



Art Museum Image Consortium

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Enabling Educational Use of Museum Multimedia

AMICO Board Meeting

May 7, 2003

Museum of Contemporary Art San Diego

Minutes (approved September 18, 2003)

1. Attendance

• **Attending in person**

Jacqueline Allen, Dallas Museum of Art
Rachel Allen, representing Elizabeth Broun Smithsonian American Art Museum
Daniel Amadei, representing Pierre Théberge, National Gallery of Canada
Max Anderson, Whitney Museum of Art
Susan Chun, Metropolitan Museum of Art
Michael Conforti, Sterling and Francis Clark Art Institute
Erin Coburn, representing Ken Hamma, J. Paul Getty Museum
Robert (Shell) Hensleigh, Detroit Institute of Art
Alan Seal, representing Mark Jones Victoria & Albert Museum
Leonard Steinbach, representing Katherine Lee Reid, Cleveland Museum of Art

• **Attending by conference call (for part of the meeting)**

Robin Dowden, Walker Art Center
Katherine Lee Reid, Cleveland Museum of Art

• **Non-Board members, representing other AMICO Member Institutions**

Dianna Folsom, Los Angeles County Museum of Art
Hugh Davies, Museum of Contemporary Art San Diego

• **Staff ex-officio**

Christine Steiner, AMICO General Counsel
Jennifer Trant, Executive Director
David Bearman, Director of Strategy and Research

2. Background Documents

Members were referred to the Briefing Package distributed electronically prior to the meeting.

3. Call to Order

The meeting was chaired by Christine Steiner, AMICO General Counsel.

Ms. Steiner convened the meeting at 10:00am PDT. She explained that due to the exceptional nature of the business before the Board, which included proposals to fundamentally alter the nature of the corporation, she would begin by reading from AMICO by-laws the four purposes for which AMICO was formed:

- 1) compile a collective digital library of visual and documentary resources
- 2) provide dramatically increased access ... for the benefit of institutions of higher education, museums, libraries, schools and other charitable educational institutions
- 3) foster and promote education and advancing knowledge
- 4) engage in other and further activities to accomplish these purposes

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She then reminded the Board Members of their responsibilities as Trustees and noted that during the meeting her role would be to direct the orderly flow of conversation and opinion and assure that actions decided by the Board were properly enshrined in motion approved by the members.

4. Approval of the Minutes of the January Meeting.

Steiner called for a motion to approve the minutes of the Board meeting of January 2003. Moved by Susan Chun, Seconded by Max Anderson. Approved by acclamation.

5. Financial Report

The Chair called on AMICO Treasurer Max Anderson to present the financial report. Anderson distributed a theoretical budget for AMICO for FY2004 in order to explain AMICO's overall financial position. He noted that in the coming year AMICO would for the first time be able to operate with a modest surplus from subscription income and no dues fees. However, he explained, this option was not truly available to AMICO because it would not be able to pay its debts if it did this, and each subsequent year of operation would likely generate less revenue because of competition with ARTstor. He noted further that AMICO has specific obligations to rights agencies, members, distributors and subscribers that must be met by operating at some level in 2003-2004. As a result, the Board instructed Trant and Bearman in January to negotiate with ARTstor with an eye towards paying AMICO's debts, fulfilling its operational obligations, and finding a graceful transition for its activities.

Anderson asked the Members of the Board to salute Jennifer and David for the job they have done for AMICO over the years and for their continued dedication to the organization. Members of the Board joined in that expression of appreciation.

6. ARTstor Proposal

Ms Steiner then proposed to move directly to the major agenda item and asked Jennifer Trant to introduce the ARTstor proposal.

Jennifer began with a background report on AMICO status, noting that we had an uneven year due in part to ARTstor.

Membership: We gained three new members in January, but have stopped recruiting now in light of the likely change in the nature of the consortium; meanwhile we lost two non-active members (the Library of Congress and the Musée des Beaux Arts de Montréal, though both have left their content in The AMICO Library). In addition, one member (the Art Institute of Chicago) has effectively withdrawn after two years of failure to pay dues or make contributions to AMICO.

Distribution: Trant reported that we have expanded the scope of two existing distributions of AMICO: Cartography Associates will support the independent scholar license from July 1 2003 and OhioLink has agreed to distribute to every public library, school and university in Ohio as of July 1 2003. (Both these agreements are finalized but not signed.) However, due to the likely entry of ARTstor into the market we have terminated a planned launch of EBSCO distribution and are likely to end plans for a SCRAN distribution of AMICO.

Data Delivery: Finally Trant reported with deep regret that AMICO had failed to deliver the 2003 Library to Distributors on May 1 as required by our contracts, due to the extraordinary amount of time we have had to devote to ARTstor matters.

• Staff assessment of the Proposal

David Bearman then reported the staff assessment of the ARTstor proposal. He began by explaining that the Board had three possible options:

- 1) Accept the ARTstor proposal in principle, negotiating points as needed
- 2) Reject the ARTstor proposal and:
 - a) Develop a similar relationship with RLG
 - b) Stop active work immediately, pay debts from current income and reconsider options after December 2003, or

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3) Accept the ARTstor proposal (with negotiations) and explore the RLG offer in the coming year with an aim to have some AMICO consortial functions continued within RLG.

He explained that the staff recommended accepting the ARTstor proposal with whatever caveats the Board wanted to place on it following a paragraph by paragraph review of the offer. From an operational point of view, the staff asked that if this action was taken the Board additionally require:

- 1) that legal documents effecting the arrangement be prepared within one month
- 2) that the matter of rights in data be directly addressed
- 3) that matters of K-12 delivery be directly addressed
- 4) that the Board satisfy itself with the role and responsibilities it might have as an ARTstor Museum Advisory committee
- 5) that the resolution of this matter include concrete plans for how the Board wants to act with respect to existing AMICO employees.

With that, Christine Steiner walked the Board through Neil Rudenstine's letter of April 24, 2003 to Elizabeth Broun, Chair of AMICO (copies of which were distributed to the Board in the Briefing Package).

• **In reviewing the accomplishments that should be celebrated:**
Leonard Steinbach suggested that the Board should cite, in addition to the list of accomplishments that ARTstor sees as important, "technical support, support for standards, and support for museums moving ahead with digitization programs".

Diana Folsom added "getting museums started in digitization" and Michael Conforti added "data quality, consistency and data structure" and "authenticity of data from museums". The Board agreed by acclamation that these should be communicated as important achievements that should be presented.

Susan Chun then suggested that the Board should also bring to the attention of ARTstor "business practices and models explored by and initiated by AMICO, and its success in engaging the collaboration of museums". This was also moved and agreed.

Max Anderson suggested adding to the important achievements "affirmation of artists rights and openly arrived at agreements by the museum community with artists, subscribers, distributors and others about how to protect and respect rights." The Board agreed by acclamation that this was a further important achievement to be preserved.

• **Serving Existing Subscribers to The AMICO Library**
Next, Ms. Steiner asked the Board to consider the proposed ARTstor "goal" to serve AMICO's existing subscribers through June 30 2004.

The Board noted that whether The AMICO Library content would be part of ARTstor after June 30, 2004 was not something that AMICO could ensure – this depended on agreements between the museums and ARTstor.

The Board further noted that there must be concrete mechanisms in place to transition subscriptions from AMICO to ARTstor or both AMICO and ARTstor would lose them. Finally, the Board recognized that transferring income to ARTstor to pay AMICO debts was too cumbersome a means of achieving this end. Instead, AMICO would use the income to pay its own debts, and such action would be audited and reported.

The Board then voted each of these changes in terms as matters it wished to instruct its staff to negotiate.

• **Continuing AMICO Functions within ARTstor**
Next Ms. Steiner turned to the paragraphs involving "plans for continuing AMICO functions within ARTstor operations":

The Board noted that the statement "We would assume that if such fees did not fully satisfy the debt, ARTstor and the Mellon Foundation would satisfy the debt at the end of the designated period" needed to be a definite statement confirmed in a subsequent agreement.

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- **Museum Advisory Committee**

In discussion of the proposed Museum Advisory Committee for ARTstor the Board wished to call attention to the absence of reference to a role for the Advisory Committee in suggesting what content acquisition was important to the museums. By privileging the choice of content topics identified, the letter strongly implied that collection development was not in the scope for museum participants and the Board felt that this would seriously impact their interest in and willingness to engage with ARTstor. The Board agreed that no concrete requirements could be dictated by AMICO for this committee but voted to bring its concern to the attention of ARTstor.

- **Continued Museum Contributions**

With respect to the paragraph on continuing contributions, the Board felt that it was important to source all data in ARTstor, because proper sourcing would enable users to “privilege” the information and images provided by museums. In particular Board Members were concerned that images and data from slide collections might not be properly sourced to the books from which they were taken and that slide cataloging might not be attributed.

- **Distribution options**

With respect to the paragraph of the proposal regarding distribution, the Board felt that the offer to “explore” multiple distributions was inadequate and that agreements must “ensure” that existing distributions of AMICO, at least, were preserved. Katherine Lee Reid and Leonard Steinbach were particularly concerned that we must state that it is crucial that the move to ARTstor not result in less distribution of the contents of AMICO member museums or distribution to higher education only. Particularly they did not want the K-12 community to be less better off. The Board strongly endorsed these views by approved motion.

- **Staffing Concerns**

With respect to ARTstor and AMICO Executive staff, Max Anderson noted that Bearman and Trant are committed to working for AMICO, but that no assumptions should be made by ARTstor that they would be available to ARTstor: this would depend on ARTstor contracting with Archives & Museum Informatics.

Anderson noted also that Scott Sayre and Kris Wetterlund were free to negotiate directly with ARTstor as their roles would not be relevant to AMICO if its membership functions were to cease and the AMICO Library was to move to ARTstor.

- **University of Toronto**

Ms. Steiner then asked Bearman to comment on the University of Toronto issues. He reported that the University of Toronto was providing AMICO free space (physical and computer storage) in return for Bearman and Trant teaching and this would continue in the fall of 2003. The University has recently concluded agreements with the consortium of Ontario Colleges to distribute The AMICO Library and this would likely be something they would want to be able to continue with ARTstor. The University has also committed to redevelopment of software tools for image instruction so they can point to The AMICO Library. Bearman felt that all these matters and the continuity of the contract could best be addressed by Dr. Rudenstine meeting with the Provost and Head Librarian at the University of Toronto, but that the time table for this was less pressing than the June 7 date established for exchange of legal documents with AMICO. The Board agreed to urge ARTstor to resolve the contract with the University of Toronto through direct talks about how the two organizations could be mutually supportive and that some commitment to the effect that ARTstor would undertake such talks would be adequate for AMICO as long as protections for AMICO space/staff arrangements were incorporated into any agreements.

- **AMICO**

Finally, the Board agreed that AMICO’s own future was a matter for the Board to resolve. In particular, it agreed that AMICO would need to continue through June 30, 2004 in order to meet its obligations and that agreements with ARTstor would need to be written to indemnify AMICO as needed. Ms Steiner assured the Board that such terms would be in all relevant agreements.

- **Other Concerns**

Before starting a conversation directly with Dr. Neil Rudenstine, Chairman of ARTstor, who agreed to be present by conference call, Steiner asked if there were additional points that AMICO Board members wished to make sure were heard.

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Daniel Amadei noted the importance to museums of the terms of AMICO's rights negotiations, that give members rights to use works on their own web sites, and the value of the free subscription to AMICO which allows the museums to see their works in the context of publication. Members concurred that these were important and should be preserved.

Michael Conforti stated that the value system of AMICO was its most important legacy and that he hoped that ARTstor would consider taking some of these values on. Members agreed that these values should be enumerated and reported to ARTstor as important for AMICO Members. Conforti also noted that in a very early ARTstor test on the Williams College campus, that classroom use showed that there was higher quality in museum data (duplication of images showed this). Conforti felt it was important for museums to reaffirm the value of quality in reproductions.

7. Discussion of the Proposal with ARTstor Staff

At noon, the Board took a short break to arrange for Neil Rudenstine, Chairman, ARTstor, James Shulman, Executive Director of ARTstor, and Gretchen Wagner, ARTstor General Counsel, to join the meeting.

From New York, by conference call, Neil Rudenstine opened with apologies for not being able to be present in person, stated that ARTstor's goal was to "keep the enterprise moving forward" and said that his role today was to listen to AMICO's suggestions and concerns.

Max Anderson welcomed Rudenstine on behalf of the Board and, with that, Christine Steiner reviewed the Board's response to his proposal paragraph by paragraph, with interjections for clarification by Board members or questions from ARTstor.

Issues explored in more depth included:

- **AMICO's obligations**

As Treasurer, Anderson noted the Board preference for retiring AMICO's obligations directly, rather than remitting income to ARTstor to be used for that purpose. Rudenstine agreed that this was a cleaner proposal.

- **K-12**

Leonard Steinbach and Michael Conforti stressed that it was essential to provide for K-12 distribution of museum content and questioned whether ARTstor was committed to doing so given the Mellon's historical interest in scholarship. James Shulman replied that although ARTstor was a product of the Mellon, its interests (even in undergraduate education) were broader.

- **Administrative Arrangements**

Anderson noted that AMICO's staff were committed to work with AMICO on the transition, and that they might also be available to work with ARTstor should that be mutually of interest.

Steiner noted ongoing obligations AMICO has with regard to the University of Toronto and welcomed ARTstor's willingness to come to an agreement there. She noted that the AMICO's obligations of AMICO Library maintenance (to rights holders, for example) extend through June of 2004, with the next published edition.

- **Artists' Rights**

Daniel Amadei noted that the AMICO member service of licenses with the Artists Rights Society (ARS) and Visual Artists and Galleries Association (VAGA) were a significant member benefit. For some members these agreements enable their participation. Amadei noted that the approach to copyright within AMICO has been successful, and Members have found that a bridge has been built between museums and rights holders. The commercial routing of requests (from the public thumbnail catalog) was also noted as a benefit. The Board stressed the importance of respecting artists' rights, of obtaining rights for museums from the artists' rights representatives, and of obtaining rights from museums on the same terms that AMICO had used.

- **Quality**

Michael Conforti stressed the importance of AMICO values in quality of images and authenticity of data. Rudenstine answered that ARTstor was still unsure what kind of quality was required for which kinds of users and uses, in which communities and saw its varied image quality as a kind of experimental environment. Jacqui

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Allen noted that end users didn't know how to assess quality but that as professionals we did and it was important to keep standards high. James Shulman explained the concept that ARTstor thought of the slide library data as a "placeholder" to be replaced by better data as it became available. AMICO Board members noted that they could provide the better data to replace what was represented in their collections. Board members felt that it was important that users are made aware of the source of data and that information and images provided directly by museums be given privilege. Alan Seal felt that concerns about quality should also apply to the documentation, not just the image.

• Motivating Museums to Collaborate

Diana Folsom stressed the importance of AMICO in motivating museums to engage in digitization. Bob Hensleigh and Leonard Steinbach concurred. Rudenstine and Shulman stated that they hoped that ARTstor could do the same.

Max Anderson concluded the dialogue by thanking Neil Rudenstine for the proposal from ARTstor and for his call. He reiterated the importance to the members of preserving the consortial value of AMICO and urged that this be carried forward, not just in an "advisory committee" but through mechanisms for active participation of museum staff in ARTstor.

8. Decision on ARTstor Proposal

The Board reconvened without ARTstor staff present.

Christine Steiner proposed that the first question before the Board was a Yes or No decision about whether to go ahead with negotiations with ARTstor. There was substantial debate about what it was possible to agree to, given that AMICO does not have assignable rights to The AMICO Library, or in any of its other agreements. Concern was expressed that some of programs that AMICO Members had crafted would not be carried forward, and that the benefits of museum collaboration would be lost. Discussion included other suggested strategies of relating to ARTstor, all of which had been explored by staff and ruled off the table by ARTstor.

The Board agreed, as expressed by Katharine Reid, that we can't have total clarity at this point, but that we should move ahead, while the momentum was with us. Michael Conforti felt that the Board should use discussions with ARTstor as an opportunity to express its concerns.

Max Anderson moved that the Board should continue to negotiate with ARTstor, based on the proposal from Neil Rudenstine, as amended and agreed in the teleconference, and Board Meeting, and with a target of June 7, 2003 to conclude discussions. Seconded by Susan Chun. Unanimously approved.

Rachel Allen proposed that a Transition Committee of the Board be established and authorized to act in the Board's stead in all matters related to these negotiations so that quick action could be approved in the coming weeks. She nominated Betsy Broun, Max Anderson and Susan Chun to be this committee. Leonard Steinbach seconded. The Motion was unanimously approved.

The Board asked Executive staff to continue the discussions with ARTstor, with the assistance of Christine Steiner as necessary. Staff was encouraged to contact the Directors of AMICO Members, and involve them in the discussions where appropriate.

Susan Chun moved that AMICO Canada should be contracted to carry out AMICO Inc. legal obligations in the coming year. Max Anderson seconded. The Motion was unanimously approved.

Susan Chun moved to announce the decision of the Board to work with ARTstor to the membership as soon as possible. Diana Folsom seconded. The Motion was unanimously approved.

9. "Deal Breakers"

The Board then took up the question of what the "deal breaker" issues in further negotiations might be.

Christine Steiner noted two legal matters:

- 1) AMICO Inc. will continue to exist, so long as it has obligations to fulfill. Directors and Officers insurance will continue to be in effect.

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2) AMICO Inc. legal and financial obligations must all be fully satisfied.

Susan Chun added 3) that all works in ARTstor must be fully sourced.

Leonard Steinbach added 4) enabling at least the current extent of K-12 distribution.

Daniel Amadei added 5) the same terms of agreements with rights societies and the same terms of agreements with museums for their contributions. The Board agreed. It further voted to add an advisory opinion that all works in ARTstor should be "legally obtained and maintained" though this was not seen as an absolute requirement of an AMICO Inc. agreement, but rather as something that was essential for the individual museums to agree to on-going participation in ARTstor.

Leonard Steinbach and Bob Hensleigh added 6) assurance of a smooth subscriber transition, so that, for example, subscriptions would be enabled to continue for full years from the time they are entered into throughout the period July 1 2003 to June 30 2004.

Alan Seal and Michael Conforti added 7) free access for museum contributors to ARTstor. The Board agreed. It further voted to add an advisory opinion that the public access thumbnail catalog serves an important function for museums in directing requests for reproductions to them and that they hoped this feature of rights requests would be preserved by ARTstor.

Christine Steiner reiterated the seven absolute requirements of an agreement with ARTstor. The Board reaffirmed these requirements and added that its negotiators should also urge the other values expressed by members during the meeting.

10. Adjournment

At 3:45, Susan Chun moved, and Robert Hensleigh seconded, a motion to adjourn. All Agreed.