elements such as: recognising that indigenous peoples and other traditional and cultural communities consider their cultural heritage to have intrinsic value; promoting respect for traditional cultures; preventing the misappropriation and misuse of traditional cultures; empowering communities; supporting customary practices and community cooperation; contributing to the safeguarding of traditional cultures; encouraging community innovation and creativity; promoting intellectual and artistic freedom and research and cultural exchange; contributing to cultural diversity; promoting community development; precluding unauthorised IP rights; and enhancing certainty, transparency and mutual confidence.

- 1.55 The current draft of the WIPO provisions propose, *inter alia*, that it might be necessary for certain TCEs, for which especially strong protection is proposed, to be notified to or registered with some or the other authority as a condition of protection. The draft also suggests certain exemptions for ‘non-commercial research or private study’ and for the making of recordings and other reproductions of TCEs ‘for purposes of their inclusion in an archive or inventory for non-commercial cultural heritage safeguarding purposes.’ The draft WIPO provisions are intended to ‘complement and work together with laws and measures for the preservation and safeguarding of cultural heritage.’
- 1.56 Documents of the 11th Session of the Intergovernmental Committee recognise the reality that it would not be possible to develop a single system of protection as a solution in view of the great variety in indigenous communities and the different attitudes and needs expressed by them. In the case of Traditional Knowledge, the basic policy objectives of the Intergovernmental Committee have been to: recognize value, promote respect, meet the actual needs of traditional knowledge holders; promote conservation and preservation of traditional knowledge; empower holders of traditional knowledge and acknowledge the distinctive nature of traditional knowledge systems; support traditional knowledge systems; contribute to safeguarding traditional knowledge; repress unfair and inequitable uses; concord with relevant international agreements and processes; promote innovation and creativity; ensure prior informed consent and exchanges based on mutually agreed terms; promote equitable benefit-sharing; promote community development and legitimate trading activities; preclude the grant of improper intellectual property rights to unauthorized parties; enhance transparency and mutual confidence; and complement protection of traditional cultural expressions. The specific areas covered by the Intergovernmental Committee for achieving these policy objectives, and on which guidelines have been spelt out, are: legal form of protection against misappropriation; eligibility for protection; beneficiaries of protection and duration of protection; general scope of subject matter;

fair and equitable benefit-sharing and recognition of knowledge holders; principle of prior informed consent; exceptions and limitations; transitional measures; formalities; consistency with the general legal framework; administration and enforcement of protection; and international and regional protection. These guidelines have been prescribed keeping in mind the following principles in mind: responsiveness to the needs and expectations of traditional knowledge holders; recognition of rights; effectiveness and accessibility of protection; flexibility and comprehensiveness; equity and benefit-sharing; consistency with existing legal systems governing access to genetic resources; respect for and cooperation with other international and regional instruments and processes; respect for customary use and transmission of traditional knowledge; recognition of the specific characteristics of traditional knowledge; and providing assistance to address the needs of traditional knowledge holders.

1.57 In the case of TCEs, the 11th Session of the Intergovernmental Committee clearly follows the objectives and principles laid down in the earlier drafts. It reiterates the general guiding principles that were spelled out in the earlier drafts: responsiveness to aspirations and expectations of relevant communities; balance; respect for and consistency with international and regional agreements and instruments; flexibility and comprehensiveness; recognition of the specific nature and characteristics of cultural expression; complementarity with protection of traditional knowledge; respect for rights of and obligations towards indigenous peoples and other traditional communities; respect for customary use and transmission of TCEs/EoF; and effectiveness and accessibility of measures for protection. The specific areas on which guidelines have been framed and recognized in the earlier drafts by the 11th Session are very similar to the areas earlier mentioned in the case of Traditional Knowledge.

1.58 WIPO has also launched a project in response to the widely-expressed need for technical information and sharing of experiences on these

issues. A first step in this direction has been the collection, in a publicly-accessible database, of guides, codes of conduct, protocols and standard agreements currently in use by museums, archives, libraries and researchers from around the world. This database is meant to serve as a resource for those interested in learning how cultural institutions, associations and researchers are addressing IP issues as they record, catalogue, inventory, disseminate, present and re-use cultural materials. This collection of empirical materials and current practices is also meant to serve as a basis for distilling IP-related best practices and developing IP-related checklists, guidelines and model agreements for museums, archives, libraries and researchers. In a situation where there is a persisting interest among museums, the next step planned under this project is to prepare a copyright guide for museums and other such institutions. Such resources have been aimed at benefiting institutions that establish inventories of intangible cultural heritage, as provided for under the recently-adopted UNESCO Convention on Safeguarding Intangible Cultural Heritage. The UN Permanent Forum on Indigenous Issues has also recommended the development of these kinds of resources.

Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005

1.59 In the absence of a uniform legal or regulatory framework of cultural industries at the national level, we may assess whether a suitable approach has been devised at the international level. UNESCO's Convention on Cultural Diversity offers a model where 148 countries have agreed to adopt a common set of principles and obligations on promoting cultural diversity in the context of national and international development policy. The United States and Israel voted against the Convention, while four others abstained from voting. The implementation of this Convention in the national context offers us a new opportunity to reframe the policy debates around laws regulating

specific cultural objects and practices as well as the impact of intangible property laws on our cultural world.

- 1.60 Significantly, in the context of laws considered in this paper, the Convention seeks both to achieve instrumental economic objectives and promote cultural diversity for its intrinsic value as a human good. This twin motivation for the Convention is a significant corrective to the market-dominated cultural policies that have driven the formulation of the TRIPs agreement and intellectual property law at WIPO. Though the Convention recognizes ‘the importance of intellectual property rights in sustaining those involved in cultural creativity’, in its Preamble it also acknowledges that cultures are enriched by the free flow of ideas and the guarantee of free speech and expression which may often conflict with restrictive proprietary laws.
- 1.61 The guiding principles that all nations are obliged to follow include the need to ensure ‘equitable access to a rich and diversified range of cultural expressions from all over the world’ as well as recognition that the ‘protection, promotion and maintenance of cultural diversity are an essential requirement for sustainable development for the benefit of present and future generations.’ These principles bring to the fore a strong link between culture and development which has generally been absent from the legal and policy discourse on intangible property. By allowing countries like India sufficient policy space to frame legal regimes which respond to these distributive concerns, the UNESCO Cultural Diversity Convention can have a significant impact on domestic policy.
- 1.62 The international consensus built around the UNESCO convention gives us the opportunity to reframe the legal and policy debate around cultural objects, practices and industries and their relationship with national development and social justice. This will mean a comprehensive revision and overhaul of the specific laws relating to cultural objects and practices

we have briefly surveyed and the critical reorientation of intangible property law and how they operate in the cultural sector.

THE LEGAL REGULATION OF MANUSCRIPTS

- 1.63 In this section we begin our legal analysis of NMM's policy on access, preservation and ownership of the manuscript wealth of India. The ownership of manuscript wealth must be considered at three levels. First, tangible property rights in the physical object of the manuscript. Second, intangible property rights inherent in the manuscript, including copyright, moral rights and performance rights. Third, information rights in the manuscript, including restraints on confidential and private information, if any. The inter-relation of these three types of property rights can result in very complex legal situations where no clear outcome may be cited with certainty.
- 1.64 For example, a secret manuscript in the possession of a family of priests in the District of Mangalore, Karnataka may contain significant pharmacological information relating to the preparation of useful medicines. Further, the priests may operate under cultural restraints on the disclosure and sharing of the information contained in the manuscript. When an NMM Researcher approaches such holders of manuscripts, they will have to evolve a legal strategy to account for and protect all three types of property rights. In such a case, we will need to develop adequate legal arrangements to account for all three types of property which may reside in the manuscript so as to adequately achieve the Mission's objectives and not to harm the legitimate interests of other actors. We first discuss access to the physical manuscript.
- 1.65 Manuscripts are presently dispersed all around the country and held by different persons under different conditions. A large number of manuscripts are, at present, in Museums, Archives and State depositories of culture and heritage. They may collectively be described as Manuscript Resource Centres (MRC). The second source of manuscripts are cultural and religious institutions such as temples, churches and mosques which maintain libraries and collections.

Another important source of manuscripts is private holdings by individuals, families or other closely related groups.

- 1.66 The first objective of this Report is to find reasonable access to all three types of sources of manuscripts. In the absence of an overall legislative framework which mandates such access, the Mission has had to develop a case-by-case approach to accessing manuscripts. Under these circumstances, the Mission adopted a strategy to gain access on a voluntary basis. All surveyors engaged by the Mission were equipped with a standard code of conduct, which is excerpted below:-

CODE OF CONDUCT FOR DOCUMENTERS/MEMBERS OF THE NATIONAL MISSION FOR MANUSCRIPTS

We must be polite and cordial in all our dealings with the members of the public.

We must reassure members of the public as to the good intentions of the Mission and its objective of documenting all of India's manuscripts.

We must assure owners of manuscripts that the Mission has no intention of forcibly appropriating manuscripts but on the contrary, will only accept manuscripts that are voluntarily donated.

We must spread the message of manuscript and heritage conservation and try and bring to light the importance of saving our cultural inheritances.

We must never bring any harm to a manuscript by tearing or dirtying or in any way damaging manuscripts. We must prevent harm from reaching any manuscript.

We must never take away a manuscript, or a part thereof, from anyone by force.

We must help anyone who requests help with the conservation or preservation or repair of a manuscript/s in their possession. We must do everything possible to ensure the preservation, correct storage and usage of manuscripts anywhere we see them.

We must never sell a whole or part of a manuscript. Whenever we see a

manuscript being sold or smuggled outside the country, we must inform the relevant authorities (police, customs officials, officers in the Culture Department etc).

We must respect people's sentiments with regard to their manuscripts. But we must try and see that no manuscript is harmed by any member of the public.

We must do our best to document as many manuscripts as we can as per the prescribed forms so as to expand our data base.

- 1.67 This Code of Conduct made it clear that the Mission had no intention of acquiring manuscripts. It mandated that surveyors must not take away or sell any part of the manuscripts and thereby act in contravention of this Code. Thus, the Mission staff sought to establish a quasi-contractual relationship, in a cordial manner, which would form the basis of all future interactions with the manuscript holder.
- 1.68 Once access to the manuscript was established, the surveyors in the second phase were instructed to fill out a Survey Form, which collected key information regarding the nature and condition of the manuscript. The data from this Survey Form was to be integrated into a Central Database maintained by the Mission. The Survey Form, which contained data on the identity and ownership of the manuscript holder, could give rise to concerns regarding the privacy of the individual and the secure keeping of the manuscript. Establishing such protocols may be advisable as in the past no express guarantees were given to the manuscript holder on the disclosure of this information.
- 1.69 The third phase in developing the manuscript database was carried out through a post-survey mechanism where the surveyor set out to gain further information on the content and preservation status of the manuscript. At this stage, surveyors were meant to assess the relative importance of the manuscript and whether it was suitable for digitization and further preservation. At this stage, the manuscript holder was offered the services of the Mission for conservation and preservation of

the manuscript in the tangible form. The post survey form is excerpted below:-

NATIONAL MISSION FOR MANUSCRIPTS	
MANUSCRIPT DATA	
Record No.	Date of data collection
Institute (Personal Collection)	(Address) (Village) (Block) (District) (State) (Pin)
(Text)	(Bundle No.) (Manuscript No.)
(Author)	(No. of Folios)
(Commentary)	(Size of Mss.)
(Commentator)	(Material) (Hand made paper/Palm leaf/Birch-bark/Leather/Cloth/Others)
(Language)	(Illustrations)
(Script)	(Complete/Incomplete)
(Date of manuscript)	(Missing portion)
(Scribe)	(Condition) (Worm eaten/bad/Good/Fungus/Fragile)
(Subject)	(Remarks)

NATIONAL MISSION FOR MANUSCRIPTS	
	(Record No.)
(Name of the Institute) (Individual)	
(Place/Village) (Block) (District) (State) (Pin code)	
Head of Institution	
(Telephone)	

(email)			
(website)			
No of total manuscripts			
No. of paper manuscripts			
No. of palm leaf manuscripts			
No. of mss. In other materials			
No. of mss. Catalogued category-wise			
State of preservation of manuscripts		Brittle/good/bad/broken	
Status/Type of Institution		Govt./private/autonomous/others	
Date on which the information is collected			
Remarks			
Subject	Language	Script	No. of manuscripts
Signature of surveyor			

The above overview of the Mission's approach to gain access to and document the content, location and ownership of manuscripts, raises some complicated legal issues, to which we shall now turn our attention.

Access to Manuscripts

- 1.70 The short history of State intervention in the domain of cultural preservation reveals that most private holders of cultural heritage artefacts are immensely distrustful of the suggestions, intentions and motivations in developing a database of manuscripts. The Mission began its activities against the backdrop of several failed attempts at developing such a database. Hence, the Mission adopted a novel strategy of accessing manuscripts purely on a voluntary basis. Despite this approach, the Mission faced several hurdles in accessing significant and important manuscript collections. We consider below a case study wherein the Mission sought to gain access to manuscripts by the Assam Satra

Mahasabha. The correspondence between the Mission and the Satra Mahasabha is excerpted below to illustrate the strength of the objections raised by the Mahasabha.

National Mission for Manuscripts

Utpal Das, M.Sc., MLISc.
Project Co-ordinator

Manuscript Resource Centre-GCC,
B. C. Gupta Memorial Central Library,
G. C. College, College Road,
Silchar-788 004
Phone: 03842-264257 / 224053 (R)
Mobile: 94350-73087
Email: sch_gclib@sancharnet.in

Ref.No.

Date: 27/12/06

To,
Dr Sudha Gopalakrishnan, Director,
National Mission for Manuscripts, New Delhi

Sub: Digitization of manuscripts as Majuli

Dear Madam,

This is in reference to the subject cited above, I would like to state to you that I had been at Majuli on 25 Dec. 2006 to discuss about the digitization programme to be taken up at Majuli by NMM soon. As there was a 3 days programme of Sanskrit Bharati at Uzzar Kamalabari Saraz, I took the opportunity to meet Satradhikaras of various Satra of Majuli and also few Executives and General Secretary of Assam Satra Mahasabha. The talk on digitization was fruitful as almost all of them at least agreed to it on principle. But before starting the digitization activities, they want to satisfy some queries in written form from your end and only signed by you which will be discussed with a team comprising of few technical persons of Dibrugarh University, (ie renowned media personality, few Satradhikaras, Executives of Assam Satra Mahasabha and few local eminent persons). If they are satisfied, then the Assam Satra Mahasabha, Majuli

Branch may sign an agreement with NMM. To expedite the process, I myself told them that the NMM was willing to bring the scanner at Majuli in the first week of January 2007 so the process of agreement must be finalized during December '06. They agreed that they would send the reply within a week after receiving the answer of the queries.

The summery queries are as follows:

What is NMM and how NMM is authorized to do digitization of manuscripts?

What exactly the term digitization means and what would be done during the process of digitization of manuscripts at Majuli?

Why do you think the manuscripts need digitization?

How Satras will be benefited from digitization and what would be the security aspects of confidentiality, as we do not want publication of the next matter at this moment?

What would be the post digitization process activities? Whether the agreement/promise would be honoured in 100 per cent satisfactorily?

What exactly the NMM will do in the aspects of storage and retrieval of CD of digitized manuscripts?

The above are the queries that have been discussed with me and requested me to deliver to you. For your kind information, informally, I must say that this is just a formality they want to have, because they have already selected a site for installation of the scanner and asked my opinion on them.

I hope this will help you to send a written document to the address given below to expedite the process of digitization of manuscripts at Majuli.

With regards,

Sd/- (Utpal Das)
Librarian/Coordinator,
MRC-GCS.

Address to whom to write

Sri Sri Sarradhikara Janardan Dev Goswami
Sarradhikar of Uttar Karnalabari Satra &
President, Assam Satra Mahasabha, Majuli
Branch, Kamalabari, Majuli, Assam
Phone 9435203270
Pl. also send a copy to Sri Utpal Das,

Coordinator, MRC-GCS for further reference
and needful.

Copy to: Mr. Anurag Arora, Coordinator, Digitization, NMM, New Delhi.

- 1.71 In this instance, a manuscript collector in the relatively remote district of Majuli in Assam is confronted with fundamental questions about the nature of access being provided to manuscripts. The holders of manuscripts ask relevant questions about the use to which data collected is put and whether it is merely a preliminary step to the State's acquisition of the manuscripts. These concerns highlight the need to adopt a more formalistic approach to securing the 'prior informed consent' of the manuscript holder before any information is collected. The use of a standard form legal contract in the local language may be appropriate. However, in discussions with field survey staff this proposal for a formalistic approach was found to be misplaced as it was likely to provoke more severe opposition to the Mission's work, since there is significant resistance to using such legal formats in rural India. Hence, we concluded that we must persist with the present informal approach and strengthen the code of conduct adopted by surveyors to ensure that holders of manuscripts were not shortchanged by errors committed by surveyors.

Privacy Law

- 1.72 Privacy law and the law relating to confidential information can provide significant hurdles to any activity involving the creation of a public database, even where the information collected is personal information unrelated to the manuscript. Privacy Law may impose bars on the collection of such information by the State. The law relating to confidential information applies where deliberate effort has been made to keep information secret. Invariably such information has commercial value or is backed by religious or cultural sanction.
- 1.73 A.C. Breckenridge defines 'privacy' to include the right of the individual to control dissemination of information about himself. However, Indian law on

privacy has always been more focused on the right to privacy of the individual *vis-à-vis* the authority of the State. Between two private individuals, the right to privacy has not evolved as an independent right that is capable of providing adequate relief by itself. The underlying basis for the right to privacy has been the right to life and personal liberty under Article 21 of the Constitution. Using an expansive interpretation of the expressions 'life' and 'personal liberty' contained in Article 21, the Supreme Court has time and again included the right to privacy within this right. The Supreme Court has reasoned that life without such a right to privacy would be rendered much less meaningful and hence acting in disregard of this right of the citizen would result in the violation of her/his right under Article 21. In any situation of breach of this right by the State, the citizen can directly approach the Supreme Court seeking appropriate remedy.

- 1.74 However, there is no specific statute that recognises and safeguards this right. The absence of any statutory law makes the right to privacy a much less protected and guaranteed right in our legal system, especially in governing the interactions and relationships between two private individuals. At the same time, it is felt that keeping in mind the invaluable nature of this right, the surveyors engaged by the Mission to access the manuscripts should be given specific instructions to respect the privacy of manuscript holders.
- 1.75 Confidential information is protected mainly through private contracts that prevent or regulate dissemination of such information. There is no statutory law in India which protects confidential information, and this area of law is regulated by common law. Since we have reasons to believe that it may not be feasible to assess the nature of information that is likely to be shared by the manuscript holder before an exchange of information, it is advisable to treat all conversations with manuscript holders as confidential. However, we recognize that it may be impossible to get the manuscript holder to sign any legal document even where the non-disclosure agreements is primarily for their benefit. Hence, it may be advisable to give specific instructions to surveyors to treat all the information that comes to their knowledge while accessing the manuscripts as confidential in nature, and NMM may enter into non-disclosure

agreements with the surveyors so that they are bound not to disclose confidential information they may receive from a third party—namely, the manuscript holder. Such a contract would bind the surveyors and any other Mission staff who come into contact with such information to treat all such information as confidential and to not disclose such information without the express consent of the Mission authorities. A draft of the Non-Disclosure Agreement that the Mission may enter into with its employees is set out below.

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ('Agreement') is made and executed at _____, on this ____ day of _____ 2007 ('Effective Date'),

BY AND BETWEEN:

THE NATIONAL MISSION FOR MANUSCRIPTS, established by the Ministry of Tourism and Culture, Government of India,
Having its office at 5, Dr. Rajendra Prasad Road, New Delhi – 110001,
Represented by its _____, Mr./Ms. _____

(Hereinafter referred to as the 'FIRST PARTY')

AND

(Hereinafter referred to as the 'SECOND PARTY')

WHEREAS:

The First Party is an institution set up by the Ministry of Tourism and Culture, Government of India, with the specific mandate of unearthing and preserving the vast manuscript wealth of India, and

In pursuance of this mandate, the First Party has undertaken several projects

including accessing, preserving, cataloguing and digitizing manuscripts possessed by different holders, and

The Second Party is engaged by the First Party to access manuscripts that may be in the possession of holders in different parts of the country, and

Such manuscripts being rich in cultural and religious significance may be considered as private and sensitive information by the holders of these manuscripts, and

The First Party therefore desires to protect the confidentiality of any such confidential Information disclosed or exchanged pursuant to the accessing of these manuscripts by the Second Party.

IT IS NOW AGREED as follows:

Use of Confidential Information

The Second Party being an employee of the First Party who is engaged to access the manuscripts possessed by various holders for and on behalf of the First Party, may come across certain information while in the course of such employment. Such information may include, but is not limited to the manuscripts themselves, historical background of the manuscript, the religious or cultural significance of the manuscript, information that is held as a secret by the holder, whether the holder be an individual, a family or a community, information about the manuscript-holder or the predecessors of the manuscript-holder or any other person associated with the manuscript, and any such other information pertaining to the manuscript (collectively known as 'Confidential Information').

The Second Party shall not disclose such Confidential Information that he may come across in the course of his employment with the Second Party to any third party nor use such Confidential Information for any purpose other than the purpose mandated by the First Party. The Second Party shall use the same degree of care in maintaining the confidentiality of the Confidential Information as it uses with respect to its own information that is regarded confidential and / or proprietary by such party, and in any case shall use reasonable care in maintaining the confidentiality of such information. The Second Party agrees that it will make no copies of any Confidential Information without having first obtained the written authorization for such copies from the First Party.

Exceptions:

The Second Party shall not be liable for any disclosure of Confidential Information or further restriction on use if the same information was in the public domain at the time it came to the knowledge of the Second Party or later comes within the public domain, except through acts or omissions of the Second Party.

Term of Agreement:

This Agreement shall continue in effect for as long as the Second Party is in the employment of the First Party. However, the obligation of the parties hereunder shall survive such expiration or termination and shall remain binding with respect to all Confidential Information that the Second Party comes across during the term of this Agreement while in the course of his employment to access the manuscripts for and on behalf of the First Party.

Agreement part of the Terms of Employment

This Agreement and the obligations, duties and liabilities imposed on the Second Party under this Agreement shall be considered a part of the terms of employment of the Second Party and shall be read along with, and treated as being part and parcel of, the other rules and regulations governing the employment and service conditions of the Second Party.

Breach:

If it comes to the knowledge of the First Party that the Second Party has committed breach of any of the obligations under this Agreement by the Second Party, disciplinary proceedings may be initiated by the First Party against the Second Party and in the event of such breach being proved, such breach may be treated as a case of major misconduct on the part of the Second Party. The First Party may in addition to this, seek appropriate legal remedy before any Court of competent jurisdiction for damages arising out of breach of any obligation under this Agreement by the Second Party.

Governing Law:

The parties agree that this Agreement shall be construed, enforced and governed solely in accordance with Indian laws and the courts in the National Capital Territory of Delhi

shall have exclusive and sole jurisdiction over any disputes arising out of or in connection with or in relation to the terms of this Agreement.

AGREED AND SIGNED BY THE AUTHORISED SIGNATORY OF THE FIRST PARTY
AND THE SECOND PARTY,

BY THE FIRST PARTY

BY THE SECOND PARTY

WITNESSES:

- 1.76 The key to the protection of confidential information is that adequate efforts are made to maintain the chain of confidentiality by practical and legal measures. As several Mission staff besides the field surveyors come into contact with such confidential information, the Mission may enter into similar agreements with its other employees who are involved with the other aspects of the project, such as digitization, preservation and cataloguing of manuscripts. Suitable changes may be made in the service rules and regulations, if any, of its surveyors (as is the case here) or the other employees (in case the Mission wishes to extend the application of such Non-Disclosure Agreements to other employees as well), to include breach of such Agreements as amounting to a case of major misconduct. In the absence of such changes to the Services Rules, there is likelihood that the disciplinary action initiated by the Mission may be exposed to legal challenge. Though we are not in a position to settle this conclusively without reviewing the terms and conditions of employment of the concerned staff, it is advisable to carry out such changes at the earliest opportunity.

Legally Mandated Access

- 1.77 In several spheres of cultural activity, the Indian State has the right to acquire cultural heritage or artefacts irrespective of the intentions of the holders of such artefacts. The Antiquities and Art Treasures Act, 1972 gives the appropriate authority the right to acquire any property which is found to be a National

Heritage. This Act also prescribes other regulations and prohibitions on dealing in antiquities and art treasures. Under Section 2(1)(a) of this Act, 'antiquities' are defined as including any manuscript, record or other document which is of scientific, historical, literary or aesthetic value and which has been in existence for not less than seventy-five years. Therefore, the provisions of this Act apply to manuscripts as well and are of significance to the Mission.

- 1.78 Section 3 of this Act prohibits the export of any antiquity by any person other than the Central Government or any authority or agency authorized by the Central Government in this regard. Under Section 5, no person is permitted to carry on the business of selling antiquities declared by Parliament by law as being of national importance, without obtaining a license to do the same. The Central Government is given wide powers under this Act, the most relevant of which is its power to compulsorily acquire any antiquity or art treasure. This power is vested in the Central Government under Section 19 of the Act which states:

19 (1) If the Central Government is of the opinion that it is desirable to preserve any antiquity or art treasure in a public place, the Government may make an order for the compulsory acquisition of such antiquity or art treasure.

(2) On the making of an order under sub-section (1) the Collector of the district in which such antiquity or art treasure is kept shall give notice to the owner thereof intimating him of the decision of the Central Government to acquire the same and it shall be lawful for the Collector to take possession of such antiquity or art treasure, for which purpose the Collector may use such force as may be necessary.

(3) Where the owner of any antiquity or art treasure the possession of which has been taken over by the Collector under sub-section (2) objects to the taking over of such possession, he may, within a period of thirty days from the date on which such possession was taken over, make a representation to the Central Government putting forth his objections:

Provided that the Central Government may entertain the representation after the expiry of the said period of thirty days, if it is satisfied that the owner of such antiquity or art treasure was prevented by sufficient cause from making the representation in time.

(4) On receipt of any representation under sub-section (3), the Central Government, after making such inquiry as it deems fit and after giving to the objector an opportunity of being heard in the matter shall, within a period of ninety days from the date of receipt of the representation, either rescind or confirm the order made by it under sub-section (1).

(5) Where any order made by the Central Government under sub-section (1) is rescinded under sub-section (4) the antiquity or art treasure shall be returned to the owner thereof without delay and at the expense of the Central Government.

(6) Where the order made by the Central Government under sub-section (1) is confirmed under sub-section (4) the antiquity or art treasure shall vest in the Central Government with effect from the date on which the possession thereof has been taken over by the Collector under sub-section (2).

(7) The power of compulsory acquisition conferred by this section shall not extend to any object, being an antiquity or art treasure, used for bona fide religious observances.

Explanation.—In this section, ‘public place’ means any place which is open to the use of the public, whether on payment of fees or not, or whether it is actually used by the public or not.

1.79 Similar provisions are found in the Ancient Monuments and Archaeological Sites and Remains Act, 1958. Section 2(b) of this Act defines an ‘antiquity’ as including any coin, sculpture, manuscript, epigraph, or other work of art or craftsmanship, which has been in existence for not less than 100 years. There is a separate Chapter in this Act devoted to protection of antiquities. As per Section 25 of this Act, the Central Government is empowered to direct that any antiquity duly notified by it shall not be moved without the written permission of the Director General. In a situation where the Central Government has issued any such notification and it further apprehends that the notified antiquity is in danger of being destroyed, removed, injured, misused or of being allowed to fall into decay, or is of the opinion that, by reason of its historical or archaeological importance, it is desirable to preserve such antiquity in a public place, Section 26 empowers the Central Government to compulsorily acquire the antiquity. Thus, Section 26 can be resorted to by the Central Government only after the notification under Section 25 and is in this manner different from the wide-

ranging power of acquisition granted under Section 19 of the Antiquities and Art Treasures Act, 1972. At the same time, this provision does play a significant role in safeguarding the manuscript wealth of the country.

1.80 Another interesting model of ownership and control of public records is envisaged by the Public Records Act, 1993, which has been enacted with the specific mandate of regulating the management, administration, and preservation of public records of the Union Government, Union Territories, Public Sector Undertakings, Statutory bodies and Corporations, Commissions and Committees constituted by the Union Government or Union Territory Administrations. The term ‘public records’ is defined under Section 2(e) of this Act as including any documents, manuscripts, or files, of any ‘records creating agency’.⁴ The Act prohibits any such public records from being taken out of India without the prior approval of the Central Government. As per Section 3(2), the Central Government or the concerned Union Territory Administration can authorize the Director General or the head of the Archives to carry out functions such as custody, use and withdrawal of public records, arrangement, preservation and exhibition of public records, preparation of inventories, indices, catalogues and other reference media of public records, promoting utilization of available space and maintenance of equipments for preserving public records, survey and inspection of public records, regulating access to public records, and obtaining on lease or purchasing or accepting as gift any document of historical or national importance. Under Section 11, the National Archives of India or the Archives of the Union Territory are also empowered to accept any record of historical or national importance from any private source

⁴ The term ‘records creating agency’ includes:

- i. in relation to the Central Government, any ministry, department or office of that Government;
- ii. in relation to any statutory body or corporation wholly or substantially controlled or financed by the Central Government or commission or any committee constituted by that Government, the offices of the said body, corporation, commission or committee;
- iii. in relation to a Union Territory Administration, any department or office of that Administration;
- iv. in relation to any statutory body or corporation wholly or, substantially controlled or financed by Union territory Administration or commission or any committee constituted by that Government, the offices of the said body, corporation, commission or committee;

by way of gift, purchase or otherwise, and make any such record available to any *bona fide* research scholar.

- 1.81 In several countries, similar approaches have been adopted for the regulation and protection of the entire body of cultural heritage and Artefacts. Two examples may be useful in illustrating how this may operate. In the Philippines, the Cultural Properties Preservation and Protection Act has been subsequently amended by Presidential Decree No. 374, and a distinction has been made between cultural properties, important cultural properties, and National Cultural Treasures. The National Museum has been entrusted with the task of regulating the sale or export of all cultural properties. While National Cultural Treasures are subject to the highest degree of protection, various regulations and restrictions have been put in place for dealing with the first two categories of cultural properties. Japan and Korea also pursue a similar policy of classification and restriction on export. Thus, in a sense, Indian law goes one step further by providing for the possibility of compulsory acquisition.
- 1.82 Our survey of the domestic law on cultural heritage as well as the international law on the subject suggests that a legally mandated access policy in the field of manuscripts is feasible. Nevertheless, our understanding of the practical circumstances in which manuscript collections are accessed or documented leads us to the conclusion that this mode is open to blatant violations and abuse. When one recognizes the level of citizen distrust of governmental intervention in this field, a legally mandated access policy may drive manuscript collections underground, with manuscript holders refusing to reveal their holdings. Hence, in order to prevent this unfortunate consequence it may be advisable to retain contractual access as the preferred legal model by which manuscripts are accessed.

Contractual Access

- 1.83 Contract law which is set out in the Indian Contract Act, 1872, would govern the gaining of voluntary access to the manuscript collections. The general principles for the formation and performance of contracts are set out in elaborate detail in the above legislation. For our purpose, two general

principles may be highlighted. First, the fundamental principle of contract is that the parties to the contract must fully understand the terms and conditions and object of the contract. In this case, the Mission and manuscript holder must be of the same mind with respect to the nature of access that the manuscript holder will permit and the benefits and services that the Mission will provide the manuscript holder. Second, a contract is valid only if it does not violate general considerations of public policy and is executed in the absence of fraud, undue influence, or duress. In order to successfully assert that a valid contract has been entered into between the Mission and the manuscript holder, it is essential for us to show that the above conditions are satisfied, which in turn necessitates full and frank communication between the Mission surveyor and manuscript holder.

- 1.84 Ideally, this should be carried out in writing, so that the agreement between the parties can be captured with precision and quality. However, the experience of the Mission surveyors suggests that the introduction of formal requirements of contracting will prevent the Mission from carrying out its objectives successfully. Manuscript holders are generally apprehensive of signing any printed document regarding the manuscripts in their possession.
- 1.85 This genuine ambiguity and the response in the formal legal conversation forces the Mission to adopt an omnibus policy which is well published and understood by all manuscript holders even in the absence of a performing contract with each party. Moreover, this saves contract expenses and time, which would naturally be incurred in the case of formal contracts.

CONCLUSION

1.86 In this section we have reviewed the domestic legal framework under which the Mission gains access to manuscripts. We have enquired into the practices of the Mission and evaluated the extent to which this complies with existing legal requirements. In the next section we review the law relating to movable property as well as the law relating to intellectual property, which regulates what the Mission may do once it has gained access to the manuscript. We may conclude this section by noting that though a more formal legal approach to the process by which manuscripts are accessed may be advisable in order to protect the privacy and confidential information of manuscript holders, this may not be a practical suggestion as employees of the Mission are likely to be viewed with suspicion, and any insistence on formality will heighten the sensitivity of manuscript holders and make access to manuscripts difficult. It is the sincere belief of Mission staff that the remarkable success of the Mission's effort at creating a manuscript database when compared to earlier initiatives of the Indian state is a result of their relatively informal approach to the process of manuscript access. Hence, the legal reform suggested in this section concentrates on the legal relationship between the Mission and its staff and does not impose legal formality on the relationship with the manuscript holder.

Collecting and Digitizing Manuscripts

1.87 This section delves into tangible and intangible property rights that may arise in the context of accessing, taking possession of and reproducing manuscripts. The Mission, to carry out its mandate, accesses the manuscripts and then subsequently takes possession of selected manuscripts for conservation purposes or digitization, or, in a few special cases, for both these reasons. In such cases, we are primarily concerned with the law relating to movable property, the law of copyright and, wherever applicable, the law of patents. Wherever the Mission takes possession of a manuscript, the law of property becomes applicable, and we will need to develop protocols that address these concerns adequately. The reproduction of manuscripts by the creation of a digital copy gives rise to several issues regarding the ownership of copyright.

Introduction of digital copies into a database needs to address copyright issues at two levels – first, between manuscript holders and the Mission, and second, between the Mission and all those who may have access to the manuscript database. We will approach these issues in turn.

Law Relating to Real Property

- 1.88 We have noted earlier that the Mission undertakes as a matter of policy not to acquire manuscripts from the present manuscript holders. However, two other modes of acquisition of manuscripts may still persist. Manuscript holders may gift the manuscript to the Mission in order to alter, preserve and disseminate the information contained in the manuscript. Other holders may temporarily loan the manuscript to the Mission for preservation and digitization purposes with the expectation that the manuscript will be returned. In the latter case, the law of bailment would cover such a transaction. We will look at each in turn.
- 1.89 The law relating to gift of movable property is found in the Transfer of Property Act. Section 122 defines a gift as ‘transfer of certain existing movable or immovable property made voluntarily and without consideration by one person, called the Donor, to another, called the Donee, and accepted by or on behalf of the Donee’. In order for the donee to convey good title to the manuscript, the Mission must first verify that the donor is indeed the owner of the manuscript. The verification of title is essential to ensure that the Mission gets full ownership of the manuscript and further to protect it from the claims of third parties, who may have an interest in the manuscript. The legal rule that applies to such gifts is known as ‘the *nemo dat* rule’, according to which any transferor of property may only convey as good a title to the property as he or she may already have.
- 1.90 The title of the manuscript holder to a manuscript may be particularly complicated where manuscripts have been generated by communities and may be in the possession of a select member of the community, who holds the manuscript as a trustee or custodian of the community. It is important to verify whether this is the case with any donor of a manuscript, as it is unlikely that such a holder of manuscripts will have the right to gift or otherwise convey the

manuscript to any person. Even though customary rules and obligations may not be enforceable in a court of law, it is important for the Mission to respect the interest of the community in the holding and use of such manuscripts and therefore refuse gifts of such manuscripts.

- 1.91 The second element for a valid gift is the clear and unambiguous expression of intention to transfer the property by the donor and its acceptance by the donee. Section 123 of the Transfer of Property Act, 1882, requires that the transfer has to be effected by a registered instrument signed by or on behalf of the donor and attested to by at least two witnesses. The Section makes an exception for movable property, so that transfers may be effected by the delivery of movable property even in the absence of a registered document.
- 1.92 Given the wide range of manuscripts which may potentially be donated to the Mission, it is advisable to utilize the informal procedure allowed by the exception contained in Section 123 to the fullest and effect all gifts by requiring the manuscript holder to deliver the manuscript and acknowledging such delivery through formal correspondence between the Mission and the donor. In this regard, it is advisable to enter into a standard form gift deed with all prospective donors. A draft of such a gift deed that may be used by the Mission and the donor is set out below.

GIFT DEED

THIS GIFT DEED ('Deed') is entered into at (PLACE), on the ____th day of _____, 200__.

BY AND BETWEEN:

(Name of the manuscript-holder),

Residing/Having its office at _____,

Represented by its Proprietor _____ (only needed if the manuscript-holder is an institution)

Hereinafter referred to as the 'DONOR', of the One Part;

AND

THE NATIONAL MISSION FOR MANUSCRIPTS, established by the Ministry of Tourism and Culture, Government of India,
Having its office at 5, Dr. Rajendra Prasad Road, New Delhi – 110001,
Represented by its _____, Mr./Ms. _____

Hereinafter referred to as the 'DONEE', of the Other Part.

WHEREAS:

- A. The Donee is an institution set up by the Ministry of Tourism and Culture, Government of India, with the specific mandate of unearthing and preserving the vast manuscript wealth of India, and
- B. In pursuance of this mandate, the Donee has undertaken several projects including cataloguing and digitization of manuscripts, and
- C. The Donor is seized and possessed of certain manuscripts fully described in the Schedule to this Deed (hereinafter referred to as the 'manuscripts'), and
- D. The Donor being the rightful owner in possession of these manuscripts and thereby being in a position to assist the Donee in its endeavours, has voluntarily agreed to gift to the Donee the title in these manuscripts.

NOW IT IS AGREED as follows:

The Donor, without any monetary consideration and in consideration of the activity undertaken by the Donee to preserve, catalogue and digitize manuscripts which the Donor endorses and is fully interested in providing support to, hereby voluntarily grants and transfers by way of gift the manuscripts owned and possessed by him, and all the right, title, and interest that the Donor presently has in the same.

The Donor covenants that he presently has in himself, good right, perfect title and absolute authority to grant the manuscripts as gift in the manner aforesaid.

In pursuance of this Deed, the Donor voluntarily places the manuscripts in the possession of the Donee.

The Donor hereby acknowledges that the Donee may at all times hereafter use the manuscripts in a manner it considers best suited for fulfilling its role and mandate in the field of preservation, cataloguing and digitization of manuscripts, without any interruption, claim or demand whatsoever from or by the Donor or

his heirs, executors, administrators, assigns, or any other person or persons claiming under or in trust for the Donor.

The Donee hereby accepts this gift of the manuscripts made by the Donor.

AGREED AND SIGNED BY THE DONOR AND THE AUTHORISED SIGNATORY OF THE DONEE,

BY THE DONOR

BY THE DONEE

WITNESSES:

SCHEDULE

<u>Sl.No.</u>	<u>Name/Description of manuscript</u>

- 1.94 In order to conserve or digitize a manuscript, the Mission has to take temporary possession of manuscripts from manuscript holders. The legal framework that applies to such temporary transfers is the law relating to bailment. Bailments

may be classified into two types: first, gratuitous bailments, where one party receives the benefit of the bailment, but the other does not receive any benefit; second, a bailment for reward, where some consideration in cash or kind passes from the party which receives the benefits of possession of the movable property to the party granting such possession. In the context of the Mission's work, we are only concerned with gratuitous bailments.

- 1.95 Under Section 148 of the Indian Contract Act, a bailment is defined as the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. Section 151 imposes certain statutory obligations on the bailee: first, to take reasonable care of the property, so as to ensure that the manuscript is maintained in the best condition reasonably possible in the circumstances in which the bailment takes place; and second, the bailee is obliged not to convert the property, by which it is meant that the bailee is prohibited from dealing with the property in a manner inconsistent with the rights he has to the property. An example of improper use would include a case where manuscript is loaned by the Mission to a foreign library not respecting the terms or other conditions under which the Mission takes possession of the property.
- 1.96 There is a need for the Mission to develop good loan documentation that sets out the terms and conditions on which the manuscripts are transferred to the Mission on a temporary, short- or long-term basis. The same becomes essential in light of the fact that the two reasons for the Mission to take possession of the manuscripts are conservation and digitization of the manuscript. The use of conservation technologies on fragile manuscripts may occasionally lead to damage or even complete destruction of the manuscript being handled. The liability for such damage or destruction must be distributed by securing adequate insurance from reliable insurance companies. Failure to take such measures and document these conditions may result in future liabilities to the Mission, which may not be quantifiable. It is advisable for the Mission to adopt a standard contract, for all bailors of manuscripts, which clearly sets out the

terms and conditions under which the bailment for conservation shall take place. A copy of this contract is set out below:

BAILMENT AGREEMENT

THIS BAILMENT AGREEMENT ('Agreement') is entered into at (PLACE),
on the ____th day of _____, 200__,

BY AND BETWEEN:

(Name of the manuscript-holder),

Residing/Having its office at _____,

Represented by its Proprietor _____ (only needed if the manuscript-holder is an institution)

Hereinafter referred to as the 'BAILOR', of the One Part;

AND

THE NATIONAL MISSION FOR MANUSCRIPTS, established by the Ministry of Tourism and Culture, Government of India,

Having its office at 5, Dr. Rajendra Prasad Road, New Delhi – 110001,

Represented by its _____, Mr./Ms. _____

Hereinafter referred to as the 'BAILEE', of the Other Part.

WHEREAS:

A. The Bailee is an institution set up by the Ministry of Tourism and Culture, Government of India, with the specific mandate of unearthing and preserving the vast manuscript wealth of India, and

B. In pursuance of this mandate, the Bailee has undertaken several projects including cataloguing and digitization of manuscripts, and

C. The Bailor being the rightful owner in possession of certain manuscripts and thereby being in a position to assist the Bailee in its endeavours, has agreed to hand over the possession of these manuscripts to the Bailee for the specific purpose of making digital copies of such manuscripts.

NOW IT IS AGREED as follows:

1. The Bailor agrees to hand over the possession of the manuscripts

identified in the Schedule to this Agreement, to the Bailee. It is agreed by both the Parties that the Bailee shall not acquire any property rights or proprietary interest in the manuscripts delivered to it as per this Agreement.

2. The Bailor accordingly hands over the possession of the manuscripts to Mr./Ms. _____, representative of the Bailee.
3. The Bailee agrees to use the manuscripts solely for the purposes of **[insert exact purpose]**.
4. The Bailee shall complete its use of the manuscripts and re-deliver possession of the manuscripts to the Bailor on the respective dates for re-delivery prescribed for each of the manuscripts in the Schedule to this Agreement.
5. No rights are granted to the Bailee to use the manuscripts for any other purpose under this Agreement, nor shall the Bailee be entitled to transfer the manuscripts to any third person by way of sale, assignment, lease, gift, or any other mode of transfer.
6. The Bailee agrees, at its own cost and expense, to preserve the manuscripts in proper condition, to exercise reasonable care and prudence while using the manuscripts, and to return the manuscript in the same condition as received by the Bailee subject to wear and tear that may arise in the ordinary course of nature.
7. The Bailee shall be responsible for the return of the manuscripts to the Bailor as mutually agreed upon by the Parties on the respective dates for re-delivery set out in the Schedule to this Agreement.
8. The Bailee shall be liable to the Bailor for the breach of any of its obligations under this Agreement, and the Bailor shall be entitled to appropriate legal remedies for enforcing the Bailee's obligations under this Agreement or for seeking damages for breach of such obligations by the Bailee.

AGREED AND SIGNED BY THE AUTHORISED SIGNATORIES OF THE BAILOR AND THE BAILEE,

BY THE BAILOR

BY THE BAILEE

WITNESSES:

SCHEDULE

Sl.No.	Name/Description of manuscript	Date of Delivery of manuscript to the Bailee	Date for re-delivery of manuscript to the Bailor

1.97 Where the Mission takes possession of manuscripts for the purposes of digitization, both real property and intangible property rights issues need to be negotiated between the Mission and the manuscript holder. Both these legal regimes will apply as there is both a bailment of the manuscript to the Mission and a granting of permission to create reproductions of the manuscript. In the section above we have set out the standard contract of bailment to be entered into prior to taking possession of the manuscript for digitization. In the section below we discuss the copyright issues which may arise out of the digitization process.

Intangible Property Rights in Manuscripts

1.98 In the previous section, we surveyed the law relating to real property and the effect it has on access to and control over manuscripts in India. In this section,

we examine the intangible property rights that apply to manuscripts and the legal measures the Mission must undertake before it reproduces manuscripts in digital form and creates databases of manuscripts for public dissemination. Though real property rights and intangible property rights are dealt within two separate sections, we must take note that these property regimes operate simultaneously with respect to the same manuscript and thereby present a complicated picture of rights entitlements in any given case. We first consider problems which may arise out of the process of digital reproduction or digitization of manuscripts. We then analyse the legal effects of incorporating all these digital manuscripts into a database and making this database available for the public.

Digitization of Manuscripts

- 1.99 One of the primary mandates of the Mission is to digitize and thereby preserve important and culturally significant manuscripts. The digitization of manuscripts is a complex activity which requires compliance with several technical and logistical parameters. This report does not go into these issues and is confined to the intellectual property issues that arise from digitization. Manuscripts may embody several intellectual property rights; these include copyright, patents, and confidential information. We have adequately dealt with the law relating to confidential information in the section of this report which dealt with access to manuscripts. In this section, we will examine the copyright and patent issues in turn.

Copyright Law Issues

- 1.100 The Copyright Act, 1957, and the rules made under it comprise the copyright law applicable in India. Copyright protects the right of the author of an original work when such a work is fixed in any material form. The Act identifies four types of works which are relevant for the purposes of discussion in this chapter. These are literary, dramatic, artistic, and musical works. A manuscript may contain subject matter which satisfies the description of any of these types of works.

- 1.101 Copyright law confers upon the author of the manuscript control over the further reproduction and distribution of the manuscript. As manuscripts are defined as documents which are over 75 years of age, it is commonly assumed that no copyright can vest in such manuscripts. However, this is a misunderstanding of the applicable copyright law for two reasons. First, in 1932, the Copyright Act, 1909, was applicable to all works created between 1909 and 1932. This law confers copyrights on authors of manuscripts in that period. Second, where manuscripts are unpublished, the duration of copyright protection is notionally indefinite as the copyright term begins to run only when the manuscript is published or distributed to the public at large. Hence, it is plausible to assume that the copyrights may subsist in a number of manuscripts sought to be digitized by the Mission.
- 1.102 Copyright confers control over the reproduction, translation, and alteration of the manuscript to the author of the manuscript. It may often be the case that the present holder of the physical manuscript, while being the owner of the physical artefact under the real property law, may not be the author and hence not entitled to claim copyright in the manuscript. In these circumstances, tracing the author of the manuscript or any other person to whom the ownership of copyright has been validly transferred is essential before the digitization project may commence. The requirement that copyright permissions be secured prior to digitization may result in a cumbersome process whereby every manuscript would have to be scrutinized and its antecedents and circumstances of production verified before digitization work may proceed. Such an approach may well hinder the rapid pace of digitization planned by the Mission, rendering its work impossible. This consequence may be avoided if the Mission can claim any of the statutory exemptions under the Copyright Act as a library or cultural institution, or under any other statute which may have an overriding effect on the copyright law.
- 1.103 Presently, the Copyright Act, 1957, does not make an exception in favour of cultural institutions such as the National Mission for Manuscripts. In order to address the same, we may propose the following clause to be added into Section 52 of the Act as a concrete proposal for law reform:

52. (1) The following acts shall not constitute an infringement of copyright, namely,-

.....

(zb) Non-commercial uses by libraries, museums and archives

(zc) Making any copies of original artistic works and works held in manuscript form, for preserving the work against loss or deterioration.

1.104 The inclusion of these clauses into the Copyright Act, 1957, will save the Mission considerable time and resources. In the absence of these provisions, the Mission must trace the ownership of copyright, which may have been transferred by the author of the manuscript by written assignment or by testamentary disposition. Having traced the present owner of copyright, the Mission must execute a limited license to reproduce the work in a digital form and for permission to incorporate the work into its manuscript database. As this is not the first time that a license for the digitization of manuscripts has been proposed, we may study some recent efforts before adopting our own approach. A draft of the copyright license agreement that the Mission can enter into with the holder of copyright over the manuscripts is set out below:

COPYRIGHT LICENSE AGREEMENT

THIS COPYRIGHT LICENSE AGREEMENT ('AGREEMENT') is entered into at (PLACE), on the _____th day of _____, 200____,

BY AND BETWEEN:

(Name of the manuscript-holder),

Residing/Having its office at _____,

Represented by its Proprietor _____ (only needed if the manuscript-holder is an institution)

Hereinafter referred to as the 'LICENSOR', of the One Part;

AND

THE NATIONAL MISSION FOR MANUSCRIPTS, established by the Ministry of Tourism and Culture, Government of India,
Having its office at 5, Dr. Rajendra Prasad Road, New Delhi – 110001,
Represented by its _____, Mr./Ms. _____

Hereinafter referred to as the 'LICENSEE', of the Other Part.

WHEREAS:

The Licensee is an institution set up by the Ministry of Tourism and Culture, Government of India, with the specific mandate of unearthing and preserving the vast manuscript wealth of India, and

In pursuance of this mandate, the Licensee has undertaken several projects including cataloguing and digitization of manuscripts, and

The Licensor owns the copyright to certain manuscripts fully described in the Schedule to this Deed (hereinafter referred to as the 'manuscripts'), and

The Licensor has agreed to grant to the Licensee a non-exclusive license to copy and use these manuscripts under the terms herein set forth.

NOW THEREFORE, the Parties agree as follows:

Effective Date

This Agreement shall be effective as of _____ (the 'Effective Date')

Grant of License

The Licensor hereby grants to the Licensee a non-exclusive, free of royalty / royalty-bearing license **(depending on whether the Mission pays a royalty or not for the copyright)** to copy the manuscripts described in the Schedule in whole or in part in the manner and the medium chosen by the Licensee, to incorporate them, in whole or in part, in other works (the 'Derivative Works'), and to distribute, use, and disseminate copies of the

manuscript throughout India and abroad.

This license is personal to and non-transferable by the Licensee.

All right, title and interest in the manuscripts, including without limitation, the copyright shall remain with the Licensor.

The Licensee shall own the copyright in the Derivative Works.

3. Royalty (this is a very simple one-time payment of royalty which the Mission can modify if it feels so. Moreover, this clause has relevance only if the Mission does enter into copyright licenses on a royalty basis, and not if the license is free of royalty)

The Licensee hereby pays to the Licensor a royalty of Rs. _____ for this license.

The Licensor hereby acknowledges receipt of such royalty amount from the Licensee.

4. Sub-Licensing

The Licensee has the right hereunder to grant sub-licenses to third parties only upon the Licensor granting express written permission prior to such sub-license.

The sub-licenses shall grant no further rights to the sub-licensee than those granted under this license to the Licensee.

5. Term and Termination

This Agreement shall be valid for a period of ____ years from the Effective Date unless earlier terminated pursuant to the terms of this Agreement.

The Licensor shall have the right to terminate this License if the Licensee makes any transfer, assignment or sub-license of this License in contravention of the terms of this License.

Termination of this Agreement for any reason shall not release any party hereto from any liability which, at the time of such termination, is already owed towards the other party or which is attributable to a period prior to such termination, nor preclude either party from pursuing any rights and remedies it may have hereunder or at law or in equity which accrued or are based upon any

event occurring prior to such termination.

6. Infringement

In the event of any infringement of either the copyright in the manuscripts or the Licensor's rights by any third party, the Licensee will take all reasonable steps in assisting the Licensor to take such action as may in the sole discretion of the Licensor be required to protect those rights.

Both the Licensor and the Licensee agree to promptly notify the other in writing should either party become aware of possible infringement by a third party of the copyright in the manuscripts.

7. Governing Law

The parties agree that this License shall be construed, enforced and governed solely in accordance with Indian laws and the courts in the National Capital Territory of Delhi shall have exclusive and sole jurisdiction over any disputes arising out of or in connection with or in relation to the terms of this Agreement.

AGREED AND SIGNED BY THE AUTHORISED SIGNATORIES OF THE LICENSOR AND THE LICENSEE,

BY THE LICENSOR

BY THE LICENSEE

WITNESSES:

- 1.105 For all cases where the copyright owner cannot be traced or is dead, the Mission may utilize an important provision of the Copyright Act, 1957, which deals with what are often called 'orphan works'. Section 31A provides that anyone may under certain conditions apply to the copyright board to secure a copyright license for an orphan work. To the extent that this allows the Mission to legally

secure copyright permissions to digitize and distribute such manuscripts, this provision is an invaluable aid.

Section 31A. Compulsory Licence in Unpublished Indian Works

- (1) Where, in the case of an Indian work referred to in sub-clause (iii) of clause (1) of section 2, the author is dead or unknown or cannot be traced, or the owner of the copyright in such work cannot be found, any person may apply to the Copyright Board for a licence to publish such work or a translation thereof in any language.*
- (2) Before making an application under sub-section (1), the applicant shall publish his proposal in one issue of a daily newspaper in the English language having circulation in the major part of the country and where the application is for the publication of a translation in any language, also in one issue of any daily newspaper in that language.*
- (3) Every such application shall be made in such form as may be prescribed and shall be accompanied with a copy of the advertisement issued under sub-section (2) and such fee as may be prescribed.*
- (4) Where an application is made to the Copyright Board under this section, it may, after holding such inquiry as may be prescribed, direct the Registrar of Copyrights to grant to the applicant a licence to publish the work or a translation thereof in the language mentioned in the application subject to the payment of such royalty and subject to such other terms and conditions as the Copyright Board may determine, and thereupon the Registrar of Copyrights shall grant the licence to the applicant in accordance with the direction of the Copyright Board.*
- (5) Where a licence is granted under this section, the Registrar of Copyright may, by order, direct the applicant to deposit the amount of the royalty determined by the Copyright Board in the public account of India or in any other account specified by the Copyright Board so as to enable the owner of the copyright or, as the case may be, his heirs, executors or the legal representatives to claim such royalty at any time.*
- (6) Without prejudice to the foregoing provisions of this section in the case of a work referred to in sub-section (1), if the original author is dead,*

the Central Government may, if it considers that the publication of the work is desirable in the national interest, require the heirs, executors or legal representatives of the author to publish such work within such period as may be specified by it.

(7) Where any work is not published within the period specified by the Central Government under sub-section (6), the Copyright Board may, on an application made by any person for permission to publish the work and after hearing the parties, concerned, permit such publication on payment of such royalty as the Copyright Board may, in the circumstances of such case, determine in the prescribed manner.

1.106 In the section above we examined the copyright law issues which may arise in the digitization of manuscripts. We will conclude this section with a brief discussion of the patent law issues which may arise with the digitization of manuscripts. A patent is granted to an invention which is novel, non-obvious and has practical utility. In order to satisfy the novelty and non-obviousness standards the patent claimed must demonstrate that it is not anticipated by the prior art in that field of invention. Prior art is a phrase used to describe the body of knowledge available in the field and commonly includes previous patents, published materials and instances of widespread public use.

1.107 As the Mission accesses manuscripts on a wide range of subject matter, there is a possibility that some of these manuscripts may contain information that can give rise to potentially patentable inventions. Such manuscripts must not have been previously published and are likely to be secret documents in the hands of a single or small group of practitioners. In the event that such a manuscript is identified by the Mission staff, they may exercise one of two options: enter into an access-and-benefit-sharing agreement with the holder of the manuscript in order to allow for ethical commercialization of this knowledge, or they should keep such materials out of the databases created by the Mission. As the primary mandate of the Mission is not the commercialization of knowledge, it is most advisable not to enter in the access-and-benefit-sharing quagmire and instead allow the knowledge to remain confined to its present holders. The use of

traditional knowledge databases as prior art to prevent ‘biopiracy’ or the misappropriation of knowledge has not proved successful. Recent experience with the Traditional Knowledge Digital Library suggests that such databases run the risk of promoting the dissemination of this knowledge. Hence, the Mission is well-advised to allow secret medical manuscripts capable of patent protection to remain in the hands of holders of such knowledge and allow specialist institutions in the field like Foundation for the Revitalization of Local Health Traditions to follow up on the conservation and preservation of such manuscripts.

Access to Databases

1.108 The concluding section of this report deals with the legal issues relating to the protection of, and access to, databases created by the Mission. These databases are of two types: first, databases containing bibliographic information on manuscripts collected through the survey and post-survey process, and second, databases of digitized manuscripts. It is proposed that both these manuscripts are to be stored in digital form and made accessible through the website of the Mission.

1.109 The legal protection of databases in India is provided for under the Copyright Act, 1957. Section 2(o) of the Act defines literary works to include ‘computer databases’. The databases created by the Mission satisfy this definition and hence are eligible for protection under this law to the extent of their ‘originality’. As the manuscript databases contain information that is either in the public domain or where copyright belongs to the holder of the manuscript, the Mission may claim a very limited copyright over the database. The extent of copyright protection for these databases will extend to the manner of organization and style of presentation of the database. This level of protection is adequate for the Mission, as its primary objective is to promote the dissemination of manuscript information while preventing others from taking undue credit for the arduous work done by Mission in creating the database.

1.110 As the IGNCA has had prior experience in digitizing manuscripts and offering a revenue-sharing approach to their distribution and dissemination, it is worth assessing the legal format explored by the institute. The IGNCA offers us the interesting case study set out below:

Database Case Study

The IGNCA is in process of digitizing the manuscripts and slides collected from various esteemed institutions like yours. At present, the IGNCA possesses about 2.25 lakh manuscripts and over a lakh of slides collected from India and abroad and the volume is growing everyday. Digitisation is aimed at providing these materials to scholars online (on Intranet or Internet) for academic references.

Through our application, called Kalasampada, we are going to facilitate scholars in obtaining access to and viewing that range from manuscripts and slides, each of them being more than a lakh, comprising thousands of rare books, photographs, audio and video records and researched publications of the IGNCA. All these will be available on Intranet and can be accessed through a single window.

The MOU between the IGNCA and your institution allows us to help researchers to view the manuscripts in the IGNCA premises and, whenever any scholar wants copy of any manuscript they would approach your institution for approval. These approvals may sometimes be given on payment, and, normally free of cost. The service provided by the IGNCA being limited to the physical boundary of its campus, the majority of scholars, who are unable to visit the IGNCA are deprived from accessing such information.

With changing economic scenario and increasing availability of the state of the art technology, we can extend these services to our scholars, throughout the world. This will be possible only when the materials will be made available on the Internet and accessed on payment, on partial recovery of expenditure.

The following rates are proposes for charges

Sl.No.	Items	INR (for Indian Scholars)	USD (for Foreign Scholars)

1	Manuscripts	Rs.10.00 per Folio	USD 1.00 per folio
2	Slides	Rs.25.00 per slides (300 dpi, JPEG)	
3	Audio	Depends on the clips (AVI File Format)	
4	Video	Depends on the clips (AVI File Format)	

Above rates and facilities are strictly for using the materials for academic reference only. For publication, users have to take permission from the respective institutions.

Amount so received, can be shared as follows:-

Institution holding the materials	50%
The IGNCA, as service provider, and	43%
The Banking payment gateways	07%

Initial infrastructure cost (includes high storage web server, high speed internet connectivity) and annual expenditure (software upgrade, maintenance cost) etc. will be borne by IGNCA.

This will help in increasing the userbase for the materials as well as in creating a revenue source for the institutions in the long run. For this, we require to change our earlier MOU, with the following changes, indicated in the copy placed below.

If you agree, kindly sign the amended agreement and return it for our signature. Once we finalise the amended MOUs, we would start sharing the revenue as indicated above.

Thank you,

Yours sincerely,

(K.K.Chakravarty)

Director
Shri Chaitanya Research Instt.,
Branch of Sri Chaitanya Math,
Sree Mayapur,
Nadia,
Calcutta-700 026 (WB)

MEMORANDUM OF UNDERSTANDING BETWEEN
INDIRA GANDHI NATIONAL CENTRE FOR THE ARTS, NEW DELHI
AND

NAME OF THE PROJECT: Manuscripts/Slides accessibility on the Internet for
the academic reference to the scholars & researchers

Memorandum of Understanding is made on _____ in the
month of _____ in the year _____ between the Indira
Gandhi National Centre for the Arts Trust hereinafter referred to as 'IGNCA'
which unless repugnant to the context would include their successors, assigns,
agents and executors of the one part and _____,
_____ which unless repugnant to the context would include their
successors, assignees, agents and executors of the other part.

WHEREAS THE IGNCA will undertake the work of putting the
Manuscripts/Slides, collected from your institution, on the Internet for
academic reference to scholars and researchers, on the following terms and
conditions:

I. SCOPE

1. The IGNCA will digitize all the manuscripts/slides collected from your
institution (in the form of microfilm rolls/slides).
2. Computerised Catalogue will be prepared and put on the Internet for accessing
the information regarding these materials.
3. The required Software for integrating the catalogue and digital copy of the
manuscripts/slides has been developed by the IGNCA.
4. These materials will be put on Internet for academic references and can be
downloaded on payment.

II. FINANCE

1. The IGNCA will bear the expenditure involved in the digitisation of the materials already housed at IGNCA. For any new collection, your Institutions will have to bear the cost of digitisation as per the standard Govt. rates.
2. Infrastructure cost (including high storage web server, high speed internet connectivity) and annual expenditure (software upgrade, maintenance cost etc.) will be borne by the IGNCA.

The following rates are proposes for charges:

Sl.No.	Items	INR (for Indian Scholars)	USD (for Foreign Scholars)
1	Manuscripts	Rs.10.00 per Folio	USD 1.00 per folio
2	Slides	Rs.25.00 per slides (300 dpi, JPEG)	
3	Audio	Depends on the clips (AVI File Format)	
4	Video	Depends on the clips (AVI File Format)	

Above rates and facilities are strictly for using the materials for academic reference only. For publication, users have to take permission from the respective institutions.

Amount so received, can be shared as follows:-

Institution holding the materials	50%
The IGNCA, as service provider, and	43%
The Banking payment gateways	07%

COPYRIGHT & OTHER CLAUSES

The copyright of the Materials will rest with your Institution. Scholars and researchers will be provided with the materials exclusively for academic purposes.

Any publication of these materials by the IGNCA or scholars will be subject to the prior approval/consent from your institution.

3. In case of any dispute or differences arising in course of the execution of this project the matter will be referred to the sole arbitration of an officer of the IGNCA, not below the rank of Joint Secretary to be appointed by the competent authority in the IGNCA whose decision shall be final and binding on both the parties.

Now, therefore, this Memorandum of Understanding is executed and signed at New Delhi in the presence of following witness(s) on the day, month and year cited hereinabove.

For and on behalf of
IGNCA
New Delhi

For and on behalf of

WITNESS:

1.

2.

WITNESS:

1.

2.

1.111 The effort and motivation of the IGNCA at reaching concrete legal arrangements to recover the cost of digitization through fees charged for the dissemination of the database is laudable. However, not a single organization or individual has agreed to this contractual arrangement. This may be due to the mistrust between institutions about accurate accounting or more likely to the lack of institutional maturity to share such manuscript collections to mutual benefit.

1.112 From this case study we learn that such a revenue-sharing model, though attractive at first glance, may not be a feasible proposal at this point in time. Hence, we have developed a simpler arrangement where the databases are made available on the web without a fee while ensuring that the information in

the databases is not used by other parties for commercial gain. Such an open-access policy best promotes the objectives of the National Mission for Manuscripts.

- 1.113 As these databases are to be hosted on a website, we have developed a website Terms of Service Contract and an accompanying Privacy Policy excerpted below:

Privacy Policy

www.namami.nic.in is committed to protecting your privacy. You can visit most pages on our site without giving us any information about yourself.

This privacy statement explains our data collection practice and use in those situations where we need information to provide services that you may request and wherever our systems may automatically log non-personal information.

Personal Information

We will alert you when we need information that personally identifies you (personal information) or allows us to contact you. Generally, this information is requested when you subscribe to our e-mail newsletter and is limited to your name and e-mail address. In future, the information requested may change in order to allow for the efficient functioning of our website and online database of manuscripts. www.namami.nic.in maintains a log of visitors to its website, which shall be used solely for its own purposes.

Sharing Personal Information

www.namami.nic.in will not voluntarily share any personal information given by you with third parties. You will not receive any unauthorized communication as a result of giving information to www.namami.nic.in. The information you provide helps us serve you better and also enables us to give you updates about our service.

Disclosure of Personal Information

We reserve the right to disclose your personal information where it is necessary for technical maintenance of our web services or to provide a service you have requested.

We reserve the right to disclose your personally identifiable information as required by law and when we believe that disclosure is necessary to protect our rights and/or to comply with a judicial proceeding, court order, or legal process served on our Web site.

Changes to Privacy Policy

We reserve the right to modify this privacy policy at any time, so please review it frequently. If we make material changes to this policy, we will notify you on this page.

If you have any complaints or feedback regarding this privacy policy please contact us at:

Director, National Mission for Manuscripts
No 5 Rajendra Prasad Road New Delhi 110001

Terms of Service & IP Policy

By accessing this website and/or using the material available on it, you expressly understand and agree that:

Terms of Use

Your use of the service is at your sole risk. The service is provided on an 'as is' and 'as available' basis.

Disclaimer of Warranties

www.namami.nic.in expressly disclaims all warranties of any kind, whether express or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose and non-infringement.

www.namami.nic.in makes no warranty that

The service will meet your requirements;

The service will be uninterrupted, timely, secure, or error-free;

The results that may be obtained from the use of the service will be accurate or reliable;

The quality of any products, services, information, or other material purchased or obtained by you through the service will meet your expectations; and

Any errors in the software will be corrected.

Downloads and Information

You understand and agree that any material downloaded or otherwise obtained through the use of the service is done at your own discretion and risk, and you will be solely responsible for any damage to your computer system or loss of data that results from the download of any such material.

No advice or information, whether oral or written, obtained by you from www.namami.nic.in or through or from the service will create any warranty not expressly stated in these terms of service.

Intellectual Property

The National Mission for Manuscripts respects the intellectual property of others, and we ask our users to do the same. In the interests of the objectives of the Commission, the following conditions govern the use of material provided on its website (www.namami.nic.in). By using such materials, you expressly understand and agree that:

- All content included on this Web site, including text, graphics, logos, buttons, icons, and images, is the property of NMM and is protected

under Indian and International copyright, patent, design and trademark laws.

- Unless otherwise specified, the Services are for your personal and non-commercial use. You may not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell any information, software, products or services obtained from the Services.
- You may not use the information from this site, reformat and display them, or mirror this website on your Web site. You may not republish such material on any Internet, Intranet or Extranet site or in any way utilize it in any database, archive or compilation, or in any way redistribute the said material to others without the permission of the National Commission for Manuscripts in writing. Having obtained such permission, you must publish the material without any adjustment, and with due credit to the National Mission for Manuscripts, including a reference to the source of the material so utilized.

If you do not agree to and accept these terms of service, you may not use any part of the services or material offered on this website.

Changes to Terms of Service

We reserve the right to modify the Terms of Service at any time without notice, and such modifications shall be effective immediately by updating this webpage. You agree to review these Terms of Service periodically to be aware of such modifications and your continued access or use of this Web site shall be deemed your acceptance of the modified Terms of Service.

If you have any questions about this TOS statement, the practices of this site, or your dealings with this Web site, you can contact:

Director, National Mission for Manuscripts
No 5 Rajendra Prasad Road New Delhi 110001

Accept Reject

- 1.114 The Terms of Service Contract does not place commercial exploitation as the primary objective of the Mission's dissemination of manuscripts. Instead, by adopting an open-access policy we hope to achieve rapid dissemination of manuscript information so that such knowledge can re-enter our cultural and intellectual traditions as living traditions. As the conservation and preservation of this invaluable inheritance rests on its ability to reintegrate these traditions with out our mainstream research and education initiatives, the open-access policy adopted above is the best means to achieve this objective.

Conclusion

1.115 This report seeks to accurately identify and critically examine the legal and policy framework for promoting equitable access to our documentary heritage. The National Mission for Manuscripts is the most important institution in India creating bibliographic databases of manuscripts and engaged in the conservation and preservation of valuable manuscripts. This report engages with the legal and policy framework which envelops the lifecycle of the Mission's work: the process of access to manuscripts, digitization of manuscripts and the creation of databases. By critically examining the legal rules in the practical context of the Mission's work, we have put together the first such review of any such initiative in the protection of traditional knowledge in the country. The conclusions of the report are in the form of draft legal agreements and policy recommendations located in the discussion on various parts of the Mission's work. While this report does not set out to be the final word on these significant policy initiatives, we may more modestly claim that the report makes significant progress in the policy debate and legal literature in this field.

Legal and Policy Framework for Promoting Equitable Access to
Documentary Heritage: *Report Submitted to UNESCO by National
Mission for Manuscripts, India*

© UNESCO, 2008

Principal Researcher: Sudhir Krishnaswamy

Research Team: Sudha Gopalakrishnan
C. K. Nandakumar
Ananth Padmanabhan

Editors: James Baer
Anup Kumar Das

National Mission for Manuscripts

www.namami.org

www.namami.nic.in

www.namami.gov.in

UNESCO Office in New Delhi

www.unesco.org/newdelhi

Memory of the World Programme

www.unesco.org/webworld/en/mow/

Asia/Pacific Regional Committee for the Memory of the World
Programme

www.unesco.mowcap.org