# Legal and Institutional Policy Frameworks

## EaaSI Webinar Series 2

## August 12, 2019

**Ethan:** Awesome and we're rolling. So welcome everyone. Thank you for joining us today. My name is Ethan Gates and I'm the Software Preservation Analyst at Yale University. For those who are possibly unaware at this point Yale University is the host of the Eaasi program who is sponsoring today's webinar. Today we are presenting legal and institutional policy frameworks for Eaasi. This is going to be a round table discussion with Sibyl Schaeffer, Brandon Butler and your Eaasi staff lead Euan Cochrane (inaudible). This is the second in a series of four webinars that's going to cover key components of the Eaasi program of work. A little bit of technical housekeeping before we get started. If you have any questions during the presentation please type them into the chat box in your Zoom control panel. Jessica will be in the background gathering them up during the presentation and we'll have time for those at the end so we'll round them up together and I'll present them to our panel. At any point you have any questions feel free to jump them in there and please mute yourself and turn your video off to maximize the quality of the recording. Those things should have happened automatically to you as you came in but just in case please check that. All webinar recordings are going to be made available also on the Eaasi website with transcripts following today's recording so keep an eye out for that for sharing with those who could not join us here today. I'm going to introduce our guest speakers. First up we have Sibyl Schaeffer who is the Chronopolis Program Manager and Digital Preservation Analyst for Research Data Curation at the University of California San Diego. In addition to working with national visual preservation efforts like the National Visual Stewardship Alliance Sibyl helps to find long-term visual preservation solutions for the UCSD campus. She previously served as the head of digital programs for the Rockefeller Archives Center where she worked to fully integrate digital and traditional archival practices including policy development, forensic and accessioning work flows and training initiatives to support the long-term stewardship of digitized (inaudible) digital materials. Euan Cochrane is the Digital Preservation Manager at Yale University Library. In this role he led the team that provides comprehensive digital preservation services across the libraries, archives and museums at Yale University and Euan is also very passionate about emulation and software preservation and has been awarded a number of grants for projects and programs of work that are seeking to expand access to emulation infrastructure. Euan is also originally from New Zealand and would like us to know that he enjoys New Zealand marmite which is extremely different than the British version or vegemite which you might be familiar with. Finally Brandon Butler is the first Director of Information Policy at the University of Virginia library. He provides guidance and education to the library and the user community on intellectual property and related issues and advocates on the library's behalf at the federal, state, local and campus level. Brandon is the author or co-author of a range of articles, book chapters, guides and presentations about copyright with a focus on libraries and the Fair Use Doctrine. Before coming to UVA Brandon taught copyright and supervised student attorneys in the IP Law Clinic at American University and advocated for research libraries across the country at the Association of Research Libraries. He received his JD from the University of Virginia School of Law in 2008 and he is

actually going to get us kicked off today with the broader legal context of the Eaasi program of works so it's my great pleasure to hand it over to Brandon who is going to introduce the code of best practices fe or fair usin software preservation, the DMCA exemption for software preservation and give us a little bit more of the legal background of the framework for Eaasi so Brandon take it away.

**Brandon:** Thanks. Thanks so much Ethan. As Natalie pointed out privately to me I have this light fixture behind me that looks a little bit like an asterisk so the asterisk's reference at the bottom that you should have in your mind is I am not your lawyer. I am a lawyer and I provide sort of education and information but this isn't legal advice, but this is you know sort of locally some policy help and I'm having let's see the mini chat window is obscuring my slide so let me just move that real quick and then we'll be back in business. Okay, so here's the road map. I'm going to talk about the two core policy tools that SPN has helped to develop over the last year and a half or so which I think set the stage nicely for Eaasi to get going. One is the best practices in fair use and the other is the preservationist's guide to the DMCA and so I'll introduce those two tools one last time very quickly and then I'm going to talk about this pivot that we're making right now so we've been introducing these tools for a little while now. You've probably seen me give a kind of overview of each of them at some point or other and I'll talk about what it means to move from just learning that the tools exist to actually using them and then finally by way of example I'll highlight some of the key points in each of those tools that you can look to when you're thinking about how to sort of align your own institutional policies and approaches with the consensus tools that we've been able to develop with SPN. So, the first resource is of course the code of best practices in fair use and this was developed over the course of two years. Our grant runs out in a couple of weeks. It's a little sad to think about that but luckily SPN is going to take on the very important role of kind of owning this document going forward and making sure that it stays kind of relevant and in the discussion for you all and so that we again make that kind of important pivot from just knowing that there's a thing to actually using it. So what is this thing? Well it's a document that was developed in conversation with the community over two years and it reflects the consensus kind of common middle ground position of the software preservation community around how fair use can apply to five sort of common recurring scenarios right so the things that we found in interviewing people on the ground were really the most important situations where over and over again legal issues especially, but most importantly copyright sort of posed a barrier to practice. So once we'd identified those kind of problem areas we developed some consensus approaches in each of those areas to using fair use so that what fair use can do for you is allow you to do things that copyright regulates. So copyright tells you copying, distributing, publicly displaying, publicly performing creating derivatives, all of these are things that copyright regulates and we went out in the community and we heard this very sophisticated group about copyright, you know that the kinds of things that you do are exactly the kinds of things that copyright regulates and what they're use lets you do is do those things without permission or payment right. That's the most fundamental you should understand. You don't have to ask anyone, you don't have to figure out who owns it, you don't have to negotiate an agreement with them if you're use is fair. And so what we did was develop this tool to help people understand which uses are widely considered to

be fair within the community so that you have a consensus what's legitimate, what's okay and that's been a really powerful organizing tool in a lot of other communities so the five scenarios that we talked about in the code are sort of go kind of chronologically through the software preservation process. So the first step is intake, getting something, stabilizing it moving it to a medium that's going to be stable, maybe making a few different copies in a few different places so that there's redundancy in case something fails. All the kind of things that you would do as kind of a step one. After you get a box of floppy disks from a donor what's the first thing you do. We have a principle about documentation that is creating things like screen shots and videos that show what a piece of software looks like. We have a principle about institutional access when can an individual institution provide access for research teaching and learning. Networked access and that's where Eaasi really comes into play where multiple institutions work together to make software accessible in a consortial or shared arrangement. Then finally source code which a lot of folks told us we treat source code a little bit differently and so we tried to break out source code and give it its own principle. So those five scenarios are treated in the code and if you can apply the logic of those scenarios to what you're doing you can know that what you're doing is sort of within the heart of what the community believes to be fair. So that's really powerful. The next tool is the preservation's guide to the DMCA exemption for software preservation and this is a little bit of a different tool. What this tool does is it translates a very wonky and kind of lawyery rule that has lots of specific nooks and crannies and ins and outs. So fair use, the problem with fair use if it's a problem I think it's actually a good thing, but fair use is big and flexible. There's not a lot of details. It doesn't tell you you can do this and not do that and so on and so that can give people anxiety and so what the code does is it takes that big generic idea of fairness and it creates new details that are applicable to your situation. What the preservationist's guide does is almost the opposite. It takes a rule written by and for lawyers that contain lots of details, but expressed in a way that only a lawyer is really going to love to read and it translates that verbiage into something that a human person who's not been through the punishment of law school can actually understand. And they even have a check list that's very concise and if you can go through that check list and check each box that you're within these rules and what these rules allow you to do is break the digital locks that prevent lots of software from being accessed or copied. If it were not for these very detailed rules, if you even though the use is fair even though what you want to do is legitimate there's a provision in the law that says you can't break digital locks period and so in 2018 SPN worked with Harvard's Cyberlaw Clinic to secure this new rule from the copyright office and it now allows folks like you to engage in software preservation including using circumvention breaking digital locks whatever is required in order to get access and copy the content without worrying about that particular provision of the law, but you have to check every box and understand every detail in order to qualify for that exemption so this is a really useful tool. So what we're doing now I think as a community what we need to do now is turn toward implementation of these tools. You know we've had them in the community now for several months and we've been talking about them. I've been telling you you can do this right, this is what the law means, this is where the stuff comes from, here's why you can trust us when we're telling you this is okay. Now we need to get into the nitty gritty of when can

you do this, how can you do this, who are you in the you can do this category. That's where we are now. We're really trying to drill down into that stuff. So let me give you some examples and then we'll get into much more detailed conversation with folks who are actually doing this stuff. In the fair use code you'll find that there's a limitation related to purpose that is everything in the code assumes that what you're doing is in support of research and teaching so if you're opening up an online arcade that's a different enterprise and code isn't necessarily about that and so you need to understand whether your mission is aligned with the mission that's described. There's also in the code an assumption that the kinds of software that you're working with are mostly utilitarian at the core. If you're working with things like art you know video games and literature those feel more like content and there are different kinds of fair use considerations that can come into play then there are for things that are more like tools and so the heart of the code is more about tools than about content. Each principle in the code has some guidance about who should have access; you know the level of access provided should be tailored to what you're doing. There's also a lot of attention to commercial effect for example treating software that's currently commercially available differently. Networks are encouraged to use MOU's and other things to structure their relationships and then finally donor agreements have to be in the mix and have to be respected. And finally because I think I'm getting to my time. The preservationist's guide you should know is much more prescriptive so the fair use code is kind of a guide to thinking and you can think it through in different people and different scenarios might have different outcomes but the rule for the DMCA is hard and fast. You must check every box or you're not in the rule period. End of story. So you have to look at are you the right kind of institution? Are you preserving the right kind of content? Are you doing the right kind of thing once you've preserved the content? If you're not you're out and so it's very important to pay attention to the details of the preservationist's guide. For example a key limitation in the rule the DMCA rule is that if you circumvented the digital protection measure on software that particular title can't be made accessible off premises of the institution that holds it. For Eaasi that's really consequential. It means when our members have a piece of software and they have to crack it in order to make it accessible the rule tells us that software can't leave that member's campus in terms of access. So that's an important thing to keep in mind. So that's kind of an overview of those tools and the moment that we're in and I'm sure we'll get to talk more toward the end but I want to definitely turn it over to Euan and Sibyl to talk more about life and actually using the stuff.

**Speaker:** Great, yeah thanks Brandon that was awesome as usual and that's a great transition into our moderated discussion bringing Euan and Sibyl into this to talk more about how this all works on an everyday practice for an organizational context. So I do want to back up a little bit in our first question so that we can hear a little bit more from Euan and Sibyl and their roles. So speaking more generally Euan, I wonder if you could kick us off by talking about what role software and software preservation plays at your organization and how it affects long-term collection and preservation strategies at Yale.

**Euan:** Sure, thanks both of you. So software at Yale well I guess a really brief overview of what we're doing here we have a lot of libraries, archives and museums on campus that collect all sorts of digital

content including software, but also content that depends on software and we also are a large research university who does a lot of research that has software dependencies within it. So things like scientific experiments that include some sort of software that processes things or that might include some sort of devices that have software in their firmware or baked into the tools themselves. Then as a campus we have all sorts of administrative tooling service things like oh uh our exchange service for email that include content that may have some long-term value that the university might want to keep for records and archival reasons. In general we have huge amounts of digital content that has either software or has intense software dependencies. I think the biggest thing that comes to mind when I think about software and its role in the work that we do in the digital preservation team here is trying to make sure that we have the ability to open digital things or interact with digital content in the original context which to me means using the original software. We wrote a digital preservation policy which I'll post into the chat just now. Whoops that's the wrong one. That's a (inaudible) I was going to reference as well but its right…here we go. In 2014, that links not working either, but our supporting policy five states that the library will have access to hardware and software dependencies of digital objects (inaudible) tools and part of the reason for that is exactly what I just mentioned which is that we want to be able to open things in the original context. For us that means any time we have something on digital or a digital of any form that's in a catalog or finding aid we'd like to be able to enable you to click it and have the object whether it's a single file object or a complex object made up of multiple files opened in the original software. Let's see. And part of that's about authenticity and part of it's about making sure the content itself is still there. You've probably…any of you who've heard me talk before probably heard me talk about the research I did at (inaudible) where we opened files and objects in original software and in a modern software you saw a lot of changes come when you open things (inaudible) and in modern software and it was changes to not just the look and feel, but to the content itself so we saw new content appearing we saw very important changes to the text and the actual content of the objects. So for us it's pretty important to make sure that doesn't happen to ensure that all the things that we're preserving are really authentic and provide strong evidence of what was actually happening at the time. Yeah.

**Speaker:** That's fantastic Euan. I think we're going to dive a little bit more into how that relates to like what Brandon was talking about but I want to be sure to bring Sibyl into this as well so I wonder if Sibyl you could chime in on UCSD's and if you all have had any sort of you know similar equivalents to the policies and the frameworks that Euan has talked about or your experience with incorporating software preservation broadly into digital preservation policy has been any different.

**Sibyl:** Yeah so at UCSD we're not actively collecting software per se. That's something that I actually want to see changed. So we have two…we have a lot of the same use cases what Euan mentioned with special collections and archives material bio-formats that need to be opened in their original software but we also have a lot of research data that we bring in and we actually have collected software that researchers have given us because they feel like it's important to include with that data for one reason or the other usually reproducibility that's a key use case for us. So one of the reasons I actually wanted

UCSD to become involved in the Eaasi process is so that we can start really incorporating software collection development in our preservation workflows and getting that as part of our collecting workflow so that when we bring something into the archives that's going to need special software to view it or interact with it or if we bring in material to research data in we're actually asking the questions you know what dependencies does this have you know what libraries are needed to run this particular piece of software etc. So we're being more proactive about that. Currently we don't have software even mentioned in our preservation policy so these are just things that as we become more advanced in our preservation workflow practices beyond just the normal image video etc., files we want to make sure that we are kind of capturing the information that is unique to software itself and also making sure that we're actively collecting software if it's needed.

**Speaker:** Awesome, thanks Sibyl. I'm really interested in hearing from both of you because it sounds like I mean in the OAF model I don't want to get to in the weeds on OAF but the model does consider software part of…it's seen as representation information considered part of the overall package to be preserved with any digital object. Again not to get too into OAF language about it but I mean we're…that's both…basically what both of you are saying you either do or want to do is consider this entire sort of software environment and dependencies around an object, part of that object. Is there a way to go about doing that or could there be, should there be a way for digital preservation systems to model that without I mean literally duplicating the entire you know…when we're talking about software that's possibly shared as it's dependency across many, many, many other digital objects is there a way to do that without literally duplicating data across packages. I'll keep that open, yeah. Sibyl.

**Sibyl:** Yeah I think from my perspective it's not necessary to include software that is commonplace like you know Microsoft software for example in every single archival information package but instead perhaps have one copy of it in your preservation storage system that's been pointed to from each (inaudible) and then also perhaps working copies. One thing that I would love to see and I think SPN is working towards this is just having some sort of resource that you can also point to that states we have you know we're responsible as an institution we're agreeing that we're responsible for maintaining these particular pieces of software so that not every institution even needs to make sure that you know they have a working copy of Microsoft Word 3.x. So I think that is definitely something that as a community we can work towards. As far as you know what we actively would decide to collect versus what other institutions are preserving themselves. I think it's really the software that is not commonplace that we might want to run an emulation environment. I mean an easy indicator of that is if you're not familiar with file extension you know and you have to go look it up and then if it's not even…if it doesn't even come up in the Google results and you have to do more research that's an indicator that that's something that is a little more rare and that you might want to explore actually collecting. For our research data a lot of that is long tail software so stuff that comes in with the data itself but then when I've dug into our research collections and seen what software they use it's either generate the data and then kind of followed that trail I've come across little pieces of like well I don't know if they're little I haven't

looked up the actual source code but pieces of software that are very niche particular to very small scientific community you know the website that it's based on and it's not even in GitHub it's in a website that looks like it was produced in the 2000's and that immediately is kind of a cause for concern because then you have to start asking questions about well how is the software maintained, how long can we expect it to be maintained if something else supersedes it, will it continue to be maintained, how long is this website going to be available to grab the software etc., so there's actually quite a bit of research that needs to be done for these long tail pieces of software and because it's things like the case that I just described I think would be definitely a candidate for collecting.

**Speaker:** Great, yeah. Thanks again. Euan do you have any thoughts on shared components and ways of addressing that?

**Euan:** Yeah I've had a lot of thoughts for a number of years actually. I'm going to post a couple of links into chat. One of them I actually posted earlier but basically I echo what Sibyl has been saying. I think what one of the things we're producing in Eaasi is a API which will allow you to look up and see whether there is something in the network that could open your file or interact with your file or which things in the Eaasi network could do that. And I think using that and integrating that into your (inaudible) and just workflows could be quite useful because then you can confirm that they're…you can associate the identifiers that will be keeping and coining for all the software that we're preserving in the Eaasi network and by we I mean all the organizations that are participating in Eaasi or that will participate in the future. You can just confirm that it's (inaudible) associate (inaudible) with whatever your object is and keep (inaudible) in your archive. If you wish to you could potentially participate as well and take copies and store them off the software and store them locally but there's not necessarily a need to provided there's…the software is being preserved and maintained and (inaudible) is being maintained by somebody. The second link I put in there is to (inaudible) 2012 about this exact process like how…how emulation might be integrated into business as usual workflows and the first one is a (inaudible) to the DPC which references the idea of representation information (inaudible) information systems model and how software and format and software obsolescence both fit into that. One of the things I point out though is you could…I personally think the software really is part of the object. It's my opinion about it but it doesn't make practical sense to include a copy of the software with every single object in your archives because that's a lot of redundancy. You could do it and to an extent we are doing it because if you look at something like a Word document and you unzip a modern Word document they're just zip files there's a bunch of files inside of that which are replicated in every single Word document out there and we really probably don't need to be doing that but we are because that's the way the model works at the moment and so it wouldn't be against precedence that's been set by things like word to keep a copy of the other software files the executables and the other dependencies with every single object as well. Of course it's not the best practice and I won't certainly recommend that.

**Speaker:** Great. Yeah I'd want to take what you all are talking about in terms of I mean these great discussions around technical and policy decisions that you're really having to make depending on the collections you're looking at whether it's the research data that Sibyl was talking about whether it's you know a Word file in front of Euan and…and bring that again to…to…to the advocacy at your institutions and how you know the legal context that Brandon mentioned sort of is sort of how that paves the way perhaps we need to actually perform this work that you're discussing. Given that these documents you know have only existed for a year about roughly at the most was there work that you all had to do at your constituencies at your communities to…to pave the way for this? Have those documents affected how you perform you know advocacy and legal context at your institutions since they came out but actually encourage the enforcement and the implementation of these policies that you're talking about? I think I'll kick that to Sibyl first if that's alright.

**Sibyl:** So we actually haven't had yet to implement policies around software collection and that's mainly because the software that we bring in with our research data was software that those particular researchers wrote and all of the research data is considered property of the University of California regents so there's no real transfer in ownership there. But the push in the scientific field right now concerning the data preservation and reproducibility really will…is something that I plan to highlight when establishing more effective ways of collecting research…collecting the software that's not considered using UC regents property so that we actually have a way of reproducing these scientific findings and I think that's going to help a great deal and once we have kind of those pathways established we can then start investigating materials that are coming into our special collections and archives and seeing what kind of special emulation needs that they will have. Those ones are more likely to be general commonly used types of files and less likely to be…require software dependent in the same way that research data is you're not running the software to produce a particular type of result in most cases but they will…there is software…there is file formats coming in that we'll need an emulation environment a specific emulation environment provided for them. And in that case I am ecstatic that these documents have been pushed out in the field and I've started highlighting them to other folks in the library like our scholarly communications library and so that we can all be kind of aware of the best practices when it comes to providing access to software of any type. And I'll pass that along to Euan.

**Euan:** (Inaudible) I think the most important thing is that the fair use guide has really been fundamental to some…enabling us to do…well not enabling but highlighting the legality of what we're trying to do or what we are doing with the Eaasi program of work. You may not know the background but…or this background but the Mellon Foundation funded us at Yale to do some pre-work for the Eaasi program at the same time as they funded the work that Brandon and the team did on the Fair Use Guide. They were deliberately planned together I'm sorry at the same time as the Sloan Foundation funded the Fair Use Guide and then Mellon and Sloan together funded the Eaasi program of work and the pre-work was deliberately planned to be done together because the funders understood that we really needed to have a strong legal framework to do the kind of things we're doing in Eaasi. And I'll point to some of the

things that Brandon mentioned like the specifics in their document about network access or network preservation of software and network access to software that's been preserved in other organizations which really are really important to make the Eaasi program successful. I think what's going to be interesting in the future to…to go off on a slight tangent will be what happens as we…as other jurisdictions nationally are interested in either participating in Eaasi or having their own implementations of the Eaasi software in their jurisdictions. Are we going to be able to share environments and software across international boundaries? It's an interesting question. Then regardless to bring back to the question that Ethan asked…Sorry Sibyl were you going to say something?

**Sibyl:** Oh no sorry. Somebody just stopped by my cube.

**Euan:** Well to bring it back to that we've been…we actively use the document the Fair Use Guide to explain to our lawyers and our general counsel why we think this is legitimate and to reassure them what we're doing is legitimate and to get their approval for what we're doing and that's been just wonderful. I think the other things we're doing at Yale in terms of working with our local communities include…over the years I've talked to (inaudible) quite a lot about the need over time to identify software dependencies as we excision stuff and that is an ongoing conversation and we actually have a group at Yale, advisory group for local stakeholders in the Eaasi program in software preservation and emulation in general. Ethan actually is an active participant in that if you want to say something about that Ethan.

**Speaker:** Uh yeah I've been with the group (inaudible) a little more background but Seth Anderson and I put together and just of pulling together various stakeholders possible participants…people who would be interested in employing Eaasi to access to their collections or in some sort of way in their work. So just I mean broadly speaking that includes digital humanities practitioners, music librarian, digital archivists, social science and then we're constantly thinking of ways to you know possibly expand that group in terms of who else we should be pulling in who would…who would have a stake and want to comment on what Eaasi could do for them but yeah and…and then more broadly even speaking about like whether it's Eaasi or just some other emulation solution you know just expanding our idea of like what emulation can do for libraries and archives. It's been…it's been really positive to be able to you know hear those voices from people who either would want to use Eaasi themselves or just benefit from it. But get those use cases. Yeah.

**Euan:** I notice I guess Jessica has posted some stuff into chat that Brandon might be able to talk to in relation to the international context.

**Brandon:** Yes. So the most immediate international work that we have going on is there are a group of Canadian universities who have long been interested in sort of importing the Fair Use best practices into the Canadian context and this is a sort of a long running goal of theirs because Canada has an analogous legal provision they call it Fair Dealing but it works very much the same basic way and about three,

four, five years ago there was a series of judicial opinions in Canada that opened up Fair Dealing so that it looks much more like American Fair Use than it did in the past and so they've been taking more active steps amongst this library group to investigate whether and how to more or less say we believe all of the U.S. Fair Use best practices apply under Canadian Fair Dealing Law but they're starting with the software code because I was very flattered by this. It is A it's the most recent but B they feel like it's just really strong like it's…it's a very compelling Fair Use case that is right at the heart of library mission and so they're going to start with this particular code and they've…what they've been doing is exploring the community in doing basically reproducing the first stage of our research by saying do you guys meet fair dealing or no and everybody saying yeah, yeah we do we're actually…there's a lot of things we like to do that we could do if we understood better how fair dealing works. When they wrap that up in the coming next few months then once they've shown the need we'll start working on doing the kind of import but I think that's really cool and then I think everywhere all of the other countries have things that are not quite Fair Use but that are limitations and exceptions and I think there's work that they need to do to explore what's possible and we'll definitely be looking for ways to help them do that.

**Speaker:** That's awesome, thanks Brandon that's really exciting to hear about you know these principles expanding and then possibly being able to work together on cross-cultural…it'll cross international boundaries. I'm going to keep with you. I do want just to remind everyone in the chat and everyone listening that again in a few minutes I want to hopefully kick this over to audience Q&A so please if there's any questions that have come up during this session if you have any questions now please post them in the chat and we'll pose them in a few minutes to our…our esteemed panelists here but I want to stick with you Brandon and then go back a little bit to your last slide and basically the what's next and what your thoughts are on advocating in the community more broadly. I mean what besides where do you want to get to where you don't have to keep giving this presentation over and over again. What would you like to see happen in terms of advocacy or around code and around the exemption in the future.

**Brandon:** Yeah so you know really two things need to happen and they happen more or less in this order. You know the first thing that needs to happen for one of these codes to be successful and we've seen it. The one where…the community that is kind of like the paradigm case of…of true total victory is the Documentary Filmmaker's Community. They had a code of best practices that they developed about oh gosh now it's more like eleven or twelve years ago and what happened was the first thing that needs to happen is that folks need to sort of understand that this can work for them and that in a way there's a certain…there's a culture of copyright skepticism which is absolutely reasonable and that I'm a part of in many ways you know copyright is too hard, it lasts too long, it's written by people who don't always know what we as cultural institutions care about you know. There's all kinds of problems with copyright, yes, true and then the question though is are you going to let that copyright skepticism sort of drive you to pessimism and…and apathy you know or sort of a sense that like you know the law is never going to be good for me so I'm either going to be you know there are the outlaws right and we

know who those people are and they're proudly saying you know I don't care about copyright I'm just going to do the right thing and they kind of take a lot of joy in flaunting or feeling that they're flaunting the law. Or the folks who are just sort of scared and feel like well I'm a law following type of person and the law doesn't help me so I'm just not going to do anything. We got to get past that and to I think the attitude that now I think filmmaker's certainly have which is yeah copyright is messed up in a lot of ways but Fair Use is for me right like Fair Use is actually exactly for me. It has features that fit perfectly to the work that I do and I understand it and I understand it well enough that I can use it and get my job done and I feel bad for everybody else who doesn't have Fair Use yet or can't use it and definitely copyright needs reform but for me I'm confident and comfortable that the Fair Use works and so that's where we need to get. The first step is kind of confidence and comfort and relatedly maybe it's not quite the second step. Maybe it's like step 1B is getting past the you know yeah we have a tool, there's this thing I heard about it it's going to be great and into like reading it and seeing you know well what's in there like is it…so can I do just whatever want now because there's a book and it says archives and libraries can save software together or are there contours you know like what are the outlines of the rules that are in there that are helpful to me and we always write the codes in a way to be flexible and so it's not the case that you're going to learn and memorize you know 30 percent or 10 pages or whatever kind of crummy rule of thumb it's never quite that easy but it teaches you a way of thinking but you have to read it to learn the different ways of weighing the considerations that go into a Fair Use decision and in those five scenarios we give you a way of thinking about each scenario including limitations for that scenario that you can bring to bear. So that's where I really want to get is I want to get people like feeling good about the thing and then reading it and then feeling better and feeling even better like read it and then well yeah that's great now I really know it now I'm really excited about this thing so that's…

**Speaker:** Yeah I wonder if Sibyl you specifically mentioned sharing the code with people at your institution. Have you heard anything back from and what's the response like. Do they actually read the whole thing? Do they have more specific questions of the kind that Brandon's talking about? What is it like when you share this document with others?

**Sibyl:** I think they probably have not read it but generally do have excitement about it and I think there's a lot of excitement about the Eaasi project in general. We're going to have a presentation for the library as a whole on it and our participation and demoing the software a there's a lot of excitement about that and this work is really the underpinning of why we can do that so it will be something that's highlighted during that presentation and hopefully that will spark folks to actually dig into it and engage with it.

**Speaker:** Yeah and I know here at Yale I mean well Brandon can basically…did the…this presentation to the advisory group that we mentioned so that I say again is a very similar experience. I don't know that all those people actually read through the whole thing but just our sort of presence here on campus I think sparked a lot of excitement and confidence in this being the thing that yes we can do. Euan do you

have any thoughts on specific advocacy and sharing the document or ground level response from talking over these principles with people over why we're able to do what we say we're going to do?

**Euan:** I mean when I've done a few talks internationally about this and if we're honest was really envious about the U.S. which is really good in some ways because the whole Fair Use provision is really making things possible but currently aren't as easy as other parts of the world and it's going to give us a leg up as an archival community to get ahead on these kind of things and do things like integrate software preservation and software as an object as part of our digital preservation systems in ways that other parts of the world may struggle to do for a while and that's kind of amazing.

**Brandon:** Yeah in addition to being like a copyright skeptic I'm also right like a good internationalist, globalist, lefty and so I'm not always proud of U.S. law and U.S. copyright law in particular can be pretty gnarly but Fair Use is something that we can sort of be proud of and I have kind of a meta-project of all of the things that we do with Fair Use in the U.S. are like a showcase of the value of this kind of flexibility and part of what I would love to see is other countries saying we need something like Fair Use because otherwise we're going to lose our digital heritage you know like this is obviously working for the U.S. and we seem to be stuck and Fair Use is definitely the tool that makes a big difference for us.

**Speaker:** One thing we can be proud of. Yeah I'm stretching it out a little bit. I'll just keep taking questions to people if we don't get anything in the Q&A but please, please if anyone has any thoughts that they want to post directly to Sibyl or Euan or Brandon just put in the group chat now and I'll try to get to it before the hour is up. Oh Euan you have a thought?

**Euan:** It might be more confusing than clarifying but I'm hoping it's going to clarify something I mentioned earlier. If you open up a Word document as docx or PowerPoint document as a zip file it changes it's extension and open it you get a bunch of files in there you see them…you'll see once you look at them you can read them all you can open them and read them. There are really instructions for the computer to interpret to produce some result through the input and output through the screen, through the speakers and what have you there as much a part of the instruction set for producing that performance that we see on screen when we read a word document or interact with a word document as the other software files are that are sitting in the other parts of your computer's hard drive and I think that…all of that is part of the tooling that makes the content available to the end user and I think looking at a word document like that I think it's a nice little demo you can get to show that really the software is part of the object it's even part of those…the software itself the instructions that instruct the computer are actually in those files as well they're not just in the software that you install on your computer and each of the files you create you see that software so it's really good…yeah I'm repeating myself a little bit but it's a really good illustration of the fact that software is part of the object.

**Brandon:** Well when I was getting involved in this community a couple years ago and kind of learning

my way around the theories that inform software preservation and that was one of the light bulbs that went off for me was when I saw the notion that digital files are written to be read by computers first and then the computer sort of shows us something so unless we have all of the tools that the computer needs to read the digital file right we can't read the file it wasn't written for us it was written for our computer to read using an array of tools. That was kind of a revelatory moment for me and it's a similar kind of insight I think that this is a package of stuff and if you're missing any part of the package it's really not something you can read.

**Speaker:** Hopefully we can turn that back right and use computers to our advantage to start reading these things for us and maybe generating more figuring out systems that pull out more of what is useful by them of them for them for themselves. Yeah because that is going to be part of it. Do we have any questions? I see…yep Jessica is pinging everyone again in the chat if you have any questions for Brandon, Sibyl, Euan. I'm reminded I mean all these questions get captured as far as the recording so even if we you know can't get things anything today you know those…those get captured and hopefully will get addressed in a future webinar. Do any of our…I mean thank you Euan for following up on your earlier thought that you wanted to expand on. Is there anything else that any of our panelists want to clarify, wish you had a little more time to talk about that we've already covered?

**Sibyl:** I actually have a question for Brandon and then I think it will be interesting to hear Euan's response to it as well but how do you see the code of best practices playing into software offered as a service? So software that you don't actually have any control over the bits of but you actually access via the internet and Euan I guess for you that part of the question that I'm interested in is how you see working with that software to provide an emulation environment?

**Brandon:** That's a great question and it's…it's…it was…it was sufficiently pressing in our conversations that we ended up if you…if you look at the code there's a little afterward that's almost kind of sad that's like you know there's a lot of work to be done on our collective digital heritage. There's a mountain of existing material that we can all save using Fair Use but when it comes to things like software as a service my paradigm case is always like Google Docs if you don't have it physically somewhere you can't save it and Fair Use…there's actually court cases about this. You can say like Fair Use says I can copy that but if you don't have it you're out of luck and you know we can't sort of go to Google and say no, no, no don't you understand I have a Fair Use right to preserve the version of Google Docs that you're using right now. They'll say that's fine but you don't have a Fair Use right to intrude on my servers and take a copy away from them right like that's a different set of rights so as long as they sort of retain physical custody of the software and we can't physically get it we're…that's a different kind of a fight so that's where…that's almost a political question where we have to figure out how do we work with the people who make these big networked software you know packages and get them to work with us in a cooperative way so that we can get access. One thing I'll say though I got…I've…I've learned that the…not everything that looks like a subscribed piece of software is necessary and y'all probably know this better than I do but when…when the Adobe Creative Suite threat

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you know of a law suit thing blew up on the internet a little while ago where it said you know if you don't update your Adobe Creative Suite you could be liable. I have thought that Adobe Creative Cloud was similar to Google Docs but I'm not a user of that software and it was only when I actually dug down a little bit that I realized some of these allegedly cloud services are just auto updated things but there's still a piece of…there's still a package on your computer right. The main thing is if you physically have custody and from my point of view you know something like an Adobe Creative Cloud Suite if you've got it on your hard drive you can turn off the update function and keep it and preserve it like I don't think the fact that you've got a cloud contract or whatever means that you couldn't preserve it. You know we could get into it…it...it…there's some nuance there but the bottom line is physical custody is a separate issue and if you don't physically have the thing Fair Use won't get it for you.

**Euan:** I just…(inaudible) just say the University of Freiburg (inaudible) behind the emulations of service technology that has Eaasi they have been doing a lot of research and development around preserving networked environments and (inaudible) environments that are networked together but isolated from the rest of the incident so technically that's possible and that technology will be coming to Eaasi and to the public domain…well open source versions will be available in the future. Getting the access as Brandon talks to to that software is going to be the challenge and I'm just thinking out loud but one of the things some of us might be able to do that are already subscribing to these services is organizations is trying to work to get some sort of provision (inaudible) agreements with them. We're…we're…places like Yale have fairly big contracts with these organizations and we might have some leverage (inaudible) especially if we banded together. There are technical challenges to doing that but I suspect with the smarts of the organizations involved that they ought to come up with some reasonable at least middle solution.

**Jessica:** Just basically to add to Euan's comment about different intervention points that we currently have available versus long-term sort of negotiation in building relationships with representatives from professional groups like the Business Software Alliance and groups like that BSA and other representatives were also present at the…the copyright testimony that took place in DC in the spring when those were part of the exemption process so that…that's an interesting point that Brandon might speak to now or in the future but I'll just say that in working with the Cyberlaw Clinic the…and Harvard one of the semesters the students worked on this so they looked…they talked to some CTO level folks at large institutions about what that negotiation process is about and where it would be appropriate and how it might be appropriate and incorporate that as a term of negotiation for an enterprise license so more information to come on that. Maybe we can release a subset of that report that the students completed that semester if that's of interest of everyone.

**Speaker:** Thanks Jessica for that. Yeah I think we're…we're just about running out of time so if…if there's anything else our guests really pressingly want to cover before we wrap up. Sounds great. Well thank you again for all of our attendees for listening in. Thanks to Brandon, Sibyl and Euan for talking with us today. We really appreciate it. And again I want to remind all of our attendees here today that

you can join us next month in September for our next episode in the Eaasi webinar series that's going to be entitled Metadata Modeling and we're going to be joined by Michael Olsen from Stanford University. Your Eaasi staff lead will be Seth Anderson, Eaasi program manager and we just thank everyone again for joining us and we will see you next time. Have a great Monday.

**Sibyl:** Thank you.

End of audio.