

## PRAGUE CONFERENCE ON HOLOCAUST ERA ASSETS

### SELECTED ISSUES FOR AMERICAN ART MUSEUMS REGARDING HOLOCAUST ERA LOOTED ART

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This paper is presented on behalf of the Association of Art Museum Directors (the “AAMD”) to the *Looted Art Working Group* of the 2009 Holocaust Era Assets Conference. The purpose of the paper is to provide an overview of the American museum response to the Principles set forth in the Washington Conference on Nazi-Confiscated Art, to identify areas that need attention and to suggest solutions.

#### **I. Introduction**

The AAMD, which was founded in 1916 as a not-for-profit organization whose director/members represent approximately 190 of the major museums in the United States, Mexico and Canada, abhors the unspeakable crimes committed against Jews during the Holocaust and recognizes the plight of Holocaust survivors who struggle to be reunited with works of art stolen from them by the Nazis and the heirs of Holocaust victims who seek resolution for the wrongs done their ancestors. The American art museum community is firmly committed to assisting Holocaust survivors and heirs by making all provenance research on potential Nazi era looted art available on websites and responding to every claim seriously, respectfully and in a timely manner in an effort to bring justice to those so long denied it.

The AAMD, among other mission-related activities, establishes policies and guidelines for its members that are followed by most art museums in North America. The AAMD also works closely with the American Association of Museums (the “AAM”) on a number of policy-related activities. The AAM establishes policies and best practices for museums of all types throughout the United States.

The AAMD was the first professional organization to establish policies and guidelines for addressing Holocaust looted art and cultural property. In June of 1998, the AAMD published its Report of the AAMD Task Force on Nazi Looted Art (the “1998 Report”).<sup>1</sup> The *1998 Report*, among other things, provides that the AAMD:

- Deplores the unlawful confiscation of art that constituted one of the many horrors of the Holocaust and World War II;
- Reaffirms the commitment of its members to weigh promptly and thoroughly claims of title;
- Urges the prompt creation of mechanisms to coordinate full access to all documentation concerning the spoliation of art;

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<sup>1</sup> The *1998 Report* was amended in 2001 and the *Report*, as amended, is attached.

- Recommends the review of the provenance of works in the collections of member museums, including research of museum records and contact with archives, data bases, art dealers, auction houses, donors, art historians and other scholars, to attempt to ascertain whether any were unlawfully confiscated during the Nazi/World War II era and never restituted;
- Recommends that records relevant to such provenance information be available;
- Recommends that, in connection with acquisitions, donors and sellers should provide as much provenance information as possible with regard to the Nazi/World War II era and, where that information is incomplete, available records should be searched and databases consulted; if the foregoing fails to show an unlawful confiscation, the acquisition may proceed, but if the evidence shows unlawful confiscation without restitution, the acquisition should not proceed;
- Recommends that new acquisitions be published;
- Recommends that if a member museum discovers that a work in the collection was unlawfully confiscated and not restituted, the information should be made public and if a legitimate claimant comes forward, the museum should offer to resolve the matter in an equitable, appropriate, and mutually agreeable manner;
- Recommends that if no claimant comes forward, the member museum should acknowledge the history of the work on labels and publications;
- Recommends that when a claim is received, the member museum should review the claim promptly and thoroughly and if the museum should determine that the work was illegally confiscated and not restituted, the museum should offer to resolve the matter in an equitable, appropriate, and mutually agreeable manner, using mediation wherever reasonably practical;
- Recommends that the provenance of incoming loans be reviewed and that works should not be borrowed if they were illegally confiscated during the Nazi/World War II era and not restituted; and
- Recommends the creation of databases and the participation in those databases by museums.

The *1998 Report* was a collaborative effort by major collecting museums and reflected the growing worldwide concern with unresolved property issues arising out of the Holocaust. Perhaps one of the most notable aspects of the *1998 Report* was that the vast majority of the directors who served on the Task Force that drafted the *1998 Report* were directors of museums that are private institutions. Furthermore, a large proportion of the AAMD museums that adopted the *1998 Report* are private institutions. This is an important distinction. Unlike art museums in almost any other country, most art museums in the United States are private institutions. With the adoption of the *1998 Report*, both private institutions and museums owned

or controlled by governmental entities undertook voluntary standards of conduct not imposed by any government policy.

Even before issuing the *1998 Report*, both in hearings before the United States Congress and discussions within the field, the AAMD took a proactive position with respect to addressing responsibly issues that might arise concerning objects that were looted during the Holocaust and not restituted. The *1998 Report* was followed by the Washington Principles for which the *1998 Report* served, in part, as a model<sup>2</sup> and in 1999, by the American Association of Museums' AAM Guidelines Concerning the Unlawful Appropriation of Objects During the Nazi Era (the "*AAM Guidelines*").<sup>3</sup>

## **II. Acquisitions**

While the undertaking by member museums to research their collections and provide accessible information about those objects that had gaps in their provenance during the Nazi era (defined in the *1998 Report* as 1933-1945) was perhaps the most significant portion of the *1998 Report*, the most immediate effect of the *1998 Report* was to change the nature of collecting by American art museums. Art museums have long sought to obtain provenance information on objects they intend to acquire, whether by purchase, gift, bequest or exchange. After the adoption of the *1998 Report*, museums asked much more specific and pointed questions of sellers, dealers and donors before acquiring objects that might have been in Europe during the Holocaust. In addition, museums conducted independent, multi-source research on such objects, especially as more information became available after the fall of the Berlin Wall and on searchable databases. This effort continues today and now not only do museums carefully research provenance for Nazi era issues, but many private collectors take the same care before acquiring works of art. At least in the United States, the increased awareness resulting from the Washington Principles, the *1998 Report* and *AAM Guidelines*, has fundamentally changed the market for art objects.

American museums also routinely publish their acquisitions. As a result, unlike private transactions and those of institutions in some other countries, the acquisition of works by American museums brings objects into the public eye. If there is a potential claim, the publication of the acquisition of the work can bring it to the attention of the claimant allowing a potential resolution. This open policy on acquisitions by American museums is an important cornerstone of the efforts to address responsibly the difficulties in researching Nazi era provenance.

## **III. Research**

When American museums committed to review objects in their collections that had gaps in their provenance between 1933 and 1945, during which time they were in Europe or had actually been confiscated, few probably understood the enormity of the effort. Of course, a gap in the provenance does not mean that an object was confiscated or confiscated and not restituted.

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<sup>2</sup> The *1998 Report* is broader in a number of significant respects than the Washington Principles. For example, the *1998 Report* addresses not only objects in museum collections that may have been confiscated during the Nazi era and not restituted, but also new acquisitions and loans.

<sup>3</sup> The *AAM Guidelines* were amended in 2001 and the *Guidelines*, as amended, are attached.

A gap, in this context, simply means that there is an absence of information for some period of time between 1933 and 1945 and an indication that during that period of time the object might have been in Continental Europe.

The first priority for review has been European paintings; some museums have been able to complete that portion of the project and have moved on to other aspects of their collections, e.g., sculpture and Judaica. Provenance research is specialized work requiring both education and experience, often times beyond the capabilities or time available of the current curatorial staff. As a result, museums have hired additional personnel in order to do the necessary research. This effort has resulted in literally multiple millions of dollars in direct expenditures for research and much more in indirect expenses as existing museum personnel are retrained to do this specialized provenance research on the collections and respond to claims.

Once an object has been identified as one that changed hands or may have changed hands in Europe between 1933 and 1945, with or without a complete provenance, the next step is publication. Pursuant to an agreement between AAM, AAMD, and the Presidential Advisory Commission on Holocaust Assets in the United States, AAM created a website known as the Nazi-Era Provenance Internet Portal. The Portal provides a central, searchable registry of objects in U.S. museums that changed hands in Continental Europe during the period 1933 to 1945. To date, over 164 museums have published over 27,000 works on the Portal. The Portal links researchers to individual museum websites or staffs, from which users can obtain detailed provenance information, exhibition and publication history, and other information about specific objects.

#### **IV. Museum Restitutions and Settlements**

Since the *1998 Report*, an estimated sixteen paintings have been returned by American museums to Holocaust survivors or their heirs and mutually agreeable settlements have been reached with claimants on an estimated thirteen claims, settlements that allowed those works to remain in the public domain at the museums.<sup>4</sup> These twenty-nine resolved claims are a very small number when considered in relation to the number of works of European origin in collections of American museums, but James Cuno, Director of the Art Institute of Chicago, explained the issue very well in his testimony before the Subcommittee on Domestic and International Monetary Policy, Trade and Technology of the Committee on Banking and Financial Services of the United States House of Representatives on July 27, 2006:

Of all of the art museums in the U.S., approximately half have no permanent collection, or have collections of only contemporary, many of which are of only local or regional [,] art, and by definition do not have Nazi-era looted art in their collections. This is true also of 30% of AAMD's 170 member museums: only 120 member museums could have Nazi-era looted art in their collections.

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<sup>4</sup> These restitutions and settlements involved museums that are both private institutions as well as museums that are owned or controlled by government entities. The numbers do not include litigated cases where the claimants did not prevail, unless there was a subsequent settlement, or cases where the claim was not accepted by the museum.

The 120 AAMD member museums that may have Nazi-era looted art in their collections have collections totaling 18 million works of art. Of these, fewer than 20,000 are European paintings, thousands of which were acquired before World War II. Unlike Eastern and Western Europe, the U.S. was never a repository for any of the 200,000 works of art recovered after the war. Any Nazi-era looted art that may be in U.S. art museums is there as a result of second-, third-, or even fourth-generation, good faith transactions. I mention this only to remind us of the scale of the potential problem in this country: the likelihood of there being problems in U.S. art museums is relatively low; nevertheless, the amount of research to be undertaken on the tens of thousands of works of art that, by definition, may have Nazi-era provenance problems is significant, requiring large allocations of staff time and money, allocations U.S. art museums have made and will make until the job is done.

U.S. museums are proud of their record of resolving claims based on diligent investigation of the underlying historical facts. Each story is distinct; the facts are invariably complicated and unique to the case. Some examples can hopefully clarify both the efforts of the American museums to resolve cases through original research and the challenges involved.

One case that demonstrates how information on a confiscated painting can come to the museum through many different sources involved the Utah Museum of Fine Arts in Salt Lake City, Utah.<sup>5</sup> While compiling information for a book on Hermann Goering's collection entitled "*Beyond the Dreams of Avarice*", Nancy Yeide of the National Gallery of Art in Washington, D.C., discovered information about a painting by François Boucher, "*Les Amoureux Jeunes*" at the Utah Museum. Yeide determined that the Boucher had been looted from the collection of the French art dealer Andre Jean Seligmann. The painting had been acquired by a collector from a New York gallery in 1972 and the collector donated it to the Utah Museum in 1993. After the Utah Museum was contacted by Yeide, it undertook an extensive provenance research investigation with the assistance of the Art Loss Register. In 2004, the Utah Museum determined that the Boucher should be restituted to Mr. Seligmann's heirs, Claude Delives and Suzanne Geiss Robbins, both of whom traveled to Salt Lake City to receive the painting and to express their thanks to the museum staff, who Ms. Robbins called "adorable."<sup>6</sup>

In another case, this time involving the Virginia Museum of Fine Arts,<sup>7</sup> the Museum was conducting research on its collection and determined that there was a gap in the provenance with respect to a small oil on panel by the 16th century artist Jan Mostaert entitled "*Portrait of a Courtier*." After more research, the Museum determined that the painting had been in the Czartoryski family collection in Poland and was transferred from the family collection at Goluchów Castle to safekeeping in Warsaw in 1939. The Nazis located the painting and seized it in 1941, moving it to the Castle of Fischhorn in Austria after the 1944 Warsaw Uprising. The painting surfaced at the Newhouse Galleries in New York and was sold in 1948 to a collector who gave it to the Museum in 1949. After discovering these facts, the Museum contacted the Polish Embassy and returned the painting in 2005 to the Embassy on behalf of Adam Count

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<sup>5</sup> The Utah Museum of Fine Arts is a university and state art museum.

<sup>6</sup> The Museum did not assert defenses to the claim such as the statute of limitations, although the work had been in the collection since 1993.

<sup>7</sup> The Virginia Museum of Fine Arts was created by the government of the Commonwealth of Virginia.

Zamoyski, the representative of the rightful owner's descendants. The family later deposited the painting in the Princess Czartoryski Museum in Krakow, Poland.<sup>8</sup>

Another example of a museum promptly addressing an issue occurred in 2000 at the North Carolina Museum of Art.<sup>9</sup> The Holocaust Claims Processing Office of the New York State Banking Department, acting on behalf of the heirs of the Viennese industrialist Philipp von Gomperz, contacted the Museum about a painting by Lucas Cranach the Elder, "*Madonna and Child in a Landscape*". The heirs claimed that the painting had been illegally seized by the Gestapo from the von Gomperz collection in 1940. During the ensuing correspondence, the Holocaust Claims Processing Office provided documentary evidence confirming the looting of the painting, including the signed authorization of the seizure and a photograph of the looted painting taken by the Gestapo, presumably for showing to Hitler and other Nazi "collectors." The painting was acquired by Baldur von Schirach, the Nazi Gauleiter (Governor) of Vienna. By the early 1950s it was held by a New York dealer, E. & A. Silberman Galleries, who sold it to an unsuspecting George and Marianne Khuner of Beverly Hills, California. Upon Mrs. Khuner's death in 1984, the Cranach painting was bequeathed to the Museum. Until contacted by the Holocaust Claims Processing Office, the Museum knew nothing of the painting's wartime history. Once the looting of the painting had been confirmed, the Museum on February 3, 2000 formally relinquished possession - without litigation. The Museum then immediately entered into negotiations with the owners to re-acquire the painting. The owners agreed to allow the Museum to buy the painting for half of its appraised value because as they indicated in correspondence to the Museum "the public should know that the heirs of Philipp von Gomperz appreciate the sense of justice shown by [the Museum's] decision to reconstitute the painting."<sup>10</sup>

In another case that shows how fact specific each one of these cases can be, the Kimbell Art Museum in Fort Worth<sup>11</sup> both deaccessioned, restituted, and then reacquired what its director, Timothy Potts, described as its most important British work. The painting "*Glaucus and Scylla*" by J. M. W. Turner was acquired in 1902 by John Jaffé, a British subject, from a gallery in Paris. Jaffé lived in Nice, France at the time of his death in 1933 and he left the painting to his wife. Mrs. Jaffé was trapped in France and died in 1942 leaving all of her property, including the painting, to three nieces and a nephew. The Vichy government seized her estate and arrested the nephew, who subsequently died in Auschwitz. The painting disappeared until 1956 when it resurfaced in Paris, was purchased by a London gallery, then by a New York gallery and then, in 1966 by the Kimbell. Approached by a representative of the family, the Kimbell confirmed these facts and restituted the painting which was then placed for auction at Christie's. At auction, the Kimbell purchased the painting for \$5.7 million, placing this important work back in the collection of the Kimbell.<sup>12</sup>

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<sup>8</sup> The Museum did not assert defenses to the claim such as the statute of limitations, although the work had been in the collection since 1949.

<sup>9</sup> The North Carolina Museum of Art is an agency of the Department of Cultural Resources of the State of North Carolina.

<sup>10</sup> The Museum did not assert defenses to the claim such as the statute of limitations, although the work had been in the collection since 1984.

<sup>11</sup> The Kimbell Art Museum is a private museum located in Fort Worth, Texas.

<sup>12</sup> The Museum did not assert defenses to the claim such as the statute of limitations, although the work had been in the collection since 1966.

These examples, as well as others, demonstrate the efforts by American museums to comply not only with the *1998 Report* and the *AAM Guidelines*, but also with the Washington Principles, specifically those Principles that provide:

- I. Art that had been confiscated by the Nazis and not subsequently restituted should be identified.
- II. Relevant records and archives should be open and accessible to researchers . . . .
- III. Resources and personnel should be made available to facilitate the identification of all art that have been confiscated by the Nazis and not subsequently restituted.
- IV. In establishing if a work of art had been confiscated by the Nazis and not subsequently restituted, consideration should be given to unavoidable gaps or ambiguities in provenance. . . .
- V. Every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted. . . .
- . . . .
- VII. Pre-War owners and their heirs should be encouraged to come forward and make known their claims . . . .
- VIII. If the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to facts and circumstances surrounding a specific case.

## **V. Disputed Claims**

There have been situations where museums have faced claims that, after painstaking historical investigation and full public disclosure of all the relevant evidence, prove not to be valid. These present a difficult situation for museums. U.S. museums are fully committed to responding to all claims carefully and in good faith. Museums hold their collections in trust for the public and they have a legal and fiduciary duty not to transfer objects from the collection to private ownership except for good cause. For a museum to transfer an object to a claimant, the evidence must demonstrate that: (1) the object was confiscated by the Nazis or was the subject of a forced sale; (2) the object was not restituted, nor was fair compensation ever paid; and (3) the claimants constitute the universe of those who could bring a claim. Until evidence can be developed that would persuade a reasonable observer that these three tests have been met, a U.S. museum cannot consider restitution to resolve a claim.

The obligation of museums not to reconstitute works in response to non-meritorious claims should not be mischaracterized. Museums are placed in a difficult position when there is a claim that they have in good faith determined to be unsubstantiated because they have limited choices in their response to the claim consistent with their fiduciary duties. Should they transfer a work to a claimant on the basis of highly ambiguous evidence of ownership and a subsequent claimant appears with incontrovertible evidence of ownership, the museum could be liable to the second claimant. Likewise, if a museum transfers a work, held in public trust, that a government regulator, like a State Attorney General, subsequently decides was inappropriately removed from the public trust, the museum again could be held responsible for inappropriately disposing of its assets.

Given this background, museums can continue to discuss the absence of persuasive evidence with the claimants and their representatives, but this can become a never ending process without resolution. They can wait to be sued by a claimant, at which point they will have to decide whether to defend the case on the merits which can be extraordinarily expensive and time consuming or interpose defenses, such as the statute of limitations. If they have already determined that the claim is invalid based on the documented historical record, there is a significant argument that they have a fiduciary duty to interpose those defenses rather than expend time and money defending a meritless claim on the merits. Finally, a U.S. museum can elect to present the facts to a court and ask the court to decide if the claim is invalid. At least in the United States, this is a time honored approach to the resolution of title disputes, as well as other litigable disagreements, and it has many advantages, not the least of which is litigating the case when witnesses are still alive and documents still available.

## **VI. Access to Records**

While there have been a number of restitutions or settlements, museums do have a fiduciary duty to only deaccession objects and transfer them out of the collection based on facts that merit such a decision. These facts are challenging to develop and U.S. museums are often hampered by the legal systems in foreign jurisdictions. Some jurisdictions prohibit third party access to estate documents or archives — sources which are generally available to claimants.

The problem with access to records is multifaceted and often involves claimants, governments and sometimes private entities. While admittedly there is no universal solution, claimants should be required to provide all information they have with respect to their claims, but also provide access to records where their consent is required, whether governmental or private. There are generally two threshold issues in connection with a provenance claim, whether the object was confiscated and not restituted and whether the claimants, if they are not the original owners, have standing to bring the claim. Museums, in the exercise of their fiduciary duty, have an obligation to assure that if an object is being transferred, it is one which was confiscated or the subject of a forced sale and not restituted or some form of settlement reached, but also that the claimants represent the universe of those who could bring an action against the museum. This latter point often requires significant research into inheritance records, copies of wills, etc., which are in many countries not available to researchers without the consent of the family. The more complete and accurate the information presented to museums by claimants, the more expeditiously a claim can be considered and resolved.



While high value works often attract support for claimants from lawyers, researchers and advocacy groups, works which do not have the same monetary value often do not garner the same attention. Nevertheless, the diligence that a museum must undertake before deaccessioning an object is not simply a question of value. Museums hold all of their works in trust for the public and that standard is not based on a hierarchy of monetary worth, even though there are broad practical considerations appropriate to the relevant inquiries.

## **VII. Government Assistance to Claimants**

The creation of government funded agencies to assist claimants in the identification of property, the research of relevant facts and the preparation and presentation of evidence to possessors like museums would be of great value. In the United States, there is an excellent example of such a group, the Holocaust Claims Processing Office of the New York State Banking Department. This organization, created by the Governor of the State of New York in 1997, has highly qualified staff of independent researchers who are there to evaluate claims for restitution of property confiscated during the Holocaust, perform research into the claim and prepare materials for presentation to the possessors. They also act as an intermediary between the claimants and the possessors in seeking the amicable resolution of the claim. Their work has been wide reaching and extremely beneficial to the claimant community and they have assisted museums, both in and out of the State of New York, in the resolution of claims. They are not an arbitral panel or an advisory panel rather they are an independent group that assists claimants in the research, preparation and presentation of their claims. Their research can often help claimants determine that their claim is valid or equally, when evidence does not support the claim, convince claimants that the claim should not be pursued.

The AAMD believes that creating an agency similar to the Holocaust Claims Processing Office is needed, provided there are sufficient safeguards built in for both parties. Such an agency is important at this time in light of the need for prompt and effective resolution of claims for the benefit in the first instance of the survivors of the Holocaust whose numbers are diminishing every day. Governments should be encouraged to create entities like the Holocaust Claims Processing Office. Of course, the distinctions of national law and practice will affect how such an organization is formed and funded, but the basic model of the Holocaust Claims Processing Office we recommend as one that has a proven track record and can at least form the basis for discussion of similar efforts.

## **VIII. Deaccession, Delivery and Export of Restituted Works**

While not an issue for U.S. museums, there is a disparity in the treatment of restitution claims in the United States as opposed to some other countries. Generally, there is no legal prohibition against a U.S. museum returning a work of art to a claimant. This is not the case in some other countries. Furthermore, in the United States, art is freely exportable by its owners, also not the situation either legally or bureaucratically, in some other countries.<sup>13</sup> American museums are proud of their leadership role in efforts to address Nazi era confiscations and they are very willing to assist other nations in evaluating the benefits of allowing restitution of works rather than simply monetary settlements. While there have been few direct restitutions in the

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<sup>13</sup> An export declaration is usually required.

United States, they have been well publicized and these cases can be examples for other countries that might consider changing their laws or practices that prohibit a complete resolution of claims. Further, United States law does not prohibit a foreign claimant from removing an awarded work of art from the territory of the United States. Simply put, if a claim is valid a work of art can be returned to the heirs after which it is saleable and freely transferable.

## **IX. Conclusion**

Every day, survivors of the Holocaust pass away. Without diminishing the rights of their heirs to seek restitution of property confiscated by the Nazis, the group that has the highest claim on our collective conscience is those who directly suffered during the Holocaust. Time left to them is limited and while progress has certainly been made since the Washington conference, there is the danger of "Holocaust fatigue." All involved, whether claimants, nongovernmental organizations dedicated to the support of Holocaust victims and survivors, national governments and museums, both state owned and private, need to redouble their efforts in the relatively short period of time left to those survivors to bring to resolution any of their claims. This is admittedly difficult in tough economic times when funding available for museums in general is diminished, much less that which is available for research, claims consideration, restitution or settlement. Nevertheless, the Prague Conference should act as a catalyst to reinvigorate all those involved in the process and there is every reason to believe that the American museum community will assist in these efforts, as it has in the past.

## **Report of the AAMD Task Force on the Spoliation of Art during the Nazi/World War II Era (1933-1945)**

June 4, 1998

AAMD Statement of Purpose: "The purpose of the AAMD is to aid its members in establishing and maintaining the highest professional standards for themselves and the museums they represent, thereby exerting leadership in increasing the contribution of art museums to society."

### I. Statement of Principles

A. AAMD recognizes and deplors the unlawful confiscation of art that constituted one of the many horrors of the Holocaust and World War II.

B. American museums are proud of the role they, and members of their staffs, played during and after World War II, assisting with the preservation and restitution of hundreds of thousands of works of art through the U.S. Military's Monuments, Fine Arts and Archives section.

C. AAMD reaffirms the commitment of its members to weigh, promptly and thoroughly, claims of title to specific works in their collections.

D. AAMD urges the prompt creation of mechanisms to coordinate full access to all documentation concerning this spoliation of art, especially newly available information. To this end, the AAMD encourages the creation of databases by third parties, essential to research in this area, which will aid in the identification of any works of art which were unlawfully confiscated and which of these were restituted. Such an effort will complement long-standing American museum policy of exhibiting, publishing and researching works of art in museum collections in order to make them widely available to scholars and to the general public. (See III. below.)

E. AAMD endorses a process of reviewing, reporting, and researching the issue of unlawfully confiscated art which respects the dignity of all parties and the complexity of the issue. Each claim presents a unique situation which must be thoroughly reviewed on a case-by-case basis.

### II. Guidelines

AAMD has developed the following guidelines to assist museums in resolving claims, reconciling the interests of individuals who were dispossessed of works of art or their heirs together with the fiduciary and legal obligations and responsibilities of art museums and their trustees to the public for whom they hold works of art in trust.

#### A. Research Regarding Existing Collections

1. As part of the standard research on each work of art in their collections, members of the AAMD, if they have not already done so, should begin immediately to review the provenance of works in their collections to attempt to ascertain whether any were unlawfully confiscated during the Nazi/World War II era and never restituted.
2. Member museums should search their own records thoroughly and, in addition, should take all reasonable steps to contact established archives, databases, art dealers, auction houses, donors, art historians and other scholars and researchers who may be able to provide Nazi/World-War-II-era provenance information.
3. AAMD recognizes that research regarding Nazi/World-War-II-era provenance may take years to complete, may be inconclusive and may require additional funding. The AAMD Art Issues Committee will address the matter of such research and how to facilitate it.

#### B. Future Gifts, Bequests, and Purchases

1. As part of the standard research on each work of art:

(a) member museums should ask donors of works of art (or executors in the case of bequests) to provide as much provenance information as possible with regard to the Nazi/World War II era and

(b) member museums should ask sellers of works of art to provide as much provenance information as possible with regard to the Nazi/World War II era.

2. Where the Nazi/World-War-II-era provenance is incomplete for a gift, bequest, or purchase, the museum should search available records and consult appropriate databases of unlawfully confiscated art (see III below).

(a) In the absence of evidence of unlawful confiscation, the work is presumed not to have been confiscated and the acquisition may proceed.

(b) If there is evidence of unlawful confiscation, and there is no evidence of restitution, the museum should not proceed to acquire the object and should take appropriate further action.

3. Consistent with current museum practice, member museums should publish, display or otherwise make accessible all recent gifts, bequests, and purchases thereby making them available for further research, examination and study.

4. When purchasing works of art, museums should seek representations and warranties from the seller that the seller has valid title and that the work of art is free from any claims.

#### C. Access to Museum Records

1. Member museums should facilitate access to the Nazi/World-War-II-era provenance information of all works of art in their collections.

2. Although a linked database of all museum holdings throughout the United States does not exist at this time, individual museums are establishing web sites with collections information and others are making their holdings accessible through printed publications or archives. AAMD is exploring the linkage of existing sites which contain collection information so as to assist research.

#### D. Discovery of Unlawfully Confiscated Works of Art

1. If a member museum should determine that a work of art in its collection was illegally confiscated during the Nazi/World War II era and not restituted, the museum should make such information public.

2. In the event that a legitimate claimant comes forward, the museum should offer to resolve the matter in an equitable, appropriate, and mutually agreeable manner.

3. In the event that no legitimate claimant comes forward, the museum should acknowledge the history of the work of art on labels and publications referring to such a work.

#### E. Response to Claims Against the Museum

1. If a member museum receives a claim against a work of art in its collection related to an illegal confiscation during the Nazi/World War II era, it should seek to review such a claim promptly and thoroughly. The museum should request evidence of ownership from the claimant in order to assist in determining the provenance of the work of art.

2. If after working with the claimant to determine the provenance, a member museum should determine that a work of art in its collection was illegally confiscated during the Nazi/World War II era and not restituted, the museum should offer to resolve the matter in an equitable, appropriate, and mutually agreeable manner.

3. AAMD recommends that member museums consider using mediation wherever reasonably practical to help resolve claims regarding art illegally confiscated during the Nazi/World War II era and not restituted.

#### F. Incoming Loans

1. In preparing for exhibitions, member museums should endeavor to review provenance information regarding incoming loans.

2. Member museums should not borrow works of art known to have been illegally confiscated during the Nazi/World War II era and not restituted unless the matter has been otherwise resolved (e.g., II.D.3 above).

### III. Database Recommendations

A. As stated in I.D. (above), AAMD encourages the creation of databases by third parties, essential to research in this area. AAMD recommends that the databases being formed include the following information (not necessarily all in a single database):

1. claims and claimants
2. works of art illegally confiscated during the Nazi/World War II era
3. works of art later restituted

B. AAMD suggests that the entity or entities creating databases establish professional advisory boards that could provide insight on the needs of various users of the database. AAMD encourages member museums to participate in the work of such boards.

## AMERICAN ASSOCIATION OF MUSEUMS

### GUIDELINES CONCERNING THE UNLAWFUL APPROPRIATION OF OBJECTS DURING THE NAZI ERA

#### Introduction

From the time it came into power in 1933 through the end of World War II in 1945, the Nazi regime orchestrated a system of theft, confiscation, coercive transfer, looting, pillage, and destruction of objects of art and other cultural property in Europe on a massive and unprecedented scale. Millions of such objects were unlawfully and often forcibly taken from their rightful owners, who included private citizens, victims of the Holocaust; public and private museums and galleries; and religious, educational, and other institutions.

In recent years, public awareness of the extent and significance of Nazi looting of cultural property has grown significantly. The American museum community, the American Association of Museums (AAM), and the U.S. National Committee of the International Council of Museums (AAM/ICOM) are committed to continually identifying and implementing the highest standard of legal and ethical practices. AAM recognizes that the atrocities of the Nazi era demand that it specifically address this topic in an effort to guide American museums as they strive to achieve excellence in ethical museum practice.

The AAM Board of Directors and the AAM/ICOM Board formed a joint working group in January 1999 to study issues of cultural property and to make recommendations to the boards for action. The report that resulted from the initial meeting of the Joint Working Group on Cultural Property included the recommendation that AAM and AAM/ICOM offer guidance to assist museums in addressing the problems of objects that were unlawfully appropriated during the Nazi era without subsequent restitution (i.e., return of the object or payment of compensation to the object's original owner or legal successor).

The efforts of the Working Group were greatly informed by the important work on the topic that had gone before. In particular, three documents served as a starting point for the AAM guidelines, and portions of them have been incorporated into this document. These include: *Report of the AAMD Task Force on the Spoliation of Art during the Nazi/World War II Era (1933-1945)*; *ICOM Recommendations Concerning the Return of Works of Art Belonging to Jewish Owners*; and *Washington Conference Principles on Nazi-Appropriated Art* released in connection with the Washington Conference on Holocaust-Era Assets co-hosted by the U.S. Department of State and the United States Holocaust Memorial Museum.

The Presidential Advisory Commission on Holocaust Assets in the United States (PCHA) was created in June 1998 to study and report to the president on issues relating to Holocaust victims' assets in the United States. AAM and the Association of Art Museum Directors (AAMD) worked with the PCHA to establish a standard for disclosure of collections information to aid in the identification and discovery of unlawfully appropriated objects that may be in the custody of museums. In January 2001, the PCHA issued its final report, which incorporated the agreed standard for disclosure and recommended the creation of a searchable central registry of the information museums disclose in accordance with the new standard. AAM and AAMD agreed to support this recommendation, and these guidelines have been amended to reflect the agreed standard for disclosure of information.

Finally, AAM and AAM/ICOM acknowledge the tremendous efforts that were made by the Allied forces and governments following World War II to return objects to their countries of origin and to original owners. Much of the cultural property that was unlawfully appropriated was recovered and returned, or owners received compensation. AAM and AAM/ICOM take pride in the fact that members of the American museum community are widely recognized to have been instrumental in the success of the post-war restitution effort. Today, the responsibility of the museum community is to strive to identify any material for which restitution was never made.

#### General Principles

AAM, AAM/ICOM, and the American museum community are committed to continually identifying and achieving the highest standard of legal and ethical collections stewardship practices. The *AAM Code of Ethics for Museums* states that the “stewardship of collections entails the highest public trust and carries with it the presumption of rightful ownership, permanence, care, documentation, accessibility, and responsible disposal.”

When faced with the possibility that an object in a museum’s custody might have been unlawfully appropriated as part of the abhorrent practices of the Nazi regime, the museum’s responsibility to practice ethical stewardship is paramount. Museums should develop and implement policies and practices that address this issue in accordance with these guidelines.

These guidelines are intended to assist museums in addressing issues relating to objects that may have been unlawfully appropriated during the Nazi era (1933-1945) as a result of actions in furtherance of the Holocaust or that were taken by the Nazis or their collaborators. For the purposes of these guidelines, objects that were acquired through theft, confiscation, coercive transfer, or other methods of wrongful expropriation may be considered to have been unlawfully appropriated, depending on the specific circumstances.

In order to aid in the identification and discovery of unlawfully appropriated objects that may be in the custody of museums, the PCHA, AAMD, and AAM have agreed that museums should strive to: (1) identify all objects in their collections that were created before 1946 and acquired by the museum after 1932, that underwent a change of ownership between 1932 and 1946, and that were or might reasonably be thought to have been in continental Europe between those dates (hereafter, “covered objects”); (2) make currently available object and provenance (history of ownership) information on those objects accessible; and (3) give priority to continuing provenance research as resources allow. AAM, AAMD, and PCHA also agreed that the initial focus of research should be European paintings and Judaica.

Because of the Internet’s global accessibility, museums are encouraged to expand online access to collection information that could aid in the discovery of objects unlawfully appropriated during the Nazi era without subsequent restitution.

AAM and AAM/ICOM acknowledge that during World War II and the years following the end of the war, much of the information needed to establish provenance and prove ownership was dispersed or lost. In determining whether an object may have been unlawfully appropriated without restitution, reasonable consideration should be given to gaps or ambiguities in provenance in light of the passage of time and the circumstances of the Holocaust era. AAM and AAM/ICOM support efforts to make archives and other resources more accessible and to establish databases that help track and organize information.

AAM urges museums to handle questions of provenance on a case-by-case basis in light of the complexity of this problem. Museums should work to produce information that will help to clarify the status of objects with an uncertain Nazi-era provenance. Where competing interests may arise, museums should strive to foster a climate of cooperation, reconciliation, and commonality of purpose.

AAM affirms that museums act in the public interest when acquiring, exhibiting, and studying objects. These guidelines are intended to facilitate the desire and ability of museums to act ethically and lawfully as stewards of the objects in their care, and should not be interpreted to place an undue burden on the ability of museums to achieve their missions.

## **Guidelines**

### **1. Acquisitions**

It is the position of AAM that museums should take all reasonable steps to resolve the Nazi-era provenance status of objects before acquiring them for their collections – whether by purchase, gift, bequest, or exchange.

- a) Standard research on objects being considered for acquisition should include a request that the sellers, donors, or estate executors offering an object provide as much provenance information as they have available, with particular regard to the Nazi era.

- b) Where the Nazi-era provenance is incomplete or uncertain for a proposed acquisition, the museum should consider what additional research would be prudent or necessary to resolve the Nazi-era provenance status of the object before acquiring it. Such research may involve consulting appropriate sources of information, including available records and outside databases that track information concerning unlawfully appropriated objects.
- c) In the absence of evidence of unlawful appropriation without subsequent restitution, the museum may proceed with the acquisition. Currently available object and provenance information about any covered object should be made public as soon as practicable after the acquisition.
- d) If credible evidence of unlawful appropriation without subsequent restitution is discovered, the museum should notify the donor, seller, or estate executor of the nature of the evidence and should not proceed with acquisition of the object until taking further action to resolve these issues. Depending on the circumstances of the particular case, prudent or necessary actions may include consulting with qualified legal counsel and notifying other interested parties of the museum's findings.
- e) AAM acknowledges that under certain circumstances acquisition of objects with uncertain provenance may reveal further information about the object and may facilitate the possible resolution of its status. In such circumstances, the museum may choose to proceed with the acquisition after determining that it would be lawful, appropriate, and prudent and provided that currently available object and provenance information is made public as soon as practicable after the acquisition.
- f) Museums should document their research into the Nazi-era provenance of acquisitions.
- g) Consistent with current practice in the museum field, museums should publish, display, or otherwise make accessible recent gifts, bequests, and purchases, thereby making all acquisitions available for further research, examination, and public review and accountability.

## 2. Loans

It is the position of AAM that in their role as temporary custodians of objects on loan, museums should be aware of their ethical responsibility to consider the status of material they borrow as well as the possibility of claims being brought against a loaned object in their custody.

- a) Standard research on objects being considered for incoming loan should include a request that lenders provide as much provenance information as they have available, with particular regard to the Nazi era.
- b) Where the Nazi-era provenance is incomplete or uncertain for a proposed loan, the museum should consider what additional research would be prudent or necessary to resolve the Nazi-era provenance status of the object before borrowing it.
- c) In the absence of evidence of unlawful appropriation without subsequent restitution, the museum may proceed with the loan.
- d) If credible evidence of unlawful appropriation without subsequent restitution is discovered, the museum should notify the lender of the nature of the evidence and should not proceed with the loan until taking further action to clarify these issues. Depending on the circumstances of the particular case, prudent or necessary actions may include consulting with qualified legal counsel and notifying other interested parties of the museum's findings.
- e) AAM acknowledges that in certain circumstances public exhibition of objects with uncertain provenance may reveal further information about the object and may facilitate the resolution of its status. In such circumstances, the museum may choose to proceed with the loan after determining that it would be lawful and prudent and provided that the available provenance about the object is made public.
- f) Museums should document their research into the Nazi-era provenance of loans.

## 3. Existing Collections

It is the position of AAM that museums should make serious efforts to allocate time and funding to conduct research on covered objects in their collections whose provenance is incomplete or uncertain. Recognizing



that resources available for the often lengthy and arduous process of provenance research are limited, museums should establish priorities, taking into consideration available resources and the nature of their collections.

#### Research

- a) Museums should identify covered objects in their collections and make public currently available object and provenance information.
- b) Museums should review the covered objects in their collections to identify those whose characteristics or provenance suggest that research be conducted to determine whether they may have been unlawfully appropriated during the Nazi era without subsequent restitution.
- c) In undertaking provenance research, museums should search their own records thoroughly and, when necessary, contact established archives, databases, art dealers, auction houses, donors, scholars, and researchers who may be able to provide Nazi-era provenance information.
- d) Museums should incorporate Nazi-era provenance research into their standard research on collections.
- e) When seeking funds for applicable exhibition or public programs research, museums are encouraged to incorporate Nazi-era provenance research into their proposals. Depending on their particular circumstances, museums are also encouraged to pursue special funding to undertake Nazi-era provenance research.
- f) Museums should document their research into the Nazi-era provenance of objects in their collections.

#### Discovery of Evidence of Unlawfully Appropriated Objects

- g) If credible evidence of unlawful appropriation without subsequent restitution is discovered through research, the museum should take prudent and necessary steps to resolve the status of the object, in consultation with qualified legal counsel. Such steps should include making such information public and, if possible, notifying potential claimants.
- h) In the event that conclusive evidence of unlawful appropriation without subsequent restitution is found but no valid claim of ownership is made, the museum should take prudent and necessary steps to address the situation, in consultation with qualified legal counsel. These steps may include retaining the object in the collection or otherwise disposing of it.
- i) AAM acknowledges that retaining an unclaimed object that may have been unlawfully appropriated without subsequent restitution allows a museum to continue to care for, research, and exhibit the object for the benefit of the widest possible audience and provides the opportunity to inform the public about the object's history. If the museum retains such an object in its collection, it should acknowledge the object's history on labels and publications.

#### 4. Claims of Ownership

It is the position of AAM that museums should address claims of ownership asserted in connection with objects in their custody openly, seriously, responsively, and with respect for the dignity of all parties involved. Each claim should be considered on its own merits.

- a) Museums should review promptly and thoroughly a claim that an object in its collection was unlawfully appropriated during the Nazi era without subsequent restitution.
- b) In addition to conducting their own research, museums should request evidence of ownership from the claimant in order to assist in determining the provenance of the object.
- c) If a museum determines that an object in its collection was unlawfully appropriated during the Nazi era without subsequent restitution, the museum should seek to resolve the matter with the claimant in an equitable, appropriate, and mutually agreeable manner.
- d) If a museum receives a claim that a borrowed object in its custody was unlawfully appropriated without subsequent restitution, it should promptly notify the lender and should comply with its legal obligations as temporary custodian of the object in consultation with qualified legal counsel.

- e) When appropriate and reasonably practical, museums should seek methods other than litigation (such as mediation) to resolve claims that an object was unlawfully appropriated during the Nazi era without subsequent restitution.
- f) AAM acknowledges that in order to achieve an equitable and appropriate resolution of claims, museums may elect to waive certain available defenses.

#### 5. Fiduciary Obligations

Museums affirm that they hold their collections in the public trust when undertaking the activities listed above. Their stewardship duties and their responsibilities to the public they serve require that any decision to acquire, borrow, or dispose of objects be taken only after the completion of appropriate steps and careful consideration.

- a) Toward this end, museums should develop policies and practices to address the issues discussed in these guidelines.
- b) Museums should be prepared to respond appropriately and promptly to public and media inquiries.

#### **Commitment of AAM**

As part of its commitment to identifying and disseminating best practices, AAM will allocate resources:

- a) to disseminate these guidelines widely and frequently along with references to other guidelines, principles, and statements that exist on the topic
- b) to track the activity and purpose of the relevant databases and other resources and to compile bibliographies for dissemination to the United States museum community
- c) to collect examples of best practices and policies on Nazi-era provenance research and claims resolution from the museum field, both in the United States and abroad, as guidelines for other museums
- d) to make the above information available to the museum community through reports, conference sessions, and other appropriate mechanisms
- e) to assist in the development of recommended procedures for object and provenance information disclosure
- f) to provide electronic links from AAM's Web site to other resources for provenance research and investigate the feasibility of developing an Internet tool to allow researchers easier access to object and provenance information about covered objects in museum collections.
- g) to encourage funding of Nazi-era provenance research.

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