

**Society of American Archivists
Council Meeting
November 9 – 12, 2014
Chicago, Illinois**

**Discussion: Recommendations Regarding SAA Advocacy Agenda
(Prepared by Committee on Advocacy and Public Policy Members Frank Boles (Chair),
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BACKGROUND

Among the Council-assigned duties and responsibilities of the Committee on Advocacy and Public Policy¹ is the following: “A. Acting proactively, the Committee: Periodically reviews and suggests (for Council approval) revisions to SAA’s Advocacy Agenda.”

The current SAA Advocacy Agenda (2012-2014) was last reviewed and revised by the Council in June 2012. See Appendix.

DISCUSSION

The task of drafting a new SAA Advocacy Agenda document was undertaken by CAPP at the request of Council. In looking at the current agenda document, it became clear that a substantial rewriting of the Agenda was advisable. The current Agenda format essentially incorporates SAA’s positions into the Agenda document. With the development of various, and more lengthy, position papers approved by the Council, and keeping in mind the Council’s prior directives that it prefers short documents, CAPP chose to substantially modify the previously used format.

Specifically, CAPP chose to not include the statements in the agenda document. Rather, CAPP believes that brief, bulleted points in the Agenda, linked electronically to the more substantive position papers adopted by the Council, is preferable. We believe this to be the logical development in the Agenda format that results from the success the Council has achieved through the work of CAPP.

CAPP also notes that we have, after previously informing the Council, abandoned the effort to develop a single statement regarding the closing of archives. A general document regarding the closing of archives that is sufficiently nuanced to cover the range of possibilities and harms

¹ <http://www2.archivists.org/governance/handbook/section7/groups/Advocacy-and-Public-Policy>

created through such an action that also met the Council's mandate for brevity could not be created. There are simply too many variables.

More importantly, each closing of an archives is the result of a specific situation and creates specific harms. In such a situation, a broadly constructed document will be largely unhelpful, since much of it will speak to issues and harms not in play. We believe the most effective way to argue against the proposed closing of a particular archives is to address the specific situation, pointing to the specific harm that will result from the decision, and with specific reasons for reversing the decision.

This focus on specificity is also consistent with how the position papers adopted by the Council have addressed other public policy issues. Rather than expressing broad dissatisfaction or calling for general change, the documents have consistently created very specific recommendations which can be used as a yardstick through which to measure SAA's opinion of any proposed change that might be suggested. The Council, through its actions, has created a road map for the committee that we have attempted to follow.

Society of American Archivists Proposed Public Policy Agenda October 7, 2014, Draft

The Society of American Archivists (SAA) believes that archival records created by government serve fundamental public needs, including:

- Making transparent and holding accountable governmental organizations at all levels.
- Ensuring the protection of citizens' rights and individual privacy.
- Guaranteeing the administrative continuity necessary for good governance.
- Making accessible evidence of the diverse and complex elements of the human experience
- Preserving historical documentation for the next generation.

To meet these needs, sufficient public funding is required at all levels of government.

Because these needs are fundamental to the functioning of a democratic government and to a historical understanding of a nation so governed, SAA believes that the archival profession must take an active role in advocating not only for the necessary resources needed, but also for public policies that ensure that these archival records are identified, preserved, and made accessible.

In pursuit of these beliefs, SAA will advocate in the following policy areas:

- To hold government accountable, and make it transparent, SAA will pursue the public's right to equal and equitable access to government information found in archives.

Examples

- Reform of the Presidential Records Act
- Strengthening the federal Freedom of Information Act

- Reform of the processes through which and the length of time government records may be classified, as well as to streamline declassification procedures
- Strengthening access to local and state records
- To ensure the protection of citizen's rights, as well as the individual right to privacy, SAA will consistently take into account privacy concerns in certain categories of archival records.

Examples

- Strengthening the Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- Determining the fate of documentation regarding individuals collected by the National Security Agency (NSA)
- To guarantee the administrative continuity necessary for good governance.

Examples

- The authority of NARA to regulate records designated as archival throughout the federal government
- To make accessible evidence of the diverse and complex elements of the human experience.

Examples

- Revisions to Section 108 of the Copyright Act
- Orphan Works legislation
- Revision to the length of current copyright protection
- The Public's Need for Strong and Adequately Funded Institutional Stewardship of the American Historical Record

Examples

- sufficient archival funding within public archives as well as for governmental grant programs to archives similar in scope and funding enjoyed by libraries, museums, and similar organizations throughout the nation
- Reauthorization of the National Historical Publications and Record Commission
- Passage of the Preserving the American Historical Record Act
- Meaningful studies to determine the direct and indirect costs of identifying, maintaining, and making available for use the public records housed in archives across the nation.

In stating these goals, SAA accepts that reasonable accommodation must be made so that:

- Confidential or personal information held by all levels of government is not disclosed in ways causing significant harm.
- Government ensure that information, or more properly the expression of information in a particular way, can be excluded for a limited time from the public domain and used exclusively by the creator for private gain.

SAA firmly believes the critical nature of information in a democracy places the burden to prove the need for confidentiality or the legitimacy of excluding information from the public domain on those asserting such claims. Unless presented good reason to the contrary, SAA will consistently value the general good obtained through open access to information over the limited good achieved by information closure or proprietary use.

For details concerning these areas, see statements posted to the Committee on Advocacy and Public Policy portion of the SAA website.

Society of American Archivists Advocacy Agenda (2012 – 2014)

Because archival records ensure the protection of citizens' rights, the accountability of organizations and governments, and the accessibility of historical information, the Society of American Archivists (SAA) believes that the archival profession must take an active role in advocating for the public policies and resources necessary to ensure that these records are preserved and made accessible. This Advocacy Agenda identifies a limited set of broad priorities that serves to guide the Society's advocacy efforts in the public policy and legislative arenas. Requests for SAA's commitment to a specific advocacy issue will be more vigorously pursued if that issue fits within these priorities.

The Public's Right to Equal and Equitable Access to Government Information

American citizens have a right to know the actions and intentions of their government and its leaders. Government officials at all levels should assume that the public has the right of access to documents prepared by a government official or entity, including communications between government officials or entities. To ensure access, government officials have an obligation to preserve such records properly until they are appropriately reviewed, appraised, and declassified when appropriate. This preservation requirement applies to all records, regardless of format.

Presidential Records Act (PRA) Reform: SAA supports all efforts to strengthen the PRA to ensure that it 1) is enforceable with regard to both the President and the Vice President, 2) adequately encompasses both electronic and paper records and communications, and 3) cannot be altered by executive order. SAA will join legal actions directed to ensuring proper and thorough application of the PRA, advocate for pertinent legislation, and suggest alterations to both court filings and proposed legislation in pursuit of our goals. *Issue brief adopted May 2014.*

Freedom of Information Act: SAA supports all efforts to strengthen the federal Freedom of Information Act (FOIA) to ensure that 1) agencies follow both the letter and the spirit of the law, 2) delays and backlogs in the FOIA request process are reduced to a minimum, and 3) communication between agencies and FOIA requesters and between the government and the public regarding FOIA matters is improved. See a [detailed legislative agenda](#).

SAA also encourages state and local governments to acknowledge the right of citizens to access public records. SAA encourages state and local governments to adopt and enforce laws and policies that are based on the belief in the public's right to these records, and to assume that all public records are open for use unless specific and generally agreed upon reasons can be stated as to why access to a particular record must be denied.

SAA will consider joining legal actions to ensure proper and thorough application of FOIA, advocate for pertinent legislation and agency regulations, and suggest alterations to both court filings and proposed legislation in pursuit of these goals. *Issue brief adopted May 2014.*

The Public's Need for Strong Institutional Stewardship of the American Historical Record

The records found in our archives contribute to a more open and pluralistic society. Records are used by citizens in the pursuit of public accountability, transparency, civil rights, protection of corporate rights and responsibilities, continuity of civil operations, and good governance. To hold government accountable and to provide evidence of the diverse and complex elements of the human experience, it is essential that concerted efforts are made to preserve and make accessible a comprehensive and trustworthy American historical record.

Closing of Archives: SAA recognizes that many institutions face fiscal pressure that may from time to time lead them to consider closing an archives or curtailing its basic activities.

Nonetheless, the Society believes that an institution must assess both short- and long-term and direct and indirect costs of this action before making any decision in this regard. Archival experts should be consulted concerning the costs and consequences of any action. Deliberation should be particularly cautious if private or donated historical materials are involved or if the archives has been supported in any part by grants, public funding, or volunteer work. Such factors can create potential liability for the institution. A proposed closing also must be discussed with the users of the archives, both within and outside the institution. [Issue Brief Pending]

The Public's Right to Timely and Reasonable Use of Information

America's first copyright act (1790) sought to strike a balance between encouraging the creation of new works and granting monopolies over knowledge, learning, and expression. Over time, both the scope and duration of copyright monopolies have increased, to the detriment of learning and broad creative expression. A more appropriate balance must be struck between the right of authors to benefit from the fruits of their labors for a limited time and the need of the public to use freely material for the greater benefit of society.

Revisions of Section 108 of the Copyright Act: Section 108 of the Copyright Act, the section that stipulates specific exemptions for archives and libraries, requires revision. Even at its inception in 1978, Section 108's exceptions were inadequate for archivists; however, in the digital age the gap has grown ever wider between the statute's provisions and the unchallenged practices of many archivists in support of preservation and increased public access.

A revised Section 108 should:

- Extend the eligibility of 108 to commercial entities, so long as they are not undertaking 108 activities for direct commercial advantage. Exceptions for digital preservation must recognize that many entities are engaged in the important task of preserving and providing access to our heritage.
- Remove the stipulation that digital access to unpublished collections must be limited to the premises of the archives. Authorized users who have agreed to the rules of the repository (including the requirement to respect copyright and privacy when engaging in the general publication of a work) should be able to have remote access to collections in digital form.
- Explicitly recognize that archival collections typically contain both unpublished work and some material that may have been published at one time. That should not affect the

inclusion of such published items within an archival collection being made available digitally.

- Remove format-specific restrictions in 108(i). All rights provided by Section 108 should be available to repositories regardless of whether the work in question is a letter, a musical score, a photograph, a sound recording, or a motion picture. The differences in the formats do not justify different treatment under the law.
- Modify 108(f)(4) so that the public benefits guaranteed by Section 108 cannot be limited or annulled by contractual obligations.

SAA adamantly opposes any attempt to restrict further the very limited exceptions in Section 108. SAA will, via its Intellectual Property Working Group, monitor and recommend appropriate actions on Section 108 of the Copyright Act. *Issue brief adopted May 2014.*

[Orphan Works](#): "Orphan works" is a term used to describe the situation in which the owner of a copyrighted work cannot be identified and located by someone who wishes to make use of the work in a manner that requires permission of the copyright owner. Proposed orphan works legislation, such as the Orphan Works Act of 2008 (H.R. 5889) and the Shawn Bentley Orphan Works Act of 2008 (S.2913), would reduce penalties for infringement if an infringer "undertakes a diligent effort to locate the owner of the infringed copyright." *Issue brief adopted May 2014.*

The Public's Right to Personal Privacy in Certain Categories of Records

An individual's right to privacy with regard to certain information—for example, records mandated by government, attorney-client records, and medical records—historically has been weighed against the public's right to information. Personal privacy should be respected throughout an individual's lifetime in appropriate ways. Documents recording private information about living Americans should be disclosed involuntarily *only* when disclosure accomplishes a greater public purpose.

[Health Insurance Portability and Accountability Act of 1996 \(HIPAA\)](#): SAA supports all efforts to strengthen the Health Insurance Portability and Accountability Act (HIPAA) to:

- Redefine "Protected Health Information" (PHI) to balance privacy and access concerns regarding access to PHI about individuals whose death dates are not known.
- Allow access to PHI for family members doing medical genealogy research.
- Clarify which archival repositories holding health-care-related holdings are subject to Business Associate Agreements and provide guidelines for them.
- Revise the Privacy Rule so that previously published individually identifiable information and photographs are not considered PHI.
- Support efforts to standardize PHI definitions and requirements in state law and regulation based on federal rules and regulations, with the goal of creating a single, nationally recognized standard regarding PHI.

SAA will:

- Work with the Council of State Archivists to advocate for standardization of state medical record statutes that would bring them in line with federal regulations.
- Encourage the development of standardized best practices by archivists working within Covered Entities.

- Encourage interested SAA Sections and Roundtables to advocate for these changes in partnership with scholarly associations representing researchers.
- Encourage interested SAA Sections and Roundtables to survey repositories documenting the health fields regarding researcher experiences in applying to Institutional Review Boards and Privacy Boards for access to protected holdings.

The Public’s Interest in Adequate Funding of Archives and Archival Programs

The records found in our archives ensure administrative continuity, help hold government officials accountable for their actions, and create documentary sources through which we come to understand our society. Because of the importance of these functions, archival institutions at all levels of government and throughout society must be adequately funded. Funding should include sufficient resources both to renew and invigorate undervalued operations and to support innovative and transformative projects that enable archives to preserve extraordinary documentary resources for the public.

National Historical Publications and Record Commission: SAA supports reauthorization of NHPRC by the 112th [113th] Congress at a funding level of \$20 million. This funding level will ensure that the agency can adequately and appropriately support projects not only to preserve and make accessible nationally significant records but also to serve as models of best practices for archives of all types. [Issue Brief Pending]

The Preserving the American Historical Record Act: This legislation would create a federally funded formula grant program to provide essential resources to support and enhance the capacity of state and local records sources to provide access to the “other half” of America’s story—that is, those significant records that are kept by sources other than the federal government. SAA supports authorization and funding of PAHR at \$50 million. [Issue Brief Pending]

*This Advocacy Agenda was adopted by the SAA Council in June 2012.
To view the 2009-2010 Advocacy Agenda, click [here](#).*