

Visitor Photography Policy:
An Exploration of Current Trends and Considerations Across American Museums



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Biographical Statement

I hold a Bachelor of Arts degree in Anthropology with a focus in Archaeology and a minor in Scandinavian Studies from the University of Oregon. As an undergraduate I did a semester abroad in Oslo, Norway at Universitetet i Oslo. This fulfilled a third year language requirement in Norwegian for my Scandinavian Studies minor.

Following graduation, I interned at two local museums in their collections departments. While working at the Willamette Heritage Center at the Mill in Salem, Oregon and the Washington County Museum in Hillsboro, Oregon I realized my passion for museums and applied to the Arts and Administration Master's Program at the University of Oregon.

In the summer prior to starting graduate school I received a grant through the National Council for Preservation Education to work at the Bureau of Land Management's The Anasazi Heritage Center in Dolores, Colorado as a curation intern.

In the summer between my first and second year of graduate school, I completed an internship in the collections department at the University of British Columbia Museum of Anthropology in Vancouver, British Columbia, Canada. I co-presented a poster called, "Earthquake Mitigation: Adapting the Collections for Seismic Activity at the University of British Columbia Museum of Anthropology" at the American Institute for Conservation of Historic and Artistic Works Annual Meeting, 2014. The poster was based on a cross-departmental collaborative project during my internship.

As a founding member of The Feminist Museum, I co-planned and co-curated the exhibit "Object/Subject: Femininity in Contemporary Culture." The Feminist Museum is a collective of feminist artists and activists and originated in the 2012 graduate level Arts and Administration course "Cultural Administration."

Abstract

This Master's research project explores current practice and opinions on visitor photography policy in museum exhibit spaces. Assuming that many U.S. museums have outdated visitor photography policies and given the general cultural trend in the use of technology and popularity of social media, it may be necessary for a redesigned visitor photography policy that reflects current realities. The main research question for this study asks, what influencing factors and best practices should be considered when creating a visitor photography policy in a museum? In addressing this question, the research explores issues of Visitor Experience, Conservation and Intellectual Property through a survey of current practice and opinions. The findings of this study informed my concluding recommendations for future visitor photography policy and practice.

Keywords: photography, visitor, museum, policy, copyright, conservation

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I. Introduction

Handheld technology has become a large part of daily modern life in the United States. A person can check their email, share a picture of a beautiful meal, text a friend, and look up just about anything on the Internet, all from a handheld wireless phone. Cellphones and smartphones have enabled our culture to have instant contact; a person is never far out of reach so long as their cell phone is near by. In a way, cell phones have changed the way we experience the world around us and share the experience with others. The cellphone camera has become a tool to share experiences and important life moments easily over the Internet via social media platforms.

The social media phenomenon is rather recent in the long history of museums. Before cameras, visitors might have sketched an art piece with pencil and paper in the museum. Early cameras with their extra equipment and their powerful flash brought about the need for visitor photography policies. The reasons for the policy are similar to today's reasons: concern for the wellbeing of objects, aesthetics of experience in the galleries, and deterring the copying of artworks. The fundamental difference in the consideration for visitor photography policy today is that many museums are struggling to keep up with the innovations and tech savvy demographics of the twenty-first century. As suggested by Eilean Hooper-Greenhill:

Museums are at a crucial moment in their history. In order to ensure survival into the next century, museums and galleries must demonstrate their social relevance and use. This means developing their public service functions through becoming more knowledgeable about the needs of their visitors and more adept at providing enjoyable and worthwhile experiences (Hooper-Greenhill, 1994).

Some museums are still operating within nineteenth century traditions and find themselves out of touch with their visitors.

In the article *Our Museums Are Broken- These 5 Fixes Can Make Them Fun Again*, Seth Porges (2014) suggests that museums are “broken” and the first “fix” is to update visitor photography policies. Porges says:

[Museums] tend to be woefully outdated in how they appeal to young people. With so much cool stuff at their disposal, our great museums feel like they can and should be far more fun than they are—attractions that appeal to locals as much as tourists (Porges, 2014).

He also states that, “some museums remain stubbornly stuck to antiquated policies that forbid photography” (Porges, 2014). As a result, a ‘no photography policy’ limits the natural ‘word of mouth’ that social media and photography support.

Museums are full of art works and objects that evoke emotions and exhibits that inspire. Museum exhibits encourage a natural reaction for visitors to want to share these experiences or at least remember them long after a visit. Pictures taken with a cellphone are the most convenient way a person can do this. Museums have traditionally been places of solitude and quiet contemplation with works of art; but many museums are realizing that they must evolve with the rest of the world when it comes to technology and its place within the galleries.

The visitor photography policy governs whether or not visitors can take pictures in the museum. A ‘no photography’ policy can alienate a visitor. It has become a common natural reaction for a person to take a picture of a fabulous painting they may never have the opportunity to see again. If stern security guards are avidly policing photography in gallery spaces, it can turn a museum visit into a negative experience; while at the same time neglecting physical security concerns for the artwork.

Purpose Statement

This Master's research project explores visitor photography policy in exhibit spaces across all types of museums. The intent of this study was to explore the influencing factors and best practice that currently inform a visitor photography policy. Museums, even of the same subject, have differing photography policies: Some allow photography, some prohibit it, and some allow it in certain galleries. The inconsistencies can be confusing for visitors. According to a recent thread with sixteen replies on the Association of Academic Museums and Galleries list-serve called "Photography in Galleries, National Dialog," museum professionals are also unsure about what informs a photography policy. It is important to know what to consider in order to make an informed decision on whether a policy should be a 'no photography' policy or not. The original poster to this thread expressed a desire for help in finding resources available on this topic (Saarnio, 2013).

Through a robust literature review, comparison of current photography policies, an online questionnaire, and key informant interviews, this study explores and surveys current practice, opinions, and attitudes toward visitor photography policy. As a result of this study, recommendations based on this research and findings are made to assist current and future visitor photography policy and practice.

Research Questions

The preliminary question in the proposal for this study asked, why would a museum have a 'no photography' policy? This question has evolved into the main research question: what influencing factors and best practices should be considered when creating a visitor photography policy in a museum? That question is based on the understanding that many museum visitor

photography policies are outdated and the museum field is in need of standards for best practice when revising or writing a policy. The smaller guiding questions are: what are museums currently practicing, and what are their perceived reasons for their current policy?

There are three main considerations that arise from the literature and that assist in systematically answering the main research question for this study. The first consideration is for the benefit of the visitor and their museum experience. Culturally, in the United States mobile technology, particularly cellphone and smart phone use, is important in the everyday life of the average person. The second consideration is for the conservation of museum objects and art. Concern for conservation mainly refers to the damage that the flash, or accidental flash, from a camera can do to museum collections. The third consideration is potential legal concerns for the museum in allowing visitors to take and share pictures of copyrighted works or works that may not be owned by that museum.

Definitions of Key Terms

A visitor photography policy is intended to guide visitors and museum staff on how to conduct decisions regarding visitor photography in museum exhibit spaces. Visitor photography in this context is defined as personal, non-commercial photography without the use of tripod, monopod, or additional light sources. A camera is defined as any non-professional device such as a compact digital camera or cell phone used to take photographs for personal use. Visitor photography policy in this study is explored across all types of museums in the United States that maintain accreditation from the American Alliance of Museums.

II. Background

Literature Review

The literature and resources specifically aimed at explaining visitor photography policy and assisting a museum in establishing one does not seem to exist. The American Alliance of Museums (AAM) is known as an authority for museum standards and best practice. It does not, however, have any resources for visitor photography policy. In an email interview, Cecelia A. Walls, Information Center Manager at the AAM, said they do not have any guidelines or best practice for museums looking to write or revise a visitor photography policy. Walls said:

Since this is not a required element in the collections management policy nor is it a required stand-alone document, the Commission has not developed any guidelines. We also do not have any resources that we provide museums in our online resource library related to this topic at this time (C. Walls, personal communication, April 16, 2014).

(Italics are used throughout this paper to distinguish direct quotes from personal interviews and survey questionnaire responses).

In addition, an assumption during preliminary research was that many museums, especially older ones, have restrictive photography policies because that is the way they have always been. Based on that assumption, this study attempts to understand why these policies exist in order to define best practice to revise them so they can reflect current trends in technology and museum practice. A post from August 20th, 2009 on Nina Simon's blog *Museum 2.0* helps us to better understand the complexity of this topic. Simon, based on her post *Museum Photo Policies Should Be as Open as Possible*, shares this assumption to some degree saying:

I've been surprised to learn that some museums have restrictive photo policies and aren't sure why. I've heard stories of museum staff at two large institutions trying to figure out who 'owns' the policy--conservation, marketing, curatorial, etc.--so that it might be revised. If you don't know why you restrict photography in your institution, please think about both the benefits AND the drawbacks of allowing photography before you perpetuate the policy (Simon, 2009).

Simon's (2009) blog post cites five main arguments for restrictive policies: Intellectual Property, Conservation, Revenue Streams, Aesthetics of Experience and Security. The three main considerations for this study are Visitor Experience, Conservation, and Intellectual Property as they stood out as being necessary for further research.

Visitor experience. Within the topic of visitor experience there are a few factors discussed in the literature that weigh this consideration in favor of an open visitor photography policy. From a museum professional's standpoint, Nina Simon's book *The Participatory Museum* (2010) points out how visitor photography can allow visitors to engage deeper with other participants around objects using social media platforms such as *Flickr*. Simon says, "*Flickr* supports a long list of social behaviors that are not available in museums and galleries... providing social functions around objects promotes other kinds of user experiences that are also incredibly valuable" (Simon, 2010, p. 135). Simon (2010) argues for an open photography policy by saying that museums can make their objects more shareable, accessible, and ultimately encourage the participation of visitors by creating policies that will support this. She says:

In museums, the most frequent way that visitors share objects with each other is through photographs. When visitors take photos in museums, few try to capture the

essential essence of an object or create its most stunning likeness. Most visitors take photos to memorialize their experience, add a personal imprint onto external artifacts, and share their memories with friends and families. When people share photos with each other, either directly via email or in a more distributed fashion via social networks, it's a way to express themselves, their affinity for certain institutions or objects, and simply say, 'I was here.' When museums prevent visitors from taking photos, the institutional message is, 'you can't share your experience with your own tools here.' While visitors generally understand the rationale behind no-flash photo policies, copyright-based no-photo policies can confuse and frustrate them. Photos are often permitted in one gallery but not another, and front-line staff members are not always able to answer visitors' questions about why photography is or isn't allowed. No-photo policies turn gallery staff into 'enforcers' instead of supporters of visitors' experiences, and they diminish visitors' abilities to share their enthusiasm and experiences with others (Simon, 2010, pp.176-177).

Visitor photography policies are ultimately either a restriction or an enabler of visitor experience and the promotion of institutions and their objects. The plethora of recent *New York Times* articles on the subject reveals the general public's interest in visitor photography policies. If an open visitor photography policy weighs in favor of a positive visitor experience, what then are the implications for the museum?

Conservation. As stewards of cultural property tasked with preserving collections for the future, museums must consider conservation concerns. Museum policies often cite the flash from cameras and its potential harm as the reason for 'no photography.' Nina Simon (2009) also

suggests conservation as a consideration in her blog post. The literature in this area fails to give a solid answer to the question: Is flash photography still a valid concern?

A 1994 article published in the *Museum Management and Curatorship* journal called “Photography: Can gallery exhibits be harmed by visitors using photographic flash?” attempts to answer this question. Evans (1994) says that the small flash units built into many modern compact cameras are less powerful, and create even less of a hazard [when compared to non-portable flash units]. However, the information in this article is difficult to relate to modern compact digital cameras since it was published in 1994.

The Getty Conservation Institute has done an extensive review on the data for the effects of light on objects in 2001. Schaeffer (2001) says:

Other considerations—such as copyright, aesthetics, or traffic flow—frequently take precedence in determining whether gallery photography should be permitted. Many conservators remain concerned about the effects of light exposures due to photographic flash... (p. 168).

The author goes on to say, “As this survey shows, the published technical literature rarely contains data that can be used directly to state maximum allowable flash exposures” (Schaeffer, 2001, p. 168). The lack of research on flash photography will be addressed later on in this study through an interview with a conservation professional.

Intellectual Property. The third consideration addressed in this study is intellectual property. Intellectual property becomes an issue for museums exhibiting works by artists that may still be under copyright. Works still under copyright may exist in a museum’s permanent collection or through an incoming loan for a special exhibition. The professional resources and

literature available for museum professionals informing them of a museum's risk for copyright infringement due to an open photography policy is vague. As far as museums are concerned intellectual property encompasses copyright, which governs how museums can use artists' images, either through permission from the copyright holder or using the "fair use" doctrine. Images in the public domain are no longer under copyright and free to use by the public. The literature in this area fails to address why museums have such varying opinions on whether to allow visitor photography or not. Looking at literature on art and the law is helpful. Kathleen Connolly Butler (1998) suggests that some museums are limiting access to their public domain works by claiming copyrights on the photographic reproductions of their own. Butler (1998) agrees with Nina Simon (2009) when she says, "The time has come to scrutinize these copyrights, which thwart the public domain principal by blocking scholarly and popular access to valued and valuable public images and by restricting how public domain images may be used" (p.6). Museums, as Butler (1998) describes, cannot have complete control of the objects in their collections as stewards for the public good and they must make works available for the use of the public (p. 5). The vagueness on this topic will be addressed in relation to current museum practice in the analysis section of this research report.

As the literature has indicated, visitor experience, conservation, and intellectual property are important considerations and each require additional research to determine how they can inform a visitor photography policy. As suggested by Cecilia A. Walls (2014), the museum field is in need of resources to better understand visitor photography policy and what should inform it. This study provides additional research on these three as yet little explored considerations.

III. Research Design and Approach

Methodological Paradigm

Recalling the above purpose statement for this study, the methodological paradigm adopted was positioned as a mix of critical inquiry and constructivist. The use of critical inquiry is how I attempt to understand the three main considerations for visitor photography policy. It is necessary to question current practice in order to understand the factors that should inform a policy. The constructivist approach shaped my interview strategy, policy analysis, and survey questionnaire wherein themes of current and best practice emerged.

This research systematically used the combination of literature review, an online survey questionnaire, policy analysis of collected museum visitor photography policies, and interviews with key informants. These four dimensions of research cohesively inform the three considerations of the main research question and explore influencing factors and best practices that should be considered when creating a visitor photography policy. Data for the study was collected through a survey on current practice in museums and professional insight into visitor photography policy fulfills this.

Delimitations

The museums included in this study were only institutions accredited by the American Alliance of Museums and those that are in the United States. Using accredited museums means that they were already operating under shared standards similar to those I have proposed as the outcome of this study. The intent of this study was to understand the necessary considerations for constructing a visitor photography policy. As a result, this study proposes recommendations for creating or revising a visitor photography policy that can be applied across all museums in the

United States. This study was in no way meant to be exhaustive. It is merely a survey of current practice and opinions regarding visitor photography policy to better understand the considerations needed to inform the construction of one.

Limitations

The limitations of this study are based on the volume of institutions that were surveyed. There was the potential that not all institutions asked to participate would and whether or not the institutions that did respond had a photography policy at all. As a researcher, I was limited to phone or email interviews with participants that were not local. Time was also a limitation; I was not able to survey every single institution or interview every important museum professional relevant to this study. This study was not meant to be an exhaustive research project, but it does explore the important factors and considerations that are currently considered to inform a visitor photography policy.

Strategy of Inquiry

The first stage in the strategy of inquiry was a review of the published literature on this topic. It has laid the foundation to inform this study and suggests the areas that are in need of additional research.

Qualtrics survey questionnaire. The second stage in the strategy of inquiry was an anonymous online survey questionnaire using Qualtrics software hosted on the University of Oregon server and website. The purpose of this survey was to gain information from museums that are accredited by the American Alliance of Museums (AAM) because they must meet

standards and best practices as defined by the AAM. The questionnaire qualified whether the respondent's associated museum was accredited through AAM by asking this as the second question. The survey consisted of thirteen closed and open-ended questions aimed at understanding the current trends in visitor photography policy. To see the survey questions, turn to Appendix A. The objective was to get a broad survey of the current practice and attitudes of museums across the country on visitor photography policy. Within this survey questionnaire was an option to upload or send a copy of the respondent's associated museum visitor photography policy.

The invitation to invite respondents to this survey questionnaire that included the link was sent through three list serves: the American Alliance of Museums Registrars Committee list-serve (RCAAM-L), the Association of Academic Museums and Galleries list serve (AAMG-L), and Museum-L list serve. Turn to Appendix D and F for Survey Recruitment Email and Consent Form. The survey was sent out to these three list serves in early March. At the time of invitation RCAAM-L had an estimated 2,000 subscribers, AAMG-L had 3,612 subscribers, and Museum-L had 4,334. There were a total of eighty-two responses to this survey of which not all were representatives of AAM accredited institutions. There were thirty-eight responses that chose to provide the name of their institution and only twenty-two of those were AAM accredited. The findings and analysis of the survey questionnaire are discussed below.

Collected policy analysis. As the third dimension of inquiry, this study also included the collection of museum photography policies already available online. Using the list of accredited institutions with the American Alliance of Museums, I visited museum websites and collected their visitor photography policy if it was available online. Turn to Appendix B-1 for the research

instrument used for document analysis. Photography policies were also collected, as noted above, through an upload option on the last question of the survey questionnaire. The collected policy analysis allowed for the understanding of current practice and management of visitor photography policy wherein themes of current and best practice arose. There were a total of thirty-eight policies collected, representing large branded museums as well as smaller regional museums and various types of collections. The number of policies collected was not meant to be a proportional representative sample, but rather a broad survey of policies from museums that differ in size and collection.

Key informant interviews. The fourth and final strategy of inquiry was key informant interviews. This consisted of four key informants providing insight on visitor experience, conservation and intellectual property. I spoke with Chris White, Collections Manager at the Jordan Schnitzer Museum of Art, J. Claire Dean, Conservator at Dean & Associates Conservation Services in Portland, Oregon, Cecelia A. Walls, Information Center Manager at the American Alliance of Museums, and Jackie Armstrong, Emily Fisher Landau Education Fellow at the Museum of Modern Art. These key informants were recruited based on their knowledge relative to the broad spectrum of issues within visitor photography policy. An attempt was made to interview an informant knowledgeable in the area of intellectual property, conservation, the American Alliance of Museums, and a large museum often looked to for best practice respectively. Limited by time, not all informants relevant to this study could be interviewed. The interviewees were recruited through publicly available email addresses on their respective institutional websites. See Appendix C for a sample recruitment email and Appendix

E for Interview Consent Form. Appendix B-2 through B-4 shows data collection instruments for each interview.

VI. Data Analysis and Findings

This chapter will present the findings through the results of each strategy. The key informant interviews are incorporated into the “Interpretation and Discussion of Emerging Themes Section” section along with supporting literature. The literature provides insight into findings and supports emerging themes.

Collected Policy Review

There were approximately 925 institutional members of the American Alliance of Museums (AAM) at the time of this study. I have collected thirty-eight visitor photography policies available online from museums, both from institutional websites and through submissions from my survey. Some respondents to my survey were also representatives of the museums from which I had collected policies.

Upon comparison, the thirty-eight policies collected fall into three main categories based on their level of prohibition. Category 1 contains museums that have open photography policies. Category 2 contains museums that have completely prohibitive photography policies. Finally, Category 3 contains museums that allow photography with exceptions. Pictured below is *Figure 1*, which shows the distribution of the collected policies into the three categories.

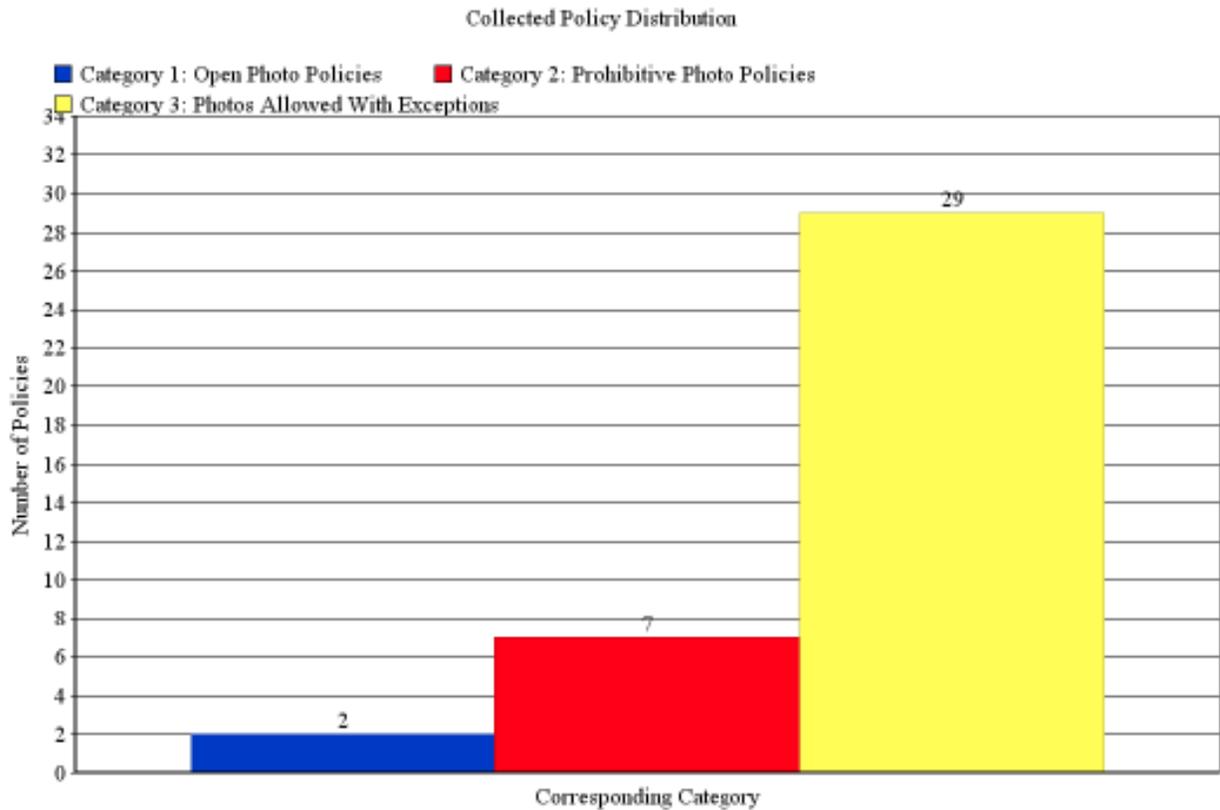


Figure 1. This is a bar graph showing the distribution of the thirty-eight collected policies into each of the three categories.

Figure 3., presented in the “Overview of Findings” at the end of this section, shows these three categories on a spectrum.

Qualtrics Survey Questionnaire Review

As previously outlined, the survey questionnaire was aimed at gaining information from museum professionals about the current practices at their museum, their concerns, and considerations for visitor photography policy (see Appendix A for full survey). For this, the survey was successful. The responses included in this study are only the AAM accredited institutions that provided institutional names. The request for respondents to provide the name of their institution was optional and many respondents did not provide a name. Of the respondents that provided the name of their institution, only twenty-two were AAM accredited. As suggested

through the collected policy review, the survey too, found the same three emergent categories that museums and their photography policies fall into. The survey also found one more theme that the collected policy review did not. Through a question that asks respondents if their policy has changed within the last ten years, the survey found that some museums have indeed recently revised their policy or are considering a revision. This theme is presented as Category 4. The bar graph in *Figure 2.*, shown below, offers a visual of the distribution of the survey responses into each of the four categories.

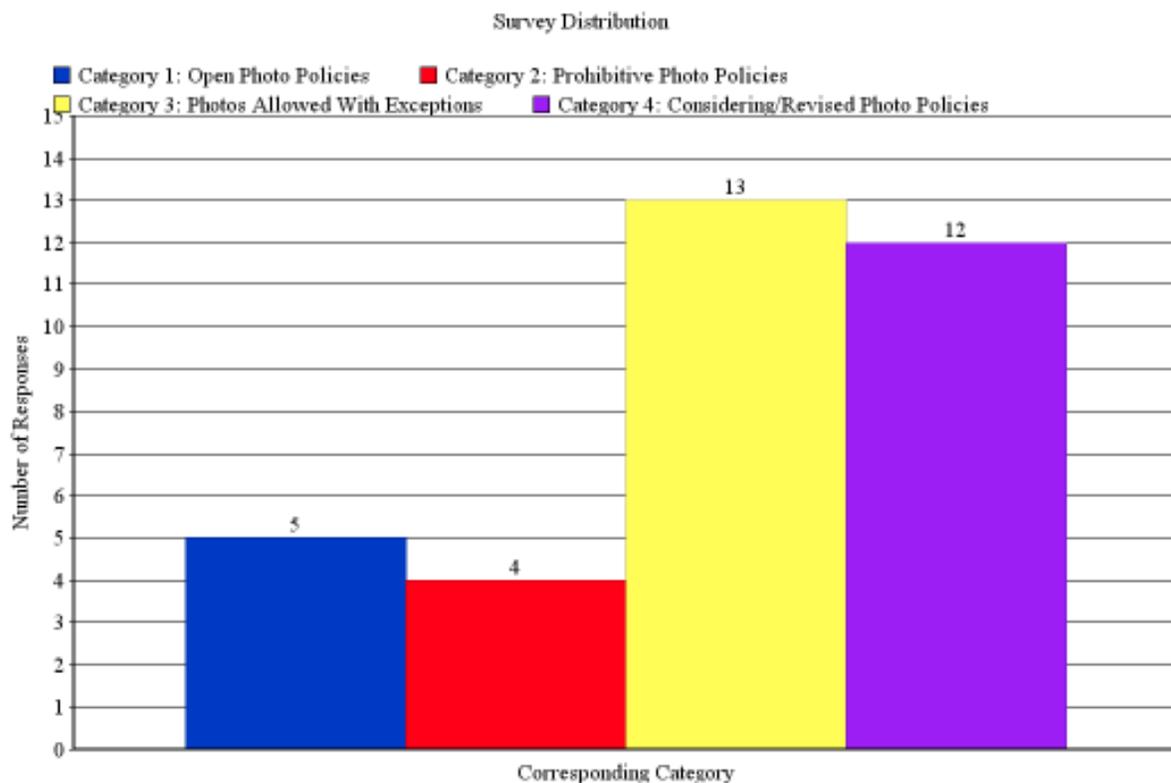


Figure 2. Distribution of the twenty-two survey respondents into each of the three categories. In addition, the fourth category, shown in purple, emerged solely from the survey.

Figure 3., presented at the end of this section, also includes the three main categories and shows the spectrum of visitor photography policies.

Category 1: Open photography policies. The first category includes museums with completely open photography policies. Only two of thirty-eight museums were represented in this category from the collected policy review and only five respondents from the survey reported an open photography policy. Presented below are some policies and survey responses from Category 1. Some of the policies were collected from institutional websites, while others were provided by survey respondents. Italics are used to distinguish direct quotes from personal interviews and survey questionnaire responses, while quotes from museum photography policies are not italicized.

The policy at the Museum of Modern Art PS1 is: “Photography is allowed in the museum. Visitors can use small cameras and cellphone cameras. Flash photography, videography, tripods, and photography for professional purposes are not allowed” (MoMA PS1, 2014). While differing in type of collection, The Natural History Museum of Utah’s visitor photography policy is very similar to MoMA PS1, with the addition of a statement that encourages photography.

The survey respondent representing the Natural History Museum of Utah explains that their policy is influenced by visitor experience because “*we view it as a marketing tool through social media.*” In addition, their concerns for copyright are limited: “*There are almost no objects that are not behind glass, making it difficult to produce images of commercial quality, and the nature of our collections is not the type that are often copied for commercial use*” (Natural History Museum of Utah Survey Respondent, 2014).

A respondent from the Fowler Museum at the University of California, Los Angeles, provided their photography policy: “Photography is permitted for personal use only, unless otherwise noted. No videos, tripods, or flash. Share your photos #FowlerMuseum” (The Fowler Museum Survey Respondent, 2014). This policy further supports an emerging trend in this category. These policies not only allow photography, but also encourage it in constructive ways such as marketing for the museum. Other respondents reported that social media and smartphones were influencing factors because of their prevalence. The Fowler Museum respondent noted that a concern for copyright has informed their policy in that they have revised their loan agreement to accommodate this: “*we have included language in our loan agreements that states that we will allow visitors to take photos for personal use unless noted otherwise*” (The Fowler Museum Survey Respondent, 2014).

The revision of loan agreement language was another emerging theme in this category. As expressed throughout these findings, intellectual property is a concern and even an obstacle that can prevent visitor photography. By revising loan agreement language to allow visitor photography, museums in this category that exhibit loaned objects can now allow photography of objects they don't own.

A response from the Museum of Contemporary Photography illustrates how both visitor experience and intellectual property have influenced their open visitor photography policy. The respondent said:

We want to be able to promote exhibitions through social media with other people posting images of being in our space... No images would be taken by a visitor at a good

enough quality for reproduction... It is listed in our incoming loan contract that we allow photography, so the lender could refuse photographing, if desired (Museum of Contemporary Photography Survey Respondent, 2014).

The only mention of a reason for not allowing flash photography was expressed by the Colorado Springs Pioneer Museum. Their policy allows only non-flash photography for copyright reasons rather than conservation. They say it is “*a deterrent for obtaining high quality photographs of our collection items*” (Colorado Springs Pioneer Museum Survey Respondent, 2014).

The themes and reasons informing the ability to have an open visitor photography policy have been presented in this category. These reasons include visitor experience and intellectual property, without much concern for conservation. The policies and responses cite visitor experience as a consideration that influences having an open policy. The reasons mentioned are the prevalence of smartphones and the museums’ desire to be represented on social media platforms for marketing through their visitors’ posts. Intellectual property, while not a concern, was a consideration that influenced the decision to not allow flash photography. Respondents said that the quality of images obtained either in low light or of objects behind glass would be poor and not a concern for commercial reproduction. Two respondents cited that allowing visitor photography was a high enough priority that they changed the language in their loan agreement to support it. None of the respondents mentioned conservation as a concern in allowing visitor photography; prohibiting flash was more of a deterrent for copyright issues. On top of allowing photography, the survey respondents in this category reported that visitors are encouraged to use

smartphones to access information in the exhibit spaces and their museums are active on social media platforms.

Category 2: Completely prohibitive photography policies. The museums and respondents included in Category 2 prohibit visitor photography in exhibit spaces. This category consists of seven collected policies and four survey respondents that reported their museum as prohibiting photography. Two of the survey respondents were representatives of two of the collected policies. This category contains more collected policies than that of Category 1, only the most notable policies will be presented.

The Museum of Contemporary Art (MCA), Chicago's policy says, "Photography, video, and audio recording are strictly prohibited." This is posted on their website under "guidelines" and is accompanied by an explanation on copyright that says:

MCA is committed to protecting the intellectual property rights of visual, sound, literary, and performing artists and others who hold copyright. With the exception of fair use as defined by US copyright law, MCA expressly prohibits the reproduction, distribution, downloading, or publication of any materials on this website (Museum of Contemporary Art, Chicago, 2014).

The Frick Collection provides an explanation for their strict policy citing visitor experience and conservation before asking visitors to observe their 'no photography' policy. The Frick Collection's policy says:

In order for all our visitors to have the most enjoyable experience possible and to help us

preserve the collection in order to delight many generations of visitors to come, we ask you to kindly observe the following guidelines: Photography is not permitted in the galleries and other public spaces (The Frick Collection, 2014).

The next four museums presented in this category were collected from survey responses. The Lowe Art Museum, University of Miami has a lengthy visitor photography policy, it says: No photography of any kind (still camera, cell phone, video recorder, motion picture camera) is allowed in the Museum, except as detailed below. The Lowe's policy in photography and filming in the galleries exists to ensure that works of art are not subjected to adverse effects of accumulated light damage; to protect copyright whether owned by the museum or by another entity; to remain compliant with the terms of traveling exhibition contracts that prohibit photography; and to provide quality control for images reproduced from the Lowe's collection (Lowe Art Museum Survey Respondent, 2014).

The Lowe Art Museum's policy specifically cites conservation and copyright as the main reasons for their prohibitive policy. A survey respondent from the Lowe Art Museum commented that copyright was:

the primary reason for our policy. We do not want visitors reproducing copyrighted objects and placing the museum at risk for liability. However, this is primarily a policy that the University's legal office would like us to maintain, but we feel it would be better to allow photography, especially since most people just sneak images with their smartphones anyway (Lowe Art Museum Survey Respondent, 2014).

This response comments on the prevalence of cellphones, which was a reason for open policies in Category 1. This response also comments on intellectual property concerns as an obstacle for visitor photography.

The Museum at the Fashion Institute of Technology mirrors the Lowe Art Museums concern for intellectual property. Their policy does not allow “*Photography, including with cell phones, movie and video cameras*” (Museum at the Fashion Institute of Technology Survey Respondent, 2014). When asked if their policy was influenced by copyright, the respondent said, “*Not really by copyright, but rather by the loan agreements signed by lending institutions or individuals*” (Museum at the Fashion Institute of Technology Survey Respondent, 2014).

The biggest trend in this category is that copyright is an obstacle that influences a closed visitor photography policy. As presented above, object loan agreement language limits museums in this category that exhibit loaned objects from other institutions or private individuals. Some respondents confided that instead of trying to enforce the policy in certain galleries, it is easier to just say ‘no photography’ for the whole museum.

An example of this comes from The Harry Ransom Center at the University of Texas at Austin. The respondent claims:

Our main concern is copyright. We often don't control the copyright for the objects in our collection, and while we do have some exhibitions where objects are primarily out of copyright, we decided that rather than changing our policy every few months when we

switch exhibitions, it would be easiest to have a blanket 'no photography in the gallery space' policy in place (The Harry Ransom Center Survey Respondent, 2014).

The respondents in this category do not mention visitor experience as an influencing factor for prohibiting photography, while some of the collected policies do. Category 2 illustrates a concern for risk of liability regarding copyright, but the respondents don't elaborate on what exactly that risk is. Conservation is mentioned in the collected policies as an explanation for a prohibitive policy. The survey respondents in this category also reported that the use of smartphones to access information in gallery spaces was not utilized at these museums while some did report being active on social media platforms.

Category 3: Photography allowed with exceptions. Category 3 is the largest category containing twenty-nine collected policies and thirteen survey respondents. The policies in this category all say that they allow photography, but only in certain galleries or where noted. The majority of the policies collected or museums surveyed seem to adopt this "open to an extent" policy so as not to completely alienate visitors while still maintaining control on copyrights and objects not owned by the museum. Since this category contains so many museums, not all will be commented on below.

A few examples from the collected policy analysis consist of lengthy and complicated policies that are posted on institutional websites. The Minneapolis Institute of Art's policy says:

If it's for personal use, feel free to use your cell phone, still or video camera. Any of the following requires prior approval: use of flash photography, objects on loan as indicated

on the label by ‘loan,’ ‘lent by,’ ‘private collection,’ or the name of museum other than the MIA (Minneapolis Institute of Art, 2014).

The theme of not allowing photography for reasons relating to intellectual property emerges in this category as well. Some museums in this category distinguish between loaned objects and permanent collection objects in many of their policies.

The Burke Museum has a lengthy policy that is also explanatory for visitors. Their policy says:

The Burke Museum welcomes visitors to take photographs or digital images for personal, non-commercial use, unless otherwise noted. Excessive flash, tripods, and monopods are not allowed. Photography may be restricted within special exhibit galleries or other locations; these instances will be clearly marked with ‘No Photography’ notices. Objects on loan to the museum may be subject to contractual restrictions that prohibit photography. The Burke Museum must honor the wishes of our lenders. Visitors will be asked to observe all restrictions... The Burke Museum reserves the right, at its sole discretion, to withhold and/or withdraw permission to photograph on its premises or to reproduce images of objects in its collection. Note: This is not intended to be a complete list, but a highlight of key policies to assist in your planning (The Burke Museum, 2014).

The Burke Museum explicitly states why photography is not allowed for some objects citing loans and copyright issues. While lengthy, this policy comes across as transparent.

The Museum of Modern Art (MoMA) is a large world-class museum that can be looked to for best practice in many areas. Their visitor photography policy says: “Still photography for

personal use is permitted in collection galleries only. No flash or tripods allowed. Videotaping is permitted in the lobby only. No photographs or videotapes may be reproduced, distributed, or sold without permission from the Museum” (Museum of Modern Art, 2014).

I was able to speak with Jackie Armstrong, the Emily Fisher Landau Education Fellow at MoMA about their policy. Armstrong said that:

In general MoMA wants to allow photography of all the works in the museum. But a lot of times because of works on loan from other people, other museums, that policy [the loan agreement] comes into play. That’s where the line gets drawn. Whatever MoMA loans to other museums that might have a ‘no photography’ policy, they always make sure that those loans from their collection are able to be photographed. There is also a push to encourage other museums that lend to us to allow photography. So in a lot of ways it’s this kind of pushing the practice in general to free up that decision around photography (J. Armstrong, personal communication, April 21, 2014).

The museums presented in this category are somewhat larger institutions than the previous two categories. Armstrong seems to say that in encouraging photography at MoMA and of loaned objects outside of MoMA, they are trying to set an example for other museums. The museum policies in this category tended to be longer, as with those in Category 2. They explain their policy a little more to visitors in a transparent way, making the prohibitive reasons less confusing and perhaps, more reasonable.

The museums and policies discussed below are from some survey responses that contained insightful explanations that accompany their museum's policy. The Indianapolis Museum of Art's policy is really lengthy, as is a trend in this category. The policy says:

To protect the objects being photographed and the safety of other visitors, there are certain guidelines that must be followed when photographing at the Museum. General Visitors: Photography must be conducted without disruption to Museum operations or limitation to the accessibility of exhibitions, entrances/exits, doorways, and high traffic areas; To help us preserve the outdoor sculptures, entering, climbing, or standing on any water features or fountains is prohibited; do not climb, lean or sit on any artworks. Do not place props or equipment on the sculptures; Flash photography, tripods, and other photographic equipment are not permitted in the galleries, Lilly House or Miller House; Photography is permitted for private, noncommercial use only. Photographs may not be published, sold, reproduced, distributed, or otherwise commercially exploited in any manner. Unless otherwise noted, photography of temporary exhibition or borrowed works of art is not permitted (Indianapolis Museum of Art, 2014).

A respondent from the Indianapolis Museum of Art says that copyright plays a large part in their policy, which follows the trend in Category 1 of museums changing their loan agreement language to support photography. While allowing photography in virtually every area of the museum, they: *“Ask for permissions to include visitor photography in special exhibitions from lenders and artists, which led to changes in the language of our loan agreements, exhibition contracts, and nonexclusive licensing agreements”* (Indianapolis Museum of Art Survey Respondent, 2014).

The comment from the respondent above suggests that the Indianapolis Museum of Art mirrors some of the themes that were apparent in Category 1. This museum has a semi-open policy rather than a semi-prohibitive policy. In addition, visitors are also encouraged to access additional information with smartphones in the gallery spaces.

The Utah Museum of Fine Arts (UMFA) has a very lengthy policy very similar to that of the Indianapolis Museum of Art's. The first sentence says, "As stewards of culturally significant objects, the Museum is charged with not only protecting the artwork on display from physical harm but also from copyright infringement" (Utah Museum of Fine Art, 2014). The rest of the policy stipulates that photography is not allowed in special exhibitions where noted.

A survey respondent representing the UMFA cited "*security, copyright and publicity*" as reasons for their current policy. The respondent said that copyright is a major concern informing their policy saying:

We restrict photography in galleries with copyrighted works as well as exhibitions with 'no photography' policies in the lending contract. We primarily want to inform the public that photographing copyrighted works and distributing the photos can lead to infringing upon the copyright holder's rights. It adds a layer of protection for our institution and can protect the visitor (Utah Museum of Fine Art Survey Respondent, 2014).

UMFA's policy is one of the longest included in this study. As noted earlier in this category, this is an almost consistent theme in Category 3. Museums with a Category 3 policy expand on their reasons for restricting policy in some galleries. The UMFA is also one of the few museums to mention conservation as a concern influencing their policy.

The Corning Museum of Glass responded to the survey saying copyright was a concern. Their solution was similar to many in Category 1 in that they have obtained “*non-exclusive licenses, which included photography by visitors, from most of the contemporary artists represented*” (Corning Museum of Glass Survey Respondent, 2014).

As an opposite example, the Nasher Museum of Art at Duke University respondent says that while they generally prohibit photography of exhibitions from other venues, they have a few works in their permanent collection that cannot be photographed. The reasons, the respondent said, are copyright and artists’ preference. These two museums show that while they both allow photography with exceptions, the Corning Museum of Glass has a semi-open policy and the Nasher Museum of Art has a semi-prohibitive policy.

The policies and survey responses in this category have semi-open or semi-prohibitive photography policies. The leading reason for restricting photography of certain objects or in certain galleries, as respondents report, is copyright or loan agreement stipulations. This concern is mostly for objects on loan to the museum. The reason to allow photography in certain galleries is for the benefit of visitor experience or lack of capacity to stop it. As noted throughout this category, a common theme is that these policies were long and explanatory.

Category 4: Recently/considering revised policies. A final data analysis category emerged solely from the survey questionnaire responses. There are twelve survey respondents that reported their museum has changed their visitor photography policy within the last ten years. As some responses are similar to others, not all twelve responses are presented below. Some of

these museums have changed their policy to be more open, while others have changed to be more or completely prohibitive. This category shows evolving current practice. Some museums are revising their policy and the survey responses show how and why current practice is changing.

The Indianapolis Museum of Art has revised their policies and lending agreements, according to the respondent:

The policy has expanded [from] permit[ting] visitors to photograph first in galleries where works were owned by the museum, in the public domain, and did not contain loans, to now permitting photography throughout virtually every space in the museum, including works under copyright, loans to the museum, and special exhibitions . This has included changes to the language in our loan agreements, nonexclusive licensing agreements, and overall policy that is posted online (The Indianapolis Museum of Art Survey Respondent, 2014).

The Indianapolis Museum of Art respondent explains the reasons for revising their policy were due to changes in technology, saying:

As photography moved from needing specialty equipment to a camera within every Smartphone, it has become harder to 'police' visitor activities, particularly when you cannot tell if photographs are being taken with a smartphone or if they are simply responding to a text or looking up information (The Indianapolis Museum of Art Survey Respondent, 2014).

The respondent comments on the main theme in this category, which is the leading reason museums have recently revised their policies. Due to the prevalence of cellphones making prohibition difficult, the norms in the museum field are changing (The El Paso Museum of Art Survey Respondent, 2014). As revealed in the previous three categories, decisions to revise loan agreement language are an emerging current and possibly best practice.

Some museums, instead of rewriting or revising their ‘no photography’ policy, have begun *“allowing photography, or rather stopped attempting to prevent it, during special events as this was too challenging for our security staff to police in large crowds”* (The Lowe Art Museum Survey Respondent, 2014). The respondent says many visitors *“sneak”* images with their smartphones anyway.

The Natural History Museum of Utah says their revision was based on moving into a new facility in 2011. They *“now encourage personal photography as we view it as a marketing tool through social media”* (Natural History Museum of Utah Survey Respondent, 2014). This museum is interesting as it represents a natural history museum that for the most part may not have as many intellectual property concerns as an art museum would.

The Museum of Contemporary Photography says they *“used to ban photography in galleries of loaned objects.”* They revised their policy because: *“Too many people have cameras at our museum! [It] was hard to prevent it. [We] want to be able to promote exhibitions through social media with other people posting images of being in our space”* (The Museum of Contemporary Photography Survey Respondent, 2014).

Similarly, the Scottsdale Museum of Contemporary Art (a previously ‘no photography’ museum) now allows photography. The respondent noted that they have revised their loan agreement language to support this, saying “*we will allow visitors to take photos for personal use unless notified otherwise* (The Scottsdale Museum of Contemporary Art Survey Respondent, 2014). The Leigh Yawkey Woodsen Art Museum respondent reported a similar situation, reporting concerns for copyright and conservation.

The Museum at the Fashion Institute of Technology has a prohibitive photography policy and is listed under Category 2. This policy change is similar to that of the Lowe Art Museum as they both decided on prohibitive policies. The reason, they claim, was the confusion for visitors in not allowing photography of loaned objects. The respondent reports that their policy has recently changed as they:

...used to allow photography in one gallery (the one that solely displays objects from our permanent collection) and prohibit it in another (the gallery that has special exhibitions with loans). It was too confusing for both the guards and the public. So now there is a no photo policy employed throughout all galleries (The Museum at the Fashion Institute of Technology Survey Respondent, 2014).

This category is the most interesting of the four categories and it emerged solely from the data collected using the survey. The survey respondents reported that the prevalence of cellphone cameras and social media were the leading reasons encouraging them to revise their visitor photography policies. Some respondents also reported that they had considered conservation and copyright concerns as informing their policy to allow only non-flash photography and only

photography in certain galleries or only of certain objects. While also a common hindrance, the revision of lending agreements was a common way in which some of these museums supported visitor photography of loaned objects. These findings will be discussed and interpreted in more detail in the next chapter of this study.

Overview of Findings

The collected policy review and the survey questionnaire find three main categories that museum visitor photography policies can be distributed into. The findings suggest a spectrum for the three main categories and where they fall. *Figure 3.* (shown below) depicts the most open policies fall on the far left (blue), the most prohibitive policies fall on the far right (red), and the semi-open/semi-prohibitive policies fall in the center or off center respectively. The majority of the survey responses and policies collected fall somewhere in the center of the spectrum in the yellow area.

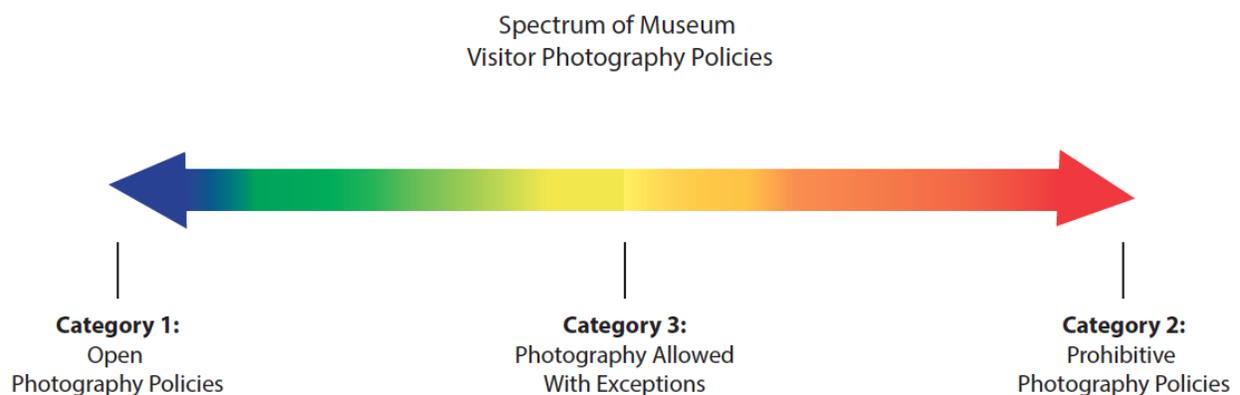


Figure 3. Spectrum of visitor photography policies, showing how they vary.

The fourth category (Category 4) comments on both the advantages of an open policy and the challenges for museums that prohibit photography. The survey respondents in Category 4 seem to fall in the center or the left side of the spectrum. The reasons and informing factors for these four categories will be discussed and interpreted below while returning to the three main considerations: Visitor Experience, Conservation, and Intellectual Property. The figure pictured below in the next section (*Figure 4.*) shows the frequency that each consideration was mentioned in the survey responses.

V. Interpretation and Discussion of Emerging Themes

Recalling the main research question for this study, “what are the influencing factors and considerations that currently inform a visitor photography policy?” The background literature on this topic suggested three main considerations that should inform a visitor photography policy: Visitor Experience, Conservation, and Intellectual Property. Analysis of the collected policies and the survey responses found these three main considerations are indeed key reasons for museums to allow photography, prohibit photography, or allow photography with exceptions. Pictured below, *Figure 4.* depicts the frequency of each main consideration mentioned in the survey responses.

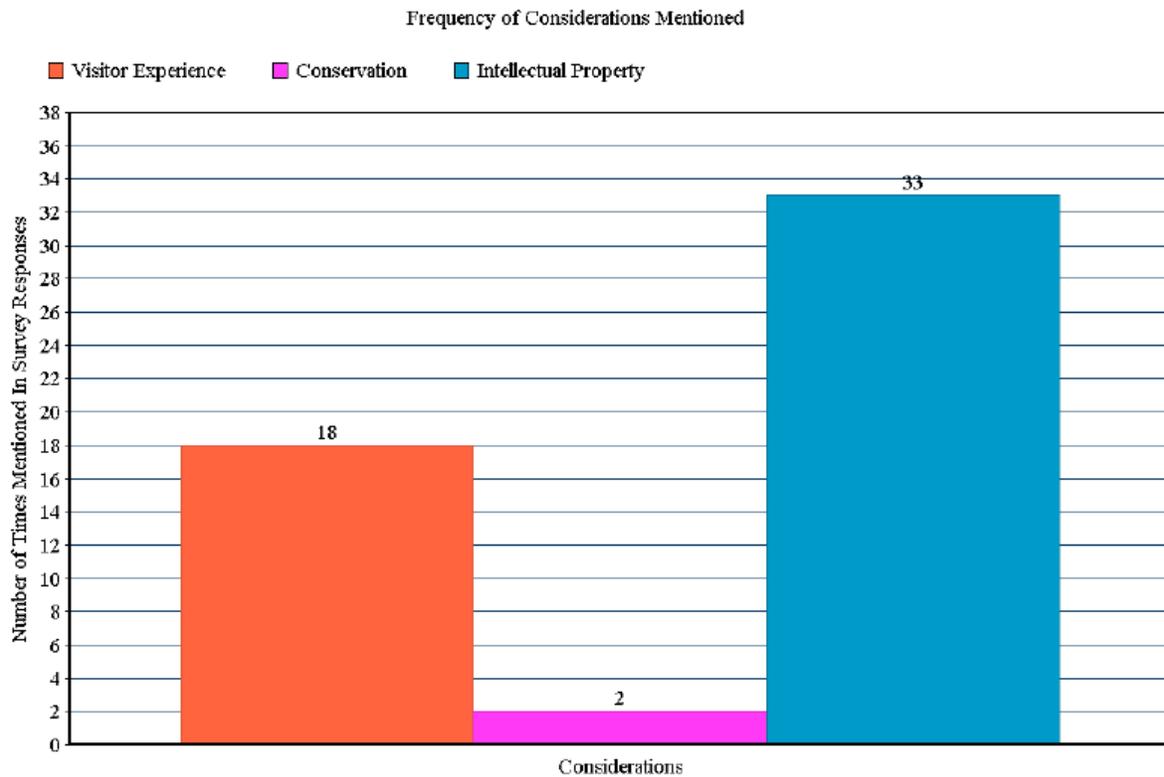


Figure 4. Shows the number of times each of the three considerations were mentioned in the survey responses. The findings suggest that visitor experience and intellectual property are the most important considerations of the three.

The findings show that museum visitor photography policies vary along a spectrum between two extremes. The findings also show that the three main considerations (mostly visitor experience and intellectual property) influence the policy and where it falls on that spectrum. The findings were similar for Category 4 in relation to *Figure 4.* and the frequency of times each consideration was mentioned. Visitor experience was mentioned nine times and intellectual property was mentioned nine times as reasons for a revision in policy. Conservation was not mentioned as a consideration for the revision of a visitor photography policy.

Based on the findings presented above, museum policies tend to fall into three main categories. The majority of museums fall into Category 3 as policies that allow photography with exceptions. Category 3 also had a large number of museums that also fell into Category 4

containing museums that have recently changed their policy. Both Category 3 and 4 cited visitor experience, conservation, and intellectual property as reasons for the exceptions in their policies. Some best practice in policy and respondents' explanation emerged in the data related to the four categories presented above. Here these three considerations and findings related to best practice will be interpreted using supporting literature and key informant interviews. A more in-depth review of the literature will be used throughout this section to discuss and interpret the findings within each of the three considerations.

Visitor Experience

Visitor experience, as suggested in the brief literature presented in the background section of this study, is the main consideration that informs allowing photography in museum exhibit spaces. Respondents to the survey reported that their open or semi-open policies considered this in favor of keeping visitors content and accommodating visitor behavior. Cellphones were the leading reason museums are becoming more lenient in their visitor photography policies.

Recent blog posts and newspaper articles talk about this issue as it affects the general public. An article from *Artnews* posted in May of 2013 by Carolina A. Miranda addresses the question, *Why Can't We Take Pictures in Art Museums?* Miranda says, "We're in an age when people take pictures just about everywhere, an act that photography critic Jörg M. Colberg describes as 'compulsive looking'" (Miranda, 2013, p.1). "As a culture, we increasingly communicate in images" (Miranda, 2013, p.1). Miranda suggests that this phenomena of picture taking is a cultural transformation:

in the way in which people digest visual stimuli—not to mention the rest of the world around them—is something that Harvard theoretician Lawrence Lessig has described as a shift from ‘read-only’ culture (in which a passive viewer looks upon a work of art) to ‘read-write’ culture (in which the viewer actively participates in a recreation of it). The first step toward recreating a work of art, for most people, is to photograph it, which, ultimately, isn’t all that different from the time-honored tradition of sketching (2013, p.1).

This is true of the current generation of *Facebook* and *Instagram* users, and as she agrees, has provided a challenge for historically strict art museums in an effort to prohibit photography and protect objects and works from light and copyright issues. Those issues aside, Miranda quotes Nina Simon, who says:

You are fighting an uphill battle if you restrict [photography]. Even in the most locked down spaces, people will still take pictures and you’ll still find a million of these images online. So why not support it in an open way that’s constructive and embraces the public (Miranda, 2013, p.1)?

Respondents to the survey questionnaire that reported open or semi-open photography policies also reported that their museum is active on social media platforms and encourages visitors to access information in gallery spaces.

Miranda also discusses social media and museums citing a Pew Research Center poll from January 2012, “Internet & American Life Project reported that 97 percent of the more than 1,200 arts organizations it polled had a presence on platforms like *Twitter*, *YouTube*, and *Flickr*. New York’s Museum of Modern Art, for example, posts photos of artworks and installation processes on *Facebook* (where it has around 1.3 million followers), the Massachusetts Museum

of Contemporary Art has photos of its Sol LeWitt wall drawings on *Instagram*, and various other institutions—from the San Francisco Museum of Modern Art to the Albright-Knox Art Gallery in Buffalo—can be found on the picture-sharing and blogging service *Tumblr*” (Miranda, 2013, p.1). Also quoted in this article is Nina Simon, who says that when museums have an active and conversational social media presence, it can be “disturbing” for visitors when they go to the museum and are confronted with a policy that doesn’t mirror that (Miranda, 2013).

Similarly, the survey respondents that reported a prohibitive photography policy, had little to no presence on social media platforms and do not provide additional access to information in gallery spaces. These museums are actually avoiding confusion for their visitors when they remain consistent with their prohibitive policy and do not encourage the use of social media or cellphone use in gallery spaces.

Visitor experience is also a consideration for museums that have prohibitive photography policies. While respondents to the survey with prohibitive policies did not cite this as a consideration, the collected policy from the Frick Museum suggested it was. Their policy calls for ‘no photography’ in order for all visitors to have the most enjoyable experience.

The New York Times has recently published a few articles on this same topic. A 2012 article by Fred Bernstein, “*At Galleries, Cameras Find a Mixed Welcome*” talks about the Isabella Stewart Gardner Museum’s photography policy, which according to their website currently says, “Photography and video recording aren’t allowed in the historic building, Special Exhibition Gallery, or Calderwood Hall. Photography and video are permitted on the first floor of the new wing.” Anne Hawley, the longtime director of the Isabella Stewart Gardner Museum quoted in reaction to being “elbowed out of the way” by tourists taking pictures while she was admiring a painting, said:

‘It was appalling, I had to leave the gallery.’ Ms. Hawley hopes that never happens at the Gardner, which reopened in January after adding a new wing. So the museum’s photo policy, at least in the original building, remains the same as before: no photography permitted (Bernstein, 2012, p.1).

Bernstein says Hawley and the Gardner are a rare holdout in the museum world since many visitors carry camera phones and share pictures on social media. Nina Simon weighs in saying, “I think people are relying on their cameras as extensions of their senses. Museums should prioritize providing opportunities for visitors to engage in ways that are familiar and comfortable to them” (Bernstein, 2012, p.1). While museums are coming around to the idea of an open photography policy, he does express the need for a balance of competing interests within an open photography policy, which includes conservation and intellectual property (to be discussed later on). Bernstein ends the article with quotes from both Simon and Hawley in obvious disagreement on the matter of open or closed photography policy:

[Simon says] ‘I think it is unreasonable for museums that own their collections (as the Gardner does) to disallow photography,’ she wrote in an e-mail. But at the Gardner, Ms. Hawley is standing her ground. Photography, she said, ‘just destroys the intimate and meditative experience that was meant to happen here’ (Bernstein, 2012, p. 1).

This article accurately portrays the current debate on an open or prohibitive policy in museums and in many ways mirrors the results of my survey questionnaire.

Based on the survey questionnaire results, respondents were less concerned with the potentially negative effects of an open photography policy, as suggested above. The Leigh Yawkey Woodsen Art Museum respondent reported “Cellphones make prohibition difficult. And social media is great free acknowledgement of what we are doing” (Leigh Yawkley Woodsen

Museum Survey Respondent, 2014). For them, the advantages for the visitors and the museum alike outweigh the negatives.

The shifts in visitor photography policy presented in Category 4 are reminiscent of Gail Anderson's idea of the "Twenty-first Century Museum." She suggests that the museum field is experiencing a paradigm shift in the way museums relate themselves to their communities. Museums must make an effort to remain relevant to their communities to become sustainable institutions that are valued by their constituents. In Anderson's (2012) book, a chapter called *An Agenda for Museums in the Twenty-first Century* calls for such a revision:

They [museums] offer a powerful educational model that can help redesign and reform American education, and they can be important centers for community development and renewal. However, to accomplish these two things, museums must engage the world with a spirit of activism and openness far beyond what they are used to. They will have to reexamine and rethink some of the most fundamental assumptions they hold about what they do and how they do it. They will also have to reclaim the sense of bold entrepreneurship and experimentation that characterized the earliest days of the museum movement in America (Anderson, 2012, p.118).

Visitor photography in museum exhibit spaces is a way in which visitors can engage with exhibits and share their experiences with others. This can promote exhibitions and encourage community dialogue adding more meaning to the exhibition and the museum.

From an academic perspective, John Falk and Lynn Dierking have developed "The Interactive Experience Model" as a way to understand the visitor's total museum experience (Falk & Dierking, p.1). The authors:

have approached this effort from a visitor's perspective and have conceptualized the museum visit as involving an interaction among three contexts: 1. The personal context; 2. The social context; and 3. The physical context. All museum visits involve these three contexts; they are the windows through which we can view the visitor's perspective (Falk & Dierking, p.2).

Falk and Dierking (1992) provide a model we can use to think about the museum experience and understand that there are multiple influencers and multiple ways that different people experience the same exhibit. Understanding the visitor experience and using Falk and Dierking's model to do this is helpful when understanding the dimensionality of visitors taking photographs in museum exhibit spaces. The three contexts that Falk and Dierking (1992) suggest, directly apply to visitor photography. The personal context includes learning style and Howard Gardner's notion of "multiple intelligences" or varying degrees of abilities and ways of learning (p. 101). The social context "influences what and how we learn" (p. 109). Falk and Dierking (1992) cite Richard Chase, saying:

Learning is a special type of social behavior and museums are a special kind of social institution for facilitating it. Numerous anthropological studies have documented that social forms of education can be highly effective in teaching everything from concepts and facts to skills and attitudes (p. 109).

The third context is the physical context. The authors say, "all learning occurs within a physical context, and this contextual stamp ultimately becomes important in determining what information is perceived, how it is stored, and when and how it is recalled" (Falk & Dierking, 1992, p. 112).

Falk and Dierking (1992) say that experiences are long-remembered if those experiences embody all three contexts. Visitor photography includes these three contexts all while being in the museum. Photography can be personal, social, and physical. Photographs are taken to remember and share a museum experience. If a security guard or museum staff member scolds a visitor for taking a photograph, the entire experience could be negatively influenced by that event. Falk and Dierking (1992) suggest that a negative experience could mean that visitor is less likely to return to that museum.

During our interview, Jackie Armstrong explained how the Museum of Modern Art embraces visitor photography. She mentioned MoMA Audio+, which is a program much like the older audio tours. The mobile guide is delivered on an iPod Touch and it:

provides visitors with the ability to listen to audio commentaries for selected artworks, and to access, share, and save additional content. An integrated camera allows visitors to take pictures, which are saved along with everything else viewed in the app during a visit for access later through the Museum's website (MoMA, 2013).

So far more than 160,000 visitors have taken and shared more than 700,000 photos. "The My Path feature connects the in-museum experience with a post-visit experience on MoMA.org, encouraging further exploration and discovery" (MoMA, 2013). Armstrong says of the MoMA Audio+:

It's just going with what's seems natural and with what's happening in the world as it is. I think the best thing to do is rather than have people secretly taking photos, or taking them without thinking about it, is to use that behavior and turn it into something more positive (J. Armstrong, personal communication, April 21, 2014).

Chris White, collections manager at the Jordan Schnitzer Museum of Art (JSMA), reinforces visitor experience as an important consideration for informing policy. In an interview, White echoes Falk and Dierking (1992)'s idea of visitor context and what influences their experience and memory of that experience. In discussing the JSMA's current semi-prohibitive policy, White says: "*essentially we're alienating our visitors because we have museum staff running around saying 'no, you can't photograph that.'*"

The literature, the collected policy review and the survey responses all agree that visitor experience is a major consideration that should inform visitor photography policy. The themes for best practice emerging from considerations for visitor experience are largely based on current mobile technology. Most visitors have cellphones and visitors may still furtively take pictures whether or not a policy restricts photography. Allowing photography and encouraging visitors to participate in the online sharing of museum experiences can add value and meaning to that experience. It can also act as free marketing for the museum itself. In high traffic museums, visitor experience considerations might be based more on gallery aesthetics and distractions from photography as suggested by Anne Hawley at the Isabella Stewart Gardner Museum. If a museum should decide on a prohibitive, semi-open or semi-prohibitive policy, it might be best for that museum to convey the reasons behind not allowing photography. Many visitors are not aware of the copyright restrictions and if this is a reason for restriction, museums should be transparent about it. Ultimately, museums on an individual level should take into account all of these considerations of visitor experience in relation to their own museum when creating or revising a visitor photography policy.

Conservation

Conservation was cited behind intellectual property and visitor experience as a reason for prohibiting photography. The Lowe Art Museum, University of Miami, for example, prohibits “photography and filming in the galleries to ensure that works of art are not subjected to adverse effects of accumulated light damage.” Their policy is informed by considerations for conservation. Aside from that, none of the other respondents expanded on their concern for conservation if they had one. Conservation was, however, mentioned often in the collected policies as reason for a ‘no photography’ policy. Light damage from flash photography is still debated among museum professionals on whether or not this is still an issue, noting current prevailing technologies.

The literature on conservation available that focuses on potential damage from flash photography is very limited. The Getty Conservation Institute’s *Effects of Light on Materials in Collections* by Terry Schaeffer (2001) was published with the intent to assist in establishing exhibition policies and provide research to supplement the otherwise lacking literature available. This publication offers an in-depth look at light exposure and its effects on various materials that might be found in museum collections. Schaeffer (2001) says that the range of effects on objects is huge, but the majority “are not likely to be significantly affected by moderate, or what would be considered normal, exposure” (p. 159). The author suggests thinking about the overall display lifetime of the individual object. “The display lifetime of an object is defined by a perceptible alteration in appearance” (Schaeffer, 2001, p.160). Schaeffer (2001) says that for most objects, the probability of alteration is small and the display lifetime is correspondingly long (p.160).

Schaeffer (2001) also notes that another difficulty in understanding the true effects of photoflash is due to camera manufacturers that are unwilling or unable to provide the

“wavelength cutoff” for their built-in flash (p.161). In assessing the risks of photoflash on objects as Schaeffer (2001) suggests, on a case-by-case basis, is not a luxury for most museum professionals. Schaeffer provides an “approximate rule of thumb... the shorter the allowed display time and the lower the display illumination advised on the basis of experience, the more limited the exposure to flash and reprographic flash light sources should be” (2001, p. 162). If the “spectral out put of the proposed flash” differs from the display lighting it can lead to additional effects and “caution is suggested” (Schaeffer, 2001, p.162). In addition, the projected popularity of the object in question should be considered. While it is known that light damage is accumulative, Schaeffer (2001) suggests that:

The rate of change decreases after an initial period...an object that has already been exposed extensively to light will not be affected to the same extent by additional exposure, and flash photography would be less likely to cause a further, unacceptable change (p.163).

It is important for museums to know the exposure history and the material of objects in the collection, as this can help determine its vulnerability.

The literature does not provide an easy answer for what museums should consider in visitor photography policy when it comes to conservation. Different materials may require different considerations, but this can be confusing for visitors. I spoke with a conservator to better understand their perspective when it comes to conservation issues and hopefully make up for what was lacking in the literature. J. Claire Dean is a conservator at Dean & Associates Conservation Services in Portland, Oregon. In our interview, Dean provided her perspective on visitor photography. When asked if flash photography had damaging effects, she said:

Well the answer is a qualified yes. Because I think in general we tended to have a policy on 'no flash photography' for the simple reason that it's erring on the side of caution. And of course, if you're dealing with art works or items of cultural heritage that are irreplaceable, then erring on the side of caution is probably smart (J. Dean, personal communication, April 2, 2014).

Dean said that the occasional flash is probably fine but it becomes an issue in high traffic exhibits as light damage is cumulative. She says:

If you've got a thousand visitors everyday, taking a flash photograph of the same object which could easily happen in some museums with objects, like, for example, The Mona Lisa or objects that are of particular interest to visitors, then the accumulative light damage could be a cause for concern... With flash prohibitive policies we basically eliminate uncontrolled instances of flash (J. Dean, personal communication, April 2, 2014).

For the most part, Dean says, *"I think I agree with 'no flash'"* (J. Dean, personal communication, April 2, 2014).

This opinion is valuable because many small museums do not have conservators on staff. *"Erring on the side of caution,"* as Dean suggests, should be taken into consideration. Survey respondents also suggested that not allowing flash was also a way to discourage visitors trying to take high quality (i.e. commercially reproducible) photographs. Light damage is a risk for objects being exposed to display light and visitor photography. Based on my findings, literature review and professional opinion, best practice in conservation as it informs visitor photography policy would suggest a visitor photography policy that prohibits the use of flash.

Intellectual Property

Intellectual property, according to survey respondents, is the biggest obstacle when it comes to allowing visitor photography. Respondents cite copyright and works on loan to a museum from an individual or another museum as being the biggest reasons for not having a completely open policy. Intellectual property issues seem to be the most confusing of the concerns for museum professionals, so it is discussed in some detail below. Perhaps this is because what the literature suggests and what current practice actually dictates, differ. The confusion for museum professionals lies in the fact that many resources do not discuss museums in particular for what puts a museum at risk by allowing visitor photography of works still under copyright or not owned by the museum. As far as this study has found, a museum has never been sued or threatened with a lawsuit for an open visitor photography policy. This section will discuss the rules at play for intellectual property in museums using supporting literature and interviews.

Most contemporary art (i.e. produced within the lifetime of an artist, plus seventy years after death) is still under copyright. This means that a person or a museum cannot reproduce or copy a work and sell it without permission from the copyright holder. Visitors taking pictures in the gallery are not trying to copy the exact likeness of a work and are not intending to make a saleable photograph. The most common issue with copyright was brought up in survey responses as it relates to loan agreements. A few survey respondents reported that they allow photography of works on loan to the museum after revising their loan agreements. The Scottsdale Museum of Contemporary Art has done this as well as the Museum of Contemporary Photography.

In my Interview with Chris White, collections manager at the Jordan Schnitzer Museum of Art (JSMA) at the University of Oregon, White said that they have also revised their loan

agreement to allow for non-professional photography. He says that while it is still currently under review by the University of Oregon legal team, it is a step in the direction of allowing non-professional visitor photography throughout the museum. He says:

What we're trying to do is take the responsibility for enforcing copyright out of our hands. We don't want to be responsible for this. Essentially we're alienating our visitors because we have museum staff running around saying 'no, you can't photograph that.' So, we've taken the first step in changing the boilerplate language for all of our loans to explicitly allow photography, at least from the lender's perspective... the language allows non-professional photography, so you can use a point and shoot camera. If you're walking around with a DSLR and a tripod, well you're not going to get through the front door. We prohibit professional photography and that's essentially what we're doing with the entire museum. So, it doesn't matter if the piece was made yesterday and it's still protected by the artist's copyright, we want to say, 'look, you can do whatever non-professional photography you want in the museum, just don't share things that are copyrighted,' essentially washing our hands of that risk (C. White, personal communication, April 1, 2014).

Chris White seemed confident that the policy and revised loan agreement would pass legal review. As evidenced in the survey responses, other museums are doing this as well. First, it is important to understand copyright, public domain, and fair use according to supporting literature. The literature, while important, does not seem to cite an explicit risk for museums allowing visitor photography, but provides a basis to understand how museums are dealing with the obstacle of intellectual property.

Copyright. In using visual art in exhibits museums must understand basic intellectual property: Copyright, exhibition rights, artist's rights, public domain, and fair use. According to Copyright.gov,

Copyright is a form of protection provided by the laws of the United States (title 17, U. S. Code) to the authors of 'original works of authorship,' including literary, dramatic, musical, artistic, and certain other intellectual works. This protection is available to both published and unpublished works (copyright.gov, 2014, p.2).

The owner of copyright is given the exclusive right to do and to authorize others to do the following, according to section 106 of the 1976 Copyright Act:

reproduce the work in copies or phonorecords; prepare derivative works based upon the work, distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental, lease, or lending; perform the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works; display the work publicly, in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work...In addition, certain authors of works of visual art have the rights of attribution and integrity as described in section 106A of the 1976 Copyright Act (copyright.gov, 2014, p.2).

"Copyright protects 'original works of authorship' that are fixed in a tangible form of expression. The fixation need not be directly perceptible so long as it may be communicated with the aid of a machine or device" (copyright.gov, 2014, p.3).

Public domain. A work that is no longer protected by copyright and can be freely used

by the public is a work that has fallen into the public domain. A work may no longer be protected under copyright if: “the term of copyright for the work has expired, the author failed to satisfy statutory formalities to perfect the copyright, or the work is a work of the U.S. government” (§ 16:74.50, Lindey, p. 1). “All works created on or after January 1, 1978, have a copyright term of the life of the author plus 70 years. However, many works published in or after 1923 may also still be protected by active copyrights” (§ 16:74.50, Lindey, p. 1).

Fair Use. There are limitations on the rights of a copyright holder established by sections 107 through 122 of the 1976 Copyright Act. The major one, and the one that directly applies to museums is the “fair use” doctrine, “which is given a statutory basis in section 107 of the 1976 Copyright Act” (copyright.gov, 2014, p.2). The use of a copyrighted work may be determined to be “fair use” if reproduction is “for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, [and] is not an infringement of copyright” (§ 16:74.50, Lindey, p. 1). To determine whether a use is “fair use” section 107 gives four factors to be considered: 1) the purpose and character of the use including whether such use is of a commercial nature or is for nonprofit educational purposes; 2) the nature of the copyrighted work; 3) the amount and the substantiality of the portion used in relation to the copyrighted work as a whole; and 4) the effect of the use upon the potential market for or value of the copyrighted work.

In an article aimed specifically at museum practice and risk, authors Rachelle Browne and Maria Pallante-Hyun look at a museum’s risk of artists’ copyright infringement and suggestions for minimizing risks in using art work. *To License or Not To License: A Look at Artists’ Rights, Museum Practices, and Institutional Risk* discusses the ease of access the Internet

provides, which can lead to museum employees believing that there are no restrictions. Browne and Pallante-Hyun (2004) say the high accessibility and distribution the Internet provides can mean that there is a higher risk of copyright infringement being detected. According to the authors, a museum might digitally infringe on artists' rights in four ways:

scanning and digitizing a copyrighted image constitutes a reproduction of that copyrighted material, uploading copyrighted work to a web site is considered not only reproduction but also distribution of the material, transferring copyrighted material to a larger group by way of electronic mail is distribution but also derivative rights (Browne & Pallante-Hyun, 2004, p. 3).

The authors say that a museum can, at times, use a copyrighted work without consent from the artist. If a museum owns the art or object, it does not necessarily mean that the museum owns the copyright to those works. They say:

If the deed of gift, purchase order, bequest, freelance agreement or other document does not transfer copyright in the object to the museum, then the artist retains all copyright in the work... the museum should not use the work without getting permission, or a license, from the artist or unless the contemplated use is a 'fair use' or specifically permitted under one of the statutory privileges... an art work that is not protected by copyright, because the work is in the public domain or are not eligible for protection under the copyright law, may be copied, distributed, adapted, or displayed without seeking copyright permission or paying a copyright fee (Browne & Pallante-Hyun, 2004, p.5).

Under federal copyright law, non-consensual uses for copyrighted materials might fall under the "fair use" doctrine in Section 107 of the copyright law. Browne and Pallante-Hyun, (2004) suggest four privileges "that allow for the nonprofit, educational use of copyrighted

works without the artists' permission" if the museum is using them as: the owner of a lawfully made copy of the material; a library archive; the publisher of a newsletter, journal or other compilation; and/or a non-profit purpose" (p. 5). Speaking directly to visitor photography:

any person who acquires an original copyrighted work or lawfully made copy of a copyrighted work may display it publicly, and authorize others to do so... However, the 'display' privilege does not permit a museum to reproduce the work digitally or to broadcast or transmit it on the Internet or distribute it through other electronic means... Pictures or photographs of such works may be made, distributed or displayed in connection with the advertisements or commentaries related to the distribution or display of the object (Browne & Pallante-Hyun, 2004, p. 6).

If an art piece in question is owned by the museum and the museum owns the copyright, obtained a license from the artist, or is in the public domain, the museum is free to display and distribute reproductions.

To determine if a use is "fair use," Browne and Pallante-Hyun look closer at the copyright statute, 17 U.S.C. section 107. The authors say fair use is the riskiest option for museums who want to use a copyrighted work without permission from the artist. "There is no absolute definition of 'fair use.' The statute and the courts seek a balance between the rights of the copyright holder and the rights of scholars, teachers, and the public to use and advance knowledge" (Browne & Pallante-Hyun, 2004, p. 8). The standard test for determining "fair use" includes four factors:

Purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes, nature of the copyrighted work, amount and substantiality of portion used in relation to the copyrighted work as a whole, and effect of

the use upon the potential market for or value of the copyrighted work (Browne & Pallante-Hyun, 2004, p. 8).

The authors note that a museum can only use the fair use doctrine as a defense if they are sued for copyright infringement and cannot be relied upon to prevent a museum from being sued. “It [fair use] is a legitimate defense to what would otherwise be considered an unlawful infringement of an artist’s exclusive right to exploit the work” (Browne & Pallante-Hyun, 2004, p. 8).

The resources available on this subject do not answer the question regarding visitor photography of art works in museums and whether it is considered personal use, infringing on copyrights, or can be determined as “fair use.” Here, I will apply the “fair use” doctrine and the four factors to an instance of visitor photography using a similar court case. A paper released by the College Art Association suggests a relatable case that finds the complete use of images as fair use: *Bill Graham Archives v. Dorling Kindersley Ltd.*, 448 F. 3d 605 (2d Cir. 2006). First, a brief background on this case:

Bill Graham Archives (BGA) is holder of copyright on seven posters of famous music group sued publishers of biographical book, claims that reproductions of posters, reduced in size and distributed with others [by Dorling Kindersley Ltd. (DK)] throughout a book, constituted copyright violation (*Bill Graham Archives v. Dorling Kindersley Ltd*, 2006).

This case will assist in the analysis of the fair use doctrine in section 107.

Fair use, factor 1. The first factor states that, “The purpose and character of the use including whether such use is of a commercial nature or is for nonprofit educational purposes.” The main question in this factor is “whether the new work merely supersede[s] the objects of the

original creation, or instead adds something new, with a further purpose or different character, altering the first with new expression, meaning, or message” (Bill Graham Archives v. Dorling Kindersley Ltd, 2006). In this case, the court found that “because the works are displayed to commemorate historic events, arranged in a creative fashion, and displayed in significantly reduced form, the district court held that the first fair use factor weighs heavily in favor of DK.” In addition, “because DK's use of the disputed images is transformative both when accompanied by referencing commentary and when standing alone...” This case also addresses the size of the work as being more transformative. A thumbnail is found to be transformative enough. I would say that many pictures of art works are much smaller than the actual piece. The final piece of Factor 1 is the commercial nature. This case found the book in question to use the photographs in fair use. The court found that:

[DK] does not exploit the use of BGA's images as such for commercial gain.

Significantly, DK has not used any of BGA's images in its commercial advertising or in any other way to promote the sale of the book. *Illustrated Trip* merely uses pictures and text to describe the life of the Grateful Dead. By design, the use of BGA's images is incidental to the commercial biographical value of the book (Bill Graham Archives v. Dorling Kindersley Ltd, 2006).

Most visitor photography is taken with a small point and shoot camera or a cell phone camera. Some people try to get the label in with the picture so as to remember what the picture is of. Many museum professionals argue that the quality of these photographs is relatively poor and are not of the quality that could result in commercial use. The intent of most visitors taking pictures in exhibit spaces is to simply remember their experience and the art they saw and also to

show their pictures to friends and family to say “I was there.” The use of visitor photography has an educational or research purpose and could even attract more people to the museum.

Fair use, factor 2. The second factor in statute 107 is “the nature of the copyrighted work.” For this factor, the court considers “the protection of the reasonable expectations of one who engages in the kinds of creation/authorship that the copyright seeks to encourage” (Bill Graham Archives v. Dorling Kindersley Ltd, 2006). In this case, the court tilted this factor in favor of fair use simply because the images had been “long and extensively published.” This is similar to images of popular art pieces such as Andy Warhol being everywhere.

This factor is more difficult because it looks at what the copyrights intended to protect in the work. The case in question mentions that this factor might weigh in favor of infringement. Again, I think that most camera-wielding visitors are intending to capture a moment in their museum visit, rather than trying to capture the exact likeness of a painting. A person attempting to get a really decent picture of a painting on a wall would be really hard pressed to come away with something saleable.

Fair use, factor 3. The third factor in the statute is: “the amount and the substantiality of the portion used in relation to the copyrighted work as a whole.” In Bill Graham Archives v.

Dorling Kindersley (2006):

the district court determined that even though the images are reproduced in their entirety, the third fair use factor weighs in favor of DK because the images are displayed in reduced size and scattered among many other images and texts (Bill Graham Archives v. Dorling Kindersley Ltd, 2006).

This is similar to how a visitor photograph might be displayed on the Internet. In addition the court says, “Copying the entirety of a work is sometimes necessary to make a fair use of the image” (Bill Graham Archives v. Dorling Kindersley Ltd, 2006).

For purposes of research and education, which is sometimes the reason for a visitor to photograph a copyrighted work, a person would need to make sure to capture the entirety of the artwork. Museums can have some control for researchers and educators trying to obtain a high-resolution photographic copy of a copyrighted work by requiring visitors to obtain permission to do so through the museum. As suggested in the previous factors, a cell phone picture will not make a good quality image.

Fair use, factor 4. The fourth and final factor in section 107 of the fair use doctrine is “the effect of the use upon the potential market for or value of the copyrighted work.” This factor balances “the benefit the public will derive if the use is permitted and the personal gain the copyright owner will receive if the use is denied.” While the fourth factor most often favors the copyright holder, the court in this case finds that “Since DK's use of BGA's images falls within a transformative market, BGA does not suffer market harm due to the loss of license fees” (Bill Graham Archives v. Dorling Kindersley Ltd, 2006).

Visitors taking pictures in galleries are not there to obtain a saleable photograph for commercial use. Most works are highly recognizable by the general public thanks to the Internet. Museums themselves sometimes argue that allowing visitor photography in exhibit spaces threatens the sales of their museum shop. A visitor that wants to give a gift to a friend will most likely choose to buy a coffee mug or a post card over giving them the printed out version of their low quality cell phone picture taken at the museum.

In a February 2014 *Issues Report* released by the College Art Association called, “Copyright, Permissions, and Fair Use among Visual Artists and the Academic and Museum Visual Arts Communities,” the authors indicate a misunderstanding and under-use of copyright law in visual arts communities. The findings in this report mirror the findings of my survey questionnaire. Museum professionals are in need of more “useful grounded knowledge about copyright and fair use, [because] visual artists and other visual arts professionals will inevitably overestimate the risk” (Aufderheide, et al., 2014, p. 18). The authors say, as I have found, that there are “few copyright decisions relating directly to the visual arts practices focused on [the museum field] and those that do have little predictive value.” *Bridgeman Art Library v. Corel Corp.*, 25F. Supp. 2d 421 (S.D. N.Y. 1998) is mentioned (involving two private for-profit entities) as a “precedent to enable the wider circulation of images representing two-dimensional objects in museums and other institutional collections” (Aufderheide, et al., 2014, p. 20). Another reason for the lack of copyright decisions is because, unlike *Bridgeman*, the authors suggest that the parties in conflict did not have great enough financial stakes or the conflicts were resolved through compromise or settlement with no public record. Aufderheide et al. (2014) claim that “even extensive illustrative use of copyrighted materials can constitute fair use, as in *Sundeman v. Seajay Soc’y*, 142F. 3rd 194 (4th Cir. S.C. 1998)” and the use of complete images of various dimensions “can constitute fair use in non-scholarly texts, in *Warren Publ’g Co. v. Spurlock*, 645 F. Supp. 2d 402 (E.D. Pa. 2009) and *Bill Graham Archives v. Dorling Kindersley Ltd.*, 448 F. 3d 605 (2d Cir. 2006)” (Aufderheide, et al., 2014, p. 21). The conclusion of the report by Aufderheide, et al. (2014) suggest that a best practice in this area might be the most helpful. “Judges look to community practice to know how to decide a fair use, and community members employ fair use more effectively when they have best practices” (p.17). Aufderheide, et

al. (2014) say “Fair use is accessible, favored in the courts, appropriate for many uses in the field, and yet vastly underused with serious consequences for the future of the field”

(Aufderheide, et al., 2014, p. 18).

Based on this study, my review of art law literature found museums are at a low risk for litigation for allowing visitor photography. Chris White says:

I haven't delved too deeply into it, but I don't sense that museums get sued for copyright infringement, but the museums are very hyperactive in restricting the public's access to copyrighted works where they're restricting their ability to photograph them or access them in some way (C. White, personal communication, April 1, 2014).

What could be an issue he says, is:

whether we have secondary liability, so we [as the museum] didn't actually post this copyrighted work on the internet, and it's unclear how far we need to go to protect that copyright, do we simply say, 'be responsible and don't infringe on the artist's copyright. What do we want to tell our visitors so that it's up to the visitors in making these decisions. Obviously, if somebody comes in with a tripod and a DSLR and they want to try and take photos, we would just say, 'no' (C. White, personal communication, April 1, 2014).

The current trend in practice found in the survey questionnaire shows a wide range in how museums decide intellectual property is going to inform their visitor photography policy. Some museums have simply changed the language in their loan agreements or obtained licensing agreements with artists to accommodate visitor photography while others have not. Current practice and literature within intellectual property suggests that museums are at a low risk for liability for allowing visitor photography.

Jackie Armstrong, Emily Fisher Landau Education Fellow at the Museum of Modern Art, said in our interview that it might be up to the larger institutions to pave the way in defining best practice for visitor photography policy. She says:

I think if larger institutions keep pushing for things like this I think hopefully everybody will eventually follow suit or at least, be a little less constrained about it. Or question why taking photographs is such a big deal. Sometimes it seems like museums don't have good reasons for it (J. Armstrong, personal communication, April 21, 2014).

Armstrong said that MoMA has also revised their loan agreements but takes it a step further to ensure visitors can photograph the works they loan to other institutions:

Whatever MoMA loans to other museums, that might have a 'no photography' policy, [MoMA] always makes sure that those loans from their collection are able to be photographed. There is also a push to encourage other museums that lend to us to allow photography. So in a lot of ways MoMA is pushing the practice in general to free up that decision around photography... people are bringing these devices into the gallery with them anyway (J. Armstrong, personal communication, April 21, 2014).

While Categories 1,2, and 3 show current practice and suggest intellectual property concerns inform visitor photography policy based on the reasons discussed above, Category 4 shows that current practice is also evolving. Museums that are revising their loan agreements and revising their visitor photography policies are keeping up with trends in social media and technology. These museums suggest that a visitor photography policy can be influenced in a positive way by intellectual property concerns. Museums are finding that if they revise their lending agreements to stipulate the allowance of visitor photography and alert visitors to copyright restrictions and potential infringements, museums can avert the intellectual property

obstacle. A respondent from the Nasher Museum of Art at Duke University suggests that museums should not be charged with policing copyrights saying, “*It is difficult to police photography with smartphones, however, and ultimately it is not our responsibility to enforce the copyright of the artist*” (Nasher Museum of Art Respondent, 2014). Museums should consider intellectual property concerns. Current practice and an evolving best practice suggests that museums concerned with copyright and objects on loan can consider revising loan agreements and obtaining licensing agreements to accommodate visitor photography. Many museums are moving toward adopting this strategy if they feel supporting visitor experience is important. Museums should react to the impulsive use of mobile devices and social media in a positive and purposeful way.

VI. Conclusion

Significance of Findings and Recommendations

The significance of this study can be found in the frequency this topic is brought up in current discussions within the museum field and in online news media. *The New York Times*, blog articles, and discussion threads in professional list-serves cited earlier in this study are evidence to its timeliness. As this paper was being written, a new article came out almost every week reporting on a museum that had changed their photography policy or suggested ways to improve the museum experience. For example, The Frick Collection has just changed their photography policy as of April 9th, 2014, according to Jillian Steinhauer from *Hyperallergic.com*. The Frick Collection’s visitor photography policy was cited earlier in this study (as of February of 2014) as being completely prohibitive. This supports the findings in

Category 4 showing that museums are changing their policies and considering alternatives to a ‘no photography’ policy.

Steinhauer’s (2014) article also cited a LaPlaca Cohen study released on April 29th “tracking Americans cultural participation... [it] found that 66% of people using mobile devices at cultural events are taking photos, and 47% are sharing them.” Museum visitors are using mobile devices in museums and taking pictures with those devices. As reported by survey respondents, cellphone photography is prevalent and difficult to police.

JiaJia Fei, Digital Marketing Manager at the Solomon R. Guggenheim Museum, gave a lecture on “Art in the Age of Instagram: Social Media at the Guggenheim Museum.” Fei spoke about the changes in how visitors interact with art, “*For the first time in the history of art, a person’s initial interaction with an art object will most likely be online — in an e-mail, an online review or on Instagram*” (Fei, 2014). Fei used a few recent exhibitions at the Guggenheim Museum such as the James Turrell Exhibition to show that even with a “no photo” policy, *Instagram* was flooded with visitor photographs of the exhibition. The museum and the artist decided that the photographs did not fully capture the essence and the experience of the exhibition and ultimately were not a concern for infringement. Another example was the Christopher Wool Exhibition in which the artist decided to open up the photography policy, resulting in another flood of shared photographs and a hash tag specifically for the exhibit. Fei admitted that it was easier to open up photography policies when there were only one or two artists involved in an exhibition. Fei called for museums to revise their photography policies and loan agreements because copyright is only hurting the public (Fei, 2014).

Larger museums like the Guggenheim Museum and the Museum of Modern Art are evolving their own practice in photography policy to be more supportive of visitors. With the

reassurance from these larger institutions, smaller museums can follow suit. The findings in this study suggest that this is indeed a current trend. The museum field is still particularly in need of resources on intellectual property specific to museum practice in order to assist in this shift. As technology and its use advances, museums will have to continue to rethink and revise their policies.

Recommendations based on the findings from surveys include each consideration within this study. Museums should consider their visitors' experience if the decision to allow visitor photography is made. An open photography policy allows for the participation and sharing of experiences and exhibits while encouraging institutional promotion through social media. As suggested by JiaJia Fei (2014) and Jackie Armstrong (2014), visitor photography is a great way to monitor audience participation. Museums can create programs that use and encourage natural visitor behavior, like MoMA's My Path and Audio+. The programs can augment visitor experience by using visitor photography in a constructive and purposeful way. Hashtags can be another form of a comment book while encouraging museum marketing through visitors' posts. "Museums have the most potential to engage and educate the public" (Fei, 2014).

Conservation was the smallest concern reported by survey responses. Museums should consider the material and display history of an object or collection that might be subjected to visitor photography. The potential for high traffic to a popular exhibit should be considered. "Erring on the side of caution" and prohibiting flash is best, as suggested by J. Claire Dean (2014). In doing this, museums minimize the risk of exposure to objects on long term display, while at the same time deterring high resolution photographs. These considerations should be made on a case-by-case basis, as some materials are more sensitive than others. In addition,

attention to gallery layout should be considered in cases of high traffic exhibits. Visitors backing up to take photographs might accidentally bump into surrounding displays.

Museums should be familiar with which pieces in their collection are under copyright and which pieces are in the public domain. For pieces not owned by the museum (traveling exhibits and loaned objects), consider revising the language in loan agreements to support visitor photography, acquire licensing agreements for copyrighted works or determine if projected use is a fair use. The survey responses found that intellectual property was the most popular reason for restricting photography. Museum professionals should understand the fair use doctrine and how it can apply to the photography of their objects on exhibit.

The visitor photography policy itself should be clear and transparent. Proper signage should be easily visible in instances of restricted photography. It can be helpful for visitors to understand the reasoning for ‘no photography’ if it is explained within the policy and posted in the museum, accessible, and easy for visitors to read. Consistency of a certain policy (whether it be open or closed) throughout individual galleries is also something to consider. It is important to understand that if a visitor wants a picture of a work of art or object, they will likely take that picture regardless of a ‘no photography’ policy.

The future of museums relies on how well museums can relate and appeal to multiple demographics. Revising visitor photography policies is a step in this direction. People are more likely to visit museums if they feel welcome there and can see themselves reflected in the exhibits. While technology is constantly changing and improving, museums can also be innovative to keep up with these trends. A collective best practice to help other museums achieve this is the key to the future and to remaining relevant with larger and multiple demographics of potential museum visitors.

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Appendix A

Qualtrics Survey Questionnaire

*First page will be consent form (see Appendix F) that says clicking forward to the survey acknowledges informed consent.

* Note before survey starts:

The following questions are all optional and may be answered to your comfort level. This survey will take approximately 20 minutes to complete. You may skip questions that you do not wish to answer or that do not apply by clicking the "Next" button in the bottom right corner.

You can continue through the survey by clicking the "Next" button in the bottom right corner. You may also go back to previous questions by clicking the "Previous" button in the bottom right corner.

When you come to the final page of the survey please click "Next" once more to submit the survey.

Thank you for your participation!

Questions:

1. Please provide the name of your museum (optional).
2. Does your museum have accreditation from the American Alliance of Museums?
3. Do you allow visitors to take photographs in your exhibit spaces?
Click Yes or No or In Certain Galleries
4. If you do not allow visitor photography, do visitors take photographs in your museum exhibit spaces anyway?
Click Yes or No
5. Does your museum have a visitor photography policy?
Click Yes or No
6. How do you communicate your visitor photography policy to visitors (signage, verbal, etc.)?
7. Has your visitor photography policy changed within the last 10 years?
Click Yes or No
8. If your policy has changed, how so?
9. If your policy has changed, what were the reasons?
10. Is your visitor photography policy informed by concerns for copyright regarding objects or art on exhibit?
If so, how?
11. Do visitors use smart phones to access information in exhibit spaces?
Yes or No
12. Does your museum participate in social media?
Check all that apply:
(Instagram, Facebook, Twitter, Flickr, Tumblr, YouTube, Pinterest)

*If you are willing, please up-load your organization's visitor photography policy or email to Stephanie Johnson at: sjohns25@uoregon.edu

[File upload button]

Final page of Survey:

Thank you for your time and participation in this survey for use in my Master's thesis research, *Visitor Photography Policy: An Exploration of Current Trends and Considerations Across American Museums*.

Sincerely,
Stephanie Johnson
Master's Candidate, Arts Management Arts and Administration Program University of Oregon
Email: sjohns25@uoregon.edu Phone: (503) 781-1307

Appendix B-1

Data Collection Sheet for Photo Policy Analysis:

Institution/title:

Data ID:

Key Descriptor:

Date:

Document Location:

Document Type: Report, Article, Book etc. Online Information
 Museum Photography Policy Legal/Copyright Information

Reference Citation:

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Appendix B-2

Interview: Conservator

Interviewee:

Institution:

Data ID:

Key Descriptor:

Date:

Interview Location:

Interviewee Details:

Consent: Oral Written (form) Audio Recording OK to Quote
 Thank You Card

Notes on Interview Context:

Key Points:

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Semi-Structured Interview Questions:

What are your thoughts on visitor flash photography in museum gallery spaces? Is there potential for photo flash to harm objects?

Could the flash on modern digital cameras and cell phones be damaging to art or objects?

-If it's damaging: Is it anymore damaging than the overhead light surrounding them on a daily basis?

If you were advising a museum on conservation concerns for objects on display, what would your considerations be in the revision or development of a visitor photography policy?

Appendix B-3

Interview: Collections Manager

Interviewee:

Institution:

Data ID:

Key Descriptor:

Date:

Interview Location:

Interviewee Details:

Consent: Oral Written (form) Audio Recording OK to Quote
 Thank You Card

Notes on Interview Context:

Key Points:

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Semi-Structured Interview Questions:

What are your thoughts on visitors taking photographs of art or objects in gallery or exhibit spaces?

What influencing factors would you consider in the creation of a visitor photography policy?

What is your experience with artists and their work when it comes to visitor photography?

In the context of visitor photography, do you have concerns for copyright or fair use?

-What concerns do the artists have, if any?

Appendix B-4

Interview: Museum generally looked to for best practice that allows visitor photography

Interviewee:

Institution:

Data ID:

Key Descriptor:

Date:

Interview Location:

Interviewee Details:

Consent: Oral Written (form) Audio Recording OK to Quote
 Thank You Card

Notes on Interview Context:

Key Points:

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Semi-Structured Interview Questions:

What were the factors that led to the change in Visitor Photography Policy?

Who or what were the major driving forces involved in the decision to revise the Visitor Photography Policy (i.e. Visitors? Artists? Staff?)?

Who in the museum manages/enforces this policy?

What considerations were there in the process of the policy change?

Do you foresee any risks as a result of this policy change?

What do the artists think about the change?

Have there been any immediate benefits for the museum as a result of the policy change?

What has been the reaction from the public as a result of this policy change?

What has been the reaction from the museum field and artists as a result of this policy change?

Appendix B-5

Interview: American Alliance of Museums Informant on Accreditation/Museum Policies

Interviewee:

Institution:

Data ID:

Key Descriptor:

Date:

Interview Location:

Interviewee Details:

Consent: Oral Written (form) Audio Recording OK to Quote
 Thank You Card

Notes on Interview Context:

Key Points:

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Semi-Structured Interview Questions:

Does AAM require a visitor photography policy for accreditation?

Have you noticed any museums making changes to or updating their visitor photography policies?

Are there any standard guidelines or best practices available for museum professionals to reference?

Appendix C

Interview Recruitment Letter

Date

Stephanie Johnson
251E Lawrence Hall
5230 University of Oregon
Eugene, OR 97403

Dear <POTENTIAL INTERVIEWEE>:

I am a graduate student in Arts and Administration at the University of Oregon conducting research on museum visitor photography policy. I would like to invite you to participate as an interviewee in my research project titled *Visitor Photography Policy: An Exploration of Current Trends and Considerations Across American Museums*. The purpose of this study is to explore current attitudes towards museum visitor photography and define guidelines and best practices to use when developing a museum visitor photography policy in the United States.

The main question of this study asks what influencing factors and best practices should be considered when creating a visitor photography policy in a museum? This research is designed to explore the influencing factors and considerations for creating a visitor photography policy such as conservation, copyright, visitor experience and museum best practice. The expected outcome will take the form of standard guidelines and best practice for creating a visitor photography policy; Assuming that many museums have outdated visitor photography policies and given the shift in technology and popularity of social media, it is desirable for them to redesign visitor photography policy that reflects this. It is my goal to provide research that will assist in this.

You were selected to participate in this study because of your relevant professional experience in the museum field. If you decide to take part in this research project, you will be asked to participate in an interview by phone or email, lasting approximately twenty to thirty minutes, in March of 2014. If you wish, interview questions will be provided beforehand for your consideration. Interviews will be scheduled at your convenience. In addition to taking handwritten notes, with your permission, I will use an audio recorder for transcription and validation purposes. You may also be asked to provide follow-up information through phone calls or email.

If you have any questions, please feel free to contact me by phone at (503) 781-1307 or by email at sjohns25@uoregon.edu; my advisor is Dr. Phaedra Livingstone. Any questions regarding your rights as a research participant should be directed to the Office for the Protection of Human Subjects, University of Oregon, Eugene, OR 97403, (541) 346-2510.

Thank you in advance for your interest and consideration.

Sincerely,

Stephanie Johnson
Sjohns25@uoregon.edu

Appendix D

Survey Questionnaire Recruitment Email Script

March 11, 2014

Dear Prospective Participant,

My name is Stephanie Johnson and I would like to invite you to participate in a research project titled *Visitor Photography Policy: An Exploration of Current Trends and Considerations Across American Museums*. I am a graduate student in the Arts and Administration Program at the University of Oregon. I am conducting an online survey questionnaire for my project to explore current attitudes towards museum visitor photography and hope to define guidelines and best practices to use when creating a museum visitor photography policy. In order to contain my study within the United States, I am inviting participants working in an American museum to respond to this survey.

Please do not put your name in this survey, but if you would like, please provide the name of the organization that you are affiliated with. This survey is voluntary. All questions are optional and may be answered to your comfort level. I am also inviting you to up-load copy of your organization's visitor photography policy to be used in this study.

This survey will take approximately twenty minutes to complete and can be taken at your convenience. Please follow the link to my Qualtrics survey questionnaire here:

https://oregon.qualtrics.com/SE/?SID=SV_9QVdhfcZHFIYpMx

There, you will find detailed instructions for completing this survey questionnaire and, if you wish, providing your organization's visitor photography policy.

If you have any questions, please feel free to contact me at sjohns25@uoregon.edu, my advisor is Dr. Phaedra Livingstone. Any questions regarding your rights as a research participant should be directed to the Office for the Protection of Human Subjects, University of Oregon, Eugene, OR 97403, (541) 346-2510.

Thank you in advance for your interest and consideration.

Sincerely,

Stephanie Johnson

Master's Candidate, Arts Management
Arts and Administration Program
University of Oregon
Email: Sjohns25@uoregon.edu
Phone: (503) 781-1307

Appendix E

Interview Consent Form

Visitor Photography Policy: An Exploration of Current Trends and Considerations Across American Museums

Stephanie Johnson, Principal Investigator
University of Oregon Arts and Administration Program

You are invited to participate in a research project titled *Visitor Photography Policy: An Exploration of Current Trends and Considerations Across American Museums*, conducted by Stephanie Johnson from the University of Oregon's Arts and Administration Program. The purpose of this study is to explore current attitudes towards museum visitor photography and define guidelines and best practices to use when developing a museum visitor photography policy in the United States.

This study is exploring visitor photography policy in museum exhibit spaces. Assuming that many museums have outdated visitor photography policies and given the shift in technology and popularity of social media, it is necessary for a redesigned visitor photography policy that reflects this. The main question of this study asks what influencing factors and best practices should be considered when creating a visitor photography policy in a museum? This research is designed to explore the influencing factors and considerations for creating a visitor photography policy. This study will explore issues of conservation, copyright and museum best practice that will help compose guidelines for a standard photography policy. The expected outcome will take the form of standard guidelines and best practice for creating a visitor photography policy.

You were selected to participate in this study because of your professional experience within the museum field and expertise pertinent to visitor photography in museum exhibit spaces. If you decide to take part in this research project, you will be asked to provide relevant organizational materials and participate in an in-person interview, lasting approximately one hour, during the spring of 2014. If you wish, interview questions will be provided beforehand for your consideration. Interviews will take place by email or over the phone at your convenience. Interviews will be scheduled at your convenience. In addition to taking handwritten notes, with your permission, I will use an audio tape recorder for transcription and validation purposes. You may also be asked to provide follow-up information through phone calls or email. There are minimal risks associated with participating in this study, particularly since this phase of research is exploratory in nature.

Any information that is obtained in connection with this study will be carefully and securely maintained. Your consent to participate in this interview, as indicated below, demonstrates your willingness to have your name used in any resulting documents and publications and to relinquish confidentiality. It may be advisable to obtain permission to participate in this interview to avoid potential social or economic risks related to speaking as a representative of your institution. Your participation is voluntary. If you decide to participate, you are free to withdraw your consent and discontinue participation at any time without penalty. Any information that is obtained in connection with this study and that can be identified with you will remain confidential and will be disclosed only with your permission.

I anticipate that the results of this research project will be of value to the museum field as a whole, especially in the United States. However, I cannot guarantee that you personally will receive any benefits from this research.

If you have any questions, please feel free to contact me at (503) 781-1307 or sjohns25@uoregon.edu, or Dr. Phaedra Livingstone at (541) 346-2296. Any questions regarding your rights as a research participant should be directed to the Office for the Protection of Human Subjects, University of Oregon, Eugene, OR 97403, (541) 346-2510.

Please read and initial each of the following statements to indicate your consent:

_____ I consent to the use of audiotapes and note taking during my interview.

_____ I consent to my identification as a participant in this study.

_____ I consent to the potential use of quotations from the interview.

_____ I consent to the use of information I provide regarding the organization with which I am associated.

_____ I wish to have the opportunity to review and possibly revise my comments and the information that I provide prior to these data appearing in the final version of any publications that may result from this study.

Your signature indicates that you have read and understand the information provided above, that you willingly agree to participate, that you may withdraw your consent at any time and discontinue participation without penalty, that you have received a copy of this form, and that you are not waiving any legal claims, rights or remedies. You have been given a copy of this letter to keep.

Print Name: _____

Signature: _____ Date: _____

Thank you for your interest and participation in this study.

Sincerely,

Stephanie Johnson
Master of Arts Candidate
Arts Management
Sjohns25@uoregon.edu
(503) 781-1307

Appendix F

Qualtrics Survey Questionnaire Consent Form

Visitor Photography Policy: An Exploration of Current Trends and Considerations Across American Museums.

Stephanie Johnson, Principal Investigator

University of Oregon, Arts and Administration Program

Dear Participant,

I am a graduate student in the University of Oregon's Arts and Administration Program conducting research on museum visitor photography policy. The purpose of this survey is to explore current attitudes towards museum visitor photography to aid in defining guidelines and best practices to use when developing a museum visitor photography policy in the United States.

Your participation in this survey is voluntary. Individually, you will not be asked to provide any identifying information such as your name. As an optional response, you will be asked to identify your associated institution's name. If you want your survey answers to remain anonymous, please do not provide your institution's name in the survey. The information provided in this survey will only be used in connection with your institution's name if you identify your institution. If you do not identify your institution, anonymous quotes and data may still be used in this study.

Any identifying information that is obtained through this survey will be carefully and securely maintained. There are minimal risks associated with participating in this survey, particularly since this phase of research is exploratory in nature. It may be advisable to obtain permission to participate in this online survey questionnaire to avoid potential social or economic risks related to speaking as a representative of your institution.

By completing this survey and/or providing your organization's name, you acknowledge your consent to the potential use of quotations submitted in the survey and consent to the use of information you provide regarding the organization with which you are associated.

By clicking continue, you acknowledge that you have read and understand the information provided above, that you willingly agree to participate and that you are not waiving any legal claims, rights or remedies.

Thank you for your interest and participation in this study.

I anticipate that the results of this study will be of value to the museum field as a whole in the United States. However, I cannot guarantee that you personally will receive any benefits from this research.

If you have any questions, please feel free to contact me at sjohns25@uoregon.edu, my advisor is Dr. Phaedra Livingstone. Any questions regarding your rights as a research participant should be directed to the Office for the Protection of Human Subjects, University of Oregon, Eugene, OR 97403, (541) 346-2510.

Sincerely,

Stephanie Johnson
Master's Candidate, Arts Management
Arts and Administration Program
University of Oregon
Email: sjohns25@uoregon.edu
Phone: (503) 781-1307