ART & ADVOCACY

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CONTENTS

The Ancient World Meets the Modern World: A Primer on the Restitution of Looted Antiquities

By Howard Spiegler and Yael Weitz

Countries whose borders encompass the rich culture of ancient lands have struggled for decades to prevent the unauthorized excavation and smuggling of their cultural artifacts, and to attempt to reclaim them after they are discovered in the possession of museums, galleries, and collectors. A few recent developments serve merely as illustrations of the increasing number of claims being asserted by so-called "art-rich" countries around the world:

- On April 7, 2010, officials from more than 15 countries, including China, Greece, Italy, Nigeria, Mexico, and Peru, attended a two-day conference in Cairo, organized by Egypt's Supreme Council of Antiquities, to discuss the protection and restitution of cultural artifacts. Following the conference, on April 16, 2010, Switzerland signed an agreement to repatriate Egyptian cultural property.
- In February 2010, an Italian judge ordered the seizure of the iconic bronze statue, "Statue of a Victorious Youth," from the J. Paul Getty Museum, after several years of heated debate. On April 14, 2010, the Museum appealed the order to Italy's highest court, arguing that the statue was discovered in international waters.
- In May 2010, the Republic of Peru agreed to withdraw the fraud and conspiracy allegations it made against Yale University in a 2008 action brought in federal court in which Peru claimed title to hundreds and perhaps thousands of artifacts in Yale's possession. The main claims continue to be litigated. The objects were shipped from Peru to Yale between 1912 and 1915 by Yale historian and explorer Hiram Bingham. The key question in this dispute is whether Yale acquired title to the objects, or whether Peru merely loaned the artifacts to the university.

This article will briefly explain a few of the important legal issues that are involved in efforts made by foreign governments to reclaim stolen cultural property in the U.S., and examine the current climate where the peaceful resolution of claims without litigation seems to be gaining a foothold in this area.

Establishing Ownership

Underlying any claim for the recovery of antiquities in the U.S. is a single, fundamental rule: Under U.S. law, no one, not even a good-faith purchaser, may obtain good title to stolen property. When U.S. law is applicable, a true owner always has the right to reclaim stolen property, unless barred by the statute of limitations or other technical defenses. To exercise this right, a plaintiff must first establish that it owns the property in question. In a typical antiquities case brought in the U.S. by a foreign government, establishing ownership almost always poses several hurdles.

(story continues on page 2)

First, the foreign government claimant must prove that the object in the defendant's hands is, in fact, the stolen item. Where the dispute involves a clearly identifiable object, particularly one stolen from a documented or catalogued collection, the question of establishing the identity of the object is straightforward. In many cases involving antiquities, however, objects have been pillaged from unexcavated archaeological or sacred sites, or removed from the country of origin before archaeologists or museum officials were able to view, much less inventory or document, the objects. As a result, it is often difficult for claimants to establish identity in these kinds of cases.

Often, identity can be proven only through the testimony of the original thieves recorded by the local police at the time of the original theft or perhaps years later when the antiquities have finally come to light. For example, the testimony of local villagers who had pillaged tombs in the Anatolia region of Turkey was critical in one of the first major cultural property cases brought in the U.S. courts, commenced to recover the objects taken from these tombs after they were discovered in the possession of the Metropolitan Museum of Art. This case, after years of litigation, eventually resulted in the recovery by Turkey of the fabled Lydian Hoard, a cache of exquisitely crafted silver jewelry, ceremonial silver and bronze vessels, incense burners, cosmetic accoutrements, fragments of wall paintings, and marble sphinxes created 2,500 years ago during the era of the legendary King Croesus of Lydia.[1]

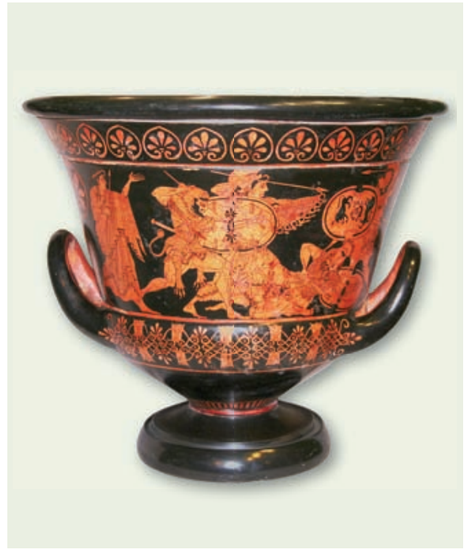
It is important to understand that it is not enough for a foreign government simply to show that antiquities similar to those being claimed had previously been discovered within its borders. The boundaries of ancient civilizations do not necessarily match the borders of the modern world. Therefore, the people from one of these ancient cultures may have lived and created antiquities now found in several different modern countries that traverse that area. This became a significant issue in a case heard several years ago by a New York state trial court involving the so-called "Sevso Treasure," considered one of the finest collections of ancient Roman silver ever found and valued at almost $200 million. Three countries—Lebanon, Hungary, and Croatia—claimed ownership of the Treasure in the possession of Lord Northampton of England, as Trustee of the Marquess of Northampton's Trust, based on the similarity between the 14 silver pieces in the Treasure and pieces apparently found in each of those countries from ancient Roman times. After Lebanon dropped out of the case, and although the items may in fact have been looted from one of the two remaining countries, the jury hearing the case essentially determined that since neither Hungary nor Croatia could establish better evidence of ownership than the other, the objects should remain with the defendant.[2]

Even if a foreign government can establish identity, however, that is still only one of the hurdles it must overcome to establish its claim. A foreign government plaintiff must also demonstrate that at the time the objects were discovered in and removed from its territory, there were laws in place that clearly vested the government with ownership rights, or some other proprietary interest, in the objects. Virtually all so-called "art-rich" countries have enacted laws, mostly in the early 20th century, declaring that anything found in or under the ground, even if not yet discovered, is owned by the government. These laws, called "patrimony laws," are usually the key to establishing the foreign government's ownership.

The interpretation of patrimony laws creates another obstacle for foreign government plaintiffs, for only if the laws clearly provide for ownership by the foreign government of antiquities discovered within its territory may they be the basis for a recovery lawsuit. Although one might expect that a government claimant would be in the best position to determine what its own laws provide, in an American court of law both sides bear the same burden of doing so. For example, in a long-fought litigation involving the Republic of Turkey, American businessman William Koch, and others over the ownership rights to ancient Greek and Lykian coins unearthed in a small town in Turkey, the attorneys for the Republic of Turkey were in the same position as the defendants' legal team: Both were required to produce experts on Turkish law, whose qualifications had to be proven to the court. The court eventually resolved the issue in Turkey's favor, but only after a four-day trial during which the court carefully weighed both sides' expert testimony on the meaning of the Turkish patrimony laws.[3]

For many years, possessors of antiquities looted from foreign countries argued against the use of foreign patrimony laws as a means of establishing ownership in U.S. courts. Their main argument was that foreign patrimony laws are fundamentally different from and contrary to American concepts of private property. But recent court decisions, particularly in the New York federal courts, have held that recovery claims arising under foreign laws that vest ownership of previously undiscovered antiquities in the foreign government will be honored, just as are private ownership rights. The courts' answer to the complaints about applying foreign law in a U.S. court is that the court is not using foreign law in place of U.S. law to determine these cases; rather, it is using foreign law to determine who owns the property in the first place and then using U.S. law to determine whether it should be returned. It is a tenet of international law to recognize a sovereign nation's laws governing interests in property found within its territory.[4] The foreign government, however, must be able to establish that its laws are truly ownership laws and not laws merely prohibiting the export of antiquities. Export laws are considered part of a country's internal policing regulations, and generally are not enforced by the courts of other countries. Only foreign laws clearly establishing that the government owns everything found in or under the ground will be applied in U.S. courts.

To avoid this distinction, several countries have entered into special bilateral agreements with the U.S. government pursuant to the Cultural Property Implementation Act of 1983,[5] which implements the international Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.[6] Pursuant to these agreements, the U.S. agrees to enforce the export laws of these countries, and will therefore seize and return items brought into the U.S. from these countries without a permit, even without requiring proof that the government owns those items pursuant to patrimony laws. But only 14 countries currently have such agreements with the U.S., including Italy and several Latin American countries, but not including Greece or Turkey.



{ Euphronios krater on display at the Metropolitan Museum of Art in New York City. }

The Current Climate: Resolution Rather Than Litigation?

Although foreign governments continue to make claims to repatriate cultural property and hard-fought litigations still occur as a result, there have been hopeful signs recently that we may be arriving at a new way of dealing with these issues.

Starting in 2006, there has been a new spirit of cooperation among art-rich countries and great museums that has led to some momentous agreements. In February of that year, the Metropolitan Museum of Art signed an agreement to return 21 looted artifacts to Italy in exchange for loans of other objects. The agreement included the famous Morgantina Collection, 16 silver Hellenistic pieces dating from the 3rd century B.C., which was returned to Italy this year. Also included was one of the museum's most prized possessions, the Euphronios krater, a painted vase dating from the 6th century B.C. that was purchased in Switzerland by the museum in 1972 for $1 million. It remained on display at the Met until January 2008 and was then returned. In return for the remaining four objects, Italy will lend objects of "equal beauty and historical and cultural significance" to the museum.

A few months later, the Getty Museum in Los Angeles turned to a long-standing claim by Greece, first asserted in the 1990s, that four items acquired by the museum were stolen and should be returned. Three of them—a gold funerary wreath, an inscribed grave marker, and a marble torso dating from 400 B.C.—had been purchased by the Getty for $5.2 million in 1993. The fourth item, an archaic marble relief that depicts a warrior with spear, shield, and sword, had been purchased in 1955 by J. Paul Getty himself. In August 2006, the Getty returned the grave marker and the relief to Greece; then in March of the following year, it returned the funerary wreath and the marble torso. All four objects are now on display at the National Archaeological Museum in Athens.

And finally, in September of that watershed year, the Museum of Fine Arts in Boston sent 13 pieces back to Italy—eleven 5th century B.C. vases, a "portrait statue" of Sabina, and a 1st century A.D. marble fragment relief of Hermes. The museum agreed that it will inform the Italian Ministry of Culture of any future acquisitions, loans, or donations of works that could have an Italian origin.

These historic agreements in 2006 appear to have inaugurated a new era of cooperation that has continued to this day. For example, in November 2008, the Director of the Cleveland Museum of Art and the Italian Culture Minister signed an agreement pursuant to which the museum will return 14 ancient treasures that had been looted from Italy in exchange for several long-term loans of 13 equally valuable artifacts for renewable 25-year periods. In December 2009, France agreed to return painted wall fragments that were stolen from the Luxor tomb in Egypt and that had been purchased by the Louvre in 2000 and 2003.

(story continues on page 4)

Postscript: The Elgin Marbles

Despite all of these cooperative efforts, one dispute continues to defy resolution, even though it has sparked controversy for some 200 years: the notorious case of the Elgin marbles.

In 2009, the new Acropolis Museum opened in Athens, a $200 million, 226,000-square-foot state-of-the-art monument. Originals of the famous frieze of the Parthenon are displayed on the top floor of the new museum, with the Parthenon itself seen through the museum's wraparound windows. But alongside these original portions of the Parthenon are mere white plaster casts of other portions of the frieze. The originals of those portions, known as the Elgin Marbles, are in London at the British Museum, where they have been displayed for almost two centuries.

{ Section of a frieze of the ancient Elgin Marbles (Parthenon Marbles) from the Acropolis in Athens }

Thomas Bruce, the 7th Earl of Elgin and British ambassador to the Ottoman Empire from 1799–1803, had purportedly obtained permission from the Ottoman authorities, who ruled over Greek territory at the time, to remove pieces of the Acropolis. From 1801 to 1812, Elgin's agents removed about half of the Parthenon sculptures and transported them by sea to Britain. In England, some critics attacked Lord Elgin for looting these objects. But following a public debate in Parliament, he was exonerated, and the British government purchased the Marbles from him in 1816 and placed them on display in the British Museum.

The legality of their removal has been repeatedly questioned since that time, but the debate was rekindled in modern times in the early 1980s, when the actress Melina Mercouri became the new Greek Culture Minister and made the restitution of the Marbles a personal crusade as well as official government policy. Since then, the Elgin Marbles have become a powerful symbol of the struggle of art-rich countries to have their looted cultural patrimony returned. With the construction of the new Acropolis Museum, it is said that one argument against the return of the Marbles—that Greece was not able to care properly for them—has now been removed. The latest proposal for a resolution of the matter was Britain's recent offer to loan the Marbles to Greece for three months on condition that Greece recognize Britain's ownership. Greece responded by offering to loan Britain any masterpiece it wished as long as Britain relinquished any claim of ownership to the Marbles. The dispute continues.

Whatever the underlying merits of Greece's claim of ownership may be, it is apparent that any applicable limitations period for bringing a claim has long expired, and therefore this case will not be resolved in a court of law. The familiar moral and policy issues in this debate, however, will continue to be discussed—including the British Museum's claim that after almost 200 years, the Marbles have become an honored part of Britain's, not to mention the world's, cultural property. Hopefully, even this epic struggle will someday be resolved.

1 *Republic of Turkey v. Metropolitan Museum of Art*, 762 F. Supp. 44 (S.D.N.Y. 1990). Herrick, Feinstein LLP represented the Republic of Turkey in this action.

2 *Republic of Lebanon v. Sotheby's*, 561 N.Y.S.2d 566 (App. Div. 1990).

3 *Republic of Turkey v. OKS Partners*, 797 F. Supp. 64 (D. Mass. 1992), *motion denied by, motion granted by* 146 F.R.D. 24 (D. Mass. 1993), *summary judgment denied by* 1994 U.S. Dist. LEXIS 17032 (D. Mass. 1994), *summary judgment and partial summary judgment denied by, motion to strike denied by* 1998 U.S. Dist. LEXIS 23526 (D. Mass. 1998). Herrick, Feinstein LLP represented the Republic of Turkey in this action..

4 *U.S. v. Schultz*, 333 F.3d 393 (2d Cir. 2003), cert. denied, 540 U.S. 1106 (2004). Herrick, Feinstein LLC advised the Arab Republic of Egypt in connection with this action.

5 Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601-2613.

6 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Nov. 14, 1970, 823 U.N.T.S. 231.

Primer: Artwork and Sales Tax in New York

By Michael Kessel and Eli Akhavan.

New York State imposes a sales tax on the sale of tangible personal property, including artwork, located within the state.[1] The tax applies to the purchase price of artwork, including any buyer's premium charged by an auction house. The purchaser is obligated to pay the sales tax, and the seller is obligated to collect and remit it to the New York State tax authorities. The seller's liability to collect the sales tax can flow to "persons required to collect" the sales tax, such as officers of the selling entity or others who may be under a duty to act for the selling entity in complying with the state's sales tax laws.

Unlike many jurisdictions, New York does not exempt occasional or casual sales from the application of its sales tax. However, there are two general exceptions:

- if the artwork is delivered to a destination outside New York; or
- if the artwork is purchased for "resale."

Delivery Outside New York

The New York sales tax is a "destination tax," meaning the point of delivery, or point at which possession is transferred, controls the imposition of the tax. In other words, if the owner of an artwork in New York sells and delivers a painting to a purchaser in California, the purchaser will not have to pay New York sales tax.

New York art dealers frequently use a common carrier to ship artwork to out-of-state purchasers. Generally, where a common carrier is used for delivery of the artwork, the New York tax authorities have ruled that for sales tax purposes, the sale is considered to have taken place out-of-state, and therefore not subject to New York sales tax.

Out-of-state purchasers should be aware that, although the New York sales tax is generally not imposed on their purchases, they may be liable for their own state's or another state's use tax. A use tax is generally imposed on the "use" of tangible personal property that would have been subject to sales tax if it was actually purchased within the state. For example, if a California purchaser buys artwork from a New York art dealer and the artwork is shipped by common carrier to California, there should not be any New York sales tax imposed. California, however, may impose a use tax on the purchaser.

Sale for Resale

Many states, including New York, provide a "sale for resale" exemption, which applies when the purchaser's sole purpose in buying tangible personal property is to resell it. To qualify for this exemption, at least in New York, the purchaser should (1) be a registered vendor with the state authorities; (2) be engaged in a trade or business of selling such items; and (3) provide the seller with a resale certificate substantiating that the purchase is for resale.

For example, if an art dealer purchases artworks in order to resell them in the gallery and provides the seller with a resale certificate, the transaction should be exempt from the sales tax and the seller should not be required to collect and remit the sales tax. Future sales of such artwork would be subject to the applicable sales tax, so that in the usual case, the dealer/purchaser would charge and collect the sales tax from his customers when he sells the works, and then remit the proceeds to the New York tax authorities.

Again, to qualify for the resale exemption in New York, the purchase of an artwork must be made exclusively for resale (i.e., the buyer's sole purpose must be to resell the artwork).

New York tax authorities have challenged taxpayers who claimed that items were purchased for resale when in fact they displayed the items in their homes or kept them in storage with other investment assets, treating them more like personal investments than items held for sale. The determination of whether a purchase is made "exclusively for resale" is highly dependent on the specific circumstance.

Conclusion

The sales tax rules applicable to the sale of artwork are somewhat complex and failure to abide by them may result in substantial penalties. Whether you are an art dealer or an art aficionado contemplating a transaction involving the sale and purchase of artwork, we recommend that you engage a tax consultant to advise you on sales tax issues.

1 This article serves as a general introduction to the sales tax imposed by New York on the sale of artwork. To determine your specific exposure to a particular state's sales tax liability, you should consult with an advisor familiar with the state's rules and your particular circumstances.

Visual Artists and Google:
Standing on the Shoulders of Ten Years of Digital Music Litigation

by Jeffrey Liebenson and Barry Werbin

Photographers and graphic artists recently filed a class action in New York federal district court against Google[1] for massive copyright infringement regarding its digital Book Project plan "to make the full text of all the world's books searchable by anyone."[2] This new action by photographers and graphic artists follows on the heels of the highly publicized class action that the Authors Guild and Association of American Publishers brought against Google in 2005 in connection with the same project.[3]

The reference to "text" in the above quote is not without meaning. Google affirmatively decided to exclude illustrations, photographs, and other visual works that were not expressly licensed or in the public domain from the books it was scanning and making "searchable by anyone." This has obvious ramifications for visual artists and the owners of visual works, and their concerns have given rise to the current litigation. The plaintiffs argue that photographers and illustrators should be compensated even when their works are blacked out after being digitally scanned (as is the case in the Google Book Project) because the images are still being reproduced without permission.

{ Google Book Project: So far, some nine million books have been scanned and made available online.}

The Google Book Project

When Google announced its Google Book Project (originally called Google Print) in 2004, it promptly caused controversy among book publishers and authors. Google's ambitious plan could be fulfilled only through the widespread copying of as many books as possible. Copyright holders, however, maintained that their consent was required before Google could engage in that copying or any subsequent display over the Internet. Google had reached agreements with major libraries to scan their books (including out-of-print and so-called "orphan works" whose copyright owners cannot be located). The digitized books were then made publicly searchable, and in the case of public domain works, fully accessible online. So far, some nine million books have been scanned and made available online.

Google reached a tentative settlement with the plaintiffs in the *Author's Guild* case, but, as of this writing, it is still awaiting approval by the presiding judge.[4] The proposed settlement raises numerous issues, such as the boundaries of copyright fair use, which are beyond the scope of this article. Significantly, however, while visual artists were included in the original suit, they were excluded just prior to the settlement.

Although visual artists sought to intervene in the *Author's Guild* class-action settlement, in 2009 the judge denied their application, ruling that it was untimely, that visual artists were not authors, and that the settlement covers only "word-based material," with the exception of illustrations in children's books. At the same time, the judge noted that the "word-based" settlement would not affect copyright owners of "pictorial materials and binds them in no way," so the new action by visual artists was anticipated.

The Visual Artists' Concerns

The visual artists have two principal objections to Google's approach. While the new class action is premised on alleged "massive copyright infringement," the first major objection is primarily commercial. By excluding their visual works from the Author's Guild settlement, which, if adopted, will provide for revenue sharing with authors and publishers of textual materials, Google relegates the visual elements to the sidelines, eliminating a substantial opportunity to monetize them in the digital realm.

While concerned about the uncompensated use of their works, the owners of visual works appear to be more concerned about their exclusion from the *Author's Guild* settlement and the opportunity to monetize their works online as part of the commercial sales of textual works through digital downloads. Excluding visual works from the Google Books Project may have simplified Google's legal issues, but it also denied the owners of visual works the opportunity to thrive in the evolving digital marketplace. The visual rights owners are looking for a seat at the negotiating table so that their works can be exploited, not ignored.

Second, the owners of the visual works have some of the same legal claims for copyright infringement as the authors of textual works in the *Author's Guild* class action. As noted in the visual artists' complaint, Google's process involved first scanning the entirety of each book, including the visual elements. In most cases, however, Google subsequently displayed only the text portions of the books. The visual artists allege that Google's scanning and digital copying of the photographs and visual art components of the books were done without the consent of the applicable copyright owners and therefore infringes, even though the visual works were not displayed to consumers. Emerging law seems to support the argument that incidental copying is an independent copyright event, regardless of whether the material is ultimately seen by consumers.

Lessons from the Digital Music Industry

One might expect that a failure to use or display a work does not result in an infringement. But, as various disputes in the digital music industry show, this is not necessarily so. During the development of digital media, much of the deal-making and litigation has related to the music industry. Over the past decade, many significant litigation battles have been over who controls the use of copyrighted music, and how the copyright owners can monetize their music online.

The debate continues, for example, about whether interactive streams of music (in which a consumer hears music but does not retain a copy of it) constitute solely public performances (as via radio broadcast), or whether they also implicate the reproduction right, which would require obtaining additional licenses and paying additional royalties. Another example is the ongoing battle over whether downloaded content protected by copyright invokes not only the reproduction right, but also the performance right, which also would require licenses from additional parties and the payment of additional royalties.

These disputes are based not on the commercial nature of the transaction, but on the technological means by which digital music is conveyed (e.g., the need to create temporary and ephemeral copies of music files on computers and servers), which are wholly incidental to the commercial purpose or value of the use of the music to the consumer. Before a digital service can stream or offer downloads of music, it first must make a digital copy of the work and place those files on its computer server. The act of copying the content onto the server is itself a reproduction of the copyrighted content, be it books, images, or music. Whether that copy, which is incidental to any commercial transaction with the consumer, requires a license in order to avoid infringement has been the subject of significant litigation.

In an early case involving streaming digital music, a court ruled in 2001 that Universal Music's Farmclub online music streaming service required its server copies to be independently licensed.[5] Eight years later, this was further addressed when the Copyright Royalty Board ("CRB") (an administrative body charged with setting certain copyright royalty rates) ruled on the scope of the compulsory license for the reproduction of musical works under Section 115 of the Copyright Act.[6] As the CRB was confronting a variety of issues with input from many interest groups, agreements were reached on some of the issues, including interactive streaming for which rates were negotiated. Agreement also was reached that server and other incidental copies required a license. In the process, the CRB established that such license was within the scope of the Copyright Act's compulsory license, which does not require specific negotiation with the underlying copyright owners over royalties. But because Section 115's compulsory license relates only to musical works and not visual works, it is inapplicable to the Google Books Project.

In another key case regarding digital music,[7] MP3.com was creating online "lockers" in which it maintained copies of music previously purchased and obtained legally by consumers. Consumers could access the music in their online lockers to enjoy it on their various computers and other devices, without having to maintain copies of those same files on each device's hard drive. Because it would be difficult, and inefficient, to require all consumers to upload many of the same musical files to their various lockers, MP3.com verified that consumers had particular digital files and then granted them access to those files in MP3.com's own library. MP3.com created its library of digital music files by copying them from CDs. The court in the MP3.com case held that the act of copying those sound recordings onto MP3.com's servers constituted an infringement of the copyright owner's reproduction rights. Due to the number of tracks copied, and after finding that the defendant's conduct was also willful, the court awarded the plaintiffs more than $50 million in damages, which lead to the demise of MP3.com.

Conclusion

Visual artists, like others, are fighting for their place in the future digital ecosystem, and they must affirm the validity of their digital rights in order to do so. As has repeatedly happened in the digital music field, the technological requirements of processing digital media have given the owners of those visual works a basis on which to assert a copyright claim—one that has nothing to do with the use of their content by the public. Whether the mere act of copying, without display or distribution, for the purpose of creating a searchable index and database of books containing such visual works, qualifies as incidental "fair use" remains to be tested, as does whether Google's intent here distinguishes this case from those where willful intent to infringe was found.

While the owners of visual works included in the Google Book project are suing for copyright infringement mainly for unauthorized scanning, they are, in reality, more concerned about Google's failure to use their content, their omission from the *Author's Guild* settlement and, ultimately, the future business implications such omissions will have as the digital marketplace develops. In the end, however, the likely outcome will be some settlement that gives photographers and other visual artists a share of the digital commercialization pie and protects their economic interests.

1 *The American Society of Media Photographers, Inc. v. Google, Inc.*, 2010 CV 2977 (S.D.N.Y.). Other plaintiffs include the Graphic Artists Guild; the Picture Archive Council of America; the North American Nature Photography Association; Professional Photographers of America; individual photographers Leif Skoogfors, Al Satterwhite, Morton Beebe, and Ed Kashi; and illustrators John Schmelzer and Simms Taback.

2 The Official Google Blog: http://googleblog.blogspot.com/2005/08/making-books-easier-to-find.html

3 *Author's Guild v. Google, Inc.*, 05 CV 8136 (S.D.N.Y.).

4 Judge Denny Chin, who was presiding over Author's Guild, has been appointed to serve on the Second Circuit Court of Appeals. As a result, the case may be reassigned and the new class action will be assigned to a different judge.

5 *The Rodgers and Hammerstein Organization v. UMG Recordings, Inc.*, 2001 U.S. Dist. LEXIS 16111 (S.D.N.Y. 2001).

6 "Compulsory" here means that anyone who wants to use a copyright-protected musical work for certain purposes, which are specified under the Copyright Act, may do so upon payment of a statutorily specified royalty to the rights owner or the owner's agent. While there are different types of compulsory licenses under the Act, under Section 115 digital music providers can obtain a compulsory license to digitally distribute copies of non-dramatic musical works that previously had been released to the public under authority of the copyright owner.

7 *UMG Recordings, Inc. v. MP3.com, Inc.*, 92 F.Supp.2d 349 (S.D.N.Y. 2000).

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Art Law Events

Herrick in the News

April 8, 2010

An interview with Lawrence Kaye and Howard Spiegler about their work and thoughts on restitution appeared in *Le Monde*.

Recent Events Involving Herrick's Art Law Group

March 26, 2010

Charles Goldstein spoke on a panel entitled "Wrestling the Dead Hand of History: Perspectives on a Proposed State Department Commission on Nazi Looted Art" at the American Society of International Law Interest Group on Cultural Heritage & the Arts in Washington, DC.

April 21, 2010

Frank Lord spoke at Davidson College on the topic of "Museums and Looted Art: Ethics, Law,and Cultural Property," addressing such issues as the moral and legal responsibilities of museum curators; what curators should do if they discover that works of art were stolen; and the ethical statute of limitations for the return of looted or stolen art.

April 28, 2010

Herrick co-hosted a CLE Art Law Conference, entitled "Europe's Warped Art Markets (1910-48): Legal, Ethical and Commercial Implications for Today," with Duke Law School and the Duke Law Club of New York. Panelists included: Lawrence Kaye; Donald Burris, an LA lawyer who works on a number of Herrick's cases; Monica Dugot, Head of Restitutions at Christie's; Lucian Simmons, Head of Restitutions at Sotheby's; and Lucille Roussin, Professor at Cardozo, and former Herrick associate.

May 4, 2010

Charles Goldstein spoke on a panel at the conference "Restitution – Where Now?" at the National Gallery in London.

May 11, 2010

Howard Spiegler spoke on a panel entitled "Reclaiming Holocaust Art: Past, Present and Future" at the Maltz Museum of Jewish Heritage in Beachwood, Ohio.

May 25, 2010

Herrick hosted "Art as Collateral: Overcoming Special Challenges for Lenders" at its New York Office. Lawrence Kaye, Stephen Selbst, Stephen Brodie and Mari-Claudia Jiménez spoke on the due diligence and documentation issues one needs to master to succeed in the art lending world. For more information, visit www.herrick.com/ArtAsCollateral.

For questions about upcoming events and other art law matters, please contact:

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Additional information on Herrick's Art Law Group, including biographical information, news, and articles, can be found at **www.herrick.com/artlaw.**

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