



LAW IN ART



ARTISTS RIGHTS

Artists Rights

Artists Rights are the type of legal rights **exclusively assignable**, granted to the artist for a **fixed period of time** to print, publish, remake, film or record.

It is possible to **obtain them automatically**, without having to pay for them. When an artist creates an original work (including prints, drawings and photography), he/she automatically is granted Artists Rights over that artwork

Artists Rights

Moral Component

States the **right to claim authorship** of the artwork and the **right to oppose to any type of mutilation, deformation or other kind of modification** (or action that may harm the artwork), that could be detrimental for the honor and prestige of the artist.

Moral Rights are personal and cannot be transferred to others

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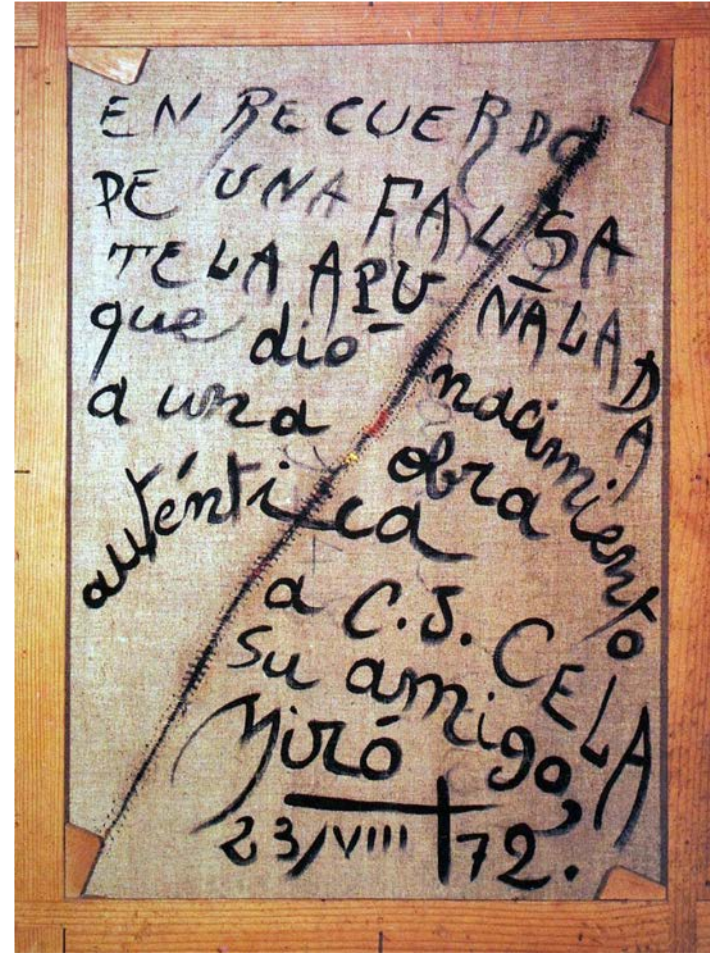
Economic Component

States if an artwork **can be sold**, or if it **can be managed by a third-party**.

When we sale an artwork, we are selling the economic rights of the work; which are passed onto the new owner.

****Some galleries include specific repurchasing clauses in their contracts*

Falsifications



Keys to Identifying Falsifications

Verify seller →

- Check their trajectory in the art market & reputation.

Make sure you have the certificate of authenticity →

- Both for works by living and deceased artists.

Ensure the authorship of the work through experts →

- Through certificates of authenticity and state of the work & reports.

Adaptations

Artists Rights help avoiding adaptations. Adaptations fall into two categories: appropriation and plagiarism.

Appropriation

Practice of making an image, work, or artistic proposal your own by giving it elements that change the meaning of the original piece.

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Plagiarism

Plagiarism consists in **copying works** from other artists in a very similar way to the originals **or even inserting a piece of the original within the copy**

An example of an Appropriation: David LaChapelle



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An example of an Appropriation: Marcel Duchamp

Leonardo da Vinci

Monalisa, 1503



Marcel Duchamp

L.H.O.O.Q., 1919



An example of an Plagiarism: Jeff Koons

Jeff Koons
Naked, 1988



Jean-François Bauret
Untitled, 1975



An example of an Plagiarism: Damien Hirst

John LeKay

Spiritus Callidus #2., 1993



Damien Hirst

For the Love of God, 2007



An example of an Plagiarism: Damien Hirst

John LeKay

*This is My Body, This is My
Blood., 1987*



Damien Hirst

In Nomine Patria, 2005



An example of an Plagiarism: Damien Hirst

John LeKay

Yin and Yang#2., 1990



Damien Hirst

Hymn, 1999



ARTISTS RESALE RIGHTS (ARR)

The Bern Convention and Copyrights

The Bern Convention, in 1886, was the first attempt at international harmonization of legislation related to Copyrights →

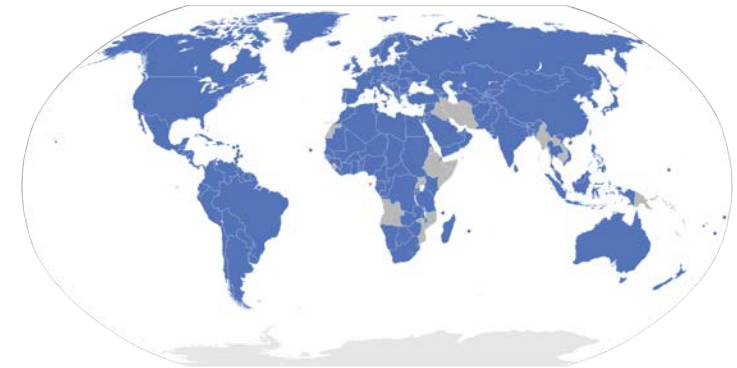
- **Ratified in 1887 by 10 countries.**
- Main function → **protection of literary and artistic works. Currently** it has been signed and ratified **by 178 countries.**

The revision of the Bern Convention in 1928 included the first allusion to the artist's moral right and the artists' resale rights (ARR).

1887



Today



Example: L'Angelus by Jean-François Millet



Example: L'Angelus by Jean-François Millet

Sold by the painter in **1860** for **1,000 francs**

Sold at auction in **1898** for **553,000 francs**.

Problem →

Millet's family did not receive any benefits from the sale.

- Moral dilemma:
 - *Should the artist or family receive compensation after the sale?*
 - Is it fair that the artist has no claims about his creation?

SOLUTION →

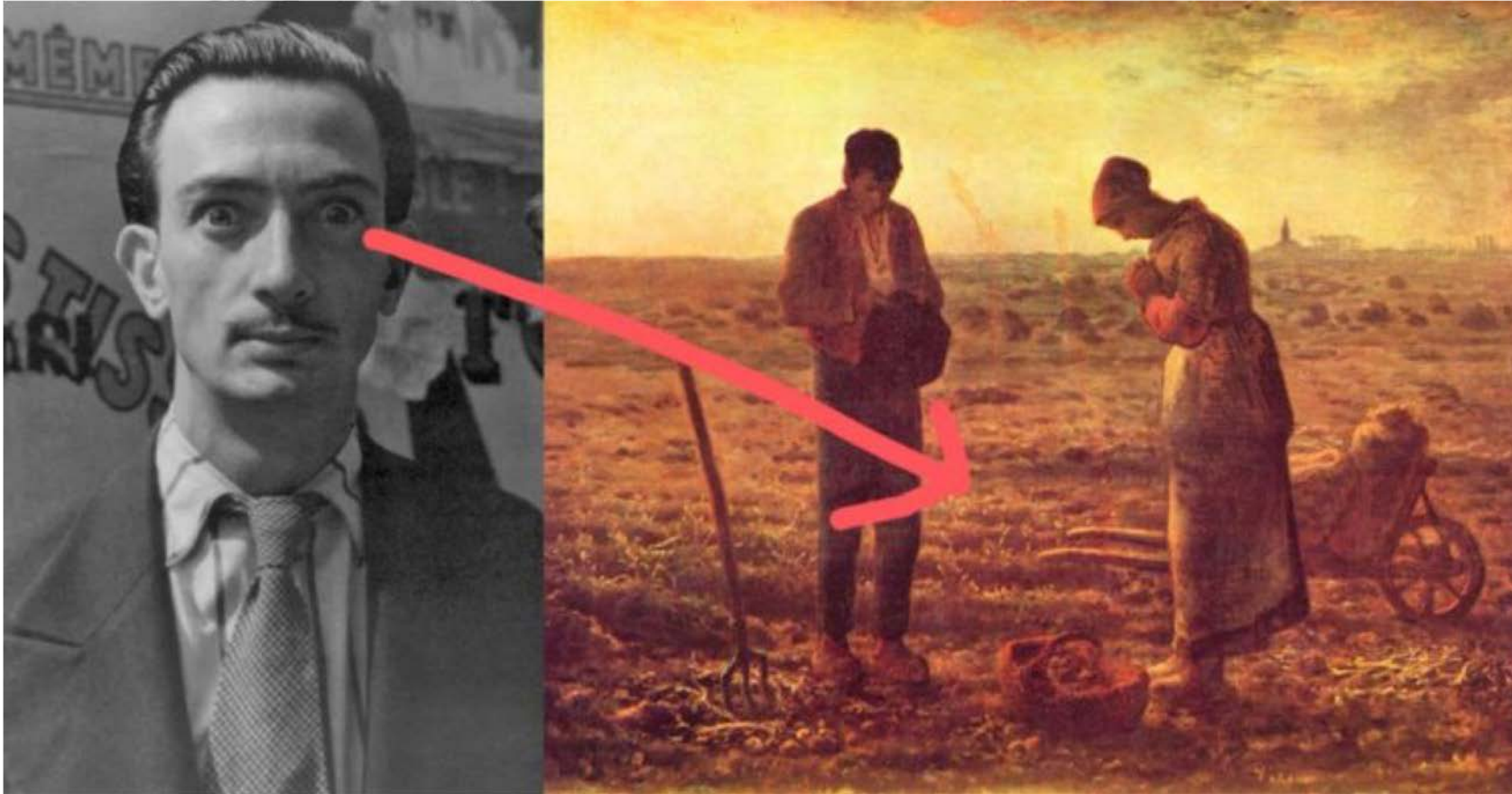
CREATION OF THE ARTISTS RESALE RIGHTS (ARR) AND THE ROYALTIES



Jean-François Millet

L'Angelus, oil on canvas,
1857-1859

Example: L'Angelus by Jean-François Millet



Dalí's fascination on the painting and the topic

About ARR

Decree adopted by the EU in 2001 that regulates at European level the artist's rights to collect an amount of royalties of up to € 12,500 for each public sale of his work.

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Both countries adopted similar schemes to ARR, applying certain modifications.

The ARR Regulation

The minimum amount from which an artist is entitled to ARRs is € 3,000. However, there are some exceptions →

- Sweden, Denmark and Finland: € 250
- Germany: € 400
- France: € 700

IMPORTS AND EXPORTS

Regulation on Imports & Exports

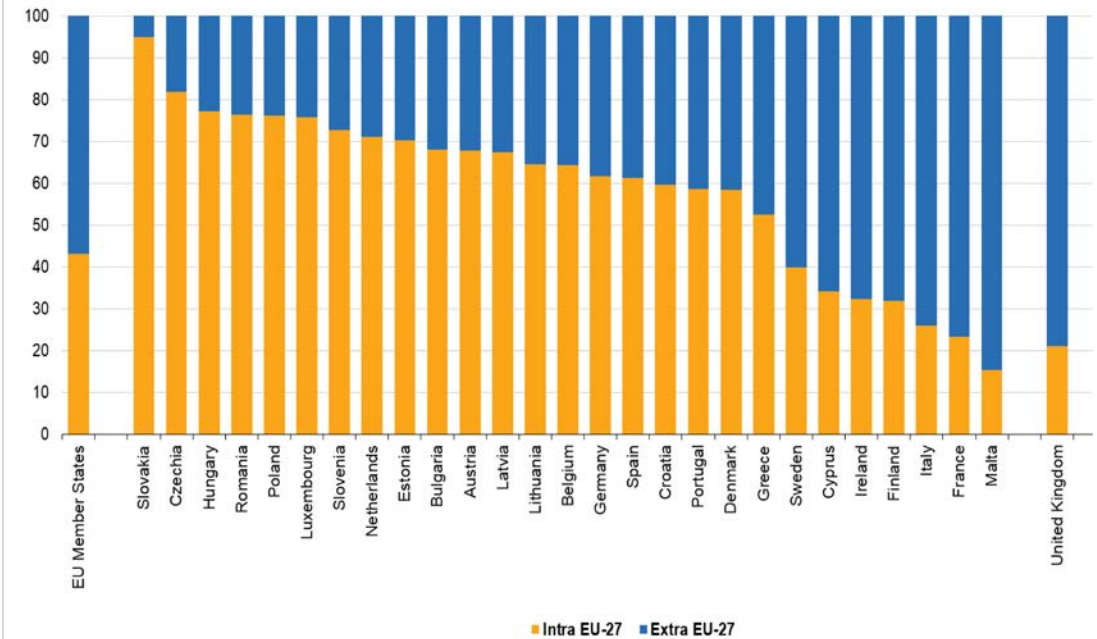
WITHIN THE EU

The following regulation applies in most countries

→

- Exemption from payment of import duties within the EU.
- Application of the principle of reciprocity with respect to third countries.
- Exemption from payment of export taxes within the EU.
- Exemption from payment of temporary imports taxes.

Share of extra-EU and intra-EU trade within all exports of cultural goods, 2018 (%)



Source: Eurostat (online data code: cult_trd_prd)

Example: EU

UK

VAT on sale and import
of works of Art = **20%**

FRANCE

VAT on sale and import
of works of Art = **10%**

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VAT on sale and import
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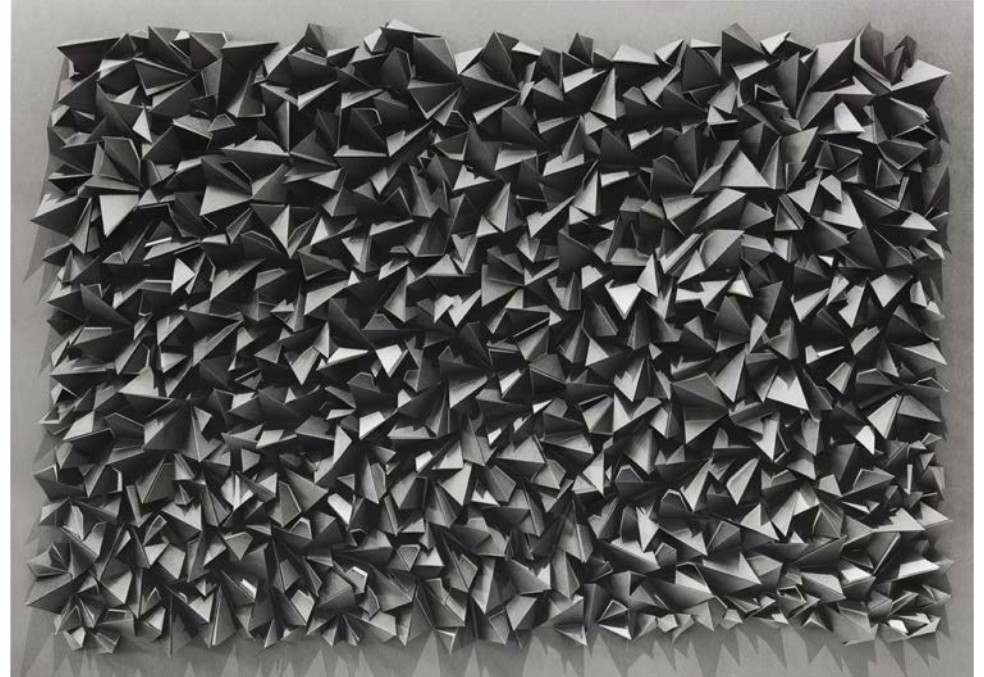
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Example: EU & USA

One of the Trump Administration regulations regarding the import of European art into the USA, states that:

All lithography, drawing, engraving and photography of less than 20 years from the United Kingdom or Germany is subject to an import tax of 25%.



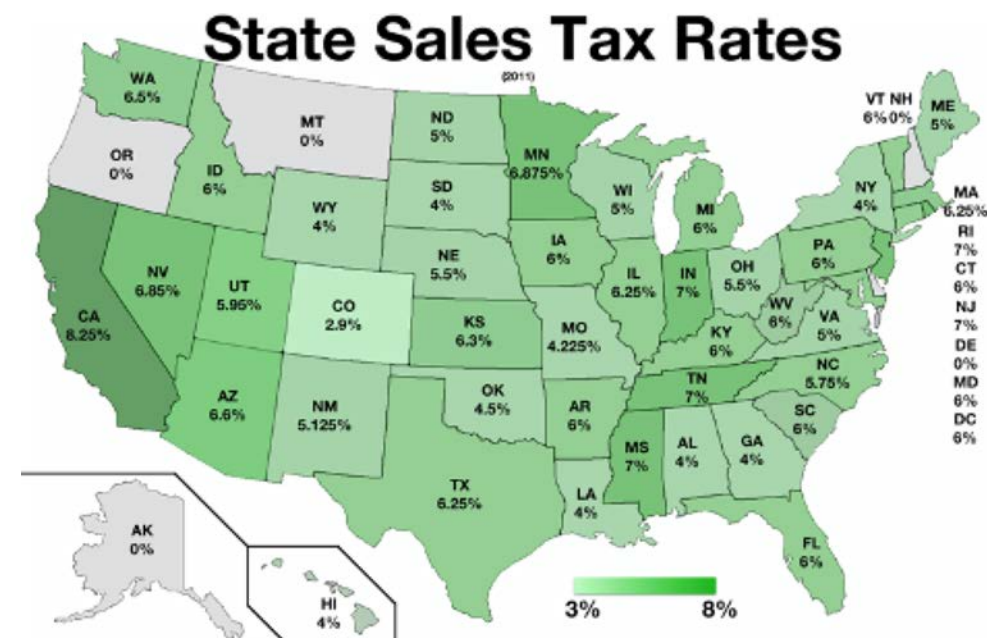
Christiane Feser

Partition 107, 140 x 200 x 3cm, 2018
German artist affected by the Trump Law

Example: USA

The imports trade regulation within the US can be seen in this map. If an artwork enters a state and is moved to another one, the **local tax must be paid at the correspondent state.**

As per this map, we can see that California is the highest state with 8.25%. New York one of the lowest with 4%. And there is no import tax for Delaware or Oregon.



Example: China & USA

According to this chart for a painting by an American that is imported into China the VAT to be paid is 36.7% as opposed to 14% for a painting painted by a non-American artist. Sculptures have the same duties. And, photographs by American artists are as high as 42%.

In addition, effective on September 1st, 2019 US customs imposed an import duty of 10% for any works by Chinese artists to come into the US



China Import Tariff

The following is current import duty & VAT in China-

	Duty	VAT	Total
Painting	1%	13%	14.13%
Sculpture	1%	13%	14.13%
Photo	6%	13%	19.78%
Installation	1.8%	13%	15.03%

For US artists to China, effective on 01 July 2019, Chinese customs imposed-

	Duty	Extra		VAT	Total
Painting	1%	20%	21%	13%	36.73%
Sculpture	1%	20%	21%	13%	36.73%
Photo	6%	20%	26%	13%	42.38%
Installation	1.8%	5%	6.8%	13%	20.68%

FREE PORTS

Free Ports in the Art Market

Free ports were originally established to facilitate trade between distant locations.

Nowadays, freeports resemble modernist museums more than storehouses, with gigantic metal and concrete sculptures in the lobby, spacious showrooms, and fancy meeting rooms.

Freeports are located in duty-free zones outside of anybody's jurisdiction and anybody's tax bills. Tax benefits are the number one reason why many gallerist, art dealers and collectors nowadays opt for keeping their art in freeports.

But what taxes are paid at free ports?

- Income Tax.
- VAT & Sales Tax when leaving the free port.
- Custom duties when outside the free port.

Images of Free ports



Images of Free ports



Free Ports in the Art Market



GENEVA, SWITZERLAND
OVER \$10 BILLION IN STORED ART



ZURICH, SWITZERLAND



DELAWARE, UNITED STATES



SINGAPORE, SINGAPORE



BEIJING, CHINA

CAPITAL GAIN TAX

CAPITAL GAIN TAX

UNITED STATES



28% + 3.8% of Medicare = 31.8%

For example: 90 K USD profit you pay 28,620 USD

CHINA



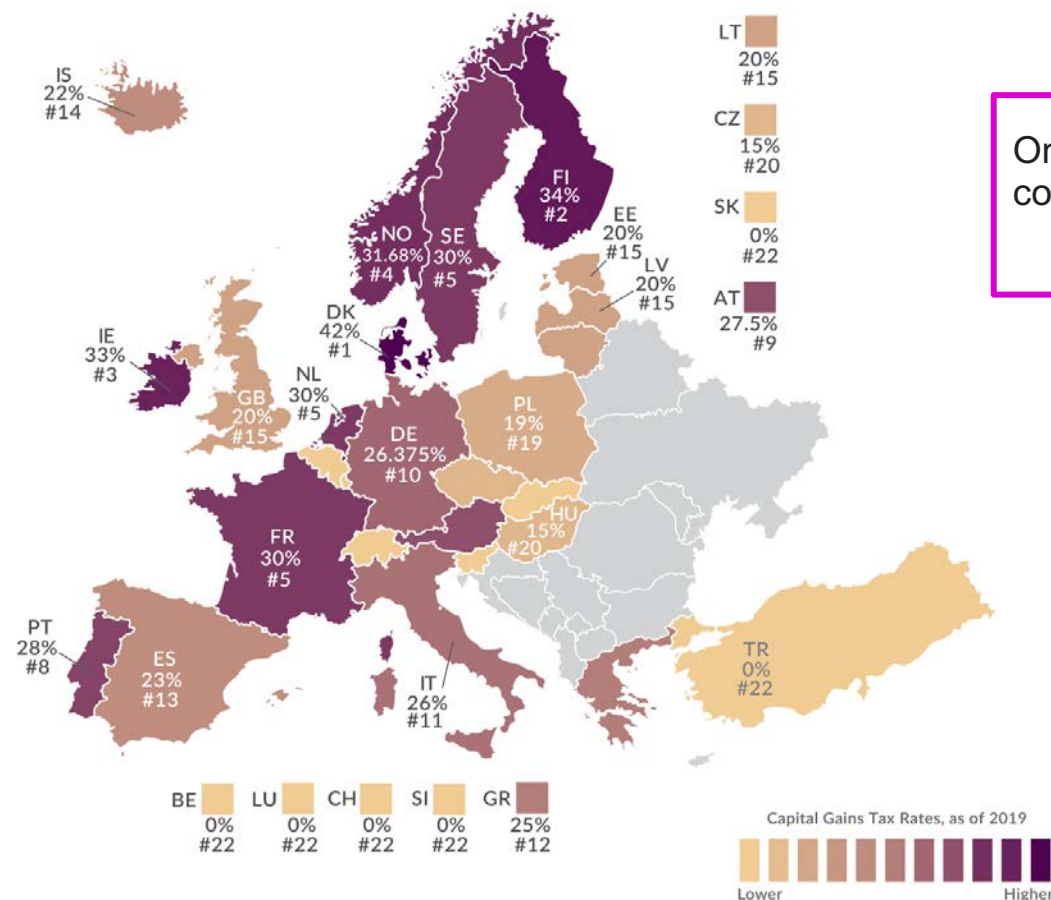
20%

For example: 90 K RMB profit you pay 18,000 RMB

Capital Gain Tax in Europe

Capital Gains Taxes in Europe

Capital Gains Tax Rates, as of 2019



On average, the European countries covered tax capital gains at **19.9 %**

Source: EY, "Worldwide Personal Tax and Immigration Guide 2018-19."

LAW ON PATRONAGE

Law of Patronage

Arts patronage refers to the support provided to artists. Patronage is an important component in the art market.

In the US is where art patronage and philanthropic work is **more present** and developed.

- The amount depends on the amount paid
- I.e.: *if you fall in the 33 percent tax bracket and you make a \$20,000 donation, your deduction will save you about \$6,600*
- When donating to institutions the tax reduction is of a 28% However, the reduction is applied to the total wealth of the donor and not only to the amount donated.

Broad museum's storage vault



Glenstone Art museum in Potomac, MA

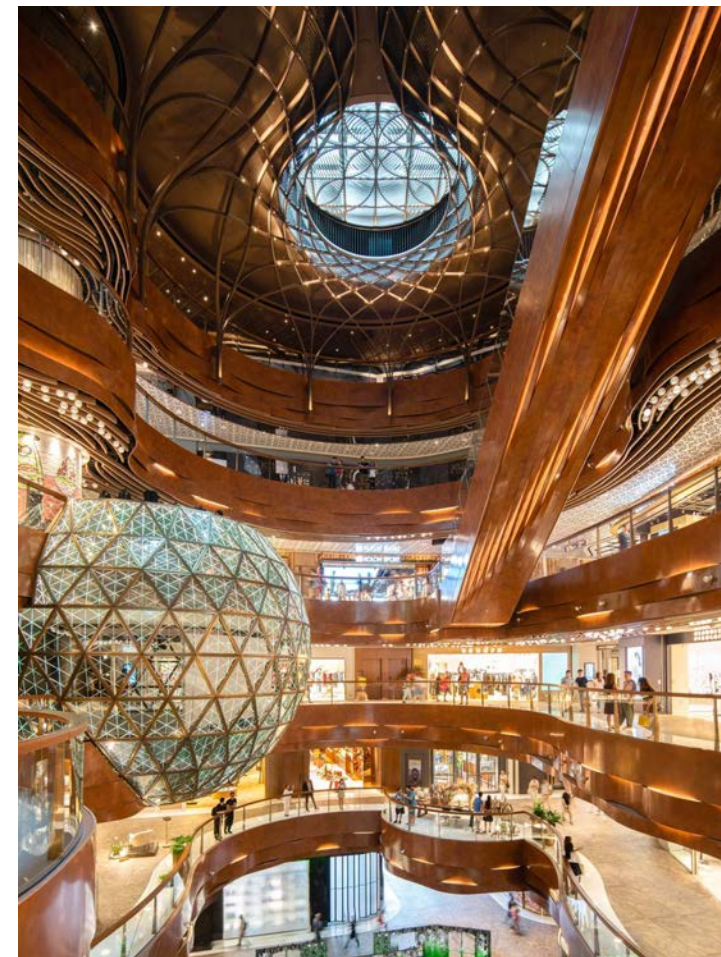


Law of Patronage

In China philanthropy is considered the third form of wealth distribution.

- According to China's corporate income tax law, a company's charitable donations are deductible up to 12 percent of the company's total annual profit
- This type of initiatives are **still being developed**.

Adrian Cheng and his K 11 Museum



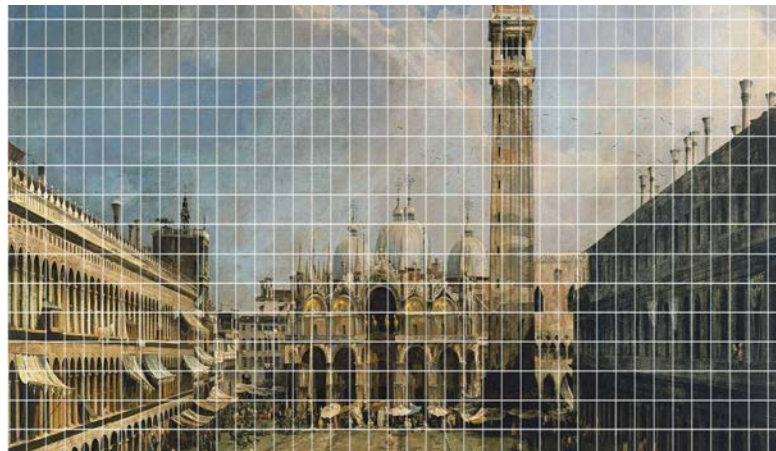
Law of Patronage

In the EU there are more than 147,000 entities registered as public benefit foundations art related

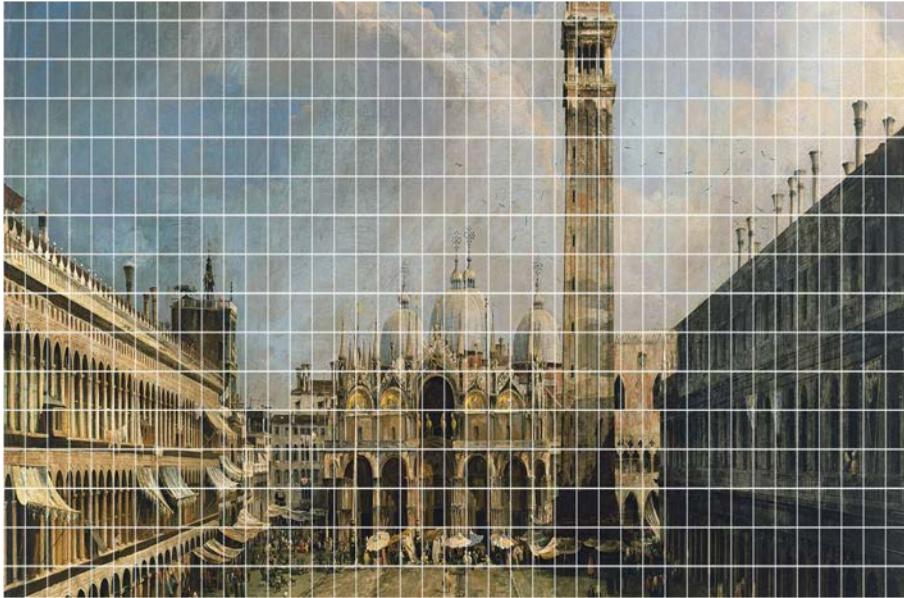
- These organizations have a combined annual expenditure of nearly 60 billion and assets of over 500 billion.

In Spain even though laws are still to be fully developed, let's look at the following example:

- In 2018, the Thyssen decided to carry out a crowdfunding campaign for the restoration of St. Mark's Square in Venice by Canaletto (1723).
- For this they divided the work into 1,000 fragments whose minimum value was € 35 → the total needed was € 35,000.
- The campaign raised € 60,000 and donors were able to benefit from a 75% discount on the amount donated.
- All of the donors benefited from a reduction of 75% over the amount donated.



The restoration of San Marco Square by Canaletto



Bernard Arnault and the Louis Vuitton Foundation



LET'S TALK WITH AN EXPERT

Art Insurance Policies

LEGISLATION

There is no specific legislation regarding art insurance policies. However, there are different specific policies and modalities.

Who may be interested in an art insurance policy ?

- Galleries → for transportation to art fairs.
- Auction Houses.
- Shipping Companies.
- Appraisers.
- Collectors.
- Restorer → while the work is under their care.
- Institutions making loans to each other.



Concepts

INSURANCE TYPES

- **Nail to Nail Insurance:** The item is insured from the time it is moved from its original location until it is returned there.
- **Comprehensive Insurance:** is in charge of protecting the Artwork from eventual claims caused by third parties based on the capital or value.
- **Civil Liability Insurance:** It covers the risk of the item when it is manipulated by professionals (gallerist, experts, auctioneers).
- **Transport Insurance:** It only covers transits.
- **Government Warrants:** For public institutions and museums that lend pieces.

SPECIFIC CLAUSES

- **Displacement Clause**
- **Depreciation Clause**
- **Photography Clause**
- **Mirror and Frame Damage Clause**
- **Buyback Option**

How to make a valuation for insurance purposes

We must bear in mind the following:

- The given value of the Artwork will influence the value of the insurance premium.
- As the price of Artworks can fluctuate, for insurance purposes we find a **fixed value** →
 - This fixed value is not always the same as the real value in a given moment.
 - This type of insurance policy is known as estimated policy (Art.28 of the Insurance Law, 1980).
 - It is important that the estimated policy is not overvalued and hence, it does not unfairly enrich the policyholder.

The obligations of the policyholder include the following:

- Present as much documentation pertaining to the authenticity and the value of the Artwork→
 - We recommend asking for the assistance of professional appraisers.
- Check from time to time the declared value, as it may fluctuate.
- Pay the premium.
- Inform of a possible accident in the maximum of 7 days.
- In the case of robbery or theft, the owner of the Artwork has to replace it within 3 years through a fair restitution.



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Sources:

The sources used in this lesson are:

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- Medium.com
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- Ramón & Cajal (Law Firm)
- The Art Newspaper.

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