

WHO WINS AND WHO LOSES WHEN ART IS STOLEN OR FORGED?

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*Paper presented at the Art Crime
Protecting Art, Protecting Artists and Protecting Consumers Conference
convened by the Australian Institute of Criminology
and held in Sydney, 2-3 December 1999*

There is a large, complex and vigorous art market in Australia. It consists of a wide range of different kinds of art, including paintings, photographs, sculptures, works in glass, ceramics, and antiquities, among others. There are hosts of artists, many alive and struggling, many deceased and revered, some deceased and perhaps undeservedly ignored. There are many different kinds of commercial enterprises that are devoted to art, including commercial galleries, auctions houses, arts and crafts shops, and of course, artists who sell directly to the public. There are many layers to the market as well, with a small number of established, mostly deceased, artists commanding exceptional prices for their art, ranging down to local (and living) artists where the costs for the art are quite modest.

There is one important feature of the Australian art market that will be central to our discussions of illegal activities within it. While there is some amount of penetration of international art into Australia, in general the vast bulk of works sold is, or has been, produced by Australian artists. Occasionally works from well-known European artists come onto the auction floor in Australia, and occasionally a commercial gallery will mount a special exhibition of an offshore artist. In general, however, most gallery and auction sales are of Australian art. The market also tends to be highly concentrated, along with the country's population. While most towns of any size will have one or perhaps many arts and crafts shops, and while some of the most notable Australian art is produced in remote Aboriginal communities, the great volume of sales will occur in the major population centres, starting with Melbourne and Sydney, and including Adelaide, Brisbane, Canberra and Perth, although major commercial establishments can be found outside of these, as in the Gold Coast, Hobart or Broome (among others). This focus on Australian art and artists, and this concentration in major urban centres, creates a form of insularity to the Australian art market that has a marked effect on the forms of illegal activity that can emerge. It can be viewed in terms of its reach or scope as a small market in personal terms (despite the huge volume of sales), one where rumours and stories spread quickly from dealer to dealer, artist to artist.

There is without question a large amount of money involved in the sale of artwork in Australia. Recent art auction in Australia have been exceptionally successful from the commercial point of view, with several works selling well above the \$10,000 mark, with some above \$100,000. It is precisely this success, of course, that creates the temptation for illegality. There are three major forms that such activity can take which will provide the focus of the present discussion: (1) the theft of art; (2) forms of fraud in art, especially the faking of art works; and (3) the illicit trade in antiquities.

The Theft of Art

Theft has been, and continues to be, an irritant to the art market of Australia. As is true overseas, art theft can occur in a wide range of contexts. While the major public galleries have been reasonable fortunate in terms of their record of theft (with the exception of the highly publicized theft of Picasso's "Weeping Woman" from the National Gallery of Victoria in the late 1980's, that work, of course, being recovered shortly after the theft), in 1976 there were thefts of works by Rees, Lindsay, Dobell, Streeton and Roberts from the Manly Art Gallery and Museum, in 1990 a van Ruisdael was stolen from Melbourne University, and in 1995, 29 works by Heysen were stolen from the Hahndorf public gallery and museum .

The theft of art from commercial galleries is another matter. There certainly have been thefts from commercial and private premises, some of them quite notable. While these examples indicate that there is some amount of art theft, its actual incidence is hard to document. There

are some galleries, for example, where there is little incentive to steal the art. Many of the most interesting of the Australian commercial dealers trade exclusively in the art of new and emerging artists, whose works are of such modest value on the market that there is little reason to take the risks involved in stealing and trading in stolen art.

Quite a different situation holds for galleries that trade in established artists. About half of the dealers who engage in what might be termed the secondary sales of works of known artists have had some sort of theft over recent years. A few of these thefts involved major works: a Gloria Petyarre, three bronzes by Klippel, a Jenner, a large Island Aboriginal object in the form of a pole, among others. Along side of these, of course, there are major thefts such as an unknown but presumed large number of works by Tucker that were unaccounted for in the thefts which resulted in the conviction of Joffe in 1998 in Melbourne. Informants in the insurance trade suggest that there is a somewhat larger volume of stolen art than might be expected from newspaper accounts. One Melbourne source has suggested that as many as 20 art works a month are stolen in Melbourne alone, and that he alone averages about 4 to 5 reports per month. This same informant goes on to point out, however, that most of these will not be “big ticket” items, with most thefts falling in the range of \$1,000 to \$1,500 or even less, and the large valued objects averaging perhaps 3 or 4 per year. This suggests, however, that there is quite possibly a reasonably large trade in illegal art work, especially at the low end of the market, which hardly ever comes to public view. These works are not known in the market to be stolen, they can easily pass at a later time through small auction houses without a ripple. In the absence of any distribution of information about the stolen works, unsuspecting buyers at the low end of the market may be purchasing what is in fact stolen works of art.

There are a number of factors that will be part of any successful entry into illegal activity in the art market. First, the person involved will need **information** including knowledge about how the art market works, what is valuable, how its value can be realised, and where goods can be sold with the least risk, among other things. Second, there will need to be **access to illegal goods**, either through theft or forgery. Third, the individual will need a **position** that provides some entry into the art market, since the art market is not something that a stranger is able to enter. When it comes to valuable works of art in particular, individuals within the market are unwilling to deal with persons that do not have some location with the market itself. Few dealers, for example, will buy “off the street”. Fourth, it is highly likely, especially for valuable items, that some **provenance** will have to be provided for the works. For works to realise their maximum value, the purchasers are likely to expect that the work be accompanied by documentation that provides evidence that the work is what it appears to be, and that it has been legitimately acquired. Fifth, the individuals involved will have to select an **access point** to gain entry into the commercial market, that most likely consisting of sale at an art auction or sale through a commercial gallery.

What this list suggests is that there is much more involved in the successful theft of art than is found in, say, the trade in ordinary goods obtained from a burglary. Recent data suggests that burgled goods move very rapidly from theft to point of sale, most often through highly informal networks consisting of friends, acquaintances or family, or perhaps local drug dealers. Goods can be off-loaded as rapidly as within one hour, and certain most of the time within a day. Further, there is reason to believe that for a large percentage of the traffic of such goods, the ultimate purchasers are aware that they are engaged in what is probably or certainly an illegal enterprise (Stevenson and Forsythe, 1998).

There are many differences between this form of illegal market, and the successful theft of art works. There is much more specialised knowledge needed about the items to be stolen and where they are located. The typical everyday burglar is likely to cruise, looking for targets of opportunity, where safe entry can be obtained, and where readily convertible goods (videos, mobile telephones, computers, TVs, and jewellery) can be taken. The successful art thief must have a reasonable idea of what art is valuable, and a venue from where the art is located and from which it can be stolen. Furthermore, in contrast to a wide an informal range of possible disposal options, for art work the portals into the market are quite narrow. If works of art are to realise anything close to their potential value, they must be sold onto the legitimate secondary art market, most commonly either at an auction or through an established commercial dealer.

Put another way, unlike the situation for other kinds of goods stolen in a burglary, there is not a large pool of potential buyers who are available to purchase major works of art at cut-rate prices, from suspect sellers, when the purchaser has reason to assume that the work has been stolen. There are tales in the art trade of “gloaters” who do purchase what they know to be stolen art, even to the point of commissioning their theft, but there is little evidence of this operating in any systematic and major way in the Australian art market. Most persons, in contrast, buying the works of established artists will expect to find that art either in an auction or at a commercial art gallery. Most are, in the most exacting sense of the words, what are known in law as “*bona fide* purchasers”, or “good faith purchasers”.

Consequently, the task of placing a stolen work into the market is not an easy one. Almost none of the established art dealers interviewed in the course of this study would buy works “off the street” from persons unknown to them. This often will mean that art works, especially those of significant value, can not be sold onto the legitimate market quickly, so that those holding stolen works and trying to pass them into the market will have to hold them for some time, that very act of retaining the works in their possession extending the risk of their being “caught with the goods” if for any reason they are questioned by the police.

Further, if it is to be disposed of “on the market”, a false provenance will have to be provided to cover up the fact that the work has been stolen. Discerning buyers under most circumstances today will want documents which establish the history of the painting, including a list of recent owners and how the painting has moved in and out of the art market. The market has become increasingly demanding about details of provenance, and while it is still possible to generate flimsy or false provenances for works, for this to be done successfully requires providing details of the history of the painting that will with stand reasonable scrutiny.

Given this list of requirements, it should come as no surprise that in fact there is an extensive history of unsuccessful thefts of art. For one example, Graeme Fricke (personal communication) tells a story of a thief whose reading of the news suggested to him in the 1980s that art works were increasing greatly in value, and thus there might be money in the theft of art. Accordingly, he identified a location of a collector living in a country area outside of Melbourne who had among his holdings what was claimed to be a Raphael. After a period of careful scrutiny of the premises where the goods were kept, the thief and his associates were able to successfully steal the painting and a number of other valuable objects from the collector. Unfortunately, the thief had not thought through the next steps, and found himself unable to divest himself of the painting, and was caught in the process of attempting to negotiate a ransom of the goods. His problem was a simple one: how do you sell a stolen

Raphael into the art market of the size of the city of Melbourne? In terms of the items listed previously, while this thief had some information about the location of potentially valuable art, he was not in possession of the important information about how the art market works, and, in particular, how difficult it is to sell an unprovenanced Old Master painting in where the market for such sales is exceptionally small. He certainly did not have either the knowledge or the skills to forge a false provenance for the work. Further, once the painting was in his possession, he did not have available to him a position, or an agent who had position, within the market, from which some access might be gained into the legitimate commercial art market.

This is, in fact, a common tale. There are many stories of criminals who are successful in large art thefts, only to find they are unable to successfully negotiate the sale of the goods. There was in early 1999 a major theft from the public gallery in York in Great Britain, where a number of important paintings were stolen, with the alleged thieves being apprehended some months later still in possession of the goods which they had not been able sell, successfully, onto either an illegitimate or the legitimate art market. In Melbourne in 1998, a small McCubbin was stolen during routine business hours from a commercial gallery, only to be found a few hours later where it had been dumped, presumably because the thief had found it impossible to sell the work after it had been stolen.

There are, certainly, stories of artwork that has been stolen and never recovered. In at least some of these cases it may be presumed that the works have passed into the hands of a buyer. There is one important gap in the Australian art market that at present actually makes this more possible than is the case overseas. In most of Europe and North American there has been operating for the past few years an Art Loss Register which provides a list of all known works of art which have been stolen in the participating countries. This register, which contains detailed descriptions of stolen works including in most cases a colour reproduction of the image, is routinely checked by auction houses and major commercial dealers when they are selling the works of established artists. This makes the task of moving stolen work onto the market even more difficult, and has the advantage of being extended to all stolen work, including those of artists who are perhaps not as well known where it might be easier to sell the stolen works onward in the market.

To provide an illustration from our current research, one dealer told us the story of the grandson of a well-known Australian artist who was examining the holdings of a commercial gallery in Melbourne, when he came across a painting that he recognised. He turned to the art dealer and said: "That is my painting". To which the dealer replied that it might be his painting if he paid over a few thousand dollars. The man then went on to state that the painting had been given to him by his grandfather, but that it had been stolen a few years earlier. It transpired that the work had then be moved initially through a small auction house in a city at some distance, from which he moved a couple of more times through more established auction houses, gaining more acceptable provenance with each sale.

There are, of course, many stories of major works in Australia which have been stolen and which have subsequently never re-appeared. One of the better known incidents involves the famous theft in the 1970s of an entire exhibition of works by Grace Cossington-Smith, consisting of 27 paintings and works on paper, none of which have been recovered. One of the biggest art thefts in Australia was the theft of 24 Australian and international pictures stolen from the Smorgon family in June, 1988, of which 5 were recovered after they had been purchased for a fraction of their value by a former Chief Stipendiary Magistrate in NSW who

then attempted to sell them on the open market and the origins of the paintings were discovered as a consequence. The remaining 19 paintings, however, are still missing, including works by Condor, Gill, Arthur Boyd, Pissaro and Chagall, among others (James, 1996). It is alleged that there are works of Albert Tucker that were taken in the thefts by Joffe which, similarly, have not been traced. Theft of art works does occur in Australia, and some of these works end up in unknown destinations.

Overall, there appear to be two major conclusions that can be made about the market for stolen art in Australia. First, it appears that the small size of the major markets (concentrated in Melbourne and Sydney), combined with the high visibility and cost of major Australian artists, and the restricted appeal of Australian artists overseas, limits the possibility of a thief being able to realise much financial gain from theft of the big ticket items of art. Therefore, at least as matters stand for now, it is not likely that Australia will experience the wave of art theft that has taken place overseas, especially in countries like Great Britain. What is obvious is that in Europe, because of both the size of the art market, the availability of works of exceptional value, and the possibility of diverse locations across many national borders, that there is a potential market for stolen art works.

Such thefts can and do occur, of course, as the case of the Smorgons in the 1980s, or more recently the armed break-in and theft of paintings by Bunny, McCubbin, Roberts and Dobbell from the home of a property developer in South Yarra in January of 1998. The newspaper article describing this theft observed that the police were "...puzzled as to why thieves would steal artworks that would be very difficult to sell" (Cant and Lancashire, 1998: A5).

A second conclusion is that there would appear to be an urgent need for some system of register for stolen works in Australia, such as the Art Loss Register which functions in Europe and North America. While the theft of the large exhibition of Cossington-Smiths is well known in the art world, in fact few in the art market today will know which of her works were among the stolen. Further, if our information is correct that much of the theft of art works are at the lower end of the market where the artists are less well known, and thus recognisable, then an obvious conclusion is that these works should be recorded as stolen in a way that this information is routine accessible to both dealers and purchasers. Further, when art works are recovered in the course of police investigations, it would then be possible to match the objects with the original owners, as could not be done in by the Queensland Police in 1997 when they uncovered a cache of stolen paintings by Pro Hart.

Fakes and Frauds in the Australian Art Market

The faking of art is hardly a new problem, and certainly it is not restricted to the Australian art market. Younger and less well known artists over the centuries have found that there was money to be made if they could reproduce the works of better known artists. One of the more famous examples of faking was the successful passing off by a Dutch painter van Meegeren of his works as those of Vermeer in the 1930s and 1940s. The artist/faker became unstuck when charged by the Dutch after WWII with crimes against the nation for selling the supposed Vermeers to the Germans during the occupation of Holland, whereupon he confessed the fraud, only to be forced to paint Vermeers in prison to prove his claims (Conklin, 1994: 72). Very recently, in February, 1999, a major Melbourne art dealer, Lauraine Diggins, shocked a started Melbourne with claims on the front page of the leading Sunday newspaper that she had been taken in by three faked paintings, and she further estimated that art fraud costs buyers millions of dollars a year (Maslen and Daly, 1999: 1). This followed extensive

coverage of the revelations of the artist Will Blundell in mid-1998 that he had done numerous what he called “innuendoes” which were replicas of works by major Australian artists such as Streeton or Whiteley, which Blundell alleged had then been introduced by others into the market as works by the more famous artists. One of the accompanying stories described how one buyer had purchased for a bargain price what he thought was a painting by Condor, only to find later that it was one of Blundell’s innuendoes (Hills, 1998: 11).

How much art fraud is there in Australia? The actual number is unknowable. A decade ago, one observer noted that:

There are a number of person who now make their living from the creation of fakes and forgeries. The favourites for forgers and fakers include Streeton, McCubbin, Gill, Heysen, Withers, Gruner, Lindsay, Rees, Drysdale, Nolan and Hart. (Simpson, 1988: 796)

The estimates by the Melbourne dealers of millions per year is consistent with an estimate given by an owner of a Sydney gallery who in 1987 similarly argued that the forgery market in Australia ran into millions per year (Maslen, 1995: 29). There have been innumerable instances of suspected works being pulled from sales at the major auction houses, including a faked Whiteley in a Phillips auction in mid-1998. The Conservation Centre of the Ian Potter Museum at the University of Melbourne, which carried out the scientific tests that proved the paintings that Diggins held were not authentic, estimates that there are at least 15 known fakers whose works are on the Australian market.

One of the problems in fixing the size of art faking is that some copying of other artists can be quite legitimate. Young art students copy works of established painters as a way of learning painting technique. Some people quite openly buy copies of original works, and there is even a gallery in Sydney which specialises in selling replicas of known artists such as Van Gogh, Streeton and McCubbin, among many others.

To be successful, the faker ideally will address the same factors presented earlier with respect to theft. These can be illustrated by discussion of one of the most notable and extensive cases of faking which emerged recently in England, involving an intrepid fraudster by the name of John Drewe. While there is much mystery about the middle career of Drewe, what is clear is that through a variety of sources he assembled considerable information about how the art market works, and specifically where its points of vulnerability to fakes. Once in possession of that knowledge, what Drewe needed was a supply of fake art, which was satisfied by contacting a local painter who advertised that he was available for producing copies of well known works of art (actually, he advertised in *Private Eye* that he would do “Genuine fakes” of 19th and 20th century art for 150 Pounds). Drewe approached the artist (John Myatt) and over time succeeding in convincing him to paint a wide number of fakes of well known artists, including Giacometti, Braque, Chagall, Matisse, and Klee, among others. In all, around 200 fakes were ultimately produced by Myatt for Drewe and were sold onto the market.

But the major factors which distinguishes Drewe, were his knowledge of how the market works, and the depth of his skill in creating detailed but false provenances for the works he placed onto the market. Drewe was able to do over the years, using his notable negotiation skills and money, to work his way inside of such organisations as the Tate Gallery, the Victoria and Albert Museum and the Institute for Contemporary Art, and actually modify their records, including both computer and hard copy files, so that when a prospective buyer would consult these files, apparent “proof” of the provenance of a painting could be found.

One dealer has commented that Drewe knew that pictures under a certain value were less likely to be scrutinised closely in auction sales (in London the cut-off point is around \$250,000), so he would price his paintings in the \$25,000 to \$75,000 range (*The Guardian*, 13 February 1999, p. 10). Furthermore, Drewe used a large number of intermediaries in order to introduce his fakes into the market. This helped reduce the possibility of knowledgeable art dealers would fix on Drewe as the source of the large supply of suspect works that began to appear on the market, since the fakes themselves often from a technical point of view were flawed. A perhaps even more complex scam, at least in terms of its extensive international structure, was involved in the sale of supposed “limited edition prints” by Dali and others (which were in fact little more than posters), which resulted in the loss of hundreds of millions of dollars by art investors in such locations as California and Hawaii (Catterall, 1987, 1992). In this case the fraud was perpetrated by art dealers who sold directly to the consumers they were defrauding, often in specialty art print shops located in holiday destinations in California, Hawaii and New Mexico.

There are some parallels to the Drewe/Myatt case in the way that Blundell’s “innuendoes” were introduced into the Australian art market by a well known Sydney art figure. In that case, it appears that this person “commissioned” faked works of specific Australian artists from Blundell (which Blundell argues he sold simply as his own legitimate copies of works in the style of famous Australian artists, selling them to the dealer for between \$200 and \$400 each). This person then would attempt to move them onto the market as legitimate works by the more famous artists, often through the smaller auction houses. While not as extensive in method as Drewe, apparently some attempt was made with some of the paintings to create documentation that provided false provenance for the works.

What these stories underscore is that there are in fact few portals available to those in possession of what they know to be fake art and who want to insert those works into the legitimate market, and that systematic fraud requires considerable information in ways of negotiating through the narrow portals available. Our research suggests that there are two major pathways that fakes enter into the market. One is where a complicitous dealer participates in the scheme, and working as an intermediary using their position as a dealer to make arrangements to sell directly to other art dealers, as happened in the dramatic case of Lauraine Diggins (see above) who fell victim to a dealer from Queensland who sold her a number of faked art works. Interviews with art dealers suggests, however, that this is a risky strategy for any art dealer, since word spreads quickly among other dealers about suspect art, and its sources.

It appears from numerous examples that a second portal for such entry into the legitimate market consists of the auction houses. While it is obviously a scourge for the major firms such as Sotheby’s and Christies, as indicated by the numerous paintings that are pulled out of the auction prior to final sale, a much more likely venue for the movement of fakes onto the market will be the smaller auction houses. There are a number of factors at work here. For one, the major auction houses hire personnel who are experts in art who collate and examine the works to be auctioned. Since the major auction houses such as Sotheby’s and Christies give a five-year guarantee of the authenticity of the works sold, they are keen to assure the authenticity of works auctioned through them. They also provide large and well produced colour catalogues of the items in the sale which are then reviewed by most of the major dealers in the market. Small auction houses are not as likely to have personnel who are expert in the market, their catalogues are much scantier and often have no photographs of the art works on auction, and their guarantee can be as brief as two weeks.

There is one further problem with fakes that needs to be considered. When a fake work is discovered, say at an auction, and it is subsequently withdrawn from the sale, that does not mean that the work is destroyed (not that it should be, by the way). In fact, if the work has been listed in a catalogue, that very listing in the future can be used as part of the provenance, since there is at the moment no effective way of “correcting” a catalogue which has already been printed and distributed. Thus, one of the dangers with the current system of dealing with faked art is that many are left free to re-circulate into the market at a later date as legitimate works, even if they have been discovered to be fakes at an earlier point in time.

There is no simple strategy that will serve to prevent the problem of art fraud through faking. As the art conservators, such as those in the Conservation Centre of the Ian Potter Museum, build up their extensive data base on a wide variety of characteristics of known painters and forgers (the characteristics include pigments used, the nature of the canvas or paper, the type of framing, the labels used, the structure of the supports, and a variety of distinctive features in the techniques of the artists), as they have been doing over the past 10 years, then it becomes possible to do a scientific analysis which can go a long way to establish the authenticity of a given painting. Since this process calls for the use of expensive laboratory equipment, it is a costly process, and probably, at least in full-blown form, and not likely to be used for works in the middle and low end of the art market.

Another possibility would be to generate a register, similar to the art theft register, where questions have been raised about the authenticity of a given work. Such a register might be created for works specifically which have been withdrawn from auctions, or from sale, because of some problem has been uncovered with the work. There are a number of difficulties with such a procedure, since the works involved may in fact be genuine. Thus, the register involved would not be so much a “register of fakes” but simply a record of those works where for one reason or another, they have been withdrawn from sale.

One of the problems here is that there will be situations where even the best experts will be unable to give a firm assessment of the authenticity of a work, unless the full (and expensive) scientific work is undertaken. Even science is not infallible in this domain. Artists through the ages have worked together, and it has not been uncommon for them to work collaboratively on a painting, and sometimes the better known of the artists would allow his or her name to be identified with the painting. The result will be a work that, many artists may have bad days, or perhaps they produce a less than satisfying work in a hurry in order to generate ready cash, or to meet a deadline. What results are works that may create insurmountable years later, may prove confusing to those attempting to authenticate the work. Some of the pigments will be genuine, some of the techniques employed consistent, but on other grounds there will emerge factors which at a minimum are less consistent with the artist’s general procedures. Further, like the rest of us, artists too have bad days and may produce works of a lower standard than normal, which will generate problems for gallery, auction or conservation staff attempting to authenticate the work, and a definitive conclusion regarding authenticity may not be possible (see Conklin, 1994: 54-57).

Whatever the strategies considered, what is certain is that there will continue to be attempts to sell faked art onto the Australian art market. Some of these fakes will be amateurish, and their discovery relatively easy for those who know the art trade. What the Drewe case in Great Britain and the Blundell case in Australia alert us to is the vulnerability of the art market to individuals who are able to assemble the knowledge about the how the art market works, who can find a source of plausible fake works, and ways of systematically and

effectively creating false provenances, and then create devices for gaining access for their faked works onto the market. There is no simple device which will protect the Australian art market against such a fraudster, but a major barrier will be the alert action of art dealers who are knowledgeable about art, and who then can act when they begin to observe a flow of suspect works onto the market.

The Particular Problems of Aboriginal Art

Aboriginal art constitutes a major component of the Australian art market, especially in terms of the overseas demand for Aboriginal works. In many ways, the Aboriginal art market mirrors the problems of the rest of the art market. Works by Aboriginal artists are occasionally stolen, examples of these uncovered in the course of our research ranging from an expensive Gloria Petyarre taken in a burglary from a major metropolitan gallery, to a large number of "Hermannsburg School" watercolours stolen from a garden shed in a suburb of Ballarat.

Much more important, however, are the issues of faking that have been raised about this art. Another paper in this series (by Dr. C. Alder) will treat the problem of authenticity in Aboriginal art in the detail it requires. There is a great demand for Aboriginal art, and the canvases of better known artists command high prices in sales and auctions both in Australia and overseas. This fact alone assures that there will be those who will be tempted to produce and sell faked works in the style of these artists. There have been noted examples of such faking, including allegations of a number of such works which allegedly were done by Clifford Possum but which that artist denies he has created.

This type of deception is clearly fraudulent, and other than the subject matter does not differ from other forms of faking that can be found in the art market. There are other much more contentious and complicated issues that arise with respect to the issue of "authenticity" in Aboriginal art which, because of space, can only be mentioned here briefly. For one example, there is a long tradition of collaborative work in the production of what European based culture defines as "art". Within Aboriginal culture, as a society without a tradition of writing, what outsiders call "art" was one of the many ways of passing on the culture from one generation to the next, with the direct participation by younger members in the creation of works being one of the critical elements of learning the stories of the culture. This collaboration, however, when objects come onto an art market can raise questions about attribution: who "did" the art? The problem may be further confused by a conflict in the meaning of "ownership" between European and Aboriginal culture, since for the Aboriginal community the major question may be who can legitimately claim ownership and custodianship of a particular story (and thus the painting about the story). Questions of authenticity can become every more complicated when people of one region begin to borrow themes, motifs, and techniques derived from another, especially if these are strongly held views about these themes in the community from which they have been borrowed. There are, simply, a number of unique issues that arise when questions of authenticity are raised about the art of indigenous Australians.

Even questions of theft can take different forms when it comes to questions of Aboriginal art. There have been a number of noted examples where thematic material from Aboriginal artists has been taken without respecting the ownership rights of the artist. While within current Australian law this is likely to be interpreted as a "copyright" problem and dealt with through a civil process, nonetheless the appropriation of artistic material without permission or payment to the artist can be seen clearly as a form of theft. A number of accounts have

emerged which suggest that in a similar way Aboriginal artists have been in some circumstances persuaded to create “limited edition” prints, only to find later that additional prints have been produced without compensation to the artist (such a practice also constitutes fraud, since such works no longer constitute limited edition prints).

In short, there are a number of issues of illegal and/or unethical practices that arise with respect to Aboriginal art, these issues spreading across a number of problems of both fraud and theft. These problems are dealt with elsewhere in more detail, but it must be underscored that given the importance of Aboriginal art to both the Australian art market, and to the economic well being of Aboriginal communities, it is important both to understand and to address such practices.

The Issue of Illicit Antiquities

A final issue, one that also will be dealt with in a separate paper at this conference, concerns the international movement of illicit antiquities. Australia is far from a major player in that market, although certainly there have been examples of the plunder of Australian material, as when a section of Aboriginal rock art was hacked out of a site in Tasmania in late 1998. In addition, there is some movement of goods plundered overseas into Australia. Archeologists are gravely concerned about the massive devastation that is occurring in many of the overseas sites in response to the huge demand for quality antiquities that has evolved in recent years in the art markets of the developed countries (Brodie, 1999; Renfrew, 1999; Watson, 1999). An argument can be made that Australia should be particularly concerned about the movement of goods from the Pacific region, especially since considerable material is now flowing out of such countries as Cambodia, China and Burma. The destruction of the sites themselves represents an irreparable loss to the study of the development of human cultures, and it is important that Australia take a principled position on the movement of these plundered goods onto the international art market.

So, Who Wins and Who Loses?

At one level, it is clear that there are few winners when illegality enters the art market. Different forms of illegality, of course, create separate problems. Probably the most worrisome problem with the current Australian art market is that of fakes. The big losers, potentially, are the dealers and auction houses (who might have to make good on works that are not authentic), consumers (who may have paid considerable sums for paintings that when the fakery is revealed become worthless), the artist or the estate of the artist (if word circulates that many suspicious works are on the market, and finally, the art market itself, which might suffer if consumers lose confidence in the market and begin to withdraw from it. This suggests that much of the corrective action might be expected to come from the collective action of those most likely to be caught in a market downturn, in particular those who deal in art, especially on the secondary market.

Thefts are rather unusual, since in a large percentage of the cases it is hard to find any winners when art, especially expensive art, is stolen. Big-ticket art works that have been stolen are going to be exceptionally difficult to move onto the secondary art market (especially if Australia establishes an art loss register system). One of the real dangers with high quality art that can not be moved onto the market is that once this is discovered by the thief, the works may be destroyed. When this happens, not only the initial victim “loses,” but also if the artwork is an important part of the nation’s cultural heritage, we all become the losers. There seem to be few winners where art theft is involved.

The problem of the traffic in illicit antiquities is quite another matter. The complexity of this trade, and the vast sums of money to be made, assure at the present time that there is significant movement of illicit antiquities onto international art markets. The losers here are the nations whose cultural heritage is plundered. I would argue that great care must be taken, however, in the steps to restrict and control this traffic. There is some evidence emerging in very recent years that increasingly the traffic of illicit antiquities may be moving along the same channels, and by the same people, that are used to move illicit drugs. Considerable mischief might be created, especially by nations which are the sources of the plundered antiquities, if premature control measures place this traffic in the hands of those who currently are so successful in the international movement of illicit drugs. These groups have proven to be highly successful in the face of considerable expenditure of resources by countries such as the United States to eliminate this trade. If the trade in antiquities also falls into their hands, their demonstrated capacity to move such goods illegally might make it exceptionally difficult to bring the traffic in these goods under control. In antiquities, as in drugs, much more effort needs to be focused on the ultimate consumers who purchase the antiquities in venues such as New York, London and Paris.

In sum, when it comes to art crime there are few winners. It seems likely that one of the strongest protections against a range of illegal activity is an informed art market. Consumers, and dealers, who are informed and knowledgeable will not be tempted by art that is not authentic (and if informed they would either know if a work was authentic, or know how to find out if it is), they would know how to check immediately to find out if a work on offer has been previously stolen, and truly informed consumers and dealers simply will not trade in plundered (and therefore unprovenanced) antiquities.

There is a great volume of wonderful artwork to be found in the art market of Australia. Ultimately, this is what assures that the market will stay healthy, and will be able to rebound from occasional bouts of concern when questions are raised in the market, as when word spreads that there are fakes beginning to appear. The more dealers and consumers know about art, and about who to assess the authenticity of art, the better they will be able to protect themselves. Armed with that knowledge, they will then become the ultimate winners in any situation where one or another form of illegal behaviour attempts to enter the legitimate art market.

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