Overview of Laws Concerning Immunity from Seizure of Works of Art on Loan

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I. Immunity – Introduction.

A. Definitions – often confused with indemnity (which is usually government
sponsored program of assurance against loss), immunity usually means a
prohibition against judicial process being used against a work of art loaned for
exhibition.

B. Recent Problems - there are a number of recent examples to showcase that the
problem is not confined to the often perceived litigious United States.

1. The 2005 seizure by Swiss police of trucks returning loaned works of art
from the Pushkin Museum in proceedings to satisfy a judgment obtained
by a foreign company against Russia in an unrelated contract dispute.\(^1\)

2. The 2004 litigation over the re-export of bark drawings lent by the British
Museum and the Royal Botanical Gardens at Kew to the Museum Victoria
in Australia despite the pre-issuance of an export certificate, while not an
immunity case \textit{per se} is yet another example of the litigation risk to loaned
objects in a foreign venue.\(^2\)

\(^1\) \url{http://cpprot.te.verweg.com/2005-November/002029.html}
II. Types of Immunity.

A. **Automatic immunity** – no action is required of the applicant and the object is protected by legislation during the term of the loan – examples are New York, Rhode Island, Texas, British Columbia and Belgium.

B. **Immunity after application** – the borrower or the lender as the particular law may provide, request immunity and after an administrative process, the immunity request can be granted with effect usually upon publication – examples are the United States, Austria, Germany, Alberta, Manitoba, Ontario and Quebec.

C. **Immunity after application, publication and a period of non-objection** – examples are France and Switzerland.

D. **Immunity from forfeiture** – The domestic law prohibits possession of a type of object, for example, one that was illegally exported from a foreign country or one that is protected cultural antiquity, but there is an exception for works on loan to an approved institution – examples are Australia and Ireland.

E. **Sovereign immunity** – In the event that the lender is a “sovereign” there may be immunity with respect to its activities as well as loaned works of art, but national laws vary as to the extent of such immunity.3

III. What is protected?

A. Generally, only the objects loaned are protected from judicial process, seizure, or attempts to interfere with their return.

B. In some instances, the borrower has rights either by implication or directly under the legislation. For example the statute in Alberta says:

   [N]o proceedings shall be taken in any court and no judgment, decree or order shall be enforced in Alberta for the purpose of, or having the effect of, depriving the Government of Alberta or the institution or any carrier engaged in transporting the cultural property into, within or out of Alberta of the custody or control of the cultural property….  

   This type of language which is similar to that found in the United States Federal statute on immunity was at least used in the United States to support the dismissal of a suit against a borrowing museum by a claimant to the loaned works for compensation, rather than seizure, for the exhibition of the allegedly stolen works. The case is Delocque-Fourcaud v. Los Angeles County Museum of Art, No. 03-5027 (C.D. Cal. filed July 15, 2003) (voluntary dismissal).

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C. The lender generally has NO judicial immunity under these statutes, so whether
the actual presence of the lender (for example for the opening) or the presence of
the works would expose the lender to jurisdiction in the courts of the country
where the exhibition is to be held is a matter of law separate and apart from the
immunity statute, e.g., the Malewicz case which is still pending here in the United

IV. Additional Guarantees.

A. Some countries will issue guarantees of return or immunity – Russia, the
Netherlands, the UK, are countries that have been reported as providing such
assurances.

B. In the absence of specific legislative authority, these assurances are of doubtful
legal significance, although commentators have indicated that they can be very
useful from a political standpoint.

V. Process.

A. For those countries where the immunity is not self-executing, the procedure to be
followed is extremely important.

B. In many cases, failure to follow the process means that immunity is not available:

1. For example, the Swiss law provides that the loan agreement must
stipulate that the cultural property will be returned to the contracting state
of origin following the conclusion of the exhibition.

2. In Germany, the confirmation of immunity must be agreed upon prior to
importation and must contain specific language, in German, which says
“Legally Binding Return Agreement.”

3. In France, publication of the proposed Decree of immunity must be
complete for the requisite period before the object is imported into France.

4. Many of the countries require a detailed listing of the objects, the
exhibition schedule and provenance history before an application will be
granted.

C. Because immunity often rests on following the applicable procedures, publication
requirements and movement restrictions, strict compliance with the process is
critical to obtaining and maintaining the immunity.

VI. New Developments.

A. A number of countries are reported to be considering immunity legislation.
1. The United Kingdom – legislation has been introduced, but at this point has not been passed.\(^4\)

2. Spain\(^5\) – legislation is reported to be under discussion, but nothing appears to have been passed.

3. Israel – legislation has been introduced to provide immunity for loans, including loans where holocaust claims might be made.

4. Romania\(^6\) – recently adopted a form of governmental warranty.

B. At the same time as countries are considering legislation, some writers have also expressed doubts as to the completeness of immunity grants.

1. For example some writers have theorized that any EU country’s grant of immunity could be trumped by the EU Convention on Human Rights or the EU Directive.\(^7\)

2. Other writers have suggested that any grant of immunity might be overcome by international agreements such as the UNIDROIT treaty.

VII. Conclusion.

In conclusion, the laws are evolving, the process is rigorous and must be followed or immunity may not issue and care must be taken to understand the extent of immunity protection – in other words who or what is protected and against what types of claims or actions.

VIII. Appendix.

The citations that follow have been gathered from a number of unofficial sources and reference to the actual statutes is critical before determining any particular course of action. In addition, other laws, rules and regulations of the particular country can impact both on the substantive and procedural rights and obligations of parties attempting to take advantage of or avoid an immunity statute.


Austria – Unable to obtain citation.


British Columbia – Statutes, Law and Equity Act, Art Exempt from Seizure, 55.

France – Loi no. 94-679 du 8 aout 1994 portant dieres dispositions d’ordre economique et financier – article 61.

Germany – Gesetz zum Schutz deutschen Kulturgutes gegen Abwanderung (Kultg Sch 6), 20.


Ontario – Foreign Cultural Objects Immunity From Seizure Act, S.O. 1990, Chapter F. 23, s. 1.

Quebec – Code of Civil Procedure, Book IV Execution of Judgments, Title II, Compulsory Execution, Chapter I Preliminary Provisions, Division III, Exemptions from Seizure, RSQ., chapter 25.


See Weller, Immunity for Artworks on Loan?, supra, which contains citations, texts and translations.