

The Legal Guide for Museum Professionals



Edited by **JULIA COURTNEY**

FOR EDUCATIONAL PURPOSES ONLY

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Edited by Julia Courtney

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Preface

Julia Courtney

Since the first American museum debuted in 1786, in Philadelphia, when Charles Willson Peale was presented with a mastodon bone found in Kentucky and displayed it in his painting gallery,¹ museums have been an important source of public and private education and entertainment. Over the years museums have been charged with remarkable responsibility and multiple missions: to acquire, care for, and maintain collections; to preserve objects for future generations; to be a place of community, entertainment, and scholarship; and to withstand continuous reinvention that align with interests in popular culture. This is by no means a complete list. In fact, it merely scratches the surface of concerns the cultural institutions face.

Not only did Charles Willson Peale create the first museum in the eighteenth century, but he unknowingly formed what could be the first membership and marketing campaigns, as well as the first solicitations for museum donations. Peale's venture was a community museum, an annual ticket cost a dollar, and early members included everyone from presidents to congressmen to merchants and skilled laborers.²

Much of the funding came from ticket sales, Peale's exhibits had to be crowd-pleasers. His museum enjoyed a fifty-year legacy, and remained open even after Peale's death in 1827. At that juncture it fell under the management of Peale's sons, and disbanded in the 1840s. Once closed, the museum's collection was sold off, and buyers included the infamous showman, P. T. Barnum.³

Between 1841 and 1868, Barnum was the proprietor of the American Museum in New York City. The museum advertised that it contained more than 850,000 "interesting curiosities," and over 4,000 people visited daily and 20,000 visited on holidays.⁴ The entrance fee was twenty-five cents. Barnum later traveled his show and it eventually evolved into a pure enter-

tainment enterprise known as the Ringling Bros. and Barnum and Bailey Circus.⁵

By the middle of the nineteenth century, museums were springing up in cities large and small. Personal collections developed into cabinets of curiosity, reflecting the Victorian quest for knowledge and beauty. Over time, cabinets of curiosity inspired larger, public museums. The founding mission of these early institutions was to “educate and uplift the public and to improve the skills and taste of those who worked with their hands.”⁶ As American cities became principal centers of commerce, they formed large art museums as a way of demonstrating their economic and cultural power. As a result, museums began to shift focus from building and maintaining audiences to the care of their valuable and quickly expanding collections.⁷ The dichotomy of attending to both of these important missions endured into contemporary times.

Museum missions have vacillated along with numerous cultural trends since this early period. Museums have transformed, transmuted, and transcended all of American history including early research expeditions, World Wars, the Great Depression, art market fluctuations, governments that did and did not support the arts, the digital and information technology age, and in recent times, a serious economic downturn that cost many museums their endowment. Consequently, about twenty museums of different disciplines and sizes folded during 2010 according to Dewey Blanton, then spokesperson for the national professional museum organization, the American Association of Museums (now the American Alliance of Museums).⁸

In addition to financial and operational challenges, museums have braved legal and ethical obstacles with regard to collections care including the repatriation of cultural objects, the restitution of artwork looted by the Nazi regime, art and object theft, forgery, fraud, and other crimes—all of which have kept museums vigilant.

As these institutions search for ways to navigate challenges they face, the legal system comes to their aid, in an effort to resolve, in a reasonable and impartial manner, both the simple and complex issues of the past and present day. Although museum ethics and legalities are different, the two inform each other and provide a resource in best practices for resolving difficulties for museums.

The essays that follow represent a sampling of compelling, contemporary challenges that museums encounter, and propose strategies for resolution and guidance for museum professionals. The authors, to whom I am immensely indebted, include renowned attorneys in the field of museum and art law, as well as museum professionals and supporters. Their suggestions offer an approach to a variety of legal problems, possible next steps, and resources for further research. The recommendations should be used only as a guide on

how to best negotiate these challenges. Museum professionals may find the need to contract with legal experts who can assist them in more specific ways as each circumstance has its own implications.

The essays are divided into the following areas: Collections and Exhibits, Museum Government and Finance, Museum Operations, and Digital Technology and Social Media in Museums. Each section covers a myriad of subjects intended to inform museum professionals on the topics and their relation to the law. Hopefully, museums of all disciplines and sizes will benefit from their content. Although museums continue to transform, it is our hope that this publication will endure as a resource for many years to come.

NOTES

1. Liane Hansen, "Philadelphia Museum Shaped Early American Culture," National Public Radio website, July 13, 2008, www.npr.org/templates/story/story.php?storyId=92388477, accessed October 5, 2014.

2. Hansen, 2008.

3. Hansen, 2008.

4. The JBHE Foundation, "The Phineas T. Barnum Freak Show," *Journal of Blacks in Higher Education*, no. 23 (Spring, 1999): p. 44, www.jstor.org/stable/2999302, accessed December 10, 2014.

5. JBHE Foundation, 1999.

6. Harold Skramstad, "An Agenda for American Museum in the Twenty-First Century," *Daedalus: America's Museums*, vol. 128, no. 3. (Summer, 1999): p. 109–28.

7. Skramstad, 1999.

8. Reed Johnson, "The Fresno Metropolitan Museum of Art & Science Closes Its Doors," *Los Angeles Times*, January 12, 2010.

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Acknowledgments

The Legal Guide for Museum Professionals publication was inspired by a conference session hosted by the American Alliance of Museums entitled, “Can You Stump the Lawyer.” A panel of art and museum law attorneys made themselves available to field questions and guide conference participants with their particular challenge, either making suggestions on a course of action or advising participants to seek further legal counsel. When the panel members, listed below, invited me to facilitate the session, I enthusiastically accepted. I had the good fortune of coming to know these three attorneys—Mark Gold, Katherine E. Lewis, and Gilbert Whittenmore—through Harvard University’s Museum Studies Program. Each of them generously assisted in bringing the book to fruition. I am grateful to them for their ideas, support, and friendship throughout the project.

I am also indebted to the Springfield Museums Association, a consortium of museums located in Springfield, Massachusetts, where I have been privileged to serve as guardian of their exceptional collections as curator of art for the Michele and Donald D’Amour Museum of Fine Arts and the George Walter Vincent Smith Art Museum.

Many thanks to my family, friends, and colleagues for their encouragement and enthusiasm. Finally, this book is dedicated in memory of my father, David; my sister, Patricia; and my sweet little nephew, Brian, all of whom departed this world far too early. They continue to inspire me.

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Collections and Exhibits

INTRODUCTION: COLLECTIONS AND EXHIBITS

American museums and their collections are as varied as the collectors who have amassed them through the years and entrusted them to the watchful care of our cultural institutions. Museum collections represent and chronicle human history in the form of material culture, often separated into the art, science, and history disciplines. Some of the largest and oldest museum collections in the country include the Philadelphia Museum of Art, the Smithsonian Institution, the Metropolitan Museum of Art, and the Boston Wadsworth Atheneum Museum of Fine Arts.

As museums began to appear across the country, in 1881 Professor William Stanley Jevons, an early museum studies specialist, articulated the purpose of museums, and formulated a general mission statement, which outlined their purpose:

The special function of the museum is to preserve and utilize objects of nature and works of art and industry; to guard the written records of human thought and activity; to discuss facts and theories as a learned society; to educate the individual, while all meet together on common ground in the custodianship of learning and extending the boundaries of existing knowledge.¹

Jevon's words are just as true today as they were in 1881, and they continue to apply to contemporary museums, many of which have adopted missions based on these early insights. Museum conservators, collections managers, registrars, curators, and educators work to safeguard, preserve,

interpretate, and display collections objects in museums today. From a legal perspective, collections issues are intriguing and include topics such as abandoned property, art theft and forgery, authenticity disputes, Nazi-era looted art, provenance research, repatriation of Native American objects, and the management of historic firearms collections.

These topics represent a sampling of the legal concerns that museum professionals navigate in their work. The authors of the following essays offer extensive information and suggestions on how best to approach these subjects, and provide museum professionals with sound advice and information.

NOTE

1. G. Brown Goode, "The Relationships and Responsibilities of Museums," *Science*, vol. 2, no. 34 (August 23, 1895): p. 198.

Chapter One

Found in Collections

How to Use Museum Property Statutes to Resolve Abandoned Property Issues in Museums

Gilbert Whittemore, Ph.D., Esq.

Have you become inspired by the power of new technology to inventory and record details regarding your collection, only to be surprised—even shocked—at the number of objects that computer databases report as having inadequate provenance documentation? You are not alone. Collections databases now make inadequacies in collections records readily visible through software programs such as PastPerfect, TMS, EmbARK, Argus, and so forth, so that records that used to lay buried in dusty file-card drawers and folders are now readable from computer databases.

This situation is not unusual. Through the many years that large and small museums have been acquiring collections, professional standards of record keeping have changed dramatically. Museum personnel have become increasingly more professional and standards of documenting provenance have become more rigorous. As a result, computer technology now makes gaps in the collection records much more apparent.

One serious—but fortunately rare—problem is that someone may come forward claiming to be the owner of an underdocumented object. But more common is the challenge of deaccessioning an object, as clear provenance must be shown for an object to be deaccessioned and sold or transferred to another museum. Additional problems may arise if an underdocumented object in the museum collection is in need of conservation treatment: before making an investment in restoration or preservation, more information may be required about the history of the object.