

CRSA Forum

The Newsletter of the Catalogue Raisonné Scholars Association

An Affiliated Society of the College Art Association

June 2004

No. 14

FROM THE PRESIDENT

Nancy Mowll Mathews

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As many of you know, our previous cash reserves are now almost gone, and it is time once again to begin asking for money from our members. Scott has done such a phenomenal job of getting the newsletter out (and very frugally, I might add) that we need to support his efforts.

We are calling for all members to make annual donations of at least twenty dollars to cover these costs. Many have already sent in their checks, but many will be hearing about this for the first time. Please fill out the membership form to update your membership information and send it to me with a check payable to CRSA.

Why "donations" rather than "dues"? Very simply: we don't have the mechanism to tie membership to "dues." Instead, we must rely on the good will of members to send in money whenever they can and at whatever amount they can afford. We fervently hope that those who have the means will send in a substantial amount.

The CRSA exists because of the extraordinary contributions of its members. I must mention once again the time and effort that Scott Ferris, as editor of the CRSA Forum, and Steven Manford, as CRSA director of programs, continue to donate to the organization. I would also like to thank all the members who have contributed to the *Forum* and who spoke in the two New York events this spring, "The Scholar and the Auction House," and "The Catalogue Raisonné: A Seminar in New York." And finally, we acknowledge with gratitude those who hosted the events: Lisa Koenigsberg and the staff at the NYU School of Continuing and Professional Studies, Programs in the Arts and Morgan Spangle,

Jack Flam, and Joachim Pissarro at the Motherwell Foundation. The NYU seminar was so successful that Lisa Koenigsberg has already selected dates for another one next year: April 16 and 17, 2005. Put these dates on your calendar!

We are currently considering what type of program to have for our annual CRSA meeting at the College Art Association conference in Atlanta next February. We would also like to repeat the format of our very successful panel on "The Scholar and the Auction House" for an evening program in New York next fall. If you would like to be an organizer, or if you have suggestions for either, please contact Steven Manford.

The Expert Versus the Object

Ronald D. Spencer is counsel to the New York City law firm of Carter, Ledyard & Milburn LLP—where he specializes in art law and foundation law—and a CRSA member. He presented his paper, "Legal Issues Concerning the Catalogue Raisonné," at The Catalogue Raisonné: A Seminar in New York, in April (see below). The following "Introduction" is excerpted from his recently published book, *The Expert Versus the Object: Judging Fakes and False Attributions in the Visual Arts* (New York: Oxford University Press, 2004).

Introduction

Ronald D. Spencer

The authenticity of a work of visual art has always been a critical issue for anyone concerned with art, not simply for the work's monetary value, but for its intrinsic worth. Authentication is the process by which art experts—academic or independent art historians, museum or

collection curators, art dealers, or auction house experts—attribute a work of visual art (the Object) to a particular artist or specific culture or era.

The "objects" with which this book is concerned are works of visual art—paintings, drawings, and sculpture, although many of the general concepts, and certainly the emphasis on the importance of connoisseurship and the need for systematic authentication procedures, will be applicable as well to other objects, such as archaeological objects, decorative arts, and antiques.¹

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D'Annunzio's Daughter, 1903.
bronze, Krakow National Museum

BY WAY OF INTRODUCTION

As a continuation in our series on lesser known artists, CRSA member Charlotte Snyder Sholod, who is compiling a catalogue raisonné on the work of Henoah "Enrico" Glicenstein, offers this thumbnail sketch of the artist.

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CRSA Forum

The Newsletter of the Catalogue
Raisonné Scholars Association

Nancy Mowll Mathews, President
Steven Manford, Program Director
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Please send manuscripts and notices via
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Membership

To become and maintain membership,
please fill out the application form at
the end of this newsletter and return it
to Nancy Mathews. Please enclose a
membership donation.

Research Methods: A Compendium

Tina Dickey,
Editor, Hans Hofmann CR

CRSA is a truly multiversal organization in that its members, as individual authorities on our chosen artists, are not in direct competition with each other. We have a golden opportunity to exchange information, even trade secrets, in order to enhance the efficiency and depth of our work as individuals and our effectiveness as a group. In line with this awareness, the following overview of research methods is not the sole contribution of the author but a compendium of comments of CRSA members culled from the business meeting held at CAA Seattle, February 21, 2004, at an ungodly hour of the morning. I am grateful for the expertise, generosity and insight of the CRSA members present: Nancy Mowll Mathews (Prendergast and Cassatt), Gail Levin (Hopper and Hartley), Sharon Flescher (Executive Director, IFAR), Barbara Wolanin (Arthur B. Carles), Joyce Schiller (John Sloan), Renee Maurer (Rothko), and Joyce Hill Stoner (Wyeth, and American Institute for Conservation).

While waiting for our colleagues to arrive, a few of us launched into a roving discussion that raised more questions than answers, questions that could fuel future meetings, newsletter articles, and listserve roundabouts: When commencing a CR, how can the investment in time and funding be estimated? Time constraints can present serious obstacles. How are CRs funded? What funding sources are available to unaffiliated CR editors? How should the work on a CR be structured, in terms of workloads, organization, and priorities? How much are we paid? When a CR is completed, what happens to the files, and how can they be updated? How can we sustain a mutually beneficial and ethical relationship with dealers? How can we increase our abilities to date and authenticate works? (Biographical study is extraordinarily helpful in dating work; studying with former students, or at least the involvement of former students can be helpful in authentication).

Our organization facilitates shoptalk between scholars, but a wider range of open discussion would benefit us all and educate the institutions and clients with

whom we negotiate our purposes and needs.

Our Networks: The Mail, The Internet and The Advertisements

The CR sprints into a new century with use of the internet. A short way into the discussion, I volunteered to look into creating a simple web page that will advertise our events and offer links to the web pages of our members (plus a membership list for those not on line). Simultaneously, the CRSA web page can establish mutual links with other organizations such as IFAR, and those of appraisers, conservators, and dealers. The subject is now under exploration. (The domain crsa.org has already been claimed by the Chinese Radio Sports Association, but catalogueraisonne.org appears to be available.)

Those members maintaining a home page for their artist or project can contact AskArt.com to request a link to their page from the AskArt page for that artist. The resources of ArtNet.com can be helpful to CR editors; inquire into their educational and institutional rates. Ebay tends to be a good source for fakes and ephemera (publications, etc.), but rarely turns up an original.

The museum mailing is logically conducted first, before mailings to appraisers, galleries, and auction houses. Museums are the last stop for most
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By Way of Introduction Enrico Glicenstein (1870-1942)

Charlotte Snyder Sholod

Born in the tiny hamlet of Turek in Russian Poland in 1870, Glicenstein in his youth seemed far from destined to become a master sculptor whose works of art would one day enjoy an international reputation and would be collected by major museums around the world. Opportunities for the child to experience the caliber of fine art that he would someday champion were limited to local fairs and church processions, the ubiquitous folk art of his native land, and the fascinating tombstones carved by his father, a poor, provincial teacher of Bible and Talmud.

An innate drive to create manifested itself early in Henoch's life, leading him to carve objects from wood he found in the nearby forest. Despite his father's stern disapproval, the boy's strong urge to carve resulted in a series of small original figures that eventually became legendary within the neighboring towns. Recognizing the teenager's outstanding talent, generous patrons in Lodz volunteered to finance his studies at the Royal Bavarian Academy of Art in Munich.

Thus Glicenstein experienced his first contact with professional artists, not to mention his first exposure to ancient and Classical art in the Glyptothek, at the age of twenty in Munich. During his five years in Germany, the Academy channeled his energies towards learning the techniques of modeling and bronze casting, while his own penchant for infusing his prize-winning works with the passionate spirit of real life informed his sculpture with a personal, emotive style that would evolve over the subsequent five decades of his illustrious career.

A crucial turning point occurred in his life in 1895/1897, when two consecutive Prix de Rome allowed him to work uninterruptedly on developing his skills in Italy. Heartened by the Mediterranean light and majestic grandeur of Rome, the twenty-six-year-old sculptor rejoiced in discovering sculptural masterpieces ranging from the Etruscan to the Renaissance periods. Equally crucial to his well-being was the presence of Helena Hirszenberg, whom he had married in Lodz at the end of 1896 and who joined him in Rome for the second year of his scholarship.

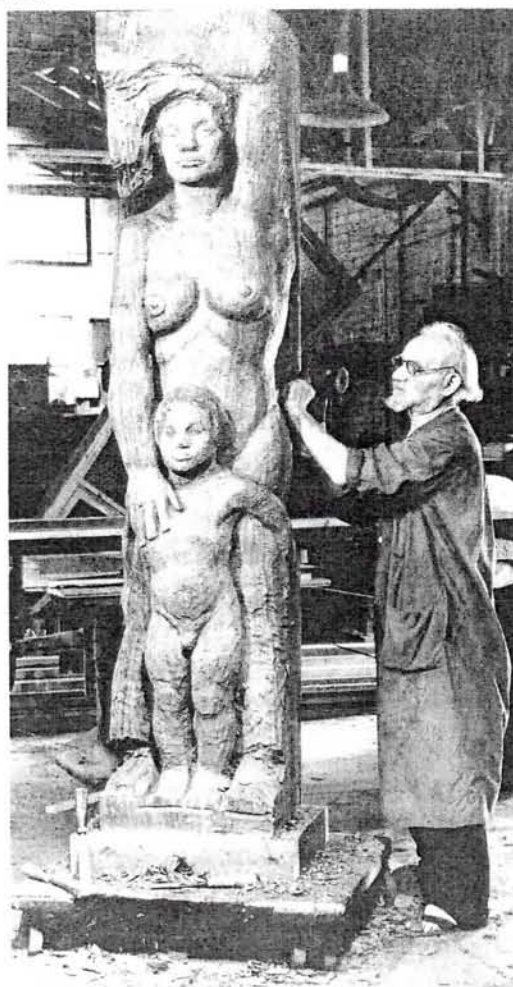
Finding patrons in Rome was a struggle. Within a few years, however, Glicenstein's expressive yet classic sculpture attracted the attention of international society in Rome, and such foreign notables as Stroganoff, Prince Nelidov, Ludwig Mond, and Henrietta Hertz, as well as numerous Italian born dignitaries, became regular visitors to his studio. Encouraged by their admiration and commissions, Enrico, as he was now called, devoted all his dynamic energy to creating new sculpture. One in particular, *Cain and Abel*, brought him the great satisfaction of winning a gold medal in 1900 at the Exposition Universelle in Paris.

By 1901 the Glicenstein family had doubled in number with the birth of a son, Emanuel, and a daughter, Beatrice. Accepted as a bona fide member of the artistic community in Rome, the sculptor was invited to model a bust of Gabriele D'Annunzio at the poet's villa in Nettuno, where the fresh beauty of D'Annunzio's young daughter inspired him to create her bust as well. It was this portrait, *D'Annunzio's Daughter*, which enjoyed a place of honor next to Rodin's *Le Penseur* at the 1904 Salon in Paris. Rodin, who had spent a full day with

Glicenstein at Meudon, soon thereafter recommended the young sculptor's election to the Société Nationale des Beaux-Arts. Many other tributes followed, allowing Glicenstein to look back to the flourishing period of 1897-1906 as his halcyon years.

The ensuing years were far less stable, as several of his major benefactors had died or left the city by 1907, and he felt the artistic climate in Rome to be less supportive. Consequently, he began making frequent extended trips to Germany to seek commissions and exhibition venues over the next seven years, compelling him to leave his family behind and interrupting the continuity of his all consuming work. Portrait busts by the pilgrim artist were in demand, collectors purchased his sculptures, and a retrospective, which was first held at the Bre-

Glicenstein working on *National Defense* (1942, wood, now in the collection of Smithsonian American Art Museum, in carpentry shop on Welfare (now Roosevelt) Island.



men Kunsthalle in late 1912 and traveled to galleries in Hamburg, Munich and Frankfurt am Main the following year, solidified his reputation in Germany.

Plans had been made to mount the traveling retrospective in St. Petersburg, and Glicenstein was in Lodz on his way to Russia when the outbreak of World War I intervened. Compelled to remain in Poland for the duration of the war, the artist created several poignant, directly carved wood sculptures and many drawings reflecting the horror of the ongoing battles. At long last, in March 1918 he was permitted to travel to neutral Switzerland, where he was reunited with his wife and children and where the family remained for several years.

Glicenstein did not stay long in Rome after his return at the end of 1920. Searching for new opportunities, he soon left for London. Although his works were featured in a solo exhibit at the Greatorex Gallery and at the Royal Academy of Art, his overall reception in England was discouraging and prompted him to hurry back to Italy in mid 1924.

In sharp contrast to London, Glicenstein's homecoming to Rome was triumphant. An exhibit held in January 1925 elicited great praise in the Italian press for his powerful and vigorous art; furthermore, as a direct result of his success, King Vittorio Emanuele inducted him into the Order of Cavalier of the Crown of Italy. Similarly, his one-man retrospective at the 1926 Venice Biennale attracted enthusiastic critical attention. But his victories were short-lived. While modeling a portrait of Mussolini, Glicenstein, in his typical guileless manner, stated his opinion that Fascism was dangerously repressive. This disastrous encounter with Il Duce sealed his fate, forcing him soon thereafter to take flight from his beloved Italy.

Accompanied by his son, the artist arrived with his collection in New York in early 1928 in time for the opening of an individual show at the Anderson Galleries. With Rockwell Kent as one of his main supporters, the situation at first seemed exceedingly promising. However, the exhibit bore no tangible results, making Glicenstein wonder why he had bothered coming to the States. Only a series of uncommissioned portrait busts—*Commander Richard Byrd*, *Mayor Jimmy Walker*, and *Ignace Paderewski*, to name a few—gave him reason for tempered optimism.

His friends felt he might have better luck in Chicago. While in the Midwest from 1929 to 1935, the stock market crashed and the Depression began, compounding Glicenstein's struggles to find benefactors willing to finance expensive works of sculpture. After suffering overwhelming loneliness for his wife and daughter, Glicenstein was finally able in 1935 to bring his whole family back together in New York, where they lived in relative tranquility until Glicenstein was hit by a car and died on 30 December 1942. Despite the oftentimes dire circumstances characterizing Glicenstein's American period, he succeeded in creating his most masterful and strongest sculptures during this time.

It was here that he achieved his signature mature style, described by directly-carved monumental forms pulsating with the intensity of his genuine emotions and illustrating his basic credo, "I feel the urge to express myself with the purity of a child."

©Charlotte Snyder Sholod

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The Expert Vs. the Object

continued from page one

Since the process of authentication of visual art depends chiefly on the scholarship of art experts, it is especially important that the experts feel free to express scholarly opinions about the attribution of works of art. The art minded public, unfamiliar with the attribution process, may regard it with a measure of suspicion or may put too much trust in it, believing that attributions are made and fakes disclosed as a result of scientific evidence. In fact, few are based on scientific tests; the majority are based on the connoisseurship of an expert. And here, the natural wariness about the subjectivity of an individual opinion may be compounded by numerous examples of shifts in the status of a single work - a work removed from the canonic oeuvre of an artist by a group of experts (e.g., the Rembrandt Research Project) and then, a few years later, reattributed to the same artist by the same experts.

If the art minded public does not have a clear idea of the attribution process, it is largely because the experts have rarely articulated it in a systematic way. And why this paucity of expert explanation? Chiefly because of the experts' fear of legal liability. If you doubt this, think, for example, about the thousands of artworks that public museums acquire each year, and think, too, why one never (or rarely) sees an expert publicly challenge the authenticity of a work on which an institution is spending millions of dollars. Why, for instance, are there no false attribution sections in almost all catalogues raisonnés? Why are owners of an artwork usually told only whether it "will" or "will not" be "included in the catalogue" raisonné of the artist in question. And why

do most American museums have policies which prohibit their curators from expressing opinions on works of art not already owned by the museum?

The question of whether a work of art is "real" or "original" implies other questions: What am I buying? What do I own? What am I looking at? And, increasingly, perhaps due in some small part to higher prices, but in larger part to the growing sophistication of the art minded public as a result of exhibitions such as the Metropolitan Museum's 1995 "Rembrandt/Not Rembrandt," people are beginning to ask how a given attribution was arrived at. The question may be answered at several moments—when art is bought and sold in a private transaction or at public auction, when art is appraised for its value for an income or estate tax deduction, when museums and art galleries mount public exhibitions, when a scholar produces a book on the work of an artist, or simply when an owner wishes to determine the authorship or authenticity of a work.

Even as public awareness of and demand for opinions on the authenticity of art is increasing, fewer experts are willing to render these opinions for fear of being sued by a seller, buyer, or owner. This circumstance is aggravated because an art scholar authenticating a work may not ethically charge a fee related to the value of the art. For a \$600 fee, why should the expert risk a million dollar lawsuit for product disparagement or negligence? It should also be understood that, in much the same way that court decisions awarding damages for medical malpractice influence how doctors practice medicine, court decisions holding experts liable for negligent opinions with respect to attribution affect how (and indeed if) experts will provide their expertise and opinions

for the benefit of the art market and the general public.

These conditions have led groups of art scholars to form boards or committees in part to defend and ensure against these potential legal claims. This attempt is bound to be only partly successful, largely because the law demands objective evidence, which conflicts with the intrinsic "subjectivity" of even group connoisseurship.

people are beginning to ask how a given attribution was arrived at

It is not just experts, art dealers, and lawyers who are interested in authentication. The public has always been fascinated to see a shrewd art forger one-up rich collectors and pompous experts, especially in the case of twentieth century art. Here many museum goers still feel that they are being taken for a ride. Standing before an abstract or minimalist painting, they think, "My kid could do that, or better." Even this dubious visitor would, however, accept objective scientific evidence about the authenticity of a work. But, alas, when we examine the process of attribution, we find very few decisions supported by science. Instead, as we will find in this book, we are, in the vast majority of cases, drawn back to those "pompous" experts and connoisseurs.

The public's lack of understanding of the attribution process and the experts' concern about legal liability for expressing their opinions have combined to produce fertile ground in which fakes and false attributions flourish. And the concern over legal liability has been intensified by several unfortunate court decisions in which the courts did not fully comprehend the attribution process

or the expert's role.

Thus, freedom of scholarly opinion requires an understanding of the attribution process on the part of the courts and of lawyers, and would benefit from increased public awareness of the process.

Part I, "Authentication and Connoisseurship," illuminates the process through essays and interviews based on the practical experience of art world experts. Each author addresses attribution issues involving his or her particular professional concerns, an approach that presents a wide variety of professional and institutional interests.

The essays begin with an examination of the nature and history of connoisseurship. By connoisseurship we mean that sensitivity of visual perception, historical training, technical awareness, and empirical experience needed by the expert to attribute the object. Francis O'Connor and Peter Sutton agree on the primacy of connoisseurship in the attribution process, with the former focusing on the nature of connoisseurship and the latter on its historical development as a bona fide analytic tool. They also agree on its essentially "objective" nature.

The 1942 essay about fakes by Max Friedlander is, in part, here to remind the reader that a fake—a work created with *intent to deceive*—is but one facet of authenticity issues.² The larger, more important, and much more frequent problem is the examination of a work of unknown or wrongly attributed authorship.

The application of connoisseurship to an artist's entire body of work will often result in the catalogue raisonné—the principal published research document on the artist's work. In their essays on the catalogue raisonné, John Tancock, Michael Findlay, and Peter Kraus agree on the primacy of the cata-

logue raisonné as a research tool, and agree as well on many of the considerations which make certain catalogues unreliable. Tancock and Findlay allow the reader to see how the two major public auction houses, Sotheby's and Christie's, utilize (or do not utilize) a catalogue raisonné in the auction sale cataloguing process.

While the catalogues referred to in these essays represent the opinions of a single expert (or, at most, two or three coauthors), Eugene Victor Thaw discusses the operation of the art world and art market, as a whole, in self-correcting misattributions. Thaw reveals how art historians, curators, art dealers, conservators, auction house experts, and collectors come, over time, to a consensus (which may change as a result of new research and analysis) about the attribution of a work of art. How this process operates in the field of Old Master drawings is the subject of the essay by Noel Annesley, an Old Master drawings expert. Through describing the analytical method by which he attributes an Old Master drawing, Annesley explains his part in the market's "self correction."

To the layman, a signature on a painting might appear to be important evidence of authorship. In fact, it tends to be nowhere near as important to the expert as our everyday contact with bank checks, receipts, wills, deeds, and contracts would suggest. However, signatures remain important to judges in courts, and so Patricia Siegel, a handwriting expert, shows how she decides on the authenticity of an artist's signature (Jackson Pollock, in this example).

It is also important to understand how organizations and groups of experts (foundations, boards or committees of experts, as opposed to individual experts) operate in the determination of authenticity. Sharon

Flescher describes the workings of the International Foundation for Art Research, although IFAR is somewhat atypical of these groups because it undertakes research on more than one artist. But, with respect to each artist, IFAR's process is rather typical in that it employs a group of experts who arrive at an opinion on attribution by consensus.

Another organization concerned with issues of authenticity and attribution is obviously the art museum. Samuel Sachs II, former director of the Frick Collection, agrees with O'Connor and other essayists in this book on the primacy of provenance and connoisseurship in determining authenticity, and on the relatively small value of signatures in this process. But there are other criteria at work in a museum. Obviously it is important not to hold out a fake as authentic; but more important than the matter of attribution (that is, who created the work) is whether the work of art is of "consummate quality."

If connoisseurship is primarily concerned with articulating visual perceptions, conservators bring to the attribution process a fairly single-minded concern with the physical structure of a work. Rustin Levenson, a conservator, describes how an examination of the physical structure of a painting can help attribute the authorship of traditional works of art. With respect to contemporary art, conservators face new challenges from artists who, in recent decades, use a variety of eccentric and often impermanent materials. The conservation of such non-traditional materials, as Levenson demonstrates in her second essay, becomes increasingly complex, both in terms of physical procedures and philosophical issues, all of which have important ramifications for attributing works of art.

While part I of this book illumi-

nates the nature of authentication and connoisseurship, part II, "Authentication and Law," attempts to help the reader understand how the law resolves disputes over issues of attribution. The essays in part II should help to establish the objective and systematic standards necessary to defend, at law, art scholarship and subjective judgments about art. To this end, Theodore Stebbins, Jr., addresses the liability of art experts in law courts from the late nineteenth century to the present day. Stebbins also examines the practical methods and procedures used by art experts today, and the effect of these procedures on their potential liability for rendering an opinion on authenticity. The essays in part II deal as well with the kinds of legal claims made as a result of an attribution, and the question of whether the expert's determination, self described as only an opinion, gives the expert protection from legal claims (Ronald D. Spencer, "The Risk of Legal Liability for Attributions of Visual Art").

Factors which judges consider important and proposed procedures for experts to follow that would limit their liability are covered in my essay, "Authentication in Court: Factors Considered and Standards Proposed." Newly available legal protections for experts rendering opinions (such as "hold harmless" provisions in agreements between owners of art and the experts) is the subject of my essay, "A Legal Decision in New York Gives Experts Protection" Last, French law and its complicating factor of artists' (and their heirs') moral right to attribute the artist's work is discussed by Van Kirk Reeves in "Establishing Authenticity in French Law."

One goal of this book is to help lawyers advise their clients and judges to arrive at more informed decisions (informed, that is, by a

better understanding of the nature of the attribution process and its practical consequences for art scholarship and the art market). When judges and private legal advisers know something more about the "industry," a knowledge which seems quite lacking in some of the judicial decisions discussed in this book, decisions are more likely to be fair to litigants and legal advice more useful to art world participants. The essays in part I describing the process of attribution and examining the history, nature, and practical application of authentication and connoisseurship are intended to provide the legal community with just such industry knowledge.

At this point the reader may well be asking why, and to whom, authenticity in the visual arts is important. As will be seen, there has been, and continues to be, an intrinsic conflict between the subjectivity of the expert's connoisseurship and the objectivity of the law, which demands clear and compelling evidence. It is said of James McNeill Whistler that when someone showed him an alleged Velazquez, he dismissed it after a glance, and when its owner protested his curtness, he declared, "I always swoon when I see a Velazquez." One of the contributors to this book of essays can deeply sympathize with Whistler. Not that Francis O'Connor faints at the sight of a Jackson Pollock painting, but he knows that recognizing a copy, a mistaken attribution, or a fake comes from a lifetime of empirical experience with an artist's oeuvre. With such experience, you can perceive the wrongness of a work as quickly as you could a forgery of your own signature. But proving such immediate, visual perceptions in court is, alas, not easy.

The essential points here are two. First, as it is argued, expressly in some essays (O'Connor and Sutton)

and implicitly in others, that the connoisseur's perception of an artist's form, or distinct manner, is not dissimilar from other types of "objective" evidence accepted by a court, such as handwriting analysis and forensic pathology—both of which are based on the formal characteristics of phenomena. Second, the expert must take a more systematic, organized, and careful approach to the authentication process, so subjective judgment can be supported by rational and physical analysis of the art object. Inherent, of course, in such a coherent system is that the authentication process is based on experts with no self-interest in the object in question, and not, as was common in late nineteenth- and early twentieth century Europe, on an opinion stated in a certificate for which a substantial fee, linked directly to a positive opinion, was received or promised.

In establishing these two points, it is hoped that this book will be of use to a wide range of individuals for whom a coherent system of authenticating works of art is important, if not crucial, in their professional lives. Artists and their estates have a very real interest in defending themselves against forgeries and misattributions; dealers, collectors, scholars, curators, and auctioneers all need to know with some modicum of certainty that what they sell or resell, acquire, study, or exhibit is authentic.

they dare not speak out for fear of risking litigation

It may be useful to detail the value of the essays to each of these interested parties.

For artists and their heirs, an active production of fakes may well prove a negative form of flattery, but

it is hardly a distinction to be sought or tolerated: it devalues the real works from the artist's hand, distorting their aesthetic and economic appreciation. This has happened with a vengeance in the realm of Salvador Dali's prints. On another level, unauthorized reproductions of an artist's work leave the artist the loser when it comes to royalties and reputation. Here, Robert Indiana's widely reproduced *LOVE* image is a notorious example. Artists and their heirs, therefore, have to fight inauthenticity on two fronts: the first, that of mistaken attributions or outright forgeries, and the second, that of intellectual property rights violations.

Dealers are often required both morally and legally to certify the authenticity of the objects they sell, so the need to establish the rightness of their wares is paramount. Both their reputations and their economic well-being require a system of authentication that is authentic in itself, being free of all questionable self-interest and recognizable as authoritative. At present, it is often the case that a dealer cannot find a recognized authority willing, even if able, to give an opinion as to the authenticity of an object because a negative opinion is too vulnerable to a lawsuit. This problem is complicated by the fact that some dishonest dealers are all too willing to pay for wildly inaccurate positive authentications, which are relatively invulnerable to challenge by knowledgeable experts for the same reason—they dare not speak out for fear of risking litigation. This book spells out the rights, duties, and vulnerabilities of art dealers faced with authentication problems, and the legal and commercial remedies available to protect them, their artists, and their clients from the consequences of fakery and misattribution in the art market.

Collectors, obviously, have a right to expect that what they buy is authentic, just as any consumer ought to be able to trust the label on a watch or a scarf. But truth in labeling does not always pertain to what changes hands in the present-day art world, leaving inexperienced collectors especially vulnerable to fakes and misattributions. Here, the collector has some obligation to perform "due diligence" before any major purchase, making sure to see such things as a complete provenance and an authoritative publication history for the object (although, as a practical matter, this information is probably not available for a large percentage of lesser works). It is hoped that the wealth of information in this book will help the fledgling as well as the experienced collector avoid the acquisition of inauthentic objects.

**scholars become the
recognized authorities
to whom everyone turns
for informed opinions**

Scholars are perhaps the most vulnerable to the present lack of clear-cut standards and procedures for authenticating works of art. They are on the front line of defense against fakes and misattributions, especially those scholars who undertake a monographic study of an artist, or who author a catalogue raisonné of the artist's work. It is scholars who most often become the recognized authorities to whom everyone else turns for informed opinions, and until early in the twentieth century, they were able to give such opinions without inhibition.³ However, because of concern for legal liability, they are no longer able to do so as freely as in the past. Further, since scholars are seldom economically independent, they are

most vulnerable to the threat of litigation. Many oeuvre catalogues are stalled because of the consequences of listing known fakes, or omitting them, which is pretty much saying the same thing. One practical result of this book might be a change in the views of judges in future court decisions about expert opinion, so that those best qualified can make judgments on authenticity without undue concern for being ruined in the process.

Museum curators are very much in the same vulnerable situation as scholars, although somewhat more protected by their institutions. Whether to include a work deemed inauthentic in an exhibition can, however, have ramifications quite different from those faced by the scholar. If you want a certain collector to leave your museum his Picasso, do you overlook the dubious Utrillo being pressed upon you for a current exhibition? When a certain Old Master painting suddenly appears at auction from the collection of a very famous connoisseur, how do you judge, under the pressure of the connoisseur's reputation, the conflicting opinions of experts that the painting may be (a) authentic but heavily restored; (b) the artist's copy; (c) an assistant's copy; (d) a seventeenth century copy; (e) something more recent?

Similarly, what does the auctioneer do when required to warrant the authenticity of the same painting when it is sold, and be ready to give back the money if the buyer later balks when the conflicting opinions of experts are reported in the newspapers? Since auctioneers tend to see a greater variety of works, as well as greater numbers of dubious works, than other art world professionals, they are more dependent on reliable in-house and outside expert opinion, and more vulnerable to litigation of all sorts. Here again, it is hoped that

the experts in auction houses can learn from this book.

Finally, these essays will demonstrate, despite our intuitive suspicion that art and the law do not comfortably coexist, that there is as much human empathy inherent in the formulation of a body of law as there is in the creation of a work of art. Both attempt to express, through either images or actions, a respect for what is true and real, and a rejection of what is not. It is our hope that this compilation of ideas will further that respect.

Notes

1. For a study of these other objects, see Mark Jones, *Why Fakes Matter: Essays on Problems of Authenticity* (London: British Museum Press, 1992).
2. For a study exclusively on the subject of fakes in the visual arts, see the work of Friedländer's younger contemporary, Otto Kurz, *Fakes*, 2nd rev. and enl. ed. (New York: Dover, 1967).
3. See Sir Joseph Duveen's difficulties in the 1929 case of Hahn v. Duveen, addressed in part II of this book.

©Ronald D. Spencer

A row of 15 triangles on a lined background. The triangles are arranged in a slightly wavy line, alternating between pointing up and down. There are 8 upward-pointing triangles and 7 downward-pointing triangles.

Forms of Legal Protection

The following **RELEASE, INDEMNITY AND COVENANT NOT TO SUE** form has been provided to the CRSA Forum by Frances Archipenko Gray as an example of the document used by the Archipenko Foundation.

Nancy Mathews has announced that she has been working with attorney Peter Stern "to develop something that could be used by CRSA members as both guidelines

and a template." *Perhaps this form will be ready to share with the membership by the next issue of the Forum.*

If other members already have forms that they use and would like to share with the membership, please do.

"RELEASE, INDEMNITY AND COVENANT NOT TO SUE"

The undersigned owner of a work which the owner believes is by the hand of Alexander Archipenko and is described as follows: (the Work), agrees to hold THE ARCHIPENKO FOUNDATION, Frances Archipenko Gray, its President, and the other officers, directors and employees of the Foundation, in their representative and individual capacities, harmless and released from any liability to the undersigned and to any other person (whether or not such person has relied upon or contracted with the undersigned) and covenants not to sue or make any other claim, because of the Foundation's rendition of an opinion on authorship of the Work or its refusal to render such an opinion.

Signature of Owner, Date

Name of Owner

Owner contact information/address."



American Institute for Conservation (AIC), Collaborations with Art Historians

The following announcement by Joyce Hill Stoner was submitted to the members of the AIC.

I am sure that a number of our members already have established professional relationships with conservators. Nevertheless, Nancy Mathews and I have and will share the names of CRSA members and their artist/s of expertise, to inquiring AIC members. If you

would not like your contact information given out to AIC members please make this clear to Nancy or myself, or Joyce.

Joyce Hill Stoner:

"I would like to alert conservators of paintings, sculpture, photographs, and works of art on paper that the Catalogue Raisonné Scholars Association (CRSA) of the College Art Association would be interested in hearing from conservators as they are treating works by known artists. If you are treating a work by Winslow Homer, Mary Cassatt, Rockwell Kent, Alfred Stieglitz, or Isamu Noguchi, for example, the scholar currently working on the catalogue raisonné for that artist would be delighted to hear from you, and might be able to offer you additional information on the particular piece.

"A CRSA online database will soon be available, probably by the end of 2004, but in the meantime, Nancy Mowll Mathews, the CRSA President, nmathews@williams.edu, or Scott Ferris, Editor of the CRSA Forum, kentiana@twcny.rr.com, have said that we may publish their e-mail addresses and they will be glad to connect conservators who write to them with appropriate catalogue raisonné scholars, if known.

(As a new Vice President of the CAA, I have been looking for ways to connect conservators and art historians for collaborative efforts of benefit to both sides.)"

Dr. Joyce Hill Stoner,
Professor and Paintings Conservator
Winterthur/UD Program in Art Conservation
jhstoner@udel.edu

Research Methods

continued from page 2

works, and the provenance they list will remove the found work from

subsequent mailings. Augment your museum mailing with a request that they notify private collectors in their area. Mailings to auction houses and the most active galleries entail prior research of auction records (or in the case of galleries, gallery sales), and the preparation of cover letters to be forwarded on to clients.

Art News provides a list of the top 200 collectors of the year, who can be individually located through internet white pages or the Social Registry. Some CR editors will be lucky to have lists of collectors in the records of the artist or primary dealer—many of these will be deceased, which can be confirmed by checking the Social Security Master Death Index or SSDI on the web. Heirs can be traced through obituaries; *The New York Times* has an index to obituaries of the last century. Additional sources for the names of collectors include the papers of the artist and related dealers in the Archives of American Art, along with columns describing auction sales by Carol Vogel in *The New York Times*.

Advertisements are known to be effective in the *IFAR Journal*, art magazines, and antique magazines. Letters to the editor are free of charge (if they are published). Notice should be placed in the AIC (American Institute for Conservation) newsletter, to the attention of the paintings and paper groups. *The New York Times Book Review Section* and *The New York Review of Books* used to be a time-honored source for CR notices.

Our Sources: The Archives

Some artist estates retained comprehensive records of works, exhibitions, and sales. As mentioned earlier, the artist and dealer papers of the Archives of American Art are tremendous original source materials. Additional clues may be found in the papers of former students and friends of the artist. The Whitney Museum papers at the AAA offer detailed research into selected artists of the forties. The findings of the

themselves to achieve that surreptitious pleasure so familiar to academics who love to repeatedly look up their publications in the university card catalog (if one could find such an item outside the University Archaeology Museum)?

So we need to ask if print publication and electronic publication are mutually exclusive. But even if most of these questions were to be resolved in favor of publishing conventionally, at least one question would remain, at least for some of us: Is this new form of publication worse than no publication at all?

©Jeffrey Coven

A Summary of the Seminar

Francis V. O'Connor

A catalogue raisonné (hereafter: CR) is a complete inventory of an artist's works. As such it is a major achievement for the scholar who produces one and a major contribution to the art profession in general. CRs provide detailed information concerning each object in the artist's oeuvre and a wealth of historical and biographical material that explains the work's nature and certifies its authenticity. Museums, auction houses, dealers, collectors and students of art find CRs invaluable. Their authors become the experts of last resort concerning their artist and his or her work. This two-day seminar [at NYU] raised and discussed the many adventures and problems scholars face in the compilation, publication and afterlife of CRs as art world resources. It also provided a rare opportunity for the scholars in the field to network. What follows is a brief account of the major points raised during the proceedings. These may be divided into four areas: gathering the information, the writing of the catalogue, the various legal ramifications concerning the intellec-

tual property they contain and the determination of authenticity, and how to publish them in the early 21st century.

Gathering

The information for a CR can be found in a wide variety of forms. If the artist is from the 19th century and very well known, such as Frederic Remington, George Inness or Camille Pissarro are, a CR may well already exist and be in need of revision and updating. This situation was discussed by Sarah Boehme, Michael Quick and Joachim Pissarro, respectively. If the artist is recent, the raw data may (or may not) be found among his or her papers. Edward Hopper's papers and remaining oeuvre were given to the Whitney Museum and provided the basis for Gail Levin's CR. Robert Motherwell's papers were given to the Dedalus Foundation, where Joachim Pissarro is editing his CR (as well as an update of his grandfather's under other auspices). In a few cases, a single scholar takes on a number of CRs and later bestows them on younger scholars, as Lloyd Goodrich did for Winslow Homer, which is now being completed by Abigail Booth Gerds. In certain cases, a long-lived artist generates a number of factions in the art world that complicate the life of the scholar, as Barbara Buhler Lynes described in an account of her Georgia O'Keeffe CR. In a few cases, artists begin organizing their own CRs—as the painter Pat Adams described during one of the seminar's panel discussions. In all cases the information has to be analyzed, checked and divided according to date and sometimes medium—a process now made easier by sophisticated computer software that permits easy augmentation and inter linkage.

Writing

The basic entry data for a work of art in a CR, which can be different for murals, prints or photographs, is: Title (there may be more than one; in some cases many; others remain untitled and may require descriptive titles), Date (not always certain, especially if the work has been repainted), Medium (may not be what it seems; technical analysis is not always possible), Dimensions (can fluctuate wildly due to perpetuated errors and the occasional shrinkage or swelling of the object!), Signature (may be present or not; may not be by the artist, etc.), Collection (normally known, but not all private owners want to be identified), Provenance (history of work back to artist's studio that may or may not be self evident—and can be obscured by art market forces), Remarks (where necessary to clarify specific points about the work—such as a visual source for the work or who or what it may represent), Exhibitions (all the places the work has been shown in public), and References (to all the publications that have illustrated the work or contain substantive comments).

The task of finding, checking and compiling all this information into a consistent format for each work in an oeuvre is daunting. Listening to the many scholars at the seminar I would say that the average time all this takes is about a decade; some spend a lifetime.

Probably the most recalcitrant problem is in dating undated works. Gail Levin pointed out the value of biographical information in this process, whereby a date can be learned indirectly from personal evidence. Michael Quick demonstrated how stylistic analysis can also help in revising the chronology of undated works. Every artist is different, of course, and absolute dates are hard to come by even when the artist signs

future of CR publishing.

In his remarks at the Dedalus Foundation, Joachim Pissarro noted that the "curse of our mortality" is to leave something out—even after years of exhaustive and exhausting research. It is just such a concern and its attendant anxieties that originally led me to consider publishing a version of my CR—"The Prints of Ernest Fiene"—on the web. If a catalogue raisonné is in fact a true, complete and authoritative compendium of an artist's work, then it behooves the CR author to correct the inevitable errors and omissions as quickly as possible. Conventional publishing simply cannot accommodate speedy revision, whereas such speed is fundamental to the nature of electronic publishing. And revision on the internet, as opposed to a CD ROM, is only limited by the author or editor being able to take a few moments from his or her subsequent project to do it.

At NYU, Francis O'Connor made the categorical statement that a CR published now that is not electronic is a waste of paper, and Tina Dickey in a recent CRSA list serve chat session cut to the same chase when she asked, "Are we as a group predominantly planning to publish our CR's in books?" Also at NYU, Abigail Gerds noted that the current generation of CR's should be published electronically, though not necessarily on the internet, as well as in print; while Sarah Boehme informed us that the Remington CR would be accompanied by a CD ROM containing supplementary material. Several other speakers discussed the features contained in their electronic databases and visitors to the Adelson Galleries were able to see one in action. At least two people were seen demonstrating their electronic CR's on their laptops during conference breaks. If the time for publishing CR's electronically has not

come, it cannot be far away.

Neil Printz, at the Dedalus Foundation, discussed his dilemma regarding whether to publish his Noguchi catalogue divided into volumes according to medium (sculpture, design, etc.) or to follow the more traditional path of presenting the works chronologically. After much soul searching, he decided on the latter. Nevertheless, he noted he would present one medium of Noguchi's oeuvre online, apparently to compensate for having had to give up the alternate format in the print version. A complete online catalogue, however, could eliminate Printz' dilemma. A click or two of the mouse can take the reader from a chronological presentation to any of a number of other formats. The capacity of the technology to store enormous amounts of data and publish it in multiple arrangements almost instantly makes web publication attractive to CR authors who want to afford their readers maximum flexibility but find themselves constrained by the limitations and costs of a printed volume or volumes. These features should be especially appealing to authors working on less than blockbuster artists for whom funding will be harder to come by.

In a recent e-mail to the CRSA listserv, Jerome H. Saltzer answered the question how do we advertise and network to turn up long lost works of art. He writes that publishing his catalog on the internet, was "one very effective way of turning up unknown or lost works. I receive two or three e-mails every month that begin with some version of 'I have a painting by Frederick Schafer that is not listed in your catalog. . . .'" Saltzer's comments go on to illustrate very effectively just how powerful a tool the web is for coaxing references out of the woodwork as well as easily updating a CR.

On the other side of the internet

publishing coin, another Dedalus panel member made the remark, in passing, that the web was a notoriously unreliable source of information. There is probably no traditional scholar who has surfed the web in his or her area of expertise who hasn't been appalled by egregious misinformation not only present but multiplied exponentially by means of the very technology lauded above. Is the web the mother of all vanity presses or can it be informed with scholarly legitimacy? CRSA Forum editor Scott Ferris has commented, "Checking through eBay or AskART or Artnet, I often cringe at what they include as factual [Rockwell] Kent information." He went on to say, however, that he also "cringes" at what various traditional print publications often include. Certainly reliability and respectability are fundamental to the very nature of the CR, so before one publishes a CR on the web (or anywhere) there must be a way of certifying its scholarly credentials. To some extent this would be accomplished on the web in the same way it is for print publications: the credentials of the author and the publisher (whether it be Yale University Press or www.yale.edu) are lent to the publication.

And then there are the fears. How can the denizen of the stacks who is more comfortable among dusty tomes than with a dusty keyboard be expected not only to examine the work of others in a technologically complex environment but develop the skills to produce his or her own work electronically?

Perhaps most deeply felt of the issues revolving around the electronic publication of a CR is what might be called book envy. Would CR authors (and readers) no longer be able to see, hold and otherwise viscerally experience their books; not be able to sign copies for friends and colleagues? Would they have to Google

puters, digital images and elaborate programs to complete their CRs, only a few seemed to have any vision of publishing them on anything other than paper—the papyrus of the 21st century. As I stated bluntly during one discussion, to do that now is crazy.

It seems to me that these days there are only two ways to publish a catalogue raisonné—either on the Internet or on a CD-ROM, or both. The kind of textual information that goes into a catalogue raisonné has the great advantage of being instantly supplemented as new works and information about old works becomes available. The visual imagery is protected from theft, since the only way to download it is to print it out—and the resulting images are hardly suitable for republication—and can be protected further by canceling procedures if required—or using a PDF format. While the images may well not show up consistently over the Internet, they are there for identification purposes. A catalogue raisonné is not an art book. Besides, the digitized images in the electronic database are pre-served, can be put on CDs, and do not fade. (I have noticed that the signature of color plates in the first volume of our Pollock catalogue are already starting to fade!) Since critical or interpretive essays have no place in a catalogue raisonné, they are not an issue.

Indeed, it is a sobering thought, especially for scholars, that at the dawn of the 21st Century information is not what it used to be. In his brilliant and as yet unappreciated book, *A New Kind of Science*, Stephen Wolfram discusses information in the context of evolving away from axiomatic systems based on discrete quantities of data and toward algorithmic systems based on the continuous processing of data. This is to be seen most dramatically today in the transition away from books

and toward computers and the Internet.

None of this interferes with the archival situation—there can always be secure files of the original research materials—just as the entire corpus of research material for my Jackson Pollock catalogue and its Supplement is today preserved for researchers at the Pollock-Krasner House and Study Center of SUNY at East Hampton.

An Internet edition of a catalogue raisonné could have a spinoff in the form of a CD edition that could be sold on a subscription basis much the way some presses sell the most recent volumes of one of those endless editions of a great personage's papers—or a new Bible translation.

Another great advantage of an electronic edition of a catalogue raisonné is that its author is in complete control of its contents and the style of their presentation. Designers and errant printers are not around to mess things up—and a good copy-editor can be hired to keep it literate and consistent. But the main point is that the entire enterprise is in the hands of the scholars who are responsible for its contents.

But all of this is contingent on accepting and respecting our new technology, keeping it under our control, and being willing to renounce our emotional bonds to traditional books made of paper—the papyrus of the 21st century.

[Note: This summary can be found in another form, along with its author's seminar paper, "Cataloging Jackson Pollock: Issues of Procedure Then & Now," at Commentary No. 20 on O'CONNOR'S PAGE: <http://members.aol.com/FVOC>. For more about Stephen Wolfram's important book, *A New Kind of Science*, go to Commentary No.16.]
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The Milne Catalogue Chronicles (Part I)

David P. Silcox
1999

Thirty-five years ago in 1964, and in my spare time, I tried to start a project that I thought would take a while—but not more than a year. In 1968 I tried to start it again, but this time I thought it would probably, realistically, take two years. Then in 1970 David Milne Jr. and I joined forces and by 1973 we thought we would be finished by 1975, although even then we would say, wryly, that our deadline was 1972. At last we finally are finished and the *David B. Milne Catalogue Raisonné of the Paintings* is a published reality.

The preparation of a catalogue raisonné, a complete chronological documentation of each and every work by an artist (and those supposed to be by him or her), is a labour of immense range and scope. Here's the enigma about it: it's the sort of work that you have to start when you are young, when you don't know as much as you should; and it's the sort of work that you can't start when you are older, when you may (hypothetically) know what you are doing, because you haven't enough time or energy to finish.

My interest in Milne began when, as a student at the University of Toronto, I met Douglas Duncan, Milne's agent and dealer, the eminence of the Picture Loan Society, one day when he was hanging Milne paintings at Victoria College, where he was an alumnus. My attraction to Milne's work became acute a year or so later when I moved to Hart House at the University of Toronto and involved myself with the collection and the exhibitions there—mostly contemporary art, but including a Milne retrospective show of 44 paintings, which Duncan chose and which I gathered up and hung. At

and dates the work—given repainting or slips of memory. And what do you do about the artists who make later copies of their early works and back-date them? Other problems arise over reconstructing the history of a work back to the artist's studio, and several speakers at the seminar lamented the secrecy of dealers, collectors and auction houses, given the huge monetary value of works of art these days and the desire to maintain absolutely opaque transactions. Scholars who want to deal only with owners of a work sometimes have to be satisfied with working through their agents. As Abigail Booth Gerdtz pointed out in her presentation, the rules of the market can invalidate the contents of a CR by withholding essential documentation.

Legalities

Here the issue of authenticity is paramount for the simple reason that these days scholars can be liable at law for negative opinions. Indeed, nearly every presenter raised the problem of fakes and how to deal with them. Michael Quick, for instance, stated that there are more Inness fakes than real ones; William A. Camfield of the Comité Picabia discussed several law suits resulting from forgeries. The lawyer, Ronald D. Spencer—and the editor of a valuable new anthology on the whole question titled *The Expert Versus the Object: Judging Fakes and False Attributions in the Visual Arts* [see above] in which the author has an essay titled "Authenticating the Attribution of Art: Connoisseurship and the Law in the Judging of Forgeries, Copies and False Attributions" (pp. 3-27)—spelled out some of the realities involved in dealing with fakes.

First off, a scholar's opinion can be a value judgment (this work of art is aesthetic drivel) or an assertion of

fact (this work of art is a fake). If the latter, there are a number of legal claims a person can make if the assertion of fact is made in public (i.e. published). First, the opinion monger can be charged with negligence—not examining the work carefully enough, he can be charged with disparagement or making the work less valuable because of the opinion stated, or defamation of the owner's knowledge and reputation. If the work is being sold and a scholar's opinion is involved, there can be claims of breach of contract concerning warranties of authenticity or claims of false advertising.

All this adds up to a situation in which a scholar can be at risk of an economically devastating lawsuit for asserting an opinion of inauthenticity. What do you do if an auction house, as agent for an owner of an obvious fake, asks your opinion and then turns around and tells the owner exactly who has prevented his making many millions on its sale? What do you do if you are editing a CR, have a backlog of several hundred fakes that you cannot publicly call fakes by publishing them, and which you by implication do call fakes even if you leave them out of your CR? (You can be in the same position if you are a curator and leave a fake out of your show.) Many catalogues are stopped in their tracks because of these issues. Scholars are also more and more reluctant to give opinions about works of art even if they utilize releases that have clauses promising not to sue the scholar for the opinion. Such clauses are now enforceable at law, but who would want to pay for the lawsuit to prove that yours is one of them?

While these issues and many other aspects of them were thoroughly spelled out in the talks, panels and discussions at the seminar (and are dealt with in legal detail in Spencer's anthology), no clear solutions to the

fundamental dilemma for scholars were forthcoming. The result is that many scholars face the frustrating fact that their expertise is stymied and that it is all but impossible to stop fakes from being bought and sold. Indeed, modern digital technology has produced methods of faking works of art that can be beyond expert detection: a high-resolution digital copy of a watercolor printed on watercolor paper in continuous tone is nearly expert proof. In one case mentioned an owner sold a group of works while requiring digital forgeries from the dealer to replace them—just as Nelson Rockefeller once required a museum to paint copies of a group of works to replace those he had promised it!

This scholar has long held that some sort of umbrella organization that would protect scholars caught up in such circumstances is necessary (see my essay in Spencer's anthology at pp. 22-24). But there is no sign that this suggestion is going to be acted on anytime soon.

Publication

When the scholar has put in his or her decade of drudgery compiling a CR, feels morally certain that the task is (for now) complete, and found a way to more-or-less finesse the fake problem, it comes time to publish the result. I was amused and not a little amazed listening to some of my colleagues at the NYU seminar talk lovingly of the big, plump books they will soon hold in their hands. One, as hard a headed scholar as you can meet, was literally cradling the virtual vision of the thing in arms!

Like me, of course, they had been raised and trained in an academic culture of "publish or perish" and it is very hard to revise one's thinking and especially one's feelings about such matters. While all the scholars at the seminar were using com-

seum world in Canada, finding Milne's paintings was, relatively speaking, straightforward, even if arranging to see, photograph, catalogue, measure, and assess each work was a task of herculean size. Everyone was helpful: collectors, dealers, curators, and auction houses. Only two or three people ever turned me down flat. I don't count the day not so long ago when I visited an art dealer to trace several of the works he had sold and he said 'David, I've had Revenue Canada here all week, and I can't remember *anything*.' Although the estate had several hundred works and the National Gallery a large collection, nearly two thousand works were sprinkled across the country and even cropped up through happenstance in countries around the globe, including the USA, Bermuda, Scotland, England, Israel, Russia, India, Mexico, France, Norway, Italy, Australia, and New Zealand.

When we got down to the business of cataloguing, we discovered that Duncan's 1200 photographs and documented paintings were considerably shy of the total. Of the 450 New York paintings, for example, he included less than twenty. Of the 200+ Palgrave paintings and 200 more done at Six Mile Lake in 1933-5, those that came into the hands of the Masseys, he included only a dozen or so. Without Duncan's records we would have had an even more difficult time, but his chronology was created without the benefit of Milne's notes and letters, and he shuffled it around so often that up to six or seven numbers sometimes are assigned to a single painting, and the different versions and lists he made overlap each other like shingles.

One of the first things I did when we started was draw up a work sheet. On it we could inscribe all the information that we thought was important when we saw a painting: the

size and medium, the particulars of the signature and date, if any, all inscriptions and numbers, the provenance as given by the owner, the exhibition history, published references, primary documents (letters, diaries, notes) in which the painting is mentioned, particular conditions of the work—if it was torn or dirty or restored or cropped; the form of the photographic documentation: black and white, large 8x10, slide, and/or larger transparency; the credit that the owner wanted in the published version.

the deadening effect of time on the colour of the slides

Thus began the odyssey: trying to see all the paintings. My weekends here and there, my summer holidays, practically everything fitted around the possibility of fitting in a Milne visit. David Jr. and I made one trip across western Canada in the early 1970s, doing the public institutions and as many private calls as we could schedule. It was pretty amateurish, as I look back on it now: maybe take a black and white picture, if Duncan hadn't; maybe take a slide if the colour was particularly striking, maybe not; setting up flood lights on chairs and using a camera tripod as much for effect as purpose. Now I'm horrified at the quality of these snaps—which were always intended as a record only, never for reproduction. Never mind the deadening effect of time on the colour of the slides, it's the unevenness of the light that offends me now, the unuseableness of them. That they were taken by an amateur, often in great haste and under duress is of little consequence now. How often did I cut frames open, while reassuring the owner that I had to examine the back and that I would put it all back to rights? How often

did I rush a snap, because the owner was going out, had other things to do, and wanted me out of the house? Or because I had three more calls to make on the other side of town. Anyway, the three-ring binders of catalogued work piled up, and by the end of the 1970s we had the basis for a rough manuscript.

Other things had been happening throughout the 1970s of course. I was on the Faculty of Fine Arts at York University for much of the time, then on my own, but serving as the part-time Director of Cultural Affairs for Metro Toronto. I scheduled my own time, and spent a good deal of it doing Milne work: research at the New York Public Library, the Philadelphia Museum, the Boston Museum of Fine Arts, the Frick Library, the Dominion Archives, the Archives of American Art, and a stint at the Library of Congress, where I worked through the night on several occasions, going through all the copies of all the magazines published in New York between 1907 and 1916, looking for Milne illustrations: *Army and Navy Life*, *Uncle Sam's*, *Metropolitan*, *Pearson's*, and a few more. In the end I only turned up three little illustrations by Milne. He seems not to have had much success as an illustrator.

A lady phoned me one day and said that her mother had gone to Model School (for teachers) with Milne and that she had a photograph of their graduating class. In the National Gallery of Canada's files I found a record of the purchase of six Milne watercolours in 1924—\$25 each.

I visited all the places that Milne painted: in New York, the building his studio was in at 42nd and Fifth Ave., still over a restaurant, sites around the Bronx and Manhattan, West Saugerties, Boston Corners, the Adirondacks, Palgrave, Six Mile Lake, Uxbridge, and of course Ban-

this time I met Alan Jarvis, former Director of the National Gallery of Canada, who had first written about Milne in 1934 and brought him to Duncan's attention. Jarvis, himself a Rhodes Scholar, said Milne was a genius. When you are young and impressionable and someone like Jarvis tells you that Milne is the best Canadian artist, you are likely to believe him. All the artists I got to know then supported Jarvis's view. Then too, before I went off to study art history at the Courtauld Institute, I visited Vincent Massey at Batterwood, and he had Milnes hanging everywhere—literally dozens of them. I was only a scrap of litmus paper in the presence of well informed opinion.

When I came home in 1964 after more than two and a half years in England (only part at the Courtauld), I thought that what I would do, since he seemed to encourage it, was help Duncan to finish a Milne catalogue, which he had started in 1939. He had photographed hundreds of paintings—all of them it seemed—and arranged them chronologically, measured them and knew who owned them. On the surface the task seemed only one of tidying up a little and finding a publisher.

Of course I hadn't counted on Duncan's eccentricity and his exceptional gift for procrastination. We would set a date, he would change it, cancel, suggest calling again a week from next Monday. The result was that I not only never got to see his catalogue (which turned out to be a stack of squared, scored, gray cards, about 24 x 18 inches (54 x 45 cm), with tiny photographs pasted on and identified with titles and his numbering system), but also saw practically none of the paintings.

Thus did 1964-5 pass. And 1965-6. I had gone to Ottawa as the Canada Council's first arts officer, and while there happily handing out

money to artists, I continued to pester Duncan periodically. At his suggestion Ralph Allen at the Agnes Etherington Art Centre in Kingston asked me in 1967 to write the catalogue essay for a centennial Milne exhibition and I did. Research for this was limited to what Duncan told me and what I could find in the few

sealing Milne's letters for 25 years

exhibition catalogues available at the time. I wrote to Blodwen Davies, a writer who had befriended Milne's long estranged wife Patsy, and who had received a Canada Council grant to interview Milne's friends in the United States and Canada, but she curtly turned me down—indeed she shortly thereafter deposited in the Dominion Archives, sealing everything for a period of 25 years, all her papers and Milne's thirty years of letters to the distinguished New York advertising artist and executive James Clarke, Milne's closest friend and supporter, which she had got possession of. She had wanted to publish the letters but Duncan controlled the copyright and wouldn't give permission; he wanted Professor Norman Endicott and the artist Gordon MacNamara to edit the letters but Davies would not allow them access. A.Y. Jackson, who disliked Duncan and Milne (he always said that the trouble with Milne was that he didn't use enough paint), encouraged her to refuse any cooperation.

In 1968, both Duncan and Milne's wife Patsy died. A year later Davies and Clarke died. Toward the end of 1968 I got a call from David Milne Jr., whom I had never met, asking if I was still interested in doing the Milne catalogue. I said I was, and that I also wanted to do a critical study of his father's work. With a

lawyer, Harry Malcolmson, we worked out an arrangement whereby the Milne estate would engage me to prepare the Catalogue. A sum of \$2000 was agreed upon. My friend Wilf Smith at the Dominion Archives decided that Milne's letters could be released and copied, since they were more than 25 years old (and thus had already served the sentence given them by Davies), and I began to transcribe Milne's writings. Some of this was simple, when Milne used a typewriter, or even when he copied out a draft of a letter. But deciphering Milne's handwriting was most often called for and has become a specialty of mine—one that was often tested. The National Gallery provided copies of photographic prints from Duncan's negatives of Milne's paintings. I had begun. Duncan's sister, Frances Barwick, imagining that Duncan's catalogue was virtually complete, insisted that it be published as based on Douglas Duncan's Catalogue. I agreed. What did I know?

Within a year, it became clear that David Milne Jr. wanted to be a part of the project. Duncan had never encouraged him to see or learn about his father's work, imagining him, I guess, to be indifferent. He was only 12 when his father died and only 27 when Duncan died. In any case, he was now the administrator of the estate, and his interest in his father's work suddenly loomed large in his life. We threw out the lawyer's agreement, and decided to work together. Thereafter, everything was in duplicate, all typescripts, all photographs, all work sheets, most correspondence. We each paid for our own expenses for travel, accommodation, meals, supplies, photography costs, etc.

I was lucky enough to travel a lot when I worked for the Canada Council, and since I knew nearly everybody in the art gallery and mu-

get posters for his family's record stores. He had none of Milne's posters. He had bought a couple of paintings, and given them to his sister, who had died. The paintings, he thought, had been thrown out.

One February in the late 1970s, I was having dinner in a restaurant called The Olde Yarde Inne on Virgin Gorda in the Virgin Islands when I saw an Eskimo print on the wall. The waiter said the owner's wife was Canadian and shortly afterwards I found myself having coffee in their remarkable home, which was mostly library (in the humid Caribbean!) and a library of first editions at that. On a shelf I noticed and pulled out the fifth number of *The Colophon*, 1931, which contains Milne's two-colour drypoint *Hilltop*, also called *Painting Place*. When I mentioned that it was by an artist I was doing some work on, they said: 'Oh, David Milne. We have a painting of his in our summer place in Maine.' My first thought was 'This whole trip is deductible!' That summer, the coast of Maine was one of my destinations.

Back in Canada I was having no luck tracing four paintings that Duncan sold, because although he wrote down the purchaser's name, he didn't note where they lived. They were not in the Toronto telephone book and no public museums recognized the name. I put the problem on hold, along with numerous other insoluble ones. One day, many, many years later in Ottawa, I saw the name Milliken printed on a tumbler, a promotional item for a Member of Parliament, who was a friend of a friend of mine. The name Milliken rang a bell. Perhaps this was the missing family. I called to ask. The MP answered: 'No, but if anyone in the family collects it would be Uncle Don, who lives in West Vancouver.' I phoned Uncle Don and, yes, he had Milnes, but two, not four. His de-

scription of one sounded familiar but the other did not. I arranged for photographs, but neither turn out to be what I expected. I looked up Duncan's records again and find that with the lapse of time I have the name wrong: it was Merriken I should have been looking for, not Milliken. But I had located two more paintings that had disappeared.

Pauline McGibbon, our wonderful former Lieutenant Governor, knew everybody among old Toronto families. I asked her one day about a friend of the Masseys named James Duncan, who had purchased some paintings from Mellors Galleries back in 1934. 'Oh, Jimmy's still alive,' she said, and gave me his phone number in Bermuda. I arranged a visit, of course, and it turned out that he was the father-in-law of a later Lieutenant Governor, Hal Jackman, and that he had three paintings.

An artist I know in Vancouver told me one day that she was sure she had just seen a Milne painting in an old boarding house she was thinking of buying. She gave me the address and I rang the bell at the right door, which was connected to the top floor. It took a long time for the occupant to negotiate the four floors. After I stated my purpose, he invited me up, but made me agree to accept him as he was, and explained that he didn't do much house-cleaning. I climbed the stairs with him. The dust was so thick that a track ran up the middle of the stairs. From the entrance door a main track went to the kitchen and a spur to the bedroom. At least ten or more years of dust had settled there, and I felt as if I would disappear from view into it if I stepped off the path. On the walls were a Milne, three Emily Carrs, two Lawren Harris's, and a fine copy of Picasso's *Le Repas Frugal*, a famous 1904 etching.

The new wife of an old friend of

mine in Victoria told me that her brother in Calgary knew someone in Cambridge, Massachusetts, who had found a Milne. The evidence was shaky, and we couldn't seem to locate the owner. E-mail messages flew off into the ether and were never received or answered. Regular mail was returned. After several weeks we learned that he had moved to the Caribbean. I grew more skeptical. Weeks went by without a response, but I kept trying, and finally we connected. It turned out that this person was cycling to work one morning and noticed a picture in someone's garbage. He retrieved it and it was, indeed, a Milne watercolour—*Boston Corners*, 1917, one that, probably, was owned by a member of the Kimball family who attended Harvard.

A lady in upstate New York contacted me to say that she had bought her Milne, a vintage 1920 watercolour, at a garage sale in Ithaca, where Cornell University is and where Milne had a show in 1922.

A gentleman from Harvard called to report that he had purchased two Milnes from a house contents sale on Long Island, both extremely fine 1921 dry brush paintings, one of them, *Across the Lake I*, the best of the Dart's Lake summer.

One day just a year ago a man called from Walkerton, Ontario, where Milne went to high school: he had an early Milne drawing, which we did not know about, of the Walkerton town hall. He had found it in a book his father bought for fifty cents when the contents of the Milne house in Paisley were sold by auction many years ago, and he asked if he could reproduce the work as part of a campaign to save the building, which was being threatened with demolition. After some discussion we discovered that the book was inscribed and given to David Milne upon his graduation in 1899 by his

croft, where David Milne Jr's mother, Kathleen, lived, still lives. David Jr. and I spent many summer weeks working in the cabin that Milne built on nearby Baptiste Lake in 1948. I would arrive with a car full of boxes of my files and slides, and a case or two of wine: an incentive to work hard and long. Using our slides, we compared paintings endlessly, scoured the letters and diaries, challenged Duncan's dating, and slowly moulded the chronology into an acceptable order.

I was also busy during 1976 and 1977 with the preparation and promotion of the book on Tom Thomson I wrote with Harold Town, and after that involved in other publications on Christopher Pratt, Jack Bush, and Molly Bobak, while trying to make a living. Even while I was traveling around for the Thomson book I was doing Milne business. In Guelph, where I went to see an elderly couple's Thomsons, I hoped to find Milnes. At the end of a pleasant visit the wife turned to her husband and said 'Do we have any Thomsons in our Toronto place?' 'I can't remember,' he said. He pressed a key into my hand and told me to go and have a look for myself—at a penthouse on Prince Arthur Avenue. They hadn't been there for a year or more and would appreciate it if I would see if everything was okay. I went. No Milnes. Three more Thomsons. I had never met these people before and there I stood in their apartment, alone, wondering what to do with their key. Perhaps I needn't say that I have met a lot of fine and trusting people in the process of cataloguing Milnes, especially those who allowed me to bundle their Milnes into my car and whisk them off to be photographed at a studio, never knowing if I would return.

David Milne Jr. was living in Toronto at the end of the 1970s, and

rented a small office on Queen Street East near Church. At the suggestion of the University of Toronto Press, where we had made an agreement with Allan Fleming (who designed and printed our letterhead) and Ian Montagnes, to publish the work, he purchased a Canadian Micom computer—expensive in those days, huge, clunky and definitely the way of the future. It clanked and churned and buzzed and whirled and was incredibly slow, but it did keep the files in order and dribbled out the entries as we prepared them. Fortunately, technology has been changing for the better. When in 1991, ten years later, I came to the problem of trying to retrieve the data from these early disks, I struck a reef on which we almost sank. The information was almost irretrievable: there was only one known place in Ontario that could still translate or transform these disks into MacIntosh or IBM (in the geological section of the Ministry of Natural Resources), and it took hours and hours for each one. Very often the information had literally fallen off the disks. The state of deterioration was alarming. Paper is much more durable than electronic media (another compelling reason to keep buying books); nevertheless, I have to confess that the changes in technology, which have allowed us to reproduce all the paintings, many drawings, and nearly two hundred colour plates (something we could never have imagined at first), have made the Catalogue a much more wonderful one than it would have been fifteen years ago. The idea will reach its apogee later this year when we bring out the CD-ROM, which will have on it virtually all of Milne's paintings in living colour.

At about the time Milne Jr. bought the Micom computer (1981-2), the entries began to take shape and a style of sorts emerged. Initially we thought of using a number of

short forms, codes, abbreviations, and we tried a variety of these. We decided that our catalogue would be factual and informative but not critical: it was our purpose to present all the relevant facts and information but not to comment on the aesthetic value of the paintings. Nevertheless, we wanted the reader to have access to all our sources for establishing the chronology or for identifying a painting.

a huge, clanky Canadian Micom computer kept the files in order

We worked away at Queen Street East daily, I usually a half day and then extra work at night. I was also working on the manuscript of a critical study of Milne, which I hoped would be published then, but David feared that if I published the critical study I would abandon the Catalogue Raisonné and he withheld permission to reproduce letters or any images until the Catalogue was finished. In retrospect he was probably correct about the Catalogue, and he probably saved me from a less than satisfactory version of the critical study that finally was published in 1996.

From the earliest days of the project, chasing down Milne paintings was more than an academic exercise. One day in 1970, for example, a New York friend of mine was in the elevator at the Museum of Modern Art and she overheard an elderly man say to his companion that he once knew an artist named David Milne, whom he thought was very good and who had been in the Armory Show, but he couldn't find any of his paintings hanging. She got his name, Maurice Landay, and I called him and met with him. It turned out that he used to go every week for years to Milne's studio at 42nd and Fifth to

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JAMES BROOKS
 (see Meg J. Perlman)
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PETER CAIN
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ARTHUR B. CARLES
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WINSLOW HOMER
 (see Abigail Booth Gerdtz)
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GEORGE INNESS
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VASILY KANDINSKY
 (see Vivian Endicott Barnett)
ROCKWELL KENT
 (see Scott R. Ferris)
PAUL KLEE
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LEE KRASNER
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JACOB LAWRENCE
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ERNEST LAWSON
 (see Valerie Ann Leeds)
LYNN HERSHMAN LEESON
 (see Robin Held)
WILLIAM ROBINSON LEIGH
 (see Deborah White)
ROY LICHTENSTEIN
 (see Jack Cowart, Justine Price,
 Yolande Trincere)
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 (see Hattula Moholy-Nagy)
EDWARD MORAN
 (see Joseph Carlton)
THOMAS MORAN
 (see Phyllis Braff, Melissa Webster
 Speidel)
ROBERT MOTHERWELL
 (see Joachim Pissarro, Allison
 Harding, Katy Rogers)
EDVARD MUNCH

(see Gerd Woll)
BARNETT NEWMAN
 (see Heidi Colman-Freyberger)
ISAMU NOGUCHI
 (see Neil Printz, Bonnie Rychlak)
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KAY SAGE
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CORNELIS SCHUT
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JUNIUS R. SLOAN
 (see Richard H. W. Brauer)
LEON SPILLIAERT
 (see Anne Adriaens-Pannier)
ALFRED STIEGLITZ
 (see Doris Bry)

teachers in Walkerton. Furthermore, the book contains the picture that Milne copied for his first known painting, *On the Dochart*, a scene of a Scottish river, which Milne later remembered as an Irish river—a painting he gave to his mother.

Sometimes paintings that should have been easy to find proved to be elusive. David Jr. arrived at the Canadian Embassy in Paris to catalogue the Milne painting that had been purchased for the Paris Legation by Donald Buchanan in 1935. After much *toing and froing* it was finally discovered in the janitor's closet in the basement. It now hangs in our Ambassador's office in Washington.

Despite our best efforts in the early 1980s, we barely got half way through the Catalogue, before I took a job as assistant deputy minister of culture in Ottawa at the beginning of 1983 and David Jr. closed the Queen Street headquarters. At that point, the whole enterprise went pretty much into the deep-freeze for nearly eight years. I had already devoted some time to my book on Christopher Pratt, which came out in 1982. I returned to work in Toronto in 1985, just in time to wave farewell to David Jr., who then moved to the country outside Ottawa.

(To be continued in the next issue of CRSA Forum.)

Editor's Notes

Scott R. Ferris

In reflecting back upon *The Scholar and the Auction House: Working Toward Working Together* program (held in March), I have to admit that I did not walk away satisfied. I came to the event believing that we would be discussing the current relationship between the scholar and the auction house, how we—the CRSA

and auction houses—might come together in a spirit of mutual cooperation and benefit. In my loftiest imagination I envisioned the drafting of our ideals into a "letter of agreement." (So much for the romantic.)

Why do I believe that such a goal is necessary? Because there are numerous issues that need to be addressed.

One issue, that was briefly discussed at the March event, is the matter of legal protection for the scholar. The auction houses should provide the owners of artwork with a binding legal document, which they would sign, that would exempt the scholar from suit when the scholar's decisions regarding said work of art were made in good faith. (For a more precise examination of this topic see Ronald Spencer's article above.)

Another issue is the matter of compensation for any contribution a scholar may make toward the acceptance of artwork by the auction houses and/or the catalogue entry data they provide. The owner of artwork should be made aware of any expense related to the acceptance of and documentation by a scholar in a pre-acceptance contract.

A third, but not last issue for consideration, is the matter of "who judges the experts" that contribute to an auction catalogue? For a great example of this issue one need look only as far as Sotheby's May 19th, American Paintings, Drawings and Sculpture catalogue—lot numbers 115 and 116 (Rockwell Kent). Although I provided Sotheby's with the catalogue data for these entries [as I have numerous times in the past], anyone is eligible to contribute an opinion. (Sharon Flescher will address this topic in an upcoming issue of IFAR journal. I believe the CRSA Forum will have an opportunity to include some of these proceedings in an upcoming issue of

our own.)

I am hopeful that we, the CRSA, have not closed our books on this important topic. I encourage all to consider the issues that effect their relationship with auction houses and submit their thoughts for publication in the next issue of this newsletter.

Membership List

Members, please check your personal data and make sure all information is correct. LET ME KNOW DIRECTLY (as well as informing Nancy Mathews) if changes need to be made!

Please keep in mind the following: Nancy generates the mailing labels from the application data you provide her; that information is forwarded on to me to update Forum entries (when I am not copied regarding the same). The entries that I insert into the Forum are not advertisements, therefore, I request that you reduce your entries to a bare minimum—give me information that would pass as a basic mailing address, plus, who your CR artist/s is (or your related CR service).

As usual there are a number of additions and corrections to this list. As we continue to grow it is important to keep this list under control; we don't want to create a newsletter that is predominantly a membership roster.

Thank you for your assistance with this matter.

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LAST MINUTE ANNOUNCEMENT

This note is from CRSA member Alain Blondel of Encyclia. Since it pertains to topics discussed at the CR meeting in New York in April, I have decided to include it herewith.

By including this note in the CRSA Forum, the CRSA is not promoting or recommending Mr. Blondel's software. However, we encourage fellow members who may be using this software to comment upon its effectiveness in these pages, in the next issue of the Forum.

"During the two days of the seminar organized by the CRSA [NYU] on 17 and 18 April 2004 in New York, numerous difficulties linked to the creation of a catalogue raisonné database were mentioned by different speakers.

The option of an online publication of a catalogue raisonné was also brought up, in particular in the speech given by Mr. O'Connor.

In the following, I would like to present in brief, the solutions Encyclia offers to resolve these difficulties which are indeed of great relevance:

—Cost reduction: the software solutions mentioned at the seminar demand cost intensive development by professional programmers. Thus, the cost price would be too high for an independent author. The Encyclia software, which is the most complete among all solutions available, costs 950 Euro (for Mac and Windows).

—User friendliness: catalogues raisonné correspond to certain generally accepted standards. Encyclia has developed a software that fully integrates all these aspects. It is very comprehensive and, at the same time, clearly structured and user friendly.

—Several databases: the software offers the possibility to design several databases simultaneously. Thus, information on several artists can be collected at the same time. A complete database can be duplicated for translation into another language.

—Editing assistant: a great number of printing formats permit the gathering of different notes on the works, history, bibliography and exhibitions in order to facilitate proofreading.

—Raisonné numbers: until the very last moment before publication, a numbering tool enables the user to modify the order. A thumbnail display offers the possibility to check consistency directly.

All tailor-made software programs that we have examined up to now are far from offering such a complete range of tools. Nonetheless, the obvious advantages of the Encyclia software probably lie in its various publishing options:

—Paper edition: the database can be exported into Quark XPress, the publishing program used by all printing companies. Thus, the risk of transcription errors is avoided.

—CD-ROM edition: the catalogue raisonné sur CD-ROM can be included in a monograph. Such a solution presents a cost saving alternative compared with the paper edition demanding the print of the illustrations of all works.

—Online edition: the author (or his publisher) may opt for his own website publication of the catalogue raisonné. A first example of this option has already gone online (and is temporarily free of access):

www.lempickacatalogue.com/

In conclusion, Encyclia enables you to save a considerable amount of time thanks to a comprehensive software program, completed and thoroughly tested since 1997 by numerous authors of catalogues raisonné. As soon as your work is complete, you may publish it in the format of your choice.

If you wish to obtain more detailed information, please visit our website:

www.encyclia.com/en/encyclia-k/index.htm

I will be glad to answer your questions any time."

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