

**38189**

**MILE**

**MILE IPR Case Study Seminar**

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***eContentplus***

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<sup>1</sup> OJ L 79, 24.3.2005, p. 1.

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## 2. Seminar flyer

Please double-click on the flyer and scroll down for full version and list of speakers.



David Rindoch Walker (1755-1828) *Shaking or Distinguishing Lock by Sir Henry Raeburn (1756-1824)*  
National Gallery of Scotland

A QUEEN MARY EVENT  
IN ASSOCIATION WITH BAPLA AND THE BRIDGEMAN ART LIBRARY

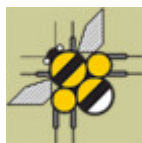
**BRIDGEMAN VERSUS COREL:**  
Copyrighted creativity or commerce?

Thursday 3rd May 2007 9.30am - 5pm  
Queen Mary's College, University of London

Lunch 12.30pm Tickets £50

**For further details and bookings contact:**  
Ms. Sandra Baird, Centre for Commercial Law Studies,  
Queen Mary, University of London, 13-14 Charterhouse Square, London EC1M 6AX  
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### 3. Seminar agenda and list of speakers



# The Bridgeman Art Library

## Bridgeman versus Corel: Copyrighted creativity or commerce?

**Thursday 3<sup>rd</sup> May 2007**

**Venue (subject to confirmation):  
Queen Mary's College, University of London**

### MORNING PROGRAMME

- 09.30am Coffee and registration  
10.00am Opening speech: Linda Royles, BAPLA  
10.20am Lecture on fine art photography: Philip de Bay (ex-V&A photographer)  
lectures and demonstrates on the skills required for fine art photography  
11.00am Review of Copyright and Photographs: Christine Michalos  
12.00am Review of Copyright Law: Professor Adrian Sterling

### AFTERNOON SESSION

- 14.00pm Chair and opening speech: Dr Uma Suthersanen  
14.20pm Keynote speaker: Marybeth Peters on the US perspective to the Corel case  
15.00pm Questions and setting the problem  
Panel
- Thomas Dreier: German and EU perspective
  - Corbis lawyer (name tbc): French perspective
  - Dominique Green Magnum (tbc)/Adrian Sterling/Jonathan Griffiths: UK perspective
  - Judge to sum up and pull debate together: Andrew Sutcliffe QC
  - Final statement on how the decision has affected the museum community and its international ramifications: Harriet Bridgeman

**CLOSE**

## 4. Seminar Report

*Bridgeman v Corel*  
**Copyrighted creativity or commerce?**  
**3 May 2007**

Report by Maria Mercedes Frabboni  
Queen Mary, University of London

The event “Bridgeman v Corel - Copyrighted creativity or commerce?”, organised by Queen Mary College (University of London) in association with BAPLA (the British Association of Picture Libraries and Agencies) and the Bridgeman Art Library, was the occasion of the re-enactment of the 1999 legal challenge brought by the Bridgeman Art Library against Corel Corporation (36 F Supp. 2d 191 (S.D.N.Y. 1999)). A review of the issues involved in that case lead to a vibrant and inspiring discussion about the problem of establishing an originality threshold in relation to photographs and the subsequent grant of exclusive right.

The conference gathered IP experts from the academic world, practitioners and professionals of the art. Such diversification of skills and expertise provided the audience with the opportunity of considering the art of making photographs from an interdisciplinary perspective.

The conference started off with a brief introductory address by Dr Uma Suthersanen who gave an overview of the critical points involved in granting copyright protection to photographs and of the ongoing discussion that such topic generates.

After Dr Suthersanen, the floor was left to Lady Bridgeman who discussed some practical aspects of producing photographic slides of works of art and managing them through licensing schemes within the framework of copyright legislation. In the context of the Bridgeman Art Library, which is “the world’s leading source of fine art with images from over eight thousand collections and twenty nine thousand artists”, it is clear that the enforceability of copyright protection on photographs was said to be crucial. Lady Bridgeman insisted on the fact that the impossibility of relying on copyright law could produce the negative effect of preferring contractual instrument. It was argued that a similar choice could undermine the intrinsic positive effect that copyright generates for the public.

The core of the problem in connection with photographs of fine art (taken for example for the purpose of being included in a catalogue) is that the photographer will try to replicate the effects without interfering with personal interpretation of it. Would the skill and labour put on this process be of the appropriate type to qualify for copyright protection? This matter was addressed by Philip de Bay, a specialist fine art photographer who since 1973 has working with many leading museums, art dealers, private collectors and contemporary artists. He illustrated the process of making photographs of fine art with the use of some props (such as the high quality films required to take photos of a piece of art in this context). He commented that that taking a picture leaves its fingerprints, in the sense that, even if a common observer would not notice the differences existing in the style of the different photographers of fine art, the expert would be able to recognise the use of certain techniques that a specific photographer might prefer. The technical choices, recognisable only by experts in the field, represent ‘fingerprints’ and should be sufficient to determine that also the skill and judgement deployed by a photographer of fine art gives rise to an original work.

## MILE IPR Case Study Seminar

After the review of the technical aspects that photography of fine art entails, the task of reviewing the regulatory framework laid down under copyright law was left to the expertise of Professor Adrian Sterling, specialist of national and international copyright law and author of the treatise *World Copyright Law*. Professor Sterling began his presentation by offering to the audience a review of the principles that inspires copyright law in France, United States, Canada and Australia. In considering which of the different principles should be adopted as a common threshold in the evaluation of originality of photographs, Professor Sterling submitted that the choice should be principally inspired by the idea of copyright as a 'discipline of respect' which develops in a form of respect to be granted to the author as well as in a form of respect to be granted to the public interest.

Christina Michalos, author of *The Law of Photography and Digital Images* and specialist in the field of media and entertainment law, developed Professor Sterling's introduction to copyright applicable to photographs, and discussed the meaning and applicability of the UK statutes (sections 4(1) and (2) of the CDPA). In the second part of her presentation, Christina focused on the *SHL Imaging Inc v Artisan House* decision and on the effect of such decision in the recognition of the boundaries of copyright protection in respect to photographs, which seem to give as a result the enforcement of a 'thin' form of copyright.

Linda Royles, BAPLA's CEO (BAPLA is the UK trade association for picture libraries and the largest organisation of its kind in the world - with over 400 member companies, it represents the vast majority of commercial picture libraries and agencies in the UK), offered a brief overview of the issues that digitalisation has brought to the field of photographic works managed by picture libraries. In particular, she mentioned that in the current scenario, there is a persistent fear that legal provisions are inadequate instruments which actually refrain the photographer from carrying out his activity and exploiting it commercially.

## Q& A session

Thomas Drier, expert of copyright law and new technologies and Professor at the University of Karlsruhe, could not participate in the event but sent his contribution in the form of a video recording. His speech described the problems of *Bridgeman v Corel* from a continental perspective and he concluded that despite the efforts put in harmonisation and the consequent effect of community law in the Member States, there could still be instances of conflict of law and ultimately the UK would grant a higher level of protection. This risk must not be underestimated given the possible effects of market segmentation, which would contradict the principle of free movement of goods within the territories concerned.

Two representatives from Magnum Photos (a photographic co-operative of great diversity and distinction owned by its photographer-members) presented the works handled by their organisation and focused on the role that certain photos have acquired in the way (recent) history is told. An example was of course Stuart Franklin's famous photo of Tien An Men Square. Every photograph and the story behind illustrate a segment of history.

Claudia Andrieu, from the Picasso Administration (the Picasso Administration acts for and on behalf of the Succession Picasso. It handles all requests for the use of the works, the likeness, and / or the name of Picasso) described the work of the institution of which she is legal representative. Such activity which mainly consists in managing all initiatives directed to the capitalisation of Picasso's name. Claudia insisted on the need to look at the different ways of exploiting an artist's name and works (which are still under the term of copyright) from a

comparative perspective. As an example, she referred to the moral right litigations in which the Administration was involved in the US. She highlighted that all legal disputes on this matter were won even if, traditionally, the US copyright doctrine is adverse to the concept of moral rights. Copyright, however, is not the only intellectual property right involved in the economic exploitation of Picasso's name and works. Legal disputes on trade marks ground were said to be more difficult. Claudia stressed that one of the goals of the Administration is to promote an international and cohesive concept of copyright, but also to fight the risk of generalisation in the definition of the relevant rights. In this sense, she said, it would be useful to consider the element of originality without looking at the process but specifically by considering the result of the effort produced by an artist.

Theodore Feder, founder and president of Art resource, Inc (an American company that provides and administer high quality images of works of painting, sculpture, architecture and the minor arts from most of the world's major museums, monuments, and commercial archives) discussed insights of the American perspective and concluded that the approach now taken in the US is to rely on contracts and the remedies provided under contract law as principal instruments for the exploitation of photographs.

Marybeth Peters, who has served as the United States Register of Copyrights since 1994 and was involved in the original *Corel* case, proposed her views on the constitutional matters that copyright law raises in the US, starting with the protection which was initially granted to 'authors' in their writings. At the beginning, federal law protected maps, charts and books. The first entries that were recorded in the Register concerned mainly spelling and teaching books. What was the notion of writing then? How much / which type of creativity was really required to successfully register a work? And of course, in the context of the conference, is a photo to be considered as a 'writing'? Photos can be considered as writings in as much as the photographer made artistic decisions when he took his photos. Therefore, ordinary photographs should not be covered by copyright. On the other hand, when considering art and the concept of originality, Marybeth reminded that the fine art of today can be the trivial art of tomorrow, but insisted that the element that should count more than any others is the decision made by the person creating the work while creating the work.

The final part of the conference was the re-enactment of the trial in *Bridgeman v Corel*. Richard Edwards was acting as the judge, Professor Sterling for the claimant and Dr Suthersanen for the defendant. Despite Dr Suthersanen's detailed submission that protection given in cases of slavish copy would be detrimental to the public interest, the judge accepted the Professor Sterling's submission that a photograph is not a painting and therefore it cannot possibly be a slavish copy of the painting. It is questionable whether the photograph would qualify as the 'author's own intellectual creation' under Community law, but this is not necessarily a problem given that the law used in the case was UK law.

## 5. Keynote Speaker Presentations:

### 5.1) Linda Royles, CEO of BAPLA

I have often remarked what a privileged position I am in to have run an association for the past eight years that represents photographers, specialist collections, multinational corporations and cultural institutions ....that have made photography their life's work. To see how photography depicts and records, creates and recreates the world around us. It is a media of paradox; capturing all in life that is powerful, and weak, profound, and profane, creative, and banal, newsworthy and historic.

I won't dwell upon the various and multiple levels where photography interacts with the law – for there are many – from privacy, human right or the database directives – of say celebrity or medical images or shots of people in public places... of trade marks of buildings or indeed faces that appear in an image... to issues of access which control whether photography can take place, for example a photographer in the UK cannot take a picture of a footballer within a two to three mile radius of the football stadium.

For these and many other issues that make this medium of photography both easy and difficult to comprehend, they are eloquently covered in the book we consider our bible at BAPLA office – Christina Michalos's “ law of photography and digital images”, and we are delighted to have Christina here today.

Nor will I dwell on the variances of law which will forbid the photographing of subjects whilst being arrested in one country.... but can appear freely in others (France), or indeed that there are copyright restrictions in a building by night, but not by day, as international comparatives in law will be best covered by our international guests and friends, who we sincerely thank for coming over to be with us here today.

BAPLA members have to juggle with these legal tensions and navigate within a rights framework particular to the UK and internationally. Furthermore local values and morals, the dictates of the client and the market economy, and the demands of the creator also need to be observed and managed. I want to highlight that photography does not behave like other creative media, it is not consumed in the same way as music, or film or books are consumed.

Firstly the very act of looking at an image is consumption. Secondly the majority of photographs are licensed by creators through third parties – to appear in print – in books and magazines, online, in adverts, in film TV etc. Essentially most commercial photography works within a business to business relationship (as we are not talking about wedding or personal photography here) – as opposed to a business to consumer or a consumer to consumer relationship. For the main, businesses who work in IP will respect copyright.

The business of photography brings with it tensions between creator on the one hand and exploiter on the other. To manage these relationships picture libraries and agencies have created complex systems to manage the interests of both parties. By way of example one of our members, Corbis owned by Bill Gates, has categorised 800 different restrictions from photographers on how a photograph may be used by a client.

Depending upon the photographer and the nature of the image, a work will be commissioned ... or licensed. It is predominantly within the latter model that our members operate. Incidentally there are more picture libraries and agencies here in the UK than in any other country – and

BAPLA represents over 430 of these companies who in turn manage the work of over 400,000 photographers worldwide.

There have been two broad driving influences on the work of BAPLA – the first is for its members to adapt to new technologies – changing from an analogue workflow to a digital work flow – from physically searching through cabinets and delivering a transparency or set of transparencies often by post to a client to the more common practice today of online searching and sending digital files. – the enormity and skill of this work to shift from analogue to digital work flow and the legacy of transforming, restoring and preserving over 100 years of print, glass plate and photographs stored in 35mm and medium format transparency can not be underestimated.

The second issue which we are wrestling with is the creation of new business models. We can now consume TV over the internet, books online, and soap operas on mobile phones. Clients want more and more rights to manage and control images across multi platforms, across territory and create products which are not viewed just once but essentially in perpetuity. We will never miss our favourite TV programme (and no we don't need to know how to programme a video recorder), we can download content when we want, consume a weeks worth of images and text in one online newspaper anywhere in the world. Creating business models to delivery safe content that is fit for today's content world, which will enable to the process of digitisation on the one hand and the management of relationships between creator and user has become more complex and economically challenging today. Today [SA1] we are wrestling the world that is awash with images and user generated content, more complex [SA2] and far reaching methods of distribution and the most profound misunderstandings about copyright and the need to protect its creative source.

One such initiative from BAPLA is to promote best practice in the crediting of images, particularly with newspapers and particularly as these move on line, our campaign is called credit where credit is due. We do not wrestle with the crude debate of whether photography is merely a copy or indeed is it an art form. For us photography is a way of life, for most a business, for all it is an art form. In the words of Victor Burgin Professor of Media Philosophy and History of Consciousness “manipulation is of the essence of photography; photography would not exist without it. First the photographer manipulates what comes over in the image; second, that as a result... his or her audience's beliefs about the world are manipulated” (visual culture the reader).

Rupert Grey formerly of Farrers was telling me of a debate coming up in 2009, Oct I believe which I think will challenge the Anglo-American notion of knowledge and IP that sits with us today. This debate will look at what is the central contribution of knowledge to the economy — the relationships between human beings. The value of a company will not be quantified merely by the collateral of its customer base or indeed its products. Value is also in the relationships that are created between these interactions. The relationship that that Bridgeman art library, for example has fostered with its cultural institutions and business partners is as a much a part of this knowledge economy as the skill involved in taking a professional image and bringing this content into a wider cultural platform – to manipulate and inform our understanding of reality.

To paraphrase Mahatma Gandhi who stressed the importance of principled relationships, “the purity of the means, for the achievement of noble ends and the inviolable connection between the two”. Selected works vol 1. For the moment, for us practitioners in this economy, the underlying balance of power is that copyright is a monopoly and also a restrictive right. As

media organisations grow in size and strength the role and function of copyright must be upheld and preserved. Copyright is about protecting the rights of the creator. It is central to the visual culture and economy.

For further information about BAPLA, or if you wish to see in person over 150 exhibiting members, attend any of our lectures, I invite you to come free of charge to the show we launch next week called the picture buyers fair, the business design centre, London. Thank you.

## **5. Keynote Speaker Presentations:**

### **5.2) Philip de Bay, Fine Art Photographer**

Good morning. I am delighted to be here today and as I am sure you have noticed from the agenda, I come here not only as a practising fine art photographer but also as the owner of a substantial collection of historical and archival images aimed toward the 'Art Editorial Market'. The issue of protecting copyright is very much in the forefront of my business and I obviously want to protect my own interests and that of future generations.

The focus of my talk is the creation and protection of high quality images. Images which can only be created by a photographer with the necessary skills and specialisation in the field of Fine Art Photography. The skill set required is different to say those required for photo journalism – an example of this would be the recent works by Don McCullum, the famous war photographer when he visited Africa, which were featured recently on the 10 o'clock news.

You might ask why I ended up specialising in Fine Art Photography. My interest in fine art started when I bought my first watercolour at the age of 14 and I count myself fortunate that I have been able to pursue a career where I can combine my passion with putting food on the table!!!! Many of us are not so fortunate. A Fine Art Photographer works mainly with large format cameras to produce a high quality transparency – generally 5x4 or if the object is exceptionally large e.g. a tapestry or a very large oil then it is likely that a 10x8 camera would be more advantageous. The reason a large format camera is used is because it has movements – by this I mean that the lens and back can move both vertically and horizontally. There are a few other tricks which I won't go into.

Advances in the digital arena now enable fine art photographers to fit large format digital backs to their cameras. In this instance, the photographer would be required to produce a minimum 50 megabyte file. The cost of a digital back takes this beyond the grasp of an amateur. There is, however, always the exception to the rule and there will be someone who has produced a good 35mm slide/digital file which, at first glance, when projected looks acceptable. Today is not about the exceptions – it is about professional fine art photography and the skills required.

An important factor when photographing an oil painting is that it must never be regarded as a 2-d object. The likes of Monet, Renoir, Degas, Picasso to name but a few would be dismayed if they were to be told that their brush strokes were flat and had no character – albeit there are some oils which are livelier than others. Then we come to watercolours, pastels, drawings, engravings etc. It would be unrealistic if I were to say they require as much skill but they still require a high level of attention to detail.

As a professional I know that an object behind glass will have a green cast and therefore needs careful lighting. An object could be stuck in a corner and screwed to the wall – again much attention to detail is required to ensure a high quality image. I wish I could say – 'what's the big deal' – stand in front of the object, centre the camera lens, release the shutter and the rest is history. The end result will be a disaster – the object will look distorted, the shadows will be in the wrong place, you might even see a reflection of yourself! In essence, I arrive at the gallery with my equipment – not an angle poise lamp and a box brownie camera – there have been many occasions when I have wished that were the case. The reality is rather like being an orienteer with a trolley!! One frequently finds oneself going down a series of long corridors, up several flights of stairs (lifts are a rare breed) through a couple of galleries, turn left or right and suddenly you are there and you realise why no-one had told you beforehand. Someone once said to me that you rarely see an overweight photographer – I wonder why?

Now let's look at how I go about creating a high quality image which will be suitable for the picture market. A high quality image is one which is suitable to be scanned to a defined specification. Scanning is carried out by a skilled technician who is creating an exact copy of the original master transparency in a digital format - the creation of a high quality scan is only as good as the original it is taken from. Prior to this becoming commercially viable and acceptable to the publishing community, technicians would create an exact copy of an original master using duplicate film.

The most important aspect of any assignment is to retain the integrity of the original. This means that I must always study any object I am photographing in detail to ensure that I understand what the artist was trying to convey, e.g. where was the sun – was it left right or centre when the original was painted? Where do the shadows fall?

I will set up slightly off centre (top left or right), and probably well above the centre line. Why, you might ask do I do this and what do I achieve – the answer is simple – I am gaining depth of colour or as we call it in the trade 'saturation'. The choice of lens is critical as you want to fill the frame and yet be far enough away from the object to prevent flare. Flare is bounced light coming back within the optic scope the lens is covering.

Lighting is of paramount importance – lights must be critically positioned to maintain the character of the object bearing in mind where the light came from in the original – incorrect lighting can fundamentally alter the effect the artist wanted to show. Whether flash or tungsten are used, the light must be carefully monitored to produce the correct colour temperature for the film being used. Kodak issues a colour patch which is accepted as industry standard worldwide. These colour patches form part of a CT and are always placed at the bottom or to the side of the original – this enables the printer to measure from pure white to black. All these factors help create a unique image at the moment the shutter opens.

I would now like to briefly explain what makes my picture unique and how you could prove such if you needed to. Firstly, there is the film. In short there are two manufacturers – Kodak and Fuji – they each produce two types of film suitable for fine art - daylight (flash) or tungsten. The film has a neutral balance and comes in two different speeds for both types of lighting, i.e. fast and slow. This gives eight variations as a possible source for an image. Each piece of film may be identified by the maker's name and a batch number. All sheet film has a series of notches at the bottom right hand corner. This notching is individual to every different type of film. All professional film is made to react to a critical colour temperature, Tungsten is 3200kelvin and daylight is 5500k. The above factors alone could be very useful when proving the source of an original/master transparency.

Secondly, there is the positioning of my lens and lights, the way I might feather in the light to show shadow detail, and you have any number of combinations. Every photographer will have their own way of doing things. All this can be measured – if you were to magnify one square inch of the original CT from the canvas say 100 times, then carefully magnify the equivalent square inch of a copy of the same or a high res scan it should be possible to see the characteristic traces of the original. At this stage some things will be obvious while others may require more in depth scientific testing. I will show you an example of this at the end of my talk.

In technical terms if you measured with appropriate scientific instruments the angle of the lens, the way the light falls on the object and other variables, you are able to define your originality. A 3-d object is going to be easier to detect than a 2-d object.

Let's move onto what a picture library wants. They are continuously looking for a high quality marketable image which will reproduce well. A few examples of the criteria they set are:

- 1) size of transparency in relation to the original
- 2) full saturation of colour
- 3) well exposed shot where the colour curves cover the full width of hues i.e. Details in the white highlights and also in dark shadows
- 4) evenly and fully lit so all the detail – such as brush strokes or stitching in a tapestry – is well recorded
- 5) interesting subject matter.

A failure to meet these criteria means that when a scan is made to reproduce the image from the original piece of film, the finer detail will not be picked up thereby giving an unsatisfactory result. This is very evident in cheap publications.

If you are the custodian of an object. the simplest and most cost effective way to protect yourself is to restrict the availability of photography. Good housekeeping is essential. It should however be borne in mind that to take a professional, commercially viable, high quality image a person would need all the appropriate equipment. Your first line of defence is to restrict availability, and extra care should be taken if an object leaves your premises on loan. Your loan agreement should almost certainly contain a restrictive clause.

When the original piece of film is duped or electronically scanned the dilution of the image does not always help your cause. In some cases it will still be obvious that it came from that particular piece of film. I stress again, you must make availability limited remembering that although you may have the original object it may not be unique to you as over the centuries copies may have been made. A good example of this would be Durer engravings from his original drawings. For most institutions and contemporary artists, the best form of protection is to place their images with a well established and reputable picture library. They have strict guidelines in place and it is their responsibility to police copyright infringements. The other advantage of using a picture library is that when they send images out on loan, they do so with very strict terms of business and this alone is one of the **main defences** you have in the protection of your imagery.

I think we all have to accept that there will always be a rogue element and the Corel case was a good example of this. The policing within a well run picture library would and indeed did pick this up. Rogue elements are usually very short lived due to the excellent lines of communication within the picture library community and it is not long before the 'rogue element' is effectively blackballed and unable to continue doing business. I learnt very early on that researching and taking images is my gift – running a picture library requires a different skill set.

One of the things I have not covered on the issue of copyright is the ownership of the film and the critical pressing of the exposure button. The exposure of light hitting the electronic back to form a digital image has, in my opinion, the same legal standing as that of film. You are capturing an image at that moment in time – the image is unique to you and it becomes your copyright – although this might, in some instances, be regarded as secondary copyright. A

contemporary artist or a recently deceased artist is still protected under EU law – but if a recording copy is made via your image then permissions have to be gained by both parties. For example, when doing a commission for a client or contemporary artist/sculptor, I ensure a two way agreement which protects both of us.

I have not touched on when an image is used as part of a montage or the original is electronically altered to give a special effect. Expert knowledge is required to identify this fraud and therefore going it alone is not exactly wise. All publishers know that the cost of copyright infringement is punitive and could result in an entire print run being destroyed. 99% of the time business is done with no infringements and if indeed an infringement occurs it is usually an oversight which can be easily rectified.

As many of you are aware digital photography and the creation of high resolution scans is the way ahead and this in turn has created a need within the market for protection. There are currently several sophisticated software packages available which enable the implant of an invisible watermark together with a tag which tracks the history of the electronic image from the time it was created. This tagging can only be read by the originator of the image (the photographer or the picture library) using special software.

My research has shown that currently there is no industry standard and this has led to significant problems when uploading images from websites or even from disks. It is a fast moving area and one which I am sure will be touched on later today. Taking legal action is not only extremely costly but also time consuming. Expert scientific proof to analyse and verify whether an image came from **the original piece** of film would be essential. But and this is a big but, I would expect that a comprehensive and carefully written terms of business would normally cover me under contract law – I ask the question ...

When I photograph a painting I can usually tell if I have taken it. To the trained eye I know instinctively how I might have feathered in a light to pick out shadow detail, move another light so the highlights on a cloud come to life. Anyone can make a picture look OK but as a professional photographer you are always looking for that extra 10% which makes the difference between a great picture and so equally a chance of a superb reproduction. It's these individual touches which make your transparency that bit different from another. Anyone can draw with charcoal but the great artists move the charcoal with such variation that the line has differences in width and density giving that bit of magic which makes them great. If you are a criminal barrister and you were working for the prosecution you are not going to say to the judge – well my lord the fingerprint on the weapon was a thumb print and this man in the dock has a thumb and in fact for good measure he has two and therefore he must be guilty. You have to look at detail and if you do so you will find differences – these are important.

I'm sure by now you have got the gist – taking a complex piece of art leaves its own fingerprint.

**5. Keynote Speaker Presentations:**

**5.3) Christina Michalos, Review of Copyright and Photographs**

Please double click on the box below and scroll down for PowerPoint presentation.



Please double click on the box below and scroll down for accompanying handout.



## 6. Post Seminar Press Release

– Press release starts –

### **Conference on copyright law in the visual arts puts Bridgeman v Corel back in the spotlight**

- Leading UK art and law experts revisit controversial copyright case
- Unanimous vote offers new verdict on Bridgeman v Corel case
- Raises critical questions around copyright in the internet age

London - 17 May, 2007 - The Bridgeman Art Library, a leading international fine art image database library, joined forces with the British Association of Picture Libraries and Agencies (BAPLA) and the Centre for Commercial Law Studies in London to host a seminal conference on the issue of copyright in the visual arts. The event, which gathered together experts in IP, art and copyright law, took place at the Centre for Commercial Studies, Queen Mary University of London, attracting an audience of arts professionals, IP lawyers, photographers and media. Although it held no legal jurisdiction, the majority audience vote at the end of the event, as well as the ruling of the presiding judge, Richard Edwards, decided in favour of The Bridgeman Art Library – contrary to the original ruling.

Bridgeman v Corel (1999) saw The Bridgeman Art Library take legal action against the Corel Corporation over pirated use of Bridgeman images. In a decision which shocked the art-world, the New York Southern District Court ruled that 'a slavish recreation of a work of art lacks originality and is therefore uncovered by copyright'. Copyright and intellectual property are critical areas for artists across all media, especially the visual arts, performance arts, music and photography. In a current high profile case, Viacom is starting proceedings against YouTube over alleged illegal showing of copyrighted material.

"The court's decision came as a surprise and, for many in the art world, an outrage," said Harriet Bridgeman, managing director of The Bridgeman Art Library. "We felt it important to revisit the original case because we are frequently contacted by professionals and academics interested in it - law students, IP professionals and photographers. It's a case that simply will not lie down. Copyright is an increasingly contentious issue due to the freedom of access created by the internet, and the success of this event shows just how relevant cases such as this are."

Marybeth Peters, the United States Register of Copyrights and winner of the Lifetime Achievement Award from the Los Angeles Copyright Society, was the keynote speaker at the conference and commented: "I thought the conference was terrific - one of the best I've attended in the last 10 years." Joining Marybeth on the speaker's podium was an array of experts and professionals from the worlds of media law, intellectual property and the creative industries. Included in the line-up were Professors Adrian Sterling and Thomas Dreier, international specialists in copyright law; Claudia Andrieu, legal representative for the Picasso Administration; and Dominique Green and Nick Galvin, respectively the managing director and head archivist for Magnum Photos UK.

Organised jointly by The Bridgeman Art Library, The British Association for Picture Libraries and Agencies (BAPLA), and the Centre for Commercial Studies, Queen Mary, University of London, all those involved were satisfied that the mock re-trial had been both fairly presented

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and fairly judged. "The case both in favour of Bridgeman and against Bridgeman was debated strongly," said Dr Uma Suthersanen, co-organiser, lecturer at Queen Mary and presenting the

case against Bridgeman. "This ruling will continue to be debated but I think that the general reaction at this conference was clear: as Professor Sterling said, copyright is a discipline of respect, and the majority want that respect recognised."

**Notes:**

For an accurate and fair version of the *Bridgeman v Corel* case, pertinent to UK organisations, visit the Museums Copyright Group website: <http://www.museumscopyright.org.uk/bridge.htm>

**Full speaker list for *Bridgeman v Corel*: copyrighted creativity or commerce?: -**

Claudia Andrieu (Picasso administration lawyer)

Philip de Bay (specialist Fine Art photographer)

Harriet Bridgeman (Managing Director of The Bridgeman Art Library)

Professor Thomas Dreier (Director, Institute for Information Law, University of Karlsruhe, Germany)

Richard Edwards (Barrister, 5 Verulam Buildings, specialist in media, creative and copyright law)

Dr. Theodore Feder (President, Art Resource)

Nick Galvin (Archive Director, Magnum Photos)

Dominique Green (Managing Director, Magnum Photos)

Christina Michalos (barrister and specialist in media and entertainment law; author of *The Law of Photography and Digital Images*)

Marybeth Peters (United States Register of Copyrights)

Linda Royles (CEO of BAPLA and Director of the Digital Content Forum)

Professor Adrian Sterling (Vice President of the British Copyright Council, Professorial Fellow, Queen Mary Intellectual Property Research Institute, University of London, and author of *World Copyright Law*)

Dr. Uma Suthersanen (Chair, British Literary and Artistic Copyright Association, and Chair, Legal Board, Creative Commons (England & Wales))

– Press release ends –

## **7. Link to webcast**

Please click on the link below for videos of the full day's speakers and presentations.