

LOANS

A loan is a work of art entrusted in good faith to another institution for an agreed period of time. It can be for the purpose of exhibition, enhancement of the permanent collection or for study or conservation. To safeguard the works of art, the Borrower is obliged to provide satisfactory conditions for the transport and display of loans, to insure them adequately, and to meet all directly associated costs. These guidelines attempt to summarise the principles which should govern such loans. They do not cover exchanges of entire exhibitions between institutions, though many of the principles, including that of reciprocity, may apply in such instances.

It has been general practice, over many years, to exchange loans between institutions as courtesy between colleagues, free of charge. Some museums consider the granting of a loan to an important exhibition as a cultural obligation which needs no compensation. For other museums granting loans is a part of a larger loan policy in which there is a reciprocal "give and take" attitude. However, in the world of art exhibitions a perfect quid pro quo, benefiting both partners equally, is impossible to achieve. Works of art are unique and difficult to compare.

1 General Principles

- 2.1 Loans are, in principle, granted as a courtesy to other institutions as a means of promoting a greater understanding and enjoyment of art, and advancing the interest of scholarship.
- 2.2 Institutions should apply the same strict ethical and practical standards whether acting as a Borrower or a Lender.
- 2.3 Loans should primarily be granted for the benefit of other institutions to which there is general public access.
- 2.4 A work of art should not be requested if its physical presence is not required in the context of an exhibition.
- 2.5 Loans should, whenever possible, be granted directly from institution to institution and not through intermediaries.
- 2.6 Institutions should not knowingly lend to any exhibition which includes works that have been proven to be stolen or illegally exported.
- 2.7 Institutions should not knowingly borrow works that may have been stolen or illegally exported.
- 2.8 It is in the common interest of institutions, whatever their legal or financial constraints, to minimise the charges which they pass on to borrowing institutions.
- 2.9 **The spirit of reciprocity and mutual cooperation is in the common interest of all institutions.**
- 2.10 Lenders should not take advantage of the fact that a loan requested by the Borrower is crucial to the success of an exhibition by demanding excessive fees or unreasonable counter-loans.
- 2.11 Institutions are to be discouraged from "hiring out" works or allowing them to travel too frequently for financial gain.

2. Loan Request

- 2.1 Loan requests should be made as early as possible, at least a year in advance of the exhibition opening.
- 2.2 The director of the borrowing institution should submit a formal loan request to the director of the lending institution clearly indicating the type and legal status of the institution he or she represents.
- 2.3 Partners in an exhibition with multiple venues should support each other in obtaining the same works for all venues and not negotiate separately for loans to their own venue only, except when agreed between the partners.

3. Loan Decision

3.1 The decision to grant a loan depends on a great number of factors, the most important being:

- the intrinsic value of the exhibition concept or context for the loan (i.e. its scholarly, artistic or educational purpose).
- the physical condition of a work and its ability to travel.
- whether the removal of a work on permanent display can be justified.
- the type and reliability of the borrowing institution and its legal and financial status.
- the security and environmental suitability of the borrowing institution, and the professionalism of its staff and agents.
- the political and financial stability of the country or region involved.

3.2 Lenders are advised to consider carefully whether to lend to exhibitions held in non-museum environments such as town halls, department stores, churches, art or antique fairs and other spaces not specifically built for the display of works of art and without trained staff and adequate security and climate controls. Similar consideration should apply when lending to government offices.

3.3 The Lender should respond sympathetically to the needs of the Borrower, whenever possible and reasonable.

3.4 In considering loan requests, Lenders should take account of any generosity shown to them by Borrowers in the past.

3.5 Lenders should take a critical view of the number of venues of travelling shows paying particular attention to the fragility of the objects requested.

3.6 Borrowers should not accept conditions imposed by Lenders which violate or threaten an exhibition's artistic or scholarly independence, such as:

- adding works which would not normally qualify for inclusion;
- dating works or making attributions against the better judgement of the scholars responsible for the exhibition;
- giving unjustifiable prominence to the illustration of certain works, for instance on the catalogue cover.

3.8 Institutions, whether borrowing or lending, should not bow to any form of external political or diplomatic pressure.

4. Lender's rights and obligations

Most institutions have standard principles of administration, which stipulate the requirements that have to be met by the Borrower and the rights that the Lenders reserve for themselves.

4.1 The Lender has the right to specify the conditions governing the loan.

4.2 It is the prerogative of the Lender to draw up a loan agreement. Such an agreement will always take precedence over the Borrower's loan forms.

4.3 The Lender has the right to recall a loan at any time if the conditions are not met by the Borrower.

4.4 Lender requirements for the handling, display and transport of their work(s) must be respected and followed whenever possible. If the Borrower is unable to comply with these requirements, the Lender should be notified and their permission sought where any changes are proposed.

4.5 The Lender should not make unreasonable demands that could increase the costs of the loan.

4.6 The Lender should provide the Borrower, in timely manner, with written information about the loan (such as value, dimensions, weight, full catalogue information, credit line, and specific security, transport and installation requirements).

4.7 The Lender should inform the Borrower of any potential risk of seizure of the requested work.

5. Borrower's rights and obligations

- 5.1 The Borrower has the right to receive from the Lender in a timely manner an estimate of all costs related to the loan.
- 5.2 The Borrower must adhere to the Lender's Conditions of Loan and requirements of insurance/indemnity and provide a safe and secure environment according to international best practice.
- 5.3 The Borrower should provide all requested documentation (including a current facility report) to the Lender.
- 5.4 Where available, the Borrower should apply for immunity from seizure.

6 Borrowing from Dealers and Private Collectors

- 6.1 Private Lenders' requests for confidentiality must be scrupulously respected.
- 6.2 When borrowing from dealers and private collectors, institutions should seek reassurance that loans will not be withdrawn from an exhibition during its planned showing or during the course of a tour, unless previously agreed in the loan agreement.
- 6.3 When asked to lend to an exhibition in a commercial gallery, an institution should be informed in advance of the character of the other works to be displayed, and should retain the right to withdraw loans if the quality of the selection or the display does not meet expectations.
- 6.4 Whether or not an institution is permitted by law to do so, it is inadvisable for institutions to lend works to private collectors in exchange for loans, due to security and conservation concerns.

7 Costs and Fees

7.1 Direct Costs

- a. A direct cost is an out-of-pocket cost directly generated by the loan but not including salaried staff-time of the Lender.
- b. If the Lender intends to charge the Borrower for any direct costs associated with preparation of the loan, these should be specified at the outset and included in the loan agreement.
- c. The cost of conservation treatment to enable a work of art to travel or to enhance its appearance should only be charged to the Borrower if it cannot reasonably be borne by the Lender, and only after written agreement by the Borrower. The Borrower's contribution to the costs of conservation treatment should preferably not exceed fifty per cent.
- d. A nominal administrative (or handling) fee may be considered a direct cost.

7.2 Loan Fees

- a. A loan fee is a payment charged by the Lender for the loan as a profit-making measure, and not a recovery of costs actually incurred.
- b. Between non-profit institutions loans should be considered as part of the cultural mandate and therefore the charging of loan fees should be discouraged.
- c. In certain circumstances, it may be advisable to offer professional or technical assistance rather than money in return for loans.
- d. No loan fee should be charged for the loan of works by living artists to exhibitions organised on behalf of those artists.

8. Counter-loans/Lend-backs

8.1 A counter-loan (such as "a painting for a painting") should not be requested unless the permanent display of the Lender or its financial well-being (through tourism, for example) would be severely damaged by the temporary absence of a particular work of art. Large institutions which have rich holdings are urged to refrain from requesting counter-loans.

8.2 A counter-loan "to replace a blank space" is only acceptable if the Lender cannot reasonably be expected to provide a suitable replacement from its own collection or if the duration of a loan is unusually long.

8.3 The cost of a counter-loan should be borne by the Borrower.

8.4 A promised counter-loan should not be withheld unreasonably as a consequence of stricter conditions or a change of loan policy.

8.5 A counter-loan that serves no artistic, scholarly or other museological function should be avoided, likewise counter-loans of works of art which are unfit to travel.

8.6 A counter-loan to a private Lender should be very carefully considered and generally discouraged.

9. Transport

9.1 Lenders should always be kept informed of arrangements for the transport of their loans. Lender requirements for the transport of their work(s) must be respected and followed whenever possible. If the Borrower is unable to comply with these requirements, the Lender should be notified and their approval sought where any changes are proposed.

9.2 Lenders should, when possible, look favourably on options which may reduce costs, provided these do not compromise the safety of the work.

9.3 Only specialised fine art transport agents should be used for the transport of works of art.

9.4 Decisions about transport should be determined principally by the security and safety requirements of the works of art, even when an airline or transport company is providing sponsorship or subsidised transport.

9.5 A police or other escort is considered a special circumstance. When such escort is required or mandated by legislation or insurance/indemnity, this should be specified in the loan conditions.

9. State, Federal and Government Indemnity and Commercial Insurance

9.1 In most circumstances the Borrower is required to pay the costs of indemnity/insurance.

9.2 The Lender should make every effort to accept a Borrower's indemnity when offered or make good use of the possibilities created by a combination of indemnity and insurance.

9.3 The Lender should accept the Borrower's commercial coverage when such coverage is comparable and the cost of the premium is equal to or lower than that of the Lender. The Borrower will provide the Lender with a Certificate of Indemnity/Insurance in advance of the transport date for loans.

9.4 In cases where there is a legal or other impediment to accepting the Borrower's own insurance policy, the Lender should charge a fair premium exempt from any direct or incidental financial benefit to the Lender. The Lender will provide the Borrower with a Certificate of Insurance in advance of the transport date for loans.

9.5 Loans should be indemnified/insured for an agreed value. The agreed value is the maximum amount that would be required to compensate the Lender for a loss or total damage.

9.6 In the event of loss or damage, compensation is limited to the maximum amount of the coverage provided by indemnity or insurance and in the currency provided by the Lender.

9.7 The Borrower's liability will correspond to the period established in the Certificate of Indemnity/Insurance.

9.8 Lenders are encouraged not to change the insurance values of loans for the period indicated in the signed agreement.

9.9 Insurance valuations or special clauses benefiting the owner in case of damage or loss should not be agreed if the Borrower knows these to be unreasonable or excessive.

10. Immunity from seizure

Immunity from seizure involves the legal protection that one state grants to an object on loan in its territory from another state within the context of a temporary exhibition. The purpose is to secure the object against any legal claims by former owners or claimants who dispute the legitimacy of the current ownership.

Lenders should research the provenance of objects in its collection and make this information available and inform the Borrower of possible risks when applicable.