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Privacy, Probate, and Nazi-Plundered Art

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I. INTRODUCTION

More than 100,000 pieces of Nazi-looted[1] art are still missing.[2] This remains so despite public opinion and the commitment of many art institutions to combatting the transfer of Nazi-looted pieces. The reason why: locating Nazi-looted artwork is time-consuming and expensive.[3] Investigators must rely on a patchwork of public documents to piece together a paper trail. Search costs fall on original owners, who often hire specialist art recovery teams to track down missing pieces. Even institutions with considerable expertise and resources struggle to locate lost works. One unrecorded transfer can render a search dead in the water. This essay examines the extent to which nonprobate transfers of art frustrate the return of looted artworks to their original owners and proposes a federal database for all nonprobate transfers of artwork created prior to 1945, known to be in Europe in the 1930s, and with incomplete provenance during the Second World War (1939-45). Any privacy concerns in recording nonprobate transfers are outweighed by public policy considerations.

The difficulties that original owners face in recovering Nazi-looted art underscore an obvious but important point: public records are vital in the search for looted works. Records of art transfers are especially valuable and must be made public.

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1 *See* Holocaust Expropriated Art Recovery (HEAR) Act of 2016, Pub. L. No. 114-308, § 5(a), 130 Stat. 1526, 1526 (defining "Nazi-looted art" as those works lost "because of Nazi persecution."). This expansive definition includes both the theft of artwork by Nazi authorities and Allied forces. *Id.*

2 Stuart E. Eizenstat, *Art Stolen by the Nazis Is Still Missing. Here's How We Can Recover It*, WASH. POST (Jan. 2, 2019, 6:06 PM), https://www.washingtonpost.com/opinions/no-one-should-trade-in-or-possess-art-stolen-by-the-nazis/2019/01/02/01990232-0ed3-11e9-831f-3aa2c2be4cbd_story.html [https://perma.cc/M88D-KSMD].

3 *See* Jackie Mansky, *Why it's so Hard to Find the Original Owners of Nazi-Looted Art*, SMITHSONIAN MAG. (May 31, 2017), https://www.smithsonianmag.com/arts-culture/why-its-so-hard-find-real-owners-nazi-looted-art-180963513/ [https://perma.cc/8HP5-49HZ] (explaining the exhaustive process of locating and identifying Nazi-looted artwork).

This essay focuses on how probate records, as public documents, could provide clues to the location of looted art. Probate records typically include detailed inventories of decedents' estates, with information about tangible personal property (and sometimes that property's provenance). For that reason, they are a viable resource for original owners.

The increasing use of nonprobate transfers complicates the picture. Nonprobate transfers offer certain benefits, such as speed in transfer (as the property is not part of the probate estate) and privacy. But this latter benefit is also a detriment for original owners. When Nazi-looted artwork passes according to the terms of a revocable trust, for example, it changes hands out of the public eye. Information about its whereabouts may remain out of the public domain for another generation or more, depending on the terms of the trust.

If one takes seriously the obligation to return Nazi-looted art to original owners, nonprobate transfers of potentially looted artworks should be made public. This essay first explains how and why probate documents, as public records, are valuable in the search for Nazi-looted works. Next, it briefly elaborates on how Nazi-looted art too easily eludes restitution. It then examines how nonprobate transfers exacerbate difficulties in recovering Nazi-looted artworks. Finally, it considers possible solutions, ultimately proposing the establishment of a federally managed registry which records the transfer of works that carry a heightened risk of being Nazi-looted pieces.

II. Public Documents Assist in the Recovery of Nazi-Looted Artwork

Nazi-looted artworks are most often discovered when they are transferred to, or through, leading art institutions.[4] Such institutions invest considerable sums in advertising collections. [5] Catalogues and exhibition highlights are available online, with individual pieces' provenance reports readily displayed. The sheer volume of online marketing materials makes it relatively easy for original owners to locate pieces without undergoing needle-in-haystack investigations.

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[4] The International Foundation of Art Research "IFAR" has compiled a database of all "U.S. and international civil and criminal cases relating to art believed to be looted or otherwise misappropriated during and after World War II." *See Case Law & Statutes: World War II-Era/Holocaust Related Art Loss*, Int'l Found. for Art, https://www.ifar.org/case_law.php?ID=1 [https://perma.cc/FBQ7-95VJ]. In over 60% of U.S. cases listed on the database, the original owner (or their subsequent heirs) discovered the contested artwork following its donation to a nonprofit museum and subsequent display, consignment with an auction house, or sale to a gallery. *See generally id.*

[5] *See* Glenn Voss et al., National Center for Arts Research: Volume Two Report 17 (2015) (finding that the average arts and cultural organization spends $4.20 on marketing to bring each attendee).

Moreover, art institutions are committed to inhibiting the transfer of Nazi-looted artwork.[6] As Stuart E. Eizenstat, the diplomat and lawyer behind the landmark Washington Principles,[7] wrote: "No self-respecting government, art dealer, private collector, museum or auction house should trade in or possess art stolen by the Nazis."[8] Art institutions conduct extensive due diligence prior to accepting works. Typically, this involves ensuring a provenance report is accurate by cross-checking it against publicly available records.[9] If an art institution determines that a work may have been looted by the Nazis, it will typically notify the original owner.[10] Alternatively, original owners are sometimes successful in locating pieces using specialist art recovery services.[11] Here, too, specialists use public records.

One might think, then, that probate records, as unique public documents, might be especially useful tools in locating looted art. To be sure, they are helpful, particularly in determining the current location of an artwork in cases where a past owner has been identified, or when an original owner may appear in a probate proceeding to claim ownership. In *Matter of Flamenbaum*, the Vorderaisiatisches Museum in Berlin appeared in a probate proceeding to claim title to a 13th century B.C. golden tablet, found among the decedent's possessions, that had likely been taken during World War II.[12] In other cases, probate documents have been used to track an artwork's post-war journey, thereby confirm-

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6 *See, e.g.*, *Unlawful Appropriation of Objects During the Nazi Era*, AM. ALL. MUSEUMS, https://www.aam-us.org/programs/ethics-standards-and-professional-practices/unlawful-appropriation-of-objects-during-the-nazi-era/ [https://perma.cc/4YVQ-FE6A] (discussing how various museum organizations are recognizing the Nazi era atrocities in their legal and ethical practices).

7 *See Washington Conference Principles on Nazi-Confiscated Art*, U.S. DEP'T ST. (Dec. 3, 1998), https://www.state.gov/washington-conference-principles-on-nazi-confiscated-art/ [https://perma.cc/RM6S-Q3R7]. The Washington Principles, published in 1998 in connection with the Washington Conference on Holocaust Era Assets, are designed to be "a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art." *Id.*

8 Eizenstat, *supra* note 2.

9 *See, e.g.*, AM. ALL. MUSEUMS, *supra* note 6 (requesting museums to consult all available records and databases tracking information concerning unlawfully appropriated objects).

10 *See, e.g.*, *id.* (requesting museums to notify potential claimants in the event that "credible evidence of unlawful appropriation without subsequent restitution is discovered through research.").

11 *See, e.g.*, Complaint at 7-8, Beck v. Horowitz, No. 1:21-cv-01991 (N.D. Ga. May 10, 2021) (artwork located by art restitution company); Dunbar v. Seger-Thomschitz, 638 F. Supp. 2d 659 (E.D. La. 2009), *aff'd*, 615 F.3d 574, 579 (5th Cir. 2010) (artwork located by specialist law firm); Museum of Fine Arts v. Seger-Thomschitz, 623 F.3d 1, 5 (1st Cir. 2010).

12 *See* 899 N.Y.S.2d 546, 548-49 (Sur. Ct. 2010), *rev'd*, 945 N.Y.S.2d 183, 184-85 (App. Div. 2012), *aff'd*, 1 N.E.3d 782, 782-83 (N.Y. 2013).

ing that the work under title dispute was the same work taken during Nazi-occupation.[13] However, probate documents do not always make for ideal sources. Many courts do not digitize case files and probate documents, rendering electronic searches impossible. Assuming a will is digitized and made searchable, an artwork may still pass pursuant to a residuary clause without the specific artwork being identified.

III. PRIVATE TRANSFERS OF NAZI-LOOTED ARTWORKS HARM ORIGINAL OWNERS

To understand why the privacy afforded to nonprobate transfers poses a risk to the recovery of Nazi-looted artworks, it is worth sketching in greater detail why Nazi-looted artwork is so difficult to trace. A looted work may be in the possession of an individual who knows it was stolen. This may be the original thief, or a descendant, donee, or transferee thereof. U.S. case law contains examples of U.S. servicemen looting treasures while deployed, only to stash them away for decades.[14] Typically, such pieces are only discovered after a beneficiary, upon inheriting them, attempts to sell them.[15] Not reflected in case law, of course, are black-market sales. Art theft is valued at six-billion dollars annually and requires tailored measures to combat.[16]

A Nazi-looted artwork may also be held by a good-faith purchaser[17] who has no reason to suspect it was illicitly acquired. Art held by good-faith purchasers remains hidden for a variety of benign reasons. Art institutions do not typically publish the names of donors, sellers, or purchasers unless legally required to do so.[18] When an artwork is bought

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[13] *See, e.g.*, Gowen v. Helly Nahmad Gallery, Inc., 77 N.Y.S.3d 605, 611-12 (Sup. Ct. 2018) (illustrating that testamentary records are used to determine the path of artwork between sales), *aff'd*, 95 N.Y.S.3d 62, 63 (App. Div. 2019); *see also* Frenk v. Solomon, 2018 WL 4300960, at *3 (N.Y. Sup. Ct. 2018), *aff'd*, 100 N.Y.S.3d 25 (App. Div. 2019).

[14] *Flamenbaum*, 899 N.Y.S.2d at 549-50; United States v. Meador, 1996 U.S. Dist. LEXIS 22058, at *3 (E.D. Tex. 1996) (stating that a U.S. serviceman stole twelve medieval artifacts while stationed in Quedlinburg), *aff'd*, 138 F.3d 986 (5th Cir. 1998).

[15] *See Meador*, 138 F.3d at 988.

[16] *See generally* Leila Amineddoleh, *Protecting Cultural Heritage by Strictly Scrutinizing Museum Acquisitions*, 24 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 729, 749-50 (2014) (discussing the need for increased penalties on those who deal in, or negligently acquire, illicitly acquired artworks).

[17] Determining whether a transferee of an artwork is a good-faith purchaser is a context-specific inquiry. *See generally* Deborah A. DeMott, *Artful Good Faith: An Essay on Law, Custom, and Intermediaries in Art Markets*, 62 DUKE L.J. 607, 608-09 (2012).

[18] *See* Brief for Sotheby's, Inc. & Art Dealers Ass'n of Am., Inc. as Amici Curiae Supporting Appellants, William J. Jenack Est. Appraisers & Auctioneers, Inc. v. Rabizadeh, 22 N.Y.3d 470 (2013) (No. 546/09) (arguing that it is a time-honored and necessary custom of auction houses to maintain the confidentiality of the sellers and that a requirement that the seller's identity be divulged would undermine the industry).

by a good-faith purchaser, it is usually displayed privately until it is next auctioned, sold, or donated. Multiple generations may separate the first purchase and its subsequent transfer, and probate records might be one of the only ways in which an artwork's whereabouts will enter the public domain. When a good-faith transferor avoids probate, leaving no public record of the artwork's transfer, they can—unwittingly—continue to obscure the whereabouts of Nazi-looted artworks.

Even *if* a Nazi-looted artwork that passed in nonprobate form were discovered, the privacy of the transfer itself may have negatively impacted the original owner's chance of recovery. To recover artworks, original owners must prove that their claims—several decades old—are not time-barred.[19] For now, original owners of Nazi-looted art may take advantage of the HEAR Act, which preempts state and federal statutes of limitations and provides that restitution claims may be commenced "not later than 6 years after the actual discovery by the claimant or the agent of the claimant of— (1) the identity and location of the artwork or other property; and (2) a possessory interest of the claimant in the artwork or other property."[20] However, the Act is short-lived, set to expire on January 1, 2027.[21] In its shadow, state and federal statute of limitations considerations will return.[22]

This is to the detriment of original owners. Many states do not echo the HEAR Act's framework. Rather, they favor a discovery rule.[23] Under this approach, the limitations period commences when an original owner could have discovered the location of the artwork with reasonable diligence.[24] The discovery rule attempts to strike a balance between the good-faith purchaser's interest in repose and the original owner's interest in recovery.[25] But in so doing, it places the original owner's recovery efforts under the microscope.[26] Continued and diligent

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19 *See* Elisabeth K. Pomeroy, *"Unlawfully Lost" Artwork from the Nazi Takeover: Redefining Forced Sales in the Holocaust Expropriated Art Recovery Act of 2016*, 21 WAKE FOREST J. BUS. & INTELL. PROP. L. 468, 470 (2021).

20 Holocaust Expropriated Art Recovery (HEAR) Act of 2016, Pub. L. No. 114-308, § 5(a), 130 Stat. 1526, 1526.

21 *Id.* § 5(g).

22 *See id.*

23 *See,* e.g., O'Keeffe v. Snyder, 416 A.2d 862, 869-70 (N.J. 1980) (discussing New Jersey's use of the discovery rule).

24 *See id.* at 869-70 (ruling that the discovery rule applies to replevin actions to discover stolen artworks). *O'Keefe* lays out a series of factors to consult when determining whether an original owner has been reasonably diligent. *See id.* at 493-94.

25 *See id.* at 868-69, 873.

26 *See* Leah E. Eisen, Commentary, *The Missing Piece: A Discussion of Theft, Statutes of Limitations, and Title Disputes in the Art World*, 81 J. CRIM. L. & CRIMINOLOGY 1067, 1089-91 (1991) (discussing the "tremendous burden" placed on original owners under the discovery rule).

search efforts—costly to sustain—are a factor in determining whether a plaintiff has slept on their rights.[27]

Nonprobate transfers delay discovery. A plaintiff may not be able to sustain costly search measures until the eventual uncovering of their missing artwork and their future claim might be disadvantaged as a result.[28] Moreover, under the discovery rule even original owners with strong claims must still undergo arduous litigation given the fact-specific nature of the limitations period inquiry.[29]

IV. The Rise in Nonprobate Art Transfers Further Threatens the Recovery of Nazi-Looted Art

Nonprobate transfers have become increasingly popular—and with good reason. Probate is notoriously expensive; wills require planning to execute or amend; probate breeds will contests; and probate documents are revealing. Nonprobate transfers, by contrast, are easy to execute, relatively inexpensive, do not require updating, and are private.[30] Today, most wealth transfer occurs through the nonprobate system.[31] Four types of transfers are widely used: (1) donative transfers, or lifetime gifts of specific assets; (2) revocable inter vivos trusts, which allow individual grantors to transfer assets into a trust during their lifetime, then administered for beneficiaries upon the grantor's death; (3) pay-on-death accounts, which stipulate that account assets will transfer to a named beneficiary upon the account-holder's death; and (4) joint ownership arrangements, whereby an asset is placed into a joint tenancy, with each tenant holding rights of survivorship.[32]

Of these, inter vivos trusts offer grantors the most flexibility and privacy: the grantor may tailor the trust exactly to their liking—all the while effectively maintaining control over the trust contents during their

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27 *See, e.g.,* Erisoty v. Rizik, No. 93-6215, 1995 WL 91406, at *13 (E.D. Pa. Feb. 23, 1995) (relying on original owners' "affirmative, sustained efforts" to locate the artwork in determining whether they had slept on their rights under the discovery rule).

28 *See generally* Eisen, *supra* note 26, at 1091, 1097 (discussing the high cost of locating stolen art). The expiration of the HEAR Act may also affect application of the discovery rule. Given the ten-year period in which plaintiffs could have brought forth restitution actions under the favorable limitations framework, failure to bring suit before the HEAR Act's expiration may well create a rebuttable presumption against plaintiff due diligence.

29 *See* Eisen, *supra* note 26, at 1097.

30 *See* John H. Langbein, *The Nonprobate Revolution and the Future of the Law of Succession*, 97 Harv. L. Rev. 1108, 1116, 1120 (1984).

31 Robert H. Sitkoff & Jess Dukeminier, Wills, Trusts, and Estates 441 (10th ed. 2017).

32 *See id.* at 440.

lifetime. All assets administered through the trust may be transferred to a beneficiary privately.

To transfer an artwork, a transferor may simply donate it during their lifetime—or they may place it into an inter vivos trust and retain possession over it while living. Having established an inter vivos trust, a grantor may also execute a will with a pour-over residuary clause, providing that all remaining assets be administered in accordance with the terms of the trust. In both cases, information critical to determining the location of a Nazi-looted piece is kept out of the public domain.

V. SOLUTIONS

If the United States takes seriously its commitment to returning Nazi-looted artworks, it should consider how best to uncloak the privacy of such transfers so that: (a) a public record exists of that art's transfer; and (b) the original owner's claim to recover their artwork is not prejudiced. Any solution must also respect the freedom of disposition of good-faith purchasers and should not unduly burden their ability to take advantage of the benefits (especially privacy) that nonprobate transfers provide.

Three solutions merit consideration. First, the HEAR Act's sunset clause could either be eliminated, or there could be an exception for works whose whereabouts were not publicly ascertainable as of the expiration date. This solution is suboptimal. At a fundamental level, the HEAR Act addresses a symptom rather than the problem. The statute alleviates some of the pressures placed upon an original owner in proving they did not sleep on their rights. Yet it still requires the owner undertake extraordinary research costs to find a piece in the first instance. Nonprobate transfers both increase (and potentially make fruitless) those research costs.

Another solution would be to limit what transferors can bequeath via nonprobate transfer. Specifically, states could forbid the donative transfer of certain artworks at risk of being Nazi-looted outside of formal probate. Defining the prohibited transfers would require careful drafting, but certainly preventing artworks bearing similarity to those listed on stolen art databases from transfer would be a possible first step. Such a system would ensure that there are public records of suspect artworks' whereabouts—but it has substantial flaws. Limiting when, and how, a decedent may dispose of their estate runs counter to the American principle of freedom of disposition. Moreover, the transaction costs of such a system would be prohibitive—ahead of every nonprobate art transfer, an individual would have to ensure that their artwork is not a match with a painting listed on a stolen art database—and a public official would have to corroborate that information.

Consider, then, a third path forward. Public information about artworks leads to recovery. At the same time, good-faith purchasers of art should retain rights of freedom of disposition. A solution is needed that balances both truths, maximizing transparency and minimizing restrictions on the transferor.

This could be achieved by the establishment of laws mandating the recording of certain donative transfers, and the parallel creation of an online, searchable database for any donative, nonprobate, intestate, or testamentary transfer of certain, suspect artworks.[33] The obligation would be on the transferee to report the transfer. Such a system may, at first, seem infeasibly broad, but framed correctly, it would provide benefits to original owners and to good-faith purchasers. Such a database might operate as follows.

First, the transfers that must be recorded should be carefully defined. This is difficult to get right: too broad, and the system becomes expensive to maintain; too narrow, and artwork may slip through the cracks; too complicated and good-faith purchasers are disadvantaged. The most feasible definition of art transfers that would need to be registered would be artworks that were (a) created prior to 1945 and known to be in Europe in the 1930s; (b) with an incomplete provenance during the Second World War (1939-45); and (c) worth over a certain dollar amount. Such a classification is not perfect, but it is simple and tailored (if slightly over-inclusive).[34]

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[33] *See generally* Eisen, *supra* note 26, at 1092-94. While this database is designed primarily to deal with private nonprobate transfers, it is noteworthy that probate records could—and should—be made more readily available for art investigators/researchers. Testamentary transfers should also be recorded in this database. Any reporting requirement on the *sale* of art would stifle the art market, which runs on secrecy. *See* Brief for Sotheby's, Inc. & Art Dealers Ass'n of Am., Inc. as Amici Curiae Supporting Appellants, William J. Jenack Est. Appraisers & Auctioneers, Inc. v. Rabizadeh, 22 N.Y.3d 470 (2013) (No. 546/09). Moreover, case law demonstrates that sales frequently lead to the discovery of Nazi-looted art without the need for additional recording. *See, e.g.*, United States v. Meador, 138 F.3d 986, 988 (5th Cir. 1998). Accordingly, art sales would not be required to be reported. *See id.*

[34] Determinations must be based upon factual criteria rather than aesthetic consideration. A recording requirement premised upon "similarity" to works in a Nazi-looted art database would be unworkable given the difficulty of determining what "similarity" actually means. How artworks are compared in fair use analyses under copyright law shows just how unworkable relying on aesthetic determinations may be. *Compare* Andy Warhol Found. for Visual Arts, Inc. v. Goldsmith, 11 F.4th 26, 52-53 (2d Cir. 2021), *cert. granted*, 142 S. Ct. 1412, 1412 (2022), *with* Cariou v. Prince, 714 F.3d 694, 707 (2d Cir. 2013). While provenance records are easily forged, cracking down on such forgeries requires additional measures. *See* Amineddoleh, *supra* note 16, at 750. Yet, without a provenance requirement, the net will be far too broad. The dollar amount likewise limits the number of recorded transfers. There are also risks that works will be misattributed and

Second, the information to be displayed publicly should be determined with regard for the privacy interests of the transferor and transferee. The simplest option would be to require the title, author/artist, and state in which the artwork being transferred is located before and after transfer to be displayed. Additional information would be kept privately; a party seeking that information would have to formally show cause to a court of competent jurisdiction that they have a colorable claim to the artwork being listed before it was granted, perhaps by demonstrating that the artwork has been listed on a recognized stolen art database.

Third, a federal agency should be created to establish and run the database. This would undeniably require federal expenditure, but such costs would be offset by the judicial efficiency such a system would create. The agency staff: (1) would provide guidance on how to report art transfers; (2) would post art transfers and keep an orderly site; and (3) would review the requests for additional information described above. There could even be a mandatory reporting requirement, whereby agency staff must report any direct matches between listed transfers and artworks posted on stolen art databases.

Fourth, to promote compliance, a fine would need to be imposed upon non-reporters. Given the wild difference between art prices, any fixed-dollar fine likely will be excessive in some instances and trifling in others. Rather, fines should be a percentage of the presumed value of the artwork transferred, as determined by an independent appraiser hired by the agency.

While a proposed federal registry may seem overbroad and intrusive, it is attractive for several reasons. Most importantly, it eliminates the problem that the HEAR Act fails to address: that potentially looted art can be transferred obscurely or even privately. It does so without imposing undue burden on the transferor, who would still be free to transfer property at will.[35] Moreover, it would provide clear guidance to courts determining whether an original owner was time-barred from bringing their claims, thereby increasing judicial efficiency in restitution cases. Under the discovery rule, original owners would be on notice of an artwork's whereabouts as of the date it was posted on the registry.

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therefore either (1) incorrectly reported; or (2) not reported. Such risks are ever present in art transfers and require remedies beyond the scope of this system.

35 *See generally* HEAR Act § 5. Privacy, unlike freedom of disposition, is not a fundamental principle of American testamentary law. *See* Frances H. Foster, *Privacy and the Elusive Quest for Uniformity in the Law of Trusts*, 38 ARIZ. ST. L.J. 713, 722 (2006) ("'To prevent secrecy in public affairs,' privacy yields to the public's 'legitimate interest and right of general access to court records.'") (quoting *In re* Estate of Hearst, 136 Cal. Rptr. 821, 824 (Cal. Ct. App. 1977)).

They would have six years thence to file a claim.[36] Mandatory recording may well also prompt beneficiaries to reach out to original owners to negotiate settlement, thereby promoting equitable resolution—or the timely initiation of a lawsuit.[37]

There is also precedent for such a system. Transactions of certain property, for example real estate, are publicly recorded, and several states already require disclosure of inter vivos trust instruments—or equivalent attestations—where real estate comprises any part of the trust res.[38] The government has also drafted several laws subjecting transfers that are otherwise legal but hinder the government's ability to detect illegal conduct to reporting requirements.[39] Just as the government has an interest in ensuring that private transfers aren't being used to launder stolen proceeds, it has an interest in making sure that the original owners of Nazi-looted art are not bring prevented from recovering that art.[40]

VI. Conclusion

Public records are key tools in the restoration of Nazi-looted art to the original owners. Unfortunately, the privacy afforded to nonprobate transfers means that it is simply too easy to keep information about the existence and location of art out of the public domain.

Instead of eliminating nonprobate transfers of art—a solution that would inappropriately restrict a transferor's right of disposition—this paper has posited the establishment of a federal database of all transfers of art that could have possibly been looted as a result of Nazi occupation. Such a database will assist in the speedy and inexpensive restitution of Nazi-looted artworks and will assist courts in determining whether a claim is time-barred without the need for overarching overhauls to statute of limitations jurisprudence.

Although Nazi-looted artwork is perhaps the most notorious example of art theft, art crime is a multibillion-dollar industry spanning be-

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36 HEAR Act § 5(a). Obviously, there would be some outlier cases where this rule would not fit neatly—such as if an artwork were misattributed. In such cases, current discovery rule case law would need to provide precedent.

37 *See* Bloom v. Emden, No. 19-CV-10155 (RA), 2022 WL 799096, at *1-3 (S.D.N.Y. Mar. 16, 2022) (executors of decedent's will reached out to the plaintiffs to inquire whether they would interfere with the sale of a painting included in decedent's estate, given that they were mentioned in its provenance).

38 *See* Foster, *supra* note 35, at 729-30.

39 *See, e.g.*, The Bank Secrecy Act, 31 U.S.C. § 5311 note (Annual Reporting Requirements).

40 Reid Kress Weisbord, *The Governmental Stake in Private Wealth Transfer*, 98 B.U. L. Rev. 1229, 1243-44 (2018) (arguing that the government has a legitimate sovereign interest in regulating transfers that hinder its ability to detect illegal conduct).

yond WWII-era displacements.[41] A federal database could serve as a blueprint for curbing the flow of other types of looted art.

41 *See* Amineddoleh, *supra* note 16, at 773.