

IN-HOUSE COUNSEL AT NEW YORK CITY
CULTURAL AND
EDUCATIONAL INSTITUTIONS

by
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2006

A L L I A N C E *f o r* T H E A R T S

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Lincoln Center for the Performing Arts
Metropolitan Museum of Art
Metropolitan Opera
Museum of Modern Art
New York Botanical Garden
New York Public Library
Whitney Museum of American Art

Outside Counsel

Milbank, Tweed, Hadley & McCloy
Patterson, Belknap, Webb & Tyler
Simpson Thacher & Bartlett

Other Organizations

Association of the Bar of the City of New York
Department of Cultural Affairs of the City of New York
Nonprofit Coordinating Committee of New York
Volunteer Lawyers for the Arts New York

OVERVIEW AND SUMMARY

"When you have a workforce in the hundreds, significant national and international operations, and a huge variety of businesses under the umbrella of the institution, there is a requirement for someone to attend to all of the issues that come up. I am astounded that more [cultural and educational] institutions do not have in-house counsel."

Such a view, expressed by the in-house counsel of a major cultural institution in New York City, represents a marked change from the social and legal phenomena that led New York City cultural and educational institutions to establish offices of general counsel beginning in the late 1960s—when the Metropolitan Museum of Art conferred the additional title of counsel upon its secretary. At the time, according to one general counsel, legal counsel were primarily used to advise institutions on the large number of gifts being given to these institutions from donors. As such, these attorneys were largely experts in trusts and estates, and their work was centered almost exclusively on such issues.

Given the change in the practice of law within these institutions in the past forty years, the Alliance for the Arts was interested in which New York City cultural and educational institutions have in-house counsel, the changing responsibilities of those individuals and their offices, and the kinds of legal issues that affect these institutions. The purpose of this report, representing research conducted in Summer 2004, is to describe the issues facing the cultural and educational community in New York, how these issues are being dealt with, and where there are problems and/or opportunities for improvement. Central to this inquiry is the fact that addressing the legal issues which present themselves to these institutions requires an ever-increasing amount of resources, both financial and professional. As an organization dedicated to examining the state of the arts in New York, the Alliance is interested in both how and to what extent these resources, as they are reflected in the legal issues facing cultural and educational institutions, are allocated.

Without question, the role of in-house counsel at cultural and educational institutions is far more complex than it once was. As these institutions have transformed into, in effect, large corporations, their in-house counsel are responsible for providing advice on a vast array of matters as well as ensuring compliance with a dizzying number of laws and regulations. As a result, the number of issues with which these attorneys must deal on a daily basis has dramatically increased. Dealing with this increase requires specialization, expertise, and intimate knowledge of an institution's ongoing activities. In addition, the current atmosphere of regulation and scrutiny of the cultural "industry" makes access to legal counsel all that much more important and necessary for the staff and board members of these institutions. So, while it is possible for cultural and educational institutions to function without in-house counsel, the long-term benefits of operating with regular and informed in-house legal oversight may outweigh the short-term costs to these institutions.

Of the major cultural and educational institutions in New York City, fourteen were sent letters describing the project and requesting their participation. Letters were also sent to institutions without in-house counsel as well as to attorneys from firms who represent many of the institutions included. See **page 2** for a list of institutions and others included. The letters yielded the following results:

- 1) Eleven institutions were identified as having in-house counsel or an attorney on staff who is responsible for addressing legal issues;
- 2) Nine in-house attorneys agreed to be included in the survey;
- 3) Three institutions without in-house counsel agreed to be participate in providing an understanding of how these institutions deal with legal issues;
- 4) To supplement the information garnered from in-house counsel, three counsel from outside firms that represent some of these institutions agreed to be included and were interviewed;
- 5) Interviews with the Nonprofit Coordinating Committee of New York, the Association of the Bar of the City of New York, Volunteer Lawyers for the Arts of New York, and the New York City Department of Cultural Affairs were included to include a broader perspective on the legal issues facing cultural and educational institutions.

All but two of the in-house counsel interviewed (Number 2 above) hold the title of associate or general counsel and have held such titles from 14 to more than 20 years. The two exceptions function as general counsel but have the title of legal officer and legal counsel and have been in their positions for less than one year to nine years respectively. The outside counsel included (Number 4 above) represent three different firms and have been handling the legal work for some of these institutions from 13 to more than 30 years. For the purposes of this survey, the three institutions without in-house counsel (Number 3 above) were represented by senior officers/executives who are responsible for coordinating their institutions' legal work, in addition to their other responsibilities. These individuals have been handling the legal issues of their institutions for the entirety of their tenure, for a total of more than 25 years. The attorneys interviewed represent, in effect, the first generation of this area of practice as well as a valuable source of knowledge and experience.

This report represents a compilation of the interviews conducted with in-house counsel using a questionnaire developed by the author with the help of the Alliance. A similar questionnaire was used for interviews with outside counsel. Those institutions without in-house counsel (Number 3 above) or representatives from other organizations (Number 5 above) were interviewed using an abbreviated questionnaire. The Alliance identified Ashton Hawkins, formerly Counsel to the Trustees and Executive Vice President of the Metropolitan Museum of Art, to supervise the author's research as well as to provide guidance in interpretation and reporting the results.

Limitations

The information compiled here is primarily qualitative and does not claim to represent an exhaustive analysis. Rather, it offers a focused but limited examination of the lawyers that represent these institutions, the kinds of legal issues they and these institutions face, and how those issues have changed. Also, this report is only as good as the information given to the author by specific individuals at specified times; thus, suggestion or omission of certain topics or issues is not necessarily indicative of their occurrence or significance. Not every cultural or educational institution in New York could be included in this survey, and resources and time were insufficient to include universities and private foundations. Were this project to be undertaken again, the results might be more robust were the survey redeveloped to garner data in a more quantitative fashion. Information from the survey would then be supplemented by personal interviews where possible or relevant. Finally, this project was and remains constrained by the limited legal knowledge of the author at the time it was undertaken. Suffice it to say, any errors or misunderstanding of the complexities and interrelationship of legal issues involved are entirely his own.

Introduction

The 40 years since cultural and educational institutions first began to establish offices of in-house counsel have been characterized by tremendous social change—change that has affected both the practice of law within them and these institutions as a whole. In the opinion of one general counsel, external pressures upon these institutions led to the increasing need for in-house counsel. He commented, “[Historically] cultural institutions had little contact with the law; but in the last 30 years, as the federal, state and city governments have been increasingly legislating social change, these institutions have become more exposed in every direction. At the same time, the cultural institutions themselves gradually became more inclusive, more transparent, and more accountable.” A striking example of this is the frequent mention by counsel interviewed of the changes in practice affecting board governance in light of legislation such as the Sarbanes-Oxley Act.

As such, the development of the career of in-house counsel for cultural and educational institutions cannot be separated from larger cultural, social, legislative and economic realities. Despite the fact that these institutions exist in a seemingly unique and, arguably a rarefied, position in the culture and life of New York City and that nation, the legal issues facing their attorneys are entirely and ineluctably rooted in the society in which they exist and, in turn, must operate.

Over the last five years the number of attorneys practicing in-house at cultural and educational institutions in New York City has dramatically increased. Of the institutions surveyed, five of nine have seen a 50 to 100 percent growth in the number of in-house attorneys practicing in-house. Overall, this represents a 34 percent increase (See **Table 1**) for these institutions. The one institution in which the number of in-house attorneys has decreased cited a combination of staff turnover and lack of financial resources for this change. While the role of in-house counsel is, by its very nature, that of a generalist—one that requires the attorney to recognize and effectively deal with the full panoply of legal issues that arise within and affect these institutions—the current trend is to divide legal work by area of expertise. For example, one large art museum recently added an attorney whose time will be devoted almost exclusively to handling litigation and litigation-related issues. While in-house counsel who are solo practitioners are generalists by necessity, the growth of counsel’s

offices and the trend toward division of responsibility by area of specialization or expertise reflects the impression of one attorney interviewed who commented that many institutions are, in effect, creating in-house mini law firms where “associates” are assigned individual clients (i.e., various departments throughout the organization) according to his or her area of expertise.

Not all of the institutions surveyed possess the financial resources nor have the quantity of legal work necessary to require multiple attorneys with distinct areas of responsibility. As one individual at an organization without in-house counsel commented, “[Hiring in-house counsel here] is completely unnecessary because there is not enough legal work to warrant it.” Another individual at a large museum without in-house counsel agreed: “[The decision not to have in-house counsel] is primarily financial; but, I don’t see how [institutions] surmount the nonfinancial problems; how do you find someone with all the requisite knowledge so you don’t have to go outside?”

How, then, do organizations without in-house counsel deal with the legal issues that inevitably arise? The three organizations included in the survey that do not have in-house counsel have identified a senior staff member or executive to coordinate the legal issues of their institution. Two of these individuals do not have legal training but, through experience, are quite familiar with legal issues; the remaining individual is a former practicing attorney who is often called upon to use his legal education and expertise to recognize and deal with legal issues at his institution. Without exception, these individuals attempt to ensure that all legal matters go through their offices so that one person in the institution has responsibility for anything that might have legal ramifications. In effect, these individuals triage legal matters, deciding which issues require the advice and assistance of outside counsel, which can be handled by board members who are attorneys on a pro-bono basis, and which can be handled directly without the assistance of any attorney. As one of these individuals commented, such a situation puts these individuals in a significant and oftentimes unenviable position: “The onus is upon me—and it’s a fairly frightening one—[to determine] what I can handle myself and what I need help on.” Of course, economics is the primary factor influencing the decision to use outside counsel. The same individual explained, “It’s not economically feasible to send everything to outside counsel.”

While all three of these institutions use outside counsel, the use of such counsel varied by

institution: one institution relies almost exclusively upon a firm that it has on retainer, in effect using this firm as its general counsel even though not in-house. This institution also seeks the advice of its attorney board members on issues involving these individuals' areas of legal expertise. Another institution uses a variety of outside firms, depending upon the kind of issue for which legal counsel is needed, and relies very little upon pro-bono legal counsel, from board members or otherwise. The third institution uses outside counsel to a limited extent and only for highly specific or complicated issues, such as real estate. The fact that the director of this institution is a trained but nonpracticing attorney, as well as its having five attorneys on its board, may account for its limited use of outside counsel.

These institutions exist and continue to thrive without having counsel in-house. Yet, based upon the increase in the number of in-house counsel at cultural and educational institutions as described in **Table 1** as well as the increasing complexity of legal issues facing the cultural world cited by the attorneys interviewed, it seems that the trend toward cultural and educational institutions bringing attorneys in-house will continue to increase. As an executive at another institution without outside counsel commented, as these institutions grow and move up to the next level of prominence within the cultural world of New York City, “relying upon board members [to handle legal work] clouds issues and is inefficient.” Such a practice may also present inherent and oftentimes inescapable conflict-of-interest issues when such attorneys go beyond mere commentary on legal issues to dispensation of legal advice.

Otherwise, merely staying on top of the legal issues that inevitably arise at these institutions seems to require someone trained in the law who knows how to spot and deal with issues. One general counsel remarked, “I’m bewildered by why some organizations do not have counsel; I don’t see how smaller nonprofits [those without counsel] comply with new regulations, or even know that they should be complying.”

Central to understanding why the need for in-house counsel at these institutions is increasing is identifying which legal issues these institutions face, in particular those issues that require the most time of these attorneys or those who are responsible for coordinating the legal issues of their institution (for those institutions without in-house counsel). Gaining an understanding of how and why the legal issues facing these organizations have changed provides further insight into why the need for in-house counsel has increased. While it

should be noted that the kinds of issues with which the individuals interviewed deal vary on a daily, if not hourly basis, the responses reflected in this report highlight the issues that are constant.

Table 2 lists the most common issues requiring the time of the individuals interviewed—sorted in order of most time-consuming to least time-consuming. Seven of the 12 institutions surveyed noted that general contract review and negotiation takes up the most amount of their time, where time spent is defined as requiring at least 15 percent of their total time. Because contract law is comprised of many different legal areas, it makes sense that it would exist as a mainstay of legal work for these individuals. Following contracts, construction/real estate was identified by six of those interviewed as an issue on which they or their staff spend a significant amount of time, followed by copyright/licensing, governance issues, and general intellectual property issues. Issues requiring the most time vary according to the activities of the various institutions. For example, lawyers whose institutions are currently involved in large construction projects or major real estate transactions spend the majority of their time on construction and real estate issues. As one in-house counsel commented, most often her schedule is defined by the calls that come to her office on any given day. Such a comment elucidates the fact that these individuals, whether they be in-house counsel or senior staff responsible for coordinating legal issues, exist in a largely service-oriented position where they are ultimately responsible for the issues raised by their clients (the staff of their institutions) or by others outside the institution. Those needs vary from day to day, minute to minute.

Interestingly, “art law” and its related legal issues was raised by only one in-house counsel as an issue requiring more than 15 percent of his time. As a general counsel from another museum commented, the time she spends on what might be termed art law is actually quite small, probably less than 10 percent of her overall time. She noted that, as a general counsel to a large cultural institution, she handles legal issues similar to those that would arise at any for-profit corporation. For example, she commented that on one day in particular, she spent a majority of her time negotiating a contract for garbage removal from the museum rather than on intricate art provenance and repatriation issues. However, art and collection-related issues are not entirely absent from the agenda of those responsible for the legal issues at these institutions. For example, an executive at one institution that does not have in-house counsel noted that her institution, through

consultation with outside counsel, spends a significant amount of time on issues related to the Native American Grave Protection and Repatriation Act (NAGPRA)—an act that directly impacts her museum’s collection and exhibitions. Finally, as an area that once made up the majority of the practice of these in-house attorneys, it is seemingly significant that no institution’s counsel mentioned gifts and bequests as an issue requiring a significant amount of his or her time. It is unclear whether such issues require little time of these individuals or if they are so much a part of the daily work of these attorneys that they seemed too obvious to mention during the interviews.

Table 3 lists the issues most important to these institutions, sorted in order of most important to least important. While the issues requiring the most time of these individuals were largely the same as those identified by them as the most important to their institutions, this was not always the case. For instance, those interviewed resoundingly identified governance issues—which, for the purposes of this survey, included both the structure and reporting relationship of the board of directors as well as the internal management and operation of the institution—as the most important to their institutions, even where they may not have identified governance issues as those requiring the greatest amount of their time. One outside counsel noted that, in the face of recent hearings by the U.S. Senate Finance Committee and proposed New York State legislation on regulation of nonprofits, governance issues may be more important than many of these institutions’ counsel realize. Otherwise, the different missions, operations, and collections of these institutions may account for the wide disparity of issues identified by them as the most important—where, for example, labor and employment are much more important to institutions with employees in the thousands represented by a multitude of different labor unions than smaller organizations with fewer employees or non-unionized staff. Similarly, the general counsel of one institution with a collection that spans countless cultures and time periods cited cultural property and repatriation issues as one of the most important issues to her institution. Meanwhile, institutions that are primarily performance- or program-based were less concerned or impacted by such issues, citing instead entertainment law as the most important to them.

Intrinsic to understanding what legal issues affect cultural and educational institutions in New York City today is a recognition of the fact that the issues affecting them have changed. As **Table 3** shows, general intellectual property issues are

increasingly important to these organizations. It goes without saying, though, that intellectual property issues as we know them today were largely nonexistent when these organizations began to hire in-house counsel, as early as 40 to 50 years ago. All of those who are directly impacted by legal matters—whether in-house counsel or staff responsible for legal issues, or outside counsel representing many of these institutions—commented on the fact that the kinds of legal issues affecting cultural and educational institutions are, without question, more numerous and uniformly more complex than they were as early as five years ago. As one general counsel commented, “There are more [legal] issues and the kinds of things with which we get involved are more complex.” Another counsel agreed stating that, “Overall [these institutions face and exist within] a much more complicated environment.” Surely such complexity arises from increased federal and state regulation, but also from the fact that these institutions are involved in increasingly complex transactions that were largely nonexistent and perhaps unimaginable 30 years ago. At the very least, such complexity makes it all but impossible for in-house counsel to maintain a strictly traditional role as general advisors to their institutions’ staff and board. As one attorney at a large art museum stated, “As more specialized expertise is necessary to deal with increasingly complex issues, it’s much harder to be a generalist.” Thus, these attorneys must be both generalists and specialists, knowing how to recognize and deal with a huge variety of issues.

Table 4 lists the most commonly cited reasons for the change in legal issues affecting these institutions, sorted in order of most common to least common. The most commonly cited reason was an increase in legislation and regulation affecting nonprofit organizations resulting in greater government oversight. As one outside counsel who represents many of these institutions stated, “The regulatory climate has become much more intense.” Whether such a climate exists as a direct result of recent corporate scandals and increased media scrutiny of cultural and educational institutions is unclear and to some extent irrelevant, as nearly all of these institutions are feeling the pressure of a government and a society that seek to regulate their activities and require a greater degree of accountability. As such, those who are responsible for dealing with the legal issues appear to believe their institution must ensure that it is preemptively complying with laws, such as Sarbanes-Oxley. This represents a huge shift from the previous era when, legally, these institutions operated within a fairly discreet realm. As one attorney who deals with general issues

affecting nonprofits commented, “For a long time, no one looked into charitable organizations. They’re now subject to greater scrutiny.” This scrutiny has resulted in an environment that has led to nonprofit institutions being held as accountable as for-profit corporations.

From the Metropolitan Museum’s seemingly constant renovation and expansion efforts to the opening of branch locations and retail stores by the Guggenheim, the New York Public Library, and others to the temporary relocation and massive building campaign of the Museum of Modern Art, the last 30 years have been a period of tremendous growth and expansion for cultural and educational institutions in New York City. Following increased government regulation and oversight, **Table 4** shows that capital projects and institutional growth were reported to be the second most common reason for the change in legal issues affecting these institutions, both for those institutions with in-house counsel and those without. Purely in terms of common sense, it follows that the legal issues facing these institutions change as they expand and grow, thereby creating and expanding the legal issues related to real estate, property and land use, and the innumerable contracts that go with major building projects.

The events of September 11—as they are reflected in the effects upon the economy of New York City, the decrease in income from admission at cultural institutions from national and international visitors, and other unforeseen social and economic impact—were another commonly reported reason for the change in legal issues affecting these institutions. As one associate counsel noted, it is now necessary to provide for terrorism insurance in exhibition agreements for works traveling to and from his museum, whereas the need for such insurance was all but unthinkable just five years ago. Likewise, the counsel for one large performing arts organization noted that she is now responsible for negotiating indemnification clauses in contracts that she never saw prior to September 11, 2001.

Although it goes by many names (e.g., rise of technology, access to information), the change in information technology in the last two decades is perhaps one of the most striking reasons for the changes in legal issues affecting these institutions. As the in-house counsel of a major educational institution commented, “Suddenly not only can people get to you more easily, but you become aware that you’re sitting on content.” With the expansion of many of these institutions onto the Internet, a whole host of new legal issues have

arisen relating to the content of their Web sites, ownership, and privacy issues. For example, in-house counsel now have the responsibility for drafting software licensing agreements for those hired to create and run computer software within their institutions. Questions such as who owns the software and who has the rights to license and use it are legal issues that were entirely nonexistent ten years ago. As such, those responsible for dealing with the legal issues of these institutions are being bombarded with complex issues that change as rapidly as technology continues to develop—so much so that, as the counsel of a large art museum commented, “Greater technical knowledge is required on all fronts [to be an effective in-house attorney].” That said, one counsel commented that it’s not the issues that have changed but the fact that those within the institution and in-house lawyers are more sophisticated: “The legal issues are the same . . . but people are more attuned to them.”

As changes to technology affect those within cultural and educational institutions, so too does the impact that changing technology has had upon access to information. For instance, increased public access to information about these institutions has opened them up to even greater scrutiny. Such scrutiny results in a different and more complex legal environment. A number of counsel, both in-house and outside, commented on the availability of these institutions’ tax filings on the Internet via GuideStar and other Web sites and how such availability leads to even greater transparency for these institutions. As the public attains access to information more easily and, in turn, demands accountability, the government legislates and regulates; thus the legal issues change and attorneys must be aware of these changes and ready to react.

Changes to technology are merely one more reason that attorneys are ever vigilant about ensuring that their institutions are compliant, even preemptively. As one counsel explained, now more than ever, her role is to insinuate herself into the activities of her institution: to proactively spot and address legal issues. This role is, perhaps, the most important function of in-house counsel to cultural and educational institutions. As one counsel commented, “A lot of it is about process; [counsel] must make sure that things are done deliberately and appropriately, that issues are addressed, and that the institution complies with its legal obligations.”

The great range of issues covered by in-house counsel and affecting these institutions is evidenced by the fact that those interviewed

identified a number of issues that were not included in the questionnaire used during the interviews. **Table 5** lists these issues, sorted in order of the frequency with which they were mentioned by counsel and others. For example, counsel at a botanical garden often deals with local, state, and federal environmental laws. Meanwhile, counsel to institutions whose buildings are historic landmarks are confronted with compliance with the National Historic Preservation Act and other state and local land-use regulations. The fact that this survey focused primarily upon art museums is demonstrated by the fact that three counsel surveyed mentioned entertainment law as issues with which they deal with some frequency. Finally, counsel at institutions such as the New York Public Library must ensure that the library complies with complicated legislation such as the Patriot Act. The variety of laws with which these institutions must comply, and their counsel must be aware, is constantly changing, leading one counsel to comment: “Ideally, my job is to help people [in the institution] do what they want to do without running afoul of some regulation they’ve never heard of—or I’ve never heard of.”

Needless to say, this is no easy task—it is one that requires well-trained and dedicated attorneys who often make significantly less than their counterparts in commercial practice. Traditionally, working in-house at one of these institutions required fewer hours than those required of a partner for a large corporate law firm. However, as the legal environment affecting these institutions becomes increasingly complex and they are subject to greater societal and governmental regulation, the traditional perquisites of working in-house are beginning to disappear. As one counsel commented, the operation of her institution requires her attention on a nearly 24-hour basis. That said, all of those interviewed commented on the fact that working in-house for these institutions provides an opportunity to support the important missions of their institutions. Without fail, all those interviewed commented on the fact that, even though their work as in-house attorneys is vastly more complicated than it once was, the work they do is satisfying, challenging, timely, and ultimately contributes to the public good.

Conclusion

The role of in-house counsel within cultural and educational institutions in New York City is becoming more complex and ultimately more important. These attorneys play and will continue

to play a vital role in the operation and success of their institutions. Cultural and educational institutions are benefited by bringing attorneys in-house, but these attorneys should be well-integrated into the management structure of the institution. Such integration ensures that legal issues will be identified proactively and handled directly by those with appropriate training and experience. Of course, attorneys who practice in-house do not and cannot exist in isolation; in fact, even institutions with a staff of associates practicing in-house still require significant assistance from outside counsel. This is true now more than ever, as the range and kind of issues affecting these institutions requires an increasing degree of specialization and singular expertise. But, given the increased cost of outside counsel, such assistance is made all that much more efficient when, as one counsel explained, it is given lawyer to lawyer. Presumably, then, the necessity for in-house counsel to these institutions will be one that will continue to increase.

TABLES

Key to Institutions Included in Tables

American Folk Art Museum	AFAM
Brooklyn Academy of Music	BAM
Brooklyn Museum	BM
Channel 13/WNET	Channel 13/WNET
Solomon R. Guggenheim Museum	Guggenheim
Lincoln Center for the Performing Arts	Lincoln Center
Metropolitan Museum of Art	Met Museum
Metropolitan Opera	Met Opera
Museum of Modern Art	MoMA
New York Botanical Garden	NYBG
New York Public Library	NYPL
Whitney Museum of American Art	Whitney

Table 1

IN-HOUSE COUNSEL AT CULTURAL INSTITUTIONS

Number of Attorneys on Staff (in Order of Size of Counsel's Office)

Institution	On Staff 2004	On Staff 1999	Percent Change	Division of Responsibility (Offices with More Than One Attorney)
Met Museum	6	4	50%	By client (dept) and by specialty
Channel 13/WNET	5.5	3	83%*	Project driven w/attention to specialty; generalist goal
Guggenheim**	3	3	0%	Specialty
MoMA	3	4	-25%	Generalists w/some issues handled by specific people
NYPL	3	2	50%	Shared w/some division by expertise
Met Opera	2	1	100%	Hopes to divide by expertise (associate recently hired)
Lincoln Center	1	1	0%	N/A
NYBG	1	1	0%	N/A
Whitney	1	0	100%	N/A
TOTAL	25.5	19	34%	

Source: *Alliance for the Arts*

* Reflects Merger of Counsel's Office w/Business Affairs Office in 2000

** 2 full-time and 2 part-time

TABLES

Table 2

IN-HOUSE COUNSEL AT CULTURAL INSTITUTIONS

Issues Requiring the Most Time (at Least 15% of Total Time Spent, Sorted in Order of Most Time Spent)

Issue	In-House Counsel									No In-House Counsel		
	Channel 13/ WNET	Guggenheim	Lincoln Center	Met Museum	Met Opera	MoMA	NYBG	NYPL	Whitney	AFAM	BM	BAM
Contracts (General Review and Negotiation)	X		X		X		X	X		X	X	
Construction/ Real Estate				X		X		X	X	X		X
Copyright/ Licensing				X				X	X	X		X
Governance*		X	X	X		X		X				
Intellectual Property (Generally)	X	X			X						X	
Labor/ Employment				X	X	X						X
Tax		X	X	X								
Buying and Selling Collection						X		X				
Exhibition and Collection- Related Issues		X				X						
Litigation	X											X
Rights/ Reproductions									X		X	
Art Law (Generally)		X										
Cultural Property/ Repatriation				X								
Entertainment Law	X											
General Advising (Counsel to Staff)			X									
NAGPRA											X	
Publications										X		

Source: Alliance for the Arts

*Includes issues about structure and operation of board and standing committees and internal management and structure of organization

Table 3

IN-HOUSE COUNSEL AT CULTURAL INSTITUTIONS

Most Important Issues (Sorted by Order of Importance)

Issue	In-House Counsel									No In-House Counsel*		
	Channel 13/ WNET	Guggenheim	Lincoln Center	Met Museum	Met Opera	MoMA	NYBG	NYPL	Whitney	AFAM	BM	BAM
Governance		X	X	X	X		X	X				
Intellectual Property (Generally)	X	X	X									
Construction/ Real Estate						X		X				
Contracts (General Review and Negotiation)							X	X				
Copyright/ Licensing			X					X				
Entertainment Law	X		X									
Gifts/Bequests/ Fundraising	X							X				
Insurance (Employee Plan and Exhibition/ Terrorism)		X	X									
Labor/ Employment						X		X				
Tax							X		X			
Buying and Selling Collection								X				
Cultural Property/ Repatriation				X								
Environmental Law							X					
Government Relations								X				
Rights/ Reproductions			X									

Source: Alliance for the Arts

*Not applicable as question was not asked. For institutions with no in-house counsel, most important issues are roughly equivalent to most time-consuming

Table 4

IN-HOUSE COUNSEL AT CULTURAL INSTITUTIONS

Reasons for Change in Legal Issues (in Order of Most to Least Common)

Reason	In-House Counsel									No In-House Counsel		
	Channel 13/ WNET	Guggenheim Lincoln Center	Met Museum	Met Opera	MoMA	NYBG	NYPL	Whitney**	AFAM	BM	BAM	
Increase in Legislation/ Govt. Regulation & Oversight	X	X	X	X	X			X		X		
Capital Projects/ Growth of Institution			X			X			X		X	
Rise of Technology				X				X	X		X	
September 11*		X	X	X							X	
Intellectual Property Issues			X					X				
Public Access to Information (e.g., GuideStar)				X				X				
Change/ Growth in Retail Operations						X						
Increase in Donor Restrictions								X				
Resolution of Major Litigation							X					
Corporate Scandals/ Media Scrutiny				X								

Source: Alliance for the Arts

*Effects upon economy, income and admission at cultural institutions, insurance issues, and the way in which these impacted and changed legal issues affecting these institutions

**Attorney has been in position for only 8 weeks; thus there is no baseline from which to quantify change

Table 5

IN-HOUSE COUNSEL AT CULTURAL INSTITUTIONS

Other Issues Handled by Counsel* (Ranked from Most to Least Commonly Mentioned)

Issue	In-House Counsel									No In-House Counsel		
	Channel 13/ WNET	Guggenheim	Lincoln Center	Met Museum	Met Opera	MoMA	NYBG	NYPL	Whitney	AFAM	BM	BAM
Entertainment Law	X		X		X							
Bond Issues								X		X		
Environmental Laws (e.g., EPA)								X		X		
Historic Preservation / Landmark Issues (NHPA, etc.)							X	X				
Joint Exhibition/Inter- Institutional Agreements		X						X				
Product Development / Third Party Reproductions						X		X				
Customs And State Department Issues								X				
NAGPRA											X	
Patriot Act								X				
Public Art Issues			X									
Relationship with Affiliated Organizations or For-Profit Entities		X										
Purchase and Sale of Air Rights										X		
Zoning Issues										X		

Source: Alliance for the Arts

*As noted by counsel or other representatives during interviews