



IADAA NEWSLETTER DECEMBER 2024

**Privacy rules are spelling trouble for the art market**

Art Newspaper: December 6: A fascinating article that highlights conflicting interests which might have significant implications for the European Union's import licensing regulation, due to be enforced from June 28 next year.

Those ignorant of the art market often argue that a lack of transparency in its transactions is the result of dishonest trading when the reality is that privacy laws and contractual obligations often prevent those conducting business from revealing the identity of sellers and sources.

The right to privacy, security and other factors lies behind these obligations rather than dishonest intent, but the public narrative generally overlooks these. This article starts to redress the balance, acknowledging the valid interests in confidentiality agreements and obligations while showing how they can come up against increasing regulation in the EU and elsewhere.

"A key driver for increased confidentiality periods appears to be recent developments in privacy laws," the article explains. "The EU's General Data Protection Regulation (GDPR) has been in force across all EU nations since 2018 and also applies to the UK, even post-Brexit. It introduced a wealth of rules around personal data, including the requirement for explicit consent to collect or process data, the obtaining of clear consent around how information will be used and the right to erasure."

Confidentiality rules makes life harder for provenance researchers, says Angelina Giovani of Flynn & Giovani Art Provenance Research. The situation is not helped by dwindling resources which can mean that updating archives may not be a priority for some businesses.

British Art Market Federation chairman Martin Wilson, a lawyer who is also Global Chief Counsel for Phillips, notes that confidentiality clauses in auction contracts are not time limited, preventing auctioneers from divulging client information even if they wanted to. Sotheby's and Christie's both agree in the article.

The *Art Newspaper* notes that Holocaust victims have been able to force the courts to divulge confidential information, but then Nazi-looted art has special protection under the law internationally.

This all begs the question as to what will happen when Customs demand importers divulge such protected information under the new EU import licensing regulation. Will EU GDPR laws take precedence? If so – as seems likely bearing in mind that such privacy rights are embedded in the EU's base treaty – where does that leave customs, the importer and the items being imported. With around six months to before enforcement, it's an important question to add to the already long list of unresolved issues surrounding the law.

**'A blend of ancient and modern': inside Thessaloniki's new €3bn metro system**

The Guardian: November 30: It's been a long and often controversial project, but after 22 years the northern Greek port city of Thessaloniki has unveiled its new metro system, complete with numerous displays of ancient artefacts.

Driverless trains traverse the 10km subway, passing through stations adorned with antiquities excavated during the development process and now preserved behind protective glass, an example of which can be seen below.

"Archaeologically, it has been an extremely complex and difficult endeavour," said the culture minister, Lina Mendoni, of the more than 300,000 finds made



since construction began 22 years ago. “To get here required a battle on many fronts.”

As *The Guardian* explains: “The discovery of treasures – many to be exhibited in the stations themselves – promises a modern ride through the multilayered history of a metropolis that dates back 2,300 years and through which the Romans, Byzantines and Ottomans all passed. Two marble squares, an early Christian basilica, a Roman-era thoroughfare, water and drainage systems and ancient Greek burial sites brimming with jewellery and gold are among the trove.”

Extensions of the network planned for the future will be accompanied by further displays.

One of the most hotly anticipated features will be an entire archaeological site unveiled for the first time at the central Venizelou station.

### **Talks over return of Parthenon marbles to Athens are ‘well advanced’**

The Guardian: December 2: This is one of several news reports – some contradictory – claiming that talks are well advanced on an agreement to send the Parthenon Marbles back to Greece from the UK on loan.

Although not at the forefront of political talks between the two countries, this article explains that British Museum chairman George Osborne and the Greek Culture Ministry have moved towards ‘an agreement in principle’.

“It is envisaged that any agreement will be underpinned by a cultural partnership between the two countries, with the sculptures returned to Athens and reunited with other pieces currently on display at the Parthenon galleries of the Acropolis Museum – in exchange for blockbuster art works that will take centre stage in rolling exhibitions in London.”

However, a BBC report headlined Sculptures return deal ‘some distance away’ attributes this conflicting view to Osborne himself.

Just before Christmas, former EU Commission vice president Margaritis Schinas wrote in the *Daily Telegraph* that Britain should take the diplomatic initiative and return the Marbles, hinting that it might influence any UK/EU trade deal.

Few, if any, believe that any Marbles loaned to Greece will ever make their way back to London.

### **But could Italy ask France to return the works requisitioned by Napoleon?**

Finestre sull’Arte: December 3: A fascinating and in-depth article on restitution arguments that explores the potential consequences of President Macron’s landmark decision to actively return items to countries of origin.

Essentially, the article asks: when is the cut-off date? If items removed from Africa over the past 200 years must be returned, why note the booty of earlier conquests such as that seized during the Napoleonic wars?

It singles out artworks in the Louvre which might have to be sent back if equal treatment was to be meted out: “Perhaps the best-known case, just to start with an example, is that of **Veronese’s** *Wedding at Cana*, a work that now decorates the Mona Lisa Room in the Louvre, hanging just opposite Leonardo da Vinci’s celebrated masterpiece. In 1797, the large canvas, over six meters high by nearly ten meters wide, was dismantled from the refectory of the Monastery of San Giorgio Maggiore in Venice and taken to France.”

The article looks at the demands of international law and sets them against French law. The Hague Convention, UNESCO 1970 and UNIDROIT all come in to play. Importantly, it notes: ‘It should be specified, however, that all of these instruments, aimed primarily at creating an international framework for combating trafficking in cultural property, can be invoked only for disputes that have occurred following their entry into force in the contracting states.’

This is the very point so often ignored by politicians and third countries demanding repatriations – supporters of international law and conventions only up to the point that they support their claims.

The article also explains how political will can get around such restrictions or shortfalls by passing ad hoc laws: French Law 2020-1673 of December 24, 2020, circumvented the French Heritage code to effect the return of Benin bronzes. This derogation from the principle of inalienability raises the spectre of mass repatriations from museum collections that would otherwise be untouchable under French law.

The article quotes cultural property lawyer Yves Bernard-Debie’s views expressed to *La Tribune de l’Art*: “...that many objects that we now consider looted at the time of the plundering were brought back to France without any laws being broken”.

Finally the article addresses conflicting imperatives between the law and morality, and the fact that politics increasingly plays a part. However, it is notable that those who emphasise the moral question assume that there is only one way of looking at the issue, forgetting that moral and ethical arguments exist for preventing repatriation in some cases, notably that of the Benin Bronzes.

### **Gravely Concerned by Rise in Theft, Trafficking of Cultural Artefacts, General Assembly Adopts Resolution Calling for Creation of Suitable Legal Protection Frameworks**

United Nations media release: December 6: Arising out of the Yemen conflict, enhanced concern for the safety of cultural heritage is understandable. However, this debate makes specific recommendations that would have a very significant impact on the international art market that go beyond the already burdensome restrictions and regulations that exist. It is possible – even likely – that the speakers are unaware of how closely the market is policed already. Nor are they likely to understand the market or how the sort of measures they call for here would make life impossible for legitimate traders.

Among those measures is “ensuring transparency on the art market” – a worthy ambition but one which may ignore the demands of other laws governing privacy under GDPR regulations, for instance. Egypt demands more ‘market control’ and ‘monitoring of auctions’ and ‘implementing the related 1970 convention’, something that already takes place.

The text of the resolution, which was adopted without a vote, pushes for an extension of powers (see paragraph 6) to grab back items from countries where they were sent before those countries acceded to the 1970 UNESCO Convention – a condition that the Convention itself explicitly forbids.

Para 25 demands member states take appropriate measures “to ensure that all actors involved in the trade of cultural property, including but not limited to auction houses, art dealers, art collectors, museum professionals and managers of online marketplaces, are required to provide verifiable documentation of provenance as well as export certificates, as applicable, related to any cultural property imported, exported or offered for sale, including through the Internet.” As usual, this takes no account of the fact that such paperwork often does not exist, so to demand it retroactively is not only unfair, but unrealistic.

Para 29 calls for the establishment of national databases of artworks, but as history has shown, nation states do not want to fund them, while those controlling them often do not want to share their contents, rendering them useless.

In all, this is a rehash of many of the long-standing demands promoted by the NGOs who have little or no understanding of the market or any concept of the practical implications of such a wish list.

The call for nations to make trafficking in cultural property a “serious crime” is confusing as many already do. However, this could be a specific move to upgrade the status of such crime to the degree where it is considered a serious threat to state security. Under such circumstances, normal rules do not apply, and reversing the burden of proof can take precedence over human rights to the ownership of property.

#### Rare Roman coin featuring Brutus sold at Geneva auction for almost €2m



The Guardian: December 9: The obverse features the head of Brutus, assassin of Julius Caesar, who had the coin struck around 43-42 BC, a year or so after the assassination.

The Casca Longus type aureus, *shown here*, weighs about grams and has just sold at auction Geneva for €1.98m.

The coin was struck by a military mint travelling with Brutus in northern Greece not long before the Battle of Philippi, and it broke tradition by picturing the likeness of a living leader.

As one of only 17 known examples of the coin – six struck from these die types – it is a much sought-after rarity and sold to a European collector.

#### **Assad involved in illegal excavations, former head of Aleppo National Museum tells Türkiye Today**

Türkiye Today: December 9: With the fall of the Assad regime comes news of claims that the dictator was behind the looting of museum artefacts.

“Based on my 15 years of professional experience working in the Aleppo region, I can confirm that illegal excavations were a persistent problem, especially in the areas around Aleppo. Most of these illegal excavations were protected by the Syrian regime’s secret police,” says Youssef Kanjou, former director of the Aleppo National Museum.

“These activities often unearthed artifacts that we, as archaeologists and museum professionals, could not document or safeguard. Since the 1980s, the Assad family has been indirectly involved in this type of activity, operating through a network facilitated by the secret police.”

The interview covers the ‘immense’ damage to Syria’s cultural heritage during the civil war but is upbeat as he tells us that all of the country’s museums are now safe.

“As we have observed, all Syrian museums are currently safe, with no reports of looting or attacks. From my experience, Syrians deeply cherish their museums, as they represent an integral part of our identity.”



Whether Assad was involved in, or facilitated, looting or not, Kanjou is clear that the regime's oversight was not in the museum sector's interest: "During Assad's regime, there was little economic support from the government, and staffing was limited. To work at a museum, one had to be loyal to the regime.

"Furthermore, museums often followed the regime's political directives rather than the recommendations of experts or the needs of the Syrian people."

Kanjou says proper documentation of museum holdings must be prioritised, as he bemoans the lack of focus and progress over the past 50 years. "Over the past 50 years, however, there has been little progress in the preservation or evolution of Syrian heritage. Under the Assad regime, there were no comprehensive plans, genuine interest, or meaningful support for the country's cultural heritage."

### **How the Windrush scandal helps shine a light on rights violations in the art market (full text)**

Antiquities Forum: December 20, 2024:

Alerting the public to existential threats posed to much of the art market by draconian regulations is a difficult task. Unless your audience has a stake in the game, it can be difficult to hold their attention or gain their sympathy.

Surely this is just another example of the market pleading for special treatment, critics will say.

So, getting the message across can depend on making a connection with something that resonates far more closely with the public's conscience.

This is where the Windrush Scandal comes in.

Its origins date to 1948, just after the Second World War, when the

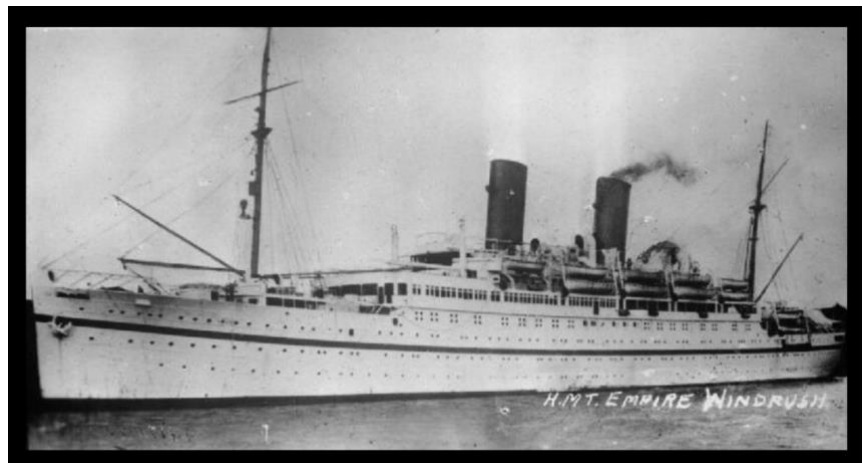
British Nationality Act granted British subjects from the Colonies the right to come to the UK and settle. Many came from Jamaica and other parts of the Caribbean, and what became known as the Windrush generation acquired its name from the *Empire Windrush*, one of the first ships to transport them across the Atlantic to Britain's shores.

Up to 1970 around 500,000 people arrived in Britain under the scheme, encouraged to make the journey by successive governments in an effort to help rebuild the country post-war.

Having a legal right to come to the UK, they neither needed nor were given any documents upon entry, nor following changes in immigration laws in the early 1970s. When former colonies established their independence, new legislation limited the rights of their citizens to emigrate to the UK. Those who had arrived before 1973 had an automatic right to remain permanently unless they left the UK for more than two years.

### **Enshrining rights in legislation**

Again, because the right was automatic, many people who qualified were never given, nor asked to provide, documentary evidence of their right to remain. Those rights were further enshrined by the Immigration and Asylum Act 1999, which protected long-standing residents of the UK from Commonwealth countries from enforced removal.



The Home Office deemed such people adequately protected when immigration legislation was updated in 2014, and so the provision was not included. By then, however, the UK was already operating a hostile environment policy to discourage immigration and to make it easier to expel illegal immigrants.

As policy tightened, ID checks and other measures such as the continuing provision of services made it necessary for individuals to prove that they had legal residence. When the scandal eventually broke in 2018, thanks to legal action by the Equality and Human Rights Commission (EHRC), it became clear that people had been wrongly detained, denied legal rights, and threatened with deportation, because they could not prove their status; 83 cases of wrongful deportation were identified. Others lost their jobs and homes or had their passports confiscated and were denied health care or benefits to which they were entitled.

The Home Secretary, Amber Rudd, resigned over the scandal.

The ensuing independent inquiry, Windrush Lessons Learned Review, reported back in early 2020, ruling that the Home Office had shown “ignorance and thoughtlessness” and that what had happened had been “foreseeable and avoidable”. It further found that immigration regulations were tightened “with complete disregard for the Windrush generation” and that officials had made “irrational” demands for multiple documents to establish residency rights.

“Ignorance and thoughtlessness”; “foreseeable and avoidable”; “complete disregard”; “irrational”.

Essentially, the innocent fell victim to a cruel and excessive policy because of the retroactive application of modern standards: although when they came to Britain documentary evidence of their residency rights was seen as unnecessary and so not issued, they were being forced to provide it decades later or suffer the consequences.

### **The demand to supply non-existent documentation**

This is what was meant as “irrational”; how can you supply evidence that never existed? How can the authorities demand it when they know it never existed? Not just “irrational”, the policy was also tyrannical, undemocratic, and a breach of human rights. No wonder politicians expressed their shame and resigned; no wonder the public and human rights bodies were outraged.

And yet, this is far from an isolated incident.

At the heart of almost every debate between the art market and the authorities, regarding cultural property, is the matter of provenance. Vanishingly few artworks and artefacts have a complete documented history dating back to their creation or discovery. In many cases this is because where such documentation once existed, it has been lost or destroyed over time. In many other cases it never existed because it was not required at the time of original sale or export.

Nonetheless, those who challenge the market – from governments and NGOs to law enforcement and advocacy bodies – demand that such documentation must be provided now if these items are to be allowed to circulate freely in the international market. Failure to provide this non-existent paperwork to meet a modern standard that was not in place before very often results in these items being deemed illicit and so seized.

Far from being ashamed, embarrassed and outraged at this treatment of businesses and individuals, those championing such policies continue to press for more restrictions.

If you agree that the victims of the Windrush scandal were ill-treated and were subject to a serious infringement of their human rights by being subjected to such unreasonable demands, then the violation of rights meted out to market professionals and private individuals alike on the same score should concern you deeply.

## **Should museums return antiquities to their countries of origin? Some say no**

South China Morning Post: December 22: A surprisingly frank discussion from a Chinese publication, this well-written article makes a genuine effort to explore the nuances surrounding repatriation claims.

Acknowledging that those demanding returns without further debate are currently winning the PR campaign, it also notes that ‘the other side is finally firing back’. The article focuses on a new book, *Plunder? How Museums Got Their Treasures*, by Justin Jacobs, a history professor at the American University of Washington D.C. Antiquities acquired as the result of plunder form only a small part of museums holdings, Jacobs argues.

“Almost all the remainder were originally exported with official permission or open disinterest, as a result of sanctioned archaeological activities, obtained from explicitly or tacitly licensed dealers, or received as diplomatic gifts, and later sold to museums whose only weapons were their chequebooks.”

Key to understanding how collections gathered is an understanding of past attitudes, Jacobs explains.

He takes the opposing view to Dan Hicks, whose 2020 book *The Brutish Museums* insists that pretty much everything was ‘blood-drenched plunder’ and should go back – a strange attitudes from someone whose role as Curator of the Pitts-Rivers Museum in Oxford should surely mean he has a duty to protect its collection, not disassemble it.

Jacobs describes Hicks’ views as ‘very selective’.

“Many people who are not in the depths of research on this topic feel that that is now the appropriate position to take,” says Jacobs, “without reflecting on the history and the details. And I’m saying the details are very important.”

British Museum treasures from China, for instance, include “gifts, items removed with the agreement and assistance of the authorities of the day, legitimate purchases from Chinese sellers, and others made for sale to whoever could pay, local or foreign”.

Jacobs describes the work of Anglo-Hungarian archaeologist Marc Aurel Stein (1862-1943), whose four expeditions between 1900 and 1930 excavated long-forgotten oases and other sites.

“The highly educated Confucian elite in charge of the region’s towns and cities had no interest in getting their hands dirty, according to Jacobs – let alone in spending days, as Stein did, digging through centuries-old but still malodorous waste heaps in search of discarded documents from long-departed alien regimes. These were also written in languages and scripts with which local officials were unfamiliar.

“But they did admire a scholar, and at the completion of Stein’s first expedition, in 1901, Han Yaoguang, the Chinese prefect of the Xinjiang oasis of Keriya, submitted a report to his superiors on the archaeologist’s activities.”

Stein recorded everything he found, gained official permission to extract it and accepted the help of officialdom to organise his digs. He also presented them with illustrated bound volumes of his discoveries, receiving praise in return.

“These people were amazed that Stein and other foreigners would pay good money for items they regarded as worthless, except sometimes for use as fertiliser,” the article says, adding: “Like their counterparts in Egypt, they had an Islamic indifference to pagan temples long left buried in sand, but were willing to mine them for those who had other ideas.”

As with so many other countries with a rich heritage, “Those who assisted archaeological expeditions may have been illiterate, but they were nobody’s fools, and like the entrepreneurial excavators of Egypt, grew to regard the desert’s treasures as a natural resource that could be dug up and sold to put food on the table, in both cases with the complicity of the government of the day.”

As we know, in Egypt's case, the desire to acquire foreign currency led to the Cairo Museum operating an antiquities saleroom up until 1983.

Jacob goes on the attack when it comes to what he sees as the patronising attitudes of the repatriation lobby: "We're doing more to erase the voices and views of these non-Western actors," says Jacobs, "than the archaeologists themselves did – by ignoring them, by treating them as children, by not accepting that they would have a rational motivation for why they're doing things. And that they're not just as complex and intelligent as we are today."

### **The afterlife of stolen antiquities when they are returned to India**

The Print: December 31: What happens to cultural property that has been seized or handed over and then returned to its source country? This article explains post-return events in India.

As subscribers will know, the primary driver behind calls for repatriation is that cultural artefacts should be returned to their place of origin for the benefit of the public there, and so that they can connect with their national heritage. So strong is this idea that many will sacrifice the personal property rights of legitimate owners overseas to fulfil this ambition. As this article reveals, however, the end result does not always measure up to the ambition.

In this case, of the almost 650 artefacts returned to India over the past decade, just 13 have found their way back to their place of origin and been put on public display. "Each object's return is celebrated and wrapped in triumphant headlines. But their afterlife in India reveals a more complex story of both revival and roadblocks," the article explains. "These artefacts offer lessons in national pride, worship rituals, and historical research. Yet there are also questions around inadequate documentation, limited public access, and a gap between repatriation and actual reinstatement in their original sites."

So where are the rest?

"After they land in India, the rest usually end up in one of two places: the ASI's Gallery of Confiscated and Retrieved Antiquities and its Central Antiquities Collection (CAC) in Purana Qila or the National Museum. Not all are on public display."

It also transpires that ongoing preservation and conservation is not always a priority.

"But even artefacts displayed in public don't always seem to receive regular upkeep."

"In 2017, the *Seated Buddha* statue was repatriated with great fanfare and welcomed at the National Museum by then Culture Minister Mahesh Sharma. This sandstone statue, over 2,000 years old and stolen from Mathura in 1992, was returned from Australia. It now sits outside the office of the museum's director general. While age has left it with broken parts, more recent neglect is evident—on an afternoon this month, there were cobwebs on its right hand."

The return of the Benin bronzes to the descendants of the slavers who traded their own people and those they conquered for the metal to make the sculptures has been controversial enough. The Nigerian government's decision to hand the returned bronzes over to the direct descendant of the slave trading Oba of Benin adds insult to injury as they are whisked away to his private collection, out of public view.

How long before some of them begin to appear on the market once more?