

AUTHENTICATION
IN ART

AiA Art News-service

ART SY

How Anti-Money Laundering Legislation Could Impact the Art Market

Dean Nicyper and Lauren Bursey

Apr 30, 2019 11:56 am



Annette Kelm, *Dollar / Upside Down*, 2016, KÖNIG GALERIE

A resolution in the United States Congress suggests that galleries and auction houses could soon be subject to strict reporting requirements about their customers amid a global push for greater transparency in art transactions. While these requirements could have significant benefits in terms of helping to curtail money laundering by bringing greater oversight to an often opaque art market, the law could also burden dealers and auction houses with onerous administrative and reporting duties that will be especially challenging for smaller and mid-size galleries.

In May 2018, the Illicit Art and Antiquities Trafficking Prevention Act(IAATP) was introduced in the United States House of Representatives and referred to the House Committee on Financial Services. The bill sought to apply the Bank Secrecy Act (BSA) to dealers in art and antiquities. The BSA, adopted in 1970, established record keeping, program, and reporting requirements for national banks, federal savings associations, federal branches, and agencies of foreign banks. The IAATP's inclusion of art dealers among those responsible under the BSA would have required dealers to satisfy new reporting obligations and ensure that any potential clients are not being sanctioned by the Office of Foreign Assets Control. The IAATP bill did not pass, but a new House resolution may signal that it is still alive.

The sponsor of the bill, Congressman Luke Messer (R-IN), stated that the aim of the bill was to “counteract terrorist financing and crack down on terrorist organizations like ISIS.” Although the primary concern to date has centered on cultural property looted in the Middle East, the IAATP was the first regulation in the U.S. that proposed to affect the entire art market, from contemporary art to antiquities, and the bill did not discriminate between sellers of different types of art depending on their potential for money laundering. Indeed, while the involvement of ISIS may have been the impetus for the bill,

financial crimes that the art market has been dealing with during the past several years involve, among other things, instances of fraud, forgery, and looted art. This misconduct goes to the very heart of the trust implied in all art transactions, and it enables funds from art transactions to end up in the wrong hands. Regulations aimed at addressing money laundering are likely to assist in uncovering and preventing such misconduct and therefore have an overall positive effect on the art market. The European Union passed new anti-money laundering legislation last spring. It becomes effective in 2020, and will be applicable to art galleries and auction houses. It is very similar to what the IAATP proposed in the U.S., and is likely to affect U.S. galleries and auction houses in cross-border transactions.

The biggest concerns for art dealers include the high administrative burden, the responsibility to “know your customer,” and a potential chilling effect on the art market. In addition to the reporting requirements, dealers would need to establish suspicious activity monitoring programs, risk-based policies, and processes for reporting. This burden would be especially problematic for small and even mid-sized galleries, who do not have resources comparable to the financial institutions already being regulated. While the BSA does enumerate certain “persons” who routinely use currency and may be exempt from the filing requirements, which would ultimately lessen the administrative burden, none of those listed would apply to art dealers or to purchasers or sellers of art. Galleries would have an obligation to train and screen their staff in recognizing suspicious transactions and conducting customer due diligence of both consignors and buyers. These efforts, especially those to identify the ultimate seller and where the money is coming from, would be time-consuming, costly, and a particular challenge for smaller and mid-size galleries or dealers.

The major auction houses, primarily Sotheby's and Christie's, already have anti-money laundering protocols in place, boosted by their robust legal and compliance departments. Christie's program includes "client, transaction and artwork due diligence, monitoring, record keeping and independent audits," and it enforces "strict cash payment limits" and a no-third-party payment policy. Christie's and Sotheby's have histories of advancing funds for consignments, and Sotheby's has a history of lending money and using art as collateral, putting them in a different risk category than other art market entities.

In addition to the burden on the art dealer, the IAATP may be a burden on art purchasers, which might lead to a chilling effect on the market. Those accustomed to using the art market as a way to move money may be deterred once these laws come into effect, thus potentially reducing the number of art transactions. Conversely, the proposed legislation's stringent reporting requirements are likely to add transparency and credibility to art sales. These laws will likely help to change the unfavorable narrative that the art market's lack of regulation makes it susceptible to money laundering activities.

The IAATP has not been reintroduced after the November 2018 midterm election. However, on March 13, 2019, the House of Representatives agreed to House Resolution 206, which expressly recognizes the global nature of money laundering: that "Federal authorities have cautioned that art collectors and dealers be particularly careful trading Near Eastern antiquities"; that "dealers in arts and antiquities are not, by definition, covered 'financial institutions' required to comply with the Bank Secrecy Act"; and that "the United States is the largest destination for archeological and ethnological objects from around the world." The House Resolution acknowledged that the lack of transparency in financial transactions is a threat to U.S. national security, and affirmed that financial institutions

and individuals must be held accountable for money laundering and terror financing crimes.

Although the Resolution is not binding, the fact that it was passed by a House of Representatives in which Democrats hold a majority and was introduced by a Democrat (Congresswoman Maxine Waters), and that the IAATP was sponsored by now-former Republican Congressman Luke Messer, may suggest the possibility for bipartisan support to pass similar legislation in the near future. Galleries and auction houses therefore may want to prepare for new legislation in this area and establish risk-based procedures soon.