Permissions and Fees*

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The trends toward temporal and conceptual copyright extension have made it more difficult for scholars to take their own publishable photographs of works of art (once a quite standard practice, but now virtually unheard of in museums), and they have caused increases in permissions fees even for non-profit, scholarly publications of limited public reach. Permission fees have traditionally been based on several factors, including character of the publication and press (academic or commercial), color or black-and-white, size of image relative to page, placement inside or on cover, geographic and linguistic range of distribution, and size of print run. With digital images, color vs. black-and-white and size are no longer crucial considerations, and with online publication, internet marketing, and the globalization of book sales, geographic and linguistic range of distribution has also become less relevant. Most publishers now require their authors to obtain worldwide reproduction rights for all images in a publication.

Research into image and permission costs for reproductions of works of art in museums, libraries, and image banks suggest that most non-profit institutions are mindful of the difference between scholarly and commercial purpose, and discount licensing fees accordingly. Image banks tend to be less generous in this regard. (It is well known to scholars that most commercial institutions that own copyrights, such as magazines and newspapers, are not set up to grant special dispensations for scholarly publication, however well-intended they may be, and these special cases are left out of consideration here.[1])

Most non-profit institutions appear to aim their fees at cost recovery, but it is unclear to what extent institutions have analyzed the full costs of maintaining rights and reproduction departments or of the fulfillment of scholars' requests. Although prices of scholarly publication licenses are often finely matched to different genres, media, and audiences of publication, there appear to be enormous inconsistencies in fee structures between institutions. Aware of these discrepancies, the Registrars Committee of the American Association of Museums[2] in 2004 produced a wide-ranging survey of rights and reproductions practices among 111 of its member organizations, the vast majority of them art museums.[3] The survey was intended to help member institutions clarify and develop reasonable policies in murky terrain. Review of its raw data as well as research into the image license policies of ten major museums and four commercial image purveyors in the United States and Europe yielded the following results.[4]

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†http://creativecommons.org/licenses/by/2.0/

[1] In one telling, recent case, an author seeking to reproduce a vintage magazine cover in black-and-white was charged $800 even after congenial and sympathetic negotiations. Stories at the other extreme, of free passes and encouragements, also abound.

[2] http://www.aam-us.org/

[3] For the *Draft Report of the AAM Member Museums Rights & Reproductions Survey 2003-4 Results*, see the pdf at http://www.panix.com/~squigle/rarin/RCAAMSurvey2003-4.pdf (<http://www.panix.com/~squigle/rarin/RCAAMSurvey2003-4.pdf>). The survey was sponsored by the Rights and Reproductions Information Network (RARIN) of the Registrars Committee of the American Association of Museums, with the support of the Indianapolis Museum of Art.

[4] Research assistance for this aspect of the study was provided by Eric Ramírez-Weaver.

Museum discounts of scholarly reproduction fees for various purposes—book cover, book interior, periodical, website—vary widely, running from minimal at the low end of commercial fees to as much as 75 percent toward the higher end. A small minority of institutions waives scholarly fees routinely. Still, the higher-end scholarly fees reported by at least eight museums surprise: $100.00 to $260.00 for color inside a book; $60.00 to $150.00 and up for black and white inside a book. The majority of reported prices range from $35.00 to $75.00 for color inside a book, and $20.00 to $50.00 for black and white. A monograph with 100 illustrations might well cost its author $5,000.00 or more in permissions costs after the images are purchased. For books on modern and contemporary art, that number is likely to be considerably higher.

Fees for reproductions in scholarly journals are not markedly cheaper than for books, running from a rare low of $10.00 to a high of about $250.00. Most fall in the $25.00 to $75.00 range. For an article with 20 illustrations, some of which are presumably reproduced at no cost, the budget could easily reach upward of $500.00.

Price policies for website uses are still young and thus less well defined; as opposed to permission policies for print, many institutions claim to set prices for any electronic publication case by case. Traditional license restrictions of language, geographic range, print runs, and even numbers of editions no longer apply. Time restrictions have taken the place of edition limitations, and this new model raises a thorny problem of publication preservation. Digital licenses frequently limit the time the image may be posted, and prices go up for longer-term licenses. The range is from about one to five years, infinitely shorter than the theoretically endless preservation of an image in a book once it has been printed. The few reported and posted prices for electronic publication fall predominantly in the $60.00 to $150.00+ range, comparable to those for print. Anecdotal reports from scholars and publishers indicate, however, that specific negotiations for high-quality digital image permissions tend to result in fees higher than those for print.

The reasons for the opaque but generally high pricing structure for digital images in this transitional moment are understandable. With the adoption of digital image delivery as standard procedure, many image providers have begun to relinquish the former separation between selling images for personal use and granting permission for publication. The loss of this distinction appears to have driven prices upward. The potential of unauthorized worldwide distribution of images at the click of a mouse, and the risk of unpalatable image uses resulting from such distribution, appear to motivate higher digital image fees. The instability and general restrictiveness of the permissions regime for digital uses are serious impediments to the productive development of electronic publications for art history.

In sum, our quantitative research suggests that editors and scholars rightly perceive total permissions expenses for books to have gone up considerably over the past few years.[5] Even commercial publishers that could traditionally shoulder the costs of the finest illustration program permissions for survey books by leading scholars are now feeling the squeeze.[6] This state of affairs has several negative consequences for scholarly publication in art history, where scholars have usually borne the weight of permission costs, either through institutional subventions and grants or at personal expense. As costs of illustrations have gone up, authors frequently have to consider illustration cuts that hamper arguments. And as sales have declined, scholarly books that need extensive illustration programs have a harder time getting published at all (see Costs to Publishers, below). Scholarly journals and their authors are experiencing the same pressures. At the *Art Bulletin*, for example, subventions for illustrations have not been able to keep pace with increasing costs. In its most recent year, authors on average could acquire fewer illustrations and licenses for their allocations, and the well-received color illustrations had to be scaled back considerably.

Scholars and editors also express grave concerns about the time and effort required to secure good images and permissions to reproduce them. It is difficult to find out from institutions how to acquire images and

[5] The written responses to the Editors' Survey register this perception, as do consistent comments of scholars on their experiences. (For the Editors' Survey, see Lawrence T. McGill's report *The State of Scholarly Publishing in the History of Art and Architecture (<http://cnx.org/content/col10377/latest/>)*.)

[6] These new pressures on permissions budgets were reported by the editors of top commercial presses who were present at the focused discussion during the College Art Association in Boston, February 2006; the Summit meeting at the Institute of Fine Arts, March 2006; and a colloquium of editors on Art History and Its Publishers organized by the Clark Art Institute, Williamstown, Massachusetts, with Ken Wissoker and Catherine Soussloff, March 31-April 1, 2006.

permissions and how much they will cost, if our experience trying to obtain such information is any guide.[7] Although electronic communication has facilitated the process of finding images and contact addresses, most museums and image repositories have no standardized procedures or easily accessible fee schedules. Electronic or credit card payment to non-U.S. institutions is rarely available. Most institutional websites offer some guidance to the image licensing process, but other than a commercial organization such as Corbis or Getty Images, very few make it possible for the transaction to be handled through online price calculation and ordering without the intervention of a fees specialist.[8] The commercial vendors offer the user a range of categories to specify the character of the intended image use and audience, but none of these indicators correspond closely to scholarly publication, with the result that fees from such organizations—from c. $300 per image to over $1000—tend to outstrip scholars' budgets. Nevertheless, the electronic request form developed by such organizations may well be modifiable for scholarly use by non-profit organizations, and such streamlining would be welcome. ARTstor[9] is poised to launch one such form when it begins to manage scholarly reproduction requests for the Metropolitan Museum of Art in the fall of 2006. Its model should be reviewed for possible use as a new standard.

[7] Research notes and correspondence with institutions by principal investigators and Eric Ramírez-Weaver, research assistant to this part of the study.

[8] For sample guidelines and electronic interfaces, all of which were used in the research, see the websites for Corbis http://pro.corbis.com/ (<http://pro.corbis.com/>), Getty Images http://creative.gettyimages.com/source/home/home.aspx (<http://creative.gettyimages.com/source/home/home.aspx>), Art Resource http://www.artres.com/ (<http://www.artres.com/>), Bridgeman Art Library http://www.bridgeman.co.uk/ (<http://www.bridgeman.co.uk/>), the Metropolitan Museum of Art http://www.metmuseum.org/education/er_photo_lib.asp#4 (<http://www.metmuseum.org/education/er_photo_lib.asp#4>), the Museum of Fine Arts, Boston http://www.mfa.org/about/index.asp?key=50 (<http://www.mfa.org/about/index.asp?key=50>), the National Gallery of Art http://www.nga.gov/resources/divsdesc.shtm (<http://www.nga.gov/resources/divsdesc.shtm>), and the Getty Foundation http://www.getty.edu/legal/image_request.html (<http://www.getty.edu/legal/image_request.html>). (The Getty Museum and Getty Research Institute, both part of the Getty Foundation, are unrelated to the commercial venture Getty Images; the Getty website cited here notes explicitly that it "does not give permission for commercial use such as creating merchandise, promoting products, etc.") Among museums, the Frans Hals Museum in Haarlem has an unusually transparent and efficient interface for image orders online, with price quotes delivered by a specialist within 24 hours; see http://fhm.imagedatabase.nl/ (<http://fhm.imagedatabase.nl/>).

[9] http://www.artstor.org/info/