

**Society of American Archivists
Council Meeting
November 5-7, 2017
Chicago, Illinois**

Consent Agenda: Ratify Executive Committee Interim Actions
(Prepared by Executive Committee Member Kris Kiesling)

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 in October 2017 be ratified:

- Approved a statement, drafted by the SAA Committee on Public Policy, regarding "[Use of Non-government Email Accounts for the Conduct of Public Business](#)," which points back to the CoSA/NAGARA/SAA Joint Statement on Conducting Public Business in Non-government Email Accounts (2015). (October 6, 2017)
- Signed on to [a letter to Secretary of the Treasury Steven Mnuchin](#), initiated by Americans for Tax Fairness, Institute for Taxation and Economic Policy, and Public Citizen, regarding removal from the federal government website of the Treasury report on the impacts of corporate tax cuts. (Approved by SAA President Tanya Zanish-Belcher, October 11, 2017)
- Signed on to [a letter to Acting Privacy Chief Officer Jonathan Cantor](#), written by the Center for Democracy and Technology (CDT), expressing "concerns with the Department of Homeland Security (DHS) System of Records Notice...stating that DHS will now store social media information in 'Alien Files' (A-Files), which include the official record of an individual's visa and immigration history." (Approved by SAA President Tanya Zanish-Belcher, October 20, 2017)

- Submitted a comment, drafted by the SAA Committee on Public Policy, in response to a request from the Open Government Partnership for comments on the U.S. federal government's Third Open Government National Action Plan (NAP3). (Appendix A) (October 30, 2017)
- Submitted a comment, drafted by the SAA Intellectual Property Working Group, on the U.S. Copyright Office's proposal to create a new group registration option for unpublished works. (Appendix B) (Approved by SAA President Tanya Zanish-Belcher, October 30, 2017)

Society of American Archivists
Comments on the U.S. Federal Government's
Third Open National Action Plan
October 30, 2017

The Society of American Archivists (SAA) welcomes the opportunity to comment on the U.S. federal government's Third Open Government National Action Plan (NAP3). As the oldest and largest professional association of archivists in North America, representing more than 6,500 members, SAA promotes the protection and accessibility of government records. Because such records ensure the protection of individuals' rights, the accountability of governments, and the accessibility of historical information, equal and equitable public access to government information is a cornerstone of our democracy.

SAA firmly believes that 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, on those asserting such claims. SAA calls on the government to expand access to public records and data in all areas that do not compromise the safety and security of the American people.

Commitment 13 Improve Management of Government Records

While the National Archives and Records Administration (NARA) should be commended for its efforts to improve records management in the federal government, the 2016 Federal Agency Records Management Annual Report¹ demonstrates that Executive Branch agencies need to do more, despite continued incremental progress. According to the latest report, 55% of agencies are in the moderate to high-risk categories when it comes to compliance with regulatory records management requirements. Similarly, 56% of agencies surveyed are in the moderate and high-risk categories for email management. This is despite 79% of agencies reporting that they are meeting the NARA/OMB directive (M-12-18) to manage all email in electronic format by December 31, 2016. And while that statistic is impressive, the reality of what this figure represents must be questioned when there are routine instances of senior government officials using private email to conduct public business. The Capstone approach developed by NARA is an important improvement towards taming the unwieldy landscaped of email management and SAA is encouraged that, to date, over 100 entities have been approved to use this strategy.

Commitment 14 Modernize FOIA and Release Nonprofit Tax Filings

SAA supported the passage of the FOIA Improvement Act of 2016. The Act addressed a range of procedural issues, including requirements that agencies establish a minimum of 90 days for requesters to file an administrative appeal and that agencies provide dispute resolution services at various times throughout the FOIA process. The Act also codified the Department of Justice's "foreseeable harm" standard, amended Exemption 5, created a new "FOIA Council," and added two new elements to agency Annual FOIA Reports. Over a year

¹ <https://www.archives.gov/files/records-mgmt/resources/2016-federal-agency-records-management-annual-report.pdf>

later, however, the impact of these most recent amendments on FOIA implementation remains unclear. It is encouraging that in FY2016 the government had an overall release rate of 91%, in which information was released in full or in part, but this optimism is tempered by the fact that the overall government backlog of requests increased 12% between 2015 and 2016.²

Commitment 15 Streamline the Declassification Process

The National Archives and Records Administration (NARA) should be commended for creating the National Declassification Center in 2010 and significantly reducing the backlog of classified materials awaiting declassification review.

The federal government, however, should continue to strive for the greatest possible openness when declassifying national security information, including when applying the automatic declassification provisions detailed in Executive Order 13526 (“Classified National Security Information Memorandum,” December 29, 2009). When an automatic classification event has occurred, the duration of classification should be extended only under extraordinary and limited circumstances. As part of their records management responsibilities, the National Declassification Center (NDC) and government agencies should support the declassification review process with adequate resources and the development of new technologies. For more on SAA’s position related the declassification process, see the related issue brief: <https://www2.archivists.org/statements/issue-brief-declassification-of-federal-records>.

Commitment 16 Implement the Controlled Unclassified Information Program

SAA commends NARA for its initiative to address the unwieldy landscape of controlled unclassified information (CUI). It is reassuring that the patchwork of agency-developed systems of categorizing sensitive but unclassified materials has been replaced with a standardized system overseen by the federal agency with the necessary expertise in records management. The government—particularly the Information Security Oversight Office (ISOO)—is to be commended for this effort to establish an orderly and standardized system to handle CUI. However, implementation of the CUI framework by agencies must avoid disclosure restrictions that override discovery, whistleblower protections, and other lawful disclosures; must not discourage legitimate information sharing both inside and outside the government; and must not hinder access via the Freedom of Information Act; in short, the system should not become another layer of “classification.”

Commitment 22 Increase Transparency of Trade Policy and Negotiations

SAA remains concerned about any proposed trade agreement that includes provisions related to intellectual property rights, and urges any future negotiations be transparent and allow for meaningful input from civil society. Any proposed trade agreement, must safeguard the role of archives and libraries in providing access to archival materials to foster ongoing research, scientific progress, and economic growth.

² https://www.justice.gov/oip/reports/fy_2016_annual_report_summary.pdf

Before the Copyright Office, Library of Congress, Washington, D.C. 20024

**In the matter of Group Registration for Unpublished Works Comments
Docket No. 2017-0009**

**COMMENTS
OF
THE SOCIETY OF AMERICAN ARCHIVISTS**

October 30, 2017

The Society of American Archivists (SAA) welcomes the opportunity to comment on the U.S. Copyright Office's proposal to create a new group registration option for unpublished works.

As the oldest and largest organization of archivists in North America, SAA is deeply interested in the ownership of and access to unpublished works. Although the proposed rule speaks to the significant benefits to the Copyright Office that would follow from the adoption of the proposed rule, it is our belief that there would be great benefits to the public as well. One of the greatest challenges that archivists face is discovering detailed and reliable information on copyright ownership. Given the potential harm associated with statutory damages, knowing whether a specific item has been registered (and is thus subject to statutory damages) can be incredibly important. A cautious archival patron may be unwilling to quote from an unpublished item or make fair use of an unpublished photograph out of fear that it is an unidentified part of a registered collection. The Copyright Office's proposed rule would go far in clarifying the registration status of new works.

SAA believes that the rule would not impose unacceptable hardships on the nation's archives. In some cases, archives receive copyright ownership in unpublished collections when they are transferred to a repository. It would be theoretically possible, therefore, for that repository to register the collection with the Copyright Office. To the best of our knowledge, this has not happened. In the rare instance in which a repository would want to register unpublished works, it would not be burdensome to ask it to absorb the increased cost of registration that the proposed rule would entail in order to be able to enjoy the substantial benefits of registration.

Respectfully submitted,

Tanya Zanish-Belcher, President, 2017-2018
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