

Newsletter

The Catalogue Raisonné Scholars Association

June 1994

Formation of the CRSA:

In 1993, Gail Levin (Baruch College and Graduate Center, City University of New York) initiated and co-chaired a session on the catalogue raisonné at the College Art Association annual meeting in Seattle. In response to the enthusiasm generated by those in attendance, Gail pursued the idea of establishing a Catalogue Raisonné Scholars Association (CRSA) as a Special Interest Group of CAA and with Roberta K. Tarbell (Rutgers, State University of New Jersey, Camden) and Barbara Buhler Lynes (Maryland Institute, College of Art, National Gallery of Art, Georgia O'Keeffe Foundation), co-chaired its inaugural session at the 1994 CAA, "The Catalogue Raisonné: Authenticity and Legal Issues."

1994 CRSA Session:

Barbara Hoffman, CAA Counsel, Schwartz, Weiss, Steckler & Hoffman, P.C., and Beverly Wolff, Secretary and Counsel, Museum of Modern Art, responded to questions formulated by the session co-chairs about copyright and disparagement. A tape of the session can be ordered through Audio Archives (1-800-747-8069; tape 140216-110).

Session Synopsis:

Disparagement: The lawyers defined and made distinctions among the legal theories upon which claims could be filed against cr authors and suggested that disparagement would be the most probable cause of action: "an intentional falsehood that degrades the quality or authenticity of somebody's property that results in damages to them." Both felt it unlikely that such a suit would be successful, but suggested that because legal defense costs are high and because "anyone can sue anyone at anytime for any reason," cr authors carry some form of liability insurance. To protect against the possibility of legal claims, Barbara Hoffman suggested the value of publishing a general disclaimer in a cr, such as a statement "indicating that the cr is for

scholarship purposes only and is not meant to be relied upon for sales or purchases of works of art," and that works have been included or omitted in it for "no reasons other than the opinion of the author." This might provide a degree of protection against legal claims.

Copyright: In responding to questions, the lawyers pointed out the complex nature of copyright laws and that those in the United States and Europe differed in certain respects, particularly with regard to the "droit moral." They also discussed "Section 107: Limitations on Exclusive Rights: Fair Use" of the 1976 United States Copyright Law, listed below, and suggested that it most probably would apply the doctrine of fair use to the reproduction of copyrighted materials in a cr. Barbara Hoffman stated: "if a scholarly work incorporates copyrighted materials (photographs, for example) and does it in a way which is not meant to supplant the original but to discuss those works, it should be considered 'fair use' of the materials. This is consistent with the goal of the copyright law which is to promote creativity rather than stifle it." Yet both lawyers also pointed out that although Section 107 should be a defense against claims of copyright for reproduction in a cr published in the United States, it has yet to be tested in a court of law.

Section 107: Limitations on Exclusive Rights: Fair Use

Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;
2. the nature of the copyrighted work;
3. the amount and substantiality used in relation to the copyrighted work as a whole; and
4. the effect of the use on the potential market for or value of the copy-righted work.

CRSA Recommendations to Catalogue Raisonné authors:

1. Contact your insurance company to discuss the best means of insurance protection and your lawyer to discuss legal protection.
2. Request (as suggested at the 1994 CRSA session by Francis V.

O'Connor) that the CAA offer such an liability insurance policy to its membership.

3. Consider including a general disclaimer in your publication.

1995 CRSA Session, CAA Convention, San Antonio, Texas:

"Scientific Analysis: An Aid to Issues of Authenticity"

Three art conservators will present papers on the scientific analysis of painting, sculpture, and works on paper and how it can serve as an aid to solving problems of authenticity. A question and answer period will follow. If you have questions that you would like raised and discussed at this session, please contact Gail, Barbara, or Roberta.

CRSA: An Affiliated Society:

As announced at the 1994 session, the CRSA is the process of becoming an Affiliated Society of CAA and has formulated a Statement of Purpose listed below. If members have suggestions for additions or deletions to it, please contact Gail, Barbara, or Roberta, who have agreed to serve one three-year term as President, Vice-President, and Treasurer.

Statement of Purpose:

The CRSA has been formed as a communication network that will provide information and advice to scholars engaged in compiling a catalogue raisonné or seeking to begin one. A newsletter will be circulated twice yearly. Sessions on issues pertaining to catalogue raisonné projects will take place during the annual meeting of the CAA. Topics of concern at these sessions will include: computer and other new technologies, funding and publishing possibilities, legal issues, authentication problems, scientific analysis as an aid in determining authenticity.

Among the goals of the CRSA are the following: to raise the level of awareness among art historians and museum professionals of the value of the catalogue raisonné; legitimacy of the museum practice of charging permission fees for reproducing works of art in these reference studies; to encourage cooperation between catalogue raisonné scholars and museums, dealers, estates of artists and other scholars.

As an Affiliated Society, the CRSA will meet at the CAA annual meeting. Its officers include a President, Vice-President, and

CRSA Newsletter - June 1994 - 4

Treasurer, who will be elected for three-year terms by the membership. CRSA members will receive a newsletter twice yearly. CRSA dues are \$10.00 per year.

Newsletter Information:

The newsletter is intended to provide information about topics that interest its membership. Please let us know your concerns. For example, if you are aware of a recently published catalogue raisonné, send in its title, publisher, and author for listing in the newsletter. The newsletter may also publish members' questions pertaining to current research problems; provide recommendations about data-base programs that have proven to be particularly effective for catalogue raisonné projects; or address other issues. Contributions from members are welcome.

The following is a list of current CRSA members. Areas of interest or expertise are listed for members who included this information on membership forms.

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CRSA Newsletter - June 1994 - 6

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CRSA Newsletter - June 1994 - 7

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