



**EN**

**Private art collections - Orphan Objects**  
**Working Group**  
*Fifth session (hybrid)*

Rome, 23 – 25 March 2026

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Study LXXB- W.G.5 - Doc. 3  
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## **OBSERVATIONS SUBMITTED TO THE 5<sup>th</sup> SESSION OF THE WORKING GROUP**

(submitted by Ms Joanna van der Lande)

1. In view of the forthcoming session of the Working Group, Ms van der Lande, member of the Working Group, submitted comments and observations on the Report on the intersessional work in Sub-Groups (Study LXXB – W.G. 5 – Doc 2) and asked them to be shared with the Working Group for consideration as she will be unable to attend the session.
2. This document also contains Ms van der Lande's comments on the paper submitted by Ms Giuditta Giardini and Ms Charlotte Loram (see Study LXXB – W.G. 5 – Doc 2, Annexe 1).

### **I. COMMENTS AND OBSERVATIONS ON THE REPORT ON THE INTERSESSION WORK**

#### **Overall comment**

3. Due to the different perspectives and background of the contributors to the Sub-Groups, there is a lack of consistency in the Commentary. Some only refer to institutions, others only to the art market/ art and antiques market/art and antiquities market – this should be addressed with consistency of phrasing and terminology throughout.

#### **1. Sub-Group 1 – Alternative Term for [Orphan] Cultural Objects**

4. I will support a proposed term that includes the word 'orphan'.

#### **2. Sub-Group 2 – Articulation between due diligence and Provenance Research (Guidelines B and C)**

#### **Paragraph 16**

5. Please note my comments submitted on the observations submitted by Giuditta Giardini and Charlotte Loram.

### Paragraph 30

6. This paragraph only refers to institutions. The guidance is as much aimed at the art trade and private collectors, so any paragraph in the commentary should reflect this and not just focus on institutions.

**Paragraph 31** – Point 2 - Category (b) refers to archaeological objects.

7. Both “archaeological objects” and “antiquities” are listed in the Annex of the 1995 UNIDROIT Convention<sup>1</sup>.

8. Objects already out of an archaeological context and from which no further archaeological information may be obtained, should *not* be considered “archaeological objects”, but instead are known as “**antiquities**” or “ancient art”. These are not just market terms, but museum collections are generally referred to as “antiquities” collections.

9. The Oxford dictionary gives the following description for “antiquities”: “*An object, building, or work of art from the ancient past; an ancient artefact, monument, etc. (now chiefly plural)*”.

10. **Archaeological objects** can be considered only those that have value for archaeology, i.e. man-made or processed objects that can provide new insights about past cultures, in particular about their customs, the technical and artistic state of development at that time, political and social structures, religion and the like.

11. **Antiquities** are ancient objects that do not come directly from excavations etc., instead from collections or those that are already circulating (lawfully) within the trade (both auction houses and art dealers). Many such objects were produced in great numbers in the past and are quasi-identical, e.g. ancient coins, Egyptian amulets, and other mould-made or mass-produced objects, which include pottery with no identifying individual characteristics etc. and are well-represented in museum collections.

12. In the context of these Guidelines – what are considered archaeological objects?

#### UNIDROIT Convention Annex

(c) *products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;*

(d) *elements of artistic or historical monuments or archaeological sites which have been dismembered;*

(e) *antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;*

### 3. Sub-Group 3 – Definition and Criteria of a Provenance Researcher (Guideline C)

#### Paragraph 37

13. Please note my comments on the observations submitted by Giuditta Giardini and Charlotte Loomam.

#### Paragraph 47

14. Note that ICOM has now published their updated Code of Ethics<sup>2</sup>

<sup>1</sup> <https://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-e.pdf>

<sup>2</sup> <https://icom.museum/wp-content/uploads/2018/07/ICOM-code-En-web.pdf>

#### **4. Sub-Group 4 – Guideline D (Evidence)**

##### **Paragraph 1 – overall comment**

15. While giving robust advice, the commentary fails to acknowledge any difference in requirements or expectations for lower value cultural objects and resources etc. when it comes to recording/audit trails of provenance research and due diligence mentioned in a number of the paragraphs. I would like to see an articulation of what this means practically and for what types of cultural objects? Resources (both time and financial) are a factor to be considered.

##### **Paragraph 2 – overall comment**

16. While there is reference to cooperative behaviour among private actors (77), I would like to see inclusion of cooperative behaviour among private actors and institutions and between them. Institutions are holders of knowledge and the expectation of sharing information is more often than not from private actors/trade to institutions/countries of origin but seldom the other way round. Transparency and collaboration should be a two-way street and this should be articulated in the Commentary.

17. While (78) refers to the disclosure of sensitive information being subject to legitimate legal, contractual and ethical constraints, it then goes on to say the default rule is one of transmission. I think there should be a more explicit acknowledgement in this paragraph that it is understood there are legitimate reasons why information cannot be shared – specifically names of individuals in the chain without their explicit permission. The wording of the requirement as it stands in this paragraph appears too dogmatic.

#### **5. Sub-Group 5 – Guideline on the [Scientific] Publication of [Orphan] cultural objects**

18. If the care of a cultural object and the advancement and sharing of knowledge is deemed to be of importance to members of this Working Group, then this Guideline should be considered and incorporated in some form.

19. We cannot demand transparency of documentation and actions, then hide an object because it doesn't fit in with an 'acceptable' framework.

20. As I have previously mentioned, collaboration, and indeed transparency, must be a two-way street. Demands cannot be placed on the market and private individuals without those demanding collaboration/transparency accepting what this means in reality. I believe it means accepting the truth, naming it and releasing the cultural object to be 'reinstated' to society, either physically or through publication.

## **II. COMMENTS ON THE PAPER SUBMITTED BY MS GIUDITTA GIARDINI AND MS CHARLOTTE LOORAM**

21. "I agree with much of what has been said in this document, but would like to make the following observations":

22. The Guidance should outline aims and principles rather than be too specific because the range of circumstances in which cultural objects will be researched will vary from a professional institutional setting to the art market and private individuals who own cultural objects, as well as to countries of origin, communities or victims of spoilation. Each of these categories/groups encompasses a broad

spectrum of people and circumstances, including resources. The original “Orphans” Working Group was focused on private collections and is now extending well beyond this framework making the Guidance necessarily less specific and not more specific.

23. **Paragraph 25.3** – under outcomes of provenance research the example used is to “evaluate the authenticity of the object”. While this is intended to be only one example, the example chosen is indicative of where I feel the focus of the authors has pivoted away from the original purpose of this Working Group. Establishing authenticity is seldom the outcome of provenance research – the knowledge of individuals gained through experience, as well as science establish authenticity, with context/provenance assisting in this process in certain circumstances. For those of us who handle cultural objects, in 90-95% of cases we know when something is authentic by looking at it and handling it or even by looking at a photograph of it. The provenance can help in the 5-10% of cultural objects where there is uncertainty. So, what other outcomes could be listed instead? Provenance research can help establish whether a cultural object can be legally acquired/offered for sale etc and whether it can cross international borders. While it can also be conducted to increase academic knowledge with the ownership history either adding to the knowledge of the object in question or perhaps about an individual in the chain of ownership, and it can uncover information about the original discovery or creation of the object. All of this adds to the history of that particular object. Provenance research is much less about authentication and much more about placing that object in a wider context and enabling other decisions to be made about that object. I have had many experiences over the years where an unusual object that has perplexed academics and scientists alike, is accompanied by an interesting provenance but it has not enabled anyone to confirm its authenticity. The ‘experts’ and this includes academics and art market professionals with long experience of handling objects, do not rely on provenance to establish authenticity, it can in fact prove to be a red-herring. It can help in certain circumstances but to give this as an example of an ‘outcome’ for provenance research is misleading.

24. **Paragraph 29** – Where the authors note: *More broadly, the paragraph overlooks an essential procedural dimension of provenance research: collaboration. Effective provenance research necessarily involves engagement with other researchers, law enforcement authorities, countries of origin, and relevant communities, both to verify findings and to ensure that the research serves the range of purposes outlined above.* Collaboration can be very productive but the focus of this paragraph appears to be on cultural objects of considerable importance. Any provenance research will be resource, cost (time and money) and value (of the cultural object) based. The Guidance cannot be too specific in this regard.

25. **Paragraph 31** – The meaning of the word ‘should’ indicates an obligation which in this context is appropriate, I am not entirely sure why there is an issue over this word in this paragraph and context.

26. **Paragraph 34** – Bearing in mind the broad spectrum of individuals likely to be conducting provenance research this must remain as broad as possible. I cannot emphasise enough that resources are generally sparse both in institutions and the private sector and are allocated and evaluated on a case-by-case basis. Discussing the theories of provenance research and due diligence is very different to allocating both financial and time/personnel related resources in both institutions and the private sector. The Commentary to the Guidance must be practical.

27. **Paragraph 37** – The only circumstances for articulating the core requisites and skills associated with the role of a provenance researcher is if the Guidelines attempt to define requirements for the ‘profession’ of Provenance Researcher. Otherwise, for reasons explained above and discussed within the sub-groups, this must remain as broad as possible. The Commentary to the

Guidance must bear in mind the broad spectrum of the audience and actors likely to be involved in researching provenance.

28. **Paragraph 46** - The outcome for a cultural object under scrutiny should be considered, as well as the ownership rights of the individuals involved. Any obligation on individuals inheriting from family members should be carefully worded. Most people have no clue about the issues we are all so immersed in. How can individuals evaluate an object without any knowledge or expertise in this area? Creating anxiety around family possessions should not be an outcome. Individuals have 'returned' cultural objects because they are anxious but where do they end up? Who benefits from them? How many of these objects end up in the drawer or cupboard of an institution without adding anything to anyone's knowledge?

29. **Paragraph 51** - Who would be considered a 'more qualified specialist'? Again, this is assuming this is a profession and not carried out in the course of daily tasks both in an institution or the private sector. This is not a realistic requirement in this context.

30. **Paragraph 53** - The requirement of a legal expert in the context of due diligence is again completely unrealistic. What type or value of objects do the authors intend this to apply to? Contractual documentation, records of title transfers etc only apply to relatively few and very important cultural objects (as yet not clearly defined). In the context of these Guidelines, it would be inappropriate to make it a requirement for a legal expert to be involved in the course of due diligence. I think it would be helpful to reflect on who these Guidelines are intended for, as well as the cultural objects they intend to include.

31. **UNIDROIT Article 2 Definition:**

*For the purposes of this Convention, cultural objects are those which, on religious or secular grounds, are of importance for archaeology, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention.*

The trouble is there is a subjective element to this definition - who/ how is "of importance" defined? Some countries of origin will state that anything that could have once been archaeological is considered 'important'.