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Arts and Humanities: Pell Amendments (1975)

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5-30-1975

## Arts and Humanities: Pell Amendments (1975): Report 07

J. R. Spencer

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- 1 General issues
- 3 Analysis section by section
- 6 ' comments on British and Australian forms
- 7 British form
- 8 Australian agreements with MOMA
- 15 Selected examples of exhibitions supported by Arts Endowment FY75-76
- 17 Addenda

for Biddle  
\$1,800  
AM

MR. Lehman, J. Brademas  
C. Pell, J. Jarvis, W. Mondale

Pressler is a new member.

He may want to talk with  
you about a special arts festival  
and exhibition in S. Dakota.

30 May, 1975

To: NH  
From: JRSpencer  
Re: S1800, Indemnification

First part: Issues and Answers (sounds like a PBS program)  
general comments and then bill part by part  
Second part: copies of British and Australian indemnification  
forms and comment

Issues and Answers  
General

Is there a need for this bill?

Ans. Yes. It has been recommended by ICOM (International Council on Museums, part of Unesco) that ALL countries have an indemnification policy.

There have been two bills passed by Congress during the last twelve months for special indemnification, viz. Archaeological Treasures from the Peoples Republic of China (INBOUND) and Metropolitan Museum of Art loan to the Soviet Union (outbound).

This bill would obviate the possible proliferation of requests for special bills.

American museums feel it is important. The insurance premium is a large expense item in mounting an exhibition. Dr. Pfeffer in a study made for the Assoc of Art Museum Directors states that 10% of a museum's annual operating budget goes to insure loan exhibitions (assume BOTH domestic and foreign).

Many premiums are a part of Total Project Cost requested from both Endowments and are supported on a matching basis. Government is indirectly involved in paying insurance premiums already.

Example of Britian shows such a bill is desirable and practical.

Does this bill favor the large institution?

Ans: No, it should not.

Indemnification is as important to the small institution as it is to the large. The smaller budget of the smaller institution makes need for indemnification even greater.

AAM survey for 1970-72 shows that 13% of museums responding - ( 8 of 62 which I do not consider a significant sample JRS) were obliged to cancel exhibitions due to insurance costs

Some small institutions (budgets under \$500,000) that have put on excellent international exhibitions are, for example:

Des Moines Art Center.	Schiele	Austria
Dayton Art Institute	Gérome	France
St. Petersburg	Dutch 17th	Holland

University of Arizona	Mauguin	France
University of Texas	Torres-Garcia	Mexico
(\$8000 premium)		
International Exhibitions	Christ Church	England
	Drawings	
	(seen at Nat. Gall)	

Do you favor insurance of outbound exhibitions?

The bill does not contain a provision for exhibitions going abroad. Others can respond better than I, HOWEVER there are a few comments I might make.

Why should we insure outbound?

There are a number of institutions that organize exhibitions for circulation abroad. The ones that most immediately come to mind are the Smithsonian, USIA and the Museum of Modern Art. The insurance premiums for the Modern alone are in excess of \$60,000 a year just to send works from their marvelous collection to South American and other countries. These exhibitions serve to ~~enhance~~ enhance the reputation of American art and the cultural leadership of the United States.

In addition, there are occasional international exhibitions such as the Venice Biennale, Sao Paulo and Delhi where American representation is requested and desirable. At present commercial insurance must be purchased for these exhibitions.

Shouldn't we wait for other countries to provide their own indemnification?

Perhaps. It is possible that we would provide a model and stimulus for them to adopt their own indemnification.

In the case of smaller countries it may not be practical or possible for them to have an indemnification policy. For example, the Field Museum in Chicago will be sending an exhibition of pre early (before 3300BC) Ecuadorian pottery to Ecuador. The Field Museum will be purchasing insurance to protect its own collection while it is in transit and in Ecuador. There may be other countries where it will be necessary for an American museum to accept responsibility for insurance.

Ultimately we would hope that all countries would follow the recommendation of ICOM.

What is risk of loss?

Experience is limited. Great Britain has reported no losses during the last 15 to 20 years.

Dr. Pfeffer's survey\* shows claims of from 5 to 10% on domestic exhibitions during 1970-72. The greatest

\* Irving Pfeffer, *The Insurance Experience of Fine Arts Museums*, 1973

Suggested New Answer to Question marked on Page 3

I note that the legislation would make the Council an operating body, which is not at present.

For administrative purposes, it might be desirable for the Council to delegate administrative functions to either Endowment, or both.

The Arts Endowment stands ready to cooperate fully with whatever arrangement seems best.

single claim amounted to \$35,000.  
 There is no difference in loss rate or claims between large and small museums. Pfeffer. Regulations could define (as is normal commercial practice today) the maximum allowable valuation per carrier.

Would this bill put government in competition with private insurance companies.?

Our sources (Bucky Block) say not, but it seems to me that representatives of the insurance industry could speak better to this point.

((Note: Bucky Block has said more than once that it makes no difference to him. He is a broker and spreads out the coverage to a variety of companies. He adds that the premiums ultimately find their way to Lloyd's.))

Do you support this bill?

I support the intent of this bill most warmly. I have some problems with it but these can be worked out when the regulations are written.

Are you content to have this bill administered by the Federal Council?

The Council is not an operating body.  
 If the bill provides for the Council to delegate authority (and staff) to both Endowments, then I would find no problems

Should there be a minimum valuation on an exhibition to be covered on this bill?  
 NO. See remarks on favoring large institutions.

The Bill, section by section

222 a Federal Council as an "agency".

So long as the Council can delegate its authority and funds for staffing, the problem is philosophical not so much practical

223a works covered.

Perhaps the definition should be expanded to include photography, etc. Definition of ART as in Arts legislation is preferable.

Item 3 does say "other artifacts or objects" which covers

223b "premises of the lender"

Lender needs to be defined. Is it a foreign individual, institution or government or does an American collector residing abroad (e.g. J. Paul Getty) also to be covered?

223a4B certified by the Secretary of State

I think if emphasis is put on Secty to screen out trivial exhibitions rather than on political implications we are all right. "In the national interest" can mean a lot of things.

What do I consider trivial? Well, some people collect telephone pole insulators (matchbook covers, beer bottles and/or cans). An international exhibition of telephone pole insulators (the others), I would find trivial.

223b "leaves premises of lender.... and returns"

This is normal museum and insurance company practice. It is called "wall to wall" coverage ( in French clou a clou).

224(a) definition of lender

I have problems with person and government; not with non-profit agency and institution.

What is a person? Is it a dealer who has a gallery in Zurich and in New York? Could he lend himself an exhibition and have it covered? That is not the intent.

Government. Does this apply? If we are talking of inbound shows, isn't the US government the only one applicable. Could Japan, for example, request indemnification? Probably.

224(b)3 policies, procedures, techniques and methods... exhibition and transportation.

Does this mean we are to become involved with overseeing packing? I hope not. It does say set forth policies.

Generally, in practice, it is the responsibility of the lender and the borrower.

Good museum practice requires condition report by sender and by receiver. Normally this includes photos. Thus damage in transit can be ascertained and responsibility placed.

AAM has a book in press on proper practices and procedures

225(b) \$25,000 deductible.

This is no real hardship. Most institutions, including very small, have a "floater policy", i.e. a general policy to cover all temporary loans up to a certain valuation-- often \$100,000 or above.

To make a large deductible (e.g. \$100,000) would make premiums on first \$100,000 very high, since this is area of greatest loss-- claims under \$50,000.

NOTE: Pfeffer states that 1.4% of all claims on domestic special exhibitions 1970-72 were in excess of \$10,000 (there were 2 for a total of \$43,946).

\$25,000 would cover total loss on a large class of

works, e.g. photos, crafts, prints, small sculpture, decorative arts, some paintings, books, manuscripts etc.

226a ...damages involving less than total loss or destruction..

This follows the British model. See attached.

I have some problems with it. It would be very difficult to ascertain the dollar amount of a less than total loss. Arbitrator's decision would have to be final

I think the key to the success of this bill lies in 222(a) and oblique reference in 226(a) to responsibility of the Federal Council to write the regulations. All the looseness of this bill could be tightened up there. It would need not only the Endowment lawyers, but insurance people (Pfeffer and Block) and some art (and other?) museum types.



Comments on British and Australian agreement forms

Both forms have in common agreement to indemnify for  
1) total loss 2) repair of damages 3) compensation for  
reduction in market value.

Both seek to work out agreement on loss between lender  
and borrower. British say they will go to a mutually  
acceptable arbitrator; Australians name him.

In England it is "the Treasury seeking Parliamentary  
approval" In Australia the Prime Minister has been  
empowered by Parliament to authorize payment of such  
sums as may be necessary. In Australia the PM signed  
for the indemnity agreement, the Attorney General for the  
certificate to MOMA and the Treasurer, on behalf of the  
PM, for individual loan forms.

The British form is appropriately terse. The Australian  
is more on the order of what we might come up with-- wordy  
but accurate.

I am informed by Dick Oldenburg that Britain does cover  
outgoing exhibitions or works through the British Arts  
Council. He has had two covered: works in the Anthony  
Caro show (now on view and supported by us) and one of  
20th century drawings.

Enclosure III

Using the Tate Gallery as an example:

"If, while the objects are in the Tate Gallery or in transit to or from it, any of them is, (except as the result of war), lost or destroyed or suffers damage which cannot be fully made good, with the owner's consent by the Tate Gallery, the Tate Gallery will (the Treasury seeking Parliamentary approval as necessary) make compensation to the owner as follows:

- a. in case of loss or destruction of the object, payment of \$ (Insert valuation agreed upon between the owner and the Tate Gallery) (This figure shall be reviewed periodically and may be adjusted by agreement to allow for any change in the value of the object.)
- b. in the case of such damage to the object as aforesaid, payment of - (1) such reasonable cost of repairs to the object as may be agreed upon between the owner and the Tate Gallery or, in default of agreement may be determined by an arbitrator mutually acceptable to the owner and the Tate Gallery, and (2) an amount equal to any reduction in the market value of the object after repair, such amount to be agreed upon between the owner and the Tate Gallery or, in default of agreement, to be determined by an arbitrator mutually acceptable to the owner and the Tate Gallery."

The Tate form provides further that the Tate Gallery ". . . should be given an opportunity to approve transport arrangement."

INDEMNITY UNDERTAKING

by

THE AUSTRALIAN GOVERNMENT

to

THE MUSEUM OF MODERN ART

in respect of

EXHIBITION - MODERN MASTERS

(1975)

## INDEMNITY UNDERTAKING

IN CONSIDERATION of the persons named and described as Owners in the Schedule hereto (herein referred to individually in relation to a work as "the Owner" and collectively as "the Owners") respectively making available to the Government of Australia by virtue of and in accordance with arrangements made between the AUSTRALIAN COUNCIL FOR THE ARTS (herein called "the Council"), a body established by the said Government to encourage and foster the arts in Australia, and THE MUSEUM OF MODERN ART of New York (herein called "the Museum") for exhibition within Australia the works described in the Schedule (herein referred to as "the works" and individually as a "work") THE COMMONWEALTH OF AUSTRALIA (hereinafter called "the Australian Government") HEREBY UNDERTAKES with, and with the Museum on behalf of, the Owner of each work that if, while a work is in transit to or from the premises of the Owner or, in the case of a work the Owner of which is not the Museum, is in the care of the Museum for the purpose of exhibition in Australia, or is in the care of the Council or in transit to or from any of its premises or the venue of any exhibition in Australia, the work is lost or destroyed or suffers damage which cannot be made good with the Owner's consent and to the satisfaction of the Owner by the Council, the Australian Government will make compensation to the Owner as follows:

- (a) in the case of loss or destruction of a work, payment of an amount equal to the agreed value of the work as shown in the Schedule or otherwise ascertained as hereinafter provided;
- (b) in the case of damage to a work, payment of -
  - (i) such reasonable costs of repairs to the work as may be agreed between the Owner of the work and the Council, or, in default of agreement, determined as hereinafter provided; and
  - (ii) an amount equal to any reduction in the value of the work after repair from the agreed value of the work as aforesaid, such amount to be agreed between the Owner and the Council or, in default of agreement, to be determined as hereinafter provided,

AND the Australian Government AGREES AND ACKNOWLEDGES that in the event of failure of an Owner and the Council to agree on a matter hereinbefore mentioned the amount of the payment to be made in the relevant respect by virtue of this undertaking shall be as determined by Mr. William F. Smith of the General Adjustment Bureau, 123 William Street, New York City, who shall be deemed to be acting as an

AND the Australian Government FURTHER AGREES that in the event of a change in the value of a work by reason of a significant and relevant market fluctuation after the date hereof the Council will, at the request of the Museum, consult with the Museum concerning the fluctuation and its effect and that the agreed value of the work for the purposes of this undertaking in respect of any loss or destruction of or damage to the work that may occur after the consultation is requested by the Museum shall be the value that is agreed upon by the Museum and the Council or, if these bodies should not be able to agree, the value that is determined by the said William F. Smith, acting as aforesaid, having regard to the fluctuation.

DATED this 25<sup>th</sup> day of February 1975

SIGNED for and on behalf of the Australian Government by the Prime Minister of Australia, the Honourable EDWARD GOUGH WHITLAM, Q.C., M.P.

  
.....  
Prime Minister

Witness:

INDEMNITY UNDERTAKING BY THE AUSTRALIAN GOVERNMENT TO  
THE MUSEUM OF MODERN ART IN RESPECT OF EXHIBITION -  
MODERN MASTERS

CERTIFICATE

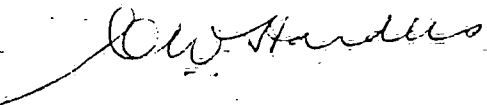
I am instructed that the Australian Council for the Arts has made arrangements with the Museum of Modern Art of New York ('the Museum') for the exhibition within Australia in 1975 of certain art works. In pursuance of these arrangements, the Prime Minister of Australia has signed, for and on behalf of the Commonwealth of Australia ('the Australian Government'), an 'Indemnity Undertaking' dated 25 February 1975 ('the Indemnity') wherein the Australian Government has undertaken with the owner of each art work, and with the Museum on behalf of each such owner, to pay compensation in the circumstances set out in the Indemnity.

2. As Secretary to the Attorney-General's Department of Australia, I have examined the Indemnity and all relevant laws of Australia and I have the honour to advise that, so far as all matters of Australian law are concerned -

- (a) the giving of the Indemnity is duly authorized by all necessary action required under the laws of Australia;

- (b) the Prime Minister of Australia, has full power, authority and legal right to enter into, and to sign and deliver, the Indemnity for and on behalf of the Australian Government; and
- (c) the Indemnity is a valid, binding and enforceable obligation of the Australian Government in accordance with its terms.

Dated this *twenty-seventh* day of February 1975.



(C.W. HARDERS)  
Secretary  
Attorney-General's Department,  
Canberra,  
Australia.



1. (a) Owner:

Name . . . . .

Address . . . . .

(b) Work:

Artist . . . . .

Title and Date . . . . .

Medium . . . . .

Dimensions . . . . .

(c) Agreed Value:

\$US.....

2.

etc.

DATED this ..... day of ..... 1975

SIGNED for and on behalf of THE COMMONWEALTH OF AUSTRALIA by

.....  
Treasurer  
Acting for Prime Minister

Witness:

Examples of International Exhibitions supported by  
Arts Endowment FY75 and 76.

Restricted to exhibitions drawn solely or in large  
part from foreign collections.

Does not include exhibitions where less than half  
of objects are of foreign origin.

ARTS ENDOWMENT SUPPORTED EXHIBITIONS, FY 1976:

1. The African-American Institute, New York City  
ZAIRE: MASTERWORKS FROM THE NATIONAL COLLECTION  
The exhibition will consist of approximately 100  
masterworks from the collection of the Institut des  
Musees Nationaux, Kinshasa, Zaire.  
Crating, shipping to and from the U.S., and insurance  
paid by Government of Zaire - \$6,000.
2. Bernice P. Bishop Museum, Honolulu  
CAPTAIN COOK AND PACIFIC ETHNOGRAPHY  
An exhibition of Hawaiian ethnographic specimens first  
gathered together by Captain James Cook in 1778.  
Insurance: \$10,000
3. The Buffalo Fine Arts Academy, Buffalo, N.Y.  
DRAWING IN FRANCE  
A comprehensive exhibition of drawings by major modern  
masters (1870-1970).  
Insurance: \$3,000
4. The Fine Arts Museums of San Francisco  
TRIUMPH OF HUMANISM  
An exhibition of decorative arts, small sculpture and  
graphic arts of the Renaissance in Italy and Northern  
Europe (ca. 1450-1600).  
Approximately 250 objects/insurance: \$15,000
5. The Museum of Fine Arts, Houston  
GUSTAVE CAILLEBOTTE (1848-74): A RETROSPECTIVE EXHIBITION  
80-100 drawings and paintings/insurance: \$5,000
6. San Antonio Museum, San Antonio, Texas  
EIGHTEENTH CENTURY ART OF THE AMERICAS  
Approximately 170 objects/insurance: \$3,000
7. Museum of Cultural History, Uni. of Calif., Los Angeles  
ARTS OF GHANA  
Approximately 350 objects/insurance: \$1,600

8. Wadsworth Atheneum, Hartford, Conn.  
JEAN-BAPTISTE GREUZE  
40 paintings, 60 drawings/insurance: \$4,000
9. Japan House Gallery, New York City  
SHINTO, JAPAN'S INDIGENOUS RELIGION  
70 works/insurance: \$14,000

ARTS ENDOWMENT SUPPORTED EXHIBITIONS, FY. 1975:

1. Asia House Gallery, New York City  
THE SCULPTURE AND PAINTINGS OF NEPAL  
72 sculpture and paintings/insurance: \$5,000
2. The Cleveland Museum of Art  
THE EUROPEAN VISION OF AMERICA  
An exhibition illustrating the development of the visual  
image of America as seen through Europeans from the time  
of Columbus.  
Wide range of European works/insurance: \$30,300
3. Museum of Fine Arts, St. Petersburg, Fla.  
LIFE IN HOLLAND IN THE 17TH CENTURY  
40 paintings/insurance: \$8,000
4. Museum of Primitive Art, New York City  
An exhibition of art from the Fang and Beti peoples  
of Gabon.  
50 works/insurance: \$15,000
5. The St. Louis Art Museum, St. Louis, Mo.  
ISLAND ARTS OF THE SOUTH PACIFIC: INDONESIA, MELANESIA  
AND POLYNESIA  
200 works in various media/insurance: \$7,100

## Addenda:

Late Cezanne Exhibition, MOMA. in the future.  
 premium estimated at \$300,000.  
 To be seen in NYC and one other city in US

Soviet Show, National Gallery. promised.  
 to travel throughout the US, possibly 15 cities.  
 premium, est. \$360,000

## Example of rip off:

Govt of Cameroons charged Benton Museum, U of Conn.,  
 \$1.69 per \$100 of evaluation per month transit and on-  
 site insurance for an exhibition of Cameroon sculpture.  
 Normal on site insurance-- 1.7¢; normal transit insurance  
 13¢ (both per 100 per month).

## PFEFFER, Irving.

He is a professor of Insurance (didn't know they  
 existed) at Virginia Polytechnic. He is an expert on  
 insurance and has respect of Bucky Block and of James  
 (Bucky's LA opposite number). He has done an excellent  
 job for AAMD. His work was published in Museum News.  
 He has a loose leaf add-to book done for AAMD.