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## Artifact-Checking: FinCEN Could Be on the Verge of Ending Artifact Appropriation

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Salisha Kayum ✍ Jan 29 3 min read

# Artifact-checking: FinCEN could be on the verge of ending Artifact Appropriation

“These objects are not just decorations, but have spirits and are considered as lives,” “[w]ithout the soul, like the human body, we are just dead... [i]t is hard to quantify their loss to our temples and country—losing them was like losing the spirits of our ancestors.”[1] These words from the Cambodian people reveal the significance of the bronze, sandstone, copper and gold statues that were torn from their ancient Khmer temples and purloined for display in various exhibits around the world.[2]

Such practice—the forcible removal of artifacts of priceless cultural significance—has become common. Douglas Latchford, a well-known collector and a self-proclaimed “adventurer scholar,”[3] was personally responsible for the looting of a significant number of these ancient Khmer statues. He created false ownership records, invoices, and shipping documents in order to clandestinely sell these antiquities to major museums, auction houses, and art dealers around the world.[4]

Earlier this summer, Latchford died in Thailand fighting extradition for his role in looting these antiquities.[5] However, a number of museums, such as the Metropolitan Museum of Art, the British Museum, and the Denver Art Museum, have yet to return the antiquities linked to Latchford,[6] even though “[r]eturning the antiquities he stole [would be] like returning the souls of the ancestors back to the country.”[7]

The bottom line is that current laws on the trade of art and antiquities are insufficient and allow the looting of culturally significant property to persist. As a result it has become common practice for these culturally significant antiquities to be looted from source countries in typically less wealthy countries, secretly transported, and then sold to collectors and museums in typically wealthier countries, where they remain long after someone like Latchford dies.[8] Other famous examples of looting include the looting of the Dream Tablet and the looting of the Lydian Hoard.[9]

A recent Senate Report detailed two Russian Oligarchs evading sanctions by transacting within the trade of art.[10] These transactions were valued in the millions and caused an uproar on Capitol Hill.[11] This incident urged the financial sector to step in and issue regulations.

The Financial Crimes Enforcement Network (FinCEN), a bureau of the United States Department of the Treasury responsible for issuing regulations on financial institutions such as banks, check cashes, casinos, and the like, has decided to issue regulations governing the trade of art and antiquities.[12]

The proposed regulations are intended to stop crimes “relating to antiquities and art [that] include looting or theft, the illicit excavation of archaeological items, smuggling, and the sale of stolen or counterfeit objects,” as

well as crimes “relating to antiquities and art [that] include money laundering and sanctions violations, and have been linked to transnational criminal networks, international terrorism, and the persecution of individuals or groups on cultural grounds.”[13] On October 25, 2021, FinCEN closed notice and comment on the proposed regulation after accepting written comments from members of the antiquities industry, law enforcement, civil society groups, and the broader public that provided further insight on proposed regulations.[14]

Such regulation could be pivotal towards mending the issues at hand if crafted correctly. If not, more people like Latchford will continue to misappropriate pieces that are valuable to cultures, like the artifacts taken from the Cambodian Khmer Temples.

[1] Malia Politzer et al., *From Temples To Offshore Trusts, A Hunt For Cambodia’s Looted Heritage Leads To Top Museums*, International Consortium of Investigative Journalists (Oct. 5, 2021), <https://www.icij.org/investigations/pandora-papers/cambodia-relics-looted-temples-museums-offshore/>.

[2] *Id.*

[3] Vincent Noce, *'Adventurer Scholar' Douglas Latchford Dies In Bangkok, Aged 89*, The Art Newspaper (Aug. 10, 2020), <https://www.theartnewspaper.com/2020/08/10/adventurer-scholar-douglas-latchford-dies-in-bangkok-aged-89>.

[4] The U.S. Dep’t of Just., <https://www.justice.gov/usao-sdny/press-release/file/1221291/download> (last visited Jan. 20, 2022).

[5] Tess Davis, *Douglas Latchford: The Man Who Pillaged Cambodia*, The Diplomat (Aug. 21, 2020), <https://thediplomat.com/2020/08/douglas-latchford-the-man-who-pillaged-cambodia/>.

[6] Malia Politzer et al., *From Temples To Offshore Trusts, A Hunt For Cambodia’s Looted Heritage Leads To Top Museums*, International Consortium of Investigative Journalists (Oct. 5, 2021), <https://www.icij.org/investigations/pandora-papers/cambodia-relics-looted-temples-museums-offshore/> (see chart)

[7] Malia Politzer et al., *From Temples To Offshore Trusts, A Hunt For Cambodia’s Looted Heritage Leads To Top Museums*, International Consortium of Investigative Journalists (Oct. 5, 2021), <https://www.icij.org/investigations/pandora-papers/cambodia-relics-looted-temples-museums-offshore/>.

[8] Michael Dearman, *Intractable Problems and Modest Solutions: The Illicit Antiquities Trade Between the United States and Mexico*, 41 Hous. J. Int’l L. 413, 415 (2019).

[9] Allison Frankel, *Hobby Lobby, Christie’s and the Epic of Gilgamesh: a new chapter for ancient saga*, Reuters (May 20, 2020), <https://www.reuters.com/article/us-otc-tablet/hobby-lobby-christies-and-the-epic-of-gilgamesh-a-new-chapter-for-ancient-saga-idUSKBN22W37G>; *Gold Hippocampus from Lydian Hoard Found*, The History Blog (Nov. 28, 2012, 1:05PM), <http://www.thehistoryblog.com/archives/21761>.

[10] *The Art Industry and U.S. Policies That Undermine Sanctions*, Staff Report, Permanent Subcommittee on Investigations, U.S. Senate (July 29, 2020), [https://www.hsgac.senate.gov/subcommittees/investigations/hearings/majority-and-minority-staff-report\\_-the-art-industry-and-us-policies-that-undermine-sanctions](https://www.hsgac.senate.gov/subcommittees/investigations/hearings/majority-and-minority-staff-report_-the-art-industry-and-us-policies-that-undermine-sanctions) at 1.

[11] *Id.*

[12] Press Release, FinCEN, FinCEN Launches Regulatory Process For New Antiquities Regulations (Sept. 23, 2021), <https://www.fincen.gov/news/news-releases/fincen-launches-regulatory-process-new-antiquities-regulations>.

[13] FinCEN, *FinCEN Notice, FinCEN Informs Financial Institutions of Efforts Related to Trade in Antiquities and Art* (Mar. 9, 2021), [https://www.fincen.gov/sites/default/files/2021-03/FinCEN%20Notice%20on%20Antiquities%20and%20Art\\_508C.pdf](https://www.fincen.gov/sites/default/files/2021-03/FinCEN%20Notice%20on%20Antiquities%20and%20Art_508C.pdf).

[14] FinCEN, *supra* note 12.