

May 31, 2011

STUDY COMMITTEE ON AN ACT ON THE RECOVERY OF
STOLEN CULTURAL AND ARTISTIC PROPERTY

Final Report

Summary

The charge of this study committee is to advise the Uniform Law Commission whether to undertake the drafting of a uniform act on private rights of action to recover stolen cultural or artistic property and illegally exported artifacts.

The committee concludes that the Uniform Law Commission should not undertake such a project, and recommends that the committee be discharged.

This conclusion and recommendation follow the committee's preliminary conclusion that such a project would be feasible and desirable. However, stakeholder reaction to the proposal is overwhelmingly and unanimously negative.

The overall tenor of stakeholder comment makes it clear that many of the key entities that would be affected by any legislation the Uniform Law Commission might draft do not support our undertaking this project and would not be likely to support the enactment of any uniform legislation that might result from the project.

Based upon this reality, the study committee recommends against the formation of a drafting committee on the topic.

Charge, Personnel, and Procedure of Study Committee

The Uniform Law Commission charged this study committee to consider and make recommendations concerning the need for and feasibility of drafting a uniform act that provides for private rights of action to recover stolen cultural or artistic property and illegally exported artifacts.

The committee was constituted in March 2010. It is composed of six Uniform Law Commissioners and five American Bar Association advisors. The committee is staffed by the Commission's Executive Director John Sebert.

The committee engaged a reporter to help it survey the literature and issues and identify stakeholders for the purpose of making its determinations. The reporter is J. Alexandra Darraby, author of *ART, ARTIFACT, ARCHITECTURE & MUSEUM LAW* (15th ed. Thomson Reuters West 2010). Ms. Darraby resigned her former position as an American Bar Association advisor on the committee to assume this role.

Click [here](#) to see the committee roster.

On April 27, 2010, the committee held an organizational meeting by conference call.

On October 25, 2010, the committee conducted a substantive review of issues by conference call.

On November 23, 2010, the committee prepared a preliminary report that surveyed the possible scope and likely issues to be addressed in the project. The preliminary report was submitted to the Committee on Scope and Program for review at its January meeting.

On January 14, 2011, the Committee on Scope and Program requested the study committee to continue its work and its outreach to interested groups.

On March 14, 2011, the study committee prepared and distributed for review and comment by stakeholders a prospectus for a uniform act on civil resolution of art ownership disputes. The prospectus is a narrowed and simplified version of the committee's preliminary report.

Stakeholders were given until May 3, 2011, to comment on the committee's prospectus. The committee received comments from a dozen persons and organizations, all opposed to a uniform act on this subject.

After reviewing stakeholder comments, committee members have concluded to submit this report recommending that the Uniform Law Commission not proceed to a drafting committee on this topic.

Prospectus for a Uniform Act on Civil Resolution of Art Ownership Disputes

The study committee's prospectus for a uniform act on civil resolution of art ownership disputes proposes, in brief, that the uniform act would maintain the current United States rule that a thief cannot convey good title, would address the major elements of due diligence in art transactions, would standardize rules governing statutes of limitation, would consider the remedies available to the parties to an ownership dispute, and would consider the possibility of creation of a public title registry. The uniform act would be prospective in operation and seek to avoid areas of federal preemption. It would not provide penal sanctions, would not deal with property claimed to be owned by a foreign government as its cultural patrimony or to be property removed in violation of its export restrictions, and would not attempt to codify conflict of laws rules.

A copy of the committee's prospectus is attached to this report.

Stakeholder Comment on the Prospectus

The study committee solicited comment on its prospectus for a uniform act on civil resolution of art ownership disputes from a wide range of stakeholders. Stakeholders were asked to respond specifically to the following questions:

- Is there a need for uniform state law on this topic?
- Are the issues that the Study Committee lists in the memorandum under “Scope of Proposed Uniform Act” the issues that a drafting committee should consider in developing an act? Are there additional issues that a drafting committee should consider? Are there some issues on the Study Committee’s list that should not be included in any draft legislation?
- If the ULC undertakes a drafting project on this topic, will you or your organization participate as an observer in the drafting process?
- If the ULC develops the type of non-partisan, well-conceived and well-drafted legislation for which it is known, what do you believe are the prospects for enactment of this legislation in a substantial number of jurisdictions?

The committee received detailed responses from a dozen stakeholders from a wide spectrum of the art world, including museums, dealers, auction houses, holocaust recovery organizations, and academics. Responses were received from the following:

- Ford W. Bell, President, American Association of Museums
- Gilbert S. Edelson, Administrative Vice President and Counsel of the Art Dealers Association of America
- Patty Gerstenblith, Distinguished Research Professor, DePaul University College of Law, and Director, Center for Art, Museum, and Cultural Heritage Law
- Stephen J. Knerly, Jr., Esq., Hahn, Loeser & Parks, LLP, on behalf of the Association of Art Museum Directors
- Jennifer Anglim Kreder, Professor of Law, Chase College of Law, Northern Kentucky University, and Lucille A. Rousin, Founding Director, Holocaust Restitution Claims Practicum, Benjamin N. Cardozo School of Law
- Tess Davis, Executive Director, Lawyers’ Committee for Cultural Heritage Preservation
- Jane A. Levine, Senior Vice President, Worldwide Director of Compliance, Sotheby’s, and Jonathan A. Olsoff, Senior Vice President, North American General Counsel, Sotheby’s.
- Herrick, Feinstein, LLP, as attorneys for the Commission for Art Recovery
- Marc J. Masurovsky, Ori Z. Soltes, and Willi Korte, Co-Founders, Holocaust Art Restitution Project
- John Henry Merryman, Sweitzer Professor of Law and Affiliated Professor of Art, Emeritus, Stanford Law School
- John J. Lombard, Jr., Special Counsel, McCarter & English, LLP
- Regine Elkan, claimant

The text of their responses is available at the ULC website at this [link](#).

There was remarkable unanimity of opinion among stakeholders who responded that there is no need for a uniform state law on this topic, that such legislation would be difficult to draft and is unlikely to be enacted (particularly in the two jurisdictions that are most important to this topic — New York and California), and would not be likely to make a positive contribution.

Conclusion of Study Committee

Although the study committee's preliminary conclusion had been that a uniform act on this subject would be helpful to those involved in art transactions, the strongly and uniformly negative reaction of those who would be affected by such a law is of great significance to the committee, particularly in light of the fact that many of the stakeholders have opposing interests in art ownership disputes.

The possibility raised in the prospectus of a public title registry likewise was not well received by stakeholders, who indicated a range of concerns. Committee advisors from the American Bar Association Section of Science & Technology Law note that implementing a proposed on-line registry for art could well be more complex and expensive than initially anticipated.

Although one might quarrel with some of the specific points made in many of the stakeholder comments, the comments are fundamentally negative and suggest apprehension on all sides that the uniform law process would result in change in law that would not be desirable from their perspective.

A number of stakeholders indicated that if the Uniform Law Commission were to proceed with this project, they would participate in it as observers. But given the time, effort, and cost of producing a uniform act that would in the end be legislatively opposed by key interest groups and largely unenactable, the study committee has concluded it would not be desirable to proceed with this project.