Meeting the Challenges of Intellectual Property Issue in Cultural Heritage: Introducing the IPinCH Project

George Nicholas and John Welch
Simon Fraser University

2008 NATHPO Conference
Washington, DC

Ancient Pictograph

Modern Appropriations

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A Shifting Focus …

from “Who Owns the Past?”

• Focus to date has been on cultural property
• Primarily concerned with things
• Addressed in part by greater participation of Indigenous peoples in the process of archaeology and cultural heritage.
To …

Who Owns the Products of Archaeological Research?

• Focus is shifting from things to intellectual property (information, ideas, knowledge)
• Concern with the products of research (artifacts plus site data, field notes, photographs….)

Appropriating Cultural and Intellectual Property of Native American Peoples
Appropriating Native American Lifeways

German Indians, Karl May Festival

Appropriating Ancient Places and Practices

Puerto Morelos, Yucatan

Non-Indigenous woman with drum, chanting, Uxmal, Yucatan
Marketing the Past

**Southwest/Anasazi**

**MIMBRES GILA MONSTER**

C.A. 1000 A.D.

We found this design in a gift shop in Santa Fe, New Mexico. A series of designs featuring the Zia Sun Symbol was seen in wooden plaques at the airport and the city of Santa Fe. The design is also seen on T-shirts, mugs, and other souvenirs.

**CERAMIC ANALYSIS**

This is a design that has been inspired by the Zia Sun Symbol. It features a geometric pattern that represents the sun and its rays. The design is made from a ceramic material that is fired to a high temperature, giving it a glossy finish.

**KOKOPELLI**

C.A. 1000 A.D.

This design is inspired by the KokoPELLI figure, which is a fertility symbol that is found in the Southwest region of the United States. The design features a figure with a long beard and a hat that is adorned with feathers. It is a popular design that is seen on mugs, T-shirts, and other souvenirs.

**Something New! Earrings**

These earrings are inspired by the Zia Sun Symbol. They are made from a metallic material and feature a circular design with a small sun in the center. They are a popular item that is often purchased as a souvenir.

**New Mexico State Flag**

The flag features a red, blue, and white design that represents the state of New Mexico. The design is simple and has a geometric pattern that represents the sun and its rays. The flag is a symbol of the state and is often seen on T-shirts, mugs, and other souvenirs.

**Appropriating Worldview**

The Zia Sun Symbol
Appropriating the Cultural Landscape

Man Praying, Big Horn Medicine Wheel, Wyoming, 1916

Do-It-Yourself Medicine Wheels

Minton Medicine Wheel, Alberta

Appropriating the Cultural Landscape

Meanwhile, in the arctic...

It's from the Vancouver City Archeology Organizing Committee. We have to take our Inuksuk down. They've trademarked it.

Appropriating Inukshuk
Motivations for Appropriation

- Emotional/Sentimental/Aesthetic Interests
- Historical/Cultural Identity
- Religious/Spiritual Connections
- Commercial Interests
- Political/Territorial Interests
- Scientific/Academic Interests

Nicholas and Wylie,
Archaeological Finds: Legacies of Appropriation; Modes of Response
in press

The Cost of Appropriating Indigenous Intellectual Property

- Loss of access to ancestral knowledge and property
- Loss of control over proper care of heritage
- Diminished respect for the sacred
- Cultural distinctiveness becomes commercialized
- Improper/dangerous uses of special or sacred symbols to the uninitiated
- Loss of confidentiality
- Reproductions replace original tribally produced work
- Loss of artistic control
- Threats to authenticity
- Loss of livelihood
New Challenges: Traditional Symbols for New Products

Confronting a Tidal Wave of Information

- Popular media
- Virtual Museums
- Scientific and historical research
- Open Access/iCommons
- Traditional Use Studies
- Land claims research
- Indigenous Knowledge/Traditional Knowledge dissemination through libraries and archives
- Tribal and Special Interest museums and archives
The Project on Intellectual Property Issues in Cultural Heritage is an international collaboration of archaeologists, indigenous organizations, lawyers, anthropologists, ethicists, policy makers, and others working to explore and facilitate fair and equitable exchanges of knowledge relating to archaeology.

We are concerned with the theoretical, ethical, and practical implications of commodification, appropriation, and other flows of knowledge about the past, and with how these may affect communities, researchers, and other stakeholders.

• Funded by the Social Sciences and Humanities Research Council (SSHRC) of Canada
• SSHRC’s “Major Collaborative Research Initiatives” program
• $2.5 million in base funding for 7 years
• $4 million in in-kind contributions from participating universities, and partner organizations and communities
THE INTELLECTUAL PROPERTY ISSUES IN CULTURAL HERITAGE PROJECT  Theory, Practice, Policy, Ethics

Goals

• To document and analyze the diversity of principles, perspectives, and responses that arise from IP issues in cultural heritage to generate norms of best practices;
• To seek more robust theoretical understandings of the contingencies and complexities of IP issues in cultural heritage;
• To explore legal and customary interpretations of IP in cultural heritage, and how these might be reconciled with research approaches and policy;
• To generate and disseminate evidence-based research that informs discussions of theory, practice, policy and research ethics at local to global levels.

www.sfu.ca/IPinCulturalHeritage/
**THE INTELLECTUAL PROPERTY ISSUES IN CULTURAL HERITAGE PROJECT**  *Theory, Practice, Policy, Ethics*

**Research Questions** include:

- What tools and best practices will assist stakeholders to better understand and negotiate equitable and responsible approaches to IP issues in cultural heritage theory, policy, and practice?

- What forms of legal and/or customary protections apply to cultural knowledge and heritage resources?

- Is there common ground between Western and Indigenous or customary conceptions of IP, and, if so, how can we build policy and practice frameworks thereon? How might they be avoided?

- What are the key elements of successful, equitable resolutions of IP issues?

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52 Team members from 20 universities (Canada, United States, Australia, New Zealand, South Africa, Germany, and Finland):

- 23 archaeologists from diverse subfields
- 9 cultural anthropologists
- 11 legal scholars or lawyers specializing in IP or Indigenous Rights
- 4 ethicists and/or philosophers
- plus: specialists in cultural tourism, museum studies, open-access knowledge, ethnobiology, and other fields
- 10 team members are Indigenous persons

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SELECTED IPINCH PARTNERS

Arctic Studies Center, Smithsonian (Washington, DC) with links to the Tshikapisk Foundation (Innu) and Labrador Inuit Association

Champagne and Aishihik First Nation (Haines Junction, YT)

Gwich’in Social and Cultural Institute (Yellowknife, NT)

Hul’qumi’num Treaty Group (Ladysmith, BC)

International Journal of Cultural Property (West Nyack, NY)

Inuit Heritage Trust (Iqaluit, NU)

Left Coast Press (Walnut Creek, CA)

Mookakin Cultural and Heritage Foundation (Standoff, AB)

National Association of Tribal Historic Preservation Officers (Washington, DC)

Parks Canada (Ottawa, ON)

Prince of Wales Northern Heritage Centre (Yellowknife, NT)

Sealaska Heritage Institute (Juneau, AK)

Social Science Research Council (New York, NY)

Society for Applied Anthropology: Intellectual Property Rights Interest Group (Columbia, SC)

Sto:lo Research and Resource Management Centre (Chilliwack, BC)

T’ondek Hwech’in Heritage Department (Yukon, YT)

White Mountain Apache Tribe (Whiteriver, AZ)

World Archaeological Congress (Adelaide, Australia)

World Intellectual Property Organization (Geneva, Switzerland)

Ziibiwing Cultural Society (Saginaw Chippewa, MI)

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THE INTELLECTUAL PROPERTY ISSUES IN CULTURAL HERITAGE PROJECT  Theory, Practice, Policy, Ethics

The IPinCH model operates at two integrated levels:

- Working Groups
  - providing intellectual direction
  - responsible for interdisciplinary, multi-sectoral research agenda
  - conducting topical research studies on WG themes
  - meta-analysis of Case Study research results.

- 20 Case Studies
  - community-based participatory research approach
  - key elements of IPinCH research agenda locally grounded
  - communities and organizations identify issues, co-develop case studies, review results before dissemination
  - primarily addresses community’s, not researcher’s, needs
  - Field Guide to Community-Based Participatory Case Study Research to be developed

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The Intellectual Property Issues in Cultural Heritage Project

Theory, Practice, Policy, Ethics

Working Groups

Addressing overall project objectives and analysis of metadata for:

- Case Study Research & Analysis
- IP and Research Ethics
- Bioarchaeology, Genetics, and IP
- Cultural Tourism
- Commodification of the Past
- Open Access, Information Systems and Cultural Heritage
- Customary and Codified IP Issues in Cultural Heritage
- IP and Cultural Heritage Sourcebook

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The Intellectual Property Issues in Cultural Heritage Project

What concerns does NATHPO have regarding the appropriation of, or infringements on, cultural and intellectual property relating to Native American cultural heritage?

If you want to become involved
Or would like more information,
Please visit our website or contact us:

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or

George Nicholas (nicholas@sfu.ca)

www.sfu.ca/IPinCulturalHeritage/