NATIONAL INITIATIVE FOR A NETWORKED CULTURAL HERITAGE
NETWORKING NEW VISIONS FOR THE ARTS & HUMANITIES

NINCH HOME PAGE	ABOUT NINCH	WHAT'S NEW	NINCH PROGRAMS
	ONLY FOR MEMBERS	CONTACT NINCH	Join NINCH

NINCH PROGRAMS

Information Exchange
Tools for Today
Future Environments

SITE MAP

SEARCH OUR SITE

HEADLINE: **COPYRIGHT TOWN MEETING: Chicago, March 3, 2001**

Licensing Initiatives for Scholars and Teachers:
Contributions from the Copyright Industry and Other Resources
College Art Association Conference

Meeting Report

AGENDA:

Robert Baron and David Green, Introductions

Renate Wiedenhoeft, Saskia: Licensing Digital Art Images for the Educational Community

Jennifer Trant, AMICO: Providing Educators Access to Museum Documentation

Carol Ann Hughes, Questia

Robert Panzer, Visual Artists and Galleries Association (VAGA)

Thomas W. Bower, A User Friendly Image Publication Use Request Form.

Discussion

Introduction
Robert Baron (see Complete Introduction)

Mr. Baron welcomed the participants to the fifth annual NINCH/CAA Copyright Town Meeting and the first of the 2001 Copyright and Fair Use Town Meeting Series.

One effect of the Digital Millennium Copyright Act (DMCA), Baron noted, will be that digital content of importance to the CAA community will likely be delivered under the mantle of licenses. Rather than investigate an issue from multiple viewpoints, as many town meetings have done, this town meeting would investigate in some depth the products and distribution mechanisms established by several agents in providing access to copyrighted cultural heritage materials, specifically for educational and scholarly use. Rather than critiquing licensing as an economic instrument for distribution, the meeting would give several producers the opportunity to describe their products. Baron proposed the question: do the new products and distribution mechanisms offer benefits to the community, or do they inhibit

the realization of our goals?

David Green

David Green placed the meeting in the context of the ongoing series of NINCH Copyright & Fair Use Town Meetings and referred participants to the summary report of the 2000 series. Copyright is key to NINCH's mission; without an intellectual property regime that "allows us to do what we need to do lawfully and economically," he said, efforts at building a networked cultural heritage will be in vain. NINCH members represent the wide spectrum of creators and users of cultural property. Questions of ownership, guardianship, access, use, revenue, and theft will continue to be sources of heated debate within the community. This arena is about law and economics, but perhaps fundamentally it is about practice or how we behave. Does practice abide by law or do laws follow evolving practice?

Many suggest that before rewriting the laws, practitioners need time to analyze the range of new, alternative practice. A seminal National Academies report, The Digital Dilemma,1 noted that the same technology that is making information available more quickly and completely also has the potential to destroy the delicate balance between public good and private gain that emerged from the evolution of intellectual property law started in the U.S. Constitution. Thus, in addition to imparting basic knowledge about copyright law and suggesting practical short-term solutions, organizers and participants of Town Meetings also strive to be a part of the long-range exploration of solutions to the digital dilemma. Essentially, the meetings have been about devising strategies and combining resources to help us create the immense digital exploratorium at the heart of our mission.

PRESENTATIONS

Renate Wiedenhoeft, *Saskia: Licensing Digital Art Images for the Educational Community*

Saskia has been a pioneer provider of art history slides since 1966. It first introduced site-licensing agreements for digital works to the educational community in 1994. While several institutions resisted the notion that they should pay to use images they considered to be within their definition of fair use, Saskia pushed ahead, signing up universities one at a time. According to Wiedenhoeft, many signed on because they decided the benefits of providing students with high quality digital images outweighed the "discomfort of agreeing to some restrictions." This dispute recalled the issue of Saskia's introduction of color slides: while some museums feared the competition, others preferred having the very best reproductions of their works available; and while some scholars maintained they weren't interested in images, others used them avidly.

The Saskia site license agreement was carefully drafted to strike a reasonable balance between the rights of museums and those of educators. It has been scrutinized and revised through comments by faculty, visual resource professionals and legal council on various campuses. Use of digital images ranges from small individual projects to "empowering students at 74 state institutions in Ohio to work and study with digital images". The agreement was designed for networked use on campuses, and images licensed from Saskia can be integrated with images from other sources as long as the site is password protected. In the early days, art and art history faculty and visual resource curators dealt with licensing procedures, but increasingly, library and electronic acquisitions staffs initiate the process, thus expanding access to digital images to the entire campus.

Why license digital images from Saskia? Wiedenhoeft posited three reasons: quality, availability, and service. Quality is essential in supplying digital images, although the range in demand for quality across the community is wide. Many users simply want subject matter without high image quality, while others want to see high-resolution detail and accurate documentation. Saskia now captures 18-megabyte digital files and is introducing digital slides. By early 2001, Saskia made available 12,000 digital images (about half of its archive) with a maximum resolution of 2,000 x 3,000 pixels. Many of its images have been scanned and re-scanned five or six times since 1994, to keep up with new scanner technologies and to meet demand. Saskia plans to re-scan all photo-CD slides and will provide them for users who renew their site license from the initial five-year term to a perpetual term.

A new fee structure is based on four factors:

- the maximum image resolution desired,
- number of campuses covered under the site license agreement,
- the total number of students at those campuses, and
- the number of images ordered at one time.
- Images are offered in three formats: JPEG files (in multiple resolutions), MrSID files (in a master resolution, as well as JPEG derivatives if desired), or a TIFF master image file.

Saskia is working to improve its website to make it a useful tool for its clients and towards direct downloading of digital images.

According to Wiedenhoeft, Saskia sees itself as the mediator between the artist and the scholar who interprets the artist's work. The work of art , according to Berenson, is the "event" and technology is merely the tool that presents the work accurately. Free images of doubtful quality on the Internet can be informative, but there will always be a need for high quality images that reflect true colors, and approximate the experience of the museum, because clear and accurate visual evidence leads to insightful and inspiring interpretation.

▲ Back to top

Jennifer Trant, *AMICO: Providing Educators Access to Museum Documentation* (See presentation slides)

The Art Museum Image Consortium (AMICO) was created in 1997 as an independent, not-for-profit consortium of organizations with collections of art collaborating to enable the educational use of museum multimedia documentation. The AMICO Library is being built as a centralized digital educational resource that is licensed, under subscription, to universities and colleges, public libraries, elementary and secondary schools, museums and galleries. The consortium enables educational use of digital museum documentation (much of which was previously unavailable beyond the walls of the museum) and encourages educators to use museum collections that they rarely had access to in the past.

In outlining the rationale for this museum collaboration, Trant said that AMICO is committed to streamlining educational rights administration. Rather than requiring licensing of individual works, AMICO administers standard educational licenses to the entire AMICO Library. University license agreements were developed based on the principles articulated in the Museum Educational Site Licensing Project (MESL) and tested and refined during a University Testbed Project in the 1998-99 academic year. Distinct licenses for primary and

secondary schools, for museums and for public libraries have been developed, to ensure that each community can make the uses it requires of works in The AMICO Library. (All AMICO Members are also licensed users of the Library.)

AMICO subscribers are institutions, not individuals, so access is free at the point of use, and no limits are placed on the amount of use. Agreements are not strictly speaking site licenses as material can be used at any physical location. Trant reported that, so far, one million undergraduates at 140 schools in North America have access to The AMICO Library. A consortial subscription through the JISC covers an additional 1.4 million students at UK universities.

Such licensing of a growing digital collection is possible because AMICO obtains necessary rights for all content in its Library. As part of their membership agreement, museums provide AMICO with a non-exclusive right to license their digital documentation for a prescribed range of educational uses. AMICO clears other rights prior to making the Library available. It has developed an agreement with the Artists Rights Society (ARS) that allows the inclusion of a groundbreaking number of modern works of art, and is working with groups like Antenna Audio to include other material (see, for example, the press release on an agreement with Antenna Audio).

Trant declared that AMICO has been firm in its commitment to offer all subscribers and members the same license terms. Success as a consortium, she said, depends on equal treatment of all participants, and the resources otherwise devoted to wrangling over legal language can be used more productively. The full text of AMICO's licenses and membership agreements, can be found on AMICO's web site, along with detailed documentation about access and use of its Library.

Membership in AMICO is open to any institution with a collection of art and now comprises 31 museums. Some of the additional benefits of the consortium, Trant said, include increased awareness of standards and their role in the preparation of quality digital documentation; an accelerated growth in the interchange of information across the communities represented; a new forum for museums to discuss issues like intellectual property management; and the building of links between museums and users, and among staff and curators within institutions. This has helped, for example, in enabling museums to understand the kind of products that users most want.

AMICO does not deliver its library itself. Rather, it partners with organizations experienced in providing information services to specialized communities. AMICO currently has distribution agreements with the Research Libraries Group (RLG) and the Scottish Cultural Resource Access Network (SCRAN). See http://web.archive.org/web/20041023091641/ http://www.amico.org/distribute.html for further developments.

Trant stressed the point that the AMICO Library is not simply an image database; it contains all kinds of collection documentation in many media including images, texts, sound bites and multimedia. AMICO's focus has been on finding ways for museums to capture and leverage the vast quantity of information and knowledge within their collections. We are creating a new kind of publication that does not have an analog corollary.

Some of the key Intellectual Property issues AMICO has worked on include: developing common agreements with rights holders (including AMICO Members, ARS and individual artists); defining educational licenses that meet the needs of different user communities (primary school uses are quite different from university uses); defining agreements with distributors to integrate The AMICO Library in to their digital resources.

Trant concluded by commenting that AMICO had addressed these issues within a collaborative, not-for-profit environment, and hoped that through working together we can

create a new system for delivering intellectual property that fits the needs of users and providers.

▲ Back to top

Carol Ann Hughes, *Questia*

Hughes' background in academic libraries brought a unique perspective to the meeting and introduced Questia as "a revolutionary online library for students to create high-quality research papers." Unlike AMICO, Questia is an individual subscription service, rather than an institutional licenser, that allows users to search and utilize full texts in a collection of 60,000 books and journals (with a goal of 250,000). So far, the collection is focused in the humanities and social sciences and the target audience is undergraduate students in core humanities courses, particularly those enrolled in community colleges and schools with small libraries. Questia has created research and organizational tools to interact with the texts that address students' research processes from start to finish. These include reference works (dictionary, thesaurus, and encyclopedia); highlighter, margin note, and bookmarking; and a cut-and-paste function with automatic bibliography and footnote creation in students' chosen formats.

Questia has signed up several commercial and academic publishers, including Oxford, Harvard, and Duke University Presses. Publishers are mostly concerned that Questia's marketing be a complement to their own sales to university libraries. They do not want Questia to compete with them for university library purchases. Questia provides a second revenue stream for publishers, rather than supplanting libraries; therefore site licenses are prohibited. Students can purchase a subscription for as brief a period as 48 hours, and as long as one year. Then they may use the service 24 hours per day. Royalties to publishers are calculated based upon per page use. Every time a user looks at a page, the publisher is paid a fee.

Hughes described the central role that copyright law plays in Questia's collection management process. Once a team of acquisitions librarians selects a title for the collection, copyright ownership must be identified. With its own copyright research office, Questia makes every effort to secure digital copyright permission, either from authors or publishers, before digitizing, XML encoding and integrating the text into the collection.

She noted that currently images are included in texts, under subsidiary rights agreements. Images cannot be separately reused or currently searched.

Robert Panzer, *Visual Artists and Galleries Association (VAGA)*

VAGA is an artists membership organization and a copyright collective, formed 25 years ago. It was the first copyright clearing house in the United States to administer reproduction rights for fine artists, rather than graphic or commercial artists. It now represents over 500 artists in the US, and through international organizations, represents 2000 foreign creators. VAGA administers reproduction rights for its member artists, but is also an artists rights organization that communicates information about copyright to the public, and lobbies

congress on its members' behalf.

Panzer began with a brief definition of copyright. From his perspective, copyright is fundamentally about originality and creativity in a work of art, although these issues are always debatable. Who requests permission to reproduce works of art from VAGA? Publishers, museums, film and television companies, poster producers, and writers and scholars all come to VAGA.

Panzer stressed that the most contentious area in granting permission is for scholarly users because of the fees involved. VAGA wants to make it affordable for scholars to use artists' works. He suggested that scholars should plan on acquiring rights from the beginning of a project, not when all of their other research is complete, both to streamline the permission process and perhaps to lower costs. He suggested that scholars and others first approach VAGA, before contacting publishers or museums, as the Association has many images in its archive and generally charges less than a museum. If a user is trying to get permission to use contemporary or modern art, it is important to discover who owns the rights and it will more likely than not be the artist, not the museum. As VAGA is a cooperative, the rights process is streamlined.

Another issue to consider when requesting rights to reproduce a work of art is the nature of the "underlying work." Does the museum hold the copyright to the original work or to the photograph of the work (i.e., the derivative copyright)? If they only have the derivative copyright, a user still has to go to the artist or copyright holder of the underlying work. Panzer reminded the audience also that the more copies of an image are in circulation, the more negotiable the rights/rental fees usually are.

Finally, in assessing fees, VAGA takes individual circumstances into account. Scholars are in the best position to negotiate fees for rights. Panzer called for civility in the process.

▲ Back to top

Thomas W. Bower, *A User Friendly Image Publication Use Request Form*.
(See Discussion Document: includes "Information To Help Reduce Image Use Fees"; "Image Publication Use Evaluation Guideline"; and "Fair Use Evaluation<"

Tom Bower oversees copyright issues as a member of the Smithsonian Institution's Rights and Reproductions Committee (SRRC). For many scholars, the expense of acquiring the rights to images for publications is often more than they make on the publication. However, some American organizations have different fees for commercial and noncommercial projects, although many organizations charge use fees simply to cover their own costs. The aim of the SRRC is to balance "public service" to scholars with institutional budgets.

To that end, the Committee on Intellectual Property of the College Art Association has drafted a document to guide users through the permissions process. Users often do not provide enough information when requesting rights to justify a reasonable fee. If they successfully demonstrated fair use, they could get fees waived or decreased. Scholars often rely on copyright laws, and they do not realize that the application of fair use is very much a judgment call for rights administrators. If users would expend some additional effort, they might see lower fees for scholarly publications.

Bower and the IP committee are currently reviewing the document with the goal of making it

a useful tool for users. He invited attendees to analyze the document and then to share their comments with him at bowert@nmah.si.edu. Bower stressed however that this was intended more as a prompt to the permissions seeker to supply the right information rather than to necessarily affect contracts.

Discussion

Max Marmor facilitated the question-and-answer portion of the program. With regard to the above discussion about rights and permissions, Brad Nugent, Assistant Director of Imaging at the Art Institute of Chicago, volunteered that AIC had 3 full-time professionals writing 3,000 licenses a year, involving tens of thousands of images. Most larger museums, he said, will understand the range of different uses and will try to accommodate. However, few will be able to "give material away".

A graphic design teacher whose students were interested in obtaining permission for using works said that the IP Committee's document would be a good educational tool. If, in a distance education scenario where the institution is a for-profit venture, would fair use apply? According to Bower, many institutions take the position that "if you're making money, we want part of it."

One participant spoke of her experience assisting a colleague in gathering rights and permissions for a small book on the outdoor sculpture on the campus of UC San Diego. She expected the job would take a week; it took her three weeks simply to figure out the need for a simple form such as Bower was promoting and spoke of the very varied subsequent responses to her inquiries from museums and galleries.

Jennifer Trant volunteered that it was important in discussing this issue to separate out the issue of intellectual property rights from fees for services rendered by museums. You might be accorded the right to reproduce an image, but simply supplying the image would entail a variety of costs for a museum. She also warned that a comparatively small proportion of works in museums' collections has been photographed and new photography costs are very high. She reiterated the importance of giving as much specific information also about the piece of work you need (an accession number or a precise title help tremendously in reducing the amount of time a museum staff person will have to spend with the request).

Another member of the audience asked why anyone should ask for permission to use an image if they believe their intended use would be covered by fair use? Bower replied that in obtaining a photograph of a work for research you would usually have to sign a contract in which you had to agree not to use the work for any other purpose. If then you wanted to publish the photograph you would have to go back and renegotiate the contract. If you photograph the work yourself it's another issue. Nugent replied that an admission ticket to a museum was usually a contract that would refer to a clause that would prohibit any reuse of any photographic image.

Panzer then reminded everyone that property rights and contract law were just as important, if not more so, in this arena as copyright law. The photograph of the image (as opposed to the underlying or original work) is a piece of property and no law compels an organization to share its property (the reproduction), even if the original work is in the public domain. Although the original piece of art, the "underlying work" may be in the public domain, scholars need the reproductive material, so they must make agreements with those institutions for access to the material (as it often costs a great deal for the museum to prepare). Another participant reinforced the importance of making clear to people the

difference between copyright negotiations and contract negotiations.

Brad Nugent volunteered that any outside processing lab charges on average $35 or more just to make a duplicate 4" x 5" transparency. The Art Institute charges $75 to supply a 4x5 color transparency to publish from for scholarly purposes. This fee includes duplicating costs, administrative costs, and for scholarly use and museums, the publication licensing fee. AIC also sells 35mm slides for $6 each for research/reference/lecture use, but no users would be authorized to publish from slides, only from 4x5 transparencies. He figured that when other costs are factored these prices are close to giving away the material for free. (See the rights page at the Art Institute for further information.)

Jennifer Trant made the point that fair use does not apply to foreign works in foreign museums and so the fair use claim on the proposed permissions form would not help in the majority of cases. Rather it should be recast according to the underlying principles of the type of use intended for the material. European museums may then very well reply more favorably. Baron replied that in the U.S., However, asking for fair use is more of a strategic ploy. One should let the institution know that you believe you have the right to use an image, so the rights administrator will think carefully before overcharging or charging at all.

Max Marmor stated that the form should also make a point of asking whether or not the museum itself had the rights to give on a work, besides asking about a reduction in reproduction fees.

One member of the audience presented a useful scenario. As a designer of online distance learning courses, she generally uses materials provided by the professor or institution when designing a course. In an on-line course on the Depression, the professor wanted to include a story about Jackson Pollock with reproductions of his paintings. Access to the site was limited to students in the course. Whose responsibility is it to acquire permissions? And what resources are available for learning about the permissions process? In reply, Panzer said that the first thing to consider is whether or not Pollock's estate claimed copyright. If so, one would need to get permission from them. Then, one might get the image from another source that creates multiple reproductions and pay for their use. However, if the course is offered within an institution that belongs to AMICO, one could use those images without any other measures, as this use is covered by an AMICO University Agreement.

Another participant commented that there is a need to develop and test market distribution of digital images. Institutions ignore the fact that they are taxpayer-funded institutions and have an obligation to make collections available to the public. Jennifer Trant responded that, although that was true, many museums are privately funded, or only obtain a portion of their funding from public sources. The reality of the cost of running cultural institutions precludes giving things away for free if institutions are going to survive. With many institutions this issue begins with whether to have an admissions charge.

A VRA member asked about the future of long-standing repositories of images. Doesn't site licensing run contrary to the ideal of building permanent collections of slides for perpetual use by the community? In response to this question about licensing rather than purchasing digital objects, Trant suggested we think about what the goal of repositories is. Is it about maintaining a body of static (and aging) images or should it be about becoming a more dynamic enabler of access to images and rich contextual information? Should we not think more about the function of images as visual information rather than as slides. This surely is one of the promises of going digital -- service can be provided across the many parts of an institution or many related institutions. The issue is whether deep and broad access is more useful than ownership.

Christine Sundt stated that one needn't necessarily have to give up ownership; that one's obligation is to discover what the new technology does best. She saw the economic issue –

of how institutions can afford these new capabilities - as the primary one. She pleaded for a balance between what we gain and what we lose in licensing digital images from providers.

Note

1. Computer Science and Telecommunications Board, National Research Council, *The Digital Dilemma: Intellectual Property in the Information Age*, (Washington, DC, National Academy Press, 2000).

◀ BACK

Copyright © 2002-2003
National Initiative for a Networked Cultural Heritage
21 Dupont Circle NW, Washington, DC, 20036
http://web.archive.org/web/20041023091641/http://www.ninch.org/index.html || ninch@ninch.org ||
Privacy Statement