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GOVERNING COUNCIL
101st session
Rome, 8-10 June 2022

UNIDROIT 2022
C.D. (101) 12
Original: French
May 2022

Item No. 5 on the agenda: Ongoing legislative activities

(h) Private art collections

(prepared by the UNIDROIT Secretariat)

<i>Summary</i>	<i>Report on activities relating to private collections</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to of the activities carried out on private art collections</i>
<i>Mandate</i>	<i>Work Programme 2020-2022</i>
<i>Priority level</i>	<i>Low</i>
<i>Related document</i>	<i>Annual Report 2021 - C.D. (101) 2</i>

I. INTRODUCTION

1. Since the last session of the Governing Council, the Secretariat has continued to monitor developments relating to private art collections and to gather information. The activities undertaken under this study in 2021 are summarised in the Annual report 2021 (UNIDROIT 2022 - C.D. (101) 2).
2. The project's most recent developments relate to orphan objects, defined as cultural objects without an identified - or a fully identified – provenance, due to displacements following theft or illicit excavation (for antiquities), but also wars, colonial domination, ethnic persecution, etc.
3. While the concepts of orphan objects in cultural property law and in intellectual property law do interlink, in intellectual property law – and more specifically copyright law –, orphan works are those for which the author is unknown. In cultural property law, the question is rather more one of history of ownership.
4. Whereas orphan cultural objects are often to be found in private collections, they also frequently appear in public collections, be it because the owner of an object deposited with a museum can no longer be identified, or the standard of diligence was not respected upon the acquisition of the object by purchase, loan or bequest.

II. ACTIVITIES UNDERTAKEN

A. Research

5. UNIDROIT has gathered information over the past few years and conducted research on the subject to better understand how the Institute might lend its expertise on the topic. Various studies have been conducted on 'Private collections - Historical and legal perspectives', 'The public interest in the protection of cultural heritage in private collections under United States law' and 'Private collections in the United States, Mexico and Colombia: legal challenges, the role of private actors and proposed solutions'.¹

B. Conferences

6. UNIDROIT has also organised or hosted conferences thanks to partners of the 1995 UNIDROIT Convention Academic Project (UCAP).² In March 2022, UNIDROIT, the University of Geneva Art-Law Centre (ALC) (an institutional member of UCAP) and the Fondation Gandur pour l'Art (FGA) were invited to a conference on 'Due diligence, Digital Databases and Cultural Property Law and Policy' by the Harry Radzyner Law School of Reichman University in Herzliya (an institutional member of UCAP). The conference featured a specific panel on the topic of 'Orphan Objects' and was organised thanks to Professor Amnon Lehavi, an individual partner of UCAP and former Co-Director of the [Law Schools Global League \(LSGL\)](#), with which UNIDROIT has concluded a MoU.

7. Finally, UNIDROIT was invited to present the project on Private Art Collections at a conference on 'Culture and Law' by UNIDROIT Governing Council member Mr Jorge Sanchez Cordero, organised by the International Academy of Comparative Law and the Centro Mexicano de Derecho Uniforme, which took place on 21 and 22 April 2022 in Mexico City.

8. As this topic is closely linked to the 1995 UNIDROIT Convention, UNIDROIT has continued to raise awareness among private collectors and museums on ethical acquisition. An event entitled 'What Museums and Collectors Should Know about Provenance and Due Diligence: An International Perspective' was organised in March 2022 at the Tel Aviv Museum of Art.

III. FUTURE STEPS

9. Based on the discussions at the various conferences, several themes were selected for further development. Subject to there being available funding, and subject to the Governing Council agreeing

¹ "Private collections - Historical and legal perspectives": this introductory document examines the definition of public and private collections and collectors; a comparative analysis (France, Italy and the United States) of national legislation that bases the public protection of private collections on the concept of public interest; the status of private collections in European and international law; (2) "The public interest in the protection of cultural heritage in private collections under United States law", the public interest in heritage preservation, the public interest and moral rights (California, Massachusetts, New York) and the public interest as justification for private collection protection legislation.

² Other three conferences were organised on the issue of private collections: (a) in 2017 on 'Private Collections: Historical and Legal Perspectives', co-organised with the International Society of Research and Cultural Heritage Law (ISCHAL), the Institut des sciences sociales du politique (CNRS-ENS Cachan-Université Paris-Nanterre) and BonelliErede law firm. Professor Elina Moustaira prepared a document indicating private law aspects on which UNIDROIT's particular expertise would be of additional benefit in this field which was submitted to the Governing Council in May 2017; (b) in 2019, a Conference organised by the University of Opole (UNESCO Chair in Cultural Property Law), the University of Gdansk and UNIDROIT in Gdansk devoted a specific session to "Private Collections: Historical and Legal Perspective" in which the very notion of collection (and the importance of integrity) was discussed, as well as the legal framework in Brazil, Germany, Spain, Northern Macedonia and Poland; (c) in 2021, UNIDROIT co-organised a symposium on "What prospects for 'Orphan Works': Reflections on cultural goods without provenance" with the University of Geneva Art-Law Centre (ALC) (an institutional member of UCAP) and the Fondation Gandur pour l'Art (FGA). This online conference provided an opportunity for collectors, gallerists, lawyers, historians, archaeologists, academics, and museums to come together virtually and share their ideas and perspectives on the ever-growing debate around orphan objects.

to an upgrade of the priority of the project on Private Art Collections, a study group/experts meeting would be convened in September 2022 to work on solutions to the question of orphan cultural objects. See document C.D. (101) 4 paras. 119 to 128 for the proposal to allocate a higher priority to the project.

IV. ACTION TO BE TAKEN

10. *The Governing Council is invited to take note of the activities undertaken by the Secretariat on the project of Private Art Collections.*