



IPinCH

Intellectual Property Issues in Cultural Heritage:
Theory, Practice, Policy, Ethics

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IPinCH Director Meets with Ainu

A recent trip reaffirms the relevance and importance of our IPinCH project. In early October, Joe Watkins and I were invited to speak on cultural and intellectual property issues, and IPinCH, at a workshop at Hokkaido University in Japan. The event was organized by Dr. Hirofumi Kato, and sponsored by the university's Center for Ainu and Indigenous Studies (CAIS). The purpose of the workshop was essentially two-fold. The first was for Joe and me to share some of our knowledge and experiences relating to intellectual property concerns in North America and elsewhere in the world, and to introduce the IPinCH project to the 30 or so Japanese scholars and Ainu representatives attending. The second was for us to learn about Ainu concerns relating to their cultural heritage, ranging from language preservation to cultural tourism to museums and education programs, as presented by Mr. Yupo Abe, Vice President of the Hokkaido Association, and others attending. The Ainu seek to share their culture with others, but also want to become aware of potential issues that other Indigenous groups have confronted.

The Ainu are the Indigenous people of Hokkaido and Sakhalin Island (now Russia). Subject to 150 years of Japanese rule, the colonial history of the Ainu is very similar to that of the Indigenous peoples of North America and Australia. Remarkably, however, they received official recognition as Japan's Indigenous population only in 2008. The Japanese government is beginning to direct resources to develop Ainu-oriented education and research initiatives, such as CAIS, as well as to fund archaeological re-



Ainu Ceremony on Hokkaido University grounds. Photo: George Nicholas, IPinCH Director.

search and traditional use studies at Atsuma and other locations where future construction will impact Ainu cultural resources. There is thus much interest in learning from what has transpired elsewhere in the world with Indigenous peoples regarding the challenges of protecting cultural heritage, establishing research protocols, determining tribal membership criteria, among other needs—and, of course, their intellectual property.

It became clear at the Hokkaido University workshop, and in discussions later with Ainu representatives at the Ainu museums at Nibutani Dam, that there is much interest in developing a collaborative relationship with IPinCH. With the support of the IPinCH Steering Committee, Joe and I will be working with our colleagues at CAIS, Hokkaido University, and several Ainu communities in Hokkaido

and Sakhalin Island to make this happen.

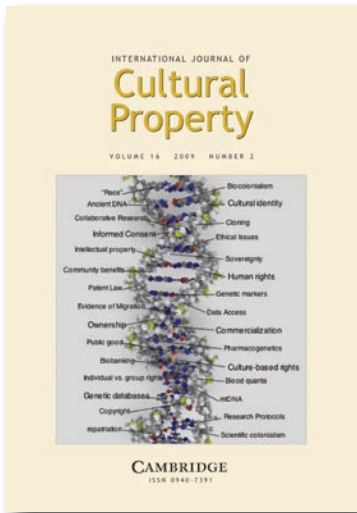
The Ainu are at a critical juncture in their history as they begin to develop new relationships with both Japanese researchers and the Japanese state.

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IPinCH Decodes the Genographic Project



The current issue of the *International Journal of Cultural Property* (16:2) contains a special section on “Decoding the Implications of the Genographic Project for Archaeology and Cultural Heritage,” edited by Julie Hollowell and George Nicholas. It explores the broader ethical and practical implications of uses of ancient and contemporary human genetic information in the context of such studies

as the National Geographic/IBM-sponsored Genographic Project. This publication is based on transcripts of a panel discussion convened by Hollowell and Nicholas at the 2006 Chacmool Conference in Calgary, Alberta, and sponsored by the World

Archaeology Congress and IPinCH.

Seven panelists, ranging from a molecular anthropologist to a bio-ethicist to a community activist discuss some of the salient issues relating to bioarchaeology, in the hope of moving beyond a polarized debate to generate productive dialogue and delineate further questions about intellectual property, cultural identity, and research ethics. The panelists and seven invited commentators addressed such topics as access to samples, permissions for research and analysis, ownership and dissemination of data, and potential consequences of archaeological or historical interpretation of results.

IPinCH team members participating were panelists **Sheila Greer** (Champagne and Aishihik First Nations); **Daryl Pullman**, (Memorial University), and **Dongya Yang** (Simon Fraser University), and commentators **Jane Anderson** (Law and Society Program, New York University School of Law, WIPO) and **Dorothy Lippert** (National Museum of Natural History). More information on this special issue and on the *International Journal of Cultural Property* is available at: <http://journals.cambridge.org/action/displayJournal?jid=JCP>

UPCOMING CONFERENCE INFORMATION

The growing challenges that globalization brings impact anthropologists and the people they work with, especially when intellectual property, cultural heritage, and Indigenous peoples are in the equation. IPinCH student associate Daniel Sherman, a Masters of Applied Anthropology student at the University of Maryland, is co-organizing a session on this topic for the 70th Annual Society for Applied Anthropology conference, “Vulnerabilities and Exclusion in Globalization,” in Mérida, Mexico, next March. The session, chaired by Daniel, Maryland Prof. Janet Chernala, and graduate student Jessica Facciponti, is titled “Intellectual Property, Cultural Heritage, and Indigenous Peoples.” Several IPinCH team members will present in the

session, which will focus on solution-oriented papers, addressing issues such as misappropriation, misuse, and commercialization, as well as examples of Indigenous groups seeking tools through intellectual property rights to protect, preserve, and promote, their cultural heritage, traditional knowledge, artistic expressions, and genetic resources.

Information on more upcoming conferences with IP and cultural heritage-related themes is available on the IPinCH website, at www.sfu.ca/ipinch



Daniel Sherman

IPinCH Goes to Japan

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Eventually, IPinCH will track, analyze and contribute theories on developments. Far more exciting, I think, is the opportunity we now have to work directly with the Ainu—and the other communities involved in IPinCH projects—to develop collaborative and community-based initiatives to aid their efforts for fair, equitable, and satisfying protec-

tion and promotion of their intellectual property.

The invitation to meet with the Ainu is but one of an increasing number of requests to IPinCH to provide information and advice on real-world situations that scholars and others are facing around the world. To provide but three examples: members of an American university sports team sought advice on use for a logo

of a rock art image from an area whose original tribes are displaced; an independent scholar sought advice after a Canadian First Nation initially supported her research, but subsequently requested she draft a research protocol curtailing her ability to publish results to limit other First Nations’ access to the findings due to competing land claims; and an archaeologist who is

compiling a worldwide radiocarbon data base and has concerns over the inclusion of certain types of information. Such instances reveal the diversity of IP issues in cultural heritage arising worldwide, which, in turn, provides IPinCH with valuable opportunities to understand more fully the reasons for, and the consequences of, the emergence of these issues.

Michael Asch Profile



As an ethnomusicologist, jazz pianist, and nationally acclaimed anthropologist, Michael Asch is in a unique position to help find harmony in the relationships between First Nations and Canada.

Michael, a University of Victoria anthropology professor and IPinCH team member, is embarking on a project case study that seeks to understand resource sharing resolutions that may be present in historical documents surrounding Canada's treaties. Though absent in the treaties themselves, a framework to resolve current and future intellectual property issues may be found in the negotiations and verbal agreements that led to the written treaties, Michael says.

"I can say now without fear of contradiction, that the written versions of treaties don't comply with what was negotiated," he says.

Michael and his research team, including a post-doctoral fellow and several graduate and undergraduate students, will delve into historical documents surrounding three important treaties: Treaty 4, with the Cree and Salteaux of Southern Saskatchewan, western Manitoba, and southeastern Alberta (1874); Treaty 6, with the Cree of Saskatchewan, Alberta, and Manitoba (1876); and Treaty 11 with many groups in the Northwest Territories (1921). A document describing Treaty 11 negotiations confirms inconsistencies recalled by an elder who signed it: "They were promised no difference to their way of life," says Michael. The research team will look at elders' statements, including those given at court cases and inquiries, the notes of commissioners and their staffs, and other documents, searching not just for inconsistencies between negotiations and written treaties, but commonalities in how agreements were reached.

"I hope this project transcends boundaries," says Michael of the research, though he notes it is too early to know whether the study will lead to improved relations and better mechanisms to negotiate intellectual property issues worldwide.

A former University of Alberta professor and Anthropology Department chair, Michael has had a long and prominent career working with and for Canada's Indigenous communities. After receiving his B.A. in anthropology from the University of Chicago, and his Ph.D. from Columbia University, he worked for the Dene as an advisor during the Mackenzie Valley Pipeline Inquiry in the 1970s, and in their negotiations with the Federal Government in the 1980s. Michael served as an anthropologist advisor with the Royal Commission on Aboriginal Peoples in the 1990s. His interest in his current research grew out of his early career, when he worked with the Dene in Pehdzeh Ki (then Wrigley, NWT).

In 2002 Michael was awarded what is considered the country's most prestigious academic accolade, when he was elected as a Fellow of the Royal Society of Canada in recognition of his work improving economic and political relations between First Nations and Canada. The previous year, he received the Canadian Anthropological Society's Weaver-Tremblay Award for applied anthropology.

Michael's main interest in the IPinCH project is the opportunity it provides to "work with people who are working on how to improve relations with First Nations." He hopes IPinCH's impact is seen not just in public policy, but also with the public itself.

"I see the possibility of reaching a wider audience and communicating the issues and needs," he says.

Latest IPinCH Case Study: Treaty Relations as a Method of Resolving IP Issues

Case Study Leader: Dr. Michael Asch

The written versions of historical treaties between First Nations and Canada are contentious documents, viewed by some Indigenous people as violations of the original negotiations behind the treaties. Yet the negotiations themselves—accounts of which can sometimes be found in elder statements, oral histories, commissioners' reports and other documents—may hold useful clues as to how certain types of resources, including intellectual property, may be shared between First Nations and others. As the principal investigator for IPinCH's newest topical case study, team member Michael Asch and colleagues will delve into these documents relating to three important treaties: Treaty 4, with the Cree and Salteaux of Southern Saskatchewan, western Manitoba, and south-eastern Alberta (1874); Treaty 6, with the Cree of Saskatchewan, Alberta, and Manitoba (1876); and Treaty 11 with many groups in the Northwest Territories (1921). The team will apply historical, oral-historical, and anthropological methods to find aspects of the treaties that may relate to current intellectual property debates, which could lead to frameworks to resolve some IP issues. The study will also contribute to researchers and communities through IPinCH's Knowledge Base, and will likely be pertinent to parties negotiating modern treaties.

IPinCH Website Updated: Faster, More Appealing, Easier to Use

The online world of the Intellectual Property Issues in Cultural Heritage Project is easier on the eyes—and easier to navigate—after a redesign of the website.

Thanks to the excellent work of Cheryl Takahashi, the website's new look is coupled with a more user-friendly interface. A redesigned home page, drop-down menus that allow instant access to better-organized content, and other new features will greet users at www.sfu.ca/ipinch.

Through daily email digests that researchers can opt out of, the IPinCH team will be able to stay posted on the project developments they are most interested in, such as updated forum posts or Working Group discussions.

Logging on is easier: users may log on with their email addresses OR usernames of lastname_firstname—all lowercase. They have the option of changing their usernames by clicking on the "My Account" menu and choosing Edit. "My Account" is also where users can select their own passwords.

The website celebrates the people behind IPinCH, with short team member profiles and pictures included on the home page, and with the ability for users to add their own content and share their stories, publications, and thoughts with the rest of the team. Though adding content is now easier, Project Manager Kelly Fox will always be happy to post content for those who would prefer it (ipinchpm@sfu.ca).



IPinCH Associate Scholar: Dr. Deidre Brown



Literally building on IPinCH's objective of interdisciplinary research is our first Associate Scholar—Deidre Brown, a senior lecturer in architecture at the University of Auckland, New Zealand. Deidre, a descendant of the Ngapuhi and Ngati Kahu tribes, researches and teaches on the history of architecture, Maori and Pacific architecture and art, and museum studies, and also investigates and interprets objects, buildings, and literature, including how narratives have been collected and used. She is also an advisor to national and international committees exploring intellectual property and traditional knowledge. Along with curating art installations, Deidre has authored several books on Maori art and architecture, including most recently *Maori Architecture*, published through Raupo (2009, Penguin) Publishing, which won the Art and Design category in the inaugural Maori book awards. She brings

to IPinCH vast research experience in art, architecture, and Maori culture. Deidre's interests relate to questions regarding the use of myth in archaeological interpretation, benefit sharing and Indigenous participation, the involvement of expatriate groups in heritage projects, and the imprinting of Maori cultural memory through institutional architecture. IPinCH Associates like Deidre can benefit from IPinCH's human and informational resources, while contributing their ideas, expertise, and experiences to the project.

IPinCH Associate Scholar: Dr. Patricia Goff



Dr. Patricia Goff's current SSHRC-funded research explores the political economy of traditional knowledge. Patricia, an Associate Professor at Wilfrid Laurier University in Waterloo, Ontario, will bring this interest to IPinCH, as she joins us as an IPinCH Associate Scholar. Her perspective as a political scientist will also expand significantly the project's interdisciplinary focus. Patricia's research scope is worldwide; her overarching interest involves the challenges international organizations face in accommodating the cultural diversity of their stakeholders. She is currently studying the work of WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. She will bring this experience and knowledge to IPinCH, contributing to our Knowledge Base as well as to debates as a member of our Customary, Conventional and Vernacular Legal Forms Working Group.

Patricia is currently executive director of the Academic Council on the United Nations System and a senior fellow at the Centre for International Governance Innovation. She is the author of 2007's *Limits to Liberation: Local Culture in a Global Marketplace*, and co-editor of *Irrelevant or Indispensable? The United Nations in the 21st Century*, as well as *Identity and Global Politics: Theoretical and Empirical Elaborations*.

IPinCH Student Associate: Kate Hennessy



First Nations and Aboriginal communities in Canada are increasingly looking towards digital media to revitalize their languages and assert control over how their culture is represented. IPinCH Graduate Student Associate Kate Hennessy is both participating in and exploring this movement. As a Trudeau Scholar and Ph.D. candidate in the Department of Anthropology at the University of British Columbia, Kate uses methods of participatory ethnography as she collaborates with communities, providing her skills in recording, producing, and digital media training. Working with the Doig River First Nation in northeastern British Columbia, she is addressing how traditional protocols for care and handling of material culture are guiding new articulations of Dane-zaa rights to control their digital cultural heritage. Kate's doctoral supervisor is linguistic anthropologist Dr. Patrick Moore. She has worked under the supervision of IPinCH

team member Dr. Sue Rowley on UBC's Reciprocal Research Network, an online database of internationally-held Northwest Coast First Nation collections and collaborative digital research environment. Her contributions to IPinCH will include acting as a research team member on our Inuvialuit collaborative community study. Working with Dr. Natasha Lyons, she will provide assistance to Inuvialuit youth videographers as they document an elders' visit to the Smithsonian Institution to view cultural items in the MacFarlane Collection.

PinCHes of News

How Indigenous knowledge fits within intellectual property law is the focus of a new book by IPinCH team member and Com-modifications of the Past? Working Group Co-chair Jane Anderson. *Law, Knowledge, Culture: The Production of Indigenous Knowledge in Intellectual Property Law* was published this year. Written to “demystify key elements of legal discourse, and to illustrate the inner mechanics of an increasingly powerful body of law,” the book evolved from Jane’s Ph.D. research at the University of New South Wales, drawing from her experiences working with Indigenous peoples in Australia, Indonesia, and the United States, and cases from the UK and Australia. Jane is a Visiting Research Scholar at the Institute for Law and Society in the School of Law at New York University.

Legislation that affects both tangible and intangible cultural heritage and law reform is discussed in *Protection of First Nations Cultural Heritage: Laws, Policy, and Reform* (UBC Press), co-edited by Catherine Bell, IPinCH team and Steering Committee member. This is the second volume to come out of the now-complete international Project for the Protection and Repatriation of First Nations Cultural Heritage in Canada, co-directed by Bell and IPinCH Advisor Robert Paterson. The companion volume to *First Nations Cultural Heritage and Law: Case Studies, Voices and Perspectives*, also co-edited by Bell, this new volume focuses on the complex legal and policy environments and key features of Canadian, US, and international laws that influence Indigenous cultural heritage protection in Canada.

In Australia, a national body should be established to set a new framework to promote Indigenous cultural and intellectual property, proposes IPinCH team member Terri Janke in *Beyond Guarding Ground: A Vision for a National Indigenous Cultural Authority*. This position paper expands upon Terri’s 1999 report *Our Culture: Our Future*, which reviewed Australian Indigenous cultural and intellectual property rights. The paper can be downloaded from the Australia Council website: http://www.australiacouncil.gov.au/_data/assets/pdf_file/0018/55611/Beoyond_guarding_ground.pdf

IPinCH associate scholar Deidre Brown has won the Art and Design book category in the inaugural 2009 Maori Book Awards for *Maori Architecture: From Fale to Wharenui and Beyond*. She focuses on the little-known history of Maori architecture, and how Maori-designed structures tell the story of an ever-changing people. Organized by New Zealand’s Massey University, the inaugural *Nga Kupu Ora* Book Awards were used to mark Maori language week and address a shortfall in Maori contributions in other book awards. Deidre is a senior lecturer at the School of Architecture and Planning and the University National’s Institute of Creative Arts and Industries and the University of Auckland, New Zealand.

Contact Us

www.sfu.ca/ipinch

Project Director

George Nicholas

Office: 778-782-5709

Fax: 778-782-5666

E-mail: nicholas@sfu.ca

Project Manager

Kelly Fox

Office: 778-782-8596

Fax: 778-782-5666

E-mail: ipinchpm@sfu.ca

Project Mailing Address

IP Issues in Cultural Heritage Project

Department of Archaeology

Simon Fraser University

8888 University Drive

Burnaby, British Columbia, Canada V5A 1S6

