

**Society of American Archivists
Council Meeting
August 22, 2011
Chicago, Illinois**

**Action: Endorse “Well-intentioned Practice for Putting
Digitized Collections of Unpublished Materials Online”**

**(Prepared by: Standards Committee Co-Chair Marcy Flynn and
IPWG Chair Heather Briston)**

BACKGROUND

The SAA Standards Committee has reviewed, per SAA Council-adopted procedures and at the request of the Intellectual Property Working Group (IPWG), a best practice document prepared by OCLC Research entitled “Well-intentioned Practice for Putting Digitized Collections of Unpublished Materials Online” (2009). (See Appendix.)

Because the document outlines the intellectual property considerations involved in providing access to unpublished materials online, IPWG prepared a preface for the external standard that provides more information about the considerations, risks, and choices to be made by archivists and repositories that may adopt the standard/ best practice.

DISCUSSION

The desired impact of “Well-intentioned Practice for Putting Digitized Collections of Unpublished Materials Online” is to articulate an approach to placing unpublished materials online for public access that can shift from an overwhelmingly item-level analysis to a more aggregate-level analysis. The intent is that over time, with increased use and acceptance of the practice, it may develop into a community of practice.

The document has been well received within allied communities. For the most recent list of organizations, repositories, and individuals that have endorsed or adopted the document, see: <http://www.oclc.org/research/activities/rights/support.htm>. Related groups that have endorsed the document include the SAA/ALA/AAM Joint Committee on Archives, Libraries, and Museums (CALM) and the Rare Books and Manuscripts Section (RBMS) of the Association of College and Research Libraries (ACRL), a division of the American Library Association (ALA).

IPWG recommended to the SAA Standards Committee that the external standard be endorsed, and the Committee has vetted it per Council-adopted procedures. IPWG has

developed a preface for the external standard that its members believe must accompany the standard as presented on the SAA standards portal in order that it provides appropriate information to SAA members (and others who may rely on the portal) regarding the considerations, risks, and choices to be made by archivists and repositories that may adopt it.

RECOMMENDATION

That “Well-intentioned Practice for Putting Digitized Collections of Unpublished Materials Online,” a standard developed by OCLC Research, be endorsed, provided that it is accompanied on the SAA Standards Portal by the following preface, prepared by the Intellectual Property Working Group:

PREFACE

“Well-intentioned Practice for Putting Digitized Collections of Unpublished Materials Online” (W-iP) offers a framework for an assertive approach to digitization of unpublished archival materials whose rights holders are often difficult to identify and contact. Consistent with the aggregate, rather than item-level, approach that traditionally has been so fundamental to the rest of archival practice, it emphasizes a collective approach to the management of the copyright responsibilities involved in large-scale digitization projects. By definition, the W-iP guidelines encourage a movement away from work-by-work or even author-by-author decision-making on rights clearances.

The guidelines offer the prospect of moving beyond a near paralysis coming from the impossibility of having copyright clarity on all the works or all the authors in a given collection or archival record series that otherwise merit wide exposure through digitization. If the guidelines are adopted widely enough, they offer the promise of becoming a “community standard” that, by its broad use, could become a foundation on which the archives profession could rely as a “best practices” defense.

For this to happen, however, archivists must understand what W-iP does and does not provide, and that W-iP cannot substitute for being well-informed about copyright. In essence, W-iP is a map of how to take risks in moving forward with digitization when a strict interpretation of copyright might argue otherwise. Those who wish to use W-iP as a basis for launching digitization programs must understand that the guidelines offer no formal legal protections, but merely define an approach for managing the inevitable risks in large-scale digitization. Before adopting the W-iP approach, archivists should confer with their legal counsel as well as their risk management staff, if available and appropriate, to be certain that the institution is prepared to accept responsibility and costs should a legal action or simply an out-of-court settlement result.

Although W-iP defines an approach consistent with the archival mission of promoting the widest possible access, it assumes a level of legal knowledge that not all archivists may possess or have available to them. Archivists need not become copyright lawyers, but to use W-iP well, they need to have a solid understanding of the law. Indeed, gaining the

institutional approval to adopt the W-iP approach will be most likely if one can forcefully articulate the particular archival dimensions of copyright. A start for building a knowledge base can be found in the following sources:

Copyright and Cultural Institutions: Guidelines for Digitization for U.S. Libraries, Archives, and Museums by Peter B. Hirtle, Emily Hudson, and Andrew T. Kenyon. Ithaca, NY: Cornell University Library, 2009.

- Available for purchase from SAA (<http://www2.archivists.org/>), Create Space (<https://www.createspace.com/3405063>), and other book retailers.
- Available for free download at:
<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1495365> and
<<http://hdl.handle.net/1813/14142>>

Orphan Works: Statement of Best Practices (Society of American Archivists)

- <http://www2.archivists.org/sites/all/files/OWBP-V4.pdf>
- Columbia University Fair Use Page <http://copyright.columbia.edu/copyright/fair-use/>
(Kenneth Crews, Director, Copyright Advisory Office, Columbia University Library)
- Fair use checklist <http://copyright.columbia.edu/copyright/fair-use/fair-use-checklist/>
 - Copyright Term and Public Domain in the United States (chart)
(Peter Hirtle, Senior Policy Advisor, Cornell University Library)
 - <http://copyright.cornell.edu/resources/publicdomain.cfm>
 - Includes links to additional sources

Support Statement: The standard helps to articulate an approach to placing unpublished materials online for public access that can shift analysis away from an overwhelmingly item-level analysis to a more aggregate-level analysis. The intent is that over time, with increased use and acceptance of the practice, it may develop into a community of practice.

Fiscal Impact: None.

APPENDIX

The full text of the request from IPWG to endorse “Well-intentioned Practice for Putting Digitized Collections of Unpublished Materials Online” follows:

Proposal to Endorse an External Standard

Name of submitting group:	SAA Council’s Intellectual Property Working Group
Date submitted:	May 3, 2011
Name of contact person:	Heather Briston
Daytime phone:	541-346-1899
E-mail:	hbriston@uoregon.edu
Fax:	541-346-1882
Mailing address:	Special Collections & University Archives, 1299 University of Oregon, Eugene, OR 97403-1299
Title (or topic) of standard:	Well-intentioned practice for putting digitized collections of unpublished materials online

Name of the standard:	Well-intentioned practice for putting digitized collections of unpublished materials online with preface
Sponsoring organization:	OCLC Research
Location of standard (website link or publication details):	http://www.oclc.org/research/activities/rights/practice.pdf

Please include a *written statement* that covers the following:

1. Brief summary of the standard.

A document outlining the intellectual property considerations involved in providing access to unpublished materials online. SAA Council’s Intellectual Property Working Group recommends endorsing the standard contingent upon its being accompanied by a preface written by the IPWG to that provide more information regarding the considerations, risks, and choices to be made by archivists and repositories who adopt it. [Please see attached preface.]

2. Effect/impact of the standard on archival practice.

The desired impact of the standard is to articulate an approach to placing unpublished materials online for public access that can shift analysis away from an overwhelmingly

item level analysis, to introducing analysis at a more aggregate level. The intent is that over time, with increased use and acceptance of the practice that it develops into a community of practice.

3. Discussion of the standard's use within the archives profession. (Who is using it? How is it being used? Is it widely used?)

For the most recent list of organizations, repositories or individuals to endorse or adopt the document, please see the list here:

<http://www.oclc.org/research/activities/rights/support.htm> Related organizations that have already endorsed the document include the Joint National Committee on Archives, Libraries and Museums (CALM) and the Rare Books and Manuscripts Section (RBMS) of the Association of College and Research Libraries (ACRL), a division of the American Library Association (ALA).

4. Review and revision procedures of the standard. (Who reviews the standard? How often is it reviewed? Is the review process open?)

The document is not slated for further review, nor is there a procedure in place for review.

5. Known existing standards that are closely related to or affected by the standard being proposed for endorsement.

Orphaned Works: Statement of Best Practices (Society of American Archivists)
<http://www2.archivists.org/sites/all/files/OWBP-V4.pdf>

When applicable, also attach a copy of the existing standard or document.

Send this form along with accompanying documentation to the Chair of the Standards Committee. Current contact information for the chair may be found online at:
<http://www.archivists.org/governance/leaderlist-index.asp>.