# THE ART LAW REVIEW

**Editors**
Lawrence M Kaye and Howard N Spiegler

THE LAWREVIEWS

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# PREFACE

We are pleased to introduce you to the very first edition of *The Art Law Review*. The field of art law has developed over many years to become a significant speciality in the law, as collectors, galleries, auction houses, museums and everyone else involved with art have expanded their collections and businesses throughout the world. Besides involving billions of dollars in the trade, art law has become the means by which the diverse cultures of our societies are governed and encouraged to develop.

We have invited leading practitioners in the field of art law around the world to detail the key developments in their respective countries pertaining to this dynamic and growing area of legal expertise. We have also asked that other leaders in the field focus on particular important issues in this area of law. We thank all our distinguished authors for their fine contributions. We hope you will find them informative, instructive and interesting.

By way of introduction, a brief overview of developments in this field during the past 50 years in the United States, where we practise, seems a good place to begin. Considering that English common law, upon which US law is based, originated in the early Middle Ages, the field of art law in the United States can rightly be characterised as a newborn. The roots of art law in the United States began in the form of intermittent cases in the early to mid twentieth century when visual artists began confronting problems in protecting their work – and themselves – particularly in the areas of copyright and obscenity.[1] Indeed, a body of law that could be characterised as art law did not really begin to take hold in the United States until the 1960s, and even then in a most disorganised fashion. The late and renowned Professor John Henry Merryman, who in 1972 offered at Stanford Law School the first formal art law class in a US law school entitled 'Art and the Law', wrote a few years later that he started the course partly out of 'a desire to determine whether "art law" really was a field' and noted that he 'took a good deal of ridicule from colleagues who thought the whole enterprise frivolous and insubstantial'.[2]

We have come a long way since then. A multitude of art law courses are now taught at US and European law schools and other institutions, such as the major auction houses.[3] And although in the late 1960s and early 1970s, when we began practising art law, one would have

1 See generally Joan Kee, *Models of Integrity: Art and Law in Post-Sixties America*, Introduction, 1-42 (University of California Press, 2019).

2 John Henry Merryman, 'Art and the Law, Part I: A Course in Art and the Law', 34 *Art Journal* 332, No. 4, 332 to 334 (Summer 1975).

3 See, e.g., Center for Art Law, 'Art Law Courses and Programs Worldwide', at www.itsartlaw.org (last accessed 29 October 2020).

been hard pressed to find anyone in the Martindale Hubble Law Directory designated as an 'art lawyer', today art lawyers proliferate in the directory; and for the New York area alone, where we practise, there are several pages listing lawyers who call themselves art lawyers.

So, what is art law? Professor Merryman observed that a primary reason for creating his new and novel art law curriculum was that 'the growth of American art and the emergence of the United States as a major art market involved problems and interests that were sufficiently substantial and complex to call for the services of specially attuned and trained practicing lawyers'.[4] Well, Professor Merryman's observation was quite prescient, for that is exactly what has happened during the past 45 years in the United States, and indeed throughout the world. Art law became a respected discipline within the law, and more and more practitioners around the globe began to specialise in the field as the nexus between art and law became more clearly defined.[5]

What had previously consisted of random cases involving visual artists and emerging issues affecting the growing art market started to morph into a cogent body of law. Even before Professor Merryman started his course and wrote the textbook to accompany it (*Law, Ethics and the Visual Arts*), in 1966 Scott Hodes published a book on the law of art and antiquities.[6] Many other texts followed.[7] Art law seminars and symposia began to proliferate and now take place almost every day somewhere in the world.

As the international art market grew and became more sophisticated, so did the practice of art law and the number of practitioners who began to devote themselves to the field. Today, art law is an amalgam of myriad legal areas that academicians, practitioners, lawmakers and judges have adapted to the specific needs of stakeholders in the art world, and art law specialists have learned how to apply traditional legal principles to art market disputes and transactions as the art world became more prevalent and more complex. The stakeholders in need of special art law expertise range from the poorest artists to the most sophisticated corporations and government entities. Even a partial list is daunting: museums, collectors, importers and exporters, galleries and dealers, auction houses, living artists (and even dead ones), including digital artists, families and family offices, estates, trusts and foundations, insurance companies, appraisers, art advisers, experts, consultants, corporate art collections, and national and state governments. To address the needs of these varied stakeholders, the experts in the field have taken general legal principles and areas of practice and applied them to the unique needs of the art law stakeholders, in addition to creating new specialities uniquely applicable to art law disputes and transactions. Among many others, these include property law, the law of contracts, consignments, torts, intellectual property, tax, trusts and estates, authentication, insurance, cultural property, moral rights, resale rights, free speech, sales and other commercial law, warranties, conflicts of law, private international law, comparative law, customs, criminal law and securities law. And the list goes on.

4 Merryman (footnote 2), at 332 to 333.

5 A practical and informative guide to the development of art law can be found in Kee (footnote 1). The early roots of art law are also explored in James J Fishman, 'The Emergence of Art Law', 26 *Clev. St. L. Rev.* 481 (1977).

6 *The Law of Art & Antiques: A Primer for Artists and Collectors* (Oceana Publications, 1966).

7 Notable among the many are Franklin Feldman and Stephen Weill, *Art Works, Law, Policy, Practice* (New York Practicing Law Institute 1974); Leonard Duboff, *Deskbook of Art Law* (Washington DC Federal Publications, 1977); and the seminal text on art law, Ralph E Lerner and Judith Bresler, *Art Law: The Guide for Collectors, Investors, Dealers & Artists* (Practicing Law Institute 1989), which is now in its fifth edition.

We have been practising art law since before it became a field, having started in the early 1970s. We believe our own professional journeys serve to illustrate some of the ways this area of law has grown and developed, so we would like to briefly share some of our experiences.

Larry first entered this field as a summer associate at the firm of Botein, Hays, Sklar and Herzberg in 1969. On reporting for duty at this first legal job, he was introduced to a brilliant attorney, who ended up serving as a revered mentor for both of us for many years to come, Harry Rand. Harry was representing the Weimar Art Museum, located in what was then East Germany, which was seeking to recover two paintings by Albrecht Dürer that were taken during the Second World War by US soldiers from a castle in which the paintings had been placed for safekeeping. East Germany (officially the German Democratic Republic), which owned the museum, sued a negligence lawyer residing in Brooklyn, New York, who had purchased the works from a US soldier who appeared at his door one day in 1946.

As it turned out, this was the first case of a foreign sovereign suing in the United States to recover cultural property. It involved many legal issues that took some 15 years to resolve finally in favour of East Germany, to which the paintings were ordered to be returned. The legal principles established in the *Weimar Museum* case continue to be cited in cases involving the recovery of artwork and other cultural property, especially those relating to the statute of limitations, and *Weimar Museum* stands as one of the iconic cases in this area of law.

During the pendency of the case, Howard joined Botein and started a professional relationship with Larry that has spanned many decades.

Our success in the *Weimar Museum* case and the publicity surrounding it attracted the interest of the Republic of Turkey, which was in a dispute with the Metropolitan Museum of Art (the Met) regarding a remarkable collection of ancient jewellery and other artefacts on display in the Met, which had been looted from caves in Turkey many years before. It turned out to be one of the leading cases involving the restitution of antiquities looted from foreign sovereigns, which led to a worldwide interest in trying to prevent such looting from countries around the world.

We sued the Met on behalf of Turkey and a six-year litigation ensued, largely spent defending dismissal motions brought by the Met on the grounds of the statute of limitations and other technical defences. But after we got past all that time-consuming and expensive motion practice, we then commenced the long discovery process, whereby we obtained information from the Met's own files about its knowledge of the objects' provenance or history, and its conduct in acquiring them. Nonetheless, the case presented significant obstacles for us. It was, after all, one of the first major cases brought against a major museum by a foreign government to reclaim looted cultural property. Indeed, at the time of its inception, most commentators were openly questioning how a previously undiscovered and undocumented collection of antiquities could be identified as having been looted from Turkey, let alone recovered.

However, we did prevail and the antiquities, known as the Lydian Hoard, were returned to Turkey in 1993 and exhibited at one of the great Turkish antiquity museums, the Museum of Anatolian Civilizations in Ankara, where it was greeted with great interest and excitement by Turkish visitors to the museum as well as those from other countries. We were privileged to visit the museum when the objects were displayed there, and we cannot adequately describe the excitement displayed by the Turkish viewers. Once the director revealed to them that we and our colleagues had assisted the government in securing the return of the objects, many people came over to thank us personally for helping to ensure that this important part of their heritage had been returned, to be viewed and appreciated by the Turkish people. The Lydian

Hoard case is considered by many as the starting point for the efforts by art-rich countries to reclaim their cultural property, which have continued and increased to this day.

As that case was ending, Botein closed shop and we joined our current firm, Herrick, Feinstein. We brought what was now a growing caseload of restitution work to Herrick, which until that time was a very successful firm that had no experience with art law. Indeed, there were still only a very few attorneys who regularly practised in this area of law.

By the mid 1990s, we were certainly known as art lawyers, particularly in the area of restituting looted antiquities to their country of origin. But then, for various reasons, the world's attention started to turn back to the Nazi era before and during the Second World War, and it became clear that the Nazis not only committed the most horrendous crimes against humanity, but they also committed the most extensive theft of cultural property in modern human history. As restitution experts, it was a natural fit for us to become involved in cases brought to recover artworks looted by the Nazis so that they could finally be returned to the families of the victims of the Holocaust. We would like to briefly mention two of those cases.

We were retained to handle one of the first important cases involving Nazi-looted art, representing the family of an art dealer who escaped from Austria after having had one of her paintings stolen by a Nazi agent. The painting by Egon Schiele is known as *Portrait of Wally*. The case started when the Wally was seized from the Museum of Modern Art (MoMA) in New York by state and then federal prosecutors after it was brought to the United States as part of an exhibition of work by Schiele in the collection at the Leopold Museum in Vienna.

Even though it took more than 10 years for the *Portrait of Wally* case to be finally resolved, it had an enormous influence from the moment it started. The fact that a loaned artwork at MoMA could be seized by US government authorities sent shock waves throughout the world and was a major factor in causing governments, museums, collectors and families of Holocaust victims to focus their attention on Nazi-looted art. Less than a week before the scheduled trial, the case was settled on three major terms:

*a* the Leopold Museum paid the family US$19 million, reflecting the true current value of the painting, in return for the surrender of their claim;

*b* a ceremony and exhibition was held at the Museum of Jewish Heritage in New York for three weeks before *Portrait of Wally* was returned to Austria; and

*c* the Leopold Museum agreed that signs would be permanently affixed next to *Portrait of Wally* at the museum and wherever it might be exhibited anywhere in the world, explaining the true facts of the painting's ownership history.

Shortly after the *Portrait of Wally* case commenced, we assisted the sole living heir of the renowned Dutch art collector and dealer, Jacques Goudstikker, to recover an extraordinary collection of Old Master paintings that had been looted during the Second World War by Herman Goering, who was second only to Hitler in the Nazi regime. With the adoption in 1998 of the Washington Principles, a non-binding international convention that for the first time brought together 44 nations in an effort to foster the restitution of property looted during the war, the Netherlands adopted a new restitution regime designed to right the wrongs of the past. To make a very long story very short, we assisted Marei von Saher in her Dutch restitution proceedings, and in 2006 we were able to effect the return of 200 works to her.

We also became involved in major art restitution cases brought against foreign sovereigns, which involved the Foreign Sovereign Immunities Act, a law that has been used in numerous cases since then as the basis for suing foreign sovereigns to recover artworks in their possession.

Over the years, we have also developed a wide-ranging practice in non-restitution art disputes, from simple breach of contract cases to more complex disputes involving dealers, collectors, artists and other art world stakeholders covering a wide range of disputes including trademark and copyright infringement, defamation, moral and visual rights, breach of warranty, misattribution, tax and trust matters, valuations, appraisals, experts and auctions.

We also became involved in the transactional side of art law. This aspect of our practice expanded when our restitution clients began asking us to handle transactions involving the sale and other disposition of major artworks and collections we had recovered for them. The transactional side included not only private treaty sales and auction sales, but also estate planning, providing tax advice, assisting not-for-profit entities, planning nationwide and international loans and exhibitions, and advising banks and collectors on using artworks as collateral for bank loans, among many other cutting-edge art law issues.

A sampling of the varied transactional matters we have been privileged to work on is a microcosm of the range of transactional matters that specialist art lawyers came to handle as the international art market expanded. To name but a few: we represented the Neue Galerie in New York in the acquisition of the famed *Woman in Gold* painting by Gustav Klimt, depicted in the film of that name, which has become the *Mona Lisa* of that museum's collection, regularly attracting huge numbers of visitors; we represented the European Fine Arts Foundation (TEFAF) in the creation of its New York Fall 2016 Art Fair; we represented the Malevich heirs in numerous auction sales during the course of 15 years, including the US$60 million sale of *Suprematist Composition* (1916), which set a world record for Russian art; we represented the Estate of Frances Lasker Brody in the historic sale of its art collection at Christie's (the highlight of which was a Picasso masterwork, *Nude, Green Leaves and Bust*, which sold for a then auction record of US$106.5 million); we represented a private art collector in one of the largest transfers of Mesoamerican art to a museum, and advised the collector's foundation dedicated to the study and advancement of Mesoamerican art; and we conducted an internal investigation on behalf of an internationally recognised art gallery concerning the authenticity of certain paintings bought and sold by the gallery.

Turning now to this Review, we open the volume with substantive chapters that present an overview of current and significant issues in some important areas of art law:

*a* cultural property disputes;
*b* the art market;
*c* art authentication;
*d* art and technology;
*e* international copyright issues;
*f* moral rights; and
*g* recent trends in art arbitration and mediation.

We then present reports on recent art law developments in 21 key countries. Each country's report gives a review of hot topics, trends and noteworthy cases and transactions during the past year, then examines in greater depth specific developments in the following areas: art disputes, fakes, forgeries and authentication, art transactions, artist rights, trusts and foundations, and finally offers some insights for the future.

We hope you enjoy reading all of these excellent contributions.

**Lawrence M Kaye and Howard N Spiegler**
Herrick, Feinstein LLP
New York
December 2020

# Part II

# Jurisdictions

**Chapter 15**

# GERMANY

*Katharina Garbers-von Boehm*[1]

## I INTRODUCTION

Germany has many internationally recognised world-class public museums, a growing number of superb private museums and a thriving contemporary art scene. Nevertheless, from a global perspective and compared to markets like China or the United States, the German art market is relatively small, according to the Art Basel and UBS report *The Art Market 2020*, with only slightly more than 2 per cent of worldwide turnover being made in Germany.[2] One of the highlights in the UBS report regarding the emerging online art market is that German collectors seem to be open to buying art online, even in the higher price segments.[3]

## II THE YEAR IN REVIEW

Three major issues are currently being discussed – and criticised – by German art market participants and by art law policymakers, since these issues are considered to be competitive disadvantages for the art market in Germany.

*a* From 1 January 2020, new regulations derived from recent European anti-money laundering legislation have required art dealers to fulfil certain formalities for almost every transaction.[4]

*b* German cultural protection legislation underwent a broad reform in 2018, which introduced a rather bureaucratic system of export licences that have to be obtained before exporting cultural goods located in Germany. Several complaints against numerous provisions of the new law have been filed with the Federal Constitutional Court. The decision on whether these complaints will be upheld is due in 2020.

*c* On 1 January 2014, the value added tax (VAT) rate in Germany on sales of artworks increased from 7 per cent to 19 per cent. This topic reappeared at the top of the agenda during the covid-19 pandemic as the rate of VAT was temporarily reduced.

1 Katharina Garbers-von Boehm is a partner at Büsing Müffelmann & Theye.

2 Art Basel and UBS report, *The Art Market 2020*, p. 36.

3 Art Basel and UBS report, *The Art Market 2020*, p. 276.

4 Gesetz zur Umsetzung der Änderungsrichtlinie der 4. EU-Geldwäscherichtlinie.

Mention must also be made, however, of some very positive policy developments, such as the state loans granted to art galleries during the covid-19 crisis[5] and the increase in the federal budget for art purchases.[6]

## III ART DISPUTES

### i Title in art

#### *Passing of title*

In general, according to German law, the purchase of any goods has two aspects.

*a* First, the parties have to conclude a valid contract (oral or written) containing all the essential components of the transaction, such as which object is being bought for what price or which object is to pass to another owner by way of a gift.

*b* Second, the passing of property requires that the parties agree that (1) the title should pass, and (2) the item should be handed over to the buyer. Instead of physically handing over the object to the buyer, it is sufficient that the parties agree on the passing of title if the object is already in the possession of the buyer. There are, however, also alternatives to the physical handing over of the object: if the seller is in possession of the work, it is sufficient that the seller and the buyer agree to a contract that has the effect that the buyer acquires indirect possession. This could be, for example, a loan either between the buyer and the seller or between the buyer and a third party. In addition, if a third party, such as a museum, is in possession of the object, the physical transfer of the object can be replaced by passing on the claims against the third-party possessor (e.g., a museum) to the new owner.

#### *Good-faith acquisition*

The issue of whether title is acquired does not necessarily depend on whether the person in possession of the object, and who wants to transfer it to another person, is actually the owner of the object – unless the recipient of the object is not acting in good faith. The recipient of the object is not acting in good faith if either (1) he or she knows that the person from whom he or she is receiving the object is not the owner of the object, or (2) the circumstances of the ownership of the object are unknown to the recipient because of gross negligence on his or her part. There is no general obligation in civil law to investigate the title of the seller, but under unusual circumstances (e.g., deals at flea markets, cash deals or other suspicious circumstances) due diligence becomes necessary. In addition to the rather lax due diligence obligations found in general civil law, new due diligence requirements were recently introduced in the Cultural Property Protection Act, which prohibits putting stolen items on the market.[7]

Nevertheless, as a principle, acquisition in good faith cannot take place if the item was stolen, lost or otherwise left the owner's possession against his or her will.[8] An exception to

5 https://news.artnet.com/market/german-commercial-galleries-bailout-1911212.

6 https://news.artnet.com/market/german-neustart-acquisitions-1899176.

7 § 40 ff German Cultural Property Protection Act (KGSG).

8 § 935 Abs. 1 German Civil Code (BGB).

this rule (i.e., whereby acquisition in good faith is possible even for stolen goods) is made for money (coins, notes, etc.) and for items that are sold at public auction[9] – an extremely important, and often criticised, exception for the art market.

Furthermore, German civil law recognises the legal principle of usucapion. According to this principle, it is possible to become the owner of any item (even a stolen item) after receiving and directly possessing it for 10 years in good faith. The institution of usucapion often plays an obstructive role in restitution cases, when looted or stolen art has been in the hands of the current possessor for a long time.

In addition to usucapion, there can generally be a transfer of property if an item is sold at public auction, even if it was stolen.[10]

***Burden of proof***

There are several provisions in the law regarding the burden of proof that make it difficult for a former owner who was dispossessed to reclaim an artwork from the current holder.

According to the general principles of German civil law, the burden of proof lies with the person who is making a claim. As a consequence, the person who argues that the current holder of an object is not the owner, but that he or she instead is the owner, has to prove that: (1) he or she acquired ownership; (2) he or she did not lose the ownership; and (3) the current holder is not the owner but, rather, acquired the object in bad faith.[11]

Moreover, German civil law provides for a presumption that the possessor of an object is actually the owner of the object. Thus, as far as stolen objects are concerned, the burden of proof lies in principle with the previous owner, not with the current holder.[12]

Finally, as far as usucapion is concerned, it generally suffices if the current holder proves that he or she has had the item concerned in his or her possession for 10 years or more. It is up to the previous owner to prove that the current holder acquired the object in bad faith or that bad faith occurred during the 10-year period.[13]

A recent case that went up to the German supreme court, the Federal Court of Justice, concerning a Purrmann painting gave occasion for the Court to issue some general guidelines regarding the burden of proof of the current holder when the current holder is defending a restitution claim by arguing that he or she acquired a work of art by possessing it in good faith for 10 years or more: the Supreme Court emphasised that, despite the rather relaxed rules on burden of proof mentioned above, the current holder at least has to explain how he or she acquired the work. If this explanation proves to be wrong, he or she cannot claim that he or she acquired ownership through usucapion.[14]

9 § 935 Abs. 2 BGB.

10 § 935 Abs. 2 BGB.

11 Federal Court of Justice, the German supreme court in criminal and private law matters (BGH), NJW 82-38; BGH NJW 91,1415, Palandt-Herler, 78. Aufl. 2019, § 932 Rn. 15.

12 § 1006 BGB.

13 § 937 BGB.

14 BGH, judgment dated 19 July 2019, Az. V ZR 255/17.

### ii Nazi-looted art and cultural property

***Nazi-looted art***

In Germany, cases regarding Nazi-looted art are rarely litigated because there has usually either been good-faith acquisition or, if this is not the case, all limitation periods have expired. Regarding Nazi-looted art, there is no specific exception to the maximum limitation period of 30 years for ownership claims. This is much criticised as there is a high risk that a restitution case litigated in Germany will not be successful, mainly because of limitation periods and good-faith acquisition.

However, even today it is not at all impossible to successfully reclaim looted art, especially if the current holder is a public museum.

This is because after the Washington Conference, a 'common declaration of the federal government and the states to find and restitute Nazi-looted art' was signed and ever since it has served as 'soft law', according to which German museums have to respect the Washington Principles[15] by way of 'self-obligation'.[16]

Many restitutions from public museums to heirs of Holocaust victims take place on this basis every year.

The following are selected examples of restitutions of Nazi-looted art that took place in 2019 and 2020.

*a* In April 2019, the Prussian Cultural Heritage Foundation restituted a drawing by Jakob Philipp Hackert to the heirs of businessman Friedrich Emil Guttsmann, who was forced to sell his valuables in 1939 because of the financial hardships caused by Nazi persecution.[17]

*b* In May 2019, the Prussian Cultural Heritage Foundation returned five works (three paintings and two bronzes) to the heirs of the art dealer Heinrich Ueberall, who had to give up his business between 1936 and 1938 and was murdered in Sachsenhausen concentration camp in September 1939.[18]

*c* In August 2019, the Bavarian state museums returned a total of nine artworks (five paintings, one wooden panel, three engravings) to the heirs of Julius and Semaya Franziska Davidsohn, two art collectors who were dispossessed by the Gestapo in November 1938 and eventually murdered in Theresienstadt concentration camp in August 1942 and April 1943.[19]

15 www.lostart.de/Webs/EN/Datenbank/Grundlagen/WashingtonerPrinzipien.html.

16 Erklärung der Bundesregierung, der Länder und der kommunalen Spitzenverbände zur Auffindung und zur Rückgabe NS-verfolgungsbedingt entzogenen Kulturgutes, insbesondere aus jüdischem Besitz (Gemeinsame Erklärung) www.kulturgutverluste.de/Content/08_Downloads/DE/Grundlagen/Gemeinsame-Erklaerung/Gemeinsame-Erklaerung.pdf?__blob=publicationFile&v=15.

17 For details see: www.preussischer-kulturbesitz.de/fileadmin/user_upload_SPK/documents/presse/pressemitteilungen/2019/190430_Restitution-Guttsman-ENG.pdf.

18 For details see: www.smb.museum/en/whats-new/detail/five-works-from-the-gemaeldegelerie-and-the-alte-nationalgalerie-restituted/.

19 For details see: https://news.artnet.com/art-world/restitution-munich-museums-1616695.

*d* In September 2019, the Prussian Cultural Heritage Foundation returned two late medieval panels to the heirs of Harry Fuld Senior, a Jewish businessman and art collector whose family was dispossessed and whose company was 'Aryanised' during the Nazi era.[20]

*e* In November 2019, the Leopold Hoesch Museum in the city of Düren restituted a painting by Heinrich Campendonk to the heirs of the Jewish shoe manufacturer Alfred Hess, whose wife, Thekla Hess, was ordered by the Gestapo to return a part of his art collection to Germany after she managed to move a large part of the collection to Switzerland following his death in 1931. Some of the returned works were then stolen from the Cologne Art Association's storage, among them most probably the Campendonk painting, which resurfaced in a gallery in Düsseldorf in 1950.[21]

*f* In January 2020, the Prussian Cultural Heritage Foundation returned a painting by Hans Baldung Grien to the heirs of the painter Hans Purrmann, who was persecuted by the Nazi regime as a 'degenerate' artist and was therefore forced to sell the painting because of his difficult financial situation in 1937.[22]

If a matter regarding Nazi-looted art cannot be settled between the parties (e.g., between a museum and claiming heirs), there is in place a possibility for alternative dispute resolution:

Following an agreement between the federal government and the German federal states, the Advisory Commission came into being in 2003 and since then has continued its work in a number of cases brought before it. On the basis of the Washington Principles and the 1999 common declaration on the restitution of Nazi-looted art[23] mentioned above, the Advisory Commission issues advisory recommendations in restitution cases. Cases that involve works of art looted or otherwise taken from their owners between 30 January 1933 and 8 May 1945 under the terror regime of Nazi Germany can be brought before the Commission, which consists of 10 very senior, experienced and respected experts with backgrounds in law and the arts.

The recommendations are not legally binding but are usually followed by the parties involved; only 18 recommendations have been issued so far.

Both sides (mostly heirs of victims of Nazi Germany on one side and public art institutions such as museums and collections on the other) have to agree to mediation by the Commission and need to express their commitment to accepting the Commission's recommendation. After handing in an application (which needs to fulfil certain requirements, such as sufficient documentation of the dispossession), the Commission asks for written statements from the parties involved and first tries to reach an amicable solution. If this fails, the Commission calls for a hearing during which the parties can again present their cases. The Commission then issues a recommendation on the basis of the Washington Principles.

20 For details see: https://news.artnet.com/art-world/artworks-confiscated-nazis-restituted-jewish-art-collector-1640692; www.preussischer-kulturbesitz.de/news-detail/article/2019/08/30/two-medieval-predella-panels-restituted.html.

21 For details see: www.theartnewspaper.com/news/german-museum-acquires-heinrich-campendonk-painting-after-restitution-to-jewish-collector-s-heir.

22 For details see: www.theartnewspaper.com/news/berlin-restitutes-painting-to-heirs-of-degenerate-artist-for-the-first-time; www.smb.museum/en/whats-new/detail/?tx_smb_pi1%5BnewUid%5D=930&cHash=4fe533e0f9dd0e9d95babdeb644cb2f5.

23 See footnote 15.

The recommendation can range from denying the application altogether to full restitution to the applicant, with various measures in between (payment of compensation, public display of the artwork's provenance, etc.).

As an example of how this works, the Commission this year recommended that the Bavarian State Painting Collection restitute a painting by Jacob Ochtervelt[24] but also stated that the State Painting Collection was to be paid half of the purchase price if the painting were sold by the heirs in the 10 years following restitution. Although the heirs had no legal claim to repossess the painting, the Commission recommended restitution, taking into account all the facts of the specific case along with moral and ethical considerations. However, the requirement to keep the painting for 10 years is an unusual restriction and this case was the first time such a restriction has been imposed on claimants.

Because there are no special rules or explicit provisions regarding Nazi-looted art in relation to German limitation periods – a situation that is widely criticised – cases of Nazi-looted art are sometimes litigated abroad, even though they have a link to Germany or even concern cultural goods located in Germany. One example of this is the case of the Guelph Treasure, in which the Advisory Commission recommended that the treasure should not be restituted to the claimants; the claimants did not want to accept this and are now litigating the case in the United States.[25]

### *Cultural property protection law*

In 2016, German cultural protection law underwent a reform with the entry into force that year of the new Cultural Property Protection Act, following which German cultural property law has become more relevant and at the same time more bureaucratic.

The reform aimed at bringing together the two key aspects of protecting cultural property, which were previously regulated in two different acts: first, the protection of important national cultural property against removal from Germany[26] and, second, the return of cultural property illegally removed.[27] The new Cultural Property Protection Act therefore introduced a number of measures to govern the import, export and placing on the market of cultural property, as well as the return of unlawfully imported cultural property.

#### *Export licensing*

A key change was the introduction of the obligation to obtain an export licence for exporting works of art that exceed a certain age and a certain value, even within the EU's internal market (depending on the type of cultural property).

In the table below are the applicable age and value thresholds. An export licence is mandatory if these thresholds are met.

24 1 July 2020, Heirs of A.B. v. Bayerische Staatsgemäldesammlung (Bavarian State Painting Collection).

25 In July 2020, the US Supreme Court agreed to hear an appeal by Germany and the Prussian Cultural Heritage Foundation. The Court will now (mainly) rule if cases concerning Nazi looted art fall within the field of application of the expropriation exception to the Foreign Sovereign Immunities Act, which, inter alia, states that foreign sovereign states (and its agencies or instrumentalities) shall not be immune from the jurisdiction of courts in the United States in any case in which property was taken away in violation of international law.

26 See § 1 Nos. 1–3 KGSG.

27 See § 1 Nos. 4–6 KGSG.

A licence will be granted if the item concerned is not included on the list of 'valuable national cultural property' or found to be of 'national importance'. In the latter case, the item will be put on the list as a valuable national cultural property[28] by an administrative act. Listed items can no longer be exported, unless their export is permitted (which is unlikely).

The process of listing can be started regardless of the age or value of the cultural goods.

| Categories | Export from Germany outside the EU | | Export from Germany within the EU | |
|---|---|---|---|---|
| | Age (years) | Value (€) | Age (years) | Value (€) |
| 1 Archaeological objects from excavations and archaeological finds on land or under water, from archaeological sites or archaeological collections | 100 | 0 | 100 | 0 |
| 2 Elements forming an integral part of artistic, historical or religious monuments that have been broken up | 100 | 0 | 100 | 0 |
| 3 Pictures and paintings that do not belong to their creators, other than those included in categories 4 or 5 | 50 | 150,000 | 75 | 300,000 |
| 4 Watercolours, gouaches and pastels that do not belong to their originators | 50 | 30,000 | 75 | 100,000 |
| 5 Mosaics (other than those included in categories 1 or 2) and drawings that do not belong to their originators | 50 | 15,000 | 75 | 50,000 |
| 6 Original engravings, prints, silkscreen prints and lithographs with their respective plates and original posters that do not belong to their originators | 50 | 15,000 | 75 | 50,000 |
| 7 Original sculptures or statuary and copies produced by the same process as the original that do not belong to their originators (other than those in category 1) | 50 | 50,000 | 75 | 100,000 |
| 8 Photographs, films and negatives thereof that do not belong to their originators | 50 | 15,000 | 75 | 50,000 |
| 9 Manuscripts that do not belong to their originators, including maps and musical scores or incunabula | 50 | 0 | 75 | 50,000 |
| 10 Books | 100 | 50,000 | 100 | 100,000 |
| 11 Printed maps | 200 | 15,000 | 200 | 30,000 |
| 12 Archives | 50 | 0 | 50 | 50,000 |
| 13(a) Collections and specimens from zoological, botanical, mineralogical or anatomical collections | No age threshold | 50,000 | No age threshold | 100,000 |
| 13(b) Collections of historical, palaeontological, ethnographic or numismatic interest | | | | |
| 14 Means of transport | 75 | 50,000 | 150 | 100,000 |
| 15(a) Any other antique items not included in categories 1–4 | 50–100 | 50,000 | 100 | 100,000 |
| 15(b) Any other antique items not included in categories 1–14 | 100 | 50,000 | 100 | 100,000 |

28 The list is publicly accessible at www.kulturgutschutz-deutschland.de.

*Import restrictions*

An item can only be legally imported into Germany if it has been legally exported from its country of origin.[29] This is the case if all applicable legislation in the country of origin and all applicable international law has been respected. Sanctions in cases of non-compliance are severe (up to five years' imprisonment, fines and confiscation of the item).[30]

In addition, the law provides for public law repatriation claims in cases in which cultural property has been unlawfully removed from a sovereign state.[31]

*Due diligence*

As mentioned above, the new Law provides for due diligence obligations when placing artworks on the market, which, as a result, make provenance research more important.[32]

Whoever puts cultural goods on the market should make sure that the goods are not stolen, illegally excavated or illegally imported. However, as far as non-professionals are concerned, further inquiry is only necessary if there are any suspicious circumstances.

Whoever puts cultural property into circulation in the exercise of his or her commercial activity is generally obliged to conduct additional due diligence: he or she has to establish the name and address of the seller, the consignor, the person acquiring the property or the client; to prepare a description and an illustration suitable for establishing the identity of the cultural property; to check the provenance of the cultural property; to examine documents proving lawful import and export; to examine prohibitions and restrictions on import, export and trade; to check whether the cultural property is registered in publicly accessible directories and databases; and to obtain a written or electronically transmitted declaration from the consignor or vendor that the latter is entitled to dispose of the cultural property.

According to the wording of the Law, it is forbidden to place any items on the market that were stolen, illegally excavated or illegally imported. Sales of such items are invalid.[33] Thus, someone who places a work on the market must make sure that the work was not stolen, illegally excavated or illegally imported (i.e., they must inquire into the work's provenance) however, only to the extent that is economically reasonable.[34] Works that are suspected of having been looted during the Nazi era (e.g., because they can be found in the database on the website www.lostart.de) can only be placed on the market once it is possible to eliminate this suspicion through provenance research or if a just and fair solution has been reached.

### iii Limitation periods

There is no specific limitation period for art claims in German law – they fall under the general limitation periods governing all civil law claims.

The following general limitation periods are important in the context of art cases:

Warranty claims regarding sales of goods are time-barred 30, five or two years following the transfer of the goods,[35] and almost all cases concerning the sale of art will fall under the two-year clause.

29 § 28 KGSG.
30 §§ 83 ff KGSG.
31 § 49 ff KGSG.
32 §§ 40 ff KGSG.
33 § 40 KGSG.
34 § 42 KGSG.
35 § 438 Abs. 1 Nos.1–3 BGB.

A declaration of will that was based on deceit can be contested for up to one year after the deceived person discovers the deception and up to, at the latest, 10 years after the declaration of will was given.[36]

A claim of the owner of a work against the current holder of the work, who did not acquire any title (i.e., a claim against the possessor of a stolen item) is time-barred after 30 years after the loss of the item (i.e., the theft).[37] However, if the possessor of the stolen item both acquired it and retained it in good faith for a period of 10 years, usucapion takes place after that 10 years and the original owner can no longer reclaim the stolen item.

### iv Alternative dispute resolution

Alternative dispute resolution in the field of restitution has a certain tradition in Germany because of the existence of the Advisory Commission (see Section III.ii).

In recent years, alternative dispute resolution has also been discussed and put in place in areas of art law other than restitution. There are several arbitration bodies worldwide that deal with art-related cases from different angles, including WIPO[38] (as far as intellectual property and copyright disputes are concerned) and the recently inaugurated international arbitration body specialising in art matters, the Court of Arbitration for Art, which is based in Rotterdam.[39]

In addition, certain national arbitration organisations such as the German Arbitration Institute have expressed an interest in alternative dispute resolution for art-related cases.[40]

## IV FAKES, FORGERIES AND AUTHENTICATION

Even prior to the spectacular *Beltracchi* case, which had its epicentre in Germany but affected dealers and collectors worldwide, the fear of fakes, forgeries and inauthentic art was, and remains, an issue in the art market. Forgeries raise complex legal questions, not only regarding criminal law.

According to the chapter in the German Civil Code dealing with the sale of goods, a thing is free from material defects if, upon the passing of the risk, the object has the agreed quality.[41] Therefore, in the context of an authenticity issue, it becomes key to establish what exactly the parties have agreed upon regarding the authenticity of a work of art. Such an agreement does not necessarily need to be explicit, it can also be implied (e.g., by referring to expert opinion, a catalogue raisonné, an artist's signature or a certificate of authenticity during the sales negotiations or in a catalogue of an auction house). German courts, however, tend to focus on the exact details of the individual case and are sometimes hesitant to assume a binding agreement regarding the authenticity of an item. According to German law on sales of goods, if the quality (or, in this case, authenticity) has not been agreed upon, the object (or, in this case, the artwork) is considered to be free of material defects if it is suitable for its customary use and if its quality is usual in things of the same kind and the buyer may expect

36 § 123 Abs. 1 BGB.

37 § 197 I Nr. 2, 200 BGB.

38 World Intellectual Property Organization.

39 www.cafa.world/cafa/about_us/.

40 In 2018, the institute's international autumn conference was exclusively dealing with ADR in art-related matters.

41 § 434 I S. 1 BGB.

this quality in view of the type of the thing.[42] To determine the quality that the buyer can expect, public statements made by the seller – again, references to expert opinion, a catalogue raisonné, etc. – can play an important role when assessing if a work of art is defective in the legal sense.[43] If the item is defective, the buyer has an array of rights, most importantly the right to revocation of the agreement[44] or to demand damages or reimbursement of futile expenditure.[45]

In addition to these specific remedies regarding a purchased item that is defective, the buyer can, according to the general rules of civil law, retroactively cancel his or her declaration of will under certain circumstances. Most relevant in the case of forgeries is the retroactive cancellation in cases of deception,[46] a right that can be exercised for up to one year upon becoming aware of the deception and, at the latest, up to 10 years after having given the declaration of will (i.e., conclusion of the contract). The consequence of such a cancellation is the reversal of the transaction according to the civil law rules governing unjustified enrichment.[47]

## V ART TRANSACTIONS

### i Private sales and auctions

There are no specific rules for private sales. Depending on the specific terms, the transactions for such sales can be legally structured in different ways, such as a simple sales contract or, if an intermediary is involved, as an agency or a commission, following the rules laid down in the Commercial Code.

Auctions are regulated by public law regulations; to conduct auctions, an auctioneer needs a permit.[48] Auctioneers' ways of doing business are regulated in specific public law directives.[49]

From a legal perspective, one of the main differences between private sales and auctions is the fact that an auctioneer can transfer title to a good-faith purchaser when the item is sold at a public auction, even if the item was stolen.[50] In a private sale, however, the buyer has more options for negotiating contractual guarantees.

### ii Art loans

For works on loan in museums in Germany, there is the possibility of applying for immunity from seizure.

To 'immunise' artworks that are temporarily on loan for a public exhibition or other forms of public presentation (e.g., research purposes) against the possibility of being seized, the owner can apply for a legally binding commitment to return cultural property, which is

42 § 434 I S. 2 Nr. 2 BGB.
43 § 434 I S. 3 BGB.
44 § 437 Nr. 2 BGB.
45 § 437 Nr. 3 BGB.
46 § 123 BGB.
47 § 812 ff BGB.
48 § 34b Absatz 1 der Gewerbeordnung.
49 Versteigererverordnung vom 24 April 2003 (BGBl. I S. 547), die zuletzt durch Artikel 101 des Gesetzes vom 29 March 2017 (BGBl. I S. 626).
50 § 935 Abs. 2 BGB.

issued by the highest federal authority (usually the Ministry of Culture of the federal state in which the work will be shown) in consultation with the Federal Government Commissioner for Culture and Media.[51] The application for such a legally binding commitment needs to be submitted in a timely fashion before the cultural property is imported; the duration of immunity from seizure shall not exceed two years but can be extended to up to four years in justified exceptional cases.

The effects of such immunity from seizure are many and they do grant far-reaching protection.

*a* No conflicting third-party rights to the cultural property may be asserted against the lender's right to the return of the cultural property, which guarantees far-reaching protection against seizures during its stay in Germany.

*b* Legal action for recovery, arrest, attachment or seizure as well as official acts of enforcement or seizure are not permitted before the cultural property is returned to the lender.

*c* Moreover, the legally binding commitment prevents the initiation of the process for entry in the register of cultural property of national significance.

*d* No export licence is needed for the return of the property.

It is important to note that the administrative decision providing immunity from seizure may not be cancelled, withdrawn or revoked after being issued and is immediately enforceable for public authorities while the cultural property is located in Germany.

Public museums in Germany often arrange for a public law guarantee of reimbursement by the state in the event of loss or damage as an alternative to taking out insurance with an insurance company, if this is acceptable to the borrower.

### iii Cross-border transactions

As far as international conventions and treaties are concerned, Germany is a member of the 1970 UNESCO convention. Germany did not sign the UNIDROIT convention.

See Section III.ii regarding cultural property protection for a discussion of import and export restrictions.

As regards tax considerations regarding art acquired internationally, the following generally applies.

The current German basic VAT rate applicable to sales of artworks is 19 per cent (however, because of the pandemic, this was lowered to 16 per cent from 1 July 2020 until the end of the year), unless an artwork is bought directly from the artist or the artist's heirs, in which case a VAT rate of 7 per cent applies (currently lowered to 5 per cent).[52]

If the seller is an entrepreneur whose turnover exceeds a certain threshold, any sale of goods that takes place in Germany is subject to German VAT. The sale of goods is regarded as taking place in Germany if the goods are located and sold in Germany.

For non-EU resident buyers, a VAT exemption applies in certain situations (assessed on a case-by-case basis) if the goods are bought in Germany and taken to the home country of the non-EU resident buyer or if the goods are delivered there directly.[53]

51 § 73 ff KGSG.

52 § 12 Abs. 2 Nr. 13 German VAT Tax Code (UStG).

53 § 4 Nr. 1(a) UStG in connection with § 6 UStG.

Deliveries to entrepreneurs in another EU country may, under certain conditions (assessed on a case-by-case basis), elect for an exemption, so that the sale is exempt from German VAT and the VAT of the other EU state applies instead.[54]

Import from a non-EU state might give rise to import VAT as well as customs duties.

Regarding customs duties, there is the possibility of temporarily importing artworks for less than 24 months without any customs duties being charged if they are being imported for public exhibition and sale.[55]

### iv Art finance

Certain banks in Germany offer loans that have artworks as collateral. The legal structure used for the collateral is a pledge in most cases, which means that the artworks have to be stored with the bank. As there is no register of security interests in Germany and because of the possibilities of good-faith acquisition mentioned above, most banks refrain from using other legal structures that would allow the artwork to remain with the beneficiary of the loan. Some banks make exceptions in specific circumstances, however.

Similarly, some companies and dealers offer loans to their clients. If this is done on a regular basis, a banking licence might be required under certain circumstances.

The art trade as well as art storage warehouses are subject to the money laundering regulations of the updated German Anti-money Laundering Code,[56] which transposes the new rules of the EU Fifth Anti-Money Laundering Directive into national law. In practice, this means a certain administrative burden for the art trade, such as the obligation for a photocopy to be made of the personal identification card or passport[57] of any client involved in a transaction or series of connected transactions involving a value of €10,000 or more; the photocopy must be kept for five years[58] after the end of the contractual relationship. If the buyer is a legal entity, not a natural person, it is necessary to inquire as to who is the ultimate beneficiary (known as the know-your-client check), to document this inquiry and keep the documentation for five years. In cases of doubt or if the ultimate beneficiary is not indicated in the transparency register, the art dealer must make enquiries with the national Financial Intelligence Unit.[59]

## VI ARTIST RIGHTS

### i Moral rights

According to German copyright law, the moral rights of the author consist of the rights:

*a* to publish a work for the first time;[60]

*b* to be named (or not to be named) as the author (attribution right);[61] and

*c* to ensure that the work is not distorted.[62]

54 § 4 Nr. 1b UStG in connection with 6a UStG.

55 With an ATA carnet or without the ATA proceedings; in the latter case, generally a security has to be provided.

56 § 2 Abs. 1 Nr. 13 of the German Anti-money Laundering Code (GWG).

57 § 12 GWG.

58 § 8 GWG.

59 Financial Intelligence Unit; see § 27 ff GWG.

60 § 12 German Copyright Act (UrhG).

61 § 13 UrhG.

62 § 14 UrhG.

The moral right to ensure that a work is not distorted often plays a role in the context of works of architecture, if a building is later modified or changed, as well as with public artworks, especially if they are installed on buildings.

Moral rights expire 70 years after the author's death.

The issue as to whether removal and destruction of a work of art constitutes a distortion was highly disputed until 2019, with most scholars and case law being of the opinion that the owner of an artwork is free to destroy it, with destruction not being a form of distortion. This case law was changed in 2019: the Federal Court of Justice pointed out that the provision establishing the author's right of defence against distortion of the work[63] protects the intellectual and personal interest of the artist regarding the sheer existence of the work and the Court came to the conclusion that the protective scope of this rule includes the right of the author to defend himself or herself against the destruction of his or her work, possibly even if the rightful owner wishes to destroy the work of art, albeit the owner's own property. So the Court made clear that the destruction of a work of art falls under the scope of Section 14 of the German Copyright Act, destruction being the most severe form of distortion. Therefore, it is now necessary to assess carefully in each single case whether the artist's moral right outweighs the owner's right to freely deal with his or her property.

### ii Resale rights

In Germany, the artist or the artist's heirs are entitled to receive resale royalties for 70 years following the artist's death under the following conditions.

If the original of an artwork or of a photographic work is resold and if an art dealer or an auctioneer is involved as purchaser, vendor or intermediary, the vendor has to pay the author a share of the net selling price.[64] If the vendor is a person acting in his or her private capacity, the art dealer or the auctioneer involved as purchaser or intermediary shall be jointly and severally liable in addition to the vendor; however, in the relationship between the vendor and art dealer or auctioneer, it is the vendor alone who shall be liable for payment.

This rule does not apply for sales of less than €400 or to architectural works and works of applied art.

The extent of the selling price share gradually decreases; it starts at 4 per cent for a selling price of up to €50,000 and goes down to 0.25 per cent where the selling price exceeds €500,000. The share cannot be more than €2,500, however, regardless of how high the selling price is.

To be able to assert a claim for resale rights, the law provides for a right to request the provision of information from an art dealer or auctioneer (e.g., the amount of the selling price) regarding past sales of the artist's work (during the past three years); this includes the name and address of the vendor, if necessary for the assertion of the claim. An art dealer or auctioneer may refuse to provide the name and address of a vendor if the dealer himself or herself pays the share to the author. Such an information request may only be made by a collecting society, which can even ask for access to the account books or to other documents if there is reasonable doubt as to the accuracy or completeness of the information provided.

63 § 14 UrhG.

64 § 26 UrhG.

### iii Economic rights

German copyright law provides as a principle that the author of a work should be appropriately remunerated for its exploitation.

German copyright law[65] provides for the following economic rights:

*a* the right to make a work available to the public;
*b* the right of distribution;
*c* the right of reproduction; and
*d* the right of broadcasting.

Generally speaking, each use of an artwork or its reproduction, other than exhibiting the artwork, requires the prior consent of the artist.

According to a recent case currently still pending at the European Court of Justice, this might also be true for 'framing'. According to Advocate General Szpunar, the embedding of works from other websites in a web page by means of automatic links (inline linking) requires the authorisation of the holder of the rights in those works.[66]

Reproduction rights as well as the broadcasting rights of artists are often administered by the German copyright collecting society, VG Bild Kunst, or its international sister copyright collecting societies.

According to German jurisprudence, total buy-out contracts are regarded very critically and in most cases viewed as being invalid.

## VII TRUSTS, FOUNDATIONS AND ESTATES

There are different options when it comes to keeping a collection or an artist's legacy together.

The classical option is to set up a private foundation. However, the assets of the foundation must guarantee that the foundation can pursue its purpose in a self-sustaining way. Therefore, and particularly in times of very low or even negative interest rates, it takes a considerable financial effort to set up a foundation. In addition, the foundation must have a long-term objective. In all, it can be said that a foundation is not necessarily the most flexible structure.

Alternatively, it is also possible to set up a limited liability company or an association or other type of entity.

All such entities can, under certain conditions, apply for official non-profit status to be able to receive charitable gifts and obtain certain tax benefits. No gift tax or inheritance tax applies to gifts or bequests to non-profit organisations and non-profit museums.

To give or bequeath artworks can be beneficial as far as gift tax or inheritance tax (which are actually provided for in one and the same statute) is concerned: in general, the rate of gift tax or inheritance tax is currently levied at up to 30 per cent, or even 50 per cent in certain cases, depending on the asset and the degree of kinship of the parties. Transactions concerning art gifts or bequests of artworks can be exempted from the applicable tax to the

65 § 15 ff UrhG.

66 However, embedding by means of clickable links using framing technique does not require such authorisation, which is deemed to have been given by the right holder when the work was initially made available. The same applies even where that embedding circumvents technological protection measures against framing adopted or imposed by the rights holder; see press release regarding the opinion of the Advocate General: https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-09/cp200103en.pdf.

extent of 60 per cent, or even 100 per cent under certain conditions, if there is a public interest in safeguarding the artworks and if they are publicly accessible for the purpose of educating the general public for at least 10 years.[67]

There is no such legal entity as an 'estate' in German law. If an artist or a collector, for example, dies without having provided for any of the options mentioned above, the heirs simply step into the shoes of the artist.[68]

## VIII OUTLOOK AND CONCLUSIONS

Art law in Germany is a complex field, as very different kinds of general legal rules apply, stemming from civil law, commercial law, public law and criminal law, as well as certain special legal rules (e.g., those concerning cultural property) and finally external legally established rules, such as the Washington Principles. Art law in Germany is permanently evolving through case law and new legislation.

67 § 13 Abs. 1 Nr. 2(a) and (b) Inheritance Tax and Gift Tax Law.

68 § 1922 BGB.

**Appendix 1**

# ABOUT THE AUTHORS

**KATHARINA GARBERS-VON BOEHM**

*Büsing Müffelmann & Theye*

Dr Katharina Garbers-von Boehm is a lawyer focusing on art law, intellectual property law and technology-related matters.

In her art law practice, her clients include family offices, private individuals, artists, galleries, art dealers and advisers, banks, corporate collections, artists' heirs, collectors' heirs and authors (advisory work and litigious matters as well as mediation). She has been recognised by *Best Lawyers* for art law since 2017 and is ranked in Band 1 of the *Chambers HNW* guide to art and cultural property law advisers.

She is a co-author of *Praxishandbuch Recht der Kunst* (C H Beck Verlag, 2019), for which she wrote chapters on looted art, export restrictions and auctions, as well as a chapter on financial transactions relating to artworks. In addition, she is a co-author of what is still the only commentary on the German Cultural Property Protection Act (C H Beck Verlag, 2018), for which she wrote the chapters on the import of cultural goods and on listing proceedings. Katharina has also published extensively in relevant journals.

She is a frequent speaker and panellist at international conferences (e.g., at the IBA's Art, Cultural Institutions and Heritage Law Committee, at UIA's art law committee, at the art law conference of the Venice Chamber of Arbitration and the annual conference of the German Arbitration Institute, as well as the art law conference of the Federal Bar Association).

For many years, her practice has included arbitration and mediation in different domestic and international matters in relation to intellectual property and art law. She was appointed to the original CAfA arbitration and mediation pools in January 2020.

She is a member of various legal and cultural national and international institutions, in some of which she has board functions. She was elected to the advisory board of a midsize industrial company in Germany in 2019.

Katharina's educational background includes: law studies in Heidelberg and Berlin followed by a doctorate on the digitisation of museum archives; an LLM in international studies in intellectual property (Exeter and Dresden); a master of laws (specialisation in business law) from Paris II Panthéon-Assas University; and completion of the diploma in art law offered by the Institute of Art and Law (United Kingdom).

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