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U.S. Study Finds Further Regulation of the Art Market Not Needed Now

A Treasury Department report says that, while the market can be vulnerable to money laundering, there are more pressing regulatory issues to address.

Graham Bowley and Zachary Small

A Treasury report on money laundering in the art market said steps taken by the Swiss authorities had lessened the risk on transactions in free ports, like the Geneva Free Port, though vulnerabilities remain in the United States. Credit...Fred Merz for The New York Times

Addressing concerns that the art market has become a ripe setting for illicit financial transactions, the Treasury Department released a study on Friday that said that, while it had identified some vulnerabilities, it does not recommend immediate government intervention to install further regulations.

The study cited some evidence of money laundering using high-end art, mentioning, for example, a financier who prosecutors said bought artworks with money siphoned from the Malaysian government. And it suggested a number of potential measures that could be instituted in the future, but it concluded that such strictures were not currently a priority.

“We have found that while certain aspects of the high-value art market are vulnerable to money laundering, it’s often the case that there are larger underlying issues at play, like the abuse of shell companies or the participation of complicit professionals, so we are tackling those first,” Scott Rembrandt, a senior Treasury official overseeing the study, said in a statement.

The report is likely to be welcomed by art dealers and auction houses, whose major players spent nearly $1 million over the last two years on lobbying federal officials in Washington on this and other regulatory issues, according to federal disclosure forms.

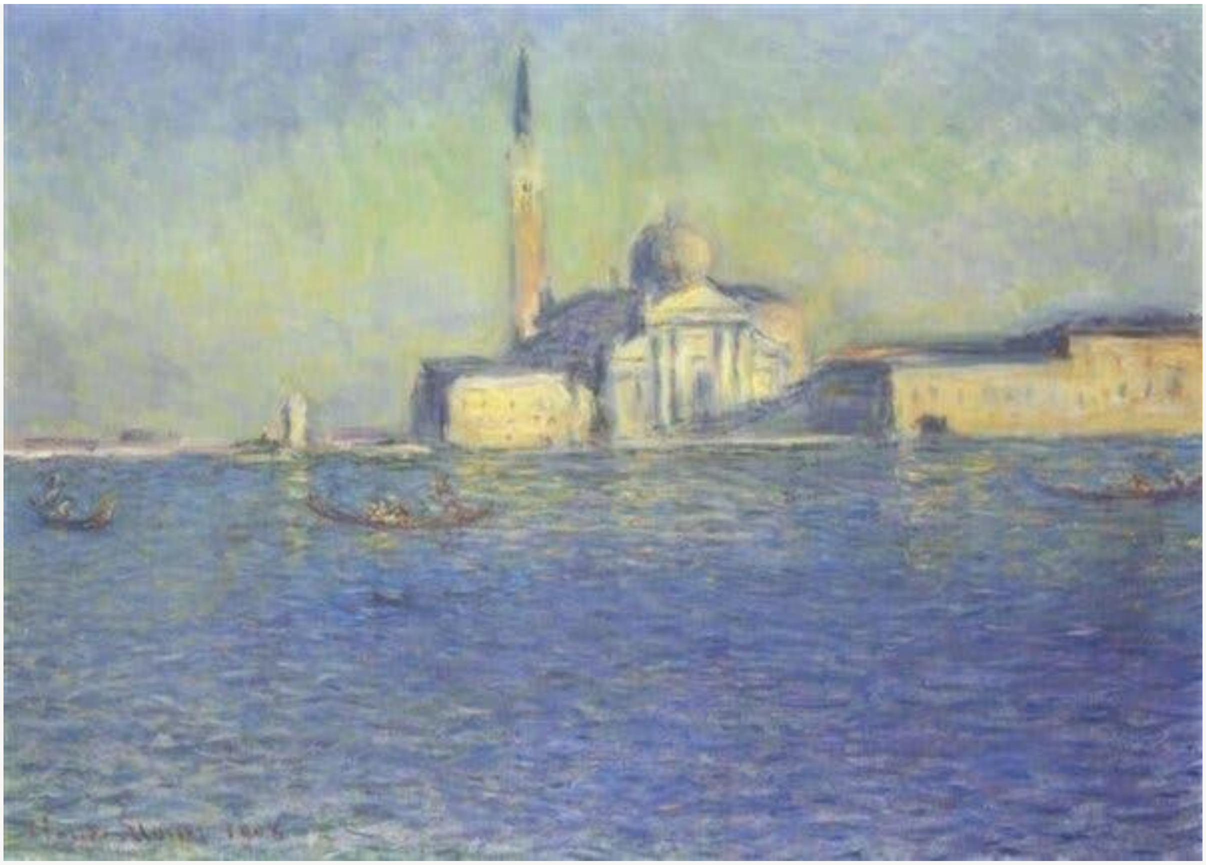
Some experts have long worried that the opacity of the art trade, where buyers and sellers are not always identified, even to the parties in a transaction, made it an easy way to shroud illicit transfers of money. Laws recently adopted in Europe amid concerns that art is being used for unlawful activities require dealers and auction houses to determine the identity of their clients and check the source of their wealth.

The 40-page Treasury study identified aspects of the current art market that it said make it vulnerable to money laundering. It cited the high prices and the ease of transporting art, as well as a culture of secrecy, the use of anonymous shell companies to hold works, and the use of free ports, storage zones that offer favorable tax treatment and where, some worry, million-dollar artworks can be bought or sold without the knowledge of the authorities.

But the study concluded that the industry has a low risk of terror financing, or being used for the sale of looted art from countries like Syria to support terrorist activities. It said that expensive artworks are rarely paid for in cash, likely making them an unattractive vehicle for laundering illicit money. In addition, the authors found that, as part of their efforts to protect their reputations and businesses, auction houses and major galleries already perform due diligence on customers, providing voluntary safeguards against abuse.

Small galleries would not be targets for money launderers, the report found, because the works they sell are not priced highly enough to be efficient mechanisms for moving wealth surreptitiously.

“It is important to note,” the report said, “that institutions such as galleries and auction houses have market incentives to collect information on the ultimate sellers or buyers of works of art regardless of identifying potential illicit finance tied to a transaction, and best practices enacted by most players in the industry are to collect information on all buyers and sellers.”



The Justice Department has said that some $200 million in funds misappropriated from the Malaysian government were used to purchase art, including Monet's "Saint-Georges Majeur."Credit...Claude Monet

Nevertheless, the study suggests the government could urge art market participants to create a system of information sharing that would help to identify problematic clients. Down the road, the study says regulators may also want to consider imposing anti-money-laundering programs on "certain art market participants," by requiring them to identify who is buying and selling art and to issue suspicious activity reports, for example, though it does not elaborate on the conditions that would lead to such an effort.

"While these abuses may not rise to a critical national-security-level threat or vulnerability, there is evidence to suggest that criminal actors sometimes purchase high-value art with illicit proceeds generated from a predicate crime and then hold that art as a way to launder such proceeds," it said.

Officials said work already underway to make shell companies more transparent will likely go some way to combating fraud in the art market where anonymous shell companies are sometimes used to buy and hold art.

Treasury officials were required to compile a report on the issue of money laundering and terror financing in the art market under legislation passed by Congress at the end of 2020.

The same legislation tightened oversight of the antiquities market, extending a law that increased federal scrutiny of financial transactions to include the trade of ancient artifacts.

That law, the Bank Secrecy Act, requires banks to report cash transactions of more than $10,000; highlight suspicious activity; and understand the identity of their customers and where their wealth comes from. Exactly how the new rules will work in practice for antiquities is currently being determined by the Financial Crimes Enforcement Network, a bureau in the Treasury Department.

Some who questioned whether auction houses and galleries could police themselves have urged regulators to extend the banking laws to the wider art market.

Treasury officials said greater evidence of links between terror financing and artifacts looted from cultural heritage sites in countries like Syria and Iraq explained the greater urgency to regulate antiquities.

John J. Byrne, who advises companies on financial crime prevention and who has urged tougher rules for the industry, welcomed the study and said it suggested to him that greater oversight would come eventually.

“This confirms that this is a problem and will be addressed in time,” he said. “The fact that they have to figure out timelines because of other priorities does not disappoint me.”

Among those who have advised caution on further regulation has been the Art Dealers Association of America, whose then president, Andrew Schoelkopf, expressed concern about the possible effect of potential new measures at an industry panel last year.

“It’s going to be a whole lot of paperwork and a whole lot of compliance and I don’t think we will extinguish much of a problem,” he said.

The association, a trade group representing nearly 190 galleries, paid its Washington lobbyist $190,000 last year, up from $140,000 the year before, and cited the potential extension of the Bank Secrecy Act to the art market as the issue on its lobbying forms. But a spokeswoman for the association said the spending covered a broader range of issues.

Maureen Bray, the association’s executive director, said in an interview that the Treasury’s study “seems to echo the A.D.A.A.’s perspective that currently there is not systematic evidence that the art market should be a priority over other industries currently not subject to the Bank Secrecy Act.”

One area of concern, the study said, was the growing market for financial services that employ artworks as collateral. It said the fact that such transactions are not currently subject to the same anti-money-laundering rules that govern banks could allow criminals to sidestep scrutiny and get liquidity from high-value artworks without disclosing the initial illicit source of their funds, and the study highlights this as “a potentially large” money-laundering vulnerability.

It cited several specific examples of abuse, such as that of the financier Jho Low, who prosecutors say helped siphon billions of dollars from a Malaysian government fund employing a network of bank accounts and shell companies and laundered the money via a spending spree on things like art. (Low has denied any wrongdoing and remains at large.)

It also cited the case of two Russian oligarchs, Arkady and Boris Rotenberg, who, Senate investigators said, used art to bypass U.S. sanctions.

Officials emphasized that the study was merely the start of a process that would involve the report being given over to committees in the House and Senate for further work. But it said that while high-value art is potentially vulnerable to fraud, the problems in bigger sectors like real estate were more pressing.

“Once we’ve tackled more systemic issues, like creating a beneficial ownership registry to crack down on shell companies, we will look at what else might be needed to address money laundering risks specific to other industries, including the art industry,” Rembrandt, the Treasury official, said in his statement.