



SOCIETY OF American Archivists

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

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I would like to thank the Chair for this opportunity to speak on behalf of the Society of American Archivists, North America's largest assembly of professional archivists, collectively responsible for billions of copyrighted works. In more than three decades of managing collections and helping researchers navigate and respect copyright law, I have witnessed how archival discoveries change people's lives.

UNESCO's Universal Declaration on Archives recognizes this transformative effect when it notes "the vital necessity of archives...for establishing individual and collective memory, for understanding the past and for documenting the present to guide future actions." This is why the Declaration calls for archives to be made accessible to everyone.

Archivists have always had the responsibility to capture, preserve, and make available the intellectual heritage of humankind and the records essential to support human rights. In the 21st century, networked technology has made it possible to open up this vast heritage to the entire world by removing the age-old barriers of time and space to permit access to these often unpublished, out-of-commerce, and personally donated collections.

Yet, current law prevents us from using this barrier-breaking technology to reach the shared goals of archives and copyright law—expansion of knowledge and creation of new works—while also supporting citizen access to records for accountability, heritage, and identity. The United States, for instance, has a set of library and archives exceptions, but these are inadequate and woefully out of date. We are not clearly permitted to preserve backup copies of born-digital and digitized materials, nor share the millions of orphaned photographs, letters, and technical reports the public has entrusted to us. As for fair use, it is often subject to costly litigation, leaving too many archives hesitant to put material online.

As information professionals, archivists take copyright very seriously, and spend considerable time guiding users in following the law, but we face two inescapable facts. First, in the 21st century, if something is not online, it might as well not exist. Second, without appropriate exceptions for orphan works and cross-border digital delivery, archivists must either ignore the law or forego our mission and renege on our obligation to society.

For archives, copyright must progress from its 300-year-old model and move into the digitally interconnected 21st century. The UNESCO declaration mandates that archives be accessible to everyone, but copyright law disenfranchises anyone not wealthy enough to travel to use the unique treasures in physical archives. To fulfill UNESCO's mandate, both archives and copyright must adapt or consign themselves to irrelevance. We welcome proposals from Member States on orphan works and other library and archives issues. We stand ready to answer questions about the distinctive nature of archival materials.



The Society of American Archivists (SAA) is the oldest and largest association of professional archivists in North America. Representing more than 6,000 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 exploit 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 more than 500 students in the SAA's workshop on Copyright for Archivists since 2000.

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