



IADAA NEWSLETTER JANUARY 2021

UNESCO makes new recommendations for tightening due diligence obligations

A two-day review of links between the concepts of provenance and due diligence at UNESCO in October has led to new recommendations for the tightening of rules governing them in the fight against illicit trade in cultural property.

A six-page report arising from a subsidiary committee meeting of the Eighth Session on October 27 and 28 starts by acknowledging that provenance can mean different things depending on where you look for a definition of it and this can create problems when it comes to establishing common cause between States Parties. For both concepts an international definition, formulated and agreed on in cooperation with art market professionals and lawyers, needs to be established before entering in further discussions. Article 7(a) of the 1970 Convention uses the concept of provenance to identify the State Party from which an object has been illegally exported, while Article 10(a) concerns the record-keeping obligations of antiques dealers and includes a separate definition regarding the level of information about and traceability of an object.

These two definitions under international law are augmented by the ICOM definition: “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.”

This latter definition, while desirable, was originally designed for paintings but is almost always impossible to meet as an obligation for other cultural property because of the absence of available information owing to the passage of time.

UNESCO also notes the Council of Europe Convention of Offences relating to Cultural Property and its concept of provenance, which relates to the sanctioning of illegal trade and “closely resembles those [definitions] adopted by many of the codes of ethics of the various organisations representing the art market”.

In considering due diligence, the report describes it as having “recently emerged in cultural heritage law to address the divergences between legal systems regarding the definition of the concept of good faith and its corresponding effects”.

It notes that while the 1970 Convention sets out to protect the interests of the innocent purchaser, what that protection might be differs between legal systems. UNIDROIT’s 1995 Convention proposes that applicants must be able to prove they have fulfilled their due diligence obligations to qualify for compensation, and it sets out what those obligations should be.

UNESCO further notes how due diligence as a concept now forms part of international cultural heritage law as well as European law, but adds: “However, since due diligence relates to vigilance, it must be applied differently depending on the stakeholder in question. This being the case, it is not uncommon to find a graduated approach to obligations of due diligence in the national legislation of States Parties to the 1995 UNIDROIT Convention or of Member States of the European Union, with tighter obligations for professionals operating in the art market or where specific cultural items are concerned and more flexible obligations in other cases.”

UNESCO then sets out clear distinctions between provenance and due diligence: “Bearing in mind that the concept of due diligence refers to an obligation of vigilance on the part of the

purchaser or any person 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.”

This all leads on to the subsidiary committee’s proposal, that States Parties to UNESCO may want to incorporate the debated concepts into national legislation (presumably not just tightening legislation but for making it consistent across all member states). This could be the opportunity to find a solution for “the orphans problem” about the millions of objects circulating legally in the art market for decades or even centuries for which hardly any paperwork exists any more. 2021, the year of the definitions, could become a line in the sand after which the new and clear definitions are applied.

It also recommends that UNESCO incorporates these updated concepts of due diligence and provenance into the Operational Guidelines for the Implementation of the Convention if and when they are updated.

In effect then, this entire process illustrates how the established 1970 cultural property Convention can be updated and made more stringent even after dozens of countries have already signed up to it.

<https://bit.ly/3ilhPS4>

Ancient treasures recovered: Thousands of stolen antiquities found in major bust

Times of Israel: January 4: Israel’s Antiquities Authority reports that it has seized a huge of hoard of illicit artefacts from all over the world in three warehouses in Tel Aviv.

Hailing the raids and accompanying arrests as “one of the most significant” in its history, the authority is now investigating how many of the objects are looted.

Images published alongside the article show a wide range of artefacts, from Greek vases to coins, but very little details have emerged as to the volume, value or variety of items seized.

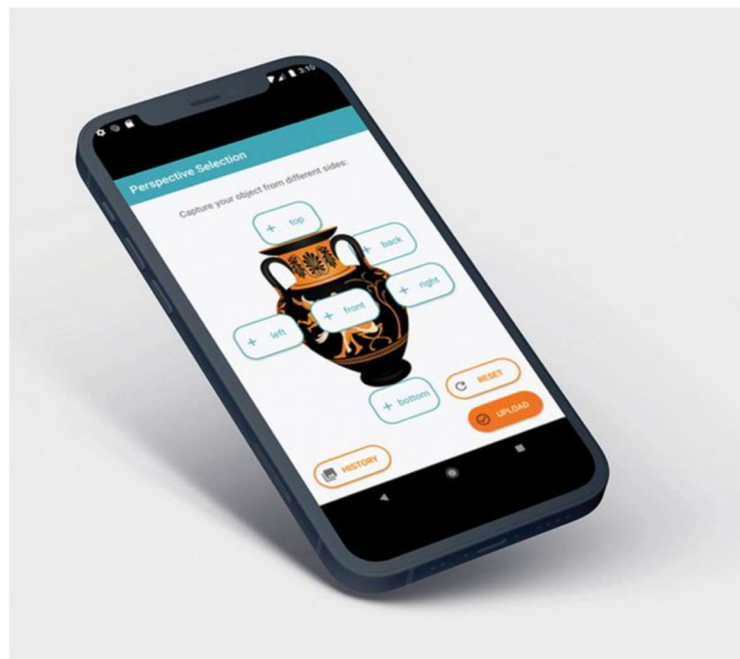
<https://bit.ly/2LdXh81>

In the battle against antiquities trafficking, Germany develops app to identify looted cultural heritage

Art Newspaper: January 5: Germany has unveiled a €500,000 government-funded initiative to develop image-recognition software to help international law enforcement identify stolen objects. The aim is to bridge the gap between their enforcement responsibilities and their knowledge of antiquities.

“While drugs or weapons are readily identifiable as illegal imports, stolen antiquities can be passed off as modern copies or legitimate imports if they are accompanied by convincing documentation. Without expert archaeologists on the spot, it is hard for law enforcers to know the difference,” the article explains.

Known as KIKU, the system will use machine learning to identify objects from photos “and to help to ascertain whether it may have been illegally looted or excavated from an archaeological site”.



Police and customs will take a number of photos of items and check them against a network of databases of looted items. This should all be possible via a mobile phone app as shown here. How long this will take is not revealed and just how effective the image recognition technology will be remains to be seen. Similar initiatives have so far failed.

KIKU is a spin-off from the ILLICID project, the €1.2 million research study on illicit cultural property. The ILLICID findings analysis showed that probably only 24% of the 6,133 objects monitored in the study were judged as doubtless authentic; this fits in with the findings in Syria, where the head of antiquities Abdoul Karim estimated that 70% of smuggled antiquities are fakes. Unfortunately the one thing KIKU cannot do is distinguish between authentic objects it aims to find and forgeries, which creates a challenge.

<https://bit.ly/35b03S8>

In a swift post-Brexit move, UK rejects EU's strict import rules on cultural property

Art Newspaper: January 6: In the first significant sign of divergence from EU policy post-Brexit, it has emerged that the UK will not continue with the controversial import licensing measures brought in by the EU in April 2019 with a view to full enforcement by 2025.

As this article notes, the first indication that the UK might diverge on this came in December 11 podcast on Brexit hosted by the *Art Newspaper*. In it, former MEP and rapporteur for the measures, Daniel Dalton, who is now CEO of the British Chamber of Commerce in Brussels, stated that the UK would not proceed to enforce the law. Later confirmation by the British Art Market Federation was based on ministerial assurances.

The most controversial part of the new law, Article 3:1, actually came into force in the UK on December 28, just before the UK transitional period came to an end. If the UK stands by its decision to ditch the law, it will also need to revoke Article 3:1, probably by statutory instrument.

Meanwhile we await news as to whether the newly passed 2021-2027 EU budget has made provision for the development and enforcement of the new regulations within the EU. On July 30 last year, the EU acknowledged that the Covid pandemic might have an impact on this process (see <https://data.consilium.europa.eu/doc/document/ST-10060-2020-INIT/en/pdf>). Under the section headed *Risk 2 – Budget availability*, it reads:

“Budget uncertainty due to the negotiations on the new MFF render progress very challenging. Depending on the outcome of the MFF negotiations, and in the worst-case scenario the development and roll-out phases risk to come to a halt [sic] or be significantly delayed and the legal deadlines to establish the ICG system impossible to meet.

“In addition to the risks identified above, the COVID-19 public health crisis is affecting to some extent the team’s capacity to deliver and especially the project activities and meetings with the Expert Group and the Project Group with the Member States. In particular, one meeting of the Expert Group was cancelled, which had a direct impact on the progress of the work of the Project Group, and the next session of the latter can only be held remotely and for a third only of the time initially scheduled [sic]. Moreover, the public health crisis forced a rescheduling of priorities within Member States, thus limiting their capacity to provide input and feedback to the file. Such impact will depend on the duration of the public health crisis.”

<https://bit.ly/35iS853>

UK Rejects European Union Regulations to Reduce Illegal Antiquity Trafficking

Hyperallergic: January 12: This article picks up on the *Art Newspaper* revelations that the UK will not continue with the new European Union import licensing regulations. Unfortunately,

it provides yet another example of the usual inaccuracies being promoted as fact: “The legislation, the first common EU law of its kind concerning imports of cultural property, attempts to control the looting and trafficking of antiquities, a thriving, multi-billion-dollar industry that has repercussions far beyond the arts sector. For example, the illegal trade of cultural goods often contributes to funding organized crime, according to Interpol.”

As even those who oppose the trade antiquities have started to acknowledge, no evidence exists to support the claim that the looting and trafficking of antiquities is a multi-billion dollar business – quite the reverse, in fact.

Along with other media coverage, this article also appears to make a number of assumptions without asking the relevant question as to why the UK Government may have made the decision it did.

The first assumption appears to be that the EU’s intention of attempting to control the looting and trafficking of antiquities means that it has identified a serious problem and is doing something about it. However, the two studies it commissioned to identify the problem, thereby justifying the measures – the Deloitte study and the Ecorys study – both failed to find the evidence they were looking for. Nonetheless, the EU pressed ahead anyway, with the European Commission setting out its justification for doing so in a set of documents published in July 2017 – documents that revealed that the evidence it was relying on to justify the measures was wrong, misinterpreted or non-existent.

Add to all this the impossible demands made over the provision of valid export licences from countries of origin and it is easy to see how the measures, if enforced in full as intended in 2025, will only serve to damage the EU’s internal market while failing to tackle the problem it seeks to solve.

<https://bit.ly/3sjQRVx>

Lawmakers Are Cracking Down on the ‘Unregulated’ US Art Market. Here’s How a New Anti-Money Laundering Law Will Affect Dealers

Artnet News: A good overview of developments in the United States’ plan to regulate the art market by bringing the antiquities trade within the scope of the Bank Secrecy Act as a means of preventing money laundering.

How this will work exactly remains to be seen as consultation in adapting the law for effective compliance has yet to take place. However, it is likely to face the same conundrum as those reviewing compliance for similar measures within the UK: how can art market professionals obliged to identify the ultimate beneficiaries of transactions comply if that information is not available to them?

<https://bit.ly/3sfcqX3>

How will US money laundering crackdown actually impact the art market? A lawyer explains

The Art Newspaper: January 6: In a well-argued article that clarifies the latest developments in the United States on bringing the antiquities trade under the scope of the Bank Secrecy Act, lawyer Nicholas M O’Donnell makes a clarion call for the market to become involved in the debate over how the measures are shaped and enforced.

“Whatever one thinks of the regulations or the regulators, these things are happening,” he writes. “And while it is questionable whether FinCEN is the right body to conduct a study of the art market, the market has a choice here. We can complain, or we can get involved in the dialogue. I would rather be at the table in the discussion than outside the room.”

<https://bit.ly/2XpY5sx>

Implications for Art Dealers in Anti-Money Laundering Provisions of the National Defense Authorization Act of 2021

National Law Review: January 7: Another detailed legal appraisal of the US AML proposals, this gives advice on what the art market should be doing.

<https://bit.ly/2LduTCL>

Recently Enacted NDAA Expands The Bank Secrecy Act To Regulate The Antiquities Trade (And Possibly Eventually The Art Market)

Mondaq: January 20: A good summary of the issues surrounding the decision to bring the antiquities trade within the scope of the US Bank Secrecy Act (BSA).

The National Defense Authorization Act for Fiscal year 2021 (NDAA) has also called for a study into whether Congress would like to extend the BSA to the wider art market.

The article notes that the BSA already regulates the financial institutions facilitating many of the antiquities trade's transactions, a point argued by IADAA member Randall Hixenbaugh in a recent *New York Times* article (see <https://nyti.ms/3beyLYD>).

How the measures will work is not yet clear and will be debated throughout this year. UP for discussion are which entities will be subject to the new rules, how much the focus should be on high-value antiquities (and what that means), and to what extent disclosure should apply on the identities of those involved in any deal chain.

The trade will be watching carefully as the US Treasury department also studies the extent to which the trade facilitates money laundering and terrorist financing. As subscribers will know, despite all the claims surrounding the Syrian, Iraqi, Yemeni and Libyan conflicts of the past decade, publicly released evidence of looted material being used to fund terrorism consists of no more than the single example of paperwork secured during the May 2015 raid on the headquarters of ISIS leader Abu Sayyaf. The most detailed assessment of this came in the *New Yorker* report by Ben Taub in December 2015 (see <https://bit.ly/3iCqUfe>). Taub noted a series of discrepancies in the accounting that led him to the conclusion: "Taken as a whole, Abu Sayyaf's antiquities documents raise more questions than they answer."

Nonetheless, as the only direct evidence publicly available, they are the best we have to go on, and extrapolating annual sums from them gives us a figure of around \$1 million for 2014-2015, and that also covers trade in metals and minerals.

Let's also not forget the \$5m reward put up in 2015 by then US Secretary of State John Kerry for intelligence leading to the seizure of people and assets – from oil to antiquities – that were funding ISIS in its terrorist activities. So far as we can see, almost six years later no mention has been made of this leading to any positive results. Meanwhile a series of reports – from the Dutch national police, London University, Rand Corporation and even reports specially commissioned by the European Commission, among others – have found no evidence at all of terrorism funding from antiquities. If the Treasury department also comes up blank, how will it revise the BSA proposals for the trade?

"Even before the new antiquities amendment, the NDAA's anti-money laundering and terrorism financing reforms garnered much attention by commentators due to their broad scope and significant impact on businesses that must disclose client information and bear the added costs of complying with the law," explains the article.

It also questions the point of this move: "The jury is out on whether extending the BSA to cover antiquities will actually make much of a practical difference. Payments for most large antiquities transactions in the United States are already handled through financial institutions and therefore are already regulated by the BSA. Moreover, many of the large, legitimate players in the art and antiquities markets already have robust compliance programs that meet BSA standards."

<https://bit.ly/3o8WSB4>

At odds with the Cultural Property Protection Act: A transit is not an import (Translated from German)

Handesblatt: January 7: Legal action by a Vienna antiques dealer has exposed the extent to which the 2016 German cultural property law is being used as a power grab by the authorities.

The case has highlighted how Germany's Ministry of Cultural and Science has overridden other laws to illegally seize goods in transit through its territory.

The issue arose after Vienna-based dealer Christoph Bacher bought a Roman artefact online at the US auction house Artemis Gallery in mid-October: a small bronze bust of a Hercules, dated to the 2nd century, which an American previously acquired at an auction at



Above: The bronze bust of Hercules from the 2nd century. The small-format Roman sculpture was "stopped" by customs on its way through Germany. (Photo: CB Gallery).

Christie's in Paris in 2011. Its history could be traced back to the estate of an antiques dealer active until the 1990s, who died in 2007.

Having bought the piece, Bacher organized delivery via Fedex, forwarding them a copy of the invoice and an extract from the auction catalogue in advance as proof of the object's bona fides.

However, at the end of October, he discovered that German customs had detained the piece on the grounds that there was evidence to show that it had been illegally imported to Germany under Section 81 of the 2016 Cultural Property Protection Act (<https://bit.ly/3q1Rdy8>).

As the bust was being exported from the United States and imported to Austria, Bacher could not understand how German law would apply to it.

However the German Ministry has interpreted its act, as well as its responsibilities under the European Union Customs Code, as also applying to goods *in transit* through its territory. The Ministry had authorised the seizure because the paperwork accompanying the sculpture did not provide evidence of legal export from its country of origin.

Bacher pointed out that with Roman artefacts it was often impossible to determine the country of origin because of the spread of empire. Simply no information was available to say how and when the object might have been exported originally from the country where it was made. This could have happened hundreds of years ago. The result is that it is impossible to state what the local laws were at the time or whether they were adhered to. This quandary was ignored, as was the fact that the bust was recorded as having sold legally at Christie's in 2011.

As noted in relation to the new EU import licensing regulations above, this is exactly the sort of scenario that threatens large volumes of legitimate trade in the future.

According to *Handesblatt*, which investigated the case, the fact that Artemis Gallery did not provide any information about the 2011 buyer and current seller was also met with surprise

even though auction houses are not allowed to name their customers because of data protection – a point about which the Ministry was apparently unaware, said the newspaper. It then transpired that a delay in handling Bacher’s case was the result of a backlog of similar seizures involving 90 other cases since the beginning of 2020. Some delays can be even longer than this, he was told.

Bacher pointed out to the ministry that a long delay would be damaging to his business, but this was also ignored, so he hired a lawyer who applied to the administrative court in Düsseldorf for an injunction against the ministry, arguing that the piece was only in transit through Germany and so had not been *imported*. This meant that it could not be assessed in Germany for import declarations under domestic law. In turn, this made the seizure illegal, said the lawyer.

As *Handesblatt* explained, in passenger air traffic, passengers stay in the transit area until they continue their journey and so are not considered to have entered the transit territory. The Ministry also appears to have ignored provisions under Germany’s Foreign Trade Act, which defines import as a domestic delivery, while a transit is the transport of goods from abroad through the German federal territory, a fact confirmed by the Ministry spokesman, says *Handesblatt*.

The term “transfer” is also clearly defined under Germany’s VAT Act, making the Ministry’s position untenable. However, until Bacher, no other EU citizen affected had sought to challenge it legally.

The success of Bacher’s legal challenge resulted in safe delivery of the bust to him in Vienna and *Handesblatt* reports the Ministry has revealed that 46 of the 91 seizures had been processed by the end of October before being released for their onward journeys to other countries – 40 of them to EU member states.

<https://bit.ly/36l6Vgf>

Gaza unable to crack down on antiquities smuggling

AL-Monitor: January 8: Following the seizure of four ancient Greek coins – each said to be worth \$100,000, an extraordinary claim as to value – in possession of a woman on the Rafah crossing, the Palestinian authorities say they have confessions from other smugglers of previously successful attempts to get antiquities out of the territory.

Pending charges point to some success in stemming the flow, but the authorities are also concerned that punishments are outdated and fines low, so that they are not the deterrent they might be.

<https://bit.ly/3sovq5l>

UK to return looted artefact to Iraq

OCCRP: October 27: This article initially focuses on the UK’s plan to return a 4,000-year-old Sumerian plaque to Iraq after the British Museum spotted it for sale online in 2019. The plaque is thought to have been looted during the US invasion of Iraq in 2003.

However, once the article gets past this, it then moves on to the usual inaccuracies, including quoting the 2018 report by the Standard Chartered Bank (it lists it as Standards) claiming that the illegal trade in archaeological artefacts is a multi-billion dollar industry. Getting the name of the source it is quoting wrong is indicative of the level of research applied here, and it is noticeable that the article already includes a correction at the end as it previously misidentified the origin of 5,000 cuneiform tablets.

The Standard Chartered Bank’s two-page report, *Combating Illegal Antiquities Trade*, from December 2018, starts as follows: “The illegal antiquities trade (IAT) is a multibillion dollar criminal industry, estimated to be the third largest type of black market after illegal drugs and the arms trade, and yet it remains unregulated and under-addressed.”

As embarrassing as it is inaccurate, this introduction makes the basic error of claiming that illicit trade is not regulated. The fact is that it is illegal and so highly regulated by numerous domestic and international laws to prevent it.

The remainder of the report cobbles together various other claims, including statistics – all bogus – which it clearly has not checked and for which it provides no sources.

For a bank to behave in this way is reputationally damaging.

<https://bit.ly/31ZxDZM>

<https://bit.ly/3jCWkAZ>

ANCA: Last Minute U.S.-Turkey Accord Grants Ankara Rights to Christian Cultural Heritage

Asbarez.com: January 19:

Another example of how international efforts to protect cultural property can backfire as those involved fail to grasp geopolitical concerns.

In this case, what might at first seem to be no more than the signing of another Memorandum of Understanding between the United States and a foreign power turns out to have very significant cultural and religious implications.

In what the report labels a “disastrous” bilateral agreement, Washington officially recognised Turkey’s legal rights to “vast religious-cultural heritage of the region’s indigenous peoples and other minority populations”.

These indigenous peoples include Armenians, Greeks, Assyrians, Chaldeans, Syrians, Arameans, Maronites, Jews and Kurds, at least some of whom have been subject to protracted oppression by the Turkish authorities.

The report adds that the “reckless and irresponsible” move was carried out in spite of protests and in the knowledge that “Turkey has openly, unapologetically, and systematically spent the past two centuries destroying minorities, desecrating their holy sites, and erasing even their memory from the landscape of their ancient, indigenous homelands”.

<https://bit.ly/3obuYEm>

UNESCO is not your friend

Numismatic News: January 19: This article explores further the decision to include antiquities in the US Bank Secrecy Act for the purpose of anti-money laundering compliance, explaining why coins should be considered an exception. In the process it revisits the fraudulent campaign launched by UNESCO to celebrate 50 years of the 1970 cultural heritage Convention.

<https://bit.ly/3sH7af4>

Art trafficking: decapitated Roman dignitary returns to Italy (Translated from French)

Economie: January 20: The Belgian authorities have returned a headless Roman statue dating to the first century BC to Italy after seizing it in Brussels where it was located in a gallery that does not specialise in ancient art. It had been stolen from Rome in 2011.

The surrounding investigation revealed that it had been consigned for sale to the gallery by a foreign national known to the Italian authorities, the implication being that the dealer in question did not carry out acceptable levels of due diligence.

The Brussels Public Prosecutor’s Office says this is the first result from a series of on-going investigations relating to art market fraud and money laundering.

IADAA commits its members to a number of protocols to help them avoid such errors, including checking stolen databases such as the Interpol database in relation to any piece

being offered for €5,000 (or its equivalent) or more. While no system is perfect, it might help matters if those who are not members of trade associations at least maintain the same standards in their own interest as well that of the public.

<https://bit.ly/2NyN4DQ>

Greek archaeologist uncovers an alleged looted Greek vase in Dutch museum.

Greek Reporter: January 25: Another gotcha from anti-trade campaigner Christos Tsirogiannis, this time aimed at the Allard Peirson Museum in Amsterdam.

As usual, the accusations arise from his scouring of the Medici archive, in which the vase concerned is said to appear. As ever, no mention is made of the fact that Dr Tsirogiannis has exclusive but unauthorized access to the archive based on work he carried out years ago. Nor does it mention that the Medici case is closed in Italy and the Italian authorities returned 98% of the archive's pictures to Medici in 2011 on the basis that nothing illicit could be found associated with them.

According to the Dutch newspaper *NRC Handelsblad*, a Dutch collector had acquired the drinking vessel in 1985 at Sotheby's in London. In those days, provenance was rarely mentioned by auction houses, and when asked about the previous owner, an auction house would remain discreet, as it would have to even today given the current privacy protection laws. In 2003, the collector donated the vase to the museum and there is no doubt that the museum is the rightful owner.

The reheated quote from Dr Tsirogiannis about his work not being about attacking the major players in the market rings more than a little hollow.

<https://bit.ly/3t1NKCO>

New Documentary Spotlights the Detective Work Behind an Infamous Art Theft

Architectural Digest: January 27: Essentially a profile of Lynda Albertson, who runs the Association for Research into Crimes against Art (ARCA), the article highlights a new documentary, titled *Lot 448*, she has made that will receive its premiere at this year's virtual Tribeca Film Festival, sponsored by Bulgari.

Lot 448 is an Etruscan antefix with a history linking it to the Medici archive that came up for auction in 2019. For various reasons, Albertson thought that it was probably stolen and was disappointed when it eventually sold.

However, it transpired that the jewellery firm Bulgari, knowing about ARCA's efforts, had bought the piece with a view to restituting it. This film follows that story and events surrounding it.

All in all, it's a pretty straightforward report – a bit of added drama can only be expected with the cinematography – but it where *Architectural Digest* undermine it is right at the start. Yet again, the bogus claim that art theft, "Third only to drugs and guns, art theft is the highest-grossing criminal enterprise in the world."

<https://bit.ly/3iWfbYZ>