This is the sixth in a series of articles sponsored by the CAA Committee on Intellectual Property (CIP), in which a hypothetical question is posed on some aspect of rights, permissions, fair use, and related topics. We provide a short answer on the legal aspects of the question, followed by commentary from a practical perspective. This feature is intended to provide general information and does not constitute legal advice. If you have specific questions, please contact an intellectual-property attorney.

**Image Fees**

Q I'm an art historian publishing a book. Several of the artworks illustrated in my book are protected by copyright. Though it is a scholarly publication, the press has asked me to get permission from the copyright holders to publish these photographs and pay any fees these parties might charge. Do I need to do this? How do I begin? How can I determine whether or not the fees are fair? Also, some of the artworks are old and not in copyright. Do I have to pay fees for them too?

A Yes, usually you need to obtain permission for the publication of works in copyright. (But see other CIP Q&A columns in CAA News and at www.collegeart.org for discussion of the fair-use doctrine.) You also may need to pay fees for the rental of photographs of artworks, both those that are in copyright and those that are in the public domain.

First, copyright: The process of copyright clearance for the reproduction of an artwork begins with finding the copyright holder(s) or their representative(s). As a threshold matter, you should recall that it is rather unlikely that the owners of the physical artwork (or the image) are the holders of the copyright. Unless copyright has been legally transferred (to a museum, for example), most often the copyright holder is the artist or his or her legal heirs.

As discussed in a previous column (see “CIP Q&A,” CAA News, November 2003), the copyright holder has the exclusive right to reproduce a work and distribute copies of it (in a book, for example) and display it publicly, as well as the exclusive right to authorize others to do the same. The supplier of the image (e.g., a museum or gallery) may be able to direct you to the copyright holder, but this is not always the case—you may have to do some research. Remember that in clearing rights, you may need to obtain permission from the owner of the image (the photograph), not just the owner of the artwork.

Many well-known artists or their estates are represented by rights-clearance agencies. Two of the largest agencies in the United States are the Artists Rights Society (ARS), which has a strong emphasis on European artists, and the Visual Artists and Galleries Association (VAGA), which works with many American artists. For those artists not represented by an agency, it is best to go directly to the artist or his or her gallery. Occasionally the trail takes several communications with different parties to reach the rights holder. Copyright law requires that you make a good-faith effort to find elusive copyright owners. If you make valiant good-faith efforts to try to find the copyright holder but fail, you and your press will have to decide whether to publish the image of the artwork nevertheless. If it is decided to do so, then you and your publisher will be relying on the fair-use doctrine. If you and your publisher were to be sued by the rights holder, your good-faith efforts ought to count significantly in your favor. Accordingly, it is extremely important that you document and archive your search—that is, maintain a good paper trail of all correspondence, phone calls, e-mails, and the like.

Once the copyright holder or his or her representative is identified, send a written communication with complete information about your publication (see sidebar on page 15). The copyright clearance process should result in a written statement granting permission for the specific use you are requesting. The copyright owner has the right to determine if, when, or where an image of the artwork is published or displayed. You may be asked to submit the text relating to the image or artist for prior approval.

The owner of the copyright in the image (the photograph of the artwork), which may be the photographer or the museum or gallery, may have stipulations regarding image alteration, such as cropping or overprinting. If you shoot the photographs you intend to publish, it may still be the case that the rights holder in the artwork itself might object to cropping or other modification of the image.

In addition to an agreement and permission regarding how the image is to be published, you may have to pay copyright fees. Again, there may be two sets of fees, one for the copyright in the artwork and the other for the copyright in the photograph of it. In the vast majority of cases, the image source (e.g., museum or gallery) holds the copyright to the photograph. If so, their fee and agreement for the loan and use of the film or digital image may cover some uses, but you will need to review that agreement carefully; if you or your institution signed an agreement to use a slide for classroom use, you will not have permission to use the image for your book and must obtain a separate permission. Occasionally, a reproduction obtained from an artist or architect, for example, will carry a photographer’s copyright. In such an instance, the photographer must be contacted separately. (Note: A photograph of a work in the public domain also may, or may not, be subject to copyright. See “CIP Q&A,” CAA News, September 2003.)

Bottom line: Several layers of permissions and fees may be required to reproduce a single image. Potentially, there are three fees to consider: one for the holder of the copyright in the artwork; possibly another for the copyright in the photograph or digital image; and finally, image suppliers (e.g., museums and others) may also charge a separate loan or rental fee for use of the photograph or digital file itself. This last is a contractual loan fee, rather than a fee for exercise of a copyright right. It may be charged for a photograph of an artwork that is in the public domain, as well as for one that is in copyright.

Be sure to read carefully any contractual agreement you sign in this process. Some permission agreements require that you give the grantor of permission one or more copies of the publication. (Check with your publisher to determine if it is willing to absorb this cost for you, or if you must pay for and ship the books yourself.) There may be a stipulation that a color proof of the image be sent for approval before the book is printed. Again, check with your publisher beforehand to clarify who will pay for the proof. Any credit information that must appear with the image should be brought to your editor’s attention. In some cases, failure to include a precisely correct credit line can result in a penalty fee.
CIP Commentary

The road to copyright clearance can have unexpected, and expensive, surprises. To keep surprises to a minimum, consider copyright fees early on in your writing. Speak to your press and check your contract to determine who will pay the fees. Make a preliminary list of the artists and works you want to include in your publication. If you are responsible for clearing copyright and paying the associated fees, check with rights-clearance agencies (e.g., VAGA and ARS) to see which artists they represent. This can be done by submitting a list to them or by checking their websites (if available). If you are searching for the gallery that represents an artist, often a Web search of the artist’s name will yield the name of his or her gallery. It would be most useful, of course, to find the relevant information on the artist’s own website, if there is one. These sources generally will provide contact information for permissions. Another helpful resource is the Art in America Annual Guide to Museums, Galleries, and Artists, which includes an index of many artists with their galleries indicated. If the contact person is not affiliated with a gallery or is not found in a Web search, sometimes (if you know where he or she lives) a telephone directory yields results.

Copyright fees vary widely. Price depends on many factors: Will the image be in a book or journal article? Will it be on the interior pages or on the cover? The reproduction of the work in black and white or color also can have a bearing on the fee. A rights-clearance agency may ask the planned size of the reproduction (e.g., quarter, half, or full page). Sometimes size is not possible to predict so early on, and it is only when the publication has been designed that you will know this information. Sometimes, therefore, a final bill from an agency is not issued until the size has been finalized. You may need to consult with your editor and/or designer to limit expenses by controlling the size of certain images and choosing works for color reproduction based on fees.

Other information you may be asked to provide includes the proposed print run of the publication, information about the breadth of its distribution (e.g., whether it will be sold in North American or world markets), and whether the publication will be published in English only or will also be in other languages. All of this information assists some granters of permission to determine the scale of fees they will charge. Your editor can supply estimates. Many grantors of permission and/or rights holders, especially artists, will waive or reduce fees, particularly for a scholarly publication. Conversely, some fees can be shockingly expensive. There is no rule of thumb about this.

Note that occasionally a photograph, transparency, or scan will not be released from an image source until you show proof of permission to publish from the copyright holder.

When obtaining an image from a source other than the copyright holder, rental and use fees may also be charged, and these vary as well, depending on the source. Here, too, steep discounts are often given to scholarly works, so if you are required to secure the images for your book, it is important to communicate the nature of your publication clearly. In some cases the rental fee and use fee are separate charges (and separate again from the rights fee), so it is critical to read the fine print of the rental agreement.

Occasionally, the use fee is not charged until the publication is printed. Sometimes a rental term (e.g., three months) is stipulated in the agreement. Talk to your publisher about who is responsible for paying any late fees that may be incurred due to the production schedule of the book. Note that the length of rental can also sometimes be negotiated, if you do so in advance.

If the image is acquired directly from an artist or from his or her gallery, it is often possible to avoid the two separate fees for loan and use and for copyright.

If your budget is overextended, you find that potential copyright fees are significant, and you have done your best to negotiate prices, consider whether you might be able to replace some images and artists. You also might consider reducing the number of images or the size of certain ones. Flexibility and good planning help to ease costs. This is a key reason for planning your copyright and permissions clearances and fees at an early stage in your writing.

Rules of Thumb

- Think about costs and the availability of permissions and images early in the writing process. Where possible, shape your picture list with these constraints in mind.
- When you have a publisher, clarify before contract who will be responsible for clearing copyrights, paying fees, and obtaining images. This is also a good time to get information from your publisher about the best formats for images: black-and-white prints, transparencies, 35-mm slides, or digital scans. Ask your publisher for detailed information about print run, languages, markets, and other factors that may affect the price of images and permissions.
- Begin the process of seeking photos and permissions early. It will take longer than you think to clear all permissions.
- If you are responsible for clearing copyrights, remember that there may be two copyrights: the copyright in the artwork (if the work is not in the public domain) and the copyright in the image. Recall also that the owner of an artwork under copyright or the institution that supplies

Information to Provide in a Permissions Request

- Author name
- Tentative title of book or article
- Expected year of publication
- Name of publisher
- Type of publication (scholarly, textbook, etc.)
- Location of image in publication (inside, cover)
- Color or black and white
- Planned size of image (quarter page, half page, full page, etc.)
- Distribution (North America, world, etc.)
- Language (English language, multiple languages, etc.)
- Expected size of print run

Contact Information for VAGA and ARS

Artists Rights Society (ARS)
536 Broadway, 5th Floor
New York, NY 10012
Tel: 212-420-9160
Fax: 212-420-9286
www.arsny.com

Visual Artists and Galleries Association (VAGA)
350 Fifth Avenue, Suite 6305
New York, NY 10118
Tel: 212-736-6666
Fax: 212-736-6767
rpanzer@vagarights.com
the image probably does not hold the copyright to the work. Numerous inquiries may be necessary to locate copyright holders. Several layers of permission and fees may be required to reproduce a single image.

- Document your inquiries and save all paperwork relating to rights and permissions. If your publisher asks for these documents, be sure to keep copies, permanently. Obtain written statements from all copyright holders granting permission for the specific use you are requesting.
- Copyright holders have the right to determine if, when, and where an image of the work is published. They may ask for a preview of your text before granting approval to use an image.
- Expect that separate fees may be charged for the loan or rental of the image itself and for the copyright permission.
- Be flexible about the specific works you need as well as the size and number of images you expect to include in your text.

Vote for the 2005–9 CAA Board

CAA's 2004 Nominating Committee has selected the following slate of six candidates for our Board of Directors for the 2005–9 term: Susan Grace Galassi, curator, Frick Collection; Mary-Ann Milford-Lutzker, provost and dean of the faculty, Carver Professor of East Asian Studies, Mills College; Charles Reeve, assistant professor of art history; Department of Visual Art, Kennesaw State University; Jack Rushing, professor of art history, University of Houston; Buzz Spector, professor of art and department chair, Cornell University; William Tronzo, professor of art and chair, Newcomb Art Department, Tulane University.

In accordance with a 2004 CAA by-law amendment, the CAA membership will elect four new members to the Board of Directors at the Annual Business Meeting in Atlanta. All members received a ballot and the candidate biographies and statements in December (either by postal mail or e-mail, depending on what you indicated on your membership form).

You may cast your ballot by sending it by mail, courier service, or hand delivery to the CAA office, or in person during the Atlanta conference. Voting will end Friday, February 18, 2005 at 4:45 PM. Results will be announced at the close of the Annual Business Meeting, and new Board members will take office at the spring meeting.

If you wish to vote during the conference, CAA will provide computers in the registration area for electronic ballots and a ballot box for paper ballots. If you have selected a paper ballot and wish to vote in person during the conference, you must bring your ballot with you! No substitute paper ballots will be issued.

We urge you to attend our "Meet the Candidates" session at the conference on Wednesday, February 16, at 5:00–5:45 PM—just before Convocation. Please take this opportunity to hear the candidates before casting your ballot. Deadline to return ballots: Friday, February 18, 2005, at 4:45 PM.

Contribute to CAA News

In addition to reporting about CAA's many activities, CAA News has begun to examine other issues critical to the fields of art and art history. The July issue was dedicated to environmental, health, and safety issues for artists, art schools, and art departments, and in September we investigated the current state of slides and digital images in the classroom.

CAA News solicits your thoughts on two topics for future newsletters: the first will explore pedagogy in art-histoy survey courses and in foundation studio-art classes; the second will examine censorship in art and scholarship. Additionally, we welcome your thoughts on other pertinent issues that you face in the art, academic, and museum worlds. Please share your comments with Christopher Howard, Editor, at caanews@collegeart.org.

Contribute to CAA News

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