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DESIS cafe, 21.6.2023

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# Intellectual property rights and Indigenous (digital) cultural heritage

Contradictory foundations?



LAPIN YLIOPISTO  
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# Indigenous cultural heritage

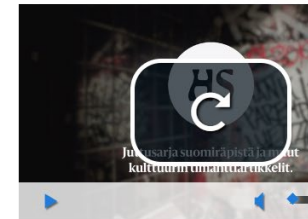
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- The UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage Article 2(1): legacy that is **inherited from the past and bestowed for the future**, but it is also **a process**, constantly recreated by communities and groups in response to their environment, their interaction with nature and their history
- Principles for Responsible and Ethically Sustainable Sámi Tourism (adopted by the Sámi Parliament in Finland on the 24<sup>th</sup> of September in 2018):
  - “The Sámi language, stories, music and the most visible cultural symbols such as the Sámi dress and Sámi handicrafts are closely connected, among other things, with traditional Sámi livelihoods, forming an **inseparable entity** in which each element relies on the others in order to remain vital and, thus, enabling the preservation, development and transmission of Sámi culture to future generations.”
- Questions related to the protection, access, development and management of Indigenous CH through legal means have been gaining increasing attention lately, due to e.g.:
  - Awareness regarding the rights of Indigenous peoples to their CH has seen a remarkable increase globally;
  - Technological developments such as digitalization and AI have greatly enhanced possibilities for protecting, accessing and further developing CH, however these also pose new challenges
- The subjects of these activities often relate to original creativities or inventive innovations, which fall under the domain of the intellectual property rights (IPR) legislation

# Frozen case – IPR protection

## Disney kävi Inarissa tutkimassa saamelaista elämää Frozenin jatko-osaan – Saamelaiset haluavat korvausta

Ryhmä oli erityisen kiinnostunut saamelaisten tarinoista ja perinteistä.



Luetuimmat

JUURI NYT

PÄIVÄ

Picture: Helsingin Sanomat 23.9.2016/Handout

“Disney visited Inari to research Sámi lifestyle for Frozen sequel – Sámi wish for compensation”

“With Frozen it is problematic that Disney has made so much money with it. What part do Sámi have in this?”, Aikio asks. Aikio notes that the original movie is not available dubbed in Sámi. According to Aikio, Sámi should be involved in deciding how their culture is used. “Sámi culture is not something that can be just taken and turned into profit.” Frozen is one of the most financially successful movies for past few years. Aikio thinks that sequel could for example involve more Sámi artists.”

*Interview of Áile Aikio, Helsingin Sanomat 23.9.2016/Translated by Iiris Kestilä*

# Sinaida case – IP licensing

- <https://yle.fi/a/3-11965453>



- Parties: Finnish Museum of Photography and Sinaida's niece, Brazilian artist, American webshop
- Key issues:
  1. Use of the Creative Commons license *CC0 - No Rights Reserved* : a contradiction between disseminating, making available and openly sharing CH this way fostering the open access and open data policies that museums are expected to pursue and preventing possible misunderstandings and abuses
    - "At the time, people thought about opening the collections and making them accessible, but they clearly couldn't think carefully enough about the ethical and moral side of what some kind of commercial reuse could entail", Wallenius commented
  2. No engagement with the Sami community
    - After this accident, the Finnish Museum of Photography has decided to update its practices by regularly getting in contact with the Sámi Museum Siida and consulting widely with Sámi researchers and activists

# IPR's and Indigenous cultural heritage: A troublesome relationship

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- Individual rights vs collective rights
- Private property vs collective property
- Requirement of material expression of an idea in copyright law vs expressions (e.g. TK, folklore) conveyed orally
- Public domain: inventions or creations that either do not qualify for protection or where the IP right has expired vs traditional societies' own custom-based IPR systems
- In contemporary Western IP system, economic interests seem to surpass societal ones vs Indigenous rights' to control their own culture
- Governance: (digitised) materials related to Indigenous cultural heritage are owned (via IPR), maintained or managed (e.g. through licensing) by organisations like State cultural institutions such as museums and archives, that are not representative of Indigenous worldviews and practices



Thank you!

Questions, comments?

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