Canada $26
International $42 CAN

A Canadian Museum's Guide to Developing a Licensing Strategy

Lesley Ellen Harris

CANADIAN HERITAGE INFORMATION NETWORK
RÉSEAU CANADIEN D'INFORMATION SUR LE PATRIMOINE

Canadian Heritage Patrimoine canadien

Canada

Published under license by the Canadian Heritage Information Network (CHIN)
Printed in Canada

Library and Archives Canada Cataloguing in Publication

A Canadian Museum's Guide to Developing a Licensing Strategy

Issued also in French under title : Guide d'élaboration d'une stratégie d'octroi de licences à l'intention des musées canadiens.
Includes bibliographical references.
ISBN 0-000-00000-0
Cat. No.

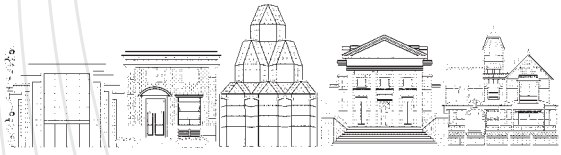
1. Museums – Canada – Computer network resources – Evaluation.
2. Museum exhibits – Canada – Computer network resources – Evaluation.
3. Web sites – Design – Evaluation.
4. Canada – Civilization – Computer network resources.
I. Canadian Heritage Information Network.

AM7.S67 2004 025.06'069 C2004-980244-5

Internet (PDF)
Cat. No. Co61-33/2004E-PDF
ISBN 0-662-38014-2

Internet (HTML)
Cat. No. Co61-33/2004E-HTML
IBSN 0-662-38015-0

A Canadian Museum's Guide to Developing a Licensing Strategy



CANADIAN HERITAGE INFORMATION NETWORK
RÉSEAU CANADIEN D'INFORMATION SUR LE PATRIMOINE

Table of Contents

Introduction

What fees should our museum collect for the use of its slides on an organization's Web site?

Who should be part of our negotiating team when licensing digital content?

Does our museum need a digital licensing policy?

What special concerns do Canadian museums face in licensing digital content on a global basis?

These are a sampling of the many questions that have arisen in the seminars I have been leading on digital licensing for museums and others. Museums are frustrated by the lack of resources providing answers to these and other related questions. This book has been written to provide information, from the unique perspective of Canadian museums, on how to develop a digital licensing strategy. I hope to inform you about legal rights and obligations in licence agreements, creating your licensing strategy, negotiating the best licence to meet your needs, and the variety of licensing arrangements which may be used. Chapter 7 of this book sets out many specific questions I have been asked by museums at seminars and by e-mail, with practical answers to help you through the licensing process.

The need for information about licensing digital content has quickly grown. I began providing information in this area through a few conferences I attended at which I led a seminar on digital licensing. The first seminar I gave on digital licensing was at a museum conference in 1997. Shortly after that time, I began giving the same seminar through my own company, Copyrightlaws.com, and often in conjunction with various associations, to audiences ranging from six to sixty persons. I presented this seminar, which I continue to teach today, throughout Canada and the U.S., and in London, England. I get requests from around the world about presenting this seminar in other countries. The audiences remain steady and in some cities where I repeatedly teach the seminar, the audiences have grown. I now teach a popular online course on digital licensing. I have also been busy writing articles on digital licensing for libraries in North American and international publications, and in *The Copyright & New Media Law Newsletter: For Libraries, Archives & Museums*, which I also edit. Further, I have helped a number of clients in various sectors

determine their strategy in licensing digital content. These experiences have led me to writing this book in order to provide a one-stop source for museums who are developing a digital licensing strategy.

In terms of digital licensing, museums are in a unique position. Museums are both licensors and licensees of digital content. In other words, museums sometimes have content others want to use; and they sometimes need the rights to use the content of others. Publishers, for example, do not find themselves in this unique position. They are predominantly licensors and want to license the content they own. Also, libraries are more likely to license and use the content of others than to license their own content (though this may change in the future as they find that similar to museums, libraries have valuable content that others may want to license.) The purpose of this book is to help demystify the licensing process and to provide you with a clear understanding of licensing as both a licensor and licensee of digital content.

This is the first Canadian publication that deals with developing a licensing strategy for museums keeping in mind the distinct needs of Canadian museums. As such, this book includes information on Canadian Heritage issues, tax considerations like the GST, and Canadian copyright collectives. Information is also provided on the relevance of foreign copyright laws and international conventions to digital licensing arrangements by Canadian museums.

As we delve further into the 21st century, museums are examining their Intellectual Property ("IP") Policies in general. Your digital licensing strategy is an integral part of your IP Policy. For example, your IP Policy will help you identify your IP assets whereas your licensing policy will help you exploit these assets and economically benefit from them. As a further example, your IP Policy deals with how your IP increases your global audience; your licensing policy will ensure that your IP is protected around the world and used according to terms and conditions to which you have agreed.

This book is meant as a practical guide; it does not set out a comprehensive review of this area of the law, which may encompass contract law, copyright law and other areas. Nor should this book be relied upon as providing legal advice. Proper legal consultation should be obtained where necessary.

As a practical book, there are checklists and precedents provided in it and/or referred to. Use them by adapting them to fit your particular needs in your specific circumstances. Determine whether the clauses in the checklist are relevant to your situation. Keep in mind that a licence agreement that works for one museum may not fit the needs of another museum. It may not even fit the needs of the same museum in two different licensing situations for different digital content.

In reading this book, keep in mind that digital technology is rapidly changing and so is the way we license works in the digital environment. As such, any discussions of relevant licensing terms and conditions should be carefully reviewed in light of the most up-to-date technological and legal developments, and in light of your own circumstances. For instance, a museum licensing the use of an electronic database in its resource center would have different concerns than a museum licensing the posting of images from its collection on an organization's Web site.

Last Word

My final introductory comment is to enjoy the process. Digital licensing is a relatively new aspect in the activities of a museum, and being new, it requires innovative and creative thinking. When you work out a licensing arrangement satisfactory to both involved parties, you will find that this once complex area will result in a rewarding experience.

If you would like to share your experiences with digital licensing, I may be reached at *museums@copyrightlaws.com*.

Lesley Ellen Harris

Chapter 1 – What is a Digital Licensing Strategy?

What we call luck is the inner man externalized.
We make things happen to us.
Robertson Davies, Canadian Author

We are now witnessing a revolution in how information is acquired, stored and accessed.

In the pre-Internet and pre-electronic days, museums regularly purchased print copies of materials such as books or monographs for their staff, resource centres and researchers. Museums owned physical copies of these materials. These same print materials are now often acquired in a digital format, sometimes on physical medium like CD-ROMs, but increasingly through the Internet and online access. Museums are re-evaluating their acquisitions policies to reflect these new times.

Similarly, the rights and reproduction departments of many museums have recently expanded their roles. Where photographs and slides once occupied much of the time of rights and reproduction departments, most museums are now licensing these same works for various digital uses such as on CD-ROMs and DVDs, on Web sites and in electronic databases and archives.

With this revolution comes a new set of administrative and legal issues museums must face. No longer are museums solely concerned about copyright law issues like photocopying in their resource centres or publicly performing a film or video in their auditorium. Curators and other museum staff have become negotiators and interpreters of legal agreements, which open the door to a wide variety of electronic content for their use and the use of researchers. It also allows the general public access to a vast variety of content to which only limited access was previously available to them. As such, licensing electronic content is now an expected part of collections management and the Intellectual Property (IP) policies of museums. This will continue to increase as more and more collections budgets are dedicated to serials available only in a digital format, and as museums looks towards their intellectual property as a way to increase their revenues. Most museums are already involved with licensing electronic or digital content, and will become more involved in this process in the near future.

Licensing electronic content involves understanding and interpreting licence agreements. Behind every good licence agreement is a well thought-out strategy. Your strategy will guide you through the myriad questions you will be facing, such as: when do you need a written licence; how does the process begin; what terms and conditions are in the best interests of your museum; and, what do these terms and conditions mean?

What is a Digital Licensing Strategy?

A digital licensing strategy is a blueprint or plan that guides your museum as a whole through the digital licensing maze. Taking into account the unique position of museums, the strategy must examine licensing from both the perspectives of owners, and consumers, of digital content. From the owner perspective, your strategy need not repeat but should reflect your museum's IP Policy. Whereas your IP Policy will help you audit and determine your copyright assets, your digital licensing strategy will take you to the next stage of granting rights to the use of those intangible assets to others and financially benefiting from doing so.

The strategy will provide all museum staff with a single consistent approach to providing permission to use your digital content, or to obtaining permission to use the content of others. An ideal licensing strategy would cover all aspects of licensing from determining and defining the relevant content, to understanding what uses will be made of that content, to putting a monetary value on that content, to negotiating the rights that work for you, to guidelines for educating your staff and visitors re what uses of that content are permitted, to monitoring such uses, to including means to continually update that strategy to ensure it meets your technological and legal needs. Detailed strategies may include licensing fees, sample clauses, preferred clauses, and educational material about copyright and licensing.

There are all sorts of shapes, forms and sizes of digital licensing strategies. While this book attempts to provide information on creating a comprehensive strategy, each individual museum will have different needs. When reading this book, think of the sorts of things that your strategy should contain. And remember, a strategy is not a static document, but similar to a Web site, it may need to be constantly updated and revised to remain effective and useful.

When to License

Licensing becomes an issue when you want to use electronic or digital content such as an online database or periodical, or when someone wants to use content owned by your museum. It may begin with a telephone call, an e-mail, a snail mail letter, an order form, or you may be offered a written licence agreement.

When are you a Content Owner or Licensor?

As a **content owner**, you require a licence agreement whenever someone else "uses" your content. Content that a museum might own includes art work, brochures, posters, promotional materials, exhibition catalogues, presentations, Web sites, compilations, photographs, images, slides, reports, letters, business documents, books, manuscripts, audio recordings, and audiovisual works. This content may be in analogue or traditional media, or in digital media.

Your museum may also own content that it acquired through an assignment of copyright. If the full rights in certain content has been assigned to you, then you have the right to license this content to others. It is likely that your museum owns much more IP than it realizes, and this may be the opportune time to undertake or to update your museum's IP audit in order to determine your IP assets.[1] The more IP assets you own, the more you have to license to others and hopefully benefit economically and otherwise from this licensing.

As an owner of content, you may be involved in some of these possible scenarios:

- licensing a handful of works to be used in association with works by other creators. For instance, licensing three photographs from your museum's collection for use in a Web site with other photographs, text, animation, etc.
- licensing content owned by your museum which would constitute all of the works to appear in a new media product. For example, a museum might license digital rights to its early Canadiana collection for use by a developer in a CD-ROM who would then create a CD-ROM solely based on this collection.
- licensing works for "re-licensing" purposes. For instance, you might license the rights to digitize your museum's newsletter to one company which will then re-license these rights to CD-ROM or DVD producers, Web site owners, corporations and others.

When are you a Consumer or Licensee?

As a **consumer** of content, you need a licence agreement whenever you "use" the content of others. For example, you want to use someone else's photograph or video clip on your Web site, or you want to access an online database or periodical. Use in this context includes many different concepts or rights that are set out in copyright laws and treaties. Among these rights are the right to reproduce or publish in digital or print form, transmit over the Internet, communicate by telecommunication, and perform the work in public. It also refers to content that is protected by copyright and is not in the public domain. It also refers to uses in which permission is required under the copyright statute where the work is being used and that an exception or fair dealing does not apply to that particular use.

1 IP Audits are discussed in detail in the CHIN publication Developing Intellectual Property Policies: A How-To Guide for Museums....

As a museum or consumer of copyright materials, you may be involved in a number of situations in which you need to license content. You may need to license:

- An online subscription to a journal or database
- Content compiled by an aggregator such as Lexis-Nexis
- An encyclopedia or other collections of content
- Financial information, stock market sources and news feeds
- Computer software, CD-ROMs, DVDs
- Pre-existing content for use on your Web site or intranet (including text, graphic content, such as maps and photographs, music and video)
- Web site content
- Intranet content

Museums are Both Licensors and Licensees

Museums are both licensors and licensees and must look at each licensing arrangement from the perspective they are facing in that arrangement. However, given the unique position of museums, and their sensitivity to both sides of licensing, they should be the perfect negotiaters! Understanding the perspective of the other side in a licensing arrangement is a key step to negotiating a licence that meets the needs of both sides.

Other Agreements

There are other agreements you may need in the digital world including the following:

- Web site terms and conditions of use
- Privacy policy/release
- Web site development agreement
- Chat room agreement
- Clickwrap or Webwrap agreement
- Linking agreement
- Domain name assignment agreement
- Licensing other IP such as trade marks and patents

Although these agreements may not *per se* be content licensing agreements, many of the clauses discussed in this book are helpful when entering into such agreements.

Are there Industry Standards in Licenses?

There is no industry standard for licensing content by museums. Digital content and digital distribution are relatively new. Developments in this area are considered to be "first generation." Digital licence agreements, in general, were initially a hybrid of computer software, book publishing and film agreements. However, they are now a "breed within themselves" and we are beginning to see common issues and trends emerge, many of which are discussed throughout this book.

Although there are some consistencies between licence agreements, most are distinct and unique from one another, and from licensed content to licensed content. Each license must be examined and evaluated on its own. There are similarities in structure, definitions and terms and conditions addressed in these licenses. As licenses become even more commonplace, it is possible that some standards will emerge but it is impossible to predict when this might occur and to what degree there may be industry standards in museum licence agreements, whether from the perspective of the museum as licensor or as licensee.

One reason that there is no industry standard in this area is that licensing digital content is relatively new, and with constantly changing technology it is not yet possible to have a single standard. Equally important is the fact that every museum, even two similar museums, may in fact have different needs and therefore may require different licence agreements. In addition, each licensed content may require a different arrangement of licensing terms and conditions. This is all due to the needs of curators, researchers and sub-licensees, different available technologies, as well as business and legal reasons (i.e., different lawyers may have different opinions, and different museums may have different copyright, IP and privacy policies.)

As museums increasingly license digital content, the question arises whether the process would be simplified by using model licenses or standard agreements that provide uniform licensing conditions. These have been more popular with respect to libraries licensing digital content than in the museum context. Although helpful, one must always keep in mind that each situation is unique and that one agreement may not fit the needs of another agreement and situation. Such models and agreements are best used as checklists of issues to be examined in your own particular circumstances.

If you come across interesting agreements (whether in the museum sector or in other sectors), use them as an educational tool. Examine the clauses in the model licenses and the principles that best fit your needs. Then examine each term and condition to determine whether it is applicable to your situation. Consider what other clauses you would like in your agreement to fit your particular needs. Read the agreement from start to finish. Ensure that the additions and deletions from the model agreement or licensing principles result in a comprehensive logical agreement that fits your needs.

Collective Societies and Digital Licensing

In copyright parlance, a collective society is a group of copyright holders who band together to provide one-stop shopping for users of copyright protected materials. There are collectives around the world representing rights holders of musical works, print works, artistic works and other copyright material. Most collectives around the world are either currently licensing or preparing to license digital rights to the works in their repertoires.

Once their systems are more fully in place, collective societies can play an important part in digital licensing. They will simplify the permissions process for consumers by providing "one-stop shopping", while providing rightsholders (i.e., content owners) with centralized, and possibly an increased, distribution of their works. However, with the growth of e-commerce and digital rights management computer software, the question arises as to the role copyright collectives will play in the digital world. Individuals and organizations may choose to directly license their works, as museums are currently doing in both the digital and non-digital worlds.

Copyright collectives in Canada and around the world generally have bilateral arrangements with one another which means that if your museum's content is included in the repertoire of a Canadian collective, users from around the world may be able to access and pay for the use of that content through a copyright collective in its own country. Likewise, a Canadian museum may easily access, for example, the articles of a British author, through the appropriate Canadian copyright collective (i.e., Access Copyright) which has an agreement with a similar British collective. This international system of reciprocal arrangements is one of the important advantages in working with a collective.

The Copyright Board of Canada has a list of Canadian copyright collectives and their contact information. See: *http://www.cb-cda.gc.ca/*.

MISCONCEPTIONS ABOUT DIGITAL LICENSING

With the newness of digital licensing, and as we all learn about this area together, there are a number of misconceptions already developing. By discussing and clearing up some of these misconceptions, it may help clear the path to an easier negotiating road and to be written licenses. These misconceptions are important licensing issues that are discussed in further detail in other parts of this book.

Misconception #1: Not all licenses are negotiable. Almost every licence is negotiable, but often you have to ask the other side if they are willing to negotiate so that you will have a licence that meets you need. Always remember to only accept a licence and arrangement that works for you in your particular circumstances.

Misconception #2: Licenses must be in "heretherewithto" language. It is best for everyone to use plain English in your licenses and not technical or legal language. Say what you mean and put that in writing. If the language is unclear, ask the other side what things mean. Define terms in the licence that are unclear.

Misconception #3: I need a lawyer. Often content owners and users know more about digital licensing than lawyers. Do not be intimidated by not having continuous access to a lawyer. Do your homework and ask questions so you are comfortable with the arrangement into which you are entering.

Misconception #4: Renegotiating every year is mandatory. Nothing is mandatory! Negotiating is time-consuming and costly. At the same time, technology is changing rapidly and so is the way we all use digital content. Lengthy durations for licence agreements may not be appropriate, so consider an automatic renewal clause, provided that both parties are satisfied with how the licence is working out for them.

Misconception #5: You can control your users. The licence agreement you sign is between you and either an owner or user of content. Your licence only contractually obligates you and that owner or user. As such, you cannot agree, or expect the other party, to police subsequent users of that content. However, you may wish to educate staff and researchers about legally using licensed content, and obligate any user licensing your content to do the same.

Misconception #6: You may restrict fair use or fair dealing. Parties to a licence may agree to limit fair use or fair dealing between the parties subject to the agreement. However, any other persons are not bound by that agreement. These persons may apply the relevant copyright law to their use, which means that fair use (if the work is being used in the U.S.), or fair dealing (if the work is being used in Canada), would apply to that licensed content.

Misconception #7: Standard licenses are the answer. Each situation is unique. Although model or standard licenses may seem like the answer to avoid costly and time-draining negotiations, you must always look at your own particular situation and find an arrangement that is suitable to your needs.

Misconception #8: One side always loses in negotiations. In the ideal world, negotiations should be "win-win." In other words, both parties should be satisfied with the end result. This, of course, is not always possible. By being prepared before entering into negotiations and by understanding your needs as well as the needs of the other party, you will be taking the right steps to finding an agreement satisfactory to both sides.

Your Next Step

You should now understand the concept of digital licensing, how it fits in with your overall Intellectual Property Policy and general management of copyright issues in your museum, and why it is important to develop a written Digital Licensing Strategy that fits the particular needs of your museum. Your next step is to begin creating your written strategy.

Chapter 2 – Creating Your Strategy One Step at a Time

Everyone thinks writers must know more about the inside of the human head, but that is wrong. They know less, that's why they write. Trying to find out what everyone else takes for granted.
Margaret Atwood, Canadian novelist, poet, critic. Dancing Girls, "Lives of the Poets," (1977).

Licensing is Simple

Simply put, licensing involves three steps. First, you must determine the needs of your museum's staff and researchers and possibly the general public. Second, you must understand the needs of the other party, whether that party is the content owner or user of content. Third, you must find a reasonable compromise between the needs of your museum and that of the other side.

Step 1: Developing a Licensing Needs Assessment

At my licensing seminars, I always stress that your best friend in the licensing process is a blank piece of paper. Odd as it sounds, the way I recommend you enter into any new licensing relationship is to start with a blank piece of paper and a pen – or a blank screen on your computer – and begin jotting down all of the things you want out of this licensing arrangement. Never begin a licensing relationship by reviewing the licence itself. The agreement is a document which should summarize all of your discussions and negotiations and should never be your starting point. The agreement is often full of legal and technical terminology that may distract you from some of the essential and initial points of a licence which you need to consider.

Needs-Based Licensing

You should always know what you want to accomplish before beginning any new licence negotiation or drafting.

To get you started in filling up your blank paper or screen, below is a list of questions or points you should consider. They should be seen as a way to guide your discussions with others in your museum so you are directed in your consultations. Consult with your colleagues in responding to these questions and make sure that your points include the many different perspectives of people in your museum. Negotiating a licence is a group effort within your institution and will have implications in various parts of your institution. Some people to be consulted are: museum director, senior management, museum board, legal counsel, librarian (reference and acquisitions librarians are very helpful), education department, purchasing department and your information systems office.

If you are a licensee, it is a good idea to obtain feedback from your staff and researchers as to how the licensed material is to be used, including the format they need to make it most accessible and useable.

It is best for one person to co-ordinate all of this internal consulting in order to ensure an organized approach to your licenses. It is also ideal for one person to be the lead negotiator for purposes of consistency.

The points below are the key usage, practical and strategic points you will inevitably face when signing a licence. As a museum, and in the position of licensor and licensee depending on the circumstances, you may need to examine each of the questions below in light of two different perspectives.

You may also find it helpful to continually be in the process of creating and amending a Licensing Policy which will refine the questions below and add other key questions. Licensing policies are further discussed below.

Licensing Strategy Issues

Content Issues

Why do you want to license this content?

What are the competitive products to the one you are licensing; and would you be interested in licensing these other ones if you cannot agree on suitable terms and conditions for the initial content you want to license?

What content are you licensing? Include title, ISBN or ISSN, and a brief description of the content. Do you have or require a sample of the content?

Do you already subscribe to this same product in print? If so, are there any financial or other advantages to be gained by this? (For example, this may apply to a text publication.)

In what format will the electronic content be provided? On CD-ROM, DVD, through the content owner's server, via an Intranet, etc.?

How often will there be updates to the electronic material? How will these updates be delivered?

Does the licensee require any archival rights after the termination of the licence?

"User" Issues

Who will be using this content? For example, will the users be library staff, patrons, members, faculty, students, alumni, visiting professors, or the public? How about museum staff?

How will the content be used? Will it be printed, downloaded, stored electronically, e-e-e-mailed to others, etc.?

What uses will be made of this content? Internal, external, Web site, Intranet, access through on-premises computers?

What sort of access is necessary? From a single machine, from a resource centre in a museum, library or educational institution, remote access on campus (or from a different corporate location), in the state/province, country or from other countries?

How many people must be able to access the content at any one time? How many simultaneous users need to access the content at the same time?

Licensee Issues

Will authentication of authorized users be necessary? Is the licensee easily and inexpensively able to do this? Will the content owner set this up?

What mechanisms does the licensee have in place to ensure user confidentiality?

If the licensee is a library, will it require the need to make a copy for interlibrary loan? E-mail interlibrary loan or by print?

How can the licensee ensure the content is used according to the terms and conditions of the licence? Keep in mind that it will probably be impossible to police the use of the content by those accessing the content from the licensee's premises.

What is the licensee's budget for this content? A range may be more appropriate than an exact dollar amount. You may also want to break up the costs into setup cost, storage cost, maintenance cost, etc.

Is any additional hardware or software required in order to be able to access the content, and who would be responsible for related additional costs for these?

What is your preference for payment schemes? Flat rate, pay-per-use, subscription basis, etc.

Will the content owner provide the licensee with documentation and support for using the content?

Does the content owner warrant how it will address downtime when access to the content will not be possible? Or if some of the content is removed from the database?

Licence Issues
What duration of the licence would work for you?

Would you want the licence to automatically renew?

Under what circumstances would you like to be able to terminate the licence?

What state/province and country's law should govern the licence?

Are there any special circumstances you need to include in the licence concerning this content?

Administrative Issues
Who will be negotiating the licence? Or will it be a team of negotiators (in which case, who is your primary negotiator)? (Did you do your research on the negotiators on the other side?)

Who will be responsible for ensuring the terms and conditions in the licence agreement are met during the duration of the licence?

How will you keep track of this licence and manage your other licenses?

Who will sign the licence?

Step 2: What is the Deal?

Once you have filled up your blank page, your next step is to read the licence agreement offered to you (assuming one is offered to you.) To determine what is being offered to you, you may need to carefully re-read various chapters of this book. If you are a licensee, always ask the content owner about clauses you do not understand – the content owner can be your most valuable source in understanding what is being offered to you.

Reviewing the Licence

Once you are comfortable in understanding what is being offered to you, you should make notes comparing your initial blank page notes and what is set out in the licence. Identify sections of the licence that work for you, and ones that require editing. Make a list of items that are missing from the licence which you would like to see added to it. These additions may later fit into existing sections of the agreement, or may require new sections to be added to the licence. Be organized in your approach to reviewing the licence.

Step 3: The Negotiating Process

Step 3 involves discussing with the other side how to find a compromise between what works for you and what is being offered to you. Chapter 4 provides helpful tips to guide you through this stage of negotiation. Always keep in mind throughout your discussions that there is no such thing as a "correct" licence. The best type of agreement is one with which both the licensor and licensee are satisfied.

Negotiating a licence may be an art and skill within itself. It may be helpful for you to consult resources on negotiation as well as brush up your skills with a course in this area.

Considering a Licensing Policy

A Licensing Policy can be a valuable tool for digital collections management. It can make licensing much easier in your institution by providing a more consistent licensing process. A good policy ensures that your museum has examined relevant licensing issues before entering into any new licensing arrangements. It also ensures that one person's memory" is not be at the root of your museum's licensing strategy and acquisition of, or licensing of, your electronic content. With a licensing policy, you have a written document that is the basis for all licenses entered into by your museum.

Your Licensing Policy may be a stand-along document or it may be part of other museum policies such as your overall IP Policy.

Developing a Licensing Policy

Your Licensing Policy should set out the minimum requirements in any licence agreements you enter into. When licensing content, you will have to decide based on the circumstances what is the appropriate type of arrangement and how you should set this out in your agreement. At one extreme is a simple document identifying the parties, the works being used, the purpose of their use, length of use, payment, the rights being licensed, a warranty that states the works are in fact owned by the

party who is licensing them, and signatures of both parties. At the other extreme may be a 20-page agreement full of legal terminology. In any licensing situation, you must examine your own perspectives and goals, as well as take into account the other party's, and tailor your negotiations and agreements to match your particular circumstances.

Ask Questions

When developing your Licensing Policy, you may want to start with the minimum requirements of a basic licence agreement:

- Who are the parties to the agreement
- What content is being licensed
- Who owns the content
- How will the content be used
- How long will the content be used
- In what format(s) will the content be used
- How much will the content cost
- What rights are being licensed (i.e., what uses will be made of the content)
- Warranties from the content provider

It may be easiest to address these complex issues by responding to the questions set out above in the Licence Issues section of this chapter.

Review Existing Licenses

Once you have started with the basic requirements of a licence agreement, you may then wish to examine various licenses to which you have entered, and to mark down all of the consistent points from licence to licence. Then you may want to mark down all the terms and conditions that vary from licence to licence. It may be helpful to examine what clauses you liked and did not like in other agreements. It is also worth noting clauses you found were not workable once a licence was signed, or clauses that limited your access to the content in any manner. You might include in your Policy circumstances under which you need to deviate from the Policy's minimum requirements, as well as provide a list of circumstances in which you are flexible and may be open to various negotiable clauses.

A helpful part of your Licensing Policy will set out how new licenses or proposed licence arrangements are reviewed and approved within your institution. It should also set out who is involved in which stage(s) of the licensing process.

A Licensing Policy is not developed overnight. It takes time to create, and may require an amendment after each new licence you sign. Amendments to the Policy may be required on a regular basis, and therefore be subject to a regular (e.g., monthly or quarterly) review. If you do not have continual access to a copyright lawyer to help you prepare and update your Policy, it may be a good idea to have a lawyer review it periodically both for legal issues and for licensing and negotiation strategies. Also, you may wish to set up a review committee to periodically review and suggest amendments to your Licensing Policy.

The following is an example of a draft licensing policy for a fictional museum, the Moose Museum. This is a very simple policy and is a good starting point. Yours, however, may be more detailed especially after it has been revised a number of times to take into account new licenses to which you have entered. Yours may also include the list of questions set out in the section in this chapter under Licensing Strategy Issues. These questions are a helpful checklist when reviewing any new licenses.

EXAMPLE

Licensing Policy for the Moose Museum

I. Purpose of Policy

The purpose of this policy is to educate Moose Museum staff about licensing basics and to provide a consistent procedure for licensing content for the museum. It is not intended to act as a substitute for legal advice and proper legal advice should be obtained when necessary.

II. What is a Licence Agreement?

A licence agreement is a written contract between a user and a content owner that sets out the terms and conditions under which a user can use content. As a content owner, we require a licence agreement whenever someone else wants to use our content. As a user of content, we need a licence agreement whenever we use the content of others. For example, if the Moose Museum wishes to use a piece of artwork on its Web site, the Museum must enter into a licence agreement with the artist to do so. A licence agreement will be necessary for accessing online journals and electronic databases. The Moose Museum is both an owner of digital content and an organization which uses the digital content of others. As such, it may need to look at each licence agreement from the Museum's perspective in that particular situation.

III. Basics of Licence Agreements

As licence agreements are legal contracts, it is important to know the basics of contract law. A contract will help to set out the relationship between the parties and can help avoid future conflict. It sets out the rights and obligations of each party.

Contract basics

A valid contract has the following three components:

- An offer to do something or refrain from doing something (for example, to pur chase a book or license software);
- Acceptance of the offer;
- Consideration. Consideration is of some value in the eyes of the law. Money is a common example of consideration. However, a promise to perform a service or supply goods is another.

Common clauses in licence agreements

It is important to note that licence agreements are open to considerable creativity by the parties involved. However, it is important that a licence agreement contain the following basic clauses:

- Parties to the contract. A licence agreement should state the legal names and address of the parties who are subject to the agreement.
- Purpose of the contract. The purpose of the licence agreement should be set forth. For example, to license software, photographs or artwork.
- Rights and obligations of each party. The rights and obligations of each party should be set out in the licence agreement. For example, the artist is to provide the Moose Museum with a picture on CD-ROM for the Museum to include on its Web site, while the Museum must only post that picture for a maximum period of 90 days from the signing of the licence.
- Usage of content. The licence agreement should set forth how content can be used and how long it can be used. For example, a photograph may only be used on the Museum's Web site for a period of 1 year, or an online journal may be accessed for 1 year.
- Compensation. This clause sets out how much compensation will be provided to the content owner for use of the digital content.
- Copyright ownership. The agreement should discuss ownership of copyright. For example, an author/consultant retains ownership in software but licenses it to the Museum for usage.
- Warranties. Warranties in a licence agreement set out promises that parties have made. For example, the content owner warrants that it is the owner of the content he is licensing to the other party.

The licence agreement may have a number of general provisions relating to such things as applicable law, arbitration, etc. The Museum's lawyer will be of assistance in ensuring that these general provisions protect the interests of the Museum and comply with any other institutional policies.

IV. Procedure for Licensing Digital Content

If you wish to use content that the Moose Museum does not own, or if another party wishes to use content that the Museum owns, a licence agreement must be negotiated. If you are provided with a licence for the use of digital content that seems to be complete and not subject to negotiation, the first question you must ask the supplier of that content is whether *the license is negotiable*. Even if the content owner says that the licence is not negotiable, if there are terms and conditions in the licence which do not work for the Museum, try to amend these clauses. Often, even apparently non-negotiable licenses are negotiable.

Before negotiating a licence agreement, it is important to first determine whether the Moose Museum has ever entered into a similar licence agreement. This can be done by looking at the Moose Museum Licensing Binder (or electronic database) which has categorized all of our agreements by subject area (i.e., Web site, software, journals, periodicals, database, etc.), as well as by name of the publisher/ content owner or licensee. It is also worth double-checking to ensure that the licence does not conflict or overlap with existing licenses.

If you find similar content has been licensed in a previous contract, examine the clauses in that other agreement, and find out if any of the clauses were problematic for the parties involved. For example, did the Museum run into problems with usage restrictions imposed by the content owner that prevented staff and researchers from accessing material? If the similar content was not covered in a previous contract, then look at other agreements in the binder or database to see if the arrangements between the parties are similar to the type of arrangement you wish to have. Determine how this new situation differs from previous arrangements and if there were any problems in the past that you can avoid.

Write down the basics that you wish to have covered by your new licence agreement. Ensure that you speak with the Museum lawyer, the Board, the head Curator and Museum Director, the librarian, the head of Education, and the Information Systems Director. Before developing any kind of licence agreement, it is important to talk to a specialized copyright lawyer (who may or may not be the same person as your museum's lawyer.) You can discuss what sorts of clauses did not work in past licence agreements and get an idea of how to resolve these problems in the future.

It is important to remember that licence agreements will be different and will need to be adapted to meet the changing needs of the Museum. Before signing a licence agreement, review its wording carefully to ensure that you know what it means and consult a copyright lawyer to ensure that you are clear on its meaning.

V. FAQs

[The frequently asked question section of the Policy should set out questions that arise from each licensing arrangement. Chapter 7 provides a number of questions and answers that would be useful to add here, however continue to update this section with questions that arise in your museum.]

Are You Ready?

They say a little knowledge is a dangerous thing. In terms of digital licensing, you should not let that scare you off. In fact, I often say that negotiating a licensing agreement is like the "blind leading the blind" since we are all relatively new to this process. Learning about digital licensing is a lengthy process. You may read about licensing, take a course on this topic, discuss it with colleagues, and even negotiate and interpret a few licenses and still feel that you have much to learn. You may take some comfort in the fact that we all have much to learn about licensing. We will have to learn this together as we work with content owners over the next several years in finding licenses that meet all of our needs.

Chapter 3 – Speaking the Language

The law is a hard, queer thing. I do not understand it.
Poundmaker, Cree Chief, who was frustrated by the government's failure to fulfill treaty promises – statement to the court at his trial in Regina on August 17, 1885

When developing your digital licensing strategy, you will need to be aware of various laws and legal concepts. Some of these are background information that will further help you understand the realm of licensing, while others are key concepts that will arise in the course of creating your strategy and various licensing experiences. Many of these laws and concepts are described in this chapter in a licensing context and may have different meanings in a different context. These concepts are the foundation for understanding the clauses and negotiating points in further chapters in this book.

Licenses are not Assignments

A full understanding of the terms licenses and assignments is essential. In simple terms, **licenses** and **assignments** are two ways to legally have permission to use content.

In an assignment situation, a content owner **assigns** his rights. In an assignment, the content owner is permanently giving away his content, or a portion of his content. An assignment is like a sale or a transfer of rights, whereas a licence is comparable to a lease or a rental of rights. In a licence, the content owner **licenses** a piece of her content, thereby temporarily permitting someone else to legally use it.

Using the words assignment or licence may not by themselves guarantee what types of rights are being granted. The wording used in a licence agreement could be such that, in practise, it has a similar effect to an assignment. What you need to understand is that rights may be exploited (usually in exchange for money) without necessarily being sold or permanently given away to someone else or to another organization. For example, your museum could license the rights for its staff to use a publisher's database, but your museum has no permanent or ownership rights in that database.

When you are involved with licence agreements, you may hear the term "purchaser" of content being referred to both assignment and licensing situations even though there is no actual change of ownership in a licence situation. This is because the "purchaser" purchases the right to use content in a certain manner even though he may not acquire outright ownership of that right or content. Similarly, the term "buying and selling" content may refer to licensing content. These are terms and meanings used in the marketplace and something of which you should be aware.

What is a Licence Agreement?

A licence agreement is a legally binding contract between two parties. The licence is a legal term for **permission** to use or access copyright protected material. In this book, a licence agreement or contract means a written document setting out mutually acceptable terms and conditions under which a museum may permit others to use its content, or may obtain permission to use content owned by others. The licence agreement sets out the conditions of use of the specified content – at a specific price for a specified period of time.

An example of a licence agreement in a non-digital setting is a print book publishing agreement. Your museum may license or obtain permission to include certain text and photographs in a print book undertaken by your publications department.

What Does "Digital Licensing" Mean?

Digital licensing means the licensing arrangement containing the particular circumstances under which a content owner and user agree upon for the use of, or access to, specified electronic or digital content[2]. The details agreed upon are usually set out in a written form called a licence, a licensing agreement or a contract. In simpler terms, a licence agreement or **contract** are terms used for "**permission**" to use certain content.

Content

For purposes of this book, **content** refers to licensed works such as electronic books, periodicals, journals, databases, news feeds, encyclopedias, images, Web site content, and the like. The content may be in a non-digital or digital format, however the end use will be in a digital format. If the content is in a non-digital format, the licence agreement will set out specific provisions relating to who is responsible for digitizing the content.

2 Electronic and digital are used interchangeably in this book.

Licensor

A **licensor** is generally the owner of the electronic content. A museum is a licensor when it owns content that it is licensing to others. Other licensors include a photographer, periodical writer, database or journal publisher. Generally, the licensor owns the content and can legally allow others to use that content. In some situations, the licensor does not actually own the content but has acquired the rights from the appropriate owner in order to be able to license that content to others. Also, see below, the description of Content Owner.

Licensee

A **licensee** is the person or entity who obtains permission to use the electronic content. For example, a licensee may be a museum, educational institution or library which licenses content from the licensor.

Content Owner

The **content owner** is the person or entity that created the content being licensed, or has acquired the ownership of the content from the actual creator of it. A content owner is sometimes referred to as a content provider.

When licensing content from a publisher, aggregator or vendor who does not own the rights in the content, you want a guarantee that they actually have the rights to license you the content. This should be carefully set out in the warranty and indemnity sections of your licence, as discussed in Chapter 5. Likewise, when your museum licenses content that you do not own, you may have to provide certain warranties (usually coupled with an indemnity) to your licensees, that you actually have the right to license the content to them.

Exclusivity

The rights granted in a licence may be **exclusive** or non-**exclusive**. Exclusive means that the content owner may only grant a licence to use the content to one party at any given time.

Non-exclusive means that the owner may grant more than one organization the right to use the same material at the same time. For example, Museum X may grant the right to use its content to Library A, DVD Producer B and Corporation C, all at the same time. Most digital licenses entered into by museums are on a non-exclusive basis; this allows the content owner to simultaneously license the same content to many others at the same time, and hopefully economically profit from doing it.

Rights

Rights are the uses permitted under the licence. For example, this may include the right to post on a Web site a poster, print a copy of an electronic article, or the right to access a database.

Fair Dealing and Exceptions

This book presumes that fair dealing or any exceptions from copyright law is not applicable to the use of the electronic content you want to license and therefore you need permission to use the content. However, you may still need to deal with fair dealing in your licence, as discussed in Chapter 5.

Unfortunately, clear rules do not exist for interpreting what use would constitute fair dealing. Thus, it has been a cause of frustration for many who attempt to apply it to their situation. Ultimately, it would be up to a court of law to determine whether a use is considered fair.

Exceptions from copyright law mean that you do not have to pay to use a copyright work and do not have to obtain permission to use it. Exceptions from copyright law specifically for museums exist in Canada and in other copyright laws around the world. Generally, these exceptions are for specific uses of copyright materials such as preservation copying. It is unlikely that an exception in a copyright statute would ever allow for the free use of an electronic database or electronic journal. Therefore, you would still need a licence to use electronic materials in your museum. Likewise, you should obtain a licence whenever someone wants to use content owned by your museum.

Privity of Contract

Privity of contract is a legal term for a licence only being valid between the parties who sign the agreement. For example, a licence is only valid between the museum and publisher who sign the licence, and a researcher (who does not work for the museum) is not subject to the licence. Therefore, if a researcher violates any terms and conditions in the licence, the publisher has no right in the licence agreement to sue him for violation of the licence. However, there may be rights under the applicable copyright statute. For instance, if the content is used in a manner that infringes the rights of the copyright holder, and the researcher does not have permission to use such content, then the publisher may sue for infringement of copyright, as opposed to violation of the licence itself.

Consortia

A **consortium** is a group of licensees who join together to license a single or a multiple of electronic resources. There are also consortia of content owners. There are now hundreds and possibly thousands of consortia worldwide, primarily in the library world. Some consortia charge a fee for membership and other services, while others are free (though will charge for the actual cost of licensing the electronic resources.) Some consortia are for specific types of libraries while others are for a variety of libraries and would include government, public, academic, school and special libraries. Libraries often belong to more than one consortium for different electronic products.

Consortia may, but do not necessarily, save libraries money for licensing fees but can make the same amount of money go much further. They can also benefit libraries in terms of saving time and legal costs for negotiating licenses and in sharing negotiating expertise.

Each consortia is unique in terms of content it is licensing, structure, background and goals. Joining a consortium is a management decision and you want to ensure that you find the right one to meet your needs and goals. If you join a consortium, make sure it is licensing the content you need, has similar goals to your own, has a decision-making process that meets your needs, and has a strong lead negotiator.

Further Lingo

Definitions of words frequently used in licenses or in the negotiation process are provided in a glossary at the end of this book. This list has been compiled by Yale University Library.

Contractual Agreements

In order to enter into a digital licence agreement, you need to know the basic principles of **contract law**. A contract or agreement is a tool that clarifies a relationship between the parties, and a document to help you avoid future conflict and possible litigation by setting out the terms and conditions of your arrangements in advance. It is a listing of each party's responsibilities or promises with respect to the rights and obligations of each party. It is a document that you may return to from time-to-time to verify your original agreement, your rights and obligations, and the rights and obligations of the other party in the particular circumstances. It is also a useful tool for identifying all of the costs of a project and who is responsible for paying them. Contracts are enforceable in court, or alternatively through mediation or arbitration, if one party does live up to its obligations in the agreement.

What is a Contract?

For purposes of this book, a **contract**, **licence** and **agreement** are used interchangeably.

In legal terms, there is a contract when two or more persons or organizations, often referred to as "parties", agree to exchange something, physical or intangible/intellectual property or a promise of future performance.

Must the Contract be in Writing?

Contracts may be oral or in writing and they may be a distinct document or part of an invoice or purchase order. Oral agreements can be a problem because they rely on the memory and understanding of the parties involved. For example, if curator Shelley negotiates a licence agreement for a database, then leaves her job, how will the library ensure that they are using the database according to the terms and conditions of the licence Shelley negotiated on their behalf?

In addition, written agreements make the parties carefully think about the terms and conditions in the licence and to be specific about them. If you ever have to go to court or arbitration, a written agreement may result in less dispute about the clauses in the licence.

Some contracts must be in writing to be enforced. For example, the U.S. and Canadian copyright statutes require an assignment of copyright or exclusive licence to be in writing. Although contract requirements vary from state to state and province to province, many U.S. states require that any contract for the sale of goods for $500 or more be in writing.

What is a Valid Contract?

When negotiating, drafting or reviewing a contract, keep in mind that a valid contract has the following three components:

- an offer to do something or refrain from doing something (for example, to pur chase a print book, license an online database or computer software, or com mission someone to design a Web site);
- acceptance of the offer; and
- consideration. Consideration is something which is of some value in the eyes of the law. Money is one example of consideration; a promise to supply goods or to perform services is another kind of consideration.

Common Clauses

Any terms and conditions to which the parties agree, may be included in the contract, provided they do not contravene any specific laws.

A contract should state the legal names and addresses of the parties who are subject to it. The contract should state the purpose of the contract (e.g., to license an online periodical or database), and the rights and obligations of each party. For example, the publisher will publish an online periodical that the museum will license for a two year period.

Key clauses to include in a licence agreement are set out in detail in Chapter 5.

Further, the contract may have a number of general or boiler plate provisions relating to such things as arbitration, applicable law, bankruptcy, etc., which are discussed in Chapter 6.

The agreement should be signed by all parties to it. If contracting with a corporation, the signature should be of an authorized corporate officer. That officer's name, title and the name of the corporation should be stated. It is also advisable to place the corporate seal on the agreement.

Although oral contracts may be legally binding in certain circumstances and in certain jurisdictions, this is not universally true, plus oral contracts are hard to prove as they are usually one person's word against another's. Written agreements are always advisable.

Before signing a contract, review the wording of your contract with great care to ensure that it means only what you think and intend it to mean. Ask the other party for any clarifications, and consider consulting a copyright lawyer before signing on the dotted line.

UCITA

UCITA is an acronym for the *Uniform Computer Information Transactions Act* in the U.S. UCITA is state law that has to date only being passed in two states, Maryland and Virginia. Its purpose is to regulate transactions in intangible goods such as computer software, online databases and other information products in digital form. Publishers and large software producers are the primary supporters of UCITA. Libraries, consumer protection groups, and certain businesses continue to oppose the enactment of UCITA which has been introduced in several states since the Fall of 1999.

One of the complaints of the vocal library groups who oppose UCITA is that UCITA intends to regulate business-to-business contractual arrangements and that its general application may not specifically address the needs of libraries. (This may also be true for museums.) Under UCITA, for example, a library, small business and individual consumer all using the same computer software may be subject to the same licence restrictions although the use of the software may greatly vary for each of these users. For further information on the concerns of UCITA and libraries, see *http://www.ala.org/washoff/ucita/*.

There is no UCITA equivalent in Canada.

DMCA

The DMCA is an acronym for the U.S. piece of legislation called the *Digital Millennium Copyright Act*. This *Act* became effective on October 28, 1998. Title I of the DMCA creates significant new remedies against the unauthorized circumvention of technological protection measures used to control access to, and protect exclusive rights in, copyright protected works. It also prohibits deliberate tampering with copyright management information. Title II clarifies the potential liability of Internet service providers (ISPs) for certain copyright infringements by their customers and others. Title IV permits libraries and archives to make digital copies of works for preservation purposes, and amends the ephemeral copy arrangements for the transmission of sound recordings under the *U.S. Digital Performance Right in Sound Recordings Act of 1995*. For further information, see *www.copyright.gov/legislation/dmca.pdf*.

Canada has no equivalent piece of legislation to the DMCA, and the types of provisions covered by the DMCA do not exist under Canadian copyright law. The Canadian copyright law is being revised on a piecemeal basis, and circumvention of technological measures as well as tampering with copyright management information are being examined as part of the revision process. It is important to stay updated on copyright reform proposals and amendments. Two helpful sites for this purpose are: *www.pch.gc.ca* and *www.strategis.gc.ca*.

International Issues

Because licensing digital content by its very nature implies global licensing (e.g., content which may be accessed from a Web site from anywhere in the world), there are a number of global copyright and licensing issues of which you should be aware.

Governing Law

To begin, you must first determine what laws apply to the licence agreement. For example, if your museum is in Nova Scotia and you are licensing content from a graphic artist or database publisher in Montana, should the laws of Montana and

the U.S. or the laws of Nova Scotia and Canada, apply to your agreement in the event of a dispute?

When negotiating a licence agreement with a content provider in another jurisdiction – whether in another state, province or country – you will need to determine, discuss and possibly negotiate which laws apply to the agreement. In the event of a dispute, it will then be clear to both parties which laws apply to resolve the dispute. You probably prefer to have the laws of your own jurisdiction to apply to the agreement, as they are likely more familiar to you. This is discussed in Chapter 6 under the Governing Law clause.

International Treaties

Notwithstanding what the agreement states with your content provider, you also want to be aware of copyright issues in countries where the licensed content might be accessed. It is possible that the laws of those countries may apply to the use of the licensed content. For example, disputes arising from your licence agreement will most likely be settled according to the laws of the country set out in the licence. However, if there are issues of non-authorized use by third parties, then you have to turn to copyright laws, as opposed to the licence, to resolve these issues. This is because the licence only governs the parties who sign the license and therefore not necessarily all persons who may have access to the licensed content.

So how does international copyright law work if the licence does not govern the use of the content? International copyright protection does not exist in any formal manner. Instead, each country has its own copyright laws. Although international copyright law does not exist per se, there are a number of international treaties that will help you understand how this area of the law works.

The leading international copyright treaty is the *Berne Convention*. It provides a minimum level of copyright protection. This level of protection is incorporated into the domestic laws of those countries that have joined these conventions. These treaties rely on the concept of national treatment. This means that each country that has signed the treaty has to provide authors from other signatory countries the same copyright treatment that it provides to its own citizens. For example, since both Canada and Australia are both signatories, Canadian authors will receive the same protection for their works in Australia as Australian authors would. The U.S. is also a signatory to both conventions. A list of member countries of the *Berne Convention*, is found at *wipo.int* (locate the *Berne Convention*, then search for contracting parties to the Convention.)

Two new treaties were developed and drafted in 1996 under the auspices of the World Intellectual Property Organization (“WIPO”), the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. These treaties are designed to

protect the rights of authors whose works are used on the Internet and in other types of new technologies. As of January 15, 2003, 39 countries are members to the Copyright Treaty. As of February 21, 2003, 40 countries are members to the Performances and Phonograms Treaty. Canada does not belong to either of these new treaties, however a high priority copyright issue of the Canadian government is to amend Canada's copyright laws so it can join these two treaties. For further information on Canada's position vis-à-vis these two treaties, see: *strategis.ic.gc.ca/SSG/ip01037e.html* and *www.pch.gc.ca*.

When licensing digital content with a party from another country, it is a good idea to determine what treaties are binding on your country, and those that are binding on the country of the other party. This will give a good indication of the level of copyright protection afforded to digital content outside the protection of the agreement.

Other Global Issues

Global licensing also involves negotiations and inclusion in your licenses of currency of the copyright payments or license fees. You may also need to examine applicable taxes – under what circumstances, if any, must a non-Canadian organization or individual charge or pay provincial sales tax or GST? Also, are there applicable taxes in the country of the other party that you may have to pay? As mentioned above, you may need to consider rights that may or may not exist in Canada but may exist in other countries. For example, moral rights for authors of copyright works are very strong in European Union countries and only exist minimally in the U.S. Canada has a "middle-of-the-ground" position on moral rights.)

Another important aspect is your definition of territory, to which countries does the licence apply? Equally important is your definitions of such terms as authorized user, authorized site, and on-site use – these terms will help clarify whether a user may accessing your Intranet from another country on a temporary basis (i.e., while travelling abroad), or through related companies, university campuses and/or libraries. These and other related issues are discussed in greater detail in the subsequent chapters.

Incorporating Language into your Strategy

As you journey into the world of digital licensing, you will come across many more concepts and terms than those discussed in this chapter. In fact, you will soon find that you have learned many new concepts, and perhaps developed a language of your own which relates to licensing digital content. Consider including these new concepts and terms and definitions into your Digital Licensing Strategy or as an appendix to it. This may help others in your museum better understand digital licensing. It may also help everyone in your museum more consistently apply your licensing policy and strategy to the various licensing situations you face.

Chapter 4 – Your Win-Win Negotiations

The Hon. Member disagrees.
I can hear him shaking his head.
Pierre Trudeau

When the word "negotiation" flashes through your mind, do you stiffen up, prepare yourself for a battle, or turn verbally aggressive? Or, do you think debate, persuasion, and understanding various perspectives in any given situation? How you approach a negotiation will invariably have an effect on its outcome, and any long term relationship with the other party with whom you are negotiating. Entering a negotiation with a friendly, positive attitude will start you off on the right foot. Although it may be difficult at first, you will soon see that negotiation is about discussing what makes sense to both parties and finding a compromise to satisfy both parties – a win-win situation.

Is a Win-Win Negotiation Idealistic?

Yes! However, that is no reason to avoid thinking in that manner. Throughout the licensing process, both parties should keep in mind that the licence they sign should be a "win-win" situation. Although at times, it may seem like each party has opposite interests, they are both aiming towards the same goal – **fair access at a fair fee**. Idealistic as this may sound, it is helpful to keep this at the back of your mind throughout the process.

What Does Negotiation Mean?

In simple terms, a negotiation is a discussion between at least two parties that leads to an outcome of a certain issue. In digital licensing, it means a discussion between a content owner and user of that content that leads to a set of mutually agreed upon terms and conditions relating to the use of specific content. The dictionary[3] meaning of negotiation is:

3 Random House Unabridged Dictionary, 2nd edition, New York: Random House, 1993.

1. Mutual discussions and arrangement of the terms of a transaction or agreement. *The negotiation of a treaty*.
2. The act or process of negotiating.
3. An instance or the result of negotiating.

Understanding Two Perspectives

Preparation of your frame of mind is an important initial task in any negotiation. The content owner and licensee have the same ultimate goals. You both want a relationship in which the content owner is fairly compensated for the use of their content while the licensee has the right to use that content in the manner necessary for its situation. By developing alternatives and being flexible, you may find that there is a way for both parties to reach its goals.

When Are Licenses Negotiable?

There are both negotiable and non-negotiable licenses. For instance, the licenses that accompany store-bought or online-purchased computer software are usually non-negotiable. Store-bought software comes with what we call “shrink-wrap” licenses, and online-purchased software comes with “Web-wrap” licenses (the licence we agree to before downloading software off the Internet.) Non-negotiable means that if you do not agree to the terms and conditions of use, then you must either return the software to the distributor, or in the case of online software, you do not download the software.

Non-negotiable licenses may apply to any type of content including electronic reports, periodicals and databases. Although non-negotiable licenses appear to be non-negotiable, there are many instances where you may be able to change certain terms and conditions in the licence. If you are faced with a licence that seems non-negotiable, and you would like to licence that particular content, always let the content owner know your position and see whether they are willing to discuss alternative terms and conditions of licensing. Sometimes asking the simple question, “Is there any room for negotiating?” may result in a pleasant outcome.

Keep Doors Open

You never want to threaten any points and close doors to discussion. However, you may keep at the back of your mind that this is not the only arrangement available. If you are a licensee, you may be able to find comparable content to license. If your museum is acting as a licensor, you may find that there may be plenty of others interested in licensing your content. You should never feel obligated to enter into an agreement that does not work for you.

If as a licensee, you find yourself in a situation where your museum cannot live with the demands of the licence but you really do want access to that particular content, contact the content owner or distributor and discuss with them the possibility of changing some of the terms and conditions. The best approach would be to say that you really want to enter into a licence to access that particular content however you need some amendments to the licence offered to you, otherwise you would not be able to fully benefit from the content.

Letter and E-mail Agreements

Is it necessary to have a formal agreement for each licensed piece of content? No, in some situations, a short letter or e-mail setting out what content is being licensed and how it may be used may make more sense. Again, this may be negotiable if one of the parties communicates to the other one that certain terms and conditions in the letter or e-mail do not meet its needs.

Oral Agreements

Whether you are a content owner or licensee, it is best to have some sort of agreement or confirmation of your understanding concerning the use of the content, in writing.

Although it is infrequent, it is possible that a content owner does not provide you with any written licence or documentation setting out how you may use their content. In such a circumstance, you may either request that they put something in writing or alternatively that you or your lawyers draft something for review by the content owner. If the content owner insists on oral permission, send them a fax or snail mail letter setting out a summary of your telephone conversation and the agreed upon terms and conditions of use of the content. That way you will have some record of the conversation should you or another person in your museum later need to refer to it. Make sure that your museum has a good system in place to track such correspondence.

Negotiable Licenses

Certain products like a costly electronic database, or an online subscription to a journal, may require the negotiation of specific terms and conditions of use to match your needs. Through your discussions and negotiations with the owner of the content (e.g., publisher of the database or online journal), the owner and yourself will negotiate and agree upon exactly the terms and conditions under which the content can be used. How do you ensure that you obtain the best possible terms and the ones that meet your needs and the needs of your museum? How do you negotiate to obtain those terms and conditions?

TIPS ON NEGOTIATIONS

Below are some tips for negotiating licence agreements. There are two sections: BEFORE YOU BEGIN NEGOTIATIONS and DURING NEGOTIATIONS.

These same negotiation tips apply to licensors and licensees and to a variety of licenses relating to individual works such as a photograph to be posted on a Web site, or relating to larger collections of works such as an entire database of works or an electronic journal.

BEFORE YOU BEGIN NEGOCIATIONS

Your Negotiating Philosophy
It is important that any negotiating strategy include a "negotiating philosophy". That is, how is the team of negotiators going to approach each negotiation. Is the team looking to "win" each negotiation? Or, is the team looking to build relationships with licensors and licensees with whom it enters into agreements? Will you take the hard line, or will you be interested in the other party's perspective, and try to ensure that each party is satisfied with the end result of the negotiation?

Be Prepared
Be prepared by having all the information you need. What do you want from the content owner? Know specifically the nature of the content and how you will use it. It is a good idea to talk to others in your museum to see how certain content will be used – will the CD-ROM content be placed on six or eight computers? Will access to the online database be permitted only to staff, or will the general public also have access to the database? Will access be permitted off the museum's premises, and how about in other states or countries? With the rise of distance education as an alternative method of delivering university education you may need to take into account that many of your users may be in other countries. Does the licence permit distance education uses of the licensed content? Who will be using the content and what they will be doing with this material? Will content be down-loaded from your Web site? When negotiating with a licensor or licensee, discuss who will be allowed to use the material, how it can be used and what happens in the case of unauthorized use.

If applicable, examine the sorts of terms and conditions you entered into last time with this licensor or licensee. How about terms and conditions in previous licenses with other parties? Were those effective agreements or did they cause problems? For instance, under your previous agreements, were you only able to make a single copy of an article from an online journal or were you able to make class sets of 100 for an art lecture at your museum? Are there alternatives you can think of that might be satisfactory to both parties? Is either party limited by a specific deadline or timeframe?

Are you confident in your negotiating skills? If not, read up on negotiation or take a course on negotiation. Do a mock negotiation with others in your museum. You will be most confident when you have knowledge of your situation and also knowledge of the other side's situation. Be comfortable with your negotiating skills.

As part of your preparation, examine previous negotiations in which you have been involved. Did they work out? Were you happy with the results? How about the other party? Were the negotiations fair and friendly? Were you prepared during the negotiations? What would you have done differently? Go through various scenarios of licensing clauses and ask yourself *what if* the other party asks for this, then we will do that, etc.

Know What You Need

There is a difference between what you want and **what** you need. You may want a Lexus but you **need** transportation of some sort. If someone offers you the Lexus at a price you can afford, then go for it. But will that really happen? If someone offers you a good deal on a Hyundai, be reasonable.

As a licensor, ask yourself what you want to gain from licensing your content. Is it just monetary compensation? What about sharing your collection? Will a particular licence help increase your reputation as a museum? Will it help promote and market your collections? Will it help increase your membership?

As a licensee, you must ask yourself how you will be using this particular content in your museum. Are you aware of your staff's and researchers' needs? How will you go about ensuring that these needs are met in your agreement? As set out in Chapter 2, it is helpful, and perhaps essential, to put any legal agreement aside, and to write a list of all the things that you might do with the journal or database. For instance, will you need to negotiate rights to print out certain parts of it, or e-mail parts of it to yourself or to colleagues, or perhaps to copy it to a disk?

Know What You Want

Do not just toss items or clauses from the licence to be agreeable. Negotiate those items you do not require for ones you do need. Know what you can give up – for the right price. Always go to the negotiating table with a few items that you are willing to toss away altogether. They are called bargaining chips. They can be used to get something in return.

Remember the difference between what you want and what you need. For instance, are you willing to be flexible with the delivery of the content, or is this unacceptable for what you plan on doing with the content? If you toss out one of these "want" items in exchange for a break on a "need" item, then you are ahead of the game.

Be prepared that you may not reach an agreement. Develop a set of alternatives for yourself. Is there someone else with whom you could enter into an arrangement? How important is the particular content being discussed to the museum? You want to know your options and have an alternative plan should the negotiations come to a standstill or fail.

Write down your goals so you do not get lost in the moment of the negotiation. Know what you want and need.

Know your Price
Know your price! How much are you willing to accept, or to pay, to license the materials? How does your budget accommodate this? Is the budget flexible? What are you willing to give up and at what price?

Who Represents your Museum?
Pick a person from your museum to lead the negotiations. If your lawyer is negotiating the licence, make sure a designated person from your museum is a part of all of the negotiations. Your staff will likely need to educate the lawyer about business activities and priorities, and the use of digital content. This person may possibly lead the negotiation, using the lawyer more as a sounding board.

It is important that a single person is designated from your museum, and is a key part of the negotiation process from the beginning to end. Changing your lead negotiator part way through the negotiation can lead to a waste of time and money, can be frustrating to both parties and can lead to inconsistent negotiations. If you are negotiating as a team, make sure the team will proceed with the negotiation from beginning to end. Likewise, ask the content owner whether its representative will be the one negotiating the licence and insist that once this representative is selected that he or she will remain the negotiator throughout the process.

Sometimes, there is a negotiating team with people from different areas in the museum, who may contribute alternative and helpful views. Whether you have a single negotiator or a negotiating team, try to include people who are confident in their work and skills and who are able to put their ego aside in order to find the best licence for your situation. You need a team you trust, and one that the other side will also trust.

Who is Representing the Other Party?
Before you begin negotiations, ask who will be representing the other party. Ask for their names and position titles and a brief description of their roles at the organization with whom you are negotiating. Do you understand their perspectives vis-à-vis the negotiation? Have respect for these people as this negotiation may the beginning of many more negotiations. Never assume you have the upper hand, and never underestimate the other party.

Plan, Plan…but be Flexible

Plan your negotiations – decide when, where, who and how. Setting the stage is important – even how the furniture is arranged can set the tone for the negotiations. For instance, one party sitting behind a big desk and the other party on the other side of it sets a much different tone from negotiating at a round table. Pick a place where you feel comfortable. If you feel better negotiating in your own office, choose this as the setting. If negotiations will take place in another setting, be sure to arrive fifteen minutes before your meeting. Get used to the surroundings. If you feel more comfortable with a mediator of some sort or an advisor, let the other party know this, and arrange for one.

Negotiations need not take place in person, and may be done over the telephone or via e-e-mail.

Most people prefer full concentration on the negotiation at hand. That means no phone calls, etc. That is something you may need to discuss with the other side prior to beginning negotiations, to ensure the environment is conducive to all.

Notwithstanding all of your planning, you may need to be flexible. In fact, you need to plan to be flexible! As you proceed through the negotiations, you may learn things that change your perspective. Do not let this halt your negotiations, however do ask for more time or a break so you may research any developments, or consult with others at your museum. Also, negotiating is not scientific or like a chess game – if he moves this piece, then I'll move that piece. It takes a lot of preparedness, patience, and the ability to be flexible and creative when things go differently than planned.

Try to Understand the Other Party

Know the party on the other side. This does not necessarily mean personally (although finding some common personal interests may make the negotiations friendlier). Know the individual or organization with whom you are dealing. Have some idea of its background, its financial situation, where its interests lie. Does the organization want to expand into a certain market or create a reputation in a certain area? Can you be the door that the company uses to achieve those goals? If you are, then that may be one bargaining chip right there.

Be sure that you are negotiating with the appropriate party. Negotiating with someone who has no real power in the organization or who cannot make the decisions you are asking them to make is a waste of time. Find out who the decision-makers are and talk to them.

If you are the licensee, make sure the party does indeed have ownership of the materials you want to license from them, or that they have secured permissions from other copyright owners if necessary. If you are suspicious that the content

owner may not in fact own the rights they are purporting to license to you, do not go any further. You should be comfortable that the content owner does in fact have legal authority to provide you with the rights set out in the license. A warranty clause in the licence should reflect your comfort and not your suspicion. Likewise, if you are the licensor, be upfront in offering the other party a warranty clause concerning ownership of the appropriate rights.

DURING THE NEGOCIATIONS

Listen Carefully and Actively
Take in everything during the negotiations. The opposing party could provide you with valuable information that you can use to your advantage. If you are unsure about something, ask for clarification so that there are no misunderstandings. Also, be sure that you understand exactly what it is you are hearing. Do not read something into what you are hearing and do not fill in gaps. Likewise, be careful not to miss anything that could turn out to be crucial.

Find Areas of Mutual Agreement
At the beginning of a negotiation it may seem like you are miles from a successful agreement. One positive way of beginning a negotiation is to start with the points upon which you agree. This can create a positive beginning to your discussions and create momentum to deal with more tricky areas.

Ask Open-Ended Questions
“Yes” or “no” answers tell you very little. You need information and clues as to where the negotiations are heading. Ask open-ended questions to get the other side to talk. Some individuals may be uncomfortable negotiating at all. If you are unable to get answers from the other party, perhaps changing the subject might be a good idea. For instance, if the other party is an artist, talking about the latest art exhibit might be a good way to get her or him to open up and then negotiations can proceed.

Never Assume Anything
If you are unsure about what you just heard – ask them to repeat it. If something appears to be missing, ask them why. It bears repeating – do not fill in gaps or read items into a statement that are not there. For example, if the other party says he wants to monitor how his content is used, ask for clarification on how this is to be done and what sort of time and costs are involved. It is important to think in the long term about these issues. Being clear on these points will strengthen your licence agreement by making it easier to ensure compliance to its terms once the content is in use.

Be Assertive – Not Aggressive
You have a right to expect co-operation in negotiations. You have a right to ask for items on your "want" and "need" list. But you do not have a right to bully. Aggression is not negotiation. Aggression will rarely get you anywhere – if anything it may cause the other party to walk away from the table entirely, realizing that you as a customer or partner are more trouble than you are worth. Do not be too dogmatic about your position – you are there to negotiate.

Communicate
You are there as a representative of your museum and do not have a personal stake in this negotiation. Neither does the party on the other side (usually). Do not compromise your own values and beliefs during the process. You are negotiating over a product, not a personality. Do not use doubletalk or veiled allusions in an attempt to stymie the other party. If you do have a personal stake in it, you might want a more objective person to conduct the negotiations on your behalf.

Some believe that it is not necessary to be overly vocal during negotiations. Some prefer to concentrate on listening to the other side, rather than speaking a lot. Some believe that it is best not to begin discussions but to let the other party take the lead. If you do go first, you may want to start off with a positive offer, then be prepared to change it if necessary.

Keep a Record
Taking notes during negotiations is very important, particularly when the written agreement is presented for your approval. If something is missing or misrepresented, then it is far easier to refer to your notes and bring it and them to the attention of the other party.

Also, frequently check the notes you made while preparing for the negotiations. Make sure you are on track with your goals, and needs.

Date all of your notes so that they provide a chronology of your discussions.

Keep in mind that any notes taken before, during and after negotiations are not legally binding and everything to which you agree should be clearly stated in the licence.

Body Language
If the negotiation takes place in person, watch their, and your own, body language. If on the phone, "listen" for intonations, and if by fax or e-mail, look for any helpful signs in the language used to communicate.

Clear Up Any Misunderstandings
Negotiations commence and continue under an aura of trust. Part of that trust involves keeping the other party's goodwill. It is possible that innocent misunderstandings can destroy that aura of trust and finish your negotiations before they even get off the ground. Do not let misunderstandings get in the way of negotiations. Admitting that there was a misunderstanding is not a sign of weakness. Be honest. Do not bluff unless you definitely mean it. Bluffing does have its uses but be prepared to carry through on the bluff if the other party calls it. If your negotiations include discussions of licensing terms and conditions with which you are unfamiliar, take time to consult a lawyer or colleagues.

Know When to Take a Break
Take some time during negotiations if things appear to be getting too heated. Take time if you have just been given a great deal of information to absorb. Take time if you need to consult with someone else. Ideas can come to you in the middle of negotiations for which you need approval before acting on them. The other party may toss out something on an unrelated matter that gives you some additional insight. Most importantly, **take some time to think over the deal before closing it**.

Sometimes both parties need time to get a clear mind and see the bigger picture. Sometimes it is helpful to take a break to review the points on which you do agree. This can help show each party how close you are to an actual deal. It may also remind both parties why the arrangement is a good idea, and provide momentum to finish the negotiations.

Stalemate
Sometimes it may feel like your discussions are going in circles and that you will never conclude the negotiation. If taking a break does not cure the situation, you may want to change the physical location you are in. You may also find it help to have a professional mediator assist you in the process. In more extreme situations, you may choose to change negotiators (though has its problems too!)

Know When to Walk Away
Lastly, know when to walk away – and do it. Do not be afraid to walk away from the negotiations if the negotiations are going nowhere. If you are not reaching your goals, then further negotiations are a waste of your time and theirs. Sometimes minds just cannot meet in the middle. Your time would be far better spent looking for another party with whom you may be better suited for a licensing arrangement. Now is the time to consider the alternatives to your negotiated agreement.

Who Should be at the Table?

Museum Staff as Driver of Negotiation

For museum staff, the licence negotiation process is an opportunity to determine and define what uses of the licensed content will be permissible under what terms and conditions. Even if a lawyer is negotiating a licence on your behalf, it is important for you to be involved in the negotiation process so your lawyer fully understands your needs and priorities. You do not want your lawyer to merely approach this as a legal challenge. You must keep in mind that you are the only voice or advocate for the rights of your museum.

The Role of a Lawyer

In an ideal world (or at least in the ideal world of a lawyer!), every licence agreement would be negotiated and drafted by and with the help of a lawyer. However, the reality in the museum community is that museum staff are often the ones who negotiate and even draft these agreements, and who must interpret them. Why? Because of the novelty of licence agreements, there are few lawyers who are experts in this area, and in fact, there may be more museum professionals who are experienced with these agreements than lawyers. Often, the agreements are time-sensitive, and the museum may not want to wait until their lawyer has had the opportunity to review the agreement as they want to get immediate access to the content being licensed. Lawyers can be expensive, something not every museum can afford. In addition, many institutions who do have in-house lawyers find that their lawyers can only provide general help and that the museum staff must negotiate the specifics of the licence. It is often best to use the lawyer as a sounding board and reviewer of the draft licence, while museum staff does the negotiation. Thus, there is a great need for museum staff to become more experienced in interpreting and negotiating licenses, as well as managing them.

If you do consult with a lawyer at any stage during the negotiation process, keep in mind that his or her role is to advise you on legal issues, interpretation of the licence, and contract language. In general, you should not expect your lawyer to make important business decisions which are part of your Digital Licensing Policy and strategy, and your IP Policy.

Whether or not a lawyer is helping you with the negotiations, you should request that the agreement be in layperson's language. This will certainly ensure you understand what is being negotiated, but it will also help your museum to interpret and apply the licence.

Your Art

Negotiation is an art within yourself. It will be well worth your time to increase your negotiation skills until you feel confident with them.

Chapter 5 – Sample Licensing Clauses

Jake Blues: My name is Jacob Stein. I'm from the American Federation of Music. I've been sent to see if you gentlemen are carrying your [copyright] permits.

Jake Blues is John Belushi's character in the movie The Blues' Brothers (1980), written by Dan Aykroyd and John Landis

A comprehensive licensing policy may include sample clauses and the position and policy of the museum in relation to each clause. As both licensors and licensees, the policy may set out the position of the museum vis-à-vis each clause, from both the licensor and licensee perspective. Further, suggested wording for each clause might be included in your policy.

If you are creating your museum's first licensing policy, you may find it difficult to include the museum's policy on each clause and may in fact find this task overwhelming. Since it is likely that you have already entered into some digital licensing arrangements, review these licenses and see what your museum has learned from them, and what may be useful in your policy. At first, your policy may only deal with a few clauses, but as your policy is a live document, keep updating it and including information that reflects your museum's ongoing licensing experiences.

Each Licence is Unique

Different licence agreements are written in different manners. Some are as brief as one page while others are 20 pages. Some are written in non-technical language while others are filled with legal terminology. This chapter discusses key digital licensing clauses common to many licenses. Although each licence is unique, the clauses in this chapter may serve as a valuable checklist when examining licenses you are negotiating or interpreting. You may use this checklist, for example, as an agenda of issues to explore when developing your licensing policy.

Be cautious when reviewing the clauses in this chapter. In some circumstances, you may find it difficult to compare these clauses to sample licence agreements and to agreements to which you have signed, or to which you are contemplating

signing. Licenses vary to a large degree in how they set out the terms and conditions of the licensed content. For example, one licence may have a clause dealing solely with rights, while another licence might include the rights granted under a more comprehensive clause such as one covering the licensee's obligations or restrictions on use. Before interpreting any one clause in an agreement, you must read the entire licence and see how the various terms and conditions are organized and set out. Do not be concerned if you see different terminology and headings in other licenses than those in this chapter. When reviewing licenses, look for clauses you may have to be add, omit and amend to meet your particular circumstances. In many situations, your licence may be brief and the details about the clauses may appear in an appendix attached to the licence. This is common for definitions, terms and duration and payment. Also, the order of clauses in a licence may vary from agreement to agreement.

Government Agencies

When a museum is part of a government agency, it may be required to include or exclude specific provisions in its licenses. Check this possibility with your corporate counsel. Also, you should understand that other licensors and licensees may also be required to include or exclude specific provisions in its licenses, and they may not be able to negotiate these specific items.

Sample Digital Licensing Clauses

The clauses discussed in this chapter are set out in an order that is intended to be logical in terms of reviewing an agreement from its beginning to end. You may find a different order in your licenses.

- Preamble
- Parties to the Agreement
- Definitions
- Content Covered by the Agreement
- Rights Granted/Licence
- Sub-Licenses
- Inter-Library Loan
- Fair Use/Dealing
- E-Rights
- Usage or Authorized Uses
- Usage Restrictions
- License Fee/Payment

- Licensor Obligations
- Delivery and Continuing Access to the Licensed Content
- Support and Documentation
- Licensee Obligations
- Monitoring Use
- Moral Rights
- Credits
- Territory
- Authorized Users
- Authorized Site
- Copyright Ownership
- Duration of Grant of Rights (Term of Agreement)
- Renewal
- Termination
- Perpetual Access/Archive
- Disclaimers
- Warranties
- Indemnity and Limitation of Liability

Preamble

The preamble is the introduction to your licence. The preamble sets out the purpose of the agreement, i.e., for one party to license the content of the other party. Typically, a preamble sets out identifying information about the two parties who will sign the agreement, the names of the parties, their addresses, the name or a brief description of the content being licensed, who owns the content, and who wants to license the content. It often sets out the date the agreement becomes effective; alternatively, this may be set out at the end of the agreement above the signature lines.

A preamble is not considered part of the agreement. However, it may be referred to should the licence later result in any ambiguity and require interpretation.

A preamble may also be called “Background”, “Recitals” or “Parties”, or have no title at all. Many licenses, especially shorter ones, do not have a preamble, nor is one mandatory. Many preambles begin with various “whereas” statements such as “Whereas the Publisher is the owner of the rights granted under this Licence And Whereas the Museum wishes to license these rights, It is agreed as follows...”

As discussed elsewhere in this book, it is not necessary to use such legal terminology as long as the clauses in the licence are clearly written and understandable.

If there is a preamble in your licence, it should be as concise as possible.

Parties to the Agreement

A licence must clearly set out the names of the two parties entering into the licence. Where this is not done in the Preamble, it is important that the licence, preferably at the beginning of the agreement, set out identifying information of the parties. It may also be placed in the Notices clause discussed in Chapter 6.

Identifying information includes the following:

- the legal names of the parties
- snail mail addresses (i.e., postal mailing addresses)
- e-mail addresses, telephone and fax numbers (as a convenience in order to locate the other party during or after the licence has been signed. Although this is not routinely done, it is highly advisable to have all of this information in the licence itself since much of your correspondence during and after negotiations may be via e-mail.)

The parties to the agreement are the licensor and licensee. The owner of the digital content is the licensor. The licensee is the party obtaining access to the digital information (often for internal purposes as well as for "walk-in" researchers, or the public at large.) Although many licenses use the terms Licensor and Licensee throughout the agreement, it is not necessary to use these words once the parties have been identified. You may then simply use "the Museum" and "the Publisher" or "the Content Owner", etc., or the names or abbreviations of the names of the two parties. However, reference to the legal names of the contracting parties should be included somewhere in the licence. Some museums are legal entities within themselves and may sign legal agreements whereas other museums are part of larger legal entities. If you are unsure of your legal name, consult your counsel.

It is important that both parties have the authority to enter into the agreement. Before entering into the agreement, be sure to ask the following questions: Does the owner of the digital content have authority to license it, or do they need to clear rights with another party? If you museum owns this content, make sure you have all the necessary rights in it. (This is further discussed in the warranty and indemnity sections of this chapter.) Do you have signing authority on behalf of your museum? If not, who should be signing the agreement? Make sure that the name on the licence is the one that has legal authority to enter into legal arrangements. Also, see below under Warranty and Indemnity as well as Chapter 6 under Signature.

Definitions

There are no specific standards or universal models for a licensing agreement. Basically, a good licence agreement is one that is clear to the parties who sign it, and to others who will be interpreting it and applying its terms and conditions to particular circumstances. The agreement should therefore define terms whose meaning may be unclear or which may have more than one meaning.

Terms that you should consider defining include authorized uses, authorized users, commercial use, content, licensed content, premises and territory. Note that authorized uses and users are often not defined in the definition section if they are defined in a separate clause. The basic rule of thumb is that if a word is being used other than in its ordinary dictionary meaning, then include that "special" meaning in the agreement. That meaning should be one to which both sides to the agreement agree, and may be part of your licence negotiations.

If you have more than one licence with the same party for different content, you may use different definitions in each licence as the definitions may vary vis-à-vis different content.

The definitions may be set out in a separate section, usually at the beginning of the licence, or defined throughout the licence. They may also be included in an appendix. Placing all of the definitions in a single place in the licence can make it easier as you may consult the one section when coming across various terms in the agreement

Museum as licensor: If your museum is drafting the licence, take the time to consider each term in the licence and which ones require a special definition for purposes of the licence.

Museum as licensee: When reviewing a licence offered to you, take the time to carefully review the way terms have been defined, even if at your initial glance they seem straight-forward. The way words are defined should meet your needs and expectations. The definition may affect other parts of the agreement and you always want to ensure that you are licensing content in the manner that works for you.

Content Covered by the Agreement

The clause dealing with content covered by the agreement is often called "Subject", "Subject Matter" or "Product Definition."

It is vital that your agreement is clear as to what content is being licensed. For instance, is your museum licensing the electronic version of a print publication to which you subscribe, or an electronic-only periodical? Is the content an online subscription to a journal, database encyclopedia, financial information or news feed? You may need

to define whether such content includes full text articles, abstracts, table of contents, indices, and any new or special online products, sections or services that are available online.

Keep in mind that with digital content there may be more than one type of content which must be covered by the licence. Less obvious works and underlying works that may be subject to the licence are: text, images, databases, musical and other audio works, video and film clips, computer software and the like.

If the description of the content is lengthy, some licenses include the description in an appendix attached to the licence. For instance, you could include a five page list of articles which are subject to the licence. Also, if the content is brief, for example, a single article or a single image, you may attach a copy of the image or article to the licence so it is easily identifiable.

Also, see the discussion below under Delivery and Continuing Access to the Licensed Content about a reimbursement of the license fee should content specified in the licence no longer be accessible during the duration of the licence.

Some licenses state that copyright in the content remains with the content owner. This may also be dealt with in a separate Copyright clause as discussed below.

Museum as licensor: The more specific and narrow the description of the content, the more you are protecting your copyrights. For instance, if you license all of your slide collections from 1998, then the licence will cover the use and payment in relation to all of your 1998 slides. However, if you license only the 1998 slides relating to artists A, B and C, then you still have other 1998 slides to license to the same licensee in the future.

Museum as licensee: The more general the description of the content, the greater the content to which you will have access.

Rights Granted/Licence

The grant clause or licence sets out the rights being granted to the licensee by the owner of the digital information. It states how the licensee may use the content being licensed and what uses of the content are prohibited. This clause is sometimes titled “Permission”, “Permitted Uses”, “Grant of Licence” or “Authorized Uses”.

The rights may be **non-exclusive** or **exclusive**. Non-exclusive means that the owner may grant another individual or organization the right to use the same content. For example, Publisher X may grant the right to use its content to Museum A, Museum B and Museum C. Exclusive means that the content owner may only grant permission to use the content to one party at any given time. Most digital licenses are on an non-exclusive basis.

Many grants of rights state that the licence is "non-transferable." This means that the licensee may not transfer its licence to another licensee. This is further discussed in Chapter 6 under the Transferability or Assignment clause.

The grant clause sets out the scope of rights. Rights may be set out narrowly or broadly, depending on what the parties agree upon. An example of a broad licence would be a licence to use the content in any manner whatsoever for the entire duration of copyright of the content. A narrow licence might be the inclusion of a specific chapter of a book on your museum's Web site for a sixty-day period.

There are no special rules or words for setting out these rights – what you want is a clear statement of what the parties have agreed to. Although some licenses use terms like reproduce, adapt, exhibit, transmit, broadcast, communicate by telecommunication, perform in public, etc. and other terms found in the Canadian *Copyright Act* or in various copyright statutes around the world, other licenses use wording relating to the relevant activities such as searching, retrieving and printing.

The grant of rights sets out the permitted uses. Both the licensor and licensee must ask themselves what sorts of permitted uses make sense in relation to the content in question. For example, a licensee would ask the following: What uses does it require in relation to the online content being licensed? Do you need to be able to view, reproduce, store or save copies of the electronic content, (i.e., on a hard drive or other digital information storage media)? What about the ability to search, browse, retrieve, display, download, print, forward electronically to others, e-mail to oneself, fax to oneself or to a colleague, include in a Web site, Intranet, Extranet, LAN, WAN or other closed network (or in a Web site that is password protected)? These are all things that may be addressed in your agreement.

Below is a list of rights you may see or want to consider for inclusion in your licenses. You may have a different perspective with respect to each right, depending on whether your museum is then in the capacity of a licensor, or a licensee.

Some of the terms set out below may need to be defined in the licence agreement.

In reviewing various licence agreements, rights granted or "permitted uses" often include the rights to:

- View
- Reproduce (sometimes for specific purposes)

- Store or save copies or a certain portion of the licensed content (i.e., on hard drive, floppy disk, backup tape or on any digital information storage media). This may be temporary storage in which case your agreement should state the length of permissible storage. In addition, this may include caching as discussed in the immediate section below. Although rarer, this may include permanent storage. Also, see Perpetual Access/Archive clause below.
- Search
- Browse
- Retrieve
- Display
- Download (see store and save, above)
- Print (this is generally individual articles or small portions of an electronic product.) If the licensee is printing the article or portion on its premises, the licensee may negotiate that the licence allow the licensee to charge a fee to cover costs of the printing.)
- Forward electronically to others

In addition to the rights granted set out above, there are other permitted uses that are sometimes included in the grant of rights, such as:

- E-mail to oneself
- Fax to oneself or to a colleague
- Electronic links (to allow the licensee to link to the licensed content for purposes of its researchers accessing the content.)[4]
- Caching (so the licensee can make a digital copy for purposes of efficiently providing the content to its users)
- Include in an Intranet, Extranet, LAN, WAN or other closed network (or Web site that is password protected)
- Include in a Web site (which has public access but is non-commercial in that it is for informational purposes only)
- Inter-library loan (see below)
- Index the contents
- Course packets, training materials (this may include print copies or electronic copies)
- Electronic reserve (this may be for a specific course and will usually only be for a portion of the licensed content)
- Distance learning

4 Some do not believe that permission to include a link to a site is necessary. In the U.S., out of court settled legal cases suggest that a link to the home page of a site is less likely to cause a legal problem than a deep link to an internal page of a site.

- Special uses (for example, patent or drug applications)
- Load the content onto the licensee's server
- Make back-up copies for a specific period of time

If the licensed content is a database or other compilation or collection of information, your licence may specifically state that the rights include extraction and manipulation of information from that database.

Who is entitled to these rights is further discussed under Sub-Licenses, Authorized Users, Authorized Site, Usage and Usage Restrictions, below.

Museum as licensor: Only license the rights that the licensee requires. Review the lengthy lists above, and determine what makes sense in the circumstances of each licence.

Some licenses set out the grant of rights followed by a phrase such as "and all similar uses" or "and related uses", etc. This is advantageous to a licensee as the licence may include some uses that are not specifically mentioned in the licence. It is in your best interest to explicitly state what uses are included in the licence agreement, and to explicitly state what uses are **not** included (or to state something to the effect, "all uses not specifically mentioned herein are retained by the museum.") Licenses more commonly take this latter approach. Although this is less flexible for licensees, it also helps to avoid ambiguity in the licence.

Museum as licensee: Without the proper grant of rights, your museum may not be able to do what it needs to do with the licensed content, and therefore the content is less valuable to you. Make sure the licence meets your needs and allows you to do all that your museum requires. Otherwise, you may have to make additional payments and obtain additional permissions after signing the licence.

Examine your agreement and see what uses are specifically permitted. Are some uses missing? Do you need to include some of these omitted uses/rights? What is your "normal" use of the content? How about future uses of this content, does the licence provide for this or will you have to return to the content owner for further permission? With the rights granted to you, are you able to carry on with your regular role of providing content to your staff and to researchers, and possibly the general public?

Sub-Licenses

Generally, a licence involves two types of arrangements. The first is a licence, let's say, for the use of a photograph or a database. The second is called a **sub-licence**, to allow the licensee to provide the photograph or database to its staff, researchers,

and possibly the generally public. In other words, a sub-licence is a licence a licensee gives to a third party.

Some licensees, such as libraries, are licensing content from museums, publishers and other content owners for the purpose of sub-licensing it, to its patrons and researchers. For example, a CD-ROM of Museum Z's collection may be licensed to Library X, then Library X "sub-licenses" the content on the CD-ROM to a library patron or researcher by allowing that patron or researcher to view the contents of the CD-ROM and to print copies of specific works from it.

Some sub-licenses are dealt with in a licence provision referred to as Authorized Users, and your licence may not include clauses for both of these terms. The bottom line is to ensure that whatever terminology is used, that any necessary sub-licensees are provided for in the licence, either in the Rights Granted clause or in the Authorized Users clause, or in both clauses.

Museum as licensor: Consider who will be using the content under the licence. Does it make sense to license the content to the licensee and to include a sub-licence to that licensee? Or is it more practical and/or profitable to directly license the same content separately to the licensee and any of its possible sub-licensees?

Museum as licensee: Determine all uses of the licensed content that may be made and by whom, then include these people as sub-licensees.

Inter-Library Loan

An inter-library loan ("ILL") is the lending of library materials from one library to another library. ILL is generally for print materials such as a book, periodical article (though not usually for an entire issue of a magazine), pamphlet, government document, etc. Generally, audiovisual materials like videos, and digital materials like CD-ROMs, online content, computer software, music CDs and databases are not part of an ILL.

An ILL is important in the library community because it allows patrons at one physical location of a library to borrow materials from a library at a different physical location without the need for travel.

At the time of writing this book, the inclusion of an electronic ILL in licensing agreements between publishers (and other content owners) and libraries is somewhat controversial, and agreements vary on whether to include it or not. One reason it is controversial is because traditional ILL meant that the print documents were shared with another library, then returned to the original library. This therefore may not be applicable to electronic documents, though a publisher allowing ILL may ask that the electronic document be destroyed after a certain period of time from the "borrowing" library. Also, developing digital rights management mechanisms may

help protect digital content from unauthorized uses. If you agree to an electronic ILL, it may be necessary to define ILL for purposes of your licence, i.e., in an electronic context.

The inclusion of an electronic ILL provision may exist in a variety of forms. For example, a licence may allow printing an article from an electronic database which may then be faxed to another library for ILL purposes. A licence may allow electronic ILL subject to specific and sometimes extensive record keeping which goes beyond what is normally required for print ILL. You may need to negotiate an ILL provision that best works for your museum and the library licensee who requests the ILL provision.

Museum as licensor: When you are involved with a library licensee, you may need to consider whether electronic ILL is permitted for the content licensed under your agreement. As the licensor, it is not necessary for you to automatically offer this in a licence with a library. However, if the library requests an ILL provision, your museum should have a policy on this issue.

Museum as licensee: If your resource centre is involved with ILL's, you may want to negotiate an ILL clause in your licence.

Fair Dealing

In Canada, licence agreements may limit rights that otherwise would apply under the application of the Canadian copyright law and principle of fair dealing.[5] If an agreement does not discuss fair dealing or expressly acknowledge it, then it will apply. However, the agreement may restrict fair dealing. Note that even if fair dealing is restricted, it will only be restricted in terms of the licensee, and not vis-à-vis any third party as the agreement is only valid between the parties who sign it. This is a controversial issue. Some licenses that specifically refer to Fair Dealing allow it under the licence in a manner that is consistent with the Fair Dealing provision in the Canadian *Copyright Act*.

Fair dealing exists in other countries like the United Kingdom, and the broader concept of fair use exists in the United States.

Museum as licensor: Explicitly stating that fair dealing applies may make content owners appear in a more positive light by libraries.

Museum as licensee: If you are licensing content from another country, your licence may be subject to the laws of that country. As such, it is important to understand the parameters of that country's fair dealing or fair use provision, if they have one.

5 This is not a legal opinion, and legal advice should be sought should this be an issue.

E-Rights

E-rights or electronic rights is a term that has become very popular in licensing parlance. E-rights are not, however, specifically defined in the copyright laws of most countries. E-rights would be included as part of the more general or flexible rights such as the right of reproduction which is set out in Canadian copyright law and in copyright laws around the world.

E-rights may include a large variety of rights for such things as using content in electronic books, journals, databases, CD-ROMS, DVDs, online, Internet, intranet, extranets, Web sites, and archives. As technology changes, so may the meaning of e-rights, and even the notion of such popular platforms as CD-ROMs and DVDs. If you use the term e-rights in your licence, it should be defined. For instance, will it include all electronic rights, or just Web rights, or other specific rights? Unless your licence does cover all electronic uses, which is unusual, then your licence should refer to the specific electronic uses that you require and which are set out above under Rights Granted/Licence.

Museum as licensor: Understand what is encompassed by the broad term, e-rights, and ensure that the specific necessary e-rights are defined and set out in your licence. Only license the necessary rights and retain all other e-rights to yourself (and possible for further licensing.)

Museum as licensee: A savvy licensor will only license specific rights to you. Make sure that you have all the necessary rights as it can be costly and time-consuming to return to the licensor to obtain additional rights not initially contemplated. It is best to err on the side of caution and to obtain more rights than necessary, however this should be at a reasonable fee to your museum.

Usage or Authorized Uses

Licence agreements generally specify the purpose of the use of the content for licensing and sub-licensing. This is sometimes referred to as “Authorized Uses”, “Conditions of Use” or “Purpose”. Usage may include the following:

- Personal
- Non-commercial
- Scholarly
- Research
- Scientific
- Educational
- Review or comment

- Private use or research
- Electronic reserves
- Class packages, training courses
- Internal research in the course of employment, business or profession

Some of the above concepts may need to be defined for purposes of your licence. For example, terms like non-commercial use or commercial gain may need to be defined. Does that mean that a licensee cannot charge a researcher to access the licensed content? What if the researcher is a student, as opposed to one earning $25/hour for his research?

Museum as licensor: Determine (and possibly negotiate) in what manner the content will be used and ensure that this is carefully and narrowly addressed and defined in your licence.

Museum as licensee: If you are licensing certain content for use on your Web site, such as an image for your home page, you should ensure that the licence allows this particular use. In fact, this may be a useful negotiating point. For instance, if the content owner asks for $1,000 for the use of his image on your home page and you only have a budget of $200, you may be able to pay $200 for use of the image on a page other than your home page.

Usage Restrictions

There may be certain things which the licence specifically states are not permissible under the licence, that is, things an authorized user or the licensee may not do with the licensed content. Foremost, the licensee may not share the licensed content with any unauthorized users. Other usage restrictions may include the following:

- Substantial or systematic copying. (For example, this is to prevent an entire issue or a substantial part of an individual journal from being copied, including copying one article at a time, and over time, resulting in a copy of an entire journal.)
- Transmitting content including digital or other reproductions of content other than to authorized users, (i.e., redistribution is not permissible for example by re-distribution, re-selling, or loaning.)
- Removing the content owner's copyright notice on any content.[6]
- Modifying or altering the content. (Ensure that this does not conflict with any intended use of the content. If the licensee needs to modify the licensed content, for example, for teaching purposes, the licensee should ensure that this is permitted under the licence.)

6 In the U.S., this may be an infringement of the U.S. *Digital Millennium Copyright Act*. See Chapter 3.

- Merging, value-adding or including content with any other product, service or a database, or creating a derivative work.
- Undertaking any activity that may harm the content owner's ability to sell its content.
- Using the licensed content in any commercial manner (including selling it for a fee or for a profit.)

Museum as licensor: Consider any restrictions on the licence that might ensure only authorized uses of the content are made, as well as ones that may help your ability to license the same content to others.

Museum as licensee: Ensure that any restrictions are fair and reasonable and do not interfere with your intended use of the licensed content.

License Fee/Payment

How will the licensor be compensated for use of the content? In legal terms, this is called "consideration". Consideration is an exchange of benefits to each party. The licensee receives the benefiting of using the content while the licensor receives monetary or other compensation. Although monetary compensation is the norm, other compensation may include publicity for the content owner when the content is used, or other "creative" benefits.

There are a number of issues to address in terms of compensation, especially monetary compensation. Will the licensor be paid-per-use of content (e.g., per article or per photograph), for time the content is accessed, based upon the number of sites from which the content is available, or a set fee for a specified period of time with unlimited access during that time? There are no standards for method of payment – it depends on what works for the parties involved.

In determining the appropriate fee, both content owners and licensees must be able to evaluate the value of the electronic content being licensed. As licensing electronic content is still new to most of us, this may involve some guesswork or experimentation. If you are unable to accurately determine or negotiate the value of the content being licensed, you may be able to arrange an interim deal to help you determine this value.

An issue both parties must consider is whether the agreed upon fee is inclusive, and includes all services relating to accessing the electronic products under the licence, as well as all applicable taxes. It is best to ensure that neither party is surprised about any hidden or missing costs from the license fee at a later stage.

Other factors to take into account when determining the appropriate license fee are such factors as: expected use of the content; any maintenance or training costs associated with accessing that content; preferences for formats in which the content may be accessible; whether any additional software or hardware will be necessary by the licensee in order to access the content; costs for such things as updates to the content; and future license fees for this content or archived content. Both parties need to carefully consider these factors in order to determine the appropriate license fee.

Your licence needs to address when the fee is due and payable, whether it is payable in stages, and the amount of each payment. You may also want to address the currency of the payment as well as any applicable taxes (this is also discussed in Chapter 6.) This may all affect the value and price of the content.

A further point is whether the license fee is all inclusive or are other services or products subject to an additional fee?

The licence should also address when the license fee is due. Is it due upon signing of the agreement or is it due at a later date? Or if the fee is payable in stages, and if so, what is the frequency and amount of each payment? It is common to attach these details in an appendix to the agreement.

Museum as licensor: Some factors that the content owner may take into account when putting a price tag on its content are the following: the cost, if any, of converting print materials to digital format; the cost of maintaining the electronic content or database, including updating the information and servicing and maintaining any necessary hardware; design costs and packaging; costs of developing and maintaining software to access digital content; the expected volume of usage of the content, if the licensor is providing online access; the intrinsic value of the content itself (e.g., financial, cultural, aesthetic); the medium in which the content is supplied (CD-ROM, digital tape, floppy disk, on-line access to remote server); expectations as to future need for and value of information; the ability to substitute the digital format for hard copies of the content with attendant savings in storage and staff; increased ability to search and maintain digital information; and the content owner's savings if the print version is no longer produced or distributed."[7]

Museum as licensee: Licensees have to consider their budget for any product and how flexible this budget may be. For instance, if your museum is able to license an online journal subscription for $5,000 for use by your staff and museum members, can your museum afford an additional $1,000 to ensure that all members of the public may equally access the content? In many situations, licenses allow for flexibility in terms and conditions and such terms and conditions are balanced against payment for using that content.

7 This list is from the library's perspective as found at the Yale University Library LibLicense site at: *http://www.library.yale.edu/~llicense/paygen.shtml*.

Pricing Models

Payment methods vary from licence to licence. You must look at all of your particular circumstances to determine which payment method or which combination of them makes the most sense for any particular licence. If you are licensing a single photograph, you will likely have a short and uncomplicated licence and pricing structure. However, if the content in question is an online database or CD-ROM, for instance, you may have to consider more complicated pricing models. There are numerous pricing models from which content owners and licensees may choose. In some situations, the content owner may offer more than one model to choose from. In other situations, the content owner only has one pricing model to offer the licensee. In some circumstances, the content owner may be open to the licensee's suggestions in terms of a new and creative pricing model.

Discussions in setting fees for licensing content like electronic databases and online journals often focus on: a) subscription fees for limited or unlimited use; and b) pay-per-use. Even within these two models, there are many, many variations, some of which are included below:

Pay-per-use models:

- A set fee for each log-on to the online content
- A set fee for each search of the online content
- A set fee for each download of an item such as an article or photograph. (Is this a print-out or electronic download? This would need to be defined in the agreement.)
- A fee per length of online time
- A fee per search

Subscription models:

- Subscription fees (annual, quarterly, monthly or otherwise) for unlimited use (i.e., allowing concurrent/simultaneous use for any quantity of content) (The number of concurrent users may need to be defined (e.g., allowing 5 users to access the content at the same time)
- Subscription fees for limited use
  - Based on a set number of users, or size of institution
  - Based on the number of pages downloaded
  - Based on the number of workstations/computers on the premises of the licensee (i.e., no remote access. If there is more than one physical location of a licensee, this would need to be addressed in the licence)

Any model that the content owner and licensee agree upon is feasible. Other models include:

- Initial fees for installation of software and any special hardware and no subsequent fees (though no fee for software seems to be the norm.)
- Cost of print journal plus a percent for electronic access (where for instance the licensee is already licensing a print journal), and the variation: cost of print journal plus a set fee for online access based on number of work stations on the premises of the licensee
- No fee for using a limited amount of the data as a "teaser/promotional" tool in order to encourage subscriptions for the entire database
- No fee for "looking" and only a fee for downloading, or for printing (and can charge at a variety of rates for either or both)
- Fee for unlimited Intranet use
- Fee for "value-added" licensees; different fee for those who do not enhance the content

Each model has its advantages and disadvantages. Below, two models are selected followed by discussion of its benefits and weaknesses. It may be helpful for you to go through a similar analysis to determine what may make sense for you in your circumstance.

Subscription fees (annual) for unlimited use (i.e., allowing concurrent/simultaneous use for any quantity of permitted uses)

Advantages: This model allows for less administration as there is one set payment per payment period (year.) It may be easier for licensees to budget this set amount. Less record-keeping and monitoring are required to determine, for instance, how many pages are downloaded by a licensee.

Disadvantages: This model makes it difficult for the content owner to determine the value of its content since it may not have actual knowledge of statistics concerning use of electronic content (though record-keeping could be built into it.) It may not be ideal in the initial stages of licensing content though it may be preferable after benefiting from statistical information. Also, it may be harder to monitor who is accessing the content and whether they are covered by the licence.

Subscription fees for limited use (i.e., for a set number of users or number of page downloads)

Advantages: More accurate for content owners and licensees to determine the value of the content by knowing how much is being downloaded. The content owner may be required to provide a simple means for automatically recording searches of licensed contents; some licensees may insist that this means be the licensor's responsibility.

Disadvantages: Licensees may not always have the amount of access required to meet their demands. There is a burden on licensees to keep records (and on the licensor to ensure record-keeping is accurate.) There are burdens in both terms of administration and costs. Licensees will need to set up some sort of workstation registration or authentication to ensure only authorized users are accessing the content. Alternatively, the licensor may have to ensure only certain IP (Internet Protocol) addresses have access to the content.

Licensor Obligations

This clause sets out what the licensor is obliged to do under the agreement. The licensor's key obligation is to provide the content. Some licenses merely state this obligation. Some licenses incorporate these obligations into other clauses in the licence. Additional issues which would be helpful to include in your licence are the following:

- In what format will the information be provided? (i.e., CD-ROM, DVD, digital tape or other physical form, or online via the licensor's server, or through a net work, or by a file transfer such as FTP (File Transfer Protocol).
- If the content is in a CD-ROM, are there warranties that it will be in working order and free of defects?
- If the content is accessed through the content owner's server, what about server problems? Does the licensor agree to take adequate steps to ensure service interruptions are as infrequent as possible? Will there be back-up servers? Can the hardware handle a minimum number of simultaneous users? Does the licence specify the quantity of downtime which is unacceptable? Does the licence state that the subscription fees will be adjusted or rebates given if there are frequent service interruptions?
- However the content is accessed, will the content owner provide technical support? (Also, see below under the clause Support and Documentation).
- How often will the content be updated? Monthly? Weekly?
- Will the licensee be notified of changes to content? If so, how will the licensee be notified?

It is important that your agreement addresses in what format the content will be supplied to the licensee, when it will be supplied and what technical or other support is available in the event that there is a problem accessing the content. It is generally not possible to ask for totally uninterrupted access when accessing content from the licensor's server, however it is fair to ask for reasonable efforts from the content owner and specify that a certain amount of interruptions results in a rebate of fees to the licensee. If possible, it is helpful that the licensee is notified before downtime for service or updates, routine servicing of the server be done during off-peak hours, and explanations and/or notices are sent to the licensee as soon as possible for downtime.

Museum as licensor: The licensor should carefully consider all obligations it undertakes. Although you want to provide good service as well as valuable content, be reasonable and only agree to what your own budget and staff allows you to provide. If the licensee requires additional content or service than you are offering them, you may be able to negotiate an extra fee in order to provide such content or service to them.

Museum as licensee: Ensure that the licensor's obligations allow you continuous access to the licensed content, and includes safeguards that downtime will be limited. Are you being offering sufficient content and service to allow you reasonable access and use of the content?

Delivery and Continuing Access to the Licensed Content

The licensor needs to provide valuable information to the licensee about the history of the content being licensed, how often it is updated, added to, and detracted from. In order for the licensee to have maximum benefit from the licensed content, the licence should include a date of delivery of the content or when the licensee may access the content itself, the frequency (assuming the content is changing, being updated, etc.), and the format.

Before signing an agreement, the licensee should sample the content. This will ensure its technology is compatible with the licensee's hardware and software, and that the content is in a format and media that the licensee and its sub-licensees may easily access. If it is not compatible, then you need to work towards remedying this prior to the effective date of the licence. Generally, if the content is not available on time, the content owner will have a specific amount of time, let's say 30 days, to remedy this situation. (This is addressed under the clause pertaining to Termination, below.) This clause may also discuss other technological details of accessing the content.

If the licence is for electronic content that is also available in print form, the licence may include a clause stating which format will be available first, and the time difference between the two formats.

Another issue sometimes addressed is the situation of the content owner discontinuing availability of some of the content being licensed. Where specified content is no longer available during the duration of the licence, the licence might state that the licensee is entitled to a proportionate amount of its fee to be reimbursed. This may be more exact and state something to the effect that if more than 10 percent of the content is no longer available, then the licensee is entitled to a 10 percent reimbursement of fees paid and/or payable.

Museum as licensor: The licensor has the obligation to provide (reasonable) continued access to the licensed content. If the content is not available, the museum must find solutions to remedy the solution and to offer these in advance to the licensee.

Museum as licensee: Specifics as to the delivery of the content will secure maximum use of the content by the licensee. Look at your particular circumstances. How often is this content licensed and by whom? What are the harms and problems if the content is no longer available, or not available for certain periods of time?

Support and Documentation

It is helpful for a licence to include specifics about support and assistance for an electronic product. This may be for free or for a fee. This may be limited or unlimited support.

Support may include a telephone support HelpDesk (and the licence should state the telephone number and if it is toll-free), online help either through a searchable list of questions and answers on the content owner's Web site, and/or real time online support in which you may e-mail a support person. Further, your licence may address the hours of operation of support (e.g., 24/7 or during business hours EST), and the amount of waiting time to obtain support, i.e., through a telephone or in response to an e-mail). In some situations, sub-licensees may also need access to support.

Documentation in the form of a user's manual may also be helpful in efficiently using the licensed content. Some content owners may provide on-going documentation such as a print or e-mail newsletter.

Museum as licensor: Providing some support may be necessary in order for the content to be fully and continuously accessible by the licensee. What is reasonable and at what fee? It would be great to provide unlimited resources, but you must look into your own budget and staff demands to see what is fair for you, and still profitable in terms of licensing the content.

Museum as licensee: Ensure that you have sufficient support or documentation – either for free or for a reasonable fee – to access the licensed content in the necessary manner. Although unlimited support is ideal, if the content owner does not provide you with this, try to negotiate some free support, another level of low cost support, and perhaps a yearly support plan for an annual fee or per enquiry.

Licensee Obligations

Users of content have certain obligations towards owners of content. A licensee's main obligation is to use the content according to the terms and conditions set out in the licence. The content owner may want to place specific restrictions on how its content may be used by the licensee. Here are some examples of licensee obligations you may see in a licence:

- The licensee will notify its authorized users about the terms and conditions of the licence including any limitations on the use of the licensed content.
- The licensee will only use the content in the manner set out in the licence and will not otherwise use that content in a copyright manner without prior permission from the content owner.
- The licensee will monitor illegal uses of the content. (Generally the licensee should not be obligated to police illegal uses, but perhaps to inform the licensor of any illegal uses that it may spot.)
- The licensee agrees to cooperate in the implementation of any security and control procedures relating to accessing the licensed content. (For example, issuing passwords to Authorized Users.)
- The licensee must keep statistics regarding the usage of the content. (See below under the clause Monitoring Use.)

Because of the ease of copying and distributing electronic content, content owners are concerned about uses beyond its control and try to protect themselves as much as possible. This is because once content is accessed by a third party, the content owner has no contractual remedies against unauthorized uses against that third party (because the licence is between the licensor and licensee and cannot be enforced against the third party.) However, the content owner may have other remedies under the copyright laws of the country where the content is being used.[8] Practically speaking, a content owner does not want to be in the position of having to enforce its rights against individual users of its content. Does this mean that licence agreements should obligate licensees to be responsible for the uses by sub-licensees? Many argue that this is an unreasonable request and burden to put upon a licensee.

8 This is according to international copyright law principles, primarily the Berne Convention (*http://www.wipo.int*.) You apply the copyright laws of the country in which the alleged unauthorized use takes place.

A compromise is for the licensee to be responsible for acts that are within its direct control or within "reasonable" control. However, a licensee may argue that it is impossible to monitor even authorized users and may request that their obligations be met if they do certain things (see suggested safeguards below.) One possibility is that a licensee's responsibility be so far as to inform its own legal counsel or the content owner if the it sees anything that may appear to be an infringement, and that it co-operate with the content owner to stop further infringements. A licensee should not be in the position of interpreting copyright law and determining what uses may constitute an infringement of copyright.

Some safeguards may be employed by licensees to help prevent patrons from infringement of copyright and these may be included in a licence. These safeguards may obligate licensees to do certain things such as:

- Each reproduced article state the content owner's name and e-mail address with a copyright notice/warning (as agreed upon).
- Wherever and whenever access to the licensed content is made available, researchers and others should be explicitly warned about copyright law and licence agreements. For example, a copyright notice should be posted near a computer terminal. Where access is remote, a copyright notice should appear prior to granting access to the content. The wording of such a notice would be agreed upon in advance by the content owner and the licensee.
- The licensee should have information on copyright law and licence agreements easily accessible to staff, researchers, and the general public, for instance, via their own Web site, as a listing of links to other Web sites, or on a shelf in their resource centre.

In addition, it is important that all curators and museum staff are made fully aware of the licence terms and conditions and may easily access them should it be necessary to clarify which conditions apply to which licence and content. (See the section on Managing Multiple Licenses in Chapter 7.)

Museum as licensor: As a content owner, you want to ensure that only authorized persons access the licensed content. However, you must also be sensitive to the practicalities of monitoring the use of licensed content. Be sure to include some safeguards to help prevent infringement of copyright in your licensed content.

Museum as licensee: Your obligations should be reasonable and not overly burdensome; for the most part they should comply with the current day-to-day operations of your museum.

Monitoring Use

The licensor may require the licensee to take security precautions, such as requiring passwords for use of the licensed content, in order to ensure that the content is used under the terms and conditions set out in the licence. They may also want the licensee to track usage of their content. Although it is not unreasonable to take security precautions, a licensee should not guarantee to the licensor that it can prevent all unauthorized use of the content. This is something that a licensee cannot prevent no matter how effective its security precautions. It is acceptable to agree to have security precautions in place, as discussed in the above section, but a licensee should not promise to prevent all unauthorized use of the licensor's content.

In certain circumstances, the licensor may want the licensee to track usage of the licensed content – who is using the content, and how often it is being used. Tracking usage may raise the question of privacy, especially for uses by non-employees of the licensee such as "outside" researchers. Monitoring how and when researchers are using licensed content may be an invasion of their privacy. It also requires staff time and equipment, such as software and even hardware to conduct this monitoring. Before a licensee agrees to track usage, it must think about the privacy of its researchers and the other costs involved. If a licensee agrees to track usage, it is a good idea to inform its researchers about this practice.

Museum as licensor: Before requesting a licensee to monitor use of the licensed content, make sure that it is essential or at least very important to the licensing of the content. Why do you want the licensee to monitor the use of the content? Would it be considered an invasion of privacy of those accessing the content? Are there alternative ways to achieve the same goals (for instance, could you "blindly" keep track of usage without specific identification of users of the content)?

Museum as licensee: Take great caution in agreeing to monitor any use of the licensed content. Ensure that your museum has safeguards if you are required to do so.

Moral Rights

What are moral rights? Moral rights protect the reputation of the author of a work and not necessarily the owner of a work. For instance, a painter would be protected by moral rights if someone modified the painting by adding a moustache to the face of one of the persons in the painting, provided this would harm the reputation of the painter. Moral rights also ensure that the author has his or her name associated with the work, may use a pseudonym, or remain anonymous.

Moral rights is one of those lesser known areas of copyright law which is gaining exposure with global licensing, i.e., the licensing of content on the Internet. Although moral rights exist in many countries, moral rights protection varies from

country to country. For instance, in the European Union countries, there are strong and perpetual moral rights provisions in their copyright statutes. In the U.S., the moral rights are much more limited. In Canada and the U.K., the moral rights are fairly strong but are lessened by the fact that they may be waived by the authors of copyright works and that they expire when the duration of copyright expires.

Depending on the nature of the content and how it is being used, your licence may need to address the issue of moral rights. In general, most online subscription or database agreements do not include a clause dealing with moral rights. However, if a licensee is specifically including content (like a photograph or video clip), on its Web site, then you may need to address this issue.

Museum as licensor: In Canada, moral rights belong to the author or creator of a work, even in an employment situation where the employer owns the copyright. As such, a museum is unable to waive moral rights in its licenses. If a licensee requires a waiver of the moral rights, the museum must obtain a waiver from the author of the work in question, a waiver that may also benefit the licensee.

Museum as licensee: If your museum is using an individual person's content on your Web site, you may want to obtain a waiver of moral rights at least in those countries where a waiver is permissible (and be sure to word it this way so that you do not have to name specific countries where a waiver is permitted.)

Credits

The licence may specifically state how any licensed content will include the content owner's name and copyright notice. Generally, the content owner will want its name, the copyright symbol and year of publication on the licensed content. This way, anyone who has access to the content through the licensee is made aware that the content is protected by copyright and the name of the owner of the copyright. Some licenses go further and state where the notice will be placed and the size of the notice.[9]

Related to Credits may be the issue of content owners listing licensees on their Web site. For instance, Publisher X may list Museum C as a licensee. If the content owner wishes to do this, he should have permission from the licensee. For various reasons, this is something to which a licensee may not wish to agree.

Museum as licensor: Determine your reasons for licensing your content. Are you licensing it primarily for financial gain, or also for promoting your museum? If the latter, then credits are extremely important and you must consider the best way to promote your museum (e.g., by including a URL or otherwise), without interfering with the licensee's use of the licensed content.

9 Omitting or removing such copyright management information may be an infringement of the U.S. *Digital Millennium Copyright Act*. See Chapter 3.

Museum as licensee: Ensure that the credits are not in a position or in a size that interferes with the enjoyment of the content.

Territory

Territory refers to the geographic boundary of the licence. For example, content may be licensed for use only in a specific state or province, or a country, or sometimes the licence may refer to North America. Global or worldwide rights are the norm for online products as it is difficult and not always feasible to distinguish territories on the Internet, however stand-alone products such as CD-ROMs or DVDs may be licensed by specific territories. If a licensee is based in Canada and it has people accessing the licensed content from outside of Canada, you will need to address this in your licence. See further discussion on this issue in the clause Authorized Users and Authorized Site. In fact, you may not need a specific clause for Territory if these other clauses address the same issues. Sometimes territory is defined in the Definitions section of the licence.

Museum as licensor: Only license the territories which are necessary for the licensee's use of the content. For instance, only license use in Ontario, or only in English speaking countries, or only in Canada. Do not license worldwide rights unless it is necessary, for example, when content is being placed on the Web. For a CD-ROM, for example, you could limit the use of the content to Canada or otherwise.

Museum as licensee: Worldwide rights will cost your museum much more than narrow rights such as Canadian rights, so you may be able to negotiate a lower payment if you can narrow the territories for the rights you want to license. However, keep in mind that online uses generally entail worldwide access and use.

Authorized Users

It is important to determine in your licence who is authorized to use the licensed content. How will authorized users be defined? Will all staff be excluded? What about non-staff of the licensee? What about the public; will they be authorized to use the content?

The content owner may want to limit who may access the content and where (see Authorized Site below.) It is important to ensure that this part of the agreement is broad enough to serve all of your staff, and the public if necessary.

Many agreements use the term "authorized user" to refer to a sub-licensee such as a researcher or the general public.

Some authorized users you may want in your agreement include:

- Employees or staff
- Consultants/independent contractors
- Affiliated researchers
- Specific “registered” persons
- Members of the licensee organization (e.g., museum members)
- Students (part and full time)
- The public. The public would include persons not specifically affiliated with the licensee and who are not physically present on a day-to-day basis at the licensee, and are often referred to as “walk-ins”.

In an academic setting, an authorized user may include: employees, faculty or department members (permanent, temporary, contract and visiting), staff, consultants, and students (part and full time) associated with the school, and authorized patrons of the school’s library – this could be for in-library or on-the-premises uses as opposed to remote access. Alumni are generally not automatically included as authorized users in an academic library setting; this is something the licensee may wish to negotiate if necessary. In some situations, students enrolled in a specific course may be specified as an authorized user group.

An important issue to consider is whether the public may be an authorized user (if so, this may be reflected in the license fee.)

Another consideration is whether the group of authorized users is defined geographically, for instance, all faculty on campus X. If the licensee has more than one physical location, you may want to consider a multi-branch licence so whatever people at the main location may access, people at other locations have the same access. University libraries want to ensure that all of their campuses are covered by any licence agreements. In some situations, licensees may need to access the licensed content from other countries. If this applies to you, make sure your licence allows this and is not limited, for instance, to physical locations in Canada. Also, see discussed below on Authorized Site.

How will authorized users gain access to the licensed content? Various methods include authenticating users by their Internet Protocol (“IP”) address, through passwords, electronic keys, or other protocols agreed upon between the content owner and licensee.

Also, see discussion above on Sub-Licenses.

Museum as licensor: Be aware of all of the locations of a particular licensee. If the licensee is headquartered in Regina, does it have other physical locations in other provinces, or perhaps in other countries? If there is only one physical location, or perhaps no physical location at all but merely a virtual existence, how is this covered by the licence? Your museum needs to be aware of who is accessing the content and from where, in order to ensure that the licence and license fee is reasonable and makes sense for them in the circumstance.

Museum as licensee: Determine and set out who will be using the licensed content. Define this as broadly as possible in order to ensure that any relevant persons are included and you do not have to obtain further permission in the future from the content owner for other users.

Authorized Site

It is important to specify from where the authorized users may access the content. Generally, this relates to two places, on-site (i.e., on the premises of the licensee), or remotely (i.e., from a home or office or while travelling or living in a different city, state or country.) On-site access may be easier to control and content owners may be better able to ensure some degree of compliance with the licence agreement. However, licensees often require remote access, depending on how its staff and the public access and use its facilities and network. For instance, if a licensee provides proxy server access to authorized users, this access will be available from anywhere in the world. If this applies to your licensee's situation, it will have to be addressed in your licence. If the licensee is an institution where many of the staff travel and access content from outside Canada, ensure that the licence allows for access by them. In fact, a licence that is non-site specific may be preferable. More simply, if the users of the licensed content need to access that content at home or from their offices, this should be expressly permitted in the licence.

In addition, your licence may need to set out whether access will be permitted from a single computer, or from a network with a specified number of simultaneous/ concurrent users, or perhaps an unlimited amount of users.

You will need to be specific in the licence about who are authorized users and authorized site access. Never assume that users or sites are included under the licence.

Museum as licensor: Carefully review who will be accessing the licensed content and from where they will access it. Are you comfortable with this? Does the licence adequately compensate you for all of the uses and users?

Museum as licensee: Ensure that any access limitations allow for the reasonable use of the content by your museum and possibly the public, and contemplate any off-site access that you may need in your licence.

Copyright Ownership

Often the licence will state who is the copyright owner in the print content, if any, and in any electronic content. Some licenses might state something to the effect that copyright remains with the content owner and that the licensee has the right to use the content (without transfer of copyright ownership) under the terms and conditions of the licence. As discussed in Chapter 3, this is a licence or mere permission to use copyright work and not an assignment or transfer of those rights.

Also, the licence should ensure that the content owner does in fact have the rights in the content that it is licensing to the licensee. This does not necessarily mean ownership rights, as long as the licensor has the rights to license the content. This is further discussed below under Warranties and Indemnity, and under Limitation of Liability.

Museum as licensor: You can only license content to which you own the rights, or have the authority to license to others. Always check to ensure that you own the rights, for instance, for works in your collections and works prepared by freelancers. By owning the physical work or paying a freelancer to perform work for you, your museum does not automatically own the copyright in those works.

Museum as licensee: Throughout the licensing process, keep in mind that you are licensing the content and not obtaining any assignment or permanent rights in it. You do not need to own copyright in that content in order to access and use it under the terms and conditions of your licence.

Duration of Grant of Rights (Term of Agreement)

Duration or term of agreement relates to the period of time in which the licence persists, or in which the content owner provides access to its content. The licence may only be cancelled before the end of the term if there is a fundamental breach of the agreement, or if a provision in the agreement allows for early termination upon the happening of a certain event.

The duration may be based on a specific length of time (for example, from January 1, 2004 to December 31, 2004, or for one year from the signing of the licence), or it may be based upon the payment of each yearly subscription fee. Educational institutions may prefer that the licence cover the school year as opposed to the calendar year or another designation of time. It is important to specify how long the agreement continues. The agreement can specify a certain date on which it will terminate or a certain length of time for which it will continue. It is also possible that the agreement renew automatically under the same conditions and terms, by inserting a renewal clause in the agreement (see Renewal, below.) This would be provided both parties to the agreement are satisfied with it and would like it to automatically renew.

The agreement should address how and when the agreement can be terminated. You can include the right to terminate the agreement for serious violations of the terms and conditions in the agreement, and/or include termination of the agreement for any reason, provided notice is given to the other party. Automatic termination is another option, whereby you set forth in the agreement what events automatically end the agreement. Examples include default in payment, bankruptcy or material breach for invoking automatic termination of the agreement.

Museum as licensor: The content owner usually initially suggests the length of time for the licence. When dealing with a new licensee or if you are uncertain about other terms or conditions of the licence and what would be most appropriate in the circumstances, a short duration may be preferable. That way, you can determine during the length of that licence what terms and conditions make sense for future licenses.

Museum as licensee: By agreeing to a shorter duration of the grant of rights, you may lower the license fee for use of the content.

Renewal

At the end of the time specified in the contract the contract ends, unless it allows for automatic renewal. You may request a specified period of time of notification should the renewal be a new price so the licensee has time to evaluate that price and determine whether its budget allows for it. For instance, you may request a clause stating that 60 or 90 days notice prior to the termination of the agreement must be given by the licensor to the licensee in order to allow time for the licensee to examine and consider any price increases.

An automatic renewal clause is very inviting in many circumstances as it means that if both parties are happy with the agreement, then it will continue and thus you do not need to renegotiate the licence. If either party is unhappy with the licence, then either party may terminate or initiate to renegotiate the licence. However, licensees should keep in mind that if you do nothing, then the agreement will generally automatically renew.

Automatic renewal may occur upon certain things happening like the payment of a yearly fee, or an increased fee from the previous year. If there is an increased fee, a licensee should ensure at the time of signing the original agreement that the amount is reasonable and within its budget. Alternatively, an agreement based, for example, on a two year period, could automatically renew for another two years unless one party notifies the other party within a certain amount of days prior to expiration of the agreement.

If there is an automatic renewal clause in your licence, both the licensor and the licensee should have the right to terminate the agreement and to halt the automatic renewal; this right should not just benefit one party. It is also helpful if the content owner is obligated to notify the licensee that the automatic renewal is about to occur unless the licensee otherwise notifies the content owner. However, many content owners would not agree to include this last clause. Thus, the managing of multiple licenses by licensees becomes even more important so that a licence does not continue in automatic licensing arrangements without being of aware of doing so.

Where automatic renewal is not included in the licence, a licensee may ask the content owner to notify the licensee several weeks prior to the termination of the licence so that it may renew. Although a content owner may resist including this in a licence, it is in their best interests to undertake this task to ensure continuing the licence. Some content owners resist sending out such notices if they have many licenses with various licensees as it can be an increased administrative burden for them.

Without an automatic renewal clause, the licence may only be renewed through a new licence agreement signed by both parties.

Museum as licensor: An automatic renewal clause can save the licensor administrative costs as well as negotiate time and expense. However, ensure that it is properly worded to reflect any increased fees in the subsequent renewals.

Museum as licensee: Consider an automatic renewal clause that allows your museum to continue a satisfying licensing arrangement. Make sure your museum keeps a careful record that the licence will automatically renew unless you notify the content owner in advance.

Termination

The licence will terminate or end when the duration of the licence expires provided there is no automatic renewal of the licence.

Generally, the termination clause allows either party to terminate the agreement for a substantial or material breach of the licence. For example, a breach would be where access to the content is no longer available or payment by the licensee has not been made. Terminating the licence must usually be done in writing. Either party should be able to terminate the licence for a fundamental breach.

It is important that the licence does not expire early due to problematic uses of the content by parties who did not sign the licence. Although the licensee may take reasonable steps to inform the public of the authorized uses of the content, it should not agree to early termination of the licence should this be a problem.

In some situations, a licence will end before the expiry of the agreement if there is a fundamental breach of it, that is, one party does not live up to its obligations. Even in those circumstances, an agreement may provide for a period of, let's say, 30 days, for the defaulting party to remedy the situation and to avoid the termination of the agreement. This also ensures that a licensee does not suddenly lose its access. Most content owners would only agree to such a clause if the licensee continues to observe the other clauses set out in the agreement relating to such things as usage, modifications and security.

A content owner should not be able to terminate the licence because it has changed the content being licensed. The content should be available as it is described in the licence throughout the duration of the agreement. Occasionally, there may be events beyond the licensor's control such as lost of a content or database supplier which could trigger such a clause.

A licensee may want to ensure that should early termination occur due to a breach by the content owner, that the licensee receives a pro rata refund that it has paid for access to that content. Upon early termination, the licensor may request that the content be returned (if feasible), or destroyed.

There might be specific provision in the agreement that allow for an earlier termination, for example, upon insolvency, or if one party gives notice to the other party.

Museum as licensor: Although you want to ensure that a licensee properly uses the licensed content, in certain circumstances, you may want to give them leeway to correct unauthorized uses. Try to be fair and reasonable, while being protective of your content.

Museum as licensee: If your licence terminates prior to the duration set out in the licence, ensure that you are entitled to a refund of your license fees for that period of early termination.

Perpetual Access/Archive

One of the more unsettling issues in relation to licensing digital content is perpetual or on-going access to the content after the expiration of the licence. This is especially true for libraries, museums and others who are "memory institutions" as they are used to permanently having "content." A digital copy of certain content like an online journal or database, with use for a limited period of time is a novel concept and often presents a problem for these memory institutions. Whether you are a licensor or licensee of digital content, perpetual access is an issue that will arise in some of your licensing arrangements.

Different agreements deal with perpetual access in different manners. Some licenses do not address this issue at all. Some mention that the content owner will provide continuing access at its discretion. Some provide access to the licensed content "for as long as is practicable", or may supply the archival content on a CD-ROM or on a DVD. Another route is to provide continuous access to any licensed content under the terms and conditions of the original licence.

Depending on what you negotiate, the licensee should keep in mind that there will be a cost to keep its own archives of electronic content. There may be an initial cost of creating the archive and backing-up the content. There may also be the cost of "renewing data", that is, keeping it in a current and accessible format, constantly upgrading it to keep up with technological change, which may be relatively expensive. In fact, making a print copy on acid free paper may prove more economical than an electronic archive, and may meet a licensee's collections needs. Again, if this is something contemplated by a licensee, ensure that permission is provided in your licence.

Museum as licensor: As this is a controversial and difficult matter, it is often best if the licensor does not raise it. However, if the licensee raises it as a discussion point, then the licensor respond to it. Although the licensor will search and possibly offer creative solutions, it must take into account any expenses and administration to provide perpetual access and determine whether this is reasonable or feasible in light of the full circumstances of the licence itself.

Museum as licensee: Discuss with the content owner if and how they may provide on-going access to previously licensed content ("previously" refers to content paid for but for which the licence has expired.)

Disclaimers

The content owner may include certain disclaimers, for example, that it does not warrant that the content will be accessible in any particular hardware or via any particular computer software. The content owner may also express that it does not warrant the accuracy or completeness of any information contained in the content, or its merchantability or fitness for a particular purpose. Generally, the content owner (other than individual content owners) will make all reasonable efforts to ensure its server is available on a 24/7 basis, excluding normal network administration and system down time and will limit its liability to restoring access. Some disclaimer clauses will limit the licensor's liability to no more than the license fee paid – this is something you may wish to discuss with your institution's attorney. Certain publicly funded institutions (for instance, in the United States) are not permitted to sign agreements with a limitation of liability and this may affect your licence.

Museum as licensor: It is important to offer the licensee and provide it with the licensed content on a 24/7 basis. However, certain circumstances may prevent you from doing so. Try to minimize the limitations on access to the content.

Museum as licensee: Ensure that the licensor is not disclaiming or limiting its liability to such an extent that the museum is losing necessary protection under the licence.

Warranties

Warranties are promises that either party makes to the other one in the agreement. For example, the licensor may warrant that it has not infringed the intellectual property rights or other rights of a third party when providing the licensee with the content. The licensor may also warrant that he has the authority to enter into the contract and to license the content does not conflict with any other licenses entered into by the content owner. If any of the warranties are untrue, then the licensor making the warranty may be subject to certain "penalties" or indemnities, as discussed below. Often, the warranties and indemnity are set out in the same paragraph in the licence.

In general, a licensee wants a warranty that the content owner is the owner of the electronic works being licensed and/or has the rights to license them. Otherwise, the licensee could be paying a license fee to the inappropriate party and may have to pay an additional fee or encounter a copyright infringement suit from the rights holder. Make sure that the warranty is straightforward and non-ambiguous. This warranty should endure for at least the duration of the licence so that the licensor has the right to license the content throughout the duration of the licence.

Although it is not frequently seen, it may be helpful to include a clause that the content owner warrants that it will continue to have the rights being licensed throughout the duration, and any renewals, of the licence agreement.

Museum as licensor: Always start with the assurance to the licensee that you have the rights to license the content in question. And, of course, make sure you do have these rights! By owning the physical property, you do not necessarily own the copyright in it. This may be relevant to art works donated to museums. Also, works created by freelancers and consultants are **not** owned by the museum unless an assignment has specifically transferred the copyright in them to the museum. In some circumstances, you may not own copyright but you may have the right to license the content in question.

Museum as licensee: Ensure that the content owner has all the necessary rights to license the content to you and that there are no substantial limitations on these rights. Wording like "to the best of the licensor's knowledge" is not acceptable. If the licensor cannot guarantee they can license the content to you, seek a licensor who can.

Indemnity and Limitation of Liability

Often warranties and indemnities are coupled. Whereas the warranty "guarantees" the rights, the indemnity provides for financial compensation should the warranty be false.

An indemnity clause states that the licensor must pay the cost of any legal expenses and other claims that arise from breaching the warranties in the agreement. If there is any infringement of rights by the content owner, the indemnity would say something to the effect that the content owner will indemnify the licensee against "all loss, damage, award, penalties, injuries, costs, claims and expenses, including reasonable attorney fees, arising out of any actual or alleged infringement." A content owner would prefer a clause where the indemnity is limited to any actual infringement as opposed to including any alleged infringements. More generally, a limitation of liability clause sets out how much and what kind of damages the licensor will pay for. The licensor will want to limit its liability by restricting the amount of damages and excluding certain kinds of damages and harms. Many public institutions (for example, in the U.S.) may not accept certain limitations of liability in the indemnity and you may need to check your institution's position on this.

An indemnity is only as useful as the pocketbook of the content owner. In other words, if the content owner cannot pay the amounts set out in the indemnity, then the indemnity becomes useless. As a licensee, you may wish to investigate the financial viability of the content owner when considering licensing content from them and determine what sort of indemnity clause makes sense for you in the circumstances.

It is easy to go overboard when asking for warranties and indemnities. It is not reasonable for either party to ask for, or to provide, an ironclad warranty-indemnity that is not critical to the licensing, and necessary use, of the licensed content.

Museum as licensor: Although you want to provide some sort of indemnity, make sure that it is reasonable and against any actual and real damages. Try to restrict the amount of damages and exclude any damages that are not directly related to an infringement of the warranties you have given in the licence.

Museum as licensee: Your licence should include an indemnity that is strong enough to back up its warranties and to ensure that you are compensated should you run into certain legal or other problems. However, the indemnity clause is only as useful as the financial viability of the content owner. As such, caution should be taken in relying on the indemnity clause.

Further Clauses

This chapter sets out a variety of sample licensing clauses that you may find, and may want addressed, in your licenses. Consider which ones would work for you and how to ensure they are part of your licence. Keep in mind your perspective as a licensor or as a licensee, as you will need to address most clauses from your unique perspective at the time. Also, keep in mind the other perspective and understand the other side's needs and how your licence may address both sides' needs. Lastly, you may also want to consider certain standard clauses which are included in Chapter 6 and are referred to as "boiler plates."

Chapter 6 – Standard Clauses

Never retract, never explain, never apologize – get the thing done and let them howl.
Nellie McClung, Canadian suffragette and author

Standard clauses, sometimes called "boiler plates", are general contract provisions that may be in various types of agreements, and are not specific to digital licensing agreements. Any licence agreement will include a number of these standard clauses. Below are clauses that you may see in your licence agreements.

- Alternative Dispute Resolution
- Amendments
- Binding Effect
- Confidential information
- Currency and Taxes
- Entire agreement and amendments
- *Force Majeure*
- Governing law
- Independent Parties
- Interpretation
- Notice
- Remedies
- Severability
- Signature
- Survival
- Transferability or Assignment
- Waiver

Alternative Dispute Resolution

Disputes or ambiguities arising from an agreement may be settled by a number of mechanisms including a court of law, arbitration, mediation and negotiation. The general trend in North America in any type of agreement is to include an alternative dispute resolution ("ADR") clause. Compared to resorting to court and court proceedings, ADR can be a less expensive and much quicker way to resolve a dispute arising under your agreement.

Generally, the licence should state that the parties will try in good faith to resolve any disputes arising from the licence, then to resort to negotiation, mediation, and, if necessary, arbitration. Arbitration still involves considerable expense; that is why licenses often allow for negotiation, then mediation prior to resorting to arbitration.

An arbitration clause may state that the arbitrator be appointed by the, and/or subject to the, arbitration laws in any jurisdiction, should such laws exist. The arbitrator is a neutral third party who renders a decision on behalf of the parties. Arbitration may be binding or non-binding. Nonbinding arbitration means that you may still go to court to resolve this issue, notwithstanding the arbitration process.

Often the ADR clause will state that the costs for ADR will be borne equally by the two parties. Also, these clauses often state that should an in-person meeting be necessary, that it be in a place half-way between the geographical locations of the two parties.

Amendments

The amendment clause states how the agreement may be modified, i.e., in writing, and signed by both parties who signed the original licence agreement. This will ensure that no changes are made to the contract without agreement between the parties. It also emphasizes that the only understandings in relation to the licensed content is that agreed to in writing in the original written licence, or in a written amendment to it. It is most reasonable to have an amendments clause that allows either party to amend the agreement and not just one of the parties.

Binding Effect

This clause would allow the agreement to benefit, if applicable, successors, administrators, heirs, affiliates, and assigns of the parties signing the licence. Usually, the assigns are subject to the prior written approval of the other party.

Confidential Information

In certain circumstances, both licensors and licensees may want certain aspects relating to this agreement kept confidential from their competitors and customers. For example, the content owner may want the amount of the license fee kept confidential, and the licensee may want to keep the usage and name of the users of the licensed content confidential. Each may want to keep confidential the business and operation practises within its own organization. What remains confidential is a matter of agreement between the content owner and the licensee. Whatever this information is, the agreement should clearly specify what is to remain confidential and the confidentiality clause should be limited to that information only.

If you are a public institution or are entering into a licence with a public institution, it is likely that any document created is a public document and may not be subject to confidentiality. Note that although the licence agreement itself is a public document, any user statistics are not part of the agreement and you may request that those are kept confidential. If you are entering into a licence with a U.S. government operated entity that is subject to the *U.S. Freedom of Information Act* or other equivalent legislation, that entity will not be able to agree to keep the terms of the agreement confidential.

Currency and Taxes

Since many licence agreements deal with parties from various countries, you should state the currency of any dollar amounts set out in the licence.

Also, since licence agreements may be subject to certain applicable taxes, you might want to mention which one(s) might apply, and who is responsible for paying these taxes and remitting them to the government.

Entire Agreement

This clause states that the agreement, along with any appendices and attachments, stands on its own and represents the entire agreement between the parties. The agreement therefore supersedes any other written or oral agreements and any implied or explicit previous agreements. In other words, any prior e-mails, faxes, telephone conversations, etc. are not part of the agreement. As a practical matter, this means that anything you or the other person has asked for, or agreed to, must be in the written licence; otherwise it will not form part of the agreement.

As a licensee, you need to be prudent. If a content owner says to you during negotiations not to worry about a specific clause in the agreement because it will not be enforced, you should insist that that clause be removed. Otherwise, the clause is part of the agreement, and the other party's promise not to enforce it may itself be unenforceable.

Force Majeure

A *force majeure* is a condition beyond the control of either party. It literally means "greater force". A *force majeure* clause excuses a party from performing its obligations under the agreement if there is some unforeseen event beyond the control of that party. This is provided due care could not have been exercised to avoid the failure to perform the obligations in the agreement.

Until recently, *force majeure* included war, strikes, floods and related conditions that could not be contemplated by either party and would prevent compliance with the terms and conditions in an agreement. In such circumstances, the contract would not be considered breached and would continue in effect. You may also want your *force majeure* clause to include power failures, destruction of network facilities, etc. This is an area where you may wish to consult with your technical experts. Generally, such things as server failures, software bugs, disputes with copyright owners, are not considered a *force majeure*.

A *force majeure* clause should apply equally to the licensor and licensee.

Governing Law

Online content generally means global access and it is very important to specify in any licence agreement: a) the jurisdiction of law for the interpretation of the licence; b) the court for submitting a claim against the other party; and c) the place of litigation.

It is best to choose a jurisdiction under which you are familiar, e.g., your own province and country. Any party to an agreement will want that agreement according to the laws of its own jurisdiction as you, your lawyers and staff will be most familiar with these laws. You should specify both the state or province under which the agreement will be interpreted as well as the country. This is because some legal matters are regulated by by a state or province such as contractual matters, where others such as copyright law are primarily federal or national laws.

Also, your licence should set out the state or province in which any legal action or proceeding would be instituted.

If you are entering into a licence with a U.S. state institution, that institution may be required to have its state laws govern your agreement. You should undertake some research into the differences between your province's laws and the institution's state laws, as well as the difference between U.S. and Canadian federal laws, primarily copyright laws, as this may affect both the terms and conditions in the licence, as well as any interpretation of them.

Related to governing law is the place of litigation. Should litigation take place, it can be quite costly if the licence states that any litigation or disputes arising from the licence take place in a state/province other than your own. For instance, it would be costly for an Ontario museum to litigate in British Columbia or in California. You want to choose a jurisdiction that is convenient in order to minimize travel to another country should a lawsuit arise.

The governing law clause can be a complicated matter and something that may be need to be discussed with your attorney. Some lawyers may suggest that if you cannot agree upon a jurisdiction, to leave it out of the agreement. This is a judgement call that may or may not meet your needs.

Independent Parties

This clause would state that the agreement does not create a legal relationship, such as a joint venture or partnership, between the two parties signing the agreement.

Interpretation

This clause states that the headings used in the licence are for convenience only and are not intended to be part of any interpretations of the licence.

Notice

This clause states that notices relating to the licence (e.g., to prevent an automatic renewal of the licence) be in writing. It also specifies how they should be delivered to the other party, i.e., by courier, snail mail, fax or e-mail. It is important that a contact name for each party is included in this provision so that the correct person receives any notice under this agreement. This will allow for immediate and efficient action on the part of the party receiving the notice.

It is important that the specifics of delivery of the notice are set out in the licence. For instance, the licence may require that the notice be in writing, be delivered by hand and that actual delivery would constitute the time and date of delivery. If by fax, you might require a fax back confirming delivery be sent. If sent by certified or registered mail, you might require that the notice be deemed to be delivered 5 days after sending it. In some situations, an e-mail notice may be sufficient but again this should be clearly set out in the licence as to when it is acceptable and how it will be ensured that the recipient actually received the notice.

Remedies

A remedy clause provides for certain remedies in cases in which there is a breach of the contract. Examples of remedies include court injunctions to stop an action harming one of the parties to the agreement, and lawsuits to obtain monetary damages. Remedies also include ADR as opposed to solving the dispute by way of a court action (see above under Alternative Dispute Resolution.)

Severability

This clauses states that should any part of the agreement be invalid or unenforceable, that the remaining portions of the agreement, where possible, survive and remain in full force and effect. Some licenses go further and state that only clauses that do not alter the entire licence arrangement may be severed and that the entire licence should cease should the removal of this clause make it unreasonable to continue the licence in a reasonable manner; this reflects the law in many jurisdictions.

Signature

It is important that the person who signs the licence actually has legal authority to do so. If an unauthorized person signs the licence, then either party may later argue that the licence is invalid and does not apply to the institution it purports to bind. Some licenses include a clause to the effect that the parties to the licence warrant that the signing persons have the authority to bind their institution or company. In a public museum, for example, the museum board will appoint an authorized signing agent or person. Your museum's corporate counsel can help you determine who in your museum has authority to bind it to a legal agreement. Make sure that the other party undertakes the same efforts to ensure that the appropriate person is signing the licence.

The person who signs the licence may protect herself by asking her museum for written documentation setting out that that person does in fact have authority to sign the licence. This may protect this person should the other party ever take legal action personally against the signing person.

Survival

This clause states that certain clauses survive the termination of the agreement. Generally, clauses that would survive are those relating to warranties and indemnities, but your agreement may specify the survival of any clauses that make sense for your particular circumstances.

Transferability or Assignment

If your museum is incorporated into another entity, then what happens to the licence agreements you have signed? Does the new entity automatically assume them? And what happens if you are a licensee and the content owner is purchased by a new content owner – are you still obligated to the terms and conditions in the licence with the original content owner? All this depends on what your licence sets out. The licence may state that it terminates should either of the signing parties cease to exist. Or it may allow the licence to be assumed by the new entity, or perhaps only so upon approval by both parties.[10] This approval should be in writing and signed by both parties. If there is an automatic transfer without approval of either party, then you may want to obtain a written promise from the new entity stating that it will fulfill all of the obligations in the licence.

Waiver

This clause generally states that if one party fails to enforce any particular clause in the licence that it does not mean that that clause is being waived and that that clause is no longer part of the licence. For example, if one parties ignores a violation of the licence then not only does the licence continues and the clause that is being violated is not necessarily waived. Generally, what you want to see in such a clause is that the only way that a clause may be waived by either party is by making an amendment to the agreement in writing (see Amendments, above.)

Negotiating Standard Clauses

Standard clauses are equally important to other clauses in your licence arrangement and should not be skimmed over when negotiating, reviewing or interpreting a licence. Read these clauses carefully because they vary from agreement to agreement. Make sure that your standard clauses are fair and reasonable, and are compatible with the day-to-day activities of your museum.

10 If your museum is licensing its own content for use by others, carefully consider this question of transferability since you may want to consider such factors as reputation of the new company using your content.

Chapter 7 – Your Questions on Licensing

Education is an admirable thing, but it's well to remember from time to time that nothing that is worth knowing can be taught.
Oscar Wilde

Below are questions asked in the many seminars and workshops I have instructed on digital licensing since 1997. In addition, in anticipation of this book on licensing, people from around the world e-mailed me questions they wanted addressed in this book. The questions below are included to provide some specific answers to your questions (often dealt with in further detail elsewhere in this book), with the hope that the sharing of these questions and answers will help museums with some of their specific licensing concerns.

General Licensing Questions

What would a "perfect" digital licence contain?
There is no such thing as a perfect licence. Each agreement must reflect the needs and requirements of the involved two parties. Each situation is unique and you must ensure that your licence meets the particular needs of your museum and the organization with whom you are entering the licence. The "perfect" digital licence would be one that sets out terms and conditions which satisfy both parties who sign the agreement.

Are a licence and assignment the same thing?
No. A licence is mere permission to use content according to specific terms and conditions. An assignment is an outright purchase of the rights to that content. Most digital content is licensed.

Must all licenses be in writing?
They should be. This is not always necessary although it is a good idea as it is a good summary of your negotiations and it constitutes a single document setting out the terms and conditions of use of content. It also helps in managing multiple

digital licenses entered into by museums. Each province has its own requirements as to when a legal agreement must be in writing.

Does the term digital licensing imply that the licensed work is not in the public domain?
Yes. Generally, works that are licensed are protected by copyright. Works in the public domain are no longer protected by copyright and permission or a licence is not necessary to use these works. In more ambiguous circumstances, for instance, in relation to a database in which the copyright status is not clear, a content owner may presume that copyright exists in the work and may then license it. Some museums even "license" the access to works which are in the public domain.

What if a licence is not negotiable?
Most things are negotiable. Other than click-through, Webwrap or shrinkwrap agreements, most licenses are subject to some discussion and negotiation. If you are faced with a licence that does not meet your needs and that does not appear to be negotiable, always ask the content owner about the portions of the licence that you would like amended. Try to open discussions and negotiations to ensure that the final licence meets your needs.

When amending an agreement, may you cross out unwanted portions, or do you need to re-write the whole agreement?
You may "cross out" portions of the licence, however both parties should initial those crossed out portions (or any added pencilled-in portions) when they sign the agreement.

Is our museum responsible if one of our staff members who does not have authority to do so, "signs" a click-through agreement to access online content?
It is possible that your museum is legally liable for any such contracts. A prudent approach for any museum is to ensure that its staff members are fully aware of rights and obligations with regard to entering into online agreements. Also, it is helpful to inform staff members that they may bear responsibility where online agreements are entered into where the staff member has no authority from the museum to do so.

Museum as Licensee

Does the licensor always own the content being licensed?
In some situations, you will license content directly from the owner of the content. However, in many situations, you will be licensing from a publisher, distributor or aggregator who has rights to license content owned by someone else. In either situation, you should feel comfortable that the licensor does actually have the rights to license the content to you. If you are doubtful of this, look for a different licensor.

Also, it is always prudent to include a warranty clause in the licence that states something to the effect that the licensor does actually have the rights to license that content to you (however, do not rely on this – be comfortable that they are trustworthy!)

What does "Third Party Rights" mean?
It means that the content is owned by a third party, or someone other than the licensor who is licensing the content to you. In this situation, you want to ensure that the licensor has the rights from the content owner to license that content.

What if the content owner does not provide a written licence?
As a licensee, you should then ask about terms and conditions. Ask the content owner if there is a licence with terms and conditions of use set out on their Web site, or if they could e-mail or otherwise send you a copy of that licence. If a licence is not available, ask the content owner if they could set out the terms and conditions of use of the content in a letter to you so that you have a record of the nature of the licence. Alternatively, you could draft a licence but this is generally the role of the licensor.

Is it possible to sample some of the content before a licensee signs a licence?
This is something you would want to discuss with the content owner. As the popularity of digital content is continuing to grow, it is possible that you may not find certain content helpful in a digital form. In specific circumstances, you may want to "test" this out with them by gaining "test access" to that content before signing a licence. You may also wish to test the format of the content to ensure it is compatible with your intended uses.

Our legal department will not approve the content owner's licence, but the content owner will not change the offending sections. What should we do?
That is a judgement call for any licensee. Are you allowed to sign a licence with which your legal department does not agree? Is it in your best interests to do so? Carefully examine the reason why your legal department is opposed to the licence. Why is the content owner so inflexible about these offending sections? Will these sections be harmful to your museum, or to the use of the licensed content? What is the liability of your museum for including or omitting certain terms and conditions? Is it possible to obtain the same or similar content from another source? Failing that it would be worthwhile looking at your next best option. This may include looking for another product that can at least come close to meeting your information needs, and finding the same one as part of a package with an aggregator (which would likely have different licence terms.)

Can your warranty and indemnity protect you from a content holder who does not really hold the rights to the content being licensed?
It is always best to enter into any licenses or negotiations with content owners whom you trust. If you are suspicious that the content owner does not own some or all of the rights being licensed, it is best to terminate your negotiations and to find and work with a more trustworthy content owner. Although a warranty and indemnity may protect you to some degree, they can be expensive to enforce and the content owner may not in fact have the funds to indemnify you against any losses or legal fees resulting from using content that belongs to another party.

Aids in Negotiating Licenses

Is it necessary for our museum to have a licensing policy before entering into negotiations?
No. A licensing policy is not part of your negotiations and in fact should be kept confidential to your museum. The purpose of this policy is to act as an internal guide in setting out a consistent approach for negotiating all licenses. It should be based on a consensus of information with various people and accumulated experiences to help guide you through the negotiation process, setting out goals and bottom lines for your museum.

Content Specific Issues

Are all databases protected by copyright?
No. The current United States copyright law requires that a collection of materials or a database require some creativity in order to obtain copyright protection. Thus, mere skill and labor in compiling a database is not sufficient to acquire copyright protection. Note that in Canada, a database may be protected if compiled with skill, labor and judgement. At the time of writing this book, there is on-going debate in the U.S. as to what sort of legislative protection should protect databases that are not protected by copyright law. Although the Canadian government sees database protection an important copyright reform issue, it is unlikely that there will be imminent legislative amendments to protect databases in Canada.

May a museum license an image donated to its collection?
It depends on whether there was any transfer of rights with the donation of the image. If full copyright in the image has been transferred to the museum, then the museum has all rights, including licensing the image to others, with respect to the image. If only partial rights have been transferred to the museum, then the museum only has these partial rights and you would have to check the donation agreement to see if sub-licensing is permitted. If no copyrights have been transferred, then the museum does not have the authority to license the image. Note that there are

special provisions in the Canadian Copyright Act with regard to copying works deposited in an archive (see: section 30.21 at: *http://laws.justice.gc.ca/en/c-42/36324.html*).

Is it necessary to obtain a licence to include an image on internal directional signage leading the public to a museum exhibit? How about in a brochure trying to attract membership to our museum?
Both situations would considered a reproduction of the image and you will need a licence.

Are digital images scanned from non-digital images protected by copyright?
Neither Canadian or U.S. copyright law is clear on this issue. However, it seems that a "mere" scanning or digitization of an image would not result in a new copyright work. If there is a certain level of skill, effort and talent involved in the creation of a digital work, then it is possible that there is copyright in the new digital work. Even if there is no copyright in the digital version, one may license the "access" to the digital work.

Are maps protected by licenses?
Check what your licence says about it including maps. The subject matter protected by your licence depends on what you have agreed upon. The licence may extent to a database, or to periodical articles. It might include an encyclopaedia or it may refer to maps and charts. You must look at your specific licence to see what is covered by it. If you need to use specific content that is not covered by your licence, negotiate for the inclusion of that content in your licence.

May my museum reproduce a photograph that does not have any copyright information stamped on it?
No. The fact that a photograph or other work lacks copyright information does not mean that you may automatically use it. You must seek permission from the owner of that photograph. You may have to be creative to locate the copyright owner or to use a different photograph in which you can clear copyright permission. Note that in Canada, you may apply for an unlocatable copyright owner licence from the Copyright Board where you cannot locate the copyright owner.
See: *http://www.cb-cda.gc.ca/indexe.html*.

Before The Negotiations Begin

How does a museum determine what rights need to be in the licence?
Determine what uses of the content will be made then ensure that the licence reflects these uses. It is best to determine these rights independently of reviewing the licence offered to you, in order to ensure that you are meeting your needs. Consult various people in your museum from your lawyer to your curators to your director of education. Even consult researchers or the general public, where possible.

Defining Words in Licenses

How do we know what words mean in our existing licenses?
Check your licenses for a definitions section which defines terminology for purposes of that particular licence. Sometimes there is no specific section for definitions but definitions are defined throughout the licence when the word first appears.

Where can we find definitions of words that we need to include in the definition section of our licence?
There are some technology dictionaries that might be helpful but because you want to define the words for the specific purposes of your licence, it is best to ask museum staff including any technology-related persons how to define the terms for your purposes. Sometimes the definitions will have to be negotiated with the other party as different meanings given to different words can affect the terms and conditions of the licence.

Is there a definition of "commercial use?"
There is no single definition of the term commercial use. It is up to the content owner and the licensee to define commercial use in a manner that meets the needs of the licence. This may be negotiable.

Does "personal use" in a licence include an individual researcher who is paid $25 an hour for his research? What about a student in a university?
There is no set definition of "personal use." For each licence, personal use should be defined to meet the needs of that particular licence and arrangement.

Fair Use and ILL

Is fair use/dealing applicable when content is subject to a licence agreement?
If the agreement does not mention fair use/dealing, then fair use/dealing is still applicable. However, the licence may limit the scope of fair use/dealing. This is something you may wish to discuss with the other party.

May a licence prohibit inter-library loans (ILL)?
Yes. A licence may prohibit ILL. However, this may be a point of negotiation.

Authorized Sites

Can a researcher in Australia legally access content from our museum in Saskatchewan?
You will need to address this in your licence and ensure that the Authorized Users and Authorized Site clauses allow for this.

Are "walk-in users" able to have access to content licensed in an educational institution?
Only if they are defined as authorized users in the licence. If an educational institution has a number of "walk-in users" who will want to access the digital content, then the institution should negotiate for their specific inclusion in the licence.

How do you ensure that a licensee includes the licensor's copyright notice when a licensee accesses the licensed content?
This may be included in the licence agreement. It is not uncommon to see a clause that states something to the effect that a copyright notice in the name of the licensor must be included whenever the content is used, i.e., displayed, published, reproduced, etc.

Record-Keeping

May content owners require record-keeping of the use of licensed content?
Content owners may request record-keeping as to who is accessing the licensed content, when, for how long, or for what amount or portion of the content being licensed. However, a licensee should be very cautious in agreeing to record-keeping in any detail. This is in part due to the invasion of privacy, and also in part because of the expense and time involved in such record-keeping. If the content owner is asking for unreasonable record-keeping, try to negotiate less onerous record-keeping.

Frequently Negotiated Areas

How can our museum avoid entering into the same licence year after year?
You can negotiate a licence for a longer duration of time than one year. Alternatively, you may negotiate a clause for automatic renewal upon certain circumstances so that if the licence is working well, you do not need to re-negotiate it each year.

What if the content owner wants a higher fee for the content than the licensee can afford?
If the licensee cannot negotiate a lower fee for the electronic content, try the strategy of narrowing the terms and conditions of use for that lower fee you are offering. For instance, try to restrict the number of users that will have access to the content. Or, reduce the number of years to be covered in the licence.

If a licence does not mention "electronic archiving", would this be allowed?
It depends on the wording of the "Grant of rights" clause. You must carefully review the grant of rights to see whether electronic archiving is either specifically or implicitly included. If implicitly included, you may want to specifically include mention of this use of the content.

If a licensee wishes to reproduce/re-publish in print form content in which only a digital licence has been obtained, is that permissible under the digital licence?
Generally, a digital licence will only provide permission for digital uses of the specified content. Unless the licence also permit print uses, you may need to include a clause relating to print uses.

Issues After Signing the Licence

We have content we licensed directly from copyright holders which we are now sub-licensing to an online database publisher. Do we need to obtain any additional permissions to sub-license the content?
Unless your initial licence with the content holders included the right to sub-license that content to a third party such as an online database publisher, you will require additional rights to do this.

What if the content is not available for the duration of the licence?
This is something you should consider before signing the licence. The licensee should ask the content owner for some guarantee as to the length of downtime for maintenance, etc. and for either a reduction in the license fee or an extension in the licence to compensate for downtime beyond this amount. The licensee should consider a clause in your licence to get out of the contract obligations or at least obtain a reduction of license fees should the content not be available during the duration of the licence.

What if a licensee needs a right that is not included in the licence, for instance, the right to e-mail a copy of a article from a licensed database?
If the right is not specifically included in the licence, or cannot be interpreted as an authorized use in other rights granted or permitted uses, then the article may not be e-mailed. If necessary, the content owner may agree to an amendment of the agreement, or to include this right when the licence is renewed.

How do you know if their licence will automatically renew?
This is something that would have to be addressed in the licence. If the licence does not deal with automatic renewal, then it will not automatically renew at the expiration of the licence. If you would like automatic renewal, negotiate this in your licence.

Does the content owner or the licensee have the onus to renew the licence?
Either party may approach the other one about renewing the licence. It is a good idea for a licensee to keep a database of licenses and their renewal dates. This way, the licensee can ensure on-going access to licensed content, and that agreements are renewed prior to their expiration date.

May a licensee archive licensed content and provide access to it after the licence has expired?
That would depend on what your licence states. If this is not addressed in your licence, then you should not be making archive copies or providing access to these copies after the expiration of the licence. Having access to previously licensed content is an issue that is controversial and is difficult to address in a licence. It is the subject of much discussion in the licensing world, especially amongst libraries and publishers and these discussions are well worth following.

Tracking Your Questions
As you proceed through various negotiations, you will find that the same questions unique to your situations arise again and again. It may be helpful to keep a list of these questions and answers and include them in your Licensing Policy. Do not forget to update the list on a regular basis.

Chapter 8 – Time to License

Do not be discouraged by lack of immediate success. Bernard Shaw flowered at 17 but nobody smelled him until he was 40.
Robertson Davies, Canadian author

At this point, you should understand the general principles of licensing and the various clauses you may include in your licence. However, you may be wondering what is the appropriate type of licensing arrangement for you. When licensing content, you will have to decide vis-à-vis each licence, based on the particular circumstances, what is the appropriate type of arrangement and how you should set this out in your agreement. Remember to keep your Licensing Policy close at hand and to refer to it as frequently as necessary. Examine all licenses you can across, as you can even learn from bad ones! Do not assume that you need to negotiate each clause in every licence; see what works for you, then discuss any specific needs with the content owner that would better meet your needs.

It is important to know the other party with whom you are dealing, and to convey (even indirectly) to them that you are on their side and looking out for their interests as well.

The Length of your Licence

Early on in the licensing process, you should start considering the appropriate length of your licence. At one extreme is a simple one page document identifying the parties, the content being used, the purpose of the use, length of use, payment, the rights being licensed, a warranty that the works are in fact owned by the party who is licensing them, and signatures of both parties. At the other extreme may be a twenty-page agreement full of legal terminology.

Put your effort into negotiating when it is most needed. When you are thinking about the time and energy you will give to each licence, look at the cost-benefits of doing so. Can you use a simple one-page licence for a short time frame or to licence a

smaller piece of content? Or, does the use of the licensed content require full-scale negotiations of all clauses and drafting of an extensive licence covering multiple years?

Lengthier agreements make the negotiating and/or signing process more time consuming and costly, and are more difficult to complete. In addition, a twenty-page contract landing on your desk is fairly intimidating, and given the opportunity to license an alternative electronic product with a simple licence, most of us would seize that chance.

It is important, however, that key issues are addressed in the agreement and that brevity does not mean an omission of important clauses. One way to keep an agreement short is to set out the agreement as simply as possible, without specific details, in a "main" agreement, and then to append details such as license fees or a payment schedule, as separate attachments to the main agreement. This approach is advantageous to content owners as they may then have one standard licence agreement, with any changes or additions for each specific licence dealt with in an appendix. This would lessen the administrative burden of content owners who over time may have different licence agreements with different licensees. For similar reasons, content owners may find this helpful.

Plain Language

Where possible, it is important to encourage and use licenses written in plain non-legal language and to be "people-friendly." One example of plain language is to avoid terms like "Licensor" and "Licensee", and instead to simply use the names of the two parties such as Moose Museum and Peter Publisher.

Language considerations should also include sensitivity to the other party, and the tone you use may help reflect this attitude.

A Written Licence

Put your licence in writing. Never base your licensing arrangements on assumptions or conversations, or even on oral agreements.

The importance of having a written agreement cannot be stressed enough. Although it is not legally mandatory in all situations, it will provide you with a summary of your agreement concerning how the electronic content may be used. It will also be of great benefit when an issue arises about the conditions of licensing the content and you have a written document to consult. Also, as personnel change all the time, the written agreement will be a valuable record of the licensing arrangement. For example, a content owner and a museum negotiate a licence, and the museum's negotiator leaves the museum, the terms and conditions of the licence may be lost if they are not reduced to writing.

Changing Clauses

When you negotiate various changes to a licence agreement, sometimes it is necessary to correct these changes on your word processor and to work with a clean copy of the licence. When doing this, make sure both parties are aware that changes have been made to the licence. In other circumstances, where the changes are minor, you may strike and/or hand-write the negotiated changes, then each party should initial each change and/or each page of the licence when they sign it.

Your Particular Circumstances

Throughout this book, you have been reminded that each licence may be unique for each type of licensed content. Thus, you must always keep in mind your particular circumstances in negotiating a licence. View every licensed content with a fresh eye with respect to the appropriate terms and conditions for that particular content.

Museums are in a unique position in that they are both licensors and licensees, depending upon the circumstances. As such, you may be more sensitive than others as to the needs of the other party. Keep this special knowledge in your mind when negotiating and try to make the other party happy with the arrangements you are proposing.

Consistent Terms and Language

Notwithstanding the need to meet your particular circumstances, you will want to balance in the fact that it would be easiest for you to use consistent terms and conditions in each licence, and have similar definitions of, for example, authorized uses and users. This would also make licence compliance much easier further down the road. It may make interface design easier in those cases where your museum has a Web page and is providing access to the licensed content from its page or through on-premise computers or a proxy server. It will be much more difficult if you are forced to divide up the users of the licensed content into different classes of users and have to keep detailed records of who is using the content when.

Managing Multiple Licenses

Although your museum may only have a handful of signed digital licenses at the current time, it is never too early to initiate a system to manage them. The amount of licenses your museum has signed, either as licensor or licensee, may rapidly increase over a short period of time and it may become increasingly difficult to quickly determine which terms of use apply to which licensed content.

You might consider creating a simple database. You may divide the database into two parts. One for licenses signed as a licensor, and one for licensees signed as the licensee. Information for each licence should include both parties' names, e-mail addresses and telephone numbers, a description of the licensed content, what uses are permitted, who are the authorized users, from what sites may the content be accessed, when the licence expires and whether it is automatically renewable. Of course, there are many more items you may include in the database, and the checklists in Chapters 5 and 6 provide valuable headings for any such database. Software for a standard database may meet your needs for managing your licenses though you may prefer customized computer software to help you do so.

Changing Technology and Needs

It is possible and likely that the licence agreement you enter into today will not be as effective tomorrow. Although a licence agreement may meet all of your current technological needs when signed, by the very next day, your technological needs may change and you may require different or new uses of the licensed content, or a modification of certain terms and conditions in order to be able to effectively use the licensed content. Modifications may need to be made to the agreement for economic, technical, legal or other reasons.

Some ways to address rapidly and constantly changing technology have been discussed throughout this book. These suggestions include a short term licence agreement, or a short term agreement with automatic renewals. An amendment clause is important as it provides you with a mechanism to easily make changes to the agreement. You may want to enter into a trial licence period to provide both the content owner and licensee an opportunity to work out problems, discover and solve specific issues, or to seek technological solutions, prior to a longer term commitment to the licence. Customer support may be helpful as it can give licensees an opportunity to understand the licence agreement from the perspective of the content owner. To go further, customer support could report to the content owner and/or licensee any issues/problems that require discussion and/or inclusion in subsequent licence agreements. Feedback forms could be placed on the licensee's site for this purpose. Lastly, a reduction of the license fee may be appropriate in certain circumstances. For example, should the content owner have to remove some of the licensed content specified in the licence, then the licensee should be entitled to a refund on a pro rata basis of its license fee. Also, should the licensed content not be available for a lengthy amount of time, the licensee may be entitled to some reduction or refund of the license fee.

Frustration and Patience

Along with licence agreements often comes frustration. There is frustration in the fact that licensees like museums and libraries now have to enter into legal agreements

just to access content for their "shelves." There is frustration that access to lawyers is not always available or immediate, and that it can be costly. There is frustration that technology outdates agreements that seem perfectly fine at the time of signing them. There is frustration that electronic uses of content must be monitored or regulated to some degree whereas staff and researchers can more freely roam licensors' print bookshelves without the same restrictions. There is frustration that the party with whom you are negotiating a licence knows less than you, and actually makes the negotiating process more difficult. Further, there is the cost and time in negotiating a licence which does not exist when acquiring print materials.

Unfortunately, there is no magic answer to overcoming these and other frustrations. Yes, time will probably ease some of frustrations (though could possibly raise others!) It is best to enter into any licence negotiations with an open mind, lots of patience, and hopefully at the end of the day, you will acquire the content and licence that best meets your needs.

Further Thoughts

Licensing has become a part of life and day-to-day duties for museums. The licensing knowledge and skills of your those in your museum is rapidly growing. Knowing your goals, understanding clauses that appear in licenses, and entering into the negotiation process with a flexible view and authority from your museum will result in licenses that meet your needs. Effective communication throughout the process with those in your own museum as well as with the other party will ensure a smoother and more effective process.

Licensing content for digital media is new to everyone. While trends are beginning to emerge, digital licensing is still in its infancy. Although the lack of standardization can be frustrating, it also allows for creativity and experimentation, as well as time to reflect upon the needs of content owners and licensees. Consideration of the issues and clauses discussed in this book and on-going discussions with other content owners, licensees and lawyers negotiating licenses will help develop a coherent, consistent approach in your licensing.

There is no one *right* way. The best agreement is the one that meets your needs and builds a strong relationship with the other party. Both sides are aiming at fair access at a fair fee.

In any licensing situation, you must examine your own perspectives and goals, as well as those of the other party. It is important to tailor your negotiations and agreements to match your particular circumstances. Keep in mind that there is room for creativity in your licenses.

As with all agreements, it is best, where feasible, to consult a lawyer before signing on the dotted line, as opposed to consulting one at a later stage when a dispute arises. A well written licence agreement will clearly set out the relationship between the parties and details of the content being licensed. In many cases, a good licence agreement may help you avoid disputes in the future. It will be a document you refer to again and again when questions arise during the course of your relationship, either as a licensor or licensee – and hopefully, it will provide you with answers.

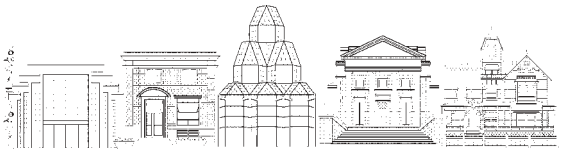
Summary of Licensing Tips

This book is full of tips to help you ensure your licence agreements work for you. Below are eight basic points you should always keep in mind when negotiating digital licenses.

1. Take the time to develop a Licensing Policy. During the negotiating process, refer to your Licensing Policy as often as necessary. Its purpose is to guide you more easily and consistently through the licensing process.
2. Avoid oral licenses. Although not always mandatory, use written agreements. Your written licence is a summary of the terms and conditions of use of the licensed content and will be used for interpretation purposes by you and others in your museum during the duration of the licence.
3. Understand your obligations. Before signing on the dotted line, make sure you understand and are comfortable with the obligations the licence demands of you. Do not base your agreement on any oral representations. If you see a clause you do not like but the other party says do not worry it will never be enforced, get that clause removed. Mark sure you can live up to any obligations in the agreement.
4. Cover all issues. Do not avoid putting in the agreement any relevant issues because you think that issue might "scare off" the other party. Best to put everything on the table at the beginning and to avoid disputes in the future.
5. Avoid legal language. Simple non-legalistic language is the best approach. You want wording that is clear to the two parties signing the agreement, and to anyone who needs to later interpret or apply that agreement. Defining any ambiguous or new technical words can help with this.
6. Consistency. Use consistent words and terms. Do not use "content" in one clause, "material" in another clause, then "publication" in another clause.
7. Be creative, patient and flexible.
8. Know when to walk away.

CHIN PUBLICATIONS

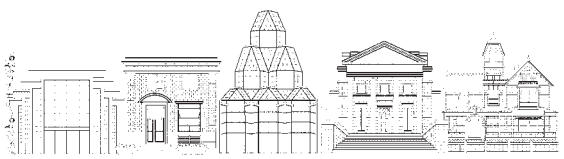
	Prices include shipping and handling	
CREATING AND MANAGING DIGITAL CONTENT	**Canadian Residents**	**International Residents**
▪ **Best Practices Study of Museum CD-ROM Production**, 1998, 63pp.	CAN$26	CAN$42 (US$26)
▪ **Capture Your Collections:** A Guide for Managers Planning and Implementing Digitization Projects, 2000, 38pp.	CAN$26	CAN$42 (US$26)
▪ **Producing Online Heritage Projects**, 2002, 105pp.	CAN$30	CAN$48 (US$30)
▪ **Research on 'Quality' in Online Experiences for Museum Users**, 2004, 56pp.	CAN$30	CAN$48 (US$30)
COLLECTIONS MANAGEMENT		
▪ **Collections Management Software Review – Comparative Analysis**, 2003, 394pp. (includes the Collections Management Software Review – Criteria Checklist, 2003; and the Collections Management Software Review – Comparative Analysis, 2000)	CAN$136	CAN$218 (US$136)
▪ **Collections Management Software Review – Criteria Checklist**, 2003, 64pp.	CAN$30	CAN$48 (US$30)
▪ **Collections Management Software Review – Product Profiles**, 2003 — Price per profile:	CAN$30	CAN$48 (US$30)
ADLIB Museum		
ARGUS Collections Management System		
EmbARK™		
IO		
KE EMu		
M3 – MINISIS Management for Museums		
MINT (MINISIS Integrator)		
Multi MIMSY 2000		
MuseumPlus		
PastPerfect Museum Software		
Re:discovery		
STAR®, with the STAR®/Museums Application		
The Museum System		
The Visual Archiver		
Vernon (previously called COLLECTION)		
Virtual Collections™		
▪ **Collections Management Software Review – Product Profiles**, 2000 — Price per profile:	CAN$30	CAN$48 (US$30)
Artsystems Collections		
Micromusée		
MIMS – Museum Information Management System		
INTELLECTUAL PROPERTY SERIES		
▪ **A Canadian Museum's Guide to Developing a Licensing Strategy**, 2004, 104pp.	CAN$26	CAN$42 (US$26)
▪ **Developing Intellectual Property Policies:** A How-to Guide for Museums, 2003, 88pp.	CAN$26	CAN$42 (US$26)
▪ **Licensing Images:** Checklist for Museums and Other Cultural Organizations, 2002, 36pp.	CAN$26	CAN$42 (US$26)
▪ **Like Light Through a Prism:** Analyzing Commercial Markets for Cultural Heritage Content, 1999, 64pp.	CAN$26	CAN$42 (US$26)
▪ **Protecting Your Interests:** A Legal Guide to Negotiating Web Site Development and Virtual Exhibition Agreements, 1999, 43pp.	CAN$26	CAN$42 (US$26)
▪ **The Virtual Display Case:** Making Museum Image Assets Safely Visible, 3rd ed., 2003, 57pp.	CAN$26	CAN$42 (US$26)
STANDARDS		
▪ **Capitalization of Data in the PARIS System**, 1989, 34pp., (bilingual)	CAN$10	CAN$16 (US$10)
▪ **Classification in the CHIN Humanities Databases**, 1995, 108pp.	CAN$10	CAN$16 (US$10)
▪ **Conservation Documentation Research Project**, 1995, 94pp.	CAN$10	CAN$16 (US$10)
▪ **Data Content Standards: A Directory**, 1994, 98pp.	CAN$10	CAN$16 (US$10)
▪ **Information Requirements of Users of Natural Science Collections in Quebec**, 1995, 227pp.	CAN$10	CAN$16 (US$10)
▪ **Religious Objects** – User's Guide and Terminology, 1994, 143pp., (bilingual)	CAN$30	CAN$48 (US$30)



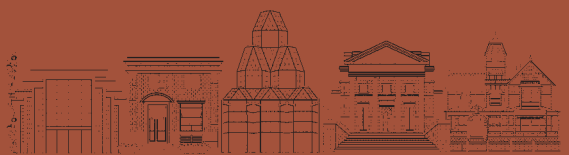
CANADIAN HERITAGE INFORMATION NETWORK
RÉSEAU CANADIEN D'INFORMATION SUR LE PATRIMOINE

PUBLICATIONS DU RCIP

	Prix (incluant les frais d'envoi et 'emballage)	
CRÉATION ET GESTION DE CONTENU NUMÉRIQUE	**Résidents du Canada**	**Résidents internationaux**
▪ **Étude sur la production de CD-Rom dans les musées**, 1998, 66 p.	26 $ CAN	42 $ CAN (26 $ US)
▪ **Gestion de projets en ligne sur le patrimoine**, 2002, 105 p.	30 $ CAN	48 $ CAN (30 $ US)
▪ **Numérisez vos collections :** Guide à l'intention des gestionnaires chargés de la planification et de la mise en oeuvre de projets d'informatisation, 2000, 42 p.	26 $ CAN	42 $ CAN (26 $ US)
▪ **Recherche sur la « qualité » des expériences en ligne des usagers de musées**, 2004, 120 p.	30 $ CAN	48 $ CAN (30 $ US)
GESTION DES COLLECTIONS		
▪ **Évaluation de logiciels de gestion des collections – Analyse comparative**, 2003, 410 p. (comprend l'Évaluation de logiciels de gestion des collections – Liste de critères, édition 2003 et l'Évaluation de logiciels de gestion des collections – Analyse comparative, édition2000)	136 $ CAN	218 $ CAN(136 $ US)
▪ **Évaluation de logiciels de gestion des collections – Liste de critères**, 2003, 76 p.	30 $ CAN	48 $ CAN (30 $ US)
▪ **Évaluation de logiciels de gestion des collections – Fiches de produits**, 2003 Prix par fiche :	30 $ CAN	48 $ CAN (30 $ US)
ADLIB Museum		
ARGUS Collections Management System		
EmbARK™		
IO		
KE EMu		
M3 – MINISIS Management for Museums		
MINT (MINISIS Integrator)		
Multi MIMSY 2000		
MuseumPlus		
PastPerfect Museum Software		
Re:discovery		
STAR®, with the STAR®/Museums Application		
The Museum System		
The Visual Archiver		
Vernon (antérieurement nommé COLLECTION)		
Virtual Collections™		
▪ **Évaluation de logiciels de gestion des collections – Fiches de produits**, 2000 Prix par fiche :	30 $ CAN	48 $ CAN (30 $ US)
Artsystems Collections		
Micromusée		
MIMS – Museum Information Management System		
SÉRIE PROPRIÉTÉ INTELLECTUELLE		
▪ **Comme un rayon de lumière à travers un prisme :** Analyse des marchés commerciaux pour les documents du patrimoine culturel, 1999, 70 p.	26 $ CAN	42 $ CAN (26 $ US)
▪ **Commercialisation sous licence d'images :** Aide-mémoire à l'intention des musées et autres organismes culturels, 2002, 40 p.	26 $ CAN	42 $ CAN (26 $ US)
▪ **Élaboration de politiques sur la propriété intellectuelle :** Guide pratique à l'intention des musées, 2003, 98 p.	26 $ CAN	42 $ CAN (26 $ US)
▪ **Guide d'élaboration d'une stratégie d'octroi de licenses à l'intention des musées canadiens**, 2004, 60 p.	26 $ CAN	42 $ CAN (26 $ US)
▪ **La vitrine virtuelle :** Exposer en toute sécurité la richesse visuelle des musées, 3e ed., 2003, 62 p.	26 $ CAN	42 $ CAN (26 $ US)
▪ **Protégez vos intérêts :** Un guide juridique pour la négociation de marches de sciences de développement de sites web et d'expositions virtuelles, 1999, 51 p.	26 $ CAN	42 $ CAN (26 $ US)
NORMES		
▪ **Classification dans les bases de données des sciences humaines du RCIP**, 1995, 119 p.	10 $ CAN	16 $ CAN (10 $ US)
▪ **L'emploi des majuscules dans le système PARIS**, 1989, 34 p., (bilingue)	10 $ CAN	16 $ CAN (10 $ US)
▪ **Normes relatives aux noms d'objet et aux zones connexes**, 1994, 56 p.	10 $ CAN	16 $ CAN (10 $ US)
▪ **Objets religieux** – Méthode d'analyse et vocabulaire, 1994, 143 p., (bilingue)	30 $ CAN	48 $ CAN (30 $ US)
▪ **Projet de recherche en documentation sur la conservation**, 1995, 100 p.	10 $ CAN	16 $ CAN (10 $ US)
▪ **Usage et besoin d'information des usagers des collections de sciences naturelles au Québec**, 1995, 233 p.	10 $ CAN	16 $ CAN (10 $ US)



RÉSEAU CANADIEN D'INFORMATION SUR LE PATRIMOINE
CANADIAN HERITAGE INFORMATION NETWORK



CANADIAN HERITAGE INFORMATION NETWORK
RÉSEAU CANADIEN D'INFORMATION SUR LE PATRIMOINE

15 Eddy St. (15-4-A)
Gatineau, Quebec K1A OM5

15, rue Eddy (15-4-A)
Gatineau (Québec) K1A OM5

Tel.: (819) 994-1200 • 1 800 520-2446
Fax: (819) 994-9555
Email: service@chin.gc.ca
URL: www.chin.gc.ca

Tél. : (819) 994-1200 • 1 800 520-2446
Télécopieur : (819) 994-9555
Courriel : service@rcip.gc.ca
URL : www.rcip.gc.ca