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DISAVOWAL OF A WORK OF ART ACCORDING TO ITALIAN LAW

The disavowal of the work by the author is a practice that arises frequently in the context of the contemporary art market, although the law does not provide a precise definition of it.

Frequent disputes arise involving artists' archives and foundations against collectors, with the risk of having them resolved in Court, often by unaccustomed judges, to the issue of the authentication of works of art and, therefore, with the risk of lengthy and costly trials with an uncertain outcome.

According to Italian Law, which is already deficient in itself, Article 142 of the Italian copyright law provides that *'the author, if serious moral reasons concur, has the right to withdraw the work from the market, except for the obligation to indemnify those who have acquired the rights to reproduce, disseminate, perform, represent or distribute the work'*. This personal right, not transferable.

It is import to draw the attention of the expression set forth by the art. 142, "*serious moral reasons*" refers to another relevant legal disposition, art 20, of the Italian copyright law which apply to all situations in which the dignity or name of the artist is jeopardised. Disavowal action, therefore, would represent the negative ability of the artist not to recognise the authorship of a work falsely attributed to him, together with the positive ability to be recognised as the author of the work and to reveal himself as such.

In addition, under art. 143 provides that "*the judicial authority, if it recognises that there are serious moral reasons invoked by the author, shall order the prohibition of the reproduction, dissemination, performance, distribution of the work, subject to the payment of an indemnity in favour of the interested parties, fixing the amount of the indemnity and the deadline for payment*".

It is nevertheless possible to bring action to disavow the paternity of a work of art. To that purpose, Court of Rome, in a ruling dated 20 June 2019, confirmed a trend according to which "*the action to disavow the paternity of the work should at most be qualified as an exercise of the right to the name as a manifestation of personality rights and, consequently, such action is only entitled to be brought by those who have an*

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interest based on family reasons worthy of protection under Article 8 of the Italian Civil Code."

Scholars also agree that, on the one hand, such an action allows not only disavowal of paternity of a work, but also the right to invoke all the other rules protecting the artist's name and pseudonym against unauthorised uses.

Nonetheless, the possibility for the artist to assert his moral rights against any reproduction use of his work that is detrimental to his dignity remains unquestioned.

In such a scenario, a recent order of the Court of Milan of 15 January 2019, pronounced on the occasion of Street Artist Banksy's refusal to have his name associated with an exhibition held at the Museum of Culture in Milan and never authorised by him, held that the artist's name had been used for less than descriptive purposes within the meaning of Article 21 of Italian copyright Law. The museum would in fact have made use of the Street Artist's name as an element of the communication highlighting the contents of the event promoted, without finding any parasitic disparaging conduct in any way prejudicial.

Street Art, however, presents the problem of not being able to be physically exhibited in a museum in an exhibition, or I would simply like to be moved without being denatured.

Part of the doctrine argues against the possibility of the artist arbitrarily disallowing works of art, demanding a strict reading of art.142 in the part referring to the necessary existence of serious moral reasons. In fact, the risk is that due to possible reprisals or in any case purely personal motivations on the part of the artist, the equilibrium of a market in which exchanged goods see their value based on the concept of authorship will be upset.

This dynamic, moreover, is already frequently applied in Anglo-Saxon countries, in particular the United States. For instance, the disavowal by the US artist Prince in 2017 of a work on canvas in which he had reproduced a photograph of Donald Trump's Instagram feed, later purchased by his daughter Ivanka Trump for \$36,000.

In this case, however, it is not clear whether the artist's disavowal will actually lead to a decrease in the value of the work, given the uproar and the media clamour generated by the affair.



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In common law systems, in fact, the law is not as generous towards the artist as in Italy, as it does not provide the author with a real right of repentance regarding his work, not even for moral reasons.

This has led, in several situations, to some extreme situations.

A court in Chicago allowed the artist Peter Doig to actually see a painting attributed to him as unknown due to a curious case of mistaken identity with an artist of the same name, the real author of the painting wrongly attributed to the defendant. In such a case, Doig would be sued by the owner of the work for damages resulting from having interfered with the market value of the work through the disavowal operation, and would have the burden of proving, by bringing exhaustive evidence, that he was not its author.

In another case, the artist John Baldessari, who through his conceptual operation of cremation project in 1970 burnt all his youthful works, from which he had decided to distance himself.

Finally, Italian case law has also questioned the liability of an artist in the situation where a work, from which it is authenticated, later turns out to be false.

The Court of Appeal of Rome, in a ruling of 26 July 1978, held that a painter who affixes his authenticated signature on the back of a painting that later turns out to be false is only liable to the person who received the work directly from him.

The Italian Supreme Court, instead, annulling said judgements, held that the painter, after having affixed his notary's authenticated signature on the back of a painting without having diligently checked its authorship, is liable for tort, causing pecuniary damage to the third purchaser who had relied on the authenticity of the work.

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