

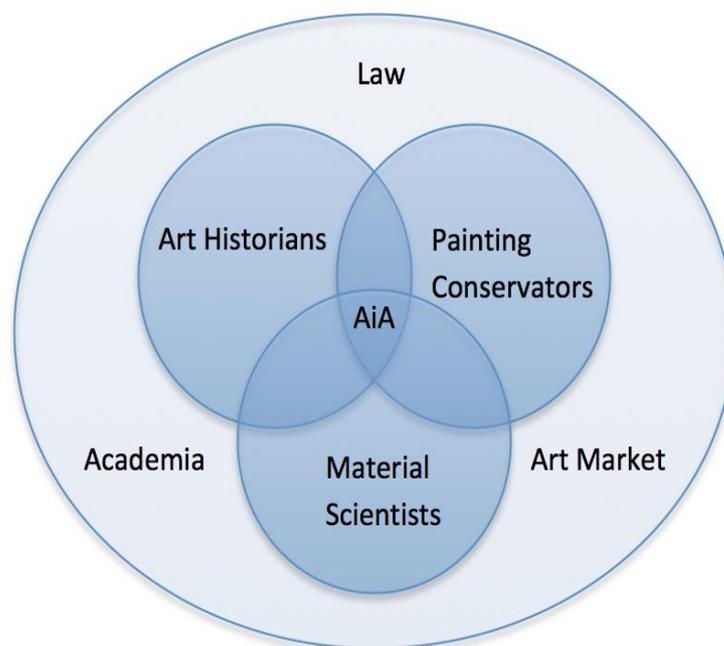
Authentication in Art – History, Current State and Future

12 November 2016 - Art Taipei - Taiwan

Dear guests, before I start I would like to thank the organization of Art Taipei for inviting me to speak at this wonderful venue. Dialogue is very important for our field, and its facilitators are invaluable. I would like in particular to thank the Executive Director of Taipei Art Economy Research Centre, Joyce Ke and her assistant Sunny Hung. And of course our dear workgroup member Chieh-Hsiang Wu for making the connection between our organizations.

For over six years now, the Authentication in Art (AiA) Foundation has worked on improving research and cooperation concerning the authenticity of paintings. In this speech we would like to reflect on the past six years of AiA, as well as look to the future and what we want to achieve.

The idea for a foundation concerned with the authenticity of art focused on paintings arose in 2010, during discussions between Prof Dr Rudi Ekkart, the former director of the Netherlands Institute for Art History, and Milko den Leeuw of the Atelier for Restoration & Research of Painting in The Netherlands. The need for such a foundation had become more and more evident by the increasing number of cases involving forgeries, misattributions and identification swaps, as well as rediscoveries that sparked conflicts around specific paintings. Problems like these often are the result of a lack of professional cooperation between the different fields active in the art world. And a lack of transparency in the art market and shortcomings on education, resulting in misconceptions brought forth by one, the other, or a combination of the two. In the light of these facts, it quickly became clear that if the AiA Foundation were to succeed, it would have to be a platform containing experts from all fields, and be built on pillars of transparency, cooperation and innovation.



To realize a foundation as such all fields should be included from the very start. Other initiatives only work from art historical or scientific angle. The first step to realizing this multidisciplinary goal was the organization of a formal meeting of AiA, held on the 25th of May 2012 in The Hague, during which a number of peers from the fields of art history, painting conservation, material sciences, juristic, the art market and the academic world came together to discuss the ideas. During this meeting it was not only decided that a foundation like the AiA was a necessity, but also, the group unanimously decided that a congress dedicated specifically to authenticity and its challenges would be a vital step forward.¹

After the 2012 meeting, AiA started the preparations for the organization of the first congress, which was to be held May 7-8-9, 2014. However, this was not the only activity that was being developed. To further improve accessibility and understanding of information available on authenticity, AiA began gathering information from a variety of sources. The first, and maybe best-known source of information provided by AiA, is the AiA Art Market news-service. This has become a comprehensive database of news articles to show that the current state of the art industry is to be found everywhere in the same circumstances. The first article of the service was posted on October 19th 2012, and to this day the service is still very much alive.² Besides starting the news-service, AiA also began developing the AiA library, striving to add relevant new publications to an ever-growing number of publications on the authenticity of art.³ The third area where AiA began gathering and disseminating information was Art & Law.⁴ Here important court cases from different jurisdictions were and still are gathered and analyzed, ranking from criminal forgery cases such as the Rosales/Knoedler law suite.

All these projects aspire to make information on authenticity more accessible and understandable to a larger audience and to the field of experts.

At the time, the most important project was organizing the 2014 Authentication in Art Congress, which was to be held in The Hague – International City of Peace and Justice.⁵ The congress had several major themes, all revolving authentication. The themes were:

- Standardization within scientific and technological research
- Education and Training
- Catalogue Raisonné guidelines
- Art & Law guidelines
- History of authentication of paintings
- Connoisseurship and the issuing of opinions

As the AiA Congress was the first of its kind, it aimed to provide an understanding of authenticity through contributions of experts from different parts of the art world. To emphasize this goal, each day of the congress had its own theme. The first day revolved around the history of authentication. It contained lectures concerning connoisseurship and the development of connoisseurship, historical forgery cases, the legal development concerning matters involving art, and the history of scientific discoveries that impacted the technical research of art works.

The second day focused on providing an overview of the current state of authenticity from the perspective of different fields. It contained speeches on important authenticity research teams,

¹ To see the participants and transcripts of this meeting visit: <http://authenticationinart.org/aia-past-events/aia-meeting-2012/>

² <http://authenticationinart.org/aia-archive/art-market-news/>

³ <http://authenticationinart.org/aia-archive/aia-literature/>

⁴ <http://authenticationinart.org/aia-archive/art-law/>

⁵ <http://authenticationinart.org/aia-past-events/aia-congress-2014/>

such as the Van Gogh Museum and the Francis Bacon research project. It also contained talks on the biggest forgery scandal at that moment, the Beltracchi case, and how it was brought to light.

The third day was focused on the future. Almost the entire third day was filled with presentations of the AiA Workgroups. These workgroups consisted of groups of professional experts, which AiA put together to provide guidelines on specific topics or issues concerning authenticity. These guidelines could then serve as industry standards, not only creating an objective and measurable standard for experts working in a particular field, but more importantly providing transparency and understanding for non-experts by producing an easy-to-understand layout of the field in question, along with an objective standard to refer to.

Before we continue with the tangible results of the congress, we would like to elaborate a bit on the non-tangible results. The Authentication in Art 2014 Congress was unique in the sense that it was the first congress to ever address the issues of authenticity from a multi-disciplinary perspective. As stated at the very beginning, one of the major issues in the field of authenticity research is the misunderstanding and miscommunication between experts of different fields. During the congress we saw a growing understanding between the different parties that were present. The jurist gained understanding of what the art historian role is and vice versa; the sciences and the humanities gained mutual understanding on the subjects. The AiA Foundation had succeeded in creating a platform for the different disciplines, and the results were already showing. Two guidelines that were developed, namely: the Guidelines on Catalogue Raisonné, and the Guidelines on Art & law. The Guidelines on Catalogue Raisonné provide a standard of best practices for its contributors. It addresses every aspect that might come up, and also provides an insightful overview of the working method of the developers of the Catalogue Raisonnés for laymen and experts related to other artists.⁶

The Guidelines on Art & Law report on authenticity research, drafted in such a way that it will hold up in court.⁷ The importance of this is twofold. Firstly, it guarantees that reports made by experts, art historical or technical, will be seen as valid evidence by the court. Being able to provide a report that meets an industry standard will not only help a court with the understanding of the report, but will also create favorability towards it. The second important benefit to conforming to this standard is that the expert will be less vulnerable to litigation. If an expert can show that the research was done in accordance with the art industry standards, it will provide a very strong argument against any claim of negligence or malpractice.

The importance of the Guidelines Art & Law even goes a step further, since they not only provide a strong industry standard on authenticity research reports, but also formed the basis for the most major announcement of the AiA 2014 Congress: the formation of The Authentication in Art Alternative Dispute Resolution Board (AIA ADR). The AiA ADR Board aims to provide the opportunity to settle authenticity related cases outside of court. During our research, and talks with jurists and other experts in the field, we discovered that courts have a hard time dealing with art historical findings and technical art historical evidence. As a result, rulings relating to authenticity often leave both parties unsatisfied, as litigation is often lengthy and costly, the outcome can be very different from what either party aimed for. To face these problems, the AiA ADR Board provides mediation, as well as arbitration. The major advantage of using the Board is that its arbiters and mediators can have

⁶ <http://www.authenticationinart.org/pdf/guidelines/education-guidelines-2016.pdf>

⁷ http://authenticationinart.org/pdf/Authentication-In-Art-Congress-May-2014_Recommendations-of-Art-and-Law-Work-Group_Official-Release.pdf

a background in the art world, ensuring their grasp of the complicated nature of evidence and research involved with authenticity disputes. Furthermore, due to the nature of ADR, procedures will be shorter and less costly than regular court proceedings. The AiA ADR Board will be opened in the coming period, and strives to offer their services to the public as soon as possible.

After the success of the first congress, and noticeable interest from within the field itself, it was quickly decided there should be an AiA 2016 Congress. Because of the foundation laid out by the 2012 and 2014 editions, as well as the other activities maintained by AiA, we were able to zoom in on specialized topics for the 2016 edition.⁸ The topics for the 2016 edition were:

- E-Related Initiatives
- Art & Law
- Innovative Technological Developments
- Education
- Technical Art History

The topics were based on being most subjective to innovation, or in fact being most in need of it. The area that is currently growing the most in the art world is the development of E-Related Initiatives. During the Congress we learned that online Catalogue Raisonné were being developed, and that multiple companies were in the process of developing an online catalogue, which would be impossible to manipulate. The digital world offers great tools for our fields, if we are willing to accept them. Especially block chain technology seems very promising.

The second topic was Art & Law, this time this topic focused on what the impact of the New York legislature for the protection of art experts would be. It also focused on some of the major court cases that had been litigated during the previous year. The presentation of these court cases again showcased the need for the AiA-ADR Board.

The third topic was Innovative Technological Developments. We had several enlightening talks on this topic from varying experts. We are very proud that we also got to give out an AiA Award 2016 for this topic. The award constituted of a € 10.000,-- grant, provided by Bruker and Artory. The goal of this award was to continue to stimulate technological development in our field. Judging by all the applications we received, we have a bright future ahead of us.⁹

Looking at Education it became clear that great discrepancies between academic institutions worldwide were leading to misunderstandings, and were therefore limiting the art historians and conservators of the future. To face this, AiA set up a workgroup to make a critical assessment of curricula worldwide, and provide recommendations on how to solve any issues identified by this assessment. The workgroup's efforts resulted in the AiA Guidelines on Education.¹⁰ In these guidelines, the workgroup identified 10 major issues currently affecting the art curricula. For each of these problems several solutions are offered.

⁸ <http://authenticationinart.org/congress-2016/>

⁹ <http://authenticationinart.org/congress-2016/aia-award-2016/>

¹⁰ <http://www.authenticationinart.org/pdf/guidelines/education-guidelines-2016.pdf>

The second workgroup of the 2016 congress was on Technical Art History. During the 2014 congress we discovered that, even among technical art historians, there was a lot of confusion and dissent about what constituted a reliable protocol, but maybe even more fundamental: what the possibilities and limitations of each separate technique were. In light of this we felt it was important that a standardized approach and understanding of Technical Art History was developed. In this light the guidelines of Technical Art History will also support the AiA-ADR Board with standardized information and protocols. To realize this we in fact started two initiatives. The first being the Workgroup Technical Art History, the second being a collaboration with the Dutch Institute for Standardization (NEN). The workgroup's aim was to develop guidelines for protocols, both in general and for specific techniques. These protocols developed by the workgroup would then be taken by the NEN to become globally recognized as industry standards, thus providing our entire field with a point of reference for reliable technical research.

Sadly the workgroup Technical Art History was not able to finish the guidelines in time for the congress, but despair not; we are currently working hard with a select group of experts from the different parts of the technical field to complete this task. When this group has finished their work we will not only provide guidelines but meet up with the right requires for authentication research, a reference point for all future publications on Technical Art History.

And now we subtly moved into the realm of the future. First and foremost, the future of AiA lies in the activities it is already maintaining. We will keep updating our sources of information and ensure that they remain accessible for everyone. Providing a platform for discussion and learning remains the most important pillar of the Foundation. However, the future will also hold the publication of the Technical Art History Guidelines, and the first legal case of the AiA ADR Board.

Lastly, we would like to talk to you about an issue that many may overlook, but is of major importance: the liability of vetting committees at art fairs. When a vetting committee gets sued over their judgment, the big question will be; who is liable? The individual members of the committee or the art fair organization? The answer is highly contra-intuitive. At many art fairs the individual members of the vetting committee are the ones that are litigated. The art fairs make sure that, in all their terms of conditions and agreements with art dealers and the vetting committees, they are regarded to have nothing more than an organizational role. They exclude themselves of any responsibility when involved with the actual works of art and their authenticity.

The consequence is that members of the vetting committee can become the aim of litigation, which, as we have seen, is very expensive and almost impossible to finance as a private individual. But if the individuals can't finance the litigation, who does? The answer is twofold, depending on the daily profession of the member. The vetting committees can be roughly divided in two parties: those who work in the public sector of museums, national research centers and universities, and those who work in the private sector, either having their own firm or working for a large art oriented enterprise. The last group is less problematic than the first. Private companies often have insurance against litigation, so committee members working for such companies, or who are company owners themselves, will be able to claim their litigation costs from insurance.

The real problem arises with those working in the public domain. The question is: are museums, research centers and universities insured against this kind of litigation? To be able to finance litigation, the entities will have to turn to their government for insurance coverage or finances. The strange conclusion is that, ultimately, the taxpayer finances the art litigation for these entities. This does not feel right, but this is the current situation. It becomes absurd

when we take into consideration that many of the vetting committee members employed in the public sector, are allowed to keep all earnings of their vetting work. This means they have a risk-free extra source of income, while it is their employer having to solve any problems that should arise. It becomes even *more* absurd when we take into consideration the fact that the solution is simple, and again twofold. Have each employer put into their employee's contracts that, for possible vetting work, the employee is liable himself, or alternatively: that any earnings from the vetting work will flow to the public entity. The second solution is making the art fair responsible. Mandate each art fair to have a litigation insurance for their vetting committees, this way the risks will not lie with outside parties, but with those involved with the fair. Whichever solution is chosen is not of major importance, but what is important is that a solution is found, because the current situation is highly unsustainable.

Before I conclude my talk I would again like to thank the congress organization for their invitation and for hosting this wonderful Art Fair. I also want to take this opportunity to thank the members of the AiA Foundation Board, Prof Dr Nico Schrijver, Willem Russel LLM and Drs Ingeborg de Jongh. The AiA Advisory Board. AiA's main sponsors ARIS, Bonhams Auctions, the Louwman Museum, Lawfirm Pryor Cashman and the municipal of The Hague. Without their support and guidance the AiA Foundation could never have been the success it is.

Q & A: I kindly ask you to give suggestions or ideas on how AiA can improve its endeavors.

Q: Do you think that drawings and paintings made with ink can be dated?

A: One of the reasons that the winner of the AiA Award 2016 was given the prize was because of the development of micro-samples for carbon dating. Of course carbon dating has its limits in relation to provide accurate dating, it is a strong tool in the kit for authentication research. Ink, and most carriers such as paper are carbon rich materials so carbon dating is a possibility. I also want to bring under your attention the possibility of iron isotope research. Also the domain of isotope research is in a strong development nowadays. Of course one needs counterfeit references but there are labs specialized in that area.

Q: How do you evaluate scientific findings and historical backgrounds in an authentication research?

A: In 2008 I published a study that is totally based on the Bayesian model. The publication is free of charge to download on the AiA website as: Leeuw, Milko den, *Jobarde, a Rediscovered Painting by Édouard Manet*. The Hague: ARRS, 2008 (e-book, 3rd print 2013)

But generally I can say the following of the Bayesian model: the Bayesian model for the discussion on the results in forensic research results are essentially assessed according to a Bayesian model. This model is based on a theorem from probability calculus which was first deduced by Thomas Bayes (1702-1761).

When applied in court cases the model in its most simple form states that the possibility that someone is guilty or not depends on a combination of factors or evidence. In the end the judge decides if the final possibility is large or small enough to determine guilt (a fake) or innocence (a genuine work by the artist). The contribution of individual pieces of evidence is determined

by a variable called the likelihood ratio. This likelihood ratio makes a statement about the strength of the investigation or evidence.

Q: Is everyone welcome at AiA?

A: Yes everyone is welcome to support AiA's endeavours. Of course a link with the subject is required. Please contact us and we see together how you can contribute.

Q: Does private collectors support this initiative?

A: Yes several private collectors support us financially. Some give advise, tips and share information.

By Milko den Leeuw
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