Agenda Item VII.M.

Society of American Archivists
Council Meeting
November 8-10, 2015
Chicago, Illinois

Intellectual Property Working Group: Report on Meeting with Kevin Amer of U.S. Copyright Office (August 21, 2015)

(Prepared by IPWG Chair Aprille McKay)

On Friday, August 21, 2015, during the SAA Annual Meeting in Cleveland, the Intellectual Property Working Group (IPWG) met with Kevin Amer of the Copyright Office at the Library of Congress. Amer is on the staff of Karyn Temple-Claggett, who was the author of the Copyright Office's recent report on "Orphan Works and Mass Digitization."

Our agenda for the conversation:

1. Welcome and introductions
2. Brief statement from both the Copyright Office and SAA of our key points and suggestions for fruitful topics for discussion
3. Orphan Works report (the CO report, and our response)
4. Anticipated impact of Trans-Pacific Partnership Agreement on copyright reform efforts
5. Movement of the Copyright Office out of the Library of Congress
6. Possibility of Section 108 amendments
7. Wrap up and determination of next steps

Prior to the meeting, we agreed to make the following points:

- Orphan works are a horrible problem for archives.
- Archivists are exasperated with being ignored; what we do as archivists is important to society and it deserves recognition in law.
- It makes little sense to have archives spend tons of money investigating the copyright status of items that were never intended for commercial use, nor are going to be used in a commercial setting.
- Relying on Section 412 (which protects archivists from higher damage claims if they are working under color of fair use) is a cop out. Archivists want to follow the law, and want the law to reflect reality. Section 412b says that if an archivist has infringed, then s/he is guilty, but it also sets the damages fairly low, suggesting that while one may have been bad, the harm is limited.
- ECLs for unpublished works do not make sense, for some of the reasons noted by the Copyright Office. We are working on a response.

- Bottom line: Those who would benefit from the payment of fees should be expected to subsidize notifying the public of these fees.

The conversation went well, in that we are now acquainted. Amer will be attending SCCR meetings at WIPO, and he and Bill Maher will be able to talk at those meetings. We had a great opportunity to describe our work as archivists and to communicate our mission and priorities.

His main response about our dissatisfaction with the Orphan Works report was that they were not really aiming to present a solution for archivists, but a middle ground between relying on Fair Use and asking for permission. We also discussed Section 108 and he shared that there is a draft text that is being circulated at the Copyright Office.

He suggested that we continue the conversation and meet again down the road. The conversation took about 1.5 hours. As chair, I followed up with a thank you note after the meeting.