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The Ethics of the International Display of Fashion in the Museum

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THE ETHICS OF THE INTERNATIONAL DISPLAY OF FASHION IN THE MUSEUM

*Felicia Caponigri**

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I. INTRODUCTION

Fashion's presence in the museum environment has become increasingly evident and pervasive.¹ While the Anna Wintour Costume Center of the Metropolitan Museum of Art may garner the most attention with its blockbuster exhibits such as *Alexander McQueen: Savage Beauty*, and *China Through the Looking Glass*, other museums

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1. Suzy Menkes, *Gone Global: Fashion as Art?*, N.Y. TIMES (July 4, 2011), http://www.nytimes.com/2011/07/05/fashion/is-fashion-really-museum-art.html?_r=0 [<https://perma.cc/5M4M-MDDR>].

across the globe also include fashion alongside traditional art works in their collections. Collections can be found in institutions in Italy (the Galleria del Costume in the Palazzo Pitti, the Gucci Museo, the Museo Salvatore Ferragamo in Florence, the Museo Boncompagni Ludovisi, and the Galleria Borghese's celebrated exhibit *Couture/Sculpture: Azzedine Alaïa in the History of Fashion* in Rome), France (the Musée des Arts Decoratifs' *Fashion Forward: 3 Siècles du Mode*), and England (the Victoria and Albert Museum not only holds an expansive Fashion collection but regularly holds Fashion exhibits, including the recent *The Glamour of Italian Fashion 1945-2014*).² Fashion's common presence in museums transcends geographic boundaries and legal jurisdictions: it exerts an international presence.

The presence of fashion in the museum is not, however, exempt from the challenges, and proposed solutions, that accompany the presence of art in the museum. If anything fashion is more susceptible to them: fashion magazines regularly sponsor fashion exhibits,³ fashion brands manage their own "museums,"⁴ and members of the fashion community serve as trustees to museums that put on fashion exhibits.⁵ In organizing fashion exhibits, museum professionals must interact with fashion designers whose work they are exhibiting,⁶ fashion magazine editors who may or may not act as trustees,⁷ and with representatives of the corporate archives of fashion brands.⁸ Conflicts of interest also

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2. *The Glamour of Italian Fashion 1945-2014*, VICTORIA AND ALBERT MUSEUM (last visited Oct. 17, 2016), <http://www.vam.ac.uk/content/exhibitions/exhibition-the-glamour-of-italian-fashion-1945-2014/about-the-exhibition/> [<https://perma.cc/KQP3-7UVT>].
 3. See, e.g., VOGUE FASHION DUBAI EXPERIENCE 2015, <http://www.vfdebyemaar.com/en/about-vfde/about-vouge-fashion-dubai-experiences.aspx> [<https://perma.cc/MYC9-82CW>] (last visited Oct. 18, 2015) (discussing the fashion exhibit Vogue sponsored).
 4. Lou Stoppard, *Fashion Brands Build Museums as Archives Gain Value*, THE FINANCIAL TIMES (July 22, 2016), <https://www.ft.com/content/7d838ca4-27ff-11e6-8ba3-cdd781d02d89> [<https://perma.cc/54GZ-R9SM>].
 5. See, e.g., *Anna Wintour Becomes an Elective Trustee of the Metropolitan Museum of Art*, THE MET (May 10, 2011), <http://www.metmuseum.org/press/news/2011/anna-wintour-becomes-an-elective-trustee-of-the-metropolitan-museum-of-art> [<https://perma.cc/W6W4-ZM3L>] (discussing Anna Wintour becoming a trustee of The Metropolitan Museum of Art).
 6. Menkes, *supra* note 1.
 7. THE MET, *supra* note 5.
 8. Stoppard, *supra* note 4.

pose a primary challenge accompanying the presentation of fashion in a treasured museum space.⁹

The International Council of Museums' Code of Ethics (ICOM Code) provides guidance for museum professionals, trustees, and sponsors as they seek to work together to present fashion in the museum.¹⁰ Accordingly, this article examines crucial issues concerning the display of fashion in museums and its compliance with international law. First, the article engages with the crucial question of how fashion is cultural heritage, or, at least, how fashion can be considered a part of the ICOM Code's definition of heritage, and therefore within the scope of the minimum ethical standards it sets forth for its members and potentially for museums at large.¹¹ Second, the article presents the ICOM Code, contextualizing it within the ICOM's framework as a non-governmental international public interest organization, and examines how the ICOM Code is a source of general principles of international law.¹² As part of this section, the article also highlights how one of the ICOM Code's ethical standards—that the museum's interest should prevail in the face of a conflict of interest between the museum and an individual—is seemingly becoming a rule of customary international law.¹³

In its fourth and fifth sections, the article enters the museum space and analyzes specific fashion exhibits and displays. First, it travels to New York City and The Metropolitan of Art in 2015 during the organization of the exhibit, *China Through the Looking Glass* [hereinafter referred to as *China*]. Through the lens of the documentary *The First Monday of May* it looks at the behavior of Anna Wintour, editor in chief of VOGUE, artistic director for Condé Nast, trustee of the Metropolitan Museum of Art, the Costume Center's namesake, and fundraiser extraordinaire, in light of the ICOM Code and the standard that the museum's interest should prevail in the face of a conflict of interest between the museum and an individual.¹⁴ It also looks at the behavior of Andrew Bolton, curator in charge of *China* and now curator in charge of the Anna Wintour Costume Center, and his interactions with other museum professionals at the Met, including Maxwell K.

9. INTERNATIONAL COUNCIL OF MUSEUMS, ICOM CODE OF ETHICS FOR MUSEUMS 13, available at http://icom.museum/fileadmin/user_upload/pdf/Codes/code_ethics2013_eng.pdf (last accessed Sept. 5, 2016) [hereinafter Code of Ethics].

10. See *Id.* (explaining guidelines Museums must seek to follow).

11. *Id.* at 15.

12. See Code of Ethics, *supra* note 9, at 17 (discussing the ICOM organization and its mission).

13. Code of Ethics, *supra* note 9.

14. Code of Ethics, *supra* note 9.

Hearn, Head of the Asian Art Department, in light of the ICOM Code and its conflicts of interest provisions.¹⁵

Then, the article examines the *Gucci Museo*. Situated in the context of historic Florence and Italy's complex cultural property legal framework, the *Gucci Museo* calls itself a museum but may not be so under a strict interpretation of ICOM's museum definition.¹⁶ The article directly engages with this question, emphasizing the importance of the issue in the face of Italy's recent incorporation of that definition into their regulations governing the administration of cultural property.¹⁷ It then looks at the display of the *Gucci Museo*, highlighting the similar aesthetic experiences between it and Gucci's stores—both inside and without its *Museo*, and examining this similarity in light of the ICOM Code's ethical standards. Lastly, it looks to the display decisions of Guccio Gucci S.p.A. and its former Creative Director, Frida Giannini, noting how their management decisions seem to indicate a tendency to subsume any museum interest to business and personal interests.¹⁸

On a last note, this article and its author would like to emphasize the importance of caring about the ethics that accompany the display of fashion in the museum. Allowing museum professionals or trustees to effectively opt out of minimum international standards just because they are displaying fashion compromises the public's ability to appreciate certain items of fashion as part of our cultural heritage and to truly accept fashion in the museum space. In an atmosphere where many still see fashion in the museum as a trend and seasonal flash of interest, the ICOM Code may prove to set the classic standard for future fashion exhibits in the museum.

II. FASHION AS CULTURAL HERITAGE

While fashion's presence in the museum today may result in blockbuster exhibitions and more widespread acceptance, there are still those in museums and their environs who see fashion's presence as a trendy decision, a presentation of something that is not worthy of the

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15. Robin Pogrebin & Guy Trebay, *Andrew Bolton Chosen to Lead the Met's Costume Institute*, N.Y. TIMES (Sept. 8, 2015), https://www.nytimes.com/2015/09/09/arts/design/andrew-bolton-chosen-to-lead-the-mets-costume-institute.html?_r=0 [<http://perma.cc/JMG4-HWSR>].
 16. See Code of Ethics, *supra* note 9 (discussing the standards ICOM requires to be considered a museum).
 17. LORENZO CASINI, *EREDITARE IL FUTURO* 179 (2015).
 18. *Frida Giannini*, THE BUSINESS OF FASHION, <https://www.businessoffashion.com/community/people/frida-giannini> [<https://perma.cc/PD2M-QZ4E>] (last visited Oct. 15, 2016). The display of the *Gucci Museo* discussed is that at the time of its opening in 2011.

term “Art.”¹⁹ The proffered explanation for this prejudice by fashion scholars is that a nineteenth century curatorial view still prevails in the museum: by many, fashion is still understood as a form of “feminine folly.”²⁰ Fashion museums and scholars still try to apply the historical canons of art history onto fashion objects in the hopes of finding a form of legitimization.²¹ A more obvious and relevant question, however, seems to be how fashion is cultural heritage.

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19. See, e.g. THE FIRST MONDAY IN MAY (Magnolia Pictures 2016) (expressing Maxwell K. Hearn’s concerns about the *China* exhibition display itself and his general comments that the “costumes” not overshadow the “Chinese art”: “My biggest concern Andrew, frankly, is just to make sure that people don’t find the intensity of the installation and a kind of shall we say the imposition of the design so powerful that it overshadows the intellectual contents. I think what happens with this is it diminishes the focus of the intellectual content and it raises the level of well this is all about creating a sense of hype which is different from what your goals and what my goals are.”). Andrew Bolton, in promoting the 2015 Costume Center exhibit *China* directly addresses the pervasive idea that Fashion is not worthy of the museum, emphasizing that the discussion of whether Fashion is museum-worthy is redundant. Bolton makes the discussion more nuanced, “I’ve always said that not all fashion is art, but then not all art is art! . . . Contemporary art is deeply, deeply rooted in commerce. And the fact that those criticisms are launched at fashion and not art I find extraordinary, in this day and age.” This is because Bolton grounds people’s criticisms of fashion in the fact that it is commercial. “I still think that there’s a bias, a prejudice against fashion, among certain curators in the museum but also among critics outside,” Bolton says. “I think they see fashion as something that is deeply rooted in the commercial world, not in the art world. And the popularity of fashion can also be annoying to some people — they don’t like that it brings in such huge numbers. But the reason why it does is that it’s a living art form we can all relate to.” Associated Press, *Met Curator Andrew Bolton, Quiet Defender of Fashion as Art*, THE BUSINESS OF FASHION, (Apr. 25, 2016 16:38), <https://www.businessoffashion.com/articles/global-currents/met-curator-andrew-bolton-quiet-defender-of-fashion-as-art> [<https://perma.cc/HK34-G2QL>].
20. Lou Taylor, *Doing the Laundry? A Reassessment of Object-based Dress History*, in FASHION THEORY: THE JOURNAL OF DRESS, BODY, AND CULTURE 2(4) 337, 340 (1998) (“[A] hostile attitude to the collection of seasonally-styled European fashion for women became enshrined within [what would become the Victoria and Albert] museum’s collecting policy from the very start.”). As Taylor explains, a European 19th century male-centric curatorial view emphasized the importance of fabric alone rather than the entire construction and form of an item of dress. *Id.* Note that Harold Koda, former Curator in Charge of the Costume Institute at the Metropolitan Museum of Art also cites this as the reason. See THE FIRST MONDAY IN MAY, *supra* note 19.
21. In the recent exhibit *Tra Arte e Moda/Across Art and Fashion the Museo Salvatore Ferragamo* included a digital timeline mapping art periods such as Surrealism onto shoes exhibited as part of the display. Valerie Steele has also observed, “Fashion- especially haute couture, which is handmade

While the term “Art” is still used by some museums to inform their mission and collections policies, the term “cultural heritage” and “cultural property” is used in international instruments to regulate the movement, transfer, display and exhibition of objects that are significant for our world and global society.²² Instead of entertaining whether fashion should be considered art, which would therefore make it cultural heritage, is it not more appropriate to determine how fashion in itself is cultural heritage? Is fashion, as the ICOM Code defines it, “[a] thing or concept considered of aesthetic, historical, scientific or spiritual significance”?²³

The International Council of Museums (ICOM) seems to consider that it is. The ICOM publication *Key Concepts of Museology* notes that the term heritage has been expanded since the 1950s to include “all material evidence of man and his environment.”²⁴ Moreover, the International Committee for Museums and Collections of Costume (ICOSTUME) emphasizes that ICOM considers fashion to be part of

and not mass-produced- is sometimes regarded as art. Certainly, a classic Balenciaga evening dress displayed on a pedestal or in a glass case in a museum has some of the aura of a work of art, although it was produced within the fashion system, not the art world.” Valerie Steele, *Fashion, in FASHION AND ART 13* (Adam Geczy & Vicki Karaminas eds., 2012).

22. The *Hague Convention* uses the term ‘cultural property’ which includes “movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above.” See *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, 14 May 1954*, in JOHN HENRY MERRYMAN ET AL., *LAW, ETHICS AND THE VISUAL ARTS* 65 (2007) (discussing how the convention covers matters of cultural property and cultural heritage). Also see the ICOM Code definition that follows. In its discussions of intangible cultural heritage, UNESCO points to clothing and jewelry as an example of the traditional craftsmanship which is “the most tangible manifestation of intangible cultural heritage.” *Traditional Craftsmanship, INTANGIBLE CULTURAL HERITAGE, UNESCO*, <http://www.unesco.org/culture/ich/en/traditional-craftsmanship-00057> [<https://perma.cc/UPL9-ZEUC>] (noting “the 2003 Convention is mainly concerned with the skills and knowledge involved in craftsmanship rather than the craft products themselves” and encouraging the passing on of such craftsmanship to future generations).
23. Code of Ethics, *supra* note 9, at 15.
24. KEY CONCEPTS OF MUSEOLOGY 40 (André Desvallées & François Mairesse eds., 2009).

the “heritage”—whether tangible or intangible—that museums and museum professionals manage.²⁵

ICOSTUME is an International Committee of ICOM, whose purpose is to provide a forum for “museum professionals and costume historians from all over the world to explore all aspects of presenting, preserving, researching and collecting apparel.”²⁶ The use of the terms “apparel” and “costume” should not be read as an exclusion of fashion, but in actuality as an embrace of it.²⁷ The use of the term “Fashion” in itself by museums and museum curators today, is in fact a reflection of the evolving nature of fashion’s place in the museum as part of collections of costume or dress. At the inception of the study of dress history, the term costume was used to refer to it,²⁸ while the term dress was used by American scholars in the place of the term costume, preferred by their Anglo-Saxon counterparts.²⁹

Fashion has historically been understood as clothing that is popular, or of the moment, which has “a social purpose, above and beyond those of function and aesthetics.”³⁰ Again, this was initially a proverbial strike against fashion in the museum space, since the European 19th century’s male-centric curatorial view understood fashion as a form of feminine folly and emphasized the importance of fabric alone rather than the entire construction and form of an item of dress.³¹ As time has passed, however, the very social purpose of fashion has supported a methodology for its analysis and the scholarship which surrounds it: seeing fashion as a form of non-verbal, visual

25. Code of Ethics, *supra* note 9, at 15.

26. *About ICOM Costume*, ICOM AND COLLECTIONS OF COSTUME, <http://network.icom.museum/costume/who-we-are/about-icom-costume/> [<https://perma.cc/D5LJ-GZXU>] (last visited Oct. 16, 2016).

27. *See About ICOM Costume*, *supra* note 26 (discussing how the ICOM welcomes members having an interest in apparel).

28. The logic behind the use of this term lay in the idea that “costume was all-embracing, a label that included ancient and medieval dress as well as ‘fashion.’” Linda Welters & Abby Lillethun, *The History of Dress and Fashion*, BERG FASHION LIBRARY, [http://www.bergfashionlibrary.com/page/The\\$0020History\\$0020of\\$0020Dress\\$0020and\\$0020Fashion/the-history-of-dress-and-fashion#Historical_Sources_and_Terms](http://www.bergfashionlibrary.com/page/The$0020History$0020of$0020Dress$0020and$0020Fashion/the-history-of-dress-and-fashion#Historical_Sources_and_Terms) [<https://perma.cc/TSE2-R876>] (last visited Oct. 16, 2016).

29. *Id.* Some scholars also provocatively suggest that there is a prevalent opinion that Fashion is only a Western concept and that the rest of the world has “dress.” Peter McNeil, “*We’re Not in the Fashion Business*”: *Fashion in the Museum and the Academy*, 12 FASHION THEORY 69 (2008).

30. Ingrid Loschek, *WHEN CLOTHES BECOME FASHION* 134 (2009).

31. Taylor, *supra* note 20, at 339–42.

communication³² between people, as a way to solidify group identity often grounds and even justifies its inclusion in the museum space.³³ This same justification also allows for the presentation of fashion objects alongside art objects, leading to the inevitable comparison between them. In both circumstances, however, those who manage fashion as part of costume and apparel see it as a container of meaning on par with a work of art or other historical material object, and therefore as an object which contemporary audiences can not only appreciate for its aesthetic value, but also as an object through which contemporary audiences can learn of the value systems, traditions, and societies of the past for the present.³⁴ ICOSTUME reflects this: using these varied terms, especially the term apparel,³⁵ allows ICOSTUME to embrace Fashion and to craft best practices for fashion in the museum space.

The inclusion of fashion as part of ICOM's definition of heritage also makes sense when we consider that Members of ICOSTUME include members who are administrators at museums that display fashion, and the fact that these members are called "museum professionals,"³⁶ as defined in the ICOM Statutes.³⁷ If museums that

32. Welters & Lillethun, *supra* note 28.

33. See, e.g., IMPRESSIONISM, FASHION, AND MODERNITY (2012) (emphasizing how Fashion in the mid-19th century reflected the new society of modern life).

34. Welters & Lillethun, *supra* note 28.

35. A synonym for clothing, defined as a functional object of personal attire. Merriam Webster's defines apparel as "personal attire," "clothing." *Apparel*, MERRIAM-WEBSTER'S DICTIONARY, <http://www.merriam-webster.com/dictionary/apparel> [<https://perma.cc/74KM-MA7F>].

36. *Costume, International Committee for Museums and Collections of Costume*, INTERNATIONAL COMMITTEES, ICOM, <http://icom.museum/the-committees/international-committees/international-committee/international-committee-for-museums-and-collections-of-costume/> [<https://perma.cc/AWN7-WCW8>] (last visited Oct. 16, 2016).

37. The ICOM Statutes define museum professionals: "Museum professionals include all the personnel of museums, or institutions qualifying as museums in accordance with the definition in Article 3, Section 1 & 2, and training and research institutions which are beneficial to museum activities, having received specialised training, or possessing an equivalent practical experience, in any field relevant to the management and activities of a museum, as well as independent persons respecting the *ICOM Code of Ethics for Museums* and working for and with museums, but not involved in promoting or dealing with any commercial products and equipment required for museums and their services." Int'l Council of Museums [ICOM], *ICOM Statutes* art. 3, sec. 3 (2016). Note that Section 2 allows institutions that are not museums to be recognized by ICOM: "The Executive Council, after seeking the advice of the

display fashion could not qualify as museums under the ICOM definition, their administrators would not be termed “museum professionals.”

On a last note, as an international committee, ICOSTUME also helps to shape and implement ICOM policy.³⁸ As part of their activities, ICOSTUME produces publications and hosts symposiums.³⁹ One of these publications includes *Guidelines for Costume*, promulgated in the 1980s around the same time as the ICOM Code.⁴⁰ According to ICOSTUME, the *Guidelines*, should be read alongside the ICOM Code,⁴¹ and also provide practical advice for curators.⁴² They also acknowledge the impact that different interests will have on the future management of costume collections.⁴³ In its *Future Considerations* section the *Guidelines* state: “the interest awakened through eye-catching displays and blockbuster exhibitions may determine the future

Advisory Committee, may recognise other institutions as having some or all of the characteristics of a Museum.” *Id.* at sec. 2.

38. The general purpose of ICOM’s international committees is to “to serve as a channel of communication between members of ICOM with similar scientific and professional interests”; they may also “implement programmes and activities” as authorized by the Executive Council, and they have the ability to appoint a certain number of their individual members to vote as part of the General Assembly, ICOM’s legislative body. Int’l Council of Museums [ICOM], *ICOM Statutes*, art. 16 and art. 10 (2016). International Committees’ Chairpersons are also part of ICOM’s Advisory Committee, which “advises the Executive Council and the General Assembly on matters concerning the policies, programmes, procedures and finances of ICOM.” Int’l Council of Museums [ICOM], *ICOM Statutes*, art. 13, sec. 1–2 (2016).
39. See *Publications*, ICOM PUBLICATIONS, <http://network.icom.museum/costume/publications/publications/> [<https://perma.cc/LC7E-UND8>] (last visited Oct. 16, 2016) (listing the publications and symposiums that ICOM hosts).
40. See *Guidelines*, ICOM, <http://network.icom.museum/costume/publications/guidelines/> [<https://perma.cc/9TMQ-DU6K>] (last visited Oct. 16, 2016) (discussing the formation of the guidelines).
41. See *Recommended Reading*, INTERNATIONAL COUNCIL OF MUSEUMS COSTUME COMMITTEE COSTUME GUIDELINES, http://network.icom.museum/fileadmin/user_upload/minisites/costume/pdf/guidelines_english.pdf. [<https://perma.cc/BD2L-D6UH>] (listing “ICOM Code” as one of the recommended readings for the ICOM Guidelines).
42. See *Id.* (“Our aim was to provide a quick reference for busy curators...”).
43. See *Id.* (“Our aim was to provide a quick reference for busy curators, many of whom were suddenly given responsibility for costume without any training, for volunteers working in museums, as well as to support trained costume curators who found their standards under threat from new management oblivious to the fragility of costume.”).

safekeeping of costume collections, whether supported by taxes or private means. Compromises [regarding interference with the object] are inevitable.”⁴⁴

III. THE INTERNATIONAL COUNCIL OF MUSEUMS AND ITS CODE OF ETHICS

ICOM is a non-governmental international public interest organization founded in 1946 comprised of more than 35,000 museum and museum professional members.⁴⁵ The most important ICOM publication is its Code of Ethics, adopted in 1986 and revised in 2004⁴⁶, which “establishes minimum standards for professional practices and achievements for museums and their employees.”⁴⁷ It consists of the General Principles and more specific elaborating clauses.⁴⁸ The ICOM Code highlights, among other principles, the duties of museums to preserve, interpret and promote tangible and intangible heritage,⁴⁹ that museums provide an opportunity for the appreciation and understanding of cultural heritage,⁵⁰ and that museums operate in a professional manner.⁵¹ While members of ICOM commit to respect the Code,⁵² the Code has also been incorporated into a UNESCO Recommendation, making it a part of soft law.⁵³ The 2015

44. *Id.*

45. *ICOM in Brief*. ICOM, <http://icom.museum/the-organisation/icom-in-brief/> [<https://perma.cc/26MN-2B78>] (last visited Jan. 12, 2017).

46. “ICOM Code of Ethics for museums was adopted in 1986 and revised in 2004. It establishes the values and principles shared by ICOM and the international museum community. It is a reference tool translated to 38 languages and it sets minimum standards of professional practice and performance for museums and their staff.” *ICOM Missions*, ICOM, <http://icom.museum/the-organisation/icom-missions/> [<https://perma.cc/9R7L-7NSU>].

47. *Id.*

48. *See* Code of Ethics, *supra* note 9, at 1–17 (showing that each chapter begins with a “general principle” and then goes on to explain each principle).

49. Code of Ethics, *supra* note 9, at 1.

50. Code of Ethics, *supra* note 9, at 8.

51. Code of Ethics, *supra* note 9, at 12.

52. *Code of Ethics*, ICOM, <http://icom.museum/the-vision/code-of-ethics/> [<https://perma.cc/49PH-2DBF>] (last accessed September 5, 2016). According to the ICOM Statutes one of the grounds for expulsion from ICOM is infringement of the ICOM Code of Ethics. Art. 4, Sec. 4(2). Int’l Council of Museums [ICOM], *ICOM Statutes*, art. 4, sec. 4 (2016).

53. United Nations Educational, Scientific, and Cultural Organization, *Recommendation Concerning the Protection and Promotion of Museums and Collections their Diversity and their Role in Society*, ¶ 26 (Nov. 17,

Recommendation Concerning the Protection and Promotion of Museums and Collections, their Diversity and their Role in Society, adopted by the UNESCO General Assembly to “supplement and extend the application of standards and principles laid down in existing international instruments referring to the place of museums, and to their related roles and responsibilities;”⁵⁴ encourages Member States “to promote the adoption and dissemination of [the ICOM Code of Ethics] and to use [it] to inform the developments of standards, museum policies and national legislation.”⁵⁵ The mention of the ICOM Code in this Recommendation highlights how the minimum standards it sets are seen as providing common solutions to common problems in the museum by the international community.⁵⁶ Some scholars, such as Lorenzo Casini, have even emphasized that ICOM is a global administrator and that the ICOM Code of Ethics is evidence of a global administrative law.⁵⁷

While the ICOM Code of Ethics is already binding on members of ICOM and acts as a point of reference for States as they seek to craft proper legal rules to apply to their museums, there is also evidence that

2015), *available* *at*
<http://unesdoc.unesco.org/images/0024/002451/245176M.pdf>
[<https://perma.cc/53P6-L7S5>] [hereinafter *Recommendation*].
International legal scholars define soft law as “a term used to describe international instruments which do not create binding legal obligations on States.” CRAIG FORREST, *INTERNATIONAL LAW AND THE PROTECTION OF CULTURAL HERITAGE* 54 (2010) (pointing to UNESCO Recommendations as soft law instruments for issues relating to cultural heritage). *See also* MARY ELLEN O’CONNELL, *THE POWER AND PURPOSE OF INTERNATIONAL LAW* 9 (2008) (“Non-binding principles are sometimes called ‘soft law’ to indicate this expectation of compliance but no right of sanction.”) (discussing soft law in the context of the power and purpose of international law as depending on more than consent or sanctions and noting the term “soft law” may be misleading since by definition it does not include the possibility of sanctions).

54. *Recommendation on the Protection and Promotion of Museums and Collections*, UNESCO, <http://www.unesco.org/new/en/culture/themes/museums/recommendation-on-the-protection-and-promotion-of-museums-and-collections/> [<https://perma.cc/MK8M-VER8>] (last visited Nov. 9, 2016).

55. *Recommendation*, *supra* note 54.

56. As Craig Forrest notes regarding the information and precepts contained in UNESCO Recommendations, they “reflect some agreement between States as to the most appropriate common response to common problems, without dictating to States exactly how to implement the recommendation’s principles.” FORREST, *supra* note 53.

57. LORENZO CASINI, *EREDITARE IL FUTURO* 83 (2015); *see also* Lorenzo Casini, *Italian Hours: The Globalization of Cultural Property Law*, 9 INT’L J. CONST. L. 369, 385 (2011) (discussing how ICOM regulations could be consider a “global administration”).

the ICOM Code is a source for general principles of international law and that one of its standards—that in conflict of interest situations not expressly provided for in the Code, between an individual and the museum, the interests of the museum should prevail—is on its way to becoming a rule of customary international law.⁵⁸

A. The International Council of Museums' Code of Ethics provides general principles of international law

Article 38 of the Statute of the International Court of Justice deems certain “general principles of law recognized by civilized nations” to be sources of international law.⁵⁹ A category of these general principles are principles common to legal systems.⁶⁰ Scholars have spotlighted the ability of non-governmental organizations to change and impact the development of international law.⁶¹ Indeed, as an example, when non-governmental organizations “lobb[y] in national capitals to gain consent to stronger international rules,”⁶² the systems of rules and principles by which these non-governmental organizations figuratively live and which they seek to promulgate and reinforce, help create principles common to legal systems.⁶³ Such has seemingly been the case with ICOM as it

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58. See Marilyn Phelan, *Cultural Property: Who Owns It and What Laws Protect It?* 74 TEX. B.J. 202 (2001) (“In addressing the issues related to ownership of valuable cultural property, the International Council of Museums (ICOM) has established an alternative dispute resolution mechanism that can provide a more effective system for museums to resolve ownership questions related to collections with gaps in provenance.”).
59. Statute of the International Court of Justice, art. 38, Jun. 26, 1945, 59 Stat. 1055, available at http://www.icj-cij.org/documents/?p1=4&p2=2#CHAPTER_II [<https://perma.cc/V7AR-VQNT>].
60. MARY ELLEN O’CONNELL ET AL, *THE INTERNATIONAL LEGAL SYSTEM: CASES AND MATERIALS* 133 (7th ed., 2016) (citing to Barcelona Traction, Light and Power Company, Limited, 1970 I.C.J. REP. 3 (Feb 5) at 139 (“It is to rules generally accepted by municipal legal systems which recognize the limited company whose capital is represented by shares, and not to the municipal law of a particular State, that international law refers.”)).
61. See Steve Charnovitz, *Nongovernmental Organizations and International Law*, 100 AM. J. INT’L L. 348, 359–60 (2006) (discussing, generally, how NGOs change and impact international law and citing several scholars who recognize NGOs’ power to morph international law).
62. Charnovitz, *supra* note 61, at 348.
63. NGOs themselves are traditionally considered to exert a moral authority, and not a legal authority per se. See Charnovitz, *supra* note 61, at 348 (“The contribution of NGOs to the vibrancy of international law is a puzzle because, doctrinally, international law is understood to be a product of state positivism. The key to the puzzle lies in the nature of

has leveraged public opinion to set minimum standards for museum professionals, petitioned local governments for united protection of museums around the world, held a consultative status in the United Nation's Economic and Social Council,⁶⁴ and effectively exported its definition of a museum and the principles embodied in its Code of Ethics to diverse legal systems around the world.⁶⁵

NGOs. Like the state, the NGO is composed of individuals, but unlike the state, the NGO enjoys a relationship with the individual that is voluntary. Individuals join and support an NGO out of commitment to its purpose. That purpose plus organization gives NGOs whatever 'authority' they have, and it will be moral authority rather than legal authority.") Note, however, that some authors have also incorporated "[t]he role of NGOs as norm entrepreneurs into theories of why states obey international law." Charnovitz, *supra* note 61, at 362 (citing Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181, 203-04 (1996)).

64. See Lorenzo Casini, *Italian Hours: The Globalization of Cultural Property Law*, 9 INT'L J. CONST. L. 369, 385, (2011) ("ICOM, therefore, is a relevant example of self-regulation operating at the global level: an international nongovernmental organization that adopts global standards with which members must comply. However, the scope of ICOM's code goes beyond its membership, because many countries, such as Italy, have enacted statutes..."). For explorations of NGOs consultative status under Article 71 see Charnovitz, *supra* note 61, at 365. The type of consultative status ICOM holds is Roster, by virtue of its affiliation with UNESCO. See *List of non-governmental organizations in consultative status with the Economic and Social Council as of 1 September 2014*, United Nations Economic and Social Council, Dec. 3, 2014, U.N. Doc. E/2014/INF/5 (2014), <http://csonet.org/content/documents/E-2014-INF-5%20Issued.pdf> [<https://perma.cc/B7MQ-7756>].
65. As will be discussed further below, Italy has incorporated the ICOM definition of a museum into its cultural heritage law, and has begun, under Minister Dario Franceschini, a reform of Italian state museums that reflects many of the ICOM Code principles. As an example, *Milan museum recruits famous authors to write object labels: Ali Smith and Orhan Pamuk, among others, will offer their take on the Pinacoteca di Brera's collection*, THE ART NEWSPAPER (Aug. 4, 2016), <http://theartnewspaper.com/news/in-the-frame/milan-museum-recruits-famous-authors-to-write-object-labels/> [<https://perma.cc/JL6V-KL2N>]. In other countries, legislation has been passed to reflect the ICOM standards of holding objects of cultural heritage in trust. See Code of Ethics, *supra* note 9. For a description of Germany's new revised Act to Protect Cultural Property see Library of Congress, Germany: Act to Protect Cultural Property Passed, LIBRARY OF CONGRESS, <http://www.loc.gov/law/foreign-news/article/germany-act-to-protect-cultural-property-passed/> [<https://perma.cc/SC4D-TSYJ>]. Tribunals and committees have been set up to perform due diligence and to avoid the trafficking of illegally imported or stolen objects. See Protect and Preserve International Cultural Property Act, H.R. 1493, 114th Cong. (2016), available at <https://www.congress.gov/bill/114th-congress/house-bill/1493> [<https://perma.cc/BRK9-C9WU>].

As one example, ICOM's annual International Museum Day raises awareness of the fact that "[m]useums are an important means of cultural exchange, enrichment of cultures and development of mutual understanding, cooperation and peace among peoples;"⁶⁶ a belief exemplified by museums all around the world as they work to memorialize, present, and share a nation's identity and heritage or that of a unique social group within that nation.⁶⁷ Through ICOM News and its press releases, ICOM regularly challenges or supports legislation of Member States.⁶⁸ By pointing out how individual governments legislation diverges from ICOM ethical principles, and supporting individual governmental action that is in line with these principles,

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66. *International Museum Day*, ICOM, <http://network.icom.museum/international-museum-day> [<https://perma.cc/F4EU-UCCM>] (last visited Nov. 11, 2016).
67. As an example of how prevalent the need for museums has become, many museums have been founded, or wish to be founded, in developing countries, not just for economic reasons, but also as a way to ground and present cultural identity. See, e.g., DAMIÁN BACA & VÍCTOR VILLANUEVA, RHETORICS OF THE AMERICAS: 3114 BCE to 2012 CE 101 (2010) (discussing the Museum of the Royal Tombs of Sipan in Lambayeque, Peru).
68. As it recently did by endorsing the controversial Amendment to the German Law on the Protection of Cultural Heritage. The law, which required German works over 70 years old and worth more than 300,000 euro to have an export permit from the German government in order to be exported from Germany to any other country, including fellow members of the EU, was met with great resistance by the art market. See Henri Neuendorf, *German Cabinet Approves Controversial Cultural Heritage Protection Law*, ARTNEWS, Nov. 6, 2015, <https://news.artnet.com/art-world/german-cabinet-approves-cultural-protection-law-356912> [<https://perma.cc/8NYZ-WHNC>]. ICOM also acts on a supranational level: In 2013 ICOM National Committees also issued an appeal, known as The Lisbon Declaration, directly to "the European Parliament and Commission, to the Parliaments and Governments of European Countries and to Regional and Local Governments" to address the negative impact of the global economic crisis on museums. Appeal to the European Parliament and Commission to the Parliaments and Governments of European Countries and to Regional and Local Governments, from National Committees of European Countries, ICOM, (2013), *available at* http://icom.museum/fileadmin/user_upload/pdf/Statements/ENG/Lisbon_Declaration_ENG.pdf [<https://perma.cc/92KV-BNX4>]. ICOM National Committees together asked that budgets to museums not be cut *en masse* in times of economic crisis, noting that "In times of crisis culture, museums and heritage are often considered a luxury that society can little afford, whereas in reality they are assets of sustainable growth." They also requested that a more equal percent of Gross National Product be spent on culture across countries, emphasized that "Investing in museums, their activities and their professionals is the best way to develop and improve the quality of cultural tourism," and identified specific priorities and objectives for national and European government institutions. *Id.*

ICOM has established its own ethical principles as the commonality between and within individual legal systems.⁶⁹

B. The standard that when there is a conflict of interest between the museum and an individual, the interests of the museum should prevail seems likely to become a rule of customary international law

Article 38 of the Statute of the International Court of Justice considers international custom to be “evidence of a general practice accepted as law.”⁷⁰ This international custom, known as customary international law, is proven by uniformity and consistency of application, the generality of the practice, the duration of its application, as well as *Opinio Juris et necessitates* (sense of legal obligation).⁷¹ Material sources of custom include policy statements, press releases, the opinions of legal advisors, international and national judicial decisions, and the practice of international organs.⁷² Customary international law can arise from soft law mechanisms such as UNESCO Recommendations.⁷³ It is important to note, however, that custom is not the same as usage, which is “a general practice which does not reflect a legal obligation.”⁷⁴ At the same time, objection to a rule’s application is not indicative of *persistent objector*⁷⁵ status sufficient to compromise the classification of a rule as customary international law.⁷⁶

69. See Code of Ethics, *supra* note 9, at IV (“It is presented as a series of principles supported by guidelines for desirable professional practice. In some countries, certain minimum standards are defined by law or government regulation. In others, guidance on and assessment of minimum professional standards may be available in the form of ‘Accreditation’, ‘Registration’, or similar evaluative schemes. Where such standards are not defined, guidance can be obtained through the ICOM Secretariat, a relevant National Committee of ICOM, or the appropriate International Committee of ICOM. It is also intended that individual nations and the specialised subject organisations connected with museums should use this Code as a basis for developing additional standards.”).

70. Statute of the International Court of Justice, *supra* note 59.

71. O’CONNELL, *supra* note 60, at 103–04.

72. O’CONNELL, *supra* note 60, at 103.

73. Although strong language in the Recommendation is usually suggested for customary international law to arise from it. FORREST, *supra* note 53, at 55.

74. O’CONNELL, *supra* note 60, at 103.

75. For a description of what “persistent objector” means, see Holning Lau, *Rethinking the Persistent Objector Doctrine in International Human Rights Law*, 6 CHI. J. INT’L L. 495 (2005) (“According to the [persistent objector] doctrine, if a state persistently objects to the development of a customary international law, it cannot be held to that law when the custom ripens.”)

76. O’CONNELL, *supra* note 60, at 106.

What this effectively means for examining conflicts of interest in the museum context is that the use of museum employees and staff who do not display a conflict of interest is not the same as the custom, or that repeated obligatory use of and emphasis of working with museum employees, staff and others that do not display a conflict of interest.⁷⁷ Moreover, a lack of enforcement of the ICOM conflicts of interest standard on the books does not necessarily mean that the ICOM standard is not a rule of customary international law: the notion that a rule is at least on the books might arguably be enough.⁷⁸ An appreciation of these nuances indicates that the ICOM standard that, when there is a conflict of interest between the museum and an individual, the interests of the museum should prevail, is a likely rule of customary international law.⁷⁹

The ICOM Code states that museums must operate in a professional manner.⁸⁰ The majority of the specific guidelines under this standard are addressed to museum professionals, which the Code differentiates from members of the museum's governing body.⁸¹ Museum professionals are museum personnel who have a practical experience or training for their work in the museum,⁸² the definition

77. Code of Ethics, *supra* note 9.

78. See Bart J. Szewczyk, *Customary International Law and Statutory Interpretation: An Empirical Analysis of Federal Court Decisions*, 82 GEO. WASH. L. REV. 1118, 1167–70 (2014) (stating, in reference to U.S. jurisprudence, that in cases of emerging customs, courts should construe statutes independent of customary claims).

79. Code of Ethics, *supra* note 9.

80. Code of Ethics, *supra* note 9, at 12. In full the principle states, “Members of the museum profession should observe accepted standards and laws and uphold the dignity and honour of their profession. They should safeguard the public against illegal or unethical professional conduct. Every opportunity should be used to inform and educate the public about the aims, purposes, and aspirations of the profession to develop a better public understanding of the contributions of museums to society.”

81. Code of Ethics, *supra* note 9, at 12.

82. The exact definition, again, is “Museum professionals consist of the personnel (whether paid or unpaid) of museums or institutions as defined in Article 2, paras. 1 and 2, of the ICOM Statutes, who have received specialised training, or possess an equivalent practical experience in any field relevant to the management and operations of a museum, and independent persons respecting the ICOM Code of Ethics for Museums and working for museums or institutions as defined in the Statute quoted above, but not persons promoting or dealing with commercial products and equipment required for museums and museum services.” Definitions in Code of Ethics, *supra* note 10, at 16. While the definitions of museum in the Code and in the ICOM statutes differ, the definitions of museum professionals are more closely aligned, differing primarily in the use of personnel instead of staff and a description of professional capacity, instead of specialized training.

does have broad elements, including the characteristic that its members have some sort of training or the main purpose of helping in the management and operations of the museum.⁸³ The Code defines governing body, as “the persons or organisations defined in the enabling legislation of the museum as responsible for its continuance, strategic development and funding.”⁸⁴

As part of the principle that museums operate in a professional manner, the Code addresses specific behavior by museum professionals, including accepting gifts, outside employment or business interests, dealing, interactions with dealers and private collecting⁸⁵; the Code generally provides that museum professionals should not accept gifts related to their position at the museum, should not deal in cultural heritage, and should not collect, and thereby compete, with their museum. To further clarify its position, the Code states, “[s]hould any other conflict of interest develop between an individual and the museum, the interests of the museum should prevail.”⁸⁶ The Code defines a conflict of interest as “[t]he existence of a personal or private interest that gives rise to a clash of principle in a work situation, thus restricting, or having the appearance of restricting, the objectivity of decision making.”⁸⁷

ICOM literature emphasizes the necessity for museum governing boards (as they are strictly governing, not managing the museum) to adhere closely to the integrity of the standards and to “protect and promote this heritage as well as the human, physical, and financial resources made available for that purpose.”⁸⁸ Indeed, according to ICOM, museum management and governance is a holistic endeavor, which necessitates that all museum actors support what is in the best interests of the museum and its public.⁸⁹ What is in the best interests of the museum is, however, decided on a case-by-case basis. Indeed, in

83. Code of Ethics, *supra* note 9, at 16.

84. Code of Ethics, *supra* note 9, at 15.

85. Code of Ethics, *supra* note 9.

86. Code of Ethics, *supra* note 9.

87. Code of Ethics, *supra* note 9, at 15.

88. Code of Ethics, *supra* note 9, at 1; *see also* RUNNING A MUSEUM: A PRACTICAL HANDBOOK 6 (2004) (“Regardless of the funding source, the museum must maintain control of the content and integrity of its programmes, exhibitions and activities. Income-generating activities should not compromise the standards of the institution or its public.”).

89. Code of Ethics, *supra* note 9, at 2–3 (“Museums that maintain collections hold them in trust for the benefit of society and its development”). Supporting this notion of the museum as a holistic endeavor is §1.16 “The governing body should never require museum personnel to act in a way that could be considered to conflict with the provisions of this Code of Ethics, or any national law or specialist code of ethics.”

some instances of sponsorship ICOM literature acknowledges that museums may have to expect a business relationship between themselves and corporate actors, which will necessitate that the museum confer a benefit on the sponsor.⁹⁰ In this sense, a broad museum interest seems to be at play; while a museum is a not for profit, according to the ICOM definition, it may at times play host to for-profit corporation parties and other events in return for corporate sponsorship of an exhibition.⁹¹ On the other hand, in the context of other interactions, such as dealings of museum professionals specifically, the ICOM Code takes a narrow view of the museum interest, allowing it to be satisfied in only one way: where a museum professional does not buy or sell natural or cultural heritage for profit.⁹² A balancing of interests is inherent to finding what is in the best interest of the museum and its public.

Whether a museum interest is narrow or broad, however, the general rule that when there is a conflict of interest between the museum and an individual, the interests of the museum should prevail, is accepted by a majority of jurisdictions. States generally understand institutions that manage cultural heritage to be for the public and its benefit.⁹³ How this notion of public trust has been embodied in museum governance, has, however, differed both historically and geographically. While in Europe, the majority of museums are State run⁹⁴, in the United States the majority of museums have, while benefiting from state funding and other State support,⁹⁵ taken the form of non-profit

90. TIMOTHY AMBROSE & CRISPIN PAINE, MUSEUM BASICS 389 (3d ed. 2012).

91. See e.g., *Exhibition Sponsorship*, NATIONAL GALLERY OF ART, <http://www.nga.gov/content/ngaweb/support/corporate-giving/exhibition-sponsorship.html> [https://perma.cc/XA6R-G86W] (last accessed Oct. 16, 2016) (describing involvement of corporate sponsors).

92. Code of Ethics, *supra* note 9.

93. For an overview of the history of museums and their founding as institutions for the public see RUNNING A MUSEUM: A PRACTICAL HANDBOOK 2–5 (2004). For a comparative view of nonprofits see Alyssa DiRusso, *American Nonprofit Law in Comparative Perspective*, 10 WASH U. GLOBAL STUD. L. REV. 39 (2011) (discussing how countries handle non-profit institutions). For an emphasis of the importance of understanding the governance of the museum institution as a museum manager or governing body see AMBROSE, *supra* note 90, at 340–42.

94. See DiRusso, *supra* note 93, at 43–52 (noting the influence of the prominence of government has had on the third sector generally in Europe). For a concise history of the historical effect of the use of art museums to affect culture by governments and others see also ANDREW MCCLELLAN, *THE ART MUSEUM FROM BOULLÉE TO BILBAO* 13–52 (2008).

95. This is true of the Metropolitan Museum of Art which, while having a strong link with the City of New York (which owns the building, the land upon which it sits and still funds it somewhat) was at its founding and

corporations or trusts.⁹⁶ Notwithstanding this history, the non-profit entity has been gaining both ground and popularity as a governance structure for museums around the world.⁹⁷ In any case, both non-profit law, as well as laws regulating State-run museums, serve as checks on conflicts of interests which might arise for the governing bodies of museums.⁹⁸

throughout its history even today, a non-profit corporation. *E.g.*, The Metropolitan Museum of Art, *Form 990, Return of Organization Exempt from Income Tax 2013*, FOUNDATION CENTER, 990s.foundationcenter.org/990_pdf_archive/131/.../131624086_201406_990.pdf (last visited Oct. 22, 2016) (showing the museums received money from the government); *see also* MERRYMAN, *supra* note 22, at 1196 (discussing how the Metropolitan Museum of Art has “public” representation on its board); *see also* Leila Amineddoleh, *Museums have a Responsibility to Protect Cultural Heritage* 2 AEDON (2013), <http://www.aedon.mulino.it/archivio/2013/2/amineddoleh.htm> [<https://perma.cc/2CR4-FNXN>] (last visited Jan. 14, 2017) (“the Metropolitan Museum of Art (the Met) was founded with substantial government support. Pursuant to the institution’s charter, the museum was built with city funds and it was maintained by expenses paid by the city. To this day, the City of New York owns the building, but a private group of trustees still controls the museum and its contents” (footnotes omitted)).

96. *You asked: How Are Museums Supported Financially in the United States?* IIP DIGITAL (Mar. 14, 2012), http://iipdigital.usembassy.gov/st/english/pamphlet/2012/05/20120515_5699.html#axzz4MAdmn6Oa [HTTPS://PERMA.CC/FVA6-H7EW].
97. The governance models of private foundations and their accompanying private actors have been increasingly used in Italy, for example, to manage cultural property (some Italian state run museums have even been transformed into state run foundations, as in the case of the Fondazione Grande Brera). *See* Giuseppe Manfredi, *La Fondazione ‘Grande Bera,’ il partenariato e la panacea di tutti i mali* 2 AEDON (2014), <http://www.aedon.mulino.it/archivio/2014/2/manfredi.htm> [<https://perma.cc/9MP5-HN7A>] (last visited Jan. 14, 2017); Daniele Lupo Jalla, *La Riforma dei Musei Statali Italiani*, IL GIORNALE DELLE FONDAZIONI, (Apr. 4, 2015), <http://www.ilgiornaledellefondazioni.com/content/la-riforma-dei-musei-statali-italiani> [<https://perma.cc/FDQ3-XD3H>]. Despite these governance differences some scholars have repeatedly emphasized that whether or not a museum is a “private” or “public” structure, it still displays the necessary “publicness” required under certain national cultural heritage law. Giuseppe Severini, *Musei pubblici e musei privati: un genere, due specie*, 2 AEDON (2003), <http://www.aedon.mulino.it/archivio/2003/2/severini.htm> [<https://perma.cc/Q399-A67L>].
98. *See* Patty Gerstenblith, *The Fiduciary Duties of Museum Trustees*, 8 COLUM. J. OF ART & THE LAW 175, 180 (1983–84) (explaining that a duty of good faith helps avoid conflicts of interest); *see also* MERRYMAN, *supra* note 22, at 1200 (explaining that a duty of loyalty helps avoid conflicts of interest).

In the United States, conflicts of interest for trustees are generally regulated under the duty of loyalty⁹⁹ and fiduciary duties more generally.¹⁰⁰ While there appears to be no law directly regulating trustee conflicts of interests in general fundraising or other situations involving the lending of trustee expertise to museum management, the majority of cases on related issues, impose strict fiduciary duties when self-dealing or obvious mismanagement of a collection by museum trustees has occurred.¹⁰¹ Some states, such as New York, also emphasize the importance of resolving conflicts of interest of a museum's governing body by incorporating the need for the museum to have a conflicts of interest policy, accompanied by certain requirements that ensure those in governance and management act in the non-profit's best interest.¹⁰² The New York Attorney General, responsible for the oversight of

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99. Some scholars (Merryman) classify conflicts of interest under the duty of loyalty, while others (Gerstenblith) classify it under "a duty of using good faith to act in the interest of the beneficiaries and to avoid potential conflicts of interest." Gerstenblith, *supra*, note 98; MERRYMAN, *supra* note 22, at 1200.
100. See, Harvey J. Goldschmid, *The Fiduciary Duties of Nonprofit Directors and Officers: Paradoxes, Problems and Proposed Reforms* 23 J. CORP. L. 631, 641 (1998) ("Consistent with the law in most states, Section 717 of New York's N-PCL states: 'Directors and officers shall discharge the duties of their respective positions in good faith and with that degree of diligence, care and skill which ordinarily prudent men would exercise under similar circumstances in like positions.' Section 8.30 of the Revised Model Nonprofit Corporation Act contains a similar formulation that appears to provide the same substantive content.").
101. Trustees are generally understood to have implied powers as well as those expressly given to them by a museum's founding document. See MARIE C. MALARO & ILDIKO POGANY DEANGELIS, *A LEGAL PRIMER ON MANAGING MUSEUM COLLECTIONS* 9 (3d ed. 2012) (citing *MidAtlantic Nat'l Bank v. Frank G. Thompson Foundation*, 170 N.J. SUPER. 128, 405 A.2D 866, 869 (1979)). But in cases where mismanagement of the collection is involved, including selling parts of the collection to trustees at unfair prices, and questionable deaccessioning and accessioning practices, the Attorney General, in charge of the supervision of non-profit corporations, usually steps in to address the behavior. See, e.g., MALARO, at 15 (citing *Lefkowitz v. The Museum of the American Indian Heye Foundation*, Index No. 41416/75 (N.Y. Sup. Ct., N.Y. County, June 27, 1975), where the trustees of the museum were accused of the above by the Attorney General and also of not recording the collection properly); see also a discussion of the famous George F. Harding Museum in Chicago in the 1970s discussed in MALARO and Gerstenblith, *supra* note 98, at 204-05 (discussing remedies for breach of duties of loyalty and good faith).
102. The 2013 New York Nonprofit Revitalization Act expressly requires a conflict of interest policy to "ensure that its directors, officers and key employees act in the corporation's best interest." Nonprofit Revitalization Act, A. 8072 § 715-A (N.Y. 2013), available at <https://www.nysenate.gov/legislation/bills/2013/A8072> [<https://perma.cc/U4QB-X8T4>].

nonprofit institutions, has emphasized that the circumstances giving rise to conflicts of interest are not solely confined to decisions that are presented to a board of directors as a whole, but may also arise in situations where an issue comes before a director or trustee individually.¹⁰³ This concern with regulating conflicts of interest reflects, like the ICOM Code, a general concern prevalent in the United States, that the best interests of the non-profit or other charitable institution prevail.

In Italy, laws regulating associations or foundations, the nonprofit equivalents in Italian law, provide that their directors owe a duty of loyalty to the entity.¹⁰⁴ Other countries, such as the United Kingdom and France, statutorily require a resolution of conflict of interests.¹⁰⁵

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103. ATTORNEY GENERAL ERIC T. SCHNEIDERMAN, CONFLICTS OF INTEREST POLICIES UNDER THE NONPROFIT REVITALIZATION ACT OF 2013, 2015 - 4, V. 1.0, (2015), www.charitiesnys.com [<https://perma.cc/9H3L-U68F>] at 2 (“If a director, officer, or key employee has a conflict of interest concerning an issue coming before that director, officer, or key employee, that individual must disclose the circumstances giving rise to the conflict of interest to the person or entity designated by the organization’s conflict of interest policy.”).
104. Codice Civile [C.c.] art. 18 (It.) (“Gli amministratori sono responsabili verso l’ente secondo le norme del mandato [1710 ss., 2392]”); *see also* CARLO GRANELLI & GIOVANNI STELLA, IL CONFLITTO DI INTERESSI NEI RAPPORTI DI GESTIONE E RAPPRESENTANZA: ATTI DEL CONVEGNO, PAVIA, COLLEGIO GHISLERI 13–14 OTTOBRE 2006 160 (2007) (“...si afferma ulteriormente che il principio dell’impugnabilità delle delibere assunte con il voto determinante di un soggetto in conflitto di interessi varrebbe non solo per le delibere assembleari dell’associazione riconosciuta, ma anche- più in generale- per tutte le deliberazioni collegiali degli enti non *profit*.”); *see also* ELINA MOUSTAIRA, ART COLLECTIONS, PRIVATE AND PUBLIC: A COMPARATIVE LEGAL STUDY 61–65 (Springer, 2015) (discussing the governance of Italian museums in a comparative perspective).
105. Although in the UK it is regularly acknowledged that “obedience” to the charitable purposes often must come before a consideration of conflicts of interest, allowing for some wiggle room on the part of trustees. *See* KLAUS J. HOPT ET AL., COMPARATIVE CORPORATE GOVERNANCE OF NON-PROFIT ORGANIZATIONS 187 (2010). The UK also generally follows guidelines of national museum professional organizations which also favor the museum’s interest over an individual’s in conflicts of interest situations. *See*, for example, the fact that the U.K. Museum Association recently rendered a decision that there was no wrongdoing on the part of British museums in regards to BP’s sponsorship of their cultural institutions. Anny Shaw, *UK museums sponsored by BP not in breach of code of ethics, committee says*, THE ART NEWSPAPER, (Aug. 19, 2016), <http://theartnewspaper.com/news/news/uk-museums-sponsored-by-bp-not-in-breach-of-code-of-ethics-committee-says/> [<https://perma.cc/8TZH-XTXM>]. §3.1 of the Museum Association’s Code of Ethics provides that “All those who work in and with museums should [a]void any private activity or pursuit of a personal interest that may conflict or be perceived to conflict with the public interest. Consider the

For state-run museums charged with managing cultural property in Italy, the regulations are even more in line with the ICOM Code.¹⁰⁶ The Ministry of Cultural Heritage, which regulates cultural property (in private or in public hands), has emanated a number of regulations for public museums.¹⁰⁷ Italy has made a point of citing directly to the ICOM Code in these regulations,¹⁰⁸ and has even envisioned its most recent reform as an implementation of ICOM Code standards.¹⁰⁹

As early as 2001, in response to a law decreeing the transfer of some state run museum competences to the Italian regions, the Ministry used the ICOM Code as a practice guideline for the professional expectations of its museum managers and personnel.¹¹⁰ While the 2001 *Atto d'indirizzo*, which . . . , does not address conflicts of interest specifically, it emphasizes the public interest that underlies the purpose of the museum and the need to keep this in mind as the museum's funds are

effect of activities conducted in private life on the reputation and of museums generally." MUSEUMS ASSOCIATION, CODE OF ETHICS FOR MUSEUMS at 18, available at <https://www.museumsassociation.org/download?id=1155827> [<https://perma.cc/7ZML-B5Q3>] (last accessed September 6, 2016). For a description of the French regulations of conflicts of interest in an association or foundation see HOPT ET AL., at 287. Note that there are some countries, such as China, who do not seem to regulate conflicts of interest at all or who leave it up to the internal regulations of the nonprofit. *Id.* at 398, 447.

106. See MOUSTAIRA, *supra* note 104 (discussing the governance of Italian museums in a comparative perspective).
107. While ministerial decrees are not laws passed by the Italian Parliament, they are considered to be a source of Italian law applicable to all within the scope of their legal mandate. MICHAEL A. LIVINGSTON ET AL., THE ITALIAN LEGAL SYSTEM 181 (2015). It is for this reason, however, that some Italian scholars debate the effects of some Italian Ministry regulations on private museums. Girolamo Sciuolo, *Musei e codecisione delle regole* 2 AEDON (2001), <http://www.aedon.mulino.it/archivio/2001/2/sciuolo.htm> [<https://perma.cc/NP6S-9Q6K>] (last accessed Jan. 15, 2017); *but see* Giuseppe Severini, *Musei pubblici e musei privat: un genere, due specie*, 2 AEDON (2003), <http://www.aedon.mulino.it/archivio/2003/2/severini.htm> [<https://perma.cc/YS6H-FSFE>] (last accessed Jan. 15, 2017).
108. CASINI, *supra* note 57.
109. CASINI, *supra* note 57.
110. Atto di indirizzo sui criteri tecnico-scientifici e sugli standard di funzionamento e sviluppo dei musei (2000), Decreto Legislativo 25 Luglio 2000 n. 112/98 art. 150 comma 6 (It.), available at http://www.beniculturali.it/mibac/multimedia/MiBAC/documents/1310746324517_2616_allegato1.pdf [<https://perma.cc/JC2M-G92T>].

managed,¹¹¹ and as museum personnel carry out their responsibilities.¹¹² In 2014, the Ministry implemented a sweeping reform of its own offices, giving more autonomy to certain State-run museums, in accordance with the ICOM Code,¹¹³ and directly incorporating the ICOM definition of a museum into the regulation.¹¹⁴ Italy also envisions a national museum system in which museums are evaluated with guidelines tracking the ICOM Code.¹¹⁵

While *opinion juris et necessitatis* might not reflect an overwhelming endorsement of the ICOM Code's specific conflict of interest catch all provision, there is ample evidence in policy statements and in the press of a long held general belief that when a museum

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111. Ambito II, assetto finanziario in Atto di indirizzo emphasizes transparency. See Ambito IV, Personale in Atto di indirizzo sui criteri tecnico-scientifici e sugli standard di funzionamento e sviluppo dei musei D. Lgs. n. 112/98 art. 150 comma 6/2000 (It.), available at http://www.beniculturali.it/mibac/multimedia/MiBAC/documents/1310746324517_2616_allegato1.pdf) [<https://perma.cc/JC2M-G92T>].
112. See Ambito IV, Personale in Atto di indirizzo sui criteri tecnico-scientifici e sugli standard di funzionamento e sviluppo dei musei, D. Lgs. n. 112/98 art. 150 comma 6/2000 (It.), available at http://www.beniculturali.it/mibac/multimedia/MiBAC/documents/1310746324517_2616_allegato1.pdf) [<https://perma.cc/JC2M-G92T>].
113. Italian scholars and members of the Ministry made much of the fact that ICOM envisioned each museum as having its own founding statute and clear mission statement, a fact which was not the case for the majority of State-run museums in Italy, since they were envisioned as extensions of the Ministry itself. CASINI, *supra* note 57, at 183.
114. See Art. 35, Musei, Decreto Presidente del Consiglio dei Ministri 29 Agosto 2014, n. 171, available at <http://www.altalex.com/documents/leggi/2014/11/26/organizzazione-ministero-dei-beni-e-delle-attivita-culturali-e-del-turismo> [<https://perma.cc/VB8L-ZAV6>] (cited in CASINI, *supra* note 57, at 179).
115. Ministero dei Beni e delle Attività culturali e del turismo, *Musei, al via la rivoluzione di franceschini, direttori selezionati con bandi internazionali. franceschini: italia volta pagina, nasce sistema museale nazionale*, (Dec. 23, 2014) http://www.beniculturali.it/mibac/export/MiBAC/sito-MiBAC/Contenuti/MibacUnif/Comunicati/visualizza_asset.html_361837075.html [<https://perma.cc/4WTY-YRVN>] (“Il sistema museale nazionale è finalizzato alla messa in rete dei musei italiani e alla integrazione dei servizi e delle attività museali. Fanno parte del sistema museale nazionale i musei statali, nonché, tramite apposite convenzioni stipulate con il direttore del Polo museale regionale territorialmente competente, ogni altro museo di appartenenza pubblica o privata, ivi compresi i musei scientifici, i musei universitari e i musei demoetnoantropologici, che sia organizzato in coerenza con le disposizioni del presente capo, con il decreto ministeriale 10 maggio 2001, recante «Atto di indirizzo sui criteri tecnico-scientifici e sugli standard di funzionamento e sviluppo dei musei» e con il Codice etico dei musei dell'International Council of Museums (ICOM).”).

trustee's private individual interest conflicts with the museum's interest, the museum's interest should prevail.¹¹⁶ Items in the press indicate opposition when museums appoint individuals who are perceived to have a conflict with the museum, and support when museums take affirmative actions to address the issue; indicating a repeated emphasis on working with museum employees, staff and others that do not display a conflict of interest in the museum community.¹¹⁷ When the Los Angeles Museum of Contemporary Art hired the art dealer Jeffrey Dietch as its director in 2010, Dietch was required to "liquidate his gallery inventory"¹¹⁸ to avoid any conflict.¹¹⁹ In the 1930s the art dealer Lord Duveen was forced to resign from his appointments as a trustee of prominent museums in London, since the apparent conflict of interest gave rise to "much disquiet;"¹²⁰ perhaps a lone example of an absolute prohibition on a particular dealer as a trustee.¹²¹

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116. THE MUSEUM OF MODERN ART, CODE OF CONDUCT FOR TRUSTEES at 2, *available at* <https://webcache.googleusercontent.com/search?q=cache:kcEsVZx12QYJ:https://www.moma.org/docs/about/MoMACodeofConductTrusteesNOV09.pdf+&cd=1&hl=en&ct=clnk&gl=us&client=firefox-a> (last accessed Oct. 14, 2016).
117. Deborah Sontag and Robin Pogrebin, *Some Object as Museum Shows its Trustee's Art* N.Y. TIMES (Nov. 10, 2009) <http://www.nytimes.com/2009/11/11/arts/design/11museum.html> [<https://perma.cc/E72Q-U3BQ>].
118. Stephanie Cash, *From the Editor's Desk: On Conflicts of Interest and Glass Houses*, BURNAWAY (Jul. 18, 2014), <http://burnaway.org/feature/from-the-editors-desk-on-conflicts-of-interest-and-glass-houses/> [<https://perma.cc/ZAG8-JPJP>]; see also Mike Boehm, *Jeffrey Dietch resigns as head of L.A. Museum of Contemporary Art*, LOS ANGELES TIMES (Jul. 24, 2013), <http://articles.latimes.com/2013/jul/24/entertainment/la-et-cm-deitch-moca-20130725> [<https://perma.cc/7VEX-YJL9>] ("Dietch, who took over as museum director in June 2010, was a controversial choice because he didn't come from nonprofit museum or academic ranks. He had won respect as a successful New York City art dealer whose sales helped him float an adventurous program of exhibitions at his Dietch Projects gallery. Some of the exhibitions Dietch brought to MOCA proved divisive, with some observers fearing that the museum was tilting too much toward the pop culture emphasis he'd pioneered at his gallery.").
119. Mike Boehm, *Jeffrey Deitch Says He'll Still Sell Art—But Not Deal in it—After Taking Moca Reins*, LOS ANGELES TIMES (Mar. 18, 2010), <http://latimesblogs.latimes.com/culturemonster/2010/03/jeffrey-deitch-moca-.html> [<https://perma.cc/C85Z-AJSN>].
120. WILLIAM D. RUBENSTEIN, THE PALGRAVE DICTIONARY OF ANGLO-JEWISH HISTORY 235–36 (2011).
121. The ICOM Code does note that museum professionals should not deal in natural or cultural heritage, although it stops short of directly prohibiting a dealer from acting as a museum professional or governor under any circumstances. Code of Ethics, *supra* note 9. John Henry Merryman, who

In part, this seems to be a result of the nature of museology itself to which museum conflicts of interest easily fall prey.¹²² Especially in communities where properly qualified individuals might be few and far between, or hold diverse roles across one common art community,¹²³ there is not only the possibility, but the very tradition of public and private partnerships.¹²⁴ Notwithstanding this, however, museums

saw the problem as avoidable by simply not appointing dealers as trustees, was adamant that art dealers who were active in the same field in which the museum was active had a “pervasive and disabling conflict of interest” that meant “even the most conscientiously honest and self-denying dealer-trustee [would be] likely to make unbalanced judgments in a conflict situation.” MERRYMAN, *supra* note 22, at 1202, 1208. Merryman’s reasoning was two-fold: first, the danger that the dealer would favor their own interest over that of the museum and second, that, in any event, the very existence of the conflict “impairs the individual’s [general] judgment and the quality of his decisions,” which should always be made in the interest of the museum.” *Id.* The AAMD’s Professional Guidelines address the need for art museum directors to refrain from dealing and that “extraordinary discretion is required to assure that no conflict of interest arises between the director’s personal collecting activity and the concerns of the museum” if the director collects art. Association of Museum Directors, *A Code of Ethics for Museum Directors*, in PROFESSIONAL PRACTICES IN ART MUSEUMS 17 (2011), available at <https://www.aamd.org/sites/default/files/document/2011ProfessionalPracticesinArtMuseums.pdf> [<https://perma.cc/7NUD-T53Q>] (last accessed Sept. 5, 2016). The Professional Practices guide also provides that “Museum directors, trustees, and others in positions of responsibility should make every effort to anticipate and address situations in which a conflict of interest or the appearance of a conflict exists. The board must establish and maintain policies regarding conflicts of interest and ethics and ensure that they are transparent and reviewed regularly by the board, staff, and volunteers.” *Id.* at 6, ¶ 8.

122. Steve C. Dublin, *Incivilities in Civil(-ized) Places: Culture Wars in Comparative Perspective* in A COMPANION TO MUSEUM STUDIES 479 (2006).
123. See Cash, *supra* note 118 (“Because there are fewer of ‘us’ in the field with the depth and breadth of knowhow, we see even more cross-pollination than in those larger cities and art communities.”).
124. For example, in some circumstances partnerships which may seem best suited to conflicts of interest have been emphasized as tradition: “in response [to the controversy of Skin Fruit] the [New Museum] organized a symposium on the importance of private/public partnerships, noting that collectors often sit on museum boards that mount exhibitions of their holdings. It addressed the long tradition of such partnerships, which in the 19th and 20th centuries helped create and grow many of our most notable institutions and the continuing need for similar arrangements as, for example, the price of desirable artworks would burn through many cultural institution’s acquisitions budgets.” See Cash, *supra* note 118. See also Julia Halperin & Melanie Gerlis, *Why a growing number of museum veterans are crossing over to the commercial sector*, THE ART NEWSPAPER (Sept. 7, 2016), <http://theartnewspaper.com/news/museums/from-museum-to-auction-house-the-revolving-door-turns-faster/>

rarely, if ever, admit to the existence of a conflict of interest;¹²⁵ even in circumstances that seem obvious and generate much discussion, such as Charles Saatchi's and Christie's involvement in the *Sensation* exhibit at the Brooklyn museum.¹²⁶ While museum ethics may not apply to museum sponsors, critics chastise museum professionals for involving a certain sponsor at the expense of a museum (and public) interest, and what certain corporate sponsorship reveals is an eagerness on the part of museum professionals and trustees to make certain sacrifices for the greater, broader museum interest.¹²⁷ When fashion enters the museum, these same critiques are levied.

The Guggenheim was fiercely criticized in 1999 when InStyle sponsored an Armani retrospective at the Guggenheim in 1999, after Mr. Armani himself had given a large donation.¹²⁸ In 1994, the Whitney was fiercely criticized when a number of Richard Avedon's professional colleagues took part in the organization and sponsorship at his own retrospective, Richard Avedon: Evidence 1944-1994.¹²⁹ Among the questionable ties were that *The New Yorker*, the magazine for which Richard Avedon was a staff photographer at the time, allowed its art critic to write an essay for the catalogue and another subsidiary, Random House, of *The New Yorker's* parent company S.I. Newhouse, published the exhibition catalogue.¹³⁰ As *The Economist* noted, what

[<https://perma.cc/3878-NPUS>] (discussing the movement of museum directors to institutions in the art market).

125. See Cash, *supra* note 118 (explaining how only on certain occasions will people actually acknowledge conflicts of interest).
126. MERRYMAN, *supra* note 22, at 1210; see also Hilton Kramer, *How Saatchi Orchestrated Brooklyn Museum Frenzy ... Money-Not Art-Rules Show*, THE OBSERVER (Oct. 4, 1999), <http://observer.com/1999/10/how-saatchi-orchestrated-brooklyn-museum-frenzy-moneynot-artrules-show/> [<https://perma.cc/G4WX-4YLL>] (stating the Museum made a point of characterizing Saatchi as the modern Leopold II).
127. See James B. Gardner, *Ethical, Entrepreneurial or Inappropriate in THE ROUTLEDGE COMPANION TO MUSEUM ETHICS 285-97* (2011) (discussing the perils of corporate sponsorship for museums as a whole).
128. Carol Vogel, *Armani Gift to the Guggenheim Revives Issue of Art and Commerce*, N.Y. TIMES (Dec. 15, 1999), <http://www.nytimes.com/1999/12/15/arts/armani-gift-to-the-guggenheim-revives-issue-of-art-and-commerce.html?pagewanted=all> [<https://perma.cc/4854-W7C3>].
129. Michael Kimmelman, *Review/Photography; Farwell Fashion, Hello Art*, N.Y. TIMES (Mar. 25, 1994), <http://www.nytimes.com/1994/03/25/arts/review-photography-farewell-fashion-hello-art.html> [<https://perma.cc/2A8U-AE5B>].
130. Moreover, the curator of the exhibition was not affiliated with the Whitney, but was, rather, a Ms. Jane Livingston, whose fee was paid by Richard Avedon with funds awarded him by a grant from Kodak to mount the exhibition. Kodak also co-published the catalogue and helped to

seems to be so troubling about close ties between sponsorship and museum display is that it affects “what the public sees, what it is told.”¹³¹ When this happens, some sponsorships seem to diverge with the ICOM Code standard that displays be well-founded and accurate.¹³² Indeed, in response to concerns that a 1997 show of Gianni Versace’s work at the Met “was paid for in part by Condé Nast, publisher of fashion magazines like *Vogue* that depend on Versace for advertising,”¹³³ the Metropolitan Museum of Art’s President of Communications said:

We are very up front about this . . . There’s no question where the curatorial imperative lies. These shows are curatorially managed and conceived and the funders do not attempt to have input on the installation of the exhibition or the selection of the items that go on view.¹³⁴

This statement was, of course, made before an employee of Condé Nast, Anna Wintour, became a trustee of the museum, interfacing with curators while acting as co-host for the Met Ball, a fundraising extravaganza also sponsored by Condé Nast.¹³⁵ While fashion editors may not be strictly understood as dealers in the context of Merryman’s dealer as trustee rule, since they do not sell fashion as a designer would, their presence does signal a conflict to the public at large, and at times to a museum.¹³⁶ There is no getting around the fact that no matter disclosure or separation the placement of objects in a museum increases both their value and their aura.¹³⁷

sponsor the exhibition; coincidentally it also had a 10 book deal with Richard Avedon at the time, along with Random House. *Id.*

131. *Bossy Sponsors - American Museums: Questionable Ethics of Corporate Sponsorship of Museum Exhibits*, THE ECONOMIST (Apr. 30, 1984), in MERRYMAN, *supra* note 22, at 1226.

132. Code of Ethics, *supra* note 9, at 8.

133. Vogel, *supra* note 128.

134. Vogel, *supra* note 128.

135. Vanessa Friedman, *It’s Called the Meta Gala, but It’s Definitely Anna Wintour’s Party*, N.Y. TIMES (May 2, 2015), http://www.nytimes.com/2015/05/03/style/its-called-the-met-gala-but-its-definitely-anna-wintours-party.html?_r=0 [<https://perma.cc/5BZY-MNCQ>].

136. MERRYMAN, *supra* note 22, at 1202.

137. The imagined increase in value on the market for the displayed works was one of the critiques leveled at the *Sensation* exhibit. See Gardner, *supra* note 127, at 293. Even more so than with art, however, fashion’s entrance in the museum space gives it a legitimacy as “Art” and the identification of living designers with history changing ones from the past, as in *Schiaparelli and Prada: Impossible Conversations*, staged at the Metropolitan Museum of Art in 2012. Perhaps for this reason (notwithstanding the *Prada* example), the Costume Institute at the

While some jurisdictions' regulations of conflicts of interest mirror the ICOM Code's general catch-all provision, others emphasize prioritizing the museum interest rather than specifically characterizing a situation as indicative of a conflict.¹³⁸ The public's reactions to exhibitions with close financial or associational ties to sponsors or trustees seem to indicate, however, a negative reaction to interests other than the museum trust being placed above or even on par with those of the museum and its public.¹³⁹ The underlying purpose of the standard that when there is a conflict of interest between the museum and an individual, the interests of the museum should prevail seems to have some proverbial teeth, even though there may be disagreement about what exactly the interest of the museum is.¹⁴⁰

IV. CHINA: THROUGH THE LOOKING GLASS AT THE METROPOLITAN MUSEUM OF ART

The Met, non-profit corporation, states that it has a conflicts of interest policy that fulfills the Nonprofit Revitalization Act.¹⁴¹ As a

Metropolitan had instituted a moratorium on exhibitions devoted to living designers after the 1983 Yves Saint Laurent exhibit. Emma Spedding, *Will Comme des Garçons' Rei Kawakubo be the subject of The Met's next fashion exhibition, creating the most avant-garde Met Gala ever?*, THE TELEGRAPH (Sept. 1, 2016), <http://www.telegraph.co.uk/fashion/events/met-gala-2017-theme-and-exhibition-rei-kawakubo-comme-des-garcon/> [https://perma.cc/5SRF-Y864] ("I'd love to do an exhibit with living designers — John Galliano, Rei Kawakubo, Azzedine Alaïa and Issey Miyake—but there was a policy at the museum that was put into place after the Saint Laurent show Diana Vreeland did in the Eighties where we don't do shows on living designers."). The current exhibit is indeed devoted to Rei Kawakubo and is entitled, *Rei Kawakubo/Comme des Garçons: Art of the In-Between*.

138. See Vogel, *supra* note 128 (noting that the Guggenheim Museum will display fashion designs of Giorgio Armani eight months after Mr. Armani became a significant benefactor to the museum).
139. Gardner, *supra* note 127, at 293.
140. Gardner, *supra* note 127, at 293.
141. Metropolitan Museum of Art, *Return of Organization Exempt From Income Tax* (2013), <http://www.metmuseum.org/about-the-met/policies-and-documents/annual-reports> [https://perma.cc/J3XR-HY6B] (acknowledging that the Met circulates written policies to trustees and senior staff, with statements to be completed by the receiving person acknowledging they have read the policy, understand it, and agree to comply with it. The receiving party is also asked to disclose "any situation or areas of potential conflicts of interest that he or she or a member of his or her family, or an entity in which any of them have a material ownership interest, may have." Only if a conflict of interest exists, which is determined by the Met, its General Counsel, outside Counsel, as well as certain members of its Board, then the person with the conflict is

member of ICOM, however, it also commits to ICOM ethical standards.¹⁴² As such, the actions of the Met's governing body and museum professionals can be held to ICOM ethical standards.¹⁴³

As an institution, the Met requires a great deal from its trustees.¹⁴⁴ In keeping with the ICOM Code standard that the governing body should ensure a museum has sufficient funds to carry out its mission,¹⁴⁵ the Met encourages its trustees to fundraise and to call on their wealthy friends.¹⁴⁶

The Met also has a history of encouraging trustees to dispense their expertise, and its Costume Institute has historically been the recipient of many such advisors, beginning with the involvement of the former VOGUE editor Diana Vreeland from 1972 to 1987, who staged multiple Costume exhibitions herself.¹⁴⁷ Active involvement by trustees makes sense alongside the Met's broad mission statement in its Collections Management Policy,¹⁴⁸ which states that exhibitions are crucial to providing both access to, and appreciation for, the Museum's collections; in addition to the Museum's commitment to support them in a variety of ways.¹⁴⁹

While the Collections Management Policy itself addresses conflicts of interests for members of museum staff only (advising staff to make sure no conflict arises in their own personal collecting habits, and its prohibition that museum staff act as dealers), it is silent as to these same conflicts for trustees, concentrating instead on their duties in

“prohibited from participating in the board's deliberations and decisions regarding the transaction.” Trustees' conflicts of interest are disclosed to the audit committee each year.)

142. Code of Ethics, *supra* note 9, at IV.

143. Code of Ethics, *supra* note 9, at IV.

144. See MERRYMAN, *supra* note 22, at 1198 (2007) (discussing the responsibilities of trustees of the Met: “Once elected, the new trustee is expected to further all that excellence. ‘I have been on several boards,’ says Drue Heinz, ‘and the Met's is the only one that asks you to work, to participate. There is no slacking around.’”).

145. Code of Ethics, *supra* note 9, at 2.

146. Code of Ethics, *supra* note 9, at 2.

147. Arielle Dorlester et al., *Costume Institute Records*, THE METROPOLITAN MUSEUM OF ART ARCHIVES (1927–2008), http://libmma.org/digital_files/archives/Costume_Institute_records_b18646104.pdf. [<https://perma.cc/4GC9-MS9T>].

148. *Statement of Purpose and Mission Statement*, Collections Management Policy of the Metropolitan Museum of Art (Sept. 8, 2015),

<http://www.metmuseum.org/about-the-met/policies-and-documents/collections-management-policy#mission> [<https://perma.cc/FB79-LTEC>].

149. *Id.*

regards to gifts, deaccessioning, loans and acquisitions.¹⁵⁰ The Met does, however, have ethical guidelines for its trustees and in one of these guidelines considered conflicts of interest to be not only direct financial ones but also, “[when the Trustee] may receive a personal, business or organizational benefit from knowledge of confidential Museum information.”¹⁵¹ The Met also acknowledges that there is a transfer of, to borrow a Benjamin term, aura when a work is included in an exhibition at the Met, leading to an enhancement in its value, therefore implying that fashion’s inclusion in the museum space also results in an enhancement of its value.¹⁵²

A. Anna Wintour and Condé Nast: A broad museum interest for trustees and a semi-broad museum interest for sponsors

As an exhibit *China* was most certainly one with a purposeful thesis: to rethink Edward Said’s conception of *Orientalism* and to see typically Chinese motifs by Western designers not as simple colonization of the East, but as cross cultural exchange.¹⁵³ Such an exhibition thesis is certainly challenging on a number of levels—politically, practically, and intellectually—and Wintour (as seen in *The First Monday in May*) certainly does her best to support Andrew Bolton, the curator in charge of the exhibition.¹⁵⁴ Listening to curatorial choices and vision for the show are certainly in line with the trustee duties of supervision and oversight.¹⁵⁵ Moreover, while some fashion designers featured in the exhibit, such as John Galliano, had been featured in VOGUE, it is unclear whether Condé Nast or VOGUE actually benefited from the decisions Bolton independently made to

150. *Id.*

151. Evelyn Brody, Julie E. Getzels, and Stephen J. Knerly, Jr., *Developing Conflict-of-Interest, Whistleblower, and Document Retention Policies for your Governing Board*, SL077 ALI-ABA 273, 292 (2006). Please note that the Metropolitan recently approved a new version of its Ethical Guidelines in 2014, cited in SALLY YERKOVICH, A PRACTICAL GUIDE TO MUSEUM ETHICS 82 (2016).

152. “While loans of works of art by a Trustee to the Museum can be of great benefit to the Museum it should be recognized that exhibition of a work of art at the Museum can enhance its value.” Brody, *supra* note 151, at 288, n. 99.

153. Andrew Bolton, *Towards an Aesthetic of Surfaces*, in CHINA: THROUGH THE LOOKING GLASS 17, 17–18 (2015).

154. *The First Monday in May*, MONGREL MEDIA 5 (2016), <http://www.mongrelmedia.com/MongrelMedia/files/af/af2cd21a-f6c0-4251-b678-5bd901c1f5dc.pdf> [https://perma.cc/UBS2-VESU] [hereinafter MONGREL MEDIA].

155. Code of Ethics, *supra* note 9, at 1.

include certain pieces in the show.¹⁵⁶ Even if Wintour were to have set up a meeting for Bolton (in *The First Monday in May* he does visit John Galliano in Paris and the *Fondation Yves Saint Laurent*), in doing so she would solely have been lending her expertise, and fashion connections, to the museum.¹⁵⁷

When exercising her duty to raise funds by organizing the Met Gala, however, Wintour serves two masters: as artistic director of Condé Nast and Editor-in-Chief of VOGUE, Wintour has an interest in throwing the best Gala possible to further her own business interests with Condé Nast and her personal brand, while as a Met trustee, the interest is to raise money for the museum.¹⁵⁸ As Vanessa Friedman aptly summed it up in the New York Times, “It’s Called the Met Gala, but It’s Definitely Anna Wintour’s Party.”¹⁵⁹

As we have seen, however, the ICOM Code and its explanatory literature do offer some wiggle room for members of a governing body, with an awareness that hard choices will have to be made, especially in sponsorship situations.¹⁶⁰ Indeed, Wintour grounds many of her decisions in this broad museum interest.¹⁶¹ The best example is when she is confronted with the value of Tiffany Pillars in the face of table organization when organizing the Met Gala.¹⁶² While at first she does not realize that the pillars are “art,” when she is made aware of it and the Met’s coinciding concern that the placement of one table will damage the pillar, Wintour strongly emphasizes that, “[i]t’s actually not about that tonight. It’s actually about raising money for the museum...”¹⁶³ To contextualize this broad museum interest in accommodating more people in the Met notwithstanding the small space, the Met Gala raises the entire operating budget for the Costume Institute, and has raised, since Wintour has been co-host, over \$145 million dollars for the Institute.¹⁶⁴ Moreover, Wintour’s help in 2015

156. John Galliano, *In Conversation with Andrew Bolton, in CHINA: THROUGH THE LOOKING GLASS* 230, 230–31 (Yale University Press, 2015) (demonstrating John Galliano’s connection with *China*).

157. MONGREL MEDIA, *supra* note 157, at 5.

158. Friedman, *supra* note 135.

159. Friedman, *supra* note 135.

160. *See* Code of Ethics, *supra* note 9 (mentioning the limits of personal independence and the interests of professional members).

161. *See* THE FIRST MONDAY IN MAY, *supra* note 19 (demonstrating how Anna Wintour makes event planning decisions based on the broad interest of fundraising for the museum).

162. *Id.*

163. *Id.*, at 1:03:58-1:04:22.

164. This figure is since 1999 when Wintour was first appointed co-host of the event. It is certainly the case that in the grand scheme of things the means

facilitated a marked increase in visitors to the museum—more than 800,000 people visited the *China* exhibit.¹⁶⁵

At other times, however, when smaller decisions are at stake, Wintour's justifications seem at odds with even a broad museum interest. Wintour's insistence that the Temple of Dendur be closed so her VOGUE team did not have to pull three all-nighters to set up Met Gala decorations sends the message that her team is more important than the museum's public; as Wintour says of the public "[t]hey'll come back."¹⁶⁶ In this case, rather than a case of sponsorship, it seems as though Wintour is prioritizing her assistants over the museum's public—a circumstance that seems to fall into the ICOM catch-all provision: the museum's interest should prevail over the individual one.¹⁶⁷

Other examples are, however, less clear. At the 2015 Met Gala, Rihanna walked down the Met Gala red carpet in a Guo Pei dress, a *haute couture* designer from China whose atelier Wintour and Bolton had previously visited months before and whose work was included in the *China* exhibit.¹⁶⁸ An image of Rihanna in the dress was the featured cover of the special edition VOGUE devoted to the Met Gala offered for sale.¹⁶⁹ In this case, calling attention to Pei's beautiful creations in the exhibition by featuring a celebrity wearing her outfits on a special edition cover of VOGUE does indeed call attention to the Museum and the exhibition, even though it may serve the personal and business interests of Wintour and Condé Nast in the process. At once an individual, a sponsor's and the museum's interest all seem satisfied: there seems to be no clash of principle.

of Wintour certainly result in excellent ends for the museum. Friedman, *supra* note 135.

165. THE FIRST MONDAY IN MAY, *supra* note 19, at 1:27:00.

166. THE FIRST MONDAY IN MAY, *supra* note 19, at 1:02:14-1:02:37.

167. See Code of Ethics, *supra* note 9, at 13 (referencing Section 8.18 "Other Conflicts of Interest").

168. Cheryl Wischhover, *Chinese Couturier Guo Pei Reveals How Rihanna Ended Up Wearing Her Gown to The Met Gala*, FASHIONISTA (May, 5, 2015), <http://fashionista.com/2015/05/guo-pei-rihanna-met-ball-dress-interview> [<https://perma.cc/GNP4-QAG9>]; See THE FIRST MONDAY IN MAY, *supra* note 20, at 47:20 (during creation of the documentary before the Met Gala, a visit was made to the studio of Guo Pei).

169. Chanel Adams, *Rihanna Covers Vogue's Special Edition Met Gala Issue for the Second Time*, INQUISITR (May 12, 2015), <http://www.inquisitr.com/2083981/rihanna-covers-vogues-special-edition-met-gala-issue-for-the-second-time> [<http://perma.cc/H2VX-LFGK>].

B. Andrew Bolton: A narrow museum interest for museum professionals

Given the quantity of guidelines dedicated to museum professionals' behavior, it seems as though the ICOM Code privileges a narrow museum interest in conflict of interest situations not already provided for in the Code which arise for museum professionals.¹⁷⁰ The majority of the circumstances in which Bolton finds himself are already provided for, and Bolton seems to deftly navigate them.¹⁷¹ Originally wishing to place Mao suits next to statues of Buddha in a room dedicated to them in the Met, Bolton quietly appreciates the concerns raised by Chinese advisors that such a visual display would be offensive.¹⁷² His solution is to place the Mao suits in an anteroom, allowing the Buddhas to be experienced after the Mao suits.¹⁷³ In another example, however, Bolton fights for the thesis of the exhibit when a Chinese delegation raises concerns that the Met is looking to the past of Chinese fashion and not to its future, encouraging the delegation to explain how they would visually represent contemporary Chinese fashion, prioritizing the work and the exhibition mission in the face of non-politically based critiques.¹⁷⁴

Where Bolton does seem to allow some individual interest to arise is in his frustration at the lack of appreciation afforded to items of fashion in the museum.¹⁷⁵ Bolton repeatedly emphasizes in his interviews in *The First Monday in May* "the power of clothes to tell stories or speak to people."¹⁷⁶ He often clashes (albeit diplomatically) with his colleague, Maxwell K. Hearn, Head of the Asian Art Department, who insists that the Chinese objects of art not be overshadowed or treated as wallpaper.¹⁷⁷ While being generous in allowing Bolton to use the Chinese art galleries, Hearn still prioritizes the Chinese art over the costume and the exhibition which he sees as only potentially "about creating a sense of hype."¹⁷⁸ Of course, as a curator his charge is the Asian art, and it seems in line with the ICOM

170. Code of Ethics, *supra* note 9, at 13 (referencing the catch all provision in section 8.18).

171. See THE FIRST MONDAY IN MAY, *supra* note 19 (showing that Bolton is faced with many challenges to maintain the museum's interests as a priority over his private interests as curator).

172. A decision very much in accord with the ICOM Code of Ethics §1.9. THE FIRST MONDAY IN MAY, *supra* note 19 at 41:30-41:55.

173. THE FIRST MONDAY IN MAY, *supra* note 19 at 43:20-44:50.

174. THE FIRST MONDAY IN MAY, *supra* note 19 at 45:30-45:50, 49:13-50:25.

175. THE FIRST MONDAY IN MAY, *supra* note 19 at 52:06-52:50.

176. THE FIRST MONDAY IN MAY, *supra* note 19 at 52:50-52:57.

177. THE FIRST MONDAY IN MAY, *supra* note 19 at 36:50-37:00.

178. THE FIRST MONDAY IN MAY, *supra* note 19 at 51:18-51:58.

Code that Hearn stand up for the objects under his care.¹⁷⁹ Given, however, the ICOM Principle that “Museums have an important duty to develop their educational role and attract wider audiences from the community, locality, or group they serve,”¹⁸⁰ an inhibition of the development and presentation of the main attraction of *China*, the costumes, seems precarious.

In the end, however, both Bolton and Hearn work together and resolve any potential intellectual disagreements, with Bolton noting how kind Hearn was to allow the costumes in the Asian art galleries to Bill Cunningham at the Met Gala.¹⁸¹ Both curators work with the idea that the museum interest, and only the museum interest, should be paramount, no matter their individual allegiances to their own curatorial spheres.¹⁸²

V. THE GUCCI MUSEO

A private corporate museum located in Florence, Italy, owned and managed by Guccio Gucci, S.p.A., the *Gucci Museo* is seemingly outside of the sphere of the ICOM Code: there is no evidence it is a member of ICOM, and its affiliation with a for profit entity seems at odds with the ICOM definition of a museum.¹⁸³ Entertaining whether the *Gucci Museo* fulfills the ICOM definition of a museum and whether or not its governing body and management is acting in according with the ICOM Code is, nevertheless, an important prospective analysis.

As previously mentioned, not only does Italy rely on the ICOM Code as a standard for the management of its museums, but it also envisions a national museum system in which individual museums are evaluated based on ICOM guidelines contained in the ICOM Code, including the definition of a museum itself.¹⁸⁴ At the moment, the regulations issued by Italy’s Ministry of Cultural Property do not seem applicable to the *Gucci Museo*—while the regulation is written to apply to all museums, whether private or public, Italian legal scholars have raised the issue that private museums are outside the scope of the

179. THE FIRST MONDAY IN MAY, *supra* note 19 at 51:58-52:06.

180. The Code of Ethics, *supra* note 9, at 8 (quoting Principle 4).

181. THE FIRST MONDAY IN MAY, *supra* note 19 at 1:22:13-1:22:35.

182. See THE FIRST MONDAY IN MAY, *supra* note 19 (reoccurring theme in the documentary shows Mike Hearn and Andrew Bolton keeping the museum interests as a priority during various interactions).

183. Code of Ethics, *supra* note 9, at 15 (referencing the definition of a museum under ICOM Code of Ethics).

184. *An excellent start for Milan 2016*, ICOM (2016) <http://icom.museum/news/news/article/an-excellent-start-for-milan-2016/L/0> [<http://perma.cc/MC3M-NKXW>] (relying on recommendations from the ICOM code of ethics and its definition of museum).

responsibility assigned to the Ministry in this particular case, given that the regulation was promulgated in response to a transfer of museum competences from the State to the regions.¹⁸⁵ Other Italian scholars do see it as applying to private museums, given that the law is written that way and that private museums nevertheless do display a sense of publicness, inherent to the cultural property regime.¹⁸⁶ In any event, however, at the moment, the *Gucci Museo* does not display cultural property as it is defined under Italian law.¹⁸⁷ While under the ICOM Code, the Gucci accessories, dresses, and handbags in it may indeed be “any thing or concept considered of aesthetic, historical, scientific or spiritual significance,”¹⁸⁸ since these items belong to a private museum, Italian law would first have to declare these objects cultural property, ascertaining an important level of historical interest in them.¹⁸⁹ Notwithstanding this fact, the *Gucci Museo* regularly uses the term “heritage” in its museum labels to describe the objects on view.¹⁹⁰ In this sense, the *Gucci Museo* presents an anomaly: it is a private museum that purports to hold heritage, and yet it does not seem to be a part of any cultural mechanism that would protect it as such.¹⁹¹ The ICOM Code, however, may provide some insight into the *Gucci Museo*’s status as a museum and its effect on the public.

A. *The Gucci Museo as a museum*

While the *Gucci Museo* may not be a money-making enterprise, and therefore might in a strict sense be considered a non-profit, its use and strong affiliation with the Gucci brand points to a museum mission that is not solely “in the service of society” or with the purpose of “education, study and enjoyment,” notwithstanding the fact that in its literature the Museo characterizes itself as an educational resource, an

185. Severini, *supra* note 97 (contesting that the regulation applies to private museums since the scope of the law involved a transfer of competence from State run museums to museums run by the Regions). Note that individual private museums are at liberty to freely follow these guidelines in their own governing statutes and operating guidelines.

186. Jerome Sciallo, *Musei e codecisione delle regole* 2 AEDON (2001), <http://www.aedon.mulino.it/archivio/2001/2/sciallo.htm> [<http://perma.cc/V3J5-ZXAP>] (mentioning that the rules apply to both public and private museums).

187. CODICE DEI BENI CULTURALI art. 13. (defining cultural property).

188. Code of Ethics, *supra* note 9, at 15 (referencing the definition of cultural heritage in ICOM Code of Ethics).

189. *See* Art. 13 (declaration of cultural property).

190. GUCCI MUSEO BOOKLET, at “Logomania” (2016).

191. *See* Art. 13 (defining the types of items covered by protection under Italian law).

authority of fashion, and a cultural center.¹⁹² More than simple sponsorship, the *Gucci Museo* is an extension of Gucci itself. Even though its products are a part of Italian history and Italian culture, there exists a close connection between them and the for-profit fashion company.¹⁹³ This fact imperils the appreciation of the museum objects as heritage, leading to a negligible educational appreciation of the actual difference between a current Gucci product for sale and a historic Gucci object in the museum.¹⁹⁴

The *Gucci Museo*, as a brand museum, capitalizes on the aesthetic experience that a customer has in its Gucci flagship stores by aligning that aesthetic experience with the *Gucci Museo*. While this premium on aesthetics in luxury brand goods stores is of course their hallmark,¹⁹⁵ the similarity of aesthetics blurs the purpose of the museum for the visitor, even though in the museum, the exhibition of small leather goods, bags, and dresses are for educational and preservation purposes.¹⁹⁶

While ICOM does envision that promotion is part of a museum's duty towards its collection, the ultimate purpose of a museum as for the public may not necessarily support such a similarity of aesthetic experience. Indeed, such a similarity, in many instances, communicates the intangible value of the Gucci object in and of itself, not as part of a greater historical or cultural narrative. As a result, a museum visitor may come away with a message of commercial, and not educational, value: rather than having created a great product on par with art and other cultural property, the Museo emphasizes that Gucci is the creator of a great product period—one that is, in fact, for sale in the Museo's gift shop. Rather than contributing to the safeguarding of cultural heritage, as ICOM emphasizes is the duty of museums,¹⁹⁷ with its

192. GUCCI MUSEO BOOKLET, at "Gucci Museo Florence" (2016).

193. Which acts as both governing body and staff. Rebecca Unsworth, *Branding (in) the Museum: Gucci Museo, Florence*, BEX UNSWORTH (March 13, 2016), <https://bexunsworth.wordpress.com/2016/03/13/branding-in-the-museum-gucci-museo-florence> [http://perma.cc/K9M7-PAFL] (mentioning that the museum displays are "predominately advertorial").

194. Anamma Joy et al, M(Art) Worlds: Consumer Perceptions of how Luxury Brand Stores become Art Institutions, 90 J. OF RETAILING 347, 357-58 (2014) (noting that while brand museums elevate the brand to a status of art, luxury brand goods objects are already perceived as art).

195. *Id.* at 347 (ascribing the term "M(Art)Worlds" to luxury industry giants that are part luxury fashion store, part museum, part gallery).

196. See Rebecca Unsworth, *supra* note 193 (mentioning how the museum's focus on past products for purchase lacked in narrative and is a missed opportunity to detail the company's history).

197. Code of Ethics, *supra* note 9, at 8 (referencing the duty of museums as stated in Principle 2).

display the *Gucci Museo* seems to only contribute to a safeguarding of the Gucci brand and its own corporate history, alone.

B. Guccio Gucci, S.p.A. and Frida Giannini: The ultimate conflict of interest

Upon the opening of the *Gucci Museo* in 2011, the Museo presented Gucci history, from its beginnings as luggage envisioned by Aldo Gucci, up to its ultimate embrace by the jet set in the 1970s and its contemporary incarnation under Creative Director Frida Giannini.¹⁹⁸ What the Museo did not display, however, was any mention of the biggest revitalizer of Gucci and perhaps its most well-known designer, Tom Ford.¹⁹⁹ The Creative Director Frida Giannini, who envisioned the Museo from the Gucci archive alongside museum curators, had in fact, not included him.²⁰⁰ By choosing to do so, Guccio Gucci, S.p.A. and its former Creative Director, Frida Giannini, have essentially created the ultimate conflict of interest situation: the business and personal interests of those in charge are essentially inseparable from, not compatible with, that of the *Gucci Museo* and the public it should serve.²⁰¹ Here, the application of the ICOM Code's general catch-all provision is apt, but no broad or narrow museum interest will change the fact that, like Merryman's conception of the dealer as trustee, Gucci's judgment, and by extension its staff's, is seemingly always impaired.²⁰² For Giannini, the first designer to succeed Tom Ford, a display that emphasized the importance of Giannini's own evening gown designs next to historic Gucci objects effectively elevated Giannini's work for sale at the expense of an accurate educational museum presentation that would prioritize Gucci's museum public.²⁰³

198. Christina Binkley, *The Museum That Frida Built*, THE WALL STREET JOURNAL (Sept. 29, 2011), <http://www.wsj.com/articles/SB10001424053111904836104576557062608123444> [<http://perma.cc/6YQF-RY53>] (describing the formation of the new museum and its contents under the direction of Frida Giannini).

199. Alexander Fury, *The Tom Ford pieces that didn't quite make the cut at Gucci*, INDEPENDENT (Aug. 31, 2015), <http://www.independent.co.uk/life-style/fashion/features/the-tom-ford-pieces-that-didnt-quite-make-the-cut-at-gucci-how-a-label-can-edit-its-own-past-10480082.html> [<http://perma.cc/LC57-ULF5>] (mentioning that the museum did not showcase any items from the Ford years).

200. *Id.*

201. See Code of Ethics, *supra* note 9, at 13 (referencing the problems between personal independence as seen in section 8.9 and other conflicts of interest in section 8.18).

202. See Code of Ethics, *supra* note 9 (referencing the catch all provision of section 8.18); MERRYMAN, *supra* note 22 (mentioning the conflict of interest between the trustee and the museum).

203. See Code of Ethics, *supra* note 9, at 8 (referencing Principle 4 as it relates to Gucci Museo).

Such decisions seem to be contrary to what the ICOM Code stands for: by setting boundaries between a museum's interest and its individual managers and governors the ICOM Code seems to imply that institutions in which there is never a difference between the two may not fall within its guidelines.

VI. CONCLUSION

Whether the ICOM Code's general catch-all provision that when there is a conflict of interest between the museum and an individual, the interests of the museum should prevail is customary international law or not, its underlying purpose—to privilege the museum interest—seems well appreciated across legal jurisdictions.²⁰⁴ Moreover, the ICOM Code, while drawing specific boundaries in the museum's interest, also allows for broad and narrow museum interests, depending on the circumstances, or characterization of the conflict of interest.²⁰⁵ Fashion editors, depending on their level of involvement, might belong to either category: a museum's governing body, or its management or personnel.²⁰⁶ What the *China* example reveals is that these members of the fashion community should walk a fine line when involved with museums that display fashion—being careful to ground their display choices in what is in the museum's best interest, and not their own, or their magazine's. The *Gucci Museo* example highlights that there seem to be conflict of interest cases where even a broad conception of the museum's interest when Fashion is in the museum must be ethically insufficient. ICOM and its Code emphasize boundaries between a museum's interest and the interests of those who run, manage or sponsor it, offering helpful guidelines to preserve the public trust in the museum space and, by extension, fashion's acceptance as heritage around the world.²⁰⁷

204. See Code of Ethics, *supra* note 9, at 1 (referencing Principle 1 as it relates to the overall interests of the museum).

205. Code of Ethics, *supra* note 9.

206. Code of Ethics, *supra* note 9, at 2.

207. Code of Ethics, *supra* note 9, at 13.