“Protecting the lives of people, their cultural heritage and identity go hand in hand,” stated UNESCO Director General Irina Bokova at an emergency response meeting in July 2014. In addition to the tragic destruction of human life, the violence of war also takes its toll on the property and symbols that define the affected countries. In the case of ISIS, the Islamic State of Iraq and Syria, militants have been purposely and openly eradicating symbols of ancient civilizations to advance their own political agenda.

DESTRUCTION OF CULTURAL PROPERTY
To date, ISIS has obliterated ancient sites such as “the prophet Jonah’s tomb in Mosul, the Assyrian capital of Nimrud and the stone sculptures in the Mosul Museum.” In an interview with Yale University professor of Assyriology, Eckart Frahm, Frahm posits that while ISIS is driven by religious ideology, their actions are likely also politically motivated. Frahm states that their political agenda may be two-fold; to eliminate the original political centers of Iraqi government and to deliberately offend Western culture which places great value in the ancient civilizations as the origins of their own history.

Frahm adds that ISIS also sells antiquities taken from the destroyed sites on the black market to fund their efforts. Kelsey Quigley points out the contradiction of these actions saying “ISIS claims to destroy these human treasures in the name of combating idolatry, and yet the extremist group eagerly funds its endeavors by exploiting the prestige and value of those idols.”

SOLUTIONS: PUNISHMENT AND PRESERVATION
The Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of Convention 1954, the “Convention,” called for the protection and respect of cultural property by its signatory countries. The Convention called for specialized forces or personnel to protect cultural property from theft and vandalism. After the attack on Nimrud, United Nations Secretary General Ban Ki-moon “condemned the destruction, designating such actions as ‘war crimes’ and called action other countries to put a stop to ‘heinous terrorist activity.'"
What career path led you to your current position (and are you a lawyer)?

I am a lawyer. As a first year law student, following a brief stint in the non-profit sector after college, I planned to practice environmental law, and had expectations for my second and third year curricula based on that goal. I enrolled in an environmental law class the first semester of my second year, and despite a fantastic professor, realized I didn’t enjoy the subject at all! Almost on a whim, I enrolled in courses in copyright and then entertainment law, and was hooked. I’m an artist at heart - always with a paintbrush, a soldering torch, and at times even molten glass close at hand – and the subject matter really resonated with me. From then on, in whatever position I held, I lobbied to work on any intellectual property matters that I could until, over the years, I developed an expertise in this area. When my current job became available at the Smithsonian, I had significant experience handling copyright transactions, which the office was looking for, even though my prior jobs would have been defined as transactional generalist positions.

What does a typical day look like for you?

There is no typical day at the Smithsonian! I work for all of the museums and research centers, which means that my clients are artists, scientists, fundraisers, administrators, and everything in between. On any given day, my time is spent counseling clients on copyright concerns, providing guidance about contracting strategy, negotiating with counsel representing parties to a transaction, and drafting agreements.

How does your legal training and experience add to the effectiveness of your current role?

My role requires me to be a licensed attorney. But even beyond that, legal training, particularly with respect to issue spotting, has been crucial. As our office supports the entire Smithsonian, we work with clients whose concerns vary widely. The only way to pivot from project to project here is to evaluate the issues and risks, and to use sound legal judgment to determine how to proceed in addressing a matter, even if you don’t have subject-matter expertise related to the issue at hand.

Who is your biggest ally in your organization and why?

Without a doubt, my peers are my biggest allies. I work with a great group of attorneys who share common concerns and on-the-job experiences, and who are great sounding boards.
What challenges and opportunities do technology and electronic media present in your role?

An organization like the Smithsonian with a long and storied history has very strong traditions, as well as strong advocates for traditional ways of doing business. For generations, that’s meant a focus on developing, and then delivering, quality content meant for a physical museum space. Over the past decade, and even more so over the past five years, the Institution has discovered the power of digital content delivery, and all of the technology and media that support it. Finding a balance between the tradition of engaging in-museum audiences, and reaching new virtual audiences, has been an exciting challenge. From a legal perspective, the pace at which we are moving into the digital world means an ongoing opportunity to analyze and make determinations on matters of first impression for the Smithsonian with respect to our legal risks. And that carries over to working across the Institution on developing policy for the utilization of technology and electronic media, which has also been fascinating.

How do you keep up with the ever-changing arts, legal, technology and policy landscapes? Which websites, publications, conferences, certifications, and other resources do you find to be valuable?

I find participation in ABA and Copyright Society events to be invaluable. On a day to day basis, I check out websites like Ars Technica, which offers a lot of useful industry information, and even traditional news sites like the New York Times online, where the most significant legal and technology matters always warrant some column inches.

What do you see as the next big issue/trend? And what are you gearing up for in your own organization?

One trend that I’m seeing gain traction with arts and cultural organizations is the integration of user-generated content with more traditional curatorial content. For the Smithsonian, that has meant projects like the Freer Sackler’s exhibit The Art of Yoga, which crowd sourced a significant amount of exhibit content, and utilized third party social media activity for exhibit promotion. We’ve also seen the inclusion of user-generated content directly into virtual museum programming like the Smithsonian Latino Center’s virtual museum, and its Day of the Dead activities. Their visitors have the opportunity to perform alongside commissioned professional artists, to upload creative audio and visual content that is publicly accessible just like curated content, and otherwise to contribute to the virtual exhibit space and programming. Educating the digital media and web professionals on the underlying legal issues related to this type of programming is critical.

What advice would you offer law students and recent law graduates interested in pursuing a career in law and the arts?

My advice to law students and recent graduates is to know that a career path is rarely linear, and to have the patience to develop the skills and expertise that you believe will get you where you want to be once you’re a seasoned attorney. Don’t be too hard on yourself if you first job (or even your first three jobs!), doesn’t quite look like you imagined it would when you decided what kind of law you wanted to practice. Find the opportunities to develop the skills you want for the future, and you will see those opportunities increase until the point at which you have become the type of attorney you wanted to be.
Quigley points out that only signatory countries are bound by the Convention; Iraq and Syria are among these countries, but ISIS is not a signatory. However, Quigley also states that ISIS could be held accountable under “customary international laws.”

Adoption of Resolution 2199 by the United Nations Security Council and the proposal of HR 1493 by the US House Committee on Foreign Affairs are among other responses to the destruction of ancient sites. Resolution 2199 would target the profits that ISIS makes from selling looted antiquities by reducing the sale of these items on the black market. The House Committee on Foreign Affairs proposal H.R. 1492 Protection and Preservation of Cultural Property would require “develop[ment of]strategies to reduce illegal trade and assist other countries in developing programs to protect cultural heritage sites and the prevention of looting and theft.” The bill would also require the creation of a position to develop and implement these strategies.

Quigley suggests education is another option but that it may be too late for the current tragic events in Syria. Quigley references a piece written by Cornell Professor of Archaeology Sturt Manning wherein he suggests to his fellow archaeologists that raising awareness and appreciation for cultural heritage may be part of the solution. Manning hypothesized that if educators created awareness, it would trigger a greater sense of ownership and pride, and therefore a desire to protect these cultural sites. Quigley astutely suggests that, for now perhaps, international human law is the best approach.

ENDNOTES
4 Id.
10 Id.
Mona Lisa Comes to Life in Interactive Format
A team of 40 French technicians and artists has finally completed a yearlong project that transformed the Mona Lisa into a digital version that employs a form of artificial intelligence technology. The interactive painting allows a frown to replace her famous mysterious smile, and other facial movements that simulate the Mona Lisa sensing changes in her surroundings. All of this was accomplished through motion sensing devices that allow the “Living Mona Lisa” to react based on spectators’ movements and images. This version is anticipated to be reproduced and marketed in several affordable formats.
http://tinyurl.com/qaoyroh

Coloring Inside the Lines: The Latest Stress Release Method
Coloring books for adults have been around for decades, but over the past few years the idea has taken off and millions of copies have already been sold worldwide. Johanna Basford, a Scottish artist and commercial illustrator, has designed three adult coloring books since 2013, two of which were best-selling books on Amazon. The artwork in the coloring books isn’t your typical balloons and bears; the patterns are sophisticated and engaging, aimed at experience colorists and beginners alike. Part of the appeal is allowing adults to enjoy childhood objects and experiences again; publishers are certainly taking notice of the phenomenon and fueling the massive new industry category by marketing the books as a way to reduce stress and anxiety. After all, “coloring is so accessible…it unleashes the creativity we all have in a way that’s quite safe” said Basford.
http://tinyurl.com/pk4k6e8

Tennis Shoes, Sneakers, and Trainers
A new exhibit at the Brooklyn Museum titled “The Rise of Sneaker Culture” features a range of modern classic running footwear and rare designer models. The world’s oldest existing running shoe, which dates back to the early 1860’s, is featured and highlights the distinct differences between current trends and that time period’s styles and technological advances. From the Converse high-top to examples of futuristic footwear such as a prototype of an Adidas shoe “made with discarded fishing nets found in the ocean”, this exhibit highlights what has changed in terms of who wears sneakers and why. The exhibit is now on display through October 4, 2015.
http://tinyurl.com/pssfgvz

Trademark Workshops
Washington Area Lawyers for the Arts
Wednesday, August 19, 2015, 7:00 PM
Kirkland & Ellis LLP, 655 15th ST NW, Washington, DC

Navigating the Risks and Opportunities of Social Media for Clients in the Creative Fields
Wednesday, August 26, 2015
The Ken Edwards Center, 1527 4th ST, Santa Monica, CA

Immersive Education Initiative Annual Conference
L’Universite Paris-Sorbonne, Paris, France
September 7 – 10, 2015
http://immersiveeducation.org/events

Challenges of Loaning Works of Art (NYC)
Wednesday, September 30, 2015, 6:00 PM – 8:00 PM
Herrick, Feinstein LLP, 2 Park Avenue, New York, NY 10016
About Us

The Museums & The Arts Committee is part of the American Bar Association’s Section of Science & Technology Law. Provenance aims to provide news and thoughtful, brief discussion on legal topics relevant to museology and the arts. http://tinyurl.com/scitechmac010

Our committee undertakes a variety of projects related to all types of museums and all types of art that are being affected by new developments. Naturally, this requires an appreciation for how those institutions and communities function in general. The Committee thus welcomes active participation from those involved in museums or the arts. In addition to attorneys and law students, membership is also open to non-attorneys who may join as Associates at: http://tinyurl.com/scitechmac011

Current projects the Committee is exploring include authenticating artwork, collecting digital forms of art, digitization for archival and commercial purposes, and copyright issues in ownership, derivative use, and online distribution.

GET INVOLVED!

WORKING GROUPS: MALC recently launched 4 working groups: Digitization and Archiving Collections, Document Archival and Electronic Communications Privacy, Social Media and Patents In Museums and Arts and invites you to learn more about the goals and objectives of each working group by joining our monthly committee calls.

MONTHLY COMMITTEE CALLS: MALC is currently holding monthly teleconferences the last Friday of each month at 4:30pm EST. Please email Katherine at kel@msf-law.com for call-in information.

NEWSLETTER: We’re accepting submissions for the Fall 2015 Newsletter! Please email submissions, suggestions for topics you would like to see covered and/or questions to Ria De las Alas, our Newsletter Editor, at redelasalas@gmail.com.

WEBSITE: We are looking for volunteers to help maintain our website to keep things updated and interesting! If interested contact Barron Oda at boda@hawaii.edu for more information.

ARTS LIAISON: A major goal of the Committee is to act as a liaison between the museum/arts community and the legal profession. If you know of national, regional or local museum/arts groups we should be contacting, send an e-mail to boda@hawaii.edu.

SUGGESTION BOX: We’re currently accepting suggestions for additional legal topics that would be helpful to museum audiences. Please email suggestions to kel@msf-law.com.

Lost & Found

Picasso Stepdaughter Files Charges, Claiming Art Stolen

Catherine Hutin-Blay, the daughter of Picasso’s second wife, filed charges against a top Paris art dealer, alleging that he stole artwork that was only meant to be transported and stored on her behalf. The artwork at issue supposedly went missing after they were given to the dealer after he was hired for transportation services. It is not clear which pieces of art are the subject of the lawsuit, but prosecutors have already opened a judicial inquiry into the dealer for theft, receiving stolen goods and fraud. To date, Picasso has had the most works stolen out of all the world’s famous painters; currently more than one thousand paintings by Picasso are registered as stolen, missing or disputed. http://tinyurl.com/mj2nivo

Artwork Won in Poker Game during World War II Journey Home

Three works from Dessau and two other paintings taken by American tank commanders as winnings from a poker game during World War II have recently been handed over to the German ambassador to the United States. While many pieces of art were preserved after American soldiers discovered it underground, these paintings were kept within the family for over seven decades before the younger descendants of the commanders offered to give the paintings back. Technically, the paintings were stolen, as General Eisenhower had issues strict directives forbidding such thefts. The Monuments Men Foundation organized the return of the paintings, and hopes that this instance will prompt the families of other American veterans to come forward and return paintings taken from that time period, even though in the past returns of artwork have been scarce. http://tinyurl.com/n5nh4sa