



## Guidelines

### A Code of Ethics for Art Historians and Guidelines for the Professional Practice of Art History

Adopted by the CAA Board of Directors November 3, 1973; January 23, 1974; November 1, 1975; and January 24, 1995.

**Introduction**

It is the responsibility of the CAA Committee on Professional Practices (the "Committee") to draft, amend, and revise, as appropriate, a Code of Ethics for Art Historians (the "Code") and its companion, Guidelines for Professional Practice. The Committee is entrusted with the task of codifying the common understanding in the art history profession of ethical behavior for scholars, teachers, and curators of art historical materials ("art historians"). The Code provides a broad framework of rules of professional conduct and both requires and prescribes conduct as well as stating general ethical values. The Code does not, at the present time, include provisions for its enforcement. The Committee on Professional Practices is not empowered to investigate or adjudicate infractions of these canons of professional conduct in individual disputes or to censure infractions by reprimand, sanctions, or expulsion. Nevertheless, the CAA Board of Directors, on its own initiative or on the recommendation of the Committee on Professional Practices, may study and make recommendations on ethical concerns of importance to the profession, may act as an advocate and publicize with a view toward education on ethical issues, make referrals, as and when appropriate, and undertake various initiatives designed to ensure compliance with the Code. The Committee on Professional Practices can recommend that the Board of Directors of CAA issue a "Statement of Concern" regarding a situation which it feels is not in the best interests of the profession or violates proper professional conduct. (This precedent was established by the Board's Statement of Concern about the "deaccessioning" practices of the Metropolitan Museum of Art, January 25, 1973.)

In matters of professional dispute between scholars, it may be proper procedure, under certain circumstances, for the Committee to refer the matter to the CAA Art History Committee which may agree to mediate disputes or to appoint a mediator(s) mutually acceptable to those involved. Persons requesting assistance in allegations of grievances and professional disputes involving a member of CAA should first obtain a copy of the Grievance Procedures (adopted unanimously by the CAA Board of Directors, January 25, 1978).

CAA has adopted rules and resolutions on the illicit international traffic in cultural property and on the rights of access to and publication of archival material to scholars and curators of art historical research materials. In the case of foreign repositories of research materials to which access seems unreasonably or capriciously denied, a scholar may request assistance from this Committee.

It is also recognized that while CAA cannot directly regulate ethical behavior, it can encourage its individual members by education and it can encourage its institutional members to adopt codes of ethics which implement the rules and principles herein.

The revised version of the Code of Ethics for Art Historians, adopted by the CAA Board of Directors January 24, 1995, is dedicated to the memory of Albert E. Elsen, who was instrumental in drafting the original document, adopted by the Board of Directors in 1973. Elsen served the College Art Association as a director (1966-1970), Secretary (1970-1972), Vice President (1972-1974), and President (1974-1976). During Elsen's tenure on the board, he was the moving force behind CAA's issuing of several important professional statements and standards in addition to the Code of Ethics for Art Historians, including, Resolution Concerning the Sale and Exchange of Works of Art by Museums (1973), A Statement on Standards for Sculptural Reproduction and Preventative Measures to Combat Unethical Casting in Bronze (1974), and a focus on toxicity and other dangers in artists materials, leading among other things to the CAA publication Safe Practices. He served on the committee which issued Professional Practices for Artists (1977) and continued to remain active in the organization, serving most recently on the Professional Practices Committee, which revised A Code of Ethics for Art Historians, the Committee on Cultural Properties, and the Endowment Campaign Committee.

Albert Elsen's guidance, wisdom, and passionate commitment to professionalism will be sorely missed by the members of the association he served so well.

#### **A CODE OF ETHICS FOR ART HISTORIANS**

One of the primary concerns of CAA as a scholarly organization is the advancement of knowledge. Art historians must be competent researchers; they must also be fully aware of professional conduct and employ ethical practices. Scholarly integrity demands an awareness of personal and cultural bias and an openness to issues of difference as they may deflect methodology and analysis. Art historians are responsible for carefully documenting their findings and then making available to others their sources, evidence and data. They must guard against misrepresenting evidence and against the offense of plagiarism. They should fully acknowledge the receipt of financial support and institutional sponsorship, or privileged access to research material and/or original works of art, as well as crediting people in the field who give interviews and/or provide access to materials and works. It is equally important that assistance received from colleagues, students, and others be fully acknowledged. The following sections of this document outline the responsibilities of art historians in specific areas of professional practice. Specific applications of these responsibilities are discussed in the

## Guidelines For The Professional Practice of Art History.

### I. Rights of Access to Information and Responsibilities of Art Historians

A. CAA believes that as much as possible there should be full, free, equal, and nondiscriminatory access to research materials for all qualified art historians. All art historical research materials, including but not limited to works of art, photographs, diaries, letters, and other documents in the possession of publicly supported or tax exempt, non-profit, educational institutions, whether in the United States or elsewhere, where not legally restricted as to use, shall be freely and fully accessible to art historians for research and publication.

B. An art historian has the moral obligation to share the discovery of primary source material with his or her colleagues and serious students. He or she is not obligated to share anything of an interpretive nature that has been done with the source material. The recipients of documents or any other form of information from an art historian should in turn give the finder a reasonable opportunity to be the first to publish the material in question. The finder should seek to publish research as soon as possible, thereby showing respect and appreciation of art historians of the past and present who have contributed to the profession and from whom he or she as benefited. In the words of Aby Warburg: "There are no reserved seats in scholarship."

C. Excavations, whether at classical or at other sites, present a special case as regards the "rights of access" of researchers to the finds. Generally, the agency or institution that conducts the excavation through a permit granted by the host government retains the publication rights to all excavated materials, assigning the various categories to individual specialists. In practice, there are two hazards. One is that the publication may be delayed for an unreasonably long period of time, thus "freezing" the finds and making them inaccessible to other art historians. The opposite danger is that an art historian not associated with the excavation may make improper use of photographs or other documentation, to which he or she has somehow gained access, thus anticipating improperly the officially authorized publication. In view of the foregoing, it is the duty of excavators and their assignees to publish with reasonable promptness the materials in their charge and to make such materials freely accessible to other art historians for study and after a reasonable length of time (normally no longer than three to five years after the end of the project) available for publication. During the period of preparation of the publication, a scholar who is not connected with the project, but has gained access to materials, shall only make use of these materials in such ways and to such an extent as permission has been granted by the excavators and their assignees.

### II. Acknowledgment of Sources and Assistance

A. An art historian must properly acknowledge assistance provided by other scholars, teachers, students, or anyone else who assists in such matters as calling attention to works of art or archival material previously unknown or overlooked by the art historian.

B. Art historical research relating to living art traditions in both the West and in Africa, Oceania, and the Americas often takes the form of observing and recording (photographs, films, tapes) objects in use, techniques of manufacture, oral traditions about the history and meaning of the objects and their practical or ritual use, as well as materials in local or national archives and museums. These field data often constitute unique and irreplaceable documents which must remain under the community's control. Scholars have responsibilities to owners, patrons, and artists in situations in which such individuals have proprietary rights. The generosity of individual informants, as well as host governments, indigenous groups, universities, archives, and museums is essential to the success of research. All too often art historians have failed to file with the host community the results of their research in the form of dissertations, articles, or books and all too often the art historian has failed to file anywhere primary field data in the form of photographs, films and/or tapes.

It is, therefore, the responsibility of art historians working in the living art traditions to deposit copies of all field data related to said publications in the form of documented photographs, films, video and audio tapes, and the like in appropriate institutions in the host community in which they have worked. Should no library/museum want the material, other public institutions should be encouraged to house it. It is also the responsibility of the art historian to deposit some form of any published material within the community.

### III. The Illegal Traffic in Works of Art and Responsibilities of Art Historians to Discourage Illegal Traffic in Works of Art

One of the most explosive issues confronting art historians as well as museum directors and Boards of Trustees and traders in cultural property is that of the illegal and illicit international traffic in works of art. For a number of years CAA has been involved with trying to expose this problem. In 1970 the CAA Board unanimously passed the following resolution:

The College Art Association is aware of the increasingly destructive illegal traffic in cultural treasures flourishing in many parts of the world and recognizes that this traffic is detrimental to the preservation and study of the numerous affected cultures while ignoring the right of the countries involved to preserve their own national treasures. This traffic is also highly detrimental to productive archaeological and art historical relations.

The College Art Association therefore urges North American museums, dealers, and art historians to exercise the utmost care and restraint in purchasing important objects. Furthermore, the College Art Association urges the United States Government to work toward implementing proposed international agreements concerning stolen antiquities and/or works of cultural significance, or toward controlling the import of significant national treasures through the creating of bilateral treaties between the United States and any petitioning country.

CAA supports The Hague Convention on the Protection of Cultural Property in the Event of an Armed Conflict and the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property designed to curb the illegal international traffic in works of art, and the United States Cultural Property Implementation Act, passed to implement the UNESCO Convention, and other bilateral measures taken by the United States to prohibit the illicit traffic in stolen art.

In 1973, CAA, in conjunction with the Archaeological Institute of America, the American Association of Museums, the United States Committee of the International Council of Museums, the Association of Art Museum Directors, and the American Anthropological Association, adopted the following resolution:

Recognizing that Museums, whatever be their specialty, have a communality of interests and concerns, which comes into particularly sharp focus in matters of ethics and professional behavior, and that they are the custodian of our human material heritage and of that part of our natural heritage which we have collected for study and transmission to future generations;

Be it resolved that the CAA cooperate fully with the United States Government and foreign countries in their endeavors to preserve cultural property and its documentation and to prevent illicit traffic in such cultural property.

The CAA believes that Museums can henceforth best implement such cooperation by refusing to acquire through purchase, gift, or bequest cultural property exported subsequent to December 30, 1973, in violation of the laws obtaining in the countries of origin.

We further believe that the governing bodies, directors and curators of Museums should, in determining the propriety of acquiring cultural property, support and be guided by the policies of the UNESCO Convention on the Means of Prohibiting and preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property and the implementing provisions adopted by the signatory states.

It is recommended that all nations establish effective export laws and develop proper control over export so that illicit traffic may be stopped at its sources. However, wherever possible, within the limits of national law, consideration should be given to legitimate and honorable means for the acquisition of cultural property. It is hoped that nations will release for acquisition, long term loan, or exchange, cultural property of significance for the advancement of knowledge and for the benefit of all peoples.

In order to augment and clarify further the intent of this resolution and determine methods of accomplishing its aims, the governing body of a museum should promulgate an appropriate acquisition policy statement commensurate with its by-laws and operational procedures, taking into consideration the International Council of Museums' recommendations on 'Ethics of Acquisition.'

Recognizing that the current international legal framework is largely unsuccessful in arresting illicit traffic in cultural objects, preventing the pillaging and looting of archaeological sites, and promoting the return of cultural objects, CAA supports the efforts of the International Institute for the Unification of Private Law (UNIDROIT) and the draft convention on the International Return of Stolen or Illegally Exported Cultural Objects. CAA supports the broad principle of a unified private law code for claims of an "international character" for the "restitution of stolen cultural objects" and for the return of "cultural objects" removed contrary to the laws regulating the export of such objects because of their cultural significance.

A. Art historians shall conduct their research and activities in such a manner that respects the protection and preservation of natural and cultural resources and discourages illicit trade in cultural property and stolen art works, cultural objects, and antiquities.

It shall be considered, therefore, unethical for any art historians to be knowingly involved in the illegal exportation of works of art from foreign countries and/or illegal importation of works of art into this country.

It shall be considered unethical for an art historian to acquire knowingly or allow to be recommended for acquisition any object that has been stolen or removed in contravention of treaties and international conventions to which the United States is a signatory or illegally imported into the U.S.

B. It shall be unethical for art historians to purchase or sell art works, artifacts or cultural objects that they suspect were stolen from excavations, architectural monuments, public institutions or individuals. To knowingly aid and abet the illegal exportation and importation of a work of art is professionally unethical and, more likely than not, illegal.

Art historians are often key players in the international trade in cultural property and have a responsibility to distinguish the licit trade from illicit trade and to suppress the latter. If an art historian is asked for advice by a museum about a prospective purchase that he/she has reason to believe may be coming from out of the country, the reasonable action for an art historian is to satisfy himself or herself that he/she is not contributing to looting. If an art historian is asked by an art dealer or a museum to write a catalogue or render an opinion about a work from antiquity or one from a living cultural tradition, similar inquiry should be made. The realities

of the art world sometimes make it necessary for a museum or dealer to withhold disclosing the name of the seller; however, it is such secrecy that has contributed to the problem of the growing and flourishing international traffic in pillaged works of art. In many cases the art historian has placed his/her trust in the reputation of the dealer or museum. Without necessarily calling into question such trust, the art historian should undertake a rudimentary investigation to ensure herself or himself of proper provenance in each situation.

An art historian who has reasonable cause to believe that an item of cultural property has been the product of illegal or clandestine excavation or has been illegally exported will not assist in a further transaction of that object, including, exhibition, attribution, description or appraisal, except with the agreement of the country of export, nor will an art historian under these circumstances contribute to the publication of the work in question.

#### **IV. Conflict of Interest**

It is extremely important that an art historian be aware of the potential for conflicts of interest when scholarship and market interests become entangled. In cases where an art historian is asked to render professional judgments on works, it is imperative that reasonable disclosure of an art historian's relationship to a seller, art dealer, auction house, etc., be made. Reasonable disclosure shall be determined in the context of a particular professional judgment, as that degree of disclosure necessary to avoid both actual conflict of interest or impropriety based on self interest or the appearance of bias based on self (financial) interest.

A. To avoid conflict of interest situations, CAA recommends that art historians set fees for attribution and connoisseurship at a fixed fee reasonable for the services provided rather than at a percentage of the sale price of the work of art. This latter practice was, and is, widespread and has led to the damaging of the reputations of art historians who depended upon large fees for a livelihood. Art historians, when consulted on such matters as scholarly attribution, can avoid the appearance of self-interest by establishing in advance, fees which bear no relation to the monetary value of any work of art in question and which do not otherwise relate to the financial complications of any research investigation, opinion or statement by the art historian. It is unethical for an art historian to engage in attributions and/or the publishing or exhibiting of works of art if the art historian or his or her university or other employer has a vested financial interest in selling, brokering, or seeking tax deductions regarding such works, without full disclosure on the part of the art historian of his/her personal financial involvement (other than normal salary and curatorial remunerations) in the said dealings.

#### **V. Acceptance of Gifts and Requesting of Commercial Privileges**

A. An art historian's sole professional debt shall be to another person or organization on an intellectual basis. This indebtedness takes the obvious form of assistance given to the art historian in the performance of his or her research and preparation of publication.

B. There are times when an art historian is offered a gift by a grateful donor to the art historian's college or university. We remind the art historian that it is his or her duty first to consult with the administration about the school's policy in these matters. If the policy permits the gift, the art historian should then consider whether or not by its acceptance he or she would compromise self-respect, independence of action, and judgment with regard to the donor. If there seems any possibility of self-interest, or compromise of one's reputation, it is clearly wiser to refuse the gift.

C. A more difficult situation is one in which an art historian is offered the gift of a work of art by an artist who is a friend, or about whom he or she will be writing or has written. There is no question but that in most cases the art historian's publication about the artist will contribute to the increased value of his or her work, as well as of the art historian's gift. The art historian is then placed in a situation where questions of conflict of interest can be legitimately raised. The tactful but outright refusal of gifts from artists may be frustrating, but such practice insures integrity of the process and should not incur loss of respect from the artist. To have works of art given by artists to members of your family similarly creates a conflict of interest.

D. Generally, art historians should not accept gifts from art dealers, even if based on a long and personal friendship; an exception might be a gift given instead of money in remuneration for services rendered. Even to accept price reductions as a "professional courtesy" from a dealer is strictly speaking unethical, as it places the art historian in the dealer's debt. If an art dealer regularly permits installment buying by his or her customers, an art historian would not be risking his or her integrity if he/she asked for similar conditions. If this is not the case, the art historian is acting unethically. The art historian in such a case is, consciously or not, trading upon his/her influence as well as putting himself or herself in the dealer's debt. For an art historian, to ask an art dealer to reserve a work for him/her for an indefinite period, or one longer than is his or her custom for the public, also raises problems of ethics.

#### **VI. Fakes and Forgeries**

At present there are no laws that provide for the confiscation or destruction of fakes and forgeries that have not entered the country illegally. The harm that is done by the continued circulation of fakes and forgeries is to truth, to the reputation of the artist, or to an older culture by misrepresentation of the nature and quality of its art in the eyes of art historians and the public. Fakes impair the value of authentic works of art in public as well as private collections and distort the art market. An art historian who made his or her reputation through knowledge and connoisseurship of the work of a given artist or culture has a moral obligation to these sources to expose fakes and forgeries when to do so comes within his or

her competence and can be established beyond a reasonable doubt. It is recognized that the detection and exposure of fakes can be time-consuming. For an art historian to turn away from this activity on the grounds that he or she does not have the time is to pass this obligation on to others who may or may not be competent to expose the crimes involved and the effect could be a diminution of the quality of the profession. It is further recognized that art historians are concerned about legal actions taken as a result of their judgment. The most probable theories are the torts of disparagement and defamation. It is unlikely that an art historian exercising due care by providing a well reasoned, scholarly opinion will lose in the defense of such a suit. Art historians are least at risk from law suits based on their reasonable opinions, when such opinions are provided to the owner of the work at the request of such owner. In the absence of other types of error and omissions insurance, art historians may be able to obtain insurance against defamation suits available under certain home insurance policies.

## VII. Appraisals and Attributions

A. Art historians invited to undertake appraisals and/or attributions should be aware of the many hazards involved. Many art historians decline to give appraisals except when clearly in the national or public interest. Nor should an art historian make attributions concerning an object when to do so would conflict with the rules of his or her institution, or when the object is to be given to that historian's institution for purposes of tax deduction or similar benefit to the donor. Monetary appraisals should be undertaken only when the art historian is fully familiar with the current market prices in both public and private sales by the artist whose work he or she is asked to appraise. The need to establish a monetary value for a work of art must have no influence on the objective, scholarly judgment of it. To prevent the appearance of conflict of interest, fees for appraisals, as for attributions, should be fixed and not based on a percentage of the value ascribed. Finally, an appraiser should be aware that an appraisal once made may be used for many purposes other than that for which it was originally made.

## VIII.

It shall be the prerogative of the Committee and/or appropriate committees of the College Art Association to review this Code of Ethics and Guidelines every five years in view of updating it to deal with changed circumstances and problems not addressed by the current Code of Ethics and Guidelines.

## GUIDELINES FOR THE PROFESSIONAL PRACTICE OF ART HISTORY

It is the purpose of the Guidelines to be of practical assistance to members, particularly those just coming into the profession. Further, it is hoped the Guidelines will amplify some of the resolutions in the Code of Ethics. Both documents are intended to assist the art historian in forming his or her own professional standards while having available the considered judgment of CAA's Board of Directors as well as the Committee on Professional Practices. No claim is made for the coverage of all questions of professional practice and members who encounter situations outside of the Guidelines and who wish advice are encouraged to communicate with the President of CAA who will see that the matter is brought to the attention of the Committee on Professional Practices.

### I. Practices Governing the Teaching Profession

A. CAA supports the AAUP Recommended Institutional Regulations on Academic Freedom and Tenure, published in the January/February 1983 issue of *Academe*, bulletin of AAUP. A copy of the CAA's Code of Ethics for Art Historians and Guidelines for the Professional Practice of Art History is to be kept on file with AAUP.

B. CAA supports the AAUP Statement on Instructional Television published in the Summer, 1969 AAUP Bulletin. Increasingly, institutions are requesting that faculty, particularly those teaching survey classes, put their lectures on videotape for future cablecast or broadcast. Since many faculty use their lectures as a forum for trying out ideas which will eventually find their way into publication, CAA feels strongly that faculty should not be required to put lectures on tape; nor should universities automatically assume ownership/circulation control of faculty lectures.

### II. Membership in Other Professional Organizations

A. All CAA members who teach should be aware of their right to join the American Association of University Professors, particularly if they are concerned about problems that might arise from appointment and tenure. AAUP is the professional organization that by its size, experience, and reputation is best equipped to assist teachers who encounter unfair or unjust practices.

B. CAA members should also participate in those professional organizations which support their particular craft. For example, CAA members who are also authors should be aware of The Authors Guild Inc., 234 West 44th Street, New York, NY 10036. Besides being an effective lobbyist in Washington for authors' rights, this organization has published important guidelines for the writing of contracts, copies of which are available to members of that organization at a small charge.

### III. Practices Governing Rights of Access to Information and Responsibilities to Art Historians

Practices governing rights of access to information and responsibilities to art historians are discussed in the CAA Code of Ethics. It must be emphasized that it is an improper professional practice for an art historian or an institution to request or agree to the exclusive reservation of research or publication rights to art historical material in the possession of the institution.

A. Consistent with the purpose of CAA as a scholarly organization we are concerned with encouraging access to all art historical research material for all qualified art historians. We have passed resolutions setting forth what we feel are the obligations of both art historians and curators or custodians of archives in publicly supported institutions. We consider private universities, colleges, and museums to be included among tax exempt, non-profit, educational institutions. While we believe that all art historians should share documentary material, we do not feel that fair usage involves asking an art historian to share his or her interpretative material. Along with notes, this may take the form of the arrangement of photographs, for example, that constitutes a new chronology, sources of influence, or the separation of original from copies or forgeries. It is to the raw information or document itself to which we support access. In the case of museum art historians working on a project within their own museum, they have the right to keep the material under their control while working on it, but at the same time should recognize the right of other art historians to have access to that part of the material pertaining to their research.

We also recognize that the building of an archive takes time, expense, and knowledge. When this is the personal achievement of an individual art historian, fellow art historians who seek to use that material should be mindful of these facts and it is appropriate to offer to share within reasonable limits, some of the expense incurred in obtaining particular documents.

B. American art historians who are supported by grants and the latest equipment for photographing and copying documents, and who go abroad and there gain access to archives on which other art historians, young and old, may have been working for years, are urged to take into account the importance of publication to their colleagues. We recognize that in many cases in foreign countries, as well as in this country, foreign art historians are treated as if all art historical research material in a public institution is the private property of its curator and what is being asked for is comparable to invasion of family rights. Accordingly, the Professional Practices Committee will try to be of assistance as indicated in the Preamble. What CAA is particularly concerned about is the practice, often of senior art historians, of claiming first publication rights of archival material and its exclusive use in many museums and libraries throughout the world. Often the art historian, conscientious as he or she may be, cannot possibly publish all the material he or she has laid claim to for many years. Younger and other art historians are frustrated in their own work by this monopolizing of source material. There are art historians in art history who feel themselves the only qualified person to write on a certain artist or subject and have influenced heirs or executors of estates not to permit others to use archival material in their trust. Some senior art historians trade on their reputations to influence less sophisticated or inexperienced archival custodians to reserve material for them, even though it may be ten or more years before a book can be published. All of these practices we deem improper professional conduct. When reasoning and bargaining in good faith do not avail an art historian access to archival material denied to him/her under the above conditions, we suggest public exposure of the problem as outlined in the Preamble.

C. With respect to all art historical research material in private ownership, CAA recognizes the rights of that ownership to decide upon its use, but urges heirs and executors of estates and artists themselves to provide equal access to their holdings for all art historians. It sometimes happens that the aforementioned may decide to invite an art historian to be the first to publish material in their possession. We also recognize that right and hope that it would be accorded or accepted only after careful deliberation of such matters as the qualifications of other art historians and the period of time before the privileged material will be published. In proposing the following resolution we appeal to the honor of art historians in the profession to observe its spirit as well as letter.

**Resolution.** It shall be an improper professional practice for an art historian to accept exclusive use and first rights of publication of art historical research material held in private ownership unless he or she agrees to publish or otherwise make available such material within a period of no more than three years.

### IV. Literary Contracts and Publishing

A. This committee recommends the Authors' Guild publication Guide to the Authors' Guild Trade Book Contract (1987) for all who enter into contracts with publishers. In addition to the above publication, the Authors Guild publishes the Authors Guild Bulletin four times a year, with news articles and columns on professional writers concerns and provides individual advice and assistance to members.

B. Members should avail themselves of CAA's Guidelines for Fair Use of Visual Materials and consult with a lawyer before signing a contract with a publisher. Your literary properties are valuable not only to you but your family. With the widespread use of electronic devices and increased use of films and tapes on art for educational and entertainment purposes, literary properties which could serve as the basis for scripts or film research gain in value. Be sure that your book contract contains an "Electronic Devices" clause which protects your rights. (See the Author's Guild on electronic uses in publishing contracts, 1993.)

C. Art historians often experience delays in getting book manuscripts approved for publication. As this is prior

to signing a contract, there is not written agreement to be violated. We urge authors whose book manuscripts are under consideration by publishers to obtain in writing a time limit before which a decision must be made, otherwise it will be understood between the writer and publisher that the former will take the manuscript to another publisher. For most books ninety days is a reasonable time limit to set as it takes into account more than one reviewer and market research on demand for the book.

There is nothing professionally unethical about an author submitting a manuscript to more than one publisher simultaneously. Such a practice is particularly advantageous to textbook writers as there is much to bargain for such as who is to pay fees and royalties owed for photographs. This practice also reduces delays in decision-making by publishers on whether or not to offer a contract.

D. If you are signing a textbook contract, be sure there is a clause in which you or your estate retain the right to approve or appoint someone to revise your book in the event that you cannot do so, and that no more than fifty percent of all royalties for the resulting revision are assigned to this person or persons. This is to insure that you and your estate retain financial interest in your textbook property for as long as it is in print and under your name.

E. For a discussion of other publishing contract issues which affect art historians see CAA newsletter.

*[This Article is currently under review and will be issued as a separate document together with Article V.]*

## **V. Other Written Agreements**

A. If you are invited by a museum to be a guest curator for an exhibition or to do research and a publication, it is recommended that you obtain in advance a written agreement setting both your responsibilities, those of the museum, and your fee or honorarium, as well as what literary rights you might have with respect to publication of your work. All art historians should carefully negotiate issues of copyright and the museum's responsibility to them with regard to curatorial credit and publicity listings. This is particularly important in the case of traveling exhibitions as original contributors to an exhibition may find their contributions omitted as the exhibition moves on to new venues.

Completion dates for catalogue copy should be specified, as well as terms for future distribution, reprinted and foreign editions, etc. Recent cases brought to the attention of CAA include at least one instance of a major museum catalogue in which external contributors were paid a single flat fee for their essays while in-house curators continued to receive significant royalties for their contributions for a number of years.

B. It is proper professional practice for an art historian to request a written contract or letter of agreement from a museum which has invited his or her participation in the preparation of an exhibition. This agreement should clearly set forth the obligations of both parties, as well as honoraria or fees and the ownership of copyright of the catalogue. It is also proper practice for the art historian to be credited, along with the museum (especially if they are not otherwise affiliated with the institution), for any consulting, research, or curatorial work which resulted in an exhibition and/or publication.

C. If you are asked by a school to set up an instructional television course, check to be sure whether this comes under your original condition of appointment, and whether or not government funding is involved in your proposed program. Each faculty member should work out copyright matters/and royalties with his/her own institution in writing. Some schools might have policies of either retaining copyright, or allowing it in the teacher's name, but retaining royalties. If the government is involved, there may be regulations prohibiting copyright and royalty assignment to private individuals. Be sure that in your written agreement the question is answered of who edits or revises the televised instructional material as time goes by. If you leave your school without making such provisions you may lose all rights to future use. If you put together a televised course with the assistance of students, they too should receive credit and their rights must be looked after.

*[This Article is currently under review and will be issued as a separate document.]*

## **VI. New Technologies and Multimedia Issues**

*[Draft language for this Article is currently under consideration and review by the CAA Intellectual Property Committee.]*

## **VII. Remuneration for Scholarly Services**

A. Art historians are often called upon to provide at no charge professional advice or services. This is particularly true in the case of certain publishers who are scouting for new manuscripts or deliberating the question of a new series. Many art historians may feel that to provide such information at no fee is a way of contributing to the quality of publication. The following resolution is intended for those who question the propriety of asking a fee under the circumstances indicated.

B. It is proper professional practice for an art historian to request or receive a fee for professional services rendered to individuals or organizations where such services are sought or rendered in connections with a commercial project such as advice requested by publishers, representatives of television and film companies, or sale of works of art provided that the regulations of the institution employing the art historian do not restrict him/her. In setting fees, art historians are urged to consult with others of similar rank and experience.

C. If you are invited to be a guest curator for a museum and are asked to set the fee, you may consider either an outright sum or compute the time you will be spending on the project and ask to be paid the equivalent of a junior or senior curator's salary (depending upon your own status) for that period of time. Another model which has been used by faculty is to calculate the rate your home institution pays per course and request pay equivalent to one course per semester. Credit for published material which may be reissued in the future should also be worked out in the written agreement.

D. On the matter of fees for connoisseurship or consultation, calling upon your experience with scholarship and academic matters, you might consider emulating the legal profession by establishing an hourly or daily rate graduated to your experience. To avoid the suspicion of self-interest, it is not recommended under our Code of Ethics that you set your fee as a percentage of the market value of a work of art, if such is involved. It seems wisest to establish the fee in advance of undertaking a project and, when possible, to have concurrence in writing.

### **VIII. Teacher/Student Collaboration**

A. It is sometimes the practice of art historians to invite one of their students to co-publish a paper with them. By itself and in principle this can be advantageous to all concerned, providing that the student is given full credit for what he or she has done. Unfortunately, there are cases of teachers who sit on such papers for years because they have other projects to complete first, and the student is the loser. We feel it is proper for a student to ask of his or her instructor when co-publication will occur and where, and to arrange a reasonable time limit. If and when that time limit is not met, the student should be fully entitled to ask for the return of his/her paper, or to publish on his/her own, crediting the teacher for his or her contribution.

### **IX. The Crediting of Sources**

It is a maxim of scholarship that authors should be scrupulous in crediting sources, not only for ideas and textual material but also photographs and suggestions as to the location of documentation. Comments made by other art historians on the mounts of drawings, on the backs of photographs, recorded in museum dossiers or reported orally when relevant to one's research should be cited. The contributions of students to a teacher who publishes must also be acknowledged. Failure to do so establishes disrespect not only for the instructor in question but also to the profession.

A. Many art historians find their published research used without credit by popularizers in various magazines. We urge the aggrieved art historians in every case to write to the editor of the publication setting forth the complaint and requesting either publication of the letter or appropriate recognition. When this is not forthcoming, we recommend taking the case to the readership of CAA publications along with an invitation to the publishers and writers in question to respond.

B. Most, if not all, of us have had the experience of wanting to acknowledge the obstructive efforts of individuals or institutions who have made research difficult if not impossible. As long as the complaint is accurate, tactfully phrased and there is nothing libelous in what you write, such comments may prove to be constructive in the long run, as well as make future work with the obstructionist impossible. Balance the risks. Consider whether or not by explaining your experience as objectively as possible you will be helping other art historians. Too many irresponsible guardians of research materials have received critical immunity as a result of the timidity of aggrieved art historians.

### **X. Fakes and Forgeries**

A. The following are circumstances under which a fake, as opposed to a misattribution, may be encountered with suggested courses of action:

1. If a fake is identified in a public collection, these findings should be reported to the administration. It is appropriate to publicize such findings.
2. If a fake is discovered in a private collection, and is not being offered for sale, the art historian, if consulted by the owner, should inform him or her, and as long as there is no reasonable doubt, cooperate in any lawsuit brought in consequence of such a discovery. If asked, the art historian should assemble relevant material and testify. If the owner does not have a lawyer, the art historian should advise him or her to consult one about recourse under the law.
3. If an art historian can reasonably prove that a work of art offered for sale is a fake, this should be made known to the seller. If there is reason to believe that the seller already knows, or if he or she refuses to withdraw the work in question from the market, the art historian should go to the proper authorities, such as the local district attorney. Since representations of this kind may give rise to defamation action, the art historian as a possible defendant may also wish to seek legal advice.



4. To prevent the continued circulation of fakes that have been identified, it is urged that art historians try to publish information about fakes they have discovered so that they become public knowledge. Art historians working as consultants for auction houses or dealers should urge them to remove fakes from circulation.

## **XI. Attribution**

One of the areas of great responsibility, and great controversy, for art historians is that of authenticating works of art. The Code of Ethics and Guidelines cover the question of fees for professional services rendered. If art historians choose to engage in the practice of attribution, it is very important that they be aware of the problems involved in the authentication of works of art.

A. It is highly unusual for an art historian's opinion of a work of art to result in a law suit. Nonetheless, such actions are possible. A claim could be made that an art historian has defamed the owner or the seller of a work of art or that there has been defamation of title, that is that an untruthful statement about a work of art has reduced its value. On the other hand, an art historian providing a favorable opinion on a work of art could conceivably be sued by a purchaser relying on the opinion on the grounds that the work was, in fact, a forgery. Of course, an art historian may defend such an action on the grounds that her/his statements are truthful and that he/she acted with due care and without malice. The wisest course of action, however, is to make authentications in such a manner as to minimize the risk of any law suit. The following procedures are recommended:

1. Art historians should first consult with the institution which employs them to determine whether, and on what conditions or restrictions, the art historian may render opinions with respect to the authenticity of works of art. As a general rule, it is inappropriate for an art historian to render opinions on the letterhead of her institution without the knowledge and consent of the institution. Some institutions have devised forms and procedures for the rendering of scholarly opinions in order to minimize the risks of, or avoid, litigation. Where such forms and procedures exist they should be scrupulously followed. Any questions should be referred to the institution's legal officer. In addition, the art historian should consult his or her own lawyer to become acquainted with the relevant legal considerations and with the applicable state law.

2. The greatest legal risk in rendering scholarly opinions occurs when such opinions are rendered for individual collectors. Opinions should not be rendered for such collectors unless there is a written request by the owner of the work, who should warrant the fact of ownership. In addition, the owner should furnish the art historian with a written release from all liability and an agreement to indemnify and hold the art historian harmless from any damages, legal fees or other costs resulting from the rendering of the opinion. When an art historian encounters a work in a museum which he/she believes to be misattributed, his/her opinion should be communicated to the appropriate curator where the work is owned by the museum. Where the work is not owned by the museum, the opinion should be communicated to the owner of the work. Difficult problems arise when an art historian encounters in a commercial gallery a work which he/she believes to be misattributed. Again, the art historian is on safest legal ground when he/she renders his/her opinion to the owner of the work. Where the art historian has reason to believe that a fraud is being practiced, however, he/she should report the matter to the proper authorities.

3. The art historian should study the work itself before rendering an opinion, although there may be instances where an opinion may be rendered on the basis of a photograph (as where the work is a blatant fake). The art historian's opinion should indicate whether it is based on a study of the work or a photograph. In any event, relevant data, including media, dimensions, location and mode of signature should be obtained and carefully verified. The art historian's opinion should be labeled as such and should include the relevant identification data in describing the work. Wherever possible, a photograph of the work, preferably an 8 x 10 black and white glossy, should accompany the opinion. (Where possible the opinion should be written on the back of the photograph.) It is advisable in any opinion to avoid comment on the character or reputation of the seller of a work. Care should be exercised in the use of the word "forgery," except in cases where a forgery is plainly involved. "Misattribution" or "not properly attributed to" are generally safer phrases. Finally, the art historian should retain for his/her own records a copy of his/her opinion, a photograph of the work and all relevant correspondence.

4. In order to help remove forgeries from the art market, art historians are urged to persuade their owners to donate them as such to museums for their study collections. If the art historian is affiliated in some way with a museum, he or she must decide upon the propriety of requesting a forgery for the museum. To urge its donation to a museum with which there is no personal affiliations can add to the persuasiveness of the art historian's argument to the owner.

5. Art historians should render opinions only on works which are within their competence. When an opinion on a work not within the art historian's competence is requested, the art historian should decline to act and should refer the matter to another art historian with appropriate expertise or competence.

## **XII. Copyright**

The CAA statement on "[Fair Use of Visual Materials: Reproduction Rights in Scholarly Publishing](#)" has recently been revised to reflect changes in the law and new technologies.

*The Board of Directors has directed the Professional Practices Committee to review and revise the "Code of Ethics for Art Historians." Members of the Professional Practices Committee during this period include:*

*Ex officio, President Larry Silver, 1992-4*  
*Ex officio, Judith K. Brodsky, 1994-6*  
*Ex officio, Counsel Barbara Hoffman*  
*Ex officio, Chair, Art History Committee*  
*Samuel Edgerton, chair, 1992-1995*  
*Albert Elsen, chair, 1971-77*  
*Whitney Chadwick, chair,*  
*Gilbert Edelson Former Counsel, CAA*  
*Darrell Amyx*  
*Herschel Chipp*  
*Wanda Corn*  
*Lorenz Eitner*  
*Leopold Ettlinger*  
*Warren Faus*  
*Egbert Haverkamp-Begemann*  
*John Merryman*  
*Ernest Mundt*  
*Dan Rosenfeld*  
*Wendy Stein*  
*Michael Aurbach*  
*Norma Broude*  
*Gylbert Coker*  
*Kathleen Desmond Easter*  
*Jock Reynolds*  
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