

Collectors, artists and lawyers **Fear of litigation is hobbling the art market**

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AT A Christie's auction in New York this month, a painting known as Ocean Park #48 fetched \$13.5m, a record for a work by Richard Diebenkorn, a Californian artist who died in 1993. The 1971 abstract painting had been certified as genuine by the Richard Diebenkorn Foundation in Berkeley. Less fortunate are the owners of more than 200 purported Diebenkorn paintings and drawings that the foundation declined to certify. Since an unauthenticated picture is not worth nearly as much, three owners got their lawyers to send threatening letters.



Spooked, the foundation is beefing up its liability insurance. Richard Grant, the director, expects to protect his authentication board's seven experts with millions of dollars of liability insurance by the time a comprehensive list of genuine works, known as a catalogue raisonné, is published in about three years. The expense is worth it, he says. Authentication reassures buyers, which stimulates sales.

Alas, plenty of other experts are now too scared of lawsuits to authenticate pictures, says Clare McAndrew, the founder of Arts Economics, a consultancy. Early this year the Andy Warhol Foundation dissolved its authentication board after spending \$7m to fight a lawsuit from a disgruntled London collector. In September the Estate of Jean-Michel Basquiat and the Keith Haring Foundation stopped authenticating works by the two late artists. Last year the Roy Lichtenstein Foundation dissolved its authentication committee rather than "jeopardise our health and well-being", says Jack Cowart, its director. In the past five years insurance policies taken out by art authenticators have more than doubled at Hiscox, an insurer.

Forgers nowadays typically favour 20th-century abstract and expressionist styles. Mimicking Jackson Pollock's drip-and-splatter paintings is easier than faking old masters such as Rembrandt. Swamped with lawsuits, the Pollock-Krasner Foundation stopped authenticating works in 1996, four decades after Pollock's death. Lawsuits continued anyway. A court even entertained a suit from a man with a painting signed "Pollack" (he lost).

A brush with the law

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.

All this is bound to hurt sales. Already the top of the art market is suffering, says Véronique Wiesinger, the chief curator at France’s ministry of culture. As scholars grow reluctant to give opinions, forgers find it easier to circulate their wares. Savvy art-buyers have noticed, she says, and are spending less than they otherwise would. Less sophisticated ones will soon wise up and do likewise, Ms Wiesinger says.

Her duties include running the French body that authenticates and promotes works by Alberto Giacometti, a Swiss artist who died in 1966. The Fondation Alberto et Annette Giacometti recently began fighting a lawsuit from an Italian collector upset that a piece he owns will not be included in the Giacometti catalogue raisonné. Ms Wiesinger reckons the suit will drag on for years and eat up about €30,000 (\$38,400) in legal fees. “Something must be done,” she complains.

Marc Restellini, a Parisian art historian, rejected as fake numerous works while preparing a catalogue raisonné of drawings by Amedeo Modigliani, an Italian artist who left little documentation when he died young in Paris in 1920. Told by phone in 1999 to leave the drawings alone or be killed, Mr Restellini cancelled the project because, as he puts it: “I’m not James Bond.” (Now head of the Pinacothèque de Paris, a private museum, he continues to work on a catalogue of Modigliani paintings, one of which fetched nearly \$69m at a Sotheby’s auction two years ago.) Other Modigliani catalogues are incomplete or at least partially discredited—one French author was convicted for forgery.

Such antics dismay dealers. Sales typically increase, sometimes dramatically, upon publication of a catalogue raisonné because buyers like knowing which pieces the artist’s estate or other authorities have declared genuine. If a good new catalogue raisonné of Modigliani drawings were published, sales worldwide would rise by about a fifth, reckons Christophe Van de Weghe, a New York art dealer.

The fear of lawsuits makes experts whisper and dodge. For instance, the catalogue raisonné of Isamu Noguchi, a Japanese-American sculptor, won’t be a real catalogue raisonné, says the project’s manager, Shaina Larrivee. To reduce liability, she says, it will be published as an online-only, ever-modifiable work-in-progress. It’s harder to sue “a constantly moving target”, as another expert puts it. Ms Larrivee says that the foundation will keep quiet if it sees an apparently fake Noguchi on sale.

Other digital-only catalogues raisonnés are on their way. This is a startling development. Many collectors will spend far less on an artwork that can be removed from a catalogue raisonné with a keystroke.

How will the art market adapt? China offers a clue. Art expertise in China often carries little weight because authenticators are thought to be in cahoots with a dealer or seller, says Shin-Yi Yang, a curator in Beijing. So living artists make more money, since they can personally assure buyers that a picture is not a fake, 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.

Corrections: An earlier version of this article said that the Richard Diebenkorn Foundation’s authentication board declined to certify 200 purported Diebenkorns. In fact, many of these paintings were brushed off before they reached the board. We also calculated a figure of \$92m of liability insurance on mistaken assumptions. Also, the French body that authenticates and promotes works by Alberto Giacometti is not affiliated with the national government. Sorry.