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# Museums Have a Responsibility to Protect Cultural Heritage

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## La fruizione del patrimonio culturale: i luoghi della fruizione ed i nuovi diritti

### Museums Have a Responsibility to Protect Cultural Heritage

di [Leila Amineddoleh](#)

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Due to tax benefits enjoyed by museums, these institutions should be required to follow more stringent standards and to complete thorough provenance research prior to purchasing new acquisitions. The most recent revision of acquisition standards by the Association of Art Museum Directors was heightened, however the guidelines are still not demanding enough.

During the past decade acquisition standards have become a major issue, as unethical museum practices have drawn attention and protest from the art community. With the public trial of the Getty Museum's former curator, Marion True, the public has become aware of irresponsible acquisitions made by museums. In 2011, cultural heritage academics were outraged over the ownership dispute of the Ka Nefer Nefer funerary mask which was unearthed in Egypt in 1953 and then went missing in the 1960s. The mask reappeared in the St. Louis Art Museum in 1998, and the museum refused to return the artifact to Egypt. The case is currently in federal court, but has drawn attention to a number of museum purchases made from antiquities dealers with criminal or suspect records. (The St. Louis Art Museum purchased the mask from a gallery whose owners have been convicted for numerous art crimes.) Then in July 2012, an antiquities dealer from India was arrested for selling black market sacred Hindu antiquities to major museums worldwide. During this time of political upheaval, with so many cultural artifacts illegally exiting the Middle East, Northern Africa, the market is full of looted antiquities. With heightened due diligence standards, museums must avoid the purchase of illegally-excavated items. Acquiring this type of property fuels the black market for art, a market with ties to international terrorism. Museums have fiduciary duties to the public and ethical duties to protect art in their care.

#### 1. Introduction

The protection of cultural heritage [1] is important for human civilization, as developments in cultural heritage reflect humanity's collective history and accomplishments. Cultural heritage provides a chronicle of mankind's evolution; select pieces hold great significance for specific ethnic and cultural groups; and it is a long-term commodity creating revenue through tourism, branding, and educational structures. Alarming, cultural heritage looting has been linked to global terrorism [2], money laundering [3], and drug [4] and weapons [5] trafficking. Over the past decade, the trade in looted antiquities remains one of the most prolific illicit trades globally [6].

One way to protect cultural heritage is by eliminating black market demand for these objects. The market for illegal goods is driven by buyers [7], as trade in looted antiquities is demand-driven [8]. The most effective method of protection for cultural heritage is to eliminate this demand, thereby reducing the market and incentive for looting, a method known as the "market reduction approach." [9] There is a well-documented link between the demand for looted items and museums [10]. To eliminate black market demand, legislation is necessary to prosecute and regulate buyers, such as museums.

Evidence clearly indicates that illegal exchanges are propagated by museums. With the public trial of the Getty Museum's former curator, Marion True, and the publication of books such as *Chasing Aphrodite* [11] and *Loot* [12], the public has become aware of illegal acquisitions made by museums. And recently the news has been filled with accounts of looted objects appearing in museums. In 2011, an ownership dispute arose over the Ka Nefer Nefer

funerary mask at the St. Louis Art Museum [13]. Then in July 2012, an antiquities dealer from India, Subhas Kapoor, was arrested for selling black market antiquities by providing false customs declarations to buyers worldwide [14]. He sold pieces to the Metropolitan Museum of Art, the Museum of Fine Arts, and other museums as far away as Australia [15].

Acquiring illegal property increases the black market demand for art. But as institutions receiving favorable treatment from the Internal Revenue Service, museums should be held to a heightened standard of due diligence. In fact, if museums continue to purchase and accept looted goods, they are perpetuating the use of public dollars in furtherance of criminal activities. The nexus between government dollars and black market trade requires the government to take firmer steps in monitoring museum acquisitions. Museums regulate their own practices within industry guidelines (set forth through organizations such as ICOM [16] and the Association of Art Museum Directors [17]), but these guidelines are not codified in law and do not include criminal penalties [18]. However, criminal sanctions are necessary, and the government should prosecute those involved in the illicit market. Although there are laws aimed to deter art theft [19], the US government and the global community are not utilized to their fullest potential. This article examines museum guidelines and fiduciary obligations in order to make recommendations that will avoid pitfalls that ultimately destroy cultural heritage.

## 2. Background

### A) *Millenia of Cultural Looting*

The market for illicit art and antiquities has a long history, pre-dating ancient Greece [20], and continuing through the reigns of Alexander [21], Napoleon [22], and modern rulers [23]. In more recent times, cultural artifacts have been smuggled by hiding their sources [24]. Artifacts removed from sites without proper archaeological process [25] lose context and scholarly worth because the value of archaeological sites is realized through methodical excavation [26]. Additionally, plunder harms objects near a pillage site as looters disrupt items found near their targets [27]. Art theft also leads to the destruction of target objects because looters unearth pieces without adhering to preservation methods [28]. Further, in an effort to maintain a discreet profile, thieves transport objects in crude and unsafe ways that may lead to destruction of the works [29]. And shockingly, some thieves intentionally destroy artifacts to disguise them in order to clear them through customs.

### B) *Defining a museum*

A museum is an "institution dedicated to preserving and interpreting the primary tangible evidence of humankind and the environment" [30]. According to the International Council of Museums (ICOM) [31], a museum is a "nonprofit making, permanent institution in the service of society and of its development, and open to the public which acquires, conserves, researches, communicates and exhibits, for purposes of study, education, and enjoyment, material evidence of people and their environment" [32]. These institutions have a history of public service. The first public museum was introduced in 1683 when the Ashmolean Museum of Art and Archaeology in Oxford was opened [33]. In 1759, the British Museum was established for the public's benefit "not only for the inspection and entertainment of the learned and the curious, but for the general use and benefit of the public" [34]. Then in 1793, the Louvre opened, with the right to visit collections belonging to "all citizens" [35]. From the inception of U.S. museums, people felt that the government should support art museums [36], and American museums touted their educational aims [37]. Nearly all of the early museums and galleries in the U.S. were nonprofit corporations under the control of a private board of trustees [38]. The largest museum [39] in the U.S., the Metropolitan Museum of Art (the Met), was founded with substantial government support [40]. Pursuant to the institution's charter, the museum was built with city funds and it was maintained by expenses paid by the city [41]. To this day, the City of New York owns the building, but a private group of trustees still controls the museum and its contents [42].

## 3. State of U.S. and International Law

The international community has recognized the importance of protecting cultural heritage, as recognized in the UNESCO [Convention Concerning the Protection of the World Cultural and Natural Heritage](#), "that parts of the cultural or natural heritage are of outstanding interest and therefore need to be preserved as part of the world heritage of mankind as a whole." The global community first came together to protect cultural heritage after the widespread destruction of art resulting from the World Wars [43]. The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict ("The Hague Convention") was created to halt wartime destruction, but has unfortunately not fulfilled its purpose [44]. But a convention organized in 1970 has proven more successful. The 1970 UNESCO [Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property](#) (1970 UNESCO Convention) has been more successful because it is broader in its application. The convention provides a means for nations to seek return of illegally-acquired cultural heritage objects in foreign jurisdictions. But the 1970 UNESCO Convention has major flaws, as state parties cherry-pick portions of the agreement. And since the convention is not self-executing, signatories must enact domestic laws to fulfill treaty obligations.

The United States ratified Articles 7(b)(1) and 9 of the 1970 UNESCO Convention (see the [Act As Public Law 97-446](#); or as [19 U.S.C. 2601 et seq.](#)) [45]. But the convention did not have a basis in U.S. law, so in 1983, Congress implemented the *Cultural Property Implementation Act* (CPIA). 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 [46]. The

Act uses civil regulations to monitor importation without the heavy burden of a criminal conviction [47]. The CPIA authorizes the government to seize property if the object meets the UNESCO definition of "cultural property" [48]. However, the CPIA is a civil customs statute, and does not carry criminal penalties [49]. But the CPIA does not prevent the pursuance of a criminal prosecution [50]. The National Stolen Property Act (NSPA), deems it a crime to "receives, possesses, conceals, stores, barter, 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..." [51]. The Second Circuit clarified that the NSPA applies to individuals who remove cultural objects from countries with patrimony laws [52].

The combination of the CPIA, NSPA, 1970 UNESCO Convention, and proliferation of patrimony laws [53] provides powerful tools for the global community to combat looting [54]. But all of these tools are pointless, if they are not utilized. Unfortunately, many charges are not pursued against museums due to the nature of these institutions (see below for a discussion about the insulation of museums' boards of trustees). Museums play a significant role in the black market art network, thus it is essential for civil and criminal penalties to apply to museums and their employees. The federal government should increase penalties for cultural heritage theft; museum acquisition requirements should be mandated by federal law, museum purchases must be strictly scrutinized by legal authorities, and the Internal Revenue Service should be granted authority to examine museum records to ensure that these non-profit organizations are following appropriate measures to avoid the purchase of looted objects.

#### **4. Purchasers of looted antiquities should face increased penalties for these illegal actions**

##### *A) Museums purchase items from the antiquities black market*

It was recently estimated that the international market for cultural heritage objects is around \$60 billion [55], and that the value of the market for illegally-obtained objects is approximately \$8 billion [56]. To effectively protect cultural heritage against looting, the demand for illicit antiquities must be eliminated [57]. Museums historically have had a direct role in the purchase of looted items [58]. The former director of the Met openly acknowledged the role that museums had in the market for black-market antiquities [59]. In the 1960s, the Met purchased a collection of hundreds of looted golden coins from Turkey [60], and then acquired the infamously looted Euphronios Krater in the early 1970s [61]. The Italian government demanded the return of dozens of items from the Cleveland Museum of Art (CMA), and 14 artifacts were returned after authorities proved that they were looted [62]. In fact, CMA recently acquired two more questionable objects, including a Roman bust purchased from dealers with a criminal record of looted antiquities [63]. The Getty Museum's illegal actions are so outrageous that an entire book was written about the scandals [64]. The Museum of Fine Arts in Boston has received criticism for accepting pillaged works. The museum acquired a looted statue of the Weary Herakles in early 1981, although the object lacked good provenance [65] ("provenance" is a history of ownership). After over two decades of legal battles, the museum returned the statue in 2011 to the Republic of Turkey [66]. More recently, the MFA in Boston acquired controversial Benin Bronzes that were looted from Nigeria in the 1890s, following the Benin Massacre of 1897 [67]. Earlier this year, the Toledo Museum of Art returned a smuggled Etruscan artifact to Italy after documentation showed that the work was exported in violation of the nation's patrimony law [68]. Universities have also been involved in cultural heritage scandals. The Princeton University Art Museum was criticized for its lack of transparency in its collecting practices [69]. The museum, which has twice returned antiquities to Italy since 2007, acquired another looted item in 1999 [70].

By purchasing illicit objects, museums fuel the black market, thus motivating robbers to destroy cultural objects [71]. To deter museums from engaging in illegal dealings, the US government should aggressively prosecute museum representatives responsible for illegal purchases. The US, in particular, should take action to prosecute because the American art market is the largest in the world [72].

##### *B) US laws do not deter the purchase of looted antiquities*

###### *1. Legal tools aimed to stop the trade in loot are not effectively used*

US laws address repercussions for stolen property, although the laws do not specifically focus on cultural heritage thefts. The National Stolen Property Act (the NSPA) provides that a person is guilty of a crime if he "receives, possesses, conceals, stores, barter, 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..." [73] In *U.S. v. Schultz*, the Second Circuit ruled that the NSPA applies to individuals who remove cultural objects from countries with patrimony laws [74]. The requirement of applicable patrimony laws limits the usefulness of the NSPA. Although Schultz was criminally convicted under the Act for smuggling Egyptian antiquities pursuant to Egypt's patrimony laws [75], not all nations have enacted patrimony laws. The NSPA only applies when title to property is vested in a nation or entity [76]. Patrimony laws vest ownership of undiscovered antiquities in the nation or state, depriving looters, middlemen, and subsequent purchasers of title [77]. Therefore, more nations should adopt patrimony laws in order to claim looted antiquities because they enable foreign nations to prosecute for stolen property [78]. Without patrimony laws, foreign nations cannot claim that their property has been stolen because ownership has not been vested [79]. Patrimony laws used in conjunction with the NSPA allows nations to reclaim their property against thieves in the US [80]. Fear of litigation brought forth by foreign nations will reduce the incentive for theft.

###### *2. Cultural heritage looters and traders are often not penalized*

Historically, prosecutors have not vigorously pursued art thieves [81]. Many law enforcement agents view the art world as "elitist." [82] They believe that destroying cultural heritage is not a matter of serious concern [83], and view it as a victimless crime [84]. However, that is wrong-cultural heritage theft is linked to organized crime [85]. Cultural treasures found abroad are valuable to all humanity [86], and the United States should actively sanction those responsible for the destruction of these cultural objects because American collectors continue to drive this illicit market forward. As a deterrent, the US government should increase penalties on museums [87]; monetary fines should be increased and incarceration is appropriate [88]. The market is worth billions of dollars, and the only way to shrink the market is to aggressively prosecute and leverage penalties that actually deter [89]. Criminal penalties have a significant impact on dealers and collectors who lend support to thieves who feed the market with plundered art and antiquities [90].

### C) *Effective models for the prevention of looting*

#### 1. *Italy actively protects cultural heritage*

The Italian government places the utmost importance on the protection of art and cultural heritage [91]. Italy's *Carabinieri* [92] art theft division employs 300 officers [93], the most personnel in the world devoted to the art crime prevention [94]. (Compare this to US which has the world's largest market for art [95]. In 2004, the FBI established the Art Crime Team which now consists of 14 special agents with three special trial attorneys for legal support [96]). Yet even with these resources, the *Carabinieri* yields a meager 10 percent recovery rate [97], thus, the Italian government finds it necessary to deter theft and repatriate objects through post-looting sanctions.

Italy's vast resources committed to art protection are supported by the nation's extensive art laws. Laws protecting antiquities have existed in some parts of the nation for centuries [98], pre-dating the unification of the Italian Republic [99]. After unification, the Republic passed dozens of laws regulating art [100]. And 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 [101]. The protection of Italian patrimony continues to this day [102]. Not only does Italy have comprehensive art laws, but the Italian nation aggressively enforces them by demanding the return of objects [103], prosecuting art criminals [104], and pursuing violators [105].

#### 2. *The prosecution that shook the museum world*

Italian prosecutors stunned the art world in the spring of 2005 when they announced their decision to prosecute Marion True, a curator at the Getty Museum in Los Angeles [106]. She was charged with criminal association and receipt of stolen property in connection with antiquities illegally unearthed in Italy and smuggled out of the country [107]. True was the first American museum official under criminal prosecution abroad in connection with the antiquities trade [108]. Marion True, a curator of antiquities, was charged for her activities during a period from the mid-1980s through 1998 [109]; she was alleged to have knowingly obtained over forty archaeological objects illegally plundered by tomb raiders in Italy [110]. Italian prosecutors charged her with criminal association, receiving stolen Italian artifacts and laundering artworks purchased privately and sold to the Getty Museum using allegedly fake documents [111]. If convicted, True could have been imprisoned in Italy for up to ten years [112]. The curator's troubles began when the *Carabinieri* raided a storage room in the Geneva Freeport in Switzerland [113]. The storage facility belonging to Giacomo Medici [114] (an infamous dealer of looted antiquities), and it was filled with antiquities and their illicit evidence of ill-gotten artifacts [115].

Italy used True as an example: by prosecuting the curator for her part in the acquisition of black market items, Italy hoped to reduce the number of artifacts being smuggled from its borders [116]. Italy tried to deter museums from buying artifacts without provenance that may have originated from Italian soil. In October 2010, the case against True ended without a verdict due to the expiration of the statute of limitations [117]. The True case is seen as an attempt to place pressure on international collectors to verify the provenance of artifacts [118]. "Museums must learn you can't turn a blind eye to art theft," a member of the Italian prosecution team said [119]. Rocco Buttiglione, the former Italian Minister of Cultural Heritage and Activities, warned "the age of trafficking in art pieces is over" [120].

While the trial was pending, legal experts opined that a conviction against True would prevent future crimes, as prison is a true deterrent for many art criminals [121]. Monetary fines do not stop wealthy collectors or museums with unlimited reserves, since those caught with illicit objects can seek financial support from other members of their circles [122]. When dealing with criminals with deep pockets, criminal punishments may be the only deterrent [123]. Fear of incarceration may be the only think that outweighs the economic gain from the commission of white collar crimes [124]. Since some museums (and their representatives) have large monetary resources, incarceration is appropriate.

#### 3. *Loan programs enable museums to fulfill their fiduciary duties to the public*

Museums would not purchase illegal objects, if legitimate items were readily available. Rather than purchase or accept black market donations, museums can access top-quality antiquities through loan programs [125]. Italy recently instated an innovative program to encourage restitution and prevent looting [126]. Institutions that cooperate with Italy's efforts will gain access to long-term loans of Italian archaeological materials [127]. The Italian Ministry of Culture touted this program when it settled an agreement with the Met [128]. In exchange for the return of twenty-one looted Italian antiquities, including the Eupronios Krater [129], the Italian government to lent the Met



comparable artifacts for up to four years [130]. The museum also received permission to sponsor excavations in Italy and bring finds to the United States [131].

The innovative loan program helps preserve art [132]. The man responsible for negotiating Italy's loan program, Maurizio Fiorilli, is optimistic that the loan program will be a model for future cooperative efforts [133]. Essentially, Italy makes objects available by loan so that people around the world can view the nation's treasures [134]. Returning artifacts and agreeing not to purchase loot in exchange for loans enables museum directors to fulfill their fiduciary duties as it creates greater art access to the public (the intended beneficiaries of museums). Through a loan program, the viewing public gets access to top-quality objects without museums driving the black market forward [135]. With this type of program, museum curators will not use black market sources to acquire works; rather, they will collaborate with foreign nations to responsibly display objects [136]. A loan program provides museums with incentive to cooperate with foreign nations because museums demonstrating "good faith" will be granted loans [137]. The loan program benefits the viewing public and also protects objects from destruction by looters. As touted by former director of the Met, a loan program paves the road to ethical behavior while providing museums visitors with the opportunity to see rare and valuable archaeological material [138].

#### D) *There are inherent hurdles in prosecuting antiquities looters and dealers*

##### 1. *Proving scienter has been a major stumbling block for prosecutors*

One of the difficulties in prosecuting purchasers of stolen goods under the National Stolen Property Act, is proving scienter (state of mind indicating knowledge that the goods were stolen) [139]. Proving this element is often challenging, but is exponentially more difficult in cases involving art [140]. Unlike goods that are prima facie illegal (i.e., ivory objects), stolen art is not prima facie illegal [141]. And whereas illegal items like those with parts of endangered species [142] (like bald eagle feathers) and regulated items are readily identifiable, recognizing an art object as stolen or without provenance is difficult, even for art experts and archaeologists. Art objects are unique. But unlike other sectors, such as the securities market, the art market is unregulated [143]. The art market has been recognized as a place filled with dishonest people [144]. Further complicating matters, looted antiquities are difficult to trace-by their very nature, they do not have a recorded provenance. The sale of antiquities is frequently consummated without the verification of provenance; therefore, it can be difficult to demonstrate a legitimate chain of title [145]. Because of the often secret and anonymous nature of art exchanges [146], gaps in provenance exist, and looted objects may resurface on the legitimate market with or without the buyer's knowledge of its surreptitious background [147].

##### 2. *It is particularly difficult to prosecute museum representatives*

Museum representatives are often not punished for illegal acquisitions. The structure of museums' board of trustees and self-regulators is an exclusive group of close-knit individuals [148]. Yet, the dynamics of the museum hierarchy militate against whistle-blowing; the board members themselves are the people responsible for superintending the institutions [149]. Essentially, wrongdoers are insulated [150]. And more troubling is that outsiders rarely discover illegal acquisitions in a timely manner, as there is generally no legal requirement for museums to publish their acquisitions [151]. Actions against these institutions are rarely pursued [152]. Without shareholder reporting requirements that regulate publicly-traded companies, the non-profit structure of museums leads to difficulty in maintaining proper supervision. The lack of individually defined beneficiaries or owners leads to difficulty in oversight and enforcement of appropriate standards of conduct for the managers of nonprofit organizations [153].

Charitable organizations, such as museums, are generally considered public institutions [154]; therefore, the entire public should benefit from their activities [155]. However the public does not have direct standing to sue museums so they must rely upon the Attorney General [156]. Unfortunately though, there is impetus to compel legal action [157] because museum trustees are usually wealthy and influential [158], and there is often insufficient knowledge or motivation for the AG to file an action. Since the preservation of artwork has historically not been a priority for law enforcement, illicit acquisitions have been left unchecked. Even worse, each state's Attorney-General is understaffed and underfunded [159]. With all of these factors, public intervention is too inconsistent to be a credible threat of imminent legal action [160].

Unlike the US, source nations such as Greece and Italy have recognized the importance in taking action against cultural heritage criminals [161]. Since the US art market is likely the largest in the world [162], law enforcement agents have an obligation to prevent these crimes against humanity. There are wealthy collectors who will pay exorbitant sums of money to acquire stolen artwork [163]. Without criminal sanctions, art theft will continue. As one art investigator aptly stated, "Until the entire art world decides it can't handle stolen goods, things are unlikely to get better" [164].

#### E) *Acquisition policies should be regulated by the government and subjected to heightened scrutiny*

##### 1. *Museums have been unable to self-regulate their purchases*

Stricter acquisition standards are necessary. Museums are established to further society's knowledge about art and culture, thus these institutions should act responsibly [165]. According to the American Alliance of Museums (AAMD), "As 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 transparency of action, and more leadership in community..." [166]. However, there are no federally mandated civil penalties or criminal penalties for violation of AAMD guidelines [167]. To insure that standards are followed, museums should be subject to greater scrutiny with legal ramifications. But museums may hesitate to support stricter standards because they restrict curators to acquire only items that have a definitive provenance. By limiting curators' abilities to acquire objects, museums would lose out on prize items and desirable objects for their collections.

### *2. Museums non-profit status and tax exempt advantages oblige these institutions to acquire items responsibly and fulfill their fiduciary obligations to the public*

It is naïve to believe museums always act in good faith. These institutions enjoy tax benefits, thus should be required to follow stringent standards and to complete thorough provenance research. Museums have superior knowledge and the best ability to investigate their acquisitions [168]. These institutions are in the best position to do so because they have full-time employees who devote their careers to the study of art [169]. As non-profit institutions, museums receive funding through tax benefits; some of those government funds should be used to properly research purchases.

The AAMD revises its guidelines every decade, and in its most recent revision, the acquisition standards were heightened. However, the guidelines are not demanding enough. As defined by the International Council of Museums (ICOM), museums are a "nonprofit making, permanent institution in the service of society and its development, and open to the public which acquires, conserves, researches, communicates and exhibits, for purposes of study, education, and enjoyment, material evidence of people and their environment." [170] This definition clearly provides that museums are established for public service [171]. Museums are, or should be, the most passionate advocates for the preservation of antiquities, due to their educational missions [172]. To properly serve the public, museums must refrain from illegal purchases. Failing to establish policies that respect the history of an object breaches the fiduciary obligations of due care [173].

Acquiring loot does not assist in preservation because it deprives society from valuable information about the objects. According to former Harvard Law professor and Deputy Solicitor General of the US, Paul Bator, the acquisition of loot is inappropriate for museums that commit to preservation [174]. He argued that when a museum acquires a smuggled object it cannot be certain that it did not help reward cultural destruction [175]. It is highly unethical, and contrary to its stated purpose, for a museum to support in any way, whether directly or indirectly, the illicit market [176].

Museums have fiduciary duties of loyalty and care [177] arising from their status as charitable trusts or non-profit corporations [178]. Yet museums differ from other trusts because the beneficiaries of museums are not named individuals, but the general public [179]. The duty of loyalty is complete loyalty towards the beneficiary [180]. In fact, the [AAMD's Code of Ethics](#) acknowledges the principle that museums have a commitment to the public. 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.

### *3. Museums should be held to higher standards due to favorable tax treatment*

As non-profit corporations, museums follow state charitable trust laws, which are designed to promote the public good [181]. The Supreme Court held that organizations classified as "charitable" and established for the public good must not act against established public policy [182]. It is in the public welfare for museums to properly investigate their acquisitions [183]. Non-profit organizations receive advantageous tax treatment, but are restricted to a narrower category of permissible purposes and stricter regulation of activities [184]. Since museums receive the benefit of tax deductions, they should also be subject to investigation by the Internal Revenue Service. Due to tax benefits enjoyed by museums and non-profit institutions, museums should be required to follow more stringent standards and to complete thorough provenance research prior to purchasing new acquisitions. A museum's ability to guarantee the legality of an object should add to the market value of the object [185]; it is reasonable for good title to be incorporated into valuation for tax deduction purposes [186]. Donors of loot should not be given tax deductions, but unfortunately this often happens [187]. Donors who purchase objects at "wholesale" or "black market" value (objects on the black market generally sell for less than objects on the legitimate market), receive inflated appraisals, donate the objects with the values stated on the appraisals, and then receive tax deductions for the gifts [188]. The Getty has carried out this tax scheme, by assisting wealthy donors make millions of dollars off of donations [189]. Thus, if the museum cannot provide proper title, then federal financial assistance through tax deductions should be denied, particularly since some of these objects fund terror [190].

*F) Museums are entrusted with the care of priceless cultural artifacts, and thus should be held to heightened due diligence standards*

#### *1. Changes in acquisition practices should be legally mandated and enforced*

Museums play a role in archaeological destruction deficient acquisition practices [191]. ICOM is an organization with voluntary membership that sets forth a [Code of Ethics for Museums](#). To join the organization, museums must abide by the ICOM Code, which was set forth in 1986 and then updated in 2004 and 2006. The Code establishes minimum standards of professional practice for museum institutions [192]. In the most recent edition, the Code calls for museums to recognize the necessity of ethical acquisition practices, stating, "Members of the museum profession

should not support the illicit traffic or market in natural and cultural property, directly or indirectly.

Museums should not acquire objects where there is reasonable cause to believe their recovery involved the unauthorised, unscientific, or intentional destruction or damage of monuments, archaeological or geological sites, or species and natural habitats" [193]. (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 illicit objects from donors or lenders [194]).

But as the name suggests, ICOM "guidelines" are not binding law and they do not carry any economic or criminal penalties. Similarly, the American Association of Museums (AAM) and the Association of Art Museum Directors (AAMD) offer acquisition guidance, in the form of standards, reports, recommendations, and ethics codes [195]. These too have little effect, as the guidelines and recommendations are not obligatory mandates [196]. Currently, museum acquisition policies are problematic since most allow for acquisitions without full documentation [197]. Proper title and good faith actions on the part of the seller and acquiring party should not be the presumption [198]. It is irresponsible for museums to merely accept the word of a seller or donor about the legitimacy of an object [199]. Failure to provide a museum with documentation related to the works provenance should be a red flag. In addition, museums should consider a dealer's or donor's reputation and any criminal record or questionable sales or donations [200].

Museums guidelines have historically been disregarded when in conflict with major acquisitions. For instance, the Getty Museum's Policy requires the museum to acquire only collections documented prior to 1995 [201]. This requirement was praised because it prohibited the museum from collecting recently looted items. However, after this policy was enacted, the Getty acquired over 300 Greek, Roman, and Etruscan objects from a collector [202]. Provenience for 85% of these objects was unknown, but the Getty cleverly used its own exhibition catalog to create provenance [203]. Critics accused the museum of producing documentation to fulfill its own requirements and to move forward with a purchase for plundered items [204].

The St. Louis Art Museum (SLAM) recently defended itself against federal charges for purchasing a missing 3,000-year-old Egyptian funerary mask that was excavated in 1952 [205]. Egyptian and U.S. authorities allege 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 [206]. The museum purchased the antiquity from Phoenix Ancient Art, a gallery owned by two brothers with a criminal history for dealing in looted antiquities [207]. Although the museum was surely aware of the brothers' criminal history, SLAM purchased the mask anyway. The museum claims that the brothers provided an accurate provenance, although important documents were missing from the report and it contained information that should have raised concern for any museum professional acquiring objects [208]. The dealers claim that the piece was legitimately bought, although there is no record of a legal purchase or transport out of Egypt [209]. Due to the brothers' well-known "criminal history," the feds characterize 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" [210].

## *2. Trading regulations may be an appropriate model for monitoring museums*

Turning a blind eye to suspicious circumstances breaches fiduciary duties when acquiring looted items [211]. Museums have the means to investigate title and origin [212]. They 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 [213]. These institutions are created to house, educate, and preserve [214]. More strictly monitoring these institutions will further the cause of preservation and education. There is a need for a uniform, and legally enforceable, standard in the U.S. on which to model museum acquisitions [215]. Since museums control priceless objects of fundamental societal interest, it is appropriate to hold these organizations to a standard similar to other organizations 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 protect stockholders [216]. The Sec found it necessary to enact more stringent requirements to protect consumers [217]. In the same way, stricter standards are needed to protect the beneficiaries (the public) of museums. Corporate scandals [218] spurred the passage of the Sarbanes Oxley Act [219]. Similarly, people around the world are becoming aware of the multi-billion dollar market for looted antiquities that finds their way into private collections and museums [220]. 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 [221]. Similarly, museum representatives and in-house attorneys should have a responsibility to report and receive information regarding improper transactions. Requirements should be instated to require museum employees to disclose illicit acquisition activities and further self-regulation [222].

### *G) Federal oversight is necessary*

#### *1. Museums have proven themselves unable, or unwilling, to properly self-regulate*

The continuing acquisition practice of looted artifacts [223] demonstrates that museums cannot self-regulate in a way that fulfills their non-profit purposes [224]. 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 [225]. If an object was stolen at one time, it is



possible that it is listed in a stolen art database [226]. Searching databases should be a minimum first step. Yet databases do not list objects that are undocumented such as those plundered, so its effectiveness for archeological material is limited [227]. Museums should be required to check the U.S. Department of State's website for objects controlled pursuant to CPIA [228]. The International Property Protection Homepage of the U.S. Department of State is illustrated with photographs of the type of objects subject to temporary import restrictions [229].

## 2. *It is imperative that museums not purchase plundered antiquities from war-torn nations*

As recognized by UNESCO, a consequence of war is the destruction of cultural heritage [230]. During times of conflict, museums and archaeological sites are left unguarded and vulnerable to looters [231]. During the "Arab Spring" and the still-raging civil war in Syria and violent protests in Egypt, archeological sites have been plundered [232]. Items are more easily smuggled during these times, and they enter the black market, and possibly find a final destination with a purchaser abroad [233]. International organizations and representatives have warned antiquities buyers that thousands of looted objects from Syria and Egypt that now appear on the market [234]. Museum directors must consider the flux of items from warring nations, and be mindful not to fuel the market for loot [235]. The director general of 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 matter and due diligence is even more necessary in the current case" [236]. The provenience or "find spot" of objects from a politically torn nation are a warning to buyers that those objects may have been looted [237]. Museums must exercise heightened scrutiny and not purchase items from war-torn nations, unless provided with an ironclad provenance [238]. 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 [239]. At a minimum, it should be required for museums to check the FBI Art Theft Program prior to purchasing items from war-torn regions [240].

## 5. Conclusion

The illicit trade of looted cultural heritage is a major problem internationally, as it deprives humanity of the objects' cultural, education, and aesthetic values. The global black market for cultural objects has recently gained media attention due to its prevalence as the second or third largest criminal activity internationally. Startlingly, art crime has links to terrorism, money laundering, and the weapons and narcotics trade. Art and cultural heritage can be protected by reducing the demand for these objects to limit the size of the market. One way to minimize the black market is to regulate market intermediaries, including museums. Museums should not be permitted to turn a blind eye to an object's looted past. These institutions are intended to preserve art; therefore, museum directors must not participate in the market for illicit goods. To ensure that museums engage in proper due diligence, it is necessary to enact mandates that effectively deter inappropriate acquisition practices. The government must also aggressively monitor museum representatives and prosecute those engaging in underhanded dealings. Additionally, existing statutes should increase penalties to include heavier fines and incarceration as criminal sentences may be the only true deterrent.

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. Due to tax benefits enjoyed by museums, they should follow more stringent standards and complete thorough provenance research prior to new purchases. Despite the recent changes in the AAMD guidelines, they are still not demanding enough. 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.

## Note

[1] Cultural heritage is the legacy of physical 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.

[2] [E. Becatoros, \*Smuggled Antiquities Funding Iraq Extremists, U.S. Says\*](#), National Geographic, March 19, 2008 (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] [P. Cohen, \*Valuable as Art, but Priceless as a Tool to Launder Money\*](#), The New York Times, May 12, 2013.

[4] [A. Kocherga, \*Mexican drug smugglers profit from illegal trade in archaeological artifacts\*](#), WFAA.com, Feb. 8, 2013.

[5] [A. Baker, \*Syria's Looted Past: How Ancient Artifacts are being Traded for Guns\*](#), Time Magazine, Sept. 12 2012, (quoting a smuggler, "We buy antiquities cheap, and then sell weapons expensively...The rebels need weapons, and antiquities are an easy way to buy them..."); [UN Office on Drugs and Crimes, \*Trafficking in Cultural Property: Organized Crime and the Theft of Our Past\*](#), October 30, 2012.

[6] [B.R. Williams, \*What is Art Crime?\*](#), The Damforst Museum, The Online Museum of Damaged, Forged & Stolen Art, Oct. 14, 2010.

- [7] J. Beckert and F. Wehinger, *In the Shadow: Illegal Markets and Economic Sociology*, Discussion Paper, Max-Planck-Institute For the Study of Societies, 2011, pag. 12; See also, [R. Blumenthal and T. Mashberg, \*The Curse of the Outcast Artifact\*](#), The New York Times, July 12, 2012 (quoting R.J. Elia, "looting is driven by the art market, by supply and demand.").
- [8] [M. Vlastic, \*Stamping out the illicit trade in cultural artifacts\*](#), The Guardian, Aug. 7, 2011.
- [9] See generally, S. Manacorda & D. Chappell, *Crime in the Art and Antiquities World: Illegal Trafficking in Cultural Property*, Springer, 2011.
- [10] [C. Franzen, \*Ill-gotten gains: how many museums have stolen objects in their collections?\*](#), The Verge, May 13, 2013.
- [11] J. Felch and R. Frammolino, *Chasing Aphrodite: the Hunt for Looted Antiquities at the World's Richest Museum*, Houghton Mifflin Harcourt, 2011.
- [12] S. Waxman, *Loot: The Battle over the Stolen Treasures of the Ancient World*, Times Books, 2009.
- [13] The mask was unearthed in Egypt in 1952, and its ownership was vested in the Egyptian government, before it went missing in the 1960s. The mask reappeared in the St. Louis Art Museum in 1998, and the museum has refused to return the artifact to Egypt. The case was in federal court, moved toward settlement, and after negotiations fell through, is expected to return to the federal court docket later in 2013. The case continues to draw attention to the number of museum purchases made from antiquities dealers with criminal or suspect records.
- [14] [R. Pogrebin and K. Flynn, \*Museums Studying Dealer's Artifacts\*](#), The New York Times, Jul. 27, 2012.
- [15] *Ibid.*
- [16] See [ICOM Standards & Guidelines](#).
- [17] See Ass'n of Art Museum Dirs., *Guidelines on the Acquisition of Archaeological Material and Ancient Art* (last visited February 17, 2013).
- [18] [M. Boehm, \*Major art museum group bolsters rules for acquiring ancient art\*](#), The Los Angeles Times, Jan. 31, 2013.
- [19] See Part II of this article.
- [20] S. Calvani, *Frequency and Figures of Organised Crime in Art and Antiquities*, in *Organised Crime in Art and Antiquities* 28 (S. Manacorda, ed.), 2009, available at [http://www.academia.edu/887647/Organised\\_crimes\\_in\\_Art\\_and\\_Antiquities](http://www.academia.edu/887647/Organised_crimes_in_Art_and_Antiquities); N. Brodie, J. Doole & P. Watson, *Stealing History: The Illicit in Cultural Material*, The McDonald Institute for Archaeological Research, 2000.
- [21] [R.M. Poole, \*Looting Iraq\*](#), Smithsonian.com, Feb. 2008.
- [22] T. Bazley, *Crimes of the Art World*, Praeger, 2010, pag. 84.
- [23] [Destruction of Iraq Cultural Heritage](#), [thelivingmoon.com](http://thelivingmoon.com)
- [24] See Gov't of Islamic Repub. of Iran v. *The Barakat Galleries Ltd.*, [2007] EWHC 705 (Q.B.D. 2007), *rev'd by* [2007] EWCA Civ. 1374 (A.C. 2007) (antiquities dealer being told that antiquities looted from Iran were found in Syria and Afghanistan); See also, *United States v. An Antique Platter of Gold* ("Golden Phiale"), 184 F.3d 131 (2<sup>nd</sup> Cir. 199) (antiquities smuggler stated that an object came from Switzerland, rather than Sicily).
- [25] K. Hanson, *Why Does Archaeological Context Matter?* in *Catastrophe! The Looting and Destruction of Iraq's Past* (Geoff Emberling & Katharyn Hanson eds.), The Oriental Institute Museum of the University of Chicago, 2008, p. 45 (stating "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.").
- [26] L. de la Torre, *Terrorists Raise Cash by Selling Antiquities*, Gov't Security News, Feb. 20, 2006.
- [27] See Brodie, *Stealing History*, cit., pag.16; Archaeological Institute of America, *Frequently Asked Questions*, available at <http://www.archaeological.org/sitepreservation/faqs>.
- [28] See generally, P. Watson & C. Todeschini, *The Medici Conspiracy: The Illicit Journey of Looted Antiquities - From Italy's Tomb Raiders to the World's Greatest Museums*, PublicAffairs, 2007.
- [29] See generally, R. Atwood, *Stealing History: Tomb Raiders, Smugglers, and the Looting of the Ancient World*. (St. Martin's Press, 2004).
- [30] "Museums", *Encyclopædia Britannica*, 2012. Encyclopædia Britannica Premium Service. Feb. 5, 2013, available at [www.britannica.com/EBchecked/topic/398814/museum](http://www.britannica.com/EBchecked/topic/398814/museum).
- [31] 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. [International Council of Museums Statutes](#).
- [32] J.H. Merryman, A.E. Elsen, *Law Ethics and the Visual Arts*, Kluwer Law International, 3rd ed., 1991, pag. 907.
- [33] See [www.ashmolean.com](http://www.ashmolean.com)
- [34] "Museums, history of", *Encyclopædia Britannica*, 2012. Encyclopædia Britannica Premium Service. Feb. 5, 2013, available at <http://www.britannica.com/EBchecked/topic/398827/history-of-museums>.
- [35] See [www.bonjourlafrance.com/france-tourist-attractions/louvre.htm](http://www.bonjourlafrance.com/france-tourist-attractions/louvre.htm) and [www.wga.hu/database/museums/louvre.html](http://www.wga.hu/database/museums/louvre.html)

[36] See P. Gerstenblith, *Art, Cultural Heritage, and the Law*, Carolina Academic Press, 3rd ed., 2012.

[37] See Merryman, *op. cit.*, pag. 906.

[38] *Ibid.*

[39] [www.forbes.com/companies/metropolitan-museum-of-art/#](http://www.forbes.com/companies/metropolitan-museum-of-art/#)

[40] W.E. Howe, H.W. Kent, *A History of the Metropolitan Museum of Art*, Gilliss Press, 1913.

[41] See P. Gerstenblith, *cit.*, pag. 227.

[42] *Ibid.*

[43] See L.J. Borodkin, *The Economics of Antiquities Looting and a Proposed Legal Alternative*, Colum. L. Rev. 95 (2), 1995, pagg. 377, 388 (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).

[44] P. Gerstenblith, *From Bamiyan to Baghdad: Warfare and the Preservation of Cultural Heritage at the Beginning of the 21<sup>st</sup> Century*, 37 Georgetown Journal of Int'l Law p. 245 (discussing the obliteration of the Bamiyan Buddhas during a time of conflict); See A. Milligan, *Targeting Cultural Property: The Role of International Law*, Journal of Public and International Affairs 2008, pag. 91.

[45] Pursuant to Article 7(b)(1), state parties state 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.

[46] See 19 U.S.C. §§ 2607-10 (2006).

[47] See 19 U.S.C. §§2601-2613 (2006).

[48] *Id.*

[49] See P Gerstenblith, *The McClain/Schultz Doctrine: Another Step Against Trade in Stolen Antiquities in Culture Without Context*, Issue 13, Autumn 2003 (posted July 2004), available at <http://www.mcdonald.cam.ac.uk/projects/iarc/culturewithoutcontext/issue%2013/gerstenblith.htm>

[50] See *United States v. Schultz*, 178 F. Supp. 2d 445 (S.D.N.Y. 2002), *aff'd*, 333 F.3d (2d Cir. 2003); *cert. denied*, 540 U.S. 1106 (2004); See also *Schultz v. United States*, 05 Civ. 246 (JSR), 2005 U.S. Dist. LEXIS 12836 (S.D.N.Y. 2005) (denying post-conviction relief).

[51] 18 U.S.C. § 2315 (2000).

[52] See *Schultz*, 333 F.3d at 416. Indicting criminals for cultural heritage theft dates back to the 1970s. In the late 1970s in *United States v. McClain*, 545 F.2d 988 (5<sup>th</sup> Cir. 1977), antiquities dealers were prosecuted under NSPA for dealing in Mexican antiquities subject to a 1972 patrimony law that vested national ownership to antiquities discovered in Mexican soil. This case established the "McClain Doctrine" that established US courts' recognition that foreign patrimony laws may create ownership of undocumented antiquities in the national government.

[53] Patrimony laws vest ownership of all undiscovered antiquities in the national government that created the law.

[54] See *United States v. Schultz*, 178 F. Supp. 2d 445 (S.D.N.Y. 2002), *aff'd*, 333 F.3d (2d Cir. 2003); *cert. denied*, 540 U.S. 1106 (2004) (HOLDING); *United States v. An Antique Platter of Gold*, 195 Mag. 2167 (NRB), 995 U.S. Dist. LEXIS 19080 (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).

[55] See C. Forrest, *International Law and the Protection of Cultural Heritage*, Routledge, 2010.

[56] [Federal Bureau of Investigation, Team Approach to Art Crime, Part 1](#), Feb. 2 2010.

[57] See Manacorda & Chappell, *op. cit.*, describing the market reduction approach, as decreasing the size of the market for illicit goods by reducing the demand for these items.

[58] [E. Wyatt, Museum Workers are Called Complicit](#), The New York Times, Jan. 26, 2008.

[59] T. Hoving, *Making the Mummies Dance*, Simon & Schuster, 1993.

[60] Herrick Feinstein LLP (Press Release) [Turkey's Lawsuit Against Metropolitan Museum of Art Ends with Return of Lydian Hoard Antiquities to Turkey](#), 1993 (stating 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](#), *The Economist*, Oct. 2, 1993 (*Metropolitan Museum of art returns plundered antiquities to Turkey*).

[61] See [Top 10 Plundered Artifacts](#), *Time*.

[62] See [Steven Litt, Cleveland Art Museum to Return 14 Stolen Items to Italy; Authorities Prove the 14 Artifacts were Looted or Stolen](#), Museum Sec. Network (Nov. 23, 2008, 6:36 PM).

[63] See [N. Wennerstrom, Cleveland Museum Strikes Defiant Tone on Antiquities Collecting-Updated](#), *Nord on Art*, Aug 13 2012

[64] See generally Felch & Frammolino, *Chasing Aphrodite*, *cit.*

- [65] See [G. Edgers, \*Making 'Herakles' Whole After All These Years\*, \*The Boston Globe\*, Jul. 17, 2011.](#)
- [66] See [Greek God Hercules Reunited With His Bottom Half as Museum Agrees to Send Back 'Looted' Bust to Turkey](#), Daily Mail, Jul. 22, 2011.
- [67] See [G. Edgers, \*MFA receives Rare West African Art Pieces\*](#), *The Boston Globe*, June 29, 2012; see *Nigeria Demands Return of Disputed Artefacts Acquired by Boston's Museum of Fine Arts*, Elginism (July 25, 2012, 1:07 PM).
- [68] [Neil Brodie, \*Toledo Museum of Art Return to Italy\*](#), Trafficking Culture, Feb. 28, 2013.
- [69] *Ibid.*
- [70] See W. Barksdale Maynard, *Art Museum Returns More Ancient Artworks to Italy*, Princeton Alumni Weekly, Vol. 112, No. 8, Mar. 7, 2012.
- [71] See generally S. Manacorda and D. Chappell, *op. cit.*
- [72] See [R. Corbett, \*Art Market Watch: How Big is the Global Art Market?\*](#), Artnet.com (some sources state that China has overtaken the US as the largest art market, but contradictory reports suggest that US is still the art market leader at 29% of the global art market.).
- [73] See 18 U.S.C. § 2315 (2006).
- [74] See *Schultz*, 333 F.3d at 416 (Antiquities dealer Howard Schultz was tried for conspiracy for selling items illegally smuggled out of Egypt, in violation of the nation's patrimony law).
- [75] Egyptian Law on the Protection of Antiquities (law no. 117 of 1983) (declaring all antiquities found in Egypt to be the property of the Egyptian government).
- [76] *United States v. An Antique Platter of Gold*, 995 U.S. Dist. LEXIS 19080 (S.D.N.Y. Dec. 21, 1995) (denying motion for return of property), 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. 1997) *aff'd*, 184 F.3d 131 (2d Cir. 1999), *cert. denied*, 528 U.S. 1136 (2000).
- [77] *Id.*
- [78] *United States v. McClain*, 545 F.2d 988 (5th Cir. 1977).
- [79] *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); See *Iran v. Barakat*, *cit.*
- [80] See *U.S. v. Schultz*, 333 F.3d 393, 416 (2d Cir. 2003).
- [81] J.A. Kreder, *The Choice Between Civil and Criminal Remedies in Stolen Art Litigation*, 38 Vand. J. Transnat'l L. pag. 1199, 1206 (Oct. 2005).
- [82] See [http://www.damforstmuseum.org/what\\_is\\_art\\_crime.html](http://www.damforstmuseum.org/what_is_art_crime.html)
- [83] B. Dobovšek & B. Slak, *The Significance of Studying and Investigating Art Crime: Old Reasons, New World*, *Varstvoslovje: Journal of Criminal Justice and Security*, 2013, 13 (4), pagg. 392-405, pag. 398. available at: [http://www.fvv.uni-mb.si/rV/arhiv/2011-4/03\\_Dobovsek\\_Slak.pdf](http://www.fvv.uni-mb.si/rV/arhiv/2011-4/03_Dobovsek_Slak.pdf).
- [84] *Ibid.* (noting that the art world is seen as an elitist world and not of import to the general public).
- [85] See [J. Jones, \*Dutch Art Theft: A Pick'n'Mix of Paintings Reduced to Criminal Collateral\*](#), The Guardian Jonathan Jones Art Blog, 16 October 2012.
- [86] M. Cocchi, *the Protection of Culture as a Shared Interest in Humanity*, *Cultural Heritage and Arts Review*, Spring 2010, pagg. 18-22.
- [87] J Ulph, *The Impact of the Criminal Law and Money Laundering Measures Upon the Illicit Trade in Art and Antiquities*, *Art Antiquity and Law* 2011, 16 (1), pag. 39-52, pag. 49 ("the 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.")
- [88] See J. Scott Dutcher, Comment, *From the Boardroom to the Cell Block: The Justifications for Harsher Punishment of White-Collar and Corporate Crime*, 37 Ariz. St. L.J. 1295, 1303-1309 (2006) (explaining that only harsher crimes will deter white-collar crime perpetrators).
- [89] [F. Lowe & J. Burke, \*Europe Bids to Halt Tide of Art Smuggled to America\*](#), *The Observer*, Jan. 22, 2006.
- [90] S. MacKenzie, *Illicit Antiquities, Criminological Theory, and the Deterrent Power of Criminal Sanctions for Targeted Populations*, *Art Antiquity and Law* 2002, 7 (2), pagg. 125-161, pag. 142 (finding that imprisonment has a deterrent effect on "white collar" criminals).
- [91] See [E. Povoledo, \*Italy Defends Treasures \(and Laws\) With a Show\*](#), *The New York Times*, Oct. 7, 2008. (The nation celebrates its success in protecting antiquities, and has hosted museum exhibitions featuring repatriated objects).
- [92] See [History of the Carabinieri](#), Carabinieri.it, (Carabinieri is the national military police of Italy, founded in 1814).
- [93] See [M. Russell, \*Intel Brief: Art theft and organized crime\*](#), *International Relations and Security Network* (Apr. 11, 2008).



- [94] *Ibid.*
- [95] See [A.R. Esman, China's \\$13 Million Art Fraud - And What it Means for You](#), Forbes Art & Entertainment Blog (Aug 8, 2012, 8:01 AM).
- [96] See [Federal Bureau of Investigation, Art Crime Team](#).
- [97] See Russell, *op. cit.*
- [98] [A.L. Slayman, The Trial in Rome](#), Archaeology, Feb. 6, 2006.
- [99] S. Fisch, *National Approaches to the Governance of Historical Heritage Over Time: A Comparative Report* p. 109, IOS Press, 2008.
- [100] See [R. St. Hilaire, The Weiss Ancient Coin Prosecution and What to Watch For Cultural Heritage Lawyer](#), March 22, 2012.
- [101] See *Protection of Items of Artistic and Historic Interest*, law No. 1089 of June 1, 1939 (Itl). This law was cited in *United States v. An Antique Platter of Gold*, 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. 1997), *aff'd*, 184 F.3d 131 (2d Cir. 1999), *cert. denied*, 528 U.S. 1136 (2000), in a forfeiture proceeding against an antiquities collector.
- [102] Amongst other laws are legge 27 giugno 1907, n. 386 *Tutela della conservazione dei monumenti e degli oggetti d'antichità e d'arte*, a law that protects artistic and archaeological objects passed in 1907; legge 22 maggio 1939, n. 823, *Riordinamento delle soprintendenze alle antichità e all'arte*, provides for the protection of antiquities through a national ministry.
- [103] See [N. O'Leary, U.S. Returns Stolen Art Worth Millions to Italy](#), Reuters, (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.)
- [104] See [Looting Matters: Italian Prosecutors Calls for Return of Antiquities](#), PRNewswire, June 4, 2010.
- [105] See [E. Povoledo, At Root of Italy's Library Plunder, a Tale of Entrenched Practice](#), The New York Times, Aug. 11, 2012.
- [106] See Slayman, *The Trial in Rome*, cit.
- [107] *Ibid.*
- [108] [J. Felch, Charges Dismissed Against ex-Getty Curator Marion True by Italian Judge](#), Los Angeles Times, Oct. 13, 2010.
- [109] See Lowe & Burke, *op. cit.*, 93.
- [110] *Italy v. Marion True and Robert E. Hecht*, Trib. Roma, sez. VI pen., 13 ottobre 2010, n. 19360/10.
- [111] *Id.*
- [112] See Lowe & Burke, *op. cit.*
- [113] See generally Watson & Todeschini, *The Medici Conspiracy*, cit. (for information about Giacomo Medici's criminal activities).
- [114] *Ibid.*
- [115] Felch, *op. cit.*
- [116] Slayman, *The Trial in Rome*, cit.
- [117] *Italy v. Marion True and Robert E. Hecht*, Trib. Roma, sez. VI pen., 13 ottobre 2010, n. 19360/10.
- [118] [B. Johnson, Getty Museum Curator Turned 'Blind Eye to Art Theft](#), The Telegraph, Jul 19 2005.
- [119] *Ibid.*
- [120] See Lowe & Burke, *op. cit.*
- [121] See Lowe & Burke, *op. cit.*
- [122] See J.S. Dutcher, Comment, *From the Boardroom to the Cell Block: The Justifications for Harsher Punishment of White-Collar and Corporate Crime*, 37 Ariz. St. L.J., pag. 1295, pagg. 1303-1309 (2006) (explaining that only harsher crimes will deter white-collar crime perpetrators).
- [123] *Ibid.*
- [124] *Ibid.*, pag. 1305.
- [125] Press Release, [The J. Paul Getty Museum, Italian Ministry of Culture and the J. Paul Getty Museum Sign Agreement in Rome](#) (Aug. 1, 2007).
- [126] See [Euphronios Krater](#), The New York Times (explaining that Italian Ministry of Cultural agreed long-term loans in exchange for the return of the Euphronios Krater); [R. Frammolino, The Goddess Goes Home](#), Smithsonian, (Nov. 2011) (describing the return of a Central Sicilian statue from the Getty Museum in consideration of exchange for long-term loans); see also <http://www.mfa.org/collections/art-past/italian-ministry-culture-agreement> (celebrating 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).



[127] [H. Eakin, \*Italy Goes on Offensive with Antiquities\*](#), The New York Times, Dec 26, 2005.

[128] A.L. Slayman, *op. cit.*

[129] [http://traffickingculture.org/case\\_note/euphronios-sarpedon-krater/](http://traffickingculture.org/case_note/euphronios-sarpedon-krater/)

[130] [E. Povoledo, \*Ancient Vase Comes Home to a Hero's Welcome\*](#), New York Times, Jan. 19, 2008.

[131] [Statement by the Metropolitan Museum of Art on its Agreement with Italian Ministry of Culture.](#)

[132] 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., pag. 673, pagg. 689-91 (2008).

[133] Eakin, *op. cit.*

[134] Bureau of Educational and Cultural Affairs, U.S. Department of State, available at <http://eca.state.gov/cultural-heritage-center/international-cultural-property-protection/bilateral-agreements/italy> (describing the loan program between the United States and Italy).

[135] See [S. Mazur, \*Maurizio Fiorilli-Italy's Antiquities Prosecutor\*](#), Scoop, Feb. 17, 2006.

[136] Eakin, *op. cit.*

[137] *Ibid.*

[138] [E. Povoledo, \*Italy and U.S. Sign Antiquities Accord\*](#), The New York Times, Feb. 22, 2006.

[139] See 18 U.S.C. § 2315 (requiring knowledge that the object was "stolen, unlawfully converted or taken"); See *generally McLain*, 545 F.2d at 1002 (noting that defendants' lack of knowledge that the articles were deemed "stolen" under Mexican law, they were not liable under the NSPA).

[140] See Kreder, *op. cit.*, pag. 1206.

[141] As explained in *U.S. v. Mask of Ka Nefer Nefer*, 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." *United States v. Mask of Ka-Nefer-Nefer*, 4:11-CV-504-HEA, 2012 WL 1094652 (E.D. Mo. Mar. 31, 2012)

[142] The [Endangered Species Act](#) prohibits the ownership and importation of species identified as endangered. Endangered Species Act of 1973 (ESA) Pub.L. 93-205, 87 Stat. 884 (1973).

[143] [T. Hill, \*The Art Market: Unregulated Unscrupulous and Worth Billions\*](#), Artlyst, Nov. 13, 2012.

[144] *Ibid.*

[145] See Kreder, *op. cit.*, pag. 1206.

[146] *Ibid.* pag. 1206; See [Aris Title Insurance Corporation](#) (companies like Aris promise anonymity to their customers).

[147] *Ibid.*

[148] [R. Pogrebin, \*Trustees Find Board Seats Are Still Luxury Items\*](#), The New York Times, Apr. 2, 2010. The Board of Trustees lists notable members such as editor of Vogue, Anna Wintour; New York City Mayor, Michael Bloomberg; former CEO of March & McLennan, Jeffrey W. Greenberg. See [Metropolitan Museum of Art, Board of Trustees](#).

[149] See Gerstenblith, *op. cit.*, pag. 235.

[150] See [A. Riding, \*American museums grapple with looted artifacts claims\*](#), The Chicago Tribune, Nov. 27, 2005, (noting that Shelby White, the widow of Leon Levy and a donor of millions of dollars or art, is a Metropolitan Museum of Art trustee); See also Elginism, <http://www.elginism.com/similar-cases/academic-backlash-against-leon-levy-foundation/20060401/379/> (noting that the Leon Levy foundation contained looted objects and that the donor and his wife have a close relationship with the Metropolitan Museum of Art).

[151] See Boehm, *op. cit.*

[152] [J.H. Merryman, \*Museum Ethics\*](#), The American Law Institute, 2006.

[153] P. Gerstenblith, *Acquisition and Deacquisition of Museum Collections and the Fiduciary Obligation of Museums to the Public*, 11 Cardozo J. Int'l & Comp. L., pag. 409, pagg. 412-13 (2003).

[154] *People ex rel. William J. Scott, Attorney General v. George F. Harding Museum* 58 Ill. App. 3d 408, 374 N.E.2d 756 (1978).

[155] See Gerstenblith, *op. cit.*, pag. 236.

[156] *People ex rel. William J. Scott, Attorney General v. George F. Harding Museum* 58 Ill. App. 3d 408, 374 N.E.2d 756 (1978).

[157] See Merryman & Elsen, *op. cit.*, pag. 966.

[158] See Merryman, *op. cit.*

[159] *Ibid.*

[160] *Ibid.*

[161] See [Associated Press, Two Greeks Jailed for Life Over Illegal Antiquities, Two More Men for 20 and 16 Years](#), artdaily.org (explaining that two men in Greece were given life sentences for dealing in looted antiquities); Trib. Roma, sez. VI pen., 13 ottobre 2010, n. 19360/10 (It.) (the nation of Italy leveraged criminal sanctions against museum curator, Marion True).

[162] 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> (although some sources are now saying that China has overtaken the US as the largest art market, there are contradictory reports to suggest that US is still the art market leader at 29% of the global art market).

[163] See David W.J. Gill, *Looting matters for classical antiquities: Contemporary Issues in Archaeological Ethics* (Apr. 29, 2010), available at <http://www.presentpasts.info/article/view/pp.14/23> (listing Leon Levy and Shelly White, and the Fleishmanns as collectors of looted art); ELGINISM *op. cit.*, 156 (noting that the Levy-White collection at the Metropolitan Museum of art is widely believed to contain many looted objects).

[164] See Lowe & Burke, *op. cit.*

[165] See Wyatt, *op. cit.*, (quoting law professor P. Gerstenblith "As educational institutions, museums have a responsibility to look beyond that particular object" that they may be acquiring).

[166] See [American Alliance of Museums, AAM 2000 Museum Guidelines](#).

[167] See Boehm, *op. cit.*

[168] See G. Edgers, *A Detective's Work at the MFA*, The Boston Globe, Dec. 11, 2011, (Boston's Museum of Fine Arts recently created a curatorial position, Curator of Provenance, that is devoted solely to the research of provenance for objects in the museum's collection).

[169] See A.L. Taberner, *Cultural Property Acquisitions, Navigating the Shifting Landscape*, Left Coast Press, 2011, pag. 55 (explaining the proposition that curators are the individuals most likely to recognize red-flag issues related to illicit excavations and site destruction); *Ibid.*, pag. 92 (finding that museums have research resources readily available).

[170] [ICOM, Development of the Museum Definition according to ICOM Statutes \(2007-1946\)](#).

[171] See Gerstenblith, *op. cit.*, pag. 236.

[172] See Taberner, *op. cit.*, pag. 108.

[173] See Gerstenblith, *op. cit.*, pag. 453.

[174] I.P. DeAngelis, *How Much Provenance is Enough? - Post-Schultz Guidelines for Art Museum Acquisition of Archeological Materials and Ancient Art* (2005), cited in B.T. Hoffman, *Art And Cultural Heritage: Law, Policy And Practice*, Cambridge University Press, 2006, pag. 407.

[175] *Ibid.*

[176] See Brodie, *op. cit.*, pag. 43.

[177] Patty Gerstenblith, *Acquisition and Deacquisition of Museum Collections and the Fiduciary Obligations of Museums to the Public*, 11 Cardozo J. Int'l & Comp. L. 409, 416 (2003); 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).

[178] E.A. Graefe, *The Conflicting Obligations of Museums Possessing Nazi-Looted Art*, 51 B.C.L. Rev. 473, 493, n. 168 (2010), <http://lawdigitalcommons.bc.edu/bclr/vol51/iss2/4>, 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).

[179] P. Gerstenblith, *The Fiduciary Duties of Museum Trustees*, 8 Colum.VLA J.L. & Arts 175, 177 (1983); Range, *op. cit.*, pag. 657.

[180] Graefe, *op. cit.*, 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"); Scott and Ascher on Trusts, 3 Austin Wakeman Scott et al., *Scott and Ascher on Trusts* § 17.2 (5th ed. 2007); 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).

[181] See *People ex rel. William J. Scott, Attorney General v. George F. Harding Museum* 58 Ill. App. 3d 408, 374 N.E.2d 756 (1978).

[182] See *Bob Jones University v. United States*, 461 U.S. 574 (1983).

[183] See American Alliance of Museums, *Code of Ethics for Museums*.

[184] *Ibid.*

[185] See Gerstenblith, *op. cit.*, pag. 464.

[186] *Ibid.*

[187] See Felch & Frammolino, *Chasing Aphrodite* *cit.*, pagg. 32-36.

[188] *Ibid.*

[189] [J. Felch, \*Getty Museum review targets its antiquities collection\*](#), Los Angeles Times, Jan. 18, 2013; [N. Brodie, \*Jiri Frel, Trafficking Culture\*](#), Aug. 12, 2012.

[190] See Lowe & Burke, *op. cit.*

[191] See Gerstenblith, *op. cit.*, pag. 450.

[192] *Ibid.*

[193] <http://archives.ICOM.museum/ethics.html#intro>

[194] See Taberner, *op. cit.*, pag. 85.

[195] *Ibid.*, pag. 40.

[196] *Ibid.*, pag. 43; See Boehm, *op. cit.*

[197] See *Louisiana World Exposition v. Fed. Ins. Co.*, 864 F.2d 1147, 1150 (5th Cir. 1989); *Stern v. Lucy Webb Hayes Nat'l Training Sch. For Deaconesses and Missionaries*, 381 F. Supp. 1003, 1013 (D.D.C. 1974).

[198] See Taberner, *op. cit.*, pag. 49.

[199] *Ibid.*, pag. 66.

[200] *Ibid.*, pag. 66.

[201] See Hoffman, *op. cit.*, pag. 405.

[202] See DeAngelis, *op. cit.*

[203] R. Short Myren, *Provenance Factors for Antiquities Acquisitions*, Society for California Archaeology Proceedings, Volume 24 (2010), 3.

[204] *Ibid.*

[205] *U.S. v. Mask of Ka-Nefer-Nefer*, No. 11-cv-504 (HEA) (E.D. Mo. March 31, 2012).

[206] *Id.*

[207] See [Steven Litt, \*Cleveland Museum of Art buys important ancient Roman and Mayan antiquities\*](#), Aug. 12, 2012; Watson, *op. cit.*; See [M. Gay, \*For the St. Louis Art Museum, a legal victory raises legal questions\*](#), The Atlantic, May 30, 2012.

[208] *Ibid.*

[209] [P. Balford, \*Focus on the Ka Nefer Nefer "Collection History" \(1\) \("Here Zakki, you can have this"\)\*](#), Apr. 8, 2012.

[210] *Ibid.*

[211] See Wyatt, *op. cit.*

[212] See [Virginia Museum of Fine Arts](#); Museum of Fine Arts Boston, [Acquisitions and Provenance Policy](#).

[213] See Taberner, *op. cit.*, pag. 49.

[214] See [ICOM, \*Museum definiton\*](#).

[215] [H. Eakon, \*Antiquities trade puts museums under scrutiny\*](#), San Diego Times, Nov. 27, 2005.

[216] See Waller, *Compensation Committees and the Stricter Standards of Independence under SEC rules and the IRS Code*, (Jan. 24, 2005) available at: <http://www.wallerlaw.com/News-Events/Bulletins/89105/Compensation-Committees-and-the-Stricter-Standards-of-Independence-Under-SEC-Rules-and-the-Internal-Revenue-Code>; Jessica Holzer, *SEC proposes stricter standards for securities brokerage*, WSI (Jun. 11, 2011) available at: <http://www.programbusiness.com/news/SEC-Proposes-Stricter-Standards-for-Securities-Brokerages>

[217] See Holzer, *op. cit.*

[218] See [P. Patsuris, \*The Corporate Scandal Sheet\*](#), Forbes, Jul, 26, 2002, 5:30 PM).

[219] See [J.C. Coffee Jr., \*Limited Options\*](#); Sarbanes-Oxley Act of 2002 (Pub.L. 107-204, 116 Stat. 745, enacted July 30, 2002).

[220] See [R. Kennedy, \*Museum Defends Antiquities Collecting\*](#), *The New York Times*, Aug. 12, 2012.

[221] See G. DiBianco and A.M. Lawrence, Skadden, Arps, Slate Meagher & Flom LLP, *Investigation and Reporting Obligations under Section 10A of the Securities Exchange Act: What Happens when the Whistle is Blown?* Securities Fraud National Institute, Sept. 29, 2006.

[222] See Merryman, *op. cit.*, pag. 966.

[223] In 2012, the Republic of Turkey demanded the return of 21 antiquities from the Cleveland Museum of Art, after the museum purchased items without appropriate provenance. [J. Felch & R. Frammolino, \*The Getty's Looted Amber: A Window into the Museum's Deepening Dilemma\*](#), *Chasing Aphrodite*, Jan. 19, 2013. The Museum of Fine arts in Boston acquired a collection of looted Benin bronzes in 2012 (see [http://www.museum-security.org/opoku\\_boston\\_return.htm](http://www.museum-security.org/opoku_boston_return.htm)). See also [Museum of Fine Arts Boston, \*Mission Statement\*](#).

- [224] See Museum of Fine Arts Boston, *op. cit.*, 278; [K. Brooks, Boston's Museum of Fine Arts Urged to Return Looted Artifacts to Nigeria](#), Huffington Post, Jul, 20, 2012.
- [225] See DeAngelis, *op. cit.*, pag. 262.
- [226] See [Interpol database](#). For a partial list of databases, see <http://www.saztv.com/page9.html>.
- [227] See DeAngelis, *op. cit.*, pag. 251.
- [228] See [U.S. Dep't of State, Immunity from Judicial Seizure-Cultural Objects](#).
- [229] See [U.S. Dep't of State, About the Image Database](#).
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- [231] See [M. Fisher, Tomb Raiders](#), The Guardian, Jan. 19, 2006; see generally M. Bogdanos, *Thieves of Baghdad*, Bloomsboory USA, 2005 (describing the destruction and looting of antiquities during the US occupation of Iraq).
- [232] [S. Al-Khalidi, Syrian violence threatens ancient treasures](#), Reuters, Feb. 20, 2013; [P. Barford, Rebels and Refugees: Looting in Syria](#), Portable Antiquity Collecting and Heritage Issues, Feb. 13, 2013; [M. Elkin, Arab Spring Impacts Archaeology, Libya/Egypt/Tunisia/Syria](#), *Archaeology*, Vol. 65 No. 1, Jan./Feb. 2012.
- [233] See Vlastic, *op. cit.*
- [234] [D. Gavlak, Syria Official Warns of Trafficking in Antiquities](#), Assyrian National News Agency, Feb. 13, 2013; [ICOM, Emergency Red List of Egyptian Cultural Objects at Risk](#).
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- [236] *Ibid.*
- [237] See Vlastic, *op. cit.*
- [238] Taberner, *op. cit.*, pagg. 96-97; see [ICOM, Code of Ethics for Museums](#) (2004), 2.21 Protection Against Disasters.
- [239] See Taberner, *op. cit.*, pagg. 96-97.
- [240] [www.fbi.gov/about-us/investigate/vc\\_majorthefts/arttheft](http://www.fbi.gov/about-us/investigate/vc_majorthefts/arttheft).

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