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Licensing Issues in the Acquisition of Slides, Digital Images, and Digital Reproduction Rights for Two Digital Image Projects at Western Michigan University

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Column Editor's Note: "Try to fill any requests for slides with digital slides," my library director told me. But librarians in medium-sized libraries, such as me, do not have an expert such as Miranda Howard Haddock, Visual Resources Librarian, on hand. In this article, Miranda shares her experiences in developing collections of digital slides at Western Michigan University. Miranda's article will help me and other librarians get started purchasing digital images. — MF

Introduction

Advances taking place in digital imaging technology and projection are changing the way libraries acquire images for classroom and research use. In the teaching of the visual arts, and other subjects where material culture is at the heart of the discipline, pictures of objects are used as surrogates for an actual artifact. Pictorial surrogates allow instructors to talk about a work of material culture without having the actual piece present. Pictures and their reproductions allow copies of the works to be distributed to a wide audience either by printing reproduction technologies or projection. In the last decades of the nineteenth century and the first half of the twentieth century, lantern slides carrying black and white or hand colored surrogate images were projected in classrooms. Lantern slides were available from publishers or made by lecturers themselves through copy photography. Projected slides allowed images to be distributed to more than one person at a time. Projection of images for educational use was updated when color 35mm slides films improved. During the middle decades of the twentieth century the practical materials, manageable size, and reasonable price made using and collecting slides sensible. 35mm slides were acquired in the same way as lantern slides. Copies of works were made and distributed within the educational community under the umbrella of fair use. Rather than dispose of the images after one use, these slides became the mainstay of art and art history slide collections and visual resources libraries.¹

Enter the advent of the digital imaging and mass electronic image distribution in the 1990s. Copying an image from a 35mm slide or an image from a printed source is almost as easy as purchasing the equipment and setting it up properly. Digital images and electronic distribution of images is a boon to education and the manner in which instructors at all

levels use images. When using 35mm slides for teaching purposes, one slide containing a specific image can only be used by one person at any given moment to project in front of a classroom. With digital technology this same image can be distributed electronically to many viewers, in or outside of the classroom, at one time. One of the major changes in image acquisition brought about by this new technology is that now image vendors and the educational community are much more attuned to the regulations of copyright and image ownership, thus changing the way institutions are acquiring images for their visual collections. When it comes to acquiring digital images for Web-based image databases and image intensive instructional Websites, librarians must consider copyright, image ownership, and the licensing of digital images. With fair use being reconsidered, license agreements between the image owner and the educational institution require negotiation. Digital image license agreements come in almost as many sizes, shapes, and colors as the images themselves.

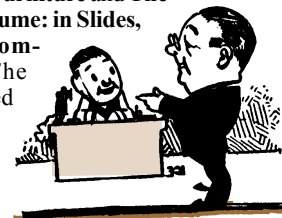
This paper focuses on two case studies involving projects that required the acquisition of actual images and the ways in which the images were purchased and licensed for use for electronic media delivery. In both cases, digital imaging technology was used for image distribution within an educational community. Both projects represented by these case studies originated with Teaching and Learning with Technology grants made available to faculty at **Western Michigan University** in Kalamazoo, Michigan. Several possible licensing scenarios are seen in these two studies. Information contained in this paper can be augmented by two writings published in the 1990s about the licensing of library materials. **Tricia L. Davis** and **John J. Reilly** published an article in 1998 entitled "Understanding License Agreements for Electronic Products"² outlining what acquisition librarians need to know about licensing agreements. That paper is an excellent complement to **Meta Nissley's** 1990 publication entitled "Taking License: Librarians, Publishers, and the New Media" where the basic language of license agreements is examined.

The Case Studies

Case Study Number One (hereinafter called **CS1**) involves the digitizing of slide images from two purchased slide sets published by a publisher of instructional slide sets. The two slide sets are **Architecture,**

Interiors, and Furniture and The History of Costume: in Slides, Notes, and Commentaries.

The project involved scanning a total of 3,383 slides from these sets and transferring the images to CD-ROM. The CD-ROMs can be checked out and circulated in the same manner as slides by faculty and students for classroom use or individual study. The CD-ROMs remain the property of the Visual Resources Library with circulation limited to the **WMU** community.



Case Study Number Two (hereinafter called **CS2**) involves purchasing slides and digital images from several vendors,³ the rights to take images with a digital camera at specific architectural sites, and the licensing of images scanned in-house from purchased hard copy materials in order to create virtual tours and online pictorial libraries of Canterbury Cathedral in England and Saint-Denis Cathedral and Monastery in France. The virtual tours of these cathedrals will be available to **WMU** faculty, staff, and students via campus intranet.

Comparisons can be drawn between both case studies. First, images were purchased. Second, permission to copy the images and other licensing agreements of the digital surrogate images were negotiated to meet our specific project goals.⁴ Third, digital images were desirable for these two projects as the images were for distribution to the campus community to more than one user at one time.

Acquiring Slides and Digital Images

Securing images was the first action taken to complete the projects. Fortunately, the slides sets for the images used in **CS1** were already part of the library's collection—slides had been purchased through our acquisitions department from the publisher. No copy photography was required nor were any other vendors contacted for **CS1**. The only copying of images necessary was the scanning of 35 mm slides.

In **CS2** more decisions concerning the acquisition of images had to be made. Since at the outset of this project, it was known that images were going to have to be purchased, a selection of vendors was sought out. Slide and digital image suppliers listing images of

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Canterbury Cathedral and Saint-Denis in their catalogs were located. Since the end product of this project was a virtual tour and online image collection for the WMU community to travel via the campus intranet, it was essential to have the ability to either purchase the image in digital format or be able to scan a slide or document in-house to create the digital image. Of the five vendors contacted, four would be able to meet our needs. The fifth vendor could supply beautiful slides of these edifices but would not allow us to purchase scanning rights for digital copies, which eliminated this vendor from consideration. Purchase orders were placed with the vendors through the library's acquisitions department.

After selecting vendors and images, another factor was thrown into the acquisition equation of images for CS2. It became apparent that not all of the images the co-investigators of this grant wanted to use on their site would be available from vendors. The grantees were going to have to go to Canterbury and Paris themselves to take digital photographs of specific elements of the structures not available through a vendor. It is acceptable for tourists to take pictures of the structures for their own use. However, since the end product of this project would be redistribution of the photographs, the co-investigators sought permission from the appropriate parties to photograph the structures. Since Canterbury was the first structure to be worked on, a letter to the leading official of Canterbury Cathedral was drafted describing the project and the kinds of pictures that were needed. The official responded positively by letter granting permission to take the images and redistribute them electronically to the WMU community. Acceptance of this letter was in a sense the licensing agreement.

As the project got underway and the framework for the virtual tour of the cathedral was laid-out, we discovered a need to add a floor plan and an aerial view. One of the investigators had a floor plan published by an exclusive distributor of materials on Canterbury Cathedral filling that need. Another had a slide of an aerial view from of the Cathedral precinct also distributed by the same company. The general manager of the company was contacted. For a fee, permission to make one digital copy of each image was granted.

License and Use Agreements

Licensing and use agreements for images differ from licenses for electronic journals and indexes. First, they are usually not as long and involved, often containing the minimum of legalese, when compared to print material agreements. Secondly, there may be more technical terms included in the agreement than those for journals and indexes. Since we are dealing with digital pictures, pixel size, digital file size, and other digital image components can and often are spelled out in an agreement between the vendor and the purchasing party. Thirdly, an image owner may require a copy-

right statement or watermark appear within the image before it is posted to a Website or image database.

In some instances, an institution will be purchasing an actual slide then license the right to make a digital copy. In other instances, a digital file containing the image will be purchased. It is important for the license agreement to spell out exactly what the library is receiving and the library's responsibility for use of the material.

CS1 required only two license agreements from the same publisher, one for each set of slides signed by representatives of the publisher and the University. The publisher formulated the agreement, in plain language stating that permission was granted to **Western Michigan University** to transfer the specific slide sets to CD-ROM for a given price. Each agreement was short, to the point, and identical, with the exception of the fees and title of the image collections involved. No specific responsibilities for University Libraries were spelled out in the agreement. At first glance this agreement appears to be non-restrictive. Nonetheless, what appears to be opened ended often is not. Even though there was no limit regarding the number of copies allowed or a restriction put on the file or pixel size of the digital image, the agreement does clearly state that the slides may be transferred to the CD-ROM format. No other format is mentioned; therefore, there are implied restrictions to this agreement. Since one format is explicitly stated in the agreement, the images cannot be used in any other visual electronic format such as a Web-based image library. If the library decided to use these electronic images in another format, a new contract would have to be negotiated with the publisher. In the world of digital imaging licenses, this was an easy transaction meeting project needs.

On the other hand, CS2 required several license agreements from different vendors. Each license agreement moved us toward the same end goal. However, since each vendor had its own way of handling images and use agreements, there was a wide range of products and services from vendors requiring responsibilities for the library to carry out for this project.

One vendor for CS2 prepared a brief agreement to be signed by both parties. The language is clear and free of legalese. The one page document is titled "Digital Use Agreement." It states that our institution will abide to a copyright statement as provided in the agreement. It also states that the use of the materials is limited to classroom educational use and for individual study on a campus intranet. Redistribution of the materials in publication and public Website is forbidden. Like the agreement in CS1, no limits on the file size or the number of copies were set. Since the product associated with CS2 is a Web page delivered via the campus intranet, this contract suited the needs of the visual resources library with no revisions. This agreement does differ from the agreements in CS1 in that it does not specify which images from the vendor are covered by this agreement. There was no

appendix listing selected images attached to the document, nor were any fees paid. It can be interpreted that this agreement covers all images from the vendor.⁵ Again, compared to many licenses, this was an easy agreement to take into account, even though long term goals and changes may need to be renegotiated between both parties in the future.

The agreement made with the distributor of materials on Canterbury Cathedral for the use of the printed floor plan and one slide was also rather straightforward. There was no agreement to be signed; a letter stating the responsibilities of the use was attached to the invoice for the one-time use fees of these documents. This letter states that WMU could use these two images on a course Website as long as a copyright statement for Canterbury Cathedral Enterprises appeared on the site and that the images were also watermarked. An agreement of this brevity only takes immediate needs for the institution into consideration. As in the previous examples, future use of the images and the addition of more images would have to be renegotiated.

License agreements for CS2 also involved what could be considered middle of the road agreements. One vendor submitted an agreement that was somewhat longer than the previously mentioned documents. Ownership of the images and responsibilities of both parties were so neatly spelled out in ten points, that there was no question in either parties' mind as to what is expected from the contract. The first five points stated specifics regarding who owned the images, who could use the images, and for what purposes the images could be used. Limits on maximum file sizes for images used on the intranet and on a departmental image database were also set. Four points concentrated on restrictions for University Libraries, specifically stating that images couldn't be redistributed on public access Websites, used for commercial purposes, or altered. A copyright statement presented by the publisher had to accompany each image. A fee schedule was listed at the end of the document. Unlike the previously mentioned agreement, this contract was limited to specific images with an appendix listing the catalog numbers and titles covered by this agreement. If the library wished to include more images from this vendor in the project, another appendix would need to be appended to the document and agreed upon by both parties. Additional fees would also have to be paid. Future needs of the institution were addressed with the additional appendix and fees.

Another vendor also submitted what this author considers a mid-level license agreement. The agreement began with the basics of the parties involved in the agreement and established the vendor as the owner of the images. The agreement was very similar to that of the vendor mentioned in the above paragraph with two exceptions. The first exception was that the agreement stated the University was responsible for informing the WMU community of permissible and non-permissible uses of the materials. The second

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exception permitted the downloading of an image into presentation software or onto a disk and modifications as long as the images were used solely for educational purposes. Images could be added to the agreement in the future with an additional appendix listing the images and payment of the appropriate fees.

So far, only agreements allowing slides and printed matter to be scanned have been discussed. There are image vendors who will directly sell digital files so that the purchaser does not have to go through the scanning process. This is convenient and time saving for the purchaser as scanning does have to be carried out, but compared to other transactions taking place for CS2, the license for these images was more complex.

A major, well-established slide vendor makes digital images on CD-ROMs available to clients. An order for specific images was placed with the vendor then these images were burned onto a CD. The license agreement from this vendor was the lengthiest and most involved. The license agreement covers ownership of the images, parties included in the contract, definitions, permitted and prohibited uses, obligations of the licensee, length of the agreement, warranty, limitations of liability, general provisions, and dispute resolution. This was the most comprehensive agreement of this project. There are no questions regarding what is being delivered by the vendor, how the purchaser can use the images, and what will happen in the case of a dispute. This is the only agreement that contains a warranty protecting the purchaser from a third party claiming to own the images. Prohibitions are similar to those in the previously mentioned CS2 agreements with the exception of adding digital watermarks. Adding another watermark or altering the watermark placed on the image by the supplier is forbidden. This agreement does call for notifying image users of all use responsibilities. Since the digital image file is being provided directly by the vendor, there is no need to include maximum file and pixel size in the agreement. The use of derivative images is covered in an appendix limiting the size and use of thumbnail images. All points were covered and the needs of both parties met with this agreement. Attached to this agreement was an appendix listing the catalog numbers of the actual images licensed. When WMU purchases more images from this vendor, the catalog numbers will be added to the appendix and fees paid. Even though this vendor's license agreement is more complex than the others, it is also the most inclusive, saving time and sparing trouble in the future.

No further agreement had to be signed between Canterbury Cathedral and the University in order for the co-investigators to take digital photographs of the cathedral. The only requirement was that the person taking the pictures must check in with an office of the precinct and wear a badge while taking the pictures. This type of agreement is very

open ended with no fees required. The appropriate office at Canterbury Cathedral can be contacted for permission whenever a grant co-investigator wishes to take more pictures.

Conclusion

So what does all this mean in the acquisition of image collections? It means building image collections has become more complex than it ever has been. Images not only have to be located, but use rights need to be negotiated as well. Not only are there more options in image formats, there are many other issues to be taken into consideration. The negotiation of license agreements requires not only knowledge of the library and patron needs, but an understanding of digitization and image redistribution as well. All the changes in developing image collections should not discourage institutions from building these important pedagogical collections. What is required is careful planning and consideration of how the images are going to be used.

Agreements requiring the purchaser to notify users of their permitted uses do add another layer to the everyday jobs of the visual resources librarians or curators. Notices should be placed on library Websites, in circulation areas, and on registration materials stating permitted and prohibited uses of the images. It may be necessary for the librarian to contact the institutions' legal counsel for assistance in this area. In the long run, these notices serve two functions. First, they inform the image users of their obligations. Secondly, these notices contribute to the user's education in copyright.

Going through the examples given in this paper, the reader can see that there are as many different types of license agreements as there are vendors, as many formats as there are ways to use a digital image. Each of the examples is considered reasonable by WMU University Libraries. In all cases, the needs of both parties could be met and the projects moved toward completion.


Based on the experience gained from these two case studies, the following questions have been devised to assist acquisitions departments in purchasing images for library collections:

1. Why are digital images necessary for the end product?
2. How will the end product be delivered and used by the purchasing community?
3. Does the agreement allow for the addition of more images in the future?
4. Does the agreement account for use of the images in different media formats such as a digital image on a CD-ROM, a campus-wide network, or public access Website?
5. Is there a limit on the number of copies per image, file or pixel size? Can images be downloaded by patrons?
6. What responsibilities to the vendor are required of the purchaser? Can these responsibilities be met?
7. Are any fees clearly stated in the agreement?

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Endnotes

1. Christine L. Sundt. "Testing the Limits: The CONFU Digital-Images and Multimedia Guidelines and Their Consequences for Libraries and Educators." *Journal of the American Society for Information Science*. v 50 n 14 (1999), p. 1329.
2. Davis, Tricia L. and John J. Reilly. "Understanding License Agreements for Electronic Products. Paper Presented at the 1997 NASIG Conference." *The Serials Librarian*, v 34 no 1-2 (1998), p. 247-60.
3. Images were purchased from Slide Presentations, Publishers; Saskia Cultural Documentation; Davis Art Slides; Hartill Art Associates; Archivision; and Canterbury Enterprises, Ltd.
4. Davis and Reilly point out in "Understanding License Agreements for Electronic Products" on page 249 that the license agreement, being a contract between two parties, "should include all the elements needed to satisfy both parties."
5. It is advisable for the institution to contact the vendor if other images from the vendor were to be used for a digital image project.