

## Underlying assumptions:

1. We curate *evidence trails* from user generated content (UGC) posted via social channels or an email form on the TMW website. Evidence trails contain curators' commentary, verbatim quotes from users, user names and links to profile pages. They are displayed on the 10most website in the form of a comment on the relevant object page.
  - » participants own the original copyright in their content
  - » they implicitly grant the social media platform a non-exclusive(...) right to use the content
  - » we own the copyright in the curated evidence trail, however, we need permission to use participants' original contributions
2. *Evidence trails* are hosted on the 10most website. The related fact on the MoDiP website has a link to the *evidence trail*. (Alternatively, the evidence trial might be directly integrated with meta data in the MoDiP digital collection and displayed on the MoDiP website.)
  - » while we could have separate licenses for "normal" MoDiP content and TMW content (including UGC), this makes things messy. Ideally we'd like to stick with the current license on the MoDiP website and not introduce a second license.
3. We want to keep our options open on how to onward-license the evidence trails, especially with respect to any side effects related to current MoDiP content licensing
  - » un-traceable IP holders for some collection items and related uncertainties regarding IP in the collection as a whole make it risky to adopt Creative Commons licensing or similar
  - » the least restrictive model would be a blanket license to use UGC in any way we see fit, i.e.
    - a) participants transfer their copyright to us, - or -
    - b) participants keep their copyright but grant us an unrestricted license to use it.
4. We want to play fair with participants and not scare them away
  - » participants have a "moral" right to their content and should be free to use their contributions/materials in any way they please
  - » they should their copyright and grant us a license to use it
  - » the granted license should be as far-reaching as possible to keep our options open (see 2.4 in the Terms & Conditions of Service)

## The Terms & Conditions of Service are adapted from the following sources:

- Web2Rights project (JISC/HEFCE 2008) - <http://www.web2rights.org.uk>
- BBC Terms of Use (BBC 2012) - <http://www.bbc.co.uk/terms/>
- Facebook Statement of Rights and Responsibilities - <https://www.facebook.com/legal/terms>

## Short version - Terms & Conditions of Service - Ten Most Wanted

Ground rules:

- 1) You are nice to others and play by the [rules](#) [link to long version of terms]
- 2) You keep ownership (copyright) of your contributions
- 3) We may use your contributions to enhance the [MoDiP collection](#) [link to MoDiP]

Yes, that's fine with me

## Long version - Terms & Conditions of Service - Ten Most Wanted

### Terms & Conditions of Service

#### THE AGREEMENT

The following agreement ("this Agreement") describes the terms and conditions on which Ten Most Wanted ("TMW") offers you access and use of material found on this website and related social media channels ("the Service"). This offer is conditional on your agreement to all the terms and conditions contained in this Agreement, including your compliance with policies, guidelines and terms linked by way of URLs in this Agreement ("Terms & Conditions of Service").

By using the Service or by exercising any rights provided to parts of it, you accept and agree to be bound by the Terms & Conditions of Service. TMW only grants you the rights contained in this Agreement in consideration of your acceptance of the Terms & Conditions of Service.

If you do not agree to the Terms & Conditions of Service you should not use the Service and therefore decline this Agreement, in which case you are prohibited from accessing and/or using the Service. TMW may amend this Agreement at any time at its sole discretion, effective upon posting the amended agreement on [\[insert T&Cs URL\]](#). No variation or counter offer of this Agreement will be accepted by TMW.

#### 1. The Service

**1.1** TMW involves members of the public in a playful way in the discovery and verification of previously undocumented facts about collection items curated by the Museum of Design in Plastics ("MoDiP"), a specialist research resource within the Arts University Bournemouth ("AUB"). It encourages and supports players to collaborate in physical enquiry as well as online research. Online discussions and materials submitted to TMW, including website submissions and communications via email or TMW social media channels, are used by MoDiP curators to produce evidence trails for facts about MoDiP collection items and might be reproduced on the TMW and MoDiP websites.

**1.2** You acknowledge that TMW is a service provider that may allow people to interact offline and online regarding topics and content chosen by users of the Service, and that users can alter the Service environment on a real time basis. As part of the nature of the Service, TMW does not always or will not always be able to regulate the content/communications created and made available by users of the Service or otherwise. As a result TMW has limited control, if any, over the quality, morality, legality, truthfulness or accuracy of various aspects of the Service.

**1.3** You acknowledge that: (1) by using the Service you may have access to graphics, sound effects, music, video, audio, computer programmes, animations, text and other creative output (“Content”); and (2) Content may be provided by TMW or by others such as the users of the Service (“Content Providers”).

**1.4** You acknowledge that TMW and other Content Providers have rights in their respective Content under copyright and other applicable laws, and that except as described in this Agreement that such rights are not transferred by mere use of the Service. You accept full responsibility and liability for your use of any Content in violation of any such rights. You agree that your creation of Content is not in any way based upon any expectation of compensation from TMW. You acknowledge that this Agreement does not assign or transfer ownership, title or interest of the Intellectual Property rights in the Service to you.

## **2. Licences and IPR**

**2.1** Subject to the terms of this Agreement, TMW hereby grants you a non-exclusive, royalty free and revocable licence to access and use the Service and use the content in the Service in accordance with the Terms & Conditions of Service.

**2.2** Content owned or licensed to TMW as part of the Service can be used by any user of the Service for any such purposes that are conducive to education, teaching, learning, private study and/or research.

**2.3** Users of the Service can create Content in the Service in various forms. TMW acknowledges and agrees that, subject to the Terms & Conditions of Service, you will retain any and all applicable copyright and any other intellectual property rights with respect to any Content you create using the Service, to the extent that you have such rights under applicable law.

**2.4** You understand and agree that by submitting your Content to any area of the Service you automatically grant (or you warrant that the owner of such Content has expressly granted) to TMW a non-exclusive, transferable, sub-licensable, royalty-free, worldwide license you may have or obtain with respect of your Content, to use your Content for all purposes within the Service.

**2.5** You agree to use all best efforts to ensure that your Content does not infringe any Intellectual Property rights of a third party.

**2.6** You agree that even though you may retain certain copyright or other intellectual property rights with respect of the Content you create while using the Service, you do not own the account you use to access the Service, nor do you own any data TMW stores on TMW servers submitted by others.

Your intellectual property rights do not confer ownership of others' data stored by or on behalf of TMW.

### **3. Community Guidelines and Policies**

**3.1** You shall not harass or cause distress or inconvenience to any other person using TMW or disrupt the normal flow of dialogue within TMW, in particular, on the TMW website or social channels.

**3.2** You shall not infringe or try to infringe the privacy or other rights of other TMW users. This includes you storing or trying to store personal data or using details of other TMW users.

**3.3** You shall not impersonate any person or entity without their consent, including but not limited to a TMW employee, or falsely state or otherwise misrepresent your affiliation with a person or an entity.

**3.4** You shall not infringe any applicable law (for instance copyright law) when using TMW. In particular you shall not upload, e-mail or otherwise transmit Content that infringes or violates any regulations or third party rights under UK or International law.

**3.5** You shall not upload, e-mail or otherwise transmit Content that

- contain offensive text or images;
- contain pornography and sexually explicit content;
- contain gratuitous violence or promote, encourage or facilitate violence;
- incite hatred whether based on race, religion, gender, sexuality;
- promote, encourage or facilitate anti-social behaviour;
- discriminate against any specific social group or otherwise exploit vulnerable sections of society;
- promote, facilitate or encourage illegal activity;
- are misleading, defamatory, or that contain illegal, or otherwise objectionable content.

This list is not exhaustive and may be amended by TMW from time to time.

**3.6** You shall not subject TMW to any derogatory treatment or use TMW in such a way that would bring TMW, MoDiP or AUB into disrepute.

**3.7** You shall not directly or indirectly suggest any endorsement or approval by TMW of a product or service (for instance, a personal website) or any non-TMW entity, product or content or any belief or opinion expressed within a product or service.

**3.8** You shall not disrupt or try to disrupt TMW. You agree not to use TMW to distribute software viruses or other harmful programs, or to engage in harmful, harassing or otherwise objectionable activity.

**3.9** You agree that TMW may take whatever steps it deems necessary to abridge, or delete material on the Service in its sole discretion, without notice to you.

### **4. Releases, Disclaimers of Warranties, Limitation of Liability and Indemnification**

**4.1** As a condition of access to the Service, you release TMW from claims, demands, damages of every kind and nature, known and unknown, suspected or unsuspected, disclosed or undisclosed, arising

out of or in any way connected with any dispute you have or claim to have with one or more users of the Service. You further understand and agree that TMW will have the rights but not the obligation to resolve disputes between users relating to the Service.

**4.2** Any Content, or other data residing on TMW's servers or the Service may be deleted, altered, moved or transferred at any time for any reason at TMW sole discretion without notice and without liability to you or any third party.

**4.3** TMW provides the Service and Content strictly on an "as is" basis and use of the Service and/or Content is at your own risk. TMW hereby expressly disclaims all warranties or conditions of any kind to the extent permitted by law, including without limitation any merchantability or fitness for a particular purpose. To the extent permitted by law, TMW accepts no liability for loss suffered or incurred by the user or any third party as a result of their reliance on the Service and/or Content.

**4.4** To the extent permitted by law, in no circumstances will TMW be liable to you or you liable to TMW for any loss resulting from a cause over which TMW or you do not have direct control, including but not limited to failure of electronic or mechanical equipment or communication lines, telephone or other interconnect problems.

**4.5** In no event shall TMW be liable to you or to any third party for any special, incidental, consequential, punitive or exemplary damages, including without limitation any damages for loss of profits arising (whether in contract, tort or otherwise) out or in connection with the Service and or Content. In addition, in no event will TMW's cumulative liability to you for direct damages of any kind or nature exceed £50.00.

**4.6** You agree to defend, indemnify and hold harmless TMW and users of the Service and Content from all damages, liabilities, claims and expenses, including without limitation reasonable legal fees and costs, arising from any breach of this Agreement by you, or from your use of the Service. You agree to defend, indemnify and hold harmless TMW from all damages, liabilities, claims and expenses, including without limitation reasonable legal fees and costs, arising from any claims by third parties that your activity or Content in the Service infringes upon or violates any of their intellectual property or proprietary rights.

## **5. Privacy**

**5.1** You acknowledge and agree that TMW, in its sole discretion, may track, record, observe or follow any and all of your interactions within the Service. TMW may share general, demographic or aggregated information with third parties about TMW's user base and Service usage, but that information will not be include or be linked to any personal information without consent. TMW agrees that when exercising these rights, it shall abide by the Data Protection Act, 1998 at all times.

## **6. Governing Law and Dispute Resolution**

**6.1** This Agreement and the relationship between you and TMW shall be governed by and construed in accordance with English law. You and TMW agree that any dispute arising out of or in connection with this Agreement will be subject to and within the jurisdiction of the English courts.

**6.2** You and TMW agree to use best efforts to resolve disputes in an informal manner. Where you and TMW agree that a dispute arising out of or in connection with this Agreement would best be resolved by the decision of an expert, you and TMW will agree upon the nature of the expert required and together appoint a suitable expert by agreement.

**6.3** Any person to whom a reference is made under Clause **6.2** shall act as expert and not as an arbitrator and his decision (which shall be given by him in writing and shall state the reasons for his decision) shall be final and binding on the parties except in the case of manifest error or fraud.

**6.4** You and TMW shall provide the expert with such information and documentation as he may reasonably require for the purposes of his decision.

**6.5** The costs of the expert shall be borne by you and TMW in such proportions as the expert may determine to be fair and reasonable in all circumstances or, if no determination is made by the expert, by you and TMW in equal proportions.

## **7. General Provisions**

**7.1** This Agreement constitutes the entire understanding and agreement between you and TMW with respect of the subject matter hereof.

**7.2** The invalidity or unenforceability of any provision of this Agreement shall not affect the continuation in force of the remainder of this Agreement.

**7.3** The rights granted to you or TMW arising under this Agreement shall not be waived except in writing. Any waiver of any of your or TMW's rights under this Agreement or of any breach of this Agreement by you or TMW shall not be construed as a waiver of any other rights or of any other or further breach. Failure by you or TMW to exercise or enforce any rights conferred upon it by this Agreement shall not be deemed to be a waiver of any such rights or operate so as to bar the exercise or enforcement thereof at any subsequent time or times.

**7.4** The section headings contained in this Agreement are for convenient purposes only and shall not affect the interpretation of this Agreement.

**7.5** Where the context so implies, words importing the singular number shall include the plural and vice versa and words importing the masculine shall include the feminine and vice versa.

**7.6** All or any of TMW's rights and obligations under this Agreement may be assigned to a subsequent owner or operator of the Service in a merger, acquisition or sale of all or substantially all of TMW's assets.

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