

Co-Ownerships: Concerns, Contracts, and Crossing borders

Panelists:

**Cindy Tovar, Permanent Collection
Senior Associate Registrar, Los
Angeles County Museum of Art
(LACMA)**

**Morgan Webb, Registrar for
Collections, Philadelphia Museum of
Art (PMA)**

**Andrea Paasch, Former Deputy
Director, Museo Tamayo, Mexico
City**

LACMA Co-Ownerships

24 joint acquisitions co-owned with 18 institutions

A total of just over 3,000 artworks, includes:

- large Mapplethorpe acquisition co-owned with the Getty
- two large print acquisitions co-owned with the Hammer

5 joint acquisitions currently in process over the last calendar year



Philadelphia Museum of Art Co-Ownerships

17 joint acquisitions co-owned with 16 institutions

Co-Owners include:

Art Institute of Chicago

Hammer Museum

Metropolitan Museum of Art

SFMOMA

Walker Art Center



Museo Tamayo Co-Ownership

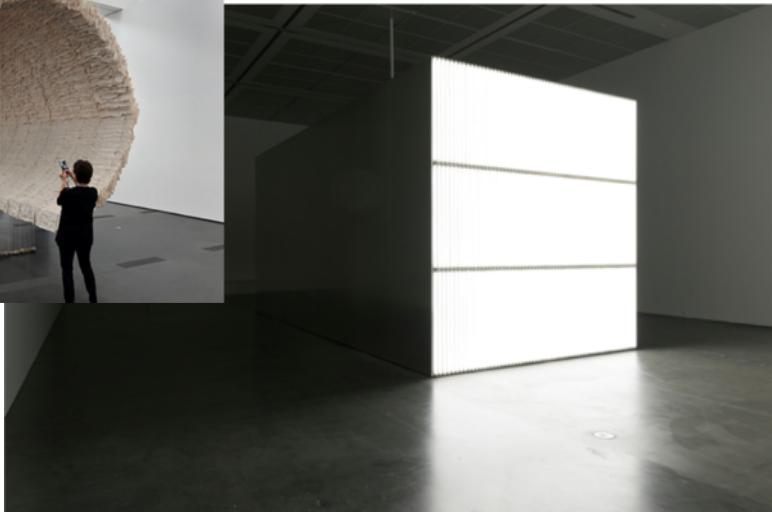
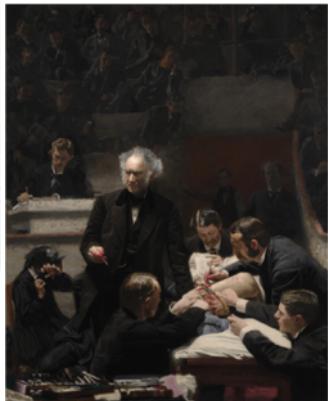
First and only co-ownership of an artwork in Mexico!



What is Co-Ownership?

Co-Ownership (or Joint Acquisition):

Permanent joint ownership with another non-profit museum



Fractional Gifts

Acceptance of any fractional gift automatically creates joint ownership.

However, prior to accepting fractional gift, **Museum requires a signed pledge agreement requiring donor to complete the gift** at or before his/her death (usually referred to as a partial and promised gift).

*Note: If donor is seeking a charitable deduction, there may be IRS regulations regarding the timing of completion of fractional gifts. Donors should consult with their tax and legal advisors to ensure that the gifts are made in accordance with applicable law.

Why Co-Own?

- 1) Share in the purchase price of a high value work
- 2) Artist or Donor wants to donate a single work to more than one museum
- 3) Provide more access to the art and create collaboration between institutions
- 4) Building relationships between international museums, and countries through the Arts



Entering into a Joint Acquisition



Lovely idea... How do we make it happen?

- 1) Conversation
- 2) Registrar Informed!
- 3) Information Gathering
- 4) Contract Drafting
- 5) Receive Work
- 6) Sign Agreements / Pay for Purchases
- 7) Accession / Share Information / Process Loans and Exhibitions

Joint Acquisition Agreements

I. Joint Deed of Gift or Joint Purchase Agreement

- Signatories: Co-Owners and Donor or, Vendor (on behalf of Artist, if applicable)

II. Co-Ownership Agreement

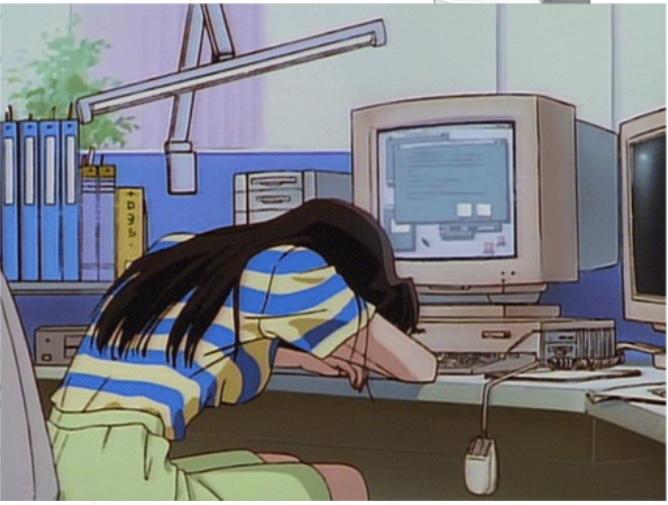
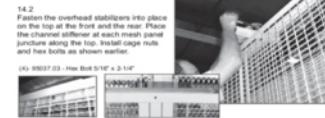
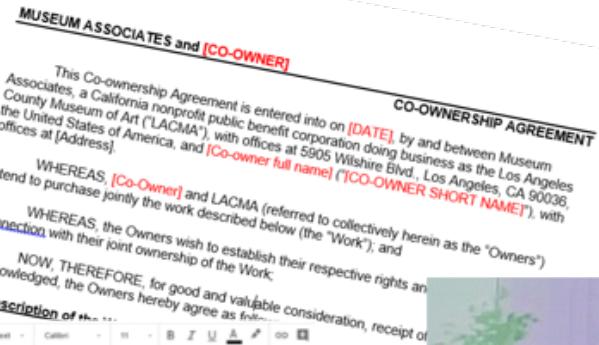
- Signatories: Co-Owners

III. Possibly a separate License Agreement

Key aspects of a Joint Purchase Agreement

- Name Parties
- List the Work
- Payment terms and timeline
- Artist has copyright but will grant us a License to: reproduce images, make exhibition copies (TBM), perform the work (TBM)
- Work is original to the Artist or they have obtained permissions
- No violation of import export laws
- Deliver all documentation
- Mutual Indemnification for Third party Claims
- Governing Law

Agreement drafting... usually takes months.



TRACKED CHANGES

You've written something. You've poured all your skill, creativity, and time into your manuscript. You've made sacrifices money, energy, and time with your final line, and you can now congratulate yourself on a job well done.

But what's next?

You know that something needs to happen between the completion of your manuscript and publication. But you're not quite sure what. There are so many types of editing available, you aren't quite sure what to do.

- Developmental (substantive) editing
- Fact-checking
- Line editing
- Copyediting
- Proofreading
- Formatting

How are you supposed to know what services you need? In a perfect world, "All of the above." In Realville, where most of us live, time and expertise are limitless. Worse, if you don't understand the types of editing and what order you can find yourself having to **do-a-step-all-over-again-(and pay for it again someone to do it)**.

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Contract Considerations

HOW WILL WE SHARE THE WORK?

- Who will be responsible for physical custody of the work?
- Will physical custody rotate over a period of time? (“Administrative Periods”)
- Who processes loan requests?
- How will insurance, conservation, storage costs (if applicable) be handled?
- Will the artist remit two Certificates of Authenticity (each listing 50% ownership, owner unnamed)?

Install & Time Based Media Considerations

- For TBM, can each institution retain an archival master? make exhibition copies? migrate the media?
- Conduct inventory and list all components (replaceable and non-replaceable)
- Review Installation Instructions and Installation Questionnaire
- Can the work only be shown at one venue at a time?
- Must have License to perform the work



Migration

Owners may migrate to new technology only with the approval of the other Owner and in accordance with the Purchase Agreement.

During the life of the artist, the Purchasers may, after consulting with the Artist or their representative, migrate to an alternative media format...



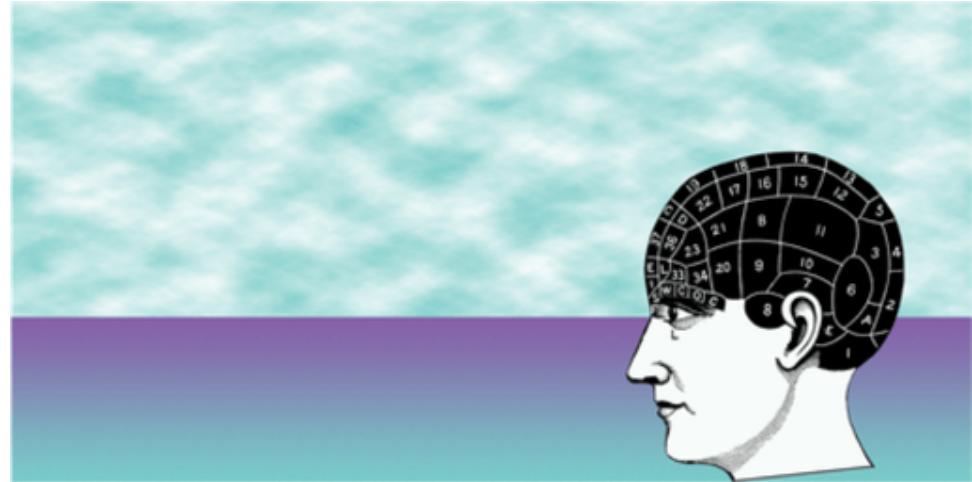
Collections Management Policy

In general, the Museum will not accept partial ownership of works of art as gifts unless the remaining interests are pledged to the Museum. **The Museum will, however, retain partial ownership of works of art if the other interests are owned by (or pledged to) another nonprofit institution** with which the Museum will share ownership.

The Museum may also pursue these co-ownership arrangements at the time of initial acquisition of an object. In all cases of co-ownership, **the Museum will enter into a Co-Ownership Agreement** with the co-owners that sets forth how the parties will address questions of storage, shipping, insurance, loans of the object, credit lines, conservation and care and similar topics.

Trends

Artists & Galleries becoming more open to co-owners each owning a full copy of the work.



Additional tips

- Review agreements with legal counsel; if not possible, reach out to other institutions to obtain template agreements.
- DocuSign is useful for obtaining signatures.
- Check in with co-owner periodically in order to update record information- values, artwork provenance, exhibition info, and tracking administrative periods.

A Co-Own Contract Review



Zoodram 5 (after 'Sleeping Muse' by Constantin Brancusi)

Pierre Huyghe

2011

Glass tank, filtration system, resin shell after Constantin Brancusi's Sleeping Muse (1910), hermit crab, arrow crabs and basalt rock

The Philadelphia Museum of Art and The Los Angeles County Museum of Art, purchased jointly with the Philadelphia Museum of Art Contemporary Revolving Art Fund and funds provided by Steve Tisch



What's covered in our Co-Ownership Agreement?

Description of the Work:

Shared Components:

Glass Tank, Base, Light Box, Filtration and Pumping System,
Volcanic Rock, Basalt Rocks, Shell

Replaceable Components:

Livestock, Installation Materials, Maintenance Equipment, Filtration
and Pumping Accessories

Two original Certificates of Authenticity,
signed by the Artist (one counterpart for each Owner)



Possession

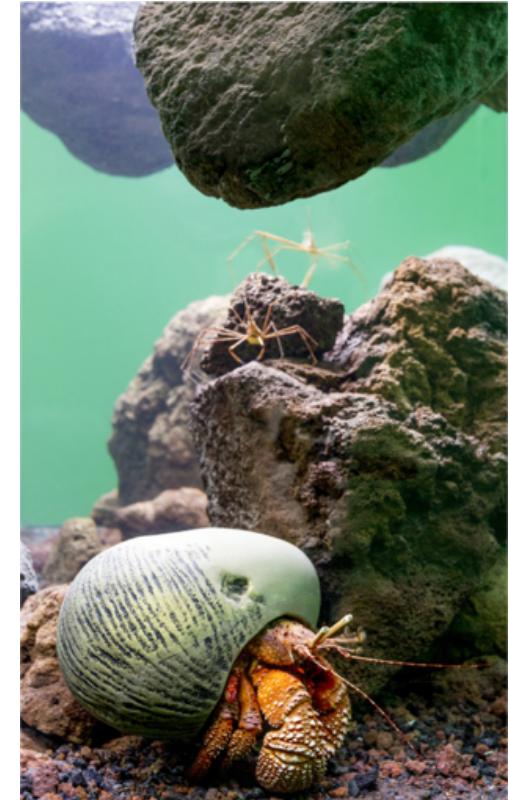
Possession is generally proportional to 50% interest of each Owner.

The **costs of packing and shipping** the Shared Components from one Owner's facility to the other's **shall be paid by the receiving Owner**, and the receiving Owner shall be primarily responsible for making all arrangements for packing and shipping.

Possession

Owners will work together to plan an installation schedule **accommodating each other's needs as equitably as possible**, while minimizing excessive handling and shipping of the Work.

Owners shall endeavor to project and agree on an installation schedule for the Work approximately **two years in advance** so that each Owner may plan accordingly.



Packing and Shipping

If a third party is to be used for packing and shipping between Owners, the selection of the third party is subject to the approval of both Owners.

Maintenance, Conservation and Repair

Each Owner shall send an outgoing **condition report** to the other Owner. The condition report must be annotated by the receiving Owner.

Owners shall endeavor to consult with Artist's recommended contractors as noted in Installation Guidelines, and cooperate with each other in good faith to share contractors and any such resources for components and services, in the interest of minimizing costs.

Any conservation out-sourced to a third party shall be subject to a written proposal signed by both Owners with **all costs split equally**, including shipping.



Storage & Access

Each Owner shall bear its own costs of storage on or off-site.

Art storage shall always meet museum industry standards.

If Shared Components are in storage, each Owner shall have access with proper notice.

Owners shall grant controlled access to qualified researchers consistent with access policies governing the rest of their respective permanent collections. This shall also apply to researchers requesting access to museum records concerning the Work.

Record-keeping and Documentation

Owners will **share** all material records and **documentation** of the Work with one another so that both parties have a complete set. This shall include any use of images or videos of the Work for archival, educational, promotional or other purposes, conservation and condition history.



Insurance

The **Owner in physical possession of the Work shall insure** the Shared Components under its own all-risk, fine arts insurance policy for 100% of the total fair market value at time of loss or damage, including the other Owner's interest, with a recovery on a basis that is pari passu with the insuring Owner's permanent collection. Each Owner's Fine Arts Policy (a) shall be subject to standard exclusions (b) shall be written with an insurance carrier licensed at all times during the term of this Agreement to do business in California and Pennsylvania, and (c) shall be endorsed to **include the other Owner as a loss payee and additionally insured** as its interest may be appear, and to be primary, with the other Owner's insurance contributing as needed.

Insurance While Works Are in Transit

When the Shared Components are in transit from one Owner to the other, the **Owner receiving the Shared Components shall be responsible for insuring** the Shared Components, from the completion of condition reporting at the facilities of the Owner sending the Shared Components.



Loans to Third Parties

Both Owners review and sign loan agreement.

Responsibility for coordinating **packing and shipping will rest with the Owner in possession** of the Work at the time the Work is to be packed and shipped to Third Party Borrower.



Photo: Ola Rindal

Loan Fees

Any loan fees charged to a Borrower to cover administrative expenses shall be retained by the Owner making the loan. The remainder of such fee, if any, shall be shared equally by the Owners.

Sale

Neither Owner shall have any right or power to sell or otherwise transfer, pledge, hypothecate or encumber its interest in the Work to or in favor of any third party **without the prior written consent of the other Owner**, which consent may be withheld at its sole discretion.

The transferee of either Owner's interest in the Work, in connection with any sale, gift, or other transfer of such interest, shall, as a condition of such transfer, be **required to agree to all of the terms and conditions** applicable to the transferring Owner pursuant **to this Agreement and the Purchase Agreement**.

Dissolution

If any of the following events should occur with respect to an Owner:

- (a) The Owner engages in a sale of all or substantially all of its assets
- (b) The Owner ceases operating as an art museum that is regularly open to the public
- (c) The Owner ceases to be exempt from federal income tax (other than tax on unrelated business income)
- (d) The Owner dissolves.....



Sale of Assets, Dissolution

Then such Owner shall **promptly notify the other Owner** of such event. Within ninety (90) days of the receipt of such notice, **the other Owner may**, by notice to the Owner, **elect to purchase the interest of the Event Owner** for an amount equal to **50% of the fair market value of the Work** (as determined by an independent appraisal) at the time of notice.

A New Form of Collecting...

Co-Ownerships are still relatively novel!

A highly detailed Co-ownership Agreement is essential to the success of joint ownership of artworks.



Across Borders Co-ownerships building museum relationships



First Co-ownership in Mexico

Tree of Life

Tacita Dean
2016

Gouache on black and white fiber based photograph mounted on paper

Overall: 132 5/16 × 165 3/8 in.

The Los Angeles County Museum of Art and Museo Tamayo Arte Contemporaneo, purchased jointly with funds provided by anonymous donor.



Across Borders Co-ownerships: sharing the artistic national heritage

A country is defined in great measure by its cultural heritage. In Mexico, public museum's collections are considered National Artistic Heritage. Therefore, ***Tree of Life*** is now part of our National Artistic Heritage which means that through this Co-ownership we are not just sharing a work of art with another museum, we are sharing our heritage, this means that what we are really sharing is a piece of Mexico.

Main Benefit for a public (state) institution

In Mexico, public museums lack acquisition funds.

Our collections grow mainly through two sources:

1. Donations (from artists themselves or from private donors)
2. A tax program for artists called Payment In-Kind (which is unique in Mexico)

A Co-ownership program means a new and third option which not only allows to reduce the total cost of a purchase by 50% but it also allows to acquire works of greater value and international relevance.

Why this specific work

The first conversation for a Co-ownership is at a curatorial level.

Both institutions should share a similar exhibitions program and similar collections (or at least a section from it).

In this case, both institutions were interested in acquiring *Tree of Life*.

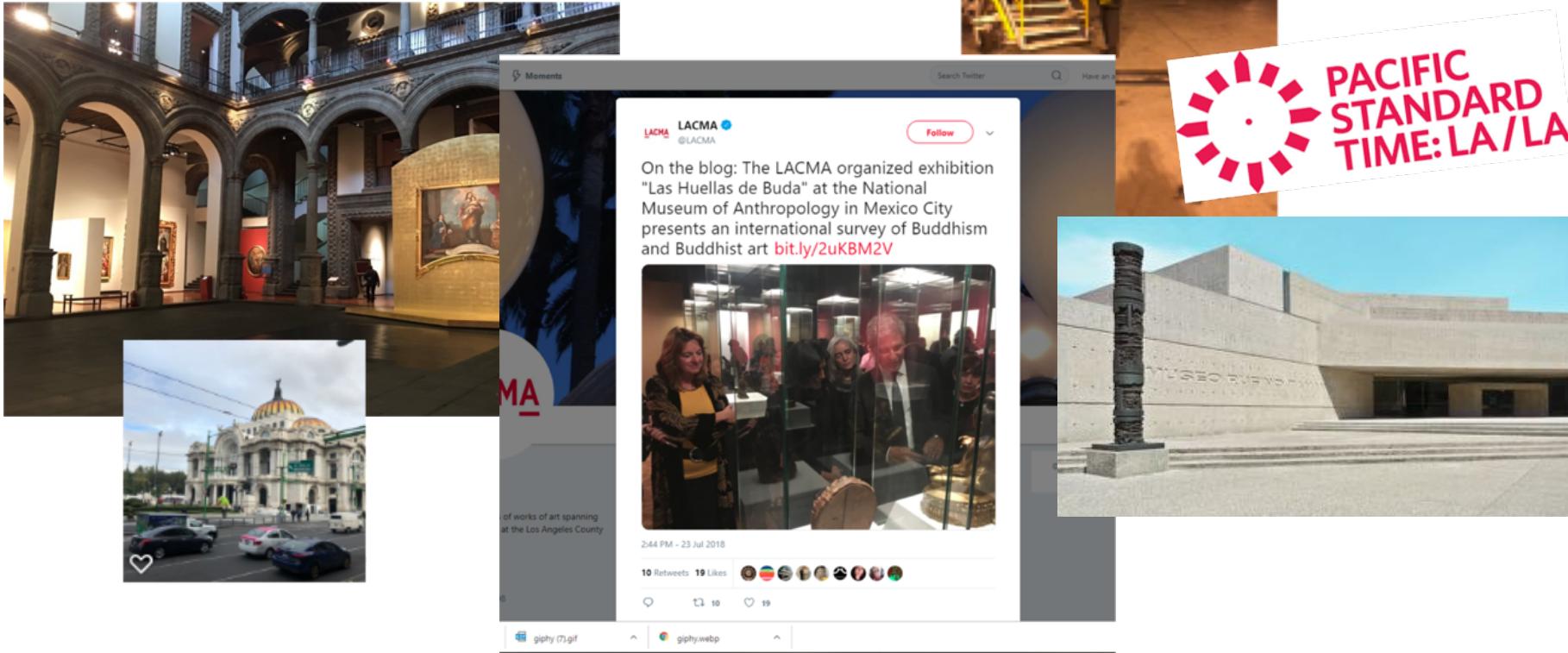
- Museo Tamayo because the work was produced for Tacita's solo show in the museum in 2016.
- LACMA because it already owned two other works from Tacita in different media (film and sculpture).

2016-2019

- Acquisition and Co-ownership agreements between all parties signed and ready.
- Inventory number from the National Institute of Fine Arts pending (two different inventory numbers).
- Since May 2019 the work is currently on display as part of Museo Tamayo permanent collection exhibition.
- All information was shared between both institutions and agreed that ***Tree of Life*** could only be on display for a period of six months.
- It will be again in storage after November 17
- Which museum will store it now?



LACMA's ties to Mexico



Other international prospects...

Not all co-ownerships work out!



The Future Fields Commission in Time-Based Media



International Co-Ownership Considerations

- Governing Law: which country's rule of law will govern?
- Or, will your Agreement be governed by an International Arbitration Organization?
- International shipping considerations

Co-ownerships: The future for collections

- Art prices rise... museums' acquisitions drop.
- Public Museums can't compete with private collectors.
- Artists losing the opportunity to be part of a public serving collection.
- Co-ownerships are a possibility for museums to take part in the art market.
- Artists win by being part of two museums' collections!

Questions?



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