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*Yours, Mine, or Ours: Intellectual Property Issues*

## Introduction

I'm hoping that in my remarks this afternoon some of the themes we explored this morning about access and use of museum collections intersect with some of the issues that have been raised by my fellow panelists concerning frameworks for intellectual property administration and the use of digital documentation of museum collections.

I'm going to talk about digital documentation, not only about digital reproductions or images. I think it's very important for museums to recognize that their intellectual property assets are not simply in the reproductions of the works of art in their collections. These assets reside in the knowledge and the writing of the members of their staff. They're in the history and corporate memory that are built up around exhibitions, research, study, and interpretations. Indeed that mixed media interpretation of works of art is one of our unique assets. It's something that we've been historically not particularly good at leveraging, at using, and reusing. We invest a great deal in its creation, but we don't invest very much in its management. That puts us in a very bad position when it comes to being able to draw on our investment again and to reuse those digital assets in new contexts.

Having listened to my fellow panelists and trying to put myself in your position, on the receiving end of great complex analyses of intellectual property law, both in the United States and internationally. I found myself wondering what's a museum to do? The "ostrich syndrome" seems very attractive. "It's just all too complicated. Maybe we can wait. If we step back and don't rush in, it will sort itself out." I recognize that there is a great temptation to inaction, but being ten years younger than the last person who revealed their age on the stage, I can say that the people who are ten years younger than me aren't waiting for museums to decide what to do. They're out there working in a digital environment and they

have definite expectations about digital access to the documentation in our collections. If your museum doesn't do something, this young group of users is going to do something for you, and it may not be something that you're entirely comfortable with. There *is* a demand for access to your collections. Think of it as people who are rushing to get into your galleries, but the galleries that they want to explore are virtual rather than physical.

How museums should respond to that demand is a question that forces us to examine the intellectual property frameworks that govern our policies for rights and reproductions. It challenges us to rethink our programs and our priorities, reviewing how and where we invest in outreach from our institutions and education about our collections. And it forces us to rethink some of the organizational structures that we've put in place. The important point is that doing things digitally isn't just digitizing what we've always been doing. It requires new activities and approaches as well as new methods.

#### AMICO as a Collective Response

The Art Museum Image Consortium (AMICO) exists as the response of one group of museums to the challenges that have been posed by changing frameworks of intellectual property. It is the answer one group of museums found to the question: How can museums respond strategically to the ever-shifting sands of both technology and intellectual property? In 1997, the Association of Art Museum Directors sponsored a series of planning meetings at which members, staff, and their member museums got together to try to puzzle through some of these questions. Was it useful to act in concert? Where was collaboration was appropriate? How could they take advantage of the opportunities offered by the internet, by digitization? And, how they could respond to the advances that most of them had received from commercial organizations—such as Interactive Home Systems which became Continuum, which became Corbis—offering what looked like great financial incentives but turned out to be a very high price for ongoing access to content? The central concern among this group was that *museums* needed to figure out where and how they could act strategically to further their missions while still retaining control of those things that they felt should be managed in-house.

The Art Museum Image Consortium is an independent, museum-governed not-for-profit organization (501-C-3) that enables the educational use of museum multimedia by licensing a shared digital library of art documentation. Educational use takes place in colleges and universities, in primary and secondary schools, in public libraries and in museums. AMICO operates as a not-for-profit and in the educational sector, where museums feel very strongly that their missions and their educational goals coincide with the users of their intellectual property. These shared objectives have enabled us to take a sympathetic approach to intellectual property rights that meshed with that of our users. It's often presented that intellectual property negotiations put someone on one side of the table as the creator and 'owner' and someone else on the other side as the user. But anyone who works in a museum knows that museums are both creators and users, and that the control we might want to exert over the content that we create, is exactly the control that we want our colleagues to relinquish when we want to use something that they've created.

### Managing Intellectual Property

It's very important that we can think with a level head about where and how we can create frameworks that both let us use content and protect it when it's appropriate. The intellectual property framework is challenging and it is changing. Copyright laws are being defined in the networked environment as we speak. Every day, there's a new case. Those cases still don't add up to something which we can count on to guide us in the digital arena. Laws, by nature, are conservative. Technology is far from it, and it's going to be a while before the legal frameworks catch up to the realities of what we might want to do. But there is a way that we can protect our intellectual property without simply relying on evolving copyright law, and that is through licensing. Licenses are contracts. Anyone who's installed a piece of software should realize that you don't actually own your software. If you've read the thing that you tore off when you opened the CD-ROM, you actually have a license to use that software in particular circumstances. That license is a contract between an intellectual property creator – the software company – and a user – you. Museums can use similar contracts in managing relationships between themselves and people who use their information. AMICO has.

Building on the foundation of a collaborative project called the Museum Educational Site Licensing Project (MESL), AMICO developed a series of educational licenses which define users and uses of museum intellectual property within parameters that are comfortable to museums. The consortium administers these licenses for its members and arranges for institutional subscribers, representing groups of users, to have access to the compiled AMICO Library. What these licenses do, is give us some firm ground on which to stand, which is far more comfortable than shifting – or sinking – sands.

Licensing also makes it possible for AMICO to take advantage of some of the economics of scale that come from the ease of digital reproduction. The economics of e-commerce are still very uncertain. We all know that anything with "e" is hot. All you have to do is look at a bus here in New York City, and you know that you should be on the web and you should be making money. But the reality is that there are a relatively small number of works in each of our museum collections that have a significant potential commercial value. Yet most of the works in our collections have substantial scholarly and educational value. Museums are challenged to find economically viable ways to enable their educational users - the scholars, the teachers, the students – to have access to the depth of our holdings. Educational access requires a different economic framework than is provided by commercial picture libraries which are interested in your "top ten" (or for very large important collections, maybe your top 100, or 1000) works in any category, but are not willing to provide access under economical terms to the thousands of drawings you may have which are the preparatory for a particular piece. There's depth in your collection which is of educational value, but may not necessarily be of commercial value.

It would be difficult for individual museums to protect their rights and administer educational access to this large body of works on a wide scale. There are significant economic costs in administering intellectual property. I'm sure those of us who have rights and reproductions departments have encountered that not-for-profit economic mirage: the income stream looks great until you realize that you're spending more to collect these fees (in terms of staff and infrastructure support) than you're actually bringing in. In administering educational rights, there's a very high price to simply saying "yes". If every teacher who wanted to use a digital reproduction of a work in your collection wrote to you and asked,

what would you do? If you could afford to answer them, could you afford to answer all their students too? Even now it is hard to keep up with non-digital requests for scholarly reproductions. So, if we're going to take advantage of the tremendous potential for access on a really broad level to the content of our collections, we can't do it simply by transferring our, "Fill in a form, and I'll send you a contract to sign," method of administering intellectual property. We need efficient management which enables economies of scale; that's where consortial administration comes in.

AMICO administers standard licenses which are agreed on by its members, and licenses entire bodies of material (The AMICO Library) to educational institutions who acquire rights to use the Library on behalf of the people that are engaged in their programs. So, rather than every teacher in a school writing to every AMICO member museum for permission to use every work in the AMICO Library, there's one agreement between the consortium and the educational institution. This simplifies the administration, and actually makes it possible for us to consider distributing this large amount of content. Although it is only in its first year, there are already over 50,000 works in the AMICO library, and well over half a million students at subscribing institutions who are potential users. Within five years we conservatively project over 250,000 works and ten million users.

#### Enabling Use and Sustaining Access

AMICO is also helping members museums realize economies that can offset some costs of traditional publication. All of us are under pressure from scholars to publish a permanent collections catalog. But the economics of print publications, especially ones with high quality reproductions, are prohibitive. Few of us can afford print publication of much of the knowledge we have on our collections. We need to find other frameworks in which we can provide access to that knowledge but still protect it. In the future, it is far more likely that your papyri collection will be published digitally than that you'll ever be able to print a full color illustrated multi-volume catalog. Digital reproductions are very valuable to those studying that material. They provide us a new possibility of reaching the user community that we would like to reach. Doing this changes our workflow and work methods a bit, but with practice institutions can take advantages of the new economics of digital distribution with little cost above that of current day-to-day operations. AMICO is helping institutions

to model environments which are self-sustaining and enable recovery of added digital distribution costs. I think everyone who has done a grant-funded digital project has wondered, "What do we do about the next one? Where are we going to get the next grant? How can we continue to meet the demand that we have created?"

Obviously grant funding is an important source of support to the museum community. But we also need to keep other frameworks in mind too. We need to explore where and how to use not-for-profit environments, where cost recovery is the goal. And we also need to acknowledge that commercial licensing and making a profit are viable as the goal sometimes. In the case of new infrastructure, and investment in ongoing use, it is important that we identify self-sustaining mechanisms. While one-time opportunities can fund special research needed to create information in the first place or the temporary exhibition, creating systems and structures that let the investment that we've made have a life beyond the life of the show, require long term commitment. We're beginning to realize how important it is that the interpretive content created around these exhibition galleries remain available when the works themselves may no longer be in on display. They may be in another museum. The show may have been disbanded completely. But the investment made in interpretation can persist – if we plan for it.

What the members of AMICO found as they explored possibilities for collaboration in this environment was that there were many ways in which new technology enabled them to reach new audiences, enabled them to serve their traditional audiences better, and enabled them to make their collections available for research, for education, and for sheer enjoyment. The digital environment had actually created a demand for use and strong expectations for access to their collections, access for educational technology uses by creative teachers in new classrooms. And I was delighted to run into Terry Gips, from the University of Maryland, one of the participants in the Museum Educational Site Licensing Project (MESL), today at lunch. Terry inspired many of us by the way she used digital reproductions of art in her classes, in creative ways that engaged and involved her in the art making process and the process of looking at art.

Museum participants in MESL learned a great deal from the experiences of those using their documentation in teaching. To build on that experience, AMICO worked with a select group of universities for a testbed year before the AMICO Library was released for general subscription in July of 1999. During this year, we explored such innovative uses and attempted to measure their impact. It was very heartening to see that the wide range of uses made of the AMICO Library in this *beta* test went far beyond art history departments, stretching as far as computer science and the school of printing. Images of works of art engaged students in a required undergraduate humanities course, as much as they engaged the students within a traditional art history course. When the university educators came to the annual AMICO members meeting in June 1998 to report on their experience, they helped museum staff to think more broadly about their audiences, and rethink how to make more satisfying digital content for educational uses in the future.

#### Benefits of Collaboration

The AMICO collaboration is just beginning, but already it has provided a framework for museums to engage in some collaborative decision making, and to solve complex problems of intellectual property management and access in a digital economy. Within a very short time—less than two years—the member museums have discovered many benefits of membership. Already there is very wide access to the digital documentation of their collections, with most of the costs being born by subscribers. Equally importantly, member museums have found that they can make collective decisions about technology and about digital strategies that are sounder—and safer—because they're being made collectively.

AMICO is providing a framework within which member museums can confront the challenges and opportunities of digital networks on their own, non-commercial, terms. And it is providing a way for museums to further their educational missions and engage new groups of users. Not the least, it is providing long-term access to the documentation they have been creating of the collections in their care.

Membership in AMICO is open to all institutions with collections of art willing to contribute digital documentation to the AMICO Library. I'd be delighted to discuss membership with any interested institution, and you can also find full background on our

web site at <http://www.amcio.org>. AMICO Members benefit from the activities of the consortium and the consortium is strengthened through the diversity of its members.