



## **PRESS RELEASE - *For Immediate Release***

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### **COPYRIGHT IN PHOTOGRAPHS OF WORKS OF ART**

Following a recent court decision in the USA challenging the existence of copyright in a photograph of a work of art (*The Bridgeman Art Library -v- Corel Corporation* 97 Civ.6232 (LAK) New York Southern District Court), the Museums Copyright Group set out to clarify the position for UK museums. The question is of considerable importance to museums. Revenue raised from reproduction fees and licensing is vital to museums to support their primary educational and curatorial objectives. Museums also rely on copyright in photographs of works of art to protect their collections from inaccurate reproduction and captioning. The decision appeared to threaten this position, prompting concern that museum photographs of out-of-copyright works of art would be vulnerable to piracy.

The Museums Copyright Group commissioned an in-depth report on the effect of Bridgeman -v- Corel on the museum sector. This concluded that:

- Bridgeman -v- Corel is not binding in the UK and is of doubtful authority even in the USA. It has not influenced the way museums negotiate or license rights and there have been no serious attempts by commercial users to undermine the position of museums. Museums must continue to lobby to ensure that their interests are sufficiently acknowledged in the copyright sphere. They must liaise with similar organisations in Europe and the UK. Currently the interests of museums are not sufficiently well reflected in copyright law.

Museums must brief themselves in other relevant areas of intellectual property law such as database law and trade mark protection.

Museums must manage their licensing activities through effective contracts. They should be particularly careful about protecting digital images. Three members of the Museums

Copyright Group (with support from the Museums & Galleries Commission) have written the *Guide to Copyright for Museums and Galleries*, which includes pro forma contracts for museums. Routledge will be publishing the book in May 2000.

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Following the report the Museums Copyright Group has obtained an opinion from Jonathan Rayner James QC, a leading copyright specialist, who has no doubt that UK copyright law protects photographs of works of art:

*"... as a matter of principle, a photograph of an artistic work can qualify for copyright protection in English law, and that is so irrespective of whether ... the subject of the photographs is more obviously a three dimensional work, such as a sculpture, or is perceived as a two dimensional artistic work, such as a drawing or a painting ..."*

Peter Wienand, the Museum Copyright Group's Chairman, and a partner at solicitors Farrer & Co, said:

*"... following Bridgeman -v- Corel it is vital that the museum community are clear on where they stand in relation to photographic copyright. While museums will always need to protect themselves contractually, the Report and leading counsel's opinion gives museums the confidence to continue releasing photographs of objects in their collections. This is extremely important news for the sector and will ensure that museums can continue to monitor reproduction quality, protect the integrity of the work, and not least to protect a vital source of income for many museums".*

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## **COPYRIGHT IN PHOTOGRAPHS OF WORKS OF ART**

### **Background**

#### Bridgeman -v- Corel

The Bridgeman Art Library (UK) brought an action against Corel Corporation for breach of copyright in the USA and lost. The crucial issue for museums was whether a photograph of a work of art is an original work and thus protected by copyright law. In the New York Southern District Court, Judge Kaplan, using UK law to reach his first decision, ruled that a photograph of an out-of-copyright artwork is not itself sufficiently original to have copyright protection.

Judge Kaplan was asked to review his decision and following re-argument reached the same conclusion a second time, this time based on American law but again citing British law.

The decision is not binding on courts in the UK, nor is it of overwhelming authority in the USA, but it has caused great concern amongst the museum community which relies on income received from licensing photographic reproductions of objects and works in their collections. Museums are also concerned that unauthorised copying will undermine the quality and integrity of image reproduction.

#### The Museums Copyright Group

The Museums Copyright Group (MCG) was formed in February 1996 in response to a need for a formal body which could inform professionals working in the museums and galleries community about Intellectual Property Rights (IPR's) and represent their views on IPR's.

The Group is currently made up of over twenty representatives of museum and gallery collections, representatives from the Museums & Galleries Commission, the Museums Documentation Association, the Museums Association and the National Museum Directors' Conference along with four other professionals active in the museum and gallery community. MCG members contribute to the Group on a voluntary basis.

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