

**Society of American Archivists  
Council Meeting  
August 2009  
Austin, Texas**

**Action Item: Charge for SAA Working Group on Cultural Property  
(Prepared by Diane Vogt-O'Connor and Margery Sly)**

**BACKGROUND**

At its August 25, 2008, meeting, the Council adopted a motion to create a Cultural Property Task Force. The vice president and his appointment committee felt their efforts to recruit individuals to serve on the task force were impeded by vagueness in the Council's charge and consequent difficulty in communicating specific objectives and responsibilities.

At its February 2009 meeting, the Council decided to learn more about the American Library Association's Traditional Cultural Expressions and Libraries initiative (as brought before the Council by SAA member Jennifer O'Neal) and determine the possibilities for collaboration on work in cultural property investigations. The Council directed Vice President Peter Gottlieb to contact the ALA and bring back information to the May/June Council meeting.

In response to Gottlieb's report about the ALA initiative at the May/June meeting, the Council agreed that, although collaboration is something that the Council intends to pursue, SAA can best learn about cultural property issues through the focused work of a working group. It was clear, however, that the group must have clearly stated objectives and time frames for its work in order to produce useful results.

The authors of this action item returned to the August 2008 Cultural Property Task Force charge in order to build a charge for this Working Group.

**DISCUSSION**

Internationally archives, libraries, and museums hold collections that document or that are linked to a broad range of cultural groups by circumstances of provenance or by shared interests (i.e., traditional knowledge or ceremonies, sacred places, etc.). Increasingly archives, libraries, and museums must address how best to manage, preserve, and provide access to these collections, given the perceived rights and responsibilities of the affiliated cultural groups and stakeholders. These issues include a wide range of concepts, only some of which are addressed by federal and state laws, including:

• **Copyright for individual creators.** U.S. law addresses the most immediate creator of the work, such as a photographer who documents a ceremony, but not necessarily the culture that creates the ceremony being documented.

• **Copyright for groups.** In U.S. law, “groups” may be the group or organization that hired the immediate creator of a work, such as a photographer, filmmaker, or author of a descriptive report describing a ceremony. U.S. law does not clearly recognize the concept of a culture as the underlying creator of ceremonies, architecture, music, creation myths, etc., or that that culture should have legal protections even if they are not the person(s)/group(s) documenting these works.

• **Privacy rights for individuals.** U.S. law refers to rights of living private individuals, but not to the dead or to public figures.

• **Privacy rights for groups.** U.S. law refers only to the individual within the group and not to the group’s views, activities, or such concepts as the views of a religion, membership group, or culture on symbolism, sacred stories, or related issues.

• **Sensitive items and information.** While recognized and repatriated as objects during Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), “sensitive items and information” have not been recognized by other U.S. legal systems as restricted, including:

- Burial images and location information (the latter is loosely protected by Executive Order);
- Images of grave goods;
- Images of sacred places and their specific locations (the latter is loosely protected by Executive Order);
- Sacred myths, stories, and symbols;
- Images of and specific locations of subsistence-related sites (the latter is loosely protected by Executive Order);
- Ceremonial images or images of sacred activities;
- Folklore or cultural legacy information.

• **Restrictions on access to and use of publicly held collections for certain people** (i.e., by gender, cultural affiliation, group membership, time period, health, or age) or by activity (e.g., “do not share this with people from outside of a certain group,” etc.). The collection custodian’s wish to be responsive to the above concerns in many cases runs directly against the archivists’, librarians’, curators’, anthropologists’, and related professions’:

- Ethics statements on equality of access;
- Historical precedents;
- Mission, audience, or access policy statements;
- Legal requirements (i.e., federal archivists’ responsibilities via FOIA, state archivists’ responsibilities via Sunshine laws);
- Binding agreements with donors and records creators and their heirs;

- Stakeholders' demands for continuing access to materials long made available to other scholars by researchers, the general public, and other stakeholders;
- Precedents and established professional practices of colleagues, which are to make publicly held collections as available as possible to the public in support of the concept of "fair use."

**The role of this working group is to identify a process to foster discussion, clarify the issues, and move toward resolution of the issues spelled out above in an effort to harmonize the conflicting best interests of divergent groups of stakeholders.**

### **Basic Work Plan**

The Working Group should proceed with goals and projects, establishing priorities and timelines based on ongoing issues in the Society and the group's understanding of needs and concerns. The Working Group will:

- Identify common ground and roles with the Diversity Committee,
- Identify partners,
- Maintain communications with allied professions that are wrestling with similar issues,
- Identify ongoing projects in these areas,
- Conduct research on existing solutions and gaps in solutions,
- Produce a resource guide with annotations,
- Develop definitions that are understandable by archivists on the basic issues,
- Identify existing best practices and make archives-based revisions as necessary,
- Identify models of culturally sensitive management,
- Develop case studies and protocols for culturally sensitive management,
- Make recommendations to the Council and to the Standards Committee,
- Working with the Education Committee and staff, create SAA course(s) relating to cultural competencies,
- Working with the Publications Board and staff, create SAA publications on this topic,
- Identify a community of practice within SAA on this topic, and
- Nominate individuals who have made major contributions in these areas for the Diversity Award.

Over time this group will serve a role not unlike that of the Intellectual Property Working Group in that this group will:

- Advise the SAA Council and staff concerning cultural property and cultural sensitivity issues,
- Prepare draft statements for SAA to issue,
- Develop positions for SAA concerning cultural property and cultural sensitivity issues, and
- Represent SAA on cultural property and cultural sensitivity issues at meetings and in professional discussions.

## Specific Activities:

1. Research and identify existing and developing practices in how to manage culturally sensitive collections.
  - a. Meet with the Diversity Committee to hone ideas, develop projects, consult and collaborate, and plan the project strategy and tactics.
  - b. Identify the exterior groups whose practices merit consideration, such as anthropologists; photo, film, and sound archivists; historians; oral historians; Native American archivists and other stakeholder groups; librarians; and curators.
  - c. Identify relevant groups within SAA to assist/coordinate this work and identify liaisons. Suggestions include Native American Protocols Forum Working Group, Diversity Committee, Intellectual Property Working Group, Visual Materials Section/Roundtable, Standards Committee, Committee on Education, Committee on Ethics and Professional Conduct, Archival Educators Roundtable, Issues and Advocacy Roundtable, Latin American and Caribbean Cultural Heritage Archivists Roundtable, Native American Archives Roundtable, Privacy and Confidentiality Roundtable, Recorded Sound Roundtable, Oral History Section, Museum Archives Section, Archivists and Archives of Color Roundtable; International Archival Affairs Roundtable.
  - d. Identify major national and international projects and initiatives on this topic. Suggestions include: Getty, Native American Protocols, South Africa, Brazilian National Archives, Australian National Archives, International Council on Archives, International Centre for the Study of the Preservation and Restoration of Cultural Property, International Federation of Library Associations and Institutions, United Nations Educational, Scientific and Cultural Organization,
  - e. Conduct research. Search the Web; search libraries and archives; talk to colleagues, related professions, stakeholder groups, and related organizations (American Anthropological Association, American Association of Museums, Association of Canadian Archivists, American Historical Association, American Institute for Conservation of Historic and Artistic Works, American Library Association, Association of Moving Image Archivists, Organization of American Historians, Oral History in the Mid-Atlantic Region, Society of American Anthropologists, Special Libraries Association, Society for Historical Archaeology); review literature.
  - f. Produce a resource guide with annotations on managing cultural property for archives, libraries, and museums.
  - g. Identify or develop basic definitions for core concepts to be discussed, including cultural materials, cultural sensitivities, culturally responsive care, consultations, Responsible Custody of Cultural Property, and stakeholders.

- h. Identify and review potential best practices already created for other communities:
  1. Develop a work plan and timeline for identification of best practices.
  2. Identify contributors to this research effort.
  3. Draft a protocol for evaluating the best practices, including a checklist.
  4. Work in collaboration with the Standards Committee to evaluate these best practices.
  5. Determine if it is useful to publish reviews or a summary of what has been found in the *American Archivist* for the various best practices that were reviewed in support of transparency of processes.
  6. Consider developing a publication or links page that shares this information via either the Standards Committee or Diversity Committee.
  
- i. Identify models and case studies of culturally sensitive management.
  1. Develop a work plan and timeline for identifying models and developing case studies on management of culturally sensitive material.
  2. Identify contributors to this research effort.
  3. Develop a protocol for evaluating the models, including a checklist.
  4. Work with the Diversity or Standards Committee to evaluate these models.
  5. Using the models, develop case studies.
  6. Work with the Diversity or Standards Committee to evaluate these case studies.
  7. Consider developing a publication or links page that shares these models and case studies via either the Standards Committee or Diversity Committee.
  
- j. Identify and develop protocols/principles for archivists working with cultural sensitive collections.
  1. Develop a work plan and timeline for identifying culturally sensitive collections.
  2. Identify contributors to this effort.
  3. Develop a protocol for review of the final products.
  4. Work with the Diversity or Standards Committee to review and enhance these protocols.
  5. Consider developing a publication or links page that shares these models and case studies via either the Standards Committee or Diversity Committee.
  
- k. Collaborate with SAA's Diversity Committee and the Academy of Certified Archivists to identify definitions and professional competencies for cultural property management in archives and establish a tool kit of protocols.
  1. Develop a work plan and timeline for identifying culturally sensitive collections.
  2. Identify contributors to this effort.
  3. Develop a protocol for review of the final products.
  4. Consider developing a publication or links page that shares these models via either the Standards Committee or Diversity Committee.
  5. Ensure that competences are included in ACA's testing process.

6. Ensure that the resulting competencies are included in SAA's publication and educational programs.
- l. Regularly identify gaps in the existing literature and practices.
    1. Develop a work plan and timeline for identifying appropriate literature and practices.
    2. Identify contributors to this effort.
    3. Develop a process for review of the final products.
    4. Consider developing a publication or links page that shares these models via either the Standards Committee or Diversity Committee.
  - m. Identify experts who might be convinced to write or teach on their experiences
    1. Develop a work plan and timeline for identifying experts.
    2. Identify contributors to this effort.
    3. Develop a protocol for review of potential experts.
    4. Consider developing a SAA links page that shares these experts' names.
2. Make recommendations to the Council on future steps that might be undertaken specifying resource needs, potential contributors, and potential collaborations.
    - a. Advise the SAA Council, officers, and staff concerning cultural property and cultural sensitivity issues.
    - b. Prepare draft statements and positions on cultural property and cultural sensitivity issues.
    - c. Represent SAA on cultural property and cultural sensitivity issues at professional meetings and in professional discussions.

**Proposed Working Group:** We recommend that a broad range of archivists and stakeholders be appointed to the Cultural Property Working Group so that a diverse array of archivists from many backgrounds, geographic areas, and bodies of practice (government, religious, business, academic) are represented. The Working Group should reach out to other relevant institutions, such as libraries and museums, to see if others might join in this effort.

**Suggested appointees:** Elizabeth Adkins, Brenda Banks, Elizabeth Banks, Danna-Bell Russell, Anne Diffendal, Tom Hyry, Rand Jimerson, Heather MacNeil, Ben Primer, Robert Leopold, Kathryn Neal, Richard Pearce Moses, David George Shongo, Carla Summers, Sharon Thibodeau, Joel Wurl, and Helena Zinkham.

**RECOMMENDATION:**

**THAT the SAA Council adopts the following work plan:**

**The Working Group on Cultural Property should proceed with goals and projects, establishing priorities and timelines based on ongoing issues in the Society and the Group's understanding of needs and concerns. The Working Group will:**

- **Identify common ground and roles with the SAA Diversity Committee,**
- **Identify partners,**
- **Maintain communications with allied professions that are wrestling with similar issues,**
- **Identify ongoing projects in these areas,**
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- **Nominate individuals who have made major contributions in these areas for the Diversity Award.**

**Over time this group will serve a role not unlike that of the Intellectual Property Rights Working Group in that this group will:**

- **Advise the SAA Council, officers, and staff concerning cultural property and cultural sensitivity issues,**
- **Prepare draft statements for SAA to issue,**
- **Develop positions for SAA concerning cultural property and cultural sensitivity issues, and**
- **Represent SAA on cultural property and cultural sensitivity issues at meetings and in professional discussions.**

**Support statement:** SAA acknowledges the importance of educating its members about broad issues of diversity as contained in cultural property concerns and SAA's need to provide resources that will guide individual archivists and the profession as we address these issues in our work.

**Fiscal Impact:** Unknown. The Working Group may need to conduct one or more annual mid-year meetings, particularly during the early stages of its work.