



**Statement of SAA Representative to WIPO
Standing Committee on Copyright and Related Rights
William J. Maher (w-maher@illinois.edu)**

TOPIC TWO: Reproduction and Safeguarding Copies

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**SOCIETY OF
American
Archivists**

The Society of American Archivists, North America's largest professional archival organization, congratulates you on your continued leadership and thanks the Secretariat for their hard-work and graciousness in preparing these meetings. Because our members manage billions of primary source works from throughout the world, SAA cares deeply about copyright's system of incentives, but we are equally concerned about the strong disincentives the system provides for using our collections to create new works.

Is everything committed to a fixed medium a commercial object? The Berne Convention assumes that is so, and therefore people at this meeting assume that copyright applies to even the tiniest scrap of paper with writing on it. But there is another universe of intellectual material that has always existed almost entirely outside the commercial world—unpublished material whose creation had no commercial intent. This is the world of archives, and by continually trying to force the round archives peg into the square commercial hole, copyright is preventing the creation of knowledge instead of cultivating new knowledge. The problem is an international one.

For example, before he joined my university's faculty, a world famous Armenian-Iranian architect was a leading proponent of modernism in Paris of the 1920s through 1940s. Now, a Netherlands based biographer, himself an Iranian architect, requires images of drawings from this modernist architect's projects plus information on classes he conducted in occupied Germany and the US. Unfortunately, we are unable to verify who holds the copyright for some of the materials. Supplying the copies if he were in the US would be no problem, but sending copies across borders raises a host of barriers.

A further example involves the personal archives of a prominent US chemist who led a post-World War I effort to reconcile scientists from both sides of that conflict. Now a Canadian researcher needs scans of his papers and most likely the same from European repositories holding the papers of the several Nobel laureates involved in that inter-war effort. We can only tell her what kind of use is allowed by US exceptions for our material. As for the other repositories elsewhere in the world, she must navigate a minefield of differing exceptions and limitations. This makes no sense.

The problem lies in the very foundation of the Berne Convention. Reopening Berne could solve this problem at its root by replacing its antiquated ban on formalities with a modern system of formalities recognizing that the creative world is no longer bound by physical books and travel by steam engine. Short of that, however, it's time for WIPO to recognize that archives are not and have never been about commerce. Now is the time to create predictable copyright exceptions for archives across all borders.



The Society of American Archivists (SAA) is the oldest and largest association of professional archivists in North America. Representing more than 6,200 individual and institutional members, SAA is the authoritative voice in the United States on issues that affect the identification, preservation, and use of historical records. SAA serves the education and information needs of its members and provides leadership to help ensure the identification, preservation, and use of the nation's historical record.

Since the 1960s, SAA has spoken in regard to archives and intellectual property and has issued more than 20 policy statements on copyright since the mid-1990s. SAA believes that archivists must take an active role in promoting the importance of archives and archivists in order to increase public support, shape public policy, and obtain the resources necessary to protect the accessibility of archival records that serve cultural functions as well as ensure the protection of citizens' rights, the accountability of organizations and governments, and the accessibility of historical records. Further, archivists promote and provide the widest possible accessibility of materials, consistent with any mandatory access restrictions. Although access may be limited in some instances, archivists seek to promote open access and use when possible.

Archivists are the custodians of writings and other materials that have been created by their own organizations and by third-party authors. Archivists try to provide access to these materials within the bounds of law, donor concerns, and public policy. Yet, copyright law is perhaps the most important challenge that archivists face in providing wider access to our collections, especially digitally. It is also a challenge for the students and scholars wishing to use our collections in their research and study.

SAA created the Intellectual Property Working Group in May 2001. The Working Group responds to requests for assistance from the SAA Governing Council, tracks intellectual property issues of concern to archivists, and drafts responses or position papers for the Council as needed.

William Maher was SAA President (1997-98) and Treasurer (1991-94). He is University Archivist and Professor of Library Administration (1995-) at the University of Illinois at Urbana-Champaign (UIUC). Previously, was Assistant University Archivist at UIUC (1977-85 & 1985-95) and Program Officer at the U.S. National Endowment for the Humanities (1985-86). He also served as President (1987-89) and Secretary-Treasurer (1981-85) of the Midwest Archives Conference. He is Chair/Président of the International Council on Archives' Section on the Archives of Universities and Research Institutions (ICA/SUV). As the author of one book and more than 25 articles, he is a regular speaker on university archival administration, archives and history, and copyright law. He has taught hundreds of students in SAA's workshop on Copyright for Archivists since 2000.

Dennis E. Meissner, President 2015-2016
dennis.meissner@mnhs.org

Nancy P. Beaumont, Executive Director
nbeaumont@archivists.org