Federal Government Commissioner
for Culture and the Media

Guidelines

for implementing the Statement by the Federal Government, the *Länder* and the national associations of local authorities on the tracing and return of Nazi-confiscated art, especially Jewish property, of December 1999

of February 2001
as revised in November 2007

CONTENTS

Foreword

The present guidelines offer **legally non-binding guidance** on implementing the Washington Conference Principles on Nazi-Confiscated Art (hereafter the "Washington Principles") of 3 December 1998 and the Statement by the Federal Government, the *Länder* and the national associations of local authorities on the tracing and return of Nazi-confiscated art, especially Jewish property (hereafter the "Common Statement") of December 1999. At the initiative and under the supervision of the Federal Government Commissioner for Culture and the Media, the guidelines dating from 2001 were revised in the course of 2007 by a working group and adopted in conjunction with the establishment of a fund for provenance research. Representatives of the *Länder* and of the national associations of local authorities, museum experts and representatives of the Federation were involved in drafting the 5th edition of the guidelines. The aim was to draw on the experience of the past ten years with a view to making the existing guidelines more practicable, effective and conciliatory and to outline ways and means to arrive at "just and fair solutions" within the meaning of the 1998 Washington Principles.

Based on the Washington Principles and the Common Statement, the guidelines are to provide **guidance to museums, libraries and archives for their independent provenance research/investigations to identify Nazi-confiscated art**. Also, the guidelines are intended to outline in an exemplary fashion various options for preparing decisions on restitution claims. Due to the complexity of the matter, case examples can only provide limited guidance so that a case-by-case examination remains indispensable.

Due to their importance for German provenance research as a whole, museums and other institutions holding cultural property are urgently recommended to share the results of their provenance research with the Coordination Office for the Return of Cultural Property *(Koordinierungsstelle für Kulturgutverluste)*. In agreement with the reporting institutions and in line with item III of the 1999 Common Statement, the data transmitted will be made available on the Internet at www.lostart.de.

In compliance with a recommendation contained in the Washington Principles and in agreement with the *Länder* and the national associations of local authorities, in 2003 the Federal Government established the **Advisory Commission** on the return of cultural property seized as a result of Nazi persecution, especially Jewish property.

This does not affect the sole responsibility of the respective institutions and their funding bodies for all relevant decisions to be taken in this context.

The following texts do not contain any final statements and are subject to future amendments and additions that will be made in the light of practical experience.

Bernd Neumann, MP
Minister of State in the Federal Chancellery
Federal Government Commissioner for Culture and the Media

Signed on 13 November 2007 by:

Minister of State Bernd Neumann, Federal Government Commissioner for Culture and the Media;
VLR I Cord-Hinrich Meier-Klodt and VLR Charlotte Schwarzer, Federal Foreign Office;
Ministerialdirektor Rainer M. Türmer, Federal Ministry of Finance;
Ministerialdirigent Dr Werner von Trützschler, Cultural Affairs Committee of the Standing Conference of the Ministers of Education and Cultural Affairs of the *Länder*;
Raimund Bartella, German Association of Cities;
Uwe Lübking, German Association of Towns and Municipalities;
Dr Irene Vorholz, German County Association;
State Secretary for Culture Hans-Heinrich Grosse-Brockhoff, State Chancellery of North Rhine-Westphalia;
State Secretary André Schmitz and Liane Rybczyk, Senate Chancellery - Cultural Affairs Department, Office of the Governing Mayor of Berlin;
Ministerialdirigent Dr Gerold Letko and Dr Michael Franz, Coordination Office for the Return of Cultural Property;
Hortensia Völckers, German Federal Cultural Foundation;
Isabel Pfeiffer-Poensgen, Cultural Foundation of the *Länder*;
Prof. Dr Klaus-Dieter Lehmann, Prussian Cultural Heritage Foundation;
Dr Michael Eissenhauer and Mechthild Kronenberg, German Museums Association;
Prof. Dr Christoph Brockhaus, Wilhelm Lehmbruck Museum Duisburg

I. Checking museum/library/ archives holdings for Nazi-confiscated art and documenting collections – scope and limitations of self-initiated research activities

The Statement by the Federal Government, the *Länder* and the national associations on the tracing and return of Nazi-confiscated art, especially Jewish property, of December 1999 reads as follows:

"Irrespective of such material compensation, the Federal Republic of Germany declared its readiness at the Washington Conference on Holocaust-Era Assets on 3 December 1998 to look for and identify further Nazi-confiscated cultural property in so far as the legal and factual possibilities allow …"

"The German public institutions such as museums, archives and libraries have supported the tracing of Nazi-confiscated art already in the past by means of

1. *exploitation of and access to the data research findings and records available to them,*
2. *investigations in case of concrete inquiries and research, on their own initiative, in case of new acquisitions,*
3. *search activities in the framework of the institutions' tasks, …*

These efforts shall be carried on wherever there is sufficient reason."

Annex I a – Washington Principles
Annex I b – Common Statement

The responsible management of holdings includes, as a primary task of the institution holding the collection, the documentation of existing holdings and an examination to establish whether and to what extent it is necessary and possible to initiate investigations into the conditions under which the items were acquired. In this context, the following guidance should also be taken into consideration. It is not a matter of "justifying" the acquisition of each and every item included in a collection and of surrendering those whose acquisition circumstances cannot be fully cleared up.

However, a purely reactive approach would be insufficient, bearing in mind the interim objective laid down in the Common Statement, which is to provide public access to information on items that are either proven or suspected to have been confiscated as a result of Nazi persecution or for which this cannot be ruled out.

As a result of an institution's independent decision to define adequate research resources depending on its specific conditions (scope and type of the holdings, documentation of acquisitions, etc.), the institution may also supply basic information by publishing data (concerning the object, author, mode and time of acquisition) on all objects acquired between 30 January 1933 and 8 May 1945.

The task can be summarized as follows:
Public collections should be aware of their responsibility to help track down Nazi-confiscated art in their holdings by identifying, on the basis of the documents available to them and taking into account the current status of research, any acquisitions suspected of having been confiscated as a result of Nazi persecution, by making available to the public any relevant information on such items at the website of the Coordination Office for the Return of Cultural Property, www.lostart.de, and by providing further information to those with a legitimate interest.

In cases where the examination of holdings results in the identification of **cultural property brought to Germany from abroad as a consequence of the war** and that has so far remained undiscovered, all available information on such items should be provided to the competent funding body of the institution concerned which will then pass on the information to the

Koordinierungsstelle für Kulturgutverluste/
Coordination Office for the Return of Cultural Property
Turmschanzenstraße 32
39114 Magdeburg
Tel.: +49-(0) 391 / 567 3891
Fax: +49-(0) 391 / 567 3899
E-Mail: lostart@mk.sachsen-anhalt.de
www.lostart.de

II. Tracing Nazi-confiscated art

A. Checklist for a case-by-case review of all post-1933 acquisitions of art works produced before 1945

- **What?**
(e.g. artworks of unclear provenance or with gaps in their provenance records)

- **When?**
(time of acquisition or change of ownership/possession, in particular between 1933 and 1945)

- **Where?**
(place of acquisition, e.g. countries and territories occupied by Germany, pawnshops, *Zentralstelle*,[1] forced auctions of Jewish property (*Judenauktionen*); evacuation repositories)

- **How?**
(a) mode of acquisition, e.g. purchase, exchange, donation in larger, self-contained units, purchase at a price below market value, larger accessions from auctions or second-hand stores, often in lots
b) way in which the items were registered in the collections; e.g. suddenly missing or cryptic provenance entries, registrations that deviate from the previous registration policy)

1 Translator's note: reference to the "Zentralstelle" (literally: central agency), i. e. was the Berlin municipal pawnshop where all high-value items which Jews were forced to surrender under the Third Ordinance Order based on the Ordinance on the Registration of Jewish Assets of 21 February 1939 were centrally collected.

- **By whom?**

(Provenance: from dealers involved in the trade with Nazi-confiscated art, Nazi-era allocations, names of the original – in particular Jewish – owners)

N.B.:
Any review on the basis of this five-question checklist should also cover the period **preceding the acquisition** by the institution concerned!

Further, non-exhaustive information may be found inter alia in the fact registration sheet developed by the Prussian Cultural Heritage Foundation and in the checklist developed by the Coordination Office for the Return of Cultural Property.

Annex II a – fact registration sheet (online only)
Annex II b – checklist of the Coordination Office (online only)

B. General information

1. Circumstances of acquisition

Where items were acquired by museums, collections, archives, libraries, etc. in the following ways, Nazi confiscation may be suspected:

- acquisitions through legal transactions that were based on persecution (the victims of persecution were private individuals and institutions), e.g. at auctions,

- direct allocations of confiscated art by official Nazi authorities to museums, etc. ("donations");
- but also the place of acquisition (e.g. purchases in or from occupied territories) can be an indicator.

2. Mode and time of acquisition

Basically, **all acquisitions** (e.g. purchases, exchanges, donations, bequests, official allocations) **and all accessions of unclear origin acquired between 1933 and 1945** and all works of art that changed possession during that period should be reviewed in order to identify any gaps in their provenance records. **For all acquisitions after 1945, the provenance record for the period between 1933 and 1945 should also be verified.**

3. Available sources

The sources to be used for reviewing collection holdings on the basis of the above criteria include first and foremost **acquisition and inventory records**, i.e. accession journals of the libraries, inventories and acquisition lists of the museums and the finding aids of the archives for the period under review and, where available, any correspondence files that may exist in the institution concerned. The data contained in the inventories, however, are often insufficient; there may be a significant gap between the date of registration in the inventory and the acquisition date.

The following facts need to be checked:

- changes of ownership (*inter alia* transfer into the property of the Reich) during the acquisition period from 1933 to 1945
- circumstances of acquisition/accession;
- parties involved.

4. Provenance research/investigations

For the purpose of establishing the provenance of artworks, the relevant printed **registers, expert literature and archival sources** may be consulted, including for example:

- the Handbook on German-speaking Emigration,
- information contained in the holdings of the Trust Management of Cultural Property (Stock B 323 of the Federal Archives and records of the Munich Institute of Contemporary History),
- the Biographical Index of Individuals in Art Looting of the US Office of Strategic Services,
- Analysis of accessible auction records (auction catalogues, trade press 1933 – 1945, etc.),
- corporate archives,
- where applicable and where important paintings are concerned: lists of works, exhibition catalogues and dictionaries on artists (e.g. Thieme-Becker),
- the website www.lostart.de; and here in particular the "provenance research" module,
- AAM Guide to Provenance Research.

In cases where there is **reason to assume that an object was Nazi-confiscated** and where the previous owner/s is/are known, the search may be extended to

- the confiscation files based on Nazi records, such as the records kept by the Property Utilization Offices with the Presidents of the Regional Finance Offices of the *Länder*,
- the files on restitution and compensation proceedings (kept by the regional finance offices and by the Federal Office of Central Services and Unresolved Property Issues (Bundesamt für zentrale Dienste und offene Vermögensfragen (BADV), formerly the Regional Finance Office of Berlin),
- the archival holdings of the Federal Archives in Koblenz, e.g. Stock B 323 (correspondence between art dealers and exponents of the Nazi regime)
- and the records relating to the Reich Chamber of Visual Arts held by the *Landesarchiv Berlin/Land Archive of Berlin* (LAB A Rep. 243-04).

Such records may also be contained in the relevant holdings of *Land* and municipal archives.

C. Criteria suggesting that a work of art may have been Nazi-confiscated (search criteria for the case-by-case review)

Only in exceptional cases may one expect to find unequivocal and detailed information in the acquisition records or on the objects themselves, indicating that a collection item held by a public institution is in fact of doubtful provenance. Hence the need to define a set of criteria that may be helpful in identifying potentially spoliated art in the framework of provenance research.

Apart from the characteristics and circumstances outlined above, the following indicators may serve as further search criteria in a case-by-case review:

1. **Public officials/institutions behind the systematic and organized spoliation of art 1933 – 1945**

- **Appropriation** (theft, confiscation, expropriation and forced sales) **by public authorities of the German Reich between 1933 and 1945 and by organizations specialized in the looting of cultural property** (other than the Gestapo, the military administration in the occupied territories, the Reich Ministries, the Reich Chancellery and the respective regional finance offices)

  Annex II c – Nazi-era agencies and organizations specialized in the looting of cultural property (online only)

- **Parties involved in the appropriation, confiscation and/or "sale" or "exchange"** of works of art on behalf of Hitler, Bormann, Himmler, Göring, Ribbentrop, Rosenberg et al.

  Annex II d – Parties involved in the appropriation, confiscation and/or "sale" or "exchange" of works of art (online only)

- The so-called ***Hohe Schule*** (High School) as a direct beneficiary of confiscated art

  Annex II e – "Hohe Schule" (online only)

- **Specialized experts of the Nazi era**

  Annex II f – Specialized experts of the Nazi era (online only)

- In many cases, the National Socialists stockpiled **spoliated art in a number of repositories.** After 1945, the victorious powers gradually discovered more than 2,000 such repositories of cultural property in Germany.

Annex II g – List of the best-known repositories (online only)

2. Museums, libraries, archives, private collectors as clients or recipients (e.g. purchases, allocations, donations, exchange) 1933 – 1945

- **Purchases in countries and territories occupied by Germany** can be an indicator of a sale under duress and should therefore be examined more carefully. Objects that were "donated" or allocated by official Nazi authorities from occupied countries/territories can, as a rule, be assumed to have been confiscated.

- **Donations** of valuable items or large numbers of items (and larger, entire lots and units) by private individuals in the acquisition period from 1933 to 1945, in particular in the years from 1938 to 1942, and payments by the state in compensation for confiscated items should be examined on a case-by-case basis to establish their provenance (i.e. to establish whether they were originally Jewish property). Acquisitions by "donation" (possibly also by exchange) must be considered "suspicious" acquisitions also in those cases where organizations of the Nazi state or party organizations were involved and/or where items were exchanged outside the existing regular exchange trade relations.

- The same applies also with regard to **acquisition by purchase** in cases where entire lots and larger units were purchased from Nazi authorities, from dealers involved in the trade with Nazi-confiscated art, at so-called *Judenauktionen* (forced auction of Jewish possessions) or from dealers with whom there were no previous business relations and/or where inadequate prices were paid.
  Purchases of valuable items from municipal pawnshops may be doubtful acquisitions in this sense. Pursuant to the Third Order based on the Ordinance Regarding the Registration of Jewish Assets (*Dritte Anordnung auf Grund der Verordnung über die Anmeldung des Vermögens der Juden*) of 21 February 1939,[2] Jews were forced to surrender jewellery and objects made of precious metal to the municipal pawnshops (with the Berlin municipal pawnshop acting as a "central agency" where all high-value items forcefully surrendered by Jews throughout Germany were collected).

- **Accessions that did not conform to established rules** are also suspicious: For many items that were registered as accessions by museums during the Nazi era, the detailed data that would normally have been registered in the records are missing (instead one would find merely entries such as "acquired in 1942" indicating that the item concerned may have been "aryanized", i.e. stolen, extorted or sold below value).

- Also, there are **thematic indicators** (e.g. items/literature directly related to Jewish or religious/ideological themes disapproved of by the Nazi regime) or the name of the author/artist (e.g. authors or visual artists who were persecuted and/or of Jewish descent) which, together with the

2 The full text of the ordinance can be found at www.lostart.de.

above-mentioned criteria, serve as a criterion for identifying "suspicious" acquisitions.
- Provenance marks (stamps, dedications, property marks) are important pieces of evidence and may require further examination.

3. Art dealers/sellers/brokers

"Art dealers involved in the trade with Nazi-confiscated art" are those who did business with representatives of the Nazi regime, among others (e.g. by tracking down certain items on their behalf), or who dealt in confiscated art (often making considerable profits). Their numbers include renowned French art dealers and even Jewish dealers who later became victims of personal persecution themselves while their collections were confiscated and their businesses "aryanized". For this reason, some of these individuals are also mentioned under II.C.4 "Individuals and collections affected".

Agencies and offices of the Nazi state such as the Gestapo, the Supreme Commander in the East or the Reich Exchange Office (*Reichstauschstelle*), which partly transferred confiscated art, may also be considered potential "suppliers".

- Purchases and sales or brokerage by **art dealers involved in the trade with Nazi-confiscated art** (sometimes on behalf of representatives of the Nazi state)

Annex II h – art dealers involved (online only)

- Acquisitions from **auction houses** which specialized in (forced) auctions of Jewish-owned art (including forced auctions of Jewish property)

  Annex II I – auction houses (online only)

- Significance of **abbreviations** in acquisition records
  Following the confiscation and inventory of cultural property confiscated in the framework of the *"Möbel-Aktion"* (Operation Furniture) of the Einsatzstab Reichsleiter Rosenberg (ERR) in France, the signatures **"MA"** for ***Möbel-Aktion*** (on paintings, prints, sculptures, Asian art and antique weapons) or **"J"** for "Jewish provenance" were used after 1941.

  Pursuant to the Ordinance on the Registration of Jewish Assets of 26 April 1938, all Jews and their non-Jewish spouses were required to have all their assets (exceeding 5,000 Reichsmark) registered and assessed. Following the Third Order based on the Ordinance on the Registration of Jewish Assets of 21 February 1939, they had to surrender these assets within a period of two weeks to public collecting agencies (municipal pawnshops). Subsequently, Jewish-owned cultural goods that were auctioned at forced auctions of Jewish property were marked "JA" (for *Judenauktion*), in case of auctions also frequently "*".

- **Shipping companies/organizations** (involved among other things in transporting confiscated art into the territory of the German Reich). Between 1941 and 1944, the Einsatzstab Reichsleiter Rosenberg (ERR) alone commissioned 29 large-scale transports of spoliated art to Germany. In total, 120 railway cars carrying 4,170 crates full

of artworks crossed the borders into Germany. Hermann Göring and others, in particular Hofer, Mühlmann, and Angerer, used not only Göring's special trains and Luftwaffe airplanes and trucks, but also relied on the services of private shipping companies.

Annex II j – Shipping companies/organizations (online only)

4. Individuals and collections affected

Nazi agencies/representatives involved in the collection of art were particularly interested in large and valuable private collections and libraries. This was true not only for Germany but in particular also for France (ERR), Poland and the former Czechoslovakia. In many cases, any indication suggesting that an item was once part of such a collection is strong circumstantial evidence that it was confiscated as a result of Nazi persecution.

- Names in alphabetical order, biographical data and place of business of important **Jewish collectors and/or art dealers** (etc.) whose property was "aryanized", sold under duress and/or confiscated.

  Annex II k – Jewish collectors and/or art dealers (online only)

- **Confiscated music scores, libraries and documents** of individuals and organizations from different countries (e.g. France or the occupied territories in the East)

  Annex II l – Confiscated music scores and libraries (online only)

III. Further information concerning archives

A. Survey of relevant archive holdings

Annex III refers to archival holdings of the Federation, the *Länder* and the local authorities which are likely to contain documents on the removal of formerly Jewish property. The archives will make these holdings available to requesting cultural institutions, authorities and potential private claimants as part of their regular services, offering in particular advice in the context of specific searches. It is for the respective institutions and their personnel to carry out any specific searches. Archives will make available only the infrastructure for such searches, unless their own holdings are concerned.

In concrete cases, detailed investigations may be necessary on the spot.

Annex III – Federal, Länder and local archives (online only)

Further potential sources include:

- auction catalogues,
- corporate archives (e.g. art dealers' archives),
- bank archives.

B. Comments by the Federal Archives on Stock B 323

The Federal Archives has published a special fact sheet (*Kurzinformation*) on the Stock "B 323 Trust Management of Cultural Property by the Munich Regional Finance Office". This fact sheet includes general information on the history of the collection, its contents and use as well as further information. The full text of the fact sheet is available at www.bundesarchiv.de.

C. Restitution files

An important source of information for provenance research is the files on proceedings under the Federal Restitution Act in which the confiscation of artworks was often documented at the time. Hence, there were corresponding files at the local reparations offices and at the regional finance offices which were involved in compensation matters, acting as representatives of the Federation as legal successor to the German Reich. The local jurisdiction of the offices depended on the current location of the assets to be restituted or their location at the time of confiscation. This is why the archival holdings of the restitution authorities are scattered over a large number of locations.
According to estimates, however, 80% of all restitution files are located in Berlin; the Federal Office of Central Services and Unresolved Property Issues (BADV) alone holds approximately one million restitution files.

It is therefore advisable to address any questions first to the

Bundesamt für zentrale Dienste und offene Vermögensfragen
(BADV)/Federal Office of Central Services and Unresolved
Property Issues
DGZ-Ring 12
Referat C2
13086 Berlin
Tel.: +49-(0)30 / 91608-1543 or -1533
Fax: +49-(0)30 / 91608-1140
E-Mail: Ursula.Kube@badv.bund.de or
Sylvia.Pieper@badv.bund.de

Where applicable, the BADV will provide references to other archival holdings of restitution files. Since the BADV's archive of restitution files is based on a central victims' file, any requests for information should contain the first and last name of the victim and, where possible, also his/her date and place of birth and other identity data. Also, the names and birth dates of the victim's relatives should be indicated, since they might have filed a restitution request at the time and their names might be recorded.

Furthermore, the BADV maintains a separate file listing the works of art mentioned in its restitution file holdings, so that it is also possible to ask the BADV about specific works. However, information provided by the BADV from that file is not necessarily complete.

IV. Enhancing provenance research/investigation and sharing research results

Museums, libraries and archives continue to be responsible for investigating data on finds. They or their funding bodies are responsible for deciding what to do with the research results.

The research results should contain the minimum information listed in Annex IV and should be reported to the Coordination Office for the Return of Cultural Property.

Annex IV – Minimum Information to be provided in reports to the Coordination Office (online only)

A. Enhancing provenance research/investigation

To **enhance provenance research/investigation**, the **Provenance Research/Investigation Unit** at the Institute for Museum Research of the National Museums in Berlin – Prussian Cultural Heritage Foundation began its work on 1 January 2008. The policy and mission of the Provenance Research/Investigation Unit are available at www.smb.museum/provenienzforschung or at the website of the Coordination Office for the Return of Cultural Property www.lostart.de.
For further information and advice, please contact the **Arbeitsstelle für Provenienzrecherche/-forschung**/Post for Provenance Research and Investigation at the following address:

Arbeitsstelle für Provenienzrecherche/-forschung beim
Institut für Museumsforschung der Staatlichen Museen
zu Berlin – Stiftung Preußischer Kulturbesitz/
Post for Provenance Research and Investigation at the
Institute for Museum Research at the National Museums
in Berlin – Foundation of Prussian Cultural Heritage
Bodestraße 1-3
10178 Berlin
Tel.: +49(0)30 / 20 90 62 15
Fax: +49(0)30 / 20 90 62 16
E-Mail: afp@smb.spk-berlin.de
www.smb.museum/provenienzforschung

B. Sharing research results

The museums/libraries/archives decide at their own discretion when to pass on the data resulting from their investigations; pursuant to the Common Statement of 1999, research findings should be passed on promptly. Even in cases where investigations do not produce any result, a report shall be made.

The Coordination Office is the central public institution financed by the Federation and all *Länder* which manages the Internet database pursuant to item III of the Common Statement at www.lostart.de.[3]

3 For details concerning the mission of the Coordination Offi ce, please see www.lostart.de

For any questions concerning the way in which reports are to be made (e-mail, “writing access” at www.lostart.de, etc.), institutions may contact the Coordination Office at the following address:

Koordinierungsstelle für Kulturgutverluste/
Coordination Office for Lost Cultural Assets
Turmschanzenstraße 32
39114 Magdeburg
Tel.: +49(0)391 / 567 3891
Fax: +49(0)391 / 567 3899
E-Mail: lostart@mk.sachsen-anhalt.de
www.lostart.de

V. Guidelines for verifying whether a work of art was Nazi-confiscated and for preparing decisions on restitution claims

A. Preliminary remarks

The Common Statement by the Federal Government, the *Länder* and the National Associations of Local Authorities on the tracing and return of Nazi-confiscated art, especially Jewish property, does not establish any enforceable entitlement to the restitution of cultural goods. Taking into account the Washington Principles and the Common Statement, the **decision in each individual case** lies **within the discretion of the institution concerned** or its funding body and will be taken in accordance with the applicable budgetary law provisions where appropriate.

This is why the following **guidelines** do not constitute **a binding set of legal rules** but merely an encouragement to abide by the guiding principles of post-war restitution policy when examining restitution claims.

However, for the **part of Germany that acceded to the Federal Republic in 1990 (acceding territory)**, the Act on the Settlement of Unresolved Property Claims (VermG) provides for a **procedure under administrative law for the restitution** of assets confiscated between 1933 and 1945 in connection with Nazi persecution; this administrative procedure comes under the responsibility of the Federal Office of

Central Services and Unresolved Property Issues (BADV) and **takes precedence over the voluntary procedure** under the Washington Principles/the Common Statement.
For this reason, any institution receiving a restitution claim must first ascertain whether, with regard to the object concerned, a procedure pursuant to Section 1 (6) of the Act on the Settlement of Unresolved Property Claims is pending with the BADV.[4]
For further explanations, please refer to

Annex V a – Comments on cultural goods that are related to the acceding territory (online only)

In the old *Länder* of the Federal Republic (the territory formerly known as West Germany), claims can no longer be enforced by law.

Both the restitution law for the old *Länder* (Federal Restitution Act) and the restitution law for the acceding territory (Act on the Settlement of Unresolved Property Claims) deliberately refrain from defining the deeds that resulted in the confiscation of property and that form the basis of restitution claims. Instead, German restitution law refers to the definitions and presumptions (allocation of the onus of proof) contained in the restitution regulations of the Western Allies; in addition, the Comments on the Guidelines refer to decisions of the supreme restitution courts and decisions reflecting German restitution policy.

4 Cf. Section 3 (5) of the Act on the Settlement of Unresolved Property Claims

B. Guidelines

The following questions may provide some guidance when it comes to examining cases of Nazi-confiscated property and to adjudicating restitution claims. For further comments, please refer to:

Annex V b – Comments on the Guidelines (online only)

1. **Were the claimant or his/her legal predecessor persecuted on racial, political, religious or ideological grounds between 30 January 1933 and 8 May 1945?**

2. **Did the claimant or his/her legal predecessor sustain a loss of property through forced sales, expropriation or in any other form? Who has to bear the onus of proof, i.e. who has to provide evidence showing that the loss was due to persecution by the Nazi regime?**

3. **Can the statutory presumption according to which losses that resulted from legal transactions should basically be considered cases of Nazi-confiscated property, be disproved by showing**
   - that the seller received a fair purchase price
     and
   - that he was free to dispose of the purchase price as he pleased;

   and **(for sales from 15 September 1935 onwards)**
   - that the legal transaction would have taken place even if there had been no National Socialist rule

- or that the victim's financial interests were safeguarded in a special manner and with substantial success, e.g. by helping him/her to transfer his assets abroad?

4. **Are there any reasons precluding restitution (priority principle, abuse)?**

5. **Compensation payments by the Federation, other compensation, considerations**
   Item 1 of the Common Statement of 14 December 1999 reads as follows:

   "This examination includes a match with material compensation already provided. Such a procedure allows to identify the legitimate owners and avoid duplicate compensation..."

In the past, compensation for the dispossession of cultural goods was frequently granted on the basis of the Federal Restitution Act (BRüG). In the context of any request made to the Federal Office of Central Services and Unresolved Property Issues in the context of provenance research and in line with the recommendation under Chapter III above, that office will always examine whether any compensation for the art object concerned has already been granted by the Federation. Purchase prices paid at the time in the context of Nazi confiscation and other compensation paid on the basis of private-law settlements should also be taken into account.

C. Just and fair solutions

According to the Washington Principles of 3 December 1998, where the pre-war owners of art confiscated by the Nazis and

not subsequently restituted, or their heirs, can be identified, steps should be taken to achieve "*a just and fair solution", "recognizing this may vary according to the facts and circumstances surrounding a specific case."* The Common Statement by the Federal Government, the *Länder* and the associations of local authorities of December 1999 is based on the principle that cultural goods found to have been confiscated by the Nazis should be returned to their rightful former owners or their heirs upon a case-by-case examination. As the practical experience of the past few years has shown, various "just and fair" solutions are conceivable and possible, depending on the individual case.
Aspects to be taken into account in such case-by-case decisions may include

- the fact that an object has been preserved with considerable effort on the part of the museum over an extended period of time and been made accessible to the public;
- the need to give the institution concerned a certain amount of time to raise the necessary funds if, in the negotiations with the heirs, the institution declares its desire to purchase the object;
- the difficulties facing the parties when it comes to providing evidence also need to be taken into account when striving for a just and fair solution.

As a rule, model solutions for dealing with restitution proceedings may consist in returning or buying back works of art which were originally Jewish property. Also, it is conceivable to propose an exchange agreement to the claimants. Another possible solution might consist in concluding a (permanent) loan agreement with the rightful owners.
In cases where compensation was already granted in the past, a just and fair solution may mean that the work of art

will remain with the public institution concerned if this was the desire of the rightful owner as expressed at the time of the compensation settlement.[5]

Regardless of what model for a just and fair solution is finally adopted by the parties involved, it should also be discussed with the heirs or legal successors whether and how future exhibitions of the artworks could display information about their provenance and the fate of their former owners.

In the annex you will find a model agreement developed by the Prussian Cultural Heritage Foundation under which one object was restituted by the Foundation while a second one – upon its restitution – was sold to the Foundation.

Annex V c – Model agreement (online only)

A number of possible model solutions are documented in the **publications of the Coordination Office for the Return of Cultural Property, in particular in volume 1, *Beiträge öffentlicher Einrichtungen der Bundesrepublik Deutschland zum Umgang mit Kulturgütern aus ehemaligem jüdischen Besitz*** (Contributions by public institutions of the Federal Republic of Germany to dealing with formerly Jewish-owned cultural goods) (Magdeburg, 2001). The Coordination Office will publish another volume in cooperation with the museums concerned.

5 Recommendation of the Advisory Commission of 25 January 2007 in the Sachs case, cf. www.lostart.de/nn_42152/Webs/DE/Kommission/Empfehlungen.html?__nnn=true

The provenance documentation database of the BADV[6] contains the research/investigation results regarding art held by federal institutions and provides information on the adjudication of individual restitution claims.

Further references to case examples, publications, etc. may be obtained from or will be made accessible by the Provenance Research and Investigation Unit at the National Museums in Berlin (for contact information, see page 25).

6 Cf. www.badv.bund.de/003_menue_links/e0_ov/d0_provenienz/index.html

VI. Advisory Commission

In line with a recommendation contained in the Washington Principles and in agreement with the *Länder* and the associations of local authorities, in 2003 the Federal Government set up the **Advisory Commission** on the return of cultural property seized as a result of Nazi persecution, especially Jewish property. This Commission can act as a **mediator between the institutions and former owners of the cultural property** or their heirs if both sides so desire. In order to settle disputes, the Advisory Commission can issue recommendations; it does not take any legally binding decisions.

Office of the Advisory Commission:

c/o Koordinierungsstelle für Kulturgutverluste
Turmschanzenstraße 32
39114 Magdeburg
Tel.: +49-(0) 391 / 567 3891
Fax: +49-(0) 391 / 567 3899
E-Mail: lostart@mk.sachsen-anhalt.de

Annexes

Please refer to the currently updated versions that are available on the Internet at:

- www.bundesregierung.de/handreichung
- www.lostart.de/handreichung
- http://provenienz.badv.bund.de
- www.museumsbund.de

Annex I a

Washington Principles

Washington Conference Principles on Nazi-Confiscated Art

Published in connection with the Washington Conference on Holocaust-Era Assets, Washington D.C., December 3, 1998

In developing a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art, the Conference recognizes that among participating nations there are differing legal systems and that countries act within the context of their own laws.

1. Art that had been confiscated by the Nazis and not subsequently restituted should be identified.

2. Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Council on Archives.

3. Resources and personnel should be made available to facilitate the identification of all art that had been confiscated by the Nazis and not subsequently restituted.

4. In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, consideration should be given to unavoidable gaps or ambiguities in the provenance in light of the passage of time and the circumstances of the Holocaust era.

5. Every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-War owners or their heirs.

6. Efforts should be made to establish a central registry of such information.

7. Pre-War owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted.

8. If the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case.

9. If the pre-War owners of art that is found to have been confiscated by the Nazis, or their heirs, cannot be identified, steps should be taken expeditiously to achieve a just and fair solution.

10. Commissions or other bodies established to identify art that was confiscated by the Nazis and to assist in addressing ownership issues should have a balanced membership.

11. Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.

Annex I b

Common Statement

Statement by the Federal Government, the *Länder* and the associations of local authorities on the tracing and return of Nazi-confiscated art, especially Jewish property, of December 1999

In accordance with the requirements of the Allied restitution provisions, the Federal Act on Restitution and the Federal Indemnification Act, the Federal Republic of Germany has fulfilled merited claims on grounds of the confiscation of works of art by the Nazi regime after WW II, and set up the necessary procedures and institutions for enabling persons entitled to such indemnification to enforce their claims vis-à-vis other parties liable to restitution. The claims primarily arose to those who immediately suffered damage and their legal successors or, in case of Jewish assets without heirs or Jewish assets that were not claimed, to the successor organizations established in the Western zones and Berlin. The material restitution was effected either on a case-to-case basis or by global settlement. The restitution law and the general civil law of the Federal Republic of Germany thus finally and comprehensively provide for issues of restitution and indemnification of Nazi-confiscated art, especially from Jewish property.

In the German Democratic Republic (GDR) the compensation pursuant to Allied law of wrongs perpetrated under National Socialism did not go beyond a rudimentary stage. In the course of German reunification, the Federal Republic of Germany has undertaken to apply the principles of the restitution and indemnification law. Nazi-confiscated art was

returned or indemnified in accordance with the provisions of the Vermögensgesetz (Property Settlement Act) and the NS-Verfolgtenentschädigungsgesetz (Federal Indemnification Act concerning persons who suffered damage at the hands of the National Socialist regime). Thanks to the global filing of claims on the part of the Conference on Jewish Material Claims against Germany Inc. (JCC) in its capacity as today's association of successor organizations, claims situated in the accession area with regard to cultural property of Jewish parties having suffered loss have been filed. As formerly in the West German *Länder*, material indemnification on a case-to-case basis was sought; where this was not possible, compensation was effected by global settlement.

I.

Irrespective of such material compensation, the Federal Republic of Germany declared its readiness at the Washington Conference on Holocaust-Era Assets on 3 December 1998 to look for and identify further Nazi-confiscated cultural property in so far as the legal and factual possibilities allow and, if necessary, take the necessary steps in order to find an equitable and fair solution. Against this background, the decision by the Foundation Board of the Prussian Cultural Heritage Foundation of 4 June 1999 is welcomed.

The Federal Government, the *Länder* and the national associations of local authorities will bring their influence to bear in the responsible bodies of the relevant statutory institutions that works of art that have been identified as Nazi-confiscated property and can be attributed to specific claimants are returned, upon individual examination, to the legitimate

former owners or their heirs, respectively. This examination includes a match with material compensation already provided. Such a procedure allows to identify the legitimate owners and avoid duplicate compensation (e.g. by repayment of compensations already paid).

The relevant institutions are recommended to negotiate the extent and procedure of return or other material indemnification (e.g. in the form of permanent loans, financial or material equalization) with the clearly identified legitimate former owners or their heirs, respectively.

II.

The German public institutions such as museums, archives and libraries have supported the tracing of Nazi-confiscated art already in the past by means of

1. exploitation of and access to the data research findings and records available to them
2. investigations in case of concrete inquiries and research, on their own initiative, in case of new acquisitions,
3. search activities in the framework of the institutions' tasks
4. providing information on the history of Nazi-confiscated art in collections, exhibitions and publications.

These efforts shall be carried on wherever there is sufficient reason.

III.

Furthermore, the Federal Government, the *Länder* and the national associations of local authorities consider in accordance with the principles of the Washington Conference to provide a website on the Internet with information on the following:

1. What the institutions involved can do for publicizing art of unclear origin to the extent that it is presumed to have been confiscated by the Nazis.
2. A search list in which every claimant may enter the items he is looking for and thus report for investigation by the relevant institutions and the interested public.
3. Information on the transfer abroad of Nazi-confiscated art during or immediately after the war.
4. Establishing a virtual information platform where the interested public institutions and third parties may enter their findings relating to the tracing of Nazi-confiscated art in order to avoid duplicate work on the same subjects (e.g. at which auction was Jewish cultural property of which collection sold?) and make such information available by way of full-text retrieval.

IV.

This statement refers to archives maintained by public institutions, museums, libraries and their inventory. The public bodies funding these institutions are called upon to ensure the implementation of these principles by taking decisions to this effect. Institutions under private law and individuals are called upon also to apply the principles and procedures laid down at the Washington Conference.

Editor:
Federal Government Commissioner
for Culture and the Media

Layout and Repro:
Otterbach Medien KG GmbH & Co.
Hardbergstraße 3
76437 Rastatt

Print:
Bonifatius GmbH
Druck–Buch-Verlag
Karl-Schurz-Straße 26
33100 Paderborn

Translation:
Translation Service
Federal Ministry of the Interior, Berlin

As at:
November 2007 Berlin/Bonn,
6th, corrected edition

The guidelines and annexes
may also be downloaded from
• www.bundesregierung.de/handreichung
• www.lostart.de/handreichung
• http://provenienz.badv.bund.de
• www.museumsbund.de