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Marketing Aboriginal Art: An Intellectual Property Fiction?

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Key words: Aboriginal art, social marketing, intellectual property

Abstract

This paper argues that legality is not enough in seeking to solve the problems caused by charlatans and carpet baggers in the Australian Aboriginal art market. It examines the role of social marketing initially posited for the health sector and seeks to apply its strategies to the Aboriginal art market. The author draws comparisons between successes in health and the need for successes in the Aboriginal art market. It suggests that social marketing has been overlooked as a way forward for the Aboriginal art market. The paper concludes by stating that conditions will not change with quick-fix legal solutions sought for complex problems. They are an intellectual property fiction.

Introduction

What is the solution to the shenanigans in the Aboriginal art market? The problems are many and varied but this paper focuses on intellectual property rights for Aboriginal artists which, if abused, deny them monetary rights. At the beginning of the twenty-first century, a controversy has developed between art market players and Aboriginal artists that illustrates the perceived unfairness of bargaining power of these two parties. So much so that the Federal Government has initiated an inquiry into the Aboriginal art market (Australia Council 2006). In the years since the end of World War II, the art market has developed to the point where art has become traded as a commodity (van den Bosch 2005). A national debate has arisen about the need to address legal and ethical issues within the cultural and economic framework in which the Aboriginal art market operates (see, for example, Coslovich 2003; Maslen 2003; Pheasant 2003; Rintoul et al 2003; Safe and McCulloch 2003). Given the money that is involved in the Aboriginal art market, the multiplicity of players and the conflicting objectives of those players, it is important to have appropriate frameworks in place to ensure that industry standards of best practice are in operation. Aboriginal art contributes an estimated $200 million to the economy annually and makes a considerable cultural and economic contribution to Australian society. Art has become an investment. However, as the artist is often the last to benefit from the investment market, if indeed they benefit at all, it has been proposed that modifying intellectual property laws might be the solution. This author argues that this is an intellectual property fiction. Solutions offered in this paper range far wider than legal issues suppose, and focus on marketing the socio-cultural relevance of Aboriginal art to the wider community.

Background

Social marketing is based on the adaptation of marketing tools and techniques in order to assist in behavioural change on issues of societal concern (Dann and Dann 2005; Rothschild 2005). Issues of societal concern include certain behaviours that result in social costs to other members of society who pay directly or indirectly for them, balancing the rights of individuals and the rights of others. Social marketing is not a value-free concept. It relies on an individualistic philosophy which can conflict with some aspects of non-commercial public
interest matters. Hence, in suggesting a social marketing approach as one solution to the irregularities in the Aboriginal art market, both the intended and unintended consequences of such an approach need to be recognised. This is covered in the framework of understanding proposed in this paper.

The main limitation to an understanding of the Aboriginal art market is that it is seen as a homogenous ‘problem’ requiring one solution. That solution has repeatedly been cited to be extension of intellectual property law to cover the introduction of resale royalties, as is the case in France and California (but not other parts of the USA). The designation of Aboriginal art as a problem means that there is a narrow interpretation of what solutions are possible, as well as inadequate discussion of the complexity of solutions needed. Hence, it could be argued that the vissitudes of the Aboriginal art market have been ignored (at least by some writers), in the rush to find one solution to the shenanigans in the Aboriginal art market. Importantly, discussions of solutions often do not take into account the views of the artists.

The rest of this paper discusses the results from the project. Current Aboriginal art market operation relies heavily on law, while neglecting marketing. The purpose of this paper is to show the relevance of social marketing to solving the problems of the Aboriginal art market.

Method

Three case studies were undertaken in the field with artists in Aurukun in far north Queensland, in regional Victoria in the Grampians and on the East Coast of Australia in 2004 and 2005. Indigenous project workers played a major role in the research. The selection of cases follows arguments by Eisenhardt (1989), who states that purpose of case study analysis is to interpret change through practical examples. The project entailed visits to the art centres of Aurukun and Brambuk, as well as interviews with the urban Aboriginal arts Destiny Deacon, Richard Bell, Danie Mellor, Brook Andrew and Gordon Hookey. This study uses a theoretical sample of art centres/artists in Australia. As there are no other studies known to the author, it supports the approach taken. In order to confirm observations from respondents used in case study research, analysis of sales data for selected Aboriginal artists occurred over a ten year period from 1996. Art work tracking is used as hard evidence of art market pricing and as a key piece of information that enables data validation of the appropriateness of a social marketing approach.

Art works for 35 artists were tracked for emerging, mature and deceased artists, for 167 art works over ten years. The year 1996 was chosen as the starting point as this was the year in which the first Sotheby's Aboriginal art auction was held, thus validating market interest in the scene. Sales data were either provided by the auction houses, on-line catalogue services or sourced by searching known art writers in the *Australian Financial Review*, *The Age* and *The Australian* newspapers. There were some gaps in the data sources, as auction houses only report on high art sales. However, this approach gave a benchmark for developing trends over time.

Case studies

The case studies found that the sector is complex, with a diverse set of opinions of the measures needed to improve the operation of the Aboriginal art market, but riddled with ‘one size fits all’ solutions and ‘one solution to all problems’. Debates are often heated, emotive and deterministic. The project found that resale royalties are not a solution to the problems of
the Aboriginal art market. Less than one percent of Aboriginal artists' works find their way to the secondary art market of high-profile auction houses. The rest languish in the primary market, meaning that art is sold direct through art centres or by other means outside the auction house network. Analysis of art work prices is evidence of this fact (Rentschler 2006). Few artists sell their works more than once or twice during their life time, and those who do sell works several times are the same one percent of artists whose work has become successful in the secondary market. Resale royalties would be of little help to the majority of artists working in the Aboriginal art market.

The strong impression gained was of a sector keenly aware of the high-flyers in the industry and of the difficulties of those struggling to make ends meet and working two jobs to do so. Further, there is a growing confidence among the artists who represent themselves that they can handle their own affairs and do not need further laws, representation and education on intellectual property issues. However, and in contrast, there are artists who are afraid of the possibility of having their work copied, of being 'ripped off' or of not being able to control the technologies made possible by the internet, as the following quotations show.

"I own copyright of all my works. I have had no problems so far. If someone copied my work I would think that would be pretty cool."

Artist Richard Bell, 2005

"... there could be someone with a hidden camera hanging about, and before you know it you work comes back on a t-shirt. I don't want someone using my designs to feather their own nest, I don't have a leg to stand on as long as they change it by 5%... Copyright: it's too technical and too confusing. I prefer not to deal with it. They scan your art onto a computer and turn it into bedsheets, curtains, t-shirts and there's nothing the artist can do about it... I prefer to deal 'one on one' with the buyer, I can tell them a little bit of the story."

Artist Chris Thorne, 2004

Framework for using social marketing in Aboriginal art market

A framework is proposed for the operation of the Aboriginal art market that includes both social issue and commercial market behaviours. Issues of societal concern include certain behaviours that result in social costs to other members of society who pay directly or indirectly for them. Issues of commercial concern include certain behaviours that result in commercial gain for individuals in society, often at the expense of other, less fortunate, members of society.

As marketing is relatively unknown as a tool for social change in the art market, its uses have often been neglected. Table 1 is a compounded model based earlier work by Wiggins (2003) on art audiences and Rothschild (1999) on social marketing for health interventions. It illustrates that the three options of marketing, law and education are each appropriate according to the motivation, opportunity and ability of the individual to participate in the Aboriginal art market. Depending on the individual's propensity to change, then one of the three would be chosen as a means of intervention.

Table 1 shows that the issues that need to be considered when seeking to use marketing for social change are the target markets, the benefits of changing behaviour and the level of competition for the message. The target markets’ willingness to change will be affected by
self-interest. This is acknowledged in the commercial sector. In the social sector, people are often asked to act in ways that are against their self-interest, as Rothschild (1999) observed. People choose to appropriate art, copy it onto carpets and put it on to T-shirts, because they have evaluated the environment and decided it is in their self-interest to do so. For example, a person may be asked to stop copying art, which they find lucrative and start doing something that is new, different, less lucrative and difficult to do. The benefits of the changed behaviour are not always obvious to those in the target market.

Table 1: Motivation/Ability/Opportunity Model for Aboriginal Art Market

<table>
<thead>
<tr>
<th>Motivation to participate</th>
<th>Yes</th>
<th>No</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Opportunity to participate</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Ability to participate</td>
<td>Art Dealer (Prone to behave)</td>
<td>Art Dealer next door (Prone to behave)</td>
<td>Commercial Sharks (resistant behaviour)</td>
<td>Commercial Sharks (resistant behaviour)</td>
</tr>
<tr>
<td></td>
<td>Education</td>
<td>Marketing</td>
<td>Law</td>
<td>Marketing, law</td>
</tr>
<tr>
<td></td>
<td>education or reminder marketing</td>
<td>reduce barriers of time and place</td>
<td>impossible to convert</td>
<td>change perceptions of opportunity</td>
</tr>
<tr>
<td>No</td>
<td>Successful artist in secondary market (Prone to behave)</td>
<td>Artist next door (primary market) (Prone to behave)</td>
<td>Wanna-be artist (resistant behaviour)</td>
<td>Wanna-be artist (resistant behaviour)</td>
</tr>
<tr>
<td></td>
<td>Education, marketing</td>
<td>Education, marketing</td>
<td>Education, marketing, law</td>
<td>Education, marketing, law</td>
</tr>
<tr>
<td></td>
<td>lower prices</td>
<td>lower prices and reduce barriers of time and place</td>
<td>change perceptions of value</td>
<td>completely new marketing campaign</td>
</tr>
</tbody>
</table>

Source: modified from Rothschild 1999 and Wiggins 2003

The primary strategic tools recommended for altering behaviour are marketing in concert with law and education, where appropriate. The challenge is to grow the field of social marketing for Aboriginal art in three ways, as outlined by Andreasen (2002). First, it is important to explore ways to complement rather than compete with the need for structural change. In the Aboriginal art market, an argument needs to be made for individual benefit through cooperation rather than competition, such as by price rises being accommodated by restricting the number and quality of art works released onto the market. Second, social marketing focuses on individual behavioural change. When individual behavioural change is the focus of the program, then social marketing should be considered. Most players in the Aboriginal art market are individuals as artists, consultants, buyers or sellers. Individual behavioural change can therefore be the focus of the program. Third, when social marketing is appropriate, make sure it is used and “branded” rather than using law or education inappropriately. This is important for the Aboriginal art market, where marketing has been ignored, while law and education have been over-emphasised. The selection of the tool to use and the circumstances in which to use it is determined by the trade-off between individual rights and the rights of others. Following Rothschild (1999), the rights of individuals and the rights of others need to be balanced. Trade-offs are necessary but often hindered by self-interest of competing individuals. Combinations of tools are chosen for complex societal problems, such as the
operation of the Aboriginal art market, similar to Rothschild's finding in the health market for unwanted social behaviours.

Conclusions

This paper argued that social marketing is a tool that can be used in conjunction with law and education to change behaviour of individuals who profit from the Aboriginal art market. Artists expound on the heterogeneity of views of the Aboriginal art market. The case study artists themselves make this quite clear. While not against the introduction of legislation, the writer wishes to establish the complexity of the market and to dispel the commonly held view that there is only one solution. The choices offered here provide a framework for balancing free choice of the individual against the needs of society. Marketing can be used appropriately, with law and education, to provide a middle ground for individual behavioural change in fraught areas of social policy. Marketing as a tool would be able to illuminate Aboriginal artistic diversity and increase public awareness of differing Aboriginal experience.

References


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