Give Us Your Tired, Your Poor, Your Wretched Works of Art: American Museums Can Fix Them up, Show Them, and Send Them Back with Help from the Arts Indemnity Act

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Comments

GIVE US YOUR TIRED, YOUR POOR, YOUR WRETCHED WORKS OF ART: AMERICAN MUSEUMS CAN FIX THEM UP, SHOW THEM, AND SEND THEM BACK WITH HELP FROM THE ARTS INDEMNITY ACT

I. INTRODUCTION

Leonardo da Vinci in New York.1 Ancient China in Ohio.2 Edgar Degas in Philadelphia.3 The Renaissance in Detroit.4 Genghis Khan in Los Angeles.5 These are only a sampling of the cultural clashes made possible by the Arts Indemnity Act ("Act") in 2003 alone.6 The Act, passed in 1975, authorizes the federal government to indemnify against loss or damage exhibitions loaned to American museums from abroad.7 The Act has enabled the National Endowment for the Arts ("NEA") to indemnify 713 exhibitions and has saved museums over $157 million in insurance premiums over a period of twenty-seven years.8


2. See id. (listing as indemnified The Glory of the Silk Road: Art from Ancient China at Dayton Art Institute).


4. See id. (listing as indemnified Magnificenza! The Medici, Michelangelo, and the Art of Late Renaissance Florence at Detroit Institute of Arts).

5. See id. (listing as indemnified The Legacy of Genghis Khan: Courtly Art and Culture in Western Asia, 1256-1353 at Los Angeles County Museum of Art).


The art of the United States, unlike the art of most countries, is a single dot in the Impressionist painting of world art history. The United States' short history and capitalist resources make American museums some of the most diverse in the world, because they must fill their walls and vaults with the masterpieces of other cultures. Thus, American museums, like American culture, are well-suited to "serve not just the citizens of one nation but the people of every nation." 

The diversity promoted by the Act is essential to the entertainment value of museums for American citizens and foreign visitors alike. Although many may not consider museums "entertainment" in the same vein as sporting events or movies, American museums receive more visitors per year than all of the country's professional baseball, football, and basketball games combined. Furthermore, museums often provide a unique collective cultural experience for those who cannot access or afford more conventional methods of entertainment or international travel. Unlike "PG-13" or "R"-rated movies, many major museums provide entertainment for the entire family by creating exhibits and activities geared towards specific ages. Modern museums have also become

9. See Stephen W. Clark, Cultural Property Update, SH042 ALI-ABA 125, at 138 (reprinting Statement on the Value of the Universal Museum, signed by museums on November 12, 2002). The Statement provides the sculpture of Classical Greece as an example of the importance of public collection: early appreciation of Greek art and culture increased during the Renaissance, resulting in acquisitions throughout Europe and then, centuries later, throughout America. See id.

10. See id. (discussing importance of encouraging distribution of art throughout the world).


12. See id. America has an estimated 16,000 museums that collectively receive over 850 million visits per year. See id.

13. See Museums Working in the Public Interest, Am. Ass'n Museums, at http://www.aam-us.org/resources/general/publicinterest.cfm (last visited May 22, 2004) [hereinafter Public Interest]. Nine out of ten American counties have at least one museum, and 75% of those museums are classified as "small," while 43% are located in rural areas. See id. Over 50% of museums are free, and almost 60% of museums that charge admission sponsor regular "free days." See id.

14. See id. (ranking museums among top three vacation destinations for families); see also Offered Daily: For Families, Getty Museum, at http://www.getty.edu/visit/families.html (last visited May 22, 2004) [hereinafter For Families] (listing various daily activities for families, including historical costume center for kids, portable drawing kits, and interactive computer guides).
venues for other forms of entertainment chosen to complement current exhibits, such as concerts and movie screenings.15

While the Act has helped development of these cultural entertainment opportunities, American museums now face new challenges in conservation and repatriation.16 Conservation requires substantial financial and personnel resources that are often beyond the reach of many museums.17 If American museums responded wholeheartedly to the call for repatriation, little would be left for visitors to see.18

This Comment explores the potential role of the Act in the solutions to both conservation and repatriation problems. Part II provides an overview of the Act and its history, including problems of interpretation, claim issues, and expansion of coverage limits through recent amendments.19 Part III examines both the repatriation controversy and the difficulties of conservation, and Parts III and IV together analyze the application of the Act to these specific problems and explore the likelihood of success in applying the Act to the restoration and repatriation challenges facing American museums.20

II. BACKGROUND

A. Elements of the Act

The Arts and Artifacts Indemnity Act was passed in 1975 to provide American museums greater opportunity to exhibit interna-

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16. See Clark, supra note 9, at 140-46 (discussing repatriation and conservation issues facing museums within context of impact of new U.S.-Italy Long-Term Loan Program).

17. See id. at 142-43 (discussing underfunded conservation labs and possible solutions, including funding provided by American institutions to Italian institutions to perform in-house or private conservation).

18. See id. at 138 (stating, in Statement on the Value of the Universal Museum, “[t]o narrow the focus of museums whose collections are diverse and multifaceted would . . . be a disservice to all visitors”).

19. For a discussion of the legislative and operational history of the Act, see infra notes 21-51 and accompanying text.

20. For a discussion of the repatriation controversy, see infra notes 79-112 and accompanying text. For a discussion of conservation issues, see infra notes 129-76 and accompanying text. For a discussion of the Act’s role in the solution to these problems, see infra notes 177-83 and accompanying text.
tional art through federal government subsidies. The Federal Council on the Arts and Humanities ("Council"), backed by the "full faith and credit of the United States," is authorized to make indemnity agreements with lending institutions to protect traveling artwork from loss or damage.

The list of items eligible for indemnity agreements is fairly comprehensive. Even a cursory examination of the statutory language leaves no potential object of art uncovered. Four categories currently exist: (1) works of art, (2) printed or published materials, (3) artifacts or objects, and (4) photographs, motion pictures, or tapes. These categories of objects eligible for indemnification are subject to two qualifiers. First, indemnity agreements can be made only for objects with "educational, cultural, historical, or scientific value." Second, objects must be certified as being "in

21. See Grace Glueck, Notes: Signs of Life in Congress, Fun and Games at Artpark, N.Y. TIMES, Aug. 10, 1975, § 2, at 25. The Act was introduced by Senators Jacob Javits and Claiborne Pell. See id. At the time of passage, the Act was expected to save museums between $2 million and $3 million per year on insurance premiums for international shows. See id. While an indemnity agreement can be made for a single exhibit in or out of the United States, there is a statutory preference for indemnity agreements to be part of an exchange of exhibitions. See Arts Indemnity Act, 20 U.S.C. § 972(b)(1) (2000). Coverage under indemnity agreements extend from the date the artwork leaves the premises of the lender to the date the artwork is returned to the premises of the lender. See § 972(b)(2).

22. See Arts Indemnity Act, 20 U.S.C. § 973(c) (2000). Approval of an application by the Council creates a contract between the Council and the applicant. See id. An application must include a description of the item to be covered (including estimated value), evidence of eligibility, and a description of the planned preparation, display, and transportation of the exhibition. See § 973(b). Not only museums, but also persons, nonprofit agencies, institutions, and governments are eligible to apply for coverage. See § 973(a).

23. See Arts Indemnity Act, 20 U.S.C. § 971(a) (2000). Under this section, agreements are to be made with a concern for achieving the purposes of the statute and protecting the financial interests of the United States. See § 971(a)(2). The Secretary of the Smithsonian Institution and the Director of the National Gallery of Art are specifically excluded from membership on the Council, presumably because of conflict of interest concerns. See § 971(b)(2).

24. See id. at § 972(a).

25. See id.

26. See id. Works of art include tapestries, paintings, sculptures, folk art, graphics, and craft arts. See § 972(a)(1). Printed or published materials include manuscripts, rare documents, books, and "other." See § 972(a)(2). Artifacts and objects are their own "other" category. See § 972(a)(3). The final category encompasses both audio and videotapes. See § 972(a)(4).

27. § 972(a).
the national interest." 28 Such qualifiers are certainly not new to art legislation. 29

Most important are the maximum limits of coverage allowed by the Act. 30 At any given time, the total coverage provided by all indemnity agreements in force cannot exceed $8 billion. 31 More specifically, coverage for any single exhibition cannot exceed $600 million. 32 Eight levels of coverage have deductibles ranging from $15,000 to $500,000. 33

Once a claim is made, the Council may arbitrate issues relating to the actual value of the loss if the damage is less than total destruction. 34 The Council must then certify the claimed amount to the Speaker of the House and the President pro tempore of the Senate. 35 Although the Council was previously required to report

28. Id. The determination of "national interest" is now made by the Director of the United States Information Agency, although the statute in its original form delegated this decision to the Secretary of State. See id.

29. For a discussion of the impact of these kinds of qualifiers on the art world and the application of the Act, see infra notes 52-64 and accompanying text.


32. See § 974(c). The prior single exhibition coverage amount was $500 million, but § 974(c) was amended by the Museum and Library Services Act of 2003. See § 501(2).

33. See § 974(d). The schedule of deductibles is as follows:

<table>
<thead>
<tr>
<th>Value</th>
<th>Deductible</th>
</tr>
</thead>
<tbody>
<tr>
<td>$2 million or less</td>
<td>$15,000</td>
</tr>
<tr>
<td>$2 to $10 million</td>
<td>$25,000</td>
</tr>
<tr>
<td>$10 to $125 million</td>
<td>$50,000</td>
</tr>
<tr>
<td>$125 to $200 million</td>
<td>$100,000</td>
</tr>
<tr>
<td>$200 to $300 million</td>
<td>$200,000</td>
</tr>
<tr>
<td>$300 to $400 million</td>
<td>$300,000</td>
</tr>
<tr>
<td>$400 million to $500 million</td>
<td>$400,000</td>
</tr>
<tr>
<td>$500 million to limit</td>
<td>$500,000</td>
</tr>
</tbody>
</table>

Id. Coverage levels under § 974(d)(7) and (8) were also amended by the Museum and Library Services Act of 2003; the seventh level was capped at $500 million and the eighth level was added because of the increase in single exhibition coverage. See § 501(2). For a discussion of the amendment process, see infra notes 72-75 and accompanying text.

34. See Arts Indemnity Act, 20 U.S.C. § 975(a) (2000). The Act has been interpreted to allow the Council to make indemnity agreements covering either the full value of an exhibit or only partial value of elements of the exhibit. See Arts and Artifacts Indemnity Act — Statutory Limits — Dresden Exhibit, 2 Op. Off. Legal Counsel 34, 35 (1978) [hereinafter Statutory Limits]. For a complete discussion of the dispute that led to this interpretation, see infra notes 37-51 and accompanying text.

35. See § 975(a).
all settled and pending claims to Congress each year, that provision was abolished in 2000.36

B. Interpretation

Perhaps because the purpose of the Act is to create simple and straightforward indemnity contracts between parties, the Act itself has not caused much controversy in matters of interpretation. But while the elements of the Act seem fairly clear, the scope of the Council's discretion in making these indemnity agreements was challenged as early as 1978.37 Furthermore, there are some provisions in the Act that cover only those objects serving the "national interest" because of their educational, historical, cultural, or scientific nature — provisions that, when interpreted by the Council, could lead to denial of applications for exhibits with more controversial subjects.38

1. Required Extent of Coverage

In 1978, only three years after the Act's passage, the General Counsel of the National Endowment for the Humanities ("NEH") challenged an interpretation of the Act that would have forced some museums to obtain commercial insurance for international exhibits.39 The Office of Legal Counsel ("OLC") responded with an opinion stating that the language of the Act did not require an indemnity agreement to cover the total value of any part of an exhibit.40

That year, the National Gallery of Art in Washington, D.C., was applying for indemnification for an exhibit from East Germany.41 The Council agreed to indemnify the entire exhibit for loss or damage up to $50 million.42 Contrary to reason, the Council allotted indemnification that covered less than the total value of two catago-

37. See Statutory Limits, supra note 34, at 36 (discussing comments made by Mr. Amory, General Counsel of the National Gallery of Art, on January 28, 1978).
39. See Statutory Limits, supra note 34.
40. See id. at 37. "Since the Council may refuse indemnification, or indemnify for the full value of covered items, it follows that its evaluation of the risks of a particular situation can justify an intermediate position under a limited indemnification agreement." Id.
41. See id. at 34. The exhibit was entitled "The Splendor of Dresden." Id.
42. See id.
ries of included objects: porcelains and panel paintings.\textsuperscript{43} The Council intended for the National Gallery to obtain commercial insurance to supplement the coverage provided under the Act.\textsuperscript{44} The NEH argued that the Council lacked statutory authority to enter into such a partial agreement and any object or exhibit indemnified under the Act must be covered for its full value.\textsuperscript{45}

Strangely enough, the National Gallery did not challenge the proposed agreement.\textsuperscript{46} Arguing in support of the limited agreement, both the National Gallery and the Department of State relied on the broad language of the Act and its legislative history, which granted broad power to the Council to create indemnity agreements.\textsuperscript{47} In fact, one of the Act's sponsors, Senator Claiborne Pell,

\begin{itemize}
\item \textsuperscript{43} See id. The Council agreed to cover only one-third of the total value of the porcelains and one-fourth of the total value of the panel paintings. See id. The total value of both the porcelains and panel paintings together was approximately $5 million, well under the $50 million coverage afforded by the Council. See id. at 35 n.1.
\item \textsuperscript{44} See Statutory Limits, supra note 34, at 34-35. The National Gallery was expected to cover, through commercial insurance:
  \begin{itemize}
  \item a. Claims for loss or damage over and above $50 million, to a limit of $18 million;
  \item b. Claims for loss or damage to porcelains in excess of one-third of the aggregate value thereof; and
  \item c. Claims for loss or damage to panel paintings in excess of one-fourth of the aggregate value thereof.
  \end{itemize}

  Id. at 35.
\item \textsuperscript{45} See id. at 35. The NEH based its argument on the language of 20 U.S.C. § 974(a), which states:

  "Upon receipt of an application meeting the requirements of subsections (a) and (b) of section 973 of this title, the Council shall review the estimated value of the items for which coverage by an indemnity agreement is sought. If the Council agrees with such estimated value, for the purposes of this chapter, the Council shall . . . make an indemnity agreement." Arts Indemnity Act, 20 U.S.C. § 974(a) (2000) (emphasis added). The Office of Legal Counsel responded that although those words would seem to obligate the Council to indemnify for the full value if it agreed with the estimate of full value, a "fair reading of the provision indicates that its purpose was merely to specify the procedures required before an agreement could be made." Id.
\item \textsuperscript{46} See Arts and Artifacts Indemnity Act, supra note 34, at 36. The Department of State joined the National Gallery in supporting the partial agreement. See id.

  This language, we believe, just as it does not debar insuring, say, an 80 million dollar exhibit but limiting the amount of recovery to 50 million dollars, likewise does not, in our view, debar insuring three million dollars in value of porcelain objects but limiting the amount of recovery [under the indemnity agreement] to one million dollars . . . In our view Congress, by the wording of the Reports, did not mean to preclude this result.

  Id. (referring, in opinion, to an excerpt from congressional committee reports at time of Act's passage).
\item \textsuperscript{47} See id. at 36-37. The language in the relevant Senate Reports stated simply that the amount of the indemnity agreement is to be set by the Council, and if a
previously stated, "the legislation has been broadly drafted to give the agency as wide a scope as possible within which to issue [indemnity agreement] regulations." 48

The OLC agreed with the broad interpretation argued by the National Gallery and the Department of State. 49 The agreeing parties reasoned that because even a partial indemnity agreement alleviates problems caused by high insurance rates, and alleviation is the specific purpose of the Act, the Council had the authority to make partial agreements like the one at issue. 50 Even interpreting the Act to allow only partial coverage, indemnity agreements made under the Act still serve the twin purposes of limiting the financial exposure of the American government and reducing insurance costs for museums. 51

2. Statutory Value Judgments on Exhibit Content

The art community is no stranger to problems created when the federal government makes value judgments on artwork and exhibits. 52 The Act requires that any exhibit under an indemnity value cannot be agreed upon, no indemnity agreement shall issue. See id. at 36 (citing S. Rep. No. 94-289 (1975)). The same report also stated, "should a claim of loss be filed under the indemnity agreement where there is a complete loss — where the item has been totally destroyed — the total amount shall be paid."  Id. Although this particular language would seem to support NEH's argument, the opinion did not address this statement directly. See id. The NEH and the Department of State also relied upon 20 U.S.C. § 971(a)(2), which states that the indemnity agreements shall be made "on such terms and conditions as the Council shall prescribe . . . in order to achieve the purposes of this chapter," and one of those purposes is protecting the financial interests of the United States. Id. at 37 (quoting Arts Indemnity Act, 20 U.S.C. § 971(a)(2) (2000)).

48. Id. at 37 (citing Arts and Artifacts Indemnity Act: Joint Hearing on S. 1800 Before the Special Subcommittee on Arts and Humanities of the Senate Committee on Labor and Public Welfare, and the Select Subcommittee on Education of the House Committee on Education and Labor, 94th Cong. 36 (1975)).

49. See id.

50. See id. at 37-38. The OLC concluded, "The Senate and House Reports' primary theme is that the high cost of insurance unduly impedes the desirable practice of loaning and receiving artistic treasures. The Act was intended to meet this problem." Id. The opinion further stated indemnifying exhibits for less than their value would not only prevent the Council from exceeding its $250 million coverage cap, but also stretch that cap to cover more exhibits. See id. at 38.

51. See Statutory Limits, supra note 34, at 38 (stating public would still benefit from exhibition of valuable items).

52. See generally John Brademas, Fourth Annual Nancy Hanks Lecture on Arts and Public Policy, Address at the National Academy of Sciences in Washington, D.C. (Mar. 20, 1991), in NANCY HANKS LECTURE ON ARTS & PUBLIC POLICY: 10TH ANNIVERSARY COMPENDIUM (Americans for the Arts 1997), at 34, available at http://pubs.artsusa.org/pdfs/ARTS062/pdfs_image/34-46_500.pdf; see also John Brademas, Arts and Public Policy, 21 J. ARTS MGMT. L. & Soc'y (1991). While the Senate, in establishing the NEA, stated its intent that the administration give "the fullest attention to freedom of artistic and humanistic expression," over the past
agreement be of "educational, cultural, historic, or scientific value" and "in the national interest" as determined by the Director of the United States Information Agency.\textsuperscript{53} Value judgments inherent in these funding requirements have lead to public outcry and political controversy over nontraditional exhibits seeking funding through the NEH or the NEA.\textsuperscript{54}

In 1989, the NEA came under attack in the political and public spheres for providing grants to two exhibits that were deemed "obscene" by many.\textsuperscript{55} These were \textit{Piss Christ} by Andres Serrano and a series of homoerotic photographs by Robert Mapplethorpe.\textsuperscript{56} Attacks of "blasphemy" and "pornography" were countered with accusations of "censorship" and "thought control."\textsuperscript{57}

In response to this controversy, Congress included a provision in the 1989 appropriations bill which prohibited the NEA from supporting works which "may be considered obscene . . . [and,] when taken as a whole, do not have serious literary, artistic, political, or scientific value" — a restriction nearly identical to the one in the Act.\textsuperscript{58}

Although there remains a stigma surrounding the funding of art that offends the amorphous "general standards of decency" of the American public, Congress eventually reached a compromise on content restriction issues.\textsuperscript{59} This compromise is also embedded in the requirements of the Act.\textsuperscript{60} Most of the exhibits for which the Act provides indemnification do not create such public controversy, but an American museum may find itself applying for indemnity for

\textsuperscript{54} See generally Brademas, supra note 52 (discussing role of federal government in supporting arts over previous two years).
\textsuperscript{55} See id. at 37 (citing two exhibits of twenty as examples of exhibits causing significant controversy in twenty-five years of NEA grants).
\textsuperscript{56} See id. The Serrano exhibit was at the Southeastern Center of Contemporary Art in Winston-Salem, North Carolina, and the Mapplethorpe exhibit was at the Institute of Contemporary Art in Philadelphia. See id.
\textsuperscript{57} Id. at 38 (describing how exhibits "triggered the formidable machine of the religious right").
\textsuperscript{58} See id. (quoting H.R. 2788, 101st Cong. (1st Sess. 1989) and concluding provision put criteria for funding "on a collision course with the Bill of Rights").
\textsuperscript{59} See Brademas, supra note 52, at 41-42 (citing report of Independent Commission reviewing authority of NEA and unanimously recommending "the appropriate forum for the formal determination of obscenity is the courts").
\textsuperscript{60} See Arts Indemnity Act, 20 U.S.C. § 972(a) (A) (stating exhibits must have "educational, cultural, historical, or scientific value").
artwork from abroad with controversial content, and those applications may be rejected on facial subject matter alone.\(^{61}\)

It could be "a great mistake to put all decisions about what is beautiful and worth collecting into the hands of officials, committees, and boards of trustees."\(^{62}\) A careful examination of the exhibit may prevent concerns about decency from interfering with the benefits of cultural sharing.\(^{63}\) If placed in the proper context — at a museum providing adequate background information on the artist and the nature of the exhibit — even homoerotic black-and-white photographs may be of cultural and historic value.\(^{64}\)

C. Claims

In the Act's twenty-seven year history, only two claims have been filed pursuant to indemnity agreements, both in the 1980s and neither for more than $105,000.\(^{65}\) Perhaps because of the low incidence of claims, legislators recently increased available funds and expanded coverage by successfully amending the Act.\(^{66}\)

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\(^{61}\) See id. (listing qualifications for exhibit subject matter); see also 2003-2004 Exhibitions, supra note 1 (listing indemnified exhibits for 2003-2004, mostly well-appreciated and "decent" artists like Da Vinci, Lucian Freud, Degas, Matisse, Picasso, Renoir, Van Gogh, Manet, and Velazquez).

\(^{62}\) Paul M. Bator, An Essay on the International Trade in Art, 34 STAN. L. REV. 275, 300 (1982) (advocating private as well as public collecting to ensure private tastes are gratified).

\(^{63}\) See generally Brademas, supra note 52 (reviewing ongoing battle between NEA/NEH and federal government concerning review standards for funded exhibits). "[M]aintaining the principle of an open society requires all of us, at times, to put up with much we do not like, but the bargain has proved in the long run a good one." Id. at 45.

\(^{64}\) See id. at 38 (discussing political controversy surrounding Mapplethorpe exhibit). In 1990, the Senate reacted to the Mapplethorpe exhibit by adopting language that prohibited the NEA from funding or promoting art which "may be considered obscene, including but not limited to, depictions of sadomasochism, homoeroticism, sexual exploitation of children, or individuals engaged in sex acts which, when taken as a whole, do not have serious literary, artistic, political or scientific value." Id. In response, an Independent Commission was formed to review NEA funding standards. See id. The Commission recommended "against legislative changes to impose specific restrictions on the content of works of art supported by the endowment" because it feared content restrictions would raise serious constitutional issues and involve the NEA in "costly and unproductive lawsuits." Id. at 40. "Freedom [of expression in the arts] endangered anywhere is freedom endangered everywhere." Id. at 44.

\(^{65}\) See Tom Ford, McCollum Seeks More Federal Help for Museum Anti-Terror Insurance, STAR TRIB. (Minneapolis), Mar. 6, 2003, at 1A (discussing possible expansion of Arts Indemnity Program by increasing coverage available under Act).

increase in available funds comes at a time when, if all current applications to the program were approved, coverage would certainly exceed the $5 billion ceiling.\footnote{Increased application to the program is partly a result of the increased fear of terrorist strikes since September 11, 2001.}{67}

American museums are experiencing increased difficulty in securing overseas exhibits because of "skyrocketing [commercial] insurance rates" and "jittery art lenders" who fear a terrorist strike will obliterate the artwork.\footnote{While commercial lenders do not provide terrorist protection in their insurance policies, government indemnification programs automatically cover destruction by terrorist actions.}{69} While commercial lenders do not provide terrorist protection in their insurance policies, government indemnification programs automatically cover destruction by terrorist actions.\footnote{The government, however, may become reluctant to indemnify exhibits if it fears a substantial probability that the number of claims filed may rise as a result of the changing political atmosphere.}{71}

Despite the potential fear of loss, legislators introduced amendments to the Act to increase indemnification limits on February 13, 2003; the amendments took effect on September 25, 2003.\footnote{Representative Betty McCollum introduced the legislation that raised the ceiling of overall coverage from $5 billion to $8 billion.}{72} The amendments also increased the available coverage for any one exhibit from $500 million to $600 million.\footnote{The Act's initi-}

Art Museum Directors). For a discussion of the expansion amendments, see infra notes 72-75 and accompanying text.

\footnote{See Ford, supra note 65, at 11A (quoting Ann Puderbaugh, NEA spokes-
woman). Often, the program offers more than $5 billion in coverage within one fiscal year because exhibits last only a few months. See id. The program covered 25 exhibits at $4.5 billion in 2001 and 41 exhibits at $9.8 billion in 2002. See id.}{67}

\footnote{See id. (describing struggle of American museums in finding overseas works to exhibit since September 11, 2001).}{68}

\footnote{Id. This is not just an American problem; rather insurance premiums have risen and affected exhibit plans all over the world. See Jack Malvern, British Council's Overseas Exhibitions Under Threat from Treasury Thrift, TIMES (London), Oct. 26, 2002, at 11 (supporting need for British Council, U.K. version of NEH, to continue insuring exhibits at current level despite Treasury efforts to make cuts).}{69}

\footnote{See Malvern, supra note 69, at 11 (quoting British Council spokesman stating collections could never lend valuable works without proper insurance, and quoting commercial underwriter inferring today's climate requires terrorism coverage).}{70}

\footnote{But see Ford, supra note 65, at 11A (noting museums have not been on terrorist target lists).}{71}

\footnote{See H.R. 829, 108th Cong. § 2 (2003) (referring bill to Committee on Edu-

\footnote{See H.R. 829 § 2 (outlining proposed amendments to § 974 of Act).}{73}

\footnote{See § 501(2). The original bill proposed the single exhibit coverage be increased from $500 million to $750 million. See H.R. 829 § 2.}{74}
demnity limits have been increased several times since its enactment; further incremental increases encourage a greater number and better quality of exhibits without significantly increasing the financial risk to the federal government.  

III. ANALYSIS

The Act has been widely applied in its twenty-seven year history; however, there is little evidence to suggest that it has been systematically applied to remedy certain problems facing the modern art community. Recent amendments to the Act provide a unique opportunity for a subtle shift in the focus and application of the Act. The Act, applied thoughtfully, can have a major impact on two areas of concern in the art world: the repatriation movement and the need for increased and uniform conservation of major works.

A. Repatriation

Repatriation demands from countries of origin to recover objects that have been long-time residents in foreign museums have increased over the past several years. This call for repatriation, in turn, has created problems for the foreign museums that have long housed those objects. For example, India has certain cultural and historical claims to a statue of the Buddha taken from the country many years ago, but the statue also has great cultural value to the American museum housing it—the opportunity to expose the statue to thousands, perhaps millions, of people who would never venture to India. Under such circumstances, should the American mu-

75. See Arts Indemnity Act, 20 U.S.C. § 974 (2000); see also Malvern, supra note 69, at 11A (doubting federal government will encounter significant financial risk).

76. For examples of the far-reaching effects of the Act, see supra notes 1-13 and accompanying text.

77. For a discussion of the amendment process, see supra notes 72-75 and accompanying text.

78. For a discussion of application of the Act to repatriation through long-term loans, see infra notes 113-28 and accompanying text. For a discussion of application of the Act to conservation partnerships as a means of encouraging uniformity of method, see infra notes 129-76 and accompanying text.

79. See Clark, supra note 9, at 138 (stating “museums serve not just the citizens of one nation but the people of every nation”).

80. See id. (discussing conflicts inherent in repatriation when current societal and cultural conditions do not mirror those existent at time many of these objects were taken from their countries of origin).

81. See id.

Over time, objects . . . have become part of the museums that have cared for them, and by extension part of the heritage of the nations which house them. Today we [museums] are especially sensitive to the subject
museum fight to keep the statue despite the country of origin’s demand for its return? As one commentator has noted, “[i]s it not better for a Greek vase to be seen and studied and published in an American museum than to sit, unwanted and functionally invisible, in the basement of an Italian museum?”

Repatriation is a broad issue that has spawned much legislation, including export and import laws, criminal anti-smuggling laws, and property laws. In fact, most repatriation issues deal with antiquities, and more specifically, antiquities that have been acquired illegally at some point along the transactional road that ultimately leads to a foreign museum. Often, museums that acquire such pieces are unaware of their illegal removal from the country of origin. This lack of knowledge “emasculates the export controls and cultural property laws of source nations, rendering them meaningless.”

When artwork housed in an American museum is discovered to be an illegal acquisition, the call for repatriation becomes compelling. However, many of these “stolen antiquities” were acquired decades ago. Application of the Act provides an attractive solution of a work’s original context, [but] we should not lose sight of the fact that museums too provide a valid and valuable context for objects that were long ago displaced from their original source.

Id.

82. Bator, supra note 62, at 299 (presenting an argument in favor of avoiding excessive repatriation).


84. See id. at 936 (stating international trade in antiquities is second only to drugs in billions generated in profits for illegal trade) (citation omitted).

85. See generally Bator, supra note 62 (discussing law and values surrounding illegal art trade).

86. See generally Park, supra note 83; see also Lisa J. Borodkin, The Economics of Antiquities Looting and a Proposed Legal Alternative, 95 COLUM. L. REV. 377, 377 (1995) (explaining ‘almost every antiquity that has arrived in America in the past ten to twenty years has broken the laws of the country from which it came’).

87. See Park, supra note 83, at 938. The process “begins with the illegal export of antiquities and ends in their legal import into market nations . . . .” Id. Transit countries like Switzerland basically intentionally or inadvertently “launder” the plundered artworks to give them a “veneer of legality” when purchased by “major market nations.” Id.

88. Id. at 938 (discussing ability of market country dealers to assure clients of legality and avoid deterring illegal trade).

89. See id. at 942 (describing United States as supportive of “retentive policies of source nations”) (citation omitted).

90. Clark, supra note 9, at 138 (stating despite agreement in international museum community that illegal art traffic be “firmly discouraged,” remembering dif-
tion: it could allow the conversion of American ownership to long-term loans to avoid the gutting of American art museum collections while respecting a country of origin’s legal claims to its cultural heritage. 91

1. **Rise of the Repatriation Movement**

The repatriation movement essentially began with 18th and 19th century efforts to restrict the illegal removal of artistic and cultural objects during times of war. 92 One commentator has suggested the public policy favoring repatriation has grown so strong that stolen objects should always be returned, even if they have been sold to a bona-fide purchaser unaware of any illegalities. 93 Two major international conventions responded to increasing demand from source nations by producing export and import restriction guidelines in an attempt to prevent stolen objects from moving into the free market. 94 These were the 1970 UNESCO (United Nations Educational, Scientific, and Cultural Organization) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property and the 1995 Unidroit Convention on Stolen or Illegally Exported Cultural Objects. 95

Different values at time of acquisition is also important. Repatriation is a difficult issue because:
The objects and monumental works that were installed decades and even centuries ago in museums throughout Europe and America were acquired under conditions that are not comparable with current ones. Over time, objects so acquired . . . have become part of the museums that have cared for them, and by extension part of the heritage of the nations which house them.

Id.


92. See Patty Gerstenblith, *The Public Interest in the Restitution of Cultural Objects*, 16 Conn. J. Int’l L. 197, 200-01 (2001) (describing customary international law in this area designed to prevent destruction and plunder); see also Clark, supra note 9, at 127-37 (listing selected World War II restitution cases).

93. See Gerstenblith, *supra* note 92, at 211-12 (stating return is appropriate in all cases except when cause of action has been barred by statute of limitations) (citation omitted).

94. See id. at 213 (describing conventions’ encouragement of countries to respect each other’s various export restrictions on cultural property); see also Borodkin, *supra* note 86, at 390 (describing efforts of Unidroit convention to improve upon UNESCO convention by formalizing international antiquities law).

95. See Gerstenblith, *supra* note 93 (stating export controls often involve permit system).
The McClain doctrine represents another important legal development in the repatriation movement; the doctrine arose from *United States v. McClain*, which involved pre-Columbian antiquities from Mexico. McClain established the principle that a country may pass legislation which vests ownership of any or all antiquities in the federal government. The ownership provisions are valid regardless of whether the government actually possessed the objects prior to a theft, and regardless of whether the objects were excavated prior to a theft. If an act of conversion occurs by illegal export after such legislation is passed, the export is considered theft and the objects are classified as stolen property. Once the objects are classified as stolen property, the offended foreign government may bring a restitution claim in a United States court under the National Stolen Property Act ("NSPA").

Museums have attempted to respond to the repatriation movement by creating codes of ethics prohibiting involvement in the illegal art market. However, these codes have few, if any, legal consequences, and some of them "sidestep" several more important

96. See *United States v. McClain*, 593 F.2d 658, 671 (5th Cir. 1979) (reversing conviction under National Stolen Property Act ("NSPA") because of error in assigning legal question to jury).

97. See Gerstenblith, supra note 93, at 216.

98. See id. (describing right to make such legislation is inherent in concept of sovereignty and equality among nations).

99. See id. The McClain Doctrine requires that the source nation satisfy three requirements to repatriate an object under this type of legislation: (1) adequate notice through clarity, (2) proof of object origination within modern territory of claiming nation, and (3) proof that conversion occurred after the date the legislation became effective. See id. The lack of a requirement that the government actually possess the antiquities in question prior to the theft is crucial for protection of unexcavated sites. See id. at 228.

100. See id. at 214 (describing important place of NSP in McClain doctrine cases). The NSP prohibits transportation of goods valued at or over five thousand dollars that have been stolen, converted, or obtained through fraud. See Park, supra note 83, at 942; see also Borodkin, supra note 86, at 400 (citing New York as common host for international art disputes because of low minimum-contact requirements for jurisdiction).

101. See Gerstenblith, supra note 93, at 242-43 (contrasting ethical code of International Council of Museums ("ICOM") with less stringent codes of American Association of Museums ("AAM") and Association of Art Museum Directors ("AAMD")). The ICOM Code states:

Museums should recognize the relationship between the market place and the initial and often destructive taking of an object for the commercial market, and must recognize that it is highly unethical for a museum to support in any way, whether directly or indirectly, that illicit market. A museum should not acquire, whether by purchase, gift, bequest or exchange, any object unless the governing body and responsible officer are satisfied that the museum can acquire valid title... and that... it has not been acquired in, or exported from, its country of origin and/or any intermediate country... in violation of that country's laws.
ethical issues.\textsuperscript{102} Despite these problems, American museums have been mostly “willing partners” in the restitution of illegally obtained and/or exported art.\textsuperscript{103} Successful repatriation by American owners under the McClain-NSPA scheme include the return of a fourth century B.C. gold plate to Italy and the return of over 300 gold and silver artifacts (collectively called the “Lydian Hoard”) to Turkey.\textsuperscript{104}

2. Perspectives on Repatriation

Some experts encourage the distribution of antiquities out of concern for proper conservation.\textsuperscript{105} Other experts, however, encourage a “nationalist perspective,” viewing a country’s artistic wealth as inalienable from the country itself.\textsuperscript{106} These national works of art create not only cultural wealth, but also economic wealth, by generating income through tourism.\textsuperscript{107} The nationalist perspective is not without its problems for repatriation purists, given that for nationalists, the national wealth or “patrimony” can also include foreign art that has resided within the borders of the country for a substantial length of time.\textsuperscript{108} Despite this contradiction, nationalists believe preserving the national body of art helps citizens learn who they are, encourages a sense of community, stimulates in-depth scholarship, and gives outsiders a sense of belonging in “a different artistic world.”\textsuperscript{109}

\textsuperscript{102} See Gerstenblith, supra note 93, at 243 (accusing AAM and AAMD of sidestepping ethical issues of illegal excavation and export). The AAMD code states: “The Director must not knowingly acquire or allow to be recommended for acquisition any object that has been stolen, removed in contravention of treaties and international conventions . . . or illegally imported into the United States.” Id. (citation omitted).

\textsuperscript{103} See Park, supra note 83, at 941-42 (citing substantive body of law in United States, including common law and legislation, for arts protection).

\textsuperscript{104} See id. at 944-46. The Italian case was \textit{United States v. An Antique Platter of Gold}, 184 F.3d 131 (2d Cir. 1999). The Turkish case was \textit{Republic of Turkey v. OKS Partners}, 1994 U.S. Dist. LEXIS 17032 (1994).

\textsuperscript{105} See Borodkin, supra note 86, at 409. “For example, apologists for British ownership of the Elgin Marbles frequently point out that those fragments of the Parthenon are better preserved than their counterparts at the Acropolis, due to air pollution in Athens.” Id.

\textsuperscript{106} See Bator, supra note 62, at 303 (stating theory national “patrimony” consists of all works of art within country’s borders).

\textsuperscript{107} See id. (stating art can provide economic, social, and psychological benefits as part of “national capital”).

\textsuperscript{108} See id. (classifying Elgin marbles as part of British national patrimony, despite Greek origin, because of length of residence in British museum).

\textsuperscript{109} See id. at 304-06 (describing civilizing effect of study and appreciation of nationalized art).
In contrast, there is the “reciprocal perspective,” which promotes preservation of each country’s cultural inheritance through internationalization. The supporters of reciprocity encourage the exchange of art through sale or loan because “art is a good ambassador,” and stimulates interest in many cultures and provides art exposure that would not otherwise exist. Furthermore, internationalization of art creates educational comparisons for those who cannot travel to countries of origin. In essence, those who support reciprocity do not doubt that humankind has been “immeasurably enriched by the travel of art between cultures.”

3. Conversion of Ownership to Long-Term Loans Under the Act

While the NSPA and the McClain doctrine provide substantive legal protection to artwork, the “transaction costs” of related lawsuits may be extremely wasteful in light of insufficient funds for maintenance and conservation of the piece in its country of origin. In response to these funding issues, state-auction models have been suggested in which the country of origin sells antiquities on the market in an attempt to eliminate the profit motivation of smuggling. This solution assumes that trade on the open market will place a work of art in the hands of the collector, public or private, who is best suited to care properly for the piece. Unfortunately, even the state-auction model cannot protect artwork from

110. See id. at 306 (claiming disaster if all art “stayed at home,” if Mexican art were only in Mexico, and French art only in France).
111. See Bator, supra note 62, at 306-07 (describing civilized objectives of exchanging art as desire to broaden tastes and sympathies as well as encourage education).
112. See id. at 307 (describing value of giving citizens knowledge of their own and other cultures).
113. See id. at 308 (promoting free exchange of art as providing international understanding beyond narrow political sense of phrase).
114. See Borodkin, supra note 86, at 399 (stating despite general difficulties of litigation, special inefficiency occurs in art litigation); see also Park, supra note 83, at 934 (reporting popular claim source nations often lack resources to protect and preserve cultural property, let alone recover it).
115. See Borodkin, supra note 86, at 413 (concluding countries can retain cultural wealth in face of illegal market only if they provide controlled markets for antiquities). This theory is based on the idea that such sales would create wealth because the purchasers would pay more for properly documented pieces. See id; see also Bator, supra note 62, at 309 (stating each country is justified in keeping art embodying special historical significance or cultural uniqueness sufficient to present broad and deep collection to citizens); Park, supra note 83, at 953-54 (concluding source nations should limit state ownership to antiquities essential to cultural heritage and release all others on open market).
116. See Gerstenblith, supra note 92, at 205 (concluding high monetary values in marketplace could be best means of ensuring physical protection).
being damaged prior to its entry into the market.\footnote{117} Furthermore, releasing art into the general marketplace will not necessarily ensure proper preservation.\footnote{118} Finally, heavy participation of private collectors in the market may continue to limit public access to the works.\footnote{119}

Several commentators, in considering the problems of the market-based model, have suggested that a repatriation solution should include encouraging open transactions between countries.\footnote{120} Open transactions, namely long-term loans, would allow museums to display pieces for longer periods of time and abate the desire for permanent ownership.\footnote{121} Moreover, museums often purchase artwork to fill gaps in their collections, but long-term loans may be easily arranged to fill such gaps if museums communicate their needs to one another.\footnote{122} Such open transactions would also ensure that art and cultural heritage “really [do] circulate throughout the world” rather than remain in a few major institutions for indeterminate lengths of time.\footnote{123}

Enter the Act, which fits perfectly into this scheme for sharing art around the world.\footnote{124} With indemnification for major artwork provided by the American federal government, foreign museums retain legal ownership of the work and the ability to reclaim it while...
encouraging a cooperative atmosphere in the international museum community. To prevent the waste incurred in repatriation litigation, it may be preferable to bypass the entire McClain-NSPA legal title process and create agreements transferring legal ownership back to the country of origin, while vesting physical ownership in the possessing American museum for a term of years. These negotiated settlements could potentially eliminate the need for restitution remedies altogether.

It is important to note that the Act itself contains no provisions governing time limits for coverage. As long as the total coverage is always under the aggregate amount, an indemnification agreement under the Act could easily be construed to last a term of years and not months. While some may argue that carrying an indemnification agreement for a term of years may prevent funding for other smaller exhibits, the educational and scholarly value of such a long-term relationship may be a greater return on the larger single investment.

B. Conservation

The field of conservation has also faced increasing challenges over the past several decades. Although many major museums have internal conservation laboratories, no official international system for certifying or licensing professional conservators exists.

125. The Arts and Artifacts Indemnity Act has already succeeded in fostering "international cooperation and goodwill through the sharing of cultural treasures." Phelan, supra note 91, at 107; see also Gerstenblith, supra note 92, at 245 (concluding open transactions perpetuate friendly relationships between countries as opposed to "antagonistic stalemates" created by repatriation and market sales).

126. See Clark, supra note 9, at 145 (concluding Italian and American museums could work together through system of five-year loans).

127. See Gerstenblith, supra note 92, at 246 (stating loans would be preferable to restitution to advance public interest in cultural preservation); see also Phelan, supra note 91, at 107 (stating most countries have realized feasibility of loans as alternative to "tacit approval given in the past to powerful nations looting and pillagering the artifacts of smaller, weaker countries").


129. See id. For a discussion of the qualification provisions, see supra notes 24-33 and accompanying text.

130. For a discussion of the educational value provided by long-term exhibits in the context of conservation partnerships, see infra notes 144-50 and accompanying text.


132. See id. at 252-54. For example, the Ajanta Caves in India are being cleaned for conservation purposes by "temporary labourers on daily wages." Id. at
Furthermore, many museums in artifact-rich countries lack the resources to conserve their own works properly. This lack of industry-wide standards has led to several legal controversies surrounding botched conservations and conservations that failed to conform to the art owner’s desires. A lack of resources has meant that many great works can fall into disrepair or sit in storage waiting to be restored and displayed. Furthermore, the conservation industry does not agree on scientific methods for conservation of various categories of objects. Increased funding of exhibits through the Act may temporarily solve two major problems facing the conservation industry: lack of standardized training and resources for conservation of important pieces.

1. Standardized Training Through Museum-Based Conservation

At least three categorical approaches to cleaning works of art exist, all favored differently in various areas of the world. The three approaches to cleaning a work of art are as follows: (1) partial cleaning, which leaves a "uniform thin layer of yellowed varnish over the entire surface of the work" and is favored in France and Italy; (2) selective cleaning, which removes different amounts of varnish from different areas; and (3) total cleaning, which leaves "only the original paint surface."
purported goal of conservation is “to preserve the work of art or artifact by stabilizing it and protecting it from environmental deterioration without significantly altering the physical remains of the object itself.” Unfortunately, conservators often clash over proper methods of achieving that goal. Often, independent practitioners, rather than conservation labs, perform conservation for museums, adding to the field’s inconsistencies.

Disagreements over conservation methods, which often arise between museums and these independent contractors, may be reduced through thoughtful application of the Act. Proper application of the Act may benefit the conservation industry, which is currently struggling to eliminate these problems, by providing funding to conservation partnerships. The benefits of these partnerships are apparent, because museums already appear willing to cooperate with other museums with better resources.

For example, a recent cooperative conservation project concerns an ancient and much-restored statue of the Roman Emperor Marcus Aurelius, which is currently housed by the J. Paul Getty Museum in Los Angeles, on loan from the Pergamon Museum in Berlin and is favored in English-speaking countries. Some restorers are willing to use “deceptive retouching,” in which the object is worked upon in a way that prevents the “ordinary observer” from distinguishing the original parts from the restored parts, and some restorers would rather the restoration be obvious, if done at all. In other words, the “rules and practices of the art trade should not contribute to the destruction or mutilation of works of art.” Bator, supra note 62, at 295-96.

139. Marcus Aurelius, supra note 133. In other words, the “rules and practices of the art trade should not contribute to the destruction or mutilation of works of art.” Bator, supra note 62, at 295-96.

140. See Botha, supra note 131, at 254-55 (describing lack of consensus among conservation experts). While the director of the Uffizi in Florence has stated “[w]e cannot accept the idea that masterpieces cannot be touched,” another scholar has pondered, “[i]s it not better to leave [masterpieces] as they are until we perfect cleaning techniques which cause no damage?” Id. at 254.

141. See id. at 253-54 (describing contract between museum supported by City of Amsterdam and New York independent conservator Daniel Goldreyer).

142. See id. For a discussion of the Act’s application to solving conservation controversies, see infra notes 142-78 and accompanying text.

143. See Botha, supra note 131, at 263-64 (describing development of code of ethics for professional conservators). ICOM adopted a code of ethics in 1984 that outlined “the activities to be undertaken by the conservator-restorer, the responsibilities owed to the original work, and the training considered necessary in order to qualify as a professional.” Id. This code and others, however, lack any legal enforceability. See id. at 265.

144. See Clark, supra note 9, at 142-43 (discussing costly nature of conservation treatments and need for Italy and United States to pool resources and encourage creative solutions). “The aim of preservation can be threatened by the international movement of art; but it can be, and often has been, promoted by it.” Bator, supra note 62, at 296 (negating assumption conservation requires all art be immobile).
In 1998, Getty conservators traveled to Berlin to examine and disassemble the statue for transport to the Getty’s Antiquities Conservation Studio in Los Angeles. The conservators were greatly concerned with the stability of the piece because it had endured several previous shoddy restorations. The conservation campaign included not only disassembly, cleaning, and reassembly, but also seismic protection. When the exhibit concludes, the statue will be disassembled and sent, along with the extensive records of the conservation process, back to the Pergamon Museum in Berlin. Similar projects should be encouraged to ensure that major conservations are performed in institutional settings.

Purposeful application of the Act can provide funding for such conservation partnerships. If more conservations are performed

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145. See Marcus Aurelius, supra note 133 (giving overview of project, including provenance of statue, history of display, and general Pergamon collection information).

146. See id. The statue consists of a first-century body with a contemporaneous but unoriginal head, and several eighteenth and nineteenth century restorations. See id. Approximately seventy percent of the statue is ancient, and the remainder comes from several different conservation campaigns. See id.

147. See id. The adhesives and fill materials used in previous restorations no longer held the heavier joints, and the discoloration and cracking affected the aesthetic presentation. See id.

148. See id. Because the Getty is located in the “seismically active” area of Southern California, the museum had to use a special mounting system to minimize damage should an earthquake occur during the statue’s stay. See id.

149. See id. (naming exhibit Statue of an Emperor: A Conservation Partnership).

150. A major step forward in encouraging cooperative conservation projects between institutions is a 2001 agreement between the United States and Italy, which states several goals for long-term loans of archeological material between the two nations. See generally United States-Italy: Agreement Between the Government of the United States of America and the Government of the Republic of Italy Concerning the Imposition of Import Restrictions on Categories of Archaeological Material Representing the Pre-Classical, Classical[,] and Imperial Roman Periods of Italy, Jan. 19, 2001, 40 I.L.M. 1031 (2001) [hereinafter U.S.-Italy Agreement]. Article II.E of the U.S.-Italy Agreement begins:

The Government of the United States of America recognizes that the Government of the Republic of Italy permits the interchange of archeological materials for cultural, exhibition, educational, and scientific purposes to enable widespread public appreciation of and legal access to Italy’s rich cultural heritage. The Government of the Republic of Italy agrees to use its best efforts to encourage further interchange through: (1) promoting agreements for long-term loans of objects of archeological or artistic interest, for as long as necessary, for research and education . . . to include: scientific and technological analysis of materials and their conservation . . . .

Id.

151. See 20 U.S.C.A. § 973(a) (Westlaw 2003) (stating nonprofit agencies, institutions, and governments may apply for indemnity agreements). This provision ensures that virtually any type of conservation lab or museum with conservation capabilities could qualify for assistance under the Act. See id.
in an institutional setting, standardization is more likely to occur.\textsuperscript{152} Conservation partnerships, such as the Getty/Pergamon example, often involve a lending institution which sends its own conservators with the work to participate in and supervise the process.\textsuperscript{153} Any differences in method are more likely to be resolved when there are conservators from at least two different countries participating in the conservation.\textsuperscript{154} Moreover, conservators in such a partnership are likely to share different aspects of their training and to be more willing to compromise when it comes to a particular step in the conservation process.\textsuperscript{155}

As conservators travel to different museums for new projects, they can spread their training and new conclusions regarding restoration methodology, and this exchange will do a great deal to "standardize" training while the professional community seeks to create a more formal licensing or certification process.\textsuperscript{156} It might even be beneficial to require that a certain number of the applications granted under the Act in any given year be for conservation partnerships, thus encouraging museums to change their focus from mere exhibition to exhibition accompanied by conservation.\textsuperscript{157} Such a shift in focus may encourage smaller international

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\textsuperscript{153} See Clark, supra note 9, at 142-43 (offering, as one way to encourage cooperation, to send U.S. conservationists to international labs to perform work there).
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\textsuperscript{155} See id. (touting conservation partnerships allow conservators to "obtain further training and experience mid-career"). "Getty conservators also benefit from the opportunity to collaborate with professionals from other institutions, and the new perspectives that they bring." \textit{Id.}
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\textsuperscript{156} See Botha, supra note 131, at 255 (stating "in order for any system of professional certification to function, some level of standardization must be achieved"). Conservation partnerships allow objects to be "viewed through new eyes," resulting in advances in technique and new discoveries and reunions of separated works. \textit{See Gerstenblith, supra note 92, at 245 (discussing benefits of cooperative partnerships over repatriation controversies).}
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\textsuperscript{157} For a discussion of the U.S.-Italy Agreement, see supra notes 150-51. The U.S.-Italy Agreement is an excellent example of museums in two countries agreeing to cooperate in lending art for conservation and educational purposes. \textit{See U.S.-Italy Agreement, supra note 150. The Guidelines for the long-term loans state that funding for the exhibit and study of artworks is the responsibility of the indi-}
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museums to send valuable pieces to American museum conservation labs rather than independent professionals.\footnote{For a discussion of a botched conservation involving a museum supported by the City of Amsterdam and an independent American conservator, see supra note 134.}

Because the Act has been applied primarily to museums, and museums possess funding and labs necessary to major conservation work, expanding the coverage amounts under the Act may encourage international museums to send their most valuable and fragile pieces to the United States for conservation.\footnote{For a discussion of recent amendments expanding coverage under the Act, see supra notes 72-75 and accompanying text.} A lending institution could be secure in knowing the piece is adequately protected because indemnification under the Act covers any item from shipment to return.\footnote{See Arts Indemnity Act, 20 U.S.C. § 972(b)(2) (2000) (stating coverage begins on date items leave lending institution to date items are returned to lending institution).} Because American indemnification covers the piece during its restoration, a lending institution may allocate its own funds to its own conservators to assist with the project and encourage standardization of methods.\footnote{See Clark, supra note 9, at 142-43 (suggesting lending institutions should maintain control over conservation done in foreign labs and students and conservators should form exchange programs).}

2. Application of Coverage to Specific Funding Problems

The Getty museum in Los Angeles is involved in other areas of conservation as well.\footnote{See id. (giving overview of other cooperative conservation projects between Getty and American and international museums).} The Getty Museum embarks on conservation partnerships with museums located as far away as Eastern Europe and South America.\footnote{See id. (including on list museums in Czech Republic, Brazil, Romania, and Germany).} Funding for at least a few of its partnerships, however, must be provided by the lending institution.\footnote{See id. (mentioning alternative funding may be available through private donations).} The required funding includes shipping and insurance costs.\footnote{See id. (stating lending institutions also responsible for support of traveling conservators).} Although other countries have indemnity laws similar to the American Act,\footnote{See Malvern, supra note 69; see also $1bn Irish Artwork On NGA’s Books, AUSTRALIAN FINANCIAL REVIEW, Feb. 19, 2000, at 2 (discussing, in order, government indemnity acts in Britain and Australia).} these countries cannot and should not be able...
to apply to the U.S. government for indemnity for exhibits they wish to send to an American museum for conservation purposes, as Act's purpose is to benefit American museums. While it is true that "no one resource [including the Act] . . . [can] provide funding for every aspect of a project," expansion and careful application of the Act may be of great assistance in these types of cooperative projects.

Experts have proposed a variety of solutions to conservation funding problems, and these proposals include sending American conservators and students abroad to perform conservation work prior to the loan, or allowing American institutions to pay for conservation by private labs prior to the loan. Another extreme measure requires American institutions to pay international institutions to perform conservation work prior to the piece's transport to the United States on loan. Such a solution ensures that the lending institution retains control over the piece while it is undergoing conservation, but does not allow the American institution accepting the loaned work to participate in its restoration or contribute to the methodology.

Arguably, the reverse of these proposed solutions — allowing American institutions to fund the conservation as it is performed at the museum accepting the loan — is both preferable and easier to accomplish with assistance from the Act. American institutions are often better equipped to perform restoration work because of their extensive resources, including better labs and more experienced staff. Yet, if the burden of conservation is to be put on

167. See Arts Indemnity Acts, 20 U.S.C. § 973(a) (2000). The provision allows any "person, nonprofit agency, institution, or government" to apply, but it is reasonable to assume because the Act is intended to assist American museums, "government" in fact relates to state governments and not non-American federal governments. Id. (emphasis added).

168. See Clark, supra note 9, at 143 (identifying sources of funding for long-term loans between international museums).

169. See id. at 142-43 (summarizing funding solutions provided by museum experts at roundtable discussion).

170. See id. (stating "the solution to the need and cost of conservation requires some creativity").

171. See id. at 142 (stating "[i]t is also clear that the lending institution should maintain control over the type and quality of conservation performed on the objects"). For a discussion of the importance of collaboration between conservators from different nations, see supra notes 120-61 and accompanying text.

172. For a discussion of what this kind of arrangement would entail, see supra notes 120-53 and accompanying text.

173. See Clark, supra note 9, at 142 (describing lack of sufficient staff or resources at overseas laboratories). Nonetheless, "most conservation departments in U.S. museums are also overburdened and understaffed." Id. at 143. For example, while "only the larger Italian museums have conservation laboratories," the United
American institutions, then the burden of insuring the piece should surely be put on the lending institution, as required, for example, by the Getty Museum.\textsuperscript{174} However, the Act was introduced at a time when insurance prices were soaring and international shows were not feasible for many American institutions, and little has changed since then.\textsuperscript{175}

If a foreign institution lacks the funding necessary for conservation, it is unlikely to possess the funding necessary to purchase loan insurance, which prevents the institution from granting loans at all.\textsuperscript{176} This is precisely the situation the Act was created to address.\textsuperscript{177} As previously discussed, if the American government indemnifies an international exhibit through the Act, and an American institution, freed from the burden of having to purchase insurance, can fund the conservation project, the lending institution is better able to provide funding and assistance to the conservation effort by sending its own professionals along with the artwork.\textsuperscript{178} This process, made possible under the Act, solves many funding problems for an international loan, encourages conservation partnerships to restore important pieces of cultural heritage, and enables American citizens to view art they would not otherwise have the opportunity to see.\textsuperscript{179}

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\item[	extsuperscript{174}.] For a discussion of the funding requirements for Getty conservation partnerships, see supra notes 159-61 and accompanying text.
\item[	extsuperscript{175}.] See William H. Honan, Dispute over Insurance Imperils a Barnes Show, N.Y. TIMES, Mar. 6, 1993, at 16 (describing inflation in art prices and inflated insurance premiums encouraging development of Act).
\item[	extsuperscript{176}.] See Park, supra note 83, at 954 (stating long-term loans benefit source nations lacking resources present in market nations to preserve their artworks adequately).
\item[	extsuperscript{177}.] See Honan, supra note 175 (stating “the Indemnity Act has been a boon to American museums in arranging loans from overseas”).
\item[	extsuperscript{178}.] For a discussion of this type of conservation partnership, see supra notes 120-64 and accompanying text.
\item[	extsuperscript{179}.] For a discussion of the benefits of American government indemnification, see supra notes 120-65 and accompanying text. Funding a conservation partnership in this way also provides for a unique educational opportunity, as with the Getty-Pergamon statue, which is displayed with videos and text explaining the restoration process to museum visitors. See Marcus Aurelius, supra note 133 (providing link to conservation video and exhibit diagram of statue’s zones of restoration).
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\end{footnotesize}
IV. Conclusion

The Arts and Artifacts Indemnity Act has been well used in its near thirty years of existence.\(^{180}\) As supporters of the Act arrive at another crossroads because of the increased coverage, now is the appropriate time to evaluate the Act’s potential applications beyond providing financial indemnification to American art institutions.\(^{181}\) Because “[t]he public interest of both the United States and foreign countries lies in protecting our mutual cultural heritage,” American museums must participate in the continuing exchange and conservation of culturally significant works of art through loans.\(^{182}\)

Protecting cultural heritage requires international cooperation to preserve works of art for future generations.\(^{183}\) The Act’s recently expanded coverage is well-suited to support preservation goals if coverage is granted in a focused manner.\(^{184}\) For reasons previously discussed, the Council responsible for granting applications should place a priority on funding to conservation partnerships.\(^{185}\) Furthermore, museums should work together to address repatriation issues and develop a system of revolving long-term loans, indemnified under the Act, that respects legal ownership of art by the country of origin while encouraging exposure of art to as many people as possible.\(^{186}\) With these goals in mind, the Act has

\(^{180}\) See Phelan, supra note 91, at 107 (describing importance of Act as part of total picture of protective arts legislation).

\(^{181}\) For a discussion of the recent amendments, see supra notes 72-75 and accompanying text. For a discussion of the potential impact of the Act on repatriation and conservation controversies, see supra notes 79-178 and accompanying text.

\(^{182}\) Gerstenblith, supra note 92, at 211 (stating restitution is not “a favor” to any country but rather means of cooperation essential to preserving culture for future generations). For a discussion of the Act’s application to the repatriation controversy, see supra notes 79-114 and accompanying text.

\(^{183}\) For a discussion of the Act’s application to conservation concerns, see supra notes 131-79 and accompanying text.

\(^{184}\) For a discussion of recent expansion of coverage, see supra notes 72-75 and accompanying text. For a discussion of the Act’s applicability to problems of repatriation, see supra notes 114-30 and accompanying text. For a discussion of the Act’s applicability to conservation issues, see supra notes 131-79 and accompanying text.

\(^{185}\) For a discussion of the conservation partnerships of the J. Paul Getty Museum, see supra notes 121-43 and accompanying text. For a discussion of the U.S.-Italy Agreement, see supra notes 150-51 and accompanying text.

\(^{186}\) For an example of a bilateral long-term loan agreement, see supra notes 150-51 and accompanying text.
the potential to have a much greater impact on the American and international museum community.

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