

**Society of American Archivists
Council Meeting
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Chicago, Illinois**

Application for WIPO Observer Status

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SAA's Intellectual Property Working Group was created as a working group of the Council in May 2001. Intellectual property issues are complex and require a special expertise. They often require a very quick response, such as when SAA is asked to join litigation or respond to draft legislation. The Working Group's purpose is to make sure that timely expertise is readily available to the Council. The Working Group responds to requests for assistance from the Council, tracks intellectual property issues of concern to archivists, and drafts for Council approval responses or position papers as needed.

The IPWG has among its duties and responsibilities:

- In order to be able to respond in a knowledgeable manner, track intellectual property issues that could be of concern to archivists.
- Contribute to the further education of SAA members and staff in intellectual property matters.
- Bring to the attention of the Council possible areas of fruitful collaboration with other organizations that are interested in intellectual property and, under Council direction or with its approval, cooperate with such organizations in furthering SAA's interests.

BACKGROUND

The IPWG recommends to the Council that it submit to the World Intellectual Property Organization (WIPO) the attached request for observer status for the November 2011 meeting in Geneva of the Standing Committee on Copyright and Related Rights (SCCR). At this meeting SCCR will begin initial discussions of a possible draft treaty on exemptions for libraries and archives. As a signatory to WIPO treaty agreements, the United States is obligated to implement WIPO treaty actions. Any treaty adopted by WIPO, therefore, may have a direct impact on American archivists. With observer status, SAA not only will be able to understand in detail the implications of the SCCR discussions, but also have the ability to express its point of view.

Currently the International Council on Archives (ICA) has a representative to the SCCR (Tim Padfield, of the U.K. National Archives), but there are no other archival voices in Geneva. In a message to archivists, Padfield expressed the "hope that at future meetings

in Geneva some bodies in addition to the ICA can be represented to show the enthusiasm of the archival profession worldwide... [W]e need to make member states of WIPO understand what is the difference between libraries and archives and why archival as well as library material is important, needs to be preserved and needs to be copiable for the benefit of researchers.” The first step in making SAA’s voice heard in Geneva would be to secure observer status at the meeting.

There is no cost associated with requesting observer status (although there are significant travel costs, discussed below) and no requirement that an SAA representative actually be in attendance.

DISCUSSION

WIPO is a branch of the United Nations and is based in Geneva. It administers most of the international treaties on copyright, notably the Berne Convention and the WIPO Copyright Treaty; the U.S. is a signatory to both. For archivists, several WIPO bodies are of relevance. One is the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), which has been working to craft a treaty protecting traditional cultural expressions. A second is SCCR, which looks at copyright. Both bodies have had representatives from the library community for many years. In 2010 Tim Padfield started to attend WIPO meetings as a representative of the ICA, but he is the only archival representative.

The SCCR has decided to work on proposals for an international treaty to set minimum standards for exceptions and limitations to copyright in signatory states in favor of reading-disabled people (primarily the blind). Next after that, in November 2011, it will move on to consider proposals for a treaty on exceptions and limitations to copyright on behalf of libraries and archives. Exceptions and limitations to copyright for educational institutions and for other disabled people will follow. The expectation is that a WIPO General Assembly in September 2012 will consider the proposals and call a diplomatic conference, probably to be held in 2013, to agree on a treaty or treaties.

Although WIPO traditionally has been the province of intellectual property rights holders, over the past few years non-governmental agencies have been playing a larger role. The libraries have had International Federation of Library Associations and Institutions (IFLA), Electronic Information for Libraries (EIFL), and the Library Copyright Alliance as well as various national and regional bodies to speak on their behalf. The blind have been represented by numerous national and international bodies. But until Tim Padfield spoke on behalf of archivists at last year’s General Assembly, there was no archival voice at the meetings.

The IPWG recommends that SAA seek to secure observer status for the next meeting of the SCCR when initial discussions about the nature and scope of a treaty exemption for libraries and archives will be opened. Furthermore, we will recommend to the Council before the next WIPO General Assembly meeting that SAA seek permanent observer status to WIPO itself. (Observer status requests to WIPO are considered only once a

year, but one can request observer status for any standing committee meeting prior to that meeting.) We will still need to secure funding in order to be able to send a representative to the meeting, but it makes sense to send someone only if we have observer status.

A request for observer status does not carry with it any costs, nor does it obligate SAA to participate in the meeting. It merely presents SAA with the potential of participating in the WIPO deliberations.

Assuming that observer status can be secured, SAA will need funds to support a representative at the meeting. The November SCCR meeting is scheduled for 8 days in Geneva, one of the more expensive cities in the world. In the past, SAA has been able to secure grant funding to support some of its international activities. IPWG has begun a preliminary investigation to identify possible external sources of funding for participation. Possible sources include IMLS and the Sloan and Delmas foundations. If a possible external funding source can be identified, IPWG will follow the “Guidelines and Procedures for SAA Fundraising and Grant Proposals” before preparing a grant application.

RECOMMENDATION

THAT the SAA Council submit to WIPO’s Standing Committee on Copyright and Related Rights (SCCR) a request that SAA be granted observer status at its November 2011 meeting.

Support Statement: Securing observer status at the SCCR would allow SAA to participate in discussions about a proposed international treaty on exemptions to copyright for archives and libraries.

Fiscal Impact: Seeking observer status in and of itself would have no fiscal impact on the Society, but it would enable us to have a representative at the meetings in Geneva in November if we can secure external funds for travel expenses. Having Council support for requesting observer status, however, will be essential to the success of any efforts to obtain external funding for travel. Travel expenses (using U.S. government per diem rates and United Airlines travel from Chicago) would be \$5,320 for the full eight days. We have been advised by Tim Padfield of ICA that it is necessary to plan attendance for the full meeting because the agenda circulated prior to the meeting is often changed radically during the meeting, making it impossible to predict which day(s) will feature discussion of the library and archives exemptions.