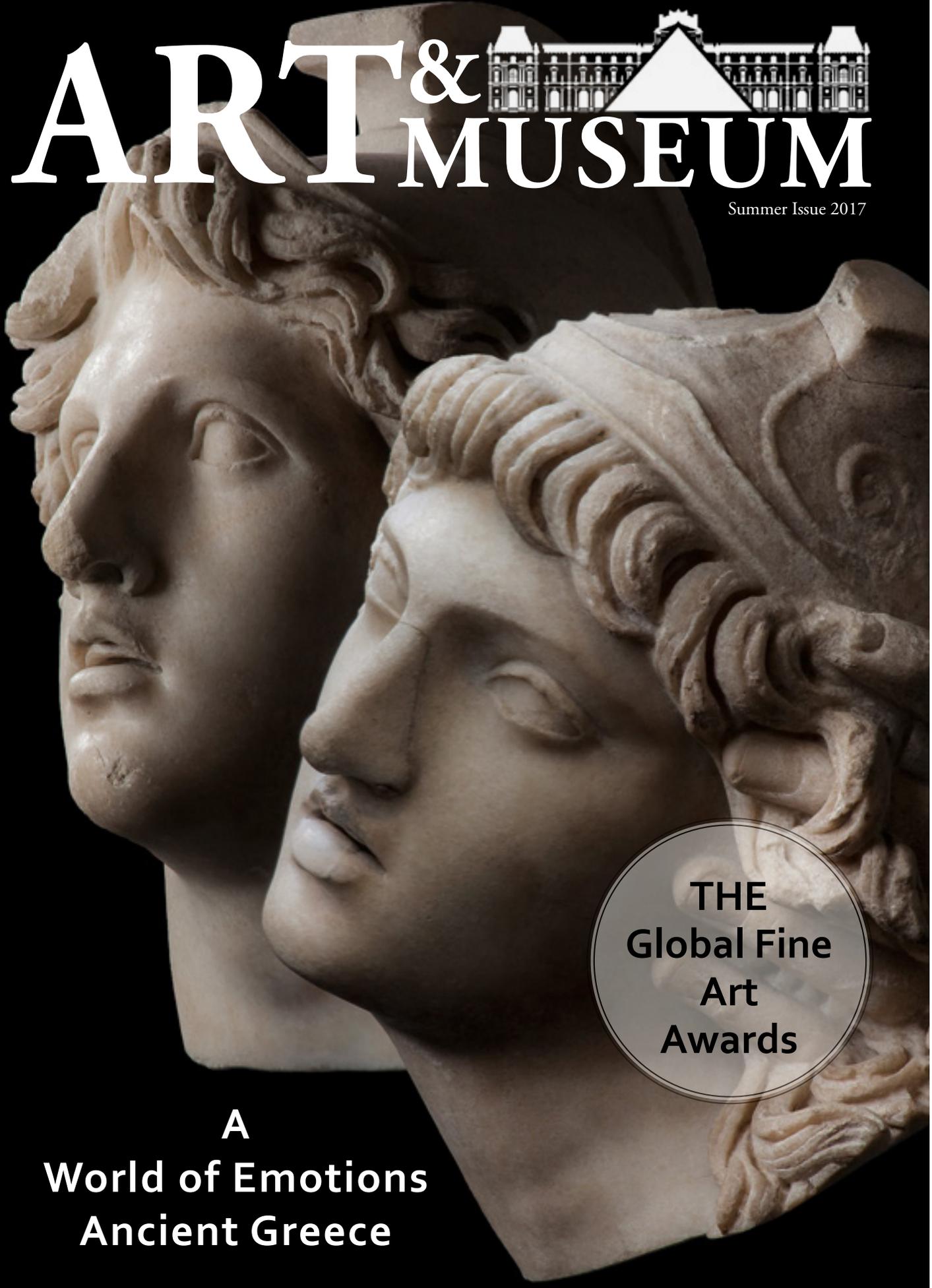


ART & MUSEUM



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IMPROVED STANDARDS FOR LENDING ART



Lending by private collectors has always been a vital component of the art market. The advantages may be several-fold for the collector, including attention if sought, and tax advantages. Or the borrowing institution may simply be a place to park a piece of art vs. paying for storage. It serves the borrower, whether a museum, gallery or other, by expanding its reputation in a specific area or style or by broadening its scope of scholarship. Bigger crowds, increased patronage and a spotlight on their capabilities are all desirable outcomes.

Considering the current climate for museums, borrowing may be on the rise, and not just among Kunsthalles (museums without their own collections). According to the billionaire collector Eli Broad, whose namesake museum opened in Los Angeles in 2015, borrowing rather than owning could be the future for museums, given the high cost of buying, storing and insuring art these days. Speaking with his museum hat on, he said: “We’re going to bear the burden of insurance, we’re going to bear the burden of conservation”.

Lenders should not make any assumptions about a loan arrangement. They should always work with a law firm that specialises in art law to ensure that all the proper steps are taken to safely transport art to and from the borrower and protect it while it is in their care.

Yet there are gaps, and assumptions continue to be made, particularly when the duration of the loan is short, which may cause both parties to be less rigorous. Currently, it is not unusual for standard loan documents from the borrower to outline protections in as ambiguous a manner as possible. The terms are, not surprisingly, brief in addressing topics like protection from theft while the work is on the borrower’s premises.

Museums, particularly those with budget constraints, will apply their own standards for protection, which may not be sufficient or equal in degree to satisfy the lender’s unwritten criteria. Common language in contracts guarantees they will “...exercise the same care in respect to the works that it does in the safekeeping of comparable property of its own”, which should be cold comfort to a lender. Today, we are far short of the point when theft, whether from the outside or within, is no longer an issue. In fact, with the expansion of the market and continuously rising prices, a greater threat of theft is inevitable. But very few museums have solutions already in place for proper protection and a layered approach to security that will sufficiently mitigate risk.

Nor should lenders depend on insurers to cover all contingencies, like theft, water damage, etc. Insurers are increasingly constrained by the concurrent rising cost of coverage in a highly competitive market. A loss will rarely lead to a satisfactory outcome for the lender.

Standard language regarding a state-of-the-art level of protection from any possible occurrence should be a part of a complete loan document. These terms would require very little additional legwork by lawyers to set an acceptable threshold. Lenders should become more active in ensuring that their work is safe by applying greater scrutiny to existing loan agreements. The borrowers that take extra steps to ensure proper anti-theft protection will maintain their reputations as showcases for loaned work. Higher standards for lending and borrowing will ultimately benefit the entire market.

By: Bill Anderson, Managing Partner of NYC-based Art Guard, developing technologies for theft protection of art and valuable assets.