



**Statement of SAA Representative to
World Intellectual Property Organization
Standing Committee on Copyright and Related Rights**

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Thank you, Mr. Chairman, for the opportunity to speak on behalf of the Society of American Archivists, North America's oldest and largest professional archival association. Our more than 6,000 members in 41 countries provide leadership to ensure the selection, preservation, and use of records of historical value. By a conservative estimate, our members' repositories are responsible for nearly a billion copyrighted works. My archives alone holds the works of more than 13 million separate writers and rights holders.

Copyright has a history. This 18th century invention was created to provide a financial return to authors and publishers, and reading material to the public, thereby settling many long-standing market disputes. While the 1886 Berne Convention changed the basis of copyright from publication to authorship, the intent was the same—to provide for the active and professional writer or artist who created works for public dissemination.

The problem for archivists is that the vast majority of our collections were never written for public dissemination. They were not created by professional writers or artists. These mostly unpublished letters, diaries, emails, photos, and the like were simply byproducts of their creators' lives. Sometimes even the creators' names are a total mystery. These works are square pegs being pushed into the round hole of copyright, but they are invaluable to society. One need only look at Ken Burns' popular documentary series on the American Civil War, in which unpublished letters defined the narrative, to see that archival holdings are not esoterica meant only for obscure studies. Rather, they contain the threads needed to weave an authentic picture of society. Whether for documentaries like Burns's or books like Fernand Braudel's monumental work on the Mediterranean world in the age of Philip II, the copying and use of archives are essential to knowledge, culture, and education.

Copyright has adapted to new technologies, recently expanding to include born-digital materials. Archival documents in these new media are as essential as old paper to providing citizens with the information needed to hold their governments accountable and maintain society's heritage. Without appropriate exemptions, however, we cannot make

born-digital documents available for use.

Meanwhile, digital technology holds the promise of liberating our collections from their physical location. Theoretically, it is now possible for even remote schools, satellite university students, and the general public to make use of these primary sources. Yet, copyright prevents this, limiting research only to those wealthy enough to travel widely.

In short, strict adherence to current copyright rules makes it virtually impossible for the world's archives to fulfill their educational and cultural missions. We preside over works rarely created for public dissemination or economic profit. For most works, there is no market structure for working with rights-holders. Yet copyright requires us to follow the same rules as commercial enterprises, thus preventing us from serving researchers, especially via new technology—our users' medium of choice.

The proposal for a library and archives exception for preservation is important to the mission of archivists. To be able to meet the needs of our users, whether established university professors or school children, an exception for preservation is essential. By supporting the right to make preservation and safeguard copies, copyright exceptions and limitations will ensure that the children of these professors and children of today's school children will have access to the same rich sources of documents that can be found in archives today. This will enable a sustained understanding of society and transmission of cultural heritage.

Likewise, carefully crafted orphan works provisions are essential to our ability to fulfill the mission that society expects archives to pursue. Yes, an orphan works provision may be a difficult exception to draft. But it is both needed and possible. As the SCCR considers this issue, it is important to recognize that archivists assume that any such exception will include safeguards for circumstances when a rightsholder comes forward to assume ownership of the orphan. In such circumstances, the SAA is clearly on record that the appropriate response from an archives is to recognize the author's right to require termination of the use of the work or to be provided of a reasonable compensation. (See: *Response to Statement on Orphan Works* (May 6, 2005) www2.archivists.org/statements/response-to-statement-on-orphan-works-pdf.)

Without specific archives and library exemptions, we lack the means to pursue our research and educational missions. We need a robust set of library and archives exemptions at the international treaty level to render copyright vital and useful to the modern archival and information world, thus ensuring copyright's continued intellectual integrity.

In closing, the Society of American Archivists wishes to express its appreciation for the serious attention given to the matter of library and archives exceptions by the WIPO Secretariat and by all of the delegates to SCCR23.

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