

Statement to WIPO Standing Committee on Copyright and Related Rights
SCCR 38



**SOCIETY OF
American
Archivists**

William J. Maher (w-maher@illinois.edu)
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The average person may not be aware of it, but archives are a part of everyday life—ranging, as they do, from gatherings of personal papers and digital social media trails to more purposefully created institutional and governmental archives containing authentic documents from the past that help us solve today's problems. Perhaps because archives are so ubiquitous, too few attend to their importance. Archives contain a range of literary, pictorial, audio, and video stories, from routine to highly creative works recorded on paper, film, or computer media. Nearly all exist as the only copy in the world and as part of discrete groupings of evidence found nowhere else. For this reason, an archives might receive inquiries from anywhere around the globe.

Archivists identify, select, acquire, and preserve material so that it lasts forever. Most importantly, they make it available for use. Currently copyright can limit each function, including making works available for public examination, making copies, and making limited distribution of copies, all normally for non-commercial purposes.

Archivists' work requires multiple specializations of which copyright law is only one, but few are trained as lawyers, let alone as copyright lawyers. Although groups like SAA work diligently to inform members about copyright, we simply cannot know the intricacies of the copyright laws of all 191 WIPO member states. Unfortunately many users cannot afford to travel to use archives in person, but copyright can prevent us from sharing electronically.

That is why archivists worldwide need a functional framework in which to pursue our societal mission while also respecting and sustaining a copyright environment. WIPO must step forward to establish broad standards for exceptions that recognize the non-commercial work of archives to preserve and make available the world's cultural heritage.

SAA appreciates that the Secretariat expedited production of the *Archives and Copyright Background Paper* (SCCR/38/7), by David Sutton. This encouraging paper provides useful depth and background on much of what SAA has stated in its SCCR interventions since 2011. It makes clear archivists' need to make copies to preserve and deliver documents to researchers worldwide, and how difficult these tasks are given the current uncoordinated provisions of national copyright laws. The *Background Paper* also reinforces SAA's comments that, although frustrated by the current mismatch between copyright's monopoly and the cultural heritage we curate, archivists are very conscientious about respecting the rights of copyright holders. The Sutton study also provides a solid foundation for a long-overdue understanding of archives. Combined with all prior work in the multiple Crews studies, the 11 topics reviewed in SCCR 26 through 33, and the draft typologies to be presented at SCCR38, the *Background Paper* outlines issues for discussions from which text might emerge later. We encourage WIPO to make wide use of Sutton's paper to inform the forthcoming regional seminars and conference on limitations and exceptions called for in part 6 of the June 2018 Action Plan (SCCR/36/7).

SAA stands ready to assist with follow-through at SCCR38 and SCCR39. We underscore, however, the need for no delays while copyright constraints continue to impede archives work and discourage respect for the copyright system.



The Society of American Archivists (SAA) is the oldest and largest association of professional archivists in North America. Representing more than 6,100 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 and that ensure the protection of citizens' rights and the accountability of organizations and governments. 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 who wish 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 (1995-present) at the University of Illinois at Urbana-Champaign and previously was Assistant University Archivist at UIUC (1977-95) and Program Officer at the U.S. National Endowment for the Humanities (1985-86). He is Chair of the International Council on Archives' Section on the Archives of Universities and Research Institutions. He is the author of one book and many articles and has taught hundreds of students in SAA's workshop on "Copyright for Archivists" since 2000.

Meredith Evans, President 2018-2019
president@archivists.org

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

17 NORTH STATE STREET, SUITE 1425 | CHICAGO, IL 60602-4061 USA

TEL 312.606.0722 | TOLL-FREE 866.SAA.7858 | FAX 312.606.0728 | WEB www.archivists.org