



## Revised *Loans Guidelines* Executive Summary

Following the October 2008 international meeting of the *Bizot Group* in Paris, Ute Collinet, on behalf of Nicholas Serota, asked members of the *International Exhibition Organizers (IEO)* to continue their assigned project of revising the 1995/2002 *General Principles on the Administration of Loans and Exchange of Cultural Goods Between Institution (Bizot Group Principles)*, the task begun in Budapest in September 2008 with the revision of the *Couriers* section.

A working group of the September 2008 task force met at the Szépművészeti Múzeum (Museum of Fine Arts), Budapest, following *Budapest 2009*, the 5<sup>th</sup> annual meeting of the *International Exhibition Organizers*, to begin drafting revisions to the *Loans* section of the *Bizot Group Principles*.

The attached *draft* revised guidelines seek to formalize the rights and obligations of the Lender and Borrower with regard to loans to exhibitions, while emphasizing cooperation of the parties, shared responsibility for the safety of the works of art on loan, and consideration for the escalating costs of loans to exhibitions.

The working group recommended that the *Bizot Group* adopt the revised *Loans Guidelines* as drafted. It further advised that successful implementation of these guidelines, as with the *Courier* guidelines adopted in January 2009, will require active support on the part of the Museum Directors to ensure compliance throughout their own and other institutions.

In summary, the key changes to the *Loans* section of the 1995/2002 *General Principles* are as follows:

- complete restructuring and reordering of the original *Loans* section for clarity and current best practices;
- change of focus to reflect the rights and obligations of both the Lender and the Borrower;
- focus on the scholarly purposes of loan requests and approvals;
- concern for mutual cooperation of Lender and Borrowers in keeping costs reasonable;
- discouraging the practice of unreasonable loan fees among not-for-profit institutions;
- clarification of expectations regarding loans from and to Private Collectors and Dealers;
- clarification of the section on Indemnity/Insurance;
- clarification of the section on Immunity from (Judicial) Seizure, acknowledging that there are different approaches, requirements, and extent of coverage available to international museums depending upon the provisions of their individual Governmental entities.

*Note:* In view of the continuation of the revision of the *Bizot Group Principles*, it is apparent that many institutions' own *Conditions for Loan* and other related international guidelines may need review and revision.

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Revisions were discussed and drafted in Budapest 25-27 April 2009 by *International Exhibition Organizers (IEO)* members—Ann Bigley Robertson (NGA), Flaminia Bonino (ASP, Rome); Fionnuala Croke (NGI), Zsuzsa Hudák (MFAB), Karina Marotta (Prado), Irene Martin (LACMA), Linda Thomas (SLAM)—together with Henrietta Galambos & Diana Szecsi (MFAB). The working group in Budapest was additionally advised by *IEO* members Maria DeMarco Beardsley (MoMA), Martine Silie (Pompidou).

## LOANS

*(This version approved by the Bizot Group 18 December 2009 & supersedes all other versions.)*

Temporary exhibitions depend upon the willingness of both public and private owners to lend works of art. To safeguard works of art while on loan, the Borrower is obliged to provide satisfactory conditions of packing, transport, security, environment, display, and insurance/indemnity coverage, in accordance with international standards in the museum profession, in transit to, from, and on-site at the Borrower. The Borrower is expected to adhere to the Conditions of Loan, required by the Lender and communicated to the Borrower, and to pay all costs directly associated with the loan.

The following guidelines seek to summarize the principles that should govern the temporary loan of works of art and the rights and obligations of both the Lender and the Borrower. While these guidelines apply to loans borrowed for all purposes, they primarily address loans to temporary exhibitions.

These are guidelines only, however, and are not intended to be exhaustive or to cover every circumstance that might be encountered by a Lender and/or a Borrower. It is expected that the Lender and Borrower will work together collegially to adjust, as necessary, to the circumstances of a specific loan situation.

### **1 Definition**

- 1.1 A loan is a work of art or cultural property (the “loan” or the “work/s”) entrusted in good faith by the owner (“the Lender”) to an institution (“the Borrower”) for an agreed period of time.
- 1.2 A loan may be requested and/or made for inclusion in a temporary exhibition, for long-term or temporary enhancement of the permanent collection, or for scholarly study or conservation, by mutual agreement of the Lender and Borrower.
- 1.3 Loans are, in general, granted as a courtesy to other institutions as a means of promoting a greater understanding and enjoyment of art and cultural patrimony, and advancing the interest of scholarship and education.

### **2 General Principles**

- 2.1. A loan should be carefully considered and not requested if the work is not essential to the context of the temporary exhibition or does not enhance the permanent collection.
- 2.2 Institutions should apply the same strict ethical and practical standards regarding loans, whether acting as Lender or Borrower.
- 2.3 Loans should generally be granted to Borrower institutions to which there is public access.
- 2.4 A spirit of reciprocity and mutual cooperation is in the common interest of all Lender and Borrower institutions.
- 2.5 Loans should, whenever possible, be granted directly from institution to institution and not through intermediaries such as government agencies.

- 2.6 Institutions should not knowingly request or lend works that may have legal or financial problems, questions of title, ownership, acquisition history, gaps in provenance, or other issues that could be raised by third-parties and prove problematic to either Lender or Borrower.
- 2.7 It is in the common interest of lending institutions, regardless of their legal or financial constraints, to minimize the charges they pass on to borrowing institutions.
- 2.8 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 or lend-backs.
- 2.9 Institutions are discouraged from “hiring out” works or allowing them to travel too frequently for the sole purpose of financial gain.

### **3. Loan Requests**

- 3.1 Loan requests should be made as early as possible, preferably at least two years but no less than one year, in advance of the exhibition opening, or in accordance with the policy of the Lender, if known.
- 3.2 Borrowers should keep in mind that from time to time a Lender museum may institute a loan moratorium, which may or may not have any flexibility depending upon the situation. For planning purposes, but to the extent practicable, it is recommended that museums initiating a loan moratorium communicate such plans as far in advance as possible.
- 3.3 The director of the borrowing institution should submit a formal written loan request to the director of the lending institution clearly indicating the nature, dates, and venues of the exhibition, and providing the justification, in the context of the exhibition, for the work/s requested for loan.
- 3.4 Partners organizing an exhibition with multiple venues should support each other in obtaining the same loans for all venues. They should not negotiate separately for loans only to their own venue, except when agreed among the partners or required by the Lender, in which case every effort should be made to find substitute loans to maintain parity of the exhibition at each venue.

### **4. Loan Approvals**

- 4.1 The decision to approve a loan request depends upon a number of factors including, but not limited to:
  - 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 and availability 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/or financial stability of the country or region involved.
- 4.2 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, or other spaces not specifically built or equipped for the display of works of art, or without trained staff or internationally accepted standards of security and climate controls. Similar consideration should apply when lending to government offices.
- 4.3 When considering loan requests, Lenders should take into account the generosity extended to them when Borrowers.
- 4.4 Lenders should take a critical view of the number of venues for travelling exhibitions, paying particular attention to the fragility of the works requested.
- 4.5 Borrowers should not accept conditions of loan imposed by Lenders that 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;
  - demanding unjustifiable prominence to the illustration of certain works, e.g. on the catalogue cover.
- 4.6 Institutions, whether Lender or Borrower, should not bow to any form of external political, diplomatic, or commercial pressure not in keeping with the exhibition's artistic and scholarly content, or the institution's mission and mandates.

## **5. Rights and obligations of the Lender and Borrower**

Most institutions have standard principles of loan administration which stipulate the requirements that must be met by the Borrower, and those rights reserved to the Lender. Likewise, the Lender has obligations to the Borrower.

- 5.1 The Lender has the right to specify the conditions governing the loan and to expect that all requirements including, but not limited to, the handling, transport, display, security, and indemnity/insurance of the loan will be respected and followed by the Borrower.
- 5.2 It is the prerogative of the Lender to draw up a loan agreement or provide written Conditions of Loan, which will always take precedence over the Borrower's own exhibition loan agreement/form/contract.
- 5.3 The Lender has the right to request a current facility report from the Borrower.

- 5.4 The Lender should not make unreasonable demands that might increase the costs of the loan to the Borrower. The Lender should generally ask for conditions that it would be willing and able to provide to Lenders when it is the Borrower.
- 5.5 The Lender should provide the Borrower, in writing and in a timely manner, with all available information about the loan—value, complete dimensions (height, width, depth; image size, matted, framed and unframed), climate-box, pedestal, socket, or other permanent mount in the case of three-dimensional works, weight, full catalogue citation, provenance documentation, credit line, specific preparation, transport, courier, installation, handling, environment, and security requirements—together with an estimate of all costs related to the loan that the Borrower is expect to pay.
- 5.6 The Lender should respond sympathetically to the needs of the Borrower and, whenever possible, consider reasonable requests for modifications to the Conditions of Loan.
- 5.7 The Lender has the right to recall a loan, at any time, if the Conditions of Loan are not met by the Borrower.
- 5.8 The Borrower must exercise the same care with respect to the loan as it would in the safekeeping of its own works of art, and provide a safe and secure environment in accordance with museum standards and international best practices in the care of art.
- 5.9 The Borrower must respect and adhere to the Lender’s Conditions of Loan including, but not limited to, all requirements for handling, transport, couriers, security, photographic restrictions, display, lighting, environment, and insurance/indemnity.
- 5.10 Should the Borrower be unable to comply with any Lender requirement, the Lender should be notified immediately and permission requested for any proposed changes.
- 5.11 The Borrower should provide the Lender, in a timely manner, with all requested documentation, including a current facility report.
- 5.12 The Borrower has the right to receive timely and clear invoices from the Lender for the direct costs associated with the loan; and the Lender has the right to receive timely payment from the Borrower.
- 5.13 The Borrower must take every precaution to safeguard all proprietary information provided by the Lender and to keep confidential such information as values or the identity of Private Collectors, who wish to remain anonymous.

## **6. Borrowing from and Lending to Dealers and Private Collectors**

- 6.1 Private Collectors’ and Dealers’ requests for confidentiality must be respected unless doing so would violate other ethical or legal considerations, in which case the loan request should be withdrawn.
- 6.2 When borrowing from Private Collectors and Dealers, 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 writing.

- 6.3 While acknowledged to be difficult to enforce, it is recommended, when deemed in the best interest of the Borrower, that Private Collectors and/or Dealers be asked to refrain from putting a loan on the market until at least six months following the close of the exhibition in which it is included.
- 6.4 When considering making a loan to an exhibition in a commercial gallery, the Lender should request information, in advance, regarding the purpose of the exhibition and the source and disposition of the other loans to be displayed. The Lender should retain the right to withdraw its loans if the purpose of the exhibition, quality of the selection, or the display does not meet the expectations of the Lender.
- 6.5 Whether or not an institution is permitted by law or internal policy to do so, due to security and conservation concerns, it is inadvisable for institutions to lend works of art to Private Collectors or Dealers in exchange for loans.

## 7. Administrative, Preparation, and Loan Fees

For many years, it has been general international practice to exchange loans between institutions as a courtesy, free-of-charge. With the exception of reimbursement to the Lender by the Borrower for the direct out-of-pocket costs of preparation, framing, packing, shipping, couriers, and indemnity/insurance and, in recent years, a reasonable charge for the administrative processing of a loan, most institutions consider the granting of a loan to an exhibition to be a cultural obligation requiring no financial compensation. For others, granting loans is part of a larger loan policy and requires a reciprocal “give and take” arrangement. For still others, there is the expectation that the loan represents a revenue-making opportunity.

Although it is generally recognized that loans are for the benefit of both the Lender and the Borrower, a perfect *quid pro quo* benefiting both partners equally is often impossible to achieve. Given that loans are unique and difficult to compare, the decision to lend and to charge for such loans should be considered carefully. While it is understood that there may be circumstances that warrant such an arrangement, the charging of “loan fees” for other than the direct out-of-pocket costs of the loan is strongly discouraged.

If the Lender intends to charge a fee in exchange for the loan, this amount should be specified at the outset of the loan negotiations and be included in the loan agreement/form and/or Conditions of Loan provided to the Borrower by the Lender. Any arrangements for the exchange of works or additional monetary compensation for loans should be made by separate and mutual agreement between the Lender and Borrower.

### 7.1 Administrative/Preparation Fees

- a. A fee charged to the Borrower by the Lender for the administrative processing of a loan is considered an administrative fee.
- b. Any out-of-pocket costs directly generated by the loan request including, but not limited to, matting, framing and crating, is a preparation fee. This fee should not include salaried staff-time of the Lender.
- c. The cost of conservation treatment to enable a work 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. Such a cost is considered a preparation fee. While the Borrower’s contribution to the costs of conservation

treatment should be open to negotiation, it is suggested that the amount charged to the Borrower not exceed fifty per cent.

## 7.2 Loan Fees

- a. A loan fee is a payment charged to the Borrower by the Lender that is not for the recovery of actual out-of-pocket costs incurred in the making of the loan. A loan fee is considered to be a revenue-making measure.
- b. Among 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 for the Borrower to offer professional or technical assistance to the Lender rather than monetary compensation in exchange for loans.
- d. In principle, no loan fee should be charged for the loan of works by living artists to exhibitions organized on behalf of those artists.
- e. In principle, no loan fee should be charged to a Borrower who is a partner in an exhibition organized by the Lender, either for the loan itself or as compensation to the Lender for the intellectual concept of the exhibition. This should be the practice even if there is potential for the Borrower to generate income as a result of either the loan or the exhibition.

## 8. Counter-loans and Lend-backs

- 8.1 A counter-loan or lend-back (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 or lend-backs.
- 8.2 A counter-loan or lend-back “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 period is unusually long.
- 8.3 All direct costs for a counter-loan or lend-back including, but not limited to, fabrication of the crate, framing, packing, transport, courier, insurance/indemnity, should be borne by the Borrower of the counter-loan or lend-back.
- 8.4 When a counter-loan or lend-back is agreed, the commitment should be honoured. It should not be unreasonably withheld as a consequence of stricter loan conditions or changes in loan policy.
- 8.5 A counter-loan or lend-back that is unfit to travel, or that serves no artistic, scholarly or other museological purpose, should be avoided.

- 8.6 Whether or not an institution is permitted by law or internal policy to do so, due to security and conservation concerns, it is inadvisable for institutions to offer counter-loans or lend-backs to Private Collectors in exchange for loans.
- 8.7. By mutual agreement of the Lender and Borrower, a counter-loan or lend-back may, in certain circumstances, be arranged for a date other than that to coincide with the period of the original loan.

## **9. Transport**

- 9.1 Only specialized fine art transport agents should be used for the transport of loans.
- 9.2 Decisions about transport should be determined principally by the security and safety requirements of the loan/s, even when an airline or transport company is providing sponsorship or subsidised transport.
- 9.3 The Lender should always be kept informed of arrangements for the transport of the loan. Lender requirements for the transport of the loan must be respected and followed whenever possible. Should the Borrower be unable to comply with any Lender requirement, the Lender should be notified immediately and permission secured for any proposed changes.
- 9.4 Lenders should, when possible, look favourably on options which may reduce costs to the Borrower, provided these do not compromise the safety of the works of art.
- 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 Conditions of Loan provided to the Borrower by the Lender.

## **10. State, Federal and Government Indemnity/Commercial Insurance**

There can be different administrative processes, regulations, terms, definitions, extent of coverage, limitations, exclusions, handling of waivers of rights of subrogation, procedures governing gross negligence clauses, extended periods of liability, etc., governing indemnity programs and/or commercial insurance policies. It is recommended that both the Lender and Borrower become familiar with their own program/policy and be in communication with each other during the loan negotiation process to make certain that all aspects of coverage are clearly understood and acceptable.

It is further recommended that the Lender request a copy of the Borrower's indemnity/insurance policy for review in cases where the terms of coverage may be unfamiliar or different from what is expected. In the event of specific questions or concerns regarding coverage and/or liability issues, the Lender and/or Borrower, as appropriate, may request an amendment, letter of clarification, and/or additional insurance coverage as necessary to allow for acceptance. It is always recommended that specific questions and/or concerns be referred to the insurance agent/company or person designated as the risk manager at the Lender/Borrower museum.

- 10.1 The Borrower is required to arrange and pay the costs of indemnity/insurance unless other arrangements have been made with the Lender.
- 10.2 Loans should be indemnified/insured by the Borrower for an agreed value as stipulated by the Lender in writing and counter-signed by the Borrower.

- 10.3 The Lender should make every effort to accept a Borrower's indemnity when offered and/or make good use of the possibilities created by a combination of indemnity and commercial insurance.
- 10.4 The Lender should make every effort to accept the Borrower's commercial coverage when such coverage is comparable to that of the Lender; the cost of the premium is equal to or lower than that of the Lender; and/or when the Lender's resources or internal policies allow this as an option. If requested by the Lender, the Borrower will provide the Lender with a Certificate of Indemnity/Insurance in advance of the transport date for the loan, naming the Lender as additional insured or providing a waiver of the rights of subrogation in accordance with the requirement of the insurance policy.
- 10.5 In cases where there is a legal or other impediment to accepting the Borrower's Indemnity/insurance, the Lender should arrange coverage and charge the Borrower a fair premium exempt from any direct or indirect financial benefit to the Lender.
- 10.6 Should the Lender elect to maintain its own insurance, the Lender should, if requested by the Borrower, provide the Borrower with a Certificate of Insurance in advance of the transport date for the loan, naming the Borrower as additional insured, if requested, and/or waiving rights of subrogation against the Borrower. As noted above, questions concerning additional insured status and/or waivers of rights of subrogation should be referred to the appropriate person/s.
- 10.7 In general, in the event that a work is lost or damaged, compensation, if any, should be limited up to the agreed value, as provided by the Lender in advance in writing, and to such amount as may be paid by the insurer/s, plus any deductible, releasing the Borrower from any further liability for claims arising out of such loss or damage.
- 10.8 The Borrower's term of liability will correspond to the period established in the Certificate of Indemnity/Insurance. In some cases, these dates may be slightly different from the published exhibition dates, stated on the loan form/agreement, as they may include the period of time prior to packing/shipping at the Lender, and again at the time of repacking/shipping on the return to Lender following the official close of the exhibition. Depending upon the circumstances and/or the Borrower/Lender schedule, the beginning and ending dates of the term of liability could be several days or a few weeks.
- 10.9 Lenders are encouraged not to change the values of loans for the period indicated in the signed loan form/agreement. Any changes in value, made by the Lender for good reason during the period of the loan, must be communicated to the Borrower in writing.
- 10.10 Insurance valuations or special clauses benefiting the Lender in case of damage or total loss should not be agreed if the Borrower knows these to be unreasonable or excessive.

## 11. Immunity from (Judicial) Seizure

In general, immunity from seizure is the legal or judicial protection that the appropriate Governmental entity of the Borrower grants to a work on loan from a Lender while within the custody or territory of the Borrower, within the context and for the period of a temporary exhibition. The purpose of immunity from seizure is to secure the loan/s belonging to the Lender against any legal claims and/or to make as certain as is possible, in the event of any such claims, that the loan/s will be returned to the Lender by the Borrower in accordance with the agreed schedule.

There are many different definitions, terms, administrative processes, regulations, and limitations governing immunity from seizure, as well as differences in the types and extent of coverage available to Borrowers. It is strongly urged that the Borrower be familiar with the application process and extent of coverage available within its relevant Governmental entity. It is also advised that both the Lender and Borrower be in communication early during the loan negotiation process to make certain that, should immunity from seizure be a condition of the loan, expectations of both the Lender and Borrower with regard to immunity from seizure can be met and that the appropriate documentation can be secured in a timely manner.

- 11.1 Borrowers are advised, to the extent practicable, or in accordance with their institutional policy, to apply for immunity from seizure if it is available to them. For some institutions, this is a requirement for every temporary exhibition that includes foreign loans; for others, it may be on a case-by-case basis, or limited to certain lenders.
- 11.2 Prior to making an official loan request, the Borrower should exercise due diligence in researching the works to be requested, excluding those which may have legal or financial issues, questions of title, ownership, acquisition history, gaps in provenance, or other issues that might be raised by third-parties and prove problematic to either Borrower or Lender.
- 11.3 The Lender should research the provenance of loans requested from its own collection, utilizing available outside resources such as, for example, the *Art Loss Register* or *Interpol*, if necessary, and inform the Borrower of any possible risks, legal or otherwise, to works requested for loan.