Lawrence: Okay so this is the presentation of the Art and Law work group. You'll recognize most of the participants from the panel discussion yesterday with the exception of Filippo Pattini, who is a lawyer from London with Foresters, practices among other areas of specialty as a litigator in the art arena representing galleries, auction houses, dealers, estates, collectors and so forth. I'm going to put into perspective what our work group did, and sort of an overview of context. And then Friederike and Filippo are going to walk through the recommendations that we as a work group have prepared with the involvement of Milko as part of the work group. And then Anna will add some context as to why this is important.

The mission we undertook was to address the issue of authentication or authenticity in the dispute resolution context. That's not to say every matter is a matter of dispute in the art world. We heard discussions about attribution and authenticity confirmation in a museum context, catalogue raisonné context. But we also know that there are disputes in the market, and so that's the part we're focusing in, not to suggest that's the entire universe, but it is important.

There's also a relationship to what we're going to talk about in our recommendations to the discussion we had today about verbiage nomenclature in the industry and so forth. And while there's always a disconnect or transition for any industry to enter the dispute arena, i.e. courts and litigation, because it's its own language. Part of the goal of what we've put forth for the congress to consider, is helping the industry communicate in a way that the courts can digest what the market's trying to say. Because if you can't make that work, then a lot of connoisseurship**,** scientific assessment by the eye and so forth won't work at least in the dispute resolution context. So there's kind of an element of "It just is the way it is." And we're here to help make that part work better.

And it's a very real issue. You can actually read cases today -- I can speak from the US context, but it's probably comparable elsewhere -- where courts actually say things like, as they're deciding cases in lots of different arenas, where experts of all sorts of disciplines are helping the fact finder resolve fact issues, things like, "That's gobbledygook," "That's shuttlecock," "That's loose cannon language." And that's the courts basically saying, "We don't understand what you are talking about. And if we don't understand what you are talking about, the person who has the burden of prevailing loses," it's that simple.

So of necessity we have to help take great science, great knowledge, great nomenclature from your perspectives, and turn that into something that the system can use. And the other perspective I would offer is that, while certainly not every dispute ends up in court, if as practitioners, if as market participants we can create deliverables, expert opinions in ways that will work in the judicial environment, then by definition they will work in the private sector without the dispute having to get to court. And why is that? Because courts are all about creating predictability, it's called precedent in the legal world. And while cases decide disputes between individual parties in the modern world whenever there's a dispute that doesn't resolve right at trial and sometimes even at trial,

courts issue written opinions that the world watches and understands to gauge their behavior accordingly.

Every technology firm in the world watches every case that gets published by every court in the world on technology issues. Because they need to understand, how are the courts resolving disputes in the arena that's relevant to me. And what can I read that tells me how I need to gauge my own behavior. So the translation in the authenticity world is, if as experts can communicate opinions in a more effective way which isn't changing the content, it's language that enables the courts to make better decisions that predictability works backwards into the market to, in a good sense, reduce the amount of dispute that the market will see.

The other dimension to what we've created as a recommendation for the congress is helping address the liability issue in the market. Because if we can do that, maybe foundations can come back into the business of doing what they were doing historically before they shut down. Experts can more comfortably render opinions; museums in the US for example may change their policy on curators and other experts in-house assisting the market. And it all goes back to a standard structure that the market can look to reliably to say, "I have done an unassailable job. Reasonable minds could differ, there may be different experts that reach a different conclusion on an issue. But I provided a fully transparent, organized, cogent, expert opinion with all the details that are needed for anyone to attack it in any way they want." Because the dispute is all about trying to find the truth in the equation, and so robust reports that give full transparency in a complete laid out rationale of how did I get from the question that was posed to the conclusion I reached creates that structure for the system to work as well as it possibly can.

And I can tell you from the stand point of a trial attorney, myself though that's not what I do anymore being in business, is that true, solid, good faith, supportable opinions do prevail. All the dispute is about opinions that may not have the adequate basis and that are masked or elusive, and the dispute is around trying to uncover that, so one as an expert need not be concerned at all frankly about being forthright and complete.

So the last point I'll make is that the structure we're recommending is in a way nothing new. In fact some of the regime that we'll review and you'll see in the handout tracks what's mandatory in the United States explicitly, and by parallel in many other jurisdictions. By that I mean under certain rules that prevail in all federal courts in the United States, if you as an expert render an opinion that does not meet a certain set of requirements in terms of structure, explanation, transparency, it's inadmissible, it's that simple. So there's nothing new here. It may be a little bit new to this market sector although I think you'll find that many of you in many ways are kind of doing this already, but we're helping you package it in a better way.

So with that I'm going to turn to Friederike to sort of walk through – it's going to be kind of a mechanical discussion then we'll go into questions -- what are the ingredients that we are recommending, and why and why they will work.

Friederike: Thank you Lawrence. So in total the list that we would like to present here includes 11 ingredients that should be part of such a solid and founded expert report. And I would like to start walking with you through the first five aspects of that list. So the first aspect is to identify the work and the person writing the report on it or giving an opinion on it, and the person asking for that report. So basically, the expert's report must identify who has asked him to prepare the opinion, and to give a base line transparency, and to allow other persons involved and stakeholders to assess potential bias or conflicts of interest.

You may now say, "Well, sometimes we need to maintain confidentiality," and that is of course a concern that is important especially in the art market. So what we request here does not mean that you always have to put down the entire name of the person who inquired for the opinion. But it may also simply be sufficient to say, the owner of the painting is the one who requested this report, the potential buyer, the potential seller has requested it. So kind of an anonymous version of making clear who is the one who asked for the opinion.

And apart from identifying the inquirer, of course the object itself should be made identifiable. And therefore we all know this as basically the first part of opinions kind of a list of alleged attribution, title, date, medium and the dimensions of the object. Also high quality digital images of the front side, of the reverse side of the painting should be included as an attachment to the report.

Second aspect: the expert should explicitly affirm that there's no economic ownership or other beneficial interest for him in the painting. So if there are any actual or potential conflicts of interests that could influence his opinion, that could influence the credibility of the report or its findings, the expert should identify these aspects. This disclosure should also include an affirmative statement that the expert is not and was not and will not and does not intend to be employed by the owner of the object.

Third aspect: this is about the compensation. So the expert should state to what extent he or she has been or will be paid for the services provided, including possible additional fees, hourly rates for future work. For example if it's expected that there will be testimony in any court proceeding or anything similar, so that may be based on an hourly fee or an agreed upon flat fee. However, it may never be a percentage of the value of the painting itself. And as we all know that proportionate payment arrangements based on such value assessments are deemed to create a conflict of interest.

Fourth aspect: the expert qualifications. The expert should include a short section on his or her academic and professional background including indications as to what qualifies the expert to give an opinion on this particular subject, on this particular artist. Including a short CV, a list of publications possibly, whatever may qualify this opinion and authority.

So the fifth aspect concerns the scope of work. The expert should specify the scope of his engagement, which means you should say, “I have been engaged to give my opinion on the authenticity of the work. I have not been engaged,” for example, “to say something about the value of the work, to determine the legal title of the work.” So basically, this section on the scope determines the scope of what is to be done and should also explicitly mention what is not covered, what will not – what aspects will not be covered by this report. And in this context it should also be made clear as to which specific activities the expert was possibly directed not to undertake to make clear from the beginning what route this opinion is going to take.

Speaker3: Okay, I’ll pick up from here. We’re then transitioning to, in a sense, the body of the report. And the first element that we’ve considered fundamental is the information considered in forming the opinion. So the expert should articulate facts, data and the source of the materials which are being reviewed and relied upon, whether this information is complete or incomplete, and the effect of the quantity and availability of that data on the expert opinion. We hived out two examples here for observationalists whether images have been reviewed in photographic form or whether they have been physically inspected. And for forensic materials, the effort is to try and establish what the base line environment and the assumptions were before undertaking any analysis.

The next point for us is the methodology of the analysis, so the detail of methods of analysis used but also equally importantly those not used, considered and rejected as inappropriate. And again fundamental point, the methodology should in our view logically and directly correlate to the academic and professional qualifications. So there should be that link drilling deeper into the methodology, the consensus of the – we‘re looking at scientific authority particularly, and an efficacy rate if that’s able to be established, and we consider this particularly key in setting the context to allow stakeholders to measure and verify whether the approach is a correct approach. Now that analysis and view on the methodology adopted is in fact distinct from the ultimate conclusion that will be reached in the report itself. So it’s a two-level consideration.

We’re not and didn’t solely focus on the scientific methodology of course. It’s equally important the approach taken in respect of a, let’s call it a more subjective approach. Our view is that the methodology, if based on observations predominantly, can only be reliable if the observations based on relevant extensive and specialized experience and I think tying in with what Lawrence had said earlier, we see in the US that it’s specifically excluded in certain circumstances in simply saying, “I’m an expert and that’s my feeling,” there’s no scope for that at all either in the market or in the law. We think the expert should furthermore address alternative explanations, so consider alternatives, and explain why these alternatives have been discarded.

The next point that we focused on was the ultimate conclusion and opinion. So the experts has, and it was mentioned by Friederike in some way that they have to clearly understand whether they’ve been asked to render an opinion on the ultimate question of fact, is it or is it not authentic or an underlying question. So is the object consistent or inconsistent with an authentic work. I think the party that is wishing to prove the authenticity of the work will have to determine how to assemble its expertise, marshal its troops so to speak, and put the position forward. Our view is that conclusions based on

these standard criteria, where reliable methodologies have been adopted and a path has been followed, there's scope for completely opposing opinions, but they're inherently credible. If the methodology and the structuring of the report and the approach to the report has been organized in a particular way, then there is room for different conclusions. But there's a greater degree of clarity.

We move perhaps to a slightly more contentious area. We believe that the experts must reach a conclusion if they're being asked to authenticate a piece. In this context, one looks at burdens of proof and legal arguments and elements which are persuasive within the court and the level of certainty required within that context, and the requirements of the client's interest or market interests.

Without delving too deeply in the concept of the burden of proof, I think it is important to just state, in very basic terms, and there are different clearly iterations internationally and across jurisdictions. But we're seeing where a party to legal proceedings has to prove that certain facts are true or untrue in support of its position. Now that's often expressed as preponderance of evidence. We have, as I said, different contexts in different jurisdictions, in the UK we're looking at balance of probabilities. There is a distinction, as I'm sure everyone is aware, between burdens of proof in criminal and civil cases and whilst that again is geographically specific, in most EU jurisdictions and English common law of the burden of proof in criminal proceedings is significantly higher than that in civil proceedings.

I'm not proposing to run through the specific burdens of proof, the information is there, we've outlined a number of countries by way of examples. And I think that's to assist in communicating that there is a spectrum. And we say that in the context of then hiving out the fact that issues in respect to burdens of proof in civil proceedings are not the equivalent always of what the experts are being asked in practice. And we take the example of balance of probability or preponderance of evidence, in essence more likely than not scenario, that's clearly unsatisfactory in the context of an authentication report. It would lead to, from a courts perspective, fairly unfortunate conclusions, and the sorts of language that we'd identified as a reasonable degree of professional scientific certainty, that's not what the courts are particularly interested in.

It's important to realize that the courts, as many are aware, are highly unfamiliar with the art market as a whole. Martin had mentioned yesterday some – I don't think he quite termed it – evasive techniques by the courts to avoid having to grapple with issues of authenticity. But it's clearly not a consideration that courts are comfortable with. The courts will have to take a decision and we hear that every time go to court, whether the parties may not like it, the shutters will come down with the judgment. And the courts are used to dealing with a broader spectrum and perhaps a more subtle frame work than the binary issue of "Is it or is it not authentic?"

Our view is that to aid the market and those practicing in the area, we've identified three characteristics: reasonable degree, highest degree and absolute certainty. Now fortunately -- not yet but in Germany it's getting close to it -- no jurisdiction requires absolute certainty. However, the jurisdictions which operate under a lower standard of proof perpetuate instability in the art market particularly in respect of authenticity. There's been some discussion over the past couple of days in respective situations

where a court has said or opined that a particular piece is or is not authentic and the market has reacted differently. Our view is that experts must express opinions on the ultimate fact as follows: the object is or is not an authentic work by artist X, or is consistent with or inconsistent with an authentic work by artist X to the highest degree of professional or scientific certainty. Now we'll leave comments on that to later, but this should be [sic] universal form of opinion that's expressed in these reports, this is what experts have been asked to do.

And a slightly less contentious aspect is that of record retention. So experts must keep records of correspondence, information supplied, working notes, testing records and so on, after the report has been prepared. We also attach I think as just a guideline and a very much as a starting point, a draft form that embodies sum of what we've discussed.

Lawrence: Anna?

Anna: Okay, so effectively we're proposing a set of standards that should be universally adopted by everyone in this room and all over the world. So that might sound – that sounds very ambitious. But we were tasked with coming up with some tangible suggestions, so this is what we've come up with. My job is to convince you why this is a good idea. So I'm going to kind of throw some more general issues around standards that I want to share with you. So one thing that we've all spoken about so many different topics over the past few days. It's been absolutely fascinating, thank you Milko for organizing such a remarkable event.

And I'd like to bring us back to something that Mr. Larmon said at the very beginning of the conference. And I think this can be something which can be adopted as a shared goal. Because as Jilleen said there are so many different languages, there are so many discourses happening at the same time. But I'm still not convinced, what is a shared goal is for us. I think may be an outcome of this congress will be to articulate a shared goal that we can all subscribe to.

So as Mr. Larmon said, the overall goal is to create transparency about each and every, in his case car, in each and every work that we deal with, that he deals with. If people are changing a car, fine, but we need to know how. So I think that underlines a lot of the things that have also informed our thinking in a sort of intuitive way. And obviously our thinking was done far before we heard your wonderful quote.

But why should we have these standards? What are impacts of these standards? Well, actually there's a lot of evidence in the academic literature and in the professional literature to suggest that standards have some really positive net effects, both on individuals, on organizations and on society as a whole. One aspect of this is that they improve the quality of the information that's being provided. And in our case having standards around the disclosure of the object would improve the evidence on which the decisions are made. It allows us to compare across cases and in an environment where every object is unique and every case is unique, this amount of comparability will probably allow us; will hopefully allow us to build a much more foundation of knowledge on which we can make better decisions going forward.

The standards allow us to make decisions more effectively and efficiently. They reduce costs and they allow you to problem-solve faster. So we start off from a global starting point and we all kind of start to understand each other. And then we can proceed to deal with the individual details of the cases. So I think that when we – we live in a world where one of the most costly thing is information processing and we saw this very much from the previous panel. Having a kind of base line of standards helps us, pushes us forward. And then of course what it does in the next layer is it allows us to increase the level of confidence in an industry, and allows that industry to then be motivated into more activity.

So I think that there's a lot of economic arguments why the emergence of a standard could really push this sector forward. And one thing that's another thing that you see very often is in emerging industries you have a lot of competition of new technologies and competition of new standards. And I think we may be in a situation right now where we have a lot of competition amongst different proposals. And over time, hopefully some of them will win out and there will be universal standards. So one of the most famous standards that I'm sure you all know are the ISO standards, international standards, and ISO 9000 which is all around quality management. And I just pulled this off their website, which I thought could be relevant to us as well.

Standards provide guidance and tools for individuals and companies who want to ensure that their products and services constantly meet the needs of their consumers, and that quality is maintained and constantly improved. So I think that a part of what standards do is it actually better enables us to serve the needs of the people in the art market whoever they may be, and there's obviously going to be a range of players. So that would be my two pence.

Lawrence: Okay great. So let me just try to wrap context together again before we go to questions, because it's really important, I want to make sure we move this out of the theoretical or pedantic posture that it's been in. So, again looking at this from the worst case, someone bought a work that turns out not to be as it was represented, and they are now going to court and they are reaching to you for expert opinion. So we have lots of issue that center around what these recommendations are about. One of which is the interaction between -- and I'm going to keep using the old terms because it's part of my language -- the observationalist or connoisseurship view and the scientific view. Because the client and or his or her lawyer will be putting together the information because we know in so many cases you need both parts to come to the final conclusion.

And so each expert's going to identify what exactly they were asked to do, and go through this process of disclosing any conflicts of interest and really deeply laying out what they did so anyone can try to attack it if they want, but it's all there transparently. But somewhere, for example, in the process, one of the experts has to reach that ultimate question. So imagine you're in court, and the one expert gets up and kind of walks through this and says "Well, I think it's consistent with." And then the scientific expert gets up and says, 'Well, I think it's consistent with." The judge in one way or the other is going to be saying, "Is anyone going to tell me if this work is authentic or not?"

So somehow through these tools, the experts as a team, collaboration that this congress is bringing about, has to identify -- that may depend on the specific facts of a case -- is the connoisseur going to be the one to ultimately opine based on his or her expertise and that of the other expert, because under the law one expert can include valid expert opinions of another expert, or is it going to be the other way around. It will depend on the particular context of the case. But ultimately, that's what the court needs guidance on.

To the discussion earlier today on what words do we use, attribution, it's a study, it's a whatever, at some point -- and this backs up to how the experts work and frame their work and their reports -- the court's going to say, "Well basically, John bought the work from Dave. Dave said it was an authentic Warhol and paid an amount that the market would suggest goes with an authentic Warhol. It turns out not to be. The question we're going to ask the jury is: was this working authentic work by Warhol or not." Experts have to answer that question, did the defendant, the dealer, knowingly sell this work aware that it wasn't an authentic Warhol – I mean that's the way the process works.

So while different language can be used within the context of attributing the work to a catalogue raisonné for example, this discussion is about how does it need to be built to work in this environment. The other piece of this is a protective envelope. If you work with me for a moment to imagine this scenario, because we know liability of experts is on everyone's mind, so this was created as a recommendation with that in mind as well, so the sort of vignette around the expert who's being sued, or the foundation that's being sued, because they did include a work in the catalogue raisonné.

If the process is working as we're recommending, the court deciding a claim against an expert would be saying something like, "Well we're here to decide whether that expert is liable for the opinion that they reached. The question isn't whether they're ultimately right or wrong, but did they fail to exercise reasonable care, for example, in coming to the conclusion. And what I have is a report that walks me through everything they did; everything they didn't do, why they did what they did, the efficacy rate of those things that they did do, all the information they considered. The reasoning for how they got to their conclusion, the reasoning for rejecting other possibilities -- because there can always be another possibility since the artist isn't here -- and, and that's the goal of this congress potentially, this expert followed the standard report requirements promulgated by the AiA which is an industry reference point that says this is the appropriate way for experts to communicate. There's no liability here, case is over."

And so this becomes a tool if you will, to help perhaps more methodically create the ultimate purpose of your engagements often in a way that gets the job done better from the stand point of what the market's asking for, and in a way that we think actually helps with the problem around liability of experts, because you have a standard reference point that you can be measured against to honest point.

So that's what it is, why, the rationale and its potential purpose for the congress to decide. And so now we'll open it up for – oh one other thing, well, who has a question about why we did we pick to the highest degree of scientific certainty versus something else? Someone must have a question on that. Martin?

Martin: Sorry about this, Friederike will not be surprised by what I'm going to say. I think if you've taken any notice of what happened the last two and a half days, you will not perpetrate this rigid division between an observationalist -- whatever that may be for God's sake -- and the scientist. We're dealing with a great spectrum of opinions, a great spectrum of skills, a spectrum of techniques. And if in a document in court you perpetrate something which is clearly not a rigid and definable definition between somebody who does scientific examination with that being a sort of gold standard of absoluteness, and somebody who's involved in other forms of historical identification, then I think you'll be doing a grave service to things. We also don't need observationalists, we don't need more neologisms which keep people out.

Lawrence: Well, so and that's not in all the case because in fact what would happen and happens in court proceedings all the time with any field of expertise where there are different individuals with general expertise in one area and specific expertise in a subsidiary area, is the court will find its own label, I assure you, for what we're going to call that expert. So the court will say something like, "Well the witness and the plaintiff offered Mr. or Mrs. so and so who's an expert in X," and has been in called an expert in X. What that means in this case is the following: they're going to take no matter how hard the art industry or any industry tries to use its own language, which works for its own purposes, they will still translate it into theirs. And it doesn't disqualify anyone, it's simply dual language that's going to happen. It's the nature of the beast, and that's the only point there.

Martin: But we shouldn't be embedding this crude polarization in a legal document which we would be signing. And if I was asked to appear on this document as observationalist, frankly I wouldn't appear because first of all I don't know what it means, and secondly a scientist is an observationalist—

Lawrence: No, you'll identify your expertise as you identify it.

Martin: Yes, but why do you then need this peculiar language of observationalist and scientist?

Lawrence: It's just two examples of what the expertise could be called, but however you define it.

Martin: No look at the document, that is not what the document says. It defines two kinds of expert, one is observationalist and one is a scientist. And you're selling the pass here—

Lawrence: No, only as a general reference. Any other questions?

Speaker4: Does the AiA plan to publish for example recommendations or forms, model forms that could be a reference for our professionals because these debates – you said that five minutes ago -- you say I followed in your example, I follow the recommendation of the AiA—

Lawrence: It's an option Milko and the congress will have to decide that, but it's an option and if you think about most associations like the appraisal associations, they end

up putting together things that become tools they use in the market. So again everyone's working from a common denominator.

Speaker4: Not to go back to the previous debate, but if you were to publish the guidelines in a proper catalogue raisonné, why not? There's enough international association and maybe that would conflicting with this association we heard earlier. But could be very good guidelines for anybody wanting to consult, then they go on AiA website and they see what they should be asking/

Lawrence: As a recommendation, and most I hate to use the word trade associations but they would be parallels in the market. One example because I happen to know them Institutional Limited Partners association, it's the largest private equity association in the world. And they promulgate lots of documents with guidelines for the entire industry to use at their option.

Speaker4: Yes, but this is the first time that – AiA is something new—

Lawrence: Sure so, this is the point of the congress is to get these discussions going and figure out when and how there'll be output. I think Milko can answer that better but.

Speaker: I mean it's not a novel concept. There are these structures and approaches in all sorts of different areas. And where they work best, circumstances where the structure and the definitions emerge from the experts in those areas themselves. As I think Lawrence was saying—

Speaker4: If you go to Wikipedia you're going to get a definition of what is a catalogue raisonné, sure, but do you trust what is written on Wikipedia? I don't always, because no, you can't. I mean AiA offers a number of guarantees but the internet is not something you can trust just because it's the internet. Wikipedia has a lot of ridiculous information on it, because who checks?

Friederike: But this document here is not a Wikipedia text. It has been written by neutral experts who have no—

Speaker4: No, no I know. I was answering this because he was that already existing organization etcetera, etcetera. And I was saying the AiA offers a particular guarantee that according to me looks better than all the things you find in a—

Friederike: Well if that's so then that's fine. I mean that would be nice. It would be perceived that way, but this is just the initial draft. We are happy to include what we hear now from your comments. And I think it will be interesting to see once this document is circulated in the market whether it will have any effect and of course we do hope so.

Dana: I'm Dana Garvey with the University of Washington in Seattle. I'm an art historian; I don't have a technical background by training, but I have a background in technology and the law. So I see this issue from multiple angles. The format that you proposed as was alluded to is almost identical to that required by the ISA, the International Society of Appraisers, the AAA, the American Association of Appraisers I believe it is. And in order to be certified by either of those groups you must be trained to write reports in their required format. You must agree to write your report in their

required format and you must also agree to keep up with your training, because the format requirement change from time to time based on new information on court cases, on tax regulation changes, etcetera.

And so my question is, is the implication here that AiA would move towards such a certification process or structure for technical art history experts?

Lawrence: Again that would be for the congress and Milko to decide. But to kind of get at I think the essence of your question, is that's a possibility in terms of normal market behavior and of course the other panelists will comment too, but the analogy I would use, because earlier today one of the guest mentioned there are a lot parallels to what we're discussing, I think around the nomenclature issue, in the field of medicine. So in the field of medicine, if you're a licensed physician in any particular field from general practitioner to surgery or anything in between, many of them serve as experts in lots of cases, typically medical malpractice of course. And without any training in report writing or anything like that, this regime, while similar to the ones that you mentioned, actually come from the statutory regime under the federal rules of evidence in the United States that apply to all federal courts and by adoption essentially every state court in the United States.

And so you don't actually need certification to write the report, you need to be an expert. And sometimes new areas of expertise are accepted as experts in court if you can demonstrate, there's an adequate basis for that expertise which was left for the courts to decide. So it's kind of a "yes but doesn't have to be," and that's the backdrop looking at lots of different industry sectors.

Bill: Bill Sharon from New York. One comment and one question. Just as judges in courts are required to issue decisions and opinions, they can reverse themselves or reconsider those decisions based upon information they missed or new facts. So I think it's possible in this context to require an opinion to be delivered and yet still call it a conditional and contingent opinion predicated upon what if new information comes to light.

And I also think that you could make a condition of the retention, include precursor language of a covenant not to sue, a waiver complete indemnity as between the retaining party and the expert. Related, and this is the question, is a published catalogue raisonné – and I'm focused mostly on, I'm focused exclusively on this question on American law, but Americans seem to be the most litigious in the group so – a published catalogue raisonné would almost certainly be classic first amendment speech and opinion and protected and immunized as a result. Have you considered, and is it worth considering, making another condition of this opinion making that it must be accessible to the public? And then therefore whatever opinion is delivered is not confidential, is not private, but it's of a public concern. Thereby I would think triggering the same first amendment protection and giving the experts that kind of comfort they're looking for.

Speaker5: It's a must. It is a must. Transparency is a must

Lawrence: What was the other comment?

Bill: Transparency is a must, is what he said.

Lawrence: Any of the other panelists want to address that?

Friederike: Do you want to expand on that? Because I think it's an interesting comment.

Speaker5: I think when you set a set of goals or a set of standards, then transparency is a must, not only on the facts but also on the process you're following it. So you're all talking about not the process what you do, and I think that's important. The whole process in authentication which you follow, if you follow that according to everybody knows how you do it, because it is transparent, transparency and governance hasn't been the words up till now in the whole congress. And I think that's crucial in this respect.

Friederike: I think we're violently agreeing. [laughter]

Lawrence: Well, I'll say it's a balancing act. Meaning in the context of litigation there are all sorts of rules, certainly in the US, it's called work product and who owns the result the client's paid for it, things like that that generally keep the report private until the litigation advances to the point called discovery where the rules are, you now need to put on the table all of your evidence, which includes your expert reports. And then that becomes part of the public record in the court which is accessible to any person in the community, unless the court issues an order sealing the record which except in extraordinary circumstances, it wouldn't do. So it kind of comes back to even if it's technically a private document up until a certain stage, the best reports would be written anticipating that it would become public. And that's just the way the system works.

Speaker: I mean if they're prepared with a view to being exchanged in court proceedings then the anticipation must be that they will be public documents.

Speaker6: Okay, I have a question following **[unintelligible 00:51:17]**. When you make a report, you ask a report you make it for a party, so a defendant or a plaintiff. And if the council decides this report doesn't favor my cause because we will surely lose releasing this report. And thus deciding not to use it, not to bring it out into the public domain, but it contains vital information concerning a painting. How could you resolve that as an expert like getting a clause, "If you don't use it, I want to have rights to make it public anyway, so the knowledge doesn't get lost in legal proceeding due to strategical [sic] reasons." And what is your view on that?

Friederike: The expert who has written the report is still the author of the document. And can basically, based on free speech and all the rights he has in the Western democracies, can use the text or reuse it re-word it, use it for other publications whatsoever. There's no exclusive right of the owner of the painting in the text, legally. So I don't really see a problem there, and I don't see a need to put any language into the document that affirms the right – for clarification purposes it might be helpful. But normally I don't really see a real need for it.

Speaker6: No because I know in Netherland on a Dutch copyright -- I don't know if it's in other countries -- if you write a document ordered by another party, the copyright transfers to the party who asked for the report—

Friederike: That's what you mean, okay.

Speaker6: --and that's what it could be in that case. So in that case the party who asked for the report could get copyright or could at least get a large amount of influence on the copyright, which differs each case, but—

Friederike: Okay, I got it. Okay, this is a concept I'm not familiar with because German copyright works differently. And we don't even have to work for higher principle or anything like that. So maybe I assume it's a common law it's like—

Speaker3: In the UK and I think it's particularly important in respect of issues of authenticity. Often when one is looking at issues of authenticity one looks at other reports that have been prepared or for the same artist as comparators. The moment a report is prepared and paid for by a client, not only does that become the property of the client but the client may or may not have an interest, and a very significant interest often, in that report or those reports being made public. Because in eventuality that a painting is not found to be authentic in court and a particular expert has relied on other reports that – there's a contamination risk there. So it's – there could be resistors—

Friederike: But like the opinion in itself that the expert has articulated in this report, that's something that he can articulate any day again, isn't it? Even in jurisdictions where this report itself might be protected by copyright law. Let's say the author of this report is the author of the catalogue raisonné of the artist. And two days after writing the report, he publishes the next volume of the catalogue raisonné and he may actually write the same things in the catalogue raisonné even if that may not be with the same wording, but this report doesn't – cannot be a basis for prohibiting the expert to give an opinion on this.

Speaker3: No, no but it's in respect of publicizing a report—

Lawrence: In the US absent a specific agreement, the owner who paid for the report would own the report including the copyright.

Speaker6: So that's the point because then you lose influence on your own opinion you gave. And you'll probably have a non-disclosure which means all the information received from the report or pigments, other technical background which may be owned by the owner of the painting, you won't be using. So having the limited amount of public knowledge wouldn't be able to give you objective opinion about the painting, so you can't put it in your catalogue raisonné or you can't do an article about it saying it's not authentic because you haven't got the information you need. The information is behind doors so would there be a possible solution for that to make in the standard agreement any findings will be allowed to be made public?

Speaker3: I wouldn't advise my clients—

Friederike: But I think also the expert has to make a conscious decision about the boundaries of what they're willing to compromise going forward by writing one particular

report. And that's a decision that every expert faces all the time. And they're not driven primarily by financial gain, the people who work in the art world I think on the whole. So they would take that, any individual decision with the consciousness of what – and it would be a negotiation process I imagine with the person who commissions the report to some extent.

And if they're not allowed to use that information in the future or publish, then I would really doubt in reality whether an expert would actually go and write a report like that. And how many clients they'd need to go and find someone who either would write a report like that, and then maybe you question the quality of their expertise, or they would have to be a bit more reasonable about what they're demanding of a top class expert. So I think theoretically it's an interesting question, but I think in practice I wonder—

Lawrence: Where are we on time?