

## **AAMD POLICY ON THE USE OF “THUMBNAIL” DIGITAL IMAGES IN MUSEUM ONLINE INITIATIVES**

### **AAMD Mission Statement**

The Association of Art Museum Directors promotes the vital role of art museums throughout North America and advances the profession by cultivating leadership and communicating standards of excellence in museum practice.

### **Preamble**

The principal purpose of art museums is education. While the purpose remains the same, the means and methods of accomplishing this goal continue to evolve, nowhere more so than with respect to the internet. In particular, the need for the availability of scholarly materials on the internet grows in importance as use of the internet escalates. While acknowledging that the technology of electronic information changes and transforms on an almost daily basis, this dynamic growth demonstrates the need for the application of basic principles so that the integrity of the image, the interests of museums and the publics they serve and the rights of the artist can all be harmonized. Integral to the museum’s accomplishment of its mission to educate is the statutory right of fair use<sup>1</sup> embodied in United States copyright law. AAMD reaffirms the critical importance of this legal exception to the missions of its members and believes that the application of fair use to internet media can be enhanced through reasonable guidelines to be established and followed by art museums.

### **Definitions**

For purposes of this Policy, the following terms have the meanings set forth below:

**Artists** means living artists and/or artists and/or entities whose works are protected under copyright laws of the United States. The term also includes estates, foundations, artists’ rights organizations or other legal entities that hold copyright or represent the artist.

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<sup>1</sup> An extract from the U.S. Copyright Office FL-102, revised May 2009, is attached as Annex A.

**Collections image database** means any digital compilation or a website, including unrestricted websites, maintained by the museum or an affiliate of the museum of digital images of objects from the museum's collection maintained primarily to support education or research and to foster interest in museum collections.

**Digital Image** means a two dimensional image using ones and zeroes (binary).

**Digital Imaging** means a process whereby an electronic photograph, scanned document, or image is converted into a series of electronic dots called "pixels."<sup>2</sup>

**Collateral materials** means magazines, articles, flyers and related materials made available electronically by a museum, at no cost to the recipient, to promote its exhibitions, collections and programs.

**Online scholarly publications** means an educational publication made available (i) on a website whose primary purpose does not include paid advertising or the selling of merchandise, or (ii) on a subscription-based website with no more than 2,000 subscribers, provided, multiple end users accessing content through one subscription agreement shall be considered one subscription, or (iii) on a website that provides archival versions of the publication in non-profit electronic archives such as JSTOR and/or in for-profit electronic library content providers such as EBSCO or ProQuest.

**Thumbnail image** means a low resolution, small version of less than commercial quality (less than 250 x 300 pixels) of a digital image that is typically used in a collection image database, on a web page, or in an online publication to represent an image or to provide a link to other content, such as a larger version of the image. Thumbnail images may or may not link to higher resolution images.

**Website** means a collection of related web pages, images, videos, or other digital assets that are addressed relative to a common Uniform Resource Locator (URL), often consisting of only the domain

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<sup>2</sup> "Pixels" is an acronym for "picture elements."

name or the IP address and the root path (‘/’) in an internet protocol-based network accessible via the internet. A website may be static or interactive and may include retail options.

### **Policy Statement**

- A. AAMD encourages member museums to develop clear written intellectual property and/or digital imaging policies and guidelines.
- B. Member museums must comply with all applicable laws in the reproduction of works in their collection and the use and dissemination of images of those works. Member museums must respect the rights of artists and copyright holders to protect the integrity of their works and to receive the benefits of the rights, including financial rights, accorded to artists and copyright holders by law, but those rights do not preclude the museum from exercising its statutory rights to fair use of images.
- C. Without intending to limit any other fair use thereof and recognizing that there are many uses of thumbnail images by museums that meet the statutory fair use test, AAMD supports the position that a museum’s use of thumbnail images in the museum’s collections image database, promotional materials to identify works in a museum’s collection, and online scholarly publications are fair uses under applicable provisions of the United States copyright law.
- D. Museums should not be requested or required to pay fees for the fair use of such thumbnail images in the museum’s collections image database, promotional materials to identify works in the museum’s collection, or online scholarly publications.
- E. Except in extraordinary circumstances or where such information is unknown, the Museum should provide with such thumbnail images appropriate information as to artist, title and owner of the work.

## ANNEX A

### □ Fair Use (from US Copyright Office FL-102, Revised May 2009)

One of the rights accorded to the owner of copyright is to reproduce or to authorize others to reproduce the work in copies or phonorecords. This right is subject to certain limitations found in sections 107 through 118 of the copyright law (title 17, U. S. Code). One of the more important limitations is the doctrine of “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:

1. The purpose 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
4. 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.

The 1961 Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law cites examples of activities that courts have regarded as fair use: “quotation of excerpts in a review or criticism for purposes of illustration or comment; quotation of short passages in a scholarly or technical work, for illustration or clarification of the author’s observations; use in a parody of some of the content of the work parodied; summary of an address or article, with brief quotations, in a news report; reproduction by a library of a portion of a work to replace part of a damaged copy; reproduction by a teacher or student of a small part of a work to illustrate a lesson; reproduction of a work in legislative or judicial proceedings or reports; incidental and fortuitous reproduction, in a newsreel or broadcast, of a work located in the scene of an event being reported.”

Copyright protects the particular way an author has expressed himself. It does not extend to any ideas, systems, or factual information conveyed in the work.

The safest course is always to get permission from the copyright owner before using copyrighted material. The Copyright Office cannot give this permission.

When it is impracticable to obtain permission, use of copyrighted material should be avoided unless the doctrine of fair use would clearly apply to the situation. The Copyright Office can neither determine if a certain use may be considered fair nor advise on possible copyright violations. If there is any doubt, it is advisable to consult an attorney.

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