

Interim Review of Italian MOU

Statement of Maxwell L. Anderson, The Melvin & Bren Simon and Director,
Indianapolis Museum of Art

On behalf of the Association of Art Museum Directors and the Indianapolis
Museum of Art

November 13, 2009

AAMD's Philosophy Regarding the Loan of Antiquities

Our group assembled today represents the 200 largest art museums in North America, all members of the Association of Art Museum Directors, which was founded in 1916 to support its members in increasing the contribution of art museums to society. As part of that support, AAMD promulgates guidelines on various issues of concern to the museum community. Over the last several years, our goal with regard to archaeological material and ancient art has been to urge restraint in collecting so as not to contribute to the destruction of sites and contexts.

In June 2004, AAMD issued guidelines regarding the acquisition of archeological material and ancient art, in which it expressed its commitment to responsible collecting and offered advice to members to help them refine collection policies. Advice included foregoing acquisitions of objects which had not been out of their probable country of modern discovery for at least the preceding 10 years. This was intended to reflect the language and spirit of the 1983 Cultural Property Implementation Act (CPIA), specifically section 2606. In February 2006, AAMD issued guidelines recommending restrictions on incoming loans of archeological material and ancient art in keeping with the 2004 guidelines affecting acquisitions, and continued a review of its 2004 guidelines.

In 2008, this review led AAMD to issue more stringent revised guidelines to recommend that works with incomplete provenance that (a) had not been exported from their probable countries of modern discovery before 1970 or (b) had not been

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lawfully exported after 1970 should not be acquired. The guidelines do give museums leeway to acquire works that they believe may have been outside their country of origin before 1970 or that will otherwise meet the principles enunciated in the document, but urge immediate electronic publication of any such works. To enhance transparency about such acquisitions with presumed but unproven pre-1970 provenance or other factors justifying acquisition, AAMD built and maintains a website, www.aamdoobjectregistry.org, where museums are encouraged to list works acquired since the passage of the 2008 revised guidelines that do not fall into one of the specific categories outlined above. The registry currently has only four objects listed, attesting to the dramatic reduction in archaeological material acquired by museums in North America with incomplete provenance.

AAMD has long supported responsible collecting, and endorsed the early MOUs which followed the intent of the Cultural Property Implementation Act. Yet more recent MOUs have, in AAMD's view, gone beyond the intent of the CPIA. Italy's request covers about 13 centuries and almost all objects from that period.

It is difficult to maintain that all objects from all centuries are indispensable to a country's protection of its cultural heritage. The Italian MOU underscores a dichotomy between a decentralized museum system and a central government. Article II cannot be fully implemented by a central government that does not exert absolute control over the museum system: The central government can change export laws, make exports available and issue export certificates. The museum system is free to pursue loans based on their collections unless the *Comitato di Settore* vetoes such loans, conversely, the *Comitato* has rarely promoted such loans.

The museum community has noted few concrete changes as a result of the US-Italian MOU. In 1987, while at Emory University, I launched a series of loan projects, four of which were with Italian museums, that sought to underscore the value of

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archaeological context, along with the wealth of material already in storage, both scientifically excavated and simply accumulated with minimal contextual evidence. Italy has more than enough artifacts to support long-term loans of the kind we brought to Atlanta, but has been slow to make these available to U.S. museums. Even with multiple personal connections among American and Italian archaeologists, museum administrators, and government officials, the long-term loan requirement in Article II is not being met.

The only art museums that have benefited from long-term loans are those that have recently transferred works to Italy in recognition of their dubious or falsified title. Desirable though these loans are, they do not satisfy the requirement of the MOU for long-term loans; they satisfy only the one-on-one agreements made with individual museums.

In order to increase U.S. access to Italian cultural heritage, the CPAC review must in our view specify how many long-term loans have been made, to which museums and for how long. Under the CPIA (section 306(g)(2)(B)), CPAC has the right to recommend changes to an agreement to make it more effective. We suggest that CPAC require Italy to make available, for loan, not less than a precise number of objects to not less than a precise number of accredited museums between this review and the end of the MOU.

If Italy does not meet that requirement, CPAC has the authority under the CPIA (section 303(e)) to recommend an extension of fewer than five years – in this case, to assure compliance with a specific lending requirement, a one-year extension might be appropriate. One way to meet the objective of long-term loans is for Italy to establish a database of objects to be loaned; such a database would be available to all museums that wish to apply for a loan or loans. CPAC should, in our view, establish an informal advisory committee to monitor the establishment of such a database and monitor its implementation by the Italian government.

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Statement of Michael Conforti, President, Association of Art Museum Directors
Director, The Sterling & Francine Clark Art Institute

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Legal Markets and their Role in Facilitating International Cultural Exchange

As members of the Committee are well aware, art museums serve as invaluable educational resources for the American public. Last year, more than 38 million people visited AAMD member institutions; 3.2 million of these were student visitors (K-12), which represents more than 100,000 individual classes. Museums also serve as guardians and representatives of world cultural heritage, responsible for the presentation, study, protection, and preservation of much of the artistic achievement of mankind. The experience of these objects fosters an appreciation of beauty and human ingenuity, and promotes better understanding among the diverse peoples and cultures of the world. In service of this goal, museums frequently lend works of art to other institutions, creating goodwill and increasing public access to these objects. U.S. museums are originators and beneficiaries of these exchanges. As of October 1, 8,590 works on loan from foreign countries were on view at AAMD member museums.

We are now at an important moment in terms of U.S. cultural exchange with other nations, particularly Italy. Having concluded a number of landmark agreements with the Italian government concerning archeological materials, U.S. museums have begun a new and positive relationship with the Italian Cultural Ministry. A number of other steps have contributed to this post-repatriation environment. In August 2008, AAMD issued a report that recognized the 1970 UNESCO Convention as the standard for the acquisition of archeological material and ancient art. This report affirmed the value of legal markets for the controlled sale of archeological materials and ancient art and unveiled a new object registry on the AAMD website where museums have begun to publish images and information on acquisitions of relevant objects. In addition, a number of high-level contacts have been made between U.S. museum directors and Italian Cultural Ministry officials. As I indicated in my memo to the Committee of July 23, I have personally had contact with a number of individuals since September 2007. In November 2007, I co-organized a conference held at the American Academy in Rome, along with Gianfranco Varvesi of the Italian Ministry of National Heritage and Cultural Activities. The conference brought leaders from 28 U.S. and Italian cultural institutions to discuss improved cultural exchange between the U.S. and Italy. Over the last year, I have also met with a number of Italian Cultural Ministry officials to discuss cultural exchange issues, including Rosanna Binacchi, Director General of the Italian Ministry of Cultural Heritage and Activities, Mario Resca, advisor to Silvio Berlusconi's heritage minister, Sandro Bondi, and Patrizio Fondi, Diplomatic Counsellor of the Italian Ministry of Cultural Heritage and Activities.

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As the Committee reviews the current Memorandum of Understanding with Italy, I would encourage them to bear a few important things in mind. First, because the U.S. does not have a cultural ministry, as Italy does, CPAC and the U.S. State Department play a key role in shaping U.S. policy with respect to cultural property. Thus, the Committee has an obligation to ensure that U.S. interests are best served with respect to this decision. Second, the provisions of the current Memorandum with Italy do not go far enough to advance either U.S. or Italian interests. Currently, U.S. museums lend far more works to Italy than Italy loans to U.S. institutions. A recent internal survey among AAMD member museum revealed that, apart from institutions that had returned objects to Italy, there are few loans from any era from Italy in American museums. A contributing factor to this imbalance is Italy's current law restricting most loans to one year, constituting a major hurdle for the mutual exchange of objects with the U.S. Ultimately it is the U.S. public that suffers from this lack of parity with regards to exchange. In light of these problems, I would suggest that CPAC request that the Italian law be changed so that long-term loans, available to all qualified museums, are for at least five years.

In addition to the problems created by the current Italian law governing loans, the Committee should revisit Article II of the current Memorandum, which states in part that the Italian government "shall continue to examine ways to facilitate the export of archeological objects legitimately sold within Italy." One solution advanced by AAMD is to encourage the development of legal markets in antiquities, which would foster the exchange of objects and help prevent the looting of Italy's archeological sites by providing a new source of funds for the enforcement of existing laws protecting Italy's cultural heritage. In May 2008, AAMD participated in a panel presentation before the U.S. Commission on UNESCO, in which we advocated for creation of legal markets in source countries. As a result, the U.S. Commission resolved to improve and expand the development of legal markets as a way of reducing looting, theft, and black markets. The following August, AAMD issued and published revised guidelines for Archeological Material and Ancient Art and Recommended Actions which included the goal to encourage the creation of a legal international market in archaeological materials and ancient art. And in November 2008, the Milken Institute, a nonpartisan think tank, issued a study advocating for legal markets as a way to increase cultural exchange between the U.S. and other nations.

The intent of Article II of the current Memorandum with Italy is to move beyond mere study of the issue of legal markets and towards creating a legal market abroad for Italian objects sold legitimately in Italy. There are several viable models for functioning legal markets: Japan as well as England, Wales, Northern Ireland and Scotland have legal markets, as does the U.S. and other countries. The U.K. has extensive laws regarding monuments and archeological sites and has enforced strict limits on development and severe penalties for transgression in those areas.

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The U.K. system has two tiers: one compensated and one uncompensated. The U.K. Treasure Act of 1996 put in place a compensation system for those who find objects of cultural value that meet the definition of treasure (largely coins and other metallic objects) to be reported within 14 days of being found. If an object is deemed treasure, the finder is rewarded based on market value of the object. The Portable Antiquities Scheme put into place in the U.K. a voluntary reporting scheme created to record and document objects that are legally unearthed but do not meet the definition of a treasure. "Find Liaison Officers" make contact with finders, record the finds, work with metal-detecting groups about sound practices, and identify finds that should be reported as treasure. The Scheme has produced an enormous database of contextual information.

The Japanese model is structured around two levels of protection for tangible cultural property, which is classified as either National Treasure or Important Cultural Properties. Once discovered and "designated" as either a national treasure or important cultural property, the owner of the property is compensated as well as being offered resources to maintain the work. The work(s) may not leave the country except with permission and then only for approved exhibitions. They may not be altered and must be conserved and made available to the public if the Japanese government so chooses. The works can be sold, but the new owner must accept the same conditions as the original owner. Finally, any works not "designated" may be sold on the open market and exported.

I urge that these examples and others of successful legal markets be considered by the Italian government as new ways to approach cultural policy as outlined in Article II. Further I recommend that the Memorandum be made more specific. In particular, I recommend that the Committee consider amending the current Memorandum by specifying a "more than" number of export certificates be issued under Article II and at the same time urge the Italian government to adopt a true system to create a legal market, overseen by the Italian government that allows for the legal sale and purchase of archeological and other works of art. We feel this supports the underlying principles of cultural exchange and will ultimately benefit the public in the U.S. and in Italy.

Interim Review of the Italian Memorandum of Understanding

Statement of Kaywin Feldman,

Director and President of the Minneapolis Institute of Arts

On behalf of the Association of Art Museum Directors and the

Minneapolis Institute of Arts

November 13, 2009

The Value of Art Museums and their Collections

Collections are the lifeblood of any art museum. Continued growth of the museum's collections is critical to supporting scholarship and research while also enhancing the public's understanding and appreciation of art for years to come. The collection that a museum holds in trust for the public is a museum's most important resource and its greatest legacy for future generations.

The Minneapolis Institute of Arts (MIA) is a 100-year old encyclopedic art museum with free admission to the general public. Our collection of 83,000 objects spans five thousand years of cultural history from civilizations all over the globe. Located in a part of the Upper Midwest that is under-served by encyclopedic museums, the museum fills a very important need by enriching the lives of our 500,000 annual visitors. The MIA enables the population of this broad region to experience, study, and appreciate outstanding works of art from the world's diverse civilizations. This access is particularly important for the thousands of school children and students who visit us, as well as the large part of the population that cannot afford to travel abroad to experience original works of art from the world's great cultures.

The MIA serves its mission by collecting, preserving, interpreting, and making accessible its collection. The growth of the museum's collection is therefore critical in fulfilling all of these functions. In our collection and our exhibitions, we are able to display a range of cultures side-by-side, thereby enabling infinite opportunities to compare and contrast cultures. This encourages discussion and the exploration of issues and themes across cultures, time, values, etc.

Needless to say, Italian antiquities and their archaeological context provide critical reference points for American museums in their exploration of the world's shared artistic heritage. Even antiquities without complete provenance information can be highly informative when placed on public view in a museum. In fact, it is in a museum context that objects without provenance can be appreciated for aesthetic merit and further researched, conserved, and published. By publishing such works, they are made available to any country with a legal claim to them. As has been recently shown, American museums have repatriated numerous works to many countries thanks to our commitment to transparency.

The Need for Export Permits

The spirit of support and cooperation emphasized in the MOU would be much better served if American museums could acquire redundant antiquities and borrow objects for long-term loan from Italian museums. AAMD believes that the United States government should encourage developed countries, such as Italy, to make redundant antiquities available to the legitimate market as a way to curtail looting. Article II calls for the Italian government to reduce bureaucracy and facilitate the export of legitimate archaeological items sold within Italy. AAMD institutions have not experienced any expedited process or increased availability of export permits. We would encourage CPAC, therefore, to confirm that the Italian government is indeed facilitating the export of legitimate archaeological items by verifying the actual number of export permits granted for antiquities. It is certainly not in the spirit of cooperation to sell antiquities legally within Italy, but then to claim that if these works are sold in another country, they necessarily cause looting.

AAMD has been encouraged by the recent success of the Italian government in curtailing looting. Italy maintains the Carabinieri for the Protection of Cultural Patrimony, arguably the largest and most effective armed force of its kind. Given that there will always be some kind of an international market for antiquities; it would be much more effective and efficient for the Italian government to discourage looting within its borders by establishing a controlled legal market outside of Italy as well as inside. For its own part, in response to the need to discourage looting of antiquities, AAMD has adopted very strict guidelines for the acquisition of antiquities and places great emphasis on the need for a complete documented provenance. As a result museums purchase fewer objects now than they did five years ago.

Not only does a legitimate market discourage looting, but it also furthers scholarship, promotes cultural understanding, and gives visitors to American museums a greater opportunity to appreciate significant works of art from other cultures that they would never see otherwise. This point was made effectively in 2007 when the J. Paul Getty Museum secured export permission from the Austrian Antiquities and Monuments Office for a character head sculpture by Franz Xaver Messerschmidt. Austrian officials agreed that Messerschmidt's work was already very well represented in Austrian collections and that the Getty, as one of the world's great art museums, provided an optimal venue for a new public audience to appreciate this important Austrian artist's work. The Austrians acknowledged that it was "good cultural policy" to have the character head on view in an American art museum for generations to come; whereby Austria's long artistic heritage could be celebrated. Austrian officials also

noted that having the work on view to the public in America was much preferable to it remaining largely unseen in an inaccessible private collection in Austria.

Long-Term Loans

To further enhance cultural exchange and to conform to the MOU, Italy should make true long-term loans available to US museums. A lively program of exchange would lead to the exchange of information among researchers and increased collaboration on scholarly projects. We have found [almost](#) no evidence of long-term loans to large AAMD museums, except for the institutions that have individual agreements resulting from the transfer of works. The Italian loans made as a result of American Museums transferring objects to Italy are not truly long-term loans since these loans are not made to satisfy Article II of the MOU, but instead to satisfy an agreement with an individual museum. We would urge CPAC to ask the Italian government to provide precise information on how many long-term loans have been made outside of those made to museums transferring material and for how long such loans were made. Long-term loans to museums often run as long as 20-40 years in order to give several generations of scholars and audience the opportunity to study and truly learn from the works on view. Needless to say, American art museums are willing to work with the Italian government to facilitate such loans.

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Statement of Gary Vikan, Director, the Walters Art Museum

On behalf of the Association of Art Museum Directors and the Walters Art Museum

November 13, 2009

Public Collections of Antiquities in America and the Current Italian MOU

A relatively small number of America's fine arts museums – the so-called “encyclopedic museums” – are able to offer their visitors representative archeological installations from nearly all the great ancient civilizations. Why? Because in the past, movement of such material across borders was commonplace, and accepted. The set of Imperial Roman sarcophagi at the Walters, which is unsurpassed anywhere in the world, was acquired by Henry Walters in Rome in 1902, along with more than 1700 works of art covering more than two millennia, with the full knowledge and consent of the Italian government, which levied an appropriate export tax. That single purchase still forms the heart of what is the Walters Art Museum.

Other great American collections of antiquities were being assembled then, and for decades thereafter, through the practice of *partage* or “sharing.” An American museum or university would sponsor and participate in an excavation with a host country, and the resulting “finds” would be divided. The superb installation of ancient Egyptian antiquities in the Brooklyn Museum of Art is an example of such past cooperative arrangements. Moreover, the archeological collections at several major American universities – including Harvard, Yale, Princeton, Pennsylvania, Chicago, and Michigan – were enriched this way, as were the great classical collections at the Metropolitan Museum of Art and the British Museum. And, of course, the host country museums similarly benefited, including those of Egypt, Iraq, Afghanistan, and Turkey.

The days of licit trade and shared finds are long since over. Nevertheless, American museums and universities continue to support excavations abroad, as an integral part of what they view as their mission to recover the past and contribute to the creation of knowledge. And while this one-way relationship is laudable, it leaves unfulfilled the mission of every museum to display the creative genius of the past for its visitors – in the case of the Walters Art Museum, for their “enjoyment, discovery, and learning.” Moreover, the Walters, like many other museums, expends a significant portion of its limited resources on the conservation and restoration of antiquities. In addition, its staff includes curators trained as archeologists

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who study, publish, and teach from the archeological record. Of course, the Walters is hardly alone in this. The Nelson-Atkins Museum of Art in Kansas City recently co-published with Yale University Press the definitive work on Chinese archaeology. This encyclopedic work, which is the grand summation of what has been accomplished in the field of Chinese archaeology in modern times, took ten years to produce and cost more than \$1M. Few museums anywhere in world would take on such a commitment.

The current exhibition at the Walters, *HEROES: Mortals and Myths in Ancient Greece*, draws heavily on our own classical collection, complemented by loans from all over America and Europe, including a number of stunning works from the National Archeological Museum in Athens. *HEROES* will travel on to Nashville, San Diego, and finally, to New York City, carrying with it a compelling story of ancient Greek culture for both adults and children. We do this because we are committed to telling the story of the past, but also because we have a superb classical collection formed decades ago from which to begin. And while this exhibition is on its 12-month tour, Terry Drayman Weisser, head of our Division of Conservation and Technical Research, will be working with a small group of American colleagues to help set up a new “National Conservation Center” in Erbil, Iraq. Again, this is an investment driven not by the hope of getting any ancient artifacts, even on temporary loan, but rather by our commitment to participate in the preservation of archaeological material across borders, worldwide.

I served on the Cultural Property Advisory Committee, from 2001 to 2003. My first meeting addressed a request from Bolivia. As we got deeply into the ethnographic material of relatively recent date and low monetary value whose movement into the United States would be (and in fact was) interdicted by this expansive agreement, I recalled my days in Romania in 1974-75 as an IREX Fellow, during the time of the dictator Nicolae Ceaușescu. Foreigners, like me, could visit the *antiquariat* shops of Bucharest, but objects 100 years old or older, no matter how culturally insignificant, were displayed in a restricted area, to which we could not gain access. As I sat there considering Bolivia’s request, it occurred to me that the movement of cultural material across borders was like the movement of people, and of ideas – since artifacts *are* the bearers of ideas. For Ceaușescu and his kind, both were forbidden. And I thought: what if all Russian music were confined to Russia, all French painting to France, all English literature to England, and all American movies to the United States?

In 2003, the Walters Art Museum, in cooperation with the State Department, hosted a “convening” of regional academics and museum professionals with a group of their Italian counterparts. The intent was to

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explore practical ways to realize the laudable outcomes articulated in the Italian MOU; and specifically, institutional collaborations and long-term loans. There was a warm and enthusiastic mood in the room, and an eagerness shared by all to move forward. But at every turn, the dreaded word: BUREACRACY. Along the way, though, the conversation took an interesting turn, as we together began to explore the distinction between *owning* and *experiencing* an artifact – the idea that you don't have to own something to experience it and learn from it. The two Italians to my left described the recent enthusiasm in Rome for “car sharing.” Like-minded people would together lease a car, but each would use it only when he or she needed it. The parallel was obvious to us all.

But sadly, in the six years since that convening our high hopes for collaborations and long-term loans have not been realized. Indeed, in a recent AAMD survey, few museums reported any long-term loans from Italy; moreover, no museum reported any effort on the part of the Italians to engage in joint projects, excavations or studies. There were, however, a few prominent exceptions in the survey; namely, those American museums that have recently transferred works to Italy and are now enjoying the benefit of long-term Italian loans in return. Clearly, there is a mechanism in place – outside the boundaries of the current MOU – to make that happen, provided that there is the will to make it happen. So now, isn't the time for that mechanism and that will to be expanded from those few museums to the vast majority of American museums who have not, and almost certainly never will, transfer works to Italy? This is especially important for museums in regions of the United States, mostly west of the Mississippi, where population migration and growth have taken place on a vast scale since the era of the licit antiquities trade and *partage*.

What do we recommend? We urge that what has happened recently for a few in the future become commonplace for many; that long-term loans of archaeological material from Italy to American museums become routine. How will this dream become reality? We believe that this will happen only if we agree on real goals and commit ourselves, on both sides of the Atlantic, to rigorous oversight. Toward that end, we urge members of this Committee to explore with the CPAC staff the Memorandum of Understanding drafted in 2000 between the United States and El Salvador. Article II of that document has a much higher degree of specificity than does Article II of the current MOU with Italy, including real, measurable outcomes. It can and should provide a model going forward, holding us collectively accountable for the realization of our shared goals. And finally, we strongly urge that this Interim Review be made part of the public record, available to all, to endorse or criticize.
