

**Statement of SAA Representative to WIPO
Standing Committee on Copyright and Related Rights**

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On behalf of the Society of American Archivists, North America's largest professional association of archivists, collectively responsible for billions of copyrighted works, I thank the Chair for this opportunity to explain why limitations and exceptions for archives are needed for the future viability of both the archives and copyright worlds.

As an archivist for nearly four decades, I am used to the fact that our profession is misunderstood. This lack of knowledge prevents an understanding of our policy needs at SCCR, so let me explain eight basic facts about archives:

1. Archives are the bridge between the past and the future.
2. Archives exist not to collect and lock away, but to be used.
3. Archives document all parts of society, not just governments.
4. Preserving for the future requires that we make copies.
5. In our digital world, preservation copies must be made before hardware and software become obsolete.
6. Most archives contain documents of everyday life created by persons operating outside of commerce.
7. Most archival documents were authored by third parties who are rarely traceable.
8. Archives consist of rare, one-of-a-kind documents. Thus, nearly all archives worldwide face the problem of cross-border requests for copies.

Copyright assumes commerce, but archives are almost never created for commerce. The question is, can our two worlds be reconciled via appropriate limitations and exceptions? Three suggestions at prior SCCRs are discouraging:

- ! *Secure permissions before doing the necessary archival copying.* This is an impossibility that fails to recognize the very nature of archives.
- ! *Copyright exceptions are not possible because archives might contain personal data or moral rights.* These rights are already governed by separate domains of archival ethics and practice. Copyright is simply the wrong tool here.
- ! *Collective licensing can substitute for measured limitations and exceptions.* This fails to recognize the fundamental nature of archives, where creators cannot be identified or found. It would be a de facto tax on cultural heritage.

When trying to reconcile copyright law with the needs of archives one recent study reported, "In short, clearing rights . . . upon a work-by-work basis imposes often prohibitive burdens upon publicly funded cultural institutions . . ." and "the cost of clearing rights generally outstrips the actual expense of digitisation, and typically exceeds the monetary value of the work in question. . . ." Other studies have confirmed this, leading many of my colleagues to conclude that copyright may be irrelevant to our mission of preservation and access.¹

Archivists and copyright are now at a crossroads. Archivists must continue preserving culture and enabling accountability, but traditional copyright's disproportionate focus on revenue potential could preclude a solution. However, as archivists committed to both best practices and respecting rights, SAA believes SCCR27 can find a solution that enables our two worlds to come together.

¹Ronan Deazley and Victoria Stopo, "Archives and Copyright: Risk and Reform" CREATE Working Paper No.3 (March 2013): 21-22, available at <http://www.create.ac.uk/wp-content/uploads/2013/04/CREATE-Working-Paper-No-3-v1-1.pdf>. Cf. Maggie Dickson, "Due Diligence, Futile Effort: Copyright and the Digitization of the Thomas E. Watson Papers," *American Archivist* 73 (2010): 626-36. Dharma Akmon, "Only with Your Permission: How Rights Holders Respond (or Don't Respond) to Requests to Display Archival Materials Online," *Archival Science* 10 (2010) 45-64.