

A detail from Raphael's fresco 'The School of Athens'. On the left, Plato, an older man with a white beard and a winged helmet, is kneeling and holding a scroll. On the right, Aristotle, a younger man with a halo, stands and holds a book. They are in a classical architectural setting with columns and a stone floor. The background shows a landscape with cypresses and a building.

# KRESS

## Copyright, Museums, and Licensing of Art Images

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Cover image:

*The Annunciation*, c.1450, attributed to Alesso Baldovinetti,  
Samuel H. Kress Collection, Snite Museum of Art,  
University of Notre Dame



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# Introduction

Access to art images –especially images of art works in museum collections here and abroad – is essential to teaching, learning, research and scholarship in the history of art, and indeed in all the many fields engaged with the study of visual culture. Such access has been rendered both easier and more problematic by the emergence of new technologies. The sponsored study described below is intended, first and foremost, to map out the current terrain of art museum image licensing.

## Objectives

In 2009, the Samuel H. Kress Foundation awarded a research grant to Dr. Kenneth D. Crews, Director of the Copyright Advisory Office at Columbia University Libraries. Dr. Crews proposed to undertake a study of art museum image licensing concepts, terminology and policies, including “terms and conditions” for the use of art images. The principal objectives of this study were to gather a representative sample of art museum license agreements; to analyze their similarities and differences with respect to both terminology and policies; and to produce a systematic inventory of the range of issues addressed in and posed by such licensing agreements and the different ways in which museums have responded to these issues. This inventory and analysis has sought to provide insight into the issues of copyright and licensing that are of concern to art museums and to educational and scholarly users of art images alike. The focus of the study is primarily art museums in the United States.

By revealing the diversity of licensing concepts and terminology, policies, and terms and conditions of use, this study summarizes the ways museums have addressed specific licensing issues and demonstrates the range of options available to art museums when drafting institutional licenses. The critical examination of these policies also reveals the choices that museums make and how they affect the ability of educators, students, researchers, scholars, and other members of the public to explore and make use of art images.

The study has further generated additional analytical research. Please see the Appendices below.

### The study includes:

- Literature Review and Bibliography
- Representative Sample of Museum Image Licensing Information and Agreements
- Compilation and Analysis of Image Licensing Information
- Interviews with Museum Professionals Involved in Image Licensing
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All of these documents are available as PDFs on the Kress Foundation website, as Appendices to this summary report. They have also been made publicly available through the Academic Commons of the Columbia University Libraries.

Dr. Crews has links to all documents and published papers from the website of the Copyright Advisory Office:

<http://copyright.columbia.edu/copyright/2011/06/27/copyright-museums-and-licensing-of-art-images/>

## Literature Review and Bibliography

An initial component of the study entailed the identification and compilation of relevant literature from across the disciplines of law, library science, art, and museums. Literature was collected and reviewed from a number of proprietary databases (*e.g.*, Westlaw, ProQuest: ARTBibliographies Modern, HW Wilson: Library Literature and Information Full Text) as well as publicly available internet sources (*e.g.* Social Science Research Network, author websites). Directly pertinent literature was incorporated into a working bibliography. The resulting bibliography serves as an interdisciplinary guide to literature on copyright and licensing issues pertaining to the reproduction of works of art, with a particular focus on literature examining the relationship between museum rights and reproduction policies and copyright law. More generally, it includes literature on art and copyright law, examining issues such as notions of originality and the impact of copyright and licensing on the creation of new works of art. While the majority of works in the bibliography are concerned with United States copyright law, it also includes relevant English-language literature on international and comparative copyright law. *See Appendix 1e.*

## Representative Sample of Museum Image Licensing Information and Agreements

A sample of United States art museums was selected for the purposes of gathering and analyzing information pertaining to image licensing concepts and terminology, policies and practices. Fifty American museums with a primary specialty in art were selected from the accredited members of the American Association of Museums. The selected museums were chosen with the goal of achieving a diverse but representative sample in terms of the size and nature of collections, staffing and budget, and the scope and nature of image licensing practices and policies.

The website of each candidate museum was reviewed and any information pertaining to art image copyright, licensing, or terms of use was harvested and recorded in a spreadsheet tracking the source page URL and the date on which the information was obtained. The amount of image licensing information available varied significantly across different museum websites. Many museums have made the full text of their image licensing agreements available online, while others offer little (and in some cases no) information about rights and reproduction. Where no relevant information was available, the museum was contacted by email with a request for a copy of its image licensing agreement(s) and any other relevant rights and reproduction information (*e.g.* permission applications, fee schedules)

for inclusion in the study. Further, some of the museums that participated in interviews provided additional documents not available on their websites.

In total, contractual licensing agreements, including the full terms and conditions governing image use, were obtained from twenty American art museums. With respect to the remaining thirty museums, at least minimal information about image licensing terms and conditions was collected from all but three of them. *See Appendix 1a.*

## Compilation & Analysis of Image Licensing Information

The assembled image licensing information was compiled into a summary of museum terms and conditions governing image rights and reproduction. The compilation provides an overview of the licensing concepts and terminology and rights and reproduction policies currently in place at art museums throughout the United States. It also provides a basis for analyzing and comparing the image licensing terms and conditions of use of different art museums.

The compilation was then adapted into a series of analytic charts categorizing and summarizing the terms and conditions landscape. Terms and conditions were organized into three separate charts, according to the general thematic groupings that emerged from a review of the compiled data:

1. provisions governing the appearance and composition of images (*see Appendix 1c.*);
2. provisions governing the reproduction and distribution of images (*see Appendix 1b.*); and
3. provisions governing third-party rights (*see Appendix 1d.*).

Each of these three charts was further subdivided into subcategories, as appropriate, to reflect the ways in which museum licensing agreements typically address these themes. These charts provide a more detailed and analytic overview of museum rights and reproduction policies. Additionally, they provide a means for comparing and analyzing how different institutions regulate art image use through licensing.

## Interviews of Museum Professionals Involved in Image Licensing

To provide a fuller sense of how museums address issues of art image copyright and licensing, interviews were conducted with a number of the art museums included in this study. Fifteen museums were contacted to request their participation in an in-person or telephone interview; these museums were selected to include a range of geographic locations, collection types, and approaches to licensing. Of the fifteen museums contacted, eight ultimately participated in interviews. These interviews involved either museum legal counsel or other professionals directly responsible for managing rights and reproductions. A summary of each interview was documented in a memorandum. Together, these interviews elucidate a number of current trends,

issues, and controversies in museum image rights and reproduction. They also document the experiences of museums in negotiating the permissions process and working with licensing agreements, providing insight into the range of issues that are of concern to both museums and permission seekers. See Appendix 1f: Summary of Study Sample.

## **Additional Work**

The research undertaken as part of this project has led to multiple conference presentations and the publication of several articles. Please see Appendices 2–3.

# Appendix I.

## Art Image Copyright and Licensing

The following five documents are products of the research conducted for this study.

### **1a. Compilation and Summary of Museum Policies**

This document compiles and summarizes terms and conditions governing image rights and reproduction from fifty art museums in the United States. The sample of museums was selected from among the 193 museums accredited by the American Association of Museums that have a primary specialty in art. For each museum, copyright and image licensing information was obtained from the museum's website.

### **1b. Terms and Conditions Governing Reproduction and Distribution**

This table provides an overview of the image rights and reproduction policies of art museums within the United States as they address the reproduction and distribution of artwork reproductions. It also provides a means for comparing and analyzing how different institutions approach controlling reproduction and distribution when licensing uses of art images.

### **1c. Terms and Conditions Governing Appearance and Composition of Images**

This table provides an overview of rights and reproduction policies addressing the composition and appearance of art images provided by art museums throughout the United States. It also provided a means for comparing the analyzing how different institutions regulate appearance and composition through licensing terms.

### **1d. Terms and Conditions Governing Third Party Rights**

This table provides an overview of the rights and reproduction policies of art museums within the United States as they address the existence of third party copyrights in artwork reproductions. It also provides a means for comparing and analyzing how different institutions approach the issue of third party rights when licensing uses of art images.

### **1e. Bibliography**

This bibliography is the result of a literature review conducted during the summer of 2009 as an initial part of a study of art museum copyright and licensing policies. It collects literature on copyright and licensing issues pertaining to reproductions of works of art, with a particular focus on literature examining the relationship between museum rights and reproduction policies and copyright law. More generally, it includes literature on art and copyright law, examining issues such as notions of originality and the impact of copyright and licensing on the creation of new works of art. While the majority of works in this bibliography are concerned with

the United States copyright law, it also includes relevant English-language literature on international and comparative copyright laws.

**1f. Summary of Study Sample**

A basic summary of the museum sample used for the research.

These documents are available for download on the Kress Foundation website, as well as on the author's website at: <http://copyright.columbia.edu/copyright/2011/06/27/copyright-museums-and-licensing-of-art-images/>

## Appendix 2.

### Museum Policies and Art Images: Conflicting Objectives and Copyright Overreaching

Crews, Kenneth D., Museum Policies and Art Images: Conflicting Objectives and Copyright Overreaching (July 1, 2012). Fordham Intellectual Property, Media & Entertainment Law Journal, Vol. 22, p.795, 2012. Available for download on the Kress Foundation website and also on the Social Science Research Network at: <http://ssrn.com/abstract=2120210>

**Abstract:** Museums face steady demand for images of artworks from their collections, and they typically provide a service of making and delivering high-resolution images of art. The images are often intellectually essential for scholarly study and teaching, and they are sometimes economically valuable for production of the coffee mugs and note cards sold in museum shops and elsewhere. Though the law is unclear regarding copyright protection afforded to such images, many museum policies and licenses encumber the use of art images with contractual terms and license restrictions often aimed at raising revenue or protecting the integrity of the art. This article explores the extent to which museums have strained the limits of copyright claims and indeed have restructured concepts of ownership and control in ways that curtail the availability and use of art images far beyond anything that may be grounded in the law. This article examines the relevant copyright law applicable to the making and use of reproductions of art images, and it identifies the challenging pressures that museums face as they strive to make policies in the context of law but that also serve the multiple competing interests coming to bear on officials and decision makers inside museums. The article analyzes selected policies from major museums and provides an original construct of forms of “overreaching” that often appear in written standards offered by museums for the use of images. The analysis of policies also demonstrates that museums have choices in the shaping of institutional policies, and that breaking away from familiar policy terms can sometimes better serve institutional and public interests.

## Appendix 3.

### Control of Museum Art Images: The Reach and Limits of Copyright and Licensing

Crews, Kenneth D. and Brown, Melissa A. Control of Museum Art Images: The Reach and Limits of Copyright and Licensing (August 1, 2012). *The Structure of Intellectual Property Law*, pp. 269-284, Annette Kur and Vytautas Mizaras, eds., Edward Elgar, 2011; Columbia Law and Economics Working Paper. Available for download on the Kress Foundation website and also on the Social Science Research Network at: <http://ssrn.com/abstract=2026476>

**Abstract:** Many museums and art libraries have digitized their collections of artworks. Digital imaging capabilities represent a significant development in the academic study of art, and they enhance the availability of art images to the public at large. The possible uses of these images are likewise broad. Many of these uses, however, are potentially defined by copyright law or by license agreements imposed by some museums and libraries that attempt to define allowable uses. Often, these terms and conditions will mean that an online image is not truly available for many purposes, including publication in the context of research or simple enjoyment. Not only do these terms and conditions restrict uses, they also have dubious legal standing after the *Bridgeman* case. This paper examines the legal premises behind claiming copyright in art images and the ability to impose license restrictions on their use.