

The Need for Speed: Why Recovery of Missing Art Needs an Upgrade

By: Maria T. Cannon¹

Anyone who has lost luggage while traveling knows the frustration and worry that comes with being separated from one's personal possessions. Fortunately, those who lose luggage often get it back – and quickly – thanks to the advanced tracking networks housed within airline operations and carried out by a dedicated task force. Additional help may exist if the packer has enclosed a digital tracker, such as an Apple Airtag or Amazon Tile-mate. With Bluetooth-enabled devices, the owner of the suitcase can locate the missing bag's geographic location with undeniable precision.

In concert, these combined forces work together to find a bag, in the event it goes missing. The channels are laid proactively, rather than as a frenzied response to a bag gone AWOL. Unfortunately, the same degree of forward-thinking measures do not find a parallel when considering the protection of art and cultural heritage.²

As a result, modern times hold this irony: an abundance of planning taken to find personal luggage, if lost or stolen (the loss of which presents a low-risk to a nation's cultural heritage) versus a dearth of proactive measures aimed at locating priceless pieces of art and cultural heritage, if the same fate occurs (the loss of which could be irreparably destructive to global art). True, in some cases, such as in the case of a Bluetooth enabled tracker, taking similar tangible precautions may be impossible to safely replicate on a delicate piece of work. Similarly, the resources required to build an airline-equivalent task force dedicated to finding lost or stolen work may be beyond the economic reach of the home country at issue.

Added to this is the fact that art, once stolen, is uniquely difficult to find. The best shot at its recovery comes from it entering the art market, in some way. However, the piece is unlikely to surface in the marketplace if it is too valuable or recognizable to be sold.³ Such a predicament may even render the piece of art virtually worthless.⁴ In those cases, the risk of getting caught with the loot outweighs any potential resale value. This causes thieves to tend to commit targeted art destruction, in an attempt to rid themselves of evidence of the crime.⁵

Artwork that disappears and miraculously survives, however, may eventually find its glorious way home. Unfortunately, logic suggests that the chance of finding art and antiquities becomes smaller over the passage of time.⁶ Many factors play into this, starting with the fact that art itself is comprised of material subject to deterioration. This deterioration may take the form of the temporal chemical changes



in paint color, changes in environmental conditions, and the varying durability of materials used to construct the piece.⁷ When delicate pieces are forcibly removed from their carefully-curated preservation sites, such as behind glass in a museum, the risk of deterioration increases tenfold.

Another reason why it is harder to locate stolen art as time goes on is that evidence pertaining to the theft decreases over time. Those with crucial knowledge of the theft may have died or simply forgotten critical facts to the case.⁸ When art is lost, instead of stolen, time may also impact the availability of personal knowledge of the case.

Evidence issues may be further exacerbated through slow processing of judicial claims for recovery. Witness testimony may suffer, due to lapses in time. Additionally, in some heart-breaking cases, this can even result in the expiration of the statute of limitations for recovery.⁹ Then, the case will be decided on a legal formality, as opposed to in the spirit of justice.

Perhaps it is time for the law to evolve to speed up the process of recovery. This could include legislation aimed at the protection and preservation of art and cultural heritage, *that plans for* an eventual loss or theft. Forward-thinking legislation could increase the chances that the world's most valuable and vulnerable missing heirlooms are found. A swift location of objects would also serve to set the stage to deter other potential thieves.

Risk-based legislation, aimed at protecting the highest-risk works, may function to proactively plan for art recovery. This would go beyond keeping a digital database. Keeping detailed databases of valuable works can surely help, but the most success may be found in creating legislation that appoints local task forces trained in

procedures aimed at specific pieces that thought to be ripe for theft.

The legislation creating each local task force would ensure that each force mirrors successful art recovery forces across the globe. One example is found in the Italian Carabinieri Art Crime Team. Although it is a national force, the relatively small geographic size of Italy means that the force ends up being comprised of officers who know the lay of the land.

Such familiarity is helpful in preventing thefts and in carrying out needed investigations. One major difficulty with solving art crimes often centers on the fact that most art crimes are carried out by local thieves. Local officers are often the best suited to sniff out local thieves, because they are deeply ingrained in the social and cultural nuances of the community on a daily basis.

The U.S. often relies on FBI agencies that lack this crucial insider knowledge. FBI investigations, though experts in their own right, are not able to penetrate the local community as quickly as those who already know the scene. Local officers would start their inquiries from a base of native knowledge, rather than from the FBI's removed vantage point. This would save time.

The U.S. needs a more targeted solution to protecting its art and cultural heritage, and fast. The laborious administrative process of recovering lost and stolen art could be shortened with simple measures that legislate art preservation and theft prevention authority to the locals.

The reason to be forward-thinking about protecting American art, today, is simple: July 4th, 2026 is the 250th anniversary of the nation's founding. Think of the potential value of colonial-era American art for theft and sale.

Is there a hotter time than summer to steal America's national treasures? ♦

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² The Hague Convention, Article 3, includes a provision that parties prepare to safeguard cultural property during peacetime "by taking such measures as they consider appropriate." Art. 3. The Second Protocol adds additional precatory measures in the event that the work needs to be hidden, moved, or protected from an environmental emergency (among other precatory measures). However, missing is a specific call to proactively plan a method to employ for finding a piece if it goes missing.

Crimean Artifacts Will be Returned to Ukraine

By: Laura Tiemstra¹

In this Newsletter's Spring 2017 issue, we discussed the *Scythian Gold Case*.² The Scythian Gold is a collection of 565 exhibits of Scythian gold and artifacts that were housed in four separate state-administered museums in Crimea.³ In 2012, the Crimean museums entered a joint agreement to loan the Scythian Gold to the Allard Pierson Museum in Amsterdam for an exhibit. The Scythian Gold was on exhibit for several months in 2014. Also in 2014, Russia annexed Crimea. So when the exhibit closed, the Allard Pierson Museum could not determine whether to return the Scythian Gold to the Crimean Museums, now in Russia, or to Ukraine where the museums were at the time of the loan. The Crimean Museums brought suit in Amsterdam, which Ukraine joined, each demanding return of the Scythian Gold.

The Crimean Museums argued that the Scythian gold was Crimean cultural heritage, and the property should be returned to Crimea so that the people of Crimea could have access to their cultural heritage. Ukraine argued that artifacts owned by Ukrainian state-run museums were the property of Ukraine.

In 2016, the Amsterdam District Administrative Court issued a decision in which it looked to the UNESCO rules and principles, finding that sovereign states are the proper legal entity to have control over items deemed cultural heritage. Therefore, the Court ruled that, even though Ukraine wasn't involved in the loan agreement between the Crimean Museums and

2d Prot. Art. 5.

³ Leila Amineddoleh, *What It Takes to Recover a Stolen Work of Art*, Artsy.net (Oct. 8, 2016), <https://www.artsy.net/article/artsy-editorial-what-it-takes-to-recover-a-stolen-work-of-art>.

⁴ *Id.*

⁵ *Id.*

⁶ James Tarmy, *What Happens to Stolen Art After a Heist?*, Bloomberg (June 15, 2015), <https://www.bloomberg.com/news/articles/2015-06-15/what-happens-to-stolen-art-after-a-heist?leadSource=verify%20wall> (stating that, according to the FBI fewer than 10% of stolen works are estimated to be recovered successfully).

⁷ See "Deterioration", Western Australia Museum (last visited Apr. 6, 2023),

<https://manual.museum.wa.gov.au/conservation-and-care-collections-2017/paintings/deterioration>.

⁸ Justin Peters, *Why Is Stolen Art So Hard to Find?*, Slate (Aug. 14, 2015), <https://slate.com/news-and-politics/2015/08/isabella-stewart-gardner-museum-video-why-is-stolen-art-so-hard-to-find.html>.

⁹ Modern theories of accrual, such as those illustrated in *Menzel v. List* and *O'Keefe v. Snyder*, do not help remedy this, because the litigation becomes too focused on legalese and the technical legal formalities of the proceedings. Crucial evidence, when presented, is no longer applicable in the light of strict legal standards. J.G. Petrovich, *Recovery of Stolen Arts – Of Paintings, Statues, and Statutes of Limitations*, 27 ULCA L. Rev. (Apr. – Jun. 1980), 1122, 1122-1158.



Legal Guide (2022 ABA Publishing).

the Allard Pierson Museum, Ukraine was the entity that properly had control of the Scythian Gold when it was lent out and should therefore receive the returned property once the exhibit had closed.

The decision was appealed by the Crimean Museums, and the Scythian Gold remained at the Allard Pierson Museum pending final decision. The Amsterdam Court of Appeal affirmed the decision in 2021, which was again appealed. On June 9, 2023, the Supreme Court of the Netherlands affirmed as well.

The Russian Foreign Ministry Spokesperson, Maria Zakharova, made a statement, including that "The Scythian gold is a part of Crimea's cultural heritage and no decisions made by biased judges can cancel this indisputable fact. Historical justice will prevail."⁴

Ukrainian President Volodymyr Zelenskyy tweeted appreciation for the decision and indicated Ukraine's intent to return the Scythian Gold to the Crimean Museums when Crimea is no longer occupied by Russia.⁵

When the Allard Pierson Museum will be delivering the Scythian Gold to Ukraine is not yet known. ♦

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² Harrington, "Amsterdam Court Issues Decision in the *Scythian Gold Case*", *ABA Art & Cultural Heritage Law Committee, Newsletter* (Spring 2017) at 1-2.

³ The four museums were: the Kerch Historical and Culture Preserve, the Central Museum of Tavrida, the Bakhchisaray History and Culture State Preserve, and the National Preserve of Tauric Chersonesos.

⁴ *Dutch court ruling on Scythian Gold collection will not be left unanswered – diplomat*, TASS Russian News Agency, <https://tass.com/politics/1630467> (June 9, 2023).

⁵ @ZelenskyyUa, Twitter, (June 9, 2023) <https://twitter.com/ZelenskyyUa/status/1667235405299589127>.

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