

## **REPORT: Copyright Confusion? Community Guides**

Thursday, May 18, 2000  
American Association of Museums Annual Meeting  
Baltimore, MD

- **Introduction: The Current Scene**, Michael Shapiro, Barry Szczesny, David Green
- **The Guides**, Diane Zorich, Kathe Albrecht, Robert Baron
- **Questions & Discussion**

### **Copyright Confusion? Community Guides**

#### **Introduction**

Michael Shapiro opened the proceedings by invoking what he called a magic moment in copyright history: the much quoted 1936 opinion of Justice Learned Hand in *Sheldon v. Metro-Goldwyn Pictures Corp.*, (81 F.2d 49 2nd Cir, 1936)

If by some magic a man who had never known of it, were to compose a new Keats "Ode on a Grecian Urn," he would be an "author," and if he copyrighted it, others might not copy that poem, though they might of course copy Keats.

Although the quotation introduces the basic notion of originality in copyright law (that works of authorship, at a minimum, must be "independently created" to qualify for copyright protection), it demonstrates how even such basic notions about copyright can be confusing. Who is an author? What is an original work of authorship? Where is the line between an original work of authorship and an infringing copy?

To such confusion, Shapiro announced, help was at hand in the form of three exemplary Guides. In this, the concluding meeting in this series of Copyright & Fair Use Town Meetings, consideration was being given to the resources that are becoming available for the educational-cultural community. Emphasis here was on three guides: *The Museum Guide to Copyright & Trademark*; *The Acquisition and Use of Images in Non-Profit Educational Visual Resources Collections*; and the *Q&A Guide to Copyright for Academics*. Moreover, this impetus to produce specific guides for specific communities was one that should continue to accompany the development of institutional and organizational policies and principles for using and managing digital copyrighted material.

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## Barry Szczesny, Resources & Issues

Co-chair, Barry Szczesny, also welcomed the audience and gave his own overview of the chief resources and the key issues still to be dealt with.

### Resources

He started with Marie Malaro's *A Legal Primer on Managing Museum Collections* (2nd edition, 1998), the copyright portion of which was written by Ildiko DeAngeles, former Assistant General Counsel at the Smithsonian Institution.

Regular resources for updates include:

- **American Association of Museums**, especially its
  - Technical Information Service;
  - “Current Issues in Intellectual Property” seminar;
  - The Museum Guide to Copyright & Trademark; and the
  - new Intellectual Property Resource Pack that includes many useful articles reprinted from other sources.
  - See the AAM Online Bookstore Catalogue for more information on these and other titles.
- **NINCH** and its ninch-announce listserv and its website with copyright resources.
- **CNI** copyright listserv
- **ALI-ABA** (the American Law Institute-American Bar Association’s Committee on Continuing Professional Education), especially its annual course on “Legal Problems of Museum Administration” (<<http://www.ali-aba.org/aliaba/CF12.htm>> for the 2001 course) that has good copyright coverage
- **New York Times Cybertimes** – especially its legal section

### Issues

Mr. Szczesny then took on the key issues under the headings of the poster for this series.

#### 1. Fair Use

Fair use is clearly in some jeopardy; especially given the anti-circumvention section of the DMCA that prohibits the breaking of the digital lock (even for purposes that may be fair use). He directed the audience to [AAM's comments](#) lodged with the Copyright Office on this issue and stressed some of the major points:

- that museums should always be included in any discussion of educational institutions
- that fair use was key to the daily business of museums
- that the effect of the anticircumvention provision on museums will remain to be seen as it seeks to regulate for a new paradigm while the paradigm is still shifting. On one hand, it will provide museums with new legal tools to protect against electronic piracy and encourage dissemination of materials, but it also may curtail museum access to information that increasingly may be available only in access- or copy-controlled digital form.

Thus, one concern for museums is tied to preservation as our cultural heritage migrates increasingly to the digital realm. A recent *Museum News* article discussed the preservation crisis posed by accelerated technological change. Given the rate at which formats, hardware, and software become obsolete, it's not difficult to imagine in the years to come that actions prohibited by the anticircumvention provision may be necessary to gain access to our cultural heritage for museum activities, such as exhibition and research and/or migrating collections to new formats for preservation.

Time will tell for what classes of copyrighted works an exemption from the prohibition may be needed. The museum community will continue to monitor these developments and comment and/or testify in future rulemakings (or future aspects of this one) to prevent any negative impact of access- and copy-control technologies on its public service mission.

## **2. Public Domain**

The public domain has not disappeared but it has been rapidly shrinking as the life of normal copyright protection has increased from 14 years to 28 years, renewable then to the life of the author plus 50 years; and now to life plus 70. He quoted Mary Bono's comment on Copyright Term Extension

Actually Sonny wanted the term of copyright protection to last forever. I am informed by staff that such a change would violate the Constitution. I invite all of you to work with me to strengthen our copyright laws in all the ways

available to us. As you know there is also Jack Valenti's proposal for term to last forever less one day. Perhaps the Committee may look at that next Congress.

Szczesny concluded that, needless to say, those of us in the nonprofit educational community need to do a better job at making a case for a robust public domain.

### **3. Distance Education**

Szczesny noted the general favorable response to the Copyright Office Study and Report on Distance Education, especially its understanding of the complexities of the issues of the many stakeholders, and the understanding that fair use still applies in the digital environment.

### **4. Ownership & Access:**

He gave his own sense of the Bridgeman Library-Corel case, in which he noted

- Bridgeman did not appeal the decision
- that AAM was strongly against submitting an amicus brief
- that in this context it was important for museums to be seen to exist to serve the public trust
- but that Bridgeman will probably have very little practical effect as it was one local case and was limited in its applicability.

Museums might sometimes over-protect work inside their walls and some scholars have suggested that museums hold works hostage (which might have given added impetus to the organization of the Art Image Cooperative). However, museums, out of necessity, has a strong interest in return on investment and he referenced Principle Number 2 of the Basic Principles for Managing Intellectual Property in the Digital Environment, adopted by the National Humanities Alliance: "Copyright law should foster the maintenance of a viable economic framework of relations between owners and users of copyrighted works.".

He also quoted a museum rights and reproductions specialist:

Photographing works of art is a costly business. Besides the specialist photographer, film, and developing, the man-hours of professional staff involved must also be included in the total cost: art handlers who remove the

painting from (costly climate-controlled) storage or (costly climate-controlled) display and bring it to the studio and remove it from its frame; conservators who check the lighting to be used and vet it vis-a-vis the painting for UV, heat, and light absorption levels; curators who discuss the painting with the photographer so that he/she understands the importance of certain elements, colors, shadows, textures, varnish, etc.; and the visual resources staff who coordinate all this, oversee the work and post-production, as well as re-framing and return to storage or display. Then there are the times we have to re-photograph again and again, using different photographers or different films, because the photographs didn't come out satisfactorily. To put it simply, we cannot afford to photograph a work in our collection unless we can hope to get a return on that investment.

It was incumbent upon museums to educate the public about their rights and reproduction enterprises and the costs of providing meaningful, high-quality access to our cultural heritage to the public.

Szczesny concluded by declaring, in the wake of *The Museum Guide to Copyright & Trademark*, that what the museum community now needs was its own set of principles.

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## **David Green, Overview of Town Meetings Series**

David Green added his welcome, thanking the Samuel H. Kress Foundation for its funding of the series and the American Association of Museums for hosting this meeting. He briefly reviewed the themes of the second series of Copyright Town Meetings, from a focus on the public domain, to the privatization of knowledge on the Internet, the academic “tug of war” over ownership of intellectual property online, digital distance education and broadly what an intellectual property regime can do in either fostering a creative turf or in severely curtailing what we can do online.

He reviewed the structure of the meetings: the basic facts on copyright and fair use online; recent legal and social developments in the managing of intellectual property online; and the sharing of concerns, problems and issues by assembled experts and audiences. Aimed at all working in the cultural-educational community (artists, curators, administrators, librarians, archivists, teachers, researchers, students), the town meetings, he said, were rooted in the conviction that copyright and related intellectual property issues will become increasingly complicated and increasingly unavoidable.

Green continued by briefly describing NINCH's mission: to facilitate an integrated and cohesive networked cultural heritage by building a framework for cooperation. The current program included an international database of humanities digital projects, a "Guide to Good Practice in the Digital Representation and Management of Cultural Heritage Materials," and a family of programs developed with the National Academies of Science to enable computer scientists and humanities practitioners to productively collaborate—especially in creating tools and software that will effectively meet the needs of the arts and humanities.

Copyright education and copyright action are seen by the NINCH President and Board as crucial to the success or failure of our mission. If intellectual property issues are not satisfactorily resolved for our community the enterprise as a whole could be deeply compromised.

The Town Meetings were initially co-sponsored by NINCH with the College Art Association and the American Council on Learned Societies as a response to what was seen as a certain "willful ignorance" in the community about copyright issues. The first series (1997-98) started with the Conference on Fair Use (as one means of widely discussing the proposed Fair Use Guidelines), moved on to the discussions on fair use and other exemptions at the World Intellectual Property Organization, and closed with an increasing focus on the critical importance of developing institutional and organizational principles, policies and guides for managing intellectual property.

The scene in the year 2000 already appears far more complex, with the Digital Millennium Copyright Act (that some have described as Talmudic in its complexity); Fair Use that in its relationship to encryption technology and copyright management software appears subject to Heisenberg's Uncertainty Principle--it both is and is not at the same time; and the Sonny Bono Copyright Term Extension Act that has curtailed the Public Domain; together with newer issues such as database legislation and the UCITA.

Green commented that the arena of intellectual property was clearly about law and economics, but perhaps was centrally about evolving practice. He referenced the observation by Lawrence Lessig in his book *Code*<sup>1</sup>, that with encryption technology West Coast Code (the products of Silicon valley) was effectively replacing East Coast Code (the Constitution). *The Digital Dilemma*, also recognized the importance of emerging new business models in its advice not to rush into legislative solutions about a technology that is changing so rapidly. That report concluded that society needed "to look further out than today's crisis, try to understand the nature of the changes taking

place, and determine as best it can what their consequences might be, what it would wish them to be, and how it might steer toward fulfilling the promise and avoiding the perils.”

As part of the purpose of *The Digital Dilemma* had been to stimulate that long-range exploration, Green expressed the hope that this continuing series of town meetings would have a similar function, beyond imparting basic information and helping figure out current practical solutions, in being part of that “long-range exploration.”

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## Notes

1. Lawrence Lessig, *Code*. Basic Books, 1999
2. Computer Science and Telecommunications Board, National Research Council, *The Digital Dilemma: Intellectual Property in the Information Age*. National Academy Press

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## The Guides:

### 1. Diane Zorich, *A Museum Guide to Copyright and Trademark*

#### Partners

Diane Zorich introduced the *Museum Guide to Copyright and Trademark* from her perspective as the project's manager. Both the American Association of Museums and the Getty Trust had been involved in the CONFU Digital Images working group and both understood the difficulty of copyright issues. AAM was also under some pressure from membership for delivering some clarity on these issues, in addition to the work it was already doing. The venture was precipitated by frustration at Monticello over misuse of its name and the sympathetic ear of the Pew Charitable Trusts, whose President was interested in supporting a solution.

All were committed to produce a practical guide quickly and decided on a double approach: broad community input (several hundreds of comments on issues and difficulties were entered into a database); and in-depth discussion by focus groups represented all disciplines, sizes and types of museums. Two

advisory committees (some two dozen museum and legal professionals) then reviewed outlines and early manuscript versions of the Guide to keep its content focused, timely, and accurate.

The challenge was to make sure the Guide was representative of concerns expressed and to develop a structure and format that would be of greatest practical use to the profession. Our challenge was to for the Guide that would address the majority of concerns that were expressed.

## **Compromises**

Compromises or decisions made in producing the Guide included the following:

- copyright and trademark only: that it would deal with copyright and trademark only (despite the importance of patent and trade secrets, these two areas reflected the most frequently requested issues);
- balance between the law and practical solutions: that there would be balance between presentations of what the law is and the specifics of ethical and practical solutions to i.p. problems;
- a narrative: that the format should be a narrative that could deal with the complexities of most cases in a way that a legal treatise, a compilation of useful resources, or question-answer format could not.

## **Characteristics**

A few characteristics of the Guide:

- International: while it focuses on US law, the *Guide* also considers the international issues that arise from the context museums operate in;
- Digital: there is an entire chapter on the digital arena, including the Web;
- Licensing: the concept of licensing is treated with some depth
- Scenarios: there are numerous hypothetical and real scenarios introduced to make points more lively (e.g. the Cleveland Rock and Roll Hall of Fame is used to explore the issue of museum buildings as trademarks, and the Bridgeman Art Library v. Corel suit is reviewed in the context of a discussion on the originality requirement in U.S. copyright law);
- Practical: the Guide is replete with practical information, e.g.,
  - steps for registering a U.S. copyright or trademark;
  - practical tips for addressing publicity, privacy, or moral rights issues;

- details on copyright infringement claims and trademark enforcement procedures and considerations to be taken into account before embarking on these.
- Ethics: ethical concerns, often intertwined with intellectual property issues, are addressed in the context of particular topics and hypothetical scenarios.

## **A Legal Framework**

Ms. Zorich felt strongly that, although the *Guide* would be used as a reference work, its potential was to be used as a legal framework for museums to make policy decisions about intellectual property use and ownership in museums--a legal framework to be integrated with institutions' own norms, procedures, and ethical considerations. But the Guide was still only a beginning and should be used in conjunction with other resources such as those that will be discussed today.

## **Still Needed**

Zorich finally outlined what was still needed beyond this substantial beginning:

1. Patent and Trade Secrets: A complementary museum guide to patents and trade secrets. While patents are perhaps more important for science and natural history museums (which, for example, can broker agreements between pharmaceutical companies and native peoples), donor and membership lists would come under trade secrets.
2. Ethical issues: Natural history museums have faced the question of who owns the technical/medical products derived from research by zoos on endangered species. Also, they often face questions about the ethics of using the intellectual property of indigenous peoples that fall outside Western intellectual property law;
3. Continuing Education: We need a multi-pronged approach in every venue and format for continuing education in this area;
4. More Niche Materials: Specific materials are needed for various segments of the museum profession (e.g., for registrars, curators, directors, boards, etc).
5. The Non-Legal Issues: Advice is needed on the intellectual property decisions that are sometimes made on the basis of, for example, donor considerations, sensitivity of collections (NAGPRA), and privacy of individuals.

**Michael Shapiro**, co-host of the Town Meeting and co-author of the Guide added a few comments, including the observation that copyright can easily complicate all manner of transactions. The law is relatively easy to grasp; it is the application to a given situation that is always the difficult part.

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## **2. Kathe Albrecht, Image Collection Guidelines: The Acquisition and Use of Images in Non-Profit Educational Visual Resources Collections**

### **VRA & CONFU**

The application of law to specific cases, mentioned above by Shapiro, was precisely the case next presented by Kathe Albrecht, visual resources curator at American University, in her introduction of the Visual Resources Association's (VRA) Image Collection Guidelines that were focused on the *educational use* of museum material.

VRA is an international nonprofit organization whose members support the educational work of historians, curators and scholars. Most members work on campuses with collections of between 50,000 and 2 million still and moving images.

The principal current concern is over the migration of materials to the Internet. Members are asked by scholars and teachers to provide the most up-to-date and innovative methods of electronic distribution and display of images. In a volatile digital and legal environment, VRA members urgently need guidance and direction.

VRA cut its teeth on many of these issues during the Conference on Fair Use (CONFU). VRA was active in the Digital Image working group, one of five groups (with members representing the commercial, public, and educational sectors), working to produce for endorsement guidelines for the fair use of information in the digital arena. One of the benefits of CONFU for VRA was a clearer understanding of the parallel missions and interests of museum and academic participants.

VRA regarded new technology as a factor that should not interfere with received practice in the educational use and re-use of images. Educational use is not a commercial use and doesn't threaten the integrity of original museum-held objects (rather it enhances its value and appreciation by a broader audience). On the other hand, VRA came to understand museums'

concerns over digital distribution. Educators understood the importance of password protection, conditions of use, and other techniques to ensure proper use of electronic information, as well as museums' concern over downstream distribution and the limitation of access to legitimate users. Museums also have their own cost issues that impact the digital distribution of their visual materials.

Another benefit of CONFU was that it began to carve out a niche that describes a non-commercial, non-exploitative, purely educational use of museum materials. Although CONFU failed, the process did point to the value of workable guidelines. VRA took up the challenge for its own membership. The challenge was to keep within the framework of fair use, protect the intellectual property of VRA members' collections, and provide assurance to museums and other rights holders that educators were responsibly making use of digital assets.

Ms. Albrecht made some comments on the difficulties she and other visual resource curators were having with current licensing models. Problems included high labor costs, widely varied fee structures, the logistics of seeking arrangements for a high volume of images and the lack of a critical mass of titles. Most slide collections, she said, are unique in scope, developed to reflect the teaching of specific faculty. Therefore, it seemed unlikely that images needed for each course would be available electronically via license. She was open to the possibility of very large image banks (especially full of public domain images) that might eventually be available electronically for broad educational access. But currently the problems of licensing outweighed any advantages.

## **The Guidelines**

The Guidelines themselves, *The Acquisition and Use of Images in Non-Profit Educational Visual Resources Collections*, were developed by the VRA Intellectual Property Rights Committee and approved for distribution in July 1999. They are available online and as a book, co-published with ARLIS/NA. They are purposely simple and, hopefully, practical. Reviewed by legal counsel, the Guidelines, Ms. Albrecht warned, should not be considered a legal document : further legal counsel should be sought for instances that go beyond the general guidelines.

The Guidelines had four sections--covering acquisition, attribution, display and responsibility--each of which would be helpful in reviewing an institution's collection management policies.

Acquisition: images would typically be acquired through purchase, license, donation or copystand photography. As copyphotography has recently come under scrutiny, the Guidelines clarify the justification for it (suitable images are not readily available at reasonable cost from vendors) and how the images should be used (only for nonprofit, educational purposes and not shared with other institutions). VRA is currently developing a table to clarify for the photographer the layers of rights inherent in images.

Attribution: VRA recommends that any image's identification record include

- source
- year of acquisition and
- any provider's own identification.

Such identification should be included in the records management system of the visual resources library.

Display of Visual Information: the guidelines reflect VRA's belief that digital materials should be made available to the same users and for the same purposes as analog collections, and this includes a belief that copystand images may be digitized and used under the same criteria they were acquired in analog form.

Responsibility: the guidelines recommend:

- there be a designated overseer of the visual resources collection.
- there be a sufficient budget for the purchase of images
- that individual managers always follow their institution's policies and
- that the designated overseer discuss institutional policies with the institution's legal counsel

A set of suggested Best Practices that does not replace counsel or good judgment, the VRA *Image Collection Guidelines* represents the most viable and practical professional path in the transition to the electronic display of educational information. Ms. Albrecht recognized that others might not necessarily share the views expressed in the Guidelines but affirmed that as the Internet rapidly evolves, we must each ensure that our piece of the digital realm functions well and continues to serve our ongoing professional needs.

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### **3. Robert Baron, The College Art Association's Q&A Guide to Copyright for Academics: a work in progress (see complete paper).**

Robert Baron also rehearsed the impact of CONFU on art historians. Not as sanguine as Ms. Albrecht on the finally positive impact of CONFU, Baron thought that the process disastrously muddled the meaning of fair use for academics and administrators, invoking a near hysteria in which some administrators were prohibiting all copyphotography. Mr. Baron felt that the guidelines were inimicable to education and, even though not adopted, radically destabilized the confidence with which academics made materials available.

He also found that the museum community, although disposed to defend scholarship and educators is continually under pressure to adopt to the rules of the new economics. Even though provision of images for educational use was central to their mission, increasingly it was being seen as an independent profit center. Once "assets," scholars are now "clients."

The College Art Association adopted at its 1999 meeting in Toronto a strategy to assist artists, teachers and scholars through the chaos of copyright. That strategy included:

1. continuing co-sponsorship of the copyright town meetings;
2. producing a guide to copyright; and
3. sponsoring the public domain based Academic Image Cooperative (the subject of discussion in Mr. Baron's San Francisco presentation).

The method for creating and producing the *CAA Q&A Handbook* was parallel to that for the AAM Guide. Initially there was a call for questions and issues for which answers, or at least guidance, was needed. After putting out a call, some 460 questions were gathered into a database and then indexed to give some 500 terms and concepts that linked the questions. The fact that, since the questions were gathered, the DMCA and Sonny Bono Copyright Term Extension Acts were passed with distance education and database legislation imminent, seemed to Baron a simple demonstration of how quickly things move in this arena.

The next step appears to be to reduce the total number of questions into a number of key scenarios and issues. Baron rehearsed the current list of typical topics in the form of questions, which include:

- How do you obtain and legally use images for classroom lectures

- How do you build a legal image archive and how to harvest the public domain
- How do you obtain help and support from university counsel
- What rights do artists have to use and manipulate works in and out of copyright?
- If you are publishing on the Internet, what do you have to know about foreign copyright?
- How do you obtain rights to publish an illustration of a work of art that quotes another copyrighted work?
- What rights do publishing faculty have when dealing with publishers of journals and books? How do you negotiate for these rights?

### **Tool Kit:**

In addition to the questions and answers, the CAA Guide would also offer a set of tools to advance their goals. He mentioned some likely candidates.

**Advocacy :** how to join in common voice with other beleaguered academics. The CAA already has an organizational voice, but it needs the combined voices of its membership as well. An on-line guide to advocacy organizations and their agendas should be helpful.

**Currency:** answers suitable for last year's users may not be appropriate this year. This project could integrate summaries and analyses of new laws, explain how they generally apply to CAA members and their activities, and must add appropriate updates to earlier answers in the Q&A section.

**Local Action:** tools and equipment academics need to work with or against university policies; how does one work to have policy changed?

**The "How To Do It" Red-Tape Kit:** here would be such practical tools to help answer the following problems:

- How do you find out about copyright law: what resources or what guides exist for academics and artists?
- How do you find the copyright owners of images and/or their agents?
- How do you know if the period of copyright for a work has ended ?
- How do you negotiate with rights holders, their agents, with publishers and museums? During negotiation, how do you know how much leeway rightsholders, museums and publishers have to absorb costs?
- Where can you find grants for image acquisition and licensing costs. What does the grant recipient owe to the granting agency?

- What information is pertinent to image vendors in scholars' quest to pay the least amount of money for usage rights?
- Which image sources (agencies and museums) offer special rates to scholars and teachers?
- What are real-world fair use guidelines? What are the most useful fair-use court cases and their outcomes? What must teachers and artists know about the copyright of work-for-hire products?
- What special kind of usage risks are created in a digital environment? What does risk assessment mean in a university environment? Who gets to make these decisions? Where can I find risk assessment explained in university policy statements?

## **Next Steps: Production**

The CAA Guide should be produced as an ongoing integrated component of the CAA website. Baron expected it to have the following structure:

Q&A Database: users will search across the database with links to questions, answers and standard documents and be able to ask new questions;

Self-help Guide: forms for accomplishing specific tasks

Standard Sources and Guides: bibliography, resources and links to statute law databases

Issues and Advocacy: education on issues and urgent appeals for lobbying and advocacy

## **Questions & Discussion**

### **1. Consultants & Freelancers**

Two questions, one from an employee and one from a freelancer, concerned the relationship between employees and consultants and institutions/corporations. One freelance photographer sold her work to corporations that frequently displayed them on the web with no credit. How could she set up a contract that would help publicize her images? This, the panel determined, was a frequent "threshold of ownership" issue in which others can easily be seen to either be promoting or infringing artists' work. An employee of an environmental conservation company told the story of how

she did all of the research for a project that somebody else published over his name, with no credit to her work. Did she have any protection?

The panel commented that there is a large public policy issue here and we are in a period of fundamental reorientation in the relationship between freelancers, and even employees and businesses, over the issue of ownership and credit. Perhaps *Tasini v. the New York Times* case was the most recent and most dramatic case exemplifying one aspect of this. As one commentator put it, there are some ugly tendencies to reduce creators to serfs, and individuals are now increasingly beginning to collectivize in order to retain their rights and bargain for collective advantage. These two stories illustrate the need for artists to pay greater attention to intellectual property rights issues.

To a question whether AAM plans to issue position papers on how to approach work-for-hire, Barry Szczesny replied that there were no current plans but thought developing some principles would be a good idea. He noted AMICO's success in negotiating with the [Artists Rights Society](#). Museum attorneys reviewing community-wide strategy, though, have raised the antitrust issue.

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## **2. Developing Policies & Principles for Institutions: Risk Management & Relationship Management**

Librarians at the National Aquarium were developing a collection of slides for the Internet. Like other museums, aquariums are producers *and* users of intellectual property and the question was whether there was some guidance to keep them from getting bogged down in copyright questions. The panel replied that many institutions had this copyright schizophrenia; as a legal matter an institution can argue from both the owner's and user's perspective. As a public policy and museum matter, it was recommended that the individual institution think about creating a policy that members can be comfortable with.

Kathe Albrecht then ventured that this was the reason for the VRA taking on a small piece of the digital dilemma, with the understanding that others would produce their own guides to answer their own needs. A visual resource professional could use the VRA Guidelines for questions about the fair use of images but then use AAM's guidelines for the perspective of the content providers. It is this COMPENDIUM of perspectives that we need.

Szczesny agreed that this was a major issue - the sense among some institutions that they wanted their copyright cake and to eat it too. Indeed copyright law is complex, but after a while you see patterns of use and practice for the most frequently asked questions. The big headaches are the problems for which there still seem to be no generally accepted answers.

In this community, we generally don't sue or get sued—it just wouldn't make sense. Certainly for museums, many copyright issues come down to relationships and managing those relationships. In any given situation, Szczesny advised to start with the necessary predicate of knowledge of the law, and then to move on to examine the relationship you need to be managing. We are all in this together and we need to find fair and reasonable ways of getting along with each other.

Baron added that he thought the subtext here was that copyright is often not the only issue. There are often other laws and other issues and interests to be taken into account in what might appear to be a Copyright Issue. Baron cited Dakin Hart's account at the San Francisco Town Meeting of the Art Museums of San Francisco putting their whole collection out in high-resolution images and waiting for the angry responses, but then only hearing from those artists who were frustrated because their work hadn't been put online yet.

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### **3. How to Develop Policies**

An employee of a small historical society with no formal rights and reproductions qualifications was doing her best to educate herself about relevant issues and wanted to know how best to educate her board. She was told that to ask the board to review their liability insurance would be one good way to get their attention.

The *AAM Guide* should also serve as a good educational tool for such purposes. Indeed AAM has seen this as a critical issue—so critical that every museum in the country (some 10,000 institutions) received a copy of the *Guide* free of charge (through the generous support of the Pew Charitable Trusts).

Another piece of advice was to keep a good list of issues as they come up, which is what happened at Monticello and what actually precipitated the Guide project.

Barry Szczesny returned to his earlier point, stressing the importance of museums taking a more active role in educational issues and educational reform. Museums, he reiterated, were educational institutions in that part of their mission was to share their collections with the public and to educate the public about them. The digital presence of museums is clearly part of this educational thrust and should be taken up with vigor. Policies on the management and use of intellectual property were, he thought, natural extensions of collections management policies. The digital reflection of those collections is a significant asset.

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#### **4. What More Is Needed? Risk Management & Digital Asset Management Policies**

To the final question of what more is needed in the form of guidance to the community, Diane Zorich suggested that what is needed is some way of assessing risk, some guidelines or a checklist to help define what the risks are and some means of helping an institution determine how much of a risk taker it wanted to be.

Another suggestion was to develop Digital Asset Management Policies: electronic information policies that cover the range of custodial interests. With the DMCA's new chapter 12 anti-circumvention provisions and the Napster case on the one hand stressing the total control scenario, museums especially need to focus on their educational missions rather than on an "over-protection" regime. However, that said, it is good to have a strong set of policies in place before any violations occur, especially for "repeat offenders."

With thanks to the Samuel H. Kress Foundation for making this series of meetings possible.