

## **RESOLUTION TO FORM TASK FORCE TO DEVELOP FAIR USE GUIDELINES**

**Submitted by:** Anne Collins Goodyear, President  
May 6, 2012

WHEREAS, members of the Association and others in the visual arts have a critical professional interest in copyright in general and in the fair use of copyrighted works in particular; and

WHEREAS, members are affected by copyright in relation to scholarly publishing, the creation of works of art, and the curation and exhibition of works that include another's copyrighted works; and

WHEREAS, the application of fair use to such activities may be uncertain, members of the Association may be required to determine when uses of copyrighted material are fair and members and others in the field frequently seek guidance with respect to such matters; and

WHEREAS, recently, a number of guidelines and policies with respect to the scope of fair use as applied to particular academic and similar uses have been established, including the Visual Resources Association's Statement on the Fair Use of Images for Teaching, Research, and Study ("VRA Statement") and the Association of Research Libraries' Code Of Best Practices In Fair Use For Academic And Research Libraries ("ARL Code"); and

WHEREAS, the Board endorsed both the VRA Statement and the ARL Code on February 26, 2012; and

WHEREAS, neither the VRA Statement nor the ARL Code addresses the use of works in scholarly publication, the creation of works of art and the curation and exhibition of works of art that include another's copyrighted work and when, and to what extent, such uses may be fair; and

WHEREAS, the Board had previously established a Standard for Copyrights and Permissions in Scholarly and Educational Publishing, which statement is currently under review; and

WHEREAS, to provide guidance to its members and the field with respect to the application of the fair use, CAA believes that it would be appropriate to establish a set of guidelines that would document current fair use practices in the field of the visual arts with respect to the activities of scholarly publishing, the creation of works of art and the curation and exhibition of works that include another's copyrighted works;

**NOW, THEREFORE BE IT RESOLVED** that a Task Force be established to develop Fair Use Guidelines to address the fair use of works in scholarly publication, the creation

of works of art, and the curation and exhibition of works of art incorporating another's copyrighted work (the "Scope"):

Statement of Purpose:

The primary purpose of the Task Force is to develop Fair Use Guidelines to address the fair use of works of art within the Scope.

Charge to the Task Force:

The Task Force has several intersecting charges:

1. Assess the impact of copyright clearance requirements on published scholarship and criticism in the visual arts.
2. Assess the impact of copyright clearance requirements on the creation of works of art.
3. Assess the impact of disputes concerning the use of unlicensed, copyrighted works in new works of art on the ability of individuals and institutions to curate and exhibit such work.
4. Develop transparent and readily-applied research methods to assess the above. Such methods may include using the findings of existing related studies as well as surveys of and interviews with scholars, artists, curators, and those charged with providing access to restricted works (whether restrictions are based on copyright or ownership of the works). It is anticipated that the Task Force will convene focus groups, which may include both practitioners and those responsible for providing guidance and developing policies.
5. Identify respected legal scholars to serve as legal advisors.
6. Develop Fair Use Guidelines based on community practices to address the fair use of images within the Scope.
7. When appropriate, and in consultation with CAA's Executive Director and President, develop fund-raising strategies, including grant requests, to support the above activities.

Expertise Desired in Task Force Members:

The members of the Task Force should have experience and expertise in copyright and the fair use of images within the Scope. The Task Force should include members whose backgrounds and experience includes art history, studio art, curatorship, exhibition, conservation and art criticism. Legal experts may be called upon to serve on the Task Force or to serve as external advisors.

The Task Force will be chaired by CAA's counsel and an individual with requisite experience and knowledge from the Committee on Intellectual Property.

Nature and Scope of Staff Involvement:

The Deputy Director, Director of Programs, the Information Technology Director, and one of the Codirectors of Publications should serve as consultants to the Task Force. It is anticipated that staff involvement would include regular participation in meetings (likely to be monthly) of the Task Force, assisting the chairs with setting up conference calls,

and assisting the staff in electronic dissemination of materials to be reviewed by members of the Task Force.

In addition, pending grant support, a half-time legal assistant with a JD and experience in copyright law, preferably as applied to the visual arts, will be hired to lead the focus group discussions, carry out research and, with the guidance and oversight of the Task Force, prepare initial and subsequent drafts of the Fair Use Guidelines. A project coordinator will be hired to coordinate the work of the Task Force, assist with research on the visual arts, coordinate the focus groups with local organizations in three cities and to record the discussions.

Criteria for Success of Task Force:

The Task Force will be successful if it develops Fair Use Guidelines for the fair use of images within the Scope.

Anticipated Costs:

A budget is currently being developed for grant funding. With the exception of in-kind support through the time of permanent CAA staff members, all costs associated with this effort are to be covered through grant support.

Timeline for Task Force to Commence, Report On, and Conclude its Business:

Summer 2012: Members of Task Force appointed

Late Summer/Early Fall 2012: First Meeting of Task Force (by telephone) to agree on work plan and timetable

Fall 2012: First focus group convened and research strategies finalized

October 2012: Status Report to Board

Spring-Fall 2013: Focus group meetings and surveys and interviews of art historians, curators, and artists regarding the use of the images in activities within the Scope

February 2013: Interim Report to Board

October 2013: Preliminary Draft of Fair Use Guidelines presented to Board

February 2014: Final Draft of Fair Use Guidelines Presented to Board for Adoption

Spring 2014: Dissemination of Fair Use Guidelines

Approved by the Board of Directors, May 6, 2012.