

EBSCO Publishing
Art Museum Image Gallery Special Collection
License Agreement

1. Introduction

This Agreement sets forth terms and conditions under which an educational institution may receive access to and use the Art Museum Image Gallery Special Collection from EBSCO.

EBSCO Publishing (EBSCO) has a current Distribution Agreement with The Picture Desk (TPD) entitling EBSCO to offer Subscribers licensed databases and services including *The Art Archive*, a copyright protected collection of images and text, comprising the core of the Art Museum Image Gallery Special Collection content under the terms of this License.

2. Definitions

The Art Museum Image Gallery Special Collection is a database produced by EBSCO, with content licensed from TPD.

"Licensed User(s)" means any person authorized to receive access to and use of the Art Museum Image Gallery Special Collection under the terms and conditions of a Subscriber agreement with EBSCO.

"Subscriber(s)" means an educational institution, including a museum or library, or individual scholar, authorized to receive access to and use works from the Art Museum Image Gallery Special Collection by EBSCO.

The Art Museum Image Gallery Special Collection License Agreement means the terms under which EBSCO may permit an educational institution to subscribe to and use the Art Museum Image Gallery Special Collection.

3. Subscriber

By fulfilling conditions for subscriptions set by EBSCO and by signing this licensing agreement, an educational institution or scholar becomes a Subscriber, entitled to all of the benefits of and subject to all of the responsibilities of a Subscriber.

4. Intellectual Property

4.1 Licensed content

The Art Museum Image Gallery Special Collection and other materials related to the Art Museum Image Gallery Special Collection are protected under US copyright law and other applicable intellectual property and proprietary information laws.

4.2 Grant of Rights

EBSCO has licensed rights to provide Subscribers a non-exclusive, non-transferable, limited license to use, modify, reproduce, distribute, and publicly display works in the Art Museum Image Gallery Special Collection for educational, research, and scholarly purposes to Licensed Users under the terms of this Agreement.

4.3 Fair Use

The parties to this license agree that it in no way limits uses by Licensed Users, which are defined by the US Copyright Act, Section 107 (Fair Use).

5. Users

5.1 Licensed Users

Subscribers may designate categories of users that may receive access to and use the Art Museum Image Gallery Special Collection under the terms of this Agreement. Faculty members, enrolled students, employees and researchers officially affiliated with the Subscriber may be Licensed Users.

5.2 Limited, On-site, Access Privilege

Subscriber may grant the privilege of limited access to the Art Museum Image Gallery Special Collection to occasional users who are not Licensed Users and who have access to computer terminals physically located on the site of and under the control and administration of the Subscriber.

6. Use for Education, Research and Scholarship

6.1 Permitted

Access to and use of the Art Museum Image Gallery Special Collection under this Agreement is exclusively for education, research and scholarship. More specifically, in addition to and notwithstanding any privileged use set forth in the US Copyright Act, Licensed Users may receive access to and use the Art Museum Image Gallery Special Collection for: (1) classroom instruction and related activities, (2) student assignments, (3) public display or public performance in a museum, gallery or similar facility, including use in exhibit labels and other components of the exhibit, (4) public display or public performance as part of a professional presentation at a seminar, conference, or workshop, or other such similar professional activity; (5) use in a student or faculty portfolio, including non-public, display thereof, if such use conforms to the customary and usual practice in the field; and (6) use in a dissertation, including reproductions of the dissertation for personal use and library deposit, if such use conforms to the customary and usual practice in the field as further defined in Section 6.2 within.

6.2 Prohibited

Access to and use of the Art Museum Image Gallery Special Collection under this Agreement for any and all purposes other than education, research and scholarship is prohibited. More specifically, without express authorization from the copyright holder, the Subscriber and Licensed Users are strictly prohibited from: (1) publishing any Art Museum Image Gallery Special Collection work in any medium or format, (2) redistributing any Cinema Museum Image Gallery work by any means beyond the Licensed User community, (3) storing any Art Museum

Image Gallery Special Collection work, in whole or in part, beyond the term of this Agreement, unless expressly permitted, and (4) removal of any copyright and other required notices as further defined in Section 6.3 within. In no event may a Subscriber or its Licensed Users use any Art Museum Image Gallery Special Collection work, or any adaptation thereof, in a commercial or business related manner. The Subscriber, or persons acting on behalf of the Subscriber, is prohibited from using any Art Museum Image Gallery Special Collection work for fund-raising, marketing promotion, advertising, or public relations.

6.3 Required Notices

Any and all publicly displayed Art Museum Image Gallery Special Collection work must reference: (1) any required copyright management information, such as the name of the creator of the work, the name and other identifying information of the copyright owner, terms and conditions for the uses of the work, and such other information as may be required by the rights holders, (2) minimum identifying documentation of the work, and (3) an acknowledgment of The Art Archive contributing the multimedia documentation to the Art Museum Image Gallery Special Collection, except where such an acknowledgment clearly would compromise an educational objective (such as examination).

7. Adaptations

7.1 Integrity of Art Museum Image Gallery Special Collection works

The Subscriber must take all reasonable steps to ensure the preservation of the integrity of Art Museum Image Gallery Special Collection works, in whole or in part, and to protect the moral rights, if any, of both the creator of the underlying original work and the photographer thereof. Any adaptation, alteration, addition to, deletion from, manipulation, or modification (together "adaptations") of a Art Museum Image Gallery Special Collection work, in whole or in part, must be undertaken exclusively for education, research or scholarship. The Subscriber must maintain, subject to audit, complete and accurate records of all institutionally managed or systematic adaptations of Art Museum Image Gallery Special Collection works created under this Agreement, including a record of the specific educational, research, or scholarly purpose served by these adaptations.

7.2 Prohibited Practices

In no event may a Licensed User: (1) reproduce or distribute any adaptation of a- Art Museum Image Gallery Special Collection work, in whole or in part; (2) publish any adaptation of a Art Museum Image Gallery Special Collection work, in whole or in part, in any medium or by any means, or (3) redistribute any adaptation of a Art Museum Image Gallery Special Collection work, outside the Licensed User community specified in this Agreement, in whole or in part, by any means.

7.3 Retention of Adaptations

Upon termination of its Subscription, the Subscriber must certify to EBSCO that any and all institutionally created adaptations of Art Museum Image Gallery Special Collection works have been destroyed. With the exception of uses in student assignments and for faculty or student portfolios, Licensed Users may not retain any adaptation of a Art Museum Image Gallery Special Collection work, in whole or in part, after the termination of this Agreement. The Subscriber

shall make a best effort to inform Licensed Users of this provision both during the period of use, and if and when the license is terminated.

7.4 Notices Required

In addition to any other notices required under this Agreement, any adaptation of Art Museum Image Gallery Special Collection works, in whole or in part, must: (1) clearly identify all changes in the image and/or related documentation, and (2) provide citations or direct links to the unadapted Art Museum Image Gallery Special Collection work.

8. Security

8.1 Subscriber General Responsibilities

Subscriber is responsible for: (1) complying with all computer security procedures required by EBSCO, (2) monitoring, exercising control over, and certifying access to the Art Museum Image Gallery Special Collection, and (3) taking all other reasonable steps to ensure the security of the Art Museum Image Gallery Special Collection works.

8.2 Subscriber Policies and Procedures

Subscriber is responsible for establishing, monitoring, and enforcing controls for the proper use of the Art Museum Image Gallery Special Collection works, including: (1) adopting and effectively disseminating policies and procedures governing the proper use of products incorporating Art Museum Image Gallery Special Collection works, including appropriate sanctions for knowing and willful infringements, (2) providing instruction to all Licensed Users on the proper use of Art Museum Image Gallery Special Collection works; and (3) fully investigating all known infringements and taking appropriate disciplinary action in cases of knowing and willful infringements and promptly reporting any such incidents or suspected incidents to EBSCO.

9. Unauthorized Use

9.1 Subscriber Responsibilities

Subscriber shall not be responsible for the unauthorized use or infringement of the Art Museum Image Gallery Special Collection works by Licensed Users provided that: (1) Subscriber is in full compliance with the requirements of Section 8 of this Agreement; (2) such unauthorized use or infringement is without the consent of the Subscriber, (3) Subscriber promptly notifies EBSCO of any such unauthorized use or infringement of which it becomes aware including any known details of the infringer and the nature and extent of the infringements; (4) Subscriber takes all reasonable steps to cause such unauthorized use or infringement to cease immediately and (5) the Subscriber takes appropriate disciplinary action against the Licensed User. Subscriber shall cooperate fully in any investigation of such unauthorized use or infringement.

10. Representations and Warranties

10.1 General

Subscriber shall warrant to EBSCO that it is an Educational Institution and that it has the authority to enter into an Agreement containing these terms and to perform all the obligations under said Agreement.

10.2 Intellectual Property

EBSCO makes no warranties and representations, and expressly disclaims any liability, with respect to any rights of publicity or privacy and any moral rights in Art Museum Image Gallery Special Collection works and other materials in the Art Museum Image Gallery Special Collection or to any rights to adaptations of Art Museum Image Gallery Special Collection works created under Section 7 of this Agreement.

11. Reporting Requirements

11.1 Policy on Licensed Resources

The Subscriber, if requested, must provide EBSCO with a copy of its policies on the use of licensed resources, and its procedures for acting against known infringements.

12. Term and Termination

12.1 Term

Subscription and license agreement with Subscribers shall not have a term longer than one year, though they may contain renewal clauses.

12.2 Termination

EBSCO may terminate Art Museum Image Gallery Special Collection License Agreements upon a thirty (30) days' prior written notice to the Subscriber should the Subscriber fail to perform or observe any material term of this Agreement or if any warranty or representation contained herein is false. The failure of the Subscriber to report any infringement of which it becomes aware shall be deemed to be a material breach of this Agreement. However, the failure of a Licensed User to perform or observe any material term or condition of this Agreement shall not in itself be grounds for termination provided that the Subscriber is discharging its responsibilities under section 10 of this Agreement.

12.3 Conduct Upon Termination

Upon termination of its Subscription for any reason, Subscriber shall promptly notify all Licensed Users that Subscription providing access to the Art Museum Image Gallery Special Collection has been terminated and shall promptly remove all Art Museum Image Gallery Special Collection works from Subscriber managed networks and computers. Subscriber shall promptly erase or destroy all known institutionally created and/or managed copies of Art Museum Image Gallery Special Collection materials fixed in any physical medium, including prints, slides, and compact disks and provide certification to the EBSCO of their destruction.

13. Miscellaneous Provisions

13.1 Entirety of the Agreement

The terms and conditions of this Agreement supersede all prior oral and written Agreements between the parties with respect to the subject matter of this Agreement and shall constitute the entire Agreement between the parties with respect to the matters contained herein. This Agreement shall not be modified or amended except by writing duly executed by authorized representatives of the parties.

13.2 Choice of Law

The parties agree to remain silent as to choice of law.

13.3 No Assignment

The Parties to this Agreement shall not assign, subcontract, or sublicense this Agreement or any of the rights and obligations thereunder.

For the Educational Institution

Organization Name _____

Address _____

City _____ State _____ Zip/Postal Code _____

Authorized Signature _____

Print Name _____

Title _____

Date _____