

# **Society of American Archivists Council Meeting Chicago, IL**

## **Group Name: Intellectual Property Working Group Annual Report, 2024/25**

**Eric Harbeson and William Maher (IPWG Co-Chairs)**

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

Note: Per Governance Manual XIII.B.1, members are appointed not for a set term but to serve at Council's pleasure.

**Council liaison :** Krystal Appiah (2022-25)

### **PROJECTS AND ACTIVITIES**

*(Please indicate all projects and activities that your component group has completed this year, continues to work on, or plans to implement in the following fiscal year.)*

#### **Completed:**

1. **International advocacy**—the Working Group continues its important work of advocating for the interests of archives and archivists at the World Intellectual Property Organization (WIPO) in Geneva, Switzerland. WIPO is the specialized United Nations agency responsible for developing and maintaining international treaties and agreements 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<sup>1</sup> has worked in support of a treaty to provide worldwide limitations and exceptions to copyright for archives, museums, and libraries. If written well and with our specialist input, that treaty would benefit archivists. SAA was the only archives organization with a representative at SCCR this year, making our presence especially important.
  - Meanwhile, our presence at WIPO/SCCR has enabled us to raise policy concerns with a proposed treaty that would confer new exclusive rights to broadcasters. Although the Broadcast Treaty has been underway for many years, it may be nearing completion, despite its continued flaws. SAA has advocated forcefully against any draft that would add yet another layer of rights to an already complicated set of laws, and also called for robust limitations and exceptions for libraries and archives. Our work at WIPO has been in collaboration with the International Council on Archives and a broad coalition of library and civil society organizations.

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<sup>1</sup> (Maher, with Harbeson briefly functioning as alternate)

2. **Access 2 Knowledge (A2K)**—the IPWG’s co-chairs have regularly participated in the A2K quarterly general meetings. More important is SAA’s seat on the A2K’s Strategy Committee which coordinates coalition activities, sets priorities, and develops public policy statements. During 2024/25, A2K provided funding for co-chair Eric Harbeson to travel to Geneva, Switzerland to attend a 2-day strategy session and participate in background discussions to prepare for the April SCCR meeting. This was an important commitment by A2K to ensure that Eric would be fully prepared to fill-in as the alternate for William Maher, who was unable to travel for the April SCCR meeting.

**National advocacy**—unlike the international sphere, where the issues are continuous and require continued vigilance, the need for action on a national level can vary widely from year to year. Some years raise multiple urgent issues, while at other times there are not many significant developments. 2024/25 was a lighter year. Even so, the Working Group acted quickly to assess and then recommend that SAA sign on to letters prepared by the Association of Research Libraries (ARL) to members of Congress calling for them to oppose the PRO-CODES Act. The act would provide copyright protection for technical standards that have otherwise been in the public domain because they are incorporated into laws by reference. Multiple versions of the letter have been prepared, endorsed, and issued as the bill’s advocates have tried a succession of approaches to have the bill considered or appended to some other must-pass legislation. As of this writing, the bill remains in the House Judiciary Committee, where [Govtrack.US](https://www.govtrack.us/congress/bills/118/1017) gives the bill only a 30 percent chance of making it out of committee and only an 8 percent chance of being enacted. However, because industry advocates have been pushing for this legislation for some years, we should continue to be engaged with ARL in case there is need for further action.

**Ongoing:** Maher will be representing SAA at the December 1-5 WIPO Standing Committee on Copyright to continue our advocacy for copyright exceptions for archives, libraries, and museums. The special focus of that SCCR session will be on trying to advance a work program that the Africa group first proposed in 2023 for activities to advance the exceptions and limitations agenda. We are hopeful that the Committee’s chair will continue her efforts from last April’s meeting where she advocated for a plan that would lead to a treaty. Meanwhile, it is likely that—once again—we will need to be vocal in opposing the proposed treaty for broadcasters.

An additional SCCR is scheduled for mid-May 2026. It is important that SAA maintain a continued presence at SCCR as long as the proposed limitations and exceptions treaty is on the agenda, since the absence of an archival voice likely would ensure archival issues would be ignored, worse yet, such a treaty would add to the burden and costs to make materials available to our domestic and global users.

We will continue to monitor litigation and legislation that develops in the Congress and Federal Courts, as well as whatever regulations or calls for public comment are issued by the U.S. Copyright Office. If the first 9 months of the current legislative session are any indication, it will be important to keep an eye on draft bills put forward relative to artificial intelligence and to look for opportunities where the archival voice needs to be added to the public discussion.

**New:** Though IPWG has been monitoring legislative developments both at home and abroad regarding generative artificial intelligence, which was also discussed as part of our 2023 and 2025 legislation/litigation updates, the working group is concerned that SAA has not established policy positions regarding generative AI in the context of archives. Generative AI is a topic that is dominating discussions at WIPO, and is also a rapidly developing topic within the United States. Likely, there will be high-profile, precedent setting appellate decisions in the next one-to-three years, and SAA's voice will be important in that discussion. The larger civil society community is also looking for SAA to weigh in on the topic.

Advising on a policy stance on the copyright dimensions of Generative AI would be within IPWG's mandate, but the overall GenAI topic is broader, as can be seen in the breadth of the AI topics at the Anaheim meeting. Thus, we believe Council should form an ad hoc task force to study the issues presented by generative AI in archives in order to establish SAA's positions. IPWG is prepared to contribute to that work, but the implications of artificial intelligence on the archival record and archival practice call for more than IPWG's expertise alone. IPWG would be happy to consult on the formation of the task force should that be helpful.

## SAA STRATEGIC PLAN

*(Please review the current [Strategic Plan](#) and indicate below how the component group has or plans to contribute to one or more of the four main goals.)*

### **Goal 1: Advocating for Archives and Archivists**

IPWG provides national and international leadership for policy development in the contested domain of intellectual property, and especially copyright. Our work in numerous coalitions has ensured that archival values are made understandable, and incorporated into the work of members of Congress, federal agency leaders, and numerous international delegates. Our work at WIPO aims to ensure that researchers and archives throughout the world are able to benefit from collections throughout the world regardless of their ability to afford travel or obtain visas. In many cases, the international policy reforms we have advocated for would allow researchers to study collections from their own country, collections which for a variety of reasons are now housed outside their cultural home. By educating archivists at annual meetings, we give archivists the language they need to advocate for archives in increasingly industry-dominated national debates.

### **Goal 2: Enhancing Professional Growth**

IPWG works to educate the membership on important intellectual property issues primarily through publications and presentations. Our presentations at annual meetings are consistently some of the best-attended presentations of the year, with many members remarking to us that they clear their schedule to make sure they can attend. Our presentation at this year's Anaheim conference, offered in a hybrid format, allowed us to use technology to reach members who otherwise were not able to travel to the meeting. More than 400 members received timely and relevant updates on legislative and litigation developments as a result. Additionally, all SAA members are welcome at our annual meetings, and are welcome to contribute whether or not they are IPWG members.

### **Goal 3: Advancing the Field**

IPWG in this report has called for new work in studying generative AI as a pathway to identifying SAA's positions on the topic, possibly also leading to new best practices or guidelines. We continue to be prepared to work with other component groups on Native American materials,

though the necessary task force still has not been formed to our knowledge. We monitor policy work being done in the federal government, such as in the US Copyright Office, and write responses to those notices of inquiry (for Council's approval) as needed. We also work with like-minded organizations to draft collaborative responses to pressing IP issues.

#### **Goal 4: Meeting Members' Needs**

SAA members need information about intellectual property, and they need national laws and policies that support archivists' work. This is what IPWG was formed to promote. All our publications are available to the membership (and, usually, to the general public) to read. Because IPWG is formed by and serves at the pleasure of Council, we are not well situated to initiate opportunities for wide participation in the association, but we would welcome any referrals that Council needs to make to us.

#### **SAA ANNUAL MEETING**

IPWG presented our biennial legislation and litigation update at the annual meeting in Anaheim in August. The meeting was attended by roughly 100 people virtually, and more than 300 in person and was very well received, with thoughtful questions and discussions about the program during both the question and answer session as well as informally afterwards.

IPWG's annual meeting occurred in early July. Meeting minutes are attached.

#### **SELF-ASSESSMENT**

Our ability to connect energetically with SAA membership continues to be inhibited by the decision, made a few years ago, to move component groups to online annual meetings. Online meetings may provide advantages for the larger, and more grass-roots units such as Sections. However, the main way that our much smaller working group has connected with the general membership in the past has been through our meetings at SAA's annual conference. The move to a 60- or 90-minute online meeting, after which everyone disperses to their separate corners of the digital universe, is a sharp contrast to the direct interpersonal networking among IPWG members and with SAA members as a whole when at a physical meeting. New members especially are hurt by the online-only nature of meetings, because much of the important work that occurs at meetings actually happens in the time surrounding the formal meeting itself. Our in-person meetings historically were opportunities for non-member attendees to come and learn about newly developing IP policy issues, an occasion that often expanded our scope and created a means to identify new members for the group.

Nevertheless, because of our long past experience of working together, IPWG members remain active and engaged. 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. IPWG actively monitors the legislature and courts and is 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. Recent decisions on fair use and on Generative AI training data as well as the Copyright Office's studies all shed significant light on copyright issues faced by SAA members. Meanwhile, our long-standing international advocacy remains important lest archival interests become subsumed by collateral library, education, and publishing interests. That work

has been described as a “long game,” but when a new international norm emerges, we need to make sure that archival matters reflect the interests and expertise of American archivists.

*Did the component group’s leadership encounter any challenges in achieving its goals for the year?*

IPWG has been frustrated by the fact that governance for the IPWG within the SAA has been modeled on that of the Section rather than the distinct difference that we are a Working Group established as an advisory committee to Council. The particular difficulty arises in the fact that the by its mandate, membership in IPWG is not for any fixed term, but instead members serve at the will of Council. That approach coincides with the particular expertise needed to deal with the way in which public policy issues arise as well as the long gestation period for intellectual property legislation and litigation. While SAA leadership have been supportive of our working in ways different from the Sections, the software tracking membership in the IPWG has created many frustrations and delayed work.

*What suggestions do you have for the SAA Council and staff that might help address these challenges in the coming term?*

*What questions or concerns do you have for the SAA Council and staff?*

The software to facilitate organizational unit governance needs to be made to fit the differences among unit structures rather than having software creating needless work for the units and the staff. We also need to eliminate delays in naming of the Council liaisons.