

THE ARTIST'S RESERVED RIGHTS TRANSFER AND SALE AGREEMENT

The accompanying 3 page Agreement form has been drafted by Bob Projansky, a New York lawyer, after my extensive discussions and correspondence with over 500 artists, dealers, lawyers, collectors, museum people, critics and other concerned people involved in the day-to-day workings of the international art world.

The Agreement has been designed to remedy some generally acknowledged inequities in the art world, particularly artists' lack of control over the use of their work and participation in its economics after they no longer own it.

The Agreement form has been written with special awareness of the current ordinary practices and economic realities of the art world, particularly its private, cash and informal nature, with careful regard for the interests and motives of all concerned.

It is expected to be the standard form for the transfer and sale of all contemporary art, and has been made as fair, simple and useful as possible. It can be used either as presented here or slightly altered to fit your specific situation. If the following information does not answer all your questions consult your attorney.

Seth Siegelaub interviewed by John Slyce Part 2

THE CONTRACT

Seth Siegelaub: At any given point in the art world, if you like, I think you come down to ten or 15 dealers who are serious dealers as opposed to businessmen having a gallery, who are more or less at the cutting edge – but I am sure there is no law of requirement.

John Slyce: *There couldn't be in such an unregulated industry.*

SS: But there probably are certain rules. Chamberlain once said, 'It is very important you owe money to the right people'. That's like a joke – but there is a grain of truth in it. But I have no idea how you work your way up the food chain.

I never had the impression that that was what we were doing. I figured I had the idea that this is important work; this is work that was asking some questions that had never been asked before; it was doing away with certain presumptions or certain assumptions about what art should be.

JS: *And hierarchies.*

SS: Hierarchies, yes.

JS: *I think it connects to your work around The Contract, a kind of growing radicalisation – after late 1968 into 1969 – that culminates, in a sense, with The Contract.*

SS: It's funny you should say that. This was something that a lot of people were talking about and many of the provisions we made, and the kinds of questions we were addressing in The Contract, were things that everybody in town – any sort of progressive artist or museum person or critic – was thinking about. It was not original in that sense. What is original is that I got the fucking thing done and Bob Projansky, the lawyer, and I put it into the world. I'm told that several years later Bob did a very a compressed version of The Contract, which is a smart idea too.

JS: *The shift from certificate to contract, in a sense, wasn't so great, but what interests me about your contract is that it connects with your disaffection with the gallery.*

SS: In a way, yes.

JS: *Because it comes forward as a proposition for doing without a dealer.*

SS: It wasn't so much that. The flack that I got – particularly from Lawrence Weiner, and also other people – was that, in trying to give the artist control over his or her art, I was treating the work of art like a capitalist object. Lawrence was very much against this because he felt that, by trying to protect his work, or give it rights, I had changed it into a piece of merchandise – a

capitalist commodity – and that was that.

There was a lot of resistance to it. Not organised resistance, but a lot of people didn't like it and they felt, in many ways, it would have been like a renunciation of so-called Conceptual Art because it was applying, or trying to apply, the values of capitalist commodities to the artwork and, of course, this was very much against the spirit of Conceptual Art.

JS: *Well, it is problematic if you glue The Contract to the form of documentation for inert gas, like the kind of radically dematerialised work Robert Morris was making at the time – The Contract then turns the documentation into the object.*

SS: But that's a problem that is still there. I have a collection of art and I will be putting it on the block later this year, and the auction people are looking at all these kinds of questions.

These problems have been around a while: who owns the work? Can someone sell it? What are they selling? How do you know he or she did it? Authenticity? I don't think we – 'we', 'me', our generation – ever resolved the question of ownership of work. Of course, that was one of the issues that we were questioning in order to circumvent the capitalist system with dematerialised or non-material work. But we still have to come back to certain forms of property rights – that's the world we're living in.

Lawrence has toyed with this through public freehold, which no one can own but anyone can use. There is a whole group of works that pops up at various moments of his life which he has signed the public freehold for, so he can use it for 20 years or something and then it's no longer his to use.

JS: *But the works can also be purchased as private freehold?*

SS: No. I don't think there is such a thing as 'private freehold'. I mean, there are works which are labelled 'public freehold' which –

if I understand it correctly – anybody has the right to make, and which they can attach Lawrence's name to, but there are no property rights. You can't sell them because you don't own them.

There are lots of ways to get around this issue, but the problems have not been resolved. In the case of a second party – particularly someone buying at auction or through a dealer – the line connecting the artist to the original owner of the work has been cut. Part of what we were trying to do with The Contract was to create that link. We were trying to set up something like a common law, and we were trying to do it privately. In other words, we were trying to establish the same protection of the creator's rights in art that exist in music and the theatre. The question is, is it possible to make a private contract just between you and me – you the artist and me the art collector – that then obliges people to maintain a relationship to you forever?

JS: *But the continuing relationship is to the artwork.*

SS: Yes – but the artist's rights are the artwork and, after his or her death, their estate's (for 30 years or whatever the law is in each country) and that, if it is possible, is a very revolutionary step. But that was not the original intention. We were just concerned about how to keep the artist in touch with his work if, and when, it passes hands. We also asked for a share in the profits, which was one of the most visible and most contested parts of The Contract. But we thought of it primarily as a means of keeping track of the work.

JS: *Yes, but it seems to me that, in the context of 1970 and 1971, galleries didn't necessarily have inventories and numbers and consignment forms.*

SS: I don't think the management of galleries (or at least the galleries that come to my mind) were that lax. Most of the artists' works were given an inventory number. But still you're just talking about only one step – the relationship between the artist and the gallery. But after the gallery sells it, what happens then? The gallery may want to guard the privacy of the client, or the client may want to remain unknown.

JS: *But that could have been a real issue in the reception of The Contract.*

SS: Oh yes. That was why I tried to conceive of it as an entirely private thing. In

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other words, in exchange for the artist acknowledging the authenticity of the work – and having some rights over it – the value of the work would be greater because you know it was his or hers. So we tried to play off one against the other. I was very much aware that a lot of black money goes into the art world; people did not necessarily want to leave traces. That was the problem.

JS: *The market remains highly unregulated to this day.*

SS: Right, it is one of the few big industries that is, and it won't last forever, that's for sure. All the countries are going to get wise to this. I wouldn't call it a racket, but it is definitely an exceptional case that art is just totally unregulated, unlike film or books.

Although I was very careful to try and fit into the existing modes of business in the art world, it didn't take. Bob and I tried to make it into some kind of standard for the industry, an industry which does not recognise itself as an industry even today. But I'd say that this is going to happen soon. I don't know whether it will be tomorrow afternoon or five years from now, but eventually they're going to realise that there are no guarantees.

JS: *Do the works in your collection that you are putting up for auction carry The Contract with them?*

SS: No. That was the artists' decision. If they didn't want to use it, I wasn't going to insist. Although, in fact, most of them were acquired before The Contract was drawn up. But that's maybe a cop-out. I could have done it retroactively, as a friend, but none of them had any great interest in it.

The only person who even had a vague interest in using it was Carl Andre, and he did use it – not for pieces that I own which date from 1965-67 – but for a certain period afterwards. He had the idea that the price of a work could be proportional, based on, say, 5% of the buyer's income. If they earned \$50,000, they should pay him \$2,500. If they earned \$10,000, they should pay him \$500. Carl was very astute politically, and also socially and economically, particularly about the relationship between his work and a collector or owner. But these kinds of problems of ownership rights, which are related to receipts, documentation and authenticity, are still around. It's not a problem for me, because I'm the first

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owner. Well, I don't know yet. It may be a problem. But all the works came from artists that I know and worked with. That can't be contested, but the next guy?

I'm still thinking on this, but I certainly have to give them a bill of sale in the way that when you go to a shoe store you ask for your receipt. I am sure there will have to be a receipt. That's a way to avoid the artist having to do it.

JS: *So the certificate will come from you?*

SS: It wouldn't be a certificate. It will be a bill of sale. I would state that I owned it, and it was sold to John Doe. But that's capitalism, too. I have no problem doing that. I deal in rare books. I send receipts off. Someone wants to buy a book – I send the book with a receipt and an invoice stating what it is, and my reputation rests on the fact that the book is authentic, as described in the catalogue. I deal in books on Islamic art, particularly Islamic textile art. I am sort of an expert on the subject, so I put my seal on it. It definitely has a value. But even if it didn't have any value, at least it has an economic value in that they own it – they have a piece of paper saying that they are the owners. If there was a defect in the book that I hadn't mentioned, they could come back to me and try to get their money back.

Lawrence has had a lawyer, Jerold Ordovery – you would call him a notary or something – who registers the ownership and comings and goings of the artworks. Carl has a website on which you have to register work or he won't acknowledge it as his. Whether he can do that at all is very questionable, whether the right of ownership in his work is dependent on you registering on his website is a legal question. I can understand why Carl wants to guard the authenticity of his work. I mean, it is very easy to produce illegal copies of his work.

But to return to the problem of documentation – what happens if there is a fire and everything burns down? You're just piss out of luck.

JS: *In that case, had The Contract been*

embraced it would have clarified a number of these issues.

SS: Exactly. And they are coming round to it now. One argument at the time was that the very artists who needed it least would make the most from having a contract. But that's the kind of thing you say about the Beatles too, about them getting 3% or something when they don't need it.

I think because our generation of artists are now heading into their late middle ages (they are in their 60s and 70s) – some of whom have had the good fortune to be relatively successful and have been put on the block several times to establish a market, or speculative market value for their work – we're going to be seeing more and more of these problems. If this auction business comes off, it will perhaps revive some of these legal or even administrative issues – but that's down the line. The situation is ripe for someone to think about some kind of administrative mechanism for dealing with this, something with a semi-official status.

JS: *But that will come part and parcel with the regulation of the market and the industry.*

SS: As for the regulation of the art industry, I don't think we're there. There are too many people who have too much interest in this. I'm sure it will happen – not in our lifetimes – but at some point down the line. The art industry is an incredible industry now, it is said to touch trillions of dollars a year. It is like a free-for-all. ■

The first part of this interview, 'The Playmaker', appeared in AM327.

Seth Siegelaub has lived in Europe since 1972 as a researcher and publisher on left communication and culture.

JOHN SLYCE is a writer and critic based in London.