

## Could a Long-Forgotten Contract Settle the Artist Resale Royalties Debate?

by Kibum Kim on January 5, 2015



Installation view of 'The Contract' at Essex Street, New York (courtesy of the artists and Essex Street, New York)

Does the art world need a new social contract? As the art market continues its reason-defying, hyper-charged boom (the current bubble seems to have been made out of stainless steel in Jeff Koons's studio), facilitating the accrual of more and more power and capital — economic and cultural — to über-collectors and mega-dealers, what is the artist's role? What kind of agency — additional rights and protections from the vicissitudes of this faddish and money-centric market — can artists claim?

With a group show simply titled *The Contract*, the Lower East Side gallery Essex Street encourages us to consider an old proposition: the "Artist's Reserved Rights Transfer and Sale Agreement" by the pioneering dealer of conceptual art Seth Siegelaub and the lawyer Robert Projansky.

Introduced in 1971, the contract attempted to address power imbalances in the art world and stake out claims for artists in the post-sale lives of their works. Notably, the contract required future collectors to pay 15% of the upside to the artist upon resale of the work and reserved for the artist certain exhibition-related rights — such as the right to be consulted about the work's inclusion in public exhibitions and a right to borrow it (at no cost to the collector) for exhibitions. All sales from *The Contract* require collectors to sign the agreement.

In its day the contract was ambitious and political, but it was not an idealistic art project. Designed to be practicable, it was translated into four languages and disseminated widely in the art world. But as a practical document, the Projansky contract (as it came to be known) was an abject failure. Hans Haacke is the only artist who has used the contract throughout his career, requiring it for all sales of his works. Fear of losing sales, the administrative burden of negotiating and enforcing the contract, and ambivalence in the 1970s art world about artists getting so intimately involved with the market side of their careers deterred a critical mass of support to build around the contract among dealers and artists.

But perhaps the idea was just ahead of its time. The contemporary art market was not as robust in 1971 as it is today; it was only in 1973 that the landmark Scull sale would kick-start the auction market for living artists and inspire the California Resale Royalty Act.

Four decades later, we find ourselves in a market where Christie's hammers down almost a billion dollars in one evening, and every auction season brings a new lineup of brash young names posting six-figure debuts, which translates into phenomenal returns of ten times or more in a very short time period. In today's feverish art market, works by in-demand artists often trade hands multiple times within a year. The consumerist imperative is strong, and while collectors are perhaps more powerful than ever, they are competing for access across all segments of the market, including for emerging artists, and dealers may be in a stronger position to negotiate the terms of sale.

Administering the contract and tracking artworks is also far more practicable in the digital age. Finding out about an artist's appearance in an auction can be as simple as a Google search, and the way works are marketed even for private transactions often involves the sharing of digital documents and



Robert Projansky and Seth Siegelaub's 'THE ARTIST'S RESERVED RIGHTS TRANSFER AND SALE AGREEMENT' (courtesy of Essex Street, New York)

images, making it more likely that interested parties would find out in the still-small art world.

It also cannot be denied that the art world's attitudes vis-à-vis the market have changed. Purists who resisted the Projansky contract in the 1970s believed interest in future profit sharing tainted artists' motivations and thought the contract signaled conceptual art capitulating to capitalism. After all, conceptual art was partly borne out of the anti-market sentiments of artists not interested in making salable objects for the market. Today, artists coming of age in the era of the financialization of the art world are more likely to take a different tack. Contemporary artists today deliberately adopt and subvert corporate strategies of branding and marketing. Participation in market success can no longer be simplistically dismissed as "selling out."



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In this environment, the show at Essex Street proves timely. While passage is unlikely, there is a new bill for resale royalties in the US Congress that will see a significant push in 2015. Representative Jerrold Nadler, the bill's main champion, has stated that, in addition to efforts to score more sponsors and get the bill through committee, he may try to fold it into new copyright

revision legislation. With the Copyright Office recommending resale rights in its 2013 study (the previous one, in 1992, came down against resale royalties), momentum is building. At the very least, expect much more public debate about resale rights in the coming year.

In light of the potential legislation, recasting a spotlight on the Projansky contract simultaneously throws support to the fight for artists' rights and presents privately contracted resale royalty arrangements as an alternative. The justification often proffered for legislation over solutions like the Projansky contract is that artists do not have the power to negotiate or to enforce the contracts. As discussed above, the current dynamic in the art world may be more amenable. To quote Roberta Smith from her 1987 story on the Projansky contract, which also serves as the press release for the Essex Street show: "Ironically, in the midst of the 1980's art boom — when more artists are more successful and wield more economic power than ever before — the time would seem to be ripe for a return of the artist's contract, or at least the ideas behind it." Arguably, today's market is even riper.

Should we be in a position to make a choice between legislation and contractual agreements, I would argue that the contract is preferable by far. In contrast to the legislative option, which pits artists and collectors against each other in antagonistic positions, contracts that collectors agree to strengthen their relationships with artists and encourage collectors to be stewards of artists' works. Legislation only grants monetary royalties and does not cover exhibition-related rights, which, for some artists, are more important. The resale royalty being calculated off the profit made from a sale in the Projansky contract makes it a more agreeable proposition for collectors (and is more fair) than legislative proposals, which call for royalties to be calculated off the sale price, meaning a collector would be liable even if she sells at a loss. Current proposed legislation would also paternalistically prohibit the artist from selling the rights, so that an artist could not sell future potential royalties for a lump sum in the present day, as musicians frequently do. And generally, as a flexible document, the artist can modify the terms of the contract. Additionally, consider what is covered in the current bill: "a work of visual art" is defined as "a painting, drawing, print, sculpture, or photograph, existing either in the original embodiment or in a limited edition of 200 copies or fewer." Under this definition, many of the works by the conceptual artists who inspired the Projansky contract would likely not be covered by legislation. Some of the most interesting artists working today, like Ryan Trecartin and Camille Henrot, may not be either.

In making its case for the Projansky contract and artist rights, Essex Street makes some expected and unexpected choices. For a show so engaged with the market and art economics, *The Contract* appears emphatically uncommercial. The exhibition is anchored by historical works from Haacke and Maria Eichhorn. Haacke's committed use of and vociferous advocacy for the Projansky contract gibes well with his conceptual practice, which has often turned a critical eye on the political and economic conditions of art production. Eichhorn organized a show about the Projansky



Maria Eichhorn, "Paperbag" (2008/2014), paper bag Data Quest, cardboard boxes (courtesy of the artist, Galerie Barbara Weiss, Berlin, and Essex Street, New York)



contract in 1998 at Kunstverein Salzburg and has published a book of interviews with many of the central players involved.

Other participants in the show include a mix of established Chelsea artists and younger artists from Essex Street's program, all of whom contribute aesthetically austere works. There are no handsome abstract canvases of the sort that have been catnip for the rabid market here. Cameron Rowland's piece is a circular table bought from a public auction of furniture from a government office building. Formally, it looks as perfunctory as one might imagine given its provenance, but that provenance — a building that served as the New York City Mayor's office that was just sold to a private entity in 2013 — imbues this readymade with interesting content.

Even Wade Guyton, whose spectacular market ascendance has been largely fueled by his sexy and masculine ink-jet printed canvases, is represented by an office furniture piece of his own: one of his twisted Cesca chair sculptures. It is a writhing Laocoön in the form of a laconic, three-dimensional line drawing.

Though she is technically absent, Andrea Fraser makes her presence felt through R.H. Quaytman's "Ark, Chapter 10 (still from A. Fraser "Untitled") #2" (2008–13), a silkscreen of a video still showing an empty hotel room. The image is from Fraser's notorious 2003 piece "Untitled," in which she videotaped a sexual encounter she had with a collector. The work reminds us how Fraser feels about the artist's lot in the art world. Fraser's absence from the image doubly resonates with the exhibition's theme — she declined to participate in the show due to her decision to abstain from exhibiting in New York as long as it has no resale rights. Fraser refuses to get fucked in the art market. Does Quaytman's work add anything to that refusal, or simply highlight it?

One uncomfortable feature of *The Contract* is that it consists largely of art about art, art referencing art. The show's *raison d'être* — to tackle inequities in the art world — feels insular and esoteric at times. Are artist rights and resale royalties really the political causes of utmost importance at a time when thousands are out on the streets protesting? Artists, no matter their current earning power, tend to belong to a privileged tribe. We may rail against the gentrification of art neighborhoods like Bushwick and regret artists' displacement, but aren't artists often the first gentrifiers in the poor neighborhoods where the Michael Browns and Eric Garners of the world navigate lives with fewer opportunities? What is the artist's role, not just in the art world and market, but also in society?



Cameron Rowland, "49-51 Chambers Street – Basement, New York, NY 10007" (2014), wooden tabletop, base, hardware (courtesy of the artist and Essex Street, New York)

Haacke's piece in the show, "Mission Accomplished" (2005), touches upon such questions. It is a torn print of the blue-and-white star pattern of the US flag, one half framed on the wall and the other half placed on the floor. Though the piece is from 2005 and critiques George W. Bush and the Iraq War, the ripped and separated halves of the US flag are even more poignant in light of recent events that revealed persistent fault lines in this country — along racial lines, and between the state and the citizenry it is supposed to protect.

There is also political content in the work by Rowland, and in Eichhorn's still life of consumerism, "Paperbag" (2008/2014), for which she had her dealer fill up a Data Quest shopping bag with the boxes from everything he bought over the course of a month. Closer consideration of such works serves to remind the viewer that visual art communicates in a multivalent manner, perhaps not as explicitly and didactically as language can, and still forms an integral part of our humanist and political discourse.

Ultimately, the important thing is to steer the art world towards a system that incentivizes artists and affords them room to experiment and grow. Art can open up space to question the status quo and effect social change. As the art market chugs along in its ineluctable march towards a future where cultural production will become increasingly intertwined with financial machinations, we need to engage in more conversations about artists' rights and rethink economic models of art production and distribution.

Perhaps *The Contract*'s most meaningful success is its transactional performance: The show is almost sold out. The time for the Projansky contract may indeed have come.

*The Contract* continues at Essex Street (114 Eldridge Street, Lower East Side, Manhattan) through January 11.