

Statement of the Association of Art Museum Directors Concerning the Proposed Extension of the Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Italy Concerning the Imposition of Import Restrictions on Categories of Archaeological Material Representing the Pre-Classical, Classical, and Imperial Roman Periods of Italy, as Amended

Meeting of the Cultural Property Advisory Committee

April 8, 2015

I. Introduction

This statement is made on behalf of the Association of Art Museum Directors (the “AAMD”) regarding the proposed renewal of the *Agreement Between the Government of the United States of America and the Government of the Republic of Italy*, last amended and extended on January 11, 2011 (the “MOU”).

II. General Background

American art museums generally have experienced a history of cooperation both with Italian museums and the Italian Cultural Ministry built on mutual assistance and shared interests in their respective arts and cultural heritage. American art museums have been generous in sharing works from their collections with their Italian counterparts and have also worked extensively across a wide range of activities to assist Italians in protecting their cultural heritage. In fact, for many of the large and mid-sized collecting museums, the number of works of art traveling to Italian museums exceeds the reverse.

An integral part of the cultural exchanges between American museums and Italian museums are loans of works of art. In these exchanges, usually the American museum acts for itself without government intervention. This is rarely the case for Italian museums whose authority is often intertwined with the national or regional cultural ministries.¹ Because of the significant involvement of the government of the Republic of Italy (“Italy”) in its museums, the Cultural Property Advisory Committee (the “Committee”) and the State Department can and should play a key role in shaping United States policy towards Italy with respect to cultural property covered by the MOU in general and, in particular, loans of works to American museums.

III. Executive Summary of AAMD Position

Under the Cultural Property Implementation Act (the “CPIA”), the Committee is required to make recommendations as to whether the United States should extend the MOU.²

¹ The appropriate party with governing authority as to policies and procedures related to cultural property is unclear in Italy, which is one of the chief complaints by member museums.

² 19 U.S.C. § 2605(f)(2).

In order to recommend extension, all four determinants must be satisfied.³ While there are questions on a number of those determinants, there are significant concerns about two of the determinants, specifically: (i) measures taken by Italy to protect its cultural patrimony do not appear to be commensurate with the protection required⁴ and (ii) the causal connection between the MOU and deterring a serious situation of pillage, even when applied with any similar restrictions by countries having a significant import trade in Italy's cultural patrimony, appears questionable.⁵

While the AAMD supports renewal of the MOU, it recommends that the Committee review carefully the concerns of the art museum community, which hopes to be able to continue supporting renewals of the MOU, assuming progress is made in some of the more challenging areas. Unfortunately, the AAMD is concerned that the situation has deteriorated in certain areas of Italy since the AAMD provided its recommendations to the Committee during the last request for extension of the MOU in 2010. In that context, the Committee must be mindful of its obligation to ensure that the interests of Americans are best served by renewal. Despite the fact that AAMD members have voluntarily imposed upon themselves strict guidelines for the acquisition of antiquities⁶, museums are simply precluded from acquiring antiquities in and exporting them from Italy. If this situation continues because Italy will not issue export permits for antiquities, there must be other means for American museums to present these works of art to the American public, *i.e.*, long-term loans. In that regard, the Committee should implement appropriate amendments that truly facilitate a more cooperative, predictable atmosphere in which Italy and the United States may share cultural treasures for the benefit of all.

IV. Issues Affecting Extension

A. Italy's Efforts to Protect Its Cultural Patrimony have Deteriorated in the Last Five Years.

Italy's efforts to take "measures consistent with the [UNESCO] Convention to protect its cultural patrimony"⁷ raise serious concerns. At first blush, this statement might seem contrary to popular belief, especially given that "[f]or over a decade, Italy has been on a campaign to reclaim treasures that were looted from its soil and sold to top museums and private collectors."⁸ The efforts to reconstitute these works, though laudable, are not the measure of compliance that the CPIA requires. Rather the CPIA requires that measures be taken within Italy's borders to protect Italian treasures – it is *these measures* that will mark success in this arena, and the lack of such efforts on the part of Italy raises significant concerns.

³ 19 U.S.C. §§ 2602(a)(1) and 2605(f)(2).

⁴ 19 U.S.C. § 2602(a)(1)(B).

⁵ 19 U.S.C. § 2602(a)(1)(C)(i).

⁶ See, *AAMD Guidelines on the Acquisition of Archaeological Material and Ancient Art* (2013), https://aamd.org/sites/default/files/document/Guidelines%20on%20the%20Acquisition%20of%20Archaeological%20Material%20and%20Ancient%20Art%20revised%202013_0.pdf (accessed March 17, 2015).

⁷ 19 U.S.C. § 2602(a)(1)(B).

⁸ Associated Press, "Record €50m Hoard of Looted Italian Antiquities Unveiled by Police," *The Guardian* (January 21, 2015), <http://www.theguardian.com/world/2015/jan/21/looted-italian-antiquities-museums-switzerland> (accessed March 4, 2015).

1. Decline in Funding.

As a preliminary matter, Italy's lack of sufficient funding for protection of sites is unfortunately all too evident. In recent years, Italy's "cultural budget has shrunk precipitously ... even as disrepair at landmarks worsened."⁹ "A full third—€1.42 billion—[was] slashed from the culture budget" between 2009 and 2012¹⁰.

2. Pompeii and Other Sites.

While Italy certainly makes significant efforts to protect its cultural patrimony, especially through law enforcement, recent years illustrate significant problems in the protection of sites.¹¹ Nowhere is this more evident than in Pompeii, where UNESCO has been warning of "serious structural problems" since 1996.¹² In an effort to rehabilitate Pompeii, in 2012, Italy undertook the "Great Pompeii Project, [to be] funded by the Italian government (€63m) and the European Union (€12m)."¹³ The project, however, has failed to live up to its title.

The Great Pompeii Project has been marred by "controversies and scandals that have tarnished the reputation of [Pompeii]. Work ground to a halt [in 2012] because of a lack of professional staff as Italian and international experts decried the state of the ancient town, which was so bad that some ancient buildings had started to collapse, including the House of the Gladiators[,]"¹⁴ which collapsed entirely before the project even began.¹⁵ In 2013, there were partial collapses at the Casa di Siricus and Casa delle Nozze d'Argento as well as a fallen pillar at the Casa di Octavius Quartio and, at a high degree of risk, are thirteen of the most important houses in Pompeii.¹⁶ In 2014, stones from an arch, a stretch of walls and part of a tomb in the Necropolis of Porta Nucera, part of a wall of a Roman-era Shop, and part of the Temple of Venus collapsed.¹⁷ Though €105m is earmarked for the Great Pompeii Project, Italy

⁹ Anthony Faiola, "Fears That Corporate Cash Will Lead to Disneyfication of Italy's Cultural Heritage?" *Washington Post* (September 7, 2014), <http://archaeologynewsnetwork.blogspot.com/2014/09/fears-that-corporate-cash-will-lead-to.html#.VO9hVTF8gs> (accessed February 26, 2015).

¹⁰ Barbie Latza Nadeau, "Italy's Culture Falling to Ruins Amid Austerity Cuts," *The Daily Beast* (September 19, 2012), <http://www.thedailybeast.com/articles/2012/09/19/italy-s-culture-falling-to-ruins-amid-austerity-cuts.html> (accessed February 26, 2015).

¹¹ Lizzy Davies, "Italy Fears for 'Vanishing' Heritage After Arrests Over Sacking of Historic Library," *The Guardian* (January 30, 2013), <http://www.theguardian.com/world/2013/jan/30/italy-fears-vanishing-heritage-sacking-historic-library> (accessed March 4, 2015); "Artemis Fresco Stolen From Pompeii," *La Gazzetta del Mezzogiorno* (March 18, 2014), <http://www.lagazzettadelmezzogiorno.it/english/artemis-fresco-stolen-from-pompeii-no702848> (accessed March 13, 2015); "Culture in Italy," *SeeItalia.com*, (n.d.) <http://seeitalia.com/essentials/culture/> (accessed March 17, 2015); Maria "Jean" Di Marino, "Can Cash-Strapped Italy Protect Its Monuments?" *Duetsche Welle* (November 13, 2012), <http://www.dw.de/can-cash-strapped-italy-protect-its-monuments/a-16374290> (accessed March 18, 2015); and Christopher Livesay, "Which Artworks Should We Save? Cash-Strapped Italy Lets Citizens Vote," *NPR* (January 21, 2014) <http://www.npr.org/2014/01/21/263502871/which-artworks-should-we-save-cash-strapped-italy-lets-citizens-vote> (accessed March 18, 2015).

¹² Natasha Sheldon, "Saving Pompeii: Is There Any Hope of Preserving the UNESCO World Heritage Site?," *Decoded Past* (March 10, 2014), <http://decodedpast.com/saving-pompeii-hope-preserving-unesco-world-heritage-site/6993> (accessed March 5, 2015).

¹³ Martin Bailey, "UNESCO warns Italy over Pompeii," *The Art Newspaper* (August 27, 2013), <http://www.theartnewspaper.com/articles/Unesco-warns-Italy-over-Pompeii/30244> (accessed March 5, 2015).

¹⁴ Carlo Avvisati and Ermanno Rivetti, "Great Pompeii Project Finally Under Way," *The Art Newspaper* (July 30, 2013), <http://www.theartnewspaper.com/articles/Great-Pompeii-Project-finally-underway/30159> (accessed March 11, 2015).

¹⁵ Natasha Sheldon; BBC News Europe, "House of the Gladiators Collapses in Pompeii," BBC News Europe (November 7, 2010), <http://www.bbc.co.uk/news/world-europe-11704720> (accessed March 18, 2015); and "Artemis Fresco Stolen From Pompeii."

¹⁶ Martin Bailey.

¹⁷ Natasha Sheldon; Anthony Faiola; AFP, "Italy Vows to Spend €2m on Saving Pompeii," *The Local Italy* (March 5, 2014), <http://www.thelocal.it/20140305/italy-vows-to-spend-2m-on-saving-pompeii> (last accessed March 5, 2015); and "Artemis Fresco Stolen From Pompeii."

deployed only €588,000 as of March 2014.¹⁸ The project also suffers from a long history of “bureaucratic red tape and political wrangling.”¹⁹ In 2013, UNESCO warned Pompeii would be placed on the World Heritage endangered list unless Italy undertook urgent steps to preserve the site.²⁰

Unfortunately, well beyond Pompeii, several other examples exist. In Rome, “chunks of marble have been plummeting from the Colosseum, ancient walls have been reduced to rubble and even bits of the baroque Trevi Fountain have crumbled, changing forever the face of that illustrious monument.”²¹ “In Naples, the Royal Palace has fractures in its façade and once-glorious fountains in the city’s squares are covered in graffiti.”²² “In Emilia Romagna, important churches and clock towers damaged in a series of springtime earthquakes will never be repaired.”²³ Still other lesser known locations face similar fates.²⁴

3. A Legal Market.

Italy obviously faces significant challenges in finding the funds necessary to protect its cultural patrimony. Recent reports suggest that Italy is turning to corporate sponsorship of sites and is even considering privatizing museums and archaeological areas to generate revenue.²⁵ One must ask in light of Italy’s challenges, why it has not turned to a more logical source of funding – an open international market for antiquities? Italy has a domestic market for antiquities, but that market is largely unavailable to international participants. Major auction houses do not operate full auction services in Italy and there is no evidence of a significant number of export licenses for antiquities being issued. Taxing an open market is a major potential source of revenue that Italy apparently ignores. Italy has the ability, the economy, the governmental capacity and the storerooms packed with antiquities to create a legitimate, international, antiquities market. The Committee should expand the provisions of Article II of the MOU to encourage Italy to open its market, instead of tolerating the current situation which simply protects an internal, Italian controlled, antiquities trade.

¹⁸AFP. There is €105m earmarked for the Great Pompeii project, but only a fraction has been spent – bureaucracy is to blame. See Associated Press, “Italy Approves €2m Repair Work for Pompeii After Series of Collapses,” *The Guardian* (March 4, 2014), <http://www.theguardian.com/world/2014/mar/04/italy-repair-pompeii-collapses-ancient> (accessed March 13, 2015). According to Natasha Sheldon, the funding and expertise needed to restore the site of Pompeii is not being released because “politicians are sitting on it.” See Natasha Sheldon.

¹⁹ Natasha Sheldon.

²⁰ Martin Bailey.

²¹ Barbie Latza Nadeau.

²² Ibid.

²³ Ibid.

²⁴ Some of these locations include: (i) the palace-farm Borbonica di Carditello; (ii) the church of Sant’Angelo in Formis, Capua; (iii) various archaeological sites in Calabria; (iv) Borgo di Leri Cavour, Trino Vercelli; (v) Punic necropolis of Sulky a Sant’Antioco, Sardegna; (vi) the rock sanctuary of the goddess Cibele in Palazzolo Acreide (SR); (vii) the temples and the archaeological site of Selinunte; (viii) the Cascine di Tavola di Lorenzo il Magnifico in Prato and le Gualchiere di Remole in Firenze; and (ix) the walls of San Gimignano. (as translated). “Nuove Segnalazioni Per La “Lista Rossa” di Italia Nostra,” *Italia Nostra*, (March 8, 2011), <http://www.italianostra.org/?p=6320> (accessed March 4, 2015) translated.

²⁵ Lesa Ukman, “Italian Cultural Partnerships Bear Watching,” *Sponsorship.com* (October 18, 2012), <http://www.sponsorship.com/About-IEG/Sponsorship-Blog/Lesa-Ukman/October-2012/Italian-Cultural-Partnerships-Bear-Watching.aspx> (accessed February 26, 2015).

4. Transparency.

A recent issue raises concerns about Italy's commitment to protecting its cultural heritage from illegal transfers on the open market. Specifically, Italy has not made available the dossier of Gianfranco Becchina, a well-known Italian art dealer charged with (although not convicted of) illicit antiquities trafficking.²⁶ The Becchina dossier is said to be made up of "over 7,400 photographs of relics . . . and 13,000 documents in 140 binders"; in short, meticulous records of Becchina's dealings that spans his career as an art and antiquities dealer.²⁷ Swiss authorities discovered the dossier in 2001 and shared it with Italian investigators,²⁸ yet Italy continues to withhold substantially all of its contents (while press reports recently lauded the "discovery" of the Becchina objects and archives).²⁹ Beyond the Becchina dossier are "the trove of documents, photographs and objects that Italian investigators have seized from antiquities dealers Edoardo Almagiá, Robin Symes, Robert Hecht, and Giacomo Medici."³⁰ Even the media is asking "will these archives, which provide an unprecedented record of the illicit trade, ever be released publicly by Italian authorities?"³¹ "[W]ithholding of information and the failure to make public known looted objects does international museums a real disservice and places them in the spotlight for accessioning objects that they had *no chance* to investigate."³²

The AAMD does not favor disclosing material that could compromise active investigations but certainly, after ten years, elements of the Becchina dossier can be made public. The inaccessibility of this information, as well as information in the Almagiá, Symes, Hecht, and Medici dossiers, constrains American museums in determining if they have problematic objects in, or are about to acquire problematic objects for, their collections. While that information remains largely unavailable to museums, apparently some of the information has found its way to journalists, antiquity bloggers, and even finds its way into commercial databases and books.³³ This leaves museums in a "catch 22" – to be blamed by Italy, the press and others for owning objects with provenance issues, while simultaneously denied the ability to confirm whether those objects passed through the hands of these dealers.

²⁶ Nicole Winfield, "Italy Unveils Record Hall of Antiquities from Swiss Raids," *Associated Press* (January 21, 2015) <http://bigstory.ap.org/article/b6e0f5c4113947cfb4488dfccd0cbd65/italy-unveils-record-haul-antiquities-swiss-raids> (accessed March 18, 2015).

²⁷ Lance Charnes, "What's in your museum?" *The Criminal Element* (March 6, 2013), <http://www.criminalelement.com/blogs/2013/03/whats-in-your-museum-lance-charnes-asteas-krater-art-smuggling%20> (accessed March 18, 2015).

²⁸ "The Becchina Dossier: A New Window into the Illicit Trade," *Chasing Aphrodite* (June 24, 2011), <http://chasingaphrodite.com/2011/06/24/the-becchina-dossier-a-new-window-into-the-illicit-trade/> (accessed March 4, 2015).

²⁹ Katherine Fitz Gibbon, "Puzzling Announcement of Antiquities Seizure That Happened 10 Years Ago," Committee for Cultural Policy, (January 21, 2015), <http://committeeforculturalpolicy.org/puzzling-announcement-of-antiquities-seizure-that-happened-10-years-ago/> (accessed March 4, 2015).

³⁰ "New Wave of Returns: Hundreds of Looted Antiquities Recovered from the Met, Princeton and Others," *Chasing Aphrodite* (January 24, 2012), <http://chasingaphrodite.com/2012/01/24/new-wave-of-returns-hundreds-of-looted-antiquities-recovered-from-the-met-princeton-and-others/> (accessed March 17, 2015).

³¹ *Ibid.*

³² Katherine Fitz Gibbon, *emphasis added*.

³³ *See, e.g.*, "The Becchina Dossier," discussing how the Becchina dossier was made available to the authors.

B. Continued Looting Raises Questions of the MOU's Value.

Systematic looting still persists in Italy notwithstanding the MOU. Antonio Paolucci, one of Italy's former ministers of culture, is "saddened but not surprised" by the devastation he characterized as "symptomatic of a country whose rich cultural heritage [i]s at risk from various factors including theft and neglect" ³⁴ Paolucci observes that, "[i]n the Italy of a thousand museums and libraries, our immense national heritage is vanishing . . . and the cultural fabric of the country is coming apart." ³⁵

Examples of this problem are unfortunately all too numerous. In Naples, an estimated 4,000 books were stolen from the 16th century Girolamini library, including works by Galileo Galilee and a 1518 edition of Thomas More's *Utopia*. ³⁶ What is worse is that the museum *director* allegedly spearheaded this methodical plunder, whereby he would sell rare works "via contacts to a network of customers in Italy and abroad." ³⁷ At Pompeii, a portion of a fresco of Apollo and Artemis was stolen by what police characterized as "experts." ³⁸ The resulting investigation revealed over 2,000 items stolen by a gang dealing in stolen artifacts. ³⁹ In Rome, police discovered an organized and well-equipped group of tomb raiders that unearthed 17,000 square meters of farmland. ⁴⁰

Against this backdrop, the Committee may be hard pressed to find that the MOU—at least in its current form—is fulfilling its stated objective of protecting against pillage.

C. Cultural Exchange; Long-Term Loans.

When the MOU was last considered for renewal in 2011, the AAMD pointed out to the Committee that long-term loans of archaeological material from Italy to American museums only occurred with respect to those museums that returned objects to Italy, which was hardly consistent with the requirement of the MOU for such exchanges. The hope was that the example of loans to those museums and cooperation on numerous levels would, in conjunction with the MOU, usher in a new era of long-term loans to American museums. Unfortunately and disappointingly, that has not been the case. In fact, as far as the AAMD can determine, only museums returning objects to Italy continue to receive loans. Since 2011, only one more museum has received loans of such material – the Dallas Museum of Art; but, Dallas also returned objects to Italy. The current level of exchange is unacceptable and inconsistent with the MOU. Demonstrably, the MOU has done nothing to encourage long-term loans. More important, as far as the AAMD can determine, Italy has not used "its best efforts to encourage. . . agreements for long-term loans . . ." as required by Article II(E)(1).

³⁴ Lizzy Davies, citing former minister of culture - Antonio Paolucci.

³⁵ *Ibid.*

³⁶ An exact count is unknown because, despite the prestige of the collection, a large portion of volumes were not catalogued. *See* Lizzy Davies.

³⁷ *Ibid.*

³⁸ "Artemis Fresco Stolen From Pompeii."

³⁹ Isla Binnie, "Italian Police Seize Stolen Artifacts, Private Museum," *Reuters* (February 4, 2015), <http://www.reuters.com/article/2015/02/04/italy-archaeology-theft-idUSL6N0VE4RA20150204> (accessed February 27, 2015).

⁴⁰ Gentile Lettore, "Ancient Site Found Near Rome, "Tomb Raiders" Foiled," *Gazzetta Del Sud* (September 4, 2013), <http://www.gazzettadel sud.it/news/english/60266/Ancient-site-found-near-Rome---tomb-raiders--foiled.html> (accessed Feb. 27, 2015).

The AAMD received many indications of interest in long-term loans from member museums. At this juncture, simply exhorting Italy to “do better” is not enough and the AAMD recommends below some specific measures that should help solve this problem. Note should be made that American art museums need to do their part as well. While they express a strong interest in such loans, few have actively pursued them, primarily because they simply do not know how to go about requesting and obtaining loans in light of the absence of information about what is available and what is the process for obtaining such loans.

D. Cultural Exchange; Exhibition Loans.

AAMD members have indicated numerous problems with respect to exhibition loans.⁴¹ Emblematic of the problems is the recent exhibition “*Sicily: Art and Invention Between Greece and Rome*,” which grew out of an agreement between the J. Paul Getty Museum (the “Getty”) and Sicily - exactly the kind of cooperation envisioned by the MOU in 2006. Notably, the Italian Ministry of Fine Arts in Rome supported the exhibition.⁴² The exhibition opened at the Getty in April 2013 and was scheduled to proceed to the Cleveland Museum of Art (the “CMA”).⁴³ The Getty spent nearly \$1 million on the show and built a \$200,000 seismic isolator (anti-earthquake display stand) for one of the most critical pieces, a six-foot-tall charioteer statue.⁴⁴ Notably, the seismic isolator was to return with the statue to Sicily.⁴⁵ In June 2013, Sicily informed the Getty that the charioteer and another keystone object, a gold phiale, should not continue on tour to the CMA because the absence of such pieces deprived Sicily of tourist dollars.⁴⁶ Then, apparently Sicily demanded a significant loan fee for the charioteer and phiale to continue on tour, forcing the CMA to cancel the exhibition.⁴⁷ After further intervention by diplomats, Sicily finally agreed to allow the subject pieces to continue the tour, but in return, the CMA agreed to send an exhibition to Sicily. This sequence of events is hardly consistent with the cultural exchange contemplated under the MOU and certainly not the specific provisions of Article II(E)(1) requiring Italy to use its best efforts to encourage cultural exchange. The Committee should raise this issue with the Italian representatives and determine ways to avoid this happening in the future. This is not a question of Italian museum colleagues, but rather of governmental decisions; decisions that should be consistent with the MOU.

⁴¹ The AAMD notes with concern the relatively recent and well-publicized problems with the exhibition *Sicily: Art and Invention Between Greece and Rome* organized by the J. Paul Getty Museum that was to travel to the Cleveland Museum of Art pursuant to an agreement between the Getty and Sicily. See, Hugh Eakin, “Sicilian Protest Imperils Exhibition,” *The New York Times* (June 22, 2013), <http://www.nytimes.com/2013/06/22/arts/design/sicilian-protest-imperils-exhibition.html> (accessed March 4, 2015); Deborah Vankin, “Cleveland’s “Sicily: Art and Invention” Show Officially Canceled,” *L.A. Times* (July 24, 2013), <http://articles.latimes.com/2013/jul/24/entertainment/la-et-cm-cleveland-sicily-show-canceled-20130724> (accessed March 4, 2015); and Steven Litt, “The Show is Back On: Sicily Reverses Its Cancellation of Antiquities Exhibition at the Cleveland Museum of Art,” *The Plain Dealer* (August 22, 2013), http://www.cleveland.com/arts/index.ssf/2013/08/sicily_reverses_cancellation_o.html (accessed March 4, 2015). Problems such as these raise legitimate concerns about Italy’s commitment to cultural exchange and the AAMD recommends that the Committee discuss with the representatives of Italy how Article II can be strengthened to avoid problems such as occurred with this exhibition.

⁴² Steven Litt.

⁴³ Hugh Eakin.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ Deborah Vankin.

There are many more issues specific to exhibition loans that should be addressed in a renewed MOU. Below are just a few of those issues.

1. Indemnity.

In order to encourage cultural exchange and to reduce the costs for American museums to exhibit works from abroad, the United States Congress created the United States Indemnity program administered by the National Endowment for the Arts. This is a government-backed indemnity against loss that is accepted around the world by lenders to United States museums, but not most Italian museums. Instead, they require American museums to purchase insurance from Italian insurance companies when works are loaned to American museums. The cost of exhibitions is thus increased with no reduction whatsoever in risk or coverage for loss. Requiring the United States government to close its borders to Italian antiquities and simultaneously allowing Italian museums effectively to say that United States government-backed indemnity is unacceptable is something that the Committee must address. This is even more surprising in light of the fact that Italy has its own indemnity program only available to European Union members.⁴⁸

2. Immunity.

When works are loaned by Italian museums to American museums, those works can be protected under the United States Immunity from Seizure law.⁴⁹ This legislation allows the Department of State to make a determination that the exhibition is in the national interest, is nonprofit and that, as a result, the works loaned from abroad will not be subject to any court order resulting in the American museum losing possession of the work, *i.e.*, they are “immunized.” This reduces the risk to Italian museums of adverse claims made against the works while they are in the United States. American museums routinely apply for and obtain this protection for loans from Italy. This protection is not, however, available when American museums lend works to Italy. Italy has long considered an immunity law, but the time for “consideration” should be long passed. Italy needs to join other western European countries (Austria, Czech Republic, Finland, France, Germany, Hungary, Liechtenstein, Switzerland and the United Kingdom) – not to mention those on other continents – and pass such a law. If an MOU is supposed to encourage cultural exchange, requiring Italy to move forward on this issue is one way of accomplishing this goal.

3. Courier Fees.

While most if not all museums charge for couriers to accompany works being loaned to exhibitions, charges by Italian museums are apparently amongst the highest in the world. These charges for Italian couriers include business travel for couriers traveling without art and, in some cases, have even extended to additional, unnecessary, personnel. This hardly promotes cultural exchange and should be stopped.

⁴⁸ “Work Plan for Culture 2011-2014,” *The Toolkit on Collection Mobility: European Agenda for Culture* (September 2012), http://ec.europa.eu/culture/library/reports/toolkit-mobility-collections_en.pdf (accessed March 19, 2015).

⁴⁹ 22 U.S.C. § 2459.

V. Recommended Modifications

If the Committee determines to recommend extending the MOU, it must be revised in several respects in order to address ongoing situations of paramount concern.

A. The MOU Should Implement Specific Measures Streamlining Cultural Exchange.

Based on the collective experience and input of its members, the AAMD has identified several areas in which the Committee could improve the MOU in order to better streamline and facilitate cultural exchange with Italy. Specifically, Article II of the MOU should be amended to:

- Acceptance of United States Indemnity. Provide that Italy will accept United States indemnity on loans into the United States.
- Immunity from Seizure. Require Italy to promulgate an immunity from seizure law.
- Establishment of Consistent and Prompt Outbound Approval Process. Provide that Italy will endeavor (a) to establish and publish a uniform outbound loan and exhibition approval process across all of Italy, including its autonomous regions; and (b) to adhere to a prompt review of proposed outbound loans and exhibitions.
- Publication of Objects Available for Long-Term Loans. Provide that Italy will establish a centralized database or clearinghouse providing information (*e.g.*, the office of the Minister of Culture) regarding objects that are available for long-term loans.
- Publication of Procedures to Request Long-Term Loans. Require Italy to publish on a Ministry of Culture website the procedures, contact addresses and requirements for American museums to request long-term loans.
- Standardization of Courier Costs. Provide that Italy will endeavor to establish and promote reasonable courier fees associated with outbound loans.

B. The Designated List.

While the Designated List is generally accurate, many of the descriptions are of objects that are not confined to Italy. For example, vases from Athenian workshops were exported throughout the Mediterranean. The fact that a vase is “Attic” means nothing in the context of import restrictions for Italy and there should be no presumption that “Attic” means “from Italy.”

Another example is ancient coins, also included on the MOU's designated list. Export restrictions on many ancient coins, however, are illogical because they are not specific to Italy in origin and there is a ready, legal market for them in Italy. Many dealers in Italy advertise ancient coins for sale.⁵⁰ Either Italy must agree to issue export permits for coins sold legally in Italy or the designated list should be amended to allow such coins to be brought into the United States.

C. Publication of Becchina and Other Dossiers.

Article II of the MOU should be amended to encourage Italy to make the contents of the Becchina and other dossiers readily available to the general public unless, with respect to a particular item described in the dossier, widespread disclosure would compromise an existing criminal investigation or claim. Withholding the contents of appropriate portions of these dossiers unfairly compromises the ability of parties seeking to research a work of art or to verify an offered work's alleged provenance.

D. The MOU Should Provide for Periodic Review of Progress.

Article II of the MOU should be amended to provide that, on an annual basis, Italy will provide the Committee with reasonable proof of its compliance with the MOU. The MOU is a binding, legal agreement between the United States and Italy. It is not aspirational, but mandatory. Where the United States freely agrees to restrict the import of cultural property that otherwise would substantially benefit its citizens, it is not unreasonable to require the beneficiary of such restrictions to fulfill its own promises, and to provide regular, factually supported, reports of progress.

VI. Conclusion

There is a perception that MOU's, once implemented, are perpetual and immutable. This is clearly not the intent behind the CPIA and the Committee should scrutinize carefully Italy's request to extend the MOU. A reasonably objective evaluation of Italy's efforts over the past five years demonstrates that there are significant issues concerning protection of its cultural patrimony that must be discussed with Italy by the Committee, and that there are legitimate questions about the benefit of the MOU in deterring a serious situation of pillage. Furthermore, little progress has been made in five years with respect to cultural exchange, an issue of vital importance to American museums and the public they serve.

If the Committee determines to extend the MOU, then it must do so with a major overhaul of Article II to address bona fide concerns of those impacted daily by its terms. To be frank, the "boilerplate" used in the past and in most MOU's proves woefully inadequate in providing measurable goals for subsequent review by the Committee or comment by the field. Italy's history of cooperation, its track record of measured response to various looting issues and the excellent relations that exist between many Italian museums and their United States counterparts provide a real opportunity for the governments of both countries to initiate a new

⁵⁰ Two such examples are Numismatica Varesi, (Varesi, Italy), whose next auction of ancient coins is April 29, 2015 (catalogue is available online) (www.varesi.it) and Aste Bolaffi (Torino, Italy), whose next auction of ancient coins is June 10-11, 2015 (catalogues showing past sales available online) (www.astebolaffi.it).

era in cultural cooperation. The AAMD is happy to do its part in this process, but governments that control the processes and procedures around cultural exchange must do their part as well. The Committee should seize upon this opportunity to recommend amending Article II to provide real and tangible benefits for the American public, to initiate oversight systems to assure compliance, and to open a meaningful dialogue with Italian officials about creating a renewed effort at effective cultural exchange.

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The AAMD is a professional organization consisting of approximately 240 directors of major art museums throughout the United States, Canada, and Mexico. The purpose of the AAMD is to support its members in increasing the contribution of art museums to society. The AAMD accomplishes this mission by establishing and maintaining the highest standards of professional practice, serving as a forum for the exchange of information and ideas, acting as an advocate for its member art museums, and being a leader in shaping public discourse about the arts community and the role of art in society.