

BUYING ART

MANY PHOTOLIBRARIES OFFER FINE ART IMAGES IN THEIR ARCHIVES, BUT ACTUALLY USING ONE IS NOT AS SIMPLE AS YOU MAY THINK, AS SARAH SAUNDERS EXPLAINS



OVER THE PAST 50 YEARS fine art has become a marketable commodity. No longer confined to the pages of expensive art books, images of art are now routinely used in annual reviews and advertising campaigns, and on mouse mats, tea towels and a dazzling variety of other products. Museums and artists earn good money from sales of reproduction rights.

Yet the experience of buying reproduction rights for these images presents a number of hurdles for the user. Not only do you have to pay a license fee to the photolibrary for reproduction of the work, you also have to clear rights to the fine art image which was photographed. If the underlying work is out of copyright, all well and good, but if it is in copyright, then you are faced

with a negotiation with the artist or the artist's estate, and payment of another license fee for use of that image.

An image of a work of art has two copyrights – the copyright in the photograph of the artwork and the copyright in the artwork itself. Despite a legal challenge in the US to copyright in the photographs (or copies) of art works (*Bridgeman vs Corel*, 1999) it is fiercely defended in the UK and you will pay a reproduction fee to the library whether or not the underlying work is in copyright. But the problem goes further than this. You may find that the copyright holder for your chosen art work is unknown to the picture library. In this situation it is your responsibility to trace the copyright holder yourself or make “all reasonable efforts” to

do so. Copyright in an image exists in the UK for 70 years after the death of the author, but there are many intricacies in copyright law which mean that it is not always straightforward, especially if the copyright holder is overseas.

Then there's the question of who to deal with. The negotiation over fee and usage rights can be with the artist, the artist's estate, or with a collecting society, or picture library acting on behalf of the copyright holder. Sometimes a number of

relatives have to be contacted before the deal can go through. Sometimes the copyright holder can't be traced.

For the uninitiated this process looks depressingly long and complicated, especially as there is no guarantee that the ►



◀ copyright holder will agree to the use of the image you have in mind – and the fee is equally unpredictable. It's a cumbersome business, especially for the new click-and-run breed of picture buyers who often have little grasp of copyright issues.

But let's take another look. After all, libraries like The Bridgeman Art Library have made a very good business out of selling reproduction rights to fine art images and a substantial portion of their revenues comes from commercial design markets. So how do they make it work for users? Marketing Manager Vivien Wheeler agrees that awareness of copyright issues is low and says "We take the issue very seriously. A large part of our service is devoted to letting clients know extra permissions are needed." She points out that you will only find text entries on the Bridgeman website for works which require further copyright clearance and there is a page devoted to explaining artists' copyright. The Bridgeman, in common with other libraries directly represents some artists – in which case all rights can be cleared in one hit. But for most artists, the library can only give the user details of copyright holders and let them get on with the job. A database of copyright holders has been set up by The Bridgeman for that purpose. But though The Bridgeman will give

every assistance possible, Wheeler says, "Artists copyrights are not part of our business. We are very clear about that."

So where does this leave the user? Roger Bassett, freelance designer and teacher at the London College of Printing, believes that many are working in the dark. "Design education gives you no preparation for using images," he says, adding that much of design education works against copyright awareness – using "found" images without any regard to copyright. More education is needed he stresses, but agrees that too much complex information can put people off using art images altogether. Cost is also a problem. "There is a perception that art images are very expensive to use," he says, but adds that for many users the work of clearing the image is the main stumbling block.

Even seasoned picture researchers, like freelance art historian Deirdre O'Day, find it hard. She compares copyright in art to a "huge boggy field" and notes that some artists' estates are particularly tricky to deal with, charging fees which many regard as extortionate. "There are no set fees: people can think of a number and charge it."

Collecting Societies were set up to deal with these inconsistencies. DACS, The Designers and Artists Copyright Society, is a not-for-profit

organisation representing around 36,000 artists worldwide. UK artists are represented directly, overseas artists by agreement with societies in their own countries. DACS has standard published prices for reproduction of works published in the UK. DACS Chief Executive Joanna Cave, explains how it works: "We have to refer back to the artists for most uses. The process can take anything from a few hours to weeks depending on where the artist and estate reside and whether all members of an estate have to be consulted. We aim to turn requests around in 28 days, but we can prioritise and produce results for news magazines in a matter of hours. In general, low-use publishing is straightforward. Problem areas are those in which the image is manipulated or used in a context which affects the integrity of the work: then our role can involve protracted discussion on both sides."

Another tricky problem is what to do if the copyright holder can't be traced. It is a peculiarity of the business that photolibraries hold images of works by unknown or untraced copyright holders. This is clearly a source of anxiety for the user, but copyright law does allow publication of an image if reasonable efforts have been made to find the copyright holder. Exactly what constitutes reasonable effort no-one really


knows. Nevertheless, the system works. Vivien Wheeler explains: "We rely on customers talking to us in this situation. We suggest suitable wording and if you have attempted to find the copyright holder there would be no grounds to sue you. We have not heard of any claims for money in this situation, so we assume amicable agreements have been worked out if copyright holders turned up."

People who understand about reproducing imagery generally accept the system says Veneta Bullen, general manager of Italian-based Library Scala Art Resource. Scala helps as much as possible, particularly for copyright holders in Italy, but in common with other libraries will steer some customers to less problematic images. "People who don't understand copyright should use out of copyright pictures," she advises. As an experienced picture researcher she rues the fact that many agencies now bypass the very people who have the know-how to do the job. "A trained picture researcher would make their client aware of the pitfalls. An inexperienced art buyer may not have a clue."

Picture library staff are clearly in a far better position to clear art images than many of their clients, so why not offer it as a service – even if it involves an extra charge? The lack of enthusiasm for this idea was

unanimous and based on hard experience. Anne-Marie Ehrlich, director of The Art Archive, says: "We sometimes try to track down a copyright holder – and it takes a lot of digging around. Some clients are very resourceful. They beaver away that much harder and sometimes get results."

Are there ways to improve the user experience? The idea of a central database of copyright information has been kicked around, but that in itself would be a mammoth project. French library Photos 12 run by Valerie-Ann Giscard d'Estaing, a publisher well aware of user problems, has made things easier with an email link on the web site direct to organisations which can clear the rights. Photos 12 only holds images of artists represented by French collecting society ADAGP or the Picasso Administration so images on the site are all "relatively" accessible.

In the end it's down to the question of how much you need a particular image. There is no easy way to deal with images in copyright, but knowledge and understanding can at least guard you against unpleasant surprises. As Wheeler says: "It can be a nightmare, but it can be straightforward. If you do understand it, it's something that you just get on with." 

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