

Intellectual Property and Interactive Multimedia Collaborations

Jeremy Rees
European Visual Arts Centre

As soon as you start analysing the full extent of the intellectual property aspects of image databases and interactive multimedia, the immediate reaction to the complexities which face you is frustration and hopelessness !

The alternative is to start exploring pragmatic approaches to the many problems.

1 A context

I hold a strong personal view that the development of image databases in art museums and galleries should, from the outset be as much concerned with their use by general visiting publics and for more formal education use (by teachers and students at all levels) as with their use for museum management.

Few art museums, collections or temporary exhibitions in Europe (or elsewhere) provide opportunities for their visiting publics to directly or indirectly explore for themselves, aspects of the permanent collections (whether hung, on loan or in store) in any depth; temporary exhibitions and their contexts; the work of an individual artist in the context of other work and influences; the historical, social or other contexts that gave rise to the creation of and the subsequent national/international distribution and display of this art. Many art museums have extensive libraries but even where these are, in principle, available to the visiting public, few are organised and accessible in such a way as to make casual public use a reality.

The "quality of experience" of visits to and general use of art museums, and the limited role of exhibition catalogues are subjects that have been surprisingly little researched. Few people actually read an exhibition catalogue in any depth while they are in an exhibition or even afterwards. Eventually the catalogue finds a place on the bookshelf, often still unread.

There is clearly a need for additional context and background and for the exploration of ways in which visitors can be encouraged to spend longer and make more frequent (and more personally satisfying) visits to art museums and galleries. We have to find other, additional, ways of involving and enthusing people.

2 New attitudes to public information

Traditionally, solutions to these problems have been explored through the use of tape/slide sequences, linear videos and personal sound guides - all of which are relatively "passive" and somewhat limited in their potential.

What we need to be aiming to set up is the means and the encouragement to create a real dialogue between the art museum visitor and the art museum collection or individual works of art - between the viewer and the viewed.

Recent developments in information technology have led to the increasingly economic possibilities for image databases (combining text and image, utilising analogue videodiscs, or digitised images of a fast increasingly improved quality), sound and moving image sequences from film or videotape.

With conventional film and videotape, the material is edited and viewed sequentially (in a "linear mode"). With interactive media or multimedia, the material can be accessed in many different ways that are, to a greater or lesser extent, determined by the user - enabling a wide variety of personal explorations of the material, rather than only an "edited" view. This can lead to explorations that really do start to involve the user in the subject matter.

The feasibility study for the European Visual Arts Centre project at Ipswich (EVAC), in East Anglia in the UK, has proposed a new exhibition centre, in which equal importance would be given to exhibitions of contemporary and historical fine art AND to easily accessible information about art. Image databases and interactive multi-media will play an important role, alongside the more "conventional" information media of books, exhibition catalogues, periodicals, audio and videotapes.

This assumes that a greater dialogue and collaboration can be achieved between art museums and a published base of material. More crucially, a range of material that has common addressability - which of course does not currently exist to any useful extent.

3 The real problem

While, for the instigator or developer of image databases and interactive multi media, one sort of headache is the rapid development of imaging and other technology with attendant fear of obsolescence, and another headache is the scarcity of staff time and financial resources another, the real problem (as many people are only just beginning to realise) is intellectual property rights - which include copyright and moral rights.

"As our society grows more litigious, and as the amounts of money to be earned grow more fabulous, we will see a great deal of creativity applied to the interpretation of copyright law"¹

The purpose of Copyright is "to protect makers of original works of art/craft/design against unauthorised economic exploitation, by enabling them to prevent and receive financial recompense for such abuses and, of course, to authorise exploitation for financial reward, if so desired"

Until the 1988 Copyright Act, copyright legislation in the UK had given little or no protection against abuses to makers reputations: public denial of their authorship and derogatory physical treatment of their works that were no longer in their possession, control or ownership. For many years the UK has been a signatory to the Berne Convention, which is the international agreement dealing with international "intellectual property" matters such as copyright and moral rights. Each participating State undertakes to enact its own laws in terms that harmonise with those of the Convention, so that "intellectual property" abuses can be remedied by any maker "qualified" through being resident, domiciled or a citizen of any such Convention country.²

An interesting recent example of moral rights was highlighted in an article by the writer Gunter Grass in the UK daily newspaper, *The Guardian*.³ Grass was objecting in the strongest possible terms to the use, by the Bundeswehr, of a reproduction of Picasso's painting *Guernica* in press advertisements for army recruiting.

4 The current situation

I am not an Intellectual Property Rights lawyer but will outline something of the current situation by giving a few examples.

At the moment, the copyright collecting societies have not, collectively or even individually, formulated a policy regarding image databases and interactive multimedia. Clearances that have been negotiated, whether through copyright collecting societies or individual copyright holders or their agents have been on an ad hoc basis, negotiated project by project. In other instances, copyright has not been cleared or projects have gone to considerable lengths to avoid the use of copyright material.

Taking the current situation at face value, as Richard Francis outlines in his draft Report *Very Spaghetti*⁴, "conventional copyright holders are prepared only by their experience with printed books and broadcast television. In the one case they can easily see the number of copies that will be produced and calculate a cost depending on the actual number of reproductions of the work. With film or TV a practice of copyright law has grown up where the rights are negotiated piecemeal for "the world or parts of the world, for cable and broadcast etc"; it is unusual for rights to be sold outright to the programme maker or for the maker to purchase all rights unless he wishes to sell on freely afterwards. In a programme from the recent *Relative Values* series, not many more than 50 works would have been the subject of copyright negotiations for each programme. On an interactive laserdisc there may be as many as 50,000 images: not only would negotiation be prohibitive for all those images but the cost, at say 50 per shot would come to more than 2.5 million !"

5 Some irrationalities

In the US, adhesion to the Berne Convention took place on 31 March 1989. . It was thought unlikely that compensation for artists' work that had been reproduced or used without permission would be achieved retrospectively, even if the work continued to be sold after 31 March 1989, but it was thought that in future users would have to obtain the consent of the artist (or their estate) before using an artist's work. The same unsatisfactory situation existed in relation to the reproduction and use of work of European artists' in the US.

In reality, Attorneys have been at work and devised a methodology to ensure that unauthorised reproduction could continue to be made, on the basis that all works created before 1 March 1989 - in the US or elsewhere - (except the few that had been registered under US law) would remain unprotected. This situation has yet to be adjudicated in court.

I use this as an example of the irrationality of the current situation - which, of course is further complicated by the fact that the situation varies in detail from country to country, even where they are signatories to the Berne Convention). There are many other countries who are not signatories and have other variants or no relevant legislation.

Clearly, dealing with this "Babel Tower" of legislation and "accepted practices" is going to be a major stumbling block in any form of international collaboration.

6 Some first steps

The Database Access Policy document of May 1991 of the Canadian Heritage Information Network (CHIN)⁵, sets out to formalise a policy to govern broader access to the national and reference databases of the inventory of the major museum holdings in Canada (to date, the Humanities National Database and the Natural Sciences National Database) and "to institute procedures to insure the quality of the resulting service".

This comprehensive document (for a text database) is useful but at the same time, to me at least, quite formidable. It is no doubt influenced by the Canadian Government commentary on its proposed "Amendment of the Copyright Act" (May 1987) which states (quite correctly) that "Companies are understandably reluctant to spend money and time to create a program when a competitor can copy their original work in the 30 seconds it takes to duplicate a disc. Despite impressive growth the industry loses millions of dollars annually to unauthorised copying."

The European Commission in Brussels produced a Green paper on the problems of copyright in relation to information technology in 1988 and, more recently, in April 1991, a Forum on Museums Information Systems, organised in connection with the Narcisse Project (under the EC IMPACT programme) in Luxembourg included a European Working Party to consider the legal problems posed by the communication and dissemination of museum images.⁶ It considered" the differences in national legislation, particularly as

regards intellectual property rights for works of art, and reached the inevitable conclusion that this area had to be harmonised (duration of protection, system of exemptions, related rights etc).

It goes on to consider five types of legal problems:

- the necessary legal framework
- the intellectual property rights
- the responsibilities
- the transborder data flow
- the problems related to the creation and operation of a telematics service

It finally concludes that "the only piece of advice that the working party could give to image bank producers was that they should protect themselves with all the requisite guarantees and:

- thoroughly understand the legal framework in which they were operating (legal systems and relevant regulations).
- respect the rights of others in order to have their own rights respected (the right to plagiarize would entail the right to be plagiarized).
- make use of existing legal procedures as a means of legal protection and obtain the necessary contractual agreements."

Again, under the auspices of a European Commission (ESPRIT) project, CITED (Copyright in Transmitted Electronic Documents) was announced in March 1991, with the objective of defining a model for technical protection of the intellectual property and/or copyright invested in digitized information services. It is aimed at the protection of information (data and images) that is produced and processed with the intend to disseminate it commercially.

7 A pragmatic approach

7.1 A European Visual Arts Information Network

Discussions about the application and development of image databases and interactive multimedia with people in many European (and other countries) led to proposals for a European Visual Arts Information Network (EVAIN).

The concept was to bring together art museums, cultural authorities and people in education - to exchange information, ideas - and to work on joint projects to increase the availability, commonality and addressibility of image-based IT projects, for both museum management and public information.

The concepts and aims were discussed eighteen months ago, at a meeting of people from nine European countries, organised by EVAC in Amsterdam. One of the most important

aspects of that meeting was the discussion of a paper that EVAC had prepared in consultation with the DACS (the Design and Artists Copyright Society) and copyright lawyers on the subject of intellectual property rights.⁷ The proposals set out three "layers" of usage and are summarised in the accompanying table.

7.2 The ITEM database

The first practical step in the establishing of EVAIN has been the launching of the ITEM (Information Technology in European Museums and art galleries) database, to be continuously updated and published twice a year on subscription in both hardcopy and on diskette (for both PC and Apple Macintosh platforms). The first issue came out in February 1991, the second issue was published in July and the third is planned for January 1992.⁸

With modest financial assistance from the European Cultural Foundation, Amsterdam, the Gulbenkian Foundation, London and the EC (DGX, Cultural Action) in Brussels, ITEM has already been a considerable success with subscribers from all over Europe (Finland to Spain), North America, Australia and Japan. It is also developing working links and exchange of information on image databases with the Clearinghouse museums database at the Metropolitan Museum in New York.

8 A European/international pilot

No paper or talk about interactive multimedia would be complete without a pilot project attached to it in some way!

Discussions are proceeding with the intention of EVAIN developing a pilot interactive multi-media project, centering on the work of a key twentieth century artist - possibly the Romanian sculptor Constantin Brancusi, who lived a significant part of his working life in Paris.

8.1 The main objectives of this EVAIN pilot would be:

to create an interactive multimedia public information system, rich in material, with a sympathetic human computer interface (HCI) that offered a variety of levels and paths of enquiry and exploration, recognising the very different levels of users pre-knowledge and depth of interest

to develop a European/international collaboration between one (or, preferably, several) existing image database projects and several art museums and cultural authorities in Western and East Europe/internationally, who have not yet developed any projects of their own

to develop and test interfaces between different museum systems, including on-line image and data transmission Such a project would demonstrate many of the aspects in

which we and others are interested in developing, and would test many of the practical intellectual property rights problems.

8.2 The Proposed Partners are . . .

- EVAC and several art museums of differing sizes from two or three Western European countries, two of which would already have image database projects.
- an Eastern European Cultural Ministry and cultural institutions and several USA art museum and other partners
- Software and Hardware developers, including a detailed human computer interface developer
- one or several European Telecoms
- an IT publisher -
- liaison with CIDOC on a standard short entry (and, ideally, longer entry) data entry format. lastly but by no means least,
- a European Copyright Collecting Society; yes, as a development partner. In fact, agreement in principle on this has already been reached.

We hope that it will also be possible for the copyright partner to also achieve the active (or passive) involvement of other CIAGP members (copyright collecting societies concerned with visual copyright).

8.3 Scope

- multi-lingual
- hard copy printout facility
- on-line transmission of images and text
- per item copyright fee charging and logging for image printout - facilities for user authoring
- downloading of images and text to videotape
- facilities for recorded user feedback

In persuance of EVAIN's stated belief in the importance of building on what has already been successfully achieved, rather than yet again "re-inventing the wheel", the intention would be to take an existing image database development and build on that, creating new front-ends as necessary. An key element would be a two part data entry for works of art - a "short-entry" for the public access aspects and a "long-entry" (that had restricted access) for museum and collection management purposes.

8.4 Intellectual Property Rights

By choosing an artist whose work is still in copyright, and a project which would bring in a number of other artists (living and dead) whose work is in copyright, the project would be a valuable test-bed for not only the greatest complexity of permutations of copyright, but the wider issues of intellectual property rights. With a Copyright Collecting Society as a

development partner, it will be possible to explore these challenges more quickly and, hopefully, more successfully, than by any other means.

9 In conclusion

To quote Charles Clark in his article "Electronic Publishing and the Law - An Agenda of Question Marks"⁹

"This contribution ends where it began, in a plea that we recognize that computer-based works are a new form of work, and that owners and users stop picking out whatever features of traditional law happen to suit their particular interests. Instead, we must argue through the new and particular author, publisher and user features of computer-based works so that creativity, investment and use are all equally encouraged.....Let us Start new, and let us start now!"

References

1. Schultz, J., Schultz, B. (1991). *Picture Research, A Practical Guide*. New York: Van Nostrand Reinhold
2. Lydiate, H. Copyright and Moral Rights: New Legislation. *Art Monthly*, July/August 1989, 36-38.
3. Grass, G (1991). Guernica revisited. *Guardian*, 23 May 1991.
4. Francis, R. (1991). *Very Spaghetti. A draft Report to the Arts Council on Interactive Multimedia*. London: Arts Council
5. Canadian Heritage Information Network. (1991) *Database Access Policy*. Ottawa: Department of Communications, CHIN.
6. European Commission (1990). *Narcisse Project: Forum on Museum Information Systems*. Luxembourg: European Commission
7. European Visual Arts Information Network (EVAIN). (1990). *Matters of Copyright*. Ipswich: European Visual Arts Centre.
8. Pring, I (ed). (1991). *ITEM (Image Technology in European Museums and art galleries database)*. Ipswich: European Visual Arts Centre on behalf of EVAIN.
9. Clark, C. (1988). Electronic Publishing and the Law : An Agenda of Question Marks. *Copyright*, May 1988, 241-246.