

Who decides ...

What is Indian Art and Who Can Sell It?

Daniel Grant

It's a plus in this day and age to be a Native American artist, because there are collectors just of Native American art," says Joanne Swanson, a painter and enrolled member of a federally recognized Alaskan tribe. In another day and age, there was far less value in proclaiming oneself a Native American or American Indian, reflecting the low regard European settlers had toward aboriginal peoples. Nowadays, as more than \$1 billion in American Indian artwork and crafts objects are estimated to be sold annually and a number of tribes have entered the lucrative gaming industry, more and more people are claiming Native American ancestry.

The bulk of sales of American Indian art takes place in Arizona, New Mexico, and throughout the southwest—at roadside stands, art galleries, and special fairs often called "Indian Markets"—although buyers may also find works sold online through eBay, as well as on other Web sites. The strength of this market has led to some instances of fraud, such as the selling of mass-produced items—sometimes imported from abroad—as American Indian-made, and individual artists proclaiming themselves Native American but unable to produce any proof of that assertion.

"We get reports of people claiming to be Seminoles all the time, selling their copies of Seminole designs, when they don't have a speck of Seminole blood in them," says a spokeswoman for the Seminole Tribe of Florida in Hollywood. "We call them members of the Wannabe tribe." To be an enrolled member of the Seminoles, one must have no less than 25% Seminole blood line.

Numerous claims of misrepresented American Indian art and other objects led Congress to pass the Indian Arts and Crafts Act of 1990, a truth-in-advertising statute that stipulated stiff penalties (up to \$1 million in fines and five years in jail for the first offense) for creators and sellers who knowingly make false claims about the heritage of those who make artwork. Under the law, "someone who claims to be an American Indian must be an enrolled member" of one of the 557 federally recognized tribes in

the United States, according to Meredith Z. Stanton, chairman of the Indian Arts and Crafts Board in Washington, D.C. The tribes themselves, as legally established sovereign nations, determine qualifications for enrollment, and the federal government is bound to support their decisions with both criminal and civil prosecutions.

The law has helped to rid the market of many artworks and objects that were not created by an actual Native American, says Stanton, as have advertisements in southwestern magazines and brochures (e.g., "Know the Law," "How to File a Complaint Under the Law") that the Indian Arts and Crafts Board has published. "Consumers are asking for information in writing" before they make purchases, says Stanton, "and the complaints we've received have increased in quantity and quality."

In spite of all the reports of fraud that led up to the enactment of the Indian Arts and Crafts Act, the effectiveness of the law cannot be judged on the number of cases brought by the federal government since then. The Federal Trade Commission filed complaints against two Seattle companies, Ivory Jacks and Northwest Tribal Arts, for mass-producing so-called American Indian artifacts in the mid-1990s. The two companies were fined \$20,000 apiece. The Justice Department has filed only two cases, both against individuals. "We know there are more instances of illegal actions than cases filed," says Chris Chaney, an administrator in the executive office of U.S. Attorneys of the Department of Justice. "There are not as many investigations or provable cases as we'd like."

However, the statute has proven effective, because "invoking the law generally accomplishes its intent without cases needing to be brought or brought to fruition," says Susan Harjo, President of the Washington, D.C.-based Morningstar Institute, a Native American advocacy organization. "The market has cleaned up its act, and many of the arts fairs, competitions, and Indian markets have declined applications of pseudo-Indian artists."

A spot check of galleries, museums, fairs, and other venues where Native American artwork is shown and sold also reveals a growing, if not fully complete, appreciation on the part of collectors of what it means to be an American Indian artist under the law. "Some collectors have not bought a

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work because it wasn't made by a documented Native American," says Julie Wagner, director of Galeria Abiquiu, in Abiquiu, N.M. "They will pay more for a work by an artist who is fully documented." On the other hand, Bailey Nelson, owner of an art gallery in Seattle says: "People rarely ask if the artist is enrolled or not. Sometimes, I might get into the artist's maternal or paternal linkage to a particular tribe, and it glazes their eyes over." Still, these and other galleries regularly ask the artists they represent for written assurances when they claim to be Native American, "because of the potential of fraud allegations," says Paul Lewin, owner of Adagio Galleries in Palm Springs, Calif. "No one wants the Justice Department coming down on you." John Kostura, who directs a Web site (at www.ArtNatAm.com) that sells artworks by Native American artists, says: "I require a copy of each of the artist's Tribal Membership Card before I list them on ArtNatAm. Also the artist must stipulate in our contract that he is a member of a recognized tribe."

Contemporary artists are able to have their work exhibited at the Smithsonian National Museum of the American Indian, the Wheelwright Museum of the American Indian in Santa Fe, N.M., and the Indian Fair and Market, held annually at the Heard Museum in Phoenix only if they can produce a card from the federal Bureau of Indian Affairs, a "Certificate of Indian Blood" or a tribal enrollment number. The same procedures are followed elsewhere as well. "Straight out, we say we want proof of enrollment," says Ray Gonyea, curator of Native American art and culture at the Eiteljorg Museum in Indianapolis.

The Indian Arts and Crafts Act, and the clarifications added to it since 1990, have sought to eliminate some of the confusion arising from disparate types of claims of American Indian identity. Some artists have listed themselves as having an Indian heritage or background or lineage or descent or blood; others claim membership in tribes not recognized by the federal government. The law now states that enrollment in a federally recognized tribe is the sole basis for a claim of being an American Indian artist. Some artists without appropriate pedigrees—or who, perhaps, made false claims about their pedigrees—have been excluded from shows and institutions devoted to Native American art. Art galleries, on the other hand, generally do not refuse to show artists whose work bears the markings of Indian art but are not enrolled. The market is sizable for work that looks American Indian, and galleries are not subject to allegations of fraud if they do not knowingly make false claims about the artists.

While the Indian Arts and Crafts Act was pri-

marily written to counter the flood of mass-produced imports—"dreamcatchers made by people of Vietnamese descent and marketed as Native American, for instance," says Chris Chaney—the fine art market has been a primary area of concern. "The fine art market is a small percentage of the volume of sales and a large percentage of the revenues" in the \$1 billion-plus American Indian market, according to Angela Gonzalez, a professor of rural sociology at Cornell University, who researched the genesis and effects of the law. She notes that the statute remains controversial

The Indian Arts and Crafts Act remains controversial because some full-blooded or part-American Indian artists are unable legally to call themselves Native American.

because some full-blooded or part-American Indian fine artists are unable legally to claim themselves as Native American. Richard Zane Smith, a sculptor and potter in Glorietta, N.M., for example, says he would be in violation of the law if he described himself as Native American, because he is a member of the Wyandot tribe of Kansas, which is recognized by the state of Kansas but not by the federal government (only the Oklahoma Wyandots are federally recognized).


The problem also stems from the fact that every tribe determines its enrolled membership in different ways. The Pueblos, for instance, allow people to claim tribal descent only on the mother's side; the son of a Pueblo man and non-Pueblo woman could not be enrolled. One tribe in Alaska reportedly employs a DNA test to determine who is a member. The Hopis require 50% "blood quantum" for enrollment, while other tribes permit only those who can prove one-quarter blood line; yet still other tribes require proof of blood lines, plus having some continuing connection to the community, which often is troublesome for individuals raised in cities.

The blood quantum issue generally poses difficulties for people who are the product of mixed marriages—especially in light of the federal government's policy of forced assimilation that persisted until only a few decades ago. The Indian Arts and Crafts Act requires Native Americans to register with only one tribe, which also creates quandaries for some. "I belong to three nations," says Michael Horse, an actor and painter in North Hollywood, Calif. "I'm one-eighth this and one-eighth that. I'm tired of explaining myself in fractions. I know who I am." Because the law does not respond to his personal situation, Horse has refused to apply to any

one tribe for enrollment. The law "may be unfair to some," says Gloria Lomahoftewa, assistant to the director of Native American relations at the Heard Museum, who is part Hopi and Choctaw herself. "That's why it's so important that your children marry within the tribe."

Other artists have also called the statute unfair, claiming that the issue of "Who is a real Indian?" is leftover racism from the 19th century, which the federal government in the 21st century must now legally enforce. Jaune Quick-to-See Smith, a painter and enrolled member of the Flathead Salish tribe ("with Cree and Shoshoni blood"), says: "No other ethnic group in this country has to carry a cultural ID card in order to show and sell their art—or to write—or to speak on a public podium. People never ask, and they should: 'Why are Americans Indians subject to quantifying questions such as 'How much Indian are you?'" Would a black person or a Latino answer such a question? Not likely, because physical features often don't reveal one's culture. Culture can define such things as religious preference, foods, language with its slang and humor, special holidays or celebrations, maybe dress, many other things including worldview. Defining someone's cultural authenticity by degrees of race is not only a lunatic idea but it is cultural hegemony right out of our colonial past." She says: "This law violates First Amendment rights. I fear that censorship results from this law."

Another artist whose career has actually suffered from the law, Jimmie Durham, says he is Cherokee but is not an enrolled member (and is unable to show his work at a number of western museums). He says: "Blood quantum is a bunch of racist nonsense. Saying you are Indian or not sounds good, but it also makes people choose one ancestry over another. I don't see urban Indians as second class citizens, or reserve Indians as the epitome of all that is truly red."

Considering the fact that some paintings and sculpture in the Indian market shows sell for as high as \$40,000, the disputes over who may participate in these events sometimes become quite bitter. The Indian Arts and Crafts Act, for its part, does not prohibit artist from creating any kind of art they like, nor does it prohibit any collector from buying it. The statute may simply make some artist's work a bit more difficult to find. "The law" says Rayna Green, curator at the Smithsonian National Museum of American History, "creates deeply invidious situations for tribal people, as tribes become gatekeepers for a system they did not create but must uphold in order to maintain their sense of themselves as sovereign people. When art is thrust in the middle of it, it's kind of sad." 

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