



## Association of Art Museum Directors

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### THE ASSOCIATION OF ART MUSEUM DIRECTORS RELEASES NEW GUIDELINES ON LOANS OF ANTIQUITIES AND ANCIENT ART

#### Enhanced Transparency and Due Diligence in Loans Process Furthers Art Museums' Public Mission

New York, NY – February 27, 2006 – As part of its ongoing commitment to provide its member museums with guidance on professional standards and best practice, the Association of Art Museum Directors (AAMD) today published its “Report of the AAMD Subcommittee on Incoming Loans of Archaeological Material and Ancient Art,” which was endorsed at its recent Midwinter Meeting in West Palm Beach, Florida.

This report supplements that of the AAMD Task Force on the Acquisition of Archaeological Materials and Ancient Art, which published its report in June 2004. Both sets of guidelines are framed in the context of concern among art museums related to the problem of illicit excavation of archaeological sites and the associated destruction of monuments, artifacts and archaeological contexts. They also respond to continuing developments in U.S. and international law relating to cultural property that have important implications for loans and other museum activities. A reexamination of U.S. art museums' acquisition, borrowing/lending and collections policies is, and will continue to be, a priority of AAMD. AAMD also announced that it will establish advisory groups from among AAMD directors with experience in these areas to aid other member museums.

The new guidelines on loans emphasize clear adherence to ethical principles in the process of deciding on, and engaging in, all loans. These are articulated in a Statement of Principles that underlines the crucial role that art museums play in the preservation and interpretation of the world's shared artistic heritage, and the contribution that a responsible loans program can make to this mission.

The Guidelines state that:

- All loans must be in conformity with U.S. law, which may recognize claims to ownership based on foreign patrimony laws;
- In accordance with the 1970 UNESCO Convention, loans may not include works of art that were illegally removed from “a museum, or a religious, or secular public monument or similar institution” after November 1970;
- Long-term loans should be assessed according to criteria comparable to those for acquisitions;

- For works of art with incomplete provenance, museums should judge case-by-case whether the proposed loan is in the best interests of the work of art, the culture it represents and the public good; and
- In cases where this judgment is positive, bringing a hitherto unknown work of art into the public domain should facilitate significant advances in scholarship, and provide a transparent process for any claimant to the work of art (should such exist) to come forward.

The guidelines emphasize the need for openness, transparency and due diligence in research on and negotiation for loans:

- Lenders, both public and private, should be required to provide all relevant evidence of a work of art's provenance history and museums must be prepared to undertake additional inquiries if and when appropriate;
- Lenders should be informed of the possible implications of a third-party claim on their work of art during the loan period, including forfeiture. Lenders should be asked as appropriate to make warranties of legal title to the work of art; and
- Museums must be prepared to respond to any substantiated claims to ownership in a responsible, forthright and transparent manner.

During the Midwinter Meeting, AAMD's members also reaffirmed their commitment to the following principles:

- AAMD deplores the illicit excavation of ancient sites and works of ancient art;
- AAMD's members are committed to the highest ethical and professional standards in their development and stewardship of the art collections they hold in trust for the public;
- AAMD is committed to protecting, interpreting and exhibiting the world's shared artistic heritage.

The Association of Art Museum Directors, representing 169 art museum directors in the US, Canada and Mexico, aids its members in establishing and maintaining the highest professional standards for themselves and the museums they represent. It serves as a forum for the exchange of information and the exploration of ideas, and as a voice with which museum directors may express their joint concerns and those of their institutions.

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## **Report of the AAMD Subcommittee on Incoming Loans of Archaeological Material and Ancient Art**

These Guidelines build on and supplement the AAMD's Professional Practices in Art Museums (2001) and the Report of the AAMD Task Force on the Acquisition of Archaeological Material and Ancient Art, issued in June 2004 (the "2004 Report"). They are designed to assist AAMD member museums ("member museums") as they develop policies that relate to the display in their museums of archaeological material and ancient art belonging to others, either as part of visiting exhibitions or as long-term loans.

### **I. Statement of Principles**

- A. AAMD is committed to the role of art museums in enriching public life by preserving and interpreting the world's shared artistic heritage. Loans of archaeological materials and ancient art, whether on a long-term or temporary basis, inform and enhance the experience provided by the museum's permanent collections. Such loans offer the museum's diverse audiences the opportunity to encounter works of art directly, in the context of their own and other cultures, for education, inspiration and enjoyment.
  
- B. AAMD recognizes that decisions relating to loans of archaeological materials and ancient art can be legally and ethically complex, and require weighing a number of legitimate, and sometimes competing, interests and priorities.
  
- C. AAMD deplores the illicit and unscientific excavation of archaeological materials and ancient art from archaeological sites, the destruction or defacing of ancient monuments, and the theft of works of art from individuals, museums, or other repositories.

D. AAMD is committed to the principle that all borrowing be done according to the highest standards of ethical and professional practice. These Guidelines reinforce the need for transparency in the loan process and due diligence in researching proposed loans.

E. AAMD supports the open exchange of information among researchers and institutions as they collaborate on loans, exhibitions and other scholarly projects. Through this process, the most complete, accurate and useful information about works of art becomes available to a broad public.

F. AAMD recognizes that the public exhibition of works of art is an integral part of research and the ongoing reinterpretation of the world's shared artistic heritage. Lenders of archaeological material and ancient art provide a valued public service by making their works available to a broader public and to scholars. Loans from public institutions provide fresh opportunities for collaborative scholarship, thus facilitating the ongoing reinterpretation of their collections through advances in research and connoisseurship. Loans from private collections also provide new opportunities for the public and scholars to study the art of the ancient world, and in particular are an important means of bringing significant works of art into public view where they can contribute to ongoing dialogue and reassessment.

G. AAMD recognizes that archaeological material and works of ancient art for which provenance information is incomplete or unobtainable may deserve to be publicly displayed, conserved, studied, and published because of their rarity, historical importance, and aesthetic merit. Importantly, in addition to inspiring fresh scholarship, the display of such works in public museums may serve to facilitate the discovery of further information regarding their ownership and provenance history.

## II. Guidelines

### A. Legal Considerations and Museum Responsibilities

In their role as temporary custodians of borrowed archaeological material and ancient art, member museums should be aware of their responsibility to consider the legal and ethical status of such works. Compliance with U.S. law, which may have significant implications for the borrowing institution and the lender, is a fundamental requirement for all loans<sup>1</sup>. Furthermore, the status of a work under the foreign law of its country of origin (i.e. country of modern discovery)<sup>2</sup> may affect its status under U.S. law.

If a member museum gains information that reasonably suggests a violation of U.S. law with respect to a proposed or existing loan of archaeological material or ancient art, the museum should seek specialized legal advice on the appropriate course of action. This advice may include notifying the lender and/or law enforcement authorities. The museum should not proceed with a prospective loan or take action with regard to an existing loan unless and until any legal issues that come to light are clarified to the satisfaction of the museum and its legal counsel. During the evaluation of a possible loan, the member museum should where appropriate advise the lender that third party claims could result in a delay to, or prohibit, the return of the object.

AAMD will endeavor to keep its members informed of legal developments relevant to these issues. Member museums may, however, need to seek legal advice with regard to specific loans. Members should share pertinent information about legal developments with their boards and staffs and, where appropriate, with each other.

### B. UNESCO Convention

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<sup>1</sup> Throughout this document, all references to U.S. law mean federal and applicable local law; for AAMD members outside of the U.S., it means the laws of their country and applicable local law.

<sup>2</sup> 'Country of origin' can have other legal meanings: e.g. for U.S. customs purposes it can mean the country of creation in antiquity.

In recognition of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted in November 1970, member museums should not borrow any archaeological material or works of ancient art known to have been “stolen from a museum, or a religious, or secular public monument or similar institution” (Convention, Article 7b) after November 1970. In addition, member museums should not borrow any archaeological material or works of ancient art known to have been part of an official archaeological excavation and to have been removed after November 1970 in contravention of the laws of the country of origin.

Member museums should abide by the preceding paragraph regardless of any applicable statutes of limitation and notwithstanding the fact that the U.S. did not ratify the Convention until 1983.

### C. Due Diligence and Research

In the course of considering possible loans of archaeological material and ancient art, member museums should inquire into their provenance history, seeking to obtain all relevant information from the lender, and an appropriate warranty of their legal ownership of the work. In some cases, the museum may decide that it is responsible and prudent to make further inquiries from other possible sources of information and/or databases. As is already standard practice, the information sought should include:

- the ownership history of the work of art;
- the countries in which the work of art has been located and when;
- the exhibition history of the work of art, if any;
- the publication history of the work of art, if any;
- whether any claims to ownership of the work of art have been made; and
- whether the work of art appears in relevant databases of stolen works.

As regards *loans for visiting exhibitions*, the principal responsibility for seeking provenance information falls to the member museum primarily responsible for organizing the visiting exhibition. (That museum is often responsible also for preparing the exhibition catalogue and, in the case of qualifying exhibitions, for obtaining U.S. government indemnity and federal immunity from seizure for the works in the exhibition.) When requested by another venue, the organizing museum should provide a list of the ownership histories of the works in the exhibition. In addition, if there are material unresolved issues regarding particular loans, the organizing museum should inform the other venues.

While other venue museums will usually accept the results of the organizer's inquiries, member museums should be aware that any venue may face legal issues if a dispute arises during its presentation of the exhibition.

If a foreign or non-member museum is the organizing partner of an exhibition, and has undertaken to make provenance history inquiries in accordance with the foregoing, the member museum venue(s) may decide to rely on the results obtained by that partner, but should ensure that any issues specific to U.S. law are addressed.

If the organizing entity is not a museum, the member museum venue(s) should assess the adequacy of the provenance inquiries undertaken by that entity on a case-by-case basis.

D) Incomplete Information on Relevant Ownership / Provenance History<sup>3</sup>

Even after rigorous research, it may not be possible to obtain complete and/or independently verifiable information on the relevant provenance history of a proposed loan. AAMD recognizes that the exhibition of such a work in a public institution dedicated to the display, conservation, study, and interpretation of works of art may best serve the interests of the object, the culture it represents and the public. In particular, this may be the case where such public exhibition makes possible important advances in scholarship and/or facilitates the emergence of new information on the ownership and provenance history of the work.

In cases of potential loans with incomplete relevant provenance histories, member museums should use their professional judgment in determining whether to proceed with the loan, taking into account relevant legal and ethical considerations. Potential *long-term loans* (i.e. loans not part of visiting exhibitions) with incomplete relevant provenance histories should be evaluated under criteria comparable to those for acquisitions (see 2004 Report, Section II, E).

### **III. Acceptance of this Report**

Member museum directors and others responsible for art museum governance are urged to accept and be guided by this Report.

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<sup>3</sup> 'Relevant' is intended to refer to the period during which the current legal and ethical framework came into being. For most countries, this means back to some point in the 20<sup>th</sup> century. For virtually all works of ancient art that were not recovered in modern, scientific excavations the provenance history becomes incomplete at some point in their past.