

Introduction to the Revisions to the 2008 Guidelines on the Acquisition of Archaeological Material and Ancient Art

In 2004, the Association of Art Museum Directors adopted guidelines on the Acquisition of Archaeological Material and Ancient Art. In light of the experience of North American museums in implementing those guidelines for a number of years, the AAMD determined that changes were required and adopted revised guidelines in 2008. The principal change was the deletion of the provision that allowed the acquisition of objects with at least 10 years of provenance and the addition of a requirement for provenance to at least November, 1970, with certain exceptions. Museums have now had experience with the 2008 revised guidelines and the AAMD has determined that additional changes should be made. This 2013 revision addresses gift and estate plans made, but not carried out, prior to the 2008 revision. The 2013 revision also adds certain definitions and examples, and clarifies that if an acquisition must be posted on the AAMD Object Registry because it was acquired based on an exception in the Guidelines, the posting must explain how the acquisition fits one or more of the exceptions.

The 2008 guidelines represented a significant change in the AAMD's recommendation for acquisitions of archaeological material and ancient art. Those guidelines used the date of adoption of the UNESCO Convention, November 17, 1970, as a threshold for a more rigorous analysis of provenance information – an analysis not necessarily required by applicable law. The 2013 revisions, while they address a very limited universe of objects that may not have a complete provenance to 1970, maintain that threshold date for analysis of acquisitions of archaeological material and ancient art. The AAMD was encouraged in 2008 to see that the date of adoption of the UNESCO

Convention was recognized not only by museums as a threshold for more rigorous analysis of acquisitions, but also by some countries as a voluntary limitation for enforcement of their cultural patrimony laws that predate the UNESCO Convention. The AAMD hopes that other countries will follow this precedent of voluntary restraint as the AAMD continues to encourage its members to pursue voluntary standards for acquisitions that are stricter than the requirements of applicable law.

Guidelines on the Acquisition of Archaeological Material and Ancient Art (revised 2013)

AAMD Mission Statement

The purpose of the Association of Art Museum Directors is to support its members in increasing the contribution of art museums to society. The AAMD accomplishes this mission by establishing and maintaining the highest standards of professional practice; serving as a forum for the exchange of information and ideas to aid its members in their professional roles as art museum directors; acting as an advocate for art museums; and being a leader in shaping public discourse about the arts community and the role of art in society.

Preamble

The AAMD recognizes that the acquisition of archaeological materials and ancient art has in recent years become an increasingly complex task that requires the careful consideration of a number of different and, at times, seemingly contradictory goals. This report is intended to help its members understand the issues they will face when evaluating the purchase or acceptance of a gift of archaeological materials and ancient art and provides a framework for responsible decision-making in the development of their collections. Acknowledging that these subjects are interrelated, it also reaffirms the importance and the possibility of protecting archaeological sites as well as collecting archaeological materials and ancient art. This dual objective can only be accomplished through enhanced cooperation between source countries (i.e., countries of modern discovery of archaeological materials and ancient art) and museums that collect such works as well as the development of a mutual understanding and respect for the rights of these countries to protect their cultural property and those of museums whose work is to enhance – through collecting, research, and exhibition – knowledge and appreciation of the artistic achievements of the past.

Acquisition of Archaeological Material and Ancient Art (adopted by the membership of the AAMD, January 29, 2013)

I. Statement of Principles

- A. AAMD is committed to the responsible acquisition, whether by purchase, gift, bequest or exchange, of archaeological materials and ancient art. AAMD believes that the artistic achievements of all civilizations should be represented in art museums, which, uniquely, offer the public the opportunity to encounter works of art directly, in the context of their own and other cultures, and where these works may educate, inspire and be enjoyed by all. The interests of the public are served by art museums around the world working to preserve, study and interpret our shared cultural heritage.

- B. AAMD deplores the illicit and unscientific excavation of archaeological materials and ancient art from archaeological sites, the destruction or defacing of ancient monuments, and the theft of works of art from individuals, museums, or other repositories.
- C. AAMD is committed to the principle that acquisitions be made according to the highest standards of ethical and professional practice and in accordance with applicable law and in such a way that they do not provide a direct and material incentive to looting.
- D. AAMD is committed to the exercise of due diligence in the acquisition process, in particular in the research of proposed acquisitions, transparency in the policy applicable to acquisitions generally, and full and prompt disclosure following acquisition.
- E. The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Export and Transfer of Ownership of Cultural Property began a new dialogue about the best ways to protect and preserve archaeological materials and ancient art, although regrettably the looting of sites, destruction of monuments and theft of objects continue to this day. The AAMD, along with others in the international community, including source countries, recognizes the date of this Convention, November 17, 1970, as providing the most pertinent threshold for the application of more rigorous standards to the acquisition of archaeological materials and ancient art as well as for the development of a unified set of expectations for museums, sellers and donors.
- F. Recognizing that a complete recent ownership history may not be obtainable for all archaeological material and every work of ancient art, the AAMD believes that its member museums* should have the right to exercise their institutional responsibility to make informed and defensible judgments about the appropriateness of acquiring such an object if, in their opinion, doing so would satisfy the requirements set forth in the Guidelines below and meet the highest standards of due diligence and transparency as articulated in this Statement of Principles.
- G. AAMD reaffirms the value of licit markets for the legal sale and export of works of art as an effective means of deterring the illicit excavation and trafficking of archaeological materials and ancient art
- H. AAMD encourages the creation of licit markets and strongly urges all nations to provide a legal method for the sale and export of art, thereby furthering the goal of deterring the illicit excavation and trafficking of archaeological materials and ancient art.

* "Member museum" means an art museum the director of which is a member of the AAMD.

II. Definitions

For purposes of these guidelines, the following terms shall have the meanings set forth below:

- A. “Archaeological material” means an object of cultural significance created in antiquity and discovered on land, below ground or under water as a result of scientific or clandestine excavation, exploration or digging activities or inadvertently as a result of other activities;
- B. “Ancient art” means a work of art created in antiquity that is not archaeological material;
- C. “1970” means November 17, 1970;
- D. “2008” means June 4, 2008; and
- E. “Work” means an object of archaeological material or a work of ancient art.

III. Guidelines

Since its founding in 1916, AAMD has regularly published professional guidelines. Given the increasingly complex set of ethical questions and rapidly evolving legal issues that need to be considered in the acquisition process, AAMD has developed the following guidelines to assist members in revising their acquisition policies. These guidelines apply to acquisitions of archaeological materials and ancient art by purchase, gift, bequest, or exchange.

- A. Member museums should thoroughly research the ownership history of a Work prior to its acquisition, including making a rigorous effort to obtain accurate written documentation with respect to its history, including import and export documents.
- B. When the Work is being imported into the U.S.[†] in connection with its acquisition by the member museum, import documentation should be obtained and compliance with the export laws of the country of immediate past export to the U.S. should be confirmed.
- C. Member museums should require sellers, donors, and their representatives to provide all information of which they have knowledge, and documentation that they possess, related to the Work being offered to the museum, as well as appropriate warranties.

[†] For AAMD members located outside the United States of America, “U.S.” means their country.

- D. Member museums must comply with all applicable local, state, and federal U.S. laws, most notably those governing ownership and title, import, and other issues pertinent to acquisition decisions.
- E. Member museums normally should not acquire a Work unless provenance research substantiates that the Work was outside its country of probable modern discovery before 1970 or was legally exported from its probable country of modern discovery after 1970.
- F. The AAMD recognizes that even after the most extensive research, many Works will lack a complete documented ownership history. Member museums may acquire such Works if:
 - 1. Based on the results of provenance research, the museum can make an informed judgment that the Work was outside its probable country of modern discovery before 1970 or legally exported from its probable country of modern discovery after 1970, or
 - 2. The cumulative facts and circumstances known to the museum after compliance with Sections III, A through D allow it to make an informed judgment to acquire the Work, consistent with the Statement of Principles above. Examples of such facts and circumstances include, but are not limited to:
 - a. The number, place and circumstances of independent exhibition(s) of the Work;
 - b. The number, type and circulation of publication(s) of the Work;
 - c. The length of time and place of public display(s) of the Work;
 - d. As to archaeological material, the provenance history of other Works excavated from the same site or area;
 - e. The prior owner(s) of the Work and any claims made against them with respect to other Works; and
 - f. Communications regarding the Work between the country of modern discovery and the current owner, a prior owner, or the museum, or
 - 3. The acquisition of the Work is by gift or bequest and
 - a. the donor/testator signed prior to 2008 a promise to gift, a will, a trust, or other document setting forth her/his intent to donate or bequeath the Work to the museum;

- b. the Work was on long term loan to the museum prior to 2008; or
 - c. the museum had an expectation prior to 2008 of receiving the Work by gift or bequest, as reflected in (i) a writing to or from the donor or a prior owner, (ii) communications with the donor or a prior owner, provided that the communications have been memorialized by the museum prior to acceptance of the gift or bequest or (iii) other documentation, or
4. The acquisition is of a fractional interest in the Work by gift, bequest or purchase and the museum acquired prior to 2008 a fractional ownership interest in the Work.

In the circumstances described in Items 1 through 4 above, the museum must carefully balance the possible financial and reputational harm of acquiring the Work against the benefit of collecting, presenting, and preserving the Work in trust for the educational benefit of present and future generations.

- G. The museum should promptly publish acquisitions of archaeological materials and ancient art, in electronic form, including an image of the Work (or representative images in the case of groups of objects) and its provenance, thus making this information readily available to all interested parties.
- H. In addition to the publication requirement set forth in Section G above, if a member museum acquires a Work under circumstances contemplated in Section F above, the member museum must post on the AAMD object registry an image of the Work (or representative images in the case of groups of objects) and its provenance as well as an explanation of why the acquisition of the Work is consistent with Section F above.
- I. If a member museum, as a result of its continuing research, gains information that establishes another party's right to ownership of a Work, the museum should bring this information to the attention of the party, and if the case warrants, initiate the return of the Work to that party, as has been done in the past. In the event that a third party brings to the attention of a member museum information supporting the party's claim to a Work, the museum should respond promptly and responsibly and take whatever steps are necessary to address this claim, including, if warranted, returning the Work, as has been done in the past.

IV. Acquisition Policies

Member museum directors and others responsible for museum governance should develop acquisition policies and guidelines for provenance research consistent with the above Guidelines.

**Amendment to Appendix A to
Professional Practices in Art Museums
A Code of Ethics for Art Museum Directors**

The fourth paragraph in the Code of Ethics would be amended to read as follows:

The director must ensure that best efforts are made to determine the ownership history of a work of art considered for acquisition. The director must not knowingly allow to be recommended for acquisition – or permit the museum to acquire – any work of art that has been stolen (without appropriate resolution of such theft) or illegally imported into the jurisdiction in which the museum is located. With respect to acquisitions covered by Section III, H of the AAMD Guidelines on the Acquisition of Archaeological Material and Ancient Art (the “Guidelines”), the director must cause the posting contemplated under that Section to be made.