



# Cultural Property Issues

## IVORY

**THE ORDER** *Director's Order 210, August 25, 2014.*

The Fish and Wildlife Service (FWS) issued an order restricting the import for acquisition of works made in whole or in part of African elephant ivory, including African elephant ivory that is over 100 years old; and although there are exceptions for museum exhibitions, the rules are ambiguous and often inconsistently enforced. AAMD continues negotiations with FWS and Capitol Hill with a goal of getting rules that are clear and that will allow museums to travel exhibitions containing ivory. AAMD also has responded to proposed rules put out by FWS by making further recommendations to its proposed rules.

## MEMORANDUMS OF UNDERSTANDING

Any foreign government can make a request to the State Department for a Memorandum of Understanding (MOU) that prohibits antiquities from being imported into the U.S. without a permit from the requesting country. The request for an MOU is submitted to the presidentially-appointed Cultural Property Advisory Committee, which hears from interested parties and then makes a recommendation to the President about whether or not to issue an MOU, which runs for five years and can be extended every five years thereafter. The U.S. currently has 14 such MOUs in effect.

## IMMUNITY FROM SUIT BILL

**THE BILL** *H.R. 899 The Foreign Cultural Exchange Jurisdictional Immunity Clarification Act.*

The State Department's immunity from seizure program assures that works borrowed from abroad will be returned regardless of any claims that may have been lodged in their home country. However, a court decision ("the Malevich case") allowed a suit to proceed in U.S. court against a foreign municipal museum that had loaned works to a U.S. exhibition, leading to a settlement that involved the return of several paintings to claimants. Understandably, this has discouraged foreign museums from lending to the U.S., despite the State Department's guarantee of immunity from seizure. AAMD is working to amend the Foreign Sovereign Immunity Act to ensure that exhibitions that have been granted State Department immunity from seizure protection will also enjoy immunity from suit; it would not apply to Holocaust-related claims. The bill has passed the House three times and awaits Senate action.

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## PROTECTION OF SYRIAN CULTURAL PROPERTY BILL

**THE BILL** *H.R. 1493 Protect and Preserve International Cultural Property Act*

The bill protects cultural property in Syria that is endanger of being destroyed or looted. It has two parts: it sets up a multi-layered new government structure to coordinate the U.S. government position on protecting cultural property across the entire government spectrum; and it intends to protect Syrian cultural property by restricting imports from Syria into the U.S., but at the suggestion of AAMD, it does have a provision that property may come into the US or any other place for safe keeping during the conflict. As part of its efforts to protect cultural property AAMD has drafted Protocols for Safe Havens that is available to all U.S. museums and others that can use them. The bill has passed the House and awaits Senate action.

## RESALE ROYALTY BILL

**THE BILL** *H.R. 1881 American Royalties Too (ART)*

The U.S. does not have a resale royalty system that would compensate artists whose works sell for more than the original price in subsequent sales. The bill would provide royalties of about five percent to artists whose works sell at auction for more than \$5,000. The fee would be collected by the chosen collecting society and distributed to eligible artists, who: are U.S. citizens, or live in the U.S., or are citizens or domiciled in a country that provides resale royalty rights, or whose work was created in the U.S. or in a country that provides resale royalty rights or the successor of copyright owner. The bill has been introduced in the House, but no action has been taken.

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