Online Conferences, Intellectual Property, and the Changing Shape of Scholarly Communications

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A post from Feeding the Elephant: A Forum for Scholarly Communications. This post continues our coverage of the shift to virtual conferences in light of the COVID-19 pandemic.

In February, the College Art Association (CAA) held its 109th Annual Conference, bringing together art historians, artists, and designers to share research and discuss issues of professional interest. Normally, the conference draws over 4,500 attendees. This year, due to the COVID-19 pandemic, the conference was, for the first time, held online, with 326 sessions, 1100 uploaded presentations, and 4100 registrants, all taking part through an online portal (Source: "March Update from CAA's Executive Director and Member Survey Reports," March 19, 2021). As the Feeding the Elephant forum has previously covered (here, here, and here), professional societies, attendees, and publishers have been experimenting—mostly on the fly—with how to use the online format to help members connect, network, and communicate research when face-to-face meetings are not possible.

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The CAA’s 2021 meeting highlighted complex, difficult questions about intellectual property—both that of scholars and that of third parties—raised by such virtual gatherings. Scholarly associations have taken different approaches to convening their annual meetings, some scrapping the “virtual meeting” altogether in favor of online programming throughout the year, others stretching the meeting out over several weeks; some requiring pre-recorded talks, others allowing real-time presentations with the option to pause the recording for presenters who do not wish to have their talks recorded. For CAA, presenters were asked to upload their pre-recorded presentations one month in advance. Attendees could watch the pre-recorded sessions anytime during the period of the conference and specific 30-minute slots were scheduled for speakers and attendees to convene for questions and discussion. Viewers would then be able to access the sessions (but not the discussions) for several weeks after the end of the conference.

To facilitate this combination of recordings and conversations, CAA shared a new participant agreement with all of its members in October, four months before the conference. Scholars who wished to take part in the conference had to sign the agreement, which, among other things, gave CAA broad license to publish and reuse the conference recordings, including for unspecified derivative works, and implied that participants had to clear copyright with any owners of third-party
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works (i.e., artworks) included in their presentations. The agreement also indemnified CAA without protecting the presenters equally. After much public confusion and push-back from members, CAA provided some clarification in an online FAQ and finally on December 31, amended the agreement. The new agreement limited the terms of the license to the conference recordings granted to CAA, including specifying the nature of any future derivative works, adding language about fair use with respect to the use of third-party works in presentations, and extending indemnity to presenters and CAA equally. (Both the marked-up original [November 1] and updated [December 31] versions of the digital permissions form are available on the CAA website.)

CAA members were given a chance to reflect on the situation at a dialogue session about the presenter agreement and intellectual property (IP) considerations hosted by the Committee for Intellectual Property (CIP) during the conference. Facilitated by four scholars specializing in different areas of art and law—Susan Douglas (Assistant Professor of Art History, University of Guelph), Lauren van Haafken-Schick (PhD Candidate in the History of Art and Visual Studies, Cornell University), Nick Pozek (Assistant Director, Parker School of Foreign & Comparative Law at Columbia University), and Celena Gonzalez (Law Fellow, Institute of Museum and Library Services)—the panel used the 2021 presenter agreement as a case study to examine what happened, to help educate CAA members about contracts, to think more broadly about how (and when) to shift from a rigid “permissions culture” to a “culture of access,” and ultimately to work towards an updated Code of Best Practices that addresses digital presentations in a way that serves CAA members.

As legal studies scholars and advocates, the presenters called for members to approach contracts like the presenter agreement as a part of one’s professional life, that is, with urgency and deliberateness. The loud push-back on the terms of the agreement from the membership suggests that some already do. An informal poll of the audience, however, showed that only one quarter of presenters actually read the agreement.

The presenters went through some of the most contentious parts of the original presenter agreement, which included:

- An “unconditional perpetual, worldwide, royalty-free release” of one’s recorded presentation, including for derivative works that CAA may decide to produce in the future;

- The implication that presenters must obtain permissions to include third-party works (i.e. art works) in their recorded presentations, as well as permission for CAA to continue to use those works in connection with the program (i.e., in those above-mentioned derivative works);

- An unconditional release of CAA and its licensees from “any and all liability” in connection with the recorded presentations, such as if a third party decided to make a claim for having their works included without permission.

Many CAA members had concerns about the agreement. An Open Letter drafted by art historian
Allison Morehead called the compulsory release of the recorded presentation, including for unspecified derivative works, to CAA a case of “copyright overreach,” and pointed to the missed opportunity to inform members of their rights with respect to fair use. There seemed to be a dissonance between the implication within the agreement that presenters had to get copyright clearance for visual materials in their presentations and CAA’s own advocacy for a “culture of access.” In an opinion piece published after the conference, art historian Martha Buskirk wrote that the agreement was a “retreat from CAA’s own advocacy, articulated in its groundbreaking 2015 Code of Best Practices for Fair Use in the Visual Arts.”

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An open discussion during the CIP panel revealed another set of concerns about scholarly communications arising out of the abrupt shift to online conferences and made manifest by the terms of the presenter agreement. As the open letter explained, for many scholars, a conference is a “forum to present work in progress,” so requiring attendees to make that work “perpetually available ... and even [potentially] sublicens[able]” goes beyond the normal expectations for conference participation. A number of attendees homed in on the distinction between presenting work in real time and having it become part of an archive. The former, which we are used to doing in the social setting of in-person conferences, suggests a certain provisionality that we associate with conversation and the exchange of ideas—and easily constitutes fair use. The latter freezes ideas in time, which raises questions about access (who gets it?) and control over one’s work (problematic for students and junior and precarious scholars, each of whom have their own particular needs to protect their work)—suggesting the need for some level of copyright protection and a widely shared consensus on citation practices. Many in the audience agreed that presenters should have a choice about having their contributions enter such an archive. A representative of CAA responded that unfortunately, such a level of customization was simply not possible this year.

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What emerged from the conversation is that much more discussion is necessary about the ways that online conferences and digital platforms are changing how we understand scholarly communications and what that means for copyright protections and fair use going forward. Concerns about the “contentification” of scholarly exchange, gate-keeping, and the corporatization of scholarly societies are balanced with the desire to create robust online communities that serve a more diverse and global membership in more equitable ways. Ultimately, as another attendee stated, scholarly societies, their legal counsel, and committees like the CIP can play a leadership role, just like they did with the Fair Use Guidelines six years ago, on behalf of members to protect scholars’ interests and allow for greater exchange.

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