

HOLOCAUST ERA ASSETS CONFERENCE
PRAGUE
2ND ROUNTABLE – “RESTITUTIONS”
JUNE 27, 2009

Madame Chair, distinguished delegates, ladies and gentlemen, thank you for this opportunity to speak to you today on behalf of the Association of Art Museum Directors, commonly known as the AAMD. The AAMD was founded in 1920 and today comprises approximately 190 directors of the major art museums in the United States, Canada and Mexico. Amongst its many activities, the AAMD establishes policies and guidelines on many topics, which are followed not only by its members, but by most art museums in North America. As such, the AAMD has a significant voice in the art museum world, but also more broadly because it often acts in conjunction with other organizations, such as the American Association of Museums, in establishing policies, standards and guidelines for the larger museum community.

The AAMD believes in this Conference and in the message that it can send to the world, a message that the Holocaust should never be forgotten, the crimes that the Nazis committed should not be allowed to stand and the work of addressing the wrongs committed by the Nazis must continue. Hopefully, the Conference will focus attention on these issues and, for our purposes, on the necessity to find and publish Nazi-looted art and, when the facts support doing so, retribute that art to its rightful owners, but our endeavors are informed by the past and much has already been done since the first meeting in 1998 in Washington of the countries critically concerned with these issues. In fact, in the United States work began even before the Washington Conference. In 1998, the AAMD issued a policy statement and guidelines with respect to the issue of Nazi-looted art, the first professional organization in the world I believe to do so.

These guidelines helped to inform the work of the Washington Conference and one can see many parallels between the 1998 AAMD Guidelines and the Washington Principles. The AAMD Guidelines are all the more remarkable because the vast majority of AAMD members are private institutions.

While there are many similarities, the Guidelines do, however, go beyond the Washington Principles. For example, the Guidelines require donors and sellers to provide Nazi era provenance information on the work, if there is evidence that a work was looted and unrestituted preclude acquisition by the museum and require review of Nazi-era provenance information for incoming loans. One possible outcome of this Conference is to broaden the Washington Principles to address some of these issues in the same manner.

While we focus, quite rightly, on such issues as research on existing collections and the manner in which claims are handled, we should not forget that the focus the AAMD Guidelines, the Washington Conference and other efforts brought to the art market on the issue of Nazi looted art has been significant and transformative. Today, at least in the United States, art museums, auction houses and, increasingly, private collectors, demand provenance information in connection with the Nazi era and not only refuse to acquire looted and unrestituted art, but have actually used the opportunity created by the provenance research into potential acquisitions to bring these objects to the attention of the true owners for restitution. Graham Beal has of course described one such incident.

One of the major commitments that AAMD members have made is to research their collections, to determine those objects that could have been in Europe during the Nazi era and to publish those objects. There is a great deal of confusion about this issue and the numbers of works involved. Once an object has been identified as possibly being in Europe during the Nazi

era, research is done to determine if there is a complete provenance for the period. The level of legal documentation one sees in art transactions today is a relatively new phenomenon and in the past limited legal documentation for art transactions was the norm, not the exception. Many other reasons for a gap exist such as dealer's no longer in business or closed archives. The absence of a complete provenance does not mean that the object was looted, but simply that there is a gap in information.

Since 1998, American museums have devoted substantial resources to this research effort and it is a significant effort. The type of research needed requires training and experience. The first work has been with respect to paintings, with some museums able to move on to other aspects of the collection, but we are talking about tens of thousands of objects that must be reviewed in collections spread throughout the country. Notwithstanding the time and effort and expense involved, thousands of objects that could have been in Europe in the Nazi era including those that lack a complete provenance for or were transferred during that period have been posted on museum websites throughout the United States. Furthermore, the American Association of Museums has created the Museums Portal, a single source searchable database to which over 164 US museums have posted over 27,000 works. Provenance research is not without its challenges, nor are its difficulties confined to museums. Claimants of course face similar challenges which is why we have suggested in our paper on this subject that organizations like the New York State Holocaust Claims Office can provide an important service in this area. Furthermore, as others here will no doubt discuss, there are significant legal and bureaucratic restrictions that hamper access to archives in a number of countries frustrating the establishment of a complete provenance or the inheritance rights of claimants.

Notwithstanding progress to date, there is still work to be done. There are objects in collections that have not been researched. If this work is to continue and expand, funding must be found to allow researchers to be hired as well as internal staff to be refocused on this work. In the United States, the vast majority of art museums are private institutions and this research effort has been borne in large measure by their operating budgets, operating budgets that are currently under severe pressure because of the recession.

While the research that has been done is significant and the number of works posted on websites, the number of claims, restitutions and settlements in the United States, in comparison to Europe where tens and even hundreds of works have been restituted to a claimant, is relatively small. While there may be other settlements that have been accomplished without publicity, since 1998 there have been at least 23 U.S. museums that have restituted approximately 16 objects and arrived at mutually agreeable settlements of claims to another 13. There are a number of reasons for this, but perhaps the most important distinction between the U.S. and Europe is what happened to art recovered after the war. Art that came into the possession of allied forces, with a few notable exceptions, was transferred to or retained by governments in Europe. Yes, there were works that came into the United States before, during and after the war that had been in Europe during the Nazi era, but U.S. Museums did not become repositories for blocks of collections as was sometimes the case in Europe. This does not mean that the research work is any less important or the efforts to resolve claims any less immediate, but it does mean that the extent of the problem needs to be viewed in light of the realities of the situation.

These 23 museums restituted works or settled claims in almost every case without litigation or asserting any so called technical defenses, such as the statute of limitations.

Thankfully, unlike some other jurisdictions, generally in the United States, there is no statutory prohibition against deaccessioning a work and once restituted it is freely saleable and exportable.

In the United States, there have been situations where museums could not honor a claim based on the facts. In a few instances, museums have requested a court to determine the issue of who owns a work. These actions are brought only after exhaustive research, a determination by the museum that the claim is without merit, a genuine effort to provide the claimants with all the relevant facts and a clear disagreement with the claimant that is likely to result in litigation. In these circumstances, the museum is faced with a difficult choice – wait to be sued at a time and place where the evidence and witnesses may no longer be available or ask a court to make a determination. While unknown perhaps in other jurisdictions, declaratory actions are a time honored means in the United States to bring all the parties and the contested objects into an impartial forum – a court – for a determination of the rights of the parties.

These cases are few and we should not ignore that, in a number of these cases, the courts discussed the substance of the claimant's case and said that the facts did not support the claim regardless of any technical defenses such as the statute of limitations. These are not cases, as some have characterized them, of museums refusing to honor the Washington Principles or certainly the AAMD Guidelines. In fact, a number of these cases have been brought by museums that in other cases voluntarily restituted objects. They are situations of legitimate disagreement with claims that museums believed were not supported by the facts.

To accomplish the Washington Principles and their application, there remains significant work ahead and there will be disagreements about how to accomplish those goals, but now would seem to be a time for rededication to those Principles, for reinvigorating the efforts of all involved and for finding common ground in the efforts of all involved.

I appreciate the opportunity to talk to you today on behalf of the AAMD and I would be happy to answer any questions.