

**Unintended Consequences:  
S. 3127, The Safeguard Tribal Objects of Patrimony Act of 2016**

The STOP Act, S. 3127, was drafted primarily in response to Hopi, Acoma, and Navajo concerns that items sacred to their culture had been sold at a series of auctions in Paris, France. The tribes felt that the auctioned items were inalienable and that no individual had a right to sell them.

However, the French courts held that the tribes had no standing and no claim, based upon a lack of recognition of tribal or communal ownership under French law. The STOP Act's prohibition of export is intended to halt foreign sales of Native cultural property by creating a new crime that never existed before under US law, the criminal export of cultural property.

In fact, relatively few items of cultural patrimony are located overseas. Moral persuasion, rather than legal action, has been most effective means of obtaining return of cultural patrimony to tribes.

The STOP Act is not the best way of achieving the goal of repatriation of specific, revered items sacred to Native cultures. Instead it will burden the tribes and cause significant, collateral harm to US collectors, museums, and small businesses that trade in Indian art and artifacts.

- **The STOP Act is unnecessary** because export for sale of unlawfully acquired artifacts is already illegal. Several US laws including ARPA penalize illicit trafficking. NAGPRA already enables both civil and criminal remedies for abuse.
- **The STOP Act does not identify the objects each tribe considers sacred or community owned.** There are over 500 federally-recognized tribes. It is impossible for owners of objects to know what is deemed a cultural object by each tribe. Some commonly traded objects are virtually indistinguishable from sacred objects, and only the tribe can tell the difference.
- **The STOP Act creates no administrative body or standards for determination of what is claimed.** Who decides if an object is lawful? Tribes or the federal government? Will tribes share secret information with prosecutors but not the public?
- **The STOP Act has no system for clearing artifacts that can be sold.** Common, everyday objects from federal or Indian lands (covered by ARPA) are identical to hundreds of thousands of legally acquired objects that have been in circulation for decades. Proponents of the STOP Act have suggested that citizens can "ask the tribe" to determine if an item should be returned or can be sold. This is not only a huge burden on the tribes; the law provides no permitting system, no staff or funding, no criteria, no standards of evidence, and no means of mediation or appeal.
- **The STOP Act will damage businesses, cost jobs, and reduce tax revenue.** The Native American art trade is a major source of income to Native and non-Native businesses alike.

Tourism revenue generated by traditional Native arts-based fairs and festivals is a crucial source of income to municipalities in the Southwest.

- **While voluntary donation of important sacred objects should be encouraged, tribal legal claims for restitution of unlawfully possessed objects belong in the courts, not in wholesale restitutions.** The STOP Act's 2-year "amnesty" window for the return of "unlawful" tribal cultural property by private collectors without prosecution implies that possession of all cultural objects is unlawful. The STOP Act is likely to cause unwarranted returns of thousands of lawfully owned and traded objects to tribes which do not want them. Collectors may be pressured to give up objects simply out of an abundance of caution. Alternatively, lack of clear criteria or means of compliance may result in virtually no returns at all.
- **The STOP Act will result in consumer confusion and harm to Native artisans and legitimate businesses because of the assumption that all Indian artifacts are tainted by illegality.**
- **The increased penalties for violations of ARPA and NAGPRA mean that citizens who unwittingly violate the law will face penalties similar to sentences for bank robbery, sex trafficking, and other heinous crimes.**
- **The STOP Act needs additional consultation with tribes** outside the Southwest, to assess impact on community goals and tribal economies.
- **The STOP Act needs additional consultation with academics and other impacted US stakeholders, including collectors, dealers, religious institutions and museums.** Americans have always placed a high value on the study and understanding of other cultures, including the diverse cultures within our own nation. By making repatriation, rather than preservation or study, a primary objective, the STOP Act will deprive museums of important resources in cultural education for our nation's citizens and especially our children.

### **The STOP Act**

- Focuses on criminalization rather than civil procedures to determine title and ownership.
- Places the US government in charge as decision maker, arbiter, and prosecutor, rather than tribal entities.
- Threatens established public policy protecting property rights, lawful trade, and US businesses.

**This summary of issues pertaining to the STOP Act, in its current, August 2016 form, is an educational project of the Antique Tribal Art Dealers Association, ATADA.**

## **ATADA**

The Antique Tribal Art Dealers Association, ATADA, was originally established in 1988, in order to set ethical and professional standards for the art trade and to provide education for the public. ATADA membership has grown to include hundreds of antique and contemporary Native American and ethnographic art dealers and collectors, art appraisers, and a strong representation of museums and public charities dedicated to the promotion, study and exhibition of Native American history and culture.

**ATADA: <https://www.atada.org/>**