

Why GAO Did This Study

In 1935 the Indian Arts and Crafts Act was enacted, establishing the Indian Arts and Crafts Board as an entity within the Department of the Interior. A priority of the Board is to implement and enforce the act's provisions to prevent misrepresentation of unauthentic goods as genuine Indian arts and crafts. As the market for Indian arts and crafts grew and the problem of misrepresentation persisted, the act was amended to, among other things, enhance the penalty provisions and strengthen enforcement.

GAO was asked to examine (1) what information exists regarding the size of the market and the extent to which items are misrepresented and (2) actions that have been taken to curtail the misrepresentation of Indian arts and crafts and what challenges, if any, exist. In addition, this report provides information on some options available to protect Indian traditional knowledge and cultural expressions. GAO analyzed documents and interviewed international, federal, state, and local officials about the arts and crafts market and enforcement of the act.

GAO is making no recommendations in this report. In commenting on a draft of this report, the Departments of Commerce and Homeland Security generally agreed with the contents of the report. The Departments of Commerce, Homeland Security, the Interior, and Justice also provided technical comments, which were incorporated into the report as appropriate.

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INDIAN ARTS AND CRAFTS

Size of Market and Extent of Misrepresentation Are Unknown

What GAO Found

The size of the Indian arts and crafts market and extent of misrepresentation are unknown because existing estimates are outdated, limited in scope, or anecdotal. Also, there are no national data sources containing the information necessary to make reliable estimates. For example, the most often cited national estimates about the size of the market and the extent of misrepresentation come from a 1985 Department of Commerce study. GAO found that not only is this study outdated, but the estimates included in the study are unreliable because they were based on anecdotal information and not systematically collected data. No national database specifically tracks Indian arts and crafts sales or misrepresentation, and GAO found that no other national databases contain information specific or comprehensive enough to be used for developing reliable estimates. Moreover, GAO determined that to conduct a study that could accurately estimate the size of the Indian arts and crafts market and the extent of misrepresentation would be a complex and costly undertaking and may not produce reliable estimates.

Federal and state agencies have relied largely on educational efforts rather than law enforcement actions to curtail misrepresentation of Indian arts and crafts, but these efforts are hampered by a number of challenges, including ignorance of the law and competing law enforcement priorities. From fiscal year 2006 to fiscal year 2010, the Indian Arts and Crafts Board received 649 complaints of alleged violations of the Indian Arts and Crafts Act. The Board determined that 150 of these complaints, or 23 percent, involved an apparent violation of the law, and it referred 117 of the complaints for further investigation by law enforcement officers, but no cases were filed in federal court as a result. According to the Board and law enforcement officials, support from law enforcement personnel and others to prosecute these cases has been sporadic because of higher law enforcement priorities. Therefore, the Board has relied primarily on educational efforts to curtail misrepresentation. For example, in response to complaints, the Board sent educational and warning letters to about 45 percent of alleged violators, and it produced educational brochures and participated in other educational efforts for artists, sellers, consumers, and law enforcement officers. GAO identified one arts organization that has successfully used civil actions to curtail misrepresentation, but this approach can be costly and time-consuming.

U.S. federal and state laws protecting intellectual property do not explicitly include Indian traditional knowledge and cultural expressions—such as ceremonial dances or processes for weaving baskets—and therefore provide little legal protection for them. Some international frameworks offer protection for traditional knowledge and cultural expressions, but the federal government has not yet undertaken steps to implement these frameworks in the United States. Other countries, like Panama and New Zealand, have taken actions—which offer options for consideration—to protect the intellectual property of indigenous groups.