

WHY BECOMING A NATIONAL TREASURE CAN LOWER AN ARTWORK'S VALUE

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Jan 2, 2019 2:40pm

While Andy Warhol believed that “in the future, everyone will be famous for 15 minutes,” the artist retains his fame today almost 30 years after his death. Warhol is, in fact, so relevant to contemporary culture that despite being a thoroughly American artist, laws in other countries increasingly categorize works by the artist as cultural property subject to export restrictions and limitations on sale. Originally designed to protect antiquities and Old Masters, these rules and regulations are starting to ensnare art made in the 20th century.

Because they restrain trade, these laws lower the value of art that must remain in the local country, while providing no mechanism for the owner to be compensated for their loss. They also create incentives for owners to get their 20th-century art out of the country before it becomes subject to the rules. Italy and Germany provide good examples through which to understand the perverse impact of cultural property laws on the marketplace for 20th-century art.

In Italy, the land many believe invented bureaucracy, fine art export rules do not disappoint. The first comprehensive Italian cultural heritage law was passed by the Italian parliament in 1909; it was recently updated in 2017. The law states that artwork that is at least 70 years old and created by a deceased artist requires an export license to leave the country. As of 2019, this will apply to art made on or before 1949, and to all deceased artists, not just artists of Italian heritage.

The law forces Italian collectors to be on death watch because the export status of works they own can change overnight when an artist passes away. Moreover, the rules apply to any “culturally significant” artwork worth more than €13,500. To use Joan Miró as an example, every work created during or before 1949 that is in Italy—be it a \$20,000 print or a \$20 million painting—will need an export license to leave the country.

Why does this matter? Securing a license is time-consuming, plus it creates incentives for side deals and other forms of bad bureaucratic behavior. The Italian Ministry of Cultural Heritage and Activities is also permitted to declare an artwork to be of national importance, a designation that enables them to block it from leaving the country and limit its sale to only Italian residents or institutions. Because the ministry has no guidelines on how the concept of “national importance” should be determined, the assessment is completely at their discretion.

Elena Quarestani, an Italian collector with a Salvador Dalí painting, was entangled in these onerous rules. Milanese officials wanted to protect the Dalí portrait *Figure at a Table* (1925) as an example of Italian cultural heritage, even though it is an early work by Dalí that does not incorporate any of the motifs for which he is known. But if not for being by Dalí, the painting would be essentially worthless. This painting only appeals to connoisseur collectors of Dalí or to an institution devoted to him, neither of which is likely to be found in Italy. But, as Quarestani told *The Guardian*, the government found that it was rare enough for any work by Dalí to be in Italy to warrant the export ban. The Italian government also blocked an offer by the Spanish-based Dalí Foundation to acquire the work.

By restricting the sale to Italian buyers, the government would force Quarestani to sell the painting at a discount to its true fair market value. But she has no recourse to the government to be compensated for her loss.

Dalí would likely be amused by the surreality of the government's arbitrary ruling. Similarly, Warhol—who once famously quipped that “making money is art and working is art and good business is the best art”—likely would have loved that two of his early paintings hung in a casino in the German town of Aachen, a spa city near the border with Belgium and the Netherlands. On their way to slot machines and poker tables, gamblers passed *Triple Elvis*, a 1963 silkscreen painting of three life-size images of Elvis Presley on a silver background; and *Four Marlons*, a 1966 silkscreen painting of four life-sized images of Marlon Brando on a motorcycle.

Purchased in the late 1970s for \$185,000 (approximately \$700,000 today), the paintings were part of a plan to glamorize an otherwise off-the-beaten-track gambling parlor. When the casino conglomerate that owned the Aachen operation fell on hard times, a German state-owned bank seized control of the company and decided to sell the paintings. The sale was a reasonable action by the owners to raise cash for a troubled company. But protesters emerged, claiming this was a dangerous sale of cultural property

owned by a state-run financial institution. The sale went ahead anyway, and the works sold for \$151.1 million.

The sale, however, contributed to the German culture minister advocating for tough new rules to limit the export and sale of artwork. In July 2016, German parliament passed legislation at the culture minister's behest. Owners of works of art worth more than €150,000 that are at least 50 years old now need an export license for the work to leave the European Union. If the work is shipped to another EU country, the minimum thresholds are €300,000 and 75 years.

Officials in each of Germany's 16 regions were also given the authority to declare works in their region to be of national significance. They can then bar the work from leaving, and restrict sales to individuals or institutions in Germany. The rules apply to art by both deceased and living artists, and artists of all nationalities. Because many German artists protested the proposed rules, the government added last-minute provisions granting living artists the right to approve whether any artworks by them are added to the export ban list. The culture minister indicated that if the rules were in place in 2014, she would have blocked the export of the two Warhol paintings.

As in Italy, the German law created unintended consequences as lawmakers tried to control markets. In advance of the legislation passing, many German collectors moved valuable art out of the country. With the passage of time, as more 20th-century art has reached the critical export license date, more artworks have left the country. The situation has become so acute that German auction houses and galleries face difficulties sourcing consignments, and continue to agitate for repeal of the regulations.

While German collectors and art market professionals were made worse off by these rules, who benefits? Collectors in the United States and Asia probably have smiles on their faces as the art that has flowed out of Germany—and will continue to do so—becomes available for sale on the international market.

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