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On. le Francesco Rutelli
Ministero per i Beni e le Attività Culturali
Via del Collegio Romano, 27
00186 Roma
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Re: Negotiations with the Getty Trust

Your Honor:

As promised in our October 5 Agreement, enclosed is a memorandum which provides the Getty Trust's response to the information and arguments provided by the Ministry of Culture with respect to the Bronze Statue of a Victorious Youth. I hope that this memorandum helps clarify why we believe the Getty's ownership of the Bronze is not subject to challenge.

Best regards,



Ronald L. Olson

Enclosure

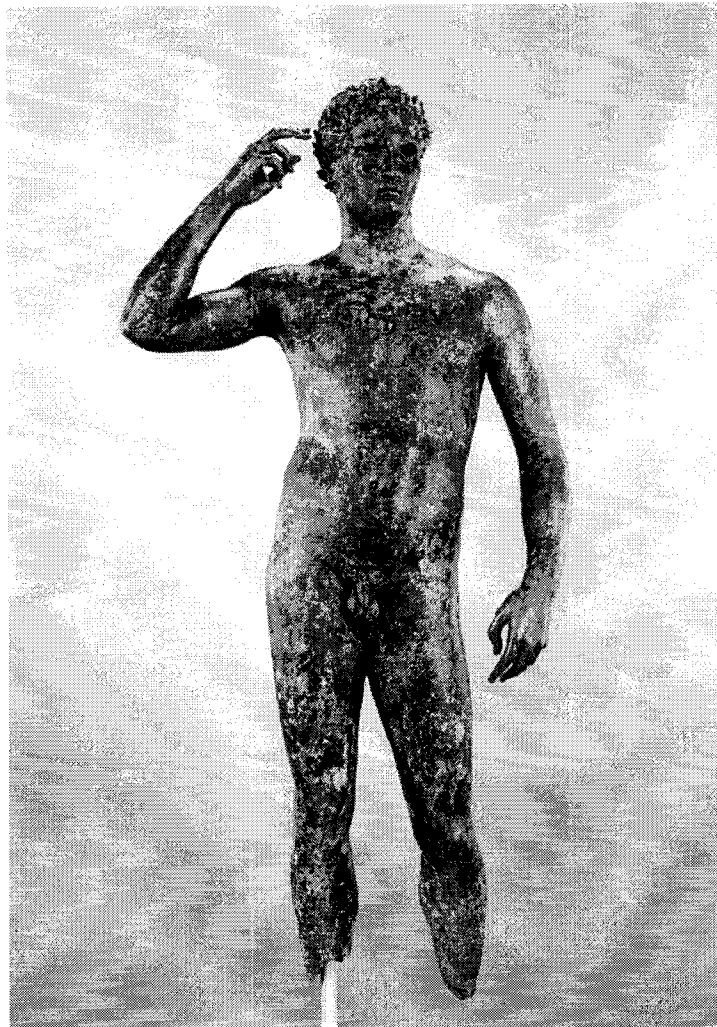
MEMORANDUM

TO: Delegation from the Italian Ministry of Culture

FROM: Ronald L. Olson
Luis Li

DATE: November 20, 2006

RE: Response of the J. Paul Getty Trust to the Italian Government's Claim to the
Statue of a Victorious Youth, 77.AB.30



I. Summary of the Getty Trust's Position on the Statue of a Victorious Youth

- The Italian government has acknowledged to the Getty that it has no valid legal claim, whether civil or criminal, to the Bronze Statue of a Victorious Youth. In addition, the ethical principles that typically buttress a foreign nation's request for restitution of an art object are absent here as well. Without a rational basis to support the transfer of this statue to the Italian State, the Getty Trust believes that to do so would conflict with its legal, professional and ethical duties to the people of California and the Museum's public at large.
- In 1964, the Bronze was pulled up in Italian fishermen's nets 30-40 miles off the coast of Italy, well outside of Italian territorial waters, which at that time extended only 6 nautical miles (6.9 miles) from shore. Over the years the fishermen who found the statue have offered to guide governmental archaeologists to the findspot. The Italian Ministry of Culture has never acted on this offer, despite the possibility that the lower legs and feet of the Bronze possibly could be recovered there. Had the government believed the statue was found in Italian territorial waters, it is unclear why it did not attempt to find the missing portion of the statue for scientific purposes, let alone to support its claim of ownership.
- In a 1966 criminal trial of the Italians who had purchased the statue which was alleged to be the property of the Italian State, the men were acquitted of the charges of purchasing and concealing stolen property for lack of evidence that the object was found in Italian waters. In 1968, the high court affirmed the trial court's decision. Because the object was not found in Italian territory, it was not deemed part of the Italian State's cultural property under Italy's Law No. 1089 regarding the Protection of Objects of Artistic and Historic Interest, dated June 1, 1939.
- The Italian Ministry of Culture never joined any of the Italian legal proceedings relating to the Bronze. Given that the Ministry is now pressing claims to the statue, it is unclear why it did not previously bring legal claims in Italy.
- The recent demand for the return of the Bronze after such a long passage of time is not justified. The Getty acquired the statue in 1977, only after the Italian courts had concluded there was no evidence that the object was found in Italian territorial water. The statue has been on display at the Getty Villa since 1978, for decades longer than it purportedly was on Italian soil, and is an anchor of the Museum's antiquities collection. The Italian government has been on notice for almost 30 years that the Getty has the Bronze. No new evidence has emerged which would justify a claim being raised now.
- The Italian government does not dispute that the Bronze is Greek in origin, not Italian. The statue was likely removed from its home in Greece in ancient times by the Romans and sank at sea when en route to an unknown destination in the Roman Empire.

- After being found at sea, the statue allegedly was brought ashore in Italy and remained there for a short time. The Italian government alleges that the Bronze should be transferred to the Italian State because it must have been exported from Italy without a proper license sometime before 1972. However, Italian, U.S., and international law do not (and did not at the time of the export) require the transfer of the statue to Italy solely on the basis of possible violations of Italian export regulations, particularly given that the Bronze is not part of the Italian cultural patrimony.
- The Getty strongly believes that the looting and pillaging of archaeological sites is harmful to the cultural heritage of the various nations and the world, and is committed to doing its part to stop such looting. However, the discovery of the Bronze did not result from the intentional pillaging of an archaeological site within national boundaries. Rather, it was found purely by chance at the bottom of the sea.

II. Introduction

In the January 2006 Dossier provided by the Italian Ministry of Cultural Heritage (the “Ministry”), the Ministry concedes that the Italian State has no viable legal claim, whether civil or criminal, to the Bronze Statue of a Victorious Youth (the “Bronze”). Nevertheless, in January 2006, the Ministry pressed the J. Paul Getty Trust (the “Getty”) to return the Bronze, and in July 2006, the Ministry sent a lengthy Dossier regarding the Bronze to the Getty to support its claim. We wish to acknowledge the substantial efforts General Ugo Zottin has made in assembling the vast amounts of information on the Bronze. However, after carefully reviewing all the information in the Dossier, as well as all other information available in the Getty files and elsewhere, we respectfully submit that the obstacles to the Italian claim to the Bronze are not merely technical legal defenses which the Getty could choose not to assert. Rather, the facts with respect to the Bronze do not amount to a valid legal claim for the transfer of the statue to the Italian State, and the ethical principles that typically buttress a foreign nation’s request for restitution of an art object are absent here as well.

First, there is no credible proof that the Bronze was found in Italian waters. The fishermen who were on board the *Ferruccio Ferri* trawler when the Bronze allegedly was pulled up in its nets have not stated that the statue was found in Italian territorial waters, and in fact have offered to guide Italian archaeologists to the findspot which they say is approximately 40 miles off the coast of Italy. Because the object was not found in Italian territorial waters, it is not deemed part of the Italian State’s cultural property under Italy’s Law No. 1089 regarding the Protection of Objects of Artistic and Historic Interest, dated June 1, 1939 (“the 1939 law”).

Second, while the Ministry alleges that the Bronze must have been illegally exported from Italy after the fishermen brought it ashore in Fano, under U.S. and international law at the time of the export an object was not subject to forfeiture based on violations of a foreign country’s export regulations, even if the object could be proven to have originated in the country seeking its return. Given that the Bronze did not even originate in Italy, but rather is a product of a Greek sculptor working in Greece, and was never part of Italy’s cultural heritage, the Bronze would not be subject to forfeiture, even under today’s more stringent laws.

Third, we believe that the ethical considerations at play fully justify the Getty’s retention of title to the Bronze. This object only came to be at the bottom of the Adriatic Sea because the Romans removed it from its home in Greece. The fact that it was Italian citizens who may have fortuitously found the statue (outside of Italian territorial waters) and kept the statue in Italy for a short time does not establish a true nexus between the statue and Italy’s cultural heritage.

We recognize that many citizens of Fano, and more broadly, of Italy, have an emotional attachment to the statue that has been fueled over the years by inaccurate press accounts about, among other things, the findspot of the statue. However, this emotional claim cannot override the strong legal and ethical bases for the Getty’s claim to ownership of the Bronze. Given the applicable law and the facts, the Trustees of the J. Paul Getty Trust could not transfer title to the Bronze and at the same time satisfy their legal duties to protect the assets of the Getty Trust for the benefit of the public of California and the world. The “Getty Bronze” – which has now resided in Los Angeles for a great deal longer than it ever did in Italy -- is a focal

point of the Getty Museum's collection and a source of pride for Californians. We respectfully must decline the Ministry's demand for this object.

III. Description of the Statue

The Statue of a Victorious Youth is a nearly life-size bronze statue cast in one piece, of a young athlete wearing a victory wreath. The Getty purchased the Bronze for just under \$4 million in 1977.

It is well-established that the Bronze is Greek. The statue was originally attributed to the master Greek sculptor Lysippos, the 4th century B.C. court sculptor of Alexander the Great. However, based on recent art historical, technical, and scientific evidence, scholars now believe the statue was sculpted not by Lysippos, but by a later Greek sculptor working in the second or third century B.C. See Carol A. Mattusch, *The Victorious Youth*, The J. Paul Getty Museum, p. 91 (1997); Jerry Podany and David Scott, "The Getty Youth Reconsidered; Initial Report on the Scientific and Technical Reexamination," *From the Parts to the Whole; Acta of the 13th International Bronze Congress, May 28-June 1, 1996*, ed. C. Mattusch, A. Brauer, S. Knudsen (2000), vol. I, pp. 178-191. Many have hypothesized that the statue originally was a monument to a victorious athlete at Olympia, although its precise home in Greece is unknown. See, e.g., Janet B. Grossman, *Athletes in Antiquity: Works from the Collection of the J. Paul Getty Museum*, Univ. of Utah (2002).

IV. Factual Background

A. The Chance Recovery of the Statue in the Adriatic Sea

In June 1964, fishermen from the Italian town of Fano, on the northern Adriatic coast, were fishing out at sea after a rough storm. When the men aboard the *Ferruccio Ferri* trawler pulled up their nets, they found that they had caught a heavy man-sized object, covered in marine concretions. This object is alleged to be the Bronze. Given that the statue is undoubtedly from Greece, the most plausible explanation for its findspot on the Adriatic sea floor is that it went down with a ship in ancient times. Because Greek art was much prized by the Romans, the sculpture likely was taken from Greece in Roman times and put on board a ship headed for another destination in the Roman Empire. See Cicero, *Against Verres* (II, I, 18, 47ff.) (discussing the multitudes of works of art the Roman Gaius Verres removed from Greece for his personal benefit, as well as earlier plunder of Greek sites by Roman generals for the benefit of the state); Brunilde Ridgway, *Roman Copies of Greek Sculpture: The Problem of the Originals*, p. 10ff ("All authors, ancient and modern, agree that [the fall of Syracuse] opened up the flow of Greek works into Rome and determined subsequent interest and corresponding depredation," including Nero's robberies of the sanctuaries of Delphi and Olympia); Janet B. Grossman, *Athletes in Antiquity: Works from the Collection of the J. Paul Getty Museum*, Univ. of Utah (2002). Only because the object never reached its destination is it still preserved today, because the bronze statue likely would not have survived to modern times had it made it to land. To our knowledge, the vessel that carried the statue in ancient times has never been recovered.

B. The Statue Changes Hands

After docking in Fano, the fishermen allegedly decided to sell the statue. The Carabinieri conducted an investigation in the summer of 1965 after receiving an anonymous tip that the statue was hidden in the town of Gubbio, an inland town 50 miles from Fano. The police learned that the statue allegedly had been purchased by Giacomo Barbetti, an antiquarian of modest means, and his two cousins Pietro and Fabio Barbetti, industrialists from the town of Gubbio. The police questioned a number of witnesses and took statements in June and July 1965. Initially, the Barbettis denied any involvement with the statue. [Attachment 1 to July 2006 Dossier]. However, they eventually admitted their involvement to the police.

According to Giacomo Barbetti's July 26, 1965 police statement, he was visiting relatives in Fano in August 1964 when some fishermen offered to sell him a statue that they said had been found in the sea, in Yugoslavian territorial waters. Piero Luigi Menichetti, another resident of Gubbio, told the police in a July 5, 1965 statement that in August 1964, Giacomo Barbetti had shown him a photo of the statue, covered in marine concretions, and that he had accompanied Giacomo and his cousin Pietro Barbetti to see the statue at the home of some fishermen, who said the statue had been fished out of the sea near Yugoslavia. [Attachment 2]. According to Giacomo Barbetti's statement and to a July 3, 1965 police statement made by Pietro Barbetti, Pietro lent Giacomo 3,500,000 lire in the summer of 1964 to buy the statue. [Attachment 2]. Pietro alleged that Giacomo had told him that the statue had been fished out of Yugoslavian territorial waters. [Attachment 2]. According to Fabio Barbetti, his brother Pietro showed him a photo of the statue and stated that it was said to have been fished about 15 kilometers off the coast of Yugoslavia. [Attachment 2].

According to June 1965 police statements given by Father Giovanni Nagni, the chaplain of the cement factory owned by Pietro Barbetti, as well as Father Nagni's maid, Giselda Gaggiolo, the statue was stored in Father Nagni's home for a time, at the request of the Barbettis. [Attachment 1 to June 2006 Dossier].¹ Father Nagni told the police that Pietro Barbetti had informed him that the statue had been fished out near the Dalmatian coast. [Attachment 2]. According to Pietro Barbetti, during the period when the statue was stored at Father Nagni's home, the commissioner of Perugia told Pietro that he had received an anonymous letter indicating that the Barbettis had purchased a statue. Soon afterwards, the Barbettis removed the statue from Father Nagni's house. [Attachment 2]. According to Giacomo Barbetti, the statue was taken to his garage, and sold in June 1965 for 4,000,000 lire (the equivalent of \$4,456) to a man traveling in a car with a license plate from Milan. [Attachment 2]. Giacomo stated that he did not know the man's name or address, but would be able to identify him if he saw him.

Police searched the home of Father Nagni in an attempt to find the statue. [Attachment 2]. While the search warrant had been issued on May 24, 1965 when the statue may well have still been at his house, the search was not conducted until one month later, on June 24. It does not appear that police conducted a search of the homes of any of the Barbetti brothers for the statue or for any other evidence. In particular, *while several witnesses testified that several*

¹ Apparently, dealer Elie Borowski came to see the statue, and according to the Barbettis, indicated that he believed it was a fake.

of the Barbettis had photographs of the statue, the police apparently did not undertake any search for these photos.

Despite the fact that the police knew from the defendants that they had purchased the statue from fishermen in Fano, there is no indication that the Carabinieri attempted to identify and question the Fano fishermen at that time to determine the findspot of the statue and the circumstances under which it had been found.

C. Prosecutions of the Purchasers of the Statue

In a report dated June 27, 1965, the Carabinieri of Rome informed the judicial authority of Perugia, Italy of the alleged involvement of the Barbettis with the Bronze. In 1966, the three Barbettis and Father Nagni were charged with purchasing and concealing stolen property, under Article 49 of the 1939 Law, which provides that protected archaeological objects found by chance belong to the Italian State, and Article 67 of the same law, which provides that one who takes possession of such archaeological objects is guilty of theft. Following a trial, in a decision dated May 18, 1966, the Magistrate Court of Perugia found insufficient evidence on which to convict the men, concluding that the charges suffered from two primary defects. First, the prosecution had failed to prove that the statue was of historic and artistic value, the first element for the charged crime. Second, the court concluded that the “most serious perplexities” concerned another necessary element of the crime, namely that the statue had been found in Italian territorial waters, and thus was the property of the Italian state. The court concluded that the only testimony offered was that the statue was allegedly found in Yugoslavian waters. Even if the statue had in fact been found in Italian waters, the court found that there was no showing that the Barbettis had knowledge of this fact, as the only evidence adduced at trial was that they had been told that the object came from Yugoslavian waters. [Attachment 3]. Notably, the Italian national government did not intervene in the case to establish a claim to the statue. Both the prosecution and the defendants appealed the decision. While the trial court had found insufficient evidence on which to convict the defendants, the defendants apparently sought a more affirmative finding of their innocence.

On January 27, 1967, the Court of Appeals of Perugia reversed the lower court, finding that the elements of the crime were satisfied because the statue had been purchased in the national territory, the object was purchased for a not insignificant sum, a well-known dealer Elie Borowski had shown interest in the statue, and the defendants behaved as though they had something to hide. The court sentenced the three Barbettis to four months’ imprisonment and a 50,000 lire fine, and sentenced Father Nagni to two months in prison. [Attachment 3].

On May 22, 1968, the Supreme Court of Cassation annulled the decision of the Court of Appeals of Perugia on the ground that the lower court used inadequate legal reasoning, and transmitted the case to the Court of Appeals of Rome. Finally, on November 18, 1970, the Court of Appeals of Rome confirmed that the convictions would not stand, on the grounds that (1) *“the question of [the statue’s] origin from Italian or Yugoslavian waters received no answer” at trial*, and (2) there was insufficient evidence introduced demonstrating that the statue was of “artistic and archaeological interest.”

D. Subsequent History of the Statue

At some unidentified point in time, the sculpture allegedly was exported to Brazil. According to the dealers Herzer & Kinnius of Munich, the statue was in the possession of a Brazilian monastery, which sold the Bronze to the consortium Artemis, S.A. in 1971 for \$700,000. On April 7, 1971, the statue was exported from Brazil to England. It was quickly exported from England to Munich, Germany on July 23, 1971. Extensive conservation work was performed on the statue after it arrived in Munich.

In 1972, Herzer & Kinnius offered Mr. Getty the Bronze. At Mr. Getty's request, antiquities curator Jiri Frel viewed the statue in Munich. The Metropolitan Museum of Art in New York was also considering the statue at the time, and there was some talk of joint ownership of the statue by the Met and Mr. Getty. In October 1972, Mr. Getty's counsel received a legal opinion from Avvocato Gianni Manca of Studio Dell'Avv. Ercole Graziadei, the Italian counsel for Herzer & Kinnius. In that opinion, Mr. Manca advised that the Italian government had no claim to the Bronze. He noted that although the trial of the Barbettis garnered significant publicity in Perugia, the Italian government had failed to take the routine step of entering a formal appearance in the criminal proceedings. Because the Ministry of Culture had not asserted an interest in the statue, Mr. Manca opined that at the time of its sale to Herzer & Kinnius the statue could not be deemed an object that was *extra commercium* and Herzer & Kinnius, the good faith purchasers, held good title to the statue.

On March 10, 1973, the *New York Times* reported that both the Getty and the Met were considering acquiring the Bronze. [Attachment 6]. The Getty's negotiations regarding the statue were abandoned several months later. We have found no evidence that Mr. Getty imposed certain conditions on the sale, as asserted in the July 2006 Dossier based on a 1979 television news story.

In July 1973, at the request of the Italian government, the Munich police (accompanied by Italian officials) went to the Antiken gallery in Munich to question Heinz Herzer about the statue based on the Italian officials' suspicion that he had received stolen goods. That investigation, however, was discontinued for lack of evidence. The following year, in 1974, the Gubbio Office of State Attorney General sent a letter rogatory to German authorities, asking for the extradition of Mr. Herzer and seizure of the statue, based on Mr. Herzer's alleged role in assisting the illegal export of the statue from Italy. However, German authorities refused to extradite Mr. Herzer (or to seize the statue) because there was no provision in the German – Italian treaty for extradition for export offenses not concerning narcotics. [Attachment 4]. It appears that Italian authorities made no further efforts to recover the statue or to pursue Mr. Herzer.

After the Getty and Mr. Herzer resumed negotiations over the statue in 1976, the Bronze ultimately was acquired in 1977 for \$3.95 million. On November 21, 1977, the Getty issued a press release regarding the acquisition, stating that the Bronze had been purchased through legal channels and that it had clear title. The statue was placed on display at the Museum in 1978 and was highlighted in Getty publications, and has since been the subject of numerous independent publications.

E. Post-Acquisition Investigations

After the Getty's acquisition of the statue was publicized in the international press, on November 26, 1977, over a decade after the statue was found and over 7 years after the Barbetti criminal convictions were reversed, dealer Renato Merli of the Italian town of Imola (80 miles from Fano), voluntarily gave a statement to the Carabinieri in Rome relating to the statue and provided a photo of a statue covered in marine deposits. He stated that an antique dealer in Fano, Libero Carotti, had put him in contact with two brothers in Fano who owned two small trawlers. These men allegedly showed him a bronze statue in their cellar and gave him the photo. According to the police statement, Mr. Merli stated that the men told him the statue had been found "near the coast of Fano, certainly in Italian territorial waters, given their exact affirmation that the finding had taken place in shallow water, which I thought to be true because it is quite easy to understand that trawl fishing is done exclusively in shallow water." He stated that he agreed to pay 3,500,000 lire for the statue, but when he returned with the money two days later, he learned that the statue had been sold to some gentlemen from Gubbio.² [Attachment 5].

On December 1, 1977, the Carabinieri subsequently questioned Libero Carotti, who apparently told the police that he had put Mr. Imoli in touch with the fishermen, and gave the police information about the address of the fishermen. [Attachment 5]. That same evening, the police questioned Guido Ferri, who owned the fishing trawler *Ferrucio Ferri*. According to Mr. Ferri's police statement, in the summer of 1963 or 1964, his nephew Romeo Pirani, captain of the *Ferrucio Ferri*, reported that during a tiresome fishing expedition in reef-filled waters, in Italian territorial water, a few miles from the coast in the zone in front of the city of Pedaso (which is 73 miles south of Fano by land), the fishermen had pulled up a bronze statue covered in marine encrustations. He stated that the fishermen had brought the statue to his house so that he could sell it to an antique dealer. Guido Ferri told the police that he kept the statue in his home for a few days, photographed it in his kitchen, and then moved it out to the garden because it had begun to smell bad. Guido Ferri said that several dealers, including Mr. Merli, came to see the statue. He stated that Mr. Merli offered only 1 million lire and thus they did not agree to sell it to him. A few days later, Mr. Ferri's wife apparently sold the statue to unknown persons introduced to them by Aldo Del Monte (an intermediary who had since died), for approximately 3 million lire which was divided among the 6 sailors on board the *Ferrucio Ferri*, the 6 sailors on board the *Gigliora Ferri*, the trawler that had been working alongside the *Ferrucio Ferri* at sea, and the owners of the two boats. According to the police statement, Guido Ferri confirmed that the photo of the statue provided by Mr. Merli had been taken in his kitchen and depicted the statue found by his nephew at sea. [Attachment 5].

Several days later, on December 3, 1977, the Carabinieri questioned Romeo Pirani, the captain of the *Ferrucio Ferri*. Mr. Pirani stated that at dawn on a Friday in July or August 1964, the trawler was fishing in the water off the coast of the town of Pedaso when the fishing net got stuck. The fishermen stopped the machines and began pulling up the net, believing that it may have been torn by a reef, only to find that it contained a metal statue. The

² Mr. Merli made the self-serving statement that he hoped to acquire the statue so that he could turn it over to the authorities and receive a reward under the 1939 Law. He stated that he had not come forward with the information and photo earlier because he had not realized that the statue was by Lysippos.

sailors returned to port in Fano the following day, unloaded the statue, and transported it on a hand truck to the home of Mr. Pirani's uncle, Guido Ferri. The fishermen entrusted the task of selling the statue to Mr. Pirani's aunt, so they could return to fishing. After a few weeks, Mr. Pirani's aunt told him she had sold the statue to two gentlemen and he received his 150,000 lire share of the proceeds. When shown the photo from Mr. Merli, Mr. Pirani confirmed that the object depicted was the one that had been found at sea. [Attachment 5]. ***Notably, Mr. Pirani did not state that the statue had been found in Italian territorial waters.***

In December 1977, Interpol requested that U.S. Customs investigate the legal status of the Bronze, verify that the statue had entered the United States with proper entry documents, and determine whether the Getty trustees had conducted the necessary due diligence before purchasing the statue. [Attachment 6]. In the course of an investigation in which they interviewed Getty Registrar Sally Ella and Getty Trustee Norris Bramlett, U.S. Customs officials learned that the trustees had reviewed the decisions of the Italian courts in the Barbetti case and a legal opinion from Avv. Gianni Manca suggesting that the Bronze had clear title, and that they believed the statue had been retrieved in international waters. [Attachment 6]. In 1984, Interpol in Washington D.C. communicated to the Carabinieri that, until proof and concrete details were provided demonstrating Italian ownership of the Bronze, no further investigations would be carried out. [Attachment 15].

Following the letter rogatory to the German authorities in 1974 and the 1977 request for investigation by U.S. Customs via Interpol, the Italian government instituted no further formal requests or proceedings relating to the Bronze, until finally requesting its return from the Getty Museum in January 2006, nearly 30 years later. However, in March 1989, Professor Francesco Sisinni, the Director General of the Ministry, sent a letter to John Walsh asking that the Getty Museum evaluate the possibility of returning the statue to Italy, arguing that the Getty was ethically and legally obligated to return the statue because the work was found by an Italian ship and immediately transported to Italian soil, and was subsequently exported without a proper license. [Attachment 9]. John Walsh responded in April 1989, stating Professor Sisinni's request that the Getty send the Bronze to Italy "came as an unwelcome surprise." He disputed Professor Sisinni's claim that the Getty was ethically and legally obligated to send the statue to Italy, noting:

[T]he statue has a tenuous relationship to Italian patrimony. It was the subject of legal claims in Italy that were dropped in 1970 and was acquired by the Getty Museum in 1977 in full compliance with international and domestic laws. It has been displayed permanently ever since and published in extenso. The facts of the case have been published widely for many years; to our knowledge no new facts have come to light that might affect our view of the status of the statue.

[Attachment 9].

In 1989, the Getty requested a legal opinion from the law firm of Pascotto, Gallavotti & Gardner regarding the strength of any claim by the Italians to the Getty Bronze. On

February 1, 1990, Alvaro Pascotto of the law firm Pascotto, Gallavotti & Gardner issued an opinion concluding that the Italians' claim for restitution of the statue was not valid.

In 1989, Elio Celesti, a former surveyor from Fano, provided a piece of a marine concretion to the District Attorney of Pesaro, a town near Fano. Mr. Celesti told the District Attorney that the marine concretion had been given to him in 1972 as a gift by Dario Felici, but Mr. Felici had not told him where the concretion came from. Mr. Celesti indicated that several days before he approached the District Attorney, a Professor Alberto Berardi had contacted him and asked whether he still had the marine concretion, because it might be connected with the famous statue found in the Adriatic. [Attachment 10].

The Carabinieri also interviewed Mr. Felici about the marine concretion. He purportedly recognized it as the one he had given to Mr. Celesti as a gift 12 or 14 years earlier. When shown a photo of the statue covered in marine concretions allegedly taken in Guido Ferri's kitchen, he recognized the statue. He stated that he had buried the same statue in his garden at the request of his friend, Guido Ferri, who told him that the statue had been found at sea and asked that he hide it in his garden because people were talking about it in Fano. Approximately one month after he buried it Mr. Ferri asked him to retrieve the statue because it had been sold. While digging up the statue with a shovel, Mr. Felici inadvertently knocked off a piece of the concretion from one of the statue's thighs. He kept the concretion in his house for many years before giving it to Mr. Celesti. [Attachment 10].

After digging up the statue, Mr. Felici stated that he and a friend named Lino Piersanti transported it in Mr. Felici's Fiat 600 Multipla to a storeroom in Gubbio, where they were helped by someone whose name he did not remember. Questioned in 1989, Giacomo Barbetti stated that the statue was delivered to his Gubbio storeroom in a Fiat 600 Multipla by the sons of Mr. Felici. [Attachment 10].

The Carabinieri apparently submitted the concretion for scientific analysis. On July 9, 1992, the Central Institute for Restoration reported to the Carabinieri that tests demonstrated that the concretion had come from a marine environment and that it had been in contact with an object made of a binary copper/tin alloy. The Institute stated that it was unable to date the concretion, however. [Attachment 10]. Another expert in marine biology, Professor Corrado Piccinetti, stated that the types of organisms found on the concretion live at a depth of greater than 60 meters. [Attachment 10]. No additional conclusions were drawn that tied the concretion to a particular area of the sea.

The information regarding the fragment of the marine deposit was provided to the Ministry purporting to support the claim that the Bronze had been on Italian soil. However, in response, the Ministry "indicated that *the legal requirements for bringing a civil action did not exist.*" [January 2006 Dossier].

In 1995, the director of the Italian Cultural Institute in Los Angeles delivered to Dr. True a request purportedly from the Carabinieri for the return of the Bronze, which was not accompanied by any new information or evidence regarding the Bronze. In April 1996, Marion True met with the Consul General of Italy in Los Angeles to discuss the Bronze, among other objects. Dr. True again communicated that the Getty would not be able to consider transferring

the statue to Italy. In 1996 Dr. True also met in Rome with Professor Mario Serio, the Director of the Ministry, and discussed the Getty Bronze with him, and reiterated the Getty's position. In a June 5, 1996 letter to Prof. Serio, Dr. True enclosed the legal opinion provided by the Getty's counsel indicating that the Italians did not have a valid claim to the Bronze.

F. Fishermen's Statements to the Press Regarding Findspot of Statue

In an article that appeared in the Italian newspaper *Il Giornale* on August 10, 1988, Romeo Pirani, the captain of the *Ferruccio Ferri*, stated that the statue was found in the international waters between Italy and Yugoslavia, some forty miles off the coast of Fano. Similarly, the *Los Angeles Times* recently reported in a lengthy article that the trawler had left Fano at dawn one summer day, traveled southeast and arrived a dusk at a "submerged outcropping where fish gathered, 32 nautical miles out." [Attachment 12, *The Amazing Catch They Let Slip Away*, *Los Angeles Times*, May 11, 2006]. According to the source, the men fished all night, and at dawn the next morning brought the statue up in the nets. They arrived back in Fano before dawn the next morning. The source for this information appears to have been Igli Rosato, one of the fishermen on board. *Id.*

In numerous press stories, Mr. Pirani is quoted as saying that he has offered to escort state-commissioned archaeologists to the site where the Bronze was found, but has never been taken up on his offer. *See, e.g.*, "Lo strano caso del pescatore di frodo che venne frodato della sua statua," *Il Venerdì*, June 7, 2002. Had the authorities accepted Mr. Pirani's offer, it conceivably would have been possible to identify the precise location from which the statue came. Perhaps sanctioned archaeological teams could have located the ancient shipwreck and found other ancient treasures, even perhaps the legs and feet of the Bronze. However, we have no information that any such expedition has taken place.

V. Legal Considerations

A. The statue was not found in Italian territorial waters and therefore is not the property of the Italian State

Unless the object was found in Italian territorial waters, under both Italian and United States law, the Italian State cannot claim ownership of the Greek statue. Indeed, the criminal proceedings brought in Italy against the Barbettis and Father Nagni failed because there was no proof that the object came from Italian territorial waters. Attachment 3, Magistrate decision (finding that while article 49 of the 1939 law provides that chance finds belong to the Italian State, such objects must have been found within the territory of the state in order for the law to apply). Similarly, in considering claims by foreign countries for the return of artifacts, U.S. courts require strong evidence that the object came from the territory of the country claiming it. *Government of Peru v. Johnson*, 720 F. Supp. 810, 812 (Central District of California 1989)³ (dismissing Peru's claim to artifacts because there was no showing that objects were excavated in modern-day Peru as opposed to neighboring countries).

³ The Central District of California includes Los Angeles and is the jurisdiction in which any claim by the Italian government must be asserted.

At the time the statue was found, Italian territorial waters extended only 6 nautical miles from shore, i.e., 6.9 miles. *See* 1942 Italian Navigation Code.⁴ While the Dossier provided by the Italian Ministry in July 2006 makes much of hearsay statements by several witnesses saying they had been told or surmised that the Bronze had been netted in these Italian waters, no competent evidence has been provided to prove this assertion, and to the contrary, ***every indication from the fishermen themselves is that the statue was found 30-40 miles from the Italian coast.***

As discussed above, the captain of the *Ferruccio Ferri*, Romeo Pirani, has stated with no hesitation that the statue was fished out some 40 miles from the Italian shore. Although it is inconceivable that the Carabinieri did not ask him whether the statue was found in Italian territorial waters, in his police statement he did not say that this was the case. Rather, he said only that the statue was found off the coast of Pedaso. Similarly, Mr. Pirani's fellow fisherman Igli Rosato recently provided a detailed account of where the object was found – a submerged outcropping southeast of Fano, and 32 nautical miles, or approximately 37 miles, from the shore. He stated that while the trawler left the Fano docks at dawn, they arrived at the fishing beds only at dusk that evening. Mr. Rosato's statement that the object was found southeast of Fano, 37 miles out to sea, is consistent with Mr. Pirani's statements that the statue was pulled out of the sea off the coast of city of Pedaso, which is south of Fano, and was found some 40 miles out.

The few statements that the object came from Italian territorial waters all came from people who were not on board the fishing boat when the statue was discovered. While the July 2006 Dossier states that according to Mr. Merli he was told that the object came from Italian territorial waters, in fact Mr. Merli never said this. Rather, he hypothesized that the object must have been found in Italian waters based on the fact that the man who showed him the statue (who was not even part of the fishing party) allegedly told him that the statue had been found in shallow waters. Mr. Merli stated that he believed this statement because it was his understanding that trawl fishing takes place only in shallow waters. Aside from the fact that the statement about the findspot in shallow waters is hearsay, it is difficult to believe that Mr. Merli, who was an antiquarian by trade and was not even from a coastal town, is an expert regarding either the fishing practices of Fano fishermen or the depths of the Adriatic. Surely the seasoned Italian fishermen aboard the *Ferruccio Ferri* would not waste their time fishing in shallow coastal waters where their nets would repeatedly be snagged on reefs and the seafloor. It is far more credible that the fishermen retrieved the statue farther from shore, in deeper waters, and inadvertently cast their nets above the same reefs on which a Roman vessel foundered 2,000 years ago. This conclusion is supported by the opinion of Professor Corrado Piccinetti, who concluded that the concretion allegedly detached from the Bronze contained organisms that live at a depth of greater than 60 meters. [Attachment 10].

Moreover, even if true, the assertion that the object was found in shallow waters does not prove that it was found near the coast. According to Mr. Rosato, the statue was found near a submerged outcropping 40 miles out, which suggests that it was found in a shallow area nowhere near the coast. Indeed, it appears that the northern Adriatic Sea region, whether in or out of Italian territorial waters, is quite shallow. *See* http://en.wikipedia.org/wiki/Adriatic_Sea.

⁴ In 1974 Italy extended its territorial waters to 12 nautical miles, pursuant to Law No. 359.

Accordingly, Mr. Merli's conclusion that the object was located in Italian waters is entitled to no weight at all.

The statement by Guido Ferri that his nephew Romeo Pirani told him the statue had been found in Italian waters is thus the sole basis for the Ministry's allegation that the statue came from Italian territorial waters. However, this statement is hearsay, and not only was it not subject to any cross-examination, but it also is unclear under what circumstances Mr. Ferri made the remark to the police. Certainly Mr. Ferri had no personal knowledge of the findspot. Most importantly, his statement is undercut by Mr. Pirani's own statement to the police in which he noticeably omits to say that the statue was found in Italian territorial waters, and his later statements that the statue was discovered 40 miles out. Significantly, *Mr. Pirani repeatedly offered to show authorities the spot where the statue was found, but was never taken up on his offer*. If authorities believed that the statue's findspot was in Italian waters, it is hard to fathom that no efforts have been made to find the shipwreck, which could still contain not only other ancient treasures transported from Greece in ancient times, but also the feet and lower legs of the Bronze.

When deciding to acquire the Bronze, the Getty Trustees appropriately focused on the fact that the Barbettis and Father Nagni were acquitted based on the Italian government's failure to prove that the object came from Italian territorial waters. Even assuming that trial could be done over again with the fishermen testifying, the prosecution would still be unable to prove that the object came from Italian territorial waters. There is no more important fact with respect to the statue, and the Italian government's failure of proof is fatal to its claim that the Italian State is the rightful owner of the statue.⁵

B. The Alleged Illegal Exportation of the Statue from Italy Does Not Constitute Grounds for Returning It

Even if it could be conclusively demonstrated that the Bronze was on Italian soil at some point in time, and was removed from Italy without a proper export license sometime between 1964 and 1972, neither Italian nor United States law permit the forfeiture of the statue based on its alleged illegal exportation from Italy.

Under Italian law, antiquities deemed of interest by the State, even those that are legally owned by a private party, cannot be exported without an export license, and anyone wishing to export such objects must apply to the Export Office for a license and declare the market value of each object. Articles 1, 35, and 36 of the 1939 Italian law; *see Jeanneret v. Vichey*, 693 F.2d 259, 262 (2d Cir. 1982) (interpreting the Italian law). The Ministry's July 2006 Dossier contains a 1978 report from the Ministry to the Carabinieri indicating that the Ministry had not issued an export license relating to the Bronze between 1963 and 1973. [attachment 7]. The 1939 law also provides that whoever exports a protected object without authorization may be criminally punished with a fine, and the object may be confiscated in accordance with the customs laws and regulations of the Italian State pertaining to smuggled goods. Article 66. When it is not possible to recover the object, i.e., because it is already out of the country and not

⁵ Of course, the statute of limitations under both Italian and U.S. law would have expired long ago as to any claim that Italy is the rightful owner of the statue.

subject to the jurisdiction of the Italian laws, the exporter is liable to the State for the value of the item. Article 64; *see Jeanneret*, 693 F.2d at 262.

However, the above laws do not support a claim against the Getty for the Bronze based on the alleged illegal exportation of the statue. The statue could not be seized under Italian law because it is outside of Italy, and because there has been no conviction in Italy for illegal exportation of the statue. *See* art. 210, 236 and 240 of the Italian Criminal Code. Further, under the Italian law any liability for the value of an illegally exported item or fine rests on the exporter, as opposed to the purchaser. *Jeanneret*, 693 F.2d at 268 (citing Articles 64 and 66 of the 1939 law).⁶ Here, the Getty did not even receive the object from Italy; it was acquired years later after its ownership had changed hands and it had been lawfully exported from Munich. In addition, the Italian State arguably waived any interest it had in the propriety of the export of the statue by failing to enter an appearance at the criminal proceedings regarding the statue in 1966. Finally, the statute of limitations under Italian law for any such claims expired long ago. Art. 157 of the Criminal Code

Nor is there any basis for a legal claim to the statue in the United States courts based on the alleged illegal export of the object. While the July 2006 Dossier suggests that Italy should be deemed the owner of the Bronze because it may have passed through Italy and been exported in violation of Italian export laws, American law does not recognize Italy's claim to ownership based on these facts. Although American jurisprudence recognizes that a foreign state can assert ownership over ancient artifacts found within its own territory, a foreign country's export restrictions on cultural artifacts do not amount to a binding declaration of ownership over such objects. *See United States v. Schultz*, 333 F.3d 393, 408 (2d Cir. 2003); *United States v. McClain*, 545 F.2d 988, 1000-01 (5th Cir. 1977) (distinguishing between theft of object belonging to foreign state and mere violation of export laws); *Government of Peru v. Johnson*, 720 F. Supp. 810, 814 (C.D. Cal. 1989).

During the time period in which the statue is alleged to have been illegally exported, the prevailing rule of law was that "[t]he fact that an art object has been illegally exported does not in itself bar it from lawful importation into the United States; illegal export does not itself render the importer (or one who took from him) in any way actionable in a U.S. court; the possession of an art object cannot be lawfully disturbed in the United States solely because it was illegally exported from another country." Paul M. Bator, "An Essay on the International Trade in Art," 34 *Stanford Law Review* 275, 286 (Jan. 1982); *see Jeanneret*, 693 F.2d at 267; Stephanie Doyal, "Implementing the UNIDROIT Convention on Cultural Property into Domestic Law: The Case of Italy," 39 *Columbia Journal of Transnational Law* 657, n. 129 (2001); *see also Leonard D. Duboff*, "The Protection of Cultural Property in Time of Peace," *Yearbook of the A.A.A.*, vol. 44, at 49 (1974) ("[I]t is not a violation of the importing nation's law to bring in works of art even if they have been illegally exported from another country.").⁷ As

⁶ While a criminal investigation into the alleged illegal export of the Bronze from Italy was opened in 1973, in 1978, the Magistrate in Gubbio ruled that there would be no prosecution for the illegal export of the statue because the perpetrators were unknown. [Attachment 8].

⁷ United States law was not anomalous in this regard. During the time period in which the Bronze is said to have been illegally exported from Italy, and still today, few nations have laws requiring the return of illegally exported objects. *See Doyal*, "Implementing the UNIDROIT

one scholar noted in 1982, “U.S. customs laws do not explicitly, and never have been interpreted to, bar the importation of art objects solely because they were exported in violation of another country’s laws.” Bator, “An Essay on the International Trade in Art,” 34 *Stanford Law Review* at 369 n.30. For instance, in 1969 the Museum of Fine Arts in Boston announced that it had acquired a rare Raphael painting. The painting had been privately owned by an Italian family, but Italian authorities discovered that the painting had been exported from Italy without the required export license. The Italian government had no recourse under American law for this violation of Italian export regulations. See *Leonard D. Duboff*, “The Protection of Cultural Property in Time of Peace,” *Yearbook of the A.A.A.*, vol. 44, at 49 (1974); Bator, “An Essay on the International Trade in Art,” 34 *Stanford Law Review* at 369 n. 30 (despite the fact that the painting was smuggled out of Italy “there was no obstacle to its legal import into and safe possession in the United States”). However, fortuitously for the Italian authorities, the Museum of Fine Arts had failed to declare the painting at U.S. Customs. Accordingly, based on this violation of U.S. Customs law, U.S. authorities seized the painting and it was returned to Italy. *Id.* There is no allegation, and no evidence, that the Bronze was imported into the United States in violation of any U.S. customs requirements.

C. International Law Does Not Support Italy’s Claim to the Bronze

The Ministry has suggested in the past that the Getty should return the Bronze based on the obligations imposed by international treaties. There are numerous reasons why no international law, treaty, or agreement compels the return of the statue.

As of the date the statue was discovered, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property had not even been drafted. When the statue was imported into the United States more than 10 years later, neither Italy nor the United States had even yet ratified the 1970 UNESCO Convention. And it was not until 2001 that Italy and the United States entered into a bilateral agreement to give teeth to the mostly aspirational goals set forth in the UNESCO treaty. In that 2001 agreement the United States pledged to forfeit and return to Italy any Italian objects that are not accompanied by either an appropriate export certificate issued by the Italian Government, or documentation demonstrating that the objects left Italy prior to January 23, 2001, over 25 years after the Bronze entered the United States. 19 CFR Part 12, enacted pursuant to the Cultural Property Implementation Act (“CPIA”), 19 U.S.C. §§ 2601 *et seq.*

Even if the Bronze had been acquired after January 23, 2001, however, the Getty would still have been able to import it lawfully under the relevant international agreements. First, the UNESCO treaty itself contains no provisions mandating the return or permitting the seizure of objects, except those that have been stolen in the conventional sense from a museum, a public monument, or a like setting. Only after the U.S. and Italy entered their 2001 agreement was any obligation placed on the U.S. government to seize and return ancient objects from Italy.

Convention on Cultural Property into Domestic Law: The Case of Italy, 39 *Columbia Journal of Transnational Law* 657, n.56. Even if the alleged illegal export of the statue could have justified an action for its return or forfeiture under American law, the statute of limitations on any such claim would have expired long ago, particularly given the fact that the Getty publicized the acquisition in 1977 and began exhibiting the statue soon afterwards.

However, the U.S. regulations implementing the 2001 agreement apply only to “archaeological material originating in Italy,” and representing Italy’s cultural heritage, *see* 19 CFR Part 12, not to Greek objects found outside of Italian territory which may have passed through Italy in modern times.

Nor would customary international law support the return of the Bronze based on the alleged violation of Italy’s export regulations. “Customary international law has never been interpreted to render the importer or possessor of an art object subject to action solely on the ground that the object was exported in violation of another country’s laws.” Bator, “An Essay on the International Trade in Art,” 34 *Stanford Law Review* at 369 n. 30; *see* Sharon A. Williams, *The International And National Protection Of Movable Cultural Property: A Comparative Study*, 107-08 (1978) (“[T]he present position [in 1978] appears to be that the forum will not enforce another state’s export regulations in the absence of a multilateral or bilateral international agreement.”) “No U.S. authority, judicial or diplomatic, has ever asserted that under international law such a cause of action exists.” Bator, “An Essay on the International Trade in Art,” 34 *Stanford Law Review* at 369 n.30.

Accordingly, not only do Italian and United States law fail to establish a basis for the transfer of title to the Italian state, but international law fails to support the Ministry’s ownership claim as well.

D. Italy’s Claim to Ownership Even if the Statue Came from International Waters Conflicts With Established International Law

In the June 2006 Dossier, the Ministry cites to a legal treatise, “*La Legislazione dei Beni Culturali e Paesaggistici*” [*Legislation on Cultural and Natural Assets*], Third Edition, Year 2000, Giuffr  Editore, by Raffaele Tamiozzo, to support its claim to ownership of the Bronze even if the statue was found in international waters. That treatise states that under Article 4 of the Italian code of navigation, ships under the Italian flag on the high seas are equivalent to the territory of the State, and thus any archaeological asset from the sea floor in international waters that ends up in the nets of an Italian fishing boat automatically becomes the patrimony of the Italian State.

Historically, the “law of finds” has applied in international waters to permit the finder of an object to gain title to an object that has been abandoned or lost at sea. Under such a law, the Italian fishermen would be deemed to hold title to the object. In more recent times, there has been a movement away from the “law of the finds” when it comes to cultural artifacts found outside of territorial waters. Thus, for example, Article 149 of the Third United Nations Law of the Sea Convention adopted in 1982 provides that all objects of an archaeological and historical nature found on the seabed outside of any nation’s territory “shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin.” Article 149. Under this scheme, Italy, which was a signatory to that Convention, would not have any preferential rights to the statue, because the object did not originate from Italian territory, did not have Italian cultural origins, and was not found at an archaeological site within Italian territory. Thus, the asserted right to claim Italian ownership to

objects caught in the nets of Italian fishermen on the high seas is in direct contradiction to the governing international treaty to which Italy is a party.

Moreover, the application of such a law could lead to truly absurd results. If sport fishermen on an Italian boat were fishing off the coast of China, and caught an ancient Chinese object in their fishing nets, would this object somehow become part of Italy's cultural heritage and title to it automatically revert to the Italian State? Without some original connection between the object and Italian cultural heritage, it is difficult to credit an Italian claim to ownership.

VI. Ethical Considerations

A. The Bronze Is Greek and Has No Connection to Italian Cultural Patrimony

In addition to having strong legal authority to support its ownership of the Bronze, the Getty is on solid ethical ground in defending its ownership of the statue.

The Italian Ministry has not attempted to dispute the Greek origins of the statue. The Ministry asserts that the object is by the master Greek sculptor Lyssipos. (The Getty believes that the statue was not sculpted by Lyssipos, but by a later Greek sculptor in the style of Lyssipos). There is no allegation that such works, particularly large-scale bronze statues, were traded to modern-day Italian territory in ancient times, as were Attic vases. This object likely was commissioned to adorn a public square in Olympia, celebrating one of the athletes who had triumphed at the Olympic games. ***The object is wholly representative of the cultural, artistic, and physical accomplishments of the ancient Greek civilization, and has no connection to Italy.***

For this reason, we simply cannot accept the Italian State's claim that Italy's cultural patrimony is damaged because the Bronze now resides at the Getty, rather than in an Italian museum. Of course, this is an important and beautiful object, and any nation would be proud to have it in one of its museums. But the fact that some Italian fishermen may have inadvertently fished it out of the open sea and brought it to Italian land, where a handful of people saw it before it left the country, does not, in our opinion, make it part of Italy's cultural heritage. Italians have created enough beautiful and inspiring works over the ages that it has no need to claim another culture's works.

U.S. law specifically recognizes the importance of protecting ancient works of Italian origin:

These materials are of cultural significance because they derive from cultures that developed autonomously in the region of present day Italy that attained a high degree of political, technological, economic, and artistic achievement. The pillage of these materials from their context has prevented the fullest possible understanding of Italian cultural history by systematically destroying the archaeological record. Furthermore, the cultural patrimony represented by these materials is a source of identity and esteem for the modern Italian nation.

Federal Register Notice: January 23, 2001; 66(15): 7399-7402, *Import Restrictions Imposed On Archaeological Material Originating in Italy and Representing the Pre-Classical, Classical, and Imperial Roman Periods*. The Bronze does not fit this description, and we do not believe the Italians have a strong ethical claim to a statue that does not form part of the country's cultural heritage.

We cannot help but see the irony in the Italian State's suggestion that the Getty has wrongfully kidnapped an object forming part of Italy's cultural heritage, when it is uncontroverted that the only reason this object ever came close to Italy is that it was looted by the Romans from Greece. As the *Los Angeles Times* put it, "[T]o whom does a statue made in ancient Greece, stolen by Romans and found by Italian fishermen 2,000 years later, rightfully belong?" [Attachment 12]. The answer, we submit, is not Italy.

B. The Chance Discovery of this Statue Did Not Result in Damage to an Italian Archaeological Site

In some instances, objects of a Greek origin were exported to Italy in antiquity, and became part of a tomb offering in Etruria or elsewhere. Thus, we understand the argument that such objects have become part of Italian cultural heritage. Indeed, the destruction of such tombs and other archaeological sites of great historical importance, and the corresponding obliteration of the historical and cultural context for the excavated objects, is the primary motivation for the international movement to stop the illicit trafficking of antiquities.

The United States government ratified the 1970 UNESCO Convention and passed the CPIA based on its conclusion that "the demand for cultural artifacts has resulted in the irremedial destruction of archaeological sites and articles, depriving the situs countries of their cultural patrimony and the world of important knowledge of its past." U.S. Senate Report 97-564, Implementing Legislation for the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. The United States Department of State echoed these concerns, supporting the passage of the CPIA because:

[t]he expanding worldwide trade in objects of archaeological and ethnological interest has led to wholesale depredations in some countries, resulting in the mutilations of ceremonial centers and archaeological complexes of ancient civilizations and the removal of stone sculptures and reliefs The United States considers that on grounds of principle, good foreign relations, and concern for the preservation of the cultural heritage of mankind, it should render assistance in these situations.

Id. Likewise, the Getty strongly feels that the looting and pillaging of such sites is harmful to the cultural heritage of the various nations and the world, and is committed to doing its part to stop such looting. However, ***the discovery of the Bronze did not result from the intentional pillaging of an archaeological site within national boundaries***. While underwater archaeological sites are equally worthy of protection, whether or not they are in Italian territorial waters, the fishermen who discovered the Bronze were not exploring the deeps with the intent to

disturb an ancient shipwreck and salvage its treasures. Only after the fact did they realize what they had found in the course of casting their fishing nets. Accordingly, the discovery of this statue did not result from intentional excavation of an archaeological or historical site, and the rationales behind the measures to stem the illicit trade in antiquities are not implicated in this situation.

C. The Time Has Past for any Claim to the Bronze

Putting aside the technical defense of the statute of limitations, which would certainly bar any formal claims to the Bronze, the recent demand for the return of the Bronze after such a long passage of time is not justified.

As an initial matter, the statue has been on display in California for decades longer than it was on Italian soil. If the Italian government's position is that an object becomes part of a nation's cultural patrimony by its mere presence in that country, would this not suggest that 30 years in California have made the Bronze a part of California's cultural property?

The Italian government has known of the existence of this statue for over 40 years. Italian prosecutors criminally tried the men who allegedly purchased the statue from the Fano fishermen, but it appears that the Carabinieri made no effort before that trial to track down those fishermen and made little effort to obtain evidence with respect to the statue itself. Further, the Ministry failed to even enter an appearance in the proceedings. Those proceedings resulted in the acquittal of the defendants and a finding by the Italian courts that there was no evidence that the statue had been found in Italian territory.

In 1973, the Italian government apparently learned that the statue was in Munich. While efforts were made to interrogate the German dealer and to institute forfeiture proceedings, those efforts were not successful. The record does not show, however, that the Ministry attempted to exert much pressure on the German authorities in its bid to recover the statue.

Four years later, after all the proceedings and investigations were closed, the Getty acquired the statue after taking a hard look at whether it could acquire good title. The Getty issued a press release in November 1977 celebrating its acquisition of the "Getty Bronze," and the acquisition was well-publicized in the international press. The following spring, in 1978, the statue went on display. After the Getty's acquisition, the Italian authorities did request assistance from Interpol and U.S. Customs authorities in relation to the Getty's acquisition of the statue. Investigations by those agencies failed to turn up evidence of wrongdoing on the Getty's part.

In 1989 and in 1996, the Ministry informally requested that the Getty consider transferring the Bronze to the Italian State. In 1989 the Getty again took a close look at the validity of any claims by the Italian government to the Bronze, seeking advice from legal counsel, and again concluded that the Getty was the lawful owner of the statue.

Nothing has changed in the interim that would cause the Getty to change its position on the Bronze. At this point, the Ministry has known for almost 30 years that the Getty has the Bronze. The statue has continuously been on display except during the period of time when the Getty Villa was renovated, and it has been a prime attraction and source of extreme

pride at the museum ever since. A specially designed, climate controlled gallery in the newly-renovated Getty Villa showcases the spectacular statue.

The Getty recognizes that even for objects that have long been part of its collection, it must consider any new evidence that it receives suggesting an illicit provenance. However, in the absence of such evidence, at some point the Getty must be permitted to have some sense of security with respect to long-held objects in its collection. Particularly given the Getty's strong legal and ethical position with respect to its ownership of the Bronze, it is time that the Ministry relinquish its claim to the statue once and for all.

VII. Transferring Title to the Bronze Could Be a Violation of the Legal Duties of the Getty Trustees

Because of its status as a charitable trust governed by California law, the Getty cannot transfer title to any of its objects, least of all valuable masterpieces, based on largely emotional claims. Decisions to transfer objects to a foreign nation must be grounded in the law and in the ethical considerations that must guide the Getty Museum. Indeed, there is "no higher duty resting upon a trustee than that of defending against adverse claims to trust assets... [F]ailure to do so without sufficient justification would subject the trustee to liability for any loss resulting from such failure upon his part." *Metzenbaum v. Metzenbaum*, 252 P.2d 31, 34 (California Ct. Appeal 1953); see *Restatement (Second) of Trusts* § 176, at 381 (1959) ("The trustee is under a duty to the beneficiary to use reasonable care and skill to preserve the trust property."). Should the Getty transfer title to the Bronze to the Italian State, this could invite the California Attorney General to initiate litigation against the Getty trustees for mismanagement of the Getty's assets. We believe the Attorney General could determine that a transfer of the Bronze is inconsistent with the Getty's legal obligations requiring that its decisionmaking process be thorough, prudent, and supported by facts.

VIII. Conclusion

Having reviewed the files on the Bronze, all additional evidence available to us, and the July 2006 Dossier on the Bronze provided by the Italian Ministry of Cultural Heritage, we have concluded that there is not a sufficient legal or ethical justification for the Getty Trust to transfer title of the Bronze to the Italian State. The Getty purchased the statue only after Italian courts found that there was no proof that the statue was fished from Italian waters, and thus Italy could not be deemed the rightful owner of the statue. Information about the statue's findspot learned after those criminal proceedings, and after the Getty's acquisition of the statue, does not prove that the object came from Italian territorial waters, and indeed, the fishermen who retrieved the statue have consistently indicated that the object was found outside of Italian territorial waters. In addition, even assuming that the Bronze was illegally exported from Italy, the violation of export regulations for an object that is not part of the cultural heritage of Italy does not provide grounds for its transfer to Italy. For all the reasons discussed above, the Getty respectfully declines to transfer title to the Bronze to the Italian State.