

## THE IMPACT OF LEGAL FEES ON CULTURAL INSTITUTIONS

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I am the director of an art museum and as such, I confront on a daily basis those issues which, over the past decade have become part of what is perceived to be the rarified world of visual arts. Now, before you begin fantasizing about international high stakes art auctions, clandestine encounters in Soho lofts and great and stirring revelations in Italian palazzos, you should be aware that the greatest percentage of my and my colleagues' time is spent trying to keep the museum's doors open and staying one step ahead of the bill collectors. Encouraged by an aura of abundance and "monetary overweight," museums are frequently misperceived. Is it not museums that proverbially joust for multimillion dollar works of art, build state of the art climate-controlled additions and celebrate events in black-tie splendor? In a way, we appear to be the cultural community's answer to conspicuous consumption. But like the mandrake at the county fair, let me assure you it is all an illusion.

Today's art museum, like today's theater or symphony, is a fragile and perishable entity beset by spiraling costs and confronted by increased public demands. In the midst of this new popularity, the museum is threatened by critically diminished federal and government support. The art museum today is perched precariously on a financial precipice which comes close to crumbling each and every operating day. And in this era of dangerous budgetary dependence, a simple two or three percent fluctuation in a given fiscal year can spell disaster for the art museum.

It is my contention, therefore, that over the next five years, Americans will see a number of prominent art museums disappear for reasons I will note in a few moments. Concomitant with all of these fiscal dilemmas is the predicament created over the last fifteen years as the body of laws governing museums, artists, collectors and dealers has expanded to the point where ignorance or un-

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familiarity can spell institutional disaster. The old rules have changed. There are new guidelines. There are rapidly changing regulations governing every step made in an art museum. Ignorance of any of these areas can lead to disastrous results for the nonprofit institution as directors, administrators and curators warily make their way through the labyrinth of each and every day. Today there exists a veritable maze of complex legal dilemmas which relate to issues involving everything from production rights of auctions to artists' estates to donors' wishes to collections management, etc. They are questions requiring institutional familiarity which, in many cases, only the most facile, well-educated, competent, up-to-date legal counsel can provide. Whether the issues involve insurance or concern areas as bewildering as international repatriation or reevaluation of property, the museum is expected to move with the most current and correct legal guidance it can possibly garner.

But unfortunately, like many questions in the nonprofit sector, effectiveness and the ability to deal with the issues at hand returns to the availability of funding. Who can afford the best legal advice; who can attract the best counsel? And although attorneys have a long and respected tradition of offering in kind services to museums, there is, to quote the vernacular, "no free lunch," and litigation invariably costs money. But more than that, it costs the museum its range of services.

Let me give you a list of a few areas that have been adversely affected or eliminated—not so much by the monetary costs (the dollars and cents of litigation), but in many cases simply because the challenges posed by opposition forces and the nuisance factor entailed are simply too expensive for already fragile institutions to bear. Museums can no longer afford many aspects of revenue production critically needed for thier operations. Museums currently face challenges regarding unrelated books, posters and magazines. Rental galleries in most institutions have already been discontinued because of the threats of local dealers and galleries claiming unfair competition. Film programs are challenged by local theaters for similar reasons. Many museums now charge for the processing of loans of art works since the necessary forms have become so complex that most institutions now have entire staffs devoted to doing nothing but filling out and processing lengthy loan materials. As a result, museums will soon charge \$75 per loan. If an exhibition consists of 500 objects, the bills can be exorbitant. To borrow a slide from a slide library in many art museums may cost as much as \$35

in processing fees.

To add to this problem, new tax legislation has radically affected the relationship of donors and art institutions. Some museums are even cautious and reluctant to collect work of living contemporary artists since new restrictions are far beyond their means of compliance. Due to the increasingly litigious nature of society, curators no longer evaluate works of art (a service which used to be invaluable to museum members) out of a fear of liability if their evaluations prove incorrect. Indeed, numerous lawsuits have been brought against institutions by the dealers who originally sold the works.

The precise impact of the rising role of the lawyer in the operations of museums is still uncertain. Obviously, the cost concern is a director's nightmare. What can be said without hesitation, however, is that the romance of the major art auctions and the lure of ancient foreign treasures will now be sobered by the reality that the law and lawyers will suspiciously view each of our acts.