

Museums and Web 2.0: Mission-Driven Approaches, Legal Challenges and New Opportunities**

Susan Sheffler examines the integration of Web 2.0 practices by museums and some of the legal challenges they face in digitising their collections.

Introduction: Museums and the Internet, Unlikely Bedfellows?

In January 2009, the Smithsonian Institution, a national museum conglomerate of dozens of individual institutions with 137 million physical objects, 6000 staff members and a \$1.2 billion annual operating budget, hosted a conference entitled Smithsonian 2.0 as an effort to explore "how to make SI collections, educational resources, and staff more accessible, engaging, and useful to younger generations."¹ What followed were months of hard work and collaboration between Smithsonian staff, external stakeholders, and the internet community at large. This work included a series of public wiki articles used to draft a Web and New Media strategy for the Smithsonian. How did one of the largest national cultural institutions in the world come to embrace such a collaborative model for strategic planning?

The shift during the last decade from Web 1.0 experiences to Web 2.0 communities has contributed to a parallel shift in museum culture and efforts at audience engagement. Over the past 20 years, there has been a move away from traditional museum methods of communication (curator designed exhibits unilaterally conveying a single message to visitors) to a collaborative and multi-directional model in order to make museums more relevant, effective, and engaging.² With this goal in mind, museums have actively pursued increased access to their collections and interactivity both on their own websites and on third-party platforms like YouTube, Facebook, and Twitter.³ These entrances into the digital world have demanded collaboration both inside and outside of the museum, engaging multiple departments and levels of staff, community stakeholders and other cultural groups and institutions with similar missions and audiences.

This paper explores the mapping of old missions and activities onto a digital framework for digital natives, potential problems when digitising collection holdings such as copyright issues and treatment of those orphaned works and collection items that are in the public

domain, and innovative attempts to bring Web 2.0 principles back inside the museums' galleries.

Museum Missions in a Digital Age

Traditionally, museum missions, especially those founded during the 19th and early 20th centuries, have focused on the collection, preservation and faithful stewardship of objects of artistic, historical, scientific and cultural importance. This mission has been manifested through a one-way transmission of information from museum expert (including curators, docents and educators) to visitors. One need only look to the Metropolitan Museum of Art, whose canonical mission conjures the image of a museum slavishly purchasing and protecting its collection and monolithically interpreting and presenting it for the public good.⁴ The focus of a visit to these grand institutions is on the authenticity and rarity of the objects on display, explicated by the expert voice of the museum as a whole, backed by the scholarship of the curator.

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In contrast, Web 2.0 disperses authority and creativity and eschews transmission in favour of collaboration. Users of Web 2.0 sites are not simply visitors but also participants, judging and selecting content based on their individual preferences and needs.⁵ Even before the dawn of Web 2.0 initiatives, new museology, beginning in the late 1970s and early 1980s, had started turning away from the traditional focus on collecting, researching, and curating,⁶ towards education and communication with audiences. Newly evolving mission

**** Editors' Note: This article is an analysis of the experience in the United States of America and while some of the issues it discusses are of general application it does not purport to consider the issues as they apply to the Australian context.**

1 Edson, M., et. al., Fast, Open, and Transparent: Developing the Smithsonian's Web and New Media Strategy, In J. Trant and D. Bearman (eds). MUSEUMS AND THE WEB 2010: PROCEEDINGS. Toronto: Archives & Museum Informatics. Published March 31, 2010. Available at <http://www.archimuse.com/mw2010/papers/edson/edson.html>. (Hereinafter "Edson").

2 Simon, Nina, *Discourse in the Blogosphere: What Museums Can Learn from Web 2.0*, Museums & Social Issues, Vol 1, No 2, Fall 2007, 257. (Hereinafter "Simon."); Jeffrey P. Cunard, Debevoise & Plimpton LLP, Developing and Distributing Museum Content: Navigating the Sea of New Apps, Platforms, and Hosting Options at ALI-ABA Conference: Legal Issues in Museum Administration (March 22, 2011). (Hereinafter "Cunard")

3 See e.g. Cunard; Lagoudi, E. and C. Sexton, *Old Masters at Your Fingertips: the Journey of Creating a Museum App for the iPhone and iTouch*, In J. Trant and D. Bearman (eds). MUSEUMS AND THE WEB 2010: PROCEEDINGS. Toronto: Archives & Museum Informatics. Published March 31, 2010, Available at <http://www.archimuse.com/mw2010/papers/lagoudi/lagoudi.html>.

4 The mission statement reads: "The mission of The Metropolitan Museum of Art is to collect, preserve, study, exhibit, and stimulate appreciation for and advance knowledge of works of art that collectively represent the broadest spectrum of human achievement at the highest level of quality, all in the service of the public and in accordance with the highest professional standards." Metropolitan Museum of Art. About: Mission Statement. Available at <http://www.metmuseum.org/about/>

5 O'Reilly, Tim, *What is Web 2.0? Design Patterns and Business Models for the Next Generation of Software*, O'Reilly, 30 Sept 2005, available at <http://oreilly.com/web2/archive/what-is-web-20.html>.

6 Ramesh Srinivasan, et. al. *Digital Museums and Diverse Cultural Knowledge: Moving Past the Traditional Catalog*. 25 THE INFORMATION SOCIETY 4, 265, 266-67. Available at <http://www.informaworld.com.ezp-prod1.hul.harvard.edu/smp/content~db=all?content=10.1080/01972240903028714>.

Web 2.0 disperses authority and creativity and eschews transmission in favour of collaboration

statements like that of the Brooklyn Museum⁷ mirror this fundamental shift from the role of museums as object collectors and protectors to knowledge creators and collaborators. These institutions with new visitor and education-centred missions have often also been at the forefront in embracing digital technologies, digitisation and Web 2.0 approaches both online and in the galleries.

Several tensions exist between the values that underpin the traditional museums' culture and experience and those that drive online innovation and collaboration. One major value underlying museum collection and exhibition is the authenticity and the uniqueness of the collection objects. The internet, in contrast, values that which is easily reproducible and transferrable, shirking authenticity for access. However, authenticity is not a value that museums are likely to surrender, since it is foundational and ensures their survival. The ideal solution would therefore be a marriage of the online museum experience with the in-person experience, allowing users to access targeted information before their in-person experience, visiting and connecting with authenticity and museum expertise in an open dialogue during an actual visit, and enriching the visit after the fact by allowing online comments, dialogue and further exploration.

Another conflicting value is museums' general resistance to change. Museums have succeeded thus far by focusing on preservation and conservation. In contrast, much of Web 2.0 thrives on a social entrepreneurship model which can start small and expand, changing swiftly to suit users demands and needs⁸. Museum practitioners who are attempting to integrate Web 2.0 practices have encouraged museums to embrace innovation and flexibility through a model of "continuous iterative design, build[ing], testing, refin[ing]"⁹. In this redefined model of museums as institutions of social entrepreneurship, there must also be fundamental changes in the top-down management structure of museums with more collaboration between departments. One strategy for encouraging this kind of collaboration is the formation of new "border habitats" – areas where the activities and responsibilities of departments in the compartmentalized museum¹⁰ overlap; for example, promoting direct collaboration between the IT, communication, and curatorial departments to build content for the museum's website. Within these "border habitats," staff can both envision and seamlessly implement their ideas, bringing the museum closer to becoming a flexible and adaptive organization.

Despite these underlying tensions, there are many ways in which traditional museum missions and work can be augmented by cyberspace. For example, digitisation encourages access to collections by the broadest possible audience, which assists museums in fulfilling their role of "serving" and educating the public.¹¹ Increased connectivity also opens up new avenues for collaboration, independent of geography. Online Web 2.0 tools like wikis have revolutionized the methods of collaboration with other institutions with similar values. While, at first glance, museum values like authenticity may seem to be antithetical to the values and norms of cyberspace, there is potential for museums to expand the reach of their missions when the two sets of values are innovatively integrated.

Problems and Possibilities in Digitising Collections

Copyright and Museum Digitisation

The copyright issues faced by museums in digitising their collections are as diverse as the collections themselves.¹² While many of the works in a museum's collection, particularly where that collection has a historical focus, are in the public domain, museums that collect art and objects from the early 20th century and onwards will need to deal directly with copyright holders in order to obtain a licence for reproduction and display online.¹³ A hard line must therefore be drawn when examining potential legal liability between objects in the collection that are in the public domain or not copyrightable and those that may still fall under copyright protection, including orphaned works.¹⁴ The two options available to museums for copyrighted works are either negotiating licences on an individual basis with copyright holders, or relying on copyright exceptions like fair use.

Difficulties associated with pursuing the licensing option include the painstaking task of seeking out licences for each individual work from individual copyright holders, the high costs that may be associated with these licences, and the numerous individual restrictions and conditions that may flow from these licences. For example,

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7 The mission of the Brooklyn Museum is to act as a bridge between the rich artistic heritage of world cultures, as embodied in its collections, and the unique experience of each visitor. Dedicated to the primacy of the visitor experience, committed to excellence in every aspect of its collections and programs, and drawing on both new and traditional tools of communication, interpretation, and presentation, the Museum aims to serve its diverse public as a dynamic, innovative, and welcoming centre for learning through the visual arts. Brooklyn Museum of Art. Mission Statement. Available at <http://www.brooklynmuseum.org/about/mission.php>.

8 Edson

9 *Id.*

10 *Id.*

11 See Metropolitan Museum of Art. Mission Statement, *supra* note 4.

12 Museums' copyright troubles are further exacerbated by the fact that few museums are large enough to have in-house counsel or budgets for hiring outside counsel to assist them in understanding copyright regimes. Instead, research into copyright liability often falls to professional staff, typically librarians/archivists. Museums and libraries with digitisation projects, according to a 2008 survey, spent an average of over 221 hours/year obtaining rights permissions and copyright clearance while only 3.45% of these institutions have been able to outsource copyright management programs to a third party. See International Survey of Library & Museum Digitisation Projects Presents Data from More than 100 Library [sic] and Museums. Artdaily. http://www.artdaily.com/index.asp?int_sec=2&int_new=25872; Primary Research Group, Dec 2010, *The Survey of Library & Museum Digitisation projects 2011 Edition*, Press Release/Description. Available at http://www.researchandmarkets.com/product/26199f/the_survey_of_library_museum_digitisation_p. See also Deborah Wythe, Brooklyn Museum, Rights Transparency: The Brooklyn Museum Copyright Project, at ALI-ABA Conference: Legal Issues in Museum Administration (March 22, 2011). (Hereinafter "Wythe").

13 17 U.S.C.A. § 107(1) (2007). *Id.* §106(5) (2007).

14 Orphaned works are those whose copyright holder is unknown and is either difficult or impossible to find. See UNITED STATES COPYRIGHT OFFICE, REPORT ON ORPHAN WORKS, (Jan. 2006), available at <http://www.copyright.gov/orphan/orphan-report.pdf>.

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while larger organizations like ARTstor.org have found success with the licensing method, access remains a key concern as ARTstor has found it necessary to prohibit any online (even non-commercial) use of the images it houses and to restrict access to the database to only those affiliated with a subscribing non-profit institution.¹⁵

Given their public, cultural and educational missions, museums would seem to be strong candidates for copyright statutory exemptions and limitations. However, the two main exemptions applicable to museums, reproduction for preservation by libraries and fair use, are shaky in application.¹⁶ For the first exception, the Digital Millennium Copyright Act (**DMCA**) expanded the narrow exception from §108 of the 1976 Federal Copyright Act for libraries and archives to include digital copies necessary for preservation and replacement.¹⁷ However, §108 still fails to address public access to digitisation that has been undertaken for the purpose of preservation, which makes it an unsatisfactory legal tool for museums which desire to both preserve and make accessible their collections.¹⁸

A more expansive statutory exemption available to museums is the affirmative defence of fair use. However, the lack of a bright line rule on what constitutes fair use makes museums, with their tight budgets and limited access to legal resources, reluctant to digitise any items in the collection which may lead to copyright infringement claims.¹⁹ Additionally, museums may find it difficult to pass the four factor test²⁰ based on the substantiality of the copying of the original that is inherent in digitisation and the potential effect on the market for digital reproductions of artworks, as seen in the licensing-focused models of ARTstor and Getty Images.²¹ Museum collection digitisation would also likely fail the “transformative” test that is frequently used in current case law and which disfavors use of copyright material that does not independently “stimulate creativity.”²²

Despite these barriers, museums have found an exception supported by case law which has allowed them to move forward: fair use of thumbnail images. The use of thumbnail images has repeatedly been held to be fair use based on the relatively small amount of the original work that has been appropriated (factor three).²³ While the thumbnail exception is useful for progressing digitisation projects, museums’ missions, focused on the preservation of, access to, and education through their collection, are not best served by the sole use of thumbnails in their digitisation efforts. Larger, high-resolution images are an integral part of providing true access to these works for both researchers and larger audiences. Fair use remains an ambiguous area for museum digitisation, thwarting progress to move the vast collections and expert knowledge of museums online where they may be preserved for and accessible to the world.

The Brooklyn Museum: Using Licensing Agreements to Digitise Works still under Copyright

The Brooklyn Museum has worked diligently to offer full records and photographs of the artworks in its collection online. Currently, over 95,000 works are available in this database and each contains a specific rights statement.²⁴ These rights statements assist the museum in classifying the copyright status of works in its collection and educate the museum’s online audience of the nature of copyright.²⁵ The museum has attempted to find a balance between “the intellectual property rights of others”²⁶ and the Digital Lab’s mission to “create, manage, make accessible and preserve digital images documenting the museum collections, research resources, and activities.”²⁷ In striking this balance, the museum has become a leader in the museum digitisation field, working arduously to educate both the public and other museums on how to implement a digitisation pro-

museums that collect art and objects from the early 20th century and onwards will need to deal directly with copyright holders in order to obtain a licence for reproduction and display online

15 Guy Pessach, *Museums, Digitisation and Copyright Law – Taking Stock and Looking Ahead*, 1 INT’L MEDIA & ENT. L. 253, 261. (Hereinafter “Pessach.”)

16 Pessach at 264.

17 See Pessach at 264. See also The Digital Millennium Copyright Act (DMCA), Pub. L. No. 105-304, §§ 103, 1201, 112 Stat. 2860, 2863-65 (1998) (codified as amended at 17 U.S.C. §§ 103, 1201 (2000)).

18 *Id.* at 267.

19 *Id.* at 269-70. This reluctance could result in a dearth of public access to and scholarship about periods still covered by copyright, including modern and contemporary art.

20 Four factor test for fair use: (1) the purpose and character of the use, (2) the nature of the copyrighted work,

(3) the amount and substantiality of the portion used, and

(4) the effect of the use on the potential market for or the value of the copyrighted work. 17 U.S.C.A. §107 (2000)

21 Pessach at 269-70.

22 Pierre N. Leval, *Toward a Fair Use Standard*, 103 Harv. L. Rev. 1105, 1111.; See also Pessach at 271.

23 See Pessach at 271-73; *Bill Graham Archives LLC. v. Dorling Kindersley Ltd.*, 386 F.Supp.2d 324 (S.D.N.Y. 2005), *aff’d*, 448 F.3d 605 (2d Cir. 2006); *Kelly v. Arriba Soft Corp.*, 336 F.3d 811 (9th Cir. 2003); Cf. *Perfect 10 v. Google, Inc., et al.*, 416 F.Supp.2d 828 (C.D. Cal. 2006), *reversed* (to uphold thumbnail image use by Google as fair use) 508 F.3d 1146 (9th Cir. 2007). In *Perfect 10*, some of Google’s activities were found to be infringing based on Google’s profit through ad revenue, and an impact on the market for thumbnail sized images for use on cell phones. It is unlikely that either of these infringing activities would be found in the museum digitisation case; however, it is worth considering the potential for an expanded market in thumbnail images for cell phone use. *Id.* at 832.

24 See e.g. http://www.brooklynmuseum.org/opencollection/objects/4885/Portrait_of_Madame_Tallien

25 See Brooklyn Museum, *About: Copyright*. Available at <http://www.brooklynmuseum.org/copyright.php>. All of the museums rights statements use a minimum of legalese and are largely in plain language. This may owe to the fact that they were written by non-lawyers with a minimum consultation with pro bono outside counsel. Wythe talk/paper at ALI-ABA.

26 Brooklyn Museum, *About: Copyright*. Available at <http://www.brooklynmuseum.org/copyright.php>

27 Wythe.

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gram which incorporates accessibility, clear notice to audiences of known and potential copyright claims in digitised works, accurate record-keeping of all rights holders, and an open and relatively inexpensive licensing program.²⁸

The Brooklyn Museum has adopted a two-pronged approach to digitisation of works of art that are not in the public domain. First, administrators have chosen to continue with the digitisation project, and, second, the Department of Digital Collections and Services has sought out the original artists in order to obtain licences for each of these copyrighted works. In order to ensure that digitisation efforts do not lead to copyright infringement liability, the Head of Digital Collections and Services, Deborah Wythe, has taken extensive measures to find rights holders and send letters to artists represented in the Brooklyn Museum's collection which include a non-exclusive licence to allow the museum to reproduce, display, transmit, publish, and distribute images of the artist's work in ways which "fulfil its mission" and are "related to the museum's collection and programs."²⁹ The museum has an involved process for locating rights holders (particularly in relation to lesser known and orphaned artworks), which focuses on locating the artist, their heirs, and other stakeholders such as the artists' galleries. While awaiting the outcome of these licence requests, the museum only makes thumbnails of the work available online, explaining in the rights statement for these objects that "copyright to this work may be controlled by the artist, the artist's estate or other rights holders."³⁰ Once a non-exclusive licence agreement is returned,³¹ the museum makes the full-sized image of the artwork available in the online database.

Reactions to the Brooklyn Museum's digitisation methods and licensing scheme have generally been positive, but the program has still faced several difficulties, particularly in relation to orphaned works. Research into the rights status of orphaned works takes into account in-house archives, curatorial notes, and artist files, professional associations, rights holders' organizations, publications, and gallery and auction house databases.³² If, following this research, the museum is still unable to locate the rights holders, the museum makes full sized images of the works available with a corresponding rights statement.³³

While this approach exposes the museum to copyright infringement liability, it represents an active choice by the museum to favour accessibility over complete freedom from liability. The request for further information on rights to the work also has the potential to engage audiences and rights holders in a dialogue with the museum, promoting goodwill that can both legitimize what the Brooklyn

Museum and others like it are doing as well as lessening animosity, and therefore potential legal liability, between rights holders and the museum.

Another hurdle faced by the Brooklyn Museum's digitisation program is generating buy-in from other departments, staff, and administration within the Museum and educating them on the importance but not insurmountability of copyright law regarding digitisation. Wythe and her colleagues first educated themselves about copyright law and its effects on digitisation, synthesized this with the Museum's mission and goals, and explained the risks and benefits to other stakeholders within the Museum.³⁴ Collaboration with broader staff, including curators and public relations officers, was critical to proceed with the digitisation project; however, even once the broader staff understood and supported the project, it was still difficult to obtain the resources to implement the project. To these ends, Wythe relied heavily on interns to conduct the research to locate rights holders, send the non-exclusive licences and catalogue the replies in the museum's database.³⁵ Digital Collections also strategically selected works to digitise, focusing on artists with multiple works (which could be included in one licence), works currently on view in the galleries, artists who were easy to find and contact, and galleries that represent multiple artists.³⁶ The success of the museum's efforts is evident: almost 6000 works by over 400 artists with potential rights claims have been cleared in the last two years alone.³⁷ The museum's model of embracing copyright law while always remembering the overarching goal of accessibility will hopefully be replicated by other museums in the coming years, promoting digitisation around the world of works not in the public domain.

Museums' Use of Licensing Agreements for Works in the Public Domain³⁸

In contrast to museums' relatively broad reading of copyright law and fair use in relation to the digitisation copyrighted works, many museums take a strict view of copyright law when it comes to digitising works for which they either hold the copyright or which are in the public domain. These museums frequently assert a copyright in the digitised reproduction of the works in their collection and require licensing agreements for third parties to use these images. These licensing agreements often impose even stricter terms of use than copyright law generally, restricting the re-use, and therefore greater access to, the digitised collection.³⁹

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28 *Id.*

29 *Id.*

30 Wythe (Boilerplate statements).

31 According to Wythe, this is the more frequent result than refusal. In returning the licence agreement, rights holders are permitted to grant some but not all of the rights that the Museum has requested. If the licence is entirely refused, the Museum continues to make the thumbnail available, relying on fair use of thumbnails analysed above. See *supra* note 25.

32 Wythe (Orphaned works worksheet).

33 The rights statement for orphan works reads as follows: "After diligent research, the museum is unable to locate contact information for the artist or artist's estate. We have therefore classified this work as 'orphaned.' If you have any information regarding this work and rights to it, please contact copyright@brooklynmuseum.org." Wythe (Boilerplate statements).

34 Wythe.

35 *Id.*

36 *Id.*

37 *Id.*

38 For more information on what works in a museum collection are likely in the public domain, see <http://copyright.cornell.edu/resources/publicdomain.cfm>

39 Crews, Kenneth D. and Melissa A. Brown, *Control of Museum Art Images: The Reach and Limits of Copyright and Licensing*. Prepared for the Proceedings of the Annual Congress of the International Association for the Advancement of Teaching and Research in Intellectual Property. Vilnius, Lithuania. 13-16 Sept 2009. At 6. Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1542070. (Hereinafter "Crews").

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Copyright claims over digitised images of collection works are not as clear-cut as the museums which rely on these licensing schemes may wish. In order to claim a copyright under American law, the copyrighted work must be an “original work,” requiring a minimum level of creativity in the conception and production of the work.⁴⁰ Since digitisation aims to accurately replicate the underlying work, courts have found that these images contain no “spark of originality” and are therefore not copyrightable.⁴¹ While photographers and museums may oppose this, courts have been adamant that creativity, not the hard work, cost, and expertise required for digitisation, is the essential element protected by copyright law.⁴²

In response to *Bridgeman* and similar cases, some museums have asserted that digital images of collection objects “depict...[the objects] in a manner expressing the scholarly and aesthetic view of the [museum]...and are protected by copyright.”⁴³ These museums require those wishing to use these digital images, including scholars and academic publications, to sign a licensing agreement and pay licensing fees.⁴⁴ Once the third party has signed this licence agreement, they are bound, under contract rather than copyright law, to its terms. Most of these licences are highly restrictive, granting permission for only the specific use applied for at that time.⁴⁵ These licences restrict even such reproduction and use that would fall under the fair use exception in copyright law, including educational uses. Museums that use such restrictive licences justify these actions on two grounds: first, that as “stewards” of their collections, they have an obligation to ensure that these works are not misused or misrepresented, and, second, that making these digital images freely available would cut off a much needed revenue flow in the form of licensing fees which can also serve as a return on investment for the resources spent in digitisation.⁴⁶

While both of these rationales seem valid on their face, the overall result of these licensing schemes (that is, the restriction of access to artworks in the public domain) stands in complete opposition to museums’ educational goals – namely, the access to art for all. Backlash to these agreements has led several major institutions in recent years to make their collections more readily available online, even for third-party use; examples include the Brooklyn Museum’s Creative Commons licence for public domain works, the Metropolitan

Museum of Art’s Images for Academic Publishing initiative which offers free, high resolution images from its collection for free to academics, and the Smithsonian which has added its public domain photography collections to the Flickr Commons.⁴⁷ By treating objects in their collection in the public domain as a public good that is widely available and non-exclusive, these institutions have embraced the values of access and public service.⁴⁸ Further, by expanding the reach of their collections online, these museums’ educational missions continue even beyond the museums’ walls.

Moving beyond digitising collections: Museum 2.0?

Some museums have, through online projects and in-gallery activities, taken digitisation a step further by seeking to redefine the museum experience as rooted in Web 2.0 values, norms and, practices.

After completing the digitisation of their collections, many museums struggle to encourage visitors to actually use these collection databases in a way that is engaging and relevant. Alongside the general digitisation trend, in recent years, a number of major museums have also relaunched their entire websites.⁴⁹ Among these relaunches, the Whitney Museum of American Art’s stands out for its distinctly Web 2.0 approach, found in the methods used to create and distribute content and the offering of personal accounts which allow users to create their own “dashboards” of digital images and pages. The entire site was redesigned on a wiki platform so that all levels of museum staff would be able to contribute content while keeping a visually consistent site and brand identity.⁵⁰ In addition to staff, other stakeholders were also invited to contribute, including 55 artists participating in the 2010 Whitney Biennial, who could create their own individual pages in order to “create a direct relationship between the museum, the artists, and the public.” This decentralized, wiki-based process was at first difficult for some internal stakeholders to accept; however, this emphasis on collaboration and interaction between departments has led to a website that staff feels is truly “a part of the Whitney – not just about the Whitney.”⁵¹

The Whitney’s website is also one of the first individual museum sites to allow site visitors to create a personal profile;⁵² that is, a dashboard on which to collect images from the collection, upcoming

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40 Copyright Act of 1976 §101, 17 U.S.C. §102(a) (2010). See also Crews at 6-7.

41 *Bridgeman Art Library, Ltd. v. Corel Corp.*, 36 F.Supp2d 191, 197 (S.D.N.Y. 1999); See also *Meshwerks, Inc. v. Toyota Motor Sales U.S.A., Inc.*, 528 F.3d 1258.; Crews at 7-9.

42 *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 355, 359-60 (1991).; Crews at 9.

43 Museum of Fine Arts Boston, Terms and Conditions of Image Usage (2009). Available at <http://www.mfa.org/master/sub.asp?key=45?key=2179>. From Crews at 10.

44 Crews at 11.

45 *Id.* at 11-12.

46 *Id.* at 16.

47 *Id.* at 18

48 Daphna Lewinsohn-Zamir, *The “Conservation Game:” The Possibility of Voluntary Cooperation in Preserving Building of Cultural Importance*, 20 Harv. J.L. & Pub. Pol’y 733, 746-748 (1997)

49 Helal, D. et al., *Barn Raising: Building a Museum Web Site Using Custom Wiki Tools*. In J. Trant and D. Bearman (eds). *Museums and the Web 2010: Proceedings*. Toronto: Archives & Museum Informatics. Published March 31, 2010. Consulted April 21, 2011. Available at <http://www.archimuse.com/mw2010/papers/helal/helal.html> (Hereinafter “Helal”).

50 Helal.

51 *Id.*

52 Other collaborative and regional sites have been created which allow users to create accounts and curate digitised collections. One such example of this is mainmemory.net which allows schoolchildren to create their own narratives by piecing together digitised historical collections and then publish them online.

events, artist profiles, and other pages on whitney.org that appeal to them specifically. While there are many benefits to the user and the museum in building its own content platform, there are still some shortcomings to this system. There appears to be little opportunity for interaction or to view other users dashboards. Privacy is likely a key concern here, and the museum sensibly requires a minimal amount of information from those who register (only email address, password and zip code). In order to move the site to the next level, however, the Whitney must expand from a two way "dialogue" between one user and the museum, to a multidirectional dialogue which allows users to view others' dashboards in order to expand their own, communicate opinions and preferences, and start to form a true online community. This approach would enable museum sites like the Whitney's to find a niche that other Web 2.0 platform providers do not currently occupy. One possible niche has been described in general terms by Edson, who headed the Smithsonian New Media and Smithsonian 2.0 process: "Web magic truly happens when collections (or research data), experts, and the public are in close proximity."⁵³ Thus, the ideal platform that would synthesize this "close proximity" between the digitised collections, museum professionals and visitors, is yet to be seen.

Web 2.0 technology has also enabled new partnerships to develop, which provide the infrastructure and support for digitisation itself and then share the fruits of that labour. Institutions have been able to move beyond their internal limitations in resources, including holes in collections, underfunding and lack of technical expertise, to create museum platforms which are greater than the sum of their parts. One such example is Fluid Engage, a suite of museum-specific technology developed by an open source community of museums, galleries, designers and developers.⁵⁴ By working in an open-source community, this project enabled contributors from institutions as diverse as the Detroit Institute of Arts, the McCord Museum of Canadian History and the Museum of the Moving Image to develop low-cost and highly flexible interactive platforms for use in galleries, online, and on third-party devices like cell phones. These institutions were able to contribute to and receive software which was already integrated with existing collections management systems and software at each institution and which was open-ended enough to fit each institutions' highly individual goals. By designing their own software through collaborative wikis instead of relying on closed, commercial software, these designers and museum administrators tapped into the creative, community-driven power of Web 2.0 platforms to create a solution, founded on "openness...configurability, and flexibility," to solve each of their individual needs.⁵⁵

Moving beyond technologies in the galleries, could museum exhibition design and communication more fully embrace the underlying values – creativity, collaboration, and exchange – of the Web 2.0 experience? Nina Simon, a writer, museum consultant and now museum director, has challenged museums to use Web 2.0 not simply as a technological tool to encourage engagement but as an overarching model to redesign the galleries as a forum where even complete strangers have the opportunity for "interpersonal discourse."⁵⁶ Simon's conception of Museum 2.0 is inherently social, supports "diverse access paths" to content, objects, and experiences, and is democratic, developed and accessed from the bottom-up.⁵⁷ Many

museums, including those examined here like the Brooklyn Museum and the Whitney, have aggressively pursued Simons' strategies for Web 2.0 online activities such as creating blogs, collection databases, podcasts, iPhone apps, and Facebook pages; few, however, have taken the more revolutionary step of integrating the principles of sociality, accessibility, and democracy into the real world galleries.

At the San Diego Museum of Natural History during a gallery reinstallation, the exhibit team implemented a program called "Case by Case." In the gallery, objects from the collection were on display without any didactics (traditionally, explanatory text on labels alongside the object), and visitors were invited to literally "tag" the objects on display with questions or observations they had on post-its.⁵⁸ From this, curators and designers were able to discover questions they never would have thought of otherwise. Didactics were then crafted to answer visitors' questions and placed alongside the objects. Even the questions themselves became part of the exhibition and the learning experience as designers decided to display them alongside the completed, traditional explanatory label.⁵⁹

"Case by Case" demonstrates a new way to engage visitors with objects, exhibitions, and the museum as a whole. Visitors have the opportunity to approach the museum through the lens of their own experiences, contribute their viewpoint to the newly multi-vocal and bottom-up museum, and feel that their views are valued, addressed, and incorporated into the exhibit which allows the creative process to start anew with the next visitor. These approaches are limited by the difficulty of, what Simon describes as, moving from interaction between "me" and the museum and "we in the museum."⁶⁰ Only by building a communal, social space founded on respect, exchange, and collaboration can museum exhibits become spaces for "collective social interaction."⁶¹

Conclusion: Museum 2.0 is only the beginning

As museums continue to find new ways to increase access to their collections through digitisation, to navigate potential legal liabilities as they bring their collections into the 21st century, and to engage continuing and new visitors both in the galleries and online, Web 2.0 can serve as a model for how to approach these complexities in an open, social, and collaborative framework. However, Web 2.0 principles integrated into the Museum 2.0 proposed by Simon can only take us so far. New initiatives like Google Art Project bring ever more complexities to the table: how, and to what extent, should museums as public organizations work with private corporations to digitise and share their collections? What role should consortiums and collaborations play in the future of museums, and who is responsible for their success or failure? In order to meet these ever-emerging challenges, museums must embrace the hybrid values examined in the first part of this paper: accessible authenticity and flexible conservation. By merging the traditional values that work for museums, which have empowered them for centuries to create authentic cultural experiences, and emerging values of digital natives, museums can remain relevant and engaging homes of science, history, art, and culture for generations to come.

Susan Sheffler has an MA in Museum Studies from New York University, and is currently a JD candidate at Harvard Law School.

53 Edson.

54 Mitchell, J. et al., *New Technology in the Museum: A Case Study of Three Museums in the Fluid Community Working Together*. In J. Trant and D. Bearman (eds). *Museums and the Web 2010: Proceedings*. Toronto: Archives & Museum Informatics. Published March 31, 2010. Consulted April 21, 2011. Available at <http://www.archimuse.com/mw2010/papers/mitchell/mitchell.html>.

55 *Id.*

56 Simon at 258.

57 *Id.* at 259.

58 Blackford, Kim, et. al. *Guest Post: Using Visitor Participation to improve Object Labels at the San Diego Natural History Museum*, *Museum 2.0*, 29 March 2011.

59 *Id.*

60 Simon at 267.

61 *Id.*