Reframing U.S. Policy on the Art Market

Recommendations for Combatting Financial Crimes

A Comprehensive Report by the Financial Crimes Task Force of the Antiquities Coalition

September 2020

The Financial Crimes Task Force

CHAIRS

Deborah M. Lehr
Chairman & Founder
Antiquities Coalition

John Byrne
Vice Chairman
AML RightSource

Tess Davis
Executive Director
Antiquities Coalition

Dennis Lormel
President
DML Associates LLC

Mike Loughnane
President
Loughnane Associates

Angel Swift
Wells Fargo, Head of Conduct Management

PROJECT DIRECTOR

Liz Fraccaro
Antiquities Coalition

MEMBERS

The Task Force unites allies from the art, financial, and legal communities, as well as former law enforcement and government officials. Members have reached a consensus around the general report and its policy recommendations, although each individual member does not necessarily endorse every finding and conclusion. Each has participated in their individual capacities and not as representatives of their institutions.

John Byrne
Vice Chairman, AML RightSource

Laura S. Ballman
Founder, Culture Matters LLC

Alessandro Chechi
Art Law Centre, University of Geneva

William Cloninger
AML Investigations, KeyBank

Brian Daniels
Penn Cultural Heritage Center, University of Pennsylvania Museum

Justine Ferland
Art Law Centre, University of Geneva

Betsy Feuerstein
Attorney and Independent Consultant

Bonnie Goldblatt
Citigroup

Theodore Greenberg
APCO Worldwide International Advisory Council Member

Layla Hashemi
Researcher, Transnational Crime and Corruption Center (TraCCC)

Sree M. Iyer
PGurus.com

Marilú Jiménez, esq. CAMS
FincAdvisors

Lester Joseph
Wells Fargo & Company

Herbert V. Larson, Jr.
Tulane University School of Law

Colette J. Loll
Founder and Director, Art Fraud Insights, LLC

Dennis M. Lormel
President & CEO
DML Associates, LLC

Michael J. Loughnane
President, Loughnane Associates, LLC

Donna M. Luisi
Senior Criminal Analyst, Department of Homeland Security/ New York HIFCA

Rick McDonell
Executive Director ACAMS

Audra McKay
Robinhood Financial Crimes Monitoring Program Manager

Jack Oskvarek
SVP BSA Executive Director, Wintrust Financial Corporation

Gregory Radke, CFE, CISA
Senior Examiner, Office of Credit Unions | State of Michigan

Anthony Rodriguez
AFEX

Kevin P. Rogers
U.S. Secret Service (Ret)
Office of The Inspector General-SSA (Ret)

Anita Saggurti
Bank of America, Art Services

Rick Small
Executive Vice President, Director Financial Crimes, Truist

Tiffany Stevens
CEO & General Counsel, Jewelers Vigilance Committee

Angel Swift
Wells Fargo, Head of Conduct Management

Mary Utermohlen
Program Director, C4ADS

Erik Vingelen
SVP, BSA/AML/OFAC Officer, Banner Bank

Sara Yood
Senior Counsel, Jewelers Vigilance Committee

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Detail from Lyonel Feininger's "Brücke II," which according to a bipartisan Congressional investigation, was part of a successful multi-million dollar scheme by Russian oligarchs to launder money and evade sanctions through the American art market.

Reframing U.S. Policy on the Art Market

Recommendations for Combatting Financial Crimes

EXECUTIVE SUMMARY

The $28.3 billion American art market is the largest unregulated market in the world, making it vulnerable to a wide range of financial crimes. This ongoing exemption from standard laws and oversight, which now cover all industries of comparable risk and size, is a documented and growing threat to our national security and integrity, as well as to the vast majority of legitimate collectors, dealers, auction houses, and museums. Unless and until the U.S. public and private sectors close these loopholes, they will leave wide open the world's biggest economy to money launderers, artifact traffickers, drug smugglers, kleptocrats, oligarchs, terrorists, and the many other criminals proven to have exploited the art market's weaknesses.

The Antiquities Coalition's nonpartisan think tank convened the Financial Crimes Task Force to explore solutions to this growing challenge and serve as an ongoing resource to policymakers. In this report, the Task Force puts forward its 44 recommendations for new policies, practices, and priorities that can be implemented by the U.S. government, art market, financial industry, and international community. These specific steps will help the American art market to protect itself from money laundering, terrorist financing, sanctions violations, tax evasion, fraud, forgery, and other related crimes.

The Task Force, the first of its kind, is an interdisciplinary initiative uniting allies from the art, financial, and legal communities, as well as former law enforcement and government officials. In compiling this report, they drew from centuries of combined experience, dozens of interviews with outside experts and stakeholders, and extensive legal and scholarly research. Their work comes at a critical time. COVID-19 is presenting the art market, both licit and illicit, with new challenges and opportunities. The pandemic has shuttered brick and mortar establishments, inflicted unprecedented losses and layoffs, and may force many businesses and museums to close their doors forever. Yet, online sales and "art financing" are skyrocketing, auction prices continue to break records, and transactions may be increasing—as individual collectors and even museums are sadly forced to sell off their works for hard cash.

Whether bad actors profit at the expense of legitimate businesses now hinges on how governments, law enforcement, and responsible market players rise to this occasion. As the world's largest art market, making up forty four percent of the global total, the United States faces its own challenges and opportunities. We hope that these recommendations and accompanying resources, developed by leading experts over the last year and a half, will help to cement America's standing as a leader in the fight against financial crimes.

For the United States government, the Task Force calls on:

- The **U.S. Congress** to apply the Bank Secrecy Act to dealers in cultural property, auction houses, and art dealers; to designate art and antiquities crime as a predicate offense for money laundering; and to require reports and subsequent strategies on the relevant risks and opportunities to address these vehicles for illegal activity.

- The **White House** to assign a Senior Director at the **National Security Council** to drive U.S. policy in the fight against transnational crimes via cultural property.

- The **Treasury Department** to evaluate criminal misuse of the art market in the National Strategy for Combating Terrorist and Other Illicit Financing and Risk Assessments; the **Financial Crimes Enforcement Network** to conduct extensive outreach to the art world and financial sector; and the **Internal Revenue Service** to require proof of legal title and known ownership history in support of tax deductions for art and antiquities.

- The **Department of Justice** to establish an office of cultural heritage crimes prosecutors, as well as join with **Federal law enforcement** to strengthen training and other support for investigations and prosecutions, and to quantify the impact of their work by tracking funds generated from forfeitures and other penalties.

- The **State Department** to combat crimes via art and antiquities through the interagency **Cultural Heritage Coordinating Committee** and encourage foreign nations to take their own measures.

For the financial sector, the Task Force calls on:

- The **industry as a whole** to increase awareness of the vulnerabilities facing it from criminal misuse of the art market, highlight these threats in its risk assessments, and incorporate efforts to counter them in existing staff training; to use existing suspicious activity reporting (SAR) procedures to provide the appropriate government agency with related intelligence where appropriate; and to consider adding to their systems in order to identify and act upon detected financial crimes via cultural property.

It is alarming and completely unacceptable that common sense regulations designed to prevent money laundering and the financing of terrorism do not apply if someone is purchasing a multi-million dollar piece of art. — U.S. Senator Tom Carper

For the art and antiquities community, the Task Force calls on:

- **All parties** to adopt a risk-based approach to assess and limit their exposure to financial crimes; to identify and verify their clients as part of their effective customer due diligence (including beneficial owners and controllers for both cultural objects and legal entities); and to consider adopting an anti-money laundering statement and appointing a money laundering reporting officer.

- **Art industry associations** to develop and implement training programs and professional standards; to consider establishing a collaborative consortium to pool data and technology or a group like the Jewelers Vigilance Committee; and to explore adopting blockchain technology.

- **Online marketplaces** to perform effective vetting and due diligence, including authenticating all sellers and buyers of art and antiquities; to educate consumers about high risk cultural objects; and to consider building specific algorithms to prevent and identify criminal misuse of their platforms.

- **Museums associations** to develop guidelines, reporting requirements, and a registry for their members who deaccession objects, especially those that will be entering the stream of commerce.

For the global community, the Task Force calls on:

- **Interpol, foreign law enforcement** and **customs agencies,** and the intergovernmental **Financial Action Task Force** to take further coordinated action in support of the above recommendations in partnership with the U.S. government, art world, and financial industry.

FINDINGS

A Smoking Gun

The U.S. government and private sector must work together to bar criminals from exploiting the $28.3 billion American art market—the largest unregulated market in the world—or risk serious consequences for the country's national security and economic integrity, as well as legitimate collectors, dealers, and auction houses.

That was the stark warning from a bipartisan Congressional report, which in July 2020 exposed how a pair of Russian tycoons laundered millions through leading American auction houses and dealers **[see sidebar].**[1] The U.S. Senate's Permanent Subcommittee on Investigations (PSI) spearheaded the two-year inquiry in the hopes of explaining the failure of U.S. sanctions against Vladimir Putin's inner circle. In answer it found that—as Task Force Chair Deborah Lehr wrote in *The Hill*—"the art market's continuing exemption from standard laws and regulations, which now cover all other sectors of comparable risk and size, gifted these sanctioned Russians with an easy backdoor into the world's biggest economy."[2]

The PSI report, which a Congressional staffer described as "only the tip of the iceberg," was met with shock from policymakers and the press.[3] However, many on this task force have long cautioned that the public and private sectors must take action to protect the art market from criminal misuse. The following pages detail why.

Billionaire Arkady Rotenberg with Russian President Vladimir Putin. Image Source: International Consortium of Investigative Journalists.

Oligarchs, Off-shore Accounts, and the Olympics: The Rotenbergs

In July 2020, a bipartisan Congressional investigation revealed Russian oligarchs Arkady and Boris Rotenberg had laundered millions through the American art market, evading U.S. sanctions.

The Rotenberg brothers amassed a fortune in construction contracts and investments tied to the Kremlin—including an estimated $7 billion just from the 2014 Winter Olympics in Sochi. On March 16, 2014, the United States sanctioned Russia in response to its invasion of Ukraine and annexation of Crimea, then followed with specific sanctions against the Rotenbergs on March 20. In those four days alone, shell companies linked to the brothers transferred over $120 million to Russia. Moreover, despite the initial sanctions and later ones imposed on their associates, the Rotenbergs continued actively participating in the U.S. financial system.

How? Utilizing the art market's culture of "secrecy" and loose or nonexistent anti-money laundering controls, as well as a Moscow agency that openly advertised services enabling clients to pursue art transactions with "complete anonymity," the Rotenbergs conducted $18 million in business with leading U.S. auction houses and dealers. Each seller maintains they transacted with the brothers unknowingly and none have been charged with wrongdoing. However, in the words of Senator Tom Carper, who led the Congressional investigation with Senator Rob Portman, the case illustrates that "criminals, terrorists and wealthy Russian oligarchs like the Rotenbergs are able to use an unregulated art industry […] to hide assets, launder funds, and evade sanctions. Unfortunately, our failure to close these obvious loopholes make U.S. sanctions—an important national security tool—far less effective than they could be."

Low Risk, High Reward: The Art Market and Financial Crimes

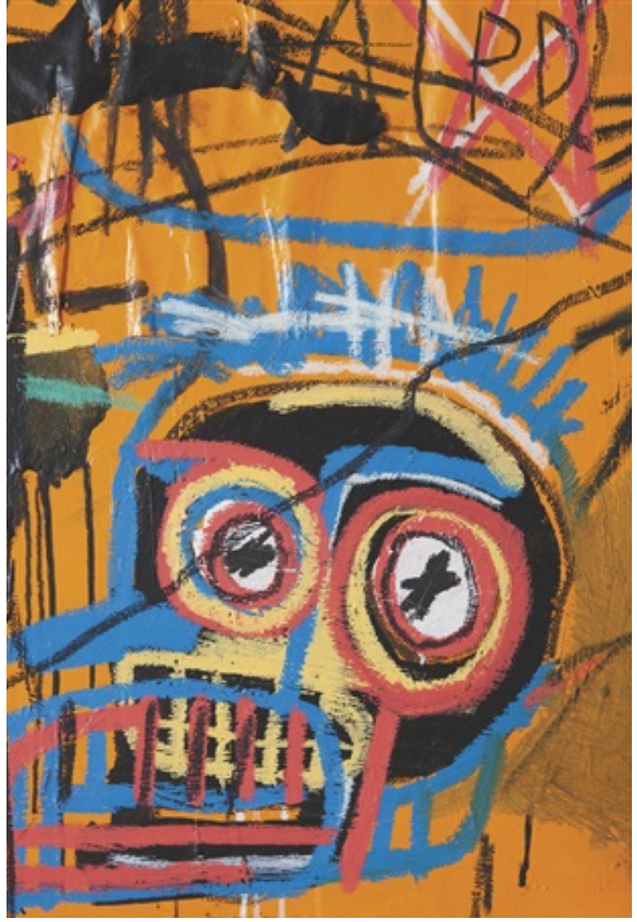
Even before the Rotenbergs made headlines, in recent years, a growing number of scandals, investigations, prosecutions, and convictions have demonstrated the art market's dangerous vulnerability to a wide range of financial crimes—including forgery, fraud, market manipulation, tax evasion, money laundering, sanctions violations, and even terrorist financing.

While the United States remains the world's largest art market, and thus dominates any survey, case studies make clear this is a global problem **[see Appendix I for illustrations from around the world]**. The cultural objects involved likewise span geography and history, from Mesopotamian relics and Egyptian mummies to Monets, Van Goghs, Dalis, and Picassos, as well as countless fakes and forgeries. Sometimes these antiquities and artworks are central to the crimes themselves, but just as often, they are tools to launder the proceeds of artifact trafficking, drug smuggling, embezzlement, corruption, or other crimes. The criminals responsible include small-time crooks, infamous kleptocrats, white-collar embezzlers, and black-clad ISIS jihadists. However, at least in the cases examined by this Task Force, they are rarely dedicated collectors or professionals from the art market, but rather bad actors seeking to exploit the sector's weakness.

These weaknesses are many. Global sales of art and antiquities in 2019 totaled $64.1billion, and even with the impacts of COVID-19, auctions in 2020 continue to break records.[4] That high dollar value alone makes the market attractive to criminals, but additional factors contribute, including its longstanding culture of discretion, as well as the unique nature of art itself. After all, artworks do not carry anything like a Vehicle Identification Number or "VIN" most are easily moved across borders and through customs, and they are notoriously difficult to price.

One would hope that these aspects of the art market would make it subject to more—not less—regulation.

The opposite has happened.



Detail from Basquiat's *"Hannibal"* (upper left) and Van Gogh's *"La Maison de Vincent Arles"* (below), both implicated in transnational money laundering cases, as well as an ancient Mesopotamian sculpture (upper right), which the U.S. government believes was looted and trafficked to finance Daesh (ISIS).

The Artful Dodger: The Art Market's Exemption from Standard Laws and Regulations

The July 2020 PSI report correctly sounded the alarm that art remains "the largest legal, unregulated market in the United States."[5] This is because the country's primary anti-money laundering law, the Bank Secrecy Act (BSA), does not yet cover the art market.

The need for the BSA cannot be overstated. Each year, an estimated 3–5% of the global Gross Domestic Product (GDP) is laundered, totaling some $2.17–$3.61 trillion.[6] Moreover, as post 9/11 reforms have increasingly closed the formal financial sector to violent extremist organizations, they have turned back to "traditional ways such as… money laundering… to move their funds to finance their terrorist activities."[7] Money laundering and terrorist financing go hand in hand —and as the Financial Action Task Force (FATF) warned back in 2013, art and antiquities are particularly vulnerable to each.[8]

The BSA requires financial institutions to assist the government in detecting and preventing financial crimes.[9] The art market clearly meets the law's definitions of a "financial institution"—a business "whose cash transactions have a high degree of usefulness in criminal... matters."[10] Indeed, in addition to expected businesses like banks, credit unions, or currency exchanges, the statute already applies to sellers of precious metals, stones and jewels, as well as automobiles, planes and boats; casinos; real estate professionals; travel agencies; and pawnshops.

The art market's "usefulness" for crime is well evidenced by the Rotenbergs, as well as countless other case studies **[see Appendix I].** One telling example is the Federal prosecution of six individuals and four corporations for a $50 million money laundering scheme involving a Picasso. A defendant told an undercover agent he had originally planned to clean his funds through real estate, but turned to art because it is "the only market that is unregulated."[11]

Under the BSA, financial institutions (which include high-risk, non-banking institutions) must file reports with the government for any transaction over $10,000, as well as report suspicious activity.[12] This information is crucial to law enforcement as it works to combat financial crimes, with some Federal agents describing BSA filings as their main leads for investigations. Since they lack these reports for the art market, it is no surprise that many of the known cases stemmed from a criminal caught committing another offense (drug trafficking, tax fraud, robbery), an operation with an undercover officer, or a major leak (like the Panama Papers). As a result, the number of prosecutions likely represent a sliver of the illegal activity taking place.

> *It is shocking that U.S. banking regulations don't currently apply to multi-million dollar art transactions [...] This creates an environment ripe for laundering money and evading sanctions.* —Senator Rob Portman

COVID-19: A Wildcard

Will COVID-19 have a lasting impact on the global art market? Historical precedent and current indicators are sounding alarms: Now and in a post-pandemic world, criminals may pose an even greater threat to cultural sites and collections,[13] while the legitimate art market will also face countless new ethical, legal, and practical challenges.

COVID-19 related losses in the art world are expected to near $4.5 billion USD due to the pandemic, with galleries fearing a 72% loss in annual revenue and 33% predicting they will not survive.[14] American museums have also been forced to discuss long-standing ethical policies against deaccessioning their collections to gather cash to cover operating costs.

However, the pandemic has also caused art financing to skyrocket, and with it the risk of money laundering and other financial crimes.[15][16] According to a March 16 article in *Bloomberg*, "The business of providing credit against Picassos and Warhols is expanding even as the art market grinds to a halt," with some claiming their business had already doubled.[17] One reason, according to a quoted expert is, "There are likely lots of collectors out there looking for liquidity…who are just not aware that art-based financing can be a fast route to capital."[18] Loaning money against art or antiquities as collateral was *already* on the rise before the coronavirus, with art-secured loans reaching at least $21 billion globally in 2019.[19] Due to regulatory loopholes that effectively exempt art market actors from the the BSA, such transactions are particularly vulnerable to abuse by those seeking to launder money, evade sanctions, and other financial crimes.

A Bipartisan Push to Tackle Financial Crimes in the Art Market

To its credit, Congress has begun to realize these risks, and in recent years has moved forward on bipartisan legislation to close the American art market to money laundering, terrorist financing, and other crimes.

A number of proposed bills would begin to remove the art market's exemption from the BSA. Examples include the Illicit Art and Antiquities Trafficking Prevention Act of 2018; the Corporate Transparency Act of 2019, the Coordinating Oversight, Upgrading and Innovating Technology, and Examiner Reform Act of 2019; and the Anti-Money Laundering Act of 2020.[20]

While their exact language varies, these would all add dealers of art, antiquities, or both to the list of high-risk, non-banking institutions to the BSA. The most recent iterations in 2019 and 2020 have focused solely on sellers of antiquities. Unless these are further amended, this would be a major missed opportunity, as antiquities are just one part of the much larger art market. Moreover, it would force the U.S. government to tackle a difficult question: what is an antiquity?

Whether for art or antiquities dealers, if any of these bills or future iterations succeed, they would require designated institutions to report suspicious activity, perform customer due-diligence and record-keeping, and establish and maintain compliance programs. These actions are already required for all other sectors of comparable risk and size in the United States.

Any other changes to the BSA would provide an extensive "notice and comment" opportunity for all stakeholders. The art market would—and must—be extensively consulted to identify and proactively address any challenges. Their input will also be crucial in determining what constitutes appropriate programs and training for the sector.

Risks and Opportunities for the United States and Art Market

Art industry leaders have called for, and many have implemented, measures similar to the bills now before Congress.

The position of Sullivan & Worcester, a leading law firm representing artists, museums, and market actors, is that proposed language would "impose on art dealers the kind of know your customer (KYC) that banks take for granted, and which honestly should already be part of a prudent business' intake process."[21] Put another way, it would *protect* dealers from unknowingly facilitating crimes, and they should be doing what the law requires under their own codes and practices.

These guidelines have greatly evolved in recent years. The Responsible Art Market (RAM) Initiative, out of Geneva, provides a gold standard. Led by the market itself, RAM is working to raise awareness of risks facing their sector, as well as to provide practical guidance for meeting them head on.

The situation is more urgent for art market actors across the Atlantic. The 2018 5th Anti-Money Laundering Directive of the European Union required dealers for art transactions of €10,000 or more to comply with anti-money-laundering regulations, including verifying the seller, buyer, and ultimate beneficial owner (which, as the name suggests, refers to the person or persons who ultimately benefit from a piece's sale).[22] The United Kingdom and Switzerland now have similar requirements [**see Appendix II for detailed information on actions taken by other jurisdictions**].[23]

Taken together, this means that anti-money laundering programs are increasingly required by American dealers operating in Europe, likely a large number given the art market's global nature. If the U.S. government does not take similar action, we run the risk of our own art market becoming a safe haven for financial criminals, an unacceptable result given the United States remains 44 percent of the global art market.[24]

Only a First Step

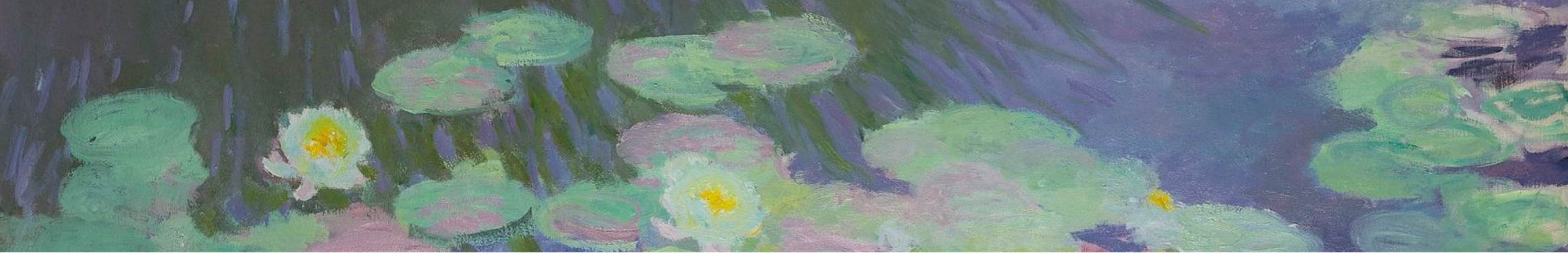
Adding the anti-money laundering infrastructure to the art market would do more than help to identify and prevent this particular crime—it would also combat the full scope of financial crimes. However, while perhaps the most pressing task facing governments on this front, it is just a first step. As the rest of the report will make clear, there are many additional actions that can be taken to fully safeguard our national security, economic integrity, and the American art market.

Detail from Claude Monet's "Saint-Georges Majeur," which was seized by Swiss authorities in 2016, as apart of an investigation into alleged money laundering and misappropriation by 1Malaysia Development Berhad.

THE TASK FORCE REPORT

In the following pages, the Task Force puts forward 44 concrete solutions for new policies, practices, and priorities that can be implemented by the U.S. government, financial industry, art world, and international community. These specific steps are meant first and foremost to strengthen the United States' national security and economic integrity. They will also help the American art market to protect itself from being an unknowing accomplice to money laundering, terrorist financing, sanctions violations, tax evasion, fraud, forgery, and other related crimes.

FINDINGS



Detail from Claude Monet's "Nympheas avec Reflets de Hautes Herbes," which was seized by Swiss authorities in 2016, as apart of an investigation into alleged money laundering and misappropriation by 1Malaysia Development Berhad.

RECOMMENDATIONS OVERVIEW

Congress

- Congress should explicitly apply the Bank Secrecy Act (BSA) to dealers in cultural property, requiring them to assist the U.S. government in preventing and detecting financial crimes, as it has done for all other sectors of comparable risk and scale.
- Congress should designate cultural property crime as a predicate offense for money laundering, placing it on an equal footing with other unlawful activities like counterfeiting, forgery, embezzlement, and theft.
- Congress should request a report on financial crimes and the art market from the Government Accountability Office (GAO) to better understand risks and opportunities facing the United States.
- As appropriate, Congress is encouraged to enable additional information sharing between financial institutions in order to better identify and report potential money laundering or terrorist activities through art and antiquities.
- Congress should appropriate funds to the IRS for auditing tax deductions related to high-value art or antiquities and conducting Anti-Money Laundering (AML) audits of dealers and others involved in such transactions.

The White House

- The National Security Council (NSC) should assign the appropriate Senior Director with responsibility for the U.S. policy regarding transnational crimes via cultural property, including trafficking, money laundering, and terrorist financing, recognizing the importance of a whole-of-government approach and seamless coordination across agencies.

Department of the Treasury

- In the National Strategy for Combating Terrorist and Other Illicit Financing and Risk Assessments, the Department of Treasury should highlight the key illicit finance threats and vulnerabilities facing the United States from criminal misuse of the art market, as well as how to strengthen the relevant U.S. anti-money laundering and counter-terrorist financing framework.
- The Financial Crimes Enforcement Network (FinCen) should conduct extensive outreach to the art market and financial sector, including nationwide conference calls, local and regional meetings, and online webinars.

- The Internal Revenue Service (IRS) should require proof of legal title and known ownership history in support of tax deductions for high-value charitable donations or purchases of art or antiquities to or by a museum, other tax-exempt organization, business, or private collector.

Department of Justice

- The Deputy Attorney General should include cultural property crimes within the purview of the Task Force on Market Integrity and Consumer Fraud, given the threat such crimes pose to the U.S. government, financial system, and public.

- The Department of Justice should establish an office of cultural heritage crimes prosecutors to bring cases against individuals and organizations who commit crimes through the art market, such as antiquities trafficking, money laundering, and fraud.

- The Department of Justice should develop and provide training for U.S. Attorneys' Offices and the Federal judiciary on cultural property crimes, which highlights their financial impact and national security risk, building on the excellent capacity building programs already in place for Federal agents.

- The Department of Justice should develop a written toolkit and/or other guidance for investigators and prosecutors to develop and pursue cultural property cases, including strategies that can be used to target the assets and financial networks of cultural racketeers.

- The Department of Justice should develop a methodology to track funds generated from administrative, civil, and criminal penalties and forfeitures related to cultural property and publicize such information in order to quantify the impact of its work.

Federal Law Enforcement

- The Federal Bureau of Investigation and Homeland Security Investigations should increase the focus on financial crimes in their existing law enforcement training on art theft and antiquities trafficking. Likewise, all law enforcement agencies that conduct training on financial crimes awareness and investigations should also incorporate the unique risks and opportunities presented by the art market.

- When pursuing cultural property theft and trafficking cases as predicate offenses, Homeland Security Investigations (HSI) and the Federal Bureau of Investigation (FBI) should also consider recommending charges of money laundering, if supported by the evidence.

- The FBI, HSI, and other relevant agencies should issue advisories as appropriate to alert local, state, and national law enforcement about fugitives wanted for cultural property crimes or other specific threats.

Department of State

- The State Department should expand the mandate of the interagency Cultural Heritage Coordinating Committee (CHCC) to combat financial crimes via art and antiquities.

- The State Department should encourage foreign nations to combat financial crimes via art and antiquities, including through the use of bilateral agreements under the Convention on Cultural Property Implementation Act (CPIA).

United States Government

- The United States Government should adopt all eight recommendations from the report, *The Art Industry and U.S. Policies that Undermine Sanctions*, published in July 2020 by the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs.

Financial Industry

- The financial sector should increase awareness of the vulnerabilities facing it from criminal misuse of the art market, as well as how to combat them. This includes highlighting relevant threats in their risk analyses and incorporating them in existing staff training.

- As they have done for human trafficking, banks and credit card companies should develop systems for identifying and acting upon financial crimes via cultural property, which could be triggered by suspicious patterns of payment, spending, deposits, travel, and other ways of moving money.

- Compliance software already in use by banks should be adapted for identifying and preventing financial crimes via art and antiquities.

- Financial institutions should use existing suspicious activity reporting (SAR) mechanisms to provide the appropriate government agency with intelligence related to cultural property crimes via art and antiquities as permitted by law.

- The financial industry is encouraged to create risk-based "Know Your Importer/Exporter" models to address the unique challenges posed by trade-based money laundering (TBML). These could draw from recent TBML, highlighting known risk factors such as geography, ownership structure, product lines, and transactional activity.

Foreign and International Law Enforcement

INTERPOL

- Interpol should develop a new "Purple Notice" to share alerts and requests for information about financial crimes committed via art and antiquities.

- Interpol member countries should request that the organization issue "Red Notices" to alert police worldwide about international fugitives wanted for cultural property crimes.

- Interpol member states should be vigilant in reporting missing cultural property for immediate inclusion in the organization's Stolen Works of Art Database.

- National customs and law enforcement agencies should contribute data on their cultural property seizures to the World Customs Organization (WCO), for inclusion in its annual Illicit Trade Report.

Financial Action Task Force (FATF)

FATF

- FATF should generate a typology report to identify money laundering and terrorist financing vulnerabilities related to the art and antiquities trade.

- FATF should specifically identify dealers in cultural property as Designated Non-Financial Businesses and Professions (DNFBPs) (a term of art for 'non-financial' sectors that are highly susceptible to money laundering and terrorist financing).

Art and Antiquities Market Participants

- Art market actors should adapt a risk-based approach to assess and limit their exposure to financial crimes, which would involve determining present exposures to risk and an acceptable level of risk, designing and implementing controls to mitigate these assessed risks, monitoring the effectiveness of these controls, and recording what has been done and why.

- Art market actors should identify and verify clients as part of effective customer due diligence. This should include a form of identification, as well as details of beneficial owners and controllers for cultural objects and legal entities alike.

- Art market actors are encouraged to adopt an anti-money laundering statement to protect their businesses from a wide range of financial crimes and reputational harm, as well as resulting civil and criminal government penalties and related sanctions by the government. Businesses should consider appointing a Money Laundering Reporting

Officer (MLRO) as a point of contact for all anti-money laundering compliance activities and concerns.

- For Customer Due Diligence (CDD) considerations at art fairs and gallery events in the United States, guests should be required to pre-register and receive pre-approval before purchasing a piece. (For those operating internationally, this is already required).

Art Industry Associations

- Art industry associations are encouraged to develop a training program establishing common professional standards to educate businesses about the risks of financial crimes, as well as how to mitigate them, including guidelines, red flags, and typologies.

- Art industry associations should consider establishing a collaborative consortium that securely pools data and technology to advise on the implementation and management of Anti-Money Laundering (AML) compliance programs, including centralized tracking of beneficial ownership, so that art specialists can train their efforts on art rather than policing financial crime.

- A group modeled after the Jewelers Vigilance Committee could be created, which would provide guidance to art dealers in understanding compliance obligations, creating an AML risk assessment program and policy, and educating staff.

- Auction houses, art dealers, and art industry associations should explore adopting blockchain technologies, which store histories of sale, ownership, and movement, as well as authenticating and validating art. A blockchain register would ideally be handled by an independent party, who adds to a collection of data that can be made available to members of the consortium upon request. The proposed consortium (above) could create such a registry.

Online Art and Antiquities Marketplaces

- Online marketplaces of art and antiquities are encouraged to build specific algorithms to identify and prevent criminal misuse of their platforms, while also protecting their consumers from purchasing illicit, faked, or forged cultural objects. These algorithms would automatically raise red flags for listing content and behaviors that are indicative of suspicious sellers, transactions, or misleading and/or inaccurate descriptions of art and antiquities. It should then trigger action by the marketplace, which could range from removing the listing to reporting a suspicious seller to the authorities.

- Online marketplaces should authenticate all sellers and buyers, requiring proof of identity before any high-value transaction ("pre-registration"), and keep these records of their client's identification securely. Additionally, like all market players, online platforms should perform effective vetting and due diligence, including following appropriate Know-Your-Customer (KYC) protocols for customers and clients.

- Online marketplaces should discourage purchases of high-risk cultural objects—those that are known for being chronically looted, forged, or faked—through a consumer awareness campaign (ie: You Can't Fake Fashion) as well as provide additional consumer buying guidelines (ie: "How to Buy a Warhol Print").

- For sales of cultural objects, online marketplaces should be required to display in clear view an unambiguous disclaimer warning consumers of the risks and how to mitigate them.

Museums

- Museums associations should develop guidelines, reporting requirements, and a registry for their members who deaccession objects—especially those that will be entering the stream of commerce—in order to identify and prevent problems over issues such as title or authenticity.

RECOMMENDATIONS

United States Government

Congress

- Congress should explicitly apply the Bank Secrecy Act (BSA) to dealers in cultural property, requiring them to assist the U.S. government in preventing and detecting financial crimes, as it has done for all other sectors of comparable risk and scale.

  While all comparable industries in the United States are subject to comprehensive AML requirements, the art market lacks any coverage. The Senate, in their July 2020 staff report, "The Art Industry and U.S. Policies That Undermine Sanctions," warns that this gap presents a vulnerability to the United States financial system that can be exploited by bad actors. Ultimately, anonymity in art market purchases can be abused in the same way as anonymity in financial services or real estate.

  Legislation should be strengthened to ensure dealers in high-value goods and specific high-risk luxury sectors are subject to customer due diligence and reporting requirements that meet international best practice standards.[25] Congress should require the art market to assist the United States government in detecting and preventing financial crimes. This could begin to take shape via application of the Bank Secrecy Act of 1970 (BSA) to dealers in art and antiquities, currently pending in section 211 of HR 2513. We suggest that this definition of dealers in antiquities be expanded to dealers in cultural property. The BSA directs certain of these businesses to file Suspicious Activity Reports (SARs) with the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) and requires designated sectors to maintain risk-based anti-money laundering programs. Art market actors would first have to be recognized financial institutions required to implement risk-based AML programs and report suspicious activities to law enforcement under FinCen regulations, defined under 31 CFR Section 5312(a)(2).[26] In the United States, the definition of a financial institution includes what the Financial Action Task Force calls "Designated Non-Financial Business and Professions" (DNFBP). Pending legislation, such as the Corporate Transparency Act or the Illicit Cash Act, could serve as the vehicle for taking this step.

  The legislation should also set a deadline for the U.S. Treasury Department to issue implementing regulations and direct those regulations to meet international standards. Such legislation will create a system fully consistent with the art-related AML safeguards in the 5th and 6th EU AML Directives to ensure consistent compliance structures across major markets.

- Congress should designate cultural property crime as a predicate offense for money laundering, placing it on an equal footing with other unlawful activities like counterfeiting, forgery, embezzlement, and theft.

  By amending 18 USC § 1956(c)(7), Congress should designate cultural property crime as a predicate offense for money laundering, thus placing it on an equal footing with other unlawful activities like counterfeiting, forgery, embezzlement, and theft. This section defines "specified unlawful activity" in terms of laundering money as: "Trafficking in persons; smuggling goods into the United States; removing goods from Customs custody; smuggling goods from the United States; crimes related to public money, property, or records; theft, embezzlement, etc."[27] Other statutes under which cultural property crime may be designated as a predicate offense may include 18 USC 1961(1)(B) Stolen Property (Sale, receipt, possession of stolen property moved interstate); 18 USC 1956(c)(7)(D) and 1961(1)(G); Trafficking in Contraband Cigarettes (unlawful acts) 1961(1)(B). Additionally, the International Monetary Fund (IMF), cited by FATF, suggests having the smuggling of cultural objects and art forgery included.[28]

- Congress should request a report on financial crimes and the art market from the Government Accountability Office (GAO) to better understand risks and opportunities facing the United States.

  To better understand risks and opportunities facing the United States, Congress should request a report on financial crimes and the art market and a subsequent hearing on those results from the Government Accountability Office (GAO), an independent, nonpartisan agency that works to provide the legislative branch

and federal agencies with objective, reliable information. Any individual member of Congress can request a study. A congressional hearing would then follow, though the rules governing who may request the hearing (and how) is governed by whether the request is coming from the House or the Senate. Requesting a GAO report and subsequent congressional hearing will ensure that the content of the GAO report is entered into the congressional record.

- As appropriate, Congress is encouraged to enable additional information sharing between financial institutions in order to better identify and report potential money laundering or terrorist activities through art and antiquities.

  Information sharing among financial institutions, both within the United States and internationally, should be developed and encouraged by the federal government in bilateral agreements with other nations.

  A secure system for passing information about suspected illegal art and antiquities trade and money laundering from the financial services industry to relevant customs and law enforcement authorities must be developed. One approach is the creation and expansion of Trade Transparency Units (TTUs) specific to the art and antiquities trade. Operated by Immigrations and Customs Enforcement (ICE), these units use sophisticated computer programming to analyze trade flows between the participating countries and the United States to identify suspicious patterns provided by the Data Analysis and Research for Trade Transparency System.[29] This analysis allows customs officials to detect anomalies such as over or undervaluing of traded goods and provides actionable leads to investigate suspected money laundering.[30]

- Congress should appropriate funds to the IRS for auditing tax deductions related to high-value art or antiquities and conducting Anti-Money Laundering (AML) audits of dealers and others involved in such transactions.

  Congress should direct the IRS to issue regulations requiring proof of legal title and known ownership history before granting tax deductions for high-value charitable donations or purchases of art or antiquities to or by a museum, other tax-exempt organization, business, or private collector. At the same time, Congress should also appropriate additional funds for the IRS to audit tax deductions related to high-value art or antiquities and to conduct AML audits of art and antiquities dealers and others involved in such transactions.

The White House

- The National Security Council (NSC) should assign the appropriate Senior Director with responsibility for the U.S. policy regarding transnational crimes via cultural property, including trafficking, money laundering, and terrorist financing, recognizing the importance of a whole-of-government approach and seamless coordination across agencies.

  Recognizing the importance of a whole-of-government approach and seamless coordination across agencies, the National Security Council (NSC) should assign the appropriate existing Senior Director with responsibility for the U.S. response to transnational crimes via cultural property, including trafficking, money laundering, and terrorist financing. This will help to set the strategic direction based on the coordinated input of all of the agencies, taking a "whole-of-government approach" to guide the public and private sectors in preventing, detecting, and prosecuting international money laundering and the financing of terrorism.

  To ensure the United States continues to serve as a global leader in combating financial crimes, the U.S. government should immediately and fully implement the changes to national legislation suggested herein with regards to the art market, bringing U.S. law and policy in line with that of other major art markets such as the European Union, Switzerland, and the United Kingdom.

Department of the Treasury

- In the National Strategy for Combating Terrorist and Other Illicit Financing and supporting Risk Assessments, the Department of Treasury should highlight the key illicit finance threats and vulnerabilities facing the United States from criminal misuse of the art market, as well as how to strengthen

the relevant U.S. anti-money laundering and counter-terrorist financing framework.[31]

The "National Strategy For Combating Terrorist and Other Illicit Financing,"[32] a report published on behalf of the entirety of the Federal government, identifies key illicit finance concerns for the United States and establishes guidance to modernize the United States counter-illicit finance regime. The "2020 National Strategy for Combating Terrorist and Other Illicit Financing" identifies vulnerabilities, key threats, and priorities for preventing illicit finance activities within the United States financial system, and builds upon the "2018 National Strategy for Combating Terrorist and Other Illicit Financing" and supporting Risk Assessment. Together, the 2020 Strategy and the 2018 Risk Assessment assist financial institutions in forming their own risk assessments. Neither the 2018 Risk Assessment nor the 2020 Strategy mention the art market. We suggest that the next Risk Assessment includes the art and antiquities and examines the unique risks, threats, and vulnerabilities of the United States art market, building upon the extensive research presented in the United States Senate Permanent Subcommittee on Investigations Committee on Homeland Security and Governmental Affairs staff report: "The Art Industry And U.S. Policies That Undermine Sanctions."

- The Financial Crimes Enforcement Network (FinCen) should conduct extensive outreach to the art market, including nationwide conference calls, local and regional meetings, and online webinars.

In conjunction with action by Congress or the Treasury Department to apply the Bank Secrecy Act to dealers in cultural property, the Financial Crimes Enforcement Network (FinCen) should conduct extensive outreach to the art market, including nationwide conference calls, local and regional meetings, and online webinars. Through such awareness raising, FinCen should seek to educate these key stakeholders about the risks facing their sectors, give them the knowledge and tools needed to fully comply with any regulatory changes, and enlist them as allies in the fight against financial crimes. This awareness training would parallel FinCEN's work on other transnational crimes such as human trafficking.

The mission of the Financial Crimes Enforcement Network is to safeguard the financial system from illicit use, combat money laundering and its related crimes including terrorism, and promote national security through the strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence. This work affirms FinCEN's support of The Department of the Treasury's "Strategic Plan for Fiscal Years 2018-2022" to fulfill its mission to enhance the integrity of financial systems by facilitating the detection and deterrence of financial crime. Specifically, FinCEN supports Treasury Goal 3: Enhance National Security, including Strategic Objective 3.1 (Strategic Threat Disruption) and Strategic Objective 3.2 (Anti-Money Laundering and Combating Financing of Terrorism Framework).[33]

- The Internal Revenue Service (IRS) should require proof of legal title and known ownership history in support of tax deductions for high-value charitable donations or purchases of art or antiquities to or by a museum, other tax-exempt organization, business, or private collector.

Within its role in tax examination, the IRS should issue regulations requiring proof of legal title and known ownership history before granting tax deductions for high-value charitable donations or purchases of art or antiquities to or by a museum, other tax-exempt organization, business, or private collector. While the IRS presently requires evidence of authenticity and physical condition in a mandatory written appraisal by a qualified art appraiser, this information should be expanded to include proof of legal title and full provenance, including whether the art or antiquities originated in a conflict area or passed through a high-risk jurisdiction. The IRS should ensure that art market actors meet their dual statutory reporting requirements under Title 26 and Title 31 when receiving more than $10,000 in cash in a single transaction, or two or more related transactions.

More stringent requirements for tax deductions for art and antiquities would help ensure that purchasers do not deal in stolen property or unintentionally support criminal or violent extremist groups seeking to finance their activities. It would also help ensure that U.S. donors and buyers do not claim tax deductions for stolen property. As this report demonstrates, such AML work would strengthen U.S. national security by curbing corruption and

preventing criminal or violent extremist groups from using stolen art or antiquities to finance their activities, and would increase tax fairness by ensuring that tax deductions related to high-value art or antiquities are not based upon stolen property or overvalued.

The IRS should dedicate additional resources to auditing tax deductions related to donations to or purchases by museums, other tax-exempt organizations, businesses, and private collectors of high-value art or antiquities coming from areas of conflict or other crises. Recent years have witnessed increased efforts by criminal and violent extremist groups to loot such artifacts in conflict areas and sell them to finance their activities. Additionally, tax-write offs for donations to museums remains a key incentive for wealthy individuals seeking tax avoidance and, at times, fraud.[34] Increased IRS audits would not only strengthen U.S. national security efforts to deny needed funds to criminal and violent extremist groups, but would also provide an added incentive for art dealers, private collectors, and others to strengthen their due diligence efforts.

Department of Justice

- The Deputy Attorney General should include cultural property crimes within the purview of the Task Force on Market Integrity and Consumer Fraud, given the threat such crimes pose to the U.S. government, financial system, and public.

  Executive Order 13844 established the Task Force on Market Integrity and Consumer Fraud in 2018. The Task Force brings together the Department of Justice, including U.S. Attorneys' offices and other components, and other law enforcement agencies to combat fraud against consumers and fight corporate fraud that victimizes the general public and the government. The Task Force is chaired by the Deputy Attorney General.

  The Task Force provides guidance for the investigation and prosecution of cases, paying particular attention to fraud affecting the general public, digital currency fraud, health care fraud, tax fraud, money laundering (including the recovery of proceeds), and other financial crimes.[35] Given the Task Force's stated focus on financial crimes such as money laundering, it is appropriate that they include cultural property crimes due to their inextricable link to financial crimes.

- The Department of Justice should establish an office of cultural heritage crimes prosecutors to bring cases against individuals and organizations who commit crimes through the art market, such as antiquities trafficking, money laundering, and fraud.

  Illicit antiquities trade investigations and prosecutions often involve links to organized crime, money laundering, and terrorism. These cases carry broader implications for U.S. foreign policy. Designating specialized attorneys with an expertise in heritage law would help the Department of Justice pursue these actions more effectively. Specialized Federal prosecutors could support law enforcement investigations and increase the number of prosecutions to hold individual and institutional cultural racketeers, money launderers, sanctions evaders, and other financial criminals accountable. These attorneys could offer early legal advice and direction on investigations, and most importantly, formulate effective trial strategies to secure felony convictions. They would be expected to train other prosecutors and investigators, and moreover, could help shape legislation. An initial step could be the creation of a point person at "Main Justice" who is an expert on art and antiquities AML cases. This expert could be consulted by Assistant U.S. Attorneys when bringing these cases anywhere in the country. Eventually, a full system could be developed of special prosecutors that support criminal cases across the country, based on the model used to prosecute wildlife trafficking violations for the department's Environmental Crimes Section.[36]

- The Department of Justice should develop and provide training for U.S. Attorneys' Offices and the Federal judiciary on cultural property crimes, which highlights their financial impact and national security risk, building on the excellent capacity building programs already in place for Federal agents.

  Amplifying excellent capacity building programs already in place for Federal agents, the Department of Justice should develop and provide training for U.S. Attorneys' Offices on methods and the importance of prosecuting cultural property crimes, as well as work with the federal judiciary to develop and provide training on the

significance of these offenses, including financial impact and risks to national security.

Some training infrastructure already exists in the form of "The Prosecution of Cultural Property Crime," an online training program created in conjunction with the State Department, available to Assistant United States Attorneys.[37] The Department of Justice should update and enhance this training resource, or consider developing new training that focuses on the risks and impact on the United States financial system.

- The Department of Justice should develop a written toolkit and/or other guidance for investigators and prosecutors to develop and pursue cultural property cases, including strategies that can be used to target the assets and financial networks of cultural racketeers.

The Department of Justice's Community Relations Service (CRS) facilitates understanding and improving communication in communities facing conflict, and develops communities' ability to independently prevent and resolve future conflicts, and would develop this toolkit. The CRS convenes parties in dialogue to identify issues and develop solutions; provides consultation services including technical assistance, best practices, models, and evidence-based resources; and trains to provide knowledge and skills-based programs.[38] Additionally, the Department of Justice should develop written guidance for overseas U.S. personnel and/or foreign partners on use of such tools in an international context to support cultural property trafficking prosecutions.

- The Department of Justice should develop a methodology to track funds generated from administrative, civil, and criminal penalties and forfeitures related to cultural property and publicize such information in order to quantify the impact of its work.

The Department of Justice already publishes similar information and key performance indicators in their annual Performance Reports. We suggest that the data regarding all types of federal cultural property crime enforcement be gathered and disseminated through similar means.

Federal Law Enforcement

- The Federal Bureau of Investigation and Homeland Security Investigations should increase the focus on financial crime in their existing law enforcement training on art theft and antiquities trafficking. Likewise, all law enforcement agencies that conduct training on financial crimes awareness and investigations should also incorporate the unique risks and opportunities presented by the art market.

Law enforcement must be trained to look at art when doing forfeitures and seizures, in order to get the full value of a seizure and avoid passing over money that is "hiding in plain sight." The FBI and Homeland Security may use already created training by ManchesterCF,[39] Interpol,[40] TRACC,[41] and Loughnane Associates.[42] AML training is included in existing training for Homeland Security Investigations (HSI), Immigrations and Customs Enforcement (ICE), and the Federal Bureau of Investigation (ICE), that is currently focused on awareness. HSI's existing training should be updated to shift focus to practical application training, and include financial crimes beyond trafficking. The FBI's Financial crimes program and training, and money laundering unit, need to be trained to view the art market , and art and antiquities dealers specifically, as institutions that facilitate money laundering.

- When pursuing cultural property theft and trafficking cases as predicate offenses, Homeland Security Investigations (HSI) and the Federal Bureau of Investigations (FBI) should also consider recommending charges of money laundering, if supported by the evidence.

Recommending charges of money laundering will provide the government with the ability to sustain prosecution against criminals should the underlying charges fail. At case initiation, a case agent together with their investigative team will consider the possible violation with which to initiate the investigation. For example, the initial allegation could be an offense applicable to cultural property theft or trafficking. At the point the case is presented before, or referred to, an Assistant United States Attorney (AUSA), the AUSA may consider substituting the violation or adding charges such as money laundering, especially if it appears the possible violation is determined as a specified unlawful activity.

When considering charges of money laundering under 18 U.S.C. § 1956 when pursuing art and antiquities trafficking, agents and AUSAs should particularly consider charges of conspiracy to violate § 1956(a)(1)(A)(i), which criminalizes the knowing participation in any financial transaction that involves the proceeds of a specified unlawful activity, with the intent to promote the carrying on of that specified unlawful activity. This will provide the government with the ability to sustain charges against cultural trafficking when underlying charges (such as drug distribution or conspiracy) fail.[43]

- The FBI, HSI, and other relevant agencies should issue advisories as appropriate to alert local, state, and national law enforcement about fugitives wanted for cultural property crimes or other specific threats.

  Advisories may be issued at any level of law enforcement. In many cases, the advisories begin at the federal level with a broad description, and the specifics are left to be determined on a regional level, by state or local law enforcement. FinCEN would refer to advisories for financial crimes via art and antiquities issued by the federal government can impact what FinCEN refers to when issuing their own advisories, or in consideration of the use of Geographical Tracking Orders (GTOs) if necessary to mandate specific information reporting.

Department of State

- The State Department should expand the mandate of the interagency Cultural Heritage Coordinating Committee (CHCC) to combat financial crimes via art and antiquities.

  One way this might be achieved is through adding a working group on financial crimes. The Cultural Heritage Coordinating Committee (CHCC) was established in 2016 in response to Congress' passing of the Protect and Preserve International Cultural Property Act.[44] The CHCC coordinates diplomatic and law enforcement efforts, as well as participating agencies and institutions, to combat antiquities trafficking and disrupt trafficking networks, especially those linked to terrorist and criminal organizations. They also coordinate efforts to protect against the looting and destruction of cultural property around the world and strengthen the ability of the executive branch to protect and preserve cultural property at risk from instability, conflict, natural disasters and other threats.[45] As with the law enforcement advisories (above), FinCEN would refer to this group's work when they do advisories.

- The State Department should encourage foreign nations to combat financial crimes via art and antiquities, including through the use of bilateral agreements under the Convention on Cultural Property Implementation Act (CPIA).

  The United States enacted the Convention on Cultural Property Implementation Act (CPIA) in 1983 to implement articles 7(b) and 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.[46] In implementing the 1970 UNESCO Convention, Congress recognized that all nations have a shared interest in protecting cultural heritage, and the United States has a particular interest as a center of the art and antiquities trade.[47] The CPIA helps to contribute to the broader international effort to discourage and prohibit the looting and illicit trade of cultural property. Specifically, the CPIA allows foreign governments to request that the United States, through the State Department, impose import restrictions on designated categories of archaeological and ethnographic material.[48] Additionally, the CPIA established the Cultural Property Advisory Committee (CPAC), which investigates each foreign government's request, examining several factors set forth in the statute, then reporting its findings and making recommendations to the President.[49] In addition, CPAC voluntarily solicits public comment and holds a public hearing before deciding whether to recommend that the United States enter into a bilateral agreement or a Memorandum of Understanding (MOU) with the requesting foreign government.

  The President appoints the Committee's eleven members; the members of CPAC represent the main stakeholder groups with two members representing the interests of museums; three members who are experts in archaeology, anthropology, or ethnology; three members who are experts in the international sale of cultural property; and three members who represent the interest of the general public.

United States Government

- The United States Government should adopt all eight recommendations from the report, "The Art Industry and U.S. Policies that Undermine Sanctions," published in July 2020 by the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs.

On July 29, 2020, the U.S. Senate's Committee on Homeland Security and Governmental Affairs – Permanent Subcommittee on Investigations published a staff report, "The Art Industry and U.S. Policies that Undermine Sanctions."[50] The Senate report provides a detailed and insightful analysis of ways in which Specially Designated Nationals (SDNs) avoid sanctions by taking advantage of the lack of regulation of the art market and provides eight recommendations that would make sanctions more effective with respect to combatting art crime. This report would adopt all eight recommendations in the Senate report, with minor reservations.

Economic sanctions can be a powerful tool to fight money laundering and terrorist financing carried out through the art market. Broadly speaking, sanctions are used to support US foreign policy goals by cutting off access to the U.S. economy for specified ("designated") individuals, groups, and entities. Those persons are added to the Specially Designated Nationals List, and all property of theirs that is in the U.S., enters the U.S., or is in the possession of a U.S. persons – citizens, companies, and anyone on U.S. territory – must be frozen, or "blocked." U.S. persons are prohibited from transacting with SDNs.[51]

Certain sanctions programs target countries (e.g. Iran, Cuba, Syria), while others target types of activities (e.g. providing material support for terrorism, carrying out human rights abuses, fueling turmoil in conflict zones). The Treasury Department's Office of Foreign Assets Control (OFAC) implements economic sanctions pursuant to legislation passed by Congress, and executive orders (E.O.s) issued by the White House.

In the past year, sanctions authorities have begun to pay greater attention to how the trade in art and antiquities contributes to the funding of those activities and the laundering of proceeds from them. This report would adopt all eight recommendations in the Senate report, with minor reservations. The Senate report's recommendations are included in italics below, with additional commentary provided following each.

1. *Congress should amend the Bank Secrecy Act to add businesses handling transactions involving high-value art. The art industry is currently not subject to AML requirements under the BSA. The European Union recently required businesses handling art transactions valued at €10,000 or more to comply with AML laws, including verification of the identity of the seller, buyer, and [the ultimate beneficial owner, or] UBO of the art.*[52]

The importance of making the art industry subject to AML requirements is discussed at greater length in this report, at page 12.

2. *Congress should require the Treasury Department to collect beneficial ownership information for companies formed or registered to do business in the United States. This information should be available to law enforcement for investigatory purposes. Beneficial owner information maintained by the Treasury Department should include appropriate privacy and security protections.*

In the sanctions context, having access to beneficial ownership information would enable OFAC to evaluate entities' ties to SDNs. If an entity is majority-owned by an SDN, U.S. persons would be prohibited from doing business with it under OFAC's 50 Percent Rule, which states that an entity owned 50 percent or more by an SDN is itself considered blocked[53] (please also refer to the proposed changes to the 50 Percent Rule in Recommendation 5 in this subsection). This would place pressure on art buyers, sellers, and intermediaries such as auction houses, galleries, and advisors, to conduct more effective due diligence on

their business transactions – including determining who the ultimate beneficial owner (UBO) of a company or artwork is – to ensure that those transactions will not violate sanctions.

3. *When imposing sanctions on an individual, the Treasury Department should consider routinely imposing sanctions on the individual's immediate family members.*

The Senate report includes a detailed case study of how two Russian oligarch brothers, Arkady and Boris Rotenberg, appear to have used transactions in high-value art to evade U.S. sanctions against them. One of the ways they did this was to transfer their financial interests in some of the entities they owned to immediate family members who were not subject to sanctions, including to Arkady's son, Igor. Certain of these entities were used to transfer funds to pay for high-value art.[54] OFAC did not sanction Igor Rotenberg until 2018, but it did so for acquiring significant assets from Arkady. Imposing concurrent sanctions on the target individual and his immediate family members would prevent such evasive transfers.

4. *The Treasury Department should implement and announce sanctions concurrently.*

The White House and OFAC frequently announce new sanctions and add key individuals and entities to the SDN List at the same time, but this is not always the case. The Senate report notes that the Rotenbergs were made SDNs on March 20, 2014, but that the sanctions regime under which they were designated was announced four days earlier, and in that four-day window, millions of dollars were transferred through the U.S. and back to Russia.[55] By implementing and announcing sanctions concurrently, such windows for sanctions evasion would be eliminated.

5. *The Treasury Department should lower or remove the ownership threshold for blocking companies owned by sanctioned individuals. According to guidance by the Treasury Department, a company is blocked if it is majority owned by a sanctioned individual. If the sanctioned individual has a minority ownership in a company, that company is not blocked, even if the sanctioned individual owns 49 percent of the company.*

OFAC should lower, but not remove, the ownership threshold. Under OFAC's current 50 Percent Rule, described above at Recommendation 2, entities that are majority-owned by an SDN are themselves blocked. In the past, where individuals who own majority stakes in companies that are integral to the global economy were designated, the automatic blocking of those companies has caused economic shockwaves far beyond the designated individual.[56] If OFAC's ownership threshold is lowered significantly, the potential negative economic effects could be enormous and compliance would become even more complicated.

OFAC should lower the threshold to a lesser extent, so that entities over which SDNs maintain control, or retain significant but non-majority financial interest, do not provide those SDNs with meaningful access to the U.S. economy.

6. *The Treasury Department should maximize its use of suspicious activity reports ("SARs") filed by financial institutions. Under the BSA, financial institutions are required to file SARs with the Treasury Department's Financial Crimes Enforcement Network. These reports document financial transactions that appear to involve money laundering or terrorist financing, among other illicit activities. The Treasury Department should more effectively mine SARs for information related to Specially Designated Nationals and add these entities to the Specially Designated Nationals and Blocked Persons List or alert other financial institutions of the risks of transacting with the entities. This would increase the effectiveness of imposing sanctions.*

By using SARs filed by financial institutions, including art industry institutions that should be made subject to AML requirements, the Treasury Department would have more information through which to trace transactions connected with the art market. This, in turn, would enable OFAC to pinpoint buyers and sellers who use high-value art to carry out activities subject to sanctions, as well as impose penalties on, or even designate, the advisers, auction houses, galleries, and other intermediaries who facilitate illicit transactions.

7. *OFAC should issue comprehensive guidance on the steps auction houses and art dealers should take to ensure they are not doing business with sanctioned individuals or entities. That guidance should clarify what steps auction houses and art dealers should take to determine whether a person is the principal seller or purchaser of art or is acting on behalf of an undisclosed client, and which person should be subject to a due diligence review.*

OFAC provides written guidance to industries that are more exposed to sanctions issues.[57] This guidance typically lays out OFAC's compliance expectations and further resources for understanding and complying with U.S. sanctions. Such guidance would be instrumental for setting sanctions compliance standards for the art industry.

8. *OFAC should issue guidance interpreting the informational exception to the International Emergency Economic Powers Act related to "artworks."*[58]

Further, the Senate report recommends that OFAC's guidance should "interpret the artworks exception narrowly to encompass matters with informational content, while excluding typical works of art such as paintings, etchings, and sculpture." However, this goes too far.

The informational exception to IEEPA, known as the Berman Amendment, was intended to protect communication with people in foreign countries. In his statement on the Amendment, Representative Howard L. Berman said that "the insignificant sums of money . . . from trade in books, works of art, and other informational materials, cannot be a valid reason for curtailing the rights of Americans, or for cutting off the flow of ideas . . . ."[59]

What the Senate describes as "typical works of art" can certainly contain informational content and serve as an important form of communication. Such art should not be categorically excluded from the informational exception. Instead, OFAC's guidance on artwork should distinguish between the exchange of art intended as part of the flow of ideas and the trade in art-as-commodity. The former will usually involve only "insignificant sums of money," while the latter will involve vast dollar amounts; art valued at more than $10,000 should be subject to sanctions regulation, to complement the reporting requirements under the BSA. Alternatively, Congress should consider amending IEEPA to reflect these distinctions.

Financial Industry

- The financial sector should increase awareness of the vulnerabilities facing it from criminal misuse of the art market, as well as how to combat them. This includes highlighting relevant threats in their risk analyses and incorporating them in existing staff training.

Training, whether online or in person, may focus on object and/or customer interrogation for authenticity. An online program, educating financial industry stakeholders about the risks of money laundering and terrorist financing unique to the art market, and helping them design and monitor controls to mitigate this risk, may be developed. Training would include guidelines, red flags, typologies, and what to look out for at any level.

Funding for these training sessions could be obtained by a single organization. This organization should be identified as a thought leader in the community. This organization could build the capital required to organize and stage these trainings, and draw the necessary elements from the community to build an effective risk-based approach and training program. The organization would be responsible for working with the art and antiquities community to assess and update the training for the financial institutions and develop ongoing intelligence reports and enhancements to the program. The organization would keep up-to-date typologies and guidelines, and continue to share them on a consistent and on-going basis. An oversight board from the community would function as a quality control check. Association of Certified Anti-Money Laundering Specialists (ACAMS) and the Association of Certified Fraud Examiners (ACFE) could provide structure.

- As they have done for human trafficking, banks and credit card companies should develop systems for identifying and acting upon financial crimes via cultural property, which could be triggered by suspicious patterns of payment, spending, deposits, travel, and other ways of moving money.

  Financial institutions have done significant research and analysis to understand trafficking operations and design systems that can detect potential financial indicators of human trafficking. In 2014, the Financial Crimes Enforcement Network (FinCEN) issued an advisory that included a list of potential indicators of trafficking based on this work. Following the release of this advisory, suspicious activity reports (SARs) related to human trafficking increased by 900 percent. Many major financial institutions have committed significant energy to refining and expanding on these indicators in an attempt to ensure such reports are useful in investigations, particularly those related to human trafficking. Given the huge variety of how trafficking situations occur and how traffickers adapt their operations over time, developing systems tailored to reflect the nuances of each type of trafficking is extremely challenging. The financial services industry should be applauded for its innovative efforts to meet this challenge. Building on the similarities of the financial indicators of human trafficking and of antiquities trafficking, the financial services industries can easily build the initial SARs for antiquities trafficking.

- Compliance software already in use by banks should be adapted for identifying and preventing financial crimes via art and antiquities.

  Compliance software already in use by banks should be adapted for use in the art business,[60] as auction houses and dealers already have much of the information they need to satisfy banks, insurers, and the Internal Revenue Service. Financial institutions should be aware of advances in technology and require their software companies to remain up to date. Financial institutions may follow the example of JewelPAC, a compliance software developed jointly by Jewelers Mutual Group and the Jeweler's Vigilance Committee.[61]

- Financial institutions should use existing suspicious activity reporting mechanisms to provide the appropriate government agency with intelligence related to cultural property crimes via art and antiquities as permitted by law.

  Relevant intelligence agencies such as the FBI and HSI would then review intelligence alerts received, and take action including due diligence screening and steps to investigate and prosecute suspicious financial activity related to art and antiquities.

- The financial industry is encouraged to create risk-based "Know Your Importer/Exporter" models to address the unique challenges posed by trade-based money laundering (TBML). These could draw from recent TBML, highlighting known risk factors such as geography, ownership structure, product lines, and transactional activity.

  Financial industry professionals could review recent cases of when TBML was used to legitimize criminal proceeds from trafficking in products such as drugs, endangered wildlife, and black-market commodities to create risk-based "Know Your Importer/Exporter" anti-TBML models based on factors such as geography, ownership structure, product lines, and transactional activity.

  By soliciting existing reports from experts, they could use data analytics to identify red flags, which might include invoice manipulation, use of high-risk transshipment points, and 'carousel' transactions. Insights gathered could be used to create risk-based

"Know Your Importer/Exporter" anti-TBML models based on known risk factors.

The OECD has created a due diligence framework for investment bankers that tracks alongside their due diligence guidelines for companies mining in high-conflict minerals, which could provide guidance and a comparable structure for a due diligence framework. The OECD guidelines for the mining industry, In summary, establishes a 5-step framework to help the investment industry implement Responsible Business Conduct (RBC) practices when dealing with minerals which have a higher risk of originating in high conflict regions like the Democratic Republic of the Congo.[62]

A white paper geared towards small and mid-sized banks addressing these issues could be published, authored by an industry association or expert.

Foreign and International Law Enforcement

- Interpol should develop a new "Purple Notice" to share alerts and requests for information about financial crimes committed via art and antiquities.

  Utilizing their color-coded notices[63] that enable countries to share alerts and requests for information, Interpol should develop a Purple Notice alert for financial crimes committed via art and antiquities. A Purple Notice is an international alert disseminated among Interpol member countries that seeks or provides information on modus operandi, objects, and concealment methods used by criminals. Purple notices do not seek the location or arrest of wanted persons, but instead are used to collect information. Notices offer high visibility for serious crimes, and are circulated to all member countries at the request of a country or authorized international entity. Interpol should use purple notices and other intergovernmental channels to supply information to member countries on art related crime, thereby providing opportunities for police to contact art auction or gallery owners. For example, a purple notice could alert member countries to evidence that criminal or violent extremist groups are looting art or antiquities from conflict zones and may be attempting to sell such artifacts to finance their activities.

- Interpol member countries should request that the organization issue "Red Notices" to alert police worldwide about international fugitives wanted for cultural property crimes.

  Member countries should always request Interpol to distribute Red Notices for individuals wanted for prosecution for financial crimes committed via art and antiquities. Red Notices are a request to law enforcement worldwide to locate and arrest persons wanted for prosecution or to serve a sentence, pending extradition, surrender, or similar legal action. A Red Notice contains information to identify the wanted person (their name, date of birth, nationality, photographs, fingerprints, etc), and contains information related to the crime they are wanted for. Red Notices are distributed by Interpol at the request of a member country, and must comply with Interpol's Constitution and Rules. It is important to note that a Red Notice is **not** an international arrest warrant.[64]

- Interpol member states should be vigilant in reporting missing cultural property for immediate inclusion in the organization's Stolen Works of Art Database.

  Interpol's Stolen Works of Art database is the only database at the international level with certified police information on stolen and missing works of art. It contains descriptions and pictures of more than 50,000 items. Countries must send Interpol information about stolen and missing works of art, and Interpol's experts add the works to the database. Only authorized entities such as member states, UNESCO, ICOM and ICCROM may provide information about the stolen or missing works to be added to the database, and only fully identifiable objects are entered.[65]

- National customs and law enforcement agencies should contribute data on their cultural property seizures to the World Customs Organization (WCO), for inclusion in its annual Illicit Trade Report.

  Including data on cultural property seizures in the WCO's annual report will shed better light on criminal network operations around the globe. In 2019, C4ADS partnered with the World Customs

Organization to produce the Illicit Trade Report. Analyzing thousands of cases of illicit trade using data submitted by 153 customs administrations around the world, the seizure data and report sheds light on illicit network operations and serves as a resource for enforcement action. The Illicit Trade Report provides unique insight into the state of global illicit markets, diving into the what, where, and how of global trafficking in six key enforcement areas: cultural heritage; drugs; environment; intellectual property rights, health and safety; revenue; and security.[66]

Financial Action Task Force (FATF)

- FATF should generate a typology report to identify money laundering and terrorist financing vulnerabilities related to the art and antiquities trade.

  In FATF's 2015-16 annual report, they stated that one of the outcomes they were trying to achieve was to combat terrorist financing by understanding the risk, and conduct a typologies exercise at the global level. As the international standard-setter against money laundering and terrorist financing, FATF should convene a typologies meeting on the art and antiquities sector and invite a variety of organizations and international stakeholders to help it generate a typology report to identify money laundering and terrorist financing vulnerabilities related to the art and antiquities trade. The reports should target various stakeholders in the art and antiquities 'pipeline,' including ancillary services such as storage, shipping, customs brokers, facilities managers, security personnel, and accountants, among others. The report should include case studies demonstrating the creative methods that criminals have used to exploit the art and antiquities trade for the purpose of money laundering and terrorist financing, and provide guidance on how to mitigate risks and vulnerabilities.[67]

- FATF should specifically identify dealers in cultural property as Designated Non-Financial Businesses and Professions (DNFBPs) (a term of art for 'non-financial' sectors that are highly susceptible to money laundering and terrorist financing).

  FATF should strengthen its recommendations to ensure high-value luxury sectors are adequately covered by global standards.

  Specifically, FATF should reevaluate Recommendation 22, which establishes the sectors considered Designated Non-Financial Business and Professions (DNFBPs) (a term of art for "non-financial" sectors that are highly susceptible to money laundering and terrorist financing), to include art and antiquities dealers. At present, art and antiquities dealers are not included on this list. Doing so will ensure high-value luxury sectors are adequately covered by global standards, and will ensure that member states apply its guidelines to the art market.

Art and Antiquities Market Participants

For the purposes of these recommendations, we chose to be consistent with the European Union's Fifth Anti-Money Laundering Directive, thus 'Art and Antiquities Market Participants' includes persons storing, trading, or acting as intermediaries in the trade of works of art, including galleries, auction houses, and freeports, where the value of the transaction or series of linked transactions amounts to EUR 10,000 or more.

- Art market actors should adapt a risk-based approach to assess and understand their exposure to money laundering, which would involve determining present exposures to risk and an acceptable level of risk, designing and implementing controls to mitigate these assessed risks, monitoring the effectiveness of these controls, and recording what has been done and why.

  Dealers of art, antiquities, rare books, and manuscripts can develop methods to assess and understand their exposures, individually and as a community, to money laundering and terrorist financing, and to mitigate risk. This "risk-based approach" would be tailored to each individual business, and could target attention and available resources to persons or activities most at risk of being involved in criminal activity. Developing the risk-based approach would involve determining present exposures to risk, considering mitigation actions, as well as determining what is an acceptable level of risk. The approach could identify the risks of money laundering and terrorist-financing that are relevant to the business. It would assess the risks posed by particular clients and their underlying beneficial owners, services, financial methods, delivery channels, and geographical areas of operation, including the location of the

seller, the artwork(s), and the funding mechanism. Beneficial ownership requirements should be imposed in accordance with FATF, the Sixth EU Money Laundering Directive and applicable domestic law, and this information should be summarized in a consultation document. Controls to mitigate these assessed risks could be designed and implemented. A tiered approach may be taken, which assigns risks to various types of products, regions, and/or customer populations. The AML program and controls required would be tailored to the tier in which a business operates. The effectiveness and implementation of the controls should be monitored, recording what has been done, and why. This information could be gathered from a risk matrix assessment.

Staff training is a critical component to any risk-based approach and would align with the risk program and policy established by the business, either in self-development or consistent with whatever regulatory or industry standards are established.

- Art market actors should identify and verify clients as part of effective customer due diligence. This should include a form of identification, as well as details of beneficial owners and controllers for cultural objects and legal entities alike.

  Beneficial ownership refers to the natural person who ultimately owns or controls a transaction, legal entity, or arrangement (such as a company, trust or foundation). The art market should impose beneficial ownership requirements in accordance with FATF, the EU's Fifth Anti-Money Laundering Directive (5AMLD), the UK's Money Laundering and Terrorist Financing (Amendment) Regulations 2019, and applicable domestic law. FATF has published best practices that clearly differentiates between basic ownership information (about the immediate legal owners of a company or trust), and beneficial ownership information (about the natural person(s) who ultimately own or control it). They also clarify that having accurate and up-to-date basic information about a legal person or legal arrangement is a fundamental prerequisite for identifying the ultimate beneficial owners, and require international cooperation in relation to ownership information. 5AMLD and the UK's regulations build upon this, and require that EU Member States allow access to beneficial ownership details on corporate and other entities in a coordinated manner. To balance the need for a public register with confidentiality and data protection rules, 5AMLD requires that the information available on the public register be specific and limited.

  Clients may be identified and verified. Businesses will need to confirm at certain value levels with whom they do business, performing effective customer due diligence. This is typically done by collecting two forms of identification, such as a passport and utility bill for individuals, and formation documents and details of beneficial owners and controllers for legal entities. In the United States, there is no central register of publicly available information regarding business ownership. Certificates of ownership may merely give the name of the organizer, not who controls the funds, therefore business's client identification records must include details of the beneficial owner. Businesses may keep records of a client's identification for at least 5 years following the completion of a transaction, or until the end of the business relationship. In the interest of data protection laws and privacy, the buyer may be advised that they will need to voluntarily supply Know Your Customer (KYC) information and this information will be verified in a due diligence process. As when one opens a bank account, consent is given, and failing to comply or providing non-verifiable information prevents the account from being opened. Businesses operating internationally must already perform this customer due-diligence and data collection in compliance with the EU's Fifth Anti-Money Laundering Directive and the UK's Money Laundering and Terrorist Financing (Amendment) Regulations 2019.

- Art market actors are encouraged to adopt an anti-money laundering statement to protect their businesses from a wide range of financial crimes and reputational harm, as well as resulting civil and criminal government penalties and related sanctions by the government. Businesses should consider appointing a Money Laundering Reporting Officer (MLRO) as a point of contact for all anti-money laundering compliance activities and concerns.

  - Businesses are encouraged to adopt an AML policy statement. This policy could be modeled after the work of the Jeweler's Vigilance Committee[68] and similar statements by gemstone and precious metal dealers. The policy would explain how risks to the business are assessed, how the business could perform

client due diligence, training, and record-keeping functions. Record keeping should be in accordance with existing FATF requirements.

Although art/antiquities dealers are not legally required to adopt such a statement, doing so is a value-added proposition, protecting the business from illicit trade and money laundering (and any related sanction actions by the government), lending greater credibility to business practices, differentiating the business for consumers. and staying abreast of regulatory trends.

Museums and institutions are also encouraged to adopt an AML policy statement. Due to their differing missions, the policy statement will look different from that of art and antiquities dealers. Museums have many risks, such as their purchasing risk, storage risk, counterfeit risk, and others - all of which would benefit from a detailed explanation of how these risks are assessed, and how the institution performs due diligence, training, and record-keeping functions.

- Business may appoint a Money Laundering Reporting Officer (MLRO),[69] tasked with executing the business's risk mitigation plan. Alternatively, this role could be outsourced to assist in the risk assessment process and building of internal processes to support business objectives.[70] The MLRO need not be a full-time position, and may be tasked to an individual with other job responsibilities. The objective of appointing an MLRO is to provide a signature on business documents that will provide a starting investigative point should a transaction be flagged. In the case of small businesses, a number of businesses may choose to share one MLRO. The MLRO would be the point of contact within the business for all things related to AML compliance, and have overall responsibility for implementing AML measures including reporting knowledge or suspicion of money laundering.

    i. Staff may be trained to identify suspicious transactions and communicate them to the MLRO. This training would be contingent on the risk assessment model and acceptable level of risk determination set by the business.

    ii. MLRO reporting would happen according to business structure. The MLRO would first report to the highest levels in the business; in the case of small businesses, wherein the owner is the MLRO, he or she would report to an attorney or other outside resource.

    iii. The next step would be to report to the relevant agency, varying by jurisdiction.

    iv. If the MLRO finds him or herself reporting often, then the risk model is not effective and the owner should reconsider types of transactions in which they wish to engage.

- For Customer Due Diligence (CDD) considerations at art fairs and gallery events in the United States, guests should be required to pre-register and receive pre-approval before purchasing a piece. (For those operating internationally, this is already required).

    For CDD considerations at art fairs and gallery events, where a visitor might enter and leave town the next day, guests could be required to pre-register and receive pre-approval before purchasing a piece. For those operating internationally, this is already required. Requirements would be consistent with AML/USB and made clear to the buyer, e.g. that any transaction above $2,000 USD requires the business to collect and register customer information, and any transaction above $10,000 USD for single and linked purchases is subject to pre-approval in order for the buyer to take immediate ownership of the item. Alternatively, the item could be held until effective due diligence is performed, and then shipped. While it is impossible to confirm the source of funds on the spot, sellers may take certain measures to determine they are not dealing with a sanctioned individual. Sellers may make a copy of the buyer's ID, such as a driver's license, and subsequently run an OFAC search to immediately determine the status of the individual. The time needed for advance notice of a prospective buyer and degree of due diligence should be within the risk profile of the business. The degree of due-diligence may be dependent on the type of customer and transaction, and the tools available to validate the buyer's identification.[71] For smaller purchases, electronic validation of a driver's license is fast and efficient. For larger purchases, and especially purchases from new customers, more time may be requested by the seller to validate the identity of the prospective customer.

COVID-19 has changed the landscape of art fairs and in-person gallery experiences, and many are moving to online viewings. This merges these CDD concerns with those of online marketplaces, discussed in the Online Marketplaces section.

Art Industry Associations

- Art industry associations are encouraged to develop a training program establishing common professional standards to educate businesses about the risks of financial crimes, as well as how to mitigate them, including guidelines, red flags, and typologies.

  Businesses should develop a training program to establish a professional standards level-set. Training, whether online or in person, would allow for a common standard. Training may focus on object and/or customer interrogation for authenticity.[72] An online program, educating business owners about the risks of money laundering/terrorist financing, and helping them design and monitor controls to mitigate this risk, may be developed. Training would include guidelines, red flags at any level of a transaction, and typologies.[73]

- Art industry associations should consider establishing a collaborative consortium that securely pools data and technology to advise on the implementation and management of Anti-Money Laundering (AML) compliance programs, including centralized tracking of beneficial ownership, so that art specialists can train their efforts on art rather than policing financial crime.

  Art industry associations, including the International Art Dealers in Ancient Art, the Art Dealers Association of America (ADAA), the European Fine Art Fair (TEFAF), and the Confédération Internationale des Négociants en Oeuvres d'Art (CINOA), could create such a collaborative consortium. The consortium could be a point where the collective concerns of the art market can be consolidated for self-regulated correction and government coordination.

  The consortium could securely pool data, technology, and human resources (such as Money Laundering Reporting Officers) to implement and manage anti-money laundering compliance programs. In doing so, smaller businesses could concentrate their efforts on their businesses, and would not need to bear the financial and time burden of policing financial crimes on their own. A collaborative consortium has the benefit of reducing the burden on individual businesses (especially smaller businesses with fewer resources), and furthers efforts to make the art market more resilient to financial crimes and thereby, more profitable.[74]

  This consortium would support due diligence activities, access to online data resources for analysis and review, and coordination with law enforcement for effective referral, thereby supplying due diligence tools that may not be affordable to smaller players in the art and financial industries. It could also serve to provide background investigation services for employees to reduce the risk of insider threat. The consortium could provide expertise on risk assessment business development and training, and educate the trade about financial crimes. Businesses' individual AML compliance programs would remain under the control of the companies in which they operate, as acceptable risk levels, areas of market, and necessary operational decisions will vary by business.

  A database should be developed and controlled by the consortium. The database will provide a centralized repository in which anyone who wants to transact must register. This database would provide centralized tracking of beneficial ownership and guidelines for higher risk transactions.[75] In addition, the centralized database should register and certify art dealers and auction houses. This database should be available and accessible to art dealers and auction houses of all sizes; thus making the burden of a risk-based approach accessible to smaller businesses, and protecting the industry at large.

  The consortium would not itself provide services, but would provide referrals to industry specialists. The consortium could function as a mode of outreach for the financial industry, with expertise only a phone call away. This would allow for consistent messaging from the art community to the financial industry community about issues and challenges, and facilitate understanding for all parties.

- A group modeled after the Jewelers Vigilance Committee could be created, which would provide guidance to art dealers in understanding compliance obligations, creating an AML risk assessment program and policy, and educating staff.

  The commercial art industry could create a group modeled after the Jewelers Vigilance Committee, which would provide guidance to art dealers in understanding compliance obligations, creating an AML risk assessment program and policy, and educating staff.[76] Program, policy, and education structures will be similar to those described in the Art & Antiquities Market Participants recommendations, pages 23-26.

- Auction houses, art dealers, and art industry associations should explore adopting blockchain technologies, which store histories of sale, ownership, and movement, as well as authenticating and validating art. A blockchain register would ideally be handled by an independent party, who adds to a collection of data that can be made available to members of the consortium upon request. The proposed consortium (above) could create such a registry.

  Auction houses and art dealers could utilize blockchain technologies to secure art transactions by storing histories of sale, ownership, and movement, as well as authenticating and validating art. At the point of sale, the hard copy of provenance converts to a digital record that will be read electronically by the receiving organization to prepare for electronic input. The original "hard copy" record of provenance remains with the submitter. The blockchain register should be handled by an independent party, who adds to a collection of data that can be made available to members of the consortium upon request. The consortium could create this blockchain registry.

Online Art and Antiquities Marketplaces

Online Marketplaces are a major global venue for art market transactions and are vulnerable to money laundering.[77] "Online marketplaces" includes websites such as eBay, Amazon, craigslist, and etsy, as well as Facebook, Instagram, and WhatsApp where transactions take place in direct messages, using ancillary services like PayPal to complete the transaction. While online marketplaces may be subject to the recommendations we have made for the art market, they also have unique challenges and opportunities and thus warrant their own specific recommendations.

- Online marketplaces of art and antiquities are encouraged to build specific algorithms to identify and prevent criminal misuse of their platforms, while also protecting their consumers from purchasing illicit, faked, or forged cultural objects. These algorithms would automatically raise red flags for listing content and behaviors that are indicative of suspicious sellers, transactions, or misleading and/or inaccurate descriptions of art and antiquities. It should then trigger action by the marketplace, which could range from removing the listing to reporting a suspicious seller to the authorities.

  Tracking of images used in sales must be more vigilant to track reproduced images, which can signify an illicit item has entered the market. Images used in sales should be run through existing search engines to perform a cursory search to determine if the image is a replication, and existing algorithms for multiple object tracking can be modified to specifically track images of antiquities via machine learning approaches.[78] These machine learning algorithms can determine if an image of an object has been photoshopped into new backgrounds of galleries or more professional surroundings to obscure their illicit origins and make the seller appear more legitimate.

  This algorithm will automatically raise red flags for listing behaviors that are indicative of suspicious individuals, transactions, or types of art and antiquities. It should then trigger action by the marketplace, which could range from freezing the listing to reporting it to the authorities. Online marketplaces should incorporate key learnings from previous research to inform algorithms that assist in identifying dubious listings and bad actors so they can then take appropriate action. The algorithm will look at

listing behaviors that are indicative of illicit items entering the marketplace. When a dubious listing or suspicious actions are found by the algorithm, online marketplaces can then take appropriate action, either by removing the listing from the site, asking the seller to provide more information about the object for sale (i.e. provenance), or penalizing those sellers who consistently act outside of the Art Selling Policy.

Online Marketplaces may implement changes to their Art Selling Policies that assist the prevention of fraudulent listings and use the resulting data to inform and build an algorithm to validate art and antiquities transactions. The algorithm examines a variety of digital red flags for signs that an object, seller, or transaction is suspicious. In the example below, the algorithmic looks at listing behaviors, specifically with regard to fakes and forgeries in fine art, and recommends appropriate consequences. In addition to the criteria below, we also suggest looking at the geographic location of the listings, which may indicate a problematic source country. This does not need to be limited to fakes and forgeries, and may be used to detect a wide variety of suspicious things.[79] The chart below is an example of what behaviors might be flagged by the algorithm, and what the marketplace may do in response.[80]

#	SUSPICIOUS: Issue Warning to Seller	EGREGIOUS: Remove and report listing
a.	Inflating value, scarcity or investment potential to imply authenticity	Obvious forgery listed as authentic (usually top tier artist)
b.	Referred to as (After) or “in the manner of” within text, but categorized or listed as Original and/or Signed	Implying authenticity, but directly trying to skirt responsibility by referring to policy language in listing
c.	Borderline deceptive practices; use of confusing or contradictory language	Obviously deceptive language
d.	Certificate Of Authenticity (COA) included, but form unknown or non-authoritative source	Described as original with no material to support it
e.	Mentioning COA/Provenance – but not picturing it or is unknown	COA and/or title insurance that is from a known offender
f.	Insufficient evidence to support authenticity (unknown, 2nd tier artist)	Insufficient evidence to to support authenticity (top tier artists)
g.	No specific edition number referenced for Serial artwork categorized as Original and/or Signed	Obscuring or blocking out edition number
h.	Excessive use of cut/paste artist bio and support information	Photoshopping the image (into a frame, interior or gallery setting)

- Online marketplaces should authenticate all sellers and buyers, requiring proof of identity before any high-value transaction ("pre-registration"), and keep these records of their client's identification securely. Additionally, like all market players, online platforms should perform effective vetting and due diligence, including following appropriate Know-Your-Customer (KYC) protocols for customers and clients.

  Like art and antiquities dealers, galleries, and auction houses, online marketplaces will need to confirm at certain value levels with whom they do business, performing effective customer due diligence. Online marketplaces have the unique ability to verify client identities and check for suspicious activity well before a transaction takes place, and may prohibit anyone from transacting on their marketplace in advance of those actors listing, selling, or buying. These actions will determine that the clients are not sanctioned individuals, and enable businesses to keep records of their clients identification. This is similar to the EU's 5th anti-money laundering directive, which requires that dealers participating in transactions of €10,000 (£8,500 or $11,000) verify client identities, check for suspicious activity, and keep secure records.

  Current and developing blockchain technology may also be utilized to accomplish this, in addition to using pre-registration techniques. Blockchain is a persistent, transparent, public append-only ledger. It is a system to which data may only be added; previous data within it cannot ever be changed. It provides a permanent, immutable record keeping system.

  As online marketplaces are not selling their own goods and services, and are thus particularly vulnerable to a wide range of financial crimes, they should follow effective vetting and due diligence with regard to those selling on their marketplaces and Know-Your-Customer protocols for customers and clients as applicable.

  Online marketplaces should be encouraged to follow the money services business (MSB) model of KYC standards. Money services businesses must conduct KYC at a $3,000 threshold, but may keep these records in house; at $10,000, however, they must report. The EU 5th AML Directive designates art/antiquities dealers as money services businesses. These regulations are underway in the EU, and are beginning to work their way through in the US via HR 2513: Corporate Transparency Act of 2019.[81] Despite the overall goal of the Bank Secrecy Act to keep regulations from being unduly burdensome, we suggest that online marketplaces adopt a lower threshold of $3,000 due to the nature of online sales having more transactions at a lower-price point. Very few transactions for the online sale of antiquities reach $10,000 or above, for example, antique coins sell for far less.

- Online marketplaces should discourage purchases of high-risk cultural objects—those that are known for being chronically looted, forged, or faked—through a consumer awareness campaign (ie: You Can't Fake Fashion)[82] as well as provide additional consumer buying guidelines (ie: "How to Buy a Warhol Print").[83]

  Some artists and mediums are well known in the art market for being chronically forged and duplicated. Artists such as Chagall, Dali, Haring, Rockwell, and Warhol suffer from chronic duplication. Listings in these highly dubious print categories should be deterred. Listings for works by artists known to be frequently forged, such as Picasso, Matisse, and Renoir, should be deterred as well. Listings for artists and mediums in these categories are difficult to authenticate, and in addition to using algorithmic authentication paths, vetting and due diligence with regard to those selling on marketplaces, and stringent KYC protocols, these listings could be reserved for premier auction clients who demonstrate independent ability to vet art objects and guarantee authenticity.[84]

- For sales of cultural objects, online marketplaces should be required to display in clear view an unambiguous disclaimer warning consumers of the risks and how to mitigate them.

  In 2006, UNESCO, INTERPOL and ICOM issued a joint statement in response to growing concerns about the Internet market.[85] The statement included several recommendations of actions to help prevent the sale of illicitly traded antiquities, including a disclaimer to be posted on any website that offers antiquities for sale. The full text of the disclaimer follows: *With regard to cultural objects proposed for sale, and before buying them, buyers are advised to: i) check and request a verification of the licit provenance of the object, including documents providing evidence of legal export*

(and possibly import) of the object likely to have been imported; ii) request evidence of the seller's legal title. In case of doubt, check primarily with the national authorities of the country of origin and INTERPOL, and possibly with UNESCO or ICOM.[86]

Online marketplaces should be required to display in clear view an unambiguous statement about acceptable provenance of objects sold. The statement must be written in layman's terms and display in clear view mandatory marketplace standards regarding acceptable provenance. It should clearly state that certificates of title and/or appraisals do not justify claims of authenticity. We suggest that a clickwrap agreement be included to demonstrate that users have read the statement and are aware of provenance standards. Online marketplaces should also display a warning about art and antiquities' potential ties to financial crimes, and explain why neither authenticity nor legal title cannot be guaranteed without verifiable provenance and expert examination.

Museums

I. Museums associations should develop guidelines, reporting requirements, and a registry for their members who deaccession objects—especially those that will be entering the stream of commerce—in order to identify and prevent problems over issues such as title or authenticity.

   a. Museum associations such as the American Alliance of Museums (AAM) and Association of Art Museum Directors (AAMD) should develop guidelines, reporting requirements, and a registry for their members who deaccession any objects in their collections, so that an early detection system will be in place and records available should problems arise later in the chain of ownership. Reports on deaccession should be open for public review.

      In light of Covid-19 and the AAMD's recent statement that it will avoid sanctioning any museum if deaccession-related transactions occurring between April 15, 2020 and April 10, 2022 are to support operating expenses (normally, disallowed under AAMD ethical guidelines), the need for such a registry is urgent. This is especially critical as it is predicted that a third of museums in the United States will close as a result of Covid-19.[87] The reporting obligations and registry could replicate the structure of the AAMD's existing object registry, "New Acquisitions of Archaeological Material and Works of Ancient Art."[88] The registry and reports on deaccession should be publicly available for review and scrutiny. Guidelines should also take into consideration the potential of deaccessioning items of considered 'culturally significant' and whether they should be afforded special status, particular or more stringent requirements for deaccession, and a notice period during which possible claimants (State actors) to come forward and lay claim to those objects before they are sold on the private market. Such precautions would benefit the art market as well, as they would help to avoid embarrassing scenes, seizures, and costly litigation at auction houses.[89]

      Because chain of ownership is essential to conducting requisite due diligence and KYC protocols, it is important that museums' records of an object's ownership and history are attached to the object when it enters the private art market.

Roy Lichtenstein's "Modern Painting with Yellow Interweave," used by Edemar Cid Ferreira to launder some of the $1 billion he stole from Brazil's Banco Santos.

NEXT STEPS

As this report makes clear, there are many immediate and concrete steps that can be taken to bar criminals from exploiting the $28.3 billion American art market, forty-four of which are laid out here. We urge the U.S. government to work with the private sector in implementing these recommendations. We believe they will do much to safeguard the United States' national security and economic integrity —as well as strengthen its responsible art market. However, it is important to recognize that their success will depend on adequate resources and education being made available, not only for their implementation, but for ongoing support between all agencies and stakeholders.

We look forward to working with our Task Force members and other stakeholders to begin realizing these proposed solutions. In furtherance of these efforts, we will be following up with tool kit to provide additional information and resources. We hope that you will join us in this work. Whether bad actors profit at the expense of legitimate businesses hinges on how governments, law enforcement, and responsible market players rise to the many challenges now facing the art world. As the largest art market, making up forty four percent of the global total, the United States has a unique opportunity to be a global leader.

We stand ready to assist in this effort.

In developing these recommendations, the Task Force drew on centuries of combined experience, dozens of interviews with outside experts and stakeholders, and extensive legal and scholarly research. The Antiquities Coalition is grateful to the members of the Task Force for their dedication to this effort. We are honored to have partnered with such a diverse group, including leaders in the art, financial sector, and legal communities, as well as former law enforcement and government officials. We are also grateful to the many others, whose names do not appear in these pages, but generously shared their expertise and experience. Their assistance has been invaluable. Any mistakes are ours and ours alone.

GLOSSARY

Algorithmic authentication path: A mechanism that provides confidence that the user is communicating with what the user intended to communicate with, ensuring that attackers can't intercept or modify whatever information is being communicated. As a security architecture concept, it can be implemented with any technical safeguards suitable for a particular environment and risk profile.[90]

Blockchain Technologies: A blockchain is a growing list of records, called blocks, that are linked using cryptography. Each block contains a cryptographic hash of the previous block, a timestamp, and transaction data (generally represented as a Merkle tree).[91] It is a shared and immutable record, and as a result, "the technology behind bitcoin lets people who do not know or trust each other build a dependable ledger. This has implications far beyond the crypto currency."[92]

Cultural Property: Objects which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art, or science.[93]

Customer Due Diligence (CDD): Customer Due Diligence. Financial institutions are generally required to establish and maintain written CDD policies and procedures that are reasonably designed to: (1) identify and verify the identity of customers; (2) identify and verify the identity of the beneficial owners of companies opening accounts; (3) understand the nature and purpose of customer relationships to develop customer risk profiles; and (4) conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.[94]

Designated Non-Financial Business and Professions (DNFBPs): a term of art for "non-financial" sectors that are highly susceptible to money laundering and terrorist financing.

FATF: The Financial Action Task Force, (also known by its French name, Groupe d'action financière), an intergovernmental organization founded in 1989 to develop policies to combat money laundering. In 2001, its mandate was expanded to include terrorism financing.

FinCEN: Financial Crimes Enforcement Network, a bureau of the United States Department of the Treasury.

Forgery: The creation of false written document, or alteration of a genuine written document, with the intent to defraud another.

Fraud: The crime of deceiving another to deprive the victim of a legal right, including through the use of objects obtained through forgery.

Insurance fraud: Any act committed to defraud an insurance process. This occurs when a claimant attempts to obtain some benefit or advantage they are not entitled to, or when an insurer knowingly denies some benefit that is due. According to the United States Federal Bureau of Investigation, the most common schemes include: premium diversion, fee churning, asset diversion, and workers compensation fraud. Perpetrators in these schemes can be insurance company employees or claimants.[95]

Know Your Customer (KYC): Know Your Customer (aka Know Your Client) is the process whereby a business verifies the identity of its clients and assesses their suitability, along with the potential risks of illegal intentions towards the business relationship.[96]

Looting: Also referred to as theft, sacking, ransacking, plundering, despoiling, despoliation, pillaging, and marauding, is the taking of goods by force.

Market Manipulation: Artificially inflating or deflating the price of a security or otherwise influencing the behavior of the market for personal gain.[97]

Money Laundering: The criminal exploitation of financial systems to conceal the location, ownership, source, nature, or control of illicit proceeds.[98]

Risk-Based Approach: A Risk-based approach means that countries, competent authorities, and banks identify, assess, and understand the money laundering and terrorist financing risk to which they are exposed, and take the appropriate mitigation measures in accordance with the level of risk.[99]

Sanctions Violations: Sanctions are provisions of a law that enact a penalty for disobedience, or a reward for obedience. Financial sanctions are maintained and enforced by The Office of Economic Sanctions Policy and Implementation, and may be leveled against entire countries, or against individuals and entities.[100] Sanctions violations occur when the country, individual, or entity works to evade the sanction and continue

operating in United States financial systems despite being disallowed.

Tax Evasion: The illegal evasion of taxes by individuals, corporations, and trusts. Tax evasion often entails taxpayers deliberately misrepresenting the true state of their affairs to the tax authorities to reduce their tax liability and includes dishonest tax reporting, such as declaring less income, profits or gains than the amounts actually earned, or overstating deductions.[101]

Terrorist Financing: The funds or assets intended for a terrorist organization that are being raised, moved, stored or used in or through a jurisdiction, in the form of legitimate or illegitimate funds or other assets.[102] The term terrorist organization refers to any group of terrorists that: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully; (ii) participates as an accomplice in terrorist acts; (iii) organizes or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.[103]

Trafficking: The illegal transportation of objects, substances, people, or information, in violation of applicable laws or other regulations.

Ultimate Beneficial Owner: Refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted.[104]

APPENDIX I: CASE STUDIES

The following list provides a guide to some of the more prominent investigations and prosecutions of bad actors manipulating the opacity of the art market to fund and facilitate criminal acts. In recent years, a growing number of scandals, investigations, prosecutions, and convictions have demonstrated the art market's dangerous vulnerability to a wide range of financial crimes—including forgery, fraud, market manipulation, tax evasion, money laundering, sanctions violations, and even terrorist financing. These cases transcend borders and overlap with other crimes.

Reference Key

Antiquities trafficking: 🏺
Drug trafficking: 💊
Fraud or false provenance: 🖼️

Kleptocracy: 💎
Money laundering, domestic: 💵, 🇺🇸
Money laundering, international: 💵, 🗺️

Oligarchy: 👑
Shell companies: 🏢
Terrorism financing: 💰

Nazem Said Ahmad, Executive Order 13224 💰 💵, 🗺️

In December of 2019, the U.S. Treasury Department placed sanctions on diamond dealer and art gallery owner Nazem Said Ahmad. Ahmad lives in Beirut and has been identified by the U.S. as one of the "top donors" to Hezbollah, a political movement based in Lebanon and U.S. classified terrorist group. The Department states that Ahmad used his art as a place to shelter money "in a pre-emptive attempt to mitigate the effects of U.S. sanctions." It is also believed that his gallery in Beirut, the Artual Gallery, is front to launder money. Marshall Billingslea, assistant secretary for terrorist financing, said to the New York Times, "we have a Hezbollah financier who is converting a significant amount of his ill-gotten gains through the blood diamond trade into high-value art, that in turn creates a lack of transparency in the transactional process," he said. "It's a way of getting around the formal financial system."

Banco Santos, Criminal Action No. 2004.61.81.008954-9 (Involving What was Banco Santos) Tried Before the Sixth Federal Criminal Court Specialized in Money Laundering and Financial Crimes, on Appeal Before the Regional Federal Appellate Court for Region 3 (São Paulo and Mato Grosso do Sul) 💵, 🗺️

In 2006, Edemar Cid Ferreira, the founder and former president of Banco Santos, was convicted in Brazil for crimes against the national financing system and money laundering. As part of the case, a Sao Paulo Court Judge ordered the search, seizure, and confiscation of assets that Ferreira, his family, and his associates had acquired with unlawfully obtained funds from Banco Sartos, including an extensive art collection valued in the tens of millions of dollars. The art collection was kept in several places, and when those locations were searched, investigators found that much of the collection was missing. After searching museums and institutions in Brazil for the missing artwork, the Sao Paulo Court sought Interpol's assistance. As a result, the U.S. Attorney's Office and HSI began and investigation and found that large numbers of the works in the collection had been smuggled out of the Brazil and into the United States and various European nations, including the

sculpture "Woman" by Henry Moore. Ultimately, 95 works were located and recovered in the United States, United Kingdom, France, and the Netherlands, and returned to the Judicial Administrator to be distributed as part of the bankruptcy estate.[105]

The Beaufort Affair, No. 2:18-cv-01317 (E.D.N.Y.) 💵, 🗺️

The defendants Beaufort Securities, are a U.K. registered brokerage firm. Between 2016 and 2018, undercover FBI agents were able to purchase artificially inflated or otherwise illegitimate stocks through the firm. Panayiotis Kyriacou, a then manager at the firm, suggested to an undercover agent that he purchase a £6.7milllion Picasso to "clean up" illicit funds earned through illicit trades. A total of six individuals and corporate defendants were charged for varying levels of involvement in the scheme, which was reported to be worth an estimated $50m.[106]

The Bouvier Affair 👑🏢💵, 🗺️

Yves Bouvier is the owner of Natural Le Coultre, a moving and storage company located in the Geneva Freeport. Bouvier was one of the first to take advantage of the freeport's unique legal loophole that designates these spaces as duty-free zones to capitalize on sales in the art world. His relationship with Russian Oligarch, Dmitry Yevgenyevich Rybolovlev, allowed him access to enormous amounts of capital he used to establish himself as a force in the art industry. Since the late 90s, Bouvier has been the subject of many allegations ranging from the intentional inflation of prices to stealing artwork from Pablo Picaso's daughter. Bouvier and his various shell companies have faced charges around the world including Singapore, Hong Kong, and the United States. Most recently, The Supreme Court of Monaco issued their decision in Accent Delight International Limited v. Xitrans Limited in July 2020. As of September 2020, The court website has not posted their decisions from July 2020.

- This list of international cases is not exhaustive. Charges against Yves Bouvier include:
  - Accent Delight Int'l v. Sotheby's & Sotheby's, No. 1:18-cv-09011-JMF-RWL, 2020 U.S. Dist. LEXIS 4108 (S.D.N.Y. Jan. 3, 2020)
  - In re in re Accent Delight Int'l, Ltd., No. 16-MC-125 (JMF), 2018 U.S. Dist. LEXIS 97673 (S.D.N.Y. June 11, 2018)
  - Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd. and another and another appeal [2015] 5 SLR 558 (Sing.)
  - Bouvier, Yves Charles Edgar and another v Accent Delight International Ltd. and another and another appeal [2015] SGCA 45 (Sing.)
  - Accent Delight International Ltd and another v Bouvier, Yves Charles Edgar and others [2016] 2 SLR 841 (Sing.)
  - Accent Delight Int'l Ltd. v. Bouvier, [2015] HKCU 1367 (H.K.)
  - Accent Delight International Ltd and another v. Bouvier, Yves Charles Edgar and others [2016] SGHC 40 (H.K.)
  - Tania Rappo v. Accent Delight International Ltd and Xitrans Finance Ltd [2017] SGCA 27 (Sing.)
  - Cour de révision [Court of Revision] Oct. 3, 2019, La société ACCENT DELIGHT INTERNATIONAL LIMITED, la société XITRANS LIMITED, e. R. et d. R. c/ y. B. et t. B. épouse R. en présence du Ministère (Monaco)

Farrapos Operation, Record No. 2007.61.81.0011245-7/SP, Conviction in 2008 by the Sixth Federal Criminal Court Specialized in Financial Crimes and Money Laundering, Upheld by the Regional Federal Appellate Court for Region 3 (São Paulo and Mato Grosso do Sul), Criminal Appeal No. 0001234- 26.2007.04.03.6181/SP, Heard on 03/06/2012, Rapporteur, Federal High Court Justice Johonsom di Salvo 💵, 🗺️ 💊

On August 7, 2007, Juan Carlos Ramirez Abadia, a.k.a. Chupeta, leader of the Colombian cartel Vale Del Norte, was arrested in the so-called "Farrapos Operation" for international drug trafficking. He, along with others, was sentenced for a number of felonies, including money laundering,[107] using forged documents (public documents and fake identifications), racketeering and corruption, with the help of a number of co-defendants.

In 2008 real and chattel property was seized, including artworks appraised at more than $3,800,000 that were being held outside Brazil by the organizations and family of the suspect for possible sale to raise financial resources.[108] The artworks located in Brazil had already been sent to museums in São Paulo. However, immediate recovery of the works located abroad was not possible, because Colombia and the United States, where they were located, required specific location information to be able to honor Brazil's request. INTERPOL was then formally contacted. Although at the time there was not sufficient information in hand to identify the location of the artworks, there was specific data on each piece. It was also revealed that a cousin of the trafficker was in charge of the artworks and that she had visited him on several occasions in Brazil, at the federal prison, beginning early in 2008.[109]

People v. Bautista, 132 A.D.3d 523, 18 N.Y.S.3d 47 (2015), aff'd, 30 N.Y.3d 935, 88 N.E.3d 304 (2017) 🖼️

In 2014, Former aide to former Philppine first lady Imelda Marcos, Vilma Bautista was sentenced in New York courts on charges of document fraud, tax offenses, and conspiring to sell a Monet painting that disappeared after Ferdinand Marcos was removed from power as president. The Manhattan DA's office received a request from the Philippine government seeking the return of several items that disappeared after Marcos had been removed from office. Four paintings (including two by Monet) that had been acquired by the Marcos family ended up in Bautista's possession following the revolution. In 2010, Bautista conspired to sell the painting, *Le Bassin aux Nymphease*, to a London gallery for £19.5 million providing false provenance documents. She claimed that despite knowing the documentation was false, she believed that she retained the authority to sell the painting and that Imelda Marcos was the owner, not the Philippine government.

Razak, Najib: 💎 💵, 🗺️

United States v. Certain Rights to and Interests in the Viceroy Hotel Group, No. 2:17-CV-04438, (C.D. Cal. Aug. 14, 2020)

United States v. One Pen and Ink Drawing by Vincent Van Gogh, No. CV 16-5366 DSF (PLAx), 2017 U.S. Dist. LEXIS 222412 (C.D. Cal. Sep. 27, 2017)

In 2016 and 2017, the DOJ filed civil forfeiture actions against Certain Rights to and Interest in the Viceroy Hotel Group, believed to be owned by the Malaysian Prime Minister Najib Razak, after connecting several of his assets to $1.5 billion missing from Malaysian state accounts. The most notable assets include masterpieces by Claude Monet and Vincent van Gogh. This effort was led by the Kleptocracy Initiative of the DOJ and their partners in Switzerland where the paintings reside.[110]

Rotenberg, Arcady and Boris, Executive Order (E.O.) 13661, E.O. 13662, E.O. 13582: 👑 🏢 💵, 🗺️

On March 16, 2014, the United States announced sanctions on Russia in response to the invasion of Ukraine and the annexation of Crimea[111]. The Rotenberg brothers were sanctioned on March 20, 2014 due to the profits they made via the construction of railways, gas pipelines, and bridges between Crimea and Russia.[112] In the four days between the announcement of the sanctions and the executive order that specifically named the Rotenbergs as sanctioned, shell companies linked to the Rotenbergs transferred over $120 million dollars to Russia.[113] Following the March 2014 sanctions, the Rotenbergs continued actively participating in U.S. financial systems via high-value art market transactions, effectively evading the very sanctions that had been placed on them.

Sack v. Lawton, 2003 U.S. Dist. LEXIS 12279 (S.D.N.Y. July 15, 2003) 💵, 🇺🇸

Kenneth Lawton agreed to purchase a drawing by Raphael known as the *Modello* from Shirley Sack for $12 million. A bill of sale was executed but Lawton never paid, and the drawing remained with Sack. Sack attempted to find a buyer but was unsuccessful and the unfulfilled bill of sale would make it impossible to convey a clear title to a new buyer. Sack sued Lawton for breach of contract, seeking $12 million in damages plus interest. Lawton was ordered by the court to pay the damages. Sack is also involved in the unrelated case United States v. Katzen, for attempting to assist an undercover agent in money laundering through the art market.

United States v. Belciano et al., 11-CR-00343 (M.D. Pa.) 💵, 🇺🇸 💊

In 2015, Ronald Belciano was sentenced to 63 months imprisonment and four years of probation for his involvement with both the distribution of marijuana and conspiracy to launder the profits using artwork. Law enforcement seized over $4 million in cash, approximately 125 pounds of marijuana, and 33 paintings worth more than $619,000 from a storage warehouse in Pennsylvania. Belciano allegedly accepted the artworks in lieu of cash after being promised they could be sold back to the art dealers for laundered money.[114] In a related case, Villanova art dealer Nathan Isen was charged with money laundering on January 8, 2015.[115]

United States v. Betts, 12-CR-277 (D. Or.) 💵, 🇺🇸 🏺

Matthew Betts and Christopher Neaman broke into the Overbay Museum in Astoria, Oregon and took cultural artifacts that included gold coins and jewelry. The pair sold the stolen antiquities to a coin dealer in Reno, Nevada for $10,750. One of the men deposited the check in his bank account in Vancouver, Washington, withdrew $10,301 in cash, and gave a portion of the money to his accomplice. The pair were charged with stealing and transporting artworks as well as conspiracy to commit money laundering. [116]

United States v. Dreier, 952 F. Supp. 2d 582 (S.D.N.Y. 2013) 💵, 🗺️

Dreier was once a prominent New York litigator with multi-millionaire clients who once spent $40 million to fill his firm's walls with Hockneys, Warhols, and Picassos. He was arrested in Canada after stealing $380 million from hedge funds, part of a larger, more convoluted scheme. In 2010, Drier pled guilty and was sentenced to 20 years in prison. His extensive art collection has subsequently been the subject of litigation connected to the $388 million in restitution Drier is required to pay to those he defrauded.[117]

United States v. Gaffey, Von der Goltz, et al., 18 Cr. 693 (RMB) (S.D.N.Y.) 🏦 💵, 🇺🇸

Richard Gaffey and Harald Joachim von der Goltz were the first Americans to be charged following the revelations uncovered in the Panama Papers. Gaffey worked as von der Goltz's accountant, playing a key role in assisting him and multiple United States taxpayers commit tax evasion by hiding their money in offshore accounts "owned" by shell companies. Gaffey executed transfers of funds from von der Goltz's shell companies, the "Revack Entities" to fund Von der Goltz's various lavish personal expenses, including large purchases of valuable art.[118]

United States v. Isen, 17-CR-0372(JS)(GRB) (E.D.N.Y. Dec. 17, 2019) 💵, 🇺🇸

In connection to *Belciano*, owner and operator of the I. Brewster and Company Gallery in Philadelphia, Pa. Nathan Isen was arrested by undercover narcotics officers in 2015. Isen sold the undercover agent one dozen Salvador Dali paintings for $20,000 in cash after coaching her on how to launder drug money through the artwork. Isen pleaded guilty to money laundering in 2015 and was sentenced to three years' probation and a fine of $25,000.[119]

United States v. Katzen, 1:01-CR-10419 (D. Mass. Nov. 13, 2001) 💵, 🇺🇸

Arnold K. Katzen, 63, was charged with conspiracy after attempting to sell two paintings for $4.1 million in cash to an undercover agent posing as a drug dealer. Katzen and his acomplice Shirley D. Sack, told the undercover agent they could resell Amedeo Modigliani's "Jeune femme aux yeux bleus," valued at around $2.5 million, and a pastel by Edgar Degas, "La Coiffure," valued at around $1.6 million overseas as part of the money-laundering scheme. Katzen pleaded guilty to conspiracy to fail to pay taxes and was sentenced to three years probation.[120]

United States v. Khouli CR-11-340 (E.D.N.Y.), (aka "Operation Mummy's Curse") 🏺 💵, 🗺️

Mousa Khouli, who lives in Brooklyn and operates Windsor Antiquities in Manhattan was with a mummy in his garage. The return of these ancient artifacts was made possible by "Operation Mummy's Curse," an ongoing multi-year investigation by ICE's Homeland Security Investigations (HSI). The investigation revealed a complex network of dealers, collectors, and middlemen across the Middle East and led to the indictment of Khouli on multiple counts of smuggling and money laundering. Khouli was sentenced to six months of house arrest, one year probation, and a fine.[121]

United States v. Kyriacou, 18-CR-0102, (E.D.N.Y. Feb. 28, 2018) 💵, 🗺️

Panayiotis Kyriacou, a former investment manager at Beaufort Securities Limited, a brokerage firm in London, pleaded guilty in 2019 to conspiring to commit securities fraud and to defraud the United States by failing to comply with the Foreign Account Tax Compliance Act (FATCA). Kyriacou was engaged in an elaborate scheme to defraud investors of millions of dollars through manipulative stock trading, and launder the fraudulent proceeds through off-shore bank accounts and the art market, including the proposed purchase of a Picasso painting. He is facing a maximum of 10 years in prison.[122]

United States v. One Gold Ring with Carved Gemstone, 16-CV-02442-TFH, (D.D.C. Nov. 7, 2019) 🏺 💰

Richard Gaffey and Harald Joachim von der Goltz were the first Americans to be charged following the revelations uncovered in the Panama Papers. Gaffey worked as von der Goltz's accountant, playing a key role in assisting him and multiple United States taxpayers commit tax evasion by hiding their money in offshore accounts "owned" by shell companies. Gaffey executed transfers of funds from von der Goltz's shell companies, the "Revack Entities" to fund von der Goltz's various lavish personal expenses, including large purchases of valuable art.[123]

United States v. The Painting Known as "Hannibal" by Jean-Michel Basquiat, Case No. 1:08-cv-01511-RJS (S.D.N.Y. 2013) 💵, 🗺️

In a collaborative effort between Sao Paulo, INTERPOL, the Brazilian government and the United States, Mr. Ferreira was sentenced in December 2006 to 21 years' imprisonment for crimes against the national financial system and money laundering. Ferreira's assets were seized during the investigation, including "Hannibal" by Jean-Michel Basquiat and other artwork which had been smuggled into the United States. The Court of Appeals held that use of materially false invoices was sufficient to establish that artwork was "smuggled or clandestinely … introduced" into the United States and the judgment of civil forfeiture was affirmed.[124]

United States v. Usuga-Norena et al., 05-CR-135 (S.D.N.Y.) 💊

Juan Gabriel Usuga-Norena was arrested in 2004 in connection to his involvement with a cocaine smuggling scheme. Usuga-Norena was fined more than $3 million, ordered to forfeit 48 pieces of artwork, and sentenced to three years of supervised release.[125] This arrest was one of several tied to an operation which landed two tonnes of cocaine at an airfield outside Paris in 1999. Also implicated was Spanish art dealer and financier, JosM-i MarM-ma Clemente, who received a five-year sentence last year for his part in the conspiracy as well as Saudi Prince Nayef Al-Shaalan. Prince Nayef was tried in absentia in Paris and sentenced to a $9.7-million fine and 10-year jail sentence.[126]

On the Horizon

- Spain 💰 🏺

  In March 2018, Spanish police arrested a renowned antiquities dealer in Barcelona, Jaume Bagot Peix, for their alleged participation in a crime of financing terrorism, belonging to a criminal organization, reception, smuggling and document falsification as part of a smuggling ring that trafficked antiquities looted from Libya to finance the Islamic State group. It is the first police operation in the world against the financing of terrorism through the looting of works of art from territories under siege by terrorist groups. Spanish police seized works including mosaics, sarcophagi and other works from ancient Greco-Roman sites in Libya, Tripoli and Egypt. The investigation has the support and collaboration of the Libyan Attorney General's Office and the Libyan Embassy in Spain. After being brought to justice, the magistrate has issued an avoidable prison order with bail for the leader of the network. [127]

- Paris 🏺

  In June of 2020, French officials arrested 5 individuals, including a retired Louvre curator, in Paris in connection to alleged antiquities trafficking. Law enforcement believes the individuals to be involved in trafficking antiquities from conflict, and post-conflict, countries that have subsequently been laundered onto the French art market. As of September 2020, the names of the individuals have not been released and charges have not been announced publicly.[128]

APPENDIX II: A LEGAL SURVEY

In recent years, across the world's major art market jurisdictions, there has been a growing trend to add anti-money laundering infrastructure to dealers, galleries, and auction houses. This is true in the United States and especially across the Atlantic, where the United Kingdom, Switzerland, and the European Union have all taken action. Since American dealers operating in Europe must now abide by these laws and regulations, more detail on these changes is below, as well as addition information on the existing framework and proposed changes in the United States.

The United States

The United States has the power to legislate markets and has done so through the Bank Secrecy Act of 1970. Under the USA PATRIOT Act, the Department of the Treasury has the power to share certain information regarding accounts and transactions that may involve money laundering or terrorist activity with federal law enforcement and financial institutions. Additionally, under this statute, certain financial institutions are allowed to share information amongst themselves for the purposes of identifying and reporting suspected money laundering and terrorism. These financial institutions must first alert the Treasury Department's Financial Crimes Enforcement Network (FinCEN) that they possess and intend to share such information and will take adequate steps to maintain confidentiality.

FinCEN, a bureau of the Department of the Treasury, also maintains a government-wide data access service that assists federal, state, and local law enforcement agencies in the detection, prevention, and prosecution of terrorism, organized crime, money laundering, and other financial crimes. The Department of Justice[129] has the authority under the Arms Export Control Act (AECA), the Export Control Reform Act (ECRA), and the International Emergency Economic Powers Act (IEEPA) to administer export control and sanctions regimes. The power to limit exports from high-risk countries, such as those with known terrorist groups, can be a valuable tool for enforcement and take some of the responsibility of stopping terrorist financing and money laundering off the art market and financial institutions.

As this report demonstrates, this existing framework can and should be better utilized to address financial crimes within the art market. The U.S. government should use these tools and authorities to ensure that art and antiquities dealers are subject to increased customer due diligence and reporting requirements. Working with art and antiquities dealers, as well as financial institutions, the United States may constructively write new regulations that protect these industries from the dangers of illicit trade, money laundering, and terrorist financing, while fostering and encouraging growth. These would ideally mirror the legislative efforts of the European Union and United Kingdom.

European Union

In April 2019, the European Union adopted a new customs regulation, the EU Regulation on the Introduction and the Import of Cultural Goods. These regulations are seen as an effort to bring EU custom laws in alignment with those of the United States. The EU regulation affects imports of non-EU art and collectibles, as well as antiquities of non-EU origin (such as materials from the Middle East, Asia, Africa, and the United States) worth €18,000 and predating 1819 into the EU. This legislation places new

requirements on art market stakeholders: the burden of proving legal export of a piece now requires determining the piece's country of origin, and a detailed analysis of the laws of the applicable country of export. Determining that a piece has been legally exported from a non-EU country requires more than just the absence of red flags: it is very likely that authorities will enforce a requirement of positive proof of legal export, much like existing customs laws in the United States.

The European Union has additional legislation to identify and protect their economy from money laundering. One of the pillars of the European Union's legislation to combat money laundering and terrorist financing is Directive (EU) 2015/849, recently updated in 2018 as EU Directive 2018/843 ("Fifth Anti-Money Laundering Directive"). According to this Directive, banks and other gatekeepers are required to apply enhanced vigilance in business relationships and transactions involving high-risk third countries. The types of enhanced vigilance requirements are essentially extra checks and control measures which are defined in article 18a of the Directive. Under Directive (EU) 2015/849, Article 9, the European Commission is mandated to identify high-risk third countries having strategic deficiencies in their regime on anti-money laundering and counter terrorist financing. The aim is to protect the integrity of the EU financial system. The Fifth Anti-Money Laundering Directive entered into force in July 2018. This update further strengthened the EU's anti-money laundering framework by requiring increased transparency regarding the beneficial ownership of companies, enhancing cooperation and sharing of information between financial supervisory authorities, introducing stricter controls of transactions with customers located in high-risk third world countries, restricting the anonymous use of virtual currencies (such as bitcoin), and extending the scope of parties subject to these obligations.

The European Union's Sixth Anti-Money Laundering Directive (6AMLD) comes into effect for member states on December 3, 2020. The Sixth Anti-Money Laundering Directive strengthens and builds upon the Fifth Anti-Money Laundering Directive, by clarifying the existing legislation and regulator details, and strengthening the criminal penalties. The Sixth Anti-Money Laundering Directive aims to remove loopholes in the domestic legislation of member states that money launderers take advantage of, by providing a list of twenty-two predicate offenses that constitute money laundering. Additionally, while under the Fifth Anti-Money Laundering Directive only individuals may be punished for the act of money laundering, the Sixth Anti-Money Laundering Directive extends criminal liability to legal persons (including partnerships and companies). In effect, the new provisions in the Sixth Anti-Money Laundering Directive require the member states to criminalize certain predicate offenses, thus harmonizing domestic legislation across the bloc and making it easier for member states to work together to prosecute offenders.

The United Kingdom

In December 2019, the UK government issued regulations that update the UK's existing anti-money laundering legislation and implement the new legislation in the European Union's Fifth Anti-Money Laundering Directive. Under The Money Laundering and Terrorist Financing (Amendment) Regulations 2019, art market stakeholders such as art galleries and auction houses, are directly regulated for transactions related to the sale of a work of art that are over 10,000 euros. Stakeholders are required to identify, and verify, the client's identity; assess the purpose and intended nature of the business relationship (and obtain information as needed to make such assessments); to identify and verify the identity of any agents acting on behalf of clients; conduct continued and ongoing monitoring of the business relationship with the client, including reviewing transactions and source of funds, to ensure that the transactions are consistent with the client's business and risk profile; and undertake reviews of existing records and continue to ensure that documents and information obtained to apply due diligence measures are retained and kept up to date. The UK's new anti-money

laundering laws require regulated parties, such as art-market stakeholders, to verify the source of funds, to establish internal written policies and procedures for compliance, to establish risk profiles, and to keep and protect source documents as well as report suspicious transactions.

A Comparison

More information on the laws and regulations discussed above is available in the table below. All data was current as of 24 September 2020.

U.S.	UK	EU
• Bank Secrecy Act (1970) • Arms Export Control Act (1976) • International Emergency Economic Powers Act (1977) • Money Laundering Control Act (1986) • Anti-Drug Abuse Act of 1988 (1988) • Annunzio-Wylie Anti-Money Laundering Act (1988) • Money Laundering Suppression Act (1994) • Money Laundering and Financial Crimes Strategy Act (1998) • USA Patriot Act (2001) • Intelligence Reform and Terrorism Prevention Act of 2004 (2004) **Introduced (have not moved past House)** • Export Control Reform Act (ECRA) (2018) • Illicit Art and Antiquities Trafficking Prevention Act (2018) **Pending (have moved from House to Senate)** • HR 2513: Corporate Transparency Act of 2019 (2019) • Coordinating Oversight, Upgrading and Innovating Technology, and Examiner Reform Act of 2019 (2019) • The Anti-Money Laundering Act of 2020 (2020)	• Money Laundering and Terrorist Financing (Amendment) Regulations 2019	• Directive (EU) 2015/849, Article 9 • EU Regulation on the Introduction and the Import of Cultural Goods • EU Directive 2018/843 ("Fifth Anti-Money Laundering Directive") **Pending** • EU Directive 2018/1763 ("Sixth Anti-Money Laundering Directive") - effective 3 December 2020

APPENDIX III: FURTHER READING

The Art Industry and U.S. Policies that Undermine Sanctions Staff Report
United States Senate Permanent Subcommittee on Investigations, July 2020
On July 29, 2020, the U.S. Senate Permanent Subcommittee on Investigations released a Staff Report, "The Art Industry and U.S. Policies that Undermine Sanctions." The Report details how sanctioned individuals can use high-value art purchases to skirt U.S. sanctions. The Subcommittee illustrates this loophole with a case study of Russian oligarchs who used purchases of high-value art to evade sanctions imposed on them by the United States in response to Russia's invasion of Ukraine and annexation of Crimea. The Report summarizes the specific factors used by financial criminals to circumvent sanctions, what the EU has implemented to close similar means of evasion, and how the U.S. may improve the Bank Secrecy Act to prevent similar illicit actions.

Money Laundering in the Art World: The Modern Day Heist
Tabitha O'Brien, AML RightSource, June 29, 2020
This article outlines the history of opaqueness in the art industry and exploited by financial criminals. In the past few decades, governments have proposed and passed legislation to make the financial sector more transparent, while the sales of art and antiquities have continued to fly under the radar. AML RightSource illustrates the issues with the current system of tracking the sales of artwork, the risks associated with unmonitored sales, and what governments around the world are doing to solve these problems.

Dirty Money, Pretty Art: Fighting Money Laundering in the Age of Art Financialization
Limburg Police and PVOL for the Maastricht University Premium Program, May 2020
Art and antiquities are now, more than ever, taking on an additional role as a financial investment. Because of this, the art market is exposed to new threats not previously considered. Due to the opaque nature of the industry, art has become a convenient vehicle for bad actors seeking to take advantage of the confidentiality offered by the art industry. The Panama Papers revealed many secrets, including scandals that intertwined the business of art and the laundering of money. This report goes on to explain how this system works, how to spot suspicious transactions, and offers recommendations for training both for law enforcement and art dealers to make transactions more secure.

The Art of Money Laundering
Tom Mashberg, IMF's Finance & Development, September 2019, Vol. 56, No. 3
This article addresses the growing momentum to impose constraints on the vulnerable art industry at a time when drug kingpins, oil oligarchs, and assorted kleptocrats are desperate to turn their dirty money into a clean or fungible asset. Discussing the Matthew Green "Mayfair Art" case study in detail, Mashberg discusses how criminals exploit the art market and the challenges to prosecuting these crimes. Discussing pending legislation to close these loopholes, the industry's concerns about the effect on their businesses and operating costs is highlighted.

Responsible Art Market Initiative (RAM)
Fifth annual conference to take place in the Winter of 2021 in Geneva, Switzerland
Concerned by the significant and evolving challenges of money laundering and terrorist financing, and their connection with the illicit trade in cultural property, in January 2017 an interdisciplinary group of experts from the art market, the Geneva free port, academia and law enforcement (…) launched the Responsible Art Market (RAM) Initiative. This non-profit industry program supports art market businesses by providing them with a practical and ethical compass to navigate the increasingly complex and fragmented anti-money laundering and anti-terrorism financing frameworks within which they are required to operate. It aims to do this by: raising awareness of risks; consolidating and sharing existing industry best practices; and providing practical guidelines and tools that can be easily understood and implemented. Since RAM's launch, the group has been contacted by individuals from various countries with offers to help draft country-specific guidelines. RAM is itself producing guidelines summarizing responsible practices for art market players to combat money laundering and terrorist financing and apply due diligence within art transactions, as well as for experts to authenticate works of fine art.

AML Challenges: Art and Antiquities: Conduits for Money Laundering and Terrorist Financing

Deborah Lehr, The Antiquities Coalition, December 2018-February 2019 Issue

This article explores links between cultural racketeering, the looting and trafficking of art and antiquities, and crime, conflict, and violent extremism worldwide. While ancient art and antiquities may serve as sound investments, such acquisitions can also support nefarious activity and compromise consumers. Lehr delves into the inadequacy of regulatory mechanisms that might otherwise curb this illicit trade, and provides a checklist of red flags for conscientious buyers.

Collaboration is key to solving art-market financial crime

Laura S. Patten, The Art Newspaper, December 11, 2018

This op-ed argues that the commercial art industry should create a collaborative consortium that securely pools data, technology, and human resources to implement and manage AML compliance programs. Whereas AML risk assessments are often conducted by objective outside experts, an art market AML consortium could define, update and test AML policies and procedures; screen counter-party names; monitor transactions for members; educate the trade about AML issues; and raise awareness about know-your-customer, suspicious activity reports, cash transaction reports, sanctions and other matters. Based on risk assessment results, consortium experts could help members implement internal financial and operational safeguards, as well as conduct testing and validation of AML programs to assess compliance and identify opportunities for enhancements.

Let the Sun Shine In on the Art Business

William G. Rich, Wall Street Journal, December 7, 2018

According to this opinion piece, the U.S. must treat art and antiquities like any other major market, and require participants to report suspicious activity and keep thorough records on clients and transactions. For criminals, the art world's comfort with secrecy and the variability of art pricing provide a layer of protection against investigation into their finances. By applying the Bank Secrecy Act of 1970 to art and antiquities dealers, training officials at the Treasury Department's Financial Crimes Enforcement to supervise implementation of the Act, and initiating a new generation of reporting technology, the American art market has the potential to become more transparent, secure, and efficient.

Ancient Art, Contemporary Crimes: What You Should Know About Money Laundering and Antiquities

Deborah Lehr, The Antiquities Coalition, ACAMS Today, August 27, 2018

This op-ed discusses the illicit trade in art and antiquities, government recognition of the gravity and scale of the problem, and the importance of due diligence by collectors. Major institutions with acute expertise and significant resources at their disposal already often struggle to verify provenance of art and antiquities; individual buyers are even less likely to be able to ascertain the validity of an object. Recognizing their own vulnerability to inadvertently enabling financial crimes, industry leaders have called for and implemented measures to enhance art market transparency.

AML Challenges: Chasing Cultural Property

Raymond Villanueva and Mary E. Cook, ACAMS Today, June-August 2018 Issue

This article explores the efforts of U.S. Immigration and Customs Enforcement (ICE) and Homeland Security Investigations (HSI) in cultural property investigations, and outlines the primary areas where HSI is exploring the nexus between money laundering and trafficking of cultural property. It discusses ICE/HSI's aims to integrate cultural racketeering into its larger anti-money laundering engagement with the financial industry, thus institutionalizing and broadening efforts to identify and stop this illicit activity while continuing its mission to protect critical financial infrastructure.

Antiquities Coalition Letter of Support of the Illicit Art and Antiquities Trafficking Protection Act (H.R. 5886)

The Antiquities Coalition, May 2018

H.R. 5886 was introduced to the House of Representatives by Congressman Luke Messer on May 18, 2018. The bill removes art and antiquities dealers' current exemption from the Bank Secrecy Act (BSA), which requires luxury and cash-intensive industries to satisfy certain record keeping requirements as well as identify and report possible criminal activity. Dealers in precious metals, stones, and jewels are already subject to the BSA, as are sellers of automobiles, planes, and boats, as well as casinos, pawnbrokers, real estate professionals, and travel agencies. However, to date, the multi-billion art market has been excluded, despite known cases of money laundering and terrorist financing schemes funded by art. After languishing under review since May, the bill is now in limbo following Rep. Messer's lost bid for re-election.

The Legal and Illegal Trade in Cultural Property to and throughout Europe: Facts, Findings, and Legal Analysis

Marc-André Renold, Art-Law Centre, University of Geneva, March 20-21, 2018

This is a background document for a broader project, "Engaging the European Union in the Fight Against Illicit Trafficking in Cultural Property." It first reviews the licit and illicit dimensions of the trade in cultural property, including the transnational dimensions, causes, and scale of cultural racketeering. Authors then assess the present legal regime in Europe, including divergences in European national legislations, and discuss the challenges faced and possible answers. Topics covered include free ports, internet sales, art market accountability, and various tools to combat trafficking.

Tainted Treasures: Money laundering risks in luxury markets

Transparency International, 2017

This report argues that luxury goods sellers, including jewelers, real estate agents, yacht builders, art dealers, and diamond brokers, are doing little to check if their customers are using corrupt money to fund their high-end purchases. Furthermore, even where there are laws, there is little enforcement. China, Japan, the US, and the UK are especially high risk countries. Transparency International calls on these states to introduce specific laws to mandate due diligence for high-risk luxury goods sales and establish a designated authority to enforce them. For example, in the UK, auction houses filed just 15 suspicious transaction reports out of 381,882 total reports covering all sectors from September 2013 to September 2014, and there were no known cases of regulatory enforcement involving auction houses or art dealers.

The report makes the following recommendations to address risks of tainted money being used to buy luxury goods and assets:

- Countries that host the largest luxury markets, such as China, France, Germany, Italy, Japan, the UK and the US, should strengthen legislation to ensure dealers in high-value goods and in specific high-risk luxury sectors have customer due diligence and reporting requirements that meet best practice international standards.

- Governments should also ensure luxury sectors have a designated authority charged with oversight and regulation. These authorities should have the mandate, resources and independence necessary to effectively carry out their oversight duties, which should include having the ability to sanction non-compliant businesses.

- Leading brands and luxury multinationals should establish effective customer due diligence and reporting systems in their retail and customer service chains. These should also be established in countries where they are not yet legally required, in line with the public commitments to ethical behavior and integrity already made by many companies. As the international standard-setter against money laundering, the Financial Action Task Force (FATF) should strengthen its recommendations to ensure high-value luxury sectors are adequately covered by global standards.

Money Laundering Through Art: A Criminal Justice Perspective

Fausto Martin De Sanctis, 2013

This book provides a bird's eye view of novel ways in which money laundering happens through illegal activities involving art. It discusses why new techniques used by criminals have been neglected by law enforcement in most countries, and addresses methods by which law enforcement, prosecutors, judges, and others involved may improve upon efforts to curb money laundering and financing of terrorism. Drawing from his own experience with the matter in both Brazil and in the United States, De Sanctis makes a case for broader institutional and regulatory improvement, extending beyond mere regulation of the art market.

End Notes

[1] United States Senate Permanent Subcommittee on Investigations, *The Art Industry and U.S. Policies that Undermine Sanctions*, Staff Report, 2020.

[2] Deborah Lehr, *Not a Pretty Picture: Money Laundering and America's Art* Market, The Hill (2020), https://thehill.com/opinion/finance/511154-not-a-pretty-picture-money-laundering-and-americas-art-market.

[3] Natasha Bertrand, *Congressional probe: Russian oligarchs using art to evade sanctions*, Politico (2020), https://www.politico.com/news/2020/07/29/probe-russian-oligarchs-evade-art-sanctions-386154

[4] Clare McAndrew, *The Art Market 2020*, Art Basel & UBS Report, 2020 at 30.

[5] United States Senate Permanent Subcommittee on Investigations, *The Art Industry and U.S. Policies that Undermine Sanctions*, Staff Report, 2020 at 10.

[6] *Anti-Money Laundering / Counter Terrorist Financing*, U.S. Dept. of State, https://2009-2017.state.gov/j/inl/c/crime/c44634.htm (last visited May 30, 2018).

[7] *Anti-Money Laundering / Counter Terrorist Financing*, U.S. Dept. of State, https://2009-2017.state.gov/j/inl/c/crime/c44634.htm (last visited May 30, 2018).

[8] Financial Action Task Force, *National Money Laundering and Terrorist Financing Risk Assessment* (Feb. 2013), *available at* http://www.fatf-gafi.org/media/fatf/content/images/National_ML_TF_Risk_Assessment.pdf.

[9] Bank Secrecy Act, 31 U.S.C. §§ 5311-5332 (2012).

[10] Bank Secrecy Act, 31 U.S.C. § 5312(a)(2)(Z) (2012).

[11] U.S. Atty's Office, E. Dist. N.Y., *Six Individuals and Four Corporate Defendants Indicted in $50 Million International Securities Fraud and Money Laundering Schemes*, U.S. Dep't of Justice (Mar. 2, 2018), https://www.justice.gov/usao-edny/pr/six-individuals-and-four-corporate-defendants-indicted-50-million-international.

[12] Under current laws and regulations in the United States, art market actors *do* have to disclose *cash* transactions of over $10,000 to FinCEN (Financial Crimes Enforcement Network, a bureau of the United States Department of the Treasury). The Bank Secrecy Act of 1970 (12 U.S.C. §§ 1724, 1813, 78a).

[13] The economic and political fallout from COVID-19 may also lead to an increase in crimes of financial desperation. There is historical precedent for looting escalating in the wake of financial crises. In Egypt, satellite data shows it more than doubled from 2009-2010 after the 2008 Financial Crisis, compared to 2002-2008. Levels doubled again from 2011-2013, following the Arab Spring. With the recent economic crisis in Greece, a similar rise occurred. Interestingly, looters active during this period were first-time offenders, as regular people began looking to antiquities for financial relief. This suggests that as the economic situation gets worse, looting will get worse too. Katya Kazakina, *Van Gogh Theft Focuses Attention on Empty Museums' Security During COVID-19 Crisis*, Insurance Journal (April 8, 2020), https://www.insurancejournal.com/news/international/2020/04/08/563663.htm.

[14] Julia Michalksa, *Galleries Worldwide Face 70% Income Crash Due to Coronavirus*, The Art Newspaper (April 27, 2009, 12:01 PM), https://www.theartnewspaper.com/news/galleries-face-70-income-crash-due-to-the-coronavirus.

[15] At least one prominent dealer is encouraging collectors to buy ancient Egyptian, Greek, and Roman antiquities by promising to donate 20% of their value to medical charities. (This same gallery has previously sold items since linked to convicted criminals Giacomo Medici and Gianfranco Becchina).

[16] At least one prominent dealer is encouraging collectors to buy ancient Egyptian, Greek, and Roman antiquities by promising to donate 20% of their value to medical charities. (This same gallery has previously sold items since linked to convicted criminals Giacomo Medici and Gianfranco Becchina). *See* Carol Ryan, *A Bad Year for Art is Looking Like a Good Year for Art-Backed Loans*, The Wall Street Journal (July 17, 2020), https://www.wsj.com/articles/a-bad-year-for-art-is-looking-like-a-good-year-for-art-backed-loans-11594978201.

[17] Katya Kazakina and Tom Metcalf, *Wealthy Wanting Cash for Investing Margin Calls Turn to Art*, Bloomberg (March 16, 2020, 7:53 AM), https://www.bloomberg.com/news/articles/2020-03-16/wealthy-seeking-cash-for-investing-margin-calls-turn-to-art

[18] Angelica Villa, *Mitchell, Basquiat Top $41 M. Phillips Contemporary Evening Sale, Thirst for Young Artists Brings New Records*, Artnews, (July 3, 2020 9:05 AM), https://www.artnews.com/art-news/market/phillips-june-2020-evening-sale-1202693351/

[19] Anecdotally, speculation in art valuation is rising as well. On June 29, 2020, Sotheby's saw a strong demand for Jean-Michel Basquiat's works on paper and Basquiat's *Untitled (Head)* sold for a record-breaking $15.2 million. However, just three days later on July 2, 2020, Philip's failed to realize anywhere near this value, when Basquiat's colossal work on paper *Victor 25448* failed to meet its estimate of $12 million, selling for only $8 million ($9.25 million with the buyer's fee included). Such speculation will continue to characterize the market as the economy continues to experience turbulence related to Covid-19. Angelica Villa, *Mitchell, Basquiat Top $41 M. Phillips Contemporary Evening Sale, Thirst for Young Artists Brings New Records*, Art News (July 3, 2020), https://www.artnews.com/art-news/market/phillips-june-2020-evening-sale-1202693351/.

[20] HR 5886: Illicit Art and Antiquities Trafficking Prevention Act of 2018; HR 2513: Corporate Transparency Act of 2019; HR 2514: Coordinating Oversight, Upgrading and Innovating Technology, and Examiner Reform Act of 2019; and the Anti-Money Laundering Act of 2020.

[21] Nicholas O'Donnell, Bill Introduced in U.S. House of Representatives Would Impose Money Laundering Reporting Requirements on Art Dealers, JDSUPRA (May 24, 2018), https://www.jdsupra.com/legalnews/bill-introduced-in-u-s-house-of-87003/.

[22] Anti-money laundering and counter terrorist financing, The European Commission, https://ec.europa.eu/info/business-economy-euro/banking-and-finance/financial-supervision-and-risk-management/anti-money-laundering-and-counter-terrorist-financing_en (last visited September 23, 2020).

[23] *Art market participants guidance for money laundering supervision*, HM Revenue & Governance (February 2020), https://www.gov.uk/government/publications/art-market-participants-guidance-on-anti-money-laundering-supervision.

[24] Clare McAndrew, *The Art Market 2020*, Art Basel & UBS Report, 2020 at 36.

[25] On October 22, 2019, the U.S. House of Representative passed the bipartisan HR 2513 249 to 173, sending it to the Senate. Overall, H.R. 2513 is an act "to ensure that persons who form corporations or limited liability companies in the United States disclose the beneficial owners of those corporations or limited liability companies, in order to prevent wrongdoers from exploiting United States corporations and limited liability companies for criminal gain, to assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, and other misconduct involving United States corporations and limited liability companies, and for other purposes. Beyond provisions on beneficial ownership, its Section 211 would apply the Bank Secrecy Act to "dealers in antiquities." Dealers are defined as those "trading or acting as an intermediary in the trade," including advisors, consultants, or anyone who solicits antiquities' sale. It should be noted that it does not apply the BSA to art dealers in general, just those in antiquities. However, under this same section, Treasury "shall" coordinate with the Attorney General, FBI, and HSI to study and report on the extent to which art and antiquities are being used to further money laundering or terrorism financing in the US financial system.

[26] *See* 31 CFR Section 5312(a)(2), https://www.fincen.gov/section-314b.

[27] 18 USC § 1956(c)(7).

[28] *National Money Laundering and Terrorist Financing Risk Assessment*, FATF Report (FATF) 2013 at 48.

[29] United States Senate Caucus on International Narcotics Control, *The Buck Stops Here: Improving U.S. Anti-Money Laundering Practices*, Drug Caucus, April 2013 at 9.

[30] ICE has successfully established TTUs with nine partner nations across the globe. These units share customs data to identify suspicious trade between the U.S. and their respective countries to coordinate actions against money launderers and criminal networks. *The Buck Stops Here: Improving U.S. Anti-Money Laundering Practices*, *supra* note 29, at 21.

[31] Pending revision of the Bank Secrecy Act, the Department of the Treasury secretary has authority under the USA PATRIOT Act to prescribe regulation minimum standards for anti-money laundering programs. Officials at the Treasury's Financial Crimes Enforcement Network (FinCEN), as an operational extension of the BSA with a mission to take the statutes and create the guidance and implementation from a law enforcement perspective, could then be specially trained to supervise implementation of BSA regulations on art-related businesses. The Treasury may designate art market actors a Financial Institution under either:

a. 31 USC § 5312(a)(2)(R): "a licensed sender of money or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system;
b. 31 USC § 5312(a)(2)(Y): "any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; or
c. 31 USC § 5312(a)(2)(Z): any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.

[32] *National Strategy for Combating Terrorist and Other Illicit Financing*, (U.S. Department of the Treasury) 2020, https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf.

[33] U.S. Treasury, *FinCEN's Strategic Plan*, FinCEN (2020), https://www.fincen.gov/index.php/about/fincens-strategic-plan.

[34] Jason Felch & Ralph Frammolino, Chasing Aphrodite 31 (Houghton Mifflin Harcourt Publishing Co., 2011).

[35] Exec. Order No. 13844, 83 FR 33115 (July 11 2018).

[36] Ricardo St. Hilaire, *How to End Impunity for Antiquities Traffickers: Assemble a Cultural Heritage Crimes Prosecution Team* Antiquities Coalition, (November 2016), https://live-ac-thinktank.pantheonsite.io/ending-impunity-for-antiquities-traffickers/.

[37] Judith Benderson, *Cultural Property Prosecutions*, 64 Cultural Property Law 1 (March 2016), https://www.justice.gov/usao/file/834826/download.

[38] Examples of CRS's available resources and toolkits can be seen at https://www.justice.gov/crs/crs-resource-center.

[39] *Financial Intelligence Training*, Manchester CF (2020), https://www.manchestercf.com/trainingmcf/.

[40] *Capacity Building Projects*, INTERPOL (2020), https://www.interpol.int/en/How-we-work/Capacity-building/Capacity-building-projects.

[41] *Schar School*, George Mason University (2020),https://traccc.gmu.edu/.

[42] *Training Programs*, Value Touches Everything (2020), https://valuetoucheseverything.com/training.

[43] See case study Operation Mummy's Curse in Appendix I.

[44] Pub. L. No. 114-151, 130 Stat. 369 (2016) (codified at 19 U.S.C. § 2601 note (2018)).

[45] Bureau of Educ. & Cultural Affairs, *Cultural Heritage Coordinating Committee*, U.S. Dep't St. (2020), https://eca.state.gov/cultural-heritage-center/cultural-heritage-coordinating-committee [https://perma.cc/VB2S-VCEC].

[46] Patty Gerstenblith, *United States of America and Canada: expert report.* Meeting of States Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (2012).

[47] Pub.L. 97–446, 96 Stat. 2329 (1983) (codified at 19 U.S.C. §§ 2601–2613).

[48] 19 U.S.C. § 2606.

[49] 19 U.S.C. § 2605.

[50] United States Senate Permanent Subcommittee on Investigations, *The Art Industry and U.S. Policies that Undermine Sanctions*, Staff Report, 2020.

[51] In this report, "SDN" and "blocked person" will be used interchangeably.

[52] United States Senate Permanent Subcommittee on Investigations, *The Art Industry and U.S. Policies that Undermine Sanctions*, Staff Report, 2020, at 14.

[53] Office of Foreign Assets Control, *Sanctions Programs and Information*, United States Department of the Treasury, https://www.treasury.gov/resource-center/sanctions/Documents/licensing_guidance.pdf.

[54] United States Senate Permanent Subcommittee on Investigations, *The Art Industry and U.S. Policies that Undermine Sanctions*, Staff Report, 2020, at 4.

[55] United States Senate Permanent Subcommittee on Investigations, *The Art Industry and U.S. Policies that Undermine Sanctions*, Staff Report, 2020, at 14.

[56] For example, in April 2018, OFAC designated Russian businessman Oleg Deripaska, who owned a majority of the parent company of Rusal, the world's second largest aluminum company. Deripaska's designation meant that Rusal, too, was blocked, and this affected companies around the world that relied on aluminum for their businesses. Eventually, OFAC negotiated with Deripaska to reduce his ownership stake to below 45% and his voting rights to 35%. *See* Polina Devitt, Arshad Mohammed, *Questions linger over Deripaska's Rusal influence after U.S. deal*, Reuters (2019), https://www.reuters.com/article/us-usa-russia-sanctions-rusal-analysis/questions-linger-over-deripaskas-rusal-influence-after-us-deal-idUSKCN1PT0K9.

[57] Office of Foreign Assets Control, *Sanctions Programs and Information*, United States Department of the Treasury, https://www.treasury.gov/resource-center/sanctions/Documents/licensing_guidance.pdf.

[58] This exception provides that the President does not have the authority to regulate or prohibit "the importation from any country, or the exportation to any country, whether commercial or otherwise, . . . of any information or informational materials, including but not limited to. . . artworks," although the exemptions do not include exports that are controlled for antiterrorism policies. 50 U.S.C. § 1702(b)(3).

[59] 138 CONG. REC. 15,052 (1992) (statement of Rep. Berman).

[60] Financial institutions have already adapted this technology for human trafficking and wildlife trafficking. Large banks may create their own software, while other institutions may ask their vendors to adapt the software.

[61] *Anti-Money Laundering Program Creation*, Jewelers Mutual Group (2020), https://www.ishipjm.com/clientservices/pac/default.aspx.

[62] The OECD Due Diligence Guidance Minerals (Edition 3) also provides Model Supply Chain Policy for a Responsible Global Supply Chain of Minerals from Conflict-Affected and High-Risk Areas. These guidelines have since been adopted by the SEC (in part) (2012), China (2015), and the European Union in 2017. *OECD Due Diligence Guidance for Responsible Mineral Supply Chains*, Responsible Business Conduct Unit (OECD), 2016 at 6.; Press Release, U.S. Securities and Exchange Commission, SEC Adopts Rule for Disclosing Use of Conflict Minerals (August 22, 2012), https://www.sec.gov/news/press-release/2012-2012-163htm.

[63] Not yet an official notice color or category, Interpol should further develop the Silver Notice and specifically should create a Silver Notice for the tracing and recovery of illicitly traded art, antiquities, and related assets. In November 2015, Interpol added a Silver Notice to its list of Notices (Resolution N01 AG-2015-RES-01) to help trace, seize, and foregiet stolen assets, for example, the stolen objects from the Libyan and Egyptian Museums amongst which were hundreds of antiquities. Interpol provided the creation of an analysis on asset recovery to centralize all data from Interpol, notices, diffusions and formatted message to facilitate analytical output such as cross-matching available data to identify patterns, trends, possible linkages and interrelationships that could lead to the discovery of evidence. This data may be used to contribute to the stolen artworks database. A clear standard for tracking art has already been developed by Object ID in association with ICOM, and this should be incorporated into the Silver Notice.# Other NGOs already engaged in this line of investigation include Global Witness and Global Financial Integrity.

[64] *Red Notices*, Interpol, https://www.interpol.int/en/How-we-work/Notices/Red-Notices.

[65] *Stolen Works of Art Database*, INTERPOL (2020), https://www.interpol.int/Crimes/Cultural-heritage-crime/Stolen-Works-of-Art-Database.

[66] *World Customs Organization Illicit Trade Report 2019*, C4ADS (2019), https://c4ads.org/wco-2019.

[67] *Terrorist Financing Risk Assessment Guidance*, FATF Report (FATF) 2019 at 46.

[68] *About Anti-Money Laundering*, JVC (2020), https://jvclegal.org/about-aml/.

[69] Note that appointing the business owner as MLRO risks producing a conflict of interest; another employee of the business should be appointed MLRO.

[70] Requirements to appoint an MLRO are contingent on the size and/or revenue of the business. When it becomes a requirement to have an MLRO, financial institutions will also be monitoring that this is in practice.

[71] Regarding ID privacy and data retention, security models may be borrowed from existing compliance frameworks at financial institutions. Requirements are driven by state law.

[72] TEFAF's stringent vetting for authenticity of objects may be a model for object vetting; the model may also be translated to customer authenticity and verification. *Stringent & Transparent Vetting Standards and Procedures* TEFAF, (2020), https://www.tefaf.com/about/vetting.

[73] Funding for these training sessions could be obtained by a single organization. This organization should be identified as a thought leader in the community, and could obtain funding from the art and antiquities community. This organization could build the capital required to organize and stage these trainings, and draw the necessary elements from the community to build an effective risk-based approach and training program. The organization would interact with the community to address the issues and concerns unique to the art market, and launch an initial program of training, working with the community to assess and update the training, develop ongoing intelligence reports and enhancements to the program. The organization would keep up-to-date typologies and guidelines, and continue to share them on a consistent and on-going basis. An oversight board from the community would function as a quality control check. Business models from the financial industry, such as the Association of Certified Anti-Money Laundering Specialists (ACAMS) and the Association of Certified Fraud Examiners (ACFE) could provide structure and are an example of the value of a professional organization to produce information, tools, and training.

[74] Laura Patten, *Collaboration is Key to Solving Art Market Financial Crime*, The Art Newspaper (December 11, 2018), https://www.theartnewspaper.com/comment/collaboration-is-key-to-solving-art-market-financial-crime.

[75] Over time, as the tenure, history, and number of transactions grows, the requirements to monitor and collect information would lessen, unless there has been a significant change or high risk transaction.

[76] *Anti-Money Laundering Program Creation*, Jewelers Mutual Group (2020), https://www.ishipjm.com/clientservices/pac/default.aspx.

[77] According to Art Fraud Insights, Ebay's arts & antiques category transacts over half a billion dollars annually.

[78] Some existing machine learning approaches include: *The Viola-Jones object detection framework* provides competitive object detection rates in real time. It was first developed for face detection in images, but may be trained to detect a wide variety of objects. *Scale-invariant feature transform* is a feature detection algorithm in computer vision to detect and describe local features in images. It has been used in object recognition, robotic mapping and navigation, 3D modeling, gesture recognition, and individual identification of wildlife. *Histogram of oriented gradients* is a feature descriptor used in computer vision and image processing for the purpose of object detection. It has been used in pedestrian detection in static images culled from video surveillance, detection of animals and vehicles in static images, and human detection in videos. *Faster_rcnn* is an object detection model used on images. *FasterRCNN Openimages v4*, TensorFlow Hub (March 26, 2020), https://tfhub.dev/google/faster_rcnn/openimages_v4/inception_resnet_v2/1.

[79] Algorithms of this type are commonly used on online marketplaces and social media. Facebook, for example, utilizes the technology to identify objectionable content in at least seven areas: nudity, graphic violence, terrorism, hate speech, spam, fake accounts, and suicide prevention. It does not yet have an algorithm to detect antiquities trafficking, a ban they recently placed on both facebook and instagram platforms in the May 2020 update to their community standards. *Community Standards*, Facebook (2020), https://www.facebook.com/communitystandards/.

[80] Chart prepared by Art Fraud Insights for eBay Art Marketplace Review Initiative Final Pilot Status Report, March 2016.

[81] Corporate Transparency Act of 2019, H.R. 2513, 116th Cong. (2019).

[82] *eBay's You Can't Fake Fashion Campaign Returns*, eBay (March 18, 2013), https://www.ebayinc.com/stories/news/ebays-you-cant-fake-fashion-campaign-returns/.

[83] *Counterfeit Item Policy*, eBay (2020), https://www.ebay.com/help/policies/prohibited-restricted-items/fake-items-policy?id=4276.

[84] Art Fraud Insights for eBay Art Marketplace Review Initiative Final Pilot Status Report, March 2016.

[85] Brodie, N. (2015), 'The Internet Market in Antiquities', in F. Desmarais ed. Countering Illicit Traffic in Cultural Goods: The Global Challenge of Protecting the World's Heritage (Paris: ICOM).

[86] UNESCO et al., *Basic Actions Concerning Cultural Objects Being Offered for Sale Over the Internet*, UNESCO (2016), https://en.unesco.org/sites/default/files/basic-actions-cultural-objects-for-sale_en.pdf.

[87] *United States May Lose One-third of All Museums, New Survey Shows*, American Alliance of Museums (July 22, 2020), https://www.aam-us.org/2020/07/22/united-states-may-lose-one-third-of-all-museums-new-survey-shows/.

[88] *New Acquisitions of Archaeological Material and Works of Ancient Art*, Ass'n of Art Museum Directors (2020), https://aamd.org/object-registry/new-acquisitions-of-archaeological-material-and-works-of-ancient-art/browse.

[89] On October 15, 2020, The Brooklyn Museum will be the first institution to take advantage of this two year grace period. The Brooklyn Museum is putting 12 works up for auction at Christie's to raise funds for the care of its collection. It is the kind of sale that once would have been subject to criticism and sanctions, but it is now completely within the parameters of the loosened regulations, which are themselves a measure of how financially damaging the coronavirus pandemic has been for cultural institutions.

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