

United States

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A. Protection of cultural property

1. What are the key characteristics of your country's regulations on cultural heritage and national patrimony?

United States regulation on cultural heritage and national patrimony can be divided into two categories: (i) protection of cultural property; and (ii) repatriation of cultural property. While the US has adopted extensive laws and regulations barring the import of stolen and pillaged cultural properties of foreign nations, US national policy generally favours free export of cultural material and thus its legal system does not specifically regulate the export of cultural material.

2. Under your national law, which criteria must be met in order to classify goods as cultural property?

For the purposes of foreign cultural patrimony, the Convention on Cultural Property Implementation Act (CPIA) broadly defines the term 'cultural property' as 'includ[ing] articles described in Article I (a)–(k) of the [1970 UNESCO] Convention whether or not any such article is specifically designated as such by any State Party for the purposes of such article'.

For the purposes of cultural heritage within the US, the US has several federal laws that define cultural property, including the Native American Graves Protection and Repatriation Act 1990, Archaeological Resources Protection Act 1979, National Historical Preservation Act 1996, National Environmental Policy Act 1969, the Federal Land Policy and Management Act 1976, the Surface Mining Control and Reclamation Act 1977 and the National Stolen Property Act 1934. Each federal legislation defines cultural property protected within the scope of the law differently.

3. What are the legal consequences arising from classifying an asset as cultural property? Does the classification of a private asset as cultural property affect the right of ownership?

A property classified as 'cultural property' is afforded special legal status and is conferred the benefit of certain privileges and protections in the US.

Classification of a private asset as cultural property may affect the right of ownership in a sense that even a privately owned asset may be subject to forfeiture and repatriation to the rightful owner if it is deemed to have been illegally imported.

4. Which authorities in your country define cultural property and who advises these authorities?

In May 2016, the Protect and Preserve International Cultural Property Act was signed into law and established the Cultural Property Advisory Committee (CPAC) whose main role is

to advise the President and recommend US action in response to State Party requests for US cooperation in protecting their cultural heritage from importation.

5. Has your country ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and what are the main features of the national implementation?

Yes. The US ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property in 1972.

The Congress implemented two provisions of the 1970 UNESCO Convention by enacting the CPIA in 1983: (i) Article 7(b) (i), which requires State Parties to undertake to prohibit the importation of stolen cultural property and return it to the source nation; and (ii) Article 9, which allows State Parties to request assistance (including the control of exports and imports and international commerce) from other State Parties to protect its cultural property which is in jeopardy of pillage. The CPIA, however, limited its recognition of foreign export restrictions by embodying a policy of prohibiting the importation of cultural property and returning it to the source nation only if: (i) it was previously identified and subsequently stolen from an institution or public monument; or (ii) pursuant to a request from a Party State, the cultural property of which is in jeopardy of pillage if the country can prove that it has taken measures to protect its cultural property and that the requested US cooperation will benefit the international community in the ‘interchange of cultural property among nations for scientific and educational purposes’ (19 USC, section 2602 (a1)).

6. Has your country ratified the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, and what are the main features of the national implementation?

No. The US is not party to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.

7. Has your country ratified any other international conventions or bilateral agreements relating to the export of cultural objects?

Yes. The US has bilateral agreements with Belize, Bolivia, Bulgaria, Cambodia, China, Colombia, Cyprus, El Salvador, Egypt, Greece, Guatemala, Honduras, Italy, Libya, Mali, Nicaragua and Peru. Further, the US imposes import restrictions on Iraqi and Syrian cultural property.

B. Restrictions on the export of cultural property and artwork

1. What are your country’s export restrictions regarding cultural property and artwork?

With only few and limited exceptions, the US does not impose export restrictions regarding cultural property. The few exceptions apply to archaeological objects removed from federal or Native American lands (see the Native American Graves Protection and Repatriation Act and the Archaeological Resources Protection Act) or protected wildlife (see Convention on International Trade in Endangered Species of Wild Fauna and Flora).

1.1 Under which conditions is export permission granted?

N/A.

1.2 Which authority grants such export permission and who advises this authority?

N/A.

1.3 What does the proceeding look like, who are the parties to the proceeding and what is the duration of the proceeding?

N/A.

1.4 Are there any monetary thresholds (*de minimis*)?

N/A.

1.5 Does the circumstance of the artist still being alive or the time of creation of the artwork matter?

N/A.

2. Is the State obliged to buy out the artwork for which an export permission was denied?

N/A. The US does not issue export permits for cultural property.

3. Are there any exceptions to these regulations (eg, temporary export for exhibitions, conservation or private reasons of the owner)?

N/A. The US does not issue export permits for cultural property.

4. Does your country dispose of any ‘free ports’ and, if so, how are they arranged?

Yes. Foreign Trade Zones (FTZs) are US free ports located near a US port of entry where domestic and foreign merchandise can be admitted for the purposes of storage, manipulation, manufacturing, destruction, exhibition or temporary removal free of customs duties or other ad valorem taxes. The US Customs and Border Protection and US Homeland Security monitor the FTZs by means of audits and spot checks.

C. Consequences in case of violation of export restrictions; restitution and repatriation of illegally exported cultural property

1. What are the legal consequences in case of breach of export restrictions?

The US, in general, does not impose export restrictions on its cultural property. Violation of certain export restriction provisions (eg, the Archaeological Resources Protection Act of 1979) may result in forfeiture and/or fines.

2. Give a description of the regulations and practices in your country relating to the restitution and repatriation of illegally exported cultural property

The CPIA regulates illicit import of cultural property through the promulgation in the US Federal Register of Designated Lists of categories of the types of cultural property restricted

from entering the US unless accompanied by an export certificate issued by the country of origin or other appropriate documentation. Promulgation of such import restrictions is contingent upon the existence of a bilateral agreement between the US and another State Party seeking such restrictions pursuant to the requirements of the CPIA. Countries may also invoke US anti-theft laws (eg, under the National Stolen Property Act or the Uniform Commercial Code) for the restitution and repatriation of cultural property under the theory that it is stolen property.

3. Under which conditions does your country assist foreign countries seeking repatriation of cultural property/artwork?

The US prohibits the importation of cultural property only if: (i) it was previously identified and subsequently stolen from an institution or public monument; or (ii) pursuant to a request from a Party State, the cultural property of which is in jeopardy of pillage if the country can prove that it has taken measures to protect its cultural property and that the requested US cooperation will benefit the international community in the ‘interchange of cultural property among nations for scientific and educational purposes’ (19 USC, section 2602 [a1]).

4. Does a buyer enjoy protection against restitution claims for violation of foreign export restrictions?

No. The US recognises the common law *nemo dat* rule that someone ‘who purchases property from a thief, no matter how innocently, acquires no title to the property’. Thus, it is difficult for the buyer, no matter how innocent, to oppose governmental seizure or repatriation of such property unless the buyer can prove that the property was lawfully exported from its country of origin or that it lacks a sufficient nexus to the predicate crime (ie, it was exported from the source nation at least ten years before its arrival in the US and the importer owned it for less than a year before such arrival).

5. Which regulations exist for the protection of the buyer against title claims, in general?

There are no regulations in place that provide protection of the buyer against title claims. However, the buyer may assert certain affirmative defences (eg, the expiration of the statute of limitations, the innocent owner defence, laches defence or abandonment by original owner).

6. Are there any regulations, such as anti-seizure guarantees, in favour of lenders from abroad regarding the return of their items on loan to local exhibitors?

Yes. The Foreign Sovereign Immunity Act 2016 protects artwork loaned to US museum exhibitions by foreign governments and museums from seizure by private plaintiffs. The law extends the doctrine of sovereign immunity over artworks in the collection of a foreign government or foreign state museum imported into the US for the limited purpose of exhibition or display are not part of ‘commercial activity’ and are therefore immune from US litigation. The legislation carves out exceptions for Nazi-looted artwork. Further, the Immunity from Seizure Act allows foreign states and institutions to apply to the US State Department for grants of immunity that guarantees their cultural objects will not be judicially seized while on the loan. The grant of immunity, however, may not protect loaned artworks from third-party civil claims.

7. **What regulations exist concerning the import of cultural property that may have been exported illegally from its country of origin or that is the subject of claims?**

See question C.2 above.

D. Due diligence obligations

1. **What general due diligence is required from the seller/buyer of artwork?**

Seller

No duty of diligence is imposed by law but it is advisable that a seller take reasonable steps to verify that the buyer is reputable and financially stable and to confirm the material terms of the transaction (eg, amount of the sale commission, minimum consignment period, allocation of risk of loss, responsibility for insurance and scope of any warranties) in writing.

Buyer

No duty of diligence is imposed by law but a prudent buyer should take reasonable steps to confirm the authenticity of the artwork by obtaining an original certificate of authenticity (if available) and checking the various databases that list stolen works and conduct Uniform Commercial Code (UCC) lien searches in applicable states.

2. **Are there any special due diligence standards applicable to the trade (eg, dealers, auction houses), that also extend to collectors?**

No duty of diligence is imposed by law but a prudent dealer or auctioneer should do more than relying on the consignee's expertise as to the work's authenticity and value, and independently ascertain the authenticity of the work by checking whether the work is listed in the Art Loss Registry of the International Foundation for Art Research and conducting UCC lien searches in applicable states. Further, auction houses should check the credit worthiness of prospective buyers before granting the right to bid.

3. **Are there any anti-money laundering regulations applicable to (individual) sellers, dealers, auction houses or agents?**

Yes. The US has several federal anti-money laundering laws, two of which concern the art world: (i) the Currency and Foreign Transactions Reporting Act 1970 (also known as the Bank Secrecy Act or BSA); and (ii) the Money Laundering Control Act 1986 (MCLA).

The BSA governs both bank and non-bank institutions, including dealers in precious metals, stones or jewels. Although the BSA does not explicitly list auction houses and art dealers as institutions covered by the law, it does not mean that they are free from legislation; the US Bureau of International Narcotics and Law Enforcement Affairs specifically lists art and black market antiquities dealers as examples of non-financial sectors that should be monitored.

The MCLA covers non-financial institutions and individuals and applies to both domestic and international transactions that violate its anti-money laundering rules.