

## Authentication and VARA: Opinions, Liabilities and Protections

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### **I. Authenticity Opinions Fuel the Art Market as Follows:**

- They are the driver in art sales between private collectors, by a gallery or through public auction;
- They are critical in establishing the price point for a work of art;
- They are crucial in making gifts of art to museums, or loans to museums for exhibitions;
- They justify a donor's tax deduction;
- They form the basis of valuations of art in the settlement of an estate;
- They reduce the likelihood that fakes and forgeries will flood the marketplace.

### **II. The 3 Principal Methods to Determine Authenticity:**

- Documentation of provenance demonstrating ownership history and chain of possession since creation;
- Forensic or scientific testing; and
- Connoisseurship or stylistic analysis.

### **III. Lawsuits and threatened lawsuits have a chilling effect on Authenticators (whether individuals or authenticating bodies). Authenticators have been sued on an array of theories including:**

- Negligence • Disparagement • Negligent Misrepresentation • Fraud • Anti-Trust Violations • Defamation

### **IV. VARA Empowers Artists to Disavow Authorship of their Own Works**

- The Attribution Right: To be identified as the Work's author; to prevent the attribution of one's name to a work one did not create...or to a work one did create if it is subsequently distorted / mutilated / modified so that it is prejudicial to the artist's honor or reputation.
- The Integrity Right: To prevent intentional distortion / mutilation / modification of a work that would be prejudicial to an artist's honor or reputation; to prevent destruction of a work of recognized stature.
- Accidental (Hurricane Sandy) Damage can empower Disavowal of Authorship.

### **V. Proposed Authenticity Legislation**

- To incentivize scholars, experts, foundations and catalogues raisonnés to continue to render authenticity opinions.
- The Authenticator must be recognized in the Visual Arts Community as having expertise to either:
  - provide an authenticity opinion; or
  - uncover evidence forming the basis of such opinion (ex., forensic expert).
- The Authenticator may not have a financial interest in the work (other than payment for authentication services).
- The legislation
  - requires the claimant at the outset to specify facts demonstrating an improper authenticity opinion;
  - requires the claimant to satisfy a heightened standard of proof,
  - awards attorney's fees to a prevailing authenticator.
- All contracts commissioning authenticators' opinions should require New York Law to govern.