

Abstract

Discussion based on the Copyright Law about When the Artist Controverts the Decision on Artwork's Authenticity

-Focusing on the Artist's Disavowal Cases-

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Cases that the artists denied the works which were known to be their own works (i. e. forgery cases) have been raised for a long time. Also, there were cases that the artist voluntarily acknowledged a forgery as the authentic work of the artist.

There are various reasons why artists carry through their arguments that contradict the facts and court's decision of the authenticity of the artwork in issue; to defend the artist's own social honor or subjective honor, or to strongly express the artist's favor on the usage or ownership of the work, or due to some other interest matters related the work, etc. There are two types of artists' disavowal; (1) the artist's denial of the fact that the artist oneself created the work (i.e. usually meaning the 'forgery'); (2) the artist's announcement that the artwork is no longer his or her work based on some incidents (damage, alteration of the work, or consumption and usage of the work that the artist did not want, etc.) to prevent further attribution of the artist's name on the work or transaction of the work.

When the dispute over the forgery of a work or the legality of an artist's disavowal of a work rises, the artwork's price in the market might go extremely unstable or it could be excluded from the auction. Moreover, not only the author but also the various

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parties such as the dealer, gallery owner, collector, or owner of the artwork can file lawsuits involving diverse issues like infringement of the artist's right to attribution or right to integrity, or breach of contract issues, etc.

The court reviews the claims of the parties, expert opinions, and the evidence of facts relevant to the work. Factual evidence of the art transaction and the artist's history tends to play a great role in the court's decision. However, if the parties continue to adhere to their stance despite the authentication results or the court decision, it causes various problems in the art market.

This paper tries to find a way to protect both the freedom of trade and the safety of trade while respecting the various parties' interests, the opinions of the art professionals, and the decision of the judiciary. In addition, this paper covers the methods of attributing the author and indicating artwork's information during controversies, and ideas for drafting the contract and legal documents for such cases.

Keywords

Artwork, Authentic Work, Forgery, Disavow, Withdrawal, Modification, Right of Integrity, Right of Attribution, VARA, Buy-back