



Art Museum Image Consortium

www.amico.org

AMICO Library University Agreement

between the

Art Museum Image Consortium

and

Regents of the University of California

Terms Effective June 1998

Art Museum Image Consortium AMICO Library University Agreement

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1. Introduction

This Agreement sets forth terms and conditions under which an institution of higher education may receive access to and use the AMICO Library, the collective digital library of visual and documentary resources of the Art Museum Image Consortium ("AMICO"), a nonprofit corporation organized under the laws of the District of Columbia. This Agreement is made and entered into as of this 16th day of April (the "Effective Date"), by and between AMICO and Regents of the University of California ("University Subscriber").

2. Purpose of AMICO

AMICO is operated exclusively for charitable, educational, and cultural purposes. More specifically, the purpose of AMICO is to assist its Members: (1) by compiling a collective digital library of visual and documentary resources documenting works of art ("The AMICO Library™"); (2) by providing dramatically increased educational access to the documentary resources for the benefit of institutions of higher education, museums, libraries, schools, and other charitable, educational, and cultural institutions; and (3) by fostering and promoting education and advancing knowledge in areas related to The AMICO Library™, including scholarship in the arts, humanities, informational sciences, and social sciences.

3. Definitions

"The AMICO Library™" means the compilation of AMICO Works and any materials contained therein.

"AMICO Library University Agreement" means the Agreement under which AMICO establishes the eligibility, rights and obligations of an institution of higher education to subscribe to and use The AMICO Library™, as provided by an Authorized Distributor.

"AMICO Work" means the catalog record and all other related multimedia documentation of a work of art in The AMICO Library™.

"Authorized Distributor" means an organization authorized by AMICO to provide access to and support services for The AMICO Library™.

"Designated User" means any person authorized to receive access to and use of The AMICO Library™ under the terms and conditions of this Agreement.

"Institution of Higher Education" means an accredited post-secondary educational institution. "University Subscriber" means an Institution of Higher Education authorized by AMICO to receive access to and use The AMICO Library™, through an Authorized Distributor, under the terms and conditions of this Agreement.

4. AMICO University Subscription

By completing enrollment and by accepting all of the terms and conditions of this Agreement, a qualified Institution of Higher Education becomes an AMICO University Subscriber, entitled to all of the benefits of and subject to all of the responsibilities of University Subscribers. The policies and procedures governing the qualifications, rights and obligations of Institutions of Higher Education as University Subscribers are established by the Board of Directors of AMICO. Continued acceptance of all the terms and conditions is a condition of this University Subscription.

5. Intellectual Property

5.1. AMICO'S Rights.

The AMICO Library™, all of the AMICO Works contained therein, and other materials related to The AMICO Library™ are protected under US copyright law and other applicable intellectual property and proprietary information laws. The mark, AMICO LIBRARY, and other marks and tradenames used to identify the AMICO Library are or shall be protected by US trademark law and other unfair competition laws. University Subscriber hereby acknowledges that AMICO is the sole and exclusive owner of the rights described in this section.

5.2. Grant of Rights.

AMICO hereby grants to University Subscriber, which consists of the 10 campuses of the University of California and the UC Office of the President (see Appendix A), a non-

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exclusive, non-transferable, limited license to use, modify, reproduce, distribute, and publicly display AMICO Works for educational, research, and scholarly purposes to Designated Users under the terms of this Agreement. AMICO hereby grants to University Subscriber a non-exclusive, limited license to use the AMICO mark to promote the use of The AMICO Library™ within its Designated User community. All other uses of The AMICO Library™, AMICO Works, related AMICO materials, and the AMICO Mark require the permission of or a separate license from AMICO, or one of its members.

5.3. Fair Use.

AMICO does not intend that the terms of this license in any way limit uses by Designated Users which are defined by the US Copyright Act, Section 107 (Fair Use).

6. Users

6.1. Designated Users.

University Subscriber may designate categories of users that may receive access to and use the AMICO Library under the terms of this Agreement. Faculty members, enrolled students, university employees, temporary employees, whether hired as independent contractors or through agencies, and researchers officially affiliated with the University Subscriber may be Designated Users. The following groups may not be Designated Users: alumni; independent contractors; subscribers who pay fees to use university facilities or services (such as individual users of the university gymnasium); university tenants; and the members of the household of Designated Users.

6.2. University Museums and Galleries.

Museums and galleries officially affiliated with the University Subscriber may gain access to and use The AMICO Library™ by entering into a separate AMICO Museum Agreement.

6.3. Limited Access Privilege.

University Subscriber may grant the privilege of limited access to The AMICO Library™ to: (1) occasional users who are not Designated Users and who have access to computer terminals physically located on the site of and under the control and administration of the University Subscriber, and (2) users of the University Subscriber's on-line public access catalog (OPAC) and similar resources, provided that the data displayed on the University Subscriber's OPAC does not exceed the scope of the data displayed on the AMICO public website as set forth in the AMICO Public Web Site Specification.

7. Use for Education, Research and Scholarship

7.1. Permitted.

Access to and use of The AMICO Library™ 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, Designated Users may receive access to and use The AMICO Library™ for: (1) classroom instruction and related activities, (2) student assignments, (3) public display or public performance in a university 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.

7.2. Prohibited.

Access to and use of The AMICO Library™ 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 University Subscriber and Designated Users are strictly prohibited from: (1) publishing any AMICO Work in any medium or format, (2) redistributing any AMICO Work by any means beyond the Designated User community, and (3) storing any AMICO Work, in whole or in part, beyond the term of this Agreement, unless expressly permitted. In no event may a University Subscriber or its Designated Users use any AMICO Work, or any adaptation thereof, in a commercial or business related manner. The University Subscriber, or persons acting on behalf of the University Subscriber, is prohibited from using any AMICO Work for fund-raising, marketing promotion, or public relations.

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7.3. Required Notices.

Any and all publicly displayed AMICO Works 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 AMICO, (2) minimum documentation of the work of art, as outlined in the AMICO Distributor Specification (Version 2.0 01/01) and (3) an acknowledgment of the AMICO Member contributing the multimedia documentation to The AMICO Library™, except where such an acknowledgment clearly would compromise an educational objective (such as examination).

8. Adaptations

8.1. Integrity of AMICO Works.

The University Subscriber must take all reasonable steps to ensure the preservation of the integrity of AMICO Works, in whole or in part, and to protect the moral rights, if any, of the creator of the underlying original work of art. Any adaptation, alteration, addition to, deletion from, manipulation, or modification (together "adaptations") of an AMICO Work, in whole or in part, must be undertaken exclusively for education, research or scholarship. The University Subscriber must maintain, subject to audit by AMICO, complete and accurate records of all institutionally created or systematic adaptations of AMICO Works created under this Agreement, including a record of the specific educational, research, or scholarly purpose served by the adaptation.

8.2. Prohibited Practices.

In no event may a Designated User: (1) reproduce or distribute any adaptation of an AMICO Work, in whole or in part; (2) publish any adaptation of an AMICO Work, in whole or in part, in any medium or by any means, or (3) redistribute any adaptation of an AMICO work, outside the Designated User community specified in this Agreement, in whole or in part, by any means.

8.3. Retention of Adaptations.

Upon termination of this Agreement, the University Subscriber must make reasonable efforts to verify for certification to AMICO that any and all institutionally created adaptations of AMICO Works have been destroyed. With the exception of adaptations for student assignments and for faculty or student portfolios, Designated Users may not retain any adaptation of an AMICO Work, in whole or in part, after the termination of this Agreement. The University Subscriber is obligated to inform Designated Users of this provision both during the period of use, and if and when the license is terminated.

8.4. Notices Required.

In addition to any other notices required under this Agreement, any adaptation of AMICO 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 AMICO Work.

9. Distribution

9.1. Authorized Distribution.

University Subscriber may receive access to The AMICO Library™ through an AMICO Authorized Distributor. The Distributor authorized under this agreement will be Cartography Associates, LLC, (CA) under its Distribution Service Agreement. Designated Users may use The AMICO Library™ at any access point that is controlled by Cartography Associates' user authentication system.

9.2. Local Mounting.

University Subscriber also may receive access to The AMICO Library™ through local delivery. When The AMICO Library™ is mounted locally by the University Subscriber it is governed by the terms of the AMICO Distributor Specification, in addition to those in this Agreement.

10. Security

10.1. University General Responsibilities.

University Subscriber is responsible for: (1) complying with all computer security procedures required by AMICO's Authorized Distributor, (2) monitoring, exercising control over, and certifying access to The AMICO Library™, and (3) taking all other reasonable steps to ensure the security of The AMICO Library™.

10.2. University Policies and Procedures.

University Subscriber is responsible for establishing, monitoring, and enforcing controls for the proper use of The AMICO Library™, including: (1) adopting and effectively disseminating policies and procedures governing the proper use of The AMICO Library™, including appropriate sanctions for knowing and willful infringements, (2) providing instruction to all Designated Users on the proper use of The AMICO Library™; and (3) fully investigating all known infringements and taking appropriate disciplinary action in cases of knowing and willful infringements.

11. Unauthorized Use

11.1. University's Responsibilities

University Subscriber shall not be responsible for the unauthorized use or infringement of The AMICO Library™ by Designated Users provided that: (1) University Subscriber is in full compliance with the requirements of Section 10 of this Agreement; (2) such unauthorized use or infringement is without the consent of the University Subscriber; (3) University Subscriber promptly notifies AMICO of any such unauthorized use or infringement of which it becomes aware; (4) University Subscriber takes all reasonable steps to cause such unauthorized use or infringement to cease immediately and (5) the University Subscriber takes appropriate disciplinary action against the Designated User. University Subscriber shall cooperate fully with AMICO in any investigation of such unauthorized use or infringement.

11.2. AMICO's Rights.

AMICO shall have the sole right, at its discretion, to bring any legal action because of an unauthorized use or infringement of The AMICO Library™. University Subscriber shall not bring any legal action in connection with an unauthorized use or infringement without first consulting with AMICO.

12. Fees and Payment

University Subscriber receiving access to The AMICO Library™ through AMICO's Authorized Distributor is responsible for the prompt payment of all subscription fees as defined by an AMICO schedule, based on numbers of Designated Users, certified by the University Subscriber. This fee, along with other applicable fees charged by the Authorized Distributor for provision of access, will be collected by the Authorized Distributor as a condition of providing that service.

13. Notices

13.1. By AMICO.

AMICO may give written notices under this Agreement to University Subscriber by electronic mail, by a general posting to the University Subscriber, by facsimile transmission (with receipt confirmed), or by conventional mail. In the case of electronic or a general posting to the University Subscriber, notice shall be deemed to have been given on the day of the delivery of the transmission. In the case of conventional mail, notice shall be deemed to have been given on the fifth business day following the day of mailing if mailed postage prepaid. Any notice given to the University Subscriber will constitute notice to all Designated University Users.

University Subscriber

Contact Name:

Licensing Coordinator

Full Postal Address California Digital Library

415 20th Street, 4th Floor

Oakland, CA 94612

Phone:

Fax:

Email:

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13.2. By University Subscriber.

University Subscriber must give notice to AMICO by electronic mail or conventional mail, unless otherwise specified in this Agreement. A notice by a University Subscriber to AMICO will not change the terms of this Agreement, or the terms of any AMICO policy or guideline, unless an authorized officer of AMICO expressly accepts the change in writing. Notices to AMICO by conventional mail must be sent to:

Art Museum Image Consortium
2520 Colfax Avenue South
Minneapolis, MN 55405 USA

Phone:
Fax:
Email: subscriptions@amico.org

14. Representations and Warranties

14.1. General.

AMICO represents and warrants that it has the authority to enter into this Agreement. University Subscriber represents and warrants that it is an Institution of Higher Education and that it has the authority to enter into this Agreement and to perform all the obligations under this Agreement.

14.2. Intellectual Property.

AMICO warrants and represents that, to the best of its knowledge, the use of The AMICO Library™ under the terms and conditions of this Agreement shall not infringe the rights of any third party. However, the foregoing shall not apply to adaptations of AMICO Works created under Section 8 of this Agreement. AMICO makes no warranties and representations, and expressly disclaims any liability, with respect to any rights of publicity or privacy and any moral rights in AMICO Works and other materials in The AMICO Library™.

15. Indemnification

15.1. AMICO.

To the extent authorized by law, AMICO shall defend and indemnify University Subscriber, its employees, officers, and directors against any claim or action brought against University Subscriber arising out of (1) AMICO's breach of any term or condition of this Agreement; (2) any third party claim for infringement or other violation of any third party's intellectual property right or proprietary rights in connection with University Subscriber's authorized uses under this Agreement except with respect to adaptations of AMICO Works created under Section 8 of this Agreement. With respect to any such claim or action, AMICO shall pay any costs, damages, reasonable attorney's fees or other expenses incurred by the University Subscriber.

15.2. University Subscriber.

To the extent authorized by law, University Subscriber shall defend and indemnify AMICO, its employees, officers, and directors against any claim or action brought against AMICO in connection with (1) University Subscriber's breach of any term or condition of this Agreement, and (2) University Subscriber's unauthorized use of The AMICO Library™, and (3) Designated Users' unauthorized uses of The AMICO Library™ if known to the University Subscriber but not acted upon by the University as specified in Sections 8 and 10 of this Agreement. With respect to any such claim or action, University Subscriber shall pay any costs, damages, reasonable attorney's fees or other expenses incurred by AMICO.

16. Reporting Requirements

16.1. Local Mounting.

The University Subscriber must report, on an annual basis, all AMICO Works mounted locally for use by Designated Users.

16.2. Use Studies.

The University Subscriber is urged to share with AMICO data from all use studies conducted with The AMICO Library™.

16.3. Policy on Licensed Resources.

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

17. Withdrawal of Works from The AMICO Library™

AMICO may withdraw specific AMICO Work(s) from the AMICO Library for good cause shown. Any claim, dispute, or action related to contributed multimedia documentation by an AMICO Member shall be deemed to establish good cause for the removal of such a work. The University Subscriber shall withdraw disputed AMICO Work(s) from institutionally managed local storage within ten (10) days following the date of notice by AMICO requesting such removal.

18. Term and Termination

18.1. Term.

This Agreement shall come into force on the Effective Date and shall remain in effect through the end of the subscription year as defined by the Authorized Distributor. This Agreement shall automatically be extended for successive terms provided that the annual subscription fees are paid and no notice of change of terms is given by AMICO.

18.2. Termination.

AMICO may terminate this Agreement upon at least thirty (30) days' prior written notice to the University Subscriber because of any failure of the University Subscriber to perform or observe any material term of this Agreement or if any warranty or representation contained herein is false. The failure of the University 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 an Designated User to perform or observe any material term or condition of this Agreement shall not in itself be grounds for termination provided that the University Subscriber is discharging its responsibilities under section 11 of this Agreement.

18.3. Conduct Upon Termination.

Upon termination of this Agreement for any reason, University Subscriber shall promptly notify all Designated Users that The AMICO Library™ subscription has been terminated and shall promptly remove all AMICO Works and AMICO Library materials from university networks and computers. University subscriber shall promptly erase or destroy all institutionally created and/or managed copies of AMICO materials fixed in any physical medium, including prints, slides, and compact disks and provide certification to AMICO of their destruction.

18.4. Educational Grace Period.

Under extraordinary circumstances (such as a documented budgetary crisis) and solely to fulfill the University Subscriber's educational mission, University Subscriber may continue to provide access to the locally mounted portions of The AMICO Library™ for a period of one academic semester after the expiration of the term of this Agreement and to specific AMICO Works assigned in current courses for a period of twelve (12) months after the expiration of the term of this Agreement, subject to a duty to promptly remit all back subscription fees and other applicable charges as a condition to renewal of the subscription during the subsequent forty-eight (48) months. Such a grace period will be granted at AMICO's discretion. University Subscriber's wishing to take advantage of this provision must submit a documented request.

19. Miscellaneous Provisions

19.1. 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.

19.2. No Assignment.

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

20. Attachments:

As per section 16.3 above the University Subscriber appends the following copy of its policies on the use of licensed resources, and its procedures for acting against known infringements.

Title: UC Policy and Guidelines on the Reproduction of Copyrighted Materials for Teaching and Research www.ucop.edu/ucophome/uwnews/copyrep.html

Date: 04/14/03

IN WITNESS THEREFORE, the Parties have caused this Agreement to be executed as the first day and year written first above.

Art Museum Image Consortium

Executive Director

Signed. _____

Date: _____

Regents of the University of California, California Digital Library _____

Deputy Univ. Librarian _____

Signed: _____

Date: _____

Appendix A

Campuses of the University of California

University of California, Berkeley

University of California, Davis

University of California, Irvine

University of California, Los Angeles

University of California, Merced

University of California, Riverside

University of California, San Diego

University of California, San Francisco

University of California, Santa Barbara

University of California, Santa Cruz

University of California Office of the President