



BY SKIP NATZMER

The Michigan Art Multiples Sales Act

The purpose of this article is not only to acquaint you with the Michigan Art Multiples Sales Act, MCLA 442.351; MSA 19.409(1), but to examine its relevance today. Most people, artists and art dealers included, have never heard of the act, either in Michigan or in the several states that have similar legislation.¹ So, consequently, no one complies with its disclosure requirements.²

To understand what motivated these legislatures, as well as the Federal Trade Commission, to become involved in the marketing of art, one must have a basic understanding of how original prints are created:

- **Woodblock Prints.** The artist carves away the surface of a block of wood so that the image remains raised. The surface is inked, the paper applied and the transfer of ink is done by a press. A separate block is created for each color, or the color can be applied by hand. The wood block is the oldest form of printmaking.
- **Etching and Engraving.** To create an etching, the artist coats a copper plate with a substance that will resist acid. The artist "draws" on the plate with an instrument to expose the copper. The plate is then given an acid bath that "bites" into the copper at these exposed areas. To create an engraving, the image is incised in the copper plate by hand using a sharp instrument. Ink is applied to the plate, then the surface is wiped so that the ink remains only in the cuts or incisions. A damp sheet of paper is applied. The press used must apply substantial pressure to pull the ink from within the incisions. In the process, the paper will be embossed around the edge of the plate. This form of printmaking began in the Renaissance.
- **Lithographs.** The artist draws the image on a block of limestone or a zinc plate with a grease pencil. The surface is then moistened with water, which is repelled by the wax. Ink is applied with a roller. The ink clings to the wax. Paper is placed over the stone and run through a press. A separate stone or plate is used for each color. Lithography was discovered in the late 1700s but did not spread to the fine art field until much later.



prints

What all the printmaking processes described above have in common is that the artist must create what is generally referred to as a master or matrix, which contains the image that the print is “pulled from.” For each print, the master must be inked, the paper positioned on it, and then a press used to transfer the ink. Generally, these steps are done by hand. All require a considerable amount of craftsmanship. Lithography requires a large capital investment in stones and equipment as well as the assistance of a master printer. Therefore, most lithography is done at a private workshop or university art department.

In the 1950s, printmaking was undergoing a renaissance in Europe and America. Artists whose prices for paintings were beyond the reach of the average consumer turned to the wood block, lithography stone, or copper plate to create “multiple originals.” At the same time a new generation of artists were attracted exclusively to the printmaking medium. Colleges began offering classes in printmaking. An explosion of galleries followed, which led to the marketability of prints that led to an explosion of prices. There was no organization to the industry, no reason for standards, and initially there were few abuses; editions were small (50 or fewer) and the mechanical means of reproduction had not been developed.

Between 1951 and 1961 the New York Times–Sotheby price index for old master prints rose from \$100 to \$3,800, the steepest rise for all art forms surveyed during that time period.³ By the 1970s the marketing of prints began to change. The publisher emerged to alter the traditional artist-dealer one-on-one relationship. The publisher could offer the artist a bulk sale, at a greater discount of course, but promise a wider distribution of the prints to galleries. Because all the prints in an edition are the same or fungible, there was an economy of scale to advertise and promote them as well as pressure to increase the number of prints in an edition.

Emerging Problems

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practice was started by museums when they created posters to promote their exhibitions. It was a short step for the artist to reproduce a painting or watercolor and then sign and number it on the margin, as was the practice with original prints. The artist had absolutely no involvement in this printmaking process, other than to add the signature and number to these “photomechanical reproductions.” Because the term for the commercial printing process used for their creation was “offset lithography,” they began to be called and marketed as “limited edition lithographs.”

Sometimes artists did not deface their etching plates or wood blocks after finishing an edition of prints or remove the image from the surface of lithography stones (which were expensive and reused until they broke). Consequently, additional prints could be made with or without the artist's consent or knowledge. With the acceptance of prints as fine art, the price acceleration, the intervention of the publisher between the artist and the dealer, and the ignorance of most buyers (and many dealers) as to the printmaking processes, the environment was ripe for dishonest dealers to take advantage of it and they did.⁴

The art world began to take note of the emerging fraudulent and misleading marketing practices in the 1970s. The summer 1976 issue of *ARTnews* magazine provided page after page of specific examples. The subtitle of the article was *A Multitude of Abuses, From Questionable Signing and Editioning Practices to Selling Reproductions as Originals, Has Accompanied the Growing Demand For Graphics.*

*Is Legislation the Answer?*⁵ California was the first state to answer “Yes” when it enacted a statute that required that certain disclosures be made in the sale of prints. Illinois, Maryland, and Hawaii followed in the 1970s with their own versions of disclosure laws.⁶

In 1981, as New York considered a print disclosure law, *ARTnews* reported on the legislative hearings that heard testimony from law enforcement officers, dealers, and auctioneers.⁷ The author enumerated the “clear pattern” of abuses emerging in the sale of prints:

- the forging of entire editions
- the sale of photomechanical reproductions as original prints
- distortion of edition size
- false identification of a signature as the artist's own when it is actually that of an heir or a forger
- lack of information as to whether a work was made in an artist's lifetime, is a restrike, or a posthumous work
- deceptive advertising⁸

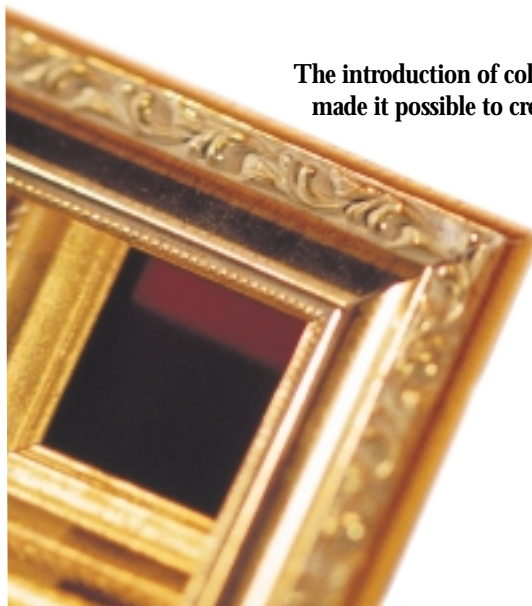
As the above-mentioned legislatures addressed the print problems through disclosure statutes, the Federal Trade Commission and a few states' attorney general offices moved forward with fraud and misrepresentation actions. Their targets were publishers and dealers operating on a national scale through magazine advertising and traveling auctions. Usually, these dealers sold fakes, reproductions as originals, misrepresented the size of the editions, or sold the prints as “risk free investments.” The magnitude of the problem is

fast facts

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illustrated by the amount of consumer redress ordered by the courts in a few of the enforcement actions:

- Hang-Ups Art Enterprises, Inc. FTC File # X95-0014 (1995) \$150,000
- Collector's Guild, Ltd/Collector's Guild International. FTC File # X90-0029 (1991) American Express refunds \$2.5 million to its cardholders from a promotion with Collector's Guild.
- Solomon Trading Co. FTC File # 90-23041 (1991) \$800,000
- Renaissance Fine Arts, Ltd. FTC File # 93-23012 (1994) \$2.3 million.
- Magui Publishers, Inc. FTC File # 89-3818 (1991) \$1.96 million.

In addition, it has been widely reported that Salvadore Dali signed up to 350,000 sheets of blank paper upon which reproductions of his watercolors were printed and that he never saw.⁹ Many of these are referred to and were involved in these fraud actions. The U.S. Postal Service confiscated 12,000 fake prints from a Hawaii gallery, most of them Dalis but also bogus Miro and Ernsts. To the outrage of the art world the Postal Service did not destroy them but rather held an auction to the public thereby putting them back into circulation.¹⁰

I recently spoke to Gerald C. Zeman, the FTC staff attorney leading the Renaissance Fine Arts prosecution cited above. I inquired about the disposition of the 50,000 Dali, 20,000 Miro, 2,200 Picasso, and 650 Chagall prints, all fakes, involved in that litigation. He told me that he had no idea what happened to them. The articles and cases cited for this article demonstrate that the problem with fakes is not limited to these artists.

The Legislative Response

The various state acts cited above are referred to as the "print disclosure laws." Some cover photography as well. These are not uniform acts; there are significant differences in them. What they have in common is that they require the art dealer (including the auction houses in Michigan) to make certain disclosures in writing prior to a sale and sometimes with the advertising of prints so that the buyer can make an informed de-

cision about a purchase exceeding \$100 exclusive of the frame. They are not regulatory acts. In recognizing the abuses and problems in the marketing of prints the House and Senate analysis to the Michigan act sets forth its purpose.

The true value of an art multiple depends on much more than its authorship. A lithograph by a famous artist, for example, may be worth a great deal if it is one of a very few in a limited edition in which each copy is numbered and individually signed by the artist. It will be worth less if it is unnumbered, or if the artist's signature is in the master so that it is automatically reproduced with each impression. A photographic reproduction of the same work may have only the value of poster art. In order to estimate the true dollar value of an art multiple an art dealer or art consumer must know a good deal more than the artist's name as provided in the works of fine art act.

The Michigan act addresses the authenticity problems by requiring disclosure as to whether, where, and how the artist's signature appears on the print, if he approved its creation if he did not sign it, and whether he was alive when the "master" was created.¹¹ For example, the act would require Picasso's daughter to disclose that she had signed his lithographs with a signature resembling her father's after his death.¹²

If there is to be a limit to the number of prints pulled, this figure must be provided as a total as well as "the method of numbering used."¹³ Therefore, if there is a European edition, an American edition, and a Japanese edition, the total, along with the number of artist's proofs, must be disclosed. These are numbering techniques in use today to mask the true size of an edition.

The most difficult issue that all the disclosure acts attempt to address, and the heart of the current print abuse problem, is whether the print is an original or a reproduction. Is this print pulled from what is essentially a non-visual master, i.e., a woodblock, etching plate, or lithography stone created solely for

the purpose of making prints? Or is the print merely a reproduction of an existing painting, watercolor, drawing, print, or other independently existing work of art?

Michigan begins by requiring a "description of the medium and process used" and then lists the traditional printmaking processes.¹⁴ If these terms cannot accurately describe the process a "brief, clear description shall be made."¹⁵

To address the semantics confusion in today's print market, Michigan adds another provision concerning originality, one generally not found in the other state acts.

(e) Whether the multiple or image on or in the master is a mechanical, photomechanical, or photographic copy or reproduction of an image previously created or produced by the artist in a different stated medium, or on or in a different master, for the purpose other than the creation of the multiple being described.¹⁶

This clause forces the seller of "limited edition" "giclee" prints, now the most common form of reproduction, to disclose that they are not original prints. "Giclee" is simply a French word for "ink spray," or another term for the ink jet printer. The fraud and misrepresentation in marketing these reproductions is surpassing the earlier abuses described above. To make a giclee print one merely scans the existing artwork, or a photo of it, into a computer and then prints it. Next, it is signed and numbered on the margin. Giclees are also being printed on canvas to resemble paintings. The creative input of the artist is limited to perhaps altering some colors, then pushing the print button. Discussing these prints one author states: "But these are not 'prints' in the way anyone in the professional art community would define them. These are reproductions—nothing more than fancy photocopies." "The signed-reproduction market is a ruse," says Toronto art dealer Donald Robinson, "and the problem is convincing the uninformed art buyer that these are not original prints."¹⁷ At prices

often exceeding \$1,000 per print, it is an expensive ruse.

Some information required by the act may not be available to the dealer, particularly one who specializes in antiquarian prints or if the print was not acquired from the artist or a publisher. For this reason, the dealer is allowed to disclaim knowledge pertaining to any specific disclosure item.¹⁸ Also, the act sets forth three time periods preceding its enactment, which allow for diminished disclosure for each, relating to edition size and signatures.¹⁹

To give the information actual meaning, the act provides that each item disclosed (including a statement that the item of information is not available) becomes an express warranty.²⁰

Remedies

If the required information is not provided prior to payment or delivery, the pur-

chaser is entitled to a refund.²¹ Failure to provide at all or to give false information subjects the dealer to a 12 percent interest penalty on top of a refund.²² Both are conditioned upon return of the print in substantially the same condition. A court may award costs and attorney fees to either party. These remedies are in addition to others provided by law.²³ The purchaser bears the burden of proving that the dealer failed to make reasonable inquiries when an item of information is disclaimed.²⁴

Does the act address the abuses in the print market? It requires sufficient disclosure for the purchaser to make an informed decision, but it lacks sufficient incentive for the dealer to make these disclosures. The fault lies as much with the dealers for failing to educate the public as it does with the legislature for failing to provide serious sanctions. The act should be amended to provide for civil penalties and injunctions by prosecuting attorneys. ◆



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field of original prints since 1970. He has authored several art-law articles for ArtSpace magazine and has been a guest lecturer on art law issues for the Photo Department of Northern Michigan College.

Footnotes

1. Arkansas Annotated Code Sec. 4-73-301 (1983); California Civil Code Sec. 1740 (1970); Georgia Commerce & Trade Code Sec. 10-1-430 (1986); Hawaii Code Title 26, Sec. 481F (1986); 815 Illinois Compiled Statutes 435 (1972); Maryland Commercial Code Sec. 14-409 (1975); Minnesota Statutes Sec. 324.06 (1983); New York Arts & Cultural Affairs Sec. 15.01 (1981); North Carolina Statutes Chapter 25C, Article 2 (1997); Oregon Revised Statutes Sec. 359.300 (1981); South Carolina Trade & Commerce Sec. 38-16-10 (1986); Wisconsin Administrative Code ATCP Sec. 117.01 (1990).
2. Vol. 2, Merryman & Elsen, *Law, Ethics and the Visual Arts* (2nd ed., 1987), Statement of Professor Merryman, p 539.
3. Keen: *The Sale of Works of Art* (1971), Jarrold & Sons, Ltd, Norwalk.
4. O'Hanlon, James. 1978. *Limited Edition Buyer Beware* Forbes, 10 July 65-67.
5. Goldman, Judith. 1976. *The Prints Progress: Problems in a Changing Medium*. ARTnews, summer, 39-46.
6. Supra n 1.
7. Wallach, Amei. 1981. *The Trouble With Prints: Abuses in Today's Market*. ARTnews, May, 60-69.
8. Supra n 7, at pp 61-62.
9. The *Great Dali Art Fraud and Other Deceptions*, Lee Catterall, Barricade Books, Ft. Lee, NJ (1992) at p 61; *Dali's Legacy, Fights Frauds & Fakes*, ARTnews vol 99, #11, December 2002.
10. *12,000 Fake Dalis under a US Gavel*, The New York Times, Monday, 11/6/95 p C11.
11. MCLA 442.355 (1) (b), (d) (f) & (g).
12. *The Trouble With Prints* at p 69; *The Great Dali Fraud* at p 87.
13. MCLA 442.355 (1) (j) & (k).
14. MCLA 442.355 (1) (c).
15. Supra n 13.
16. MCLA 442.355 (1)(e).
17. Scott, Melanie. 1996. *The Fine Print*. Saturday Night, May, 31-38.
18. MCLA 442.352(2).
19. MCLA 442.356-358.
20. MCLA 442.355(3); MCLA 442.359.
21. MCLA 442.352(3).
22. MCLA 442.362.
23. MCLA 442.360.
24. MCLA 442.365.