

# Valued in the ‘*West*’, Sold in the ‘*East*’

## The need for a virtual code of ethics?

By Steve Sabella

In addition to copyrights, artists also benefit from moral rights which derive from the international intellectual property conventions (Berne Convention for the Protection of Literary and Artistic Works).<sup>1</sup> Moral rights aim to protect the artist’s honour, integrity and reputation, and they are considered a special law of artistic defamation. Countries adopting the law give artists or their estates and heirs, the right to be identified as author, to claim or deny authorship and object to ‘derogatory treatment’ of the work when shown in public.<sup>2</sup> Practically, this means that people should be aware if they are breaking the law, in accordance with the above, when they change, alter, delete or add to artworks or forget to credit them. Indirectly, even though moral rights are not about national patrimony, they do in fact help to protect artworks that might eventually become considered as such. Moral rights clearly highlight the

ethical attributes in protecting works of art and their creators. Scholars have observed that, “protection of an artist’s moral rights can simultaneously implement the society’s interest in protecting its artistic heritage”.<sup>3</sup> The ‘art boom’ of galleries, auction houses, and museums in what is referred to as the ‘Middle East’ is necessary to develop the art infrastructures and add economic value to artworks, but is it taking into consideration the welfare of the artist?

### Who is Validating Art in the ‘Middle East’?

The economic foundation has been established and is prospering in the ‘Middle East’ and many artists are emerging from the region. Alan Bowness described four circles of recognition through which artists go on their path to fame: peer recognition, critical recognition, patronage by dealers and collectors, and finally, public acclaim.<sup>4</sup> Critical recognition is a necessary

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1 Henry Lydiate, «Moral Rights, The Right to Destroy Artworks,» 2001, <http://www.artquest.org.uk/artlaw/moral-rights/the-right-to-destroy-artwork.htm>

2 France extended these moral rights to include the ‘droit de divulgation’ (right of publication) where the author is given the right to authorize the artwork when he or she wants it to be first shown in public Henry Lydiate, «Christoph Moral Rights, Büchel v Mass MoCA,» 2007, <http://www.artquest.org.uk/artlaw/moral-rights/christoph-buchel-v-mass-moca.htm>

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3 Joseph L. Sax, *Playing Darts With a Rembrandt: Public and Private Rights in Cultural Treasures*, (Ann Arbor : [Great Britain] : University of Michigan Press, c1999 (2001 [printing])), 23.

4 Alan Bowness, *The Conditions of Success : How The Modern Artist Rises to Fame*, (Thames and Hudson: [London], 1989).

stage and should precede the economic success. In the last few years, it appears that auction houses and commercial galleries that are based in the 'Middle East' have been validating Arab art and were responsible for bringing 'new' artists to world attention. In a region where visual art promotion is new, a key question is whether promoting artists commercially is the right approach to nurturing their career. This advancement might lead to the quick downfall of artists, as they are not given sufficient time to gain artistic expertise and have their work exposed in important museums and curatorial shows, and reviewed by art critics and historians. Established artists are more beneficial to commercial galleries (who usually seek them), as in the long run they are more adept at sustaining an art career. The moment a gallery is responsible for 'creating' an artist, it is possible for it to demolish an artist's career when misfortunes occur between both parties. On the other hand, one should also remember the crucial role galleries have played from the nineteenth century (and still do) in working together with artists. From the inception of the modern art market, dealers have defined "their own identity as disinterested promoters and patrons rather than merchants and marketers of art."<sup>5</sup> They believe they distribute art for history and not for the market, and that they choose their artists solely accordingly to artistic merit.

### 'Art Brands' and 'Art Logos'

There is a distinction between economic and cultural globalization. The former as defined by Robert Morgan is about "fundamental bottom-line concerns that have little to do with aesthetic issues and opt instead to focus on art as a system of commodities with investment potential."<sup>6</sup> The latter has more to do with what 'Middle Eastern' artists are contributing to the world of art. He continues by arguing "if art continues to function solely according to the agenda of economic globalization without a clear cultural agenda, art will lose its significance and become a slideshow."<sup>7</sup> In the Middle East, artists are being pushed into becoming 'art logos' in contrast to the 'West', where artists tend to become 'art brands' — something that helps them to sustain their art career. Galleries find 'logos' easier to deal with, as they can be easily changed, adjusted or dropped altogether. In contrast, a gallery that works with a

branded artist needs to adjust its strategies, often in accordance with what the brand stands for, or to develop a working relationship based on trust, understanding and mutual interests. There seems to be a tendency that what is attracting attention to the 'Middle East' is the economic factor, and this indirectly empowers galleries at the expense of the aspiring emerging artist, who needs these galleries to establish an art career. This is not to claim that the art in question does not contain value, but the gallery's approach towards the perception of value inevitably influences the life path of artists.

It is necessary to point out that auction houses in the 'Middle East', including Sotheby's, Christie's, and Bonham's, have sold 'Middle Eastern' art at record prices, and accordingly this has created an investment opportunity for galleries which mainly seek economic gain. From an art perspective, "dealers are an active part of the support system of the art world, whereas auctions are not."<sup>8</sup> That is, the world can live without auction houses, but without dealers it will be hard to have an art market and advance art altogether. The gallery, in a healthy art environment, is seen as the artist's home base, where the price of artworks enjoys stability and careful attention. It reacts rationally to supply and demand, and auction houses' price fevers.<sup>9</sup>

### The Ethics of Art Disposal

Historically, the church and aristocracy controlled and brokered culture. They provided the economic foundation for culture while academia set the standards for what comprised noteworthy art.<sup>10</sup> What the art world has been witnessing, mainly in the last few decades, is a clear shift in the way art is validated. Commercial galleries and auction houses are setting the agenda and are quickly giving rise to artists worldwide. Effectively, this has created many artists whose career is at stake any time the balance relationship between the gallery and artist gets disturbed, or when the art market goes down. Given that the main motive of the gallery (at least behind doors) is to make money through selling art, some artists may face expulsion from the gallery when their creativity no more suits market demand.

When cultures evolve rapidly as is happening in the 'Middle East', cultural change is inevitable. It is generally perceived

5 Olav Velthuis, *Talking Prices: Symbolic Meanings of Prices on the Market for Contemporary Art*, (Princeton University Press: Princeton, N.J.; Woodstock, 2005), 20.

6 Robert Morgan, "Unraveling the Ethics in Cultural Globalization", *Ethics and the Visual Arts*, ed Elaine A. King and Gail Levin, (Allworth: New York, 2006), p. 236.

7 *Ibid.*, 238 – 242.

8 Olav Velthuis, *Talking Prices*, 86.

9 *Ibid.*, 90.

10 Elaine A. King and Gail Levin, *Ethics and the Visual Arts*, (Allworth: New York, 2006), 5.

that a nation's choice of development strategies "will shape the impact foreign influences exert on national culture".<sup>11</sup> As is the case in the UAE and Qatar, there have been foreign investment incentives that have encouraged the building of museums and have attracted auction houses and galleries to set up businesses. All of these have transformed the cultural landscape of the 'Middle East', triggering the start of an Arab art market. Art sales are a relatively new experience in the 'Middle East'. Successful dealers tend to collect symbolic capital when they see their role more for the sake of art and not for the sake of money. Dealers were described as cultural institutions, which serve as gatekeepers to the art world. In addition to representing established and new artists, they also provide critics, curators, and art historians with a platform to execute their missions. Ironically, building symbolic capital eventually leads to more sales at higher prices.<sup>12</sup> Furthermore, dealers are necessary because they understand that collectors affect the future biography of the artwork, in contrast to auction houses, where an artwork is sold to the highest bidder. There are collectors who buy for speculative reasons, something that dealers consider 'wrong' as they tend to harm the artist's reputation and affect his or her sales balance.<sup>13</sup> Collectors are key for any country seeking to have a healthy and viable art market, and they do in fact trigger the secondary art market sales. Furthermore, Adam G. remarks that until recently:

*The use of auction houses by dealers to sell work is shortsighted and self-defeating. Traditionally, dealers used the auction room to offload works they were having trouble selling... Dealers are in danger of simply becoming suppliers for the auction houses. A more insidious danger is that people are starting to think that all art is sold at auction, and dealers selling in auction houses can only increase this belief.<sup>14</sup>*

This is an approach that few agree is helping artists in their careers, and while taking into consideration the 'Middle Eastern' market, there is a general feeling that the auction houses have become the appropriate channel of 'disposing' of art.

### Who, What, When, Where and Why?

Responsible citizenship and interests of society go hand in

hand. Without the artist, all other components of the art world would not exist. Hence, is it not ethical to think about which actions are in the best interest of sustaining the livelihood and reputation of the emerging artists from the 'Middle East'? Ethics implies responsibility, and even though an exclusive code of ethics does not exist as a reference for galleries, auction houses and artists, the creation of a virtual one might be necessary. Its primary purpose is to raise the level of professional practice, similar to the Code of Ethics of the International Council of Museums (ICOM) (which museums tend to follow) and to the International Code of Ethics for Dealers in Cultural Property. A code of ethics is based on shared values, which trigger a sense of responsibility that is based on trust, respect, honesty, fairness, integrity, reliability and commitment. It is true that artists and galleries have interests of their own, but eventually both project the 'character of public trust' and are 'judged' on whether they meet the expectations of the community and culture at large.<sup>15</sup> There is no such thing as a code of violation when economic interests precede the artists' interests; however, the issue of concern is whether galleries recognize the ethical responsibility society sees in them.

Olav Velthuis, author of the book *Talking Prices: Symbolic Meanings of Prices on the Market for Contemporary Art* remarks that the art market is structured along commercial, artistic and moral axes. The way art is marketed is the "heart of what the art market is about",<sup>16</sup> and dealers constitute a major part of it. Treating art as a commodity is not necessarily how commercial galleries function in the world. Attempts to deem commercial galleries as corrupting the art world are futile, because historically their role has been essential. Because ethics deals with the 'ought' of society, and the direction to the way things should be, ethical analysis can serve to answer the five Ws:

*Who should do What,  
When it should be done,  
Where it should be done,  
Why it should be done.<sup>17</sup>*

"The challenge thereby becomes how to decide on the 'best' action rather than simply deciding to do what is 'right'. Making the 'best' choice when confronted by an ethical dilemma

11 John M. Kline, *Ethics for International Business: Decision Making in a Global Political Economy*, (Routledge: London, 2005), 171.

12 Olav Velthuis, *Talking Prices*, 23-27.

13 Ibid., 43.

14 Adam, G. *Dealers, Use of Auction Houses is Short-Sighted and Self-Defeating*, *The Art Newspaper*, v. 17 (April 2008) p. 32

15 Gary Edson, *Museum Ethics: Theory and Practice*, (Routledge: London, 1997), 127.

16 Olav Velthuis, *Talking Prices*, 50-52.

17 John M. Kline, *Ethics for International Business*, 16.

also raises issues regarding who should decide". Does the whole responsibility lie with the commercial gallery or do auction houses have a share? When confronted with an ethical dilemma, people often question who should decide and take the lead. John Kline, author of *Ethics for International Business* also argues that "governments, in particular, carry a heavy weight of presumption of social responsibility. The fundamental purpose of governments is to protect and enhance social welfare; they also possess significant resource capabilities as well as the power of mandatory sanctions. By contrast, corporations are chartered by governments fundamentally to serve an economic purpose, within societal expectations".<sup>18</sup> One can only expect commercial galleries and auction houses to act responsibly and ethically in nurturing artists' careers. However, governments should have a higher level of awareness of cultural, intellectual and educational responsibility, which inevitably, in time, trigger people to adopt more ethical approaches.

There is a need to recognize first of all the ethical objective. Once recognized, a description of the objective is necessary, which in turn leads to its achievement. According to Gary Edson, ethics refers to the examination of practices.<sup>19</sup> Now might be the time to examine the ethical behaviors of the different art players in the 'Middle East' and explore, at least theoretically, the different roles they play, as ethics is not simply choosing between right and wrong.<sup>20</sup> This reflection is necessary as according to many signs, 'Middle Eastern' artists will be more influential in what it seems is a gradual dissolve of what is termed 'Western Art'.

### Auction House Fevers

It is perhaps unavoidable to briefly mention the role of museums in this ethical debate, as all components of the art world are interlinked and connected. It is necessary when the new museums (Louvre, Guggenheim and the others in the Universal Museums Project) open their doors and start acquiring art to consider their strategy of value reference. Is the reference based on critical and historical value, or on economic value that has been set by auction houses and commercial galleries? It is hoped that the museums will play a major role in validating artists. When we think of museums, we often see the museum as serving the public. Given that the region is

constructing museums at record speed, a key question should be: are these museums going to serve the artists ethically or are they going to follow the trend and auction fevers? The museum is effectively an institution that is run by professional and academic human power. Accordingly, the 'Middle East' might need to send 'local people' to seek higher education and expertise in order to be able to deal with the challenges ahead.

### Concluding Thoughts

John Kline writes that "the more a corporation possesses relevant knowledge in a case, the more that corporation is expected to act ethically".<sup>21</sup> Similar debate could be formulated concerning the developing art scene in the 'Middle East'. The more knowledge people acquire through education, the more these people are expected to act ethically. According to RAND, a Research and Development Corporation in the United States, art consumption is connected with the level of education a person possesses. Considering the boom of arts in the 'Middle East', in particular in the UAE, there is an immense need for art-educated people, and art industry professionals knowledgeable in contemporary art issues and art management skills in particular. There is no question that the new galleries, which have emerged in the last few years, and the several museums which are being constructed, are integral to any country seeking to establish its art credentials. However, to sustain these credentials and to be able to adopt a virtual code of ethics, a tailored human power is also required to be part of the art boom. Clearly, foreign expertise might do the job, but a more sustainable approach is to equip the region through long-term planning with an army of educated curators, writers, critics and of course artists. This is crucial when educated people assume influential positions in the cultural sector.

Art dealers "saw themselves and were seen as patrons, who thought it was their duty to assume responsibility for their artists and to provide them with support, recognition, and praise."<sup>22</sup> It might be virtually impossible to separate market and culture analytically. What differentiates dealers from auction houses is that the former work with artists on a long-term basis, develop a relationship with the artist and sometimes act as patrons of art. Good dealers are also concerned with "stimulating critical attention for the artist's work by having critics write about 'their' artists, and persuading curators to

<sup>18</sup> Ibid., 13-16.

<sup>19</sup> Gary Edson, *Museum Ethics: Theory and Practice*, 25.

<sup>20</sup> Ibid., 40.

<sup>21</sup> John M. Kline, *Ethics for International Business*, 14.

<sup>22</sup> Olav Velthuis, *Talking Prices*, 55.

include them in future museum shows and other noncommercial institutions.” Curating, which has become one of the main functions of a gallery, has perhaps replaced the role of the critic, and accordingly, galleries can take advantage and create thought-provoking curatorial shows in the ‘Middle East’ and abroad.<sup>23</sup> It is necessary to empower the curatorial, critical, academic and museum infrastructures.

Do Arab artists need to travel to the ‘West’ to gain a ‘value visa’ in order to be authorized to go back to the ‘East’ and get a ‘sales visa’? Why can’t the journey start from ‘home’? It appears that artists are valued in two different ways in the ‘West’ and the ‘Middle East’. In the latter, the academic foundation still has to go a long way to balance the economic foundation. When the art market demand goes down for an artist, the economic value is reduced or disappears, and the only protection for the artist is the critical value that acts as the re-launch pad when the economic environment gains momentum. History will prove that Arab artists who gained critical acclaim in the ‘West’ like Mona Hatoum, Emily Jacir, Walid Ra’ad and Ghada Amer will survive any economic downfalls in the ‘Middle East’ art scene. Their artistic credentials are stronger in contrast to their colleagues whose artistic value might have been built on the economic value. Since promoting arts in the ‘Middle East’ is a new phenomenon, we need to question our ethical guidelines that were formed at times when art promotion in general was absent. In order to reach an advanced level of critical thinking and understanding, education is needed to liberate the mind and prepare it to deal with complex decisions.

The Arab Gulf countries are competing in building outstanding museums, iconic buildings and attracting the world’s leading galleries and auction houses, but are they competing in knowledge as well? Economic success is possible without considering ethical issues relating to the form of the relationship between art dealers and artists, but is this approach sustainable as a long-term strategy? Many galleries, if asked, say they do not have an interest in selling what is economically viable in the present, but are interested in what is of artistic importance in the future.<sup>24</sup> The aim of this essay is to question the ethical consciousness of commercial galleries because they are the gatekeepers of the art world. It is an ethical dilemma because the life span of the gallery is limited, while the artist’s life span usually extends much longer after death. Hence, it is

crucial to keep in mind that Art History records the successes and failures of artists. The question is: how do galleries in the ‘Middle East’ choose to influence the History of Art?

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<sup>23</sup> Ibid., 3-12.

<sup>24</sup> Olav Velthuis, *Talking Prices*, 17.

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