



**EN**

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

UNIDROIT 2025  
Study LXXB - W.G.4 - Doc. 8  
Original: English  
January 2026

**Rome, 1 – 3 December 2025**

## **Summary Report**

### **Item 1 of the agenda - Opening of the session and welcome by the UNIDROIT Secretary General**

1. In the absence of the Chairperson, Professor Anna Veneziano, *Deputy-Secretary General*, took the chair and opened the fourth session of the Working Group, welcoming the representatives of the partners to this project, the participants attending in person at the seat of UNIDROIT, those joining remotely as well as the speakers invited to the Research Symposium (see ANNEXE I for the list of participants).

### **Item 2 of the agenda - Adoption of the draft agenda and organisation of the session** (Study LXXB- W.G. 4 - Doc. 1)

2. *The Deputy-Secretary General* indicated that the proposal for a new Guideline on the scientific publication of orphan cultural objects (see document UNIDROIT 2025 – Study LXXB - W.G.4 - 7) will be discussed at the beginning of the third day of the Working Group – and not at the end – due to the scheduling imperative of a participant.
3. The Working Group adopted the revised draft agenda (see Annexe II).

### **Item 3 of the agenda - Research Symposium on “Orphan Objects: Curatorial, Ethical, and Legal Aspects” (1<sup>st</sup> December 2025)** (Study LXXB- W.G. 4 - Doc. 2 rev.)

4. The fourth session started with one day Research Symposium on “Orphan Objects: Curatorial, Ethical, and Legal Aspects” at which several experts – among which provenance researchers, whether affiliated with a national or government-funded organisation, non-profit organisations, or with provenance research teams in cultural institutions –, were invited to answer specific questions (see [UNIDROIT 2025 - Study LXXB- W.G. 4 - Doc. 2 rev.](#)). The Symposium was meant to help the Working Group to move forward with the discussions and the speakers were invited to answer specific questions in relation to orphan objects intended as: a) undocumented objects, which, after research into their provenance, remain without archives and b) partially documented objects with a gap in their history.

5. Professor Janet Ulph, Leicester Law School, University of Leicester, UK, sent a Memorandum which was shared in advance to the meeting (see UNIDROIT 2025 - Study LXXB- W.G. 4 - Doc. 3).

- **Connections between provenance research and due diligence?**

6. *Mr Sanjay Adhikari* explained that there might be cultural differences between what was called “art” and “cultural property” in certain parts of the world and the consequences of such differences on the due diligence and provenance research exercise. He described differences between how objects were treated in museums versus in communities, regarding devotion and paying respect. He stressed that what communities considered “guardians” were now discussed as “orphaned”.

7. *Ms Marie Duflot* proposed to define provenance research as part of due diligence and a means toward completing due diligence. Even though provenance research had not been universally defined yet, the commonly agreed-upon understanding was that provenance research was the search for every piece of information relating to the history and circulation of an object, from its creation to its current location, with a specific focus on possessors and owners. Moreover, the qualification of provenance research was also debated: whether it was a growing discipline, a specialisation within art history, or a methodology. She differed provenance research, being a historical process, from due diligence, being more of a legal process related to compliance. Regarding the 1995 UNIDROIT Convention, provenance research was only part of due diligence.

8. *The Conseil des Maisons de Vente (CMV)*<sup>1</sup> explained that any regulation on the circulation of cultural property necessarily involved taking provenance into account, resulting in a duty of care to establish provenance or to state the impossibility of doing so. Due diligence was a fundamental concept of the 1995 UNIDROIT Convention as well as within the European Union, where the Directive 2014/60<sup>2</sup> - reproducing the 1995 UNIDROIT Convention – linked due diligence to provenance research - listing criteria such as provenance documentation, export authorisations, the status of the parties, the price paid, consultation of stolen-object registers, and any other steps a reasonable person would have taken. The Conseil underlined that the scope of provenance research needed clarification for auctioneers and professionals who were questioning which cultural objects required provenance research and what reasonable obligations arose.

9. *Mr Maxence Garde* also referred to the criteria given by the UNIDROIT Convention for due diligence, underlining the word “reasonable”. Due diligence was a checklist of goals and objectives that could be verified step by step, often by third parties such as legal professionals, and was designed to be understandable, shareable, and assessable. By contrast, provenance research was complex, multi-layered, and never-ending, and could only be undertaken by specialists. He stressed that due diligence focused on the chain of ownership and on information that was available at the moment of acquisition, whereas provenance research focussed on what was missing and where the gaps were. However, he disagreed with the idea that provenance research was simply part of due diligence. Due diligence was the first step, while provenance research extends indefinitely, sometimes changing established narratives decades later when new information emerged.

10. *Ms Saskia Cousin and Mr Daniel Abidjo* addressed the relationship between provenance research and due diligence through the case of the Dakar–Djibouti Mission<sup>3</sup> (1931–1933). Their research focused on the acquisition methods of objects from this Mission, such as purchases, requisitions, thefts, and donations, even if the acquisition remained unclear or contested. They stressed that provenance research was central to due diligence and required making every effort to document the history of an object. However, they explained that some methodological questions were still unresolved, particularly regarding the role and limits of oral tradition, who had the authority to validate information, the legal value of such data, and who ultimately decided what was credible. Uncertainty should not justify retaining objects in collections. On the contrary, doubt should lead to prioritising the position of those who contest the legitimacy of an object’s presence in a museum.

---

<sup>1</sup> Represented at the Symposium by Ms Laurence Mauger-Vielpeau and Mr Pierre Taugourdeau.

<sup>2</sup> [Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation \(EU\) No 1024/2012 \(Recast\)](#)

<sup>3</sup> [Mission ethnographique Dakar-Djibouti \(1931-1933\)](#)

They also added that practical challenges, such as the inability to photograph certain objects due to museum restrictions or ritual practices should be taken into account. Direct access to collections by community representatives helped correct misidentifications. They warned against the instrumentalisation of provenance research as a tool to enhance market value or authenticate objects for sale, as it represents a serious risk to identified individuals and communities.

11. *Ms Nancy Karrels* explained that the Smithsonian National Museum of Asian Art was defining provenance as the ownership history of an object from the moment of its creation to the present day. Provenance research helped determine the historic means of transfer and the legitimacy of those transfers and informed decisions on acquisitions and loans, gallery interpretation, and repatriation or restitution. Unlike many museums, the National Museum of Asian Art's mandate was to address not only illicit but also unethical transfers of cultural property, and this mandate shaped how orphan objects were treated and reflected a broader shift in the museum field toward collaboration rather than accumulation.

12. *Mr Jacques Schuhmacher* indicated that provenance research was seeking to establish the history of a cultural object, whereas due diligence seeks to identify potential problems associated with it. Due diligence drew on provenance research to answer questions about an object's past, but this relationship was more complex than it might initially appear. Historically, provenance research served to enhance an object's value and appeal by emphasising prestigious associations. In the same context, a lack of complete provenance was seen as regrettable but not as a cause for concern. As a result, a very large number of objects in both public and private collections today had incomplete provenance. These gaps, however, did not in themselves signify anything problematic, as they might or might not be filled through further research. Following the Washington Conference, provenance research was transformed from a sub-discipline of art history producing optional insights into a forensic-style tool designed to identify potential problems and, in some cases, confront historical injustices.

13. *In her memorandum, Ms Janeth Ulph* noted that a distinction had to be made regarding whether the context was the *title of collection items* (referring to undocumented objects where, in the context of museum collections, ownership was uncertain) or the *identification* (being partially documented objects where there was a lack of identification/understanding of the object). Therefore, she stressed that due diligence should be concerned about protecting cultural objects because of their special value, while provenance research was concerned with understanding them properly. However, due diligence should not only concern the context of acquisitions of cultural property. She emphasised the helpful guidance in relation to legal obligations and due diligence provided by Article 4(4) of the UNIDROIT Convention. She also raised the issue of proportionality, as both dealers and museums would be concerned to carry out extensive enquiries relating to provenance where an object appeared to have great cultural significance.

• **Elements needed to make the presence of a particular object in a collection acceptable**

14. *Ms Duflot* differentiated her answer on whether the collection was private or public. For private collections, a collector had to do provenance research on each and every object, but in practice, this was not feasible. For public collections, there was a higher expectation on museums because they involved public money and were subject, depending on the country, to different instruments. She stressed that the results of provenance research should be made public and explicit the lack of provenance, and that an evaluation of risks should be done, including risks relating to illegal excavations, looting, and illicit exportations. She concluded suggesting that if no indications or hints of illegitimate provenance were to be identified, the object could remain in the collection, be published and be exhibited in the hope that it would generate more knowledge.

15. *The Conseil des Maisons de Vente (CMV)* stated that transparency regarding the history of the object was essential: revealing what was known and not. The Conseil believed that a presumption of good provenance might be established by being transparent about gaps in the object's history and

by using analogical reasoning. If a collection was well documented and complied with the regulations of the country of origin, it might reasonably be assumed that an orphan object entered the collection under similar circumstances.

16. *Mr Garde* also distinguished between private collectors and public institutions. Public institutions often relied on benchmarks such as the 1970 UNESCO Convention and tend to prefer objects with pre-1970 provenance. Two key moments of acceptability for an object entering a collection could be identified: satisfaction at the time of acquisition and risk assessment over time. Risks differed depending on how an object was used and whether it was held privately or publicly - showing the limits of due diligence and reinforcing the need for ongoing provenance research. Objects such as Nazi-era spoliation, archaeological artefacts, or post-colonial objects required different analytical approaches.

17. *Mr Schuhmacher* suggested that an object's acceptance into a collection should not be dependent on a recurring misconception: the idea that a provenance gap was inherently indicative of a problem. Treating every gap as suspicious, or hiding or refusing to publish objects because of gaps, fundamentally misunderstands how objects historically circulated and how documentation practices evolved.

18. *Ms Ulph* stressed that the most important issue was to understand the object, its functionality, its purpose, its potential sacred significance and to describe it accurately. For some cultural objects, where a museum would only have the name of the donor, they would not be put on display because of their lack of sufficient information. The lack of provenance should not affect the acceptance of an object, that is not tainted in any way, when entering a collection.

- **Existing Best practices in your field/institution**

19. *Ms Duflot* explained that in France, there were no regulations governing the role of provenance researchers. As a result, practices varied depending on the individual researcher and their own public research policies. Many initiatives had arisen in which museums temporarily hired independent researchers. The *Collectif pluridisciplinaire de recherche de provenances*<sup>4</sup> was in the process of developing a Guide specifically for independent researchers. Additionally, the French Ministry of Culture was working on a Vademecum on provenance research, which would include a standardised report model for provenance research.

20. *The Conseil des Maisons de Vente (CMV)* explained that French law provided a *compendium of ethical obligations for auctioneers*, revised in March 2022, which had regulatory value and was enforceable by sanctions.<sup>5</sup> It detailed obligations relating to identification, authentication, origin, and provenance, emphasising risks of illicit trafficking. Beyond due diligence, it included obligations of transparency, fairness, and anti-money laundering. The Conseil also stressed the importance of initial investigation with sellers and consulting databases of stolen objects. This compendium was intended to evolve and might incorporate guidelines specifying steps to satisfy provenance research requirements.

21. *Mr Garde* distinguished between historical provenance (ownership history) and geographical provenance (site-based origin). However, he emphasised that this approach was complex, as archaeological objects only became highly valued much later, meaning that documentation practices differed significantly. He noted that the Calouste Gulbenkian Museum's archives, correspondence, invoices and labels were open to researchers by appointment and that the museum was publishing scholarly catalogues with annexes reproducing primary documentation to contextualise objects.

---

<sup>4</sup> For more information of the [Collectif pluridisciplinaire de recherche de provenances](#), CPRProvenances - [Multidisciplinary Provenance Research Collective (CPRProvenances)]

<sup>5</sup> [Arrêté du 30 mars 2022 portant approbation du recueil des obligations déontologiques des opérateurs de ventes volontaires de meubles aux enchères publiques.](#)

22. *Ms Cousin and Mr Abidjo* indicated that while many excellent guides, handbooks, training programmes, and guidelines on provenance research already existed, their approach to the topic was from a slightly different angle. Their best practices focussed on the epistemological and ethical position of those who conduct research on orphan objects, have access, identify and investigate them, and who ultimately share and publish the results. Their approach also relied on scientific methods such as cross-checking narratives and comparative analysis.

23. *Ms Karrels* explained that, in her museum, four approvals were required for an object to be acquired. The first approval was curatorial, based on scholarly justification for why the object belonged to the collection and how it would be used (research or exhibition). The second was conservation approval, following scientific examination to assess authenticity, condition, and conservation needs. The third was collections approval, addressing issues such as conditions of gift, shipping, insurance, storage capacity, and environmental requirements. The fourth and decisive approval was provenance approval, which was her duty. Only after all four approvals were granted a recommendation was sent to the director for final decision. She indicated that the Smithsonian Institution Policy<sup>6</sup> stated that provenance should be as completely documented as possible. Objects with incomplete provenance should be acquired only when they were of exceptional rarity and when it was reasonably certain that their origin, context, and history could be established through scholarly research<sup>7</sup>. These requirements made it theoretically very difficult to acquire orphan objects but possible in case of exceptional rarity and when there was a strong expectation that further research might eventually clarify its provenance.

24. *Mr Schuhmacher* stressed the importance of sharing publicly what was known and what remained unknown about objects, as perfect knowledge should not be treated as a prerequisite for acquisition. Reflecting on his own institutional experience, while gaps should encourage further research, loading them with moral judgment confused the absence of evidence with evidence of wrongdoing. He warned that if incomplete provenance alone qualified an object as “orphan”, most objects in private and public collections would fall into this category. This revealed, in his view, the problematic nature of the terminology, which suggested abandonment or loss, when in fact it often described nothing more than incomplete documentation.

25. *Ms Ulph* explained that some museums placed photographs their objects on their web pages with the aim of the public contacting them if they had more information. She encouraged museums to use electronic databases to carry out searches in local newspapers, as they may provide information about donations in past times.

- **How not to exclude an orphan object from the “cultural heritage”?**

26. *Ms Duflot* indicated she understood the question to be linked with definition matters. An orphan object could be understood as an object without provenance after extensive research: first, it would be an undocumented object, and then, after the provenance research process, it would become an orphan object if no new element arose.

27. *The Conseil des Maisons de Vente (CMV)* argued that the exclusion of orphan objects from the legal market represented a loss to cultural heritage, as they risked entering illegal networks. This process would lead both to the impoverishment of the legitimate art market and to a rupture in scholarly research. To address this problem, the Conseil advocated for a more pragmatic regulatory approach, including recognising a special legal status for “orphan objects”, allowing them to circulate lawfully and maintain a legitimate existence within the market. They suggested developing typologies

---

<sup>6</sup> [Smithsonian Institution Policy on Acquisition of Art, Antiquities, Archaeological and Ethnographic Material, and Historic Objects. Adopted by the Board of Regents April 13, 2015.](#)

<sup>7</sup> The National Museum of Asian Art has even stricter internal acquisition policies: objects proposed for acquisition must be accompanied by verified documentation showing that they left their country of origin before 1970, or by an export permit if they left in or after 1970. Country-specific laws are also considered, and objects circulating during the Nazi era must have complete provenance for the period 1932–1946.

of objects based on their sensitivity to provenance concerns with highly sensitive categories requiring heightened vigilance, while more abundant object types might justify a degree of tolerance.

28. *Mr Garde* underlined that orphan objects were not excluded from recognition by the general public. The distinction between objects with and without provenance was largely invisible to non-specialists and operated instead on a reputational level. He cautioned that museums displaying objects in grey areas were risking reputational harm unless they were transparent and rethink institutional missions. He reminded that the status of an orphan object was temporary and might change when new information emerged. Excluding objects from cultural heritage was undermining research, as the absence of evidence did not mean evidence did not exist.

29. *Mr Schuhmacher* highlighted that, if an object was acquired after conducting provenance research, it should be treated like any other object in the collection. If gaps remained, further research should be pursued when new leads arose. Owners should be advised to publish their collections and provide contact details. Public institutions were best positioned to care for such objects over the long term, sustain research and act in the public interest across generations.

30. *Ms Ulph* noted that not all orphan objects in the United Kingdom's museum collections were part of cultural heritage. When no records were to be found, or only incomplete records existed, these museums would register what they know - or do not know - on a database and would store these objects. They were helped in creating internal electronic records by the Collections Trust.<sup>8</sup> Regarding low cultural value objects, museums might choose to dispose of them where these objects appear to be badly damaged, infested or otherwise unsuitable for retention. This might mean transferring them to private individuals to care for them.

- **Recommendation for the possessor to do with an orphan object?**

31. *Ms Duflot* suggested checking available databases depending on the object. Then, the possessor could contact a researcher with expertise in the relevant field and order a provenance research report and publish it. She indicated that publishing and exhibiting an object with no provenance or a lack of provenance was not a danger of whitewashing, but it could, on the contrary, generate more knowledge. She explained that if museums refuse to acquire such objects and the art market was closed to them, the objects might disappear or end up on the black market.

32. *The Conseil des Maisons de Vente (CMV)* recommended that owners be encouraged to undertake reasonable steps to investigate provenance to secure and enhance the object's value. This process could begin with basic inquiries, such as searching family archives for documents or correspondence and document it through inventories or professional appraisals.

33. *Mr Garde* stressed the importance of context-sensitive guidance and strong support. He warned that owners might hide objects out of fear if they were labelled "grey". He recommended facilitating controlled access for research, particularly through scientific publications. Critics had been made regarding overly restrictive publication policies that limit the discussion of objects without strong provenance, as it reduced the amount of available information for future research.

34. *Ms Karrels* recommended conducting thorough provenance research or engaging a specialist. Research often began with comparative objects in museum collections and archival sources to establish a probable historical context and circulation pattern. Once a country or region of origin was identified, dialogue should be initiated with relevant authorities or communities.

35. *Mr Schuhmacher* explained that in some cases, archival holdings allowed reconstruction of an object's journey. However, a major challenge lied in identifying and accessing relevant archives. He stressed the importance of speaking with people who possess knowledge of the objects and their cultural contexts.

---

<sup>8</sup> [Museum Data Service](#): a joint initiative by Art UK, Collections Trust and the University of Leicester, supported by the Arts and Humanities Research Council and Bloomberg Philanthropies.

36. *Ms Ulph* suggested distinguishing the title of the object from its identification. Regarding the title, if the lack of documentation related to questions of ownership, the museum should check if it had lent the object to another museum in the past. If the object had never been transferred on loan, the museum should carry out a risk assessment, which would involve due diligence and provenance research if this had not already been done. Concerning the identification, if the lack of documentation affected a museum's understanding of an object, it should make every effort to learn more about it. One possibility was to take photographs of it and post them on the museum's website with an invitation to the public to provide comments.

- **Steps, if any, to take towards the countries of origin, Indigenous communities or any group that could have been the owner of the objects**

37. *Mr Adhikari* commented that Nepal's Indigenous diversity affected how cultural property was understood and handled. While introducing a recent looting example, he explained that certain types of deities appear in museums/auction houses without proper provenance or due diligence, and that communities often do not report theft because they cannot show pictures to the police, resulting in a lack of records.<sup>9</sup> He advised possessors to contact the community of origin directly.

38. *Ms Duflot* explained that the first step would be to create a space for dialogue with cultural heritage experts from the country or representatives of the Indigenous community/groups. Then, verify collaboratively whether the object indeed originated from that location, thereby enriching the documentation on its provenance. Finally, engaging in dialogue to understand any claims, or at least to discuss and find a decent agreement on where the object should be and how it should be displayed. If, after dialogue, no provenance could be reconstituted, research should continue.

39. *The Conseil des Maisons de Vente (CMV)* explained that national regulatory authorities liaised with relevant judicial and administrative bodies and that these authorities might refer matters to the appropriate institutions, which then act within their respective powers and, where necessary, contact affected individuals or communities. Ultimately, the Conseil noted that the responsibility of States and communities lied in documenting their heritage, including both existing cultural property and items that were missing.

40. *Mr Garde* described the topic as particularly difficult for archaeological objects, stressing the need for standardised and balanced procedures. Contacting source countries could be extremely challenging, as authorities might demand proof of lawful export that was impossible to provide. He underlined the importance of combining historical and geographical provenance research to assess plausibility.

41. *Ms Cousin and Mr Abidjo* advocated for a participatory approach to provenance research, with collaborative models that could help reconnect objects with families and communities.

42. *Ms Karrels* underlined, regarding engagement with countries of origin and Indigenous communities, that the museum had a policy of approaching embassies directly when considering acquisitions.<sup>10</sup> The museum would ask whether the object raised concerns or might later be claimed as a national treasure, seeking to make informed legal and ethical decisions. She acknowledged that in some cases neither a country nor a community of origin could be clearly identified, leaving the museum to make the best possible decision based on limited information.

43. *Mr Schuhmacher* noted that if the aim was to publish objects with provenance gaps, he urged consideration of the Nazi-era provenance databases created after the 1998 Washington Conference. With AI advances, he suggested that new standalone databases might be unnecessary, as researchers would increasingly rely on AI to connect information across sources. If such a database

---

<sup>9</sup> The speaker referenced Nepal's legal context, including the Ancient Monument Preservation Act, since 1956 and earlier prohibitions on export, and explained that documentation itself might violate cultural rights for certain lineage deities, creating unavoidable provenance gaps.

<sup>10</sup> [Shared Stewardship and Ethical Returns Policy. Smithsonian Ethical Returns - Working Group April 29, 2022](#)

were nevertheless created, he warned it would face the problem that virtually all objects would qualify, given that complete provenance was the exception rather than the rule.

44. *Ms Ulph* stressed that members of a country or Indigenous communities can help identify an object. Where possible, museums should reach out to these communities and to the local diaspora. Governments could also fund museums' research projects into unidentified objects, teamed up with a representative from the relevant Indigenous community and an academic.

- **To what extent a database/platform of these objects would be relevant?**

45. *Ms Duflot* underlined internet access issues regarding the creation of a worldwide database. She suggested a contact point between the database and countries of origin and communities, such as ICOM national offices, ministries of culture, and academics, to ensure information reached them even if they did not consult the database.

46. *The Conseil des Maisons de Vente (CMV)* acknowledged that a database was an appealing idea, particularly as a means for professionals to demonstrate good faith and transparency, but it raised numerous unresolved questions: who would manage the database (whether a public or private body, and at what territorial level), who would be permitted access, and the precise purpose of the database. Additional concerns were raised about defining the scope of eligible objects, the risk of the database becoming unmanageable due to excessive entries, and whether it should include public property, private property, or both.

47. *Mr Garde* stated that there were already too many databases with limited interoperability and unrealistic promises. He argued that a dedicated database for orphan objects was of limited value, as users often seek definitive answers that such databases could not provide. He suggested that databases could be useful if organised by geography and cultural period and linked with archaeological records, potentially assisted by future technologies such as artificial intelligence. He noted that some resources already existed in analogue form and would benefit from digitisation.

48. *Ms Karrels* agreed that transparency was important and that databases could, in theory, help identify orphan objects. However, she noted that there were already too many databases, many of which were not interoperable and were dependent on short-term funding - referring to the now-defunct Nazi-Era Provenance Internet Portal in the U.S.<sup>11</sup> as an example of a well-intentioned but ultimately unsustainable initiative. She suggests that any future database for orphan objects would need to be capable of incorporating progress such as artificial intelligence, noting the success of the Getty Provenance Index<sup>12</sup> as a comparative model.

49. *Mr Schuhmacher* outlined two general strategies: working backwards from the last known owner using archival records, or working forward from the artist, maker, or place of origin. Both approaches might reach dead ends, making strategic thinking about archival traces essential.

50. *Ms Ulph* emphasised the need to have a database for every country - or an international one - which had photographs from every angle of a cultural object together with any known information, including a note of where it was located. It would encourage individuals to carry out research, making objects more accessible.

- **How to clarify the object's provenance?**

51. *Mr Adhikari* underlined that creators' names were often unknown because of offerings made without attribution which contributed to documentation gaps. He encouraged creating replicas to encourage communities to speak up and identify potential lost or stolen artefacts.

---

<sup>11</sup> From 2003-2024, the [Nazi-Era Provenance Internet Portal \(NEPIP\)](#) provided a searchable registry of objects in U.S. Museum collections that changed hands in Continental Europe during the Nazi era (1933-1945).

<sup>12</sup> [The Getty Provenance Index](#)

52. *Ms Duflot* suggested creating a label, obtained only after extensive research. A three-step process was proposed for an object to obtain this label. Firstly, provenance research should have been conducted, which implied that collectors must be put in contact with researchers or be able to identify them. Secondly, it should be verified that the provenance research was sufficiently rigorous and exhaustive. A method and framework were needed to demonstrate the reliability of reports. Thirdly, due diligence must also have been exercised. She suggested that this label should always follow the object and specify the periods where there was no provenance, so later exhibitions and publications could not fill past gaps.

53. *The Conseil des Maisons de Vente (CMV)* noted that such efforts were inherently limited by the absence of documentation. One proposed solution was the formal recognition of provenance research as a professional field, requiring specialised skills and training. Authorities and professional organisations were encouraged to raise awareness within the art market of the value of engaging provenance researchers. Under this framework, orphan objects could be granted a specific legal status, benefiting from a presumption of innocence and freedom of movement, provided that gaps in documentation were clearly disclosed.

54. *Ms Ulph* encouraged museums to check their records, including notes on acquisitions, their collecting policies and information relating to loans. She also indicated that museums should also consider contacting other museums with similar collections, as some of the items in their collections might shed light on poorly understood objects in their own collection and putting photographs of objects with poor records on their websites, with calls for members of the public to help.

#### **Item 4 of the agenda – Discussion on the draft Guidelines (2<sup>nd</sup> and 3<sup>rd</sup> December 2025)** (Study LXXB- W.G. 4 - Docs. 5 and 6)

55. *The Deputy Secretary-General* opened the discussions with two preliminary key issues submitted to the Working Group: the main audience addressed by the Guidelines and the possible alternative terms which could be used for orphan objects, as disagreement was expressed in previous sessions.

56. *A participant* was favourable to a more inclusive approach, covering both public and private entities. Considering the uneasiness to sometimes distinguish between public and private, this key issue should take into account the existence of hybrid institutions. *Mr Renold* agreed with this proposal and stated the importance of this being clearly expressed in the introduction.

57. *A member of the Working Group* disagreed with the previous members' vision and indicated that museums were already receiving a lot of guidance. Including public or private museums in the scope of this project would only add confusion to the way they were currently working. The introduction of the Guidelines should clearly make the distinction between collections originating from public/private museums, semi-public and semi-private entities, and collections belonging to private collectors. This differentiation was important, as it implied differing levels of responsibility and actions undertaken by private individuals, private institutions, foundations, or private museums that already follow some guidelines.

58. *A participant* underlined that the institutional nature of certain entities depended on the country, some institutions and museums could either be public or private entities with non-profit status. Regarding the hybridity of some institutions, the Working Group should continue to focus on private collections from private collectors.

59. It was explained to the Working Group that the current ICOM Code of Ethics had a provision concerning "unprovenanced objects", Principle 2.11 dealing with "repositories of last resort"<sup>13</sup>. This

---

<sup>13</sup> ICOM Code of Ethics, Principle 2.11: *Nothing in this Code of Ethics should prevent a museum from acting as an authorised repository for unprovenanced, illicitly collected or recovered specimens or objects from the territory over which it has lawful responsibility.*

provision was stating that, for objects without provenance, museums could act as repositories of last resort and host unprovenanced objects. Moreover, the *ICOM representative* expressed some reservations about applying the Guidelines to museums, as the scope was initially supposed to focus on private collections and market due diligence. ICOM was representing both private and public museums, and as long as the scope of “orphan objects” and the ultimate objective, such as a database or platform, had not been clearly defined, its position would remain pending.

60. *A participant* expressed his support for targeting all collections as a way to involve art-market players. In return, *a Symposium speaker* proposed not to focus on terms of private or public museums, but the focus should be on the objects and on their provenance research.

61. *A member of the Working Group* circled back to having a broader approach, taking into consideration all stakeholders, starting from Indigenous communities and going on to museums. This project aimed at objects with no significant provenance and at a solution for a way to obtain and share information.

62. *The Deputy Secretary-General* acknowledged that these Guidelines were suggestions for improving the clarification of provenance, which might be useful for many different actors. She asked the Working Group to closely work with ICOM on this specific question, and it should be reflected in the commentary to the specific Guidelines.

63. Concerning the second issue, at the previous meetings of the Working Group, some members disagreed to use the term “orphan cultural objects” for various reasons and alternative terms were proposed, including “unprovenanced objects”, “undocumented objects”, “insufficiently provenanced”, or “incompletely documented provenance”.

64. *Some members of and participants* to the Working Group expressed a strong disagreement to the use of “orphan” cultural objects as it raised ethical issues and was seen by some as violating the rights of communities. It was also argued that the use of the term orphan objects raised emotional aspects and implications that were not appropriate. One preference was expressed for the use of “insufficiently” or “incompletely documented” cultural objects. Regarding the preference expressed for “documented” over “unprovenanced”, a participant observed that objects did have a provenance, they were just not documented.

65. The semantic meaning of “orphan” was debated. For those against the term, “orphan object” would identify as an object that had no provenance at all - whereas in practice, as the presentations during the Research Symposium showed, an object had provenance information in a vast majority of cases.

66. *Two speakers to the Symposium* raised that in many cultures, objects were not only objects but also subjects and therefore the final term should not treat objects as being “only materiality”, but objects as being “not only material” to consider their “humanity” (or human dimension).

67. *Mr Renold and other members of the Working Group* were in favour of keeping the term “orphan cultural objects”, which they believed to be highly symbolic, and stressed that the main work would be on the definition which would require careful drafting and precision. They believed this term would open the conversation on very important topics and stimulate debate. As in copyright, an orphan work was one for which the author was not known, and the same principle would apply here: the absence of knowledge regarding the origin of the object, without meaning it did not have any.

68. *Some members of the Working Group* stayed open to using “orphan cultural objects” if accompanied by a very clear and technical definition, while warning that, as it was an already used expression, many individuals could interpret it based on the semantic image of an orphan. *A member of the Working Group* recalled the colour methodology reference discussed during the third Working Group session and proposed to consider using such a method as a constructive alternative.<sup>14</sup> A direct

---

<sup>14</sup> For more details, please refer to document [UNIDROIT 2025 – Study LXXB – W.G.3 – Doc. 4](#)

and simple name could be used, with a more detailed definition, considering that many legal concepts had labels that carry different meanings across different branches of law.

69. A *Symposium speaker* considered the colour methodology proposal as possibly very confusing because of the already existing colour system called the “Gurlitt traffic light” system<sup>15</sup>, in relation to Nazi-looted art. She added that “insufficiently documented objects” was already a definition, not a title, and warned against choosing long labels.

70. A *member of the Working Group* proposed as an alternative formulation “an object without significant provenance”. Indeed, the term “insufficient” appeared problematic because of the absence of a clear legal or professional benchmark that commanded consensus among the trade and museums. Based on a presentation at the Symposium, it was noted that an overwhelming majority of archaeological objects had an incomplete provenance - only degrees of knowledge existed – and therefore the word “significant” was presented as a practical approach. As missing information did not imply that the object was tainted, the aim was to move from non-significant provenance to a more significant one. Another *member of the Working Group* proposed “cultural objects without reasonably well-established provenance”, echoing the definition of due diligence in the 1995 UNIDROIT Convention.

71. Some *members of the Working Group* acknowledged the delicate task of naming such objects, as adopting too broad an approach would entail that most cultural objects would be defined as “orphan cultural objects”. Caution was expressed regarding a multi-word phrase, inviting extensive interpretation. A *member of the Working Group* proposed to retain “orphan cultural objects” as the main term and then add, in brackets, a descriptive phrase linked to provenance, such as “orphan cultural objects (cultural objects without reasonably well-established provenance)”.

72. Attention was raised regarding proposed terms, such as “undocumented” or “unprovenanced”, which were already used by ICOM and UNESCO. The World Intellectual Property Organisation was also working on orphan objects in a current project, which risks confusion regarding international law.<sup>16</sup> For some participants, the name used should be disconnected from the strict museum sector. The *Deputy Secretary-General* noted that the fact that one organisation used a term did not necessarily mean that another organisation could not use it, especially if the meaning was clearly defined.

73. The Working Group then turned to the review of the multiple changes made to some Guidelines during the previous session. The text of the Guidelines, as it stood at the beginning and the end of the fourth session of the Working Group is reproduced in Annexe III.

#### **Guideline A. Definition of an [orphan / insufficiently provenanced] cultural object**

<b>Text as it stood at the end of the <u>third</u> session of the Working Group –</b>	<b>Text as it stood at the end of the <u>fourth</u> session of the Working Group –</b>
<i>The present Guidelines apply to movable cultural objects of importance, as defined in Article 2 of the 1995 UNIDROIT Convention on</i>	<i>The present Guidelines apply to <del>movable</del> cultural objects <del>of importance</del>, as defined in Article 2 of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, <del>which has no or incomplete provenance</del></i>

<sup>15</sup> The “Gurlitt traffic light” system is the *Kunstmuseum Bern*’s red–yellow–green provenance scheme for evaluating whether works from the Cornelius Gurlitt estate are confirmed Nazi-looted (red), cleared (green), or still unresolved (yellow). For more information, check [The Cornelius Gurlitt Legacy](#).

<sup>16</sup> For more information on WIPO’s current work on Orphan Works Database, see the [Copyright Orphan Works and WIPO Standards Workshop](#) (2024), [Proposals for Improvement of Copyright Orphan Work Metadata in WIPO Standard ST.96](#) (2024) and the [“Orphan Works Study Report”](#) (2018).

<i>Stolen or Illegally Exported Cultural Objects, which have no or incomplete provenance.</i>	<u><i>without reasonably well-established provenance.</i></u>
---	---

74. *The Deputy Secretary-General* opened the discussion on the definition of “orphan cultural objects” indicating in particular two issues raised in previous Working-Group sessions: 1) should all cultural objects be covered by the Guidelines (potential exclusion of archaeological objects); and 2) should the objects be categorised? - if so, whether the Guideline should refer to an existing list of categories (such as the list in the 1995 UNIDROIT Convention)? Regarding the second issue, it was reminded that a document had been shared before the fourth Working Group session concerning the notion of importance regarding cultural objects in international law (Study LXXB- W.G. 4 - Doc. 5).

75. *Mr Renold* indicated that, based on some presentations at the Symposium the current definition was too broad and proposed changing “objects with no or incomplete provenance” with “objects where that lack of provenance raises issues”. Incomplete provenance was not always problematic, and narrowing the definition would focus on objects where provenance raised concerns. *A member of the Working Group* agreed that this lack of provenance had to raise an alert of some kind. *Another member of the Working Group* proposed to add “without significant provenance”.

76. *Some members of the Working Group* expressed confusion regarding the meaning behind “without significant provenance” and a proposal was made to change “significant” to “substantial”. Preferences were expressed toward “without reasonably well-established provenance”. Emphasis was made concerning the fact that every object had a provenance, but sometimes the documentation of that provenance was missing. The term “reasonably” was important as it covered situations where some research had been done, or where research was still needed.

77. Other proposals were made: “without documented provenance” or “without reasonably well-documented provenance”. *A Symposium speaker* suggested using “without documented and researched provenance”, explaining that “documented” alone could be misunderstood as merely referring to paperwork passed from a previous owner. Adding “researched” would emphasise the effort to actively investigate provenance and he suggested to develop it in Guideline C on Provenance research. Positive feedback was expressed, as “documented and researched” could help to explain the meaning of “well-established” or “substantial” provenance. *A member of the Working Group* explained that the word “reasonably” already implied that some effort had been made. Explicitly requiring provenance research in the definition could place an unfair burden on the current owner rather than previous owners.

78. Consequently, it was agreed to replace “no or incomplete provenance” by “without reasonably well-established provenance”. A suggestion was made to keep the title as “Definition of an ‘orphan cultural object’” with the term in inverted commas, followed by an explanation indicating that further refinements to the title might still be considered.

79. *The Deputy Secretary-General* asked the Working Group if leaving “without reasonably well-established provenance” in the Guideline and explaining it fully in the commentary would be sufficient. *Members of the Working Group* agreed, explaining that provenance research should be reflected in the definition.

80. *A speaker to the Symposium* stressed that if the Guidelines aimed to encourage proactive work, the “alert” idea was risky as many objects with gaps in provenance were not seen as problematic until something triggered concern. He added that current practices in many museums and collections focussed on provenance only when a problem or external alert appeared and that using the alert concept in the definition could perpetuate a reactive approach and put undue pressure on institutions. *A participant* noted that the alert notion might be more appropriately addressed in the Guideline on due diligence. Each situation would depend on the specific circumstances and could be developed in the commentary.

81. Referring to her programme “Matrimoines / Rematriation”<sup>17</sup>, a speaker to the Symposium insisted that when talking of importance, the question should always be “for whom?”– for the art market, for aesthetic reasons, or for the communities concerned? She stressed that importance was relative and must be questioned. *The Deputy Secretary-General* noted that “importance” could serve as a limiting element in the definition.

82. On the “notion of importance”, *the Deputy Secretary-General* underlined that Article 2 of the 1995 UNIDROIT Convention was being used as the reference categorisation in the text. The remaining question was how to refer to provenance in the last part of the definition. A *Symposium speaker* proposed to explain “of importance” in the commentary section. *Members of and participants* to the Working Group exchanged on the potential removal of “of importance” from the definition and the limitation of the title to “orphan objects”, improving clarity.

83. The *Working Group* agreed to delete “of importance” from the draft definition, as the term already appeared in Article 2 of the 1995 UNIDROIT Convention and the commentary would explain. *Some members of the Working Group* argued that the reference to Article 2 was sufficient, and that repeating “of importance” might be read as adding a new criterion.

84. The *Working Group* proposed the deletion of the term “movable” from “cultural objects”. Examples were given where, in some legal systems, “movable” referred strictly to movable goods, while certain architectural elements (e.g. columns or capitals) were classified as immovable, even though they were physically detachable. Due to the reference to Article 2 of the UNIDROIT Convention being considered as sufficient, consensus was reached to remove the terms “movable” and “of importance”.

85. A *participant* proposed that the definition of such objects could be given in the preamble of the Guidelines. *The Deputy Secretary-General* clarified that the preamble would serve as the introduction to the Guidelines, indicating the scope, addressees, and nature of the instrument.

86. Concerning the categories of objects, a *participant* stressed that there were different categories of cultural objects, each with a different significance and policy questions. She identified at least two “particularly sensitive” categories: (1) religious, ritual, and traditional objects and (2) archaeological artefacts. The definition of an “orphan” cultural object should acknowledge the nuanced application of due diligence for each of them. A *participant* referred to a “taxonomy of risk situations”, as some categories of objects would require a higher level or a different kind of due diligence. *All participants* shared the opinion that archaeological objects should not be excluded from the categories covered by this Guideline.

87. The use of the term orphan cultural object was also debated. On multiple occasions, it was stressed that the term “orphan object” was already widely used, particularly for archaeological objects - often with a pejorative connotation. *Some participants* highlighted that in the United States, “orphan object” had long been used, and was still today, in criminal-law cases, as a justification for not considering, or not acting upon, repatriation and restitution requests, even for objects that were illegal. As the term held a negative pattern, they strongly supported removing it.

88. *The Deputy Secretary-General* asked the Working Group whether the term “orphan cultural object” should be kept and accompanied by a clarifying explanation in the commentary. A *member of the Working Group* explained that adding “cultural” already distinguished this concept from the “orphan object” terminology used by archaeologists. She considered “orphan cultural object” as a short and clear title and was in favour of defining it in the commentary. This point of view was shared by several members of the Working Group. A *Symposium speaker* proposed to use “orphan cultural object” in an advocacy-oriented way, as it might help to change the conversation.

89. For *some participants and Symposium speakers*, the addition of “cultural” to the term “orphan object” would not fix the issues raised, change the connotations or reduce the risk of

---

<sup>17</sup> For more information, see the “Matrimoine Rematriation” project page on the [Provenienzforschungsfonds website](#).

misunderstanding. *The Deputy Secretary-General* suggested using inverted commas in the text of the Guideline and not necessarily in the title to underline that the term was being used in a specific context and was not intended to replace or override its use in other sectors.

### Guideline B. Due diligence

Text as it stood at the end of the <u>third</u> session of the Working Group –	Text as it stood at the end of the <u>fourth</u> session of the Working Group –
<p>1. <i>Due diligence should be performed when the object is subject to a transfer or when the circumstances so require. Due diligence includes, but is not limited to, the criteria provided for in Article 4.4 of the 1995 UNIDROIT Convention.</i></p> <p>2. <i>For the purposes of this Guideline, "transfer" shall mean a change in ownership, possession, or physical location of the object.</i></p> <p>3. <i>Due diligence should be performed by public and private institutions, collectors, and all actors dealing with cultural objects.</i></p> <p>4. <i>If, after exercising due diligence, the provenance of the object remains unknown or incomplete, continued attention should be given to the object, and the provenance research should be considered ongoing.</i></p>	<p>1. <i>Due diligence should be performed when the object is subject to a transfer <del>or when the circumstances so require</del>. Due diligence includes, but is not limited to, the criteria provided for in Article 4.4 of the 1995 UNIDROIT Convention.</i></p> <p>2. <i>For the purposes of this Guideline, "transfer" shall mean a change in ownership, possession or physical location of the object.</i></p> <p>3. <i>Due diligence should be performed by public and private institutions, collectors and all actors dealing with cultural objects.</i></p> <p>4. <i>If, after exercising due diligence, the provenance of the object remains unknown or incomplete, continued attention should be given to the object and the provenance research should be considered ongoing.</i></p> <p>5. <u><i>Certain categories of sensitive cultural objects require a heightened degree of due diligence, necessitating, among other actions, increased attention to provenance research. These categories of heightened sensitivity include:</i></u></p> <p style="padding-left: 40px;">(a) <u><i>human remains, burial objects, objects of religious, ritual, sacred and traditional significance (as determined by the community of origin), and</i></u></p> <p style="padding-left: 40px;">(b) <u><i>archaeological objects.</i></u></p>

90. *The Deputy Secretary-General* recalled the central role of Guideline B and the two main issues to be discussed: 1) the definition of the concept of due diligence (with a possible reference to Article 4(4) of the 1995 UNIDROIT Convention); and 2) what constituted an "apparent change of circumstances" that would trigger a duty to perform due diligence - and how that should be defined or addressed in the Guidelines.

91. It was also recalled that to ensure the Guidelines' application to both domestic and cross-border contexts, "across international borders" was deleted during the third session of the Working Group. *The Deputy Secretary-General* emphasised that this deletion served two purposes: to incorporate purely domestic transactions and to avoid technical debates about whether a given border was "international" in public international law.

92. A *Symposium speaker* warned against using the term “transfer”, referring to how it had been used in Germany and France to avoid more political terms like “restitution” or “repatriation.” She suggested using the term “translocation”<sup>18</sup> as an alternative term. *Mr Renold* believed that “transfer” was more appropriate in a legal instrument as it encompassed the idea of physical movement without excluding other dimensions. *The Deputy Secretary-General* proposed mentioning in the commentary that the term “translocation” was being used in other academic projects.

93. A *member of the Working Group*, co/author of the Guideline, explained that this version was intended to emphasise that due diligence was not a one-off act and that provenance research was an ongoing process. Once due diligence had been exercised and still did not produce a complete or acceptable provenance, this outcome should trigger continued provenance research. Provenance research might, and often must, continue beyond the initial due diligence. A *Symposium speaker* agreed on this explanation of the articulation between due diligence and provenance research. He circled back on the idea that due diligence could be expressed as a step-by-step checklist, whereas provenance research was much harder to reduce to bullet points. He proposed that, should the Working Group still want a checklist-style approach, the commentary could mention it.

94. Another *Symposium speaker* disagreed with the idea of the checklist, referring to the Article 4(4) of the UNIDROIT Convention as being already explicit about what due diligence entailed. Concerns were expressed that expanding a potential due diligence checklist could unduly reduce flexibility. The Working Group agreed that provenance-related checks could be referenced in the commentary.

95. To distinguish definitions of “due diligence” and “provenance research,” it was proposed that due diligence could be understood as a transactional, business-practice-derived concept, while provenance research was broader, multi-step and often non-transactional. A recent judgment was mentioned, concerning the *J. Paul Getty Trust v. Italy*, in which the European Court of Human Rights used the expression “high standard of diligence” in relation to the circumstances of acquisition rather than the type of object.<sup>19</sup> A *Symposium speaker* suggested that provenance research regarding sensitive objects should imply research in the countries and communities of origin, drawing attention to the “ritual inalienability” concept. Reviewing collections, dealing with “red flag” names, and considering publications belonged primarily to provenance research rather than to due diligence.

96. A *member of the Working Group* suggested to add a new paragraph in the Guideline itself which would state that certain categories of cultural objects required a heightened degree of due diligence, including greater attention to provenance research. These sensitive categories should expressly include human remains, burial objects, and objects of ritual, religious, sacred or traditional significance, as well as archaeological objects (idea following a previous proposal of creating a taxonomy of sensitive objects). Strong support was expressed among *other members of the Working Group* who also agreed that for such objects, due diligence should also consider their nature, function and any limitations on their tradability as derived from the laws and customs of the culture of origin.

97. Attention was brought to the fact that traditions and rules of the community of origin of the object varied, as some cultures did permanently prohibit trading in human remains and sacred objects, whereas in others, religious items could be formally “desacralised” and sold. This Guideline should acknowledge that, in many legal systems, the removal and sale of sacred objects was treated as theft and might justify restitution, even after very long periods. *The Deputy Secretary-General* agreed that these points were extremely important and more suited to elaboration in the commentary. A *participant* expressed strong support for inserting this new sensitive-category paragraph, noting that it aligned with the existing focus on the nature of the object in Article 4(4) of the UNIDROIT Convention.

---

<sup>18</sup> The concept of “translocation” introduced by Bénédicte Savoy, refers to the large-scale historical displacement of cultural assets in contexts of war, colonialism, and unequal power relations. See [Bénédicte Savoy, \*Leibniz Project Cluster: Translocations\*](#) (December 2016), p. 1–4.

<sup>19</sup> [The J. Paul Getty Trust and Others v. Italy, The European Court of Human Rights, Final Judgment 02/02/2024.](#)

98. Caution was expressed regarding the phrase “heightened sensitivity needing a clear distinction between basic due diligence and this heightened standard. Indeed, the listed categories did cover the vast majority of archaeological objects, fearing that almost every object would be affected by the “heightened” condition. *A member of the Working Group* proposed to align the wording of the new paragraph 5 with the 1995 UNIDROIT Convention, noting that the annexe to the Convention listed two sub-categories of archaeological objects: “products of archaeological excavations (including regular and clandestine excavations) or of archaeological discoveries”.

99. *Members of the Working Group* were inclined to be cautious on whether archaeological objects were always “sensitive”. A suggestion was made to explain in the commentary that sensitivity for archaeological objects referred mainly to risks and contextual losses. Provenance research was not only about legal risk but also about the interests of source countries and communities requesting the return of objects. *A participant* referred to the hierarchy established by Article 3(8) of the 1995 UNIDROIT Convention, which gave special treatment to claims for the restitution of sacred or communally important cultural objects belonging to Indigenous or tribal communities.

100. *The Deputy Secretary-General* suggested that the commentary should address how to distinguish different kinds of transfer (title, possession, relocation) without re-introducing “across international borders”, and how to address privacy laws and “legitimate interest” in sharing due diligence information. Agreement was found regarding the terms “acquisition” and “exhibition” being covered by “transfer”, as they imply a transfer of physical location. The notion of “when the circumstances so require” would not cover such examples of transfer.

101. It was emphasised that, as all archaeological objects were covered by the new paragraph 5, the inclusion of “publications” as a due diligence trigger could become unmanageable by imposing a disproportionate burden and blurring the line between due diligence and provenance research. What kinds of “publications” should also be clarified. *A participant* warned that traffickers had paid scholars to publish unprovenanced objects to create a false provenance. Ideally, when an object was first published, the scholar should carry out due diligence and clearly explain the object’s origin. *A participant* suggested limiting this to publications that might reasonably be relied upon as provenance evidence, rather than every scholarly reference. A legal case illustrated that insufficiently responsible academic publications facilitated problematic purchases. Standard due diligence checklists could still be gamed by bad-faith actors by providing plausible answers. For her, rigorous and critical provenance research was only possible by not excluding publication, loans and restoration channels.

### Guideline C. Provenance Research

Text as it stood at the end of the <u>third</u> session of the Working Group –	Text as it stood at the end of the <u>fourth</u> session of the Working Group –
<p>1. <i>Possessors of cultural objects should engage in provenance research, which is part of due diligence when [... to be completed during the next Working Group].</i></p> <p>2. <i>Provenance research is the process of searching for information related to the history and circulation of an object from its creation or discovery. Provenance research also endeavours to identify if the object has been subject, in the past, to any illicit transfer or similar action.</i></p>	<p>1. <i>Possessors of cultural objects should engage in provenance research, <del>which is part of due diligence when [... to be completed during the next Working Group].</del></i></p> <p>2. <i>Provenance research is the process of searching information related to the history, <u>context, circulation, ownership and current meaning</u> of an object from its creation or, <u>in the case of archaeological objects, its discovery, to its current location.</u> Provenance research also endeavours to identify if the object has been</i></p>

<p>3. Provenance research should be conducted by a person who, considering all circumstances, has adequate technical knowledge and expertise in the relevant field, taking into consideration existing standards, if any.</p> <p>4. The extent of provenance research depends on the specific case and the history of the object. It should aim to collect all reasonably obtainable documentation and information at the time of the search in order to evaluate their authenticity, provenance gaps, and undocumented transfers.</p> <p>5. The results are only relevant at the time the provenance research is conducted.</p>	<p>subject, in the past, to any illicit transfer or similar action.</p> <p>3. Provenance research should be conducted by a person who, considering all circumstances, has adequate <del>technical</del> knowledge and expertise in the relevant field, taking into consideration existing standards, <del>if any</del>.</p> <p>4. The extent of provenance research depends on the specific case and the history of the object. <u>The provenance research should aim to collect <i>and assess</i> all reasonably obtainable documentation and information at the time of the search in order to evaluate <i>provenance gaps and undocumented transfers</i>. It should also aim to evaluate the authenticity of the object and of the available documentation.</u></p> <p>5. <del>The results are only relevant at the time the provenance research is conducted of the provenance research should be dated.</del> <u>Should additional information become available, the results of the provenance research could be reconsidered and supplemented or amended as relevant.</u></p>
--	---

102. A representative of the UNIDROIT Secretariat recalled that the order of the Guideline on Provenance research and the Guideline on Due diligence had been inverted.

103. Members of and participants to the Working Group discussed moving the reference “when the circumstances so require” from paragraph 1 of the Guideline on Due diligence in the commentary of the Guideline on Provenance research. They emphasised that, if due diligence should be performed every time a publication, exhibition or other situation listed took place, provenance research should also be conducted.

104. A Symposium speaker disagreed with the removal of this reference from the Guideline on Due diligence, as it would limit the exercise of due diligence to only transfer contexts. By doing so, past transfers would not be subject to the Guidelines once adopted. The reference should remain in situations involving procedures, case law or prosecutions, while other situations, such as review of collections, publications, and red flags should be covered under the Guideline on Provenance research.

105. A representative of the Secretariat ultimately concluded that case law and acquisition examples would be retained in relation to “when the circumstances so require” in the commentary of the Guideline on Due diligence, and other examples would be moved to the commentary of the Guideline on Provenance research. Provenance research should accompany the due diligence exercise but should also be undertaken in a broader set of circumstances - as would be explained in the commentary.

106. A Symposium speaker turned to the definition given in paragraph 2, which referred to “the history and circulation of an object from its creation or discovery”. The term “discovery” did not cover colonial-era artefacts, as the farthest they could be traced was the moment of their looting or problematic acquisition. A member of the Working Group suggested removing “discovery” and

retaining “from its creation”, on the basis that archaeologists seek the full history of an object from creation onwards.

107. *A member of the Working Group* warned that requiring a full history from creation would massively and unnecessarily expand the scope of this Guideline. She supported keeping both “creation” and “discovery”, while clarifying that “discovery” concerned archaeological objects. A proposal was made for provenance research to trace the object’s history “from its creation or discovery to its current location”. The *ICOM* representative referred to the *ICOM* Code of Ethics, which defined provenance as the “full history and ownership of an item from its discovery or creation to the present, through which authenticity and ownership are determined”<sup>20</sup>. She suggested aligning the Guideline with this wording by including “ownership”. Support was also expressed in favour of the inclusion of “circulation”.

108. *A Symposium speaker* proposed the insertion of “the history, circulation and current meaning of an object” in paragraph 2. Discussions took place to determine how to define “current meaning”, particularly in relation to existing cultures. Regarding archaeological objects, “current meaning” could be complex and might not always fall within provenance research as traditionally understood.

109. The final draft proposal for the first sentence of paragraph 2 would read “Provenance research is the process of searching information related to the history, context, circulation, ownership, and current meaning of an object from its creation or, in the case of archaeological objects, its discovery, to its current location”.

110. Concerning the articulation of provenance research with due diligence, *a Symposium speaker* explained the autonomy of provenance research, and how communities conducted provenance research to support restitution claims. *Mr Renold* proposed paragraph 1 to indicate that provenance research “can be part of due diligence”. *A participant* raised the issue of fixing a rigid hierarchy or relationship between these concepts. To address this concern, the following proposal was made “Possessors of cultural objects should engage in provenance research, which should accompany the process of due diligence but should also regularly be carried out in a broader set of circumstances”. Ultimately, it was proposed to delete the reference linking the two concepts in the text, as provenance research could be undertaken independently of any purchase, for objects already in a collection for example.

111. Regarding paragraph 3, *a member of the Working Group* stressed that there were far fewer trained provenance researchers than orphan objects. In practice, most provenance research was done by curators or other museum staff rather than dedicated specialists. This paragraph should therefore focus less on formal status and more on the objective and standard of the provenance research exercise.

112. *Mr Renold* proposed to delete the words “if any” after “existing standards” in paragraph 3, since, if no standards existed, there was nothing to take into account. This proposal was supported by a *Symposium speaker*, to reflect the importance of developing standards.

113. *A Symposium speaker* raised concerns about the “adequate technical expertise” in the same paragraph, pointing out that local community experts (such as priests, ritual specialists or elders) might lack formal qualifications but hold crucial orally transmitted knowledge about specific objects. A suggestion was made to reflect community-based traditional knowledge, rather than limiting expertise to formal technical credentials. *Two members of the Working Group* agreed and proposed to change the word “technical” with “adequate knowledge and expertise in the relevant field”. This wording would mirror approaches like the business-judgment rule, where no single type of education was mandated, but a certain level of knowledge and experience was expected. The commentary would illustrate the different types of expertise (academic, traditional, etc.).

---

<sup>20</sup>

[ICOM - Code of Ethics for Museums, 2017.](#)

114. *Another Symposium speaker* commented the fact that provenance research should be conducted by an independent person and reported that many researchers worked independently and were subject to economic and ethical pressures, as well as reporting issues. Moreover, provenance research was often treated as a temporary or project-based activity. He argued that the Guidelines should help to structure and stabilise the profession and expressed concern about the term “independent” used as “external” to the institution. *A member of the Working Group* stressed that the term “independent” should convey the idea of morality, responsibility and avoidance of conflicts of interest - addressing the controversy on whether provenance research should be carried out independently or “in-house”. *Another member of the Working Group* noted that any individual researching provenance was being paid at a certain moment of the process – whether by a museum, by the market or by the owner. Strong oppositions have been expressed in the Working Group regarding the independent nature of the person conducting the provenance research, fearing that this notion might privilege external research over in-house research. In-house and external research should be complementary, not hierarchically framed. Suggestions were made to refine the concept of independence to focus on freedom from influence rather than employment status.

115. Concerns were expressed about the wording of paragraph 4 regarding the extent of provenance research. *A Symposium speaker* proposed to add an explicit reference to assessing the documentation. He indicated that due diligence was about gathering and checking information reasonably, while provenance research was about questioning what had been presented and going beyond it and that describing provenance research merely as collecting reasonably obtainable documentation entailed the risk of opening the door to forgeries in provenance documentation.

116. The scope of provenance research was also debated, following the proposal to revise the second sentence of paragraph 4 to read “in order to evaluate the authenticity of the object and of the available documentation”. *A Symposium speaker* proposed to add “collect and assess” precisely to cover the idea of assessing the information and documentation. He agreed that the wording “evaluate authenticity, provenance gaps and undocumented transfers” could easily be read as referring only to the object and not the documentation. “Authenticity” was widely understood as authenticity of the object, not of the documentation, and he suggested that the text might need rephrasing, or at least clarification in the commentary. *Members of the Working Group* agreed that provenance gaps and undocumented transfers referred to the object, whereas authenticity referred to both object and documentation. Therefore, the final sentence would be “evaluate the authenticity of the object and of the available documentation”.

117. *A member of the Working Group and a Symposium speaker* suggested that the commentary should address two aspects: (1) assessing whether documentation was forged or not, and (2) identifying the nature of documentation (e.g. documentation that was no longer commonly used and thus required extra research to confirm it was genuine). They also indicated that examples of documentation from the 1995 UNIDROIT Convention should also be given in the commentary and that the commentary could highlight specific references and examples of risks and cases of forgeries, especially in relation to archival documentation. In addition, acknowledgement should be expressed toward countries or cultural contexts where written documentation might not exist, oral history being the only component of provenance research.

118. *A member of the Working Group* proposed changes for paragraph 5, stating that “each research report should be dated”, rather than “the results are only relevant at the time the provenance research is conducted”. He explained that previous reports might still be relevant for future transfers and provenance research exercises, anchoring such results in time without implying their automatic irrelevancy.

119. *A member of the Working Group* proposed a new wording: “The results are subject to being supplemented or amended if and when new documentation comes to light”, capturing both the provisional character of the current result and the possibility of future revision if new material emerged. Additional wording was suggested to read: “The results are subject to being supplemented or amended if and when new documentation comes to light”. *The Deputy Secretary-General* sought

a balance between keeping the research open to revision and recognising that it remained valid until a new element emerged.

120. *Some members of the Working Group* proposed to add in the same paragraph the sentence "Should new additional information become available, the results of the provenance research may be enriched or amended". It was suggested that the wording "may be enriched" could be redrafted to "supplemented or amended". This new sentence intended to reflect both the possibility of supplementing information and, when necessary, amending it. Consequently, when new information or documentation arose, the revised conclusions should take this new material into account. *The Deputy Secretary-General* suggested adding "reconsidering" to capture all scenarios in paragraph 5. Agreement was found on the wording "reconsidered and supplemented or amended as relevant". The commentary should recognise practical constraints and difficulties in undertaking provenance research (methodology, proportionality of methods and reasonable expectations).

### Guideline D. Evidence

Text as it stood at the end of the <u>third</u> session of the Working Group	Text as it stood at the end of the <u>fourth</u> session of the Working Group –
<p style="text-align: center;">–</p> <p>All elements relating to the provenance and due diligence performed are to be retained and shared. They should accompany the object at any time and be shared in case of a transfer.</p>	<p>D. Evidence [Evidence in court/Documentation/Results/Transparency]</p> <p>All elements relating to the provenance and due diligence performed are to be retained and shared <u>including with the community concerned</u>. They should accompany the object at any time and be shared in case of a transfer.</p>

121. *The Deputy Secretary-General* introduced Guideline D on Evidence, reminding that the Working Group was due to discuss more into details (1) Under what conditions provenance research and due diligence information should be shared, with whom it should be shared? And (2) What constitutes acceptable proof of the due diligence and provenance research exercise?

122. *A member of the Working Group* explained to the Working Group that the important aspect of this text was to determine if, and when, information should be maintained and shared. The "force probante" and burden of proof of such information also had to be discussed, regarding the current jurisdiction-oriented draft. He also recalled that the original scope of the Guideline was based on evidence in a court proceeding.

123. *The Deputy Secretary-General* suggested modifying the title of the Guideline, as "Evidence" seemed too general. Following the recent deletion of the Guideline on Applicable law, she asked if the Guideline should maintain a strict judicial approach. *Mr Renold* advocated for a broader approach, as the second sentence was stating that the information should accompany the object at any time and be shared. The Guideline would aim at keeping the documentation and provenance research element with the object, as a way of encouraging the progression of knowledge of the object.

124. Clarification was asked on the differentiation between retaining provenance information and passing it to the next owner/possessor and sharing it broadly outside of a transfer. Strong reactions were expressed against the "transfer" oriented criterion of sharing of provenance information on the basis that communities and countries of origin would not have access to such content and knowledge if sharing were based on this criterion.

125. A *participant* encouraged broadening the scope of this Guideline, permitting it to address evidence in an out of court context. It could reflect that provenance research results were often inscribed in a spectrum of information.

126. *Members of and participants to the Working Group* agreed on broadening the intention of the Guideline and reviewing its title. *Mr Renold* proposed to change the title from "Evidence" to "Provenance documentation", "Documentation on provenance" or "Results of provenance research". *The Deputy Secretary-General* suggested "Transparency" as an alternative title, advocating the general idea that collectors should not keep information to themselves. This potential new title would not necessarily imply a court-style duty to disclose, but a general norm in cultural property law by moving from secrecy and opacity toward transparency. Provenance research would be conducted to reassure the possessor, and to also share available information, with communities.

127. While acknowledging the proposal for a new title, a *Symposium speaker* stressed that, in his opinion, the discussions were not moving much further into helping Indigenous people and people who were not collectors. He underlined that this Guideline also had to be helpful for the non-legal community. He pointed out that the repatriation of the majority of cultural properties to his country happened because of discussions with museums, auction houses and not court proceedings. This concern was shared by *another Symposium speaker*, explaining that provenance gaps could not be fulfilled until the community was allowed to be a part of the discussions. The community was best suited to fill the gap and the context behind it.

128. *The Working Group* also addressed with whom provenance research and due diligence elements should be shared. A *Symposium speaker* raised the issue of a global designation, especially when talking about evidence and sharing. The action of sharing was raising key notions of legitimacy of access and confidentiality. *The Deputy Secretary-General* turn back to the access to the information by the community of origin and encouraged the Working Group to consider situations where a third party was conducting ongoing provenance research activities. She relied on a Symposium speaker presentation underlining the communities' interest in undertaking provenance research, and the concrete difficulties they encountered regarding restrictive access to some information. Agreement was found for provenance and due diligence elements to be retained and shared "including with the community concerned".

129. The link between the scientific publication of provenance research and the action of sharing provenance research elements related to this Guideline was discussed, as both Guidelines should be drafted in mutual consideration. A question was raised regarding whether the sharing of information should relate to the results of provenance research or to the object in itself - whether it was about knowing the results of the search or knowing the documentation that led to the result.

130. A proposal was made to have one guideline on the outcome of provenance research (highlighting that due diligence and provenance elements were to be retained and accompany the object at any time) and a second guideline on how to share information.

131. *The Working Group* acknowledged that this Guideline embodied the purpose of this project and its final goal. Promoting provenance research and sharing results and/or documentation was the aim, while agreeing that it needed to be reviewed.

### **Guideline E. Publicising an [orphan cultural object]**

132. This Guideline has not been discussed during the fourth session of the Working Group, due to time constraints.

## Guideline F. Dispute resolution

133. This Guideline has not been discussed during the fourth session of the Working Group, due to time constraints.

### Item 5 of the agenda - Proposal for a new Guideline on the scientific publication of orphan cultural objects (UNIDROIT 2025 – Study LXXB - W.G.4 - 7)

Text submitted <u>during the fourth session</u> of the Working Group –	Text as it stood at the <u>end of the fourth session</u> of the Working Group –
<p>1. <i>Objects without an undocumented full provenance history or no provenance at all should be brought to the attention of the scientific community and to the public.</i></p> <p>2. <i>The publication of those objects should be [accompanied by/include] a [clear/direct] [reference/mention] to the fact that the object is fully or partially unprovenanced, to the absence of the object’s documentation before the latest date known or the multiple provenance gaps identified, to the known or unknown date of the object’s legal export from its [country of origin/source country], and to a contact referenced in case of additional information.</i></p>	<p>1. <i>Objects without an undocumented full provenance history or no provenance at all should be brought to the attention of the scientific community and to the public.</i></p> <p>2. <i>The publication of those objects should be [accompanied by/include] a [clear/direct] [reference/mention] to the fact that the object is fully or partially unprovenanced, to the absence of the object’s documentation before the latest date known or the multiple provenance gaps identified, to the known or unknown date of the object’s legal export from its [country of origin/source country], and to a contact referenced in case of additional information.</i></p> <p>3. <i>The publication of unprovenanced objects may not be used to replace, construct, or establish provenance, nor to encourage any transfer of the object. Any transfer of the object remains subject to the applicable provisions of the relevant conventions in the field.</i></p>

134. *The Deputy Secretary-General* indicated that a new document had been prepared by one 8object (optional wording “Scientific publication/Publication of orphan objects/unprovenanced objects”).<sup>21</sup>

135. *The member of the Working Group* explained that dealing with orphan objects could include buying, selling, donating, exhibiting, studying them, and, for researchers and curators, should include publishing them according to best practices in peer-reviewed journals. She underlined that publishing these objects raised key curatorial, ethical, and legal dilemmas, but that publication should be open to every researcher who respected ethical rules. She referred to a case of an object in a private collection for which, because there was a lack of information regarding the provenance, she could not publish the results of her historical and archaeological research, despite the archaeological and historical importance of the object. It was wrongly interpreted as promoting a cultural object potentially connected to illicit trafficking.

<sup>21</sup> See document UNIDROIT 2025 – Study LXXB - W.G.4 – 7.

136. She strongly disagreed with the assumption that an object with uncertain provenance should automatically be linked to illicit trafficking as such assumptions silenced cultural objects and hindered proper provenance research. She stressed that current publishing policies were unsatisfactory, as they did not address the issues surrounding objects without provenance that did not have an illicit origin.

137. She believed that the creation of a new Guideline would aim to create a specific standard, a unique benchmark, for such particular objects clearly indicating the publication of such objects would not aim to legitimise or legalise the object's legal status<sup>22</sup> but would highlight the key issues associated to its unprovenanced nature. Indeed, such a reference would show that, despite exercising due diligence and conducting provenance research, an object could remain partially unprovenanced. It would aim to demonstrate transparency, ethical behaviour and to attach an "unprovenanced" mention to the object until more information was gathered, so as not to fall into illicit circulation or trafficking. Moreover, this reference would be added to every publication of unprovenanced objects, including a clear and direct reference to its unprovenanced status, to the absence of documentation before the latest known date, to the multiple provenance gaps identified, to the known or unknown date of the object's legal export from its country of origin or source country, and to contact details for further information.<sup>23</sup> These information would permit such objects to be brought to the attention of the scientific community and the public, allowing them to receive new provenance elements

138. *A member of the Working Group* expressed her disagreement with the insertion of this Guideline underlining that the publication policies of the relevant organisations had existed since the 1970s, being directly inspired by the 1970 UNESCO Convention. She stressed that these publication policies concerned only the place of first publication or first presentation of the object and did not cover the entire global field of publication, and that these policies could not be broadened without directly challenging the principles of other international instruments. She firmly believed that publication did confer value to an object and praised precautions against future objects that might be decontextualised through a direct consequence of publication. She called for precaution with the substantive content of the Guideline and expressed scepticism with the impact that it would have in the future.

139. *Mr Renold* expressed, on the other hand, support for this new proposed Guideline, acknowledging a real problem connected to provenance research and the publication of unprovenanced objects. Already existing standards were deemed unsatisfactory considering the aim of the project.

140. *A Symposium speaker* underlined that one of the policies had three conditions for publishing an unprovenanced or partially unprovenanced object.<sup>24</sup> He considered the first two conditions relatively irrelevant as they concerned forgeries or risk of looting, while the third condition was a sidestep that still fell within the due diligence zone. It allowed publications focusing specifically on provenance research, implying that only trained provenance researchers who achieved a comprehensive understanding of a piece were allowed to present it. Attention was brought to the fact that some art market actors were reluctant to disclose provenance information, impeding researchers to publish their findings because of incomplete provenance history.

141. *Another participant* agreed with the last remarks and stressed that these Guidelines were aiming to promote provenance research in favour of knowledge. While publications could be very dangerous, this Working Group was the right forum to discuss this specific key issue.

---

<sup>22</sup> One of the arguments of current peer-reviewed publication policies is that publishing an object without complete provenance could enhance illicit trafficking or forgeries by giving the object an avenue to legitimise its potentially illegal circulation.

<sup>23</sup> The Guideline proposed in document UNIDROIT 2025 – Study LXXB - W.G.4 – 7 was slightly changed before the Working Group session.

<sup>24</sup> He referred to the documentation shared by the UNIDROIT Secretariat concerning existing publication policies for cultural objects, see Document UNIDROIT 2025 – Study LXXB - W.G.4 – 7.

142. The Working Group discussed the necessity of having a specific Guideline addressing this topic. A *participant* suggested to add a paragraph at the end of the provision, stating that the scientific publications in question could not be used in any way to replace, build, establish provenance or to encourage transfer of the object. Caution was raised regarding cases in which publications and auction records were used to forge provenance for other objects.

143. *Some members of the Working Group* were in favour of the *participant's* proposal. *Mr Renold* agreed that publication should in no way serve to establish provenance for unprovenanced objects. In view of one member's reluctance to the addition of this new provision, he proposed adding another paragraph stating that publication should be coordinated with specialised organisations.

144. To meet the concerns of a member of the Working Group, *another member* suggested to add the proposed Guideline to the commentary of the Guideline on Provenance research. He encouraged finding a constructive way to dialogue with the community in order to gain more information through publication.

145. *Members of and participants to the Working Group* agreed to work on the suggestion of inserting the text into the commentary of Guideline C, acknowledging that opening the discussion on whether orphan cultural objects should be published was very important for the project. *Some members of the Working Group* cautioned for a more subtle drafting.

#### **Item 6 of the agenda – Organisation of future work**

146. In light of the next Working Group meeting, a *representative of the Secretariat* proposed the creation of five Sub-Groups to continue to exchange views on specific issues. These Sub-Groups would work on key issues that had not reached consensus in previous Working Group sessions. Each Sub-Group would be responsible for drafting proposals to be discussed during the fifth Working Group session to reach a consensus.

- Sub-group 1 - [orphan cultural object] - research of a new term
- Sub-group 2 - articulation between due diligence and provenance research (Guidelines B and C)
- Sub-group 3 - definition and criteria of a provenance researcher
- Sub-group 4 - Guideline D (evidence)
- Sub-group 5 - Guideline on scientific publication – proposal to add the idea into the commentary to Guideline C

147. *The Deputy Secretary-General* encouraged more structured drafting and invited each Sub-Group to collaborate on developing commentaries for each Guideline.

148. It was decided that the fifth meeting of the Working Group would take place at the seat of UNIDROIT and online from 23<sup>rd</sup> to 25<sup>th</sup> March 2026.

#### **Item 7 of the agenda – Other business**

149. In the absence of other comments, the *Deputy Secretary General* thanked the participants present in the room and online and closed the session of the Working Group.

**ANNEXE I****LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS****MEMBERS / MEMBRES****Ms Patty GERSTENBLITH***Remotely*

Professor  
Distinguished Research Professor  
Director, Center for Art, Museum and Cultural  
Heritage Law  
DePaul University College of Law, USA

**Ms Corinne HERSHKOVITCH***in-person*

Avocate à la Cour  
France

**Mr LEE Keun-Gwan***in-person*

Professor International Law  
Member of the UN International Law  
Commission and Professor, School of Law, Seoul  
National University, Rep. of Korea

**Mr Amnon LEHAVI***in-person*

Atara Kaufman Professor of Law  
Academic Director, G City Real Estate Institute  
Harry Radzyner Law School  
Reichman University (IDC Herzliya), Israel

**Mr Jorge A. SÁNCHEZ CORDERO***remotely*

Mexican Center of Uniform Law  
Mexico City, Mexico  
*Chairman / Président*

**Mr Marcilio TOSCANO FRANCA FILHO***in-person*

Professor  
Federal University of Paraiba  
Brazil

**Mr Till VERE-HODGE***in-person*

Specialist Art and Cultural Property lawyer  
Solicitor  
England and Wales

**Ms ZHANG Jianhong***in-person*

Professor of Archives  
the Palace Museum  
Beijing, China

**INSTITUTIONAL OBSERVERS**

INTERNATIONAL COUNCIL OF MUSEUMS /  
*CONSEIL INTERNATIONAL DES MUSÉES*  
(ICOM)  
*remotely*

Ms Mélina MAC DONALD  
Coordinator of Heritage Protection  
Department

CONSEIL DES MAISONS DE VENTE  
*in-person*

M. Pierre TAUGOURDEAU  
Secrétaire Général  
Conseil des Maisons de Vente

Mme Sandra VIARD  
Directrice des affaires européennes et  
internationales  
Conseil des maisons de ventes

Mme Laurence MAUGER-VIELPEAU  
Professor  
Université de Caen-Normandie

### INDIVIDUAL OBSERVER

Ms Giuditta GIARDINI  
*Remotely*

PhD Student Università Cattolica del Sacro  
Cuore  
Chair of the Legal Affairs Committee of ICOM

### SPEAKERS – RESEARCH SYMPOSIUM

Mr Daniel ABIDJO  
*in-person*

Heritage curator  
PhD student in 'Heritage Studies'  
Benin

Mr Sanjay ADHIKARI  
*in-person*

Lawyer  
Public Interest Litigator for issues pertaining to  
Cultural heritage across Nepal

Ms Saskia COUSIN  
*in-person*

Anthropologist and Professor of Sociology  
Paris Nanterre University, affiliated with the  
Sophiapol Research Centre, France

Mme Marie DUFLOT  
*in-person*

PhD candidate  
Ecole des Hautes Études en Sciences Sociales  
(EHESS) et associée au Centre Georg Simmel  
(EHESS-CNRS, UMR 8131), France

Mr Maxence GARDE  
*in-person*

Curator, Antiquities Collection  
Calouste Gulbenkian Museum  
Calouste Gulbenkian Foundation, Portugal

Ms Nancy Karrels  
*Remotely*

Associate Director of Provenance Research and  
Object Histories  
Smithsonian Museum, USA

Mme Laurence MAUGER-VIELPEAU  
*in-person*

Professeure  
Université de Caen-Normandie, France

Mr Jacques SCHUHMACHER <i>Remotely</i>	Executive Director of Provenance Research Art Institute of Chicago, USA
M. Pierre TAUGOURDEAU <i>in-person</i>	Secrétaire Général Conseil des Maisons de Vente
Ms Janet ULPH	Professor Emeritus of Commercial Law, Leicester Law School University of Leicester, UK

#### **UNIDROIT & Partners**

Ms Anna VENEZIANO	Deputy Secretary-General
Ms Marina SCHNEIDER	Principal Legal Officer & Treaties Depository
Ms Priscila DE ANDRADE	Legal Officer
Ms Alexandra DELORME	Legal Consultant
Ms Xiatong JIAO	Senior intern
Mr Marc-André RENOLD	Emeritus Professor at the University of Geneva, UNESCO Chair in international law on the protection of cultural property, Co-Director Art-Law Centre of the University of Geneva
Ms Isabelle TASSIGNON	Consultant Fondation Gandur pour l'Art Geneva

**ANNEXE II****AGENDA**

1. Opening of the session and welcome by the UNIDROIT Deputy Secretary-General
2. Adoption of the draft agenda and organisation of the session (Study LXXB- W.G. 4 - Doc. 1 rev.)
3. Research Symposium on "Orphan Objects: Curatorial, Ethical, and Legal Aspects" (Study LXXB- W.G. 4 - Doc. 2 rev.)
4. Discussion on the draft Guidelines (Study LXXB- W.G. 4 - Doc. 5 and 6)
5. Proposal for a new Guideline on the scientific publication of orphan cultural objects (Study LXXB- W.G. 4 - Doc. 7)
6. Organisation of future work
7. Other business

## ANNEXE III

## DRAFT TEXT AS IT STANDS AFTER THE FOURTH SESSION OF THE WORKING GROUP

During the third session of the Working Group (17-19 March 2025), a sub-group presented a preliminary Draft Preamble for the Guidelines on Orphan Cultural Objects (see ANNEXE 1 of document UNIDROIT 2025 - Study LXXB – W.G.3 – Doc. 2)

<p><b>Guidelines as they stood at the <u>beginning</u> of the fourth Working Group session</b></p> <p>Elements in square brackets indicate a lack of consensus on the proposal.</p>	<p><b>Guidelines as they stood at the <u>end</u> of the fourth Working Group session</b></p> <p>Elements in square brackets indicate a lack of consensus on the proposition.</p>
<p><b>A. Definition of an [<del>orphan / insufficiently provenanced</del>] cultural object</b></p> <p><del>For the purposes of</del> The present Guidelines, <del>an orphan cultural object is</del> <u>apply to</u> movable cultural objects of importance, as defined in Article 2 of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, which <del>has</del> <u>has</u> <del>[no or]</del> incomplete provenance.</p>	<p><b>A. Definition of an [orphan cultural object]</b></p> <p>The present Guidelines apply to <del>movable</del> cultural objects <u>of importance</u>, as defined in Article 2 of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, <del>which has have no or incomplete provenance</del> <u>without reasonably well-established provenance</u>.</p>
<p><b>C. Due diligence</b></p> <ol style="list-style-type: none"> <li>1. Due diligence should be performed when the object is subject to a transfer or when the circumstances so require. Due diligence includes, but is not limited to, the criteria provided for in Article 4.4 of the 1995 UNIDROIT Convention. <del>Provenance research is part of the due diligence process.</del></li> <li>2. For the purposes of this Guideline, "transfer" shall mean a change in ownership, possession or physical location of the object <del>across international borders.</del></li> <li>3. Due diligence should be performed by public and private institutions, collectors and all actors dealing with cultural objects.</li> </ol>	<p><b>B. Due Diligence</b></p> <ol style="list-style-type: none"> <li>1. Due diligence should be performed when the object is subject to a transfer <del>or when the circumstances so require</del>. Due diligence includes, but is not limited to, the criteria provided for in Article 4.4 of the 1995 UNIDROIT Convention.</li> <li>2. For the purposes of this Guideline, "transfer" shall mean a change in ownership, possession or physical location of the object.</li> <li>3. Due diligence should be performed by public and private institutions, collectors and all actors dealing with cultural objects.</li> </ol>

<p>4. <del>If, after exercising due diligence, the object remains [orphan], further provenance research should be carried out. If, after exercising due diligence, the provenance of the object remains unknown or incomplete, continued attention should be given to the object and the provenance research should be considered ongoing.</del></p>	<p>4. If, after exercising due diligence, the provenance of the object remains unknown or incomplete, continued attention should be given to the object and the provenance research should be considered ongoing.</p> <p>5. <u>Certain categories of sensitive cultural objects require a heightened degree of due diligence, necessitating, among other actions, increased attention to provenance research. These categories of heightened sensitivity include</u></p> <ul style="list-style-type: none"><li>(a) <u>human remains, burial objects, objects of religious, ritual, sacred and traditional significance (as determined by the community of origin), and</u></li><li>(b) <u>archaeological objects.</u></li></ul>
--	---

<p><b>D. <u>Provenance Research</u></b></p> <ol style="list-style-type: none"> <li>1. Possessors of cultural objects should engage in provenance research <u>which is part of due diligence when... (to be completed during the next Working Group)</u></li> <li>2. Provenance research is the process of searching information related to the history and circulation of an object from its creation or discovery. Provenance research also endeavours to identify <del>that if</del> the object has been subject, in the past, to any illicit transfer or similar action.</li> <li>3. Provenance research should be conducted by an <del>independent</del> person who, considering all circumstances, has adequate technical knowledge and expertise in the relevant field, <u>taking into consideration existing standards, if any.</u></li> <li>4. The extent of provenance research depends on the specific case and the history of the object. It should aim to collect all reasonably obtainable documentation and information at the time of the search in order to evaluate <u>their authenticity,</u> provenance gaps, <u>and</u> undocumented transfers.</li> <li>5. The results are only relevant at the time the provenance research is conducted <del>and should be preserved and accompany any transfer of the object. They should be shared with any present or future possessor.</del></li> </ol>	<p><b>C. Provenance Research</b></p> <ol style="list-style-type: none"> <li>1. Possessors of cultural objects should engage in provenance research <del>which is part of due diligence when (...).</del></li> <li>2. Provenance research is the process of searching information related to the history, <u>context,</u> circulation, <u>ownership and current meaning</u> of an object from its creation or, <u>in the case of archaeological objects,</u> its discovery, <u>to its current location.</u> Provenance research also endeavours to identify if the object has been subject, in the past, to any illicit transfer or similar action.</li> <li>3. Provenance research should be conducted by a person who, considering all circumstances, has adequate <del>technical</del> knowledge and expertise in the relevant field, taking into consideration existing standards, <del>if any.</del></li> <li>4. The extent of provenance research depends on the specific case and the history of the object. <u>The provenance research</u> should aim to collect <u>and assess</u> all reasonably obtainable documentation and information at the time of the search in order to evaluate <u>provenance gaps and undocumented transfers. It should also aim to evaluate their authenticity of the object and of the available documentation.</u></li> <li>5. The results <del>are only relevant at the time the provenance research is conducted of the provenance research should be dated. Should additional information become available, the results of the provenance research could be reconsidered and supplemented or amended as relevant.</del></li> </ol>
<p><b>E. Evidence</b></p> <p><del>When transferring an orphan cultural object,</del> All elements relating to the provenance and due diligence performed are to be retained and shared. They should accompany the object <del>in</del> <u>at</u> any <u>time and be shared in case of a</u> transfer of it.</p>	<p><b>D. Evidence [Evidence in court Documentation/Results/Transparency]</b></p> <p><del>When transferring an orphan cultural object,</del> All elements relating to the provenance and due diligence performed are to be retained and shared <u>including with the community concerned.</u> They should accompany the object <del>in</del> <u>at</u> any <u>time and be shared in case of a</u> transfer of it.</p>

<p><b>F. Publicizing an [orphan cultural object]</b></p> <ol style="list-style-type: none"> <li>1. A person or institution possessing an [orphan cultural object] <del>can</del> <u>may</u> <u>subject submit</u> its <del>possession</del> to a publicizing process.</li> <li>2. This <del>will</del> <u>could</u> involve the physical and/or virtual presentation of the object on a platform specifically designed for this process.</li> <li>3. <u>[Respect should be given to the sensitivity of certain cultures.]</u></li> <li>4. <u>Issues connected with the provenance or due diligence of an [orphan cultural object] should be put before an [international advisory body].</u></li> </ol>	<p><b>E. Publicizing an [orphan cultural object]</b></p> <p>Not discussed</p>
<p><b>H. Dispute resolution</b></p> <p><u>In addition to the procedures normally available under national law,</u> the parties may agree to submit a dispute relating to the provenance or due diligence of an [orphan cultural object] <del>shall be resolved by</del> <u>to</u> negotiation, mediation, conciliation or international arbitration. <u>When resorting to such an alternative dispute resolution mechanism,</u> the parties <del>should agree to</del> <u>should</u> make all relevant information and documentation available.</p>	<p><b>F. Dispute resolution</b></p> <p>Not discussed</p>

**A new text on the scientific publication of an [orphan cultural object] has been proposed during the fourth session of the Working Group.**

No consensus was reached regarding its final insertion into the current drafted version of the Guidelines.

**[Scientific] Publication of an [orphan cultural object]**

1. Objects without an undocumented full provenance history or no provenance at all should be brought to the attention of the scientific community and to the public.
2. The publication of those objects should be [accompanied by/include] a [clear/direct] [reference/mention] to the fact that the object is fully or partially unprovenanced, to the absence of the object's documentation before the latest date known or the multiple provenance gaps identified, to the known or unknown date of the object's legal export from its [country of origin/source country], and to a contact referenced in case of additional information.
3. The publication of unprovenanced objects may not be used to replace, construct, or establish provenance, nor to encourage any transfer of the object. Any transfer of the object remains subject to the applicable provisions of the relevant conventions in the field.