



2017 Photography Workshop
"Photo Synthesis: What You Need to Know About Photographs"

April 25, 2017

Copyright and Open Access

John ffrench
Director of Visual Resources
Yale University Art Gallery

The Art Museums at Yale

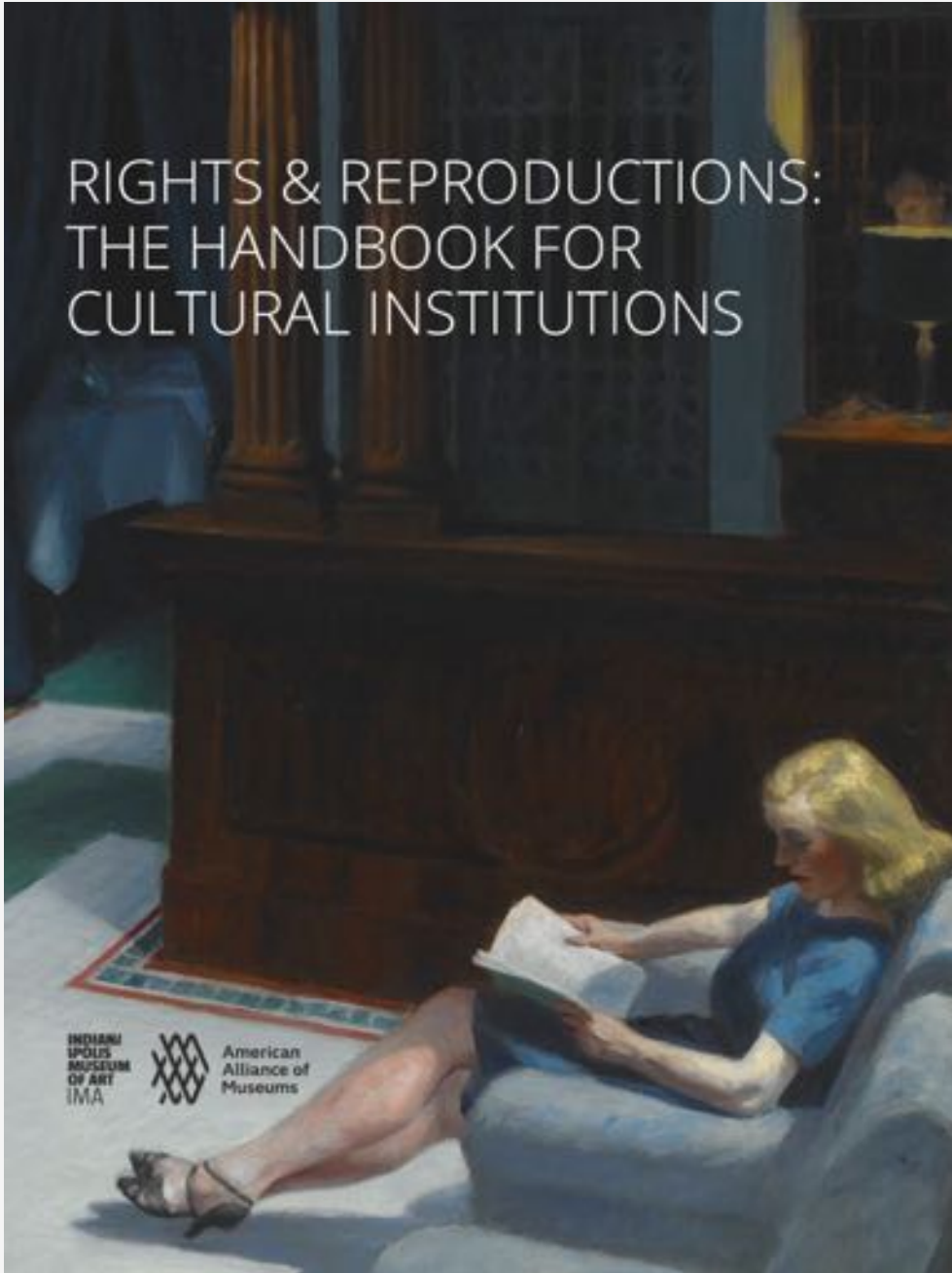
Over 80% of objects in the collections of the Yale University Art Gallery are works in the public domain.

The screenshot shows the Yale University Art Gallery website's search results page. The header includes the logo and navigation menu with 'COLLECTIONS' selected. A search bar is at the top right. Below the header, there's a 'REFINE RESULTS' section with a list of departments and their object counts, such as 'African Art (2,511)' and 'European Art (1,505)'. The main search area is titled 'Search' and 'SEARCH THE COLLECTION', featuring a search input field and a 'SEARCH' button. Below this, it shows '162,403 RESULTS' and a list of collection objects. One object is highlighted: 'King George I of Great Britain and Ireland', with details like 'Artist: Sir Godfrey Kneller, British, 1646-1723', 'Date: 1714', and 'Medium: Oil on canvas'. A small image of the painting is shown to the right.

The screenshot shows the Yale University Art Gallery website's home page. The header includes the logo and navigation menu. Below the header, there's a banner for 'Free and open to the public' with 'TODAY'S HOURS: 10 AM-5 PM 1111 CHAPEL ST NEW HAVEN, CT MAP'. The main content area is titled 'FEATURED' and displays a large image of a ship and a person, with the text 'Lumia: Thomas Wilfred and the Art of Light' and 'Exhibitions Learn More >'. Below the featured section, there are sections for 'CONTINUE EXPLORING' and 'UPCOMING' with a date '04/15'.

More than 80,000 high resolution digital images of our public domain works are freely available to anyone for any use.

RIGHTS & REPRODUCTIONS: THE HANDBOOK FOR CULTURAL INSTITUTIONS



INDIANA
POLIS
MUSEUM
OF ART
IMA



American
Alliance of
Museums



RIGHTS & REPRODUCTIONS:
THE HANDBOOK FOR
CULTURAL INSTITUTIONS

INDIANA
POLIS
MUSEUM
OF ART
IMA



American
Alliance of
Museums

REPRODUCTIONS

and Reproduction Rights

FOR MUSEUM-OWNED OBJECTS

The Committee on Reproductions and Reproduction Rights

ASSOCIATION OF ART MUSEUM DIRECTORS

Contributors

- Megan P. Bryant, The Sixth Floor Museum at Dealey Plaza
- Cherie C. Chen, The J. Paul Getty Museum
- Kenneth D. Crews, Gipson Hoffman & Pancione
- John French, Yale University Art Gallery
- Walter G. Lehmann, Lehmann PLC
- Naomi Leibowitz, The Solomon R. Guggenheim Museum
- Melissa Levine, University of Michigan Library
- Sofia Galarza Liu, Spencer Art Museum, University of Kansas
- Michelle Gallagher Roberts, New Mexico Museum of Art
- Nancy Sims, University of Minnesota Libraries
- Deborah Wythe, Brooklyn Museum
- Anne M. Young, Indianapolis Museum of Art

Legal Review Panel

- Jeffrey P. Cunard, Debevoise & Plimpton LLP
- Kenan Farrell, KLF Legal Intellectual Property and Business Law Office
- Janet Benson Ford, United States Holocaust Memorial Museum
- Fred Goldstein, Los Angeles County Museum of Art
- Cara Hirsch, Artstor
- Troy B. Klyber, The Art Institute of Chicago
- Lynda Knowles, Denver Museum of Nature & Science
- Pamela Kohanchi, Los Angeles County Museum of Art;
- Robert S. Meitus, Meitus Gelbert Rose LLP
- Megan M. Mulford, Bose McKinney & Evans LLP
- Virginia Rutledge, PIPE Arts Group
- Bridget Smith, The New York Public Library
- Gretchen Wagner, Save the Children
- Maureen Whalen, The J. Paul Getty Trust

Handbook topics addressed

INTRODUCTION

Law vs. Ethics
Legal vs. Cultural Institution Thinking
Risk

INTELLECTUAL PROPERTY

Types of Intellectual Property (U.S.)
Personal, Moral, and Third Party Rights
International Intellectual Property Rights
Infringement

INSTITUTIONAL INTELLECTUAL PROPERTY POLICIES

Intellectual Property Audits
Open Access Policies

RIGHTS ISSUES FOR THE COLLECTION

Determining Copyright Status
Identifying/Finding Copyright Holders
Non-Exclusive Licensing Agreements

INSTITUTIONAL USES

Publications
Educational Materials
Institutional Websites
Traditional Marketing and Promotion
Social Media
Retail and Commercial Products
Fair Use and Attribution
Clearing Permissions and Sourcing Materials

LEVERAGING CONTENT: DISTRIBUTION PARTNERS

Expanding Audiences and Potential Revenue Generation
Fair Use
Risk and Liability

INTELLECTUAL PROPERTY AND THE PUBLIC

Licensing Collection Images (External Uses)
Photography Policies
Communicating Copyright to the Public

APPENDICES

Court Cases
Document and Contract Templates
Terms and Definitions
References and Resources

Topics addressed today

- Copyright
- Identifying and finding rights holders
- Determining rights status:
 - Orphan works
 - Fair use doctrine
- Non-exclusive license agreements
- 3rd party agreements
- Open Access

Determining copyright

- As a general rule, anything created prior to 1923 is Public Public domain

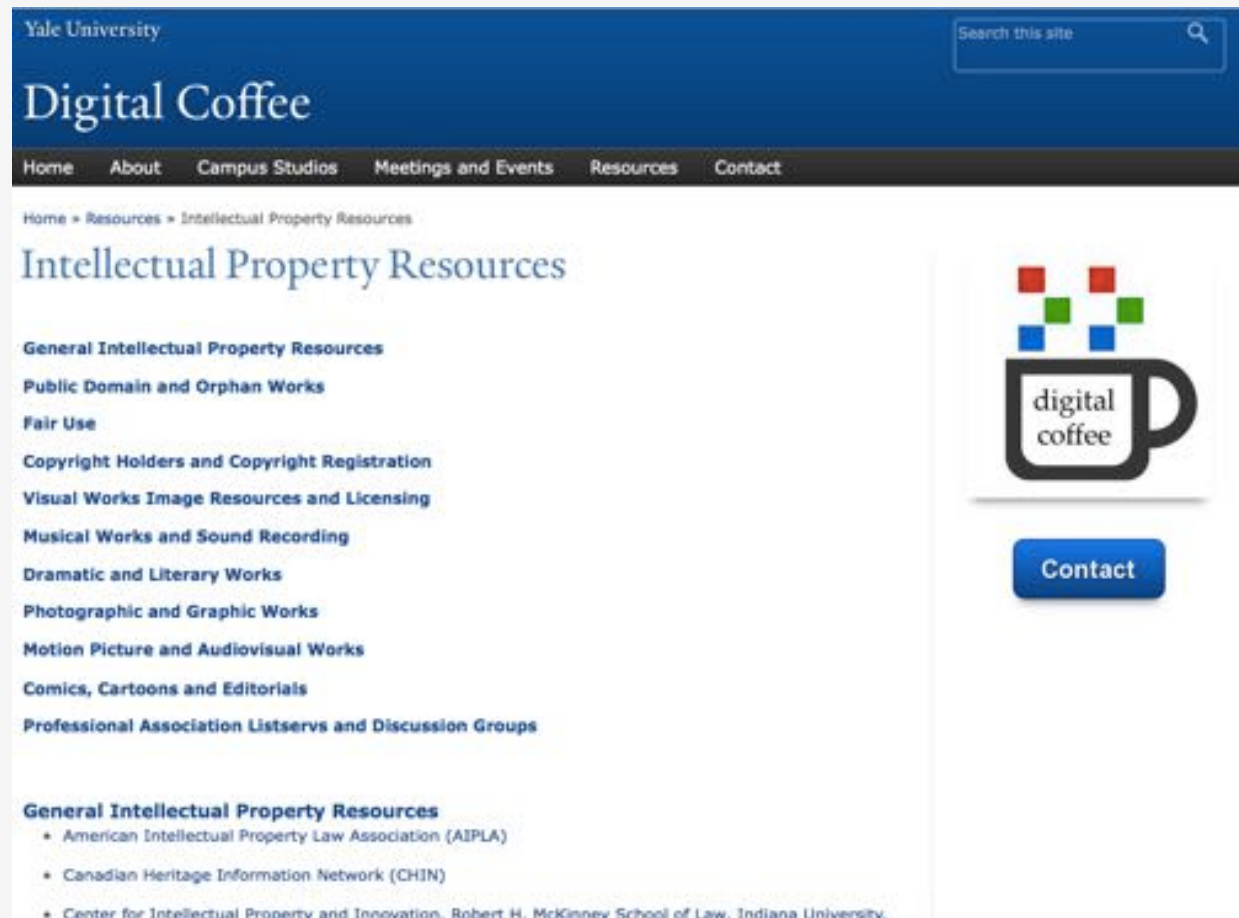
For everything else...

- <http://copyright.cornell.edu/resources/publicdomain.cfm>
 - Peter B. Hirtle

Copyright Term and the Public Domain in the United States 1 January 2017 ¹				
Never Published, Never Registered Works ²				
Type of Work	Copyright Term	What was in the public domain in the U.S. as of 1 January 2017 ³		
Unpublished works	Life of the author + 70 years			
Works Registered or First Published in the U.S.				
	120 years from date of creation	Date of Publication ²	Conditions ⁷	Copyright Term ³
		Before 1923	None	None. In the public domain due to copyright expiration
Unpublished anonymous and pseudonymous works, and works made for hire (corporate authorship)	120 years from date of creation	1923 through 1977	Published without a copyright notice	None. In the public domain due to failure to comply with required formalities
		1978 to 1 March 1989	Published without notice, and without subsequent registration within 5 years	None. In the public domain due to failure to comply with required formalities
Unpublished works when the death date of the author is not known ⁴	120 years from date of creation ³	1978 to 1 March 1989	Published without notice, but with subsequent registration within 5 years	70 years after the death of author. If a work of corporate authorship, 95 years from publication or 120 years from creation, whichever expires first
		1923 through 1983	Published with notice but copyright was not renewed ⁵	None. In the public domain due to copyright expiration
		1923 through 1983	Published with notice and the copyright was renewed ⁶	95 years after publication date
		1984 through 1977	Published with notice	95 years after publication date

Determining copyright

- Digital Coffee
 - <http://digitalcoffee.yale.edu/resources>



The screenshot shows the Digital Coffee website interface. At the top, there is a dark blue header with the Yale University logo on the left and a search bar on the right. Below the header, the main navigation menu includes links for Home, About, Campus Studios, Meetings and Events, Resources, and Contact. The page title is "Intellectual Property Resources". The content area lists various categories of intellectual property resources, such as General Intellectual Property Resources, Public Domain and Orphan Works, Fair Use, Copyright Holders and Copyright Registration, Visual Works Image Resources and Licensing, Musical Works and Sound Recording, Dramatic and Literary Works, Photographic and Graphic Works, Motion Picture and Audiovisual Works, Comics, Cartoons and Editorials, and Professional Association Listservs and Discussion Groups. A sidebar on the right features a logo for Digital Coffee (a coffee cup with colored squares) and a blue "Contact" button. At the bottom, there is a section for "General Intellectual Property Resources" with a list of links to external organizations like AIPLA, CHIN, and the Center for Intellectual Property and Innovation.

Yale University

Search this site

Digital Coffee

Home About Campus Studios Meetings and Events Resources Contact

Home » Resources » Intellectual Property Resources


Intellectual Property Resources

General Intellectual Property Resources

- Public Domain and Orphan Works
- Fair Use
- Copyright Holders and Copyright Registration
- Visual Works Image Resources and Licensing
- Musical Works and Sound Recording
- Dramatic and Literary Works
- Photographic and Graphic Works
- Motion Picture and Audiovisual Works
- Comics, Cartoons and Editorials
- Professional Association Listservs and Discussion Groups

General Intellectual Property Resources

- American Intellectual Property Law Association (AIPLA)
- Canadian Heritage Information Network (CHIN)
- Center for Intellectual Property and Innovation, Robert H. McKinney School of Law, Indiana University,



Contact

Identifying and finding rights holders

Spokeo – A people search website

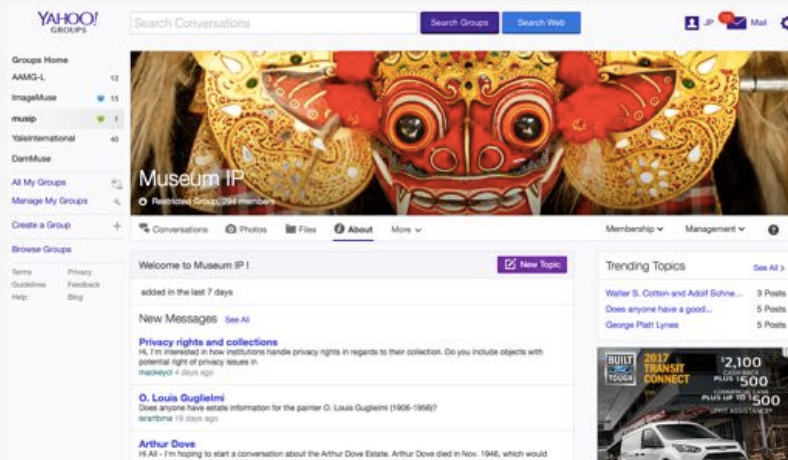
MuseIP - A Yahoo Group list-serv

Watch – Writers, Artists and their copyright holders

Artist Rights Society

Bridgeman

VAGA



Determining rights status: orphan works, fair use doctrine

Copyright Office

2005-2006 Report on Orphan Works


“orphan work” is any original work of authorship for which a good faith prospective user ***cannot readily identify*** and/or locate the copyright owner(s) in a situation where permission from the copyright owner(s) is ***necessary as a matter of law*** especially orphan photographs

Determining rights status: orphan works, fair use doctrine

Notwithstanding the provisions of sections 106 and 106A, **the fair use of a copyrighted work...** for purposes such as **criticism, comment, news reporting, teaching** (including multiple copies for classroom use), **scholarship, or research, is not an infringement of copyright.** In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the **purpose and character** of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the **nature** of the copyrighted work;
- (3) the **amount** and **substantiality of the portion** used in relation to the copyrighted work as a whole; and
- (4) the **effect of the use upon the potential market** for or value of the copyrighted work.

Determining rights status: orphan works, fair use doctrine



The image shows a screenshot of the 'Fair Use Evaluator' tool interface. At the top left, there is a logo consisting of three interlocking gears of different sizes, with the text 'Fair Use Evaluator' in a large, blue, sans-serif font to its right. Below the logo, there are two main sections: 'What this tool can do for you:' and 'What this tool cannot do for you:'. Each section contains a bulleted list of points. To the right of the text, there are two purple rectangular buttons with white text: 'Make a Fair Use Evaluation' and 'Learn More about Fair Use'. At the bottom right, there is a small logo for 'Local Copyright Information' and a copyright notice: '© 2008 Michael Brewer & ALA Office for Information Technology Policy'.

Fair Use Evaluator

What this tool can do for you:

- Help you better understand how to determine the "fairness" of a use under the U.S. Copyright Code.
- Collect, organize & archive the information you might need to support a fair use evaluation.
- Provide you with a time-stamped, PDF document for your records [\(warning\)](#), which could prove valuable, should you ever be asked by a copyright holder to provide your fair use evaluation and the data you used to support it. [Why is this important?](#)
- Provide access to educational materials, external copyright resources, and contact information for copyright help at local & national levels.

What this tool cannot do for you:

- This tool does not provide legal advice. It records the information you provide it as well as your own judgment on the fairness of the use. See the tool [disclaimer](#) for more information.
- Only a court of law can definitively rule on whether a use is fair or unfair. This tool does not assume or predict a court outcome.

[Make a Fair Use Evaluation](#)

[Learn More about Fair Use](#)

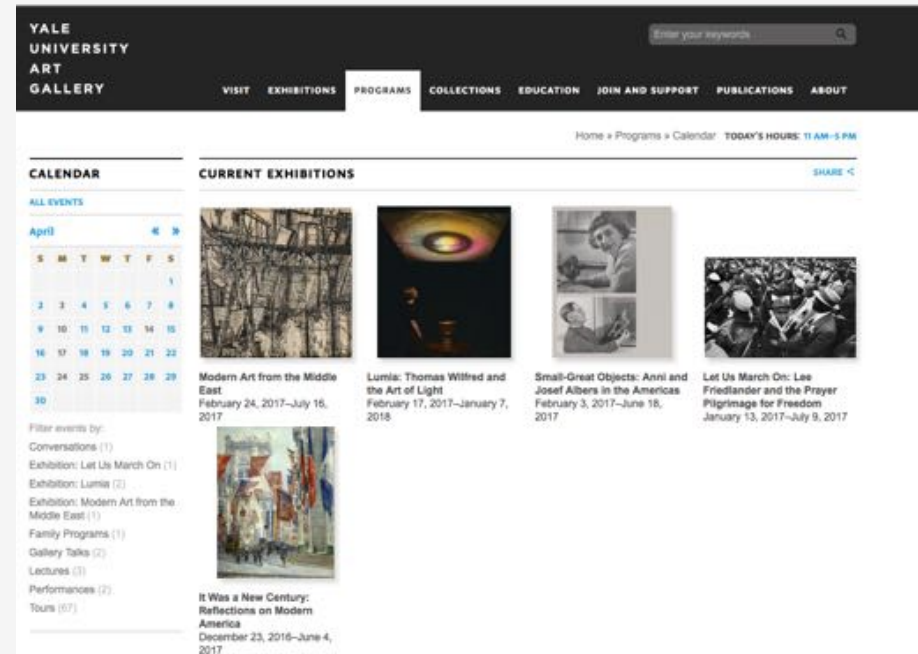
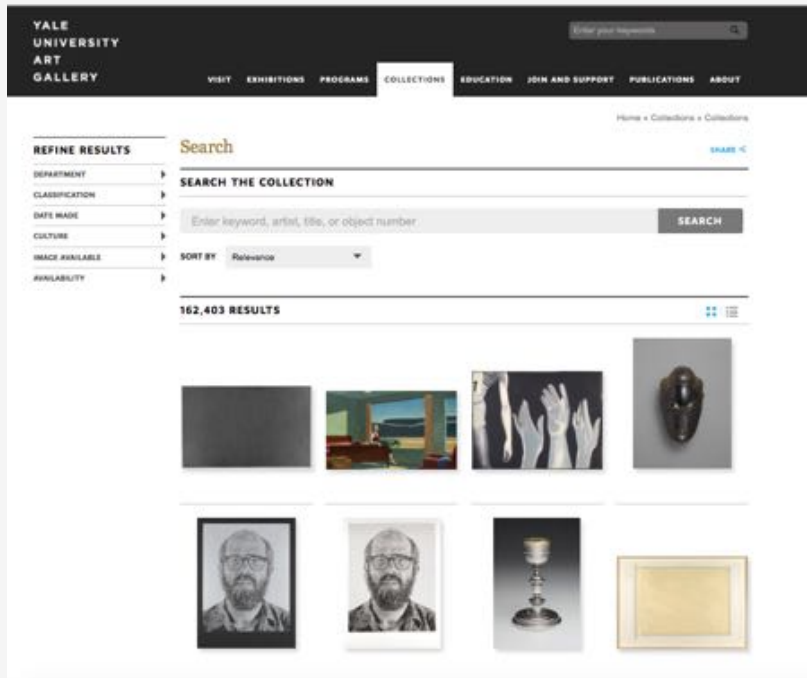
Local Copyright Information
© 2008 Michael Brewer & ALA Office for Information Technology Policy

<http://librarycopyright.net/resources/fairuse/>

Determining rights status: orphan works, fair use doctrine

Thumbnails:

- A search engine's practice of creating small reproductions ("thumbnails") of images and placing them on its own website (known as "inlining") did not undermine the potential market for the sale or licensing of those images. *Kelly v. Arriba-Soft*, 336 F. 3d. 811 (9th Cir. 2003).
 - The thumbnails were much smaller and of much poorer quality than the original photos and served to help the public access the images by indexing them.



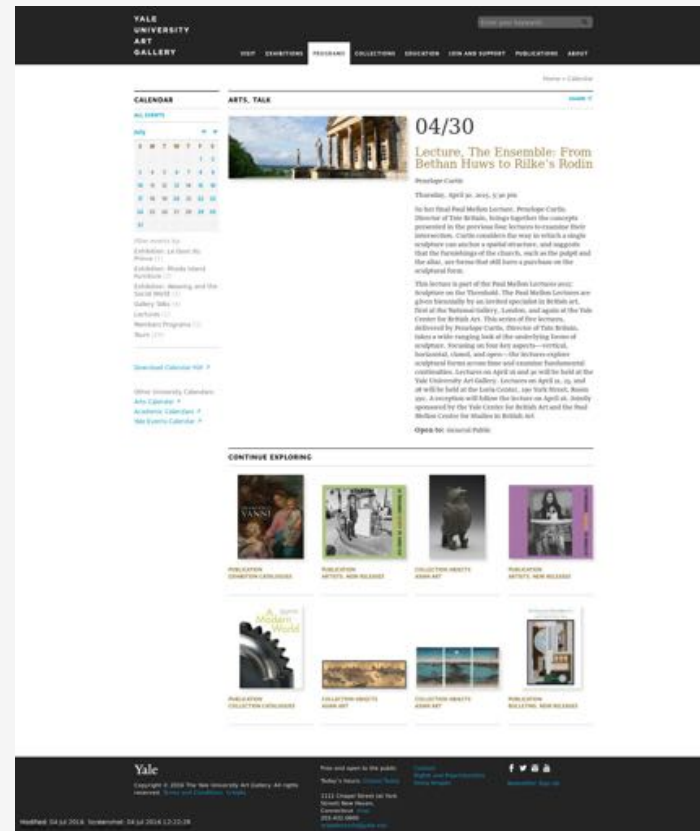
Determining rights status: orphan works, fair use doctrine

Thumbnails:

- John Vanbrugh, Temple of the Four Winds, Castle Howard, 1725–8
 - Photo: © Castle Howard Estate



Photo by: Marianne Majerus



The screenshot shows the Yale University Art Gallery website. The main content area features an event titled "Lecture, The Ensemble: From Bethan Huws to Rilke's Rodin" on Thursday, April 30, 4:00 pm. The event is part of the Fred McMan Lavinian series. The text describes the event as a conversation between Bethan Huws, a Welsh artist, and a panel of experts, including a poet and a scholar. The event is held at the Yale University Art Gallery, Lecture Hall 10, and is free of charge. The website also includes a navigation menu, a calendar, and a "Continue Exploring" section with various art-related links.

Determining rights status: orphan works, fair use doctrine

Images of Utilitarian Works

- Sec101 (definitions):

“Pictorial, graphic, and sculptural works” include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.



Determining rights status: orphan works, fair use doctrine

Some Dorothea Lange photographs, such as the famous *Migrant Mother* series that were captured while on assignment for the Farm Security Administration (FSA), are in the public domain as U.S. federal government works, whereas the photographs in which she retained the copyright will remain under copyright protection until January 1, 2036



Determining rights status: orphan works, fair use doctrine



Non-exclusive license agreements

B. Intellectual Property Conveyance:

If you control the Intellectual Property Rights in some or all of the Property (the second box in section A is checked), please check one of the following boxes (one box only):

I/we hereby give, donate, transfer, convey, and assign to Yale in perpetuity and worldwide all Intellectual Property Rights that I/we control in the Property and hereby waive any moral rights or similar rights of paternity, integrity, disclosure, and withdrawal that I/we may have in the Property.

I/we hereby give, donate, transfer, convey, and assign to Yale all Intellectual Property Rights that I/we control in the Property and hereby waive any moral rights or similar rights of paternity, integrity, disclosure, and withdrawal that I/we may have in the Property, subject to the limitation _____

I/we do not wish to transfer the Intellectual Property Rights in the Property in perpetuity, royalty-free, worldwide and hereby waive any moral rights or similar rights of paternity, integrity, disclosure, and withdrawal that I/we may have in the Property to the extent that the _____

Deed of Gift

Non Exclusive Agreement

YUAG permission on a non-exclusive, worldwide, royalty-free basis, for the duration of the copyright, to reproduce, display, distribute and otherwise use images of your works listed in the attachment (the "Works") in the following ways without specific additional permission:

1. To make large images (i.e., images larger than a thumbnail) of the Works available publicly as part of the YUAG online collections database and the YUAG web site in electronic or digital format (note: Image will not be made available for download)

___ yes ___ no, please contact for written permission in each instance

2. To use images of the Works in YUAG publications (for example, exhibition and collection catalogues, annual reports, calendars of events, and visitor guides)

___ yes ___ no, please contact for written permission in each instance

3. To use images of the Works for Gallery Public Relations purposes of promoting objects or exhibitions (for example, news articles, reviews, and social media)

___ yes ___ no, please contact for written permission in each instance

It is understood that thumbnail images are distributed and made available publicly through the YUAG online collections database, YUAG web site and the Yale Digital Commons for all Works

Leveraging Content with Distribution Partners

While cultural institution websites often serve as the primary mechanism for delivering information and images about collections objects and related content, there are times that it is advantageous to partner with external organizations to increase community outreach and to enable a great number of users to discover the available content.

Some example organizations:

INCOME GENERATING

Art Resource

Scala

Bridgeman Images

DNP Communications

NON-INCOME GENERATING

Artstor

Artsy

ArtBabble

Google Cultural Institute

Art Project, Street View,

Gigapixel

Open Access

“The museum community now has two decades of the experience of ‘being digital’ to look back on, and it is fairly clear that digital networks and online access to collections has not substantially changed image-licensing revenue – as was anticipated by many in the early 1990s. What has happened, but has received much less attention, is that the potential for fulfilling mission in research, education and general creativity has greatly increased because of those same developments – digital networks and online access. In the end, all of the directors of Yale collections came down on the side of research, education and creativity. The greater risk was thought not to be loss of future revenue, but diminution of mission capacity by continuing to place obstacles like small images at low resolution, with forms to fill and fees to pay where they might very easily be removed.”

Ken Hamma – (Modern Art Notes Blog, September 15th, 2011)

Key considerations

- Will the distribution partner enable the cultural institution to further its mission, directly or indirectly, by providing additional resources back to the cultural institution?
- The partnership should not be contrary to the ethics policy of the cultural institution.
- The partnership should not compromise the reputation of the cultural institution, and in appropriate cases, should in fact enhance it.
- The partnership should produce sufficient benefit for the cultural institution within its strategic objectives, and it should not be a detriment to the wider public interest for/of the collection.
- The benefits of any working agreement must outweigh any risk of disadvantage for the cultural institution through an association with the third party.
- Will the relationship be exclusive or non-exclusive (preferred)?

Open Access

- If a cultural institution decides to go the OA route for image distribution, the question should be asked of whether it will still receive fees from any 3rd party organizations and to continue the working relationship.
- An institution may find itself in the position of giving something away for free while a 3rd party is charging a licensing fee and sending the institution a check for its percentage of the sales.
- Institutions that work with third party distribution partners and also operate under an OA policy should consider whether they wish to maintain their relationships, or if there is the potential of a mixed message that may be perceived by the public.
- There is no right or wrong answer and each institution should study its own situation.

Opening access to works in the public domain at Yale University (began in summer 2011)

YALE UNIVERSITY ART GALLERY

SEARCH

VISIT EXHIBITIONS CALENDAR COLLECTIONS EDUCATION JOIN AND SUPPORT PUBLICATIONS ABOUT

Home » Collections » Teakettle on Stand

COLLECTIONS

OVERVIEW AND HIGHLIGHTS

- African Art
- American Decorative Arts
- American Paintings and Sculpture
- Ancient Art
- Art of the Ancient Americas
- Arts of Islam
- Asian Art
- Coins and Medals
- European Art
- Indo-Pacific Art
- Modern and Contemporary Art
- Photographs
- Prints and Drawings


CONSERVATION

RESOURCES

SEARCH THE COLLECTION >

AMERICAN DECORATIVE ARTS

SHARE <



Maker: Joseph Richardson, Sr., 1711–1784
Teakettle on Stand

1745–54
Silver and wood
Kettle on stand, handle up: 37.5 x 29.2 x 20.3 cm (14.384 x 11.502 x 8 in.), 52 oz., 10 dwt. (1838 gm)
Metal Study Gervan Collection
1932.03

This teakettle on stand by Joseph Richardson, Sr., is among the earliest and most monumental examples of the Rococo style in American silver. It was made between 1745 and 1755 for the Philadelphia merchant Clement Furnstead (died 1745) or for his widow, Mary (died 1755). The profusion of naturalistic ornament reflects the penetration of French ideas into English silver design, often through the work of Huguenot silversmiths. Paul de Lamerie, an immigrant Huguenot working in London, made a related teakettle on stand in 1744/45 for the wedding of David Franks and Margaret Evans of Philadelphia. That teakettle may have been a source of inspiration for this example.

Geography: Made in Philadelphia, Pennsylvania
Culture: American
Period: 18th century
Classification: Containers - Metal
Status: On view
Bibliography:
John Marshall Phillips, "Outstanding Examples from the Metal"

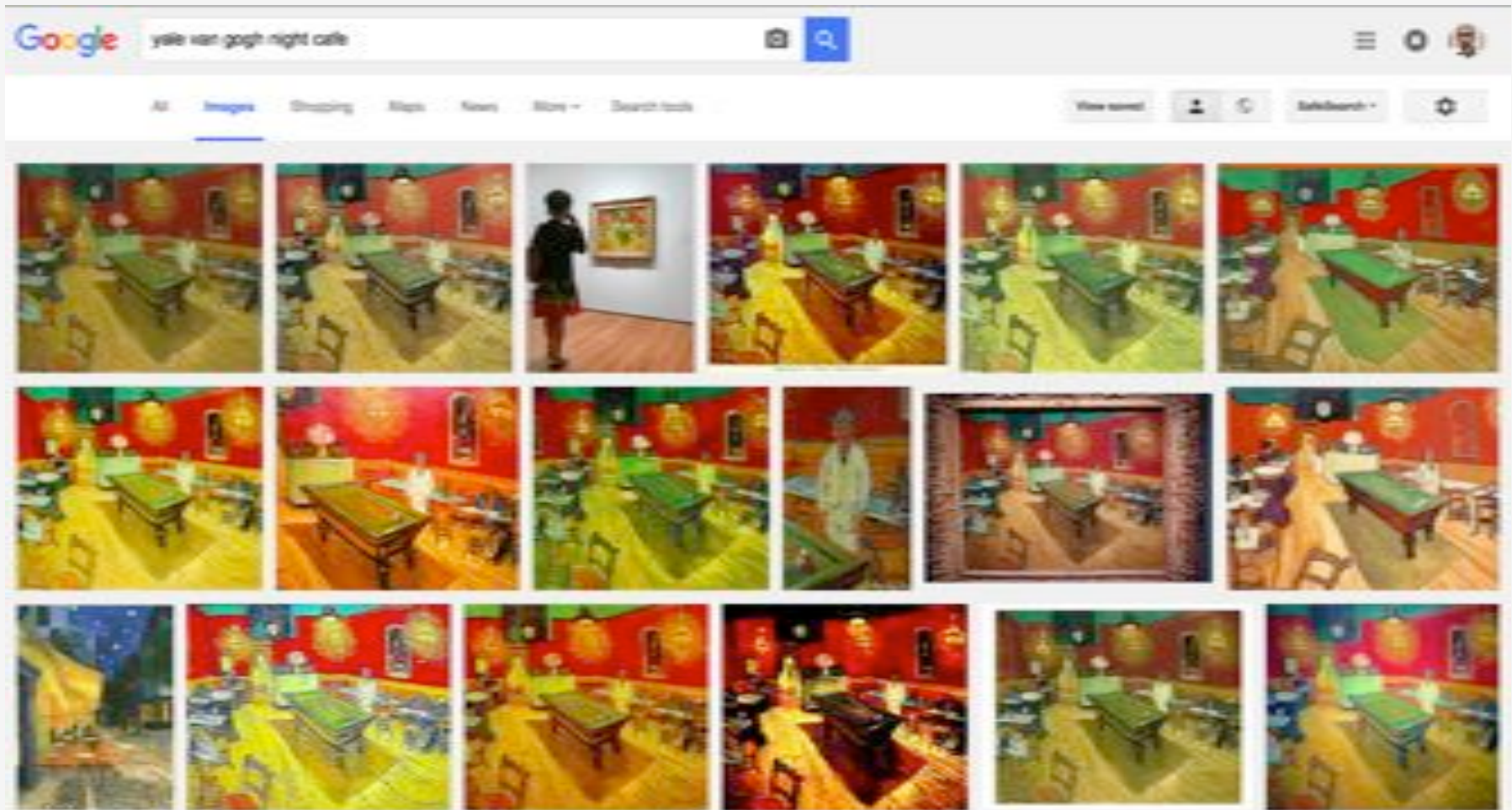
< > 1 of 4

Photo credit: Yale University Art Gallery

Public domain

Download presentation-size image
Download full-size image

Opening access to works in the public domain at Yale University



Resources

Professional Association Listservs and Discussion Groups

[Art Libraries Society of North America \(ARLIS/NA\)](#) Listserv

[Canadian Heritage Information Network \(CHIN\)](#) Listserv

[ImageMuse](#) Yahoo Group

[Museum Computer Network \(MCN\), Intellectual Property Special Interest Group \(IPSIG\)](#)

[Museum IP \(MUSIP\)](#) Yahoo Group

[Registrars Committee of the American Alliance of Museums \(RCAAM\)](#) Listserv

[Society of American Archivists \(SAA\)](#) Listservs

[Visual Resources Association \(VRA\)](#) Listserv

digitalcoffee.yale.edu/resources

Thank You



John ffrench – Director of Visual Resources
Yale University Art Gallery
@johnffrench

ARCS 2017 Photography Workshop
Tuesday April 25th, 2017 - 2:20pm - 3:20pm

