

Statement of Best Practices for Dissemination in Artist-run Centres

This document discusses the relationship between artists and managers of artist-run centres when the latter act in the capacity of promoters within the meaning of the law.

Artist-run centres are not-for-profit organizations comprised of a majority of professional artist members. Their functioning is based on self-management. Their mandate is to support contemporary art research, experimentation and development. Artist-run centres are professional production and/or dissemination organizations that artists initially created for themselves, then for all fellow artists and finally for the public.

The dissemination of visual art work is mainly regulated by two important acts : An act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters (R.S.Q. c. S-32.1) and the Copyright Act (R.S.C., 1985, c. C-42).

In Quebec, An act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters requires artists and promoters to sign a contract formalizing their professional relationship. A contract is a freely consented agreement which takes effect when each of the parties has signed a copy of their own.

The artist and the artist-run centre must keep in mind that each provides the other an essential return in terms of goods and services. Each party must ensure that their expectations and requirements are well understood by the other and are agreed upon in their contract.

1 A PROFESSIONAL RELATIONSHIP

- The relationship between an artist and an artist-run centre entails rights and obligations for each of the parties. It implies the use of the artist's work(s) and the carrying out by the artist of professional activities.
- At all times, mutual respect, that takes into account what each party brings to the relationship, is a must.
- The development of a dissemination project implies formal and informal dealings ; these may be initiated by the artist or the exhibitor.
- The ephemeral character of most exhibitions in artist-run centres influences the nature of the relationship between centre and artist ; this relationship is thus generally temporary.
- It is important that the artist and the artist-run centre inform each other of the roles each will play in the project, of their respective tasks and responsibilities, and of the limits of each party's commitment.
- When an agreement in principle is reached for an exhibition and its related activities, both parties take part in the negotiations of the dates of the exhibition, of the space(s) where it will take place and of the necessary equipment, etc. and, if applicable, of the parameters of any activity planned in

conjunction with the exhibition.

- The terms of the agreement must all be stated in a written contract. Using the model contracts jointly developed by the RAAV and the RCAAQ is highly recommended.
- Either party may end the professional relationship by informing the other with reasonable notice. It is always best to define the meaning of "reasonable notice" within the contract itself.

2 GENERAL INFORMATION ABOUT CONTRACTS

- In the province of Quebec, *An act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters* (R.S.Q. c. S-32.1) stipulates that a contract between an artist and an exhibitor must be drawn up in writing.
- A promoter is a person, institution or partnership, operating - as primary or secondary activity - for commercial or not-for-profit purposes, a dissemination venture which enters into contract with artists.
- An artist and a promoter who wish to establish a professional relationship may not waive the application of the provisions of the R.S.Q. c. S-32.1 Act regarding contracts between artists and promoters.
- The promoter and the artist may choose a contract form that can be adapted to the terms of the agreement between the parties. This contract should outline the mutual expectations of each party. However, it must absolutely contain the minimum compulsory content stipulated in the R.S.Q. c. S-32.1 Act, of which an excerpt follows. It must mention:
 - *"the nature of the contract;*
 - *the work or works which form the object of the contract;*
 - *any transfer of right and any grant of license consented to by the artist, the purposes, the term or mode of determination thereof, and the territorial application of such transfer of right and grant of license, and every transfer of title or right of use affecting the work;*
 - *the transferability or nontransferability to third persons of any license granted to a promoter;*
 - *the consideration in money due to the artist and the intervals and other terms and conditions of payment;*
 - *the frequency with which the promoter shall report to the artist on the transactions made in respect of every work that is subject to the contract and for which monetary consideration remains owing after the contract is signed. "*
- Ideally a contract should be signed at the latest three months before the exhibition takes place. In addition to the minimum compulsory content stipulated by the act, the following should also be taken into account during the negotiation of a contract:
 - the location where the exhibition will take place, its duration and the number of works to be shown ;
 - the set-up of the works and all the necessary requirements for their presentation (framing, construction, display structures or cabinets, technical equipment, personnel, etc.) ;
 - the transportation of the works ;
 - the protection and the insurance of the works ;
 - travel of the exhibition in the case of a tour, including transportation, storage, set-up, etc. ;
 - the means and tools of promotion.
- The contract must include, as appendix, a detailed list of the works that the artist entrusts to the care of the promoter. It is the artist's responsibility to provide this list. The artist-run centre is responsible for verifying that this list is consistent with the works entrusted and that the works are in good

condition.

- The signatures of both the promoter and the artist at the bottom of this appendix validate the authenticity of the document. Each party must keep a copy. Any amendment made to this list must be done so in writing and initialed by both parties.
- The works entrusted are not the promoter's property and thus cannot be part of any sales or property transfer transaction. For example, they may not serve as a guarantee for a loan or any other undertaking of similar nature.
- Every agreement between an artist-run centre and an artist which reserves, for the promoter, an exclusive right over any future work of the artist or which recognizes the promoter's right to determine the circulation of such work must, in addition to the minimum compulsory content required :
 - *"contemplate a work identified at least as to its nature;*
 - *be terminable upon the application of the artist once a given period agreed upon by the parties has expired or after a determinate number of works agreed upon by the parties has been completed;*
 - *specify that the exclusive right ceases to apply in respect of a reserved work where, after the expiration of a period for reflection, the promoter, though given formal notice to do so, does not circulate the work;*
 - *stipulate the duration of the period for reflection agreed upon by the parties. "*

3 EXHIBITION COSTS

- Exhibition costs are subject to negotiation between the artist and the artist-run centre. These costs include :
 - promotion ;
 - opening ;
 - travel ;
 - transportation ;
 - insurance ;
 - set-up and take-down.
- Ideally, artist-run centres should cover all exhibition costs.
- Certain costs can be charged to the artist, as for example for late changes requested by the artist to the exhibition, or to a publication, or for invitation cards different from ones the promoter usually uses.

4 PROFESSIONAL ACTIVITIES PROVIDED BY THE ARTIST WITHIN THE CONTEXT OF THE DISSEMINATION OF HER/HIS WORK

- Professional activities provided by the artist within the context of the presentation of her/his works should be described in the contract and be subject to specific remuneration negotiated with the artist-run centre.
- Remuneration for professional activities provided by the artist is not the same as the fees that must be paid for copyright.
- Once an exhibition is confirmed by a letter from the artist-run centre, the artist's active participation in

the implementation of the exhibition project should be paid according to terms agreed upon by both parties.

- Any related activities, for their part, should be the subject of a different contract and so part of a separate negotiation. Related activities can include the participation of the artist in a publication and the commission of work(s).

5 COPYRIGHT

- In Quebec the copyright of a work of art belongs to the artist unless she/he has signed an agreement as to its sale or assignment.
- The artist may manage her/his copyright herself/himself or through a collective copyright management organization that can handle the copyright administration in her/his name. It is the artist's responsibility to inform the promoter of the necessary procedure to obtain the licenses for the use of her/his work(s).
- The main copyright categories of concern for the visual arts are: **The Exhibition Right, The Reproduction Right, and The Right of Communication to the Public.**
- Any public exhibition of an art work created after June 7, 1988, requires an **Exhibition Right** license, unless the purpose of the exhibition is for the sale or hire of the work. So as not to penalize older artists, several promoters also pay exhibition fees for works created after June 7, 1988, that are still protected by the Copyright Act.
- **The Reproduction Right** is the right to "*reproduce the work or any substantial part thereof in any material form whatever*". The right to reproduce an art work must be granted by the artist, or her/his copyright management collective, by the issuance of a license.
- **The Right of Communication to the Public**, for its part, mainly concerns the diffusion, or reproduction of the work, by telecommunication means (television, internet, cinema).
- **Moral Rights** are inherent in Copyright and consist in the right to claim authorship of an art work and the right to protect its integrity. There is infringement of the moral right to the integrity of a work when it is distorted, altered or mutilated in a way that prejudices the reputation of the artist, or when it is used in association with a product, cause, service or institution without the artist's permission.
- While the artist may choose to waive her/his moral rights, they cannot be sold or assigned to any other party.

6 AN EXHIBITION'S SCHEDULE

- The artist and the artist-run centre should negotiate a time-table that both parties agree on for the exhibition. This time-table should specify :
 - the final due date of the list of elements to be included in the exhibition ;
 - the dates of delivery and pick-up of these elements ;
 - the due date for all necessary information for the development of the promotional tools ;
 - the payment dates of the fees or royalties owed to the artist ;
 - the dates for the opening and promotional events ;

- the time available for set-up and take-down ;
- the duration of the exhibition ;
- for public performances: their duration, frequency and schedule.

7 PROMOTION

- The artist-run centre informs the artist of the breadth and nature of the promotional activities it intends to undertake and of the artist's planned participation in these activities.
- The artist-run centre should produce and keep a copy of visual documentation of the exhibition. The artist may also contribute to this documentation.
- The artist-run centre should provide the artist with a copy of all promotional material related to the exhibition.

8 THE ARTIST'S OBLIGATIONS

- The artist must deliver the selected works to the artist-run centre in good condition, ready to be exhibited and carefully packaged, at the agreed upon time.
- In the case of works that include mechanical or electronic equipment, the artist must make sure that this equipment will work for the entire duration of the exhibition. In the event of damage or failure, she/he must do everything possible to get it back to working order at the earliest opportunity.
- The artist must provide the artist-run centre with a complete list describing the works of the exhibition, including the title, the date of completion, the dimensions, the fair market value and any other necessary information.
- The artist must provide the artist-run centre with correct biographical information and respond with all due diligence to any information request necessary to the promotion of the exhibition or of the publication.
- If she/he is unable to participate in the set-up of the exhibition, she/he must ensure that the artist-run centre has all the necessary information for the adequate installation and take-down of the works.
- If applicable, the artist and the artist-run centre should discuss the health and safety aspects of the work or works exhibited.
- The artist must accept to respect the regulations in force in the space where her/his work is exhibited, especially as to health and safety.

9 THE ARTIST-RUN CENTRE'S OBLIGATIONS

- The artist-run centre should verify the list of works provided by the artist, make note of what state they are in if needed, sign this list and keep a copy of it. In case of damage to the works during transportation, the artist must make note of this in writing on the list, or in a detailed report attached to the list. These documents protect the promoter and the artist and will be necessary in the event of potential claims to the insurance providers.
- The protection of the works, as well as the respect of the centre's policies in the event of loss, damage or theft, form part of the normal obligations of an artist-run centre.

- The artist-run centre must ensure that its personnel take every reasonable precaution during the handling, storage and exhibition of the works.
- The artist-run centre is responsible for taking out an adequate insurance policy. The contract negotiated with the artist should describe the insurance coverage as well as the procedure, in the event of loss, damage or theft, while the works are under the artist-run centre's protection.
- If the artist-run centre does not offer any insurance coverage, the artist, or the owner of the work or works should be notified in writing.
- The artist-run centre is responsible for providing security, fire prevention as well as an adequate environment for the works, which includes placement and lighting.
- If access to the work requires technical equipment, personnel or any other specific measure, the artist-run centre should ensure their availability in good working order. In the event of any problem, the artist-run centre should inform the artist and rectify the situation as soon as possible.
- When the work is ephemeral (by its very nature or because it self-destructs), the artist and the artist-run centre should agree before the exhibition on who is responsible for preserving or discarding the residues of the work.
- The artist-run centre has the responsibility to see to it that the artist be informed of its establishment's health and safety regulations.

10 THE SALE OF WORKS

- The artist is free to put her/his works on sale during an exhibition at an artist-run centre. The conditions of sale should be specified in the exhibition contract.
- If the artist accepts that her/his works be sold, the artist-run centre forwards the purchase offers directly to the artist or to her/his representative if applicable.
- When the artist-run centre intervenes as an intermediary in the sale of a work and that the artist is not under contract with a gallery located on the Quebec territory, it should not retain any commission, except for the coverage of direct costs (handling, packaging, transportation...).

11 DISPUTE RESOLUTION

- The artist and the artist-run centre should agree to make all possible reasonable efforts to resolve any dispute relative to their contract, or ensuing from its interpretation or its application, through mediation in accordance with the procedure provided for in Articles 1 to 7 of Book VII of the Civil Code of Québec, as specified in *An act to establish the new Code of Civil Procedure* (Bill no 28).
- If the parties are not able to reach an agreement within sixty (60) days following the appointment of a mediator, one of the parties may, if necessary, turn to common law courts. The artist and the artist-run centre then expressly waive the application of Article 37 of the *Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters* (R.S.Q. c S-32.1).

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