

**NINCH COPYRIGHT TOWN MEETING  
TORONTO, SEPTEMBER 7, 2002**

**WORKSHOP EXERCISES**

A popular museum in your city played a significant role in a recent court suit. A professional photographer had donated several pictures to the museum, including a picture of jazz performer Cleone Laine. With the museum's consent, an organizer of a local music festival used the picture on the festival website and the cover of several hundred programs distributed to festival attendees. The photographer sued the festival organizers for copyright infringement and won. Although the museum was not sued, it was embarrassed by the incident and the resulting negative publicity.

You are employed by another, albeit larger, museum (the "ALB Museum") in the city. The museum collects not only photographs but also paintings, sculpture, historic and scientific artifacts and text, natural history specimens, visual and audio recordings, and other materials. On the day that the photographer's successful suit was publicized, your museum's registrar, chief curator and reproduction coordinator were at a conference. Your museum director assigns to you, his special assistant, the responsibility for the museum's writing policy, and to do so soon, to make sure that "nothing like that little problem with our sister museum happens at our institution."

At the next staff meeting with senior museum management, you discuss the proposed policy. Before finishing your preliminary remarks:

1. The chief of the museum's education office interrupts and expresses his concern that the policy not restrict unduly his office in making copyrighted materials in the museum collections, whether owned by the museum or third parties, available to the public on the museum's website. His office has just received a grant from the MacArthur Foundation to expand the museum's offerings on its website.
2. The chief business officer reminds the group that the museum received over \$19,000 last year as net income from the museum's rights and reproduction office and that greater exploitation of the museum's resources through the Internet may increase that income several-fold.
3. On hearing this, the museum's personnel officer remembers a possibly new revenue source. She shares with the group a recent complaint brought to her attention just last week by a disgruntled employee. The employee was told that the museum, and not the employee, owns the copyright in a computer program that she developed. She created the program to help her in designing graphics for the museum's website. However, the program could also be used to allow the museum's website visitors to create on-screen images and to manipulate any images appearing on the site.

### **Exercise One**

4. Would a proposed intellectual policy that covers only the Director's concerns about the risks of mishandling requests from outside parties to use copyrighted works of third parties in the museum's collection adequately cover the museum's intellectual property concerns? Why or why not?
5. What other intellectual property issues could the proposed policy cover?
6. Prioritize the various purposes that could be served by the proposed intellectual property policy? How does each of those purposes comport with a typical museum's mission statement?
7. Under the proposed policy, who within your museum should be responsible for reviewing and/or responding to requests to use materials in the museum? What are some of the factors to consider in making this decision?
8. Would a proposed intellectual policy that covers only the use of still images in the museum's collection adequately cover the museum's needs? Why or why not?
9. What other types of copyrighted works or materials in the museum's collections could the proposed policy cover?
10. Under the proposed policy, would the museum's handling of these requests depend upon the type of copyrighted works or other materials at issue? How might the museum's treatment of a request, or the requirements imposed on a requester, differ?

### **Exercise Two**

In the workshop exercise, the festival organizer is a commercial beverage company. Because the event was co-sponsored with the city and was free and open to the public, the museum did not charge the festival organizer any fee.

11. Assume that your museum owns the copyright in another photograph provided for the festival. Consistent with your current intellectual policy practices, your museum charges a fee. What is the charge for the festival's usage of the image on the program brochures? On the festival's web site? What factors should be considered in assessing the charge(s)?
12. While developing the proposed policy, a difference in views arises between the registrar and the business officer concerning the museum's handling of third party, commercial requests for use of materials in the museum's collection when the copyrights are owned by third parties. The museum currently does not require a non-profit user to obtain evidence of the copyright owner's prior consent before allowing access or copying of such material. For this reason and in the absence of any contractual obligation to the copyright owner, the business officer believes that the museum should not impose any such requirement on for-profit requesters, stating that "Those requesters' assurances that they 'will indemnify and hold the museum harmless for any unauthorized use' should be sufficient." The business officer also believes that the museum's fees for the use of any such materials should cover not only its expenses of reproduction but also a significant

“overhead figure” as well. Do you agree or not agree with views of the business officer? Are there some circumstances where his views should be reflected in the proposed policy or other contexts where they should not?

13. Under the proposed policy, are there other ways that requests to use materials in the museum’s collections for non-profit and commercial uses, *or* from non-profit and commercial entities may be handled differently by the museum? Why or why not?
14. Assuming that the answer to the above question is yes, what are some other ways that the museum’s handling or treatment of, or the requirements for, non-profit and commercial requests may differ?
15. Should copyrighted works owned by the museum be treated differently from copyrighted works that are in the public domain? Why or why not? How should this issue be addressed, if at all, in the policy?

### **Exercise Three**

The ALB Museum has a major exhibit on the “Royal Treasures of the Lost Kingdom” in Peru. Prior to the exhibition’s opening, the museum sent a video crew to Peru to record the source of the treasures, including the places and people with whom the treasures are associated. Recorded on the video are members of an indigenous tribe performing a traditional spiritual dance and song. The song features the distinctive chanting of one of the members.

The museum uses the video in an orientation film at the museum. Excerpts of the video, including the distinctive chanting, also appear on the museum’s website and in public service announcements on television.

A local resident, a distant relative of the chanter, complains that the museum use of the video is disrespectful of the tribe’s sacred dance and music traditions. On the same day, the museum learns that a rock group has sampled the audio portion of the video and is featuring the rock group’s song, that incorporates the tribe’s song, on the rock group’s website.

What should the proposed policy address:

16. The museum’s videotaping of any live performances?
17. The museum’s use of the videotape for exhibition purposes? On its website? For promotional or advertising purposes? Other “standard” museum purposes?
18. The museum’s use of intangible cultural property that may not be protected by copyright?
19. Filming, photographing or recording by museum visitors?
20. The Museum’s exercise of its “stewardship” responsibilities in addressing infringements of materials it may own?