

PAYING FOR SERVICES: EXPERIENCES AT THE SMITHSONIAN INSTITUTION

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Abstract: The Smithsonian Institution, a trust instrumentality of the United States, and the largest museum and research complex in the world, receives many outside permission requests to reproduce images in the Smithsonian Collections. Charging fees for photographic usage is a common practice in the United States, especially in art, history and general museums. Beginning in 1992, the Smithsonian established internal guidelines for charging such fees and for handling permission requests from outside sources. The procedures to assure that the Smithsonian recognizes and respects the intellectual property rights (copyrights, trademark, right of publicity) associated with images in the Collections and the terms of any pre-existing agreements. Great care is also taken to protect the Smithsonian's name from use in any commercial context to avoid the implication that the Institution endorses a product, or one product over another.

To mark the 150th anniversary of the Smithsonian Institution this year, we are especially delighted to be able to share our experiences with you at the IFLA Section of Art Libraries Workshop. On the theme of Pay or profit: Fee or free, our paper is entitled Paying for services: Experiences at The Smithsonian Institution.

The Smithsonian Institution ("SI") was established in 1846 with funds bequeathed to the United States by James Smithson, an English scientist, for the Increase and Diffusion of Knowledge. The SI is the world's largest museum and research complex, with sixteen (16) museums and the National Zoo, eighteen (18) branch libraries, plus three independent art libraries -- National Museum of American Art/National Portrait Gallery Library, Freer/Sackler Galleries library, and the Hirshhorn Art Library, and over nineteen (19) archival units/operations. This paper will attempt to relay our experiences in implementing policies on charging fees for photocopies, black & white photographs, color transparencies, and for licensing of merchandise, using images from the Institution's vast collections of more than 140 million artifacts and specimens, over 1 million catalogued books and countless materials in our archival collections.

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As a national institution, the Smithsonian is open free to the public and presents a variety of programs and services of cultural and educational value, such as permanent and special exhibitions, lectures, films, Internet's WWW, etc., and the Smithsonian Institution Research Information System ("SIRIS") (Bitnet: SIRIS@SIVM; Internet: SIRIS@SIVM.SI.EDU). SIRIS is a primary avenue for public access to information about our library and archival collections, and as a result, SIRIS generates many users' requests for photocopying. We would like to spend some time familiarizing you with SIRIS.

SIRIS is a computerized collection of research catalogs maintained by Smithsonian Institution's libraries, archives, and research units. SIRIS provides an Online Public Access Catalog (OPAC) to information about research resources held by SIRIS members. There are five institution groups in SIRIS, but we will discuss only three the largest: LIB Catalog, ARC Catalog and the ARI Catalog. The LIB Catalog contains holdings for the eighteen (18) Smithsonian Library branches and the American Art & Portrait Gallery Library. The Smithsonian Institution Libraries (SIL) supports the research activities of the Institution's staff, scholars from around the world, and members of the public. The SIL collections of approximately 1.2 million volumes, including over 15,000 journal titles, are available in the Reciprocal Faculty borrowing program of the Research Libraries Advisory Committee of the Online Computer Library Center (OCLC). In addition, SIL holds a large collection of manufacturers' trade literature and catalogs and historically important rare books and manuscripts. The ARC Catalog is the archives and manuscripts collections catalog. ARC describes holdings of the Archives Center at the National Museum of American History, the Archives of American Art, Human Studies Film Archives, National Anthropological Archives, and Smithsonian Institution Archives. ARC contains 103,523 records as of March 31, 1996. Three to five additional SI archival units are soon expected to join the ARC. The ARI Catalog is the art inventories catalog. The ARI database contains over 300,000 records from two ongoing projects--The Inventory of American paintings Executed before 1914 (a national census of painting created by American artists working prior to 1914), and the Inventory of American Sculpture (a national census of works created by artists born or active in the United States up through the 20th century). ARI is designed to assist researchers in locating American paintings and sculptures. Data has been compiled from reports supplied by private collectors, museums, corporate collectors, and public art programs.

Fees for photocopying library material is one of the most common fees charged in a library, archives or research setting. The charges vary slightly within the Smithsonian Institution. At the National Museum of American Art/the National

Portrait Gallery (NMAA/NPG) Library, we charge single sided copies at 15¢ each, double sided copies at 25¢ each, and microform copies at 25¢ each. The library staff does the copying for users to assure the best care for our material. Smithsonian staff and fellows, current or former, are not charged. Each year the NMAA/NPG Library collects an average of \$2,500.00. However, to upkeep a photocopier and to purchase the necessary supplies amounts to much more, or about \$8,000.00. The Smithsonian branch libraries charge 10¢ per copy. At the Archives Center of the National Museum of American History, the first ten pages per calendar year are free, afterwards there is a charge of 20¢ per page.

Charging fees for photographic usage is a common practice in the United States, especially in art, history and general museums. Beginning in 1992, the Smithsonian established Institution-wide policy permitting its bureaus to charge fees for the right to reproduce images in the Smithsonian collections and guidelines on handling permission requests from outside sources. In establishing a fee schedule, each bureau was cautioned to take care not to inhibit publication of images, especially in the areas of non-commercial scholarly publishing. The guidelines recommend setting up internal procedures to assure that the Smithsonian bureaus recognize and respect the intellectual property rights (copyrights, trademark, right of publicity) associated with images in the collections and the terms of any pre-existing agreements with donors or others. Great care was also to be taken to protect the Smithsonian's name from use in any commercial context to avoid the implication that the Institution endorses a product, or one product over another. We would like to spend most of our time discussing fees established under these guidelines.

Before we examine the specific policies and practices of a specific Smithsonian bureau, we need to define the types of fees that may be charged for reproduction. First, a production fee is charged to anyone who requests an image of a collection object which may include SI-owned photographs, other two-dimensional visual materials, films, or videos. This fee is intended to cover the costs of laboratory, materials and postage expenses in producing the copy for the user. Second, and in addition to a production fee, a reproduction fee may be charged for use of any image in a commercial publication or for other commercial type uses. Such fees are generally waived for scholarly or educational uses. Finally, an access fee may be charged for commercial taping, filming or photographing our objects at our facilities by outsiders. Such commercial activity requires electrical support for additional lighting and staff oversight to ensure safe handling of objects. These three types of fees may be charged whether or not the image is protected by copyrights. However, before granting permission to reproduce an image in our possession, the question of copyright ownership must be considered.

If the Smithsonian owns the copyright in the image or if the work is in the public domain, not protected under U.S. copyright law, the duplication is permitted. If our research shows that the image is protected by copyrights not owned by SI, we refer the user to the owner of copyrights for permission. If ownership is unclear, SI may grant right to reproduce, but only to the extent of our ownership of the copyrights, and we place the responsibility on the user to determine ownership, to procure additional permissions, and to indemnify SI against any claims based on allegations of violation of copyrights and related rights that may arise from the user's failure to obtain adequate permissions. It should be noted that most uses for private study or research purposes would fall under the "fair use" provisions of U.S. copyright law that permits duplication for "criticism, comment ...teaching... scholarship or research" without the permission of the owner of the copyrights. Let us look now at the specific policies of one Smithsonian bureau.

We will use the National Portrait Gallery, one of the Smithsonian Institution's art and history museums, as a model. Each Smithsonian unit, including the libraries and archives, may adopt its own fee schedules and procedures provided that the central Institution-wide guidelines are honored. The act of Congress creating the National Portrait Gallery in 1962 stated that it would function as a public museum "for the exhibition and study of portraiture and statuary depicting men and women who have made significant contributions to the history, development, and culture of the people of the United States, and the artists who created such portraiture and statuary." The Gallery has about 1,480 paintings and sculptures in its permanent collection, 2,674 prints, 1,646 photographs, and about over 550 images in its temporary collection.

The National Portrait Gallery has contracted with a commercial firm in New York City to handle requests for images in the permanent collection that will be utilized in commercial or profit-making ventures, mostly in commercial book publications. All requests for such reproduction uses are forwarded to the firm for processing and are subject to their standard materials and photographic usage fees which are approved by the Gallery in advance by contract. Requests for photographs for personal use, research, non-profit publications or videos, CD-ROM, special media use, etc. are handled by the Office of Rights and Reproductions at the Portrait Gallery.

The National Portrait Gallery offers for purchase photographic prints and slides, and when possible, provides rental of color transparencies for the unrestricted portraits of its permanent collection. Copyright restrictions on some special collections and many portraits created after 1920 prohibit their being made available without prior written permission from the copyright holder. All requests

must be submitted in writing to the Gallery's Office of Rights and Reproductions ("ORR"). A complete request must include the title, artist and accession number of the art work desired, as well as a statement of the intended use of the material i.e. printed or video reproduction, CD-ROM, research or personal use. An invoice will be forwarded for those items that are available, and prepayment is required. Upon receipt of payment, delivery will be made within 4-6 weeks.

Further reproduction of photographic materials is strictly forbidden without the written permission of the National Portrait Gallery or its agents. For nonprofit reproduction uses, Reproduction Permission Forms may be obtained through the ORR. The Gallery does not permit the use of 35mm slides for reproduction or duplication. Color reproductions must be made from 4x5 inch color transparencies. In addition, proofs must be submitted for correction of all printed color reproductions before final approval will be granted. One copy of the finished product is required to be submitted to the ORR. Fees are non-refundable. When paid, the receipted invoice together with the counter-signed permission form constitute official authorization.

The Gallery's production fee is \$10.00 for 8"x10" black and white print and \$25.00 for color. These fees increase for larger prints. The production fee for color slides is \$6.00. Color transparencies in 4x5 inch size may be rented for six months for \$50.00, with a damage or loss fee of \$100.00.

To demonstrate the application of reproduction fees, let's examine four possible scenarios. First scenario: if I want to order a black & white print for personal use to decorate my room, I only have to pay for the production fee. For a black and white 8x10 inch print, the fee is \$10.00; the reproduction fee would be waived for private study purposes; or if I am preparing for my doctoral dissertation, again I only have to pay for the production fee but not the reproduction fee, because my use is for scholarly research, not for profit. Second scenario: a university press, a nonprofit entity, requests an image for a scholarly publication of low press run of about 1,000 copies. Here, the reproduction fee is waived, and therefore there is only a \$10.00 charge for an 8x10 inch black and white print or a rental fee of \$50.00 for a color transparency per image. Third scenario: that same publisher requests an image for use in a publication of a press run of about 10,000 copies, because a profit from the publication is anticipated. For this large run publication, a reproduction fee will be charged, in addition to the production fee. The Gallery's standard reproduction fees for one-time editorial use of the image inside the book is \$50.00 for a black and white image, and \$100.00 for color. For use on the cover, the charge is \$100.00 for a black and white, and \$200.00 for color. Fees are for one-time, non-exclusive use, world rights, in one language

only. Re-use of the image in a later edition or in another publication will be considered a new request. Fees for a CD ROM/laserdisk use (per 5,000 units) is the same as for books. Fourth scenario: a profit making big commercial publisher requests an image for a large run. ORR will refer the request to the New York firm to handle. These fees are usually higher than the Gallery's standard charges. The Gallery is paid a portion of the profit made by the New York firm from use of the image.

The Smithsonian Institution also has a central Office of Product Development and Licensing that arranges for licensing of images in the collections with manufacturers on behalf of the Institution, usually for merchandising and other profit-making ventures. For example, merchandise sold in our museum shops are licensed through this office. A portion of the licensing fees comes back to each bureau for images used from its collection. For fiscal year 1995, the Office of Product Development and Licensing has transferred more than \$13,400 to the Smithsonian Libraries for profits made in that year. Images from SIL collections are used in publications and other products, such as note cards, place mats, framed prints, scarves, and jewelry.

The Smithsonian now maintains several homepages on the Internet's World Wide Web. The main reasons for putting the Smithsonian on WWW are for outreach, content not otherwise or easily conveyed, public feedback/interaction, publicity and sales. The important aspects of the WWW site is to provide general museum information, self-guided tours of exhibition, background information on current exhibitions, programs, and educational activities. The WWW site is being updated on a daily basis. The WWW also serves people with disabilities, since electronic information helps to solve some accessibility issues. All aspects of the electronic rights in a digital library environment can be a big concern for the whole Institution. Among others, the Smithsonian Rights and Reproduction Committee, consisting of staff working in this area institution-wide, is working to establish proposed guidelines for electronic reproduction uses, including definitions for various units/products and the fees to be charged for them. The Smithsonian, unlike the National Gallery of London, the Hermitage Museum in Russia, and the Kimbell Museum in Fort Worth has not contracted for electronic distribution of its images through commercial software companies such as Bill Gates' Corbis, Inc.. SI does have contracts with pay online services in which some of its images are featured along with other information about the Smithsonian.

Usage fees have met with some resistance. There are some who insist that publicly supported institutions should make their images available for free.

Others argue that it is inappropriate for public institutions to charge anything above the minimal production fee allowed under the provision of certain Freedom of Information laws applicable to government entities. Still others argue that nonprofit organizations generally should not be in the business of generating income. However, in times of drastic cuts in public funding and shrinking private support, educational institutions must, as a matter of survival, look to ways to generate income consistent with their educational mission. Under U.S. law, although, a nonprofit organization is allowed to make money to cover the cost of its operations, all profits must be dedicated to advance the social purposes of the organization. Some commentators, however, argue that too much commercialism has crept into some nonprofit institutions in the U.S.. They fear that, in the eyes of the public, these organizations may be viewed as small businesses, indistinguishable from their for-profit counterparts. Most nonprofit institutions are aware of these concerns and work hard to insure that the earned income activities they engage in support and further the organization's interests. The Smithsonian Institution, at its historic 150th anniversary, continues to treat its collections not as assets held for profit, but rather as assets held in trust to support its educational mission, To Increase and Diffuse Knowledge.

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