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# Investigating the Prevalence of Fraud within the Art Auction Market

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## **Abstract**

This study contains an analysis of art fraud investigation within the art auction market. This master thesis aims to understand the impact of art fraud on the market, focusing on a briefing understanding of how the art auction market functions, the consequence of art fraud for both buyers and sellers and governmental regulations about art fraud. Then an interview is conducted with an expert in the field of art crime to gain insights into the challenges and strategies involved in investigating art fraud cases within the auction market. Previous research has shown that the investigation of fraud within the art auction market is a topic that has not been analyzed extensively and this thesis aims to fill the gap by providing a comprehensive analysis of the various aspects related to art fraud investigation. The conclusion of this research is then presented through the synthesis of findings from an extensive literature review and case studies of diverse art fraud cases. Some recommendations for stakeholders in the art auction market and law enforcement agencies are provided to enhance the effectiveness of art fraud investigation and prevention. The study concludes that while art fraud is not considerably influential in impacting an artist's price for a long period, it is still an important issue that needs to be further researched to protect the integrity of the art auction market and preserve cultural heritage.

**Key Words:** Art Fraud, Authentication, Art Auction Market, Provenance, Art Value.

## Chapter 1: Introduction

Art auction houses have played a pivotal role in the art market's history, acting as central players in the exchange of valuable artworks (Heath, 2012). As these institutions expanded and gained prominence, they became essential institutions for both art enthusiasts and collectors, facilitating transactions that still last over centuries, but this expansion and prominence have also unwittingly contributed to the surge in art fraud—a complex phenomenon that has challenged the authenticity and integrity of the art market. It is necessary to understand how the evolution of art auction houses has intersected with the surge of art fraud, highlighting key factors that have contributed to the rise of this crime.

The foundation of auction houses as recognizable institutions dates back to the late 17th century in Europe and this early emergence of auctioneering as a trade can be traced to the coffeehouses of London, where commodities, including artworks, were sold via a public bidding process (Heath, 2012). A crucial moment in the trajectory of art auction houses occurred during the 19th century, marking an era characterized by significant structural and functional changes within auction houses, laying the foundation for their prominence in the art market. The Industrial Revolution, played an important role in shaping the art auction landscape since the rise of the middle class and their newfound affluence generated a burgeoning demand for art, antiques, and collectibles, which raised the search for valuable items, consequently, instigating the need for formalized auction spaces capable of facilitating the sale of prized artworks and artifacts (Heath, 2012). Simultaneously, the vast expansion of the British Empire led to the acquisition of art and cultural treasures from around the world, enriching the supply of goods to be auctioned and this convergence of factors propelled the growth and diversification of auction houses.

The key to their success lies in their ability to adapt to the evolving needs and interests of their buyers (Heath, 2012). Auction houses gradually specialized in various categories, ranging from fine art to rare books, jewelry, furniture, and collectibles, thereby catering to the diverse tastes and preferences of collector with this diversification not only broadening the offerings available at auctions but also heightening the significance of these institutions

as central players in the art market. The introduction of printed auction catalogs was another innovation that reshaped the auction experience during this period with these catalogs providing comprehensive information about the items on offer and reaching a broader audience of potential buyers. This shift marked a crucial step towards the democratization of art auctions, making them more inclusive and opening doors to both seasoned collectors and newcomers to the art world.

These innovations that marked the 19<sup>th</sup> century, made auctions more inclusive and open to a wider audience, but also had unintended consequences. Art fraudsters, leveraging the democratization of art auctions facilitated by printed catalogs, found new opportunities to deceive buyers by carefully studied these catalogs, they used detailed information to strategize their forgeries and since they possessed descriptions, images, and estimated values, they could craft counterfeit artworks that closely mimicked those listed in the catalogs (Amore, 2015). Buyers, especially those new to the art market, might rely heavily on these catalogs without conducting extensive due diligence and this reliance on catalog information created a vulnerability, as buyers sometimes accepted artworks without thorough scrutiny, assuming that the descriptions were accurate. Consequently, the democratization of art auctions, while enhancing accessibility, inadvertently exposed a wider audience to potential art fraud.

Competitive bidding environments, characteristic of art auctions, further contributed to the rise of art fraud considering that auctioneers cultivate an atmosphere of excitement, encouraging bidding wars that often drove prices far beyond their initial estimates (Heath, 2012). This competitive bidding attracted a diverse array of participants, from experienced collectors to new auction participants, yet this quick and exciting atmosphere sometimes overshadowed the need for meticulous authentication. In the rush to secure artworks, buyers and auction houses sometimes failed to conduct thorough due diligence, inadvertently accepting artworks without rigorous scrutiny. This created an environment that contributed to the infiltration of fraudulently attributed or forged pieces and this intense competition, with its focus on acquiring coveted artworks, sometimes came at the expense of concerns about authenticity.

The globalization of auction houses in the 20<sup>th</sup> century further transformed the landscape of the art market especially after the expansion of their reach to international markets which brought art to a global audience and broadened its appeal and accessibility. However, this expansion also exposed the art market to new challenges since artworks began to traverse international borders, complicating the process of authentication and provenance research and providing art fraudsters with opportunities to exploit the complexities of global transactions.

### **1.1 Background and Rationale**

The art auction market has become an important part of the global art market, which is expected to be worth \$68 billion by 2024, with a growth rate of at least 3% yearly (Intelligence, n.d.). However, the rise of the art auction market has also led to the prevalence of art fraud. Art fraud refers to the misrepresentation, authenticity, or provenance of artwork, and can have significant ramifications for both buyers and sellers. Despite several measures being taken to prevent fraud, it still remains a serious problem in the art auction market. It can hurt individuals financially, damage the reputation of the art market, and have broader socioeconomic implications (Cheong, 2021).

The topic of art fraud has been extensively researched in recent years, with scholars and experts attempting to understand the causes, consequences, and prevalence of this phenomenon (Polk & Chappell, 2019). Nonetheless, there are still significant gaps in our understanding of art fraud, especially in terms of its impact on the market, the effectiveness of current regulatory measures to combat it, and public perception of this crime.

Therefore, investigating the prevalence of fraud in art auctions is important for several reasons. First, it can provide insights into the extent of the problem and why it persists. Second, it can help to identify potential managerial and scientific solutions to prevent or reduce art fraud. Finally, it contributes to a greater understanding of the functioning,

regulation, and governance of the art market. This study aims to investigate the prevalence of art fraud in the art auction market, with a view to increasing our understanding of this phenomenon and contributing to its prevention and mitigation.

## **1.2 Research Objectives**

The first research objective of this study is to present and analyze the diverse perspectives on fraud risk within the art auction market, exploring the views held by both buyers and sellers. This exploration recognizes the market's composition as a combination of various stakeholders, including auction houses, investors, collectors, and dealers and understanding how these stakeholders perceive fraud risk is vital as it provides insights into the motivations and behaviors that justify their actions. Are buyers cautious due to perceived risks? Do sellers take proactive measures to mitigate fraud? These are questions that this objective aims to answer.

The second research objective addresses the practices and regulations governing art auction houses, for they are the main institutional against art fraud. This objective initiates an in-depth examination of the methods and mechanisms deployed by auction houses to ensure authenticity and prevent fraudulent activities and it seeks to assess the effectiveness of these practices against art fraud while investigating the role of government regulations in shaping these practices. Moreover, the research extends its scope to scrutinize the influence of governmental regulations in shaping these practices and by answering these questions, it provides valuable insights into the strengths and weaknesses of existing measures, paving the way for more robust fraud prevention strategies.

The third research objective is to investigate the role of transparency and accountability within the art auction market. This objective analyzes avenues through which art auction houses can increase transparency to reduce the risk of fraud and, in doing so, restore public trust since an inherent deficit in transparency, especially concerning the estimation and final



sale prices of artworks, erodes bidder confidence, diminishing trust in the auction house itself.

These research objectives form a comprehensive framework for addressing the multifaceted challenge of art fraud within the art auction market. They not only aim to unravel the intricate dynamics of art fraud but also to provide tangible solutions that can lead to a more transparent, accountable, and trustworthy art auction market.

### **1.3 Significance of the Study**

This research holds great significance within the area of art market studies and intersects various disciplines, such as art history, criminology, and cultural economics. This encompasses multiple key aspects that highlight its academic and practical value.

The present study conducts a comprehensive examination of the various factors that contribute to art fraud in an academic manner. It delves into the complexities of the art auction market, shedding light on its inefficiencies and lack of transparency, which have been widely acknowledged but insufficiently studied in the scholarly literature (David et al., 2013). By illuminating pricing strategies, confidential reserves, and bidding practices, this research provides valuable insights into how fraudulent activities are facilitated within this industry. Through such an analysis, our understanding of the mechanics behind art fraud can be significantly deepened.

Furthermore, this study delves into the relationship between authenticity, value, and art fraud to enhance the understanding of market dynamics and consumer decision-making processes. This analysis has practical implications for individuals involved in the art market as well as scholars conducting research in this area since it exemplifies how art fraud impacts sellers and challenges the notion that it is a "victimless" crime carries significant social and ethical significance (Mazurek, 2019). By evaluating both the economic and reputational

consequences faced by buyers affected by fraud, this study contributes to an assessment of its repercussions and by examining societal perceptions surrounding art fraud.

In Chapter 2, a brief overview of the art auction market is presented to better understand the context in which art fraud occurs and its implications for the market, and to highlight the need for a comprehensive examination of art fraud within this specific sector.

Chapter 3 analyses the many stakeholders that are part of the art auction market, especially buyers and sellers, delving into their perspective of risk regarding fraud in the market in order to have new insights into how to develop new strategies to mitigate the risk of fraud.

Chapter 4 focuses on the research of how auction houses provide guarantees and authenticate artworks. It provides more knowledge on how effective their efforts are and if the current government regulations are contributing to preventing the occurrence of fraud.

The case studies presented in this study are analyzed to better understand the instances in which this crime is committed within the art auction market. Through this analysis, the role of trust in the art market is better exemplified and how it has an essential role in the occurrence of art fraud. Besides that, the interview conducted with Noah Charney justifies the need for a comprehensive examination of fraud within the art auction market.

## Chapter 2: A overview of the Art Auction Market

The art auction market has become an important part of the global art market, which is estimated to be worth \$30.6 billion by 2022 (McAndrew, n.d.). As profitable as the art auction market is, there are a few considerable characteristics that distinguish it from other markets and that contribute to the propensity for fraud and money laundering, and it is necessary to provide a brief overview to better understand the peculiarities present in this market.

Throughout history, auction houses have been present as a dramatic and theatrical form of selling that entices the collective of many and proportionate selling of diverse objects (e.g., artworks, cars, artifacts, furniture, etc.) through supply and demand. (Heath, 2012) Auctions are a form of buying that does not impose any restraints or regulations in many different countries. The lack of a fixed price mechanism allows the prospective buyer and seller to negotiate the price of the object, allowing competition between buyers to purchase the auctioned object (Heath, 2012). However, these variable prices are, for many scholars, what makes the market inefficient by violating the principle that similar or equal goods must be sold at the same or similar prices even in different locations, resulting in some inequalities regarding pricing (David et al., 2013).

The art auction market evokes the name of the two biggest auction houses on the market in the subconscious of the majority of the population: Christie's and Sotheby's. The latter was founded some years prior to the first, during the middle of the 18<sup>th</sup> century, and both represent values that are established through their historical legacies, monumental sales, and exclusivity. At the end of the 18<sup>th</sup> century, Harry Philips founded his own auction house, Philips, which would join Christie's and Sotheby's as being the three dominant powers of this market.<sup>1</sup>

However, the art auction market would only become as massive as it currently is with the turn of the 20<sup>th</sup> century and the rise of the Chinese art market, which, together with the United States of America and the United Kingdom would become the largest market for art

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<sup>1</sup> About Us | Phillips. (n.d.). Retrieved May 3, 2023, from <https://www.phillips.com/about>

in the world. In the 21<sup>st</sup> century, an ‘explosion’ of the art auction market would occur, setting new trends within the art sector that are still prominent in the current art scene.

In 2022 alone, Christie’s, Sotheby’s, and Philips’s sales would account for approximately 57% of the \$30.6 billion that was reached during the year. (McAndrew, n.d.) Through statistical analysis of these auction sales, a potential buyer is broadly informed of the trends that the market is currently following, as seen with the sector of Post-War and Contemporary art being the largest seller of the market reaching over 50% of the global fine art auction market (McAndrew, n.d.).

To further comprehend the functioning of an art auction house, it is necessary to understand the basic mechanisms that constitute an auction. First, the main character of an auction is the auctioneer, responsible for determining and announcing the prices according to the reaction of the clients to the first bidding price. Besides that, the auctioneer is also responsible for regulating bidding in a manner that only two participants actively participate in the bidding at a time, providing a sense of competition and ensuring that the auction sale continues to function without various interruptions (McAndrew, n.d.). The second main character is the auction participant, who places the bid and propels their interest in the object that is being sold.

Concerning bidding, the bids are placed in a crescent manner, starting with lower prices, and rising with the auctioneers’ proposition for higher bids. As the auctioneer establishes the price, interested participants will raise their hands to declare their willingness to pay the determined sum; if there is more than one interested party, the auctioneer will establish a competitive price for the bidding by raising the price at each announcement (Heath, 2012).

Whenever a price offer is accepted by a participant and none of the other participants continues in the bid, the price is ‘hammered down’ and the object is sold. The final price is based on the ‘buyer’s premium’ which consists of 10% to 20% of the ‘hammered down’ amount (Ashenfelter & Graddy, 2006). Regarding the seller's profit, there is usually a commission that is subtracted when the object is sold by an auction house, and it is negotiated with the company beforehand (Ashenfelter & Graddy, 2006).

However, it is important to highlight that several other price components fluctuate during the bidding process in art auction houses. These components include the sales characteristics of the artwork, bidding history for similar artworks, time since the last auction of the artist, and the buyer's perception of the future value addition of the artwork. In addition, art auction houses use some mechanisms to guarantee seller satisfaction and attract bidders, such as minimum price guarantees, confidential reserves, and 'bids off the chandelier'. These price components and mechanisms are further discussed in the next section.

## **2.1 Price structure: value within the Art Auction Market**

Value is a complex concept that underlines modern economic thinking. (Ashenfelter & Graddy, 2006). Nonetheless, establishing value for certain goods can be a difficult endeavor for both the seller and buyer, as an example of this difficulty can be observed throughout the art auction market and the process of selling artworks.

The problem that resides within the art auction market is that art is hard to evaluate given its subjective nature. Thus, the pricing of artwork in auction houses is a complex matter that is closely monitored by experts and researchers. Several factors contribute to the complexity of pricing art in auction houses, including high transaction costs, and the withdrawal of pieces from the market if they cannot achieve the desired prices (Ashenfelter & Graddy, 2006).

The evaluation of artwork by art auction houses is usually reflected in several factors that range from authenticity, rarity, historical importance, medium, size, condition, provenance, demand and the reputation of the artist and its seller. A brief overview of some of these factors is important to follow the concept of value in the market.

### **2.1.1 Authenticity**

Authenticity is usually verified by the use of the catalogue raisonnée of the artist; however, if there are no records available for the artwork, connoisseurs that specialize in the artist's works are called to give a second opinion on authenticity. This is usually seen as a challenge in the art auction market, wherein the quality and value of artwork are difficult to determine, but the importance of authenticity is well established within secondary markets, where resale values depend significantly upon provenance (Bandle, 2015). Therefore, it could be argued that authentication determinations become more critical with time. Artists and collectors alike aspire to authenticity in the artworks they produce or acquire, and authenticity is highly linked to being relatable to the artist's personality, spirit, or character, adding value to the artwork and preserving its cultural heritage. (Newman & Bloom, 2012)

Counterfeiting and fraud are prevalent within the art market, and authentication determinations have become more critical over time, often involving examining technical details such as brushstrokes, paper type, and patina on bronze sculptures, among others. The use of scientific methods such as radiography and carbon dating has also helped to prove or disprove claims regarding the origins of artworks (Sloggett, 2019). Since rarity affects demand levels when supply remains constant, genuine items hold higher resale values over counterfeit ones; therefore, authenticating works is crucial both culturally and financially for artists producing their pieces or collectors acquiring them from secondary markets (McNulty, 2006).

### **2.1.2 Rarity**

Rarity in the art world is usually defined by supply and demand and can produce a sort of mythology about the object and create a competitive ambiance for an auction because the scarcity of an object can create a sort of mythology around it, imbuing it with prestige

and desirability that fuels fierce competitiveness within auction environments (Moulin & Yeoman, 2011).

However, it is difficult to accurately determine rarity due to subjective valuations in the art auction market due to a lack of objective criteria, which highlights the roles of intermediaries such as art critics, historians, dealers, and auction houses in assessing artworks' quality and value over time.<sup>2</sup>

It can be concluded that artists seek out rare materials such as precious stones or metals when creating pieces with the knowledge that it will add both cultural significance and potentially increase their long-term monetary gain and induce further inciting opportunities for increased bidding upon selling time during auctions (Rengers & Velthuis, 2002).

### **2.1.3 Historical Importance**

Historical importance has significant value, as it represents an object's significance and the role of its history in contemporary society, leaving behind a legacy made by past generations and serving as a link between different periods, laying the foundation for cultural continuity.<sup>3</sup>

Analyzing these objects provides a context for how societies operated, their technological advancements, and the belief systems at play during those times. Among the many other valuable insights encompassing geographical location or political climate these historical items are housed within museums and offer access to shared culture, aiding historians in constructing well-rounded depictions bound to research-grounded evidence (Rampley, 2005). Furthermore, examining the marketability around such ancient collections reveals changing perceptions concerning concepts such as authenticity, while providing economic footing by creating opportunities for buyers who invested in the art auction market or in collecting rare pieces (Galenson, 2005).

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<sup>2</sup> The Value of Art | Episode 3: Rarity. (2016, December 20). Sothebys.Com. <https://www.sothebys.com/en/videos/the-value-of-art-episode-1-authenticity>

<sup>3</sup> Sotheby's (Director). (2016). The Value of Art | Episode 5: Historical Importance. <https://www.youtube.com/watch?v=LRenUbdgpl>

### **2.1.4 Medium**

Medium refers to the material used by an artist to create a painting or object, with rarer mediums often commanding higher prices at auctions. However, other factors such as size can also influence the pricing and perceived value of artwork, with larger pieces often carrying more impact and presence, leading to increased demand and price.<sup>4</sup> In addition to affecting the financial worth of individual pieces, the medium plays a pivotal role in preserving cultural heritage through museums. The preservation of these artifacts ultimately allows for the continued access, study, and appreciation of artistic achievements from various cultures throughout history. This is particularly vital considering that many artworks are susceptible to deterioration due to environmental factors, such as light exposure, improper handling, or fluctuations in temperature and humidity (Tan & Dang, 2022). Therefore, not only does the medium impact an artwork's financial worth, but it is also essential in maintaining its aesthetic integrity (Yoshida, 2004).

### **2.1.5 Condition**

The condition plays a crucial role in evaluating the value of art pieces with the state of conservation, including any restoration work carried out on an object affecting both its aesthetic and monetary value. The condition of an art piece can also provide insights into its historical context and provenance through a close examination of wear and tear or other signs of use (Fincham, 2019).

### **2.1.6 Provenance**

Provenance refers to the ownership history of an artwork, which can increase its value if it has a prestigious or interesting provenance, for example, being owned by a famous collector or figure in history. This prestigious or interesting provenance can increase the value

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<sup>4</sup> Sotheby's (Director). (2016). The Value of Art | Episode 9: Medium. <https://www.youtube.com/watch?v=mvI9vBEQfgU>



of an artwork significantly with this information creating a historical context and adding cultural significance to art pieces (Bandle, 2015).

Several factors influence the weight a provenance carries when determining its impact on the value of an artwork. A transparent record tracing back directly from the creator to the current owner with no unauthorized alterations enhances authenticity, indicating legitimacy throughout generations, helping identify origins, and assists immensely in research regarding certain art styles (Bandle, 2015). Provenances become even more relevant today due to technology facilitating fraudulent activities like counterfeits emerging steadily and increasing sellers' misleading conducts to customers (Polk & Chappell, 2019).

The importance of provenance in the art auction market lies in its role in safeguarding the value and integrity of the artwork (Fritzke, 2008). By establishing a comprehensive provenance, collectors, buyers, and experts can ascertain the authenticity of a piece while avoiding forgeries or fraudulent works, which adds not only depth to an artwork's unique story, but also playing a vital role in determining its legal or illicit status within the market (Gramlich, 2017).

As such, ensuring proper documentation of provenance becomes imperative for buyers looking to invest in valuable artworks and sellers, aiming to establish their credibility. The transparency provided by detailed records enhances trust among stakeholders and maintains overall confidence in the art auction market (Oliveri et al., 2022).

In this particular context, it is important for potential buyers who wish to invest in valuable artworks and sellers aiming to establish their credibility to ensure that the provenance is well documented. Moreover, the role of provenance in determining the market value of an artwork cannot be overstated. As mentioned previously in the chapter, artwork with a prestigious or intriguing provenance- such as being owned by renowned collectors or prominent figures from history- often commands a higher price due to its intrinsic historical context and cultural significance; as a result, these previous owners contribute to additional layers of rarity as well as desirability (Fritzke, 2008).

To illustrate this point further, it is possible to explore the provenance underlying the artworks produced by the post-war artist Jackson Pollock. The history of ownership and

transactions surrounding these pieces prove essential not only in assessing their financial worth but, more importantly, in establishing their authenticity- that they indeed originated from Pollock himself rather than being replicas or imitations. As an example, it is possible to refer to one of Pollock's drip paintings, "No. 5.", which was created during his abstract expressionist phase, and represents a significant milestone in his artistic career (O' Hara 2015).

The provenance of "No. 5" by Jackson Pollock is considered well documented, showing that it was directly acquired from the artist by the well-known art collector Alfonso A. Ossorio (Levin, 2011). Over time, it has passed through distinguished galleries and private collections, such as The Betty Parsons Gallery and Samuel Irving Newhouse Jr. collection, before eventually being exhibited in major museums around the world (O' Hara 2015). This extensive provenance not only adds to the historical significance of the artwork, but also contributes to its immense market value due to its association with renowned collectors and institutions who have recognized its importance within post-war art movements.

Furthermore, the concept of provenance possesses different meanings in the realm of art, as it encompasses not only establishing authenticity and avoiding forgeries, but also influencing market value by providing invaluable insights into an artist's career trajectory. This can be further comprehended by analyzing scenarios where artworks can be traced back to a significant early period or are associated with important milestones in an artist's artistic development such as the case with Pollock's "No. 5" painting. In such instances, these works would be more valuable than pieces created during later or less impactful periods in the artist's career. Thus, provenance plays a vital role in determining both the monetary value and perceived significance attached to an artwork (Fritzke, 2008).

Provenance is crucial when considering the authenticity and value of an art object. It provides a comprehensive record of ownership history over time, which helps establish credibility while avoiding forgery or misrepresentation. Similarly, documenting provenance enables researchers and connoisseurs to trace every step from creation to exhibition venues.

### **2.1.7 Demand**

When it comes to auctioning artwork, the number of bidders can be a crucial factor that affects its value. Nonetheless, predicting prices can prove challenging due to varying beliefs about an artwork's worth (Heath, 2012), and the distribution of private-value benefits among prospective buyers with this uncertainty being largely attributable to what art market experts call a "common-value characteristic." (De Silva et al., 2012)

Despite this complexity in the valuation process, bidding wars involving several interested parties tend to inflate final sale amounts significantly higher than anticipated. Additionally, the presence of multiple bidders could foster a sense of competition, resulting in more aggressive bids and increased price volatility at auctions. (Heath, 2012)

Besides these factors contributing to the value of an artwork, there are also some price mechanisms used by auction houses to ensure maximum profit for sellers and to attract potential buyers. The minimum price guarantee is offered by the auction houses to sellers through the promise that their piece will be sold for the minimum amount agreed upon by the institution and the vendor. If the object is not sold or sold for less than the minimum price, the art auction house will either buy the piece or reinstitute the seller so that the base price is achieved. In the case of an object being sold for more, profits are usually shared between the auction house and the vendor. While this generates more opportunities for selling and buying art in the art auction market, it also raises questions of transparency within these transactions, since any price that is published can be different from the amount it was sold for (Adam, n.d.).

Moreover, confidential reserves play an important role in price assessment and transparency in the art auction market. These confidential reserves are set by the auction house and seller, setting up a minimum price; if this amount is not reached during the bidding process, the artwork goes unsold or is bought in by the auction house (Ashenfelter & Graddy, 2006). There are even some bidding techniques used to achieve the price set by the reserve,

and the most common one would be ‘bidding off the chandelier’ in which the auctioneer executes bidding in the name of the seller.

However, this pricing strategy brings ethical dilemmas regarding the legitimacy of an auctioneer bidding on behalf of the seller because it may create a conflict of interest and undermine the transparency and fairness of the auction process (Heath, 2012). Confidential reserve prices also reduce the art market efficiency and transparency. Through the secrecy surrounding these prices, buyers may not have a clear understanding of the true value of the artwork because of their inability to create an accurate price prediction (David et al., 2013).

In conclusion, the art auction market presents a challenging paradigm that incorporates several subjective and objective factors in determining an artwork's worth. Although the valuation process is complex, it is evident that successful auctions can attract multiple bidders to compete aggressively for pieces of their choice (Adam, 2014.). Therefore, stakeholders in this industry must balance various elements, such as authenticity, artistic appeal, and popular demand, alongside other arbitrage activities when assessing fair prices for any given work of art.

While experts play important roles in influencing perceptions surrounding artistic value or potential profit generation outcomes, auction houses have become principal players within the global economy, helping increase liquidity through "price discovery" coupled with speculation tactics, leading to heightened sales figures (Adam, 2014).

In Section 2.2, fraud in the art auction market is further discussed from a critical standpoint, briefly exploring the types of fraud prevalent in this market and its potential impact on the auction industry as a whole.

## **2.2 Art Fraud: Definition, Ramifications and Pertinence**

The art auction market is a multi-billion-dollar industry that has attracted many investors and collectors over the years, however, it is an inefficient market that contributes to the occurrence of art fraud (David et al., 2013).

Art fraud can be defined as a form of art crime involving the deliberate deception or misrepresentation of an artwork's true origin, authenticity, or provenance. (Hufnagel & Chappell, 2019). It also takes the form of theft, money laundering, or other illicit activities related to the buying and selling of art and during this chapter, we will delve into its various types and ramifications.

Art fraud can be classified into several types including fakes, forgeries, and copies (Nguyen et al., 2018). The distinction between fakes and forgeries is crucial, as forgeries are considered to be more serious art crimes due to the intention of deceiving buyers into assuming the artwork to be original when in fact it is not, while fakes are created to mimic an artist's style without necessarily deceiving buyers (Hufnagel & Chappell, 2019). Nonetheless, copies are more controversial as they can be seen in some countries as a form of emulation or tribute to an artist's style (Nguyen et al., 2018), instead of a fraudulent activity, they are defined as art pieces that duplicate the original work of an artist but with no intention to deceive, associated with issues of intellectual property and copyright infringement, rather than art crime with fraudulent intent (Gupta, 2005).

The ramifications of art fraud are far-reaching, extending beyond the art market and affecting society as a whole (Hufnagel & Chappell, 2019). First, art fraud undermines the integrity of the art market and lowers public trust in its authenticity which leads to a decrease in investments (Amineddoleh, 2015). Moreover, it can damage the reputation of artists and collectors whose names may be associated with fraudulent artwork, and it has significant financial implications as buyers and investors may suffer huge losses due to the purchase of fraudulent art pieces.

Second, art fraud can lead to legal disputes and financial losses for buyers who may have purchased fake or forged artwork at inflated prices and to the destruction of cultural heritage, as art thieves and fraudsters may steal or forge cultural artifacts and sell them on the black market, thereby misrepresenting cultural heritage (Amineddoleh, 2015). Additionally, art fraud is not only an economic crime, but also a threat to cultural heritage, as it can contribute to the loss and destruction of significant historical and cultural artifacts, which are invaluable to society.

Third, art fraud has broader societal implications as it may contribute to the funding of criminal activities while also facilitating money laundering schemes. This is an area where there are different repercussions on how to approach art fraud, especially in different countries and cultures. It is possible to exemplify such a difference by mentioning France, which possesses a legal system that has protective measures against art fraud (Article 1130, French Civil Code, n.d.), and China, which lacks specific laws that address art fraud (Jingtian & Gongcheng - Angell Xi, 2019). In addition to these examples, other countries do not record art fraud as a separate entity from other forms of fraud, making it difficult to estimate the incidence of such crimes with these competing definitions of what constitutes art fraud, which can complicate the efforts to quantify the problem. Because of the lack of official statistics and policing agencies that separate art fraud from other forms of fraud, it is difficult to estimate the true extent of art fraud.

Therefore, market participants face a significant dilemma: while the need to protect their investments puts them on high alert, overzealousness may turn out counterproductive, causing unnecessary suspicions about otherwise authentic artwork and undermining their overall confidence in legitimate pieces being traded (Runhovde, 2021). Balancing quality control with transparency and fairness presents an ongoing challenge, as all stakeholders aim to maintain confidence within this lucrative industry.

The relevance of art fraud in contemporary society is a matter of great curiosity and concern because of its impact on various aspects of the art auction market and society as a whole. It poses a substantial threat to the integrity and credibility of the art market, which relies heavily on trust and authenticity. (Heath, 2012) The prevalence of forged artwork undermines this foundation with mistrust, making it increasingly difficult to differentiate between genuine and fraudulent pieces.

As a concluding note to this chapter, it is possible to affirm that the concept of value in the art auction market is one of extreme complexity and depth. (David et al., 2013) The determination of value in this market involves numerous factors that go beyond mere aesthetic appreciation or artistic skills. While these aspects are certainly important, other elements such as provenance, rarity, cultural significance, historical context, and marketing strategies contribute significantly to an artwork's perceived worth. Furthermore, some

pricing strategies used by auction houses also impact the value within the art auction market, as well as transparency and trust in the market.

This lack of transparency in the art auction market creates perfect conditions and an inefficient market that propels the crime of art fraud. (David et al., 2013) Art fraud has several social, economic, and cultural repercussions, and to better understand how these crimes affect the art auction market, it is necessary to further delve into players' perception of fraud risk within the market.

## **Chapter 3: Perception of Fraud Risk in the Art Auction Market**

Fraudulent activities in the art auction industry have become a growing concern in recent years, drawing significant attention from both scholars and law enforcement agencies. As the art market continues to expand, dealing with billions of dollars' worth of transactions each year, instances of auction fraud have become increasingly prevalent. According to the Fine Art Institute, over 50% of art is forged or distorted (Scorcu et al., 2021). This has sparked interest in investigating the causes, types, and effects of fraud in this industry.

The art auction market is characterized as being an extremely opaque market (McNulty, 2006). An opacity that benefits some players and leaves the possibility of disguising several types of crimes. However, the focus of this study is the act of fraud and how it affects the market in several aspects, such as risk perception and reputation.

### **3.1 Understanding Buyers' Perception of Fraud**

Comprehending buyers' perception of art fraud risk is essential in assessing its influence on their behaviour in the art market, with the perception of risk referring to an individual's subjective assessment of the likelihood and potential consequences of encountering fraudulent artworks in the market (Amineddoleh, 2015). Buyers' perceptions of art fraud risk can significantly impact their behavior in the art market (Runhovde, 2021).

It would be expected that whenever buyers perceive a high risk of art fraud, they would be more likely to adopt cautious and defensive comportments. Nonetheless, the influence of fraud perception on behavior in the art market is complex. While it is logical to assume that a higher perception of art fraud risk would lead buyers to be more skeptical and hesitant in their purchasing decisions, the impact on buyer behavior may differ depending on various factors, such as individual characteristics, market conditions, and the perceived value of the artwork (Cheong, 2021).

Whenever an artist's work is perceived as highly valuable or prestigious, buyers may be more willing to take the risk of potential fraud, as they believe the potential rewards



outweigh the risks, with scandals regarding fraud causing sellers to only postpone their sales (Flynn, n.d.). Nevertheless, their impact is considered small “indicating that price increases lead more forgers to enter the market.” (Flynn, n.d.) As was analyzed with the case of the market revolving around the sculptures by Alberto Giacometti in which an empirical study was performed after the discovery of several forged sculptures in the market (Scorcu et al., 2021), it was found that despite the increased fraud perception, buyers were still actively participating in the market and bidding on Giacometti's artworks. There were some variations in price during and after the scandal, but overall, the demand for Giacometti's work did not significantly decrease and its price remained relatively stable with “its effect being short-lived, and the segment moving towards its previous pre-shock trend” (Scorcu et al., 2021).

This leads to the conclusion that buyers may have placed higher importance on the prestige and aesthetic value of Giacometti's sculptures, overshadowing their concerns about potential fraud. This case exemplifies reputation and perceived value overriding fraud perception, highlighting the complex nature of buyer behavior in the art market. It has been referenced by many different scholars and is usually an effect commonly seen in the international art market (Scorcu et al., 2021).

This phenomenon is often explained by the fact that a considerable percentage of buyers in the art market rely solely on the expertise and knowledge of a connoisseur to assess the authenticity of artworks, trusting their ability to differentiate between genuine and forged pieces, which reduces their perceived risk of fraud or influences their decision-making process (Amineddoleh, 2015). While it is true that buyers cannot solely rely on their own expertise to detect art fraud, they must also exercise caution when relying on the expertise of others. In the art market, where forgeries and counterfeit works are becoming increasingly sophisticated, it has become essential for potential buyers to adopt a comprehensive and technical approach to determine authenticity by hearing multiple professional opinions and analyzing scientific data (Sloggett, 2019). Therefore, it is crucial that buyers conduct diligent research and seek multiple opinions before making informed decisions regarding the authenticity of a piece.

Another factor that influences buyer behavior in the art market is the availability of information, in which buyers are more likely to engage in fraudulent transactions if there is

a lack of transparency and information about the artwork's provenance, history, and authenticity, which is commonly seen in the art market (Coslor, 2016). This lack of information can create uncertainty and increase fraud perception, potentially leading buyers to become more cautious or hesitant in their purchasing decisions. However, these perceived risks do not appear to deter buyers in the art market significantly (Scorcu et al., 2021).

Overall, fraud perception does not seem to have a significant impact on buyer conduct in the art market, with buyers often willing to take the risk of potential fraud in their pursuit of acquiring valuable and prestigious artwork (Bocart & Oosterlinck, 2011). However, it is important to reflect on the ethical implications of this behavior. While fraud perception may not have a substantial effect on buyer behavior in the art market, it raises ethical concerns regarding the authenticity and integrity of artwork (Nguyen et al., 2018).

Buyers who are willing to overlook the risk of fraud may contribute to the perpetuation of counterfeit artwork and undermine the credibility and value of genuine pieces in the art market and cultural heritage. However, buyers' perception is a factor in the complex dynamics of the art market. It is also important to consider the role of art institutions, galleries, and auction houses in ensuring the authenticity and legality of artworks, and the role of sellers and institutions in providing accurate and transparent information about the artworks they sell. Therefore, the sellers' and institutions' perceptions of art fraud risk will be further discussed in this chapter to gain a comprehensive understanding of the influence of fraud perception on behavior in the art market.

### **3.2 Sellers' Perception of Fraud**

To fully comprehend the impact of art fraud on behavior within the art market, it is crucial to understand how sellers and institutions perceive the associated risks. This knowledge allows us to gain insights into their perspectives and shed light on the extent to which art fraud affects their actions. The role of sellers within the market is undeniably influential in shaping the dynamics of the marketplace and these stakeholders, often driven by financial interests and motivations, have significant power in determining the fate of artworks that pass through their hands. However, a critical aspect that needs attention is their

perception, or sometimes the lack thereof, of art fraud risks in the market and the extent to which these perceptions affect their behavior and decision-making processes. It is notable that, in some instances, sellers and institutions may perceive art fraud as a risk that does not directly impact their interests, leading to a certain degree of apathy or indifference regarding the issue (Charney, 2016).

While art fraud poses substantial risks to buyers and the overall integrity of the market, sellers and institutions may perceive themselves as relatively insulated from these risks since sellers are often motivated by the desire to maximize profits, may prioritize the sale of artworks over the meticulous scrutiny required to detect art fraud and institutions, on the other hand, may focus on their reputation and maintaining a smooth auction process, which can sometimes overshadow their vigilance towards art fraud prevention. This divergence in perception comes from a perceived misalignment of interests, as sellers and institutions may not bear the direct financial or reputational consequences of art fraud to the same extent as buyers (Charney, 2016). Consequently, this perception can lead to a sense of detachment from the issue, creating a gap in the market's defenses against art fraud.

The world of art dealing is considered by many as a 'grey market,' in which the dealers are complacent and key participants in the negotiation (Runhovde, 2020). A self-regulating market that provides sellers, intermediaries, and buyers with a level of discretion not usually seen in another sphere that perpetuates an auspicious territory for ambiguous transactions and criminal acts (Hufnagel & Chappell, 2019). Throughout the research, the question arose of how informed the agents of this market are regarding art fraud and how this lack of information manipulates the market. Since discretion is the main characteristic of transactions, authenticity continues to be a serious problem propagated throughout transactions, mainly through the lack of effectiveness regarding provenance (Hufnagel & Chappell, 2019).

Provenance is originally a French word meaning the place of origin of something, and in the art market, it refers to the historical transactions that the art piece has passed with the objective of tracking it down until the origin of the object.<sup>1</sup> In several cases, the provenance can be verified through a living relative who has inherited the artwork and has

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<sup>1</sup> Provenance. (2023, July 12). <https://dictionary.cambridge.org/dictionary/english/provenance>

produced a catalogue raisonné for the artist (Hufnagel & Chappell, 2019). Through tracking down all of this information, an art dealer is providing ‘due diligence,’ a process to actually verify provenance.

The importance of provenance in art transactions is often overlooked by many dealers, who prioritize other factors and this neglect of provenance becomes the standard practice in most art sales involving buyers and sellers. A study conducted by Runhovde, which consisted of interviews with Norwegian art dealers between 2018 and 2020, revealed that trust played a crucial role in these transactions (Runhovde, 2021). While there are concerns about the lack of regulation within this profession, trust between the parties involved becomes the foundation upon which these deals are built.

Within this context of trust, the issue of provenance arises as an instinctual decision made by dealers based on their assessments of credibility and reliability (Runhovde, 2020). The majority opinion among interviewed dealers was to avoid delving too deeply into questions regarding provenance unless necessary since, “99% of cases it is totally fine” (Runhovde, 2020). This suggests that despite its significance in certain instances, overall dealer reliance on trusting relationships leads to a lenient approach when considering an artwork's origin or history.

This perception of risk is highly influenced by the uniqueness, subjective value, and authenticity of the artwork, which makes it difficult for buyers to evaluate the monetary value of an art piece before committing to a purchase. Studies highlight that the art auction market is a highly complex and traditional system in which trust plays a critical role in building relationships between buyers, sellers, and intermediaries (Polk & Chappell, 2019). In addition, trust, transparency, and information play crucial roles in the perception of risk in the art auction market. Research has also noted that guarantees, warranties, and provenances are essential tools for reducing risk perception among potential buyers. (Hufnagel & Chappell, 2019)

The significance of provenance in evaluating risk within the art market is illustrated by the high-profile case involving Wolfgang and Helene Beltracchi, German art dealers who gained notoriety for fraudulent activities. The couple orchestrated a sophisticated scheme that resulted in the creation and sale of over 300 counterfeit artworks by expressionist masters

(Hufnagel & Chappell, 2019). In this elaborate deception, Wolfgang utilized his artistic skills to meticulously replicate the styles of renowned artists, while Helene fabricated compelling narratives about the provenance of each artwork to lend them credibility among prospective buyers.

In the case of Helene Beltracchi and her forgery scheme, she managed to create a deceitful cover story to authenticate her fake artworks. To enhance the credibility of her fraudulent pieces, Beltracchi purchased an authentic camera from the 1930s to take photographs that would appear as if they were captured during that time period (Hufnagel & Chappell, 2019). Additionally, she dressed up as her deceased grandmother in front of these forged paintings to add authenticity when posing for the pictures.

Moreover, when questioned about the provenance of these art pieces by potential buyers or sellers, Beltracchi and her collaborators came up with a fabricated narrative involving Alfred Fletchheim, a German art dealer who allegedly fled Germany due to Jewish persecution during World War II. By associating their fake artwork with this seemingly legitimate historical figure and claiming that it was part of his collection known as "the Jägers Collection," they further solidified their perceived trustworthiness (Hufnagel & Chappell, 2019).

In addition to establishing provenance, the couple in question also took steps to ensure the authenticity of their art collection. They sought specialist opinions from renowned artists and experts in order to certify that the paintings they had acquired were genuine. An example of this practice is evident in their engagement with Werner Spies, a Max Ernst specialist who was not only well acquainted with the artist but also confirmed that one particular painting believed to be fake was actually created by Ernst himself (Hufnagel & Chappell, 2019).

Furthermore, it is worth noting that one of these paintings underwent scrutiny when it went up for sale at Christie's auction house: It was validated as an authentic work through meticulous examination carried out by specialists whose opinions carry significant weight within the art world.

Dr Nicholas Estaugh played a pivotal role in unravelling this intricate web of deception as he conducted meticulous scientific examinations that ultimately exposed Rotes

Bild mit Pferdenas (Figure 1) an elaborate forgery copying the style of Heinrich Campendonk.<sup>5</sup> These investigations demonstrated inconsistencies within its composition, particularly through detection schemes such as analyzing pigments used during different time periods.



Figure 1. Wolfgang Beltracchi. (2006). *Rotes Bild mit Pferdenas*. Retrieved from: <https://arttrado.de/news/faelscher-die-die-welt-bewegten-2-wolfgang-beltracchi/>

This revelation had significant reverberations within the art world: subsequent buyers who had acquired artwork from similar dubious sources began to subject their own pieces to rigorous scientific analyses, which consistently revealed traces indicating materials incongruent with their supposed creation dates (Charney, 2019). This pattern further reinforced the growing awareness regarding reliance on comprehensive authentication methods rather than mere trust based on narratives or external appearances.

Wolfgang and Helen Beltracchi case highlight the inherent risks associated with relying mainly on trust in the art market, particularly when provenance is considered the primary factor for authentication. Despite being convicted and sentenced to paying fines and undergoing house arrest for a certain period, Wolfgang Beltracchi continues to actively participate in the art market. He has continued selling his own artwork and even ventured

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<sup>5</sup> Beltracchi: The Art of Forgery (2014)—IMDb. (n.d.). Retrieved July 23, 2023, from <https://www.imdb.com/title/tt3212568/>.

into the realm of NFTs, drawing inspiration from renowned masterpieces such as Leonardo da Vinci's *Salvator Mundi* (Lau, 2021).

This situation raises important questions regarding suitable punitive measures for individuals involved in art forgery. In light of this case, one could argue that rather than facing appropriate consequences for their crimes, these criminals might actually be rewarded by gaining notoriety within both artistic circles and media coverage (Coslor, 2016). These issues demonstrate why establishing mechanisms rooted in independent scientific techniques alongside traditional methods of analysis is crucial to effectively combating forgery.

### **3.3 Influence of Fraud Perception on Behavior**

#### **3.3.1 The crime of art forgery**

Art Fraud is a type of crime that involves deception, forgery, and the manipulation of provenance in order to deceive buyers or collectors and even though it is considered a white-collar crime, its impact extends beyond financial losses (Amore, 2015). However, this crime is not considered as serious as other forms of criminal activity, and the perpetrators of art fraud do not face significant consequences, as previously shown in Beltracchi's case.

The concept of a lack of punishment in the realm of art crime is intricately linked to its societal structure and the perception of its associated risk. From a sociological standpoint, many art crimes are classified as victimless crimes, where the general public may lack sympathy towards wealthy victims, who are usually the main targets of art fraud (Mazurek, 2019). These victims are often seen as bearing responsibility for their own losses due to their perceived negligence in not safeguarding against potential deception. However, the prevailing notion of victimless crimes in the art market can contribute to an increased perception of risk among prospective buyers and investors (Flynn, n.d.).

It is possible to highlight that the perception of risk within the context of art auctions encompasses several interconnected factors. These factors encompass various elements,

including, but not limited to, the reputation and credibility associated with auction houses, the authentication processes employed, transparency regarding pricing information and provenance, market trends and speculation surrounding specific artworks, and legal considerations pertinent to buying or investing in artwork (Heath, 2012).

The reputation of an auction house has a crucial impact on how trustworthiness and credibility are perceived in its transactions with a strong and positive reputation, asserting confidence among buyers, sellers, and other participants in the art market (Heath, 2012). It also serves as a signal of integrity, expertise, and fairness in conducting business which is particularly important considering the nature of art transactions which often involve high-value items with unique characteristics.

Auctions houses with established reputations tend to attract more bidders and achieve higher prices for artworks compared to those without such repute and they are also likely to have better access to consignments from collectors who value their proven track record for success (Heath, 2012). Overall, it can be concluded that the reputation of an auction house significantly influences perceptions related to trustworthiness and credibility within its transactions.

The implementation of authentication methods during evaluations bolster buyer confidence and alleviates any concerns pertaining to the authenticity of artworks. Through rigorous procedures, auction houses verify the legitimacy and provenance of art pieces before they are put up for sale. This assures potential buyers and minimizes doubts regarding issues related to forgery or misattribution (Hufnagel & Chappell, 2019). Authentication practices play a crucial role in ensuring transparency within the art market by establishing an objective criterion through which the genuineness of artworks can be determined and through this process, buyers can make informed decisions based on reliable information about the artwork's provenance, artist attribution, and historical significance (Newman & Bloom, 2012).

Transparency and reliable provenance details play crucial roles in bolstering fairness and confidence within the art market's pricing mechanisms. When it comes to establishing the value of an artwork, transparency ensures that a fair process is followed, allowing all



stakeholders involved to have access to relevant information (Coslor, 2016). By providing clear and open procedures for determining prices, auction houses can create a sense of trust among buyers and sellers.

Moreover, having reliable provenance details adds another layer of confidence to the authenticity of artworks. Provenance records contain vital historical information about an artwork's ownership history, which helps establish its credibility, and buyers are more likely to feel secure in their purchases when they have access to such documentation as it provides assurance regarding the origin and legitimacy of the artwork (Bandle, 2015).

Market trends and speculation surrounding specific artwork play a pivotal role in the art market, influencing both prices and demand, which are often driven by various economic, social, and cultural forces that shape the perception of value within the art world (Jurevičienė & Savičenko, 2011). One important aspect is market sentiment, which reflects investors' beliefs about future price movements, based on current conditions (Blasco et al., 2012). Speculation comes into play as buyers and sellers anticipate changes in these trends to capitalize on potential gains or mitigate losses and auction houses contribute significantly to this process through their expertise in assessing market dynamics and setting estimated values for artwork. Additionally, external events such as exhibitions, publications, critical acclaim, or endorsements from influential figures can impact an artwork's perceived worth, with the media playing an essential role in disseminating information about artists' achievements or significant developments within the art industry (Beckert & Rössel, 2013).

The factors affecting market trends extend beyond artistic quality alone; the historical significance of works or artist reputations may attract additional attention from collectors seeking investment opportunities and well-informed dealers with profound knowledge of past sales records possess better insights when trading artworks (McNulty, 2006).

When it comes to purchasing or investing in artwork, there are several legal considerations that are crucial. The art market, like any other industry, operates within a legal framework that governs transactions and protects the rights of the parties involved, but there is a lack of specific laws in many different countries which increases the chance of criminal activities (Merryman et al, 2007). Buyers and investors should be aware of certain legal aspects before making any decisions (Merryman et al, 2007).

One important consideration is the authenticity of the artwork and the establishment of provenance which is essential as it ensures that buyers are acquiring genuine pieces. Additionally, copyright issues must be considered to avoid infringing on an artist's intellectual property rights (Towse, 2006).

Contracts should play a significant role in art transactions, outlining terms such as payment methods, delivery arrangements, warranties or guarantees from sellers regarding the authenticity or condition of the artwork, return policies, etc. (Grau-Pantureac, 2023). However, as will be further discussed in some of the case studies, many transactions in the art market are made through verbal agreements. Another area requiring attention is taxation laws related to buying or selling artworks, tax liabilities may arise concerning capital gains tax upon sale or transfer of ownership (Akhavan, 2012).

Lastly, it is also important to highlight the importance of insurance in the art market, which can mitigate risks associated with owning valuable art pieces particularly given their susceptibility to damage during transit, storage, handling, loan, multiple displays by museums or galleries over time even resulting in claims due to theft in some cases insurers require conservation reports (Kerr, 2016).

Besides these factors that influence the perception of risks and behaviors in the art market, another important aspect to consider is the psychological factors that contribute to the perception of fraud and influence behavior in the art market.

For instance, anchoring bias has a significant influence on art auction outcomes, anchoring bias is the practice in which the initial price set for an artwork can shape bidders' perception of its value and ultimately affect how much they are willing to pay for it (Beggs & Graddy, 2009). This anchoring bias affects individuals since they are more likely to bid higher on an artwork if the initial price set by the auction house is higher and directly impacts buyers' behavior and perceptions of the market (Ashenfelter & Graddy, 2006). By pushing this behavior, it can lead to an undermining of the credibility of both the auction house and the art market as a whole with these perceptions contributing to their decision to participate in the auction or purchase art from a particular seller.

Furthermore, the art market is influenced by various other factors that have brought about significant changes. One such factor is the increased liquidity facilitated by online resources, which has revolutionized the buying and selling of artworks (Louargand & McDaniel, 1991). With more accessibility to financing options, potential buyers now have greater flexibility in acquiring valuable pieces of art. These developments have transformed the dynamics within the art industry as a whole.

In conclusion, the art market is a highly intricate and multifaceted industry that is shaped by numerous factors with the concept of risk being a crucial consideration for both buyers and sellers in this market. Factors such as insurance coverage and concerns about fraudulent practices play significant roles in influencing behavior and decision-making within the art market. Sellers in the art market are not immune to the perception of fraud and its potential impact on their business and buyers also consider various psychological factors when making purchasing decisions.

Therefore, it is necessary for sellers in the art market to proactively address these concerns and take steps to mitigate the perception of fraud and for buyers to be cautious and conduct thorough research before making any purchases. It raises the question of how the art market can effectively regulate itself to ensure transparency and trustworthiness, thereby minimizing the risk of fraud while maintaining a sustainable and lucrative market. Through careful exploration and meticulous examination, the upcoming chapter will shed light on several key factors relating to art market regulation.

## Chapter 4: Current Practices and Regulations to Prevent Art Fraud

Art fraud, especially art forgery, has been a crime present throughout human history since art has had value attached to its creation (Fine, 1983). Since Ancient Egypt forgeries have been considered a lucrative form of business that continues to thrive in the modern art market (Fine, 1983). However, the dispute over art authenticity that brought about awareness of the prevalence of forgeries in the market also sparked the development of current practices and regulations to prevent art fraud was the case of Han van Meegeren, a Dutch artist and forger, who successfully sold an impressive fake Vermeer painting *The Supper at Emmaus* during the 1930s and 1940s (Fine, 1983) (Fig 2). Van Meegeren had failed to gain recognition as a legitimate artist and resorted to creating forgeries to deceive experts and even museums, being able to sell his masterpiece forgery to the Nazi commander Hermann Göring (Amore, 2015).



*Figure 2.* Han van Meegeren. (1936–1937) *The supper at Emmaus*. [Old canvas relined]. Museum Boijmans Van Beuningen, Rotterdam, The Netherlands. Retrieved from: <https://www.boijmans.nl/en/collection/artworks/101464/the-men-at-emmaus>

After the repercussions of the Van Meegeren case, there has been an increased emphasis on implementing measures to prevent and combat art fraud in the art auction market. The measures are varied within different countries and jurisdictions, but they generally aim to enhance transparency, create a system for authentication, and establish legal consequences for those involved in art fraud. For a better understanding of how each country legally approaches art fraud, this study will focus on three countries that have a similar legal heritage and principles as former British colonies: Australia, Canada, and the United Kingdom.

## **4.1 Government Regulations and Their Effectiveness**

### **4.1.1 Australia**

Australia has a relatively small and emerging art market, with its yearly auction sales reaching around A\$ 102 million,<sup>6</sup> and with the rise in value of this emerging market, there are more instances in which art fraud is committed, and as consequence it can damage the reputation of the market internationally and reduce its economic value (Nguyen et al., 2018). To address this issue, Australia has implemented certain measures and regulations that can be discussed and analyzed, for better understanding, they are divided into five measures.<sup>7</sup> The first one is the implementation of a Code of Conduct in which the Australian government, along with art industry associations, has developed a code that outlines ethical practices for artists, galleries, dealers, and auction houses. The main goal of this code of conduct is to promote transparency, honesty, and integrity within the art market and to ensure that artworks are accurately represented and described to potential buyers.<sup>8</sup> This code of conduct is also applied to all the employees that are working within the Australian Arts Council which assures that they do not “Not provide false or misleading information in response to a request for information that is made for official purposes.”<sup>9</sup>

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<sup>6</sup> The Art Law Review—The Law Reviews. (n.d.). Retrieved August 25, 2023, from <https://thelawreviews.co.uk/title/the-art-law-review/australia>

<sup>7</sup> Art Crime | Office of Justice Programs. (n.d.). Retrieved July 28, 2023, from <https://www.ojp.gov/ncjrs/virtual-library/abstracts/art-crime-0>

<sup>8</sup> Ibid

<sup>9</sup> Ibid

The second is the establishment of a certification system that authenticates artworks from aboriginal artists and provides buyers with confidence in their purchase. These systems involved the verification of provenance and documentation of the artwork's history, and after the artwork has been considered an authentic one it receives a label that considers it as an original Australian Indigenous artwork.<sup>10</sup>

It helped boost the work of underrepresented artists and assure the buyer that they are acquiring certified artwork. To obtain the label of authenticity the artist needed to be registered with the National Indigenous Arts Advocacy Association (NIAAA), the NIAA objective was to promote Australian Indigenous culture, but, in 2002, the Association stopped operating and therefore stopped issuing labels of authenticity for the artists.<sup>11</sup> This authentication system may have been operational for a short period; however, it has been crucial to protect the integrity of Australian Aboriginal Art and to promote future ideas that can prevent fraud and misrepresentation in the Australian art market.

The third is investing in training programs and educational initiatives to educate art professionals and collectors about the importance of assuring that the artwork being sold is original (Studies, 2022). The government started initiatives that aim to increase awareness and knowledge about the risks and consequences of art fraud and the benefits of ethical purchases, enabling individuals to make informed decisions when buying or selling artworks. These initiatives include buying artworks straight from the artists or through the galleries in which these artists are represented; being aware of materials that may be non-traditional while buying Australian Aboriginal artworks and asking for small details about the artist's life to verify that this seller does indeed represent the artist (Studies, 2022).

The fourth is by improving law enforcement. Australia did not possess a specialized art crime unit, so new efforts are being made to enhance law enforcement's capacity to address art fraud cases such as current reviews of Australian copyright laws.<sup>12</sup> The Australian Copyright Laws were introduced with The Copyright Act of 1968 in order to regulate literary, dramatic, musical, and artistic works, and the difference with Australian

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<sup>10</sup> Certificates of Authenticity (AITB). (n.d.). Arts Law Centre of Australia. Retrieved August 25, 2023, from <https://www.artslaw.com.au/information-sheet/certificates-of-authenticity-aitb/>

<sup>11</sup> Ibid

<sup>12</sup> Protecting Australian artists. (2022, November 24). Our Ministers – Attorney-General's Portfolio. <https://ministers.ag.gov.au/media-centre/protecting-australian-artists-24-11-2022>

copyrights is that there is no need to register your work to be copyrighted, it is done as soon as the idea is written or uploaded online.<sup>13</sup> However, there are no specific laws that address the incidence of art fraud and there are ongoing discussions about the need for better collaboration between the police, art industry professionals, and relevant government agencies to ensure a more effective response to art fraud (Davies, 2017).

Since 2010, several organizations such as the Art Law Centre of Australia and the Indigenous Art Code have been advocating for the copyright laws of the Aboriginals, and from the pressure that was exerted by these groups, the Competition and Consumer Amendment (Prevention of Exploitation of Indigenous Cultural Expressions) Bill was implemented and it would guarantee that “supply or offer commercial goods to a consumer that include Indigenous cultural expression unless supplied by, or following a transparent arrangement with, an Indigenous artist or relevant Indigenous community.” (Commonwealth Parliament, n.d.) would be considered a criminal offence. Nonetheless, this bill did not pass through the Senate Standing Committees on Environment and Communications that stated that the “broader objective is beyond the scope of the current bill.” (Commonwealth Parliament, n.d.) Therefore, there is still a current discussion regarding art fraud and artwork authentication applied to Australian law enforcement.

The fifth is through the enhancement of international cooperation especially through the efforts to collaborate with international organizations and other countries to share information, intelligence, and best practices in the detection and prevention of art fraud (Interpol, 2022). This cooperation is essential in a globalized art auction market where artworks can easily cross borders and where fraudulent practices may transcend national boundaries.

These measures are aimed at protecting the integrity of the art market, preserving the reputation of Australian art, and minimizing the economic losses associated with art fraud. However, these measures alone are not as effective in addressing the issue regarding art fraud in Australia. Even though there are Australian criminal laws related to fraud and forgery, import/export regulations, intellectual property laws, and consumer protection laws, there are none specific to art fraud. This lack of specific legislation and art crime unit makes it difficult

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<sup>13</sup> Copyright law | ALRC. (n.d.). Retrieved August 25, 2023, from <https://www.alrc.gov.au/publication/genes-and-ingenuity-gene-patenting-and-human-health-alrc-report-99/28-copyright-and-databases/copyright-law/>

for law enforcement agencies to prioritize art fraud cases and allocate resources to investigate them thoroughly (Alder et al., 2011)

#### 4.1.2 Canada

Canada has also a relatively new art market that has recently gained more attention from international buyers and collectors (Heritage, 2019). However, even though it is considered an emerging market, it has already faced some challenges regarding art fraud (Nelson & Nelson, 2016). The Canadian government takes a unique approach to addressing art fraud compared to other countries, such as Australia. While Australia lacks a specialized art crime unit due to a lack of reported cases,<sup>14</sup> Canada treats forgeries as faked documents and applies existing laws related to fraud and misrepresentation to art-related cases and offenders can be prosecuted for offences such as falsifying signatures, false advertising, or intentional misrepresentation in the art market (Branch, 2023).

Therefore, one can infer that the crime of art forgery or false authentication is covered by these laws, but, since there are no specific law enforcement squads that are specialized in art fraud crimes, many of them go undetected by the local police force since these local law enforcement agencies are not used to dealing with the complexity and lack of transparency within the art auction market. These regulations ensure that proper documentation and declaration of artworks are in place when they are being imported or exported, controlling their movement, and reducing the chances of fraudulently claiming an artwork's authenticity or provenance.<sup>15</sup> Besides that, import/export regulations and intellectual property laws also play a crucial role in preventing art fraud in Canada. If a buyer acquires an artwork in Canadian territory, he has to apply for a special export license to be able to transport the piece to another country.<sup>16</sup> In addition, if the work is considered essential for the Canadian cultural heritage, it will be included within the Canadian Cultural Property Export Control List and for that reason it cannot be exported from Canadian territory (Branch, 2006).

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<sup>14</sup> Art Crime | Office of Justice Programs. (n.d.). Retrieved July 28, 2023, from <https://www.ojp.gov/ncjrs/virtual-library/abstracts/art-crime-0>

<sup>15</sup> Art law: Restrictions on the export of cultural property and artwork. (n.d.). Retrieved August 1, 2023, from [https://www.ibanet.org/LPD/IP\\_Comm\\_Tech\\_Section/Art\\_Cultl\\_Inst\\_Heritage\\_Law/art-law-2020](https://www.ibanet.org/LPD/IP_Comm_Tech_Section/Art_Cultl_Inst_Heritage_Law/art-law-2020)

<sup>16</sup> Some Fine Art Cannot Be Exported From Canada—Export Controls & Trade & Investment Sanctions—Canada. (n.d.). Retrieved August 25, 2023, from <https://www.mondaq.com/canada/export-controls--trade--investment-sanctions/805984/some-fine-art-cannot-be-exported-from-canada>



The intellectual property laws in Canada are usually comprised of the Copyright Act and Trademarks Act, which provide legal protection for original artistic works and trademarks respectively. The Copyright Act in Canada grants artists and creators exclusive rights to reproduce, publish, and distribute their original works, including visual arts, they have to register their copyright with the Canadian Intellectual Property Office (Intellectual Property Rights in Canada, n.d.). The Trademarks Act provides legal protection for trademarks, which can include artist signatures or logos associated with their artworks and it also prohibits the unauthorized use or reproduction of these trademarks (Branch, 2021).

Furthermore, Canada has also different agencies and organizations that are currently proposing debates and discussions on the implementation of stricter regulations and policies to address art fraud. Organizations such as the Canadian Cultural Property Export Review Board that oversee the exportation of cultural property from Canada have been involved in discussions on how to combat art fraud.<sup>17</sup>

However, despite these measures, it is important to recognize that the current practices and regulations in Canada may have limitations in effectively preventing art fraud that is similar to the ones presented in Australia, such as the lack of specialized law enforcement units regarding art fraud and the absence of specific art crime laws.

### **4.1.3 United Kingdom**

The United Kingdom has one of the biggest art markets in the world, with a revenue of \$11.9 billion in 2023 (Chesters, 2023.). However, despite its significant presence in the art market, the United Kingdom has faced challenges in addressing art fraud and implementing regulations to combat this issue. Some of the measures adopted in the United Kingdom to regulate art fraud include the creation of the Art Loss Register and the implementation of legislation such as the Fraud Act

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<sup>17</sup> About CCPERB | CCPERB. (n.d.). Retrieved August 25, 2023, from <https://ccperb-cceebc.gc.ca/en/about-us/about.html>

The Art Loss Register was founded in 1990 as a private database and register of stolen and missing art and antiques.<sup>18</sup> It is a voluntary initiative that allows art collectors, dealers, and law enforcement agencies to report and search for stolen artworks, it even allows for the registration of valuable pieces to deter potential thieves and fraudsters and recover items if they are found. The Register also facilitates their services to nation-states and law enforcement by not charging any fees and providing access to their database.<sup>19</sup> This provides a valuable resource for tracking and identifying stolen artworks, helping to prevent their sale on the legitimate art market.

In addition, the Fraud Act of 2006 is legislation that was enacted in response to the growing concerns over fraud and its impact on various sectors, including the art market. Article 6 of the Fraud Act 2006 specifically addresses fraud by possessing any object that is known to be or reasonably suspected of being forged, including forged artworks.<sup>20</sup> Besides that, this legislation also covers offences such as making or supplying articles for use in fraud, participating in fraudulent business practices, and obtaining services dishonestly.<sup>21</sup> These measures provide a legal framework for prosecuting individuals who engage in art fraud and allow law enforcement agencies to act against those involved in the production, distribution, and sale of forged artworks. Nonetheless, none of the articles of the Fraud Act 2006 directly address fraud in the art market as a separate entity.

The Police and Criminal Evidence Act 1984 is another regulation in the United Kingdom that has implications for combating art fraud. This act sets out the powers and procedures for the police concerning criminal investigations, including the gathering of evidence by search and seizure and the handling of seized items.<sup>22</sup> It allows law enforcement agencies to obtain search warrants and seize artworks suspected of being fraudulent, providing them with the authority to investigate and gather evidence. However, as with the other Acts and legislation that address art fraud, it does not specifically focus on art fraud as a separate entity but rather treats it as a form of fraud that falls under the scope of criminal activity.

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<sup>18</sup> About us – Art Loss Register. (n.d.). Retrieved August 26, 2023, from <https://www.artloss.com/about-us/>

<sup>19</sup> Ibid

<sup>20</sup> Participation, E. (n.d.). Police and Criminal Evidence Act 1984 [Text]. Statute Law Database. Retrieved August 26, 2023, from <https://www.legislation.gov.uk/ukpga/1984/60/introduction>

<sup>21</sup> Ibid

<sup>22</sup> Ibid

Additionally, some other measures in the United Kingdom can also be utilized to combat art fraud, mainly through the efforts of cultural institutions and organizations. As seen previously in the case of Canada and Australia, there are no specific laws or regulations in the United Kingdom that directly address art fraud as a separate entity so cultural organizations such as Arts Council England play a vital role in combating art fraud through their policies and initiatives of conducting due diligence in their acquisitions and trying to promote transparency within the art market.<sup>23</sup>

Therefore, there is a need in Australia, Canada, and the United Kingdom to establish more comprehensive and specialized measures to address art fraud more effectively and this need is not set specifically for these countries but for the global art auction market as a whole. Current practices and regulations in Canada and Australia to prevent art fraud are primarily focused on applying existing laws related to fraud and misrepresentation to art-related cases instead of developing specialized laws and dedicated art crime units (Alder et al., 2011) (Nelson & Nelson, 2013). The United Kingdom also lacks regulations and guidelines specifically addressing art fraud and a regulating body to oversee the art auction market. In the next section, this study will delve into detail on the current practices adopted by auction houses to prevent art fraud.

#### **4.2 Auction House Practices to Authenticate Artworks and their efficacy.**

Art auction houses play a crucial role in the authentication process of artworks, as they are responsible for verifying the authenticity and provenance of the pieces they sell (Brodie, 2019). To ensure the integrity of the art market, auction houses employ a range of practices and procedures to authenticate artworks. One common method used by auction houses is conducting extensive research and investigation into the artwork's history and provenance and this involves examining previous ownership records, sales history, exhibition records,

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<sup>23</sup> How we invest public money. (n.d.). Arts Council England. Retrieved August 26, 2023, from <https://www.artscouncil.org.uk/how-we-invest-public-money>

catalogue raisonnée and any available documentation related to the artwork. Auction houses may also consult experts, scholars, and art historians to gather further information and expertise about the artifact that they are verifying (Bandle, 2015).

However, the practices and procedures employed by these auction houses have limitations that can compromise the effectiveness of authentication. First, conducting extensive research and investigation into an artwork's history and provenance is primarily dependent on available documentation but sometimes historical records can be incomplete or unreliable, making it challenging for auction houses to obtain accurate information about an artwork's origins (Bandle, 2015). Additionally, relying solely on previous ownership records or sales history might overlook instances where fraudulent documents were created to establish false provenance (Bandle, 2015).

Moreover, consulting experts and scholars for additional information is subjective as opinions may differ among professionals with authenticity being a complex matter involving interpretation and expertise; therefore, even well-respected authorities can make mistakes or disagree with one another which can cause misjudgments during the authentication process (Fincham, 2017). Furthermore, despite having access to various resources like exhibition records or scholarly articles regarding specific works of art - such sources are not always readily available due to limited documentation or inadequate preservation efforts over time (Sakka et al., 2010).

Another important method employed by auction houses is the use of scientific techniques and technology to analyze and examine artworks. These methods are only possible since technology has been constantly evolving, they include infrared imaging, X-ray analysis, and chemical analysis of pigments and materials used in the artwork and provide valuable insights into the composition, age, and authenticity of the artwork (Sloggett, 2019). Auction houses also rely on the expertise and knowledge of their staff members, who are trained to identify art fraud indicators through visual inspection, especially in details such as brushwork, signatures, style, and consistency with the artist's body of work. On the other hand, some may argue in favor of cautiously using scientific techniques and technology in analyzing artworks as a method to prevent art fraud.<sup>24</sup>

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<sup>24</sup> Detecting Art Forgeries: What Scientific Methods Can We Use? (n.d.). FutureLearn. Retrieved August 1, 2023, from <https://www.futurelearn.com/info/blog>

While these methods may provide valuable insights into the composition, age, and authenticity of the artwork, they are not the only reliable method.<sup>25</sup> Scientific analysis can only go so far in determining an artwork's true value and significance since technology alone cannot replace human expertise and knowledge when it comes to identifying art fraud indicators.<sup>26</sup> Visual inspection by knowledgeable staff members remains essential in uncovering subtle details that machines may miss such as the brushwork, signatures, and style - these aspects require subjective interpretation which a machine cannot fully replicate (Cole, 2016). Furthermore, there is always room for error or manipulation in scientific analysis results and forgers have become increasingly sophisticated in their methods of producing convincing fake artworks that evade detection even through advanced technological means such as infrared imaging or X-ray analysis (Hufnagel & Chappell, 2019).

To effectively combat art fraud, art auction houses need to employ a combination of scientific analysis, expert knowledge, and traditional art connoisseurship. This multifaceted approach allows for a thorough examination of artworks' authenticity and provides multi-layered protection against fraudulent practices. By utilizing scientific techniques alongside the expertise of experienced professionals in the field, auction houses can minimize the risk

Regarding authentication processes within the art auction market, there is a new and emerging technology that has the potential to revolutionize the way authenticity is verified: blockchain. Blockchain can be defined as a new technology that integrates decentralization, distributed computation, asymmetric encryption, timestamp, and consensus algorithm (Blockchain State-of-the-Art: Architecture, Use Cases, Consensus, Challenges and Opportunities - ScienceDirect, n.d.). With blockchain, various security services like authentication, integrity assurance, and confidentiality can be automated, thereby resolving challenges faced by current art authentication techniques (Bhushan et al., 2021).

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<sup>25</sup> Ibid

<sup>26</sup> Ibid

The use of blockchain within art auction houses' authentication processes offers several advantages, such as a secure and transparent chain of ownership record that ensures that every transaction and transfer of ownership is recorded and traceable. This chain of ownership record is crucial in the art auction market, where provenance and authenticity are highly valued attributes.

However, there are still some challenges to overcome in implementing blockchain within art auction houses' authentication processes. One challenge is the adoption and acceptance of blockchain technology within the art auction industry, while blockchain technology has gained popularity in various applications, including auctions, there may be resistance to its adoption within the art auction industry. Art auction houses may have concerns about the transparency and security of blockchain technology, as well as potential disruptions to existing authentication processes (Stublić et al., 2023).

Additionally, there may be a need for standardization and regulation in the use of blockchain within art authentication, it may require education and awareness campaigns to highlight the benefits and address any concerns or misconceptions. Therefore, art auction houses could profit from leveraging blockchain technology to enhance their authentication processes, ultimately boosting customer confidence and participation in the online auction market (Liang & Chi, 2021).

The benefits of blockchain would also extend to tracking and identifying stolen or looted artwork, as well as preventing the sale of such pieces in the art market. By providing a chain of ownership record that is dependent on the starting point of the blockchain record, blockchain technology can ensure the transparency and reliability of an artwork's provenance and authenticity (Shrimali, 2021). Additionally, the use of blockchain technology within art auction houses' authentication processes can enhance the security and privacy of transactions. By utilizing features such as information encryption and smart contracts, blockchain can automate the auction process without the need for deliberate intervention, ensuring the fairness and non-tampering of auction activities and results (Li & Xue, 2021).

By leveraging the decentralized and tamper-proof nature of blockchain, art auction houses can create a secure and transparent system for recording and verifying the ownership history of artworks. This system would not only enhance customer trust and enthusiasm for online auctions but also contribute to the overall integrity of the art market by preventing the sale of stolen or looted artwork.

In addition to blockchain technology, the use of image recognition software has been an innovative new method of recognizing forgery in the art market, utilizing computational tools and machine learning analysis to verify the authenticity of paintings (Polatkan et al., 2009). However, it is still a method that needs to be tested before becoming a staple in the process of authentication used by art auction houses.

In conclusion, there are several methods that art auction houses employ to be able to detect if an artwork is original. Provenance, documentation, scientific and technical analysis, blockchain and even software recognition are all used by these institutions to verify their objects, however, there are still several obstacles to each of these techniques and in the art auction market also presents as a challenge due to its global nature and constant evolution of fraudulent practices. In the next section, this study will delve into the lack of information and resources that prevent the full effectiveness of such authentication measures.

### **4.3 Lack of Information and Resources**

Current preventive measures against art fraud include the implementation of rigorous authentication processes, the use of advanced technology such as blockchain and image recognition software, the establishment of international databases for stolen and looted artwork, and the training of art professionals to detect and identify fraudulent practices. These measures aim to prevent art fraud by ensuring the authenticity and provenance of artworks, as well as by providing tools and resources for identifying and recovering stolen artworks.

Evaluating these processes is crucial to determine their effectiveness in preventing art fraud and while there have been advancements in preventive measures against art fraud, there are still challenges and limitations to consider. A significant challenge in preventing art fraud

is the lack of information and resources available (Day, 2016). To be able to achieve considerable effectiveness in preventing art fraud, there is a need for comprehensive and up-to-date databases that document known cases of art fraud, forgeries, and stolen artworks and while the establishment of such databases is a step in the right direction, but there is still a need for a unified system that can track and verify the authenticity of artworks from their creation to their current ownership.

This lack of information and resources can make it difficult for art institutions, particularly smaller ones, and those in emerging markets, to implement comprehensive preventive measures against art fraud and effectively authenticate artworks. Furthermore, the cost associated with implementing these preventive measures can also be a challenge for many institutions, smaller art institutions or auction houses usually do not possess regular private donors or significant amounts of government funding to sustain expensive technology methods to provide authenticity (Renz, 2003).

Additionally, there is also a lack of resources that extends to law enforcement agencies and regulatory bodies responsible for investigating and prosecuting art fraud, since there are no specified departments dedicated solely to dealing with art fraud in many countries. Moreover, as was mentioned in section 4.1, the current legal system in many countries may not have provisions or specific regulations that address the complexities of art fraud, making it challenging to prosecute offenders and effectively prevent art fraud.

Another factor that contributes to this lack of information and resources is the prevalence of underreported art crimes. Many art crimes go unreported due to a variety of reasons, such as the victims' reluctance to come forward, fear of negative publicity that would affect the price of their artworks, the fact that sometimes the crime goes undetected or even the perception that art crimes are not a high priority for law enforcement agencies as it is often perceived as a "victimless crime." (Mazurek, 2019)

Therefore, the current practices and regulations need to be reanalyzed to prevent the occurrence of a wide range of art fraud. To highlight the need for stricter regulations and prevention measures against art fraud, it is crucial to acknowledge and make known some



specific case studies that demonstrate that this type of crime is present and detrimental to the art market.

## **Chapter 5: Case Studies**

The central aim of this section is to present a series of case studies, each selected to offer insights into the world of art fraud within the art auction market. These case studies are essential to uncover the occasions when art fraud has happened and the consequences it has on the market while also exploring the interplay between authenticity and art in this complex marketplace. By delving into these cases, this study aims to provide a nuanced and comprehensive understanding of the multifaceted nature of art fraud within the context of art auctions.

The objectives of these case studies are to seek to elucidate the specific instances in which art fraud has unfolded within the art auction market. By analyzing these occurrences, we aim to discern the tactics and strategies employed by art fraudsters, shedding light on their methods and the vulnerabilities they exploit within the art market. Besides that, these case studies offer a closer examination of the profound consequences that art fraud has had, not only on affected buyers but also on the broader integrity and reputation of the art market as a whole.

Lastly, the analysis of these cases provides a valuable perspective that explores the essential role that trust plays within the art market. By analyzing these case studies, we aim to highlight the intricate relationship between trust and the art market, ultimately contributing to a more comprehensive grasp of the challenges and intricacies surrounding art fraud.

## 5.1 Joe Simon Whelan vs. The Andy Warhol Foundation

In 1989, British filmmaker Joe Simon-Whelan acquired Andy Warhol's painting, *Self Portrait* (Fig 3) for \$150,000. This particular artwork was part of a series consisting of ten portraits created in 1965 using acetate separations, similar to the renowned 1964 *Self Portrait*, which had been sold at Sotheby's auction house in 2006 for an impressive amount of \$3.7 million (Taylor Swain, 2009).

The subsequent resale of this painting marked the beginning of a three-year-long lawsuit against the Andy Warhol Foundation in the United States District Court for the Southern District of New York, which incurred costs exceeding \$7 million dollars for all parties involved (Taylor Swain, 2009). Through this case study, we explore the complexities of authentication boards and their impact on art ownership and value within the auction market domain.



Figure 3. Andy Warhol. (1965). *Self Portrait (Red)*. Retrieved from:  
<https://www.theguardian.com/artanddesign/2009/dec/04/andy-warhol-red-portraits-fake>

Upon acquiring the painting, Whelan asserted that it had previously undergone authentication by Fred Hughes, an appointed executor of Warhol's estate and an esteemed member of the Andy Warhol Foundation. However, subsequent to his purchase, Whelan discloses that Hughes prompted him to undertake further verification of the authenticity of the Warhol artwork. Once he consented to this additional authentication process, he discovered in 2001 that the foundation board deemed it non-authentic and rejected its validity. Consequently, Hughes advised him to make another attempt at certification through Andy Warhol's catalogue raisonnée. In 2003, his painting received a "double denial" stamp from the Andy Warhol Art Authentication (Taylor Swain, 2009).

As a consequence, this "double denial" could potentially harm his ability to sell the artwork as originally intended, with an estimated value of \$2 million in auction (Lacy, 2011). As a result, he decided to sue the Andy Warhol Foundation on the basis of violating American

Antitrust Laws. The American antitrust laws are comprised of three laws that are still present in the American legislative system and are essential to maintain equilibrium in the trade market. In 1890, the first antitrust law was presented: the Sherman Act, which prohibits any form of restraint on trade or monopolistic practices that could harm competition in the market. The Sherman Act aims to promote fair competition and prevent the concentration of economic power on the hands of a few entities. In addition, it prohibits any agreements or practices that would limit competition or create monopolies in the market. The fines applied to this act are significant, with penalties of up to \$100 million for corporations and \$1 million for individuals, as well as the possibility of imprisonment (The Antitrust Laws, Federal Trade Commission, n.d.).

In 1914, two more antitrust laws integrated the Sherman Act into the Antitrust laws. The first is the Federal Trade Commission Act (FTC), which serves as a regulatory body to enforce antitrust laws and promote fair competition in the market; it also prohibits unfair methods of competition and deceptive acts or practices that violate the FTC Act, resulting in possible civil penalties and enforcement actions. The second law introduced is the Clayton Act, which was set to prevent and punish the practices of mergers and acquisitions that would lead to a significant reduction in market competition. In addition to that, the Clayton Act prohibits anticompetitive practices such as price discrimination and exclusive dealing arrangements. These antitrust laws play a crucial role in ensuring fair competition and preventing monopolistic practices in the US market (The Antitrust Laws, Federal Trade Commission, n.d.).

The lawsuit filed by Whelan's legal team is based on the alleged violation of the Sherman Act, specifically regarding monopolistic practices and trade restraint, as outlined in American antitrust laws (Lacy, 2011). Simon-Whelan accused the Andy Warhol Foundation of engaging in actions that harmed competition within the art auction market and contributed to a monopolistic environment. Specifically, he alleges that the decision to deny authentication for *Self Portrait (1965)* was predetermined prior to submitting the artwork for evaluation, effectively restricting competition by limiting the availability of authentic Warhol artworks for sale.

Whelan also alleged that several other paintings from the 1965 series were deemed inauthentic by the board without sufficient justification. Furthermore, Whelan suggests that the foundation may intentionally attract potential Warhol collectors with the aim of later changing their decision on authenticity to align with their own financial interests. Comparatively, the art collector Richard Ekstract has reported encountering similar issues with the Andy Warhol Foundation's authentication board in 2022. Specifically, when attempting to sell *Self Portrait (red)* (Fig. 3), a piece from the same 1965 series gifted personally by Andy Warhol himself, Ekstract faced rejection as the foundation claimed that it was not an authentic work by Warhol (Widewalls, 2022).

Despite the rejection of authentication by the foundation, which claimed that the artwork was not an original Warhol piece, Ekstract sought validation from Richard Polsky, an expert in post-World War II American Art. Based on Polsky's confirmation of its authenticity, Ekstract made the decision to proceed with auctioning the artwork. Even though it lacked official authentication from the Andy Warhol Foundation and carried a relatively low estimated price range of \$500,000-\$700,000 (Widewalls, 2022), there is limited information available regarding whether or not Ekstract successfully sold it at auction.

Additionally, Whelan argued that the Andy Warhol Authentication Board functions as a monopoly within the Warhol art market because of its exclusive authority to determine the authenticity of his artworks (Taylor Swain, 2009). This monopolistic power grants the board control over pieces that are recognized as genuine and thus valuable, resulting in an unfair advantage in the auction market by limiting competition. As there are no alternative sources for authenticating Warhol's artworks, the board effectively holds sway over the market and exerts considerable influence on prices and demand for his pieces.

The case proposed by Whelan was not the only instance of questioning the decision-making process and transparency of the Andy Warhol Authentication Board. Collector Susan Shaer also filed a lawsuit regarding a painting from the same series of self-portraits in 1965, which was deemed to be inauthentic by the board (Warhol Foundation Accused of Defacing

Art, n.d.). Additionally, there have been other cases either settled or dismissed because of insufficient evidence or legal standing. What sets apart Whelan's case from previous challenges to the Andy Warhol Authentication Board is his argument about commercial interests influencing board decisions that could violate American antitrust laws, as well as his determination and financial resources to continue with this lawsuit (Lacy, 2011).

In 2010, Whelan settled in his prolonged legal battle against the Andy Warhol Authentication Board. As part of the agreement, Whelan acknowledged that the foundation did not participate in any fraudulent or illegal activities pertaining to the sale and authentication of Andy Warhol artworks. Despite lacking sufficient funds to continue with the lawsuit, Whelan alleged that the Warhol Foundation had “a 20-year scheme of fraud, collusion, and manipulation.” (Lacy, 2011)

The Andy Warhol Foundation refuted any allegations of misconduct and contested that the *Self Portrait* painting submitted for authentication was actually produced by a commercial printer who allegedly had no direct connection with Andy Warhol himself (Lacy, 2011). In addition to reaching a settlement and engaging in a protracted legal battle, the Warhol Foundation decided to dismiss members of its Authentication Board in 2011. Nonetheless, as highlighted by the Richard Ekstract case, similar challenges regarding authentication would continue to be significant concerns for the newly appointed Authentication Board at the Andy Warhol Foundation.

Therefore, it is essential to analyze the repercussions of the Simon Whelan vs. Andy Warhol Authentication Board and its implications for authentication procedures in the art auction market. This case sheds light on numerous issues concerning the trustworthiness of the artist foundation's authentication boards and their impact on the art auction market. As we can see in the case of Simon-Whelan vs. the Andy Warhol Authentication Board, Whelan alleges that the Foundation made decisions influenced by commercial interests, raising concerns about the integrity and impartiality of the authentication process. Other artist foundations have faced similar allegations, such as the Jackson Pollock Authentication Board, the Mark Rothko Authentication Board and the Basquiat Committee and all of these cases raise questions about the objectivity and credibility of these authentication boards (Kennedy, 2005).

Why would these foundations prioritize commercial interests over the integrity of the authentication process? As the art auction market relies on trust and credibility, it is important to address these issues and question the potential conflicts of interest that may arise within artist foundations and their authentication boards. The foundations have an interest in maximizing the value and marketability of the artworks associated with the artist, which may lead to decisions that prioritize commercial gain. If there are fewer authenticated artworks in the market, the value of the authenticated pieces might increase, thereby increasing the potential profits for the foundation and the artists' estates.

Consequently, the authenticity of artworks becomes a complex issue, as it is not solely based on the specificities of the artwork itself, but also influenced by external factors such as the commercial interests of artist foundations. Therefore, the question that remains is how to ensure the integrity of the authentication process and mitigate potential conflicts of interest within artist foundations and their authentication boards.

To ensure that the authentication process occurs in a fair and unbiased manner, it is necessary to establish clear guidelines and standards for the operation of artist foundations and their authentication boards such that the interests of commercial gain do not override the integrity of the authentication process. It is fundamental for these boards to maintain transparency throughout their operations and decision-making processes by implementing open and clear protocols for the authentication of artworks that are accessible to individuals seeking authentication.

Furthermore, it is crucial to involve independent experts, such as art historians, curators, and conservators in the authentication process to reduce the influence of commercial interests and ensure a more objective evaluation of the artwork (Hufnagel & Chappell, 2019). If only members of the artist foundation or individuals with a direct interest in the commercial success of the artist's work are involved in the authentication process, it increases the likelihood of biased decision-making to favor the commercial interests of the foundation rather than the accuracy and integrity of the authentication. In addition, artists' foundations should consider a system of checks and balances within their authentication boards to prevent conflicts of interest through the use of external auditors or oversight committees.



In conclusion, it is possible to affirm through the analysis of cases such as Simon Whelan vs. Andy Warhol Authentication Board that the commercial interests of artist foundations can impact the authentication process and raise concerns about the integrity of the process and how easily the art auction market can be manipulated. This shows that the art auction market is characterized by its lack of transparency and potential conflicts of interest, which can undermine the credibility of the authentication process (Cheong, 2021).

The monopoly on authentication of these artist foundations damages the art industry and the artists themselves. The industry is affected by a lack of transparency and competition in the authentication process, which limits access to authenticating artwork to only a few select organizations, while the artist's legacy is controlled and defined by these foundations.

Throughout this case study, it becomes evident that the authentication process for artworks is not a definitive and objective procedure and that artists' foundations and their authentication boards need to implement clear guidelines, involve independent experts, and establish checks and balances to ensure transparency and integrity in the authentication process and to address concerns about possible manipulation of the art auction market.

## 5.2 Ponzi Scheme: The Case of Larry Salander

A Ponzi Scheme is a fraudulent investment scheme where the operator promises high returns for investors by using funds from new investors to pay off earlier investors in a pyramid-like structure. This specific case study has been named an illegal Ponzi art fraud scheme by one of the creditors involved in the Larry Salander scandal that collapsed Salander-O'Reilly Galleries.

Larry Salander is a well-known player in the art world market, an art dealer who specializes in the work of the old masters and who without much of a proper upper-level education managed to open one of the biggest and most affluent art galleries in New York, called Sallander O' Reilly Gallery, located within an expensive position in the city, at Madison Avenue. Salander came from a middle-class Jewish family and thrived in the art world without many qualifications, he started off by working in a specialized antique shop and from there he would make the connections necessary to start collecting and selling artworks. Later on, he would open his gallery and it would continue to be a reference in the market for at least 40 years, with the selling of his artworks proportionating a lavishing lifestyle with multiple properties and even private jets (Panero, 2008).

Salander had charisma and storytelling qualities which made him an excellent seller and provided him with a number of famous clients who entrusted their whole collection to him, such as Robert de Niro Sr. and Stuart Davis (Panero, 2008). According to Ann Freedman, the gallery owner of Knoedler & Co which would later be sued for similar art fraud reasons, Salander had a magnetic way to attract people (Panero, 2008).

Even though he kept being a successful art dealer and gallery owner, the art market started to change its trends and contemporary and post-war art were being considered much more valuable than the works of old masters, with a Warhol piece reaching double the price of a Tintoretto painting.

This change in the art market would deeply affect Salander, who considered the work of the Renaissance to be superior to the ones presented through contemporary art and he took it upon himself the task of preserving and promoting the art of the old masters. In order to reach his goals, Salander first rented an old Italian Renaissance palace so that he could expand his collection of old masters and establish his gallery as a premier destination for admiring and purchasing these works (Pilkington, 2009). Through the purchase of several 16th and 17th-century artworks, he started to build a reputation as a prominent dealer in the field of old masters. However, the cost of rent for this palace and the acquisition of so many artworks strained his finances and he had to close his first establishment at Madison Avenue so that he would be able to afford the palace's rent (Press, 2010).

It can be observed that his ambition to rent this palace and buy numerous old master artworks was a crucial turning point in Salander's career. Since his financial situation was getting critically worse and he needed to generate significant income, Salander resorted to taking loans from different individuals and financial institutions, one of them being Jack Binion, owner of Binion's Horseshoe Casino in Las Vegas and with a family history in the gambling industry (Haslach, 2014). The decision to take loans from individuals and financial institutions, including Jack Binion, marked a pivotal moment in Salander's career as he struggled to pay his debts and keep up with the demands of his lavish lifestyle and business endeavors.

This financial struggle would eventually lead Salander to engage in fraudulent activities and in 2007 several of the artists he represented, states, collectors and investors were accusing him of misappropriating funds, not paying them for works that were sold and even misrepresenting provenance. His debt would total amount to almost \$100 million and after the initial accusations were out in the media, many more of his clients came forward with claims of fraud and deceit Davis (Panero, 2008). Earl Davis, the son of artist Stuart Davis, was one of the individuals who filed a lawsuit against Salander, alleging that he had sold his father's artwork without properly compensating or consulting the artist's estate. Besides that, Robert De Niro would also file against Salander, claiming that he had been defrauded of millions of dollars for artworks his father had made and that were consigned to Salander for sale (Pilkington, 2009).

Following the public accusations, numerous individuals initiated legal action against Salander. For instance, Salander's longtime partner Myron Kunin expressed in court that his trust and confidence had been betrayed by Salander's failure to fulfil a \$7 million purchase of a Georgia O'Keeffe painting. Arthur Carter, the former New York Observer publisher who previously showcased his sculptures with Salander, filed a lawsuit seeking \$1.2 million as repayment for loans that turned sour. Stanley Moss, another art dealer, secured a \$1 million judgment against Salander for unpaid purchases.

Additionally, Roy Lennox from Caxton Associates hedge-fund company sued - seeking both monetary reimbursement of \$4.6 million and punitive damages worth an additional \$10 million- alleging various illicit practices including attempting to settle debts through questionable attribution of artworks and Lennox was the one that referred to the entire spectrum of transactions involving Salander as an illegal Ponzi Scheme (Panero, 2008).

In an attempt to make the rumors regarding his fraudulent activities disappear, he started planning in 2007 an exhibition entitled "Masterpieces of Art: Five Centuries of Creation" in which artists such as Caravaggio, Rembrandt, and Vermeer would showcase in this huge exhibition of rare and valuable artworks. It was while the organization of this exhibition was underway that collector Clovis Whitfield would bring to Salander-O'Reilly Gallery a painting entitled *Apollo the Lute Player* (Fig. 4) which had been sold previously in auction at Sotheby's for less than a million dollars as a work made within the inner circle of Caravaggio's circle. Nonetheless, Whitfield hired the services of an Italian Art Specialist called Sir Denis Mahon who confirmed that the artwork was in fact a genuine Caravaggio piece (Experts at Odds over Painting's Pedigree, n.d.).



Figure 4. Michelangelo Merisi da Caravaggio. (c. 1595). *The Lute Player*. [Oil on Canvas]. State Hermitage Museum, Saint Petersburg, Russia.

With the emergence of this authenticated Caravaggio painting in his possession, Salander saw an opportunity to put this piece to be exhibited and later sell it for \$100 million to generate significant profits and bolster his art business whilst changing art market trends by reaching a higher price for an old master artwork instead of contemporary pieces (Haslach, 2014). However, his plans to make the "Masterpieces of Art" exhibition happen were marred by legal and financial issues.

One of his creditors, Donald Schupak, filed a lawsuit to seek the repayment of his loans and to restrain Whitfield's control over the gallery assets (Press, 2010). Through the scandals that were happening, Whitfield removed all the artworks he had loaned for the exhibitions including the Caravaggio piece. "Masterpieces of Art: Five Centuries of Creation" was cancelled due to a lack of financial backing and the ongoing legal battles surrounding Salander's fraudulent activities and the gallery was closed down due to a court order (Panero, 2008).

Therefore, after this scandal and the subsequent closure of the Salander-O'Reilly Gallery, Larry Salander filed for personal bankruptcy under Chapter Eleven of the United States Bankruptcy Code. Chapter 11 of the American Bankruptcy Code allows individuals to

reorganize their debts and develop a plan to repay creditors over time which would allow them to alleviate some of their financial burdens and potentially regain control over their assets (Chapter 11 - Bankruptcy Basics, United States Courts, n.d.). Salander would plead guilty to 29 counts of securities fraud, grand larceny, and scheming to defraud and was sentenced to serve a prison term of eighteen years, during the court hearings he would also admit to falsifying provenance records and selling paintings without proper authorization (Haslach, 2014).

The Ponzi art fraud scheme orchestrated by Larry Salander serves as a case study highlighting the intricate web of deception and manipulation that can occur within the art auction market. The issue surrounding Salander revolves around the matter of trust within the art auction market with varying interpretations of his actions, with some individuals expressing their disapproval of Salander's behavior. For example, Ellyn Shander recounts how her late father's collection, worth an estimated \$2 million, was entrusted to Salander for safekeeping but never returned to her: "Larry Salander took that which is the essence of the art world -- relationships -- and violated it in the worst possible way," (Press, 2010) contrary to some arguments, it can be suggested that the intention behind Lawrence Salander's actions was to promote misrepresented artworks and revitalize appreciation for old masters. A long-time artist represented by Salander, Paul Resika, expressed his perspective on the matter: "he did great exhibitions that I consider a very high and moral thing to do. He did tremendous things for art." (Press, 2010).

This case raises important questions about the lack of transparency and accountability within the art market and highlights the potential risks faced by investors and collectors. The selling of artworks is often based on trust and reputation, with many of the selling agreements made through informal verbal agreements that are not legally binding.

This lack of transparency is a common trait of the fine art market and potentially increases the risk of fraud and art crimes occurring. It also puts into question the authenticity and ownership of artworks within the market, especially through the forgery of provenance records. If the selling agreements are only based on trust and not legally binding, it creates a loophole that can be criminally exploited by dealers and sellers.

As well as being a financial crime that affects investors and the market itself, the unauthorized sale and misrepresentation of artworks also have significant implications for the collectors and art enthusiasts who trust their pieces to be safely stored and cared for by reputable dealers. Several times these individuals, like Ellyn Shander, have seen their valuable artworks disappear, never to be returned and many of them have a deep emotional attachment to these pieces, as they may hold sentimental value or be passed down through generations (Press, 2010).

As a recurrent theme in the art world, the lack of transparency and of regulated transaction processes needs to be addressed as it becomes an inefficient market for both investors and collectors in the art market and hinders the growth and potential of the industry as a whole (David et al., 2013). Art galleries and art institutions need to establish strict guidelines and regulations to ensure transparency and accountability in the buying and selling of artwork so that potential fraud and art crimes can be prevented.

In conclusion, the presence of a lack of transparency in the fine art market is an urgent concern that presents substantial risks to both investors and collectors. As exemplified by the noteworthy case involving Lawrence Salander, the absence of legally binding agreements and reliance on trust within this market creates a loophole that can be exploited by dishonest dealers. This not only results in financial harm for investors but also undermines the integrity and authenticity of the artworks themselves. Furthermore, the Salander case also highlights the larger issue of white-collar crime within the art industry in which fraudulent activities such as selling copies of artworks, tax fraud, and dealing in looted cultural objects are prevalent.

These cases are not isolated incidents, but rather indicative of a larger systemic issue within the art industry, as can be seen through the Knoedler Gallery scandal and other similar cases. Therefore, it is crucial for stakeholders in the art market, including galleries, institutions, and regulatory bodies, to collaborate and establish stringent guidelines and regulations that promote transparency, accountability, and ethical practices.

### **5.3 Yves Bouvier vs Dimitri Rybolovlev - Trust within an Artwork Transaction**

The case of Yves Bouvier vs. Dimitri Rybolovlev is a complex and intricate case that revolves around trust within an artwork transaction. To better understand the dynamics at play, it is important to briefly discuss both Yves Bouvier and Dimitri Rybolovlev, as well as the nature of the artwork transaction between them.

Yves Bouvier is a Swiss art dealer who started his career in the late 1980s and has since gained a reputation as one of the most prominent figures in the international art market. Bouvier is known for his role as an art dealer and intermediary, connecting buyers and sellers in high-value art transactions while also owning freeport businesses around the world to store and showcase art collections. His freeport company is called Natural Le Coultre, and it serves as a secure storage facility for valuable artworks (Knight, 2016).

Freeports that have warehouses companies such as Natural Le Coultre, located in Switzerland, Luxembourg and Shanghai, provide high-security storage facilities for art collectors and dealers, offering services such as climate control, on-site conservation, and restoration, as well as expertise in import-export procedures and customs regulations (Knight, 2016) Besides that, freeports are also a tax-free zone, allowing collectors to store their artworks without incurring taxes or duties until they decide to bring them into a specific country (Zarobell, 2020).

Bouvier met Dimitri Rybolovlev, a Russian billionaire and owner of AS Monaco Football Club, in the early 2000s. Through their interactions, trust was established between them, leading to multiple art transactions over the years and also a relationship that extended beyond business. Dimitri Rybolovlev is considered one of the wealthiest individuals in Russia, with significant investments and interests in various industries, including finance and mining (Bregman, 2019). However, he did not possess knowledge regarding the art market but had a desire to build an art collection that would represent his status and personal taste.



Therefore, through the connection with Bouvier, Rybolovlev relied on Bouvier's expertise and trusted his judgment in acquiring valuable artworks for his collection (Bregman, 2019).

From that moment forward, Bouvier and Rybolovlev engaged in a series of art transactions. The contract between them was signed throughout the selling of the first artworks with Bouvier asking for a 2% commission on the purchase price as his fee for locating and acquiring the artworks. Nonetheless, during these transactions, Bouvier charged more than the 2% commission they had previously agreed on since he argued that he was an art dealer so his commission rate could be more flexible and based on market conditions (Knight, 2016).

To gain a comprehensive understanding of this case study, it is crucial to provide further elucidation on certain terms, notably the distinctions between an art dealer and an art advisor. An art dealer refers to either an individual or a company engaged in the buying and selling of artworks, often serving as intermediaries between artists, collectors, and galleries (Bambic, 2015). Typically specializing in specific genres or periods of art, art dealers typically charge commissions ranging from 30% to 60% within the primary market. As for commissions in the secondary market, they can exhibit significant variations depending on mutually agreed-upon terms between dealers and buyers/sellers; however, percentages generally hover around 5% for artworks exceeding one million dollars and may reach up to 20% for those valued below that threshold (Custodio, 2020).

Art advisors, on the other hand, offer their expertise and guidance to clients who seek to develop or enhance their art collections. They are bound by a fiduciary duty to act in the best interests of their clients and provide impartial advice while upholding ethical standards (Océane, 2023). Furthermore, the level of commission they receive typically ranges from 20% for artworks valued under one million dollars to 5% for those valued above that threshold. This narrower commission range is attributed to the role art advisors play as consultants rather than direct participants in purchasing and selling transactions (Océane, 2023).

Several artworks were purchased by Bouvier to be sold to Rybolovlev, and it is possible to observe through the selling prices established by Yves Bouvier that the commission agreed with the Russian billionaire was not adhered to. Some of the artworks include works by Gustav Klimt, Mark Rothko, Leonardo da Vinci, and Pablo Picasso. All of these were sold for prices significantly higher than the agreed commission rate (Bregman, 2019) (See Table 1).

Artwork	Artist	Acquisition Date	Purchase Price	Selling Price	Final Commission
<b>Flute Player and Naked Woman</b>	Pablo Picasso	2010	\$3.5 million	\$25 million	86%
<b>Reclining Nude with Blue Cushion</b>	Amadeo Modigliani	2012	\$93.5 million	\$118 million	20.7%
<b>Water Serpents II</b>	Gustav Klimt	2013	\$112 million	\$183.3 million	38.8%
<b>Salvator Mundi</b>	Leonardo Da Vinci	2013	\$80 million	\$127.5 million	37,2%
<b>N°6 (violet, green, and red)</b>	Mark Rothko	2014	\$80.5 million	\$140 million	42.5%

*Table 1: Artworks sold by Yves Bouvier to Dimitri Rybolovlev and how much was his actual commission.*

Their dispute would extend to the courts of Switzerland, Monaco, France, Singapore, Hong Kong, and the United States of America. The lawsuit first started in December of 2014 when Dmitri Rybolovlev found out that Yves Bouvier had sold him an Amadeo Modigliani called *Nude on a blue cushion* for the price of \$118 million, while Bouvier had acquired the painting for only \$93 million, thus making a profit of \$25 million, which would make his

commission almost 20% higher than the agreed 2% (Knight, 2016).

In January 2015, Rybolovlev filed a lawsuit in Monaco alleging that Bouvier had engaged in fraudulent practices by inflating the prices of the artworks and that his actions had cost him at least \$1 billion in monetary losses. In the subsequent month, Bouvier gets arrested by the Monaco authorities on charges of fraud and money laundering, but he is later released on a \$10 million bail (Dafoe, 2020).

The Singaporean High Court ruled to freeze his assets in Singapore, where he possesses multiple properties and one of his freeport warehouse facilities. His case in the Singaporean court unfroze his assets, but the legal battle continued as Bouvier appealed that the case should be discussed in Switzerland, his country of citizenship, and the Singaporean Court of Appeal agreed, stating that the case should be heard in Switzerland (French Press, 2014).

Nonetheless, this did not mark the end of their legal dispute, since Rybolovlev obtained a Mareva Injunction against Bouvier from Hong Kong's High Court (Leach et al., 2015). A Mareva Injunction is a court order that freezes a person's assets to prevent them from dissipating or disposing of their wealth during legal proceedings (Mareva Injunction, n.d.). However, Bouvier's assets were unfrozen after he came into an agreement with companies that were linked to Rybolovlev that allowed for the release of his assets.

In 2018, a \$380 million lawsuit was filed by Dimitri Rybolovlev's company, Accent Delight International Limited in the Manhattan Federal Court, against the auction house Sotheby's, alleging that Sotheby's knew about the overinflated prices set by Yves Bouvier and facilitated the fraudulent transactions (*Accent Delight Int'l Ltd. v. Sotheby's & Sotheby's Inc., 18-CV-9011*, n.d.). Rybolovlev claims that Sotheby's intentionally provided inflated appraisals to Bouvier enabling him to purchase the works for less and sell them at the auction house's inflated estimates (*Accent Delight Int'l Ltd. v. Sotheby's & Sotheby's Inc., 18-CV-9011*, n.d.). Through these actions, Bouvier was able to conceal actual acquisition prices from Rybolovlev. Sotheby had been the mediator on the sales of 14 out of the 28 artworks that were involved in the dispute between Yves Bouvier and Dimitri Rybolovlev, such as the

painting *Salvator Mundi* by Leonardo da Vinci (Fig. 4), which Bouvier acquired from Sotheby's for \$80 million and sold it to Rybolovlev for \$127.5 million (Kent, 2021).



Figure 5. Leonardo da Vinci. (c. 1500). *Salvator Mundi*. [oil on walnut wood]. Retrieved from: [https://en.wikipedia.org/wiki/File:Leonardo\\_da\\_Vinci,\\_Salvator\\_Mundi,\\_c.1500,\\_oil\\_on\\_walnut,\\_45.4\\_%C3%97\\_65.6\\_cm.jpg](https://en.wikipedia.org/wiki/File:Leonardo_da_Vinci,_Salvator_Mundi,_c.1500,_oil_on_walnut,_45.4_%C3%97_65.6_cm.jpg)

The *Salvator Mundi* painting is a particularly interesting and controversial piece in this case study and also in the question of authenticity. The painting has been a point of discussion within the art world, with debates surrounding its attribution to Leonardo da Vinci since at first the painting had not been attributed to the artist and after scientific analysis and restoration, it was declared to be a work produced by Leonardo da Vinci. However, many experts still question the authenticity of the painting, citing inconsistencies in style and technique, and the work is often attributed to Leonardo's workshop (Brinkhof, 2022).

In addition to that, the painting has been considered missing since it was acquired by the Saudi Arabian Prince Bader bin Abdullah bin Mohammed bin Farhan al-Saud for \$450 million in a Christie's auction and it has not been publicly displayed or seen since its purchase in 2017 (Schachter, 2019). After its auction at Christie's, it became the most expensive painting to ever be sold in the history of art auctions (Masterworks, 2022).

The controversy surrounding the *Salvator Mundi* painting still continues, since the digital platform ElmonX and the imaging company Bridgeman Images came together with a deal to turn *Salvator Mundi* and other paintings into NFTs (non-fungible tokens), which sparked further debates on the authentication and ownership of the artwork (Aton, 2023).

The New York South District Court ordered in 2019 that the sigil between emails exchanged through, at the time the vice president of Sotheby's, Samuel Valette, and Yves Bouvier regarding the sale of artworks should be unsealed. Through the exchange of these emails, it was possible to see that the prices had been coordinated by Bouvier and Valette to mislead Rybolovlev, resulting in inflated purchase prices. Therefore, the United States District Court for the Southern District of New York applied articles 1 and 3rd of the 18th of March 1970 Hague Convention. According to Article 1 of the Hague Convention, in countries that are parties to the Convention, it is possible for other participating countries to request relevant documents for commercial or civil transactions (Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, 2007). Additionally, Article 3 of the Hague Convention outlines that judicial authorities in the country where these documents are located should aid in obtaining and transmitting them as specified (Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, 2007).

At the New York District Court, a letter of request was submitted to the International judicial assistance to obtain evidence from Yves Bouvier for official use in the civil proceeding currently pending before the New York South District Court. In 2015, the case filed by Dimitri Rybolovlev against Sotheby's was dropped due to a lack of evidence. (*Accent Delight Int'l Ltd. v. Sotheby's & Sotheby's Inc., 18-CV-9011*, n.d.)

Besides the New York, Monaco, and Hong Kong lawsuits, Rybolovlev also attempted to file against Sotheby's for a motion in the United Kingdom (*Russian Billionaire Rybolovlev Sues Sotheby's for \$380m in Fraud Damages*, n.d.). However, there was already a counter-lawsuit filed in Switzerland by Sotheby's and Yves Bouvier for financial damages against

Rybolovlev. Since the Lugano Convention denies multiple lawsuits among convention members (Norway, Switzerland, Iceland, the UK, and Denmark), the case in the United Kingdom was dismissed, under the Article 23 of the Lugano Convention, which states that:

If the parties, one or more of whom is domiciled in a State bound by this Convention, have agreed that a court or the courts of a State bound by this Convention are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction.

"

(Article 23 § 1, Lugano Convention, 2007)

Since Yves Bouvier was domiciled in Switzerland, which the Lugano Convention binds, and the agreement between Sotheby's and Bouvier stipulated that the courts in Switzerland would settle any disputes, the case in the United Kingdom was dismissed based on the jurisdiction clause specified in the Lugano Convention (Carrigan, 2018).

In 2015, all cases pertaining to Dimitri Rybolovlev's allegations against Yves Bouvier and Sotheby's were dismissed due to insufficient evidence in multiple courts including the New York District Court, Monaco, Hong Kong, Switzerland, and the attempted case in the United Kingdom conditions (Knight, 2016). However, a recent development has occurred as Rybolovlev has appealed against the decision of the Geneva Court leading to a reopening of the investigation. As of now, the case remains pending in Geneva (Kinsella, 2022). Furthermore, Yves Bouvier has filed a countersuit for billion-dollar damages alleging harm done to his business and reputation. The legal proceedings for this countersuit are still ongoing (Miller, 2017).

There is no evidence that the legal battle between Yves Bouvier and Dimitri Rybolovlev will be solved amicably shortly. Different considerations need to be addressed when analyzing this case study and an important perspective is to consider both their defenses regarding the contract dispute and the selling and buying of artworks.

Rybolovlev has accused Bouvier of overcharging him for the artwork, with a commission that was not the 2% agreed between both parties but instead, a significantly higher percentage. Yves Bouvier argues that he was acting as an art dealer and not an advisor, therefore the agreed commission does not apply.

Consequently, it is necessary to further delve into the implications of not having a written contract in this transaction, which could have potentially prevented or clarified any misunderstandings regarding the agreed commission percentage. In the art auction market, the practice of verbal agreements is commonly used within the art industry, but it is a risk for both the seller and the buyer. Verbal agreements can easily lead to misinterpretations or disagreements, as there is no concrete evidence of the terms and conditions agreed upon by either party. As shown in the case of Yves Bouvier and Dimitri Rybolovlev, the absence of a written contract has created ambiguity and allowed for conflicting interpretations of the agreed commission percentage, which has been a major point of contention in this case. If the contract is only made by verbal agreements there can be many potential issues that arise such as unclear terms, misconceptions of the agreement and the lack of a clear record of the agreed-upon terms. Therefore, it is crucial that in art transactions detailed written contracts are established to ensure clarity and prevent potential disputes.

In addition to that, the roles of freeports as places of storage can be critically questioned in this case study. The use of freeports as places of storage in the art world has raised doubts regarding the transparency and accountability of these locations (Zarobell, 2020). These facilities are known for their confidentiality and security levels but also for their potential for facilitating illicit activities such as money laundering and tax evasion (Zarobell, 2020). Freeports also bring forward the question of accessibility to and control over artworks stored within them, since some of these artworks stored in freeports may not be easily accessible to the public due to their restricted access policies. Access to these artworks can be limited only to a select few, which raises concerns about inclusivity and the public's ability to appreciate and engage with art that at times is an essential part of their cultural heritage.

Furthermore, the use of freeports in art transactions highlights the larger issue of financial credibility within the contemporary art market. This trend reveals a darker aspect

of contemporary art's economic standing, specifically its capacity to secure liquidity and transport it across international borders without being subjected to taxation on capital transfer (Zarobell, 2020). The internal dynamics of the modern art community have contributed to this phenomenon due to the decreasing of non-market funding structures for the arts and the declining presence of smaller galleries and collectors who traditionally supported local artists, emerging practitioners with uncertain market status, and those whose artistic value remains ambiguous in terms of future trends (Milano, 2020).

Besides that, the case study of Yves Bouvier vs. Dimitri Rybolovlev is another one that highlights the role of trust within the art market. The relationship between Bouvier and Rybolovlev became one of friendship and trust since the Russian was not familiar with the art auction market or even art prices, relying on Bouvier to purchase all of his artworks. This trust between the two parties was built over time and it is assumed to be strong enough that a verbal agreement regarding the commission percentage would be sufficient.

As seen before in this study, the lack of transparency within the art auction market has contributed to the reliance on trust between sellers and buyers.<sup>2</sup> Since the transactions within the market are often conducted through auction houses which often do not disclose specific details about the transactions or the identities of buyers and sellers, which make new players that are entering the art auction market rely upon and trust established art dealers and art advisors that have been part of the market for a long time to be able to take part in the market and perceiving fewer risks within these transactions.

Nonetheless, if a market primarily relies on trust between their parties to do the transactions, it leaves too many potential loopholes for exploitation and conflicts. The case studies analyzed throughout this paper are all related to one of the parties involved in the art transactions abusing the trust that was placed in them by the other party and subsequently resulting in crimes such as art forgery, breach of contract, misrepresentation of prices, embellishment, theft, and other illegal activities.

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<sup>2</sup> See Chapter 3



In conclusion, the Bouvier Affair brings to light aspects that are not often clearly discussed within the art market, such as the predominancy of non-verbal contracts in the art market, the use of freeports as places of storage, the possible implications for tax evasion, and the importance of trust in facilitating transactions within the art market.

Throughout all of the discussions presented in this thesis, it is evident that the lack of transparency within the art auction market contributes to the reliance on trust between sellers and buyers and that the transactions cannot be made solely on the basis of trust. Therefore, there is a need to also analyze and explore potential solutions to improve transparency and reduce information asymmetry. During the final chapter of this thesis, the focus will be on proposing strategies and recommendations to address the trust issues within the art auction market, particularly in relation to proposing solutions to stakeholders in reducing information asymmetry and increasing transparency.

## **Chapter 6: Conclusion**

### **6.1 Analysis of Research Findings**

The research conducted in this study yielded significant findings pertaining to art fraud. Several key themes and patterns emerged in an analysis of the available literature, case studies, and expert interviews in the field.

First, inefficiency and a lack of transparency within the art auction market are major contributing factors to instances of art fraud (David et al., 2013). The pricing strategies employed by auction houses often prove difficult for potential buyers to comprehend, creating opportunities for overpricing, underpricing, and the manipulation of artwork values (Beckert & Rössel, 2013). Employment of confidential reserves, practices such as bidding off the chandelier, and the undisclosed amount of the buyer's premium add to the ambiguity and lack of trust in the auction process (Ashenfelter & Graddy, 2003). These price mechanisms allow the auction house to artificially inflate or deflate the prices of artworks, making it easier for fraudulent activities to go undetected (Ashenfelter & Graddy, 2003).

Furthermore, research findings indicate that the international art market is particularly susceptible to art fraud because of the lack of a standardized system for verifying the authenticity and provenance of artworks. This lack of transparency and standardization allows for the circulation of counterfeit artworks and may compromise the credibility and economic value of genuine artworks.

Second, the role of provenance was identified throughout the study as a crucial aspect in the detection and prevention of art fraud. However, as presented in the research, provenance can easily be falsified or manipulated, particularly in cases where the artwork has changed hands multiple times, or where there are gaps in the documentation. Besides that, provenance also influences the market value of an artwork, with artworks that have strong and well-documented provenance being more valuable than those with questionable or incomplete history (Gramlich, 2017).

Third, the lack of specific laws and regulations regarding art fraud has been identified as a major issue in combating this crime. Although many countries have laws that criminalize fraud in general, there is often a lack of specific legislation addressing art fraud and its unique complexities. This creates challenges for law enforcement agencies as they may struggle to effectively investigate and prosecute art fraud cases. Therefore, it is difficult to quantify how many forgery and fraud cases go undetected because of the lack of suitable legal measures in place.

In addition, the interview with crime specialist Noah Charney supports all the claims that the art auction market is inefficient and that most of the players benefit from the lack of regulations of the market. Charney agrees during the interview that players are not interested in knowing about fraud since: “The art trade certainly does because it's a whole headache if something that they have traded in is fraudulent, there's embarrassment if you're an expert who authenticates something fraudulent.”<sup>3</sup>

The perspective of a potential buyer within the art auction market is influenced by a multitude of factors such as the artist’s reputation, the rarity of the artwork, and its demand (Nguyen et al., 2018). However, when it comes to the impact of fraud on the consumer's decision to purchase the artwork or invest in the art market, its influence is surprisingly minimal compared to the gravity of the crime (Scorcu et al., 2021). Through the analysis of the research results, it was observed that while art fraud may slightly damage the reputation of the artist or artwork, it does not significantly deter buyers from engaging in the market. Additionally, the price of an artist's artwork may be affected by the discovery of fraud, but the overall tradability of the artwork remains relatively unaffected (Scorcu et al., 2021). From the buyer's perspective, the discovery of fraud may lead to a slight decrease in the price they are willing to pay for the artwork, but it does not prevent them from participating in the art market altogether.

Regarding the seller’s perspective, the research findings indicate that art fraud does not have a detrimental impact on the seller’s reputation and economic value. Despite the existence of art fraud, sellers in the art market are still able to maintain their reputations and economic value; in fact, the opaqueness of the market works to their benefit, as it allows them

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<sup>3</sup> See Appendix

to continue selling counterfeit artworks without serious consequences. Many times, forgeries or frauds are not even detected by the buyer, and when they are discovered, buyers often prefer not to disclose the incident or take legal action, in order to maintain the marketability of the artwork and avoid potential losses in reputation, thereby allowing the seller to continue operating in the market without facing significant repercussions.

New technologies such as blockchain and artificial intelligence in the art market have been used by some institutions and proposed as potential solutions to detect and prevent art fraud (Bhushan et al., 2021). However, the lack of transparency within the art auction market mainly affects small cultural institutions, such as museums and galleries, which often struggle to authenticate artworks and are more susceptible to purchasing fraudulent pieces, since they do not possess the resources and expertise of larger institutions (Day, 2016).

The analysis of research findings reveals several key insights into the issue of art fraud, but it is necessary to address the possibility of mitigating this problem and recommend actions to stakeholders to combat art fraud effectively. In the next section (7.2), the possible mitigations and recommendations for addressing art fraud will be further explored.

## **6.2 Recommendations for Stakeholders**

Several improvements can be made to the authentication processes used by auction houses and regulators. The implementation of several steps in the authentication process can help to reduce the possibility of art fraud. These additional steps include further scientific examinations to assess the materials used and the age of the artwork, and employment of experts from different fields and not associated to the art institutions to assess the authenticity of the artwork.

Scientific analysis, such as spectroscopy, radiography, and other advanced techniques, should be incorporated as an intrinsic part of the authentication process, conducted in parallel with other methods like provenance research and stylistic analysis

through the creation of standardized procedures and protocols for the application of scientific methods in art authentication. These standardized protocols should be developed collaboratively, drawing from the expertise of art historians, conservators, scientists, and other relevant professionals.

In addition, it is necessary to emphasize the importance of transparency in scientific authentication processes by ensuring that all scientific analyses, findings, and methodologies used in the authentication process are thoroughly documented and made accessible to all the relevant parties. This transparency not only builds trust but also allows for peer review and inspections, further enhancing the credibility of the authentication process.

It is also fundamental for stakeholders to recognize that scientific methods in art authentication are continually evolving and that they should remain open to adopting new technologies and techniques as they emerge, ensuring that the authentication process remains dynamic and effective in the face of emerging challenges and fraudulent practices.

Connoisseurship, as the discerning evaluation of an artwork's attributes, such as style, technique, and historical context, is an invaluable tool in art authentication. Connoisseurs possess the ability to recognize the peculiarities of an artist's work, drawing upon their accumulated knowledge and experience and their role is crucial in distinguishing authentic pieces from forgeries or misattributions. While connoisseurship is essential, it should not rely solely on the opinions of a single expert because the diverse and dynamic nature of the art world necessitates a plurality of perspectives and different connoisseurs may possess varying areas of specialization or distinct knowledge of particular artists, regions, or periods.

Stakeholders should assemble a team of connoisseurs with diverse areas of expertise and by incorporating these individuals with different specializations, the authentication process becomes less susceptible to biases or limited perspectives with this diversity ensuring a comprehensive evaluation of an artwork's attributes. However, it is necessary that these connoisseurs are independent from institutional affiliations to mitigate conflicts of interest and preserve the integrity of the authentication process since institutional affiliations can introduce biases that compromise the impartiality of experts (Charney, 2015). As it was stated in the interview with art crime specialist Noah Charney, there is a need to hire specialists that are external to the institution and stakeholders must prioritize the selection of connoisseurs

who are not affiliated with institutions, such as museums, galleries or art auction houses that may have concealed interests in the outcome of authentication with this independence enhancing the credibility of the assessment and minimizing potential conflicts.

The adoption of a dual approach encompassing standardized scientific methods and the professional advice of non-affiliated connoisseurs stands as a formidable defense against the propagation of art fraud within the art auction market. By combining these approaches, stakeholders not only fortify their ability to combat art fraud but also establish a comprehensive and resilient system that boosts trust, credibility, and transparency within the art market with this cooperative strategy ultimately safeguarding the integrity of artworks, benefiting collectors, investors, and the entire art auction market.

### **6.3 Final Considerations**

Art Fraud is a topic that has been underestimated and overlooked for a long time within the art auction market and it has caused significant damage to both buyers and sellers. It remains a complex issue that requires continuous research and resources to clarify the importance of accurate investigations and studies to inform market participants of potential risks and preventive measures that can be applied to mitigate and prevent art fraud.

Auction houses are established institutions that build their reputation by cultivating trust and discretion with their clients. However, this cultivation of discretion can inadvertently create an environment propitious for fraudulent activities and manipulation, which contributes to the lack of transparency and accountability in the art auction market. Regulators of the art auction market also play a role in behaviors that encourage art fraud such as ineffective pricing strategies and inadequate monitoring of the auction processes.

The lack of transparency within the art auction market is a problem that requires many discussions and collaborations between auction houses, regulators, and other stakeholders to be solved effectively and efficiently. Since it is a type of crime that only affects specific individuals and organizations within the art market, there is not much societal impact that would prompt immediate actions from governments or law agencies. Through the

incentivization of research and policies that promote transparency and accountability, the public can be better informed about art fraud, its repercussions, and the importance of preventing and mitigating it.

This study demonstrates that implementing effective strategies to prevent and mitigate art fraud is crucial for increasing the level of trust and integrity within the art auction market. It is evident that the actual market is full of information asymmetries and uncertainties, with buyers and sellers being unclear about the attribution, provenance, authenticity, and copyright of artworks (Colavizza, 2023). There is a trend of growth in the discussion and recognition of art fraud, especially since topics such as authenticity, provenance, and ownership have gained increased attention in recent years.

## Appendix

### Interview with Art Crime Specialist Noah Charney

Noah Charney is a prominent scholar and author in the field of art history and art crime, having published several books that further delve into the implications and reasons behind these crimes, such as, “The Art of Forgery: The Minds, Motives, and Methods of the Master Forgers”, “Stealing the Mystic Lamb: The True Story of the World's Most Coveted Masterpiece” and “The Art of Forgery”.

He is currently an Adjunct Professor at the University of Ljubljana, the founder and lecturer of ARCA, the Association for Research into Crimes against Art, Editor-in-Chief and Founder of The Journal of Art Crime, and a columnist at the *Tendencias del Mercado del Arte Magazine*.<sup>4</sup> Through the foundation of the ARCA, Charney has facilitated international collaboration among scholars, law enforcement agencies, and art professionals, promoting a deeper understanding of the complexities surrounding art fraud.<sup>5</sup>

Noah Charney's expertise and contributions to the field make him an expert. His comprehensive understanding of the dynamics of art fraud, combined with his commitment to disseminating knowledge and fostering dialogue, positions him as an important figure for examining the intricate interplay between authenticity, provenance, and market forces within the art auction realm.

This interview was conducted through email, with the answers being recorded and transcribed in this appendix. It aimed to elucidate some of the complex nuances of art fraud in the art auction market, exploring its historical roots, evolving tactics, and strategies employed by experts and institutions to combat this persistent challenge. Through a multifaceted approach, the interview sought to clarify the intricate dynamics at play within the art market, ultimately contributing to a deeper comprehension of the complexities surrounding art forgery.

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<sup>4</sup> “Bio.” Accessed September 18, 2023. <https://noahcharney.smugmug.com/About-Me/Bio>.

<sup>5</sup> “Our Work – ARCA 2021 Website Revamp | ARCA – Association for Research into Crimes against Art.” Accessed September 18, 2023. <https://www.artcrimeresearch.org/our-work/>.



Art fraud often involves several intricate schemes. Could you share notable cases in which fraudsters employed particularly creative or unconventional methods to deceive the market and experts?

*The main criminological advance in my book is an analysis of what is called the provenance trap, which is a regularly successful method used by conmen in forgery schemes. Sometimes it is the forgery themselves and sometimes it's people working with them. There are five variations of it. One is with John Mayer and John Drew; their version of the provenance trap is John Drew forged archival material that appeared to authenticate forgeries painted by John Myatt, and he hid that archival material in real archives. So, when a forgery by John Drew was brought to an expert and they didn't find the object in question in the catalogue raisonnée of the artist who appeared to have painted it, they would go to the archives and see if other scholars had maybe missed something that they could find, and low and behold, they would find a document that no scholar had ever seen before because the document was a forgery that was inserted by John Drew and the enthusiasm of the treasure hunt on the part of the expert confirms within their mind the authenticity of the work in question, and it's a trap that's set regularly through provenance by fraudsters in order to pass off forgeries.*

*Provenance trap version two involves the Greenhalgh family, in which Sean Greenhalgh, the son, would make forgeries of objects that matched the descriptions from authentic provenance of lost objects; for example, an auction catalog that describes a lot that is an object that was sold at some point, a real object, but no one knows what it is or where it is now, and he would create an object that would match that description.*

*The third version, the case study of Eli Sakai, involves buying an authentic work along with its paperwork, the provenance that comes with it, and then having someone copy the work, making an exact duplicate of it, and selling the duplicate along with the original paperwork.*

*Version four involves Eric Hepburn, who is my favorite forger if I can say that. And he created what appeared to be preparatory drawings for famous paintings. And in this case, the paintings themselves acted as the provenance people knew of the paintings and knew that there were likely preparatory drawings made before the paintings were finished as part of the conceptualization phase, but those drawings are rarely kept as a work of art unto themselves, so he would create what appeared to be those lost preparatory drawings.*

*And the fifth version involves Han van Meegeren. He is probably the most famous forger, and this version of the provenance trap involves creating an object that appears to fulfill a theory, posited by a scholar. In his case, Abraham Bredius, the leading Vermeer scholar, posited that there was an early period of Vermeer's career in which he painted large scale religious works inspired by Caravaggio, but none of those works were extant, and so von Meegeren created works that match that description and managed to fool Abraham Bredius. We also see this, for example, in some forgeries of Natural History or objects or religious relics like the Shroud of Turin, is a famous forgery; it's a 13th century painting meant to look like a Christian relic, or the Archaeoraptor fossil is a forgery made by Chinese scientists to try to demonstrate in plastic form, the link between dinosaurs and birds.*

Could you elaborate on the methods and technologies that experts employ to differentiate authentic artworks from forgeries?

*Well, art is authenticated in three ways, as I described in the book: connoisseurship, forensic testing, and provenance research. Connoisseurship is the most traditional old-fashioned method that involves an expert giving their opinion and that's obviously very fallible, and you have to rely on the expert being both honest and actually knowing what they're talking about and that's difficult to determine.*

*Provenance research is the primary way that objects are authenticated basically looking at the archival history and seeing, has this work considered authentic for a long time and does the history we know make this work of art plausible where it was located at the subject, for example, is it referred to an archival material.*

*And then the third version is forensic testing, and forensic testing is very rarely turned to, usually only when provenance and connoisseurship cannot determine or there's arguments among experts and conservators do this testing, and it usually involves looking at objects with different light spectrum or things like Carbon-14 testing that can give the estimated age of organic materials and it's good at spotting anachronisms; it's very bad at saying this is from exactly this date or this is by this artist's hand. It can rarely do that, but what it's good at is spotting something anachronistic that like postdates when the work should have been made, this could be like titanium white was found in Wolfgang Beltracchi's forgeries, and that was a type of paint that hadn't been invented when the forgeries had supposedly been made when the original works that they were trying to imitate had been made.*

In a complex market, such as the art auction market, what factors make it susceptible to various forms of fraud, and how do these factors interplay?

*There are a lot of them. You know, the basic overarching one is the art industry profits only when objects are sold, and the objects are not problematic. So, whether it's conscious or subconscious, the art trade always wants every interesting object to be legitimate. As in not stolen or looted and not a forgery. There's very little proactive criminality, but what happens a lot, I think, is that people in the art trade will have what I call non-malevolent wishful thinking. That is to say, that they see an object that looks great, and they are looking into the object in the hope that it's legitimate and so they will have a tendency to ignore evidence to the contrary and look for evidence that supports their hypothesis bias that 'I hope this is well authentic, because then everybody's going to profit'. So that's the overarching, you know, reason why the art market is susceptible to fraud.*

Provenance, often regarded as the backbone of authentication, can be fabricated or manipulated. Do you think that new technological improvements (such as blockchain) revolutionize the way we establish and verify provenance in the art auction market?

*Yes, I think this is a good thing. I have a book coming out about NFT's in art, and I think blockchain is going to be a very helpful thing, especially for digital art, but it can also be used for traditional in real life art. Provenance research it's important to understand that the art market will be looking for reasons to sell something when they do their own provenance research, so the best way to get around this is actually has little to do with technology, although that can be helpful in making sure that provenance is transparent, and available and unalterable. That's where a blockchain provenance could be helpful. But what it really comes down to is there should be a field, and this exists but barely, and this is something where certainly people could fill this out, where there are independent objective companies that will look into the research, will research provenance of objects that and these companies cannot have any connection to the art market or the owner of the object. So, they're just objectively saying, 'Does the provenance that accompanies this object match the object?'. So, it's not describing something else and was attached to this object and is the provenance authentic itself, because sometimes people might say: 'Okay. Let's say that this was shown in 1872 in this museum' and then, in fact, it wasn't but, nobody bothers to check, so they add it to the documentation. So, that's probably the single most helpful thing.*

Can you shed light on how different stakeholders in the art market perceive the risk of fraud such as buyers, sellers, auction houses, collectors, and dealers? How do these perceptions vary and what factors contribute to these variations?

*I think one of the problems is that nobody wants to know about fraud. They all want to go in and say: 'I'm sure this is fine.' The art trade certainly does because it's a whole headache if something that they have traded in is fraudulent, there's embarrassment if you're an expert who authenticates something fraudulent. And if you find out that something's fraudulent before you sell it, well, you don't get the sale, so you're not making any money. Usually, it's buyers, collectors, museums, the ultimate end stop for the object in question who will flag something if they get suspicious about it after having acquired it and usually get,*

*they get angry that they were sold something that isn't what they thought it was, and then they launched an investigation themselves. So, they're the ones who are the victims in the end; they're the ones getting upset when they find out about it. But you know if nobody knows, then everybody's happy. So, the value of art equals the perceived authenticity plus the perceived demand plus the perceived rarity. It's all about perception. So, everybody except the buyer is hoping that every object is authentic. The buyer is also hoping the object is authentic; but, if they get suspicious, they're the ones who are the victims and they're the ones who are going to get upset.*

Do you have any suggestions on what strategies auction houses can adopt to provide buyers and sellers with more information about the artworks and the transaction process?

*Well, they still try to do this. The more provenance they have for an object before it sells, the more money they're going to get for it and the more reassured the public is going to be. I'm not sure what more they can do because they're already doing a lot. I think the best option would be if there is a new habit of also hiring an external company, who is ideally not being paid by the auction house or gallery, because then they're going to have an incentive to not find anything problematic. I'm not sure who would be paying them in the end, but some objective, independent firm that should double check the provenance so that we know that the provenance, which is usually gathered by the selling party, is authentic.*

Considering fraudsters' evolving tactics, are there actions taken by art auction houses to adapt their strategies to stay ahead of potential fraud? Are there instances where the effectiveness of these strategies has been proven or where improvements are still needed?

*Not really, Sotheby's, for example, hired Orion Analytics, which is basically one guy who does forensic testing of objects to give the impression that they're taking it seriously, and that everything that is sold through them is being checked, but of course in practice he's just*

*one guy with a small firm that they hired and he's maybe checking hundreds of objects, but they're selling thousands of them, but they're trying to make it seem to the public like they're taking it seriously, in fact, I don't think the art trade really cares as long as they are profiting through selling objects. So, they're just hoping that everything they sell is legitimate, and if it's sold through one of these companies, buyers are assuming that they've checked and that the object is legitimate, and that's where we can get into problems.*

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