

LAW ART WITH INTELLECTUAL PROPERTY ATTORNEY TOM O'LEARY

□ The California Fine Art Resale Royalty Act. Los Angeles abstract artist Mark Grotjahn and representatives of late painter and printmaker Sam Francis filed suit seeking resale royalties from California galleries and collectors who have resold their work for dramatically escalated prices. Signed into law in 1976 by Governor Jerry Brown, the law was modeled after the French law, droit de suite, which was enacted to benefit painters and sculptors. The law is intended to ensure that artists share in the appreciation of the value of their work when it is resold by galleries and collectors for amounts greater than the original purchase price.

The little known and infrequently enforced law provides that whenever a work of fine art is sold and the seller resides in California or the sale occurs in California the seller or his or her agent must pay the artist 5% of the amount of such sale. The artist must be either a citizen of the United States or a resident of California for two years at the time of the resale. It applies to an original painting, sculpture, drawing or an original work of art in glass.

The law does not apply to works sold for less than \$1,000.00. A royalty also need not be paid if the resale is by an art dealer to a purchaser within 10 years of the initial sale of the work by the artist to the dealer, as long as all intervening sales are solely between art dealers. Upon the death of the artist the royalties belong to the artist's estate or heirs until the 20th anniversary of the death of the artist (if the artist died

before 1983 there are no residual royalties due). If the artist or estate cannot be located within 90 days of the sale the money is to be transferred to the California Arts Council. If no claim is made on the funds within 7 years, the Arts Council is to use the funds to acquire fine

The media recently reported several lawsuits brought by high profile artists or their estates against art gallery owners and collectors in California. What are these lawsuits about?

art for public buildings.

The law is controversial because California is the only state that mandates such royalty payments to the artist; New York refused to adopt a similar law due to opposition from influential art galleries and auction houses. Some gallery owners and collectors have complained that the law is an unconstitutional violation of the Equal Protection Clause of the 14th Amendment. In other words, California collectors and galleries are treated differently than their counterparts in other states by having to deduct 5% of the sales for the benefit of the artist. However, the law has withstood Constitutional challenge thus far. The 9th Circuit Court of Appeal noted that the law did not inhibit transfer of the art but merely created a right for the artist against the seller to obtain the benefits of the appreciation.

The enforcement of the law has been lackadaisical, at best. One of

the causes of such lack of enforcement is the inability of the artist to learn of the resale of the artwork. Another reason may be the artist's inability to retain a lawyer to pursue the case. But, the latter reason would be a misunderstanding of the law. A successful artist may recover attorneys' fees for pursuing an action to recover the unpaid royalties. Consequently, a lawyer may take on the representation of the artist knowing that fees may be paid upon the successful prosecution of the suit or settlement of the case.

The artist or gallery may want to consider providing collectors with a Resale Royalty Agreement at the time of sale in which the purchaser acknowledges the law and agrees to pay the royalty upon a higher resale. Using this approach the artist can attempt to collect a higher than 5% royalty as negotiated with the purchaser. A provision wherein a less than 5% royalty is paid if the art is donated to charity should also be considered. After all, the charitable donation is reducing the tax liability of the donor, so the artist could likewise share in the financial benefit of the artwork's appreciation.

Artists who decide to enforce their rights under the law need to be vigilant. A suit to recover royalties must be brought three years after the sale of the art, or one year after discovery of the sale, whichever is longer.

{Tom O'Leary is a Gallery Row intellectual property attorney. If you have any art related legal questions you would like answered C O N T A C T toleary@rmkb.com}

ELECTRIC SEX

And the Force Behind the Musical Success of DJ Da'shon Is. & Legendary Lounge Creator DJ A-SKI by Keri Freeman

Seeking advice on relationships? Concerned about health and longevity? Want to know how to truly become compatible with a future mate? Or are you simply longing for that special sense of relaxation after work at a chill Downtown hot spot?

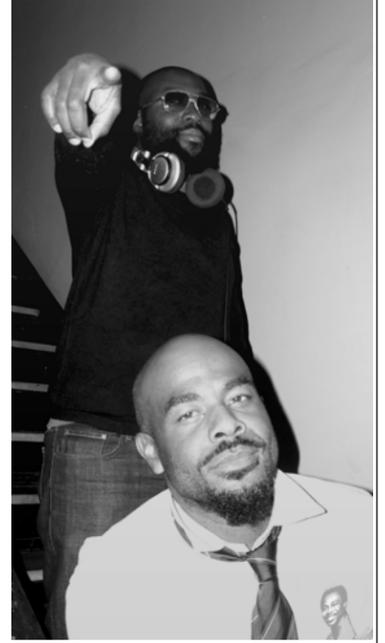
Listening to legendary lounge creator Dj A-SKI with guest Djs Dashon Is. and Tailwind Turner on Mondays and Tuesdays at Onyx will satisfy your the primal need to release, all the while allowing you to build up and hold on to your *Elixers of Life*.

Da'shon Is, a Virgo, comes to us via Atlanta to work with Dj A-SKI a long time friend who he met ten years ago. Da'Shon Is., pronounced DAH SHON...IS says his travels, creative endeavors and soulful style of music mixing are made possible and more poignant by five years of practicing *Sexual Kung Fu*. In other words Da'shon is studied and practiced in the art of being able to please the listener for long periods of time without the pressures of *premature evacuation*?

Dj A-SKI on the other hand, an Aquarius, takes a different approach. Although he does admit his mixing also equates to sex, he's more laid back stating, "What ever happens is going to happen."

A-SKI, well known for his production company Unique 74 and his uncanny ability to make venues pop, honors his fan base of upscale society and celebrity entertainers with a healthy ejection of ambient house, hip hop, and soulful electronic music.

A-SKI says he enjoys the musical experience delivering even more when he



Da'Shon Is. (Above) and Dj ASKI photo by Kaye Nicole

frees up and lets his energies flow naturally, not having any expectations of what the night will bring, how he will perform or what music he will play. No matter what, he knows he's gonna get the job done.

"A lot of people get into the hype of things rather than getting into the soul...I'm doing naturally what so many other dj's and club promoters are trying to force."

Being this in tune comes from experience. A-SKI was cool before he touched records but says he's been spinning since he was 6 years old and since been contributing to many legendary parties in Los Angeles, with the Root Down, Bounce Rock Skate, and the Room in Hollywood just to name a few.

Join these musical love gurus at Onyx on Monday and Tuesday nights, for heighten energies and smooth vibrations that promise to satisfy and keep you coming back.

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"Life In Christmas"

By Lida Parent

The sights and sounds
I know so well
the carolers sing,
the chiming of bells.
Happy children dance and play,
it is a celebration,
it's Christmas Day!
In every tree decorated
and wishful gaze,
the twinkling eyes
are wide, amazed.
With the full heart and love
combined
together with those dear in mind,
peace on earth
for all mankind.

ARTISTS, Writers & Poets...

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