

## CHAPTER FOURTEEN: TOURING OF EXHIBITIONS<sup>1</sup>

### 1. Introduction

Most collecting institutions are involved in the touring of exhibitions: some merely as recipients; others, as organisers and promoters of the shows. The touring of an exhibition is a complex legal transaction as the monetary value of the subject matter is often high and the rights and responsibilities of the participants are as complex as they are weighty. All participants are undertaking considerable risk and the primary risk management tools are the formal written agreements between:

- the lender of the works and the organising institution;
- the organising institution and the touring venues; and
- the organising institution and the courier company (discussed in the next chapter).

### 2. The agreement between the lender of the works and the organising institution

This agreement contains many of the matters already dealt with in earlier chapters, relevant to the loan-in of exhibition material. That discussion will not be repeated here. The main additional factors relate to the fact that the loaned material will be part of an exhibition that will tour to venues other than that of the organising institution. Every time that material is moved, it faces an enhanced degree of danger. The touring loan agreement has to recognise those risks, make clear what degree of responsibility the borrower is undertaking to minimise those risks and set out a procedure that will be followed if the loan material is endangered or damaged. In this way, the lender is fully informed and is assured that its property will be properly cared for. For its part, the lending institution knows the limits of its obligations, responsibility and legal liability.

The organising institution must make sure that the promises that it makes to its lenders are mirrored in the agreements that it negotiates with the touring venues but, at the end of the day, it is the borrower – not the touring venue – that will be primarily liable to the owner of the loaned material. It can pass on the obligations but not the liability.

### 3. The agreement between the organising institution and the touring venues

The agreement between the exhibition organiser and the venues to which the exhibition will be travelling is both a primary tool for managing the risk inherent in the transaction and a document that facilitates the cultural purpose. The latter is important because, unless this is recognised, the agreement is seen as negative, formalistic and

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inhibiting. It shouldn't be. Without it, neither party would be prudent to undertake the cultural purpose, such shows would be impracticable, and the public would be the loser.

All good touring exhibition agreements are essentially loan-out agreements with several distinguishing features:

- the loan is for a whole show, not merely individual items;
- at the end of the exhibition period at the venue, the show will move to another venue (or return to the exhibition organiser for dispersal); and
- agreements will usually deal with a range of issues simply not relevant to other loan agreements – including provisions relating to catalogues, other merchandise, exhibition support and promotion.

From a conservation point of view, what are the risks that arise from the touring nature of the show? Essentially, they all come down to the fact that whenever an object is moved, it is at greater risk than when it is static. Accordingly, the primary issues that arise in touring agreements focus on:

- the obligations of the venue to minimise risk to the loaned material;
- the degree of liability that the venue has in the event of loss or damage to an exhibition material;
- definition of the exact moment that the venue assumes that risk; and
- definition of the exact moment when it is absolved of that risk.

Accordingly, the contract should clearly articulate the parties' obligations of care; the procedures that must be complied with, the degree of care, the period of risk and what is to happen if something goes wrong. So that responsibility for the condition of the material can be properly ascertained, it is a standard requirement that a condition report be undertaken every time that the loan leaves one venue and every time it arrives at another venue.

#### **4. A checklist for a touring of exhibition**

The following is a checklist that Simpsons drafted for a public **art** gallery (hence its references to works rather than any other material). The principles for museums other than art galleries are the same, irrespective of the material on loan, even if the detail differs. It is provided as an aide-mémoire so that you can check that your loan agreement covers the important issues. As with all such checklists, it can never be exhaustive, and you should build on this list and make it your own.

1. Who is the correct lender?
2. Who is the correct borrower?
3. Title of the exhibition?
4. Are the works fully described?
5. Is the exhibiting timetable established (including dates for delivery, installation, opening, closing de-installation and packing and return or on-ward shipping)?
6. Transport arrangements:
  - a. Who will be responsible for organising delivery of the show to the venue?
  - b. Who is to organise the return or on-transport after the exhibition closes?
  - c. Who will be responsible for the paying for the delivery?
  - d. How will it be transported? Are there any particular transport requirements (such as being in no less than two separate shipments)?
  - e. Will a courier accompany the works during any transport? Who will supply and who will pay for the courier? Will courier salary replacement be required by the lending institution?

- f. Is it clear that the lender must approve all transport arrangements (and where necessary, any relevant customs, CITES or other import or export permits)?
  - g. Does the contract emphasise that transport of works must in every respect follow the method and timetable approved by the lender and that failure to do so may invalidate the indemnity or amount to a breach of the loan agreement?
7. Packing and Unpacking:
  - a. When delivered, who will unpack the works? Who will supervise?
  - b. Who repacks the works at the end of the show? Who will supervise?
  - c. Are there packing and unpacking instructions? Is the venue required to retain all original packing material so that works are repacked in the same materials and in the same manner as they were unpacked?
8. Condition Reports:
  - a. Who prepares the initial condition report? Will a dated and signed copy of each report be made available to the recipient of the show?
  - b. Who will provide the conservation personnel to prepare a condition report on the works upon unpacking at the receiving venue and prior to repacking, noting any changes in the condition of any work?
  - c. Will a dated and signed copy of each report be countersigned by the venue making the report?
9. Insurance:
  - a. From and until when is each party obliged to insure the works?
  - b. What is the value of the works being toured?
  - c. Will the borrower also be obliged to ensure they both have and maintain adequate insurance for other potential risks, such as workers; compensation claims, third party liabilities and occupier's liability?
10. Damage – emergency procedures:
  - a. What is the procedure if a work is damaged in transit, during unpacking, or during the exhibition?
11. Exhibition security
  - a. Is it a requirement that the works be stored and installed only in a facility that is equipped with adequate fire detection/prevention systems?
  - b. Is it required that all external doors and accessible windows be locked and fitted with alarms, and that the exhibition and storage areas be covered by electronic or closed circuit television surveillance devices that are activated whenever security personnel are not present?
  - c. Must the alarm systems be monitored continuously at the venue's security control centre, police station, or by an accredited or recognised security company?
  - d. While the exhibition is closed to the public will the perimeters of exhibition venues be patrolled periodically?
  - e. Is there a requirement that while the exhibition is open to the public the number of security staff in the exhibition must be sufficient to keep all works and all exits from the exhibition constantly under visual surveillance?
12. Standard of care at the venue:

- a. Temperature range, relative humidity range and light levels?
  - b. Framing and reframing: is it permissible? If so, what are the agreed procedures?
  - c. Is removal, repositioning or replacement of hanging devices permitted? If so, what are the agreed procedures?
  - d. Does the agreement clearly establish a duty to protect the works from the hazards of fire, theft, insects, dirt, foodstuffs, drink, smoking or handling by unauthorised or inexperienced persons or members of the public.
  - e. Must cleaning and maintenance of the exhibition display area be done under supervision of the Museum's staff?
  - f. Is it clear that the lender retains the right to withdraw works if there is any breach of standard of care?<sup>2</sup>
13. Is conservation or restoration work permissible? If so, what are the agreed procedures?
14. What are the insurance arrangements?
15. Photography/Copyright/Reproduction:
- a. Who controls copyright of works?
  - b. What photographs can be taken; by whom; for what uses? Are these compliant with the terms of the permissions granted in the loan agreements and copyright permissions obtained by the gallery organising the tour?
  - c. Is it clear that the requirements of this exhibition override whatever the usual practice of the exhibiting gallery may be?
  - d. Will the borrower be given any allowance or carve-outs for visitor photography that may not be easy to control or will any prohibitions be absolute?
16. Credits
- a. What credits must be given to lenders?
  - b. What credits must be given to owners (if different to lender)?
  - c. What credits must be given to others, such as, agents, artists or other creatives?
17. Catalogue:
- a. Who prepares the catalogue? Who pays?
  - b. What are the financial arrangements between the organiser and the borrower venues?
  - c. Who is responsible for any copyright clearances?
  - d. Free copies?
18. Promotion:
- a. What promotion is to be undertaken?

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<sup>2</sup> Because this is both professionally and legally contentious, it is prudent to include clear protocols in this regard. For example: *'If the Exhibiting Gallery breaches any of its obligations of duty of care to any work, or the condition of a work so requires, the representative of the Lender Gallery may withdraw it from display. This will not be done without prior consultation with the Executive Director of the Lender Gallery and the conservation staff of the Exhibiting Gallery. In the event of any disagreement, the decision of the Executive Director of the Lender Gallery shall be final. A contemporaneous written record of those instructions shall be made by the Executive Director of the Lender Gallery. A copy of those instructions shall be sent to the Exhibiting Gallery and the Lender Gallery's solicitor. A copy shall also be maintained for Lender Gallery records.'*

- b. What promotional materials will be made available to borrower venues?

19. Education Services:

- a. Will there be educational products that accompany the show?
- b. What educational materials will be made available to borrower venues? On what basis?

20. Exhibition Merchandise:

- a. Will there be merchandising of the show?
- b. What are the arrangements between the lending gallery and the exhibiting gallery as to the choice, design, commissioning, and purchase of merchandise, and profit splits?
- c. Must all merchandise sold at the exhibiting venue be approved (for quality and appropriateness) by the Lender gallery?

21. Individual Exhibition Support:

- a. Is the borrowing institution able to negotiate directly as to the on-site availability of artists, technicians, artists' representatives, Gallery staff etc for installations, opening attendance of public programs? The needs of each institution are very individual and these particularised costs need to be borne by the borrower rather than treated as a draw-down on hire fees as they will vary at each venue.

22. Fees and Expenses:

- a. Are fees due to be paid to artists or other creatives participating in the show? (ii) What fees are payable to lenders/organisers?

23. Exclusion of Liability by Lender:

- a. Is the exclusion clause sufficient/acceptable?

24. Reporting

- a. Will a report be furnished on the exhibition? By whom? When?
- b. If so, what must it contain? For example:
  - i. attendance figures (broken down, for example, into school groups, other special tours and general public);
  - ii. press clippings relating to the exhibition;
  - iii. details of any radio or television promotion, publicity or other coverage of the exhibition;
  - iv. copies of the catalogue (if not supplied by the lender) and all printed promotional and publicity material;
  - v. details of the education program and any other services that the Museum associated with the exhibition;
  - vi. sales figures of exhibition merchandise;
  - vii. within three months of the end of the exhibiting gallery's year, an annual report including audited financial statements.

25. Miscellaneous:

- a. In what circumstances can the agreement be terminated?

- b. Can the borrower cancel the exhibition? If so, what penalties or fees will apply or what costs need to be met by the borrower? In addition, if so, are there any relevant timelines that will effect both whether cancellation is possible and what penalties will apply?
- c. Does the contract contain a mechanism for the resolution of disputes (for example, mediation or arbitration)?
- d. Other (such as which country or state's laws apply and where are any disputes to be litigated if the alternative dispute resolution doesn't apply or work)?