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Laura McFarland-Taylor

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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

“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.”

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 antiquities out of their London home to their United States base in New York. In particular, Sotheby’s general sales of Greek and Roman antiquities and Indian and Himalayan art. 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.

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

3. Throughout the rest of this Comment, the term “artworks” means both art and antiquities, unless it is important to distinguish between the two.
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. 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? What can be done to effectively track and search for stolen artworks? As it is applied now, the due diligence standard is especially unhelpful. United States courts apply different due diligence standards in attempting to resolve stolen artwork cases. Some courts apply the due diligence standard to just the true owner, others apply it to both the true owner and the good-faith purchaser. In addition, a court may also consider the atmosphere of the art world at the time the artwork was discovered missing. 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.


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.

12. See id.
13. See Autocephalous, 717 F. Supp. 1374, aff'd, 917 F.2d 278.
This Comment proposes adopting an internationally recognized standard of due diligence in reporting lost or stolen artworks utilizing the Internet. 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 effectively

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.'

and efficiently tracked utilizing the power of the Internet. There are literally hundreds of web sites dealing with stolen art and antiquities. 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, coupled with diverse rulings in the cases from the courts, 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. Secondly, this Comment will discuss the various legal standards the courts use in analyzing stolen art cases: statute of limitations, due diligence, and adverse possession. Discussing these standards is important to understanding why a new standard of due dili-

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"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.
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, Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc., and Guggenheim v. Lubell, and touching briefly on DeWeerth v. Baldinger. 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. People

have been stealing artworks since the beginning of time,\footnote{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.\footnote{33} For-
archaeological artifacts, meteorites, coins, Native American artifacts, and religious icons are some of the objects particularly vulnerable, either because they are easily stolen and concealed, or because there is no cost efficient way to guard the items. Many of these


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).


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 antiques).

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.\textsuperscript{42} The practice has not decreased but rather increased over the years.\textsuperscript{43} It is not just cultural treasures\textsuperscript{44} that have seen an upswing in thefts, but also art in museums and in private homes.\textsuperscript{45}

In the \textsuperscript{1980s}, 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.’\textsuperscript{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.\textsuperscript{47} Also disheartening is the fact that only about ten percent of the artworks stolen are ever recovered.\textsuperscript{48} In other countries, particularly those torn apart by war, the problem is


\textsuperscript{43} See Olivier, \textit{supra} note 9 n.2.

\textsuperscript{44} See Blumenthal, \textit{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.

\textit{Id.}


\textsuperscript{46} See Lopez, \textit{supra} note 31, at 74, 82.

\textsuperscript{47} See Olivier, \textit{supra} note 9 n.2.

\textsuperscript{48} See id.
growing worse.\textsuperscript{49}

1. \textit{Statute of Limitations}

Statute of limitations,\textsuperscript{50} the determination of when a cause of action accrues, varies from state to state.\textsuperscript{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.\textsuperscript{52} In \textit{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{55} The \textit{Guggenheim} case caused an uproar in the art and legal community\textsuperscript{56} as well as with good-faith purchasers. The Lubell's, who were good-faith

\begin{itemize}
\item \textsuperscript{50} See \textit{BLACK'S, supra} note 24, at 927.
\item \textsuperscript{52} See \textit{Guggenheim}, 569 N.E.2d at 429.
\item \textsuperscript{53} Id.
\item \textsuperscript{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).
\item \textsuperscript{56} See Steven A. Bibas, \textit{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, \textit{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, \textit{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, \textit{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.\textsuperscript{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.\textsuperscript{58} The implications for both true owners and good-faith purchasers are enormous\textsuperscript{59} 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.\textsuperscript{60} However, the court did allow a defense of laches,\textsuperscript{61} as discussed in an earlier case, \textit{DeWeerth v. Baldinger},\textsuperscript{62} to be available.\textsuperscript{63} The \textit{Guggenheim} decision left the burden on the good-faith purchaser.\textsuperscript{64}

In California, the statute of limitations is three years.\textsuperscript{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.\textsuperscript{66}
In Indiana, the general statute of limitations for replevin 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. The inquiry begins with the general rule: “a cause of action accrues when the plaintiff ascertains, or by due diligence could ascertain, actionable damages.” 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, is also utilized, as is the doctrine of fraudulent concealment which bars a defendant from raising the issue of the statute of limitations 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.” In other words, “the plaintiff must exercise due diligence to investigate the theft and recover the works.” 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. This general principle is also followed in New Jersey.

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 nations generally favor the good-faith purchaser; common law nations favor the discovery rule.

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67. See BLACK’S, supra note 10, at 1299. Replevin: An action whereby the owner or person entitled to rerepossession of goods or chattels from one who has wrongfully destrained 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.


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


78. See id.
generally favor the true owner. 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 diligence is raised by every defendant in every stolen art case. Some cases are easier to decide, such as Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts, Inc., 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 and Guggenheim v. Lubell. The O'Keeffe and Guggenheim cases depended heavily on the atmosphere of the art world at the time the thefts took place. As stated in Guggenheim, the plaintiff did not tell anyone of the theft, believing that to do so would drive the painting further underground.

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 theft was only applicable to the laches claim, due diligence was immaterial for a statute of limitations claim. In Autocephalous, when the Republic of Cyprus received communications that the

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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.
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.
86. O'Keeffe, 416 A.2d at 865-866; Guggenheim, 569 N.E.2d at 428.
88. Guggenheim, 550 N.Y.S.2d at 621.
89. Guggenheim, 569 N.E.2d at 426.
mosaics were missing they immediately contacted UNESCO,\textsuperscript{91} the International Council of Museums,\textsuperscript{92} and the International Council of Museums and Sites,\textsuperscript{93} and introduced a resolution to Europa Nostra.\textsuperscript{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,\textsuperscript{95} alerting everyone they could that the mosaics were missing.\textsuperscript{96} These actions were considered enough to satisfy due diligence.\textsuperscript{97}

3. Adverse Possession

The issue of adverse possession\textsuperscript{98} 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.\textsuperscript{99} In a 1996 California case,\textsuperscript{100} the court discussed whether adverse possession was available for personal property\textsuperscript{101} and noted that the "issue does not appear to be settled."\textsuperscript{102} In a 1980 New Jersey case,\textsuperscript{103} the court found that the requirements of adverse possession: hostile, actual, visible, exclusive and continuous\textsuperscript{104} possession, were too difficult to apply to personal property.\textsuperscript{105} This is particularly true when

\begin{itemize}
  \item \textsuperscript{91} "UNESCO" is the United Nations Economic, Scientific and Cultural Organization. See generally John Moustakas, \textit{Group Rights in Cultural Property: Justifying Strict Inalienability}, 74 \textit{Cornell L. Rev.} (1989) (arguing that protecting certain types of cultural property ought to be mandatory).
  \item \textsuperscript{92} \textit{Autocephalous}, 717 F. Supp. at 1380. "[A]n organization that coordinates and develops measures and security around the world." \textit{Id}.
  \item \textsuperscript{93} See \textit{id}. "[A]n organization that works with restorers and specialists in the preservation of ancient monuments." \textit{Id}.
  \item \textsuperscript{94} See \textit{id}. "[A] European organization interested in the conservation of the architectural heritage of Europe." \textit{Id}.
  \item \textsuperscript{95} See \textit{id}.
  \item \textsuperscript{96} See \textit{Autocephalous}, 717 F. Supp. 1374 (S.D. Ind. 1989), aff'd, 917 F.2d 278 (7th Cir. 1990).
  \item \textsuperscript{97} See \textit{id}.
  \item \textsuperscript{98} See \textit{Black's, supra} note 10, at 53.
  \item \textsuperscript{99} See \textit{id}.
  \item \textsuperscript{101} See \textit{id}. at 865.
  \item \textsuperscript{102} \textit{Id}. at 872.
  \item \textsuperscript{104} See \textit{id}. at 870.
  \item \textsuperscript{105} See \textit{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." 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." Because of these difficulties, adverse possession is not often raised in stolen artworks cases.

B. UTILIZING THE INTERNET

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

As stated earlier, there are literally hundreds of web sites dealing with stolen artworks on the Internet. Some, such as "Stolen Masks," deal exclusively with one form of art. 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-

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106. Id. at 871.
107. Id.
109. See id. at page 2334.
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.
119. See id.
ers and the police.\textsuperscript{120}

The excuse the court used in \textit{Guggenheim},\textsuperscript{121} which essentially for-gave the plaintiff their obligations of due diligence in relation to the statute of limitations,\textsuperscript{122} is too uncertain for good-faith purchasers, while what constituted due diligence in \textit{Autocephalous}\textsuperscript{123} may be too arduous for many.\textsuperscript{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 \textit{O'Keeffe},\textsuperscript{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."\textsuperscript{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.\textsuperscript{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.


\textsuperscript{122} \textit{Id}.

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

\textsuperscript{124} \textit{Id}.


\textsuperscript{126} \textit{Id}.

III. ANALYSIS

A. THE CASES

As pointed out in the Background, there are jurisdictional differences in how stolen artwork cases are handled.\textsuperscript{128} This Comment will discuss four cases, focusing on three: \textit{O’Keeffe v. Snyder,}\textsuperscript{129} \textit{Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc.},\textsuperscript{130} and \textit{Guggenheim v. Lubell,}\textsuperscript{131} and touching briefly on \textit{DeWeerth v. Baldinger,}\textsuperscript{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.\textsuperscript{133} With the burgeoning international art market\textsuperscript{134} 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.\textsuperscript{135}

\begin{itemize}
\item \textsuperscript{128} See text, page 5-16.
\item \textsuperscript{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).
\item \textsuperscript{132} DeWeerth v. Baldinger, 836 F.2d 103 (2nd Cir. 1987).
\item \textsuperscript{134} See Lopez, \textit{supra} note 45, at 74.
\item \textsuperscript{135} See Reno, 117 S. Ct. at 2334.
\end{itemize}
1. O'Keeffe v. Snyder\textsuperscript{136}

In 1946, three small oil paintings, "Cliffs," "Seaweed," and "Fragments," painted by artist Georgia O'Keeffe, were stolen\textsuperscript{137} from a gallery owned by O'Keeffe and her husband, photographer Alfred Stieglitz.\textsuperscript{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.\textsuperscript{139} Shortly thereafter, O'Keeffe also discovered that the two other paintings were missing from a storeroom.\textsuperscript{140} Neither O'Keeffe nor Stieglitz reported the thefts to the police.\textsuperscript{141} However, they did tell some visitors to the gallery and a few people within the art community about the thefts.\textsuperscript{142} It wasn't until


\textsuperscript{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 . . . .

\textit{Id.}

\textsuperscript{138} O'Keeffe, 416 A.2d at 865.

\textsuperscript{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." \textit{Id.}

\textsuperscript{140} See \textit{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."

\textit{Id.}

\textsuperscript{141} See \textit{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 that the 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.

\textit{Id.}

\textsuperscript{142} See \textit{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.'

\textit{Id.}

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

The trial court granted summary judgment for Snyder, the Superior Court of New Jersey reversed the lower court, entered judgment for O'Keeffe, and the case was remanded for further proceedings. The essential question for the Superior Court was: when did the cause of action accrue for purposes of the statute of limitations? 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. The court also held that the almost total lack of due diligence on the part of O'Keeffe was "beside the point." 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. 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.

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

In discussing the due diligence issue, the Supreme Court laid out the elements of the discovery rule, 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.


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. Johnaton, 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).

152. See id. at 840. “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.

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).
action for replevin\textsuperscript{161} of a painting under New Jersey statutes:\textsuperscript{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."\textsuperscript{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. Whether 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 notice\textsuperscript{164} that someone other than the possessor was the true owner.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{168}

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

\textit{Id.}

\textsuperscript{161.} See \textit{id.} at 870.
\textsuperscript{162.} See \textit{id.}
\textsuperscript{163.} \textit{Id.} (emphasis added)
\textsuperscript{164.} See \textit{BLACK'S, supra note 10, at 314 (defining constructive notice).}
\textsuperscript{165.} See \textit{O'Keeffe, 416 A.2d at 870.}
\textsuperscript{166.} See \textit{id.} at 872.
\textsuperscript{167.} See \textit{id.}
\textsuperscript{168.} See Professor Ann Lousin, \textit{Course Materials on Sales Transactions} 395 (1996).
2. *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc.*

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. 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. At the time the priests fled, the mosaics were still in the apse of the church. During the occupation by Turkey many Cypriot churches and monuments were vandalized, their contents stolen or destroyed. 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." Immediately, the Republic of Cyprus contacted UNESCO, the International Council of Museums, and the International Council of Museums and Sites, introduced a resolution to Europa Nostra. 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.

Citing O'Keeffe, this court held that the discovery rule applied in this case. 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." Determination of due diligence is fact-sensitive and

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

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

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

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


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.\textsuperscript{182} The United States Court of

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. \textit{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 . . . . \textit{Id. at 1400.} The nature of the items should have put her on notice: As Professor von Mehren explained:

\begin{quote}
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.
\end{quote}

\textit{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." \textit{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. \textit{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." \textit{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. \textit{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. \textit{Id.}
Appeals, Seventh Circuit, upheld the ruling that the Church had used due diligence in looking for the mosaics.\textsuperscript{183}

3.  \textit{DeWeerth v. Baldinger}\textsuperscript{184}

DeWeerth, a West German national,\textsuperscript{185} inherited a Monet from her father in 1922.\textsuperscript{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.\textsuperscript{187} At the end of the war in 1945, von Palm's home\textsuperscript{188} was used to house American soldiers.\textsuperscript{189} When the soldiers left in the fall of 1945, von Palm noticed that the Monet was missing and notified her sister.\textsuperscript{190} DeWeerth filed a report with the military government in 1946,\textsuperscript{191} contacted her lawyer in 1948,\textsuperscript{192} sent a photograph of the painting to an art expert in 1955,\textsuperscript{193} and in 1957 sent a list of the artworks she lost during the war to the West German federal bureau of investigation.\textsuperscript{194} DeWeerth did nothing else to recover the artworks after 1957.\textsuperscript{195} In 1982 she learned that Baldinger had the painting\textsuperscript{196} and demanded its return.\textsuperscript{197}

\begin{flushright}

\textsuperscript{184}. DeWeerth v. Baldinger, 836 F.2d 103 (2nd Cir. 1987).

\textsuperscript{185}. See id. at 104.

\textsuperscript{186}. See id.

\textsuperscript{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.

\textsuperscript{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.

\textsuperscript{189}. See id.

\textsuperscript{190}. See id.

\textsuperscript{191}. See id.

\textsuperscript{192}. See id.

\textsuperscript{193}. See id.

\textsuperscript{194}. See id.

\textsuperscript{195}. See id.

\textsuperscript{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.

\textsuperscript{197}. See id. at 106.
refused.\textsuperscript{198}

The trial court found that DeWeerth had exercised reasonable diligence\textsuperscript{199} in searching for the painting and ordered Baldinger to return it.\textsuperscript{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.\textsuperscript{201}

4. Guggenheim v. Lubell\textsuperscript{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.”\textsuperscript{203} The museum did not “know”\textsuperscript{204} the painting was stolen until after a complete inventory of the museum was completed in 1970.\textsuperscript{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.\textsuperscript{206} The Lubells had purchased the painting from a reputable Manhattan art gallery in 1967.\textsuperscript{207} The museum learned that the Lubells had the painting in August 1985, and in January 1986, demanded its return.\textsuperscript{208} Relying on DeWeerth,\textsuperscript{209} Lubell argued that the Guggenheim could not now

\begin{footnotesize}
\textsuperscript{198} See id.
\textsuperscript{199} See id.
\textsuperscript{200} See id.
\textsuperscript{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).
\textsuperscript{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.
\textsuperscript{204} Id.
\textsuperscript{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.
\textsuperscript{206} See Guggenheim, 569 N.E.2d at 428.
\textsuperscript{207} 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.
\textsuperscript{208} Id.
\textsuperscript{209} DeWeerth v. Baldinger, 836 F.2d 103 (2nd Cir. 1987).
\end{footnotesize}
demand the painting back because the statute of limitations had run.\textsuperscript{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 laches\textsuperscript{211} and not the statute of limitations.”\textsuperscript{212} The Court of Appeals affirmed, effectively overruling a portion of DeWeerth.\textsuperscript{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.\textsuperscript{214}

\textbf{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.\textsuperscript{215} In \textit{O'Keeffe}, 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.”\textsuperscript{216} The court in \textit{DeWeerth} expected “reasonable diligence,”\textsuperscript{217} whatever that means. In \textit{Autocephalous}, the court held that the plaintiff “must exercise due diligence to investigate the theft and recover the works.”\textsuperscript{218} The court in \textit{Guggenheim} stated that the due diligence of both the purchaser and the true owner should be taken into consideration by the court.\textsuperscript{219} \textit{Guggenheim} sparked interest in setting “bright line” parameters in order to protect buyers and true owners.

\begin{itemize}
\item \textsuperscript{211} Id. at 619.
\item \textsuperscript{212} Id.
\item \textsuperscript{213} See \textit{Guggenheim}, 569 N.E.2d at 431.
\item \textsuperscript{214} 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.
\item \textsuperscript{216} \textit{O'Keeffe}, 405 A.2d 840, \textit{rev'd.}, 416 A.2d 862.
\item \textsuperscript{217} \textit{DeWeerth}, 836 F.2d at 103.
\item \textsuperscript{218} \textit{Autocephalous}, 717 F. Supp. 1374, \textit{aff'd}, 917 F.2d 278.
\item \textsuperscript{219} \textit{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 . . . .” \textit{Id.}  
\end{itemize}
owners. Others argued that innocent buyers were being treated too harshly. 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.

C. An Internet Site As A Solution

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

The Scotland Yard 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.
228. See supra note 224.
231. See supra note 226.
most of the sites visited: they are not set-up very intuitively. For example, on the Scotland Yard site, the area for information on how to report an artworks crime is under “Operation Bumblebee.” Not exactly the first place you would look! On the CIA site, nothing says “click here to report stolen artworks.” If you do a search on the CIA site for “stolen art” you receive zero matches; if you search under “art” you receive job postings for engineers. If you search under “antiquities,” you receive a listing for heads of state. The Art Dealers Association of America site has no posted way of reporting or searching for stolen artworks. The FBI site, 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.

One of the best sites is called “Stolen Masks.” The site’s home
page has links\(^{244}\) 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 police\(^{249}\) 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.
conduct online searches, issue reports, and provide general information for museums, auction houses, gallery owners, police, media, researchers, and purchasers.

2. Due Diligence for Legitimate Sellers

When obtaining artworks for auction or sale, a legitimate seller should insist on receiving provenance 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.

The U.C.C. allows parties to an agreement to choose the law which will govern. 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" and "good faith." 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.

"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.

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."
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. 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, good-faith purchasers must insist on receiving provenance on the artwork, and a detailed report from the Internet site. The report from the Internet site would certify that the work has not been reported stolen. 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* 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. But

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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. 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, 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; this Comment does not agree with that position.

Another potential problem is the issue of privacy. 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

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[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/>.
The courts apply different rules depending on who the parties are, what actions (or inactions) were taken by the parties, and even the atmosphere of the art world at the time of the theft. The situation becomes even more difficult if one of the parties involved is not a resident of the United States. 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. Some, such as “Stolen Masks” deal exclusively with one art form. 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” enough to encourage casual computer users to utilize them. As with any use of the Internet there are issues of access and privacy. 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

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