

SURVEY

MUSEUMS, ARTISTS AND COPYRIGHT*

DOROTHY WEBER-KARLITZ**

INTRODUCTION	121
I. RIGHTS CREATED BY THE COPYRIGHT ACT OF 1976	124
II. THE SURVEY	126
III. CONCLUSIONS	128
APPENDICES	
A. SUMMARY OF MUSEUM RESPONSES	131
B. SAMPLES OF FORMS CURRENTLY USED BY MUSEUMS	139
C. PROPOSED V.A.G.A. MUSEUM LICENSE	143

INTRODUCTION

Several years ago, an artist informed the Visual Artists and Galleries Association¹ (V.A.G.A.) that a museum sent him a form which seemed "a little strange." After examining the form, labelled "Transfer of Copyright," V.A.G.A. determined that if the artist signed it, all of his copyright in the work being acquired by the museum would transfer to the museum. The museum offered no explanation of the document in its cover letter to the artist, but simply asked that he sign and return the form for the museum's records. Since that time, V.A.G.A. received many similar inquiries from artists, and decided that the issue of which rights an artist was required to transfer to museums created a problem of sufficient importance to warrant investigation. Hence, this survey was initiated.

A finding of abuses of artists' rights was the anticipated result of this survey. Questionnaires were sent to eighty museums in thirty-two states.² Through follow-up telephone calls and meetings with museum

* This survey was presented in October of 1982 at a conference of the Confederation Internationale Des Societes D'Auteurs Et Compositeurs held in Madrid, Spain.

** B.A., 1977, Brooklyn College; J.D., 1981, Brooklyn Law School; Executive Director, Visual Artists and Galleries Association, Inc.; Associate, Bressler & Lowe.

The author extends special thanks to Evelynn Torres for her invaluable assistance in gathering the information for this survey.

¹ The Visual Artists and Galleries Association, Inc., is a licensing organization formed in 1977 to police and enforce artists' reproduction rights.

² The survey was sent to the following museums: *Alabama*—The Birmingham Museum of Art, The Fine Arts Museum of the South at Mobile; *Alaska*—Anchorage Historical and Fine Arts

representatives in New York and Washington, D.C., the policies of eighteen museums were obtained.³ Unfortunately, the survey results indicated a problem of even greater magnitude than originally expected. For the most part, every major museum is seeking a complete grant of rights from the artist. If an artist does not sign a grant of copyright, he risks the museum's refusing to acquire his works in the future.

Museum; *Arizona*—Phoenix Art Museum; *Arkansas*—Arkansas Arts Center (in Little Rock); *California*—The Fine Arts Museums of San Francisco, La Jolla Museum of Contemporary Art, Long Beach Museum of Art, Los Angeles County Museum of Art, Memorial Union Art Gallery (in Davis), San Francisco Art Institute Galleries, San Francisco Museum of Modern Art, University Art Museum (in Berkeley); *Colorado*—Aspen Center for Visual Arts, The Denver Art Museum; *Connecticut*—Yale University Art Gallery; *District of Columbia*—Hirshhorn Museum and Sculpture Garden, National Gallery of Art, National Museum of Art; *Georgia*—The High Museum of Art (in Atlanta); *Hawaii*—Contemporary Arts Center (in Honolulu); *Illinois*—The Art Institute of Chicago, The David and Alfred Smart Gallery of the University of Chicago, Museum of Contemporary Art (in Chicago), Center for the Visual Arts Gallery, College of Fine Arts (in Normal); *Indiana*—Sheldon Swope Art Gallery (in Terre Haute); *Iowa*—Cedar Rapids Art Center; *Kansas*—Mulvane Art Center (in Topeka); *Kentucky*—J.B. Speed Art Museum (in Louisville), Owensboro Museum of Fine Art; *Louisiana*—The Alexandria Museum Visual Art Center, New Orleans Museum of Art; *Maine*—Museum of Art of Ogunquit, Portland Museum of Art, The Jones Gallery of Glass and Ceramics (in Portland); *Maryland*—The Baltimore Museum of Art; *Massachusetts*—Children's Museum (in Boston), De Cordova and Dana Museum and Park (in Lincoln), Institute of Contemporary Art (in Boston), The Museum of Fine Art (in Boston), University Gallery (in Amherst); *Michigan*—Art Worlds (in Ann Arbor), The Detroit Institute of Arts, Flint Institute of Arts, Impression 5 (in Lansing), Kalamazoo Institute of Arts; *Minnesota*—African American Cultural Center (in Minneapolis), The Minneapolis Institute of Arts, Walker Art Center, Women's Art Registry of Minnesota (in Minneapolis); *Missouri*—The St. Louis Art Museum; *Montana*—C.M. Russel Museum (in Great Falls), Museum of the Plains Indian and Crafts Center (in Browning); *Nebraska*—Joslyn Art Museum (in Omaha), University of Nebraska Art Galleries and Shelden Memorial Art Gallery (in Lincoln); *Nevada*—Sierra Nevada Museum of Art (in Reno); *New Hampshire*—Thorne-Sagendroph Art Gallery (in Keene); *New Jersey*—The Art Museum (in Princeton), Monmouth Museum (in Lincroft), Montclair Art Museum, The Spy House Museum Complex (in Port Monmouth); *New Mexico*—Geronimo Springs Museum (in Truth or Consequences), Roswell Museum and Art Center, Stables Gallery of the Taos Art Association; *New York*—Albany Institute of History and Art, Albright-Knox Art Gallery, The Bronx Museum of the Arts, Cooper Hewitt Museum (in Manhattan), The Solomon R. Guggenheim Museum (in Manhattan), Guild Hall Museum (in East Hampton), International Center of Photography (in Manhattan), The Metropolitan Museum of Art (in Manhattan), Museum of Holography (in Manhattan), Museum of Modern Art (in Manhattan), The New Museum (in Manhattan), Project Studios 1 (in Long Island City), The Storefront Museum (in Jamaica), Whitney Museum of American Art (in Manhattan); *Ohio*—New Gallery of Contemporary Art; *Pennsylvania*—Pennsylvania Academy of the Fine Arts (in Philadelphia), The Philadelphia Art Alliance; *Rhode Island*—Bell Gallery List Art Center.

³ The policies of the following museums were obtained: Albright-Knox Gallery, The Alexandria Museum Visual Art Center, Anchorage Historical and Fine Art Museum, De Cordova and Dana Museum and Park, Flint Institute of Art, The Solomon R. Guggenheim Museum, The High Museum of Art, Los Angeles County Museum, The Museum of Modern Art, National Gallery of Art, National Museum of American Art, New Orleans Museum of Art, Saint Louis Art Museum, San Francisco Museum of Modern Art, The Art Institute of Chicago, Walker Art Center, Whitney Museum of American Art.

Since there is no *droit moral*⁴ in the United States, the only protection artists have with respect to how purchasers use artworks is afforded by the Copyright Act of 1976⁵ (1976 Act). The survey results demonstrated that, with very few exceptions, museums limit rights granted by the 1976 Act by attempting to obtain all copyright from artists when their works are acquired. Because an artist relies on a museum's exhibition of his work to enhance his reputation, it is difficult for him to refuse a request for the transfer of copyright. The absolute transfer of rights museums are seeking severely reduces the advantages intended for artists by the 1976 Act.

Another significant and troubling problem revealed by the survey involves reproduction rights. Museums often charge a fee for allowing third persons to reproduce artworks in such things as artbooks and television programs. This reproduction fee is wrapped around the rental fees museums charge for using their transparencies or for allowing someone access to photograph a work. The artist's permission to reproduce his work is not sought. This practice diminishes an artist's right to control reproduction because someone wishing to reproduce a work inevitably goes to the museum possessing the original work rather than to the artist. Furthermore, in some instances, the artist receives no part of any fees charged. V.A.G.A. has also been made aware of instances in which the artist is charged for access to his own work. While the museums V.A.G.A. interviewed claim that they have not abused artists' reproduction rights, it should be noted that what a museum believes is not offensive may be offensive to an artist.

The results of this survey indicate a need for a form agreement that grants museums rights which they concededly need, while preserving the rights of the artist. This article will begin with a brief discussion of the rights granted to artists by the 1976 Act, followed by a review of the various methods used by museums to gain control of rights connected with a work of art. After presenting the survey and an analysis of the museums' responses, several solutions for better protecting the artist are proposed. The appendices contain details of the responses to survey questions along with forms illustrative of those

⁴ The copyright laws of civil law countries include a doctrine known as *le droit moral*, or translated in the plural, moral rights. Under that doctrine an artist is said to have the following rights: 1) the right of disclosure or publication; 2) the right to withdraw the work from the market; 3) the right of paternity, i.e., the right to have one's name associated with the work as its creator; and, 4) the right of integrity, for example, the right to prevent distorting changes in the work. See e.g., M. NIMMER, *COPYRIGHT AND OTHER ASPECTS OF LAW PERTAINING TO LITERARY, MUSICAL AND ARTISTIC WORKS*, at 499 (2d ed. 1976).

⁵ 17 U.S.C. §§ 101-810 (Supp. V 1981) (effective January 1, 1978).

artists are requested to sign, and, V.A.G.A.'s proposed museum license form.

I. RIGHTS CREATED BY THE COPYRIGHT ACT OF 1976

Prior to January 1, 1978, unless the creator of a work of art complied with strict copyright formalities, the work entered the public domain upon publication. In addition, unless copyright was specifically reserved by the artist, all reproduction rights flowed with the work's sale. In other words, all the reproduction rights and any control of the *droit moral* was lost to the artist forever.

If the copyright requirements were met, copyright lasted twenty-eight years from the date of first publication.⁶ Although the copyright could be renewed for an additional twenty-eight year period,⁷ if the right of renewal was assigned, the assignment was irrevocable.

Since enactment of the 1976 Act, many of the harsh results under the old law have been eliminated. The 1976 Act provides that copyright exists in works first created or first published on or after January 1, 1978 for the life of the author, plus fifty years.⁸ Assignment is not irrevocable under the 1976 Act. Any assignment or license of the copyright may be terminated after thirty-five years.⁹ Importantly, publication without a copyright notice is no longer fatal.¹⁰ Furthermore, an important distinction is created between the original work and the rights that attach to that work. Sale of the original work does not constitute a transfer of the copyright.¹¹

Copyright rests in the artist upon "creation" of the work, that is, once the pictorial, graphic or sculptural work is "fixed" in a tangible medium of expression.¹² Five exclusive and divisible rights are granted to the owner of copyright:¹³ 1) the right to reproduce copies; 2) the right to prepare a derivative work; 3) the right to distribute copies to the public by sale, lease, lending or rental; 4) the right to perform a literary work; and 5) the right to display a copyrighted work publicly.

Primarily, the 1976 Act gives copyright holders the right to prevent others from making any use of the copyrighted work unless the

⁶ Copyright Act of 1909, §§ 23,24, ch. 320, 35 Stat. 1075, 1080-81 (1909) (codified at 17 U.S.C. §§ 1-216 (1976)) (superseded by Copyright Act of 1976).

⁷ *Id.*

⁸ 17 U.S.C. § 302 (a) (Supp. V 1981).

⁹ *Id.* § 203 (a)(3).

¹⁰ *Id.* § 405.

¹¹ *Id.* § 202.

¹² *Id.* §§ 102(a), 201(a).

¹³ *Id.* § 106(1)-(5).

copyright owner gives permission. A lawful owner of the actual work, however, may display that work. Thus, a museum which acquires the original work of art may display it to the public. On the other hand, the exclusive rights which belong to the artist would prevent a museum from taking photographs of a work and from allowing others to take photographs. Making reproductions of the work either for items in museum gift shops or exhibition catalogs would also be prohibited as would the lending of the work to others for display without the copyright owner's express permission.

Under the 1976 Act, any assignment or sale of copyright must be embodied in a signed writing.¹⁴ Therefore, to use a copyrighted artwork for any purpose other than public display, a museum must obtain a written grant of rights from the copyright owner or rely on the doctrine of fair use. In effect, the fair use doctrine places a limitation on the copyright owner's exclusive rights. Fair use of a copyrighted work, including use by reproduction, is not an infringement if the use is for purposes of criticism, comment, news reporting, teaching, scholarship, or research.¹⁵

When determining whether a particular use is in fact fair use, the 1976 Act specifies four factors that must be considered:¹⁶ 1) the purposes and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; 2) the nature of the copyrighted work; 3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and 4) the effect of the use upon the potential market for, or value of, the copyrighted work.

In connection with the nature of the use, fair use will be recognized where the work is being reproduced for educational, scientific or historical purposes. With regard to the nature of the work, the question of fair use usually arises in connection with scientific, legal or medical writings. Fair use will usually be recognized when the use made is for advancement of the fields of science and art. Reproductions of works of art in a treatise on art history would fall under this category.

The portion of the work used takes into consideration both the quantitative and qualitative amount of the work uses. In other words, if the entire work is used, the defense of fair use is less likely to prevail. The effect of the use takes into consideration the commercial exploita-

¹⁴ *Id.* § 204.

¹⁵ *Id.* § 207.

¹⁶ *Id.*

tion of the copyright. If the use will impact on the value of the owner's work or the potential market for that work, the fair use defense cannot be utilized.

The fair use doctrine is complex and has resulted in numerous lawsuits which have developed conflicting standards. Consequently, the "fair use" area is rife with potential problems for museums. Therefore, museums find it preferable to obtain a written document from the copyright owner assigning his copyright. The written documents used by museums have taken two forms: 1) a non-exclusive license;¹⁷ or 2) a deed,¹⁸ transfer,¹⁹ or gift²⁰ of copyright.

The non-exclusive license, although sounding less ominous than a complete transfer, still extinguishes most of the artist's rights. In theory, this non-exclusive agreement allows the artist to exploit the same rights as those given to the museum. However, the license allows the museum total control over the reproduction rights and provides for neither *droit moral* protection nor payment of fees to the artist. The museum can, therefore, make *any* use of the work it wishes without paying a fee to the artist. While the artist could conceptually grant rights, the question of access to the work becomes a problem. It is the museum which has physical possession and thus control over the work.

An example may be illustrative: Suppose an artist's work entitled "Still Life" is acquired by New York Museum. XYZ Sheet Company wishes to use "Still Life" on sheets and towels, and asks the artist for his permission. The artist does not wish this use to be made of his work and says "no" to XYZ. XYZ then goes to New York Museum which is able to grant these rights because of its "non-exclusive license." New York Museum allows XYZ Corporation to use "Still Life." The artist will have his work reproduced in spite of his wishes to the contrary and will not share in the royalties.

II. THE SURVEY

The Survey forms which were sent to the Museums asked the following questions:

¹⁷ See *infra* Appendix B, at 140.

¹⁸ *Id.* at 139.

¹⁹ *Id.* at 141.

²⁰ *Id.* at 142.

Question I

With regard to the newly acquired works that are in your collection, do you obtain an assignment of copyright or some other form of release from the artist concerning this work of art?

Question II

Does the artist have access to his-her work of art? If so, on what basis (fees charged, etc.)?

Question III

Does the Museum grant reproduction rights to third persons on works in their collection? If so, is a fee charged? Is the fee shared with the artist?

Question IV

For reproduction of a work of art (other than Museum catalogs), does the Museum seek the artist's permission for posters, cards, puzzles, etc.?

Question V

Are the Museum's administrative problems (paperwork, etc.) greater since the effective date of the new Copyright Act of 1976?

Eighteen museums responded to the survey's first question. Of those that responded, fifteen attempted to obtain all rights in a work upon its acquisition, or requested that the artist sign a "non-exclusive" license or assignment granting the museum reproduction rights. Only one museum indicated no policy or forms involving the transfer of rights. Two museums that currently do not obtain the artist's copyright intend to implement a form to do so in the future.²¹

Several museums indicated that an artist's reluctance to relinquish his rights could affect the purchase of his work. In addition, when an artist does assign the reproduction rights attached to a work, he normally is not paid for any uses made of that work. Furthermore, there are often no restrictions on how the work will be used, nor are there established standards regulating the quality of reproductions.²²

²¹ See *infra* Appendix A.

²² *Id.*

Most of the museums allow the artists visual access to their works. Fourteen museums responded to the second question, and all indicated the artist had access, although the fees charged for photographic services and loans of the work for other exhibitions varied. One museum indicated that it does not allow the artist to make commercial use of the work.²³

Eighteen museums responded to the third question of the survey. Fourteen of the museums grant reproduction rights to works in their collections. Ten museums charge a fee for these rights, and nine of them do not share fees received with the artist. The museums often have different policies with respect to commercial and educational uses.²⁴

Generally, the artist's approval is not sought for reproduction of a work for such uses as posters, cards or puzzles. Of the thirteen museums that responded to question four of the survey, only two indicated that they sought an artist's permission prior to granting reproduction rights, and in one of these two cases permission is sought only on a very limited basis. Most of the museums rely on the signed release form and do not feel it is necessary to consult with an artist about a particular use made of his work.²⁵

Only five of the museums surveyed indicated that their administrative problems had not increased since passage of the 1976 Act. Other museums noted a greater awareness of the rights granted by the 1976 Act on the part of artists and foresaw the possibility of tougher negotiations regarding the transfer of rights in the future. Several museums noted an increase in the paperwork involved in obtaining a work, and also reported some difficulties locating the signatories required for those papers.²⁶

III. CONCLUSIONS

An artist who tries to resist a museum's attempt to obtain all copyright upon transfer of a work is not likely to change the museum's policy. Instead, the museum may simply refuse to acquire his work in the future. Therefore, if artists' rights are to be better protected, the museums themselves must be prevailed upon to change their practices. Three solutions may be considered:

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

A. Form Agreement

An agreement along the lines of V.A.G.A.'s draft proposal²⁷ could be accepted by museums. This agreement gives certain rights to the museum while preserving the rights of the artist. In essence, the agreement divides reproduction rights into two areas: "museum uses" and "commercial uses." Museum uses consist of exhibition and collection catalogs (not offered for sale through commercial channels), handouts, brochures, newspapers, etc., produced in furtherance of the educational purposes of the museum. For other than museum uses, an artist's written permission must be obtained and a royalty paid to the artist. The agreement specifically *reserves* copyright to the artist.

B. Litigation

It is possible that litigation instituted against a major museum by means of a class action would serve to focus attention on the problems inherent in the transfer of rights. This would provide precedent if the artist prevailed. On the other hand, if the artists lost the case, their rights could be placed in further jeopardy.

C. Pressure from Art Community

Boycotting museums which require artists to transfer their copyright could be effective, but *only if* the entire art community adhered to this position.²⁸

Solutions B and C appear not to be viable alternatives. Solution B puts the artist in the precarious position of depending on the outcome of litigation. Solution C also puts artists in a tenuous position. Although many artists are unhappy with the current state of affairs, they rely heavily on museum acquisitions of their works. In addition, past experience shows that organization of the entire art community is a difficult task. Wherever possible, however, influential artists, art

²⁷ See *infra* Appendix C.

²⁸ The distinguished art historian Professor Albert Elsen of the Stanford University Art Department has endorsed the notion of a boycott:

I think the idea of a museum's trying to obtain the copyright from the artist is an outrageous thing. There is no reason they should get all the rights. This policy should be fought at all costs. It is hypocritical and should not be tolerated. Artists, art historians and collectors should boycott any museum that has this policy until an acceptable policy is established.

Jahns, *Museums and the Copyright Issue*, STATE OF THE ARTS, May-June 1982, at 4.

historians, and patrons should take a stand and attempt to exert some influence over museum policies.

There is a need for the development of a form agreement acceptable to museums and artists. This solution is the most viable on a practical level. In addition, through adoption of the V.A.G.A. agreement, the legitimate needs of both the artists and museums could be addressed in an equitable fashion.

APPENDIX A
SUMMARY OF SURVEY RESPONSES

QUESTION I (TO MUSEUMS): *With regard to newly acquired works that are in your collection, do you obtain an assignment of copyright or some other form of release from the artist concerning this work of art?*

ALBRIGHT-KNOX ART GALLERY: At present, this gallery does not obtain copyright to newly acquired works of art. However, they are planning to implement a procedure to do so.

THE ALEXANDRIA MUSEUM VISUAL ART CENTER: Copyright assignment is sought by requesting the artist to sign a "Copyright Title Agreement."* Although the agreement allows the artist to place restrictions on the museum's use of his work, there is a note to the artist declaring that "restriction may be a detriment rather than a benefit."** This note functions as a reminder to artists that the museum controls the bargaining process.

ANCHORAGE HISTORICAL AND FINE ARTS MUSEUM: Although this museum does not have a formal procedure or form, it does send a letter agreement that is signed by the artist and returned to the museum. The agreement stipulates release of the artist's copyright.

DE CORDOVA AND DANA MUSEUM AND PARK: This museum has no policy regarding artists' copyright.

FLINT INSTITUTE OF ART: Assignment of copyright has "not become an issue" for this museum. No release form has been developed. When a form is developed, the museum plans to make it part of the purchase agreement.

THE FINE ARTS MUSEUMS OF SAN FRANCISCO: Until recently this museum sent a form to artists which requested the exclusive transfer of all copyright to the museum. When pressured, the museum acceded to a compromise position which was based on the proposed V.A.G.A. Museum Agreement.***

* See *infra* Appendix B, at 141.

** *Id.*

*** See *infra* Appendix C.

THE GUGGENHEIM MUSEUM OF ART: This museum obtains a "non-exclusive assignment" to reproduce works of art in catalogs, slides, postcards and posters. While the assignment purports to be non-exclusive, in fact, all rights are given to the museum. The artist receives no fee for reproductions, and there are no restrictions on how the work of art can be used. In addition, there are no restrictions on the integrity of the reproduction.

THE HIGH MUSEUM OF ART: Forms requesting release of copyright are used by this museum. The forms were not sent as part of the response to this survey.

LOS ANGELES COUNTY MUSEUM OF ART: An attempt is made to obtain all copyright when the artwork is purchased. The release is contained in the purchase agreement. Although the museum has no form separate from the purchase agreement, one is being developed along with a policy for its implementation.

THE MUSEUM OF MODERN ART: The museum requests all copyright upon purchase of the artwork. Through use of a non-exclusive agreement, the museum obtains rights that equal the artist's.

NATIONAL GALLERY OF ART: For the most part, this museum does not deal with copyrighted works. When there are shows of recent works, donors stipulate copyright transfer.

NATIONAL MUSEUM OF AMERICAN ART: Two options are offered to the artist: outright transfer of copyright or a non-exclusive license agreement that gives the museum the same rights as a copyright holder.

NEW ORLEANS MUSEUM OF ART: A letter of unrestrictive gift, requesting all rights, is sent to the artist. The museum's procedure is the same as the Guggenheim's.

THE SAINT LOUIS ART MUSEUM: This museum has no formal policy; however, it is developing a form release. At present, the museum sends a letter agreement to the artist. Although the agreement does not convey exclusive rights, the museum does attempt to purchase the artist's copyright when a work is acquired.

SAN FRANCISCO MUSEUM OF MODERN ART: The museum seeks to acquire all rights from the artist.

THE ART INSTITUTE OF CHICAGO: Artists sign a non-exclusive license that permits reproduction of their work and allows distribution to the public "by means of any device or process . . ." The license also authorizes the museum to allow limited use of the work by third parties. The basic procedure is the same as the Guggenheim's.

WALKER ART CENTER: The Center attempts to obtain all copyright upon purchase of the artwork. In addition, the museum uses a non-exclusive license similar to the one used by the Guggenheim. * * *

WHITNEY MUSEUM OF AMERICAN ART: Although this museum has no procedure for obtaining all of the artist's copyright, artists are asked to sign a reproduction agreement that allows use of the work for "normal museum uses" (e.g., catalogs, postcards and posters).

QUESTION II: *Does the artist have access to his/her work of art? If so, on what basis (fees charged, etc.)?**

Most of the museums permit the artist to view their work. Some museums charge for photographic services.

Works are loaned to artists for other exhibitions. Although some museums exact a loan and handling fee from those who exhibit an artist's works, no fees are charged to the artist. The Flint Institute of Art does not allow the artist to have commercial use of the work.

MUSEUM	Yes	No	LOAN	COMMENTS
The Guggenheim Museum of Art	X		X	The artist is charged for photographic services. "Visual access" is afforded the artist.
Anchorage Historical and Fine Arts Museum	X			
De Cordova and Dana Museum and Park	X			
Flint Institute of Art	X			The artist is allowed visual but not copyright access. If copyright becomes an issue, the museum reserves the right to limit access that might lead to publication or reproduction. The museum claims that any other policy would not give it proper control over the artwork.

**** See *infra* Appendix B, at 139.

* Of the museums that responded to the survey, the following did not respond to this question: New Orleans Museum of Art, The Saint Louis Art Museum, The Art Institute of Chicago, The Fine Arts Museums of San Francisco.

MUSEUM	YES	NO	LOAN	COMMENTS
The High Museum of Art	X		X	Artworks are loaned to appropriate institutions. Borrowing institutions must meet standard loan requirements.
The Alexandria Museum Visual Art Center	X		X	Artworks are loaned for exhibition.
Los Angeles County Museum of Art	X			The collection is predominately pre-twentieth century, hence access for artists is not a problem.
National Gallery of Art				
Albright-Knox Art Gallery	X			Has had no experience in this area.
Whitney Museum of American Art	X			
Walker Art Center	X			
San Francisco Museum of Modern Art	X			
National Museum of American Art				
The Museum of Modern Art	X			Charges loan fee to borrowing institutions.

*QUESTION III: Does the museum grant reproduction rights to third persons on works in their collection? If so, is a fee charged? Is the fee shared with the artist?**

MUSEUM	YES	NO	FEE	No FEE	NOT SHARED	COMMENTS
The Guggenheim Museum of Art	X		X		X	
Anchorage Historical and Fine Arts Museum		X				
New Orleans Museum of Art	X			X		Reproduction for use in advertisements is prohibited.
De Cordova and Dana Museum and Park	X		X (see comments)	X (see comments)	X	Sometimes charges a fee. Whether a fee is charged is determined by the use of the work intended by the party seeking permission.

* Of the museums that responded to the survey, the following did not respond to this question: The Fine Arts Museums of San Francisco.

MUSEUM	YES	NO	FEE	NO FEE	NOT SHARED	COMMENTS
Flint Institute of Art	X			X		Reproduction rights are only granted for use in catalogs and for educational purposes.
The High Museum of Art	X		X		X	
The Alexandria Museum Visual Art Center		X				Will make exceptions when reproduction is for scholarly purposes.
The Saint Louis Art Museum	X		X		X	A \$70 flat fee is charged. Permission is granted for only one usage in one publication at a time. Publication of a color reproduction is not allowed before the museum approves the proofs.
Los Angeles County Museum of Art	X		X		X	
National Gallery of Art		X				Donors of the artwork handle third party permissions. The museum is not involved.
Albright-Knox Art Gallery	X		X		X	Reproduction rights are only granted for use in artbooks and for educational purposes.
Whitney Museum of American Art	X		X		X	A work may not be cropped or bled. The museum controls reproduction.
The Art Institute of Chicago	X		X			
Walker Art Center	X		X			Fees are charged for commercial uses only and are shared with the artist, if living. There are no charges for educational uses.
San Francisco Museum of Modern Art	X		X		X	

MUSEUM	YES	NO	FEE	No FEE	NOT SHARED	COMMENTS
National Museum of American Art	X			X		
The Museum of Modern Art	X		X		X	A work may not be cropped or bled. The museum controls reproduction.

QUESTION IV: *For a reproduction of a work of art (other than museum catalogs), does the museum seek the artist's permission for posters, cards, puzzles, etc.?**

MUSEUM REPRODUCTIONS

Most museums do not seek the artist's approval when reproduction of a work is for "museum uses" or when a bona fide museum reproduction is made. The museums rely on the signed release forms to absolve any duty to notify the artist. If the museum obtained the copyright from the artist (even in the form of a non-exclusive license), it will not seek further permission.

THIRD PARTY REPRODUCTIONS

Except as indicated, the artist's approval is not sought from the following museums when an outside person seeks permission to reproduce an artwork:

The Guggenheim Museum of Art	Flint Institute of Art
De Cordova and Dana Museum and Park	Los Angeles County Museum of Art
National Museum of American Art	National Gallery of Art
Anchorage Historical and Fine Arts Museum	New Orleans Museum of Art
The High Museum of Art	The Alexandria Museum Visual Art Center

* Of the museums that responded to the survey, the following did not respond to this question: The Museum of Modern Art, The Saint Louis Art Museum, San Francisco Museum of Modern Art, The Art Institute of Chicago, The Fine Arts Museums of San Francisco.

Walker Art Center: Prior to a recently instituted policy, an artist was asked for permission.

Albright-Knox Art Gallery: The Gallery Shop obtains the artist's approval.

Whitney Museum of American Art: Permission is requested from the artist on a very limited basis.

*QUESTION V: Are the museum's administrative problems (paperwork, etc.) greater since the effective date of the new Copyright Act of 1976?**

THE ALEXANDRIA MUSEUM VISUAL ART CENTER: Yes. It is often difficult to find the artist when the artwork is donated by a third person. Consequently, this adds to the research the museum's registrar must perform to find the artist or other person legally qualified to sign the copyright form. Files are incomplete until the form is received and often remain incomplete because artists are almost impossible to find or irresponsible about returning the documents.

FLINT INSTITUTE OF ART: At present there are no administrative problems. However, as the museum becomes more involved with contemporary work, and as artists become more aware of their copyright privileges, the museum anticipates increasing difficulties.

DE CORDOVA AND DANA MUSEUM AND PARK: The museum anticipates more problems and has implemented a procedure for obtaining copyright clearance with all new acquisitions.

THE GUGGENHEIM MUSEUM OF ART/WALKER ART CENTER/THE ART INSTITUTE OF CHICAGO: Yes. Since passage of the Act, a lot of time is spent completing, filing and following up on receipt of forms.

SAN FRANCISCO MUSEUM OF MODERN ART: Yes. The law is confusing and the museum is proceeding carefully. However, the law has raised the museum's consciousness of the copyright problem. The museum is waiting for a test case and does not want to be the first to misinterpret the Act and make a mistake when handling the copyright issue.

* Of the museums that responded to the survey, the following did not respond to this question: The Fine Arts Museums of San Francisco, The Museum of Modern Art, The Saint Louis Art Museum, Whitney Museum of American Art.

NATIONAL MUSEUM OF AMERICAN ART: The law created some difficulties at first but the museum believes that the problems encountered are under control.

ANCHORAGE HISTORICAL AND FINE ART MUSEUM: No. The law is only a potential problem. Many artists are incorporating the copyright symbol in their work and the museum foresees the possibility of tougher negotiations in the future.

THE HIGH MUSEUM OF ART: No, but if the museum puts off implementing a procedure for obtaining copyright clearance any longer, it foresees a backlog of paperwork and greater difficulty in tracking down artists to sign the forms.

The following museums have felt no impact from the Copyright Law and their administrative and paper work has not changed.

Albright-Knox Art Gallery
Los Angeles County Museum
of Art

National Gallery of Art
New Orleans Museum
of Art

APPENDIX B

SAMPLES OF FORMS CURRENTLY USED BY MUSEUMS

TRANSFER BY DEED

For ten (10) dollars the artist transfers all rights in and to his copy-right. It should be noted that the Walker Art Center shares fees with artists when third persons are charged for reproducing artworks for commercial purposes. This form, however, does not require the museum to share the fees or to consult the artist about reproducing his work.

Walker Art Center

BILL OF SALE

In consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, paid to me by the Walker Art Center, Vineland Place, Minneapolis, Minnesota, receipt of which is hereby acknowledged; I hereby grant, bargain, sell, transfer and deliver to the Walker Art Center, its successors and assigns, the following described work or works:

Title _____

Type of Work _____

Copyright Registration Number _____

(if applicable)

Title _____

Type of Work _____

Copyright Registration Number _____

(if applicable)

I specifically grant, bargain, sell, transfer and deliver to the Walker Art Center in this transaction all rights under Section 106 of the Copyright Act (Title 17, U.S. Code) to reproduce or authorize reproduction of the works above described.

I further covenant that I am the lawful owner of the above works, that the works are free from all encumbrances, that I have good right and title to the works, and that I will warrant and defend my title to the works against all lawful claims and demands.

In Witness Whereof I do hereunder set my hand this

_____ day of _____, 19_____.

Signature _____

Witness or Witnesses:

NON-EXCLUSIVE LICENSE

Although at first glance the non-exclusive license appears to respect certain rights, it transfers virtually all rights to the museum. The license makes no distinction between museum use and commercial use and gives the artist no control over the integrity of the reproduction. Furthermore, no royalty or *droit moral* protection is reserved for the artist.

The Museum of Modern Art
11 West 53 Street, New York, N.Y. 10019
Tel. (212) 956-6100
Cable: Modern Art

NON-EXCLUSIVE LICENSE

I, _____, being the owner of the copyright in and to the following work of art created by me:

in consideration of the acquisition of the said work by The Museum of Modern Art, do hereby authorize The Museum of Modern Art to copy or reproduce the said work, to distribute reproductions thereof to the public, to transmit or otherwise communicate a display thereof by means of any device or process (examples include but are not limited to slides, film, and television), and to authorize others to do the same, **BUT ONLY ON CONDITION THAT** all such reproductions of said work bear a copyright notice as prescribed by the Copyright Law of the United States.

This non-exclusive license, which does not transfer ownership of my copyright to The Museum of Modern Art, shall endure for the entire term of the copyright in and to said work and shall survive all assignments of copyright.

Date

Signature of Artist

COPYRIGHT TITLE AGREEMENT

Along with title to the artwork, this agreement gives the museum title to the artist's copyright. Although the form allows the artist to place restrictions on how the museum may use the work, by signing this agreement the artist still loses virtually all control over his work.

The Alexandria Museum Visual Art Center
P.O. Box 1028
Alexandria, Louisiana 71301

COPYRIGHT TITLE AGREEMENT FOR LOANS
AND ACQUISITIONS

I _____ agree to give copyright title for the following article(s) in the possession of the Alexandria Museum/Visual Art Center.

TITLE (1) _____
(2) _____

MEDIA (1) _____
(2) _____

DIMENSIONS (1) _____
(2) _____

I HEREBY MARK THE BELOW RESTRICTIONS ON THE COPYRIGHT OF THE ABOVE LISTED ARTICLES.

- _____ 1. The above museum to take a photograph of the work or allow others to do so.
- _____ 2. To allow others than the above museum to take a photograph of the work.
- _____ 3. To include a photograph and/or videotape of the work for use in a catalogue or other type of promotion or documentation.
- _____ 4. To allow another to include such a photograph and/or videotape in another's catalogue or related publicity and documentation.
- _____ 5. To sell any publications of the work in the above museum's shop.
- _____ 6. To lend the work to other institution(s) for exhibition.

IF NONE OF THE ABOVE RESTRICTIONS ARE MARKED, THEN THE MUSEUM OBTAINS EXCLUSIVE TITLE TO THE ABOVE WORKS OF ART.

*NOTE TO THE ARTIST: By restrictions on the copyright title, your work(s) may not receive the widest dissemination. Thus restriction may be a detriment rather than a benefit.

SIGNATURE _____

DATE _____

WITNESS _____

DATE _____

TRANSFER BY GIFT

When an art work is donated or sold by its creator to the museum, transfer using this type of form gives the museum absolutely all rights to the art work. When a third person donates or sells the work to the museum, his signing this form will not affect the artist's copyright unless they were transferred when the work was purchased from its creator.

No. _____

DEED OF GIFT

National Museum of American Art

Smithsonian Institution

By these presents, I(we) hereby irrevocably and unconditionally give, transfer and assign to the Smithsonian Institution for its National Museum of American Art all right, title and interests (including all copyright, trademark and related interests*) in, to and associated with the object(s) described below. I(we) affirm that I(we) own said object(s) and that to the best of my(our) knowledge I(we) have good and complete right, title, and interests (including copyright, trademark and related interests*) to give.

* If less than all copyright, trademark and related interests are given, specify below.

Dated this _____ day of _____ 19_____.

Donor's Signature

Donor's Signature

APPENDIX C
PROPOSED V.A.G.A. MUSEUM LICENSE

NON-EXCLUSIVE LICENSE

I, (we) _____, being the owner(s), holder(s), or claimant(s) of a copyright interest in and to the following work of art: _____ in recognition of the acquisition of the said work by the _____ (MUSEUM), do hereby acknowledge and to the extent necessary, authorize the _____ (MUSEUM) and other parties duly authorized by either of them (a) to reproduce the work for all standard museum purposes including specifically (but not limited to) exhibition and collections catalogues *not* offered for sale through commercial channels, handouts, brochures, didactic labels, magazines, journals, newspapers, and the like; (b) to print and distribute reproductions thereof to the public (including 2-dimensional reproductions such as postcards and slides for non-commercial use; and (c) to transmit or otherwise communicate a display thereof by means of any device or process (examples include but are not limited to slides, film and television); (d) to loan the work to other museums with the express condition that all the terms and conditions of this license apply; it being understood that these uses are in furtherance of the scholastic and educational purposes of the museum. **BUT ONLY UPON THE CONDITION THAT** all such reproductions of said work bear a copyright notice as prescribed by the Copyright Law of the United States, and include the name of the artist and on the **FURTHER CONDITION** that any three-dimensional reproduction *or* any reproduction for commercial purposes (which shall not be deemed to include those authorized above) be produced and distributed only upon receipt of the express written approval of the artist, agent or heir of the artist setting forth all the terms of the agreement including royalties and other payments as applicable.

For the purposes of this agreement, commercial sales shall mean any sales outside museum shop sales and any use made by the museum not included in (a), (b), (c) and (d) above. Owner shall have the right of access during reasonable business hours, and to take photographs of the work with no fee to be paid.

This non-exclusive license, which does not transfer ownership of the copyright to the _____ (MUSEUM) shall

endure for the entire term of the copyright in and to said work (to the extent permissible under the copyright laws of the United States) and shall survive all assignments of copyright.

Dated

Signature of artist/owner/
holder/claimant