Consent Agenda: Ratify Executive Committee Interim Actions
(Prepared by Governance Manager Felicia Owens)

BACKGROUND

Current parliamentary policy agrees on validating board decisions made remotely, and ratifying the Council’s online and conference-call decisions via the Consent Agenda does not conflict with any existing SAA policy.

DISCUSSION

Given the Executive Committee’s use of an e-mail discussion list to function as a group and make decisions remotely, approving interim Executive Committee actions via the Consent Agenda contributes to streamlining the group’s work and improves access to the interim decisions of SAA’s elected decision makers.

RECOMMENDATION

THAT the following interim actions taken by the Executive Committee between January 20 and March 5, 2021, be ratified:

- Agreed to sign on to a statement prepared by the American Historical Association condemning the report from former President Trump’s 1776 Commission on US History; agreed to sign both as a member of the National Coalition on History and as SAA separately. (January 20, 2021)

- Agreed that the diversity statement requirements (approved by the SAA Council in January 2021) apply to elected class B members of the SAA Foundation Board. (February 5, 2021)

- Endorsed legislation (championed by the American Library Association) that reintroduces the Build America’s Libraries Act (S.127), which would provide funding to modernize and build public libraries, tribal libraries, and state libraries and archives that provide library service directly to the general public, including improvements to library facilities that house archives. (February 9, 2021)
- As recommended by the SAA Intellectual Property Working Group, agreed to sign on to a letter encouraging the incoming US Trade Representative to support fair use in international trade agreements. (Appendix A) (March 2, 2021)

- Approved a mid-cycle funding request from the Women Archivists Section to provide an honorarium for the featured speaker at their upcoming virtual event on self-care for archivists. (Appendix B) (March 5, 2021)
Appendix A

[Date]

The Honorable Katherine Tai
U.S. Trade Representative
600 17th Street NW
Washington, DC 20006

Re: Promoting a Balanced Copyright Policy to Benefit All Americans

Dear Ambassador Tai:

Congratulations on your confirmation as United States Trade Representative. We write to request that the Biden-Harris Administration return to the Obama-Biden Administration policy of protecting and promoting fair use rights in international copyright policy. The Trump Administration abandoned this policy, and took the contrary position of pressuring South Africa and other countries to abandon fair use proposals. The undersigned organizations, representing consumers, libraries, educators, and creators, urge this Administration to once again prioritize fair use as an engine of equity. In particular, the United States should praise, not punish, other countries that seek to incorporate fair use in their national copyright laws.

In a January 20, 2021 executive order, President Biden announced that it is the policy of the Administration “that the Federal Government should pursue a comprehensive approach to advancing equity for all.” The U.S. copyright system has built-in accommodations for equity in the form of fair use and other exceptions and limitations. The Obama-Biden Administration recognized the importance of advancing the equitable balance reflected in the U.S. copyright law, both domestically internationally. Below, we set forth some of the positions regarding fair use taken by USTR and other executive branch agencies during the Obama-Biden Administration, and urge that they be reincorporated into U.S. policy priorities now.

Balanced Copyright in the Trans Pacific Partnership Agreement

In the context of the negotiations on the Trans Pacific Partnership (“TPP”) Agreement, USTR stated that fair use and other copyright exceptions are “critical aspects” of the U.S. copyright system, and USTR sought to reflect them in the TPP. In a statement issued on July 3, 2012, USTR observed that

the balance of rights and exceptions and limitations achieved in U.S. law provides diverse benefits for large and small businesses, consumers, authors, artists, and workers in the information, entertainment, and technology sectors.

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A robust copyright framework ensures that authors and creators are respected, investments (both intellectual and financial) are promoted, that limitations and exceptions provide an appropriate balance, and that enforcement measures are effective.

An important part of the copyright ecosystem is the limitations or exceptions placed on the exercise of exclusive rights in certain circumstances. In the United States, for example, consumers and businesses rely on a range of exceptions and limitations, such as fair use, in their businesses and daily lives. After this introduction stressing the importance of copyright exceptions, USTR announced that

[for the first time in any U.S. trade agreement, the United States is proposing a new provision, consistent with the internationally-recognized “3-step test,” that will obligate Parties to seek to achieve an appropriate balance in their copyright systems in providing copyright exceptions and limitations for purposes such as criticism, comment, news reporting, teaching, scholarship, and research.]

The six listed purposes come directly from fair use provision in the U.S. Copyright Act, 17 U.S.C. § 107. USTR followed this description of its new proposal by asserting that

[these principles are critical aspects of the U.S. copyright system, and appear in both our law and jurisprudence. The balance sought by the U.S. TPP proposal recognizes and promotes respect for the important interests of individuals, businesses, and institutions who rely on appropriate exceptions and limitations in the TPP region.]

A provision based on the U.S. proposal was included in the final TPP Agreement. After assuming office in 2017, President Trump pulled out of TPP. In 2018, the eleven remaining TPP countries entered into a successor agreement, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“CPTPP”). Significantly, the CPTPP included the balanced copyright provision. Language similar to the CPTPP balanced copyright provision was included in the 2020 Regional Comprehensive Economic Partnership (“RCEP”).

Marrakesh Treaty

In 2009, the U.S. Delegation to the Standing Committee on Copyright and Related Rights (“SCCR”) at the World Intellectual Property Organization announced support for the adoption of an instrument concerning exceptions for people with print disabilities. This eventually became the Marrakesh Treaty, which the United States signed in 2013. At the December 2009 meeting of the SCCR, Justin Hughes, the head of the U.S. Delegation stated:

We recognize that some in the international copyright community believe that any international consensus on substantive limitations and exceptions to copyright law would weaken international copyright law. The United States does not share that point of view. The United States is committed to both better exceptions in copyright law and better enforcement of copyright law. Indeed, as we work with countries to establish consensus on proper, basic exceptions within copyright law, we will ask countries to work with us to improve the enforcement of copyright. This is part and parcel of a balanced international system of intellectual property.\(^3\)

Department of Commerce Internet Policy Task Force

In 2013, the Department of Commerce Internet Policy Task Force issued a *Green Paper on Copyright Policy, Creativity, and Innovation in the Digital Economy*. The *Green Paper* stated:

[t]he fair use doctrine, developed by the courts and codified in the 1976 Copyright Act, is a fundamental linchpin of the U.S. copyright system. Along with the idea/expression dichotomy, the fair use doctrine is a critical means of balancing “the interests of authors and inventors in the control and exploitation of their writings and discoveries on the one hand, and society’s competing interest in the free flow of ideas, information, and commerce on the other hand.” It is also a vital “built-in First Amendment accommodation[]” in copyright law. […] [An] advantage of fair use is its flexibility; the doctrine is highly adaptable to new technologies and has already played an important role in the online environment.\(^4\)

Intellectual Property Enforcement Coordinator

In her 2013 Joint Strategic Plan, Victoria Espinel, the Intellectual Property Enforcement Coordinator (“IPEC”), stated:

Effective enforcement is critical to providing meaningful protection of intellectual property rights, but enforcement approaches should not discourage authors from building appropriately upon the works of others. […] Fair use is a core principle of American copyright law. The Supreme Court has repeatedly underscored fair use provisions in the Copyright Act as a key means of protecting free speech, and many courts across the land have upheld the application of fair use as an affirmative defense to infringement, in a wide variety of circumstances.\(^5\)

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In her 2016 Joint Strategic Plan, the IPEC observed:

Nothing in the Joint Strategic Plan should be interpreted as limiting the scope of exceptions and limitations, such as fair use, under U.S. copyright law. To the contrary, the basic principles that have permitted the Internet to thrive must be safeguarded, and the Strategic Plan expressly recognizes and celebrates advancements in technology. The way people use and access content – which has led to new and innovative uses of media (e.g., remixes and mashups involving music, video and the visual arts), and fair use, for example – will undoubtedly continue to evolve. We must work to foster creativity, understanding the role of exceptions and limitations as not only part of our body of laws, but as an important part of our culture. Indeed, it is the combination of strong copyright rights with a balance between the protection of rights and exceptions and limitations that encourages creativity, promotes innovation, and ensures our freedom of speech and creative expression are respected.6

**Promoting and Protecting Fair Use Today**

We look forward to working with USTR to encourage the spread of fair use around the world, to the benefit of consumers, creators, businesses, and cultural heritage and research institutions both in the United States and overseas. As a first step toward this partnership, we request that USTR make a statement along the following lines and implement it into the policy of the United States, including in defining the concept of “adequate and effective intellectual property” in trade policy programs such as Special 301 and generalized systems of preference:

_The United States promotes an appropriate balance in all copyright systems, including by providing copyright exceptions and limitations for purposes such as criticism, comment, news reporting, teaching, scholarship, and research. The United States shall not seek, through negotiation or otherwise, the revocation or revision of any copyright limitation or exception for the fair use of copyrighted works for purposes such as criticism, comment, news reporting, teaching, scholarship, and research, to the extent they comply with the country’s treaty obligations with the United States._

Again, congratulations on your confirmation.

Sincerely,

[American Library Association]
[Association of College and Research Libraries]
[Association of Research Libraries]
[Program on Information Justice and Intellectual Property]
[Re:Create Coalition]
[Society of American Archivists]

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7 For an example of a similar policy in the context of public interest patent policy, see U.S. Executive Order 13155 of May 10, 2000. Access to HIV/AIDS Pharmaceuticals and Medical Technologies (commanding that the United States “shall not seek, through negotiation or otherwise, the revocation or revision of any intellectual property law or policy of a beneficiary sub-Saharan African country . . . [that] promotes access to HIV/AIDS pharmaceuticals”).
Women Archivists Section: Funding to Support [WArS Committee Section: Self Care Blueprint for Archivists]
(Prepared by Charmaine Bonner and Kymberly Keeton)

The Women Archivists Section requests that funding be included in SAA’s FY 2022 budget to support Self Care Blueprint for Archivists.

BACKGROUND

SAA WArS Co-Chairs realized that this has been a difficult past year and wanted to create a program that gives the section tips to self care and wellness in these times.

Program Title: Self Care Blueprint for Archivists. Licensed therapist Cassandra Rowe will speak to WArS about self care tips in times of difficulty. Program Activity: Co-Chairs and or Steering Committee will lead the section in a padlet activity similar to this one: https://padlet.com/kiss_allyson/1awz9hz8p9vz. The padlet will give attendees an opportunity to communicate with one another and share tips and encouragement. Synopsis for Activity: Co-Chairs and steering committee will add their self care tips and allow space for members to add their tips/memes and such to each activity category as a living resource for section members. There will also be a book giveaway.

§ Is the request in response to a charge from the Council? No

How does it address a priority from the SAA Strategic Plan?
This section meeting event addresses Goal #2 of SAA Strategic plan which is Enhancing Professional Growth and the event specifically targets Goal 2.4. Foster communities for professional interaction. The program acknowledges this past year has been a challenging time for most and will foster a safe environment where archivists can mix and mingle professionally with one another through break out room sessions. The guest speaker for the event is a woman of color which fits into the SAA Diversity and Inclusion statement.
§ How does it further the purpose of SAA? By providing excellent member service. Members will feel more connected to each other and SAA as an organization from this program.

§ What makes this project relevant to your Section or to the profession at this time? This program is relevant to our section because we are bringing in a woman professional therapist and this section is for women archivists. We would be supporting a fellow professional woman who in turns will help women archivists cope with the current difficulties.

§ Please indicate the time period during which the activity is expected to take place if funded, and continuing programs or projects that will imply future funding needs: Late March on a Wednesday or Friday from 1-2:30pm cst.

DISCUSSION

§ How is this project significant to the component group(s)? How is this project significant to SAA overall? Who is the audience for this project? The audience is the section members who are primarily women. The project is significant to SAA in that it promotes Diversity and Inclusion by hiring a woman of color as the guest speaker. The project is significant as it addresses mental health and good mental health is crucial to archivists succeeding in their professional lives.

§ Does the project foster collaboration between SAA component groups? Does it foster collaboration with groups outside of SAA? The project will be open to other SAA component groups, especially Archives and Archivists of Color Roundtable, Disability and other sections that are intersectional to the topic of the event.

§ What is special about this project? How is it innovative? The event is special in that attendees will gain invaluable skills to help them cope in this difficult time. We believe it is innovative in that we are having a professional therapist who is a woman of color speak during Women’s History Month.

§ What or who will this project fund? Is it to bring in a consultant or outside speaker? Is it in support of a task force? This project will fund a 300 dollar honorarium to Cassandra Rowe who is a licensed therapist.

§ What are the expected outcomes? How will the outcomes benefit SAA? How do the outcomes support work that is fundamental to the archives profession? Expected outcomes are increased collaboration and partnership among section members. Increased mental health status and a feeling of empowerment. The program will benefit SAA by increasing participation and collaboration amongst its members. Collaboration is a key component to the work we do as
archivists. SAA benefits from fostering participation and collaboration. This event could produce new members to the organization.

**Budget**

Are there other ways to accomplish this project that would reduce the budget?
No, this program is seeking to provide an honorarium for the guest speaker: Cassandra Rowe in appreciation of their time and expertise as a professional in their field.

**FUNDING REQUEST**

The Women Archivists Section requests that funding in the amount of $300 be included in SAA’s FY 2022 budget to support Self Care Blueprint for Archivists.

**Support Statement:**

SAA WArS Co-Chairs realized that this has been a difficult past year and want to create a program that provides section tips about self care and wellness in these times.

**Relation to SAA Strategic Plan:**

Goal #2 of SAA Strategic plan which is Enhancing Professional Growth: By hosting this event it will allow participants the opportunity to relish in their value as archivist practitioners and learn best practices to endure as servant leaders in the 21st century.

**Fiscal Impact:** The total direct expenses are $300 which will cover the honorarium for Cassandra Rowe as guest speaker.