



AUTHENTICATION IN ART CONGRESS, MAY 2014
THE HAGUE, NETHERLANDS.

The following transcription is the literal written representation of Javier Lumbreras' opening speech during the Authentication in Art Congress in May 2014 as a keynote speaker on the following lecture 'Facing the Sea Change: The Pivotal Role of the Congress in Aiding the Art Industry'

Good morning everyone, distinguished guests, and organizers. Although the AIA¹ is not my area of expertise, I have to deal with authentication issues almost every day in my field.² What is my area of expertise? I'd like to think art is.

Artistic creation and collecting go hand-in-hand. One could not exist without the other. But³ what is art? This morning I was waking up and I was looking⁴ at a very interesting video that was posted in the Artemundi Global Fund Facebook page. [...] ⁵The director of this 30 minute movie went through different art fairs around the world and he started asking collectors, dealers and artists alike "what is art?". You would be amazed by the faces that people made when they were asked such question. "What is art?" and some people go, "Uh-huh. Whoa, that's a big question."

Well, I always like to remind us what art is [...] ⁶I always like to keep in perspective how important art is for us all human beings. I know today we're going to be talking about authentication in art, but we should never forget that we're really here because of art.⁷

Now I'm going to give you a very short definition of what art is.⁸ My favorite definition is that art is the same way I am and you are. Therefore, "art is". There are many other definitions. We have the intentional definition, the historical definition and the symbolic definition. We have the functional, and of course, the institutional definition. The intentional definition, first supported by Nietzsche is that art is generally accepted as a form of expression. Plato said that "A work of art is not something frivolous or to give us some pleasure. Instead it is fundamentally dangerous because one can see the chasms existence." That's how strong, art is. Thomas Hoving, the former director of the Museum of Modern Art, said that "Art happens when an artist takes any kind of an object and transforms it into a deliberate statement."

¹ Authentication in art.

² Few people can be said to have successfully launched a new category of capital investment. Mr. Lumbreras is one of those few who can put forth such a claim. His rich background in art and finance hails from a lineage of art collectors that started in Spain in 1883. He has served as consultant to selected private collectors, guest lecturer at museums, universities, banks and at leading media groups, and as trustee to international art institutions. Additionally, he is Chairman of the Board of Directors of The Art Fund Association, New York. With a reputation as a pioneer in the field, he is a reliable and respected speaker in matters pertaining to art collecting at large, art as an asset class, and art securitization including portfolio management and estate planning. Among other venues, Mr. Lumbreras has been a speaker at the Alternative Investment Association, the Sotheby's Institute in London, the Heckerling Institute on Estate Planning, the Art Investment Forum, and at Deloitte's Art & Finance conferences. Mr. Lumbreras is the author of the book *The Art of Collecting Art*. He is also a skilled and determined art collector in his own right. He founded The Adrastus Collection of contemporary art, the base of a national museum set in Árevalo, Spain.

³ Original deleted: And

⁴ Original deleted: reading

⁵ Original deleted: In this video

⁶ Original deleted: "When I go out and speak sometimes the matters that I talk about, which have to do with art as an asset, are a little bit boring."

⁷ Original deleted: for, and we're here

⁸ Original deleted: and this is my favorite



Again, we're talking about intention in Hoving's "deliberate statement" definition. We can say that understanding the aesthetics in art is something very different to understanding the definition and intention of art. Aesthetics means the perception of the sensitive. For example, Van Meegeren fooled many experts in his time. One of the most important questions regarding his work is "Why are Van Meegeren's works worthless compared to Van Eyck's?" His aesthetics could equally match Van Eyck's, there's no doubt that both are comparable in the eyes of others. My answer is very simple and it's based on the very same definition of art. Art is [...] a deliberate expression. Van Meegeren's work had the intention to fool, but no more artistic intention than one's of a chimpanzee. Whenever I'm invited to speak, I always like to put these things in perspective because this is the soul of our activity.

Art collectors, art historians, institutional collectors, art market professionals, financial institutions, legal advisers, trust and estate practitioners, and other stakeholders in international art market: this congress addresses the apparent disconnect in the industry between our history, the material sciences, and the conservation of art in an attempt to strike a critical conversation that focuses on the authentication of art. The practice of authentication has grabbed huge attention in international media and also thanks to the global award by the Knoedler Gallery¹⁰. One wonders how authentication can still be such a relevant issue in the 21st century, with so much information at the tip of our fingers. The authentication of art is in an appalling state of disagreement, in my humble opinion, because there is no transparent consensus of the experts on best practices. Art authentication is a multilayer that often is difficult to classify. However, if we are unable to reach best practices through consensus, this lack of precision in authentication will only get worse.

Nevertheless, I'm not here to tell you how we're going to get rid ourselves of this malaise. No, I'm not here to promote a specific authentication technique. Rather, I'm here to share with you my firsthand experience with the international art market from my dual perspective as a collector and industry professional. When I was first approached by Milko den Leeuw¹¹ [...] ¹² to speak in this congress, I was fascinated by the initiative to find common ground in authentication. The concept opened the floodgates of my mind in real-life situations where I deal with art authentication; some were quite obvious and others came to mind later. I realized that I have been on almost all sides of the authentication practice.

I have experienced art authenticity risk as a collector, as an investor, as a victim, and also as a challenger. I've personally retained the services of a number of experts in scientific analysis, historians and conservators, some of whom are listed on this program, some who are not. It seems there is always a feeling of embarrassment in addressing mistakes in public, boasting assertively or even validating gut instincts of the past in view of new discoveries. Therefore, I have determined that in order to better serve you, I will share with you some of my experiences, which will shed more light on my polemical, so to speak, appreciation of the current state of art authentication. All but the last of my experience, lack consensus of some sort.

I've been, like others, involved in litigation. And although I have never lost, I have mixed success in solving these cases. I've learned the hard way that it is, for the most part, a waste of time to litigate,

⁹ Original deleted: expression,

¹⁰ The now-defunct Knoedler gallery and New York associates stand accused of selling works painted by leading 20th-century artists including Willem de Kooning, Jackson Pollock and Mark Rothko that have been unmasked as worthless fakes. An illegal trade involving tens of millions of dollars over more than a decade from the mid-1990s is alleged in legal papers that paint a picture of a murky art world.

¹¹ Milko den Leeuw is painting conservator specialized in the technical and scientific investigation of paintings and the AIA Congress organizer.

¹² Original deleted: – I don't know if I'm pronouncing it correctly –



especially regarding authenticity. *Lumbreras versus Cernuda et al in 1997*: the art gallery owner disparaged an artwork that was set up for auction at Christie's. The artwork was valued at US \$200,000 to 300,000 but, as a result of the gallery's misrepresentations, the artwork was removed by Christie's from the sale even though a certificate of authenticity by its creator, Mario Carreño, had been provided. Carreño had had a brain stroke that impaired his ability to write. With the artwork physically present, he assisted to the authenticity and his wife instead drafted the certificate under his direction.

I first hired the services of the late Dr. Walter McCrone of the McCrone Institute in Chicago, Sandra Amann Conservation Studios and James Swope Conservation Studios from Palm Beach. We also consulted with Doctor Eugene Farrell from the Straus Center of Conservation, in charge of Harvard University's Museums. My counterpart analytic on hire, Orion Analytical, James Martin. The case became a battle of the experts with reports that included carbon 14 analysis from an isotrace radiocarbon laboratory in Canada that was performed on our behalf and the University of Arizona, on theirs. Expert witnesses were brought in by both parties for stylistic analysis.

Every time one party found another expert, the other party also found someone else. Weak or strong, it did not matter, because there was no settled protocol for whom the judge should believe was a proper expert. Needless to say, judicial interpretations are easier philosophized than they're practically applied. After many years of frustration and hundreds of thousands spent by both sides on attorneys' fees and expert witnesses, amounting to more than 50 participants and connoisseurs around the world, the cost of depositions etcetera, the case settled amicably on the verge of its eighth birthday and was dismissed with prejudice. The artwork is still in limbo. In this particular case, the point to address is the consequences of science not being able to provide a bulletproof decision where stylistic analysis is insufficient because the lack of expertise at a governing level. The painting today hangs in my office as a reminder of this incident and opportunity for address.

Some years later, *Lumbreras et al versus Zaragosi et al*: the dealer sold a 19th century painting to us. It was indeed a 19th century artwork but from another artist. The problem surfaced when the painting was sent to the conservatory for cleaning. The painting started to fade on the lower right corner. The superimposed signature disappeared and the place where the original signature once laid had been scratched and removed.

There was no use going through scientific analysis in this case because we all knew this painting was also 19th century, that was undisputed. We never knew who the author was, but we knew it was not a Pogolotti. The case had an easier way to a bench trial as opposed to a trial by hearing. While at trial, the dealer's lawyer did a very good job of portraying his client, the dealer, as an uneducated man and me as the connoisseur, suggesting that I should have been more diligent before engaging in the painting's purchase. So the judge felt inclined to say as well. The case actually settled in the middle of a trial in the lobby outside a courtroom for a fraction of the amount paid to Mr. Zaragosi.¹³

On August 18, 2011, Artemundi Global Fund engaged in the purchase of a \$2.35 million euro painting by Rey from an authorized representative dealer acting as an intermediary. I personally inspected the painting in Paris, it was that very same summer. The facts with respect to the transaction and the ownership were quite opaque, but transparency in the global artwork, while getting better, is still nascent. We reached out to ARIS¹⁴, the title insurance company, to delegate the due diligence for

¹³ Original deleted: Lawyers...

¹⁴ ARIS Title Insurance Corporation (ARIS) is a title insurance company domiciled in the State of New York and licensed by the New York Department of Insurance. ARIS serves the art market and related businesses in the fiduciary banking, legal, museum and non-profit communities. ARIS developed the field of art title insurance and offers the world's first and only title insurance for art and similar tangible personal property, the ATPI® title insurance policy.



entitlement. ARIS did not feel comfortable baring the risk of title insurance for good reasons, but we had time to extend the terms of the LOI¹⁵. We finally determined that we could be facing some discrepancies on full attribution as well. In the end, we lost the deposit and I called off the deal. We thank ARIS for their advice during five years of Artemundi Global Fund operations. We have not had one single loss as a result of authenticity, entitlement, or casualty. We take pride on our thorough art acquisitions protocol and commitment to better transparency.

I will lastly tell you a story with a happy ending. This one is my favorite. Last year, we did an exercise with a 19th century landscape by Jose Maria Velasco. Dr. Altamirano expressed some reluctance to authenticate this painting. The provenance was exquisite and the work came with a sister painting depicting a hunting scene from 1863. The latter one was swiftly authenticated. I proposed to Dr. Altamirano what I would like to actually propose to you today: to form a group to study the painting from which I was naturally excluded as I represented Artemundi Global Fund and was an obviously interested party.

We hired Maestro Serrano, Mexico's foremost conservator, and chemist Dr. Vasquez. The process took several months. It included visits by three experts of the National Museum to compare the work with others from the same year, other paintings by the same artist. The pigment analyses were carried out and tested correctly. Still, the academic expert, the historian Dr. Altamirano, felt reluctant with the results and ordered another set of pigment analysis centered this time on specific areas of the painting where she felt the brush strokes were sloppier and maybe with a little heavier in pastel. The second set of results again tested positive for the period and so did the carbon protein analysis to determine the age.

Further conservation studies carried out by Maestro Serrano unveiled that, as accurately pointed out by the academic expert, certain areas had a slightly different luminescence under UV light and the impasto was heavier. Further research of the historical archives showed that Jose Maria Velasco's -the artist's-daughter could have been responsible for so many interventions on the painting, of which there were four versions in existence. Ours listed as whereabouts unknown. All the experts were correct in this case and it was happily resolved. Teamwork made it possible. The painting was authenticated, the interventions on the lower center possibly by Velasco's own daughter duly noted.

I find that it is equally terrible to demote as to promote an artwork to a full signature. It is our duty to pursue the truth to the end. After all, it is truth that is integral to authentication. And I could go on and on with other cases, some of them more bizarre than others. Most problems, in our case, were unveiled before ever becoming serious, but my conclusion is this: always spend all the extra time in exhaustive due diligence. I have no hope that a busy judge or a juror will understand all these matters. Any *bona fide*¹⁶ seller will find a way to play fool or counter with an "expert" willing to testify against you for a fee.

This might be mitigated if there were an organization in charge of determining the guidelines for true expertise. In the absence of this, I became very cautious and proactive. If you had a chance or interest to read my bio, you should know that I'm a collector of contemporary art and also run an investment fund with several hundreds of artworks every year. Our approach: do not trust gut instincts, doubt the expert, do not make decisions based on scientific analysis or conservation alone. Do not take provenance or exhibitions list for granted. Instead, verify them and question the accuracy of

¹⁵ A letter of intent (LOI or LoI, and sometimes capitalized as Letter of Intent in legal writing, but only when referring to a specific document under discussion) is a document outlining an agreement between two or more parties before the agreement is finalized.

¹⁶ The law requires all persons in their transactions to act with good faith and a contract where the parties have not acted bona fide is void at the pleasure of the innocent party.



publications. Make sure there are no anachronisms or red flag. And if a red flag is found, it's always worth pursuing until reaching a straightforward answer.

Holding the seller accountable for all guarantees and representations may not do you any good, whether the seller is reputable or not. Auction guarantees are only good for four years and the burden of proof lies on the buyer. That means that if I want Christie's to refund me for an alleged fake I bought at auction, I have to prove to them that it is a fake and go the long way for them to reimburse me according to the terms of the guarantee. And I'm talking from experience. It happened to me. I spent four years trying to settle with Christie's. In the end, we settled but not on the most desirable terms. I also had the impression that selling, for Christie's, was a simple business decision. So here comes the old saying: when something's too good to be true then it probably isn't. It applies accurately. We look at the grand picture. All of the above have to check correctly. We look for consensus, the consensus of the experts and flawless documentation.

I have many questions for this congress. As Thomas Hoving¹⁷ said¹⁸: "art happens when an artist takes any kind of object and transforms it into a deliberate statement". Here we're probably going to discuss a lot of things that have to do with paintings, with canvases, pigments, binders, support canvases, stretchers, and frames from the time period. But it is different now in contemporary art where, as you know, redefining objects or ephemeral works of art will definitely be a problem in the future.

Perhaps, preventive cataloging will be a way of doing it. But nonetheless, although we don't pay so much emphasis in authentication of contemporary art, it's going to be a nightmare for the future. I say that we need to protect the experts. The Warhol Foundation is being sued for millions of dollars. I believe that Keith Haring as well. Who decides who's the next expert? I spent three months trying to get from the Marlborough Gallery a certificate because the artist had passed away and the director of the gallery decided that he himself will be the next person to authenticate the artist. How did we come to that?

I think that an international arbitration organism similar to the Fédération Internationale des Véhicules Anciens might help. Is there an institution to legitimize and accredit a expertise in our field? Is it recognition alone that determines who the expert is? And what happens when the expert deceases and another one challenges prior decisions? I believe those are questions for this congress. If I'm not mistaken, there are 14 Rembrandts at the Metropolitan Museum in New York, of which only all of the experts agree on seven. The art market counterfeits not only create significant market inefficiencies, but also push towards transparency and competitiveness.

In an unregulated market such as the art market, transactions rely heavily on trust. Collectors usually trust the dealer or auction houses because they claim to have more information than them. On the other hand, dealers, museums and institutions, trust the academics and scientists because they also say to be more informed. A very important aspect of the art market, and thus, the art world, is information. And by being an unregulated market, it is vulnerable to asymmetric information problems that cause terrible market distortions. Regulating the art market is not a viable option. The solution of the problem of art authentications must come from within the art experts: You. Consensus and transparency, I believe is the name of the game. Are we upon a new era of consensus? I leave it up to you and on your noble consciences. Thank you.

¹⁷ Thomas Hoving, the charismatic showman and treasure hunter whose tenure as director of the Metropolitan Museum of Art from 1967 to 1977 fundamentally transformed the institution and helped usher in the era of the museum blockbuster show.

¹⁸ Original Deleted: -especially when discussing contemporary art and I'm probably jumping into something else- but as Thomas Hoving said