Statement of SAA Representative to WIPO
Standing Committee on Copyright and Related Rights
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Thank you on behalf of North America's largest professional archives association, whose members oversee billions of primary source works.

The inconclusive endings of SCCR 27 and 28 have left member states and the NGOs wondering the same thing: Why are we here?

This is an important question for the Society of American Archivists, considering the comment last July 3 from an authors' rights delegate who asserted archives are nothing more than a collection of data lacking creativity and thus available to freely copy, digitize, and preserve. If he were right, at least I could go home. But he is not right, so we are here to ask: Why do publishers and rightsholders organizations object to reasonable exceptions for archives? What do they want from us?

Our public knows that archives hold everything from raw laboratory data to diaries and family letters. It's all primary source material, most never created for commerce, but it is essential to heritage and good governance. Only an overzealous lawyer would apply copyright to it. Copyright's original intent, however, was not to force non-commercial creative content into a payment scheme that prevents the expansion of knowledge, but that's what happens with no exceptions for preservation or cross-border access. This matters.

For instance, a foreign student of economics at the University of Tokyo needed copies from our collection of 1970s Swedish labor union handbooks. Should this content concern the creative industries? Hardly.

Then there's an interlibrary loan request from a graduate student in Nanjing unable to travel abroad to see 180 pages of reports, letters, and field notes from a 1940s American agricultural mission to China. Hardly the stuff of commerce, but our hands are still tied.

And what do we do about a Romanian researcher needing copies of informal, 50-year-old letters illustrating the intellectual networks that laid the foundations for a distinctly Romanian school of sociology?

Each case requires us to make copies of unique unpublished or rare printed documents to support research and education. These examples are repeated by the thousands at archives across the globe. That is the reality of archives.

Kenneth Crews' masterful 2014 update of his *Study on Copyright Limitations and Exceptions for Libraries and Archives* has brought exceptional clarity to the issue. Unfortunately, the study's most inescapable finding is that there is great confusion in the laws with which archives and libraries must work. Costly complexity is growing.

The maze of provisions in the multiple national laws for us to navigate inhibits our mission and stifles the creativity and learning we support. Given the global mission of each archives, only clear direction at the international level can solve the problem.

This is why SCCR must provide guidance on how to accommodate copyright to archives. Right now, we see only two options open to us:

> 1. We accept the analysis of the NGO I cited and agree that archives merely contain uncopyrightable documents. We could then ignore the copyright implications of creative content found in archives, thus confirming copyright's irrelevance to today's information world.

> 2. Or we acknowledge that archives contain primary source material that falls both inside and outside of copyright, but we adhere to a carefully crafted international instrument providing exceptions to enable archives to fulfill our critical societal role.

This is the reality archivists worldwide have faced for decades. Finding a 21st century solution that works in our interconnected world is the job of SCCR. Believe me, archivists would much rather be in your tent holding up the poles than outside watching it collapse.

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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 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.

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