



Holocaust Art Recovery Initiative Aims to Spread Awareness of the HEAR Act and Help Victims

By Jonathan H. Schwartz and Daniel H. Cooke

From 1933 through 1945, Nazi Germany systematically and methodically looted valuable artwork from Jewish families across Europe.¹ Many victims and their heirs have yet to recover their artwork stolen during the “greatest displacement of art in human history.”² Approximately 300,000 valuable pieces of Jewish cultural heritage remain unreturned.³

For more than 70 years, governments, museums, and art dealers have prevented litigation on the merits in U.S. courts seeking the restoration of art stolen by the Nazis by relying on the statute of limitations in various states across the country, and as a result, possessors of stolen artwork were not motivated to return it or engage in settlement negotiations because dismissal of lawsuits on procedural grounds was the norm.⁴

Bipartisan legislation revives claims for recovery of looted artwork

To right this ongoing historical wrong, Congress unanimously passed the Holocaust Expropriated Art Recovery (HEAR) Act of 2016, which was signed by President Barack Obama on December 16, 2016.⁵ The HEAR Act revives legal

claims in federal courts related to theft of artwork during the Holocaust with the goal of “provid[ing] the victims of Holocaust-era persecution and their heirs a fair opportunity to recover works of art confiscated or misappropriated by the Nazis.”⁶

Under the HEAR Act, a claimant may bring a civil claim or cause of action against a defendant to recover any artwork or other property that was lost between January 1, 1933 and December 31, 1945 because of Nazi persecution, not later than “6 years after the actual discovery by the claimant or the agent of the claimant.”⁷ The term “actual discovery” is defined by the statute as knowing (1) the identity and location of the artwork or other property and (2) the claimant’s having a possessory interest in the artwork or other property.⁸ The HEAR Act also provides a cause of action for claimants who discovered missing artwork before the date of enactment of the HEAR Act but were barred by a federal or state statute of limitations.⁹ All claims discovered after the HEAR Act’s enactment now have a six-year statute of limitations to bring a claim, while any permissible preexisting claims now have a renewed six-year period beginning on the date of the statute’s enactment.¹⁰

AT A GLANCE

Nearly 300,000 pieces of artwork stolen from Jewish families by the Nazis during the World War II period have not been returned to victims and their heirs. Adding insult to injury, lawsuits seeking the recovery of located artwork historically failed because of applicable statutes of limitations.

In an attempt to remedy this ongoing injustice, President Obama, with the unanimous bipartisan support of Congress, enacted the Holocaust Expropriated Art Recovery (HEAR) Act of 2016, which revives and renews the statute of limitations to bring claims in U.S. federal courts.

The SBM Arts, Communications, Entertainment, and Sports Section and the Jewish Bar Association of Michigan launched an initiative in 2018 to raise awareness of the HEAR Act and assist claimants with filing lawsuits in U.S. federal courts before the new statute of limitations runs out.

HEAR Act enforced by federal courts

The most prominent case to date regarding judicial interpretation of the HEAR Act was decided by the U.S. Court of Appeals for the Ninth Circuit in *Cassirer v Thyssen-Bornemisza Collection Foundation*.¹¹ In *Cassirer*, the Court revived a Nazi-era art appropriation case that the district court had dismissed in 2015, finding that the plaintiffs' claim to a painting by Danish-French Impressionist painter Camille Pissarro (whose mother was Jewish) was now timely under the HEAR Act.¹²

The game-changing effect of the HEAR Act and *Cassirer* holding was displayed in a case decided by the Supreme Court of New York. In *Reif v Nagy*, the plaintiffs sought to recover two drawings that were looted from an ancestor who was murdered in the Dachau Concentration Camp in 1941.¹³ In ordering the return of both drawings, the *Reif* Court relied on the HEAR Act to hold that "we are instructed to be mindful of the difficulty of tracing artwork provenance due to the atrocities of the Holocaust era, and to facilitate the return of property where there is reasonable proof that the rightful owner is before us."¹⁴

Michigan-based efforts to provide assistance

While the HEAR Act is proving to be an important legal tool, the race is on to identify and assist victims and their heirs with filing claims within the renewed statute of limitations and before new claims are effectively barred on January 1, 2027 (the "Sunset Provision").¹⁵ To help in this effort, the State Bar of Michigan Arts, Communications, Entertainment and Sports Section has partnered with the Jewish Bar Association of Michigan to launch a Holocaust Art Recovery Initiative. Potential claimants are encouraged to reach out for assistance connecting with scholars and researchers to help

piece together provenance (based on historical records of ownership) and with attorneys who are prepared to litigate claims in Michigan federal courts. More information is available at <https://www.jewishbar.org/holocaustartrecovery/>. ■



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ENDNOTES

1. Breeden, *Art Looted by Nazis Gets a New Space at the Louvre. But Is It Really Home?*, The New York Times (February 8, 2018) <<https://www.nytimes.com/2018/02/08/world/europe/louvre-nazi-looted-art.html>> and United States Holocaust Memorial Museum, *Documenting Numbers of Victims of the Holocaust and Nazi Persecution* <<https://encyclopedia.ushmm.org/content/en/article/documenting-numbers-of-victims-of-the-holocaust-and-nazi-persecution>>. All websites cited in this article were accessed October 27, 2018.
2. The Holocaust Expropriated Art Recovery (HEAR) Act of 2016, PL 114-308, § 2(3); 130 Stat 1524.
3. Hoffmann, *Cruz and Cornyn Bury Hatchet to Help Nazi Victims Recover Stolen Art*, NewsMax (June 8, 2016) <<https://www.newsmax.com/Newsfront/ted-cruz-john-cornyn-nazi-art/2016/06/08/id/732924>>.
4. Comm for Art Recovery, *HEAR Act* (March 7, 2018) <<http://www.commartrecovery.org/hear-act>> and *Can You Hear Me Now?: Holocaust Expropriated Art Recovery (HEAR) Act*, Sheppard Mullin Art Law Blog (April 25, 2017) <https://www.artlawgallery.com/2017/04/articles/changes-in-law/hear-act/#_ftn2>.
5. Kutner, *Obama Signs New Law to Help Recover Nazi-Looted Art*, Newsweek (December 21, 2016) <<https://www.newsweek.com/obama-hear-act-law-holocaust-534793>>.
6. HEAR Act of 2016.
7. *Id.*, § 5(a).
8. *Id.*
9. *Id.*, §§ 5(c)(1)-(2).
10. *Id.*, §§ 5(a)-(c).
11. *Cassirer v Thyssen-Bornemisza Collection Foundation*, 862 F3d 951 (CA 9, 2017).
12. *Id.* at 960.
13. *Reif v Nagy*, 61 Misc 3d 319; 80 NYS 3d 629; 2018 NY Slip Op 28253 (NY Comm Div, April 6, 2018).
14. *Id.* at 325. See also *New York judge awards Egon Schiele art to Holocaust heirs*, BBC (April 6, 2018) <<https://www.bbc.com/news/world-us-canada-43665737>> and McBride & Schuler, *Surprise Decision in Reif v Nagy Raises As Many Questions As It Answers*, HHR Art Law (April 23, 2018) <<https://www.hhrartlaw.com/2018/04/surprise-decision-in-reif-v-nagy-raises-as-many-questions-as-it-answers/>>.
15. HEAR Act of 2016, § 5(g).