

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

TOPIC SIX: Cross-Border Uses of Archives

As Presented 12 May 2016

The Society of American Archivists, North America's largest professional archival organization, congratulates you on your leadership and thanks the Secretariat for its work in preparing these meetings. SAA's members manage billions of primary source works from across the globe. They care about copyright but are keenly aware that the copyright system fails to recognize the 21st-century needs of our users.

How does it fail them? Whether through wars or natural disasters, the cultural and political documents of one nation often reside thousands of miles away. Internet access can solve this problem, but today's copyright laws make most cross-border delivery of such documents illegal. If you cannot travel internationally, your own country's heritage may be inaccessible. The existing quasi-international legal framework is not working.

This no longer makes sense. As the U.S.'s "Objectives and Principles" state, archives enable citizens to "participate meaningfully in public life." The first principle for archives is that we must make our materials available. In today's world, if materials are not available digitally, they might as well not exist.

The second principle is that most archival materials were never created for commercial purposes despite being valuable cultural and scientific documents. Because of the very nature of such records, there can be no viable collective licensing for the billions of virtually anonymous authors found in today's archives.

The third principle is that archives, by definition, hold rare or unique works available nowhere else. Thus, we must make them globally accessible, usually through

digital tools. To do otherwise betrays the public's trust.

These principles put us in copyright jeopardy when it comes to cross-border sharing of archives. For instance, my university holds the archives of a Dutch anthropologist who was the leading 20th-century expert on pre-Columbian Incan society. He also made extensive microfilms of local church records in the Chuschi district of Peru when researching intermarriage between colonizers and the native population. Because many of those churches and their original records were destroyed by later civil wars, his microfilms now may be the only copies existing anywhere. Where would a licensing collective find the rights for these records? Yet, as their custodian, I must be able to ensure that these apparently unique records can reach their rightful constituents half a world away. Their information needs are borderless.

The necessary technological tools have existed for over 25 years, but national copyright laws have not kept pace, and it would be absurd to argue that licensing can fill the gap. Without the kind of cross-border exceptions only an international treaty can provide, we cannot help the millions of people worldwide who need archives for preservation and heritage. Answering user requests and placing out-of-commerce documents on websites must be permissible across borders.

Archivists want to fulfill our mission without being deemed criminals. Copyright was not meant to lock up material never created for the commercial market. Cross-border exceptions are nothing more than common sense. Why should anyone deny this?

480 words 5/11/2016 10:43 PM

518 Words, May 10 21:25 Geneva