

CHAPTER ELEVEN: EXHIBITION DEVELOPMENT¹

1. Exhibitions developed by one institution

Where a single institution is organising an exhibition the development process is essentially internal.

The process itself raises no legal issues until third parties are involved.² Where the exhibition planning is going to involve the loan of third party material, the organising institution will make enquiries from the owners as to the availability of the material sought and their preparedness to lend. Such enquiries do not have the status of an enforceable contract – in legal terms, they are merely ‘offers to treat’. The contract does not come into force until a proper loan agreement is negotiated and signed. Until that occurs, the borrowing institution must realise that communications are merely indications of preparedness to enter a contract and it should not rely on the promise until a formal agreement is signed.

Institutions who answer such enquiries should nonetheless make it clear that this preliminary discussion does not form an enforceable contract by stating expressly that the discussions are ‘subject to the parties signing a formal loan agreement’.

2. Development of joint exhibitions

2.1 *Introduction*

With the ever-increasing cost of mounting exhibitions, it is now common for exhibiting bodies to collaborate in the development and presentation of shows. Sometimes, being able to share the cost (and risk) of exploring the viability of an idea for a show means that the cost is worth bearing.

One of the difficulties in such relationships is devising an agreement that protects both parties: each party needs to be able to pull out if the results of the exploration are not encouraging but each party also needs the certainty that, after a certain stage of development, their collegiate institution will not withdraw, leaving the former partner responsible for everything.

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² We leave aside here legal issues relating to objects that are loaned – these are discussed in the next chapter, dealing with loans. We also note that external contractors are more and more frequently engaged to provide a particular expertise not available at the developing institution. Contractors may include expert curators, authors, designers, prop makers, filmmakers, lighting designers and so on - for more discussion of such contracts, see our chapter on exhibition-related consultants.

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To avoid this situation, the parties need to enter a preliminary agreement – one that is restricted to the feasibility study. This is a straightforward document that spells out what each party promises to do and to pay. It also provides both parties with certain succour in the event that the other wants to cease the collaboration.³ If the parties then decide that they wish to move to the next stage of the collaboration and present the exhibition, they will enter a separate agreement.

The essential features of such an agreement may include:

- the formal names of the legal entities that run the institution;
- a simple statement setting out the purpose for which the agreement is being signed (for example “to explore the feasibility of developing an exhibition on the subject of ...”);
- a statement to the effect that the agreement does not commit the parties to presenting the exhibition unless or until some further agreement is reached;
- the obligations of each party (such as what personnel and financial commitment they are making)
- the setting of up a steering committee, who is to be on it and how and when it is to meet;
- what responsibilities will be given to the committee (for example, to make decisions relating to the spending of the feasibility study budget, decisions relating to the scope of the project and the budget and decisions relating to logistics and responsibilities for the exhibition and how any disputes within the committee are to be resolved);
- how decisions are to be made (for example, whether they must be unanimous before they are binding on the institutions involved);
- the establishment of a project team to make recommendations to the steering committee;
- what responsibilities will be given to the project team;
- which party will look after the feasibility budget;
- how disputes between the parties will be handled;
- obligations on each parties of confidentiality (including prohibitions on any party making any announcements about the project or a potential exhibition unless the other party or parties agree); and
- any formal processes to be followed if one party wishes to withdraw or if the parties wish to abandon the process.

3. Exhibition development checklist

During the feasibility study, the joint project team will have to devise a template that will help guide them through the evaluation process and ensure that all participants are agreed on the scope and purposes of both the feasibility investigation but also what mechanics will need to be addressed for the exhibition itself.

The starting point may be the use of an agreed checklist. The following is based on a checklist drafted for a State and a Federal museum that were considering a collaborative international exhibition. Issues include:

- who are the nominated contacts and representatives for each institution;
- what will be the legal structure (for example, a letter of agreement between the existing legal entities? a jointly controlled company set up for the purpose, with its own shareholders agreement? a formal joint venture agreement?);

³ I use the term collaboration because some governments have formidable rules relating to their statutory authorities entering ‘joint ventures’. In fact, when one examines the definition of ‘joint venture’ in the relevant regulations, the definitions are very wide and cover most situations in which one government institution wishes to work together with another.

- what loan agreements will be used for borrowed items;
- how communications with third parties are to be made and shared;
- whether an extranet site will be set up to facilitate communications and the effective sharing of information;
- whether there will be any exceptions to the usual general principle that parties pay their own development costs but that other costs are shared 50/50;
- what mechanisms will be adopted for selecting exhibition material;
- how the partners will break any selection deadlocks;
- how other decisions will be made;
- whether the representatives have power to bind their institution (and if so, whether there are any limits to that power);
- what milestones dates are anticipated for the process and for the exhibition;
- which institution will first host the exhibition and when it will move to the second;
- what space and conservational constraints apply to each party;
- what budgetary restraints apply to each party and how each party will contribute to the exhibition and its development (including administrative overheads and organisational time);
- which party will be responsible for loan negotiations (including signing loan documents);
- which party will make transport arrangements;
- how insurance will be handled;
- what costs are likely (both for the development and the exhibition phases);
- which party will be responsible for drafting budgets;
- what is the minimal period of notice of withdrawal from the venture;
- consequences of withdrawal (both within and outside any agreed time to withdraw);
- what credit lines will be used and how logos will be used (including for sponsors);
- any approvals that may be needed from the partners for press releases, promotional material; merchandise and catalogues;
- the nature and scope of merchandise (including which party will be responsible for developing merchandise, what approvals processes will apply, how merchandise will be branded, how stock will be paid for, what level of stock will be initially ordered and how excess stock will be handled at the end of the exhibition cycle);
- the nature and scope of any catalogue (for example, what format or characteristics it will have, who will be responsible for design, what mechanism will be adopted for choosing contributors, which party will be responsible for contracting writers and overseeing the process, including production and publication how stock will be paid for and handled); and
- how exhibition design will be developed (including support materials such as wall and label text).

The aim is to leave nothing to chance – to articulate the process and allocate all responsibilities to one, other or both parties acting together (thus avoiding any possibility that the parties think that one of the other parties might be responsible for a particular issue and something falling through a gap).