



## **Rights, Reproductions & Photography Policies**

### **A. Purpose**

This policy is intended to provide the staff, contractors, and those acting on behalf of the Utah Museum of Fine Arts (Museum) with guidance regarding the acceptable uses of the intellectual property of others, including the issue of fair use, in order to support the integrity of the Museum's mission and to protect the Museum's collection.

This policy addresses Museum use of original Museum-created images and/or text as well as any original images and/or text gleaned from any other source for print and web-based publications. It also addresses the behavior standards mandated for those to whom the Museum has extended the privilege of making images of its objects and in its facility. This policy applies to staff, volunteers, and contract or free-lance workers. Its provisions must be referenced in any applicable contract, scope of work or memo of understanding agreement.

### **B. Definitions**

1. **Copyright:** copyright is the exclusive right given by law for a certain term of years to the Author of a Work (an artist, author, composer, designer, etc. or his/her assignee), to print, publish, distribute, etc. copies of his/her original work. The five exclusive rights of copyright holders are the rights

- i. to reproduce
- ii. to prepare derivative works
- iii. to distribute
- iv. to perform
- v. to publicly display

2. **Protected by copyright** means that it is a violation of federal law to use a copyrighted work in any manner that usurps the rights of the copyright holder. The legal use of a copyrighted work generally requires that the copyright holder grant permission for the intended use.

3. **Fair Use:** The doctrine of fair use has developed through a substantial number of court decisions over the years and has been codified in section 107 of the copyright law. Section 107 contains a list of the various purposes for which the reproduction of a particular work may be considered fair, such as criticism, comment, news reporting, teaching, scholarship, and research. Section 107 also sets out four factors to be considered in determining whether or not a particular use is fair:

- i. The purpose and character of the use, including whether such use is of commercial nature or is for nonprofit educational purposes
- ii. The nature of the copyrighted work
- iii. The amount and substantiality of the portion used in relation to the copyrighted work as a whole

- iv. The effect of the use upon the potential market for, or value of, the copyrighted work

The distinction between fair use and infringement may be unclear and not easily defined. There is no specific number of words, lines, or notes that may safely be taken without permission. Acknowledging the source of the copyrighted material does not substitute for obtaining permission. See also:

[http://fairuse.stanford.edu/Copyright\\_and\\_Fair\\_Use\\_Overview/chapter9/index.html](http://fairuse.stanford.edu/Copyright_and_Fair_Use_Overview/chapter9/index.html)  
<http://copyright.lib.utexas.edu/copypol2.html>  
<http://www.copyright.gov/fls/fl102.html>

4. Public Domain: When the term of years for a copyright has ended the copyright expires. A work no longer protected by copyright is “in the public domain.” US Government works are also in the public domain. A work in the public domain may be freely used without the permission of the copyright holder or owner.

## **C. Policy**

### **I. Museum’s Use of Works**

#### **a. Works for Which the Museum Does Not Own the Copyright**

The Museum does not condone any violation of the Federal Copyright Law or of any international copyright laws and expects all Museum employees, contractors, and volunteers to abide fully by terms and conditions of these laws. Title 17 of the U.S. Code states, “It is illegal to make or distribute copies of copyrighted material without the owner’s authorization.” Illegal reproduction of visual art, records, books, films, software, etc. may result in civil damages or criminal penalties.

Museum employees, independent contractors, or others creating materials for the Museum’s use (“Creator”) must ensure that one of the following is met in relation to all elements of the created work: (1) the entire work is the Creator’s personal work; or, (2) to the extent the work incorporates any materials that are not the original work of the Creator, (a) the Creator has received permission from the copyright owner to use such incorporated work, or (b) the incorporated material is in the public domain; or (3) the Creator has consulted with the Museum’s Executive Director, or his/her designee, and a determination has been made that the use constitutes fair use and no permission is required. If permission is obtained, such permission should be documented in writing. This can be in the form of an email or other similar correspondence to, or agreement with, the copyright holder confirming the permission, and confirming the scope of the permission (i.e., what will the image be used for, in what media, for what duration, etc.).

#### **i. Fair Use Policy**

Fair use, in addition to reflecting in copyright law First Amendment-based principles of free speech, provides the basis for many of our most important day-to-day activities in museum scholarship and education. The Museum recognizes that the principle of fair use was created to allow us flexibility in using the work of others and to not infringe on their legal rights. Employees must complete a fair use

evaluation prior to using a work for which fair use rights are claimed. The Fair Use Evaluator, or a similar tool, should be used to conduct the fair use evaluation.

<http://librarycopyright.net/resources/fairuse/>

The Executive Director of the Museum or his/her designee must approve the fair use evaluation.

#### b. Works for Which the Museum Owns the Copyright

The Museum/University owns the copyright to Works created by its employees within the course and scope of their employment. It also owns the copyright to Works for which the copyright has been assigned to the Museum/University. Museum/University employees may use the images of such Works on behalf of the Museum without obtaining permission.

### 2. Images of the Museum, and Textual References Regarding the Museum

Images of the Museum, of objects from the Museum collections, or any textual materials relating to such objects must not be used, in any media, to assert or imply that the Utah Museum of Fine Arts endorses any commercial product or enterprise, concurs with the opinions expressed in, or confirms the accuracy of any text used with these images or materials. The Museum Public Relations and Marketing Associate, a designated curator, or other appropriate representative of the Museum must review any text the Museum allows outside clients to use. The Museum holds the right to regulate all usage of images to ensure accuracy of detail/color. The Museum Photographer and/or Graphic Designer have the right to review all images in proof format.

### 3. Visitor Photography Policy

As stewards of culturally significant objects, the Museum is charged with not only protecting the artwork on display from physical harm but also from copyright infringement. We ask visitors to follow these rules without exception.

Still photography is permitted in areas open to the public and exhibition galleries except as posted for private noncommercial use, subject to the following restrictions:

- a. Photographs cannot be published, reproduced, publicly displayed, transferred, distributed, sold, or otherwise commercially exploited in any manner.
- b. Photography is not allowed in areas posted with a “No Photography” symbol, or of objects identified with the “No Photography” symbol. No flash photography of any kind including flashes on cell phones.
- c. No tripods or monopods; only handheld photography equipment is permitted.
- d. No video recording, including by cell phone or any other device.

Visitors may request Images of the Museum’s collection through the Museum’s website:

<http://umfa.utah.edu/reproductionrequests>

For special arrangements, including express permission for film or videotape projects, contact the Public Relations and Marketing Associate.

**The Museum reserves the right, at its sole discretion, to withhold and/or withdraw permission to photograph on its premises and grants permission to photograph objects in its collection on the condition that it is permitted to reproduce such photographs.**

#### 4. Contract/Professional Media Photography and Video Policy

##### a. Photography

When the media, or an outside contractor hired either by the Museum or by a party using the Museum facilities, is photographing an event or other occurrence in the Museum's galleries, flash and tripod are allowed. The photographer must agree to use flash judiciously, refrain from including artwork, and concentrate on people and capturing the ambience of the occasion. A tripod is permitted to reduce the use of flash, but cannot be set-up within 3 feet of any artwork. The photographer is specifically prohibited from directly photographing artwork without permission and must make sure that any art works incidentally included in photographs are obscured by people or soft focus to avoid possible copyright infringements. All other rules of the general visitor photography policy apply. The Museum staff member charged with responsibility for the event should enforce the requirements of this policy.

##### b. Film

When the media, or an outside contractor hired either by the Museum or by a party using the Museum facilities, is filming an event or other occurrence in the Museum's galleries, arrangements may be required in advance. Hand held equipment or the use of a tripod is allowed when the event is a planned event for the media. Requests for filming for all other uses must be made in writing at least two weeks in advance to the Executive Director. An internal review by the Director of Collections and Exhibitions, the Head of Security, and the Public Relations and Marketing Associate will result in a recommendation to the Executive Director who makes the final decision. The request must clearly articulate the scale of the proposed activity and the locations of filming. The Museum may also require a walk through of the space with filmmakers prior to rendering a recommendation. Continuous lighting is preferred and all equipment must be at least 3 feet away from any art work. Both a security and collections representative may be required to be present during any filming in the galleries. It is the responsibility of the Museum staff member charged with responsibility for the event to enforce the requirements of the policy. The videographer is specifically prohibited from directly photographing artwork without permission and must make sure that any art works incidentally included in photographs are obscured by people or soft focus to avoid possible copyright infringements. All other rules of the general visitor photography policy apply.

#### 5. Image Reproduction and Publication Policy

##### a. Research and Publications Outside of the Museum

Photographs of objects in the collection are available to scholars, non-profit organizations, publishing companies, commercial entities, etc. with the approval of the responsible curatorial departments. The Museum Photographer takes photographs for reproduction and all originals regardless of format (digital images, negatives, color transparencies, etc.) remain the property of the Museum.

Image requests must be made in writing to the Museum Registrar and/or Photographer through the Museum's website:

<http://umfa.utah.edu/reproductionrequests>

Fifteen business days are required to fulfill requests and fees may apply. The Museum provides images for education and research purposes under fair use guidelines. Images are also provided for publication, but securing permission from the copyright holder of the reproduced work is the responsibility of the publisher not the Museum. Written proof of permission from the owner of copyright of the work of art to publish any images must be presented to the Museum before the Museum will provide an image for publication. The Museum has the right to regulate all usage of images to ensure accuracy of detail/color. The Museum Photographer and/or Graphic Designer have the right to review all images to be published in proof format prior to publication.

- i. Reproduction requires compliance with the Museum's written application process for permission to reproduce. The Museum reserves the right to deny permission to any applicant whose product is not acceptable to the Museum for any reason. Reproduction is permitted only from materials supplied by the Museum.
- ii. In addition to receiving permission from the Museum the applicant must also receive permission from and pay any necessary fees to the copyright owner. The Museum is not the holder of copyright for all pieces of its permanent collection.
- iii. Payment in advance may be required.
- iv. Duplication of any printed or digital images sold or rented by the Museum is strictly prohibited.
- v. Negotiations for royalties, exclusives and/or receipt of in-kind merchandise will be made at the time of application.

b. Museum Produced, Public Relations and Marketing Products

i. Catalogues, Books, Brochures, Postcards, Other Printed Material

It is the responsibility of the employee creating a work to obtain permission to use copyrighted material or illustrations in catalogues and books that will be published by the Museum. It should generally be assumed that any text or illustrations not created by the employee are subject to copyright. The creating employee should keep a copy of the permission and give a copy to the Museum Registrar or Photographer for cataloguing. In all cases, the source of the quoted text or illustration should be cited in a reference list or credit line. It is also the responsibility of the Director of Collections and Exhibitions to determine if there

are any restrictions regarding the use of photographs of works of art that have been lent to the Museum for special exhibitions. Art loan agreements and/or separate contracts should contain a description of any restrictions and the extent to which the work of art may be reproduced. The Director of Collections and Exhibitions should be provided with a copy of loan forms that contain restrictions.

ii. Permanent Collection Image and Copyright Management

The Collections Photographer maintains an archive of master digital images of the permanent collection. Images are made available to Museum staff and the public. The Collections Photographer and/or Registrar seek non-exclusive licenses from living artists and/or their heirs for the purpose of caring for the collection. Contact information for copyright holders is archived in the Museum's Collections Management System (CMS).

## **D. Photography Services & Copyright Information Management**

### **I. Permanent Collection**

The Collections Photographer maintains an archive of master digital images of the permanent collection. Photography of the Museum's collection is done on an ongoing basis, with the newest accessions having the highest priority. The Collections Photographer and/or Registrar seek non-exclusive licenses from living artists and/or their heirs for the purpose of caring for the collection. Contact information for copyright holders is archived in the Museum's Collections Management System (CMS).

### **2. Loans**

The Public Relations and Marketing Associate and/or a curator, or designees working on their behalf, shall seek permission of the copyright owner and owner of the work for any reproduction or publication efforts to promote the purposes of the Museum or its exhibits including such uses as press releases, distribution of images to the media for publication, brochures, and the museum web site. This will most often be sited on the loan agreement between the Museum and the lender or through a separate contract. Loans are usually photographed within 5 days of arriving at the Museum for condition reporting and publication purposes. Loans from institutionally organized travelling exhibitions ("canned" shows) are not photographed. Typically the lending organization provides images.

### **3. Exhibitions**

Images of exhibitions are available for use by Museum staff in all publications. Permission to reproduce from a work of art's copyright owner may be needed if the work shows prominently in the image. It is the responsibility of the author of the publication (curator, public programming staff, etc.) to determine whether copyright permission is required. Installed exhibitions are usually photographed the Monday following the public opening.

### **4. Events**

Events may be photographed (see applicable requirements of contract/professional media photography and video policy above) and it is implied that those attending the event have given

tacit permission to the Museum to use photographs depicting event attendees in various published forms. Whenever possible the Public Relations and Marketing Associate should place an easily visible and concise sign stating that by attending the event a visitor gives their permission to be included in photographs and video from the event. In terms of artwork, permission to reproduce from a work's copyright owner may be needed if it shows prominently in the image, and is the responsibility of the author of the publication (curator, public programming staff, etc.) to determine whether copyright permission is required. Event attendees are expected to follow rules for visitor photography.

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