The Unique Position of Museums vis-à-vis Licensing Digital Content

Museums are Both Licensors and Licensees

Museums are both owners and consumers, or licensors and licensees, of digital content. As such, museums must look at each licensing arrangement from the perspective they are facing in that particular arrangement. A museum may be a licensor and license content they own to another person or entity for use on their website. Sometimes museums are licensees and license the content of others, for example, license an online periodical or database. Also as a licensee, a museum may obtain a licence to use photographs, then re-license the use of those photographs for use by others either directly or perhaps through a site such as flickr.

Given the unique position of museums, and their sensitivity to both sides of licensing, they should be the perfect negotiators! Understanding the perspective of the other side in a licensing arrangement is a key step to negotiating a licence that meets the needs of both sides.

Issues to Consider in a License Agreement

Below is a list of issues museums should consider whenever entering into a licence arrangement.

1. Why do you want to license this content? (On the licensor side, you may want to monetize certain content, or license it to promote your museum online. On the licensee side, you may want to license the content of others for use in museum research.)
2. What are the competitive products to the one you are licensing; and would you be interested in licensing these other ones if you cannot agree on suitable terms and conditions for the initial content you want to license? (As a licensor, you want to know the content you are up against so you know how to market and price your own. As a licensee, you want to know the alternative products so you can determine the value of the one at hand in comparison to other similar products.)
3. What content are you licensing? Include title, ISBN or ISSN, and a brief description of the content. Do you have or require a sample of the content? (The more accurately you can describe the content, the less the confusion in the future regarding identifying that content.)
4. Do you already subscribe to this same product in print? If so, are there any financial or other advantages to be gained by this? (For example, this may apply to a text publication.) (This is a licensee question.)
5. In what format will the electronic content be provided? On DVD, through the content owner's server, via an Intranet, etc.? (As a licensee, you need to know
how you will be able to access that content. As a licensor, you have to consider additional choices such a free website or social networking venues.)

6. How often will there be updates to the electronic material? How will these updates be delivered? (Your museum both wants the most up to date content, and wants to be able to provide the most up to date content to others.)

7. Does the licensee require any archival rights after the termination of the licence? (As a licensee, you may already have the print version of the content, but if not, you may need to have ongoing access to a digital database, for example, after the expiration of the licence.)

"User" Issues

8. Who will be using this content? For example, will the users be library staff, other employees, patrons, members, faculty, students, alumni, visiting professors, or the public? How about museum staff? Will the use go beyond a closed/private network? (Scope of use may relate to pricing from a licensor or licensee perspective.)

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

10. What uses will be made of this content? Internal, external, website, Intranet, social networking sites, access through on-premises computers, included in an e-book or e-publication?

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

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

Licensee Issues

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

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

15. If the content will be used by your museum’s library, will the library require the need to make a copy for interlibrary loan? Print and/or electronic interlibrary loan?

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

17. What is the licensee's budget for this content? A range may be more appropriate than an exact dollar amount. You may also want to break up the costs into setup cost, storage cost, maintenance cost, etc. Take into account your budget relating
to licence negotiations and perhaps lawyers’ fees related to your licence negotiations.

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

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

20. Will the content owner provide the museum with documentation and support for using the content?

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

Licensor Issues

22. Do you own the content outright? (If so, then your museum may use the content in any manner it wishes.)

23. Do you have a partial assignment of rights or a licence that allows certain re-licensing of the content? What are you permitted to re-license? Is your permission limited by media, time or geographical location? (If you own some rights, you may only need to obtain partial rights in your licence agreement. For example, you may have the right to digitally archive images that physically exist in your museum, but you need to obtain the rights to post those same images in Facebook or publish them in an e-book.)

24. Do you have a waiver of moral rights (in countries where this is possible) and is this necessary for your particular licensing of the content?

Licence Issues

25. What duration of the licence would work best for you?
26. Would you want the licence to automatically renew?
27. Under what circumstances would you like to be able to terminate the licence?
28. What state/province and country's law should govern the licence?
29. Are there any special circumstances you need to include in the licence concerning this content? (for example, required clauses mandated by law or by internal policies.)

Administrative Issues

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

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

32. How will you keep track of this licence and manage your other licenses?
33. Who will sign the licence? (e.g. legal counsel, accounting representative, museum director or other person?)

Negotiations

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


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