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Protecting Cultural Heritage by Strictly Scrutinizing Museum Acquisitions

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Protecting Cultural Heritage by Strictly Scrutinizing Museum Acquisitions

Cover Page Footnote

Leila Amineddoleh is an art and cultural heritage attorney, the Executive Director of the Lawyers' Committee for Cultural Heritage Preservation, and an adjunct professor at Fordham University School of Law. She would like to acknowledge Filippa Anzalone, Jane Pakenham, Kelvin Collado, and Amanda Rottermund for their valuable insights and assistance.

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Leila Amineddoleh*

INTRODUCTION	731
I. BACKGROUND.....	735
<i>A. Cultural Heritage Looting</i>	735
<i>B. The History of Museum Collecting</i>	737
II. STATE OF THE LAW	739
III. THE NEED FOR INCREASING PENALTIES ON CULTURAL HERITAGE LOOTERS AND MUSEUMS ACQUIRING QUESTIONABLE ARTIFACTS	744
<i>A. Museums Participate in the Market for Illicit Goods</i>	744
<i>B. Current U.S. Law Does Not Properly Protect Cultural Heritage Against Looting</i>	747
1. U.S. Law Provides Legal Tools to Halt the Trade in Looted Artifacts	747
2. U.S. Law Does Not Properly Prosecute Cultural Heritage Looters and Traders	748
<i>C. To Prevent Cultural Heritage Looting, Nations Should Look Toward Italy in its Efforts to Reduce the Black Market for Antiquities</i>	750
1. Italy Devotes Appropriate Resources for the Protection of Cultural Heritage	750
2. The Sad, but “True” case, as Italy’s	

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Prosecution of an American Museum Curator Drastically Altered the Landscape of Cultural Heritage Prosecution.....	753
3. One of the Positive Effects of the True Prosecution Was Italy's Innovative Loan Program	755
D. <i>There are Inherent Difficulties in Prosecuting Antiquities Looters and Dealers</i>	757
1. Proving Scierter Has Been a Major Stumbling Block.....	757
2. There Are Inherent Difficulties in Prosecuting Museum Representatives.....	759
E. <i>Museums Acquisition Policies Should Be Federally Mandated and Museum Purchases Should Be Subject to Scrutiny from Federal and State Representatives</i>	761
1. Stricter Oversight of Museums is Necessary ...	761
2. Museums are Not-for-Profit Organizations Entitled to Tax Advantages, Thus Have an Obligation to Acquire Items Responsibly and Fulfill Their Fiduciary Obligations of Loyalty and Due Care.....	762
3. Museums' Not-for-Profit Status Should Require Heightened Standards.....	764
4. There are Federal Tax Justifications for Stricter Scrutiny.....	765
F. <i>As Institutions with a Charitable Purpose, and Their Position as the Caretakers of Art and History, Museums' Actions Should be Subject to Heightened Due Diligence Standards as Seen in Other Areas of the Law</i>	766
1. Changes in Acquisition Practices Should be Legally Mandated and Enforced	766
2. In Developing the Appropriate Standard, We Should Examine Comparable Corporate Standards	770
3. It is Appropriate to Utilize the Security and Exchange Commission As a Model Through Which to Properly Monitor Museums.....	772

<i>G. The Need for Federal Oversight is Apparent</i>	774
1. Self-Regulation Conducted by Museums Has Not Been Effective.....	774
2. With the Destruction of Wartime Looting, It Is Imperative That Museums Do Not Purchase Plundered Antiquities and Fuel a Market That Results in Widespread Pillaging.....	775
3. The Connection Between Cultural Heritage Looting and Terrorism Necessitates Stricter Acquisition Practices.....	776
4. Political Justifications for Not Halting the Black Market Antiquities Trade Are Inappropriate	778
5. Museums Must Take Precautionary Measures to Not Acquire Items Looted During Times of War	779
CONCLUSION.....	780

INTRODUCTION

The protection of cultural heritage¹ against theft, looting, improper acquisition, and destruction is tremendously important because cultural heritage objects hold invaluable historic and cultural significance. First, the preservation of cultural heritage objects is important for human civilization, as developments in cultural heritage reflect mankind's collective history and societal changes. A record of mankind's evolution enables an examination

¹ Cultural heritage is the legacy of physical artifacts (such as buildings, monuments, landscapes, books, works of art, and artifacts) of a group or society that are inherited from past generations, maintained in the present and bestowed for the benefit of future generations. Cultural heritage is unique and irreplaceable, which places the responsibility of preservation on the current generation. The United Nations Educational Scientific and Cultural Organization (UNESCO) defines heritage as "the product and witness of the different traditions and of the spiritual achievements of the past and . . . thus an essential element in the personality of peoples." United Nations Educ. Scientific and Cultural Org., Records of the General Conference Fifteenth Session, 1968, U.N.E.S.C.O., *available at* http://portal.unesco.org/en/ev.php-URL_ID=13085&URL_DO=DO_TOPIC&URL_SECTION=201.html.

of humanity's changes, including all aspects of social, religious, political, and scientific developments. Second, select pieces of cultural property hold great significance for various ethnic and cultural groups, because these works facilitate a sense of identity and pride, a value that should be fiercely guarded. Third, cultural heritage is a commodity that creates a stream of revenue through tourism, branding, and educational structures. The value that derives from cultural heritage has the ability to last for centuries in the future. Fourth, cultural heritage should be protected for equitable reasons; thieves should not be able to gain exclusive access to these objects and reap their value while simultaneously depriving the world from experiencing their value. Lastly, cultural heritage theft should be policed because of its link to global terrorism², money laundering³, and drug⁴ and weapons⁵ trafficking. Over the past decade, the trade in looted antiquities remains one of the most prolific illicit trades globally, together with drug and arms trafficking.⁶

There are many ways to protect cultural heritage as a valuable commodity. Although heightened security measures and extensive

² See Elena Becatoros, *Smuggled Antiquities Funding Iraq Extremists, U.S. Says*, ASSOCIATED PRESS, Mar. 19, 2008, available at <http://news.nationalgeographic.com/news/2008/03/080319-AP-iraq-insurg.html> (explaining that the smuggling of stolen antiquities from Iraq finances Iraqi extremist groups, quoting New York assistant district attorney and Marine Reserve Colonel Matthew Bogdanos, "the link between extremist groups and antiquities smuggling in Iraq was 'undeniable'").

³ See Charles Q. Choi, *NY Mummy Smugglers Reveal Vast Antiquities Black Market*, LIVESCIENCE (July 26, 2011), <http://www.livescience.com/15234-ny-mummy-smugglers-reveal-vast-antiquities-black-market.html>.

⁴ See Angela Kocherga, *Mexican Drug Smugglers Profit from Illegal Trade in Archaeological Artifacts*, WFAA.COM (Feb. 9, 2013, 12:10 AM), <http://www.wfaa.com/news/world/190484501.html>.

⁵ See *Trafficking in Cultural Property: Organized Crime and the Theft of Our Past*, U.N. OFFICE ON DRUGS AND CRIME (Oct. 30, 2012), <http://www.unodc.org/unodc/en/frontpage/2012/October/trafficking-in-cultural-property—organized-crime-and-the-theft-of-our-past.html>; see also Aryn Baker & Majdal Anjar, *Syria's Looted Past: How Ancient Artifacts Are Being Traded for Guns*, TIME, Sept. 12, 2012, <http://world.time.com/2012/09/12/syrias-looted-past-how-ancient-artifacts-are-being-traded-for-guns> (quoting a smuggler, "[w]e buy antiquities cheap, and then sell weapons expensively The rebels need weapons, and antiquities are an easy way to buy them . . .").

⁶ See Brian R. Williams, *What Is Art Crime?*, THE DAMFORST MUSEUM: THE ONLINE MUSEUM OF DAMAGED, FORGED & STOLEN ART (Oct. 14, 2010), http://www.damforstmuseum.org/what_is_art_crime.html.

surveillance methods can deter theft, a more effective means for reducing theft is the elimination of the demand for black market art items. Trade in unprovenanced antiquities is a demand-driven crime;⁷ the market for illegal or undocumented items is driven by buyers' wants.⁸ The most effective method of protection for cultural heritage is to eliminate the demand for black market for these precious objects, thereby reducing the market, a method known as the "market reduction approach."⁹ There is a well-documented link between the demand for items without provenance and museums.¹⁰ To eliminate black market demand, legislation is necessary to prosecute and regulate buyers, such as museums.

As buyers, museums should be subject to greater scrutiny when acquiring objects. Museums have the ability and responsibility to appropriately research their acquisitions, as their objective is to house and preserve artwork.¹¹ According to the International Council of Museums ("ICOM"), museums are "non-profit, permanent institution[s] in the service of society and its development, open to the public, which acquires, conserves, researches, communicates and exhibits the tangible and intangible heritage of humanity and its environment for the purposes of education, study and enjoyment."¹² Due to their educational and public purpose, museums are generally granted tax deductions and

⁷ See Mark Vlasic, *Stamping Out the Illicit Trade in Cultural Artifacts*, GUARDIAN, Aug. 7, 2011, <http://www.guardian.co.uk/commentisfree/cifamerica/2011/aug/07/egypt-antiquities-trade>.

⁸ See JENS BECKERT & FRANK WEHINGER, IN THE SHADOW: ILLEGAL MARKETS AND ECONOMIC SOCIOLOGY, DISCUSSION PAPER 11/9, at 12, MAX PLANCK INSTITUTE FOR THE STUDY OF SOCIETIES (2011), available at www.mpifg.de/pu/mpifg_dp/dp11-9.pdf; see also Ralph Blumenthal & Tom Mashberg, *The Curse of the Outcast Artifact*, N.Y. TIMES, July 12, 2012, <http://www.nytimes.com/2012/07/15/arts/design/antiquity-market-grapples-with-stricter-guidelines-for-gifts.html?pagewanted=all> (quoting Ricardo J. Elia, "[I]ooting is driven by the art market, by supply and demand").

⁹ See generally CRIME IN THE ART AND ANTIQUITIES WORLD: ILLEGAL TRAFFICKING IN CULTURAL PROPERTY (Stefano Manacorda & Duncan Chappell eds., 2011).

¹⁰ JASON FELCH & RALPH FRAMMOLINO, CHASING APHRODITE: THE HUNT FOR LOOTED ANTIQUITIES AT THE WORLD'S RICHEST MUSEUM (2011).

¹¹ Cf. Int'l Council of Museums [ICOM], ICOM Internal Rules and Regulations, art. 2, sec. 1.1 (June 1, 2010), available at <http://archives.icom.museum/download/InternalRulesandRegulations.pdf>.

¹² *Id.*

government funding. A portion of these monetary resources should thus be mandated for the due diligence required for museums to properly conduct acquisition investigations. In fact, if museums continue to purchase and receive pieces from the black market, they are perpetuating the use of public dollars in the furtherance of illicit and terrorism-linked activities.¹³ The nexus between government dollars and black market trade requires the United States to take greater action in the prevention of museums' acquisitions of looted artwork.

An increase in communication and knowledge within the art community is needed to deter cultural heritage destruction. With greater communication, the resale of stolen artwork will become more dangerous, increasingly difficult, and less profitable because the demand for these pieces will decrease. To further protect against art theft, the U.S. government should increase penalties on museums for acquiring questionable objects; monetary fines should be heightened, criminal charges should be brought against perpetrators, and the government should more aggressively investigate and pursue a greater number of cases. Museums regulate their own acquisition practices within industry guidelines (set forth through organizations such as ICOM¹⁴ and the Association of Art Museum Directors¹⁵), but these guidelines are not enforceable as they are not codified in any federal or state laws that include sanctions or penalties for violators.¹⁶

Although there are laws aimed to deter art theft,¹⁷ the United States government and the international community are not utilizing these legal tools to their fullest potential. The problem with the current status of the law is that many of the applicable

¹³ See *infra* Part III.G.3 for discussion of links to terrorism.

¹⁴ See *Standards & Guidelines*, INT'L COUNCIL OF MUSEUMS, <http://icom.museum/professional-standards/standards-guidelines> (last visited Mar. 13, 2014).

¹⁵ See *Guidelines on the Acquisition of Archaeological Material and Ancient Art (revised 2013)*, ASS'N OF ART MUSEUM DIRS. (Jan. 30, 2013), available at https://aamd.org/sites/default/files/press_release/AAMD%20Release%2001%2030%2012%20%20FINAL%20PDF.pdf.

¹⁶ See Mike Boehm, *Major Art Museum Group Bolsters Rules for Acquiring Ancient Art*, L.A. TIMES, Jan. 31, 2013, <http://www.latimes.com/entertainment/arts/culture/la-et-cm-major-art-museum-group-bolsters-rules-for-acquiring-ancient-art-20130130,0,6024098.story>.

¹⁷ See *infra* Part II.

laws derive from international treaties that have not been ratified by Congress. Since these treaties frequently concern treasures hailing from other nations, the United States has not placed high priority on these agreements. However, as the international community now recognizes the extent to which artwork is stolen, governments are finding it essential to take action.¹⁸ At the forefront of this movement are the Italian government,¹⁹ the Turkish government,²⁰ and other nations rich in antiquities.²¹

I. BACKGROUND

A. Cultural Heritage Looting

Despite the long history between art and cultural heritage misappropriation²², modern day looting of cultural heritage is greater in scale and more damaging than pillaging witnessed in the past.²³ The illicit art and antiquities market pre-date ancient Greece.²⁴ In more recent history, cultural artifacts have commonly been stolen and smuggled by hiding their sources.²⁵ By hiding

¹⁸ See *Greek God Hercules Reunited with His Bottom Half As Museum Agrees to Send Back 'Looted' Bust to Turkey*, MAIL ONLINE (July 11, 2012), <http://www.dailymail.co.uk/news/article-2017629/Weary-Herakles-reunited-half-looted-bust-returns-Turkey.html>; Helena Smith, *Greece Demands Return of Stolen Heritage*, THE GUARDIAN, July 10, 2006, <http://www.guardian.co.uk/world/2006/jul/11/parthenon.arttheft>.

¹⁹ See *Italy v. Marion True*, Trib. Roma, sez. VI pen., n. 19360/10 (Oct. 13, 2010) (It.) (Italian prosecutors famously attempted to penalize the now infamous Getty ex-curator Marion True with criminal sanctions.).

²⁰ See Dayla Alberge, *Turkey Turns to Human Rights Law to Reclaim British Museum Sculptures*, GUARDIAN, Dec. 8, 2012, <http://www.guardian.co.uk/culture/2012/dec/08/turkey-british-museum-sculptures-rights> (Turkish officials have taken action by demanding the restitution of cultural heritage objects, citing human rights principles.).

²¹ See Tom Mashberg, *Khmer Art Collector Linked to Statue*, N.Y. TIMES, Dec. 12, 2012, <http://www.nytimes.com/2012/12/13/arts/design/us-links-collector-to-statue-in-khmer-looting-case.html?pagewanted=all>.

²² See generally Sandro Calvani, *Frequency and Figures of Organised Crime in Art and Antiquities*, in ORGANISED CRIME IN ART AND ANTIQUITIES 28 (Stefano Manacorda ed., 2009), available at http://www.academia.edu/887647/Organised_crimes_in_Art_and_Antiquities.

²³ See NEIL BRODIE, JENNY DOOLE & PETER WATSON, STEALING HISTORY: THE ILLICIT TRADE IN CULTURAL MATERIAL 11–12 (2000).

²⁴ See *id.*

²⁵ See *Gov't of Islamic Repub. of Iran v. Barakat Galleries Ltd.*, [2007] EWHC (QB) 705, *rev'd*, [2007] EWCA Civ. 1374 (A.C.), [2009] Q.B. 22 (antiquities dealer being told

sources, looters deprive the world of accurate information about the artwork. The environment surrounding an object provides essential information about the piece because it helps archaeologists and historians properly date an object and understand its context.²⁶ Artifacts ripped from the ground without adherence to any archaeological process²⁷ lose context and scholarly value because the value of archaeological sites is realized through stratigraphic excavation.²⁸ (Stratigraphic excavation entails removing artifacts and sediments from vertically discrete three-dimensional units of deposition and keeping those artifacts in sets based on their distinct vertical recovery proveniences for the purpose of measuring time.²⁹ Additionally, art theft can lead to further destruction by disrupting objects found near the target artifact, as context is of the utmost importance for archaeologists.³⁰ When art is acquired surreptitiously, archaeologists lose this valuable context information.³¹ In addition, art theft may also lead to the physical destruction of target objects because untrained looters unearth objects without adhering to the necessary preservation methods and using the appropriate tools.³²

that antiquities looted from Iran were found in Syria and Afghanistan); *see also* United States v. An Antique Platter of Gold, 184 F.3d 131, 133 (2d Cir. 1999) (antiquities smuggler stated that an object came from Switzerland, rather than Sicily).

²⁶ *See* Katharyn Hanson, *Why Does Archaeological Context Matter?*, in CATASTROPHE! THE LOOTING AND DESTRUCTION OF IRAQ'S PAST 45 (Geoff Emberling & Katharyn Hanson eds., 2008) ("Archaeological context is provided by information about the archaeological level in which an artifact was found, the type of building where it was found, where it was found inside that building, objects found nearby, and how these artifacts were discarded.").

²⁷ *See id.* (stating "[d]uring an archaeological excavation an artifact's context is carefully identified and recorded by archaeologists").

²⁸ *See* Laura de la Torre, *Terrorists Raise Cash by Selling Antiquities*, GOV'T SECURITY NEWS, Feb. 20, 2006, at 10, *available at* <http://www.savingantiquities.org/wp-content/pdf/GSNarticle.pdf>.

²⁹ MICHAEL J. O'BRIEN & R. LEE LYMAN, *SERiation, STRATIGRAPHY, AND INDEX FOSSILS: THE BACKBONE OF ARCHEOLOGICAL DATING* 150 (1999).

³⁰ *See* BRODIE, DOOLE & WATSON, *supra* note 23, at 16.

³¹ *See Ask the Experts: ALA Archaeology FAQ*, ARCHAEOLOGICAL INSTITUTE OF AMERICA, <http://www.archaeological.org/education/askexpertsfaq> (last visited May 24, 2014) ("Once an object is removed from its original setting, it often loses much of its informational value.").

³² *See generally* PETER WATSON & CECILIA TODESCHINI, *THE MEDICI CONSPIRACY: THE ILLICIT JOURNEY OF LOOTED ANTIQUITIES—FROM ITALY'S TOMB RAIDERS TO THE WORLD'S GREATEST MUSEUMS* (2007) [hereinafter WATSON & TODESCHINI].

In order to transport cultural heritage objects, some thieves intentionally destroy the pieces by temporarily defacing or disguising the artwork to clear it through customs, and then later repair the pieces when they arrive at their destinations.³³ Since these thieves may not be knowledgeable about the protection of artwork, they irreparably destroy the artifacts through such tactics. Furthermore, in an effort to maintain a discreet profile, thieves may be forced to transport objects in crude, unsafe, and unreliable ways that may lead to the physical destruction of the works.³⁴

B. *The History of Museum Collecting*

A museum is defined as an “institution dedicated to preserving and interpreting the primary tangible evidence of humankind and the environment.”³⁵ The word *museum* has classical origins, deriving from the Greek *mouseion*, a sanctuary or temple dedicated to the Muses, meaning “seat of the Muses.”³⁶ This term referred to a philosophical institution or a place of contemplation. Use of the Latin derivation, *museum*, appears in Roman times mainly to indicate places of philosophical discussion.³⁷ In ancient Greece, art collections honoring the gods were sacred, and symbolized the glory and power of the city-state.³⁸ The word *museum* was revived in fifteenth century Europe to describe the collection of Lorenzo de Medici in Florence, but the term conveyed the concept of

³³ See generally United States v. Schultz, 333 F.3d 393 (2d Cir. 2003); see also Peter Watson, *The Investigation of Frederick Schultz*, CULTURE WITHOUT CONTEXT: THE NEWSLETTER OF THE ILLICIT ANTIQUITIES RESEARCH CENTRE, Spring 2002, available at <http://www2.mcdonald.cam.ac.uk/projects/iarc/culturewithoutcontext/issue10/watson.htm>; Sarah Knapton, *Smuggled Ancient Sculpture Returns to Egypt*, TELEGRAPH (Dec. 19, 2008, 1:32 AM), <http://www.telegraph.co.uk/culture/3836319/Smuggled-ancient-sculpture-returns-to-Egypt.html>.

³⁴ See generally ROGER ATWOOD, *STEALING HISTORY: TOMB RAIDERS, SMUGGLERS, AND THE LOOTING OF THE ANCIENT WORLD* (2004).

³⁵ Geoffrey D. Lewis, *Museums*, in ENCYCLOPAEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/398814/museum> (last updated Nov. 20, 2013).

³⁶ Geoffrey D. Lewis, *History of Museums*, in ENCYCLOPAEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/398827/history-of-museums> (last visited May 24, 2014).

³⁷ See *id.*

³⁸ See JOHN H. MERRYMAN ET AL., *LAW ETHICS AND THE VISUAL ARTS* 905 (3d ed. 1991).

comprehensiveness rather than denoting a building.³⁹ By the mid-seventeenth century the idea of the museum went public and the world's first university museum, the Ashmolean Museum of Art and Archaeology in Oxford was opened in 1683.⁴⁰ In 1759, the British Museum was formed to benefit the public “not only for the inspection and entertainment of the learned and the curious, but for the general use and benefit of the public.”⁴¹ Then in 1793, the Louvre opened in Paris, with the right to visit collections belonging to all citizens.⁴²

Museums were slow to develop in the United States, but their charters emphasized educational aims.⁴³ From the inception of U.S. museums, people felt that the government should support art museums, in the way that schools, libraries, and parks were assisted.⁴⁴ Nearly all of the early museums and galleries in the U.S. were nonprofit corporations under the control of a private board of trustees.⁴⁵ The largest museum in the U.S., the Metropolitan Museum of Art (“the Met”),⁴⁶ was founded with substantial support from the government.⁴⁷ The Met’s earliest roots date back to 1866 in Paris, France, when a group of Americans agreed to create a “national institution and gallery of art” to bring art and art education to the American people.⁴⁸ The museum was eventually founded in 1870.⁴⁹ Pursuant to the institution’s charter, the

³⁹ See Lewis, *supra* note 36.

⁴⁰ See *Ashmolean Transformed*, ASHMOLEAN MUSEUM OF ART AND ARCHAEOLOGY, <http://www.ashmolean.org/transforming> (last visited Jan. 30, 2014).

⁴¹ See Lewis, *supra* note 36.

⁴² See *France Tourist Attractions—Louvre Museum*, BONJOUR LA FRANCE, <http://www.bonjourlafrance.com/france-tourist-attractions/louvre.htm> (last visited Mar. 6, 2014); *Musée du Louvre, Paris*, WEB GALLERY OF ART, <http://www.wga.hu/database/museums/louvre.html> (last visited Jan. 30, 2014).

⁴³ See MERRYMAN ET AL., *supra* note 38, at 906.

⁴⁴ See PATTY GERSTENBLITH, *ART, CULTURAL HERITAGE, AND THE LAW* (3d ed. 2012).

⁴⁵ See *id.* at 226.

⁴⁶ See *Metropolitan Museum of Art*, FORBES, <http://www.forbes.com/companies/metropolitan-museum-of-art> (last visited Mar. 6, 2014).

⁴⁷ See WINIFRED EVA HOWE & HENRY WATSON KENT, *A HISTORY OF THE METROPOLITAN MUSEUM OF ART* (1913).

⁴⁸ *History of the Museum*, METROPOLITAN MUSEUM OF ART, <http://www.metmuseum.org/about-the-museum/history-of-the-museum> (last visited Jan. 26, 2013).

⁴⁹ See *General Information*, METROPOLITAN MUSEUM OF ART, <http://www.metmuseum.org/en/about-the-museum/press-room/general-information?pg=1&rpp=50> (last visited Jan. 26, 2013).

museum was built with substantive city funds and it was maintained by expenditures paid by the city.⁵⁰ To this day, ownership in the building remains with the city; however, a private group of trustees still controls the museum and its contents.⁵¹

According to the International Council of Museums (“ICOM”), a museum is a “permanent non-profit institution at the service of society and its development, open to the public, which collects, conserves, researches, exhibits, and makes accessible the tangible and intangible heritage of humanity and its environment for study, education and enjoyment.”⁵² ICOM, created in 1946, is a non-governmental organization and the only worldwide organization of museums and museum professionals committed to the promotion and protection of tangible and intangible cultural heritage.⁵³ ICOM maintains formal relations with UNESCO, and has approximately 21,000 members in 146 countries.⁵⁴

II. STATE OF THE LAW

Although the United States government has not been particularly aggressive in pursuing charges against prominent art dealers or museum representatives, prosecutors have legal tools to use against art thieves. As stated by the English Court of Appeals in *Government of the Islamic Republic of Iran v. Barakat Galleries Ltd.*, “it is essential for every State to become alive to the moral obligations to respect the cultural heritage of all nations and that the protection of cultural heritage could only be effective if organized [sic] both nationally and internationally among States working in close co-operation.”⁵⁵ The international community first cooperated to protect cultural heritage after the substantial loss

⁵⁰ See GERSTENBLITH, *supra* note 44, at 227.

⁵¹ See *id.*

⁵² See MERRYMAN ET AL., *supra* note 38, at 907; see also ICOM, ICOM Internal Rules and Regulations, art. 2, sec. 1.1 (June 1, 2010), available at <http://archives.icom.museum/download/InternalRulesandRegulations.pdf>.

⁵³ See *Who We Are*, INT’L COUNCIL OF MUSEUMS, <http://network.icom.museum/ictop/about-us/who-we-are> (last visited Jan. 26, 2013).

⁵⁴ See *id.*

⁵⁵ [2007] EWHC (QB) 705, [2], *rev’d* [2007] EWCA Civ. 1374 (A.C.), [2009] Q.B. 22.

of art resulting from the World Wars.⁵⁶ The resulting agreement, the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (“The Hague Convention”), addresses wartime looting and destruction, and has proven ineffective in the prevention of cultural heritage loss.⁵⁷ Due to the chaotic and destructive nature of war, the Hague Convention has been unsuccessful in the protection of property.⁵⁸

Whereas the Hague Convention is limited in scope to the protection of cultural heritage during times of war,⁵⁹ the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property of 1970 (“1970 UNESCO Convention”) is broader in its application.⁶⁰ The convention allows nations to seek the repatriation of cultural heritage in foreign jurisdictions.⁶¹ However, there are major shortcomings with this convention. The convention is not self-executing, meaning that the state party must enact implementing legislation; a change in the domestic law that will direct it to fulfill treaty obligations.⁶² Another shortcoming is that the convention allows treaty signors to cherry-pick portions of the agreement.⁶³

In 1972, the United States ratified Articles 7(b)(1) and 9 of the 1970 UNESCO Convention,⁶⁴ calling for “necessary concrete

⁵⁶ See Lisa J. Borodkin, *The Economics of Antiquities Looting and a Proposed Legal Alternative*, 95 COLUM. L. REV. 377, 388 (1995) (explaining that the widespread looting and bombing during the World Wars played a major part in the destruction of art, and was the motivation for laws and policies aimed to better protect these objects).

⁵⁷ See Patty Gerstenblith, *From Bamiyan to Baghdad: Warfare and the Preservation of Cultural Heritage at the Beginning of the 21st Century*, 37 GEO. J. INT’L L. 245 (2006) (discussing the obliteration of the Bamiyan Buddhas during a time of conflict).

⁵⁸ See *id.*

⁵⁹ See Ashlyn Milligan, *Targeting Cultural Property: The Role of International Law*, *Journal of Public and International Affairs*, 19 J. PUB & INT’L AFF. 91, 93–94 (2008).

⁶⁰ Convention on the Means of Prohibiting and Preventing the illicit import, export, and transfer of ownership of cultural property art. 2, para. 2, UNESCO, Nov. 14, 1970, 823 U.N.T.S. 231 [hereinafter UNESCO Convention].

⁶¹ See *id.*

⁶² See *id.*

⁶³ See *id.*

⁶⁴ See Act of Jan. 12, 1983, Pub. L. 97-446, §§ 301–315, 96 Stat. 2329 (codified at 19 U.S.C. § 2601); see also *The 1970 Convention*, BUREAU OF EDUCATIONAL AND CULTURAL AFFAIRS, <http://exchanges.state.gov/heritage/culprop/background.html> (last visited Jan.

measures” to restrict importation of cultural materials.⁶⁵ As the convention did not have basis in U.S. law, legislation was needed to allow for its implementation. In 1983, Congress passed the Cultural Property Implementation Act (“CPIA”) in order to implement the 1970 UNESCO Convention.⁶⁶ The CPIA prohibits the importation of stolen cultural material from other state parties, and applies import controls over a state’s patrimony in danger of pillage.⁶⁷ The benefit of the CPIA is that it is a civil regulation that allows the government to regulate importation without obtaining the heavy burden of a criminal conviction.⁶⁸ The CPIA authorizes the government to seize property if the object meets the UNESCO definition of “cultural property.”⁶⁹

However, the CPIA is designed only as a civil customs statute, and it lacks the weight of criminal penalties.⁷⁰ In addition, the CPIA leaves particular types of thefts unpunished because the law limits protection only to the restricted class of objects stolen from museums and cultural sites specified in the CPIA.⁷¹ Notwithstanding, the Second Circuit held that the CPIA is not the exclusive means for assessing penalties in cases involving objects stolen from other nations; essentially the CPIA does not prevent the pursuance of a criminal prosecution.⁷² In the action against Frederick Schultz, an antiquities dealer and the former president of

30, 2014) (Pursuant to Article 7(b)(1), state parties agree to prohibit the importation of documented cultural property stolen from museums or religious or secular public monuments in another state party to the Convention. Article 9 allows any state party whose cultural patrimony is in jeopardy from pillage to call for aid from other states parties to take actions to control of exports, imports, and international commerce in the cultural materials concerned.)

⁶⁵ See UNESCO Convention, *supra* note 60, art. 9.

⁶⁶ See Pub. L. No. 97-446, 96 Stat. 2350–2354 (codified at 19 U.S.C. § 2601 et seq.).

⁶⁷ See 19 U.S.C. §§ 2607–10 (2012).

⁶⁸ See 19 U.S.C. §§ 2601–13.

⁶⁹ See *id.*

⁷⁰ See Patty Gerstenblith, *The McClain/Schultz Doctrine: Another Step Against Trade in Stolen Antiquities*, CULTURE WITHOUT CONTEXT: THE NEWSLETTER OF THE ILLICIT ANTIQUITIES RESEARCH CENTRE, Autumn 2003, available at <http://www2.mcdonald.cam.ac.uk/projects/iarc/culturewithoutcontext/issue%2013/gerstenblith.htm>.

⁷¹ See *id.*

⁷² See *United States v. Schultz*, 333 F.3d 393, 409 (2d Cir. 2003); see also *Schultz v. United States*, 05 Civ. 246 (JSR), 2005 U.S. Dist. LEXIS 12836, at *4–5 (S.D.N.Y. June 24, 2005) (denying post-conviction relief).

the National Association of Dealers in Ancient, Oriental, and Primitive Art, the Second Circuit found that not only did the CPIA apply, but the National Stolen Property Act applied as well.⁷³ The National Stolen Property Act (“NSPA”), section 2315 of Title 18 of the United States Code, provides that a person is guilty of a crime if he “receives, possesses, conceals, stores, barter[s], sells, or disposes of any goods, wares, or merchandise . . . which have crossed a State or United States boundary after being stolen . . . knowing the same to have been stolen”⁷⁴ The Second Circuit ruled in *United States v. Schultz*, that this law applies to individuals who remove cultural objects from countries with patrimony laws.⁷⁵

The CPIA, NSPA, the 1970 UNESCO Convention, and individual nation’s patrimony laws⁷⁶ enable the global community to civilly and criminally charge individuals for dealing in artwork sold on the black market.⁷⁷ These laws should be actively enforced to prevent museums from acquiring works with questionable histories. Unfortunately though, many charges against museums are not pursued because of the structure of these institutions.⁷⁸ However, there is a sea change occurring within the art community due to massive looting occurring in war-torn areas such as Iraq, Afghanistan, and North Africa. With recent prosecutions of art

⁷³ See *Schultz*, 333 F.3d at 409.

⁷⁴ 18 U.S.C. § 2315 (2012).

⁷⁵ See *Schultz*, 333 F.3d at 416. The indictment of criminals for cultural heritage theft has a precedent dating back to the 1970s. In the late 1970s in *United States v. McClain*, antiquities dealers were prosecuted under NSPA for dealing in Mexican antiquities subject to a 1972 Mexican patrimony law that vested national ownership to antiquities discovered in Mexican soil. 545 F.2d 988, 991–92 (5th Cir. 1977). This case established the “*McClain* Doctrine” that established U.S. courts’ recognition that foreign patrimony laws may create ownership of undocumented antiquities in the national government. *Id.* at 1001.

⁷⁶ Patrimony laws vest ownership of all undiscovered antiquities in the national government that created the law. See Jamison K. Shedwill, *Is the “Lost Civilization” of the Maya Lost Forever?: The U.S. and Illicit Trade in Pre-Columbian Artifacts*, 23 CAL. W. INT’L L.J. 227, 241–42 (1992).

⁷⁷ See *Schultz*, 333 F.3d at 409; *United States v. An Antique Platter of Gold*, No. 95 MAG. 2167 (NRB), 995 U.S. Dist. LEXIS 19080, at *6 (S.D.N.Y. Dec. 21, 1995) (denying motion for return of property to a buyer who had purchased an antiquity smuggled out of Italy), *summary judgment granted*, 991 F. Supp. 222 (S.D.N.Y. 1997), *stay of judgment granted pending disposition on appeal*, No. 95 Civ. 10537, 1997 U.S. Dist. LEXIS 18850 (S.D.N.Y. Nov. 27, 1997), *aff’d*, 184 F.3d 131 (2d Cir. 1999).

⁷⁸ See Part III.D.2 for discussion about the insulation of museums’ boards of trustees.

thieves, the international community is more aggressively pursuing the return of cultural property.⁷⁹ Museums play a crucial role (sometimes inadvertently) in the black market art network, thus it is essential for civil and criminal penalties to apply to museums and museum representatives as well. Museum employees and their host institutions should not be permitted to hide behind their non-profit educational status to evade punishment. In fact, as discussed in this Article, maintaining non-profit status should require greater due diligence.⁸⁰

In addition to the need for increased prosecution, changes in legislation are necessary in order to prevent the destruction of artwork. The federal government should increase penalties for cultural heritage theft—perpetrated by both individuals and institutions—museum acquisition requirements must be heightened by Federal law, not by mere museum guidelines or recommendations, acquisitions must be strictly scrutinized by legal authorities, and the Internal Revenue Service should have authority to regulate museums to ensure that these non-profit organizations are following appropriate acquisition practices.

⁷⁹ See Jason Felch, *Turkey Asks U.S. Museums for Return of Antiquities*, L.A. TIMES, Mar. 30, 2012, <http://articles.latimes.com/2012/mar/30/entertainment/la-et-turkey-antiquities-20120331> (describing Turkey's request for the return of dozens of antiquities from major U.S. museum collections); see also Allison Meier, *Golden Seahorse Thought to Be Cursed Returns to Turkey After a Forgery Took Its Place*, BLOUIN ARTINFO (Nov. 27, 2012), <http://blogs.artinfo.com/artintheair/2012/11/27/golden-seahorse-thought-to-be-cursed-returns-to-turkey-after-a-forgery-took-its-place> (stating that Turkey is pursuing an "art war"); Benjamin Sutton, *More Antiquities Woes for U.S. Museums Loom, as Turkey Demands 18 Artifacts from the Metropolitan Museum*, BLOUIN ARTINFO (Mar. 20, 2012), <http://www.artinfo.com/news/story/779730/more-antiquities-woes-for-us-museums-loom-as-turkey-demands-18-artifacts-from-the-metropolitan-museum> (describing the demands from Turkey as worrisome for U.S. museums). See generally FELCH & FRAMMOLINO, *supra* note 10 (tracing Italy's attempts to claim title to their looted objects); SHARON WAXMAN, *LOOT: THE BATTLE OVER THE STOLEN TREASURES OF THE ANCIENT WORLD* (2008) (describing Egypt's aggressive tactics to demand the return of objects from major museums around the world).

⁸⁰ See *infra* Part III.E.3.

III. THE NEED FOR INCREASING PENALTIES ON CULTURAL HERITAGE LOOTERS AND MUSEUMS ACQUIRING QUESTIONABLE ARTIFACTS

A. *Museums Participate in the Market for Illicit Goods*

In 2010, it was estimated that the global market for cultural heritage artifacts is around \$6 billion.⁸¹ It is estimated by some that the illicit trade of antiquities is valued at around \$8 billion.⁸² However, this number is a low estimate because art and cultural heritage crimes are underreported.⁸³ The most effective way to protect cultural heritage is by eliminating the demand for illicit antiquities.⁸⁴ Nations are robbed of their artwork by thieves who collect art for sale on the black market. Museums, including major U.S. institutions, historically have had a direct role in the purchase of black market items.⁸⁵ In the 1960s, the Metropolitan Museum of Art purchased a looted hoard of golden coins from Turkey, now known as the Lydian Hoard,⁸⁶ and then acquired the now famous looted Euphronios Krater in the early 1970s.⁸⁷ Thomas Hoving,

⁸¹ See CRAIG FORREST, INTERNATIONAL LAW AND THE PROTECTION OF CULTURAL HERITAGE (2010).

⁸² See *Art Crime: A Team Approach, Part I*, FBI (Feb 2, 2010), http://www.fbi.gov/news/stories/2010/february/artcrime1_020210.

⁸³ See generally CRIME IN THE ART AND ANTIQUITIES WORLD: ILLEGAL TRAFFICKING IN CULTURAL PROPERTY 60 (Stefano Manacorda & Duncan Chappell eds., 2011).

⁸⁴ See Simon Mackenzie, *The Market as Criminal and Criminals in the Market: Reducing Opportunities for Organised Crime in the International Antiquities Market*, in CRIME IN THE ART AND ANTIQUITIES WORLD, *supra* note 9, at 69, 80–82 (describing the Market Reduction Approach, which aims to decrease the size of the market for illicit goods by reducing the demand for these items).

⁸⁵ See Edward Wyatt, *Museum Workers Are Called Complicit*, N.Y. TIMES, Jan. 26, 2008, <http://www.nytimes.com/2008/01/26/arts/design/26muse.html>.

⁸⁶ See Press Release, Herrick Feinstein LLP, Turkey's Lawsuit Against Metropolitan Museum of Art Ends with Return of Lydian Hoard Antiquities to Turkey (1993), available at <http://www.herrick.com/siteFiles/News/94F46F571AA38025A4D3343547A8B65F.pdf> (announcing that the Metropolitan Museum of Art returned to the Republic of Turkey the collection of 363 antiquities that were looted and smuggled out of Turkey in the mid-1960s); see also *Return to Sender: The Lydian Hoard*, ECONOMIST, Oct. 2, 1993, <http://www.highbeam.com/doc/1G1-14486501.html> (stating that the Metropolitan Museum of Art agreed to return plundered antiquities to Turkey pursuant to a settlement).

⁸⁷ See *Euphronios Krater: Top 10 Plundered Artifacts*, TIME, http://www.time.com/time/specials/packages/article/0,28804,1883142_1883129_1883079,00.html (last visited Mar. 15, 2014).

former director of the Metropolitan Museum of Art, famously recounted the museum's purchase of illicitly-gotten artifacts in his memoir "Making the Mummies Dance."⁸⁸ The Princeton University Art Museum returned an item that may have been looted in 1999.⁸⁹ It was the second time between 2007 and March 7, 2012 that the Princeton University Art Museum "returned Greco-Roman antiquities to Italy amid concerns that the ancient artworks had been illegally excavated."⁹⁰ The university museum was criticized for its lack of transparency in its collecting practices.⁹¹ The Italian government demanded the return of forty-two items from the Cleveland Museum of Art ("CMA"), and eventually fourteen artifacts were returned after authorities proved that the items were looted or stolen.⁹² In fact, CMA recently acquired two more questionable objects, including a Roman bust purchased from the Phoenix Ancient Art Gallery, a gallery owned by brothers with a well-publicized criminal record for dealing in looted antiquities.⁹³ The John P. Getty Museum had received so much media attention related to stolen artifacts that an entire book was written about its acquisition practices.⁹⁴ After over two decades of battles, Boston's Museum of Fine Arts returned the statue of the Weary Herakles to the Republic of Turkey in 2011.⁹⁵ The museum acquired the looted object in early 1981,⁹⁶ although

⁸⁸ See THOMAS HOVING, *MAKING THE MUMMIES DANCE* (1993).

⁸⁹ See W. Barksdale Maynard, *Art Museum Returns More Ancient Artworks to Italy*, PRINCETON ALUMNI WEEKLY, Mar. 7, 2012, <http://paw.princeton.edu/issues/2012/03/07/pages/2531/index.xml>.

⁹⁰ *Id.*

⁹¹ See *id.*

⁹² See Steven Litt, *Cleveland Art Museum to Return 14 Stolen Items to Italy; Authorities Prove the 14 Artifacts Were Looted or Stolen*, PLAIN DEALER, Nov. 20, 2008, <http://www.museum-security.org/2008/11/cleveland-art-museum-to-return-14-stolen-items-to-italy-authorities-prove-the-14-artifacts-were-looted-or-stolen>.

⁹³ See Nord Wennerstrom, *Cleveland Museum Strikes Defiant Tone on Antiquities Collecting—UPDATED*, NORD ON ART (Aug. 13, 2012), <http://nordonart.wordpress.com/2012/08/13/cleveland-museum-strikes-defiant-tone-on-antiquities-collecting>.

⁹⁴ See generally FELCH & FRAMMOLINO, *supra* note 10.

⁹⁵ See *Greek God Hercules Reunited with His Bottom Half as Museum Agrees to Send Back 'Looted' Bust to Turkey*, *supra* note 18.

⁹⁶ See Press Release, Museum of Fine Arts Boston, Museum of Fine Arts, Boston, and Turkish Republic Reach Agreement for Transfer of Top Half of *Weary Herakles* to Turkey (Sept. 23, 2011), available at http://www.mfa.org/sites/default/files/MFA_Final%20Weary%20Herakles%20Press%20Release%20FINAL.pdf.

the object lacked good provenance and good provenience. Provenance is a “historical record of its ownership,”⁹⁷ and provenience is “an archaeological term referring to an artifact’s excavation site or find spot.”⁹⁸ Most recently, the MFA in Boston acquired controversial Benin Bronzes in June 2012 “as a gift from New York banker and collector Robert Owen Lehman, who purchased the Benin pieces in the 1950s and 1970s.”⁹⁹ The Nigerian government is demanding their return because the pieces were originally taken by British soldiers in the late 1890s, following the Benin massacre of 1897.¹⁰⁰ These are just a few accounts of well-known looted objects appearing in major U.S. museums.

By purchasing illicit objects, museums and galleries increase the market demand for these objects, thus incentivizing robbers to steal art objects.¹⁰¹ To deter museums from engaging in illegal dealings, the United States government should more actively prosecute museum representatives responsible for underhanded dealings. The United States, in particular, should take action to prosecute because the American art market is the largest in the world,¹⁰² with the US importing \$6.2 billion and exporting \$17.5 billion of art and antiquities in 2010.¹⁰³ According to the FBI, the U.S. is the preferred market for selling stolen art.¹⁰⁴

⁹⁷ *Provenance Guide*, INT’L FOUND. FOR ART RESEARCH, http://www.ifar.org/provenance_guide.php (last visited Mar. 15, 2014).

⁹⁸ *Id.*

⁹⁹ See *Boston’s Museum of Fine Arts Urged to Return Looted Artifacts to Nigeria*, HUFFINGTON POST (July 20, 2012), http://www.huffingtonpost.com/2012/07/20/bostons-museum-of-fine-ar_n_1690062.html.

¹⁰⁰ See *id.*

¹⁰¹ See generally FELCH & FRAMMOLINO, *supra* note 10.

¹⁰² See David Barboza et al., *Forging an Art Market in China*, N.Y. TIMES, Oct. 28, 2013, <http://www.nytimes.com/projects/2013/china-art-fraud> (showing that the U.S. was the largest market for art based on auctions, galleries, and private deals in 2012).

¹⁰³ See Rachel Corbett, *Art Market Watch: How Big Is the Global Art Market?*, ARTNET.COM, <http://www.artnet.com/magazineus/news/artnetnews/china-the-worlds-top-art-and-antique-market.asp> (last visited Mar. 15, 2014).

¹⁰⁴ See Noah Charney, Paul Denton & John Klieberg, *Protecting Cultural Heritage from Art Theft: International Challenge, Local Opportunity*, FBI L. ENFORCEMENT BULLETIN, Mar. 2012, at 1, 4, available at <http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/march-2012/march-2012-leb>; see also Robert E. Madden, *Steps to Take When Stolen Art Is Found in an Estate*, 24 EST. PLAN. 459, 460 (1997).

B. Current U.S. Law Does Not Properly Protect Cultural Heritage Against Looting

1. U.S. Law Provides Legal Tools to Halt the Trade in Looted Artifacts

United States laws currently address repercussions for stolen property, although the laws do not specifically focus on criminal penalties for cultural heritage thieves or museums. The National Stole Property Act (the “NSPA”) provides that a person is guilty of a crime if he “receives, possesses, conceals, stores, barter[s], sells, or disposes of any goods, wares, or merchandise . . . which have crossed a State or United States boundary after being stolen . . . knowing the same to have been stolen”¹⁰⁵ In *United States v. Schultz*, the Second Circuit ruled that this law should be broadly construed and that it applies to individuals who remove cultural objects from countries with patrimony laws.¹⁰⁶ However, that factor is a major shortcoming with the NSPA. Although the court leveraged criminal sanctions onto Schultz for stealing Egyptian antiquities pursuant to Egypt’s patrimony laws,¹⁰⁷ not all nations have enacted patrimony laws. The NSPA applies when title to property is vested in a nation due to patrimony laws.¹⁰⁸ As patrimony laws enable foreign nations to prosecute for stolen property,¹⁰⁹ it is necessary for more nations to adopt patrimony laws in order to claim property rights. Without patrimony laws, foreign nations cannot claim that their property has been taken because ownership has not been vested in any entity when objects are merely found in a nation’s soil.¹¹⁰ Patrimony laws vest

¹⁰⁵ 18 U.S.C. § 2315 (2012).

¹⁰⁶ See *United States v. Schultz*, 333 F.3d 393, 416 (2d Cir. 2003) (concluding that “the NSPA applies to property that is stolen from a foreign government, where that government asserts actual ownership of the property pursuant to a valid patrimony law” and affirming the district court’s conviction of appellant).

¹⁰⁷ See *id.* at 396 (citing the Egyptian Law on the Protection of Antiquities (Law No. 117 of 1983), which declared all antiquities found in Egypt to be the property of the Egyptian government).

¹⁰⁸ *United States v. An Antique Platter of Gold*, 991 F. Supp. 222, 231 (S.D.N.Y. 1997), *aff’d*, 184 F.3d 131 (2d Cir. 1999).

¹⁰⁹ See *United States v. McClain*, 545 F.2d 988, 1000–01 (5th Cir. 1977).

¹¹⁰ *Republic of Peru v. Yale University*, No. 3:09-CV-01332 (D. Conn. filed Aug. 11, 2008), *transferred from* No. 08-cv-02109 (D.D.C. filed Dec. 5, 2008).

ownership of undiscovered antiquities in the nation or state, depriving looters, middlemen, and subsequent purchasers of title.¹¹¹ Without ownership of the property, nations cannot make a case for the return of the objects.¹¹² The lack of valid title makes it difficult to sell the objects on the international market. Without the ability to sell the objects, the incentive to loot will be reduced and destruction of artifacts will decrease. Furthermore, using foreign patrimony laws in conjunction with the NSPA permits actions to be taken against art thieves and art purchasers within U.S. jurisdictions.¹¹³ The fear of litigation pursued by nations from which looted artifacts are taken will further reduce the incentive for theft.

2. U.S. Law Does Not Properly Prosecute Cultural Heritage Looters and Traders

Unfortunately, prosecutors have not readily pursued art thieves and certainly have not been using legal tools to their greatest capacity to prevent questionable acquisitions by museums.¹¹⁴ Since art thieves and museums have not been aggressively prosecuted, the body of case law is also limited. The lack of rigorous pursuit may be due to the fact that prosecutors and law enforcement agents view the art world as “elitist” and therefore do not regard international art crime as a serious crime.¹¹⁵ Law enforcement officers may ignorantly believe that smuggling art from abroad is not a matter of serious interest.¹¹⁶ In addition, some

¹¹¹ *Id.*

¹¹² See cases cited *supra* note 25.

¹¹³ See *United States v. Schultz*, 333 F.3d 393, 416 (2d Cir. 2003).

¹¹⁴ See Jennifer Anglim Kreder, *The Choice Between Civil and Criminal Remedies in Stolen Art Litigation*, 38 VAND. J. TRANSNAT'L L. 1199, 1206 (2005).

¹¹⁵ See Brian R. Williams, *What Is Art Crime?*, DAMFORST MUSEUM (Oct 14, 2010), www.damforstmuseum.org/what_is_art_crime.html; see also, Bojan Dobovšek & Boštjan Slak, *The Significance of Studying and Investigation Art Crime: Old Reasons, New World*, 4 VARSTVOLSLOVJE J. CRIM. JUST. & SEC. 392, 398 (2011), available at http://www.fvv.uni-mb.si/rV/arhiv/2011-4/03_Dobovsek_Slak.pdf (noting that the art world is seen as an elitist world and not of import to the general public).

¹¹⁶ See Dobovšek & Slak, *supra* note 115, at 398; Williams, *supra* note 115 (“But most police departments are unable (due to budget constraints) or unwilling (due to the perceived notion that art crimes are not serious crimes) to devote time, resources and manpower to solving art crimes.”).

mistakenly view art crime as a victimless crime.¹¹⁷ However, it is important to remember that this is not true—art and cultural heritage theft have links to organized crime syndicates.¹¹⁸ In addition, depriving a nation of its cultural treasures affects the global art world. The cultural treasures that are found abroad are valuable to all humanity,¹¹⁹ and the United States should actively sanction those who are responsible for the destruction of these cultural objects.

A reflection of the United States' lack of interest in art and cultural heritage crime is reflected in the resources devoted to its prevention. In 2004, the FBI established an Art Crime Team which is now composed of 14 special agents with three special trial attorneys for prosecutorial support.¹²⁰ Since its founding, the Art Crime Team has recovered more than 2,650 items valued at over \$150 million.¹²¹ While this figure is impressive and the founding of this crime team is clearly beneficial, the U.S. government is not doing nearly enough. In a nation the size of the United States, with the largest market in the world for art and antiquities,¹²² the government should be doing more to halt the illicit trade. In light of the fact that the trade in looted antiquities helps to fund organized crime and terrorism,¹²³ the U.S. should devote greater resources to this cause.

To prevent further art theft and looting, it is necessary for the government to actually prosecute art criminals and purchasers of

¹¹⁷ See Dobovšek & Slak, *supra* note 115, at 398.

¹¹⁸ See Jonathan Jones, *Dutch Art Theft: A Pick'n'mix of Paintings Reduced to Criminal Collateral*, *Jonathan Jones on Art Blog*, *GUARDIAN* (Oct. 16, 2012, 12:23 PM), <http://www.guardian.co.uk/artanddesign/jonathanjonesblog/2012/oct/16/dutch-art-theft-paintings-collateral>.

¹¹⁹ See generally Michela Cocchi, *The Protection of Culture as a Shared Interest in Humanity*, *CULTURAL HERITAGE AND ARTS REVIEW*, Spring 2010, at 18, available at http://www.lootedart.com/web_images/pdf2/CHARReviewI%20first%20edition%20Spring%202010.pdf.

¹²⁰ See *Art Crime Team*, FBI, http://www.fbi.gov/about-us/investigate/vc_majorthefts/arttheft/art-crime-team (last visited Mar. 15, 2014).

¹²¹ See *id.*

¹²² See Abigail R. Esman, *China's \$13 Billion Art Fraud—And What It Means for You*, *FORBES ART & ENTERTAINMENT BLOG* (Aug 8, 2012, 8:01 AM), <http://www.forbes.com/sites/abigailesman/2012/08/13/chinas-13-billion-art-fraud-and-what-it-means-for-you>.

¹²³ See *infra* Part.III.G.3 for discussion on the link between organized crime and cultural heritage looting.

looted objects.¹²⁴ And as further deterrent, the United States government should also increase penalties on museums; monetary fines should be increased and incarceration may be appropriate in some circumstances.¹²⁵ The international trade of stolen art is worth billions of dollar, and it relies on networks of dealers, collectors, museums, and auction houses. Driving this market forward is the demand by wealthy collectors and museums,¹²⁶ so the only way to eliminate demand and shrink the market is to aggressively prosecute. Criminal penalties have a significant impact on dealers and collectors who lend support to thieves who feed the market with plundered art and antiquities.¹²⁷

C. To Prevent Cultural Heritage Looting, Nations Should Look Toward Italy in its Efforts to Reduce the Black Market for Antiquities

1. Italy Devotes Appropriate Resources for the Protection of Cultural Heritage

The Italian government's emphasis on the protection of art and cultural heritage is evidenced by the attention and resources the European nation devotes to this cause.¹²⁸ Whereas the United States FBI has 14 special agents focusing on art and cultural

¹²⁴ See Janet Ulph, *The Impact of the Criminal Law and Money Laundering Measures Upon the Illicit Trade in Art and Antiquities*, XVI ART ANTIQUITY AND LAW 39, 40 (2011), available at <http://traffickingculture.org/wp-content/uploads/2013/02/2011-Art-Antiquity-and-Law-Ulph-1.pdf> (“[T]he general criminal law can play a valuable role in deterring not only thieves, but also accessories such as those who knowingly purchase a stolen object.”).

¹²⁵ See J. Scott Dutcher, Comment and Note, *From the Boardroom to the Cell Block: The Justifications for Harsher Punishment of White-Collar and Corporate Crime*, 37 ARIZ. ST. L.J. 1295, 1303–09 (2006) (explaining that only harsher crimes will deter white-collar crime perpetrators).

¹²⁶ See Felix Lowe et al., *Europe Bids to Halt Tide of Art Smuggled to America*, OBSERVER, Jan. 22, 2006, <http://www.theguardian.com/world/2006/jan/22/usa.arts>.

¹²⁷ See Simon MacKenzie, *Illicit Antiquities, Criminological Theory, and the Deterrent Power of Criminal Sanctions for Targeted Populations*, ART ANTIQUITY & L. 125, 142 (2002) (finding that imprisonment has a deterrent effect on “white collar” criminals).

¹²⁸ See Elisabetta Povoledo, *Italy Defends Treasures (and Laws) with a Show*, N.Y. TIMES, Oct. 7, 2008, <http://www.nytimes.com/2008/10/08/arts/design/08heri.html> (describing Italy celebrating its success in protecting antiquities by holding an exhibition featuring repatriated objects).

heritage, Italy's *Carabinieri*¹²⁹ art theft division employs 300 officers¹³⁰ for a geographic area that is slightly larger than the state of Arizona.¹³¹ This is the most personnel in the world devoted to the prevention of art crime.¹³² And this statistic excludes informants and employees who maintain LEONARDO,¹³³ a database with data on 2.6 million missing pieces of art, the largest national stolen art database in the world. However, even with these resources, the *Carabinieri* only boasts a meager ten percent recovery rate.¹³⁴

Italy devotes vast economic and human resources to art and cultural property protection. These resources are further supported by the nation's extensive laws protecting art and cultural heritage. Although Italy is now aggressively vying for the return of its stolen art objects, legal protection for antiquities has existed in some parts of Italy for centuries.¹³⁵ Parts of Italy have had patrimony laws in place since before the unification of the Italian Republic.¹³⁶ Italian regions created laws to protect their own patrimony: the Edict Pacca in 1822 in Naples (which established a Commission for Fine Arts),¹³⁷ a law in 1850 in Lombardy,¹³⁸ and a law in Tuscany in

¹²⁹ See *Historical References*, CARABINIERI MINISTERO DELLA DIFESA, http://www.carabinieri.it/Internet/Multilingua/EN/HistoricalReferences/01_EN.htm (last visited Feb. 3, 2014) (the *Carabinieri* is the national military police of Italy, founded in 1814).

¹³⁰ See Morgan Russell, *Intel Brief: Art Theft and Organized Crime*, INTERNATIONAL RELATIONS AND SECURITY NETWORK (Apr. 11, 2008), <http://www.isn.ethz.ch/isn/Communities-and-Partners/Partners/Detail/?lng=en&id=52001>.

¹³¹ See *Geographic Statistics*, NATIONMASTER, http://www.nationmaster.com/graph/geo_are_com_to_us_pla-geography-area-comparative-us-places (last visited Feb. 3, 2014).

¹³² See Russell, *supra* note 130.

¹³³ *Id.* See generally Pierangelo Iannotti, *Online Portal for Italian Carabinieri Police Enhances Delivery of Services to Citizens*, MICROSOFT WINDOWS SERVER SYSTEM CUSTOMER SOLUTION CASE STUDY, available at <http://www.microsoft.com/casestudies/Microsoft-Windows-Server-2003/The-Carabinieri/Online-Portal-for-Italian-Carabinieri-Police-Enhances-Delivery-of-Services-to-Citizens/1000003887>.

¹³⁴ See Russell, *supra* note 130.

¹³⁵ See Andrew L. Slayman, *The Trial in Rome*, ARCHAEOLOGY ARCHIVE (Feb. 6, 2006), <http://www.archaeology.org/online/features/italytrial>.

¹³⁶ See Donata Levi, *The Administration of Historical Heritage: The Italian Case*, in NATIONAL APPROACHES TO THE GOVERNANCE OF HISTORICAL HERITAGE OVER TIME: A COMPARATIVE REPORT 103, 109 (Stefan Fisch ed., 2008).

¹³⁷ See *id.*

1854.¹³⁹ Patrimony laws in Southern Italy were promulgated as early as 1822, while the first antiquities laws covering modern Italy were enacted in 1902.¹⁴⁰ After the unification of Italy, the nation passed dozens of laws regulating art.¹⁴¹ The national patrimony law was updated in 1939 in the “General Regulations for the Protection of Things of Historical and Artistic Interest,” which claims national ownership of antiquities in addition to regulating their excavation and exportation.¹⁴² During Mussolini’s time, laws such as Law No. 1089/1939 continued being promulgated; the laws during this period were known as the Bottai Laws.¹⁴³ The protection of Italian patrimony continues to this day.¹⁴⁴ Not only does Italy have comprehensive art laws, but the Italian nation aggressively enforces these laws by seeking the return of objects,¹⁴⁵ prosecuting art criminals,¹⁴⁶ and pursuing law

¹³⁸ See Lauren Fae Silver, *Recapturing Art: A Comprehensive Assessment of the Italian Model for Cultural Property Protection*, 23 N.Y. INT’L L. REV. 1, 18 n.71 (2010).

¹³⁹ See *id.*

¹⁴⁰ See Slayman, *supra* note 135.

¹⁴¹ See Ricardo A. St. Hilaire, *The Weiss Ancient Coin Prosecution and What to Watch for*, CULTURAL HERITAGE LAWYER RICK ST. HILAIRE (March 22, 2012), <http://culturalheritagelawyer.blogspot.com/2012/03/weiss-ancient-coin-prosecution-and-what.html>.

¹⁴² See Protection of Items of Artistic and Historic Interest, Law No. 1089 of June 1, 1939 (It.). This law was cited in *United States v. An Antique Platter of Gold*, a forfeiture proceeding against an antiquities collector. 991 F. Supp. 222, 227 (S.D.N.Y. 1997).

¹⁴³ See Chiara Garau & Valentina Pavan, *Regional Cultural Heritage: New Vision for Preservation in Sardinia*, 3 J. LANDSCAPE STUD. 127, 127 (2010) (It.).

¹⁴⁴ Amongst other laws are Legge N. 386 “Tutela della conservazione dei monumenti e degli oggetti d’antichità e d’arte,” a law that protects artistic and archaeological objects was passed in 1907; Legge N. 823 “Riordinamento delle soprintendenze alle antichità e all’arte” was passed in 1939, and it provides for the protection of antiquities through a national ministry. Italy has dozens of art and antiquities laws, and in 2009 even addressed issues related to underwater archaeology. See Legge N. 15 “Rattifica ed esecuzione della Convenzione sulla protezione del patrimonio culturale subacqueo, con Allegato, adottata a Parigi il 2 novembre 2001.”

¹⁴⁵ See Naomi O’Leary, *U.S. Returns Stolen Art Worth Millions to Italy*, REUTERS (June 27, 2012, 10:31 AM), <http://www.reuters.com/article/2012/06/27/us-italy-idUSBRE85Q0X420120627> (quoting U.S. ambassador David Thorne as stating that increased cooperation between U.S. Homeland Security agents and Italian *Carabinieri* police specializing in the prevention of art fraud should increase recoveries in the future).

¹⁴⁶ See David Gill, *Looting Matters: Italian Prosecutors Calls for Return of Antiquities*, PRNEWswire, June 4, 2010, <http://www.prnewswire.com/news-releases/looting-matters-italian-prosecutor-calls-for-return-of-antiquities-95620419.html> (giving examples of the need to prosecute art criminals).

violators.¹⁴⁷ Most impressively, the Italian government aggressively penalizes museum representatives for their contribution to the network of illegally acquired artwork.¹⁴⁸

An examination of the country's tremendous looting problem sheds light onto the motivation for Italy waging such an aggressive antiquities war on overseas entities.¹⁴⁹ It is said that Italy is home to half of the world's great art,¹⁵⁰ and as recognized by officials, it is impossible to stop the looting because it is impossible to supply security at every archaeological site.¹⁵¹ Thus, the Italian government finds it necessary to prevent theft through post-looting sanctions.

2. The Sad, but "True" case, as Italy's Prosecution of an American Museum Curator Drastically Altered the Landscape of Cultural Heritage Prosecution

In the spring of 2005, Italian prosecutors announced their decision to prosecute Marion True, a curator at the J. Paul Getty Museum in Los Angeles, for criminal association and receipt of stolen property in connection with antiquities believed to have been illegally unearthed in Italy and smuggled out of the country.¹⁵² True was the first American museum official under criminal prosecution abroad in connection with antiquities trade.¹⁵³ Marion True, a curator of antiquities, was alleged to have knowingly obtained over forty archaeological finds illegally excavated by tomb raiders or stolen in Italy.¹⁵⁴ Italian prosecutors

¹⁴⁷ See Elisabetta Povoledo, *At Root of Italy's Library Plunder, a Tale of Entrenched Practice*, N.Y. TIMES, Aug. 11, 2012, <http://www.nytimes.com/2012/08/12/world/europe/naples-librarys-plunder-highlights-entrenched-dealings.html?pagewanted=all>.

¹⁴⁸ See Andrew M. Goldstein, *Italy May Prosecute a Princeton Curator over Antiquities*, BLOUIN ARTINFO (June 3, 2010, 3:17 PM), <http://www.blouinartinfo.com/reviews/article/34823-italy-may-prosecute-a-princeton-curator-over-antiquities>; see also *Italy v. Marion True*, Trib. Roma, sez. VI pen., n. 19360/10 (Oct. 13, 2010) (It.).

¹⁴⁹ Stephanie Gruner, *Italy's Special Carabinieri Unit Fights Art Looting*, WALL ST. J., Apr. 10, 2006, <http://online.wsj.com/news/articles/SB114470857104222259>.

¹⁵⁰ CHARLES ABBOTT, CULTURE SMART! ITALY 101 (Geoffrey Chesler ed., 2004).

¹⁵¹ See *id.*

¹⁵² See Slayman, *supra* note 135.

¹⁵³ See Jason Felch, *Charges Dismissed Against Ex-Getty Curator Marion True by Italian Judge*, L.A. TIMES, Oct. 13, 2010, <http://latimesblogs.latimes.com/culturemonster/2010/10/charges-dismissed-against-getty-curator-marion-true-by-italian-judge.html>.

¹⁵⁴ *Italy v. Marion True*, Trib. Roma, sez. VI pen., n. 19360/10 (Oct. 13, 2010) (It.).

charged her with criminal association, receiving stolen Italian artifacts and laundering artworks purchased privately and sold to the J. Paul Getty Museum using allegedly fake documents.¹⁵⁵ True faced up to ten years in prison if convicted, but she consistently denied the charges, which related to a period from the mid-1980s through 1998.¹⁵⁶ True's troubles began when authorities raided a Swiss warehouse belonging to Giacomo Medici, an infamous dealer of looted antiquities,¹⁵⁷ and found "Polaroid photographs of hundreds of recently looted antiquities."¹⁵⁸ Marion True had dealt with Medici and his business partner, Robert Hecht, and this information was used in the trial against True.¹⁵⁹

By prosecuting Marion True for the acquisition of black market cultural objects, Italy hoped to reduce the flight of top-quality artifacts from the country.¹⁶⁰ Italy hoped to deter museums from buying artifacts without provenance that may have originated from Italian soil. In October 2010, the case against Marion True ended without a verdict due to the expiration of the statute of limitations.¹⁶¹ The related case against Robert Hecht, a notorious dealer of stolen antiquities, was also dismissed due to the expiration of the statute of limitations.¹⁶² The *True* case is seen as an attempt to place pressure on international collectors to verify the origin of their artifacts.¹⁶³ "Museums must learn you can't turn a blind eye to art theft," a member of the Italian prosecution team said.¹⁶⁴ While the trial was pending, United States public prosecutor Matthew Bogdanos, explained that if True was found guilty and imprisoned, it would prevent future crimes.¹⁶⁵ He

¹⁵⁵ *Id.*

¹⁵⁶ See Lowe et al., *supra* note 126.

¹⁵⁷ See generally WATSON & TODESCHINI, *supra* note 32 (for information about Giacomo Medici's criminal activities).

¹⁵⁸ Felch, *supra* note 153.

¹⁵⁹ See *id.*; see also FELCH & FRAMMOLINO, *supra* note 10 (describing Marion True and the Getty's illegal acquisitions).

¹⁶⁰ See Slayman, *supra* note 135.

¹⁶¹ Italy v. Marion True, Trib. Roma, sez. VI pen., n. 19360/10 (Oct. 13, 2010) (It.).

¹⁶² *Id.*

¹⁶³ See Bruce Johnson, *Getty Museum Curator Turned 'Blind Eye to Art Theft,'* TELEGRAPH, July 19, 2005, <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/1494375/Getty-museum-curator-turned-blind-eye-to-art-theft.html>.

¹⁶⁴ *Id.*

¹⁶⁵ See Lowe et al., *supra* note 126.

believed that a conviction would act as a deterrent for future illegality, and he thought it necessary to set this example, as prison is a true deterrent for many art criminals.¹⁶⁶ When dealing with criminals with great monetary reserves, criminal punishments, such as imprisonment, may be the only real deterrent.¹⁶⁷ Monetary fines will not deter collectors or museums with unlimited funds, since those caught engaging in illegal activity may find financial support from other members of their circles.¹⁶⁸ For those malfeasors, incarceration is the only deterrent as a prison sentence may be the only punishment that can outweigh the economic gain from the commission of white collar crimes.¹⁶⁹ Since some museums (and some of their representatives) have large monetary resources and endowments, incarceration may be the appropriate penalty and deterrent for museum representatives.

Italy is leading the world in the prevention of illicit art exchanges. Rocco Buttiglione, the former Italian Minister of Cultural Heritage and Activities, said that the nation was paving the way for other countries to retrieve looted heritage. “The age of trafficking in art pieces is over,” he warned.¹⁷⁰ The United States government should emulate the legal actions taken by Italy.

3. One of the Positive Effects of the True Prosecution Was Italy’s Innovative Loan Program

One way to decrease the acquisition of looted objects is to reduce the incentive to acquire these pieces. Rather than purchase or accept donations of objects with questionable or problematic provenance, museums can gain access to top-quality antiquities through loan programs.¹⁷¹ Italy has instated an innovative loan program to encourage the return of artwork and prevent future

¹⁶⁶ *See id.*

¹⁶⁷ *See* J. Scott Dutcher, *supra* note 125, at 1305 (“Only the possibility of a truly significant prison term could have deterred someone with no moral compass when the potential gains were so high.”).

¹⁶⁸ *See id.*

¹⁶⁹ *See id.*

¹⁷⁰ Lowe et al., *supra* note 126.

¹⁷¹ *See* Press Release, The J. Paul Getty Museum, Italian Ministry of Culture and the J. Paul Getty Museum Sign Agreement in Rome (Aug. 1, 2007), *available at* http://getty.art.museum/news/press/center/italy_getty_joint_statement_080107.html.

looting.¹⁷² Museums that cooperate with Italy's repatriation efforts will gain greater access to an increased number of long-term loans of Italian archaeological materials, but those that do not, may find Italian works unavailable.¹⁷³ The Italian Ministry of Culture touted this program when it settled an agreement with the Metropolitan Museum of Art ("the Met") in New York City. In January 2006, the Italian Ministry of Culture sent a formal proposal to the Met, which the museum accepted the next month.¹⁷⁴ In exchange for the return of twenty-one Italian antiquities, including the Eupronios Krater (a krater found in Cerveteri, Italy),¹⁷⁵ the Italian government would lend the Met comparable artifacts for up to four years.¹⁷⁶ In addition, the museum would be permitted to sponsor excavations in Italy and take finds to the United States.¹⁷⁷

The instatement of a loan program on the international level will benefit the preservation of art.¹⁷⁸ A lawyer for the Italian Ministry of Culture, Maurizio Fiorilli, expressed hope that Italy's

¹⁷² See Ralph Frammolino, *The Goddess Goes Home*, SMITHSONIAN MAG., Nov. 2011, <http://www.smithsonianmag.com/history-archaeology/The-Goddess-Goes-Home.html> (describing the return of a Central Sicilian statue from the Getty Museum in consideration of exchange for long-term loans); *Times Topic: Euphronios Krater*, N.Y. TIMES, http://topics.nytimes.com/top/reference/timestopics/subjects/e/euphronios_krater/index.html (last visited Mar. 15, 2014) (explaining that the Italian government agreed long-term loans in exchange for the return of the Euphronios Krater); see also Press Release, Museum of Fine Arts, Boston and the Italian Ministry of Culture, MFA Boston and Italian Ministry of Culture Sign Agreement Marking New Era of Cultural Exchange (Sept. 26, 2008), available at <http://www.mfa.org/collections/art-past/italian-ministry-culture-agreement> (lauding the return of objects from Boston's Museum of Fine Arts in exchange for long-term loans and educational collaboration with the Italian Ministry of Culture).

¹⁷³ See Hugh Eakin, *Italy Goes on Offensive with Antiquities*, N.Y. TIMES, Dec. 26, 2005, <http://www.nytimes.com/2005/12/26/arts/design/26loan.html?pagewanted=all>.

¹⁷⁴ See Slayman, *supra* note 135.

¹⁷⁵ See Neil Brodie, Case Studies, *Euphronios (Sarpedon) Krater*, TRAFFICKING CULTURE, http://traffickingculture.org/case_note/euphronios-sarpedon-krater (last modified Sept. 6, 2012).

¹⁷⁶ See Eakin, *supra* note 173.

¹⁷⁷ See Press Release, Metropolitan Museum of Art, Statement on Agreement with Italian Ministry of Culture (Feb. 21, 2006), available at <http://www.metmuseum.org/about-the-museum/press-room/news/2006/statement-by-the-metropolitan-museum-of-art-on-its-agreement-with-italian-ministry-of-culture>.

¹⁷⁸ See Paige S. Goodwin, Comment, *Mapping the Limits of Repatriable Cultural Heritage: A Case Study of Stolen Flemish Art in French Museums*, 157 U. PA. L. REV., 673, 689–91 (2008).

loan program can become a model for cooperation in the exchange of cultural heritage objects.¹⁷⁹ For example, Italy loans works to museums so that people around the world can view and enjoy the nation's treasures.¹⁸⁰ Returning undocumented pieces to gain access to loans enables museum directors to fulfill their fiduciary duties as it creates greater art access to the public, who are the actual museum beneficiaries. Through this loan program, the viewing public gets access to top-quality objects without museums driving the market for looted or undocumented art.¹⁸¹ With this type of program, museum curators will not need to use black market sources to acquire works; rather, museums will have an opportunity to collaborate with foreign nations to responsibly display licit objects.¹⁸² With a loan program, museums will have an incentive to cooperate with foreign nations and not acquire problematic pieces because museums demonstrating "good faith" in their purchases will be granted the benefit of loans.¹⁸³ As recognized by former director of the Met, Philippe de Monetebello, a loan program paves the road to ethical norms while still providing millions of museums visitors with the opportunity to see rare and valuable archaeological material.¹⁸⁴

D. There are Inherent Difficulties in Prosecuting Antiquities Looters and Dealers

1. Proving Scierter Has Been a Major Stumbling Block

One of the difficulties in prosecuting an art thief or purchaser of stolen goods under the NSPA, is proving scierter (the defendant's state of mind indicating that he had knowledge that the

¹⁷⁹ See Eakin, *supra* note 173.

¹⁸⁰ See United States-Italy: Agreement Between the Government of the United States of America and the Government of the Republic of Italy Concerning the Imposition of Import Restrictions on Categories of Archaeological Material Representing the Pre-Classical, Classical and Imperial Roman Periods of Italy, U.S.-It., Jan. 19, 2001, 40 ILM 1031.

¹⁸¹ See Suzan Mazur, *Maurizio Fiorilli—Italy's Antiquities Prosecutor*, SCOOP (Feb. 17, 2006), <http://www.suzanmazur.com/?p=123>.

¹⁸² See Eakin, *supra* note 173.

¹⁸³ See *id.*

¹⁸⁴ See Elisabetta Povoledo, *Italy and U.S. Sign Antiquities Accord*, N.Y. TIMES, Feb. 22, 2006, <http://travel.nytimes.com/2006/02/22/arts/design/22anti.html?pagewanted=all>.

goods were stolen).¹⁸⁵ Whereas scienter is often a stumbling block for prosecutors in any theft matter, it is more difficult in the case of undocumented art than for other goods.¹⁸⁶ Art and cultural heritage items are unique. Unlike other sectors, such as the securities market, the art market is unregulated.¹⁸⁷ As stated by art critic Robert Hughes, “[a]part from drugs, art is the biggest unregulated market in the world.”¹⁸⁸ This market has been characterized as “a very dangerous place, populated by any number of unscrupulous figures.”¹⁸⁹ Unlike goods that are prima facie illegal, such as illegal drugs that are unlawful to possess, art and cultural objects are not prima facie illegal.¹⁹⁰ And whereas illegal items like endangered species¹⁹¹ and regulated items are readily identifiable, recognizing an art object as stolen is complex and difficult, even for art experts and archaeologists. Only antiquities that are stolen, looted, or improperly exported are illegal to import and purchase, and their illegal status is not obvious.

The exchange of antiquities is frequently completed through art dealers and auction houses, and this is often done without the verification of provenance or provenience; therefore, it may be very difficult to demonstrate a legitimate chain of title.¹⁹² Because of the often secret and anonymous nature of art exchanges,¹⁹³ gaps in provenance exist, and stolen or looted objects may resurface on

¹⁸⁵ See 18 U.S.C. § 2315 (2012) (requiring knowledge that the object was “stolen, unlawfully converted or taken”). See generally *United States v. McClain*, 545 F.2d 988, 1002 (5th Cir. 1977) (noting that because defendants’ lacked the knowledge that the articles were deemed “stolen” under Mexican law, they were not liable under the NSPA).

¹⁸⁶ See Kreder, *supra* note 114.

¹⁸⁷ See Toby Hill, *The Art Market: Unregulated Unscrupulous and Worth Billions*, ARTLYST (Nov. 13, 2012), <http://www.artlyst.com/articles/the-art-market-unregulated-unscrupulous-and-worth-billions>.

¹⁸⁸ *Id.* (internal quotation marks omitted).

¹⁸⁹ *Id.* (internal quotation marks omitted).

¹⁹⁰ See *United States v. Mask of Ka Nefer-Nefer*, No. 4:11-CV-504-HEA, 2012 WL 1094652 (E.D. Mo. Mar. 31, 2012) (explaining that unlike illegal drugs, an antiquity such as a mummy mask is not contraband per se “as [artifacts] may be lawfully owned and become contraband only based on a connection with a criminal act”).

¹⁹¹ See *The Endangered Species Act prohibits the ownership and importation of species identified as endangered*, Endangered Species Act of 1973, 16 U.S.C. §§ 1531–44 (2012).

¹⁹² See Kreder, *supra* note 114.

¹⁹³ See *id.*

the legitimate market without the buyer's knowledge of its surreptitious background.¹⁹⁴ For example, the art company ARIS promises anonymity in its brochure.¹⁹⁵

2. There Are Inherent Difficulties in Prosecuting Museum Representatives

One of the particular difficulties in regulating museums is that museum representatives are not often sanctioned for illegal behavior or actions carried out in bad faith. The structure of museums' boards of trustees and self-regulators is an exclusive group of close-knit individuals.¹⁹⁶ Yet, the dynamics of the museum hierarchy militate against whistle-blowing; the board members themselves are the people responsible for overseeing the inner-workings of the institutions.¹⁹⁷ Since members of the museum community will not take action against or report fellow members of their board, these malfeasors are insulated.¹⁹⁸ And it is unlikely that outsiders will discover problematic acquisitions in a timely manner, as there is generally no legal requirement for museums to publish their acquisitions.¹⁹⁹ Actions against these institutions are rarely pursued.²⁰⁰ Without the shareholder reporting requirements that regulate publicly-traded companies, the

¹⁹⁴ See *id.*

¹⁹⁵ ARIS TITLE INSURANCE CORPORATION, THE ART OF RISK MANAGEMENT, available at [www.aristitle.com/news/docs/Quest_Jan12%20\(2\).pdf](http://www.aristitle.com/news/docs/Quest_Jan12%20(2).pdf) (last visited Mar. 15, 2013).

¹⁹⁶ See generally Robin Pogrebin, *Trustees Find Board Seats Are Still Luxury Items*, NY TIMES, Apr. 2, 2010, <http://www.nytimes.com/2010/04/03/arts/03center.html?pagewanted=all>. The Board of Trustees lists notable members such as the editor of Vogue, Anna Wintour; New York City Mayor, Michael Bloomberg; and former CEO of March & McLennan, Jeffrey W. Greenberg. See METROPOLITAN MUSEUM OF ART, ANNUAL REPORT FOR THE YEAR 2012–2013, available at http://www.metmuseum.org/about-the-museum/annual-reports/~/_media/Files/About/Annual%20Reports/2012_2013/Annual%20Report%202013.pdf.

¹⁹⁷ See GERSTENBLITH, *supra* note 44, at 235.

¹⁹⁸ See Michael Balter, *\$200 Million Gift for Ancient World Institute Triggers Backlash*, 311 SCIENCE 1846, 1846 (2006) (noting that the Leon Levy foundation's Levy-White collection contained looted objects and that around 200 artifacts from the Levy-White collection, over 90% of which had "no known provenance," were shown at the Metropolitan Museum of Art); see also *Officers & Staff*, LEON LEVY FOUNDATION, <http://leonlevyfoundation.org/category/the-foundation/officers-staff> (last visited Mar. 15, 2014) (stating that Shelby White serves on the board of The Metropolitan Museum of Art).

¹⁹⁹ See Boehm, *supra* note 16.

²⁰⁰ See Kreder, *supra* note 114.

non-profit structure of museums leads to difficulty in maintaining proper supervision. The lack of members with a financial interest—or of defined beneficiaries or owners—leads to difficulty in oversight and enforcement of appropriate standards of conduct for the managers of nonprofit organizations.²⁰¹

Charitable organizations, such as museums, are generally considered public institutions;²⁰² therefore, the entire public should benefit from their activities.²⁰³ The Attorney General represents the public and has standing to sue museums.²⁰⁴ The public does not have the power to take action, and thus must rely solely upon the Attorney General's discretion to bring suit.²⁰⁵ Unfortunately though, there is nothing to compel legal action,²⁰⁶ particularly because museum trustees are usually wealthy and influential.²⁰⁷ Furthermore, each state's Attorney General is understaffed and underfunded.²⁰⁸ There is often not enough knowledge or impetus for the Attorney General to initiate action. And since the preservation of artwork has historically not been the primary concern of governing officers, the improper acquisition of property has been left unchecked. With all of these factors, Attorney General intervention is too sporadic to be a credible threat of imminent, informed legal action.²⁰⁹

Other nations, such as Greece and Italy, have deemed it important to take action against cultural heritage destruction and the trade of objects without proper provenance.²¹⁰ Italy's

²⁰¹ See Patty Gerstenblith, *Acquisition and Deacquisition of Museum Collections and the Fiduciary Obligation of Museums to the Public*, 11 CARDOZO J. INT'L & COMP. L. 409, 412–13 (2003).

²⁰² See *People ex rel. Scott v. George F. Harding Museum*, 374 N.E.2d 756, 760 (Ill. App. Ct. 1978).

²⁰³ See GERSTENBLITH, *supra* note 44, at 236.

²⁰⁴ See John Henry Merryman, *Museum Ethics*, 1 ART & MUSEUM L.J. 93 (2006), available at http://www.law.harvard.edu/faculty/martin/art_law/museum_ethics.html.

²⁰⁵ See *id.*

²⁰⁶ See MERRYMAN ET AL., *supra* note 38, at 966.

²⁰⁷ See Merryman, *supra* note 204.

²⁰⁸ See *id.*

²⁰⁹ *Id.*

²¹⁰ See *Two Greeks Jailed for Life over Illegal Antiquities, Two More Men for 20 and 16 Years*, ARTDAILY.ORG, http://artdaily.com/index.asp?int_sec=2&int_new=59703# (last visited Mar. 15, 2014) (explaining that two men in Greece were given life sentences for

aggressive prosecution tactics would be furthered by the support of other nations. And since the U.S. art market is probably still the largest in the world,²¹¹ the United States should have an ethical obligation to prevent these offenses against humanity. There are many very rich collectors who will pay exorbitant amounts of money to acquire stolen artwork.²¹² As one art investigator aptly stated, “Until the entire art world decides it can’t handle stolen goods, things are unlikely to get better.”²¹³ Without criminal sanctions, art theft will continue, so it is necessary for government officials and regulating bodies to monitor museums and pursue both civil and criminal actions against these seemingly untouchable institutions.

E. Museums Acquisition Policies Should Be Federally Mandated and Museum Purchases Should Be Subject to Scrutiny from Federal and State Representatives

1. Stricter Oversight of Museums is Necessary

In addition to increasing penalties for illicit art acquisition, laws should mandate museums and galleries to exercise greater care when acquiring artwork. Museums are established to further society’s knowledge about art and culture, thus these institutions should act responsibly.²¹⁴ According to the American Alliance of Museums in 2000 (then American Association of Museums), “[a]s society has come to rely more on museums for education about, as well as *preservation of, its cultural heritage*, it has also come to expect more of its museums—more accountability, more

dealing in looted antiquities); Trib. Roma, sez. VI pen., n. 19360/10 (Oct. 13, 2010) (It.) (the nation of Italy leveraged criminal sanctions against museum curator, Marion True).

²¹¹ See David Barboza et al., *supra* note 102.

²¹² See David W. J. Gill, *Looting Matters for Classical Antiquities: Contemporary Issues in Archaeological Ethics*, 1 PRESENT PASTS 77 (2010), available at <http://www.presentpasts.info/article/view/pp.14/23> (listing Leon Levy, Shelly White, and the Fleishmanns as collectors of looted art-questionable interpretation).

²¹³ See Lowe et al., *supra* note 126 (internal quotation mark omitted).

²¹⁴ See Wyatt, *supra* note 85 (quoting law professor Patty Gerstenblith, stating “[a]s educational institutions, museums have a responsibility to look beyond that particular object’ that they may be acquiring”).

transparency of action, and more leadership in community”²¹⁵ However, there are no federally mandated civil penalties or criminal penalties for violations of guidelines.²¹⁶ In order to insure that appropriate standards are being followed, museums should be subjected to a higher level of scrutiny with legal ramifications. But museums may hesitate to support stricter requirements because they restrict curators to acquire only items that have a definitive provenance and bill of sale, and museums would lose out on prize items and desirable objects for their collections.

2. Museums are Not-for-Profit Organizations Entitled to Tax Advantages, Thus Have an Obligation to Acquire Items Responsibly and Fulfill Their Fiduciary Obligations of Loyalty and Due Care

There should be no assumption that museums always act as good faith purchasers. Placing pressure on museums to properly research and authenticate the provenance of artwork is appropriate since these institutions have the ability to adequately research their acquisitions.²¹⁷ In fact, these institutions are in the best position possible to properly research their acquisitions, because these institutions have full-time employees who devote their careers to the study of art.²¹⁸ As non-profit institutions, museums receive tax benefits;²¹⁹ some of those funds should be used to properly research purchases.

²¹⁵ See Technical Bulletin, OKMUSEUMS.ORG http://www.okmuseums.org/sites/oma2/uploads/documents/Technical_Bulletins/Technical_Bulletin_36_-_Exhibiting_Borrowed_Objects.pdf (last visited Apr. 21, 2014) (quoting the *Code of Ethics for Museums*, AM. ALLIANCE OF MUSEUMS 2000) (emphasis added).

²¹⁶ See Boehm, *supra* note 16.

²¹⁷ See Geoff Edgers, *A Detective's Work at the MFA*, BOS. GLOBE, Dec. 11, 2011, <http://www.bostonglobe.com/arts/2011/12/11/detective-work-mfa/6iaei4YOQOj83s9u3YfDXO/story.html> (stating that, in 2010, Boston's Museum of Fine Arts created a curatorial position, curator of provenance, that is devoted solely to the research of provenance for objects in the museum's collection).

²¹⁸ See AIMÉE L. TABERNER, CULTURAL PROPERTY ACQUISITIONS, NAVIGATING THE SHIFTING LANDSCAPE 55 (2011) (explaining the proposition that curators are “more likely to recognize red-flag issues” related to illicit excavations and archaeological site destruction); *id.* at 92 (finding that museums have research resources readily available to “assist the museum staff in its investigation of foreign property laws”).

²¹⁹ See 26 U.S.C. § 501(a) (2012).

As defined by the International Council of Museums (“ICOM”), museums are a “permanent non-profit institution at the service of society and its development, open to the public, which collects, conserves, researches, exhibits, and makes accessible the tangible and intangible heritage of humanity and its environment for study, education and enjoyment.”²²⁰ This definition clearly provides that museums are established for public service.²²¹ Museums are, or should be, the most passionate advocates for the preservation of antiquities, due to their educational missions.²²² To properly serve the public, museums must refrain from illegal acquisitions—or the purchase of objects with incomplete provenance—and protect cultural objects to fulfill their stated purpose. Some commentators assert that museums breach their duty of care, and therefore their fiduciary obligations to the public, when they fail to establish policies that respect the history of an object and its educational and scientific value.²²³ Acquiring questionable objects and purchasing objects from dealers working with looted antiquities does not assist in preservation because it deprives society from valuable information about the objects. According to Paul Bator, former Harvard Law and Chicago Law School Professor who served as Deputy Solicitor General of the U.S. during the Reagan Administration,²²⁴ speaking in 1982, the acquisition of smuggled objects by “public institutions” is inappropriate for museums that must commit to preservation.²²⁵ He argued that when a museum acquires a smuggled object it cannot be certain that it did not help reward cultural destruction.²²⁶ It is highly unethical and contrary to a museum’s stated purpose,

²²⁰ ICOM, ICOM Internal Rules and Regulations, art. 2, sec. 1.1 (June 1, 2010), available at <http://archives.icom.museum/download/InternalRulesandRegulations.pdf>.

²²¹ See GERSTENBLITH, *supra* note 44, at 236.

²²² See TABERNER, *supra* note 218, at 108.

²²³ See Gerstenblith, *supra* note 201, at 453–54.

²²⁴ Alfonso A. Navarez, *Paul Michael Bator Is Dead at 59; Lawyer-Teacher Also Served U.S.*, N.Y. TIMES, Feb. 25, 1989, <http://www.nytimes.com/1989/02/25/obituaries/paul-michael-bator-is-dead-at-59-lawyer-teacher-also-served-us.html>.

²²⁵ Ildiko Pogany DeAngelis, *How Much Provenance Is Enough? Post-Schultz Guidelines for Art Museum Acquisition of Archeological Materials and Ancient Art*, in BARBARA T. HOFFMAN, ART AND CULTURAL HERITAGE: LAW, POLICY AND PRACTICE 398, 407 (2006).

²²⁶ *Id.*

for a museum to support, directly or indirectly, an illicit market in looted antiquities.²²⁷

Museums have fiduciary duties of loyalty and care²²⁸ arising from their statuses as charitable trusts or non-profit corporations.²²⁹ Yet museums differ from other trusts because the beneficiaries of museums are not named individuals, but the general public.²³⁰ The duty of loyalty is complete loyalty towards the beneficiary.²³¹ In fact, the American Alliance of Museums' Museum Director's Code of Ethics acknowledges the principle that museums have a commitment to the public.²³² The Code recognizes that a museum's duty to the public is not to just act legally, but also ethically, responding and representing the public interest.²³³

3. Museums' Not-for-Profit Status Should Require Heightened Standards

Museums and non-profit organizations are given tax exemptions because of the public service that they perform.²³⁴ Within the category of nonprofit organizations exists a subset that

²²⁷ See generally BRODIE, DOOLE & WATSON, *supra* note 23, at 43.

²²⁸ See Gerstenblith, *supra* note 201, at 416; Jennifer L. White, Note, *When It's OK to Sell the Monet: A Trustee-Fiduciary-Duty Framework for Analyzing the Deaccessioning of Art to Meet Museum Operating Expenses*, 94 MICH. L. REV. 1041, 1051 (1996).

²²⁹ See Emily A. Graefe, *The Conflicting Obligations of Museums Possessing Nazi-Looted Art*, 51 B.C. L. REV. 473, 493 (2010) (citing Daniel Range, Comment, *Deaccessioning and Its Costs in the Holocaust Art Context: The United States and Great Britain*, 39 TEX. INT'L L.J. 655, 657 (2004)), available at <http://lawdigitalcommons.bc.edu/bclr/vol51/iss2/4>.

²³⁰ See Patty Gerstenblith, *The Fiduciary Duties of Museum Trustees*, 8 COLUM.-VLA J.L. & ARTS 175, 177 (1983); Range, *supra* note 229, at 657.

²³¹ See Graefe, *supra* note 229, at 494, 494 n.173 (citing *Renz v. Beeman*, 589 F.2d 735, 740 (2d Cir. 1978)); *Meinhard v. Salmon*, 164 N.E. 545, 546 (N.Y. 1928) (stating that "[n]ot honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior"); see also 3 AUSTIN WAKEMAN SCOTT ET AL., SCOTT AND ASCHER ON TRUSTS § 17.2 (5th ed. 2007); White, *supra* note 228, at 1052. See generally Victor Brudney, *Contract and Fiduciary Duty in Corporate Law*, 38 B.C. L. REV. 595, 601–07 (1997) (providing an overview of the fiduciary duty of loyalty).

²³² Cf. *Code of Ethics for Museums*, AM. ALLIANCE OF MUSEUMS, <http://www.aamus.org/resources/ethics-standards-and-best-practices/code-of-ethics> (last visited Feb. 17, 2013).

²³³ See *id.*

²³⁴ See GERSTENBLITH, *supra* note 44, at 230–31.

are classified as either public benefit or charitable organizations.²³⁵ In the United States, “most museums qualify as charitable or public benefit organizations because of their educational, and sometimes, scientific purposes.”²³⁶ As non-profit corporations, museums also follow state charitable trust laws, which are designed to promote the public good.²³⁷ The Supreme Court held that organizations classified as “charitable” and established for the public good must not act against established public policy.²³⁸ Public interest group Saving Antiquities For Everyone proposes that attorneys general in the US have a responsibility to guarantee that museums formed for charitable purposes operate in conformity with the public interest.²³⁹ Since museums are given tax deductions and government funding, they should use these monetary resources for their intended purpose—the public good. It is in the public’s welfare for museums to properly investigate their acquisitions.²⁴⁰ Members of museums should ask questions of their institutions to determine whether the museum’s acquisition and accession policies diverge from accepted ethical purchasing standards.

4. There are Federal Tax Justifications for Stricter Scrutiny

Non-profit organizations receive significantly greater advantageous tax treatment at the federal and state levels, but are restricted to a narrower category of permissible purposes and stricter regulation of their activities and dissolution processes.²⁴¹ The purposes of this category are more restrictive, but include

²³⁵ See Gerstenblith, *supra* note 201, at 412 n.19 (stating that that “[n]onprofit organizations are typically divided into two categories: the public benefit and the mutual benefit organizations” (citing Howard L. Oleck & Martha E. Stewart, *NONPROFIT CORPORATIONS, ORGANIZATIONS & ASSOCIATIONS* 1-2 (6th ed. 1994)).

²³⁶ See Gerstenblith, *supra* note 201, at 413 (citations omitted).

²³⁷ See *People ex rel. Scott v. George F. Harding Museum*, 374 N.E.2d 756, 760 (Ill. App. Ct. 1978).

²³⁸ See *Bob Jones Univ. v. United States*, 461 U.S. 574, 591 (1983).

²³⁹ See Heather Hope Stevens, *All in a Day’s Work: How Museums May Approach Deaccessioning as a Necessary Collections Management Tool*, 22 DEPAUL J. ART, TECH. & IP LAW 119, 157–58 (2011).

²⁴⁰ See *Code of Ethics for Museums*, AM. ALLIANCE OF MUSEUMS, <http://www.aam-us.org/resources/ethics-standards-and-best-practices/code-of-ethics> (last visited Feb. 17, 2013)

²⁴¹ See *id.*; see also 26 U.S.C. § 501(a) (2012).

educational missions.²⁴² Since museums receive the benefit of tax deductions, they should also be subject to investigation by the Internal Revenue Service. The “security of [proper] title and the ability of a museum to know that the object was legally acquired is part of the market value of the object.”²⁴³ The understanding of good title should be incorporated into the valuation of a donated object for tax deduction purposes.²⁴⁴ Donors should not be given tax benefits for donating objects without provenance or good title. Some individuals derive financial benefits by donating looted art to unscrupulous museums.²⁴⁵ Donors purchase objects at “wholesale” value, receive inflated appraisals, donate the objects with the values stated on the appraisals, and then receive tax deductions for the gifts.²⁴⁶ The Getty has been recognized as carrying out this tax scheme, and assisting contributors such as Sy Weintraub make millions of dollars off of donations.²⁴⁷ Museum donors guilty of using inflated estimates for tax deductions have been threatened by the IRS with tax fraud charges.²⁴⁸ Thus, if the museum cannot prove proper title, then federal financial assistance through tax deductions should be denied.

F. As Institutions with a Charitable Purpose, and Their Position as the Caretakers of Art and History, Museums’ Actions Should be Subject to Heightened Due Diligence Standards as Seen in Other Areas of the Law

1. Changes in Acquisition Practices Should be Legally Mandated and Enforced

Deficient acquisition practices diminish society’s knowledge of history and cultural heritage. When dealing with antiquities, decontextualization is a major problem, and museums sometimes

²⁴² See *People ex rel. Scott*, 374 N.E.2d at 760.

²⁴³ See Gerstenblith, *supra* note 201, at 464.

²⁴⁴ See *id.*

²⁴⁵ See FELCH & FRAMMOLINO, *supra* note 10, at 32–36.

²⁴⁶ *Id.*

²⁴⁷ See Neil Brodie, *Jiri Frel*, TRAFFICKING CULTURE (Aug. 12, 2012), http://traffickingculture.org/case_note/jiri-frel.

²⁴⁸ See Jason Felch, *Getty Museum Studies Its Antiquities*, LA TIMES, Jan. 19, 2013, http://www.latimes.com/entertainment/arts/culture/la-et-getty-ambers-20130119,0,1165994.story?page=1&goback=.gde_3674711_member_206310047.

play a prominent role in this process.²⁴⁹ The loss of cultural, historical and scientific knowledge is in opposition to a museum's educational purpose.²⁵⁰ To fulfill their educational mission, museums must refrain from poor acquisition practices.

The International Council of Museums ("ICOM") is an organization with voluntary membership that sets forth a Code of Ethics for Museums.²⁵¹ To join ICOM, museums must agree to abide by the ICOM Code, which was set forth in 1986 and then updated in 2004.²⁵² The Code establishes minimum standards of professional practice and performance for museum institutions.²⁵³ In the most recent edition, the Code calls for museums to recognize the necessity of ethical acquisition practices, stating that "[m]embers of the museum profession should not support the illicit traffic or market in natural and cultural property, directly or indirectly"²⁵⁴ and "[m]useums should not acquire objects where there is reasonable cause to believe their recovery involved unauthorized or unscientific fieldwork, or intentional destruction or damage of monuments, archaeological or geological sites, or of species and natural habitats."²⁵⁵ It should be noted that museums must do more than follow proper acquisition practices. In addition to not purchasing looted items, museums should also refrain from accepting problematic objects from donors or lenders.²⁵⁶

However, the ICOM guidelines are not binding law and they do not carry any economic or criminal penalties. In the same way, the American Alliance of Museums ("AAM") and the Association of Art Museum Directors ("AAMD") also offer acquisition guidance, in the form of standards, reports, recommendations, and ethics codes.²⁵⁷ However, this guidance also has little impact, as

²⁴⁹ See Gerstenblith, *supra* note 201, at 450.

²⁵⁰ See *id.*

²⁵¹ *ICOM Missions*, INT'L COUNSEL OF MUSEUMS, <http://icom.museum/the-organisation> (last visited Mar. 15, 2014).

²⁵² See ICOM, ICOM Code of Ethics for Museums (2013), available at http://icom.museum/fileadmin/user_upload/pdf/Codes/code_ethics2013_eng.pdf.

²⁵³ See *id.*

²⁵⁴ *Id.* art. 8, sec. 5.

²⁵⁵ *Id.* art. 2, sec. 4.

²⁵⁶ See TABERNER, *supra* note 218, at 68 (suggesting obtaining a signed affidavit from the donor).

²⁵⁷ See *id.* at 40–41.

the guidelines and recommendations are not law or obligatory mandates.²⁵⁸ Currently though, museum acquisition policies allow for acquisitions without full documentation. Proper title and good faith actions on the part of the seller and acquiring party should not be the presumption.²⁵⁹ Museums must not simply accept the word of a seller or donor about the provenance or legitimacy of an object.²⁶⁰ Failure to provide a museum with documentation related to the works provenance and legitimacy should be a red flag to a museum.²⁶¹ In addition, museums should consider a dealer's or donor's reputation and any criminal record or questionable sales or donations.²⁶²

Yet even these guidelines have been ignored or disregarded. For example, the Getty Museum's policy requires the museum to acquire only collections documented prior to 1995.²⁶³ This requirement was widely admired because it prohibited the museum from collecting looted or illegitimate items.²⁶⁴ However, shortly after this policy was enacted, the Getty acquired a collection of over 300 objects of Greek, Roman, and Etruscan origin from a private collector.²⁶⁵ Reportedly, provenience for eighty-five percent of these objects was unknown, but the Getty relied upon its own catalog from a loaned exhibition to manufacture provenance.²⁶⁶ Critics accused the museum of creating documentation to fulfill its own requirements for provenance and thereby tacitly condoning the flow of illegal antiquities.²⁶⁷

²⁵⁸ See *id.* at 43; see also Boehm, *supra* note 16.

²⁵⁹ See TABERNER, *supra* note 218, at 49.

²⁶⁰ See *id.* at 66.

²⁶¹ See *id.*

²⁶² See *id.*

²⁶³ See DeAngelis, *supra* note 225, at 405.

²⁶⁴ See Neil Brodie, *Marion True*, TRAFFICKING CULTURE, <http://traffickingculture.org/encyclopedia/case-studies/marion-true>; see also Press Release, J. Paul Getty Museum Announces Revised Acquisitions Policy, GETTY (Oct. 26, 2006), https://www.getty.edu/news/press/center/revised_acquisition_policy_release_102606.html.

²⁶⁵ See DeAngelis, *supra* note 225, at 405.

²⁶⁶ See Robin Short Myren, *Provenance Factors for Antiquities Acquisitions*, 24 SOCIETY FOR CAL. ARCHAEOLOGY PROCEEDINGS, at 3 (2010), available at <http://scahome.org/publications/proceedings/Proceedings.24Myren.pdf>.

²⁶⁷ See *id.*

The St. Louis Art Museum (“SLAM”) was recently brought to federal court for purchasing a missing 3,000-year-old funerary mask that was originally discovered in Egypt in 1952.²⁶⁸ Egyptian authorities claim that the piece was stolen; SLAM denies this charge, and claims to have purchased the mask in good faith, after examining the mask’s good provenance.²⁶⁹ The museum purchased the antiquity from Phoenix Ancient Art, a gallery owned by Ali and Hicham Aboutaam, brothers with a criminal history of dealing in looted antiquities.²⁷⁰ The brothers were accused of selling items with provenance gaps to the Cleveland Museum of Art,²⁷¹ Hicham pled “guilty to a misdemeanor charge of misrepresenting the origin of an Iranian drinking vessel on customs documents,”²⁷² the Aboutaams had connections with infamous dealer of looted antiquities, Giacomo Medici,²⁷³ and Ali was indicted by Egypt, and found guilty *in absentia*, for helping to smuggle antiquities out of the country.²⁷⁴ SLAM maintains its due diligence was properly conducted, although there were important documents missing from the provenance report and questionable pieces of information that should have raised a red flag for any curator or museum professional acquiring objects.²⁷⁵ According to the Aboutaams, the piece was legitimately bought, although there is no record of any legal purchase or transport of the mask out of

²⁶⁸ See *United States v. Mask of Ka-Nefer-Nefer*, No. 4:11-CV-504-HEA, 2012 WL 1094652, at *1 (E.D. Mo. Mar. 31, 2012).

²⁶⁹ *Id.*

²⁷⁰ See Press Release, Art Dealer Pleads Guilty in U.S. Court to Customs Violation in Iranian Antiquity Case, U.S. Attorney’s Office, Southern District of New York (June 23, 2004), available at <http://www.cemml.colostate.edu/cultural/09476/pdf/doj-aboutaam-06-2004-pr.pdf>; *Sleeping Beauty: Seizure of Sarcophagus in New York Shows Value of Becchina Dossier*, CHASING APHRODITE (Mar. 1, 2014), <http://chasingaphrodite.com/tag/hicham-aboutaam>; see also Paul Barford, *Aboutaam Antiquities Arrest?* (July 2, 2011), <http://paul-barford.blogspot.com/2011/07/aboutaam-antiquities-arrest.html>.

²⁷¹ See Steven Litt, *Cleveland Museum of Art Buys Important Ancient Roman and Mayan Antiquities*, CLEVELAND.COM (Aug. 12, 2012, 10:00 PM), http://www.cleveland.com/arts/index.ssf/2012/08/cleveland_museum_of_art_buys_i.html.

²⁷² Malcolm Gay, *For the St. Louis Art Museum, a Legal Victory Raises Ethical Questions*, ATLANTIC (May 30, 2012, 12:34 PM), <http://www.theatlantic.com/national/archive/2012/05/for-the-st-louis-art-museum-a-legal-victory-raises-ethical-questions/257839>.

²⁷³ See WATSON & TODESCHINI, *supra* note 32, at 153, 183–84.

²⁷⁴ See Gay, *supra* note 272.

²⁷⁵ *Id.*

Egypt.²⁷⁶ Phoenix Ancient Art sold the mask to SLAM in 1998 for half a million dollars.²⁷⁷ Due to the Aboutamms' well-known "criminal history," the [federal prosecutor] characterize[d] [SLAM's] due diligence as 'pro forma,' charging the museum 'knew or was willfully blind to the fact that the Mask was stolen property both before and after its importation.'"²⁷⁸

2. In Developing the Appropriate Standard, We Should Examine Comparable Corporate Standards

By turning a blind eye to suspicious circumstances, museums breach their fiduciary duties when acquiring looted or questionable items.²⁷⁹ In the corporate world, business directors are held to the "business judgment rule." Under this rule, it is assumed that corporation directors are motivated by the interests of the corporation.²⁸⁰ This standard, as articulated in *Grobow v. Perot*, requires that business directors (1) act in good faith; (2) act on an honest belief that their actions are in the best interests of the corporation; (3) act on an informed basis; (4) not be wasteful; and (5) not act in self-interest.²⁸¹ These requirements reflect the business directors' fiduciary duties of good faith, loyalty, and due care.²⁸² However, the business judgment rule standard may not be harsh enough, as directors are not liable for negligence—they are only liable for *gross* negligence.²⁸³

In exercising good faith and fulfilling their fiduciary duties, museums should be held to an elevated standard. Museums are not typical purchasers of art, they are institutions with vast resources

²⁷⁶ See Paul Barford, *Focus on the Ka Nefer Nefer "Collection History,"* PORTABLE ANTIQUITY COLLECTING AND HERITAGE ISSUES (Apr. 7, 2012), <http://paul-barford.blogspot.com/2012/04/focus-on-ka-nefer-nefer-collection.html>.

²⁷⁷ See Malcom Gay, *Out of Egypt*, RIVERFRONT TIMES, Feb. 15, 2006, <http://www.riverfronttimes.com/2006-02-15/news/out-of-egypt/full>.

²⁷⁸ Gay, *supra* note 272.

²⁷⁹ See *supra* notes 228 and 230.

²⁸⁰ See *Gimbel v. Signal Cos.*, 316 A.2d 599, 608–609 (Del. Ch. 1974) (quoting *Robinson v. Pittsburgh Oil Ref. Corp.*, 126 A. 46, 48 (Del. Ch. 1924)).

²⁸¹ *Grobow v. Perot*, 539 A.2d 180 (Del. 1988).

²⁸² See *Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 361 (Del. 1993).

²⁸³ See *Aronson v. Lewis*, 473 A.2d 805, 812, 812 n.6 (Del. 1984). See generally Jorja Ackers Cirigliana, *Let Them Sell Art: Why a Broader Deaccession Policy Today Could Save Museums Tomorrow*, 20 S. CAL. INTERDISC. L.J. 365 (2011).

with the ability to properly investigate title and origin.²⁸⁴ Museums should not contemplate the purchase of objects that would, in any actual or even perceived way, encourage the trade and illegal import of looted cultural heritage.²⁸⁵ Because the danger of stolen artwork is so great, museum curators must assume that work was not legally acquired, rather than blindly accepting that all objects were properly obtained. In determining whether an action was made in “good faith” by a business director, it is unclear whether this standard is objective or subjective.²⁸⁶ However, courts have recognized a limited objective element to the good faith standard.²⁸⁷ Some courts have found that the failure of business directors to make an inquiry does not constitute bad faith, unless the facts are so cogent and obvious that passiveness amounts to the deliberate evasion of knowledge.²⁸⁸ Although this recognizes the link between good faith and conscious avoidance, the mere lack of research would not constitute bad faith under the current standard. That is not the proper standard; museums should be required to complete a full investigation. The museum standard should be amended to hold that lack of research actually is an act of bad faith since such lack of investigation allows museums to willfully turn a blind eye towards acquisitions without proper provenance.

Rather than having curators merely assume that a work was properly acquired, museum officials should follow the lead of major museums in Philadelphia that have been at the forefront of arguing against the looted and stolen art trade.²⁸⁹ The University of Pennsylvania Museum of Archaeology and Anthropology

²⁸⁴ See *Acquisitions and Provenance Policy*, MUSEUM OF FINE ARTS BOSTON, <http://www.mfa.org/collections/art-past/acquisitions-and-provenance-policy> (last visited May 24, 2014); *VFMA and Provenance Research*, VIRGINIA MUSEUM OF FINE ARTS, <http://vmfa.museum/collections/vmfa-and-provenance-research> (last visited May 24, 2014).

²⁸⁵ See TABERNER, *supra* note 218, at 49.

²⁸⁶ See Melvin Aron Eisenberg, *The Divergence of Standards of Conduct and Standards of Review in Corporate Law*, 62 FORDHAM L. REV. 437, 441 (1993).

²⁸⁷ See *id.* at 441–42.

²⁸⁸ See *Richards v. Platte Valley Bank*, 866 F.2d 1583 (10th Cir. 1989).

²⁸⁹ See Stephan Salisbury, *On Alert for Looted Art*, PHILLY.COM, Apr. 13, 2006, http://articles.philly.com/2006-04-13/news/25395322_1_antiquities-getty-museum-artifacts.

follows a very strict acquisition policy.²⁹⁰ According to former Williams Director of the University of Pennsylvania Museum of Archaeology and Anthropology, Richard M. Levanthal, unless a seller or donor can unequivocally demonstrate that an object is legal, and provide the proper paperwork, the museum will not acquire the object.²⁹¹ The burden of proof, according to Levanthal, is *not* to assume that the work is legal.²⁹²

3. It is Appropriate to Utilize the Security and Exchange Commission As a Model Through Which to Properly Monitor Museums

Museums are established to house, educate, and preserve.²⁹³ If these are truly the aims of museums, then applying greater scrutiny to these institutions is appropriate, as greater oversight from outside governance will champion the cause of preservation and education. Greater scrutiny will ensure that museum employees properly purchase works through ethical and responsible acquisition practices. There is a need for a uniform, and legally enforceable, standard in the U.S. on which to model museum acquisitions.²⁹⁴ Since museums control priceless objects of fundamental societal interest, it is appropriate to hold these organizations to a standard similar to other organizations and businesses controlling valuable assets. An appropriate model for guidance is the stock exchange listing requirements. During the past two decades, the Securities and Exchange Commission (“the SEC”) has made requirements more stringent to avoid scandal and protect stockholders.²⁹⁵ The SEC found it necessary to enact more

²⁹⁰ See *id.*

²⁹¹ See *Strict Antiquities Policies Spare Philadelphia Museums from Scrutiny*, BLOUIN ART INFO (Apr. 13, 2006), <http://www.artinfo.com/news/story/13828/strict-antiquities-policies-spare-philadelphia-museums-from-scrutiny>.

²⁹² See *id.*

²⁹³ See ICOM, ICOM Internal Rules and Regulations, art. 2, sec. 1.1 (June 1, 2010), available at <http://archives.icom.museum/download/InternalRulesandRegulations.pdf>.

²⁹⁴ See High Eakon, *Antiquities Trade Puts Museums Under Scrutiny*, U-T SAN DIEGO, Nov. 27, 2005, available at http://www.utsandiego.com/uniontrib/20051127/news_1a27looted.html.

²⁹⁵ See *Compensation Committees and the Stricter Standards of Independence Under SEC Rules and the IRS Code*, WALLER LANSDEN DORTCH & DAVIS, LLP (Jan. 24, 2005), <http://www.wallerlaw.com/News-Events/Bulletins/89105/Compensation-Committees->

stringent requirements to protect consumers;²⁹⁶ in the same way, stricter standards are needed to protect the beneficiaries (the public) of museums. Just as corporate scandals were gaining greater attention during the past two decades²⁹⁷ and spurred the passage of the Sarbanes-Oxley Act,²⁹⁸ nations around the world are becoming acutely aware of the multi-billion dollar market for black market antiquities that finds their way into private collections and museums.²⁹⁹ Consequently, there is a need for stricter regulations of museums. Just as regulations are needed to protect the public good of stocks, regulations must protect the public and societal goods of priceless artifacts. The SEC requires that people within a corporate hierarchy inform authorities about improper practices.³⁰⁰ Similarly, museum representatives and lawyers working as in-house counsel should have a similar responsibility to report and receive information from employees and directors about improper business transactions. This type of requirement should be instated since requiring museum employees to disclose improper acquisition activities will help to further self-regulation.³⁰¹

and-the-Stricter-Standards-of-Independence-Under-SEC-Rules-and-the-Internal-Revenue-Code.

²⁹⁶ See Jessica Holzer, *SEC Proposes Stricter Standards for Securities Brokerage*, WALL ST. J., June 16, 2011, <http://www.programbusiness.com/news/SEC-Proposes-Stricter-Standards-for-Securities-Brokerages>.

²⁹⁷ See Penelope Patsuris, *The Corporate Scandal Sheet*, FORBES (Aug. 26, 2002, 5:30 PM), <http://www.forbes.com/2002/07/25/accountingtracker.html>.

²⁹⁸ See Sarbanes-Oxley Act of 2002, Pub. L. 107-204, 116 Stat. 745, enacted July 30, 2002; John C. Coffee Jr., *Limited Options*, LEGALAFFAIRS, http://www.legalaffairs.org/issues/November-December-2003/review_coffee_novdec03.msp.

²⁹⁹ See Randy Kennedy, *Museum Defends Antiquities Collecting*, N.Y. TIMES, Aug. 12, 2012, http://www.nytimes.com/2012/08/13/arts/design/cleveland-museum-buys-antiquities-stirs-ethics-debates.html?pagewanted=all&_r=0.

³⁰⁰ See Gary DiBianco & Andrew M. Lawrence, *Investigation and Reporting Obligations Under Section 10A of the Securities Exchange Act: What Happens When the Whistle is Blown?*, SEC. FRAUD NAT'L INST. (Sept. 29, 2006).

³⁰¹ See MERRYMAN ET AL., *supra* note 38, at 966.

G. *The Need for Federal Oversight is Apparent*

1. Self-Regulation Conducted by Museums Has Not Been Effective

The continuing practice of acquiring problematic artifacts³⁰² demonstrates that many museums cannot self-regulate in a responsible way that will fulfill their non-profit purposes, despite having policies that purportedly aim to eliminate such questionable acquisition practices.³⁰³ The federal government should intervene, and legislation must be enacted to regulate museums' acquisition practices. At a minimum, museums should be required to use Internet government resources to investigate the legality of potential acquisition pieces.³⁰⁴ If an object in the collection was stolen at one time, there is a possibility that it is listed in a database of stolen art.³⁰⁵ Searching such databases should be a minimum first step. The Art Loss Register ("ALR") is a preeminent international stolen art database that lists over 300,000 works reported as stolen or missing.³⁰⁶ The ALR collects information from law enforcement agencies, insurance companies, and individuals.³⁰⁷ However, ALR cannot list objects that are undocumented—such as those surreptitiously excavated—so its effectiveness for archeological material may be limited.³⁰⁸

³⁰² Last year, the Republic of Turkey demanded the return of 21 antiquities from the Cleveland Museum of Art, after the museum purchased items without appropriate provenance. See *The Cleveland List: 21 Objects Turkey Wants Cleveland Museum of Art to Return*, CHASING APHRODITE (Apr. 2, 2012), <http://chasingaphrodite.com/2012/04/02/the-cleveland-list-21-objects-turkey-wants-cleveland-museum-of-art-to-return>. The Museum of Fine Arts Boston acquired a collection of looted Benin bronzes in 2012. See K. Opoku, *Will Boston Museum of Fine Arts Return Looted Benin Bronzes?* MUSEUM SECURITY NETWORK (Jan. 1, 2013), http://www.museum-security.org/opoku_boston_return.htm.

³⁰³ See *Boston's Museum of Fine Arts Urged to Return Looted Artifacts to Nigeria*, *supra* note 99; MUSEUM OF FINE ARTS BOSTON, *supra* note 284.

³⁰⁴ See DeAngelis, *supra* note 225, at 262.

³⁰⁵ See *Works of Art*, INTERPOL, <http://www.interpol.int/Crime-areas/Works-of-art/Works-of-art> (last visited May 24, 2014). For a partial list of databases, see *Stolen Art (Listing on Line)*, SAZ PRODUCTIONS, <http://www.saztv.com/page9.html> (last visited May 24, 2014).

³⁰⁶ See THE ART LOSS REGISTER, www.artloss.com (last visited Mar. 15, 2014).

³⁰⁷ See *Our Company*, THE ART LOSS REGISTER, <http://www.artloss.com/about-us/our-company> (last visited Mar. 15, 2014).

³⁰⁸ See DeAngelis, *supra* note 225, at 251.

Museums should also utilize the U.S. Department of State's website for objects controlled pursuant to CPIA.³⁰⁹ The International Property Protection Homepage of the U.S. Department of State is illustrated with thumbnail photographs of the type of objects subject to temporary import restrictions.³¹⁰

2. With the Destruction of Wartime Looting, It Is Imperative That Museums Do Not Purchase Plundered Antiquities and Fuel a Market That Results in Widespread Pillaging

There is a well-documented pillaging of cultural heritage in nations affected by war, such as with the numerous political uprisings in North Africa and the Middle East.³¹¹ In fact, UNESCO has issued a warning to the international art market that artifacts coming from some of the war-torn regions may have been looted.³¹² Also, it should be required for museums to check the FBI Art Theft Program prior to purchasing items.³¹³ Furthermore, statutes with sanctions (not just acquisition *guidelines*) should be enacted that require museums to publicize all new acquisitions, a practice undertaken by the Philadelphia Museum of Art,³¹⁴ through both purchase and gift, and to disclose documentation that establishes good title. Publicizing new purchases will help to avoid situations such as the purchase of black market items such as

³⁰⁹ See *Cultural Property Protection*, U.S. DEP'T OF STATE, <http://eca.state.gov/cultural-heritage-center/cultural-property-protection> (last visited Mar. 15, 2014).

³¹⁰ See *About the Image Database*, U.S. DEP'T OF STATE, <http://eca.state.gov/cultural-heritage-center/cultural-property-protection/about-image-database> (last visited Mar. 15, 2014).

³¹¹ See Robert Fisk, *Robert Fisk: Syria's Ancient Treasures Pulverized*, INDEPENDENT, Aug. 5, 2012, <http://www.independent.co.uk/voices/commentators/fisk/robert-fisk-syrias-ancient-treasures-pulverised-8007768.html>; see also Paul Peachey, *Watch out for Looted Libyan Artefacts, UN Warns Auction Houses*, INDEPENDENT, Aug. 26, 2011, <http://www.independent.co.uk/news/world/africa/watch-out-for-looted-libyan-artefacts-un-warns-auction-houses-2344154.html>.

³¹² See *UNESCO Warning Over Libya Looting*, BBC (Aug. 26, 2011, 7:39 AM), <http://www.bbc.co.uk/news/entertainment-arts-14676197>.

³¹³ See *Art Theft*, FBI, http://www.fbi.gov/about-us/investigate/vc_majorthefts/arttheft (last visited Mar. 5, 2014).

³¹⁴ See Stephan Salisbury, *On Alert for Looted Art Local Museums Cite Strict Rules Ensuring Artifacts Aren't Illicit*, PHILLY.COM (Apr. 13, 2006), http://articles.philly.com/2006-04-13/news/25395322_1_antiquities-getty-museum-artifacts.

the Lydian Hoard³¹⁵ and the Ka Nefer Nefer funerary mask.³¹⁶ When acquisitions are not publicized, they may remain hidden in museum collections for years, as in the case with the Lydian Hoard,³¹⁷ during which time the statute of limitations may expire.³¹⁸ During this time, objects are hidden from the eyes of the appropriate individuals who could properly identify them, provide information about their true provenience, and champion their restitution.³¹⁹

3. The Connection Between Cultural Heritage Looting and Terrorism Necessitates Stricter Acquisition Practices

There is a proven link between black market cultural heritage objects and terrorism,³²⁰ as there is a connection between art crime and terrorism.³²¹ There is a growing body of evidence that links the trade in looted antiquities to organized crime and terror.³²² U.S. public prosecutor and former head of investigation into the

³¹⁵ See *Lydian Treasure*, THE CULTURAL HERITAGE RESOURCE OF THE STANFORD ARCHAEOLOGY CENTER, <http://www.stanford.edu/group/chr/drupal/ref/lydian-treasure> (last updated Mar. 12, 2009, 2:29 PM).

³¹⁶ See Jennifer Mann, *Art Museum Sues to Keep Egyptian Mummy Mask*, ST. LOUIS POST-DISPATCH (Feb. 6, 2011, 12:05 AM), http://www.stltoday.com/news/local/crime-and-courts/art-museum-sues-to-keep-egyptian-mummy-mask/article_6a5937bc-0ea6-50ca-94ab-aa45697af009.html.

³¹⁷ See generally Lawrence M. Kaye & Carla T. Main, *The Saga of the Lydian Hoard Antiquities: From Usak to New York and Back and Some Related Observations on the Law of Cultural Repatriation*, ANTIQUITIES, TRADE OR BETRAYED: LEGAL, ETHICAL AND CONSERVATION ISSUES 150–62 (Kathryn W. Tubb ed., 1995).

³¹⁸ See *Italy v. Marion True et al.* Trib. Roma sez. VI pen., n. 19360/10 (Oct. 13, 2010) (It.); Dobovšek & Slak, *supra* note 115, at 398.

³¹⁹ See *Republic of Turkey v. Metro. Museum of Art*, 762 F. Supp. 44, 45–47 (S.D.N.Y. 1990) (the court rejected the Metropolitan Museum of Art's statute of limitations expiration contentions, and found that the Republic of Turkey's claim had been made within the appropriate time period also in the light of the fact that the museum concealed a collection of looted antiquities in its storerooms for nearly two decades).

³²⁰ See *Antiquity Smuggling Finances Terror*, HERITAGE WATCH (Mar. 19, 2008), <http://www.heritagewatchinternational.org/antiquity-smuggling-finances-terror.html> (describing the sale of antiquities to sponsor terrorist activities).

³²¹ See Robert S. Mueller, III, Director, Fed. FBI, Address at Town Hall Los Angeles (Nov. 15, 2004), available at <http://www.fbi.gov/news/speeches/the-fbi-improving-intelligence-for-a-safer-america>.

³²² See Joel Leyden, *Swift-Find: Terrorism Funded by Stolen Property*, ISRAELI NEWS AGENCY, October 16, 2005, available at <http://www.museumbeveiliging.com/msn/2005-October/003837.html>; Torre, *supra* note 28.

looting of Iraq's National Museum after the 2003 U.S. invasion, Matthew Bogdanos, states "the claim that the illicit art industry funds terrorism is undeniable."³²³ Art crime has been reported as the third highest grossing criminal activity after illegal drug and arms sales.³²⁴ This alone makes it a rich source of funds for terrorist groups. The United States is the prime market for this enterprise, and many of the illicit antiquities are coming from Middle Eastern nations under the influence of terrorist networks such as the Hezbollah and Islamic Jihad.³²⁵ In addition, terrorists use art to instill fear. Infamously, the Taliban destroyed two huge statues of the Buddha in Afghanistan to further the discouragement of idolatry. Afterwards, the Taliban refused anyone access to examine the statues to verify the damage to the carvings.³²⁶

Since the federal government provides money to museums through tax deductions, then the government facilitates black-market-funded activities when museums acquire art through crime syndicates.³²⁷ Purchasing objects without proper acquisition practices funnels money into the networks of smugglers, looters, thieves, and destroyers.³²⁸ This implication requires that the United States take greater steps to prevent art theft. As various government agencies and representatives have acknowledged, the trade in stolen and looted antiquities helps to fund terrorism.³²⁹ As explained by Marine Reserve Colonel Matthew Bogdanos, "the link between extremist groups and antiquities smuggling in Iraq was 'undeniable.'"³³⁰ The government's lack of action in preventing cultural heritage theft may contribute to struggles with global terrorist groups.

³²³ See Lowe et al., *supra* note 126.

³²⁴ See Charney, Denton & Kleberg, *supra* note 104.

³²⁵ See Torre, *supra* note 28.

³²⁶ See Leyden, *supra* note 322.

³²⁷ See *id.*

³²⁸ See Wyatt, *supra* note 85.

³²⁹ See Matthew Bogdanos, *The Terrorist in the Art Gallery*, NY TIMES, Dec. 10, 2005, http://www.nytimes.com/2005/12/10/opinion/10bogdanos.html?pagewanted=all&_r=0; Mueller, *supra* note 321.

³³⁰ Becatoros, *supra* note 2.

4. Political Justifications for Not Halting the Black Market Antiquities Trade Are Inappropriate

Political considerations are inappropriate place in the debate on the ownership and exchange of cultural heritage.³³¹ When artwork and cultural treasures originate from a nation that is viewed as an enemy to the U.S., the realm of antiquities takes on a distorted twist.³³² The United States has not been particularly forthcoming in returning stolen objects to nations that are at political odds with the U.S. For example, the U.S. has not acted consistent with its intentions on returning a 2,500 year-old drinking vessel to Iran that was smuggled out of the Middle East.³³³ In that case, an ancient rhyton was seized after its illegal importation into the United States.³³⁴ Rather than return the object to Iran, the U.S. has considered using the item to satisfy part of a legal judgment in an unrelated lawsuit.³³⁵

Political alliances are inappropriate when dealing in the realm of cultural heritage preservation since these objects have significant values that outlive political spats and that will last into future generations. The historic significance of cultural items outweighs the political climate that may currently exist between two nations.³³⁶ For these reasons, the United States government should be uniform in its treatment of foreign antiquities and art. Simply because a nation is in political opposition to another political entity does not lessen the value of an opponent's cultural treasures.³³⁷ And since it is a museum's responsibility to preserve art, museums must not take advantage of a political situation to acquire controversial or questionable objects.

³³¹ Cf. *Jenny Rubin v. Islamic Republic of Iran*, 349 F. Supp. 2d 1108 (N.D. Ill. 2004).

³³² See Barry Meier, *Antiquities and Politics Intersect in a Lawsuit*, NY TIMES, Mar. 29, 2006, http://www.nytimes.com/2006/03/29/arts/artsspecial/29returns.html?_r=1&oref=slogin.

³³³ See *id.*

³³⁴ See *id.*

³³⁵ See *id.*

³³⁶ See generally Ashlyn Milligan, *Targeting Cultural Property: The Role of International Law*, 19 J. PUB. & INT'L AFF. 91 (2008).

³³⁷ See *id.*

5. Museums Must Take Precautionary Measures to Not Acquire Items Looted During Times of War

Similarly, a consequence of war and political tensions is the destruction of cultural heritage.³³⁸ During times of conflict, museums and archaeological sites often go unguarded, leaving them vulnerable to looters.³³⁹ During the upheavals during the “Arab Spring” and the still-raging civil war in Syria, archeological sites have been pillaged.³⁴⁰ As a result, items are more easily smuggled during these times, and they enter the black market, and possibly find a final destination with a purchaser abroad.³⁴¹ International organizations and representatives have warned antiquities buyers that thousands of objects from Syria have been looted and are appearing on the market.³⁴² Museum directors must consider the fluctuating marketplace and the flux of items from warring nations when making acquisitions, and must be mindful not to fuel the market for plundered objects.³⁴³ Museums must give additional consideration to objects from areas of the world plagued by war and conflict, where the archaeological record is in peril.³⁴⁴ Julien Anfruns, director general of the International Council of Museums (“ICOM”), has warned buyers not to purchase objects from Syria, stating, “We really, really strongly advise any buyers to be extremely prudent . . . it’s a serious legal

³³⁸ See Mark Fisher, *Tomb Raiders*, GUARDIAN, Jan. 19, 2006, <http://arts.guardian.co.uk/features/story/0,,1689799,00.html>. See generally MATTHEW BOGDANOS, *THIEVES OF BAGHDAD* (2005) (describing the destruction and looting of antiquities during the U.S. occupation of Iraq starting in 2003).

³³⁹ See Fisher, *supra* note 338.

³⁴⁰ See Suleiman Al-Khalidi, *Syrian Violence Threatens Ancient Treasures*, REUTERS (Feb. 20, 2013), <http://www.reuters.com/article/2013/02/20/uk-syria-crisis-antiquities-idUSLNE91J01C20130220>; Paul Barford, *Rebels and Refugees: Looting in Syria*, PORTABLE ANTIQUITY COLLECTING AND HERITAGE ISSUES (Feb. 13, 2013), <http://paul-barford.blogspot.nl/2013/02/rebels-and-refugees-looting-in-syria.html>; Mike Elkin, *Arab Spring Impacts Archaeology—Libya/Egypt/Tunisia/Syria*, 65 ARCHAEOLOGY 1 (2012), available at http://archive.archaeology.org/1201/features/topten_arab_spring.html.

³⁴¹ See Vlastic, *supra* note 7.

³⁴² See Dale Gavlak, *Syria Official Warns of Trafficking in Antiquities*, ASSYRIAN NATIONAL NEWS AGENCY (Feb. 13, 2013), <http://www.aina.org/news/20130213155211.htm>.

³⁴³ See Ian Johnston, *‘Emergency Red List’ Targets Syria’s Looted Treasures*, NBC NEWS (Sept. 10, 2012), http://worldnews.nbcnews.com/_news/2012/09/10/13727086-emergency-red-list-targets-syrias-looted-treasures?lite.

³⁴⁴ See TABERNER, *supra* note 218, at 96.

matter and due diligence is even more necessary in the current case.”³⁴⁵ The provenience or “find spot” of objects from a politically torn nation should act as a warning sign to government and museum agents responsible for monitoring acquisitions.³⁴⁶ Museums must exercise heightened scrutiny and not purchase items from war-torn nations, unless an ironclad provenance or provenience is provided.³⁴⁷ Consequently, it is necessary to enact a heightened scrutiny and museum acquisition procedures that take into consideration the country or origin and question whether art or cultural heritage was misappropriated during a time of conflict.³⁴⁸

CONCLUSION

The destruction of cultural heritage through looting and black market trade has come to the attention of the international community due to its prevalence—as the second or third largest criminal activity globally—its links to terrorism, and the fact that it deprives future generations of the objects’ educational, cultural, and aesthetic value. The most effective method of protecting artwork is to reduce the size of the black market by reducing demand. One way to prevent the market for unprovenanced works is to regulate market intermediaries, including museums. Museums are established to protect art; therefore, museum directors must make a good faith effort to avoid questionable acquisitions. Museums cannot merely turn a blind eye to an object’s looted past. To ensure that museums engage in proper due diligence, it is necessary to enact mandates that effectively deter inappropriate acquisition practices. Following these mandates, the government should actively prosecute museum representatives who engage in underhanded dealings. Lastly, existing statutes should increase penalties to include incarceration and heavier fines.

³⁴⁵ *Id.*

³⁴⁶ *See* Vlastic, *supra* note 7.

³⁴⁷ *See* TABERNER, *supra* note 218, at 96–97; ICOM, ICOM Code of Ethics for Museums, art. 2, sec. 21 (2013), available at http://icom.museum/fileadmin/user_upload/pdf/Codes/code_ethics2013_eng.pdf.

³⁴⁸ *See* TABERNER, *supra* note 218, 96–97.

It is imperative that museums be subjected to greater scrutiny. Museum representatives should not simply assume that works have valid title and were properly acquired; rather, museums should be required to research the works and prove proper ownership. Tax deductions for museums necessitate oversight by the Internal Revenue Service and the federal government. Cultural heritage is vested with a value for all humanity for generations to come; therefore, the government should aggressively protect these priceless and irreplaceable objects, a testament to humanity's progress and shared achievements.