

Cultural Property

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I. Introduction

The illicit trade in artworks, antiquities, and other cultural property persists as an international problem of tremendous magnitude. Experts have classified the illegal trafficking of international cultural heritage as being “second only to the ‘black market’ of illegal drugs and weapons.”¹ As governments around the globe announce plans to clamp down on the illicit trade in art and antiquities, some groups in the United States, principally art and antiquities dealers, are pushing for free trade in artistic and cultural objects. These continuing efforts include trying to rescind the United States’ ratification of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.²

Courts and museums continue to struggle with legal issues related to donated cultural property, as well as cultural property on loan, when pieces in the collection may have been stolen. The risks and benefits of charitable gifts of cultural property are persistent subjects of interest to fiduciaries, trustee, executors of estates, and their attorneys.

II. Laws and Treaties on Cultural Property

A. GLOBAL TREATY TO PROTECT UNDERWATER CULTURAL PROPERTY

Over 3,000 years of history reside in shipwrecks in international waters. Nations and courts continue to deliberate issues relating to ownership of such vessels and their booty. UNESCO continues its efforts to prepare a global treaty to prevent destruction of shipwrecks located in international waters. A draft proposal for such a global treaty was prepared

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1. *Seventh Report of the Culture, Media & Sport Committee of the House of Commons*, available at <http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmcmds/371/37104.htm#24> (statement of Major General Conforti, Head of the Protection of National Heritage Command of the Italian Carabinieri).

2. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Apr. 24, 1972, 823 U.N.T.S. 231 [hereinafter UNESCO Convention].

in 1998. Governmental experts met for a second time in Paris in 1999 to examine the UNESCO Draft Convention on the Protection of the Underwater Cultural Heritage.³ Since the 1999 meeting, a number of Member States have made comments on the text of the convention. Representatives from the United States have objected⁴ to the definition of "underwater cultural heritage" as "all traces of human existence [which have been] underwater for at least 100 years."⁵ They contend there should be a process to categorize resources in terms of their relative archaeological or cultural significance and that objects, sites, and wrecks that are simply 100 years old and underwater may not be underwater cultural heritage. They would add provisions to clarify that title to state vessels and aircraft remain vested in the flag State unless expressly abandoned or captured in accordance with international laws. Furthermore, the laws of salvage and finds would not apply to State vessels and aircraft. The next meeting to consider the global treaty is scheduled for April 2001.

B. UNITED STATES RATIFICATION OF THE 1954 HAGUE CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT

The International Cultural Property Committee submitted a report⁶ to the Section of International Law and Practice with the recommendation that it forward to the House of Delegates of the American Bar Association (ABA) a resolution calling for the ABA to urge U.S. ratification of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict.⁷ The 1954 Hague Convention assumes that the collective efforts of all nations and peoples are required to protect and preserve the cultural heritage of humanity. The Convention recognizes that historic monuments, archaeological sites, and artworks are the property of humanity and not just that of a single state. Current reports of the intentional destruction of cultural property during the war in the former Yugoslavia emphasize the continued need for laws to protect cultural property during military conflicts and a means to enforce these laws. While military leaders are aware of the need to protect cultural property during wartime and are receptive to efforts on an international scale to provide such protection, the United States has continued to move away from definite action towards providing protection through international agreement. Members of the International Cultural Property Committee have expressed that the United States should exert the leadership needed to assure that in future military conflicts the needless destruction of cultural property ceases.⁸ Members of the International Cultural Property Committee think that implementation of the 1954 Hague Convention should be a major goal of the Department of State and the Congress and that a recommendation by the ABA that the United States ratify the Convention would have tremendous influence on members of Congress and the President when they next consider U.S. ratification of the Convention.

3. Draft Convention on the Protection of the Underwater Cultural Heritage, U.N. Doc. CLT-96/Conf. 202/5 Rev. 2, available at www.unesco.org.

4. Comments from the United States of America on Selected Articles on Draft Convention on the Protection of the Underwater Cultural Heritage (July 4, 2000) (on file with author).

5. UNESCO Convention, *supra* note 2, at art. 1(1)(a).

6. International Cultural Protection Committee, Recommendation to the ABA on Ratification of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (2000) (unpublished Report, ABA) (on file with ABA International Section) [hereinafter ICPC Report].

7. Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240 [hereinafter 1954 Hague Convention].

8. See ICPC Report, *supra* note 6.

C. STATE LAWS EXEMPTING SEIZURE OF CULTURAL PROPERTY ON LOAN

Artwork and other cultural property on loan have been subject to seizure because of theft victims' claims. A painting on loan to a New York museum from the Rudolph Leopold Museum in Austria was subpoenaed by the New York district attorney's office pursuant to a grand jury investigation into the theft of the painting during the German annexation of Austria.⁹ The museum moved to quash the subpoena on the ground it was invalid under Section 12.03 of the New York Arts and Cultural Affairs Law.¹⁰ Section 12.03 provides a seizure exemption for any work of fine art that is en route to or from, or that is on exhibition at, any museum, college, university, or cultural organization. The highest court in New York ruled that the statute applied to both civil and criminal proceedings; thus, it granted the museum's motion.¹¹ Immediately following the ruling of the New York court, the federal government commenced a forfeiture proceeding.¹² The federal district court decided that the painting was no longer stolen, however, it granted the government's motion to file an amended complaint, and the stay remained in effect pending further order of the court.¹³

New York has since amended its anti-seizure statute in 2000 to limit its application solely to civil proceedings.¹⁴ Thus, prosecutors in New York can now seize stolen works of art on loan to a museum.¹⁵

D. NAZI LOOTED ART LAWS

The Presidential Advisory Commission on Holocaust Assets in the United States, the Association of Art Museum Directors, and the American Association of Museums agreed in 2000 on new standards for making public the Holocaust-era provenance of artwork in museum collections.¹⁶ The agreement requires the creation of a centralized online registry to provide claimants, their advocates, and researchers access to information on Holocaust-era objects in museum collections. The standards for publicizing the information are: (a) identification of all objects in a museum's collection that were created before 1946 and acquired by a museum after 1932 if those pieces had a change of ownership between 1932 and 1946 and were, or could have been, in continental Europe between those dates; (b) publication of objects that fit the categories in (a) and provenance information on these objects; and (c) commitment to continuing provenance research as resources permit.¹⁷ Reclamation priorities include European paintings and Judaica.

Some museums are already acting to return stolen objects. The National Gallery of Art announced in November 2000, that it would relinquish a valuable still life by the Seven-

9. See *In re Grand Jury Subpoena Duces Tecum Served on Museum of Modern Art*, 719 N.E.2d 897 (N.Y. 1999).

10. N.Y. ARTS & CULT. AFF. LAW § 12.03 (McKinney 2000).

11. See *In re Grand Jury Subpoena Duces Tecum*, 719 N.E.2d at 901, 904.

12. See *U.S. v. Portrait of Wally*, 105 F. Supp. 2d 288 (S.D.N.Y. 2000).

13. See *U.S. v. Portrait of Wally*, No. 99 Civ. 9940 (MBM), 2000 U.S. Dist LEXIS 18713 at *2 (S.D.N.Y. Dec. 28, 2000).

14. See N.Y. ARTS & CULT. AFF. LAW § 12.03, (amended, effective May, 2000).

15. The effectiveness of the amendment is to be evaluated two years after its enactment.

16. See Jacqueline Trescott, *Museums to Facilitate Search for Nazi-Looted Art*, WASH. POST, Jan. 17, 2001, available at <http://washingtonpost.com/wp-dyn/articles/A3669-2001Jan16.html>.

17. Aviso, American Association of Museums, Jan. 2001, P. 1, available under "Hot Topics" at www.aam-us.org.

teenth Century Flemish artist Frans Snyders after concluding that the painting almost certainly was looted by the Nazis from a French Jewish family during World War II.¹⁸ The painting had been donated to the National Gallery by a New York art dealer.

Nevertheless, most ownership controversies are ending up in court. For example, a claim has been made to Yale University's art museum over a landscape by Gustave Courbet.¹⁹ The painting and forty-seven others are on long-term loan from a European collector who became a member of the Nazi party in 1937.

E. CULTURAL PROPERTY IMPLEMENTATION ACT

The Convention on Cultural Property Implementation Act²⁰ represents a somewhat restrictive ratification of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.²¹ In 2000, Senators Patrick Moynihan, Charles Shumer, and William Roth attempted to push through Congress the Cultural Property Procedural Reform Act.²² This act would have substantially restricted the ability of the federal government to comply with various provisions of the Cultural Property Implementation Act. Although the proposed legislation was not enacted, art and antiquities dealers continue efforts to prevent the imposition of import restrictions on illegally exported cultural property. In his final words after the proposed Cultural Property Procedural Reform Act was not passed, Senator Moynihan stated that the "United States has long encouraged free trade in artistic and cultural objects," which, according to Senator Moynihan "has helped create a museum community in our Nation that has no equal."²³ Senator Moynihan did not acknowledge that this free trade in cultural property has resulted in the pillage of archaeological and ethnological materials and has deprived many nations of their cultural heritage. The participation of the U.S. government in the 1970 UNESCO Convention not only serves to protect cultural objects against pillage and illicit export, but also to protect information associated with these objects, particularly in an archaeological context.

As possessors of cultural property and their representatives encourage the reintroduction of legislation similar to the Cultural Property Procedural Reform Act to promote free trade in cultural property, the public should acknowledge the rights of theft victims (both individuals and foreign nations) and should work to defeat any such reintroduced legislation. Cultural property protectionists posit that only those engaged in the illicit trade of illegally exported art and antiquities benefit from such legislation.

F. UNIDROIT CONVENTION ON INTERNATIONAL RETURN OF STOLEN AND ILLEGALLY EXPORTED CULTURAL PROPERTY

The increasing pressure for action with respect to Holocaust works of art, the continuing illicit trade in works of art and other cultural property, and the practical difficulties en-

18. See Press Release, National Gallery of Art, National Gallery of Art to Return Painting to Heirs as a Result of Gallery Research and Web Posting (Nov. 20, 2000), available at www.nga.gov/xio/snyderspr.htm.

19. See *Family Claims Painting at Yale was Looted by Nazis* (Jan. 23, 2001), available at www.cnn.com/2001/STYLE/arts/01/23/looted.art.ap/.

20. Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601 *et seq.* (2000).

21. UNESCO Convention, *supra* note 2.

22. Cultural Property Procedural Reform Act, S. 1696, 106th Cong. (1st Sess. 1999).

23. 146 Cong. Rec. § 11855-01 (2000).

countered by many parties in their efforts to obtain satisfactory resolution of issues relating to ownership of such property, including the tremendous cost of litigation, should lead to greater international harmonization of laws limiting the rights of possessors of stolen or illegally exported cultural property. The 1995 UNIDROIT Convention on the International Return of Stolen and Illegally Exported Cultural Property²⁴ provides a means to achieve this goal. Drafters of the Convention were conscious that a process is needed to enhance international cultural co-operation and to provide and maintain a proper role for legal trading and inter-state agreements for cultural exchanges. In April of 2000, there were twenty-two signatories and twelve state parties to the UNIDROIT Convention, which provides an international framework for the recovery of works of art and other cultural property that have been stolen or illegally exported. The UNIDROIT Convention provides a general right of restitution to persons from whom cultural property has been stolen. The Convention provides that a good faith purchaser would be obligated to restore the property to the owner, but would be entitled to fair and reasonable compensation if he or she had exercised due diligence in acquiring the property. The United States should consider signing the Convention and bringing forward implementing legislation to give effect to its provisions.

G. TAX DEDUCTIONS FOR DONATIONS OF STOLEN ARTWORKS

As museums such as the National Gallery of Art repatriate stolen pieces, provocative questions arise regarding charitable deductions claimed in earlier years by donors of such objects. A taxpayer may deduct the fair market value of artwork or antiquities donated to a museum or similar public charity if the taxpayer has held the object more than one year.²⁵ The legal standard defining fair market value is "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts."²⁶ The fair market value of an otherwise valuable artwork or antiquity that is known to have been stolen and never returned to its rightful owner would be zero.²⁷ Thus, a donor would not be entitled to a charitable contribution deduction for donating a work of art known to be stolen. The question arises as to the value of a donated painting that was not known to have been stolen at the time of the gift, but to which a rightful owner establishes ownership a few years later. Would the fact that the painting actually was stolen apply retroactively to render the value of the gift zero even though there was no knowledge of an actual theft at the time of the gift? Does the inability to establish good title in and of itself lessen the value of donated artwork or antiquities?²⁸ The statute of limitations may have run on the ability of the Internal Revenue Service (IRS) to reduce or disallow completely a previously claimed charitable contribution deduction. Section 6501 of the Internal Revenue Code requires the IRS to assess additional income taxes within three years after the later of the due date of a return or the date the return is filed.²⁹ If a donee museum discovers a donated painting was

24. UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, June 24, 1995, 34 I.L.M. 1322.

25. See I.R.C. § 170(e)(2).

26. Treas. Reg. § 1.170A-1(c)(2) (2001).

27. See, e.g., *Adams v. Comm'r.*, 50 T.C.M. (CCH) 48 (1985).

28. The court opined that, "any cloud on title, no matter how slight, will have a negative effect on the value of property." *Adams*, 50 T.C.M. at 51.

stolen and returns the painting more than three years after the donation, the IRS may be precluded from assessing the donor additional income taxes due to a disallowance of any charitable contribution deduction for the painting. Still, Section 6501 does not preclude making adjustments to a closed tax year solely to determine the income tax consequences of a taxable year that still is open under the statute of limitations. Thus, if the donor taxpayer was unable to deduct the entire value of the painting in the year of the gift (because the charitable contribution deduction is limited in a tax year to 50 percent of the donor's adjusted gross income), the IRS could disallow any carryover deduction from the charitable contribution deduction claimed in a closed tax year.³⁰

III. Recent Cases involving Cultural Property

Four significant cases involving legal issues relating to stolen artworks and other cultural property were the subject of litigation in 2000. One earlier case provides the impetus for the continuing restitution of artwork stolen by American Forces during the occupation of Germany after World War II.

A. *UNITED STATES V. PORTRAIT OF WALLY*

The case of *U.S. v. Portrait of Wally*,³¹ involves substantial issues of public policy relating to property stolen during World War II as part of a program implemented by the German government and others. In that case, a federal district court had ruled that a painting on loan to the Museum of Modern Art in New York from the Leopold collection, which was subpoenaed by the New York District Attorney's office pursuant to a Grand Jury investigation into the alleged theft of the painting during the Nazi annexation of Austria, was no longer stolen because, according to the federal district court, U.S. forces recovered the painting after World War II as an agent of the true owner. The court so ruled even though U.S. forces, unaware of the true owner, erroneously listed the painting as belonging to another person, and had placed the painting in that person's collection.³² After the district court's ruling, the United States moved for an order to amend or alter the judgment based upon its contention that paintings seized during and after World War II were not held by U.S. forces with an eye to returning them to their true owners. The federal district court has permitted the United States to file another amended complaint.³³

B. MISSING ART

On December 5, 2000, a valuable Sixteenth Century painting of Christ by Venetian artist Jacopo de Barbari, stolen by an American soldier from the storage deposit of the Weimar Art Museum at the Schwarzburg Castle in 1945, was returned to a representative of the

29. See I.R.C. § 6501 (2000).

30. Any excess charitable contribution deduction (over the annual 50 percent of adjusted gross income limitation) may be carried forward and deducted in the five succeeding years and treated as if paid in such succeeding years. See Rev. Rul. 77-225, 1977-2 C.B. 73 (1977).

31. *U.S. v. Portrait of Wally*, 105 F. Supp. 2d 288 (S.D.N.Y. 2000); 2000 U.S. Dist. LEXIS 18713 (2000).

32. See *Wally*, 105 F. Supp. 2d at 294.

33. See *Wally*, 2000 U.S. Dist. LEXIS 18713 at *2.

Weimar Art Museum at a ceremony at the U.S. Customs Bureau. This painting, along with fourteen other valuable paintings, was discovered missing from the Schwarzburg Castle after the departure of American forces in 1945. The first restitution of missing works to the Weimar Art Museum occurred pursuant to the landmark case *Kunstsammlungen zu Weimar v. Elicofon*,³⁴ when two portraits by Albrecht Dürer were returned. In 1997 a valuable painting by Tischbein was returned to the Museum. Eleven works of art are still listed as missing and the U.S. Customs Service has promised to continue its efforts to discover these works and facilitate their return. At the ceremony, Customs Commissioner Raymond W. Kelly announced the creation of a new U.S. Customs Art Recovery Team in Manhattan.³⁵

C. *SEA HUNT, INC. AND COMMONWEALTH OF VIRGINIA v. UNIDENTIFIED SHIPWRECKED VESSEL OR VESSELS AND KINGDOM OF SPAIN*

The Fourth Circuit Court of Appeals addressed the issue of rights of a foreign government pursuant to a treaty with the United States to ownership of shipwrecks that are located within U.S. waters. It had to decide whether the Abandoned Shipwreck Act³⁶ is applicable if a foreign government asserts ownership to a sovereign wreck. In *Sea Hunt, Inc. and Commonwealth of Virginia v. Unidentified Shipwrecked Vessel or Vessels and Kingdom of Spain*,³⁷ Spain asserted an interest in two Spanish vessels that had sunk off the coast of the Maryland/Virginia border in the Eighteenth Century. Two vessels commissioned into the Spanish Navy, the LA GALGA, a fifty-gun frigate placed in service in 1732, and the JUNO, a thirty-four frigate commissioned in 1790, were lost off the shores of present-day Virginia in 1750 and 1802. The LA GALGA left Havana in 1750 to escort a convoy of merchant ships to Spain. It encountered a hurricane near Bermuda and eventually sank off the coast of the Maryland/Virginia border. The JUNO set sail from Veracruz bound for Spain in 1802. It was beset by a ferocious storm and began taking on water. At least 413 sailors, soldiers, and civilians perished in its sinking. The wrecks were discovered after Virginia issued permits to Sea Hunt to conduct salvage operations. Sea Hunt spent approximately one million dollars in conducting remote sensing, survey, diving, and identification operations, which it contended resulted in locating the remains of the wrecks. Virginia asserted ownership over the shipwrecks pursuant to the Abandoned Shipwreck Act, but Spain filed a claim of ownership pursuant to the 1902 Treaty of Friendship and General Relations between the United States and Spain.³⁸ The reciprocal immunities established by the treaty protect United States shipwrecks and military gravesites. Under terms of the treaty, Spanish vessels, like those belonging to the United States, may be abandoned only by express acts. The United States has defended Spain's ownership of the vessels contending that protection of the sacred sites of other nations assists in preventing the disturbance and exploitation of its sites. The United States maintains that this interest is rooted in customary international

34. *Kunstsammlungen zu Weimar v. Elicofon*, 536 F. Supp. 829 (E.D.N.Y. 1981), *aff'd*, 678 F.2d 1150 (2d Cir. 1982).

35. Information about this new unit, and photos of the missing Weimar paintings is available at <http://www.customs.gov>.

36. Abandoned Shipwreck Act, 43 U.S.C. §§ 2101-2106 (2000). The act awards the United States title to any abandoned shipwreck that is embedded in a state's submerged lands, but the United States then transfers title back to the state. *See id.* at § 2105.

37. *Sea Hunt, Inc. v. Unidentified Shipwrecked Vessel*, 221 F.3d 634 (4th Cir. 2000).

38. Treaty of Friendship and General Relations, 1902, U.S.-Spain, 33 Stat. 2105.

law. The Fourth Circuit ruled that the Kingdom of Spain had not expressly abandoned the ships and ruled that the Abandoned Shipwreck Act was therefore not applicable. As the court stated, a shipwreck is abandoned only where an owner has relinquished ownership rights. It decided, pursuant to the legislative history of the Abandoned Shipwreck Act, that sovereign vessels are treated differently from privately owned ones. The court noted that "under the terms of the 1902 Treaty, Spanish vessels can . . . be abandoned only by express renunciation."³⁹ The court decided that the "treaty provision requires that in our territorial waters Spanish ships are to be accorded the same immunity as United States ships."⁴⁰ The court pointed out that in other cases where abandonment was found for Spanish wrecks, Spain had not made a claim of ownership.

The court denied *Sea Hunt* a salvage award because it determined that *Sea Hunt* knew the vessels were Spanish ships and that Spain might make a claim of ownership and decline salvage. The court recognized that the owner of a vessel can refuse unwanted salvage.⁴¹

D. INTERNATIONAL RECOVERY V. UNIDENTIFIED WRECKED AND ABANDONED AIRCRAFT

In *International Recovery v. Unidentified Wrecked and Abandoned Aircraft*,⁴² the Eleventh Circuit Court of Appeals addressed the issue of whether the Abandoned Shipwreck Act applied to a torpedo bomber which had crashed off the Florida coast during a training flight and was found in deep international waters approximately eight miles off Miami Beach. The plane, which was built in 1938, flew neutrality patrol in the central Atlantic until it was assigned in mid-1941 to the aircraft carrier *Yorktown* operating in the Pacific. In 1942, the plane participated in the Battles of Midway and the Coral Sea. During the Battle of the Coral Sea, torpedo bombers sank the Japanese aircraft carrier *Shoho* and badly damaged the carrier *Shokaku*. After overhauling the bomber, the Navy used the plane for training in Miami. During a torpedo attack instruction flight in 1943, the bomber crashed in international waters. The Navy struck the plane from its inventory of active aircraft in 1943 and had taken no steps to locate or salvage the plane since that time. In 1990, a group searching for Spanish galleons located the bomber and offered to sell the location to the National Museum of Naval Aviation. The United States claimed ownership of the bomber and rejected salvage operations. The court ruled that the United States had not abandoned its ownership of the plane. The court decided that the government "holds its interests in trust for all the people . . . [and should not] be deprived of those interests by the ordinary court rules designed particularly for private disputes over individually owned pieces of property."⁴³ It stated, "officers who have no authority at all to dispose of government property cannot by their conduct cause the government to lose its valuable property rights by their acquiescence, laches, or failure to act."⁴⁴ The court determined that the Abandoned Shipwreck Act did not apply because the plane was "not a shipwreck" and because it was not "embedded in the submerged lands of a State."⁴⁵

39. *Sea Hunt*, 221 F.3d at 643.

40. *Id.*

41. *See id.* at 647.

42. *Int'l Recovery v. Unidentified Wrecked and Abandoned Aircraft*, 218 F.3d 1255 (11th Cir. 2000).

43. *Id.* at 1258.

44. *Id.*

45. *Id.* at 1260.

E. *ROSENBERG V. SEATTLE ART MUSEUM*

In *Rosenberg v. Seattle Art Museum*,⁴⁶ the Seattle Art Museum agreed that a Matisse, donated to it by the estate of Bloedel, was stolen by the Nazis and that the Rosenberg heirs were the rightful owners of the painting. The Seattle Art Museum returned the painting to the Rosenbergs. It then filed a third-party complaint against the gallery that had sold the painting to the Bloedels for fraud, breach of title, and negligent misrepresentation. It alleged that the gallery had defrauded the Bloedels when it sold them the painting by lying to them about the painting's provenance. The district court in Washington originally granted the gallery's motion for summary judgment. The law in the state of Washington provides that transferring ownership of personal property does not thereby transfer a claim for fraud associated with the purchase of that property. The Seattle Art Museum filed a Motion for Reconsideration of the Court's order granting partial summary judgment after the Rosenberg heirs assigned their claim against the gallery to the museum.⁴⁷ After the court granted the Seattle Art Museum's Motion for Reconsideration,⁴⁸ the gallery agreed to a settlement of the case.

46. *Rosenberg v. Seattle Art Museum*, 42 F. Supp. 2d 1029 (W.D. Wash. 1999); 124 F. Supp. 2d 1207 (W.D. Wash. 2000).

47. See *Rosenberg*, 124 F. Supp. 2d 1207 (W.D. Wash. 2000).

48. See *id.* at 1210.

