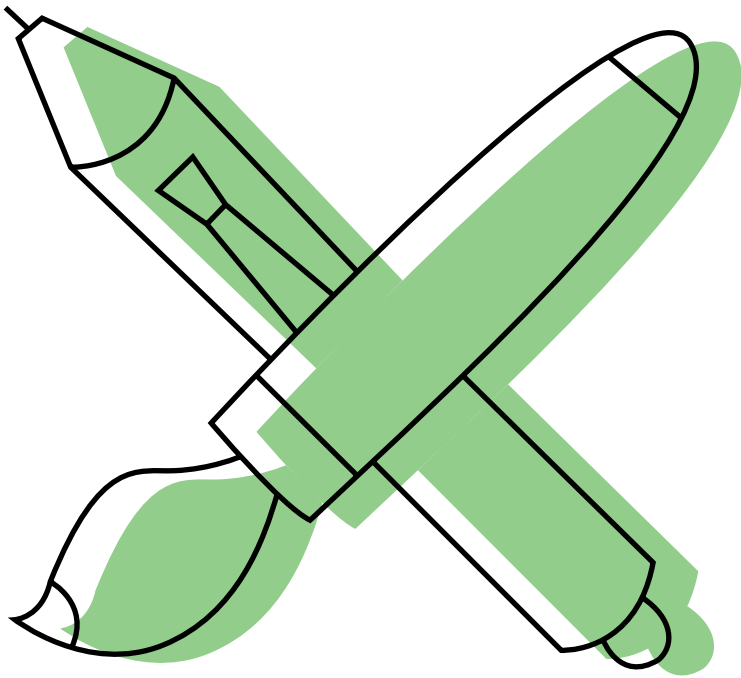


BEST PRACTICE GUIDE

FOR THE VISUAL ARTS
IN SOUTH AFRICA 2016



Visual Arts Network of South Africa

6 Verwey Str

New Doornfontein

Johannesburg

South Africa

www.vansa.co.za

Best Practice Guide for the Visual Arts in South Africa

2016

Commissioned by the South African Department of Arts and Culture

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I. EDITOR'S FOREWORD

The Best Practice Guide for the Visual Arts in South Africa was developed out of the need to share and develop industry practices that would support healthy and ethical relationships and transactions between practitioners in the industry. The guidelines published herein allow practitioners to discern between current norms of practice in South Africa and the fair standards to which all players should aspire in working and collaborating with each other. In this sense the guide provides principles that all practitioners would find useful in establishing fair relationships and dealings, particularly in navigating situations that might result in power imbalances between parties.

The principles provided in this guide follow from a feasibility study that the Visual Arts Network of South Africa undertook in 2014 into the need for and possibilities of producing a code of best practice. Titled 'A Shared Practice', the study supported the findings of previous reports and contextualised the gaps in the organisation of relations in the South African visual art world. 'A Shared Practice' revealed that although the sector is small and precarious, all who practice in it want to survive and grow, and that individual survival ultimately depends on the growth and survival of the visual arts sector as a whole. The study revealed the spectrum of precarity experienced in the sector, and the great imbalances that exist between practitioners in relation to accessing sound advice on how to assert particular rights that could prevent further financial and artistic vulnerability. A key recommendation that emerged from the study was the development of a document detailing norms and standards in regard to the nature of work and relationships, that would make industry knowledge, guidelines and frameworks accessible to a wide range of practitioners at any stage in their careers.

For this guide, international precedents developed by NAVA (Australia) and CARFAC (Canada) were researched and consulted. International best practice has been emulated, but with a strong consideration for the particularities and range of practice within the South African context. As in these international codes, the principles and practices outlined in the Best Practice Guide for the Visual Arts in South Africa are voluntary and have been structured along the lines of 'should', instead of 'must', excepting those areas that have already been legislated (such as tax, copyright, health and safety, employee equity and labour rights). While the guidelines developed are in principle not legally binding, a guide of best practice is useful for establishing a foundation for the development of policy and legislation that supports the long-term sustainability of practice in the sector. That is to say,

the sector will be in a stronger position to lobby government and influence policy and the development of supportive legislation, drawing from the basis of a guide that formalises ethical practice between parties in the sector.

One of the fears that we encountered while developing the guide was the question of regulating artistic practice. This guide does not tell artists and practitioners what constitutes acceptable subject matter for their work, nor dictate how practitioners should artistically or conceptually produce work. While this guide supports certain limitations on artistic freedom (such as the dissemination of hate speech and discrimination as outlined by the South African Constitution), the intention of this document is to provide recommendations that stipulate the standard terms upon which practitioners should enter into agreements with one another. As such, this guide makes a distinction between professional practice, and the industry norms and standards that are commonplace in setting up sound business transactions and relationships between practitioners. This has been a difficult distinction to make, but the editors of this document have consistently sought to provide a best practice guideline that proposes an industry standard and recommends codes and levels of attainment by which practitioners can measure their situations and experience as they enter into relationships, associations and arrangements in the field. It is not intended to be a professional practice toolkit designed to explain in detail 'how to'.

The principles articulated in this guide take into account the specificity of the South African visual arts landscape, including the state of infrastructural development and resource dissemination. A key area of concern relates to setting particular recommendations for the remuneration of artists. While not prescriptive - and avoiding specific schedules and amounts - the fee calculator is intended to assist practitioners to define the financial value of their labour. It is hoped that in the absence of legislated fees for the visual arts industry, and despite the precarity of funding, all practitioners, whether artists, curators, events, spaces or organisers, might benefit from a set of fee recommendations that is available as a reference for all parties. It is through empowering visual arts practitioners to negotiate fees that we hope to encourage event and venue managers and organisers to prioritise practitioner fees when evaluating their own budget setting practices.

The guidelines in this handbook propose precedents for informing relations between practitioners and events and spaces operating within the South African visual arts industry. We hope that this guide will encourage and inspire all parties to work towards a fair, accessible and empowered industry.

II. GLOSSARY

Best Practice

Best practice is a set of guidelines, principles or working methods that, through experience and research, provides the fairest and most ethical standards for an industry to work by.

Practitioner

Persons who affiliate themselves to the visual arts sector or world. This includes visual artists, curators, project managers, administrators and organisers, visual arts writers and critics, arts agents, auctioneers, gallery owners and managers.

Space

Any organisation, company, business, studio, community centre, whether officially registered or not, that undertakes to commission or produce any artistic project involving practitioners (as they are defined under 'Practitioner'). The word space does not necessarily refer to physical space but rather the constitution of some longer term entity that produces projects, exhibitions, workshops or other performance (as opposed to the fixed-term nature of a festival).

Event

Any planned public or social occasion that involves the creation and/or viewing of artworks and/or working with, contracting or commissioning practitioners (as they are defined under 'Practitioner'). This includes competitions, exhibitions (opening and duration of), gallery showings, festivals, and open days. Events are considered to be fixed term (i.e. they begin on a certain date and end on a certain date) even if they are recurring (such as an annual festival). In some cases, events may be run by spaces (e.g. an organisation that runs a festival), but in other cases events may be pop up or once-off and organised by an individual or temporary group of individuals.

Contract/Written Agreement

Any written agreement that is intended to be enforceable by law. Under South African law any written or verbal agreement (including email and other tentative agreements) may be enforceable by law. The guidelines refer primarily to contracts

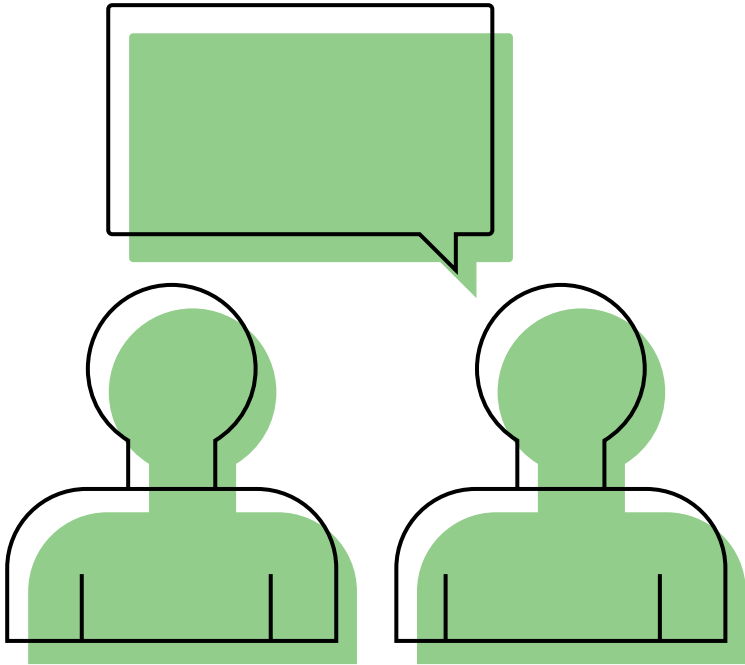
and written agreements due to the fact that they are more easily consulted, referenced, and therefore argued.

Fees

A payment made to a practitioner or to an event or space in exchange for advice or services. A fee is usually set according to the experience of a practitioner and/or the labour involved in rendering a supplied service.

Honorarium

A modest payment to a practitioner who is asked to act in a professional capacity as such. An honorarium is not considered a fee, but is paid as an acknowledgement of the value of a practitioner's intellectual labour, work and time (e.g. an artist might be paid an honorarium for guest moderating a public panel, as opposed to a fee that would be paid in exchange for a commissioned artwork).



1. INTRODUCTION

The visual arts is a sector driven by relationships. Artists, curators, gallerists, installers, administrators and many other practitioners all have different skills that contribute to making the visual arts sector a vibrant place. In all cases, these skills require the skills of others in order to work – we are inter-relational. Gallerists need artists who need independent art spaces who need museums who need administrators who need installers who need artists and vice-versa. All these different persons are collectively invested in the growth, strengthening and development of the visual arts because we all want and need it to continue and to thrive.

The intention of this guide is to facilitate strong, healthy and fair relationships within the visual arts, in order to support its growth and development. The guide has been written to encourage and facilitate fair relationships and mutual responsibility for how we work together. The intention has been to cover as many areas of the visual arts as possible in ways that are as broadly applicable as possible.

What you will find in this guide are best practice terms that all practitioners in the visual arts can consult, discuss and decide whether and how to apply in particular situations. In some cases – such as copyright and freedom of speech – the law dictates what must be done. In most areas however, the content indicates what should be done, and what is strongly recommended. In situations and relationships that are not determined by law, all practitioners have the right to decide how they choose to apply the contents of the guide. The guide is intended to enable practitioners to be aware of the best possible situation (or benchmark), and to determine for themselves what their options are, how to negotiate for these, and the terms that might be applicable. This guide should empower all practitioners in the visual arts to make informed decisions. In some instances, the guide includes information on expected outcomes (i.e. where best practice is not the norm, and practitioners need to make informed decisions about whether they wish to follow the norm, best practice, or some kind of compromise).

The guide is divided into seven sections beginning with an Introduction and statement of the context and reality to which the guide applies. The following two sections cover most of visual arts practice. Section 3 deals with non-commercial practice – which is practice not driven by commercial gain but rather driven by intellectual, creative or conceptual intentions. This includes spaces such as state-run galleries and museums, non-profit organisations, some collectives, and non-sales or non-profit project and gallery spaces. It includes events such as non-profit festivals, pop up projects, workshops and exhibitions. Section 3 provides guidelines on how practitioners, events and spaces should function within the framework of

their intended objectives – specifically that these events and spaces are aimed at the development of the arts (rather than profit), and that many such events and spaces are constrained by tight budgets and stretched capacity. Within this framework, the guidelines deal with elements such as insurance, public relations, transportation, and so on, and suggest which entity (event, space or practitioner) should take responsibility for which part of the relationship. Section 4 sets out the terms that are specific to the sale of artworks, and applies primarily to galleries, expos, fairs and spaces where artists sell their works themselves. Many parts of the relationships dealt with in Section 4 – such as transportation and insurance – correspond with those in Section 3. Thus, in Section 4, we deal with best practice relating to the commercial nature of the relationship, and in particular with the terms of full gallery representation, which operates significantly differently to transient and temporary relations in the arts.

Section 5 is concerned with the work of artists and practitioners within professional environments including events and other spaces constituted for visual art, performance and display. A detailed fee calculator is provided to guide commercial entities such as galleries and non-profit organisations and companies in financial best practice applicable to issues of payment of fees, reimbursements, and tax compliance among others.

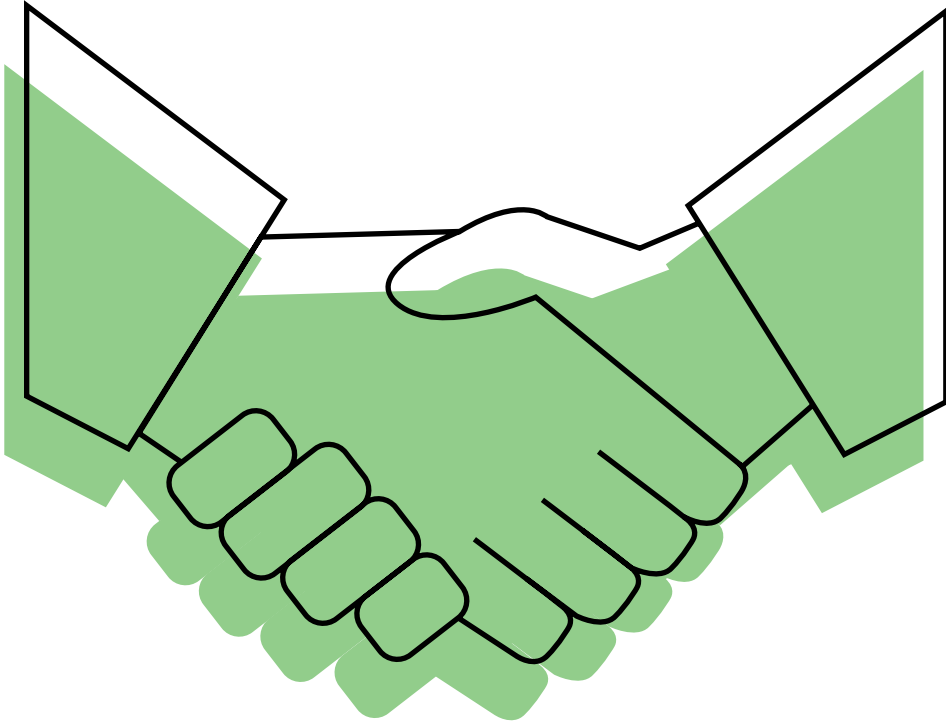
Section 6 provides guidelines for marketing, publicity and public relations, and the media specialising in visual arts. This section deals with responsible communication to the public of art and artworks, and how such communication may differ depending on the event or space. Section 7 details key issues of artists' rights, including Intellectual Property Rights and Freedom of Expression best practice. This section is primarily legislated – and is due to shift in legislative framework as new copyright laws are put to Parliament at the time of writing this guide. Importantly, much of this section is introductory and may in certain cases require additional legal consultation regarding some of the more complex details of artists' rights.

Areas dealing with legislation have been checked and approved by legal experts who have kindly done so at their own cost. The document has gone through extensive consultation, within the visual arts sector as a whole, and by invitation to individuals with specialist and extensive knowledge of certain areas. The content of this guide is as comprehensive and as up to date as could be achieved at the point of going to print – August 2016. It goes without saying however, that parts of the document will eventually be out of date, or need revision, and it is vital that individuals check content for context specificity, legislative change and other aspects that might be subject to change over time.

INTRODUCTION

Many sections of this guide overlap and cross-refer. In order to keep this guide brief and accessible, we have elected not to repeat content in all cases. The index at the back of the guide serves to provide detailed orientation to the various practices covered.

This guide is available for consultation as and when projects, processes and relationships arise. It is also available to practitioners involved in events and spaces already in process who might seek to edit, shape and change their practices for the better. Our hope is that the guide serves as a space for discussion and engagement on how we, as various organisations, companies, collectives and individuals, choose to practice, and on the roles we imagine for ourselves in the broader visual arts sector.



**2. THE REALITY IN WHICH
PRINCIPLES OF BEST PRACTICE
OPERATE: MUTUAL AID,
BENEFIT AND COST**

The point of departure for this document has been the idea of Mutual Aid. The intention in this guide is to provide clarity on professional standards in the visual arts in order to equip all with the knowledge and tools for better mutual practice in the sector.

01

Goal of Mutual Benefit

The great diversity of events and spaces, and how they are sourced, resourced, and presented, affects the way that practitioners and such events or spaces interact artistically and financially. The goal for both event and/or space, and practitioner, should be mutual benefit. Neither can function without the other, and both stand to gain from the relationship.

02

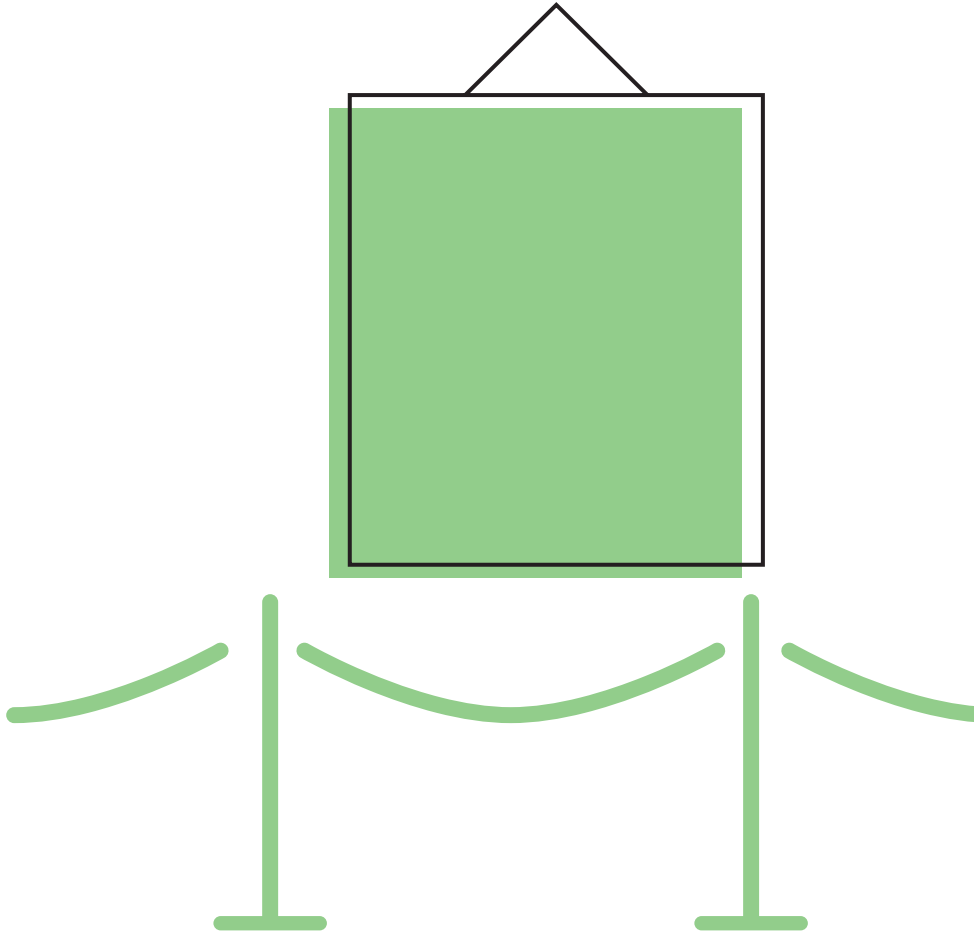
Reality of Mutual Cost

All parts of the sector (spaces, events, practitioners and others) invest time, energy and money to bring an event, exhibition or artwork to the public. Each stakeholder plays a different role, from the production of work, to the administration of events and spaces, to the conceptual and curatorial frameworks in which creative practice is discussed and engaged. This work is not mutually exclusive, and the time, energy and resources invested have mutual impact on all parties.

03

Aiming for a sustainable future

While acknowledging the current limiting financial realities in South Africa's art sector, this document outlines what the industry should aspire to. The guidelines are aimed at advancing best practice so that maximum mutual advantage can be gained and the sector can be sustained. A best practice document such as this should set national standards. Just as importantly, it can be an advocacy and leverage tool. Where events, spaces and practitioners cannot meet best practice standards, it is hoped that the document will be used as a catalyst for discussion and growth and that, at minimum, we can make informed decisions about how we want to function in our shared practice.



**3. NON-COMMERCIAL SPACES
AND EVENTS**

Non-commercial spaces and events are exhibitions, festivals, organisations and institutions that do not have commercial gain as the primary objective. Some of these may have money-making imperatives as part of their programme, and may have commercial partners and relationships, since the nature of the visual arts is that these lines may blur. However, the intention of this section is to give guidelines to practitioners and actors on professional practice conducted under circumstances that are not profit driven.

This section takes into account the public benefit derived from such spaces and events, considers the budget restrictions that may pertain, and with these in mind, plots out best practice for all possible professional working relationships that may be encountered. Importantly in this section, key areas are highlighted in which best practice is not, at this stage, a norm or standard, but is included in order to encourage and equip all stakeholders to work towards internationally accepted best practice.

3.1. TYPES OF NON COMMERCIAL SPACES AND EVENTS

Non-commercial spaces and events do not have profit-making objectives. While these spaces and events might engage in commercial practices from time to time, they see their reasons for existing through wider objectives outside of commercial gain. These spaces are usually registered as non-profit companies or organisations (NPC or NPO), but can include events such as curated exhibitions, festivals, performances and screenings that are publicly funded and driven by intentions outside of commerce.

3.2. BEST PRACTICE RECOMMENDATIONS FOR CURATED EXHIBITIONS AND EVENTS/ FESTIVALS

3.2.1. POLICY

For the guidance of practitioners, staff, and boards of directors, publicly funded spaces or events should have publicly available documents that provide accurate and transparent information about their policies in relation to exhibitions and associated events, the payment of fees and any cost sharing arrangements.

These policies should be available for consultation by regular users/employees and should be regularly updated.

3.2.2. WRITTEN CONTRACTS OR AGREEMENTS



What to Know and What to Expect

Contracts are not usual practice in the visual arts in South Africa, especially within galleries. Though they are standard best practice in most industries, and strongly recommended in this guide, practitioners should be aware that this best practice is still to be widely implemented.

A written exhibition contract or agreement between the space or event and the practitioner should be used.

Where no contract is available, either party may record the terms agreed to in writing and provide the other party with a signed copy. By accepting the written

terms of agreement, both parties may be considered to have acknowledged that the terms have been negotiated and agreed to by both parties.

Amendments to any contract or agreement should only be made in writing with the agreement of both parties.

All contracts and agreements:

- > Should make mutual expectations clear, including roles and responsibilities of each party.
- > Should identify the dates, location and title of the event, as well as the expiry of the agreement.
- > Should include a full and detailed list of artworks, including any preferred wording for copyright and attribution, as well as sign-off procedures for any text developed as part of the exhibition.
- > Should specify the amount and date by which payment of the fee/s can be expected.
- > Should include timelines for the delivery of artwork and all other supporting material (images, statements, CV or biography).
- > Should make clear reference to media announcements, responsibilities of each party in media relations (see Arts Media, Section 6).
- > Should identify liabilities for costs and expenses.
- > Should deal with Intellectual Property Rights (IPR).
- > Should include a Dispute Resolution Clause (DRC) compatible to the negotiation, mediation, or arbitration terms and processes provided in terms of South African laws.

In cases of collectives, agreements should be entered into with the entire collective and should detail how engagement with collectives will work (e.g. responsibilities for communication, decision making, publicity, finances, and so on).

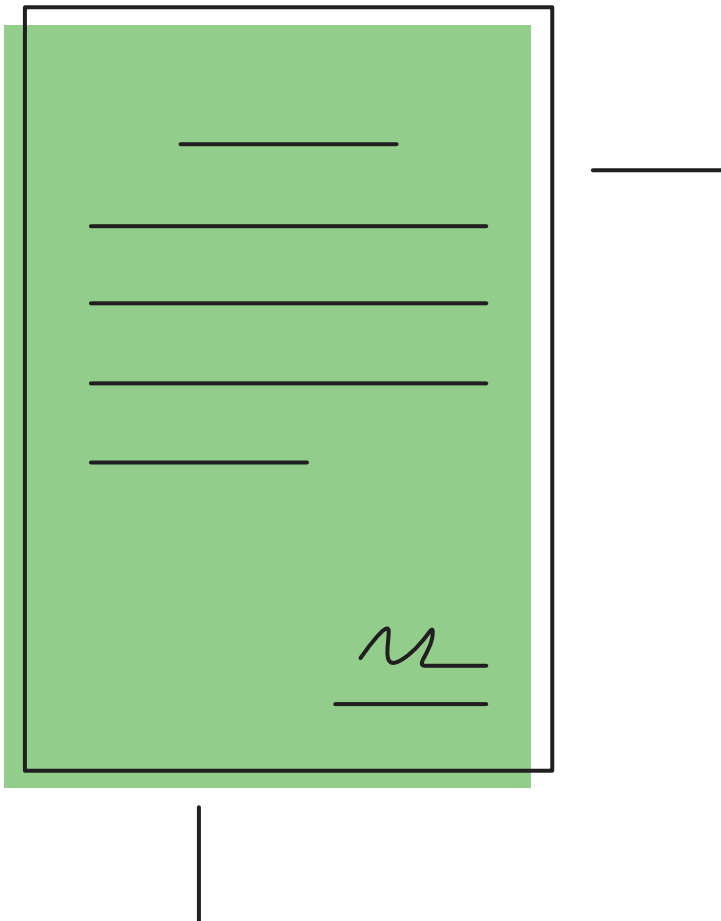
Events/spaces should be aware of third party contracts and best practice within these. In the case of a space hosting an event organised by a third party, the separate obligations and responsibilities of each space or event should be identified through a contract or agreement between these parties. Responsibilities for publicity, catalogue, invitations, fees, insurance, freight, duty of care, and so on, should be communicated in writing to all stakeholders and affected parties.

The events/spaces should cover all costs of the exhibition including promotional costs, opening and other receptions, transportation of work, and exhibition

installation. How these costs are arrived at should be negotiated.

Any costs to the practitioner should be negotiated by the practitioner and the event/ space in advance, and be recorded as part of the contract or written agreement. If a dispute arises as a result of a breach in any of the terms of the contract, the norm is that parties agree to resolve the issue by negotiating with each other. If negotiation fails, the norm is that the parties will try mediation. If mediation fails, the dispute will be decided by arbitration. Court proceedings are time consuming, slow and expensive. It is better to try to resolve issues through negotiation, mediation and arbitration.

Please refer to artright.co.za for more information regarding negotiation, mediation, and arbitration.



3.2.3 PAYMENT OF FEES AND HONORARIUMS



What to Know and What to Expect

Fees and honorariums for work shown in non-selling exhibitions, when the work is not part of the spaces' collection, are standard international practice. However in South Africa, this practice is not yet widely accepted. This is partly due to limited budgets of spaces such as state museums and galleries, however many non-profit spaces with small budgets make an effort to make provision for fees or honorariums.

Practitioners should be paid a fee for the use of artwork in curated, non-selling public exhibitions and fees should be prioritised in fundraising and budgets. Amounts paid are determined in relation to the overall budget and in cases of small budgets, modest honorariums should be paid.

In cases of collectives, and where budget allows, overall fees should be higher for the collective than for individual practitioners.

For additional programming, the event or space may pay fees or honorariums for associated services such as workshops, screenings, and long distance travel costs.

For other types of exhibitions (related to competitions or student artwork and installations), publicly funded spaces should develop policies that clearly articulate circumstances under which fees will or will not be paid, how the level of payment will be determined, and who is responsible for making payment when third parties are involved in the event. In events such as student exhibitions in the educational environment or community art institutions, fees often do not apply.

Practitioners are entitled to set the conditions for reproduction of images of their artwork, including the payment of licence fees, other than for 'fair dealing' and other exemptions under the Copyright Act. However, practitioners should discuss and

agree in writing to waiver fees when specific uses of their artwork may be required to publicise the event.

When a space (gallery or other venue) commissions a practitioner to create an artwork or works for an exhibition, the practitioner may be entitled to payment for their labour, cost of materials and other expenses (may be referred to as an Artist Fee, Author Fee, Practitioner Fee, Exhibition Fee or Commissioning Fee as distinct from a Loan Fee, see the Fee Calculator, Section 5.2.1). In this situation, the timing or staging of payment should be included in the contract or agreement. In the case of installations, a separate design fee may be payable to the practitioner if the installation is dependent on a detailed model and designs.

Practitioners should be paid a curator's fee for conceptualisation, management and coordination of an exhibition, unless earning commission on sales. Additional costs incurred by the curator, such as transportation, communication, insurance, should be reimbursed by the event or space. These terms should be agreed to in writing.

The agreement should specify whether the curatorial fee includes catalogue duties from the curator. Catalogue duties could entail fees additional to the agreed-upon curatorial fee.

Practitioners should be paid a writer's fee for any texts developed for publication (over and above artist or curatorial statements). Practitioners are usually paid per word. Both event or space as well as writer should have established rates per word in keeping with best practices for Media, Section 6. The per-word amount and text length should be agreed in writing. An hourly rate should be agreed to for any additional research or time spent interviewing subjects.

Events and spaces may deduct legislated amounts such as PAYE from fees paid to practitioners. Any deductions should be communicated in writing and the event or space should provide a pay slip and an IRP5.

For more information on how to calculate practitioner fees, please refer to the Fee Calculator, Section 5.2.1.

3.2.4. PRODUCTION COSTS

Agreement should be made prior to the exhibition as to whether an event or space will cover production costs.

If the event or space has a standard of display (e.g. a specific style or method of framing), the event or space should cover that cost.

In the case of a work commissioned by an event or space, the event or space should provide a production budget over and above fees. In such cases, additional costs over and above those of the commissioned work should be made clear in writing. In all other cases, practitioners and events or spaces should agree in writing on sharing costs.

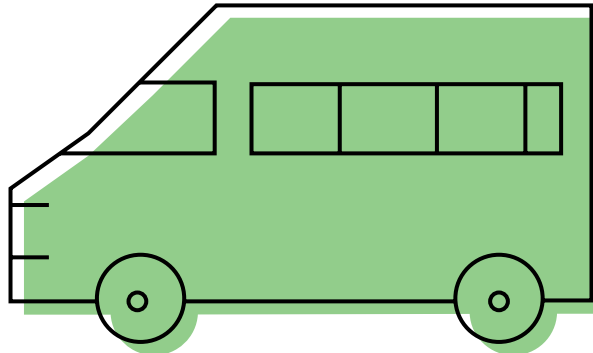
3.2.5. TRANSPORT

The space or event organiser should pay for freight and transit insurance of artworks to and from the event or space in cases of long distance transit, and for large or heavy works. For smaller works or shorter distances, the terms should be negotiated between the parties and agreed to in writing.

Spaces, events, and practitioners should use reputable logistics companies that specialise in the transport of art.

The practitioner should provide detailed packing instructions where this will assist in the safe handling of the artwork.

The practitioner should pack the artwork carefully for transport unless it is being borrowed for an extensive tour, in which case the tour organiser should arrange to pack the work.



If practitioners are required to travel long distance, such travel should be paid for by the event or space where budget permits. Spaces and events should have policies to determine the standard of travel (e.g. economy vs business class flights, class of accommodation and so on).

Prior agreement should be made on dates of delivery and return.

3.2.6. INSTALLATION

The event or space should meet the cost of installing the artwork unless this is particularly difficult or unusual. In that case, the cost and requirements should be negotiated and agreed to in writing with the practitioner (including potential for damage to the event or space during installation and exhibition of the artwork). A condition report on the event or space before and after installation may be required.

The cost of restitution of the venue after removal of the installation should be borne by the event or space. If there is unanticipated damage, this should be covered by the event or space, or through insurance unless in contravention of the contract.

The practitioner should make sure the event or space has all the information necessary to correctly install the work.

Some artworks or practitioners may require the event or space to provide specialist installation teams and equipment. In such cases, costs and logistics should be agreed to in writing.

Prior agreement should be made as to whether the practitioner must be present at the installation of the artwork.

3.2.7. DUTY OF CARE

The event, space and organiser should exercise diligence and reasonable care when handling, storing, displaying, packing and transporting the artwork, and undertake to supply suitable display mechanisms, security, lighting, fire prevention and environmental controls.

The event or space is responsible for the practitioner's work and exhibition while it is in the care of the event or space.

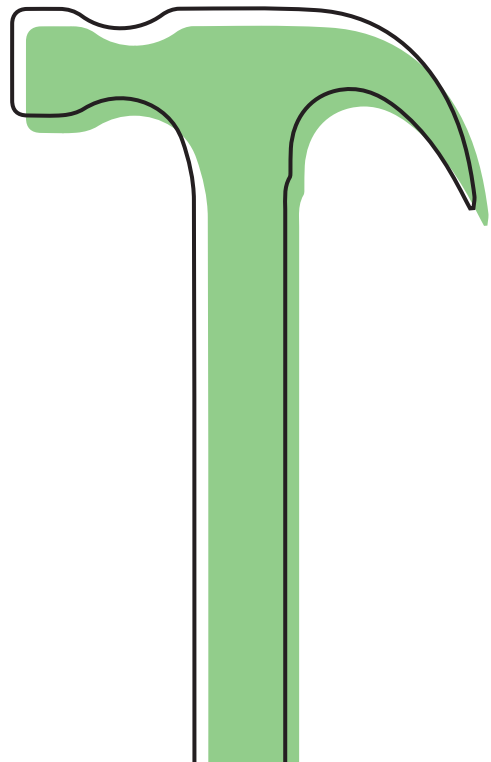
The event or space is responsible for security, fire prevention, and environmental conditions such as air temperature and humidity control. Specifications and controls should be agreed upon prior to the delivery of work.

Where the work is ephemeral (e.g. temporary in nature or self-destructing), responsibility for retention or disposal of the elements of the work should be agreed to in writing by the practitioner and the event or space prior to the exhibition.

A receipt and holding agreement should be used when an artwork is left at an event or space or storage company for the purpose of storage only. The work cannot be exhibited, photographed or used by the event or space for any other commercial purpose while it is in storage.

To ensure public access to the artwork, the event or space should take responsibility for ensuring that technical equipment, lighting and temperature controls are functional during the hours agreed to.

For new media/digital works the event or space should deal with breakdowns promptly and notify the practitioner of malfunctions if the problem needs to be rectified with the practitioner's assistance.



The exhibiting event or space should assess the artwork and document its condition on arrival, noting its insured value and any special conservation requirements.

Permission from the practitioner is required should the event or space, or the exhibition organiser, wish to reframe or remount the artwork. The event or space should return the artwork to the practitioner in its original frame or mount unless otherwise agreed.

In a situation where decay or deterioration is an intrinsic and stated characteristic of the artwork, any deterioration should not be subject to repair or compensation.

3.2.8. INSURANCE

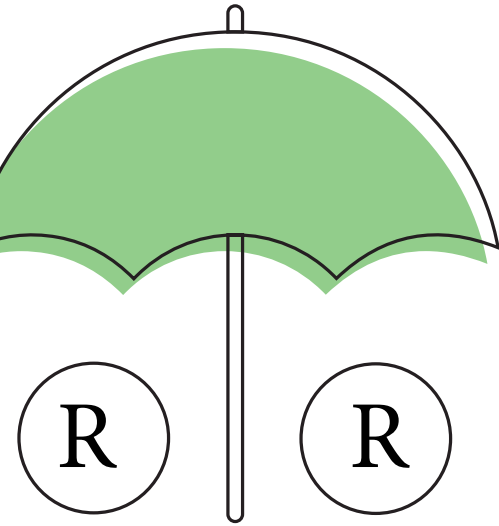
The event or space is responsible for maintaining adequate insurance. Full details of all insurance cover must be provided and explained in writing to the practitioner or owner of the work, as should the process to be followed should the work be damaged while in the care of the event or space.

Works should be inspected on arrival or delivery to the event or space, and details of condition recorded in a Condition Report.

The event or space has the right to question the stated value of an artwork, and may seek independent valuation from at least two qualified evaluators if the value stipulated for insurance purposes appears unrealistically high. If the event or space fails to provide insurance, the practitioner or owner of the work should be informed in writing.

Should an artwork be damaged, the event or space should consult with its insurer and/or the practitioner or artwork owner. The decision on whether and how to repair a damaged work should be negotiated. The event or space should cover the cost of repair unless the artwork, as previously agreed in writing, has been presented in a manner that precludes the event or space from adequately caring for the artwork (e.g. it is the practitioner's wish for the work to be shown in a public space).

Should the damage be beyond repair, the practitioner/owner should be paid the full insured price of the artwork and, if the insurer agrees, the damaged artwork should be returned to the practitioner (author).



Work kept in storage at the event or space prior or post the event must continue to be insured until such time as it is removed from the care of the event or space.

The event or space should ensure that there is public liability insurance, and adhere to public gathering and emergency procedures.

3.2.9 SALES IN NON-COMMERCIAL SPACES

Sales enquiries arising from a non-selling exhibition should be referred by the event/space/curator/exhibition organiser to the practitioner or the practitioner's representative dealer, agent or gallery.

If an institution is non-commercial in objective, the commission fee is lower than the standard for commercial events or spaces.

Public institutions do not typically sell work. In exceptional cases, such as fundraising exhibitions, commission would be lower than the benchmark paid at non-commercial exhibitions.

All sales terms, including prices and editions where applicable, must be agreed to in writing prior to the event.

In the event of the sale of an artwork, invoicing, delivery and payment to the practitioner is usually the responsibility of the event or space. Payment should be made within 30 days of the sale, or of the item being delivered to or received by the event or space, whichever is sooner.

3.3. INTERNATIONAL EVENTS

Many of the norms and standards detailed and discussed above for non-commercial practices are applicable to international events.

3.3.1. TRANSPORT

Cost of shipping and insurance should be paid by the receiving event or space. In cases of travelling exhibitions, this may be negotiated if the travelling exhibition has budget available for shipping and insurance.

Should funds not be available to ship work back to the practitioner, works (e.g. exhibition prints of photographs) should be destroyed post exhibition, and proof of destruction sent to the practitioner.

All shipping, transport and insurance arrangements should be communicated in good time and in writing.

It is expected that work travelling across international borders will be subject to customs control, and that some materials may not be accepted into a country or might require certification. Freight insurance should cover the cost of recovery in a case where entry or exit of a work is barred by customs. The event or space arranging the transport should be responsible for the management of this process.

3.3.2 EXCHANGE CONTROL

Works sold cross-border are subject to exchange control considerations and export costs. Authorised dealers are employed at most of the commercial banks and can be consulted to assist with any exchange control obligations.

Authorised dealers must ensure that any artwork exported complies with the applicable exchange control regulations.

3.4 RESIDENCIES



What to Know and What to Expect

There are many different types of residencies and no internationally expected standard for who pays for what parts of the residency. Residencies are very different from each other and practitioners should ensure they are clear on the terms of any residency before embarking upon it.

2.4.1. TYPES OF RESIDENCIES

In the case of a residency by invitation, all costs are most often covered and the residency usually occurs within a specific framework, theme or prize.

Open call residencies involve open selection criteria. Some cover all costs while others expect practitioners to cover some of the costs.

Research, studio, commercial gallery, project and outcomes-based residencies most often expect an exhibition or event to be produced at the end of the residency. All expectations pertaining to the outcome or end product should be made clear in writing.

All residencies should be conducted on the basis of a written document clearly outlining the terms and conditions of the residency.

Residencies that offer funding do so at varying levels. Some offer grants to assist in covering living expenses, materials and accommodation, others provide space, networks and accommodation, but not travel or living expenses.

Some residencies provide budget for production costs. In these cases, residency managers should assist with acquiring materials and production needs. In some cases, the budget for production of artworks is based on reimbursement only.

Where a residency results in the production of artwork, the work belongs to the practitioner, and the practitioner retains the full right to retain ownership of the work produced during the residency, unless otherwise agreed to in writing.

Some residencies provide budget to cover the cost of shipping work from the residency to the practitioner's place of residence. However, this is not obligatory, and terms should be determined in writing prior to the commencement of the residency.

Some residencies result in an exhibition. Expectations and requirements for exhibition should be made clear in writing prior to the commencement of the residency. In such cases, applicable standards of exhibition and sales should apply.

Where an event or space chooses to acquire for its collection, artwork produced during a residency, then normal sales standards should apply, unless otherwise agreed upon in writing prior to the commencement of the residency.

Should there be prior agreement between both parties that a work will be donated by the practitioner to the residency programme, it should be stated in writing prior to the commencement of the residency. Limitations, specifications, and details of selection criteria and process should be included.

In the case of open call residencies, the selection criteria and process should be made transparent by the organising body through detailed information on application forms, and by identifying:

Key objectives of the residency programme:

- > Eligibility criteria;
- > Principal selection criteria;
- > Areas of priority, such as regional areas, emerging practitioners, women, people for whom English is a second language, or people with disabilities;
- > Selection process, whether by conveners/jury, interview/image pre-selection;
- > History or background of the programme;
- > Funding models, and involvement of subsidiary organisations;
- > Previous successful applicants and projects;
- > Format of application, including support material requirements;
- > Application deadlines and address.

Some residencies accommodate the practitioner's family members for the duration of the residency. Whether or not such arrangements are applicable should be established before commencing the residency. It may be necessary or desirable to include this arrangement in the agreement or contract.

Residencies that depend on the proven professional status and experience of the resident practitioner to produce an exhibition, or to provide tuition or public access, should offer remuneration commensurate with the practitioner's professional status and experience.

The contract or letter of agreement should indicate how and when the resident will be paid, if applicable, and specify the expenses the resident is personally liable for, such as accommodation, freight, and insurance.

Some residencies are able to host collectives and/or members of collectives. Such residencies should make this facility clear. Collectives applying for such residencies will be responsible for establishing how many of their members can be accommodated, and the attendant financial implications.

Providing effective orientation for residents is a pre-requisite for the success of a residency, and is therefore an essential component of best practice. Issues integral to the success of residencies include: orientation, opportunities for networking, duration of the residency, access to transport, publicity and promotion and access to facilities.

Organisers should help residents to settle into their new environments. This may include: airport pickup, information about the area, supporting the acquisition of materials and supplies, developing networks through introductions, studio visits and events.

Insurance conditions differ across residencies depending on their type. Residents should be made aware in writing of their applicable insurance status.

Residency managers should ensure that residents are informed and aware of how to access medical services.

3.5. PUBLICATIONS

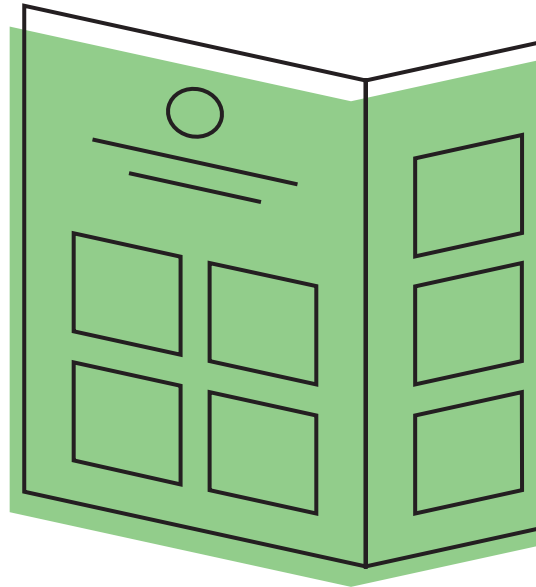
3.5.1. DIFFERENT KINDS OF PUBLICATIONS

Catalogues for exhibitions and projects are most often developed according to the needs of a particular project, and are in keeping with the particular specifications of the event or space in regard to its brand, logo, or corporate identity.

Monographs are detailed and specialised publications about a single practitioner and are most often associated with a solo exhibition. Negotiations as to the design and development of a monograph publication would take into consideration both the specifications of the event or space, the creative perspective of the artist and the specifications and sales plan of the publisher.

Editorial publications are collections of texts on a particular theme, practitioner, or phenomenon, that are commissioned or collated by an editor. Editorial publications can include academic publications and survey texts.

Artist's books are works of art that utilise the form of the book. They are most often published in small editions, though they are sometimes produced as one-of-a-kind objects. Artist's books employ a wide range of forms, and could also include zines.



3.5.2. DIFFERENT KINDS OF PUBLISHING AND ASSOCIATED RIGHTS AND RESPONSIBILITIES

All parties involved in producing a publication should have clear expectations and responsibilities detailed in writing, including text contributions and design responsibilities. There should be clear agreement on processes of distribution and dividends from sales. The parties should decide on the IPR arrangements including the collection of royalties.

If a publication for a project will be published by an event/space:

- > The event/space is to cover all costs.
- > Should the practitioner require a different production standard to that of the event or space, then costs associated with such changes must be taken on by the practitioner. Any such agreement must be in writing.
- .> Should the practitioner delay the publication process, the practitioner may be liable for the additional costs incurred. Any agreement should be in writing
- .> The norm is for practitioners to negotiate the extent of their creative freedom and contribution to the production of a publication. Events or spaces that regularly produce publications should develop a policy to regulate production and publishing relationships.

If a publication for a project will be published by a publisher external to the event/space:

- > Costs should be shared between publisher and event or space. Any agreement as to shared costs should be in writing.
- > It is up to practitioners to negotiate their creative freedom and contribution. Creative freedom and contribution are most often significantly constrained by the publisher's perception of salability of the book. This is particularly the case where publishers insist on the prerogative to determine the design and appearance of the book cover.

Practitioners should receive a minimum of two copies of a publication that features their work and to which they have contributed. If the author or contributing writer lives in a different part of the country, continent or world, the publisher should cover the cost of delivering the book via postage or courier service. This must be determined and confirmed in writing.

In the case of editorial publications (defined in Section 3.5.1), a practitioner should be paid copyright fees for permitting their work to be included in a published collection or catalogue. The terms of inclusion should be negotiated by all parties and the final decision should be set down in writing. Contributors to an edited publication should receive at least one copy of the publication.

Commissioned content should be paid for by all contributors to a publication (e.g. for a commissioned text). However, the norm is that practitioners are not paid for artist statements included in their own exhibition catalogue/monograph/artist's book. The author and/or contributing writer(s) should be provided with a PDF proof of the content before publication, in order to check for accuracy.

In the case of digital publications:

- > Involved parties should subscribe to the above norms where relevant in reference to digital publishing.
- > Where an e-publication has been produced for online sale, the practitioner should be given access to a free copy.
- > Quality of images and conditions of access to downloads should be taken into account to protect the practitioner's copyright.

3.6. PUBLIC COMMISSIONS

This document strongly recommends the use of a selection committee that includes artists, art professionals, any representatives of the commissioner, and others as needed.

Organisers should make all necessary decisions regarding project planning and preparation before promoting the commission.

Methods of and timelines for promoting the commission must be established.

In the case of a public artwork, the site for the work must be established and restrictions determined if any. Site safety for practitioner, workers, and the public, including liability, must be considered. It must be decided whether the work will be constructed on-site or created elsewhere and installed at the site. Whether the work is to be installed permanently, or will be removed at a later time, must be considered. The commission document should make requirements, limitations and expectations clear to practitioners and the events or spaces involved.

Budget for the commission must be determined. This should include:

- > Payment to practitioner for design/maquette and the final work;
- > Cost of travel, and practitioner accommodation if applicable;
- > Cost of insurance cover and who will bear that cost;
- > Cost of site preparation, materials, project management and expertise, and equipment (including industrial equipment such as scissor lift or crane);
- > Cost of installation of work including transportation if work is constructed off-site;
- > Cost of infrastructure, including lighting and signage;
- > Role of practitioner in the above;
- > The work of the committee.
 - budget for promotion
 - budget to produce publication, if applicable.

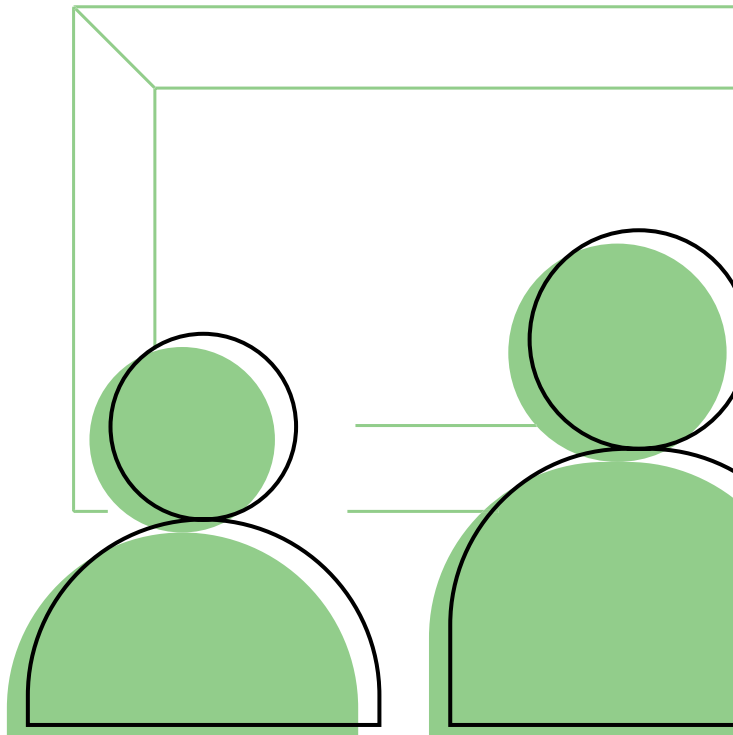
Where exact production or installation expenses cannot be determined, an estimate should be included in the contract, with a provision that clearly states who is responsible for costs and cost overruns.

A written agreement should be prepared between the practitioner, any intermediary, and the commissioner, that sets out the agreed conditions between the parties.

The commission contract should include any requirements regarding maquettes. Ample time must be given for a practitioner to complete the maquette. An appropriate fee for the production of a maquette must be paid to each practitioner when the finished maquette is delivered to the organisers. The contract should provide for possible changes to the approved maquette that may be required, and the process thereof.

All risk related to protection of the work during the event and within the specific location/s lies with the commissioner. The commissioner is therefore required to provide insurance cover for the work and the site during production and installation, and once the work is completed. Terms should be detailed in writing.

Public institutions should make a special effort to enable and facilitate practitioners to meet supply chain management requirements, and to ensure that supply chain management does not negatively affect artistic selection.



The commission contract should specify terms of acceptance and sign-off for the completed work.

The practitioner should retain ownership of the IPR, and especially of Copyright to the work. The contract should confirm the commissioner's responsibilities relating to moral rights of the practitioner (author) for inter alia, damage, lack of maintenance or disparaging treatment, and should state the commissioner's responsibilities in general matters such as maintenance, protection of the work against ageing, inappropriate treatment, safety and security (especially from malicious damage), and disposal.

Agreement as to the terms of the commission contract should be reached as soon as possible following the selection process. The selected practitioner should not undertake further work on the project unless and until agreement has been reached with the commissioner about the terms of the commission contract, and the agreement is in writing.

A series of progress payments should be made to the practitioner. A minimum suggested payment schedule requires the first payment to be made when the contract is signed, the second after completion of the design phase, and the final payment on completion.

Where the practitioner is responsible for purchasing materials and fabrication costs, the payment schedule should recognise that practitioners may not have the resources to cover the costs of large projects in advance, and that payments need to be made on time. A schedule of penalties for late payments should be included in the contract.

If the practitioner is responsible for purchasing materials and for managing the fabrication of the commission, the initial payment should include a component for the practitioner's fee and a sufficient component to cover materials and fabrication costs.

Prior agreement should be reached on a schedule of key meetings relating to the project that the practitioner will be expected to attend. Attendance at additional meetings should be paid according to an agreed hourly rate.

Provision should be made for handling unforeseen variations in costs.

These may occur due to:

- > General project delays;
- > Delays in acceptance of quotes by the commissioner, leading to the need to requote with the possibility of costs rising in the interim;
- > Budget cuts in the commissioning body, or other changes resulting in the project not going ahead in its original form, and requiring redesigning or remaking of the work;
- > Extra modifications to designs made at the commissioner's request, when these are over and above the number of revisions specified in the contract, and covered by the original fee.

The practitioner should not be expected to bear additional costs incurred under such circumstances. Appropriate design fees, and other costs for additional labour, services and materials required due to circumstances beyond the practitioner's control, should be paid by the commissioner.

Practitioners need to be aware of their intellectual property rights. Ideally copyright in both the visual concepts and the work should be retained by the practitioner. The contract between commissioner and practitioner should include rights pertaining to reproduction and moral rights of attribution.

The practitioner's authorship of the work should be made clear at the site and should be attributed on adjacent signage, and by a signature affixed to the commissioned work, unless otherwise agreed to. The nature and size of the attribution and/or signature should be agreed to in writing prior to the commencement of the commission.

It is important to clarify who is responsible for insuring the work if it is being fabricated on site, who is responsible for receiving materials on site, and for their safe storage, and who is responsible during the work's installation. Issues of worker's compensation, property care, custody and control, public liability and professional indemnity must be taken into account.

3.7 COMPETITIONS, AWARDS AND PRIZES

3.7.1 OPEN AND CLOSED COMPETITIONS AND EVENTS

Closed competitions involve pre-selecting the prizewinner through a committee without an open call for applications. Open calls invite practitioners to submit work and projects for consideration.

In the case of open calls, initial promotional information should contain a general project description and should outline submission requirements with deadline dates for each stage and the amount of money available in the competition for prizes and/or production costs where and if applicable. Information about the organisers of the competition and the process of selection to be followed should be included in the call.

The detailed project description should include:

- > A project description and any restrictions;
- > Specifics of who may enter the competition;
- > A site description and any restrictions;
- > The type of artwork to be accepted (i.e. site specific sculpture or moveable works);
- > All relevant deadline dates and requirements;
- > The name of the competition organiser;
- > A description of the stages of the selection process;
- > A statement of whether practitioner images are required in the first step of a competition. If images are required, details regarding acceptable formats must be included, and dates when images will be returned;
- > A statement regarding copyright and moral rights of work/project submitted;
- > A list of all requirements that the practitioner must fulfill when submitting;
- > Announcement date for notification of winners.

3.7.2 SELECTION AND CONDITIONS OF ENTRY

All arrangements with practitioners (both shortlisted and winners) should be contracted in writing and should include specifications for:

- > Acquisition;
- > Production budget, where and if applicable;
- > Event/space requirements where practitioner is represented by a commercial space;
- > Moral rights, copyrights and permissions;
- > Costs and logistics where applicable for touring exhibitions and exhibitions in general.



3.7.3 MORAL RIGHTS, COPYRIGHTS AND PERMISSIONS

The Conditions of Entry should state for what purpose any or all of the material submitted may be used. Practitioners should be given the right to veto proposed use of their work/creative output to protect their privacy, or to prevent unauthorised reproduction, in a case where such use was not stated in the Conditions of Entry.

If appropriate, a copyright licence fee should be agreed on regarding future reproduction of any images.

The practitioner's moral rights must be observed. Moral rights give the practitioner the right to be known as the author of a work (attribution). It includes the right to have the integrity of their work respected (not to be altered, tampered with or damaged in any way).

If reproducing work, the photographer should also be credited.

Where photographs of competition or commission winners are to be used later for commercial purposes, organisers should consider whether the permission of the subject, or the subject's guardian, should be sought before such use.

Organisers who wish to include images of the winning work(s) on a website should take steps to avoid copyright abuse, such as limiting the resolution size of images. Payment of licensing fees and the circumstances thereof should be agreed to in writing.

Organisers should indicate if winners or other practitioners are expected to participate in any personal promotional activities associated with the event. Practitioners should have the right to negotiate the extent of their participation in such promotions.

3.7.4 JUDGES, ADJUDICATION, REJECTION AND CENSORSHIP OF WORK

Organisers should endeavor to convene independent selectors or judges to the selection committee.

The competition should have policy in place to ensure fair and transparent selection of a shortlist.

Judging processes should be fair and transparent.

Judges must declare all professional and familial relationships during the shortlisting process (e.g. a curator who has exhibited an artist, or a gallerist who has or is considering showing or representing an artist who has applied, should declare these associations).

Best practice is to have adjudication and shortlisting processes on record and in writing, and available for reference in case of a contested adjudication. At the same time, judges' privacy should be protected as far as possible. Judges should have conceptual freedom to select work of their choosing. If there are limitations pertaining to the judging process, these should be made clear in writing prior to the

commencement of judging.

Organisers should develop a risk management strategy to deal with the possibility of contentious works. The strategy must recognise the rights of practitioners entering or submitting work, the organisers, the public, and sponsors and funding agencies.

Organisers should ensure that competition winners are notified prior to the opening event to enable them to attend and receive the prize or award. They can be asked to maintain confidentiality if necessary. If winners are travelling a long distance, organisers should assist with travel costs.

Practitioners not selected for the shortlist should be informed immediately that they are no longer in the competition. Arrangements must immediately be made for their materials to be collected.

3.7.5 ACQUISITIONS

Organisers should clearly state in the Conditions of Entry exactly what type of acquisition will be offered – whether by purchase, or by exchange for the cash value of the prize, and who, or what entity will ultimately own the work.

Organisers should be aware that purchase or acquisition of the work does not include automatic transfer of ownership of copyright in the work. If organisers require copyright ownership, a licence agreement should be drawn up with the practitioner and separate payment made.

Practitioners with full gallery representation need to advise their representative of any acquisition by purchase or prize, and should negotiate the level of gallery commission due.

3.7.6 COLLECTION OF WORK

The Conditions of Entry should indicate accepted methods for removal of selected and non-selected work, with full details of date/s, place/s and time/s. Any rules regarding

the early removal of work on display (prior to the end of the exhibition or event) should be stated.

Organisers should give practitioners, their agents, couriers or freight companies reasonable time to collect the work. Collection should be allowed for a period of at least two weeks.

The Conditions of Entry should indicate whether storage fees, if any, will be charged and under precisely what circumstances. Any storage fees should be kept to a minimum.

The Conditions of Entry should spell out the notice procedure to be followed by the organiser before uncollected works are deemed 'unclaimed' or disposed of. Organisers should allow at least six weeks for practitioners to claim their work.

3.7.7 TAX ON PRIZE MONEY

Winning artists and practitioners are responsible for income tax deductions where applicable.

3.8 WORKSHOPS AND MASTERCLASSES

3.8.1 CONTRACTS

All workshop agreements should be negotiated through a written and signed contract outlining payment and schedule of fees, responsibilities for materials and equipment costs, insurance arrangements, observance of occupational health and safety measures and workplace codes of conduct.

The contract should clearly delineate which party is responsible for the payment of hiring fees, administration fees and utilities such as electricity.

The contract or agreement should clearly indicate which party is responsible for purchasing materials, and for meeting payment or reimbursement arrangements agreed to.

3.8.2 REMUNERATION AND COSTS

Workshop teachers should be remunerated in accordance with their professional status, experience and expertise.

Workshop and sessional teaching arrangements are temporary and casual rather than permanent and fixed-term employment, and remuneration scales should compensate for lack of holiday pay, sick pay and sometimes superannuation entitlements.

Teachers who conduct contractual workshops stipulate their own remuneration, based on tuition fees, material costs, hiring of studios and facilities, and sometimes travel costs as well. Teachers should be aware of institutional policies and fee structures, and of benchmarks that might define final remuneration.

All projected and associated costs for the workshop should be clearly outlined in the contract.

3.8.3 APPLICATION

3.8.3.1 CANCELLATION AND REIMBURSEMENT

Higher learning providers should make publically available a fee schedule for any programme offered.

Higher learning providers should develop and implement a cancellation policy. The policy should clearly outline when students are entitled to a reimbursement of fees in case of cancellation, and when students are required to pay cancellation fees.

Where possible, institutions of higher learning should have a payment plan in place for students who are not able to pay the initial payment in full.

3.8.3.2 MATERIALS AND EQUIPMENT

Higher learning programmes and courses should clearly outline what materials and equipment will be required for a specific course. This should be published in the prospectus for the course. If possible, estimated costs of material and equipment should be provided.

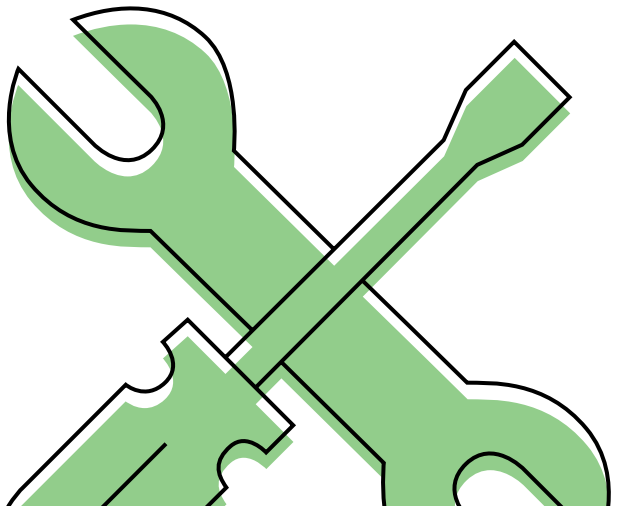
Higher learning providers and programmes should have clear and available policy to regulate rental of equipment owned by the institution or programme. This should detail deposits that students might be expected to pay, the conditions affecting the return of the deposit, and any circumstances that might affect graduation (e.g. whether the cost of repairing damaged equipment can be added to tuition fees, and whether the student's right to graduate may be made conditional to full payment).

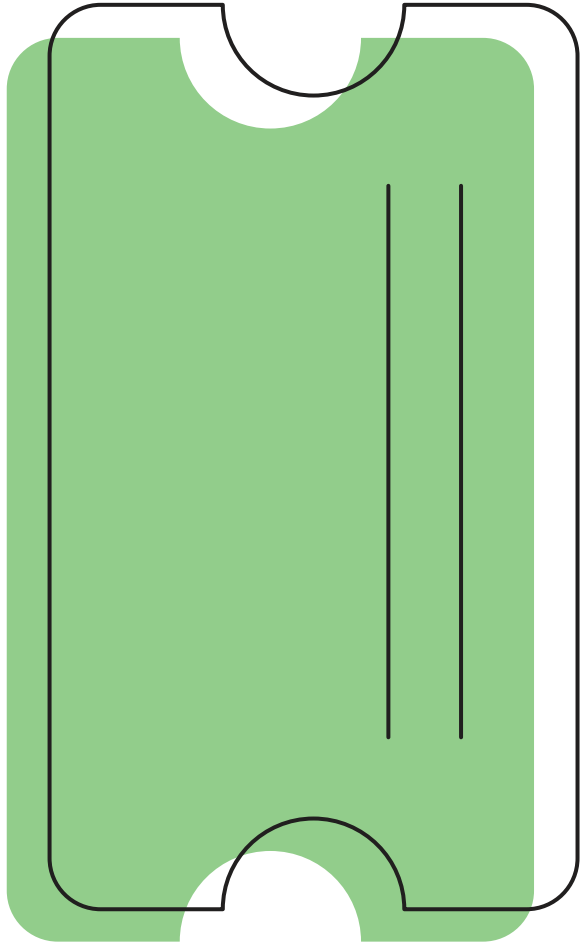
3.8.3.3 OUTCOMES

Higher learning providers and programmes should make the course outline, learning outcomes and skills development criteria available in the prospectus for the course. This should include any professional opportunities that the course might offer students.

3.8.3.4 TIMES AND VENUE

Higher learning providers and programmes should make available in advance the times and venues of all courses and programmes offered.





**4. COMMERCIAL SPACES
AND EVENTS**

Commercial spaces and events are exhibitions, festivals, organisations and institutions that have the sale of artworks and/or art related services as their core business. The nature of contemporary art practice means that such spaces and events have wider conceptual and philanthropic strategies and intentions than pure profit; however, if the largest proportion of work and time is directed at the sale of artworks and/or services, then the event or space will be deemed commercial. The sale of artworks and/or services outside of specified spaces and events (including by practitioners themselves), is likewise deemed commercial and therefore subject to the same guidelines of best practice.

Best practice guidelines for commercial spaces and events are the same or similar to those applicable to non-commercial spaces or events (see Section 3), and are therefore not repeated here. This section deals with best practices, norms and standards specific to the commercial context. Importantly, key areas are highlighted in which best practice is not, at this stage, a norm or standard, but are included in order to encourage and equip all involved to work towards internationally accepted best practice.

4.1 TYPES OF COMMERCIAL SPACES AND EVENTS

Commercial spaces and events undertake profit-sustaining activities such as the sale of artworks and other objects as their core objective. While these spaces and events may have broader values and intentions, their programming, decision-making and processes are primarily aimed at commercial interest and gain. These spaces and events include commercial galleries, art fairs and pop-up selling exhibitions.

4.2 POLICIES

Commercial galleries and events should have policies in place regarding the functions of exhibitions, representation and sales. These policies should be available for consultation to regular users/employees and should be regularly updated.

4.3 FULL GALLERY REPRESENTATION



What to Know and What to Expect

Gallery representation differs from gallery to gallery and sometimes from practitioner to practitioner within the same gallery. The best practice guidelines listed here take from a range of gallery practice within South Africa, that meets internationally expected best practice.

It is recommended that all galleries and all practitioners negotiate and agree in writing on the nature and terms of their relationship. Of particular importance are the provisions regarding exclusivity, commissions, accounting and reconciliation, costs and expenses, IPR and dispute resolution.

The agreement should list the expectations of both parties. To provide reasonable certainty, the commercial terms of the relationship should be confirmed in writing, whether by a letter of agreement or a formal contract. If there is to be any change to these terms, the practitioner and the gallery should negotiate the required changes, and document these in writing as a variation to the agreement.

Full representation relationships are generally expected to be long-term. Most full representation relationships are not for a fixed period. All terms of representation, including clear procedures that outline how each party can exit from the relationship, should be agreed in detail and in writing.

It is a norm that parties re-assess their commercial relationship from time to time. This assessment should take place at least as regularly as when the results of each exhibition are reviewed.

Practitioners and commercial galleries/dealers should be clear when establishing a relationship that its purpose is the successful sale of artwork. However, while selling generally takes place inside or otherwise in the context of the gallery, other artistic ventures by the practitioner add to the salability of the practitioner's work. These may include, but are not limited to, public gallery exhibitions, non-commercial

artwork, promotional activities, and sales relationships with other dealers outside the territory agreed to between gallery and practitioner at the outset of the relationship. Commercial galleries should plan to support such ventures, to the extent to which their resources can accommodate such activity, and in keeping with the scope of the original agreement.

Galleries should expect to exhibit and sell the practitioner's work on a regular basis within the gallery space. Practitioners should expect to supply work on a regular basis.

The practitioner represented by a gallery should not undermine or compromise his or her relationship with the gallery by attempting to establish an independent business relationship with clients.

While the principal service of the gallery to the practitioner is to sell the work, gallery representation may also include the services listed below. This list is an indication of core services a gallery may provide in representing the practitioner. It is not exhaustive, nor will all galleries provide all services:

- > Holding regular in-house exhibitions;
- > Managing all promotional requirements of the artist (see Media, Section 6);
- > Pursuing sales outside the gallery in the public and private sector;
- > Cultivating collectors and corporate clients;
- > Protecting the practitioner's legal rights, including copyright, in activities relating to artwork consigned to, sold through, or promoted by the gallery;
- > Pursuing sales outside the gallery in the public and private sector;
- > Collaborating with the practitioner on competition, grant, and commission submissions prepared by the gallery;
- > Recording all works left on consignment, on approval, on loan, and sold.

The gallery should not expect its area of exclusivity to exceed its true territory of operations.

The gallery should be able to substantiate any claim for exclusivity.

Where no written and precise exclusivity agreement is signed, none should be presumed to exist.

In case of dispute over breaches of contract, mediation should be sought before legal action is commenced.

4.3.1 EXHIBITIONS

The gallery and practitioner should agree on the frequency of exhibitions.

The gallery and practitioner should discuss and agree in writing the best promotional strategy for work, including frequency and timing of exhibitions, and whether work should be available for selected viewing prior to an exhibition being scheduled.

Where the gallery typically offers solo exhibitions, the practitioner should be able to expect exhibitions on a regular basis, 'regular' being defined in writing at the initial stages of drawing up the representation agreement. Practitioner and gallery should discuss timelines.

Where the gallery does not offer solo exhibitions, the practitioner should be able to expect that a representative sample of their work is exhibited on a regular basis.

To facilitate the successful exhibition of work, the practitioner should deliver the agreed work to the gallery in good order and good time.

The gallery and the practitioner should together negotiate a written agreement in regard to exclusive representation. Exclusivity may include, but not be limited to, territory, method of sales, and means of communication.

The practitioner and the gallery should discuss and agree who is to pay the cost of framing and whether commission is to be calculated on the framed or unframed price. In most cases the practitioners – in consultation with the gallery – are responsible for the cost of framing their work for the purpose of presentation and sale.

The practitioner should supply the gallery with a guest list for exhibition openings, including names of those who have previously bought their work.

When the practitioner receives an invitation to exhibit in another space, this should be disclosed and discussed with the gallery.

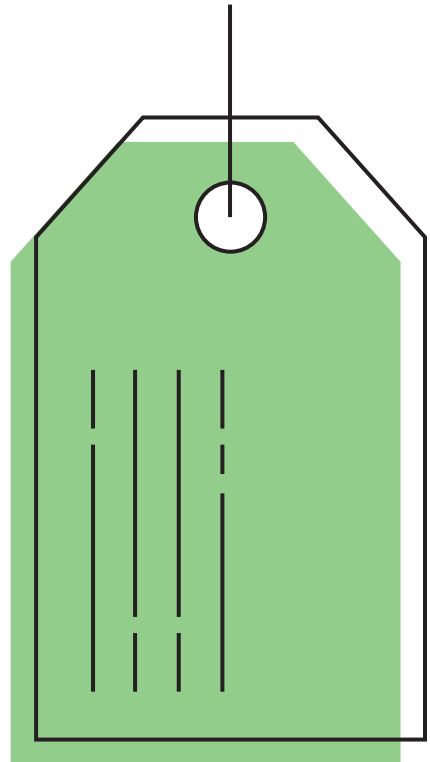
The practitioner should credit the contracted, representative gallery when their work is exhibited in another venue.

4.3.2 PRICING

The gallery and practitioner should jointly agree on the retail price of the artwork. It should be clear to the practitioner what deductions are required (e.g. production costs, framing, and/or gallery loans).

Once prices are established, they should remain stable across all jurisdictions. In the interests of both parties, undercutting established prices or raising them in one location and not another is not recommended. These practices undermine the value of the practitioner's work and are a potential source of discord between practitioner and gallery.

The gallery and the practitioner should from time to time discuss price increases to keep pace with the rising value of the work.



4.3.3 COMMISSIONS AND SALES

Commission on sales is payment by the practitioner to the gallery for the gallery's continuing work and representation. It is earned by the gallery for the types of services listed under Section 4.3 and is paid to the gallery when the practitioner's work is sold. Commission should be negotiated by the parties involved at the outset and the rate should be stated in the written agreement.

Gallery commission should reflect the type of service (see Section 4.3) provided by the gallery, and is usually set at 40% of the price of the artwork. Commission is paid on the price before VAT.

In cases of collectives, galleries should be paid commission on the basis of their services, which is equal to the service delivered to an individual practitioner. Commission of approximately 40% is payable on the sale of an artwork, as agreed to in writing.

Galleries should not increase sales commissions as a way of defraying increased expenses. Increased expenses should instead be defrayed by an increase in prices, as is the case in other business and industry sectors.

'Selling out the studio door', when the practitioner makes unacknowledged personal sales of when having formally agreed to gallery exclusivity, will be a source of discord between practitioner and commercial gallery and is not recommended.

When a practitioner spends extra time on a commissioned artwork for a gallery client, a lower than standard gallery sales commission may apply. This rate and the roles of all parties involved (including but not limited to client liaison, documentation, supervision, insurance, transportation, framing, installation, and so on), should be negotiated prior to the start of the project.

The gallery's fees for services other than sales, such as rental of the practitioner's work, negotiations for commissions of artwork, or any other service, should be agreed to in advance by practitioner and gallery.

When the practitioner enters competitions, art awards, or acquisitive exhibitions, and wins prizes, the practitioner should ensure that the gallery is credited for all works currently consigned to the gallery.

When the practitioner receives a grant, award, or cash prize, the commercial dealer should have no expectation of commission.

The practitioner and gallery should discuss whether commission will be paid to the gallery on donations to, or sales of artwork at fundraising events. The gallery and practitioner should jointly agree on a reserve price to ensure that the value of the work is not undermined.

The practitioner and gallery should jointly agree in writing on the rate of commission to be paid on all other types of special transactions.

The gallery has an obligation to the practitioner and to the practitioner's work to represent the work as fully as possible, and to its best advantage, and not to undermine the value of the work.

If a gallery gives discounts, any reduction in profit should be taken from the gallery's commission, not the practitioner's return.

A written agreement of sale should be issued by the gallery to the buyer for the sale of each work. It should detail all the terms of sale.

Payment to the practitioner should be made within at least 30 days of the sale, or when payment is received by the gallery, whichever is sooner.

Where the gallery accepts installment payments, a minimum deposit of 25% should be made.

Where the gallery agrees to accept the return of sold artwork, this should be entirely at the gallery's expense.

On request, the gallery should provide the practitioner with a statement of progress of purchases, and any installment payments due or received.

The gallery should provide a statement of account for individual works with every payment to the practitioner, including details of purchasers. It is a breach of the representation agreement for the practitioner to seek direct sales from purchasers so named without the payment of commission.

At the end of each financial year, the gallery should undertake a stock-take and send to each practitioner a list of their works held on consignment, a list of sales

made throughout the year, and should settle any outstanding amounts owed to the practitioner. Individual stock-take statements should be issued more frequently for practitioners with a substantial turnover.

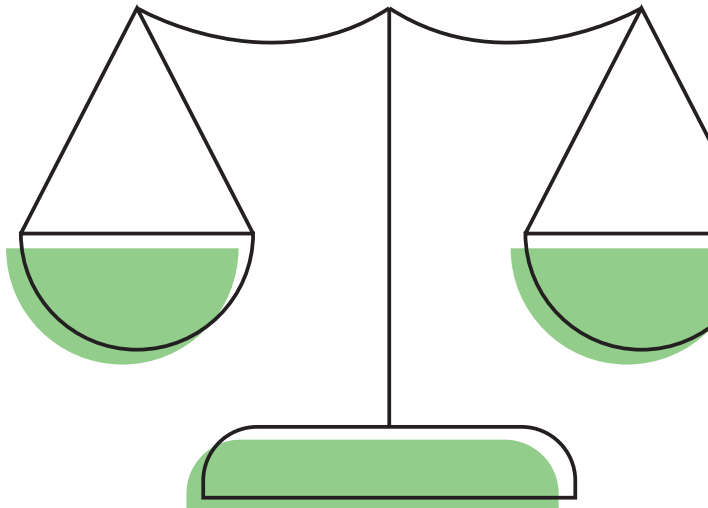
4.3.4 COPYRIGHT

The gallery should protect the practitioner's legal rights, including copyright, in activities relating to artwork consigned to, sold through, or promoted by the gallery, and should take reasonable steps to ensure that others do so also.

The gallery should not influence the practitioner to sell, licence, or waive their copyright or (as may be applicable) moral rights.

The gallery should not be expected to pay royalties for reproduction of the practitioner's work where the purpose of reproduction is to sell the practitioner's work. This should be confirmed in the written agreement.

Royalties, which includes the right or permission to use intellectual property, that are paid to a non-resident, may be subject to a withholding tax in South Africa. The withholding tax is 15% of the amount that is paid to the non-resident.



4.3.5 DUTY OF CARE

The gallery is responsible for the practitioner's work while it is in the gallery's care.

The gallery should exercise all reasonable diligence when handling, storing, displaying, and packing the work.

The gallery is responsible for maintaining adequate insurance cover. Details of insurance cover should be outlined to the practitioner in writing, as should the process that will be followed if work is lost, damaged, or stolen while in the gallery's care.

If the gallery does not provide insurance, the practitioner should be informed in writing. This does not waive the gallery's responsibility to compensate the practitioner for lost, stolen or damaged work.

The gallery is responsible for security, fire prevention, and adequate environmental conditions including display and lighting.

If a work is damaged while in the gallery's care, the practitioner should be given the first option to repair the work, or to approve the choice of conservator. The gallery should cover the costs of repair.

If loss or damage is such that the work cannot be satisfactorily repaired, the practitioner should be paid within a reasonable period of time, regardless of the gallery's level of insurance or time taken to settle the claim.

4.4 SINGLE OR ONE-OFF EXHIBITIONS AND EVENTS

In some circumstances, practitioners may organise a single or one-off exhibition with a commercial gallery, space, or event where there is no commitment to a continuing relationship. Such circumstances include, for example, a practitioner who organises a one-off exhibition in a different city or region that lies outside of their normal area of representation, or when a commercial gallery agrees to take on a practitioner for one show only. This may be in order to test the market for the work prior to an offer of full representation being made. Both parties need to be absolutely clear and have a written agreement on matters such as the duration of the relationship, level of services provided and commission charged, to avoid confusion about the nature of the representation that may be negotiated in the future.

In a one-off exhibition, the costs to the practitioner can vary greatly. Practitioners are most often responsible for transport costs, framing, promotional and private view costs and, depending on the arrangement, display costs. The commission paid to the event or space should take into account the financial contribution from the practitioner.

There should be a written contract or agreement.

The event or space and the practitioner should consult and jointly determine who pays for any costs arising.

The practitioner and the event or space should jointly agree upon the appropriate commission due to the event or space, and it should be proportional to the level of service supplied by the event or space.

The event or space should obtain the approval of the practitioner before proceeding with payment by installment. Installment agreements should be included in the contract between practitioner and event or space. Maximum time for the installment payments to be completely paid off should be three months. Installment payments should be made in regular tranches and stages (e.g. 30%-30%-40%) with commission paid on each installment.

The practitioner should receive each installment payment within 30 days of payment being received by the event or space, and credit extended should be entirely at the

event or space's risk. If the installment sale is not completed within 90 days, the event or space should pay the practitioner the full retail price less the relevant commission. Agreement should be reached as to how long an event or space may keep or store work for sale, prior to returning the work to the practitioner.

4.5 MULTIPLE SALES OUTLETS

When a practitioner sells work through many outlets such as coffee shops, malls or markets, a written non-exclusivity agreement should be in place between all parties.

Pricing should be agreed and negotiated by all parties and should be similar across all outlets.

If the organiser or owner of the outlet does not offer the same services as a commercial gallery (see Section 4.3), then the commission rate should be significantly lower.

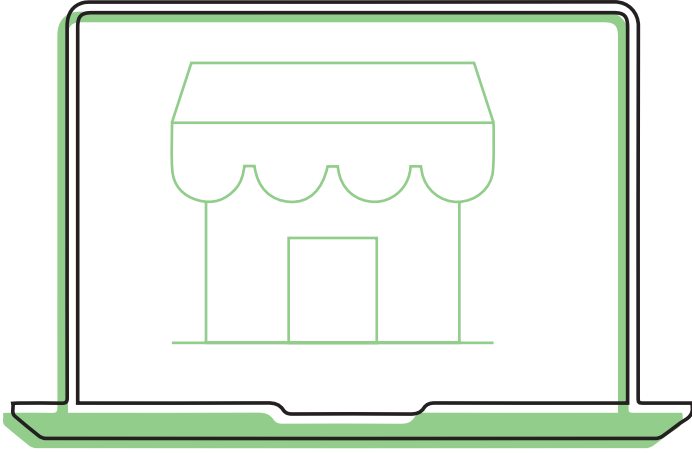
4.6 SELLING ON THE INTERNET

Works sold online by an event or space may be subject to the same arrangements as works sold through a regular commercial gallery, including in relation to commissions.

It is in the best interests of practitioners and galleries to establish:

- how secure the site is against IPR infringements;
- whether access and use is managed by a Website User Licence;
- whether the work will be properly attributed and interpreted.

The event or space, or the owner of the website, should agree with the practitioner whether downloading by users will be permitted, and on what licence terms and condition.



4.7 CONSIGNMENT

Consignment is the most common selling arrangement between visual arts practitioners and commercial galleries. This means that the event or space is not the owner of the artwork, but that it sells the work as the agent of the practitioner.

Art is sold on consignment when a practitioner or an art owner allows an event or space to exhibit and promote a work of art for a period of time, without the event or space taking ownership of the work. The event or space takes a commission for selling the work. Most galleries and some café spaces sell art on consignment on behalf of a practitioner.

Ownership of the work remains with the practitioner, and only on full payment will the ownership transfer from the practitioner to the buyer.

A consignment agreement should be developed and signed between the parties. It should include:

- > The period that the work is to be consigned;
- > The commission that the gallery and the practitioner will receive upon the sale of the work;
- > How the event or space will pay the practitioner;

- > Who pays for the transport and insurance of the work;
- > Who is responsible for the installation of the work;
- > How the work is returned if the work is not sold;
- > Condition reports should be supplied when the work is consigned and/or returned.

In the case of new work being added to a current and valid consignment agreement, a consignment record should be produced and signed by both parties and attached to the consignment agreement.

When delivering works to the event or space, the practitioner should supply a full descriptive list of works, including a description of the condition of works. The event or space should check the consignment list against the works delivered. The event or space should sign and return a copy of the list to the practitioner as a receipt. If the practitioner does not prepare the consignment list described above, it should be prepared by the event or space promptly upon taking possession of the works and a signed copy provided to the practitioner.

By accepting the practitioner's work on consignment, the event or space agrees to statements made on the consignment sheet, and acknowledges that the work was in good condition when received.

Consigned artworks are not the property of the event or space, and may not be included in any sale or transfer of the event or space.

4.8 EXPOS AND FAIRS

It is a norm for expos and fairs to convene a selection committee made up of galleries with commercial experience and insight.

Expos and fairs should have policy in place that ensures that selection remains fair and transparent.

Selection criteria should be publicly available in cases of open calls for gallery or project participation in the expo or fair.

In the case of non-commercial projects or project spaces invited to a fair or expo, the

project or project space will manage and contract their own artists and practitioners.

Fairs should have policy in place on how best to deal with contentious work.

All norms and standards concerning contracting, commissions and sales for commercial galleries and practitioners at fairs remain as stated in Section 4.3 or 4.4 depending on the circumstances.

4.9 AGENTS AND ART CONSULTANTS

4.9.1 ARTIST REPRESENTATION AND SALES

In contrast to the continuing relationship practitioners have with their representing gallery, selling through art consultants is most often a one-off event focused on a single transaction. Nevertheless, art consultants may deal many times with a particular practitioner and good business relationships often develop.

There should be a written agreement or contract between the art consultant and the practitioner that outlines the terms and conditions of the relationship. The detail of what should be included will depend on the nature of the relationship.

The art consultant should assist in ensuring that there is a sale of artwork contract between the practitioner and the purchaser.

The agreement should cover payment details, make purchasers aware of rights held by the practitioner, and address any special considerations in relation to the display and care of the work.

Payment to the practitioner should occur within 30 days of payment being received by the art consultant.

Where the practitioner has full gallery representation the art consultant should respect that relationship and deal through the gallery. In that case, commission should be paid by the practitioner to the gallery at the rate previously agreed. Then, if appropriate, the

gallery should split the commission with the art consultant at a rate previously agreed to. The art consultant should not be paid any additional commission by the practitioner.

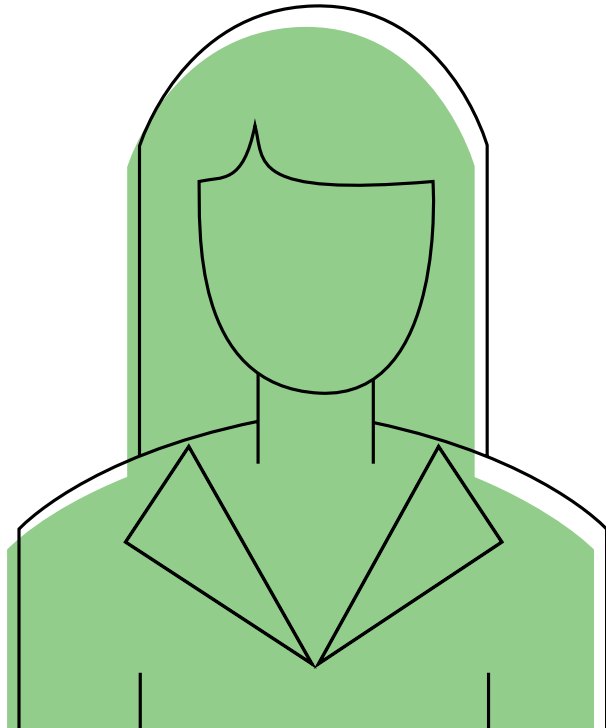
An art consultant should receive commission directly from a practitioner only where the consultant takes on a representation role on behalf of a practitioner who is not otherwise represented.

The art consultant should sign and return a copy of the consignment list supplied by the practitioner as a receipt of work.

4.9.2 PROJECT MANAGEMENT AND FACILITATION

Consultants who provide project management and facilitation services should state the terms of such engagements in writing with clients and appropriate parties.

A fee schedule should be made available to all participating parties in advance. Negotiations related to fee structure and payment plan, if applicable, should be agreed to in writing.



4.10 PRACTITIONERS SELLING WORK

A sales agreement should be drawn up between practitioner and buyer and should include the following:

- > A description of the artwork, including materials, scale and editioning details where applicable;
- > IPR ownership and control;
- > Which party is liable for the cost of transport and insurance;
- > Whether the work is framed or not (if applicable);
- > A schedule for delivery of the work;
- > Exchange of contact details and addresses (domicilia) with commitment from the buyer to notify the practitioner if the work is resold.

Practitioners may also request that certain added rights be respected after the work has been sold. Such a sales agreement must include:

- > A clause on alteration and maintenance of the artwork and duty of care;
- > That the practitioner needs to be paid and attributed when the work is published;
- > That the practitioner has the right to use the artwork for exhibition;
- > That the practitioner has the right to use the art work for exhibition on request;
- > How the work should be maintained and repaired if it is damaged.

A Certificate of Authenticity describes the artwork and guarantees the buyer that the work is an original piece created by the practitioner named and identified in the certificate. A gallery, event or space, a practitioner, or any other seller, should produce a certificate of authenticity on a buyer's request.

Practitioners should be allowed access to their work for documentation, and for exhibitions elsewhere, subject to normal conservation and collection considerations.

In the event that a work needs to be destroyed due to irrevocable damage, the owner should notify the practitioner and allow reasonable time for the work to be documented and/or removed and re-housed. Where practical, the owner should return the work to the practitioner at no cost, to uphold the practitioner's moral right.

Private and public purchasers of art need to be aware of some of the special conditions that apply in the sector. Many practitioners derive low earnings from their art practice and full and fair remuneration for their services is recommended.

4.11 PRIVATE COLLECTORS AND COMMISSIONS

4.11.1 COMMISSIONING WORK

Commissioned artworks are works produced under a commission arrangement where the practitioner functions as an independent contractor in producing the work or project. This arrangement is distinct from an employee relationship. Under a commission relationship, the commissioner and the practitioner agree on the nature, form, and content of artwork or project to be produced, the commissioner pays a fee to the practitioner for the production of the work, and the practitioner produces the work or project to the specifications previously agreed on between the parties.

In the case of a buyer commissioning a work directly from a practitioner, a commissioning contract should be drawn up. The agreement should describe what the commissioning process entails, and a schedule of how and when payments are to be made during the process. The contract should include the following details:

- > A description of the artwork including preliminary sketches;
- > A cost breakdown;
- > The stages of inspections and approvals and an interim payment breakdown;
- > How the agreement can be terminated by either party, and what the outcome will be;
- > Who owns the copyright to the work;
- > How the work will be transported and delivered;
- > Who will install the work.

Collectors must observe the requirements in relation to the practitioner's legal rights such as copyright and moral rights over their work.

4.11.2 BUYING WORK

Prospective buyers should honour any payment terms that they agree to with the seller and/or practitioner.

Before a sale commences, a prospective buyer may rightfully request access to published material on the artist (texts and catalogues), a CV and biography of the artist, and certificates of authenticity of the work (if applicable), that the seller might possess or have access to.

Prospective buyers should be allowed to inspect any work that they might want to purchase, to verify that the work is not damaged and that the work is in the condition that the seller has described.

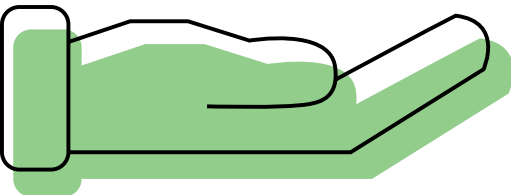
Buyers should document the works in their collection for authentication and ownership purposes, and keep records of any damage or changes in the condition of the work. Record keeping is important for ascertaining the value of a work for resale.



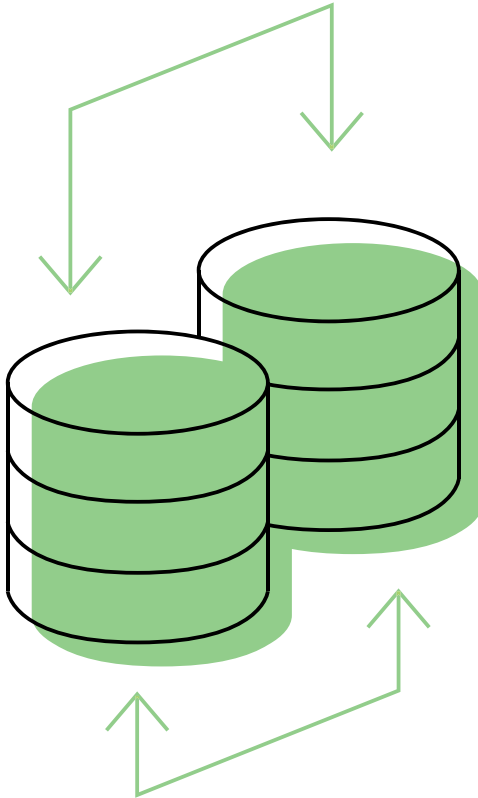
Prospective buyers of video art should confirm with the seller in regard to any need for, and associated costs of, future-proofing the work, in light of rapidly changing technologies and formats.



Prospective buyers should ensure that they understand the storage conditions and/or the conditions of display for any work purchased. Buyers may request that these conditions be supplied in writing by the seller.



4.11.3 PRICING OF WORK



Prospective buyers should undertake research on the pricing of a particular artist's work, or benchmark pricing of similar work. In the case of an emerging artist without a sales record, the buyer should investigate the selling prices of comparable work by other artists with similar career trajectories and highlights.

When buying from a commercial gallery or through another agent and not directly from the artist, prospective buyers should be aware that up to 40% of the total will be paid as commission to the commercial gallery or agent. The artist receives the remaining 60%.

Prospective buyers and collectors should be aware that any of the following might have an effect on the price of a particular artist's work:

- > galleries, museums or institutions where the artist has exhibited work;
- > solo exhibitions;
- > participation in group exhibitions;
- > awards, prizes, grants or honours received;
- > acquisitions in public, private, or corporate collections;
- > positions held (e.g. resident artist, professor, teacher, lecturer);
- > acknowledgement, citation or dedication in publications (e.g. monographs or catalogues);
- > sale of work on auction.

The following might also apply to the final price and should be taken into regard:

- > original work is priced considerably higher than reproductions of work;
- > limited edition original prints (including photographs) are generally priced at a higher amount due to fewer prints being available on the market;
- > whether the work is framed or unframed;
- > in the case of video art, the price might vary depending on the edition size, the format available, if the work comes with an archival copy, or the case or packaging supplied or included (e.g. a handcrafted case for a DVD or video work as opposed to a plain case).

4.12 STUDIOS

4.12.1 CONTRACTS AND AGREEMENTS

If a studio is managed by a collective of practitioners, a partnership agreement should be agreed to by all members. The agreement should delineate roles and responsibilities in regard to:

- > Maintenance;
- > Administration;
- > Finance.

It is recommended that such collectives consider formal registration.

Lease agreements should be effected between the landlord and the collective or organisation.

Studio agreements should be in place with all practitioners who rent studio space.

Studio agreements should allow a maximum of two months' notice.

Studio agreements should include the following:

- > Deposit requirements;
- > How and when rent is to be paid;
- > Management of arrears;
- > Minimum notice.

In the case of an institution (local business, local authority, municipal gallery or museum) providing space in exchange for particular services from a group of practitioners (e.g. workshops), an agreement should be in place as to provision and limits of services.

It is not a norm to have insurance cover for artworks in studios, however this could be collectively negotiated and agreed upon in writing by all parties, members, and residents.

If a practitioner wants to create a work and hires a print studio or sculpture studio to complete the limited edition, it should stand that the agreement terminates once the work has been created unless the practitioner grants permission to the studio to sell the work. If a practitioner and a print studio or a sculpture studio collaborate to create a limited edition, the ownership of the edition is shared between the two parties, since the studio and the practitioner are taking on shared risk in creating the edition together.

4.12.2 HEALTH AND SAFETY

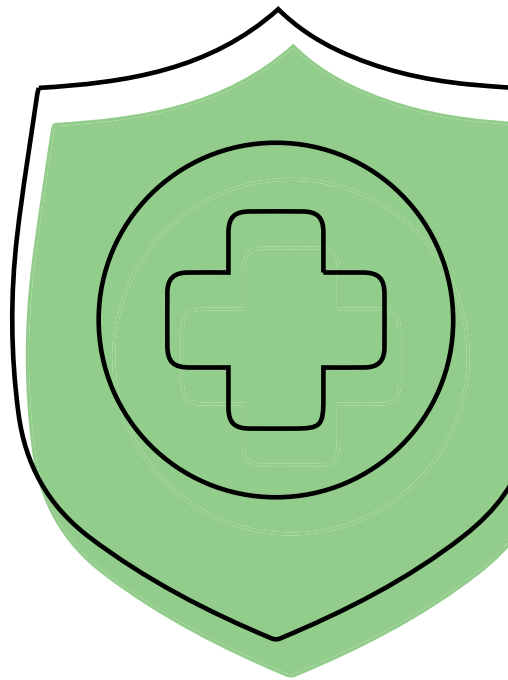
The studio is liable for the personal safety of anyone using the space, and is responsible for taking adequate measures to enable people to exit the space in case of emergency (e.g. by making sure that work is not stored in passages leading to exits).

The studio needs to ensure proper storage of hazardous materials and must follow manufacturer's instructions in this regard. Details should be included in studio agreements.

Studios need to establish adequate systems of waste management and disposal as per bylaws.

The studio needs to ensure adequate ventilation of all spaces. Studio agreements must include and adhere to legislated standards of ventilation, safety and disposal. Studios should regularly re-assess health and safety standards, including the working quality and servicing of fire hydrants, emergency exits and ventilation.

Studios should be in good standing with the Compensation Fund and have public liability insurance. See Section 5.1.2.



4.13 AUCTIONS

The seller, auctioneer, and buyer should conduct the auction process at all times with integrity and in compliance with the auction industry's codes of practice.

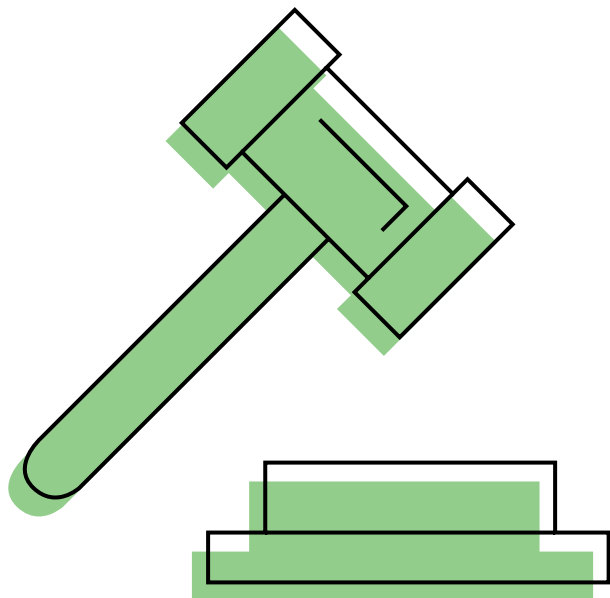
Terms and conditions of sale should be on display and available for inspection at the auction.

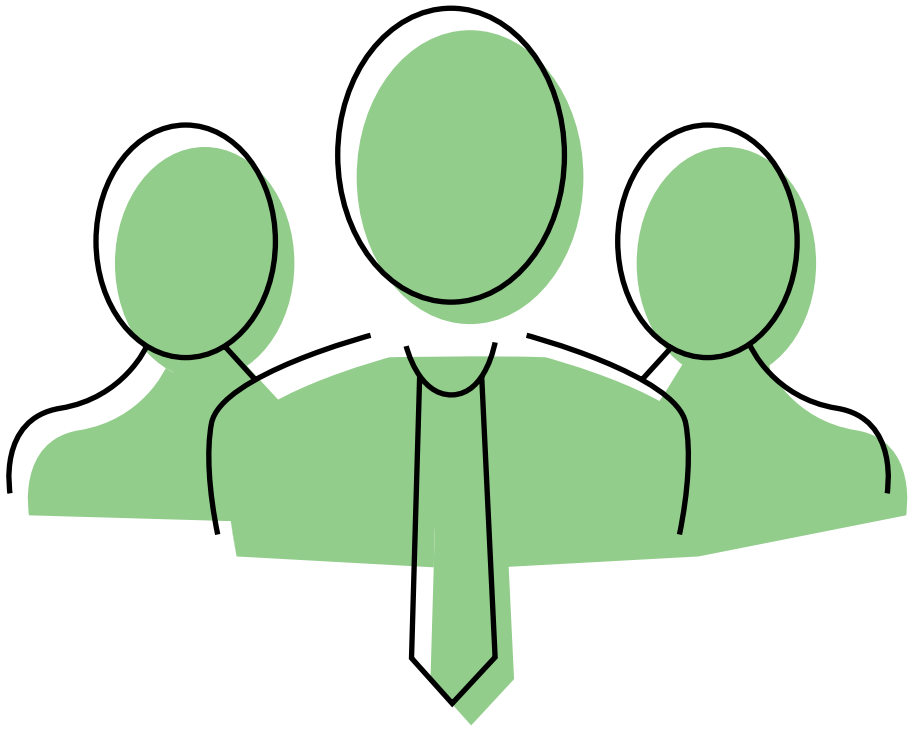
Any work that carries a financial interest for the auction house, or has a reserve price should be declared in the catalogue and announced prior to the bidding process. The reserve price is usually not disclosed to the bidder.

Before commencement of bidding, the auctioneer should announce whether the seller has reserved the right to bid at any level below the reserve price.

The auctioneer shall ensure that the amount of any bid is clearly stated.

The auctioneer may refuse a bid.





**5. ORGANISATIONS,
BUSINESSES, AND
PRACTITIONER FINANCE**

This section is primarily concerned with work-related elements of the professional practice of artists. It is a mixture of issues that are not particular to the staging of projects and exhibitions, but are rather concerned with the everyday functioning of events, spaces and practitioners as professional working environments and peoples. The first part looks at the process of people working together in business, organisational or collective environments, and provides best practice standards for collaboration, good governance and legislated work environments (including transformation, health and safety and so on).

The second part deals with key work-related financial issues for organisations, businesses and practitioners. The fee calculator is included in this section. The fee calculator has been developed in terms of international standards, taking into account the specificities of the South African context. It sets out norms and standards for what can and should be included when calculating levels of payment for professional fees. The fee calculator can serve as a guide for fundraising, commissioning/contracting and for the pricing of works and services.

5.1 BUSINESSES, NON-PROFIT ORGANISATIONS AND COLLECTIVES

5.1.1. TRANSFORMATION

Events or spaces should determine and establish equity policies that address transformation. An employment equity plan should be developed by all employers and should apply to all events or spaces designated within Employment Equity Regulations. The policy should be available for inspection by all employees and affected parties, and should be regularly updated.

The employment equity (EE) plan reflects a designated employer's employment equity implementation programme. The EE Plan can be a separate document or a component of a larger document (such as a business plan). A template EE plan is attached to the Employment Equity Regulations, and the EE Plan must contain at a minimum all the elements contained in the EEA13 template. Events and spaces not formally subject

to employment equity regulations should use this template as a guide for their own transformation.

Events or spaces should establish exhibition equity plans that achieve reasonable progress in facilitating equitable representation of practitioners from designated groups, as well as assist in eliminating unfair discrimination.

5. 1. 2. HEALTH AND SAFETY

Policies

All events or spaces should have policies for health and safety. These should apply to employees as well as to visitors, audiences, practitioners in studios and special event situations (e.g. installations of tents or other equipment). The policy should be available for inspection by all employees and affected parties, and should be regularly updated.

Responsibilities to Employees

The Occupational Health and Safety Act, 1993, requires the employer to bring about and maintain, as far as reasonably practicable, a work environment that is safe and without risk to the health of the workers. This means that the employer must ensure that the workplace is free of hazardous substances (e.g. benzene, chlorine and micro-organisms), and articles, equipment and processes that may cause injury, damage or disease. Where this is not possible, the employer must inform workers of the dangers, prevention measures, and safe working strategies, and provide protective measures to facilitate a safe workplace. Studio managers should familiarise themselves with the Act, in addition to referring to Section 4.12.2.

All practitioners, events and spaces should familiarise themselves with the Occupational Health and Safety Act, 1993, and ensure that all regulations of the Act are implemented on any site where the space is located or in which the event is occurring. Special attention should be paid to practitioners working on installation, packaging and handling, as well as those engaged in technical work such as welding or forging.

Examples include:

- the provision of all safety equipment including helmets, gloves, eye protection;
- providing information, instruction, training and supervision for practices that may be deemed to be of risk;
- appointing and training a health and safety representative for every 20 workers employed at an event or space, and establishing a health and safety committee where two or more health and safety representatives exist.

The full Act can be downloaded from the following link:

labour.gov.za

The Compensation for Occupational Injuries and Diseases Act

The Compensation for Occupational Injuries and Diseases Act, 1993, (COIDA) provides for the payment of compensation to employees and, in certain circumstances, their dependants, for occupational injury or disease.

Employees covered by the COIDA include any person who has entered into a contract of service or apprenticeship/learnership with an employer, whether the contract is written or oral, express or implied.

COIDA makes the following provisions:

- an employee does not have to prove that the employer has been negligent - the Act provides for a 'no-fault' system of accident insurance;
- employees receive compensation even if the employer was not to blame for the accident. Compensation is paid provided the accident took place 'in the course and scope of employment', that is, while the worker was on duty;
- there is no need to go to court: compensation is paid through the Compensation Commissioner;
- the Act makes provision for increased compensation to be paid if the employer was negligent.

If the accident is caused by serious and wilful misconduct by an employee, no compensation will be paid, unless the accident results in serious disablement or death of the employee, or if the employee has dependants. 'Serious and wilful misconduct' is defined in the COIDA as being drunk or under the influence of a narcotic drug, wilful or reckless contravention of any health and safety law, and any other act or omission which the commissioner considers to be serious and wilful misconduct.

An employer that has one or more employees must register with the Compensation Fund, and must pay annual assessment fees. Employers who register for and pay their annual Workers' Compensation fees are protected from being sued by employees who are injured at work. The Workers Compensation Act holds any employer personally liable and financially responsible for the costs of employee accident and loss of life if not registered with the Compensation Fund.

An employer is legally bound to report an accident to the Compensation Commissioner within seven days. Failure to do so is punishable by a fine not greater than the amount of compensation payable in the case.

The right to compensation lapses if a claim is not made within 12 months of the accident or doctor's diagnosis of a disease covered by the Act.

Where free transport to and from work is provided by an employer, and the vehicle is driven by the employer or a person specifically employed to do the driving, any accident that occurs will be deemed to have occurred in the course of employment. In other words, compensation may be claimed for injury or death as a result of such an accident. No compensation is payable if an accident occurs with free transport that is provided by a contractor on behalf of the employer.

All employers and employees should familiarise themselves with the Compensation for Occupational Injuries and Diseases Act, 1993, and the associated rights provided for in the Act. The COIDA is accessible at the following link:

labour.gov.za

5. 1. 3. INTERNSHIPS

For more detailed information on visual arts internships in South Africa see the VANSA internship toolkit at vansa.co.za

Policies

Events or spaces should draw up internal policies on internships. An internal policy should determine the terms by which an event or space contracts with the intern, what the mentorship procedures are, and the terms of remuneration. The policy should be made available for inspection by all interns, employees and affected parties, and should be regularly updated.

Terms

An internship should:

- Provide a valuable supported learning experience; provide mentorship; allow an individual to develop or enhance skills that are applicable in their chosen area;
- Ensure the development of interpersonal work relationships; enable the candidate to learn good work habits such as communication, time and project management skills;
- Offer networking opportunities that will lead to further paid employment, or help to further the intern's career in tangible ways.

Each intern should be provided with a contract or letter of understanding outlining the role and responsibilities that will be allocated. An intern should be provided with a defined role and job title. This should include transparency on day-to-day activities and responsibilities, and clarity of progression within the organisation. In general, all interns should be given a level of responsibility that will further their experience.

An internship should be short-term and ideally be between six months to a year's duration.

Interns should be recruited in the same way as regular employees, with proper consideration given to how their skills and qualifications fit the tasks they will be

expected to undertake. Recruitment should be conducted in an open and transparent manner, to enable fair and equal access to available internships.

A written contract defining the intern's working hours, the duration of the internship, the intern's goals and obligations, and other terms of the relationship, should be drawn up and agreed to before the internship commences. Any training the intern might require for the role should be planned in advance. The plan should be shared with the intern on the first day of the programme. The training should include a health and safety induction tailored to the individual organisation.

Organisations should ensure that there is a dedicated person to supervise and mentor the intern, and who will conduct regular performance reviews. This person should provide ongoing feedback to the intern, be their advocate and mentor during the period of the internship, and should conduct formal performance reviews to evaluate the outcomes of the time spent with the organisation.

Organisations should provide the required equipment and ensure a dedicated work space to enable the intern to undertake the assigned tasks and responsibilities.

A detailed personal reference should be provided at the end of the internship.

Remuneration

Where possible, interns should be paid. At minimum, host events or spaces should cover work-related expenses incurred by the intern: travel to, from, and during work. This will ensure wider access, and allow people from varied economic backgrounds to access internships.

In Europe and America, unpaid internships in the arts have become commonplace. Much concern exists around this practice, with many countries introducing laws to protect young creative workers from exploitation.

The core issue with unpaid internships around the world has been the undermining of skilled labour in the creative sector – denying that creative workers are workers.

Interns are considered employees in terms of South African labour law, and are therefore entitled to compensation for their services. Their employment is subject to the Basic Conditions of Employment Act.

5. 1. 4. BUSINESSES

All for-profit organisations, companies, businesses and enterprises must be registered with the Companies and Intellectual Property Commission (CIPC), and in order to operate legally, must follow all the provisions of the Companies Act. The Companies Act can be accessed at the following link:

cipc.co.za

Practitioners with registered businesses, companies or organisations should develop business plans for their operations, and review the implementation and effects of these plans annually.

If applicable, practitioners must ensure that their businesses have a relevant trade licence from a local municipality.

Practitioners starting new businesses might want to consult the following government agencies that provide skills, advice and financial support for small businesses:

Small Enterprise Development Agency (SEDA)

seda.org.za

National Youth Development Agency (NYDA)

nyda.gov.za

Government Investment Incentives Schemes

investmentincentives.co.za

5. 1. 5. NON PROFIT ORGANISATIONS

5. 1. 5. 1. ORGANISATIONAL GOVERNANCE

The principles and practices that make good governance are key to the effectiveness, success and long-term sustainability of events and spaces. Good governance is an integral part of the overall management process of an event or space, and events and spaces should have policies in place to ensure sound practice in regard to finance, administration, programme implementation, monitoring and evaluation, human resources and communication.

Registered events or spaces should have, and abide by, an article of incorporation or constitution that meets the requirements stipulated by the Department of Social Development. For Public Benefit Organisation status, the event or space should have, and abide by, an article of incorporation or constitution that meets the requirements stipulated by the South African Revenue Service's Tax Exemption Unit.

For more information, visit:

dsd.gov.za

sars.gov.za

Events or spaces registered as Non Profit Companies (formally Section 21), should comply with the Companies' Act.

For more information, visit:

cipc.co.za

Boards

Registered events or spaces (NPOs, NPCs and Trusts) should ensure that they appoint a Board for the purposes of strengthening accountability, assisting with monitoring and evaluation, and ensuring compliance with State and funders' regulations. Board members should be aware of their fiduciary duties, and any roles and responsibilities should be set down in writing.

To strengthen transparency and accountability, Board members are entitled to receive the following:

- > a clear schedule of tasks and an indication of what is expected during the term of office;
- > the organisation's constitution and other founding documents, where applicable;
- > all relevant strategic planning reports, annual reports, financial reports and the latest audit report;
- > a list of names of fellow Board members, staff members and volunteers;
- > staff contracts and performance reviews;
- > funding and contract agreements;
- > rental or lease agreements entered into by the organisation;
- > periodic internal reviews of the organisation's compliance with known existing legal, regulatory and financial reporting requirements.

Events and spaces should ensure that core vision, mission, objectives and values are met and upheld through all their organisational practices and in their projects.

Events and spaces should develop codes of good governance, codes of ethics and mechanisms to ensure sound self-regulation. These include:

- > periodically reassessing the event or space's mission, objectives and operations;
- > critically analysing internal practices and organisational culture, and implementing changes when necessary;
- > developing clear, well-defined written policies and procedures to be followed in regard to all employees, members and volunteers. Such policies must adhere to the Labour Relations Act, the common law of employment, and other relevant legislation, and must protect the rights of employers, employees, members and volunteers;
- > establishing and maintaining disciplinary and grievance procedures with clear lines of authority and accountability;
- > clear and transparent procedures for employing new staff, and disengaging existing staff.

Events, spaces and practitioners should familiarise themselves with the Basic Conditions of Employment Act, 11 of 2002, and the Labour Relations Act, 66 of 1995, and ensure that these are correctly implemented.

5. 1. 5. 2. COLLECTIVES AND COLLABORATION

It is recommended that collectives and collaborations agree in writing to the terms of the collectivisation or collaboration – especially in cases where collectives and collaboratives are made up of more than three practitioners and/or intend to work together long term (i.e. beyond a single project). Agreements should discuss the following:

- > terms of decision making;
- > conflict resolution mechanisms;
- > terms of attribution and copyright;
- > terms of sale and income distribution;
- > where possible, delineation of roles and responsibilities (administrative and creative);
- > terms of membership of collectives (this may include how one becomes a member, and whether there are tiered or other categories of membership).

Other specific norms and standards regarding collectives can be found across this guide. Use the index at the back of this book to locate them.

5.2 FINANCE

5. 2. 1. FEE CALCULATOR

This fee calculator applies to the calculation of a reimbursement fee paid to a creative practitioner, rather than to the pricing of an artwork. Types of fees are:

A: Types of Fees

Artist's Fees/Honorariums

Public Art Fees

Independent Curator Fees

Freelance Fees

Travel Expenses and Per Diems

B: Other Fees

Copyright Royalties
Arts Administrator Salaries
Teaching Rates of Pay
Model Fees

Section A: Types of Fees

Consideration of these fees should be included in any quote and costing by a practitioner, and should be prioritised in budgeting by events or spaces. Practitioners should include these fees together with estimated costs of materials and any additional needs (such as special transportation or installation requirements) when quoting or costing.

Categories of practitioner fees include:

- > labour (usually an hourly rate);

(It is recommended as a standard that practitioners assign themselves an hourly rate and consider the total time it took to make the work to reach a practitioner fee. However, it should be taken into consideration that an experienced or skilled practitioner may take considerably less time to complete a brief or commission. Therefore, while there are many situations in which an hourly rate may be appropriate it, should not be considered a catch-all method of costing work.)

- > IP and conceptualisation (critical contribution, research);
- > skills and expertise;
- > overheads (water, lights, rent, airtime, data);
- > daily transportation (of the practitioner and the work in cases of ordinary transportation needs);
- > project management;
- > installation.

When costing the above to develop a fee, the following should be taken into account:

1. Type of space/scale of event budget

Practitioners should take into account that established events or spaces, as well as larger budget events are able to make provision for substantial fees. Practitioners should take into account that new and emerging events and spaces, or events with smaller budgets, are able to afford modest fees.

2. Career and experience of the practitioner

Practitioners should take into account – particularly when costing their labour and IP – that career level informs the sum. The following should be considered:

- > practitioner's experience in solo shows;
- > status of galleries in which the practitioner has shown;
- > number of residencies;
- > number of collections;
- > prizes.

3. Type of Exhibition

- i. Solo Show: a practitioner may cost a higher sum for a solo show because the total budget is specific to one practitioner, and the resource requirements are higher.
- ii. Group Show of fewer than 10 practitioners: a practitioner would cost slightly lower than for a solo show.
- iii. Group Show of more than 10 practitioners: a practitioner would cost slightly lower than a group show for less than 10 practitioners.
- iv. Multi-Venue exhibitions: fees should be costed per venue.
- v. Subset for work that is new: work that has not been seen before is costed at a higher amount than work exhibited before.
- vi. Subset for existing work that has already been shown: work exhibited before is costed at a lower amount than work that has not been seen before.

More detailed fee considerations are listed below by category:

Artist Loan Fees/Honorariums



What to Know and What to Expect

Artist Loan Fees and honorariums for work shown in non-selling exhibitions, when the work is not part of the spaces' collection, are standard international practice. However in South Africa, this practice is not yet widely accepted. This is partly due to limited budgets of spaces such as state museums and galleries, however many non-profit spaces with small budgets make an effort to make provision for fees or honorariums.

Artist loan fees are paid to practitioners who loan work to an event or space, or to a non-selling exhibition. The fees are paid in recognition of the public benefit of including the work in a non-commercial space or event, as well as to offset the potential loss of income while the work is on loan for short or long-term exhibition, and not available for sale.

For non-commercial events or spaces, practitioners need to take into account the following when calculating the fee (practitioners showing in commercial galleries might also take these into account when pricing work):

- > events or spaces should pay fees to practitioners who contribute artwork to exhibitions;
- > should the practitioner be required to install the work, additional costs might apply;
- > should the practitioner require additional expertise or technical support for production and/or installation (e.g. an engineering certificate), additional costs might apply;
- > should the practitioner require specialised transportation, additional costs might apply;
- > should the practitioner be required to conduct additional work such as a panel discussion or PR appearance that involves a significant amount of time, additional costs might apply. Walkabouts are not usually costed separately.

Public Art Fees

Public art project fees are set at a higher rate as they need to take into account the long-term nature of producing large-scale public artwork, consultation with stakeholders, the project management involved, and the additional production of maquettes.

The following would not be included in the practitioner's fee, but would be costed to a separate budget by the commissioner:

- > technical expertise (e.g. services of an engineer or architect);
- > installation costs (e.g. need for large crane or other heavy equipment);
- > transportation of work to installation site.

Independent Curator Fees



What to Know and What to Expect

Independent curator fees are not widely used or, regularly, not explicitly determined within project budgets. As curatorial practice is increasingly professionalised within the visual arts in South Africa, curators, events and spaces are becoming more aware of the importance of independent curator fees.

In addition to the categories listed above for practitioners, the calculation of curatorial fees should consider the following:

- > scale of the event (e.g. modest, short term or large, or long term/travelling event);
- > the work that the curator undertakes in artist/practitioner and space/event management;
- > whether the curator was commissioned by an organisation, or whether the curator has self-funded and initiated the project independently;
- > event installation oversight;
- > whether a publication or catalogue will need to be developed and managed, and the extent of the curator's work and participation in the development thereof;

- > typical textual production around the event (e.g. curatorial and project statement);
- > concept development and research.

In the case of an exhibition tour, the curator should receive a percentage of the usual fee:

- > the fee is paid as a royalty for work completed, rather than a fee for new duties;
- > the fee does not include administration or coordination of an exhibition tour, which is the responsibility of the receiving institution;
- > the fee does not include installation duties at tour venues. This would be an additional fee paid if the curator is to oversee installations while on tour.

Section B: Other fees

Freelance Fees

A freelancer or freelance worker is a term commonly used for a person who is self-employed. Many practitioners freelance in other fields such as photographic documentation, graphic and publication design, exhibition installation, and editing, among many other kinds of work.

General Freelance Daily Rate

Practitioners are encouraged to develop an hourly freelance rate based on the nature of the work they are undertaking. In addition, the following may apply:

- > in some cases, general freelance rates would omit the costing of project/work conceptualisation that is associated with separate fees (e.g. editing texts, or logo or graphic design).
- > as well as the hourly rate, typical rates mentioned in Section A (e.g. labour) should be included.
- > it is advised that freelance workers consider the difference in budget and financial security between commercial and non-commercial, established companies and individuals, when undertaking costings.

A range of arts-related freelance fees and some considerations for practitioner fees are listed below:

Media Artist Fees

A media artist develops concepts, products and artwork such as graphic design, illustration, and publication design. This could include photo- and video-journalism commissions.

Photographers

- > photographers showing in galleries would calculate fees at the same level as artist's fees;
- > photographers are regularly required to photograph exhibition installations;
- > additional costing for equipment (e.g. lights), should be considered;
- > photographers may be requested to grade for publications and other printing needs;
- > photographers may be requested to photograph events such as exhibition openings and workshops. If an event is far away, a photographer can request reimbursement to cover transportation and accommodation.

Illustration

- > a premium fee is commanded for a cover image; the fee level decreases depending on the size of the reproduction, whether full page, half page or smaller;
- > a reproduction of a work that already exists would command a lower fee than a newly commissioned work;
- > additional fees should be negotiated for reprints. For more information, see Copyright, Section 7.2;
- > for commissioned, one-off or single-use illustrations, a higher fee should be charged.

Writing, Copy Editing and Proofreader Fees

- > commissioned writers generally charge by the word. In the case of the use of previously published material, rates would be lower than for original material;
- > proofreading and copy editing would similarly be charged by the word.

Copyright Royalties

Important points for consideration in licensing a work for reproduction include:

- > exclusive or non-exclusive;
- > the number of reproductions;
- > the time period in which the licence operates;
- > distribution territory of the product;
- > usage and purpose;
- > royalty payable or royalty-free? (e.g. if the image appears on a cover, the price is high, and decreases for full page, half page and smaller);
- > see IPR/Copyright Section 7.

Arts Administrator Salaries

Arts administrators may have an employment relationship to the event or space, or may be contracted for short term project management work. It should be noted that a person who works for more than three months for the same event or space, may be deemed to be an employee of the event or space. Events or spaces should have policies setting out bands of pay for employees and independent contractors. Events or spaces are encouraged to conduct benchmarking analysis to ascertain standard salaries for the following employees:

- > directors;
- > senior managers;
- > administrative staff;
- > trainees and casual staff.

Teaching Rates of Pay

Teaching rates of pay include work done on commissioned one-off workshops and long term workshops produced in series. Practitioners should include costing for the following:

- > preparation towards the workshop;
- > curriculum development for a long-term series of workshops;
- > time for set up of the workshop where required;
- > hours in the class;
- > class/materials produced or acquired.

Model Fees

An art model poses for any visual artist as part of figure drawing, sculpture and painting classes or workshops, providing a live visual reference for the human figure in a work of art. Art models should include costing for the following:

- > transport to and from the venue;
- > hours spent modeling;
- > time for set up, where required.

5. 2. 2. TAX

Personal Income Tax

Income tax must be paid to the South African Revenue Service (SARS), which is responsible for collecting taxpayers' money on behalf of government.

Practitioners and Individuals (sole proprietors):

You are required by law to pay income tax every year if your annual income as an individual under the age of 65 is above R75 000 for the 2017 tax year. The onus is on the taxpayer to keep abreast of any legislation changes in each year of assessment.

All incomes must be disclosed, including income through freelance work or casual labour.

Employee Tax and Deductions

Employers are required by law to deduct PAYE and UIF from employees' salaries every month. These amounts should be reflected on the employee's payslip.

Employers have seven working days from month-end to pay PAYE contributions to SARS. At the end of each year of assessment, employers must provide IRP5 forms to employees.

The standard should be for all practitioners to obtain their tax clearance certificate from SARS.

Public Benefit Organisations

Events or spaces that are for public benefit must apply to SARS for Public Benefit Organisation (PBO) status. Any events or spaces that do not qualify, or have not yet finalised PBO status, may be subject to payment of taxes.

If the organisation has a turnover in excess of R1 million in any consecutive twelve-month period, and the organisation is not a legally tax-exempt PBO, then the organisation should register as a Value Added Tax (VAT) vendor and pay VAT on sales goods accordingly to SARS.

Value Added Tax for Artists

A sole proprietor would need to register for VAT if the income received from selling artwork exceeds R1 million in any consecutive 12 months. A sole proprietor may register as a VAT vendor if the artwork sold over the course of 12 months exceeds R50 000.

Tax for International Events and Transport

Fees or profits received by practitioners taxed in South Africa who receive proceeds from international spaces and events, will be subject to income tax, and may be eligible for certain deductions for artwork produced.

Practitioners who are taxed in South Africa may need to consider the VAT implications of selling their artworks or charging a fee for exhibiting their works.

Non-resident practitioners are required to pay tax in South Africa on any proceeds received from a source within South Africa. This would most likely be the case where non-resident practitioners produce artworks in South Africa, and sell those artworks or exhibit them for a fee.

Tax Implications for Residency Participation

Residents need to be aware of the tax implications of their residency, including what may be assessed as income. Should the residency be granted by a non-resident entity, there may be tax consequences for resident practitioners, as resident persons are taxable on their worldwide income. Practitioners need to carefully consider the terms of the residency to determine what the South African tax implications would be.

Where residency is granted to a non-resident practitioner by a South African entity, the non-resident may need to pay tax on the proceeds received from the South African entity, as non-residents are taxed on their source-based income.

Tax on Remuneration for Public Commissions

Should an artist's or practitioner's agreement include remuneration for a commissioned artwork, the practitioner would need to include these proceeds in his or her income tax return.

Tax on Prize Money

Prize money or prizes won by practitioners may be subject to tax depending on the following considerations:

- > the nature of the prize;
- > the terms of participating in the competition; and
- > whether or not the competition is local or international.

The proceeds from a competition received by practitioners may be included in the taxable income of the practitioner.

Tax advice should be sought at the time that any proceeds are received as a result of winning a competition.

Tax for Commercial Galleries and the Practitioners that they Represent

In most circumstances, practitioners taxable in South Africa will be responsible for their own income tax submissions. If the terms of the agreement between the gallery and the practitioner resemble an employer/employee relationship for tax purposes, the gallery may be obliged to deduct or withhold the Pay as You Earn (PAYE) tax from the remuneration paid or the remuneration payable. A gallery that is construed as an employer and is required to register with SARS for PAYE and/or Skills Development Levy (SDL) tax, will be required to register for the payment of UIF contributions to SARS. This would arise where a gallery has substantial control over the practitioner and the production process.

Where South African galleries enter into a contract to represent a non-resident practitioner, the non-resident may need to pay tax on the proceeds which arise from the South African source, as non-residents are taxed on their source-based income.

Both galleries and practitioners should educate themselves about the implications of the tax system for their businesses, and regularly update their knowledge. Ethical tax practices are strongly recommended for both practitioners and galleries.

It is mandatory to register as a VAT vendor if the taxable supplies made (or to be made) exceed R1 million in any consecutive 12-month period. A person may register for VAT if the taxable supplies made in the last 12 consecutive months exceed R50 000.

5. 2. 3. USING ARTIST OR PRACTITIONER'S WORK FOR FUNDRAISING

No practitioner should be expected to donate works of art outright to any organisation for fundraising purposes.

No organisation should expect to raise funds through unpaid subsidy by practitioner's work.

Written contracts must be used and must include all terms negotiated between the practitioner and the event or space.

If a practitioner chooses to donate an artwork as part of contributing to a community, they should be aware of SARS regulations regarding charitable donations.

As the donation of artwork may not be in the practitioner's best financial interests, the practitioner may be advised to consider a monetary donation instead.

Compensation paid to practitioners for the sale of their work for fundraising purposes should be guided by industry standards for other commercial sales of artwork. It is recommended that the practitioner retain a portion of the sale price, to be negotiated in advance and agreed to in writing.

Any commissions payable to commercial galleries for the sale of practitioners' work for fundraising purposes should be negotiated in advance between the practitioner and the gallery.

In most cases, artwork should not be sold for fundraising purposes at below market value. Typically, a practitioner will establish a reserve (minimum) price below which the practitioner reserves the right not to sell the work. The practitioner should use discretion in setting a reserve on work sold to raise funds, and should take into account benefits that may accrue from selling a work at below market value during a fundraising event.

The practitioner should guarantee that the work is original if it is stated to be so.

No practitioner should be expected to donate works of art outright to any organisation for fundraising purposes.

No organisation should expect to raise funds through unpaid subsidy by practitioner's work.

Written contracts must be used and must include all terms negotiated between the practitioner and the event or space.

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The practitioner should guarantee that the work is original if it is stated to be so. It is the organiser's responsibility to insure the work at the full value stated by the practitioner.

The organiser should undertake to protect the practitioner's copyright on all works submitted, and to inform all purchasers in the sales agreement that purchase of work does not constitute purchase of copyright.

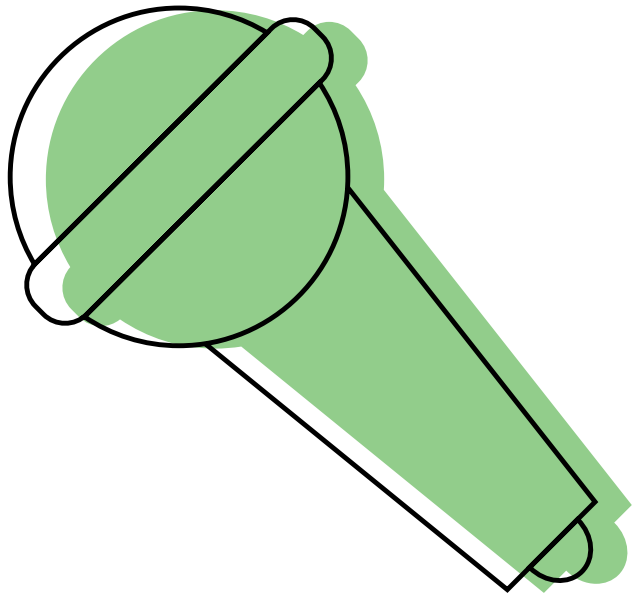
The organiser should return all unsold artwork and deliver all receipts to the practitioner. Unsold artwork should be returned in packaging comparable to that in which it was originally delivered.

The organiser should assume all costs related to the event, including insurance cover, publicity, and provision of financial statements and published information.

Works should be inspected upon arrival for damages. A written condition report should be kept.

The practitioner must be notified immediately if work is received in damaged condition. If shipped work is received in damaged containers, such damaged items should be returned, pre-paid, to the practitioner, pending claims on the insurer; or the organiser may, with the practitioner's permission, unpack the damaged container on the understanding that no claims for damage will be made against the organiser.

The organiser is responsible for maintaining the artwork in the condition received.



**6 PROMOTION, MARKETING
AND ARTS MEDIA**

This section is divided into two areas. The first regards promotion and marketing of events, spaces, practitioners and artworks. The guidelines indicate relationships, agreements and areas of promotional activity that should be considered when embarking on promotions for spaces and events. The second section gives an introduction of best practice in the arts media, noting the existing best practices in the media in general, and with additional key points for consideration when writing and reporting on the visual arts.

6.1 EVENT AND SPACE PROMOTION

6.1.1 GENERAL EVENT AND SPACE PROMOTION

Events or spaces should have a policy to govern promotional activities, including online/print promotion (e.g. postcards), and the development of online content (e.g. clarifying who is responsible for setting up an event on Facebook).

Prior to the exhibition, the event or space and the practitioner should agree on the strategy, extent and nature of the promotional activity to be undertaken at the event or space cost, and should decide on and agree to the practitioner's level of participation in the promotional activity.

A decision should be made in writing about which images may be distributed to the media (see Section 6 for copyright implications for media images), and the terms by which the work will be credited as well as the text content that will be distributed. Practitioners should ensure selected images do not infringe on personal rights of third parties (e.g. model release forms for images of third parties should be signed and agreed to).

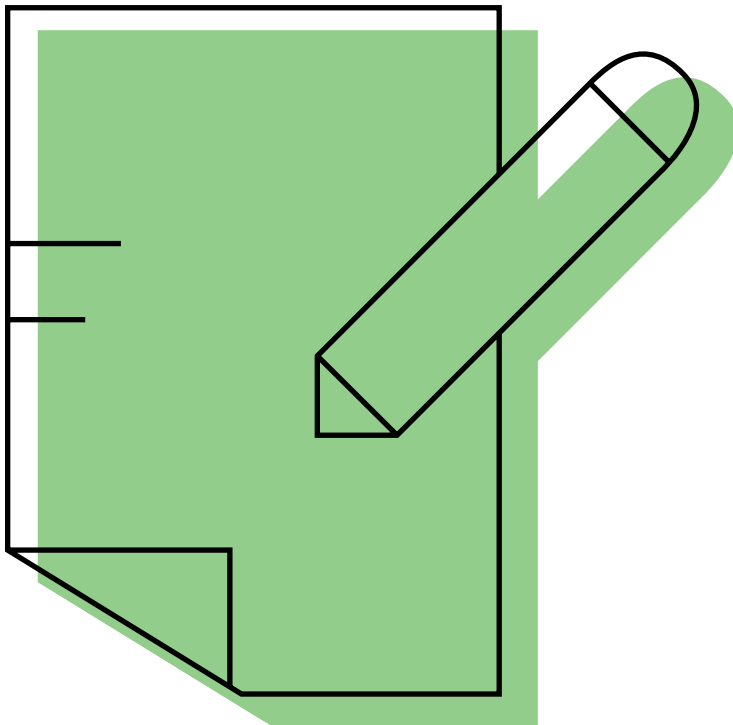
If the event or space produces the invitation, the practitioner should be given an opportunity to approve the design. If a different invitation from the event or space's standard design is requested by the practitioner, any additional cost may be incurred by the practitioner.

Practitioners should receive a specified number of complimentary copies of an exhibition catalogue or other published materials (e.g. a percentage (2% to 5%) of the

print run for a monograph, or one to two complimentary copies for a large group exhibition).

At the conclusion of events in which individual artists may have received significant media coverage, such as solo exhibitions, the event or space should present the practitioner with a media package containing copies of advertisements, invitations, press releases, reviews and other relevant materials relating to the promotion of the exhibition.

Practitioners should be paid a writer's fee for any texts developed for publication (over and above artist or curatorial statements). Practitioners are usually paid per word. Both event or space as well as writer should have established rates per word. The per-word amount and text length should be agreed in writing. The rate should include an hourly rate for any additional research or time spent interviewing subjects.

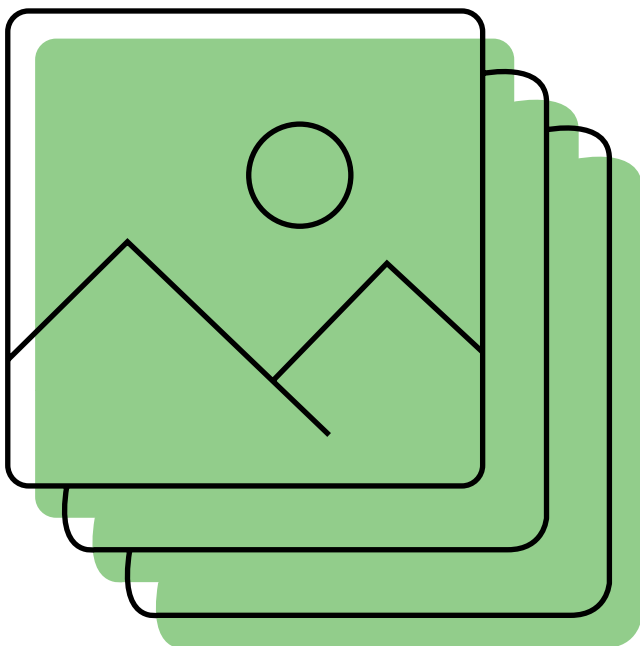


6.1.2 FULL GALLERY REPRESENTATION PROMOTION

Where artists have full gallery representation, the gallery is responsible for the following:

- > producing and distributing invitations, hosting receptions, carrying out promotion of exhibitions;
- > maintaining curriculum vitae for each practitioner represented;
- > maintaining current visual material for promotional purposes for each practitioner represented;
- > maintaining an archive of promotional activities.

At the conclusion of an exhibition, the gallery should present the practitioner with a media package containing copies of advertisements, invitations, press releases, reviews and other relevant materials relating to the promotion of the exhibition.



6.2 ARTS MEDIA

6.2.1 GENERAL MEDIA

All online and print arts media editors and practitioners should follow the Code of Ethics and Conduct for South African Print and Online Media, adopted by the Press Council of South Africa. The code can be accessed online at the following link:

presscouncil.org.za

The code is updated annually by the Press Council of South Africa and the onus is on arts media publishers and practitioners to keep abreast of amendments that relate specifically to online and user generated content.

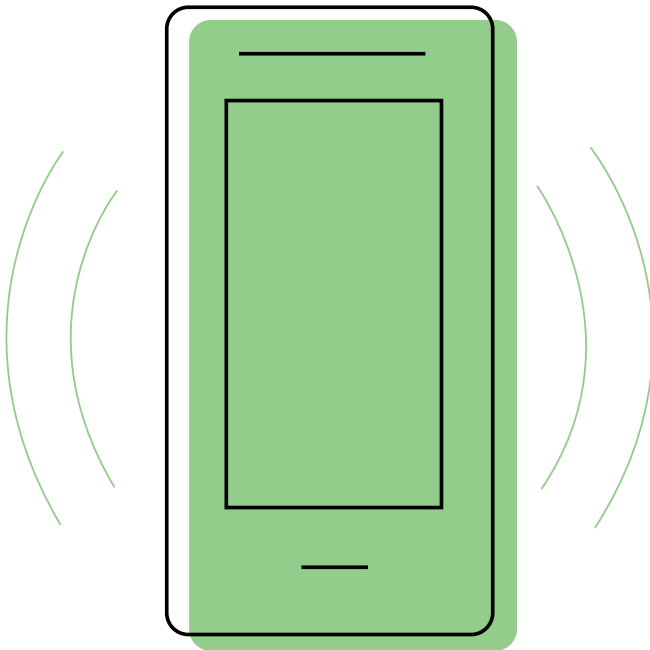
Practitioners should be paid a writer's fee for any texts developed for publication (over and above artist or curatorial statements). Practitioners are usually paid per word. Both event or space as well as writer should have established rates per word. The per-word amount and text length should be agreed in writing. The rate should include an hourly rate for additional research or time spent interviewing subjects.

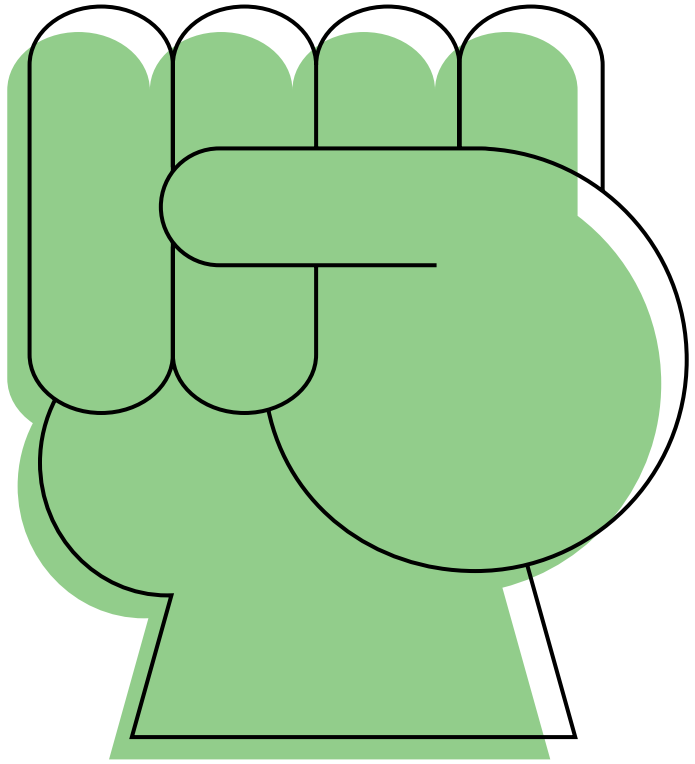
Any visual documentation of artworks (such as photographs) published in arts media must be credited to the artist, to the author of the visual documentation and in certain cases to a space, sponsor or other entity. The onus is on the practitioner developing the media content (writer or journalist) to ensure that visual documentation is correctly credited.

6.2.2 SOCIAL MEDIA

All works and reproductions of works (photographs, images, sound pieces) used on social media are subject to copyright and must be used within copyright law (see Section 7). A practitioner's work or reproductions of the work must not be used without permission by any other practitioner, events or spaces unless the work's use rights are published, and then only within the limitations of those use rights. Media houses may not republish, print or show works or reproductions of works that have been published on social media by the author or any other user, without permission.

Some social media platforms have automatic use rights of the work or reproductions once the author has uploaded it onto that platform. The social media platform does not have ownership rights and may not sell the work or reproductions of the work.





**7 PRACTITIONER
(AUTHOR) RIGHTS**

This section details the rights of artists and other practitioners. Much of this section is legislated, in documents such as the Constitution/Bill of Rights and the Copyright Amendment Bill of South Africa. In Section 7.1 and 7.2 a special phrase is used: practitioner (author). This is because within Moral and Intellectual Property Rights legislation, the legal term used is 'author'. We have used both words to reference the legal framework and for clarity of reading in relation to the rest of the document. Importantly in this section, the Artist Resale Right has not yet, at time of going to print (August 2016), come into law, but is with Parliament for deliberation. This is a key area that will require updating in the near future. It has been included here for awareness, so that practitioners can keep themselves up to date as the Artist Resale Right progresses into law.

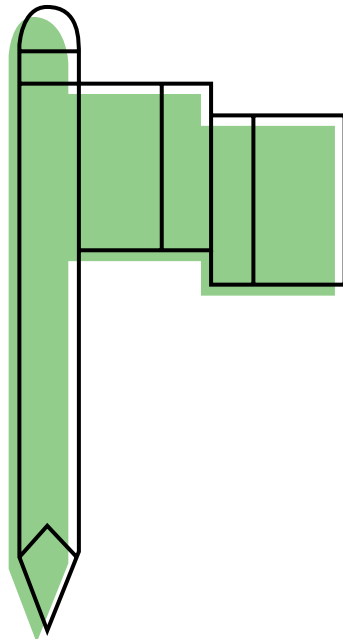
7.1 MORAL RIGHTS

Moral rights help a practitioner (author) to protect the visual integrity of their works.

Moral rights consist of the dual rights of attribution (authorship) and integrity (the right to object to any unauthorised distortion, mutilation or other modification of the work).

If the work is altered, destroyed or adapted, the practitioner (author) has the right to remove his or her name from the artwork, and potentially to sue for infringement of moral rights.

Events or spaces must appropriately attribute the practitioner (author) of the artwork, and must not alter or compromise in any way the integrity of the artwork, or permit anyone else to do so while the art work is in the care of the event or space.



Where a sponsor/s is involved in an event, the event or space should inform involved practitioners of the sponsor's involvement and the nature of its business interests prior to seeking confirmation of participation. Equally, practitioners should identify in their initial discussions and contract negotiations any sponsors they would not want to be associated with.

7.2 COPYRIGHT AND IP

Copyright in South Africa is conferred and regulated by law under the Copyright Act, 98 of 1978.

Copyright is the automatic and exclusive right of the practitioner (author) of an artistic work to own and control the use (e.g. reproduction) of the work for a limited period.

There are certain basic requirements (e.g. originality). Importantly, copyright does not apply to ideas and concepts unless they have been made into an original and creative material form.

7.2.1 BASIC NORMS AND STANDARDS OF COPYRIGHT

Copyright exists automatically and does not have to be registered. Copyright is property and it may be sold, assigned or licenced for use by others. The practitioner's copyright may be managed by the practitioner (author) or by a copyright collective to which the practitioner (author) has assigned copyright for that purpose. Generally, the practitioner (author) retains the right to exercise his or her own copyright even where another agency manages the copyright.

Copyright entitles the copyright owner to prevent the unauthorised copying (termed infringement) of the relevant work by others. There is no infringement unless actual copying takes place. Infringement occurs as a result of the unauthorised reproduction or publishing of the relevant work, or a substantial part of it, in one way or another. In some cases (where the content of the work is

more important than its actual form), infringement takes place if an adaptation (modified form) of the work is made.

Infringement of copyright entitles a copyright owner to sue in court for an order preventing the unauthorised person from infringing the copyright, and also for damages.

It is a criminal offence in cases where a person imports, sells, distributes, deals in, or offers for sale works that are known to be infringements of the copyright.

Infringement of copyright entitles a copyright owner to sue in court for an order preventing the unauthorised person from infringing the copyright, and also for damages.

It is a criminal offence in cases where a person imports, sells, distributes, deals in, or offers for sale works that are known to be infringements of the copyright.

In cases where copyright has been transferred from the practitioner, the practitioner's moral rights to the work remain. Moral rights are inherent in copyright but their duration is limited to the life of the practitioner. Moral rights may not be sold or licenced, though the practitioner may choose not to exercise these rights.

Full copyright can only be transferred by way of a written document called an assignment, which must be signed by the person transferring the copyright. By such a written document, the practitioner may sign away the copyright or, conversely, in the case of a commissioned work or a work made in the course of employment, the practitioner may retain the copyright.

Licensing copyright should be in writing, to ensure a proper record of the terms and conditions of the licence. The person who has licenced the copyright has the right to use the image in the way outlined in the agreement.

The agreement should outline the following:

- > Exclusive or non-exclusive (as a general rule, practitioners should not agree to licence copyright on an exclusive basis, and if they do, the licence must be in writing and signed by the parties);
- > What the image will be used for;
- > How the image will be reproduced;
- > How many reproductions will be produced;

- > The geographic area where they will be distributed;
- > How much money the copyright holder will earn (royalties);
- > When the license will terminate.

Under South African law, copyright in a work of art lasts for the life of the practitioner and expires at the end of the 50th year after the practitioner's death. After the copyright term has expired, the work falls into the public domain and may be freely reproduced.

If the practitioner has been commissioned to paint or draw a portrait or make a gravure and there is an agreement to pay for it, then the first copyright owner is the person who commissioned the work. If the practitioner makes the work in the course of their employment (to create works of art), the first copyright owner is the employer, and special rules apply if the employer is a proprietor of a newspaper or magazine. All of these arrangements can be changed by contract.

When a work of art is sold, the practitioner retains the copyright, irrespective of the sale.

The exclusive rights provided by copyright enable the copyright owner to negotiate a fee (royalty) for the use of his or her work as a condition for giving permission.

Copyright cannot be soundly vested in collectives or collaborations that are not formally recognised legal entities. In the case of copyright attribution for unregistered collectives, it is recommended that the collective prepare a formal written agreement between members, and with any external event or space when necessary, that:

- > Defines the collective by specifically citing who forms part of the collective;
- > States that all members cited share copyright of work produced under the collective;
- > Defines how the collective wishes to be attributed in any promotional or other material (as a list of individuals or as the collective title, for instance).

7.2.2 SPECIFIC NORMS AND STANDARDS FOR COPYRIGHT IN THE VISUAL ARTS

For specific information pertaining to the categories below, please refer to corresponding sections:

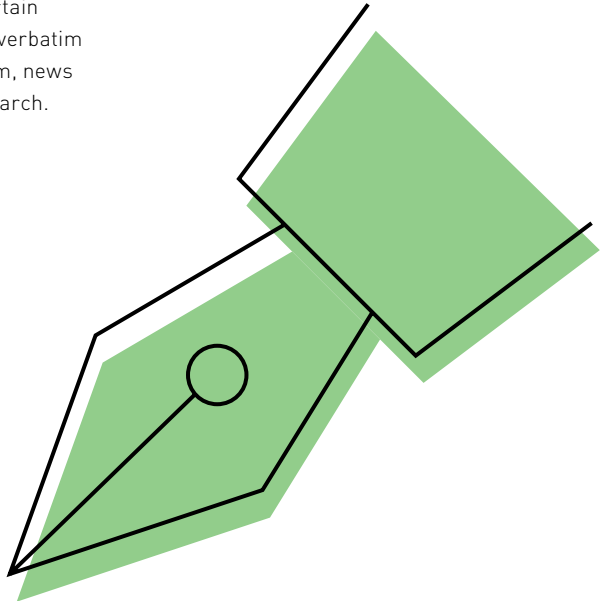
Competitions and Awards: Section 3.7.

Commercial Galleries: Section 4.

Internet Sales and Online Galleries: Section 4.6

7.2.3 THE EXCEPTION: 'FAIR DEALING'

Sections 12 and 15 of the Copyright Act list the general exceptions which are limited in number and scope. 'Fair dealing' allows for brief excerpts of copyright material, under certain circumstances, to be quoted verbatim for purposes such as criticism, news reporting, teaching, and research.



7.3 RESALE RIGHT

7.3.1 WHAT IT IS

A right of resale, or *droit de suite* (a 'right to follow'), is a legislative instrument under intellectual property law, which enables practitioners to receive a percentage of the sale price whenever artistic works are resold. Revenue from copyright is normally generated in the context of creative work, which involves large scale reproduction, such as music and literature. Effectively, because the value imbued in a work of art 'lies in its uniqueness', visual artists are less able to benefit from copyright. The Resale Right was introduced in order to address this imbalance.

The basic premise of Artists' Resale Rights is that artists should directly benefit from the market growth and wealth production that emanates from their own work in the resale market. In order to ensure that artists are protected for the original work that they produce, and that artists' livelihoods are supported, Artists' Resale Rights are pivotal.

7.3.2 CURRENT STATE OF RESALE RIGHTS IN SOUTH AFRICA

The Copyright Act, 98 of 1978, is currently undergoing extensive amendment. One of the amendments is the introduction of the Artist Resale Right into South African law. South Africa does not currently have laws governing and regulating the resale of artworks through auction houses, galleries, dealers, collectors and other art agents. The provision of an Artist Resale Right in the current amendment will entitle practitioners to a royalty when a work of art is resold through the above channels. At the current stage of drafting, the resale royalty is set at 5% of the selling price of the work. The Department of Trade and Industry, responsible for drafting the Bill, is in the process of establishing the best route for the collection and distribution of the royalty percentage. At present the most adequate option is to establish a collecting society that works along the lines of collecting societies in the music industry. The

current draft also states that resale rights will expire 50 years after the death of the artist.

The Bill was scheduled to be introduced to Cabinet in May of 2016, after which it was to be tabled in Parliament. At that stage the Bill would again be available for public comment and consultation. At time of printing (August 2016), the Bill had not yet been introduced to Parliament.

7.4 FREEDOM OF EXPRESSION

7.4.1 PROTECTIONS AND LIMITATIONS

The Constitution of South Africa is the supreme law of the State and takes precedence over any legislative enactment. Any law contrary to it is null and void. Section 16(1) of the Constitution entrenches the right to Freedom of Expression as a primary right, which includes:

- (a) Freedom of press and other media;
- (b) Freedom to receive or impart information or ideas;
- (c) Freedom of artistic creativity;
- (d) Academic freedom and freedom of scientific research.

The right to Freedom of Expression requires that it be exercised with responsibility by all practitioners, so as not to infringe on the rights of others. Section 16(2) of the South African Constitution states that Freedom of Expression cannot extend to expression that does or aims to encourage the following:

- a. Propaganda for war;
- b. Incitement of imminent violence;
- c. Advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

The need to limit certain rights is due to the fact that careless exercise of the right may infringe on the rights of others and thereby become destructive and harmful.

7.4.2 CULTURAL NORMS AND SENSITIVITIES

Cultural sensitivity begins with the understanding that there are differences among cultures and that value should be placed on this diversity. Placing value on diversity means respecting cultural norms that might not be present or embedded in your own culture. In the visual arts it is especially important to take cognisance of the public display of cultural elements, and to consider the problematic history of such display in South Africa and in colonial practices in general. The appropriation of aesthetics embedded in a culture that is not your own can be problematic and becomes an ethical question when used for commercial gain. Practitioners should be aware of and sensitive to the triggering effects of using cultural taboos as subject matter and content for artworks. This applies to the decision to use cultural stereotypes in work, and practitioners should be aware of finding ways of critiquing particular institutions and systems without inadvertently reproducing those systems.

7.4.3 DEALING WITH CONTROVERSY (GALLERIES AND COMPETITIONS)

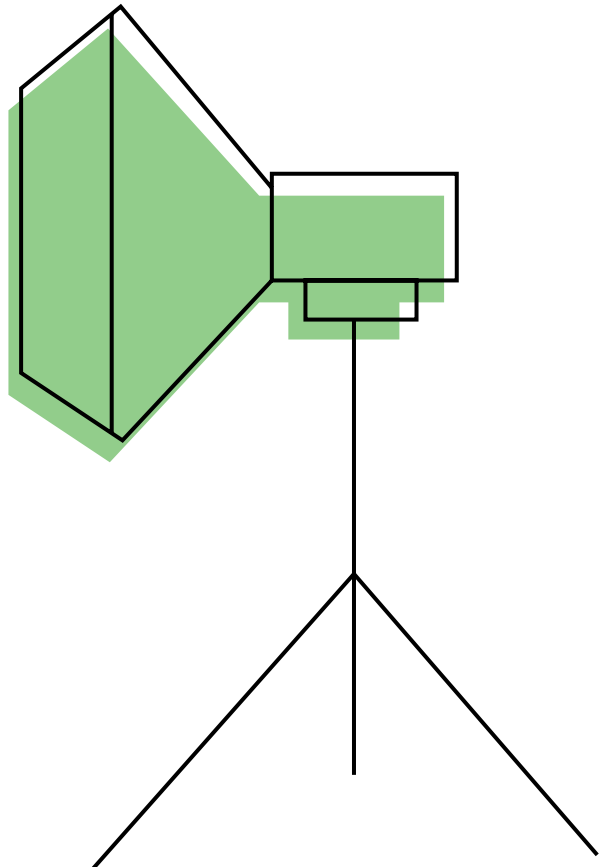
The commercial gallery, organisation, event or space should establish a set of guidelines that aims to deal with any controversial issues associated with an exhibition in a way that limits damage to the practitioner's reputation or exposure to unreasonable pressure or media attention.

The event or space should work in partnership with the practitioner to address or deal with the controversy.

If the event or space intends to attach any warning or advice to audience members about artwork in an exhibition, the purpose and wording of this should be agreed with the practitioner before such notice is applied. The practitioner should have the right to withdraw from the exhibition if the practitioner does not agree with the notice.

If an art work is, for any reason, withdrawn from an event by the event or space,

the practitioner should be notified immediately, and reasons provided for the withdrawal. An event or space that withdraws art work from an event may be breaking its contract with the practitioner, and therefore withdrawal of artwork from an exhibition should only be done when it is absolutely necessary. Events and spaces should predetermine what these situations might be, and develop a risk management strategy that can be implemented to avoid withdrawal of an artwork after it has been accepted for exhibition.



1. REFERENCES AND SUPPORT:

This project has been developed based on content from The Code of Practice for the Professional Australian Visual Arts, Craft and Design Sector, developed, commissioned and published by the National Association for the Visual Arts (NAVA) and Best Practices for the Saskatchewan Visual Art and Craft Sector developed by Canadian Artists Representation (CARFAC)

Australia (NAVA Code of Practice)

Australia (ACGA Code of Practice for Commercial Galleries)

Canada (CARFAC Saskatchewan Code of Practice)

Canada (Best Practice Code for Curators – Lasalle River Accord)

Ireland (Visual Artists Ireland Best Practice Guide)

Art Right South Africa

'Copyright – What it means for Visual Artists' by Andre Myburgh, found on Baruffa

Art Consulting website baruffa.co.za

VANSA Internship Toolkit

2. ACKNOWLEDGEMENTS

VANSA would like to thank the Department of Arts and Culture for making this project possible. A special thank you to Africalia for funding the consultation meetings in Johannesburg, Durban and Cape Town. We received generously written advice from Norton Rose Fulbright, Joseph Gaylard, Clive Kellner, Toby Orford, Mary Corrigan, Gwen Ansell, Gerhard Hagg, John Fleetwood and Gillian Anstey. VANSA is grateful for your expert input.

VANSA would like to express much gratitude to the many people who participated in the consultation processes for the Best Practice Guide for the Visual Arts in South Africa.

3. FURTHER READING:

On this page you will find a list of resources that expand into professional practice and that you may incorporate into the principles provided within this document according to your needs:

ARTRIGHT

The ARTRIGHT project provides the visual arts community of South Africa with a free resource of business, legal and educational tools, documents, information and advice. The objective is for people who work in and around the visual arts industry to do better business, more often. On this site you will find greater details and templates on how to develop and work with contracts, running a business, tax for arts practitioners, and negotiating the processes of contract disputes, arbitration and mediation.

artright.co.za

THE SOUTH AFRICAN NATIONAL ASSOCIATION FOR THE VISUAL ARTS (SANAVA)

SANAVA operates as a non-governmental association for the promotion of the visual arts in South Africa, its origin dating back to 1851 when the Cape Fine Arts Society (CFAS) was established. Over the years, the Society has grown to become a national body of artists and lovers of the visual arts. One of SANAVA's major objectives concerning the development of artists relates to the administration of three fully equipped artists' studios, in the Cité Internationale des Arts in Paris, France.

sanava.co.za

ARTERIAL NETWORK TOOLKITS

Arterial Network is a civil-society network of artists, cultural activists, entrepreneurs, enterprises, NGOs, institutions, and donors active in Africa's creative and cultural sectors. Arterial Network has developed a number of toolkits for arts practitioners working in Africa with detailed advice on practice for Project Managers in the arts, Fundraising, Art Advocacy and Networking, and Marketing for arts practitioners. These publications and guides are downloadable at the below link.

arterialnetwork.org/resources/our_publications

INTERNSHIP TOOLKIT

VANSA's Internship Toolkit is derived from the experiences and learnings of arts organisations and arts interns from various parts of the country, with differing contexts and needs. Based primarily in the case studies of the experiences of these organisations and interns, this toolkit looks to give hands-on, useable techniques for organisations to manage good, productive, learning experiences. For the benefit of both the interns and the organisations themselves.

<http://vansa.co.za/professional-practice/resources-tools-1/internship-toolkit-book-1-of-the-vansa-professional-practice-toolkit-series>

VANSA LEGAL HELPDESK

VANSA has initiated a Legal Helpdesk to provide free basic legal advice to its members. The Legal Helpdesk functions in partnership with Cilac, who responds to legal queries on a weekly basis. Please note: VANSA facilitates this service at no cost to its members. Cilac is a registered legal services provider and is solely responsible for advice given or any other services rendered. The legal advice offered to VANSA members specifically deals with:

- Copyright / Intellectual Property
- Contracts, Sales and Services
- Business and Organisational Structures

<http://vansa.co.za/professional-practice/resources-tools-1/free-legal-advice-for-vansa-members>

CAPE CRAFT AND DESIGN INSTITUTE (CCDI)

The CCDI supports craft producers and helps to network all players in the product-to-market chain. This includes craft producers and designer-makers, retailers, marketing agents, exporters and service providers such as designers, product developers, skills trainers, business development practitioners and mentors. Government and other funders form a vital part of this collaboration, to build relationships across sectors.

ccdi.org.za

BASA

Business and Arts South Africa (BASA) is a not-for profit company whose primary aim is to promote mutually beneficial and sustainable business-arts partnership that will benefit society as a whole. BASA runs various support programmes for the arts including the BASA basics programmes.

basa.co.za/

VISUAL ARTISTS IRELAND

Visual Artists Ireland provides practical support to visual artists in all art forms throughout their careers. It provides services, facilities and resources for artists, operates an artistic programme and acts as an advocate for the interests of artists. VAI has developed a professional practice manual in the form of a Survival Guide for Visual Artists that covers professional business practices for artists to commissions and professional job practices. The online manual includes videos and advice from artists. While developed from a different context, the manual provides good practical advice for any artist on how to negotiate the different aspects of their careers.

<http://visualartists.ie/the-manual-a-survival-guide-for-visual-artists/>

DRAMATIC, ARTISTIC AND LITERARY RIGHTS ORGANISATION (DARLO)

DALRO is a multi-purpose copyright society established in 1967 and administers (or licenses) various aspects of copyright on behalf of authors, artists and publishers. We provide the link between them and the licensees who use their works in their businesses or educational institutions.

Their main areas of administration are reprographic reproduction rights (from published editions), public performance rights (including stage rights for musicals and plays) and reproduction rights (granted for both publishing and copying) in works of visual art.

DALRO has mandating agreements with local and foreign authors, agents and publishers, and a number of foreign bilateral agreements with their sister organisations. This guarantees their clients have access to a vast repertoire of copyright works.

dalro.co.za

INTERNATIONAL COUNCIL OF MUSEUMS

The International Council of Museums (ICOM), created in 1946, is the only organisation of museums and museum professionals with a global scope, committed to the promotion and protection of natural and cultural heritage, present and future, tangible and intangible. With approximately 30,000 members in 137 countries, ICOM is a network of museum professionals acting in a wide range of museum- and heritage-related disciplines. ICOM has developed a number of reports into sound ethical museum practice and standards.

<http://icom.museum/>

COMMISSION FOR CONCILIATION, MEDIATION AND ARBITRATION

The Commission for Conciliation, Mediation and Arbitration (CCMA) is an independent body in South Africa that is charged with resolving disputes in labour relations. The mechanism is independent from the Government. It is run by the Governing Body and comprised of representatives of the three social partners: workers, business and government. On the CCMA's website you will find templates for contracts and information sheets that outline various employee rights and statuses, ranging in scope from the rights of independent contractors and unfair dismissal to discrimination in the workplace. These templates and documents can be downloaded at the above link from the CCMA website.

ccma.org.za/

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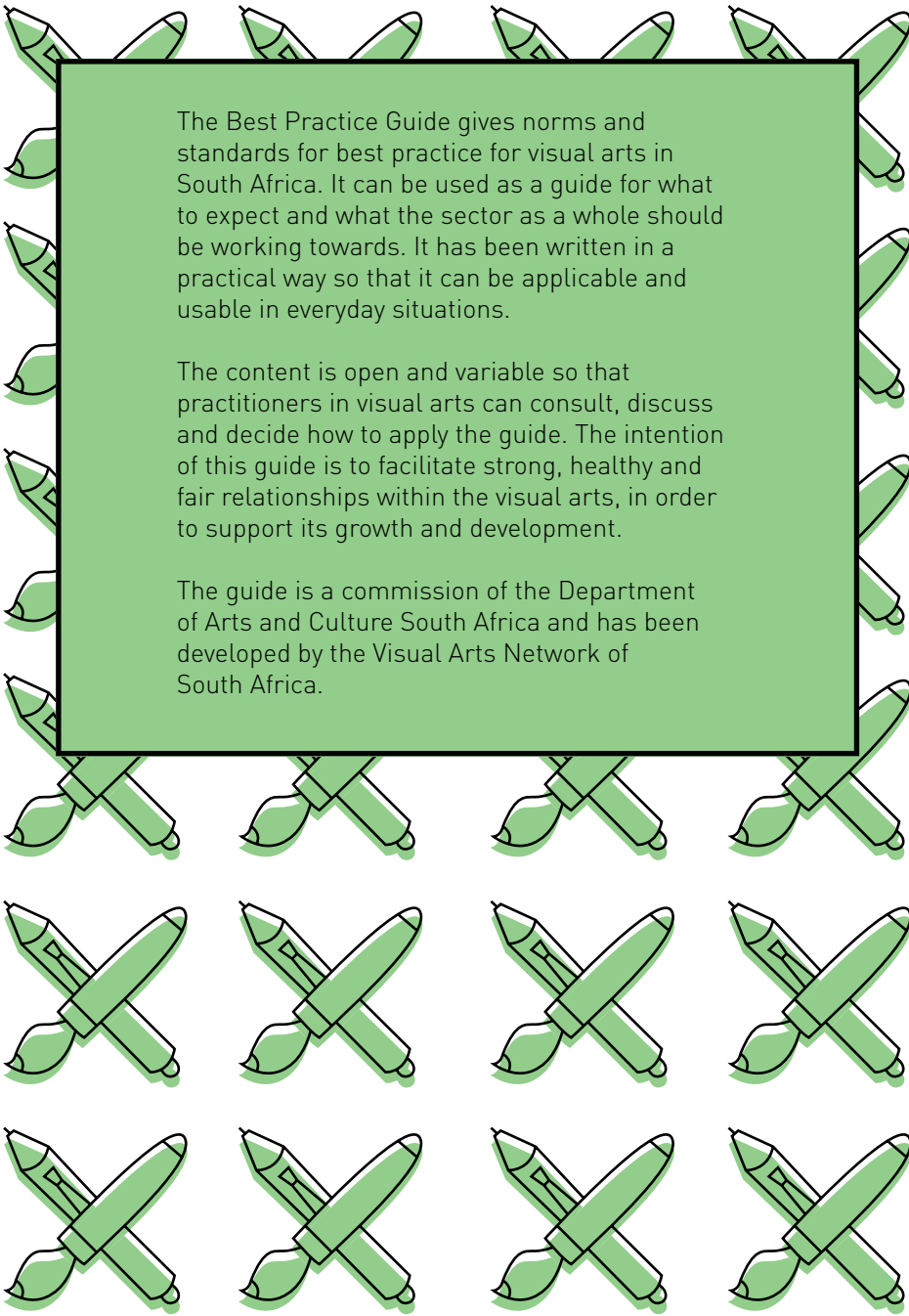
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The Best Practice Guide gives norms and standards for best practice for visual arts in South Africa. It can be used as a guide for what to expect and what the sector as a whole should be working towards. It has been written in a practical way so that it can be applicable and usable in everyday situations.

The content is open and variable so that practitioners in visual arts can consult, discuss and decide how to apply the guide. The intention of this guide is to facilitate strong, healthy and fair relationships within the visual arts, in order to support its growth and development.

The guide is a commission of the Department of Arts and Culture South Africa and has been developed by the Visual Arts Network of South Africa.