

## National Stolen Property Act

**Agencies:** Federal Bureau of Investigation (Department of Justice)

**Citation:** [18 U.S.C. §§ 2314 et seq.](#)

**Enacted as:** National Stolen Property Act of 1934, enacted May 22, 1934

**Where Law Applies:** Applies within the U.S. territory to the trafficking of “goods, wares, merchandise, securities, or money” valued at \$5,000 or more, which have been “stolen, converted or taken by fraud” then transported, transmitted, or transferred in interstate or foreign commerce.

### **Summary of the Law:**

The [National Stolen Property Act of 1934 \(NSPA\)](#) (18 U.S.C. §§ 2314 *et seq.*) prohibits the transportation in interstate or foreign commerce of any goods with a value of \$5,000 or more with the knowledge that they were illegally obtained, and prohibits the "fencing" of such goods. The NSPA allows foreign countries' cultural patrimony legislation to be effectively enforced within U.S. territory by U.S. courts. These patrimony laws generally consider theft to include the unauthorized excavation or removal of artifacts from their archaeological context in the country of origin. Such laws must confer ownership of these antiquities to the country of origin's government.

Section 2314 of the NSPA criminalizes the transportation of illegally obtained goods valued at \$5,000 or more across borders in interstate or foreign commerce by persons knowing the goods to be stolen, converted, or taken by fraud, with a sanction of either a fine or imprisonment of up to ten years, or both.

Section 2315 of the NSPA criminalizes the sale or receipt (for possession, concealment, storage, or disposal) of illegally obtained goods valued at \$5,000 or more which have crossed a State or U.S. boundary after being stolen, unlawfully converted, or taken by an individual that has the knowledge that such goods were illegally obtained. This section also prohibits the pledging or accepting as security for a loan any goods, wares, merchandise, or securities of the value of \$500 or more, which have crossed a state or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen, unlawfully converted, or taken. The sanction includes a fine or imprisonment of up to ten years, or both.

The NSPA has been used successfully to prosecute those involved in the transportation or receipt of stolen cultural heritage, but the scienter or knowledge requirement that such goods were illegally obtained from the country of origin, included to protect innocent parties, is a heavy evidentiary burden for prosecutions under the NSPA. Once antiquities are removed from their context, it is difficult to demonstrate knowledge of illegal excavation or removal. Furthermore, many cultural objects have been excavated and traded over the centuries with little or no record-keeping, making it difficult for law-abiding dealers to be certain of the legality and provenance

of the items for sale. However, such knowledge may be inferred from the defendant's actions under the circumstances.

The Federal Bureau of Investigation has investigative jurisdiction for the stolen property offenses set forth in the NSPA. The Office of Enforcement Operations of the Criminal Division has supervisory responsibility over offenses arising under 18 U.S.C. §§ 2314 and 2315. The UNESCO 1970 Convention is also enforceable under the NSPA in the United States. The Convention on Cultural Property Implementation Act (CPIA) of 1983 provides civil remedies while the NSPA provides criminal sanctions.

**Source:** Department of Justice,

[http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usam/title9/61mcrm.htm](http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/61mcrm.htm) (last visited July 25, 2013); and Mark J. Petr, *Trading Places: Illicit Antiquities, Foreign Cultural Patrimony Laws, and the U.S. National Stolen Property Act After United States v. Schultz*, 28 Hastings Int'l & Comp. L. Rev. 503 (2005).

### **Legislative History:**

In 1919, Congress enacted the predecessor to the NSPA, the National Motor Vehicle Theft Act (NMVTA), to respond to a new challenge brought on by the technological innovation of fast, personal transportation that allowed criminals to “utilize the channels of interstate commerce to make a successful getaway and thus make the states’ detecting and punitive process impotent.” (*United States v. Sheridan*, 329 U.S. 379, 384 (1946)). In other words, prior to the NMVTA, automobile thieves could escape state law enforcement by transporting the stolen vehicle across state lines out of the state where the crime was committed. In 1934, Congress expanded the scope of the NMVTA with the NSPA by including other forms of property, thereby closing a similar enforcement loophole with regards to other stolen goods. Legislative records indicate that the NSPA was supported as a means of implementing federal and state cooperation in apprehending and convicting criminals. One Senator in support of the NSPA stated, “Gangsters who now convey stolen property, except vehicles, across the State line, with that immemorial gesture of derision, thumb their nose at the officers.” (78 Cong. Rec. 6981 (1934) (statement of Sen. Ashurst)).

In 1986, Congress amended two provisions of section 2315. First, Congress added “possession” to receipt and concealment as an offense. By prohibiting possession, the section is able to reach persons in cases where the prosecution may not be able to prove that the defendant received the property in a particular district. The second change that Congress made was to replace the requirement that goods be moving as or be part of interstate or foreign commerce with language that included goods “which have crossed a State or United States boundary after being stolen.” This new language eliminated the defense that stolen goods have left interstate commerce by “coming to rest” or by the passage of time.

**Source:** Stephen K. Urice, [\*Between Rocks and Hard Places: Unprovenanced Antiquities and the National Stolen Property Act\*](#), 40 N.M. L. Rev. 123 (Winter 2010).

## Cases:

- *Gov't of Peru v. Johnson*, 720 F. Supp. 810 (C.D. Cal. 1989), *aff'd sub nom.*, *Gov't of Peru v. Wendt*, [933 F.2d 1013 \(9th Cir. 1991\)](#).
- *United States v. An Antique Platter of Gold*, 184 F.3d 131 (2d Cir. 1999), *aff'g* [991 F. Supp. 222 \(S.D.N.Y. 1997\)](#).
- *United States v. Hollinshead*, [495 F.2d 1154 \(9th Cir. 1974\)](#).
- *United States v. McClain*, [593 F.2d 658 \(5th Cir. 1979\)](#), *cert. denied*, 44 U.S. 918 (1979).
- *United States v. Pre-Columbian Artifacts*, [845 F. Supp. 544 \(N.D. Ill. 1993\)](#).
- *United States v. Schultz*, 178 F. Supp. 2d 445 (S.D.N.Y. 2002), *aff'd* [333 F.3d 393 \(2d Cir. 2003\)](#), *cert. denied* 124 S. Ct. 1051 (2004).
- *United States v. Trupin*, [117 F.3d 678 \(2d Cir. 1997\)](#).

## Law Articles:

Stephen K. Urice, [Between Rocks and Hard Places: Unprovenanced Antiquities and the National Stolen Property Act](#), 40 N.M. L. Rev. 123 (Winter 2010).

- This Article argues that continued application of the NSPA in cases involving unprovenanced antiquities risks outcomes that undermine one or both of two U.S. policy goals: protecting archaeological records and promoting museums' missions. In such cases, pursuing alternatives to the NSPA may better determine title to undocumented antiquities. The Article also discusses the concept of provenance, the relationship between foreign patrimony statutes and the NSPA, and describes Congress's 1986 amendments to the NSPA with regards to cases involving unprovenanced antiquities. The Article concludes with three possible alternatives to the existing framework for combating trafficking in unprovenanced antiquities.

Andrew L. Adler and Stephen K. Urice, *Resolving the Disjunction Between Cultural Property Policy and Law, A Call for Reform*, 64 RUTGERS L. REV. 117 (Fall 2011).

- This Article discusses the disjunction between the executive branch's cultural property policies and the existing legal framework established by Congress and the judiciary, proposing that the disjunction reflects an outdated legal framework. The authors suggest that statutory reform is necessary to resolve the disjunction, modernize the legal framework, and restore the rule of law. The Article concludes by offering suggestions for reform.

Graham Green, *Evaluating the Application of the National Stolen Property Act to Art Trafficking Cases*, 44 HARV. J. ON LEGIS. 251 (Winter 2007).

- Analyzes the effectiveness of applying the NSPA to cases involving cultural property, considering whether the use of the NSPA conflicts with the Convention on Cultural Property Implementation Act (CPIA). This Article also provides recommendations on how to enhance the effectiveness of the NSPA by bringing its application into greater accord with the CPIA.

Jessica Eve Morrow, [\*The National Stolen Property Act and the Return of Stolen Cultural Property to its Rightful Foreign Owners\*](#), 30 B.C. INT'L & COMP. L. REV. 249 (Winter 2007).

- Note discusses *Hollinshead*, *McClain*, and *Schultz* cases, recommending a relaxation of the *mens rea* requirement of the NSPA to increase its effectiveness in deterring illicit trade.

Adam Goldberg, *Reaffirming McClain: The National Stolen Property Act and the Abiding Trade in Looted Cultural Objects*, 53 UCLA L. REV. 1031 (2006).

- This Comment argues that the McClain doctrine remains sound as a matter of both law and policy, despite claims to the contrary, and helps to provide the same protections to both foreign and domestic cultural objects.

Cynthia Ericson, *United States of America v. Frederick Schultz: The National Stolen Property Act Revives the Curse of the Pharaohs*, 12 TUL. J. INT'L & COMP. L. 509 (2004).

- This Note discusses the recent development of the *Schultz* case, providing background on the NSPA and previous related cases, as well as the UNESCO 1970 Convention, before analyzing the Court's decision.