

**Visitor Photography Policy:  
An Exploration of Current Trends and Considerations Across American Museums**  
(A condensed version).

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The full detailed research project can be found at:  
<https://scholarsbank.uoregon.edu/xmlui/handle/1794/17940>



**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 Assuming that many U.S. museums have outdated visitor photography policies and given the general cultural trend in the use of technology and popularity of social media, it may be necessary for a redesigned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

## Introduction

Recently, the subject of museum visitor photography policy has been a hot topic. There have been countless articles reporting on museums that enforce strict and unfriendly policies and museums that are leading the movement for open photography policies. 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 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 changed their photography policy as of April 9<sup>th</sup>, 2014, according to Jillian Steinhauer from *Hyperallergic.com*. The Frick Collection's visitor photography policy is cited in this study (as of February of 2014) as being completely prohibitive. Some museums are changing their policies and considering alternatives to a 'no photography' policy, while others are in need of best practices and guidelines to inform their own decisions for policy development or revision.

Steinhauer's (2014) article cited a LaPlaca Cohen study released on April 29<sup>th</sup> "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 for this study, 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).

This study has explored and surveyed 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. The main question for this study asked: what influencing factors and best practices should be considered when creating a visitor photography policy in a museum? To answer this question, this study examined current museum practice, and the perceived reasons for current policy.

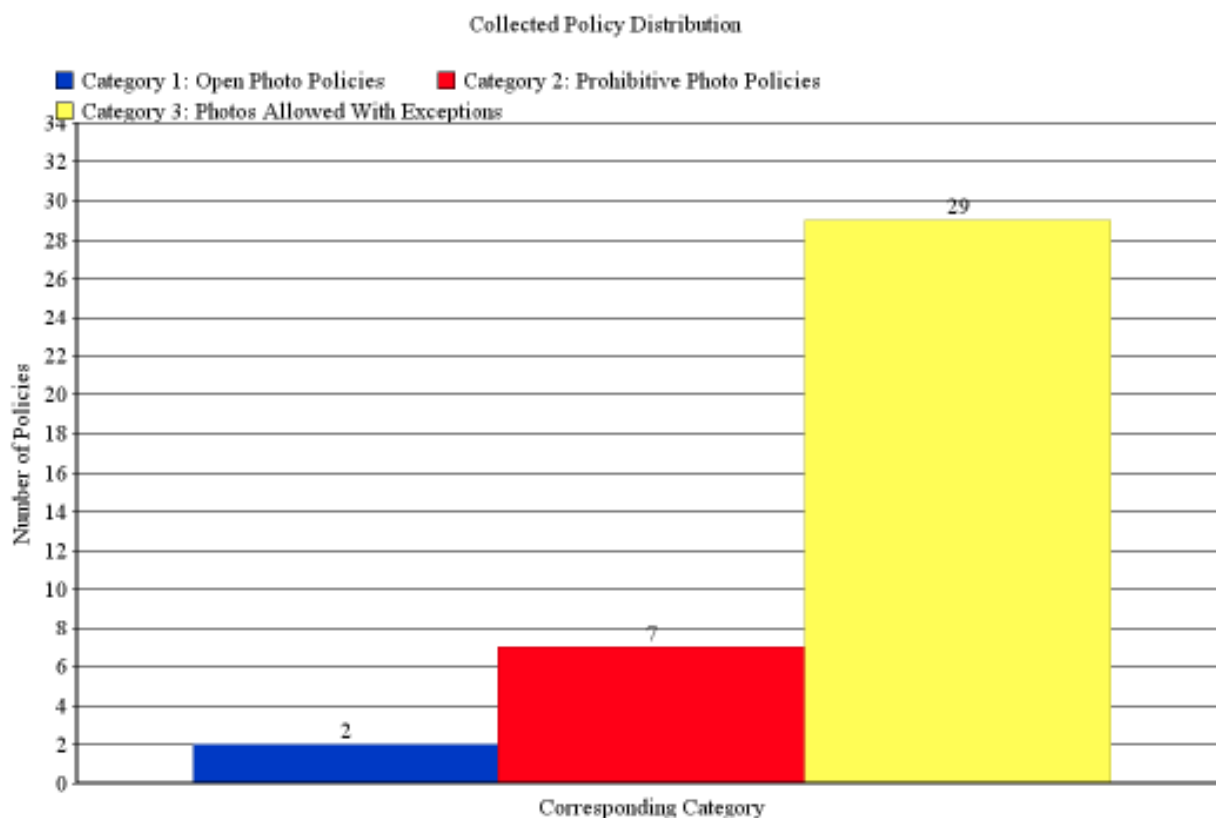
To examine current museum practice and the reasoning behind it, this study used three considerations for museum visitor photography policy: Visitor Experience, Conservation, and Intellectual Property. These three considerations became apparent in the review of literature and guided the process of collecting visitor photography policies, surveying museums and interviewing museum professionals. The three considerations influence visitor photography in varying ways and are each important to understand.

## Overview of Findings

In order to explore the current trends and considerations in museum visitor photography policy, this study incorporated a collected policy review, a survey, and interviews with museum professionals. The collected policy review involved collecting museum visitor photography policies from museum websites. It is important to note that all the museum policies and survey responses that were used in this study came from American Alliance of Museums accredited institutions. The invitation to invite respondents to the survey 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.

**Collected policy review.** There were approximately 925 accredited museums by 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.

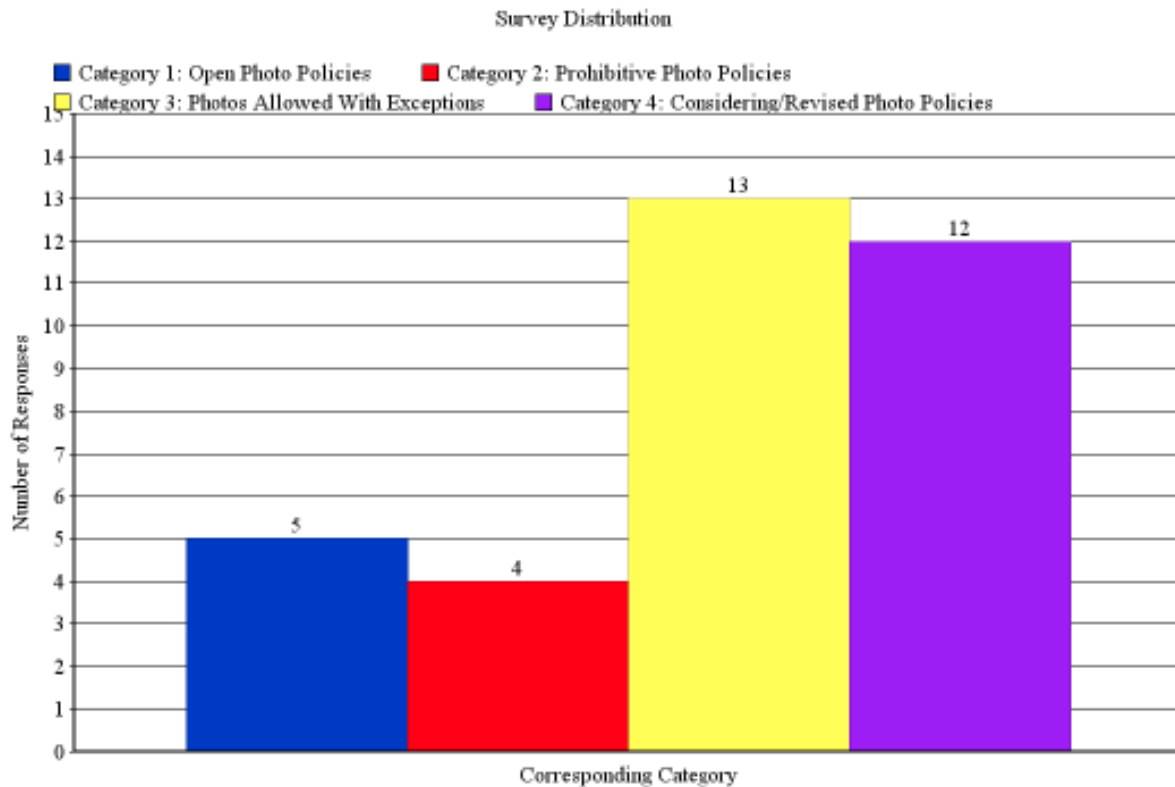
Upon comparison, the thirty-eight policies collected fall into three main categories based on their level of prohibition. Category 1 contains museums that have open photography policies. Category 2 contains museums that have completely prohibitive photography policies. Finally, Category 3 contains museums 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* shows these three categories on a spectrum.

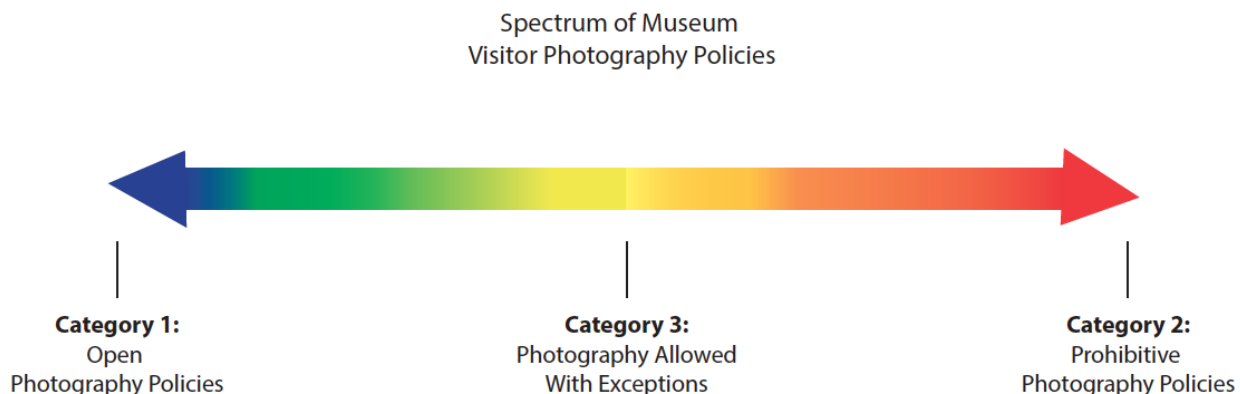
**Qualtrics survey questionnaire review.** As suggested through the collected policy review, the survey too, found the same three emergent categories that museums and their photography policies fall into. The survey also found one more theme that the collected policy review did not. Through a question that asked respondents if their policy had 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.*, shown below, also includes the three main categories and shows the spectrum of visitor photography policies.

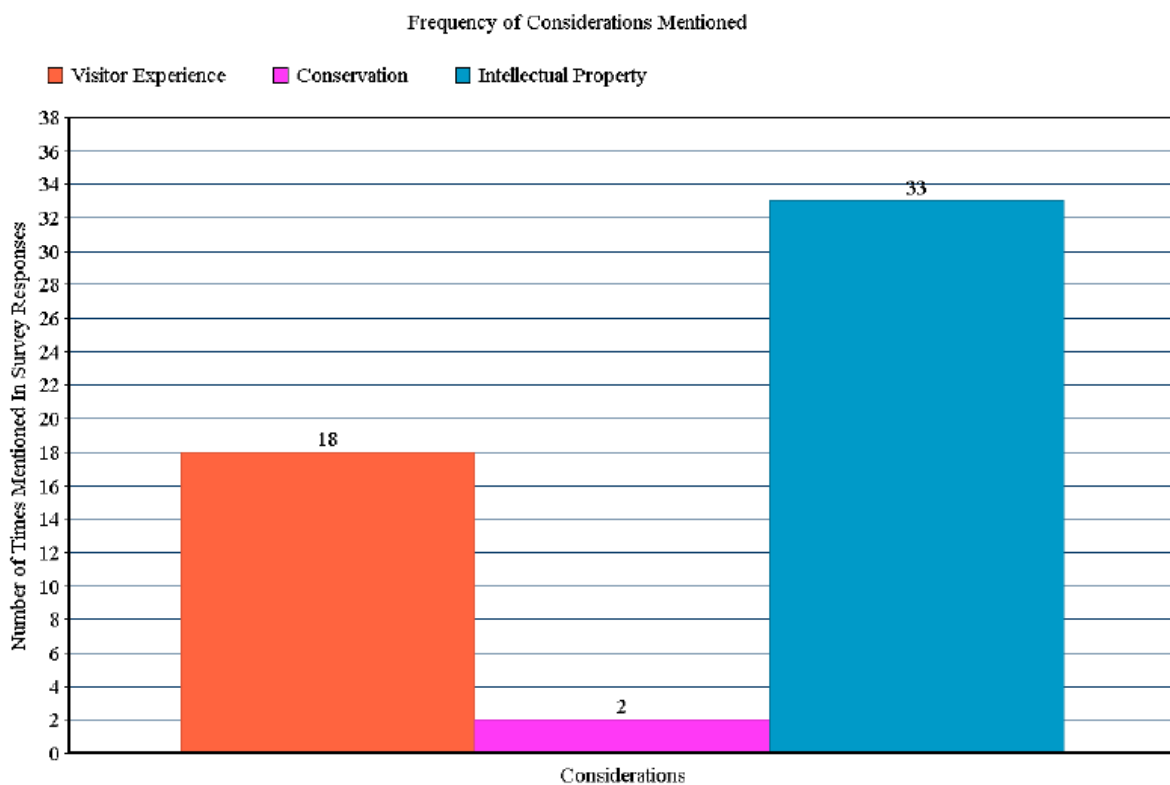
The collected policy review and the survey questionnaire find three main categories that museum visitor photography policies can be distributed into. The findings suggest a spectrum for the three main categories and where they fall. *Figure 3.* (shown below) depicts the most open



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

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.

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 (*Figure 4.*) shows the frequency that each consideration was 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.

**Category 1: Open photography policies.** The first category includes museums with completely open photography policies. The revision of loan agreement language was an 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 allow photography of objects they don't own.

The themes and reasons informing the necessity to have an open visitor photography policy include visitor experience and intellectual property, without much concern for conservation. The most common reason mentioned is 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. For a more detailed analysis of this category and the others, please refer to the original research project for this study.

**Category 2: Completely prohibitive photography policies.** The museums and respondents included in Category 2 prohibit visitor photography in exhibit spaces. 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.

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 and 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. 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 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).*

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 policies in this category explain to visitors in a transparent way making the prohibitive reasons less confusing, and perhaps, more reasonable.

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. 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. 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 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).

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.

## **Discussion**

**Visitor experience.** Visitor experience, as mentioned throughout the survey, 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.

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.

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 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.” 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 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 output 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 this 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 every day, 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.



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.” In the original version of this study I 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).

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 this study. 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. 3<sup>rd</sup>

194 (4<sup>th</sup> 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.

## **Conclusion**

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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