

07.2021

art law
magazine

#13

éditorial *Nouvelles de la fondation*

Chères et chers Membres,

C'est avec enthousiasme que nous vous remettons le nouveau volume du *Art Law Magazine* qui vous accompagnera durant l'été.

Cette édition revient notamment sur le droit de suite en Belgique, permettant aux artistes de toucher une part sur les reventes successives de leurs œuvres, un droit qui a été introduit dans tous les États membres de l'Union Européenne suite à une directive européenne à cet effet.

En Suisse, l'implémentation du droit de suite a également été débattue pour être finalement rejetée. Le Parlement a notamment jugé qu'elle ne permettait pas d'améliorer sensiblement la situation économique des artistes.

Vous trouverez également dans cette édition le compte rendu de notre événement sur les œuvres d'art numériques aussi appelées NFTs (*Non Fungible Tokens*), qui

The Foundation's News

Dear Members,

We are delighted to present you the new issue of Art Law Magazine, a perfect read for your summer holidays!

This edition focuses on the resale right in Belgium, which allows artists to receive a share of the resale of their works, a right that has been introduced in all EU Member States following a European directive to this effect.

In Switzerland, the implementation of the resale right was also debated and finally rejected. The Parliament considered that it would not significantly improve the economic situation of artists.

In this issue you will also find a report on our event on digital artworks, also known as NFTs (Non

connaissent un succès fulgurant. En particulier, la vente aux enchères en mars dernier d'une œuvre de l'artiste Beeple pour plus de 69 millions de dollars a été largement commentée. Il ressort des débats entre avocats et spécialistes du marché de l'art que l'acquisition d'une œuvre NFT doit tenir compte de plusieurs considérations, validées dans le cadre d'un contrat. Parmi celles-ci, le droit d'usage ou d'exploitation dont dispose l'acquéreur et les conditions de revente, facultés qui touchent au droit d'auteur de l'artiste. Cette conférence, ainsi que celle sur la nouvelle application d'INTERPOL (Art ID), ont été enregistrées et sont accessibles à nos membres qui souhaitent les (re)voir sur demande à notre secrétariat.

Après une année d'événements virtuels, nous sommes confiants de pouvoir tenir notre conférence annuelle le 11 novembre prochain en présentiel à l'Université de Genève. Organisée conjointement avec le Centre du droit de l'art, celle-ci portera sur les transactions d'art et plus particulièrement les risques et responsabilités des marchands, des acheteurs, des courtiers et des experts impliqués. Les thématiques abordées concerneront entre autres les questions de propriété et de provenance, d'authenticité et d'origine des fonds, ainsi que les aspects transfrontaliers, les

Fungible Tokens), which are enjoying tremendous success. In particular, the auction in March of a work by the artist Beeple for over \$69 million was widely reported. The debate between lawyers and art market specialists shows that the acquisition of an NFT work must take into account several considerations, validated in a contract. These include the right of use or exploitation available to the purchaser and the conditions of resale, which affect the artist's copyright. This conference as well as the one on INTERPOL's new app (Art ID) have been recorded and are available to our members who wish to (re)view them upon request to our secretariat.

After a year of virtual events, we are confident that we will be able to hold our annual conference on 11 November in person at the University of Geneva. Organised jointly with the Art-Law Centre, the conference will focus on art transactions and more specifically on the risks and responsibilities of dealers, buyers, brokers and experts involved. Topics will include issues of ownership and provenance, authenticity and source of funds, as well as cross-border issues, auction guarantees and contractual relationships.

Other FDA projects that will continue to develop in the coming weeks include the Responsible Art

garanties aux enchères et les relations contractuelles.

Parmi les autres projets de la FDA qui poursuivront leur développement durant les semaines à venir, figurent la *Responsible Art Market initiative* dont les travaux portent sur le rôle des intermédiaires dans le marché de l'art, ainsi que notre collaboration avec le Fonds cantonal d'art contemporain de Genève (FCAC) concernant « Les œuvres issues de la commande publique ». Nous nous réjouissons de pouvoir prochainement partager avec vous les fruits de ces réflexions.

D'ici là, nous vous souhaitons un très bel été.

Pour la FDA :

Anne Laure Bandle, directrice

Market initiative, which is working on the role of intermediaries in the art market, and our collaboration with the Fonds cantonal d'art contemporain of Geneva (FCAC) on "Publicly commissioned works". We look forward to sharing the fruits of these reflections with you in the near future.

Until then, we wish you a very nice summer.

For the ALF:

Anne Laure Bandle, director

Table des matières / Table of content

- p. 6 The Resale Right in Belgium
By Leo Peeters and Toon Delie
- p. 13 Social media influencers and works of visual art in the public domain
By Matteo Piccinali
- p. 20 Conference Report: 5th Responsible Art Market (RAM)
Conference – Innovation and change in a responsible art market
By Ruth Whittaker
- p. 25 Conference report : Non-Fungible Tokens in the art market: the beginning of a digital art boom?
By Leila A. Amineddoleh, Clara Cassan and Claudia Quinones
- p. 29 Book reviews
- p. 36 Nouvelles suisses en droit de l'art et des biens culturels
- p. 39 Nouvelles acquisitions de la Bibliothèque du Centre du droit de l'art
- p. 43 Rendez-vous de la FDA / ALF's agenda

The Resale Right in Belgium

by Leo Peeters and Toon Delie*



Although the resale right of the creator of a work of art exists in Belgium since 1921, the legal framework was only harmonised in the European Union in 2001 by Directive 2001/84/EC. This Directive made it mandatory for each Member State to implement rules regarding the exercise of the resale right. The twentieth anniversary of this directive is the ideal moment to analyse how currently the resale right is implemented. Especially in view of the changes made back in 2015, when the Copyright law was included in the Belgian Code of Economic Law.

* Leo Peeters, Partner of Seeds of Law, leo.peeters@seeds.law, Toon Delie, Senior Associate of Seeds of Law, toon.delie@seeds.law.



Marc Bourguignon, atelieraimbe.be

1. What is the meaning of the resale right?

Prior to the implementation of the EU Directive, rules governing the resale right were already part of the Belgian legal system by means of the law of 25 June 1921. This law was later incorporated¹ in the Copyright law of 1994. These days, this legal concept is enacted in Articles XI.175 to XI.178 of the Belgian Code of Economic Law (*Wetboek economisch recht/Code de Droit Economique*) (“CEL”).

This law, for the first time, defines the resale right, that is the right of an author to receive a fee based on the resale price, each time his original work of art is resold, and where professional art dealers are involved. The resale right can only apply to “original works

¹ J. Corbet, *Auteursrecht (Copyright Law)*, APR-reeks, Kluwer, Mechelen 1997, 53.

of art”, - works of graphic or plastic art -, provided that they are made by the artist or that the latter considers these to be original works of art. It can also cover copies, provided that they were made in limited numbers by the artist himself or under his authority².

The resale right is important to artists, as it gives them an opportunity to benefit from the value of artworks created by them, even after they have been sold. It also allows them to benefit from any added value created as their career evolves, or they become more widely known, and the value of their artworks increases.

2. Characteristics of the resale right

The resale right is the odd man out in copyright law; it is therefore regarded as a *sui generis* right. The most significant consequence of this is its explicit characteristic that it is as an inalienable right of the author. As inalienability is of public order, any agreement to transfer such right will be null and void³. It endeavours to protect authors from being put under pressure to sell their resale rights along with their artworks⁴. Conversely, it is impossible for authors to undertake never to invoke the resale right, and/

or, to waive it⁵.

In addition, the resale right only arises at the resale of a physical medium in which the original work of art is embodied. The resale right is considered to be a right to a compensation, but is by no means an exclusive right⁶.

The duration of the resale right is the same as for the author's other patrimonial rights, more precisely, it is 70 years from the death of the author⁷. Similar to copyright, the resale right is acquired without any formalities.

3. The older rules were refined

Despite the harmonisation in 2001 on EU level of several important aspects that could mainly negatively affect the common market⁸, each Member State still has the power to determine for itself the manner in which authors can actually exercise and collect their resale right.

Belgian law initially favoured voluntary collective management. But in 2015, when the copyright law was integrated into the Code of Economic

⁵ F. Brison, H. Vanhees, *De Belgische auteurswet: artikelsgewijze commentaar (Belgian Copyright Law: article by article commentary)*, Jan Corbet Huldeboek, Groep De Boeck, Brussels 2011, 83.

⁶ *Ibid.*

⁷ Art. XL166 WER (CEL), Explanatory memorandum transposing into Belgian law directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art, *Parl. St.* 2006-2007, No. 2464/001, 8.

⁸ H. Vanhees, *De vernieuwde regeling inzake het volgrecht (The renewed rules on the resale right)* in Volume XI WER (CEL), AM 2015, 364.

² Art. XI.175 §1 WER (CEL).

³ H. Vanhees, *Handboek Intellectuele Rechten (Handbook of Intellectual Rights)*, Intersentia, Brussels 2020, 92.

⁴ J. Corbet, *Auteursrecht (Copyright Law)*, APR-reeks, Kluwer, Mechelen 1997, 53.

Law⁹, it was changed to a system of mandatory collective management by means of a designated ‘unique platform’.

Indeed, voluntary membership of a collective management company made it difficult for art professionals to find out to whom resale royalties should be paid to. All too often, royalties were not paid in the end. Also, the monitoring of it became very difficult¹⁰.

In addition to minor modifications of the rules, the statutory limitation period for claiming the resale right was extended to 5 years from the sale of the artwork¹¹.

4. The Belgian Resale Right: What, how and how much?

4.1 When does the resale right apply?

When a work of art is resold, and professionals from the art trade are involved in the transaction, either as seller, buyer or intermediary, the author is owed a resale royalty.

A significant threshold governing the resale right stipulates that a resale royalty only applies to sales of more than 2,000 Euros. The Belgian legislator kept the threshold below

the 3,000-Euro maximum threshold foreseen by the Resale Right Directive¹².

No resale royalty is due on a work of art sold for up to 10,000 Euros, provided the seller himself purchased the work from the author less than three years before reselling it¹³. Art galleries and art dealers that promote young artists, and make the necessary investments for the promotion and support (exhibitions, books and catalogues) can take advantage of this exemption.

As the law only targets resales involving a professional, the resale right does not apply in the following cases¹⁴:

- Direct resales between private persons without any participation of a professional;
- Resales to museums which are not for profit and which are open to the public.

4.1 How much are the resale royalties?

If a sale takes place, which satisfies the conditions, the resale royalty shall be calculated according to the following degressive rates¹⁵:

9 M-C. Janssens, H. Vanhees, V. Vanovermeire, De intellectuele eigendomsrechten veranderend in het Wetboek Economisch Recht: een eerste analyse (*The intellectual property rights anchored in the Code of Economic Law: an initial analysis*), IRDI 2014, 466-468.

10 H. Vanhees, De vernieuwde regeling inzake het volgrecht (*The renewed rules on the resale right*) in Volume XI WER (CEL), AM 2015, 367.

11 Art. XL178, §2 WER (CEL).

12 Art. 3 Directive 2001/84/EC of 27 September 2001 (Resale Right Directive).

13 A Art. XL175 §2 WER (CEL).

14 R.o. 18 Directive 2001/84/EC of 27 September 2001 (*Resale Right Directive*); J. Deene, De nieuwe wettelijke regeling van het volgrecht van de kunstenaar (*The new legal rules for the resale right of artists*), RW 2007-2008, 804-805.

15 Art. XL176 WER (CEL).

Price	Rate
<2,000 Euros	0%
<50,000 Euros	4%
50,000.01 Euros – 200,000 Euros	3%
200,000.01 Euros – 350,000 Euros	1%
350,000.01 Euros – 500,000 Euros	0.5%
>500,000 Euros	0.25%

These rates are applied in price bands, the maximum amount being 12,500 Euros. This amount is reached when an artwork is sold at 2 million Euros.

4.2 Who is entitled to the resale right?

The resale right is an inalienable right of the author of an original artwork. Belgian law expressly states that the resale right also belongs to the heirs and other assignees of the author¹⁶. Indeed, unless he has designated a specific person for this purpose, the copyright property rights will transfer to the heirs and legatees of the author. It should be noted that certain member states limit these legal successors to the legal heirs. This has already been accepted by the Court of Justice¹⁷.

Based on European jurisprudence,

¹⁶ Art. 175 §3 WER (CEL).

¹⁷ CoJ 15 April 2010, Case C-518/08; B. Demarsin, “Hebben erfgenamen Dalí recht op deel van de koek?” (*Are Dalí’s heirs entitled to a slice of the pie?*), RW 2010, 5.

each EU national has the right to enjoy the resale right arising in relation to his/her works in a different member state¹⁸. For non-EU-nationals, the principle of reciprocal arrangement applies¹⁹: only if the third country also protects the resale right of the artist, these nationals may invoke it in Belgium²⁰.

4.4 Who must pay the resale royalties?

Article XI.175 CEL expressly mentions the seller’s obligation to pay resale royalties to the author. Nevertheless, the parties involved in a sale are always free to agree who will be liable to pay the resale royalty²¹.

In this regard, Belgian law provides for clear rules concerning the obligation of the parties involved in a sale to pay resale royalties.

For sales taking place in the context of a public auction, the participating seller and the professional have the joint obligation to notify the unique platform (cf. *infra*) one month from the sale at the latest. They must then pay the resale royalty, within two

¹⁸ H. Vanhees, *Handboek Intellectuele Rechten (Handbook of Intellectual Rights)*, Intersentia, Brussels 2020, 86 with reference to CoJ 20 October 1993, C-92/92 and C-326/92, Jur. CoJ 1993, I-5145.

¹⁹ Art. XI.175 §4 WER (CEL).

²⁰ F. Brison, H. Vanhees, De Belgische auteurswet: artikelsgewijze commentaar (*Belgian Copyright Law: article by article commentary*), Jan Corbet Huldeboek, Groep De Boeck, Brussels 2011, 76.

²¹ CoJ 26 February 2015, *Christie’s France SNC v./ Syndicat national des antiquaires*, C-41/14, AM 2015, 270, note H. Vanhees.

months since this notification, via the unique platform²².

If the resale does not take place within a public auction, the professional together with the seller shall be jointly obliged to notify the unique platform, and thereafter pay the due resale royalty within two months²³. In this context, the professionals have an obligation to provide the unique platform with a quarterly notification of the sales, on the basis of which the resale royalties payable have arisen²⁴.

According to certain legal doctrine²⁵, this general joint liability of all professionals involved in the sale cannot be regarded in accordance with the Resale Right Directive, as the directive only foresees to make “one of the professionals/operators” jointly liable with the seller. Furthermore, public officials (who can be involved for example in a forced sale of a work of art), which are also targeted by the Belgian legislator, cannot in any way be regarded as operators within the professional art trade, according to the same legal doctrine.

22 Art. XI.178, §1 first paragraph WER (CEL).

23 Art. XI.178, §1 second paragraph WER (CEL).

24 Art. 3 §1 Royal Decree 11 June 2015 laying down the conditions and more specific rules for management of the resale right stipulated in Articles XI.177 and XI.178 of the Code of Economic Law (*Wetboek van economisch recht*), BS 17 June 2015, 34997.

25 H. Vanhees, *Het volgrecht van de kunstenaar (The resale right of the artist)*, Garant, Antwerp 2016, 39-40.

5. How are Resale Royalties collected?

5.1 A unique platform is responsible for the exercise of the resale right

As already mentioned, in 2015, the system for collecting resale royalties was changed to a mandatory collective management system. On the basis of Article XI.177 CEL, a unique platform that is responsible for the exercise of the resale right, was designated. This platform was set up by the management companies responsible for managing the resale right, namely Sabam and SOFAM²⁶. The operation and conditions of the unique platform are regulated in the Royal Decree of 11 June 2015²⁷.

This platform is currently organised via the website www.resaleright.be.

As a result of these changes, sellers no longer need to identify the author entitled to royalties by themselves. Conversely, parties entitled to receive royalties from a resale are no longer able to collect the resale royalties owed to them directly from the sellers.

The unique platform www.resaleright.be collects any resale royalties payable, and it pays these to the authors (or to their heirs).

The author is free to approach the

26 J. Keustermans, P. Blomme, *Auteursrecht – Capita selecta – Tweede herziene editie (Copyright – Capita selecta – Second revised edition)*, Intersentia, Brussels 2021, 189.

27 Royal Decree 11 June 2015 laying down the conditions and more specific rules for management of the resale right stipulated in Articles XI.177 and XI.178 of the Code of Economic Law (*Wetboek van economisch recht*), BS 17 June 2015, 34997.

unique platform directly if he has not joined a management company²⁸. The same applies for foreign individuals entitled to receive royalties, who must also contact the unique platform²⁹.

Authors and persons entitled to receive royalties have a period of 5 years, counting from the resale, to claim their rights via the unique platform, and to obtain the collected resale royalties³⁰. All of this is made easier due to an obligation of transparency imposed on the unique platform. Indeed, the latter must keep a publicly accessible list of the sales notified to it³¹. In this way, the website allows any author or person entitled to receive royalties to check the sales of its works of art in Belgium³².

5.2 Right to information

In order to allow further monitoring of the declarations of sales and the payment of resale royalties by sellers and professionals, an adapted right to information was also elaborated³³.

28 M.-C. Janssens, H. Vanhees, V. Vanovermeire, *De intellectuele eigendomsrechten verankerd in het Wetboek Economisch Recht: een eerste analyse (The intellectual property rights anchored in the Code of Economic Law: an initial analysis)*, IRDI 2014, 467.

29 H. Vanhees, *Handboek Intellectuele Rechten (Handbook of Intellectual Rights)*, Intersentia, Brussels 2020, 89.

30 Art. XL178 §2 WER (CEL).

31 Art. XL178 §5 WER (CEL).

32 Link to the list of sold works: https://resaleright.be/pls/apex/f?p=20000:71:::RP::&cs=3nkpz7_GmeXFcGPjGPKzS5MccHisG-wDCoAeOMGG989CDyQsjfN3uCR5ARWIdau8BYAnX9Ya757WxJA2daaB35w

33 Art. XL178 § 4 WER (CEL). and Art. 5 Royal Decree 11 June 2015.

In order to protect the individual author or person entitled to receive royalties, he has a right to receive information from the unique platform. Such person can request all the relevant information to claim the resale royalty³⁴.

A request for information that is not respected is subject to criminal sanctions³⁵. This shows the importance attached to it by the Belgian legislator.

When the unique platform pays the collected resale royalties, both non-members and members of management companies are charged various different costs³⁶.

6. Conclusion

The evolution and further adaptation of the resale right has strengthened its practical implementation and the possibility of its collection.

Making the system of collective management compulsory, and thereby placing one unique platform between authors on one side, and sellers and art professionals on the other, created a simpler and more effective system.

On the one hand, the unique platform is responsible for collecting the resale royalties from sellers, and it has the authority and resources to

34 Art. XL178 WER (CEL).

35 Art. XV.110 WER (CEL).

36 H. Vanhees, *De vernieuwde regeling inzake het volgrecht (The renewed rules on the resale right)* in Volume XI WER (CEL), AM 2015, 372.

do this. Hence, resale royalties are collected in a more consistent manner, and more frequently paid to person entitled to receive them. This also increases clarity for art professionals. On the other hand, authors and sellers/art professionals are no longer obliged to search for each other (often in vain) in order to collect a resale royalty. In addition, authors (via their membership of a management company or not) have one clear direct point of contact, which is responsible for ensuring that resale royalties are collected and paid out on request.

Finally, the public list of sold works on the website www.resaleright.be makes it very simple for both foreign authors and artists to check whether any resale of their works has generated royalties.

The modified operation of the resale right can therefore be regarded as positive, due to its more transparent and more effective system.

Social Media Influencers and works of visual art in the public domain

By *Matteo Piccinali**



1. Enhancement of cultural heritage: social media influencers for the evolution of art marketing

Communication and marketing are playing an increasingly strategic role in the sector of art and culture¹.

Messaging platforms and social media channels are the new ways of communication between institutions

* Matteo Piccinali, Lawyer and Visiting Professor at Shanghai University of Political Science and Law – m.piccinali@zagliorizio.it.

Olga C. Patroni, Il caso di Chiara Ferragni agli Uffizi come simbolo del cambiamento della comunicazione dell'arte <https://osservatorio-arte-tecnologia.weebly.com/reviews/il-caso-di-chiara-ferragni-agli-uffizi-come-simbolo-del-cambiamento-della-comunicazione-dellarte>

¹ <https://www.insidemarketing.it/galleria-degli-uffizi-di-firenze-effetto-chiara-ferragni/>

and the public, as art and cultural events take place on social media channels and museums keep creating virtual tours and engaging on social media.

Art. 6.3 of the Italian Heritage and Landscape Code (“HLC”) on the promotion of cultural property states that “the Republic favors and supports the participation of private individuals, singularly or associated, in the enhancement of cultural heritage.” On the basis of this general principle and the important shift by the operators of the art and culture sector towards new means of communication, Italy has been recently experiencing the engagement of social media influencers to support and promote cultural heritage.

One of the initiatives that perhaps most recently aroused the interest of our public opinion took place at the Uffizi Galleries in Florence: in July 2020, while shooting for a Vogue Hong Kong campaign, the popular influencer Chiara Ferragni (over 23 million followers on Instagram) was portrayed in front of many famous works at the museum. The attractiveness exerted on the public by this initiative was very significant,

with an important response in terms of appreciation on social media channels and, more importantly, a 27% increase in youth attendance in the following days². Uffizi's director, Eike Schmidt, commented - also in response to those criticisms that did not appreciate the influencer's association with the Uffizi's unique cultural heritage - that Uffizi has "a democratic vision of the museum: our collections belong to everyone, not only to a self-proclaimed cultural elite, but above all to the younger generation. [...] This is why it is important to use their language, to intercept their irony and their creative potential"³. So the secret is using the "language of young generations" such as social media and messages of opinion leaders.

From a legal point of view, it is of interest to investigate whether and to what extent the promotion of cultural heritage may also contemplate the reproduction of cultural assets on social media channels. In particular, on the one hand, the reproduction of the work by the influencers on their social channels should take place within the framework of a formal agreement with the museum institution, whereas the purposes and methods of such reproduction are duly identified and authorized; on the other hand, the

reproduction of cultural assets in the context of a social network may lead - by means of appreciations and sharing - to a viral dissemination of those contents by followers.

More generally, consumers and art enthusiasts increasingly wish to capture with their smartphone and tablets - for personal memory and for sharing purposes on their social networks - the contents of what they see, experience and visit, thus generating an uncontrollable dissemination of artworks reproductions. Some of those art enthusiasts even become "art sharer", that is, art experts who use their social network channels for disseminating contents, photos and posts relating to art and artworks, particularly aimed at younger people⁴.

But where the reproduction of museum art works on social networks is not authorized on the basis of ad hoc contracts with the institutions, on what legal basis is the reproduction of the works based?

Article 70 section 1-bis of the Law for the Protection of Copyright states that the free publication through the internet of images is allowed provided that said publication is (i) free of charge, (ii) of low resolution or degraded, (iii) for educational or scientific use, (iv) the reproduction contains the reference to the title of the work and the name of the author, and (v) such use is not for profit. This

2 <https://www.ilfattoquotidiano.it/2020/07/21/chiera-ferragni-agli-uffizi-per-avvicinare-i-giovani-il-rischio-e-di-perdere-la-propria-identita/5874879/>

3 Iervasi, Art Sharer: gli influencer dell'arte. Intervista a Giusy Vena aka Lessi s Art, <https://closeupart.org/art-sharer-gli-influencer-dellarte-intervista-a-giusy-vena-a-lessi-art/>.

4 Corte d'Appello di Roma, 8 febbraio 1993, Dir. Aut. 1994, 440; Corte di Cassazione, 19 dicembre 1996, n. 11343, in Gius. Civ. I, 1997, 1606.

provision is intended to be extensively applicable also to figurative art⁵.

Further to the principles on copyright in the Italian legal system, works qualified as cultural properties can be reproduced within the limits of what is established by arts. 107 and 108 HLC.

In particular, the reproduction is allowed (if authorized by the Ministry, the Regions and other territorial public bodies) provided that such reproduction is compliant with the copyright legislation (art. 107 HLC). Moreover, the concession fees connected to the reproductions of cultural goods are not payable for reproductions requested by private individuals for personal use or for study purposes, or by public or private subjects for enhancement purposes, as long as they are implemented on a non-profit basis (art. 108 HLC)⁶. At any rate, the following activities - if carried out on a non-profit basis, for purposes of study, research, free expression of thought or creative expression, promotion of knowledge of cultural heritage – are always allowed (art. 108, section 3-bis, HLC):

- 1) the reproduction of cultural properties provided that said reproduction is implemented (i) in compliance with the copyright legislation and (ii) in ways that do not involve any physical contact with the asset, (iii) nor the exposure of the same to light sources, (iv) nor, within the cultural institutes, with the use of stands or tripods;
- 2) the disclosure by any means of the images of cultural assets, legitimately acquired, so that they cannot be further reproduced for profit.

The provisions under art. 108, sections 3 and 3-bis, which apparently represent sort of a "liberalization of photographic shooting in museums" would seem to constitute, in relation to works in museums, a new limited form of free use, relating precisely to photographic reproduction, which, while maintaining the limit of prohibition of the purpose of profit, also includes activities carried out for the purpose of "promoting knowledge of cultural heritage" even in blogs and on social networks⁷.

The reform of art. 108 HLC could have been more courageous in the direction of full freedom of reproduction, considering that "although a general principle of free reproduction of cultural goods

5 D.L. 31 May 2014, nr. 83, converted by Law 29 July 2014, nr. 106; Law 4 August 2017, nr. 124.

6 Galli, Tutela e valorizzazione dei beni culturali pubblici e privati attraverso la proprietà intellettuale, in *Il Diritto Industriale*, 2/2021; De Robbio, Il nuovo decreto ArtBonus e la liberalizzazione dello scatto fotografico nei musei italiani, in <http://aibnotizie.aib.it/derobbio-artbonus/>; De Robbio, Fotografie di opere d'arte: tra titolarità, pubblico dominio, diritti di riproduzione, privacy, <http://digitalia.sbn.it/article/download/1054/684>.

7 Aliprandi, Vincoli alla riproduzione dei beni culturali oltre la proprietà intellettuale, *Archeologia e Calcolatori*, 9/2017.

in the public domain is established, in fact reproduction is far from free since it is in any case subject to prior authorization, as well as to the payment of a fee”⁸.

Notwithstanding the innovative forms of marketing recently adopted, the Uffizi themselves have specified that the use of the images of those works in the museum by those who, on their social media channel or blog, for a personal, scientific and non-profit purpose is free of charge. On the other hand, the commercial purpose - and therefore the obligation to pay a fee to the museum - can be configured in the case of images used e.g. by tourist guides in online courses provided on a professional basis, or by operators promoting, on social networks, the sale of objects that depict such images⁹.

2. Works of visual art in the public domain

The Directive (EU) 2019/790 on copyright (“Directive”) introduces several updates to the exceptions and limitations to copyright provided for by Directives 2001/29/EC and 96/9/EC.

Recital 53 Directive points out that

8 *Attribune*, Gli Uffizi vietano le foto sui social, May 7, 2021, https://www.attribune.com/arti-visive/2021/05/foto-influencer-uffizi-canone/?utm_source=Newsletter%20Attribune&utm_campaign=784c35f4cb-&utm_medium=email&utm_term=0_dc515150dd-784c35f4cb-154158697&ct=%28%29&goal=0_dc515150dd-784c35f4cb-154158697.

9 Questions and Answers – European Parliament’s vote in favour of modernised rules fit for digital age, 26 March 2019, https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_1849.

“[...] In the field of visual arts, the circulation of faithful reproductions of works in the public domain contributes to the access to and promotion of culture, and the access to cultural heritage. [...] differences between the national copyright laws governing the protection of such reproductions give rise to legal uncertainty and affect the cross-border dissemination of works of visual arts in the public domain. Certain reproductions of works of visual arts in the public domain should, therefore, not be protected by copyright or related rights [...]”.

In light of this, art. 14 Directive provides that, upon expiry of the term of protection of a work of visual arts, the material deriving from an act of reproduction of that work is not subject to copyright or related rights, unless such reproduction constitutes by itself an intellectual creation.

This provision introduces the possibility of disseminating, sharing (including online) and reusing (including for commercial purposes) non-original copies of works of art that have become public domain.

The European Commission has pointed out that “When a work of art is not protected by copyright anymore, for instance an old painting, it falls into the public domain. In that situation, everybody should be free to make, use and share copies of that work. [...] Thanks to this provision, all users will be able to disseminate online with full legal certainty copies

of works of art in the public domain. For instance, anybody will be able to copy, use and share online photos of paintings, sculptures and works of art in the public domain when they find them in the internet and reuse them, including for commercial purposes or to upload them in Wikipedia¹⁰.

In recent years, several cultural institutions worldwide have anticipated these principles and have chosen to make available online high-resolution images of their heritage in the public domain, in order to encourage free reuse and promotion of their respective institutions¹¹. A research was able to demonstrate that the revenues from the sale of images on Internet are lower than the management costs, compared to the benefits for cultural institutions in terms of visibility¹². In particular, the elimination of fees and authorizations can constitute a powerful incentive for the economic initiative of cultural enterprises and for the tourism enterprise, and the reuse implemented through the Internet

– while reaffirming that cultural heritage is a universal good and achieving cultural democracy - allows a potentially infinite number of users to take advantage of the same asset at the same time without damaging it but rather increasing the perceived value of the heritage through¹³.

It is easy to understand how important this innovative approach would be for revitalizing the sectors of tourism, art and culture and, hence, the image of Italy, a country that is gifted with a unique historical, artistic, archaeological and landscape heritage, a legacy of the richness of cultures and traditions that have always found in Italy the conditions to develop and grow like nowhere else around the world.

During the hearings held before the XIV Standing Committee for European Union Policies between April and June 2020 on the transposition of the Directive in Italy, several cultural heritage institutions and civil society associations requested a broad and harmonized implementation of all the mandatory exceptions provided by the Directive, as well as an effective implementation of the principle on the protection of the public domain as stated in art. 14.

In its 5 May 2020 Resolution, the Parliamentary Commission on Culture has invited the Italian Government to

10 <https://www.franceinter.fr/culture/acces-libre-pour-150-000-images-de-paris-musees-ce-que-les-internautes-peuvent-en-faire>.

11 Sharing is Caring 2014 Openness and sharing in the cultural heritage sector, Statens Museum for Kunst, Copenhagen https://www.smk.dk/wp-content/uploads/2018/10/94124_sharing_is_Caring_UK.pdf.

12 Audizione informale di ICOM Italia presso la XIV Commissione permanente (Politiche dell'Unione Europea) del Senato della Repubblica Italiana sul disegno di legge n. 1721 (Legge di delegazione europea 2019), dell'8 giugno 2020, https://www.senato.it/application/xmanager/projects/leg18/attachments/documento_evento_procedura_commissione/files/000/144/301/ICOM.pdf; https://sca.jiscinvolve.org/wp/files/2011/10/iDF158-SCA_lthaka_ReportPl us_Sep11_v1-final1.pdf.

13 <https://aic.camera.it/aic/scheda.html?numero=8-00073&ramo=C&leg=18>.

“evaluate the opportunity to adopt initiatives aimed at encouraging [...] the free reproduction and dissemination of images of public cultural assets [...] through the use, among the list of Creative Commons licenses, of those typical of Open Access”, as well as aimed at recognizing the possibility for the directors of cultural institutions to license images online through free reuse Creative Commons licenses¹⁴.

3. Art. 14 Directive: lost opportunity for Italy?

Art. 14 Directive primarily aims at preventing European cultural institutions from interposing exclusive rights to the free reuse of reproductions.

The Italian Law provides a series of provisions on the restriction of images reproducing cultural heritage in the public domain (e.g. arts. 87-88 LPC¹⁴; art. 108 HLC) that are more restrictive than what is required by the relevant EU legislation. It follows that the implementation of art. 14 Directive requires a reform of the Italian legislation in order to avoid that, outside of the non-profit uses, the reuse of the works remains subject

to the “concession for consideration” regime, which limits initiatives of digital dissemination.

For these reasons, it is first of all necessary to amend art. 87 LPC, in order to exclude reproductions of works of cultural heritage from the protection provided for by the rules of copyright, and to adapt the definition of the same to the concepts set out in art. 14 Directive. In this perspective, “works of visual arts” should not only coincide with “works of figurative art” already mentioned in art. 87 LPC but, more generally, with all objects, in analogue or digital format already defined as “cultural assets” on the basis of art. 10 and 13 HLC, in order to include the wide range of works already described in the scope of the norm.

Secondly, it is necessary to reform art. 108 HLC, which governs the use of reproductions of public cultural assets, in order to allow the free reuse of the same without restrictions regarding the purposes. In addition, said provision should be amended in order to specify that the free reproduction of cultural assets concerns both the assets belonging to the Ministry of Culture, the Regions and other territorial public bodies, as well as the assets belonging to any other public, private and recognized ecclesiastical bodies, as well as those privately owned and declared to be of cultural interest.

¹⁴ Art. 87.1 LPC: The images of persons, or of aspects, elements or events of natural or social life, [...] including reproductions of works of figurative art and stills of cinematographic film, shall be considered photographs for the purposes of this Chapter (V); Art. 88.1 LPC: The exclusive right of reproduction, dissemination and marketing of a photograph shall belong to the photographer [...] and without prejudice to any copyright in works of figurative art reproduced in photographs.

Italy is preparing to implement the Directive and, to this end, on 8 May 2021, the European Delegation Law, or EDL (Law n. 53/2021¹⁵), came into force. In particular, art. 9 EDL defines those principles and criteria for the implementation of the Directive by the Italian government. Interestingly, art. 9 EDL provides the principles for the transposition of art. 3, 5, 8, 10, 15, 16, 17, 20 and 22 of the Directive only. As a result, the EDL does not include the transposition of art. 14 Directive, with the consequence that those norms restricting the reproduction of cultural heritage in the public domain (art. 87-88 LPC, art. 108 HLC) are not expected to be reformed in a way that is consistent with art. 14 Directive. Needless to say, a simple copy and paste transposition of art. 14 Directive may not be able to achieve the scope of the Directive in this respect¹⁶.

Facilitating innovation for art and culture, digital transformation and implementation of a concrete democracy of knowledge through the free use and Internet dissemination are all principles largely advocated by operators in the sector. The implementation of art. 14 Directive can represent a possible solution in order to achieve said targets at the

European level and this would take place consistently with the principles of the Italian Constitution embedded, in particular, in art. 9 (“The Republic promotes the development of culture and scientific and technical research”) and art. 33 (“Art and science are free and their teaching is free”).

We therefore await the next steps of the Italian legislator in this regard, in order to understand if - through the most consistent alignment with the Directive - Italy will be able to seize the opportunity to exploit the new forms of communication and sharing of its artistic and cultural heritage, with a strong attention toward the younger generations and, with it, a more accentuated promotion of its touristic system.

¹⁵ <https://www.gazzettaufficiale.it/eli/id/2021/04/23/21G00063/sg>.

¹⁶ De Angelis – Leva, *The Italian transposition of the CDSM Directive: a missed opportunity?*, April 28, 2021, at <https://www.communia-association.org/2021/04/28/the-italian-transposition-of-cdsm-a-missed-chance/>

Conference Report: 5th Responsible Art Market (RAM) Conference – Innovation and change in a responsible art market

By Ruth Whittaker*



The 5th Responsible Art Market (RAM) Conference opened with a reminder of the profoundly human nature of the art industry: one comprised of passionate professionals for whom affection towards art, antiquities, and cultural property underlines their commercial interactions.

I. Trust in the art market

The keynote address was delivered by Nanne Dekking (CEO of Artory and former Chairman of TEFAF), who opened with the concept of trust in a market involving objects that retain no rational value. With reference to the singularly ‘human’ nature of the art market

Nanne stated: *“if you have to trust someone, it means that you don't have all the facts”*. This comment led neatly to the use of blockchain as a source of immutability and provenance, whilst acknowledging the need for trustworthy human input.

Speaking about the unfortunate lack of trust in the art industry, Nanne Dekking brought to the Conference’s attention Deloitte’s 2020 Art and Finance Report,¹ which confirmed that wealth advisors are generally uncomfortable with their clients purchasing artworks. He pointed out that when accounting for advisors that do not trust or understand art as an asset class, one begins to understand why the market has failed to grow over the past decade, even accounting for COVID-19.

Attendees were reminded that those with little experience of the art market are bound to be cautious given its comparative lack of regulation and slow embrace of technology, but that modernisation of the industry is worth pursuing to secure the faith of new market participants.

* LLM candidate at the London School of Economics and Political Science

¹ <https://www2.deloitte.com/lu/en/pages/art-finance/articles/art-finance-report.html>

Nanne Dekking concluded his speech by expressing admiration of the use of novel technologies to ensure that people could continue to buy art online. However, he made clear that *“seeing is crucial for atmosphere”* and that the industry would continue to face challenges in the absence of a physical presence.

II. Digital due diligence

The second panel included Dr. Nicolas Galley (University of Zurich), Valentina Volchkova (Pace Gallery), and Masha Golovina (Masterworks). Chaired by Dr. Anne Laure Bandle (Art Law Foundation), it centred on the effect of online sales in what remains a tradition-bound industry in many respects.

Generally, the panellists’ view was that although established ‘blue-chip’ artists with strong ties to galleries and collectors may thrive, the present climate is difficult for emerging artists. This is particularly so given the absence of art fairs, which has reduced opportunities for the latter to showcase their work.

The panellists spoke favourably of the increased accessibility that comes with the digitalisation of exhibitions. This applies not just to consumers, but for organisations whose business models have consequently improved.

It was also posited that the art market had become healthier during the pandemic, on the basis that there remain enough high-net-worth collectors willing to engage. However, it was appreciated that other market participants had clearly suffered. For instance, certain US-based museums, as privately funded entities, have been forced to sell parts of their collections in order to survive. Yet, the panel suggested that movement of such artworks and cultural property between museums could be reframed as a positive overall.

The panel was mindful of the potential increase in fraudulent online behaviour during the pandemic, but denied that this had posed any considerable problems so far. The need for clear provenance has not changed due to COVID-19, and despite the ability to conduct sales remotely, physical inspection of art is simply a key part for many collectors. For many, seeing the artwork in person is by far the most accurate means of assessing its quality and authenticity.

The consensus of the panel was that the art market stands to benefit tremendously from the increased use of technology to facilitate remote viewing, due diligence, and sales.

III. Managing the legal challenges of online art sales and services

The third panel involved Melanie Damani (Hottinger Group), Amy Whitaker (New York University), and Tom Christopherson (Bonhams). Chaired by Sandrine Giroud (Art Law Foundation), speakers discussed questions of client verification and data protection in the context of online art sales and services.

Melanie Damani and Tom Christopherson both recognised an increase in attempts to leverage liquidity from artworks in the face of an unpredictable pandemic. Interestingly, Melanie Damani observed that following initial excitement about online sales among collectors, many clients have since become overwhelmed and/or disinterested in the process, which has prompted a return to more traditional means of sourcing and selling artworks.

The success of timed auctions was commented upon, as was the development of ‘hybrid’ auctions. The panel agreed that these have afforded buyers more transparency and security by enabling improved scrutiny of advertised artworks.

Tom Christopherson noted that many auction houses had drastically increased their online offerings in the

second half of 2020, but acknowledged the difficulties faced by smaller outfits and those with minimal or no online presence. Out of all the key commercial and legal implications discussed, he considered the biggest threat not to be the sale of art, but rather, sourcing it. Referring back to the human nature of the art industry, Tom Christopherson reiterated that person-to-person contact is often how purchasers are persuaded to become involved, which in turn leads to fruitful relationships, and in turn, consignments and successful business dealings.

Amy Whitaker explained how the regulatory environment of the art industry is reminiscent of anti-money laundering (AML) and ‘know your client’ (KYC) standards in finance: the imposition of AML in particular has generated a raft of ‘knock on’ changes that merits consideration given the complex and unique nature of the art market. This includes, and is not limited to: the need to account for varying levels of resources, clients’ commercial reputations, and advancements in cybercrime. A growing appreciation for third-party AML consultants was a significant matter raised by the panel, and it will be interesting to see how this need evolves as a consequence of developing AML, data protection, and international art law regulations. Related challenges include the extent to which responsibility may be delegated, as well as client confidentiality: if art

professionals are obliged to reveal their client books to competitors under due diligence, this will undermine their businesses, and substantial power shifts between organisations are liable to occur.

The applicability of the GDPR to the art world was also examined. The key link identified was that the industry is, for legitimate reasons, reluctant to share data. Each auction house retains a valuable client database that is jealously guarded and demands protection beyond those provided by the GDPR. Organisations often deal with ultra-high-net-worth individuals linked to exceptionally valuable collections: without sufficient safeguards, unauthorised access to these databases could have potentially dangerous consequences. This again raised the potential benefits of delegating AML, KYC, and data protection responsibilities to third parties with extensive knowledge of modern data security.

IV. Global perspectives

The fourth discussion chaired by Mathilde Heaton (Phillips) concerned three major art market hubs: China, the US, and the UK. Audry Li (Zhong Lun Law), Freya Simms (LAPADA) and Nicholas O'Donnell (Sullivan & Worcester LLP) examined the trends and expectations for 2021 in their respective region.

Audry Li confirmed that the Chinese art market has grown tremendously despite COVID-19, and welcomed the shift towards online sales as a way to encourage smaller auctioneers and the inclusion of a new generation of high-net-worth collectors. She reported that the regulatory framework governing Chinese art auctions is effective in managing the growing industry. Calls for auctions to be regulated in a manner similar to the economy have also been made in China, namely in terms of rules protecting the right to return goods. Audry Li also made mention of Chinese AML regulations, which do not yet extend to its art market.

Nicholas O'Donnell confirmed that the US has yet to introduce any substantial legal framework to the antiquities trade, which has raised questions as to how the market should be controlled in a constructive and inclusive manner. By way of example, he referred to the US Corporate Transparency Act, which proposes to include antiquities dealers within the remit of the Bank Secrecy Act. Yet, the legislation fails to define specifically what a 'dealer in antiquities' is. Nicholas O'Donnell concluded that there is presently space for art professionals to contribute to the development of these laws. Such opportunities for engagement are rare, and it is one he suggests that the industry ought to capitalise on.

Freya Simms ended the panel with an overview of the pandemic's effect on the UK art market. She predicted a busy time between September and October on account of 'virtual fair fatigue' and observed that the hyper-acceleration of online sales has been extremely helpful in reaching the millennial buyers that the market has been keen to attract for some time. With brief reference to Brexit and AML developments, Freya Simms said that it is important to remain cognisant of increased red tape and border congestion issues. Organisations appear to be in an element of stasis due to the last-minute nature of the Brexit Trade Deal, but Freya Simms suggested that the presence of online fairs and increased certainty surrounding the Deal rules means that the art market is likely to recover quickly.

Her personal view neatly surmised that of the Panel: that although art events remain more effectively attended in person, the current situation has proved the traditional industry to be a resourceful, ingenious, and adaptive one.

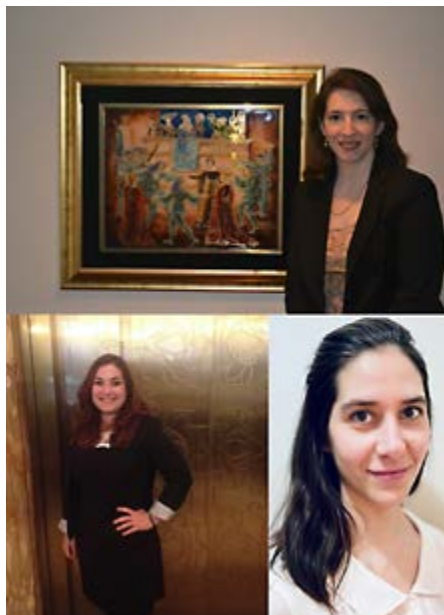
V. Concluding comments

Overall, the industry is continuing to adapt well to the pandemic – a point successfully evidenced by this year's RAM Conference. Experts and collectors continue to manufacture new means of virtually inspecting artworks; museums are expanding

their online platforms to promote community engagement; and lawyers are developing creative ways of accommodating standard contracts and negotiation methods to reflect the new reality. The Conference generated productive conversations between its panellists and audience on how to best address these novel changes whilst maintaining strong standards of diligence and public trust in the industry, and once again proved itself as a functional forum for promoting the reach and security of the art market during the pandemic and beyond.

Conference report : Non-Fungible Tokens in the art market: the beginning of a digital art boom? - Online, 4 May 2021

*By Leila A. Amineddoleh, Clara Cassan and Claudia Quinones**



Last month, the Art Law Foundation hosted an event titled “Non-Fungible Tokens in the art market: the beginning of a digital art boom?”. It was organized and moderated by attorney Anne Laure Bandle, Director of the Art Law Foundation and co-founder of the Responsible Art Market initiative. The panelists included Gabriel Jaccard, a legal scholar in the field

of smart contracts and Co-Chair of the Regulatory Working Group Crypto Valley, and Garrett Landolt, a Postwar and Contemporary Art Specialist at Christie’s auction house, and Leila A. Amineddoleh, the founder of Amineddoleh & Associates LLC, an art, cultural heritage law and intellectual property law firm. This multidisciplinary group of speakers presented varying perspectives on NFTs and the art market, demystifying this new asset class for the audience.

After Gabriel explained the technological aspects of NFTs, Leila stressed the importance of understanding and drafting contractual terms relating to them. As digital assets, NFTs fall outside traditional frameworks of property law and art sales agreements. In conventional transactions, a buyer will purchase a work from an artist or on the secondary market and receive a tangible object. With NFTs, it is not always immediately clear what the collector is buying or what rights they will be allowed to retain and exercise. A digital token can exist separately from a physical work of art or contain rights to a unique digital artwork that does not have a physical counterpart.

* LLM candidate at the London School of Economics and Political Science

Each situation will carry different rights for the creator, the seller, and the purchaser. For instance, a variety of options are available for the protection of artists' moral and intellectual property rights, although

this is complicated by the fact that such rights vary between countries. As this is a rapidly developing field, contracts will need to adapt to the rapidly changing technology and art market.



Gabriel noted that NFT sales are governed by smart contracts embedded within the purchased tokens that are programmed to operate automatically. These contracts work similarly to a vending machine, which is programmed to release an item when a buyer inserts payment. However, as NFTs are a recent addition to the legal world and are usually more expensive than chips and soda, parties are still struggling with how to draft contractual terms that program the tokens effectively. Without clear legal precedent to inform these agreements, questions have arisen as to how the trade in these assets will develop.

Depending upon the limitations the seller wishes to place on the NFT (such as commercial use and publicity restrictions), the parties may approach sales as straightforward exchanges of goods, as more complex licensing agreements, or even as hybrid contracts that incorporate these two forms. In any case, the parties' rights should be clearly specified and memorialized in an agreement in order to avoid future legal challenges. Another critical matter to consider is the potential conflict between private contract provisions and the terms of services on an NFT platform.

• Where is the work of art? (Hash / everywhere)

• Where is the smart contract?

<https://etherscan.io/address/0x2a46f2ffd99e19a89476e2f62270e0a35bbf0756>

Although it is unclear which terms will prevail in the event of a dispute, including protections in the agreement will help safeguard the parties and help enforce their rights.

As a complement to the legal discussion, Garrett provided an exclusive account of the now famed March 2021 Beeple sale, which drew 22 million visitors to Christie's website during the final minutes of the auction. This unprecedented traction perhaps suggests that NFTs are a more desirable (or at least more accessible) asset class for Millennials than the traditional art market sphere: bidders for Beeple's *Everydays* averaged 36 years old. Garrett also indicated that while Christie's had an excellent start, this sale was a learning experience for future transactions. The auction house plans to pursue NFT sales and will offer blockchain-embedded works called *Cryptopunks* in an upcoming

auction. It remains to be seen whether NFTs will be treated as a luxury asset, but Christie's will remain selective with the items chosen for auction.

As way of context, Leila noted that NFTs are not quite as novel or unprecedented as described by the media. NFTs are not entering into uncharted territory; conceptual artists have long explored values related to the physical possession of art and ownership documentation as an integral part of an artwork. Between 1959 and Yves Klein's death in 1962, the artist sold eight "pieces" in a series entitled *Zone de Sensibilité Picturale Immatérielle* (Zone of immaterial pictorial sensibility). The work, described as performance art, involved selling ownership documentation for empty space in the "Immaterial Zone". The sale was recorded in a check that was exchanged for the buyer's gold.

Upon the buyer's wish, the piece could be completed in a ritual (witnessed by an art critic or art dealer, as well as an art museum director, and at least two other witnesses) in which the buyer would burn the receipt, and Klein would throw half of the gold into the Seine River.

Decades later, in 1987, the value of ownership was tested at auction with the sale of Hans Haack work *On Social Grease* at Christie's. According to the *New York Times*, the sale was subject to a transfer agreement and record. That agreement included an artist's royalty fee, artist's approval of loans, a non-modification clause, permission for the artist to borrow the work, and a provision to track the location of the work. Notably, the contract was placed on a pedestal next to the work during its viewing. The *NY Times* stated that the sale affirmed the "official acceptance of conceptual art." However, conceptual artists (including Yves Klein and Sol Lewitt) had been accepted by the art world decades before the sale 1987 auction.

As part of the event, Anne Laure then moderated audience questions. The first question concerned recommendations for potential purchasers. All the panelists agreed that purchasers should perform due diligence in advance of transactions to ensure that they fully understand what is being purchased, their respective rights, liabilities, and potential legal

implications. Proceeding with caution is necessary to avoid pitfalls. Gabriel further noted that purchasers should verify whether the relevant contract addresses their needs, depending on the purpose of the transaction (investing versus collecting). Another question concerned the reception of NFTs by financial institutions as collateral for loans. Gabriel stated that NFTs currently represent a high-risk ratio and as such, financial institutions are hesitant to use them as collateral. However, this could change in the future if NFT-related transactions become more common, and smart contracts could potentially be used as collateral. It is worth noting that financial institutions must also comply with anti-money laundering (AML) regulations, which were recently extended to antiquities dealers in the US and already apply to art market participants in the EU and UK. If financial institutions apply the new regulations to NFT transactions, these institutions will need to conduct diligence regarding the identity of the work's ultimate beneficial owner. This requirement might mitigate the anonymity provided by the Internet and ultimately discourage certain NFT buyers.

The legal landscape surrounding NFTs continues to develop, and so collectors, artists, and other art market participants are wise to obtain legal counsel from experienced professionals with an understanding of this new asset class.

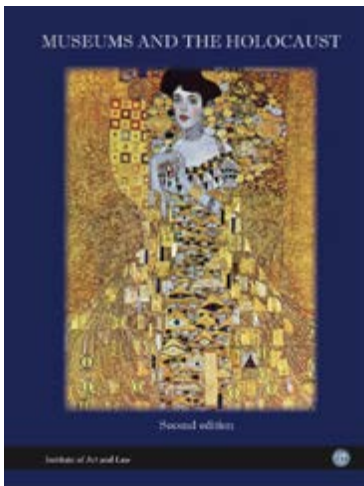
Book reviews

by Adrienne Bauer*



The second edition of *Museums and the Holocaust*

*Edited by Ruth-Redmond Cooper,
published by the Institute of Art and Law*



The second edition of *Museums and the Holocaust*, edited by Ruth

Redmond Cooper, Director of the Institute of Art and Law, gathers the contributions of renowned specialists in the field of provenance research and related legal issues. This new edition demonstrates the efforts being made since the first edition was published in 2000.

While my anticipation was already piqued by the online launch of the book on Holocaust Memorial Day, my high expectations were exceeded.

Divided into three major parts, the book gives a comprehensive overview of the current situation on Nazi looted art and its connection to museums worldwide. After initial thoughts on the subject by the editor of the first edition, the late Norman Palmer, Leonie Schwarzmeier, German lawyer, elaborates on the Nazi legislation, such as the *Reich Flight Tax Ordinance* of 1931. She shows the economic pressure under which Jewish citizens were forced to sell their possessions and how their property was confiscated. Another contribution presents the legal problems that always arise when works of art pass through many hands within different jurisdictions. Legal issues such as the *lex situs* rule as well as limitation periods are explained. Since international loan agreements

* Adrienne Bauer is a Munich based lawyer and art historian.

have become indispensable in today's museum practice, due attention is also given to seizure statutes. The general reflections in the first part of the book are rounded off by a contribution by Dr. Jacques Schuhmacher, curator at the V&A Museum in London. He summarises the efforts and successes of provenance research in British museums, examining, among other things, the interesting question of how these museums were able to acquire looted artworks even though the respective curators were in some cases themselves *Monuments Men*. However, the 1998 Washington Conference was a turning point for provenance research in British museums.

The second part of the book shows the successes that countries have achieved in handling Nazi looted art in museums, as well as the challenges faced. While some countries have established restitution committees, others take a different approach. In the United Kingdom, the Holocaust Act of 2009 enabled the restitution of paintings and the Spoliation Advisory Panel started its work in 2000. Since its inception, twenty claims have been heard by the Panel, five being unsuccessful. The author is critical of the panel's procedure rules and suggest that they should be observed by all parties involved in possible future reforms.

Germany has also set up an Advisory Commission. Until November 2019,

it has dealt with seventeen cases, one of them being the *Welfenschatz* recommendation. Isabel von Klitzing, provenance research specialist, and Carola Thielecke, inhouse lawyer at the Stiftung Preußischer Kulturbesitz, describe how some works of art were returned immediately after the war and Germany was confronted with different legal systems in the following period due to its division into East and West. Once again, the Washington Conference can be described here as a turning point in the restitution practice. While no specific legislation exists, ethical guidelines and soft law instruments such as the *Gemeinsame Erklärung* have been used for successfully return Nazi looted art over the last 20 years. Of course, an action in court is also possible, although the relationship between the special post-war laws and general civil law has not yet been finally clarified by the highest courts. The problem of the statute of limitations also prevents a judicial clarification. Famous museums such as the *Bayerische Staatsgemäldesammlungen* have integrated provenance research in their due diligence and the database *lostart* is online since 2000. Academics are also continuing to address the issue of looted art, such as Prof. Weller at the University of Bonn working on a restatement of the Restitution Principles. Even if criticisms regarding the transparency of the Commission's decisions are already being taken into account, it is first and foremost necessary to increase the number of cases processed.

In the Netherlands, immediately after the Second World War, the *Art Property Foundation* was established to organise art restitution. Emergency laws stated that any transaction with a German buyer during the occupation of the Netherlands was forbidden and, moreover, null and void. Since its implementation in 2002, the restitution committee has recommended the return of approximately 600 works of art. Despite the positive effects, such as transparency and neutrality, the committee is also criticised for its interpretation of just and fair solutions. In the Wassily Kandinsky case *Bild mit Häusern*, the balancing of interests between the claimant and the museum was found to be incompatible with the Washington Principles.

Lawyer Corinne Hershkovitch has investigated the situation in France, where Jews also faced the looting of artworks. The Nazis classified artists as “degenerate” in order to loot their works for Hitler’s collection and at the same time destroyed many more paintings. The courageous and impressive work of Rose Valland from the *Jeu de Paume Museum* should of course not go unmentioned in this context.

The Ordinance of 1945 still provides the legal basis for the restitution of looted art. The establishment of the MNR is outlined. Until end of October 2018, the commission (CIVS) recommended in 35,287 cases and

more than 45 million Euros have been paid as compensation. Only 5 per cent of all the MNR artworks have been returned to date, which the author considers to be primarily due to a lack of provenance research.

In Austria, the Art Restitution Act has been in existence since 1998, as well as the commission. Looking at the decisions of the last two decades, it becomes obvious that they have tended to be made in favour of the victims, even if evidence is often no longer available. In the context of a painting by Egon Schiele, the Art Restitution Advisory Board ruled in March 2020 in favour of the heirs of the murdered Dr. Morgenstern.

Due to its communist character between 1949 and 1989, Poland did not pursue the restitution of works of art. However, in 2017, the National Treasures Restitution Act was implemented and in the past 30 years, the small number of 50 Nazi looted cultural goods found their way back to Polish public collections.

Lawyer Agnes Peresztegi assesses the progress in Hungary. Both the Museum of Fine Art and the Hungarian government seized, as allies of the German, artworks from Jewish collections and the Soviet Red Army took what was left over. In 1991, Hungary was the first former communist country using compensation laws. Nevertheless, even if provenance research started in the

1990s, the author criticises that no Hungarian state museum is making any efforts towards transparent provenance research and no independent commission was established. Similarly, there is a lack of uniform legal handling of looted art cases.

A chapter is devoted to the situation of Israeli museums such as the Israel Museum. It is shown that works of art entered the country, for example, via organisations that held works of art of unknown owners in trust. Some works were also purchased or donated. While provenance research is already standard in other countries, there is no legal basis for it in Israel. Until its liquidation, the Hashava Company was entrusted with the task of returning assets looted during the Holocaust. The results of all international conferences have not been transposed into national law, but initial progress is evident through the Jerusalem Declaration of 2018. According to the authors, provenance research is done ineffectively and lacks a budget. Nevertheless, the Israel Museum had completed provenance research for 620 items by 2016, of which 18 had been given back to the rightful owners. The Hashava Foundation was established a year ago and in addition to the task of returning works of art, this Foundation also makes a valuable contribution to the legislation and administration in Israel with regard to cultural property.

Greece suffered from two aspects: on the one hand, the Nazis looted

cultural artefacts that embodied the idea of superiority in their eyes. On the other hand, the Jewish population, especially in Thessaloniki, was not safe from looting either. In total, more than 11,000 pieces were looted. The restitution situation between Germany and Greece remains unsatisfied and Greece's economic disbalance does not help the country and its Jewish community to improve its standing regarding possible claims for reparations.

Museums in the US have made considerable progress in provenance research. Whereas claims against US museums were not a question before the 1990s, the situation changed markedly. The chapter outlines many of the changes implemented and explains why even court cases concerning works of art that have never been in the USA are nevertheless heard there (e.g. the Adele Bloch-Bauer case). The US Supreme Court recently denied the admissibility of action in the USA in the case of the Guelph Treasure because, in the court's view, there is no exception to the *Foreign Sovereign Immunities Act*. The HEAR Act was enacted in 2016 to harmonise the different statutes of limitations in the US legal system and can be seen as a strong signal that the USA wants to simplify the restitution of looted art. The situation has also changed in Australia since 2000, when the first edition of the book was published and provenance research was just in the beginning. The Australian Best

Practice Guide to Collecting Cultural Material was published in 2014, giving valuable advice on how to exercise due diligence in museums.

After this exciting literary journey through museums worldwide, the book concludes with an essay on the remarkable successes of the Monuments Men. In another contribution to the Gurlitt story, it is worked out that despite all efforts, over 1000 works of art have gaps in their provenance. The Max Stern Art Restitution Project is also mentioned and illuminates, by giving concrete examples, how complex the relationship between claimants and museums can be and what should be done to make both sides happy.

Reading this highly informative work shows how much provenance research and the handling of looted art in museums is of public interest worldwide. At the same time, the authors critically comment on grievances in this field and point out possible solutions. Always bearing in mind that behind every looted work of art there is a personal human fate, the book makes a valuable input to the current discussion. The ongoing issues of how to deal with colonial art illustrate how far-reaching the questions of restitution are and one can only be grateful to the editor and the contributors for this exciting and legally sound read.

Kulturgutschutzgesetz

*Edited by Kerstin von der Decken,
Frank Fechner and Matthias Weller,
published by Nomos and Schulthess*



The first edition of the eagerly awaited legal commentary on the German Cultural Property Protection Act is a great enrichment for the legally interested readership. Published in 2021 at the reputable Nomos Verlag, its editors, Prof. Dr. Kerstin von der Decken¹, Prof. Dr. Frank Fechner² and Prof. Dr. Matthias Weller³ are all experts in their field.

¹ Prof. Dr. von der Decken is a professor of Public law with a focus on international law, European law and general political science at Kiel University. Her research focuses on the protection of cultural property and cultural law.

² Prof. Dr. Fechner is a professor of Public Law, in particular Public Business Law and Media Law at the University of Ilmenau. His work focuses on media and cultural law.

³ Prof. Dr. Weller is a professor at the Rheinische Friedrich – Wilhelms – University Bonn. His research areas include civil law, international civil procedure and private law as well as art and cultural protection law.

Numerous contributors, such as Prof. Dr. Kurt Siehr as well as Prof. Dr. Marc-André Renold have helped in the realisation of this extensive book project. Their legally sound knowledge provides valuable assistance in the interpretation of this relatively new act.

The first part of the book presents basic aspects of the law, starting with terminology and background knowledge. The intention and purpose of the act is, on the one hand, the protection against removal from the federal territory and, on the other hand, the import and export of movable cultural property. First and foremost, the law aims to prevent illegal cross-border trade in cultural property.

The authors describe historical processes in the context of cultural property protection and make clear that there is an ongoing internationalisation in this field and that purely national protection mechanisms are no longer so much in focus. The authors also deal in detail with international and European legal requirements for the movement of cultural property, including the subject matter and objectives of the UNESCO Convention of 1970, as well as European legal norms and regulations. The protection of cultural property should not be viewed purely on a national level, which is why the commentary also includes comparative legal considerations and addresses the topic in both Austria and Switzerland. The second part of the book is devoted to a well-founded analysis and

commentary on the respective norms of the law, in each case addressing earlier rules, the international context and previously unresolved legal issues.

The Cultural Property Protection Act came into force in 2016 and combines then already existing legal regulations. At the same time, the law implements European law requirements, such as the *Kulturgüterrückgaberrichtlinie* of 2014. The act also serves to improve the implementation of the UNESCO Convention of 1970. In short, the Act represents one of the largest and most far-reaching reforms of German legislation on the import and export of cultural property.

The principle of protection against removal from the federal territory of national cultural property is established at the very beginning of the law and what is considered to be national cultural property is defined in the central section 6. The list principle still exists, but inventories of public museums, archives and libraries are now also classified as national cultural property.

Section 20 establishes the principle of freedom of movement of cultural property, and then goes on to set out export and import regulations.

With regard to export regulations, a distinction must be made between cultural property and national cultural property. For national cultural property, differences apply with regard to temporary or permanent export,

whereas for the export of cultural property, the place of transfer is decisive (outside or within the EU internal market). In the latter case, different age and value limits must also be observed. The requirements of the Washington Principles are incorporated into law. Thus a permanent export of national cultural property must be approved if the restitution of a cultural property seized during the Nazi Era is to be made to the original owner or to the heirs living abroad.

Section 28 provides for import bans on cultural goods as an exception to the freedom of movement of cultural goods and in this way makes it clear that the law is not only designed to protect the country's own cultural property.

The fourth chapter of the Act prohibits the placing on the market of cultural property that has been lost, unlawfully excavated or unlawfully imported. This central point is followed by various other provisions, such as duties of care and due diligence requirements. Those are to be respected by anyone, especially professional art dealers. The general due diligence obligations represent a special German feature, whereas in Austria and Switzerland obligations are only provided for commercial art dealers.

The return of unlawfully imported cultural property is also regulated and classified as a public-law claim. In the course of a possible restitution under public law, the interactions with civil

law may mean that the bona fide owner of a cultural property must relinquish his or her right of possession resulting from ownership when the law is applied.

Since its introduction, the law has already been amended twice and it remains to be seen what influence current developments such as the EU Import Regulation of 2019 will have on the future structure of the law. An evaluation is planned for this year, which is why the editors have reserved the right to a possible new edition of this commentary in order to always maintain the necessary topicality in this dynamic legal matter. Although the editors describe the act as tried and tested, some aspects are still unresolved due to a lack of supreme court rulings. With regard to the question of whether the law possibly violates the freedom of property guaranteed by the German Grundgesetz, a decision by the Federal Constitutional Court is still pending.

However, according to the authors, the feared weakening of the German art trade location has not been evident so far.

This reference book is an indispensable tool for lawyers, academics and other legal experts. Authorities will also find valuable information for their practice. With its highly precise and in-depth legal analysis, this commentary fills a gap in this rapidly progressing field of law and is a great reference book for this reason.

Nouvelles suisses en droit de l'art et des biens culturels

Par Morgane Desboeufs,*

Centre du Droit de l'art, Université de Genève

Modifications apportées à la Loi fédérale sur l'encouragement de la culture (LEC)

Le 11 décembre 2009, le législateur suisse adoptait la Loi fédérale sur l'encouragement de la culture (LEC)¹, mettant en œuvre l'article 69 de la Constitution fédérale suisse (Cst.)², disposition réservée au domaine de la culture. Pour rappel, ce texte délimite et partage les compétences en matière de culture entre la Confédération et les cantons, villes et communes qui sont, à teneur de l'article 69 Cst., les premiers compétents dans ce domaine (article 69 al. 1 Cst.). La Confédération a, quant à elle, pour tâche de promouvoir les activités culturelles présentant un intérêt national et d'encourager l'expression artistique et musicale, notamment par la promotion de la formation (article 69 al. 2 Cst.).

La LEC définit les lignes directrices de la politique culturelle de la Confédération et attribue une base légale formelle au renforcement des activités liées à l'encouragement de la culture au niveau

national. Ayant fait l'objet de plusieurs modifications, depuis son adoption, la toute dernière est entrée en vigueur, le 1er janvier 2021, et s'inscrit dans le contexte du plan stratégique de la Confédération sur l'encouragement de la culture pour la période 2021 à 2024³.

La première modification est d'ordre terminologique. En effet, le patrimoine culturel dans sa dimension *immatérielle* ne faisait l'objet d'aucune mention dans la LEC qui le prend, désormais, en compte. Ainsi, à teneur de l'art.1 let. a ch.1, la LEC règle « l'encouragement de la culture par la Confédération » notamment dans « la sauvegarde du patrimoine culturel matériel et immatériel ». Par cet ajout, la Confédération tient compte des récents développements en Suisse vis-à-vis de ce type de patrimoine, notamment la mise en place de la liste des « traditions vivantes » et reconnaît que le patrimoine culturel immatériel est un élément important du patrimoine culturel helvétique⁴.

En outre, l'article 12 s'est vu doté d'un alinéa supplémentaire (alinéa 4) et prévoit que la Confédération « arrête des mesures spécifiques pour promouvoir les talents musicaux ». Cet article met en

* Morgane.Desboeufs@unige.ch.

1 Loi fédérale sur l'encouragement de la culture (LEC) du 11 décembre 2009, RS.442.1.

2 Constitution fédérale de la Confédération suisse du 18 avril 1999, RS. 101.

3 Voir Message concernant l'encouragement de la culture pour la période 2021 à 2024 du 26 février 2020, FF 2020 3037 ss.

4 Ibid, FF 2020, 3149.

œuvre l'art. 67a Cst. Selon ce dernier, « la Confédération et les cantons encouragent la formation musicale » (alinéa 1). Elle est ainsi tenue de « fixer les principes applicables à l'accès des jeunes à la pratique musicale et à l'encouragement des talents musicaux » (alinéa 3). Avec l'adoption de cet alinéa, la Confédération entend prévoir des mesures spécifiques pour les talents musicaux.

Selon, l'ancienne teneur de l'article 17, « la Confédération peut prendre des mesures pour permettre aux gens du voyage de mener la vie qui correspond à leur culture ». Afin de tenir compte du plan d'action « Yéniche, Manouches, Roms »⁵ mis en place par la Confédération – ayant pour but d'améliorer les conditions de vie de ces minorités nationales – le terme « gens du voyage » a été supprimé. Inadéquat et jugé discriminatoire, le texte parle, à présent, de promotion des cultures « yéniche et manouche ».

Finalement, l'article 18 a été abrogé. Ce dernier donnait la possibilité à la Confédération de verser une aide financière à la ville de Berne pour les prestations culturelles particulières qu'elle fournit en tant que siège de l'Assemblée fédérale et du Conseil fédéral. Cette indemnité n'étant plus prévue pour 2021, l'article de loi était devenu obsolète.

Modifications apportées à la Loi fédérale sur le transfert international des biens culturels (LTBC)

Le 1^{er} janvier 2021, est entrée en vigueur la dernière modification de la Loi fédérale sur le transfert international des biens culturels (LTBC)⁶.

Un nouvel article 4a a été adopté, cela suite, notamment, à une décision du Tribunal fédéral (TF), datant du 13 mai 2019, qui a mis en lumière l'absence de définition et de clarté concernant les notions d'« importation illicite » et de « déclaration incorrecte ». Dans cet arrêt que nous avons commenté dans ce *Magazine*⁷, le TF s'est penché sur ces notions en affirmant qu'une déclaration inexacte ou manquante d'un bien culturel n'est pénalement répréhensible qu'à condition que le bien soit couvert par un accord bilatéral concernant l'importation et le retour des biens culturels passé entre la Suisse et un autre État (procédure prévue à l'article 7 LTBC). Or, l'Office fédéral de la culture (OFC) considérait, pour sa part, ces actes comme pénalement répréhensibles, que la Suisse ait conclu un accord ou non. La décision du TF mettait, donc, le doigt sur une lacune dans l'interprétation de la réglementation suisse en matière de lutte contre le trafic illicite. Selon le Message du Conseil fédéral, sans cette modification, la Suisse aurait pu « s'attirer la réputation d'être une plateforme de négoce de biens culturels »⁸ actuellement menacés dans les États en crise et qui n'ont pas signé

5 Confédération suisse, Office fédéral de la culture, «Les Yéniches et les Manouches sont une minorité nationale : Plan d'action», <https://www.bak.admin.ch/bak/fit/home/sprachen-und-gesellschaft/les-yeniches-et-les-manouches-sont-une-minorite-nationale/plan-d-action.html> (consulté le 28 mai 2021).

6 Ibid, FF 2020, 3149.

7 Ibid, FF 2020, 3149.

8 Ibid, FF 2020, 3149.

d'accord avec elle. Ainsi, selon l'article 4a LTBC « quiconque importe, fait transiter ou exporte un bien culturel (...) est tenu de le déclarer à la douane ».

Les mesures temporaires prévues à l'article 8 al. 1 let. a LTBC se rapportent à l'importation, au transit et à l'exportation de biens culturels. Or l'article 2 al. 5 LTBC ne définissait que la notion d'« importation illicite ». Il convenait donc de le compléter. A présent, la teneur de ce dernier est la suivante : « par importation, transit ou exportation illicite, on entend une importation, un transit ou une exportation qui contreviennent à un accord au sens de l'article 7 ou à une mesure au sens de l'article 8 al. 1 let. a ».

Finalement, la phrase introductive de l'article 24 al. 1 et l'article 28, 1^{ère} phrase LTBC, ont également été modifiés et l'article 25 al. 3 LTBC a été abrogé. A présent, quiconque « lors de l'importation, du transit ou de l'exportation de biens culturels, omet de fournir des informations ou fournit de fausses informations au moment de la déclaration en douane » est passible d'une peine d'emprisonnement ou d'une peine pécuniaire (article 24 al.1 let. c^{bis}). Pour des raisons de clarification, le législateur a donc prévu que l'infraction « d'importation illicite » et de « déclaration incorrecte » seraient à présent réglées dans deux dispositions différentes (let. c et c^{bis}). Cet article doit être lu en lien avec l'article 4a LTBC.

Nouvelles acquisitions de la Bibliothèque du Centre du droit de l'art

Généralités sur le droit de l'art

1. Barrelet, Denis ; Egloff, Willi, Le nouveau droit d'auteur : Commentaire de la loi fédérale sur le droit d'auteur et les droits voisins, 4ème édition, Stämpfli, Berne, 2021. – 540 p.
2. Kaye Lawrence M.; Spiegler Howard N., *The Art Law Review*, *The Law Reviews*, 2020. – 368 p.

Droit international et européen

3. Jakubowski Andrzej, Jagielska-Burduk, Alicja, *Santander Art and Culture Law Review*, 2019, 2/2019 (5). 317 p.
4. Jucker, Dario, *Le buone pratiche del collezionismo*, Edizioni Scientifiche Italiane, 2020. – 432 p.
5. Mottese, Elisabetta, *La lotta contro il daneggiamento et il traffico illecito di beni culturali nel diritto internazionale: La Convenzione di Nicosia del Consiglio d'Europa*, Giappichelli, 2020. – 240 p.
6. Prott Lyndel, *Commentary on the 1995 Unidroit Convention (second edition)*, Institute of Art and Law, 2021. – 160 p.

Etudes sur le patrimoine culturel et les domaines connexes

7. Hafstein, Valdimar Tr. ; Skrydstrup, Martin, *Patrimonialities*, Cambridge University Press, 2020. – 102 p.
8. Joy, Charlotte, *Heritage Justice*, Cambridge University Press, 2020. – 56 p.
9. Lixinski, Lucas, *Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice*, Cambridge University Press, 2021. – 228 p.
10. Patin Christelle, *Ataï, un chef kanak au musée*, Publications scientifiques du Museum national d'Histoire naturelle, Paris, 2019 – 543 p.
11. Redmond-Cooper, Ruth, *Museums and the holocaust (second edition)*, Institute of Art and Law, 2021. – 338 p.

Grand public

12. Noce, Vincent, *L'Affaire Ruffini : enquête sur le plus grand mystère du monde de l'art*, Buchet-Chastel, 2021. – 280 p.

Articles parus dans des revues spécialisées

International Journal of Cultural Property Volume 27, Issue 4, Novembre 2020

13. Vrdoljak, Ana Filipa; Bauer, Alexander A., Pandemics and the role of culture, 441-448.
14. Katz, Stanley N.; Reisman Leah, Impact of the 2020 crises on the arts and culture in the United States: The effect of COVID-19 and the Black Lives Matter movement in historical context, 449-465.
15. Silberman, Neil Asher, Good-bye to all that: COVID-19 and the transformations of cultural heritage, 467-475.
16. Martins Angela, Shule, Vicencia, The impact of the COVID-19 pandemic on the arts, culture, and heritage sectors in the African Union member states, 477-480.
17. Tracy, Megan, Heritage hands and tastes of the pandemic, 481-488.
18. Settis Salvatore, Lo sguardo di Giano, 489-493. 397-416.
19. Rosén, Frederik, The dark side of cultural heritage protection, 495-510.
20. Diana Betzler, Implementing UNESCO's Convention on Cultural Diversity at the regional level: Experiences from evaluating cultural competence centers, 511-525.

Art Antiquity & Law Volume XXV, décembre 2020

Articles

21. Bianco Paulo, Blockchain as a Technology Applied to Authenticity Issues : A possible New Resource for Building up a Catalogue Raisonné?, 285-318.
22. Harwood OBE QC, Richard, The Legal Mechanics of Removing a Statue, 319-336.
23. Professor Bilsky Leora, The Virtues of Comparing: between Early Jewish Restitution Campaign and Contemporary Post-Colonial Restitution Debate, 337 – 348.

Case note

24. Gould, Emily, Scope of the Auction House Authenticity Guarantee: Sub-Agency Contracts and Interpretation of the “Generally Accepted View”, Sotheby's v. Mark Weiss Ltd, Fairlight Art Ventures LLP and Mark Adrian F. Weiss, 359-366.

Book Reviews

25. Stokes, Simon, Art and Modern copyright : The Contested Image by Elena Cooper 367-369.
26. Bauer, Adrienne, Kultur Kunst Recht Schweizerisches und Internationales Recht eds Marc-André Renold, Peter Mosimann and Andrea Rascher, 370-372.

KUR - Kunst & Recht, Volume 5, 2020

27. Van den Bergh, Gert Jan, Decolonizing Depots: The Dutch Difference, 102 – 108.
28. Von Lintig, Johannes, Der Fall Simon Bauer vor dem französischen Kassationsgerichtshof, Wie historische Gesetze in Frankreich zur Lösung aktueller Raubkunst-fäll beitragen, 108-117.
29. Elmenhorst, Lucas, Gmurzynska erfährt nichts: Das Kölner Museum Ludwig muss keine Vorabauskunft über vermeintlich gefälschte Werke der Russischen Avantgarde geben, 115 – 117.
30. Der Fall Simon Bauer : Cour de cassation – Chambre civile 1, 1 juillet 2020, N° de pourvoi : 18-25.695, 118 – 124.
31. Museum Ludwig: Stadt Köln ist nicht zur Herausgabe von Forschungsergebnissen verpflichtet, Beschluss Oberverwaltungsgericht NRW vom 16.9.2020, Az. 15 B 1357/20, 125 – 129.
32. Schack, Haimo, Jani McCutcheon/ Fiona McGaughey (Hrsg.): Research Handbook on Art and Law, 130 – 132.
33. Weller, Matthias, Mosimann/Renold/Raschèr (Hrsg.): Kultur Kunst Recht – Schweizerisches und internationales Recht, 133 – 134.
34. Kirchmaier, Robert, Kerstin von der Decken (Hrsg.): Kulturgüterrecht, 135 – 135.
35. Köstering, Susanne, Tagungsbericht: Sammlungsverluste der Museen im Zweiten Weltkrieg – Perspektiven aktueller Forschung, 136 – 138.

KUR - Kunst & Recht, Volume 6, 2020

36. Tams, Christian J., Lucas Benedikt, Der Welfenschatz vor dem Supreme Court, 142 – 147.
37. Franz Michael, Lost Art und Recht, 148 – 153.
38. Dewey, Anne, Gerecht und fair? „Guter Glaube“ im Nachkriegsrecht und Lösung gegenwärtiger Raubkunstfälle – Teil I: Der Fall Henri und Pauline Grünzweig vor dem österreichischen Kunstrückgabebeirat, 154 – 159.
39. Hahne, Charis, Gerecht und fair? „Guter Glaube“ im Nachkriegsrecht und Lösung gegenwärtiger Raubkunstfälle – Teil II: Der Fall Galerie Heinemann in der deutschen Restitutionspraxis, 159 – 164.
40. Lecher Ruth, Michl Felix M., Auf dem Prüfstand der Verwaltungsgerichtsbarkeit: die Einfuhrregelungen des Kulturgutschutzgesetzes: Anmerkung zu VG Karlsruhe, Urteil v. 24.06.2020 – 5 K 7747/18, 165 – 168.
41. Keine Sicherstellung einer Buddha-Statue nach dem KGSG bei Unsicherheit über Ausführzeitpunkt und Rechtslage im Herkunftsstaat: VG Karlsruhe, Urteil vom 24.6.2020, 5 K 7747/18, 169 – 178.

KUR - Kunst & Recht,

Volume 1, 2021

42. Elmenhorst Lucas; Silvan, Bennett-Schaar, Leistungsstörungen im Kunsthandel bei unzutreffender Zuschreibung: Eine ökonomische Betrachtung der Rechtslage im Lichte eines Urteils des englischen Court of Appeal, 2 – 4.
43. Lucas Benedikt, Zwischen Völkermord und Immunität: Die Odyssee des Welfenschatzes, 5 – 9.
44. Rückabwicklung des Auktionsverkaufs – der umstrittene Frans Hals free: Royal Courts of Justice (London/UK) [2020] EWCA Civ 1570, 10 – 18.
45. Welfenschatz: Supreme Court of the United States 592 U. S. (2021), 19 – 23.
46. Siehr Kurt, Neuerscheinungen aus Kunst und Recht Neuerscheinungen: Ausgewählt und annotiert, Wichtige Bücher, die in den Jahren 2016–2020 erschienen sind, 24 – 40.
47. Friehe Matthias, Kulturgutschutzgesetz: Kerstin von der Decken / Frank Fechner / Matthias Weller (Hrsg.), 41 – 43.
48. Michael Franz, Moral vor Recht? Zur Lehrveranstaltung „NS-Raubgut, Recht und Ethik“ des Deutschen Zentrums Kulturgutverluste an der Julius-Maximilians-Universität Würzburg, 44 – 47.

Rendez-vous de la FDA *ALF's agenda*

Prochain Art Law Magazine / Next Art Law Magazine
décembre 2021 / December 2021

Délai pour soumettre des contributions / Deadline to submit your contributions
1^{er} octobre 2021 / 1st October 2021

Événements / Upcoming Events

11 novembre 2021	Transactions d'art – risques et responsabilités
9h-17h	Conférence annuelle FDA/CDA, Université de Genève

SAVE THE DATE



Jo Holdsworth, Into the Light, 2020 | Image: Courtesy of the Artist

Transactions d'art risques et responsabilités

11 novembre 2021, Université de Genève

La conférence annuelle de la Fondation pour le droit de l'art (FDA) et du Centre du droit de l'art (CDA), traitera des principaux risques qui peuvent survenir dans le cadre de transactions portant sur des œuvres d'art et des biens culturels. Cette journée a pour objectif d'examiner le rôle de chaque acteur impliqué dans la transaction, tels que le vendeur, le courtier, le marchand d'art, l'expert et l'acheteur. Les thématiques abordées concerneront notamment les questions de propriété et de provenance, d'authenticité et d'origine des fonds, les aspects transfrontaliers, les garanties aux enchères et les relations contractuelles.

Retenez la date dans vos agendas.
De plus amples informations suivront.



FDA fondation
pour le droit de l'art
art law foundation

Fondation pour le droit de l'art / Art Law Foundation

Uni Mail – Faculté de droit
40, boulevard du Pont d'Arve
1205 Genève – Suisse

www.artlawfoundation.com

+41 22 379 80 75