

ACGA Code of Practice Guidelines for Selling Art in Public Spaces

Definition of a public gallery

As defined in the Rules of the Public Galleries Association of Victoria (PGAV) a public gallery is one 'owned by or on behalf of the public; is a properly and legally constituted visual arts facility; is professionally and permanently staffed; has and maintains an on-going and regular program of exhibitions of visual arts material; is not for profit and *does not engage in significant commercial activities*; and meets clear and identified needs within its community'. This definition would generally include contemporary art spaces, regional public galleries, state galleries and university galleries, but would not include hire spaces or artist-run spaces.

Policy on selling art in public spaces

Public gallery policy on how to manage sales varies enormously from gallery to gallery. Some public galleries feel that as publicly funded institutions they should not sell works of art under any circumstances and do not hold exhibitions of work for sale. In these cases any inquiries regarding the sale of works of art are usually passed on directly to the artist or representing gallery. Others may hold selling exhibitions, arguing that public galleries offer a valuable service (particularly to regional artists) by selling their work, but choose again to pass on sales inquiries. A few public galleries hold selling exhibitions and seek a commission on these sales.

The PGAV believes that given the diversity of funding support it is the responsibility of the gallery Director and his/her Board to determine policy regarding the sale or non-sale of work, it recommends to members that a) sales of work by represented artists are referred to the representing gallery/agent b) that where commission is levied by public galleries an appropriate rate applies to sales (see below for detail) and c) that proper acknowledgment is made of representing galleries on labels, in associated publications and at associated public events

As stated in the above definition, public galleries shall *not engage in significant commercial activities*.

- Public galleries should cover all aspects of selling exhibitions in written policy and should make sure any exceptions to those conditions—open entry competitions, by invitation only competitions, fundraisers—are appropriately addressed therein;
- Public galleries should provide all exhibiting artists and their representing galleries with written policy on sales and the conditions/commissions that apply to those sales;

- Where sales have been achieved, public galleries should ensure prompt payment is made either directly to the artist, where the artist is unrepresented, or in the case of represented artists, directly to the representing gallery;
- Public galleries should ensure clear documentation is kept in regard to each sale;
- While the onus of responsibility rests with an artist to declare representation by a commercial gallery, a public gallery should, as a matter of course, check representational status with all artists.

Commission on works for sale in public gallery exhibitions

The ACGA's position is that commercial gallery rates of commission are earned as the privileged outcome of the artist/gallery relationship and its intensive ongoing development of career, reputation and livelihood. As exhibitions in public galleries are discrete events that are inevitably only able to offer short-term support for represented and unrepresented artists alike, the ACGA fully endorses a) the payment of artists' loan fees for exhibitions and tours¹ and b) the referral of sales to artists or representing galleries. This allows artists to benefit directly from any sales without undermining the artist/gallery relationship.

Where public galleries do choose to levy commission it should be limited and calculated relative to the amount and duration of the support offered to artists participating in the event. It should not be considered as a means of funding the event or as return for the work of staging the exhibition itself. More properly, in the context of a discrete exhibition, commission should be regarded as return for the extra work of promoting and achieving sales and should only apply where the gallery institutes new duties above and beyond those ordinarily undertaken.

The artist/gallery relationship

Commercial galleries will often provide a number of ongoing services for the benefit of a represented artist, such as the following:

- Staging regular in-house exhibitions, producing catalogues and invitations
- Archive and CV maintenance
- Maintaining visual material for promotional purposes
- Media archive maintenance/records of promotional activities/post-show summaries of media outcomes and promotional material
- Pursuing ongoing sales and exhibition opportunities outside the gallery
- Pursuing commissioning opportunities and advocating for the artist's interests

¹ In anticipation of updated loan fee rates in NAVA's next edition of the Code of Practice, the ACGA recommends fees in accordance with Australia Council's rates. See the National Association for the Visual Arts, Professional Practice Kit Fact Sheet, 'Artists' Scales of Fees, Wages....'

- Cultivating collectors and corporate clients
- Monitoring the artist's interests and legal rights
- Collaborating with the artist on competition, grant and commission submissions
- Pursuing critical writing and publishing opportunities for the artist
- Recording location of all sold works

The ACGA recommends in this comparative context that 10% is an appropriate amount of commission for simple one-off sales in a public gallery, particularly as this equates with the percentage that art consultants who facilitate one-off gallery sales may receive. However, while this is a good guide, sometimes a greater percentage may be appropriate depending on the benefits to artist and representing gallery.

Public galleries sometimes ask artists to cover exhibition costs. Organisers should not seek to cover the cost of the exhibition by out-sourcing expenses that should properly be paid by the gallery to participating artists.

Splitting commission

As ACGA members' commission is on the basis of detailed ongoing services provided to the artists they represent, splitting commission with a one-off exhibition offering limited and short-term benefits to artists (and consequently their representing galleries) can be problematic, depending on the rate of commission being charged by the public gallery (and as such the support offered to artists), other costs payable and the organisational status of the event.

Public galleries should recognise that asking commercial galleries to split or waive commission, is in effect a request for sponsorship whereby representing galleries would forgo a percentage of what they might otherwise earn. Where a commercial gallery chooses to split or waive commission, organisers should acknowledge the gallery as a sponsor on a par with other organisations providing similar levels of sponsorship value.

Public galleries should not expect commercial galleries' automatic willingness to sponsor the exhibition with a percentage of commission. However, many commercial galleries remain willing and able to do this when a) the event is not-for-profit and for a good cause, b) where proper recognition is made of the gallery support this support represents (which allows some galleries to claim this as a deductible expense against their marketing budgets) and c) where public galleries are charging appropriate rates of commission and are offering good support to artists.

Public galleries wishing to harness the support of commercial galleries are encouraged to contact the ACGA in the early planning stages for advice or feedback on their terms and conditions.

Acknowledgment

Public galleries should also be informed about and should acknowledge the role commercial galleries have in the whole-of-career development of artists' reputations and livelihoods.

Commercial galleries:

- Generate primary income for artists and as such are vital to a healthy visual arts infrastructure;
- Play a key role in facilitating the creation of new art works;
- Act as agents for commissioning new public and private works of art;
- Have long-term relationships with artists and act as ongoing cultivators of individual artists' careers;
- Are key players in the creative promotion of Australian art and Australian artists nationally and internationally;
- Support a broader spectrum of artists than is possible in the public sphere;
- Work cooperatively with the public and private sector in a wide variety of roles

Where commercial galleries decide to contribute all or some of their commission, the ACGA recommends that public acknowledgment of the support of individual gallery sponsors is made by a) labels that indicate the name and city of the representing gallery b) acknowledgments in any catalogue or published material and c) in verbal form at the opening.

Compulsory sales

To avoid the perception that commission on sales of work is generating exhibition income, public galleries should not insist that all works must be for sale. Organisers should allow for the situation in which artists and their representing galleries choose to hold works back from sale and should ensure that any such work is treated without prejudice in any exhibition or tour.