

Information:

Drawer: Accounts Payable - Invoices
Vendor Number: 1596706
Vendor Name: Artists Rights Society Inc
Invoice Number: AR2INV12174
Invoice Date: 4/19/2023
PO Number: B0001336
Check Number: E0094961
Check Amount: \$ 1,000.00
Check Date: 05/03/2023
Voucher Number: V0783915
Document Type: AP Invoice

Document Below

ARTISTS RIGHTS SOCIETY

INVOICE/AUTHORIZATION

To : College of DuPage
425 Fawell Blvd,
Glen Ellyn, IL 60137
Attn: Julia Walker
Email: walkerj1310@cod.edu

Invoice: AR2INV12174
P.O.: B0001336
Date: 04/19/2023
Federal ID: I3-3405268

Project: Photo rental for WARHOL
Re: Artists rights permission; per your request

The grant of rights is contingent upon payment of fees. Please see last page for applicable laws.

WARHOL IMAGE LICENSE AGREEMENT TERMS

1. LICENSE GRANT. Artists Rights Society (hereafter referred to as "ARS"), as Agent for The Andy Warhol Foundation for the Visual Arts, Inc. (hereafter referred to as "AWF") hereby grants to CLEVE CARNEY MUSEUM of ART (hereinafter referred to as "LICENSEE"), in consideration of fees paid to ARS, the limited, nonexclusive right to make temporary use of photographs of Andy Warhol works of art represented in digital form and formatted as .tif files at 300dpi measuring no less than 20MB provided by AWF or ARS as listed below (hereinafter referred to as "DIGITAL FILES"). Permission is granted for the one-time use of the DIGITAL FILES solely in conjunction with reproduction rights granted by ARS set forth in the License Agreement/Invoice (#) dated INSERT DATE.

1. TOP283.005 High Heel c. 1956
2. TOP283.006 High Heel
3. PM 12.0439 Sunset and Evening Shoe (from: A 1955
4. PM 12.0394 The autobiography of alice B. shoe 1955
5. OC58.006 Superman 1961
6. CR 1429C Little Electric Chair 1964-65
7. Most Wanted Thirteen Most Wanted Men Installation 1964
8. CR 2289 Mao 1972
9. OC44.002 Skull 1976
10. 2014.41.1358_23 1984

ARTISTS RIGHTS SOCIETY

INVOICE/AUTHORIZATION

To : College of DuPage
425 Fawell Blvd,
Glen Ellyn, IL 60137
Attn: Julia Walker
Email: walkerj1310@cod.edu

Invoice: AR2INV12174
P.O.: B0001336
Date: 04/19/2023
Federal ID: I3-3405268

Project: Photo rental for WARHOL

Re: Artists rights permission; per your request

The grant of rights is contingent upon payment of fees. Please see last page for applicable laws.

2. PAYMENT. LICENSEE shall pay ARS, on behalf of AWF, the amount and on the date set forth below as a non-refundable fee in consideration of the rights granted herein. LICENSEE acknowledges that no DIGITAL FILES shall be released by AWF or ARS until payment in full is made by LICENSEE to ARS. Upon five (5) business days of receipt of applicable fees and the acknowledgement and acceptance of the terms set forth herein, DIGITAL FILES will be provided to LICENSEE by ARS or AWF via email or a secure file transfer service.

1000.00

3. LIMITATIONS ON LICENSE. Recipient agrees not to sell, sublicense, re-license, rent, lease or otherwise distribute any DIGITAL FILES, or any material derived from DIGITAL FILES, either in whole or in part, or to otherwise make any advertising or commercial use of DIGITAL FILES, or any material derived from DIGITAL FILES, except as expressly agreed in writing by ARS. Without limiting the foregoing, recipient agrees that it will not: (a) archive, republish or transmit any of the DIGITAL FILES by any method without ARS's prior written consent; (b) copy or publish any of the DIGITAL FILES to a network or bulletin board, or otherwise distribute or allow any of the DIGITAL FILES to be distributed to or used by anyone other than as permitted hereunder, without the prior written consent of ARS; (c) use the DIGITAL FILES to promote a business that sells or licenses DIGITAL FILES, or otherwise competes with AWF or ARS in any manner; and (d) use the DIGITAL FILES in any manner that would discredit or disparage AWF or the owner of the DIGITAL FILES. The DIGITAL FILES may be subject to trademarks, copyrights, rights of publicity and/or rights of personality owned or controlled by third parties. LICENSEE shall solely be responsible for obtaining the consent of any third party should such consent be necessary, and to pay the fees thereto that may be required by such parties. The Andy Warhol Foundation does not represent or warrant that it can or is conveying any of the above described ancillary rights. If LICENSEE is unsure whether additional rights are needed for use of the aforementioned Andy Warhol reproduction, it shall be the sole responsibility of LICENSEE to consult with its own counsel.

4. PROTECTION. LICENSEE acknowledges the ownership, great value and good will of DIGITAL FILES and that all rights therein belong exclusively to AWF. LICENSEE shall not, during the term of this Agreement or thereafter, attach or put in issue the title or any rights of OWNER in and to the DIGITAL IMAGES. At all times LICENSEE shall limit access to DIGITAL FILES to those having a bona fide need to exercise the rights granted herein. LICENSEE shall delete and destroy all DIGITAL FILES and all copies thereof in whatever form rendered and upon whatever media stored on or before [three months from today]. Unless this period is extended in writing, recipient must delete DIGITAL FILES from all electronic and removable media and destroy any other copy of DIGITAL FILES, except as licensed under this agreement. AWF'S copyright information embedded in the meta-data and the original file name must remain with the DIGITAL FILES while recipient retains them and all copies thereof in whatever form rendered and upon whatever media stored. The right to make temporary use of DIGITAL FILES hereby granted is strictly limited to DIGITAL FILES identified herein and to only the

ARTISTS RIGHTS SOCIETY

INVOICE/AUTHORIZATION

To : College of DuPage
425 Fawell Blvd,
Glen Ellyn, IL 60137
Attn: Julia Walker
Email: walkerj1310@cod.edu

Invoice: AR2INV12174
P.O.: B0001336
Date: 04/19/2023
Federal ID: I3-3405268

Project: Photo rental for WARHOL

Re: Artists rights permission; per your request

The grant of rights is contingent upon payment of fees. Please see last page for applicable laws.

make temporary use of DIGITAL FILES hereby granted is strictly limited to DIGITAL FILES identified herein and to only the above-described media for only the above-described period, and any further uses, distribution or reproductions are strictly prohibited. All rights not specifically granted herein to recipient are reserved for AWF's use and disposition without any limitations whatsoever.

5. LABELING REQUIREMENTS. LICENSEE shall cause the following notice to appear adjacent to all reproductions: Image and Artwork © The Andy Warhol Foundation for the Visual Arts, Inc./Licensed by ARS. LICENSEE acknowledges that failure to include such notice adjacent to any reproduction of the DIGITAL FILES shall invoke a minimum thirty-three and one-third percent (33 1/3%) surcharge.

6. RESERVATION OF RIGHTS AND OWNERSHIP OF DIGITAL FILES. AWF explicitly reserves and retains all rights not expressly granted to LICENSEE herein. DIGITAL FILES remain the property of AWF. Recipient does not acquire any right, title or interest in or to any DIGITAL FILES, including, without limitation, any electronic reproduction or promotional rights, and will not make, authorize or permit any use of the DIGITAL FILES made therefrom other than as specified herein.

7. INDEMNIFICATION. LICENSEE agrees to indemnify and hold ARS and AWF, harmless from any and all claims, liabilities, damages, costs and expenses, including reasonable attorney's fees, arising from LICENSEE's use of DIGITAL FILES including, but not limited to, any additional third party rights, consents or permissions as may be required and any breach of this agreement. This indemnification shall include all damages, interests, reasonable attorney's fees, costs and expenses which may be levied against or incurred by AWF and/or ARS, including costs of collection of all amounts owed to ARS and/or AWF by LICENSEE and costs of all actions by AWF and/or ARS against LICENSEE to enforce LICENSEE's compliance under this Agreement.

8. LIMITATION OF LIABILITY. Under no circumstances will AWF or ARS be liable for any direct, incidental, consequential, indirect or punitive damages from LICENSEE's access or use of the DIGITAL FILES. In any event, the limit of liability of AWF and ARS shall be the fee set forth herein paid by LICENSEE for use of the DIGITAL FILES.

9. LIMITED WARRANTY BY AWF. AWF has made reasonable efforts to ensure that DIGITAL IMAGES accurately represent the artwork depicted therein and are free of dust, scratches, and other defects. Notwithstanding the foregoing, LICENSEE accepts the images on an as-is basis and shall make no claims against ARS or AWF pertaining to the quality or accuracy of color for the DIGITAL IMAGES. THE EXPRESS WARRANTIES IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE DIGITAL FILES AND ANY SERVICES PROVIDED HEREUNDER, AND AWF SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. LICENSEE ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS

ARTISTS RIGHTS SOCIETY

INVOICE/AUTHORIZATION

To : College of DuPage
425 Fawell Blvd,
Glen Ellyn, IL 60137

Attn: Julia Walker
Email: walkerj1310@cod.edu

Invoice: AR2INV12174

P.O.: B0001336

Date: 04/19/2023

Federal ID: I3-3405268

Project: Photo rental for WARHOL

Re: Artists rights permission; per your request

The grant of rights is contingent upon payment of fees. Please see last page for applicable laws.

PERFORMANCE. LICENSEE ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON THE DURATION OF IMPLIED WARRANTIES, THE ABOVE LIMITATION MAY NOT APPLY.

10. NO RIGHT TO ASSIGN OR SUBLICENSE. This Agreement and all rights and duties herein are personal to LICENSEE and are not assignable, in whole or in part, by LICENSEE without AWF's prior written consent.

11. ENTIRE AGREEMENT. These terms and conditions contain the entire Agreement between ARS and LICENSEE concerning the transmission, delivery, review, and reproduction of DIGITAL FILES, and no term or conditions may be added or deleted unless made in writing by ARS. LICENSEE confirms that it has the right to enter into this Agreement on behalf of itself and any company on whose behalf it is receiving DIGITAL FILES. The terms of this Agreement and the terms of any subsequent invoice supersede any and all terms of any prior purchase order submitted by LICENSEE.

12. APPLICABLE LAW AND JURISDICTION. Any and all disputes arising out of, under or in connection with this agreement, including, without limitation, the validity, interpretation, performance and breach hereof, shall be settled by arbitration in New York City, New York, pursuant to the rules of the American Arbitration Association. Judgment upon the award rendered may be entered in any court having jurisdiction. This agreement, its validity and effect, shall be interpreted under and governed by the laws of the State of New York. If LICENSEE is an agent for or an employee of a non-U.S. company that operates in a place of business in the United States or its territories or in Canada, LICENSEE expressly agrees that any dispute regarding this agreement shall be adjudicated within the United States in the manner described here.

CREDIT: Image and Artwork © 2023 The Andy Warhol Foundation for the Visual Arts, Inc. / Licensed by ARS

1	Photo Rental Fee	\$	1000.00
	Andy Warhol, [Photo rentals]		
	TOTAL AMOUNT:	\$	1000.00

All invoices are due within 30 days of receipt. Please make checks payable to Artists Rights Society. Please include the invoice number with payment.

ARS also accepts major credit cards (up to \$3,000) and electronic bank transfers.

JPMorgan Chase Bank, N.A., 525 Broadway, New York, NY 10012-4411, Bank Routing (ABA) No: 021000021, Swift Code: CHASUS33, Account No: 590066861.

Please visit the following link for credit card payments: <https://www.arsny.com/payment>

65 BLEECKER STREET, 12th FL., NEW YORK, NEW YORK 10012. TEL. (212) 420-9160 FAX. (212) 420-9286 WEB. WWW.ARSNY.COM

LAWSPERTAINING TO THE RIGHTS OF ARTISTS

EXCLUSIVE RIGHTS OF COPYRIGHT OWNERS

"The owner of a copyright under this title has the exclusive rights to do and to authorize any of the following:

- (1) To reproduce the copyrighted works in copies or phonorecords.
- (2) To prepare derivative works based upon the copyrighted work."
- (3) The 1976 Copyright Act, S. 106 (Title 17 U.S.C: 90 Stat. 2541 et seq. Public Law 94-553)

OWNERSHIP OF COPYRIGHT AS DISTINCT FROM OWNERSHIP OF MATERIAL OBJECT

"Ownership of a copyright, or of any of the exclusive rights under a copyright is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy or phonorecord in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property-rights in any material object."

-The 1976 Copyright Act, S. 202

"The copyright is distinct from the property in the material object copyrighted, and the sale or conveyance, by gift or otherwise, of the material object shall not of itself constitute a transfer of the copyright, nor shall the assignment of the copyright constitute a transfer of the title to the material object." -The 1909 Copyright Act, S.27

"Whenever a work of fine art is sold or otherwise transferred by or on behalf of the artist who created it, or his heirs or personal representatives, the right of reproduction thereof is reserved to the grantor...unless such right is sooner expressly transferred by an instrument, note or memorandum in writing signed by the owner of the rights..." -1966 New York General Business law, S.224, Art. 12-E

COMMENTARY:

"Even if the museum owns a painting, bought at great expense, it does not hold the copyright in the painting unless it is specifically transferred by the artist. The museum may believe erroneously that ownership of the object includes ownership of the copyright and therefore the right to reproduce the work on a poster or postcard for sale in the museum shop. Many museums make this error...by failing to separate conceptually ownership of the copyright from ownership of the material object. But the museum, absent a specific grant, no more owns the copyright in the painting than if it were to acquire the copyright in a literary work by buying a paperback book at a bookstore.

- Copyright and the Art Museum, Berkowitz and Leafer, 8 Art & Law, 249 ff. (1984) Feldman, Weill & Biederman (Boston: Little Brown & Co.), 1986, vol.1 p. 132

INFRINGEMENT

"Anyone who violates any of the exclusive rights of the copyright owner as provided by section 106...is an infringer of the copyright."

-The 1976 Copyright Act, S. 501(a)

- (a) Any person who infringes a copyright willfully and for purposes of commercial advantage or private financial gain shall be punished as provided in section 2319 of title 18.
- (b) When any person is convicted of any violation of subsection (a), the court in its judgment of conviction shall, in addition to the penalty therein prescribed, order the forfeiture and destruction or other disposition of all infringing copies or phonorecords and all implements, devices, or equipment used in the manufacture of such infringing copies or phonorecords." -The 1976 Copyright Act, S. 506, ss.(a) & (b)

CASE LAW:

"Innocent intent, although relevant to questions of remedy, will not be a defense to actions for statutory copyright infringement."

-Beck v. Jewell La Salle Realty Co. 233 U.S. 191, 198 91930)

"Intention to infringe is not essential under the act." -Plymouth Music Co. v. Magnus Organ Corp., 456 F Supp 676 (S.D. N.Y. 1978)

THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS

"The protection of this Convention shall apply to: (a) authors who are nationals of one of the countries of the Union, for their works, whether published or not;" -Article 3, S.1

"The enjoyment and the exercise of these rights shall not be subject to any formality.." -Article 5, S.2

"Authors of literary and artistic works protected by this Convention shall have the exclusive rights of authorizing the reproduction of these works, in any manner or form."

-Article 9, S.1

"This Convention shall apply to all works which, at the moment of its coming into force, have not yet fallen into the public domain in the country of origin through the expiry of the term of protection." -Article 18. S.1

"The Preceding provisions shall also apply in the case of new accessions to the Union..." -Article 18. S.4

THE UNIVERSAL COPYRIGHT CONVENTION

"This convention shall not in any way affect the provisions of the Berne Convention for Protection of Literary and Artistic Works or membership in the Union created by that Convention."

-Article XVII, S. 1

"The Universal Copyright Convention shall not be applicable to the relationships among countries of the Berne Union insofar as it relates to the protection of works having as their country of origin, within the meaning of the Berne Convention, a country of the International Union created by the said Convention," -Appendix Declaration relating to Article XVII, S. (b)

COPYRIGHT RESTORATION

-U.S. Copyright Code (Title 17) as amended by the Uruguay Rounds Agreement Act (URAA), S514, effective January 1, 1996.

104A. Copyright in restored works.

"(a) AUTOMATIC PROTECTION AND TERM.-

"(1) TERM.-

"(A) Copyright subsists in accordance with this section in restored works, and vests automatically on the date of restoration.

"(B) Any work in which copyright is restored under this section shall subsist for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States.

"(b) OWNERSHIP OF RESTORED COPYRIGHT.- A restored work vests initially in the author or initial rightholder of the work as determined by the law of the source country of the work.

In the definitions section of the Act, the term *restored work* is defined in the following fashion:

"(6) the term 'restored work' means an original work of authorship that -

"(A) is protected under subsection (a);

"(B) is not in the public domain in its source country through expiration of the term of the protection.

"(C) is in the public domain in the United States due to-

"(1) noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, lack of proper notice, or failure to comply with any manufacturing requirements;:

STATE MORAL RIGHTS LAW

A number of U.S. States, including California, New York, and Massachusetts have enacted artists moral rights laws. A provision of the New York Act follows.

"...No person other than the artist or a person acting with the artist's consent shall knowingly display in a place accessible to the public or publish a work of fine art...or a reproduction thereof in an altered, defaced, or mutilated or modified form..."

-New York Arts and Cultural Affairs Law S. 14.03 (McKinney Supp. 1986)

"Schoettle, Kari" <schoettlek@cod.edu>

Artists Rights Society Inv \$1000

"Schoettle, Kari" <schoettlek@cod.edu>

Wed, Apr 19, 2023 at 10:14 PM UTC

CC:

BCC:

Please process. Thank you.

Kari Schoettle

Project Manager

McAninch Arts Center, College of DuPage

630-942-2914 | schoettlek@cod.edu

1 attachment

ARS Inv AR2INV12174 \$1000.pdf