



PRESS KIT

Art and Cultural Heritage Mediation

An alternative litigation resolution method
adapted to art and cultural heritage fields

Press conference: 12 July, 2011 in Paris

International Council of Museums – ICOM

Press contact: Nadine AMORIM – Tel. + 33 1 47 34 91 63 – nadine.amorim@icom.museum

ACHM contact: Samia SLIMANI – Tel. + 33 1 47 34 91 60 – samia.slimani@icom.museum

Summary

Press release	p. 3
An historical overview	p. 4
The Art and Cultural Heritage Mediation	p. 5
The mediation process	p. 7
ICOM and WIPO	p. 8



PRESS RELEASE

Paris, 12 July, 2011:

Art and Cultural Heritage Mediation

An alternative litigation resolution method
adapted to art and cultural heritage fields

The increase in ownership disputes between museums and other parties (museums, associations, representatives of governing bodies, national communities, private individuals...), such as return and restitution claims or intellectual property rights, required to find settlement more adequate than litigation.

Since 2006, ICOM shows its willingness to meet and satisfy the long felt need for a specialized alternative dispute resolution procedure to settle art and cultural heritage disputes. ICOM concluded a partnership with WIPO (World Intellectual Property Organisation) and its Arbitration and Mediation Center to set up a tailored mediation procedure adapted to the settlement cultural property disputes, dedicated to all museum professionals.

This ICOM-WIPO not-for-profit mediation service is specially designed for art and cultural disputes. In particular, parties can choose a mediator experienced in art and cultural heritage mediation from the ICOM-WIPO List of Mediators. ICOM and the WIPO, two organizations recognized for their rigor and expertise, provide procedural advice and support to the parties.

Mediation under the ICOM-WIPO Mediation Rules guarantees mediator impartiality and independence and of ethical standards embodied in the *ICOM Code of Ethics for Museums*. While preserving the relationship between the parties, mediation guarantees confidentiality and a fast resolution of the dispute at minimal cost.

The parties reach a mutually satisfactory agreement which safeguards the parties' interests.

With the ICOM-WIPO Art & Cultural Heritage Mediation, ICOM reinforces its commitment to promoting the restitution of illicitly acquired cultural property and its mission to fight illicit traffic in cultural property.

Press contact - Nadine AMORIM - Tel. + 33 1 47 34 91 63 – nadine.amorim@icom.museum
International Council of Museums (ICOM) – UNESCO House – Paris - <http://icom.museum>

An historical overview

The increase in ownership disputes between museums and other parties (museums, associations, representatives of governing bodies, national communities, private individuals...), such as return and restitutions claims or intellectual property rights, required to find other settlement more adequate than litigation.

ICOM is highly involved in promoting the restitution of illicitly acquired cultural property; one of its duties is to provide the means and the services to support museums in fulfilling this goal.

The idea of an art and cultural heritage mediation project came from a request for setting a mediation project from the ICOM Legal Affairs Committee in 2005, pursuant to the 2004 ICOM General Conference in Seoul, Korea.

It was etched in 2006 by a statement from Alissandra Cummins, former ICOM President. The project was designed to satisfy a long felt need by museum professionals for a specialized Alternative Dispute Resolution (ADR) procedure adapted to the settlement of cultural property disputes.

In the vein of ICOM's mission to fight illicit traffic in cultural property, the United Republic of Tanzania and the Barbier-Mueller Museum of Geneva have signed an agreement in May 2010 for the donation of the Makondé Mask to the National Museum of Tanzania thanks to ICOM's "good offices".

From then on, ICOM decided to broaden the range of its Alternative Dispute Resolution services by launching a mediation service dedicated to art and cultural heritage.

Therefore, in December 2010 the global project of Mediation was drafted by ICOM Secretariat. It was finalized in May 2011 with the signing of an agreement ICOM-WIPO in Geneva.

The Art and Cultural Heritage Mediation

The Art and Cultural Heritage Mediation is an alternative dispute resolution process dedicated to museum professionals and to all stakeholders in the cultural field.

A process adapted to art and cultural heritage disputes

It is a voluntary process in which the parties have primary responsibility for resolving their dispute. A mediator is designated and acts as a non-coercive neutral facilitator, meeting directly and simultaneously with both parties; he maintains the dialogue between the parties and assists them in identifying the issues and the interests at stake.

A long felt need for art and cultural heritage disputes

The Art and Cultural Heritage Mediation procedure is designed to satisfy the long felt need for a specialized alternative dispute resolution procedure adapted to the settlement of art and cultural heritage disputes, such as for instance restitution or intellectual property rights disputes.

Art and cultural heritage claims distinguish themselves from other disputes by their highly specific subject matter. The stakes in a cultural property ownership dispute, for instance, are multiple since the past embedded in the work of art affects ownership of the work. In art or cultural heritage disputes legal and non-legal issues are intertwined; they require an understanding of every aspect of the dispute.

A service for the international museum community

The ICOM-WIPO Mediation procedure is dedicated to museums professionals but also to states, private individuals, institutions or collectors. It is not restricted to ICOM Members; non-members can request mediation under the ICOM-WIPO Mediation Rules and benefit from the special joint ICOM-WIPO List of Mediators selected for their skills in mediation and their expertise in art and cultural heritage.

An efficient framework for mediation

In order to provide an efficient framework for mediation, WIPO and ICOM drafted a series of tools comprising the ICOM-WIPO Mediation Rules, mediation contract clause and an optional standard form for submitting a case.

A flexible, fast and low cost process

ICOM-WIPO Art and Cultural Heritage Mediation is a not-for-profit mediation service specially designed for art and cultural disputes. In particular, parties can choose a mediator experienced in art and cultural heritage mediation from the ICOM-WIPO List of Mediators. ICOM and the WIPO, two organizations recognized for their rigor and expertise, provide procedural advice and support to the parties. Parties are charged with very low administrative fees and shall determine the payment of the mediator's fees by mutual agreement.

Moreover, mediation under the ICOM-WIPO Mediation Rules is a guarantees the mediator's impartiality and independence and of ethical standards embodied in the *ICOM Code of Ethics for Museums*.

While preserving the relationship between the parties, mediation guarantees confidentiality and a fast resolution of the dispute at minimal cost.

With the ICOM-WIPO Mediation, the parties reach a mutually satisfactory agreement which safeguards both parties' interests. An outcome in mediation cannot be forced upon the parties like in arbitration and the parties remain free to terminate the process at any stage: the lock still remains unlocked

The mediation process

At all stages, the parties have the possibility of combining the mediation process with other dispute resolution mechanisms such as WIPO Arbitration, Expedited Arbitration or Expert Determination.

Request

In the case of a cultural property dispute (return, restitution, acquisition, loan, deposit or intellectual property rights issues), the claimant can submit the dispute to mediation by sending a request to the ICOM Secretariat.

The ICOM Secretariat analyses the case in order to ascertain that the dispute falls within the intended scope of the mediation procedure in thirty (30) days. All eligible requests are sent to the WIPO Arbitration and Mediation Center for the mediation to commence and the WIPO Center administers the process, the commencement of the mediation starts at this stage.

Instruction

The parties have seven (7) days from the commencement of mediation to agree on the person of the mediator. If the parties fail to reach an agreement within that period, the mediator is appointed according to the ICOM-WIPO Mediators Rules.

Conduct of Mediation

The parties and the mediator establish a timetable for the mediation and decide whether they communicate documents and data. The parties send a statement summarizing their interest and contentions to the mediator before they meet. A first meeting is set up. Then, the mediator offers a solution, which can be accepted or not. If so, other meetings are organised until an agreement is reached.

Termination

If needed, ICOM and WIPO assist the mediator in drafting the agreement, which is signed by the parties. A copy of the signed agreement is sent to ICOM and WIPO.

International Council of Museums (ICOM)

What is ICOM?

Created in 1946, ICOM (International Council of Museums) is an international non-governmental organisation maintaining formal relations with UNESCO. Within the United Nations, ICOM has a consultative status with the Economic and Social Council. ICOM is the only international organisation representing museums and museum professionals on a global level.

ICOM is:

- A diplomatic forum of representatives from 137 countries and territories
- Standards of excellence for museums, especially in terms of ethics with the publication of the *ICOM Code of Ethics for Museums*
- A unique network of more than 30,000 museum professionals worldwide
- An international think tank of 31 International Committees representing specific museum fields International public service missions, committed to fighting illicit traffic in cultural property and developing emergency response programmes for situations of natural disaster or armed conflict.

<http://icom.museum>

World Intellectual Property Organisation (WIPO)

What is WIPO?

The World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations. It is dedicated to developing a balanced and accessible international intellectual property (IP) system, which rewards creativity, stimulates innovation and contributes to economic development while safeguarding the public interest. WIPO is based in Geneva, Switzerland and currently has 184 Member States.

WIPO's Areas of Activity

WIPO has a history of over 120 years, going back to 1883, when the Paris Convention for the Protection of Industrial Property was adopted, and to 1886, when the Berne Convention for the Protection of Literary and Artistic Works was adopted. WIPO currently administers 24 multilateral intellectual property treaties.

For further information on WIPO, see **www.wipo.int**

WIPO areas of activity include in particular copyright, cultural heritage, traditional knowledge and traditional cultural expressions, often in consultation with cultural institutions, such as museums, archives and libraries, as well as with indigenous peoples and local communities and other stakeholders. As part of its global IP services, WIPO, through its Arbitration and Mediation Center (WIPO Center), provides on a not-for-profit basis dispute resolution services, such as mediation, arbitration, expedited arbitration, and expert determination. The WIPO Center also provides tailored dispute resolution services for specific intellectual property related sectors and entities, including the art and cultural heritage sector.

For further information on the WIPO Center, see **www.wipo.int/amc**

For all questions concerning the world museum community and for interview requests with ICOM's Director General, please contact the press office:

Press contact: Nadine AMORIM – Tel: + 33 1 47 34 91 63 – nadine.amorim@icom.museum