

Canadian Heritage Information Network  
Intellectual Property Series

## **Copyright Guide for Museums and Other Cultural Organizations**

**By Borden Ladner Gervais  
Barristers and Solicitors**

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This Copyright Guide is one in a series of publications produced by the Canadian Heritage Information Network (CHIN) that are intended to assist museums with the management of their intellectual property.

Initially prepared for the Canadian Museum of Civilization Corporation and the Canada Science and Technology Museum, this Guide may also be of interest to other museums and cultural organizations. For the purpose of this publication, the term “museum” will be understood to include “cultural organization,” in the general sense of this term.

Other titles in this series are listed below. Information on ordering the publications can be found on the CHIN Web site at: [www.chin.gc.ca](http://www.chin.gc.ca)

- **Best Practices Study of Museum CD-ROM Production**
- **Licensing Images: Checklist for Museums and Other Cultural Organisations**
- **Like Light Through a Prism: Analyzing Commercial Markets for Cultural Heritage Content**
- **Protecting your Interests – A Legal Guide to Negotiating Web Site Development and Virtual Exhibitions Agreements**
- **Sample CD-ROM Licensing Agreements for Museums – Quebec Civil Law Edition Canada**
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- **The Virtual Display Case: Making Museum Image Assets Safely Visible**

## TABLE OF CONTENTS

<b>INTRODUCTION</b> .....	<b>6</b>
<b>MODULE I</b>	
<b>1.0 GENERAL COPYRIGHT PROTECTION</b> .....	<b>8</b>
<b>2.0 TERM OF COPYRIGHT PROTECTION</b> .....	<b>9</b>
2.1 GENERAL RULE FOR TERM OF PROTECTION.....	9
2.2 UNKNOWN AUTHOR (ANONYMOUS WORKS).....	10
2.3 UNPUBLISHED WORKS .....	10
2.4 CROWN WORKS .....	11
2.5 PROTECTION FOR EACH TYPE OF WORK.....	12
2.5.1 ARTISTIC WORK .....	12
2.5.2 PHOTOGRAPHS .....	12
2.5.3 SOUND RECORDINGS .....	13
2.5.4 PERFORMER'S PERFORMANCE.....	13
2.5.5 CINEMATOGRAPHIC WORKS.....	14
<b>3.0 POSSIBLE APPLICABLE EXCEPTIONS TO COPYRIGHT INFRINGEMENT</b> .....	<b>15</b>
3.1 WORKS IN THE PUBLIC DOMAIN — COPYRIGHT PROTECTION HAS EXPIRED.....	16
3.2 EDUCATIONAL INSTITUTIONS .....	16
3.3 LIBRARIES, ARCHIVES, AND MUSEUMS .....	17
3.4 FAIR DEALING .....	18
3.4.1 FAIR DEALING — COPIES OF WORKS FOR RESEARCH AND PRIVATE TUDY.....	19
3.5 PUBLIC-ACCESS PHOTOCOPY MACHINES .....	19
<b>4.0 CREATION OF NEW WORKS BY THE MUSEUM</b> .....	<b>21</b>
4.1 OWNERSHIP OF WORKS CREATED BY MUSEUM STAFF .....	22
4.2 OWNERSHIP OF WORKS CREATED BY INDEPENDENT CONTRACTORS HIRED BY THE MUSEUM.....	22
4.3 USE OF CROWN WORKS .....	23
4.4 OWNERSHIP OF COPYRIGHT IN COMMISSIONED ENGRAVINGS, PHOTOGRAPHS, OR PORTRAITS .....	23
4.5 OWNERSHIP OF MORAL RIGHTS IN A WORK .....	24
<b>5.0 ACQUIRING WORKS</b> .....	<b>25</b>
5.1 BEWARE - REVERSION OF COPYRIGHT OWNERSHIP IN WORKS .....	26
<b>6.0 BORROWING/LENDING WORKS</b> .....	<b>28</b>
<b>7.0 EXHIBITS</b> .....	<b>29</b>
7.1 COPYRIGHT IN ARTEFACTS.....	29
7.2 RIGHTS APPLICABLE TO TRAVELLING EXHIBITS .....	30
7.3 RIGHTS GRANTED BY THE MUSEUM FOR TRAVELLING EXHIBITS .....	30
<b>8.0 PUBLICATIONS BY THE MUSEUM</b> .....	<b>31</b>
8.1 HAVE RIGHTS TO COPY THE WORK BEEN OBTAINED FROM THE AUTHOR/PUBLISHER? .....	32
8.2 COPYING TRADE LITERATURE AND OLDER PUBLICATIONS.....	334
8.3 COPYING MUSEUM PUBLICATIONS/PERIODICALS.....	33
8.4 COPYING PUBLICATIONS/LITERATURE.....	33
8.5 COPYING ELECTRONIC PUBLICATIONS .....	34
8.6 COPYING PUBLICATIONS FOR OTHER LIBRARIES OR MUSEUMS .....	34
<b>9.0 REPRODUCTION/NEW USE OF WORKS OWNED BY THE MUSEUM</b> .....	<b>35</b>

<b>10.0</b>	<b>INTERNET/WEB SITES .....</b>	<b>36</b>
10.1	EXHIBITING AND POSTING A WORK ON THE MUSEUM'S WEB SITE .....	39
10.2	DIGITISING/REPRODUCING IMAGES OF WORKS FOR POSTING ON A WEB SITE .....	40
10.3	POSTING IMAGES ON THE MUSEUM'S INTERNAL INTRANET .....	38
10.4	USING IMAGES OR COPYING INFORMATION FROM THIRD PARTY WEB SITES .....	39
10.5	THIRD-PARTY USE OF IMAGES ON THE MUSEUM WEB SITE .....	41
<b>11.0</b>	<b>PHOTOGRAPHS .....</b>	<b>41</b>
11.1	COPYRIGHT IN PHOTOGRAPHS OF EXHIBITS AND ARTEFACTS .....	41
11.2	OWNERSHIP OF COPYRIGHT IN NEGATIVES AND PHOTOGRAPHS MADE FROM THE NEGATIVE .....	41
11.3	THIRD-PARTY REPRODUCTION OF MUSEUM PHOTOGRAPHS.....	41
<b>12.0</b>	<b>SOUND/FILM RECORDINGS .....</b>	<b>42</b>
12.1	THIRD-PARTY RECORDINGS OF A FILM/SOUND CLIP IN A MUSEUM EXHIBIT .....	42
<b>13.0</b>	<b>PHOTOGRAPHS .....</b>	<b>43</b>
13.1	DISPLAYING COMPANY TRADEMARKS IN AN EXHIBIT .....	45
13.2	USING BOOK OR SONG TITLES AS EXHIBIT TITLES .....	43
<b>14.0</b>	<b>INDUSTRIAL DESIGNS .....</b>	<b>44</b>
14.1	INDUSTRIAL DESIGN PROTECTION .....	44
<b>15.0</b>	<b>PERSONALITY RIGHTS/PRIVACY RIGHTS .....</b>	<b>45</b>
15.1	PHOTOGRAPHS OF MUSEUM VISITORS FOR PROMOTIONAL USE .....	45
<b>16.0</b>	<b>ORAL HISTORIES.....</b>	<b>46</b>
16.1	COPYRIGHT IN ORAL HISTORIES .....	46
<b>17.0</b>	<b>DEFINITIONS .....</b>	<b>47</b>
 <b>MODULE II</b>		
	<b>STANDARD FORM AGREEMENTS.....</b>	<b>50</b>
	ACQUISITION AGREEMENT .....	51
	LICENSE AGREEMENT.....	57
	ASSIGNMENT OF COPYRIGHT .....	62
	RECORDING INTERVIEWS .....	64
	ACCESS TO MUSEUM COLLECTION .....	68
	RELEASE .....	72

## INTRODUCTION

A museum is, among other things, a repository of the work of others. That work consists of a broad spectrum of art, literature, plans, maps, charts, visual recordings, sound recordings, books, and drawings — some published, some unpublished — recorded on a wide variety of media ranging from paper to canvass to micro-forms to “bytes” of data. All of these works, in all of these media, are protected by copyright. Copyright is the right to produce, reproduce, publish, or make available to the public anything in respect of which copyright subsists.

Ownership of a thing in which copyright subsists — for example a journal or record — is not ownership of the copyright. A museum may, for example, be the legal owner of a journal or a painting, but not the owner of the copyright. Generally speaking, the owner of the copyright in a work is the “author” of the work. In the case of a book or a journal the author is the person who wrote it; in the case of a photograph it is the photographer; in the case of a painting it is the painter. Copyright in some things, such as a sound recording of an opera performance, may have more than one owner. A sound recording of an opera performance is a good example. The performer has a copyright in the performance itself. The recording engineer has a copyright in the recording produced of the performance. The museum that owns the record has no right to reproduce either the performance or the recording of it simply as a result of its ownership of the record. To reproduce either the performance or the sound recording, it must own the respective copyright.

With some fairly narrow exceptions, museums are, like everyone else, subject to copyright laws. Copyright infringement, whether intentional or unintentional, is a serious matter that can expose a museum to significant legal penalties. A museum’s reputation, as custodian of the work of others, depends to a very great extent on its understanding of and ability to work within copyright laws. The purpose of this Guide is to provide the reader with an awareness of and sensitivity to copyright issues, as well as the information necessary to address those issues on a day-to-day basis.

This Guide is composed of two modules. The first module focuses addresses issues of particular interest to museums as they relate to acquiring works, using works already owned, borrowing/lending works, and creating works. This module is based upon a “question” format to help the reader identify issues and obtain answers quickly.

The second module consists of standard form agreements available for use in addressing copyright issues as they may arise, whether in the process of acquiring, creating, or lending works.

While every attempt has been made to demystify copyright law, and while we hope to have succeeded in that objective, there will inevitably arise situations in which museum staff may have concerns about a particular work or issue. These should be raised with senior museum staff at the earliest opportunity. As with any complex legal regime, future complaints are best avoided by present vigilance.

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## 1.0 GENERAL COPYRIGHT PROTECTION

“Copyright” is a compendious term meant to describe the rights associated with various works. Strictly speaking, copyright, in relation to a work, is the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof. Copyright extends to include the translation of works, their conversion from one form to another, performances, recordings, adaptations, exhibitions, and rentals.

In Canada, the applicable statute that creates copyright is the *Copyright Act*. The Act has been in existence for many years and amended on a number of occasions. These amendments have affected not only the rules that govern copyright but also the periods of time during which copyright will subsist for particular works. The more important amendments came into effect on June 7, 1988, January 1, 1994, and December 31, 1998. The practical effect of these amendments, as they relate to issues that are crucial for the museum, is reviewed below.

The word “work” is not defined in the *Copyright Act*, but clearly extends to include paintings, drawings, maps, charts, plans, photographs, engravings, sculptures, architectural works, compilations, books, pamphlets, and engravings. This list is not exhaustive. In addition to the bundle of rights that compose copyright, moral rights must be considered. The author of a work has, subject to certain exceptions, the right to the integrity of the work and the right to be associated with the work as its author. Moral rights, unlike copyrights, cannot be sold, but may be waived.

Definitions for terminology used throughout this Guide are provided in section 17.0.



## **2.0 TERM OF COPYRIGHT PROTECTION**

To determine the length of term of copyright protection for a particular work, consideration should be given to the following questions:

- What type of work is it? What is the term of protection applied to that type of work?
- Has the work been published?
- Is the author known?
- Does the Crown own the copyright?

These issues are explained in more detail below, where we will set out general rules followed by those applicable to specific types of work.

### **2.1 General Rule for Term of Protection**

#### **General Rule**

As of January 1, 1994, the general rule for the term of copyright protection is the life of the author + the remainder of the calendar year of death + 50 years. For joint authors, the term of copyright is measured from the death of the last living author.

#### **Old Rule**

Prior to January 1, 1994, the term of copyright protection was the life of the author + 50 years. For any work in which copyright still subsisted as of January 1, 1994, the term changed to the general rule above. If copyright expired prior to January 1, 1994, the term was not extended as a result of the rule change.

#### **Works to Which General Rule Does Not Apply**

While the general rule applies to artistic, literary, and dramatic works, it does not apply to types of works for which a term of protection is specifically defined in the *Copyright Act*. Works that have a specific term include anonymous works, posthumous (unpublished) works, photographs,

cinematographic works, performer's performances, sound recordings, communication signals, and works under Crown copyright. More information is given in the following sections.

## **2.2 Unknown Author (Anonymous Works)**

If the author is unknown, the term of protection is the shorter of:

- i) The remainder of the calendar year of publication of the work + 50 years; and
- ii) The remainder of the calendar year of the making of the work + 75 years.

If the author becomes known, the general rule applies (life of the author + remainder of calendar year of death + 50 years.). This rule applies where the author was never known or never associated with the work, but not necessarily in cases where the museum is unable to identify or locate the author at this time.

The museum must make all reasonable efforts to identify and locate the author/copyright owner of the work. If no author can be identified or located, the museum may apply to the Copyright Board, pay a fee determined by the Board, and use the work as permitted. This only applies with respect to certain works such as published works, fixation of a performer's performance (e.g. videotape of the performance of a play), published sound recording, or a fixation of a communication signal (e.g. taping a television show). For other works or where no application is made to the Copyright Board, the museum may run the risk of infringing copyright in the work.

## **2.3 Unpublished Works**

Publication of a work is defined as making copies available to the public in quantities that satisfy the reasonable demand of the public. An artistic work is not published when it is exhibited in public. It would be published, however, if it were printed on note cards and made available to the public. A literary, dramatic, musical, or artistic work is not published when it is performed or broadcast in public. It would be published, though, if taped copies of that performance or broadcast were made available to the public.

Historically, unpublished works had perpetual copyright protection. This changed as of December 31, 1998, for all posthumous works (works which were unpublished at the author's death) *except* Crown works, artistic works, and any work for which there was a set statutory period of protection such as sound recordings, certain cinematographic works, and some photographs. This new term of protection for unpublished works would apply, for example, to literary, dramatic, visual, or musical works that were not published, performed, or delivered at the time of the author's death.

For works in existence as of December 31, 1998, when the law changed, transitional provisions apply. The terms of protection are as follows:

- i) If the author is alive on December 31, 1998, and has an unpublished work, the period of protection is the life of the author + the remainder of the calendar year of death + 50 years.
- ii) If the author has died and the work was published before December 31, 1998, the term of protection for the work is the remainder of the calendar year in which the work is published + 50 years.
- iii) If the author died on or after December 31, 1948, but before December 31, 1998, with a work that is unpublished, the period of protection is 50 years from December 31, 1998, i.e. until December 31, 2048.
- iv) If the author died before December 31, 1948, with a work that is unpublished, the term of protection is 5 years after December 31, 1998, i.e. until December 31, 2003.

## **2.4 Crown Works**

If Crown copyright subsists in a work, special rules apply. As long as Crown copyright subsisted in the work as of January 1, 1994, or the work was created after this date, the term of protection is the remainder of the calendar year of publication + 50 years.

Crown copyright would subsist in any Crown work published after January 1, 1944, and this new term would apply. Prior to January 1, 1994, the term was only 50 years from the date of

publication. If Crown copyright protection expired prior to January 1, 1994, it cannot be extended under these amendments and the work remains in the public domain.

If the work is unpublished, Crown copyright will exist until it is published. Many Crown works are never published and therefore Crown copyright in these works will never expire.

## **2.5 Protection for Each Type of Work**

### **2.5.1 Artistic Work**

Copyright still subsists in an artistic work if the author died after January 1, 1944. If copyright still subsisted in the work as of January 1, 1994, or the work was created after this date, the term of copyright is extended to life of the author + remainder of calendar year of death + 50 years.

If copyright had expired as of January 1, 1994, the work remains in the public domain. It does not matter whether the work was published or unpublished.

### **2.5.2 Photographs**

After December 31, 1998, the term of protection for photographs became the same as for other works. For any photograph in which copyright subsisted as of December 31, 1998, the term of protection is as follows:

- i) Where the author is an individual, the term of protection is the life of the author + the remainder of the calendar year of death + 50 years.
- ii) Where the author is a corporation in which the author owns the majority of voting shares and, the term of protection is the life of the author + the remainder of the calendar year of death + 50 years.
- iii) Where the author is a corporation where the majority of voting shares is not owned by the author, the term of protection is the remainder of the calendar year of the making of the initial negative or plate from which the photograph was derived or, where there was no negative or plate, of the initial photograph + 50 years.

To determine if copyright still subsists in a photograph as of December 31, 1998, determine the date when the photograph or initial negative was made. Prior to January 1, 1994, the term of protection for photographs was 50 years from the date of making of the original negative from which the photograph is derived. As of January 1, 1994, this term changed only for those photographs in which copyright still subsisted or for those photographs where the initial negative was created after this date. The revised term is the remainder of the calendar year from the making of the initial negative or other plate, or the initial photograph where there was no negative or other plate + 50 years.

If the work was a cinematographic work protected as a photograph under the old *Copyright Act*, the new revised term for photographs does not apply. See section 2.9 dealing with cinematographic works.

### **2.5.3 Sound Recordings**

If copyright protection subsisted in the sound recording as of January 1, 1994, or it was created after this date, the term of protection is the remainder of the calendar year in which the original plate from which the recording was derived or the digital recording was made + 50 years. Prior to this, the term of protection was 50 years from the making of the original plate. The revised term applies to any recording made after January 1, 1944. Any recording made before January 1, 1944, is in the public domain.

If copyright protection subsisted in the recording as of September 1, 1997, the term of protection is now the remainder of the calendar year in which the performance is first fixed + 50 years. It does not matter if the recording is published. Therefore, for any sound recording made after September 1, 1947, the amended term of protection applies. The definition of sound recording has changed in each of the amendments so care should be taken to determine if, in fact, the work is protected as a sound recording.

### **2.5.4 Performer's Performance**

The term of protection for a performer's performance is the remainder of the calendar year in which the performance is first fixed in a sound recording or its performance, if it is not fixed in a

recording, + 50 years. This term applies whether the performance is fixed or performed before or after September 1, 1997.

### **2.5.5 Cinematographic Works**

If the work was created after January 1, 1994, the term of protection is the life of the author + remainder of the calendar year of death + 50 years.

If the work was created prior to January 1, 1994, and copyright still subsisted on that date, then the term of protection depends on whether it has original and creative character.

If the work has original character, the term of protection is now life of the author + remainder of the calendar year of death + 50 years.

If the work has no original character, the term of protection is for the remainder of the calendar year of first publication + 50 years or, if unpublished, then for the remainder of the calendar year of its making + 50 years.

Cinematographic works created prior to January 1, 1994, and without original character were protected as photographs and therefore had a shorter term of protection. The amendment to the term of protection for photographs brought into effect on December 31, 1998, does not apply to these cinematographic works.

### **3.0 POSSIBLE APPLICABLE EXCEPTIONS TO COPYRIGHT INFRINGEMENT**

Museums are bound by copyright law. They do not have a general exemption from copyright infringement and must be aware of copyright issues. However, several narrow exceptions to infringement may apply to a museum depending upon its use of works in which copyright subsists. Some of the issues to consider when determining whether an exception applies are the following:

#### **Educational Institutions** (See section 3.2).

No general exemption to infringement applies. There are, however, narrow exceptions, which are discussed below.

- Is it a not-for-profit institution?
- Is the work commercially available?
- Is it for the purpose of research or private study of the requesting party?

#### **Museum-specific exceptions to copyright infringement** (See section 3.3).

Does the Institution qualify as a museum under the *Copyright Act*?

- Is it a not-for-profit institution?
- Does it hold or maintain a collection of documents or other materials?
- Is it open to the public or to researchers?

#### **Is the work copied to maintain or manage the museum's collection?**

- Is the work commercially available?
- Is the work rare or unpublished and deteriorating, damaged, or lost?
- Is it copied for the purpose of viewing or handling because of the condition of the work?
- Is the format of the original in an obsolete technology/format?
- Is it copied for internal record keeping, cataloguing, insurance purposes, or police investigation?
- Is it necessary for restoration?

#### **Fair Dealing** (See section 3.4).

- Is the copy provided to a party for the purpose of their private study?
- Is it provided for the purpose of research (for either commercial or private purposes)?
- Is the work copied for the purpose of criticism, review, or news reporting?

- Is a significant portion of the work copied?

### **3.1 Works in the Public Domain — Copyright Protection has Expired**

If copyright in a work has expired, the work is in the public domain. The museum is free to make copies and other reproductions without infringing the copyright of others. However, other protection or rights may subsist in the work and care must be taken not to violate these rights. In particular, attention should be given to contractual rights agreed to by the museum at the time of acquisition and ownership rights of others.

For works owned by the museum and in which the copyright has expired, the museum may still charge a fee to third parties to exhibit, use, copy, or otherwise access these works. This fee is an “access” or user fee and does not relate to copyright protection.

### **3.2 Educational Institutions**

Educational institutions are not excluded from copyright infringement for use of materials in teaching. In most cases, it is an infringement of copyright for a school to take material to which copyright applies and reproduce it for students without the permission of the copyright owner. Limited exceptions are available.

Only one of the exceptions for educational institutions is relevant here. It is not an infringement of copyright for an educational institution to make a Guide reproduction of a work onto a dry-erase board, flip chart, or other similar surface for displaying handwritten material, or to make a copy of a work to be used in an overhead projector or similar device for purposes of education or training on the institution’s premises. This exemption only applies if the work is not commercially available in an appropriate medium.

Otherwise, in order to copy a work and avoid infringement, the educational institution must rely on exceptions to copyright infringement such as fair dealing for research and private study, discussed more fully below. Where a school contacts the museum for copies of works to distribute to its students, the school must obtain permission from the museum or risk infringing the museum’s copyright in any such works. Where a student contacts the museum for a copy of a work to use in the student’s school project, such use would likely fall within research and



private study and be an exception to infringement.

For-profit institutions and companies providing materials to educational institutions do not fall within the educational exceptions to copyright infringement. Care must therefore be taken to ensure that the museum is dealing with a non-profit institution such as a school or school board rather than a for-profit institution or company.

### **3.3 Libraries, Archives, and Museums**

Certain exceptions to copyright infringement are available to libraries, archives, museums, and persons acting under their authority. In order for these exceptions to apply, the institution must qualify as a museum as defined in the *Copyright Act*. The definition under the *Copyright Act* for a library, archive, or museum to qualify for these exceptions is:

1. An institution, whether or not incorporated,
2. That is not established or conducted for profit or that does not form a part of, or is not administered or directly or indirectly controlled by, a body that is established or conducted for profit,
3. In which is held or maintained a collection of documents and other materials,
4. That is open to the public or to researchers.

By this definition, then, any museum or library operated by a for-profit corporation such as a private company or bank would be excluded, as would any institution in which the collection is closed to the public or to researchers.

If it meets the definition above, a museum or library is permitted to copy a work, whether published or unpublished, for the purpose of the maintenance or management of its permanent collection or the permanent collection of another museum, archive, or library:

- If the original is rare or unpublished and is deteriorating, damaged, or lost (or at risk of becoming so), unless a copy is commercially available in an appropriate medium and quality;
- For the purposes of on-site consultation if the original cannot be viewed, handled, or listened to because of its condition or because of atmospheric conditions under which it must be kept, unless a copy is commercially available in an appropriate medium and

quality;

- In an alternative format if the original is currently in an obsolete format or the technology required to use the original is unavailable, unless a copy is commercially available in an appropriate medium and quality;
- For the purposes of internal record keeping and cataloguing;
- For insurance purposes or police investigations; or
- If necessary for restoration.

### **3.4 Fair Dealing**

Copyright in a work is not infringed where it is copied for fair dealing for limited purposes. Fair dealing for the purpose of research or private study does not infringe copyright. Fair dealing for criticism, review, or news reporting does not infringe copyright if proper credit is given as to the source and name of the author, performer, maker, or broadcaster, if applicable.

“Fair dealing” is not defined in the *Copyright Act* and depends upon the facts of each case. Factors to consider in determining fair dealing include the purpose for which the work is used, the importance and amount of the work taken, and whether the user is competing with the author/owner of the work. A court will look at the true purpose and intent of the user of the work. It will look at the size of the part reproduced and the importance of this portion. Taking only a small portion of the work does not necessarily constitute fair dealing; rather fairness depends on how important or recognisable portion taken may be. In many well-known books, small quotes are immediately recognisable and attributable to that particular work. Taking such a quote for an improper purpose may be considered unfair. In other cases, taking substantial amounts of the work may be considered fair dealing, depending on the circumstances.

Fair dealing for the purpose of research is an exception to infringement under the Act. While it has not been decided in Canada, other countries have interpreted this to mean that businesses may copy and use works in the course of research to enable commercial exploitation of a final product. Therefore, it is likely that museum staff can copy works for the purpose of background research in preparing exhibits, displays for the museum Web site, internal catalogue records, or for other purposes of the museum. It is unlikely that such copies could themselves be used in exhibits, on Web sites, or within the museum.

### **3.4.1 Fair Dealing — Copies of Works for Research and Private Study**

A museum and its staff may copy works under the fair dealing provisions discussed above for the purpose of research or private study. As well, a museum or library may do anything on behalf of any person that he or she has the right to do under the fair dealing provisions. For example, if the person has the right to copy an article for private study purposes, then the museum can make the copy of the article for that person. Where the person requesting a copy is a patron of another museum or library, the museum may provide a copy to the other museum or library under this exception; however, copies cannot be provided in a digital form.

The museum may photocopy a work that is contained in an article published in a scholarly, scientific, or technical periodical for any person requesting the copy for research or private study. A copy may also be made from a newspaper or periodical (other than a scholarly, scientific, or technical periodical) published at least one year prior but only where the work is not a work of fiction, poetry, drama, or music. These copies may only be made where the museum is satisfied that the person will not use the copy for a purpose other than research or private study and the person is provided with a single copy of the work. Copies may not be provided in digital form. Copies must be made without the motive of gain; however, the museum may recover costs associated with making the copies, including overhead costs.

A sample form for access to the museum collection is provided in Module 2. This form states that the requesting party will use the work for research or private study. It is not necessary to have this form signed by every patron requesting copies of materials, but it should be used in circumstances where large amounts of material are copied or where the museum feels that such a form would satisfy it that the requesting party will use the work only for the stated purpose.

### **3.5 Public-Access Photocopy Machines**

The museum or a library does not infringe copyright where:

1. A copy of a printed work is made using a photocopy machine; and
2. The machine is installed on the museum or library premises with the approval of the museum or library for use by visitors; and
3. There is affixed a notice warning of infringement of copyright; and

4. The library or museum has entered into an agreement with the copyright owner or with a collective society that is authorised by copyright owners to grant licenses on their behalf.

Therefore, where the public is using museum photocopy machines to reproduce works in which the museum owns copyright or has an agreement with the copyright owner, the museum does not infringe copyright. For other works where the museum does not have an agreement with a collective society or the individual copyright holder, the museum must look to other exceptions.

## **4.0 CREATION OF NEW WORKS BY THE MUSEUM**

Works may be created by employees of the museum or by independent contractors hired by the museum. Copyright in the resulting work may be owned by the museum or by the independent contractor depending upon the particular situation. Rather than leaving ownership to be determined at a later date, consider these issues when having works created:

**Is a member of the museum staff preparing the work?** (See section 4.1).

- Is the work created as part of the regular employment duties of the staff person?
- Is the work created by museum staff but outside of their general employment duties?
- Have any provisions/restrictions been made for ownership of rights?

**Is the work prepared by an independent contractor who is not museum staff?**

(See section 4.2).

- Is there any provision in the contract between the contractor and the museum with respect to ownership of copyright or other rights in the work?
- Have moral rights been waived?
- How much control and direction is given to the contractor? If significant direction and control are exerted over the contractor, then copyright may be owned by the museum.

**For works created by independent contractors, what rights were obtained?**

- Does the museum have the right to use the work whenever it works?
- Can the museum alter the work or update it?
- Can the museum copy and reproduce the work?
- Can the museum have a third party alter the work or update it?

**If the work is an engraving, photograph, or portrait, is it commissioned by the museum?**

(See section 4.4).

- Will the museum receive the plate, original negative, or other original?
- Does the author retain the right to reuse the work?

## 4.1 Ownership of Works Created by Museum Staff

The employer under section 13(2) of the Copyright Act automatically owns works created by an employee in the course of their employment. Therefore, where a museum employee creates a work such as text for incorporation into an exhibit, a classification guide, photographs, or an electronic directory, the copyright in that work is owned by the museum. As well, Crown copyright will automatically subsist in this work (where the museum is a Crown agency and not private).

If the work is created outside of the ordinary course of an employee's regular job-related duties and without using the employer's equipment, then the employee would own the copyright. For example, a photographer employed by the museum would retain copyright in photographs taken outside of working hours.

## 4.2 Ownership of Works Created by Independent Contractors Hired by the Museum

Under the *Copyright Act*, copyright in any work that is prepared or published by the Crown, is owned by the Crown subject to any agreement with the author. Whether a particular work prepared by an independent contractor is considered to be prepared under the direction or control of the Crown will depend upon the facts of the particular case. If the contractor is given little guidance or direction, then copyright in the work would likely belong to the contractor. Where the museum provides substantial direction and control over the preparation of the work, then Crown copyright would apply and copyright would likely be owned by the museum. **To avoid ambiguities, any contracts with contractors, or persons other than museum staff acting in the ordinary course of their employment should clearly state who owns copyright in the work.**

Works created by a third party for the museum and in which the third party retains copyright may not be altered or copied by the museum without the permission of the copyright owner unless the museum has specifically obtained this right. Since the museum does not own copyright in the work, any copying or alteration of the work would be an infringement of a third party's copyright. Examples include commissioned sculpture, exhibit materials, texts, logos, or promotional brochures.

### 4.3 Use of Crown Works

Where the Crown owns copyright in a work, third parties may not copy the work, or do anything else with the work that only the copyright owner has the right to do, without the proper authorisation of the Crown.

### 4.4 Ownership of Copyright in Commissioned Engravings, Photographs, or Portraits

If a work is a commissioned engraving, photograph, or portrait, the person who commissioned the work owns the copyright and not the author/maker in the absence of an agreement to the contrary. The plate, negative, or other original must be ordered by another person and made for valuable, paid consideration. The person who commissioned the work must receive the original plate or negative and not simply a copy made from it. If the author retains the plate or other original as part of the agreement, then the author would be the first owner of the copyright.

Consider the example where a photographer is hired to create a series of photographs for the museum. The photographer provides these photographs to the museum but retains the negatives and the right to reuse the photographs. The photographer and not the museum would be the first owner of copyright unless there was a written agreement to the contrary. A photographer may also rely on general industry practice to show that he, and not the person who commissioned the work, is the first owner. If the general practice is that the photographer always retains the negatives and has the right to reuse the photograph, this practice has always applied in the past when the photographer dealt with the museum, and it is not clear that different provisions would apply to the particular situation, then the general practice would apply. **Therefore, the museum should have express written agreements dealing with copyright ownership whenever a third party is commissioned to carry out work on behalf of the museum.**

#### **4.5 Ownership of Moral Rights in a Work**

Regardless of who owns the copyright in the work, the author still retains the moral rights. Moral rights cannot be assigned by an author and are retained by the author even where an employer owns the copyright in the work. Moral rights may be waived but such waiver needs to be in writing.



## 5.0 ACQUIRING WORKS

When works are acquired by the museum, the museum may own the physical work but not the copyright. Copyright is often not assigned to the museum, thus restricting the museum in how it may use the work. At the time of acquisition, consider the following issues:

### **For what reason is the museum acquiring this work?**

- Exhibition?
- Publication?
- Use in promotional brochures, ads? Other copies? Reproduction in another format?  
Posting on the Web?
- Will the work be changed (i.e. blown up, cropped, enhanced, used with a different/altered background?)?
- One-time use only?
- Will it become part of the museum collection?

### **Is there copyright subsisting in the work?** (See section 1.0).

- Is this the type of work in which copyright subsists?
- Has copyright in the work expired?
- Who owns the copyright?

### **Is there more than one copyright subsisting in the work and has permission from all owners been obtained?**

### **Are there any moral rights in the work?** (See section 4.5).

- Will the work be altered in any manner (i.e. enlarged, cropped, enhanced, used with a different/altered background)?

### **Considering the museum's intended or possible use of the work, what rights should be obtained?**

- Will it be reused by the museum in an unrelated activity?
- Will the museum use it in related works to the intended use (for example, in promotional brochures for an exhibition)?
- Will it be used in an exhibit? In an updated exhibit?
- Will it be used in a publication?

- Will it be placed on the museum's Web site?
- Will it be placed on an intranet or in an internal cataloguing system?
- Will it be altered?

### **What is the cost of obtaining these rights?**

#### **If the museum has acquired an assignment of copyright, is the author deceased?**

- Was copyright assigned during the life of the author?
- Has the author been deceased for 25 years or more? Has copyright reverted to the author's estate? (See section 5.1).

#### **Are all of the rights obtained by the museum clearly set out in a written agreement at the time of acquiring the work?**

It may often be impossible or impractical to acquire all of the copyright in a particular work. The author or copyright owner may be willing only to extend partial rights — for example a right to exhibit without a right to reproduce, or a right to reproduce without a right to alter. Consideration should be given to determining exactly what rights the museum requires, and for what purposes. The rights may be acquired absolutely by way of a simple purchase or they may be acquired conditionally, in the form of a licence. They may, as well, be gifted, which is typically accomplished by way of an assignment or simple donation. Forms for each of these kinds of acquisition appear in Module 2.

### **5.1 Beware - Reversion of Copyright Ownership in Works**

In some cases, copyright in a work may revert to the estate of an author 25 years after death. This provision only applies to works where the author is the first owner of the copyright. It therefore does not apply to works such as those created during the course of employment where the employer is the first owner of copyright or to Crown works. The rule does not apply to collective works (i.e. works where more than one work by different authors are combined to form a collective work such as an encyclopaedia, magazine, dictionary, or newspaper).

Where the author is the first owner of the copyright in a work and then assigns by that copyright, other than by will, after June 4, 1921, the copyright will revert to the author's estate 25 years after the author's death, regardless of any contract or agreement to the contrary. Therefore, any

assignment relating to such works that transfers all copyright to the museum will do so only for the period up to 25 years after the death of the author, at which point the copyright will revert to the author's estate. The museum may contact the legal representatives for the estate to obtain rights for the remaining 25-year period.

Although this provision does not apply to Crown works, it does apply to many of the works acquired by or donated to the museum. Therefore, museum staff should be aware of the effect of this provision.

## **6.0 BORROWING/LENDING WORKS**

When the museum obtains a work, it may only obtain limited rights. It is of fundamental importance that museum staff determine, as best they can, whether the museum has obtained the entire copyright in a work or only specific rights in respect of it. The museum cannot grant to others any greater right in a work than it itself has. As a result, inter-museum lending agreements should stipulate any limitation on the rights of the granting institution in order that the limitation can be reflected in behaviour of the borrowing institution. Consider some of these issues:

### **What rights does the museum own for each work in the exhibit or each work on loan?**

- Do they have the right to copy it?
- Do they have exhibition rights? (See section 7.1).
- Is it an artistic work?
- Was the artistic work created after June 7, 1988?

### **Are there any restrictions on travelling exhibits/works by the owner of right?**

### **Is a list of rights provided to each venue for a travelling exhibit/work?**

### **For what purpose is the borrowing venue obtaining the work?**

- Does this purpose infringe any rights that the museum has not obtained?
- Is it for purposes of educational use, private research or study, or commercial use?

### **Is it clear to the venue what they may do with the exhibit/work and what rights/restrictions apply to it?**

- Can the venue use images from the exhibit for marketing or promotional purposes?
- Can the venue allow third parties to photograph, film, or otherwise copy the exhibit?
- Can the venue post images from the exhibit on its Web site or reproduce it for any other purpose?
- Are these permissions/restrictions clearly set out in a written agreement/notice?

Forms that may be useful when acquiring rights to a work are provided in Module 2. These include a purchase agreement, a copyright agreement, a copyright assignment, and a license.

## 7.0 EXHIBITS

In *Copyright Act* amendments that came into effect on June 7, 1988, exhibition rights were added as part of overall copyright. An exhibition of an artistic work created after June 7, 1988, other than a map, chart, or plan, is now an infringement of the copyright in that work. Exhibition rights are not included in the Act for works other than artistic works. When exhibiting artistic or other works, consider these issues:

### **What rights did the museum obtain with the work?**

- Does the museum own the copyright in the work?
- Does it have the right to exhibit the artistic work?

### **Was the work created prior to June 7, 1988?** (See section 7.1).

- If so, exhibition of the work is not an infringement of copyright
- If the work is an artistic work other than a map, chart, or plan, and it was created after June 7, 1988, does the museum have the right to exhibit it?

### **Are other company's products/brand names/trademarks shown in the exhibit?**

(See section 13.0).

### **Is the work an original or a copy?**

- If it is a copy, who owns the copyright in the copy, if there is any?

### **Does the museum have the right to copy/reproduce the work to include it in an exhibit?**

- If a copy of the work is being made to include in an exhibit, does the museum have the right to copy it, enlarge it, crop it, etc? (See section 9.0).

## 7.1 Copyright in Artefacts

Copyright may subsist in artefacts such as technical drawings, logs, diaries, and designs on quilts and handcrafts. Copyright does not subsist in work tools or machinery. However, photographs or reproductions of these artefacts may be protected by copyright. (See, in this regard, section 11.1). The museum may not copy or reproduce such photographs or reproductions without the permission of the copyright owner. As well, such photographs or reproductions may not be cropped, altered, or otherwise amended for inclusion in an exhibit

without the permission of the copyright owner and the author who owns moral rights in the works unless such rights are waived. The museum should verify what rights were obtained with the artefact at the time of acquisition before including it in an exhibit.

For artefacts created prior to June 7, 1988, the exhibition of the work is not an infringement of copyright. However, as of that date, exhibition rights were added into the *Copyright Act* for artistic works. For any artistic work created *after* this date, other than a map, plan, or chart, the *Copyright Act* prohibits exhibition of the artistic work without the permission of the copyright owner.

## **7.2 Rights Applicable to Travelling Exhibits**

When an exhibit travels to another country, the copyright laws in that country apply with respect to infringement of copyright and these laws may differ from those of Canada. In most cases, infringers will be subject to the laws of the country in which the infringement occurs. While the majority of industrialised countries have standardised their Copyright laws to some degree, there remain differences and the museum may wish to verify the rights available in any country in which an exhibit will be travelling.

## **7.3 Rights Granted by the Museum for Travelling Exhibits**

**The museum should clearly outline any restrictions on the use, exhibition, or otherwise with respect to any exhibit travelling to other venues.** These restrictions should be clearly set out in a written agreement or notice accepted by the venue. Such an agreement may give the museum some recourse for any violation of its rights occurring in other countries by the particular venue.

Forms are provided in Module 2 that may be useful when obtaining or granting the right to exhibit works owned by the museum, including a purchase agreement, a donor agreement, a copyright assignment, a license, and a copyright agreement.

## **8.0 PUBLICATIONS BY THE MUSEUM**

When the museum publishes a work, copyright may subsist in several portions of it. For example, a book may contain photographs, text, drawings, sketches, and quotes from others — all of which may be the subject of copyright. It is necessary to obtain permission to reproduce and publish each of these separate works in the museum's publication, which will itself be a work in which copyright will subsist. Consider some of these issues:

### **Who is the author of the work?**

- Museum staff?
- A third party hired by museum?
- A third party who has voluntarily submitted the work?

### **For museum publications such as books, who is compiling the book?**

- Museum staff?
- A third party hired by the museum?

### **Does the museum own any rights in the work, including the right to print it?**

(See section 4.0).

- If museum staff prepared the work, is this in the ordinary course of their employment?
- If the work was commissioned from a third party, what rights were obtained at the time of commission?
- If a third party voluntarily submitted the work, what rights were obtained at the time of acceptance?

### **Will the museum be reprinting the work in another format (i.e. –will it appear on the Internet, another exhibit, publication, or elsewhere)?** (See section 9.0).

- Do additional rights/permissions need to be obtained?

### **Does the main work include photographs, drawings, sketches, quotes, or other incorporated works that may have separate copyrights?**

- Have the rights to reproduce the incorporated work been obtained by the third party or by the museum?

## **8.1 Copying Written Works of Others**

Before the written work of another, such as a published article, can be reproduced by the museum, permission must be obtained from the owner of any copyright in it. This includes scholarly, scientific, and technical articles as well as works of fiction. Consider some of these issues:

**Does copyright subsist in the work?** (See section 2.0).

**Has the copyright expired and is the work in the public domain?** (See section 2.0).

**For what purpose is the work being reproduced or copied? Is there an applicable exception to infringement?** (See section 3.0).

- Fair use for research or private study?
- Fair use for criticism or review?
- How much of the work is being copied?
- Is it being copied/reproduced because of the condition of the original?
- Is it being copied/reproduced for internal cataloguing/maintenance of the museum collection?

**Have rights to copy the work been obtained from the author/publisher?**

## **8.2 Copying Trade Literature and Older Publications**

Depending upon the age of these publications, copyright may still subsist. The museum may copy them for limited purposes without infringing copyright. These purposes are discussed in more detail in section 3, which deals with exceptions to copyright infringement. Briefly, the museum may make copies, for example, for the maintenance or management of its collection if the original is rare or is at the risk of deterioration, damage, or loss; for onsite consultation if the original cannot be viewed or handled because of its condition; for the purpose of internal records and catalogues; or for restoration. These exceptions only apply where copies are not available commercially in an appropriate medium and quality. Copies may also be made, for example, for patrons of the museum who wish to conduct research or private study.



### **8.3 Copying Museum Publications/Periodicals**

In general, copies of articles from publications and periodicals may not be reproduced without infringing copyright unless one of the statutory exceptions to copyright infringement applies. This includes reproduction by the museum on its Web site.

The rights associated with an article or other publication will depend upon the rights obtained by the museum at the time the article was contracted or submitted. For example, if the museum publishes a periodical with academic articles in it but only informs the authors that the articles will appear in one paper publication, then the museum does not have the right to reproduce the articles without the authors' permission. If the authors are informed that the articles may be electronically reproduced on the Web and grant this right to the museum, then the museum can do so. If the museum contracts with a third party to prepare a publication or text or other works for use in a publication, the museum must obtain rights to reproduce the work in the desired formats.

For museum periodicals in which articles are obtained from third parties, it may be necessary to obtain copyright for reproduction of works incorporated within the article. For example, reproducing an historical article that includes photographs may infringe copyright in the photographs it contains. Permission from the owner of the copyright in the photograph must be obtained. Exceptions to copyright infringement may apply in some cases. For example, if a quote is reproduced from another work, the fair dealing exception may apply. (See the section 3.4). Where a minor portion of a work is reproduced, copyright in the work will not usually be infringed, depending on the significance of the portion.

### **8.4 Copying Publications/Literature**

Limited copying and reproduction rights apply to publications/literature. A person may copy a publication under the fair dealing provisions for the purpose of research or private study. Copies may be made by the museum for the maintenance or management of its collection in limited circumstances. These and other provisions are discussed in more detail above in section 3 on exceptions to infringement and in particular in section 3.4 on fair dealing. Similarly, the amount of a publication that can be copied is dealt with under the fair dealing provisions. Each case is dealt with on its own facts: there is no formula that can be used as a guideline. The amount that

can be copied will vary on a case-by-case basis.

The museum cannot take the works of others and copy them for use by the museum. This includes materials on the Web (for example, a museum cannot take clip art images from Web sites and use them on museum materials without obtaining the authorisation of the copyright owner). The museum may not copy other types of publications or written works — including not only periodicals, articles, and books but also recipes, poems, and tombstone epitaphs. Copyright may apply to these literary works if they are original and meet the other requirements set out in the Act such as citizenship/residency of the author.

### **8.5 Copying Electronic Publications**

Rules similar to those for paper publications apply with respect to electronic publications. The medium does not change the nature of the infringement, only the ease with which the infringement may be carried out.

### **8.6 Copying Publications for Other Libraries or Museums**

As a general rule, the museum may not make copies of publications for other libraries or museums unless specific exceptions to infringement apply.

## **9.0 REPRODUCTION/NEW USE OF WORKS OWNED BY THE MUSEUM**

For many works obtained by the museum, the museum may own the physical work but not the copyright in the work. The museum may therefore have limited rights in the work. It may not have the right to copy the work, reproduce the work, or post an image of the work on the museum Web site. Consider some of these issues before reproducing the work:

### **What rights does the museum own in this work?**

- Does it own full copyright or only limited rights? What limited rights?
- Does it have the right to copy it?
- Does it have the right to reproduce it in another format?
- Does it have the right to exhibit it?
- Does it have the right to re-use it? Or only to use it one time for one particular event?

### **Does the museum have the right to use the material in other formats?**

- In exhibits? In films? In video clips? On the Web?
- Can it copy the work for use on commercial items such as t-shirts, cups, or other giftware?

**Can the museum alter the work? May it enlarge it, crop it, change the background, or enhance it?**

**Can the museum digitise the work?**

**Was the original work altered/reproduced to create a second work? Who owns the copyright in this second work?**

- For example, was a photograph altered or were photos combined to create a new image?
- Was a translation prepared?
- Was a work photographed?

## **10.0 INTERNET/WEB SITES**

Posting works on the museum Web site constitutes an exhibition of the work. Digitising the work to post it on the museum Web site may infringe the work's copyright protection. Determine what rights the museum owns in the work prior to copying it, posting it on the Web site, or allowing others to copy the image from the Web site. Some issues to consider are as follows:

### **Does copyright subsist in the work?**

- Is this a type of work in which copyright subsists? (See section 2.0).
- Is the copyright still in effect or has it expired? (See section 2.0).
- Is it an artistic work other than a map, chart, or plan and therefore exhibition rights apply? (See section 7.0).

### **Who owns the copyright in the work?** (See sections 4.0 and 5.0).

- The museum?
- The author?

### **What rights does the museum have in the work?**

- Is the work a part of the museum collection?
- Does the museum own the work itself or is it on loan?
- Does the museum own copyright in the work?
- If not, does the museum have the right to copy the work to post it on the Web site?
- If it is an artistic work, can the museum exhibit the work?
- Does it have the right to reproduce the work in another format such as digitising it?
- Does it have the right to enhance or alter the image of the work?
- Can it sell or distribute copies of the work?

### **Is the work being posted on an intranet accessed by museum staff only?**

- If it is posted on an intranet, what is the purpose for posting the work? Is it for cataloguing/indexing purposes only? (See section 3.3).
- Is there restricted access to the works posted on the intranet?

**Does the museum have the right to provide copies of the work to the public?**

- Can it copy the work without restriction?
- For what purpose does the public want the work? (See section 3.4).
  - Private use/study?
  - Commercial use?
  - Educational use?

**Did the work/image come from a third party's Web site?**

- Were there any posted restrictions on the third parties Web site?
- Did the museum obtain the right to reproduce/copy the work?

**If the work/image came from a third party's Web site, for what use was it obtained?**

- Research and background information?
- Reproduction on the museum's Web site?
- What part of the work/image is being reproduced?
  - All of it?
  - Only a small part of it?
  - Substantial or significant portion of it?
- Has the image been changed in any way?

**Did a third party take or use a work/image from the museum's Web site? For what purpose is the work being used?**

- Educational?
- Private research and study?
- Commercial use?

**Did the third party obtain permission from the museum to use the work?**

- Was proper credit given to the museum?

**10.1 Exhibiting and Posting a Work on the Museum's Web Site**

Displaying an artistic work at a public exhibition for a purpose other than sale or hire is an infringement of copyright for any work created after June 7, 1988, other than a map, chart, or plan. Prior to this date, public display of any work was not included in the specific rights under copyright. Therefore, for any artistic work created after June 7, 1988, the museum must obtain

exhibition rights before the artistic work can be posted on the museum's Web site. Since most works displayed on the museum's Web site would be images that fall within the definition of artistic works, a grant of electronic exhibition rights should be obtained by the museum. As well, since the works will be reproduced in a digital format to post on the Web, the museum must obtain reproduction rights.

## **10.2 Digitising/Reproducing Images of Works for Posting on a Web Site**

In order to post a work on the museum's Web site, an image of the work must be digitised (assuming the work is not provided in digital form). Because this process involves creating a copy of the work in a different form, reproduction rights must be obtained from the copyright owner before a digital copy can be made. In addition, exhibition rights must be obtained from the owner of copyright if the work was created after June 7, 1988.

The museum may not own copyright in a work in its own collection even though it owns the physical work or a copy of it. The rights obtained by the museum at the time of acquisition may be restricted or limited for other reasons. For example, the museum may have purchased the right to use the work for one particular purpose, perhaps a particular exhibit or video, and will not have the right to use the work in future exhibits or to post the work on the museum Web site. The museum may have been given the right to use the work in an exhibit or retain it in its collection but may have no right to copy it. In most cases, without the right to copy the work, the museum cannot post an image of the work on its Web site. If however, the museum has the right to exhibit the work, it is possible that implied rights were given to copy the work for exhibition on the Internet. These rights should, however, be verified.

## **10.3 Posting Images on the Museum's Internal Intranet**

It is questionable whether images posted on an internal intranet constitute public exhibition. However, a copy would need to be made to post an image of the work and therefore such a copy could infringe the copyright in the work. Exceptions to copyright infringement that apply to museums, libraries, and educational institutions may avoid copyright infringement in this situation. For example, where the internal museum intranet is used as a catalogue of the museum collection, then copies of a work could be posted. See the exceptions to infringement in section 3.0.

## **10.4 Using Images or Copying Information from Third Party Web Sites**

Copyright protects the expression of an idea or information but not the idea or information itself. Therefore, information from another Web site may be used in creating the museum's Web site as long as the other Web site is not itself copied. Copies of the third party's Web site may be made for preparing the museum's Web site without infringing copyright if such copies fall within an exception to infringement. For example, if the copies are made for research purposes, the copying may fall within the exception to infringement under fair dealing. This exception is discussed in more detail in section 3.0.

Images of works may be taken from third party Web sites for use on the museum Web site, in museum publications, or within the museum itself only where permission has been obtained from the copyright owner. Works displayed on the Internet are not in the public domain and, therefore, are not free to use without restriction. Use of any work on the Internet in which copyright subsists is restricted according to copyright laws. Any unauthorised copying or other use of these works would infringe the copyright in them. Third-party images of works may include photographs, paintings, artefacts, and other works such as clip art. Unauthorised copying includes use of the image in promotional brochures or in handouts to museum visitors.

## **10.5 Third-Party Use of Images on the Museum Web Site**

The rules governing the provision of copies of images of works from the museum Web site to the public are the same as those for providing any copies of works to the public. Does the museum have the right to copy the work? If the museum owns copyright in the work and no other restrictions are placed on the work, the museum may provide copies to the public as it wishes.

If the museum does not own copyright in the work, then it must determine what rights it does own and what rights subsist in the work. If the work includes more than one work within it, there may be more than one copyright owner. The copyright may have expired or still be in effect. As well, providing copies of images to the public may fall within an exception to copyright infringement. (See section 3.0).

Just as copyright protects works posted on a third party's Web site, copyright also protects

works posted on the museum Web site. Others may not take copies of the images from the museum Web site and use them without permission from the museum. Unauthorised use of images from the museum Web site is an infringement of copyright even if the third party credits the museum as the source of the image. There are however some exceptions to public use which may apply. (See section 3.0). **In any event, copyright notices should be posted on the museum Web site with respect to all its images.**



## **11.0 PHOTOGRAPHS**

### **11.1 Copyright in Photographs of Exhibits and Artefacts**

Copyright subsists in an original photograph and is usually owned by the photographer. More than one copyright may subsist in the photograph, for example, in a photograph of an exhibit in which several works may be seen. Should copyright subsist in any work depicted, the photograph may not be reproduced without infringing its copyright. The right to copy each work shown in the photograph must be obtained as well as the right to copy the photograph itself.

While artefacts or other objects may have no subsisting copyright (either because copyright does not apply to them or because the copyright has expired), copyright will subsist in a photograph of such an object. Even though a third party may copy an artefact without infringing any copyright, a third party could not copy the photograph of the artefact.

### **11.2 Ownership of Copyright in Negatives and Photographs Made from the Negative**

Section 10 of the *Copyright Act* provides that the owner of the copyright in a photograph is the person who owns the initial negative or other plate at the time when it is made. Where there is no negative or plate, the owner is the owner of the photograph at the time when it is made. Infringement of copyright would occur where a negative is made from a photograph and/or where copies of the photograph are made from that negative.

### **11.3 Third-Party Reproduction of Museum Photographs**

Where photographs or copies of photographs are provided to third parties, the rights given with respect to the photograph should be clearly stated. The third party may only use or reproduce the photograph in accordance with the rights granted by the museum (or the copyright owner). For example, if a third party obtains a copy of a photograph to use for a particular publication, the third party may not then reuse the photograph in another publication without authorisation from the museum (or copyright owner).

## **12.0 SOUND/FILM RECORDINGS**

### **12.1 Third-Party Recordings of a Film/Sound Clip in a Museum Exhibit**

A third party making film or sound recordings of works within the museum may be infringing copyright. Where a third party films a work in the museum, displaying or copying the film may infringe copyright in any work contained in the film. Filming a video clip in the museum and then selling or copying the film for the purpose of showing the video clip infringes its copyright. Similar rules apply with respect to sound recordings. As well, where limited rights to a sound recording were purchased by the museum, for example for one-time use in a video clip for an exhibit, making a sound recording of the video clip and using it in another exhibit would be unauthorised copying.

The museum is not responsible for the acts of a third party unless it induces those acts or encourages them. Similarly, where the museum uses a song or other sound recording in an exhibit, rights to use this work must be obtained by the museum.

## **13.0 TRADEMARKS/BRAND NAMES**

### **13.1 Displaying Company Trademarks in an Exhibit**

The Trademarks Act protects trademarks and brand names. A trader cannot use another person's trademark on its wares or services in such a manner as to confuse the public. As well, a third party cannot make any statements which would discredit the wares or services of another or pass off its goods as those of another.

The manufacturer's name or trademark may appear on some artefacts, for example, the Ford name and emblem on an antique car or the name of a magazine used in an exhibition. This name or mark may also appear in a work in which copyright subsists, for example, in a photograph of the artefact. By displaying the work, the name or mark of the manufacturer is seen by the public. The display of the trademark in an exhibit in the museum would generally not be considered use as a trademark and, therefore, would not violate trademark rights in the mark.

However, use of this artefact, where such a trademark is visible, on commercial products sold by the museum or others may infringe trademark rights. Such use on commercial products may imply a relationship or endorsement between the museum and the manufacturer that does not exist.

### **13.2 Using Book or Song Titles as Exhibit Titles**

In most cases, copyright and trademark protection does not apply to book or song titles but may apply to characters within a book or song. In select cases, copyright or trademark protection may apply where a particular title is intrinsically connected to an author or a particular work. Therefore, in general, book and song titles may be used by the museum as titles for exhibits or other publications. However, particularly unique or well-known titles should not be used. As well, references to particular characters in a book or song should not be used without the author's permission. For example, "Harry Potter and the Sorcerer's Stone" should not be used as a title for a children's exhibit at the museum since most Canadians would connect this title with the popular author and book.

## 14.0 INDUSTRIAL DESIGNS

### 14.1 Industrial Design Protection

Industrial design registrations protect features of shape, pattern, configuration, or ornamentation in a finished article that are judged solely by the eye. Industrial design protects artistic characteristics of the article and not the functional features of it. Examples of protected features include the shape of a knife handle, the pinwheel patterns on crystal glasses, and the unique pattern of the tread of a running shoe. Protection only lasts for a maximum of 10 years and registration must be obtained in order for a design to be protected.

In some cases, both copyright and industrial design protection may appear to be available but exceptions in the *Copyright Act* apply. Where industrial design protection is available and the article to which the design is applied is manufactured in more than 50 copies, copyright protection is not available. Only industrial design protection would apply, with some exceptions. These amendments were made to the *Copyright Act* on June 7, 1988, and prior amendments apply for designs created before this date.

## **15.0 PERSONALITY RIGHTS/PRIVACY RIGHTS**

### **15.1 Photographs of Museum Visitors for Promotional Use**

In Canada, some provinces have enacted statutes providing the right to privacy for individuals. In Newfoundland, Quebec, Manitoba, and Saskatchewan it is a violation of privacy of an individual to use his or her likeness for advertising or trade purposes without authorisation. Therefore, a picture of a visitor attending a museum in one of these provinces could not be used in museum promotional literature without the individual's permission. In the other provinces, the Courts have not dealt with this issue with respect to non-famous people. However, it is generally suggested that any photographs or images showing visitors to the museum be used in promotional literature only where permission has been obtained from the persons depicted. Where a photograph or image shows a large crowd of visitors, then the right of privacy does not usually apply. Where models are hired for the purpose of using their image for promotional purposes, their written permission should be obtained. Similarly, employees of the museum should sign statements (which can be included in their employment contracts) that waive such rights for any photographs taken by the museum.

For well-known people, the common law provides a right of publicity in the tort of misappropriation of personality. This tort prevents the use of the image of a well-known person in advertisements or to promote the business of another without the authorisation of the person. The well-known person does not need to be famous, only recognisable to the community to which the ad/promotional literature is distributed. Therefore, if the museum hires a well-known local personality to perform demonstrations in the museum, the museum does not have the right to photograph this person and use the photographs without obtaining permission.

Where an individual is shown in a photograph or other work and the work is exhibited in the museum, privacy laws still apply and the permission of the person in the work may need to be obtained before the work is reproduced or exhibited. A release form is provided in Module 2 for obtaining permission of the person being photographed to use the resulting photograph for museum purposes.

## 16.0 ORAL HISTORIES

### 16.1 Copyright in Oral Histories

Oral histories may be recorded in order to document history such as folklore, the use of artefacts, or aboriginal culture. Copyright may subsist in the oral history, for example, as a dramatic work, literary work, or performer's performance. The person being recorded may also have rights in the work. **If the museum wants to copy or reproduce the recording, it may be necessary for the museum to obtain a release not only from the person making the recording but also from the person being recorded.** In some instances, restrictions to access may be placed on these recordings. Such restrictions are not a result of copyright protection but rather are at the option of the museum.

A form is provided in Module 2 for obtaining permission of the person being interviewed to use the materials resulting from the interview such as a recording or photograph.

## **17.0 DEFINITIONS**

### **Assignment**

Transfer of ownership of the copyright in a work from one party to another. This does not include a transfer or waiver of moral rights. See also license for the grant of limited rights to a work rather than transfer of full ownership.

### **Author**

Creator of a work that is unique.

### **CANCOPY**

One of the collective societies within Canada formed to look after the administration of applications to use published print works such as books, magazine, newspapers, poems, and short stories. CANCOPY works in conjunction with the Copyright Board in carrying out these duties. In effect, CANCOPY gives authorisation to use copyright print materials by issuing licenses, collecting royalties for the copying, and distributing the money back to the author or publisher. Rather than having to request permission each time a copy is made, frequent users of copyright material can sign comprehensive licenses that allow copying (within limits) of a broad range of materials without seeking permission.

At present, CANCOPY directly represents the reproduction rights of more than 3,000 Canadian writers and publishers. Through agreements with similar organisations in the United States, the United Kingdom, Australia, and other members of the International Federation of Reproduction Right Organisations, CANCOPY represents the rights of a vast number of foreign authors and publishers as well. Reproduction rights of authors and publishers in Quebec are represented by the collective COPIBEC, with whom CANCOPY also has an agreement.

### **CANCOPY Address:**

1 Yonge Street, Suite 1900, Toronto, ON, M5E 1E5

Telephone: 1 800 893-5777 or (416) 868-1620 in Metro Toronto

Fax: (416) 868-1621

Web site: <http://www.cancopy.com/>

**COPIBEC Address:**

1290, rue Saint-Denis, 7<sup>e</sup> étage

Montréal, Québec H2X 3J7

Telephone : (514) 288-1664 or 1 800 717-2022

Fax : (514) 288-1669

Web site: <http://www.copibec.qc.ca>

E-mail : [info@copibec.qc.ca](mailto:info@copibec.qc.ca)

**Collective Societies**

Also known as collectives, these groups grant licenses to allow the use of copyright works within their particular area. For example, CANCOPY grants licenses in relation to print works while SOCAN and SDRM grant licenses in relation to musical works. Some collectives are CANCOPY, discussed above, SOCAN (Society of Composers, Authors and Music Publishers), NRCC (Neighbouring Rights Collective of Canada), and SOGEDAM (Société de gestion des artistes-musiciens). Each collective is responsible only for those works in their repertoire (i.e. those works on which they have the right to act).

**Copyright**

Sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof. Copyright extends to include the translation of works, their conversion from one form to another, performances, recordings, adaptations, exhibitions, and rentals. Only the owner of the copyright has the right to produce or reproduce the work or to allow others to do so. Permission is given by assignment or license.

**Crown copyright**

Copyright that subsists in a work that is prepared or published by or under the direction or control of the Crown or any government department. (See section 4.0).

**Fair Dealing**

Exception to copyright infringement. The right to use a work for research or private study, criticism, review, or news reporting. (See section 3.4).

**Industrial Design**

Intellectual property right that protects designs of articles and relates to the shape, pattern, configuration, or ornamentation that the eye can see on an article.



**Intellectual Property**

Property right in intangible goods. Intellectual property rights protect such things as inventions, expressions of ideas, business names or marks, and designs, through the use of patents, trademarks, copyrights, and industrial designs.

**License**

Contract between the copyright owner and another party that allows the other party to use a work for a limited period of time for a specified purpose.

**Moral Rights**

Rights of the author of a work over the integrity of the work and the right to be associated with the work or to remain anonymous. Moral rights cannot be assigned but may be waived by the author. Without the waiver of the author's moral rights, the museum may not alter a work.

**Posthumous Work**

Work that is published, performed, or delivered after the author's death.

**Publish**

Making copies of a work available to the public. Displaying a work in public is not publication of the work.

**Public Domain**

Copyright in the work has expired and any party may produce or reproduce the work without infringement of the author's rights.

**Trademark**

A mark (design or words) that is used to distinguish the goods or services of a trader from the goods or services of another.

**Works**

This term is not defined in the *Copyright Act*, however, for use within this Guide, "works" refers to anything which may have copyright associated with it. The term includes any written books, artistic drawings, paintings, compilations, photographs, architectural designs, maps, charts, plans, etchings, and plays. This list is not complete but only offers some examples.

## **MODULE II**

### **STANDARD FORM AGREEMENTS (MODULE 2)**

Forms are attached as samples of standard agreements for use in simple situations. These forms are not meant to replace the extensive agreements that are necessary in some cases. They are meant to provide a basic agreement for straightforward cases.

The forms include an acquisition agreement for donations to or purchases by the museum, a license agreement for licensing rights to a work in the museum's collection to another party, an assignment of copyright to the museum, an agreement for recording interviews and obtaining rights in the recordings, a form for access to the museum collection and copies of its works, and a release. These six forms can be used in many of the day-to-day activities of the museum but care should be taken in their application.

These forms are meant to apply to a number of situations and therefore a number of options are given within the paragraphs in each form. As well, additional information may need to be included in the spaces provided. A brief description of each form and its use is given below.

## **ACQUISITION AGREEMENT**

This agreement may be used for donations or simple purchases of works. The form may be used for any donation or purchase regardless of whether copyright actually subsists in the work, article, or object.

The definition section at 1.4 allows a description of the work, article, or object to be included in the agreement. If possible, attach a copy of a printed work or a photograph of the article or object. Otherwise, describe the work, article, or object in as much detail as possible, and be sure to include the museum's accession number to identify the work at a later date.

If the owner of the work is also its author or creator, this should be indicated on the form in section 2. This will allow the museum to determine if copyright subsists in the work and, if so, when it would expire. If the owner is not the author of the work, the owner should provide whatever information he/she has about the author.

Under owner's title and warranty in section 3, if the owner does not own copyright in the work, section 3.2 should be deleted from the agreement.

Under section 4, indicate whether the museum is providing a tax receipt or a specified payment. If a tax receipt or other payment is provided separately, indicate this here

Under section 4.2, indicate if the owner owns the copyright in the work and is assigning it to the museum or whether the owner is only granting certain rights to the museum such as the right to reproduce the work or use it in publications. If the owner has no copyright in the work and no right to license any such rights to the museum, delete section 4.2 from the agreement.

If the owner is the author, section 5 may be retained in the agreement at the option of the museum. This section waives moral rights in the work and allows the museum to modify the work without infringing the moral rights of the author. If the owner is not the author, this section should be deleted.

## ACQUISITION AGREEMENT

[Donation to or Purchase by the Museum]

BETWEEN:

**[Museum name and address]**

Hereinafter the "Museum"

AND:

**[Name and address of Owner of Work/Article/Object]**

Hereinafter the "Owner"

WHEREAS the Museum wishes to acquire the works/articles/objects and/or copyright in the work(s)/articles/objects as described herein, and the Owner wishes to grant ownership in the work(s)/articles/objects and/or copyright in them to the Museum on the terms specified herein;

NOW, the parties agree as follows:

### 1. DEFINITIONS

- 1.1. "Author" is the person or persons who created the work.
- 1.2. "Copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public, or, if the work is unpublished, to publish the work or any substantial part thereof and includes any translation, adaptation, performance, communication, broadcast, exhibition, recording, or conversion to any other form or medium whatsoever.
- 1.3. "Moral Rights" means the right to the integrity of the work and the right to be associated with the work as its author.
- 1.4. "Work" (including articles/objects) means **[insert full description of work being acquired, including date of creation, title, and physical description. If the work is**

**in written form, it should appear as an appendix to the contract. If the work is an object, a photograph should be attached as a schedule].**

## **2. AUTHORSHIP OF THE WORK**

2.1. The owner warrants that he/she/they is/are the author(s) of the work(s);

**[Or]**

The Owner warrants that to the best of his/her/their knowledge, information, and belief, the author(s) of the work(s) is/are **[insert identity and address of author(s) as well as any other information such as date of death]**.

## **3. OWNER'S TITLE AND WARRANTY**

### **Legal Owner of Work**

3.1. The Owner warrants that he/she/they is/are the legal owner(s) of the work(s), that he/she/they has/have the capacity and right to grant the ownership of the work to the Museum, and that the work(s) is/are free from any and all liens, encumbrances, prior assignments, or other encumbrances.

### **Legal Owner of Copyright in Work - [Use only if copyright is being assigned]**

3.2. The Owner warrants that he/she/they is/are the legal owner(s) of the copyright in the work(s) and has the capacity and right to grant the copyright in the work(s) to the Museum, and that the copyright is free of any and all liens, encumbrances, prior assignments, or other encumbrances.

## **4. NATURE OF THE GRANT**

### **Donation to or Purchase by the Museum**

4.1. The Owner(s) hereby irrevocably and unconditionally give(s) or transfer(s) his/her/their entire right, title, and interest in the work(s) to the Museum.

**[And]**

The Museum has appraised the work(s) and will provide the Owner with a tax receipt in the amount of **[insert dollar amount]**

**[Or]**

The Museum agrees to pay the Owner the sum of **[insert dollar amount (CDN)]** payment, receipt of which is hereby acknowledged by the Owner(s).

## **Copyright**

4.2. The Owner(s) hereby assigns his/her/their copyright in the work(s) to the Museum.

**[Or]**

The Owner retains copyright in the work but hereby grants to the Museum the rights to the work(s) as stated below:

### **Exhibition Rights:**

- To present the work(s) at public exhibitions organised by the Museum.
- To authorise others to present the work(s) at public exhibitions.
- To translate the work(s) or portions of it into both official languages (or other languages) for inclusion in an exhibit.
- To reproduce the work or translation for any purpose related to the exhibition(s) such as promotion, advertisement, or other uses.

### **Reproduction Rights:**

- To reproduce the work(s) for Museum internal records and catalogues, research by Museum staff, and other internal activities such as conservation and maintenance of the Museum collection or displays.
- To reproduce the work(s) for third parties or to authorise third parties to reproduce the work(s) for research or other purposes.
- To reproduce the work(s) for publishing and public transmission in written, electronic, or other media.
- To reproduce the work(s) in digital format for placing on the Museum Web site.

**Publication Rights:**

- ❑ To use or reproduce the work(s) for a publication published by the Museum or someone authorised by the Museum.
- ❑ To use or reproduce the work(s) for subsequent editions and reprints.
- ❑ To translate the work(s) or portions of it into both official languages (or other languages) for inclusion in a publication.

**Other Rights:**

Specify: \_\_\_\_\_

The grant of the aforesaid licence is made in consideration of the payment, if any, set out at paragraph 4.1., payment and receipt of which is hereby acknowledged by the Owner(s).

The Owner specifically agrees that the Museum may sub-license the rights that it has received under this licence.

- 4.3. The Owner(s) agrees that the Museum may make minor modifications to the size and format of the work(s) by any digitisation process for design, layout, or other purposes, as the Museum may reasonably require. The Museum will ensure accurate exhibition/reproduction/ publication or other licensed use whenever possible.

**5. MORAL RIGHTS [to be included only if the owner is the author]**

- 5.1. The Owner(s) as author(s) hereby waives his/her/their moral rights in the work(s).

**6. ACKNOWLEDGEMENT [optional]**

- 6.1. In any public use of the work(s), the museum will acknowledge the work as follows:

Credit line: \_\_\_\_\_

SIGNED, sealed and delivered on **[date]** \_\_\_\_\_, at **[place]** \_\_\_\_\_.

In the presence of:

Signature: \_\_\_\_\_

\_\_\_\_\_

Witness:

Owner:

Address:

Accepted in the presence of:

Accepted for the Museum by:

Signature: \_\_\_\_\_

\_\_\_\_\_

Witness:

Museum Agent:

Address:



## LICENSE AGREEMENT

This agreement should be used when the museum is licensing rights to a work to another party.

The work should be described in as much detail as possible in section 1, including the museum accession number. In section 2, the museum can warrant that it owns copyright in the work or warrant that it owns specific rights in the work. Alternatively, the museum may own the work but no copyright in it. These options are set out in section 2 and the options that do not apply should be deleted from the agreement.

Section 4 sets out the rights that are licensed from the museum to the other party. A list of common rights is provided but other rights may be included. Full details should be provided wherever possible.

In sections 5 and 6, insert the expiration date of the license of rights and the amount to be paid under the agreement. In section 8, the museum's credit line should be included.

The document entitled, *Licensing Images: Checklist for Museums and Other Cultural Organizations*, is part of CHIN's Intellectual Property series. In this document you will find more detailed information on licensing agreements. An online version of this publication is available, and you can also order a printed copy.

## **LICENSE AGREEMENT**

**[Museum licensing rights to a third party]**

BETWEEN:

**[Museum name and address]**

Hereinafter the "Museum"

AND:

**[Name and address of party wanting rights in the work]**

Hereinafter the "Licensee"

Whereas the Licensee wants to obtain certain rights in the work(s) set out below and the Museum wants to license these rights to the Licensee,

NOW, for good and valuable consideration, receipt of which is hereby acknowledged, THE PARTIES AGREE AS FOLLOWS:

### **1. WORK(S)**

This license is with respect to the following work(s):

**[Identify work by title, type of work, accession number, author, year of creation/making, and any other information available]**

### **2. MUSEUM'S TITLE AND WARRANTIES**

**[Choose only one option:]**

2.1. The Museum warrants that it is the owner of the copyright in the work(s).

**[Or]**

The Museum warrants that it has the following rights in respect of the work(s):

**[State what rights the museum has with respect to the work, e.g. the right to exhibit, to reproduce, to copy, etc.]**

**[Or]**

The Museum does not warrant that it owns any copyright in the work(s). The Licensee must assure that no copyright or other rights in the work(s) is/are or will be infringed as a result of this license.

### **3. LICENSEE'S OBLIGATION TO INDEMNIFY**

- 3.1. The Licensee will save harmless and indemnify the Museum of all claims, demands, suits, or actions taken in consequence of any alleged infringement of any copyright or moral right in the work(s) in respect of which the Museum has not warranted that it is the owner.

### **4. GRANT OF LICENSE**

- 4.1. The Museum grants to the Licensee the following non-exclusive, non-transferable rights with respect to the above work(s):

- To use the work(s) for the following purpose:  
**[Identify use by type of use, title, proposed dates, locations, or other information as applicable]**
  
- To reproduce the work(s) for the following purposes and in the following manners:  
**[Identify the purpose for reproduction (for example, for an educational project with a particular school/class, for use on a Web site or in a publication, etc.) and in what manner it will be reproduced, (digitisation, copying, etc.)]**

- To publish the work(s) under the following conditions:

**[Identify publication by title if available, proposed publication date(s) or time frame, number of editions, or other applicable conditions]**

These rights include the right to translate and publish the work(s) into both official languages (or other languages) if applicable.

- Such other rights as follows:

**[Identify any other rights that are being granted]**

## **5. TERM OF THE LICENSE**

- 5.1. This license expires on **[insert expiry date]**, at which time the work(s) and any and all copies or other reproductions of the work(s) must be returned to the Museum. This license may not be amended or extended other than in writing, signed by both parties.

## **6. LICENSE FEE**

- 6.1. The Licensee agrees to pay to the Museum the sum of **[insert dollar amount (CDN)]** in consideration of the right granted herein, which fee is to be paid within seven (7) days of the execution of this agreement.

## **7. DAMAGE TO THE WORK(S)**

- 7.1. The Licensee is absolutely and strictly liable to the Museum for loss of or any damage to the work while it is in the possession of the Licensee, its agents, employees, or servants.

## **8. ACKNOWLEDGEMENT**

- 8.1. In any public use of the work(s), the Licensee will acknowledge the work(s) as follows:

Credit line: \_\_\_\_\_

SIGNED, sealed, and delivered on **[date]** \_\_\_\_\_, at **[place]**\_\_\_\_\_.

Signature: \_\_\_\_\_

Witness:

Address:

Licensee:

Signature: \_\_\_\_\_

Witness:

Address:

Museum Agent:

## **ASSIGNMENT OF COPYRIGHT**

This form is intended for the simple transfer of copyright from the owner to the museum. It may be used to assign copyright in a work already owned by the museum or as part of the acquisition of a work by the museum. Include a full description of the work in the agreement and, if possible and practical, attach a copy or photograph of the work.

If the owner of the copyright is the author, the author may elect to waive moral rights in the work. This waiver is included as option 1 in the agreement. It should only be included if the assignor is the author (therefore holding moral rights in the work) and agrees to waive the moral rights. Otherwise, it should be deleted.

**ASSIGNMENT OF COPYRIGHT**

**[From the owner to the museum]**

BETWEEN:

**[Name and address of the museum]**

Hereinafter the "Museum"

AND

**[Individual's name and address  
Or name and address of corporation]**

Hereinafter "Assignor"

The Assignor certifies that it owns the copyright in the work(s) described herein, and for good and valuable consideration, receipt of which is hereby acknowledged, does hereby sell and assign to the Museum all of its copyrights in the following work(s):

**[Identify work(s) as clearly as possible by title, author, accession number, year of creation/making, and any other information available]**

**[Option 1: to be included if the Assignor is the individual who is the author of the work]**

The Assignor certifies that it is the author of the work(s) listed herein and waives all moral rights in the work(s).

SIGNED, sealed, and delivered on **[date]** \_\_\_\_\_, at **[place]** \_\_\_\_\_.

Signature: \_\_\_\_\_

Witness: \_\_\_\_\_ Assignor

Address:

## **RECORDING INTERVIEWS**

This basic form is intended for situations where an authorised agent of the museum is interviewing a person for the purposes of collecting information such as oral histories. Such recordings would become part of the museum collection and be accessible to the public.

The museum would retain ownership of the recording itself and any transcript of it. However, the person being interviewed may elect to retain copyright in the recording if any copyright exists in it. In section 4, an option must be chosen as to whether the interviewee retains copyright or assigns it to the museum. If the interviewee elects to retain copyright, determine what rights the museum is given with respect to the recording. Mark these rights in the list or add other rights at the end of the list.



## **RECORDING INTERVIEWS**

BETWEEN:

**[Museum name and address]**

Hereinafter the "Museum"

AND:

**[Name and address of Interviewee]**

Hereinafter the "Interviewee"

WHEREAS the Museum wishes to obtain the Interviewee's authorisation to record an interview with him/her;

AND WHEREAS the Museum wishes to acquire from the Interviewee the right to reproduce the interview;

AND NOW, the parties agree as follows:

### **1. DEFINITIONS**

1.1 "Copyright" means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform the work or any substantial part thereof in public, or, if the work is unpublished, to publish the work or any substantial part thereof. This includes any translation, adaptation, performance, communication, broadcast, exhibition, recording, or conversion to any other form or medium whatsoever.

## 2. OBJECT

- 2.1. The Interviewee agrees to be interviewed by an authorised agent of the Museum on **[date]** \_\_\_\_\_, at **[place]** \_\_\_\_\_ on the following topics or for the following purpose:

**[Set out the reason for the interview or the particular topic]**

- 2.2. The Interviewee agrees that the authorised agent of the Museum may record the interview on sound tape, videotape, or other media.

## 3. OWNERSHIP OF THE RECORDING

- 3.1. The Museum will be the owner of the recording and any transcription of it.
- 3.2. The Museum has the right to reproduce the recording and any transcription of it for the Museum's internal records and catalogues, research by Museum staff, and other internal activities such as conservation and maintenance of the Museum collection or displays.

## 4. OWNERSHIP OF COPYRIGHT IN THE RECORDED INTERVIEW

**(Select one option only)**

- The Interviewee assigns all right, title, and interest, including copyright, in the recording to the Museum.

**[Or]**

- The Interviewee will retain copyright, to the extent it exists, in the recorded interview and agrees to grant to the Museum the following rights with respect to the recording:

**Exhibition Rights:**

- ❑ To use the recording or transcription in public exhibitions organised by the Museum or others.
- ❑ To translate the recording or transcription or portions of it into both official languages (or other languages) for inclusion in an exhibit.
- ❑ To reproduce the recording or transcription or translation for any purpose related to the exhibition(s) such as promotion, advertisement, or other uses.

**Reproduction Rights:**

- ❑ To reproduce the recording or transcription for research purposes for third parties or to authorise third parties to reproduce the recording or transcription for research purposes.
- ❑ To reproduce the recording or transcription for publishing and public transmission in written, electronic, or other media.
- ❑ To reproduce the recording or transcription in digital format for placing on the Museum Web site.

**Publication Rights:**

- ❑ To use or reproduce the recording or transcription for a publication published by the Museum or someone authorised by the Museum.
- ❑ To use or reproduce the recording or transcription for subsequent editions and reprints.
- ❑ To translate the recording or transcription or portions of it into both official languages (or other languages) for inclusion in a publication.

**Other Rights:**

Specify: \_\_\_\_\_

**5. PHOTOGRAPHS**

- 5.1. If required, the Interviewee agrees to be photographed during the interview by an authorised agent of the Museum or at a later date as arranged.
- 5.2. The Museum will retain all rights including copyright in the photograph(s). The museum will obtain the Interviewee’s permission for commercial use of the

photograph(s).

SIGNED, sealed, and delivered on **[date]** \_\_\_\_\_, at **[place]** \_\_\_\_\_.

Signature: \_\_\_\_\_

Witness: \_\_\_\_\_ Interviewee: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

Witness: \_\_\_\_\_ Interviewer **Museum Agent?:** \_\_\_\_\_

Address: \_\_\_\_\_

## **ACCESS TO MUSEUM COLLECTION**

This form can be used when a member of the public requests access to or copies of works in the museum collection. The person is required to identify the purpose for which they are requesting a copy of the museum work.

This form need not be used in all situations where a member of the public requests copies of a work in the museum collection. However, in cases where large amounts of materials are requested or the museum has some concern with respect to the use of the materials, this form can be used as a precautionary measure and evidences that the museum has taken steps to ensure that copyright infringement will not occur.

## ACCESS TO THE MUSEUM COLLECTION

### [Third-Party Use of the Museum Collection for Research or Educational Purposes]

Name of Applicant: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Associated Institution or Organisation:

\_\_\_\_\_

Description of Requested Materials:

\_\_\_\_\_

Reason for Request/Intended Use for Materials:

\_\_\_\_\_

I hereby certify that the above requested materials will only be used for the following purpose:

- My private research and study as described above.
- Educational purposes only as described above.
- Other, as described above.

Ownership of any reproductions of these materials in any form whatsoever including photographs and photocopies of these materials remains with the Museum.

I hereby certify that the materials and any reproductions thereof will not be used for any commercial or revenue-generating purposes.

I certify that the above requested materials will not be exhibited, published, reproduced, performed or otherwise provided to the public (except as stated above, if applicable) without the prior written consent of the Museum.

In all relevant instances, the Museum will be given acknowledgement as follows:

Credit Line: \_\_\_\_\_

Signed on **[date]** \_\_\_\_\_ at **[place]** \_\_\_\_\_ .

Signature:

## **RELEASE**

This form is used to obtain the consent of models or others included in photographs, videotapes, or other recordings taken by the museum to allow the museum to use the recording for any purpose. Whenever a person is included in a recording (including photographs), their permission to reuse the recording should be obtained. This includes not only hired models or museum staff but members of the public as well.



## RELEASE

BETWEEN:

**[Museum name and address]**

Hereinafter the "Museum"

AND:

**[Name and address of Individual]**

1. I hereby declare that I am at least eighteen (18) years old.
2. I hereby consent that any photographs, digital pictures, moving pictures, videotapes, or sound recordings, taken by a member of the staff of the Museum or at the request or under the direction of the Museum and in which I appear or perform, may be published or used by the Museum or a third party authorised by the Museum for any purpose whatsoever unless stated otherwise below.
3. Where the publication or use stated in paragraph 2 is for a particular purpose only, the authorised purpose is as follows:

**[If the use is only for a particular project, identify the project by title, proposed publication/use date, or other information.]**

Signed on **[date]** \_\_\_\_\_, at **[place]** \_\_\_\_\_.

Signature:

Witness Signature:

Name:

Address:

**[Where the individual is under the age of eighteen (18) years old, the legal guardian must sign.]**

I hereby warrant that I am the legal guardian of the above-named individual and I certify that he/she has signed with my full consent and approval.

Guardian Signature:

Name:

Address: