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HACKING

Kobre & Kim LLP attorneys Randall Arthur, Lara Levinson, Jason A. Masimore, Jef Klazen, and Steven G. Kobre discuss one of the new targets of hackers—the art world. The authors provide several important steps art dealers should take when hacked.

INSIGHT: The New Art Fraud—Galleries, Dealers Are Next Global Hacking Targets





BY RANDALL ARTHUR, LARA LEVINSON, JASON A. MASIMORE, JEF KLAZEN, AND STEVEN G. KOBRE

Email hackers have been striking the art market. In a fraudulent scheme that has been widely reported and hard to detect, criminals hack into a gallery or dealer's email account in order to impersonate them, then intercept legitimate correspondence with clients ready to finalize a deal to send fraudulent invoices with wire payment instructions. The art world is an attractive target because of its fast-paced, high-value transactions with minimal documentation. Once the money has been wired to the criminal's account, they move to transfer the funds to erase their trace and disappear undetected.

Reports of these types of hacks reveal the global complexity of the scheme. Hackers, who could be anywhere in the world, reportedly have infiltrated galleries from Chicago to Switzerland to London. The hackers have syphoned off as much as U.S. $1,300,000 in a single transaction, and often move funds to accounts in Asia or beyond. To further complicate recovery, funds often end up in the complex web of the Asian underground banking system.

Victims of such a hack must wield all of the legal and investigative tools at their disposal to maximize the odds of recovery.

Three Keys to Success

1. Act quickly, the money may still be reachable. Many jurisdictions will allow lawyers to move quickly to freeze suspicious assets. For example, in Hong Kong (where a significant portion of art transaction funds land), with sufficient documentation, the police can ''peek'' into bank account records to confirm whether the wire proceeds have hit the account. They can immediately ask the bank to put a soft freeze on the proceeds of crime in the account until lawyers seek a local court order to return the funds.

2. Use powerful tools to go on the offensive against the wrongdoers. Many jurisdictions such as Hong Kong and London also have powerful tools such as Norwich Pharmacal (third-party discovery) orders and Mareva injunctions (asset freezing orders) that can be deployed to gather information on the fraudulent accounts and

the wrongdoers themselves. Armed with more information, it's possible to target the hackers and their co-conspirators directly, potentially disrupt their operations, and freeze other of their assets for recovery.

3. Leverage law enforcement interest and recovery schemes. Collaborating with law enforcement is another avenue to successful recovery. Many international agencies, including in the United States the FBI and Secret Service, have agents and analysts who specialize in cybercrime, as well as art fraud. Using counsel with preexisting law enforcement relationships is key to gaining access and ensuring your case is a priority. If law enforcement pursues the perpetrators, under U.S. federal law, anyone convicted of a crime is assessed a judgment for restitution to repay the victims for their losses. While not all cybercriminals are brought to justice, many are and may be able to repay their victims. And while restitution is separate from forfeiture (through which the U.S. government seizes funds and other assets resulting from crimes), the DOJ often turns over any forfeited assets to victims as restitution.

This is a new threat for one of the oldest global industries. To combat it, art dealers and galleries need to work with speed, across jurisdictions and with all of the tools of law enforcement, investigations and international judgment enforcement at their disposal.

The nature of the targeted transactions in the art world, coupled with the global reach of the money flows, sets these cases apart from other hacking schemes. Lawyers must navigate the privacy concerns of galleries and collectors, as well as relationships among galleries, clients and even artists, while deploying these recovery tools across multiple jurisdictions. Our teams in Asia, London and New York have done this successfully, leveraging our specialized knowledge of the art world and asset recovery to recoup such stolen funds.

Author Information

Randall Arthur concentrates his practice on complex Hong Kong and cross-border commercial disputes involving Asia, in addition to matters related to international judgment enforcement, offshore asset recovery, insolvency, and financial products and services disputes.

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