

## **Response to Gowers Review from Association of Art Historians of Great Britain and Ireland**

### **GENERAL QUESTIONS**

#### **3. How IP is licensed and exchanged**

(d) Are there specific barriers to licensing in the main forms of IP currently used: patents, copyright, trade mark, and designs?

(e) Are there barriers to licensing IP on grounds of cost? What drives these costs?

**The costs of reproduction fees make it very expensive to publish art books and journals, especially academic art history texts with small print runs. Museums, under continuous pressure to generate revenue, currently charge high fees for the reproduction of works which are, in many cases, the property of the nation and should be accessible to all. The majority of our members, whether they be doctoral students, established academics, or freelance lecturers and writers, need to publish as part of their work. The vast majority of publishers expect authors to pay reproduction fees. Charges of £100 for a full-page black-and-white plate are not uncommon, whilst authors typically receive no fee for papers, and comparatively small fees for books, which may require over 100 illustrations. Whilst some art historians are able to secure money from their employers or other funders to meet these costs, a great many cannot. Consequently, fees to reproduce IP are being used by many institutions to supplement their funding from some of those who can least afford it.**

**The IP issues here are complex. They relate primarily to objects which are out of copyright; the reproduction fees charged by artists and their estates are another matter. Current copyright law states that there is no copyright in a slavish copy, although many museums continue to insist that they hold copyright in the reproductive images they produce of works in their collection, even if those works are themselves out of copyright. Whilst this may be a reasonable claim for three-dimensional works, it is questionable in respect of two-dimensional works. The American case of *Bridgeman Art Library v. Corel Corp.*, 36 F.Supp.2d 191 (S.D.N.Y. 1999) (see [http://en.wikipedia.org/wiki/Bridgeman\\_Art\\_Library\\_v.\\_Corel\\_Corp](http://en.wikipedia.org/wiki/Bridgeman_Art_Library_v._Corel_Corp). with further links) has brought these issues into sharp focus.**

**However, museums do not necessary rely upon copyright law to secure their reproduction charges. Instead, agreement to pay the charge is usually made a condition of the contract to supply the photograph to the author, so that failure to pay would become a breach of contract rather than a breach of copyright. The net effect remains the same, however – exorbitant fees charged to our members, many of whom find it difficult to pay them.**

## SPECIFIC ISSUES

Copyright exceptions – fair use/fair dealing

Background: there are a number of exceptions to copyright that allow limited use of copyright works without the permission of the copyright holder.

- (a) What are your views on the current exceptions in copyright law?
- (b) Could more be done to clarify the various exceptions?

**Whilst current regulations covering “fair use” are usually considered to include private research and study, it is less clear whether they include the dissemination of research through lectures, presentations, and teaching, particularly when digital images are being used. These are activities which should be encouraged for the public benefit, and we would like to see “fair use” regulations extended to permit all these activities.**

**Freelance art historians, who earn their living by charging for lectures, teaching, etc., are in a particularly awkward position: their activities are often practically identical to salaried staff in schools, FEIs and HEIs (indeed, they are frequently employed by such institutions), but, because they charge for their services, they find it more difficult to claim “fair use”. An extension of “fair use” to cover *all* educational activities would also remove the inconsistencies faced by our most vulnerable members.**

- (e) How would you see content owners being compensated for such use?

**By displaying and discussing works of art, interest in them is increased. Compensation would therefore come in non-monetary form: free advertising for the works of living artists, and for museums, increased visitors and help in fulfilling their mission of making art works accessible to all.**

**Iconographic and other specialised art historical research increases understanding of a work in relation to works in other collections. When published, such research brings together knowledge that benefits museums, scholars and the public. Often it draws attention to works rarely, if ever, on public display and thus expands the public knowledge of the museum’s holdings.**

- (f) To what extent has technological change presented difficulties in use of copyrighted material in the field of education?

**The standard tool used by art historians when teaching and discussing images was, for decades, the slide projector. Kodak, the leading supplier of 35mm slide**

**projectors, ceased manufacture in 2004, citing the growth in digital technologies as the major factor. School and university slide libraries have been left with huge stocks of slides which will become increasingly difficult to project – slide libraries in university art history departments typically contain from 100,000 to 500,000 slides. Whilst the obvious solution would be to digitise these resources (itself a time-consuming and expensive task), many institutions are currently unwilling to convert their slides to digital images, because of concerns that they will be infringing copyright law. However, it could be argued that digitisation is doing no more than converting the format of an image which has already been paid for, in order to ensure that it can still be used in the manner which was originally intended. Licences should be made available for them to do this without undue restriction or expense, or (since schools and HEIs are publicly funded) such digitisation should come under the heading of “fair use”.**