



RETURN TO AN ADDRESS OF THE HONOURABLE THE HOUSE OF COMMONS
DATED 28 MARCH 2023 FOR THE

**REPORT OF THE SPOILIATION ADVISORY PANEL IN RESPECT OF
THE PAINTING 'LA RONDE ENFANTINE' BY GUSTAVE COURBET
IN THE POSSESSION OF THE FITZWILLIAM MUSEUM, CAMBRIDGE**

The Right Honourable Sir Donnell Deeny

*Ordered by the House of Commons
to be printed 28 March 2023*



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REPORT OF THE SPOILIATION ADVISORY PANEL IN RESPECT OF THE PAINTING ‘LA RONDE ENFANTINE’ BY GUSTAVE COURBET IN THE POSSESSION OF THE FITZWILLIAM MUSEUM, CAMBRIDGE

INTRODUCTION

1. This report deals with a claim brought by Pinsent Masons, France LLP, on behalf of Mondex Corporation (“the claimant”) which was mandated by heirs of the late Robert Bing to seek restitution of the painting presently titled *La Ronde Infantine* by Gustave Courbet currently located in the collection of the Fitzwilliam Museum, University of Cambridge (“the Museum”). An image of the painting is included at Appendix 1 to this report.

THE PANEL’S TASK

2. The task of the Spoliation Advisory Panel (“the Panel”) is to consider claims from anyone or their heirs who lost possession of a cultural object during the Nazi era (1933-1945) where such an object is now in the possession of a United Kingdom national collection or other museum or gallery established for the public benefit and to advise the claimant, the institution and, where it considers it appropriate, the Secretary of State for Culture, Media and Sport on what action should be taken in relation to the claim; see Panel’s Constitution and Terms of Reference at Appendix 2. The claim was initiated by letter of 22 October 2021. The paramount purpose of the Panel is to achieve a solution which is fair and just to both parties.
3. In making this report the Panel has considered the submissions and the evidence submitted on behalf of the claimant and the response of the Museum and, where appropriate, has made enquiries of its own. In reaching any conclusion of fact the Panel will do so on the balance of probability recognising the difficulties of proof in all the circumstances including the lapse of time since the owner lost possession of the object. A necessary finding by the Panel is the identity of the owner of the painting at the time it was taken.

THE WORK

4. The painting in question is by the French artist, Gustave Courbet (1819-1877), the leader of the Realist movement in French art in the generation before the Impressionists came to prominence. The work is oil on canvas, signed by the artist and measures 67 x 52.5 centimetres. It bears the title in the Museum catalogue “*La Ronde Infantine*” and the accession number PD.28-1951. It may have borne other names in the past.

THE CLAIMANT'S CASE

5. The keystone of the case made by the claimant is that the work now in the possession of the Museum and entitled *La Ronde Infantine* was seized from the flat of Robert Léo Michel Lévy Bing at 8/10 rue Oswaldo Cruz, Paris on 5 May 1941 by two members of the Einsatzstab Reichsleiter Rosenberg ("ERR") as part of the Nazi dispossession of Jews in occupied France. We will go into this in greater detail in due course but for ease of understanding will summarise the claimant's case in chronological order.
6. The claimant submits that the painting was created in about 1862 by Gustave Courbet and was first shown at an exhibition and auction of paintings and sculptures by Courbet and Corot among others at Saintes, France in 1863. Lot 104 on the catalogue of that sale is entitled "*Bois de Rochemont*". They submit this is the same painting. They point to a handwritten note in the marked-up catalogue which appears to read "*Baudr.*" They argue that is very likely to be the art collector, friend and supporter of Courbet, Étienne Baudry. The claimant draws attention to an excerpt from a Catalogue d'Exposition at the Salon des Amis des Arts de Bordeaux, 1865. The claimant submits that item 179 entitled "*L'entrée de la Forêt: Étude*" is the work in question. Beside it the number 120 is given though no vendor or purchaser is named in the annotated catalogue. There is a reference to the sale in another work by Fernandes and Sanches of 2017 with the same description.
7. Casting back from the knowledge that the painting was in Robert Bing's apartment in 1941, the claimant argues that it was probably acquired by his maternal grandmother, Clara Simonette Ballin (1845-1930). She married Alfred Michel Grunebaum and seems to have been known as Madame or Mrs Grunebaum Ballin thereafter. In support of that thesis the claimant points to a number of factors. Alfred Grunebaum was a wealthy banker and merchant as was his wife's father, Frédéric Ballin. They are mentioned in commercial directories of the time in London and Paris.
8. The claimant's research has located a letter in the correspondence of James McNeill Whistler found in the library of the University of Glasgow. On 14 February 1877 Gustave Courbet wrote to Whistler speaking of matters of mutual interest. Towards the end of the letter, he mentions sending paintings for a Philadelphia exhibition and says: "*And I have paid the freight for that, see Mrs Grunebaum Ballin, E.C.: Angel Court, Throgmorton Street, tell Mr Reitlinger.*" Both Reitlinger and Mme. Grunebaum Ballin are named in an earlier letter of 26 April 1876 written by Courbet and found in a volume of his private correspondence published by the Institut Gustave Courbet. Therefore, Courbet knew the grandmother of Mr Bing, at least to the extent indicated by this reference.
9. Alfred Grunebaum died in 1884. In support of the submission that his widow was a collector of art at this time the claimant draws attention to a Catalogue Raisonné by Alfred Robaut (of the work of Corot) published in three volumes in Paris in 1905 which refers at pages 52F and note 1392 to a painting from the collection of "*Mme Veuve Alfred Grunebaum*".

10. Her daughter Marguerite Rachel Grunebaum married Pierre-Joseph-Léo Lévy Bing (1864-1918) on 6 July 1897. She is variously named even in legal documents but we propose to refer to her as Mme Grunebaum in distinction from her son Robert Bing, and her later daughter in law. The claimant describes the Bing family as a wealthy and influential Jewish family. Robert Bing's father had been a naval officer who became a Chevalier of the Légion d'Honneur. His uncle, Paul Grunebaum Ballin, was an advisor to two French Prime Ministers, Aristide Briand and Léon Blum.
11. In a claim made on 28 June 1961 to the German authorities for compensation Robert Bing declares that his mother, Marguerite, had moved into his apartment in 1939. This would be perfectly natural given her widowed state and the commencement of war. However, they fled before the arrival of the Germans in Paris. The apartment was, it seems, occupied by the Germans from 9 September 1940.
12. As mentioned briefly above, the ERR entered the apartment of Robert Bing at 8/10 Rue Oswaldo Cruz, Paris on 5 May 1941. They recorded in a document located by the claimant in the federal archive held at Koblenz in Germany, file B323-267, a file recording the looting of the property and describing the painting as "*Courbet signed Waldlandschaft*". In support of the claimant's claim the dimensions are given at 67 x 52.5 centimetres. *Waldlandschaft* means forest landscape, a not unlikely description of this painting.
13. The painting has a somewhat colourful history after it was seized. It was held in the Jeu de Paume for the benefit of the leading Nazi collector, Hermann Goering. At one point he proposed to exchange it as part of a transaction involving the German Foreign Minister, Ribbentrop, but either the latter or his wife disliked the work and that transaction did not proceed.
14. We know at this point that there was a further deliberate looting of Mr Bing's apartment on 14 May 1941 when a large part of his furniture was loaded on to two trucks by French furniture removers under German orders. Subsequently a piano and the remaining items were looted in December 1942 and March 1943.
15. A further confirmation of the seizure and Nazi possession of the work was advanced by the claimant in response to the submissions on behalf of the Museum. They identified the work as D24 in "*Beyond the Dreams of Avarice: The Hermann Goering Collection*" by Nancy H. Yeide, (Laurel Publishing, Dallas, 2009). Reference to confiscation is also found in the *Deutsches Historisches Museum* database for the art collection of Hermann Goering.
16. The whereabouts of the painting are unknown in the immediate aftermath of the Second World War. The claimant points out that it resurfaced in the inventory of the London art dealership, Arthur Tooth & Sons, in 1951. On 10 January in that year a French art expert, André Schoeller, certified the authenticity of the painting as *La Ronde Infantine* by *Gustave Courbet*. Schoeller is mentioned in the "*Red Flag Names List*" of the Art Looting Intelligence Unit ("ALIU") consisting of names of individuals, dealers and agencies likely to have been involved in art looting (<https://www.lootedart.com/MV13RM469661>)

17. On 1 May 1951 Arthur Tooth & Sons acquired the painting from the Swiss art dealer, Kurt Meissner. He owned a gallery in Zurich and is mentioned in the Roberts Commission Card File on Art Looting Suspects held in Washington DC.
18. On 19 November 1951 Arthur Tooth & Sons sold the painting to the then Dean of York, The Very Reverend Eric Milner-White (1884-1963). He in turn donated it in the same year to the Fitzwilliam Museum in memory of the donor's father. The Museum records give a slightly different date of June 1951. The work has remained in the collection of the Museum since then.

THE MUSEUM'S RESPONSE

19. As soon as the Museum was alerted to the spoliation claim in July 2021, curatorial research was instigated to clarify provenance. The Museum accepts that it went from the artist to Etienne Baudry and that, much later, it was owned by Meissner who sold it to Tooth, who sold it to The Very Reverend Eric Milner-White. The Museum says that the research conducted by it on provenance at the time of receipt of the gift was consistent with the methods and norm of the time. The Museum has some 500,000 objects in its collection, including around 2,000 paintings. At the time of the gift there would have been little to arouse suspicion. Not only was The Very Reverend Eric Milner-White an Anglican Priest but he was a generous donor of some 50 paintings to public collections in the United Kingdom and had been awarded both the DSO (unusually for a clergyman) and a CBE.
20. The Museum points out that Arthur Tooth & Sons was a long-established business set up in 1842. The London branch closed in the 1970s. Such provenance was likely to have inspired confidence with the Museum at the time. The Museum's recent research has not revealed information about the whereabouts of the painting between Baudry and Meissner until the claim was submitted. The Museum accepts that a painting matching the appearance of *La Ronde Infantine* was once in the art collection of Hermann Goering. The Museum suggested that it was transported to the tunnels at the Nazi elite's Bavarian retreat in Berchtesgaden with other paintings where it was discovered and salvaged by Allied soldiers. On this point the claimant disagrees. The Museum contacted the French Commission for the Compensation of Victims of Spoliation and after research by their agents no further information about Robert Bing or *La Ronde Infantine* was found.
21. In the claimant's response in a letter dated 7 February 2021 (*sic*, in fact 2022) Pinsent Masons underline that neither the claimant, Mondex Corporation, nor the heirs of Mr Robert Bing, blame the Museum for having accepted the painting donated by The Very Reverend Eric Milner-White in 1951.

ISSUES AND FINDINGS

22. Pursuant to paragraph 15(g) of our Terms of Reference the Panel has considered "*whether any moral obligation rests on the institution taking into account in particular the circumstances of its acquisition of the object, and its*

knowledge at that juncture of the object's provenance." Like the claimant, the Panel sees nothing blameworthy in the acceptance by the Museum of this donation by The Very Reverend Eric Milner-White in 1951, he having acquired it from a reputable London dealer who had acquired it from a Swiss dealer. We consider that the Museum has acted honourably in this matter. We consider that nevertheless they will not dispute the moral obligation to restore the work of art to the heirs of the rightful owners if the contentions made by the claimant are accepted by the Panel.

23. The following four issues remain to be determined by the Panel in arriving at a conclusion: -

- (1) Is *La Ronde Infantine* in the collection of the Museum the same painting described as Forest Landscape seized by the ERR from the flat of Robert Bing on 5 May 1941?
- (2) Have the heirs of the owner of the painting at the time of its seizure a valid claim to its restitution or another remedy because the owner was deprived of the object in the circumstances referred to in our Terms of Reference?
- (3) If so, who was the owner of the painting whose heirs are entitled to claim?
- (4) What remedy, if any, is appropriate?

24. (1) Is *La Ronde Infantine* in the collection of the Museum the same painting described as Forest Landscape seized by the ERR from the flat of Robert Bing on 5 May 1941?

The Panel having considered all the evidence adduced by the claimant and the Museum is satisfied that *La Ronde Infantine* in the possession of the Fitzwilliam Museum is indeed the painting seized by the Nazi Institution ERR from the flat of Robert Bing on 5 May 1941.

25. (2) Have the heirs of the owner of the painting at the time of its seizure a valid claim to its restitution or another remedy because the owner was deprived of the object in the circumstances referred to in our Terms of Reference?

The Panel has from time to time to deal with quite difficult issues regarding the adequacy of price paid to a seller of a work of art in the 1930s. This is not such a case. This is a deliberate seizure by the German authorities from a Jewish citizen of France with the diversion of the work of art to Nazi leaders. No other reason for seizure other than the Jewishness of Mr Bing has appeared to explain this seizure. We are satisfied that the heirs of the owner of the painting have a strong claim to restitution.

26. (3) Having answered the previous questions in the affirmative, who was the owner of the painting whose heirs are entitled to claim?

We are satisfied from the materials carefully brought together on behalf of the claimant that the painting in question was owned by Marguerite Rachel Grunebaum who married Pierre-Joseph-Léo Lévy Bing on 6 July 1897. We are satisfied that following the death of her husband, she moved in 1939 into the apartment of her son, Robert Bing, from which the painting in question was seized by the Nazis as their own records show on 5 May 1941. The question is, who was the owner at the time of its seizure or indeed subsequently? On first consideration the owner might be thought to be Madame Grunebaum as she was the owner when she moved into the apartment, bringing the Courbet with her. This view initially appeared to be reinforced by an absence of any claim by her son, Robert Bing, for compensation for the painting after the Second World War. While it would be entirely understandable that his mother would have given the painting to him at some point in her life while living with him, perhaps especially towards the close of her life, it seemed surprising that he had not made any claim after the war for his loss of a painting by a leading French artist.

27. Initially it appeared that this was a factor against the submission on behalf of Robert Bing that he was the legal owner. For example, the claimant had provided us with a document found in the Central Archives for the History of the Jewish People in Jerusalem setting out a list of information to be provided for each claim concerning property which was removed in France by 'the German services' during the war and relating to Robert Bing. The details there, which included a claim for 6,000,000 French francs overall, did not name the Courbet although there was a passing reference among a number of other items to "furniture, household goods and works of art".

28. However, prior to our meeting of October 2022 we obtained further documentation from the French Commission for the Compensation of Victims of Spoliation including a copy of an inventory which Bing had stated had been signed by him and two witnesses in April 1948. The document is entitled "*Inventaire des Objets Mobiliers Enlevés Par Les Autorités Allemandes Dans L'appartement de Monsieur Robert Bing, 8/10 Rue Oswaldo Cruz, Paris 16e*". There follows an inventory of movable objects which Mr Bing was asserting were taken by the German authorities from his apartment, an event that has been well authenticated on behalf of the claimant and outlined above. Of particular significance here is an entry on the first page of the inventory setting out the claimed items in the "petit salon" of the apartment and reading as follows: -

"1 *Tableau de Courbet, non encadré, représentant _____* ".

In favour of the claim made by the heirs of Robert Bing, this is an assertion by Mr Bing in 1948 that he should be compensated for the seizure of his property from his apartment including this painting. We are satisfied that this refers to *La Ronde Infantine*. The inventory goes into great detail about his belongings over some seven closely typed pages and including itemisation of collected works of leading French authors. It is therefore a little surprising that he did not in this

inventory say what the “tableau de Courbet” did represent. There is a space after ‘représentant’. (“Non-encadré” means unframed.) On the other hand, he had not seen the painting since his departure from his apartment seven years previously because he had fled, and the Nazis had subsequently seized it. Furthermore, as outlined earlier in this report, the painting seems to have been referred to by different names over the years and is not of a closely defined object. He might have asked his mother, who was still alive at the time, but we do not know her health or indeed where she was living at that time. She was certainly of a considerable age. The fact that she was alive but that he included it in his claim is a factor in favour of the claim made on behalf of the heirs of Robert Bing. The absence of a precise name for a work of art is not at all unusual.

29. Both parties were given an opportunity to comment on this newly discovered document and we have considered those responses. Our Terms of Reference require us to act in evidential terms on the balance of probabilities. We conclude, on the balance of probabilities, that Robert Bing had become the owner of the painting, or any rights to it, during the lifetime of his mother. We will return in due course to what that means regarding the different heirs of Robert Bing. The answer therefore to the third issue is that his heirs are the proper claimants.
30. It is true to say that this conclusion is based, to some extent, on accepting the credibility of Robert Bing in his assertion in the inventory prepared for compensation. Neither the Museum in this case nor our colleagues in France have advanced anything to call into question the credibility of Robert Bing. He came from a prominent French family active in public life. He himself, we are informed by the claimant, was active in the French Resistance from 1941 until 1944. He was arrested at one stage and interned by Vichy France but having been moved to a hospital in Lyon, he was liberated on the 8 January 1944. Confirmation of his contribution exists in the form of the award of the Croix de Guerre and the Médaille de la Résistance Française. The Panel is satisfied that it can rely on the assertion in the inventory of April 1948 which he had signed and forwarded to the authorities.
31. The issue of the precise ownership of the Courbet is not academic. Madame Grunebaum had two sons and no daughters. The other son was Pierre Alfred Lévy-Bing. He in turn had two children, Jean-Claude Bing and Muriel Bing, deceased in 2020 and 2018 respectively.
32. The existence of Jean-Claude Bing was already drawn to the attention of the Panel by the claimant as they act for his descendants. Following enquiries by the Panel to Messrs Pinsent Masons, they acknowledge that Muriel Bing, who was not an heir of Robert Bing, had a sole heir whom they have named. He has provided, and a copy was given to us, a ‘certificate of registration of a declaration of renunciation of an estate’ dated January 2020. It may be therefore that he has renounced any possible claim. In any event our finding that the right to claim had passed from Madame Grunebaum to her son, Robert, is sufficient to dispose of that issue.

33. (4) What remedy, if any, is appropriate?

In light of the circumstances set out above, including paragraph 25, in which Robert Bing was deprived of the painting, we consider consistent with our approach in our previous decisions that the only appropriate remedy is restitution of the work.

34. The claimant has set out who are the heirs of Robert Bing and has done so as evidenced by a series of French legal documents. Robert Bing died on 23 February 1993. He had been married to Denise Bloch from December 1954. Their marriage contract instituted a regime of full property and thus Denise was Robert's only heir, there being no children to the marriage. She died shortly after her husband, Robert, on 27 August 1993. Tax documents provided to the Panel show that her beneficiaries were her niece, Nicole Charlotte Picard, wife of Albert Saragoussi, who was entitled to 40% of her estate and her late husband's nephew, Jean-Claude Bing, who was entitled to 60% of the estate of Denise Bing, which included the estate of Robert Bing. Jean-Claude Bing died on 7 September 2020. Mondex Corporation adduces a Deed of Donation between Jean-Claude Bing and his wife, Nadya Lefevre Bing, of 28 August 1984 and a Power of Attorney signed by their son, Frank Bing, on 10 November 2019 assigning his rights to Mondex Corporation. The Museum has not taken issue with this claim on behalf of the heirs of Robert Bing. Therefore, in answer to our fourth question the Museum can properly reconstitute the painting to the Mondex Corporation on behalf of the heirs of Robert Bing, subject to the matters we now address.
35. This leaves an outstanding point of potential importance. If the work is sold and proves of value, the claimant acknowledges that 40% of the value of the estate of Denise Bing (which carried over the estate of Robert Bing and therefore the right to this work) belongs to the children of Nicole Charlotte Picard Saragoussi.
36. The Panel considers it necessary in their own interest and in the interest of transparency to name these persons and does so with the leave of the Chairman pursuant to paragraph 13 of our Terms of Reference. They are Inés Marguerite Plata Saragoussi (born 1952), Jacques Charles Isidore Saragoussi (born 1958) and Claire Madeleine Caroline Plata Saragoussi (date of birth unknown).
37. The claimant has found birth certificates for the first two of the three children of Madame Picard Saragoussi but has not succeeded in having any response from these heirs. They are heirs of Robert Bing and therefore the claimant will continue to have a legal, as well as a moral, obligation to those other heirs of Robert Bing even if they have not joined in the claim. No doubt the claimant would argue that it is entitled to recover its reasonable costs of bringing this claim and recovering the work by Courbet before passing on 40% of the net benefit to those heirs.
38. The Panel did make enquiries as to whether the lawyers who formerly acted for the estate of Madame Grunebaum could receive the work on behalf of her heirs and deal with the work of art on behalf of those heirs. Our enquiries in that

regard have led to a courteous response from the successor to the firm of notaires who previously acted, indicating this was not something that could be done in French law or done by them as the estate of Madame Grunebaum had been wound up many years previously. It might legitimately be asked how far a Panel such as ours should go in pursuing heirs who had not brought a claim. If we had concluded that Madame Grunebaum had retained ownership of the work, there might well have been insuperable difficulties in granting restitution given the passage of time and the previous winding up of her estate. In the event our conclusion, significantly influenced by the inventory of April 1948 with the claim by Robert Bing for compensation for the painting, obviates the need to consider that difficulty further.

POST-WAR COMPENSATION

39. Having found in favour of the heirs of Robert Léo Michel Lévy Bing one final issue remains. Messrs Pinsent Masons very properly drew to the Panel's attention a German document with an English translation of 30 June 1961. They had pointed out that as Robert Bing and his family never lived in Germany there are no claims to the Federal Office for Central Services and Unresolved Property Issues (BADV) or the West German Federal Indemnification Law (BEG). However, they have provided a certification of the expert commission relating to Robert Bing's claims and signed on behalf of the Fonds Social Juif Unifié. From that we can see that Mr Bing received cash payments paid by the French state of 316,782 francs and in addition certificates paid or payable by 1 April 1956 to the amount of 1,279,800 francs. The document records that it was calculated on the basis of an insurance policy and was somewhat less than Mr Bing claimed. It is relevant to note that there is no reference to works of art in this summary certificate but there is a reference to "furniture classified in group 1". The certificate goes on to record the German authorities' assessment and to award a further 28,079 Deutschmarks taking into account the money awarded by the French state. That assessment includes this short entry "*X multiplier biens somptuaires*".
40. There is a reference in the document to an Annex which describes the circumstances in which Mr Bing's property was occupied and looted between September 1940 and March 1943. It makes express reference to the removal of a piano. At no point does the Certificate or the Annex or any related compensation document we have seen refer to this work or any other work by Gustave Courbet or any other painter.
41. The Panel has had to consider the issue of post-war compensation to claimants on previous occasions. In *Report of the Spoliation Advisory Panel in respect of a Gothic relief in Ivory, now in the possession of the Ashmolean Museum, Oxford, 10 February 2016* the Panel dealt with the issue at paragraph 21. Post-war compensation had been paid to the Silberberg family but with no reference to this small ivory object. We observed in passing that Alfred Silberberg received "at least 25,000DM as part of a settlement in respect of a painting by Gustave Courbet owned by his father". The claim (for the small ivory item) was not successful.

42. In *Report of the Spoliation Advisory Panel in respect of a painted wooden tablet, the Biccherna Panel, now in the possession of the British Library, 12 June 2014* we addressed the issue at paragraph 31. 75,000DM had been paid in post-war compensation in that case but there was no breakdown of amounts. We referred to our earlier decision regarding Glasgow City Council, to which we will turn in a moment, and decided that the possibility of a tiny fraction of compensation for the work should not affect our recommendation to restore the work to the claimants.
43. In *Report of the Spoliation Advisory Panel in respect of a painting now in the possession of Glasgow City Council, 24 November 2004*, coincidentally 75,000DM had also been paid but we concluded that only a tiny fraction of the compensation would be attributable to the painting (paragraph 24), and it did not impact on our decision. This was an unusual case where the painting had been declared by the expert consulted by the Panel to be a poor copy.
44. We consider that the absence of any express reference to the painting in question in the assessment of post-war compensation makes it clear that no significant part of the compensation was for its loss and thus it would be inappropriate to qualify or restrict the recommendation of restitution of this work of art, seized by the Nazis solely because the owners were Jewish.

THE PANEL'S RECOMMENDATION

45. The Panel recommends that *La Ronde Infantine* by Gustave Courbet currently in the possession and legal ownership of the Fitzwilliam Museum, University of Cambridge, be restituted to Mondex Corporation representing and on behalf of the heirs of Robert Bing. This recommendation implies no criticism of the Museum or the original donor, The Very Reverend Eric Milner-White, who have acted honourably and in accordance with the standards prevailing at the time of acquisition and since. The Museum has cared for the work so that it can now be restored to the heirs of the original owners.

28 March 2023

The Rt Hon Sir Donnell Deeny – Chairman
The Rt Hon Sir Alan Moses
Christopher Baker
His Honour Judge Tony Baumgartner
Professor Sir Richard J Evans
Professor Miranda Fricker
Martin Levy
Peter Oppenheimer
Ms Anna Southall
Oliver Urquhart Irvine

Appendix 1: Image of *La Ronde Infantine* by Gustave Courbet (the claimed work)
Appendix 2: Constitution and Terms of Reference

APPENDIX 1

La Ronde Infantine by Gustave Courbet (the claimed work)



© The Fitzwilliam Museum, University of Cambridge

APPENDIX 2

SPOLIATION ADVISORY PANEL CONSTITUTION AND TERMS OF REFERENCE

Designation of the Panel

1. The Secretary of State has established a group of expert advisers, to be convened as a Panel from time to time, to consider claims from anyone (or from any one or more of their heirs), who lost possession of a cultural object ("the object") during the Nazi era (1933-1945), where such an object is now in the possession of a UK national collection or in the possession of another UK museum or gallery established for the public benefit ("the institution").
2. The Secretary of State has designated the expert advisers referred to above, to be known as the Spoliation Advisory Panel ("the Panel"), to consider the claim received from Messrs Pinsent Masons on behalf of Mondex Corporation which was mandated by heirs of the late Robert Bing on 22 October 2021 for the painting *La Ronde Infantine* by Gustave Courbet in the collection of the Fitzwilliam Museum.
3. The Secretary of State has designated Sir Donnell Deeny as Chairman of the Panel.
4. The Secretary of State has designated the Panel as the Advisory Panel for the purposes of the Holocaust (Return of Cultural Objects) Act 2009.

Resources for the Panel

5. The Secretary of State will make available such resources as he considers necessary to enable the Panel to carry out its functions, including administrative support provided by a Secretariat ("the Secretariat").

Functions of the Panel

6. The Panel shall advise the claimant and the institution on what would be appropriate action to take in response to the claim. The Panel shall also be available to advise about any claim for an item in a private collection at the joint request of the claimant and the owner.
7. In any case where the Panel considers it appropriate, it may also advise the Secretary of State:
 - (a) on what action should be taken in relation to general issues raised by the claim, and/or
 - (b) where it considers that the circumstances of the particular claim warrant it, on what action should be taken in relation to that claim.

8. In exercising its functions, while the Panel will consider legal issues relating to title to the object (see paragraph 15(d) and (f)), it will not be the function of the Panel to determine legal rights, for example as to title;
9. The Panel's proceedings are an alternative to litigation, not a process of litigation. The Panel will therefore take into account non-legal obligations, such as the moral strength of the claimant's case (paragraph 15(e)) and whether any moral obligation rests on the institution (paragraph 15(g)).
10. Any recommendation made by the Panel is not intended to be legally binding on the claimant, the institution or the Secretary of State.
11. If the claimant accepts the recommendation of the Panel and that recommendation is implemented, the claimant is expected to accept the implementation in full and final settlement of his claim.

Performance of the Panel's functions

12. The Panel will perform its functions and conduct its proceedings in strictest confidence. The Panel's "proceedings" include all its dealings in respect of a claim, whether written, such as in correspondence, or oral, such as at meetings and/or hearings.
13. Subject to the leave of the Chairman, the Panel shall treat all information relating to the claim as strictly confidential and safeguard it accordingly save that (a) such information which is submitted to the Panel by a party/parties to the proceedings shall normally be provided to the other party/parties to the proceedings in question; and (b) such information may, in appropriate circumstances, including having obtained a confidentiality undertaking if necessary, be communicated to third parties. "Information relating to the claim" includes, but is not limited to: the existence of the claim; all oral and written submissions; oral evidence and transcriptions of hearings relating to the claim.
14. In performing the functions set out in paragraphs 1, 6 and 7, the Panel's paramount purpose shall be to achieve a solution which is fair and just both to the claimant and to the institution.
15. For this purpose the Panel shall:
 - (a) make such factual and legal inquiries, (including the seeking of advice about legal matters, about cultural objects and about valuation of such objects) as the Panel consider appropriate to assess the claim as comprehensively as possible;
 - (b) assess all information and material submitted by or on behalf of the claimant and the institution or any other person, or otherwise provided or known to the Panel;
 - (c) examine and determine the circumstances in which the claimant was deprived of the object, whether by theft, forced sale, sale at an undervalue, or otherwise;

- (d) evaluate, on the balance of probability, the validity of the claimant's original title to the object, recognising the difficulties of proving such title after the destruction of the Second World War and the Holocaust and the duration of the period which has elapsed since the claimant lost possession of the object;
- (e) give due weight to the moral strength of the claimant's case;
- (f) evaluate, on the balance of probability, the validity of the institution's title to the object;
- (g) consider whether any moral obligation rests on the institution taking into account in particular the circumstances of its acquisition of the object, and its knowledge at that juncture of the object's provenance;
- (h) take account of any relevant statutory provisions, including stipulations as to the institution's objectives, and any restrictions on its power of disposal;
- (i) take account of the terms of any trust instrument regulating the powers and duties of the trustees of the institution, and give appropriate weight to their fiduciary duties;
- (j) where appropriate assess the current market value of the object, or its value at any other appropriate time, and shall also take into account any other relevant circumstance affecting compensation, including the value of any potential claim by the institution against a third party;
- (k) formulate and submit to the claimant and to the institution its advice in a written report, giving reasons, and supply a copy of the report to the Secretary of State, and
- (l) formulate and submit to the Secretary of State any advice pursuant to paragraph 7 in a written report, giving reasons, and supply a copy of the report to the claimant and the institution.

Scope of Advice

16. If the Panel upholds the claim in principle, it may recommend either:
- (a) the return of the object to the claimant, or
 - (b) the payment of compensation to the claimant, the amount being in the discretion of the Panel having regard to all relevant circumstances including the current market value, but not tied to that current market value, or
 - (c) an ex gratia payment to the claimant, or
 - (d) the display alongside the object of an account of its history and provenance during and since the Nazi era, with special reference to the claimant's interest therein; and

- (e) that negotiations should be conducted with the successful claimant in order to implement such a recommendation as expeditiously as possible.
- 17. When advising the Secretary of State under paragraph 7(a) and/or (b), the Panel shall be free to recommend any action which they consider appropriate, and in particular may under paragraph 7(b), recommend to the Secretary of State the transfer of the object from one of the bodies named in the Holocaust (Return of Cultural Objects) Act 2009.

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