

How do our ethical codes relate to safeguarding intellectual property?

Response to presentation by Wend Wendland from WIPO¹

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Professor Kallinikou ended her presentation a moment ago by stating that regulations about intellectual property issues should be based on mutual respect, fairness and justice². I wholeheartedly agree with her on that. These three values might be used as cornerstones for our lives - both professionally and privately.

Much of what Wend Wendland has spoken about today is also relevant to ideals of respect, fairness and justice. Mr. Wendland compared legal solutions for museum access and use of Intellectual Property with a more general approach of professional guidelines.

I don't have a law background myself, but rather training as a social anthropologist, together with several years of museum experience. When I see a dilemma tied to any aspect of my professional work, I normally don't go directly to legal sources, but rather try to envision how my professional training is relevant towards finding a solution to the problem. Therefore, when I received the preliminary draft of Mr. Wendland's presentation a few weeks ago, I decided to address only part of his material. I aimed to get an overview of how relevant professional organizations interpret the ethics of Intellectual Property, rather than what laws have been adopted.

My approach also echoes recent discussions within ICOM: During the June 2005 ICOM Advisory Committee meeting in Paris, three presentations were given on the UNESCO

¹ Wend Wendland: *Safeguarding Cultural Heritage, Protecting Intellectual Property and Respecting the Rights and Interests of Indigenous Communities: What Role for Museums, Archives and Libraries?* ICME Papers 2005. <http://icme.icom.museum>

² Dionyssia Kallinikou: *Protection of traditional cultural expressions or expressions of folklore.* ICME Papers 2005. <http://icme.icom.museum>

"Preliminary Draft Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions". ICOM president Allissandra Cummings commented that it is perhaps the ICOM code of ethics which can best act as a reference for museum professionals in hindering the unlawful trade of cultural properties, and that UNESCO might take professional ethics into account when shaping such a convention.

In the following, I will try to present how a number of professional organizations look on codes of ethics for their members, and how these codes relate to the theme of Intellectual Property.

First, what is a museum code of ethics? According to the UK Museums Association, "a code of museum ethics represents and articulates a set of consensual values and standards of behaviour that are agreed at a particular time to define a relationship of trust between the museum and the communities it serves."³ This might be another way of describing the aforementioned ideals of mutual respect, fairness and justice between museums and the outside world. However, a code of ethics is *codified*, a set of principles which define these ideals in a concise and systematic manner.

The ICOM code of ethics places weight on respect also, stressing the importance of symbolic values:

"Museum collections reflect the cultural and natural heritage of the communities from which they have been derived. As such they have a character beyond that of ordinary property which may include strong affinities with national, regional, local, ethnic, religious or political identity. It is important therefore that museum policy is responsive to this possibility."⁴

An attitude of respect is particularly important when museums display material related to religious beliefs, according to the ICOM code: "Human remains and materials of sacred significance must be displayed in a manner consistent with professional standards and, where known, taking into account the interests and beliefs of members of the community, ethnic or religious groups from whom the objects originated."⁵ In addition, museum professionals working with communities of today need to have an understanding how cultural values interrelate between communities. Material from contemporary groups should therefore "be used to promote human well-being, social development, tolerance, and respect by advocating multi-social, multicultural and multilingual expression."⁶

However, nothing in the ICOM code of ethics specifically addresses Intellectual property as such. The closest I have been able to discover comes from a policy statement on *Museums and Cultural Diversity* by the *ICOM Working Group on Cross Cultural Issues* in 1997:

"While information technologies will provide better access to services and cultural exchanges, several issues such as the possible global exploitation of

³ http://www.museumsassociation.org/asset_arena/text/cs/code_of_ethics.pdf

⁴ <http://icom.museum/ethics.html>

⁵ <http://icom.museum/ethics.html>

⁶ <http://icom.museum/ethics.html>

intellectual and cultural property rights [...] are yet to be addressed within the context of museums, culture and development. Proactive measures are needed [...]"⁷

If we look at examples of anthropological-oriented codes of ethics, we also notice that direct focus on Intellectual Property may be lacking, even though there often is mention of mutual respect in professional work. The ' Briefing Paper on Remuneration to Subject Populations and Individuals' by Gail EWagne from the *AAA Committee on Ethics* is one such case in point. Wagne writes that "researchers should be alert to proper demands of good citizenship or host-guest relations. [...] consult actively with the affected individuals or group(s), with the goal of establishing a working relationship that can be beneficial to all parties involved. [...] acknowledge their obligation to reciprocate with people studied in appropriate ways."⁸

One mention of Intellectual Property rights tied to Anthropological work is in the *Museum Ethnographers Group Guidance Notes on Ethical Approaches in Museum Ethnography*:

"It is important to be clear about exactly what is being acquired when an acquisition is being made. Does it include the right to use designs on objects or photograph the object, or reproduce the object for sale, as well as the physical object itself? In other words, the whole notion of intellectual property rights should be considered."⁹

In the *Ethical Guidelines for Good Research Practice*, the UK-based *Association of Social Anthropologists* also discusses the intellectual property rights of participants:

"It should be recognised that research participants have contractual and/or legal, interests and rights in data, recordings and publications, although rights will vary according to agreements and legal jurisdiction. [...] It is the obligation of the interviewer to inform the interviewee of their rights under any copyright or data protection laws of the country where research takes place"¹⁰

Not all organizations believe that a code of ethics is the best way for giving guidelines for professional practice. Perhaps keeping up with current debates in the discipline is more important? The European Association Of Social Anthropologists seems to feel this way. The *EASA* web pages state that the *EASA Ethics Network*

"agreed that many current debates unduly emphasized the institutionalization of ethics into the form of (semi-) professional codes of conduct with their attendant procedures for peer reviews, but under-emphasized the constant renegotiation and re-contextualization of ethical thinking and standards. These, however, should be the hallmarks of anthropological analysis."¹¹

⁷ <http://icom.museum/diversity.html>

⁸ <http://www.aaanet.org/committees/ethics/bp2.htm>

⁹ <http://www.museumethnographersgroup.org.uk/ethglines.htm>

¹⁰ http://www.theasa.org/ethics/ethics_guidelines.htm

¹¹ <http://easaonline.org/networkspage.htm>

The most thorough discussion I have seen about protecting the rights of informants comes from the UK-based Oral History Society. In the online article *Copyright and Oral History: Is your oral history legal and ethical?*, Alan Ward says that "interviewing people serves very little purpose unless the interviews become available for use. It is unethical, and in many cases illegal, to use interviews without the informed consent of the interviewee, in which the nature of the use or uses is clear and explicit."¹²

The Ethical Guidelines of the Oral History Society state specific tasks that the interviewer should perform when collecting material from informants:

- To inform the interviewee of the arrangements to be made for the custody and preservation of the interview and accompanying material
- To indicate any use to which the interview is likely to be put.
- To record in writing (and later carry out or convey to others) any restrictions on use or other conditions which the interviewee may require.¹³

The guidelines further stress the importance of clarifying copyright ownership in interviews. For example, does a waiver from an informant provide unlimited use for the material collected? The Oral History Society says no: "Even where the interviewee agrees to transfer copyright to the interviewer or to an institution, copies of substantial portions of interviews should not be passed to others without the knowledge of the interviewee."¹⁴

After looking through these various ethical codes, I still have gotten little help in learning how we might address the intellectual property rights of groups contra individuals, or of how the existing material in our collections might ethically be exhibited or used. How can we 'do the right thing' in respecting intellectual property rights here? One example might illustrate an attempted solution:

The London Horniman Museum exhibit *African Worlds*¹⁵ contains a number of video segments illustrating African history, intangible heritage, religion etc. When I visited the museum a few years ago, I noticed signs beside several of the videos saying that the museum has been unable to discover who the relevant rights holders were, and requesting visitor help in identification. Although the signs detracted from the esthetic quality of the exhibition, they simultaneously raised the atmosphere to a meta-level, where both visitors and employees were involved in ethical evaluation. I consider this to be a positive step, even though I suspect that similar questions could also be raised about many other objects/recordings/knowledge in both the Horniman Museum and most other museums around the world.

I feel that having a collection of both *best practice* examples and *ethical dilemmas* that perhaps don't have any easy solution can be useful for us. The *WIPO Guidelines*¹⁶ that

¹² <http://www.oralhistory.org.uk/ethics/>

¹³ <http://www.oralhistory.org.uk/ethics/ethics.html>

¹⁴ <http://www.oralhistory.org.uk/ethics/ethics.html>

¹⁵ <http://www.horniman.ac.uk/>

¹⁶ <http://www.wipo.int/tk/en/folklore/culturalheritage/index.html>

are currently being compiled are a good start on this. However, these are not the ultimate answer to how we, as ICME or ICOM members, can address Intellectual Property issues with confidence.

My question for ICME is, then,

- Should we encourage the future revision of the ICOM code of ethics to encompass also Intellectual Property issues?
- Should we work towards greater collaboration between WIPO and ICME (and ICOM in general) in order to increase our professional competence in Intellectual Property issues?

My suggestion is that we say YES to both questions.