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- 12.3 Additional IP Addresses. Licensee represents and warrants that it is providing no IP addresses to ARTstor that pertain to any campus or institution other than those listed or indicated on Attachment A of this Agreement or for which access has otherwise been agreed to in writing by ARTstor. ARTstor reserves the right to assess additional fees and to require additional license terms or separate license agreements in the event that Licensee provides IP addresses pertaining to institutions or campuses other than those listed or indicated on Attachment A, or in the event that Licensee seeks to add additional institutions or campuses, or distance education programs, other than those currently listed in Attachment A.
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ARTstor agrees to indemnify, defend, and hold harmless Licensee, its agents, employees, officers and directors, and its Authorized Users for all costs, damages, reasonable attorneys fees, and other expenses arising out of any third party's threatened claim(s) or claim(s) of infringement of copyrights, patents, or trademarks brought against Licensee and/or its Authorized Users, but only if such threatened claim(s) or claim(s) arise out of Permitted Uses of the ARTstor Digital Library. Notwithstanding the foregoing, ARTstor expressly disclaims any and all liability, and in no event shall ARTstor be liable, or indemnify Licensee and/or Authorized Users, for claims to the extent that they are related to: (a) adaptations and/or modifications of ARTstor Content; (b) links between ARTstor and other sites, and/or content on those sites; (c) content in, and/or uses, reproductions, displays, performances, or distributions of, Local Content and the Local Content Services; (d) any and all uses, reproductions, displays, performances, or distributions made of the ARTstor Digital Library and/or ARTstor Content outside of the United States of America; (e) breaches by Licensee, its agents, employees, directors, officers, and/or Authorized Users of this Agreement and/or uses, reproductions, displays, performances, or distributions made of the ARTstor Digital Library and/or its ARTstor Content that exceed and/or violate the terms of this Agreement and/or the Terms and Conditions of Use, whether or not such uses, reproductions, displays, performances, or distributions are permitted by law under the fair use or other provisions of US or other countries' laws; and/or (f) any and all uses, reproductions, displays, performances, or distributions made of ARTstor Content obtained from the ARTstor Digital Library following the termination or expiration of this Agreement.

In connection with these indemnification obligations, ARTstor will control the defense of such claims and/or threatened claims, including the right to designate counsel and to control all negotiations, litigation, arbitration, settlements, compromises and appeals of such claims and/or threatened claims, and Licensee shall: (i) immediately notify ARTstor upon learning of any such claim and/or threatened claim; (ii) provide to ARTstor such information respecting such claim and/or threatened claim as ARTstor shall reasonably require; and (iii) take all such steps as ARTstor shall reasonably request to preserve and protect any defense to such claim and/or threatened claim at ARTstor's expense. Licensee shall have the right to participate in (but not control) the defense of any such claims or threatened claims with counsel of its selection at its sole expense.

- 12.5 Disclaimer and Limitation of Liability. **OTHER THAN THE EXPRESS WARRANTIES AND INDEMNIFICATIONS STATED IN THIS SECTION 12, THE ARTSTOR DIGITAL LIBRARY AND THE ACCESS SOFTWARE ARE PROVIDED ON AN "AS IS" BASIS, AND ARTSTOR AND ANY AND ALL THIRD PARTY CONTENT AND SOFTWARE PROVIDERS AND/OR LICENSORS ("CONTENT PROVIDERS") DISCLAIM TO THE FULLEST EXTENT OF THE LAW ANY AND ALL OTHER WARRANTIES, CONDITIONS, OR REPRESENTATIONS OF ANY KIND (EXPRESS, IMPLIED, ORAL, OR WRITTEN) RELATING TO THE ARTSTOR DIGITAL LIBRARY, ARTSTOR CONTENT, LOCAL CONTENT, THE ACCESS SOFTWARE, OR ANY PARTS THEREOF, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, COMPATIBILITY, MERCHANTABILITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE. ARTSTOR AND ALL CONTENT PROVIDERS MAKE NO WARRANTIES WITH RESPECT TO ANY HARM THAT MAY BE CAUSED BY THE TRANSMISSION OF A COMPUTER VIRUS, WORM, TIME BOMB, LOGIC BOMB, OR OTHER SUCH COMPUTER PROGRAM, EXCEPT THAT ARTSTOR WILL EXERCISE A REASONABLE LEVEL OF CARE IN AN ATTEMPT TO PREVENT SUCH OCCURRENCES. ARTSTOR AND ALL CONTENT PROVIDERS FURTHER DISCLAIM ANY LIABILITY AND MAKE NO WARRANTIES WITH RESPECT TO ANY ERRORS OR OMISSIONS IN THE ARTSTOR CONTENT, LIABILITY UNDER LIBEL LAWS, INFRINGEMENT OF RIGHTS OF PUBLICITY AND PRIVACY, MORAL RIGHTS, AND/OR THE DISCLOSURE OF CONFIDENTIAL INFORMATION; AND/OR FURTHER DISCLAIM ANY LIABILITY AND MAKE NO WARRANTIES WITH RESPECT TO ANY AND ALL CLAIMS AND/OR THREATENED CLAIMS OF ANY KIND (INCLUDING BUT NOT LIMITED TO INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT CLAIMS AND/OR THREATENED CLAIMS) RELATING TO: LINKS BETWEEN ARTSTOR AND OTHER SITES AND/OR THE CONTENT ON SUCH LINKED SITES; LOCAL CONTENT AND THE LOCAL CONTENT SERVICES; USES, DISPLAYS, PERFORMANCES, REPRODUCTIONS, AND DISTRIBUTIONS MADE OUTSIDE OF THE UNITED STATES; ADAPTATIONS AND/OR MODIFICATIONS OF ARTSTOR CONTENT OR LOCAL CONTENT; ANY AND ALL USES, REPRODUCTIONS, DISPLAYS, PERFORMANCES, AND DISTRIBUTIONS THAT EXCEED OR VIOLATE THE PERMITTED USES (WHETHER PERMITTED BY LAW OR OTHERWISE) AND/OR ANY USE(S), REPRODUCTIONS, DISPLAYS, PERFORMANCES, AND DISTRIBUTIONS MADE OF ARTSTOR CONTENT AFTER THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.**

- 12.6 Unavailability of ARTstor Digital Library. ARTstor shall try to provide continuous availability of the ARTstor Digital Library online. Licensee recognizes that the ARTstor Digital Library may not be available from time to time due to maintenance of the server(s), the installation or testing of software, the loading of ARTstor Content as it becomes available, and downtime relating to equipment or services outside the control of ARTstor including but not limited to public or private telecommunications services or internet nodes or facilities, and, except as set forth in section 12.4, ARTstor shall not be held liable for any loss, injury, claim, liability, or damage of any kind resulting from the unavailability of the ARTstor Digital Library or the Access Software, interruption of the services provided hereunder, or arising out of, or in connection with, Licensee's use, display, performances of, reproduction, distribution, or the uses, displays, performances of, reproductions or distributions made by Authorized Users or other users of the ARTstor Digital Library. If the ARTstor Digital Library fails to operate in conformance with the terms of this Agreement, Licensee shall promptly notify ARTstor, and ARTstor's sole obligation shall be to repair the nonconformity. Except as set forth in section 12.4, in no event shall ARTstor's liability exceed the fees paid to ARTstor by Licensee. In the event, due to causes within its reasonable control, ARTstor is unable to provide Licensee with access to the ARTstor Digital Library for an aggregate period of fourteen (14) consecutive days during any twelve (12) month period, Licensee may terminate the Agreement and receive a pro rata refund of the Annual Access Fee (but not the Archive Capital Fee).

- 12.7 Laws and Jurisdiction of the United States of America Controlling. This Agreement shall be interpreted and construed according to, and governed by, the federal and state laws of the United States of America, excluding any such laws that might direct the application of the laws of another jurisdiction. The Parties expressly exclude, if applicable, the application of the United Nations Convention on Contracts for the International Sale of Goods. Any controversy or claim arising out of or relating to this Agreement or the breach thereof shall be subject to the exclusive jurisdiction of the courts of the United States of America, excluding any laws that might direct jurisdiction to courts outside of the United States of America.
- 12.8 Discontinuance of ARTstor. ARTstor intends to maintain the ARTstor Digital Library and to make it available for noncommercial educational and scholarly purposes on an ongoing basis. However, should exigent circumstances so require, ARTstor reserves the right to discontinue and/or cease operating the ARTstor Digital Library. Should ARTstor discontinue and/or cease operating the ARTstor Digital Library, it would provide notice to Licensee and other users of the ARTstor Digital Library, and would make efforts to transfer the ARTstor Digital Library to another nonprofit institution and to have it made widely available for noncommercial educational and scholarly purposes. However, Licensee recognizes that such transfer may not be possible and agrees that ARTstor shall not be liable whatsoever should ARTstor cease to exist and should such transfer not be made.
13. **Miscellaneous.**
- 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. It is understood, however, that the terms and conditions of this Agreement shall not supersede or modify any other written agreement between the Parties concerning provision of ARTstor Content by Licensee for the ARTstor Digital Library or similar matters; any and all such agreements shall continue in full force and effect in accordance with their terms. This License Agreement shall not be modified or amended except by writing duly executed by authorized representatives of the parties (except that the Privacy Policy may be amended from time to time, as set forth in section 6.2).
- 13.2 No Assignment and No Third Party Beneficiary Rights. Neither Party to this Agreement shall assign, transfer, subcontract, or sublicense this Agreement or any of the rights and obligations hereunder, without the prior consent of the other Party. Notwithstanding the foregoing, ARTstor reserves the right to use fee-for-service entities to perform specific services on behalf of ARTstor, provided that such entities are obligated to comply with the applicable terms and conditions herein (including but not limited to terms relating to security and privacy). This Agreement has been executed for the sole benefit of the Parties that are signatories to this Agreement and is not intended for the benefit of any third party. The Parties expressly disclaim the creation of any third party beneficiary rights under this Agreement and agree that no third party shall have any rights under this Agreement.
- 13.3 No Agency, Joint Venture or Partnership. Nothing contained herein shall be deemed to create an agency, joint venture, or partnership relationship between the Parties.
- 13.4 Waiver or Invalidity of any Provision or Breach. Waiver of any provision herein shall not be deemed to be a waiver of any other provision herein, nor shall waiver of any breach of this Agreement be construed as a continuing waiver of other breaches of the same or other provisions of this Agreement. If any provision or provisions of this Agreement are held to be invalid, illegal, unenforceable, or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 13.5 Force Majeure. No Party shall be in breach of this Agreement if a failure to perform an obligation hereunder results from a condition(s) that is beyond the Party's reasonable control, including, but not limited to strikes, labor disputes, terrorist acts, or governmental requirements.
- 13.6 Use Outside of the United States of America. Should Licensee and/or its Authorized Users access the ARTstor Digital Library outside of the United States of America, such access will be through ARTstor servers housed in the United States of America, or such other server(s) as may be determined by ARTstor. Licensee understands that performance of the ARTstor Digital Library when accessed outside of the United States of America is subject

to available transmission bandwidth and other factors beyond ARTstor's control, and may not equal performance of the ARTstor Digital Library when accessed within the United States of America. Licensee agrees to comply with all applicable laws and regulations in its exercise of the License. Licensee agrees that, should it use the ARTstor Library outside of the United States of America, it will effect or obtain any necessary governmental or regulatory filings and approvals required outside of the United States of America in connection with its use of the ARTstor Digital Library in such countries and will pay any costs associated therewith. Should Licensee access the ARTstor Digital Library from a country outside of the United States of America, Licensee will inform ARTstor of any laws in such country of which Licensee becomes aware that require any change to this Agreement. ARTstor may revoke access to the ARTstor Digital Library in any country outside the United States of America if warranted, in ARTstor's sole opinion, by the laws or regulations of such country.

13.7 Counterparts. This Agreement and any Amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one agreement.

IN WITNESS THEREFORE, the parties have caused this Agreement to be executed as of the Agreement Date in Attachment A hereto.

Licensee: Regent  University of California


Name: 


Printed: 

Title: Director, Business Services

Date: 7/31/07

ARTstor Inc. 

Name: 

Printed: 

Title: General Counsel and Secretary

Date: 8/29/07

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ATTACHMENT A
ACCESS INFORMATION AND PAYMENT TERMS

This Attachment A is an addendum to the ARTstor Digital Library License Agreement, and incorporates by reference all of the terms of the ARTstor Digital Library License Agreement between ARTstor and the Licensee listed below.

(Please type or print clearly)

Licensee (Institution Name): Regents of the University of California
Licensee Address: California Digital Library, 415 20th Street, 4th Floor
Oakland, CA 94612 USA
Agreement Date: August 1, 2007
Term of Agreement and Renewal Terms: Initial three-year term, automatically renewable upon payment for additional one-year terms.

Contact Information: Please ensure this information remains current by providing regular updates.

Licensee Primary Contact (required):

Main contact between ARTstor and Licensee
Responsibilities include overseeing subscription

Attn: [REDACTED]
Title: Acquisitions Coordinator
Address: Geisel Library, Univ. Calif.
99500 Gilman Drive, #0175A
La Jolla, CA 92093-0175 USA
Telephone: [REDACTED]
Facsimile: 858.534.1236
E-Mail: [REDACTED]

Licensee Secondary Contact (optional):

Assists in overseeing subscription

Attn: [REDACTED]
Title: Licensing Manager
Address: 415 20th Street, 4th Floor
Oakland, CA 94612
Telephone: [REDACTED]
Facsimile: 50.987.0243
Email(s): [REDACTED]

Licensee Contact for Legal Notices:

Attn: [REDACTED]
Title: Licensing Manager
Address: 415 20th Street, 4th Floor
Oakland, CA 94612
Telephone: [REDACTED]
Facsimile: 510.987.0243
E-Mail: [REDACTED]

Licensee Technical Contact (required):

Responsible for providing access information to ARTstor

Attn: [REDACTED]
Title: Sr. Development Programmer
Address: 415 20th Street, 4th Floor
Oakland, CA 94612
Telephone: [REDACTED]
Facsimile: 510.287.3825
E-Mail: [REDACTED]

Licensee User Support Contact (required):

This contact's name, email address and/or telephone number will be made available through the ARTstor website as the person to reach for local user help.

Attn: [REDACTED]
Title: Sr. Information Svcs Analyst
Address: 415 20th Street, 4th Floor
Oakland, CA 94612
Telephone: [REDACTED]
Facsimile: 510.893.5212
Email: [REDACTED]

ARTstor Primary Contact:

User Services
ARTstor Inc.
151 East 61st Street
New York, NY 10021
Telephone: 212-500-2400
Facsimile: 212-500-2401
Email: userservices@artstor.org

ARTstor Contact for Legal Notices:

[REDACTED]
General Counsel & Secretary
ARTstor Inc.
151 East 61st Street
New York, NY 10021
Telephone: [REDACTED]
Email: [REDACTED]

If this license is to cover multiple campuses or locations, please list the campuses below:

Note: ARTstor may consider certain campuses or locations to be separate institutions, and fees and license terms will be determined accordingly.

[see Attachment B] _____

IP Information (addresses or domain ranges for computers at your institution(s)):

Note: If IP information is not available upon completing this Agreement, ARTstor staff will contact the Technical Contact listed above to obtain the information and initiate access. ARTstor reserves the right to delay access if adequate IP information is not provided.

IP Addresses: [see Attachment C] _____

Are you currently using a proxy server to provide access to restricted resources? Yes _____ No _____

If yes, please indicate the type of proxy server: _____

If yes, please provide the IP information of the proxy server: _____

Are all of the above IP addresses static and restricted to use only by your institution? Yes _____ No _____

Please also provide the URL of the web page that offers information about how to use the proxy: _____

Do you have plans to use a proxy server in the future? Yes _____ No _____

Do you provide to users any other means of access to restricted resources from machines outside of your institution's IP domain? Yes _____ No _____. If yes, please describe. _____

If you are a museum, did you complete a Network Performance Test (contact participation@artstor.org for details)?

☐ Yes ☐ No

Payment Terms:

Full Time Equivalent (FTE) Enrollment (*undergraduate plus graduate*): _____

ARTstor Classification: (*to be completed by ARTstor*) See Attachment B

Archive Capital Fee (ACF): (*to be completed by ARTstor*) See Attachment B

Annual Access Fee (AAF): (*to be completed by ARTstor*) See Attachment B

The total Archive Capital Fee shall be due and payable thirty (30) days after the date of invoice. Licensee shall be invoiced for the total Annual Access Fee indicated above on or about the beginning of every calendar year during the initial and renewal terms of this Agreement. The above total Annual Access Fee for the first year shall be prorated to reflect the number of months remaining in the calendar year following the date access to the ARTstor Digital Library is established. Furthermore, the above total Annual Access Fee for the first and second calendar years shall be prorated to reflect the difference between the 500,000 images in total anticipated in the Charter Collection by the beginning of calendar year 2006-07, and the actual number of images available at the beginning of the calendar years 2004-05 and 2005-06, and shall be due and payable thirty (30) days after the date of invoice. The Annual Access Fees and Archive Capital Fee are subject to reasonable annual increases.

Any payments made more than thirty (30) days after they are due and payable shall be subject to a 10% annual interest charge.

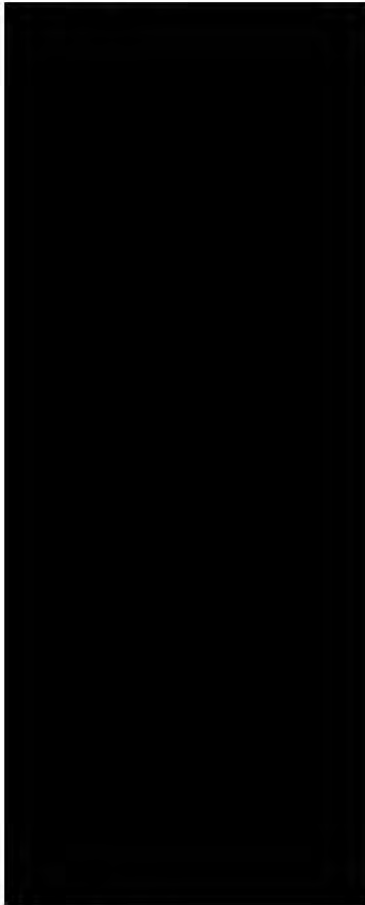
All payments shall be made by check payable to ARTstor Inc.

ATTACHMENT B

Institution	Classification	ACF	AAF
University of California, Berkeley	Very Large		
University of California, Davis	Very Large		
University of California, Irvine	Very Large		
University of California, Los Angeles	Very Large		
University of California, Merced	Very Small		
University of California, Riverside	Large		
University of California, San Diego	Very Large		
University of California, San Francisco	Very Small		
University of California, Santa Barbara	Very Large		
University of California, Santa Cruz	Large		
University of California Office of the President	Special		

ATTACHMENT C
UNIVERSITY OF CALIFORNIA
IP ADDRESSES BY CAMPUS

UC Berkeley



UC Davis



UC Irvine



UC Los Angeles



UC Merced



UC Riverside



UC San Francisco



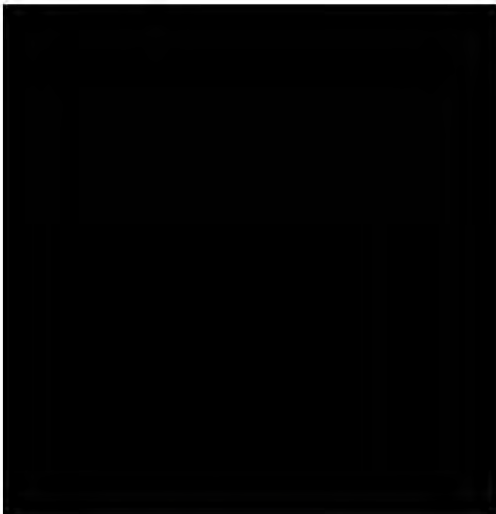
UC Santa Barbara



UC Santa Cruz



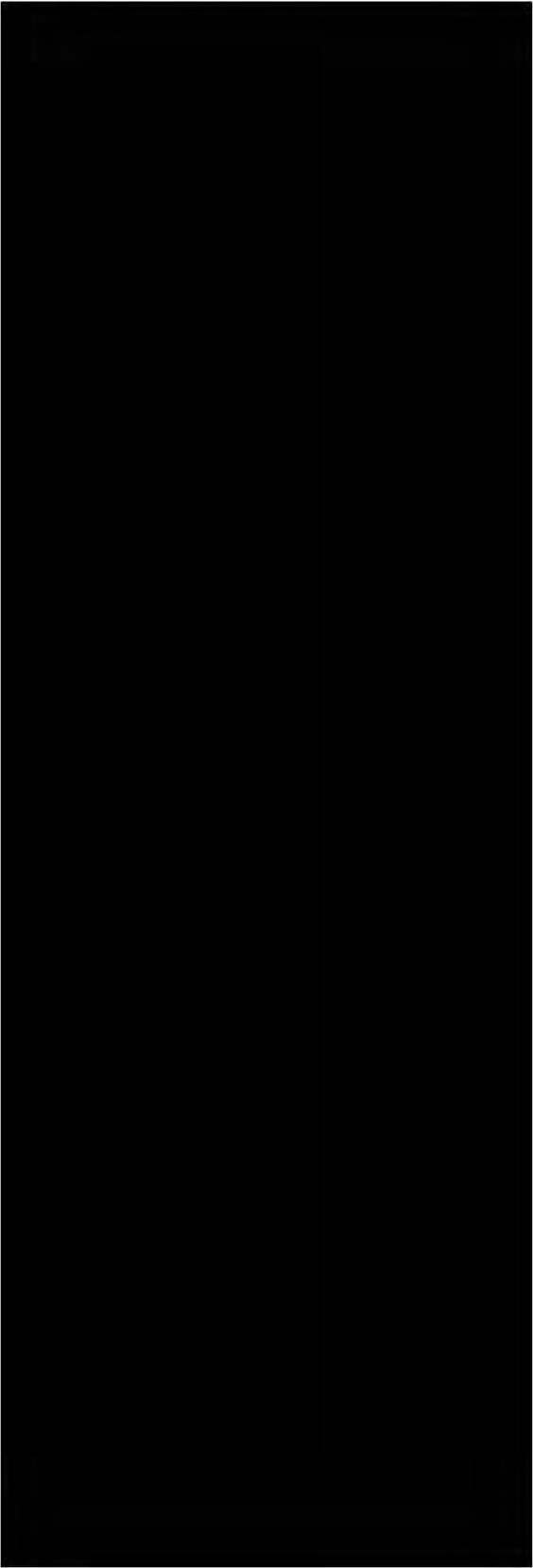
UC San Diego



UC Office of the President - California Digital Library



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ATTACHMENT D
ARTstor PRIVACY POLICY

ARTSTOR PRIVACY POLICY

ARTstor is committed to protecting the privacy of the users of its website and the ARTstor Digital Library. To better inform you of our policy concerning user privacy, we have adopted the following guidelines. Please note that these guidelines are subject to change, and any such changes will be posted on this page in the ARTstor website.

The Information ARTstor Collects

You can perform all of the functions in the ARTstor Digital Library without providing ARTstor with any personally identifiable information. You can view the ARTstor Charter Collections, for example, and perform other functions while maintaining anonymity.

If you elect to save electronically image groups and set user preferences so that you can subsequently retrieve them, you must go through ARTstor's site registration process. During this process, we will ask you for your email address (which can be any email address) and will ask you to create a password of your choosing. By providing us with your email address, ARTstor will be able to connect user preferences and saved image groups to the email address, allowing us to retrieve your image groups and preferences should you forget your password.

Maintenance of Image Groups

Some institutions currently facilitate the use of their digital resources by providing administrative support for the use of such resources, such as helping save materials into course folders, or removing materials that are no longer needed. To provide such support, one or more representatives at an institution, such as a library administrator ("Institutional Administrator"), may need to associate such electronic materials with the individual who created them, so that they can determine, for example, whether a particular user wants to continue to maintain such materials.

If you elect to register as a user of the ARTstor Digital Library or to save electronically image groups using tools from the ARTstor Digital Library, you give ARTstor permission to provide the Institutional Administrator the email address that you used to register with ARTstor. You also give the Institutional Administrator or ARTstor (should the Institutional Administrator so direct us) permission to access the image groups that you have created, to make changes to those groups (including deleting such image groups, either in full or in part), and to contact you at the email address you have provided with respect to such image groups, for the purpose of administering and supporting the institution's subscription to the ARTstor Digital Library. Your having given the Institutional Administrator and ARTstor permission to perform these roles does not necessarily imply that these activities will be performed at your particular institution. Please contact your Institutional Administrator if you have questions about institutional policy in this area.

Such access is not intended to compromise your individual privacy. ARTstor does not require you to use an email address that reveals your name or other personally identifiable information.

Participation in Optional Surveys

ARTstor will seek to conduct surveys on the ARTstor website, or to send surveys to selected groups of ARTstor registered users, who have given us permission to send them email, for purposes of better understanding users' needs and interests, and for improving the ARTstor

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Digital Library and site over time. In those cases, we will link the voluntary survey results to the registered user's email address. Participating in such surveys is optional.

Information Collected with Technology

ARTstor collects some non-personally identifiable information about you through its use of technology, so it may not be readily apparent to you that it is being collected. For instance, when you come to our site, your IP address is collected so that we know where to send information you are requesting. An IP address is often associated with the place from which you enter the Internet. We also may collect other non-personally identifiable information, such as the type of browser you are using (e.g., Netscape, Internet Explorer), the type of operating system you are using (e.g., Windows 2000 or Mac OS), and the domain name of your Internet service provider.

ARTstor's Use of Cookies

ARTstor employs "cookie" technology. Cookies are small pieces of text that are stored on your computer and act as a tool for controlling certain system variables and storing system configuration information in the WWW environment. ARTstor uses cookies to store user preferences, such as for viewing and printing, and to store authentication information. ARTstor does not link cookie data with personally identifiable information. No personal information is extracted in the cookie setting process, and we do not use cookies to identify what other sites or pages you have visited. We do not involve advertisers, who may place a cookie on your browser, in the operation of our site.

We require users to agree to our Terms and Conditions of Use.

Use of the Information

We use the information you provide to facilitate your use of the ARTstor Digital Library, to respond to your inquiries about ARTstor, to improve the design of our site, for system administration and troubleshooting purposes, to correspond to users (where possible), to enable us to respond to uses of the ARTstor Digital Library in violation of the ARTstor Terms and Conditions of Use, and to track and analyze site usage.

Security

We have physical, electronic, and managerial measures in place to prevent unauthorized access to the information we collect online. We do not, however, claim any responsibility for information collected by or from websites linking to or from ARTstor.

Sharing Information

Except in special circumstances, as outlined herein, ARTstor does not share information you provide. ARTstor does share general usage data in aggregated form, so that no personal information is identifiable, to institutions licensing the ARTstor Digital Library, content providers, and the general public. ARTstor will make available to you all of the personal information that you provided ARTstor (where applicable), on request.

Compliance With Legal Proceedings

ARTstor may disclose personal information if required to do so by law or if we believe in good faith that such action is necessary to comply with the law or a legal proceeding, to protect against violations of our Terms and Conditions of Use, or to protect and defend our rights and property or the rights and property of contributors to the ARTstor Digital Library.

Opting Out

ARTstor will remove you and your personal information from our database on request. Please note that this may cancel your access to the ARTstor Digital Library.

Contact Us

If you have any inquiries about ARTstor's privacy policy or its implementation, you may contact us at userservices@artstor.org.

Last updated on January 10, 2005