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Traditional Cultural Expression Records of the South Pacific: Sensitivities and Access in the Digital Age

Brandon Oswald

Dissertation submitted as part requirement for the MLitt in Archives and Records Management at University of Dundee.

August 2011

Abstract

As technology and technological skills have improved in recent years, access to cultural heritage materials in the South Pacific has also improved. Even anthropologists who have previously conducted fieldwork in this region are currently finding it easier to manage the moral responsibility of repatriating their ethnographic material. However, this open access to South Pacific indigenous materials causes concern regarding cultural sensitivities in the Digital Age. Indigenous societies of the South Pacific often maintain a different concept of “rights”- what is owned belongs to the group, not to the individual. Therefore the need for Intellectual Property protection takes on a whole new meaning. Digitization, too, plays a major role in the accessibility of cultural sensitive material, as there is presently no universal Internet policy for the dissemination of images and other works in the collections of cultural heritage organizations. Using case studies and other related published information, this research project will examine three main issues challenging access to culturally sensitive material in the South Pacific region centered on Intellectual Property rights: 1) the impacts of digitization from ethnographic records; 2) the definition of Traditional Culture Expression and the concept of “ownership” regarding Intellectual Property rights associated with these collections; 3) the involvement of indigenous and traditional communities with cultural heritage organizations in the management of their Traditional Culture Expression. This study will show that, although it was not the intention of cultural heritage organizations to offend indigenous groups, sensitive material previously intended to remain non-public may now be published, thus unwittingly releasing proprietary information. This may carry responsibilities of use of the information in them. While access concerns to culturally sensitive materials in the South Pacific region are widely discussed, this study will also emphasize the discussion of the moral consequences of introducing Western Intellectual Property laws in the South Pacific. Indigenous peoples may be better served in developing their own regulations in association with such organizations like the World Intellectual Property Organization (WIPO). Finally, this study will examine possible strategies and guidelines that cultural heritage organizations in the Pacific need to actively develop, manage, and maintain to better safeguard access and control over their native islander’s Traditional Cultural Expression.

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Finally, it is impossible to express sufficient appreciation to my family- to my wife, Shannon, and daughter, Devin, to whom I am most indebted for their many months of patience and understanding, especially during times when the research made me “grouchy.” Their support will always be remembered.

“E lauhoe mai na wa’a; i ke ka, i ka hoe; i ka hoe, i ke ka; pae aku i ka ‘aina”

“Everybody paddle the canoes together; bail and paddle, paddle and bail, and the shore is reached.”¹

--Hawaiian Proverb

¹ From Huna Light Website: <http://www.hunalight.com/Polynesian%20quotes.htm>

Map of the South Pacific Islands



Introduction

The Pacific Ocean is the largest geographical feature on earth, is host to more than 20,000 islands, and covers five different time zones. Of the 7,500 islands in the South Pacific, only 500 are inhabited. There are over 25 countries and territories in this region. Melanesia, Micronesia and Polynesian are the South Pacific Islands' three distinct culture areas. Melanesia comprises the countries of Fiji, New Caledonia, Solomon Islands and Vanuatu. Micronesia countries are the Federated States of Micronesia, Kiribati, Marshall Islands, and Nauru. The countries of Polynesia consist of the Cook Islands, French Polynesia, Hawaii, Samoa, Tokelau, Tonga, Tuvalu and Niue. The region has some of the greatest cultural diversity in the world. English is the official language in most countries, however there are many vernacular languages and dialects. In fact, Papua New Guinea has over 850 known local languages. Ms. Konia Helu Thaman believes that there is not just one culture in the region. She states,

'Oceania is embracing culture, but it is very difficult to pinpoint, because within that there are many different cultural groups and their thinking and acting is closely linked to their languages. And we have hundreds of languages here.'²

Pacific Islanders were the last people on Earth to encounter Europeans, in some places nearly 500, in others only 60 years ago.

In the South Pacific region oral tradition is the transmission of knowledge and histories in a community from one generation to the next. In Fiji, for example, a person's ancestry is learned through song and dance, and not by consulting documents. Likewise, knowledge

² Andre Vltchek, *Oceania* (Groningen, V.O.F. Expathos, 2009) 53.

of the sea and marine life is not acquired by studying biology texts, but by interacting with the marine environment and by using carefully constructed narratives to expand and reinforce the insights gained by those experiences.³ In fact, a useful article written by Tale and Alefaio's looks specifically at Fiji's challenges to their cultural memory.⁴ Its underlying theme is that oral tradition is the synthesis and transmission of knowledge and histories in a community from one generation to the next. Indeed, the challenges to retain memory that are examined in this insightful paper resonate throughout the rest of the South Pacific region.

Similarly, Vltchek's book addresses the major issues facing the South Pacific islands today. The author believes that this region is a microcosm of almost all major problems faced by our planet including the impact that colonialism has had on cultures. Orality still dominates the many aspect of island life in the Pacific and many Pacific Islanders would claim that many people of this region do not have much of a sense of recorded history. France Mugler and John Lynch of the University of South Pacific compare indigenous oral traditions:⁵

'The South Pacific has a rich oral tradition in its many indigenous languages, a multifarious tradition where performance is central and which ranges from story telling to epic poetry and genealogies, oratory, songs, and drama. Literacy, introduced by missionaries in the Nineteenth Century, spread fairly quickly and many South Pacific languages— though far from all, given their very large number- were soon written. But most literature in English about the South Pacific was for a long time written by outsiders, with outsiders' point of view, so that places and people were by turns romanticized, demonized, or simply marginalized.'

³ Andre Vltchek, *Oceania* (Groningen, V.O.F. Expathos, 2009) 50.

⁴ Setareki Tale and Opeta Alefaio, "We Are Our Memories: Community and Records in Fiji," *Community Archives the Shaping of Memory*, eds. Jeannette A. Bastian and Ben Alexander (London: Facet Publishing, 2009)

⁵ Ibid. 88.

By the end of the nineteenth century, orality and literacy began to co-exist throughout this region as indigenous voices were captured through activities of the Colonial administrations, judiciaries, traders, travellers, planters, missions, and research stations. These offices introduced formal recordkeeping. The records that they created were systematic and detailed, and survived extremely difficult conditions. Maori in New Zealand have this perspective:⁶

‘Many of my children, our *mokopuna* [grandchildren] don’t know their own history, and we don’t have easy access to that knowledge because we haven’t got *kaumatua* [elders] left who know it all and can teach us. We are trying hard to recapture what we have left. It’s really important, that information.’

Contact with the outside world and the introduction of modern records, centralized governments, and rapidly evolving technologies brought many challenges to this region, including a steady erosion of oral traditions. Fortunately, as the culture of Pacific Island peoples becomes more prominent, there is an understanding that cultural heritage organizations such as, archives, libraries, museums and often universities, need to improve their capacity to engage and participate with local individuals, communities, and professionals such as anthropologists who are creating ethnographic records in the region to record islander’s memories before they are lost to time. Wareham’s papers expressed the need for cultural heritage organizations to work more closely with their indigenous populations. All of these concerns should play a significant role in the availability of sensitive material, such as photographs of ceremonies or rituals, as they become repatriated, especially virtually repatriated. However, this endeavor has generated other issues and challenges, particularly, regarding access.

⁶ Evelyn Wareham, “From Explorers to Evangelists: Archivists, Recordkeeping, and Remembering in the Pacific Islands,” *Archival Science* 2002: 201.

Access

Access is the great desideratum.⁷ Hunter defines it as the right, opportunity, or means of finding, using, or approaching documents and/or information.⁸ It is one of the core functions of any cultural heritage organization such as an archive, library and museum, throughout the world. In most Western cultural heritage organizations there are typically two traditions in administering access: the historical manuscript tradition and the public archives tradition. In the first instance access is based upon an agreement between a repository and donors who may impose restrictions on access for a fixed period.

However, restrictions to public archives tradition restrictions are regarded as a necessary evil, since it is believed that these records belong to the people and the people should be able to have access to them as quickly and fully as possible. Cultural heritage organizations will generally not accept a collection if it is not going to be open sometime in the future.

Although access opens a myriad of thorny problems in the digital, one major issue is the access to culturally sensitive materials particularly in the South Pacific region. These are materials that the islanders feel should not to be viewed by others. Welmer and Madiment's study shows the importance of access to ancestral voices in cultural and government archives. 'Access to ancestral knowledge helps define the broader within

⁷ Sydel Sliverman and Nancy J. Parezo, eds. *Preserving the Anthropological Record* (New York: Wenner-Gren Foundation for Anthropological Research, Inc., 1992) 33.

⁸ Gregory S. Hunter, *Developing and Maintaining Practical Archives* (New York: Neal-Schuman Publishers, Inc., 2003) 207.

contemporary life and distinguish taboo from everyday practice.’⁹ Digitized photographs are a good example of this kind of material, as they hold an immediacy of representation of place, of ceremony, of knowledge.¹⁰ Another issue is that open access involves problems with intellectual property law, policy and practice. As in other countries that have indigenous people such as Australia, New Zealand, Canada and the United States, contests over the rights and responsibilities of cultural heritage organizations in the South Pacific region are continuing to emerge. This can be attributed to differing value systems and interpretations of history, unequal power relationships regarding access to collections and control and use of cultural materials.¹¹

The Ethnographic Record

Ethnography, the scientific research strategy often used in the field of social sciences, particularly in anthropology, deals with races and their distinguishing characteristics. It engenders a distinctive kind of commitment- indeed, identification on the part of practitioners toward their subject matter. Anthropologists rely on fieldwork, that is, living in an indigenous community using methods such as participant observation, interviews, recording, and oral histories.

Field notes, for example, are very complicated records that were not meant to be public when they were produced, and yet they must be shared for the entire research endeavor to

⁹ Wehner, Monica and Ewan Maidment, “Ancestral Voices: Aspects of Archives Administration in Oceania,” *Archives and Manuscripts*, vol. 26 no. 1, May 1998:25.

¹⁰ Martin Nakata and Marcia Langton, eds. *Australian Indigenous Knowledge and Libraries* (Canberra: Australian Academic & Research Libraries, 2005) 84.

¹¹ Molly Torsen and Jane Anderson, *Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives* (World Intellectual Property Organization, 2010) 10.

be validated. Field notes are valuable records to cultural heritage organizations because they are unique research documents, and together with contextualizing records, carry information that cannot be replaced or replicated, since they deal with specific times and places, and document the point of view of the ethnographer. However, indigenous groups of the South Pacific do not create ethnographic material like field notes, which still manifest important evidence of their spiritual and cultural traditions. Dr. Julie Cruikshank, a University of British Columbia anthropologist who has done extensive work on oral traditions notes:

‘Spoken words embodied in ordinary speech, may be ephemeral physical processes. But they become things when they appear on paper, on artifacts or when they are recorded in magnetic or digital codes on tapes or disks, or in film or videotapes.’¹²

Ethnographic records hold great significance to the surviving members of the communities and are considered by them to be their cultural and intellectual property. Because of this, ethnographic collecting practices and protocols have improved over the past thirty or forty years. In fact, release forms and permissions are now systematically obtained at the time of collecting. Without these documents, most cultural heritage organizations are unable to accept the collection, as they would be unable to provide researchers with access to the material.

Research Aims and Objectives

The aim of this dissertation is to examine the issues challenging access to culturally sensitive material in the South Pacific region brought forth by the Digital Age. This will

¹² Krisztina Laszlo, “Ethnographic Archival Records and Cultural Property,” *Archivaria* 61:301.

be achieved by analyzing the issues relating to repatriation, particularly digital repatriation, of ethnographic material play on the access to traditional cultural expressions. The advent of digital technology complicates the question of ownership of material in this region. Thus, it will also be vital for this study to recognize that the ownership of material is an important concern, and resolving this issue lies at the heart of access, control and future use. There are three objectives to be met:

- Objective 1: To examine critically the affects that digital (or virtual) repatriation has on the access to material.
- Objective 2: To analyze the meaning of cultural ownership and the issues of intellectual property rights among the indigenous people.
- Objective 3: To investigate the relationship that cultural heritage organizations can create with native communities to protect Traditional Cultural Expressions.

Perhaps the most significant contribution to achieve objective 1 comes from the Jaarsma's collection of case studies that present issues confronting anthropologists after they have repatriated their material to South Pacific museums or archives.¹³ Even in the most innocuous cases, the good gesture of returning ethnographic material can lead to problems with the communities from which the material was collected. The case studies try to tackle such question as: why or why not repatriate? There is also a genuine and understandable distrust from anthropologists regarding whether or not the cultural heritage organizations in the region will be able to properly safeguard the repatriated material. More recently, Geismar's paper about the historical book, *Stone Men of Malekula*, shows the effects of how the material's return to Vanuatu has opened

¹³ Sjoerd R. Jaarsma, ed. *Handle with Care: Ownership and Control of Ethnographic Materials* (Pittsburgh: University of Pittsburgh Press, 2002).

controversies, particularly dealing with land and status. “The struggle for repatriation of the past is a struggle for the right to control and possess the present.”¹⁴

Because digitization is quickly becoming easier and more economical, virtual repatriation of material is allowing greater access to researchers worldwide. One of the main topics throughout Peers and Brown’s collection of case studies is the pros and cons of virtual repatriation.¹⁵ The authors are in accord that this must be a two-way process where cultural heritage organizations of the South Pacific region (and, indeed, even those organizations and universities outside the region who hold South Pacific material) partner with the source community. Both parties must be actively engaged; superficial involvement is not efficient. All too often, anthropologists may have neither the skill nor the proficiency to deal with their material as an archival collection and will allow the digitization of their material without a second thought. This can lead to culturally sensitive material being innocently placed on the Web. Smith’s paper takes the two way process a step further by showing examples where archives allow people from the source community to offer feedback on digital photos allowing indigenous people an opportunity to become more involved.¹⁶ This improves understandings and appreciations of the people, events, and places appearing in the photographs. Hennessy’s article, on the other hand, asks the harder questions regarding virtual repatriation. She looks at the

¹⁴ Evelyn Wareham, “From Explorers to Evangelists: Archivists, Recordkeeping, and Remembering in the Pacific Islands,” *Archival Science* 2, 2002:201.

¹⁵ Laura Peers and Alison K. Brown ed., *Museum and Source Communities: A Routledge Reader* (London: Routledge, 2003).

¹⁶ David A Smith, “From Nunavut to Micronesia: Feedback and Description, Visual Repatriation and Online Photographs of Indigenous Peoples,” *Partnership: The Canadian Journal of Library and Information Practice and Research* 2008.

ethical issues, raising concerns as to who has the right to determine how digital cultural heritage should be restricted or circulated.¹⁷

For objective 2 there are a few articles that have tried to shed light on why western-style Intellectual Property laws do not successfully work in the South Pacific region. A few authors have tried to form opinions of intellectual property issues from a non-Western background. These articles draw on examples from the Pacific, and from other countries, particularly developing nations dealing with similar issues. Forsyth argued that it is practically impossible for Western-style intellectual property systems to meet the current needs of indigenous protection.¹⁸ The article's main concern is crafting strategies to amend Western-style intellectual property laws to fit with prevailing conditions of indigenous populations. Antons' book highlights an interdisciplinary approach to the study of the relationship between traditional knowledge and intellectual property law in countries of the Pacific region.¹⁹ The essays provide perspectives from various disciplines, particularly from intellectual property law and international law. As will be eventually seen, intellectual property rights are becoming a bigger issue in the region, especially with the advent of virtual repatriation.

¹⁷ Kate Hennessey, "Virtual Repatriation and Digital Cultural Heritage: The Ethics of Managing Online Collections," *Anthropology News* April 2009.

¹⁸ Miranda Forsyth, "Intellectual Property Laws in the South Pacific: Friend or Foe?," *Journal of South Pacific Law* 2003.

¹⁹ Christoph Antons, *Traditional Knowledge, Traditional Cultural Expressions and Intellectual Property Law in the Asia-Pacific Region* (Austin: Wolters Kluwer, 2009).

The ease of access to sacred and secret information in digital formats has complicated matters even further. According to the protocols set forth by the Australian Institute of Aboriginal and Torres Strait Islander Studies ‘... there is information that is of a secret or sacred nature that many people have no knowledge of or access to.’²⁰ Additionally, Derlon and Mauze’s publication looks at sacred and secret material and tries to define what it means and how this kind of information should be accessed.²¹ Brown’s essay underlines how secrecy threatens a democratic process (except under certain situations such as a deed or gift).²² A major topic throughout these publications is that secrecy continues to be a double-edged sword that defends powerful knowledge, but at the same time restricts access to it.

Finally, objective 3 will examine the protocols and policies created by the many organizations or special interest groups to protect the rights of indigenous people and their knowledge. The Australian Institute of Aboriginal and Torres Strait Islander Studies Network Protocols endeavor to provide appropriate ways for cultural organizations of Australia to interact with Aboriginal and Torres Strait Islander people regarding the handling of their material. This guide provides an excellent source of outreach, which promotes participation among the Aboriginal people. Another key organization is the World Intellectual Property Organization (WIPO). They have explored and continue to investigate intellectual property rights in relation to cultural material, especially in and

²⁰ *Aboriginal and Torres Strait Islander Library and Information Resources Network Protocols*, http://www1.aiatsis.gov.au/atsilirn/protocols.atsilirn.asn.au/index0c51.html?option=com_frontpage&Itemid=1 (accessed 30 Jan 2011).

²¹ Brigitte Derlon and Marie Mauze, “Sacred or Sensitive Objects,” Jan 30, 2011 < http://www.necep.net/papers/OS_Derlon-Mauze.pdf>.

²² Michael F. Brown, “Can Culture Be Copyrighted,” *Current Anthropologist* April 1998.

from the South Pacific. Moreover, they provide a significant survey of intellectual property related experiences and practices of cultural heritage organizations in this part of the world. Torsen and Anderson's guideline looks at the role cultural heritage organizations have played regarding the safekeeping and promotion of collections of Traditional Cultural Expression.²³ This is a key publication as it also analyzes the intellectual property challenges from a South Pacific country's point of view. It provides an optimistic impression that there are a few South Pacific cultural heritage organizations that are finally recognizing a problem, and shows how they are addressing the issues.

Research Structure

This dissertation is organized into four chapters each focusing on one of the specific objectives discussed above. The introduction provides an overview of the study, including research aims and objectives, the significance of the research, and the background on historical records and why access to cultural knowledge is important in the South Pacific region. *Chapter 1* will focus on real and virtual repatriation, particularly of ethnographic material by anthropologists and its immediate impact on access to Traditional Cultural Expressions. It will firstly examine the ethical decisions to repatriate. Then it will show the reasons how virtual repatriation is changing the attitudes of donors, and how the indigenous people can benefit from this decision allowing more open access to material. *Chapter 2* delves into the issue of how virtual repatriation is affecting

²³ Molly Torsen and Jane Anderson, "Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives," (World Intellectual Property Organization, 2010)

intellectual property rights of the Pacific Islanders. It will also attempt to examine the secret and sacred nature of their material and how it should be accessed. The chapter will focus heavily on the issues of cultural ownership, and discuss how implementing a non-Western style intellectual property laws will be beneficial. *Chapter 3* will focus on identifying guidelines that South Pacific cultural heritage organizations and indigenous people can strive to create together. The key theme here is working together, as indigenous peoples and traditional communities do have legitimate interests in being part of the decision-making process concerning their Traditional Cultural Expressions. The chapter will examine practices that some of the more advanced cultural heritage organizations in the region are implementing, as well as the protocols of other countries that deal with materials of indigenous populations.

Chapter 1: Real and Virtual Repatriation

The South Pacific islands possess diverse and vibrant cultures. Since their discovery in the late eighteenth century, they have attracted a myriad of people such as adventurers, evangelists, and artists- who described the Pacific Islands' as a kind of a natural society unburdened by civilization's problems and used it as a model and counter-point to advanced civilization. Perhaps, because of this, the islands have also attracted another kind of person- the researcher. Anthropologists have come in droves to study the unique cultures of the South Pacific creating an innumerable amount of ethnographic material that they take back with them to their homes, universities, or institutions. It consisted of observations and data captured in the form of correspondences, diaries, journals, field notes, genealogies, audio recordings, photographs and film. Ethnographic records hold great significance to the surviving members of the communities studied, and are considered by them to be their cultural intellectual property.²⁴ In the later half of the twentieth century anthropologists felt an obligation to repatriate, or give back, ethnographic material they had collected to the community from which it came. Anthropologists can now rely on digital technology to easily and cheaply make their material available to the source community via virtual repatriation, that is- giving visual access to these communities to their cultural heritage through online museums and Websites.²⁵ This research will now look closer at how real and virtual repatriation, its affects on archival access, and how virtual repatriation is changing the attitudes of

²⁴ Krisztina Laszlo, "Ethnographic Archival Records and Cultural Property," *Archivaria* 61 Spring 2006, 307.

²⁵ Kate Hennessy, "Virtual Repatriation and Digital Cultural Heritage: The Ethics of Managing Online Collections," *Anthropology News* April 2009, 5.

donors, and how the indigenous people can benefit from this decision allowing more open access to material.

Real Repatriation

Anthropologists feel that it is their responsibility to make the products of their research accessible to the people that they study. Although the physical return of materials is the central issue for the repatriation, providing access to it remains a much larger problem. In 1942, British anthropologist, John Leyland, published *Stone Men of Malekula* that was based on his fieldwork and focused on the social and ritual configurations of the small island of Vao that is part of the Vanuatu archipelago. When the volume made its way back to Malekula, it became the center of many contemporary disputes on Vao concerning land title and leadership and continues to do so today. Therefore, there are two basic principles when deciding to repatriate: (1) that no harm should come to either the community that was studied or the individual informants that were consulted during the research; (2) and that no harm should come to the interests of continued academic research.²⁶ These principles are encapsulated in existing codes of anthropological ethics and are constantly challenged, as repatriation requires taking into account the interests of both indigenous communities and academia.

As the importance of records is evident in the new developments in rethinking Pacific Islands' history, politics, and culture, Pacific Islanders are turning to cultural heritage

²⁶ Sjoerd R. Jaarsma, ed. *Handle with Care: Ownership and Control of Ethnographic Materials* (Pittsburgh: University of Pittsburgh Press, 2002) 6.

organizations for academic research, information needed for government studies, and personal family history. There is a general want and need for material to be repatriated in this region. In fact, the struggle for repatriation of the past is a struggle for the right to control and possess the present. In particular, records relating to land and genealogy are potent sources of traditional evidence of current rights in many Pacific Island nations.²⁷

Repatriation before the Digital Age typically took the form of placing records on microfiche or microfilm. This was done for several reasons: it was low-tech, and cultural heritage organizations did not have to divert scarce resources to use it; it was inexpensive to produce and distribute; it was easy to preserve, as it has a longer life expectancy than nonacid-free paper; and, finally, it was compact and light so housing it did not place an undue burden on already-crowded shelves.²⁸ However, there remain a number of problems and issues. These include the breakdown of equipment, lack of repair facilities, staff turnover, financial difficulties, and especially the matter of disposition of original documents.

Repatriation Issues

The process and semantics of “return” are more complex than they might first appear, as repatriated materials will often alter the local culture and research context forever after. Even in the most innocuous circumstances, the repatriation of material will generate a complexity of problems. This study will now look at two cases that provide excellent

²⁷ Evelyn Wareham, “From Explorers to Evangelists: Archivists, Recordkeeping, and Remembering in the Pacific Islands,” *Archival Science* 3 2002: 201.

²⁸ David Akin and Kathryn Creely, “A Kwaio Case Study from the Melanesian Archive,” *Handle with Care: Ownership and Control of Ethnographic Materials* ed. Sjoerd R. Jaarsma, (Pittsburgh: University of Pittsburgh Press, 2002) 84.

examples on how repatriated material affects access and the disruption of cultural identity. The first will deal with questions of access to genealogical material, looking at the interest in such material within Tuvalu communities studied and among islanders living elsewhere. The second will focus on the problems that result from setting access limitations on the materials that will eventually be placed in the control of the Kwaio people of Malaita, Solomon Islands.

Ethnographers, Keith and Anne Chambers, conducted research in Tuvalu from 1973 to 1975, and intermittently until 1996. Their efforts at recording oral tradition, collecting genealogies were welcomed by the communities they studied. The ethnographers adeptly noted that they had become involved in a subtle “making” of the community’s traditional history. In fact, this maker’s role is inherent to anthropological fieldwork and a characteristic feature of ethnographic writing.²⁹ Although the people of these studied communities commented approvingly about the value of recording traditional history and describing indigenous institutions, they were unfamiliar of anthropology, and scholarly research, thus had no frame of reference to contextualize the ethnographic fieldwork. These aspects of life were associated with a heritage that the people of these communities recognized as old, treasured and providing a basis for the community’s distinctive identity within Tuvalu.

Over the years, the Chambers had deposited copies of their publications in the National Library of Tuvalu, government departments, local schools, particular communities, and

²⁹ Ibid. 158.

appropriate individuals they felt might be interested in the data. They felt that their publications were of great interest and should be easily and widely accessible. Indeed, this raised the issues regarding accessibility and safekeeping of the material. Simply “giving back to the community” that which is rightfully its property proved more difficult than they had assumed.³⁰ The ethnographers concluded that they had three options: give copies to (1) leaders to keep in homes; (2) the National Archives and; (3) a council of chiefs. Giving copies to leaders without proper storage would lead to the disappearance of the records. At the same time, the ethnographers did not trust the National Archives where there were rudimentary preservation skills as well as access discrepancies, as politically important people had greater access to material than ordinary members of the public. The public, in turn, was reluctant to allow material, such as genealogies, to be controlled by government institutions. Therefore, it was decided that the copies would be given to the council of chiefs, although copies were given to two elected members of parliament who agreed to preserve them from the elements and then to deposit them at the National Archives at a later date.

The Melanesian Archives, a project at the University of California, San Diego (UCSD), was conceived with the goal to address the problem of the dispersal of and difficult access to unpublished ethnographic materials of the Melanesia. Thus, the idea to create one central repository to hold photocopies of material and equipped to provide remote access was seen as a solution. The archives began in 1983 to recover as many extant items as possible, with the emphasis on informational content rather than artifactual

³⁰ Ibid. 167.

significance. The plan was also to establish a procedure whereby present and future works would be routinely deposited with the archives. Another important goal of the Melanesian Archive is to repatriate unpublished anthropological materials to their place of origin. With the written consent of the anthropologist, copies (generally on microfiche) are sent while the original documents remained in the archives.

One of these collections that can be accessed in the Melanesian Archives is from the anthropologist, Roger Keesing, and his fieldwork on the Kwaio community on the island of Malaita, Solomon Islands. It was deposited at UCSD after his death. Anthropologist, David Akin, helped with the archiving because of his knowledge of community, its language, and was seen as best qualified to decide which material should be restricted. The major portion of the collection consisted of 180 cassettes and 150 reel-to-reel tapes of interviews with Kwaio people dating back to the early 1960'-s. At first, it seemed that Keesing's material were without any issues or problems. His interviews rarely dealt with case studies of a personal nature, and only a handful of recordings contained material that raised privacy concerns.

After the repatriation of the material to the Solomon Islands National Museum, problems began to surface. Kwaio resembles many other Melanesian cultures in that people often downplay or ignore certain illicit behaviors so long as they are not publicly revealed.³¹ Simply removing names from an infamous case will not necessarily disguise it. Repatriating field notes that examine infamous cases caused considerable social distress

³¹ Ibid. 89.

by placing and returning the matter into the public arena. Thus, personal privacy, scandal, and illegal activities were unintentionally brought into focus. Access, too, became a controversial issue, as Keesing's material became entwined with larger sociopolitical issues within the Kwaio community that involved local ideas about the power of knowledge and its control. Upon repatriation, Atkin thought that it would be best if a committee of Kwaio leaders would control access to the material. These leaders had a good working relationship with the museum, as well as, with Keesing, in the past. However, those individuals viewed the materials and their return in different ways, and could not compromise on who should have access. Therefore, access became confusing and hindered because of these disagreements. The future of access remains uncertain, as leaders pass-away and new leaders resume control.

Virtual Repatriation

Cultural heritage organizations have been intrigued with the idea of digital technologies and their ability to make collections visible on the Internet. This visual access is the essence of virtual repatriation. With technology becoming more stable in certain areas of the South Pacific, those with training and technological knowhow can take advantage of virtual repatriation and its ease of access to materials. Today, anthropologists are digitizing their ethnographic material to share them with the research community, and are increasingly using digital recording technologies. Library and museums, too, have embarked on digitization projects of their material to create online collection databases and virtual exhibits, while documentation of intangible cultural expressions is being

transformed from analog photographs, film, video, and tape recordings into digital files. Indigenous people of the South Pacific region (as well as the rest of the world) are reconnecting repatriated cultural heritage to social practices and forms of cultural production. However, like real repatriation, virtual return has revealed tensions, contradictions, and conflicts as material is reconnected to dynamic social practices. Ethnographic archives created by outside researchers, and indigenous media produced by originating communities are significant “arenas in which social actors struggle over social meanings and... visible evidence of social processes and social relations.”³²

It is not surprising that photographs are by far the most virtually repatriated material. Invariably, they are used as a memory-salvaging tool. Photographs are intricately enmeshed within local practices and understandings of the past, thus should always be seen as potentially controversial documents. Too often, cultural heritage organizations receive, and digitize photographs with missing context. Information as to whom, when, and why it was originally produced, where it has been stored, how it has been organized, and why it has returned is not passed on. Yet, it is important to think through the relationship between photographs and telling stories, because such an understanding helps to reformulate approaches to collections of a cultural heritage organization and to create a deeper understanding of the processes underlying virtual repatriation.

Photographs are also described in terms of orality: Photographs can speak. They can whisper and shout. They can lie.³³ Photographs allow people to articulate histories in

³² Kate Hennessy, “Repatriation, Digital Cultural Heritage, and the (Re)Production of Meaning in a Canadian Aboriginal Community, (Media in Transition Conference, April 25, 2009) 3.

³³ Laura Peers and Alison K. Brown, eds. *Museums and Source Communities: A Routledge Reader* (New York: Routledge, 2003) 89.

ways that would not have emerged if photographs had not existed. The past is projected into the present by the nature of the photograph itself and the act of looking at a photograph, focusing on an object. This points to the significance of material forms in which communities actually view and use it. Therefore, virtual repatriation has become a new source for the transmission of stories, traditions, and life stories.

The Value of Virtual Repatriation

Indeed, there are several reasons why virtual repatriation has become very valuable and necessary for cultural heritage organizations. Firstly, their photographs have become sites through which traditions were revisited, contested and publicly discussed, thus giving elder members of a community a chance to share aspects of their individual and collective histories. In fact, connections between elders and youth could be strengthened as they work together to record content and evaluate the Websites throughout their production. Secondly, community members will also gain a greater awareness of what had been recorded by anthropologists over the years, thus the mobilization of repatriated cultural heritage formed new possibilities for participatory research, and has definitely strengthened relationships between researchers and the community. Additionally, this helps to create a space where the host community, researcher and the holding cultural heritage organization can revisit and rework intersecting histories as they are represented and displayed in their various by-products. Visual repatriation is a step in the process of reinvesting host communities with a degree of agency and a voice in what is written about them. Finally, virtual repatriation shows how photographs and ethnographic

material are containers of history and possess the ability to elicit and contain within their frames multiple narratives, histories of the past, present and future.

Virtual Repatriation Examples

There are two examples that briefly highlight the positive affects that virtual repatriation has on a community, as well as the access to their material. The first explores the use of a website for making available published and unpublished ethnographic material pertaining to the island of Rotuma in the Fiji chain. In 1990 it was discovered that few Rotumans expressed little interest in their history as a people. This was, perhaps, due to the unavailability of archival and published sources on the island. However, because of the lack of resources and trained staff, the likelihood that archival records surviving indefinitely on the island was slim. Then in 1996, the Internet offered the possibility of the construction of a website as an alternative to provide basic information about the island's history, culture, and language for Rotumans. It contains an interactive message board along with maps, relevant publications, history, economics politics, myths, and other cultural topics. These postings are regarded as a form of repatriation in the sense that virtually all these materials have been buried in publications that for all practical purposes made them inaccessible to the broader Rotuman community.³⁴ Additionally, a number of photographs from nineteenth century sources were also digitized and placed on the site. Today, with the majority of Rotumans now living in urban centers abroad, people have Internet access and often download materials from the site and share them

³⁴ Alan Howard, "www.repatriating_ethnography.edu/rotuma," *Handle with Care: Ownership and Control of Ethnographic Materials*, ed. Sjoerd R. Jaarsma (Pittsburgh: University of Pittsburgh Press, 2002) 31.

with others in their local communities. The website, too, has allowed for interactivity, so that Rotumans, or other interested parties, can post their responses, corrections, and opinions about the repatriated materials. Their responses then become part of the total record; their voices can be heard.³⁵

A second example examines an innovative approach to foster a meaningful relationship between the participating host institution (in the case the University of Hawaii) and the indigenous people of Satawal, a remote island in the Caroline chain of western Micronesia. The atoll of Satawal is best known for its preservation of traditional navigational techniques without the use of instruments, based on indigenous astronomical and maritime concepts.³⁶ The University of Hawaii (UH) holds The Traditional Micronesian Navigation Collection consisting of 2,200 photographs taken by Steve Thomas in the early 1980'-s. The scanning of the collection was completed in 2007 with the goal of accurately portraying the life of the Satawalese community as it existed at a specific time in the late twentieth century. Like the Rotumans, there is on Satawal an increasing out-migration of Micronesians to other parts of the world and these images may ultimately help to maintain a collective memory of the region. Unlike the Rotuma website, this digitization project is not a direct partnership with the people of Satawal and no formal invitation was issued to provide feedback. Thus, the UH Library initiated a public comments field to allow an "unmediated conversation to take place" which, "in the process often deepens the historical value of the site by adding yet another layer of oral

³⁵ Ibid. 38.

³⁶ David A. Smith, "From Nunavut to Micronesia: Feedback and Description, Visual Repatriation and Online Photographs of Indigenous Peoples," *Partnership: the Canadian Journal of Library and Information Practice and Research*, vol. 3 no.1, 2008: 10.

history.”³⁷ Members of the Satawalese and neighboring communities are appreciative of the site. The interaction with patrons to improve collection descriptions can reap valuable rewards for the institution, as well as the community members, as a feedback system where people can assist in identifying perhaps previously unidentified or misidentified images.

Although the examples above simply show the positives of virtual repatriation, both projects did recognize the importance of cultural sensitivities when dealing with indigenous resources. These issues can be encountered throughout the region, as individual and groups compete over control for legitimacy granted by tradition and culture. Archival practice in this region is not just about preservation. It is about activating material in often highly sensitive or political local environments.³⁸ Keesing is noted as saying, “even in those few Melanesian communities where traditional life seems intact and secure, the threat of cultural loss and breakdown is felt on all sides.”³⁹ In this context, the repatriation of ethnographic material becomes an even more urgent and poignant necessity. As virtual repatriation becomes the modern method of giving back to communities, more issues abound and are in plain sight of indigenous people. Specifically, intellectual property rights and Traditional Cultural Expression are being compromised, while the very tough question as to who truly owns native culture demands answers.

³⁷ Ibid. 12.

³⁸ Haidy Geismar, “Stone Men of Malakula on Malakula: An Ethnography of an Ethnography,” *Ethnos* Jun. 2009: 204.

³⁹ David Akin and Kathryn Creely, “A Kwaio Case Study from the Melanesian Archive,” *Handle with Care: Ownership and Control of Ethnographic Materials* ed. Sjoerd R. Jaarsma, (Pittsburgh: University of Pittsburgh Press, 2002) 81.

Chapter 2: Traditional Cultural Expression

In colonial times the knowledge of indigenous peoples occupied the realm of the “primitive,” an obstacle to progress along the path to modern civilization and was largely ignored or suppressed.⁴⁰ It was not until academic and scientific circles started taking an interest in the diverse cultures that they were deemed no longer inferior or primitive, but rather, different. Thus, indigenous knowledge now surfaces in academic and scientific circles that include fields of ecology, forestry, human health, aquatic resource management, rural sociology, botany, fisheries, and water resource management to name a few. Today, indigenous peoples welcome the elevation of status that comes with increased recognition of their knowledge systems after centuries of dismissal and disintegration. However, when non-indigenous people own most of the material that documents indigenous people’s lives and traditions legally, certain tensions arise.⁴¹ These tensions are expressed on matters relating to access and control. Indeed, in the past several decades there has been a publicized absence of trust between indigenous and traditional communities and the cultural institutions, as they feel that they have not been recognized as rights holders or acknowledged as having legitimate relationships with the material within the collections. Additionally, professional volunteers come from countries outside the South Pacific region to work in a variety of ways at cultural heritage organizations. However, these volunteers may not understand all the nuances of working with traditional cultural expression material that can be a source of conflict. As this paper

⁴⁰ Martin Nakata, “Indigenous Knowledge and the Cultural Interface: Underlying Issues at the Intersection of Knowledge and Information Systems,” *IFLA Journal* 28, 2002: 281.

⁴¹ Jane Anderson, “Indigenous Knowledge, Intellectual Property, Libraries and Archives: Crisis of Access, Control and Future Utility,” *Australian Indigenous Knowledge and Libraries*, eds. Martin Nakata and Marcia Langton (Canberra: Australian Academic & Research Libraries, 2005) 90.

will show, it will only benefit both indigenous and traditional community and the cultural heritage organization to work together beyond the risks and troublesomeness in order to understand how to best protect and make accessible their rich cultural heritage.

The Issus with Traditional Cultural Expression

Traditional cultural expressions embody know-how and skills, and transmit core values and beliefs. They are integral to the cultural and social identities of indigenous and traditional communities. As cultural and economic assets, their protection is linked to the promotion of creativity, enhanced cultural diversity and the preservation of cultural heritage. Traditional cultural expressions include music, art, designs, names, signs and symbols, performances, architectural forms, handicrafts and narratives. Indeed, these are the traditions that ethnographers study and record. In many countries where knowledge is transmitted in oral form, particularly in the Pacific Island countries, traditional knowledge and expression of indigenous cultures are a living and evolving tradition. Such knowledge and expressions are socially based and communally-owned, because they have been developed for the benefit of the group as a whole.⁴² Often, it is a group that is the custodian of a particular item of heritage, and thus, the consent to authorize others to use indigenous cultural knowledge must be given by the group, through specific decision-making procedures which differ depending on the nature of the particular item.

⁴² Terri Janke, "Pacific Indigenous People Unite to Protect Cultures: Report on the Symposium on the Protection of Traditional Knowledge and Expressions of Indigenous Cultures in the Pacific Islands," (Symposium on the Protection of Traditional Knowledge and Expressions of Indigenous Cultures in the Pacific Conference, Noumea, New Caledonia, 15-19 Feb. 1999) 3.

This is a significant point when comparing intellectual property rights law with those in Western societies.

As cultural heritage organizations in the South Pacific region are drawn into the digital age, managing access and use of collections inevitably involves intellectual property law, policy and practice. The very nature of traditional cultural expressions means that they occupy an ambiguous intellectual property status. Unique intellectual property issues are being raised regarding collections of traditional cultural expression because of the certain qualities that make them different from other collections. Traditional knowledge and indigenous cultural expression is vital for the survival of the cultural identity of Pacific Island nations and there is a real need to protect local cultures to ensure that there is something to pass on for the future.

Contemporary negotiations over the rights of indigenous peoples' and traditional communities' and interests in their traditional cultural expressions raise a number of challenges for cultural heritage organizations. Often these challenges arise from the complex social, historical, cultural, legal and political conditions informing the collections of these organizations, and can manifest in a variety of ways. Firstly, researchers often collect traditional cultural expressions without obtaining consent from the source communities, as indigenous people typically do not understand as to how the information will be used. These collections may contain secret or confidential material that may be subject to restricted use under customary laws and practices. Secondly, the legal status of traditional cultural expressions under intellectual property law is often

unclear. A good example of this is when a cultural heritage organization makes accessible material that they believe exists in public domain and considered free to be used by anyone, but, in fact, may be subject to certain restrictions according to the source community. Finally, indigenous peoples and traditional communities wish to be more directly involved in the decision-making processes related to the management of their cultural heritage. This involvement will help them reconnect with those elements of their cultural heritage, allow greater access for children and the community as a whole, and revive the knowledge systems associated with these elements.⁴³ On the other hand, indigenous peoples may wish to regain full possession of their traditional cultural expressions and bring them back to the community.

Secrecy and Sacred Material

The term “secret,” or “sacred” material is best defined as objects having a particular value for members of the originating community.⁴⁴ There are both published and archival materials in many cultural heritage organizations of the South Pacific region that hold secret and sacred information which should not be made generally available. These objects command respect and therefore require special care or the observation of prohibitions, and thus the treatment of these objects by cultural heritage organizations and electronic media requires prior consultation. Often, Pacific Islanders have given

⁴³ Molly Torsen and Jane Anderson, “Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives,” (World Intellectual Property Organization, 2010) 11.

⁴⁴ Australian Institute of Aboriginal and Torres Strait Islander Institute, “Aboriginal and Torres Strait Islander Library and Information Resources Networks Protocols,” 29 Jan. 2011, < <http://www1.aiatsis.gov.au/atsilirn/protocols.atsilirn.asn.au/ATSILIRNprotocols.pdf>>.

secret information to respected researchers, not realizing that the information would be published and made available to the general public. Secrecy continues to be a double-edged sword that defends powerful knowledge but also imperils the reliable transmission of cultural information. Often, private knowledge and tradition are held by only a handful of anointed experts- those who are at the top of the social ranking, and who are trusted to pass their knowledge to the appropriate person(s). However, with their unexpected deaths, this knowledge and tradition can be lost. Ironically, in a surprising number of cases, information “stolen” by missionaries and anthropologists has saved indigenous communities from tragic cultural losses.⁴⁵

Cultural heritage organizations making available online images of material in their collections without proper consultation with source communities run the risk of inadvertently displaying to the widest possible audience secret and sacred material that should not be publicly seen at all. The role of the cultural heritage organization is to allow access to information to be open and free of charge with no restrictions. Any South Pacific Islander will be able to access this information on the Internet. However, there is much less chance of him coming across a scientific work outside the region that deals with his community, and even less of a chance of his having the occasion to enter an archive, library, or museum. Therefore, the ideology of democratic and free access to the database runs up against the issue of “sacred” or “culturally sensitive” objects insofar as many of these are subject to restrictions of access.⁴⁶ As the dissemination of sacred

⁴⁵ Michael F. Brown, *Who Owns Native Culture*, (Cambridge: Harvard University Press, 2003) 31.

⁴⁶ Brigitte Derlon and Marie Mauze, “Sacred or Sensitive Objects,” Jan 30, 2011 < http://www.necep.net/papers/OS_Derlon-Mauze.pdf>, 6.

material happens (often innocuously), the distrust that many indigenous and traditional peoples feel towards cultural heritage organizations will deepen.

In the South Pacific Islands, knowledge was traditionally held more valuable than material possession. While material goods held a transitory value and were distributed to everyone, information was non-distributed wealth, jealously guarded and passed down from father to son.⁴⁷ Today, this is still true, and is especially practiced in Governments throughout the region. A good example of this is that knowledge is strictly controlled by Government hierarchies, as information flows from the bottom up, and orders for the information from the top down. Generally, senior staff must ask for information before it is offered. On the other hand, junior staff do not volunteer or ask for information from superiors without permission to do so. Thus, the ministers control information within their sectors and lateral transfer of information is prohibited without special accord.

When it comes to the Maoris of New Zealand (and the Cook Islands), the usefulness of the database becomes a crucial question. What can we show concerning the culture of the Maoris without incurring the disapprobation of their present representatives? Indeed, material that has any historical and cultural importance for a present-day indigenous community can be defined as “sacred” or “culturally sensitive”. Thus, the photographic reproduction and utilization of such objects in electronic media may therefore be forbidden. Technical objects and knowledge also come under the heading of “culturally sensitive.” For example, Maori consider certain hunting, fishing and agricultural

⁴⁷ “Information Constraints in the Pacific Islands,” (Ministerial Conference on Environment and Development in Asia and the Pacific 2000, 31 August – 5 September, 2000) 2.

techniques, as well as medical knowledge, to be the collective property of their people and to represent cultural and economics values they wish to protect by setting restrictions on their transmission.⁴⁸

For Vicki Heikell, Maori Paper Conservator at the National Library of New Zealand, the Maori sacred domain is far from being limited to carvings, ceremonial houses or the manuscript and photographs concerning Maori ceremonies. She insists that the work of contemporary Maori artists is “sacred” or “culturally sensitive” for the simple reason that it illustrates the history of interactions between Maori and European New Zealanders. In fact, in 1996, some Maori even protested against the circulation on the Web of reproductions of nineteenth-century paintings by a European artist portraying Maori chiefs. The “culturally sensitive” value of these paintings lay in the traditional tattooed facial designs depicted by the European artist.⁴⁹

The Maori are also very prudent and discreet about the presentation of their objects in a database. Problems can arise when Maori cultural objects are placed on the Internet. For example, it is typically prohibited in the Maori culture of any contact between food and sacred objects. In a cultural heritage organization environment, like a museum or library, it is unlikely that anyone would be permitted to eat in the presence of a cultural object. However, once that object has been represented as a digital image and placed on the Web, that image may be viewed in situations where food may well be consumed, and indeed prints may well be taken at remote sites and used in ways that would offend the

⁴⁸ Brigitte Derlon and Marie Mauze, “Sacred or Sensitive Objects,” Jan 30, 2011 < http://www.necep.net/papers/OS_Derlon-Mauze.pdf>, 8.

⁴⁹ Ibid. 9.

cultural owners. Therefore, how can an Internet user be stopped from visiting the site of the future database while eating a sandwich? It seems that, in the case of the Internet, the fear of a threat to Maori cultural values is greatly magnified by the considerable potential number of visitors to sites that may present their sacred objects.

Indigenous peoples insist that documents contain sacred knowledge so authentic and powerful that access to them should be carefully controlled.⁵⁰ Moreover, it is clear that cultural heritage organizations perceive databases as a form of repatriation and not as forms of insult, offense and threat to traditional cultural values. The Maori example highlights, once again, the need for cultural heritage organizations to communicate with indigenous communities. As far as it is known, there exists no exhaustive list of “sacred” or “culturally sensitive” objects for any given community throughout the Pacific. Secrecy is inherently threatening the democratic process and to the public good except in a sharply circumscribed range of situations, for instance, when an Archive abides by a donor’s request that material be closed to researchers for a stated period of time. Additionally, the lack of such exhaustive lists may also indicate disagreements within the communities themselves, as community spokespersons should have the right to check everything that is to be shown and written concerning them, for example, historical details that they judge to be objectionable.

⁵⁰ Michael F. Brown, “Can Culture Be Copyrighted?” *Current Anthropology*, April 1998: 201.

Reasons for the Protection of Traditional Cultural Expression

Protection in the intellectual property sense is distinguishable from the “safeguarding” or “preservation” of cultural heritage and expressions, but can complement them.⁵¹

Safeguarding in the context of cultural heritage typically refers to identification, documentation, revitalization and promotion of real and virtual cultural heritage material in order to ensure its maintenance and essence. However, archiving, documenting, and recording are typically means in which protection of material is achieved. This will mean acknowledging and giving effect to the broader range of collective and individual rights that are linked to traditional cultural expressions. Additionally, there will be a need to build a capacity to support traditional creativity and the social structures that sustain and express them.

The question, ‘what do indigenous peoples seek to protect?’ is not easy to answer, as reasons for seeking protection will be specific to the particular information or knowledge for which the protection is being sought. For example, European connections with haka, a Maori traditional dance, are longstanding in New Zealand. Maori community leaders began to take a public role in supporting haka performances and to insist on correct usages in accordance with traditional custom. In fact, customary standards continue to exercise some control over limited roles for women in haka performance, over performances by foreigners, and over commercial uses. However, in recent years, certain perceived misuses of haka in advertising overseas have become a major source of

⁵¹ Ibid. 18

contention. In New Zealand, the advertisements were widely thought to be culturally insensitive to Maori as well as to New Zealanders. And although Maori groups tried to intervene and ask the producers to change the advertisements, their supplications were mostly ignored.

When indigenous knowledge is removed from an indigenous community, the community loses control over the way in which it is represented and used. Nevertheless, a more general concern is not just with an individual sign, symbol, story, song, or artwork but also with the knowledge and cultural, spiritual and other significance that the material conveys and carries with it. In Australia and New Zealand indigenous people have voiced four major reasons for protecting of traditional cultural expression material that would also be applicable to the South Pacific region in general:⁵²

- Safeguarding traditions that depend on secrecy, or cultural privacy. Access and use is available only by qualified people or with appropriate permission.
- Maintaining cultural associations in public eye, or cultural publicity. Use is sought to include acknowledgement of cultural associations and by qualified people or with appropriate permission.
- Commercial exploitation of resource or its application treated as commodity, or cultural property. Use is only for agreed purpose and usually on terms of compensation by qualified person or with appropriate permission.
- Maintaining guardianship of traditional culture as a whole. Any use of material must respect and be consistent with guardianship and be by a qualified person or with appropriate permission.

⁵² Christopher Antons, ed. *Traditional Knowledge, Traditional Cultural Expressions and Intellectual Property Law in the Asia-Pacific Region* (Austin: Wolters Kluwer, 2009) 278.

The “Digital Divide”

The “Digital Divide” is a reflection of existing broader socio-economic inequalities that can be characterized by insufficient infrastructure, high cost of access, weak policy regimes, and the inefficiencies in the provision of telecommunications networks and services.⁵³ Many countries in the South Pacific are considered to be “developing nations” and this “Digital Divide” is quite apparent. Building a digital library requires first people and infrastructure, and then content. How to resource communities so that they can access the World Wide Web is an issue with even more resonance for indigenous groups. The South Pacific region is a reminder that digital divides have cultural, economic and technological context.

There is no single factor that creates a digital divide, but rather a number of issues that, when combined with each other create various incarnations of it. There is the matter of availability of infrastructure from remote atolls under threat of submergence by global warming to rugged mountainous topography in such countries like, Papua New Guinea. Thus, Asymmetric Digital Subscriber Line (ADSL), a high-speed Internet access service that far exceeds conventional dial-up modems, may never be a reality. Instead, users will have to rely on different versions of wireless or satellite. Given low national and personal incomes in much of the region questions of access costs are significant. Arguably, then, the availability of infrastructure would not be important if connectivity, hardware and power costs will not allow users to go online. The third issue has to do with Internet

⁵³ World Intellectual Property Organization, “Issues for Developing Countries in the Digital Environment, 21 Jan. 2001, <http://www.wipo.int/copyright/en/ecommerce/ip_survey/chap5.html>.

expectations where there is a considerable publicity about easy enrichment of personal experience, improved public services and substantial economical growth. Without reliable access, this buildup and belief will never meet expectations.

Access to telecommunications technologies, including the Internet, is a significant step in bridging the digital divide, and there is an increasing awareness of its importance. At a regional level, disparities between countries continue, brought about by economic and geographic realities. The varied but generally high costs of Internet access are exacerbating the digital divide along socio-economics lines; they also create regional imbalances, with countries that are effectively isolated.⁵⁴ However, in this early twenty-first century there is a transformation in the demographics of Internet users, including dramatic growth in online populations in the developing South Pacific region. IT is being used extensively in urban zones, and development can only improve in the remote areas. This will open up all sorts of opportunities and certainly help narrow the digital divide. Additionally, this is creating a change in the culture and content of online material, and this sharing of cultures is benefiting Pacific indigenous communities, as well as the rest of the world.

The Role of the Database Vis-a-Vis Traditional Cultural Expression

⁵⁴ Dirk Spennemann, "Digital Divides in the Pacific Islands," *IT & Society*, Spring/ Summer 2004: 60.

The Web is a global space that has enormous implications for indigenous peoples, for it has emerged at an historical moment when indigenous peoples globally are enabled to participate freely. Electronic databases are gaining popularity in many cultural heritage organizations of the Pacific Islands. Today, indigenous Pacific Islanders have embraced the online environment, as technology has allowed greater and faster access to information. Also, this speedy technology connects indigenous peoples from the local to the global, and allows for dissemination of indigenous perspectives and representations produced by indigenous peoples themselves.⁵⁵ The online environment has reconstructed the balance between visual, oral and textual modes of presenting information in a way that supports cultural perspectives. The Web also helps destroy the myth that meaning is really contained in text, by highlighting the interdependence of documents and showing that meaning arises from the relationships between texts and from our interactions with them.⁵⁶

Databases are being considered as a mechanism to protect traditional cultural expressions but clearly have negative and positive possibilities. Negatively, many indigenous communities feel that making a database would unwisely allow access to the very traditional cultural expression material that they want to protect. This raises a variety of concerns with the collection and dissemination of and research on indigenous peoples' cultures. First, there is the possibility of breaches of confidentiality between ethnographers and informants, although professional codes of ethics try to prevent these.

⁵⁵ Martin Nakata, "Indigenous Knowledge and the Cultural Interface: Underlying Issues at the Intersection of Knowledge and Information Systems," *IFLA Journal* 28, 2002: 287.

⁵⁶ *Ibid.* 287

Second, there is always the possibility of the misrepresentation of indigenous and traditional cultures. For the sacred, spiritual and culturally significant traditional cultural expression material, some communities can consider access by third parties inappropriate. Finally, there is a concern that much documentation of indigenous and traditional cultures is made, owned and commercialized by non-indigenous and non-traditional persons.⁵⁷ Many indigenous people of the South Pacific region are concerned that this would leave their cultural knowledge vulnerable and exposed to erosion.

Electronic databases are also gaining popularity in cultural heritage organizations because they allow the inclusion of further explanation, background, and supplementary material that assist with contextualizing knowledge. This allows it to be accessible in a moment and in a way that suits individual learning needs. In fact, it allows control over pace and increased self-direction in learning, as students make their own pathways through fields of information. Furthermore, indigenous people can become more involved from the beginning, exert influence on the development process and shape it for their own purposes. Databases supposedly prevents patents being taken out because the knowledge then becomes part of the prior art base, and therefore, does not meet the novelty feature

⁵⁷ Molly Torsen and Jane Anderson, "Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives," (World Intellectual Property Organization, 2010) 28.

of the patents law regime.⁵⁸ Finally, as Maui Solomon, a New Zealand lawyer, states, creating databases may be an interesting option:⁵⁹

‘In the appropriate circumstances, public access can be effectively controlled. For example, by the use of “silent files” in which only the knowledge holders themselves or a duly authorized agency has access to that information for purposes of assessing whether or not a misappropriation has or is likely to occur.’

Nevertheless, the main point at issue is that any traditional knowledge database must have the prior informed consent of the communities. Perhaps, the biggest misperception is that if something is available through a free and open source, it must be in the public domain. Indeed, there is a big difference between “publicly accessible” and “public domain”. In situations where knowledge is not already in the public domain, cultural heritage organizations need to ensure that disclosure of traditional knowledge by indigenous people is voluntary. The spread of indigenous controlled Web sites with information presented by indigenous peoples has not only connected them to each other in the shared struggle for rights but has allowed the presentation and representation of the issues that concern them.⁶⁰ Thus, a much different composition of indigenous peoples can be found on the Web from that found in the books on the shelves in a library.

When indigenous knowledge is removed from their community, the community loses control over the way in which it is represented and used. Today, indigenous people want

⁵⁸ Terri Janke, “Managing Indigenous Knowledge and Indigenous Cultural and Intellectual Property,” *Australian Indigenous Knowledge and Libraries*, eds. Martin Nakata and Marcia Langton (Canberra: Australian Academic & Research Libraries, 2005) 101.

⁵⁹ Molly Torsen and Jane Anderson, “Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives,” (World Intellectual Property Organization, 2010) 28.

⁶⁰ Martin Nakata, “Indigenous Knowledge and the Cultural Interface: Underlying Issues at the Intersection of Knowledge and Information Systems,” *IFLA Journal* 28, 2002: 287.

to assert their cultural rights and reclaim their culture.⁶¹ They have begun to understand intellectual property and have also started questioning who the legitimate rights holders are and why. As, in a globally interconnected world, the issues related to the safeguard of traditional cultural expression could not be resolved at the sub-national or national levels alone, they have naturally entered the international debate.⁶² Organizations such as the World Intellectual Property Organization (WIPO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) have taken the responsibility of addressing the issues regarding intellectual property and the safeguarding and the promotion of traditional cultural expressions. However, from the viewpoint of indigenous peoples a major shortcoming of these approaches is that they are concerned with safeguarding public interests rather than those of their community. As indigenous people have become more involved and successful in voicing a greater recognition of their right to traditional cultural expression at international forums, there have been many attempts made for greater protection of indigenous cultural and intellectual property rights.

Who Then Owns Culture?

As indigenous peoples and traditional communities of the South Pacific desire access to existing cultural material so that it can be reinterpreted and given new meaning, the question as to who should be entitled to make decisions concerning such material is a contentious debate. Should the researcher, community or the cultural heritage

⁶¹ Terri Janke, "Managing Indigenous Knowledge and Indigenous Cultural and Intellectual Property," *Australian Indigenous Knowledge and Libraries*, eds. Martin Nakata and Marcia Langton (Canberra: Australian Academic & Research Libraries, 2005) 97.

⁶² Christopher Antons, ed. *Traditional Knowledge, Traditional Cultural Expressions and Intellectual Property Law in the Asia-Pacific Region* (Austin: Wolters Kluwer, 2009) 169.

organization be the rightful owner of the cultural material? This issue creates a bitter and intense atmosphere in relations with indigenous communities as well as with the cultural heritage organization that holds it. It is difficult on the organization, in terms of time and labor, but may also be considered quite unfair to the community that wants to use material that represents them and their culture.

It is clear that the concept of ownership (either by individuals, families or communities) in the South Pacific region of songs, dances and other forms of traditional knowledge and custom has been well established for a long period of time. In the past, knowledge of styles of singing and dancing, of sculpting slit-gongs or weaving mats, of myths of origin told in local languages, together with the associated rights of performance was a commodity exchanged between local groups. As Dr. Jacob Simet, Executive Director of the Papua New Guinea National Cultural Commission stated:⁶³

‘We have had songs, traditional knowledge and so on for hundreds of years. There was no doubt as to who originally owned them- they were originally owned by one person who passed them on to his or her clan. There were clear customary laws regarding the right to use the songs and the knowledge. There was no problem in the past.’

Today, confusion often arises when people living non-traditional lives claim to be indigenous and try to assert the special protection that might have been appropriate to the indigenous status of their ancestors. This particularly is an issue in Hawaii, as knowledge created in ancient times, belonging to an indigenous group as a whole, is held today by individuals who are fully assimilated into the American culture. Property rights, for example, belong to the people who own the property, and not to the property itself. Thus,

⁶³ Miranda Forsyth, “Intellectual Property Laws in the South Pacific: Friend of Foe?” *Journal of South Pacific Law*, 7, 2003: 2.

intellectual property rights of an indigenous group are not written down in copyrights, patents, or trademarks; but need to be treated as though they were.⁶⁴

Perhaps, the best answer to the question as to who truly owns traditional cultural expression material exists in intellectual property rights, as any given item in a collection has an intellectual property status. Traditional cultural expression may or may not benefit from intellectual property, thus managing access to and use of material inevitably implicates intellectual property law, policy and practice. Be that as it may, cultural heritage organizations sit at the junction between tradition-bearers and the public. In their daily activities they have a unique opportunity to allow the public to access cultural heritage, and at the same time protect the traditional cultural expressions and preserve the rights and interests of their bearers. Therefore, today, some cultural heritage organizations and communities in the South Pacific region have developed intellectual property related policies and practices concerning the access, ownership, control of content, and safeguarding of cultural heritage. The Vanuatu Cultural Center is exemplary in this practice, as precautions in the manner of forms must be completed and approved for access to certain kinds of traditional cultural expression material.

⁶⁴ Kenneth R. Conklin, "Indigenous Intellectual Property Rights- General Theory, and Why It Does Not Apply in Hawaii," *Angelfire*, 2011, 11 Feb. 2011
<<http://www.angelfire.com/hi2/hawaiiansovereignty/indigenoustellproprts.html>>

Intellectual Property Protection Examples

Because of the diversity of cultural material within South Pacific cultural heritage organization's collections, the range of strategies that need to be developed to manage it requires considered thought. Indigenous peoples and communities of the South Pacific want to access material so that it can be reinterpreted and new meanings made. There are three countries that lead the way: Fiji, Papua New Guinea, and Vanuatu. Although their legislation is largely based on Anglo/European models, it is also modified to allow for local conditions. In Fiji there is a specific provision dealing with the protection of "expression of folklore," which is defined as "a group oriented and tradition-based creation of groups or individuals reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means."⁶⁵

Although Fiji has a Copyright Act (1999), Property Law Act (1978), and a Patents Act (1978), it has been found that these laws are limited in application and inadequate to protect Fijian traditional knowledge and expression of culture. However, the Ministry of Indigenous Affairs and the Department of Culture and Heritage of Fiji have actively developed practical and policy measures to preserve and safeguard the island's cultural heritage. Their objective is to "strengthen the conservation, preservation, promotion and

⁶⁵ Ibid. 5.

protection of all forms of cultural and natural heritage including intangible and tangible, movable and immovable heritage, and cultural industries.”⁶⁶

One important aspect within these measures is the development of a “Training Manual on Field Research Methodology Designed for Cultural Mapping Field Officers” that contains information on the steps to be taken and issues to be addressed when conducting research. The objectives of this manual are:⁶⁷

1. To develop “a clearer understanding” of the Fijian governmental bodies dealing with cultural heritage and indigenous communities.
2. To discover intellectual property rights issues for the development of “Model Legislation” in protecting “traditional knowledge and cultural expressions.
3. To derive a “cultural mapping exercise and database.
4. To explore all aspects of “anthropology” including research methods and design.
5. To develop a “fieldwork and research guideline for the institute”.

Moreover, the methodological approaches are heavily influenced by anthropological procedures to research and anthropological ethical conduct and guidelines.

The Ministry of Indigenous Affairs in conjunction with the Institute of Fijian Language and Culture has also developed a “Recommended Guideline for Socio-Cultural Researchers When Undertaking Fieldwork in Cultural Settings.” This framework captures research as perceived by the local, culturally appropriate research methodology, reciprocating the assistance rendered by the informants and locals during research,

⁶⁶ Malia Talakai, “Intellectual Property and Safeguarding Cultural Heritage: A Survey of Practices and Protocols in the South Pacific,” (World Intellectual Property Organization, 2007)

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⁶⁷ Ibid. 39

respect for local ethical principles when assessing traditional cultural expression material, intellectual property protection and the setting up of a formalized resource center and archive for collections.⁶⁸ The primary intention of this framework is to engage cultural and non-cultural institutions into appreciating indigenous knowledge systems, worldviews, and minimize misuse of local customary practices, language, and values.

Research conditions and guidelines have been produced for researchers who want to perform research and fieldwork in Papua New Guinea. Visas are required to conduct research and are made available by the Research Institute to the Department of Foreign Affairs. Proposals must be submitted prior to conducting research and must be accompanied by details of the academic institution the researcher is affiliated to, sponsorship and funding, and a signed copy of the “Conditions and Guidelines for Researchers/ Film Makers in Papua New Guinea” agreement form. However, in reference to intellectual property rights, the Condition and Guidelines document does not specifically deal with issues of ownership relating to outcome of research or knowledge obtained for the product of such research. Instead, it makes reference to intellectual property rights by stating that, researchers should make this clear in their research proposals.

Although the Intellectual Property Office of Papua New Guinea (IPOPNG) is small, it is a fully dedicated to promote and protect intellectual property rights throughout the country. IPOPNG currently administers laws that provide protection for patents

⁶⁸ Molly Torsen and Jane Anderson, “Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives,” (World Intellectual Property Organization, 2010) 79.

trademarks, industrial designs, and copyright. This administration also oversees a legal framework and is supported by a modern intellectual property rights granting system. In addition, IPOPNG administers the Copyright and Neighboring Rights Act 2000, and works of copyright are automatically protected upon creation under this law. There are continuous discussions between IPOPNG and cultural heritage organizations regarding the enforcement of intellectual property rights amongst the public and private sectors, as a result of widespread use of infringed and counterfeited products on the streets and shelves of many market outlets.

The Vanuatu Cultural Centre consists of a National Museum, National Photo, Film and Sound Archive, a National Library and the National Archives. The function of the Cultural Centre is to manage and safeguard the cultural heritage of Vanuatu, as well as to provide for fieldwork projects and cultural research, in which the Centre collaborates with local communities in cultural heritage management. It also manages options for foreign nationals to conduct research on and in Vanuatu.

The Centre has created policy and legal measures in response to growing concerns from local communities. They have created Vanuatu Cultural Research Policy that consists of policies, principles, and research processes. Researchers must respect “traditional copyright protocols” which are protected and enforceable under Vanuatu’s Copyright Act. The Policy further includes a “Researcher Agreement,” which needs to be completed

and signed by the prospective researcher and the Cultural Centre.⁶⁹ Perhaps, the main measure for the development of the Cultural Research Policy is to protect “kastom”. Kastom is defined by the traditional, political, social, religions, and economic structures, and their associated practices, systems of knowledge and material items.⁷⁰ Kastom is first and foremost knowledge and only secondarily practice and objects.

In addition, the Research Policy protects intellectual property rights. The Traditional Copyright Agreement within the policy is intended to protect traditional copyrights and to ensure the respect of this indigenous method of controlling information and the communication of specialized knowledge and form. Like many other places in the world, Vanuatu copyright, as property, is inheritable. Rights to produce and talk about genealogy, secret clan names, magic spells and medical therapies, ritual practices and artifacts, and technologies pas down within lineages.⁷¹ The purpose of the Traditional Copyright Agreement is to make the subjects and informants of research aware of their ownership and rights over the information they impart and to contractually enshrine these rights, thus obligating the researcher to respect them.⁷²

These examples briefly highlight some of the efforts being taken to address intellectual property issues. Despite these valid and respectful endeavors, there remain concerns by

⁶⁹ Molly Torsen and Jane Anderson, “Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives,” (World Intellectual Property Organization, 2010) 79.

⁷⁰ “Vanuatu Cultural Research Policy,” (Vanuatu Cultural Centre) 1.

⁷¹ Lamont Lindstrom and Geoffrey M. White, eds. *Culture Kastom Tradition: Developing Cultural Policy in Melanesia*, (Fiji: Institute of Pacific Studies University of the South Pacific, 1994) 69.

⁷² “Vanuatu Cultural Research Policy,” (Vanuatu Cultural Centre) 3.

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indigenous and traditional communities that the activities of cultural institutions, ministries, and cultural specialists do not always take adequate account of their rights and interests, and that documenting and displaying cultural heritage make these communities vulnerable to misappropriation.

Chapter 3: Recommended Guidelines for Handling Traditional Cultural Expression Material

The strengthening of communication and the building of new relationships between cultural heritage organizations and indigenous peoples and traditional communities depends on how actively both parties will develop, manage, and maintain strategies concerning the safeguarding and access to traditional cultural expression material. This relationship is vital, as solutions may reside in the development of mutually satisfying pathways for the future management of such valuable material. Tradition-bearers can provide invaluable contextual information and personal narratives regarding collections about them. Indeed, indigenous peoples and tradition communities do have a legitimate interest in being part of the decision-making process regarding traditional cultural expression material. Historically, this was not often the case. Today, however, current practices and responsibilities to maintain foundational principles of equality, freedom, and justice require that tradition bearers must be heard and their opinion should be taken into account. This voice is essential, as it can explain alternative meanings embedded within them, and help outline the access conditions that respect the indigenous or traditional community from which those materials derive, as well as those of other users who are keen to learn and understand different cultures and cultural practices from them.⁷³ Much depends on the strengthening of communication and building of new relationships between cultural heritage organizations and indigenous peoples. Many solutions may reside in the development of mutually satisfying pathways for the future management of such important and valuable cultural material. Cultural heritage

⁷³ Molly Torsen and Jane Anderson, “Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives,” (World Intellectual Property Organization, 2010) 12.

organizations in the South Pacific region are constantly seeking to develop new frameworks for understanding the legal implications inherent in caring for and making accessible ethnographic and cultural materials. Therefore, this chapter will review recommended guidelines, protocols, and frameworks will examine a range of possibilities that cultural heritage organizations and tradition bearers can utilize for future access, control and ownership of traditional cultural materials.

Recommendation Guidelines for Repatriated Material

According to anthropologist and one of the founders of the Melanesian Archives, Donald Tuzin:⁷⁴

‘Ethnography and the act of writing it... is a gift in kind to the people who made it possible. Never mind that they may never be able to read it; their literate children or grandchildren will appreciate it as a record- often the only record- of a way of life now lost to them... Never mind, either, if no member or descendant of the group in question ever reads the account; the gift is made by way of memorializing to others, remote in space or time, the instance of cultural humanity.’

The decision to repatriate is not always easy. In fact, what anthropologists can repatriate, perhaps, falls into two parts. Today, the physical return of materials is not necessarily the central outcome, as providing access to the materials that anthropologists store may be a more essential issue. Moreover, repatriation may require transferring the rights to control access to those who originally “owned” the information or to their descendants. When repatriating material, anthropologists should keep in mind two axioms:

⁷⁴ Bryan P. Oles, “Dangerous Data from Mokil Atoll” *Handle with Care: Ownership and Control of Ethnographic Materials* ed. Sjoerd R. Jaarsma, (Pittsburgh: University of Pittsburgh Press, 2002) 191.

1. They should not harm either the community they have studied or the individual informants that they have consulted while in the field.
2. They should not harm the interests of continued academic research.

Although these two points allows anthropologists to answer the questions as to why and what should be repatriated, the question of when should repatriation take place is a little more difficult to grasp. To answer this it is best to distinguish between two possible scenarios for repatriation:

1. Anthropologists acting on a request from within the field or from representatives of the people they studied;
2. Anthropologists initiating repatriation themselves.

The difference between the two lies in the background against which the demand for repatriation is made. Without such a demand, repatriation would perhaps serve to absolve anthropologist's apprehensions about sitting on information that does not belong to them, but serves little purpose otherwise. Often, many anthropologists differ a great deal in how they treat their records once they finish each research project. Some anthropologists feel that their records are sacrosanct, for others, all but worthless. The main consideration involves balancing probable benefits against probable harm that might result from repatriation. Anthropologist, Alan Howard, has created an equation that one might process in determining the fate of hitherto inaccessible information. Some of the highlights of this equation that can help inform decisions to be made by cultural heritage:⁷⁵

⁷⁵ Alan Howard, "www.repatriating_ethnography.edu/rotuma," *Handle with Care: Ownership and Control of Ethnographic Materials* ed. Sjoerd R. Jaarsma, (Pittsburgh: University of Pittsburgh Press, 2002) 43-44.

1. *Relevant units implicated by the field notes*- In general, the broader the social unit implicated the less likely information will be harmful to individuals and communities.
2. *The degree to which the information is inscriptive or transcriptive*- Transcriptive information, especially in the form of verbatim texts from identifiable consultants, is prime material for repatriation, since it amounts to a transcription of knowledge already available. Inscriptive notes may include initial impressions, offhand value judgements, or other commentary not meant for public viewing needs to be evaluated accordingly. However, each type of information needs to be assessed for potential harm or benefit.
3. *The expressed wishes of the community (including the original providers of information and their descendants)*- Here it is important to keep in mind that views are likely to be mixed. Anthropologists should do the best they can to access the full range of opinions, past and present, before they arrive at an assessment.
4. *The original disposition of the information (whether it is regarded as secret, belonging to specific individuals or groups, or as public knowledge*- In general, secret knowledge needs to be hedged with more safeguards and requires a continuous process of negotiation with its owners regarding its disposition.
5. *Applicable laws*- These include copyright and repatriation laws that might have bearing.
6. *The stage of people's historical consciousness*- For some people the written word is authoritative; for others historical consciousness has developed to the point where outsider accounts are contested with accounts of their own, drawn from a broader array of sources than used by outsiders. In general, the more developed a people's historical consciousness the stronger the case for repatriating materials.

Although these variables may guide the anthropologist and the cultural heritage organizations through the difficult decision of repatriation, indigenous responses must be taken into account as part of the process. However, some anthropologists like, Howard, believe that indigenous response should be responsive. They feel it may be necessary to suggest Western values to peoples if they truly believe that it will result in the preservation of materials that will allow future generations of the South Pacific region to reflect on their pasts.

Records relating to excavated or destroyed archaeological sites, societies that have fundamentally changed, life histories of individuals and communities, languages no longer spoken, cultural material that no longer exists, texts of oral renditions of historical events and statements of worldview, all constitute a tenuous link to knowledge that is otherwise irretrievable.⁷⁶ Saving anthropological records involves ethical considerations aside from the responsibility for preserving the information they contain. Each anthropologist must consider both access and confidentiality issues, as well as plan for legitimate access before transferring papers to cultural heritage organizations, or even posting digitized copies on the Internet. The scholar who gathered and created the materials must review them to note any sensitive items. Additionally, it is important to remember that situations do change; what is sensitive at a given time may not be later and vice versa. The needs of future researchers and members of the communities are important, but specific decisions will be based on the type of record and the original research purpose.

Cultural heritage organizations often hold original records that were created by, about or with the recommendations of particular South Pacific Islander communities. Some records may have been taken from the control of the community. A practical strategy that allows communities to have more rights to material when historically they have had none is very important. Communities may place tremendous importance on particular records

⁷⁶ Nancy J. Parezo, "Preserving Anthropology's Heritage: CoPAR, Anthropological Records, and the Archival Community," *The American Archivist*, Fall 1999: 290.

and request copies for use and retention within the community. Thus, to address this issue, cultural heritage organizations should:

- Respond sympathetically and cooperatively to any request from Pacific Islander communities for copies of records of specific relevance to the community for its use and retention.
- Agree to the repatriation of original records to Pacific Islander communities when it can be established that the records have been taken from the control of the community.
- Seek permission to hold copies of repatriated records but refrain from copying such records should permission be denied.

Cultural heritage organizations need to understand the importance of preserving and making accessible the various complementary forms of anthropological data, even though some material will be cumbersome and may appear superficially to be redundant.

Likewise, archivists, librarians and museum curators must refresh their basic understandings of anthropological terms, especially those terms that designate languages, communities, societies, cultures, ethnic groups, and places because anthropological records are always active. In fact, field records produced by anthropologists do not end their usefulness at the completion of a research project but are revisited throughout the course of a career. Therefore, this understanding will require active participation and collaboration with anthropologists and the indigenous communities, as well as the consideration of rights of the donor of the material and their wishes or the wishes of their heirs. Finally, ready access to the records can be vital to the indigenous community's knowledge of itself. It certainly is not uncommon for records to be held in distant, often unapproachable institutions where they are effectively alienated from the people to whom they are most relevant. This issue will allow an opportunity for collaboration between indigenous communities and the cultural heritage organization to consider the appropriate

location for records with possible cooperation in the development of community keeping places like an archive, or museum.

Recommended Digitization Guidelines

Digitization provides opportunities to improve South Pacific indigenous peoples' access to historical and contemporary cultural indigenous knowledge materials that are currently dispersed in institutional collections across the region, and as well as across the world. As seen earlier in this research, easier access provided by digital technologies also increases the risk of breaching indigenous cultural protocols for the management of materials.

Thus, developments in both the digital context and in the indigenous information context indicate the need for a coordinated planning approach to deal with the issues. Guiding principles should include:

- Recognize indigenous communities as equal partners in future digital collaborations.
- Ensure cultural integrity.
- Uphold cultural intellectual property rights of communities.
- Interpret, analyze, and synthesize information for general users.
- Ensure that individuals should only access sacred, genealogical information after they have consulted with the relevant indigenous members.
- Ascertain that sacred information is not used in a manner contrary to indigenous communities' values, or for commercial purposes.
- Ensure that information cannot be changed or altered unless after consultation with relevant indigenous people or communities.

Digital databases with potentially vast public access must use sensitivity in the development of their guidelines, determine which material will be made available and

establish levels of access that can be implemented.⁷⁷ These areas require much attention and discussion prior to the establishment of the digital database. However, as anticipated, the challenge for the development of the digital database remains the extent to which they accommodate the desires and expectations of tradition-bearers about access and control within their governing guidelines. Nevertheless, as technology constantly changes, the preservation of digital databases will also invariably change. Thus, it will be advantageous if the guidelines are flexible and can change with this technology so that it continues to fit the needs of the indigenous community.

Digitization can be an expensive and technically complex process, and it is not uncommon for cultural heritage organizations to fall behind on projects. Moreover, ancillary costs associated with establishing and maintaining an online presence to facilitate public access to images can become a major burden on an organization. Therefore, one bold strategy that will combat against this issue is through the development and maintenance of a distributed contextual information framework. This framework would be designed to link together sources of knowledge that may be of value to a future society.⁷⁸ The mapping of these entities (such as, people, organizations, concepts, ideas, places, natural phenomena, events, and cultural artifacts) creates a network of nodes and arcs that mimic actuality. In other words, this creation and caretaking of digital cultural heritage resources utilizes the Internet that enables the

⁷⁷ Molly Torsen and Jane Anderson, "Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives," (World Intellectual Property Organization, 2010) 73.

⁷⁸ Gavin McCarthy, "Finding a Future for Digital Cultural Heritage Resources Using Contextual Information Frameworks," *Theorizing Digital Cultural Heritage: A Critical Discourse*, ed. Fiona Cameron and Sarah Kenderdine (Cambridge: MIT Press, 2007) 251.

linking and sharing of information. An excellent example of this is the Oceania Digital Library, focused on the culture and heritage of the indigenous peoples of the Oceania region.⁷⁹ The use of this open-source technology will help cut costs, and can even include individuals with limited technological understanding.

Although these kinds of open-source databases are becoming more popular, very few are being created in the South Pacific region. Typically, these digital projects are a collaboration of universities that are inspired to digitize, preserve and provide searchable access to a range of cultural and heritage resources from research collections of partner institutions. Unfortunately, the extent of participation that indigenous communities are making towards these projects is uncertain. Nevertheless, there are a number of benefits in using an open-source database approach, which include:⁸⁰

- Making knowledge transfer easier and encouraging the sharing of experiences within and between organizations.
- Enabling existing knowledge sources to reside within a structured and visible system.
- Increasing visibility of knowledge sources that will promote their preservation and value.
- Introducing nonintrusive techniques that complement existing business practice.
- Supporting the decision-making process by making available a wide range of information giving a view of “the bigger picture.”
- Improving transparency within the cultural heritage community and for external observers (transparency is fundamental to building trust).
- Referring to sensitive information within the system without it being reproduced.
- Improving discovery, accessibility, and comprehensibility of resources.

⁷⁹ See Website, <http://www.oceania-digital-library.org/>.

⁸⁰ Gavin McCarthy, “Finding a Future for Digital Cultural Heritage Resources Using Contextual Information Frameworks,” *Theorizing Digital Cultural Heritage: A Critical Discourse*, ed. Fiona Cameron and Sarah Kenderdine (Cambridge: MIT Press, 2007) 254.

As we live in a world of perpetual change, there is a very real threat that the accumulated knowledge that guides the digital cultural heritage resources today will be lost to the next generation. Nevertheless, on a positive note, there is no one body that has overall control or the responsibility for overseeing the placement of information on the World Wide Web. It is envisioned that contextual information framework would adopt this strategy, and thus evolve the robustness that comes with dispersed but shared responsibility. Therefore, indigenous communities could establish themselves with cultural heritage organizations as the principal nodes in the network, providing major resources for their communities and a management function in the area of standards.

Managing Intellectual Property Guidelines

Indigenous cultural and intellectual property management must be articulated from the start of any digitization project. The main legislative deficiency affecting digitized projects is the temporary and individualistic protection that copyright offers to creators of traditional cultural expression material. Cultural heritage organizations are in a unique position of being both copyright owners and copyright users. As a result, the primary rights of owners must be recognized. Thus, cultural heritage organizations need to:

- Become aware of the issues surrounding cultural documentation and the need for cultural awareness training.
- Create ways, including the recognition of ethical rights, to protect indigenous peoples and traditional communities.
- Develop proper professional recognition of the primary cultural and intellectual property rights of indigenous people and traditional communities.
- Share information on initiatives involving cultural documentation.

Personal information or culturally sensitive material should not be widely circulated.

Typically, sensitive materials include those relating to family photographs, family trees or any recorded historical information and past histories. This type of material should be treated as sensitive and access to this information should be carefully monitored. In fact, appropriate management practices will depend on both the materials and the communities served by the cultural heritage organization. In implementing the processes through which such materials are managed, cultural heritage organizations should:⁸¹

- Consult in the identification of such materials and the development of suitable management practices with the most appropriate representatives of the particular indigenous traditional community involved.
- Facilitate the process of consultation and implementation by developing effective mechanisms including liaison with reference groups at local and national levels.
- Seek actively to identify the existence of secret or sacred and sensitive materials by retrospectively surveying holdings and by monitoring current materials.
- Provide suitable storage and viewing facilities with limited access as may be required.
- Ensure that any conditions on access are understood by staff and users and are fully implemented.
- Support the establishment of a national database for the identification of publications with secret or sacred content and of suitable management practices.

Appropriate handling will typically mean making users aware of the contents before they open them. This might involve the need to create labels or notes in the database indicating that the contents are, for example, “For initiated males only,” or any kind of note that states who is allowed to look at the documents

It is inevitable in today’s current environment that traditional cultural expression will be disseminated on the Internet in ways that will agree with the wishes of its custodians and

⁸¹ Australian Institute of Aboriginal and Torres Strait Islander Institute, “Aboriginal and Torres Strait Islander Library and Information Resources Networks Protocols,” 29 Jan. 2011, < <http://www1.aiatsis.gov.au/atsilirn/protocols.atsilirn.asn.au/ATSILIRNprotocols.pdf>>.

in ways that will not. The Internet offers tremendous potential for people to learn more about indigenous culture. However, if respect is to be maintained, guidelines are needed to shape proper conduct in relation to traditional cultural expressions. Therefore, guidelines that deal with indigenous intellectual property and culture should be based on the following:⁸²

- respect;
- indigenous control;
- communication, consultation and consent;
- interpretation, integrity and authenticity;
- security and confidentiality;
- attribution;
- proper returns;
- continuing cultures; and
- recognition and protection.

Cultural heritage organizations must ensure that traditional cultural expression material is not released unless it is in agreement with best practice guidelines. The development and implementation of guidelines for dealing with traditional cultural materials is becoming an important means of ensuring that the rights of indigenous peoples are recognized. Guidelines will encourage ethical conduct and promote interaction based on good faith. Although protocols are not legally binding, they will establish practices that can, over time, come to be regarded as industry standards.

⁸² Brian Fitzgerald and Susan Hedge, "Traditional Cultural Expression and the Internet World," *Traditional Knowledge, Traditional Cultural Expressions and Intellectual Property Law in the Asia-Pacific Region*, ed. Christopher Antons (Austin: Wolters Kluwer, 2009) 251.

Awareness and Education for Professionals in Cultural Heritage Organizations

The cultural heritage organization's role as an educational source will also benefit by addressing the concerns of scholars and academics regarding access. This, in turn, can help promote the vitality of indigenous peoples and cultures. Increasing awareness of indigenous communities and their traditional cultural expression material will only contribute to a greater understanding between the indigenous communities and the cultural heritage organization. In pursuit of awareness, cultural heritage organizations should:⁸³

- Be proactive in the role of educator, promoting awareness of indigenous peoples, communities, cultures and issues among non-indigenous people.
- Be proactive in acquiring materials produced by indigenous peoples and communities.
- Highlight indigenous content and perspectives through such means as oral history and record copying projects.
- Promote awareness and the use of indigenous related holdings, by such means as targeted guides, finding aids, tours and exhibitions.
- Promote the inclusion of indigenous community peoples to governing and advisory boards, councils, and committees.

Cultural heritage organizations will also greatly benefit by ensuring that their staff are appropriately prepared to deal with traditional cultural expression material. All graduates of South Pacific education and training programs for cultural heritage organizations should have gained an appreciation of Pacific Islander history and culture and of the issues relating to the documentation that they will handle in their future careers.

Therefore, archives, libraries and museums of the South Pacific region should strive to:

⁸³ Australian Institute of Aboriginal and Torres Strait Islander Institute, "Aboriginal and Torres Strait Islander Library and Information Resources Networks Protocols," 29 Jan. 2011, < <http://www1.aiatsis.gov.au/atsilirn/protocols.atsilirn.asn.au/ATSILIRNprotocols.pdf>>.

- Provide indigenous cultural awareness training for every staff member, especially those who handle traditional cultural expression material.
- Provide appropriate models for professional practice in acquisition, processing, and collection management on matters concerning indigenous peoples and traditional communities.
- Ensure that education and training programs involve indigenous peoples in both design and delivery.
- Support indigenous students in archive, library and museum education and training through such means as positive encouragement, mentoring and study leave.

Additionally, cultural heritage organizations can help indigenous people promote awareness and make available their histories and perspectives by a number of ways. First, is to mount displays that incorporate, or that are undertaken by indigenous people. A second way is for an archives, library, or museum to host guest speakers or hold community nights where indigenous people tell stories or present cultural performances. A third way is to display community projects of indigenous art works. Finally, as publishers, cultural heritage organizations can help indigenous peoples to make available their histories and perspectives. Oral history, for example, can result in the publication of tapes, videos or books.

Finally, proper awareness and educational practices will ensure the involvement and participation of indigenous communities in governance, management and operation. It is now widely accepted that all cultural heritage organizations should adopt a client focus, and should respect and solicit the views of their clients. Indeed, these organizations have a certain responsibility to the communities and nations they serve which make it imperative that the communities' interests are reflected in both their governance and

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management to ensure that all policies and practices serve the interests of the communities without discrimination.

Conclusion

The focus of this research project was to examine the issues that the Digital Age raises concerning access to traditional cultural expression material of the South Pacific region held in ethnographic collections of cultural heritage organizations. To do this it was necessary to critically examine the affects that real and virtual repatriation has on the access to material, as well as to analyze the meaning of cultural ownership and the issues of intellectual property rights among the indigenous people. Additionally, the research analyzed the role that cultural heritage organizations play with native communities, and recommended guidelines that would protect traditional cultural expressions material so that access is not compromised.

Repatriated data should be viewed not as a “gift” based upon Western moral imperative, but as an offering to the societies that anthropologists study, to be used, discarded, hallowed, or decried in accordance with local understanding and needs. It must be noted that many cultural heritage organizations in the region are lacking the archival infrastructure to deal with the documentary record. As Justina Nicholas, former National Archivist of the Cook Islands once stated that still rings true today:⁸⁴

‘Right now there is an urgent need to repatriate, purchase, get hold of materials, artifacts relating to the history of the country but we need to train our own people in how to take care of them once they are in our custody. Because there is no point trying to repatriate what we have held in countries only to bring it home to rot.’

⁸⁴ Evelyn Wareham, “From Explorers to Evangelists: Archivists, Recordkeeping, and Remembering in the Pacific Islands,” *Archival Science* 2002: 203.

Although indigenous people operate many cultural heritage organizations of the South Pacific region, there remains a need for archivists, librarians and museum curators to understand the different cultures, which their organizations encounter and represent, as well as be sensitive to their continual development to suit changing needs. Thus, archival development is a necessity if documentary records are to take their place alongside oral evidence in the fabric of island identity.⁸⁵

In today's Digital Age, virtual repatriation is becoming much more common, as anthropologists and cultural heritage organizations are making use of the benefits of the Internet to make their ethnographic materials more accessible through an online database. Unfortunately, this enthusiastic, supposedly innocuous, leap to placing material online leads to intellectual property issues and questions as to who is the rightful owner of traditional cultural expression material.

Some of the materials returned to their place of origin or placed online are of sensitive or secret nature that should require certain restrictions on access. Indeed, archivists, librarians and museum curators are caught in a dilemma, as calls for organizations to honor indigenous rules of secrecy have affected everyday practices in their repositories. In fact, some archivists confess privately that they have relocated sensitive records to storage areas that casual visitors are unlikely to find.⁸⁶ Nevertheless, it should be the responsibility of each cultural heritage organization that holds traditional cultural

⁸⁵ Ibid. 206.

⁸⁶ Michael F. Brown, *Who Owns Native Culture?* (Cambridge: Harvard University Press, 2003) 31.

expression material to seek guidance on access, handling and storage. For example, the creation of simple permissions templates can be developed that details those that were consulted, what access was granted, and who should be contacted for further information. Unfortunately, indigenous and traditional communities of the South Pacific are generally among the poorest and most disadvantaged in the world and concern over properly dealing with traditional cultural expressions is not simply an ethical issue.⁸⁷ Therefore, it is recommended that cultural heritage organizations of the South Pacific region need:⁸⁸

- Assistance in setting up clear institutional infrastructures and systems for collecting, recording, storing and interpreting cultural heritage material;
- Assistance in the training of staff in more up-to-date systems of collecting, storing and recording of cultural heritage material;
- Assistance in the training of staff on intellectual property issues, generally and specifically in relation to museums and archives;
- Assistance in developing and formulating good practices that will guide staff in collecting institutions about how to deal with intellectual property issues; and,
- Availability of funding for inventory projects.

Perhaps, one of the biggest themes found throughout this research was the importance of cultural heritage organizations' interaction with indigenous peoples and traditional communities prior to placing digitized material in an online database. When it comes to digitization and the Internet, guidelines that deal with intellectual property and technology issues are needed for the sustainable management of indigenous materials. These guidelines will help cultural heritage organizations develop coordinated policy approaches. Undoubtedly, indigenous and traditional communities want to be more

⁸⁷ Molly Torsen and Jane Anderson, "Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives," (World Intellectual Property Organization, 2010) 14.

⁸⁸ Australian Institute of Aboriginal and Torres Strait Islander Institute, "Aboriginal and Torres Strait Islander Library and Information Resources Networks Protocols," 29 Jan. 2011, < <http://www1.aiatsis.gov.au/atsilirn/protocols.atsilirn.asn.au/ATSILIRNprotocols.pdf>>.

involved in the process. And as they have legitimate opinions about how traditional cultural expression collections should be managed, they are beginning to help set guidelines, codes of conduct and protocols. They are even helping to set standards and safeguards for how research should be conducted, what intellectual property rights will remain with the community and where permissions for use in the future will be required. For many cultural institutions the problems arise because there is insufficient information about the source community. This hinders negotiations and consultations about the access and use of traditional cultural expression material by third parties.

‘Heritage is not lost and found, stolen and reclaimed. It is a mode of cultural production in the present that has recourse to the past.’⁸⁹ By definition, heritage looks backward. It is something received from one’s forebears.⁹⁰ South Pacific indigenous cultures continue to flourish today. Unfortunately, due to attempts at integration and assimilation of island peoples into Western culture, much traditional knowledge has been lost or diluted. However, those records created by anthropologists and ethnographers offer a rich source for Pacific Islanders to re-connect with their traditional cultural roots. In fact, they provide evidence of stories, dances, languages, and other traditional knowledge that may be at risk of disappearing. This risk becomes much more mitigated, as cultural heritage organizations work together with traditional communities and their traditional cultural expression material.

⁸⁹ Brigitte Derlon and Marie Mauze, “Sacred or Sensitive Objects,” Jan 30, 2011
< http://www.necip.net/papers/OS_Derlon-Mauze.pdf>, 1.

⁹⁰ Michael F. Brown, *Who Owns Native Culture?* (Cambridge: Harvard University Press, 2003) 183.

To address the gaps in current intellectual property law in relation to traditional cultural expression material in the South Pacific, improved processes for identifying problems in the management of these kinds of materials by cultural heritage organizations must be developed. This includes the development of mutually beneficial strategies and relationships between cultural heritage organizations and indigenous peoples and traditional communities. Today, there is no general international law or legislative framework for managing traditional cultural materials. This state of uncertainty has produced confusion in terms of how cultural heritage organizations handle their collections. Nevertheless, as cultural heritage organizations work more closely with their indigenous communities, as well as with helpful intergovernmental organizations such as WIPO, this confusion should not be an impediment to foster better, more respectful behaviors and practices.

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