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COMMENTS

TRACKING STOLEN ARTWORKS ON THE INTERNET: A NEW STANDARD FOR DUE DILIGENCE

If fools did not go to market, cracked pots and false wares would not be sold.

*Jean Le Merchanceux, 12th Century*¹

*"Art theft, like vandalism, has always been with us, of course, like fire, war, and flood, perhaps as human nature's way of preventing us from being smothered with past art."*²

I. INTRODUCTION

In July, 1997, Sotheby's, the oldest auction house in London, announced that it would move some of their sales of art and antiquities³ out of their London home to their United States base in New York.⁴ In particular, Sotheby's general sales of Greek and Roman antiquities and Indian and Himalayan art.⁵ In a *New York Times* article the reason given was two-fold: first, Sotheby's London and New York sales in these objects were only two weeks apart, which did not make sense given the "small field" for these works; and second, that a greater percentage of the buyers of these objects were American.⁶

What the *New York Times* article only hinted at,⁷ however, an ear-

1. CLIFFORD IRVING, *FAKE! THE STORY OF ELMYR DE HORY THE GREATEST ART FORGER OF OUR TIME* (1969).

2. ANTHONY HADEN-GUEST, *TRUE COLORS: THE REAL LIFE OF THE ART WORLD* 193 (1996).

3. Throughout the rest of this Comment, the term "artworks" means both art and antiquities, unless it is important to distinguish between the two.

4. See Carol Vogel, *Sotheby's Moves Some Sales*, N.Y. TIMES, July 23, 1997, at B6.

5. See *id.*

6. See *id.*

7. See *id.* The article stated:

Ending these London sales was a management decision, a Sotheby's official said, and was not the result of the internal review being conducted by an independent committee of the auction house's board, together with an outside counsel hired by Sotheby's. The review follows allegations by Peter Watson, a London-based re-

lier Associated Press article came right out and said: certain members of Sotheby's staff had allowed "smuggled artifacts which had been taken from religious sites" to be sold through Sotheby's.⁸

Is it safe to assume that these artifacts and other stolen artworks are safer in the United States, and that it is less likely that unscrupulous companies or individuals are less likely to try and bring stolen artworks into this country?⁹ What can be done to effectively track and search for stolen artworks? As it is applied now, the due diligence¹⁰ standard is especially unhelpful.¹¹ United States courts apply different due diligence standards in attempting to resolve stolen artwork cases.¹² Some courts apply the due diligence standard to just the true owner,¹³ others apply it to both the true owner and the good-faith purchaser.¹⁴ In addition, a court may also consider the atmosphere of the art world at the time the artwork was discovered missing.¹⁵ Because of the uncertainty faced by good-faith purchasers, legitimate sellers and owners of stolen artworks, an internationally recognized standard of due diligence is needed.

porter, in his book, *Sotheby's: The Inside Story*, which accused the auction house of selling smuggled antiquities from ancient Indian temples.

Id.

8. Associated Press, AOL News: *Sotheby's Moving Sales to New York* (transmitted July 19, 1997, 17:37:19 EDT) (on file with the author) (no Internet site available).

9. See Monique Olivier, *The Unidroit Convention: Attempting to Regulate the International Trade and Traffic of Cultural Property*, 26 GOLDEN GATE U. L. REV. 627 n.2 (1996). "Over \$2 billion worth of art is stolen each year. The rate of theft increases 10 percent each year." *Id.* See also Jason C. Roberts, *The Protection of Indigenous Populations' Cultural Property in Peru, Mexico and the United States*, 4 TULSA J. OF COMP. & INT'L LAW 327 (1997).

The trade in illicit antiquities is a multi-million dollar international business. It is difficult to obtain accurate numbers on the value of individual stolen cultural property and the extent of the antiquities trade. However, estimates run from \$2 billion to \$6 billion annually. These staggering numbers place the illicit trade in antiquities "only behind drug smuggling and perhaps weapons trading," in terms of international illegally transferred goods.

Id.

10. See BLACK'S LAW DICTIONARY 457 (6th ed. 1990). Due Diligence: Such a measure of prudence, activity or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case. *Id.*

11. See generally *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989); *DeWeerth v. Baldinger*, 836 F.2d 103 (2nd Cir. 1987); *Guggenheim v. Lubell*, 550 N.Y.S.2d 618 (1990), *aff'd*, 569 N.E.2d 426 (1991); *aff'd*, 917 F.2d 278 (7th Cir. 1990); *O'Keeffe v. Snyder*, 405 A.2d 840 (N.J. Super. Ct. App. Div. 1979), *rev'd*, 416 A.2d 862 (N.J. 1980).

12. See *id.*

13. See *Autocephalous*, 717 F. Supp. 1374, *aff'd*, 917 F.2d 278.

14. See *Guggenheim*, 550 N.Y.S.2d 618, *aff'd*, 569 N.E.2d 426.

15. See *Guggenheim*, 550 N.Y.S.2d 618, *aff'd*, 569 N.E.2d 426; *O'Keeffe*, 405 A.2d 840, *rev'd*, 416 A.2d 862.

This Comment proposes adopting an internationally recognized standard of due diligence in reporting lost or stolen artworks utilizing the Internet.¹⁶ The best way to insure that this Comment's proposed standard of due diligence is acceptable internationally, is to create a readily accessible database in which the theft of artworks is effectively¹⁷

16. See *Reno v. American Civil Liberties Union*, 117 S. Ct. 2329, 2334 (1997).

The Internet is an international network of interconnected computers. It is an outgrowth of what began in 1969 as a military program called 'ARPANET' [Advanced Research Project Agency] which was designed to enable computers operated by the military, defense contractors, and universities conducting defense-related research to communicate with one another by redundant channels even if some of the portions of the network were damaged in a war. While the ARPANET no longer exists, it provided an example of development of a number of civilian networks that, eventually linking with each other, now enable tens of millions of people to communicate with one another and to access vast amounts of information from around the world. The Internet is 'a unique and wholly new medium of worldwide human communication.'

Id.

17. See Ralph Blumenthal, *Museums Getting Together to Track Stolen Art*, N.Y. TIMES, July 16, 1996, at C13. "The identification system, being drawn up under the coordination of the J. Paul Getty Trust, is decidedly low-tech, as basic as a common checklist of what a missing object looks like. It is as applicable to pencil and paper as to computers." *Id.* See also, *The Eizenstat Report and Related Issues Concerning United States and Allied Efforts to Restore Gold and the Assets Looted by Nazis During World War II*, 105th Cong. (last modified June 25, 1997) <http://commdocs.house.gov/committees/bank/hba41978.000/hba41978_0x.htm>; *Holocaust Victims Redress Act*, S. 1564, 105th Cong. (1997) <[http://thomas.loc.gov/cgi-bin/bdquery/z?d105:s.01564:](http://thomas.loc.gov/cgi-bin/bdquery/z?d105:s.01564:;)>; *H.R. 2591*, 105th Cong. (1997) <[http://thomas.loc.gov/cgi-bin/bdquery/z?d105:h.r.02591:](http://thomas.loc.gov/cgi-bin/bdquery/z?d105:h.r.02591:;)>; *Holocaust Victims Insurance Act*, H.R. 3121, 105th Cong. (1998) <[http://thomas.loc.gov/cgi-bin/bdquery/z?d105:h.r.03121:](http://thomas.loc.gov/cgi-bin/bdquery/z?d105:h.r.03121:;)>; *Comprehensive Holocaust Accountability in Insurance Measure*, H.R. 3143, 105th Cong. (1998) <[http://thomas.loc.gov/cgi-bin/bdquery/z?d105:h.r.03143:](http://thomas.loc.gov/cgi-bin/bdquery/z?d105:h.r.03143:;)>; Judith H. Dobrzynski, *Judge Rejects Seizure of 2 Schieles*, N.Y. TIMES, May 14, 1998, at B1; Jeffrey Kastner, *Schiele Case has Wide-Ranging Impact*, ARTNEWS, Mar. 1998, at 61; Judith H. Dobrzynski, *Museum is Asked to Play Solomon in Art Dispute*, N.Y. TIMES, Jan. 1, 1998, at B1; Judith H. Dobrzynski, *The Modern Refuses to Detain 2 Schieles*, N.Y. TIMES, Jan. 5, 1998, at B1; Judith H. Dobrzynski, *District Attorney Enters Dispute Over Artworks*, N.Y. TIMES, Jan. 8, 1998, at A8; Judith H. Dobrzynski, *Already, Schiele Case is Reining in Art World*, N.Y. TIMES, Jan. 10, 1998, at A13; Judith H. Dobrzynski, *Man in the Middle of the Schiele Case*, N.Y. TIMES, Jan. 29, 1998, at B1; Judith H. Dobrzynski, *Museum Exchanges Looted Art for a Borrowed Show*, N.Y. TIMES, Apr. 23, 1998, at B1; William H. Honan, *Case Against Heirs of Art Thief Is All But Over*, N.Y. TIMES, Apr. 14, 1998, at A14; *Nazi Looted Art Stays in Russia, Court Declares*, N.Y. TIMES, Apr. 7, 1998, at A8; David E. Sanger, *Inquiry to Ask if Nazi Loot May Also Be in U.S.*, N.Y. TIMES, Apr. 2, 1998, at A8; Judith H. Dobrzynski, *Museums Call for a System to Address Nazi Looting*, N.Y. TIMES, Feb. 5, 1998, at B1; Associated Press, AOL NEWS: *Looking for Nazi Plunder in Museums* (transmitted Feb. 12, 1998, 10:34:57 EST) (on file with author) (no Internet site available); Associated Press, AOL NEWS: *Holocaust Claims Must Be Handled* (transmitted Feb. 12, 1998, 17:46:08 EST) (on file with author) (no Internet site available); Stevenson Swanson, *Museum in Middle of Nazi Plunder Dispute*, CHI. TRIB., Feb. 8, 1998, § 1, 4; Michael Kilian, *Museums Say Agency Needed to Trace Stolen Art*, CHI. TRIB., Feb. 13, 1998, at § 1, 8. See Tom L. Freudenheim, *Will Everything Become Suspect?*, ARTNEWS, Mar. 1998, at 100 (calling for a more reasoned approach to this issue). See *infra*, note 33. See generally, Suzanna Andrews, *Bitter Spoils*, VANITY FAIR,

and efficiently tracked utilizing the power of the Internet.¹⁸ There are literally hundreds of web sites¹⁹ dealing with stolen art and antiquities.²⁰ This leaves true owners with no efficient way to look for their stolen artwork, and legitimate sellers and good-faith purchasers have no efficient way to discover if the work they want to purchase has been reported as stolen. The number of web sites dealing with stolen art,²¹ coupled with diverse rulings in the cases from the courts,²² leaves the parties involved with no clear understanding of how best to look for their stolen artwork, or how best to proceed in a case involving stolen artworks. The best way to properly protect true owners, legitimate sellers and good-faith purchasers is by implementing an internationally recognized due diligence standard by which stolen artworks can be efficiently tracked utilizing the Internet.

First, this Comment briefly discusses the history of stolen artworks.²³ Secondly, this Comment will discuss the various legal standards the courts use in analyzing stolen art cases: statute of limitations,²⁴ due diligence,²⁵ and adverse possession.²⁶ Discussing these standards is important to understanding why a new standard of due dili-

Mar. 1998, at 238 (accusations that Wildenstein family's gallery collaborated with the Nazis to secure some of their art treasures); Alan Riding, *Mighty and Secretive Art Dynasty Goes Public to Rebut Nazi Links*, N.Y. TIMES, Apr. 20, 1998, at B1.

18. See *Reno*, 117 S. Ct. at 2334.

19. See *Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295, 297 n.1 (S.D.N.Y. 1997). "A [web] 'site' is an Internet address which permits users to exchange digital information with a particular host." *Id.*

20. On August 30, 1997, an Internet search via AOL using "art theft" found 660 matches, "antiquities theft" found 23 matches. Among the matches were the major databases, such as Interpol (<<http://www.rcmp-grc.gc.ca/html/interpol.htm>>), the CIA (<<http://odci.gov/cia>>), the FBI (<<http://www.fbi.gov>>), and the Metropolitan Police of London, England (<<http://www.open.gov.uk/police/mps/home.htm>>). The most interesting site is for a theft that occurred at the Museum of Bad Art, (visited Oct. 8, 1997) <<http://glyphs.com/moba/>>.

21. See *id.*

22. See generally *Guggenheim v. Lubell*, 550 N.Y.S.2d 618 (1990), *aff'd*, 569 N.E.2d 426 (1991); *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990); *DeWeerth v. Baldinger*, 836 F.2d 103 (2nd Cir. 1987); *O'Keefe v. Snyder*, 405 A.2d 840 (N.J. Super. Ct. App. Div. 1979), *rev'd*, 416 A.2d 862 (N.J. 1980).

23. See generally sources cited *infra*, note 31.

24. See BLACK'S, *supra* note 10, at 927.

Statutes of the federal government and various states setting the maximum time periods during which certain actions can be brought or rights enforced. After the time period set out in the applicable statute of limitations has run, no legal action can be brought regardless of whether any cause of action ever existed.

Id.

25. See BLACK'S, *supra* note 10, at 457.

26. See BLACK'S, *supra* note 10, at 53. "A method of acquisition of title to real property by possession for a statutory period under certain conditions." *Id.*

gence utilizing the Internet is needed. To analyze the standards now used, this Comment will discuss four cases, focusing on three: *O'Keeffe v. Snyder*,²⁷ *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc.*,²⁸ and *Guggenheim v. Lubell*,²⁹ and touching briefly on *DeWeerth v. Baldinger*.³⁰ These cases demonstrate the various standards the courts use in determining ownership of stolen artwork. Finally, the proposed standard will be introduced: an internationally recognized due diligence standard utilizing the Internet, setting forth the guidelines to be used.

II. BACKGROUND

A. STOLEN ARTWORK

In order to understand why an internationally recognized due diligence standard is necessary, an understanding of the history and magnitude of the problem of art and antiquities theft is required.³¹ People

27. *O'Keeffe v. Snyder*, 405 A.2d 840 (N.J. Super. Ct. App. Div. 1979), *rev'd*, 416 A.2d 862 (N.J. 1980).

28. *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990).

29. *Guggenheim v. Lubell*, 550 N.Y.S.2d 618 (1990), *aff'd*, 569 N.E.2d 426 (1991).

30. *DeWeerth v. Baldinger*, 836 F.2d 103 (2nd Cir. 1987).

31. See generally Dan Barry, *Back Home to Pooh Corner? Forget it New York Says*, N.Y. TIMES, Feb. 5, 1998, at A1; Dan Barry, *Pooh Cornered, the British Give In*, N.Y. TIMES, Feb. 6, 1998, at A17; Maritza F. Bolano, *International Art Theft Disputes: Harmonizing Common Law Principles with Article 7(b) of the UNESCO Convention*, 15 FORDHAM INT'L L.J. 129 (1991/1992) (arguing that the United States should adopt a uniform policy in assessing litigants behavior in adjudicating art related cases, reconciling between U.S. policy and Article 7(b)); Karen Theresa Burke, *International Transfers of Stolen Property: Should Thieves Continue to Benefit from Domestic Laws Favoring Bona Fide Purchasers?*, 13 LOY. L.A. INT'L & COMP. L.J. 427 (1990) (comparing and contrasting the laws regarding the transfer of cultural property in the United States, Germany, Italy and Switzerland); John E. Bersin, *The Protection of Cultural Property and the Promotion of International Trade in Art*, 13 N.Y.L. SCH. J. INT'L & COMP. L. 125 (1992) (arguing the case for repatriation); Judith Church, *Evaluating the Effectiveness of Foreign Laws on National Ownership of Cultural Property*, 30 COLUM. J. TRANSNAT'L L. 179 (1992) (evaluating how foreign national ownership laws have fared in U.S. courts and suggests alternative means for the reconciliation of cultural property protection and international trade); Jessica L. Darraby, *Current Developments in International Trade of Cultural Property: Duties of Collectors, Traders and Claimants*, 297 PLIPAT 659 (July 12, 1990) (outlining the available means of dealing with the growing international trade in cultural property); Sylvia L. Depta, *Twice Saved or Twice Stolen?: The Trophy Art Tug-of-War Between Russia and Germany*, 10 TEMP. INT'L & COMP. L.J. 371 (1996) (arguing that Russia should be allowed to keep the artworks taken from Germany during World War II); Joseph F. Edwards, *Major Global Treaties for the Protection and Enjoyment of Art and Cultural Objects*, 22 U. TOL. L. REV. 9191 (1991) (addressing three global treaties and related instruments that form a major part of the body of international law that focuses on the protection and sharing of cultural property); Steven F. Grover, *The Need for Civil-Law Nations to Adopt Discovery Rules in Art Replevin Actions: A Comparative Study*, 70 TEX. L. REV. 1431 (1992) (analyzing the ways civil-law

countries compromise the rights of the original owner in stolen art cases); Sarah Harding, *Justifying Repatriation of Native American Cultural Property*, 72 IND. L.J. 723 (1997) (discussing three reasons in support of repatriation); Michael J. Kelly, *Conflicting Trends in the Flourishing International Trade of Art and Antiquities: Restitutio in Integrum and Possessio Animo Ferundi/Lucrandi*, 14 DICK. J. INT'L L. 31 (1995) (analyzing the current conflicting trends in dealing with stolen art and antiquities); Nina R. Lenzer, *The Illicit International Trade in Cultural Property: Does the Unidroit Convention Provide an Effective Remedy for the Shortcomings of the UNESCO Convention?*, 15 U. PA. J. INT'L BUS. L. 469 (1994) (critiquing the two major international efforts at curbing the trade in stolen and illegally exported works of art); see also Steve Lopez, *The Great Art Caper*, TIME, Nov. 17, 1997, at 74 (discussing the theft at the Isabella Stewart Gardner Museum); Paige L. Margules, *International Art Theft and the Illegal Import and Export of Cultural Property: A Study of Relevant Values, Legislation, and Solutions*, 15 SUFFOLK TRANSNAT'L L.J. 609 (1992) (examining existing international laws addressing art theft and the illegal import and export of stolen cultural property); Roger W. Mastalir, *A Proposal for Protecting the "Cultural" and "Property" Aspects of Cultural Property Under International Law*, 16 FORDHAM INT'L L.J. 1033 (1992/1993) (proposing re-balancing protection of cultural property to take into account preservation of the culture as well as property aspects of cultural property); Teresa McGuire, *African Antiquities Removed During Colonialism: Restoring a Stolen Cultural Legacy*, 1990 DET. C.L. REV. 31 (1990) (tracing the development of a western rule of cultural restitution and its later application to colonized Africa); Mary McKenna, *Problematic Provenance: Toward a Coherent United States Policy on the International Trade in Cultural Property*, 12 U. PA. J. INT'L BUS. L. 83 (1991) (examining recent developments in United States which bring it closer to a coherent policy on dealing with the art world); Robert H. McLaughlin, *The Native American Graves Protection and Repatriation Act: Unresolved Issues Between Material Culture and Legal Definitions*, 3 U. CHI. L. SCH. ROUNDTABLE 767 (1996) (analyzing the particular difficulties and issues involved with distinguishing objects of art and other forms of material culture from sacred objects and objects of cultural patrimony); David A. Meyer, *The 1954 Hague Cultural Property Convention and its Emergence into Customary International Law*, 11 B.U. INT'L L.J. 349 (1993) (examining the effects of recent events on the 1954 Hague Convention); Talbot J. Nicholas II, *EEC Measures on the Treatment of National Treasures*, 16 LOY. L.A. INT'L & COMP. L.J. 127 (1993) (examining the EEC legislation as it relates to the international efforts to compromise the opposing legal, policy and practical interests involved and the EEC's single internal market program); Monique Olivier, *The Unidroit Convention: Attempting to Regulate the International Trade and Traffic of Cultural Property*, 26 GOLDEN GATE U. L. REV. 627 (1996) (examining the steps being taken internationally and in the United States to deal with the illicit trade in works of art); Thomas W. Pecoraro, *Choice of Law in Litigation to Recover National Cultural Property: Efforts at Harmonization in Private International Law*, 31 VA. J. INT'L L. 1 (1990) (proposing specific provisions to the private-law codicil to the UNESCO Convention to help resolve conflict of laws issues); John E. Putnam II, *Common Markets and Cultural Identity: Cultural Property Export Restrictions in the European Economic Community*, 1992 CHI. LEGAL F. 457 (1992) (arguing that many of the national laws restricting the export of cultural property to other Member States of the European Community are overly restrictive and violate Treaty provisions); See Roberts, *supra* note 9, at 327 (examining current international agreements and national legislation protecting cultural property); Joseph L. Sax, *Is Anyone Minding Stonehenge? The Origins of Cultural Property Protection in England*, 78 CALIF. L. REV. 1543 (1990) (examining the beginning of preservation policies in the United Kingdom); John P. Shinn, *A New World Order for Cultural Property: Addressing the Failure of International and Domestic Regulation of the International Art Market*, 34 SANTA CLARA L. REV. 977 (1994) (discussing the 1970 UNESCO Convention and the 1983 Convention on Cultural

have been stealing artworks since the beginning of time,³² though the practice of looting a country's art treasures during war for the glory of one's country has been attributed back to Napoleon Bonaparte.³³ Fos-

Property Implementation Act); Kimberly A. Short, *Preventing the Theft and Illegal Export of Art in a Europe without Borders*, 26 VAND. J. TRANSNAT'L L. 633 (1993) (examining European treaties, laws of the individual EC Member States, and Community-wide treaties and regulations designed to prevent the theft and illegal export of art); Theresa Simpson, *Claims of Indigenous Peoples to Cultural Property in Canada, Australia and New Zealand*, 18 HASTINGS INT'L & COMP. L. REV. 195 (1994) (arguing for the right of indigenous groups to independently enforce their cultural property rights under international agreements); Judd Tully, *Vanished Art, Vivid Memories*, ARTNEWS, Jan. 1998, at 96 (exploring one family's efforts to retrieve the art they say was stolen by the Nazis); Robin Hardy Villanueva, *Free Trade and the Protection of Cultural Property: The Need for an Economic Incentive to Report Newly Discovered Antiquities*, 29 GEO. WASH. J. INT'L L. & ECON. 547 (1995) (proposing a method for allowing residents to sell nonessential cultural finds); Victoria J. Vitrano, *Protecting Cultural Objects in an Internal Border-Free EC: The EC Directive and Regulation for the Protection and Return of Cultural Objects*, 17 FORDHAM INT'L L.J. 1164 (1994) (examining the EC Directive and Regulation and proposes a higher burden on purchasers of art).

32. See HADEN-GUEST, *supra* note 2, at 193. "Sometimes art crimes have mirrored the specific preoccupations of the culture at a particular time." *Id.*

33. See JEANNETTE GREENFIELD, *THE RETURN OF CULTURAL TREASURES* 199 (2d ed. 1996). See generally HECTOR FELICIANO, *THE LOST MUSEUM: THE NAZI CONSPIRACY TO STEAL THE WORLD'S GREATEST WORKS OF ART* (1997); *THE SPOILS OF WAR* (Elizabeth Simpson ed. 1997); Oleg Bergazov and Sylvia Hochfield, *France: The Search for an Answer*, ARTNEWS, May 1997, at 154; Shawn Stephens, *The Hermitage and Pushkin Exhibits: An Analysis of the Ownership Rights to Cultural Properties Removed From Occupied Germany*, 18 HOUST. J. INT'L L. 59 (1995) (presenting both sides of the argument of who should keep the cultural property removed from Germany during World War II); Amy Fine Collins, *Masters of the Line*, VANITY FAIR, Dec. 1996, at 172 (previewing the Hermitage Museum's second show of art taken from Germany during World War II); Judith H. Dobrzynski, *A Bulldog on the Heels of Lost Nazi Loot*, N.Y. TIMES, Nov. 7, 1997, at B1; Michael R. Gordon, *Hot Issue for Russia: Should It Return Nazi Plunder?*, N.Y. TIMES, Apr. 17, 1997, at A3; Ron Grossman, *Family Sues Collector, Says Degas Work Stolen by Nazis*, CHI. TRIB., Mar. 24, 1997, at § 1, 1; William H. Honan, *Curators as Partners in War Crimes*, N.Y. TIMES, July 27, 1997, at E5; Michael Kilian, *Indian Bones in the Nation's Cupboard*, CHI. TRIB., Apr. 16, 1997, at § 5, 1; Constance Lowenthal, *The Prince vs. The Professor*, WALL ST. J., July 30, 1997, at A13; Carol Vogel, *Tracing Path of Artworks Smuggled Out of Asia*, N.Y. TIMES, Apr. 23, 1997, at B3; Bernard Weiser, *\$10 Million in Looted Art Returned*, N.Y. TIMES, Sept. 10, 1997, at A24; Alan Riding, *Staking a Claim to Art the Nazis Looted*, N.Y. TIMES, Sept. 3, 1997, at B1; Associated Press, AOL NEWS: *Art Smuggling Prevades Cambodia* (transmitted Feb. 3, 1997, 10:10:07 EST) (on file with the author); Associated Press, AOL NEWS: *Poland to Return Jewish Property* (transmitted Feb. 20, 1997, 15:49:45 EST) (on file with the author); Associated Press, AOL NEWS: *British Museum Vows to Keep Art* (transmitted Feb. 20, 1997, 15:49:45 EST) (on file with the author); Alan Riding, *France to Display Art Looted by the Nazis*, N.Y. TIMES, Apr. 3, 1997, at B1; Associated Press, AOL NEWS: *Russia Duma: Let's Keep Looted Art* (transmitted Apr. 4, 1997, 13:23:07 EST) (on file with author); Associated Press, AOL NEWS: *Yeltsin to Take Art to Germany* (transmitted Apr. 15, 1997, 14:03:12 EDT) (on file with author); Associated Press, AOL NEWS: *Icons Hold Cypriots Together* (transmitted Apr. 16, 1997, 05:39:19 EST) (on file with author); Associated Press, AOL NEWS: *Russia Police: Art Smuggling Grows* (transmitted Apr. 16, 1997, 14:13:22 EST) (on

sils,³⁴ archeological artifacts,³⁵ meteorites,³⁶ coins,³⁷ Native American artifacts,³⁸ and religious icons³⁹ are some of the objects particularly vulnerable, either because they are easily stolen and concealed,⁴⁰ or because there is no cost efficient way to guard the items.⁴¹ Many of these

file with author); Associated Press, AOL NEWS: *Yeltsin, Kohl to Talk on NATO, Art* (transmitted Apr. 16, 1997, 9:23:43 EDT) (on file with author); N.Y. TIMES News Service, *Russia Debates Returning Nazi Loot*, CHI. TRIB., Apr. 17, 1997, at § 1, 20; Associated Press, AOL NEWS: *Yeltsin, Kohl Talk NATO and Art* (transmitted Apr. 17, 1997, 13:21:11 EDT) (on file with author); Associated Press, AOL NEWS: *Russians Delay 'Trophy Art' Vote* (transmitted Apr. 17, 1997, 11:19:54 EDT); Associated Press, AOL NEWS: *Art Allegedly Looted by Troops* (transmitted Apr. 19, 1997, 12:31:08 EDT) (on file with author); Associated Press, AOL NEWS: *Russian Museum to Show Nazi Relics* (transmitted Apr. 19, 1997, 21:25:34 EDT) (on file with author); Associated Press, AOL NEWS: *Report: Dealers Eyed Looted Art* (transmitted May 9, 1997, 11:29:33 EDT) (on file with author); Associated Press, AOL NEWS: *Russia May Keep WWII Seized Art* (transmitted May 13, 1997, 15:52:44 EDT) (on file with author); Associated Press, AOL NEWS: *Russia Praises Germany Art Promise* (transmitted May 15, 1997, 21:39:54 EDT) (on file with author); Associated Press, AOL NEWS: *Amber Room Piece May Have Surfaced* (transmitted May 16, 1997, 00:18:57 EDT) (on file with author); Associated Press, AOL NEWS: *Yeltsin Returns Trophy Art Law* (transmitted May 22, 1997, 07:44:17 EDT) (on file with author); BOSTON GLOBE, *Art Museums Face Painful WWII Quandary*, CHI. TRIB., Aug. 3, 1997, at § 1, 13; Associated Press, AOL NEWS: *Russia Returns Looted Wartime Booty* (transmitted Sept. 11, 1997, 04:30:40 EDT) (on file with author); Associated Press, AOL NEWS: *Drawings Looted After WW2 Recovered* (transmitted Sept. 10, 1997, 15:51:40 EDT) (on file with the author); Associated Press, AOL NEWS: *Man Pleads Guilty in Stolen Art Case* (transmitted Oct. 21, 1997, 12:18:57 EDT) (on file with the author); Associated Press, AOL NEWS: *Missing Matisse Painting Turns Up* (transmitted Oct. 22, 1997, 09:06:24 EDT) (on file with the author).

34. See *Black Hills Inst. of Geological Research v. South Dakota Sch. of Mines & Tech.*, 12 F.3d 737 (8th Cir. 1993) (beginning of the fight over "Sue," the tyrannosaurus rex fossil discovered in South Dakota); *United States v. Larson*, 110 F.3d 620 (8th Cir. 1997) (discussing who owns fossils collected from federally owned land). See also Associated Press, AOL NEWS: *So Who Owns Dinosaur Bones?* (transmitted Nov. 2, 1997, 12:09:13 EST) (on file with the author).

35. See *United States v. Gerber*, 999 F.2d 1112 (8th Cir. 1993) (regarding violation of the Archaeological Resources Protection Act).

36. See *State of California v. Mead*, 618 F.2d 618 (9th Cir. 1980) (discussing ownership of meteorite removed from federal land).

37. See *Republic of Turkey v. OKS Partners*, 797 F. Supp. 64 (D. Mass. 1992) (seeking return of coins).

38. See *United States v. Corrow*, 1997 WL 386028 at *1 (10th Cir. 1997) (arguing the constitutionality of the Native American Graves Protection and Repatriation Act).

39. See *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990), *but see* *Husbands v. United States*, 46 Cust. Ct. 456, 1961 WL 9829 (Cust.Ct.) (bonsai trees were held not to be artistic antiquities).

40. See Olivier, *supra* note 9, at 627. "Art theft has increased rapidly throughout the world because the objects are extremely valuable, easily hidden and transported, and the legal owner of the work is difficult to identify." *Id.*

41. See *id.* at 630-31. "Although criminals now prefer art theft over bank robbery, museums cannot afford to install the most sophisticated security systems. Additionally, private collections are rarely better equipped to protect themselves from thieves." *Id.*

artworks have been easily stolen because at the time of the theft they were not considered valuable, monetarily or as a symbol of a culture.⁴²

The practice has not decreased but rather increased over the years.⁴³ It is not just cultural treasures⁴⁴ that have seen an upswing in thefts, but also art in museums and in private homes.⁴⁵

In the [19]80s, . . . with inflation raging, many people sought protection by sinking money into art. The auction houses fed this acquisition craze by selling on credit. The Japanese buyers poured money into the market, prices soared, and big sales became fodder for the 11 o'clock news. It all made it clear to every thief that in addition to stealing the family silver, he might as well take what's on the walls.⁴⁶

Internationally, as of 1996, the trafficking in stolen artwork is second only to drug smuggling in terms of the amount of money involved, at least two billion dollars each year.⁴⁷ Also disheartening is the fact that only about ten percent of the artworks stolen are ever recovered.⁴⁸ In other countries, particularly those torn apart by war, the problem is

42. See *id.* at 633. See generally Stephanie Ann Ades, *The Archaeological Resources Protection Act: A New Application in the Private Property Context*, 44 CATH. U. L. REV. 599 (1995) (outlining the evolution of the United States archaeological resource protection laws); Jessica L. Darraby, *Is Culture a Justiciable Issue?*, 18 PEPP. L. REV. 463 (1991) (examines whether disputes over art should be in the courts); Dorna Sachiko Sakurai, *Animal, Mineral, or Cultural Antiquity?: The Management and Protection of Paleontological Resources*, 17 LOY. L.A. INT'L & COMP. L.J. 197 (1994) (examining the relevant laws of the United States and Canada that affect the collection and trade of paleontological objects); Moustakas, *infra* note 91 (arguing that protecting certain types of cultural property ought to be mandatory); Associated Press, AOL NEWS: *Britain to Return Aboriginal Skull* (transmitted Aug. 8, 1997, 20:10:12 EDT) (on file with the author); James A.R. Nafzinger, *The Underlying Constitutionalism of the Law Governing Archaeological and Other Cultural Heritage*, 30 WILLAMETTE L. REV. 581 (1994) (discussing and analyzing the constitutional underpinnings of cultural heritage law); M. Catherine Vernon, *Common Cultural Property: The Search for Rights of Protective Intervention*, 26 CASE W. RES. J. INT'L L. 435 (1994) (discussing legal issues associated with the concept of protective intervention over culturally significant sites).

43. See Olivier, *supra* note 9 n.2.

44. See Blumenthal, *supra* note 17.

In a report last year by the Getty, "Protecting Cultural Objects," the Czech Republic was said to be losing about 10 percent of its national patrimony every year to thieves and smugglers. In China in 1989 and 1990 alone, the report said, 40,000 tombs were plundered. Italy recorded 253,000 art thefts from 1970 to 1990, and British losses were estimated at \$1.5 billion a year.

Id.

45. See Lopez, *supra* note 31, at 74, 82.; see also, Tom Mashberg, *Stealing Beauty*, VANITY FAIR, Mar. 1998, at 214; Serena Fokschaner, *To Catch a Thief*, THE LONDON MAGAZINE, July 1996, at 152.

46. See Lopez, *supra* note 31, at 74, 82.

47. See Olivier, *supra* note 9 n.2.

48. See *id.*

growing worse.⁴⁹

1. *Statute of Limitations*

Statute of limitations,⁵⁰ the determination of when a cause of action accrues, varies from state to state.⁵¹ The lack of consistency in applying statute of limitations rules causes problems for good-faith purchasers, legitimate sellers and owners in the United States. Such problems are not caused because of the different types of artworks involved, but rather by the fact that different courts apply different rules. In some states, such as New York, the statute of limitations rules are applied differently depending on if the possessor is the thief or if the possessor is a good-faith purchaser.⁵² In *Guggenheim v. Lubell*, the New York court held that if a possessor of art is the thief, then the three-year statute of limitations begins to run from the time the piece is stolen, regardless of when the true owner knows of the theft.⁵³ If the possessor is a good-faith purchaser, the statute of limitations begins to run from the time the true owner demands the return of the piece from the good-faith purchaser and its return is refused: this is the demand-and-refuse rule.⁵⁴

New York is considered by many to be the center of the art world and as such, its courts decisions in these matters are closely watched.⁵⁵ The *Guggenheim* case caused an uproar in the art and legal community⁵⁶ as well as with good-faith purchasers. The Lubell's, who were good-faith

49. See Judith Miller with Stephen Kinzer, *Orthodox Churches Ravaged in the Turkish Part of Cyprus*, N.Y. TIMES, Apr. 1, 1998, at A1. See generally GREENFIELD, *supra* note 33; HECTOR FELICIANO, *THE LOST MUSEUM: THE NAZI CONSPIRACY TO STEAL THE WORLD'S GREATEST WORKS OF ART* (1st ed. 1997); *THE SPOILS OF WAR* (Elizabeth Simpson ed. 1997).

50. See BLACK'S, *supra* note 24, at 927.

51. See *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990); *DeWeerth v. Baldinger*, 836 F.2d 103 (2nd Cir. 1987); *O'Keeffe v. Snyder*, 405 A.2d 840 (N.J. Super. Ct. App. Div. 1979), *rev'd*, 416 A.2d 862 (N.J. 1980). See generally *Guggenheim v. Lubell*, 550 N.Y.S.2d 618 (1990), *aff'd*, 569 N.E.2d 426 (1991).

52. See *Guggenheim*, 569 N.E.2d at 429.

53. *Id.*

54. See *id.* See also *Republic of Turkey v. The Met. Museum of Art*, 762 F. Supp. 44 (S.D.N.Y. 1990) (demanding return of artifacts).

55. See generally Austin S. Faberman, *Developments in the Law*, 68 ST. JOHN'S L. REV. 991 (1994) (examining recent decisions in New York regarding stolen art).

56. See Steven A. Bibas, *The Case Against Statutes of Limitations for Stolen Art*, 103 YALE L.J. 2437 (1994) (arguing that buyers of stolen art should not be protected if owners have reported the artwork stolen); see Robin Morris Collins, *The Law and Stolen Art, Artifacts and Antiquities*, 36 HOW. L.J. 17 (1993) (examining private international choice of law rules and international law enforcement to determine why the marketplace for stolen art is so active and profitable); see Andrea E. Hayworth, *Stolen Artwork: Deciding Ownership Is No Pretty Picture*, 43 DUKE L.J. 337 (1993) (examining the various approaches the courts have taken to the statute of limitations defense and concludes that the demand and refuse rule is best); see generally Hans Kennon, *Take a Picture, It May Last Longer if Guggenheim*

purchasers, were ordered to return the painting to the Guggenheim Museum by the court even though the painting in question had been hanging in their living room for over twenty-two years.⁵⁷ The court held that the statute of limitations had begun to run from the time the plaintiff, the Guggenheim Museum, demanded the return of the painting and the defendant, the Lubell's, refused.⁵⁸ The implications for both true owners and good-faith purchasers are enormous⁵⁹ because this case used strict statute of limitation rules, and mostly disregarded the actions of the parties involved outside of the demand-and-refuse rule.⁶⁰ However, the court did allow a defense of laches,⁶¹ as discussed in an earlier case, *DeWeerth v. Baldinger*,⁶² to be available.⁶³ The *Guggenheim* decision left the burden on the good-faith purchaser.⁶⁴

In California, the statute of limitations is three years.⁶⁵ This appears to be straightforward, but the California courts apply two, *separate*, three-year periods: the first three-year period is from the time the piece was stolen, and the second is applied from the time the thief gets rid of the piece (within the first three-year period); then a new three-year statute of limitations period begins to run for the new possessor.⁶⁶

Becomes the Law of the Land: The Repatriation of Fine Art, 8 ST. THOMAS L. REV. 373 (1996) (addressing the problems faced by innocent purchasers of stolen art).

57. See *Guggenheim*, 550 N.Y.S.2d at 622.

58. See *Guggenheim v. Lubell*, 569 N.E.2d 426 (N.Y. 1991).

59. See Kennon, *supra* note 56, at 373 (addressing the problems faced by innocent purchasers of stolen art); see also Bibas, *supra* note 56, at 2437 (arguing that buyers of stolen art should not be protected if owners have reported the artwork stolen); Collins, *supra* note 56, at 17 (examining private international choice of law rules and international law enforcement to determine why the marketplace for stolen art is so active and profitable); Hayworth, *supra* note 56, at 337 (examining the various approaches the courts have taken to the statute of limitations defense and concludes that the demand and refuse rule is best); Montagu, *supra* note 56, at 75 (examining recent cases and the approaches taken by each court).

60. See *Guggenheim*, 569 N.E.2d at 427; see also *Republic of Turkey*, 762 F. Supp. at 45.

61. See *DeWeerth*, 836 F.2d at 110. "Laches is an equitable defense that requires a showing of delay and prejudice to the defendant, whereas the reasonably prompt demand principle involved in this case is a legal doctrine based exclusively on an unexcused lapse of time." *Id.*

62. *Id.* at 110.

63. See generally *Guggenheim v. Lubell*, 550 N.Y.S.2d 618 (1990), *aff'd*, 569 N.E.2d 426 (1991). *Guggenheim* partially overruled *DeWeerth*.

64. *Id.*

65. See *Society of California Pioneers v. Baker*, 50 Cal. Rptr., 2d 865 (Cal. Ct. App. 1996) (bringing conversion suit against innocent purchaser, who in turn brought cross-complaints against owner and others).

66. See *id.* at 872.

In Indiana, the general statute of limitations for replevin⁶⁷ actions is six years from the "time its cause of action accrued in which to sue for recovery . . .," so there is a question for the court as to when a cause of action accrues.⁶⁸ The inquiry begins with the general rule: "a cause of action accrues when the plaintiff ascertains, or by due diligence could ascertain, actionable damages."⁶⁹ The discovery rule, which states that the statute of limitations will begin to run from the date the negligence was or should have been discovered,⁷⁰ is also utilized, as is the doctrine of fraudulent concealment⁷¹ which bars a defendant from raising the issue of the statute of limitations⁷² against the plaintiff. However, "[c]entral to both the discovery rule and the doctrine of fraudulent concealment is the determination of the plaintiff's diligence in investigating the potential cause of action."⁷³ In other words, "the plaintiff must exercise due diligence to investigate the theft and recover the works."⁷⁴ The statute of limitations claim will not be considered on its own, but hand-in-hand with the due diligence on the part of the plaintiff.⁷⁵ This general principle is also followed in New Jersey.⁷⁶

This inconsistency is difficult enough when the parties are all based in the United States, but the situation becomes even more difficult when the parties are citizens of different countries. For instance, civil law nations⁷⁷ generally favor the good-faith purchaser;⁷⁸ common law na-

67. See BLACK'S, *supra* note 10, at 1299. Replevin: An action whereby the owner or person entitled to repossession of goods or chattels from one who has wrongfully detained or taken or who wrongfully detains such goods or chattels. *Id.*

68. *Autocephalous*, 917 F.2d at 287-88.

69. *Id.*

70. See *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990).

71. See *Autocephalous*, 917 F.2d at 287-88. The statute of limitations will not protect a defendant who has behaved improperly:

Apart from but related to the discovery rule, Indiana recognizes, by both statute and case law, the doctrine of fraudulent concealment. Under this doctrine, a defendant who has by deceit or fraud prevented a potential plaintiff from learning of a cause of action cannot take advantage of his wrongdoing by raising the statute of limitations as a bar to plaintiff's actions.

Id.

72. See *id.* See also BLACK'S, *supra* note 10, at 927.

73. *Autocephalous*, 917 F.2d at 287-88.

74. *Id.* at 289.

75. See generally *Autocephalous*, 717 F. Supp. 1374, *aff'd*, 917 F.2d 278; *O'Keeffe*, 405 A.2d 840 (N.J. Super. Ct. App. Div. 1979), *rev'd*, 416 A.2d 862 (N.J. 1980).

76. See generally *O'Keeffe*, 405 A.2d 840; *rev'd*, 416 A.2d 862.

77. See Steven F. Grover, *The Need for Civil-Law Nations to Adopt Discovery Rules in Art Replevin Actions: A Comparative Study*, 70 TEX. L. REV. 1431, 1439 (May, 1992). "Switzerland, Germany, France, Italy, Mexico, and numerous Central and South American countries." *Id.*

78. See *id.*

tions⁷⁹ generally favor the true owner.⁸⁰ The lack of consistent rules in dealing with stolen artworks causes problems for good-faith purchasers, legitimate sellers and owners the world over, not just in the United States. An internationally recognized standard of due diligence would go a long way in rectifying the situation.

2. Due Diligence

Due diligence⁸¹ is raised by every defendant in every stolen art case.⁸² Some cases are easier to decide, such as *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*,⁸³ where the due diligence of the plaintiff was particularly active and straightforward, while others did not seem as clear cut, such as *O'Keeffe v. Snyder*⁸⁴ and *Guggenheim v. Lubell*.⁸⁵ The *O'Keeffe* and *Guggenheim* cases depended heavily on the atmosphere of the art world at the time the thefts took place.⁸⁶ As stated in *Guggenheim*, the plaintiff did not tell anyone of the theft, believing that to do so would drive the painting further underground.⁸⁷

What has been considered due diligence by the courts? In *Guggenheim*, the court stated that the fact that the museum had not notified anyone of the theft⁸⁸ was only applicable to the laches claim, due diligence was immaterial for a statute of limitations claim.⁸⁹ In *Autocephalous*,⁹⁰ when the Republic of Cyprus received communications that the

79. See *id.* "Great Britain, Ireland, the United States, Canada, New Zealand, and Australia." *Id.*

80. See *id.*

81. See BLACK'S, *supra* note 10, at 457.

82. See generally *Autocephalous*, 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990); *DeWeerth*, 836 F.2d 103 (2nd Cir. 1987); *Guggenheim*, 550 N.Y.S.2d 618 (1990), *aff'd*, 569 N.E.2d 426 (N.Y. 1991); *O'Keeffe*, 405 A.2d 840 (N.J. Super. Ct. App. Div. 1979), *rev'd*, 416 A.2d 862 (N.J. 1980); Julia A. McCord, *The Strategic Targeting of Diligence: A New Perspective on Stemming the Illicit Trade in Art*, 70 IND. L.J. 985 (1995) (arguing for strengthening the due diligence standard); Linda F. Pinkerton, *Due Diligence in Fine Art Transactions*, 22 CASE W. RES. J. INT'L L. 1 (1990) (meaning of due diligence in the United States as it relates to fine art transactions);

83. *Autocephalous*, 717 F. Supp. 1374, *aff'd*, 917 F.2d 278.

84. *O'Keeffe*, 405 A.2d 840, *rev'd*, 416 A.2d 862.

85. *Guggenheim*, 550 N.Y.S.2d 618, *aff'd*, 569 N.E.2d 426.

86. *O'Keeffe*, 416 A.2d at 865-866; *Guggenheim*, 569 N.E.2d at 428.

87. *Guggenheim*, 569 N.E.2d at 428. See also e-mail from Roger Wulff, President, Museum Services International, to the author (transmitted Aug. 25, 1997, 13:17:15 EDT) (on file with the author) (discussing the reluctance of cultural institutions to report missing artworks for fear of hurting future donations); Museum Security Network, *Thieves Steal Museum's Only Van Gogh* (transmitted Sept. 4, 1997, 21:56:00) (on file with author).

88. *Guggenheim*, 550 N.Y.S.2d at 621.

89. *Guggenheim*, 569 N.E.2d at 426.

90. *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990).

mosaics were missing they immediately contacted UNESCO,⁹¹ the International Council of Museums,⁹² and the International Council of Museums and Sites,⁹³ and introduced a resolution to Europa Nostra.⁹⁴ Their ambassador spoke to individuals, auction houses and museums, contacted American and European museums and universities, sent press releases and gave speeches around the world,⁹⁵ alerting everyone they could that the mosaics were missing.⁹⁶ These actions were considered enough to satisfy due diligence.⁹⁷

3. *Adverse Possession*

The issue of adverse possession⁹⁸ is unresolved when it comes to artwork. In order to establish ownership of artwork via adverse possession, the party claiming the artwork by adverse possession would have to display the artwork in a manner that would alert the true owner of who had the artwork.⁹⁹ In a 1996 California case,¹⁰⁰ the court discussed whether adverse possession was available for personal property¹⁰¹ and noted that the "issue does not appear to be settled."¹⁰² In a 1980 New Jersey case,¹⁰³ the court found that the requirements of adverse possession: hostile, actual, visible, exclusive and continuous¹⁰⁴ possession, were too difficult to apply to personal property.¹⁰⁵ This is particularly true when

91. "UNESCO" is the United Nations Economic, Scientific and Cultural Organization. See generally John Moustakas, *Group Rights in Cultural Property: Justifying Strict Inalienability*, 74 CORNELL L. REV. (1989) (arguing that protecting certain types of cultural property ought to be mandatory).

92. *Autocephalous*, 717 F. Supp. at 1380. "[A]n organization that coordinates and develops measures and security around the world." *Id.*

93. See *id.* "[A]n organization that works with restorers and specialists in the preservation of ancient monuments." *Id.*

94. See *id.* "[A] European organization interested in the conservation of the architectural heritage of Europe." *Id.*

95. See *id.*

96. See *Autocephalous*, 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990).

97. See *id.*

98. See BLACK'S, *supra* note 10, at 53.

99. See *id.*

100. See *The Society of California Pioneers v. Baker*, 50 Cal. Rptr., 2d 865 (Cal. Ct. App. 1996).

101. See *id.* at 865.

102. *Id.* at 872.

103. *O'Keeffe v. Snyder*, 405 A.2d 840 (N.J. Super. Ct. App. Div. 1979), *rev'd*, 416 A.2d 862 (N.J. 1980).

104. See *id.* at 870.

105. See *id.* at 871. Would a true owner know if someone had their personal property in order to satisfy the requirements for adverse possession:

For example, if jewelry is stolen from a municipality in one county in New Jersey, it is unlikely the owner would learn that someone is openly wearing that jewelry

it came to works of art since “nothing short of public display would be sufficient to alert the true owner.”¹⁰⁶ As the court stated, “the effect [would be] to impose a heavy burden on the purchasers of paintings who wish to enjoy the paintings in the privacy of their homes.”¹⁰⁷ Because of these difficulties, adverse possession is not often raised in stolen artworks cases.

B. UTILIZING THE INTERNET

Essentially, the Internet¹⁰⁸ is a large network of computers linked together, sharing information.¹⁰⁹ A web site¹¹⁰ is a place on the Internet, set-up and maintained by a person or company that acts as the “host.”¹¹¹ The host computer allows other users to get information or to exchange information among the users.¹¹² Some of the ways in which information can be exchanged are via e-mail,¹¹³ newsgroups,¹¹⁴ chat rooms¹¹⁵ and the World Wide Web.¹¹⁶

As stated earlier, there are literally hundreds of web sites dealing with stolen artworks on the Internet.¹¹⁷ Some, such as “Stolen Masks,”¹¹⁸ deal exclusively with one form of art.¹¹⁹ Because these sites are too specialized for purposes of developing an internationally recognized standard of due diligence utilizing the Internet, this Comment’s focus is on taking the best features from the sites available and tailoring them to a more “universal” site available to museums, sellers, purchas-

in another county or even in the same municipality. Open and visible possession of personal property, such as jewelry, may not be sufficient to put the original owner on actual or constructive notice of the identity of the possessor.

Id.

106. *Id.* at 871.

107. *Id.*

108. *See Reno v. American Civil Liberties Union*, 117 S. Ct. 2329 (1997).

109. *See id.* at page 2334.

110. *See Bensusan Restaurant Corp. v. King*, 937 F. Supp. 295 (S.D.N.Y. 1997).

111. *Reno*, 117 S.Ct. at 2334. A host computer are “those that store information and relay communications.” *Id.*

112. *See id.*

113. *See id.* at. 2329. “E-mail enables an individual to send an electronic message—generally akin to a note or letter—to another individual or to a group of addresses.” *Id.*

114. *See id.* “Newsgroups also serve groups of regular participants, but these postings may be read by others as well.” *Id.*

115. *See id.* “[T]wo or more individuals wishing to communicate more immediately can enter a chat room to engage in real time dialogue—in other words by typing messages to one another that appear almost immediately on the others’ computer screen.” *Id.*

116. *See id.* “[A]llows users to search for and retrieve information stored in remote computers, as well as, in some cases, to communicate back to designated sites.” *Id.*

117. *See supra* note 20.

118. *See Images of Masks, Stolen Masks* (visited Oct. 8, 1997) <<http://www.masks.org/linksout/images/stolen.htm/>>.

119. *See id.*

ers and the police.¹²⁰

The excuse the court used in *Guggenheim*,¹²¹ which essentially forgave the plaintiff their obligations of due diligence in relation to the statute of limitations,¹²² is too uncertain for good-faith purchasers, while what constituted due diligence in *Autocephalous*¹²³ may be too arduous for many.¹²⁴ With the almost universal availability of the Internet, there is no reason not to set up due diligence parameters and utilize the capabilities of the Internet to effectively track lost and stolen artworks. This Comment agrees with the court in *O'Keefe*,¹²⁵ which stated, "[t]he focus of the inquiry [will be] whether the owner has acted with due diligence in pursuing his or her own personal property."¹²⁶

If this statement is indeed correct, the question then becomes: what should constitute due diligence and how can the Internet help? In order to come to a conclusion about what should constitute due diligence, we must first look at prior cases to understand how the due diligence standard has been applied.¹²⁷ From there, we can then understand why the "old" way of analyzing due diligence is inadequate, what the standard of due diligence should be, and how the Internet can be utilized to implement the new due diligence standard.

120. Some of the sites visited include: *About the ALR* (visited Oct. 8, 1997) <<http://www.artloss.com/repuk.htm>>; *Art Dealers Association of America* (visited Oct. 8, 1997) <<http://www.artdealers.org/>>; *Federal Bureau of Investigation* (visited Oct. 8, 1997) <<http://www.fbi.gov/>>; *Interpol* (visited Oct. 8, 1997) <<http://www.rcmp-grc.gc.ca/html/interpol.htm>>; *Metropolitan Police Service, New Scotland Yard, London, England* (visited Oct. 8, 1997) <<http://www.open.gov.uk/police/mps/home.htm>>; *New York City Police Department* (visited Oct. 8, 1997) <<http://161.185.203.7/html/nypd/finest.html>>; *The Central Intelligence Agency* (visited Oct. 8, 1997) <<http://odci.gov/cia>>; *The Directory of Design & Decoration, N.A.A.D.A.A., Inc., National Antique and Art Dealers Association of America, Inc.* (visited Oct. 8, 1997) <<http://www.dir-dd.cm/naadaa.html>>; *The Police Services of the UK* (visited Oct. 8, 1997) <<http://www.police.uk>>.

121. *Guggenheim v. Lubell*, 550 N.Y.S.2d 618 (1990); *aff'd*, 569 N.E.2d 426 (N.Y. 1991).

122. *Id.*

123. *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990).

124. *Id.*

125. *O'Keefe v. Snyder*, 405 A.2d 840 (N.J. Super. Ct. App. Div. 1979); *rev'd*, 416 A.2d 862 (N.J. 1980).

126. *Id.*

127. *See Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990); *DeWeerth v. Baldinger*, 836 F.2d 103 (2nd Cir. 1987); *Guggenheim v. Lubell*, 550 N.Y.S.2d 618 (1990), *aff'd*, 569 N.E.2d 426 (1991); *O'Keefe v. Snyder*, 405 A.2d 840 (N.J. Super. Ct. App. Div. 1979), *rev'd*, 416 A.2d 862 (N.J. 1980).

III. ANALYSIS

A. THE CASES

As pointed out in the Background, there are jurisdictional differences in how stolen artwork cases are handled.¹²⁸ This Comment will discuss four cases, focusing on three: *O'Keeffe v. Snyder*,¹²⁹ *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc.*,¹³⁰ and *Guggenheim v. Lubell*,¹³¹ and touching briefly on *DeWeerth v. Baldinger*,¹³² which will show that the different approaches taken by each of these courts confuse rather than serve good-faith purchasers, legitimate owners and sellers.¹³³ With the burgeoning international art market¹³⁴ it is clear that it is necessary to implement an internationally recognized standard of due diligence, and the most efficient and effective way to implement the proposed standards is via the Internet.¹³⁵

128. See text, page 5-16.

129. *O'Keeffe v. Snyder*, 405 A.2d 840 (N.J. Super. Ct. App. Div. 1979), *rev'd*, 416 A.2d 862 (N.J. 1980).

130. *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990).

131. *Guggenheim v. Lubell*, 550 N.Y.S.2d 618 (1990), *aff'd*, 569 N.E.2d 426 (1991); *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989).

132. *DeWeerth v. Baldinger*, 836 F.2d 103 (2nd Cir. 1987).

133. See generally Stephanie O. Forbes, *Securing the Future of Our Past: Current Efforts to Protect Cultural Property*, 9 TRANSNAT'L LAW. 235 (1996) (examining the different theoretical solutions used in trying to stem the illicit trade of cultural property); Fabeman, *supra* note 31; Patty Gerstenblith, *Identity and Cultural Property: The Protection of Cultural Property in the United States*, 75 B.U. L. REV. 559 (1995) (arguing that society as a whole needs to take steps to ensure that our cultural resources are protected); Ashton Hawkins, et al., *A Tale of Two Innocents: Creating An Equitable Balance Between the Rights of Former Owners and Good-faith Purchasers of Stolen Art*, 64 FORDHAM L. REV. 49 (1995) (proposing a comprehensive legislative solution based on a computerized art theft registry); Deborah DePorter Hoover, *Title Disputes in the Art Market: An Emerging Duty of Care for Art Merchants*, 51 GEO. WASH. L. REV. 443 (1983) (investigating title before purchase); J. H. Merryman, *The Public Interest in Cultural Property*, 77 CALIF. L. REV. 339 (1989) (discussing why the public is interested in cultural property and how that interest can help shape a cultural property policy); Marilyn Phelan, *Synopsis of the Law Protecting Our Cultural Heritage*, 28 NEW ENG. L. REV. 63 (1993) (reviewing the statutes enacted to protect our cultural heritage); Charles D. Webb, *Whose Art is it Anyway? Title Disputes and Resolution in Art Theft Cases*, 79 KY. L.J. 883 (1990/1991) (suggesting that clear guidelines in determining diligence will afford both parties an opportunity to comply with the law).

134. See Lopez, *supra* note 45, at 74.

135. See *Reno*, 117 S. Ct. at 2334.

1. *O'Keeffe v. Snyder*¹³⁶

In 1946, three small oil paintings, "Cliffs," "Seaweed," and "Fragments," painted by artist Georgia O'Keeffe, were stolen¹³⁷ from a gallery owned by O'Keeffe and her husband, photographer Alfred Stieglitz.¹³⁸ The gallery, An American Place, located in New York City, had been showing the painting "Cliffs" when O'Keeffe and Stieglitz discovered that the painting was missing from the gallery walls.¹³⁹ Shortly thereafter, O'Keeffe also discovered that the two other paintings were missing from a storeroom.¹⁴⁰ Neither O'Keeffe nor Stieglitz reported the thefts to the police.¹⁴¹ However, they did tell some visitors to the gallery and a few people within the art community about the thefts.¹⁴² It wasn't until

136. *O'Keeffe v. Snyder*, 405 A.2d 840 (N.J. Super. Ct. App. Div. 1979), *rev'd*, 416 A.2d 862 (N.J. 1980).

137. *O'Keeffe*, 416 A.2d at 867 (discussing Appellate Division's decision).

Instead of recognizing the existence of this controversy, the Appellate Division misconstrued Snyder's concession that the paintings had been stolen. That concession was made to enable the trial court to determine Snyder's motion for summary judgment that title had passed by adverse possession. The concession was not available to resolve O'Keeffe's cross motion for summary judgment. Hence, there is an issue of material fact, whether the paintings were stolen

Id.

138. *O'Keeffe*, 416 A.2d at 865.

139. *O'Keeffe*, 416 A.2d at 865. "One day in March, 1946, she and Stieglitz discovered Cliffs was missing from the wall of the exhibit." *Id.*

140. *See id.* "About two weeks later, O'Keeffe noticed that two other paintings, Seaweed and Fragments, were missing from a storage room at An American Place. She did not tell anyone, even Stieglitz, about the missing paintings, since she did not want to upset him." *Id.*

141. *See O'Keeffe*, 405 A.2d at 842. (discussing O'Keeffe's inaction).

The theft was not reported to the police, plaintiff viewing such official efforts to locate the paintings as being futile. 'I was certain (they) could not or would not do anything about what I'm sure they would have thought was a minor theft.' Nor did she confront a man by the name of Estrick, the person she suspected of being the thief. Instead, she hoped the that paintings would be found as were others stolen from the gallery at about the same time. Word of the theft was given to many persons within her artistic circle.

Id.

142. *See id.*

Plaintiff's husband Stieglitz died during the summer of 1946 soon after the theft of the paintings and plaintiff became involved in the settling of his estate over the next three years. As she recited in her affidavit, 'I had the burdensome job of settling his estate and could not really pursue the stolen paintings beyond mentioning it to people who were around the artists the Stieglitz circle.'

Id.

See also O'Keeffe, 416 A.2d at 865 (discussing O'Keeffe's inaction).

Neither Stieglitz nor O'Keeffe reported them missing to the New York Police Department or any other law enforcement agency. Apparently the paintings were uninsured, and O'Keeffe did not seek reimbursement from an insurance company. Similarly, neither O'Keeffe nor Stieglitz advertised the loss of the paintings in Art News or any other publication. Nonetheless, they discussed it with associates in the art world and later O'Keeffe mentioned the loss to the director of the Art Insti-

1972 that the paintings were listed as stolen with the Art Dealers Association, which maintained a registry of stolen art.¹⁴³ In March 1976, O'Keeffe learned that the paintings were in Barry Snyder's gallery located in Princeton, New Jersey.¹⁴⁴ She demanded their return, was refused,¹⁴⁵ and commenced this action.¹⁴⁶

The trial court granted summary judgment for Snyder,¹⁴⁷ the Superior Court of New Jersey reversed the lower court, entered judgment for O'Keeffe, and the case was remanded for further proceedings.¹⁴⁸ The essential question for the Superior Court was: when did the cause of action accrue for purposes of the statute of limitations?¹⁴⁹ This court held that adverse possession became "part and parcel" of the statute of limitations, and thus, personal property could almost never be acquired via adverse possession.¹⁵⁰ The court also held that the almost total lack of due diligence on the part of O'Keeffe was "beside the point."¹⁵¹ Instead, the

tute of Chicago, but she did not ask him to do anything because 'it wouldn't have been my way.'

Id.

143. *See id.* at 866 (discussing action O'Keeffe finally took and subsequent discovery of the paintings).

In 1947, [O'Keeffe] retained the services of Doris Bry to help settle the [Stieglitz] estate. Bry urged O'Keeffe to report the loss of the paintings, but O'Keeffe declined because 'they never got anything back by reporting it.' Finally, in 1972, O'Keeffe authorized Bry to report the theft to the Art Dealers Association of America, Inc., which maintains for its members a registry of stolen paintings. . . . On February 11, 1976, O'Keeffe discovered that Ulrich A. Frank had sold the paintings to Barry Snyder, d/b/a Princeton Gallery of Fine Art.

Id.

144. *See id.* (discussing where Frank had gotten the paintings):

Frank received the paintings from his father and claims there is a family relationship by marriage between his family and Stieglitz. He also said he recalls seeing the paintings in his father's apartment as early as 1941-1943, long before the date of their disappearance from An American Place. O'Keeffe denies the family connection.

Id.

145. *See id.*

146. *See id.*

147. *See O'Keeffe*, 405 A.2d at 840.

148. *See O'Keeffe*, 416 A.2d at 867 (N.J. 1980) (discussing why summary judgment was inappropriate).

Factual issue includes whether . . . the paintings were not stolen but sold, lent, consigned, or given by Stieglitz to [Frank's father] or someone else without O'Keeffe's knowledge before he died; . . . and [whether] there was any family or business relationship between Stieglitz and [Frank's father] so that the original possession of the paintings by the Frank family may have been under claim of right.

Id.

149. *See id.* at 869.

150. *O'Keeffe*, 405 A.2d at 847. "Hence, . . . the elements of adverse possession have become part and parcel of the statute of limitations governing replevin actions." *Id.*

151. *Id.* at 848 (discussing why O'Keeffe's inaction was not dispositive)

court seemed to blame Snyder because he purchased the paintings without provenance.¹⁵² The court implied that the third-party defendant should be glad O'Keeffe had never reported the theft, otherwise, he would have never had the opportunity to enjoy the paintings as long as he had!¹⁵³

The Supreme Court of New Jersey reversed the Superior Court and remanded the matter back for trial.¹⁵⁴ The Supreme Court found that summary judgment was inappropriate, not for the reasons given by the Superior Court,¹⁵⁵ but because there were questions¹⁵⁶ whether the paintings had, in fact, been stolen,¹⁵⁷ whether adverse possession was merged into the statute of limitations,¹⁵⁸ and whether O'Keeffe's due diligence, or lack thereof, should play a role in the outcome of the case.¹⁵⁹

In discussing the due diligence issue, the Supreme Court laid out the elements of the discovery rule,¹⁶⁰ and concluded that it applied to an

That she did not report the theft to the police in 1946 is beside the point. She may well have been right that such an effort would have proved fruitless. . . . Moreover, her lack of action did not, as the trial judge suggested it did, deprive the defendant or his predecessors of the opportunity of proving their title.

Id.

152. *See id.* at 840; *see also* *Society of California Pioneers v. Baker*, 50 Cal. Rptr., 2d 865, 867 (Cal. Ct. App. 1996). "[P]rovenance, . . . [is] the historical lineage of ownership in a piece." *Id.* *See also* Mimi Thompson, *The Art Black Book*, TOWN & COUNTRY, May 1997, at 59.

Is it stolen? It is only prudent to ask this question *before* you buy a work of art. If you make no effort to check its provenance and the original owner sues to get the piece back, it is likely, because of recent changes in the laws, that you will lose both the object and the purchase price.

Id.

See generally Nancy McCarthy, *The Lowdown on Fakes . . . a.k.a. Reproductions*, HOME, Nov. 1997, at 108 (judging whether pieces at auction or for sale are real antiques or reproductions); Jo Durden-Smith, *Caveat Emptor*, TOWN AND COUNTRY, Dec. 1995, at 64 (cautioning purchasers of art); Elaine L. Johnston, *Nuts and Bolts of Buying and Selling Collection Objects: Private Sales*, SB53 A.L.I.-A.B.A. 137, 143 (Mar. 20, 1997) (presenting general introduction to the legal issues that may arise in connection with private sales of collection objects).

153. *See O'Keeffe*, 405 A.2d at 848. "Had she been successful in earlier recovering her paintings, the result would have been that the third-party defendant would never have enjoyed their possession for so many years. . . ." *Id.*

154. *See O'Keeffe*, 416 A.2d at 862.

155. *See O'Keeffe*, 405 A.2d 840.

156. *See O'Keeffe*, 416 A.2d at 868 (discussing whether New York or New Jersey law should apply).

157. *See id.* at 868.

158. *See id.* at 867.

159. *See id.* at 870.

160. *See id.* at 869 (discussing the discovery rule).

The discovery rule provides that, in an appropriate case, a cause of action will not accrue until the injured party discovers, or by exercise of reasonable diligence and intelligence should have discovered, facts which form the basis of a cause of action. . . . The rule is essentially a principle of equity, the purpose of which is to

action for replevin¹⁶¹ of a painting under New Jersey statutes:¹⁶² "O'Keeffe's cause of action accrued when she first knew, or reasonably should have known *through the exercise of due diligence*, of the cause of action, including the identity of the possessor of the paintings."¹⁶³ The court gave three issues a trial court was to consider in determining whether or not O'Keeffe should receive the benefit of the discovery rule:

(1) [W]hether O'Keeffe used due diligence to recover the paintings at the time of the alleged theft and thereafter; (2) whether at the time of the alleged theft there was an effective method, other than talking to her colleagues, for O'Keeffe to alert the art world; and (3) whether registering paintings with the Art Dealers Association of America, Inc. or any other organization would put a reasonably prudent purchaser of art on constructive notice¹⁶⁴ that someone other than the possessor was the true owner.¹⁶⁵

The court held that the discovery rule is more equitable than adverse possession and shifts the emphasis from the conduct of the possessor to the conduct of the owner.¹⁶⁶

For example, under the discovery rule, if an artist diligently seeks the recovery of a lost or stolen painting, but cannot find it or discover the identity of the possessor, the statute of limitations will not begin to run. The rule permits an artist who uses reasonable efforts to report, investigate, and recover a painting to preserve the rights of title and possession.¹⁶⁷

The case never returned back to the trial court. The parties settled the dispute in a most unusual way: O'Keeffe took possession of her first choice of the three paintings, Snyder took possession of his first choice of the two remaining and they assumed joint ownership of the remaining painting.¹⁶⁸

mitigate unjust results that otherwise might flow from strict adherence to a rule of law.

Id.

161. *See id.* at 870.

162. *See id.*

163. *Id.* (emphasis added)

164. *See BLACK'S, supra* note 10, at 314 (defining constructive notice).

Such notice as is implied or imputed by law, usually on the basis that the information is a part of a public record or file, as in the case of notice of documents which have been recorded in the appropriate registry of deeds or probate. Notice with which a person is charged by reason of the notorious nature of the thing to be noticed, as contrasted with actual notice of such a thing. That which the law regards as sufficient to give notice and is regarded as a substitute for actual notice.

Id.

165. *See O'Keeffe*, 416 A.2d at 870.

166. *See id.* at 872.

167. *See id.*

168. *See Professor Ann Lousin, Course Materials on Sales Transactions* 395 (1996).

2. *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc.*¹⁶⁹

A mosaic, depicting Jesus Christ as a young boy in the lap of the Virgin Mary, surrounded by archangels and the apostles, was affixed to the apse of the Church of the Panagia Kanakaria in Cyprus in the sixth-century.¹⁷⁰ The Turkish military took over the northern portion of Cyprus where the church is located in 1974, and in 1976, the priests evacuated the Kanakaria Church.¹⁷¹ At the time the priests fled, the mosaics were still in the apse of the church.¹⁷² During the occupation by Turkey many Cypriot churches and monuments were vandalized, their contents stolen or destroyed.¹⁷³ In November, 1979, word came to the Republic's Department of Antiquities that the Kanakaria Church had been vandalized and that the mosaics were "missing."¹⁷⁴ Immediately, the Republic of Cyprus contacted UNESCO,¹⁷⁵ the International Council of Museums,¹⁷⁶ and the International Council of Museums and Sites,¹⁷⁷ introduced a resolution to Europa Nostra.¹⁷⁸ Their ambassador spoke to individuals, auction houses and museums, contacted American and European universities, sent press releases and gave speeches around the world seeking the return of the mosaics.¹⁷⁹

Citing *O'Keeffe*, this court held that the discovery rule applied in this case.¹⁸⁰ The court concluded "that a plaintiff who seeks protection under the discovery rule has a duty to use reasonable diligence to locate the stolen items."¹⁸¹ Determination of due diligence is fact-sensitive and

169. *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990).

170. *See Autocephalous*, 917 F.2d at 280.

171. *See id.* at 280.

172. *See id.*

173. *See id.* at 281.

174. *Id.*

175. *See id.* *See Autocephalous*, 717 F. Supp. at 1380 (defining UNESCO).

176. *See Autocephalus*, 917 F.2d at 281. *See Autocephalous*, 717 F. Supp. at 1380 (defining International Council of Museums).

177. *See Autocephalus*, 917 F.2d at 281.

178. *See Autocephalus*, 917 F.2d at 281. *See Autocephalous*, 717 F. Supp. at 1380 (defining Europa Nostra).

179. *See Autocephalous*, 917 F.2d at 280.

180. *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990) (discussing Indiana's discovery rule).

Several Indiana decisions have recognized . . . a 'discovery rule' for the accrual of a cause of action; to wit, the statute of limitations commences to run from the date plaintiff knew or should have discovered that she suffered an injury or impingement, and that it was caused by a product or an act of another.

Id.

181. *Id.* at 1389.

must be made on a case-by-case basis.¹⁸² The United States Court of

182. See also *Autocephalous*, 917 F.2d. at 279 (discussing due diligence finding).

Second, Goldberg attacks Judge Norland's due diligence finding. Specifically, she argues that Cyprus failed to contact several organizations it should have, particularly IFAR and Interpol [I]n this case the assessment of Cyprus' diligence necessarily involve a contextual analysis of a particular and nonrecurring set of historical events, as well as an assessment of the credibility of the various witnesses who testified to what Cypriot officials knew and when they knew it. *Id.* See also *Autocephalous*, 717 F. Supp. at 1400 (discussing all the reasons why the defendant should have used more care in this transaction). In this case there were several things that should have made Goldberg suspicious about what she had been told about the mosaics: Goldberg knew the mosaics came from an area occupied by foreign military forces. Goldberg herself admitted on direct examination that the origin of the mosaics raised suspicions in her mind Goldberg testified that at the time of the sale she was aware that Turkish military forces had invaded Cyprus in 1974 and that the Turks had been in control of northern Cyprus since that time *Id.* at 1400. The nature of the items should have put her on notice: As Professor von Mehren explained:

Here we have not an ordinary object, nor do we have an object that is typical movable property. Instead we have mosaics that are unique, that have great artistic and cultural value, that also have great economic value. These mosaics, up until recently, were not movable property at all. They were part of a building. They were immovable property. When one has an object that was not movable property and it then is turned into movable property and appeared on the market and is of great and unique value, the circumstances require an explanation of how that came about. Was this a legitimate series of events or not? In addition, these objects are not ordinary commercial objects. They are objects that have religious and cultural significance. They are the kind of objects that do not ordinarily enter into commerce, and here they are in commerce, or being offered for sale. A careful and honest purchaser would have to understand and explain why . . . these mosaics should now be offered on the market.

Id. at 1401.

Price disparity: There was a huge disparity between the appraisal of the mosaics and the amount she paid: "Goldberg paid \$1.08 million, in cash, for the mosaics; six months later she offered to sell them to the Getty Museum for \$20 million." *Id.* at 1401. She did not know all the parties involved: She knew very little about the seller: Everything she knew about Dikman she learned from middlemen She was told that Dikman was a Moslem Turk attempting to sell Christian mosaics from northern Cyprus. She was also told that Dikman "found" the mosaics while he was employed as 'an archaeologist from Turkey assigned to northern Cyprus. The Court believes that a reasonable purchaser would have found it peculiar that a Turkish archaeologist would be in the business of selling Cypriot antiquities. *Id.* at 1402. She had only met the seller once, for about five minutes in an airport: "Well, I had prepared a list of things that, if possible, to talk about. But I introduced myself and he introduced himself and we shook hands and the crates containing the mosaics were opened and he left." *Id.* The people acting as middlemen were suspect: About van Rijn, she did know, however, that he was a felon; about Faulk, she had known him casually for several years, . . . she knew he had used [different] names and had been sued for his involvement in a transaction involving a purported Michelangelo modello. *Id.* The time frame in which the deal took place: The haste in which the transaction took place. Goldberg first learned of the mosaics on July 1, 1988. On July 4th, she signed a contract with the three middlemen to divide the mosaics resale profits. Later on July 4th Goldberg traveled from Amsterdam to Geneva. There she inspected the mosaics on July 5th. The sale was consummated on July 7th. On July 8th, the mosaics were on an airplane to the United States. *Id.*

Appeals, Seventh Circuit, upheld the ruling that the Church had used due diligence in looking for the mosaics.¹⁸³

3. *DeWeerth v. Baldinger*¹⁸⁴

DeWeerth, a West German national,¹⁸⁵ inherited a Monet from her father in 1922.¹⁸⁶ The painting hung in her home until 1943, when she sent the painting and other valuables to her sister, von Palm, in southern Germany for safe keeping during World War II.¹⁸⁷ At the end of the war in 1945, von Palm's home¹⁸⁸ was used to house American soldiers.¹⁸⁹ When the soldiers left in the fall of 1945, von Palm noticed that the Monet was missing and notified her sister.¹⁹⁰ DeWeerth filed a report with the military government in 1946,¹⁹¹ contacted her lawyer in 1948,¹⁹² sent a photograph of the painting to an art expert in 1955,¹⁹³ and in 1957 sent a list of the artworks she lost during the war to the West German federal bureau of investigation.¹⁹⁴ DeWeerth did nothing else to recover the artworks after 1957.¹⁹⁵ In 1982 she learned that Baldinger had the painting¹⁹⁶ and demanded its return.¹⁹⁷ Baldinger

183. See *Autocephalous*, 917 F.2d at 290. See generally Keith Highet, et al., *Cultural Property—Recovery of Stolen Artworks—Choice of Law—Recognition of Governments Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 917 F.2d 278, 86 AM. J. INT'L L. 128 (1992) (analyzing case); Pamela Farrell, *Foreign Relations—Unrecognized Foreign States—Title to Church Mosaics Unimpaired by Confiscatory Decrees of Unrecognized State*, *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 917 F.2d 278 (7th Cir. 1990), 15 SUFFOLK TRANSNAT'L L.J. 790 (1992) (analyzing case); see also Webb, *supra* note 133, at 899 (suggesting that clear guidelines in determining diligence will afford both parties an opportunity to comply with the law); Stephen L. Foutty, *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.: Entrenchment of the Due Diligence Requirement in Replevin Actions for Stolen Art*, 43 VAND. L. REV. 1839 (1990) (examining entrenchment of the due diligence standard).

184. *DeWeerth v. Baldinger*, 836 F.2d 103 (2nd Cir. 1987).

185. See *id.* at 104.

186. See *id.*

187. See *id.* at 104-05. See also Judith H. Dobrzynski, *Wary Hong Kong Collectors Send Art Abroad for Safety*, N.Y. TIMES, May 27, 1997, at A1.

188. See *DeWeerth*, 836 F.2d at 105. "Von Palm lived in a castle in Oberbalzheim, Southern Germany. Von Palm received the shipment, including the Monet, which she hung in the castle." *Id.*

189. See *id.*

190. See *id.*

191. See *id.*

192. See *id.*

193. See *id.*

194. See *id.*

195. See *id.*

196. See *id.* at 105-06. "DeWeerth learned of Baldinger's possession of the Monet through the efforts of her nephew, Peter von der Heydt." *Id.*

197. See *id.* at 106.

refused.¹⁹⁸

The trial court found that DeWeerth had exercised reasonable diligence¹⁹⁹ in searching for the painting and ordered Baldinger to return it.²⁰⁰ The Second Circuit Court of Appeals reversed, holding that DeWeerth had a duty of reasonable diligence in attempting to locate the stolen Monet, and the fact that she had done nothing since 1957 to recover the painting, demonstrated her lack of diligence.²⁰¹

4. *Guggenheim v. Lubell*²⁰²

Sometime in the late 1960s the Guggenheim Museum in New York noticed that a Chagall oil painting was not “where it was supposed to be.”²⁰³ The museum did not “know”²⁰⁴ the painting was stolen until after a complete inventory of the museum was completed in 1970.²⁰⁵ The museum did not report the work stolen, believing that to do so would drive it further underground and point out breaches in its security.²⁰⁶ The Lubells had purchased the painting from a reputable Manhattan art gallery in 1967.²⁰⁷ The museum learned that the Lubells had the painting in August 1985, and in January 1986, demanded its return.²⁰⁸ Relying on *DeWeerth*,²⁰⁹ Lubell argued that the Guggenheim could not now

198. *See id.*

199. *See id.*

200. *See id.*

201. *See id.* at 112. “[W]e believe that the New York courts would impose a duty of reasonable diligence in attempting to locate stolen property.” *Id.* at 108. “A rule requiring reasonable diligence in attempting to locate stolen property is especially appropriate with respect to stolen art.” *Id.* at 109. “Most indicative of DeWeerth’s lack of diligence is her failure to conduct any search for 24 years from 1957 until 1981.” *Id.* at 112. *See generally* Sydney M. Drum, *DeWeerth v. Baldinger: Making New York a Haven for Stolen Art?*, 64 N.Y.U. L. REV. 909 (1989) (analyzing need for clarification of due diligence rule).

202. *Guggenheim v. Lubell*, 550 N.Y.S.2d 618 (1990), *aff’d*, 569 N.E.2d 426 (N.Y. 1991).

203. *Guggenheim*, 569 N.E.2d at 428. “The museum acknowledges that it discovered that the painting was not where it should be sometime in the late 1960s.” *Id.*

204. *Id.*

205. *Id.* Discussing why museum didn’t know whether or not the painting was missing: “[I]t claims that it did not know that the painting had in fact been stolen until it undertook a complete inventory of the museum collection beginning in 1969 and ending in 1970. According to the museum, such an inventory was typically taken about once every ten years.” *Id.* *See also* Wulff *e-mail*, *supra* note 87.

206. *See Guggenheim*, 569 N.E.2d at 428.

It is undisputed, however, that the Guggenheim did not inform other museums, galleries or artistic organizations of the theft, and additionally, did not notify the New York City Police, the FBI, Interpol or any other law enforcement authorities. The museum asserts that this was a tactical decision based upon its belief that to publicize the theft would succeed only in driving the [painting] further underground and greatly diminishing the possibility that it would ever be recovered.

Id.

207. *See id.*

208. *See id.*

209. *DeWeerth v. Baldinger*, 836 F.2d 103 (2nd Cir. 1987).

demand the painting back because the statute of limitations had run.²¹⁰ The Supreme Court of New York held "that whether plaintiff was obligated to do more than it did in searching for the [painting] depends on whether it was unreasonable not to do more, and whether it was unreasonable not to do more is an issue of fact relevant to the defense of laches²¹¹ and not the statute of limitations."²¹² The Court of Appeals affirmed, effectively overruling a portion of *DeWeerth*.²¹³ The issue of due diligence was still important, but not to statute of limitations claims, and should be decided on a case-by-case basis.²¹⁴

B. CASE ANALYSIS

As the cases demonstrate, good-faith purchasers, sellers and true owners are left without adequate guidance in determining how much due diligence is enough.²¹⁵ In *O'Keefe*, the court held that "the meaning of due diligence will vary with the facts of each case, including the nature and value of the property."²¹⁶ The court in *DeWeerth* expected "reasonable diligence,"²¹⁷ whatever that means. In *Autocephalous*, the court held that the plaintiff "must exercise due diligence to investigate the theft and recover the works."²¹⁸ The court in *Guggenheim* stated that the due diligence of *both* the purchaser and the true owner should be taken into consideration by the court.²¹⁹ *Guggenheim* sparked interest in setting "bright line" parameters in order to protect buyers and true

210. See *Guggenheim v. Lubell*, 550 N.Y.S.2d 618 (1990), *aff'd*, 569 N.E.2d 426 (1991).

211. *Id.* at 619.

212. *Id.*

213. See *Guggenheim*, 569 N.E.2d at 431.

Despite our conclusion that the imposition of a reasonable diligence requirement on the museum would be inappropriate for purposes of the Statute of Limitations, our holding today should not be seen as either sanctioning the museum's conduct or suggesting that the museum's conduct is no longer an issue in this case As noted above, although appellant's Statute of Limitations argument fails, her contention that the museum did not exercise reasonable diligence in locating the painting will be considered by the Trial Judge in her laches defense.

Id.

214. See *id.*

215. See *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990); *DeWeerth v. Baldinger*, 836 F.2d 103 (2nd Cir. 1987); *Guggenheim v. Lubell*, 550 N.Y.S.2d 618 (1990), *aff'd*, 569 N.E.2d 426 (1991); *O'Keefe v. Snyder*, 405 A.2d 840 (N.J. Super. Ct. App. Div. 1979), *rev'd*, 416 A.2d 862 (N.J. 1980). See *McCord*, *supra* note 82, at 985 (arguing for strengthening the due diligence standard); see also *Pinkerton*, *supra* note 82, at 1 (meaning of due diligence in the United States as it relates to fine art transactions).

216. *O'Keefe*, 405 A.2d 840, *rev'd.*, 416 A.2d 862.

217. *DeWeerth*, 836 F.2d at 103.

218. *Autocephalous*, 717 F. Supp. 1374, *aff'd*, 917 F.2d 278.

219. *Guggenheim*, 569 N.E.2d at 431. "The conduct of both the appellant and the museum will be relevant to any consideration of [the laches] defense . . ." *Id.*

owners.²²⁰ Others argued that innocent buyers were being treated too harshly.²²¹ What can and should the parties do? Setting an internationally recognized standard of due diligence utilizing the Internet would go a long way in answering this question.²²²

C. AN INTERNET SITE AS A SOLUTION

There are literally hundreds of sites on the Internet concerned with stolen artworks.²²³ Some, such as Interpol,²²⁴ the FBI,²²⁵ Scotland Yard,²²⁶ and the Art Theft Report Form,²²⁷ have areas on their sites which tell you how to report stolen artworks, though only Interpol²²⁸ and the Art Theft Report Form²²⁹ allow you to report stolen artworks via the Internet.²³⁰

The Scotland Yard²³¹ site exemplifies a problem that is endemic on

220. *Id.* See also Bibas, *supra* note 56, at 2461 (discussing the benefits of reporting art thefts).

Owners who report thefts to the police and the database should face no legal bars to recovery. The law's prescription for owners would be clear and simple, as opposed to the imprecise demand to be diligent. This rule would strongly encourage owners to report thefts to the police and to the database. It would strongly encourage buyers to investigate an artwork's provenance, since an owner could always claim her art if the art had been reported stolen, regardless of the buyer's good-faith.

Id.

221. See Hawkins, *supra* note 133, at 49. This article also proposes a database, but keeps the statute of limitations, which would begin running at the time the purchaser made the inquiry.

222. See Blumenthal, *supra* note 17 (discussing the identification program proposed by the J. Paul Getty Foundation).

What the identification program is not, organizers say, is any kind of data base of stolen art and cultural treasures. Such inventories are already kept by the Art Loss Register at the art research foundation, among other groups. Governments and museums will not be asked to turn over lists of their holdings or losses. Rather, they will be encouraged to document their collections by a standard identification system, including an image and the condition of each work. (emphasis added)

Id.

Author's note: This further points out the need for an internationally recognized standard of due diligence is needed.

223. See *supra* note 20.

224. See *Interpol* (visited Oct. 8, 1997) <<http://www.rcmp-grc.gc.ca/html/interpol.htm>>.

225. See *Federal Bureau of Investigation* (visited Oct. 8, 1997) <<http://www.fbi.gov/>>.

226. See *The Police Services of the UK* (visited Oct. 8, 1997) <<http://www.police.uk>>. See also *Metropolitan Police Service, New Scotland Yard, London, England* (visited Oct. 8, 1997) <<http://www.open.gov.uk/police/mps/home.htm>>.

227. See *About the ALR* (visited Oct. 8, 1997) <<http://www.artloss.com/repuk.htm>>.

228. See *supra* note 224.

229. See *Art Loss Report* (visited Oct. 8, 1997) <<http://www.artloss.com/repuk.htm>>.

230. See *Reno v. American Civil Liberties Union*, 117 S. Ct. 2329, 2334 (1997).

231. See *supra* note 226.

most of the sites visited: they are not set-up very intuitively.²³² For example, on the Scotland Yard site,²³³ the area for information on how to report an artworks crime is under "Operation Bumblebee."²³⁴ Not exactly the first place you would look! On the CIA site,²³⁵ nothing says "click here to report stolen artworks." If you do a search on the CIA site for "stolen art" you receive zero matches;²³⁶ if you search under "art" you receive job postings for engineers.²³⁷ If you search under "antiquities," you receive a listing for heads of state.²³⁸ The Art Dealers Association of America site²³⁹ has no posted way of reporting or searching for stolen artworks.²⁴⁰ The FBI site,²⁴¹ on the other hand, has a very detailed description of the theft at the Isabella Stewart Gardner Museum in Boston, including images, suspect descriptions, and how to contact the FBI with additional information.²⁴²

One of the best sites is called "Stolen Masks."²⁴³ The site's home

232. See *The Police Services of the UK* (visited Oct. 8, 1997) <<http://www.police.uk>>. See also *Art Dealers Association of America* (visited Oct. 8, 1997) <<http://www.artdealers.org/>>; *Metropolitan Police Service, New Scotland Yard, London, England* (visited Oct. 8, 1997) <<http://www.open.gov.uk/police/mps/home.htm>>. See also *New York City Police Department* (visited Oct. 8, 1997) <<http://161.185.203.7/html/nypd/finest.html>>; *The Central Intelligence Agency* (visited Oct. 8, 1997) <<http://odci.gov/cia>>; *The Directory of Design & Decoration, N.A.A.D.A.A., Inc., National Antique and Art Dealers Association of America, Inc.* (visited Oct. 8, 1997) <<http://www.dir-dd.cm/naadaa.html/>>.

233. See *supra* note 226.

234. *The Police Services of the UK* (visited Oct. 8, 1997) <<http://www.police.uk>>. See also *Metropolitan Police Service, New Scotland Yard, London, England* (visited Oct. 8, 1997). <<http://www.open.gov.uk/police/mps/home.htm>>.

235. See *The Central Intelligence Agency* (visited Oct. 8, 1997) <<http://odci.gov/cia>>.

236. See *id.*

237. See *id.*

238. See *id.*

239. See *Art Dealers Association of America* (visited Oct. 8, 1997) <<http://www.artdealers.org/>>.

240. See *id.*

241. See *Federal Bureau of Investigation* (visited Oct. 8, 1997) <<http://www.fbi.gov/>>.

242. See *Id.* See also Stevenson Swanson, *Unsolved Art Theft Spurs Museums Rebirth*, CHI. TRIB., Apr. 27, 1998, at A1; Ralph Blumenthal, *7 Years After an Art Theft, Moves That Hint of a Return*, N.Y. TIMES, Sept. 5, 1997, at A14; Ralph Blumenthal, *On the Trail of a Boston Museum's Art*, N.Y. TIMES, Sept. 27, 1997, at A21; Holland Cutter, *A Legacy Thieves Could Not Steal*, N.Y. TIMES, Mar. 31, 1997, at B1; Judith H. Dobrzynski, *A Murky Lead Tantalizes An Art Museum in Boston*, N.Y. TIMES, Aug. 30, 1997, at A10; Associated Press, AOL NEWS: *Clue May Lead to Rembrandt Painting* (transmitted Aug. 30, 1997, 22:41:21 EDT) (on file with author); Associated Press, AOL NEWS: *FBI Has Lead in Huge 1990 Art Heist* (transmitted Aug. 26, 1997, 20:39:29 EDT) (on file with the author); Museum Security Network, AOL NEWS: *Museum Renews Reward Offer for Stolen Artwork* (transmitted Aug. 16, 1997, 21:51:24) (on file with the author).

243. See *Images of Masks, Stolen Masks* (visited Oct. 8, 1997) <<http://www.masks.org/linksout/images/stolen.htm/>>.

page has links²⁴⁴ to (1) images of masks organized by geographic location, culture, and collections; (2) sources and resources, organized by geographic location and culture; and (3) an index by location, organized alphabetically by culture.²⁴⁵ The descriptions of the stolen masks include images, a description of the mask, what it is and where it was stolen from, the file number of the theft, and links to other stolen artworks and an e-mail address.²⁴⁶

D. PROPOSAL

With the diversity of web sites and different jurisdictional decisions, there must be one set of rules that will satisfy true owners, good-faith purchasers and sellers. This Comment's proposal is simple because it combines the best of the case law and utilizes the power of the Internet: set-up one "official" site on the Internet where stolen artworks are arranged by type (i.e., masks, paintings, sculpture, religious icons, etc.); within each type, arrange the pieces by geographic location, culture and collection. Include an image or images of the piece; detailed description of the piece; description of the crime and suspect descriptions; police file number; and both a contact link on the Internet, as well as mail, telephone and fax information, for the Internet site, the true owner and the local police handling the matter.²⁴⁷

1. *Due Diligence for True Owners*

As soon as it is discovered that an artwork is missing, the true owner must report it to the local police.²⁴⁸ Then, either the true owner or the police²⁴⁹ should e-mail, fax, or telephone the host of the Internet site with as much information as is currently available. As soon as photographs, descriptions, and police file numbers are available, that information should be forwarded to the Internet site host for posting to the site.²⁵⁰ The Internet site would then maintain the lists of stolen artwork

244. See *Reno*, 117 S. Ct. at 2335. A web page generally will "contain 'links' to other documents created by that site's author to other (generally) related sites." *Id.*

245. See *supra* note 243.

246. See *Reno*, 117 S. Ct. at 2335. "E-mail enables an individual to send an electronic message—generally akin to a note or letter—to another individual or to a group of addresses." *Id.*

247. See *Federal Bureau of Investigation*, *supra* note 225.

248. Under this proposal you would be required to report the theft to your local police in order to obtain a police report file number, which will be important to both the Internet site and for insurance claims.

249. Depending on the capabilities of each.

250. This could be done either via the Internet, utilizing scanners that have both picture and text reading capabilities, or via fax or mail.

online,²⁵¹ conduct online searches,²⁵² issue reports,²⁵³ and provide general information for museums, auction houses, gallery owners, police, media, researchers, and purchasers.

2. *Due Diligence for Legitimate Sellers*²⁵⁴

When obtaining artworks for auction or sale, a legitimate seller should insist on receiving provenance²⁵⁵ on the artwork. Regardless of whether or not provenance is received, the legitimate seller would be required to run an Internet search on the piece through the proposed Internet site. A copy of this search would be attached to the bill of sale when the work is sold to a good-faith purchaser. The seller and true owner attempting to place the work with the seller would incorporate Article 2 of the Uniform Commercial Code (U.C.C.) into their agreement. This would solve a number of problems and utilize the power of the U.C.C.²⁵⁶

The U.C.C. allows parties to an agreement to choose the law which will govern.²⁵⁷ Instead of choosing a state's law which will govern, the parties dealing with artworks would choose to use the proposal in this Comment, incorporating, in particular, the U.C.C.'s definition of a "merchant"²⁵⁸ and "good faith."²⁵⁹ This would be particularly useful when dealing with non-U.S. parties, since most other countries require

251. See *Images of Masks, Stolen Masks*, *supra* note 243 (lists would contain general information: who, what, when, where, why and how, as is done on the Stolen Masks site).

252. See *About The ALR*, *supra* note 226.

253. The reports would be the due diligence statement. Depending on who the true owner is, they may want to hire a private investigator, send out press releases, etc. For more on this strategy, see *Art Theft/Most Wanted Art/Recovery Project* (visited Oct. 8, 1997) <<http://www.saztv.com/index.html>>. This site is home to a television production company and a private investigator specializing in art theft, located in Chicago, Illinois. Just in case you want your case to be a TV movie of the week!

254. The author gratefully acknowledges the help of Professor Ann Lousin in this section.

255. See Thompson, *supra* note 152, at 59.

256. Uniform Commercial Code, Art. 2 (1997). See generally *Mucha v. King*, 792 F.2d 602 (7th Cir. 1986) (artist's son brings action seeking return of painting).

257. U.C.C. § 1-105 (1997).

258. U.C.C. § 2-104 (1997).

"Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having knowledge or skill.

Id.

259. U.C.C. § 2-103 (b) (1997). "'Good faith' in the case of a merchant means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade."

Id.

good-faith beginning in the negotiation stage and the United States does not.

Incorporating Article 2 of the U.C.C. with this Comment's proposal would hold both parties to a very high standard, particularly the merchant. The merchant takes responsibility and, essentially, gives the good-faith purchaser a warranty.²⁶⁰ This should make the good-faith purchaser more comfortable with the transaction and gives them someone to go after should a true-owner make a claim.

3. *Due Diligence for the Good-faith Purchaser*

When purchasing a work from a reputable dealer,²⁶¹ good-faith purchasers must insist on receiving provenance²⁶² on the artwork, and a detailed report from the Internet site. The report²⁶³ from the Internet site would certify that the work has not been reported stolen.²⁶⁴ Insurance companies should also insist on provenance and a report from the Internet site before agreeing to insure newly acquired works, and require a report from the Internet site that a work has properly been reported as stolen before paying a claim. Following this protocol would create *prima facie*²⁶⁵ evidence of due diligence for the good-faith purchaser, seller and true owner.

4. *Access and Privacy*

The argument will be made, however, that not everyone has access to the Internet and that the requirement of due diligence utilizing the Internet would create an undue burden. It is true that not every museum, gallery or good-faith purchaser has access to the Internet.²⁶⁶ But

260. U.C.C. § 2-314 (1997).

261. Investigate your dealer! It is not possible to stem the tide of stolen artworks completely, but try and protect yourself as much as possible: call your local Better Business Bureau, area museums and auction houses and ask about a dealer's reputation. See Thompson, *supra* note 152, at 59. See generally Carol Vogel, *Art Dealer to the Elite Has a New Role: Inmate*, N.Y. TIMES, Apr. 22, 1998, at B1. See also Carol Vogel, *Top Art Dealers are Subpoenaed in Possible Antitrust Investigation*, N.Y. TIMES, June 3, 1997, at A1; Judith H. Dobrzynski, *Louisiana Auction is Off After Forgery Charges*, N.Y. TIMES, Mar. 8, 1997, at B3; Associated Press, AOL NEWS: *Art Dealer Pleads Guilty to Swindle* (transmitted Nov. 11, 1997, 13:01:37 EST) (on file with the author) (no Internet site available).

262. See Thompson, *supra* note 152, at 59.

263. The site would be funded by charging a nominal fee to users, as does the Art Theft Report, see *About The ALR*, *supra* note 226; and possibly subsidized with funds from participating governments.

264. As of the day the report is issued.

265. See BLACK'S *supra* note 10, at 1190. *Prima Facie Evidence*. Evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact . . . and if not rebutted or contradicted, will remain sufficient. See *id.*

266. See Blumenthal, *supra* note 17.

most do, or their local police have access, either within their own police stations or via the FBI, Scotland Yard, or other larger governmental agencies.²⁶⁷ The due diligence protocol proposed in this Comment should be considered a cost of doing business. A computer with Internet capabilities is much less expensive than getting dragged through litigation. Considering the billions of dollars that are lost in stolen artworks every year,²⁶⁸ it does not seem unreasonable to require some form of due diligence utilizing the Internet. Some involved in the art world do not believe that it is necessary to utilize computers to track artworks;²⁶⁹ this Comment does not agree with that position.²⁷⁰

Another potential problem is the issue of privacy.²⁷¹ The proposed web site would be set-up in such a way that the *progress* of the investigation would not be posted on the site. The site would simply be a repository of information and images of the stolen artworks. This would make it much more difficult for a thief to gain access to information which would aid them in concealing the stolen artwork.

IV. CONCLUSION

As the cases demonstrate, good-faith purchasers, sellers and true owners are not left with much guidance in determining what their rights and responsibilities are regarding the buying, selling or return of

[A] survey of 107 arts organizations in 42 countries found wide variations in how information on their collections is maintained and transmitted. Although most use computers, few are on line or otherwise linked to other users, and even fewer use computers in a major way to store images of their holdings. Some groups keep scanty information on their collections. Others have such voluminous documentation that it is not easy to transmit.

Id.

267. *See id.*

268. *See Olivier, supra* note 9, at 627 n. 2. "Over \$2 billion worth of art is stolen each year. The rate of theft increases 10 percent each year." *Id. See also Drum, supra* note 201, at 909. "Glittering prices, however, attract not only legitimate but also illicit trade. In dollars, art thievery is estimated to be the second biggest international criminal activity after narcotics. The value of worldwide art theft and fraud has been estimated to be at least \$1 billion annually." *Id. See generally* Lisa J. Borodkin, *The Economics of Antiquities Looting and a Proposed Legal Alternative*, 95 COLUM. L. REV. 377 (1995) (calling for a dramatic revision in current attitudes towards antiquities in order to halt destruction to remaining archaeological sites).

269. *See Blumenthal, supra* note 17.

270. *See id.* "[I]f [the information] is in a standardized form, it can be swiftly communicated to Interpol and police agencies by computer after a theft." *Id.*

271. *See* Stephanie B. Lichtman, *Computers and Privacy Rights: Minimum Standards Needed*, 10 No. 12 COMP. L. 26 (1993). "The vast majority of Americans believe that computers have improved their quality of life and customer service, but they are also extremely worried about the lack of privacy in the computer age." *Id. See generally Privacy International* (visited Nov. 16, 1997) <<http://www.privacy.org/pi/>>; *Electronic Privacy Information Center* (visited Nov. 16, 1997) <<http://www.epic.org/>>.

artworks.²⁷² The courts apply different rules depending on who the parties are,²⁷³ what actions (or inactions) were taken by the parties,²⁷⁴ and even the atmosphere of the art world at the time of the theft.²⁷⁵ The situation becomes even more difficult if one of the parties involved is not a resident of the United States.²⁷⁶ This hodgepodge can easily be rectified by creating an internationally recognized due diligence standard utilizing the Internet.

Adding to the confusion is the fact that there are literally hundreds of web sites dealing with stolen artworks on the Internet.²⁷⁷ Some, such as "Stolen Masks"²⁷⁸ deal exclusively with one art form.²⁷⁹ These sites are too specialized for the purposes of developing an internationally recognized standard of due diligence utilizing the Internet. Some are not "user-friendly" enough²⁸⁰ to encourage casual computer users to utilize them. As with any use of the Internet there are issues of access²⁸¹ and privacy.²⁸² Because of the amount of money lost every year with stolen artworks, access should be considered a cost of doing business. Access can also be gained through local police stations, the FBI, Scotland Yard, or other large governmental agencies. Privacy issues can be resolved with the database itself, i.e.: the programming of it would determine who had access to what information.

With the almost universal availability of the Internet, there is no reason not to set-up the due diligence parameters outlined above and create an easy to use Internet site to effectively track lost and stolen artworks.

Laura McFarland-Taylor

272. See *Guggenheim v. Lubell*, 550 N.Y.S.2d 618 (1990), *aff'd*, 569 N.E.2d 426 (1991); *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc.*, 717 F. Supp. 1374 (S.D. Ind. 1989), *aff'd*, 917 F.2d 278 (7th Cir. 1990); *DeWeerth v. Baldinger*, 836 F.2d 103 (2nd Cir. 1987); *O'Keeffe v. Snyder*, 405 A.2d 840 (N.J. Super. Ct. App. Div. 1979), *rev'd*, 416 A.2d 862 (N.J. 1980).

273. See *Autocephalous*, 717 F. Supp. at 1374.

274. See *Autocephalous*, 717 F. Supp. at 1374; *DeWeerth*, 836 F.2d at 103; *Guggenheim*, 550 N.Y.S.2d at 618; *O'Keeffe*, 405 A.2d at 840.

275. See *Guggenheim*, 550 N.Y.S.2d at 618; *O'Keeffe*, 405 A.2d at 840.

276. See Steven F. Grover, *The Need for Civil-Law Nations to Adopt Discovery Rules in Art Replevin Actions: A Comparative Study*, 70 TEX. L. REV. 1431 (May, 1992).

277. See *supra* note 20. Having these parameters as requirements are key to the success of the proposed Internet site.

278. See *Images of Masks, Stolen Masks* (visited Oct. 8, 1997) <<http://www.masks.org/linksout/images/stolen.htm>>.

279. *Id.*

280. See *The Police Services of the UK*, *supra* note 234.

281. See Blumenthal, *supra* note 17 at C13.

282. See Lichtman, *supra* note 271.

