

QUESTIONS AND ANSWERS

Shiva as Lord of the Dance [Nataraja]

Update: 5 September 2014

In light of recent media reports, the National Gallery of Australia offers the following Statement as well as a Question and Answer document regarding the Chola dynasty bronze sculpture, *Shiva as Lord of the Dance [Nataraja]* purchased in 2008 from New York commercial gallery *Art of the Past* and dealer Mr Subhash Kapoor.

Statement:

The National Gallery of Australia's process for acquiring the Shiva included broad and thorough research, and was consistent with international best practices followed by museums at the time.

The National Gallery of Australia complied with Australia's commitments under the 1970 UNESCO Convention on Cultural Property (*UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Export and Transfer of Ownership of Cultural Property*).

If the allegations regarding Mr Kapoor are proven to be true, then our Gallery, along with leading museums around the world, will have been the victim of a most audacious act of fraud. If proven, this fraud has involved the elaborate falsification of documents by a long-established New York art dealer who had been dealing with leading international museums for almost 40 years.

The National Gallery is cooperating and working closely with relevant authorities on fact gathering and on possible outcomes.

The case of the Shiva has highlighted issues relating to the purchase of antiquities for art museums around the world. The Gallery, along with other museums internationally, is reconsidering its acquisition procedures in light of the case involving *Art of the Past* and Mr Kapoor.

Below are some general Questions and Answers regarding the Gallery's Shiva bronze statue:

What is the Shiva?

The Shiva is a superb example of Indian Chola-period bronze casting. The sculpture originated in the Tamil Nadu region of south India and is dated to the 11th-12th century.

The sculpture was purchased by the Gallery in 2008 and represents the Hindu god Shiva in an iconographic form known as Nataraja, or Lord of the Dance. This form of Shiva is found in a great variety of Indian art and often appears in bronzes from the Chola period (9th–13th centuries).

The details of the sculpture in the collection of the National Gallery of Australia are:

Chola dynasty

Tamil Nadu, India

Shiva as Lord of the Dance [Nataraja]

11th-12th century

bronze; lost-wax casting

Purchased with the assistance of the National Gallery of Australia

Foundation 2008

Accession No: NGA 2008.1

Who is Mr Subhash Kapoor and what is *Art of the Past*?

Mr Subhash Kapoor is an American citizen born in India who operated the commercial gallery *Art of the Past* for over 35 years on Madison Avenue in New York City. The website of *Art of the Past* stated that “the gallery has sold to some of the most celebrated public and private collections in the world. These include The Metropolitan Museum of Art, New York City; Arthur M. Sackler Gallery, Washington D.C.; Los Angeles County Museum of Art, Los Angeles; Museum of Fine Arts, Boston; Asian Art Museum of San Francisco, San Francisco; The Art Institute, Chicago; and Virginia Museum of Fine Arts, Richmond; Honolulu Academy of Arts, Honolulu”.

Mr Kapoor was arrested on 30 October 2011 in Frankfurt, Germany and was extradited to India on 14 July 2012. Currently he is in prison. Court proceedings have yet to begin and Mr Kapoor has pleaded not guilty to the charges against him.

When was the Shiva purchased and for how much?

The Gallery purchased the Shiva in February 2008 from New York commercial gallery *Art of the Past*. The work was first brought to the Gallery’s attention by Mr Kapoor in 2006. Details of prices paid for works of art are considered commercial-in-confidence. However, in this case, due to action in the US courts, the information is in the public domain. The amount paid was US\$5million.

What processes were followed in the purchase of the Shiva to check it was legal and authentic?

The Gallery exercised probity and due diligence to international standards in relation to the acquisition. This included compliance with the 1970 UNESCO Convention on cultural property (*UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Export and Transfer of Ownership of Cultural Property*) and Australian law on movable cultural property. The Gallery did what any reputable international

gallery would have done and what is required to comply with the UNESCO convention.

The Gallery undertook thorough and extensive research over a period of a year before the purchase. This searching found no indications that the acquisition would be improper or illegal.

The search process included:

- Consulting the Interpol Stolen Art database.
- Seeking and checking statements of the chain of ownership and receipts of original purchase that stated the sculpture was purchased by the former owner from a commercial gallery in India in 1970.
- Obtaining an Art Loss Register certificate (this register is the world's largest private database of lost and stolen art, antiquities and collectables).
- Regularly checking the Tamil Nadu Police Idol Wing website where thefts in this state of India are reported (no object resembling the work was listed on that site prior to its purchase by the Gallery).
- Undertaking extensive research of published Chola bronzes, including Archaeological Survey of India records, and other sources of archive photographs.
- Liaising with a Chola bronze expert, in India, who was supportive of the acquisition and raised no concerns about its provenance.
- Appointing an independent legal specialist to review the due diligence procedures required to meet the Gallery's legal and ethical obligations so that the Gallery could ensure that legal, contractual, title and ethical issues were addressed and appropriate.
- Entering into an agreement with Mr Kapoor through a letter of warranty in order to protect the Gallery in the event that the sculpture was not as purported.

What past ownership documents were provided and how were they checked by the National Gallery of Australia?

Art of the Past provided documentation in support of the provenance and past ownership of the Shiva. In spite of art market practices of confidentiality, due to repeated requests from the Gallery, Mr Kapoor did provide documentation to establish the ownership and timeframe for the Shiva's departure from India. Under normal circumstances the Gallery does not publicly release such private and confidential information supplied by vendors, but as this information is now in the public domain the

details can be disclosed.

Three key documents were furnished:

- The receipt of purchase in India from Fine Art Museum (dealer), Delhi on 14 May 1970 to purchaser Mr Abdulla Mehgoub. Mr Kapoor stated that Mr Abdulla Mehgoub worked as part of the diplomatic service in India from 1968–1971. Also according to Mr Kapoor, the sculpture was moved to America through embassy channels around the time of Mr Mehgoub’s departure from India.
- A letter of provenance from Ms Raj Mehgoub (in which she declares herself to be the wife of Abdulla Mehgoub) dated 15 January 2003 confirming events of the purchase.
- A receipt of sale from Ms Raj Mehgoub (by then, widow of Abdulla Mehgoub) to *Art of the Past* dated 18 October 2004. According to Mr Kapoor, Abdulla Mehgoub died in 2004 and his widow relocated to a more modest house.

The Gallery checked and confirmed that the people named in the documents existed and were at the addresses indicated on the receipts. To avoid a potential breach of privacy, the Gallery did not directly contact the previous owner. At the Gallery’s request, however, Mr Kapoor supplied detailed biographical information on the couple, including explanation of changes of address, which the Gallery relied upon in good faith since it came from a dealer of longstanding good reputation.

While the Gallery did rely on documentation supplied by *Art of the Past* and the chain of ownership it outlined, the Gallery also carried out its own separate research including the reviewing the Indian Archaeological Survey and Chola literature, consulted an Indian Chola bronze specialist, checked international stolen art loss registers, all undertaken over many months leading up to the purchase.

In what circumstances do galleries usually remove a work of art from display?

Aside from the general rotation of works of art for display, it is customary to remove a work from display in a situation where a work is shown to be a fake or where the authorship is in question.

Is the *Shiva* sculpture on display?

The *Shiva*, which is one of the great examples of Indian culture in Australia, has been consistently on display at the National Gallery of Australia since February 2008. The Gallery wishes to retain the *Shiva* on display for the benefit of its visitors until the ownership issues can be resolved.

Update: In response to a request from the Indian Government to the Australian Government, the National Gallery of Australia has voluntarily removed *Shiva as Lord of the Dance (Nataraja)* from public display. Please see the [statement released by the Attorney-General’s Department](#).

Why did the National Gallery of Australia sell a *Shiva* in its collection to buy this

one?

In 1994, the Gallery purchased a Chola dynasty bronze sculpture of *Shiva as Lord of the Dance [Nataraja]*. While a fine sculpture, it was missing the ring of flames around the figure and therefore incomplete. In accordance with its endorsed *Deaccession and removal of works of art policy*, the Gallery sold the 1994 Shiva to provide funds for the subsequently purchased Shiva which was complete, in excellent condition and significantly larger than the 1994 sculpture. The Gallery's policy allows for a work to be deaccessioned where a superior example has been acquired.

Why does the National Gallery of Australia collect antiquities?

Among the core purposes of museums and galleries around the world is to collect art and cultural material in order to preserve and provide public access to it now and into the future. As part of this purpose, the collection of the National Gallery of Australia includes fine examples of historical Asian art, with particular emphasis on the art of our geographic neighbours in South and Southeast Asia.

The Gallery has a significant collection of Indian art developed through collecting that commenced in the late 1960s through reputable dealers and auction houses. The Gallery's antiquities collection is held in trust for the Australian public and for the benefit of visitors to the Gallery. Indian art is not otherwise well represented in Australian collections and showing art from our region was a documented aim in the policies that lead to the establishment of the Gallery, as far back as 1966. The Gallery purchases antiquities on the secondary market outside their country of origin. Works of art from countries with such rich cultural traditions as India have been lawfully traded for centuries.

The Gallery does not support the trafficking of looted art. As with all leading art institutions around the world, the Gallery is committed to due diligence when acquiring works of art, particularly with regards to determining provenance. The Gallery adheres to and endeavours to abide by the principles of the 1970 UNESCO Convention on Cultural Property (*UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Export and Transfer of Ownership of Cultural Property*). Australia is a signatory to this Convention and it is implemented under Australian law in the Protection of Movable Cultural Heritage Act 1986. The Gallery has always acquired works of art consistent with policies that reflect Australia's legal obligations.

What is the National Gallery of Australia's acquisition policy?

The Gallery collects and displays works of art from Australia, Europe, America, the United Kingdom, Asia and the Pacific and has an excellent acquisition track record – lawfully and ethically acquiring thousands of works of art over the years – through an acquisitions process that is in line with international best practice. The National Gallery of Australia's acquisition policy can be accessed at <http://nga.gov.au/Collection/AquPolicy.pdf>. All acquisitions to the Gallery are recommended to and assessed by the National Gallery of Australia's Council prior to approval.

As part of its commitment to principles of responsibility and transparency, the Gallery's collection of approximately 170,000 objects is available online through its website <http://artsearch.nga.gov.au>. The Gallery also publishes a list of all new acquisitions each financial year in its Annual Report. Consistent with these policies, the Shiva appeared in the Gallery's annual report for 2008 as a new acquisition and has been posted on the Gallery's website since early 2008.

Will the National Gallery of Australia be changing its acquisition processes?

The Gallery is committed to due diligence in acquiring works of art and regularly reviews and refines its processes. The situation with the Shiva has highlighted the importance of rigorous due diligence processes and issues of documentation and provenance for the Gallery and for many museums around the world. The Gallery, along with other museums internationally, is reconsidering its procedures.

Why hasn't the Gallery returned the Shiva to India?

The Gallery is cooperating and working closely with relevant authorities on possible outcomes.

The process for returning foreign cultural objects is handled on a government-to-government basis, in accordance with the provisions of the Protection of Movable Cultural Heritage Act 1986, which implements Australia's obligations under the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. For further information on the protection of movable cultural heritage see <http://arts.gov.au/movable>

Update 5 September 2014:

The Prime Minister of Australia, the Honourable Tony Abbott MP, today presented the Shiva Nataraja sculpture to the Prime Minister of India Mr Narendra Modi in a gesture of goodwill and respect. This action was undertaken with the cooperation and approbation of the National Gallery of Australia (see Gallery media statement of 5 September)

What is the role of the Tamil Nadu Police 'Idol Wing' and when were authorities alerted to the thefts in India?

The Idol Wing is a unit of the Economic Offences Wing of the Tamil Nadu Police with responsibility for recovering stolen antiquities. In August 2008 (some months after the Gallery's Shiva arrived in Canberra for inspection in November 2007) local police in India were alerted to the disappearance of a large bronze Shiva from a temple in Sripuranthan village in Ariyalur district, Tamil Nadu.

The case was referred to the Idol Wing of the Tamil Nadu Police in November 2008 and in March 2009 police arrested locals alleged to be involved in the theft. An Interpol Red Corner Notice (a wanted person alert circulated to international police forces) was issued for Mr Kapoor in 2011 in connection with the case. The notice appears to have been posted on 25 October 2011, 5 days before Mr Kapoor's arrest.

Multiple images of the Shiva

Media reports carry images of bronze Shiva statues and it should be noted that there are many similar Shiva statues in existence both in India and across the world and only through thorough and close examination can similarities and differences between them be discerned. Information found on the internet about the case of *Art of the Past* often include images, generally without dimensions, nor time and location of their photography, which adds confusion.

Is the Shiva insured?

All works owned by the National Gallery of Australia are insured.

What other objects has the National Gallery of Australia purchased from *Art of the Past*?

The National Gallery of Australia purchased 22 works of art from *Art of the Past* between 2002 and 2011.

These are:

- 14 sculptures from South Asia
- 1 sculpture from Southeast Asia
- 1 painting from India
- 6 photographs from India

Has the National Gallery of Australia reviewed the provenance of all the works from *Art of the Past*?

The Gallery was confident in the provenance of the other objects purchased from *Art of the Past* at the time each was acquired. We have since reviewed the documentation and information received. The Gallery will continue to reassess this information as the court cases progress.

Is the National Gallery of Australia taking legal action?

The Gallery has commenced legal action against Mr Subhash Kapoor, *Art of the Past* and the gallery's former office manager, Mr Aaron Freedman in New York. Details of the case can be found in a statement released by the Gallery on 6 February 2014.

The National Gallery of Australia's proactive steps in taking legal action in the United States of America are based on the legal contract signed by Mr Subhash Kapoor in 2008 and U.S. law. This action is intended to preserve the Gallery's legal position in regard to fraud and the possibility of the recovery of its losses if it is established that the Shiva was stolen.

If the National Gallery of Australia is taking action in New York then surely it

proves that the Gallery accepts the Shiva is stolen?

It has not yet been proved that the Gallery's Shiva was stolen. The determination of this issue is now before the courts in India and the United States of America. The Gallery is taking action in New York relying on statements made in the guilty plea made by the former office manager of *Art of the Past*, Mr Aaron Freedman. That plea arose in response to the separate criminal proceedings instituted by the State of New York. Mr Kapoor is also subject to proceedings in India to which he has pleaded not guilty.

The Gallery awaits the outcome of the legal proceedings and will act accordingly, to protect its position and cooperate with relevant authorities.