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Summary Report

Item 1 of the agenda – Opening of the session and welcome by the UNIDROIT Secretariat

1. Professor Ignacio Tirado, *Secretary-General,* opened the fifth session of the Working Group, welcoming all participants (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. 5 - Doc. 1)

2. *The Secretary-General* indicated that Guideline D would be addressed before Guideline C in light of scheduling constraints (see document UNIDROIT 2026 – Study LXXB - W.G.5 - 2)

3. The Working Group adopted the revised draft agenda (see ANNEXE II).

Items 3, 4 and 5 of the agenda – Discussion on the proposals of the Sub-Groups on the Guidelines (B, C and D) and commentary (Study LXXB- W.G. 5 - Docs. 2)**, and on Guidelines A, E and F**

4. *The Secretary-General* explained that after the fourth session of the Working Group, five Sub-Groups had been created to discuss Guidelines, commentary, and specific key issues. Several of these Sub-Groups had met multiple times, for which summary reports had been drafted.

5. Document 2 highlights all the proposals submitted to the Working Group by each Sub-Group.[1] As for Sub-Group 4 on Guideline D "Evidence", it was clarified that they had proposed an entirely new draft text with more elaborate commentary. This document also highlighted key issues raised by the Working Group at previous meetings in order to be added to the commentary. Document 3 presented the observations submitted by Joanna van der Lande, who was unable to attend this session, and was shared with all the members and observers of the Working Group in advance.[2] Finally, the *Conseil des Maisons de Vente* also submitted comments, reproduced in Document 4.[3]

6. The Working Group first addressed the proposals submitted by the Sub-Groups on the alternative term for [orphan] cultural objects and Guidelines B, C, D and their commentary, and then turned to Guidelines A, E and F, which were not the object of a Sub-Group. The text of the Guidelines,

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1 UNIDROIT 2026 - Study LXXB - W.G.5 - Doc. 2.
2 UNIDROIT 2026 - Study LXXB - W.G.5 - Doc. 3.
3 UNIDROIT 2026 - Study LXXB - W.G.5 - Doc. 4.

as it stood at the beginning and the end of the fifth session of the Working Group is reproduced in ANNEXE III.

Alternative term for "orphan" cultural objects

7. The Working Group examined the proposals submitted by Sub-Group 1 concerning a possible alternative terminology for "orphan cultural objects", as no consensus had been reached on the use of this term. Discussions focused on whether the term "orphan" should be retained, replaced, or qualified by additional wording to reflect the incomplete nature of available provenance information.

8. *Some members and observers* supported retaining the term "orphan cultural objects", noting that it was already used in practice by collectors and within the art market and that it conveyed the idea of cultural objects whose history was unknown or only partially established. It was nevertheless emphasised that the term should not suggest that such objects were inherently problematic, illicit, or tainted. In this regard, the use of quotation marks around "orphan" was proposed as a way to acknowledge the term's existing use while distancing it from its ordinary meaning.

9. *Other members and observers* raised concerns regarding the appropriateness of the term. It was noted that "orphan" had a specific meaning in other fields, including intellectual property law, and might lead to confusion when applied in the context of cultural heritage. Concerns were also expressed that the term could unnecessarily anthropomorphise cultural objects or create sensitivities among communities of origin, as cultural objects might embody historical, cultural, and ancestral significance rather than an absence of belonging.

10. The importance of ensuring consistency with the objectives of the project and with the approach of the 1995 UNIDROIT Convention was also highlighted. *Several members* stressed that the Guidelines should avoid implying that undocumented provenance automatically indicated illicit circulation, as the absence of documentation did not, in itself, establish a problematic history.

11. In an effort to reach a compromise, several formulations were considered. The main options discussed included:

- "'Orphan' or incompletely documented cultural objects";
- "Undocumented or incompletely documented cultural objects"; and
- "Undocumented or incompletely documented 'orphan' cultural objects".

12. Support was expressed for retaining a reference to "orphan" cultural objects, provided that the term was qualified and placed in quotation marks. This approach was seen as preserving the familiarity of the term while clarifying that it referred to a category of objects lacking complete documentation rather than to objects presumed to be illicit.

13. Conversely, *some members* favoured removing the term entirely and using a terminology centred on the documentary status of the object. In particular, "undocumented or incompletely documented cultural objects" was considered clearer and more accessible, as it directly reflected the factual situation addressed by the Guidelines and avoided potentially misleading connotations.

14. The Working Group also discussed whether "incompletely documented" should be replaced by "insufficiently documented". While the latter was considered by some to better reflect the idea that the available information might not meet the needs of provenance research, concerns were raised that "insufficient" could introduce a subjective assessment requiring a determination of what level of documentation should be considered adequate.

15. It was further noted that the majority of cultural objects did not have a fully documented history, and that the term "incompletely documented" should therefore not imply that such objects were exceptional. Rather, it described an objective situation at a given moment in time, where provenance information might exist but remained incomplete.

16. Following further discussion, the Working Group recognised that "documented" and "undocumented" were more appropriate concepts than "provenanced" and "unprovenanced", since all cultural objects have a provenance, even when that provenance was not recorded or available. The distinction between a lack of documentation and an illicit history was reiterated.

17. Ultimately, a broad majority supported retaining a reference to "orphan" cultural objects while placing emphasis on their documentary status. The preferred formulation was therefore "'Orphan' or incompletely documented cultural objects", with the possibility of noting in Guideline A that such objects might also be referred to as "orphan" cultural objects. This approach was considered to balance practical usage, legal clarity, and sensitivity towards communities of origin.

Guideline A. Definition of an [orphan / incompletely documented] cultural object

Text as it stood at the end of the fourth session of the Working Group –	**Text as it stood at the end of the fifth session of the Working Group –**
A. Definition of an [orphan cultural object] The present Guidelines apply to ~~movable~~ cultural objects ~~of importance~~, as defined in Article 2 of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, ~~which has have no or incomplete provenance~~ without reasonably well-established provenance.	**A. Definition of an [orphan cultural object]** The present Guidelines apply to cultural objects of importance, as defined in Article 2 of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, without reasonably well-established provenance.

18. *Guideline* A was not specifically addressed during the fifth session of the Working Group. However, *an observer* reflected on the previous deletion of the term "of importance", referring to cultural objects of importance as defined in Article 2 of the 1995 UNIDROIT Convention. He moved for the reinstatement of the term in Guideline A, explaining that even though "of importance" was already in the definition of Article 2 of the Convention, its repetition was necessary to clarify the scope of cultural objects covered by these Guidelines.

19. This proposal found agreement within the Working Group. It was stressed that this reference would also serve the purpose of avoiding introducing ambiguity and raising questions about thresholds of importance.

Guideline B. Due diligence

Text proposed by Sub-Group 2 in view of the fifth session of the Working Group –	**Text as it stood at the end of the fifth session of the Working Group –**
B. Due Diligence 1. Due diligence should be performed when the object is subject to a transfer. Due diligence includes, but is not limited to, the criteria provided for in Article 4(4) of the 1995 UNIDROIT Convention.	**B. Due Diligence** 1. Due diligence should be performed when the object is subject to a transfer. ~~Due diligence includes, but is not limited to, the criteria provided for in Article 4.4 of the 1995 UNIDROIT Convention.~~

2. For the purposes of this Guideline, “transfer” shall mean a change in ownership, possession or physical location of the object. 3. Due diligence should be performed by public and private institutions, collectors and all actors dealing with cultural objects. 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 [could] be considered ongoing. 5. Certain categories of sensitive cultural objects require a heightened degree of due diligence, necessitating, among other actions, increased attention to provenance research. These categories include (a) human remains, burial objects, objects of religious, ritual, sacred and traditional significance (as determined by the community of origin), and (b) archaeological objects.	2. For the purposes of this Guideline, “transfer” shall mean, as appropriate, a change in ownership, possession or physical location of the object. 3. [Due diligence should take into account, but is not limited to, the [elements] [circumstances][criteria] of Article 4(4) of the 1995 UNIDROIT Convention and [include elements of information shared with provenance research as appropriate in the circumstances].] 4. Due diligence should be performed by parties involved in or benefiting from a transfer, such as purchasers, owners, possessors, dealers, sellers and auction houses ~~public and private institutions, collectors and all actors dealing with cultural objects~~. 5. If, after exercising due diligence, the provenance of the object remains unknown or incomplete, the provenance research [is] ~~should~~ [could] be considered ongoing. 6. Certain sensitive categories of ~~sensitive~~ cultural objects may require a heightened degree of due diligence, necessitating, among other actions, increased attention to provenance research. These categories include but are not limited to (a) human remains, burial objects, objects of religious, ritual, sacred ~~and~~ or traditional significance (as determined by the community of origin and Indigenous Peoples), and (b) archaeological objects and paleontological objects.

Paragraph 1

20. The Working Group considered the revised draft of Guideline B on due diligence prepared by Sub-Group 2. Discussion initially focused on paragraph 1, which sought to define due diligence by reference to Article 4 of the 1995 UNIDROIT Convention. Questions were raised regarding the reference to the criteria contained in Article 4(4) without distinguishing between different categories of cultural objects. The Working Group also examined the use of the term “should”, noting that it appeared to introduce a moral dimension and could be interpreted as implying an obligation.

21. A substantial part of the discussion concerned the relationship between due diligence and provenance research. Divergent interpretations emerged regarding conclusions reached during previous sessions of the Working Group. *Some members and observers* considered that an understanding had been reached during the third session that due diligence should be conducted before any provenance research was undertaken.[4] According to this view, provenance research would only arise where due diligence revealed risks, inconsistencies, or other indicators requiring further investigation.

[4] UNIDROIT 2026 - Study LXXB - W.G.5 - Doc. 2, para. 13.

22. Supporters of this approach emphasised that due diligence and provenance research should be regarded as distinct processes serving different purposes. In their view, due diligence was a defined and demonstrable process aimed at determining whether a cultural object may legitimately be transferred, acquired, donated, inherited, or otherwise dealt with. Provenance research, by contrast, was described as a subsequent and more extensive inquiry into the history of an object. It was argued that due diligence did not necessarily require provenance research in every case and that provenance research should only be undertaken when due diligence identified issues that warranted deeper examination.

23. This position was also linked to the understanding of due diligence as a compliance mechanism. From this perspective, due diligence served to establish whether an object was available for transfer and whether the relevant legal and factual requirements had been satisfied. If new information emerged after a due diligence exercise had been completed, such information would operate as a warning sign requiring reassessment. Only where the new information called into question the provenance of the object would additional provenance research become necessary. Conversely, if renewed due diligence confirmed that the object remained eligible for transfer or acquisition, no further provenance research would be required. Proponents of this approach therefore viewed due diligence primarily as a tool for compliance and risk management, while provenance research was understood as a means of expanding knowledge about an object's history.

24. Further clarification was provided regarding the conceptual distinction between the two notions. Due diligence was characterised as a transactional process that could be completed and demonstrated, whereas provenance research was described as inherently open-ended and ongoing. It was observed that provenance research could continue indefinitely as new sources, evidence, or interpretations became available. It could be initiated in a variety of contexts and often require different resources, expertise, and objectives from those associated with due diligence. For these reasons, concerns were expressed regarding the complete integration of provenance research into due diligence, as such an approach could blur the distinction between a finite process and one that is by nature continuous.

25. An alternative position strongly supported a closer connection between the two concepts. According to this view, provenance research should be regarded as an integral component of due diligence[5] rather than as a separate subsequent activity. Supporters of this interpretation argued that the Working Group had previously reached a broad understanding that provenance research formed part of due diligence. They also considered that Article 4(4) of the 1995 UNIDROIT Convention already encompassed research into provenance, understood as investigation of an object's history.

26. This interpretation was, however, contested. It was argued that the Convention's reference to "research on provenance" should not be equated with the contemporary concept of provenance research. *Members and observers* noted that provenance research had developed considerably since the drafting of the Convention and had evolved into a specialised field with methodologies and practices that did not exist in their current form at that time. In response, *others* maintained that while the methods and tools available for conducting due diligence might have evolved, the underlying concept of due diligence itself has remained constant.

27. Those advocating an integrated approach pointed to the transactional language of Articles 4(1) and 4(4) of the 1995 UNIDROIT Convention referring to acquisition, donation, and inheritance. They argued that several of the criteria listed in Article 4(4) corresponded to activities that were now commonly regarded as elements of provenance research. On this basis, they considered provenance research to be embedded within the due diligence process. It was further suggested that aligning the Guidelines closely with the terminology and approach of the 1995 UNIDROIT Convention would promote consistency and coherence across UNIDROIT instruments.

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5 UNIDROIT 2026 - Study LXXB - W.G.5 - Doc. 2, ANNEXE 1, para. 24.

28. To reflect this position, proposals were advanced to strengthen the connection between the two concepts in the text of Guideline B. Suggested formulations included stating that "Due diligence, of which provenance research forms an integral component, should be performed when the object is subject to a transfer"[6] and, alternatively, adding a separate sentence providing that "Provenance research constitutes an integral element of due diligence." *Other members and observers* proposed more nuanced language that would recognise provenance research as an integral part of due diligence where appropriate, while preserving the conceptual distinction between the two processes.

29. The discussion also addressed situations in which due diligence should be undertaken. Questions were raised as to whether limiting due diligence to cases involving transfers was too restrictive. *Some members* noted that circumstances unrelated to a transfer of ownership could also justify or require due diligence. At the same time, it was observed that due diligence under the 1995 UNIDROIT Convention was closely linked to transactional contexts, including acquisition, donation, and inheritance.

30. The Working Group therefore considered broadening the scope of paragraph 1 by clarifying that due diligence should be performed not only when an object was subject to a transfer of ownership or possession but also when there was a change in its physical location. It was suggested that the accompanying commentary should explain the distinction between transfers of ownership, transfers of possession, and changes in the location of cultural objects.

31. Comparative legal examples were also introduced to illustrate the broader legal significance of due diligence. Reference was made to the Dutch Civil Code[7] and the German Act on the Protection of Cultural Property,[8] both of which recognised due diligence as a legal obligation. Particular attention was drawn to the German framework, which differentiated between "reduced and increased due diligence requirements". The heightened standard was noted to include an obligation for sellers to investigate provenance when placing cultural property on the market. These examples were cited as evidence that due diligence was widely recognised as an established legal concept, even though the precise relationship between due diligence and provenance research might vary.

32. The Working Group further observed that provenance research could both support and challenge the results of a due diligence exercise. By uncovering new information or by reinterpreting existing evidence, provenance research could either confirm conclusions reached through due diligence or cast doubt on them. This was considered particularly relevant in relation to documentation, ownership history, and import records. It was therefore suggested that the commentary should explain the areas of overlap between due diligence and provenance research, as well as the ways in which each process might influence the other.

33. In the course of revising the draft text, *members and observers* proposed several modifications to paragraph 1. One suggestion was to incorporate language from paragraph 2 into the opening sentence so that the Guideline would apply "when an object is subject to a transfer of ownership or possession, or to a change in physical location". It was further suggested that the commentary would establish the difference between transfer of ownership and possession, or physical possession, and the change in the location of the objects. Another proposal sought to reformulate the second sentence to provide that "due diligence, of which provenance research might be an integral part where appropriate, includes, but is not limited to, consideration of the circumstances provided for in Article 4(4) of the 1995 UNIDROIT Convention".

34. Following extensive discussion, consensus emerged on one drafting issue. The Working Group agreed that the sentence referring to Article 4(4) of the 1995 UNIDROIT Convention should be removed from paragraph 1 and relocated to paragraph 3. This solution was considered preferable from a

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6 UNIDROIT 2026 - Study LXXB - W.G.5 - Doc. 2, p. 19, para. 73.

7 *Burgerlijk Wetboek* (Dutch Civil Code), Article 3:87 *Obligation to provide information about the alienator*.

8 *Kulturgutschutzgesetz - KGSG* (German Act on the Protection of Cultural Property), sections 41, 42 and 43.

structural perspective and helped separate the definition of due diligence from the detailed criteria relevant to its assessment.

Paragraph 2

35. The Working Group continued its discussion by examining the meaning and scope of the term "transfer" and its implications for the application of due diligence requirements. *Members and observers* sought clarification on the situations intended to be covered by this concept, particularly in cases involving changes in physical location or possession without a corresponding transfer of ownership.

36. Questions were raised regarding whether temporary or long-term loans of cultural objects would require a reassessment of due diligence. Similar concerns were expressed with respect to relocation of objects within the same jurisdiction where no change in ownership or formal transfer of title occurred. In this regard, it was recalled that previous discussions had suggested clarifying through the commentary that the concept of "transfer" should apply to both domestic and cross-border situations.

37. The Working Group observed that changes in location might be particularly relevant in cross-border contexts, where legal and regulatory requirements were more likely to be engaged. International movements of cultural objects involved the allocation of responsibilities and risks between different parties and therefore might justify the application of due diligence measures. However, the Working Group also considered situations where objects remained under the ownership of the same person or institution but were relocated, including within a country.

38. The discussion also addressed whether due diligence should apply where there is no change of ownership or possession but only a relocation of the object, including cross-border movement by the same owner. While routine movements were not considered to automatically require a new due diligence assessment, it was noted that longer-term relocations or movements involving different jurisdictions could justify a review. Such situations might affect future provenance research, expose objects to different legal frameworks, or trigger cultural heritage restrictions requiring prior checks.

39. Examples were provided of artworks transported across international borders, where applicable import, export, or cultural heritage rules might require verification even in the absence of a transfer of ownership. It was also noted that a change in the physical location of an object by the same owner, including within a single country, could in certain circumstances justify the exercise of due diligence.

40. A different view was expressed against extending due diligence requirements to situations involving only a change in physical location without any transfer of title. According to this position, the concept of due diligence reflected in Article 4(4) of the 1995 UNIDROIT Convention was closely connected to the acquisition of ownership. On this basis, *some members and observers* suggested that the application of due diligence should remain limited to situations involving a transfer of ownership.

41. The Working Group also considered transfers of possession connected to a future transfer of ownership, including situations where a private collector consigned an object to a dealer or auction house for sale. Although such arrangements involved only a temporary transfer of possession, it was noted that they were directly linked to a subsequent transfer of title. In practice, due diligence was often undertaken at this stage in preparation for a potential sale. It was therefore suggested that, particularly in the context of private collections, such situations could justify the application of due diligence.

42. The question of responsibility for carrying out due diligence in such circumstances was also discussed. It was observed that responsibility might depend on the allocation of risks and obligations between the parties under the relevant contractual arrangements. However, caution was expressed

regarding leaving this issue entirely to contractual arrangements, since the purpose of the Guidelines was to establish general standards of good practice rather than merely reflect private agreements.

43. To address the various situations discussed, a drafting proposal was introduced suggesting that "due diligence should apply when an object is subject to a change in ownership or possession, or, as appropriate, a change in physical location". The inclusion of the phrase "as appropriate" was intended to provide flexibility and recognise that different situations might require different levels of due diligence.

44. In this context, participants supported the use of qualifying language such as "as appropriate" to allow for a differentiated application of due diligence. It was suggested that the commentary should clarify that a change in physical location, particularly where the object remains under the same ownership, would not necessarily require the full due diligence process contemplated under Article 4(4) of the 1995 UNIDROIT Convention. In the latter circumstances, the relevant requirement could consist primarily of ensuring the communication, disclosure, or availability of existing information concerning the object.

45. The Working Group further examined whether a change from private storage or non-display status to public exhibition could constitute a situation requiring due diligence. Some concerns were raised regarding the practical consequences of such an interpretation, particularly for smaller institutions holding long-standing collections. It was considered unrealistic to require systematic provenance research for all objects whenever they were placed on public display. At the same time, it was acknowledged that objects entering a public display context and becoming accessible to a wider audience might generate higher expectations regarding transparency, due diligence, and, where appropriate, provenance research.

New Paragraph 3

46. Following the discussion on the structure of Guideline B, the Working Group agreed that the second sentence of paragraph 1 should be moved to a new paragraph 3. This restructuring was intended to ensure that paragraph 1 would focus exclusively on the definition and general scope of due diligence, while the new paragraph 3 would address the factors or elements to be considered when assessing whether due diligence had been properly exercised.

47. The proposed wording of the new paragraph 3 provided that: "the criteria to be taken into account when exercising due diligence shall include, but are not limited to, those provided for in Article 4(4) of the 1995 UNIDROIT Convention".

48. *An observer* raised concerns regarding the use of the term "criteria", noting that the terminology used in Article 4(4) of the 1995 UNIDROIT Convention referred instead to the requirement that "regard shall be had to all the circumstances". It was suggested that the wording should more closely reflect the Convention's approach provided that, in determining whether due diligence had been exercised, regard should be given, without limitation, to the circumstances identified in Article 4(4).

49. The Working Group subsequently considered two alternative drafting proposals for the new paragraph. The first proposal referred to the "criteria" or "circumstances" to be taken into account when exercising due diligence, specifying that these should include, but were not limited to, those listed in Article 4(4) of the 1995 UNIDROIT Convention. This proposal also sought to include a reference to the extent of provenance research carried out in connection with the due diligence process.

50. The second proposal provided that due diligence should take into account, without limitation, the elements, circumstances, or criteria referred to in Article 4(4) of the 1995 UNIDROIT Convention, and should include relevant information obtained through provenance research where appropriate in the circumstances.

51. After extensive discussion, a majority of the Working Group expressed support for the second proposal ("Due diligence should take into account, but is not limited to, the [elements][circumstances][criteria] of Article 4(4) of the 1995 UNIDROIT Convention and [include elements of information shared with provenance research as appropriate in the circumstances]"). However, *some members and observers* maintained reservations concerning the inclusion of language suggesting that provenance research constituted an integral component of due diligence. In particular, the previous divergence of views regarding the relationship between due diligence and provenance research remained unresolved.

52. As no consensus was reached on either the broader policy question or the final drafting of the provision, it was agreed that the issue would require further consideration and that the different positions could be revisited during the intersessional period.

Paragraph 4 (Former Paragraph 3)

53. The Working Group continued its discussion by examining the actors responsible for carrying out due diligence. The former version of paragraph 3 of Guideline B provided that due diligence should be performed by "public and private institutions, collections, and all actors dealing with cultural objects". The discussion focused on whether this wording was sufficiently precise and on the scope of persons or entities that should be considered responsible for exercising due diligence.

54. *An observer* proposed replacing the reference to specific categories of actors with the broader formulation "all actors", considering that the term "possessor" or similar narrower concepts would not adequately reflect the range of persons involved in transactions concerning cultural objects. In this context, attention was drawn to the distinction between ownership and possession, as the two concepts did not necessarily coincide.

55. The Working Group also considered comparative legal approaches. *An observer* explained that, in China, concepts such as public and private institutions had a broad meaning. As an example, he mentioned the Law on the Protection of Cultural Relics,[9] which required museums to exercise reasonable care by verifying the legitimacy of cultural relics before acquisition or solicitation. However, this obligation did not amount to an expressly defined mandatory due diligence requirement. Rather, it reflected a standard closer to the reasonable person approach found in tort law. In comparison, Article 4(4) of the 1995 UNIDROIT Convention established a more specific and demanding standard of due diligence.

56. In this regard, it was observed that a prospective acquirer would generally be expected to conduct due diligence before completing an acquisition. Given concerns that the term "possessor" alone might be insufficiently broad, a proposal was made to refer to both the current possessor and the prospective possessor or owner.

57. A revised formulation was subsequently proposed, providing that "due diligence should be performed by public and private institutions, collectors, and possessors dealing with cultural objects". This wording raised further discussion regarding the relationship between possession and ownership. It was noted that not all possessors were owners and that borrowers, for example, might hold possession without holding title. Conversely, ownership referred to the legal title over the object, which might be separated from physical possession. In light of the transactional context of due diligence, it was suggested that the provision could refer instead to purchasers, buyers, owners, and possessors.

58. *The Secretary-General* questioned whether the explicit mention of owners and possessors would overlap with paragraph 2, which defined situations triggering due diligence, including changes in ownership or possession. It was clarified that paragraph 2 addressed the circumstances calling on the need for due diligence, whereas paragraph 4 identified the persons expected to carry out the

[9] Law of the People's Republic of China on the Protection of Cultural Relics, Article 52(3).

exercise. It was agreed that references to "buyers" and "possessors" largely addressed the same group of actors and that unnecessary duplication should be avoided.

59. *Several participants* emphasised the need to clarify the intended addressees of the provision. It was noted that the obligation should not extend indiscriminately to all persons connected with an object, such as transport providers or other parties involved only in handling the object. Instead, the focus should remain on actors who were directly involved in acquiring, transferring, or otherwise dealing with the object in a manner that created a responsibility to verify its status.

60. The Working Group also considered whether the list of responsible actors should include persons who were not directly involved as buyers, owners, or possessors. *A member* highlighted the example of financial institutions holding cultural objects as collateral in the context of secured transactions. Such institutions might have a legal or economic interest in the object but would not necessarily be owners, buyers, or possessors. It was suggested that this issue could be addressed in the commentary rather than through an exhaustive list of addressees in the operative provision.

61. The Working Group further emphasised that narrowing the list of actors responsible for due diligence should not be confused with the broader question of who might contribute to provenance research. Provenance research might involve a wider range of stakeholders, including experts, researchers, and other persons with relevant information.

62. In this context, discussion focused on the role of dealers, auction houses, intermediaries, and lenders. It was noted that auction houses and similar actors might bear contractual responsibilities towards the parties involved and might therefore have an important role in ensuring that due diligence was carried out. *Some members* favoured a neutral formulation referring generally to "the relevant parties to the transaction". *Others* supported expressly mentioning categories such as dealers, sellers, purchasers, and auction houses to reflect their practical involvement in the market for cultural objects.

63. *An observer* suggested replacing the reference to "both parties" with "parties involved in any transfer", in order to avoid limiting the provision to only two actors. Further proposals suggested referring either to "all parties" or to "parties involved in or benefiting from a transfer", thereby recognising that responsibility might extend beyond the immediate parties where other actors had a legitimate interest in the transfer.

64. Following the discussion, the Working Group adopted a formulation providing that due diligence should be performed by "parties involved in or benefiting from a transfer, such as purchasers, owners, possessors, dealers, sellers and auction houses". This wording was intended to provide flexibility while identifying the principal actors expected to exercise due diligence in connection with transfers of cultural objects.

Paragraph 5 (Former Paragraph 4)

65. The Working Group examined the former paragraph 4 of Guideline B, now renumbered Paragraph 5, which addressed the relationship between due diligence, provenance research, and the need for continued attention vis-à-vis the object. Sub-Group 2 presented a revised draft proposing the deletion of the phrase "continued attention should be given to the object". The rationale for this change was to avoid suggesting that an object should be subject to a presumption of concern or that an unresolved issue necessarily existed merely because further attention was required.

66. *A member of Sub-Group 2* explained that extensive discussion had taken place regarding the choice between the terms "should" and "could" in the paragraph. It was noted that the two terms could carry different implications, particularly in relation to whether the provision created an obligation or merely indicated a possibility.

67. *An observer* supported the use of "could", considering that this formulation would better reflect the discretionary nature of the assessment. However, *other participants* favoured maintaining "should", noting that this wording would be more consistent with the approach adopted in Article 4(1) of the 1995 UNIDROIT Convention.

68. The Working Group also discussed whether the word "considered" should be removed from the paragraph. One proposal suggested that provenance research should be understood as an ongoing process rather than merely something to be considered. However, concerns were raised regarding the establishment of any general requirement to conduct provenance research continuously without identifying the circumstances that would justify such action.

69. The Working Group emphasised that the need for further provenance research might depend on the nature of the object and the information already available. Certain categories of cultural objects might present lower risks and might have sufficiently documented histories, meaning that additional provenance research would not necessarily be required. In such cases, a conclusion could be reached that the existing information was adequate and that no further investigation was necessary.

70. *A member* expressed disagreement with removing the reference to "considered", explaining that, from an archaeological perspective, the provenance of many cultural objects would inevitably remain incomplete. He supported a priority-based approach, recognising that the volume of cultural objects requiring consideration made continuous provenance research impractical. According to this view, the Guidelines should provide guidance on how to assess different levels of need rather than suggesting that provenance research must always continue.

71. *Another member* supported the idea of prioritisation, noting that a gap in the provenance history of an archaeological object might raise different concerns from a gap relating to a nineteenth-century painting with a different historical context and evidentiary background. *The Secretary-General* questioned whether the wording could instead indicate that provenance research "should be deemed ongoing", which would avoid creating an absolute obligation while recognising that further investigation might remain relevant depending on the circumstances of the object.

72. A further drafting proposal was introduced by *an observer*, suggesting that where, after the exercise of due diligence, the provenance of an object remained unknown or incomplete, consideration should be given to whether due diligence could only be properly fulfilled through the undertaking of provenance research. This proposal sought to emphasise that the outcome of due diligence should determine whether additional provenance research was necessary, rather than automatically requiring it in every case.

73. The Working Group did not reach consensus on this proposal. The discussion therefore remained focused on finding an appropriate balance between recognising the ongoing nature of provenance research and avoiding the creation of an unrealistic or disproportionate obligation.

74. The final draft of paragraph 5 was formulated as follows: "If, after exercising due diligence, the provenance of the object remains unknown or incomplete, the provenance research [is] [could] be considered ongoing."

Paragraph 6 (Former Paragraph 5)

75. The Working Group examined the former Paragraph 5 of Guideline B, now renumbered Paragraph 6, concerning categories of cultural objects requiring particular attention in the context of due diligence obligations.

76. A general agreement was expressed on the importance of retaining this provision within the Guideline. The discussion highlighted the need to recognise that certain categories of cultural objects presented specific concerns and therefore required particular consideration when conducting due diligence.

77. *An observer* questioned the use of the expression "sensitive cultural objects", arguing that the sensitivity did not necessarily relate to the individual object itself but rather to the category to which the object belonged. It was therefore proposed to refer instead to "sensitive categories of cultural objects" requiring a heightened level of due diligence.

78. The Working Group discussed the categories of objects that should fall within this provision. *Some members* observed that the current categories appeared to overlap and that clearer distinctions would be necessary to ensure that each category received appropriate attention and that the corresponding level of due diligence was properly assessed.

79. *Other members* noted that the distinction between categories also raised ethical considerations. In particular, an object that might appear legally unproblematic from the perspective of provenance could nonetheless raise concerns from an ethical perspective. It was therefore questioned whether all categories should be considered according to the same hierarchy of importance or whether different levels of concern should be recognised.

80. *The Secretary-General* explained that, from the perspective of soft law, the purpose of the provision was to establish that certain categories of objects required a higher standard of due diligence. Where national legislation did not reflect such a standard, it would not be aligned with the Guidelines. The provision was therefore intended to promote greater caution and encourage enhanced scrutiny in specific situations.

81. The Working Group considered whether the Guideline should explicitly state that some categories were more sensitive than others and therefore required greater caution, without necessarily creating a separate heightened standard of due diligence.

82. *Some members* expressed concern that the current wording could imply that every object that fell within the listed categories automatically required the same increased level of investigation, even though not all such objects would necessarily present a risk.

83. The complexity of defining sensitive categories was further discussed. *Members* noted that the sensitivity of an object might depend on various factors, including the historical period concerned, geopolitical circumstances, and the location from which the object originated. For this reason, the Working Group considered that it would not be appropriate to establish a definitive or closed list of sensitive categories in the Guidelines.

84. The Working Group decided not to attempt to enumerate all possible categories in the text itself, as this could make the provision excessively detailed. Instead, additional explanation could be provided in the commentary, including examples of categories recognised under international instruments.

85. To preserve the general structure of the provision, the Working Group agreed to retain the two existing sub-categories while adding the wording "these categories may include" to clarify that the list was illustrative rather than exhaustive.

86. The commentary would explain that the identification of sensitive categories depended on the circumstances, the nature of the object, and the likelihood that the object might have been unlawfully or forcibly acquired, removed, or transferred from its country of origin.

87. *An observer* questioned whether the reference to a "heightened degree of due diligence" was appropriate, as not every object included in the list would necessarily constitute a risk object. Three possible approaches were proposed: (1) deleting Paragraph 6 entirely and addressing the issue only in the commentary; (2) retaining Paragraph 6 but removing the reference to a heightened degree of due diligence; (3) maintaining the current wording.

88. A proposal was also made to address objects connected with colonial contexts or objects acquired through unjustifiable or unethical means. Following discussion, it was suggested that the commentary could encourage particular attention to objects removed in circumstances involving power imbalances, conflict, or comparable situations.

89. *Another member* supported moving Paragraph 6 into the commentary, arguing that the commentary could better explain the distinctions between categories and the possible levels of due diligence required. However, *other members* disagreed, stressing that the principle itself should remain in the Guideline and not be transferred entirely to the commentary.

90. It was also noted that if most of the categories listed in the commentary were subject to heightened scrutiny, the provision would no longer operate as an exception or specific rule but would simply become part of the general explanation.

91. The Working Group therefore rejected the deletion proposal and agreed on retaining Paragraph 6 in the Guideline while clarifying its illustrative character through the wording "these categories may include".

92. Regarding sub-category (a), it was proposed that the word "and" before "traditional significance" should be replaced with "or". The reasoning was that an object would not necessarily need to meet all listed criteria in order to fall within the category.

93. *An observer* also suggested that this paragraph could refer to Article 3(8) of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.

94. The category of human remains was specifically discussed. *An observer* proposed separating human remains from objects of religious, ritual, and sacred significance, as human remains were subject to distinct legal treatment. This proposal received support from several members. The Working Group agreed, however, that the term "human remains" should remain in the paragraph, while the commentary should clarify that certain categories of human remains could not legally be sold and that ownership or legal title could not be acquired over them.

95. The phrase "as determined by the community of origin" was also examined. *An observer* questioned the meaning of "community", explaining that the term might be understood primarily in an ethical or cultural sense and might not adequately cover objects associated with religious or sacred functions outside a clearly defined community structure. Reference was made to legal examples showing that religious groups and religious legal systems might have their own understanding of sacred or ritual objects and their own rules governing their transfer. It was therefore suggested that the concept of "community" should be interpreted broadly enough to include religious groups regardless of their organisational form. A proposal was made to refer to "the relevant community or organisation". However, no consensus was reached on this wording.

96. The Working Group also discussed the possible inclusion of the term "Indigenous Peoples". It was noted that this terminology differed from concepts such as "local communities", "Indigenous communities", or "populations".[10] International instruments, including the United Nations Declaration on the Rights of Indigenous Peoples,[11] alongside the Expert Mechanism on the Rights of Indigenous Peoples Study on Repatriation 2020,[12] recognised Indigenous Peoples as holders of rights linked to self-determination and their own laws, customs, and traditions. The discussion emphasised that normative systems of Indigenous Peoples might be relevant when determining whether an object was sacred, whether it might be transferred, and whether it had been removed without free, prior, and informed consent or contrary to Indigenous laws and traditions.[13]

97. The Working Group then considered sub-category (b), concerning archaeological objects. *Members* discussed whether particular attention should be given to archaeological objects originating from conflict areas. While there was general agreement that this issue deserved recognition, disagreement remained regarding the appropriate place for addressing it.

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10 *The observer* explained that, since 2022, the United Nations General Assembly had adopted the style and usage of capitalising both words "Indigenous Peoples".

11 United Nations Declaration on the Rights of Indigenous Peoples, Articles 11 and 12.

12 Expert Mechanism on the Rights of Indigenous Peoples Study on Repatriation, 2020.

13 A/HRC/60/29: Recognition of Indigenous Peoples - Report of the Special Rapporteur on the Rights of Indigenous Peoples, Albert K. Barume, 2025.

98. *Some members* considered that the issue would be better dealt with in the commentary to Paragraph 1 of Guideline B, particularly in relation to Article 4(4) of the 1995 UNIDROIT Convention.

99. It was noted that archaeological objects often required extensive research, including examination of excavation reports and related documentation. Their nature already implied a basis for increased scrutiny.

100. The Working Group clarified that archaeological objects and objects originating from conflict areas were not identical categories. The creation of a separate category for archaeological objects from conflict areas was not supported, as it could introduce additional complexity and mix different types of criteria.

101. The Working Group therefore decided that the specific issue of archaeological objects from conflict areas should be addressed in the commentary rather than by creating a new category.

102. A proposal was made to include fossils within the category of archaeological objects. The argument was that fossils were covered by relevant international instruments and that explicitly mentioning them would respond to claims that due diligence requirements did not apply because fossils were not cultural objects. This proposal did not attain consensus.

103. Another proposal suggested adding paleontological objects due to the particular sensitivity of this category in certain countries. Although *one member* questioned whether paleontological objects should be classified as cultural objects, it was recognised that they raised similar policy concerns to archaeological objects when removed or looted from their original context, including the loss of scientific and interpretative value. It was therefore proposed to include "paleontological resources or remains" either within the archaeological category or as a separate category.

104. Following discussion, the Working Group agreed to redraft sub-category (b) so that it referred to "archaeological objects and paleontological objects". The final wording of Paragraph 6 would therefore retain a general approach, recognising that certain categories of objects might require particular attention, while leaving further explanation and contextualisation to the commentary.

Guideline C. Provenance Research

Text proposed by Sub-Groups 3 and 5 in view of the fifth session of the Working Group	**Text as it stood <u>at the end of the</u> <u>fifth session</u> of the Working Group**
C. Provenance Research 1. Possessors of cultural objects should engage in provenance research. 2. Provenance research is the process of searching information related to the history, context, circulation, ownership and ~~current~~ <u>cultural</u> meaning of an object from its creation or, in the case of archaeological objects, its discovery, to its current location. Provenance research also endeavours to identify if the object has been subject, in the past, to any illicit transfer or similar action.	**C. Provenance Research** 1. Possessors of cultural objects should engage in provenance research. 2. Provenance research is the process of searching information related to the history, context, circulation, ownership and ~~current~~ <u>cultural</u> meaning of an object from its creation or, in the case of archaeological objects, its discovery, to its current location. Provenance research also endeavours to identify if the object has been subject, in the past, to any illicit <u>[trade or illegal transaction</u>/transfer or similar action]<u>, and in the case of objects of Indigenous Peoples, if the object has been taken without the free, prior, and informed consent or in violation of their laws, traditions and customs</u>.

3. Provenance research should be conducted by a person who, considering all circumstances, has adequate knowledge and expertise in the relevant field, taking into consideration existing standards. 4. The extent of provenance research depends on the specific case and the history of the object. The provenance research should reasonably aim to collect and assess all ~~reasonably~~ obtainable documentation and information at the time of the search in order to evaluate provenance gaps and undocumented transfers. It should also aim to evaluate their authenticity of the object and of the available documentation. 5. The results of the provenance research should be dated and publicly shared. Should additional information become available, the results of the provenance research could be reconsidered and supplemented or amended as relevant.	3. Provenance research should be conducted by a person who, considering all circumstances, has adequate knowledge and expertise in the relevant field, taking into consideration existing standards. 4. In advance of any ~~Provenance research on the categories of objects listed in Guideline B, paragraph 5(a), shall occur with a full and effective participation of the Indigenous Peoples concerned through their representative institutions, with their full consultation and collaboration~~ provenance research on the categories of objects listed in Guideline B, paragraph 5(a), the Indigenous Peoples concerned shall receive notice and the opportunity for full and effective participation through their own representative institutions. Possessors, researchers, and others shall consult and cooperate with the Indigenous Peoples concerned in the preparation, review, and publication [or provision] of provenance research. ~~[toward obtaining their free, prior, and informed consent].]~~ 5. The extent of provenance research depends on the specific case and the history of the object. The provenance research should reasonably aim to collect and assess all ~~reasonably~~ obtainable documentation and information at the time of the search in order to evaluate provenance gaps and undocumented transfers. It should also aim to evaluate their authenticity of the object and of the available documentation. 6. The results of the provenance research should be dated and publicly shared. Should ~~additional~~ new information, [research or technology] become available, the results of the provenance research/ all provenance information and documentation ~~could~~ should be reconsidered and supplemented or amended as relevant at any time.

Paragraph 1

105. The Working Group examined Paragraph 1 of Guideline C, focusing on the question of who should undertake provenance research and the relationship between provenance research and due diligence obligations.

106. *An observer* questioned the use of the term "possessors" in the draft text and whether this terminology was intended to exclude intermediaries such as auctioneers. She also raised the question of who should be considered a possessor, noting that the wording appeared to imply that every person holding or owning a cultural object would automatically be required to conduct provenance research.

107. *Several members and observers* considered this to be a central issue, arguing that the concept of "possessor" did not necessarily identify all persons who should be responsible for carrying out provenance research. *Other members*, however, did not consider the term problematic, explaining that intermediaries could qualify as possessors when the object was deposited in their custody or under their control.

108. *A member* emphasised that the main question was not merely the terminology but rather determining (1) who should conduct provenance research, (2) at what stage it should be undertaken, and (3) which circumstances should trigger the need for such research.

109. *An observer* proposed modifying the wording of Paragraph 1 to clarify that provenance research should depend on the prior assessment of whether it was necessary as part of due diligence.

110. The proposed approach suggested that the paragraph should be understood as meaning that, once it had been determined that due diligence could only be properly conducted through provenance research, a possessor or prospective possessor should undertake such research. The following drafting was proposed: "Having determined that due diligence can only be properly exercised by undertaking provenance research, a possessor or prospective possessor should undertake such research". This proposal was intended to clarify that all possessors of cultural objects should not automatically be required to conduct provenance research in every situation.

111. The proposal reflected the broader discussion concerning the threshold that triggered provenance research. *A member* asked whether the proposal suggested that due diligence could sometimes be carried out without provenance research. In response, it was explained that provenance research would not necessarily be required where it appeared unrealistic or unlikely that further investigation would provide useful additional information about the object.

112. The reasoning behind the proposal was therefore that provenance research should be undertaken where the circumstances indicated that such research was meaningful and capable of contributing to the due diligence process.

113. While *some members* understood the concern behind introducing a threshold mechanism, *several members* supported the view that provenance research constituted an essential element of due diligence. They noted that when assessing gaps in ownership history or identifying possible issues relating to the circulation of an object, some level of provenance research would necessarily take place.

114. *Members* also emphasised that provenance research existed on a sliding scale. Depending on the circumstances, it might range from a simple verification exercise to a much more systematic and extensive investigation involving specialised expertise. Because of its flexible nature, *some members* questioned whether it would be appropriate to establish a filtering mechanism determining when provenance research should begin.

115. Caution was expressed regarding the proposed wording, as it could unintentionally suggest that provenance research was optional or unnecessary in certain circumstances. *Members* highlighted that the obligation involved was an obligation of means, which was inherently context-dependent and varied according to the object, the transaction, and the available information.

116. It was therefore suggested that the appropriate balance could be achieved through clarification in the commentary rather than by modifying the Guideline itself.

117. The Working Group also discussed the connection between Paragraph 1 of Guideline C and Paragraph 4 of Guideline B, which addressed the parties responsible for carrying out due diligence.

118. *Some observers* suggested aligning the terminology of the two provisions and referring to the persons responsible for due diligence rather than using the expression "possessor or prospective possessor". However, *a member* considered that the two provisions should not necessarily be identical. Due diligence was closely connected to the transactional context, whereas provenance research had a broader scope and should be undertaken by persons with the necessary knowledge

and expertise, including individuals who were not necessarily owners, possessors, or directly involved in the transfer of an object.

119. *Other members* considered that the term "owner" should nevertheless appear in Paragraph 1 of Guideline C and Paragraph 4 of Guideline B, as possession did not always correspond to ownership.

120. It was observed that the current wording of Paragraph 1 of Guideline C could be interpreted as requiring all possessors to undertake the same level of provenance research. *Members* acknowledged, however, that different types of possessors might have different responsibilities and different capacities regarding full-scale provenance research.

121. The Working Group then considered the relationship between Guideline C and Paragraph 5 of Guideline B, particularly regarding the statement that provenance research "is" considered ongoing.

122. *Some members and observers* questioned whether this formulation was consistent with the concept of an obligation of means discussed by the Working Group. They noted that describing provenance research as ongoing could imply that some degree of provenance research had already been carried out as part of due diligence.

123. *Other observers* suggested that due diligence and provenance research could be understood as two parallel but distinct processes. According to this approach, due diligence might conclude once a transaction had been completed, whereas provenance research might continue afterwards as new information became available.

124. *A member* observed that many of the disagreements appeared to result from different understandings of what provenance research actually involved. *Some members and observers* understood provenance research as a comprehensive process requiring external experts and extensive investigation. *Others* emphasised the difficulty of conducting meaningful due diligence without undertaking at least some degree of provenance research.

125. *Several members and observers* considered that the Guidelines would benefit from a clearer distinction between due diligence and provenance research.

126. *One member* supported introducing a definition of due diligence in Guideline B, noting that Guideline C already contained a definition of provenance research. However, caution was expressed against creating overly detailed or exhaustive definitions, suggesting that the Guidelines could become rigid and impractical.

127. Instead, it was suggested that the Guidelines should articulate a general principle explaining the relationship between the two concepts and distinguishing their respective purposes. The discussion identified two possible approaches: (1) one approach where provenance research was undertaken only after due diligence had established a need for further investigation; (2) another approach where certain elements of provenance research were already incorporated into the due diligence process itself. The disagreement was considered to reflect different interpretations of the scope of provenance research.

128. A practical example was discussed in relation to museum acquisition practices. In such a context, an initial step might consist of verifying the identity of the seller or donor. *Some members* considered this to be part of due diligence, while others considered it an element of provenance research. The latter interpretation was based on the understanding that provenance research included gathering information relating to the history, context, circulation, ownership, and meaning of an object. It was further observed that provenance research began at an early stage of a possible transaction, including through the verification of ownership title.

129. The Working Group acknowledged that several existing instruments contained relevant provisions[14] on due diligence and provenance research. *A member* suggested that Guidelines B and C should refer directly to those existing instruments in order to ensure consistency.

130. Finally, *an observer* explained a museum-based approach to due diligence consisting of three stages: (1) "Client due diligence", aimed at verifying the identity and existence of the donor or seller of the cultural object; (2) "Object due diligence", aimed at verifying the authenticity and condition of the object; and (3) "Transaction due diligence", aimed at ensuring compliance with import, export, taxation, and other legal requirements. According to this approach, provenance research would primarily begin during the second stage, namely the examination of the object itself.

131. The discussion demonstrated that the main challenge regarding Paragraph 1 of Guideline C concerned the precise relationship between provenance research and due diligence. The Working Group recognised that provenance research was closely connected to due diligence but could vary significantly in scope depending on the circumstances. While *some members* favoured making clear that provenance research should be triggered only when necessary, *other members* emphasised that provenance research was an inherent component of due diligence.

132. The Working Group therefore identified the need for greater conceptual clarity while maintaining the flexible, context-dependent nature of the obligations established by the Guidelines.

Paragraph 2

133. The Working Group examined Paragraph 2 of Guideline C, focusing on the elements that should be included within the concept of provenance research.

134. *Several members* raised concerns regarding the inclusion of the term "ownership" in the description of provenance research. They considered that ownership issues were primarily connected to due diligence rather than provenance research itself.

135. It was suggested that the reference to ownership should instead be addressed in Guideline B, which concerned due diligence, while provenance research should focus on verifying and confirming ownership information rather than defining ownership as an element of provenance research itself.

136. This discussion reflected the broader distinction between due diligence and provenance research considered by the Working Group. Due diligence was viewed as addressing the legal and transactional assessment of an object, including ownership-related risks, whereas provenance research was understood as the process of gathering and analysing information concerning the history and trajectory of the object.

137. The Working Group then discussed the question of provenance research including the identification of whether an object had previously been subject to "illicit trade or transfer".

138. *Members* emphasised the need to avoid inconsistencies in terminology, particularly regarding the use of the terms "illicit" and "illegal" transfer. It was noted that relevant terminology had already been established in existing international instruments and should be applied consistently. The commentary could clarify that provenance research might require consultation with the country of

[14] See, for example: ICOM Code of Ethics (2017): *Article 2.3 Provenance and Due Diligence*: "Every effort must be made before acquisition to ensure that any object or specimen offered for purchase, gift, loan, bequest, or exchange has not been illegally obtained in, or exported from its country of origin or any intermediate country in which it might have been owned legally (including the museum's own country). Due diligence in this regard should establish the full history of the item since discovery or production."; Glossary of ICOM Code of Ethics (2017), *Due Diligence*: "The requirement that every endeavour is made to establish the facts of a case before deciding a course of action, particularly in identifying the source and history of an item offered for acquisition or use before acquiring it"; and *Provenance*: "The full history and ownership of an item from the time of its discovery or creation to the present day, through which authenticity and ownership are determined.".

origin and relevant sources of information in order to determine whether an object had been transferred under problematic circumstances.

139. *A member* stressed that the expression "illicit transfer" directly referred to situations where a legal rule had been violated. However, concerns were raised about linking this concept exclusively to the 1970 UNESCO Convention, as this framework primarily addressed obligations under public international law and did not fully incorporate considerations relating to Indigenous Peoples.

140. The Working Group considered whether the commentary should refer to existing international instruments dealing with the removal and transfer of cultural objects. A proposal was made to include references to Chapter 2 of the Nicosia Convention,[15] to the Operational Guidelines related to the 1970 UNESCO Convention[16] and to the United Nations Declaration on the Rights of Indigenous Peoples.[17] These references were proposed as useful tools to explain the meaning of objects removed or transferred unlawfully, while also recognising broader concerns relating to cultural rights and Indigenous Peoples.

141. Support was also expressed for referring to the 1995 UNIDROIT Convention. *Members* noted that this Convention used the term "illicit" in its Preamble while taking into account the Free, Prior and Informed Consent (FPIC) notion, and that it also provided a relevant framework for addressing cultural objects that had been transferred in problematic circumstances. A proposal was made to refer to "illicit and contrary to the laws of the relevant country".

142. The Working Group further examined the distinction between the terms "illicit" and "illegal". *Some members* considered that "illicit" was the more appropriate term because it referred to conduct that was not only contrary to legal rules, but also inconsistent with ethical or moral principles. By contrast, "illegal" generally referred specifically to conduct that breached a legal provision.

143. Another proposal was to use the expression "illegal transaction of whatever nature", reflecting the wording of Article 10(3) of the 1995 UNIDROIT Convention. The objective of this approach was to ensure consistency with existing terminology and avoid creating language that could unintentionally legitimise previous wrongful removals or transfers. *An observer* also noted that the regulatory framework of the European Union concerning imports of cultural goods referred to "illicit trade" and prohibited the import of objects removed "in breach of the laws and regulations" of the country of origin.[18]

144. The Working Group also discussed the importance of integrating references to Indigenous Peoples within the provision. *An observer* proposed that provenance research should include consideration of whether an object belonging to Indigenous cultural property had been removed without free, prior, and informed consent, or contrary to Indigenous laws, traditions, and customs.

145. A proposed wording suggested that "provenance research also endeavours to identify if the object has been subject in the past to illicit transfer (…) and in the case of cultural property belonging to Indigenous Peoples, whether it has been taken without their free, prior, and informed consent or in violation of their laws, traditions, and customs".

146. The discussion highlighted that provenance research might require engagement not only with state authorities but also with relevant communities, including religious or cultural communities connected to the object. *Members* stressed the importance of considering the cultural, ceremonial, or ritual functions of objects and understanding the circumstances of their removal.

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[15] Council of Europe Convention on Offences relating to Cultural Property, Nicosia, 3 May 2017.

[16] Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, Paris, 1970).

[17] United Nations Declaration on the Rights of Indigenous Peoples, Resolution adopted by the General Assembly on 13 September 2007.

[18] Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods.

147. Regarding the reference to the "state of origin", it was noted that the position of the State did not always necessarily correspond to the views, rights, or interests of Indigenous populations connected to the object.

148. The discussion on Paragraph 2 demonstrated the importance of clarifying the relationship between provenance research, due diligence, ownership verification, and the identification of problematic transfers.

149. The Working Group recognised that provenance research should not be limited to a purely legal examination of ownership history but should also consider broader historical, cultural, ethical, and contextual factors.

150. The final drafting approach would need to preserve consistency with existing international instruments while ensuring that the concept of provenance research appropriately reflected the rights and perspectives of Indigenous Peoples and relevant communities.

Paragraph 3

151. Paragraph 3 was not directly addressed during the fifth session of the Working Group. However, *some members and observers* reflected on the necessity for a provenance researcher to have a legal background, regarding the expectations expressed to ascertain the concept of "illicit transfer". A provenance researcher should flag information and be trained in regarding interpretation. The result might be a spectrum of information rather than a definitive outcome.

New Paragraph 4

158. The Working Group discussed the possible addition of a new paragraph to Guideline C addressing the relationship between provenance research, Indigenous Peoples and countries of origin. The proposed paragraph aimed to provide that, before initiating provenance research concerning the categories of cultural objects identified in paragraph 5 of Guideline B, the person undertaking the research should proactively contact the presumed Indigenous Peoples concerned or the country of origin as an initial step in the provenance research process.

159. The discussion highlighted that specific recognition of Indigenous Peoples was important as addressed by the 1995 UNIDROIT Convention. Since the adoption of the Convention, significant developments had taken place concerning the treatment of Indigenous cultural objects, demonstrating that provenance research could be incomplete or ineffective where it was carried out without the involvement of the Indigenous communities concerned.

160. While supporting the underlying objective of the proposed paragraph, *a member* considered the need to clarify its scope. A distinction was drawn between the interests and concerns of Indigenous communities or other surviving communities and those of countries of origin, particularly in relation to archaeological objects. It was noted that these categories raised different considerations and should not be treated as identical.

161. The view was expressed that this distinction could be addressed in the commentary rather than in the operative text of the Guidelines. The black-letter rule should remain sufficiently general, while the commentary could explain that, when conducting provenance research and taking into account existing standards, the provenance researcher should assess whether the object raised issues concerning a country of origin, an Indigenous community, or another relevant community.

162. The Working Group also discussed whether the terminology used in international instruments relating to Indigenous Peoples should be reflected in the new paragraph. Reference was made to the United Nations Declaration on the Rights of Indigenous Peoples,[19] particularly the concepts of the

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[19] Article 11 of the [United Nations Declaration on the Rights of Indigenous Peoples, Resolution adopted by the General Assembly on 13 September 2007].

"full and effective participation" of Indigenous Peoples concerned and consultation and collaboration aimed at obtaining their Free, Prior and Informed Consent.

163. A proposal was made by *an observer* to draft the provision as follows: "Provenance research shall occur with the full and effective participation of the Indigenous Peoples concerned, with their full consultation and collaboration [toward obtaining their free, prior, and informed consent]." It was suggested that the commentary could further refer to relevant provisions of the Declaration, including Articles 11, 12 and 19. During the discussion, the notion of requiring researchers to make "best efforts to reach out" to Indigenous Peoples was also considered as a possible formulation.

164. The Working Group generally supported the use of terminology reflecting these international standards. The inclusion of a best-efforts obligation was further examined, with the suggestion that provenance research should "aim at ensuring" the full participation of Indigenous Peoples concerned. This approach was considered as a means of recognising the importance of Indigenous involvement while maintaining flexibility in the application of the Guidelines.

165. *A member* and an observer noted, however, that Guideline C was gradually evolving towards a more detailed framework or practical manual for conducting provenance research. It was therefore considered important to maintain a distinction between the essential obligations to be included in the black-letter rules and the more detailed explanations to be developed in the commentary.

166. Concern was also expressed about requiring a collaborative process in absolute terms, as it could create practical difficulties or prevent provenance research from reaching conclusions in certain circumstances. In this context, preference was expressed for a formulation based on "best efforts to reach out", which would establish an obligation to engage with relevant communities while allowing for the realities of individual cases.

167. The Working Group further examined the relationship between the proposed new paragraph 4 of Guideline C and paragraph 6 of Guideline B. It was noted that cultural objects originating from Indigenous Peoples or other communities raised specific considerations that were distinct from those relating to archaeological objects.

168. In light of this distinction, a proposal was made that archaeological objects should not fall within the scope of the new paragraph of Guideline C, but should instead remain addressed through paragraph 6 of Guideline B. The discussion underscored the need for consistency between the two provisions and for a clear delineation between different categories of cultural objects requiring particular approaches in provenance research.

Paragraph 5 (Former Paragraph 4)

169. Paragraph 5 was not addressed during the fifth session of the Working Group.

Paragraph 6 (Former Paragraph 5)

170. Discussions on Paragraph 6 of Guideline C were addressed during the debate on Paragraph 6 of Guideline D. Please refer to the debate on that Guideline.

Guideline D. Provenance documentation, information transparency

Text proposed by Sub-Group 4 in view of the fifth session of the Working Group	**Text as it stood at the end of the fifth session of the Working Group**
D. Provenance information, documentation and transparency 1. All information and documentation relating to due diligence and provenance research undertaken shall be dated, recorded, retained, and preserved in a durable and intelligible manner. 2. Due diligence and provenance documentation shall accompany the object at any time and be transmitted upon any transfer of the object. 3. Such information and documentation should also be shared in good faith, outside any transfer circumstances, with competent authorities, dispute-resolution bodies, communities of origin or concern and persons or entities demonstrating a legitimate and proportionate interest in the object. 4. The extent and form of disclosure may be subject to legal, contractual, or ethical limitations, including those arising from data protection, privacy, security, or confidentiality obligations. Where full disclosure is not possible, reasonable measures should be taken to enable meaningful access to the substance of the information, such as summaries or anonymisation. 5. Demonstration of a reasonable level of due diligence and provenance research exercise consists of documented evidence of the research process. The absence of conclusive information shall not, in itself, be regarded as a failure of reasonable and proportionate efforts being manifested during the research process. 6. Should additional information, research or technology become available, all provenance information and documentation could [new wording to be proposed] be reconsidered, revised, supplemented or amended as relevant at any time.	**D. Provenance documentation, information, ~~documentation~~ and transparency** 1. All information and documentation obtained in the process of exercising ~~relating to~~ due diligence and provenance research ~~undertaken~~ shall be dated, recorded, retained, and preserved in a durable and intelligible manner. 2. Due diligence and provenance documentation/information ~~shall~~ should accompany the object at any time and be transmitted upon any transfer of the object. 3. Demonstration of a reasonable level of due diligence and provenance research exercise consists of documented evidence of the research process. The absence of conclusive information shall not, in itself, be regarded as a failure of reasonable and proportionate efforts being manifested during the research process. 4. Such information and documentation should also be shared in good faith, outside any transfer circumstances, with competent authorities, dispute-resolution bodies, Indigenous Peoples ~~communities of origin or concern~~ or upon reasonable request ~~and~~ with persons or entities demonstrating a legitimate and proportionate interest in the object. 5. The extent and form of disclosure may be subject to legal, contractual, or ethical limitations, including those arising from data protection, privacy, security, or confidentiality obligations. Where full disclosure is not possible, reasonable measures should be taken to enable meaningful access to the substance of the information, such as summaries or anonymisation. ~~6. Demonstration of a reasonable level of due diligence and provenance research exercise consists of documented evidence of the research process. The absence of conclusive information shall not, in itself, be regarded as a failure of reasonable and proportionate efforts being manifested during the research process.~~ ~~7. Should additional information, research or technology become available, all provenance information and documentation could [new wording to be proposed] be reconsidered, revised, supplemented or amended as relevant at any time.~~

171. Prior to the fifth session of the Working Group, Guideline D was examined through intersessional work carried out by Sub-Group 4, which was tasked with clarifying the purpose and scope of the Guideline and preparing a revised draft for consideration. The Working Group noted that the revised text represented a significant development compared with earlier versions, moving away from a limited focus on evidentiary material for potential judicial proceedings towards a broader framework addressing provenance documentation, record-keeping, and transparency.

172. The revised approach was based on six main principles: (i) systematic record-keeping; (ii) continuity of documentation throughout the lifecycle of a cultural object; (iii) appropriate sharing of information with legitimate parties; (iv) qualified transparency; (v) a process-based approach to compliance; and (vi) recognition of the evolving and dynamic nature of provenance research.

173. The proposed framework placed emphasis on ensuring that due diligence and provenance research activities were dated, documented, and preserved in a durable and accessible form. This approach aimed to strengthen the evidentiary value of provenance information over time and to provide greater reliability in the circulation of cultural objects. It was also recognised that the reconstruction of provenance would often face structural limitations, as historical information might remain incomplete or unavailable. In this context, calibrated transparency was considered an important tool for enhancing legal certainty, accountability, and trust among stakeholders.

New Title

174. The Working Group considered a proposed new title for Guideline D: "Provenance information, documentation and transparency". A suggestion was made to modify the order of the terms to "Provenance documentation, information, and transparency", placing greater emphasis on the documentary aspect of provenance work.

175. A further point was raised concerning the continued reference to "provenance" in the title, given that the revised Guideline also addressed broader due diligence considerations, particularly in paragraphs 2 and 5. It was therefore noted that the title should accurately reflect the full scope of the Guideline and avoid suggesting that its application was limited to provenance-related matters.

Paragraph 1

176. Paragraph 1 of the revised draft of Guideline D introduced new standards concerning the recording, preservation, and long-term availability of information and documentation generated through due diligence and provenance research. The discussion focused first on clarifying the relationship between due diligence and provenance documentation. A proposal was made to amend the opening of the paragraph to refer to "all information and documentation obtained in the process of exercising due diligence and provenance research", thereby making explicit that the obligation applied to both processes. This formulation would also remove the term "undertaken" to avoid any possible ambiguity.

177. The Working Group examined the requirement that information and documentation should be "preserved in a durable and intelligible manner". Concerns were raised that this wording might require further clarification to ensure consistency with existing standards relating to the preservation of evidence, including both physical and digital records. Reference was made to approaches adopted in electronic transactions legislation, such as the U.S. Federal Electronic Transactions Act and the EU eIDAS framework,[20] as possible sources of terminology that could better reflect current standards for reliable record preservation.

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[20] Uniform Electronic Transactions Act, National Conference of Commissioners on Uniform State Laws, 1999; Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC.

178. The practical meaning of "durable and intelligible" was also discussed. It was noted that provenance information was often meaningful only when considered together with related data and contextual elements, raising questions about how documentation should be preserved so that it remained understandable over time. Challenges were also identified regarding private archives, which might not always be publicly accessible, transferable, or capable of being reproduced.

178. The Working Group further considered the methodology for preserving provenance information. The importance of developing appropriate practices for recording provenance elements while respecting confidentiality obligations was emphasised. One approach suggested that provenance researchers should adopt methodologies allowing key information to be captured and preserved, potentially in anonymised form, while ensuring that relevant information remained associated with the object.

179. The role of oral information was also considered. It was observed that information provided orally was not always recognised within institutional due diligence processes, particularly in acquisition contexts where written documentation might be required to establish sufficient reliability. This raised the question of how oral sources should be recorded and incorporated into provenance documentation.

180. The possible retention period for provenance documentation was discussed. Reference was made to existing legislative approaches, including the 30-year retention periods found in certain Swiss and German laws,[21] as well as the 50-year period provided for in Article 3(3) of the 1995 UNIDROIT Convention.[22] However, the Working Group recognised the difficulty of establishing a uniform mandatory retention period, particularly because provenance documentation might need to be preserved for periods exceeding traditional record-keeping obligations.

181. Concerns were also raised regarding fairness and accessibility, as fixed retention periods could create disadvantages for jurisdictions or actors with limited access to market information or historical documentation. The Working Group therefore decided not to establish a mandatory period in the Guideline. Instead, the commentary could refer to the retention of documentation for a "reasonably long period", supported by practices such as digitalisation and timestamping. The 50-year period under the 1995 UNIDROIT Convention could be mentioned as an example of an existing standard without creating a universal requirement.

182. The Working Group considered that the commentary should further develop the principle of proportionality in relation to the dating, recording, retention, and preservation of information and documentation resulting from due diligence and provenance research. This approach would recognise that preservation obligations should be meaningful and effective while remaining adaptable to the nature of the object, the available information, and the circumstances in which the research was conducted.

Paragraph 2

183. Paragraph 2 of the revised draft Guideline D addressed the continuity of provenance records by providing that provenance documentation should remain physically or digitally attached to the cultural object throughout transfers of ownership. The discussion focused on the meaning and practical implications of the wording that "due diligence and provenance documentation shall accompany the object", particularly regarding the identification of the party responsible for ensuring this continuity.

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[21] *Bundesgesetz über den internationalen Kulturgütertransfer, Kulturgütertransfergesetz, KGTG* (Swiss Federal Act on the International Transfer of Cultural Property, Cultural Property Transfer Act, CPTA); *Bürgerliches Gesetzbuch, BGB* (German Civil Code), Section 197.

[22] Article 3(3) of the 1995 UNIDROIT Convention: *Any claim for restitution shall be brought within a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the time of the theft.*

184. The Working Group also considered the distinction between original archival materials and provenance information derived from research. It was recognised that current owners or possessors might not always be able to provide original historical documents, particularly where such materials remained in private or family archives. The Working Group therefore agreed that the information accompanying the object should not consist of the original archives themselves, but rather of a comprehensive report reflecting the provenance research undertaken and the relevant information obtained.

185. The possibility of developing a standardised format or template for provenance information was discussed. Such a system could facilitate consistency and potentially support the creation of a registry containing information relating to cultural objects. At the same time, caution was expressed regarding overly rigid structures or check-box approaches. It was considered important that any system remained sufficiently flexible to reflect the complexity of provenance research and allow for different levels of information depending on the circumstances of each object.

186. The Working Group also considered whether the term "provenance documentation" should be expanded to "provenance documentation and information". The distinction between the two concepts was clarified: provenance information referred to the substantive conclusions and interpretative results emerging from the research, whereas provenance documentation referred to the records, sources, and evidentiary materials supporting those conclusions.[23] While the distinction was recognised as useful, no consensus was reached on whether the additional reference to "information" should be included in the text.

187. The use of "shall" or "should" in paragraph 2 was also discussed. *Some members and observers* considered that "should" would better reflect the non-binding and guidance-based nature of the Guidelines, while others noted the need for consistency in terminology throughout the document. *The UNIDROIT Secretariat* indicated that the terminology would need to be reviewed and harmonised across the Guidelines as a whole.

Paragraph 3 (Former Paragraph 5)

188. In discussing paragraph 3, the Working Group considered the nature of due diligence and provenance research obligations. *A member of the Sub-Group* explained that such obligations should be understood as obligations of means, or obligations of conduct, rather than obligations of result. Accordingly, the assessment of a researcher should focus on the quality, adequacy, and documentation of the methodology employed, rather than on the ability to establish a complete and uninterrupted chain of ownership. In order to ensure consistency with established legal terminology, it was proposed that the Guidelines align their language with that used in the UNIDROIT Principles of International Commercial Contracts.[24]

189. The Working Group also considered a proposal to move former Paragraph 5 to an earlier position in the black-letter rule and renumber it as paragraph 3. The proposed reorganisation was intended to improve the logical structure of the provision by addressing, in sequence, the scope of the obligation, the research process and standards of completeness, and finally the sharing of information. *Two members* opposed the proposed change, maintaining that the paragraph should remain in its original position in order to emphasise that the documentation of an unsuccessful search remained an integral component of a valid due diligence and provenance research exercise. In their view, evidence of the efforts undertaken might alone demonstrate that a reasonable level of diligence had been exercised.

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[23] For a more detailed explanation, refer to UNIDROIT 2026 - Study LXXB – SG 4 – Doc. 4, para. 18, footnote 2; UNIDROIT 2026 - Study LXXB – SG4 – Doc. 2, para. 13.

[24] UNIDROIT Principles of International Commercial Contracts, 2016.

190. In the context of maintaining the paragraph in its original position, *an observer* proposed adding the qualifier "where available" to the reference of documented evidence. Under this proposal, the paragraph would provide that a demonstration of a reasonable level of due diligence and provenance research exercise consisted, "where available", of documented evidence of the research process. This suggestion did not receive universal support. *Several participants* emphasised that the phrase "documented evidence of the research process" referred to evidence of the methodology employed – such as the databases consulted and investigative steps undertaken – rather than to the documentation relating to the history of the object itself. It was further observed that the existing reference to a "reasonable" level of due diligence already afforded sufficient flexibility.

191. The implications of gaps in provenance research were also discussed. In response to a proposal to delete the second sentence of paragraph 3, *an observer* argued that its retention was particularly important in cases involving orphan cultural objects or objects characterised by significant documentation gaps. It was noted that the absence of information should not automatically give rise to a presumption of illicit origin. It was emphasised that, while due diligence and provenance research could not provide definitive certainty in all cases, the results of such research should remain valid unless and until they were shown to be incomplete or incorrect. In this regard, the distinction between obligations of means and obligations of result was reiterated.

192. The Working Group returned to the wording of the second sentence of paragraph 3, particularly the statement that the "absence of conclusive information" did not constitute a failure of effort. Questions were raised regarding the meaning of the term "conclusive information" and the degree of certainty that it implied. In order to improve clarity, it was proposed that the word "conclusive" be deleted. No consensus was reached on this proposal.

193. With respect to the commentary accompanying paragraph 3, *a member* stressed the need for further guidance on the meaning of a "reasonable level of due diligence and provenance research exercise". In particular, it was observed that a mere reference to what might be regarded as a "standard in the field" would not, in itself, provide a sufficient basis for determining reasonableness. The member therefore advocated the inclusion in the commentary of a more objective standard against which the adequacy of due diligence and provenance research efforts could be assessed.

Paragraph 4 (Former Paragraph 3)

194. In considering paragraph 4, the Working Group examined the distinction between provenance information and the analysis derived from that information. *One member* questioned the definition of "information", observing that information should be understood as the starting point of the provenance process rather than its final outcome. In her view, the endpoint of provenance research lay in the professional analysis and conclusions drawn from the available information. She therefore proposed a clearer separation between provenance information and the analytical findings resulting from its assessment. *A member of the Sub-Group* supported this distinction, noting that documentation constituted the underlying data, while information represented the result of analysing that data.

195. The Working Group also discussed whether due diligence information and documentation should be distinguished from those resulting from provenance research. *Two members* argued that provenance research findings should be communicated more openly than due diligence records. In this context, *two observers* suggested that information should be shared "upon reasonable request", thereby avoiding the creation of a continuous obligation to publicise information but ensuring access for those demonstrating a reasonable interest. Caution was raised against confusing mandatory disclosure obligations arising from court orders with the voluntary sharing of information by a possessor. It was clarified that the purpose of the provision was to establish a broader ethical expectation that actors involved with cultural objects would contribute to their traceability.

196. While there was general support for retaining the formulation of "such information and documentation should be shared in good faith outside any transfer circumstances", proposals were made to refine the scope of potential recipients. *One member* suggested removing the exhaustive list of entities contained in the text and replacing it with a more general reference to "entities demonstrating a legitimate and proportionate interest". Another proposal sought to qualify the obligation by providing that information should be shared "upon reasonable request".

197. The question of access to provenance information and documentation generated further discussion. *One member* expressed concern that the paragraph, as drafted, could permit unrestricted access by any individual and thereby create an overly broad framework for disclosure. In her view, the sharing of provenance information in good faith should be directed toward competent authorities, Indigenous Peoples, and entities demonstrating a legitimate interest, rather than being open-ended. *Another member* observed that the concept of "sharing in good faith" necessarily involved the exercise of judgment in determining whether disclosure was appropriate in a particular case.

198. The Working Group further considered who should be entitled to request provenance information and documentation. In this context, the Working Group debated whether such persons could be encompassed by the term "others", with reference being made to the principle of *nemo dat*. *One member* proposed distinguishing between three categories of disclosure: (i) disclosures required by law or court order; (ii) disclosures made within a transactional context, such as between a possessor and a prospective transferee; and (iii) disclosures made in response to broader legitimate interests. The Working Group recognised the need for further clarification regarding the categories of persons entitled to request and receive information.

199. Particular attention was given to the position of Indigenous Peoples. The Working Group discussed whether Indigenous communities should be formally notified during the preparation of provenance research and afforded an opportunity to participate in the process. The sensitivity of information relating to Indigenous Peoples and other communities was emphasised, and it was noted that public disclosure of such information should be subject to their prior informed consent. Following a proposal made by *an observer*, the Working Group agreed to replace the expression "communities of origin or concern" with the term "Indigenous Peoples".

200. *An institutional partner* raised the question of how the provision would operate in circumstances where no relevant information existed to be shared. In response, it was observed that broader practices of information sharing could, over time, contribute to filling existing gaps in provenance records by enabling interested parties to compare information relating to objects with documented provenance histories and identify previously unknown connections.

Paragraph 5 (Former Paragraph 4)

201. *A member* questioned the disclosure of information when full access would not be possible, wondering whether summaries and anonymisation were intended for all inquiries or specific categories, and emphasising that the black-letter rule needed to be more explanatory regarding who, and at what level, was entitled to have access to such information. Summaries should be viewed as a redacted alternative when comprehensive research could not be shared.

202. A proposal was made to merge paragraphs 4 and 5, with the second sentence of paragraph 5 moved to the commentary due to its narrative nature. The addition of "upon reasonable request" in paragraph 4 was proposed as a way to effectively bridge the core concerns of paragraphs 4 and 5. However, *an observer* raised caution against merging the sections. While paragraph 4 specifically addressed disclosure to third parties, Paragraph 5 also addressed factors that applied to those directly involved in a transfer. He warned that if the two were merged under the assumption that paragraph 5 only applied to third-party disclosure, the Working Group might inadvertently exclude contractual legal obligations for the primary parties to a transfer.

Paragraph 6

203. The Working Group considered a proposal to relocate this paragraph from Guideline D to Guideline C in order to align it with paragraph 6 of that Guideline. The proposal was based on the view that the provision concerned the ongoing reassessment of provenance conclusions and therefore fit more naturally within the framework governing provenance research itself. Under this approach, where pertinent new information or technology came to the attention of a current owner or possessor, previous provenance conclusions should be reconsidered in light of that development.

204. *An observer* noted that, should this approach be adopted, Guideline D would only require a reference in its opening paragraph to the need to keep provenance documentation current. The substantive obligation to revisit earlier conclusions in response to new developments would be addressed exclusively within Guideline C.

205. The Working Group examined several proposals regarding the drafting of the provision. *One observer* suggested retaining the paragraph in its existing location while introducing the phrase "As far as provenance research is concerned" at the outset in order to clarify its scope. This formulation would allow the provision to focus specifically on the results of provenance research before introducing the possibility that "additional information, research, or technology" might become available. Attention was also drawn to differences in terminology between Guideline C and Guideline D. Whereas paragraph 6 of Guideline D referred to conclusions being "reconsidered, revised, supplemented, or amended", the corresponding provision in Guideline C referred to conclusions being "reconsidered, supplemented, or amended". In the interest of consistency and clarity, it was suggested that the text employ a more limited set of terms, such as "supplemented" or "revised".

206. The discussion also addressed the question of who would bear responsibility for acting upon new information and what should qualify as "additional information". *A member* clarified that the responsibility would rest with the current owner or possessor, subject to the qualification "as relevant". It was observed that the phrase "should additional information become available" implied an expectation that action would be taken once the relevant party became aware of such information. In order to establish a more objective standard, the Working Group expressed support for drawing on the terminology of the 1995 UNIDROIT Convention, namely the standard of what a person "knew or ought to have known". This approach was considered preferable to a purely subjective standard, as it would reduce the possibility of avoiding responsibility through claims of lack of awareness.

207. The inclusion of the term "technology" generated considerable discussion. It was argued that its retention would appropriately reflect the need to take account of evolving research methods and technological tools, including developments such as artificial intelligence. Others cautioned that an explicit reference to technology might create unrealistic expectations or impose disproportionate burdens, particularly on private owners or possessors who might not have access to advanced scientific or technological resources. The Working Group ultimately agreed that the role of technological developments in provenance research should be addressed in the commentary rather than in the operative text.

208. Nevertheless, no agreement was reached on whether the provision should refer solely to "information" or also include "technology" as a factor that required the reassessment of provenance research. Given the differing views on whether researchers should be expected to make use of newly available technologies, it was proposed that any reference to technology remain in square brackets pending further consideration.

209. The Working Group ultimately reached consensus on transferring paragraph 6 of Guideline D to paragraph 6 of Guideline C. In doing so, it agreed that the provision should employ the term "should" rather than "could" in order to articulate a clearer expectation that owners and possessors reassess provenance conclusions when appropriate. It was further suggested that any remaining issues relating to the updating of documentation could be addressed in paragraph 1 of Guideline D.

210. The Working Group also discussed the possibility of including, in the commentary, a non-exhaustive list of documents as examples of best practices in provenance research and due diligence. *An observer* cautioned against relying on lists of specific documents, noting that such materials might not be available or relevant in many cases. It was further emphasised that an exclusive focus on formal documentation, such as permits and official records, could risk overlooking other important sources of information, including oral histories, customary knowledge, and cultural norms.

Guideline E. Publicizing an [orphan cultural object]

Text as it stood at the end of the fourth session of the Working Group	**Text as it stood at the end of the fifth session of the Working Group**
E. Publicizing an [orphan cultural object] 1. A person or institution possessing an [orphan cultural object] ~~can~~ may ~~subject~~ submit it~~s~~ ~~possession~~ to a publicizing process. 2. This ~~will~~ could involve the physical and/or virtual presentation of the object on a platform specifically designed for this process. 3. [Respect should be given to the sensitivity of certain cultures.] Issues connected with the provenance or due diligence of an [orphan cultural object] should be put before an [international advisory body].	**E. Publicizing an [orphan cultural object]** 1. A person or institution possessing an [orphan cultural object] ~~can~~ may ~~subject~~ submit it~~s~~ ~~possession~~ to a publicizing process. 2. This ~~will~~ could involve the physical and/or virtual presentation of the object on a platform specifically designed for this process. 3. [Respect should be given to the sensitivity of certain cultures.] Issues connected with the provenance or due diligence of an [orphan cultural object] should be put before an [international advisory body].

211. Guideline E was neither discussed during the fourth session of the Working Group nor examined through intersessional Sub-Group work between the fourth and fifth sessions. At the fifth session, however, *the Secretary-General* reintroduced the proposal to establish a public registry or platform through which individuals holding cultural objects with uncertain or incomplete provenance could publicise them.

212. The proposal was widely regarded as reflecting the original rationale of the project. The underlying premise was that incomplete provenance should not automatically be viewed as a defect requiring concealment. Rather, transparency should be encouraged so that cultural objects could be documented, researched, protected, and preserved. The creation of a public platform was therefore seen as a mechanism for transforming uncertainty about provenance into an opportunity for information sharing and collaboration.

213. *A significant number of members and observers* expressed strong support for the development of such a registry. They considered it central to the objectives of the project because it would enable possessors of cultural objects with incomplete provenance to make information publicly available in the hope of obtaining additional knowledge about an object's history. Publicizing such objects could help prevent them from remaining undocumented, disappearing from view, entering illicit markets, becoming inaccessible to the scientific community, or ultimately being destroyed. The registry could also encourage all relevant stakeholders, particularly current possessors, to disclose available information and remain open to receiving feedback from researchers, institutions, and other interested parties.

214. The Working Group emphasised that the practical impact of the project would largely depend on the existence of such a platform. Some concern was expressed that, without an operational mechanism for publicizing objects, the project might lack practical effectiveness.

215. Discussions also addressed the relationship between the proposed registry and due diligence obligations. *The Secretary-General* explored with members and observers how registration might contribute to the exercise of due diligence. It was noted that the establishment of a platform could have important practical implications when assessing whether a person had acted diligently. The act of uploading information to the registry would entail a degree of responsibility, and the date of publication could serve as a clear reference point from which due diligence efforts might be measured.

216. Questions arose regarding the stage at which an object should be entered into the registry. *Some participants* wondered whether registration should form part of the due diligence process itself or whether it should occur only after due diligence had been undertaken without producing complete provenance information. In response, *the Secretary-General* observed that a person acquiring an object already publicized through the registry could potentially rely on that fact as evidence that some level of due diligence had previously been exercised.

217. In considering the possible structure of the registry, the Secretary-General referred to UNIDROIT's extensive experience with electronic and online registries, as well as its guidance on electronic registry systems.[25] Two possible models were identified.

218. The first model was a notice-based registry where the information concerning the existence of an object would be made publicly available through photographs and a concise description. Its purpose would be to facilitate the identification of provenance information by interested parties, but it would not verify the accuracy of submitted information nor produce direct legal effects. The second model resembled a civil-law registry and would require oversight by an expert responsible for ensuring that supporting information and documentation existed before an object was publicized. Both models would require an appropriate institutional framework for their operation.

219. *Several members* considered the two approaches and concluded that only a non-evaluative, notice-based approach appeared as the more suitable model and was realistically more achievable. They stressed that such a system would allow current possessors to provide and receive information in a transparent manner without requiring formal evaluation of submissions. It was suggested that the platform could incorporate links to online museum collections, drawing inspiration from comparable initiatives in the United States.[26] *The Secretary-General* further emphasised the importance of interoperability, noting that technical solutions already existed to facilitate connections between registries, databases, and online collections.

220. Practical experience from comparable projects was also discussed. *One member* referred to his involvement in the British Museum's "Circulating Artefacts" database,[27] which similarly operated on a public-access and notice basis. Drawing on this experience, he concluded that the notice-based model was the only realistically implementable option.

221. The Working Group also considered the scope of objects that could be publicized through the platform. *Some members* favoured limiting the registry to cultural objects "of importance" in order to ensure its effectiveness and manageability. This reflected earlier concerns regarding the potentially large volume of objects that could be submitted. Discussion followed regarding the meaning of the term "of importance". It was clarified that the concept should be understood in terms of cultural significance rather than financial value.

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[25] Guide on Best Practices for Electronic Collateral Registries, Cape Town Academic Project, August 2021.

[26] Association of Art Museum Directors' Object Registry for New Acquisitions of Archaeological Material and Works of Ancient Art is a database of archaeological objects that do not comply with museum ethical policies. In this system, institutions voluntarily upload information, even if no guarantee is provided regarding accuracy or authenticity, as the purpose is to give notice of the existence of such objects.

[27] Circulating Artefacts (CircArt).

222. A distinction was subsequently proposed between cultural objects generally considered “of importance” and those falling within the specific category identified in paragraph 5 of Guideline B. On this basis, a phased implementation strategy was recommended. Beginning with ordinary cultural objects of importance would allow the platform to be tested under controlled conditions before expanding to more complex or sensitive categories. Such a gradual approach was viewed as more realistic and operationally feasible while preserving the project’s broader long-term objectives.

223. The question of whether publicized objects should be subject to assessment generated considerable discussion. The Working Group debated whether any review process would be necessary and, if so, who should undertake it. Questions were raised regarding the expertise required, particularly given the diversity of cultural objects that could be involved, ranging from archaeological artefacts to objects associated with Indigenous communities. On one hand, caution was raised that meaningful assessment across such varied contexts could prove extremely difficult. *An institutional partner* argued that establishing a team of experts would not only improve the quality of the platform but could also contribute to the further development of provenance research by involving archaeologists, art historians, and other specialists.

224. Attention was also devoted to the financial and institutional implications of maintaining a registry. *Members* sought clarification regarding the relative costs of the two proposed models. *The Secretary-General* explained that a notice-based platform would be significantly less expensive than a registry involving expert verification, while noting that even the simpler model would still require dedicated funding. The Working Group agreed that any platform would need a sustainable financial structure and a clearly identified operator.

225. *A member* questioned the desirability of creating an international advisory or assessment board, expressing concern that such a body might become counterproductive. At the same time, concerns were raised about the long-term viability of a system that would allow private collectors to submit information without any form of verification. It was therefore acknowledged that a balance would need to be achieved between maintaining a non-evaluative platform and ensuring sufficient credibility and accountability.

226. *The Secretary-General* noted that operation of the platform would require dedicated resources, including technical specialists and, where appropriate, legal experts, archaeologists, or provenance researchers. While UNIDROIT possessed experience in designing registries, he clarified that it did not generally operate or administer them. Given the complexity of establishing even a notice-based registry, the conduct of a feasibility study at an early stage was proposed. *An observer* further suggested that a mixed funding model, including philanthropic and private-sector contributions, could be explored.

227. The voluntary nature of participation in the registry was also discussed. Questions were raised regarding the incentives for consulting or using a platform that would not provide definitive assessments. *The Secretary-General* maintained that use of the registry should remain voluntary. In his view, users would choose to consult the platform as part of their own due diligence processes, while those who elected not to do so would simply forgo the benefits associated with that additional source of information.

228. The Working Group additionally identified several practical challenges relating to accessibility. Some possessors might be reluctant to publicise objects because of concerns about theft or unwanted attention. Other groups, particularly Indigenous communities and Peoples, might face barriers in accessing or using online systems. The Working Group nevertheless considered these issues as practical challenges that could be addressed through appropriate design measures, rather than as grounds for rejecting the registry concept altogether.

229. In this context, the importance of cultural sensitivity was emphasised. Particular attention was paid to Indigenous communities, and reference was made to UNESCO’s practice of designating

"Indigenous focal points".[28] It was suggested that a comparable mechanism could be beneficial for both the registry and the broader Guidelines. Such a focal point could assist with the initial review of submitted information, help prevent the inappropriate disclosure of sensitive materials, and draw on established relationships with Indigenous communities to ensure respect for traditions and cultural sensitivities.

230. The relationship between the proposed registry and existing platforms was also considered. It was noted that some private collectors already maintained their own databases or platforms. Questions, therefore, arose as to whether the creation of a new registry would affect these existing initiatives, whether they could adapt to any new standards that might emerge, and whether the Guidelines would apply broadly to all relevant platforms or only to the registry currently under consideration.

231. Issues of anonymity and transparency were likewise discussed. The Working Group considered whether individuals publicising cultural objects should be required to disclose their identities. It was argued that information regarding both the owner and the location of the object should be available. *The Secretary-General* observed that, while privacy considerations would need to be respected, certain circumstances might ultimately require the identity of the individual uploading an object to be ascertainable.

232. Further questions concerned access to the platform itself. *Some members* debated whether the registry should be fully open to the public or restricted to individuals capable of demonstrating a legitimate interest. Consideration was also given to practical mechanisms that could help protect ownership rights and prevent looters from exploiting publicly available information. Additional concerns included ensuring equitable access, designing effective search functions, and overcoming language barriers, particularly in regions where numerous Indigenous languages coexisted alongside official national languages.

233. In conclusion, *the Secretary-General* emphasised the need for a dedicated Sub-Group to examine the practical aspects of the proposal, including funding arrangements, governance structures, access conditions, and operational models. *Members* agreed that exploring these issues before the sixth session of the Working Group would provide a stronger foundation for future discussions and facilitate more informed decision-making regarding the potential establishment of a registry.

Guideline F. Dispute resolution

Text as it stood at the end of the <u>fourth</u> session of the Working Group	**Text as it stood <u>at the end of the fifth session</u> of the Working Group**
F. Dispute resolution <u>In addition to the procedures normally available under national law, t</u>he parties may agree to submit a dispute relating to the provenance or due diligence of an [orphan cultural object] ~~shall be resolved by~~ <u>to</u> negotiation, mediation, conciliation or international arbitration. <u>When resorting to such an alternative dispute resolution mechanism, t</u>he parties <u>should</u> ~~agree to~~ make all relevant information and documentation available.	**F. Dispute resolution** In addition to the procedures normally available under national law, the parties may agree to submit a dispute relating to <u>the title</u>/the provenance or due diligence of an [orphan cultural object] to negotiation, mediation, conciliation or international arbitration. When resorting to such an alternative dispute resolution mechanism, the parties should make all relevant information and documentation available.

[28] See, for example, UNESCO Policy on engaging with Indigenous Peoples, 2018.

234. *The Secretary-General* introduced Guideline F on dispute resolution, highlighting the importance of ensuring that parties involved in disputes concerning cultural objects had access to appropriate mechanisms for resolving disagreements. He noted, however, that the draft Guideline was not yet sufficiently policy-orientated and invited the Working Group to consider whether it should continue developing this section or reconsider its inclusion.

235. The Working Group generally supported retaining a specific Guideline on dispute resolution, while emphasising the need for a careful and neutral approach. *Members* agreed that the text should not promote alternative dispute resolution (ADR) as inherently preferable to other mechanisms, but rather recognised the value of ensuring access to a range of appropriate procedures. The distinction was made between encouraging ADR as a "best practice" and recognising the availability of ADR as an important option for parties.

236. Discussions focused on the precise purpose and scope of the Guideline. While *some members* considered that the text should provide practical guidance on facilitating amicable solutions and dialogue between parties, *others* questioned whether it should explicitly encourage the use of ADR mechanisms. Concerns were raised that such an approach could unintentionally affect questions of applicable law, particularly in cross-border disputes involving mandatory rules of public law.

237. The Working Group also examined whether disputes involving undocumented or incompletely documented cultural objects presented specific characteristics justifying dedicated guidance. It was noted that disputes in this field often involved complex factual circumstances, including incomplete information, competing interpretations of provenance, and multiple historical narratives. Such situations might also involve overlapping legal frameworks, including the laws of source countries, receiving countries, and, where relevant, Indigenous legal systems.

238. *An observer* with experience in the museum sector highlighted that ADR could play an important role in facilitating dialogue between parties, particularly where disputes could not be resolved solely through legal analysis. At the same time, the complexity of these disputes was recognised, especially where questions of ownership, title, possession, provenance, or historical circumstances were intertwined.

239. *Some members* questioned whether the concept of "dispute resolution" was the most appropriate framing, given that ADR mechanisms traditionally addressed legal or financial disputes. They suggested clarifying whether the Guideline was intended to address disputes over legal rights or rather disagreements relating to factual issues, such as gaps or uncertainty in available provenance information. A possible reframing towards disputes concerning title, ownership rights, or possessory rights was proposed.

240. Following the discussion, the Working Group agreed that the Guideline should be redrafted to better reflect the specific nature of disputes relating to undocumented or incompletely documented cultural objects and to clarify the role of dispute resolution mechanisms in facilitating dialogue and mutually acceptable solutions.

Item 6 of the agenda – Organisation of future work

241. In light of the next Working Group meeting, *the Secretariat* proposed continuing the intersessional work with some specific key issues addressed in Sub-Groups.

242. It was decided that the sixth meeting of the Working Group would take place at the seat of UNIDROIT and online the week of 28 September 2026.[29]

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[29] After the meeting the decision was taken to hold the sixth meeting of the Working Group from 30 September to 2 October 2026.

Item 7 of the agenda – Other business

243. In the absence of other comments, *the Secretary-General* thanked the participants present in the room and online and closed the session.

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ANNEXE I

LIST OF PARTICIPANTS / *LISTE DES PARTICIPANTS*

MEMBERS / *MEMBRES*

Mr Sanjay ADHIKARI *remotely*	Secretary, Nepal Heritage Recovery Campaign Executive Director, Prakash Mani Sharma Academy for Public Interest Law Board Member, The Jane Goodall Institute Nepal
M. Eric COTTIER *remotely*	Ancien Procureur Général du canton de Vaud
Mr Maxence GARDE *in-person*	Curator, Antiquities Collection Calouste Gulbenkian Museum Calouste Gulbenkian Foundation
Ms Patty GERSTENBLITH *in-person*	Distinguished Research Professor Director, Center for Art, Museum and Cultural Heritage Law, DePaul University College of Law
Mme Corinne HERSHKOVITCH *in-person*	Avocate à la Cour
Mr LEE Keun-Gwan *in-person*	Professor International Law Seul National University
Mr Amnon LEHAVI *remotely*	Atara Kaufman Professor of Law Academic Director, G City Real Estate Institute Harry Radzyner Law School Reichman University (IDC Herzliya)
Mr Jorge A. SÁNCHEZ CORDERO Excused	*Chairman / Président*
Mr Jacques SCHUHMACHER *excused*	Executive Director of Provenance Research Art Institute of Chicago
Mr Marcilio TOSCANO FRANCA FILHO *in-person*	Professor Federal University of Paraiba
Ms Joanna VAN DER LANDE *excused*	Chairman Antiquities Dealers' Association
Mr Till VERE-HODGE *remotely*	Specialist Art and Cultural Property lawyer Solicitor, England and Wales
Ms Ana Filipa VRDOLJAK *remotely*	Professor, UNESCO Chair in International Law and Cultural Heritage Co-coordinator UNESCO-UNITWIN Network on Culture in Emergencies Faculty of Law - University of Technology, Sydney

Ms ZHANG Jianhong *in-person*	Professor of Archives The Palace Museum

INSTITUTIONAL OBSERVERS / *OBSERVATEURS INSTITUTIONNELS*

UNESCO *Remotely*	Ms Sunna ALTNODER Chief Movable Heritage and Museums Unit UNESCO Culture Sector Ms Maria MINANA Programme Specialist Illicit Trafficking and Return and Restitution Unit Culture Sector
ICCROM *remotely*	Mr Tomás MERAZ CASTAÑO Movable Heritage Officer
INTERNATIONAL COUNCIL OF MUSEUMS / *CONSEIL INTERNATIONAL DES MUSÉES* (ICOM)	*excused*
INTERNATIONAL CONFEDERATION OF ART AND ANTIQUE DEALERS' ASSOCIATIONS (C.I.N.O.A.) / *CONFÉDÉRATION INTERNATIONALE DES NÉGOCIANTS EN ŒUVRES D'ART (CINOA)* *in-person*	Mr Mark DODGSON Secretary General BADA The British Antique Dealers' Association
CONSEIL DES MAISONS DE VENTE *remotely*	Mme Sandra VIARD Directrice des affaires européennes et internationales

OBSERVERS / *OBSERVATEURS*

Prof. Kristen CARPENTER *remotely*	University Distinguished Professor Council Tree Professor of Law Director of the American Indian Law Program at the University of Colorado Law School
Mme Marie DUFLOT *remotely*	PhD candidate École des Hautes Études en Sciences Sociales (EHESS) and associated to the Centre Georg Simmel (EHESS-CNRS, UMR 8131)
Mr Angelo ESTRELLA FARIA *in-person*	Former Secretary General of UNIDROIT

Dr. Henrietta Erika GALAMBOS *in-person*	Head of Legal Department Museum of Fine Arts Budapest
Ms Giuditta GIARDINI *in person*	Chair of the Legal Affairs Committee of ICOM
Prof. Hao LIU *in-person*	Associate Professor School of Law, Shandong University
Ms Charlotte LOORAM *remotely*	Provenance researcher Musée Guimet
Ms Janet ULPH *remotely*	Professor Emeritus of Commercial Law Research Handbook on Art, Culture and Heritage Law Leicester Law School, University of Leicester

Invitee / *Invité*

Mr Luiz Filipe Maciel Gomes *remotely*	Head of the Cultural Office of the Embassy of Brazil in Italy

UNIDROIT & Partners / *UNIDROIT & partenaires*

Mr Ignacio TIRADO	Secretary-General / *Secrétaire Général*
Ms Anna VENEZIANO	Deputy Secretary-General / *Secrétaire Générale adjointe*
Ms Marina SCHNEIDER	Principal Legal Officer & Treaties Depositary / *Juriste principale et Dépositaire des traités*
Ms Alexandra DELORME	Legal Consultant / *Consultante juridique*
Ms Xiaotong JIAO	Senior intern / *Stagiaire senior*
Ms Clàudia López Flores Ms Zixi Zhu	Interns / *Stagiairse*
Mr Marc-André RENOLD *remotely*	Professor at the University of Geneva, UNESCO Chair in international law on the protection of cultural property, Director Art-Law Centre of the University of Geneva
Mme Isabelle TASSIGNON *in-person*	Consultante Fondation Gandur pour l'Art Genève

ANNEXE II

AGENDA

1. Opening of the session and welcome by the UNIDROIT Secretariat

2. Adoption of the draft agenda and organisation of the session (Study LXXB- W.G. 5 - Doc. 1)

3. Report on the intersessional work in Sub-Groups (Study LXXB- W.G. 5 - Doc. 2) and observations submitted by Ms van der Lande (Study LXXB- W.G. 5 - Doc. 3) and by the French Auction Market Authority (Study LXXB- W.G. 5 - Doc. 4)

4. Discussion on the proposals of the Sub-Groups on the Guidelines (B, C, D and the proposal for scientific publication) and commentary

5. Discussion on Guidelines A, E and F

6. Organisation of future work

7. Other business

ANNEXE III

DRAFT GUIDELINES AFTER THE FIFTH SESSION OF THE WORKING GROUP

Elements in square brackets indicate a lack of consensus on the proposal.

Text as it stood at the end of the fourth Working Group session –	**Draft texts proposed by Sub-Groups at the beginning of the fifth Working Group session –**	**Text as it stood at the end of the fifth Working Group session –**
A. Definition of an [orphan cultural object] The present Guidelines apply to ~~movable~~ cultural objects ~~of importance~~, as defined in Article 2 of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, ~~which has have no or incomplete provenance~~ without reasonably well-established provenance.	**Not addressed by a Sub-Group**	**A. Definition of an [orphan cultural object]** The present Guidelines apply to cultural objects of importance, as defined in Article 2 of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, without reasonably well-established provenance.
B. Due Diligence 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. 2. For the purposes of this Guideline, "transfer" shall mean a change in ownership, possession or physical location of the object. 3. Due diligence should be performed by public and private institutions, collectors and all actors dealing with cultural objects. 4. If, after exercising due diligence, the provenance of the object remains unknown or	**B. Due Diligence** 1. Due diligence should be performed when the object is subject to a transfer. Due diligence includes, but is not limited to, the criteria provided for in Article 4(4) of the 1995 UNIDROIT Convention. 2. For the purposes of this Guideline, "transfer" shall mean a change in ownership, possession or physical location of the object. 3. Due diligence should be performed by public and private institutions, collectors and all actors dealing with cultural objects. 4. If, after exercising due diligence, the provenance of the object remains unknown or incomplete, ~~continued attention should be given to~~	**B. Due Diligence** 1. Due diligence should be performed when the object is subject to a transfer. ~~Due diligence includes, but is not limited to, the criteria provided for in Article 4.4 of the 1995 UNIDROIT Convention.~~ 2. For the purposes of this Guideline, "transfer" shall mean, as appropriate, a change in ownership, possession or physical location of the object. 3. [Due diligence should take into account, but is not limited to, the [elements][circumstances][criteria] of Article 4(4) of the 1995 UNIDROIT Convention and [include elements of information shared with provenance research as appropriate in the circumstances].]

incomplete, continued attention should be given to the object and the provenance research should be considered ongoing. 5. 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 (a) human remains, burial objects, objects of religious, ritual, sacred and traditional significance (as determined by the community of origin), and (b) archaeological objects.	~~the object and~~ the provenance research should [could] be considered ongoing. 5. Certain categories of sensitive cultural objects require a heightened degree of due diligence, necessitating, among other actions, increased attention to provenance research. These categories include (c) human remains, burial objects, objects of religious, ritual, sacred and traditional significance (as determined by the community of origin), and (d) archaeological objects.	4. Due diligence should be performed by parties involved in or benefiting from a transfer, such as purchasers, owners, possessors, dealers, sellers and auction houses ~~public and private institutions, collectors and all actors dealing with cultural objects~~. 5. If, after exercising due diligence, the provenance of the object remains unknown or incomplete, the provenance research [is] ~~should~~ [could] be considered ongoing. 6. Certain sensitive categories of ~~sensitive~~ cultural objects may require a heightened degree of due diligence, necessitating, among other actions, increased attention to provenance research. These categories include but are not limited to (a) human remains, burial objects, objects of religious, ritual, sacred ~~and~~ or traditional significance (as determined by the community of origin and Indigenous Peoples), and (b) archaeological objects and paleontological objects.
C. Provenance Research 1. Possessors of cultural objects should engage in provenance research ~~which is part of due diligence when (...)~~. 2. 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. Provenance research also endeavours to identify if the object has been subject, in the past, to any illicit transfer or similar action.	**C. Provenance Research** 1. Possessors of cultural objects should engage in provenance research. 2. Provenance research is the process of searching information related to the history, context, circulation, ownership and ~~current~~ cultural meaning of an object from its creation or, in the case of archaeological objects, its discovery, to its current location. Provenance research also endeavours to identify if the object has been subject, in the past, to any illicit transfer or similar action. 3. Provenance research should be conducted by a person who, considering all circumstances, has	**C. Provenance Research** 1. Possessors of cultural objects should engage in provenance research. 2. Provenance research is the process of searching information related to the history, context, circulation, ownership and ~~current~~ cultural meaning of an object from its creation or, in the case of archaeological objects, its discovery, to its current location. Provenance research also endeavours to identify if the object has been subject, in the past, to any illicit [trade or illegal transaction/transfer or similar action], and in the case of objects of Indigenous Peoples, if the object has been taken without the free,

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~~. 4. The extent of provenance research depends on the specific case and the history of the object. The provenance research should aim to collect and assess all reasonably obtainable documentation and information at the time of the search in order to evaluate provenance gaps and undocumented transfers. It should also aim to evaluate the authenticity of the object and of the available documentation. 5. The results ~~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.	adequate knowledge and expertise in the relevant field, taking into consideration existing standards. 4. The extent of provenance research depends on the specific case and the history of the object. The provenance research should reasonably aim to collect and assess all ~~reasonably~~ obtainable documentation and information at the time of the search in order to evaluate provenance gaps and undocumented transfers. It should also aim to evaluate their authenticity of the object and of the available documentation. 5. The results of the provenance research should be dated and publicly shared. Should additional information become available, the results of the provenance research could be reconsidered and supplemented or amended as relevant.	prior, and informed consent or in violation of their laws, traditions and customs. 3. Provenance research should be conducted by a person who, considering all circumstances, has adequate knowledge and expertise in the relevant field, taking into consideration existing standards. 4. In advance of any ~~Provenance research on the categories of objects listed in Guideline B, paragraph 5(a), shall occur with a full and effective participation of the Indigenous Peoples concerned through their representative institutions, with their full consultation and collaboration~~ provenance research on the categories of objects listed in Guideline B, paragraph 5(a), the Indigenous Peoples concerned shall receive notice and the opportunity for full and effective participation through their own representative institutions. Possessors, researchers, and others shall consult and cooperate with the Indigenous Peoples concerned in the preparation, review, and publication [or provision] of provenance research. ~~[toward obtaining their free, prior, and informed consent].]~~ 5. The extent of provenance research depends on the specific case and the history of the object. The provenance research should reasonably aim to collect and assess all ~~reasonably~~ obtainable documentation and information at the time of the search in order to evaluate provenance gaps and undocumented transfers. It should also aim to evaluate their authenticity of the object and of the available documentation. 6. The results of the provenance research should be dated and publicly shared. Should ~~additional~~ new information, [research or technology] become available, the results of the provenance research/ all provenance information and documentation ~~could~~ should be reconsidered and supplemented or amended as relevant at any time.

D. Evidence [Evidence in court Documentation/Results/Transparency] ~~When transferring an orphan cultural object,~~ All elements relating to the provenance and due diligence performed are to be retained and shared including with the community concerned. They should accompany the object ~~in~~ at any time and be shared in case of a transfer ~~of it~~.	**D. Provenance information, documentation and transparency** 1. All information and documentation relating to due diligence and provenance research undertaken shall be dated, recorded, retained, and preserved in a durable and intelligible manner. 2. Due diligence and provenance documentation shall accompany the object at any time and be transmitted upon any transfer of the object. 3. Such information and documentation should also be shared in good faith, outside any transfer circumstances, with competent authorities, dispute-resolution bodies, communities of origin or concern and persons or entities demonstrating a legitimate and proportionate interest in the object. 4. The extent and form of disclosure may be subject to legal, contractual, or ethical limitations, including those arising from data protection, privacy, security, or confidentiality obligations. Where full disclosure is not possible, reasonable measures should be taken to enable meaningful access to the substance of the information, such as summaries or anonymisation. 5. Demonstration of a reasonable level of due diligence and provenance research exercise consists of documented evidence of the research process. The absence of conclusive information shall not, in itself, be regarded as a failure of reasonable and proportionate efforts being manifested during the research process. 6. Should additional information, research or technology become available, all provenance information and documentation could [new wording	**D. Provenance documentation, information, ~~documentation~~ and transparency** 1. All information and documentation obtained in the process of exercising ~~relating to~~ due diligence and provenance research ~~undertaken~~ shall be dated, recorded, retained, and preserved in a durable and intelligible manner. 2. Due diligence and provenance documentation/information ~~shall~~ should accompany the object at any time and be transmitted upon any transfer of the object. 3. Demonstration of a reasonable level of due diligence and provenance research exercise consists of documented evidence of the research process. The absence of conclusive information shall not, in itself, be regarded as a failure of reasonable and proportionate efforts being manifested during the research process. 4. Such information and documentation should also be shared in good faith, outside any transfer circumstances, with competent authorities, dispute-resolution bodies, Indigenous Peoples ~~communities of origin or concern~~ or upon reasonable request ~~and~~ with persons or entities demonstrating a legitimate and proportionate interest in the object. ~~5.~~ The extent and form of disclosure may be subject to legal, contractual, or ethical limitations, including those arising from data protection, privacy, security, or confidentiality obligations. Where full disclosure is not possible, reasonable measures should be taken to enable meaningful access to the substance of the information, such as summaries or anonymisation. ~~6. Demonstration of a reasonable level of due diligence and provenance research exercise consists of documented evidence of the research process. The absence of conclusive information shall not, in itself, be regarded as a failure of reasonable and proportionate efforts being manifested during the research process.~~

	to be proposed] be reconsidered, revised, supplemented or amended as relevant at any time.	7. ~~Should additional information, research or technology become available, all provenance information and documentation could [new wording to be proposed] be reconsidered, revised, supplemented or amended as relevant at any time.~~
E. Publicizing an [orphan cultural object] 1. A person or institution possessing an [orphan cultural object] ~~can~~ may ~~subject~~ submit it~~s possession~~ to a publicizing process. 2. This ~~will~~ could involve the physical and/or virtual presentation of the object on a platform specifically designed for this process. 3. [Respect should be given to the sensitivity of certain cultures.] Issues connected with the provenance or due diligence of an [orphan cultural object] should be put before an [international advisory body].	**Not addressed by a Sub-Group**	**E. Publicizing an [orphan cultural object]** 1. A person or institution possessing an [orphan cultural object] ~~can~~ may ~~subject~~ submit it~~s possession~~ to a publicizing process. 2. This ~~will~~ could involve the physical and/or virtual presentation of the object on a platform specifically designed for this process. 3. [Respect should be given to the sensitivity of certain cultures.] Issues connected with the provenance or due diligence of an [orphan cultural object] should be put before an [international advisory body].
F. Dispute resolution In addition to the procedures normally available under national law, the parties may agree to submit a dispute relating to the provenance or due diligence of an [orphan cultural object] ~~shall be resolved by~~ to negotiation, mediation, conciliation or international arbitration. When resorting to such an alternative dispute resolution mechanism, the parties should ~~agree to~~ make all relevant information and documentation available.	**Not addressed by a Sub-Group**	**F. Dispute resolution** In addition to the procedures normally available under national law, the parties may agree to submit a dispute relating to the title/the provenance or due diligence of an [orphan cultural object] to negotiation, mediation, conciliation or international arbitration. When resorting to such an alternative dispute resolution mechanism, the parties should make all relevant information and documentation available.

G. [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.	**Not addressed by a Sub-Group**	**Not discussed during the fifth session of the Working Group**