

Interim Report

Art Image Copyright and Licensing Study

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**Delivered to:
The Samuel H. Kress Foundation**

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Introduction

This report constitutes an interim report submitted to The Samuel H. Kress Foundation with respect to a grant for the study of museum licensing policies and terms for the use of art images. According to the original grant proposal, the requested grant period was eighteen (18) months, beginning as of May 1, 2009. The first twelve (12) months have centered on research and producing deliverables. That period is now completed. This report will document the tasks pursued and completed during the initial research term of the grant. The original grant proposal also permits six (6) additional months during which findings may be presented at conferences. With permission from the Kress Foundation, some additional research will continue during this period. As detailed later in this report, Dr. Kenneth Crews has thus far made one conference presentation pursuant to this grant.

The principal investigator is Dr. Kenneth Crews. With funding from the grant, the university was able to hire Melissa Brown to work with Dr. Crews on all aspects of the study. Ms. Brown earned a law degree from New York University and a master's degree in library science from Pratt Institute. Because of her talents as a lawyer, researcher, and librarian, she was responsible for undertaking and completing many aspects of the project. As of June 2010, Ms. Brown has secured a full-time position with the New York University Libraries and will participate only incidentally in the remainder of this project.

Summary of Objectives & Outcomes

The principal objective of this study has been to gather and analyze a sample of art museum license agreements and to analyze their similarities and differences, producing a systematic inventory of the range of issues addressed in license agreements and the different ways in which museums respond to these issues. This collection and analysis provides insight into the issues of copyright and licensing that are of concern to museums and to users of art images. The study further serves as a foundation for additional analytical research. Through revealing the diversity of license terms and conditions, this study demonstrates the available options that museums have when drafting licenses and shares means that museums have developed to address specific issues. Each component of this study, including the deliverables, is summarized below.

Deliverables: Literature Review & Bibliography

An initial component of the study was to compile the relevant literature from across the disciplines of law, library science, art, and museums. Literature was collected and reviewed from a number of proprietary databases (*e.g.*, Westlaw, ProQuest: ARTBibliographies Modern, HW Wilson: Library Literature & Information Full Text) as well as publicly available internet sources (*e.g.* Social Science Research Network, author websites). Selected literature was incorporated into a bibliography and made publicly available through Academic Commons, the open access repository of Columbia University Libraries (*Art Image Copyright and Licensing: Bibliography*, Mar. 11, 2010, at <http://hdl.handle.net/10022/AC:P:8543>). The bibliography serves as an interdisciplinary guide to literature on copyright and licensing issues pertaining to reproductions of works of art, with a particular focus on literature and studies examining the relationship between museum rights and reproduction policies and copyright law. More generally, it includes literature on art and copyright law, discussing issues such as notions of originality and the impact of copyright and licensing on the creation of new

works of art.

Deliverables: Collection of Museum Image Licensing Information & Agreements

A sample of United States art museums was created for purposes of gathering and analyzing information pertaining to image licensing policies and practices. Fifty (50) museums with a primary specialty in art were selected from the accredited members of the American Association of Museums. The selected museums were chosen with an aim toward achieving a diverse sample in terms of the size and nature of their collections, their staffing and budget, and the scope of their image licensing practices.

The website of each museum was reviewed and any information pertaining to art image copyright, licensing, or terms of use was printed and recorded onto a spreadsheet tracking the source page URL and the date on which the information was obtained. The amount of image licensing information available varied significantly across different museum websites. Many museums have made the full text of their image licensing agreements available online, while others offer little to no information about rights and reproduction. Where no relevant information was available, the museum was contacted by email with a request to submit its image licensing agreement(s) and any other relevant rights and reproduction information (*e.g.*, permission applications, fee schedules) for inclusion in the study. Additionally, some of the museums that participated in interviews (described more fully below) provided additional documents not available on their websites.

In total, contractual licensing agreements, including the full terms and conditions governing image use, were obtained from twenty (20) museums. With respect to the remaining thirty (30) museums, at least some information about image licensing terms and conditions was collected from all but three of them. (*See* Appendix A: Summary of Study Sample, attached.)

Deliverables: Compilation & Analysis of Image Licensing Information

The collected image licensing information was compiled into a summary of museums terms and conditions governing image rights and reproduction and made publicly available through Academic Commons at Columbia University Libraries (*Art Image Copyright and Licensing: Compilation and Summary of Museum Policies*, Mar. 8, 2010, at <http://hdl.handle.net/10022/AC:P:8546>). The compilation provides an overview of the rights and reproduction policies currently in place at art museums throughout the United States. It also provides a basis for analyzing and comparing the image licensing terms and conditions of different institutions.

The compilation was then adapted into a series of analytic charts categorizing and summarizing the collected terms and conditions. Terms and conditions were organized into three separate charts, according to the general themes that emerged from a review of the compilation: (1) provisions governing the appearance and composition of images, (2) provisions governing the reproduction and distribution of images, and (3) provisions governing third-party rights. Each of these three charts was further subdivided into subcategories, as appropriate, to reflect the ways in which museum license agreements commonly address these themes. These charts provide a more detailed and analytic overview of museum rights and reproduction policies. Additionally, they provide a means for comparing and analyzing how different institutions regulate art image use through licensing. As with the other deliverables generated during the course of this study, they have been or will be made

publicly available through Academic Commons at Columbia University Libraries (*Art Image Copyright and Licensing: Terms and Conditions Governing Appearance and Composition of Images*, Mar. 11, 2010, at <http://hdl.handle.net/10022/AC:P:8544>; *Art Image Copyright and Licensing: Terms and Conditions Governing Third Party Rights*, Mar. 11, 2010, at <http://hdl.handle.net/10022/AC:P:8545>; *Art Image Copyright and Licensing: Terms and Conditions Governing Reproduction and Distribution*, forthcoming).

Deliverables: Interviews

To provide a fuller sense of how museums address issues of art image copyright and licensing, interviews were conducted with a number of different museums. Fifteen museums were contacted to request their participation in an in-person or telephone interview; these museums were selected so as to include a range of geographic locations, collection types, and approaches to licensing. Of the fifteen (15) museums contacted, eight (8) ultimately participated in interviews. (See Appendix A: Summary of Study Sample, attached.) These interviews involved either museum legal counsel or other professionals responsible for rights and reproductions. A summary of each interview was documented in a memorandum. Together, these interviews elucidate a number of current trends, issues, and controversies in museum rights and reproduction. They also document the experiences of museums in negotiating the permissions process and working with license agreements, providing insight into the range of issues that are of concern to both museums and permission seekers.

Deliverables: Conferences & Publications

The preliminary findings of this study were presented by Kenneth Crews at the annual Congress of the International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP) in September, 2009. This presentation was then developed into a preliminary paper for inclusion in the conference proceedings. The paper is titled *Control of Museum Art Images: The Reach and Limits of Copyright and Licensing*. This paper also is publicly available on the Social Science Research Network (at <http://ssrn.com/abstract=1542070>).

Future Steps

Funding for the study continues through October 31, 2010. During that time Dr. Crews will continue work on an analytical article based on this research. The Kress Foundation has permitted continued expenditure of grant funds for a research assistant during that period. Dr. Crews anticipates that the article will be prepared for publication in a law journal. Dr. Crews is also exploring possibilities for presenting the findings of this study at a second conference. The study to date has drawn considerable attention from museum officials, scholars, and innovators of online services such as Wikipedia. We are grateful to The Kress Foundation and its president, trustees, and staff for their support. We welcome any questions or comments. We expect to submit a final report shortly after completion of the study.

**The Kress Foundation
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Appendix A: Summary of Study Sample**

Museum	Full T&C obtained from site or Museum	Partial T&C obtained from site	No T&C on site & not obtained from Museum	Museum contacted for interview	Museum participated in interview
The Art Institute of Chicago		•			
Asia Society Museum		•			
American Folk Art Museum	•				
The Andy Warhol Museum		•			
The Barnes Foundation			•		
Birmingham Museum of Art		•			
Blanton Museum of Art	•				
Brooklyn Museum of Art	•			•	•
Cantor Arts Center	•				
Carnegie Museum of Art	•			•	•
Cincinnati Art Museum		•			
The Cleveland Museum of Art		•			
Dallas Museum of Art		•			
Detroit Institute of Arts	•				
El Museo del Barrio	•		•	•	•
Fine Arts Museums of San Francisco	•			•	•
The Frick Collection	•			•	•
Georgia Museum of Art		•			
Georgia O'Keeffe Museum		•		•	
The Getty	•			•	•
The Guggenheim	•			•	•
Hammer Museum		•			
Harvard Art Museum		•		•	
High Museum of Art		•			
The Huntington Library and Art Collections		•			
Indianapolis Museum of Art	•			•	•

The John and Mable Ringling Museum of Art	•				
Los Angeles County Museum of Art		•			
The Metropolitan Museum of Art		•		•	
Milwaukee Art Museum		•			
Minneapolis Institute of Arts		•			
Museo de Arte de Ponce	•				
Museum of Fine Arts, Boston	•			•	
The Museum of Modern Art		•		•	
National Gallery of Art	•				
North Carolina Museum of Art	•				
Peabody Essex Museum	•				
Pennsylvania Academy of the Fine Arts		•			
Philadelphia Museum of Art		•			
Phoebe A. Hearst Museum of Anthropology	•				
Portland Art Museum		•		•	
Saint Louis Art Museum		•			
San Diego Museum of Art		•			
Seattle Art Museum		•			
Smithsonian American Art Museum & The Renwick Gallery		•		•	
Sterling and Francine Clark Art Institute		•			
The Studio Museum in Harlem			•		
Virginia Museum of Fine Arts			•		
Whitney Museum of American Art		•			
Yale University Art Gallery	•				

	Full T&C	Partial T&C	No T&C	Interview Requested	Interview Conducted
Totals:	20	27	3	15	8