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The case for creating an international title registry for art

As art is increasingly used as collateral for loans and sold fractionally, as an investment asset, title becomes even more critical. Unlike condition or authenticity, however, title is a legal matter. But because art is movable, it is also subject to as many legal regimes as there are countries in the world or even states in the United States. We are all familiar with frauds perpetrated by members of the art trade who misappropriated artworks or sale proceeds. Inevitably there are more yet to be uncovered, as fraud is often discovered only years after it began. The perception of these risks inhibits not only lending but also collectors and trade in general. A title registry for art could effectively prevent bad actors from selling competing ownership interests or double pledging an artwork.

There are myriad other beneficial purposes that a global art registry could serve, such as connecting museums and curators with art owners, artists estates and artists who have an interest in lending to potential exhibitions, contributing to scholarship, and other non-financials uses of such information.

In early September, in New York, we convened 70 experts from the auction houses, art lenders, art advisors, art lawyers, appraisers, art fraud prosecutors, museum curators, artist estates, collectors, galleries, art investment companies and working artists to discuss and debate the feasibility, challenges, and impediments to the creation of an international art registry. The symposium was created through a collaboration among Athena Art Finance (Rebecca Fine), the Art Loss Register (Julian Radcliffe), Blank Rome (Steve Brodie) and Columbia Law School. Excited to discuss with broader audiences the next steps towards the creation of an international title registry for art, we continued this conversation with an audience of 300 art market professionals at the Art Business Conference in London. Below is a summary of those discussions.

It was broadly agreed that a global title registry for art would meet the most resistance from collectors, because of concerns about their privacy, traceability of ownership, misuse of the data by taxing authorities and concerns about government interference more generally in private property rights. This seemed to be of particular concern to continental Europeans who have had experience with confiscatory policies of countries that have used export restrictions to alienate private property, the complications of shared ownership in estates, and the impracticality of including artworks that are already in museum collections.

There was however broad consensus that a registry for art which has been used as loan collateral and art owned through investment vehicles would be a place to start and would put the onus on lenders or investment managers to register artwork. Doing so would enable one to learn only that it is encumbered by a loan or that it is owned by more than party, which would prevent unauthorized sale, competing ownership claims or double pledging artwork collateral. We debated whether a database operator should be non-profit, governmental or a public-private partnership. Ultimately, any successful initiative would likely require (at a minimum), a consortium of bank and non-bank lenders, art investment and fund managers. Panelists shared views that if the art market does not begin to self-regulate, government intervention is inevitable and would be heavy-handed. Regulators would likely not be receptive to privacy concerns, for example. Participants also acknowledged that the introduction of various KYC and AML regulations in Europe have not caused great disruption, or at least, less than anticipated.

Importantly, there are myriad examples of global registries that have facilitated the maturation of other esoteric asset classes. For example, we discussed the registration system in the classic car industry, where participation, although not compulsory, has been very widely adopted and is so effective that adverse inferences are drawn by a failure to register.

Technology such as AI, blockchain and other new tools make a registry more viable today and could also go a long way to addressing concerns about conflicts of interest and confidentiality. Automating the registration process (e.g., verification of proof of a registrant's ownership interest), enabling anonymity of communications within a platform, differentiating levels of information sharing and access, could address many objections. On the other hand, although blockchain has the potential to keep a perfect title ledger going forward, it cannot help quiet any existing title concerns regarding artworks that are already in existence and correcting erroneous information recorded on a blockchain might be challenging. But none of these issues are intractable or a reason not to move ahead.

In sum, given the increasing financialization of the art market, the rise of fractional art ownership models, the demand for capital in this expanding market, and advances in technology, the time is right for the creation of an international title registry for art.

By: Rebecca Fine, Managing Director, Athena Art Finance