

**Society of American Archivists
Council Meeting
January 23 – 26, 2014
Chicago, Illinois**

**2012–2013 External Representative Annual Reports (Compiled)
(Compiled by René Mueller, SAA Program Coordinator)**

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Representative to Academy of Certified Archivists (ACA) (Terry Baxter)

The ACA Board of Regents met in New Orleans on August 14th, 2013. I attended the entire meeting and participated in a variety of discussions about ACA generally and SAA-ACA relations specifically. There had been a little discussion prior to and after the meeting, but most of my interaction with the ACA Board occurred in New Orleans.

In addition to the general desire to see SAA and ACA continue their positive relationship and joint activities at the SAA annual meeting, there were two areas that the ACA Board wanted to highlight for SAA Council and staff consideration.

1. The ACA Board wants to insure that the selection criteria and/or methodology for the jointly-funded ICA representative are fair and represent the interests of both ACA and SAA.
2. The ACA Board wants to make sure that their 25th anniversary celebration at the 2014 SAA meeting is adequately planned. This will require meeting planning coordination and promotion from SAA, primarily by SAA staff.

We discussed an item I brought forward as an interested SAA and ACA member related to coordination of SAA education offerings and ACA certification requirements. I bring this up to make sure that the record reflects that this was not an official SAA or SAA Council inquiry or position.

I plan to continue working with the ACA Board in 2014 to insure that our relationship remains strong and productive.

Representative to ALA Committee on Cataloging: Description & Access and MARC Advisory Committee (Cory Nimer)

Newly combined representative position. See Standards Committee annual report for ALA CC: DA report and for MARC Advisory Committee report (0114-VII-J-StdsComm).

Representative to ARMA International Standards Development Committee (None)

No representative is appointed at this time. The position is currently under review by the Council.

Representative to ICA Experts Group on Archival Description (EGAD) (Daniel Pitti)

See Standards Committee annual report for ICA EGAD (0114-VII-J-StdsComm).

Representative to ICA Section on Professional Associations (ICA/SPA) (Gregor Trinkaus-Randall)

The International Council on Archives Section of Professional Associations (ICA SPA) met in Brussels, Belgium on Friday, November 22, 2013. This was followed immediately by the First Annual ICA Conference on November 23-24, 2013 – Gregor Trinkaus-Randall attending.

As of August 2012, Gregor Trinkaus-Randall has been representing the SAA and the ACA on the ICA SPA. As noted in the April report the ICA SPA Steering Committee is composed of representatives from Korea, Norway, Germany, Poland, France, the United States, the Netherlands, Switzerland, Israel, Mexico, Hong Kong, Canada, and Catalonia.

When Trudy Peterson stepped down as the SAA and ACA Representative to the ICA SPA and Gregor Trinkaus-Randall was appointed as the liaison, it was also determined that the SAA and the ACA needed to develop criteria for appointing representatives in the future. During 2013 this process has been formalized and will be employed as time moves on.

ICA SPA Steering Committee Meeting

As per normal with such meetings, the first few items on the Steering Committee Agenda were administrative with various reports. Fred van Kan (the Netherlands and Chair of SPA) noted that numerous municipal archives were leaving ICA, usually for financial reasons, but that the number of ICA members has climbed over 400. One of the interesting announcements was that ICA would like to hold the 2015 annual conference in Africa, but there is a problem with scheduling. ESARBICA has scheduled its meeting already and is apparently unwilling to change the dates to do a joint meeting with ICA. PCOM is looking into creating experts groups in specific areas of archival activity. There is concern that these groups might end up being in conflict with some of ICA's Sections. It was noted that they should look at the SAA organization with Sections and Roundtables. Apparently, the aim is to have smaller groups than the two SAA groups who can then assist others in these areas.

Within SPA one of the main foci is to get a fairly large number of documents translated into French and Spanish. The French translations cost more than the Spanish ones, which are still not inexpensive. It was decided to focus on the most important ones first and then move to the secondary ones. Work has been continuing to improve the SPA website, but administratively this has been difficult because changes have to go through the ICA Secretariat and that can slow things up significantly. One of the aims is to link from the SPA website to the websites of national associations and to work with these national associations to link to the SPA website (SAA and ACA to ICA SPA?)

Probably the two biggest areas of discussion were advocacy and the strategic plan. As noted in the previous report, the European Union has a proposal to permit organizations and agencies housing personal data to delete all this data after the purpose for which it was gathered has been completed. While originally aimed at such giants as Google and Yahoo among others, the petition has potential ramifications regarding personal data that has been collected for administrative purposes and which serves as a goldmine for genealogists and other historical researchers. The Association des Archivistes Français initiated a petition protesting this regulation. The petition garnered some 51,000 signatures from throughout Europe and beyond, including the United States. The European Council has postponed action until 2015, after the next election. Subsequent discussion focused on advocacy in general and the role that SPA can play, especial regarding Heritage Day in France in September and International Archives Day on June 9th. Advocacy is one of the key components of the strategic plan.

ICA has created a working group on photographic archives, which is now working on developing short guides on specific topics. It was not clear if they are actually working with SAA and AMIA at this time, but it was emphasized that they should do so before publication of the topics. Their plans are to provide half a million photographs to a European website. Currently they want to expand the number of guidelines, continue to work on old projects, and work with ICA members more, as they are now considered an ICA expert group. Interestingly, SAA has not been that active, and it was suggested that the Visual Materials Section might want to get involved in these projects with their expertise. Apparently, the Visual Materials Section person has not been involved. The spring 2014 SPA meeting will be held in conjunction with the New England Archivists meeting. As part of the spring meeting, the ICA members will be on a panel at NEA, and they will be meeting with archival students and faculty at Simmons College. The Second Annual ICA Conference to be held in Girona, Spain from October 13-15, 2014 where the theme will be Archives and Cultural Institutions. Section meetings will occur the previous weekend.

That afternoon there was a general meeting of the SPA members. It was announced that there are now 74 SPA members. There was a presentation regarding the Fund for the International Development of Archives (FIDA) which supports workshops and archival schools in low-resourced countries. They are beginning to run low on funds, so the presentation was a plea for fundraising to support these programs. Following this report, there were reports from the SPA members present, including Canada, Catalonia, Germany, Finland, France, Italy, the UK, the Netherlands, Switzerland, and the United States. Some of the highlights were that Germany and Finland are currently working on archival legislation. France hosted a Tour de France to discuss the future of archives with the regional members. A new archival group has been established in Italy. In Canada, the Canadian Archives System Task Force is looking into the future of archives and libraries in Canada. Also, in Canada, there is an interim national archivist who is more open than the past one, and, as a result, the situation is better there than it was a year ago. Switzerland is revising its regulations that would establish a “safe haven” for cultural property from abroad that is threatened by war, natural disasters, etc. This now includes archives, mostly electronic copies, so that if the originals are damaged or destroyed, copies will exist. In the UK, the Archives and Records Association (ARA) is stronger than previous organizations and is now the group to whom the government turns for commentary or reaction to proposals. In Germany, they are having to deal with the destruction of files by governments and other organizations. It is against the law, but there is no punishment. Finally, in Catalonia they have had the UDA approved and adopted by the Parliament.

First Annual ICA Conference

Plenary: It was noted first of all that the first gathering of librarians and archivists in Belgium occurred in 1910. Waldo Leland was one of the archival leaders participating. It was a conference that allowed participants to learn across borders. Prior to this First Annual Conference, roundtables had met annually, but it was determined that this was not meeting the needs of the members. It was emphasized that archival activities will continue to develop and evolve internationally. The long-term preservation of and accessibility to archival records is a crucial wheel into the future. Archivists serve the citizens of today and of future generations. Anne Thurston (IRMT, England) then emphasized the fact that transparency and open government are ideas whose time has come. The state should be the servant, not the master, and information should be open for everyone to see and use. The main goal is build peace and open government, freedom of speech, rule of law, access to justice, and accountable government. An emphasis needs to be on the accuracy and reliability of data. We tend to communicate among ourselves, but we must communicate with our colleagues in related fields. Willem Debeuckelaere (Belgium) noted that the tension between access to data and protection presents problems. Personal data needs to be treated properly but available for the long term. Archives are the treasury of democracy. Alison North (ARMA International) then addressed the principles of transparency, integrity, protection, compliance, availability, retention, disposition, and accountability. She also emphasized the importance of joining forces with related professions.

Open Government: James Lowry (IRMT), England) noted that the open government partnership really began only a couple of years ago (www.opengovguide.com), and he emphasized that good records management ensures that accurate and reliable records are created and accessible. José Alonzo (World Wide Web Foundation) mentioned that the open government partnership is now up to 62 countries. Open data should be the basis of open government. Miriam Nesbit (United States) noted that in the United States the emphasis of the open government partnership is anti-corruption, modernizing records management, modernization of Freedom of Information, and reforming the declassification system. The policy is to make data open in easily accessible formats. “Do not let the management of information override information management.”

Truth and Reconciliation II and Truth Commissions: Kathy Wisser and Joel A. Blanco-Rivera (United States) discussed how the East German Stasi files actually have helped the healing process as

they are providing access while protecting third parties. However, they also noted that there are challenges and ethical questions. How do archives deal with the disposition, access, and preservation of surveillance files? Are there times when the records should be destroyed? They then addressed several instances, both in the United States and abroad, where these issues have come to the fore, including in Mississippi, Puerto Rico, Japan, East Timor, and Mexico. Mario Ramirez and T-Kay Sangerwand (United States) focused on the use of force to retain power and the process of reconciliation in a post-violent society. Accountability, helped by archives, is at the heart of the process, as the archivists can assist in the management of access for records that will remain with the creators, while digitization may assist in the long-term preservation of the information. Ellen Ndeshi Namjila (Namibia) spoke on the content and use of colonial archives, especially in Namibia where access to white Namibians' records can be much faster than to those of black Namibians. Activities using non-traditional methods may be needed to begin to recover or recreate some of these records.

Legal Issues: Michael Hollman (Germany) noted that freedom of information and the protection of information are a duality of concern. Open access means making the materials available as soon as possible and in declassifying records whenever possible. At the same time, protection steps have to be taken to protect personal information as much as possible. Part of the problem with electronic records is that while some of it is really important for historical research, it can and may be deleted when it is no longer of use administratively. Paul Drossens of the Belgium State Archives described the situation in Belgium where those records without sensitive information are available for use. However, the Archives Act of 1992 does not apply to all records. Bruno Ricard (France) noted that based on the Archives Law of 2008 most records are available nearly immediately, but that those with state secrets and medical records can be restricted for up to 120 years. There is some uncertainty about putting materials online, even for people who are dead – those with sensitive data are protected for 100 years and with particularly sensitive data up to 150 years. This is particularly confusing to archivists and to users, especially since some of these regulations are quite recent. Martin Fries (Switzerland) outlined the concerns about posting digital finding aids and protecting sensitive data. In the reading rooms there are fewer restrictions regarding the finding aids than online.

Perceptions of Privacy: Marie Ranquet and Aude Roelly (France) discussed the proposed European Union regulation and its implications for research, archives, genealogy, and for privacy. In France, there were already robust laws regarding privacy issues prior to 1995. The 2008 Act noted above strengthened and updated previous laws. There is a feeling that if the European Union regulation passes that there could result in a rewriting of history and the deletion of references to people in all sorts of media. The draft regulation has actually undermined many privacy issues. Access to archival records must continue to be open to all persons, as has been the case in France since 1794. Cheryl Avery and Mona Holmund (Canada) distinguished between public and private and public and personal when using social media. They surveyed students at the University of Saskatchewan regarding their views on social media. They divided respondents into Traditionalists (1940-1964), Transitionalists (1965-1977), and Naturals (1978-). Most were more apt to put restrictions on visuals. Men were apt to apply fewer restrictions. Women were more cautious with language than men and were less apt to put visuals online than men. Interestingly, most students were going online to complete their research, but they actually preferred the real over the virtual. Most often it was a matter of time – digital was really a more convenient option. 69 % felt that online privacy is very important, while 23 % feel that it is important.

Citizens Engaging with Government: Sheila Anderson (England), Veerle Vanden Daelen (Belgium), and Reto Speck (England) discussed the issues surrounding the amalgamation of information on collections from a wide variety of sources. One of the examples used was the European Holocaust Research Infrastructure where they are working to identify and bring together virtually the Holocaust materials dispersed in many locations. In doing so they are using many of the same sorts of practices but with new research tools, resulting in different ways of reading the original texts vs. digital/computer

screens. Another problem is that there are multiple research guides in different countries, languages, cultures, missions, and readers. The context is an archival one, but the descriptions are neither neutral nor objective. The old problems of authority, authorship, trust, etc. still remain, but it does raise new interpretation of the principle of provenance. Researchers can provide annotations that allow one to integrate the knowledge of the researchers and the archivists. There is a need for structure and a “common language” while remaining aware of the histories and contexts in which the descriptions have been created – flexible mapping to standards. Finally, Pieter Lagrou (Belgium) noted that technology and transparency have had massive impacts on historical research. With Freedom of Information (FOI), some administrations have tried to destroy data rather than make them available. Technology has made research easier as one can access records more easily remotely, but funding may well not be available for archives to digitize materials. Decisions on what to digitize can have incomparable impacts on the use of these materials and the use of those not digitized. Are these decisions political? Historians and archivists need to be involved in these decisions, which involve politics, policies, etc.

Commentary: The theme of the conference was *Accountability, Transparency, and Access to Information*. Throughout the two days these issues were raised and discussed in numerous contexts. Access and privacy were the two key elements along with advocacy. What was interesting and enlightening were the recurrent themes no matter from what country the speakers came. These are key issues, and we, as archivists, have tended to sit on the sidelines while others make the decision. On numerous occasions, it was emphasized that we, and records managers and historians, need to be in the mix in addressing these issues. The proposed European Union regulation has galvanized archivists and made them much more political in Europe. They are fighting to retain the information that documents our lives and our history. No matter where one stands politically, this issue, in one form or another, was addressed in nearly all the sessions in the two-day conference. In many ways it comes down to advocacy – theme of the ICA and of the ICA SPA – and the role that archivists can and should play.

April 2013 ICA SPA Meeting: At the Brisbane meeting, the SPA Steering Committee adopted a new Strategic Plan for 2012-2016 (see attached.) The April 2013 meeting was the first in which aspects of this Plan began to be addressed. However, before that occurred, Fred van Kan, the current Chair, provided an update from the ICA Executive Board Meeting. This was followed by a discussion of the Steering Committee members’ critique of the Brisbane meeting as each saw it from his/her perspective. Since a conference call with David Leitch, the Secretary General of ICA, was scheduled for later in the meeting, this discussion brought to the fore issues that would be mentioned in that call. In addition, two other items were highlighted from the Executive Committee Meeting. The first was that more translators are needed for both ICA and ICA SPA to ensure that appropriate documents are available in as many languages as possible but at least in the six official UNESCO languages. The second was that there will be a new perspective and direction for the Program Commission (PCOM). The Executive Board wants PCOM to become a greater force in moving forward in the areas of digitization, preservation, good governance, and open government. The aim is to get all professional initiatives grouped under PCOM.

The ICA SPA meeting then began to address the components of the Strategic Plan. The first item on the agenda was to deal with the Universal Declaration on Archives. The question was that now that it has been approved by ICA and adopted by UNESCO, how do we proceed to publicize it throughout the world. A working group including members from Australia, Canada, the United States, and one or two others has been approved by the Executive Board and will be developing ideas on how to proceed. Two ideas that were brought forward were to make presentations at national associations’ annual meetings (note: a session was scheduled for SAA 2013 but because of medical issues with one of the key presenters it has had to be cancelled) and to give it to instructors in archival education programs. The principles elucidated in this document are excellent for promoting archives.

Digital preservation was the next topic to be discussed especially as more and more business is being conducted electronically. It was interesting to hear that in several countries records management and archives work much more hand-in-glove than they do in the United States. In several countries the organizations are one and the same. This was further emphasized as the discussion moved towards the necessity of being involved with both concepts right from the creation and through the life cycle of the records. Not that this is a new concept in the United States, but the convergence of the two disciplines was interesting to note. In many ways, the members felt that there was a need to address this issue through advocacy. As a result, a subcommittee will be drafting guidelines and recommendations in this area.

The discussion then turned to the relations between national archives and national archival associations and between national associations. In a number of countries it appears that there is a serious gap between the two, as was the case between SAA and NARA for years. It was felt that some of the more well-established national associations could potentially serve as mentors to some other less defined associations and provide assistance in their educational programs, in designing archives buildings, etc. The group Archivists Without Borders is sending archivists to developing nations to assist in some of these initiatives, for example.

International Archives Day, June 9th, has been adopted by a number of countries. There is a movement afoot to get this approved by UNESCO. In Hong Kong, this day serves as an opportunity to bring archivists together for seminars and exhibits. In France they use the day to promote archives – similar to SAA's Archives Month. One suggestion was to produce newspaper articles to promote the Universal Declaration on Archives and the Principles of Access. As with the UDA, it was recommended that countries contact their delegates to UNESCO to urge them to support this effort. The ICA Secretariat will also be contacting UNESCO in this matter.

There were a number of reports from various Steering Committee members, but the one that generated the most urgent discussion dealt with proposed legislation in the European Commission to destroy personal data after a very short period of time. Apparently, this legislation was originally aimed at commercial entities to fight commercial reuse of these data, but its implications for long-term research and for information being gathered in archives are significant. The Association des Archivistes Français (France) has taken the lead on protesting this action. It was emphasized that the committee that will be examining this regulation will be meeting on May 29th, so gathering as many petition signatures as possible is of the utmost urgency. The Steering Committee then drafted the following statement that is being distributed to all SPA members and will be posted on the SPA website in both French and English.

“At its April 2013 meeting in Amsterdam, the Steering Committee of the Section of Professional Associations of the International Council on Archives (ICA SPA) expressed its concern about the draft European Data Protection Regulation that will result in the destruction of personal data and recommends that the members of ICA SPA promote, in- and outside their associations, the signing of a petition initiated by the French Association of Archivists AAF (<https://www.change.org/petitions/the-european-parliament-adjourn-the-adoption-of-the-regulation-about-personal-data>). ICA SPA emphasizes that archives are a unique and irreplaceable heritage and play an essential role in the development of societies by safeguarding the individual and community memory (UNESCO Universal Declaration on Archives as adopted by UNESCO in 2011).”

The French have gathered a significant number of signatures already (more than 42,000), including over a hundred from the United States. The signatories include archivists, historians, genealogists, and general citizens. However, looking at the list of American signatories, it becomes obvious that most of these

people are members of the AAF and have been reached by the AAF's publicity. This is something that the SAA and ACA could definitely publicize immediately.

Conversation with David Leitch: The ICA staff is currently bogged down with administrative tasks that can be contracted out, such as membership and financial matters. They are examining how they can streamline their activities so that they can be much more responsive to the member organizations and individual members. As noted above there is also a push to get documents translated into the six UNESCO languages (English, French, Spanish, Russian, Arabic, and Chinese). There is a real focus on increasing membership. The emphasis by SPA members in this conversation was on increasing the benefits to members and to make ICA better known to the rank and file archivists in member states. One suggestion was for ICA to begin to have a booth in the exhibit halls at association annual meetings. Since David Leitch is currently planning to attend SAA in New Orleans, I made the suggestion that ICA exhibit there. As to the ICA website, David Leitch noted that they have been doing a substantial amount of work recently to make it much more user-friendly. (In examining it subsequently, the SPA Steering Committee agreed that significant steps have been taken.) The final comment from David Leitch is that ICA is changing. There is a real and sincere push to look outward and become less bureaucratic and much more responsive to its members.

The last day of the conference was spent at the Amsterdam City Archives where we were presented with history of the Dutch Archival Association, starting in 1891, and the development of its first its first processing manual in 1898. In 1918 the first Dutch archival legislation was passed, and it included the requirements to be an archivist. Originally the focus was to promote archives, but it has changed to focus on the archivists themselves – collegial exchange, archival education, and the role of the archivists in society. What was particularly interesting was the emphasis now on working much more closely with records managers than in the past. At the same time, they are moving towards certification, but they are running into the same issues that American archivists did as the ACA was being created. (This is an area in which the ACA could provide some guidance.) These comments led to an interesting discussion of the relationship between records managers and archivists in various countries. For example, in France records management is included in the Association des Archivistes Français. Furthermore, as can be expected there was a long discussion on how to deal with electronic records. The three final presentations that all generated a fair amount of discussion were the European Commission's Data Protection Regulations and the French petition, verification of digital data, and archival education. Although the last presenter had to leave quite quickly afterwards, he did mention that they are re-evaluating how archivists are trained. Given the international composition of the SPA, this topic generated a fair amount of discussion since there are a number of different models in existence.

Representative to National Coalition for History (Nancy Beaumont)

I serve as SAA's representative to the National Coalition for History Policy Board. Unfortunately I was not able to attend the Policy Board's annual meetings in January 2013 or January 2014, but I participated actively in periodic conference calls and online discussions throughout the year. (Danna Bell represented SAA at the January 2014 Policy Board meeting.)

The following report highlights the work of the Coalition in 2013 and is derived from the Annual Report prepared for the Policy Board by NCH Executive Director Lee White.

INTRODUCTION

Federal appropriations and reauthorization issues have traditionally been a primary focus of the NCH's efforts on Capitol Hill. In 2013 the Coalition continued to take the lead in advocating for funding for federal programs that affect archivists, historians, educators and other stakeholders. In an increasingly hostile budget environment, NCH has been able to fend off draconian cuts to most programs of interest to our members.

NCH and its constituent organizations effectively mobilized their members to contact Congress concerning funding for the National Historical Publications and Records Commission (NHPRC), the National Endowment for the Humanities (NEH), Title VI/Fulbright-Hays International Education and Foreign Language, and other federal programs. Senior staffs at the affected federal agencies have credited these efforts with preventing deeper cuts or elimination of programs.

From an organizational standpoint, the Coalition achieved two of its major objectives for the year: Creation of a Congressional History Caucus and development of a membership marketing plan. With creation of the Congressional History Caucus NCH has begun to transform itself into a resource for policymakers and our stakeholders, not just another group seeking its small piece of the shrinking federal pie. In the coming year, we will continue to build on the initial transitional steps taken in 2013 to move the Coalition in this new direction. NCH must continue to become a more nimble organization that is able to respond to situations not just at the federal level but in the states as well. Unfortunately, in the past NCH has not been good at promoting itself and taking credit for its accomplishments. In 2014, the Coalition must do a better job of educating our constituent organizations (and potential members) about its important past contributions in the past and how it will continue to play a vital role in federal policymaking in the future. The new membership marketing plan was developed to set the path forward.

This report summarizes NCH's activities and highlights major accomplishments in 2013. Also incorporated into the report is a proposed Work Plan which sets the objectives and priorities for the organization for the coming year.

LEGISLATIVE ADVOCACY

Federal Appropriations: NCH has not and cannot abrogate its responsibility to seek federal funding for programs that are important to our constituents. Given NCH's very limited resources, however, the Policy Board has instructed the Executive Director to allocate his time based on a realistic assessment of the likelihood of achieving a successful outcome.

Congress was unable to pass any appropriations bills prior to the start of the fiscal year on October 1. With Congress and the federal government shut down for 16 days in October, and Congress in recess in August, there was little time for legislative action on issues affecting our interests. Early in 2013, when Congress failed to act on a budget, the mandatory sequester resulted in a 5% percent across-the-board reduction in non-exempt non-defense discretionary funding.

In December 2013 Congress passed, and President Obama signed into law, a two-year budget agreement that sets broad parameters on federal spending and avoids further sequestration cuts. This clears the way for the House and Senate to pass a FY 14 budget when they return in January 2014.

Reducing the federal deficit will continue to dictate the congressional appropriations process for the foreseeable future. In years past, NCH's main focus was advocating for increased funding and expansion of federal programs. Now our major concern is holding our own and preventing severe cuts or even

elimination of programs. Seeking increased appropriations in this environment would squander NCH's limited advocacy resources and hurt our credibility with policymakers.

Policy Objective 1: During the conclusion of the FY 2014 appropriations process and development of the FY15 budget, NCH will lobby aggressively for sustained funding for those federal agencies and programs that have the greatest impact on the archives and history communities. These include (but are not restricted to):

- a) National Archives and Records Administration (NARA)
- b) National Historical Publications and Records Commission (NHPRC)
- c) Title VI/Fulbright-Hays International Education programs
- d) National Endowment for the Humanities (NEH)
- e) National Park Service history and preservation programs
- f) Institute of Museum and Library Services (IMLS)

In recent years, programs of interest to NCH constituent organizations have been specifically targeted for elimination by Members of Congress. For example, Senator Tom Coburn (R-OK) has repeatedly sought elimination of the Political Science program at the National Science Foundation or put limits on the subject matter of projects that can be funded. NCH has worked closely with the American Political Science Association to fend off these threats. In 2013 NCH fought off efforts to defund, or halve, the National Endowment for the Humanities in the FY 14 budget.

For many years, the History Coalition has successfully led the fight to prevent elimination of the NHPRC and to ensure that it receives adequate funding to meet its mission. Unfortunately this small but vital program remains a perennial target for budget cutters in Congress and at the Office of Management and Budget.

Policy Objective 2: NCH will remain vigilant for targeted language or amendments on appropriations bills designed to reduce funding for specific programs or that detrimentally affect constituent organizations.

Federal Funding of K-12 History Education: The Elementary and Secondary Education Act of 1965 (ESEA) was last authorized in 2001 during the Bush administration under the rubric of the No Child Left Behind Act (NCLB). The NCLB's authorization expired in 2008. In 2013 efforts to pass an ESEA reform bill continued to be bogged down in the House and Senate. The Obama administration's decision to grant states waivers from NCLB's compliance requirements removed the sense of urgency for Congress to act on reauthorization legislation.

Nonetheless, NCH worked closely with history, education, and civics organizations in seeking to create a dedicated funding mechanism for K-12 history education in any NCLB legislation considered by Congress.

Policy Objective 3: NCH will advocate for restoration of federal K-12 history/civics education funding in the U.S. Department of Education's FY 15 budget and/or in legislation reauthorizing the ESEA.

Presidential Records: For more than a decade the Coalition has been the lead advocate for enactment of Presidential Records Act (PRA) reform legislation. President Obama issued a Presidential Records Executive Order (EO) in 2009, replacing the overly restrictive Bush administration EO. Unfortunately, efforts to codify these changes in the PRA remain stalled in Congress.

The “Presidential and Federal Records Act Amendment of 2013” (HR 1233) cleared the House Oversight and Government Reform Committee in June 2013, but has not seen action on the House floor. A Senate version has not yet been introduced. White has reached out to the staff of the Senate Homeland Security and Governmental Affairs Committee to urge Chairman Tom Carper (D-DE) to introduce a bill and bring it before his panel for consideration.

Policy Objective 4: NCH will take a lead role, with the assistance of other stakeholder groups, in advocating for the House to enact HR 1233 to strengthen the Presidential Records Act. NCH will identify a champion in the Senate to introduce a presidential records reform bill and work toward its passage.

Federal Records Preservation and Management: Declassification, records access, and preservation issues will remain a top priority for NCH in the coming year. *The Coalition has worked* with other stakeholders advocating for passage of legislation reducing over-classification of government records, increasing public access to unclassified records, speeding the declassification process, and establishing standards for the preservation of federal and presidential electronic records.

In 2013 NCH endorsed the “Access to Congressionally Mandated Reports Act” (H.R. 1380), which requires that any report required by statute to be issued to Congress and releasable under the Freedom of Information Act (FOIA) be posted on a website managed by the US Government Printing Office (GPO).

The “Electronic Message Preservation Act of 2013” (HR 1234) cleared the House Oversight and Government Reform Committee in June 2013, but has not seen action on the House floor. A bill (S 1464) to expedite the declassification process and identify and designate historically valuable records as soon as possible after their creation was introduced in the Senate by Jean Shaheen (D-NH).

Policy Objective 5: NCH will advocate for passage of legislation to expedite preservation and retrieval of federal and presidential records (both paper and electronic) and to streamline the declassification process.

REGULATORY AND LEGAL ADVOCACY

NCH continues to play an important advocacy role with federal agencies. NCH has maintained excellent relationships with the Archivist of the United States, the chair of the National Endowment for the Humanities, the chief historian of the National Park Service, the director of the Smithsonian’s National Museum of American History, the Historian of the State Department, and other key officials in the federal historical and archival bureaucracies.

Processing, Preservation, and Declassification of Federal and Presidential

Records: NCH collaborated with other stakeholder groups in working with federal agencies to reduce over-classification of government records, increase public access to unclassified records, speed the declassification process, and establish standards for preservation and retrieval of federal and presidential electronic records.

The National Archives, under the leadership of Archivist of the United States David Ferriero, has been aggressively urging agencies to take their records management responsibilities more seriously. Unfortunately NARA still lacks the legal authority to compel compliance with federal records laws. NCH will continue to advocate for passage of legislation to establish meaningful records preservation standards and aggressively ensure federal agency compliance.

In December 2013 the Public Interest Declassification Board (PIDB) held a forum to seek public input on the recommendations in its 2012 report *Transforming the Security Classification System* regarding the prioritization of the preservation and processing of “historically significant records.” The PIDB report suggested that these records “should be identified and set aside as early as possible after their creation to ensure their preservation, long-term access and availability to agency policymakers and historians.” The PIDB also recommended that each agency should have an in-house history staff to assist agency records officers and declassifiers in the prioritization of records.

Policy Objective 6: NCH will advocate for implementation of the relevant PIDB recommendations by Congress and within the Administration. NCH will advise the National Declassification Center on developing criteria to prioritize the processing of “historically significant” records, and support the creation of historical advisory panels and/or history offices at relevant federal agencies.

Policy Objective 7: NCH will continue to provide advice to and monitor the activities of the National Historical Publications and Records Commission, Public Interest Declassification Board, the State Department Advisory Committee on Historical Diplomatic Documentation, the Advisory Committee on the Records of Congress, and other relevant federal bodies.

Open Government and Transparency: Since taking office, President Obama has issued a number of executive orders, directives, and memoranda to federal agencies committing his administration to maximum openness, transparency, and public participation. The National Archives has also engaged in a number of open government and outreach efforts.

In December NCH coordinated a letter to Director James Clapper of the Office of the Director of National Intelligence (ODNI) urging him to reverse the CIA’s decision that the ODNI Open Source Center (OSC) will cease providing information to the World News Connection as of December 31, 2013.

Policy Objective 8: Working with other stakeholders, NCH will continue to monitor the progress of the Obama administration in achieving its open government objectives. NCH will also work toward identifying new areas in which to promote openness and transparency within the federal government.

National Security Archive’s Lawsuit Re: Release of the CIA’s Bay of Pigs History: In May 2012, the National Security Archive sued the CIA under FOIA, seeking to declassify the full “Official History of the Bay of Pigs Operation.” Unfortunately the U.S. District Court sided with the Agency’s efforts to keep the last volume of the report secret in perpetuity.

The NSA appealed to the U.S. Court of Appeals for the D.C. Circuit. In response, the CIA filed a “motion for summary affirmance,” in effect asking the court to decide in its favor without full briefing or oral argument. In August 2012 NCH coordinated a letter from a dozen organizations representing thousands of archivists, historians, political scientists, educators, and researchers opposing the CIA’s motion. On December 7, 2012, the D.C. Appeals Court rejected the CIA’s position and ruled that the case merits the court’s full consideration.

At its January 4, 2013, meeting, the NCH Board passed a motion authorizing preparation and submission of an *amicus* brief in support of the NSA’s appellate brief. White worked with the law firm Jones-Day in developing the brief, which was filed with the D.C. Federal Court of Appeals on January 29, 2013. The Appeals Court heard oral arguments in *National Security Archive v. CIA* on December 12, 2013. A decision is expected in the spring of 2014.

EDUCATION AND OUTREACH

Congressional Outreach: At its January 2013 meeting, the NCH Policy Board directed White to investigate creation of House and Senate caucuses devoted to history. Consultations with the Historians of the House and Senate and the heads of the relevant federal agencies to gauge their interest were overwhelmingly positive. Based on these contacts, initial efforts to create such a caucus began in the House.

During the past six months, White has worked with the offices of Congressmen John Larson (D-CT) and Tom Cole (R-OK) on creation of a Congressional History Caucus. Subsequently Rep. Ander Crenshaw (R-FL) and Rep. Bill Pascrell (D-NJ) were added as co-chairs. The purpose of the Caucus is to provide a forum for Members of Congress to share their interest in and to promote an awareness of history.

Although the Caucus has been created, it is still in the formative stages. There will be a major push when Congress returns in January to solicit Members of Congress to join the organization. At that time, the Coalition will work through its member organizations and archives and history professionals across the country to encourage their representatives to join the caucus and participate in its activities.

Policy Objective 9: The Executive Director will work with the Congressional History Caucus co-chairs to solicit members through promotion of a “Dear Colleague” letter and in organizing a rollout event. Throughout the year the Executive Director will assist the Congressional History Caucus in achieving its mission of promoting history on Capitol Hill.

Policy Objective 10: The Executive Director will work toward creation of a Senate History Caucus by the end of 2014, with the initial steps of identifying potential co-chairs by spring 2014.

Implementation of the Membership and Marketing Plan: In 2013, the NCH Board and White developed and adopted a Marketing and Membership Plan. The Plan addresses such topics as promoting the Coalition, the importance of keeping Coalition members informed, membership retention and expansion, and clarifying membership benefits based on contribution levels.

Policy Objective 11: The Executive Director should make it a top priority to implement the Membership and Marketing Plan and provide the Executive Committee with quarterly reports on his progress.

In 2013, White chaired a session at the Organization of American Historians annual meeting on the effects of sequestration on history-related programs at federal agencies.

White made a presentation on legislative advocacy during the National Humanities Alliance’s Advocacy Day event in March. Humanities advocates visited Capitol Hill, distributed issue briefs and state grant data, and urged members of Congress to support increased funding for the NEH, NHPRC, and Title VI/Fulbright Hays International Education programs.

Policy Objective 12: The Executive Director will set a goal of attending the annual meetings of four NCH organizations (within budget limitations), with priority given to those groups who meet the requisite membership level in the Membership and Marketing Plan. To the extent possible, the Executive Director will work with member organization representatives to provide presentations at these meetings.

Public Outreach: NCH plays an educational role for the history and archives communities it serves. This function is accomplished via the NCH electronic newsletter, the website and RSS feed, the Executive Director’s monthly and quarterly columns in member organizations’ publications, and

presentations to constituent organizations at their annual meetings. Because the Coalition's educational mission also extends to the media and the general public, White frequently responds to requests from the print and electronic media.

In 2013, NCH created a Twitter feed and a Facebook page to have a social media presence for the organization.

The 2013 budget approved by the NCH Board authorized \$10,000 to redesign NCH's website. White contracted with the Roy Rosenzweig Center for History and New Media (CHNM) to redesign the website. \$6,800 of the amount allocated by the Board has been spent to date. However, there has been a general consensus among the NCH Executive Committee that the prototype needs extensive additional work before going live.

Policy Objective 13: In consultation with the NCH Board, the Executive Director will work with CHNM to continue to refine the parameters of the website with a completion date no later than April 30, 2014. If the cost of completion exceeds \$5,000, the Executive Director must seek Board approval before expending any additional funds.

Representative to National Historical Publications and Records Commission (NHPRC) (Peter Gottlieb)

Report on November 14, 2013, Commission Meeting

Attending:

- NHPRC members (in person): David Ferrerio, representative of Chief Historian of Department of Defense, Stephen Randolph, Nicole Saylor, Ray Smock; (by conference call) James Ceaser, Peter Gottlieb, Jerry Handfield, Karen Jefferson, Rodger Stroup, George Miles, William Thomas.
- Staff: Kathleen Williams, Lucy Barber, Tim Connelly, Keith Donohue, Christine Dunham, Gaynelle Gilbride, Alex Lorch, Nancy Melley, Dan Stokes
- Guest: Robert Karachuk,

Archivist of the U.S. David Ferrerio convened the meeting at 11:00 am ET. After introductions, approval of the agenda and approval of minutes for the May 2013 meeting, we moved to the substantive agenda.

Executive Director's Report

Kathleen Williams's report included the following information:

- For now there is \$4.7 million in grant funds available for FY 2014. If further sequestration cuts occur, staff will be directed to spread those cuts across approved grant proposals.
- The funds available for the next FY 2014 round of grant proposals will be allocated across the announced grant programs.
- The federal government shutdown in October 2013 abbreviated preparations for this November meeting. (Commission members were alerted to this in advance.) Some staff reports were summarized, although all the material that those reports encompass was made available.
- Williams gave an update on *Founders Online* and said that NHPRC and NARA staff have been quite pleased at the publicity and the online visits that *FO* has received.

- Williams reported on recent NHPRC fundraising efforts (approaching the Calderone Foundation about funds to assist Puerto Rican archives; contacting the National Humanities Center with an interest in collaborating on teaching with digital records/*Founders Online*; discussing more collaborative programming with the National Endowment for the Humanities). She reported that Ferrero is supportive of these fundraising initiatives and that NHPRC has the legal authority to seek third-party funds.

Commission members asked Williams questions about the Calderone Foundation and if Puerto Rico will develop an active Historical Records Advisory Board.

- Regarding the financial summary report, Williams commented on the variability of the appropriations figures (in the current federal fiscal environment) and in the likely eventual Refunds/De-obligations totals.
- She “walked” Commission members through the figures on the program funds allocations and the highlights of recent publications and recent records projects.

Conflict of Interest Statement / May 2014 Calendar

Ferrero noted these administrative items in passing. No action taken on either one.

Presentation on Institute for Historical Editing (Bob Karachuk, Education Director, Association for Documentary Editing)

Karachuk’s report included a Powerpoint, the slides for which those connecting remotely could see. Karachuk evaluated the accomplishments of the Institute since it made substantive changes about three years ago. Rather than offering training and sessions of its own, the Institute began meeting in conjunction with the ADE’s annual meeting. It has also reached out to new audiences beyond those employed as documentary editors, seeking to attract librarians, archivists, digital publishers, etc. It has also strongly emphasized information technology and digital publishing. The IHE has two years left on its current NHPRC grant and is looking ahead to continuing with ongoing NHPRC support. There was some discussion of the report from Commission members, but nothing substantive.

Report on the Status of SHRABS (Dan Stokes, NHPRC Staff)

In addition to reviewing the history and development of State Historical Records Advisory Boards, Stokes’ report emphasized that NHPRC funds supporting SHRABs have been more evenly distributed since the advent of the SNAP program in 2008. The report also said that there are more active SHRABs today (48) than was true before 2008. Commission members asked questions about the incidence of non-archivists having responsibility for the care of archival records, about SHRABs requesting funding from their state legislatures, about how NHPRC SNAP grants are used to pay for participation in national organizations, about how NHPRC staff assesses the quality of training done with SNAP grants, and about the advantages of spreading NHPRC’s limited funds across as many SHRABs as possible.

Report on *The Digital Citizen and the American Record*: Report to the President of the U.S.

Ferrero opened the discussion of the report by saying that he approves of the current draft because its recommendations align with NARA’s strategic plan and because it is much better focused on digital record keeping. He then gave an overview of the report’s recommendations. Commission discussion included a suggestion that the title of the report be changed to include “call to action” wording and a question regarding whether the current draft’s strong orientation to the Obama administration’s digital government/open government policy remains a good strategy. Williams noted that the current draft will proceed through final editorial work and then on to graphic design, publication, and distribution to the White House and to others.

Reviews of Grant Proposals

All proposals were approved by the Commission with little discussion, except for some questions about the reason for not funding any of the electronic records proposals.

Other Business

The Commission heard resolutions of appreciation for NHPRC staff member Tim Connelly, who retires soon.

Representative to National Information Standards Organization (NISO) (Kathleen Dow through 7/1/13)

No report submitted.

Representative to US State Department Advisory Committee on Historical Diplomatic Documentation (Trudy Huskamp Peterson)

The Historical Advisory Committee, commonly called the HAC, has a statutory mandate and is required to meet four times each year to oversee the preparation and timely publication of the Foreign Relations of the United States series and to promote public access to records that are 25 or more years older than the date of issue. The authorities, charter, and members are listed on the Office of the Historian's official website <http://history.state.gov/about/hac> The HAC's annual report for 2012 was published in June 2012 and is found here: <http://www.fas.org/sgp/advisory/state/hac2012.html>.

The HAC met four times, as required by the statute; I attended all four meetings.

The HAC is pleased that the Office of the Historian is making progress on publishing volumes, with seven published this year including the long-delayed volume on the Congo, 1960-1968. Eight additional volumes are undergoing declassification review. Although the publication of the volumes still is not meeting the 30 year line (the volumes are to be published 30 years after the events), the Historian's Office is taking serious steps to approach that goal.

The HAC is very concerned about the accessioning, processing, declassifying and releasing of the records of the Department of State held at the National Archives. The Committee had conversations with Archives staff members at each of its four meetings, and it has followed the work of the National Declassification Center closely. The National Declassification Center has a mandate to work through 400 million pages of a backlog of classified records held by the National Archives, with a deadline for completion of December 31, 2013. In order to do so, the withdrawal sheets now include only skeletal information (principally a unique identification number). According to the NARA officials who briefed the HAC, further "indexing" of the withdrawn materials—which are still a sizeable quantity, even after review—will be done "on demand." And the HAC understands that additional, complex processing must take place after the declassification is completed and before the newly-declassified records are made available for research use, a burden that will fall onto the understaffed NARA reference units.

The chair of the HAC, Richard Immerman of Temple University, is also the chair of the documentation committee of the Society for the History of American Foreign Relations, and in the latter role he worked to develop a survey on the research experience at the National Archives that was distributed widely in the historical profession. As of the beginning of December, over 800 responses had been received, and the work of analyzing the findings is in progress. The results will be shared with both the National Archives and the HAC.

Representative to World Intellectual Property Organization Standing Committee on Copyright and Related Rights, 26th Session (William J. Maher)

Submitted January 8, 2014

Executive Summary: At the December 2013 Standing Committee on Copyright and Related Rights (SCCR), the SAA was instrumental in educating not only the WIPO national delegates but also the library advocacy groups on the differences between libraries and archives and the specific archival needs for a treaty supporting copyright exceptions and limitations. With our coalition partners, the SAA helped prevent the marginalization of work on library and archives exceptions during future meetings. Meanwhile, new leadership of the SCCR helped the Committee avoid the stalemate that had been evident at SAA's prior attendance in November 2011. Thus, momentum has been maintained for continued work on library and archives exceptions at the three SCCR sessions scheduled for 2014.

Next Steps: Because of the positive outcome of SCCR 26 calling for continued "text-based" work on library and archives exceptions over the next three meetings in 2014, it will be important for SAA to secure funding to ensure that our archival voice, experience, and particular needs continue to inform both the NGOs and national delegates at these sessions. In addition, to help make that representation most effective, the Intellectual Property Working Group will need to develop several concise case study statements or "issue briefs" to exemplify the particular archival dimensions of the eight remaining themes in the draft text being considered for a treaty. Finally, early consultations should be held with the head of the IFLA delegation to develop a strategy to ensure the retention of the text's orphan works coverage for unpublished works.

Background: Copyright law may be established by national laws, but it is international treaties, such as the Berne Convention and the 1996 World Intellectual Property Organization (WIPO) Copyright Treaty that provide the broad framework of copyright and authors' rights. While current treaties allow nations to provide some exemptions to authors' monopoly of exclusive rights, the areas for exceptions are quite limited, and none are mandated except in the recently treaty supporting exceptions for visual impaired persons.¹ Meanwhile, there continue to be onerous regimes for exclusive rights,² and it has been difficult to get attention to archivists' and librarians' specific interests in supporting acquisition, preservation, and accessibility of our of collections, and services to our users.

Fortunately, there are some global actors with whom American archivists can collaborate. Thanks to 2004 and 2008 initiatives by Chile, Brazil, Uruguay, and Nicaragua, there has been a call for WIPO to develop treaty language that would require member states to enact education- and development-friendly exemptions into national law. The International Council on Archives (ICA) has commissioned a copyright working group to examine these issues, created a "white paper" entitled *Current Issues in Copyright for Archives*, and appointed the UK's Tim Padfield as a representative to WIPO. By their joint work, ICA and the International Federation of Library Associations (IFLA) have created a plan to secure appropriate exceptions and limitations to copyright's exclusive rights. The plan's success, however, would require continued engagement in and representation at WIPO.

WIPO's Standing Committee on Copyright and Related Rights (SCCR) is the body authorized to draft language for international treaties on copyright and generally meets twice a year. The possibility of "library and archives rights" was the subject of a special SCCR meeting in Geneva in November 2011. This meeting was the first time the Society of American Archivists was able to participate as an *ad hoc* Non-Governmental Organization (NGO) observer, and I attended as SAA's representative. Subsequently, SAA applied for and was granted status as a permanent NGO observer, and on that basis sent me once again as a representative to the SCCR 26 meeting December 16-20, 2013. Given what I had observed in 2011, the protocol and process of the SCCR made much more sense. Perhaps this was just part of the learning curve, but it equally well could be a result of the top-notch leadership of the 2013 session.

The effort to develop a treaty to provide exceptions and limitations for libraries and archives has been tied to development concerns of the "global South." When the WIPO General Assembly adopted a development agenda in 2007, SCCR had a mandate to make development needs an integral part of its work. It commissioned Kenneth Crews to provide a report examining copyright laws of 149 of WIPO's 184 member states.³ Results, not surprisingly, showed wide variations in national practices and a general lack of provisions addressing library and archives needs. In 2010, SCCR expanded its consideration of exemptions and limitations to include provisions for visually impaired persons, libraries and archives, and education. Then, in June 2011, the 41-member Africa Group presented a draft WIPO treaty for these latter areas, based heavily on a 2010 proposal from IFLA. Finally, IFLA itself presented its own "Treaty Proposal on Copyright Limitations and Exceptions for Libraries and Archives" (TLIB) at the November 2011 meeting.⁴ The draft was cosponsored by ICA, Electronic Information for Libraries (EIFL), and a library NGO called Innovarte.⁵

Although IFLA, as an NGO, cannot propose treaty language, at the 23rd session of SCCR in November 2011 a coalition of Brazil, Ecuador, and Uruguay put forward a document that incorporated all of the essential elements of IFLA's proposal, and that document received standing for debate and discussion within SCCR. However, the discussion revealed deep divides among the national delegates. Developed countries argued that their separate laws already contained provisions to meet the needs of users for access to library and archival material and that no mandatory treaty was needed. Developing and lesser developed countries argued that the needs of their populations for access to information and knowledge was impaired by the lack of exceptions and limitations to copyright and particularly by the lack of an international instrument that could provide predictability and uniformity across national borders. At best, the developed countries suggested the adoption of so-called "soft law," or guidelines that countries could adopt. At worst, some developed countries argued that attention to balancing copyright with exceptions and limitations was unnecessary use of the committee's time.

In the end, while the November 2011 SCCR 23 could not agree on the nature of the "international instrument" it would be pursuing, it adopted a work plan to continue to discuss library and archives exceptions at its future meetings while also focusing attention on the creation of exceptions to support the needs of visually impaired persons (VIPs). Over the course of 2012 and through mid-2013 (i.e., SCCR 24-25), the Committee focused most of these discussion of exceptions on the VIP matter, but it did set a timetable to devote particular

attention to the library and archives exceptions over the course of SCCR 26 through 29, with the objective of adopting a text for submission to a diplomatic conference in 2015.

Despite the seemingly intractable positions the SAA observer saw in 2011 and which were reported through early 2013 regarding VIP provisions, a June 2013 diplomatic conference in Marrakesh was able to reach an unexpected agreement on a VIP treaty. This was an important development because it represented a first. It elevated copyright exceptions to treaty status and it involved obtaining consensus among hitherto seemingly irreconcilable parties.

The so-called “Miracle of Marrakesh” set the stage for potential drama at the December 2013 SCCR 26. Could the momentum of creating copyright exceptions carry forward from the VIP area to also support library and archives exceptions? Would the content industries and global north be able to argue that the exceptions created at Marrakesh had rebalanced copyright so that attention could now focus on other areas of exclusive rights, such as the long-deferred matter of exclusive rights for broadcasting organizations?

Preparations: Once it was clear that the SAA Council would be funding participation at SCCR 26, I was placed on the “Exceptions Listserv” that was created by eIFL to brainstorm and coordinate positions among treaty-friendly NGOs, and I was given access to the Dropbox.com account containing policy resource materials and to the e-mail list managed by the IFLA coordinator, Ellen Broad. These collaborations involved assessing the variant drafts that national delegates had put forward for the 11 separate “topics” or provisions of a proposed treaty text and advising on which variant was best for our particular needs. That work involved two hour-long November Skype calls which included representatives from the British Library, a Canadian law school, and IFLA staffers and it especially explored the nature of exceptions needed to support text and data mining for digital humanities purposes. Particularly important was being invited to participate in the shaping of the message for a general publicity piece to explain to the public why copyright reform for libraries and archives mattered. Insofar as IFLA invited coalition partner organizations to have their logo appear on the ultimate piece, I was able to use that, with appropriate SAA approval, as leverage to influence the phrasing to be sure it reflected not just library conditions but also those of archives.⁶ Throughout the entire preparation period, as well as during the week of SCCR, there were multiple and frequent consultations with the SAA IPWG and the SAA Executive Director, especially in drafting the main statement for SAA to present as well as the text for the “Side Event” presentation. Particularly important were my regular consultations with the IPWG Chair. While ultimately the person on the ground in Geneva does the representation, effectiveness is only possible with the strong collaborative contributions from the SAA network.

SCCR 26, December 16-20, 2013: The schedule for SCCR 26 allocated the first two days to a discussion of exclusive rights for broadcasting organizations, a question of little interest to archivists. This was to be followed by two days devoted to exceptions and limitations for libraries and archives, and a final day discussing issues relating to whether exceptions could be created to support educational institutions and organizations. The session opened on December 16 with the election of Martin Moscoso of Peru as a new chair to lead the committee for the next two years. He had most recently served as facilitator over informal discussions between opposing sides at Marrakesh and had strong support from the Committee.

Moscoso proved adept at maintaining good order, identifying issues for potential consensus, and managing situations when positions of some national delegates conflicted sharply. The resultant draft text for the SCCR's plan for future work suggests that the matter of the exceptions for libraries and archives being sought by the Africa Group (AG) and the Group of Latin American and Caribbean countries (GRULAC) will remain on the agenda. His leadership provided a very positive alternative to the near gridlock that prevailed during the November 2011 SCCR23.

Library and Archives Exceptions and Limitations: Despite some efforts by global North countries to extend the broadcasting discussion beyond the scheduled two days, the Chair directed the Committee to follow the previously agreed-upon allocation of time, although he did dedicate a portion of the Wednesday morning session to discussion of draft “conclusions” on broadcasting. Then after calling upon regional groupings and national delegates for general comments on library and archives exceptions, he opened the floor for presentations by the NGOs.

Interventions from Non-Governmental Organizations: Unlike some other international bodies such as the telecommunications union where invited NGOs participate in floor debate, at SCCR NGOs' formal involvement is limited to scheduled opportunities to offer statements or “interventions” on the policy issues before SCCR. By long convention, these interventions are limited to three minutes, with some prior chairs actually cutting off the microphone of those exceeding the time limit. The NGOs at SCCR contained representatives from both sides. Those speaking against the need for library and archives exceptions included Motion Picture Association, International Federation of Journalists, International Federation of Musicians, International Publishers Association, Group of Scientific, Technical and Medical Publishers, Federation of Reproductions Rights Organizations, etc. Those speaking in favor of L&A exceptions included the Canadian Library Association, Center for Internet and Society, German Library Federation, Karisma Fundación (Colombia human rights organization), IFLA, eIFL, ICA and the SAA. In his intervention, Jamie Love of Knowledge Ecology International pointed out that the needs of archives were particularly striking yet seemingly less complex than those of libraries. He suggested that SCCR start by dealing with archives exceptions, get some experience in that area, and later come back to other areas for exceptions. As an archivist, it is hard to disagree with this, but unfortunately, it seems unlikely that such a position would receive support of the delegates or civil-society NGOs.

A central part of my presence as SAA's NGO representative at SCCR was this opportunity to provide a formal position statement to the Committee.⁷ Within the allowed three minutes, I noted how the recent UNESCO “Universal Declaration on Archives” called for broad public access to archives. I also noted that since the public expected archival content needed to increasingly online, copyright represented a major barrier to the archival mission and to the public's right to access. Noting the insufficiency of the U.S.'s Section 108 library and archives exceptions, I called the national delegates' attention to the need to develop a treaty that would provide cross-border uniformity. I closed by suggesting that the viability of both archives and the copyright system required exceptions to support public access for heritage and accountability. The statement appears to have been well-received by treaty advocates based on several comments that I received through the end of the week. Perhaps the best indication of this was the blog entry provided by Manon Ress of Knowledge Ecology International, who

reproduced my statement in full, immediately preceded by her comment: “The room is clearly divided but the intellectual argument is being won by the libraries and archives. Here are some of the very strong statements.”⁸ Later that evening, I was told by one of the library NGO leaders, a long-time SCCR veteran, that “today belonged to the archives and archivists.” I also received positive comments the following day from a developing-world national delegate.

Debate by National Delegates on Proposal for Library and Archives Treaty: Following a previously developed work plan, the Committee adopted a text-based discussion of the awkwardly titled: “Working document containing comments on and textual suggestions towards an appropriate international legal instrument (in whatever form) on exceptions and limitations for libraries and archives.” The work plan had called for discussion of the draft text through its 11 topics which had been built from texts first by the Africa Group and Brazil/Ecuador.⁹ Over the two allocated days, the delegates were able to complete work on the first two topics (copying for preservation and for users), touch briefly on legal deposit (topic 3), and begin discussion of library lending (topic 4). Those skeptical of the need for an international treaty kept trying to steer the discussion toward a review of current national practices and the need to protect the authors’ interests. Advocates for the treaty emphasized the need for a base level of exceptions and the need to establish uniformity across national borders. Insofar as multiple phrasings of the the proposed provisions were left in document, those proposals appear to have basically survived the discussion, but it became clear that there was overlap among some of the themes, such as copying for users and library lending/document delivery. Thus, some consolidation could be expected. For archives, issues about preservation, including the need to remove limits on the number of preservation copies, were well handled. However, one of our most important topics, orphan works copying and distribution, was deeper into the work plan and was not addressed.

Overall, there was little change in the delegates’ positions during the meeting. In short, the global North argued that an international instrument was not needed because many countries had addressed these concerns with national laws. They therefore tried to steer SCCR’s work towards merely studying the laws and practices of member states. In addition, a number called for an update of Kenneth Crews’ 2007/08 study, presumably on the assumption that legislation in some countries may have changed in the past 6 years.

During the discussion of preservation copying, one delegate from a developing country made the rather troubling remark that while such an exception was needed, it should not be allowed to extend to unpublished materials. I assume that this idea may emanate from the continental concept of “moral rights,” since this country had been a European colony. We had expected unease of some over the moral rights issues in relation to orphan works. This indicated that it could extend into other areas as well. Fortunately, comments from at least two other developing countries (one of which had also been a colony of the same country) about the need for archives to be able to be copied for preservation and use provided a counter balance. Indeed, when it came to the discussion of making copies of archives for users, the delegate of yet another former colony provided a particularly cogent explanation of what archives were and why it is so essential for the public to be able to obtain access to documents and records through copies.

Further, an African delegate related that his country lost most of its archives and libraries through repeated wars, and it had had to go to the former colonial power to obtain replacement copies. Now, when citizens of that country want to do research in those records, it is essential

that his country's libraries and archives have an exception to allow them to make user copies from these replacement copies.

Through it all, Chair Moscoso attempted to soften sharp differences, and this could help build consensus in the future. On the down side, it became apparent that some delegates seemed insufficiently aware of how libraries and archives actually work and why exceptions for preservation or user copies were needed. Clearly, a to-do for any future presence at SCCR is to develop informal connections with sympathetic delegates (if they can be identified ahead of time) to feed them information so that they might then be able to articulate specific examples of how effective operations and service depend on exceptions. Finding an opportunity to initiate such conversations is somewhat tricky, however, given the prevailing etiquette of only a semi-permeable divide between NGOs' representatives and the delegates.

Overall, the discussion at SCCR 26 clarified that our most important task is to have a rich roster of simple, practical examples of how the lack of a specific exception militates against the public's need for information and records. We also need to counter the claim that national laws already provide locally tailored solutions by explaining the cross-border, international nature of the problem. Good, clear, and provocative examples in our prepared remarks and in briefing sheets, will help those friendly delegates on whom we have to rely. The IFLA and eIFL representatives began working on such a set of briefing documents in the midst of SCCR26. We were able to provide a few examples from our own archives experience, however, more stories should be gathered. While some of the 11 issues on the agenda for discussion at the next SCCR may be less likely to have archival examples (e.g., legal deposit), it is important that SAA develop broad-based examples for every issue, if possible, even if U.S. law's fair use provisions or other exceptions (e.g. § 109 or 110) might mean the matter is less of an issue here.

“Side Event” Presentation: SCCR meetings often include “side events” beyond the official proceedings of the Committee. These events include evening receptions as well as the more typical early afternoon panel sessions on some issue of relevance to the topics being considered. At SCCR 26, the Thursday December 19 side event, sponsored by IFLA, was titled ““Digital Gridlock”” What Future for Libraries and Archives?” Its particular point was to clarify how access to library and archival material is impeded by copyright limits, and how the problem is fundamentally an international one that can only be solved by a treaty providing consistency across borders. The speakers were allocated five to ten minutes. I was asked to present on how copyright affected the future of archives. My remarks were titled, “It's My Heritage, Why Can't I Have It? The Unintended Consequences of the Digital Embargo.”¹⁰

Realizing that neither the delegates nor the other NGOs understood what archives contain and what archivists do, I drew on my own archives experience to describe the scope and use of institutional archives and manuscript collections. I focused on the increasing expectations to meet users' needs via online holdings, and I emphasized how copyright in orphan works was a major impediment to meet these expectations. I cited an example of a NARA project where the use of its data files increased 335 times when the data were put online.¹¹ I made a special point of citing core statistics from Maggie Dickson's University of North Carolina study to underscore the excessiveness of a strict authors' rights and permissions regime for archival digital projects.¹²

I closed with two specific examples drawn from collections and users at the University of Illinois Archives, in which key cultural heritage information was not readily available to individuals of those communities unless they could afford travel to see the originals. The presentation was well-received and generated some useful discussion during the question period.¹³ Overall, the “Side Event” was a successful opportunity to explain the archival concerns and clarify that they are not precisely the same as libraries’.

Education Exceptions: Friday morning, December 20, was devoted to general statements from NGOs, and regional and national delegates about the set of exceptions that the Africa Group had proposed to support educational organizations and educational activities. These call for a broad array of exceptions to allow copying and digitization of works in support of education and research activities at all levels. Overall, the concept appears to face a tough road ahead. For example, the kind of institutions that would be entitled to claim such exceptions is not clearly defined. Because this issue was at a very early stage, only the morning of the last day was dedicated to discussing it.

Conclusions and Closure of SCCR 26: One of the defining elements of any SCCR meeting is the last day’s work to prepare a “Conclusions” document. It summarizes what work was completed during the session, including consensus statements on issues where possible. Most importantly it identifies the work plan and allocation of time in the coming SCCR meeting(s) for particular issues. Because the Conclusions define what it the SCCR has accomplished and where its priorities and policies are headed, each sentence in the relatively short document (generally 3-4 pages) is subjected to great scrutiny and sometimes nearly endless debate late into the night or wee hours of the morning.

Given the smoothness with which the Chair ran the meeting, we had some hopes that floor fights would be minimized and that the evening might end early. Unfortunately, that was not the case, even if the ultimate result was positive for those interested in library and archives exceptions. Those delegations advocating for a broadcast treaty and merely more study for the library and archives area launched an effort to allocate the majority of time in the next three SCCR meetings (i.e., three days in each) to broadcasting, with only two days in each for “exceptions.” Thanks to the some effective work by the librarians and archivists present in connecting with a few of the sympathetic to neutral country delegates, wording in the final version of Conclusion item 31 included the specific reference to libraries and archives as the lead topic for the latter two days of the April 2014 SCCR.

Nevertheless, the issue of relative allocation of time during the three 2014 SCCR meetings was contentious. Because of some persistent resistance by treaty-sympathetic countries, the Committee’s eventual consensus was that the allocation of days for the July and December SCCRs would need to be deferred pending outcomes of the April meeting. While this may seem a small accomplishment or even just a delaying action, in fact it reflects significant success by treaty advocates in not allowing the momentum from Marrakesh to be turned back.

Advocacy as Education of Multiple Publics: My experience as SAA’s representative at the SCCR in 2011 and especially in 2013 demonstrates that a central part of successful policy advocacy is not simply communicating our position, but also the extent to which we use the

interchange as an opportunity for education. Because the policy makers and stakeholders whom we want to reach are only minimally aware of the mission and professional practices of archivists, influencing policy cannot start until we are recognized as a distinct sector with a mission that matters to the public and communities we serve. Ironically, the low visibility of archives and archivists among the public can work to our advantage in that if we sharpen our message carefully, we can immediately create a positive foundation for future interactions. By providing concise statements that focus on the broad cultural and educational value of archives combined with the substantial professional and ethical standards we have developed over the past three-quarters of a century, we can obtain not just respect for our mission but also a sympathetic hearing for our policy needs.

In this regard, according to comments from more than one of the IFLA coordinators, SAA was extremely effective in its communications and advocacy for the archives sector. SCCR 26 also demonstrated that archivists can obtain a hearing and audience for our concerns that is clearly well out of proportion to our inescapably small size. Indeed, it is the power of the archival message that has made stakeholders much larger than ourselves seek us out as coalition partners. In the process, we have gained significant leverage to advance our positions.

To the extent that SAA wishes to build on the success at SCCR 26, we must continue to secure support for several practical items that provided the infrastructure for this advocacy. First and foremost, we need to have a physical presence at WIPO. Many of the occasions SAA had for influencing the text of coalition advocacy pieces would not have arisen if our planned presence at SCCR had not opened the door to our participation in coalition's listservs, Skype conference calls, and group e-mails in which policy and positions were formulated collaboratively. Only through these were we able to educate library and other prospective allies of the fundamental, and indeed compelling, differences of archives needs. We need an experienced representative able to dedicate significant amounts of time to collaboration with coalition partners in the weeks leading up to the meeting, sometimes to the exclusion of other archival and professional work. Significant preparation is needed to prepare concise, targeted position statements that can be effectively delivered in time that is measured in seconds rather than minutes. The statements need be supplemented by practical examples of archival needs and the benefits to the public from our holdings and professional work. The examples need to reflect the breadth of the publics whom archives serve as well as how these relate to international policy objectives being sought.

It goes without saying that SAA's representative has been absolutely dependent upon and grateful for the strong support provided by the Intellectual Property Working Group, especially its chair, and for the confidence and support of the SAA Executive Director. Education is essential for effective advocacy, but it is preeminently a team effort.

ENDNOTES

1. According to the Berne Convention and the World Trade Organization's 1994 TRIPS agreement, any exemptions provided by national legislation are supposed to meet a "three-step-test." "Members shall confine limitations and exceptions to exclusive rights to *certain special cases* which do not conflict with a *normal exploitation* of the work and do *not*

unreasonably prejudice the legitimate interests of the rights holder.” See: Berne 9.2. at http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html

2. For example, the 1996 WIPO Treaty required countries to create legal prohibitions against circumventing any electronic copy-protection mechanisms that copyright holders have used on their works, making archival migration and preservation of electronic records very difficult.
3. Kenneth Crews, Study of Copyright Limitations and Exceptions for Libraries and Archives, http://www.wipo.int/edocs/mdocs/copyright/en/sccr_17/sccr_17_2.pdf.
4. Available at: <http://www.ifla.org/en/node/5856>
5. The TLIB proposal calls for copyright exceptions and limitations that would enable libraries and archives to engage in: parallel importation; library lending; reproduction and supply of copies; preservation; making and distributing accessible copies for persons with disabilities; providing access to retracted, withdrawn, and orphan works; cross-border uses; translation of legally acquired works for specific users/user groups; freedom from contract provisions which would otherwise overwrite the exceptions; circumvent technological protection measures for lawful access; and enjoy limitations on liability for libraries and archives work.
6. The resultant flyer can be seen at: http://www.ifla.org/files/assets/hq/topics/exceptions-limitations/ifla_wipo_message_overview_final.pdf
7. The full text of the intervention on behalf of the SAA can be found attached as **Appendix A**.
8. <http://keionline.org/node/1863> Unfortunately, because SAA’s acronym was mistranslated from the Chair’s Spanish, WIPO interpreters muddled the translation of the SCCR Chair’s Spanish-language introduction of my intervention, Ms. Ress misidentified the first text as being from the International Council on Archives. While Tim Padfield’s ICA intervention was quite good, the text Ms. Ress replicates on the KEI blog is a verbatim transcript of my remarks, not those of the ICA’s Tim Padfield. The video of my presentation can be seen at: <http://www.wipo.int/webcasting/en/index.jsp> – Scroll down to below the title "Video on Demand," and in the right-hand menu, select “SCCR/26-Wed 18-English, Afternoon Session.” My remarks begin at minute 34.
9. Those themes/topics, with a brief summary of the provisions being sought, were:
 - 1) Preservation: It shall be permitted for libraries and archives to reproduce works, or materials protected by related rights, for the purposes of preservation or replacement, in accordance with fair practice.
 - 2) Right of reproduction: A library or archives may reproduce and distribute a copy of a copyright work to a library user, or to another library or archive, for purposes of: education, private study by a user, or interlibrary document supply.

3) Legal deposit: Treaty member countries may determine that specific libraries and archives or any other institution shall serve as designated repositories in which at least one copy of every work published in the country is to be deposited and retained.

4) Library Lending: It shall be permitted for a library to lend copyright works, or materials protected by related rights, to a user, or to another library.

5) Parallel Importation: Libraries and archives shall have the right to buy, import or otherwise acquire copies of any work published in any other Member State with the permission of the author of that work.

6) Cross border uses: To the extent that it is necessary for the exercise of a limitation or exception provided for in this Treaty, cross-border uses shall be permitted.

7) Orphan works, works out of commerce: Libraries and archives shall have the right to reproduce, preserve and make available in any format or retracted any withdrawn works from public access or orphaned works.

8) Limitations on Liability: A librarian or archivist acting in good faith within the scope of his or her duties, is protected from claims for damages, from criminal liability, and from copyright infringement.

9) Technological Protection Measures: Libraries and archives may circumvent technological protection measures to exercise any of the rights provided by this treaty.

10) Contracts: contractual provisions may not overwrite the limitations and exceptions.

10. The full text of the Side Event presentation can be found attached as **Appendix B**.
11. Margaret O'Neill Adams, "Analyzing archives and finding facts: use and users of digital data records," *Archival Science* 7(2007):21–36.
12. Maggie Dickson, "Due Diligence, Futile Effort: Copyright and the Digitization of the Thomas E. Watson Papers," *American Archivist* 73 (2010): 626-36.
13. Indeed a January 6, 2014 e-mail from Ellen Broad, IFLA's Manager of Digital Projects and Policy, noted "...you're an extremely effective communicator and expert for the sector! Your Thursday presentation was widely discussed."



SOCIETY OF American Archivists

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

December 2013

I would like to thank the Chair for this opportunity to speak on behalf of the Society of American Archivists, North America's largest assembly of professional archivists, collectively responsible for billions of copyrighted works. In more than three decades of managing collections and helping researchers navigate and respect copyright law, I have witnessed how archival discoveries change people's lives.

UNESCO's Universal Declaration on Archives recognizes this transformative effect when it notes "the vital necessity of archives...for establishing individual and collective memory, for understanding the past and for documenting the present to guide future actions." This is why the Declaration calls for archives to be made accessible to everyone.

Archivists have always had the responsibility to capture, preserve, and make available the intellectual heritage of humankind and the records essential to support human rights. In the 21st century, networked technology has made it possible to open up this vast heritage to the entire world by removing the age-old barriers of time and space to permit access to these often unpublished, out-of-commerce, and personally donated collections.

Yet, current law prevents us from using this barrier-breaking technology to reach the shared goals of archives and copyright law—expansion of knowledge and creation of new works—while also supporting citizen access to records for accountability, heritage, and identity. The United States, for instance, has a set of library and archives exceptions, but these are inadequate and woefully out of date. We are not clearly permitted to preserve backup copies of born-digital and digitized materials, nor share the millions of orphaned photographs, letters, and technical reports the public has entrusted to us. As for fair use, it is often subject to costly litigation, leaving too many archives hesitant to put material online.

As information professionals, archivists take copyright very seriously, and spend considerable time guiding users in following the law, but we face two inescapable facts. First, in the 21st century, if something is not online, it might as well not exist. Second, without appropriate exceptions for orphan works and cross-border digital delivery, archivists must either ignore the law or forego our mission and renege on our obligation to society.

For archives, copyright must progress from its 300-year-old model and move into the digitally interconnected 21st century. The UNESCO declaration mandates that archives be accessible to everyone, but copyright law disenfranchises anyone not wealthy enough to travel to use the unique treasures in physical archives. To fulfill UNESCO's mandate, both archives and copyright must adapt or consign themselves to irrelevance. We welcome proposals from Member States on orphan works and other library and archives issues. We stand ready to answer questions about the distinctive nature of archival materials.



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 exploit 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 of Library Administration (1995-) at the University of Illinois at Urbana-Champaign (UIUC). Previously, was Assistant University Archivist at UIUC (1977-85 & 1985-95) and Program Officer at the U.S. National Endowment for the Humanities (1985-86). He also served as President (1987-89) and Secretary-Treasurer (1981-85) of the Midwest Archives Conference. He is Chair/Président of the International Council on Archives' Section on the Archives of Universities and Research Institutions (ICA/SUV). As the author of one book and more than 25 articles, he is a regular speaker on university archival administration, archives and history, and copyright law. He has taught more than 500 students in the SAA's workshop on Copyright for Archivists since 2000.

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It's My Heritage, Why Can't I Have It?
The Unintended Consequences of the Digital Embargo
 Presentation at Side Event, WIPO SCCR26
 Geneva, December 19, 2013
 William J. Maher, Society of American Archivists and
 University of Illinois at Urbana-Champaign

I know that's a rather provocative title, but it aptly describes the biggest problem facing archives worldwide: laws intended for authors writing for publication are being applied to works like letters, diaries, technical reports, and the like that were created merely as the by-products of just living a life or running an institution. That's exactly the kind of material that makes up the bulk of archival collections.

Archives are cultural heritage repositories containing documentary information in a nearly unlimited variety of formats—paper, photographic, audiovisual, manuscript, printed, you name it. We acquire, maintain, preserve, and make all these items accessible because of their enduring value for establishing institutional identity and accountability, individual rights, and for their cultural and intellectual content. Archives are found in virtually all types of institutions: educational, business, government, religious, cultural, community, labor, etc., and of course our particular constituencies influence our collecting scope, subject areas, and emphases. Regardless of our differences, however, all archives share certain concerns, such as managing electronic records, preservation, and access, particularly in difficult financial times.

To the point of SCCR 26, all archives also face problems caused by the fact that, virtually by definition, the majority of our holdings tend to be orphan works. Many are actually anonymous or unidentifiable, and the authors of most others are generally untraceable if the documents are more than 5 or 10 years old. This is a major problem for us because the only reason we care for these rare and unique items is so that they can be used as broadly as possible. There's no point in acquiring documents just to hoard them and watch the dust grow on them—our mission is to actively curate them and promote their use by our institutions as well as the general public.

How much content are we talking about? Statistics from my one repository will give you an idea of the scope—just multiply it by hundreds, if not thousands of repositories to get an idea for the United States as a whole. We alone have 850 cubic meters of material—the equivalent of 90 million pages of works, most of which were never created for the purpose of publication and often were created by persons now lost to history. The archives holdings are in every conceivable format, from paper to wax cylinders to photographs to punch cards to born-digital in an array of formats, most of which are obsolete and forgotten in just a few years.¹ People reach out to us

¹While the digital access restrictions in US Section 108 are significant, the problem of "digital gridlock" is even more prevalent in the area of shrinkwrap licenses. Shrinkwrap licenses, threaten to prevent us even from acquiring some materials. For example, after one of our international prize-winning faculty members died recently, we needed to capture the electronic content off of his laptop. The first step in doing so is to make a preservation image of the hard drive so that we can analyse it to determine which content merits archival retention. We may have no interest in his iTunes downloads, but we may need some of the special software he

daily from around the world to gain access to what we have, but because of pre-digital copyright restrictions, technically we cannot provide access unless they physically come to our rather remote location, three hours from any large city.

Frankly, in this day and age, no matter where a user is located in the world, the expectation is that there will be online access. There is almost universal surprise, not only from users but also from donors, that our concern about adhering to current law keeps us from making our materials digitally available for online use.

Meanwhile, statistics from our National Archives and Records Administration show the transformative power of digital access. They recently created the Access to Archival Databases website, which covers only 475 of their nearly 200,000 data files. In its first two years alone, nearly 1.3 million online visitors ran 1.6 million queries. This dwarfed the 3,878 traditional mediated uses by historians and social scientists—a 335-times increase. That is the power of online access.

So what prevents us from making orphan works available digitally? An archivist at the University of North Carolina decided recently to find out what it would cost to follow current law, based on one modest, early 20th-century collection. First, she needed to identify all authors in the collection, then determine their death dates, then locate descendants for those who died less than 70 years ago, then contact those descendants and request permission to use their deceased family members' materials. In the 8,400 correspondence documents of the collection, she found 3,304 separate authors. Of these, no traceable information of a death date could be found for 48 percent. Then, it took months of intense detective work to establish that 1,101 had died less than 70 years ago. This was the point at which the permission process could begin. In the end, for those 1,101, she managed to reach and obtain a total of 4 explicit permissions—resulting in a labor cost of approximately \$2000 per document. A recent study at the Wellcome Library in the UK has found quite similar results. Clearly, this is an untenable situation for archival repositories in the 21st century.

The harm this does to society is tremendous. For instance, at my repository, we hold the papers of an anthropologist containing unique 1930s field notes and photographs of two western U.S. Native American tribes and their cultural practices. Because of the digital embargo, if tribal members want to see information about their own cultural heritage, they must travel nearly two thousand miles to Illinois, which most cannot afford to do. Considering the history of governmental suppression of their cultural identity, this is particularly troubling. And recently we had a request from someone studying the emergence of Puerto Rican national identity. He sought an unpublished photograph of a Puerto Rican sports team marching under the U.S.'s flag at the Pan American Games in 1950, just two years after the team had marched under Puerto Rico's own standard. We knew the photographer's name and original address Guatemala in but couldn't trace him. Because of that, we can't provide the image across borders.

In the twenty-first century, to fulfill our mission it is clear that archives need to be able to make the rich content from our collections available online. To provide a future for the record of society, we need exceptions and limitations that recognize the great public interest in these nearly always out-of-commerce materials.

used for his data analysis projects, but in either case the terms of service for those items forbid any transfer, thus putting us at odds with the law.