

Dangerous Liaisons

When it comes to politically sanctioned countries, the art trade walks a complicated line.

By Thomas & Charles Danziger

When a Miami dealer recently phoned to ask us about “trading with the enemy,” we initially thought he meant buying art from a competing gallery.

It turned out he was speaking literally. He was considering an exhibition of “dissident art” from “embargoed countries” (nations against which the U.S. has imposed sanctions) and wanted to avoid any legal snags. “I’m thinking of focusing on Cuba,” the dealer explained, “and I’d like to commission paintings from artists currently living in Havana. What’s my risk?”

“Only a \$1 million fine and ten years in prison,” we replied cheerfully. That’s the penalty for willfully violating the Trading with the Enemy Act and similar U.S. laws, which prohibit Americans from providing goods or services to persons in embargoed countries, such as Cuba, Iran and Sudan. These laws are intended to deprive “dangerous regimes” of U.S. dollars, thereby isolating them economically. For example, American galleries that mount shows of artists from embargoed nations are normally restricted from paying fees to artists for the creation of new work.

“If I can’t commission the art, may I at least buy it directly from Cuba and ship it home?” our client asked.

The answer, surprisingly, was yes. Goods or services originating in Cuba may not be imported into the U.S., but art is specifically exempted from the embargo—as long as the work is already in existence. This exemption stems from the First Amendment, as interpreted by *Cernuda v. Heavy*, a 1989 federal case in which the Cuban Museum in Miami and its director, Ramon Cernuda,

successfully challenged the embargo. The case involved a proposed benefit auction that was to take place in April 1988 and included works by artists who either lived in Cuba or had not renounced allegiance to Fidel Castro. Following public protests, the works were withdrawn to avoid possible legal violations, but Cernuda and other museum directors continued to receive death threats.

Then, in December 1988, Cernuda sought permission from the U.S. government to show the work of a Cuban dissident, but received no response. Five months later, U.S. Customs agents obtained warrants to search Cernuda’s home and office and seized approximately 200 paintings believed to be of Cuban origin. He petitioned the court for their return.

In backing Cernuda, the court noted that “informational materials” were exempt from export restrictions. “Art conveys information through its unique form of expression, often political expression,” the court reasoned. “For example, Eugène Delacroix celebrated liberty, equality and fraternity in *Liberty Leading the People*. Pablo Picasso decried the brutality of fascism in *Guernica*.” It concluded, “As the Supreme Court has noted, ‘if there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea because society finds the idea itself offensive or disagreeable.’”

Our client wondered, “If depriving Cuba of economic benefit is the rationale behind the embargo, isn’t it inconsistent that I can buy works from Cuba but can’t commission them?”

“Whoever said U.S. policy was consistent?” we responded.

“Should I expect visits from men in trench coats if I sell works by Cubans?” he asked facetiously.

“Don’t laugh,” we replied. Other clients have reported rumors of federal agents making “spot visits” to U.S. galleries that show Cuban artists to check for illegal payments to artists.

Undaunted, the dealer proposed publishing an exhibition catalogue. “I was hoping to translate, edit and illustrate art historical essays by Cubans,” he said.

Our client was in luck, since the law in this area recently changed in his favor. Late in 2004, several groups, as well as the Iranian human-rights activist and Nobel laureate Shirin Ebadi, filed suit claiming that the U.S. government’s regulation of publishers from certain embargoed nations violated the First Amendment. In response, the Treasury Department abruptly issued a new “general license” permitting Americans to engage freely in most ordinary publishing activities

“May I invite artists from Cuba to my show?” our client asked hopefully. Here again, the answer was yes—assuming they can get a visa. In 1997 the U.S. denied an entry visa to one of Cuba’s most internationally acclaimed artists, known as Kcho. Then came the events of September 11, 2001, and various pieces of legislation intended to exert pressure on “state sponsors of terror.” Under the Enhanced Border Security and Visa Reform Act of 2002, for instance, the U.S. enacted especially restrictive processing requirements for people seeking visas from Cuba, North Korea, Syria, Sudan, Iran and Libya—even if they are artists.

The results have been predictable for American cultural organizations. The U.S. denied the Cuban artist Carlos Garaicoa a visa to attend the opening of his solo exhibition at the Museum of Contemporary Art in Los Angeles in March on the grounds that his entry “would be detrimental to the interests of the United States.” Similarly, the Frederick R. Weisman Art Museum at the University of Minnesota canceled an exhibition of Cuban conceptual art planned for this past January because the organizers didn’t believe they could obtain visas for any of the nine artists in the show.

Our client then asked about the possibility of bringing American collectors to artists’ studios in Cuba. Unfortunately, the Bush administration has also clamped down within the past year on cultural travel to Cuba and on the “people-to-people” exchanges promulgated during the Clinton administration.

“Doesn’t the recent Louise Bourgeois show in Havana signal a thaw in the chill of U.S.-Cuban relations?” our client persisted, referring to the first major exhibition in Cuba by an artist living in the U.S.

The Treasury Department had surprised the show’s U.S.-based organizer by issuing a license to mount the show at the Centro de Arte Contemporaneo Wifredo Lam this past February. Although Bourgeois’s works had to be shipped to Cuba via Canada, Cuba’s cultural minister praised the organizers for “breaking the blockade.” In our view, the U.S. may have been lenient in the Bourgeois case because the 93-year-old artist is famous and did not travel to Cuba.

In Castro’s Cuba, works have been expropriated by the state, leading to legal—and moral—questions of ownership. This issue recently came into the limelight when

the Fanjuls, a prominent family in the sugar business, asked the U.S. State Department to intervene with Sotheby's in an effort to recover a painting they had owned before fleeing Cuba for Florida. A View of Malaga, by Joaquin Sorolla y Bastida, had been seized by Castro and the Fanjuls are now trying to locate it. According to news accounts, they allege that Sotheby's may have handled the work, thereby violating trade sanctions against Cuba. Sotheby's denies any wrongdoing.

Frustrated by the restrictiveness of U.S. law regarding Cuba, our client had another idea: "Perhaps I'll focus on dissident art from another country. How about Iran?"

We reminded him that Iran is not only on the embargo list, but when the Asia Society in New York mounted a major show of Iranian art two years ago, all the works had to come from collections outside Iran. The chances of getting permission seemed close to zero.

Our client left our offices exasperated. His parting question: "Is there any country from which I can easily show dissident art?" We resisted the temptation to suggest Switzerland.