

Indigenous ownership of digital material



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Libraries and museums are both collecting institutions. We acquire, conserve and research material culture and communicate information to the public. Librarians may disagree with me on this point, but I believe that museums have several additional roles. They also create new meaning through the juxtaposition, recombination or interpretation of objects, research findings and media resources. Libraries in contrast place a high value on making information accessible without such mediation or interpretation.

This makes the question of intellectual property especially complex for museums. Copyright already resides in the numerous art works, images, publications and recordings in museum collections. Images of collection objects, extracts from recordings or from existing publications are re-combined to make exhibitions. The museum's intellectual effort is also invested in fixed, tangible product such as CD-ROMs, multimedia programs, publications or broadcasts.

Like libraries, museums are obliged to manage the traditional 'tension' between access and protection. Our Act obliges us to collect and safeguard material *and* to reproduce and disseminate material. The dual roles of safeguarding and sharing are not mutually exclusive, and how we achieve the proper balance is an art well understood by all publicly funded collecting institutions.

Intellectual property and Indigenous material

Australian museum practice in respect to Indigenous collections has not always been admirable. The Museums Australia policy document *Previous possessions: new obligations*, first published in 1993, established a number of important principles, in particular the right of Aboriginal and Torres Strait Islander people to self-determination in respect to cultural heritage matters. In practice this meant involving Indigenous people in all decisions affecting the manner in which museums store, research, use or display Australia's Indigenous collections and information. Significantly, it noted that the stories and information associated with an Indigenous object were to be considered of equal importance to the actual object, and were to be treated with equal respect.

That move by the mainstream museum community was a substantial step forward. However, the National Museum commissioned an audience survey in March 2000, which revealed that Australian Indigenous communities still have very mixed feelings. Museums in their experience had appropriated and frequently misrepresented Aboriginal and Torres Strait Islander culture. Exhibitions often seemed to be by white people for white people, with Indigenous culture portrayed as exotic or primitive, the implication being that it was a thing of the past — now superseded or even extinct. Inappropriate cultural material was

placed on public display and some of the explanatory texts were condescending or simply wrong. Indigenous people themselves were not made to feel welcome as museum visitors.

On the other hand, Indigenous people also acknowledge that given the right approach, museums could be an extremely important means of promoting and celebrating Aboriginal and Torres Strait Islander cultural diversity and history, both to themselves and others. Sensitively managed, co-operative museum exhibitions and programs could assist all Australians to understand the past and to contribute to a sense of pride and belonging — a major contribution to reconciliation.

It is important to understand that Indigenous people do not usually regard intellectual and cultural property as separate components. Rather, they are a part of the whole culture. The creative process behind a work of art, for example, may be ceremonial and ritual, and the main purpose is not the end product or 'art object' at all, but rather the spiritual meaning of the process. The resulting work may not be perceived primarily as an object but as the focus of a spirit or force.

Copyright law is concerned to balance the rights of creators, owners and users, and to protect economic rights and the rights of the individual. Indigenous law is concerned with the preservation and maintenance of culture, and respect for the tradition from which it arises.

Another category of concern is what we might call culturally sensitive material — not secret or sacred, not original art work, but nevertheless a range of material the dissemination of which may offend or distress Indigenous people. We may have objects that have been misrepresented or sensationalised in the past. Collections may include images of medical conditions, of people now deceased, or images of human remains, acquired perhaps for scientific purposes but with potential to disturb or distress. In addition to copyright clearances, the Museum must therefore seek *cultural* clearances from relevant communities to ensure that the subject matter itself is appropriate to use.

There is the tension between a museum's need to protect the items in its collection and its requirement to allow the public ready access to them. A three-way compromise then ensues between protecting the intellectual property of those Indigenous communities with an enduring stake in the collection, the museum's own intellectual property in the interpretive material it prepares, and the museum's desire to share this material with as many appropriate users as possible.

Special challenges of digitisation

Now, for the first time in history an *infinite* number of copies can be made available of almost every kind of cultural material. The increased opportunity this offers to the custodians of cultural treasures is very exciting — however

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it is matched with a corresponding increased risk of breaching moral or intellectual property rights on a huge scale, both nationally and internationally.

It is clear that exposure to the much larger audiences that digitisation allows will have an enormous impact on intellectual property questions, simply because of the difficulty of tracing all uses.

There is currently a huge national and international growth of interest in Australian Indigenous matters. This intense public scrutiny, and in particular its enormous commercial potential in a global marketplace, is creating even more pressure on custodians of intellectual property rights.

Practical approaches

Because of its inherited and acquired collections, the National Museum of Australia has major responsibilities as a custodian, consumer and also creator of copyright and intellectual property.

When we negotiate licences with an Indigenous individual or community, we discuss quite specific terms and conditions. Increasingly, Indigenous communities will not give exclusive or total copyright clearance, being prepared to give approval for specific purposes only.

We also believe that authors and creators have a 'right of integrity' in their work that the Museum will respect in all dealings. [Such moral rights have now been enacted into law.] Good working relationships between museums and Indigenous communities will depend on our recognition of the right to attribution and the right of integrity.

That 'right of integrity' does not necessarily mean the preservation of the object. There are cases where a community advises that conservation work must not be done, as the object is intended to decay or weather away with the passage of time.

Indigenous communities should expect the best from the National Museum and we are naturally interested in maintaining our good working relationship with all the people whose material and intellectual property is in our care. We understand and accept that the concept of cultural integrity is paramount in any reproduction of Indigenous cultural material.

A policy choice

So far we have considered digital technology as a threat to intellectual property rights. However in devising solutions that are acceptable to all interests, we can employ the same technology to provide protection for many kinds of material. Before that happens, museums and libraries face a policy choice between protectionism and access.

Some museums are choosing to employ electronic protection of their digital material

through embedded codes and 'watermarks'. These strategies make it very difficult for people to copy the material without obtaining copyright permission. Technology is also available to detect unauthorised use of both images and text. Where evidence of misuse is identified, action can be taken.

Another protectionist measure has some museums restricting their reproductions to small, low-resolution digital images — thus defeating the purpose of digitisation, whose speciality is of course the delivery of superb high-resolution images.

The future

The digital revolution is still young. Resolutions will get higher, bandwidth greater, demands for access and capacity for access will continue to increase.

Like other intellectual property owners, Indigenous people are also going online, are increasingly better informed and more confident about protecting their rights, and aware of the commercial value of intellectual property. They will expect to have a greater rather than lesser involvement in all discussions concerning the use of that property in a digital environment. The emerging Australian Indigenous Cultural Network, a project to enable digital archiving by Indigenous communities, is one example of self-management of digital material.

Changes to copyright law which extend exceptions for libraries and educational institutions and recognise the right to make material available online are of course very welcome, but they do not solve the problem of the exploitation or inappropriate use of Indigenous material.

In an age of increasing globalisation and commercialisation, museums will probably seek to redefine their place in the world. Decisive in this process may be the recognition of their most important function — the service of society. That 'service' may be defined as an ever more responsible approach to balancing the rights of different sectors of society — the providers and the consumers of culture.

One important emphasis must be on the acknowledgement of Indigenous ownership, both legal and moral, of material collected and disseminated by museums. This of necessity involves consultation and discussion about its proper use.

If we can get the balance of responsibilities right, museums and libraries can capitalise on knowledge in the 21st century with confidence that we are providing the best possible service to all stakeholders.

This is an abridged version of Dawn Casey's address to the ALIA2000: Capitalising on knowledge conference, held Canberra, October 2000. ■

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