

The following document is AN EXAMPLE ONLY, intended to help you better understand the kind of provisions typically included in this type of agreement. It is not intended as a substitute for consulting with an experienced attorney and receiving legal advice based on the facts and circumstances of a particular case. It also does not necessarily represent the only possible way to structure the business relationship or the range of deal terms that might be available in a particular situation.

It is important to remember that just as every transaction is unique, so is the proper structure of the agreement documenting that transaction. Rarely does a so-called “standard” or “boilerplate” legal form fit the particular needs of the parties to a transaction. When a party says their contract is “standard” what they usually mean is that it is in a format that they are accustomed to using. There is some value in starting from a common ground, but never assume that a “standard” contract is not negotiable. It is all too common for parties to employ a “standard” form agreement without carefully considering the implications of its terms or its failure to address critical issues until a dispute arises. There are those who believe that the process of negotiating the terms of agreements is tedious and is a waste of time and money – they often try to cut corners by employing “standard” forms. However, in our experience the process of careful drafting and thorough negotiation is as valuable (or more so) than the final product. Those who take the time to clearly discuss their expectations, and to memorialize those expectations in a written agreement, forge stronger relationships and are much less likely to find themselves in a dispute later on.

**SHOW ME THE MONEY:**  
**Legal and Ethical Implications**  
**of Working with For-Profits**

**AAM Museum Conference**  
**May 2, 2009**

(originally presented at the  
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**LEHMANN STROBEL** PLC

LEGAL AND BUSINESS AFFAIRS

# Session Topic

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- In this session we will discuss what steps museums can and should take to make the most of corporate sponsorship opportunities without compromising core institutional values.

# Introduction

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- Branding and Marketing opportunities and other forms of business support present benefits as well as consequences requiring careful consideration.

# Introduction

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- Museum staff need to know how to properly structure donor, sponsorship and advertising arrangements with for-profit companies.

# Introduction

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- Museum staff should be familiar with internal museum policies and with museum association guidelines.

# The Funding Pie

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# The Funding Pie

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- Increasing competition among museums and from other charities
- Shift away from government to individuals, foundations and businesses
- Corporate financial support grew from under 19% in 1989 to over 35% in 2005

# The Corporate Pie

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# The Corporate Pie

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- ◉ Shift from corporate philanthropy to corporate marketing sponsorships -- “strategic philanthropy”
- ◉ Corporate dollars come from marketing budgets
- ◉ “Quid pro quo”
- ◉ Dealing in a “business-like” manner

# Show Me the Money

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- In the film “Jerry McGuire” an unhappy sports agent writes a personal mission statement and decides to leave a soulless sports agency to become an independent agent.
- McGuire loses all but one client.
- His client coaches him to “show me the money.”

# Show Me the Mission

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- The moral of “Jerry McGuire is that the pursuit of financial success does not need to be incompatible with mission and values, but it should be second place to them.

# Challenges

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- Can Museum successfully pursue corporate sponsorships while remaining true to its mission and values?

# Challenges



"She then went and threw back the curtain, when she was much surprised to see how oddly her grandmother looked in her night-clothes."

# Challenges

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- Are corporations always the Big Bad Wolf?



# Challenges

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# Challenges

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- ◉ Or are corporations more like the Frog Prince?

# The Key

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*This above all: to thine own self be true,  
And it must follow, as the night the day,  
Thou canst not then be false to any man.*

Polonius' advice to his son  
Hamlet, Act 1, Scene 3

# The Key

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- Remain true to Museum mission

# Legal Considerations



# Legal Considerations

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- There are few statutory or contractual constraints to sponsorship relationships.

# Legal Considerations

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- Trust law imposes duties of care, loyalty and obedience.
- Positive fiduciary duty to seek adequate funding
- Duty to remain true to mission
- Duty of due diligence in carrying out responsibilities
- Duty of loyalty requires avoiding conflicts of interest

# Legal Considerations

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- State and federal laws regulate the acquisition and use of charitable contributions for lobbying and political campaigns.



# Legal Considerations

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- Corporate sponsorships may involve tax considerations.
- Federal tax laws on unrelated business income (UBIT)
  - Substantial benefit (2% or \$75)
  - Acknowledgement vs. advertising
    - Value neutral descriptions
    - Website links
    - Handing out samples

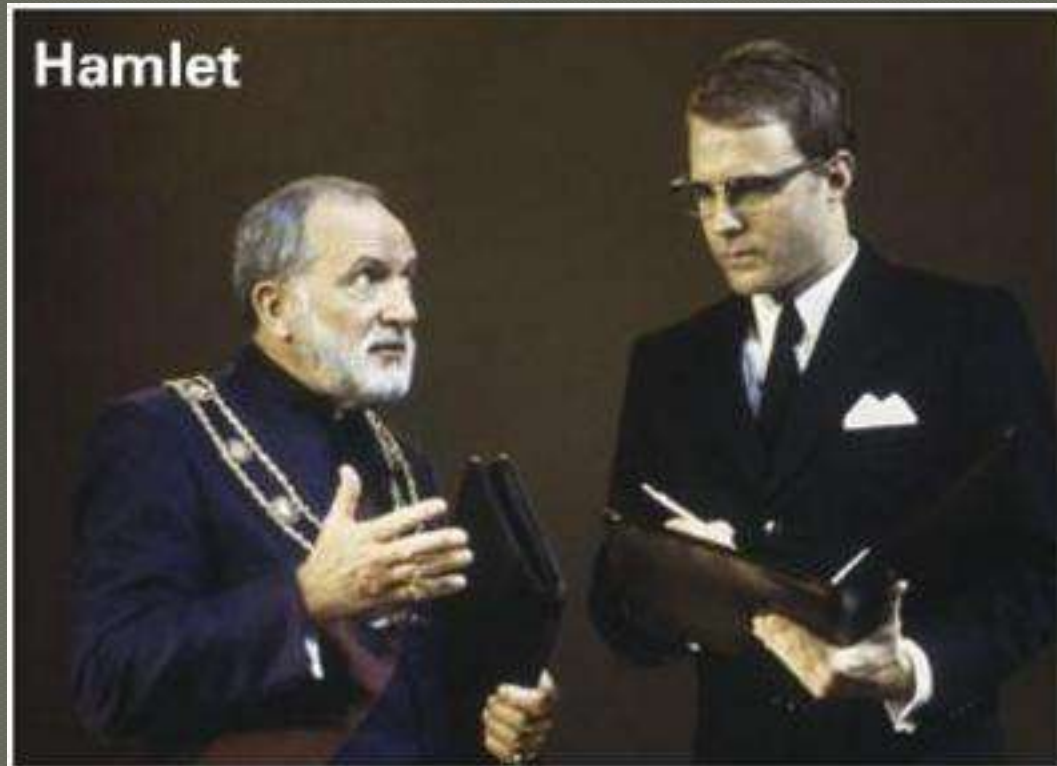
# Legal Considerations

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- ⦿ Accounting for corporate sponsorships must follow GAAP principles.

# Ethical Considerations

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# Ethical Considerations

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- ◉ Be true to mission
- ◉ Be true to Museum
  - Protect reputation
  - Protect brand
- ◉ Protect curatorial functions
  - Retain control of exhibit content
  - Protect collection

# Ethical Considerations

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- ◉ *AAM Guidelines for Museums in Developing and Managing Business Support*
  - Acknowledges mutual benefits of museum-business relationships
  - Each museum must draft its own policies on business support

# Ethical Considerations

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## ◉ *AAM Guidelines* (continued)

- Individual Museum policies must:
  - Comply with the law
  - Be consistent with the Museum's mission, policies and procedures
  - Maintain control over content and integrity of programs and activities
  - Uphold the duty of loyalty – avoid conflicts of interest
  - Be transparent – confidentiality agreements?

# Ethical Considerations

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- Individual museum policies should:
  - Reflect individual museum's mission, values and objectives
  - Define processes for making decisions
  - Establish conflict of interest policies
  - Explain any excluded uses (tobacco, alcohol)
  - Set standards for use of museum brands and logos
  - Address exclusivity issues
  - Prohibit “quid pro quos” (Vendor relationships must not be dependent on donations)
  - Include procedures for terminating the relationship (bankruptcy, scandals can harm museum reputation)

# Self Evaluation

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- Properly done, developing a policy on corporate sponsorships is the first step in the self evaluation process.
- Establish sponsorship objectives and goals
- Assess museum needs
- Inventory Museum assets
- Pricing – not needs based but market-driven



# Understanding the Market

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- Corporations fund through marketing budgets (timing of “ask”)
- Focus on changing demographics

# Understanding the Market

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- Sponsorship evaluation criteria
  - Tangible benefits
  - Long-term value
  - Ability to reach target audience and build relationships
  - Positive exposure for corporate brand
  - Potential for leverage with additional resources
  - Potential for long-term, sustainable partnership

# Understanding the Market

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- Identifying sponsorship partners
  - Compatibility
  - Mutual benefits

# Understanding the Market

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## ◉ Developing the relationship

- Networking and personal contact
- Identifying the decision makers
- Explaining advantages/benefits to company
  - In business terms
  - What the Museum can offer
- Stages in corporate giving (“Contribution Continuum”)
- May start with a donation, grow into an alliance

# Understanding the Market

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- ◉ Developing strategic alliances
  - Ask why the business is making the donation
  - Discuss how to develop the relationship

# Finalizing the Deal

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# Finalizing the Deal

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- Importance of putting sponsorship agreement in writing
  - Manage expectations
  - Establish what will be exchanged
  - Express values
  - Anticipate problems
  - Adopt procedures

# Finalizing the Deal

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- ◉ What can go wrong?
  - Misunderstandings (verbal promises)
  - Changed circumstances
  - Due diligence – look for a record of performance



# Finalizing the Deal

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## ○ Basic terms of a Corporate Sponsorship Agreement

- Binding contract
  - Offer, acceptance and consideration
  - Verbal contracts
- Program description
- Contribution of sponsor
- Acknowledgement/credit
- Exclusivity

# Finalizing the Deal

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- Basic terms (continued)
  - Other benefits
    - Museum access
    - Use of Museum brand and logo
    - First look at future opportunities
  - Sponsor-generated publicity
  - Cancellation and termination
    - Program is cancelled
    - Corporation doesn't perform
    - Force Majeure
    - Other reasons
      - Counter to mission
      - Damaging to museum reputation

# Finalizing the Deal

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## ◎ Basic terms (continued)

- Confidentiality provisions – suitable for museums?
- Charitable contribution documentation
- Indemnities
- Authorized representatives

# Finalizing the Deal

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- ◉ Managing the relationship
- ◉ Evaluation and feedback
  - More than just “thank you”
  - Building trust – demonstrate value
- ◉ Taking the relationship to the next level
- ◉ Reassess Museum needs and company wants

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# Is your museum living in the past?

**Intellectual Property Asset Management  
Non-Profit Administration & Board Governance  
Employment & Volunteer Management  
Museum Policies & Ethics**



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