



EN

Working Group on Orphan Objects
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UNIDROIT Preliminary Draft Guidelines on Orphan Cultural Objects

1. The UNIDROIT General Assembly initially approved work in the area of Private Art Collections for the 2017-2019 triennial Work Programme, and the research conducted between 2017 and 2022 contributed towards the General Assembly's decision to maintain the Private Art Collections project in the 2023-2025 Work Programme with medium priority. This project is undertaken by UNIDROIT in partnership with the *Fondation Gandur pour l'Art* (FGA) and the Art-Law Centre of the University of Geneva.
2. The UNIDROIT Secretariat identified orphan cultural objects as one topic in particular need of transnational legislative attention. The need to work on a definition of orphan objects, the role of provenance, the legal status of orphan objects in art collections, and the definition of due diligence when acquiring orphan objects have all been earmarked as issues that shape the scope of the UNIDROIT Private Art Collections project.
3. So-called orphan objects, in other words cultural property with no proven provenance or with significant gaps in provenance, are the source of many legal, ethical, archaeological and historical questions. The questions that merit further consideration in the project include, among others, what should be done with works without archives, especially when their holders wish to sell or lend them. Not infrequently collectors and dealers prefer to avoid potential problems by resorting to more discreet solutions, primarily private sales, which encourage the clandestine market and result in a lack of transparency, detrimental to the preservation of objects and the industry as a whole. Due diligence, provenance research and the future of objects without satisfactory provenance are all linked together. It is therefore ever more necessary to find a procedure that will allow an object the provenance which is currently considered unsatisfactory to have a future on the art market. It is noted that this also applies to museum institutions.
4. An Exploratory Expert Group was first established – and then a Working Group – to delve into the complexities surrounding orphan cultural objects. The summary reports of the meetings held by the Exploratory Expert Group and of the first session of the Working Group are available on the Private Art Collections project's dedicated [webpage](#).
5. One of the goals of the project is to enhance legal certainty in the market by defining the concept of orphan objects and also by defining – to the extent possible – their legal regime, in particular in connection with the diligence of the owner. The format that seemed best suited to achieve this goal is the elaboration of guidelines which, in the first instance, would have the following framework: Definition / Applicable Law / Provenance / Due Diligence / Burden of proof // Procedure for "clearing" orphan objects.

A. Definition of an orphan cultural object

For the purposes of the present Guidelines, an orphan cultural object is a movable cultural object, as defined in Article 2 of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, which totally or partially lacks documented and/or identifiable provenance (for example no available or reliable relevant archives or publications).

Commentary / References

6. The definition was amply discussed in the Subgroup on definitions,¹ in the Exploratory Expert Group² and in the Working Group,³ in particular in connexion with the possible confusion with “orphan works” in copyright law. It was, however, decided to keep the notion of “orphan cultural objects”, as it was felt that this term was the closest to the types of objects discussed in the guidelines.

7. For the time being, the decision was made to have a clear and short definition, in order to stay broad and make sub-divisions (provide subcategories with specific regimes) at a later stage.

8. The reference to Article 2 of the 1995 UNIDROIT Convention was questioned and found by some as not adapted to non-legal use, for example for museum professionals. It must also be recalled that the criterion for objects under Article 2 of the 1995 Convention is cultural importance and not economic value.

9. As to the terms “totally or partially”, the Subgroup wondered whether two definitions should be used: one for *totally* undocumented objects and one for *partially* undocumented objects (gaps in provenance), as they could deserve two different regimes. The Subgroup agreed to keep this in mind and for the time being retain the expression “totally or partially” in the definition.

10. The Subgroup then discussed the part of the definition in brackets: “(e.g. *no available or reliable relevant archives or publications*)”. It was agreed to add more examples between brackets, such as publications, which were not necessarily included in the term “archives”, as for certain types of objects, there were no archives, but the history of restorations could date these objects and when they appeared on the market.

11. Another question was raised concerning the meaning of “reliable” and who would decide if an archive was reliable, or a provenance was documented. It was recalled that the definition had to remain general. A member suggested the creation of another Subgroup to focus on archives and on documents that could constitute proof, with the help of search provenance experts and museums. It was noted that this issue concerned the regime more than the definition.

Questions to be discussed

- *Should the text in parentheses (examples) be left in the actual definition or be considered as a comment?*
- *Should other terms of the definition also be defined, such as “archives” or “documented provenance”? It was stressed that the Explanatory Report of the 1995 UNIDROIT Convention should be used as a reference for definitions which had possibly already been made.*

¹ Exploratory Expert Group, Sub-group on definitions, 3 March 2023: [summary report](#)

² Exploratory Expert Group, 2nd meeting, 28-29 March 2023: [summary report](#)

³ Working Group on Orphan cultural objects, 1st session: [summary report](#)

B. Applicable Law

The existence, legal status and acquisition of an orphan object are subject to the relevant conventions. If no convention is applicable, the existence and legal status of an orphan object are subject to the domestic law of its country of origin. The acquisition of an orphan cultural object is subject to the law of the place of its location at the time of the transaction, provided the principles of due diligence (below D) are respected.

Commentary / References

12. The Working Group acknowledged the complexity of the issue of applicable law and no consensus was found regarding this issue. The Working Group proposed first developing the content of possible guidelines and then determining if these principles could be more prescriptive. It was proposed that the Working Group consider how the choice of applicable law will interact with provenance and suggested that a text emphasising this point was necessary.

13. The applicable law and research provenance of cultural objects refer to the legal frameworks and investigative processes that govern the ownership, acquisition, and historical context of these objects, particularly in relation to issues like the protection of cultural property. The legal frameworks that govern cultural objects vary by jurisdiction but generally fall into the following categories: international conventions, national laws, customary law and Indigenous rights. Indeed, there is growing recognition of the need to respect the rights of Indigenous peoples and local communities with respect to their cultural heritage. Provenance research plays a critical role in ensuring the legitimacy of ownership and helping to prevent the illicit trade in cultural goods. The protection of cultural heritage is an ongoing concern, and various legal mechanisms, coupled with advances in provenance research, continue to shape the landscape of cultural property law and ethics.

14. Guideline B is based on the doctrine of *lex originis* according to which one should apply the law of the State of origin to issues connected to the status of a cultural object and its transferability. This was first developed by the *Institut de droit international* at its Basel Session in 1991, which adopted a resolution on this matter on 3 September 1991.⁴ This idea, championed by Professor Lalive, influenced the 1995 UNIDROIT Convention.

15. The Belgian Code of Private international law also contains a rule providing for the application of the law of the State of origin, provided the protection of the good faith purchaser can be guaranteed:⁵

Art. 90. Law applicable to cultural property

If an item, which a State considers as being included in its cultural heritage, has left the territory of that State in a way, which is considered to be illegitimate at the time of the exportation by the law of that State, the revindication by the State is governed by the law of that State, as it is applicable at that time, or at the choice of the latter, by the law of the State on the territory of which the item is located at the time of revindication.

Nevertheless, if the law of the State that considers the item part of its cultural heritage does not grant any protection to the possessor in good faith, the latter may invoke the protection, that is attributed to him by the law of the State on the territory of which the item is located at the time of revindication.

⁴ The International Sale of Works of Art from the Angle of the Protection of the Cultural Heritage - https://www.idi-iiil.org/app/uploads/2017/06/1991_bal_04_en.pdf

⁵ Law of 16 July 2004 Holding the Code of Private International Law, Art. 90 (English version: https://www.ipr.be/sites/default/files/tijdschriften_pdf/Engelse%20vertaling%20WIPR_augustus%202018.pdf)

Questions to be discussed

- *What should be done when the object at stake is not to be potentially claimed by a State but by a community, such as Indigenous people (see art. 11 and 12 of the 2007 UN Declaration on the Rights of Indigenous People)?⁶*

16. When the cultural object at stake is to be potentially claimed by a community, such as Indigenous people, rather than by a State, there are several key considerations and actions that should be taken in accordance with international law, particularly the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Articles 11 and 12. These Articles underscore the rights of Indigenous peoples to protect their cultural heritage, intellectual property, and traditional knowledge, and to regain control over their cultural objects.

17. The protection and repatriation of cultural objects tied to Indigenous communities require a holistic approach, one that respects the principles of self-determination; free, prior, and informed consent; and cultural integrity. States and institutions that hold such objects must engage in genuine dialogue with Indigenous communities, ensure that their rights are upheld in both legal and practical terms, and facilitate the repatriation of cultural property when it is in the community's interest.

- *What happens if the State or origin is not known?*

18. There are potential problems with attempting to invoke the *lex originis*, particularly with respect to objects the nation of origin of which is unknown or unknowable – often described as “orphaned objects”.

19. When the State of origin of a cultural object is unknown, the issue of determining the applicable law becomes complex, particularly when it comes to legal frameworks governing cultural property, such as protection, and ownership. To address this challenge, several approaches can be taken, often depending on the context and legal system. International legal frameworks (such as the 1970 UNESCO and the 1995 UNIDROIT Conventions) provide guidance on how to handle cultural property when its state of origin is unknown. These conventions do not directly solve the problem of unknown origin but provide a framework for resolving disputes over ownership and repatriation when the object can be tied to a particular cultural or geographical context.

20. In some jurisdictions, laws may prioritise the cultural significance or importance of the object over its precise origin. This approach focuses on the object's link to a particular culture, group, or heritage. For example, if an object appears to be part of a specific cultural heritage, it could be treated as belonging to the group or region it represents, even if its precise origin is unknown. This may involve expert testimony, research, or historical analysis to establish its cultural and historical context.

21. There may also be public policy considerations. Some countries may take a broader public policy approach, prioritising the cultural heritage of all peoples over strict national boundaries. This could involve recognising objects with uncertain origins as part of a global cultural patrimony, treating them as objects to be preserved and protected under international cooperation rather than returning them to one nation.

22. The 1991 resolution of the *Institut de droit international* also proposed rules which would govern if the country of origin is unknown (Article 1(1) provides the “‘country of origin’ of a work of art means the country with which the property concerned is most closely linked from the cultural

⁶ <https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples>

point of view”). However, such a situation presents a difficult problem for any choice-of-law rule. Moreover, there may be the possibility that the potential nations of origin could band together and exercise their collective interest.⁷

C. Provenance Research

Provenance research is the means by which the owner or the acquirer of an orphan cultural object is to find out the place of origin and/or the history of acquisition of the object. No universal definition can be proposed, as provenance research will depend on the specific case at hand and its history. Provenance research should be performed by professionals, and it can involve, among other actions, library research, archives (public or private) consultation, documentation analysis, or exchanges with witnesses.

Commentary / References

23. Provenance research involves tracing the history of objects by researching and documenting their background and changes in ownership. It is based in particular on archive documents and on any traces that show that an object has been in the collections for a long time. Several definitions of provenance and methodology of research have been elaborated by different institutions.⁸

24. The discussion in the various groups emphasised the relation between provenance research and the definition of orphan objects. as what is important is to determine what constitutes sufficient provenance. There may be a need to narrow the definition in very precise terms and in a legal manner, so that it can be agreed upon as an acceptable standard of provenance. Provenance research should be adapted to orphan objects and should focus precisely where there may be suspicious gaps in provenance.

25. The ICOM Code of Ethics for Museums provides some indications for the handling of unprovenanced objects, which is to avoid displaying such objects, in its Principle 4.5.⁹ See also the Annexe below, which presents some definitions and criteria of research provenance provided by other institutions.

⁷ See also Prof. Symeon Symeonides, who has provided his own proposal for implementing the *lex originis* rule. Symeon Symeonides, A Choice-of-Law Rule for Conflicts Involving Stolen Cultural Property, 38 Vand. J. Transnat'l L. (2005) at 1183.

⁸ <https://icom.museum/wp-content/uploads/2018/07/ICOM-code-En-web.pdf>;
[https://provenienzforschung.ch/fr/schweizerischer-arbeitskreis-provenienzforschung-francais/mnr/recherche-de-provenance](https://www.culture.gouv.fr/Nous-connaître/Organisation-du-ministère/Le-secretariat-général/mission-de-recherche-et-de-restitution-des-biens-culturels-spoliés-entre-1933-et-1945/recherche-de-provenance-outils-et-méthode#:~:text=Définition,aux%20«%20Principes%20de%20Washington%20»;
<a href=);
<https://rechercheprovenances.fr>;
<https://www.historien-conseil.fr/qu-est-ce-qu-une-recherche-de-provenance/>

⁹ 4.5 *Display of Unprovenanced Material* Museums should avoid displaying or otherwise using material of questionable origin or lacking provenance. They should be aware that such displays or usage can be seen to condone and contribute to the illicit trade in cultural property.

Questions to be discussed

- *Should the importance of provenance research, and the time spent on it, be proportional to the price of the object?*
- *Should there be a chronological age limit (e.g., objects over 500 years old) for orphan cultural objects with provenance being researched?*
- *As part of a search for proof, should a contract be drawn up between the holder and the provenance researcher, giving the latter free access to the holder's archives?*

D. Due diligence in acquiring an orphan cultural object

When acquiring an orphan cultural object, attention must be paid to all the relevant circumstances. In this respect the criteria of due diligence provided for in Article 4.4 of the 1995 UNIDROIT Convention are a good starting point.

Commentary / References

26. Article 4(4) of the 1995 UNIDROIT Convention reads: "In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances".

27. Due diligence in acquiring an orphan cultural object is a critical aspect of ensuring ethical and legal compliance, particularly in light of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.¹⁰ This Convention emphasises the importance of provenance research and the obligation of acquiring parties to verify the origin of the object. In the context of orphan cultural objects due diligence becomes even more crucial. Collectors, institutions, and dealers are encouraged to conduct thorough investigations into the object's past, engage with relevant databases, and consult experts to mitigate the risk of acquiring items that may have been unlawfully removed from their cultural context. By adhering to these principles, stakeholders can contribute to the protection of cultural heritage and foster responsible stewardship of art and artifacts.

28. The criteria of due diligence established by the 1995 UNIDROIT Convention in its Article 4(4) have been incorporated in the Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State. The Working Group agreed on the transposition of these criteria and discussed whether due diligence should be specific to orphan objects or not, not reaching a consensus.

29. The exercise of due diligence is an obligation of means and not an obligation of result, but it must be done accurately, and the aim of the Working Group is to find key factors related to due diligence related to orphan objects (for example, a checklist).¹¹ A proposal was made to change the

¹⁰ <https://www.unidroit.org/fr/instruments/biens-culturels/convention-de-1995/>;
<https://1995unidroitcap.org/article-44-due-diligence/>

¹¹ Potential source of inspiration: [Art Transaction Due Diligence Toolkit](#)

expression “characters of the parties” with “features of the objects” to emphasise that the focus must be on the categories of objects. See the Annexe for some definitions and criteria of due diligence.

Questions to be discussed

- *Should experts in art history, archaeology, or legal matters always be engaged to assess the object’s provenance and legitimacy?*
- *What is the link between the value of the objects and the level of due diligence to be exercised?*

30. Discussion should continue on the financial cost of due diligence and the link between the value of the objects and the level of due diligence it is “practical” to exercise. See document UNIDROIT 2024 - Study S70B – W.G.2 – Doc. 3.

- *Is there a willingness, or should there be an obligation, to disclose the findings of the due diligence process to relevant stakeholders, including the public or cultural institutions?*

E. Evidence and burden of proof

Keeping the proof of all elements surrounding the provenance research and the due diligence performed when acquiring or selling an orphan cultural object is of paramount importance. In case of a transaction, the burden of establishing that due diligence was performed will lie on the acquirer, the seller or the donor.

Commentary / References

31. The 1995 Convention places the burden of proof on purchasers to establish that they were diligent with respect to provenance. It was noted during the first session of the Working Group that “the distinction between due diligence and proof and burden of proof is important because due diligence is about creating a proper file for the future, while both proof and the burden of proof are about how to deal with today’s situation before a court”. It was also suggested that blockchain might be an interesting tool to research an object’s provenance.¹²

32. Collectors should be encouraged to create and maintain databases on their collections. It is also worth highlighting the importance of dealer archives, including for collectors. These archives are very valuable and, although some dealers active during the war have ceded their galleries and archives to their beneficiaries, access is only relative (partial and targeted openings). Article 4 of the 1995 Convention deals with accessibility. In the context of provenance research, the researcher needs access to archives but may face professional secrecy, which becomes an obstacle.

33. The discussion also mentioned that if due diligence is carried out, but it is based on a pedigree that turns out to be false after the event, the seller must take responsibility.

¹² Blockchain and provenance research:

<https://heritagesciencejournal.springeropen.com/articles/10.1186/s40494-023-011296#:~:text=A%20recent%20literature%20review%20has,of%20cultural%20objects%20%5B22%5D>

Questions to be discussed

- *Who should bear the burden of proof? Would it be desirable for the seller/donor to share the burden of proof equally with the buyer?*
- *Should there be recommendations for both (i) how to approach due diligence going forward, given that provenance research has and is continuously improving, and (ii) how to approach proof from the past?*

F. Procedure for “clearing” an orphan cultural object

A person or institution possessing an orphan cultural object, regardless of how long ago it was acquired, can subject its possession to a “clearing” procedure. This will involve the physical and/or virtual presentation of the object on a platform specifically designed for this procedure. If, after a period of [XXXX] years, no claim has been made, the object can be subject to publication, research and legal transfer, and a specific official mention (“‘Cleared’ orphan cultural object”) will have to accompany the object at all times.

Commentary / References

34. The establishing of such a platform will be a complex matter. At best, we should try to benefit from an existing structure. UNIDROIT is not suited to be that structure, as such would fall outside of its statutory goals and purposes. The FGA is too involved in the acquisition and exhibition of cultural objects to be able to play that role, and it is not certain that such an activity should be promoted by an academic institution. A suggestion submitted as a possible appropriate venue to host the orphan object platform was the “Platform for the diplomacy of cultural heritage”, based in Geneva.

35. The proposed procedure could be “inspired” by the Kimberley Process Certification Scheme (KPCS),¹³ which is an international forum dedicated to eliminating conflict diamonds from the global trade.

36. The objective of this procedure is not to clean tainted objects but to permit objects without a complete provenance, after thorough research, not to disappear onto the black market. The procedure would permit claims to be raised, and if no claim is made, the object would have a sort of authorisation for circulation and presentation for sale.

37. The educational role in informing the public about the phenomenon is important to stress. Also, the Working Group indicated that it cannot solve all problems at once and suggested to focus on the most important items first before turning to the problem of less valuable items.

Questions to be discussed

- *Is a platform the only possibility? Another option would be to follow the French MNR (Musées Nationaux Récupération) for Nazi-looted art.¹⁴*

¹³ [The Kimberley Process \(KP\) | KimberleyProcess](#)

¹⁴ <https://www.culture.gouv.fr/nous-connaître/organisation-du-ministère/Le-secretariat-général/mission-de-recherche-et-de-restitution-des-biens-culturels-spoliés-entre-1933-et-1945/biens-musees-nationaux-recuperation->

38. One of the key audiences of such a soft-law principle would be museums, which will have guidelines to not “hide” unprovenanced items but to be transparent about provenance gaps. After World War II, France created a category of objects based on the Declaration of London. These objects were stolen by Nazis from private art collectors and Jewish art owners and returned to France after the war. The most important objects were placed in public French museums and, upon this placement, became “MNR”. Despite their placement in museums, these objects are not owned by the museums, nor by the French State. Not all MNR works are necessarily spoliated works. The proportion of spoliated works in the total of MNR remains uncertain, insofar as the provenance of the majority of works remains unknown. MNR are classified into different categories according to the information available.

- *The period after which an object can be considered as “cleared” is central. The present draft does not make any suggestion, but it could be 5, 7 or 10 years.*

G. Dispute Resolution

Any dispute relating to the provenance, due diligence or clearing of an orphan cultural object shall be resolved by negotiation, mediation, conciliation or international arbitration.

Commentary / References

39. The 1995 UNIDROIT Convention contains a provision favouring international arbitration regarding disputes relating to cultural objects, be they stolen or illegally exported (art. 8.2). The present draft follows that provision but widens its scope to all alternative dispute resolution mechanisms.

40. Disputes relating to the provenance, due diligence, or clearing of an orphan cultural object can indeed be resolved through negotiation, mediation, conciliation, or international arbitration. These methods are often considered preferable to litigation, especially in the context of international cultural property law, where multiple jurisdictions, legal systems, and cultural interests may be involved. How can each of these methods be applied?

a) *Negotiation* is the most straightforward and flexible way to resolve disputes over orphan cultural objects. The parties involved - such as museums, collectors, governments, or cultural heritage organisations - can directly engage in discussions to reach a mutually agreeable solution without resorting to formal legal proceedings.

- **Provenance and due diligence:** Negotiation can be used to establish clear provenance for an object, resolve ownership disputes, or agree on the ethical handling of the object. If the origin is unclear, the parties might negotiate based on research, the historical importance of the object, or its cultural significance.

- **Benefits:** Negotiation allows for a more collaborative approach, which can be particularly important when cultural property is involved, as parties may wish to preserve relationships or respect cultural sensitivities.

b) *Mediation* is a more structured form of negotiation, involving a neutral third-party mediator who facilitates communication between the disputing parties. The mediator does not impose a decision but helps the parties find a solution that they both agree upon.

- Application in provenance issues: When parties disagree over the origin of an orphan cultural object or how to handle due diligence in its acquisition, mediation can guide the parties toward a solution that respects both the object's potential cultural significance and the legal rights of all parties involved.
 - Benefits: Mediation is less formal and faster than litigation. It also preserves confidentiality, which can be important when dealing with sensitive cultural heritage matters or the reputations of institutions involved.
- c) *Conciliation* is similar to mediation but involves a more proactive role for the conciliator, who may suggest terms of settlement or offer opinions on the merits of the case. This method can be especially useful when there is a need for a more expert and neutral party to weigh in on the potential resolution.
- Resolution of disputes: For orphan cultural objects, a conciliator might help identify whether a specific State or cultural group has a rightful claim to the object based on broader international principles or agreements.
 - Benefits: Conciliation can be effective when parties are unable to reach a settlement on their own but are open to receiving expert guidance. It can help clarify legal and cultural issues that are difficult to resolve without specialised knowledge.
- d) *International arbitration* is a more formal and binding dispute resolution method, where an independent arbitrator or a panel of arbitrators makes a final and legally enforceable decision after reviewing the facts, applicable law, and arguments from both sides.
- Application in cultural property disputes: In cases where the provenance of a cultural object is unclear, or there are conflicting claims to ownership, arbitration could be an effective method to resolve the dispute. This would be particularly appropriate in international cases where different legal systems and cultural expectations are involved.
 - Benefits: Arbitration provides a final and enforceable decision, which can be crucial in international disputes where parties are in different jurisdictions. It is often faster and more specialised than court proceedings, especially in areas like cultural property law.

Questions to be discussed

- *If the parties wish to bring the dispute to court, should the guidelines propose a specific jurisdiction rule? If so, should it be the jurisdiction of the courts of the place where the orphan object is located?*

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ANNEXE

DEFINITIONS “DUE DILIGENCE” AND “PROVENANCE RESEARCH” & CRITERIA

	DUE DILIGENCE		PROVENANCE RESEARCH	
	Definition	Criteria / Guidelines	Definition	Criteria
UNIDROIT 1995 https://www.unidroit.org/instruments/cultural-property/1995-convention/	N/A	Article 4.4 - In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural artefacts, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances		
Association Of Dealers & Collectors of Ancient & Ethnographic Art https://adcaea.wildapricot.org/resources/1015_duediligence.pdf	“Due Diligence is the process where the collecting history (provenance) of the object is investigated and recorded”.	1. Documentary evidence of ownership and history: Export License • Written correspondence, personal notes, labels • Inventory list as part of a will, appraisal, or the like. • Publication in a reputable source such as auction catalogues, exhibition catalogues, journals, books or other such related publications, • Image, sound and film	“Collecting history of an object”	N/A

	DUE DILIGENCE		PROVENANCE RESEARCH	
	Definition	Criteria / Guidelines	Definition	Criteria
		<p>resources • Excavation field notes • Dated invoices</p> <p>2. <u>Initial examination of the object:</u> Traces of ingrained dust, dirt, or other accretions. (it suggests it has been displayed or stored for many years and could therefore be from an older collection) • A distinctive type of mount, mounting or binding that is likely to be from a particular period. • Whether the object has been mended, partially restored, or otherwise interfered with. • Carries old labels, inscriptions, or other marks. These could offer clues about presence and/or use in former collections.</p> <p>3. <u>Consideration of the countries in which the object has been located and when:</u> Ensure the object was not taken illegally during a time of conflict or natural disaster. These events often result in the creation of 'hot' areas i.e. an area where extensive looting is presently occurring or has happened in the recent past. • Check the "red list" compiled by ICOM to ensure the object does not fall into high risk category and is therefore extremely likely to be illicit. • Obtain an Art Loss Register Certificate. • Conduct an Internet search: check news reports to ensure no similar objects have been reported stolen or missing in the international press.</p>		

	DUE DILIGENCE		PROVENANCE RESEARCH	
	Definition	Criteria / Guidelines	Definition	Criteria
		<p>4. <u>Seller Reputation:</u> Avoid questionable sources and pay particular attention to any item offered for sale when the asking price does not equate to its market value. Look carefully at the seller and what else they offer. Consider how the object is described, whether the seller provides collection history or a registration number, and any appropriate export papers from the residing country.</p> <p>5. <u>Expert Advice:</u> Ask for assistance and advice from specialists such as reputable dealers, specialist auction houses, and collecting institutions. Legal or other advice from the country of origin, such as through the cultural attachés in embassies, may also be beneficial given the wide range of approaches internationally.</p> <p>6. <u>Discussions with the seller:</u> When no documentary evidence is available, have the seller prepare a document that records all known collecting history for the object. This document should be notarized with a lawyer or notary public.</p>		
<p>International Association of Dealers in Ancient Art (IADAA) https://iadaa.org/about-us/</p>	N/A	<p>1. Require a vendor to provide their name and address and to sign and date a form identifying the item for sale and confirming that it is the unencumbered property of the vendor which they are authorised to sell.</p>	<p>There is no definition for provenance. However, they have one for UNPROVENANCED: "It means that ownership history is unknown,</p>	N/A

	DUE DILIGENCE		PROVENANCE RESEARCH	
	Definition	Criteria / Guidelines	Definition	Criteria
		<ol style="list-style-type: none"> 2. Verify the identity and address of new vendors and record the details. 3. Pay particular attention in the case of any item offered for sale where the asking price does not equate to its market value. 4. If you are offered an item you suspect to be stolen: <ol style="list-style-type: none"> (a) Attempt to retain the item while enquiries are made (b) Contact the appropriate authorities (c) Check with the relevant stolen property registers 5. Look critically at any instance when requested to pay in cash and avoid doing so unless there is a strong and reputable reason to the contrary. In the absence of such a reason pay by cheque or other method that provides an audit trail. 6. Be aware of money laundering regulations. 7. Ensure that staff are aware of their responsibilities in respect of the above code. 8. You should be particularly careful only to acquire well provenanced objects from actual trouble spots and adhere to national laws and international regulations with regard to the above. 	partially unknown, and often unknowable. It is not a euphemism for looted". (Michael Bennett (2013), p. 35-37).	
<p>(Responsible Art Market) RAM</p> <p>https://www.responsibleartmarket.org/guidelines/guidelines-on-combatting-</p>	"Due diligence" is commonly defined as "action that is considered reasonable for people to be expected to take to keep themselves or	<ol style="list-style-type: none"> 1. Know and comply with the laws where you are doing business and be alert to 'red flags' 		It is important to satisfy the standards of: <ol style="list-style-type: none"> 1. Ownership: In the absence of valid

	DUE DILIGENCE		PROVENANCE RESEARCH	
	Definition	Criteria / Guidelines	Definition	Criteria
<p>money-laundering-and-terrorist-financing/guidelines/</p> <p>The guidelines are for money laundering, but they also include owner due diligence and artwork due diligence, so it might be useful.</p> <p>https://www.responsibleartmarket.org/guidelines/art-transaction-due-diligence-toolkit/</p>	<p>others and their property safe". 1 In practice, it is about asking the right questions, obtaining and verifying information and applying common sense. Where we use the term "due diligence" in the toolkit, we are referring to this common definition and not to any legal definition which may exist in certain legislation.</p>	<ol style="list-style-type: none"> 2. Know Your Clients (KYC) and establish their risk profiles – Check for client red flags (Client Due Diligence) 3. Research the artwork, its ownership and provenance – Check for artwork red flags (Artworks Due Diligence) 4. Know the background and purpose of transaction – Check for transaction red flags 5. Keep records 6. Train staff and monitor processes and procedures 7. If grounded suspicions exist, know how to act 		<p>objections it is reasonable to suppose that the possessor of an artwork enjoys full ownership, but possession of itself is not a guarantee of ownership or rights of disposal. It is advisable for the Art Business to ask the seller to confirm if they are the owner of the artwork and if not, to identify the actual owner of the artwork.</p> <p>2. Provenance: The Art Business will want to be reasonably sure that the known history of previous owners of the artwork has been established as far as it is reasonably possible to do so. For antiquities for example Art Businesses will want to be sure the objects have not been recently dug out of the ground or looted from their source country.</p>

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				<p>Documents which can be helpful in establishing ownership and provenance include; invoices, receipts, dated photographs, insurance records, valuations, official records, exhibition catalogues, invoices for restoration work, diaries, dated newspaper articles, original signed and dated letters.</p> <p>In addition to assisting with AML checks, provenance and ownership information when combined with a physical examination of the artwork and technical analysis and dating of materials used, plays an important role in helping to establish the authenticity of artworks.</p>

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<p>ArThemis https://plone.unige.ch/art-adr/key-words-mots-cles</p>	<p>“The standard of conduct reasonably expected from a person who seeks to satisfy a legal requirement or to discharge an obligation; with respect to the art market, it refers to the obligation of any prospective buyer (either a professional or a dilettante) to investigate the origin of the artwork, whether it has been legally dealt with and the status of the transferor (see Article 4 of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995). It also relates to the procedural constraints imposed on a party and resulting from the duty of due diligence”.</p>	N/A		
<p>ICOM (GLOSSARY) https://icom.museum/wp-content/uploads/2018/07/ICOM-code-En-web.pdf https://icom.museum/en/heritage-protection/international-observatory-on-illicit-traffic-in-cultural-goods/</p>	<p>All the required endeavours 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. In other words, the due diligence implies all the necessary verifications</p>	<p>There are <i>not clear criteria on due diligence</i>; section 2.3 of the Code of Ethics states that: “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</p>	<p>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.</p>	

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	<p>regarding the legal provenance of a cultural object, i.e. its full history and ownership from the time of its discovery or creation to the present day, through which authenticity and ownership are determined.</p> <p>In determining whether due diligence has been exercised, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances.</p> <p><i>Source: ICOM Code of Ethics for Museums / UNIDROIT Convention on Stolen or</i></p>	<p>in this regard should establish the full history of the item since discovery or production".</p> <p>Also, museums should consider the trustworthiness of the seller or donor and examine:</p> <ol style="list-style-type: none"> 1) available documents, including purchase contracts, insurance documents and documentation of prior ownership beyond the current owner. 2) related customs documents including export and/or import licenses, declarations of import or export; and 3) references in auction catalogues, inventories, or correspondence. <p>The object itself should be examined for evidence of damage that might have resulted from illegal excavation, theft, looting, or suspicious restoration. In addition, objects should be examined for previous inventory numbers or markings that may indicate that the object originates from another collection or provides information about its provenance (ICOM Standards of Accessioning (https://icom.museum/wp-content/uploads/2022/03/Accessioning-Standards_EN.pdf, p.2)</p>	<p><i>Source: ICOM Code of Ethics for Museums</i></p>	

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	<p><i>Illegally Exported Cultural Objects</i></p> <p>“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”.</p>			
<p>Subsidiary Committee of the Meeting of States Parties to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, Paris, 1970) Eighth Session Paris, UNESCO Headquarters - 27 and 28 October 2020</p> <p>https://unesdoc.unesco.org/ark:/48223/pf0000374386</p>	<p>16. Due diligence is a single-purpose legal concept, which, whilst it may stem from another branch of law, refers to a behavioural obligation of vigilance on the part of the actors involved in the process of acquiring the object in question. It is often accompanied by an exhaustive or non-exhaustive list of elements to be verified, which extends beyond the search for the provenance of the object.</p> <p>17. Bearing in mind that the concept of due diligence refers to an obligation of vigilance on the part of the purchaser or any person</p>	<p>UNESCO does not include new criteria on due diligence, but it follows the those expressed by UNIDROIT 1995 (Operational guidelines 1970 Convention)</p>	<p>The 1970 Convention mentions the term twice and uses it in two different senses:</p> <p>1. Article 7(a)2 of the Convention uses the concept to identify the State Party from which an object has been illegally exported, the acquisition of which must therefore be prevented by the “recipient” State Party. Provenance is understood here, then, as referring to the place from which the property was exported</p>	<p>Legal provenance would be characterised by a legal and unbroken chain of ownership, export and import of the object, which supports the definition of provenance according to Article 10(a) of the 1970 UNESCO Convention or the ICOM Code of Ethics for Museums.</p>

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	<p>involved in the transfer of ownership of a cultural object, it would appear that the search for provenance is one of the steps, if not the most important step, that must be taken in order to comply with the obligation of due diligence.</p> <p>N.B. The term "due diligence" is not included in the UNESCO Glossary https://whc.unesco.org/en/glossary/</p>		<p>and/or in which it was created.</p> <p>2. Article 10(a)3 of the Convention, regarding the obligation on the part of antique dealers to keep a register stating the provenance of each item of cultural property, proposes an alternative definition of the concept whereby provenance refers to a certain amount of information regarding the nature and history of the item. It is therefore a matter of establishing its traceability by keeping a record of all transfers of ownership pertaining to the item of property in question. Also, the concept of provenance refers to the history of a cultural object, from its creation to its final destination, combining different types of information (Cornu, Marie, <i>Fighting</i></p>	

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			<p><i>Illicit trafficking in Cultural Objects, Searching for Provenance and Exercising Due Diligence in the European Union, UNESCO, 20-21 March 2018, p.5-6)</i></p> <p>N.B. The term "provenance research" is not included in the UNESCO Glossary https://whc.unesco.org/en/glossary/</p>	
<p>International Code of Ethics for Dealers in Cultural Property</p> <p>https://unesdoc.unesco.org/ark:/48223/pf0000121320</p>	N/A	<p>Although the Code does not explicitly mention "due diligence", the articles refer to guidelines and conducts that can be understood as due diligence</p>		
<p>Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation. Twenty-Second Session</p>	N/A	<p>No criteria mentioned. However, proposal for implementing them. Section 16 suggests to clarify Art 1 and 2 of the International Code of Ethics for Dealers in Cultural Property (https://unesdoc.unesco.org/ark:/48223/pf0000121320).</p>		

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<p>Paris, UNESCO 27-29 September 2021. Provisional Agenda item 13: Proposed revision of the International Code of Ethics for Dealers in Cultural Property https://unesdoc.unesco.org/ark:/48223/pf0000378808</p>		<p>Also, Section 19 states that “Due diligence should establish, as far as possible, the full history of the item since discovery or production to the present day. As to the starting date for the application of more rigorous due diligence standards, it is suggested to adopt the date of the Convention, 1970, as the date until which the full history of the cultural objects must be established”.</p>		
<p>Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Aboriginal-cultural-heritage/due-diligence-code-of-practice-aboriginal-objects-protection-100798.pdf</p>	<p>“Taking reasonable and practical steps to determine whether a person’s actions will harm an Aboriginal object and, if so, what measures can be taken to avoid that harm”.</p>	<p>1. <u>Will the activity disturb the ground surface?</u> If an activity will disturb the ground surface there is a higher likelihood that Aboriginal objects will be harmed.</p> <p>2. i) <u>Search the Aboriginal Heritage Information Management System (AHIMS) database and use any other sources of information of which you are already aware</u> If the results of the initial AHIMS search indicate that AHIMS contains information about recorded Aboriginal objects in the area of your proposed activity you must obtain copies of those records. Contact the AHIMS registrar by faxing the request form or submitting the request form over the internet. Costs may apply depending on the type of information you are asking for. There may also be restrictions in providing culturally sensitive information. After obtaining records from AHIMS of any</p>		

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		<p>recorded Aboriginal objects you should confirm that these objects can be located in the area where your activity is proposed.</p> <p>ii) <u>Activities in areas where landscape features indicate the presence of Aboriginal objects</u></p> <p>Regardless of whether your AHIMS search indicates known Aboriginal objects, you still need to consider whether Aboriginal objects are likely to be in the area of the proposed activity having regard to the following landscape features.</p> <p>3. <u>Can you avoid harm to the object or disturbance of the landscape feature?</u></p> <p>This step only applies if your activity is on land that is not disturbed land or contains known Aboriginal objects. If you can't avoid harm to the object or disturbance of the landscape feature(s) you must go to step 4. If you can avoid harm to the object and disturbance of the landscape feature(s) you can proceed with caution without applying for an AHIP (Aboriginal Heritage Impact Permit)</p> <p>4. <u>Desktop assessment and visual inspection</u></p> <p>The assessment process is primarily a desktop exercise that involves examination and collation of the readily available information. The assessment must consider the area of the proposed activity as a whole, not just particular areas where any Aboriginal objects have been recorded on</p>		

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		<p>AHIMS or areas where landscape features are located.</p> <p>5. <u>Further investigations and impact assessment</u></p> <p>If after this detailed investigation and impact assessment you decide that harm will occur to Aboriginal objects then an AHIP application must be made.</p>		
<p>Australian Best Practice Guide to Collecting Cultural Material 5.0</p> <p>https://wipo.int/edocs/lexdocs/laws/en/au/au397en.html#_Toc436918419</p>	<p>"Due diligence requires that every endeavour is made to verify the accuracy of information before deciding a course of action, particularly in identifying the source and history of cultural material considered for acquisition. Due diligence may include verifying the authenticity of an object, legal title, condition, value for money, integrity of its history, source and vendor".</p>	<p>Institutions should develop written procedures to guide staff when undertaking due diligence research. When conducting research on cultural material, institutions may need to consider these points:</p> <ul style="list-style-type: none"> - Legal Title - Provenance - Legal export - Physical examination - Consultation - Institutions working with Aboriginal and Torres Strait Islander cultural heritage should ensure close consultation and collaboration with Traditional Owners or, where applicable, authorised custodians or their representatives, or academic experts in the field. 	<p>"Provenance includes the full history and chain of ownership of an object from the time of its discovery or creation to the present day, through which authenticity and legal title are determined. In addition to questions of ownership and legal title, public collecting institutions must be able to establish, as far as practicable, where cultural material came from and when and how it left its country of origin and intermediate countries before acquisition"</p>	<p>1. Examine documentary evidence of the ownership and history of the cultural material, including secondary documentation, archival material and images, specifically to:</p> <ul style="list-style-type: none"> • Evaluate and research the provenance information provided by the vendor, donor or lender and the legitimacy or authenticity of documents and other evidence • Assess where research should be extended to clarify the history of the cultural material and document gaps in information

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				<ul style="list-style-type: none"> • Determine if there are outstanding title or ownership claims or judgements relating to the material and if checks are required on whether claims to ownership have previously been made. <ol style="list-style-type: none"> 2. Check the cultural material against international databases or registers of stolen art, such as the Art Loss Register, the INTERPOL Stolen Works of Art database and national databases within the relevant countries. 3. Give extra scrutiny and consider specific types of objects and the provenance for cultural material known to be at risk of illicit trade including:

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				<ul style="list-style-type: none"> • Art and antiquities acquired during and shortly after times of conflict,[3] social upheaval or natural disasters • Art, antiquities, archaeological and palaeontological objects and architectural sculpture that may have been stolen from historic sites, for example risk regions in Africa, Asia and Latin America or from a category listed on the ICOM Red Lists database • Objects that may have been stolen from museums, private collections, religious buildings (such as churches, temples, mosques) and historic buildings. <p>4. Examine the exhibition and publication history of the cultural material.</p>

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				<p>5. Consult with experts on the cultural material, the country of origin or the circumstances of export and/or on the reputation of the owner, donor or lender.</p> <p>6. Consider the need to seek specialist legal advice.</p>
<p>The Getty Research Institute https://www.getty.edu/research/tools/provenance/index.html</p>			<p>"From the French word <i>provenir</i>, which means "to come from," provenance is the history of ownership of a valued object, such as a work of art. A full provenance provides a documented history that can help prove ownership, assign the work to a known artist, and establish the work of art's authenticity".</p>	
<p>International Foundation for Art Research https://www.ifar.org/Provenance_Guide.pdf</p>			<p>"...A work's provenance comprises far more than its pedigree, however: it is also an</p>	<p>1. Gathering information</p>

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			account of changing artistic tastes and collecting priorities, a record of social and political alliances, and an indicator of economic and market conditions influencing the sale or transfer of the artwork".	2. Examine the object's file at the home institution 3. Documenting sources 4. Keeping records