

The Need to Re-incentivize Art Authenticators and Restore Integrity to Art Transactions in New York

MEDIA COVERAGE

The Art Newspaper

“No more silence of the scholars: Law drafted to protect experts who fear being sued if they speak out”



By Julia Halperin | Issue 254, Feb. 2014 | Published online: March 14, 2014

Available at <http://old.theartnewspaper.com/articles/No-more-silence-of-the-scholars/31622>

“Being sued has always been a risk of giving opinions on authenticity,” says Katy Rogers, the president of the Catalogue Raisonné Scholars Association. “The rising cost and increased frequency of these lawsuits have driven scholars away.’ In the past month alone, a group of nine collectors have sued the Keith Haring Foundation for \$40m after it labeled their works as fakes; a Swiss dealer sued the estate of Alexander Calder for claiming that a \$1m sculpture he wanted to sell was merely a fragment of a larger work; and the sisters of Jean-Michel Basquiat sued to halt a sale of their brother’s work at Christie’s because they questioned the authenticity of some of the objects.

‘Today’s litigious atmosphere ‘gives people trying to peddle works that are not authentic an open field, and constrains communication so that scholars not only won’t give an opinion, but also feel constrained about speaking to each other’, says Jack Flam, the president of the Dedalus Foundation, which represents the estate of Robert Motherwell.”

The National Law Review

“New York Senate Passes Bill to Protect Art Authenticators”



By Kevin P. Ray | June 29, 2015

Available at <http://www.natlawreview.com/article/new-york-senate-passes-bill-to-protect-art-authenticators>

“After being subjected for years to ruinous litigation in suits brought by owners of artworks displeased with authentication opinions unfavorable to the owner’s preferred outcome, art authenticators – including artists authentication boards, authors of *catalogues raisonne*, and scholars – stopped giving authentication opinions. Even when they ultimately prevailed on the suits, the cost of the litigation was prohibitive. In an attempt to provide art authenticators with some measure of protection, on June 15th, the New York Senate approved a bill entitled “An act to amend the arts and cultural affairs law, in relation to opinions concerning authenticity, attribution and authorship of works of fine art,” S. 1229-A-2015 (the “Bill”).”

MEDIA COVERAGE

Hyperallergic

“NY State Senate Passes Bill Protecting Art Authenticators from Bogus Lawsuits”

By Laura C. Mallonee | June 16, 2015

HYPERALLERGIC

Available at <http://hyperallergic.com/215013/ny-state-senate-passes-bill-protecting-art-authenticators-from-bogus-lawsuits/>

“Art authenticators can finally breathe a sigh of relief: on Monday, the New York State Senate passed much-anticipated legislation that protects them from frivolous libel lawsuits. Act S1229A states that only “valid, verifiable claims” against authenticators will be allowed to proceed in court. It also stipulates that they be compensated financially for their legal expenses should they win. Though the bill has cleared one major hurdle with the State Senate’s approval, it still needs to be voted on by the State Assembly before it passes into law.

The bill amends the existing Arts and Cultural Affairs law to address an enormous problem. In recent years, art authenticators have increasingly become victims of some of the art world’s biggest bullies. Those who formulate opinions about artworks that collectors disagree with have found themselves served with bogus libel lawsuits, forced to bear the financial burden of crippling lawyers’ fees even when the suits get thrown out.

It’s also been detrimental to art historical scholarship. In 2012, for instance, the Andy Warhol Foundation and the Estate of Jean-Michel Basquiat stopped providing certificates or opinions of authenticity in order to avoid any legal repercussions. That same year, researchers at London’s Courtauld Institute of Art cancelled a conference about a group of alleged Francis Bacon drawings for the same reason.

Thanks to the new law, that sad era in contemporary art may finally be relegated to the history books.”

artnet news

“Art Authenticators Harassed by Lawsuits and Death Threats Get New Legal Protection”

By Sarah Cascone | June 30, 2015

artnet news

Available at <https://news.artnet.com/market/ny-state-senate-bill-protects-art-authenticators-harassed-lawsuits-death-threats-312967>

“The New York State Senate passed a bill on June 15 to protect art authenticators from potentially ruinous litigation. The question of art authentication can be a costly one, especially for the authenticators offering their expert opinions, who, should a collector disagree with their findings, open themselves up to legal action, or worse. Modigliani Scholar Marc Restellini notably stopped working on part of a survey of Modigliani's work years ago after getting death threats. As a result, there is a huge disincentive for authenticators to make any sort of judgment on the authenticity of artworks, and many artist's foundations have shut down their authentication boards.”

MEDIA COVERAGE

The Economist

“Fear of litigation is hobbling the art market”

Nov. 4, 2012 Print Edition

Available at <http://www.economist.com/news/business/21567074-fear-litigation-hobbling-art-market-collectors-artists-and-lawyers>

The
Economist

“Most suits fail, but fears keep mounting, says Sharon Flescher, director of the International Foundation for Art Research. Her organisation, based in New York, helps by allowing some scholars to carry out authentication under its auspices after art owners have signed its waivers. Such promises not to sue are now common, but unreliable. The plaintiff who attacked the Warhol foundation sidestepped a waiver he had signed by accusing the group of monopolism. (He eventually gave up.) Courts do not go easy on defendants just because they are art scholars of modest means, says Ronald Spencer, an art lawyer and author of a book about art forgery, “The Expert and the Object”. Scholars are ‘nervous about taking a \$500 fee and getting sued for \$10m’, he says.”

“A year ago the Courtauld Institute of Art in London prepared an academic debate on issues related to the authentication of about 600 drawings attributed to Francis Bacon, a British artist who died in 1992. The debate was cancelled a week before it was to have taken place on January 25th 2012, due to the ‘possibility of legal action’, the institute said. The irony will not be lost on those who consider art to be freedom of expression incarnate.”

Widewalls

“The Laws in Art”

By Asja Nastasijevic

Available at <http://www.widewalls.ch/artwork-authentication-liability/>

WIDEWALLS

“Even if the market, and not judges or authentication committees, really determines authenticity, the fear among authenticators that they will be held legally liable for their opinions apparently spreads through the market. The market may be “expert-driven,” but the experts are afraid to speak up, fearing liability. Because of this threat, even authentication boards for artists such as Warhol, Basquiat, Lichtenstein and Haring no longer authenticate works by these artists. Similarly, individual art experts, curators, and the authors of catalogue raisonné have also become fearful of potential legal liability in offering an opinion on authenticity. Nobody wants to be sued. Today’s experts will most likely tell you in confidence whether the work is authentic or fake. This situation leads to a greater occurrence of fakes as well as the so-called “orphan” works in the market and increased litigation on the issue of authentication.”

MEDIA COVERAGE

Art Law Journal



“Can You Spot a Fake? The Trouble with Authenticating Art”

By Nicole Martinez | July 22, 2015”

Available at <http://artlawjournal.com/authenticating-art/>

“In response to a plethora of litigation, many art experts and art authentication committees have altogether stopped giving opinions on works of art, citing the risk of litigation and its accompanying costs far too great to support the risk. But an expert opinion on the legitimacy of an artwork is crucial to the art business, and a boycott by experts and committees would amount to a bonified crisis in this lucrative business. If art experts and authentication committees refuse to give opinions on the validity of works, it’s extremely likely that forgeries will become even more prevalent in the industry.”

Art Law Blog – Grossman LLP

“Three Recent Suits Exemplify Some of the Legal Issues Surrounding Art Authentication”

By Kate Lucas | April 7, 2014

Available at <http://grossmanllp.com/art-law-blog/2014/04/three-recent-suits-exemplify-legal-issues-surrounding-art-authentication/>

“Taken together, these three cases crystallize some of the complex legal issues involved in authentication of fine art. The *Haring* case shows that those who authenticate works may be vulnerable to claims by those who believe a work has been wrongly denied authentication, while the *Fertitta* case shows that experts who stand behind the authenticity of a work may also face claims if they endorse a work that turns out to be inauthentic. The case involving the Christie’s auction of Basquiat works is a reminder that an artist’s estate or foundation may also become a plaintiff, wielding its authority and stamp of approval as a sword to try to protect the market for an artist’s works from possible fakes. All three cases demonstrate how a work’s value and marketability can be impacted by the existence or lack of authentication by a respected authority.”

“These cases come at a time when several prominent artists’ foundations have disbanded their authentication boards, perhaps as a result of the expensive litigation that sometimes follows their decisions. Recognizing that there is an important function and value to such authentication, but that experts may fear the prospective liability, the New York legislature has considered various legislative solutions that would provide authenticators with some protections; a recent proposal would require plaintiffs to meet a heightened pleading standard for authentication-based claims, impose a heightened standard of proof by clear and convincing evidence, and introduce a fee-shifting mechanism by which an authenticator can recover his or her attorney’s fees and other costs if he or she is sued and ultimately prevails.”

MEDIA COVERAGE

The Art Newspaper

“Scholarly debate will be stifled after Knoedler: Abstract Expressionism experts forced to watch what they write and say”

By Dan Duray, Julia Halperin | March 4, 2016

Available at <http://theartnewspaper.com/news/news/scholarly-debate-will-be-stifled-after-knoedler/>



“In the wake of the high-profile trial, many say that the implications for scholarly debate are grave. There are fears that experts will retreat from authentication and that pressure will be put on those preparing catalogues raisonnés, the authoritative lists of known works by artists that are traditionally compiled by independent art historians. ‘If we can no longer define what the extent of the body of work is, we can no longer determine the artist’s achievement,’ says Robert Storr, the former dean of the Yale University School of Art.... In 1995, a collector sued the Pollock-Krasner Foundation because he believed that a work he owned should be included in the artist’s catalogue raisonné. (The case against the foundation was dismissed.) Some worry that such cases will become more common. One board member of a major artist’s foundation predicts that catalogues will become the focus of lawsuits because collectors may sue if works are excluded.”

Artsy

Editorial: “Have Multi-Million-Dollar Forgery Scandals Changed the Art Market for Good?”

By Laura Gilbert | Oct. 19, 2015

Available at <https://www.artsy.net/article/artsy-editorial-have-multi-million-dollar-forgery-scandals-changed-the>



“Buyers might consider consulting an authenticator, but they ‘are more and more cautious,’ for fear of being sued, says lawyer Stern. Experts entangled in the Beltracchi and Knoedler scandals have been taken to court in both the U.S. and Europe. And many artist foundations have closed their authentication boards in light of the \$7 million in legal fees the Andy Warhol Foundation incurred vindicating itself in an authentication suit.”

MEDIA COVERAGE

The Art Newspaper



“African-American Fakes Are On the Rise”

By Margaret Carrigan | Jan. 4, 2019

Available at <http://theartnewspaper.com/news/african-american-fakes-are-on-the-rise>

“This dearth of information makes it easier for fraudsters to operate and harder for authorities to catch them. Although some of the artists whose works are being forged, such as Bearden and Jacob Lawrence, do have estates and foundations, these organisations are increasingly unwilling to authenticate works due to the threat of litigation. “Foundations just aren’t doing this work any more; they can’t afford to,” says Bridget Moore of New York’s DC Moore gallery, which represents African-American artists including David Driskell, Bearden and Lawrence. For this reason, Moore says she has always kept detailed “fake files” on all of her artists.

The New York Times



“Art Experts Warn of a Surging Market in Fake Prints”

By Milton Esterow | Jan. 24, 2020

Available at <https://www.nytimes.com/2020/01/24/arts/design/fake-art-prints.html>

“Since the dawn of the internet, the problem of phony art being sold has only grown, experts say, and the primary coin of the forgery realm has long been the fake print, which is relatively easy to create, often difficult to detect and typically priced low enough to attract indiscriminating novice buyers. But now the problem seems to be escalating, according to law enforcement officials in the United States and Europe.”