Anti-Money Laundering Regulations for Art Market Participants in the United Kingdom  

By: Lauren Bursey

Contrary to the halting pace of introducing anti-money laundering regulations for the art market in the United States, the art market in the United Kingdom has been subject to the Mon- 

The Guidance now explains that an intermediary would be “someone who, by way of business, actively transacts in the sale or purchase of works of art on behalf of a seller or buyer under whose authority they act.” ... an intermediary could be an agent or an art dealer, or an online sales platform, but framers, shippers, and those who do not actively participate in transactions are not intermediaries.

Secondly, the British Art Market Foundation (“BAMF”) released its updated Guidance on Anti-Money Laundering for UK Art Market Participants on June 30, 2022, to elucidate ambiguities in the Regulation. There are clarifications to which it is worth drawing attention, the first of which concerns the understanding of “intermediary” that is used in the definition of AMP. The Guidance now explains that an intermediary would be “someone who, by way of business, actively transacts in the sale or purchase of works of art on behalf of a seller or buyer under whose authority they act.” Thus, an intermediary could be an agent or an art dealer, or an online sales platform, but framers, shippers, and those who do not actively participate in transactions are not intermediaries. The Guidance does acknowledge that there is a spectrum of involvement in a transaction, from a mere introducer to an agent acting with the transaction(s)’ authority, demonstrating that a fact-specific analysis is necessary. Moreover, the Guidance clarified that a “customer” of an AMP depends on the AMP’s role in the transaction, or, where the AMP is selling or acting as an intermediary, the customer will be whoever is paying the AMP for the art or for services in relation to the transaction. Again, a fact specific- 

In any event, there are financial, trade, and crime laws in the U.K. which are applicable despite the relevant party meeting the require- 

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2 Defined as:

a firm or sole practitioner who (i) by way of business trades in, or acts as an intermediary in the sale or purchase of, works of art and the value of the transaction, or a series of linked transactions, amounts to 10,000 euros or more; or (ii) is the operator of a freeport when it, or any other firm or sole practitioner, by way of business stores works of art in the freeport and the value of the works of art so stored for a person, or a series of linked persons, amounts to 10,000 euros or more.

2019 No. 1511, Part II, 14(1)(d).


4 BAMF AML Guidelines, para. 13, pg. 8.

5 Id. at para. 56, pg. 14.

6 See the Treasury report on illicit finance in the art market released in February 2022, which concluded that there was limited evidence of terrorist financing risk, although three factors unique to the art market made it attractive to criminal money laundering: (1) the high dollar value of transactions; (2) the transportability of goods; (3) the longstanding culture of privacy and use of intermediaries; (4) the increasing use of high-value art as an investment class. Study of the Facilitation of Money Laundering and Terror Finance Through the Trade in Works of Art, DEPT. OF THE TREASURY (2022), https://home.treasury.gov/system/files/136/Treasury_Study_WoA.pdf.

UNESCO Model Provisions, will if adopted, end most international trade in cultural goods

By: Kate FitzGibbon and Peter K. Tompa

UNESCO has released proposed draft model provisions “modifying” the 1970 UNESCO Convention. The changes are major; they resemble the harsh provisions of the 1995 UNIDROIT Convention – which have been rejected by many Western and collecting nations. UNESCO accepted comments on this proposal until November 30, 2022. Once these rules are finalized, UNESCO expects member states to pass then into domestic law. If the Model Provisions are implemented into the national laws of countries where much art now circulates freely, as it does in the EU, the UK and in the United States, most of the legal international trade in ancient and ethnographic art would end.

Despite the draconian nature of what has been proposed, the model rules were crafted by a small Committee made exclusively of academics, law enforcement, and government cultural heritage officials. There was little advance notice of this proposal. There appears to have been little outreach to those who would be most impacted by these rules – museums, collectors and dealers in market countries. Instead, those that commented learned from sources outside of UNESCO about the draft proposals just weeks before comments were due, forcing them to rush to provide meaningful insight.

The model rules are seriously flawed and should be redrafted to reflect the public’s interest in a lawful global circulation of art and artifacts and to address the legitimate concerns of the lawful art trade, museums, educational institutions, and private owners. The rules call for extra-territorial enforcement of foreign nationalizing laws and return of objects to countries where they were created thousands of years before, without requiring actual evidence that they were illicitly acquired.

The model rules reiterate the 1970 UNESCO Convention’s erroneous assumption that the State is always the best steward for the protection of cultural heritage.

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The Model Provisions mandate government licensing and supervision of all businesses and persons trading in cultural property, contrary to established regulatory regimes in many State Parties. For example, in the United States, licensure of professions is typically a state function, not one for federal authorities. Indeed, when the United States Senate gave its advice and consent to the 1970 UNESCO Convention, one of the reservations the Senate made indicated that any such regulation would be decided on a local or state level. See S. Res. 129, 92d Cong., 2d Sess., 118 CONG. Rec. 27,925 (1972).

The Model Provisions establish unattainable provenance requirements, since few countries ever established export permitting systems. When permits existed, they were not retained by State Parties to provide a record of lawful exports or by exporters because there was no obli-
illustrate an article about Prince. That artist

to do so at the time. After decades or even centuries in circulation, provenance rec-
ords do not exist for the majority of ethnographic and ancient objects. The model rules
would therefore make items which have been traded legally for generations, illicit overnight.

There is a threshold question whether UNESCO can require a country that allows
exports without an export certificate to issue them. Certain countries, like the United
States, have explicitly reserved their rights on this issue. See S. Res. 129, 92d Cong., 2d
Sess., 118 CONG. Rec. 27,924-25 (1972). An export certificate mandate is completely unrealistic. Blanket
prohibitions of exports of cultural property of “national interest” also preclude State Parties
from exercising their own discretion. Certain countries (including the US) do not currently
issue export permits but allow these cultural goods within their jurisdiction to be exported.

The Model Provisions endorse state ownership of all cultural objects, including
private and religious property, damaging fundamental human, cultural, and religious
rights of minorities.

All in all, the proposed changes appear geared to expanding the reach of foreign state govern-
ments’ control over U.S., European, UK, Japanese, Singaporean, and other global ownership
of art and cultural property, whether it belongs to private citizens, museums or is circulating in
the art trade, not to fulfilling the express statement in the preamble of the 1970 UNESCO
Convention, that “the interchange of cultural property among nations for scientific, cultural
and educational purposes increases the knowledge of the civilization of Man, enriches
the cultural life of all peoples and inspires mutual respect and appreciation among nations.”

Different Perspectives on Andy Warhol Foundation v. Goldsmith

By: Armen R. Vartian

The rare occasions that the U.S. Supreme Court considers matters relating to
fine art are always of great interest. In recent years, such cases have tended to focus
on claims for restitution of artworks seized during the Nazi era. But currently pending
before the Court is a case which may resolve a wide-ranging dispute with great
significance for 21st century artists and art institutions – the scope of “fair use” protections for derivative works under U.S. copyright law. The case is Andy Warhol
Foundation v. Goldsmith, which the Newsletter analyzed 18 months ago at the
Court of Appeals level. The case has been briefed fully, and the Court heard oral
arguments on October 12, 2022. While the art world – and the art business world–await
the Court’s decision, we thought we could review the main themes of the case, as
presented by some of the numerous amici curiae who filed briefs in support of one or the
other party, or neither of the parties. Hopefully our review and recapitulation of the
amicus’ arguments is “fair”….

The facts are simple. The publication Vanity Fair licensed Goldsmith’s photograph of
Prince on a one-time basis, to be used as a reference by an artist Vanity Fair was hiring to
illustrate an article about Prince. That artist

Others do not require export permits for common items like historical coins. Still other
countries technically issue export permits, but they cannot keep up with demand for such ex-
port permits so there are extensive attendant delays. Still others do not issue export permits
at all, even though the 1970 UNESCO Convention assumes such permits will be issued.

This problem is exacerbated given the scope of what is covered. The Model Provisions
are so broad that they will apply to objects regardless of their importance to na-
tional identity, Model Provisions would inappropriately apply severe restrictions
to trade in objects duplicated in the millions and limit the circulation of common ethnological
objects as well as items mass produced for com-
merce.

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1 Kate FitzGibbon and Peter K. Tompa have written extensively about cultural heritage is-
suess. Kate edited and Peter was a contributor to “Who Owns the Past?” (K. Fitz Gibbon, ed, Rut-
ger, 2005). Kate is the Executive Director of the Committee for Cultural Policy and Peter is
the outgoing Executive Director of its sister advocacy organization, the Global Heritage
Alliance. Both are members of the Art & Cul-
tural Heritage Committee’s Steering Committee and Peter previously served as the Committee’s
co-chair.

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earned extensively about cultural heritage is-

So it’s not surprising that the prospect of the Supreme Court defining the limits of fair use
once and for all has aroused energetic advocacy from many stakeholders in the art world, from
established artists to less-established “creators” who wish to sample and comment upon those
artists’ works, to art institutions, and even the U.S. Government, i.e., the Copyright Office
which processes applications for copyright reg-
istration and reports to Congress on copyright matters. What is surprising, however, is that
when examining the amici briefs, these stake-
holders seem to be speaking different languages. One group of copyright law professors says that
“meaning matters”; and that if the infringing
work is “transformative”, i.e., if the world sees
Warhol’s work differently from Goldsmith’s,
that’s enough for fair use:

“If the meaning of artistic works were
objective, an art appreciation class