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## **LENDING SIGNIFICANT CULTURAL HERITAGE MATERIAL**

### **Evaluating Exhibition Loan Requests to Minimize Risks to Special Collections Materials**

#### **Abstract**

Special collections libraries lend rare books, manuscripts, and primary source materials to cultural heritage institutions for exhibitions, making their significant holdings more widely available for viewing and research. Often, these texts and documents are extremely valuable, historically significant, and irreplaceable. By recognizing, appraising, and addressing risks present during loans, libraries minimize exposure and potential losses during their review of the loan request. This paper examines specific ways lenders can identify and assess risks, and enumerates ways lenders can specify requirements that protect their important holdings and prevent detrimental losses during exhibition loans.

**Keywords:** exhibition loans, special collections, libraries, archives, rare books, cultural heritage institutions, facility report, fine art insurance, seizure immunity

## INTRODUCTION

Special collection libraries are the caretakers of treasures, such as rare early books, medieval manuscripts, original archival documents, and items with historic provenance. As an outreach strategy to further their research and cultural missions, special collections libraries regularly participate in exhibitions and lend holdings to institutions such as museums and libraries<sup>1</sup>. Exhibitions showcase collections and illustrate the importance of rare library materials and the power these items have to facilitate scholarly inquiries and inspire curiosity. Through loans, special collection libraries promote their collections while supporting scholarship and appreciation of cultural heritage holdings with wider audiences.

During the course of an exhibition, the range of potential perils for materials on display is typically greater than those for materials held behind the scenes in secure storage spaces. In addition to building-specific threats, such as broken pipes and fires; regional risks, such as earthquakes and hurricanes; materials on display have higher public visibility, making the materials more vulnerable to theft, vandalism, and judicial seizure. Sudden losses that may occur during the window of an exhibition have the potential to catch the media's attention, and could irrevocably strain the relationship between borrower and lender. Beyond the loan, high-profile losses could quickly damage both parties' reputation as careful custodians of cultural heritage materials, thwarting approval of future loans, and perhaps, negatively coloring perceptions potential donors may hold about the library.

Protecting collection materials is always important, but it is of paramount significance when displaying materials during an exhibition. In the context of a formal exhibition loan, safeguarding materials is legally compulsory, and libraries insure materials on loans differently from their main holdings, and loans may present legal indemnity issues. Librarians managing exhibition loans must understand these issues and know how to proactively address the concerns loan materials present during the loan review process to minimize risk and limit exposure over the entire course of an exhibition.

Cultural heritage management literature and legal texts such as *Art Loans*<sup>2</sup>, *A Legal Primer on Managing Museum Collections*<sup>3</sup>, and *MRM5: Museum Registration Methods*<sup>4</sup> provide instruction and document professional best practices on how to effectively manage the specialized needs of materials borrowed for display. The growing

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1 "ACRL/RBMS Guidelines for Interlibrary and Exhibition Loan of Special Collections Materials", Association of College & Research Libraries, accessed September 1, 2017, <http://www.ala.org/acrl/standards/specialcollections>.

2 Norman Palmer and Lionel Bently, *Art Loans* (London, UK: Kluwer Law International and International Bar Association, 1997).

3 Marie Malaro and Ildiko DeAngelis, *A Legal Primer on Managing Museum Collections* (Washington, DC: Smithsonian Books, 2012).

4 Rebecca Buck and Jean Gilmore, *MRM5: Museum Registration Methods* (Washington, DC: American Alliance Museums, 2010).

body of fine art-focused disaster management literature, such as *Disaster Response and Planning for Libraries*<sup>5</sup> and *Handbook of Research on Disaster Management and Contingency Planning in Modern Libraries*<sup>6</sup> document how librarians proactively address contingency planning needs, prioritize response, and prescribe detailed reaction procedures specific to library materials. Moreover, works such as “Assessing Risk and Safeguarding Rare Library Materials during Exhibit Loans”<sup>7</sup> and “Perils of Lending Rare Book and Archival Materials for Exhibition”<sup>8</sup> begin to address concerns particular to the lending of rare library materials.

Libraries that participate in loans protect their valuable collection materials by adopting loan policies that examine a proposed borrower’s ability to provide appropriate care for materials lent for an exhibition. These guidelines help lenders scrutinize the request, evaluate whether the material is suitable to loan, assess the borrower’s ability to protect materials, and determine appropriate legal protections. This paper provides guidance on how to fully review loan requests and specify requirements to safeguard loaned materials.

## BACKGROUND: REASONS TO LEND

Exhibition loans present unique opportunities<sup>9</sup>. Through loans, libraries can build collegial relationships with other cultural heritage organizations. Through loans, libraries can further their educational missions. Moreover, loans present public relations opportunities, and during exhibitions, borrowing libraries promote loaned materials and improve the visibility of their libraries. Loans present an occasion to interpret materials alongside other materials, often in new contexts. During a loan, curators may unite sets or works dispersed throughout history, and, perhaps, display materials in their countries of origin or display nationally significant materials outside its borders. Traveling materials promotes scholarship, artistic appreciation, and supports global scholarship. Through loans, lenders and borrowers collaborate to complete exhibition narratives, while supporting the appreciation of cultural heritage holdings with new audiences.

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5 Miriam Kahn, *Disaster Response and Planning for Libraries* (Chicago, IL: American Library Association, 2012).

6 Emy Decker and Jennifer Townes, eds., *Handbook of Research on Disaster Management and Contingency Planning in Modern Libraries* (Hershey, PA: IGI Global, 2016).

7 Patti Gibbons, “Assessing Risk and Safeguarding Rare Library Materials during Exhibition Loans”, *International Journal of Risk and Contingency Management* 5, no. 1 (2016): doi: 10.4018/IJRCM.2016010102.

8 Patti Gibbons, “Perils of Lending Rare Book and Archival Materials for Exhibition: Identifying Threats and Evaluating Exposures”, in *Research, Practices, and Innovations in Global Risk and Contingency Management*, ed. Kenneth Strang (Pennsylvania: IGI-Global, at press).

9 Adam Berenbak and Association of Research Libraries, *Special Collections Engagement* (Washington, DC: Association of Research Libraries, 2010).

## **RECOGNIZING RISKS DURING LOANS**

The range of potential harm is greater during a loan, and libraries must evaluate and assess potential risks from door-to-door in order to safeguard materials during the loan period. Risks can be physical, with damage happening through accidental breakage due to improper packing, handling, or mounting. Physical damage can happen in transit, during installation/deinstallation, and during the exhibition as a result of improper exhibition conditions.

Natural disasters and unforeseen building emergencies have the potential to harm materials. Libraries need to assess the borrower's readiness to respond and prevent harm. Lenders may consider the season of the loan or the geographic region, and scrutinize a borrower's readiness for contingencies more likely to happen under those circumstances.

Some types of physical damage happen intentionally. Crimes of opportunity may occur, and items could be stolen or vandalized. Lenders need to carefully examine the security features in place at the borrowing venue, and specify security requirements to their level of comfort. Potential lenders need to consider the nature of the exhibition's content to determine if themes may provoke responses by vandals, and investigate the borrower's readiness and mitigation strategies.

Aside from physical harm, lenders need to evaluate requests for potential legal challenges. During the course of a loan, different audiences may become aware of materials, and potentially challenge ownership.

Lenders must also consider the overall themes and message of the exhibition. Lenders need to feel confident in the borrower's scholarship and overall credibility. Through the loan, the lender is associating its institutional name to the exhibition and if issues arise, the lender's reputation may be marred.

## **SOLUTIONS: IDENTIFYING RISKS AND SPECIFYING SOLUTIONS**

### **Evaluating the Loan Request for Risks**

To best safeguard and minimize potential risks to important cultural heritage materials during an exhibition loan, special collections librarians need to thoroughly evaluate the request. Specifically, potential lenders must closely evaluate the merits of the loan, evaluate risks that may endanger materials physically, lenders must scrutinize the borrower's ability to provide safekeeping during the loan, and lenders must thoroughly examine the request for legal risks.

#### Four Key Points of Consideration During the Loan Request Review:

- Evaluate the request,
- Evaluate the material,
- Evaluate the borrower,
- Evaluate legal issues.

#### **Evaluate the Merits of the Request**

When considering a loan request, lenders should pause to reflect on the merits of the request, considering what is being requested, why it is being requested, and to whom it would be loaned.

Lenders should evaluate the potential borrower's reputation and capacity to safeguard materials, as well as the overarching aims of the exhibition. Lenders must feel comfortable, or approve of how the material will be publically interpreted. During this part of the loan review, lenders insure that important collection materials are represented within an appropriate context and are part of an exhibition message the library is comfortable supporting. When considering the borrower, lenders should feel comfortable with the borrower's mission and reputation. Prudent lenders may screen out loans to institutions that are not aligned with scholarly and cultural missions, and perhaps that are not from accredited non-profit organizations.

Evaluating the request, lenders should evaluate how and why the requested material is relevant and evaluate how it supports the exhibition. Lenders should question, "Why this item? Could other material be used or other copies be displayed?"

Lenders must also consider the material requested, and whether it is appropriate to lend the material. Institutional gems and national treasures may be too valuable to travel. Relics, ceremonial articles, and items imbued with consecrated associations may potentially be inappropriate for viewing. Lenders should consider the social and cultural associations materials hold, and determine if exhibition display would be appropriate.

When reflecting on the exhibition theme, lenders should consider whether the loan is controversial in any way, and whether this attracts additional risks. If so, lenders need to determine if reasonable requirements or precautions could mitigate the risk and help protect the item during the loan.

By evaluating the request, librarians protect their library's reputation, scholarly integrity, screen out participation in loans that may attract unwanted attention or perhaps thieves, and limit lending participation to venues with the professional capacity to holistically care for materials through the duration of the loan period.

## Evaluate the Materials for Risks

In considering a loan, librarians should evaluate the materials requested, and the physical requirements safe display necessitates. By reviewing an item's physical condition and evaluating specifications necessary to prevent physical damage, librarians are able to enumerate loan terms that minimize potential physical and security risks.

On the whole, special collection materials are sensitive to environmental factors, and the wear and tear of display is cumulative. Lenders need to review the display history of the requested material to evaluate whether it has been recently displayed, will soon be displayed, or has been heavily displayed in the past. Using that information, lenders can determine if the proposed loan would pose irrevocable long-term conservation concerns.

Lenders need to examine the physical condition of an item to determine if it is in stable condition for display and transportation. Lenders need to understand how a borrower would like to present an item, and will need to determine if display armature is required for gentle display. Conservation staff can design mounts that prevent damage and lessen the stresses of display. Preservation staff can specify lighting, environmental, and other display requirements that minimize physical risks.

During the examination, lenders need to consider if there are physical features that may make the piece vulnerable to theft, such as autographs, gems, or unique provenance history, and evaluate an item's overall rarity. Lenders, especially with high value and scarce materials, need to carefully examine the security features in place at the borrowing venue, and specify requirements to their level of comfort to protect items from theft. Lenders may consider requiring precautions such as locking cases with security-grade hardware, smash-resistant vitrines, robust alarm systems, staffing in gallery spaces, and afterhours monitoring.<sup>1011</sup>

When considering the needs of an item, lenders need to specify requirements to protect materials during transit. Fine art transportation firms can determine safe packing options. Professionally designed, custom-built travel containers protect materials from a range of potential exposures. Additionally, with high value materials and complex installations, lenders may feel it necessary to have a courier oversee the loan. If required, the lender needs to determine the courier's roles throughout the transportation, installation, and deinstallation phases and stipulate those requirements with the borrower.<sup>1213</sup>

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10 International Committee on Museum Security and International Council of Museums, *Museum Security and Protection: A Handbook for Cultural Heritage Institutions* (London, UK: ICOM in conjunction with Routledge, 1993).

11 Elizabeth Merritt and American Association of Museums, *Covering Your Assets: Facilities and Risk Management in Museums* (Washington, DC: American Association of Museums, 2005).

12 Rosalie Cass, "The Museum Courier and the Distribution of Liability for Loans in Transit", *Art, Antiquity and Law* 6, no. 4 (2001): 325–344.

13 Cordelia Rose, *Courierspeak: A Phrase Book for Couriers of Museum Objects* (Washington, DC: Smithsonian Institution Press, 1993).

## Evaluate the Borrower's Capacity to Protect

During the loan review process, lenders need to acquaint themselves with the potential borrower, their institutional programs, the professionalism of their staff, the physical attributes of their venue, and their security programs in order to assess the organization's overall ability to care for materials throughout the loan. To accomplish this, lending policies must require borrowers to provide a facility report. Professional societies such as the American Alliance of Museums<sup>14</sup> and the United Kingdom Registrars Group<sup>15</sup> provide facility report templates that provide a comprehensive overview of a cultural heritage institution's staff, facility, insurance, and programs. Lenders must thoroughly examine the borrower's facility report and ask judicious follow up questions in order to identify and address potential risks. Through this review, lenders gain an understanding of who is handling their materials, risks present in the venue, and steps taken to safeguard materials and minimize threats.

A lender must carefully review the borrower's facility. After reviewing the facility report, lenders may find it helpful to research the facility, staff, and operations of unfamiliar institutions. Searching the Internet to view images of the facility may help make the facility report more understandable. Lenders may also research news stories on the staff, investigate the professional backgrounds of key staff, and review publically available financial information about the institution.

When reviewing the facility report, lenders need to determine if there are any construction projects scheduled during the loan. Construction projects increase the potential for contingencies and may make it difficult for an institution to operate with all best practices. Also, when reviewing the venue, lenders scrutinize the environmental performance of spaces where loaned materials will occupy, and a borrower's ability accommodate lighting and environmental requirements that mitigate risk.<sup>1617</sup> In the facility report's security section, lenders review the scope of a borrower's security program and its ability to protect materials from theft, vandalism, and accidental damage. Additionally, lenders need to inquire about a borrower's disaster preparedness plans and determine if response documents enumerate adequate protections for the loan.

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14 "General Facility Report", American Alliance of Museums, accessed September 1, 2017, from <https://www.aam-us.org/ProductCatalog/Product?ID=891>.

15 "Standard Facilities Report", United Kingdom Registrars Group, accessed September 1, 2017, from <http://www.ukregistrarsgroup.org/wp-content/uploads/2013/06/UKRG-Facilities-report.pdf>.

16 Susan Bradley, "Preventative Conservation Research and Practice at the British Museum", *Journal of the American Institute for Conservation* 44, no. 3 (2005): 159-173.

17 James Druzik and Stefan Michalski, "Guidelines for Selecting Solid-state Lighting for Museums", Canadian Conservation Institute and the Getty Conservation Institute (2012): DIO: 10.13140/RG.2.1.3347.2080.

While considering a loan request, lenders should feel confident with how the borrower will handle the materials from the point of departure through return. During the review, lenders should consider the credentials and overall professionalism of the staff at the borrowing institution and assess whether the staff can safeguard the materials during the loan.

## Legal Considerations

By reviewing the legal aspects surrounding a loan, lenders protect both the material and the institution. Legal review involves confirming clear title and ownership, researching applicable domestic and international laws, and determining appropriate loan terms, including but not limited to insurance coverage.<sup>1819</sup>

As a matter of course, lenders must review their claim to ownership before approving a loan. With older materials, this often involves provenance research and reviewing purchase and ownership documents, especially for acquisitions that happened at times when less regard was paid to the ethical nature of sales and ownership. By taking the initiative to research legal aspects that may influence the loan, lenders verify their own claims on ownership and identify any nebulous provenance issues, that left unaddressed could result in judicial seizure or dispute.

Laws protecting and governing cultural heritage materials vary by locality, and, especially with international loans, may present unknown considerations or risks. The lender should understand laws and regulation that govern the exhibition and movement of materials at the host location and route of travel. In particular, lenders should become familiar with indemnity for judicial seizure laws.<sup>202122</sup>

During a loan review, lenders need to review and inquire about the scope of a borrower's fine art insurance. Lenders protect their assets throughout the entire duration of a loan by requiring wall-to-wall (nail-to-nail) insurance coverage. Insurance for exhibitions loans typically are inland marine or inland transportation policies, and international shipments generally include additional interoceanic insurance policies.<sup>23</sup>

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18 Ralph Lerner and Judith Bresler, *Art Law: The Guide for Collectors, Investors, Dealers, & Artists* (New York, NY: Practising Law Institute, 2012).

19 Patrick O'Keefe and Lyndel Prott, *Cultural Heritage Conventions and Other Instruments: A Compendium with Commentaries* (Builth Wells, United Kingdom: Institute Of Art and Law, 2011).

20 "Arts and Artifacts Indemnity Program: International Indemnity", National Endowment for the Arts, accessed September 1, 2017, <https://www.arts.gov/artistic-fields/museums/arts-and-artifacts-indemnity-program-international-indemnity>.

21 "Immunity from Judicial Seizure – Cultural Objects", US State Department, accessed September 1, 2017, <http://www.state.gov/s/1/c3432.htm>.

22 "Exemption from Judicial Seizure of Cultural Objects Imported for Temporary Exhibition, Pub. L. No. 89–259 (S.2273), 79 Stat. 985 (1965) (codified at 22 U.S.C. 2459 (1994))", accessed September 1, 2017, [http://1997-2001.state.gov/www/global/legal\\_affairs/public\\_law\\_culture.html](http://1997-2001.state.gov/www/global/legal_affairs/public_law_culture.html).

23 Marie Malaro and Ildiko DeAngelis, *A Legal Primer on Managing Museum Collections* (Washington, DC: Smithsonian Books, 2012).



Lenders can look to the borrower's facility report for a fairly detailed overview of their insurance policy's inclusions and non-standard exclusions. Lenders need to review the general terms of coverage, noting whether any exclusions listed would affect coverage for the loaned material, or whether the loan requires additional insurance protections. Generally, coverage extends to materials damaged by theft, fire damage, water damage, natural disasters, and vandalism. Typically, coverage excludes damage or loss caused by acts of war, rebellion, military invasion, nuclear activity, normal wear and tear, improper packing, employee dishonesty, and biological/pest damage. By thoroughly reviewing the entire insurance policy, lenders are assured coverage to offset a loss and that their materials are properly insured throughout the duration of the loan.

When reviewing the insurance section of the facility report, lenders note whether the potential borrower filed claims recently, and should inquire about the circumstances of those losses. If an institution is self-insured, the lender reviews the supplemental information provided and assess whether coverage is appropriate for the loaned material.

Overall, the loan agreement should be subject to terms, conditions, and policy exclusions agreed to by both parties, but that benefit the lender. As appropriate, lenders may request clauses, such as naming the lender as an additional insured and loss payee, including a buy back proviso in the event of a loss, insuring parts of bibliographic entities at the full value of pairs and sets, and including subrogation statements, that favor the lender.

Common riders that benefit lenders include packing clauses that stipulate coverage for materials packed "to the best of its abilities"; coverage during strikes, riots, or civil disturbances; payment of current market value at time of loss; and additional insurance endorsements necessary for overseas shipments.

Prudent borrowers need to carefully review all contracts and may elect to use their own loan form. Additionally, lenders should include a statement allowing them to terminate the loan at any point without cause or retaliation. Lenders may require bilingual translations if appropriate.

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## Summary

Special collections libraries routinely review requests to lend significant special collections materials to enhance exhibitions at cultural heritage institutions. Libraries minimize risk and exposure during the loan by integrating risk assessment procedures into the loan review process. By properly evaluating loan requests, enumerating display requirements, specifying adequate insurance coverage, and following registration best practices, libraries better protect and care for significant cultural heritage materials loaned for an exhibition, and help extend the reach of their educational missions and share important library materials with new audiences.

**Keywords:** exhibition loans, special collections, libraries, archives, rare books, cultural heritage institutions, facility report, fine art insurance, seizure immunity