

Pricing Creativity: The Art Market's Dance with Appraisal

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Whether you are an artist seeking the value of your work, an individual with an artwork found at a flea market or rediscovered in your attic, an art collector, or simply curious, you might need to understand the workings of appraisal, and, above all, its role. In this article, you will explore the process of appraisal and delve into the legal challenges it can pose.

What is appraisal?

Let's start from the beginning.

From the late latin *appretiare*, composed by *ad+pretium* (price, value), an appraisal refers to the process of determining the value of property, assets, or goods¹.

From the 4th century onwards, the first evidence² appears of purchasing new works of art for private use, either for domestic worship or for visual pleasure. The Hellenistic period witnesses the development of a significant circulation of artworks throughout the entire Eastern Mediterranean³. The entry of art in commercial exchange makes the process of appraisal inevitable. The art piece needs to be valued to be sold and brought to the market. Many years later, by the end of the 17th century, we can find some of the first auction catalogues from Holland⁴, where drawing of the art piece, their characteristics and appraisal were listed, in the same way we know today.

The more the market for art is developed, more the need to value the works precisely. That is why the process of appraisal has become more and more meticulous.

What is an appraisal, who performs it, and for what purpose?

The principle of analyzing different characteristics of an artwork and giving a price according to those specific aspects can be difficult. That is why, appraisers or auctioneers are professionals entitled to appraise. An art appraiser is a professional, who assesses the monetary value of an artwork. They may work for insurance companies, museums, or private individuals. To do their job, they must be familiar with different styles of art and the market values of various pieces. As a professional, they must "give their opinion on the value of an artwork based on market evidence, without the influence of their personal biases and artistic taste"⁵.

An appraisal can be asked by insurance companies, who often mandate appraisals for insuring valuable assets. The input of an external expert carries significant weight when claims of damage or loss arise. When contributing artwork to charitable causes, appraisals become essential for accurate tax deductions or work as evidence in potential audits. Numerous non-profit organizations accepting art donations also stipulate appraisals for their internal records. Seeking an appraisal is also advisable when determining the appropriate resale value of an artwork, leveraging it strategically in

¹ [Etymology of appraisal](#), last updated 9th of January 2024.

² "The earliest substantial evidence of an art market in the West is from ancient Greek civilization and includes a cup by Phintias dating to approximately 500 BCE that shows a young man buying a vase—possibly the earliest depiction of an art transaction." [Art market economics, Britannica](#), Jeremy R. Howard, 9th of January 2024.

³ Michel Hoog, Emmanuel Hoog, *Le marché de l'art* (1995).

⁴ [Reel: les archives des ventes aux enchères](#), Chloë Collin, 29th October 2023.

⁵ [How Does Fine Art Appraisal Work? \(Why You Need Them\)](#), Sparks Gallery.

consignment negotiations⁶. In legal scenarios like property division cases, attorneys may seek appraisals, or for estate tax purposes⁷. But what role does appraisal serve in the legal realm?

For now, let's see how appraisal works.

How does appraisal work?

When evaluating art, it becomes crucial to scrutinize various factors that play a role in determining the value and, consequently, the price of the object.

Firstly, identifying **the nature** of the object is paramount. Whether it be jewelry, photography, painting, sculpture, drawing or a sketch, the specific category significantly influences its market value.

The **size** of the artwork also holds substantial importance, as larger pieces often command higher prices due to the increased materials and effort involved in their creation.

The **meaning** of the artwork, the idea it represents must be considered when defining the price. Delving into the **historical background** of the object provides context, potentially enhancing its value. The condition of the piece is also to be taken into consideration: whether it is in good, mediocre, or poor condition will determine the value assigned to it at the end of an appraisal.

Establishing the **artist's identity** is another critical element, often requiring the expertise of an authenticator to ensure credibility. Once the artist has been identified, the value of the piece often varies depending on the reputation of the artist and in which **period of the artist's lifetime** the piece has been made. It is essential to position the work along the timeline of the artist's career. A piece created towards the end of an artist's career will generally hold more value than one produced at the beginning of their artistic journey. Similarly, an artwork that is part of a recognized artistic period or series, such as Picasso's Rose Period, will inherently possess higher value. The pricing of an artwork is also influenced by whether the piece can be readily attributed to the artist, thanks to its artist's recognizable style, or if it originates from a more experimental period where recognizing the artist becomes a more intricate task.

Finally, assessing the **prevailing market prices of similar** artworks aids at establishing a realistic and competitive valuation, offering valuable insights into the object's monetary worth within the current art market landscape. This aspect will usually vary depending on the rarity, uniqueness of the object, whether it is a unique piece, available in limited quantities, or part of a large-scale production. Sometimes, the **venues** that exhibit the artist's works can serve as indicators to determine the price of an artwork⁸.

Naturally, there are additional criteria that must be taken into account and analyzed depending on the individual case. However, the aforementioned factors stand out as the primary considerations.

What role does appraisal serve in the legal realm?

Now, you should be well aware that art appraisal or valuation plays a crucial role in determining the value of an art piece. But what are its legal ramifications? While we might automatically associate appraisal with the sale of a piece, its significance extends to various legal matters such as establishing insurance values, dealing with issues arising from divorce, addressing debts, handling successions, and even determining compensatory damages and interest in legal proceedings.

⁶ Consignment negotiations refer to the process of discussing and finalizing the terms and conditions involved in consigning goods or products. Consignment is a business arrangement where a seller (consignor) entrusts their goods to another party (consignee) for selling, and the consignee only pays the consignor for the sold items.

⁷ [How Does a Fine Art Appraisal Work?](#), David Barnett Gallery.

⁸ [Les 5 indicateurs pour déterminer le prix d'une œuvre d'art](#), Fortius, 5th September 2022.

To help you gain a better understanding of the legal issues that could necessitate an appraisal or arise from an art valuation, here are some well-known French legal cases⁹, which provide valuable insights:

The first one is known as “**l’affaire Poussin**”¹⁰. The case concerns an antique painting owned by the Saint-Arroman spouses, which was traditionally believed to be a work by Nicolas Poussin. Seeking to auction it, the Saint-Arroman spouses engaged auctioneers from the Maurice Rheims and René-Georges Laurin firm.

Upon examination, the painting was determined not to be by Poussin but from the Carracci School. On February 21, 1968, the painting was modestly auctioned for 2200 French francs. However, on the same day, the French Museums Directorate exercised its right of preemption as granted by French law¹¹ and acquired the painting. After this acquisition, the Louvre Museum displayed the artwork from 1969¹², attributing it to Nicolas Poussin.

Surprised by this revelation, the Saint-Arroman spouses subsequently filed a lawsuit against the French Museums Directorate, seeking the annulment of the sale due to a mistake in substance. This case was brought to Court due to an authentication error, resulting in a misappraisal of the sale price.

The legal question arising from this case was: Can a misappraisal resulting from an error in the substance of the object make a contract of sale concerning an art piece void?

It highlights that legal discrepancies can arise when the attribution of a painting is probable rather than certain. The case also addresses the timing of the error assessment, emphasizing the impact of post-contractual revelations. While offering valuable insights, it raises concerns about legal certainty in the art market, particularly regarding the potential challenges to sales contracts based on new information, within a prescribed time limit of twenty years from the discovery of the error.

In the end, and after fifteen years of procedure, the court of Versailles ordered the return of the painting to Mrs. Saint-Arroman and to acknowledge her commitment to refund the received amount, namely the sum of 2,200 F.

⁹ The selection of French cases in this article is because these are cases related to appraisal that have had a significant impact on French law. They have raised numerous and highly important legal questions. Today, if a French law student is not familiar with either of these two cases, they cannot be considered a law student.

¹⁰ [Poussin, erreur sur la substance](#), judgement of 22 February 1978.

¹¹ Art. 37. De la loi du 31 décembre 1921 « L'Etat peut exercer, sur toute vente publique[...], un droit de préemption par l'effet duquel il se trouve subrogé à l'adjudicataire ou à l'acheteur ».

This article means that in case of an auction, State Museum (at a municipal, provincial, or regional level) prevails on another buyer with a higher bid.

¹² Which is not the case anymore, the painting is now in possession of unknown proprietary.



From Wikimedia Commons, the free media repository¹³

The second case is known as “**l’affaire Pinoncelli**”¹⁴.

On August 25, 1993, the performance artist Pinoncelli stood before the most famous ready-made piece¹⁵ in art history, *Fountain*: a commercially manufactured urinal signed by Marcel Duchamp under a pseudonym and displayed horizontally. He urinated into it and then smashed it with a hammer¹⁶.

¹³ ['Olympos et Marsyas'](#), 13th June 2011

Painting titled 'Olympos et Marsyas' dating from approximately 1626-1628, which was rediscovered by Pierre Rosenberg in 1969. This painting was initially acquired by the Louvre Museum but was later returned to its owners following a legal procedure in 1978. Subsequently, it was put up for sale and sold for 8,142,500 francs on December 12, 1988.

¹⁴ [Daloz, affaire Pinoncelli](#), judgement of 20th November 1998.

¹⁵ Ready-made art refers to an artistic concept introduced by Marcel Duchamp in the early 20th century, where everyday objects are designated as art simply by the artist's choice and presentation. Duchamp's most famous ready-made is "Fountain" (1917), a urinal he signed and displayed as an artwork, challenging traditional notions of artistic creation and value.

¹⁶ [L’affaire Duchamp-Pinoncelli : retour à la fonction originelle de Fountain ?](#), by Amélie, 29th April 2016.

This case raises numerous legal questions, such as: What is the legal definition of a work of art? How do you appraise a piece that claims to be without an artist? Is an aesthetic criterion mandatory for a work to be qualified as art? In the context of this article, we will focus solely on the aspect related to estimating damages and interest attributed to the defendant, here Pinoncelli, and ask: How can appraisal determine the damages asked from the defendant?

In 1996, *Fountain* was featured in the "Masculin Féminin" exhibition after restoration by Mrs. Nollinger for 16,336 francs and 80 centimes. Although effective, the restoration didn't conclude the story. Despite state insurance for 450,000 francs, AXA expert Mr. Privat estimated a 60% loss in value post-degradation and restoration. The Ministry of Culture pursued damages and interest against Pinoncelli, contending not only material harm but also a profound intellectual impact on *Fountain's* status and function as a ready-made art piece¹⁷. Pinoncelli tried to counter this price by qualifying his action as an artistic performance which increases the price of the original *Fountain*.

Finally, the Court concluded that Pinoncelli is obligated to pay only the costs of restoration rather than compensating for the loss in the value of the artwork.

With these two cases, we observe the pivotal role appraisals play in the legal proceedings and, moreover, how they significantly influence judicial decisions.

In conclusion, art appraisal is a nuanced process that involves evaluating various factors to determine the value of artworks. Appraisers play a crucial role not only in buying and selling but also in legal matters such as insurance, divorce, and compensatory damages. Legal cases like "l'affaire Poussin" and "l'affaire Pinoncelli" illustrate the challenges and complexities in art valuation, emphasizing its significance in preserving the value and integrity of artworks in an evolving art market.

VALC Tip: While we typically visit exhibitions and museums to see artworks, it's easy to overlook the fact that there is plenty of art waiting not just to be sold but, more importantly, to be seen in auction galleries. Consider taking a look there!

¹⁷ [Vacarme: l'épreuve de droit retour sur « l'affaire Pinoncelli »](#), by Agnès Tricoire, 26th April 2001.