

Protecting, Accessing and Developing Indigenous Cultural Heritage: *Building a Responsible Framework with IPRs*

Seminar: Digital Cultural Heritage: Legal, Ethical and Technical Considerations

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Professor Rosa Maria Ballardni, University of Lapland

Rosa.Ballardini@ulapland.fi

Iiris Kestilä, Doctoral candidate

Iiris.kestila@ulapland.fi



INDIGENOUS CULTURAL HERITAGE IN EVOLUTION

Questions related to the protection, access and management of Indigenous CH through legal means have been gaining increasing attention lately, due to multiple developments:

1. Awareness regarding the rights of Indigenous Peoples to their CH has seen a remarkable increase globally;
 2. Technological developments such as digitalization and AI have greatly enhanced possibilities for protecting, accessing and further developing CH.
- Yet, the digitalization of CH calls us to rethink both digital and postcolonial. Indeed, these developments bring opportunities, challenges, and completely new considerations especially in relation to legal and ethical use of digital technologies in CH.
 - Beyond the efficiency, a challenge remains: *how to design proper laws and policies for solutions that are respectful of the 'cultural sensitivities' which are by definition intrinsic elements of the heritage of a culture?*



ICH & IPR: A TROUBLESOME RELATIONSHIP

- Individual rights
- Private property
- Requirement of material expression of an idea in copyright law
- Public domain: inventions or creations that either do not qualify for protection or where the IP right has expired
- In contemporary Western IP system, economic interests seem to surpass societal ones → Indigenous culture appropriation are not necessarily forbidden by the current IP system

- Collective rights
- Collective property
- TK and expressions of folklore are often conveyed orally or through physical action
- Public domain: traditional societies' own custom-based IPR systems might understand PB differently
- IPR's economic focus might be in contracts with Indigenous rights' to control their own culture

AT THE HEART OF THE PROBLEM..

..there is the need to strike a balance: when it comes to Indigenous CH regulation, (Western) *IP law* and (Indigenous) *ethics* are naturally interlinked and, as such, should be approached separately (but they are not).



” IPR VS INDIGENOUS EHTICS: SOME EXAMPLES...



In this case the CC BY 4.0. license is being used, however, different organizations may use different licensing schemas

Commercial use is not explicitly denied

Rights to the photographs often belong to non-Sámi persons or organizations



DOWNLOAD IMAGE (500 X 315)

Material usage rights



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LESS ▲

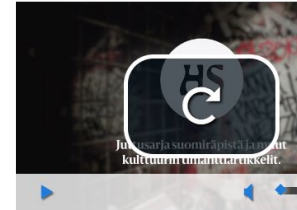
An example of the archive materials displayed in the service developed by Digital Access to Sámi Heritage Archives

Intellectual property rights?
"The user is responsible of respecting copyright etc..."

Often legislation leaves gaps in terms of protection of CH, however, sometimes guidelines offer sufficient protection. E.g. photographs of private persons must not be used in marketing or advertasing (based on ICC Marketing Code).

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 succesful 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



MARRIAGE COUNSELLING

What can we learn from the Frozen case? We need to consider (at least):

- Informed consent → should this commonly known principle be applied also to situations where cultural heritage is being commercially used?
- Involvement → "you cannot just take something", there needs to be real cooperation based on consent (this was corrected with the sequel)
- Returning results to the community → Indigenous groups whose CH is used should benefit from that! E.g., with the case of sequel, film was dubbed into Northern Sámi thus making it possible for Sámi to enjoy it with their own language

→ Intellectual property law has been considered insufficient in terms of Indigenous cultural heritage: can ethical guidelines fill the gap?



HOW TO SAVE THIS MARRIAGE?

INTRODUCTION

ABOUT THE ETHICAL GUIDELINES

WHY DO WE HAVE ETHICAL GUIDELINES?

WHAT IS CULTURAL HERITAGE?

ETHICAL GUIDELINES

GENERAL PRINCIPLES REGARDING THE USE OF THE SEARCH SERVICE

DIFFERENCES BETWEEN KNOWLEDGE SYSTEMS

BUILDING RELATIONSHIPS TO ENSURE THE RESPECTFUL USE OF ARCHIVAL MATERIALS

CONSIDERATION OF INTELLECTUAL PROPERTY RIGHTS, USE AND ACCESS

Ethical Guidelines

Introduction

About the ethical guidelines

These guidelines feature some of the common notions brought up in different ethical guidelines drafted by Indigenous Peoples internationally. The guidelines are directed for non-Sámi users of the search service. Common contexts for the use of cultural heritage include, for example, tourism, research and archiving. However, other users are also invited to acquaint themselves with the guidelines. The guidelines are presented to guide the user in engaging in the culturally responsive use of Sámi archival materials. However, the user should be aware that ultimately, each community and context of use is unique. The recommended best practices will need to be interpreted contextually.

Why do we have ethical guidelines?

Several Indigenous Peoples around the world have drafted ethical guidelines for the use of their cultural heritage materials. There have been cases where, for example, cultural

- In the Digital Access to Sámi Heritage Archives-project ethical guidelines were developed in order to advice on the use of cultural heritage materials with the focus on previously mentioned points
- Guidelines were "tested" in different workshops, conferences and pilots and altered based on the comments received
- While changing laws is a slow process, the ethical guidelines can (perhaps) prove to be a flexible instrument in enhancing Indigenous rights to cultural heritage.

REFERENCES

- Rosa Maria Ballardini, Heidi Härkönen and Iiris Kestilä, “Intellectual Property Rights and Indigenous Cultural Heritage - Balancing Interests via a User-Centric Approach” in Marcelo Corrales (ed.), Helena Hapio (ed.), Margaret Hagan (ed.), and Michael Doherty (ed.) *Integrating Business, Design, & Legal Thinking with Technology*, Edward Elgard, October 2021
- Kamrul Hossain and Rosa Maria Ballardini, “PROTECTING INDIGENOUS TRADITIONAL KNOWLEDGE THROUGH A HOLISTIC PRINCIPLE-BASED APPROACH”, [Nordic Journal of Human Rights](#). 39, 1, p. 51-72 (2021)
- Iiris Kestilä, Rosa Maria Ballardini, Taina Pihlajarinne and Jukka Mähönen, Management of intellectual property rights related to digital collections of Indigenous cultural heritage (work in progress)



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FOR THE NORTH
– FOR THE WORLD

GIITU, NAKURMIK,
KIITOS, TACK,
THANK YOU,
СПАСИБО, ТАКК

("Thank you" in some Arctic languages)

Photographs:

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