



EN

GOVERNING COUNCIL
107th session
Rome, 27-29 May 2026

UNIDROIT 2026
C.D. (107) 8
Original: English
April 2026

Item No. 6 on the agenda: Private Art Collections – Orphan Objects

(prepared by the Secretariat)

<i>Summary</i>	<i>Report on the Private Art Collections – Orphan Objects project</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the activities carried out by the Secretariat and the progress made by the Working Group</i>
<i>Mandate</i>	<i>Work Programme 2026-2028</i>
<i>Priority level</i>	<i>High</i>
<i>Related documents</i>	<u>UNIDROIT 2025 – Study LXXB – W.G.4 – Doc. 8</u> ; <u>UNIDROIT 2025 – Study LXXB – W.G.5 – Doc. 2</u>

I. INTRODUCTION

1. The purpose of this document is to update the Members of the Governing Council on the development of the project on Private Art Collections – Orphan Objects since the 105th session of the Council in May 2025. It briefly recalls the background of the project (Section II), provides information on the Working Group, describes the ongoing discussion of the scope and content of the project (Section III), and proposes next steps (Section IV).

II. BACKGROUND

2. The subject of private art collections was first included in the 2017-2019 UNIDROIT Work Programme, with low priority, and some preparatory research was conducted. In 2022, the UNIDROIT Secretariat conducted additional work and identified orphan cultural objects – objects with no or incomplete provenance – as one topic in particular need of transnational legislative attention. The conclusions of the preparatory work led to the General Assembly's decision to maintain the private art collections project in the 2023-2025 Work Programme, with a focus on orphan cultural objects.

3. It was decided that this project would be undertaken in partnership with the Art-Law Centre of the University of Geneva and the *Fondation Gandur pour l'Art*. In light of this, the project was upgraded to medium priority,¹ and the Secretariat was authorised to finish the preparatory work and to convene a Working Group to develop a soft-law instrument aimed at developing criteria for cultural

¹ [UNIDROIT 2022 – A.G. \(81\) 9](#), para. 56.

objects lacking any provenance and/or presenting significant gaps in their provenance, with a view to avoiding their damage or disappearance, to the detriment of the history of art, science, and wider knowledge. A more detailed background of the project can be found in prior documents on the project.²

4. After being upgraded to medium priority in 2022, the project was further upgraded to high priority under the 2026-2028 Work Programme, and the Secretariat was authorised to continue convening the Working Group toward the development of a normative instrument.³

III. THE ACTIVITY OF THE WORKING GROUP SINCE THE 105th SESSION OF THE GOVERNING COUNCIL

A. Fourth session of Working Group (1-3 December 2025)

5. The fourth session of the Working Group was held in a hybrid format at the seat of UNIDROIT in Rome from 1 to 3 December 2025. This session started with a one-day Research Symposium on “Orphan Objects: Curatorial, Ethical, and Legal Aspects”.⁴ Multiple experts (including representatives of the art market and of Indigenous communities, as well as provenance researchers affiliated with national or government-funded organisations, non-profit organisations, and provenance research teams in cultural institutions) were invited to grapple with specific questions linked to the definition of orphan objects, the role of provenance research, its articulation with due diligence, or the status of orphan objects in art collections. The discussions at the Symposium were intended to inform the Working Group in consolidating a blueprint for the future guidance document.

6. The Working Group continued its consideration of the draft Guidelines in light of the presentations made during the Symposium and the documents prepared by the UNIDROIT Secretariat, addressing several important issues on which no consensus had been found in the previous sessions.⁵

7. A new Guideline was proposed, addressing the scientific publication of [orphan] cultural objects.⁶ The aim of this Guideline was to encourage the publication in scientific reviews of cultural objects lacking a complete provenance, as this was currently very limited (and even against the publication policy of some scientific journals) due to the fear of encouraging the creation of false provenance. After debating the potential scope, a proposal was made to insert the content of the proposed Guideline into the commentary to Guideline C, but the Working Group did not reach an agreement on its inclusion. Due to time constraints, Guidelines E (Publicising an [orphan cultural object]) and F (Dispute resolution) were not discussed during this session.

8. To not lose momentum, and to facilitate the discussions and finding consensus, the UNIDROIT Secretariat proposed to continue to work intersessionally in Sub-Groups on specific issues in advance of the fifth session.⁷

² See especially [UNIDROIT 2024 – C.D. \(103\) 7](#), paras 2-7.

³ [UNIDROIT 2025 – C.D. \(105\) 32](#), para. 197.

⁴ [UNIDROIT 2025 – Study LXXB – W.G.4 – Doc. 2 rev.](#)

⁵ [UNIDROIT 2025 – Study LXXB – W.G. 4 – Doc. 6.](#)

⁶ [UNIDROIT 2025 – Study LXXB – W.G. 4 – Doc. 7.](#)

⁷ [UNIDROIT 2025 – Study LXXB – W.G.4 – Doc. 8.](#)

B. Intersessional work

9. Members and observers of the Working Group had the possibility to choose which Sub-group(s) (maximum two) to participate in. The specific topics allocated were:

- *Sub-Group 1* – Search for an alternative term for “Orphan cultural object”;
- *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 on Evidence;
- *Sub-Group 5* – Guideline on scientific publication.

10. Each Sub-Group met several times before the fifth session and exchanged on specific issues, eventually refining the text of the black-letter rules and indicating references to be inserted in the commentary.

C. Fifth session of Working Group (23-25 March 2026)

11. The fifth Working Group session took place in hybrid format from 23 to 25 March 2026. The Working Group proceeded on the basis of a document prepared by the UNIDROIT Secretariat that reported the results of the intersessional work done in the five Sub-Groups mentioned above.⁸ The Working Group made significant progress and also discussed the issue of publicisation and dispute resolution (Guidelines E and F).

12. The Working Group also welcomed the participation of Prof. Kristen Carpenter, who shared her insights as Director of the American Indian Law Program at the University of Colorado Law School. She assisted in aligning the language used in the draft Guidelines regarding Indigenous Peoples with the relevant international legal instruments.⁹

1. Sub-Group 1 - [Orphan Cultural Object] - search for an alternative term

13. Sub-Group 1 was tasked with finding an alternative, acceptable term to designate the category of objects covered by the Guidelines, which has been the subject of continuous debate. To assist the Sub-Group, the UNIDROIT Secretariat prepared a document listing the terms proposed over the course of the sessions and identifying the arguments expressed in favour or against for each term: “orphan cultural objects”, “unprovenanced objects”, “undocumented objects”, “insufficiently provenanced”, or “incompletely documented provenance”.

14. Sub-Group 1 ultimately submitted the following four proposed terms¹⁰ to the Working Group for discussion: “orphan or incompletely documented cultural objects”; “undocumented or incompletely documented cultural objects”; “undocumented or incompletely documented ‘orphan’ cultural objects”; and “‘orphan’ or incompletely documented cultural objects”.¹¹

15. During the fifth Working Group meeting, some members wished to stick to the term “[orphan] cultural object”, as it was already used by art market professionals, while others were against using

⁸ [UNIDROIT 2025 – Study LXXB - W.G.5 - Doc. 2.](#)

⁹ In particular the [United Nations Declaration on the Rights of Indigenous Peoples, Resolution adopted by the General Assembly on 13 September 2007.](#)

¹⁰ The use of quotation marks in options 3 and 4 was proposed to indicate that the term was being used in a specific, non-standardised context.

¹¹ [UNIDROIT 2025 – Study LXXB - W.G.5 - Doc. 2](#), p. 2.

this term since they deemed it offensive to some. Ultimately, consensus was reached to opt for the fourth option, “‘orphan’ or incompletely documented cultural objects”.

2. Sub-Group 2 - Articulation between due diligence and provenance research (Guidelines B and C)

16. During the third and fourth sessions of the Working Group, members agreed that both notions were intrinsically linked and that due diligence needed to take place in case of a “transfer” and to be exercised before provenance research. The elements that triggered the carrying out of provenance research were still under discussion. Sub-Group 2 was therefore tasked with working on the articulation between the two notions and in particular on how often, or whether as an “ongoing” process, the provenance research should be conducted.

17. Sub-Group 2 met four times and submitted elements regarding the text of Guideline B. It discussed, in particular, the commentary accompanying the black-letter rule, specifically on the definitions of and articulation between due diligence and provenance research and the concept of “continued attention”.¹²

18. The Working Group discussed the definition of “transfer” and, in particular, the inclusion of the notion of change of physical location, as well as the elements triggering the exercise of due diligence and the carrying out of provenance research, as members wished to distinctly identify which parties had the duty to conduct it. The Working Group also extensively discussed the ongoing nature of provenance research.

3. Sub-Group 3 - Definition and criteria of a provenance researcher

19. The definition of a provenance researcher and the criteria that this definition should include were thoroughly debated during the fourth session of the Working Group. Paragraph 3 of Guideline C on Provenance research seeks to define the person who should conduct provenance research, notably as someone who “has adequate knowledge and expertise”, taking “existing standards” into consideration.

20. Sub-Group 3 tasked with discussing the professional or non-professional nature of a provenance researcher, reflecting on what constitutes “adequate knowledge and expertise”, and proposing a definition for the commentary. References to existing standards were also to be incorporated into the Guideline’s commentary.¹³

21. The Working Group discussed the submitted elements for the commentary to paragraphs 3 and 4 of Guideline C regarding the definition of a provenance researcher, the definition of “adequate knowledge”, examples of existing standards, and cases of good and bad provenance research (and their implications for legal doctrine).

22. Due to time being dedicated to other paragraphs from Guideline C, the elements submitted by Sub-Group 3 on the definition and criteria of a provenance researcher were not addressed during the session.

4. Sub-Group 4 - Guideline D (Evidence)

23. As there was originally a trio of Guidelines on “Applicable law, Evidence and Dispute resolution”, the recent deletion of the Guideline on Applicable law had consequences for the relevance of the two other Guidelines. The decision was then taken to revise the scope of Guideline D to address

¹² [UNIDROIT 2025 – Study LXXB - W.G.5 - Doc. 2](#), pp. 3-7.

¹³ *Id.*, pp. 7-16.

provenance elements concerning evidence submitted to a court and when provenance elements were shared with future possessors outside of court (for example, limitations that might occur in relation to passing on information).

24. Sub-Group 4 was tasked with further discussing this topic, clearly stating the intention of such a Guideline, proposing a new draft text and commentary, and ultimately proposing a new title. This new draft was to contain the conditions under which provenance research and due diligence information could be shared (regarding legitimate interest, legal restrictions, and privacy concerns), the person with whom provenance research and due diligence information could be shared, and what constituted acceptable proof of the due diligence and provenance research exercise.

25. The Working Group discussed the new proposed draft of Guideline D,¹⁴ which conceptualised provenance as a dynamic and cumulative informational history, structured around continuity and qualified transparency. It also discussed the draft commentary and adopted a new title: “Provenance documentation, information and transparency”.

26. Provenance information and documentation are grounded on three core normative pillars: (i) the principle of continuity, establishing a standard for systematic record-keeping; (ii) the principle of qualified transparency, understood as a calibrated standard that avoids both unjustified opacity and unrealistic demands for absolute disclosure; and (iii) the dynamic and evolutionary nature of provenance information and documentation, recognising that records may be reconsidered, revised, and supplemented as new archives, forensic methodologies, or advanced technologies, including artificial intelligence, become available. This three-pillar approach ensures that this Guideline encapsulates standards that are both technically robust and ethically responsive.

27. The members and observers of the Working Group were supportive of this new draft, and discussions on a possible reordering of some paragraphs ensued. The need to clearly define and differentiate provenance information from provenance documentation was also raised. Finally, the Working Group acknowledged the necessity to encourage the good practice of keeping all information as long as possible.

5. Sub-Group 5 - Guideline on Scientific publication– proposal to add the idea into the commentary to Guideline C

28. As no consensus had been reached during the fourth session of the Working Group regarding the proposal of inserting this new Guideline, Sub-Group 5 was asked to reflect on whether this Guideline should be inserted and explained in the commentary to Guideline C, and if so, how. After meeting one time, no agreement was found among the participants of the Sub-Group. Nonetheless, the Sub-Group further discussed the publicisation of an orphan object (Guideline F) beyond scientific publication, and in particular, the sharing of provenance results.

29. This Guideline was not addressed during the fifth session of the Working Group.

6. Guidelines not submitted to a Sub-Group

30. As Guidelines E (Publicising an [orphan cultural object]) and F (Dispute resolution) were not discussed during the fourth session of the Working Group, no associated Sub-Groups were created. However, these two Guidelines were discussed during the fifth session of the Working Group.

31. Regarding Guideline E (Publicising an [orphan cultural object]), the members discussed the core idea of creating a registry on which [orphan] cultural objects could be published. This publication system would encourage transparency and accessibility. The type of registry that could be used was

¹⁴ [UNIDROIT 2025 – Study LXXB - W.G.5 - Doc. 2](#), pp. 17-23.

also debated. The majority of the members seemed to favour a “notice-based” type of registry, with low or no control over the information posted. Some members and observers, however, seemed to prefer the addition of a vetting system before publishing an object in the registry. This would likely need to be done by legal experts or provenance researchers. Reservations were expressed regarding the expenses this vetting system and its maintenance would imply. Finally, some difficulties for accessing the registry were addressed, such as cultural and language barriers and internet proximity, notably for Indigenous populations. However, this possibility was deemed worthy of further consideration.

32. Concerning Guideline F (Dispute resolution), the promotion of settling claims through alternative dispute resolution was underlined. Some members of the Working Group questioned the necessity of having such a Guideline in the current draft but, ultimately, the Working Group did not reach a final decision.

IV. PROPOSED NEXT STEPS

33. Not having been addressed during the last session of the Working Group, the scientific publication of [orphan] cultural objects remains a key issue at the core of the discussions of the project. Linked with the notion of transparency, the sharing of information, and completing an object’s provenance, this theme represents an important part of the discussions of the Working Group and should be thoroughly addressed during the next session. Furthermore, the registry will be given thorough discussion in the next iterations of the draft instrument.

34. It was also decided that a Sub-Group would discuss the issue of dispute resolution during the intersessional period.

35. Due to the significant progress made, intersessional work within the Sub-Groups will continue to advance the development of the project. The Secretariat will also organise thematic workshops, for example on the potential registry (structure, maintenance, etc.) to facilitate the work and discussions of the next meeting of the Working Group.

36. It is proposed that the next session of the Working Group be held from 28 to 30 September 2026 (dates to be confirmed).

V. ACTION TO BE TAKEN

37. *The Governing Council is invited to take note of the activities carried out by the Secretariat and the progress made by the Working Group.*