

Issues in Conservation Documentation: Digital Formats, Institutional Priorities, and Public Access

The Andrew W. Mellon Foundation

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Issues in Conservation Documentation: Digital Formats, Institutional Priorities, and Public Access

Conservation documentation has historically been created in print form (including paper files, typed or printed documents, and film-based images). The shift to digital forms of documentation poses new problems and offers new opportunities that must be confronted as we consider the future. While crafting a set of expectations for future digital documentation, we must also consider the advisability of retrospective digitization of existing print records.

The complex issues of access to conservation information must also be considered. How and when should information be shared, and what kinds of audiences—professional? public?—should have access? What are the primary issues that must be taken into consideration in the areas of policy, ethics or values, and resource allocation?

All of these topics are matters of institutional priorities, requiring discussion and decision making at a variety of levels, including directors, curators, conservators, educators, and all who have an interest in museum collections information.

This meeting will provide a forum for a variety of museums to share and compare their experiences and priorities, and to learn whether or not there is a consensus concerning the value of providing access to this kind of information.

Preliminary Questions Circulated in Advance

I. Past and Current Practices: Issues of Access to Conservation Information

Is any or all documentation in its current form shared with other professionals in your own museum? Is it important that this be facilitated?

Is any or all documentation in its current form shared with conservation professionals in other museums? Is it important that this be facilitated?

Is any or all documentation in its current form available to any interested individual such as a freelance conservator, scholar, or reporter, or to the general public?

Are there new or changed legal or ethical considerations that you feel require you to provide access to conservation documentation?

Should a distinction be made between treatment-related conservation documentation and technical studies of artists' materials?

Are there advantages to sharing conservation documentation with a broader audience? with an unrestricted audience? Are there specific exceptions in an affirmative or negative response to this question?

Are there affirmative obligations to share conservation documentation along with other information, such as bibliography or provenance information?

Are there publications issues that result in individual or departmental protection of information (i.e., refusal to share or release information for fear of someone else publishing it)?

II. Digitization of Conservation Information

Is conservation documentation woven into the broader context of collections information? Purely technical issues aside, should conservation information be treated differently than other types of object-cataloguing information? Is conservation documentation more like the non-public financial information—such as price paid and current insurance value—also tracked in collection information systems?

Should all previous records ideally be digitized? If so, should the original documents (which obviously have intrinsic value) also be preserved? What are the financial implications of these decisions, and would retrospective digitization be practical even if it is desirable?

Are there aspects of traditional documentation or of the process of creating it that deserve attention so that valuable information does not get lost in the creation of documentation as digital files? The current practice of adding comments from visiting professionals to the file as a note, for example, might be more difficult in digital documentation. On the other hand, if conservation documentation is publicly available to some extent, should submitting comments and questions be more easily facilitated?

**Issues in Conservation Documentation:
Institutional Summaries**

Art Institute of Chicago

Access to Conservation Documentation

Is any or all documentation in its current form shared with other professionals in your own museum? Is it important that this be facilitated?

Conservation files in hardcopy form are readily available to the museum's curators. Information is freely shared as needed. Much, but not necessarily all, of the information in the conservation files is duplicated in the curatorial files. The reasonable proximity of most curatorial and conservation offices facilitates communication and sharing of information. A file server has been used to provide internal museum network sharing of digital text and image files for catalogue projects.

Is any or all documentation in its current form shared with conservation professionals in other museums? Is it important that this be facilitated?

We make a great effort to share information with independent scholars, and conservators and curators from other museums. If the request first comes to Conservation, we contact an appropriate curator and discuss the request to decide how to proceed. Requests for information range widely in respect to specificity and complexity. The number of requests varies from one part of the collection to another. Painting Conservation receives five to ten requests per year, though the frequency appears to be increasing. Objects Conservation receives approximately ten inquiries per year and Paper Conservation receives ten to fifteen. Only rarely does Photo Conservation receive requests for technical information. Fulfilling requests requires a staff member to review the conservation file in order to collect the relevant information. When the existing documentation is not adequate to respond to the request, the artwork is sometimes brought to Conservation for new examination. Some inquiries can be answered with little time and effort, while others may require days for examination and documentation. Collection catalogue projects have provided important opportunities to compile documentation that can be shared with a minimum of new effort.

Is any or all documentation in its current form available to any interested individual such as a freelance conservator, scholar, or reporter, or to the general public?

Not necessarily. Inquiries are dealt with on an individual basis. Requests for specific information might be answered via letter or e-mail. Files are generally reviewed to check for sensitive content before they are shared with a visiting scholar. Sensitive content might include negative comments on previous treatments. Trusted professional colleagues are generally given the most open access to information, including the opportunity to read the complete conservation file, make notes, view technical images, and photocopy selected material, including treatment and examination reports. Students might be given the same kind of access if their research interests appear to be serious. A journalist would probably not be given free access to conservation files. Providing access to files and responding to inquiries may take significant amounts of staff time.

Are there new or changed legal or ethical considerations that you feel require you to provide access to conservation documentation?

Not sure.

Should a distinction be made between treatment-related conservation documentation and technical studies of artists' materials?

Both treatment documentation and technical studies might contain sensitive information related to condition, authenticity, and previous treatment. There may be valid reasons for limiting access to this information or at least for controlling how the information is shared.

Are there advantages to sharing conservation documentation with a broader audience? with an unrestricted audience? Are there specific exceptions in an affirmative or negative response to this question?

There are educational benefits, possibilities of broadening the museum audience, stimulation of new research. The result may be new information about pieces in the museum's collection. Certain kinds of information may be difficult to understand or can be readily misinterpreted by the general public. Professionals are better able to assimilate and interpret technical information.

Are there affirmative obligations to share conservation documentation along with other information, such as bibliography or provenance information?

Yes, absolutely. This kind of information is integral to gaining a thorough understanding of a work of art. Better overall understanding of techniques and materials leads to more effective preventive conservation measures and preservation initiatives.

Are there publications issues that result in individual or departmental protection of information (i.e., refusal to share or release information for fear of someone else publishing it)?

This question comes up, especially when examinations and technical studies are done in preparation for exhibition or a scholarly catalogue. Conservators and/or curators may wish to protect certain information until research may be published. This kind of situation would be addressed on an individual basis.

Digitization of Conservation Information

Is conservation documentation woven into the broader context of collections information? Purely technical issues aside, should conservation information be treated differently than other types of object-cataloguing information? Is conservation documentation more like the non-public financial information—such as price paid and current insurance value—also tracked in collection information systems?

Yes, conservation documentation is an integral part of collections information and should be treated similarly.

Conservation documentation at AIC exists in both paper and digital form. Pre-ca. 1990 material is almost entirely hard copy. This includes written reports, brief notes, annotated images and diagrams, technical images, and analytical information. We have an extensive collection of X-rays of AIC and non-AIC paintings, but only recently have we begun to digitize newly taken X-rays.

Post-ca. 1990 documentation is mostly both hard copy and digital. Hard copy is still considered the most reliable backup. Conservation documentation is not generally contained in the AIC's collections management database. We are working toward adding conservation documentation capabilities to the database, but making this system a universal repository for conservation documentation seems a distant goal.

We have made technical progress in developing a means of sharing technical images and reports via the museum's intranet. Image and document files are placed on a computer server that may be accessed via the intranet by any staff member having the requisite privileges. This system is being used for our ongoing

modern catalogue project, so curators may read reports and view IR and X-ray images from their office computers. In the future, one can envision a collections management database that would provide access to the text and image files on a server.

Access to this information would need to be tailored to the status of the individual.

Should all previous records ideally be digitized? If so, should the original documents (which obviously have intrinsic value) also be preserved? What are the financial implications of these decisions, and would retrospective digitization be practical even if it is desirable?

In an ideal world, all earlier records would be digitized, but this seems like a time-consuming and costly task, with limited benefits for the museum's staff. There would almost surely be some loss of quality in the transposition of image files from analog. Some information may lose contextual meaning when it is transferred to digital. Access to the original would certainly remain important in critical instances.

Are there aspects of traditional documentation or of the process of creating it that deserve attention so that valuable information does not get lost in the creation of documentation as digital files? The current practice of adding comments from visiting professionals to the file as a note, for example, might be more difficult in digital documentation. On the other hand, if conservation documentation is publicly available to some extent, should submitting comments and questions be more easily facilitated?

One can look at a file folder to grasp the scope of information that it contains. That can be more difficult to do with a database, where one needs to be familiar with the structure of the database and adept at using it to find the necessary information. It is easy to file a piece of paper in a folder. Adding data to a database can be more difficult and must be done accurately and consistently for it to be reliable, thus requiring dedicated staff members for this purpose. Conservators report that updating databases takes away from the time they have available for bench work.

The British Museum

The Merlin System

Conservation documentation at the British Museum forms part of the wider information system for object information, which has been developed since the late 1970s. The current primary database for the management of information about registered objects in the museum collections is dubbed Merlin. This system was developed in 2000 by System Simulation Ltd (SSL), using the MUSIMS information management system developed for Museums, Galleries and Image Libraries, which is based on Index+ search and retrieval software. Data were successfully imported into Merlin from the previous museum database, called Magus. Merlin has a common set of fields (some 500 in total) for all objects. Some are core fields that are used for every object, such as object number, location, description, materials, techniques, dimensions, date, acquisition details, and production information. In addition, varying supplementary fields are used for different objects depending on their type, such as find spot, ethnic group, etc. The depth and quality of information available on Merlin for a particular object varies, depending on how much is known about it and the quality of the data entry. But the system allows for unlimited real-time updating, and for texts of unlimited length. Merlin is backed by thesauri/authority files to which a great deal of care has been given. The major such files are of personal names (c. 135,000 records), materials, techniques, and geography. Other files, such as ethnic group names and subject matter, are still in a rudimentary state and need development.

The Merlin database currently holds a total of nearly 1.5 million records, representing some 2.5 million objects. To these have so far been added images of nearly 68,000 objects since the facility was introduced in late 2004. Half of the museum's curatorial departments now have records for all their objects, with the possible exception of very recent acquisitions. Records are still being created for the other four departments (Prints & Drawings, Coins & Medals, Ancient Near East, and Prehistoric & Europe). The latter two should be finished within a few years; the first two will take many years longer because of the huge size of their collections.

The Merlin database is currently available only inside the museum, although a small selection of 5,000 objects forms the core of the COMPASS online introduction to the collection, available through the museum's Web site (<http://www.thebritishmuseum.ac.uk/compass/index.html>). A five-year scheme has just been launched to make the entire database available through the Web as soon as possible, but in any event no later than 2010. The scheme also aims to add the entire existing stock of photographs of objects to the database (250,000) and scan directly about 150,000 more objects. It will also add by OCR technology almost all existing published catalogue texts from the past century.

Digitisation of Conservation Information

Conservation Merlin

Detailed conservation records are held within the Merlin system, but on a separate database (Conservation Merlin), which is linked to the curatorial records held in the main Merlin database. The linking works in both directions: the Conservation module draws on information in the main Merlin record, while certain fields are exported back and are visible within the main Merlin record. The full conservation record is currently only accessible to (and editable by) conservators; curators see the abridged version on Merlin. These computerised

records contain information relating to conservation investigation and treatment; the data structure of the module includes fields for condition, treatment, conservation recommendations, and details of X-radiograph and photographic record numbers.

In the past (pre-1990), conservators at the British Museum recorded their observations and conservation treatments on paper records. Supplementary information, including simple diagrammatical representations of objects, was drawn on paper, known as Technical Information Records (TIR). Currently there are approximately 42,000 existing paper treatment records with text, and approximately 900 TIRs. In addition, there are approximately 2,500 X-radiographs.

Computerisation of conservation documentation began in 1990 using the Magus database. At this point the paper treatment records were no longer produced, although the creation of TIRs continued. When Merlin superseded the Magus system in 2000, all records in Magus were transferred to Merlin.

Legacy Conservation Documentation

For almost all the older conservation records, before the advent of Magus/Merlin, only paper-based documentation exists. When, prior to the establishment of a museum-wide conservation department in 1975–76, examination and treatment was conducted within the curatorial departments, these records were made on cards in formats developed by each department, and individual to that department.

Later, post-1976 card records of conservation treatments are more uniform and are stored in an envelope containing the conservation history of a particular object. In addition to the treatment report, this envelope often contains photographs, X-radiographs, annotated drawings, or technical drawings of the construction of an object. However, each conservation section has a separate system for filing X-radiographs and photographs.

Current Practice in Conservation Documentation

All new conservation processes, including visual examination or condition checking, are now recorded on the Conservation Merlin system. If an object comes for re-conservation, its previous conservation details are entered on the Merlin system from the paper records and the paper records are then destroyed. There is, however, currently no systematic programme of transferring information from the paper record into the Merlin system.

Most images made in the Conservation, Documentation and Science Department since 2005 are digital; after 1 April 2006, all new visible images made during examination or treatment will be digital. The digital images are entered on the Digital Asset Database (DAD) and a link is created between the record on DAD and the entry for the object on the Merlin system, so that these images are visible when consulting the Merlin record. X-radiographs will continue to be made photographically, but the images are always scanned at high resolution, and the digital file will be stored on DAD and linked to Merlin. Where they exist, the TIRs are scanned and stored on DAD, and the image is linked to the Merlin database.

Access to Conservation Information

Within the Museum

As explained before, at present curators see only part of the conservation record and have no 'write' access to it. We believe that increased access for professional colleagues in the museum will improve standards of conservation documentation, as the records will be under more direct scrutiny and this will create greater

professional accountability. Such shared access prevents duplication and allows errors in the information to be identified more readily. So, from early 2006, designated representatives in the curatorial departments have been able to alter the information in Conservation Merlin where this is at variance with the main Merlin. Wider access facilitates interdisciplinary study of the collection. Sharing conservation documentation with professionals within the museum can also promote good internal decision making. For example, providing access to condition information could aid curators who are beginning to consider the suitability of objects for loan or display. Finally, allowing and encouraging increased access to conservation records will help to raise the profile of conservation within the museum itself. The next upgrade/replacement of the Merlin system will integrate the fields from Conservation Merlin into the main Merlin system and will include provision for the inclusion of scientific reports.

Outside the Museum

Although the Merlin and Conservation Merlin documentation systems are not currently accessible outside the museum, the information they contain is already in practice shared with professionals outside the museum by sending paper printouts or by downloading sets of records electronically. One of the purposes of the Merlin Web project is to make these data more readily available, and it is intended in due course to make the conservation information available along with the rest of the curatorial information.

Sharing the conservation database will allow conservators to provide information to colleagues in a quick and efficient way and promote dialogue between different professional groups within and outside the museum. For example, objects excavated from Dover Buckland Anglo-Saxon cemetery site in 1994 were sent to Conservation directly from the field. Conservators treated the objects and entered their observations and treatments onto Merlin. Copies of this initial work were supplied to British Museum curators and external find specialists, and formed the backbone of what was to become the catalogue for the published excavation report. This information provided an axis for discussion among conservators, curators, and scientists, and promoted the work of conservation and demonstrated the benefits of internal collaboration.

Allowing other museum professionals access to conservation records can promote a dialogue between institutions, either to challenge or to share similar experiences on particular common concerns of deterioration or treatment. Sharing information can allow smaller organisations with fewer staff or resources to forge partnerships with large institutions and enable them to participate in a wider debate. Sharing conservation information may help to influence treatments where conservators are not always available, for example, in developing countries or in areas of conflict or war. Conservators at the British Museum helped to train a group of Iraqi conservators in 2004. On their return home, reference to British Museum treatment records aided the Iraqis' learning and acted as a reminder of materials and conservation techniques.

Large collections, particularly archaeological collections, are often split among museums. For example, material from the Layard excavations at Nimrud is split among a number of museums, including the British Museum and Bristol City Museum. Sharing conservation information relating to split collections can forge new relationships with relevant partners and encourage new debate and discovery.

Sharing conservation information promotes learning at all levels. Making information available to schools and universities would promote and extend the use of the collection (both database and objects) as a research tool and foster an interest in conservation. Wider access to detailed, subject-specific information would promote the development of individual professionals. For example, a group of coins treated recently at the British Museum was made principally of zinc, a material with which the conservators had little experience. Accessible databases would allow searches for similar material and provide a point of contact for conservators to facilitate a mutual exchange of information with other experts.

Finally, sharing information outside the British Museum promotes its duty to be open and accessible.

Public Access

The British Museum has an obligation to make its collections available to the public, so allowing access to records can be seen as an extension of this policy. There is general agreement that since the objects to which these records refer are held by a publicly funded museum and the research or treatment on which the record is based is also publicly funded, the information should be freely accessible.

As the Merlin system is not accessible outside the museum, public access at present is through individual enquiry. However, over the next few years, development work will be taking place to allow the entire Merlin system to be placed online. As part of the development, the number of records will be increased, conservation records will be fully integrated, and many more images incorporated.

There is often little visual presence of conservation in galleries and little interaction between conservators and the general public. Having access to conservation information would help redress this imbalance as well as promote further interest in conservation.

As with enquiries from other museum users, the knowledge that records may be scrutinized has the added advantage in that it increases professional accountability and responsibility, and leads to improved standards of documentation.

The Freedom of Information Act 2000 imposes a statutory duty on all public bodies to disclose information that is requested, subject to certain exclusions. The scope of the Act is well documented in the briefing document produced for this meeting by Sue Breakell, while the British Museum's policy is summarised in a separate document. Quite apart from this, the trustees have stated that as a matter of policy, all museum information should be made available on request. Indeed, the policy is to make information freely available so that requests for information are to an extent pre-empted. It is in this light that the museum has released all its files on the cleaning of the Parthenon sculptures, although this put the museum in a bad light in a highly sensitive area.

It is expected that access to some sensitive information will have to be restricted. This will include precise find location in order to deter metal detectorists. Addresses and details about living donors will also be held back as personal information. This is in any event exempt from disclosure under the Act. Although this is not finalised, our current thinking is that the prices paid and the names of donors or vendors will be published. The museum does not make or keep current valuations of objects in its collection.

The museum has drawn up a comprehensive set of guidelines for dealing with FOI enquiries. These are on the museum intranet and include templates for several types of standard letter to deal with issues such as acknowledging enquiries, explaining that information is exempt from the Act or that the information requested is not held, supplying information, and dealing with appeals against non-disclosure or complaints.

Disadvantages of Access

Set against the advantages expressed above are some potential disadvantages. Once the information is in the public domain, the ownership of the intellectual content is difficult to protect. Concerns have been expressed about the use of unpublished work, or work-in-progress. The museum takes the view that such study is largely publicly funded and it is the museum's duty to make it available freely, with an indication of the author of the information. With changes in the nature of publishing, the act of posting data on the museum Web site is taken to constitute a form of publication in its own right. The British Museum research board is encouraging the production of good Web entries for objects as a form of permanent cataloguing and is

promoting electronic publication as an appropriate route for scholarly publication. As only completed material will be included in Merlin, there remains the possibility of limiting access to 'work-in-progress'. The decision taken some decades ago that no parts of the museum collection should be considered 'reserved' led to a great increase in the use of the student rooms and a flourishing of the scholarly life of the museum. In the same way, it might be anticipated that opening all parts of the collection through freely available documentation might have a similar effect.

Other disadvantages may derive from unwitting or wilful misinterpretation of the records. These will include the misinterpretation of incomplete treatments or condition assessments, or of conflicting information between curatorial records and conservation records. Experience suggests, however, that limiting access will not limit wilful misinterpretation. Another danger is that untrained individuals may use the conservation methods and treatments described in reports to conduct treatments that are inappropriate for the object on which they are used.

There will inevitably be records referring to treatments applied in the past that are now considered inadvisable or unethical. It would seem best to be honest about these at the earliest possible stage in order to dissipate any suggestion that they are 'covered up', for example, in the case of the cleaning of the Parthenon sculptures mentioned earlier, which has been largely defused by the release of all the surrounding information. It may be best to avoid naming individuals in these reports.

The J. Paul Getty Museum

The J. Paul Getty Trust has at the core of its mission—which focuses on the presentation, enjoyment, study, and conservation of the visual arts—a stated educational purpose for both general audiences and specialized professionals. The conservation departments at the Getty Museum are committed to carrying out their work within the context of this mission; as a result, there is general agreement among the conservators that broad accessibility to conservation information, in all of its varied formats, should be provided. However, there is also general agreement that there is a real need for a carefully developed institution-wide policy for development, management, appropriate use, and dissemination of the information contained within the conservation files.

Conservation information exists primarily as hard copies in individual object files within each department. Some conservation departments have routinely sent copies of condition reports and treatment records to their respective curatorial departments for inclusion in the curatorial files. The Paintings Conservation department began, in 2004, to enter all of its new conservation information into the museum's collections management system (TMS); hard copies are produced from the database for the department files.

Conservation documentation is routinely shared with interested professional colleagues, both within the museum and from other institutions. In general, information is provided when requested. Information within TMS is accessible by anyone with access to the system. All of the conservation departments noted that the most sensitive and problematic materials were to be found in condition reports for potential acquisitions. In some departments, those reports are shared with the dealer or owner of the work of art, regardless of whether or not the object is ultimately acquired; in other departments, such reports remain for internal use only, as they often contain frank assessments of quality and condition, and may address complicated issues of attribution and date.

Conservation information is also generally considered to be available for interested individuals, including the general public. There is some concern that technical information could be misused by a non-professional; this prompted repeated comments that there may be a need for editing of material before it is made available. However, inquiries from the general public for treatment reports or similar information on specific objects are virtually (and have been historically) non-existent. Curatorial departments also noted that similar requests for access to their files were extremely rare. More common requests come from undergraduate and graduate students; this information is provided on request, usually with some editing involved. Journalists also occasionally request technical information or technical photographs to be used for articles about the ongoing work of the Getty, ranging from scientific projects at the Getty Conservation Institute to museum exhibitions. Again, this information is provided when requested, with appropriate editing.

In general, requests for access tend to focus primarily on technical studies of artists' materials rather than treatment-related conservation documentation. In many instances, though, this information is intimately intertwined, for example, within a treatment record or condition report; again, this may require editing and interpretation before the information is disseminated.

The questions of advantages to be gained from sharing conservation documentation with a broader audience and the specific exceptions that might be made in response to this issue provoked the broadest comments with regard to the need for an institutional policy as to how this could and should be done.

Concerns ranged from worries as to whether or not technical studies on thermoluminescent dating could provide sophisticated information for forgers, to worries as to whether or not both professionals and members of the general public would try to treat their own works of art using materials and methods described in existing (and often outdated) treatment records.

Yet there is a general consensus that sharing of information—beyond the immediate obligation of keeping and maintaining conservation records as part of an object’s long-term history—is critical to the general mission of the Getty Trust. It is also considered to be a fundamental responsibility for the conservators, and their colleagues throughout the Getty, who produce this information. Underscoring this commitment were several comments noting that our obligation to the public goes beyond simply making information accessible: it must be presented in a way that is educational.

There is general agreement among the conservators that any information should be shared with other professionals, regardless of whether or not it is to be used in the conservators’ own planned publications. However, there is acknowledgment of the fact that this open sharing is not always paralleled in the curatorial departments, or in the Getty Conservation Institute scientific department, where information may be withheld until it has been published (and fears of losing the “right to publish” were repeatedly noted). There is also concern that a conservator’s interpretation of technical information, based on individual experience and understanding, is a critical part of conservation documentation, and that this might preclude disclosing unedited information.

There is general agreement that conservation information should be digitized—including retroactive digitization of so-called legacy information—to improve access. There is also an understanding that doing so will come about only with an institutional mandate, and with institutional compliance and support. Such has proven to be the case with projects in the Paintings Conservation department, where retroactive digitization of the legacy information has finally begun (and has proven to be much less daunting and complicated than originally thought), but only after months of considerable effort to enlist the technical support necessary to undertake the process.

Harvard University Art Museums

Access to Conservation Information

Conservators and curators met to discuss access to conservation documentation. Generally, conservation files at the Art Museums are considered an extension of curatorial files. Copies of some materials are sent to curatorial departments to be included in their files, but the Straus Center records, which date back to 1928, form an important archive containing unique documents of both practical and historically significant information.

The Art Museums may be at an extreme end of the spectrum in terms of philosophy toward sharing this information. In our university setting, with our program of academic courses and professional training, our goal is to share our holdings as broadly as possible. We do in fact receive requests not only from outside scholars and conservators but also from students at all levels and from the general public. Our policy is to assist in all requests as is practical, and almost all requests thus far have been handled without significant difficulty. Procedurally, the senior conservator in a particular lab reviews a file folder's contents for confidential information (which is removed) and makes the folder available through the office manager. Confidential information might include some private correspondence and donor information. When appropriate and practical, the conservator may interact with the visitor. On a case-by-case basis, we have occasionally provided copies of some documents to visitors or by mail to individuals we know or whom we judge are conducting significant research.

Is any or all documentation in its current form shared with other professionals in your own museum? Is it important that this be facilitated?

Yes.

Is any or all documentation in its current form shared with conservation professionals in other museums? Is it important that this be facilitated?

Yes.

Is any or all documentation in its current form available to any interested individual such as a freelance conservator, scholar, or reporter, or to the general public?

Yes, with a modicum of screening for confidential materials.

Are there new or changed legal or ethical considerations that you feel require you to provide access to conservation documentation?

Occasionally, government grants fund large projects, which generate significant documentation. This adds to our argument that files should be shared. Repatriation and provenance issues require ready access to files to facilitate resolution.

Should a distinction be made between treatment-related conservation documentation and technical studies of artists' materials?

We have large quantities in both categories. They are often quite distinct, but our desire is to share both categories of materials.

*Are there advantages to sharing conservation documentation with a broader audience? with an unrestricted audience?
Are there specific exceptions in an affirmative or negative response to this question?*

Yes. Broad availability is part of our mission. If responding to large numbers of inquiries, the resulting global electronic distribution will eventually require significantly more time and could pose operational challenges.

Are there affirmative obligations to share conservation documentation along with other information, such as bibliography or provenance information?

Yes, they are similar.

Are there publications issues that result in individual or departmental protection of information (i.e., refusal to share or release information for fear of someone else publishing it)?

Yes. However, our feeling is that sharing should be a priority unless there is a clear and immediate possibility that someone is going to undermine our own publications. In this case, we assert our rights to withhold information based on a variety of criteria, even if they are difficult to specify.

Dissemination of Information

In our discussions, issues related to broad dissemination surfaced. Disadvantages and concerns included:

- Misinterpretation: Avoiding public misreading of old or confusing materials may require additional time and effort.
- There is the potential for the media or even individuals who may have a self-serving agenda to intentionally distort data to make a story that has negative consequences.
- Over the years, some records and even the work they represent may not meet the highest standards.
- The time and therefore the cost of providing information as freely as we would like could prohibit the free dissemination of information we would like to provide.

Finally, there is general optimism that digitization of information, if it is entered within an intuitive and flexible system, could provide a service to all interested audiences. Conservation documentation should not be managed within rigid or isolated boxes, but should interact fluidly with other collections information, thus weaving it into the programmatic life of the institution.

The Metropolitan Museum of Art

Conservation of the collection is entrusted to five departments reporting to the director (Objects, Paintings, Paper, and Textiles Conservation, plus the Department of Scientific Research) and seven conservation laboratories within curatorial departments (Arms & Armor; Asian Paintings; Books; Textiles from Africa, Oceania, and the Americas; Costumes; Musical Instruments; and Photographs). More than one hundred scientists and conservators in twelve separate facilities are thus responsible for producing and managing *conservation documentation* (a term that will henceforth be used to include treatment, examination, and scientific information, including photography, unless otherwise specified).

Standards for organizing and managing this information vary from facility to facility, reflecting the traditionally high degree of independence afforded to individual departments, curatorial and conservation alike.

With a few specific exceptions (whole records for Photographs and for Textiles from Africa, Oceania, and the Americas, and outgoing loan condition reports for all objects in the collection), conservation documentation is not entered in the museum-wide collections management tool (TMS), although some departments have established their own digital catalogues. In 2004, the museum initiated a survey of conservators with a goal of determining the scope of current and retrospective conservation documentation and cataloguing; detailing the extent to which shared access is desired; and outlining next steps, which might include conducting a complete inventory of existing conservation information, setting priorities for digitization and cataloguing, developing a centralized repository (or catalogue), and building the necessary workflow tools to support documentation activities.

While standards for conservation information vary across the institution, some generalizations can be made. Information is object-centered, with files identified by accession numbers; most documentation is not filed or indexed according to treatment type, examination result, or document type. All files are open-ended, with notes, analyses, and reports added as further work is done on the objects; some types of documentation are stored separately from the main files (this is the case for radiographs, original instrumental readouts, etc.). Files are generally catalogued in logbooks, with digital databases (Excel or FileMaker Pro) increasingly being used for new files.

Conservation documentation currently includes paper files, digital texts (the transformation from paper reports to digital documents mirrors the move from the typewriter to the word processor), instrumental readouts (including both printouts and digital records in a variety of formats), photographs, radiographs, and digital images. A final but very important component of conservation information is represented by extemporaneous handwritten notes, typically taken when examining an object, or when comparing an object to others in texts or from photographs. Individual files can sometimes be quite large: the Gubbio Studiolo documentation fills several folders, and the digital reproduction of the Unicorn tapestries is stored on two hundred CD-ROMs.

Archiving and Distribution of Conservation Documentation

Conservation files and conservation documentation in general are stored in the relevant conservation department: 95 percent of the conservation documentation does not circulate outside of its department.

This is not to say that conservation documentation is sealed: conservation reports are routinely used in certain administrative transactions (for instance, when an object is considered for acquisition); scientific reports (but not the raw data on which they are based) are always forwarded to the conservator or curator requesting a scientific examination; and finally, conservation reports—and in some cases whole records—are forwarded, following treatment, to those curatorial departments that request them.

The general policy across conservation departments is that conservation documentation is freely shared with the professional staff of the museum. Records are generally held in the individual conservation departments and are available to be read, ordinarily by appointment. When conservation records are part of TMS for that curatorial department, they can be viewed by anyone who has access to the departmental database (as a museum policy, each curatorial department maintains its own TMS database, and grants or denies access to individual staff members outside of the department). Basic information on accessioned objects can be seen by anyone in the museum using a separate tool, e-Museum, which draws selected information from the various TMS databases. At present, this information does not include conservation information of any kind.

The current access policy works well for the institution, although there is a general consensus among conservators and scientists that a more centralized repository would have great benefits. Even a simple initial step such as a digital catalogue or index of conservation information would be extremely desirable. Curators have generally expressed interest in greater access to conservation documentation, although actual requests for conservation records have been relatively few.

Documentation is readily shared with conservation professionals in other museums. Appointments may be made to read a conservation file, although for reasons of expediency, this information usually is disseminated to our colleagues by telephone or e-mail. Although the importance of this type of exchange is clear to all those interviewed, there are a variety of opinions as to how and whether these exchanges need be facilitated further. The issue of what type of information should be freely available and at what level access should be restricted seems to be a decisive factor in forming individual opinions on information sharing.

Conservators and scientists at the Metropolitan Museum of Art consider the education and training of the next generation of conservation professionals as an important part of their mission. Students at all levels of development are welcomed into the conservation departments as interns and fellows, and documentation is readily shared with these individuals. The same openness generally applies to visiting professionals, who are often invited for the specific purpose of exchanging and sharing knowledge with staff members.

Documentation is available to freelance conservators, scholars, and the general public on a case-by-case basis and has rarely, if ever, been denied (although in fact there are few inquiries from members of the general public). All inquiries from the press, including any request for information regarding documentation, need first to be fielded by the museum's communications department. Conservators have expressed a strong opinion against giving reporters complete access to records. This opinion is based on a few cases in which information was seriously mishandled by the requestors.

Editorial Control and Access to Conservation Documentation

Maintaining some editorial control over the diffusion of information is seen as a priority by all conservators interviewed. A system offering open and uncontrolled access to a broad public is not seen as a benefit to the museum or to the public by the conservation professionals at the Metropolitan Museum of Art. Three factors play a part in shaping the museum's stance on this issue. Treatment information is generally seen as sensitive and as deserving of some level of confidentiality protection. This is especially true for older treatments and

for methods that are now considered outdated or simply incorrect. While there is no wish to hide damaging information—controversial practices are openly discussed with professional colleagues—we see no need to disseminate information without interpretation to an untrained audience. The potential for information to be taken out of context far outweighs any possible benefit. A second objection to free, unfettered, and uninterpreted access to our archives stems from the nature of some of the information. Conservators are encouraged to jot down thoughts in the form of quick notes. Over the years, these notes can form a considerable corpus, a work-in-progress, on the subject under examination. This is seen as an integral component of the profession of the conservator in this museum. While objections could be raised that all information should be edited and finalized so that any reader could interpret it without needing assistance from the extender, a logical counter would be that it is only these finalized reports, once prepared, and not the notes they are based on, that should be shared. Finally, every conservator and scientist interviewed objected to broadening access to unpublished data when publication is under way. Conservation documentation is in some sense analogous to scientific information: while scientists in academia and industrial research share information by publishing articles and by presenting work-in-progress at conferences, laboratory notebooks are considered privileged information, and disclosure of notes is requested only in case of controversy (intellectual property, priority of discovery, fraud, or misattribution).

The objections to free and automatic access to conservation documentation listed above could perhaps be analyzed to extract some distinctions between how treatment and technical examinations records are perceived. Overall, treatment information is seen as slightly more sensitive than technical examination reports. In the latter case, only data awaiting publication and examinations of objects with questions of authenticity (very often objects that have not been or will never be acquired) are universally considered as privileged. Disseminating treatment notes without commentary to the public, however, is seen as counterproductive. A case apart is that of notes related to the examination of objects that do not belong to the museum: the number of such objects is quite substantial, given the very active acquisition and exhibition schedule of the museum. Because of confidentiality issues, the museum does not share the results of these examinations with a broader audience.

The museum has not yet created a general policy for conservation along the lines of its policy on provenance information. At present there are no legal or ethical issues that seem to compel the museum to automatically disclose conservation records in their entirety. Nonetheless, the institution is willing to consider arguments in favor of a policy of disclosure for certain types of conservation information, where a significant benefit might derive from making information known (for example, we believe that genuine educational value is attached to a full understanding of the state of a work).

Suggesting a parallel between conservation documentation and bibliography or provenance information is, to a certain extent, misleading. Museum publications (the *Journal*, the *Bulletin*, the Objects Conservation department's own newsletter, *MetObjectives*, and the exhibition catalogues) are increasingly featuring essays based on conservation information. Articles published by staff in the conservation and scientific literature make available to a wide audience detailed studies on objects in the collection. And finally, an initiative is under way to include articles by conservators and scientists in the museum's *Timeline of Art History*, a Web-based publication visited by four million readers every year. This is indeed analogous to providing provenance information and bibliographies in art historical essays. Whether the analogy should be extended to the original record-level documentation that conservation publications are based on is a matter for the upcoming discussion and further debate.

Technical Issues Related to Conservation Documentation Management

The museum is only now starting to consider how to reorganize conservation documentation. The Science and Intellectual Property Inventory recently carried out at the Met highlighted what is already known to all those engaging in the present discussion. Conservation information is, by its own nature, extremely complex and quite different from curatorial information: the technical difficulties implicit in an indexing effort are enormous, and are eclipsed by the complications and costs associated with a digitization project. It may not be possible in the immediate future to have all conservation documentation available in an electronic format: some documents are still best viewed in the original (this is the case for radiographs of three-dimensional objects, or for physical specimens such as pigment slides and paint cross sections). Yet, a tool as simple as a catalogue of conservation information detailing which objects have been radiographed, analyzed for alloy composition, had their pigments identified, and so on, with pointers to the location of actual physical records, would be invaluable.

There is a general consensus among originators of documentation and information systems professionals at the museum that a conservation documentation archive may have to be a completely new system, distinct from the current collections management system. The two systems will of course need to be able to interact, and it is probable that cataloguing information for conservation documentation, such as record identifiers, descriptions, and so on, will be drawn from the collections management system.

There is a good agreement that conservation records should be made more broadly available, with the understanding that parts must be kept confidential, just as price paid and insurance valuations are not generally shown to anyone outside the specific curatorial department.

The current absence of any cataloguing system for conservation documentation at the museum, the simple criteria used to classify files (by accession numbers), and the increasing use of digital records as the primary documentation format make a transition to a completely digital system relatively easy, going forward. Some records, as stated previously, will remain analog because of the loss of information when going to a digital format. Improvements in technology will eventually change this, as they have changed the field of photography. As for past records, everyone interviewed expressed a wish for digitization, although the resources required for cataloguing, editing, and digitizing the material would be prohibitive. The original documents, which in many instances are still the preferred format for consultation, would need to be retained.

The Museum of Modern Art

Requests to study archives of material at MoMA have been steadily increasing in recent years, and this is true of conservation documentation as well. Public access to conservation documentation at MoMA varies. While the current nominal policy at MoMA is that these records are confidential, in practice this material is available to interested scholars. Requests are handled individually, sometimes coming directly to conservators; at other times they are referred to conservation by library/archives staff or curatorial staff. Typically a conservator reviews the information with the scholar. The majority of the studies are of technical documentation, rarely of treatment history. Treatment history can be problematic, so unless it has a direct bearing on the scholar's study, we do not provide this information.

Scholars who gain access are typically faculty at universities and colleges or curators from other museums. Auction houses and galleries may occasionally have very specific questions we can answer, but because of potential conflicts, this is rarer than access by academic scholars. It is worth noting that requests from the trade are also much less frequent. Staffing levels require us to limit access, and so graduate students and undergraduates are not afforded the same access, but here too the requests are much less frequent.

Within the museum, the conservation department is the official archival repository for condition, treatment, and technical study information. Museum policy also dictates that the paper record is the archival record, although it may also exist electronically. While the department houses files from many decades only in paper form, for at least fifteen years all narrative documentation has been generated electronically as well. Until recently, photo documentation has been entirely film-based, but it is now largely digital. Conservation documentation is not fully integrated into the museum-wide collections management system (CMS), although several efforts have been made to design a module that will capture all the relevant information in a way that integrates seamlessly with the CMS. Access to the conservation documentation is open to all relevant museum staff, who contact conservation to make sure all relevant information is pulled for their review.

This review generated some common observations at each of the internal discussion meetings. The first is that the formal museum policy should more accurately reflect the current practice, which is one of access to as many relevant scholars as we can reasonably accommodate. This leads to another general conclusion, which is that current staffing levels limit the time available for conservation staff both to review materials with scholars and/or to digitize existing records, written or photographic, so that they might be accessible to a wider audience. This is a persistent problem with museum documentation generally. Additional observations/questions were: whether metadata standards exist or if such standards might be adaptable from some other field, such as libraries and archives; confidentiality concerns surrounding study and treatment of living artists, e.g., might an artist get a "bad rap" if it appears his or her work is frequently treated?; how to handle requests for information on works in which there remains a fractional interest in the work of art; and the necessity of reviewing any information to be published to make sure it is accurate.

The National Gallery, London

The present approach to conservation documentation at the National Gallery encompasses two contiguous policies: (1) to maintain (and conserve) the existing traditional paper-based records (conservation dossiers) and (2) to explore the potential for future digital documentation of the record, and the resources and methods required to duplicate, in electronic form, the 'back-catalogue'. The latter remains at an exploratory stage; no individual technology has been chosen, although some experimentation has been undertaken with TMS and also with small-scale, custom-designed databases.

The conservation records are not viewed, or used, in isolation from other gallery information sources. They are considered to be, particularly by the conservators who are their custodians, working (open) documents recording both past and continuing care of the gallery's collection.¹ There is one dossier for each painting in the collection (many are multi-volume records), and each consists of archival-quality albums containing comments on the painting's condition, history of treatment, treatment reports, and (usually) many black-and-white prints of details, including the backs of paintings, before-and-after treatment prints, 1:1 X-ray prints, and a certain amount of infrared, UV, and colour (transparency) photography. Some older dossiers contain scientific and colour measurement information in addition.

Although there are many types of record within the gallery that deal with paintings in the collection, the bulk of key information is contained within three series of files: (1) the conservation records noted above, (2) the curatorial/history files, located in the gallery's main library but administered under the supervision of the curatorial department (also one record per painting in the collection), and (3) the scientific files, organised by artist, at present covering around 60 percent of the collection (that is, for pictures which have had some form of technical examination or analysis).²

With the National Gallery's library and archive, these three sequences of records form the principal research resources for the collection. None of these files is static or closed. In addition, there are a variety of paintings-based image databases growing at the gallery, the most significant of which is a high-resolution, accurate colour image database of (virtually) the entire collection, recorded directly from the paintings using a high-resolution digital scanner (VASARI scanner) and high-resolution digital cameras (MARC camera). At the same time, growing numbers of X-ray images are being digitised and assembled electronically into complete mosaics; the same is true of a collection of infrared images. Infrared reflectogram mosaics are now being recorded with a new solid-state, high-resolution digital infrared camera developed in the Scientific Department. At present these records reside in stand-alone databases.

At the gallery, the policies for developing and exploiting information-based resources are formulated within a senior management forum known as the 'Information Strategy Group' (ISG), its overall remit being guided by an internally published 'information strategy'. The ISG has the power to make recommendations on policy and projects to the gallery's management group, the priorities in allocation of resources for which are tested competitively each year within a corporate planning process. Among other principles, the ISG-sponsored strategy states, in relation to gallery-held information, that the institution should:

- Create value by exploiting information effectively.
- Share and communicate information internally as widely as possible.
- Make information available, with limited exceptions, *externally*.

- Keep information safe, archived, and preserved.

Clearly these principles must be judged to apply to conservation-related information resources, and allied material held elsewhere within the gallery, which is often read in conjunction with the conservation record. It is recognised, of course, that for outside enquirers, the specialist nature of the conservation records is such that it is helpful where practicable to provide assistance in interpretation of the material.

In Britain, the third bullet point above has been given special emphasis in the institution of a Freedom of Information Act (2000),³ which, in its essential intent, gives the public general right of access to documents and information held by public institutions, museums included. There are a number of exemptions to this overarching right (material bearing on national security, commercially sensitive material, possible infringements of intellectual property rights, and so on), but the kind of information that museums hold on their collections, including their conservation records, are covered by this Act, and the public have the right to be given the information in the form that the public institution holds it. If an enquirer is dissatisfied with an institution's response to an enquiry, the person has recourse to an independent commissioner for information, who is empowered to adjudicate.

The National Gallery, as a public institution, is bound by the Act, but it is worth pointing out that in practice it simply formalises a policy toward public enquiries that the gallery has operated for some years: that is, to *facilitate* supply of information on the collection in as open a way as possible. Over the year of its full operation, the gallery has tried to interpret the Act in a helpful and unrestrictive way, on the basis that the collection is owned by the public and that the institution is in the business of engaging the public with its collection to the maximum degree. This means, of course, providing information of all kinds when it is requested, rather than seeking to find exceptions within the law to deny it to enquirers.

A rough analysis of the types of enquiry about the collection that have come in from the public (although 'Freedom of Information' is quite rarely cited) shows that genuine conservation information is quite rarely sought (although a few journalists have been consulting the dossiers).⁴ There are rather more enquiries concerning the results of technical examination of individual paintings in the collection or the work of particular artists, whether this information is held in the conservation dossiers in the form of X-rays and other technical photographs, or in the Scientific Department's picture files. This is also broadly true for most professional research enquiries, and it is usually only our conservator colleagues who have an interest in handling the conservation dossiers themselves. The National Gallery always shares this information on a collegial basis, and, it must be said, our staff very frequently receive the benefit of similar courtesies from colleagues in museums around the world. These contacts are vital to our own care of the collection and to its study and they are relationships we seek to foster.

It is important to draw a clear distinction between technical records on paintings and conservation records—the museum needs to keep up-to-date records of both—but it is the former which have the greater usefulness to researchers of all kinds, and if made more widely available, it is these records which would have the largest constituency. Initially, electronic versions of these technical documents, particularly if they are held in well-designed relational databases, would be of considerable value to the museum's own staff when made accessible on the gallery's network. There is probably no fundamental reason why this documentation should not be made available externally in the future, excepting the need to solve certain problems which might involve intellectual property rights in the material, and perhaps also some copyright matters. Whether there is genuinely sufficient demand for the conservation records to be open to outside enquirers in electronic form is a less resolved question, and the loss of our ability to provide guidance on interpretation to enquirers would be a disadvantage.

It is inevitable that museums will make increasing use of electronic documentation methods, if only because the importance of conventional photography is diminishing so rapidly. In addition to institutional operational imperatives to adopt electronic documentation methods, these tend now also to align with some of the outward, public-facing methods of providing information to the museum's general visitors, whether via the Web or through provision of systems such as the National Gallery's 'Art Start' project. To that extent, the design of public programmes might have the effect of pulling along more specialist documentation projects.

The obvious challenge to institutions is whether the new documentation methods will grow up in museums in a coordinated, planned manner or instead in haphazard, incompatible forms and formats. The advantages of the former must be obvious, and there may even be arguments for museums around the world to think of designing common protocols for conservation and other museum documentation, at least for similar types of collections, in order to facilitate future exchange of information.

It seems quite likely that museums will be forced to continue to maintain both conventional paper-based systems at the same time that they are developing new methods based on electronic technologies, if only because of the practical advantages—that all conservators know—of paper records in actual use in the studio. These collections of files are also of historical importance in their own right, and they form part of the history of conservation. A simpleminded calculation of the human resources required to enter the 'back-catalogue' of conservation and scientific records even for such a relatively small number of paintings as the National Gallery's collection produces daunting results and extended time-scales. However, that does not mean that a serious start should not be made, nor does it mean that we should not try to overcome some of the objections that have been raised in sharing this information with colleagues around the world in ways that can be delivered across the Web.

¹ The conservation records include files on a number of outside paintings, including paintings on long-term loan to the collection but not possessing NG inventory numbers.

² The Scientific Department files also include a large number of records of technical examination of paintings and other painted objects outside the collection.

³ The terms of the Freedom of Information Act came fully into force in January 2005.

⁴ The great majority of enquiries about the collection are made through the gallery's information staff, who deal with public enquiries of all types. Many concern simple information about the gallery's holdings, location of paintings, requests for further information about particular artists, and so on. Information staff log FOI enquiries with the archivist, who ensures that enquiries are answered within the time limits laid down. They also pass on conservation and scientific enquiries to the relevant department, sometimes to both. Certain of these technical enquiries suggest they should be logged as 'Freedom of Information', even though they may not say so explicitly; they are also noted in a log in the relevant department.

The National Gallery of Art

The National Gallery of Art is committed to providing access to conservation records and would welcome opportunities to improve access in the future. Records for individual works of art may include examination reports, treatment proposals, after-treatment reports, treatment photographs, digital images, radiographs, infrared reflectograms, scientific analyses, correspondence, and conservators' notes. Some conservation documents are housed in the department of curatorial records, which maintains files for paintings, sculptures, and decorative-art objects, and is open to the public by appointment, Monday through Friday. The only complete set of records is housed in the Conservation Division. National Gallery staff is given broad access to conservation files, while non-gallery curators, conservators, graduate students, journalists, and the general public must make a formal request. The Conservation Division receives one hundred to two hundred requests per year for information from the files, and a genuine effort is made to respond to these requests. This can mean answering simple questions, sending out copies of documents, or allowing colleagues to examine documents in the studio. Some requests go unfulfilled because there is insufficient time or because they are unreasonable, e.g., a student's expectation that we will do their research.

Most members of the conservation and curatorial staff feel it is appropriate to increase accessibility to conservation documents and images, with the exception of material pertinent to active research projects and possibly conservators' personal notes. Some would prefer that we simply increase awareness of the information in our conservation files but continue to review requests for access. This group is concerned that documents could be misinterpreted when examined out of context or without a conservator's input; documents could be inappropriately used to arouse controversy; and colleagues could publish material without properly crediting the contributions of gallery conservators. These concerns warrant continued discussion.

Digitization is the most practical approach to increasing accessibility of conservation documents. It would also dramatically improve the preservation of documents. The creation of digital documents and images has been standard practice for the past year, but we are only in the planning stage of digitizing our enormous number of existing records. We recognize that addressing this task will require additional staff, equipment, and conservators' time. While we hope to obtain help in the form of federal funding in the 2008 or 2009 budget, we would welcome support from other sources.

A first step in undertaking a project of this magnitude would be the development of a one- to two-year pilot project, which would require technical and procedural advice from colleagues and/or consultants. We envision digitization of all documents in a record file, accompanied by the entry of metadata. This would ensure the preservation of complete files and facilitate the sharing of conservation documents with other institutions and the public. A pilot project of this type could be shared with a few sister institutions, increasing the likelihood of success. In addition, it could include one or two smaller institutions that would likely benefit from the assistance of larger institutions like the National Gallery of Art.

Philadelphia Museum of Art

Access to Conservation Information

Discussions among conservators, curators, and administration at the Philadelphia Museum of Art revealed general agreement about access to and distribution of conservation documentation within the museum, although there were many opinions about the distribution of such information outside the museum. As a starting point for further discussion, however, we felt that the terms *conservation information* and *conservation documentation* needed to be more clearly defined. For our purposes, conservation documentation may be considered to be all completed “raw” conservation reports about and conservation images of an individual work of art, whereas *conservation information* is derived from this “raw” conservation data, documentation, or research, whether relating to specific works of art or to more general conservation practice.

Responses are summarized as follows:

Is any or all documentation in its current form shared with other professionals in your own museum? Is it important that this be facilitated?

Conservation documentation in its current form is easily shared with other professionals in our museum through reports in hard copy that are distributed to the appropriate curators and to the registrar. There are few perceived difficulties or impediments to “sharing” this documentation, so further facilitation is not felt to be necessary.

Is any or all documentation in its current form shared with conservation professionals in other museums? Is it important that this be facilitated?

Documentation in its current form is shared with conservation professionals in other museums as issues arise or requests are made. Most information exchanged is in the form of collegial discussions, although on occasion conservation documentation, images (including infrared reflectograms [IRR] and radiographs), and/or other written conservation information is shared. One area where facilitation might be beneficial is through some sort of collaborative effort, such as a distribution list, where conservators can post areas of ongoing research or treatment in order to promote mutual awareness of current work in the field.

Is any or all documentation in its current form available to any interested individual such as a freelance conservator, scholar, or reporter, or to the general public?

“Raw” conservation *documentation* is available only to interested individuals with special permission from Conservation (such requests are relatively infrequent). It is not available to the general public, though *conservation information* is available on the museum’s Web site and, of course, in publications.

Are there new or changed legal or ethical considerations that you feel require you to provide access to conservation documentation?

New or changed legal or ethical considerations requiring access to conservation documentation often stem from new federal grant requirements for public access. These considerations are further complicated by copyright and ownership issues when materials are published on the Web.

Should a distinction be made between treatment-related conservation documentation and technical studies of artists' materials?

Little distinction is made at PMA between the raw conservation data in treatment documentation and raw analytical data in technical studies of artists' materials.

Are there advantages to sharing conservation documentation with a broader audience? with an unrestricted audience? Are there specific exceptions in an affirmative or negative response to this question?

Clearly there are advantages to sharing conservation information with broader audiences, the character of the information shared being dependent in some way on the nature of the audience. The nature of sharing also depends on whether the obligation pertains to “interpreted” conservation *information* or “raw” conservation *documentation*. The obligation to share conservation information is generally carried out within available staff time, e.g., catalogue or gallery text/labels, whereas sharing “raw” conservation data requires conservation review since it depends on the audience and the use to which the data will be put.

Are there affirmative obligations to share conservation documentation along with other information, such as bibliography or provenance information?

Conservation information is felt to be less analogous to bibliography or provenance information, which is simply factual, and more analogous to attributions, i.e., based on judgment and interpretation.

It is important to emphasize that conservation documentation is implicitly and explicitly confidential, and that the “ownership” of the information resides with Conservation on behalf of the museum. The content of conservation reports is often candid and interpretive, reflecting judgment rather than absolute information. Consequently, only carefully vetted conservation information—“interpreted results”—should be made available in a broader context.

Are there publications issues that result in individual or departmental protection of information (i.e., refusal to share or release information for fear of someone else publishing it)?

Certainly there are publications issues that may result in protection of information, such as delaying in sharing/releasing information until it can be published by the originator.

Digitization of Conservation Information

Is conservation documentation woven into the broader context of collections information? Purely technical issues aside, should conservation information be treated differently than other types of object-cataloguing information? Is conservation documentation more like the non-public financial information—such as price paid and current insurance value—also tracked in collection information systems?

Conservation documentation is woven into the broader context of collections information, but generally is not digitally integrated into the museum’s collections database (see PMA “Conservation Documentation History” below). Such information is different from other types of object-cataloguing information or label information and more like the non-public financial information or curatorial working notes; as such, it should be restricted.

Should all previous records ideally be digitized? If so, should the original documents (which obviously have intrinsic value) also be preserved? What are the financial implications of these decisions, and would retrospective digitization be practical even if it is desirable?

In an ideal, financially unconstrained world, all conservation documentation should be digitized, while the original “raw” documents, including photographic images, are also preserved. The financial

implications of decisions about digitization are enormous and include staffing implications. The choice to establish digital records, however, is not necessarily an “all or nothing” decision.

There are aspects of traditional documentation or of the process of creating it, such as hand-drawn diagrams, which deserve attention so that valuable information does not get lost in the process of digitization.

Are there aspects of traditional documentation or of the process of creating it that deserve attention so that valuable information does not get lost in the creation of documentation as digital files? The current practice of adding comments from visiting professionals to the file as a note, for example, might be more difficult in digital documentation. On the other hand, if conservation documentation is publicly available to some extent, should submitting comments and questions be more easily facilitated?

The second question was puzzling. “The current practice of adding comments...should submitting comments and questions be more easily facilitated?” Does this suggest that comments be solicited via public e-mail or the Web, including inevitably those by unknown persons? Even if conservation documentation is publicly available to some extent, we cannot foresee a benefit or need to facilitate submitting comments and questions in this manner.

Conservation Documentation History at the Philadelphia Museum of Art

Conservation records at PMA are stored by accession number in object files, each containing conservation reports, analytical results, conservation photography, diagrams, notes, labels, etc. in hard copy. These files and the rich history contained in them will be retained whether or not the information is digitized. Historically, conservation reports were typed until around 1992, when word processing was introduced. A stand-alone database for conservation record keeping was introduced in 1996 and found partial acceptance among the conservators.

Since then we have worked to develop an improved, more intuitive electronic system for conservation record keeping, which was launched in 2005. It incorporates word-processing features and allows retrieval of conservation images through the system (images are stored in folders by accession number on a separate server). It also allows an administrator to attach existing conservation reports in word-processing format to the database, essentially retaining the original document format. The printed reports generated look like the text documents that conservators typically produce. Fully searchable text is intended to give improved access to conservation information. Security levels are determined by username. Finished reports are “locked,” essentially archiving them. The database interfaces with the museum’s collections management software, importing key object information from it. Two fields in the conservation database are tentatively designated to export information back into the collections management system: one to list all conservation reports done on a given object, the other to allow conservators to indicate any special needs or cautions that they wish to communicate to other museum staff.

The Conservation Department has also been the principal sponsor of IRUG, a Web-based database (www.irug.org) that shares infrared and Raman spectra of artists’ materials—another form of conservation data—with scientists, conservators, and preservationists globally.

Access to Conservation Information

Tate's collection spans from 1545 through to tomorrow and is "fine art" in nature. It comprises a British historic collection of paintings, frames and works on paper, limited numbers of sculpture up to 1900, and an international collection, including artists' photographs and time-based media from 1900 to the present day.

For the purposes of this initiative, conservation information is defined as material that is specifically relevant to the structure, condition, and display needs of the work. It includes both the written word and images and the primary data and interpretive information, and can include the physical material and archive elements.

Parallel information is also held within files and systems managed by the curators and registrars.

Fewer than twenty applications to view conservation information were made from outside Tate last year. Most of these were for technical, art history-type information. Requests for advice on materials was probably in the order of thirty to forty queries.

Is any or all documentation in its current form shared with other professionals in your own museum? Is it important that this be facilitated?

Tate, by virtue of its status as a national gallery, has as its mission "to increase the public's knowledge, understanding and appreciation of art" as set out by parliament in the 1992 Museums and Galleries Act. It is thus desirable for all information to be available.

However, there are priorities within this which co-exist with the need to support the day-to-day business of Tate in a very practical way. Data such as dimensions, display status, and media stored within the collections management system are fully digitized and live. They are accessible to all Tate staff.

All conservation information is technically accessible to colleagues within Tate. Some of it is more readily accessible than other information. It is recognized that an awareness of the existence of the information and of its accessibility is patchy across the organization.

Is any or all documentation in its current form shared with conservation professionals in other museums? Is it important that this be facilitated?

All the documentation noted above is available to be shared with conservation professionals. This is arranged on an ad hoc basis by direct enquiry. It is the hardcopy file that is accessed and information is transcribed. Information is also photocopied, although this has not been the preferred method. Increasingly, requests are being made to photograph pages digitally from the files. Those making enquiries are encouraged to check out the Web page prior to visiting. Access is made available within the studio/office space, although remote access, controlled by the library and archive, is being considered.

There is a library and archive database that is accessed by the public and scholars by appointment, which indicates where conservation information exists.

Access to artist interviews is dependent on individual copyright agreements. Their existence is flagged though INCCA and the Tate archive database.

Is any or all documentation in its current form available to any interested individual such as a freelance conservator, scholar, or reporter, or to the general public?

As above, this is arranged on an ad hoc basis by direct enquiry. Typically the files are accessed and information can be transcribed. Information is also photocopied, although this has not been the preferred method. Increasingly, requests are being made to photograph pages digitally from the files. Library and archive databases are searchable by the public and scholars by appointment; the archive will indicate if conservation information exists.

Press enquiries are always referred to Tate's press office, so a degree of filtering takes place. No instance is recalled in which specific access to our files was requested by the press.

No notable increase in requests to view our files has occurred since conservation information has been available on the Web. The number of hits to Tate Online has increased dramatically, but the proportion of hits that include visits to conservation information cannot be determined.

Those making conservation information enquiries are encouraged to check out the Web page prior to visiting.

Are there new or changed legal or ethical considerations that you feel require you to provide access to conservation documentation?

The Freedom of Information Act may require additional filtering of information in our files. We have not had a rigorous approach to restricting personal information, e.g., artists' addresses getting into the files, although this is likely to be rare. Currently, potentially problematic requests for information pass through a team dealing with FOI requests.

Typically, the nature of conservation information is factual and non-judgmental with respect to the working method of the artist.

Moral rights of the artist have not changed, but with increased awareness of conservation information, a rise in challenges may be seen.

One area for concern has been Tate's ability to control or ensure that it has access to the information obtained by examination of the collection in support of post-graduate studies, in particular PhD documentation. This has been an issue in cases where publication/completion of PhDs has not happened or has been postponed as a means of controlling information usage.

Should a distinction be made between treatment-related conservation documentation and technical studies of artists' materials?

Currently we make no distinction and we have not had significant problems. With resource implications for digitization, this needs to be assessed. The treatment record is seen as the ethical requirement of conservation practice and is the means by which best practice can be illustrated.

Past cleaning controversies?

Tate has been subject to only the occasional press response to a conservation issue.

Are there advantages to sharing conservation documentation with a broader audience? with an unrestricted audience? Are there specific exceptions in an affirmative or negative response to this question?

This perhaps requires a distinction between interpreted information and raw data to be interpreted.

Are there publication issues that result in individual or departmental protection of information (i.e., refusal to share or release information for fear of someone else publishing it)?

Conservation at Tate has had a tradition of being quite open about the information in its files. It may be that as interest in access has been generally quite limited, concern over information being used by others has been insignificant.

Is this really a matter of the difference between knowledge and information? Is knowledge equivalent to interpretive information? Typically the files contain primary information; the interpretive aspect does not generally make the file until it is published. Research projects, when restricted to a distinct time period, normally hold the new findings separate from the files until the completion, when it is inserted.

Concern has arisen with direct lifting from Web sources, not least of which the means by which credit is ascribed to Tate's Web information. Currently it is non-person-specific. Appropriate referencing or credit for interpretation leading from conservation technical information has been difficult to control. This provides little professional incentive to produce Web information prior to formal publication.

The direct contact with individuals accessing our files has made it easier to identify how information is to be used. It has also provided a means by which we are informed as to what research is being undertaken.

Appendix

Types and Forms of Information

The primary source of conservation information is a hardcopy folder, held at the location of the conservation specialism. Records are thus spread across the Milbank site and the Tate store. Frames and paintings have separate sets of records, with elements of duplication across them. This record is a working folder and houses non-interpreted data; descriptive passages about structure, condition, and artist's method; and interpreted research. Physically it will typically contain: condition and structure records, a list recording occurrences of examination, sets of standard condition photographs, (B+W) technical photographs, CDs, enquiries and letters, artist's letters and copies of artist's letters, copies of artist's interviews, and records of treatment. It may also contain removed labels and associated physical aspects of the work: scraps of tacking margin, tacks, paint samples, colourman labels. Labels specific to display history have typically been removed in the past and stored in curatorial files.

These full records can date back to the 1950s, with short notes dating back even further to the turn of the century, with transcribed notes from National Gallery records prior to the transfer of works to Tate.

Increasingly, condition and structure information is recorded electronically and linked to the object record within the collections management system. The format of the information is structured with a detailed help document embedded. A hard copy is printed out for the conservation folder. The structure has been developed in preparation for fuller use of a searchable database in the hope that once this is in place, historic data will be in a usable form for transfer. A Web form of this is also viewable for staff and the public via the Tate Web page, and internally via the Tate intranet. This form is searchable, but conservation-specific search criteria have yet to be created. Currently the themes identified are based on subject.

Artists' interviews, now underpinned by protocols established through INCCA, are housed separately from the conservation files and from the main Tate archive. Their existence is listed within the library/archive database. Access to these is restricted and dependent on individual copyright agreements.

Art installation files are produced by handling staff and rationalized by conservation for works where a standard approach cannot be used. These are stored at the Tate store and are managed by art-handling staff.

No second copy of paper records exists.

Technical studies of specific works or groups of works that are generally driven by exhibition programmers sit within the exhibition page of the Tate Web site.

Images

The extent to which digital images are taken varies across the specialisms, as does their function. Tate is currently developing an indexing system to manage digital images. Once this is in place, there will be enormous pressure on conservation to move from analogue imaging systems to digital. There are concerns over the degradation of quality. Currently, images of the collection fall into two categories: official views and conservation photographs. Conservation photographs are managed independently of the official views and include technical photographs. Of concern is the official view image, which, once superseded, becomes an essential record in the history of the condition of the object.

Collections Management Data

Conservation owns certain information fields within the networked collections management system (The Museum System). These include medium, dimensions and information pertaining to storage and transit components—crates and transit frames. Conservation is responsible for keeping this information current. This is the primary source for publications, including display captions, Web pages, and catalogues. Transit data are fundamental to Tate’s use of the collection and underpins transit and movement scheduling.

Within the collections management system, conservation also maintains a “display-state” survey record. This is data-controlled and fully searchable by terms. A performance indicator for conservation is that no object will have a survey record older than five years. These records are effective for sculpture, paintings, and frames, but not for works on paper. These records are not archived, but are live current statements about the work.

Information pertaining to damage is collated both within the conservation record and via damage records that are linked to object records.

Time-based media, where management of both the unique object and the supporting equipment is required, are currently integrated into the collections management system.

Limited, direct use of conservation information is made by curators. This is achieved on an ad hoc basis and is dependent on individual contacts across the institution. Curatorial expertise on the IT front has limited their ability to use digital formats. Relatively little use is made of the hardcopy conservation files.

Short texts of interpreted conservation information that describe the artist’s method are produced by conservation, and these are accessed in Web form. Interpreted information is also made available through conservation publication: catalogues and books, Web pages specific to exhibitions within Tate’s Web site.

The Yale University Art Gallery

The Yale University Art Gallery is committed to its mission as a teaching institution, where there has been a long tradition of learning through the direct observation of art. Yale's students and faculty benefit from regular classes held either in the museum or in object-study classrooms. The free exchange of ideas and information is encouraged, and curators and conservators openly share and explain the contents of object files. Learning directly from artifacts naturally lends itself to discussions about the materials and techniques of art making and about aging, conservation, and restoration.

As a staff within a teaching institution, we remain firmly committed to the free exchange of our research and gladly share reports with our colleagues at other institutions, as well as those in private practice. While in principle we are in favor of almost universal access to our conservation reports, we are not inclined to make reports available—over the World Wide Web, for instance—with no holds barred. As conservators, we do not want our reports to become sources for treatment recipes for just anyone to use to self-teach or treat artwork. Who in this field does not have accidents, and who would not want to exercise at least some control over information pertaining to either unfortunate mishap or, perhaps, more profound errors in judgment and policy? It was in the very spirit of controlled openness that the art gallery chose to address the problems we faced with our collection of Early Italian paintings, a project with which many of you are familiar, and one that resulted in the treatment, exhibition, publication, and public discussion of many of these pictures when we collaborated with the Getty Museum on a joint conservation project some eight years ago. At that time, almost all of our records were on traditionally based paper documents, and although we would have welcomed digital access to our and our predecessors' objects files, the technology to do so was not available.

Presently, conservation department records are accessible not only to the gallery's staff but also to the students, faculty, and the professional community as long as they are willing to visit the museum. The conservation staff works to facilitate this access, not just by writing the reports in a relatively jargon-free manner and asking curators to review and comment on them, but also by taking the time to meet one-on-one with any student, faculty member, or visiting scholar who asks to read them. Meetings serve to clarify information and embellish the classroom experience. Furthermore, the director and curatorial and conservation staff believe that the information contained within our reports should be freely available to the scholarly community beyond the university and, to a large extent, to the general public.

The gallery conservation department has generated word-processed reports supplemented by film-based photography for approximately thirteen years. Prior to that, most documents were typed or even handwritten and supplemented with black-and-white as well as color transparency photography. Hard copies of reports are kept in the object files of the conservation, curatorial, and registrar's departments, where they can be read by any member of the art gallery staff, university faculty, students, and inquiring scholars. The move to digitally based archives using The Museum System software began in 1996 and the first digital photographs were taken in 1999. The conservation department initially attempted to use the conservation fields available in the database, but found them awkward and difficult to use. While an attempt was made to incorporate records into TMS, this was not routinely done by everyone until we physically moved our entire collection in 2001. We consciously enter new documents to the database, which is still cumbersome, but have not given much priority to adding our earlier records or those of the previous generation. Our staff and resources for this kind of project are limited and it is not clear in our minds what benefit such a project would

serve. We continue to believe that one-on-one communication with individuals seeking our conservation documentation remains the single best way to accurately communicate and increase understanding.

While using a museum database has made archiving and accessing reports, especially written ones, much easier, the shift to a digital database has not accommodated personal or institutional style, nor does it engender object-anchored communication and discussion. A well-written and formatted hardcopy report held before an object invites the reader to reflect on and question the object, whereas the receipt of an e-mail announcing that a report has been filed in the database and is ready for review, from practically anywhere, does not.

While a handheld file or portfolio complete with 8 x 10 photographs, transparencies, or even drawings allows for the easy review of a project, the many layers, windows, and fields and the number of double-clicks needed to appreciate a database-driven report can be mind-boggling and cumbersome. While film-based photographs can be easily taken and, once processed, can be quickly labeled and filed, digital photography requires far more labor to save, label, manipulate, color correct, store, migrate, and archive. Unfortunately, the services of the darkroom technician have disappeared and much image manipulation has fallen back to the desktop of the conservator.

Does this process need to be facilitated and improved before it can be universally adopted and appreciated? The answer is emphatically yes. Digital documentation is clearly the path we should follow. The power of a good and well-organized database is understood. Yet, as conservators who are in constant and literal touch with our art objects, we still see the need, use, and benefit of a palpable, handheld document. Talking about real objects compels us to share information in more than a “virtual” way.

Databases should be designed as more fluid and dynamic entities. A report form that is useful for one discipline might not be appropriate for another. While one institution might favor checklist inventories, another might favor cursive open-field, word-processed documents. And the interface between text, drawing, diagram, or photograph needs to be seamlessly facilitated.

There is certain irony in that all is lost when the carefully written, designed, and then almost desktop-published treatment reports we see coming from training program students are completely destroyed when downloaded to our database. Our need is for the database to accommodate us, rather than for us to accommodate the database.

Buffalo State College

Access to Conservation Information

As Buffalo State College is a conservation training institution, the artifacts we examine and treat, and from which we produce documentation, belong to other institutions or to individual collectors. By signed contract, these owners all formally agree to release to us the rights of publication of all information and images documenting their examination and treatment, and grant us permission to communicate this information and material to other conservators and allied professionals for scholarly, educational, and other professional purposes. In addition to the material documenting examination and treatment are reports of student research into conservation methods and materials, or materials and methods of the artist and artisan.

We are willing to provide and have provided information from these records to those inquiring who have professional interests, such as students, researchers, conservators, and professionals in allied fields. There is no direct access to the documentation material, but responses to such inquiries may include the sending of copies of reports or portions of reports in their current form. At present, the number of such inquiries is relatively small, as there is neither a published listing nor an Internet-accessible listing of the art and artifacts examined or treated by the department, or of reports of student research. (It should be noted, however, that some of this work is published in the conservation literature.)

We do feel that it would be advantageous if such listings were created and made accessible, not only because of the ethical professional imperative to share information but also for the anticipated benefits of broadened dialogue among those in conservation education and the profession as a whole. We have an actively maintained, well-linked Web site and thus already have a venue for Internet access. We do not anticipate inquiries from the general public for this documentation material; we see no benefit in actively encouraging such inquiries, nor do we have the resources to respond to them.

While the creation of a listing of research reports is planned, a listing of artifacts treated would be a major undertaking and requires further discussion. We do not foresee that direct Web access to reports and documentation materials themselves would be pursued, as the contractual agreement with our clients requires that we establish the purpose to which the information is to be applied before making it available. In the case of research reports, as this is student research and perforce limited in scope, we feel that it is important that we maintain an ability to make those accessing such reports aware of any specific limitations in the work.

This approach to information access, where a searchable listing of existing records is provided but direct Internet access to the actual material itself is not, is similar to that used, for example, by the newly created International Network of Conservators of Contemporary Art (INCCA). It is a sensible approach as it allows an institution to maintain its records in a form best suited to itself, while at the same time broadly sharing knowledge of the existence of available information, with direct access provided on an as-needed basis.

It should be noted that, since 1976, student research presented at the annual conferences of the Association of North American Graduate Programs in Conservation (ANAGPIC) has been published as post-prints distributed to participants. ANAGPIC has recently addressed this limited distribution problem by planned Web publication of past and future post-prints through the facilities of Conservation OnLine.

While the typical conservation examination report will contain information on artists' techniques and materials, maintaining an ability to distinguish between treatment-related conservation information and technical information on artists' materials is pragmatically sound, as these two areas are usually separate kinds of inquiries. This might be accomplished simply by use of appropriate record formatting and search parameters.

Digitization of Conservation Information

As we have no collections, we cannot appropriately address the issue of the contextual relationship between conservation information and other cataloguing and registrarial information in terms of our own institution. In general, however, the profession's *Guidelines for Practice* (the American Institute for Conservation of Historic and Artistic Works, or AIC) denote an underlying requirement for confidentiality in the relationship between the conservator and the owner of the artifact under care. Thus, for a museum this is an institutional decision based on practical, philosophical, and legal rationales.

Despite the advantages in terms of access and backup security, the digitization of our previous conservation records (i.e., records that exist in hard copy only) would be impractical and an unwise use of limited resources, as the documentation would need to be totally re-created in digital form by re-entering or scanning, an enormous and complex undertaking. In our institution and others, the same results might equally be achieved by better management protocols for existing hardcopy records, and simple photocopy duplication for offsite storage if not already practiced. During this process, it would be valuable to create a basic Internet-accessible reference database of the existing hardcopy records, perhaps through integration with the digital record database.

For the past three years, our formal conservation records, i.e., reports of examination and treatment (both written and photographic portions), have been created using digital technology only, and are stored in both digital and hardcopy form. (The profession's *Guidelines for Practice* require the production of hardcopy records, and we feel that until the long-term accessibility of digital records can be convincingly demonstrated, such practice should be continued.) There are aspects of traditional documentation, however, that will likely never be digitized, and it is important that the care and storage of these records be addressed. Marginalia from visiting scholars mentioned in the questionnaire are one such example, but in terms of conservation records, more critical are the conservator's daily laboratory log notes and accompanying physical addenda (e.g., swabs with samples of removed coatings, scientific samples used for analysis). These "informal" but ethically required records can be invaluable to future conservation care and investigation. Storage with the hardcopy report records is an obvious solution, but each institution may need to deal with this on an individual, practical basis.

One aspect of traditional conservation documentation that has changed is the time now allotted to it. Through our own experience with current students and from correspondence with graduates, we find that for the conservator, the recent transition to digital documentation has had a profound impact in terms of daily practice, especially in the increased time allotted to and required for documentation activities. While some of this is related to transitional issues such as the setting up of databases, metadata protocols, the learning (and frequent relearning) of new and still evolving technologies, etc., some aspects of this increased time allocation will likely remain, especially those related to imaging and photographic documentation activities. Even in major museums, conservators are entirely or partially responsible for their photographic documentation. It is proper that they be, as the photo-documentation process involves examination of the artifact under ideal viewing or illumination conditions and is thus an important part of the examination process. While digital imaging has time benefits in terms of immediacy of results and future access, "processing" of the image has become a new responsibility for the conservator. Although improvements in

technology will facilitate this procedure, it is likely to remain a significant burden for the foreseeable future. With digitization, image and, increasingly, written records have become major points of access to museum collections; thus, the creation and maintenance of such documentation has become an increasingly important museum function. When digital documentation programs and protocols are established, it is critical that careful consideration be given to the impact that these procedures will have on the ability of conservation staff to address their primary collections care and treatment responsibilities.

The United Kingdom Freedom of Information Act and Its Impact on Museums and Galleries

Sue Breakell

Tate

Executive Summary

A significant change in the United Kingdom's information environment was brought about by the Freedom of Information Act (2000) (FOI), which provided new rights of access to information held by public authorities, subject to certain exemptions.*

Museums and galleries provide large quantities of information to the public as a matter of course, and on this the Act has generally had little impact. However, prior to the Act coming fully into force in January 2005, the sector discussed a number of concerns about particular kinds of information becoming available under the new regime, such as certain details about current acquisitions.

In practice, the workload of enquiries has varied; some complex enquiries have been extremely time-consuming to collate, consider, and consult on releasing the information requested. A large proportion of enquiries have come from journalists, in many cases investigating high-profile subjects such as acquisitions, export licence cases, and governance issues. Exemptions have been applied in some cases, tending to cluster on particular subjects or exemptions. A combination of experience and precedence, including one tribunal, has helped to refine and clarify the processes and boundaries.

Overall, one year on, it is clear that FOI has led to some cultural change in museums and galleries as the assumption of openness becomes more established, although it does vary by institution and by department. There has also been an increase in awareness of the importance of records management as a vital tool for the management and provision of information. However, there is still a way to go before FOI is fully embedded in the culture of the museums and galleries sector.

The UK FOI Act: Background and Summary of Effects

The Freedom of Information Act was passed in 2000 and, after a staged series of preparatory provisions, came into full effect on 1 January 2005. The Act was part of a series of moves by the British Government to create a climate of greater openness about the activities of central and local government and associated public bodies, including national museums.

The previous legislative framework for records of public bodies provided for them to be closed, should the institution wish, for thirty years after creation, at which point they should automatically be made available (although some kinds of records could be given longer closure periods).

* Different Freedom of Information legislation applies in Scotland and has not been referred to in this paper.

The new Act gives two basic rights: firstly, the right to know whether information is held by the public authority in question, and secondly, the right to have access to that information, unless it is subject to one of a limited number of exemptions. The Act covers recorded information, which may be in any form, including film or sound recordings. It includes all information *held* by the authority, not just that which is created by it. Note also that the right is to access to information, not to records; this is an important distinction.

Requests must be made in writing but, unlike FOI legislation in some other countries, there is no requirement to cite the Act when making the request. The information must be provided within twenty working days. The public authority may seek clarification about the information requested, and in this case the clock stops until further details are received.

The assumption is that information will be made available unless one of a limited and specific list of exemptions applies. There are a number of exemptions, which fall into two categories: some are absolute and apply in all cases, while others, even when considered applicable, are subject to a public interest test. This means that it must be considered whether the public interest is best served by releasing the information, even if an exemption could be used. The exemptions which might apply to records created in the museums and galleries sector include:

- Commercial interest: – disclosure would be likely to damage the commercial interests of either the public authority or another party, or both.
- Information provided in confidence: disclosure would lead to an actionable breach of confidence.
- Communications with the Royal Family and Household.
- Prejudicial to the conduct of public affairs: disclosure would inhibit “free and frank exchange of views”.
- Health and safety: disclosure would endanger an individual’s mental or physical health and safety.
- Law enforcement: for example, disclosure would prejudice the investigation of a crime or accident.

Another area where information may be withheld is personal data: the interface between the Data Protection Act (1998) (DPA) and FOI. In a way, the two acts can be seen as flip sides of a coin. FOI seeks to make information available wherever possible, while DPA seeks to protect personal information about individuals and ensure it is not made available inappropriately. The FOI Act includes two exemptions relating to personal data: one where the applicant is the data subject, and one where the applicant is a third party. If the applicant is the data subject, then the request is taken out of FOI and handled as a DPA request. If the applicant is a third party, personal information about the data subject is exempt.

It is also worth noting a third piece of information legislation, which might be particularly pertinent in relation to conservation records: the Environmental Information Regulations (EIR). This is an EU law, rather than an exclusively UK one, and as such there has had to be some tweaking to try to ensure that FOI and EIR sit alongside one another. Essentially EIR seeks to ensure openness and accountability in terms of information relating to the environment. The definition of *environment* is very broad, and may include information about emissions from buildings, energy efficiency, or what chemicals are held in the building and how they are used. It is not the purpose of this report to cover EIR, but it is important to be aware of it.

Returning to FOI, if the applicant is unhappy about the decision made to withhold information, or perhaps about the quantity of material released, he or she may request an internal review. If the applicant remains dissatisfied, he or she can contact the Office of the Information Commissioner. The commissioner

will carry out a review of the case but a tribunal may also be requested. One case tribunal has been held relating to information withheld by a national museum, and a number of other cases are under review.

There are provisions in the Act for charging for information provision within a clearly prescribed framework, although museums have rarely levied charges. There is also provision to refuse to give information where the amount of time taken to provide it exceeds a certain threshold, effectively about eighteen hours. This is somewhat difficult to apply, as only certain kinds of activity can be included in the calculation. For example, time spent locating information can be counted, as can time spent extracting information from the document (including editing or redacting information), but not time spent considering whether an exemption applies. In practice, it can be difficult to distinguish among these different activities.

The first part of the FOI Act to come into effect was the Publications Scheme. This document, produced by each public authority, lists information which is already actively made available to the public, and how. For example, this would include information published in the museum's biennial report, or on the Web site, or information leaflets available by post on request. In the case of museums and galleries, publications schemes had to be published by November 2002. The scheme, as well as being an active demonstration of openness, helps deal with FOI requests, because there is an exemption which covers information already published. A related exemption covers information intended for future publication. It is not clear how far in the future this can be, or how concrete the intention to publish must be.

Information Provision in Museums and Galleries Prior to FOI

Over the last twenty years, most national museums, in London at least, have employed at least one professionally qualified archivist or records manager to take care of their institutional records. These are public records as defined by the Public Records Act (1958) and they are held under authority devolved from the National Archives (TNA), to whom the institution is accountable for the appropriate care, management, and storage of these records. Records managers are responsible for establishing and implementing systems for the management, retention, and disposal of records still in active (or semi-active) use, while the older records, no longer required for current operational reasons, are retained as archives for historical research purposes.

Some national museums also collect archival material within their subject area from outside individuals or institutions. This material is acquired by gift or purchase, or occasionally on loan or deposit. At Tate, the Archive of British Art since 1900 collects the papers of artists and institutions such as commercial galleries, while the Victoria & Albert has the Archive of Art and Design. These, by their very nature as national collections, are publicly available resources, a fundamental purpose of which is to give access to and answer enquiries about their holdings. Often these collections are managed in the same department as the institution's own records. This means the general context has been one of openness and information provision, and information has, in practice, rarely been closed for the thirty-year period which was permitted.

Preparation for FOI in Museums and Galleries

An early impulse for preparing for FOI in the sector came from archivists and records managers. The National Archives had been issuing guidance and raising awareness. A limited amount of guidance came from the Information Commissioner's Office (ICO) at this stage, which, while useful, generally did not cover the concerns particular to the museums and galleries sector.

Anticipating the kind of concerns that might arise, and given their role as information providers aware of the needs of both the institution and the public, many archivists discussed the subject informally together. There was also some discussion across other networks at the director level.

Subsequently, the National Museum Directors' Conference (NMDC) convened a Freedom of Information Working Group from around 2001. The group sought to plan for FOI for the sector and to collate concerns, providing model documentation where possible and raising specific questions with the ICO or the Department for Constitutional Affairs (DCA) (or the Lord Chancellor's Office, as it was then called). For example, the group developed a publications scheme template on which museums could base their own scheme. It also collated a list of the kind of information which museum staff were concerned about making available to the public. This included:

- Acquisition negotiations.
- Forward planning and strategy documents.
- Names of donors of works or money.
- Information about private lenders of works.
- Applications for grants.
- Board of Trustees discussions and minutes.
- Investigation of loss, damage, or theft.
- Negotiations with private or corporate partners, sponsors, or government departments.
- Object storage locations.
- Object valuations.
- Some current financial data.

As the provision of information to the public is a core function of museums and galleries, there was also a general concern about how to identify FOI enquiries among the vast volume of enquiries which were already dealt with as a matter of course by various parts of the institution. No one wanted to make the enquiry management process more complicated than it need be.

Archivists in particular were also concerned about the fact that FOI covered all information held by (not necessarily created by) the institution. In a collection of modern archives, there are always concerns about information relating to living individuals, and this has tended to be dealt with by the application of closure periods to all or part of particular collections. The terms of the FOI Act meant that such closure periods might no longer be enforceable.

Nevertheless, FOI was potentially a great lever for promoting good records management. What may seem to some managers to be somewhat abstract arguments about efficiency, accountability, and the like can fall on deaf ears in a cash-strapped environment, but they were significantly strengthened by the very concrete reality of FOI.

The final stage before January 2005 saw museums drawing up guidance and procedures for the handling of information, and providing training to staff across the organisation. At this stage, the actual impact of FOI was an unknown quantity: what would people be interested in about the internal workings of museums? How would the exemptions be applied? How quickly would the boundaries of the law be tested by particular cases? Would it change the way the gallery was managed?

FOI in Practice

FOI was a big news story in the first few months of 2005 as journalists tested it across a range of public authorities. Just over a year on, news stories still regularly refer to “information released under the FOI Act” as a normal occurrence.

The general view from the ICO is that the Act is working well. There has generally been a high media profile for FOI and there have been significant releases of information. It is certainly being taken seriously and there has been a definite culture change in public authorities, tending much more now toward openness. All parties are learning and improving from experience, and the boundaries are being tested, as would be expected, by a number of appeals and tribunals.

The ICO has stated that 90 percent of authorities have made changes to their filing/records management systems as a direct consequence of FOI. The DCA suggests that enquiries from the media initially focused on the FOI process, whereas they are now more interested in the substance of the individual release. This seems to be true across the museums and galleries sector, too.

For the purposes of this report, archivists at five major national museums (the British Museum, the National Gallery, the National Portrait Gallery, the V&A, and Tate) were consulted about the impact of FOI on their organisation, and the kind of issues which had arisen over the first year. Their comments are discussed below.

Enquiry Management

The recommended model for FOI enquiry management is to have an FOI champion, and an FOI specialist, who is the first point of contact for enquiries. The roles which take on these responsibilities vary by institution, but the first contact point will make an initial assessment of the enquiry and identify—either from records management documentation, or personal knowledge, or a combination of the two—where the records likely to contain this information are held. They will then contact the appropriate person or people who hold these records, and work with them to identify the information (remember the distinction made between records and information). Decisions are also made then about whether any exemptions apply and, in the case of the non-absolute exemptions, the public interest test is also applied. In many cases these decisions are made by a group of senior staff, drawing in as necessary other individuals with particular expertise on the subject of the enquiry.

Some institutions’ arrangements have remained unchanged since January 2005; others have evolved to accommodate the volume of enquiries and the complex decisions required. Other senior staff, either directors or board members, are designated to consider any requests for reviews, and so are not involved in the first responses, in order to retain their objectivity.

Institutions differ slightly in how they make a decision about whether an enquiry should go through the Freedom of Information process rather than be dealt with as a normal enquiry. Many use the distinction that FOI enquiries relate to information that would or could have been refused under the pre-FOI regime, i.e., the thirty-year rule. However, in practice, several of these institutions had not rigidly enforced the thirty-year rule and often made documents available sooner, consulting senior management as necessary. One institution does not treat any academic enquiries as FOI requests, however current the information, because such information has always been made very easily available to these enquirers.

The implication is that there is inevitably a reliance on other staff at enquiry entry points to deal appropriately with enquiries and refer them on as necessary.

The volume of enquiries received varies considerably from institution to institution and depends in part on the way in which FOI enquiries are defined and therefore logged. Tate has the highest figure at sixty; the National Portrait Gallery the lowest at twelve, though it should be noted that the NPG figure does not include any academic enquiries.

All agreed that the impact of FOI on workloads is not steady throughout the year. When a complex enquiry comes in, the workload may be extremely heavy and involve a great deal of consultation and co-ordination across the museum before a reply can be sent. No museum has a post officially dedicated to FOI, as is the case in many central government bodies. FOI responsibilities have had to be assumed in addition to other duties.

Enquiries and Exemptions

Decisions about release cannot be made based on the purpose of the enquiry, and in some cases it is not clear whether an enquirer is writing as a private individual or as the representative of an institution. Of course, once released to one enquirer, the information must be made available to any others who wish to see it. In many cases we do know the purpose of the enquiry, and although there is a wider variety within and across institutions, all those consulted reported two broad main groups, with other minor categories. The first is the more academic enquiry, where the information has been sought for genuinely analytic or evaluative purposes. As well as the more obvious art historical academic enquiries, this might also include people seeking information about, for example, visitor profiles or the use of audio guides.

The second area, which carries the highest level of risk for organisations, is enquiries from journalists and others with an investigative purpose. Some of these are “round robins”, sent to a number of national museums for comparative purposes. In the early days of FOI, “round robins” were often made with the purpose of testing the different museums’ handling of FOI.

Recent journalist enquiries are more likely to be investigating a subject specific to one museum, where information would previously have been unavailable. Many enquiries have related to acquisitions, particularly those which have involved an export licence case, where a stop is put on the export of a work pending an attempt by a national museum to fundraise to keep a work in this country. Details of transactions where private individuals have funded or partially funded acquisitions are also common requests. The most commonly used exemptions in these cases have been commercial interest, personal information, and information given in confidence.

Tate and the National Portrait Gallery in particular have received requests relating to works purchased or commissioned from contemporary artists, including the price paid. Both these institutions commission and purchase work by contemporary artists far more than the other museums questioned.

Governance issues are also a common area of enquiry, including directors’ activities and checking whether appropriate procedures have been followed.

However, perhaps one of the most significant developments has been the case tribunal relating to an enquiry received by the National Maritime Museum. The enquirer asked for financial information about money paid to an artist for an exhibition of his work at the museum, including new work made for the show. The museum released a quantity of information, but withheld some details of the negotiations and the sums involved, because it was felt that releasing it would prejudice the commercial interests of both the museum and the artist. On appeal, the Information Commissioner supported the museum’s decision, with some caveats about the duration of the exemption, but a subsequent tribunal overturned the decision because it was felt that the prejudice to commercial interests could not be demonstrated to be “likely”, in a very real sense based on actual evidence.

The tribunal's view highlights the need for individuals or companies dealing with public bodies, including museums and galleries, to understand the new environment in which those bodies now operate, and that information may be subject to requests and the museum cannot in any way undertake to keep such information confidential. Some museums are including standard text on their formal documents, such as contracts, to bring this to the attention of the other party.

Interestingly, the Web site of the National Union of Journalists includes articles on how to use FOI to maximum effect. This is of course a legitimate form of enquiry and it is entirely proper that public bodies should be accountable and subject to press scrutiny. However, the burden of responding to these requests has at times been considerable and staff have found themselves wondering if this time is really the best use of public money, or indeed the real intention of the Act. There has at times been a clear tension between the wish to be helpful (and to be seen to be helpful) and the need to apply the letter of the law in order to manage the time burden of answering FOI enquiries.

Attitude of the Institution

All museums agree that FOI is being taken more seriously now than it was as an unknown quantity prior to implementation. There is a significantly higher level of awareness, particularly at the senior management level, reinforced by a number of cases which have received a volume of press coverage. In general, there is a growing understanding that release of information is no longer at the discretion of the gallery but has to fall within the FOI framework. There is also an increased awareness of the possible impact of FOI on practices and processes, at least among those staff who are involved in enquiry handling or consultation about releases. Sustaining these levels of awareness will require regular training updates.

In some institutions, managers have also recognised the need to continue to remind staff that any record they create may be requested under an FOI enquiry, including e-mails, which people seem to have particular difficulty seeing as records. It has also had the effect of making them realise that records belong not to them, but to the institution.

Records and Information Management

A number of galleries were able to secure extra staff resources for records management in anticipation of FOI, although in some cases this was temporary, initially at least. For example, the National Gallery recruited a three-year records manager in addition to its archivist, specifically to improve records management. FOI is certainly a very clear lever for records management around the organisation. Indeed, staff seem to appreciate the reassurance that comes from a records management framework. In theory this framework should mean that information can be more easily located; and retention schedules give an audit trail so that enquirers can be told information has been disposed of according to a formal schedule and is therefore no longer held.

Conservation Records

Conservation records have some particular characteristics in that the record for a particular work is a cumulative body of information, none of which ever becomes irrelevant for current operational purposes: a conservator always needs to have the full story of work carried out on the painting.

In general, museums and galleries have not received many requests for access to conservation records. Those requests which have been received continue to be in the area of specialist professional or academic research, including conservation students. In any case, this is an area where the sharing of information and expertise is commonplace, albeit perhaps not so comprehensively as under FOI.

Occasionally, a particularly controversial case might include interest in the physical condition of, or conservation work carried out on, an object, but generally speaking this does not seem to be an area of particular interest to journalists. Another example given is an enquiry made into the process of authenticating a work through technical reports and assessments. However, so far, instances of this kind of enquiry through the FOI framework have been rare.

Concerns expressed by conservation staff in the various institutions have included the sharing of research which has not yet been completed; a general concern about the confidentiality of their work, leaving them exposed to scrutiny in an unprecedented way, because previously they could choose what information they wished to share; and concern that advice given for the purposes of museum activities may be followed inappropriately in another context. The first of these may be dealt with under the 'intended for future publication' exemption, but the others seem more a case of cultural change, as is the case across the whole of the institution.

Collaboration and Guidance across the Sector

The UK museums' and galleries' sponsor, the Department for Culture, Media and Sport (DCMS), from whom funding comes and to whom they are accountable, has offered a certain amount of information and guidance. It has offered advice on specific cases, although the number of occasions on which this service has been used is limited.

However, some feel that the guidance offered by DCMS and DCA has been of limited value. Reasons cited for this include the fact that it does not cover the specific needs of the sector, which is the area where guidance is most needed.

Generally considered far more useful are the new and existing formal and informal networks between the galleries, such as the museums and galleries archivists group, a National Archives-sponsored group. These networks present an opportunity to compare notes, share information about enquiries received, and consult about the application of the Act with colleagues who understand the particular circumstances of the sector. There has been much discussion across these networks about questions of consistency of approach, as evidenced in the case of the acquisitions information.

In the case of "round robin" enquiries, this kind of consultation can be particularly helpful. One early "round robin" enquiry sent to several museums asked for a class of records rather than a body of specific information. One museum declined to answer for this reason, whereas another did give access to the records that were requested. This was then used by the enquirer as a negotiating tool with the first museum, which then released the information. This aspect of the impact of FOI is one which will continue to evolve: the sector as a whole needs to consult and be consistent, which it does at many levels, but each institution also needs to maintain its own integrity.

General Conclusions

The Freedom of Information Act is part of a wider trend, in the information age, toward access and openness. While not overall a major change for museums and galleries as information providers, the Act has nevertheless had a significant impact in certain specific areas, and as such it has been—and is still evolving as—a culture change.

A year in, staff dealing with enquiries are gaining familiarity with the Act and learning its boundaries and flexibilities. It seems that the areas of concern have proved to be much more limited than anticipated, the main one being a key area of acquisitions-related information. Applying the exemptions in practice—and the

recent IC tribunal—have led to changes in attitudes across the sector, some of which may well be formalised through the publications scheme over the next few years. Over this time, it is to be hoped that awareness will continue to be spread around museums.

From an archivist's point of view, there have been enormous benefits in raising awareness about the importance of good record keeping, as well as individuals' sense of accountability and their responsibility for ensuring that whatever they write or otherwise record would not cause embarrassment if revealed. The fear would be that this could lead to less information being recorded. The experience of other countries which already have FOI suggests that this might be the case, which would be a great shame for the researchers of the future.

The sector is still very much in a transitional period, during which questions about process and application continue to arise. In a few years' time this will be fully embedded in the museums and galleries culture, and people will feel more comfortable operating within the FOI environment.

Further information:

Office of the Information Commissioner: <http://www.ico.gov.uk/>

Department for Constitutional Affairs: <http://www.dca.gov.uk>

Department for Culture, Media and Sport: <http://www.culture.gov.uk>

The United Kingdom Freedom of Information Act and Its Impact on Museums and Galleries

David Saunders and Antony Griffiths

The British Museum

The British Museum's answer to the 2000 Freedom of Information Act is detailed below; it applies to all information in the museum, but it is worth commenting first on our basic philosophy for making information available from the curatorial and conservation documentation systems.

The Merlin documentation system includes a conservation module to allow information from examination and treatment to be recorded. There has been discussion regarding the issue of making information from the Merlin and Conservation Merlin systems available to the public, and agreement that since the objects to which these records refer are held by a publicly funded museum and the research or treatment on which the record is based is also publicly funded, the information should be freely accessible.

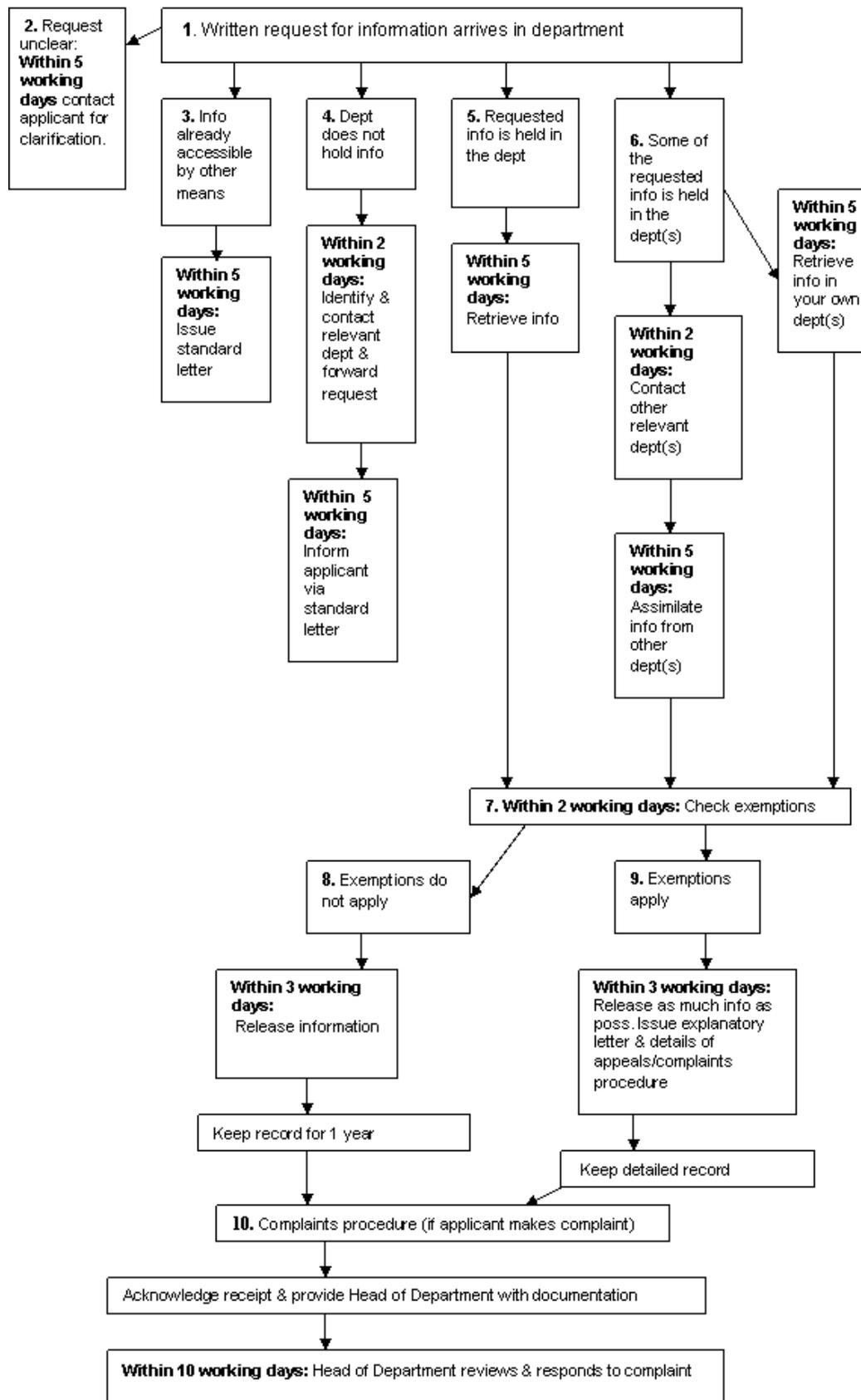
At present the Merlin system is not accessible outside the museum, and a very limited subset of information is available on the museum Web site. However, over the next few years, development work will be taking place to allow us to put the entire Merlin system online, making accessibility less of an issue. As part of the development, the number of records will be increased, conservation records will be fully integrated, and many more images will be incorporated.

Freedom of Information Act 2000

The museum has a fairly comprehensive set of guidelines for dealing with enquiries. These are on the museum intranet and include templates for several types of standard letter, covering such areas as:

1. An immediate response indicating that an enquiry has been received.
2. Explaining that information is exempt from the Act.
3. Indicating that the information is not held.
4. Providing the information for the enquirer.
5. Dealing with appeals against non-disclosure or complaints.

There is also a very useful flow chart (below) that guides staff through the procedure.



Specific Issues Raised by Contemporary Art in View of the Rights of Living Artists: Overview of Copyright and Moral Rights in UK Law

Jacqueline Ridge

Tate

In the context of the Mellon research project into the legal implications for conservation, initially with a US and UK focus, this paper sets out a few general principles of copyright protection in the UK.

International Framework

National copyright laws are derived from international framework treaties, negotiated by national government members of the World Intellectual Property Organisation (WIPO), based in Geneva. The main treaty, the Berne Convention, sets up core standard principles of the scope and nature of rights, limitations to rights, moral rights, and beneficiaries of copyright.

A second layer of governance and regulation applies to EU countries under the European Union harmonisation directives, which provide some consistency across the legal regimes and more detail on the protection of rights, duration of copyright, etc. for member states. Despite this, there are historic structural differences: the UK protects the economic right of the copyright holder under common law, whereas most European countries have a 'droit d'auteur' system (right of the author), which is a more individual personal right tied to the identity and personality of the author. The area in which this difference is most closely seen is in the relative strength of protection for moral rights.

Territorially, copyright protection applies on a worldwide basis in all countries which have signed the Berne Convention. The original protection is granted to works based on where a work was first issued to the public. Rights to take action for infringement will depend on where the act of publication (and possible infringement) takes place and the law of that country. Any assessment of the legality of certain actions needs to consider the cross-border implications.

UK Law

Copyright is an automatic right (meaning it applies from the moment of creation, without the need for registration) to an original work. There is considerable case law about what constitutes sufficient originality. The protection attaches to the expression of the work (as a text, painting, music) rather than to the idea.

The relevant legislation is the Copyright Designs and Patents Act 1988, as updated by the Copyright and Related Right Regulations 2003, implementing international and EU rules on copyright to digital environment.

The nature of the rights confers on the author the right to authorise copying or making the work available to the public via publishing or the Internet (and other actions not explained here). An act of copying

which requires the author's permission includes photography of a work, which technically requires explicit permission, even where the museum is the owner of the physical object. In practice, most artists enter into a copyright licence to grant the museum non-commercial rights to copy and publish the work for their own purposes. The museum will become the owner of the rights in the photograph, such right co-existing with the rights of the author.

Further information sources for UK law:

UK Patent Office: <http://www.patent.gov.uk/copy/index.htm>

IP Portal: Index: <http://www.intellectual-property.gov.uk/resources/copyright/index.htm>

Economic rights of the author: http://www.intellectual-property.gov.uk/faq/copyright/econ_rights.htm

Moral Rights

In the UK, moral rights are a statutory right conferred by the 1988 Act. Some moral rights can be waived and some can be claimed only where they have also been asserted. They basically comprise:

- Right of attribution (paternity)—to be identified as the author of the work when a work is copied or communicated.
- Right to object to false attribution (being named in respect of a work not created by the author).
- Right to control the form of the work (right of integrity/right to object to derogatory treatment).

These are a limited set of rights to which a number of conditions and exceptions apply, weakening their force. Other moral rights regimes, such as France, may also grant the right to publish or divulge work, to correct a work, to object to the alteration or destruction of the original of a work, to object to excessive criticism of a work, and to withdraw a work from circulation on the grounds that the author is no longer happy with it (whether that is an artistic view or is on the basis that the person who holds copyright has not exploited the rights).

Duration of moral rights in the UK is generally for the duration of copyright, although in the case of integrity right, this is limited to twenty years after the author's death.

The integrity right is the key focus for this overview. For the right of integrity to be infringed, there has to be a 'derogatory treatment' of the work.

Treatment means any 'addition to, deletion from, alteration to or adaptation of the work.' The textbooks give guidance that this must involve an interference with the internal structure (or sequence or organisation or meaning) of the work. Examples of likely derogatory treatment are given as chopping out a part of a painting to exhibit it; reproducing a drawing that is recoloured or reduced in size; and colourising black-and-white film. It has been suggested that mere display in a new or inappropriate context will not constitute a 'treatment' for these purposes in the UK, whereas it could be in France.

To be *derogatory*, the treatment must be a 'distortion' or 'mutilation', or otherwise be prejudicial or dishonour the reputation or profile of the author. There is almost no case law on these terms, so there is no certainty about how these rules will be applied. It does appear that derogatory treatment is increasingly interpreted as meaning that an impact on reputation is a pre-condition for such a finding, even if the actions were originally meant to be alternatives, i.e., there is only a distortion if the reputation of the artist is

threatened. This means that publication, circumstances, and extent could all be relevant factors in assessing the case. The test for the damage to reputation would be an assessment of reasonable likelihood and it would probably avoid the subjectivity of the author's own view. Nonetheless, there is so little case law, it is impossible really to be clear on how these provisions would be applied by a court.

Since the right is tied to reputation, it is not surprising that it is triggered only by the publication or communication of the work to the public and that would involve publication in research papers, on Internet sites, etc. Textbooks say that it is not a right to object to spoliation or destruction of the work itself. Clearly, the extent to which it reached the public would be relevant to the scale of damages.

There are a few defences available, for instance if an act takes place in performance of a legal obligation. It is just possible that the preservation of works of art for the nation could be argued as appropriate grounds, although there might be issues as to whether publication of consequential research was justified.

The right of integrity cannot be transferred by the author, but it can be waived by the author in writing, a practice which is common in broadcasting and media industries, allowing them to edit works. Any relationship with the artist on acquisition or later through copyright licence could specifically cover moral rights issues.

Further information:

Moral rights: http://www.intellectual-property.gov.uk/faq/copyright/moral_rights.htm

Bently, Lionel, and Brad Sherman. *Intellectual Property Law*. Oxford: Oxford Univ. Press, 2001. See esp. chap. 10, "Moral Rights."

Notes and Questions

1. Copyright

Royalties and fees: The use of technical images, backs, fronts, raking lights, macros. Does image copyright need to be sought if copyright of the work is not held by the institution that owns the work?

Copyright law is different in detail from country to country. It is challenged on the basis of the copyright law that is in place in the country where the information is published. For Internet publication, this clearly has far-reaching implications. A Web site generated within the UK may comply with UK copyright, but it can be challenged on the basis of the law in the place from where it was accessed.

The different regime of exceptions in the US and EU/UK: Many of these points about images/X-rays and macros are likely to fall within the broad fair-use category in US law and in the EU/UK (US lawyers to confirm; this would be useful research and Q&A). The UK's fair dealings are specific and limited and have not been invoked for these situations as far as the author knows. But perhaps this question could be added: What sort of law reform would provide sensible protection for the essential conservation activities of the museum?

Recent copyright situations:

The publication of an array of technical images, including a B+W X-radiograph, cross sections and macro photographs (published in a hardcopy catalogue and online in 2004), alongside colour images of complete paintings by the artists Gwen John and Augustus John prompted a claim for royalties for all the

images from the heirs of both artists and the Bridgeman library. A precedent was not established either way and it was agreed on this occasion that the challenge would not be pursued.

The challenge, including an X-radiograph which illustrated an entire work and corresponded closely to finished paintings, was not successful and was settled through direct discussion with Tate.

Publication in a 2002 ICOM-CC article of B+W images of a cross section, printed alongside both the spectrum and the paintings (in B+W) to identify the medium used in individual layers, was challenged by DACS. They owned the copyright for the painting from which the sample was taken. The challenge was unsuccessful and was argued against on the basis that publishing the cross section was no different to publishing the spectrum alone, for which there was no challenge. In addition, the article was discussing the scientific technique rather than the artwork itself.

In Tate's 2000 publication, *The Impact of Modern Paints*, the Bridgeman library attempted to claim royalties for all macro paint details published of works for which they owned the copyright. A precedent was not established as, unusually, Tate owned the copyright for a major work by a living artist and thus the claim was invalid. Various artists who own the copyright for their works have given agreement on an individual basis for the use of details and technical images. Sometimes this has included a small fee per image.

2. Moral rights of the artist

An artist can waive moral rights but cannot sign them away. They continue past the artist's death and can be invoked by the heirs. The ability to challenge on this basis becomes more difficult as the distance between the creator of the artwork and the challenger increases.

Moral rights are not underpinned by financial gain.

Moral rights, unlike copyright, can be a challenge to both the published information about the work and to changes made to the object itself. This suggests that the artist can challenge the publication of material information, be it accurate and factual, on the grounds that others' knowing this detracts from the intention of the work. It also means that challenges can be made on the basis of conservation treatments and the presentation of a work. This would seem to imply that relationships between institutions, conservators, and artists are critical and are likely to be a major element in managing moral rights challenges.

There are few examples of challenges on the basis of moral rights within the conservation literature.

3. Is digitizing conservation information synonymous with increased access?

If digitizing conservation information is seen as a means of making it more widely available, it seems likely that this will also increase the potential for challenges. It also seems likely that information published for consumption by the conservation profession will carry less risk than when it is published for a mass public audience.

It is likely that challenges that can lead to financial benefit will be more frequent.

4. New media/born digital works

This relatively new field has by necessity prompted examination of the legalities surrounding copying as part of the process of conservation. It provides useful parallels and approaches which should be considered by more traditional fields moving into the digital era.

5. Rights of the conservator: do these exist?

For employees of Tate, there are no moral rights for the individual, and an institution cannot have moral rights. Nor do Tate employees hold copyright over information or images they produce.

There is likely to be a difference between public and private institutions that opens up differences re: access/confidentiality and also how one might handle release of copyright information under FOI, etc.

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Conservation Documentation of Contemporary Art: Legal Issues in the U.S.

Jim Coddington

The Museum of Modern Art

Contract and Lender Liability Issues

The legal relationship between a museum and its lenders is usually governed by the terms of the loan agreement between them. Therefore, conservators must take care to ensure that in sharing documentation of conservation performed on such works, they are not violating the loan agreement or any related document (such as lender conservation consent forms or waivers). Loan agreements may require confidentiality, for example. In addition, lenders may consider the disclosure of information relating to conservation performed on the loaned work as a violation of their rights, resulting in an actionable diminishing of the value of that work. Before sharing documentation of conservation performed on loaned works, institutions would need to review their loan agreements and related documents to be sure that such disclosure is permitted, or revise their loan agreements and conservation consent forms to authorize such sharing. Needless to say, these concerns would not apply to works of art conserved by the institution that owns them.

Patent Issues

In the course of performing its duties, an institution's conservation department may develop new conservation techniques or processes that are eligible for protection under the patent laws, possibly creating a valuable asset for the institution. By sharing documentation related to these techniques, however, the conservation department might compromise or destroy the institution's ability to obtain the patent at issue. Under U.S. patent law, if an "invention" has been described in a printed publication anywhere, or has been in public use or on sale in this country for more than one year before the date on which an application for patent is filed, a patent cannot be obtained. It does not matter when the invention was made or whether the printed publication or public use was by the inventor himself/herself or by someone else.

Artist Issues

The Visual Artists Rights Act of 1990, an amendment to the U.S. Copyright Act, provides an artist with the right to disclaim authorship of a work that has been distorted, mutilated, or otherwise modified if such modification would be prejudicial to his or her honor or reputation. Fortunately, modifications caused by conservation are expressly excluded from this provision, unless they result from a conservator's gross negligence. However, disgruntled artists might have other means to seek redress. For example, while unlikely, it is not inconceivable that artists who are the subject of shared conservation commentary regarding the pervasive deterioration of their works may feel that their reputation or business has been damaged as a result of this commentary. The artist might then assert claims against the institution(s) for disparagement, trade libel, or similar causes of action.

Copyright Issues

While not unique to the sharing of documentation related to conservation, it is important to remember that disseminating copies of copyrighted material (excerpts from books, reports prepared by independent contractors who have retained the copyright in their work product, etc.) without the consent of the rights holder can precipitate a claim of copyright infringement.

