



IADAA NEWSLETTER FEBRUARY 2021

International conference on Prospects for Orphan Works

Reflections on cultural goods with no documented provenance –

A review by IADAA chairman Vincent Geerling

On February 4 and 5, the Fondation Gandur pour l'Art, the University of Geneva and UNIDROIT hosted an international conference on the theme of Orphan Works.

The idea was to begin a free dialogue – unconstrained by the usual taboos – between the various protagonists involved in attempts to shape the future of the art market: collectors, gallery owners, lawyers, historians and archaeologists, curators, judiciary, customs and police. The objective is to find a reasonable long-term solution that balances the interests of preservation, conservation and bona fide property ownership.

Orphan Works are archaeological and ethnographic objects – and more broadly works of art – which are present in private and museum collections, but for which there are neither archives nor material proof of their collecting history. What to do with these works, and what to do with them if the owner wishes to move, sell or lend them?

This conference was one of the rare occasions where art dealers had been invited to join the debate – in contrast to most of the numerous institutional meetings about trafficking and illicit cultural property.

The 26 presentations stretched across the full two days of the conference illustrated clearly just how complex this subject is. Five presentations focused on historical aspect, the first by Marc-André Haldiman (Université de Berne). Among other points, he considered a collection of 3,746 Roman glasses in the Musée d'art et d'histoire in Geneva, of which the provenance of only one glass could be established. '*Provenance*' here was defined under the ICOM's Code of ethics for museums Art. 2.3: "*Due diligence in this regard should establish the full history of the item since discovery or production.*" Ideal though this might be, it is obviously an impossible task for most Roman glasses and other objects from antiquity. Originally this ICOM rule was designed to establish the authenticity of paintings from more recent times. Today in the art trade, the meaning of '*Provenance*' is the collecting history rather than the history of an object from the point of its creation. So one thing the Orphan Works debate needs to settle on is a clear definition of Provenance.

Six presentations looked at the issue of "*works without pedigree*". Four of them focused on the challenges for museums. Marcel Marée (British Museum, Ancient Egypt and Sudan Department) spoke on *The Circulating Artefacts platform (CircArt) as a tool for provenance research*, and from this we learned that 85% of the objects assessed by the sophisticated software involved were found not to have been demonstrably looted. Those identified as probably recently looted could all be pinpointed to just a handful of sites in Egypt. This raises a serious question about how effectively these sites are being protected. Article 5 of the UNESCO 1970 Convention obliges Egypt to protect its vulnerable sites against looting and trafficking. The vulnerability of the sites involved is worrying, but the fact that all of the apparently looted material came from so few sites also raises the exciting possibility that properly targeted action now could have an extremely effective impact.

Markus Hilgert (CEO of the Cultural Foundation of the German Federal States) gave a presentation entitled *Provenance Research on Orphan Objects in German Museum's Collections*. This also underlined the complexity of the subject, but gave no indication of the results of his research so far. With a €10 million budget, one would expect something in return at this stage.

Six further presentations concentrated on *Trade and provenances*. Three of them were given by art dealers. Anna Zielinski (Galerie Sycomore, Genève) explained in her talk, *A good provenance*, how persistent a dealer has to be to get information about previous owners and that on rare occasions this leads to the discovery of important information, enhancing the value and interest of the object concerned. This illustrates that it has always been in the interest of a dealer to find out as much as possible about an object, but that in most cases they are thwarted by the absence of information because of the passage of time. Anthony Meyer (Galerie Meyer Oceanic Art, Paris) gave a splendid presentation, illustrated with old photographs on which objects could be identified, under the title *Provenance has to start somewhere*. This shed clear light on the dealer experience, and he vividly talked about some rare but lucky moments of discovery of additional provenance information. Jean-Christophe Argilet (Galerie Fürstenberg, Paris) told a story about one object "Un adopté américain devenu orphelin européen" for which he finally discovered a very good provenance.

Next came *Tracks for solutions?*, a series of four presentations, including one from Apolline Sans, a legal expert in cultural heritage, who revealed that a definition for "orphan works" already exists in French copyright law (Article L. 113-10 §1 of the intellectual property code): *"The orphan work is a protected and disclosed work, of which the holder of the rights cannot be identified or found, despite diligent, proven and serious research."*

What the presentations had in common was the high value of the objects researched; the orphans problem, however, largely concerns lower value items. I estimate that at least 95% of objects in circulation for decades or longer that have no documented collecting history are of a low value. These presentations set this dichotomy in context, showing how time-consuming detailed provenance research is, and therefore how impractical it is from an economic standpoint in the case of low value objects where the chances of success are minimal. We have to keep in mind that these are the sort of objects that attract collectors, thereby helping to maintain a live interest in helping to preserve the vast numbers of legitimate cultural objects in circulation. This is important because, understandably, no museum is interested, willing or able to spend time, space and money to preserve these thousands of less important works.

At the end of the conference, one of its sponsors, Jean Claude Gandur, made an interesting proposal: the creation of a database for Orphan Works, to be maintained by a neutral institution. Once an object has been in that database for some years, without being claimed by a possible country of origin, he argued, it could be "legitimised" and traded without hindrance from then on. Possible claims for restitution by source countries should be dealt with by the courts, based on existing laws and international conventions, he added.

This fits with provisions for fair and just compensation for the innocent owner under both UNESCO 1970 and UNIDROIT. It would also protect collectors, innocent owners who bought objects in good faith, thereby avoiding long and costly court cases. If a practical solution for the vast number of orphans could be found, it would be a major step in the fight against the illicit trade!

Opposing sides in this debate will continue to champion their own causes, but this event is a positive step in the right direction and a credit to the Fondation Gandur, UNIDROIT and the University of Geneva. Whatever else, it acknowledged that the issue of Orphan Works is not a simple matter of right and wrong, but a complex challenge that needs to be debated seriously.

Marina Schneider, Principal Legal Officer of UNIDROIT and a major contributor to seeking a solution, has informed us that there will be a follow-up event. Before we embark on that, it would be sensible to agree on definitions for the following: 'Orphan Work', 'Provenance', 'Provenience', 'Due Diligence', 'Cultural property that is of importance for art history etc.' (UNESCO 1970 Art 1).

Agreeing on precise definitions for these terms would save a great deal of time and misunderstandings, and accelerate the search for practical solutions. In this way, we can all secure the future of all these innocent objects that have lost their history in the course of time.

FIGHTING BOGUS INFORMATION ABOUT THE ART MARKET – 2021

CINOA Perspectives: February 2021: CINOA, the global trade federation for dealers in the international art market, with 5,000-plus members, has published a wide-ranging new report that exposes the causes and sources of bogus information used to damage the market.

From the deliberate dissemination of false evidence, as seen in the October 2020 UNESCO advertising campaign, *The Real price of art*, to the misreporting of facts, the report shows how many bodies of international standing, from NGOs to law enforcement and even governments, perpetuate falsehoods about the art and antiques market.

It also demonstrates how the bogus evidence – as well as its constant reinforcement via the media and other sources – has directly influenced policy, including new laws that damage the market.

One of the most shocking aspects of all this has been the clear failure of highly influential bodies such as the European Commission and the United Nations Office for Drugs and Crime to properly check the sources of the information that they publish; the repercussions for legitimate interests have echoed down the years.

Another shameful feature is just how much of the false information now being relied on can be traced back to media articles and other reports that are decades old and either do not carry the information claimed at all or whose evidence has been completely misreported as it has been filtered through other sources over time.

Frequently cited claims that prove to have no foundation in fact whatsoever include:

- Trafficking in cultural property is third only to that in drugs and weapons
- 80-90% of sales of antiquities involve goods with illicit origins
- Cultural property trafficking is a multi-billion dollar industry

However, bearing in mind the time, resources and legislation already dedicated to this subject in recent years, perhaps the most startling fact CINOA publishes is that it cannot find a single instance anywhere in the world of an arrest or seizure of artworks leading to confirmation that the items in question have been used to fund terrorism. Considering how keen the authorities are to demonstrate the link between the art market and terrorist financing, it is hard to believe that they would not engage in a major media campaign to publicise such a case if it ever arose.

Quite apart from the unwarranted damage this lack of probity has inflicted on the innocent, it has also led to a wider failure of policy, with real problems that need dealing with under international conventions and other agreements being ignored in favour of the pursuit of propaganda-fuelled ideology. While the report focuses on the repercussions for the art market, the institutional failures resulting from this misguided policy have claimed other victims, notably vulnerable cultural heritage sites and the vulnerable people living near them, who should enjoy better support as they are asked to help in the protection of their heritage.

Much of this inappropriate policy development is funded by public money, yet acts against the public interest. Even when its failures are drawn to the attention of the authorities responsible, as those involving UNESCO and the European Commission have been, they ignore or dismiss them and carry on as before. It is hard to think of any other walk of life where such scandalous behaviour would go unpunished, let alone continue to be encouraged and even celebrated.

Unlike many of the bodies it takes to task, the report provides properly checked primary sources, including weblinks, for all the data it publishes, so that they can readily be verified independently.

<https://bit.ly/3sA58MY>

Dan Hicks on the Benin Bronzes and Ultraviolence of World Culture Museums: The Benin Bronzes, Colonial Violence and Cultural Restitution

Hyperallergic: January 29: One of an increasing number of articles taking Western museum policy to task in the face of the colonial backlash, this highlights a prominent new book, *The Brutish Museums*, by Dan Hicks, archaeology curator at the Pitt Rivers Museum in Oxford. "There is no more important question for western museums today than restitution," the article begins, quoting Hicks.

Hicks declares himself "explicitly anti-colonial".

"We need to start to dismantle those elements of world culture museums that constitute the survival of an old infrastructure of racist ideologies. I wanted to write a book that can be used as a tool in that process of dismantling, of excavation," he tells *Hyperallergic*. He has selected the Benin Bronzes as his focus because of their iconic nature coupled with the circumstances surrounding their removal to Britain and then to various museums in the UK and around the world.

Hicks counterblasts the claim that fulfilling restitution claims would "empty museums" and leave "gaps" in their collections by noting that less than 1% of objects taken under colonialism are now on display.

Very much a political treatise, while Hicks makes his views on colonialism and the raiding of native culture very clear, the article and interview makes no mention of the Bronzes' direct link to the slave trade (they are made from Manilla, the European slave trade currency exchanged with the King of Benin for slaves, among other commodities). This is a considerably more difficult challenge to deal with: as other symbols of slavery, such as statues to philanthropists who made their fortunes, at least in part, from slavery are pulled down and their names erased from institutions they endowed, where does that leave the bronzes? Astonishingly accomplished and beautiful artworks they may be, but they are no less representative of violent oppression at the hands of the King of Benin than their presence in museums around the world are of violent colonial oppression.

This raises the question as to what must be destroyed or removed from view and what must be preserved in the stand-off between the iconoclasm of political dogma and the traditional world of heritage preservation. It's a debate that has barely begun.

Hicks concludes: "What's at stake is the social legitimacy of the world culture museum. Time's up." That's fine, but if you are going to position yourself as international moral arbiter, then you have a duty to address such issues in the round.

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

Mexico asks Christie's to call off auction of pre-Hispanic artifacts

Reuters: February 3: The Mexican government has asked Christie's to cancel its auction in Paris of more than 30 artefacts dating back to the country's pre-Hispanic era, saying the items are part of the national heritage and should be returned.

The selection of masks, carved stones and other figures by Aztec, Mayan, Toltec and Mixtec cultures is expected to fetch as much as €900,000 on February 9.

This is not a dispute over whether the items have been illegally come by – Mexico does not claim that, simply that what it considers to be national treasures should not be sold at all, but returned to it. What it does not appear to have done is to offer compensation alongside its demands.

<https://reut.rs/2Mqd44c>

Egypt agrees to help Iraq recover looted antiquities

Al-Monitor: February 3: The Egyptian Ministry of Antiquities has agreed to help Iraq reclaim stolen antiquities that are now in Turkey.

Co-operation between the two countries will also include the sharing of archaeological expertise and restoration.

<https://bit.ly/3oL0Oby>

Antiquity revenues in Egypt plunge more than 90 percent in 2020, ministry facing LE7 bn in debt: minister

Egypt Independent: February 4: The Egyptian Antiquities ministry has been left seven billion Egyptian pounds in debt as a result of the fall-off in tourism revenues in the wake of the pandemic.

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

Egypt punishes stealing antiquities by life imprisonment, LE 5M fine

Egypt Today: February 13: The authorities in Egypt have upgraded punishments for stealing antiquities to life imprisonment and fines of one million to five million Egyptian Pounds.

“The amendments approved by the Egyptian parliament stipulated that the punishment will apply to the violators, who intend to smuggle the antiquity, whether it is registered as state-owned, or prepared for registration, or extracted in archaeological excavations run by the ministry or part of the mission and universities excavation works,” the report reads.

<https://bit.ly/3qnFp9W>

Fewer Young Iraqis Choose to Study Archaeology

Al-Fanar Media: February 16: This article sets out how and why Iraq is having a problem encouraging young Iraqis to train as archaeologists: in brief, once trained they find that they cannot find work. This is an astonishing state of affairs bearing in mind the crying need for new domestic talent and expertise, a long-term plan for conservation and preservation, in keeping with the country’s Article 5 obligations under the UNESCO 1970 Convention and the vital importance of cultural heritage tourism to the future of the country’s economy.

“Many of Iraq’s world heritage sites lie in ruins three years after the collapse of the Islamic State and thousands of mounds conceal remnants of ancient cities,” the article begins. “The sites are under threat of looting and need teams of experts to unveil their treasures. But fewer young people want to study archaeology in what is regarded as the cradle of civilization, and jobs are scarce for those who do.”

The experiences of one candidate explains their discouragement: “The graduates’ situation is painful,” Al-Obaidi said. “There are no public or private jobs for us. It has become a joke for an archaeologist to apply for jobs.”

The extent of the problem is illustrated by the University of Mosul intake: “only 28 students out of 17,000 students joined the College of Archaeology this year, according to its president, Kossay Al-Ahmady.”

Usama Adnan, an assistant professor of history at Al-Mustansiriyah University, says the admission of only a handful of students in some of Iraq’s archaeology schools stems from “a lack of archaeological awareness.”

Al-Ahmady believes that poor pay is one of the reasons that put potential archaeologists off. Others experts give their reasons too.

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

UNESCO: The real price of lies (Translated from French)

Facebook account of Yves-Bernard Debie, reproduced from his article for *Art et Loi* magazine: Following on from the CINOA/IADAA investigation and exposure of the fraudulent anniversary campaign in November, cultural property lawyer Yves-Bernard Debie, who has often championed the art market against those who have sought to damage it, recaptures the story in this article, showing how UNESCO has abused its authority and standing to mislead the public and media over what it has called *The Real price of art*. IADAA published a full account in the October and November 2020 newsletters and also carries the evidence on its website (see <https://bit.ly/3avKh7l>). Debie rightly concludes with the following comments: “It is precisely because this institution (UNESCO) and its clearly identified goals are essential for humanity that we cannot accept its involvement in stigmatizing the art market, either without proof or by fabricating it, as it works towards understanding and rapprochement between peoples.”

The Facebook post reproducing the article has attracted a large number of comments regarding UNESCO’s behaviour, illustrating the level of anger and outrage at what has happened – in particular at the repetition of misconduct in the revised campaign, the misuse of public money to fund it and the apparent lack of oversight or comeback for UNESCO over its misdemeanours.

Typical of the reaction is the following detailed comment from Paris Tribal Art dealer Anthony Meyer: “Thank you for bringing to our attention the duplicity of UNESCO. It is intolerable to see that this venerable institution which has done so much good in the past saving cultural heritage is now resorting to FAKE NEWS and FAKE ADVERTISING to try and discredit the art market and the collectors. I would think that there is a rotten apple in their basket. UNESCO is financed through member state contributions made from the taxpayer’s money. So, it appears that UNESCO is using our taxpayer money to finance FALSE advertising incriminating collectors worldwide by publishing works of art that WERE NOT stolen as if they were. How is it possible that there is no oversight in UNESCO – where is the administrator that should be keeping an eye on the doings of the various departments. How did UNESCO produce this FALSE campaign not only once – but when they were caught at it and informed of the spurious aspect of the campaign, they repeated their FAKE adverts once again using more works of art that WERE NOT stolen... Something is going awry in UNESCO and they need to be taken to task and they need to fix it ...”

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

Spanish police seize 'very rare' 2,000-year-old bronze Roman tablet

MSN.com: February 20: Police in Madrid have seized what they have described as a “very rare” ancient Roman legal document cast in bronze dating two millennia to the time of Emperor Tiberius, MSN reports.

The bronze tablet, which had been advertised online as for sale by auction in Madrid, has been deemed illicit because the seller was found not to have any paperwork proving its legal status after buying it in a shop in Seville and because it was not registered in Spain’s inventory of archaeological assets, as is required by law.

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

Academic tussle as ancient relics from black market brought into country

The Sydney Morning Herald: February 20: A University of Sydney academic is at the centre of a legal and ethical storm after allegedly sourcing ancient relics on the black market and

importing them illegally to Australia. Dr Mark Allon, who launched a crowdfunding campaign to fund \$30,000 research into a pair of 2000-year-old bark manuscripts linked to the birth of Buddhism, argues that “if I hadn’t acted, they would have been destroyed.”

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

Lawmaker seeks support of Parliament to decolonise Swiss museums

Swissinfo: February 23: A parliamentary committee is to investigate the origins of artefacts in the country’s museum collections with a view to seeing whether items should be returned to their countries of origin.

Explaining the reasons behind the move, Carlo Sommaruga, a Social Democrat member of Parliament, said: “Because Switzerland didn’t have any colonies, it is difficult to accept that we also have a responsibility here, but we do. The difficulty for Swiss politicians is that we haven’t really accepted that we profited from colonialism. This is not just about museum policy – it is also about diplomacy, and we could become proactive and serve as an example for other European countries.”

<https://bit.ly/3bE58VI>

Authorities taking action over e-bay sale of tile from Salamis

Cyprus Mail: February 25: Cypriot authorities have intervened after someone in Russia advertised an object on eBay as an ancient floor tile from the city of Salamis. Asking \$85 for the piece, the seller stated that it was ‘A piece of tile 2500 thousand years old Antiques’. A request has been filed for the tile to be repatriated.

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

Confiscated coins at Canadian border become opportunity

Coin World: February 26: Greek Hellenistic and early Islamic coins seized at the US/Canadian border have been deemed illicit because the person attempting to import them to the US had no documentary evidence to prove they had been lawfully acquired and imported. Homeland Security is reported to have checked with experts and been informed that it was likely that they had been excavated illegally because they showed signs of bronze disease. They were also said to be similar to coins found on the Red List of Afghanistan Antiquities at Risk.

The importer and abandonment agreement, legally forfeiting them to the United States and they have now been handed over for study to the University of Washington.

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

A complete Bronze Age spearhead has been discovered by a metal detectorist on the island of Jersey.

Heritage Daily: February 26: Metal detectorist Jay Cornick has discovered a complete Bronze Age spearhead on a beach next to the small village of Gorey on Jersey’s eastern coast.

“In line with best practice for non-treasure, Mr Cornick recorded the find-spot location and declared it to Jersey Heritage,” the article reports.

Carbon dating of the remains of a Field Maple wooden shaft attached to the spearhead suggests the find dates from between 1207 BC and 1004 BC, around the later Bronze Age.

<https://bit.ly/2O4kR8f>

‘Extraordinary’ ceremonial chariot unveiled in Pompeii

RNZ: February 28: A highly decorative Roman chariot in an “an excellent state of preservation” has been unearthed near the archaeological park of Pompeii.

Found in a double-level portico connected to stables at an ancient villa at Civita Giuliana, north of the walls of the ancient city, the ceremonial chariot is said to have “iron

components, beautiful bronze and tin decorations: as well as ropes and floral decoration discovered “almost intact”.

Photo credit: AFP/Pompeii Archaeological Park

<https://bit.ly/3sxc0L2>

