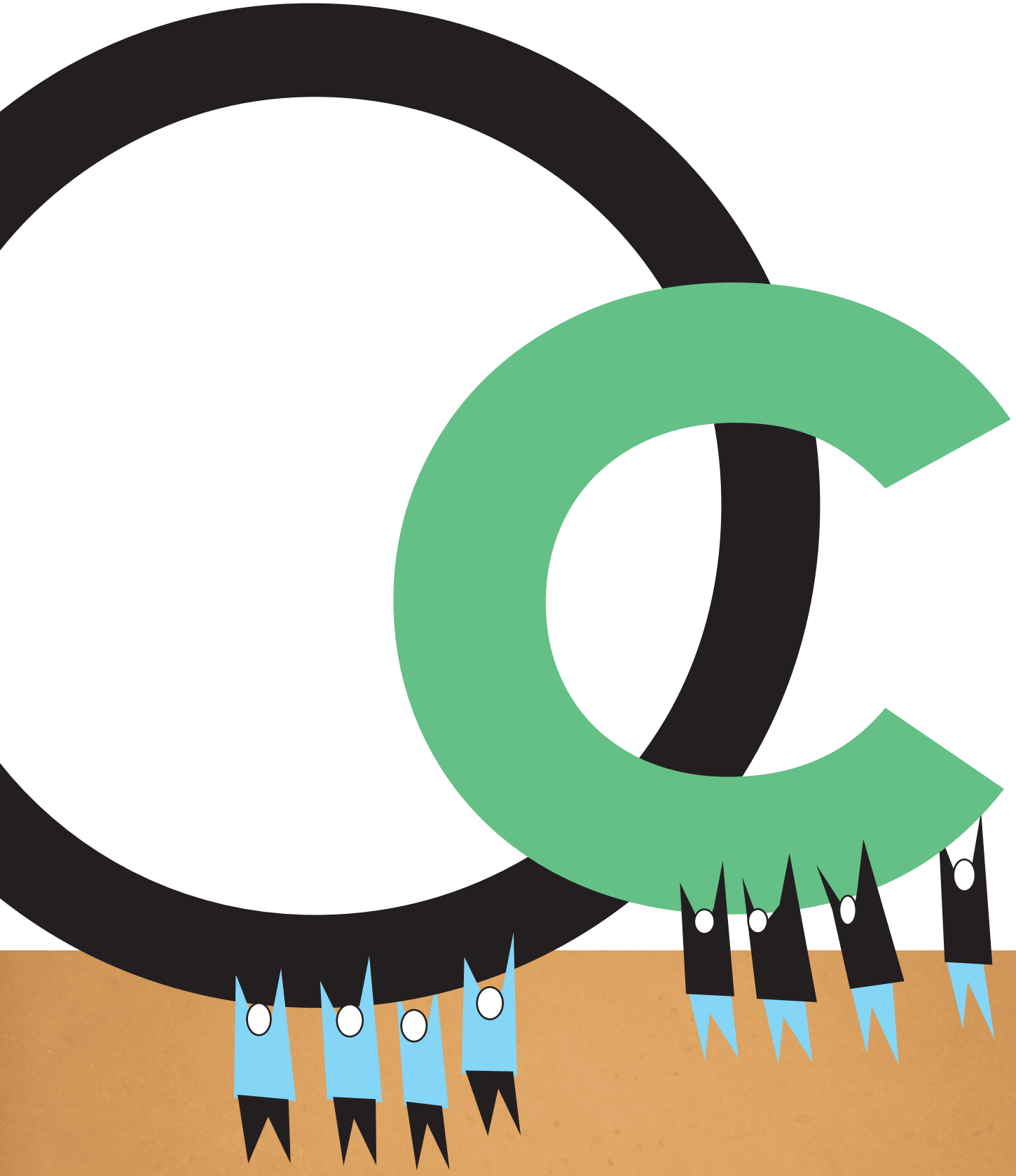

‘Earning Legitimacy’:

Participation, Intellectual Property and Informed Consent

Helen Graham, Rhiannon Mason and Nigel Nayling

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A booklet linking politics and practice aimed at museum practitioners and researchers working with museums

Helen Graham, Rhiannon Mason and Nigel Nayling

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Index

Summary	p1
Introduction	p4
Part 1: What is intellectual property? What is copyright? What is informed consent?	p5
Part 2: Views, Practices, Issues	p8
Part 3: How shall we do this?	p26

Summary (if you're short of time...):

1. **Copyright law has a lot of greys in it, especially when it is applied to participatory work. In all likelihood you and the people you work with will be able to draw up an agreement that suits you all.**

2. **How museums organize copyright and informed consent is, in effect, best seen as an argument for the legitimacy of the institution, its public purpose and public funding.**

Whether 'copyright' and 'consent' are framed through a top-down approach which argues that 'this is the deal, take it or leave it' and 'we need this from you for the benefit of all', or through a bottom-up approach which says 'let's set the aims together and negotiate everything over time', what is being articulated is a political argument.

3. **Consent is a process that has to be earned over time.**

Even if people sign a form at the beginning, it is very hard for people to immediately understand the full scope of the project. There is no way round this but it is important to build in lots of chances to check people are happy. Projects also need some kind of final 'closure' moment (as one participant who is involved in Glasgow Museum's Curious project put it) where future uses are discussed and agreed upon.

4. **It matters that museums collect the outcomes of participatory projects.**

Museums should not run scared from collecting the work of participation projects because all this copyright stuff feels a bit intimidating. People are proud to have their work valued, they just want to be involved in how it will be used.

5. **Formalizing consent becomes more significant if people are not directly in control and as the scale and timescale of the project increases.**

It is the extensions of scale and timescale which make discussions about copyright and consent necessary. No matter how much the rest of the project has been led by participants, posting on the internet or accessioning into the collection is a moment of 'letting go'.

6. **Digital objects don't need to be treated like material objects.**

From the best of intentions it has often been assumed that to show value for participant-authored digital objects they need to be treated in the same way as material culture. Specifically, copyright is sometimes used like a 'transfer of title'. As digital objects can be in multiple places at once and can be used by lots of people simultaneously they don't need to be 'transferred' as such. This means that full copyright transfer is probably not necessary, even if an item is accessioned. Joint copyright is an option to be explored, especially if supporting people to feel ownership over their story is an aim of the project.

7. **Asking for personal stories – and producing them in group contexts – changes the relationship with the museum.**

Museums used to ask people how this piece of machinery was used, now we are asking them how they felt about using that machine and what it was like to fall in love with their co-worker! The increased desire for personal knowledge means the museum must respond with a more personal relationship with the contributor. Participatory projects also often set a highly social and personal context for the production of knowledge. When people say they'd like the museum to show them the 'courtesy' of knowing if their story is being used, they are signaling that they expect that same sociality to continue into the future. The reason why getting copyright forms signed feels awkward to some museum workers is that it is the insertion of a less personal and more official moment into a dynamic which, until then, has felt social, fluid and responsive.

8. **Being clear and upfront about the purposes at the beginning – and getting copyright forms signed – will not mean that the museum won't still have to be responsive to individuals. It is their story.**

Once the form is signed it might seem like everything is all done and dusted but the personal nature of stories and memories means that if people change their mind, or their life changes (e.g. they split up with their partner) then they will expect changes. In fact, the better the interactions with staff the more will become expected.

9. **But it's ok - people understand this will change when they die!**

No need to worry, people are fine for their stories to be used without any further interaction with their descendants when they die. You just need to ask them and make this part of the form.

10. **Good participation projects change people's perception of museums and they expect this way of working to change the institution from within.**

It is important to remember that 'the museum' is not a fixed thing but is made up of the 10s or 100s or 1000s of interactions people have with museum staff. If in our personal lives love and friendship have to be made real through all the small things we do, then institutions have to earn 'trust' in the same way. For people who have been involved in participatory projects the interactions with the museum have often been intense and high quality. There is then some expectation that this way of working will spread throughout the museum and characterize their future encounters with the museum.

11. **All of this is an opportunity!**

Museums are caught between the pressure to be more open and the pressure to audit and be risk adverse. But if museums were more open and responsive then the tension might fall away. What the interviews around copyright and consent tell us is that there is an appetite to be actively involved in the museum. They tell us that high quality projects transform people's perception of the museum. They also point to the political and institutional significance of museums soliciting personal stories and the personal and social nature of the projects themselves. All this strongly suggests that museums' future lies in seeing democracy not in a dispassionate balancing between individual interests against the public interest but in open discussion and responsive interactions. This is where museums' relevance lies.

What this means is...

Draw up copyright and consent forms together. Discuss future use. Discuss possible contexts. Discuss who will keep in touch with who and make sure there's a point of 'closure' in the project where all this is discussed.

Show people courtesy. Do consider using their stories for future exhibitions. But do ask people, send them draft interpretative text and invite them and their families to the opening.

Don't require full copyright transfer – explore joint copyright options. Be open about what this means.

If you have a box of oral histories which have no record of copyright assignment then remember those people interviewed probably were proud to be asked. So don't hide the oral histories away. Organize an event for the relevant community, share them, discuss them, ask local people's advice and invite the contributor or their relative to come forward. Earn a consensus about how to treat them.

Value front-line members of staff who – through everything they do – have the potential to transform perceptions of the museum. Value each of these projects as learning opportunities for the institution as a whole. People expect the museum to exhibit the same qualities of responsiveness, openness, fluidity and fun they have experienced in community projects.

Introduction

'Intellectual Property' (IP), 'Copyright' and 'Informed Consent' are scary concepts. We all know we need to pay them attention but the legal and contractual issues they index often seem deeply intimidating and not always relevant in obvious ways to the day-to-day work museums and researchers do with individuals and communities.

There are many toolkits out there to help individuals and organisations navigate intellectual property, copyright and informed consent. Our contribution is to provide new access points for museum practitioners and researchers interested in participative and collaborative practice with individuals and community partners. [1] We explore how we might best approach intellectual property, copyright and informed consent via a conceptual frame informed by questions of aims, shared understandings, long term thinking and planning and ideas of political legitimacy and democracy. In other words, we place intellectual property, copyright and informed consent in practical, ethical and political frames.

The title of the booklet is 'Earning Legitimacy'. It is this focus on the motivations and conversations which underpin participative and collaborative work which act as our guide. A focus on aims and motivations helps us filter what is and what is not relevant and to take on board the implications of law and policy without losing sight of the negotiations, fluidity and responsiveness of good participative and collaborative work.

Part 1: What is intellectual property? What is copyright? What is informed consent? introduces the key legal, technical and ethical concepts with which the booklet will engage.

Part 2: Views, Practices, Issues draws together the critical reflections from two workshops with professionals and participants at the Culture Shock! Conference in September 2011, interviews with nineteen museum practitioners and group interviews with eleven participants. [2]

From these discussions and interviews emerge key ethical and political parameters within which decisions over ownership and consent are currently taking place, specifically between an orientation towards the demands of 'public' accountability, transparency and value and a negotiated, grassroots and personalized ethics.

Part 3: How shall we do this? draws out these reflections and practices into a practical framework and flow of questions to help you, and the people you work with, to collaboratively decide how to approach issues arising from questions of ownership and consent.

This booklet concludes by signposting other widely available toolkits and resources which might be helpful in gaining deeper legal and technical understandings.

Part 1:
What is intellectual property? What is copyright? What is informed consent?

As part of the research project we undertook a literature review, the account we offer here is a condensed version of the longer review (available at: **www.partnershipandparticipation.wordpress.com***).*

The big idea of this booklet is that while there certainly is law which relates to both intellectual property and informed consent, the law does not offer any simple answers. For many of the issues that come up through participative work, there is enough legal greyness for you and the people with whom you collaborate to develop understandings and agreements which suit your project.

What is intellectual property? What is copyright?
The aim of intellectual property rights is to provide incentives to produce new intellectual and cultural expressions by making it possible to have control over how your work is used.

In the UK Intellectual Property Rights cover the expression of 'things created by the human mind' (Web2Rights, 'IP and Web 2.0 factsheet', online), this does not include ideas but the way they come to have form, whether through writing, being recorded or in other ways.[3] There are four legally determined areas of IP: patents, trade marks, designs and copyright (See Office of Intellectual Property, 'Types of Intellectual property' online). In this booklet we focus only on copyright as the Intellectual Property Right most relevant to participation in both museum and research contexts.[4]

Under the UK Copyright, Designs and Patents Act (1988), if you write a play, take a photograph or record your own memory, then you are an '**author**'. In terms of copyright this comes with rights which mean you can copy, publicly perform and distribute your work in any way you like. Copyright has limits under current law. For literary, dramatic or artistic works (including composition and photography) it is the author's life plus seventy years. The duration of copyright in sound recordings has recently been extended – under EU law – to 75 years after the date of recording, a revision known as the Cliff Richard ruling.[5] After this period, works are generally seen as falling into the 'public domain', which means they are free of copyright restrictions.

When you are the only author then it is all pretty straightforward. It becomes more complex when there are other people involved. If you and someone else recorded your joint discussion and then worked on editing it together, then the Act would recognize this – relatively simply – as 'joint copyright' where you share all the rights

However, it isn't just the 'author' who has rights but the '**performer**' too. Specifically, performers have rights in terms of reproduction and distribution as well as rental rights and lending rights. Performers' rights are intimately connected to authors' rights. For example if you filmed someone reading a poem you had written then you would be the author of the poem (as it is written down) and of the film but the reader would be the performer. If you wanted to copy and distribute the film you would need permission from them.

And to complicate everything a little bit more; what happens when institutions, their staff, their freelancers and volunteers are involved? How about if you work in a museum and you set up and produce in-house an oral history for an exhibition? It could be this falls under the provision in the Act which states that copyright lies with the institution or person making 'all necessary arrangements'

and, as the memory was not written down and just flowed from the conversation, the interviewee is a performer. But what if a freelance sound recordist was involved? Or there was a volunteer doing the interview? Does that change the notion of 'all necessary arrangements'?

If this is starting to seem a bit messy, then you are 100% right! As you will have already guessed, there are multiple instances of authors' rights and performers' rights in the examples above and who is an author and who is a performer often isn't entirely clear cut at all. This is where the formal copyright assignments, consent forms and employment contracts come in. The act of signing the form or contract aims to document the agreement of who holds the rights.

Let's start with the most clear cut cases. If you are employed by an institution, usually they hold copyright (although this is not usually the case for academic researchers).[6] However, freelancers, volunteers and students all generate their own IP unless their contract specifically states otherwise. So if your institution wants to retain the IP generated by their work then this needs to be addressed in freelancer employment contracts and volunteer agreements.

To move into more tricky areas, any author or performer can assign copyright to someone else. For example, a script writer can assign copyright to a film maker so a film can be made and distributed. An oral history interviewee can assign copyright to an archive so the interview can be collected, used in academic work and used in display. All the extras on a film set usually sign waivers so the footage of them milling about in a street scene can be broadcast.

Assigning copyright sounds like you lose all rights over your work. Or from an institution's perspective that, once the form is signed, the institution can legally do what it wants with a piece of work. However, this isn't the case. An author and performer (including those who produce work as freelancers, volunteers or students) still retain '**moral rights**', unless they specifically sign them over. This means that even if copyright is assigned to an institution, attribution and acknowledgement of either authorship or performance is required. This gives the author or performer the ongoing right – as long as they 'assert' it (through a credit or through a consent form) – to have their work attributed to them and to be able to object to the derogatory treatment of the work.

One of the effects of assigning copyright, even if you retain moral rights, is that you can no longer distribute your own work. However, fully assigning copyright, even with moral rights intact, isn't the only option. You could set up a joint copyright agreement where both you and the museum could use it non-commercially but get in touch if commercial use is sought. You could instead grant the museum a license to use an image in certain ways. This would mean that the museum could use it only in the ways you have agreed, but you could still use it as you like (including commercially).

Licenses are becoming increasing popular in the context of digital work. Partly this comes from a political critique of what has been called the 'new enclosure movement' (Lessig 1999) where more and more aspects of human knowledge are being placed under copyright and for longer (e.g. the Cliff Richard law mentioned above). The initiative Creative Commons exists to both allow people to decide what rights they want to retain and to specify how others can use their work. For example it is possible to use Creative Commons to say that you want to have your work attributed to you but otherwise people can use it for any non-commercial ends. It doesn't mean people couldn't use it for commercial reasons but before they did, they would have to come back and negotiate an agreement with you (which could include payment). Licenses have some benefits, however, they are often not seen as strong enough if, for example, a digital piece of work is to be accessioned into a museum's permanent collections. This is an issue we will come back to in the next two sections.

What is informed consent?

All the above – in terms of contracts, copyright forms and waivers – rests on the idea that you, as the individual author or performer, can give your consent and that your consent is informed. Informed consent entails understanding what is being asked, understanding the consequences of involvement, freely giving agreement and documenting this agreement. While traditionally this was seen as a simple form signing exercise, increasingly informed consent is understood as something built over time and, therefore, as a process. Informed consent has been most written about in relationship to groups perceived as unable to give consent, specifically children and people with learning disabilities. Recent rulings and law have emphasized that children under 16 and people with learning disabilities should have their ability to consent supported where possible. While getting consent from parents for the under 16s may still be advisable, under a ruling referred to as the Gilleck ruling, this is not essential if the young person can be shown to have 'sufficient understanding' (Wiles et al, 2005, p. 9).[7]

Self-advocates with learning disabilities have long argued that they should be treated like other adults. While this should be the default position, legal requirements do exist in relationship to people with more complex learning disabilities. The Mental Capacity Act has much relevance both for participation in research and museums as it moves beyond proxy consent and assent (Wiles et al., 2005) and instead offers a framework for supporting capacity to consent where possible and ensuring 'best interest' decisions where not. The Act's Best Interests checklist requires multiple factors to be considered and potentially for the circle of decision making to be extended beyond either/or family and staff (Nind 2008, p. 9). It has been shown that a 'supported decision' making process can enable people with high support needs to be actively involved in decision making (Ledger unpublished thesis; see also Paradigm; see Mencap Involve me project). In all cases, creative and responsive approaches are advocated, including the use of 'multi-media' both to make more concrete understandings and to record consent (see also The Rix Centre online).

So what to take from all this?

To sum up there is quite a bit of messiness (who is the author again?), a desire for clarity (through assignment and consent) and quite a lot of emphasis on informed consent as a process. If you were going to make a big budget Hollywood film and wanted to keep at least some of the profits, then getting the contractual arrangements all tightly sewn up would be very important. However, for most participative projects the most important idea to take away is that the law has less bearing than we might think and that there is plenty of scope for us to build the kind of co-developed and shared understandings which make the consent form (or its creatively accessible alternative) an expression of a relationship, rather than it being legally-mandated or either its beginning or end. For the most part the agreements produced through collaboration won't be tested in court, therefore the most important issue is what lawyers call 'reputational risk'. Or, to put it in terms more appropriately for participation and collaboration, that what is most important is how we work together and how we treat each other.

What we see through the workshops and the interviews discussed here is that these spaces have been filled with different notions of the purpose of participation and, in turn, different notions of how museums and heritage organisations can gain political legitimacy and be democratic.

In other words, looking at intellectual property and informed consent helps you to see much bigger questions about what makes museums legitimate and democratic institutions. And re-approaching the copyright and consent form via these bigger questions allows us to reimagine copyright and consent not as a moment of institutional appropriation (the museum takes what's yours) but as a moment where slowly developed shared understandings are documented so the institution can remain true to the spirit of the collaboration long after it has passed.

Part 2:
Views, Practices, Issues

Introduction

Museums, archives and heritage organisations are increasingly paying attention to intellectual property and informed consent. In terms of participative projects questions of copyright and informed consent emerge at the intersection of two trends.

The first trend is that there is simply much more participation and collaboration going on. This is partly the result of pioneering work by, for example, Glasgow Museums' Open Museum, Tyne & Wear Archives & Museums with the People's Gallery and contemporary collecting projects (e.g. Making History) and the Museum of Croydon, whose approach starts from people rather than objects, uses oral histories as a basis for its permanent displays and co-production as a basis for displays in temporary spaces (Croydon Now; Space C). However, the interest in participation and collaboration has also been influenced by Web 2.0, where producing, sharing and re-using material has forced institutions to consider what this means for them (Simon 2010; online). This shift can also can be linked to changes in theories of organisation and work, with trends in favour of less hierarchical organisations, project-based work and a desire for increasing porosity between inside and outside the organisation.

The second trend – which appears (at first glance) to be pushing in an opposite direction – is an increasing need for audit trails (e.g. of consent; health and safety; evaluation of outcomes of project) and legal clarity (e.g. of intellectual property). Yet while these two trends do definitely produce tension, in practice they are intimately connected. If an institution is going to share openly and encourage re-use, then they need to be pretty confident they have gained the consent of those whose objects, images or memories there are sharing. Increasing openness brings with it increasing risk. In one view this tends towards legally-binding consent. However, our view here is that this risk is mitigated by genuinely earning shared understandings.

In the interviews we explore in this section, it is clear that these two trends also tip us towards the bigger questions of democracy and legitimacy introduced in the last section. While there is a legal legitimacy in the piece of paper which enables the museum to secure things for public access in perpetuity, the shift towards greater openness, sharing and porosity also asks different questions about legitimacy. Longer term radical approaches to community engagement (associated with Pablo Freire (2011 [1970]) and Web 2.0 together have certainly sown the seeds for a more grassroots approach where democracy and legitimacy are earned from below through all the interactions which make up a more expansive and networked understanding of the 'the museum'. What we see in the interviews we conducted is that while some people have a very clear understanding and position on what might make the museum legitimate, there is an increasingly open negotiation between bottom up and top down readings of democracy. The constant reinvention of legitimacy and democracy is happening – as we will show – through thinking across binaries of 'either/or': whether these are the binaries of outcome/process; legitimacy from law and representational democracy/legitimacy from the grassroots; policy/practice; or professionals/public.

Process/Outcome: implications of future use

In traditional museum practice a distinction has been drawn between engagement with individuals and communities focused on process (associated with learning) and individuals and communities focused

on outcomes (usually linked to exhibitions and collecting of various kinds). In the literature review we conducted we found three key ways through which museums and university researchers have justified or argued for participation or collaboration: '**Good for "Us"**' which emphasizes outcomes and the benefits accrued to the museum or research in terms of better/more representative knowledge or exhibitions, '**Good for "Them"**' which focuses on process and the relevance of the museum coming through benefiting the individuals involved in terms of skills, well being or social capital, '**Not Good for Anyone**' which suggests that institutions can too often be unaware of their 'coercive power to manipulate', be manipulative, fetishize authenticity and only practice 'empowerment-lite' (Lynch interview; 2011a, p. 6) and '**Good for Us All**' which fuses process and outcomes by drawing on logics of solidarity and self-generating networks to see benefit as coming through collaboration itself.

However, in recent years there is no question that the relationship between 'process and outcome' has been renegotiated – sometimes due to funders' interests – so that social policy aims such as well-being, self-esteem or employment skills are increasingly understood as being served through producing and publically sharing an output (whether an exhibition or piece of media). Equally, there has been increasing interest in whether the 'quality' of any museum output is improved by a greater participative or collaborative process.

Reflecting the traditional process/outcome divide, Iain Watson, Director of Tyne & Wear Archives & Museums (TWAM), sees there as being two different types of work done by his organisation; the first more focused on the quality of experience for individuals, often tied to social policy outcomes (e.g. training; confidence; citizenship skills; well-being) (in the mode of 'Good for "Them"') and the second more on demonstrable outcomes (which could be understood as in the 'Good for "Us"' mode):

> It's being clear with people at the start and knowing what the nature of the project is. If you've got a project which has written in amongst its outputs 'creating an archive' [then what is produced] is going to be available. You need to be clear with people from the start that that is what it's about. Also who is funding it could be critical. And this isn't a hard and fast definition but if it is funded with 'museum cultural money' for the broader public good then there has got to be some outputs that are for the broader public good. But if the project has been commissioned as part of work that's specifically to enhance the wellbeing of individuals and the wellbeing is a process not an end point then it's quite different. And we potentially work in both those zones and knowing which zone you're in is important.

The difference between the two modes of work is significant for considering questions of copyright and informed consent because such questions have generally been understood as more relevant when outcomes and specifically any kind of future use (including accessioning into permanent collections or use in a publication) is involved.[8]

In terms of working directly with individuals and groups to develop 'outcomes', practice around managing copyright and consent has been influenced by the ethics of oral history. This was understood by those we interviewed as being, in large part, because the Oral History Society (OHS) has been proactive in giving advice on ethics, copyright and consent (a point noted by Georgina Young; Mike Lewis and Barbara Bartl). The Oral History Society approach reflects a line of thinking about consent and copyright which emphasizes outcomes, future use and clarity. As Alan Ward states:

> Interviewing people serves very little purpose unless the interviews become available for use. It is unethical, and in many cases illegal, to use interviews without the *informed consent* of the interviewee, in which the nature of the use or uses is clear and explicit.

> Many of the legal constraints referred to (in the OHS guidance) can be very simply avoided if informed consent is obtained; and most of the Ethical Guidelines at the end of this document are concerned with the necessity and process of obtaining consent.
>
> Consent is best negotiated by means of a clearance form, which should be completed and signed at the time of the interview. Retrospective clearance is usually very time-consuming and often impossible if informants or interviewers have died or moved away. Where informed consent has not been given, interviews cannot be used for many purposes and the value of keeping them is much reduced. (Ward online)

Ward locates the value of the interview in its future use by others. However, what came across very strongly in our interviews was the ways in which the outcome – and its 'quality' – was increasingly seen as being intimately connected to the process of its production. As Bernadette Lynch, former Deputy Director, Manchester Museum and currently a museum consultant and activist on questions of participation, put it, 'thinking through the ethics is the point of the exercise. Getting the stuff is not the point of the exercise'.

Purposes, timescale and scales

Rethinking the relationship between 'outcome' and 'process' was significant in the pioneering example of Glasgow's Open Museum, where individuals and groups create exhibitions using the Glasgow Museum collections (O'Neill in Dodd et al. 2002).[9] Morag Macpherson, previously Manager of the Open Museum and now Principal Learning and Community Officer at TWAM, drew attention to the ways in which ownership and consent were built into the very act of making the exhibition:

> The reason that there wasn't paper and bureaucracy around the Open Museum's work was that [the group's] intentionality really was their output. So what people intended to create largely they created, within [...] all the normal logistical parameters. But basically their intention as it developed was the final outcome in terms of what people could see. But it was only there for a fixed time. So you could say that it wasn't open to misrepresentation because it wasn't going to be presented in any other context or taken out of the context which they were aware of. It wasn't open to their intentions being changed in any other way and given another context.

In the context of Open Museum projects consent is, Macpherson argues, grown through a way of working which is enabled precisely because there are no intermediaries and no future use. As such ownership was traditionally only ever implicit as Mark O'Neill, who was involved in the Open Museum from the first,[10] explained:

> Whether the objects were owned by the person or organisation we were working with or by the museum, would be decided by consensus – if it's in a foyer of the hospital it's theirs. It's been very informal and possibly none the worse for it. [...] If there were £100millons at stake [then a more formal approach would be necessary] but it would be kind of sad if a community project had to divvy up the stuff in that way.

Because the original emphasis of the Open Museum was not on the long term collection of people's exhibitions but rather on creating the conditions for authorship within a context known to those involved, all those we interviewed who were connected to the Open Museum emphasize the link between consent, timescale and scale:

> I think the permanence and timescale of the negotiations is quite key [...] Say in the Open Museum we were creating exhibitions which might be displayed for a year at a time but there was never an intention for that to be permanently collected. And you could say there was lots of missed opportunities and that really the content should have been archived. But there was never a sense that what you are producing now would be available in fifty years time and that it would be related to you as an individual.
> (Morag Macpherson)

The other obvious issue of scale related to reaching wider audiences – whether in terms of the printed publication of people's work or the publication of people's work online. As Claire Coia, Open Museum Curator, argues a different approach to consent might be necessary if it's a small exhibition authored by the group in, for example, Glasgow's Mitchell Library, rather than if the same content is put online.

These questions of informed consent are becoming more urgent as there is an emerging emphasis on long term legacies for Glasgow Museum's collaborative projects. Aileen Strachan, Project Curator for a community project 'Curious' and Crawford McGugan, Open Museum Curator, are currently exploring ways in which the Glasgow Museums' collection database might store knowledge about the collection produced through Open Museum or other projects. As Aileen Strachan put it, 'all the bits should link up [and should] change the institution's understanding of the objects as well as valuing what you've got from people in the first place'. Yet while the more concerted focus on valuing the outcomes of community projects signals a commitment to a more thoroughgoing institutional change, there is no doubt that this by definition involves a loss of immediate control and is likely to involve a more formal process of copyright transfer and consent. As the insights of Open Museum staff past and present suggest, the aims of the project, its timeframe and its scale, clearly all need to influence the approaches taken.

A close focus on the specific aims, timescale and scale of a project helped in developing a copyright and consent approach for a project based at Newport Museums and Heritage Service. Newport Museums and Heritage Service partnered with SOLAS, a local housing agency, worked with people experiencing homelessness on a photography project call 'What Matters?'. From a museum perspective the aims of the project were to increase access and to break down negative perceptions of the museum. As Emma Routley, Newport Museums and Heritage Service's Community Engagement Officer put it:

> It's raising awareness of the fact that we're here. Because so many people, even Newport residents, don't know we're here, they think of it as the library building. Museums should be for the community and be a part for the community. [In a project like 'What Matters?'] we're taking it outside first and then encouraging people to come in. We want the museum to be a hive of activity.

This point was backed up by Annette Wells, Museum Officer (Access), 'museums aren't everybody's cup of tea but they are probably more peoples' cups of tea than they realize. So it's about breaking down the barriers that many people have towards museums and galleries. [We want to make sure that] if someone chooses not to visit it's because they are not interested in that exhibition, rather than because they are too frightened to come in'. From a SOLAS perspective there were similar aims of supporting their clients to feel confident in using public services as well as providing people with skills and a greater sense of self-esteem. Wendy Carrie, SOLAS Learning Officer, emphasized the importance of the museums professional skills of display; '[the participants gained a greater sense of] self-esteem by seeing the work so professionally presented. That if they hadn't had that input from professionals then they wouldn't get the same buzz'. For these reasons of pride and self-esteem, the idea of people

using their names next to their photographs in the temporary exhibition was seen by all involved as crucial. However, the issue of timescale and scale emerged in terms of the decision over whether to take the same approach to authorship in the 'What Matters?' publication. Wendy Carrie explained that through talking to everyone involved they decided to go from using both first and second names in the exhibition to first names only in the publication: 'While people are resident in SOLAS they might be happy to have the name associated with either a picture of themselves or their work, but if their life moves on in the future they may not want that part of their life exposed. It remains private to them'. In other words, the lack of immediate control indicated by the change of scale and the extended timeframe was understood by all those involved to require a different approach to attribution and, therefore, a renegotiation of consent.

As Mark O'Neill implied in the quotation above, another well recognized reason for formalization of copyright is if a project has any commercial dimension. Yet even when there were commercial possibilities for individual or groups, museum projects – such as Newport's 'What Matters?' – which were focused more on process and social outcome rather than accessioned outcomes, were happy about this:

> Annette Wells: Breaking down barriers, that's what we are getting out of it. [...] There are no material goods changing hands. It's more of an attitudinal exchange.
>
> Wendy Carrie: Our input to a project through joint work, our objective, is for a client to make positive changes and move on and make progress in their lives. You're achieving your objectives. We're achieving ours. And if they are achieving theirs through commercially selling their photographs then we are all happy.

Focusing on aims for the project had the effect of clarifying both organizations' positions on copyright and, similarly, considering issues of timescale and scale helped facilitate decision making around consent.

Tony Butler, Director of the Museum of East Anglian Life (MEAL) in Stowmarket, Suffolk takes a similarly relaxed view about commercial outcomes. The Victorian Walled Garden project, initially run by East Ipswich Community Mental Health team through Suffolk Community Mental Health Partnership (SCMHP) is currently exploring building on this work as part of a social enterprise:

> Since 2009 we've had a group working here as part of their therapeutic recovery. [...] They've been involved here for a couple of years but then funding fell through. But a group have remained engaged with the museum. The group's now led by one of the group. [...] So we've begun to develop a plan for them to take over our walled garden, which would eventually be under their jurisdiction to grow traditional plants and flowers for resale. They will work with us to discern planting scheme and types of specimens but how that is done, will be a negotiation between us. That is much more a co-produced piece of work because we will ultimately get to the point where any receipts from sale will go back to group and it will be up to the group to decide whether they want to reinvest the money in the walled garden or whether they want to split the money and take it home. Because that [decision making] will be part of recovering and leading more independent lives. But if they wanted to run it as a business, then we'd be really interested.

Rather than seeing the new status of the project as requiring formalisation simply because money might be involved, Butler instead draws attention back to the aims of the collaboration – supporting recovering and making good use of the Victorian Walled Garden. A clear orientation around these aims

means that it 'doesn't require a very structured approach, because it's evolving and we need to see how it works...my vision is that it becomes a successful enterprise and brings income in. How that income is spent is decided upon by the group'.

MEAL also takes a very case-by-case approach to the range of different activities on site. For example while the volunteer agreements are relatively formal – 'so they know why they are here' (Tony Butler) – there are other people using and contributing to the site in various much less formalized ways. For example, there is a charcoal maker who lives on site for some of the year, he 'burns charcoal, sells the charcoal and he takes the profits. [And he is] providing us with a service for the public. [...] it's a different kind of participation.' In quite a different approach than one which is more orientated to producing outcomes to be accessioned or displayed, involvement with the museum is understood, therefore, as an individually tailored and evolving process. Issues of ownership and consent are dealt with only as they become relevant and not as an automatic precursor to taking part.

New forms of knowledge, new forms of ownership

The period in which copyright and consent have become more visible issues has coincided with a shift in the kinds of knowledge which are sought by museums. As Mike Lewis, now Head of Newport Museum and Heritage Service, remembers there was originally a focus on oral histories only as background for research:

> In my earlier career I was involved in some oral history collecting. We worked in a maritime and industrial museum in Swansea and a generation of those linked to docks and industry were passing. [We conducted oral history interviews] to help us understand the process in industries that had disappeared thirty years previously. And what struck me was that they were absolutely thrilled. No, there wasn't any issue of 'this is my story and I have rights over that'. Their approach was 'wow, someone's actually recording this'. They were thrilled because people were interested in what they did. They were all reaching the end of their lives. By listening to them and putting it in the museum it gave a sense of importance [to their lives] that they had probably disregarded until that point.

However, today's uses of oral history and digital storytelling are often focused less on empirical knowledge and more on telling personal stories or memories. Bernadette Lynch sees this as a concerning trend in museum work:

> Now we're collecting people – we were collecting objects – and now we're representing lives, and sometimes the most intimate lives, in ways which work within our overarching narratives. I was terribly, terribly uncomfortable about this. At what point do they give up control of their own story. We ran into that with Collective Conversations (at Manchester Museum). At what point are people involved in editing and its representation. Do you get to take people's life stories and do something with them?
>
> I'm uneasy about the cut off point. It is presented as 'you signed something and it's gone. Now, thank you very much, your input is no longer required'.

How personal a story should be was an issue for Culture Shock!, a TWAM-led digital storytelling project which collected over 500 digital stories between 2008-2010.[11] Culture Shock! took an upfront approach to copyright and consent by being clear from the first that all stories would be collected by the museum. Part of the aim of this was to enable participants to shape their story with public display and with perpetuity in mind. As Culture Shock! Project Co-ordinator Alex Henry explains:

> We asked participants to sign a form at the beginning or as close to the beginning as possible. [...] We wanted to make sure participants were clear how their stories would be used. I wouldn't want them to tell a very personal story and then be shown a form at the end and say I wouldn't want to show anybody. It gave participants an opportunity to self-censor.
>
> A lot of people were very open about the stories that they told. We got some 'hard hitting' stories about mental health, self-harm and domestic abuse.
>
> Saying to people at the start 'this is what we're going to do with your story. It's going to go on to a big screen in Middleborough town centre or on the web' [was important]. [Then] people could at least make that decision themselves.[12]

Some Culture Shock! storytellers were very happy with this up front approach and therefore happy to sign over copyright in advance of making the story. For example, Henry Holden, who made a story as part of the Culture Shock! project, states, 'I am very happy to hand over my story, it was free for me to do and it was paid for by public funding and money from Trusts. I am happy to hand over my story to the museum to do whatever it likes with it. I am very happy to say that'. However, other participants wanted something more than 'handing over' implies. Indeed, even when copyright had been signed with the understanding that the museum could accession the story and use it in the future, the Culture Shock! project evaluation conducted by Culture: Unlimited suggests that, for some, keeping in touch with the museum on an ongoing basis was important:

> Although each participant was asked to sign a copyright waiver, which in a legal/technical sense gave control over their story to the museum concerned, this was not the way participants saw it in reality. Their view, instead, was that they had given something of themselves to the museum(s), and that it remained precious and they held a strong stake it how it was used thereafter. This project created a community of stakeholders, rather than suppliers of stories and, rather like the transformation of the music and publishing industries, the old structures for protecting assets and controlling their use (copyright, licensing, loan agreements, legal ownership) began to dissolve.
> (Culture:Unlimited 2011, p. 7)

This sense of ongoing interest in their story and how it might be used was also reflected in two workshops one of us ran with Mel Whewell, Principal Officer, Collections Management at TWAM, at the Culture Shock! Conference on 29th September 2011. Both workshops had a mix of museum and other professionals and people who had developed stories as part of Culture Shock!. We aimed precisely to set up this problem of whether the institution is accountable to individual donors (or story tellers in this case) versus the museum needing to be able to make decisions about their collections on behalf of the public. By setting up a continuum between 'It's the museum's story' and 'It's my story' and asking people to take a position on the continuum, some revealing discussions took place. While some professionals wanted that clarity of transfer of ownership and went straight to that end of the continuum there was a certain clumping of professionals in the middle all of whom emphasized negotiation with individuals but also the need of clarity over future use. However, nearly all Culture Shock! participants saw the story as still theirs. This broader sense of ongoing connection with the story was also reflected in one focus group and one individual interview with Culture Shock! participants and one focus group and two individual interviews with participants in a Glasgow Museum project 'Curious' which uses storytelling around objects to develop intercultural dialogue.

When looked at in detail, many of the things the participants want fall under the legal provision of 'moral rights'. As we saw in the first section, even after copyright is assigned 'moral rights' mean that

authors have a right to be named as authors and to object to derogatory treatment. This was expressed in terms of expecting the museum to respect the integrity and intentionality of the story. Barry Martin argued that he would not want his story changed or 'messed about with' and Michael Young was very clear that he wouldn't want his story to be used in a disrespectful way. Young and Kilpatrick both also said they would like to know how the story was going to be interpreted, though not to 'be prescriptive', as Young put it, but again, just because it would be interesting. For participants in the Curious project 'context' was a significant issue in terms of future use. Nikki Pardasani said, 'when I did that project there were certain grounds, certain things being laid down by the museum. They said the motivation for the project was this, and for these reasons and we knew the aims and that's why we joined the project. If it is used for something completely different then I would have preferred the museum to tell us. If it is for the same reason as long back, then that's ok, if the motivation is the same. If something different, I would prefer it if they let me know'.

In all but one of the interviews and focus groups with participants the word 'courtesy' was used. As Mary Cleary said, 'as a courtesy it would be nice to know, but I wouldn't expect the museum to come back and seek permission. That's what the form was for'. Michael Young also noted that the museum did not *need* to re-ask permission, 'but I would still like to know as a matter of courtesy if they were using my work. It's good for bragging!'. A Curious participant, who preferred not to be named here, said 'I just feel it's courtesy. I suppose it does feel part of me and I suppose I feel I would like to know what was happening to it' and another Curious participant Rose, felt similarly, 'It is us that's put the work in and if [it is] going to be used in some way which wasn't even anticipated at the time it might not be possible but basic courtesy would be to try. I can't imagine anyone would have a problem but it is basic recognition that you've contributed to this'. This sense of courtesy was, in one sense, a recognition that they didn't have a legal *right* to know as such, but that it was nevertheless the social aspect of a more implicit contract which had, in effect, developed throughout the project.

However, there was a final issue which did require more rights over their story than those provided by 'moral rights' and that was the right to copy and share their story with friends, family and on the internet – which raises the question of whether full copyright assignment to the museum – as opposed to joint copyright – was strictly necessary.

In many ways, the Culture Shock! participants' response to copyright could be seen as an effect not only of the responsive mode of working but also of the kind of knowledge produced. In this light it does not seem unreasonable that if museums seek personal stories that this needs to be matched by a more personal relationship with the donor. Indeed, it could be argued that the heightened sense of ownership and rights derive precisely from the museum's aim to accession personal stories not simply for their own value but also as a means of achieving aims of self-esteem and self-confidence. In this sense while the legacies of Culture Shock! certainly ask difficult questions for the museums, that these questions are being posed is, in effect, a testament to the project's success in coupling personal story telling with aims around self-worth.

Michelle Brown, Community Curator, also draws attention to the changing relationship between the type of knowledge being produced and questions of ownership. Recently, as part of the Museum's *Overground Uncovered* exhibition she collaborated with local people who were recruited as Community Collectors in order to explore the impact of the new East London line. In this new context of this extensive collaboration and the Community Collectors drawing on their personal and local networks, Brown felt that asking for the assignment of full copyright was not appropriate:

> I felt that the participants were doing something on the museum's behalf and one of the outcomes was not only that we would develop the collections but the participants would get

> new skills, grow in confidence, and all the outer outcomes that these projects could potentially have. We wanted as a museum to be able to be use [the material] but also for it to be used in a local context, should that be appropriate. While recognizing that it was a museum project, we didn't just want to restrict it to that.

In response Brown adapted the existing London Transport Museum copyright form by adding two additional options. The first was joint copyright and the second was a license, so that the individual could do as they wanted with their work whilst still giving the museum permission to also use the content. In the end the majority of Community Curators chose joint copyright as this was felt to best fit the co-produced nature of the work and type of knowledge produced. Brown saw this as a great outcome for the museum as it enables the museum to use the participants' work while not at all restricting the participants' use of the material and, therefore, its proliferation beyond the museum.

The need for an increasingly negotiated and responsive approach to copyright – especially in the context of oral history – was argued for strongly by Georgina Young, who has worked at the Museum of Croydon, the Museum of Liverpool and the Museum of London and is currently Clore Leadership Fellow in Arts Participation and Engagement (2011-2012). Young points to the discrepancy in the way artists and collaborating members of the public are treated:

> If you work with an artist and they create work for you they hold on to the copyright because it's got a value. [...] We very rarely get artists to sign over that level of copyright. There is an issue of status, that you would ask an oral history interviewee to hand copyright over.

Yet while taking the desire that some Culture Shock! participants have to stay in touch with their stories and the museum very seriously, Alex Henry's experience shows the difficulties of institutionally managing this:

> I'm conscious about annoying people by sending them an e-mail every time we want to use their story. Where do you draw the line with the communication? Once they've signed the form over and have taken part. Obviously we have some people who are more engaged now. Other people are happy to have taken part, sign the form and to get on with their lives. Others do want to have more of a relationship with us. It's about getting that balance between annoying people and not telling them something you should have told them.

Georgina Young described a similar difficulty in terms of how much contact participants wanted after they had signed the form in the context of the Museum of Croydon's oral history collections:

> When the institution takes ownership, and it is taking ownership, it implicitly means that you are removing ownership from the person that gave it. Museum of Croydon did have really robust rules that if you were going to reuse something in a different context you would go back to them, providing they were still around. This was something which always caused us issues. We went back to people and said, 'this is the context in which it's being used. Are you happy?' People got annoyed with us asking so often. Some people wanted that ongoing relationship. Other people ten years later said, 'I signed a form saying I was happy. Why are you asking?' We're asking because what you originally signed the form for has subsequently changed. You know, the internet happened and you probably didn't think of that. It was good because we knew every instance had been approved. But we also frustrated people with constant requests for use in slightly different ways and there is probably a balance there, with what constitutes an entirely different use. Maybe we went a bit over the top. The whole point was to maintain a connection with the museum, not annoy them.

Henry and Young point to how ineffective the one-size-fits-all approach is yet also how challenging it is to personalize responses in larger projects and on an ongoing basis.

Iain Watson, who acted as Culture Shock!'s Project Director, was impressed by the impact of the project but argued that the desire expressed by some for ongoing relationships needs to be carefully interpreted and does not necessarily imply a bureaucratic fix:

> We've not yet got the right mechanisms for engagement around that. On one level, we could have a clever documentation system and every time you used that story you went back to that person in a very bureaucratic way, much like a copyright agency works out every time someone's article is photocopied and you get 1p. And my gut instinct that that is not what it's about, it's about something different.

The 'something different' is, perhaps, reflected in the response of some participants that they would like to know if their story is being used – and be invited to the exhibition opening – rather than necessarily be asked permission as such. As part of the legacy of Culture Shock! TWAM are working through what it might mean to keep in touch with people, specifically what might constitute an 'unanticipated use' and if a time limit needs to be put on keeping in touch (Alex Henry; Ian Thilthorpe; Morag Macpherson).

Georgina Young suggests that much of what people are interested in is, however, the relationship they made with the individual member of staff who worked with them: '[people who had donated oral histories to the Museum of Croydon] felt a connection to the individual who had done the oral history interview, because people respond to people and not organisations particularly'. For the focus groups this was expressed in terms of a way of working and the kind of relationship made between people involved, including the staff. The ethical challenge comes in ensuring that people understand that the person who, for them, represented the institution, may not be there indefinitely; a particular problem with the project funded nature of much participative work in museums. As Zenobia, who choose just to have her first name included here, put it, it was not just her story that needs to carry on but a particular 'Curious' way of working, a responsibility which she saw as belonging to the staff with whom she had worked. Pardasani saw this ongoing relationship with staff as key and suggested being invited to events and being included on a museum mailing gave a sense of a 'personal touch'. In terms of copyright, their comments strongly suggest the significance of the relationship as a kind of guarantor of wider institutional credibility and therefore points towards a need for the documentation of copyright and consent – whatever form it takes – to reflect as fully as possible the shared understandings built during the project between staff members and interviewees. Michael Young suggested there should be a 'policy which says, not that these things are sacred, but that lots of work went into them and they should be respected'.

Flexible approaches to informed consent

In terms of working with under 16s and adults who are labeled as being vulnerable, similar ideas recognizing the significance of timeframe and scale and the need for flexibility and negotiation are in evidence. While larger organisations (often based within local authorities) have specific safeguarding policies which have specific directives (e.g. no use of second names for people with learning disabilities), the interviews reflect an increasing organisational willingness to be flexible. For example, reflecting the Gilleck ruling, a group of teenage mums working on a Culture Shock! project were not asked to get their parents to sign a consent form as they were clearly living their lives as adults. Reflecting this kind of responsiveness, Ian Thilthorpe, Senior Manager: North and South Tyneside (TWAM), notes that if a certain aspect of safeguarding policy did not work with a particular group –

e.g. a person with a learning disability wanted both their first and second names used in an exhibition – then the front line worker could simply refer it upwards for a decision.

An issue which did emerge in a number of the interviews was whether the museum was primarily responsible to the partner organisation (often characterized in the interviews as the experts working with their clients) or to the individuals in the group. In some cases, such as work with Leverndale Hospital, Clare Coia, Open Museum Curator, discussed how important the partnership with professionals is, emphasizing the sharing of skills (see also Coia 2010). Yet sometimes the main relationship being with the group leader limited the ability for the museum to negotiate individual agreements with specific participants. For example Aileen Strachan mentions the effect of structural difficulties in building shared understanding with individuals in an English for Speakers of Other Languages group. Strachan notes that while everything was very clear with the tutors, specific individuals would come and go which limited the possibility of gaining a deep understanding of the meaning of authorship. The difficulty of the museum only having a relationship with the tutor or support worker was especially significant when questions of capacity to make decisions was an issue (for example with people with learning difficulties or people with dementia). Even in the cases of the most experienced staff working in museums with the best reputation for participative work, there was a sense of not being sure whether or how to challenge decisions made by staff or relatives which may seem to not respect an individual's wishes. This points to a careful consideration of different types of responsibilities to partners and participants and more specifically, to the need for increased awareness of the Mental Capacity Act in museum contexts.

The Web and Participation

It is clear that Web 2.0 logics are inflecting thinking about both participation and organisational structure. For example Tyne & Wear Archives & Museums have recently contributed some of their digitalized collection to Flickr: The Commons. Iain Watson, Director of Tyne & Wear Archives & Museums, described the process the organisation went through:

> The biggest challenge is when you don't know whose IP it is. For example with old photograph collections. [This debate] goes back to years and years ago, when I first got involved in this 15-20 years ago, a local authority solicitor saying 'if you're not going to face prohibitive damages, crack ahead with it'. Which on one level is an approach. Clearly I think there's not much point in having stuff if you can't use it. There are exceptions when you can't use stuff for a period of time, such as time limited archives. For the rest, you want to be able to use it. And so I think you've got an obligation to try and establish who owns the rights. If you can't, you have to make a reasonable decision about whether you should use that material or not. The basis should be if it is used for public good, then you should be able to use it.

TWAM have made a deliberate decision to embrace the range of possibilities offered by Web 2.0 which link openness, increased participation and commercial opportunities, as Ian Thilthorpe explains:

> [...] there has been a lot of worry in museums over the last 10-15 years that the moment you start putting collections images of a high quality on the web then people will use them and won't buy them, when I think the opposite has been proved. If you put high quality images up, then that generates requests for commercial use because actually people get to see more of the collections. Actually opening up and having a very simple and open approach to licensing I think is the way we need to go. So where people want to use it there are lots of visible licensing routes. We will license people to use our images. We will sell it through secondary and tertiary sites. I think that it's about being open and not restrictive. Because the whole

> movement, in terms of web use, is about sharing and open source and it's about being collaborative. It's about making sure people recognize that it's your stuff and that will generate more income for us than taking a restrictive approach.

As Thilthorpe's comments make clear taking such an open approach is not simply in an altruistic model of openness and participation but one which also has commercial benefits. This way of thinking is also leading to TWAM hosting 'hack days' to support digital innovation.

However, one of the contradictions of the Web 2.0 phenomena relates directly to copyright. Online media sharing means that you can upload your work yourself and take it down whenever you choose, and therefore create a sense of control. However, if you post on Flickr or YouTube you give them a 'world-wide irrevocable license' which is revoked if you remove the picture or video.[13] In other words, sometimes the web gives a feeling of openness and individual control but this is in the context of proprietorial licenses and, of course, the selling of advertising. Therefore even if the difference between 'public good' (as Watson puts it) and corporate gain may seem stark to professionals, museums find themselves in a contradictory moment where, through the deployment of copyright transfer, they seem to be taking more control away and disseminating less effectively than standard commercial media platforms.

Questions of democracy and legitimacy

Questions over the purposes of the specific project, and how copyright and informed consent fitted in, were not seen by the museum practitioners we interviewed as local or specific questions. Rather they were repeatedly located within broader ideas of public accountability and democracy. It is possible to delineate three different broad understandings of how museums practice democracy: 1) Representation democracy, public accountability, professionalism and participation; 2) Grassroots activism to create institutional change and; 3) Associative democracy which flows through earning legitimacy through interactions and building 'commons'. The argument we want to make is that how you see museums' legitimacy being earned – how you see museum's relationship to democracy – will influence the approaches taken to copyright and informed consent. And, in a sense, approaches to copyright and consent are one way in which the museum makes an argument for its legitimacy in working with people and their personal experiences.

Representation democracy, public accountability, professionals and participation

The most widely held views about how museums gain political legitimacy are linked to ideas of representational democracy (either through local authorities or via appointed Trustees), specific governance arrangements and public accountability. All of which are often drawn together under the idea of the 'public interest'. Perhaps the key idea here is that museums need to act as interpreters of the 'public interest' and that legitimacy comes from professionals making informed decisions supplemented by consultation and participation. This is effectively the position outlined in the Museum Association's Code of Ethics (2008). In terms of copyright and consent, the logic of 'public interest' locates legitimacy in making sure that outcomes funded by public money are available in the public domain and in minimizing the need for future public resources being spent on unnecessarily going back and checking with individuals.

For Nick Merriman, approaching these issues from the perspective of the Director of Manchester Museum and as the current Chair of the Museum Association Ethics Committee, legitimacy is certainly bound up with a strong sense of 'public interest' or 'public benefit'. Merriman explains that the

questions the Museum Association Ethics Committee consider when asked about disposals are 'What is the public good or the public benefit? We try and advise people on the right course of action which places public benefit as paramount. It's balance or reasonableness – it's like being a jury without coming to a verdict, we're just coming to advice, balanced advice, about what's the most appropriate course of action'.

In general the 'public interest' logic has tended to imagine the museum as a 'guardian' on behalf of the public, rather than the museum being an 'owner'. However, drawing on research about museums' future sustainability which Merriman conducted as part of a Clore Leadership Fellowship, he argues that thinking of the museum as an owner rather than 'guardian' might actually facilitate a more strategic view of existing collections and collecting strategy:

> We are effectively trustees or guardians – that led in past times to think that the collections were somehow inalienable and that our job was to keep them in trust forever. [...] In order to move on from a problem of just having too much stuff accumulating [...] we needed to shift our notion of property to one which is more 'hands on' in a way and more engaged in the here and now and to treat it more as a institution's property rather than something which is held in trust forever and in perpetuity. This means treating it more as an asset; a non-financially realizable asset. And either the asset works towards the institution mission by contributing to learning and research or, you could argue, it doesn't. It comes down to being professional and ethical – because if you are professional and ethical you should be able to make judgments in the here and now and be able to defend them to people who come after you. (see also Merriman 2008)

The sense of the museum as the legitimate 'owner' is reflected in Iain Watson's account of the Culture Shock! project:

> In Culture Shock! I think it was explicit from the start that these were going to be made available on the website, they were going to be accessioned as museum objects and that regardless of intellectual property law the museum has some kind of proprietary interest in the content produced. I think natural justice said that. And I think we were clear with people about that.

In effect, the direction set – in this case by TWAM's own (Local Authority approved) strategy plus the direction set by the public money administrated by, for example, the Heritage Lottery Fund – is believed to legitimize the museum taking a 'this is the deal' approach. Watson argues that the museum was clear and people could opt in or opt out of the project and so, in effect, Watson understands legitimacy as deriving from that clarity.

Watson sees the debate over copyright as a more recent iteration of persistent questions of how to relate to the balance between 'individual rights and the greater good'. For Watson this means that legitimacy cannot simply come from interactions between the museum and specific people and groups because there are other calls to legitimacy through wider issues of accountability. So while he welcomes the excitement generated by the Culture Shock! project, Watson argues that there always has to be a balancing of resources:

> I'm pleased that it's come out. It's great that people have that level of interest. In many ways we faced it for a number of years, so when we've done a project with a group, it ends and people feel bereft and want to maintain that relationship. And there are some people who have worked on a number of projects. [...] and you really don't want to cut those people off.

> But at the same time you can't concentrate limited resources on a small number of the same people.

A key question then becomes who is the legitimate mediator of these interests. The Museum Association Code of Ethics strongly emphasizes ideas of a 'balance', a balance which is struck by museum professionals:

> You will need to exercise judgment in applying the principles set out in the Code of Ethics for Museums.[...] sometimes competing considerations may need to be balanced. An ethical decision does not usually depend on a choice between 'right' and 'wrong' but between competing 'rights'. (MA 2008, p. 4).

The code states that there are two key balances to be struck: 1) between now and future (2008, 3.12; 6.0; 6.4) and 2) between specific individuals and 'the public interest'. Reflecting the Culture Shock! approach to clarity of transfer of copyright, one example given in the Code advises museum professionals to exercise 'caution' in response to specific reservations an individual might want to make on a donation (2008, 5.17) precisely because a balance must be struck between the individual donor and the wider 'public benefit'.

Museum professionals striking a 'balance' is seen by Merriman as a part of a legitimate professionalism:

> I sometimes think museums curators having expertise has been denigrated or placed alongside community involvement and given equal standing. We struggle with this a bit through our Collective Cultures, we had a programme whereby an object or a group of objects are interpreted by different perspectives including a curatorial perspective and actually the interpretations are given equal weight. In terms of strategic decisions about the collection, the fact that you have an expert who has dedicated their professional life gives them authority through experience to make strategic recommendations.

Yet, Merriman argues, professional judgment is improved by taking many 'different soundings':

> Legitimacy lies in the interaction between the professional experience of the curator and the different interested parties. But somebody has to make a decision. And I think it's right that it is in the professionalism of the curator is that the decision or that recommendation is located. [...] It is more porous than the traditional didactic academic approach. [...] Ethical questions are best solved by taking soundings from lots of people. I think these decisions are always poor when done only by one person. The point about ethics is to have a range of views that you then come to some balanced judgment about.

Mark O'Neill also recognizes the need for a kind of professional leadership and, in the same vein as Merriman, argues that 'the autonomy of professionals is derived from democracy, it isn't the other way round. People are given professional autonomy on conditions they deliver a public good'. However, for O'Neill there is a limit to the use of participation in delivering 'public good':

> The process of consultation is not just about giving people what they expect or want, we have a leadership role. It's saying that the process of consultation is about understanding where people are, what their background knowledge is and what they would need to learn more and what would inspire them. If you take consultation too literally you end up with displays which are accessible but not inspiring because they are not beautiful.

Clearly the arguments made by Merriman, O'Neill and Watson relate to the governance structures within which the museum they work in sits – they are arguments which allow them to operate as professionals within certain kinds of democratic logics. Indeed, Watson identifies a certain strength as coming through the local authority governance of TWAM:

> There are lots of ways of running [TWAM] but our model is cost efficient and based on representative democracy. Our governing body are elected by the citizens of this area. I think the challenge, and this is the challenge I put to our joint committee, is to use them more as a conduit to engaging the citizens in their wards. Because people forgot that local authority members are all the time speaking to people in their ward about a whole range of things. [...] So not only are they elected but they are very engaged with those communities.[14]

Watson evokes a democracy which flows from the bottom up the electorate of local authority wards to elected officials and then top-down from elected officials via policy and governance to museums. However, while committed to the model of democratic accountability provided by local authority governance, TWAM are nevertheless interested in experimenting with models of democracy:

> We're coming up with some exciting ideas. We've suggested the idea of having an alternative management team with community members on. The thinking around that is [to explore] what do other people do when they face the same decisions I have to face and do they come to the same conclusions or different conclusions. It will also give them an understanding of maybe why we are making decisions we make. So it's not about some crazy idea of handing over power and having anarchy. It's about say, well, engage in this process and debate with us.[15]

These more experimental approaches reflect a desire for increased porosity and a recognition of varying layers of involvement. Ian Thilthorpe emphasized the importance of relationships: 'It's retaining a relationship with somebody. Having started a relationship, let's continue it. All the work we do is about relationships. Whether it's a one off visit – we are trying to develop a quick relationship between them and us, 'oh I enjoyed that I'll go and visit one of their other sites'. The whole purpose is about developing relationships of different kinds, at different levels and of different intensities depending on the projects you are working on'.

Yet holding onto the museum as a legitimate mediator between the individual and 'the public' (now and in the future) – though nevertheless a position which has to be earned through consultation and participation – is a persistent idea. In the context of copyright, Watson argues that it is not necessarily a contradiction in terms to be a democratic organisation which wants to be 'proprietorial': 'if organisations are more open and transparent, then people might be open to giving over control'. As such the interviews discussed here signal the way in which copyright makes visible the operation of older and established forms of legitimation as well as how there are emerging trends for this to be melded with institutional adaptability, flexibility and porosity.

Grassroots activism and institutional change

In contrast Bernadette Lynch (see also 2011a; 2011b; with Alberti 2010) expresses more fundamental concerns about museums as institutions 'continued resistance to change' and criticises the oft-heard evocation of 'public interest' as a possible 'get out clause'. Seeing museums as 'continuing to avoid facing up to issues of coercive power and inequality of access and power', Lynch advocates a re-imagining of legitimacy through changing the relationship between the museum and communities. Lynch understands practices of 'empowerment-lite' as leading to a great anger, likelihood of disagreement and, therefore, to conflict:

> I always remember the very first time I had come back to UK and took up work at the Manchester Museum – a university museum that had virtually no relationship with communities that it was situated right in the heart of, Hulme, Moss Side, Rusholme, all very well known. I went out – I guess, naively – I went out and made contacts with communities and invited them to a meeting just with me and thought we'll build some nice relationships here. And what happened was an absolute assault of anger towards me – which I completely understood later on. They were saying, 'you're asking now? We've been here forever. We've got all these issues in our communities. Our young people, here you are sitting on all these resources, you have all our history…we don't have anything like this'. There was a big interest but big demand that the relationship with the museum change.

Lynch does not give up on the notion of the museum as a 'public resource'. Instead she sees the legitimacy of the resource as being slowly earned through knowledge of locality rather than from simple adherence to central government policies: 'Knowing your place. Place becomes critically important'. Lynch does also recognize the old dilemma, evoked by Watson, between individual rights and collective good and notes that a strategic approach to audience development (which implicitly is about a balance) is necessary. However rather than the museums' 'gaze' always being 'somewhere else' – chasing policy and funding initiatives – she argues for the 'institution defin[ing] its own strategy based on its own locality and local people'. Who to work with then emerges from local knowledge rather than from a less earned sense of 'let's find some refugees' to work with.

In terms of copyright and informed consent, Lynch takes issue with the idea that simply being clear about the institutional aims and requirements up front is sufficient. As a result Lynch argues that ethics is not a form and 'a waiver is not good enough':

> The interest in the work is not simply in the creation of the product, it never has been, it is what is gained in the relationship and working together – as colleagues, in solidarity – where all have the possibility of developing capabilities. It is not about saying 'you are no longer needed. We've got what we came for'.
>
> I would rather say 'let's design and sign this form together'. It's not something which says I've given you my life. Never talk to me again'.

Instead, she describes herself as 'an idealist': 'I prefer to work on trusting relations with the groups I've worked ethically with for such a long period of time. Once you start to say 'you've signed this and it is our property' they are no longer involved. Ours to take away and do with it as we will […] people are left bereft'. This does not mean that no written agreement can be made. However, instead of using an off-the-peg form, she suggests, an agreement can be drawn up together: 'How can it not be a detailed negotiation in every case. It has to be so there's a clear understanding'.[16] What can be seen in Lynch's argument is the way in which the very question of copyright and consent can be a driver for institutional change from the bottom up.

Associative democracy

Tony Butler, Director of MEAL, evokes a different kind of political logic to both 'representational democracy, public accountability, professionals and participation' and 'grassroots activism and institutional change', one which could be seen as a form of 'associative democracy' (our word not his). Associative democracy, as defined by Paul Hirst, comes from discontent with a bureaucratic state and offers instead a fusing of 'individual rights and freedoms' with 'public welfare' through organisations which are highly responsive and involving of those they serve (Hirst 1994, pp. 5-6).

Butler sees the particular mode of working at MEAL as flowing from its differences as an organisation – a charity on private land – and its semi-rural location:

> The vision for the museum is that it fits in with the rhythms of work and life and that it reflects the muddle of life in the community and the wider community. People will access the museum in all sorts of ways. They might go for a walk or use the café; they might come for an event or they might access us as a museum experience.

Butler draws attention to the difference of MEAL to the large local authority-connected museums such as TWAM or Glasgow:

> Can big organizations adapt to these things or not. If you are running the Laing Art Gallery [in Newcastle] there is a reputational issue which doesn't apply in a place like this. A large civic institution is based on its role as an institution, the idea of being custodian of treasures of the locality and that isn't the case here. [...] My concern for reputation is how we treat people. Because in the press that's where we would be criticized most. Rather than whether we presented a steam engine in the way it should be.

As a result, Butler does not centre the politics of MEAL around an imagined 'public' to which the museum is accountable and whose interests MEAL's professionals need to balance. Instead Butler describes the way staff and volunteers collaborate and draws attention to the politics of idiosyncrasy and self-actualizing networks.[17] Reflecting aspects of Lynch's bottom-up approach, relationships, Butler suggests, are negotiated and people work individually or together to define what needs to be done and to solve problems. This involves a re-imagination of 'the professional', where instead of people having highly demarcated roles and responsibilities, there can instead be a productive crossing over and interrelationship of roles.

However Butler also contrasts the kind of politics at work at MEAL, suggesting that unlike in urban centres the politics of social justice (associated with Lynch or Glasgow Museums) or 'supporting the dispossessed', are 'not so resonant here'. Butler fully acknowledges that MEAL has imperialist collections and a hierarchical management structure but argues that MEAL doesn't fit a 'dialectical view of the world' which is fueled by opposition and conflict. In this context, boundaries of ownership and consent are developed over time and through building a kind of conceptual (if not actual) 'common': 'so what [MEAL] isn't, is common land. It is not a village green but it has the ethos of a village green'.

In copyright terms the associative approach to generating a commons evoked by Butler resonates with an increasingly wide use of Creative Commons licenses in participative projects. In one recent innovative research project – The Umbrella Project, a partnership between Loughborough University and York's Pilot Theatre – people took part by phoning in answers to questions which were then recorded. All contributions recorded were automatically licensed under a Creative Commons Attribution-Non-Commercial-Share-Alike license:

> The license that's used on the Umbrella Project is called a Creative Commons Non-Commercial Sharealike License, which allows derivative works. It means anyone can share and build on the content, as long as they attribute its origin – here 'the origin' means 'the Umbrella Project' if you're remixing/building on stuff you've got from the site, and 'the person who has left a story' (if they've not done so anonymously) for people who submit content online or on the voicemail system.

What is intriguing about this is – unlike in conventional research ethics, the Museum Association Code of Ethics or Lynch's approach where power imbalances are treated very seriously – there is a kind of *as if* at work in the Umbrella Project. It is *as if* anyone involved in the Umbrella Project would be equally as likely to remix and reuse material for future use, when the project was set up precisely for a researcher to use the material. In the context of MEAL it is *as if* people can relate to each other across hierarchies in ways which grow new types of association. Legitimacy in the Umbrella Project is imagined as coming from being transparent about how consent works and making sure everything is available to all who participated. The legitimacy of MEAL comes mainly through it being earned between the people who use the museum. The political question is whether acting *as if* there is equality and free association generates greater possibilities than assuming in advance that inequality, institutional power and conflict are always determining frameworks.

Part 3:
How shall we do this?

In 'toolkits' it is conventional to provide some kind of flow diagram and to transform the messiness and in-processness of the work we all do into a schematized step-by-step process. While the workshop discussions and interviews we've explored above definitely do suggest certain specific things that most people agree need to be thought about, they also show the limits of, and complicate, any step-by-step approach.

What we are offering in this final section are the questions which have emerged through the interviews we conducted. One way of thinking about the interviews is that there is a constant professional dialogue in evidence between each individuals' own political views in general – and what this means for how they see the museum, their role and how they work with people – and their understandings of effective and context-relevant institutional politics (how to work within institutional structures to create institutional change).

What we hope to explore here is how these broader questions might inform your approaches to copyright and consent.

...and what's the museum for again?

Yes, it's a big question but doesn't almost every discussion you have about what to do and how to work come down to this question? Drawing out the questions that inflected the interviews, copyright takes us back to issues such as:

- What are the political potentials and limitations of your governance structure?
- How do you think about the relationship between top-down and bottom-up legitimacy?
- What is the current policy and funding context? How can your practice respond to but also challenge and extend the logics of policy and funding?
- What priority do you put on 'simply getting the stuff', versus how you work with and how you treat people, as Bernadette Lynch put it?

No one we interviewed approached these questions in a simple way. Legitimacy was not understood as either all top-down governance or all grassroots legitimacy. Everyone evoked some kind of mix. But the extent of the mix was different and there are real things at stake here. Both Nick Merriman and Mark O'Neill evoked the significance of their own governance structures and public participation as a way of informing – and legitimizing – professional decision making but nevertheless both were building an argument for the professional as mediator and interpreter of the 'public interest'. In terms of copyright and consent, if you do acquire memories, stories and objects then the legitimacy of the process is secured by clear consent and by the items being made publicly available. Iain Watson and Ian Thilthorpe at TWAM deploy similar logics to Merriman and O'Neill yet a combination of a bottom-up reading of top-down representational democracy and the logics of Web 2.0, perhaps, point to an extended reading of 'public legitimacy' which becomes meaningful through relationships built with individuals and groups. This is something like the role the Open Museum plays for Glasgow Museums and how the personal and personalized interaction of the Open Museum's approach might be scaled up is a focus of O'Neill's current work.[18]

For Bernadette Lynch it is grassroots activist democracy which gives the museum its continued legitimacy – including institutional change and responding to, and shaping, local policy. If there is a 'professional' for Lynch it is the professionalism of reflexive practice that comes from being prepared to deal with anger and conflict. Yet even though the 'public interest' is deeply informed through relationships which are embedded in locality, for Lynch the museum is still a public institution which should be renewed and not 'given up on' precisely because it is a shared resource: 'we work not in spite of the difficulties in these relationships but because of them'.

For Tony Butler at MEAL you could say that the notion of the 'public' is not a significant anchor for legitimacy. Rather reflecting logics of associative democracy, legitimacy come through what happens between people, the self-generating connections they make and a kind of making of 'common' resources. Acknowledging the specific possibilities and limitations of MEAL's governance (private land, entrance fee) and hierarchical structure (though flatter than many because of the size of the museum), Butler sees possibilities for reflecting the rhythms of community and using those rhythms to renew and expand the museum.

The subtlety of each of these thinkers makes it impossible to simplify their positions into a scheme or a series of tick boxes. Yet they each do evoke slightly different logics of legitimacy and democracy and, therefore, imply the different ways in which museums might approach copyright and consent.

Questioning Copyright

At the most basic level there is a sense that certain stages are at work in participative and collaborative projects.

1. Institutional, Policy and Funding Contexts (as above)

2. Process or outcome?
3. Project Aims
4. Shared Understandings (timescale and scale)
5. Documentation for future
6. Feeding back into institutional, policy and funding contexts

Yet how you move through these steps can be very different depending on how you read and understand the bigger questions of political legitimacy and democracy above. Here we have developed a flow of questions which might help you work through copyright in collaborative work.

2. Process or outcome?

- Is there an outcome which the museum has an interest in beyond the event? (An oral history? An exhibition? A digital story?)

If yes, then it is time to think about issues of worth copyright and informed consent.

3. Aims

- How do you develop 'projects?' Are they co-developed from the first? Or is there a fixed project into which you are inviting participation?

- Are the parameters fixed in advance by funders or the institution? Can these parameters be challenged if necessary? If not, then be upfront about this from the first.

- What aspects of the project's aims can be/should be negotiated with the people with which you are working?

- How might this mix – between institutions setting parameters and fully negotiating the terms – vary from project to project? How might the type of knowledge produced affect questions of copyright and consent? For example, is there a difference between a competition inviting people to submit photographs of their city on Flickr and a project where people are being invited to share their life histories or personal memories?

4. Shared Understandings

- How can you work together to make decisions about the immediate display? How can you explore issues of timescale and scale? (For example, will it be on a website? Will it be accessioned into the collection?)

- How will it be interpreted in the short term? Who will control the interpretation?

- If the object is collected under what circumstances would the author like to be contacted? Every time it is displayed? Or only if it is being displayed in a way unanticipated? How much involvement would the author want over future interpretation of the work? Is there a time limit on this? Is it about courtesy or securing additional permission?

- Whose responsibility is it to keep contact details up to date and to keep in touch?

5. Documenting understandings

- How will these understandings be documented? How can the institution record these understandings in a meaningful way and so they are carried forward beyond the life of the project?

- Will there be a future hand-over of responsibility, for example, from one team to another within the museum or from one organization to another (or from museum to archive or university to museum)? How will you manage the transfer of responsibility and its communication to participants?

6. Feeding back into institutional, policy and funding contexts

- How can ways of working developed in specific projects affect the wider institutional culture? How might collaborative ways of working affect understandings of the legitimacy of the museum?

- Can you use the project evaluations and reporting to funders to help them revise approaches/policies?

Shared Understandings and Political Differences

What seem to be technical concerns about copyright and consent are connected to much bigger questions. As we have argued, thinking through your position on these bigger questions will help you approach questions of ownership and consent.

It is clear is that there are a variety of factors which weigh on approaches to copyright. Key factors noted were timescale and scale. If a project was fully authored by those involved, if they knew the site where the work is displayed and there was no broader mediation (via the web) or accessioning of items into the collection, then often copyright and consent were not major concerns. However, as soon as a project outcome has a longer term life or wider scale, then copyright and consent clearly become more significant.

This takes us back to the questions of legitimacy. For those who draw on the ideas of the museum professional as a mediator between individuals and a broader 'public interest', then the museum being very clear up front about its aims and expectations is enough to be reasonable. In this mode, it is also felt that a proprietorial interest was justified because of the use of public monies and that clarity over copyright limited the need for future resources to be spent going back to check: it was seen by some that all these factors gave the museum the right to set the terms. For others, a much more bottom up view was in evidence and how you treat people was key. Here copyright and consent were seen as more negotiated with agreements being drawn up together. In one view, this was thought about as a re-imagination of 'the public', in another this related to a more associative logic where the professional determination of the 'public interest' was not a major anchor.

These different readings of museums' political legitimacy are a sign of the times. The big question for the public sector today – all the more urgent in context of the cuts to funding – is how the meanings of a public ethos might be re-imagined. What we have here is a range of approaches: public plus participation, a grassroots reinvention of the public from inside and also a kind of post-public which is more about the associations and relationships between people than institutions as a public service.

In this booklet we have spoken about the links between practicalities, ethics and politics. Whether you are a researcher or work in a museum, and from whatever position you might have within a museum hierarchy, the contributions from those who have been involved in museum participation projects suggest that there is an expectation that the ethos of collaboration will be used to enliven and expand the conceptual parameters of the institution. In other words there is an institutional politics to be done around these issues. And one place to start is with the awkward issue of copyright and consent.

Further reading and guides to copyright:

UK:

Web2Rights, a UK-based project, was originally funded by JISC to develop practical toolkits around IP issues. They now continue as a consultancy team and have a range of useful resources available via their website. The Web2Rights toolkits are available at:
http://www.web2rights.org.uk/documents.html

Beyond the UK:

Aboriginal and Torres Strait Islander Library and Information Resources Network Protocols, a project exploring the ethical and practical issues of IP in the context of indigenous heritage. Available at:
http://www1.aiatsis.gov.au/atsilirn/protocols.atsilirn.asn.au/index6df0.html?option=com_content&task=blogcategory&id=0&itemid=6

Intellectual Property Issues in Cultural Heritage: Theory, Practice, Politics, Ethics is an ongoing research project which is working to explore and facilitate fair and equitable exchanges of knowledge relating to archaeology. Their website signposts a range of useful resources and literature reviews. Available at:
http://www.sfu.ca/ipinch/

Bibliography

CMLG (n.d.) Culture Shock: Tolerance, Respect, Understanding. Cornwall, cmlg. Available at: **http://cultureunlimited.org/culture-shock.php** (accessed 17 December 2009).

Coia, C. (2010) 'The Gardener's Ark' in *Out There, The Open Museum: Pushing the Boundaries of Museums' Potential*. Glasgow Museums. Glasgow: Culture and Sport Glasgow (Glasgow Museums).

Culture:Unlimited (2011) *Culture Shock! Evaluation*. For Tyne & Wear Archives & Museums. Newcastle.

Dodd, J, O'Riain, H, Hooper-Greenhill, E. & Sandell, R. (2002) *A catalyst for change: the social impact of the Open Museum*. Leicester: Research Centre for Museums and Galleries.

Freire, P. (2011 [1970]) *Pedagogy of the Oppressed*. London: Continuum.

Glasgow Museums (2010) *Out There, The Open Museum: Pushing the Boundaries of Museums' Potential*. Glasgow Museums. Glasgow: Culture and Sport Glasgow (Glasgow Museums).

Hirst, P. (1994) *Associative Democracy: New Forms of Economic and Social Governance*. Cambridge: Polity.

Ledger, S. (2012) *Staying Local: support for people with learning difficulties from inner London 1971-2007*. Unpublished thesis: The Open University.

Lessig, L. (1999) *_Code and Other Laws of Cyberspace_* New York: Basic Books.

Lynch, B. (2011a) Whose cake is it anyway? A collaborative investigation into engagement and participation in 12 museums and galleries in the UK. Available at: **http://www.phf.org.uk/news.asp?id=1418**.

Lynch, B. (2011b) 'Collaboration, contestation, and creative conflict: On the efficacy of museum/community partnership' in Janet Marstine (ed.) *Routledge Companion to Museum Ethics: Redefining Ethics for the Twenty-First Century Museum*. London and New York: Routledge.

Lynch, B. and Alberti, S. (2010) 'Legacies of prejudice: racism, co-production and radical trust in the museum', *Museum Management and Curatorship*, 25 (1), 13-35.

Mencap (2011) *Involve Me*. Available at: **http://www.mencap.org.uk/involveMe**.

Merriman, N. (2008) 'Museum collections and sustainability', Cultural Trends, 17:1, 3-21

Nind, M. (2008) 'Conducting qualitative research with people with learning, communication and other disabilities: methodological challenges.' (ESRC National Centre for Research Methods Review Paper (NCRM/012))

O'Neill, M. (2002) 'Preface', in Dodd, J, O'Riain, H, Hooper-Greenhill, E. & Sandell, R. (eds) (2002) A *catalyst for change: the social impact of the Open Museum*. Leicester: Research Centre for Museums and Galleries.

Paradigm (2005) Supported Decision Making Book **http://www.paradigm-uk.org/articles/Supported_Decision_Making_Book/2941/42.aspx.**

Rix Centre. Available at: **http://www.rixcentre.org/**

Simon, N. (ongoing) Museums 2.0. Available at: **http://museumtwo.blogspot.co.uk/**

Simon, N. (2010) The Participatory Museum. Available at **http://www.participatorymuseum.org/read/**

Ward, A. (n.d.) Is your oral history legal and ethical?', *Oral History Society*
http://www.ohs.org.uk/ethics/

Wiles, R., Heath, S., Crow, G. and Charles, V. (2005) *Informed Consent in Social Research: A Literature Review ESRC National Centre for Research Methods*
NCRM Methods Review Papers. Available at:
http://eprints.ncrm.ac.uk/85/1/MethodsReviewPaperNCRM-001.pdf

Web2Rights. Available at: **http://www.web2rights.org.uk/**

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[1] 'Participation' is used to describe what Andrea Cornwall calls 'invited spaces', that is the 'expanded 'participatory sphere' that lies between the formal institutions of state bureaucracy and service delivery and the kinds of associations, organizations and informal institutions that exist within society at large. (2008, p. 19). Collaboration does not necessarily operate in these kinds of spaces.
[2] The workshops and interviews with professionals were conducted as part of an Arts and Humanities Research Council (AHRC) project 'Partnership and Participation: Intellectual Property and Informed Consent' (see **http://www.partnershipandparticipation.wordpress.com**). The interviews with participants were conducted as part of a separate AHRC project 'Tackling ethical issues and dilemmas in community-based participatory research: a practical resource' (see **http://www.dur.ac.uk/beacon/socialjustice/researchprojects/cbpr/**)
[3] While this is an oft-stated fact about intellectual property there are arguments to say that it has changed with the inclusion of database within copyright law under 1997 Copyright and Rights Database Regulations (Bainton 2007), i.e. that the facts and data noted in a database are subject to the same protections as is the academic paper that comes out of analysis of the database.
[4] That's not to say that participation might produce other forms of IP but in museum projects copyright is the most obviously relevant.
[5] The extension relates to producers and performers not composers.
[6] This issue came to prominence when the University of Cambridge attempted to assert ownership over IP generated by all academic staff employed by the University. It provoked a concerted campaign and was ultimately overturned. However, there are different rules for different types of work. It might be clearer that a peer review journal article is the IP of its author, but when materials are created for teaching the institution has, arguably, a great claim.
(see **http://www.richardpoynder.co.uk/Ownership%20tussle%20in%20ivory%20towers.htm**)
[7] Numerous guidelines specifically state that with all children under 16 parental consent should be sought (Ward online). However, this is not legally the case. While it is noted that in 'England, Wales and Northern Ireland, children under 16 are now *automatically* presumed to be legally competent to give consent', since the Gilleck ruling if it can be judged that a child can '"understand" what participation in research will involve then parental consent is not necessary' and that as long as 'sufficient understanding' is indicated that 'a parent has no right to override their child's wishes' (Wiles et al. 2005, p. 9)
[8] This thinking around process and outcomes is reflected in changing roles within museums. For example at the London Transport Museum, two related roles have been developed - Community Curator and Community Learning Officer. Michelle Brown, who is Community Curator, suggests that while there is a lot of cross over, for the projects led by the Community Learning team it is 'more about the learning experience of the participants', where the Community Curator projects are more about 'developing our collection in some way, I guess. I think that's the difference really. Engaging people with the collection. But we need that outcome, not necessarily a tangible outcome, but something that can be fed back into the collection'.
[9] Opened in 1994, it describes itself today as 'a free service that allows groups, venues and community event organisers in Glasgow to borrow museum objects and create displays' (Glasgow Life, Open Museum,
http://www.glasgowlife.org.uk/museums/our-museums/open-museum/about-the-Open%20Museum/Pages/home.aspx). See Dodd et al. (2002) and a recent publication celebrating ten years of the open

museum (GM 2010).
[10] Mark O'Neill was the Keeper of Social History and founding curator of Springburn Museum at the time and held the role jointly with Jem Fraser (Head of the Museum Education Service).

[11] The other Culture Shock! partners were Beamish - The Living Museum of the North, The Bowes Museum, Hartlepool Museums & Heritage Service and Culture:Unlimited. Culture Shock! was funded by the Heritage Lottery Fund, Renaissance North East, Tyne & Wear Archives & Museums Business Partners and the Gillian Dickinson Trust.
[12] Alex Henry noted that the approach and the copyright form did itself evolve over time and that staff members did use a flexible approach when it was felt appropriate.
[13] The full YouTube agreement is:

8.1 When you upload or post Content to YouTube, you grant:

1. to YouTube, a worldwide, non-exclusive, royalty-free, transferable license (with right to sub-licence) to use, reproduce, distribute, prepare derivative works of, display, and perform that Content in connection with the provision of the Service and otherwise in connection with the provision of the Service and YouTube's business, including without limitation for promoting and redistributing part or all of the Service (and derivative works thereof) in any media formats and through any media channels;
2. to each user of the Service, a worldwide, non-exclusive, royalty-free license to access your Content through the Service, and to use, reproduce, distribute, prepare derivative works of, display and perform such Content to the extent permitted by the functionality of the Service and under these Terms.

8.2 The above licenses granted by you in Content terminate when you remove or delete your Content from the Website. The above licenses granted by you in textual comments you submit as Content are perpetual and irrevocable, but are otherwise without prejudice to your ownerships rights, which are retained by you as set out in paragraph 7.2 above.

[14] Iain Watson draws attention to the shifts in governance which have been set in train by the public sector cuts: 'Across the country lots of test to established ways of working. Suffolk, everything contracted out. Legal challenges around that. I think people still have a lot of faith in the value of public service. I believe there is still a public service ideal which is important'
[15] This is through a Paul Hamlyn funded project, 'Our Museum: Communities and Museums as Active Partners'. Available at: **http://www.phf.org.uk/page.asp?id=1125**
[16] One of the institutional arrogances Lynch sees here is the museum holding back and not making visible the parameters of projects – for example legal issues, specifically developed policies or, a point also made by both Crawford McGugan and Georgina Young, budgets.
[17] This resonates with a range of conceptual shifts linked to ideas of 'multitude' and 'commons' (Hardt and Negri 2005).
[18] Mark O'Neill argues, 'It is also a means of scaling up, I see scale as an ethical issue and not just an impact issue. The Open Museum does many very powerful quite small projects but we need to find a way of reaching more people, especially given Glasgow's conditions. And the underlying thrust of Curious was how can we use one type process but reach a lot more people and I think it succeed quite brilliantly at that. Assuming it reaches its target of training 5000 volunteers'.