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International Loan Agreements: A comparison

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I. The Museum Loan Agreement: A Short History

A decree by the Prussian Secretary for medicinal, educational and medical affairs for all outgoing loans of the National Gallery, Berlin (1883) already contains many clauses that can be found in today's loan agreements:

„(...) Packing, Unpacking and installation of the works of art at their final destination shall be undertaken in the presence of an expert, who is familiar with such operations and who has been cleared by the National Gallery's Director.“

(...)

„In the case of any damage to the works of art, a report has to be written and immediately submitted to the National Gallery's Director.“

(...)

„In order to control the measures taken, access to the works of art must be granted to the National Gallery's Director and authorized personnel at all times.“ (...)



II: The Material received: Wildly different loan agreement samples from 20 countries

- 44 samples from 20 countries
 - Size: between 1 page and 10 pages (single-lined)
 - Institutions: museums (public and private), private art handling companies, congregations, foundations, university archives...
 - All kinds of objects...
- **The agreements received are not representative for the types of museums, objects to be borrowed, or the countries of their origin in any way.**



Legal Systems

- 20 countries: 20 national laws!
- Two legal systems: Anglo-American (common) law and civil law
- Each agreement needs to comply with national law
- Our comparison of international loan agreements are observations of the material received.



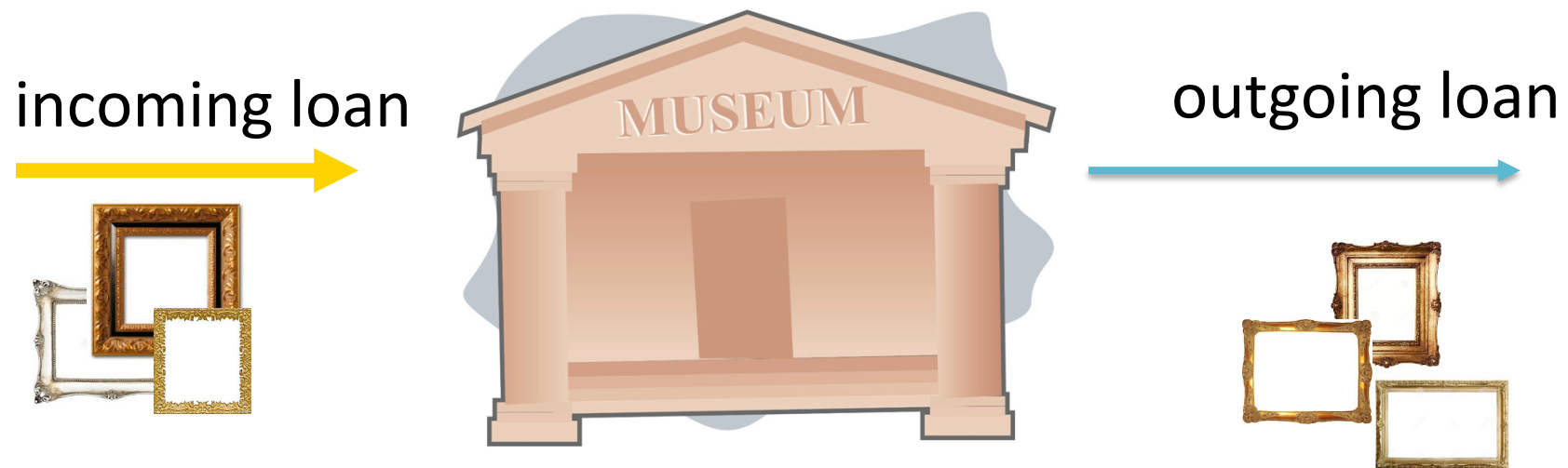
To share or not to share loan agreements?

3 to be found:

1. Museums, which do not share loan documents unless with a potential borrower and for a specific loan in question.
2. Museums, which provide loan request forms for potential borrowers; they usually give contact information of department for collection management or even a registrar's name. Museums might also describe their loan policies and publish flow charts about their loan decision on their homepage.
3. Museums, which upload their terms and conditions on the Internet. Examples: The Tate, Sweden's Nationalmuseum



“Reciprocity” of rights and obligations?



- Different content for both agreements?
- Exchange lender for borrower (and back)?

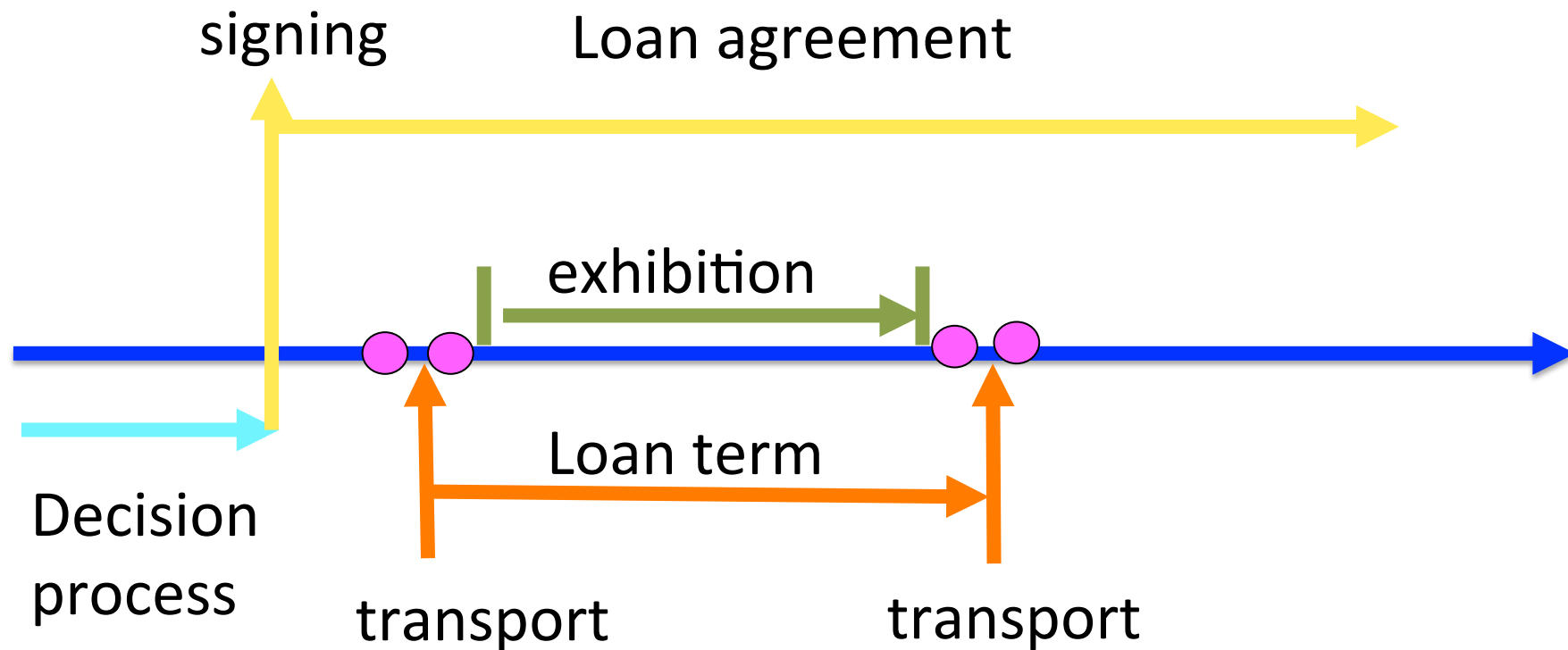
III. The Structure and Content of Today's Loan Agreements

1st Part: The Specific Loan

- **often in tabular form**
- Who is lending what to whom, how long, where and for which purpose?
- **Parties:** Who is lender, who is borrower? (Name, address, phone, fax, email, homepage)
- **Person(s) to contact** (registrar, address, phone, fax, email)
- **Object (s):** name of artist, title, year, signature (if applicable), medium, dimensions
- **Purpose of loan:** Title, venue, and duration of a specific exhibition
- **Loan Period:** specific dates or open term



1st Part: The Specific Loan (cont'd)



● = Condition report

1st Part: The Specific Loan (cont'd)

- **Dimensions:** height/with/depth with/without base or frame
- **Weight** with/without base
- **Frame:** material of frame and glaze (glass, ant-reflective acrylic glass...)
- **Inventory or reference number**
- **Collection/ drop-off (return) address for object**
- **Transport:** specific requirements, e.g. climate-controlled crate
- **Installation:** specific requirements
- **Display of object at exhibition venue:** special conditions, p.e. light exposure in foot candles and lux, no UV component / materials have to pass Oddy test / humidity (p.e. display in humidity controlled display case etc.) / acrylic glass cover
- **Bibliography and exhibition history**



1st Part: The Specific Loan (cont'd)

- **Insurance:** Who insures / insurer / underwriter / expected costs / agreed value / policy number / address /inclusion of special insurance against terrorist attacks
- **Courier** accompaniment: cost for travel, accommodation, daily allowance / air fair specifics (business class for overseas flights etc.)
- **Conservator at exhibition venue**
- **VAT-number of borrower**
- **Condition Report** on arrival at borrower's venue/ prior to de-installation
- **Credit line** "lent by...[lender]" for catalogue, captions etc.
- **Reproduction of objects**
- **Expected costs**



2nd Part: General Terms & Conditions

a. Subject of the Loan

- loaning and the timely return of the object.
- object may only be used for specific exhibition.
- prohibits the object to be given to a third party.
- obligation to exhibit?
- travelling exhibition: Separate agreement with all Borrowers
- Extension of loan term possible?



2nd Part: General Terms & Conditions (cont'd)

b. Packing / Shipping / Transport

- Who organizes the transport? The Lender or the Borrower? The Borrower with the Lender's consent? Lender with the right to refuse a specific carrier? Lender determines carrier? Freight Forwarder? Air travel only?
- Many detailed provisions



2nd Part: General Terms & Conditions (cont'd)

c. Condition report

d. Courier

e. Environmental conditions

f. Care

g. Insurance:

- Who insures?
- Who determines insurer?
- Nail to nail/ “all risk” or with exclusions?
- Insurance value /adjust due to market fluctuation?
- Object remains property of museum in every case?



2nd Part: General Terms & Conditions (cont'd)

h. Liability:

- often Borrower hold liable for the object's loss or damage regardless of the insurance and irrespective of any fault by Borrower

i. Indemnity:

- Lenders decide from case to case whether they accept indemnity under a national indemnity scheme

j. Immunity from Seizure



2nd Part: General Terms & Conditions (cont'd)

k. Costs

- Borrower has to bear all expenses
- Detailed? (insurance, transport, administration, restoration, packing, data, handling, courier expenses, customs...) or „all reasonable expenses“?
- fixed handling fee for each work borrowed? (loan administration, art-historical evaluation, conservator inspection, condition report, and other costs) or estimated costs?
- Or “loan fee”?



2nd Part: General Terms & Conditions (cont'd)

I. Photography, filming, televising

- According to many agreements, Borrower is not entitled to photograph the object and may “not permit the object(s) to be photographed or reproduced without the prior written approval of the Lender”. Often, the photographing and filming of objects is permitted for media purposes, but has to be done under supervision of the Borrower’s personnel.
- However: check for copy right issues!!

m. Catalogue

n. Termination of Agreement / Recall of object



2nd Part: General Terms & Conditions (cont'd)

o. General provisions (“miscellaneous”) often contain:

- confidentiality of the loan conditions (especially the objects' insurance value)
- applicable law and jurisdiction
- dispute resolution and mandatory mediation proceedings
- agreement can only be altered in writing; severability clause
- Special provisions (local law)
- ICOM ethic code
- (...)



IV. Incoming Loan Issues

- Borrowers often require guarantee of Lender that Lender is the object's owner /entitled to give it to Borrower for the purpose of the agreement / object not encumbered by third party's rights
- Borrowers reserve the right not to display the object and to withdraw the object from exhibition at any time.
- Lender's obligation to inform Borrower of a new return address or ownership
- object's transport and insurance usually organized by Borrower



IV. Incoming Loan Issues (cont'd)

- Borrowers strive to limit their liability in the case of loss or damage to the amount paid by insurer or under an indemnity scheme
- Often Borrower disclaim the liability to the Lender “in respect of any loss or damage that occurs to the object(s) as a result of natural deterioration or compliance with the Lender’s instruction”



V. The “Mini-Do’s-And-Don’ts of Drafting Contracts”

1. Be specific: Who is obliged/has the right to do what and when?
2. Don’t overload the contract with facts from decision-making process
3. The language: Say it in English...
4. The pros and cons:
 - Should a contract stipulate issues, which the Lender is not too keen on (e.g. extension of loan; insurance under Borrower’s police) ?
 - Should a contract stipulate conditions, which the other party can’t possibly fulfill (environmental conditions)?



Guidelines, Examples, Links

- Collection Mobility-Lending for Europe: <http://www.lending-for-europe.eu>.
- Dokumentation for potential Borrowers to be found on the US National Park Service's homepage: <https://www.nps.gov/museum/publications/MHII/mh2ch5.pdf>.
- ICOM: Running a Museum: A Practical Handbook, ICOM – International Council of Museums 2004; Download:
http://www.icom-deutschland.de/client/media/198/running_a_museum.pdf
- Loans Between National and Non-national Museums, New Standards and Practical Guidelines, Published in the United Kingdom by the National Museum Directors' Conference, 2003, Download:
http://www.nationalmuseums.org.uk/resources/press_releases/pr_loans_sept03/
- Network of European Museum Organisations (NEMO) standard loan agreement:
<http://www.ne-mo.org/index.php?id=110>.
- Smithsonian American Art Museum, <http://americanart.si.edu/visit/contact/loan/>.
- Tate Project „Media matters“,
<http://www.tate.org.uk/about/projects/matters-media-art/loan-agreement-guidelines>.
- Nationalmuseum, Stockholm loan request and example loan agreement:
www.nationalmuseum.se/sv/English-startpage/Collections/Loan-requests/,
- Recommendations by a Working group of EU Member States' experts on the Mobility of Collections, Sept 2012:
http://www.lending-for-europe.eu/fileadmin/CM/internal/OMC/omc-report-mobility-of-collections_en.pdf , with toolkit „Practical Ways to Reduce the Cost of Lending and Borrowing“:
http://www.lending-for-europe.eu/fileadmin/CM/internal/OMC/toolkit-mobility-of-collections_en.pdf.

„(...) personal trust is one of the main factors in the successful lending and borrowing of collections.“

Recommendations by Working group of EU Member States' experts on the Mobility of Collections, Sept 2012, p. 10)

