

**Society of American Archivists
Council Meeting
November 18/19, 2024
Chicago, IL – Hybrid**

Intellectual Property Working Group
Annual Report—2024

The Intellectual Property Working Group co-chairs respectfully submit the following report of activities for the 2023–2024 academic year.

I. Working group roster :

Menzi L Behrnd-Klodt, Heather Briston, Aprille Cooke McKay, Jean Dryden, Eric Harbeson (co-chair), Cathy Henderson, Peter B. Hirtle, William Maher (co-chair), Selena St. Andre, Marilyn Cresswell.

Council liaison : Krystal Appiah

Per Governance Manual XIII.B.1, “there is no set term length for participation [in working groups]; members serve at the pleasure of the SAA Council. Nonmembers of SAA may be appointed, based on their expertise.”

II. Projects and activities

The Working Group’s activities this year included:

1. **International advocacy**—the Working Group continues its deeply important work advocating for the interests of archives and archivists at the World Intellectual Property Organization (WIPO) in Geneva, Switzerland. WIPO is the specialized agency of the United Nations responsible for developing and maintaining international agreements and treaties governing intellectual property issues. WIPO’s work directly affects the laws and policies of the United States, which in turn affect US-based archivists. At WIPO’s Standing Committee on Copyright and Related Rights (SCCR), SAA’s representative has worked in support of a treaty to provide limitations and exceptions to copyright worldwide, and that treaty—if written well—could benefit archivists. A treaty that would confer new exclusive rights to broadcasters, although underway for many years, may be nearing completion, and SAA has advocated against any broadcasting treaty that would add yet another layer of rights to an already complicated set of laws. Our work at WIPO has been in collaboration with the International Council on Archives and a broad coalition of library and civil society organizations, and SAA’s voice has been essential in ensuring archives are given proper weight in discussions that otherwise are often library-centric.
 - a. **Access 2 Knowledge (A2K)**—on the Working Group’s recommendation, SAA joined the A2K coalition, a large and internationally diverse body of like-minded organizations working toward similar goals at WIPO and elsewhere.
2. **National advocacy**—unlike in the international sphere, where advocacy requires constant and consistent presence, the need for action on a national level varies from year to year. Some years

3. Raise multiple urgent issues all at once, while at other times years may pass without significant developments. Given the Working Group’s internal transition, we were fortunate this was a lighter year. Even so the Working Group did recommend SAA’s signing on to a letter to members of Congress from the Association of Research Libraries, opposing the PRO-CODES Act (HR 1631, S.835), which would provide copyright protection for technical standards that would otherwise have been in the public domain because of their incorporation into laws by reference. The bill failed to pass the House of Representatives but was later added as an amendment to an omnibus defense authorization act. We are also involved in discussions with ARL and other allied groups about possible issues arising out of licensing and/or generative artificial intelligence.
4. **SAA matters**—The Working Group proposed a 2024 Annual meeting session on the implications of recent copyright legislation for Native American sound recordings held by US archives. The session was not accepted.
5. **Internal matters**
 - a. Following the 2023 Annual Meeting, the Working Group’s chair, Aprille McKay, stepped down as chair after many years. The Working Group wishes to thank and acknowledge Aprille for her superb leadership and is grateful she has opted to remain on IPWG as a member.
 - b. The Working Group recruited and welcomed one new member, Marilyn Creswell.
 - c. At the suggestion of the Council, the Working Group studied its membership and leadership structure. In addition to moving to a co-chair model, the Working Group considered whether to adopt a revised structure whereby members would be appointed for staggered, three-year, automatically renewing terms. Though the group was generally in favor of the idea, we determined that doing so would require either IPWG to be restructured as a task force (which the group believes to be inadvisable) or a revision of the Governance Manual to allow for such a structure.

SELF-ASSESSMENT (question borrowed from Section questionnaire)

How would you describe the health or energy of your section? How engaged are your members?

The group’s energy and ability to connect with SAA membership at large has suffered somewhat from SAA’s decision to move annual meetings of component groups online. IPWG meets periodically (usually quarterly) throughout the calendar year, but our annual meeting has traditionally been in person. The move to online meetings means years pass before some of the Working Group members share space and breathe the same air. New members especially are hurt by the online-only nature of meetings, because much of the important work that happens at meetings actually happens in the time surrounding the formal meeting itself. In addition, our in-person meetings at the SAA conference site are occasions where non-member attendees come to hear about the latest intellectual property issues and pose questions of IPWG members. That dynamic is one that has served IPWG and the SAA well by expanding our scope and often providing an opportunity to identify potential new members for the group. Though online meetings can be valuable and can accomplish work, they are not fully equivalent to the sort of social/professional networking that archivists have long found essential to their SAA experience during in-person meetings.

That said, the group is still quite engaged. The addition of two recent new members (including one this year), and a possible third in the near future, suggests the group is healthy. Intellectual property policy can be something of a “feast or famine” field, and lately the national landscape has been comparatively calm. However, the U.S. federal courts and legislature frequently take up cases with significant implications for the intellectual property held by archivists. When that happens IPWG has been and will continue to be ready to advise SAA leadership of the need for the Society to take a public policy stance on behalf of the profession and the publics we serve. As evidenced by the trimming back of fair use in the Supreme Court’s 2023 *Andy Warhol Foundation* decision, as well as the just-released Second Circuit decision in *Hachette v. Internet Archive*, SAA and IWPG need to be alert to cases currently in the courts that could have (possibly dramatic) consequences for archivists. Meanwhile, our long-standing international advocacy remains important lest archival interests become subsumed by library, education, and publishing interests. International work is a “long game.” By the time a new international norm emerges, the time to respond has already passed. Our work now, while those norms are still being formed, helps ensure that policy affecting archival matters reflect the interests and expertise of American archivists.