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TO: All Registrants for SAA Copyright Workshop at Ames, Iowa

FROM: William J. Maher

SUBJECT: Welcome to Workshop and Comments on Readings

DATE: May 31, 2017 (URLs updated May 29, 2017)

This “mailing” includes introductory comments, the list of readings for the workshop, and the outline/agenda/schedule for the workshop. You can also access this memo at: <http://archives.library.illinois.edu/wp-content/uploads/2013/09/SAA-Workshop-Readings2017-06.pdf>

In selecting items for the pre-workshop readings, I have included materials that provide background on the larger issues of copyright and intellectual property. In some cases, these may not seem to have an immediate archival relevance, but they do reflect current issues that affect how much freedom archivists have to deal with intellectual property. In the years since the expansion of the internet and simultaneous efforts to amend the Berne Copyright Treaty via the World Intellectual Property Organization Treaty (1996), there has been increasing attention in the popular press to how efforts to tighten controls on unauthorized copying start to intrude on many others than just the “pirates.”

Note: It is essential that you review the *Copyright Law for Archivists: A Risk Assessment Approach* that I have written. (It can be found at:

<http://archives.library.illinois.edu/wp-content/uploads/2013/09/WorkshopResourceBook4-0.pdf>

This is a text edited from lecture notes that I have used for the first 12 years of this workshop. Although the *Resource Book* is a bit long, the more of it that you can read in advance of the workshop, the more we will be able to focus on case studies and deal with your individual questions. If you find the detailed discussion of court cases, summaries of legal literature and footnotes to be dense, feel free to skim those lightly. At the least try to review the text through the coverage of Chapter 5 of the copyright law (about page 42). The good news is that there are at least 12 to 14 pages of that amount which are charts (e.g., Crews and Hirtle) that you do not need to read closely.

Beyond the *Resource Book*, there are other items I hope you read. Note: for some of the longer works, such as the *ARL Code of Best Practices* and the Hirtle, Hudson, and Kenyon book, you should limit your reading to the pages specified on the Readings List. Please review the following comments may help you plan your time:

Hilton’s short piece from *Educause* “In Praising of Sharing” evinces an academic view towards copyright as a matter of sharing rather than a means of enforcing ownership.

It is essential to look carefully at my *Copyright Chronology* (See: <http://archives.library.illinois.edu/workpap/CHRONOUT.pdf>) This is intended to explain the political framework of copyright and provide a quick view of the sequence of U.S. court cases that have had a fundamental effect on what we as archivists can do. Of course, you will not be quizzed on these, but being familiar with some of the names and subjects of the cases will help when we get to the explication of “Fair Use.”

The eight pages selected from the *ARL Code of Best Practices* and the one-page OCLC *Well-Intentioned Practices* will be important for the risk assessment exercises you will do the evening of the first day and which we will discuss on the second day so please read those before the workshop.

Finally, there is *Circular 92* which is the text of the copyright law itself. I have deliberately asked that it not be sent to you in advance of the workshop. Rather, it will be provided to you on-site at the workshop. The law is a complicated and intimidating document that seems designed to confuse. Although you can easily find *Circular 92* online, I strongly recommend that you do not try to read it in advance. One of the goals of the workshop is to teach you how to read key sections of it without too much angst.

If you happen to have a few moments at a computer before the meeting, you might want to do a little websurfing of the Copyright Office's site just to see the kinds of information that they make available there, especially in their *Publications / Circulars*. You would start your browsing at: <http://www.copyright.gov/> and follow the links under the tab "Law and Guidance" | Circulars. But, please do no more than surf around to get an idea of the general categories of information made available.

In addition, if you want to have a good, article providing the general social and economic context for the last two decades of public attention to copyright, I recommend taking the time to read Charles Mann's "Who Will Own Your Next Good Idea." *Atlantic Monthly* (September, 1998): 57-82, available at <http://www.theatlantic.com/past/issues/98sep/copy.htm> Despite the publication date, this is still the best overview article for the context of the broader commercial, cultural, and legal world in which archival copyright concerns reside.

Please note that a bibliography of items for further reading will be provided in the workshop binder and discussed during the workshop.

Finally, while it is probably not welcome news, the effectiveness of the major risk management exercise, requires that you have a bit of "homework" between day one and day two. It involves reading one page of summary descriptions of about 3-5 collections and then rating them as to their copyright status and the amount risk involved in digitizing them. This will require you to logon to the internet to retrieve a Google Form document that will be used to track and collate the class's responses. About a week before the workshop, I will e-mail you the document with the case studies.

Meanwhile, if you have any questions about the readings or if there is anything else I should do to help you get the most out of the Workshop, please email me w-maher@illinois.edu.

I look forward to seeing you in Ames, Iowa.

SAA Workshop
Copyright Law for Archivists: A Risk Management Approach
READINGS, June 29-30, 2017

- *** Association of Research Libraries. *Code of Best Practices in Fair Use for Academic and Research Libraries*, Pages 1-4, 19-21, available at:
<http://www.arl.org/storage/documents/publications/code-of-best-practices-fair-use.pdf>
- Hilton, James L. "In Praise of Sharing," *Educause*, 40:3 (May-June, 2005): 72-73, available at:
<https://er.educause.edu/articles/2005/1/in-praise-of-sharing>
- Hirtle, Peter B., Emily Hudson, and Andrew T. Kenyon, "Risk Management: How to Digitize Safely" Chapter 10 in *Copyright and Cultural Institutions: Guidelines for U.S. Libraries, Archives, and Museums*, (Ithaca, New York: Cornell University Library, 2009), pages 193-213. Available for download at: <http://hdl.handle.net/1813/14142>
- *** Maher, William, *Copyright Chronology*, 2014 see:
<http://archives.library.illinois.edu/workpap/CHRONOUT.pdf>
- *** OCLC Research. *Well-intentioned practice for putting digitized collections of unpublished materials online*. Available at:
www.oclc.org/research/activities/rights/practice.pdf
Also read: SAA's preface to its endorsement of *Well-Intentioned Practices*:
<http://www2.archivists.org/groups/intellectual-property-working-group/well-intentioned-practice-for-putting-digitized-collections-of-unpublished-materials->
- Society of American Archivists. "Basic Principles for Managing Intellectual Property in the Digital Environment: An Archival Perspective." *Archival Outlook* November/December, 1997.
<http://www.archivists.org/statements/managing-intproperty.asp>
- DO NOT ATTEMPT TO READ OR SKIM THE FOLLOWING UNTIL *AFTER* THE WORKSHOP:**
- United States Copyright Office. (2016). *Circular 92: Copyright Law of the United States and Related Laws Contained in Title 17 of the United States Code*.
<http://www.copyright.gov/title17/> [Selected pages only.]

SAA COPYRIGHT WORKSHOP: Copyright Law: A Risk Assessment Approach
Iowa State University, Ames, Iowa
Thursday-Friday June 29-30, 2017
Thursday June 29, 2017 (9:00-5:00)

- 1.1 Introduction: survey of audience, global context in info age, and caveats. Review of Structure of Workshop
- 1.2 Group Exercise I: What is copyright? Why copyright? Whose rights are these?
- 1.3 Basics of U.S. Copyright for Archivists (Items 1-5)
10:15-10:35 Break
- 1.4 Basics of U.S. Copyright for Archivists (Items 6-10)
- 1.5 History of copyright-4th century B.C.E. to Salinger (1987) and Authors Guild (2014)
12:00-1:15 Lunch and individual or group work on Case Studies 1 & 2
- 2 **1:15-2:30** Quick review of Title 17 §101-106A
- 2.1 Report on Case Study 1 (Basics) [Authorization to Use . . .]
- 2.2 Report on Case Study 2
- 2.3 Review of Fair Use provisions and Fair Use Factors
3:00-3:15 Break
- 3.0 **3:15-3:30** Individual or Group Work on Case Study 3
3:30-4:30
- 3.1 Quick review of Chapters 2 and 3
- 3.2 Case Study Exercise 3 (Basics of Fair Use) [Carlos Crump]
- 3.3 Title 17 Chapters 4 and 5 (Safe harbors?)
- 4 **4:45-5:00** Review of Risk Factors and Risk Level Assessment for Case Study 4
Stock-taking–class identifies issues needing further attention for Day 2.
Instructor identifies materials for class to read overnight.

Friday June 30, 2017 (8:30-4:30)

- 5 **8:30-9:00** Convene to discuss case studies and enter data for Case 4.
9:00-10:10 Reports and analysis of Case Studies 4 (Advanced-Risk Management)
10:10-10:30 Break
- 6 Review of Title 17 Section 108 (Library and Archives Exceptions)
- 7.1 Case Studies 5 [Permissions and Fees] and 6 [Culturally sensitive materials]
- 7.2 Archival policies to implement: deeds, userforms, copy notices, copyright status notices, licensing
- 8 Resources for further study–guide to course bibliography.
“Things that Go Bump in the Night” (Congress, Hague Convention, ACTA, SOPA, TPP, WIPO, etc.)
12:00- 1:00 Lunch
Individual Work–Copyright Quiz
- 9 Questions/answers re specific copyright problems facing attendees.
2:30-2:45 Break
- 10.1 Case Study 7 [Review Exercise]
- 10.2 Further questions and answers regarding specific copyright problems faced by attendees.
- 11 Copyright Quiz Answers and Remaining Individual Case Questions
- 12 **4:00-4:30** Other matters and issues arising
- 2.4 **4:30-5:00** Comments and evaluation questionnaire

DISCLAIMER: The instructor is not a lawyer, and is not offering legal advice. The materials provided with this workshop are not presented as legal advice but as an outline of key copyright concepts. You should familiarize yourself with copyright laws and recognize that it may be necessary for you to consult with your institutional legal counsel for advice for assistance in specific cases.