

# INTRODUCTION

## Museums and the Digital Future

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The digital future is bright for museums. Many museums are beginning to mount “virtual exhibitions,” using the most advanced technologies. Museum educators are bringing cultural treasures directly into the classroom for use by students and teachers. World cultural heritage information is becoming more widely available for scholarly use. The public response has been overwhelming. Some museums count more attendance in cyberspace than on earth, with the international virtual museum audience estimated to be over 1 billion!

The great promise of the Internet also arrives with great challenges for museums. Whether creating an audiovisual program or establishing a new website, the decision of a museum to enter the digital future is an important one. Each museum must evaluate the risks and rewards associated with the decision. Some of the challenges facing museums in the digital future are:

- How will museums obtain the financial resources to digitize their rich cultural resources and make them available to the public?
- How will museums respond to the significant legal and business risks of doing business on the Internet?
- How will museums limit the risk of the unauthorized reproduction, alteration, and distribution of their digital assets in cyberspace?
- How should museums safeguard their symbols, goodwill and reputation against the actions of electronic pirates, all too eager to appropriate them for their own commercial gain?

These questions are difficult, and many museums around the world are searching for the right answers. Fortunately, the global museum community and international organizations like the World Intellectual Property Organization (WIPO)

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<sup>1</sup> Dr. Michael Shapiro, the former General Counsel of the National Endowment for the Humanities, is the co-author of *A Museum Guide to Copyright and Trademark* (American Association of Museums, 1999). An earlier version of various materials in this resource guide was delivered at the WIPO Conference on Electronic Commerce, Geneva, September 2000.

are beginning to play an important role in helping museums find solutions to these daunting problems.

In particular, as part of WIPO's "Digital Agenda," Director General Kamil Idris focused on the important role that cultural assets can play in social, economic and human development. "We want to broaden opportunities for developing countries to trade their intellectual property assets via the Internet," Dr. Idris said, adding that the new technologies could assist developing countries to "expand trade using their rich cultural heritage." WIPO's Digital Agenda endorses studying "measures designed to improve the management of cultural and other digital assets at the international level," including the development of "model procedures and forms for global licensing of digital assets."

The International Intellectual Property Institute (IPI) is pleased to play a role in advancing these important social, cultural and economic goals. This objective of IPI's "World Museums & Economic Development" project is to assist museums to develop the capacity to digitize, protect and license their collections, thereby demonstrating the importance of intellectual property as a tool for economic, social and cultural development.

The development of *Managing Museum Digital Assets: A Resource Guide for Museums* is the first step in this process. The guide collects in a single place a number of model licenses, notes and comments, and resource materials to assist the world museum community to better manage its portfolios of cultural and intellectual property assets. Section 1 focuses on developing museum audiovisual products. Section 2 turns to museum data licensing and distribution. Section 3 provides materials to assist museums to establish a presence and identity on the Internet. A glossary of terms, a reading and Internet resource list, and other reference materials can be found at the end of the guide.

# **INTRODUCTION**

## **Museums and Audiovisual Licenses**

Museums around the world are besieged with requests from new media companies to develop audiovisual products that exploit their rich cultural resources. The scope of an audiovisual project may range from the simple to the complex. Films, videotapes, audiotapes, CD-ROMs, digital videodiscs (DVDs) are all types of audiovisual products.

From the perspective of fulfilling the museum's mission, such projects offer new opportunities for museums to showcase their collections, attract visitors and educate their audience. From a business perspective, audiovisual projects may generate new revenue streams for the museum. Nonetheless, the legal aspects of negotiating and drafting an audiovisual development agreement can be daunting for museums.

Audiovisual development agreements are really hybrid contracts, combining elements of intellectual property licenses (usually copyright and trademark and sometimes patent) and general contractual provisions governing the manufacturing of the product itself. In the typical agreement, the museum permits the audiovisual developer to use its visual and textual materials in exchange for compensation, either in the form of royalties or a flat fee payment.

Although the terms and conditions of audiovisual development licenses can become quite complex, there are five essential questions to keep in mind in each licensing transaction. Which rights? To whom? For how long? For what purpose? For how much? At each stage in the negotiating process, the museum should have a clear answer to these questions. To assist museums in this process, this section provides a model audiovisual development agreement and related commentary, which can be used as a point of departure for the museum's specific project.

## **Model License 1**

### **AUDIOVISUAL DEVELOPMENT AGREEMENT**

THIS AGREEMENT dated as of \_\_\_\_\_2001, by and between the ABC Museum of Art (“ABC Museum”) and the New Media Company (“New Media Company”), sets forth the terms and conditions for the production and distribution of a certain audiovisual work by the New Media Company for the ABC Museum.

#### **INTRODUCTION**

WHEREAS, the ABC Museum and the New Media Company seek to enter into a business arrangement for the production of a certain Audiovisual Work that incorporates textual, visual and other information and materials related to the collections of the ABC Museum, and

WHEREAS, the ABC Museum and the New Media Company wish to establish the terms and conditions under which the Audiovisual Work shall be produced and distributed,

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the parties agree:

#### **Section 1 DEFINITIONS**

**1.1 Audiovisual Work** means a creative work that consists of a series of related images which are intended to be shown by the use of machines, or devices such as projectors, or any other electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material object embodying the creative expression.

**1.2 Copyright Management Information** means any information that identifies a copyrighted work, including title, author, copyright owner, terms and conditions of use of the work, and identifying numbers or symbols that accompany the work.

**1.3 Licensed Images and Documentation** means any image, including photographs, negatives, slides or digitized images; any materials that describe or identify the image, including the artist’s or author’s name, title, date of creation or first publication, size, medium, whether in analog or digital format; and any other textual materials provided to the New Media Company in connection with the development of an Audiovisual Work.

## **Section 2 INTELLECTUAL PROPERTY RIGHTS**

### **2.1 Grant of Rights**

The ABC Museum hereby grants to the New Media Company a non-exclusive, non-transferable, limited license to use the Licensed Images and Documentation to develop and produce the Audiovisual Work described in this Agreement. The rights of the ABC Museum in the Licensed Images and Documentation are listed in Annex A to this Agreement. All rights not expressly granted under this Agreement are reserved to the ABC Museum.

### **2.2 Ownership of the Audiovisual Work**

The ABC Museum shall be the exclusive owner of the Audiovisual Work and all of its elements, including all copyrights, trademarks, patents, and any other intellectual property rights or rights in proprietary information in the Audiovisual Work. The New Media Company shall not use or permit others to use any rights in the Audiovisual Work without the prior written authorization of the ABC Museum.

#### **2.2.1 Notice of Ownership**

The New Media Company shall affix the ABC Museum notice and legend of intellectual property rights ownership on the outer package, opening screen and front page of any accompanying training materials or manual. The precise wording of the notice and legend is set forth in Appendix A to this Agreement.

## **Section 3 PRODUCT DEVELOPMENT**

### **3.1 Specification**

The New Media Company shall design and develop the Audiovisual Work on the basis of the Product Development Specification attached to this Agreement at Annex B, which sets forth the technical requirements and standards governing: (1) image resolution for all digital representations of the Licensed Images, (2) adaptations or modifications of all Licensed Images, including, but not limited to, cropping and color correction of such images, and (3) encoding of information for digital asset management and intellectual property rights management, including the digital watermarking of all Licensed Images and the encoding of Copyright Management Information.

### **3.2 Schedule**

The New Media Company shall design and develop the Audiovisual Work on the basis of the Product Development Schedule attached to this Agreement as Annex C, which sets forth certain milestone dates, among others, for the delivery to the ABC

Museum of components of the Audiovisual Work, a prototype of the Audiovisual Work, and the final product.

### **3.3 Museum Approvals**

#### **3.2.1 Use of Images and Documentation**

The ABC Museum has the sole right to approve the use of any and all Licensed Images and Documentation provided by the ABC Museum for the development of the Audiovisual Work. Any adaptations or changes in the Licensed Images and Documentation require the prior written approval of the ABC Museum.

#### **3.2.2 Development Approvals**

During the development of the Audiovisual Work, the New Media Company shall submit the Audiovisual Work for review and approval according to the Product Development Schedule set forth in Appendix B to this Agreement. The ABC Museum shall provide a written explanation of any non-approval of the Audiovisual Work with sufficient detail to permit the correction of the deficiency. The ABC Museum shall review the Audiovisual Work in a timely manner and shall not unreasonably withhold its approval. Once the ABC Museum has submitted its written approval, the New Media Company shall not modify or make any substitution to the Audiovisual Work or any element thereof.

#### **3.2.3 Final Approval**

The New Media Company shall submit a prototype of the Audiovisual Work to the ABC Museum for final museum approval according to the Product Development Schedule set forth in Appendix C of this Agreement. The ABC Museum shall evaluate the prototype using the standards set forth in the attached Product Development Specification. The ABC Museum shall review the prototype Audiovisual Work in a timely manner and shall not unreasonably withhold its approval. Once the ABC Museum has submitted its final written approval, and not before, the New Media Company shall commence the manufacture of the Audiovisual Work under the terms of this Agreement.

## **Section 4 PRODUCT QUALITY**

### **4.1 Quality of Product**

The New Media Company shall establish and maintain the quality of all Audiovisual Works manufactured under this Agreement in accordance with the criteria and standards set forth in the Product Manufacturing Specification attached to this Agreement at Annex D. The product quality standards for manufactured products shall be at least as high as those governing the production of the approved prototype of the Audiovisual Work

## **4.2 Museum Approvals**

The New Media Company shall not distribute any manufactured Audiovisual Works without the prior written approval of the ABC Museum. The New Media Company shall furnish samples of all manufactured Audiovisual Works upon the completion of any production run. The ABC Museum shall have a period of at least ten (10) days to give such approval for distribution and manufacturing, which shall not be unreasonably withheld.

## **4.3 Inspection of Facilities**

The ABC Museum, or its duly authorized representative, shall have the right, during normal business hours, and upon reasonable notice, to inspect all facilities used by the New Media Company or its subcontractors in connection with the manufacturing of the Audiovisual Work.

# **Section 5 COMPENSATION**

## **5.1 Requirement to Pay**

In consideration of the rights granted to the New Media Company under this Agreement, the New Media Company shall pay to the ABC Museum the royalties set forth in this Section of this Agreement

## **5.2 Advance Against Royalties**

Upon mutual execution of this Agreement, the New Media Company shall pay to the ABC Museum a non-refundable advance against royalties in the amount of \_\_\_\_\_. The royalty advance shall be deducted from royalties otherwise due and payable to the ABC Museum under Subsection 5.3 of this Agreement.

## **5.3 Royalties**

For each copy of the Audiovisual Work sold, the New Media Company shall pay to the ABC Museum such royalties as are defined and set forth in Appendix D of this Agreement. Notwithstanding the foregoing, the New Media Company may distribute up to \_\_\_ copies of the Audiovisual Work for promotional purposes, the distribution of which will not require the payment of royalties to the ABC Museum.

## **5.4 Royalty Payments**

Royalty payments shall be made four (4) times per year, within thirty (30) days of the last day of each quarter. The royalty payment schedule for the Term of this Agreement is attached as Annex E to this Agreement.

## **5.5 Royalty Statements**

On the date that any royalty payment is due, the New Media Company shall deliver to the ABC Museum a statement setting forth the total amount and basis for computing the royalty payment. Royalty statements shall include, at a minimum: (1) the number of copies of the Audiovisual work sold during the quarter, (2) total sales revenue for the quarter by channel of distribution, and (3) year-to-date sales revenue by channel of distribution. The New Media Company agrees to provide the ABC Museum with any other information that the ABC Museum shall reasonably request in order to confirm that the royalty payments conform to the requirements of this Agreement.

## **5.6 Books and Records**

The New Media Company shall maintain at its own expense complete and accurate books and records covering all transactions arising out of or relating to transactions under this Agreement. The ABC Museum shall have the right, upon reasonable notice and during usual business hours, to examine the foregoing books and records maintained by the New Media Company throughout the term of this Agreement and for two (2) years thereafter. Such examination shall take place at the place where such records are regularly maintained.

# **Section 6 TERM AND TERMINATION**

## **6.1 Term**

This Agreement commences upon the date it is executed and shall continue for three (3) years, unless earlier terminated or renewed in accordance with the terms of this Agreement. Upon expiration of this Agreement, the New Media Company shall not manufacture any new copies of the Audiovisual Work but may sell off existing, unsold copies of the Audiovisual Work over a six-month period beginning in the date of expiration of this Agreement.

## **6.2 Termination**

The ABC Museum may terminate this Agreement in the event of a material breach by the New Media Company that is not cured within thirty (30) days after the receipt of written notice thereof. All of the following shall be deemed a material breach of this Agreement: (1) failure of the New Media Company to make royalty payments in a timely manner; (2) the failure of the New Media Company to exploit the rights granted under this license in a timely manner; and (3) exceeding the rights granted under this Agreement by the New Media Company.



## **6.2 Effect of Termination**

### **6.2.1 Payment of Royalties Due**

Upon termination, all Royalties due on each copy of the Audiovisual Work sold prior to the date of termination shall be paid to the ABC Museum within thirty (30) days of the date of termination. The ABC Museum shall retain all advances not recouped by the date of termination.

### **6.2.2 Discontinuance of Use**

Upon termination, the New Media Company shall discontinue all use of the Licensed Images and Documentation immediately upon receipt of notice of termination of this Agreement, except that the New Media Company shall have a period of thirty (30) days to sell off any Audiovisual Works held by it in stock or resulting from orders placed prior to receipt of notice of termination of this Agreement.

### **6.2.3 Delivery of Materials**

Upon termination, New Media Company shall deliver all Licensed Images and Documentation, and any other materials in its possession or control provided it by the ABC Museum in connection with the production and distribution of the Audiovisual Work under the terms of this Agreement. The New Media Company shall retain no Licensed Images, Documentation, and other materials provided by the ABC Museum from which Audiovisual Works or other commercial products or services may be produced.

In the event that the New Media Company's performance is not complete upon termination, the New Media Company shall (1) inform the ABC Museum of the extent to which performance has been completed through such date and (2) collect and deliver to the ABC Museum all Licensed Images and Documentation, and any other materials provided it by the ABC Museum in connection with the production of the Audiovisual Work.

## **Section 7 WARRANTIES and REPRESENTATIONS**

### **7.1 By the ABC Museum:**

The ABC Museum warrants and represents that to the best of its knowledge the rights granted under this Agreement will not infringe any copyright of any third party. Notwithstanding the foregoing, the ABC is not responsible for determining the copyright status, obtaining permissions, or paying license fees for the use of the Licensed Images and Documentation, except for the rights owned by the ABC Museum, which are listed in Annex A to this Agreement. The rights granted under

this Agreement do not include any rights of attribution or control under the laws of any state or country, moral rights, or the rights of publicity or privacy.

7.2 By the New Media Company:

The New Media Company warrants and represents that neither the Audiovisual Work, nor any elements thereof, will infringe upon any copyright, trademark, patent, or any other intellectual property rights or other proprietary rights of any third party, including, but not limited to, any right of publicity, right of privacy, or moral rights.

## **Section 8 INDEMNIFICATION**

New Media Company shall indemnify, defend and hold harmless the ABC Museum, and its respective officers, directors, employees and agents from any and all claims, damages, liabilities, costs and expenses, including reasonable attorneys' fees arising out of the production or distribution of the Audiovisual Work, or out of the breach by the New Media Company of any representation or warranty or any other obligation of the New Media Company under this Agreement. Each party to this Agreement shall give prompt notice in writing to the other party of any claims arising out of this Agreement.

## **Section 9 INSURANCE**

The New Media Company, at its own expense, shall maintain during the term of this Agreement a comprehensive Multimedia Liability Insurance that shall at a minimum provide coverage for the risks identified in Annex F to this Agreement. The New Media Company further agrees to name the ABC Museum as an additional insured under such insurance policy.

## **Section 10 GENERAL PROVISIONS**

### **10.1 Entire Agreement**

The terms and conditions of this Agreement supercede all prior oral and written Agreements between the parties with respect to the subject matter of this Agreement and shall constitute the entire Agreement between the parties with respect to the matters contained herein.

### **10.2 No Assignment**

The New Media Company shall not assign or sublicense any of its rights or obligations under this Agreement without the express prior written consent of ABC Museum.

**10.3 Modification**

This Agreement may not be modified except by written agreement signed by the party to be bound thereby.

**10.4 Governing Law**

This Agreement will be construed and enforced under and subject to the laws of \_\_\_\_\_.

For the New Media Company

For the ABC Museum

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Printed Name and Title]

\_\_\_\_\_  
[Printed Name and Title]

\_\_\_\_\_  
[Date]

\_\_\_\_\_  
[Date]

## **Notes and Comments**

# **AUDIOVISUAL DEVELOPMENT AGREEMENT**

## **1. Definitions**

There is no uniform international definition of audiovisual works, which are subsumed under the category of “cinematographic works under the Berne Convention for the Protection of Literary and Artistic Works.”<sup>2</sup> The definition used in this model license is based on U.S. copyright law, but attorneys are strongly encouraged to use national laws as a point of departure in drafting a definition of an audiovisual work.

Audiovisual works also may be protected as “compilations” under national copyright laws, which generally refer to works created through the collection or assembling of preexisting materials or data in such a way that the resulting work as a whole constitutes an original work of authorship. However, the standard of originality required for such protection may vary widely across national boundaries.<sup>3</sup>

Beyond the precise legal categorization of an audiovisual work, the draftsman faces the inherent difficulty of defining products in a period of rapidly changing technology. Careful attention should be given to the question of whether the audiovisual work is being developed as a standalone product or for use in a networked environment such as the Internet or the organization’s private Intranet. The more difficult questions of network access to museum digital assets are taken up in section 3 of this guide, which covers the licensing of museum databases.

## **2. Intellectual Property Rights**

### **2.1 Grant of Rights**

The grant of rights provision is perhaps the most important clause in the agreement because it defines the scope of the entire license. The grant of rights in the model agreement is relatively limited, providing only for the development and distribution of the audiovisual work. Distribution of museum digital assets through databases is discussed more fully in section 4 of this guide.

Under the model agreement, the rights are granted on a nonexclusive basis. In general, intellectual property licenses may be granted on an exclusive or nonexclusive

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<sup>2</sup> See generally Berne Convention for the Protection of Literary and Artistic Works, (Paris text 1971) Articles 2. 14. 14*bis*.

<sup>3</sup> Under the database directive of the European Union, the originality standard is “the author’s own intellectual creation.” However, the standard in Great Britain (“skill and labour”) appears to be slightly lower, while that of France (the “imprint of the author’s personality”) slightly higher.

basis. An exclusive license is one under which the only “licensee” (the person or firm receiving the permission) may exercise the rights. By contrast, under a nonexclusive license, the licensee may have to share the rights with others.

## **2.2 Ownership of the Audiovisual Work**

As an additional safeguard, the museum may wish to include a provision requiring the licensee to acknowledge that the museum is the sole and exclusive owner of the licensed assets. Where the licensor enters into contracts for the creation of original literary, musical and computer works for the project, the ownership of each creative component of the audiovisual work should be made clear in the agreement.

Intellectual property ownership provisions are critical elements of audiovisual production agreements. The ABC Museum should obtain ownership of any audiovisual product produced for the museum by the New Media Company, along with all of the elements of the audiovisual work, including any literary, dramatic, musical, software and other components of the work.

The precise legal mechanism under which the ABC Museum obtains ownership in an audiovisual work will vary under national law. The approach taken in the model agreement is to provide for an assignment of the work and all rights from the New Media Company to the ABC Museum. However, under U.S. copyright law, the parties would probably agree that the audiovisual work was a “work-made-for-hire,” thereby vesting ownership in the ABC Museum from the moment of creation. Whatever the precise legal mechanism, the audiovisual production agreement should contain a provision that clearly allocates ownership rights.

## **3. Compensation**

### **3.1 Flat Fee**

Compensation under an audiovisual production agreement can be structured on a fixed fee basis, or under a royalty arrangement. Under a fixed fee arrangement, the audiovisual developer is simply paid a set fee for producing, manufacturing and delivering the audiovisual work and other deliverables. Under this approach, the New Media Company, which assumes neither the risks nor rewards of producing the audiovisual work, is compensated without regard to the sales revenues generated by the project.

### **3.2 Royalty**

Under a royalty arrangement, by contrast, the audiovisual developer is compensated through earnings received from the project usually through sales of units of the Audiovisual Work. The parties negotiate the royalty rate. Some of the factors that may influence in the negotiations are the relative significance of the content licensed

by the museum; the investment in and sophistication of the technology of the audiovisual developer; and the potential market for the product.

The parties also should clearly define the revenue pool against which the royalty rate is applied, carefully defining such terms as gross revenues, gross profits, net profits, or other similar terms. In the model agreement, the ABC Museum and the New Media Company agreed that the museum would receive a guaranteed, non-refundable advance against royalties, thereby ensuring that the ABC Museum would receive a minimum amount for the use of its content.

## **4. Product Development**

### **4.1 Developing Specifications**

Clause 4.1 in the model agreement provides the link to important information set forth in an annex to the agreement. The specifications should include a clear and detailed description of any content and intellectual property rights that are being licensed in connection with the audiovisual development project, including registration numbers for any patents, trademarks and copyrights.

The list of deliverables under the agreement will vary depending on the scope of the project. For example, the deliverables might include a first generation print of the audiovisual work and copies of all manuals and promotional materials for the work. A clear statement of the production schedule, including milestones for the delivery of components of the audiovisual work, is of critical importance to the success of the project. As provided for in the model agreement, failure to comply with the production schedule may be subject to early termination of the agreement, discussed more fully below.

### **4.2 Delivery Schedule**

The Product Delivery Schedule should set forth realistic deadlines for the delivery of the key components of the audiovisual work, including the prototype, specified Web Pages, and the final product. The parties may also wish to consider including important meetings and related product approval dates within the Product Delivery Schedule.

### **4.3 Control of Production**

All of the production obligations of the New Media Company should be clearly set forth in the agreement. The ABC Museum should consider requiring the New Media Company to furnish the script and other material elements of the work, all members of the cast, the producer, director and writer; and all functional specifications upon which the software will be based.

## **5. Term and Termination**

### **5.1 Term**

The term of an audiovisual development agreement generally covers the entire period needed by the developer to develop and distribute products containing the content provided by the museum. In the usual case, audiovisual agreements last between three and five years.

The term is entirely open to negotiation. The parties may negotiate longer or shorter terms for the agreement, or decide to specify separate terms for the development and distribution phases of the project. As a licensor, the museum may prefer a shorter term, permitting it to pursue other business opportunities as they arise. The audiovisual developer, by contrast, generally will prefer a longer term, allowing it sufficient time to recoup start-up costs and investments. The sell-off period following termination in this agreement would seem to be a reasonable resolution of the competing interests of the museum and the audiovisual developer.

### **5.2 Termination**

Despite the optimistic expectations of the parties at the time of execution of an agreement, some business arrangements turn out to be unsatisfactory or unproductive. Termination provisions provide an orderly exit strategy under such circumstances. Such provisions may specify a “cause” for termination, or provide for termination “without cause.”

## **6. Warranties and Representations**

To avoid becoming entangled in lawsuits with third parties claiming rights in licensed materials, parties to audiovisual development agreements often require warranties and representations from the other party. Under a typical provision, the licensor promises that he or she is the sole and exclusive owner of the intellectual property rights granted under the license and that the transfer of rights will not violate the rights of third parties. Under the model agreement, the qualifying phrase “to the best of its knowledge” may invite a negotiation with the developer.

## **6. Indemnification and Insurance**

Indemnification is a legal mechanism that shifts the risk of liability from one party to another for the payment of costs, expenses and damages arising from the breach of any express representation or warranty under the agreement (or, in some cases, any obligation under the agreement). Under the model agreement, the New Media Company promises to identify the ABC Museum for any such losses.

This risk, however, may be further spread by requiring one of the parties to purchase a comprehensive multimedia liability insurance policy. In acquiring such insurance, some of the key considerations to determine are (1) the party responsible for the insurance, (2) the exclusions from coverage, if any, (3) the amount of the deductible, if any, (4) the per-claim policy limits, and (5) the aggregate policy limits. If the insurance policy is acquired by the audiovisual product developer, it is very important that the museum be named an “additional insured” to avoid any possible liability to third parties.



## **INTRODUCTION**

### **Museum Database Licensing and Distribution**

Over the years, museums have licensed photographs or transparencies of images in their collections either directly or through commercial image databases. Today many museums are licensing such content in digital format for online or CD-ROM distribution. While the precise business arrangements vary from museum to museum, database licensing and distribution can be an important way for the museum to reach wider audiences and to earn additional revenue for the museum.

Nonetheless, because the law related to licensing and distributing databases in the online and electronic environment is evolving rapidly, museums should be particularly careful in negotiating and drafting such agreements. To assist museums in these tasks, this section provides two model agreements: a museum database agreement and a museum database distribution agreement. These agreements can be used by museums to identify some of the key issues in museum database licensing and distribution, including defining the scope of the license grant, negotiating permitted uses and authorized users of the database, and developing compensation and payment arrangements.

#### **Museum Licensing Consortia**

Directly negotiating individual licenses can be time-consuming and expensive for museums. One solution is for the museum to join a consortium of other museums that are interested in licensing museum digital information on a collective basis. In a typical museum licensing consortium, the museum will contribute digital information (text and images) to a collective database for licensing to other entities. The consortium, which is usually organized as a nonprofit corporation, promotes the database, licenses the resources to authorized users, collects licensing fees for distribution to its members (retaining a percentage of the fees for administrative costs) and monitors the use (and possible misuse) of the database.

Museum licensing consortia offer many benefits to both museums and licensees. Museums reduce the costs of processing individual requests for single images and the costs for clearing and negotiating rights with artists and rights holders. Museums also benefit by standardizing practices for digitizing and documenting collections and by gaining access to the holdings of other museums. Licensees gain a single-point access to a library of digital materials from the collections of many museums on a low, annual fee basis, avoiding the difficulties of obtaining separate licenses from individual museums.<sup>4</sup>

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<sup>4</sup> The Art Museum Image Consortium (AMICO) is a good example of the collective approach to licensing museum digital assets for educational use. [www.amn.org/AMICO](http://www.amn.org/AMICO); [www.museumlicensing.org](http://www.museumlicensing.org).

## **Commercial Options**

The museum may enter into an exclusive or nonexclusive licensing arrangement with the commercial firm. The Bridgeman Art Library, the Corbis Corporation, and Getty Images are three of the leading suppliers of visual content today.<sup>5</sup> Under a licensing arrangement with such entities, the museum may provide transparencies or digital images to the database or authorize the firm to photograph the collection. In the latter case, care should be taken to determine which party owns the copyright in the photographic image (whether digital or analog). Once captured, the image can be displayed and converted to different formats.

Some of the possible advantages for the museum in licensing through a commercial firm or collective rights organization include: (1) reaching a wider clientele, (2) obtaining assistance in managing rights and reproduction, (3) gaining national or international promotion and marketing services, (4) monitoring and policing the marketplace, (5) licensing to end-users, including book publishers, the media, and academic institutions, and (6) increasing revenues for the museum. Some of the possible disadvantages of licensing through such entities include loss of control over (1) the selection of the licensed content, (2) the quantity and quality of the image; and (3) pricing, end-user, and end-use decisions.

## **Collective Rights Organizations**

A final possibility is to license museum digital content through a collective rights organization. The Media Image Resource Alliance (MIRA), a joint project of the Copyright Clearance Center (CCC) and the Association of Media Photographers, although principally an online stock photography agency, does include some museum digital content.<sup>6</sup> On a more ambitious scale, the VERDI project (“Very Extensive Rights Data Information Project”) is a European-wide multimedia information and licensing network between national collectively managed clearance services designed to facilitate rights trading.

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<sup>5</sup> Art Web, a consortium of the Bridgeman Art Library, La Reunion des Musees Nationaux, and Bildarchiv Preussischer Kulturbesitz, provides a single access point for these three major European image archives.

<sup>6</sup> <http://www.mira.com>

## **Model License 2**

### **MUSEUM DATABASE AGREEMENT**

THIS AGREEMENT dated as of \_\_\_\_\_2001, by and between the ABC Museum (“the ABC Museum”) and the XYZ Cultural Organization (the “Subscriber”) sets forth terms and conditions under which an eligible Subscriber obtains access and use of the ABC Museum Database.

#### **INTRODUCTION**

WHEREAS, the ABC Museum produces certain databases containing text, visual images and other cultural information, which it desires to make available to colleges, universities, schools, libraries, archives, museums and other cultural organizations, and

WHEREAS, the Subscriber desires to obtain access and use of the ABC Museum Databases to advance its educational, research or scholarly mission,

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the parties agree to the following terms and conditions:

#### **Section 1 DEFINITIONS**

**ABC Museum Database** means the compilation of textual, visual and other cultural information compiled and owned by the ABC Museum.

**Authorized End-User** means any person authorized by the Subscriber to receive access to the ABC Museum Database under the terms and conditions of this Agreement.

**Eligible Subscriber** means any cultural organization authorized to receive access and use of the ABC Museum Database.

**ABC Museum Distributor** means the organization authorized by the ABC Museum to provide delivery and support services for the ABC Museum Database.

**Cultural Organization** means a college, university, school, museum, archive, or library or similar non-profit organization.

## **Section 2 LICENSE GRANT**

### **2.1 License Grant**

The ABC Museum hereby grants to the Subscriber a non-exclusive, non-transferable, limited license to access and use the textual, visual and other cultural information in the ABC Museum Database for the purpose of advancing research, scholarship and education.

### **2.2 Commercial Use Prohibited**

Any commercial exploitation of any materials in the ABC Museum Database is strictly prohibited, including any use for fund-raising, marketing promotion, or public relations purposes of the Subscriber.

## **Section 3 LICENSE TERM**

### **3.1 Subscription and Renewal**

This Agreement shall come into force upon the date of execution by both parties and shall remain in effect through the end of the subscription year, unless renewed for an additional subscription year or terminated early as provided for in section 3.2 of this Agreement.

### **3.2 Termination**

The ABC Museum may terminate this Agreement upon at least thirty (30) days' prior written notice to Subscriber because of any failure of the Subscriber to observe any material term of this agreement.

## **Section 4 DISTRIBUTION**

Distribution of the ABC Museum Database is exclusively through an authorized ABC Museum Distributor. Subscriber is entitled to receive access to the ABC Museum Database upon agreeing to the ABC Museum Distributor's terms and conditions of delivery and support and upon payment of all fees, including licensing and distribution fees. Continued acceptance of the Distributor's terms and conditions of delivery and service is condition of this Agreement.

## **Section 5 AUTHORIZED END-USERS**

### **5.1 Designation**

Subscriber may designate categories of authorized end-users that may receive access to and use the ABC Museum Database under the terms and conditions of this Agreement. For example, a university subscriber may designate faculty members, research staff and enrolled students as authorized end-users, and a library may designate authorized library patrons as end-users of the ABC Museum Database. The categories of authorized end-users must be approved in advance by the ABC Museum.

### **5.2 Compliance**

Subscriber is responsible for ensuring its authorized end-users comply with the Distributor's terms and conditions for access and use of the ABC Museum Database and with applicable Subscriber access and use policies, which are discussed in greater detail of section 6 of this Agreement.

## **Section 6 AUTHORIZED ACCESS AND USE**

### **6.1 Authorized Access and Use**

Access and use of the ABC Museum Database is exclusively for education, research and scholarship. A non-exhaustive list of educational, research and scholarly uses is attached to this Agreement as Annex A. Without express authorization of the ABC Museum, the Subscriber and its Authorized Users may not publish or redistribute, in print or electronic format,

### **6.2 Access and Use Policies**

Subscriber shall provide for the approval of the ABC Museum a copy of its policies on access and use of the ABC Museum database, which shall include policies and procedures for handling any known instances of unauthorized use or infringement of the ABC Museum Database or any materials contained therein. The approved Subscriber policies on access and use shall be attached as Annex B to this Agreement and shall be incorporated by reference.

### **6.3 Enforcement**

Subscriber shall promptly notify the ABC Museum of any instances of unauthorized use or infringement of the ABC Museum Database, or any materials contained therein, of which it learns or is notified. Subscriber shall take all reasonable steps to cause any unauthorized use or infringement to cease immediately. The ABC Museum shall have the sole right, at its discretion, to bring any legal action because of an unauthorized use or infringement of the ABC Museum Database.

### **6.4 Safe Harbor**

Subscriber shall not be responsible for the unauthorized use or infringement of the ABC Museum Database by Authorized Users provided that: (1) the unauthorized use or infringement is without the consent of the Subscriber, (2) the Subscriber is in full compliance with its access and use policies discussed in section 6.2 of this Agreement, and (3) the Subscriber has provided Authorized Users with informational materials on the appropriate use of the ABC Museum Database.

## **Section 7 REPRESENTATIONS AND WARRANTIES**

The ABC Museum warrants and represents that it has the authority to enter into this Agreement and that it has obtained all the clearances necessary to permit the Subscriber to use the materials in the ABC Museum Database for the uses authorized under this Agreement.

## **Section 8 GENERAL PROVISIONS**

### **8.1 Entire Agreement**

The terms and conditions of this Agreement supercede all prior oral and written Agreements between the parties with respect to the subject matter of this Agreement and shall constitute the entire Agreement between the parties with respect to the matters contained herein.

**8.2 Modification**

This Agreement may not be modified except by written agreement signed by the party to be bound thereby.

**8.3 No Assignment or Sublicense**

The Parties to this Agreement shall not assign or sublicense this Agreement or any of the rights and obligations thereunder.

**8.4 Governing Law**

This Agreement will be construed and enforced under and subject to the laws of \_\_\_\_\_.

For the Subscriber

For the ABC Museum

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Printed Name and Title]

\_\_\_\_\_  
[Printed Name and Title]

\_\_\_\_\_  
[Date]

\_\_\_\_\_  
[Date]

## **Notes and Comments**

### **MUSEUM DATABASE AGREEMENT**

#### **1. License Grant**

Under the model agreement, the ABC Museum grants a non-exclusive license for the limited purpose of advancing research, scholarship and education. The clause is designed to advance the parallel objectives of museums and user communities such as universities, schools and libraries. Use of the database for non-educational purposes is prohibited. However, the language of the license grant (and the related prohibition) could be modified to permit a wider range of activities, or even commercial distribution.

#### **2. License Term**

Museums and educational institutions often prefer fixed-term licenses for ease of administration. Accordingly, the model license provides for a basic annual subscription of the licensed resources, subject to renewal. However, the parties are free to negotiate the terms of multi-year agreements, which generally would discounted subscription fees. The model agreement provides for early termination in the event of a material breach of the agreement (such as the failure to bring about the end of unauthorized use or infringement of the database).

#### **3. Authorized Users**

One of the most important issues in the negotiation of a museum database license agreement is the scope of authorized users. For example, the authorized users may include faculty members, research staff, and enrolled students but may exclude university administrators and alumni. Another approach is to define user groups through access to university computer networks. However, in a period when “distance education” is no longer just a distant possibility, careful attention must be given to defining the scope of university computer networks.

#### **4. Authorized Uses**

Under the authorized use provision, the model agreement restates that the license is for educational, research and scholarly uses. Because these terms are very broad, the parties may wish to agree in advance on specific categories of permitted uses. Some of the issues relating to authorized use of licensed resources include classroom use, use in print and electronic publications, use in scholarly papers and presentations, and transmission for distance education.

Researching agreement on authorized uses would be meaningless without an effective enforcement policy by the licensee. Accordingly, the model agreement requires the



licensee to provide and enforce such an access and use policy. However, the model agreement also provides an important (optional) safe harbor for unauthorized use where the licensee is in good faith compliance with its access and use policy.

## **5. Warranties and Representations**

Under the model agreement, the museum warrants and represents that it has cleared all the rights necessary for uses of the materials under the agreement. For museums with collections that are in the public domain, compliance with this provision poses few problems. However, for museums holding collections of works by contemporary artists and other creators, the clearance burden may be a significant burden. Subscribers may also want the museum to provide an indemnity against any losses or damages arising from the breach of such a warranty and representation.

## **Model License 3**

### **DATABASE DISTRIBUTION AGREEMENT**

THIS AGREEMENT dated as of \_\_\_\_\_ 2001 by and between the ABC Museum (“the ABC Museum”) and the XYZ Distribution Company (“the Distributor”) sets forth the terms and conditions for the distribution of the ABC Museum Database by the New Media Company.

#### **INTRODUCTION**

WHEREAS, the ABC Museum produces a database, which it desires to distribute in the territory described in this Agreement, including distribution to universities, schools, and other museums, and

WHEREAS, the Distributor desires to obtain the exclusive right to distribute certain Databases produced by the ABC Museum in the territory described in this Agreement, including distribution to universities, schools, and other museums,

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the parties agree to the following terms and conditions:

#### **Section 1 DEFINITIONS**

**ABC Museum Database** means the compilation of textual, visual and other cultural information compiled and owned by the ABC Museum that is described more fully in Annex A to this Agreement.

**ABC Museum Database License** means the agreement that sets forth the terms and conditions of Eligible Subscriber and its Authorized End-Users to access and use the materials in the ABC Museum Database.

**Authorized End-User** means any person authorized by the Subscriber to receive access to the ABC Museum Database under the terms and conditions of this Agreement.

**Eligible Subscriber** means any cultural organization authorized to receive access and use of the ABC Museum Database, including, but not limited to, colleges, universities, schools, museums, archives, or libraries

**ABC Museum Distributor** means the organization authorized by the ABC Museum to provide delivery and support services for the ABC Museum Database in a particular Territory.

## **Section 2 TERRITORY and SERVICES**

### **2.1 Territory**

The ABC Museum hereby appoints the Distributor its exclusive distributor for the ABC Museum Database in the Territory described more fully in Annex B to this Agreement (the “Territory”).

### **2.2 Services**

The Distributor shall perform the following distribution services in the Territory (a) solicit subscriptions to the ABC Museum Database, (b) promote subscriptions to the ABC Museum Database in the Territory through demonstrations, presentations, trade show exhibitions and other promotion mechanisms customary and usual in the industry, (c) fulfill subscription orders, including shipping the ABC Museum Database and ensuring compliance with the ABC Museum Database License, and (d) collect and remit subscription fees under the terms and conditions of this Agreement.

## **Section 3 COMPENSATION**

### **1.1 Subscription Fees**

The Distributor shall solicit subscriptions to the ABC Museum Database from Eligible Subscribers at subscription fees no greater than the prices set forth in Annex C to this Agreement. The Distributor shall not add any surcharge to such fees without the express written permission of the ABC Museum.

### **3.2 Distribution Fee**

In consideration of the services described in section 2 of this Agreement, the Distributor shall be entitled to commissions for subscriptions to the ABC Museum Database that it secures in the Territory in accordance with Annex D to this Agreement.

### **3.3 Payment**

Distributor shall provide advance payment to the ABC Museum for all subscription orders secured under this Agreement. Payments shall be net of the distribution fee due to the Distributor.

### **3.4 Books and Records**

The Distributor shall maintain at its own expense complete and accurate books and records covering all subscriptions secured under this Agreement. Each subscription order shall show the full name and address of the customer. The ABC Museum shall have the right, upon reasonable notice and during usual business hours, to examine the foregoing books and records throughout the term of this Agreement and for two (2) years thereafter. Such examination shall take place at the place where such records are regularly maintained.

## **Section 4 SUBSCRIPTION FULFILLMENT**

### **4.1 Subscription Orders**

For each subscription order secured under this Agreement, the Distributor shall be responsible for executing a subscription order showing the full name of the customer. Such subscriptions shall be maintained at the offices of the Distributor and shall be available for inspection under the terms set forth in section 3.4 of this Agreement.

### **4.2 Museum Database License**

For each subscription order secured under this Agreement, the Distributor shall be responsible for ensuring that the customer executes the ABC Museum Database License, which is set forth in Annex E of this Agreement. Distributor shall inform each of its customers regarding the terms and conditions of the Database License and shall monitor customer compliance with such terms and conditions. Distributor shall promptly notify the ABC Museum of any violations of the terms and conditions of the Database License that reasonably come to its attention.

### **4.3 Delivery and Support of Database**

For each subscription order secured under this Agreement, the Distributor shall be responsible for directly shipping the ABC Museum Database to the customer and thereafter providing technical support to its customers as described more fully in Annex F of this Agreement.

## **SECTION 5 MUSEUM AND DISTRIBUTOR OBLIGATIONS**

### **5.1 Museum Obligations**

The ABC Museum shall provide Distributor with copies of its promotional literature and such demonstration materials as are necessary for the Distributor to perform its obligations under this Agreement.

## **5.2 Distributor Obligations**

The Distributor shall use its best efforts to promote and secure subscriptions for the ABC Museum Database within the Territory, including, but not limited to, giving demonstrations, attending trade shows, distributing promotional literature and providing technical support to customers. The Distributor, at its own expense, shall maintain such offices in the Territory as may be necessary to perform under this Agreement.

## **Section 6 TERM AND TERMINATION**

### **6.3 Term**

This Agreement commences upon the date it is executed and shall continue for twelve (12) months, unless earlier terminated in accordance with section 6.2 of this Agreement. Notwithstanding the foregoing, this Agreement shall continue in effect for all Museum Database Licenses then in effect or timely renewed under the terms of the ABC Museum Database License.

### **6.2 Termination**

The ABC Museum may terminate this Agreement in the event of a material breach by the Distributor that is not cured within thirty (30) days after the receipt of written notice thereof. All of the following shall be deemed a material breach of this Agreement: (1) exceeding the scope of the agency or territory set forth in section 2 of this Agreement, (2) failure of the Distributor to perform the services under this Agreement in a professional and workmanlike manner, (3) failure of the Distributor to provide timely advance payments to the ABC Museum; and (4) failure to perform any other obligation under this Agreement.

### **6.3 Effect of Termination**

Upon expiration of this Agreement, the Distributor shall discontinue all services under this Agreement and shall deliver to the ABC Museum within thirty (30) days all copies of the ABC Museum Database and any other materials in its possession or control provided to it by the ABC Museum.

## **Section 7 NO WARRANTY**

The ABC Museum makes no warranty about the accuracy or completeness of the textual, visual or other cultural information contained in the ABC Museum Database.

## **Section 8 GENERAL PROVISIONS**

### **8.1 Entire Agreement**

The terms and conditions of this Agreement supercede all prior oral and written Agreements between the parties with respect to the subject matter of this Agreement and shall constitute the entire Agreement between the parties with respect to the matters contained herein.

### **8.2 No Assignment or Sublicense**

The Distributor shall not assign or sublicense any of its rights or obligations under this Agreement without the prior written consent of the ABC Museum.

### **8.3 Modification**

This Agreement may not be modified except by written agreement signed by the party to be bound thereby.

### **8.4 Governing Law**

This Agreement will be construed and enforced under and subject to the laws of \_\_\_\_\_.

For the Distributor

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Printed Name and Title]

\_\_\_\_\_  
[Date]

For the ABC Museum

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Printed Name and Title]

\_\_\_\_\_  
[Date]

## **Notes and Comments**

### **DATABASE DISTRIBUTION AGREEMENT**

#### **1. Territory and Services**

Determining the territory and scope of services of a database distribution agreement is among the most important considerations for the museum. First, the museum must determine whether it wishes to grant “exclusive” or “non-exclusive” distribution rights. An exclusive distributor would have the sole right to distribute the database (usually in a particular territory but in some cases worldwide). A non-exclusive distributor would be required to share the distribution right with others. In choosing a particular distributor and deciding on the nature of the arrangement, the museum may wish to consider the distributor’s past and current experience and clients, delivery capabilities, and its reputation for customer service.

Second, the museum must determine the geographic scope of the distribution agreement. The museum may decide to grant “worldwide distribution rights,” or confine the distribution right to a specific country or region. For example, the museum may grant to Distributor A the right to distribute the product in Europe and grant to Distributor B the right to distribute the database in South America. Another approach would be defining the geographic scope of the distribution agreement by language. For example, the museum might define a territory as “all countries of the world where Spanish is an official language.”

Defining the scope of services to be provided by the distributor is also a critical component of the agreement. The model agreement provides for a relatively broad scope of services, including promoting the product, soliciting and fulfilling product subscriptions, and collecting and remitting fees.

#### **2. Compensation**

Compensation arrangements under a distribution agreement can take a variety of forms, including flat fee, royalty-based, or subscription models. The model agreement adopts the subscription model, which is very common in the information industry. Under a subscription arrangement, the end-user receives access to digital information in exchange for the payment of a periodic fee.

Under the model agreement, the museum would establish the basic pricing structure for access to the database, and the distributor receives a percentage of the subscription fees as a commission for promoting and distributing the product. In determining the subscription fee base for purposes of calculating commissions, careful attention should be given to identifying any deductions. Common deductions include sales taxes, shipping charges and returns.

### **3. Subscription Fulfillment**

In addition to securing new subscriptions, ensuring prompt delivery of the database and customer support are essential elements of the database distribution agreement. This section of the model agreement also requires the distributor to ensure end-user compliance with the terms of the underlying database license.



## **INTRODUCTION**

### **Museums and the Internet**

Museums are flourishing on the Internet, bringing their vast resources of art and cultural information to local and global audiences. The number of museum web sites on the Internet is large and growing daily. One online directory lists over 10,000 museums in 120 countries, with a new museum added to the list almost every day. Today some museums count more attendance in cyberspace than on earth. The international virtual museum audience is estimated to be over 1 billion.

Nonetheless, many museums around the world are just beginning the process of launching their programs and activities on the Internet. For these museums, the process of creating a web site and protecting their digital assets on the Internet can be a daunting task. Consistent with WIPO Director General Kamil Idris' offer of assistance to countries seeking to "expand trade using their rich cultural heritage," this section of the guide provides a model web site development agreement and resources that are available to museums to protect their domain names and trademarks on the Internet.

## Sample License 4

### MUSEUM WEB SITE DEVELOPMENT AGREEMENT

THIS AGREEMENT dated as of \_\_\_\_\_2001, by and between the ABC Museum of Art (“ABC Museum”) and the New Media Company (“New Media Company”), sets forth the terms and conditions for the design and development of the ABC Museum Web Site by the New Media Company.

#### INTRODUCTION

WHEREAS, the New Media Company is engaged in the business of developing Web Sites on the World Wide Web portion of the Internet, and

WHEREAS, the ABC Museum desires to engage the New Media Company to design and develop such a Web Site, and the New Media Company is interested in providing such services,

NOW, THEREFORE, for the mutual consideration set forth herein, the ABC Museum and the New Media Company hereby agree as follows:

#### Section 1 DEFINITIONS

**1.1 Internet** means the worldwide network of computers that permits the transfer and exchange of information in digital format.

**1.2 Web Site** means a series of interconnected Web Pages residing in a single directory on a single Web Server.

**1.3 Web Page** means a document or file that is formatted using computer code and that is intended to be accessible by Internet users.

**1.4 Web Server** means a computer or computers used to make Web Sites accessible to Internet users.

**1.5 World Wide Web** means all of the Web Pages that are accessible to a computer user with appropriate access to the Internet.

## **Section 2 DESIGN AND DEVELOPMENT**

### **2.1 Deliverables**

The New Media Company shall design, develop, and deliver to the ABC Museum a Web Site consisting of certain Web Pages and all other related code, documentation, reports, and other materials developed by the New Media Company under this Agreement as set forth in Annex A to this Agreement (the “Deliverables”).

### **2.2 Specification**

The New Media Company shall design and develop the ABC Museum Web Site on the basis of the Web Site Development Specification set forth in Annex B to this Agreement. The ABC Museum Web Site shall include all of the features and satisfy all of the requirements set forth in the Web Site Development Specification.

### **2.3 ABC Museum Images and Documentation**

The ABC Museum shall provide the New Media Company with certain textual, visual and other materials, including photographs, negatives, slides or digitized images of artwork and other objects in the collections of the ABC Museum (collectively “ABC Museum Images and Documentation”). The ABC Museum Images and Documentation, and the rights of the ABC Museum in these materials, are set forth in Annex C to this Agreement.

## **Section 3 DELIVERY and ACCEPTANCE**

### **3.1 Delivery Schedule**

The New Media Company shall design, develop and deliver the ABC Museum Web Site, and all of its constituent elements, in accordance with the Delivery and Payment Schedule set forth in Annex D to this Agreement, which includes certain Milestone Dates triggering delivery and payment obligations of the New Media Company and the ABC Museum, respectively.

### **3.2 Demonstration Model**

The New Media Company shall deliver to the ABC Museum for review and approval by the ABC Museum a demonstration model of the proposed Web Site in accordance with the Delivery and Payment Schedule. All documentation of the Web Site shall be

delivered in print format and electronic format. Code shall be delivered in electronic format. The ABC Museum shall review the demonstration model in a timely manner and shall not unreasonably withhold its approval.

The ABC Museum shall provide the New Media Company with a written explanation of any non-approval of the Web Site, or any part thereof, in sufficient detail to permit the New Media Company to make corrections. Once the ABC Museum has submitted its final approval, the New Media Company shall design the Web Site substantially in conformity with the demonstration model.

### **3.3 Failure to Deliver**

An unexcused failure of the New Media Company to meet any delivery date in the Delivery and Payment Schedule by more than ten (10) calendar days may result in the early termination of this Agreement under Section 8 of this Agreement, unless the delay is excused by the ABC Museum. The New Media Company shall promptly notify the ABC Museum of any factor, event or occurrence that may result in a failure to meet any milestone date in the Delivery and Payment Schedule.

### **3.4 Acceptance**

The New Media Company shall provide the ABC Museum with one copy of the Web Pages for testing in accordance with the Delivery and Payment Schedule. Commencing with the date of delivery of the Web Pages, the ABC Museum shall have ten (10) business days to inspect, test and evaluate the Web Pages under the technical criteria set forth in the Web Site Development Specification.

If the Web Pages fail to substantially satisfy any criteria set forth in the Web Site Development Specification, the ABC Museum shall provide the New Media Company with a written notice clearly identifying the deficiencies, and the New Media Company shall have ten (10) business days to correct any such deficiencies. Failure of the New Media Company to timely correct any such deficiency may result in the early termination of this Agreement consistent with section 8.2 of this Agreement.

Alternatively, on the basis of the results of the testing of the Web Pages, the New Media Company and the ABC Museum may agree to modify the terms of this Agreement. If the ABC Museum does not provide timely notice to the New Media Company of any deficiencies, the Web Pages shall be deemed to have been accepted by the ABC Museum ten (10) business days after the date of delivery to the ABC Museum.

### **3.5 Installation**

The New Media Company shall be solely responsible for installing the Web Pages on the ABC Museum Web server. The New Media Company shall notify the ABC

Museum in writing when the Web Pages have been loaded onto the ABC Museum Web server and the Web Site can be accessed from a remote computer linked to the World Wide Web.

## **Section 4 HOSTING and MAINTENANCE [Optional]**

### **4.1 Hosting**

The New Media Company agrees to maintain the ABC Museum's web site on its server and serve as its system operator. The foregoing services, which are described in greater detail in Annex E to this Agreement ("Web Site Hosting Services"), shall include: (1) making the ABC Museum Web Site available to Internet users twenty-four (24) hours per day, (2) backing up the ABC Museum Web Site at least once every two weeks and storing such back-ups in a safe and secure environment, and (3) using its best efforts to ensure reasonable response to users of the ABC Museum Web Site.

### **4.2 Updates and Revisions**

The New Media Company agrees to update and/or revise the ABC Museum Web Site under the terms of this section. The ABC Museum shall provide the New Media Company with materials and information to update existing Web Pages on the ABC Museum Web Site. The New Media Company shall incorporate such new materials or new information within two (2) to three (3) business days following their receipt, depending on the difficulty of the updating or revision.

### **4.3 New Web Pages**

The New Media Company shall promptly respond to all requests for the development of new Web Pages for the ABC Museum Web Site, setting forth proposed charges and product delivery schedule.

### **4.4 Termination/Transfer of Hosting Services**

The ABC Museum, at its sole discretion, may terminate or transfer the Web Site Hosting Services described in this section. Upon notice from the ABC Museum, the New Media Company shall transfer to the ABC Museum within twenty-four (24) hours a complete and current copy of the ABC Museum Web Site, including all components and computer code thereto, in accordance with the Transfer Media and Format set forth in Appendix F to this Agreement. The New Media Company may retain one complete copy of the ABC Museum Web Site on its server; all other copies must be destroyed.

## **Section 5**

### **INTELLECTUAL PROPERTY RIGHTS**

#### **5.1 ABC Museum License**

The ABC Museum hereby grants to the New Media Company a non-exclusive, non-transferable, limited license to use the ABC Museum Images and Documentation (Annex C) in connection with the design and development of the ABC Museum Web Site. All rights not expressly granted under this Agreement are reserved to the ABC Museum.

#### **5.2 Ownership of Web Site**

The ABC Museum shall be the sole and exclusive owner of the ABC Museum Web Site and all of the Deliverables, including any and all copyrights, trademarks, patents, and any other intellectual property rights or rights in proprietary information in the ABC Museum Web Site and Deliverables.

#### **5.3 Assignment by New Media Company**

With the exception of certain pre-existing works identified in Annex G to this Agreement (including certain computer code), the New Media Company hereby assigns and transfers to the ABC Museum, its successors and assigns, all right, title and interest in any and all copyrights, trademarks, patents, trade secrets and any other intellectual property rights or rights in proprietary information in the ABC Museum Web Site and the Deliverables.

#### **5.4 New Media License**

The New Media Company hereby grants to the ABC Museum a nontransferable, perpetual, paid-up, irrevocable license to use certain pre-existing works and the source code for the ABC Museum Web Site. Under this license, the ABC Museum is authorized to modify, adapt, change, enhance or update the pre-existing materials and source code for the ABC Museum Web Site and to create related and derivative works and to compile and create related object code.

## **Section 6**

### **DOMAIN NAME REGISTRATION**

#### **6.1 Domain Name Search**

Immediately upon execution of this Agreement, the New Media Company shall conduct a comprehensive “Whois” search to determine the availability of the museum’s domain for registration. In the event that this domain name is unavailable

for registration, the New Media Company shall promptly notify the ABC Museum of this fact and the reasons for the unavailability and shall arrange to register such other domain name(s) as are acceptable to the ABC Museum.

## **6.2 Domain Name Registration**

Within ten (10) days following the execution of this Agreement, the New Media Company shall contact an ICANN-Approved Domain Name Registrar (the “Registrar”), and take all actions necessary to register on the ABC Museum’s domain name. The domain name shall be registered in the name of the ABC Museum name and shall be listed in the Registrar’s “Whois Database”.

## **Section 7 COMPENSATION and PAYMENT**

### **7.1 Compensation**

The total price for the design, development and delivery of the ABC Museum Web Site and all Deliverables (exclusive of the hosting and maintenance services described in Section 4 of this Agreement) shall be \_\_\_\_\_, payable as set forth herein.

### **7.2 Payment Schedule**

Upon mutual execution of this Agreement, the ABC Museum shall make an advance payment to the New Media Company in the amount of \$\_\_\_\_\_. Thereafter, the New Media Company shall be entitled to receive progress payments upon the satisfactory completion of certain milestone events as set forth in the Delivery and Payment Schedule (Annex D). The final payment will be made to the New Media Company at the expiration of the sixty (60) day period commencing upon delivery of the final Web Pages provided that the product performs in a satisfactory manner during this trial period.

## **Section 8 TERM and TERMINATION**

### **8.1 Term**

This Agreement commences on the date it is executed and shall continue for renewable five (5) periods, unless terminated earlier under the terms of this Agreement.

### **8.2 Termination**

Either party to this Agreement may terminate this Agreement in the event of a material breach by the other party that is not cured within ten (10) business days after

the receipt of a written notice thereof. The following acts or omissions shall be deemed a material breach of this Agreement: (1) an unexcused failure by the New Media Company to meet any delivery date in the Web Site Delivery and Payment Schedule (Annex D) by more than ten (10) calendar days; and (2) an unexcused failure by the ABC Museum to make payment when due under this Agreement.

### **8.3 Effect of Termination**

#### **8.3.1 By the ABC Museum**

Upon termination of this Agreement, (1) the ABC Museum shall pay to the New Media Company the fair development costs incurred to the date of termination, and (2) the New Media Company shall immediately discontinue the use of and collect and deliver to the ABC Museum all ABC Museum Images and Documentation (Annex C).

#### **8.3.2 By the New Media Company**

Upon termination of this Agreement, the ABC Museum shall have the right to immediately assign the operation of the Web Site to another system operator and the New Media shall be relieved of any further responsibility for the continued operation of the Web Site.

## **Section 9 REPRESENTATIONS and WARRANTIES**

### **9.1 By the New Media Company**

The New Media Company warrants and represents that (1) it is and will be the sole author of the ABC Museum Web Site and Deliverables; (2) it has and will have full and sufficient right to assign or grant the rights and/or licenses granted under this Agreement; and (3) the ABC Museum Web Site and Deliverables do not and will not infringe any patents, copyrights, trademarks, or other intellectual property rights (including trade secrets), including, but not limited to, any right of publicity, right of privacy, or moral rights.

### **9.2 By the ABC Museum**

The ABC Museum warrants and represents that, to the best of its knowledge, the rights granted under this Agreement, will not infringe any copyright of any third party. Notwithstanding the foregoing, the ABC is not responsible for determining the copyright status, obtaining permissions, or paying license fees for the use of the ABC Museum Images and Documentation, except for the rights owned by the ABC Museum, which are listed in Annex C to this Agreement. The rights granted under this Agreement do not include any rights of attribution or control under the laws of any state or country, moral rights, or the rights of publicity or privacy.



## **Section 10 INDEMNIFICATION**

New Media Company shall indemnify, defend and hold harmless the ABC Museum, and its respective officers, directors, employees and agents from any and all claims, damages, liabilities, costs and expenses, including reasonable attorneys' fees arising out of the design, development, and installation of the ABC Museum Web Site and Deliverables (Annex A) or out of the breach by the New Media Company of any representation or warranty or any other obligation of the New Media Company under this Agreement. Each party to this Agreement shall give prompt notice in writing to the other party of any claims arising out of this Agreement

## **Section 11 INSURANCE**

The New Media Company, at its own expense, shall maintain during the term of this Agreement a comprehensive Multimedia Liability Insurance that shall at a minimum provide coverage for the risks identified in Annex H to this Agreement. The New Media Company further agrees to name the ABC Museum as an additional insured under such an insurance policy.

## **Section 12 GENERAL PROVISIONS**

### **12.1 Entire Agreement**

The terms and conditions of this Agreement supercede all prior oral and written Agreements between the parties with respect to the subject matter of this Agreement and shall constitute the entire Agreement between the parties with respect to the matters contained herein.

### **12.2 No Assignment**

The Developer shall not assign or sublicense any of its rights or obligations under this Agreement without the express prior written consent of ABC Museum.

### **12.3 No Agency**

In rendering performance under this Agreement, Developer is acting solely as an independent contractor and shall not be construed as an agent of the ABC Museum. In entering into this Agreement, the ABC Museum shall not be construed as acting as the agent of the Developer in any respect.

**12.4 Modification**

This Agreement may not be modified except by written agreement signed by the party to be bound thereby.

**12.5 Governing Law**

This Agreement will be construed and enforced under and subject to the laws of \_\_\_\_\_.

IN WITNESS WHEREOF, Museum and Developer have caused this Agreement to be signed and delivered by their duly authorized agents, all as of the Effective Date stated above.

For the ABC Museum:

For the Developer:

\_\_\_\_\_

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## **Notes And Comments**

### **MUSEUM WEB SITE DEVELOPMENT AGREEMENT**

#### **1. Design and Development**

The first step in a web site development project is for the museum and the web site developer to prepare a detailed specification for the project. It is critical to the success of the project for the web site developer to understand the purpose of the web site within the museum organization. For example, will the web site merely display information about the museum (such as hours of operation)? Or will the web site also support the museum's exhibition and education functions? To provide the developer with a clear picture of the proposed purpose and function of the web site, it is important to include a wide range of museum personnel in the planning process, including administrators, curators, educators, and information technology specialists.

Once the purpose and function of the web site have been clarified, the museum should draft a clear and detailed statement of its requirements. The following items may serve as checklist: (1) a summary of the scope and cost of creating and maintaining the web site; (2) the type of graphics to be used on the web site; (3) the presentation of the text on the web site; (4) the title of each web page; (5) the use of indexing tools and metadata, (6) providing back-up materials on a periodic basis; (8) the design of the home page and (9) the accessibility of the web site during construction.

#### **2. Delivery and Acceptance**

In the usual case, web site development projects are extremely time-sensitive. Therefore, care should be taken in drafting the delivery schedule for all deliverables under the agreement. Museums should avoid making large, up-front payments for web site development projects. Instead, the approach adopted in the model agreement is to provide for certain "milestone dates" that trigger performance and payment obligations on the part of the museum and developer, respectively. Such milestone dates should include the date for the delivery of the demonstration web site and final web pages. The delivery schedule also may include dates for key project planning meetings and "walk through" demonstrations for the web site and its important components.

#### **3. Hosting and Maintenance**

Just as a current and accurate web site may be an asset to a museum, an out-of-date or inaccurate web site may be liability. Therefore, once the web site is developed, the museum will need to determine how it will be hosted and maintained. Such hosting

and maintenance services may be undertaken by the original developer of the site or another entity. The model web site agreement provides language that permits the museum, if it so decides, to retain the initial developer to host the site and to update, revise, and create new web pages. The precise maintenance services should be identified in an annex to the agreement. The termination and transfer of hosting services clause provides important protections to the museum in the event that it later chooses a different vendor to provide these services.

#### **4. Domain Name Search and Registration**

Under the model agreement, the web site developer is required to undertake a search for the availability for registration and to register the museum's domain name. Alternatively, the museum may wish to undertake these aspects of the project on its own. Additional information on museum trademarks and domain names is available in section [x] of this resource guide.

#### **5. Intellectual Property Rights**

Carefully identifying and allocating ownership of content and related intellectual property rights is of central importance to a successful web site development project. In general, there are three categories of content and rights that need to be clearly identified and allocated under the agreement: (1) content and rights owned by the museum, (2) "pre-existing" content and rights owned by the web site developer, and (3) content specifically created for the museum's web site. With respect to content that is owned neither by the museum nor the developer, the parties will need to obtain appropriate licenses or releases from third parties.

In the model agreement, the museum retains ownership over all content provided to the developer for the creation of the web site, granting the developer only a non-exclusive, non-transferable limited license to use the materials in connection with the development of the web site. With respect to certain pre-existing works and rights (notably source code), the web site developer retains ownership but the museum receives a non-transferable, irrevocable license to use such content and rights in connection with its web site. Third, the model agreement provides for the assignment of all rights in the web site to the museum, with the exception of the developer's pre-existing works and rights in software.

#### **6. Indemnification and Insurance**

In a complex web site development project, parties can never be absolutely certain that all rights have been cleared. Under the model agreement, the web site developer is under an obligation to indemnify the museum if the museum is sued by a third party for infringing material that is incorporated into its web site. However, this potential burden is spread by requiring the web site developer to maintain multimedia insurance for the project.

# **INTRODUCTION**

## **Museum Identity and the Internet**

In today's global electronic markets, museums are well positioned to supply a broad range of cultural products and services to online customers eager for new forms of creative expression. At the same time, consumers are also searching for reliable signs of the "quality" and "authenticity" associated with such cultural products and services. Indeed, one of the museum's most valuable assets may be its "brand name."

A museum "name" becomes a "brand name" when consumers over time associate it with such intangible benefits as quality and authenticity. For example, the names of the Hermitage, the Louvre, and Metropolitan Museum of Art are recognized around the world not only for their unsurpassed collections but also for the high quality of their services and products that they offer to their audiences, both locally and globally. As the association between the museum and these products and services grows stronger, museum brand loyalty develops. The key point is that effective online museum marketing will build upon the museum's conventional world branded products and services.

### **Trademarks**

In both traditional and electronic markets, there are two ways that museums can establish brand loyalty. First, museums must distinguish their products and services from those offered by others in the marketplace. That is the function of a museum's trademarks, which may take the form of distinctive words, names, symbols, slogans, or some combination of these. Second, museums must deliver products and services that are consistent with claims made in their advertising and marketing programs.

Significantly, in the networked environment offers unique opportunities for museums to enhance museum brand loyalty. For example, products and services displayed in an online museum shop that is part of the museum's website are already associated with the unbiased information available in other parts of the site. Museums can establish trust and enhance brand loyalty through establishing links with other trusted sites and creating "online communities" of satisfied customers.

### **Domain Names**

Of special importance are trade names and trademarks that form part of the museum's domain name, what the World Intellectual Property Organization (WIPO) has aptly called the "human-form of Internet address."<sup>7</sup> Like commercial entities in cyberspace, domain names serve not only as the street and houses on the Internet but

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<sup>7</sup> "The Management of Internet Names and Addresses: Intellectual Property Issues: Final Report of the WIPO Internet Domain Name Process," <http://wipo2.wipo.int> (April 30, 1999).

also as the signposts for electronic business. Without global protection for such signs, confusion would quickly arise among businessmen, consumers and researchers, ultimately eroding confidence in the Internet as a stable business environment. Jacques Perot, President of the International Council of Museums (ICOM) recently described the important role domain names play for museums:

As we expand our reach into cyberspace, our missions and the reasons people depend upon us do not change. It is perhaps even more important in cyberspace than it is in physical space for museums to have an authentic identity, ensuring that our vast collections and information holdings are accessible and verifiable.<sup>8</sup>

To enable Internet users to locate its rich cultural resources, a museum must select, clear and register a useful and appropriate domain name. In broad outline, a domain name consists of two primary components. The “top-level” domain (TLD) is an Internet zone designation that indicates the type of entity associated with a particular domain. For example, the suffix “.com” indicates a commercial enterprise while the suffix “.org” indicates a nonprofit organization. The “second-level” domain consists of the letters immediately to the left of the top level that identify the particular museum.

Until quite recently, museums seeking to register a domain name were generally restricted to the “.org” top level. However, the Internet Corporation for Assigned Names and Numbers (ICANN), the nonprofit organization that provides oversight for domain names, recently approved the establishment of a **.museum** TLD. The new museum TLD gives museums the option of registering Internet addresses with a distinct museum identity and permits users of the Internet to recognize such domains as signposts of authenticity. A new nonprofit organization, Muse Doma, will be responsible for maintaining and operating the new restricted, top-level domain for and in the best interests of the worldwide museum community.<sup>9</sup>

Although registration of a museum domain name is an important step in establishing and maintaining a museum’s identity in cyberspace, registration alone may not be sufficient. Unfortunately, there are persons all too eager to appropriate the name, goodwill, and intellectual assets of museums for their own purposes. In fact, one of the early abuses of a museum name involved the phrase “Le Web Louvre” to identify a web site of public domain images. In response to claims made by the Louvre Museum, the site was renamed “Web Museum.” Since such practices could damage the reputation of museums, museums are investing the time and resources to select, clear, register, and defend their domain names.

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<sup>8</sup> Muse Doma, “ICOM Seeks New Internet Domain Name for Museums,” Press Release (November 11, 2000).

<sup>9</sup> The International Council of Museums (ICOM) and the J. Paul Getty Trust were the founding members of the Domain Management Association (MuseDoma). For more information, see <http://www.musedoma.org>.

## **Resolving Domain Name Disputes**

Where a dispute arises over the use of a museum domain name, the museum may be able to take advantage of ICANN's Uniform Domain Dispute Resolution Policy (UDRP) Policy. Under the UDRP, registrars have agreed to abide and implement a uniform dispute resolution procedure that applies to the abusive registration and use of an Internet domain name. Any person or entity wishing to register a domain name within certain TDLs is required to consent to the terms of the dispute settlement procedure. The procedure is administered by dispute settlement service providers, including the WIPO Arbitration and Mediation Center. More information on how museums can take advantage of this procedure is set forth in section 4 of this resource guide.

## GLOSSARY

**Acceptance:** The formal act of agreeing to an offer to enter into a legally binding agreement.

**Access:** The ability to gain entry to a database or other digital information.

**Agreement:** An understanding between two or more parties that is embodied in a legally binding, written contract.

**Amendment:** An addition to the terms of an agreement. *See also* “Modification”.

**Archive Copy:** A copy of a work intended to be preserved permanently.

**Assignment:** A transfer of all or part of the contractual rights and obligations to another party.

**Authentication:** A process by which the identity of a user accessing a network or other source of information is verified.

**Authorized Signature:** The signature by a person with authority and power to represent and legally bind a party to a written agreement.

**Authorized Use:** Use of information that is expressly allowed under a licensing agreement.

**Authorized User:** A person designated in a licensing agreement as having permission to access or otherwise use the digital information that is the subject matter of the agreement.

**Breach:** A failure to perform an obligation under an agreement.

**Concurrent Use:** The simultaneous used of digital information by more than one user.

**Confidentiality:** The treating of information as private and not for distribution beyond specifically identified individuals or organizations, or to be used other than for specifically identified purposes.

**Contract:** A formal, legally binding agreement between two or more parties.

**Copies:** Reproductions of all or a portion of digital information onto any one of a number of media including computer diskette, hard-copy printout, or exact quotation.



**Copyright:** Legally granted property rights in intellectual works embodied in a physical means of expression, such as print, musical score or electronic image.

**Disclaimer:** A statement by a party to an agreement that has the effect of denying responsibility for a particular action.

**Distributor:** An individual or organization that re-sells, sublicenses or otherwise makes digital information available, under license from the owner to end-users.

**End-user:** An individual or organization that accesses digital information for his or her own use.

**Force majeure:** Literally, "greater force"; a clause designed to protect against failures to perform contractual obligations which are caused by events beyond the party's control, such as natural disasters or wars.

**Governing Law:** The jurisdiction whose law will be applied in the event of a dispute relating to an agreement.

**Indemnity:** A party agrees to insure or otherwise defend another party against any claims by third parties resulting from its performance under the agreement.

**Infringement:** An unauthorized use of material protected by copyright, patent or trademark law.

**Interlibrary Lending:** The loaning of materials owned or licensed by one library to another library and its users.

**Liability:** Legal responsibility for an act or failure to act.

**License:** Permission to do something that, without such permission, would be illegal or illegitimate. For example, a license to use digital information gives the Licensee permission to access and use the information under the terms and conditions described in the agreement between the Licensor and the Licensee.

**Licensee:** The person or entity that is given permission through, a license, to use or access digital information. The licensee, often a library, educational or research organization generally pays the licensor a fee for permission to use digital information.

**License Agreement:** A written contract setting out the terms under which a licensor grants a license to a licensee.

**Licensor:** The person or entity that gives or grants a license. The licensor owns or has permission to use and/or distribute digital materials, for example, to a licensee.

**Modification:** A change or alteration to the terms of an agreement. *See also* Amendment.

**Negotiations:** Communications between two or more parties to develop and maintain a contractual relationship.

**Non-assignable:** The rights and obligations in terms of an agreement may not be assigned to any party who is not a signatory to the agreement. For example, a library licensee may not assign the right to access licensed materials to another library. *See also* Non-transferable.

**Nondisclosure:** An agreement to treat specific information confidentially. *See also* Confidentiality.

**Non-exclusive:** The rights granted to the licensee under the licensing agreement are not given to that licensee alone; the licensor reserves the right to give the same or similar rights to other parties.

**Non-transferable:** The rights and obligations in terms of an agreement may not be sold, given, assigned or otherwise conveyed to any party who is not a signatory to the agreement. For example, a library licensee may not sell or give the right to access licensed materials to another library. *See also* Non-assignable.

**Obligations:** The requirements imposed on a party in terms of an agreement or in law.

**Penalty:** A specific cost to be assessed against a party for breach of a term of an agreement.

**Perpetual License:** The continuing right to access digital information after the termination of a license agreement.

**Remedies:** The special rights a party has when another party defaults or breaches an agreement. Remedies include lawsuits or injunctions to stop an action that may harm a party.

**Rights:** The powers or privileges granted to a party in terms of an agreement or in law.

**Severability:** A clause which provides that in the event that one or more provisions of the agreement may be declared void or unenforceable the balance of the agreement remains in force. Such provisions may also be referred to as “Separability” clauses.

**Site:** As used in a Licensing Agreement, site is a physical location affiliated with the Licensee where the Licensee may permit access to digital information to Authorized Users.

**Site License:** A type of Licensing Agreement that permits access and use of digital information at a specific site.

**Subscription:** A type of Licensing Agreement by which a Licensee pays for access to digital information by payment of a periodic fee.

**Term:** 1. A word, phrase or an expression that has been defined in an agreement. 2. A clause or provision of an agreement. 3. A fixed and definite period of time.

**Termination:** The cancellation or ending of an agreement.

**Third Party:** A party who is not a signatory to an agreement but who nevertheless has rights and obligations relating to that agreement.

**Unauthorized User:** A person specifically mentioned in an Agreement as not having permission to access or otherwise use the digital information that is the subject matter of the agreement or, more often, any person who is not an Authorized User, as that term is defined.

**Venue:** The particular jurisdiction where a legal dispute is tried.

**Waiver:** The intentional or voluntary relinquishment of a right or privilege granted under an agreement, or the failure to take advantage of some failure of performance or breach in terms of an agreement.

**Warranty:** A statement or representation that the goods and/or services will perform as promised in the agreement; a guarantee.

## **INFORMATION RESOURCES**

### **[American Association of Museums](#)**

The AAM assists museum staff, boards and volunteers to better serve the public through advocacy, professional education, information exchange, accreditation, and guidance on current professional standards of performance. The AAM's Web page on intellectual property presents a brief overview of intellectual property issues faced by museums in the digital age. <http://www.aam-us.org/index.htm>.

### **[Art Museum Image Consortium \(AMICO\)](#)**

The Art Museum Image Consortium (AMICO) is a not-for-profit association of museums that have come together to create, maintain and license a digital library of images and documentation of works in their collections. <http://www.amico.org/>.

### **[Consortium for the Computer Interchange of Museum Information \(CIMI\)](#)**

Formed in 1990, CIMI is a group of institutions and organizations that encourages an open standards-based approach to the management and delivery of digital museum information. CIMI is involved in researching for the museum community standards for structuring its data and for enabling widespread search and retrieval capabilities. <http://www.cimi.org/>.

### **[European Copyright User Platform \(ECUP\) and Central and Eastern European Copyright User Platform \(CECUP\)](#)**

ECUP was a project sponsored by EBLIDA (European Bureau of Library, Information and Documentation Associations) beginning in 1994. During the project, fifteen copyright awareness workshops were conducted in the member states of the European Union and in Norway. In January 1996 additional funding was granted to continue the ECUP activities for three years as a Concerted Action (ECUP+). The goals of this Concerted Action are to follow-up the results achieved under the previous ECUP I contract and to establish new services to enhance awareness on copyright among librarians and information professionals.

<http://www.eblida.org/ecup/>. <http://www.eblida.org/cecup/>.

### **[Museum Educational Site Licensing Project \(MESL\)](#)**

The Museum Educational Site Licensing Project (MESL) was joint project of the Getty Information Institute and MUSE Educational Media to define

appropriate licensing terms and conditions for educational use of digital reproductions of museum images and related information. The two-year (1995-1997) collaborative project involved seven collecting institutions and seven universities. <http://www.inform.umd.edu/MESL/home.html>.

### **Museum Computer Network**

The Museum Computer Network is a nonprofit organization of professionals dedicated to fostering the cultural aims of museums through the use of computer technologies. The Museum Computer Network publishes a quarterly newsletter, *Spectra*, as well as an online version of the newsletter, *eSpectra*. <http://www.mcn.edu/>.

### **Museum Domain Management Association**

The Museum Domain Management Association (MDMA), a nonprofit trade association, was created to obtain, maintain and operate a restricted, top-level domain for the worldwide museum community. In cooperation with the J. Paul Getty Trust and the International Council of Museums (ICOM), MDMA submitted an application for the establishment of a *.museum* top level domain name (TLD), which was approved by the Internet Corporation for Assigned Names and Numbers (ICANN) in October 2000. <http://www.musedoma.org/>.

### **Museum Digital Library Collection**

The MDLC is a non-profit corporation formed in 1998 to provide technical and financial assistance for the digitization of museum materials and to manage the storage, distribution, and licensing of digitized materials to educational institutions and the public. <http://www.museumlicensing.org/>.

### **Rights and Reproductions Information Network (RARIN)**

The Rights and Reproduction Information Network (RARIN) is a task force of the Registrars Committee - a Standing Professional Committee of the American Association of Museums. The site provides sample museum rights and reproduction forms and licensing agreements. <http://www.panix.com/~squigle/rarin/01rcsite.html>.

### **Smithsonian Institute Research Information System**

The site includes a bibliography that contains a list of past ALI-ABA "Legal Problems of Museum Administration" materials, which include numerous papers on intellectual property and technology issues. [http://www.si.edu/info/museums\\_research.htm](http://www.si.edu/info/museums_research.htm).

### **World Intellectual Property Organization (WIPO)**

WIPO is an intergovernmental agency within the United Nations system that is responsible for the promotion and protection of intellectual property throughout the world. WIPO administers various multilateral treaties dealing with the legal and administrative aspects of intellectual property. The texts of these treaties are available at its website. <http://www.wipo.org/>.

## FOR FURTHER READING

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