

SAA Council's Intellectual Property Working Group Meeting Minutes

Tuesday July 20, 2021 4-6pm Eastern

Working group attendees: Aprille McKay (chair), Eric Harbeson, Cathy Henderson, Peter Hirtle, William Maher, Jean Dryden, Menzi Behrnd-Klodt, Heather Briston.

SAA Council liaison: Eric Chin

- Welcome – Overview of IPWG purpose and function for new attendees.
 - Aprille noted it is the 20th anniversary of IPWG
 - Peter: We should make a special gesture to Nancy.
 - Aprille: We'll collaborate on a Google document to make a proclamation and send her flowers.
- Update on amendment of DACS for archival description (Rights Statement for Archival Description and Rights Statement for Archival Authority Records) (Aprille)
 - Last fall IPWG submitted comments in support of the amendment, suggesting that archivists should be encouraged to use the most open licenses possible on finding aids and other description. The changes to DACS have been officially approved. A victory for advocacy by Heather Briston and Merilee Profitt. Next issue will be adapting ArchivesSpace to include a field so that these elements will be easy to write into EAD.
- International advocacy planning 2021-22 (20 minutes)
 - Review of SCCR activities 2020-21, including suggestions on Bill's recent report
 - Bill Maher's final report to Council for August 2, 2021 meeting:
<https://www2.archivists.org/sites/all/files/0821-1-VI-F-WIPORep.pdf>
 - Objectives and tactics for SCCR going forward (Bill and Jean)
 - The plan is there will not be SCCR virtual meetings in the remainder of 2021, it is hoped that the next meeting will be in person in Geneva in 2022.
 - New Director General of WIPO is former chair of SCCR, so knows the problems of archives and Bill Maher and Jean Dryden, personally. Bill and Jean had a very cordial meeting with him.
 - We had hoped that Ken Crews or someone similar would be commissioned to write a model law on preservation and copyright. That may be too normative, but a toolkit might be acceptable. A toolkit would be good examples of language for preservation exceptions. 3 good consultants have been hired to do this work: Kenny Crews, David Sutton and Rina Pantalony. This is a very encouraging development. The intent is to make the examples up-to-date for the digital world and to allow pre-emptive copying and to take account of cross-border situations. Not merely to copy outdated language from existing laws. Another goal is to make it regionally focused.
 - We need to continue to advocate for an international instrument too, not just get countries to amend their laws.
 - We need to continue to guard against requirements as to licensing from reproducing rights organizations.

- We need to make sure that there's still money in SAA's budget to pay for trips to Geneva when they're necessary.
- Rep Eric Chin, Council Update
 - Council is looking to increase cultural competency across the organization
 - ACensus will be a big project this year. First one was done in 2004
 - Salary transparency now required for job postings on main SAA job board, but sections will have autonomy to decide
 - Nominating committee is looking for nominations, deadline of August 15.
 - Council approved a deficit budget for FY2022. Not worried about our needs for SCCR.
 - New executive director, Jacqueline Price Osafo. She started July 15.
- New Executive Director of SAA, Jacqueline Price Osafo (Aprille)
 - Soliciting meeting for getting to know each other / introducing IPWG.
 - Eric Chin will reach out to President Courtney Chartier and to Jacqueline Price Osafo. We could include Nancy Beaumont too.
 - Aim to meet within 6 weeks or so?
 - Topics to discuss: who are our members, past significance of IPWG, advocacy rhythm and timing, monitoring listserv, future of IPWG membership, budget
 - She is data driven and will read what we give her ahead of time. Has been reading past minutes posted on the website to get oriented. She's a great communicator and effective administrator. Helping her understand the nexus of archives and copyright is something we should focus on since she is shifting into this profession. Also, relationship with ALA and other orgs around this topic.
 - Heather: We should think about all the different ways that copyright touches the work of archivists. Business archivists' needs may be different than a non-profit.
 - Aprille: Look at Bill's SCCR statements as examples of good "elevator speech" summaries of archives and copyright.
 - Bill: IPWG's role in representing SAA with national and international partner organizations. Sometimes the representative needs to exercise independent judgment without explicit consultation because of time constraints.
 - Aprille: Need to compile our bios and a one-pager on the history of the IPWG and major accomplishments over a 20-year period. The Council Service Award, Orphan Works, talking with Kevin Amer, public testimony, comments on laws, letters of support.
 - Heather: DEI work and IPWG: Interplay of law and ethics and how decisions impact communities. Copyright during donor conversations. Ideas of shared ownership or stewardship with donor communities. What does it mean if the Regents of your university want to own it? How do we talk about it and navigate it?
 - Eric Harbeson: Noted that IPWG is tasked in the strategic plan with creating an IP guide to the Native American Protocols. We need to explore what this is.
 - See
 - <https://www2.archivists.org/groups/native-american-archives-section/protocols-for-native-american-archival-materials-information-and-resources-page>
 - <https://www2.archivists.org/sites/all/files/0821-2-II-B-2-StratPlanActions-Dashb oard.pdf> (which shows 'Complete "IP Guide" to Native American Protocols' as

assigned to IPWG in FY 2022. This was approved in March 2021, but no one has reached out to consult with us about it.)

- Domestic advocacy planning 2021-22
 - Aprille: How has more open access during COVID impacted desire/likelihood of better access? (HathiTrust, for example) Faculty don't want to go back. Some universities are restricting access to print collection so that emergency access can continue. Might just be a rude awakening when things go back to the way they were. No bills have been introduced. We may have to wait for an outcome to the Internet Archive case. That case is still years from a resolution.
 - Eric Harbeson: Identities of the 3 new Copyright Small Claims Board members have been released. Not very balanced, though the law said they had to have representation of the user community. There will likely be pushback against those selected. We might want to weigh in. Also, questionable constitutionality because it's a court in the legislative branch. Peter Hirtle: we may want to make sure archives know they can decline to be sued in that venue. Though the board wouldn't adjudicate claims against state owned entities because they are excluded from the act.
 - Jonathan Band is developing an action agenda, may want to be in touch with him.
 - Peter Hirtle: Berkeley Responsible Access workflow and guidelines for copyright. This could develop into a new norm or standard for SAA. We should all read it in depth and develop opinions. Should maybe let them propose it, but offer support and strategic advice? We might reach out to say we're interested in the effort, and talk about perhaps helping to secure a public forum for discussion?
 - See [ResponsibleAccessWorkflows_PUBLIC_CC-BY-NC-4.0](#)
 - Eric Harbeson: Nothing from Copyright Office study yet on Allen v. Cooper case and sovereign immunity. It was looking at whether there was a pattern of harm emerging from states claiming sovereign immunity. Roundtables were held in December 2020. Report may be issued fairly soon. We might want to be ready to address the response that will not likely be favorable.
- Creative Commons question related to Dictionary Working Group (Applying CC license, volunteer agreements) Marjorie was in attendance so she received advice directly.
 - Based on the Dictionary Working Group's stated goals, the best recommendation would be a Creative Commons-Attribution license. SAA may wish to add an NC provision. If so, it needs to ensure that it owns the copyright. This is best done with an agreement with the authors that stipulates that their contributions are work made for hire, but if this turns out not to be the case, they assign their copyright to SAA. This would also make it easier to provide proper attribution. (It would be to SAA, rather than to the individual contributors.)
 - Volunteers for the Dictionary list is not long. They will pursue getting releases from contributors.
- Session ideas for next year (Boston, MA August 20, 2022 - August 27, 2022) (10 minutes)
 - Copyright update session
 - How has COVID impacted expectations and risk management for access?
 - Kyle Courtney is at Harvard. We could ask him to participate. Maybe his State Copyright Resource Guide might be a topic?
 - DEI and specialized communities' copyright issues in donor relations? (Fold-up pamphlet targeted at musicians? Dancers?)
 - Total cost of stewardship?

- Berkeley digitization/copyright workflow. Talk to Rachel Samberg.
- IP and Native American Protocols
 - Look to webinars that have been mounted in past year on this to get ideas for speakers
 - Bill: Illinois is working on a project funded by Doris Duke Foundation. Oral history interviews from Native American Tribes. Need to craft policies (transcribe or not? Accessibility to tribe/wider community?)
 - See <https://ais.illinois.edu/news/2021-03-29/illinois-awarded-doris-duke-indian-oral-history-program-archives-revitalization-and>
 - We might not want to follow the same pattern that the copyright update has in the past.
- Update on University of Michigan / FOIA case (Aprille)
 - See the recorded session
- Heather: See the Copyright 101 seminar that Melissa Levine and Heather did for LYRASIS. It's free. They will be doing it again live on September 22, 2021, 1 - 2:30 Eastern.
 - See: <https://www.lyrasis.org/Content/Pages/Event-Details.aspx?Eid=0DC13741-AB4E-EB11-80EF-00155D0A2721>
- Copyright at the conference:
 - Session 3A - Thursday, August 5: 1:30-2:30 - Should Collections Closed under a Donor Agreement Be "Public Records" under FOIA? Archivists Disagree. Aprille McKay, Peter Hirtle, Eira Tansey, Bryan Whitledge
 - Session 09 - On Demand after July 26 : Creating Digital Access Initiatives During COVID-19 Panel with 7 archivists. Berdini: Building a Virtual Reading Room in the Time of COVID; Bolding: Building a Virtual Reading Room in the Time of COVID; Brannock: Where Do I Start? Curating Digital Images for Student Researchers; Dearborn: Virtual access during COVID and beyond; La Beaud: Where Do I Start? Curating Digital Images for Student Researchers; Lieberman: Launching Scan on Demand; Marie: Launching Scan on Demand
 - SAA Fellows' Ernst Posner Award: Katherine Fisher, "Copyright and Preservation of Born-digital Materials: Persistent Challenges and Selected Strategies," *American Archivist* (Fall/Winter 2020, Vol. 83.2)
 - Also: Eric Harbeson's NRPB report on the Music Modernization Act: https://www.loc.gov/static/programs/national-recording-preservation-plan/publications-and-reports/documents/Hatch-Goodlatte-Music-Modernization-Act_Guide-for-Sound-Recording-Collectors.pdf