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and Audiovisual Archives

Internationale Vereinigung der  
Schall- und audiovisuellen Archive

Association Internationale d'Archives  
Sonores et Audiovisuelles

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Memories are what we are made of. Memory is the one clue we have to the past. What we remember and how we remember is very selective as to who we are. In most Third World countries, memories are an important aspect – and have become a valuable source – of information that links the past to the present. Oral histories and oral traditions have been passed on for centuries and have begun to be referred to as our ‘living archives’. These ‘living archives’ of the Third World are in juxtaposition with those of the First World, where an archivist has become the custodian of the record or document progressing through its lifecycle.

The conference in September in Pretoria paid tribute to these memories. We heard stories from South Africa, Nigeria, Australia, and Jamaica, and came to realise that our responsibility to archiving is so much more than technology, preservation, or the theory of archiving. We, as archivists, have to take responsibility for these stories, as the oral histories and oral traditions might be fading away sooner than we realised. Sean Field, in his keynote address, warned against the ‘freeze-dead’ of stories that so often happens in our archives. But if we were to enter into ‘dialogues with storytellers and various audiences, possibilities for keeping people’s stories alive and expanding archives would be increased.’

The conference gave an interesting overview of ‘Memories and Society’, and a selection of the papers have been chosen for this edition. Grace Koch looked at recognition of Native Title rights for the Indigenous peoples of Australia, and how this has changed the way libraries and archives deal with the documents they hold, by and about Indigenous people. From South Africa, Renate Meyer relates how stories provide invaluable material on what people remember and forget about living in this country, in her paper about the illegal liquor trade during the apartheid years. Wend Wendland from WIPO dealt with the very complex issues of ‘traditional knowledge systems and cultural expression’, which are under threat from modern society. *Ekofisk I*, by Lars Gaustad, is an interesting case study of the first oil field in the North Sea and documentation of this ‘industrial cultural heritage memory’.

I wish you well for 2004, and hope to see you soon – at our next annual conference, in Oslo.

I am writing this letter in my hotel room in Kingston, Jamaica. Albrecht Haefner, Dietrich Schueller and myself are participating in the First Caribbean Audio Visual Information Conference, organized by our distinguished colleagues Elizabeth Watson and Maureen Webster Prince of the National Library of Jamaica. It's a natural continuation of what was presented and discussed at our Annual Conference in Pretoria, only on a more regional level. The audiovisual heritage of the Caribbean is obviously in danger and our task as consultants is not easy because of the lack of funding in this region. But the energy and the optimism of our hosts are encouraging.

After the seminar in Mexico City this spring, it is the second time this year that I am participating in that kind of event. I must say, and this is my personal opinion, that we could still improve our way of planning and actualising these seminars. It begins with co-ordination between the NGOs that are participating in the event. Everyone prepares their programme without knowing what the others are presenting. And normally we do not know what kind of audience we will have. This is a particular handicap because the programme could be very different if you were speaking to staff of broadcasting archives, librarians, archivists, or researchers.

But the biggest problem is obviously that the technology we should reasonably recommend is not within the means of most of the institutions in these regions. And I have the impression that the manufactures do everything except develop solutions that institutions with lower budgets can afford. But as our colleague, the well-known expert Jim Lindner, said this morning in his lecture, manufacturers simply do not consider archives economically interesting as clientele.

Another interesting observation from Jim Lindner is that once our audiovisual documents are digital files, they join a much larger community of information of different kinds and therefore a different market. There are only two problems with this:

1st: how to transform our large holdings of analogue and digital audiovisual documents into file form; 2nd: these files are much "heavier" than nearly every other element of digitised cultural heritage. The audiovisual archives community has primarily to work on the first problem; the second will probably be resolved by the development of storage techniques in the computer world.

During the debates in Kingston I was reminded of a key phrase in the well-known TC 03 document (The Safeguarding of Audio Heritage: Ethics, Principles and Preservation Strategies): "We recommend an unhurried strategy for the digitisation of analogue documents". It seems contradictory, but we can admit that we should

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keep both strategies in mind: get rid of a specific audiovisual technology, and preserve the analogue technology as long as possible. We should not forget that magnetic tape audio technology survived for more than 50 years, and that millions of machines and spare parts must still be around. If we systematically protect this material and avoid its being destroyed, we will have at least another 50 years to resolve problem number 1. In the video domain things are obviously more urgent. But VHS, even if we all agree that is not a good format, has been so popular for a long time that machines and spare parts will still be available for a time, probably longer than all the current digital formats.

This was quite a busy year with a lot of travelling for the board, some of our experts and a large part of our membership. The end of the year is approaching and I would like to wish you all everything of the best for the coming year 2004.

Kurt Deggeller  
November 2003

## Memory, Knowledge and Power: Can Archives Keep People's Stories Alive?

*Dr Sean Field, Centre for Popular Memory, Historical Studies Department, University of Cape Town*

*Keynote speech given at the IASA Conference, Pretoria (City of Tswane), 2003*

### Abstract

Archives do not serve society in a neutral manner. There are power relations between knowledge forms within and outside archives. I define memory, explore the links between memory, myth and identity, and reflect on the evolution of my thinking about archives. I argue that archives often 'freeze-dead' people's stories. Archivists should never lapse into approaching recordings as separate objects that no longer have a relationship to the person who told or performed the story. Also, the traces of memory in archives are not static. We must understand the place of myths in people's memories and in archives. The importance of conservation is acknowledged, but I argue for the need to increase both public access and dissemination. While archives own recordings of people's stories, they usually do not own people's stories. This conceptual slippage exacerbates the separation between storytellers and archives. By developing dialogues with storytellers and various audiences, possibilities for keeping people's stories alive and expanding archives are increased.

### Introduction

The world-renowned oral historian Allesandro Portelli has argued that in the dialogue between interviewer and interviewee<sup>1</sup>, the expert on that person's life story is not the researcher but the interviewee. It is we, the researchers, who have a lack of answers to questions, or have insufficient knowledge of particular research topics. It is precisely our lack of knowledge that makes us ignorant, and it is this ignorance that propels us to do research. It is a power-knowledge relation that academic researchers all too often forget and, I will argue in this paper, it is a relationship that many archivists also forget. However, by acknowledging this power-knowledge relationship it also means that we have to find ways of validating popular forms of knowledge within the academy and the archive. What should be obvious is that the taken-for-granted status of the academy and the archive as sources of intellectual or primary knowledge should itself be the object of critical analysis. The starting point for this paper is to acknowledge that power relations between archives and forms of knowledge within and outside the archive do exist. This acknowledgement should conceptually explode myth-laden notions of the academy and the archive as atomized, enclosed spaces of knowledge serving society in a neutral manner. Unfortunately, 'should' is used rarely enough when

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it comes to challenging myths, especially those that have been ingrained into institutional practices over many decades. As Michel Foucault once wrote,

... we should abandon a whole tradition that allows us to imagine that knowledge can exist only where power relations are suspended ... We should admit rather that power produces knowledge ... that power and knowledge directly imply one another; that there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations.<sup>2</sup>

For those less theoretically minded, don't worry, I am not going to sprout endless quotes from Foucault and Derrida at you in this paper. I am just an oral historian who happens to like dabbling in social theory. It is, however, my intention to take this key Foucaudian insight and to begin to unravel some of its implications for doing memory-work and archival-work. My central guiding question is how do power-knowledge relations shape the recording and archiving of people's stories? And by people's stories, I especially mean the people who are usually marginalised from the academy, the archive, and mass media. I also mean people's stories as they are produced through the spoken word, the written word, music, and through images. This paper is shaped around my responses to four questions. These questions are as follows:

- Firstly, what is memory?
- Secondly, why are memory, myth and identity significant?
- Thirdly, why do I have nightmares and dreams about the archive?
- And lastly, can archives keep people's stories alive?

## **What is memory?**

Pause for a second, and allow yourself to imagine life without any memory. You would not know how you got to this time and place: who your family and friends are; and where you have worked or what work you have done. In fact you would not know who you are. This is memory in the social or cultural sense. Memory in this sense is central to the construction of ourselves and our identities. But we should also include habitual memory, as shaped by the executive functions of the brain. If you lost this memory capacity, you simply would not know how to walk, or move your arms, and ultimately the most basic of bodily functions would not be possible. Bluntly put, life without memory in both the social and physiological senses is impossible. For the purposes of this paper I will be looking at social memory and in particular the interweaving of popular and unpopular forms of social memory.

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<sup>1</sup> Portelli, 'The Death of Luigi Trastulli'.

<sup>2</sup> . Foucault, 'Discipline and Punish', p.27.

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By popular memory I mean the memories that people recall, erase, forget and over time reshape and reconstruct. By popular memory I also mean memories as they are contained within and outside individuals. Memories cannot only exist within ourselves in isolated interior spaces. We are still fundamentally social beings. We inscribe and attach our memories into the objects, the spaces and places we frequent throughout our lives. In fact, even those memories we feel and experience as being intensely private are shaped by on-going relationships with people and spaces around us. For example, Paul Connerton argues that,

Groups provide individuals with frameworks within which their memories are localized and memories are localized by a kind of mapping. We situate what we recollect within the mental spaces provided by the group. ... No collective memory can exist without reference to a socially specific spatial framework. That is to say, our images of social spaces because of their relative stability, give us the illusion of not changing and of rediscovering the past in the present.<sup>1</sup>

In addition, for people's memories to survive and to be conveyed to others they require language; the language of words, sounds and images. But we must wonder then, given the fundamentally social nature of memory, is it even possible to talk of 'our memory'? Nevertheless, I think we can talk about 'our memories' because both individuals and groups need some sense of ownership over their memories in order to maintain a stable sense of self and identity. This sense of ownership is probably part real and part illusion, but as I will argue later, this is a necessary myth for individuals and groups to sustain identity.

At a more rudimentary level, what are our memories made of? Again, allow me to ask to you pause: take yourself back to your childhood, the time before you entered formal schooling, and let me ask, can you remember your first day at school? Can you describe those first days and weeks of entering the world of schooling? What did my questions evoke in you? I suspect what emerged was a mixture of feelings and thoughts, and most likely the first things to be evoked by my question were images; images of that time and place in your life. In short, the raw material of our memories is composed of images, feelings and thoughts. Or, to put it differently, these images, feelings and thoughts you sense are mental traces of your past. As Connerton puts it,

...literal recall is very rare and unimportant, remembering being not a matter of reproduction but of construction; it is the construction of a 'scheme', a coding, which enables us to distinguish and therefore to recall.<sup>2</sup>

Strictly speaking, then, memories are not experiences; experiences happen in the here and now; and experiences are always mediated into memory through

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<sup>1</sup> Connerton, 'How Societies Remember', p. 27.  
<sup>2</sup> Connerton, 'How Societies Remember', p. 27.

several lenses such as language, schooling, mass media and so on. We have no direct access to our past experiences. In contrast we can access our memories but these memories are not like photocopies kept in a filing cabinet. Memories are present-centered, socially constructed traces of past experiences. But how can we access these traces of memory?

For the oral historian, people's memories are confronted through their spoken words, sentences and stories that are formed to convey memories in an intelligible manner to the interviewer. For the art historian it might be through artistic representations: through painting, drawing, sculpture, and so on. For historians working on music or dance, it will be a different set of representations through compositional notation and choreography. In a sense, all memory is performed, but I would prefer not to over-play that form of analysis, as it carries the risk of suggesting that all memory is artificial. Conversely, amongst historians an empiricist view of the past is very common and this approach tends to consider all forms of memory as unreliable and flawed, with fictional elements. It is this relationship between 'true' and 'false', or 'fictional' and 'non-fictional' traces of memory that I will explore by posing the question:

### **Why are memory, myth and identity significant?**

It is commonly assumed within the academy that people's memories are merely unreliable and therefore not worthy of study, let alone of archiving. The research practices that flow from this assumption are disempowering, and it is an assumption that still drives much of academic research. By approaching memory in this conventional scientific or artefactual manner one runs the risk of excluding a wealth of information,

which is arrogantly deemed emotional, subjective, nostalgic or unmeasurable. If you are only looking for facts, then people's memories will sometimes give you facts and other times they will not. But if you are trying to understand how and why people believe what they believe, why they think what they think, and most crucially why people act in the way they do, then people's memories are of vital significance. Over the past two decades, researchers from a wide range of disciplines have challenged conventional scientific assumptions about memory.

In the South African context, for example, the work of oral historians such as Isabel Hofmeyer and Belinda Bozzoli have shown how people's life strategies for survival and the telling of gendered oral stories are crucial to understanding communities and spaces.<sup>1</sup> And, as regards local cultural forms, the anthropological work of David Coplan on township music and township theatre reaffirmed the validity of these popular forms of performance and knowledge.<sup>2</sup> Moreover, the

<sup>1</sup> Bozzoli, 'Women of Phokeng' and Hofmeyer, 'We spend our years as a tale told'.

<sup>2</sup> Coplan, 'In the Township To-night'.

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emergence of African history as a legitimate area of academic study would probably not have been possible were it not for the work of researchers using oral tradition and oral history techniques.<sup>1</sup> More recently, the work of visual historians such as Patricia Hayes and Ciraj Rassool has shown the importance of photographs, both colonial photographs and family albums in communities, as legitimate historical texts to be analysed and represented.<sup>2</sup> So, then, researchers can begin to understand people's memories through oral, written, visual or performative texts. Each medium and form of text poses its own interpretative challenges, but memories are nevertheless socially constructed fragments of people's past experiences, which should be approached as legitimate research texts in their own right.

Analyzing these textual forms of memory across disciplines poses the challenge of how to interpret myths. By myths I do not merely mean things that are false or fictional, but rather myths that are internalized or created in people's memories and provide meaning over time. As the historian and novelist Marina Warner argues,

In common usage, the word myth invites dissent, implying delusion and falsehood. But ... myths are not always delusions, deconstructing them does not necessarily mean wiping them, but that they can represent ways of making sense of universal matters ... and that they enjoy a more vigorous life than we perhaps acknowledge, and are more of an inspiration and influence than we think.<sup>3</sup>

In my view, it is particularly the interpretation of social agency, and how people's actions are shaped by their memories, that reveals the significance of myths. When people tell stories about the past, sometimes their motive is to 'tell as it was', or to 'capture the past', but very often the stronger motive is to convey memories in a way that gives meaning. As Portelli has argued, '... memory is not a passive depository of facts, but an active process of creation of meanings'.<sup>4</sup> For example, in the following audio clip the interviewee talks about community life before being forcibly removed from the District Six community in Cape Town.<sup>5</sup>

**AUDIO CLIP:** *Was a wonderful time. (Interviewer: It just shows money can't buy everything, hey?) No man, money can't buy everything today. We were happy. We were happy children. We were really happy. (Interviewer: Even though you didn't have everything money can buy?) No. Even though we didn't, although we didn't have everything. And now, it's food sometimes and grand church clothes. But our life was happy. And our parents were happy people. No fighting, only here and there you would hear that a man hit a*

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<sup>1</sup> 'African Studies', a special edition on Western Cape oral histories.

<sup>2</sup> Hayes and Rassool in 'Kronos'

<sup>3</sup> Warner, 'Managing Monsters', pg. xii/xiii.

<sup>4</sup> Portelli, 'The Death of Luigi Trastulli', p. 52.

<sup>5</sup> Field, 'Lost Communities, Living Memories'.

woman, or the woman was fighting, or they drink also – but it was in every home like that. Those days, we were Christian, the people were really church-going people, the Muslim people were, we were all one community living together, Muslim and Christian together. Never a argument over religion.<sup>1</sup>

The recording of people's stories highlights tensions between historical truth and popular meaning. Most storytellers tend to attach greater value to memories that are meaningful and useful. And in the process myth-laden memories often have a greater impact on people's actions than do memories that are factually true. However, there is no guarantee that people's agency will be positive or progressive. And therefore, the political content of people's agency is never certain and cannot be glibly read from their economic condition or identity.<sup>2</sup>

When people strive to forge meaning through storytelling, the storyteller is consciously and unconsciously constructing a sense of identity. A sense of identity that is dependent on a broader social world that hears, sees, reads and witnesses these stories being told and performed. The storyteller will often be driven by the desire for a true, stable and coherent identity. Unfortunately, we can only reach this sense of pure or complete identity in myth. And the reason why an identity is never complete, never pure and never fixed is because identity is not an object. Rather, identity is fundamentally an open-ended processes of becoming.<sup>3</sup> We all, including we middle class intellectuals, have times when we mythically believe our identity to be complete in order to help us act in confident ways. These are, as Thompson and Samuel put it, 'the myths we live by' or, in other cases, psychologists have written about our need for 'self sustaining myths'.<sup>4</sup> The complex intertwining of memory and myth is shaped by many social relationships. For the sake of brevity I want to indicate quickly just four relationships that shape the process of identity construction:

- **Firstly, the past-present relationship:** People remember the past in ways to help them deal with their fears and needs in the present and their hopes for the future. They often remember the past in a nostalgic way because it gives positive meaning to their sense of identity in the present.
- **Secondly, there is a public-private relationship:** Many of the myths we privately internalise are drawn from collective and public mythologies as constructed in traditions, rituals and, of course, contemporary mass media. How people negotiate this public-private relationship is central to determining which memories and stories remain closed and inaccessible, and what is disclosed to the world.
- **Thirdly, there is a difference-sameness relationship:** All identities require a sense of what is different and what is the same compared with others around us. Memories provide the content to help people distinguish themselves from others and connect with others.

<sup>1</sup> All audio-clips quoted in this article are from collections located within the audio-visual archive of the Centre for Popular Memory. For further information visit: [www.popularmemory.org](http://www.popularmemory.org)

<sup>2</sup> Laclau, 'New Reflections of our time'.

<sup>3</sup> Laclau, 'New Reflections on our time'.

<sup>4</sup> Samuel and Thompson, 'The Myths We Live By'.

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- Fourthly, there is a belonging–displacement relationship: In a particular sense all identity is about belonging. [Note: I am changing this because ‘belongings’ in the plural has only one meaning in English: it means material possessions, eg ‘I packed up my belongings and left town’] But our sense of belonging contains specific needs for safety, connectedness and meaningful location in a particular place. Often this belonging is unfulfilled through experiences of displacement. When our need for belonging is fulfilled, we often describe these in mythical terms as being ‘grounded’, or ‘rooted’, and when we conversely feel displaced, that’s when we say we are feeling ‘rootless’. (If I may insert a short story at this point, Salman Rushdie when faced with a speaker who repeatedly stressed the need for ‘finding your roots’, Rushdie replied, ‘people don’t have roots they have feet’.)

These complex relationships shape what is remembered, how it is remembered, what is silenced or forgotten, and what is expressed and how it is expressed. In many cases storytellers will turn to myth to describe the painfully indescribable, or to explain what they cannot explain. For example, in times of war, on one hand soldiers motivate themselves with the myth of potent invincibility; on the other, the survivors of war and violence often console themselves with the cozy warm images of a distant childhood because the violence of the present is too unbearable.

While myths often help people to reconstruct the past and present in a more comforting manner, in other instances myths also motivate and justify horrific actions: for example, we know for a fact that sexual intercourse with a virgin cannot cure the HI virus, but certain HIV positive men have internalized this myth and have raped very young girls. In this example, memory and myth are shaping people’s actions, with destructive and traumatic consequences.

Over time, people tend to forget or reconstruct memories, especially memories that are too painful or too uncomfortable to bear. At times, in contrast to the myths that I have just been exploring, oral historians encounter brave interviewees who manage to tell stories that are simultaneously truthful, meaningful and painful. In the following oral history extract, the interviewee searches for answers to the tragedy of apartheid’s forced removals:

**AUDIO CLIP:** *Don’t talk about it – I will cry, you know. There is where the trouble started...when... the day they chuck us out of Cape Town, my whole life came to ...there was a change in... you could say not in me...but in many a people. They took away... They will never give it back, they cannot give it back. Even if they give it back to us, we won’t take it. It will never be the same again, it cannot be the same. What did we do that they chuck us out of Cape Town? We wasn’t murderers, we wasn’t robbers like today. What the white man did was wrong, they had everything, everything a person’s heart yearned for. We had nothing, but we were satisfied... they took our happiness from us the day they threw us out of Cape Town. That was my whole life tumbling. I could see my*

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*life in this raw township, you know, far away from family; all neighbours are strangers. That was the hardest part in my life, believe me. (Mrs G J).*

This interviewee not only tells an evocative story about a traumatic period in her life, she also poses critical questions about her life and the problems she has inherited from the past. In their own words, images and performances, people not only tell their stories, they also often try to interpret aspects of their own lives. The common assumption that we, the professionals, are the ones with the power of interpretation, and storytellers are not, is problematic. The storyteller might have a different conceptual vocabulary or style from 'we' the researchers, but we nevertheless need to learn to listen, read and see more sharply, if we are to understand the ways in which people are also interpreting and making sense of their lives. And while sometimes the myths and clichés storytellers use might seem misleading or useless to us, we nevertheless need to understand these myths empathetically from the perspective and the context of the storyteller.

In concluding this section, I want to suggest that one of the central terms in the title of this conference is a myth. Or perhaps I should pose a question: Is society ever possible? Is society a myth? But in terms of what I have argued so far, perhaps the notion of 'society' is a necessary myth to cope with life in the midst of a world of uncertainties. Perhaps all that we can be certain about is that we are feeling uncertain? And perhaps in collectively acknowledging our uncertainties we do construct a society?

### **Why do I have nightmares and dreams about archives?**

Allow me to start with a nightmare: I still have nightmares about the first time I entered the Western Cape State Archives, which is housed on the site of the old Roeland Street prison in Cape Town. This archive, as the archivists there are quick to point out, is not housed in the original prison building. However, it is housed behind the original prison walls. In 1993, exactly a decade ago, I was a young PhD student entering these archives to gain access to specific government documents. There are a number of salient features to my memory of this archive: firstly, those walls, those prison walls, they scream power and control in your face; and those walls and the overall sense of the place felt like, as Foucault would put it, a spectacle of power.<sup>1</sup> The architecture and systems being imposed were intended to tell you emphatically, 'know your place'. To make matters worse, in my memory the behaviour of the security checks and of the archivists all seems very harsh, punitive and prison-like. Although, honestly, I suspect the archivists at the time were very polite and very helpful, these positive aspects I have forgotten, or reconstructed out of memory.

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<sup>1</sup> Foucault, 'Discipline and Punish'.

What remains in my memory is a nightmare vision of control through containment and observation. Over time, images of Jeremy Bentham's all-seeing panopticon have become spliced with my memories of these experiences in that archive. You must also remember that this was 1993, a turbulent year for South Africa in the midst of political transition from an authoritarian regime to democracy.

During that year, I was conducting both my archival and oral history fieldwork to construct a history of the Windermere community in Cape Town.<sup>1</sup> One aspect of this research was the pass law system and its implementation in this community during the 1940s and 1950s. Under apartheid law it was obligatory for all the people classified as 'African' to carry a type of identity document known as 'the pass' or 'the dompas'. For example, in the following audio clip, an interviewee describes her memory of life under the apartheid pass law system:

**AUDIO CLIP:** *A lot of bad things... We struggled with the Pass. The Pass come 1953 I think... I remember they give the papers, pink papers. There comes the section ten from the Pass... If you are not 10 years here in Cape Town, you must go out. If you not 15 years under under employment in one place you not qualified here. If you married and the man is not qualified here, you must go home – ahh, the people struggled very hard with the Pass. The Police come with the van, got dogs in the van... fighting with the people, with the dogs. And when the Pass start, you can't go to the shop. When the police stop you and say "Where is your Pass?", "No my Pass is in the house", they take you, put you in the van with the dogs, you must go and pay...but you've got the Pass! (Mrs A G)*

In contrast, back in the Cape archives, I was also sifting through the documents of the apartheid government's Native Affairs Department. To my surprise I found a document detailing pass law raids on African residents in the Windermere community. The document I found detailed how Windermere residents who were caught without a pass, and who could not pay the fine imposed by the police, were sentenced for a period of imprisonment in the Roeland Street Prison.<sup>2</sup> The same place, 40 years later, where I was sitting reading the document. This was a bizarre moment. It was as if time had moved on, but only to come back in circular motion to the same spot in space. My attraction towards oral history has always been the direct dialogue with historical participants themselves, and conversely my dislike for archiving was the separation forced between historical participants and sources of knowledge about them and from them. Yet, in this archival experience, it felt as if for a brief moment that separation had been bridged, albeit only in my imagination.

For years after, I must confess to developing a jaundiced, overly negative view of archives. But in 1997 I began a new job which, among several responsibilities, required me to look after a small oral history archive at the University of Cape

<sup>1</sup> This was a simple list of pass law detainees in Windermere compiled by officials of the then Native Affairs Department, circa 1955.

<sup>2</sup> Foucault, 'Discipline and Punish'.

Town. What I knew about archiving, especially sound archiving, was severely limited. I saw archives as merely a storage space, managed by frumpy people. But that was before I met Tony Seeger.

Tony, in his quiet, unassuming and brilliantly insightful manner, sparked creative thoughts in my mind about archiving that I had assumed were not possible. How could one refer to the archive as a performative space? How could one talk about the archive needing to be accessible to multiple audiences beyond its physical confines? These are just two of the many points that jolted me.

My process of re-education and rehabilitation began then, and over the past five years has continued through conversations with a range of South African archivists, such as Renate Meyer, Valmont Layne, Sello Hatang, Ilse Assmann, and several others. Prior to my re-education I was aware of the importance of conservation, but not much else. Thanks to all of you for helping me to see the archive differently; thanks for helping me to conjure up dreams about what audiovisual archiving could do and could become. But in re-educating me about the archive, you have also sharpened a tension in my mind, between life and death.

### **Can archives keep people's stories alive?**

The historian Carolyn Steedman argued that, 'The telling of a life story is a *confirmation* of that self that stands there telling the story. History, on the other hand, might offer the chance of denying it'.<sup>1</sup> History in this instance is represented by both academics and archivists. Herein lies my central tension, on one hand I am driven by a passion to listen to people telling their stories, especially marginalized people, and to do this

in ways that will affirm them and empower them; on the other, the ways in which people's histories are recorded, constructed, inscribed, lodged, catalogued and conserved poses risks of undermining or killing off the dynamic qualities of people's stories.

It is in this context that I must admit to having a rudimentary understanding of Derrida's complex text 'Archive Fever'.<sup>2</sup> As should be evident by now, the little I did understand of this text struck several chords for me. In particular, his argument that archival work is shaped by the logic of the 'death drive'. The overarching pursuit for archival conservation, above all else, raises the danger of forms of information being fixed in a timeless and closed-off manner. This ironically a-historical fixing of information means that people's knowledge is dissected, sterilized and frozen-dead for posterity. Derrida also argued that archives are not only institutions located behind physical walls, but are located in multiple sites such as people's homes, classrooms and of course people's minds. I am aware of the controversial nature

<sup>1</sup> Steedman, 'Past Tenses', p. 49.

<sup>2</sup> Derrida, 'Archive Fever'.

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of these ideas, but for the purposes of my argument, I want to interweave these two ideas: that there are struggles between images of life and death in the archive, and that the archive is actually located in many institutionalised and non-institutionalised places of memory.

Many of the myths we live by, such as the ones that help people to tell their stories and to construct their identity, need to be approached sensitively and at times respectfully left alone. However, there are also myths that need to be critically challenged. For example, I began this presentation by saying that it is a myth to see the archive as an enclosed space of privileged knowledge. This myth blinds us from seeing and grappling with the power relations that exist between archives and people's knowledge contained in them. It also inhibits us from engaging with the different audiences who want to have access to that knowledge. Yes, institutional archives should be protected spaces for proper conservation practices to be implemented, but they also need to be open-ended spaces for dialogue between multiple audiences and other places of memory to occur. Yes, most of us correctly believe that the institutional archives we manage contain special or significant forms of knowledge, but in my view this should never be knowledge preserved for the privileged few. Rather, it is our jobs as archivists and academics that are privileged. I have no doubt that many will shudder at my radical views. But are they really so radical, or are they not just basic democratic and human rights ideas applied to the archive and taken to their logical conclusion?

In my view, then, keeping people's stories alive requires us to think about democracy, and when we think about democracy in the archival context then we must ask serious questions about the people who contributed knowledge forms to archives and the audiences we serve. Let us return to the moment of recording: when people tell or perform their story: whether it is through written or spoken words or images, they tell their story to an audience. Yes, how this recording was staged is absolutely critical. But in this instance I want to stress the relationship between storyteller and audience at the moment of telling, and the archival audiences who will receive and use this recording. For example, from our university location, building an archive where both audio and videotaped recordings are all transcribed is a crucial aim. But as I do not need to tell this audience, the transcript is usually a lifeless and flat text, when compared with the audio or audio-visual recording. Given that our archive mainly serves academics and students, the persistent tendency is for our users to only want to read the transcript. Why? It is no doubt that users are partly too busy, or partly too lazy, to or view the actual recordings. The problem also lies in the kind of academic training at universities that pushes reading and particular kinds of observation as the primary ways of learning. Moreover, what kinds of interpretation are possible when only the transcript is being read? What then is the point of even recording oral history interviews and oral performances?

Significantly, the problem is also that our archive as originally conceived was to serve readers, not listeners and not viewers. As many of you will know, with current hardware and software technological innovations it is possible, finances permitting, to provide archival facilities where users can simultaneously read the transcript, hear the audio, view the visuals, and see the sound waves represented. We can also keep people's stories alive by labelling, cataloguing and managing recordings in creative ways, which are more emotionally and culturally sensitive to the storytellers themselves. We can also do more to develop multilingual collections and multilingual forms of access. However, we should never lapse into approaching the recording as some separate object that no longer has any relation to the person who told the story or gave the performance on that recording.

The traces of memory in our archives are not static, and to understand the fluid or dynamic nature of the texts in our archives we must understand myths and the place of myths in people's lives, and the place of myths in archives. All too often researchers say, 'That recording is rubbish, it tells us nothing', but I quickly retort 'one researcher's rubbish is another's treasure trove'. As researchers and archivists, we need to cultivate an openness to confronting the full spectrum of possible interpretations and uses of the texts in our archives.

In our view, at the Centre for Popular Memory, audiovisual archives need to find ways not only of balancing conservation and access needs, but of going further and seriously prioritising the dissemination of people's stories. While I know that there are complex debates among archivists about the merits and risks of digital technologies, certainly in our experience digital technologies present innovative ways of giving our users multiple access points into texts. They also allow quick transfer of copies and extracts from recordings in archives into forms of public representation such as audiovisual exhibitions, radio programmes and film documentaries.

Yet why should audiovisual archives disseminate information? Many oral historians and other researchers have often naively believed that they were giving 'voice to the voiceless' through the research and writing they do. While their intentions might be noble, this is simply not what happens. People are not voiceless. Even the most oppressed and deprived of peoples do express themselves and do, in a multitude of ways, express dissent and disapproval. However, marginalized peoples usually do not have the appropriate access and resources to develop and expand their public voices through multiple forms of media.

I am not only arguing that audiovisual archives need to maximize public access, I am also arguing that archives need to pursue on-going dialogue with the people and the communities whose stories we record and archive. It is especially through these on-going dialogues, often uncomfortable but necessary dialogues, that people's stories can be kept alive. It is not enough to say that the archive is always open to multiple interpretations, when there are no audiences or storytellers talking back at you.

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Audiovisual archives can be set up as performative spaces where multiple audiences and interest groups can engage and debate with the knowledge forms in that archive. The notion of the archive as a performative space can be conceptualised in many ways, but for me, it is the archive as dialogic space of democratic debate that we are striving to create. In addition, through these dialogues professional archivists can help to build community archives in community spaces such as museums, libraries and schools. Through these dialogues we will attract more people to use archives and to lodge their stories in archives. But these dialogues can only be sustained if we prioritize all three of the following elements: conservation, access and public dissemination.

But this is not enough. Allow me to approach the issue from a different angle: while telling one of my classes about the importance of archiving people's memories, a bright student stood up and asked me, 'Sean, is it still popular memory once you have archived those stories?' I gave her a glib response, but her question had unsettled me. In our drive to build an archive of living memories, a crucial element had not been sufficiently acknowledged. In part, her question raised the delicate issue of ownership. As we work to respectfully archive people's memories in ways that will ensure that the passion of the storyteller is retained, we must not forget that these stories do not belong to us. Under most copyright laws, archives have particular rights, which effectively amount to their owning recordings of people's stories, but archives usually do not own people's stories. In this area, I do realize that music archives have a different and more complex set of issues to contend with. Nevertheless, this conceptual slippage from owning rights over the recording to thinking we own people's stories is not only ethically problematic, it is one of the key issues that often concern storytellers before and after the moment of recording. It is precisely this kind of slippage that separates us from storytellers, and in the process raises the danger of archivists being single-minded in their drive towards conservation and control above all else.

In raising the issue of public dissemination, I am also raising the issue of memorialisation. Memorialisation must matter to archivists. For example, recently Renate Meyer, Ilse Assmann and I were fortunate to be able to travel to Rwanda to evaluate a project to record oral testimonies given at their gacaca court process. This project also entails building an audiovisual archive from these recordings. The gacaca court process aims to bring about justice and reconciliation between survivors and perpetrators of the genocide. In the space of 100 days in 1994, approximately 800 000 people were murdered. The Rwandan genocide killers were proportionately five times more efficient at killing people than the Nazis were during the Holocaust.<sup>1</sup>

Finding or creating ways of keeping people's stories alive is for me an ethical responsibility that all archivists, irrespective of their context, need to confront.

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<sup>1</sup> Mamdani, 'When Victims become Killers'

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But the scale of this archival responsibility, when viewed in the context of post-genocide Rwanda, is absolutely staggering. How should we remember and represent the life stories of people who have been murdered, injured or traumatised? How can we archive and memorialize in ways that contribute to preventing future genocide and future authoritarian regimes?

In conclusion, then, the importance of conferences like this is that archives and archivists from many countries will talk to each other and learn from each other. And while it is very important to debate the technical details of archiving, never lose sight of the broader contexts, relationships and storytellers who created the conditions of possibility for change. As historians and archivists we cannot only study or conserve people's memories of change over time; we also need to explore ways of contributing to change. This requires being open to working through the complexities of power/knowledge relations with interviewees, performers, archival users and various communities. But if archives are to contribute to social change, then these dialogues need to be translated into sustainable project partnerships. Through sustainable projects archives can play a role in helping people to empower themselves. And empowerment for me is not merely a rhetorical cliché. Rather, by making meaningful connections with marginalized communities, we can shift these power relations. These meaningful connections can be made by sincere and empathic listening to people telling and performing their stories, and by ensuring that their audiovisual histories are heard and seen by thousands in archives and in the public realm.<sup>1</sup>

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<sup>1</sup> Mamdani, 'When Victims become Killers'

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## References

- Banks, A and Hayes, P (eds.) 2001. Kronos, Journal of Cape History. No. 27.
- Bickford-Smith, V, Field, S and Glaser, C (eds.) 2001. African Studies, vol. 60, no. 1.
- Bozzoli, B. 1991. Women of Phokeng, Consciousness, Life Strategy and Migrancy in South Africa, 1900 – 1983. Johannesburg: Raven Press.
- Coplan, D 1985. In Township To-night, South Africa's Black City Music and Theatre. Johannesburg: Raven Press.
- Connerton, P 1989. How Societies Remember. Cambridge: Cambridge University Press.
- Derrida, J 1995. Archive Fever, a Freudian Impression. Chicago: University of Chicago Press.
- Field, S 1996. 'The Power of Exclusion: Moving Memories from Windermere to the Cape Flats, 1920s – 1990s'. Ph.D Thesis: Essex University.
- Field, S (ed.) 2001. Lost Communities, Living Memories: Remembering Forced Removals in Cape Town. Cape Town: David Philip.
- Foucault, M 1977. Discipline and Punish, The Birth of the Prison. London: Penguin Books.
- Hofmeyer, I 1993. "We Spend our years as a tale that is told": Oral Historical Narrative in a South African Chiefdom. London: James Currey.
- Laclau, E 1990. New Reflections on the Revolution of Our Time. London: Verso.
- Mamdani, M 2001. When Victims Become Killers, Colonialism, Nativism and the Genocide in Rwanda. London: James Currey.
- Portelli, A 1991. The Death of Luigi Trastulli and other stories, Form and Meaning in Oral History. New York: State University of New York Press.
- Samuel, R and Thompson, P (eds.) 1991. The Myths We Live By. London: Routledge.
- Steedman, C 1992. Past Tenses, essays on writing, autobiography and history. London: Rivers Oram Press.
- Warner, M 1989. Six Monsters of Our Time, Managing Monsters. London: The Reith Lectures.

## Voices of the Past Speaking to the Future: Audiovisual Documents and Proof of Native Title in Australia<sup>1</sup>

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*Paper given at the IASA Conference, Pretoria (City of Tswane), 2003*

The recognition of Native Title rights for the Indigenous peoples of Australia has changed the way libraries and archives deal with the documents by and about Indigenous people that they hold. The passage of the Commonwealth Native Title Act (1993) brought about a major paradigm shift in the way collecting institutions handle Indigenous cultural material, because it has now become potential evidence for land rights claims. A whole new set of protocols and procedures had to be devised for management of such material.<sup>2</sup>

In addition to print documents, audiovisual materials often seem to provide evidence in culturally appropriate ways. Legal practitioners have recognized the importance of some of this evidence and have allowed for creative use of audiovisual evidence in court.<sup>3</sup>

This paper will give brief highlights of the movement for land rights in Australia, emphasizing the development of Native Title. It will summarize the procedures involved in Native Title, and will examine how audiovisual evidence is being used now and may be used in the future.<sup>4</sup>

### Land Rights and the Development of Native Title

The land rights movement gained special momentum in 1963, when the Yolngu people of the Gove Peninsula, seeking to be recognised as owners of their land, tried to stop mining by submitting the famous "Bark Petition" to the Australian Government.<sup>5</sup> These documents were the among the first attempts to bridge Commonwealth law the Indigenous laws of the land, and to seek recognition of Indigenous peoples in Australian law. Although the Bark Petition did not achieve its goal<sup>6</sup>, it set a number of events in motion that led to land rights.

<sup>1</sup> Author's note: The views expressed in this paper are those of the author and do not necessarily represent those of the Australian Institute of Aboriginal and Torres Strait Islander Studies.

<sup>2</sup> See Guidelines for the Retention of Records relevant to Native Title Claims <http://www.archives.qld.gov.au/policies/nativetitle/RetNatTitle.pdf> Aboriginal and Torres Strait Islander Protocols for libraries, archives and information services <http://www.ntu.edu.au/library/protocol.html>

<sup>3</sup> For a thorough treatment of this subject, see Ritter, David and Frances Flanagan. *The Most Obvious of Dodges: Preserving the Evidence of Aboriginal Elders in Native Title Claims in Native Title in the New Millenium: Proceedings of the Native Title Representative Bodies Legal Conference 16-20 April 2000*: Melbourne/ editor, Bryan Keon-Cohen, Canberra :Aboriginal Studies Press, 2000, p. 286-304

<sup>4</sup> I would like to thank Harold Koch, Lisa Strelein and Jane Anderson for their most constructive comments and suggestions for this paper.

<sup>5</sup> See a concise chronology of events in the land rights movement at [http://www.nlc.org.au/html/land\\_hist.html](http://www.nlc.org.au/html/land_hist.html)

<sup>6</sup> <http://www.foundingdocs.gov.au/places/cth/cth15.htm>

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After a number of unsuccessful attempts by Aboriginal groups to substantiate their claims to land ownership, Prime Minister Gough Whitlam appointed Mr Justice Woodward to hold a Commission of Inquiry into how Aboriginal peoples' land rights could be recognized by law in the Northern Territory. Woodward's second report set out the aims of land rights and how they could best be achieved.<sup>1</sup>

The findings of the Woodward Report became codified into law with the *Aboriginal Land Rights (Northern Territory) Act NT 1976 (Cth)*.<sup>2</sup> This document established the basis upon which Indigenous peoples in the Northern Territory could, for the first time, claim rights to land based on continuous connections with the land, genealogical links with traditional owners, and knowledge of ritual and songs. The Act specified a 20-year period for claims to be lodged, which closed in 1997. As a result of claims brought under this Act, approximately half of the land in the Northern Territory now exists under inalienable freehold title to Aboriginal people and is administered by land councils. In addition to taking evidence on the land being claimed, the Land Commissioner was shown videos, photographs and sound recordings that had been made before the hearing.

However, there was no legislation to help Indigenous peoples outside the Northern Territory claim rights to land until 1981.<sup>3</sup> The *Pitjantjatjara Land Rights Act 1981 (SA)* ceded large portions of the State of South Australia to the Anangu Pitjantjatjara people.

The drive for land rights gained momentum. In 1982, Eddie Mabo, a Meriam man from the Torres Strait Islands, began a legal process to claim his ancestral land. One of his inspirations had been a viewing of photographs and documents made by the Cambridge Expedition to the Torres Strait in 1898, and copies of these, along with films and sound recordings from that expedition, were tendered as evidence for the case.<sup>4</sup> Although Eddie Mabo claimed only his ancestral land on the small island of Mer in the Torres Strait, the High Court extended the findings of his case to all of Australia and its islands. The legal concept of Native Title was born, and the findings for the Mabo case became enshrined by law in the *Commonwealth Native Title Act 1993 (Cth)*.<sup>5</sup> This Act set up a process for establishing where Native Title might still exist, giving protection to the rights of claimants prior to the final decision by the court. In that same year the Federal Government created a position of Aboriginal and Torres Strait Islander Social Justice Commissioner, whose brief

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<sup>1</sup> Woodward, J., 1974, *Aboriginal Land Rights Commission second report*, Canberra: Aboriginal Land Rights Commission

<sup>2</sup> For a full version of this Act, see <http://www.foundingdocs.gov.au/places/nt/nt7.htm>

<sup>3</sup> For a full version of this Act see <http://www.foundingdocs.gov.au/places/sa/sa11.htm>

<sup>4</sup> See Herle, Anita and Sandra Rouse, eds. *Cambridge and the Torres Strait : centenary essays on the 1898 Anthropological Expedition*. New York : Cambridge University Press, 1998.

<sup>5</sup> For the full version of this Act, see [http://www.austlii.edu.au/au/legis/cth/consol\\_act/nta1993147/](http://www.austlii.edu.au/au/legis/cth/consol_act/nta1993147/) [http://www.hreoc.gov.au/social\\_justice/](http://www.hreoc.gov.au/social_justice/) Also, the present Commissioner, Dr Bill Jonas, formally opened the IASA conference in Canberra in 1992, when he was Principal of AIATSIS.

included reporting to Parliament annually on the operation of the Act and its effect on the exercise and enjoyment of human rights of Indigenous Australians.<sup>1</sup>

I would like to mention two other major developments that may be described as one step forward and several steps backwards in the ongoing saga of Native Title in Australia- the Wik decision and the Ten Point Plan.

## **Wik and the Ten Point Plan**

Approximately 40% of the total land mass of Australia is leasehold land, and the terms of the lease may or may not remove or “extinguish” Native Title. Questions about the many types of agricultural leases and whether or not they extinguished Native Title rights became burning issues in the mid-1990’s. Many leasehold properties are far from cities and are places where Indigenous peoples have lived continuously, reinforcing their cultural and their physical connection to the land. Proof of extinguishment of Native Title rights had to show that the land was owned exclusively by the leaseholders.

To the dismay of many pastoralists, miners and State governments, the Wik Peoples vs Queensland decision by the High Court of Australia opened up vast tracts of land for Native Title claims.<sup>2</sup> The Wik people of North Queensland were able to show that the pastoralists who leased one property of 2830 sq km did not hold it exclusively because the Wik people were free to live there and to maintain traditional customs and lifestyles. The court held that the two interests could co-exist without affecting the legal rights of the leaseholders.

The Federal Government countered the gains of the Wik decision by issuing a Ten Point Plan, the intent of which was to place stringent limits on all claims.<sup>3</sup> Its provisions included reducing negotiation rights of Native Title holders over mining and pastoral activities, thus expanding the rights of pastoralists to conduct agricultural activities on their leases. Political figures said that the Plan would bring about “bucketloads of extinguishment”, causing a loaded political environment where extreme pressures are put on all the parties concerned. Unfortunately the greatest burden is always on the Indigenous applicants.

With this Plan, and other actions too numerous to mention here, Native Title rights are being eroded more and more by conservative court decisions and other means. It is no wonder that of 501 claims, determinations (for or against Native Title) have been listed for only 45, and registered agreements number only 83.<sup>4</sup>

<sup>1</sup> For a statutory definition of Native Title, see Native Title Report 2000 Aboriginal and Torres Strait Islander Social Justice Commissioner

<sup>2</sup> (See <http://home.vicnet.net.au/~aar/wik.htm> for further information on Wik)

<sup>3</sup> For discussion and a full version of the Plan, see [http://www.atsic.gov.au/issues/land/native\\_title/10\\_point\\_WIK\\_plan.asp](http://www.atsic.gov.au/issues/land/native_title/10_point_WIK_plan.asp)

<sup>4</sup> As of 31 March 2003. For maps, see [http://www.nntt.gov.au/publications/maps\\_intro.html](http://www.nntt.gov.au/publications/maps_intro.html)

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## Process of Native Title Claims

Tracing the steps of the Native Title claim process will place our examination of audiovisual evidence in context. To reiterate some definitions, Native Title is the recognition in Australian law that Indigenous peoples had a system of law and ownership of their lands before European settlement. Where Indigenous peoples can show, through continuous observance of their laws and customs, that traditional connection to land and waters has been maintained, and where government Acts have not removed it, the law recognizes that Native Title exists.<sup>1</sup> As the laws and customs vary throughout Australia, each claim is unique and its evidence will differ from other claims. Apart from oral evidence of the claimants themselves, proof of connection relies heavily on historical sources, including oral histories, genealogies, and early diaries. These, of course, are found in archives, libraries, government records and other sources.

There are 17 Native Title Representative Bodies (NTRBs), recognised by the Australian Government and located in each state and territory, that can help Indigenous peoples do their research to prepare their claims. Research officers encourage claimants to look for old photographs, tapes and family videos as well as printed documents. As Native Title Research and Access Officer at AIATSIS, I keep in close touch with NTRBs in order to respond to their requests for listings of materials held in the AIATSIS Library and Audiovisual Archive.

Procedurally, the claimants lodge an application with the Federal Court. Next, it goes to the National Native Title Tribunal (NNTT), whose Registrar applies a test to see if the claimants could have certain rights during the claim process. If the application passes the test, it is entered onto the Register of Native Title Claims, and written notice is given to the public, and to all who may have an interest in the claim. Such parties have a limit of three months to respond; they may be additional traditional owners, neighbours, mining companies, or others. Time pressures brought about by this process affect what kind of evidence may be used, as I shall discuss later.

The claim then goes back to the Federal Court, which makes orders about mediation between all the people involved in the claim. After that, the NNTT organises meetings to work towards an agreement. If this cannot be reached, then the matter goes back to the Federal Court.

Respondents to the claims may include competing Indigenous claimants, or others who may have an interest in the land. Claims may also be made by non-Indigenous people, who can test to see if there could be Native Title rights over land in which they have an interest, and the Indigenous peoples connected to that land must produce evidence of their Native Title.

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<sup>1</sup> [http://www.nntt.gov.au/publications/1035773354\\_1456.html](http://www.nntt.gov.au/publications/1035773354_1456.html)

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## Information on Archival Recordings

In order to support the claims and evidence of their clients, researchers employed by Native Title Representative Bodies (NTRBs) have spent time examining not only printed documents but also audio tapes and photographs to glean essential bits of information tying individuals and groups to specific areas of land. Word for word transcriptions do not exist for all the tapes, so listening is essential to find vital references. Sometimes fragments of such information appear only fleetingly on a recording and may not be traceable through a subject-based catalogue. The time required for listening, and the difficulty in finding small bits of essential material, pose major problems for Native Title researchers who may be on a very limited time frame. Also, NTRBs are notoriously under-resourced and are usually working on a number of cases at the same time.<sup>1</sup>

In contrast, the National Native Title Tribunal (NNTT), who conduct their own limited research into each claim in mediation, choose not to use audiovisual materials in their research “because of format and access difficulties.” They say there cannot be fair access because not all the parties may be able to use viewing (or playback) equipment. All, however, can obtain photocopies of printed matter easily. Another source from the Tribunal says that “audiovisual material is difficult to cite and even more difficult to include as an appendix [to reports].”<sup>2</sup> An exception to this procedure is that, during the time between the claim passing the registration test and the final decision, or determination, being made, the Tribunal may deal with some requests to use the land through a simplified process known as “fast tracking”. They allow documentary evidence “including maps and video” for this procedure.<sup>3</sup>

It is tragic that, given the large amount of material held in audiovisual archives, the cultural bias of the Western legal system serves to discriminate against it, relying primarily on written documents and presentations given in court. However, those researchers who persevere in consulting archival audiovisual material for background evidence to claims will be looking for some of the following types of information.

### General Types of Evidential Information

#### *Recordings describing sites and country*

Linguists, anthropologists, musicologists, geographers and other researchers have made many recordings in which certain sites are described along with their mythological connections. For example, descriptions given by claimants or their relatives of the meaning of cave paintings, stone arrangements, or other geographical features will demonstrate traditional links with the land and the extent of their territory.

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<sup>1</sup> See 2003 Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, OPERATION OF THE NATIVE TITLE ACT, Inquiry Into The Effectiveness Of The National Native Title Tribunal, pp 17-18 for further information on resourcing NTRBs.

<sup>2</sup> personal communication, Robyn Taylor, NNTT 27 March 2003.

<sup>3</sup> Fast-tracking is done for activities that might have minimal impact on native title (future acts), such as some exploration and prospecting licences, if no objection is lodged. See [http://www.nntt.gov.au/publications/1021521856\\_27946.html](http://www.nntt.gov.au/publications/1021521856_27946.html)

### *Recordings with creation myths and other stories seminal to Indigenous culture*

Another important bit of evidence could be recordings of mythology explaining the creation of various geographical features, such as mountain ranges. Also, stories of the travels of mythical ancestral figures give exhaustive descriptions of tracts of land. Such narrations help to frame the traditional laws that establish the people's rights to their land and substantiate their connection to it.

### *Recordings that tell of how the land was changed by weather, by white settlement, or in other ways*

Claimants identify closely with their ancestral land, perceiving themselves as belonging to it rather than vice versa; therefore changes to the land can affect them at a deeply personal level. Recordings of accounts of historical change and their responses demonstrate connection with the land.

For example, in 1963 the Queensland government had leased a large tract of traditional Girramaygan territory to King Ranch, a pastoral company from the United States. The company cleared the land with bulldozers and dynamite, destroying many traditional sites. These were places where the people believed their spirits came from when they were born and to which they should return on their death. When the linguist R M W Dixon began fieldwork in October 1963, Aboriginal people were very distressed at this desecration of their land, which had symbolic associations that stretch far into the past. One of the elders, Paddy Biran, composed a song about "destruction of his country" as an indication of his concern, and Dixon recorded this along with many other songs (Dyirbal Song poetry: 221). The Jirrbal people used the song as background evidence for their Native Title claim.

## **Media as Evidence**

The audiovisual material described in the last section serves as corroborative evidence for the principal evidence of the claimants, expert witnesses and others; however, there have been moves to create audiovisual materials as principal evidence.

Usually, principal evidence consists of direct testimony delivered under oath and is cross-examinable; otherwise it may fall under the rule of hearsay, or second-hand opinion, and be disqualified. There are exceptions to the rule of hearsay, and the court has admitted videotaped evidence under some of these. They are:

- That the evidence is especially relevant to the case
- That the witnesses are not available to give evidence in court

On the first point, relevant evidence from Indigenous elders is best elicited on site rather than in a courtroom, as was the practice for land claims under the 1976 Land Rights Act. The anthropologist Peter Sutton comments on the strength of oral evidence on country:

There are many people who you can take to a place and you can say ‘Okay, Jacko, tell me where we are now, tell the judge. You run it, you tell him what’s important here, what happened here in the past, who was here before.’ No questions; you get the best evidence possible – the richest, the most relevant and sincere evidence. Answers to questions are typically short; the question-and-answer format is typically a non-Aboriginal way of eliciting information. People can tell you better than you can ask them. (AIATSIS 1994: 23)

Although the Federal Court has also heard testimony on country for Native Title, the costs of the process have required them to re-examine the procedure. If a site visit is impossible, videotaped testimony may be considered by the court.

Some video materials used in court are more useful than others. During the Wongatha claim in south-west Western Australia, which amalgamated 21 claims into one and represented over 2000 people, the court tried to short-circuit the process of site visits by screening pre-recorded videos of sites in the courtroom. However, the Goldfields NTRB argued that this procedure would disadvantage witnesses because the videos would not evoke their ‘full attachment to traditional lands.’<sup>1</sup> Presence on the land evokes the connection in a way that no image of it can do.

As for the second point, elderly witnesses who may have extensive traditional knowledge of an area may not be able to give evidence in court, because they may be frail and unable to travel from their country. Also, Native Title claims take a very long time, and the key witnesses may die before they can speak for the claim. For example, the Yorta Yorta Claim over part of the State of Victoria took eleven years. Owing to this, one NTRB has taken the initiative to ensure that information from elders is preserved and available.

## **A Proactive Project**

In April 2000, the Yamatji Land and Sea Council began a programme of making video interviews of Aboriginal elders whose memories include contact with even older ancestors. These recordings included listing the names of families and individuals who have rights to specific areas of land. Such testimonies provide strong evidence for a claim, especially when each elder, speaking before a group of people from his or her own community, names the same people as holders of land rights (Ritter and Flanagan 2000). This year, Mr Justice Robert French of the Federal Court of Australia actually directed the Yamatji Council to continue collecting this type of ‘early’ or ‘preservation’ evidence.<sup>2</sup> [NOTE: In English, ‘Justice’ – like ‘Reverend’ – is not a title, it’s a description of a sort. So, you have to add a

<sup>1</sup> See “GLSC & state agree on mediation for Goldfields claim – 24 June 2002” in NTRB news <http://www.ntrb.net/ntrb.asp?p=13>

<sup>2</sup> Personal communication, Alastair Hill (Yamatji Land and Sea Council), 4 June 2003.

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title (Mr, Dr, Ms etc), and it becomes Mr/Ms/Dr Justice (James) Green. Rev or Revd (as you prefer) works a bit differently in that the title comes second and you have 'The Reverend Mr/Dr (Bill) Smith'.]

As audiovisual archivists, we can appreciate that the videos are priceless documents for the communities, passing on vital information from elders to subsequent generations. Discussions are under way to find a suitably secure repository for these original recordings, as they must be held under strict access conditions.

So we have seen how Native Title developed, some actions being taken as a result of Native Title, and the present use of audiovisual evidence. Where do we go from here?

## **Future Developments**

As we have seen, the National Native Title Tribunal states that audiovisual evidence is difficult to use, because it is hard to ensure playback facilities and hard to cite. This stance is very unfortunate for Indigenous claimants, because it excludes much of the material held in audiovisual archives. What are some actions being taken to overcome these difficulties? The answers come largely from the digital realm, in making information easier to access.

## **I. ARTS PROJECTS**

The Native Title Act has been a catalyst for Indigenous communities to gain artistic, conservation, documentation and web skills in order to take care of and to publicise their cultural material.<sup>1</sup> I would like to highlight two interesting initiatives that have arisen in Western Australia that work with audiovisual materials and mention their connections with the Native Title process.

### **Warburton Arts Project**

Paintings depicting topographical and mythological features of the land along with their accompanying documentation are being used as evidence in land claims. In 1991, an innovative programme to train people from the Western Desert community of Warburton in arts practice, including creation of artworks based on traditional themes, documentation and curation, has served to maintain and strengthen the cultural life of the people there. Video and audio tapes were used to document information such as the genealogies of the artists as well as the meaning of the paintings and their connection with the land.<sup>2</sup> This information has been used by researchers in preparing native title claims. The Tjulyuru Cultural and Civic Centre,

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<sup>1</sup> For other arts projects involved in creating works to substantiate native title rights, see

<sup>2</sup> [http://www.users.bigpond.com/Mangkaja\\_Arts/webpage/canvassing.html](http://www.users.bigpond.com/Mangkaja_Arts/webpage/canvassing.html)

built in 2000 through a partnership arrangement with the local government and neighbouring Indigenous communities, houses all the material and has a web site showing digital copies of many of the paintings.<sup>1</sup> The audiovisual materials are stored in a new Arts Project facility in Warburton and in the Ngaanyatjarra Council Native Title Unit farther east, in Alice Springs. Videos allowed to be viewed by the general public are often screened in the Tjulyuru Centre as part of the ongoing exhibition programmes.<sup>2</sup>

## Spinifex Arts Project

As part of the broader Native Title process, the Spinifex Arts Project was established in 1996 to record and document ownership of the Spinifex Area in Western Australia. Two large canvases, one painted by men and one by women, were produced depicting the entire claim area. Both paintings appear on the Internet, showing intricate depictions of a complex web of stories, songs, ceremonies and genealogical connections. They have been formally included in the preamble to the final land agreement between the Spinifex People and the Western Australian Government. The project grew to 31 paintings, which formed a travelling exhibition. Ten of these were presented to the people of Western Australia as a symbolic celebration of the negotiation of a Spinifex land agreement with the State.<sup>3</sup>

## 2. GEOSPATIAL EVIDENCE

Even though the evidence of the “land claim” paintings is glaringly obvious to the people of the Spinifex area, it needs to be interpreted in a way that is comprehensible to the courts.

Multimedia-enhanced maps are one way of presenting the multilayered information relevant to a claim in a way that non-Indigenous researchers, lawyers and the court can understand. As a claim is based on a discrete section of land, multimedia with GIS (geographic information system) technology linked to a map of the claim area can present a significant amount of evidence in an efficient way. This type of technology is already being used by business, mining, meteorological, and environmental sectors, so why not for land claims?<sup>4</sup> The National Native Title Tribunal accepts the use of multimedia forms such as images when representing the external boundaries of Native Title applications. (Brazenor 2000: 137)<sup>5</sup>

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<sup>1</sup> <http://www.desart.com.au/artcentres/warburton.htm>

<sup>2</sup> <http://www.tjulyuru.com/centre.asp>

<sup>3</sup> Personal communication, Chris Paget, Chief Executive Officer, Shire of Ngaanyatjarraku 10/7/2003  
<http://www.spinifex.org/nat.html>

<sup>4</sup> For geospatial information on land management, see <http://www.landcareaustralia.com.au/ProjectDisplay.asp?ProjectID=28>

<sup>5</sup> see [http://www.sli.unimelb.edu.au/research/publications/PW/Clare\\_thesis.pdf](http://www.sli.unimelb.edu.au/research/publications/PW/Clare_thesis.pdf) for a full version of the thesis.

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Thus a researcher could do a rollover on a digitised map and have a drop-down menu offering the genealogy of the traditional owners, or an oral history recording, or a set of images of sites for that place. Various compilations of evidence could be made via SMIL presentations to fit the participants' needs, but this sort of technology and its applications go far beyond this writer's background. Suffice it to say that we need incredibly complex technology for lawyers, anthropologists and researchers to interpret the highly sophisticated knowledge base of an Indigenous elder, who carries it all in his or her memory.

However, the information has to be gathered together and digitised in order to be linked to a multimedia map. A positive effort to digitise Indigenous cultural material is being made through the establishment of local Knowledge Centres.

### **3. KNOWLEDGE CENTRES**

Virtual repatriation is the way of the future for getting information held in external institutions back to the communities from which it came. Once such material is available to claimant groups, they can prepare their Native Title claims in situ instead of having to travel to cities where the material is kept.

The governments of the Northern Territory (NT) and Queensland have allocated large amounts of money to establish databases and web sites to do this very thing. Tom Redston, Community Development Consultant from the NT Library and Information Services Project Management Team, says:

"What we're saying to museums and libraries and other places where many .... resources are currently housed is, you keep looking after the object or the tape or the roll of film, but we want to access it in the virtual world. (Savannah Links Issue 23 August - October 2002 Indigenous Issues)

In the Northern Territory, the Galiwin'ku community in East Arnhem Land was the site of the first Indigenous Knowledge Centre in Australia.

Opened on 12 June 2003 its facilities include accommodation for visitors, a dance ground, areas for restricted information, a Western-style library, and a learning centre. In April this year, Joe Neparrnga Gumbula, one of the Galiwin'ku elders, presented a seminar at AIATSIS explaining the cultural underpinnings of the Centre. During his time in Canberra, he visited a number of cultural institutions, searching for audiovisual and other holdings of material from Galiwin'ku.

The State Library of Queensland has instigated a three-year plan to open 31 centres by mid-2005, with the first five being located in New Mapoon, Wujal Wujal, Lockhart River, Mabuiag and Erub (Darnley Island). The Library will consult and negotiate with local communities to develop the infrastructure to provide training programmes,

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help to preserve local history, ensure the centre is a community meeting place, and provide employment opportunities for local communities (Artnotes Queensland August 2000). Remember that the Wik people come from North Queensland.<sup>1</sup>

#### 4. NATIVE TITLE DETERMINATIONS ON THE WEB

Finally, audiovisual material is being used to disseminate findings of the Federal Court of Australia in a number of cases, including Native Title determinations. As of 09:15 on Tuesday 23 August 1999, the Federal Court broadcast the first live streaming video and audio of a judgement summary over the Internet.<sup>2</sup> As of 16 May 2003, there are 25 summaries, four of which are of major Native Title cases.<sup>3</sup> These are available for narrowband or broadband audio/video, and for audio broadband and narrowband, and there are print versions of the full reasons for the judgement and of the summary.

#### Conclusion

In conclusion, the Native Title Act has offered a ray of hope to Indigenous peoples in granting them recognition as owners of the land of Australia, but there are still many obstacles to work through. The conservatism of the legal process has made it difficult to accept the validity of audiovisual evidence, but some battles have been won.

For archivists, new protocols and procedures have arisen as they deal with the demand for Indigenous audiovisual material in Native Title claims. Researchers are working with archivists to locate compelling background information to land claims. In turn, audiovisual materials have not merely served as evidence but have assisted in cultural revitalisation in a number of areas of Australia as people hear stories, language and songs from their elders.

Indigenous peoples are generating new materials as well, and are using the Internet to educate its users in their traditions. After all, audiovisual material imparts information in a culturally appropriate way by hearing, seeing and telling.

No matter how the requirements for the process of Native Title change, the precious cultural information gathered in its course will, with proper care, last as a gift to future generations. We archivists must ensure that it lasts for posterity.

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<sup>1</sup> See <http://www.artmonthly.org.au/artnotes/qld.htm> for more information on the project.

<sup>2</sup> [http://www.fedcourt.gov.au/judgments/judgmts\\_video01.html](http://www.fedcourt.gov.au/judgments/judgmts_video01.html)

<sup>3</sup> State of Western Australia v Ward [2000] FCA 191 / Full court / 3 March 2000; State of Western Australia v Ward [2000] FCA 191 / Full court / 3 March 2000; Andrew Passi on behalf of the Meriam People v State of Queensland [2001] FCA 697 / Chief Justice Black / 14 June 2001 and De Rose v State of South Australia [2002] FCA 1342 / Justice O'Loughlin / 1 November 2002

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## References:

Artnotes Queensland August 2000.

<http://www.maq.org.au/publications/bulletin/vol5no3aug02.html>

Brazenor, Clare. The Spatial Dimensions of Native Title. Thesis submitted for Master of Geomatics Science University of Melbourne, August 2000

Savannah Links Issue 23 August – October 2002 Indigenous Issues

<http://savanna.ntu.edu.au/downloads/savlinks23.pdf>

Sutton, Peter. The Relative Strengths of Oral and Written Evidence . In Proof and Management of Native Title: Summary of Proceedings of a Workshop Conducted by the Native Titles Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies at University House, Canberra, 31 January – 1 February 1994 [edited and produced by the Native Title Research Unit, AIATSIS], Canberra : Australian Institute of Aboriginal and Torres Strait Islander Studies, 1994, pp 20–24

## The Importance of Telling Stories: Umqomboti, Utywala and Lucky stars<sup>1</sup>

Renate Meyer, Centre for Popular Memory, UCT, SA  
Paper given at the IASA conference, Pretoria, (City of Tswane) 2003

*The paper is divided into two parts: the first looks at the example of an audiovisual exhibition we created from oral history interviews done in our archive. The second part looks at ways in which we as archivists can actively involve ourselves in creating access to our collections. This is focused as a discussion paper, so I am raising issues rather than exploring intricacies, in the hope of stimulating discussion rather than providing a monologue. I also survey notions of agency, construction and audience access, and explore some of the possibilities and risks of dissemination.*

*I am interested in the role of archives in ensuring that the legacies we hold are not only preserved behind physical (and virtual) walls, but disseminated beyond the safe houses we work in. I am writing from a South African perspective and use the archive I work in, the Centre for Popular Memory (CPM), as an example.*

### Introduction

Archival preservation strategies, cataloging techniques, restoration rigour and digital dexterity are extremely valuable to us as archivists. However, what difference could those strategies make to the communities we claim to serve, if they never get to hear the recordings?

As a society, we in South Africa are still grappling with the legacy of apartheid. When we held our first democratic elections in 1994, the memories of our violent past were not suddenly exposed (or erased) and 40 million voices were not necessarily heard singing *Nkosi Sikelel' iAfrika* (the South African national anthem) in unison. Basically we did not reach utopia through creation of the 'rainbow nation'. Although we now have a more representative public voice, the intricacies of peoples' stories and memories are often lost in the thunder of nation building. But there are many stories to be told, many individual memories that could be voiced, and I am interested in how we manage our archives with regard to these recordings of people's stories that we hold.

One question is, how can the audio archive create ways to ensure that people's stories and versions of history are fed back into the society that feeds the archive? In that sense the archive has a distinct social function to provide access to its collections beyond the confines of the building that houses it, and to increase the presence of people's stories beyond the archive walls. But, while getting peoples stories out into the public realm is imperative, we are also aware of the need for

<sup>1</sup> Umqomboti, (traditional sorgum beer) utywala (liquor trade) and lucky stars is part of the title of an exhibition we held using oral history recordings from the Centre for Popular Memory (CPM) archive.

effective copyright and intellectual property regulations, and of the difficulties around digital formats, migration and [obsolescence?? obsolescence?]. The paper explores these polarities and the impact they have on the audio archive in a public realm.

To discuss these notions, I am going to take the very practical route of unpacking some of the work that we do, so that we can explore public dissemination and archival accountability.

The Centre for Popular Memory is based at the University of Cape Town (UCT). It is a centre rooted in oral history and currently involved in four main areas:

- Training
- Research
- Archiving
- Dissemination

These streams are all interrelated, for instance: In 2002 we trained students who were selected from an associated postgraduate course – the Post-Graduate Diploma in Museum and Heritage Studies. Over a nine-month period we taught the three interns skills of oral history interviewing, transcription, archiving and exhibition design. During the internship they chose a theme on which to centre their practical interviews and recordings. In this case they chose to conduct 20 interviews each with long-term residents of Langa, a township in Cape Town, about their memories and stories of shebeens – informal and at the time illegal ‘pubs’ – and alcohol trade between 1930-1980.

## Background

Langa is considered to be the oldest township in Cape Town, South Africa. It was built in the 1920’s and completed in 1927, with the aim of housing migrant workers who were coming from the rural areas in search of employment in the city of Cape Town, and people staying in Ndabeni (a temporary residential area, which was being developed for industrial use). The movement of people into Langa and the city was then controlled by what was known as the Urban Areas Act of 1923, which was the precursor of the apartheid Group Areas legislation.

As I have said, what the researchers sought to explore was the role of shebeens for residents of Langa.

*“Black people weren’t allowed to have shebeens. They were raided, arrested and paid fines. They couldn’t even enter bottlestores, or stand near a bottlestore. They weren’t allowed to deal in liquor, or buy liquor. It is only in the 1960’s that black people were allowed to enter bottlestores.” Ms P M<sup>1</sup>*

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<sup>1</sup> All interviews in this paper are housed at the Centre for Popular Memory (CPM), UCT. The CPM has entered legal copyright agreements with interviewees regarding the use of their recordings.

Until 1962, black people in South Africa were not allowed to consume or buy alcohol, or even make traditional beer (umqomboti) without a permit. Yet people drank alcohol and smuggled it into the townships, and the shebeens (which were often no more than a chair at a kitchen table) became places of recreation and resistance.

One of the points that was often raised in interviews was that most shebeens were run by women:

*“Yes, they managed to survive, I am telling you... the shebeens had to survive. One wouldn't have liked to be a shebeen queen, but though one thing you will find... Here is the lady, she has got about 4 children that are at school, what must she do? So, to survive, you know, she had to sort of do it illegally [sell liquor] so that she can make ends meet.” Mr M*

What became evident through the research is that one of functions of the 'shebeens' was to act as a forum for social resistance to restrictive and unfair political strategies of the apartheid government. So people managed to enlist 'coloured' men (who were allowed into bottlestores under apartheid law) to buy the alcohol, and it was then passed on to the shebeen owner and smuggled into Langa.

Mr Mbilini describes this process of smuggling alcohol into Langa:

*“There used to be quite flourishing shebeens because ... white man's liquor... you know Africans were not allowed to drink. So whenever you're going to a shebeen, you find there will be a kettle... they pour say about five bottles of brandy and there are cups, you know. Whenever the policeman comes in, he will think 'These people are having tea' and yet it's brandy in the kettle!” Mr M*

Many of the interviewees told stories of how they managed to get alcohol into the township, and then how they used to hide it in their houses, under chairs or buried in their yard. But they were constantly vulnerable to police raids and arrest, which would mean large fines and loss of earnings.

What is significant (for this paper) is that the information that came out of the research, as often happens, is very different from any textual accounts of the era described. So the research provided an alternate view of how the history of that time was presented. While this paper does not explore these complexities, it serves to highlight that stories provide invaluable material on what people remember and forget about living in this country. What were/are the conditions like? What were their experiences and memories of that time? How do they relate to other people's experiences? etc.

We completed the process with close to 60 interviews conducted in English and Xhosa with residents of Langa. These recordings are all transcribed and translated,

and the images, artifacts and interviews are archived. Our concern was that the research shouldn't just sit in our archive and get indexed into our digital repository. If we are to have a social function, the stories we record need to go out into the world.

For this collection, we decided to create *Umqomboti, Utywala and Lucky Stars – People's Stories of Liquor in Langa between 1930 and 1980*, an exhibition and audio CD. The idea behind its being a movable exhibition was that it could alter with space available and conditions, but most important that the research would go beyond the archival stacks. For more information on the exhibition and 'shebeen' research you can visit our web site at [www.popularmemory.org](http://www.popularmemory.org).

### **How can Archives Immerse Themselves in the Communities they Serve?**

Firstly, one needs to establish the possible audiences for the archival material. While it is easy to identify some of those audiences (in our case we are based at the University of Cape Town so they are often researchers, students and historians), if our aim is to extend the work beyond the archive walls, we need to get the voices back: Firstly to the community in which the research was conducted, in this case the people of Langa; secondly in order to expand the audiences that are exposed to such research. To do this we needed to understand the importance of "agency, construction, audiences and community" in a theoretical and practical sense.

Derrida, in his book *Archive Fever*<sup>1</sup>, demonstrates that the archival trace implies both process (its power) and place. In post-modern terms, this control of the process and place is partially what archiving entails. Another issue that Freud and Iriguray draw on is the instinct of forgetfulness. In Freudian terms the notion of forgetfulness cannot be separated from processes of memorialisation. So then the archive has a lot to do with knowledge, and power is about remembering and forgetting at the same time. To expand the notion, Harris notes that *'The archive seems to draw us forward as we look to the past...the idea is not to concretize memory and create fact...but to acknowledge that fact is contextual and disturbed by what is left or forgotten or gathered and not gathered.'*<sup>2</sup>

The archive cannot be viewed as a neutral space where records (or archival traces) are stored. In post-modern terms the archive is a construction and archivists are responsible players in this construction. The relevance this has is that theory informs practice. The recording has a life of its own; it is not given meaning only through the process of archiving, but can also gain meaning through historical/sociological and ideological debates and contexts.

<sup>1</sup> Derrida, J. *Archive Fever*. University of Chicago Press. Chicago. 1995

<sup>2</sup> Harris, V. *Nascent, Renaissance and the archive in South Africa*, SASA Newsletter, Oct. 2000

This acceptance of the subjectivity and active participation of the archivist and archive in the process of production, further suggests we need to play an active part in getting the stories we have in our archive into the communities we serve. For us at the CPM that doesn't just mean making the archive accessible through an effective catalogue system, digital database on the web, or an open door policy. It means finding ways to step out of our doors.

To do that we are often confronted with issues of intellectual property, copyright and legality, and the line we take is quite simple. Our first step is establishing and not breaking trust with interviewees, so that they feel comfortable and protected. The second is to ensure that their wishes are legally ratified, through our copyright release form. Thirdly, even if we have copyright on the material, ethically we have a responsibility to use it in a sensitive, contextual and referential manner.

We all understand the importance of our senses, of being able to speak, be heard and be seen. In the same way the archive needs to work more cohesively, not only by providing textual transcripts, but by allowing users to listen to the sounds, read the quotes, connect the pictures and, through this layered process, to make interpretations.

## **Archival Processes**

For this to happen there are a number of principles the archive needs to observe, including: Correct copyright and IP regulations; effective archiving and digitisation methods; migration/backup and vigilance. Crucial to development of the digital repository is an understanding of the temporality of the trace (in Derridian terms), and the need for metadata around the trace (to try to ensure its sustainability).

Hedstrom refers to the needs of digital preservation as follows:  
'The planning, resource allocation, application of preservation methods and technologies necessary to ensure that digital information of continuing value remains accessible and usable'<sup>1</sup>.

She reminds us that digital recordings are not just the digital version of an analogue original, but that preservation includes understanding the volatile and ever changing nature of the digital landscape with regard to access.

## **Metadata et al**

So much effort goes into the recordings and correct archival procedure, but that is not enough. Expanding audiences and negotiating difficulties also lie at the heart of a useful A/V Archive. I know that in South Africa, and I don't believe it's confined

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<sup>1</sup> Hedstrom, M., Digital preservation: a time bomb for digital libraries. Available at <http://www.uky.edu/~kiernan/DL/hedstrom.html>

to this country, archives are not seen as the most inviting places and are often frequented only by tenacious researchers, and students trying to complete their assignments at the last minute. We need to change the notion of what the archive does and what it holds. After all, we hold people's stories, and surely those stories belong beyond our temperature-controlled vaults.

However, to do that we need legal copyright forms, and understanding from interviewees of what we are doing with their recordings. Further, owing to the nature of A/V archiving we need to follow 'migration/preservation strategies'. In our case, many of our recordings are on analogue cassette; we digitise them to 96/24 data, which are stored as multiple copies across multiple media in different locations. We also enter all the recording metadata information into an XML digital repository that also holds sound clips, transcriptions and translations (where applicable) of our material.

But while the bits and bytes of our technical jargon are essential to us, we need to remember what we are working with. So, while we can get immersed in building cyber architecture and discussing which cartridge stylus provides the most accurate rotation (or is it revolution?), we also need to keep in mind that those digital 1's and 0's, and the resultant metadata, hold the voice of a person.

One of the reasons for having a digital version of an analogue or physical trace is that it means access is increased; the original is also protected. While we need to remember that the digital copy does not replace the original version, it does provide a new and increased range of uses. Consequently, digital technology suggests a desire to communicate – to create ways of using, sharing and accessing information. It provides the platform to begin exploring those desires.

To conclude, one of the powers of oral narratives resides in the fact that they are oral – spoken, heard and experienced by people. Creating best practices around digitisation, and exploring the problems and possibilities of using technology as a tool, can alter the way we record oral history and the way in which it is received. For some of the reasons explored briefly in this paper, our work needs to extend beyond internal archiving, digitising and metadata functions, and be coupled with dissemination, both on the web and beyond. Doing this involves seeking active ways of using the voices and sounds we spend so much time working with.

## **The Audiovisual Collections of the International Criminal Tribunal for Rwanda: Reconciliation and Reconstruction**

*Martha Hunt, ICTR, Arusha, Rwanda*

*Paper delivered at the Iasa Conference, Pretoria (City of Tswane), 2003*

On 9 December 1948, the United Nations General Assembly adopted the Convention on Prevention and Punishment of the Crime of Genocide, recognising the necessity of establishing an International Court to prosecute crimes against humanity. Following the post-WWII Tribunals in Nuremberg and Tokyo, the international community realised the importance of a permanent, world-wide institution to help establish justice throughout the world, to end impunity, to end ongoing conflicts, to take over where national criminal justice systems are unwilling or unable to act, and to deter future war criminals.

But in the fifty years that followed, an international court was not established. In that time, atrocities were committed that undoubtedly warrant investigation by the international community. The names Idi Amin, Pol Pot, and Augusto Pinochet are among the most notable that come to mind – people responsible for crimes against humanity who have been allowed to live out the remainder of their days without ever having been held accountable for their actions.

But it appears that the years of impunity may be drawing to a close.

On 25 May 1993, the United Nations Security Council passed a resolution to establish the ad hoc International Criminal Tribunal for the Former Yugoslavia to deal with violations of humanitarian law committed in the region since 1991.

On 8 November 1994, the Security Council established the International Criminal Tribunal for Rwanda to prosecute the persons responsible for genocide and other crimes against humanity that were committed in Rwanda, and by Rwandan citizens in neighbouring States, throughout 1994.

In 2002, the Special Court for Sierra Leone was formed, through an agreement between the UN and the Government of Sierra Leone, to try those people most responsible for atrocities during the country's armed conflict.

The work being done by the ad hoc Tribunals is of the utmost historical significance. In Arusha, Tanzania, the seat of the International Criminal Tribunal for Rwanda, 66 people accused of involvement in the Rwandan genocide have been arrested since 1995. To date, 15 cases have been completed, resulting in 12 convictions and 3 acquittals. The trials of 20 of the detainees are currently in progress in the three chambers of the Tribunal. 1 300 judicial decisions have been adopted by the Tribunal,

including a landmark judgement that defined rape in international law, and a finding that rape could constitute genocide.

Despite the important work done by these tribunals, the United Nations has recognised that there are serious deficiencies associated with such ad hoc institutions. The time spent setting up such an organization can allow evidence to deteriorate, or be destroyed; witnesses to relocate or be intimidated; and perpetrators to escape or disappear. This makes investigations more costly and time-consuming, and softens the political will to establish future ad hoc Tribunals.

At a conference in Rome on 17 July 1998, 120 countries adopted a statute to create a permanent international court. By 31 December 2000, 139 nations had ratified the treaty, and the International Criminal Court's jurisdiction officially commenced in the Hague on 1 July 2002. After more than fifty years, the world's first independent and permanent international court has been established.

The audio-visual collection of the International Criminal Tribunal for Rwanda has the potential to play a key part in establishment and expansion of the International Criminal Court. All the courtroom proceedings since the beginning of the Tribunal have been recorded in audio format, and video recordings have been made since 1999. These audio cassettes, CDs, VHS, and DVCAM tapes are records of the important precedents of international law that have been established by the Tribunal since 1997. The storage and preservation strategies adopted by the staff at the ICTR will serve as guidelines for archival practices in the ICC.

As audiovisual archivists, we all understand the irreplaceable role of recorded moving images and sound in memory and history. To actually be able to see someone from the past, to hear him speak in his own voice, gives present day historians valuable insights that cannot be duplicated by the written word. The same, of course, will be true for future historians when they study their history: our present. The filmed proceedings of the trials at Nuremburg are still used today by scholars and historians, as well as being an educational tool for the general public. The work being done at the ICTR is of equal significance, and the video and audio recordings will doubtlessly have a very important role in the future. What happened in Rwanda in 1994 should never be forgotten, and proper preservation and storage of the audiovisual recordings will ensure that it isn't.

It is an express goal of the Tribunal to be as open and accessible as possible. All the proceedings are open to the public, as long as nothing will be said/reported that could threaten a witness's safety. Similarly, a database of transcripts is available on the ICTR web site, but for the time being the video tapes are not available to the public, for reasons I shall explain later in this presentation. The ICTR is now working on its exit strategy. The work of the Tribunal is expected to be completed in about five years. When the work of the Tribunal is done, all the original judicial records,

documents, transcripts, evidence and audiovisual holdings will be transported to UN headquarters in New York for permanent storage. Copies of all the materials will also be deposited in various archives throughout the continent of Africa, to be used for research and educational purposes, in fulfilment of the ICTR's mandate of open and free public access.

But the audiovisual recordings of the ICTR have a more immediate significance. A primary goal of the Tribunal is to contribute to the process of reconciliation in Rwanda. In the words of UN Secretary General Kofi Annan, "There can be no healing without peace; there can be no peace without justice; and there can be no justice without respect for human rights and rule of law." It is crucial for the survivors of the genocide to be kept up to date on what is happening in the Tribunal. The audiovisual recordings of the proceedings are made available to the survivors, to prove that something is being done, that the perpetrators are being held accountable for their actions, and that justice is being served. The use of video is crucial. Many of the survivors and relatives of victims cannot read or write. A videotape of the proceedings in Kinyarwanda, the native language of Rwanda, is the only way many of the people most effected by the tragedies in Rwanda can learn that something is being done, that there can be a peaceful future for their nation. The first post-genocide presidential election was held in Rwanda last month, and the landslide victory of President Kagame, who ran on a platform of national unity, is proof that the healing has begun in Rwanda.

Another express goal of the ICTR is to prevent further crimes against humanity. In the past fifty years, the international community has turned a blind eye to the rule of impunity throughout the world in general, and in Africa specifically. Impunity is defined as exemption from punishment, penalty, or harm. Too often in recent history have world leaders and influential figures enjoyed impunity, have they not been held accountable for their actions. And too often have atrocities and crimes against humanity been committed, because people in positions of authority knew that there was nothing anyone could or would do to stop them. But the international community is unwilling to let this rule of impunity continue. It is hoped that the ICTR's presence in Africa will discourage would-be perpetrators of crimes against humanity from committing any further atrocities. Once it is understood that dictators and warlords will not be allowed the impunity they have enjoyed in the past; that no amount of power or influence can protect anyone who is guilty of crimes such as genocide and rape; that every human being is responsible for his actions; then perhaps the unspeakable violations against human rights that have become all too prevalent in the past century will finally cease.

The audiovisual collection of the ICTR is helping the tribunal fulfill its mandate, and will continue to be a valuable tool for the ICC, researchers, and historians. There are now 10 000 audio cassette tapes, 5 000 audio CDs, 10 000 VHS tapes, and 10 000 DVCAM tapes. They are being stored in a temperature and humidity controlled

environment at the ICTR headquarters in Arusha. The average temperature is 17 degrees centigrade, with a fluctuation of less than two degrees per month, and the relative humidity is 37.4%, with a fluctuation of approximately 5% per month. Plans are under way to install an air purification system to filter out airborne dust and smoke particles from the archive. It is expected that by the conclusion of the tribunal, we will have 15 000 CDs and 20 000 video tapes of each format. For the time being, all the materials are stored in one room, but an off-site facility is being constructed to store duplicates of all the materials, so that they will not be lost in the event of a disaster. The off-site facility will also aid in dealing with the lack of storage space, which is a major issue in the audiovisual archive. More compact shelves have been ordered, and should be waiting for me when I get back to Arusha next week.

We are now working on a preservation plan for the most at-risk materials in the archive. As nothing is more than seven years old, and everything has been stored in a climate controlled environment, we are not seeing any signs of degradation of elements. And as two videos are made of every proceeding every day, we have a ready-made backup for every video tape. However, there are certain materials in the collection that are a cause for concern. As I said before, video recording of the proceedings was begun only in 1999, which means that the first two years of the Tribunal's existence are recorded only in paper transcripts and on audio cassette tapes. In those two years, about 7 000 60-minute tapes were created. The plan now to deal with these unique materials is to create a preservation copy of each cassette on an archival gold CD, and an access copy on standard CD. And then, of course, to store the master cassette in a temperature controlled environment with extremely limited access.

The audiovisual collection of ICTR also includes all the non-paper evidence that has been presented in the court proceedings. This includes video and audio tapes, photographs and slides, maps, and an assortment of physical objects, each of which presents a unique preservation concern.

The video evidence is generally footage of the scenes of crimes, including mass graves. It is generally recorded on VHS tapes, often using camcorders, and the tapes are of variable sound and image quality. In most cases, there is only one copy of each of these tapes. Duplication of these elements is one of the top priorities of the ICTR audiovisual archive.

The audio tapes that have been presented as evidence are extremely interesting. One case going on at the Tribunal right now has been brought against three media leaders, one of whom was the director of RTLM, the national radio station of Rwanda that broadcast messages specifically targeting certain Tutsis and political opponents of the ruling party. Quite a few of these tapes have been presented by the prosecution as evidence. Once the trial is complete, these tapes will become part of the audiovisual archive.

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The photographs and slides that have been presented as evidence in court are all stored in an environmentally controlled storage area. All have been digitised, and are stored in the ICTR's digital record keeping system, TRIM. All the physical evidence – items such as scraps of cloth found near massacre sites, mallets and machetes that were used as murder weapons – are photographed and stored on the TRIM database.

Having all the materials available digitally is a necessity for the ICTR. The main seat of the Tribunal is in Arusha, Tanzania, but the Appeals Chamber is at The Hague, in the Netherlands. When a case is complete and a verdict has been handed down, all the materials, transcripts, documents and evidence from that case must be made available to the Appeals judges. The well maintained TRIM database makes it possible to burn CDs of all the scans of materials relating to the case in question to send to the Appeals Chamber in Europe.

A major obstacle that the audiovisual archive of the ICTR will have to overcome soon is redacting of the video recordings of the proceedings. Redaction is removal of any sensitive information from a legal document to make it suitable to be viewed by the public. All the transcripts at the ICTR are redacted before they are made available to researchers or the press. Additionally, if the council deems that a certain witness's testimony could present a danger, if it were heard by the public, the session is declared closed. That means the public is requested to leave the viewing area of the courtroom, and the court reporter notes this and ensures that the transcript is made available only to parties directly involved in the case: the judges, the prosecution, and the defence attorneys. At this time, the video tapes have not been redacted. A major challenge facing the audiovisual archive will be redaction of these tapes before they can be made available to the public. Methods for this procedure are being investigated, including hiring of a video editor to create these redacted copies. If anyone has experience of this type of work, suggestions and advice would be most welcome.

There is a considerable amount of work to be done in the ICTR's audiovisual archive. The metadata for all the audiovisual materials have yet to be entered into the database. Storage conditions will have to be improved and maintained. Supplies and equipment needed for duplication of at-risk materials will have to be procured.

But steps are being taken in the right direction. The staff of the archives is hard-working and dedicated, understands the necessity of proper archival storage and handling, and appreciates the importance of the material. There is no question but that the materials being created by the ICTR must be preserved for posterity. For the sake of the both the victims and the survivors of the Rwandan holocaust, for the sake of justice, peace, and the future, the audio-visual collection must be well cared for, properly maintained, and widely accessible to researchers and the general public.

## Ghana's Highlife Music: A Digital Repertoire of Recordings and Pop Art at the Gramophone Records Museum and Research Centre of Ghana in Cape Coast.

Kwame Sarpong, *Gramophone Records Museum and Research Centre of Ghana Paper read at the biennial Pan African Festival of Arts and Culture (PANAFEST) on 26 July 2003, Cape Coast.*

### Introduction

Throughout history, libraries and archives have been the guardians of the documentary heritage of mankind. Given the rapid evolution of the new technologies, safeguarding the cultural heritage becomes more and more the concern of specialists [0].

One of the essential goals of archival and library services is to facilitate access to the documents or materials in their care, ensuring that cultural heritage is kept alive and can be an object of research and enrichment.

Their other important mission is preservation of the documents or materials in their care, so that cultural heritage may be passed on intact to future generations, since the future of a nation, a people, or a community, is unthinkable without knowledge of its past.

Preservation and access to the collection are the main objectives of the digitisation project, which was implemented recently in our museum with the help of international organisations and collaborators<sup>1</sup>.

### About GRMRC

In Ghana, one of the main goals of the Gramophone Records Museum and Research Centre of Ghana (GRMRC) is preservation and promotion of Ghana's musical patrimony. The museum is located in Cape Coast, Central Region. It is situated in the building of the National Centre of Culture (CNC) just opposite to the main gate of the University of Cape Coast.

The museum was founded by myself from my private collections spanning 40 years of music and officially opened during the *biennial Pan African Festival of Arts and Culture (PANAFEST)* in 1994 [1]. From a small beginning in one small room in the CNC building, it has grown to occupy four rooms made up of an exhibition room, archives and documentation rooms, and an office.

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## The Collection

The collection includes my personal collections, collected from the 1960's, as well as those of my uncles, who gathered their collection from the 1930's to the late 1950's.

The idea of establishing this museum of recorded sound was mooted in the early 1970's, with the proliferation of discotheques and their influence on the youth of the country that was relegating the authentic Ghanaian Highlife music and dance to oblivion [2]. Between 1973 and 1993 I embarked on a systematic collection drive that yielded the following additions to the already existing ones:

1973/74	1165 discs
1980/81	530 discs
1983/85	4153 discs mainly from the Ashanti and Eastern Regions
1989/90	2596 discs mainly from the Central and Western Regions

Between 1990 and 1993, I hired the services of 20 people in all the regions, who collected about 6 000 discs. The addition of this collection to the existing one provided the basis for creating the museum, and the Gramophone Records Museum was registered at the Registrar General's Department in Accra in February 1994. In December 1994, the museum was officially opened to the general public during PANAFEST 1994, in two rooms of the Cape Coast Castle. At the end of the festival the museum was moved to the Centre for National Culture Buildings in Cape Coast, with part of its holdings of nearly 18 000 recorded songs comprising both the vintage 78's and the 45rpm and 33.3rpm vinyl discs of the 1960's and '70's, and has been there ever since. The continual presence at the Centre is the result of the National Commission on Culture's recognition accorded to the museum.

The core of the collection is the Ghanaian Highlife seminal "Yaa Amponsah" recorded by the late Jacob Sam with his group known as the "Kumasi Trio", in London in 1928, on the Zonophone label, as well as traditional and choral music. There are also several foreign collections from Europe, America and other African countries, namely Nigeria, Angola, South Africa and Cameroon.

## Album Sleeves

From the mid-1920's through to the 60's the production distribution of the music was made up mainly of European companies, and the presentation was similar to that distributed in Europe. It was of the usual two lightweight brown craft papers of 10in x 10in measurements for the 78 rpm shellac discs, which evolved to the 12in x 12in for the 33.3rpm long-playing vinyls and the 7in x 7in for the 45rpm vinyls. These historical album sleeves served not only to announce the names of the artists and their works, but also illustrated the mood and type of music.

The music presentation (Highlife, Traditional Folk and Choral), with the coming into being of local production and distribution companies in Ghana in the 1960's, saw the transition from the plain sleeves of the early 1920's through to the illustrated ones of the early 1960's, and the CD presentations of the 1990's. The illustrations were representative of various themes: cultural, gospel and the psychedelic art movement.

Popular artists of designs that produced these album sleeves in the 1950's through to the 70's included E E Lamptey, Guy Hayford Agbemeti, Frimpong, Setordzi, Lemi, Deckor Gbedemah, Samuel Buabin, Mantsefio Bampo, Kofi Atta Bedu, Big Jerry, Liberty Press and Design Emporium. Writing the biographies of these artists is forming part of the ongoing conservation and digitisation project.

## **Preservation Today**

Today, preservation plays an increasingly important part among other archival and library services. In some cases it has led to creation of preservation management directorates, as can be found at the United States Library of Congress [3] and the Smithsonian Institutions in Washington DC [4], the Canadian Museum of Civilizations [5] and the British Library Sound Archives in the United Kingdom [6].

All collections need a preservation programme. In this context "preservation" is used to refer to the organisation and programming of activities regarding conservation of the collections in general. Conservation as a concept includes preventive preservation, which aims to reduce the risk of deterioration: environmental control, regular maintenance and protection of the collection by using appropriate treatment, anti-theft devices, and creating surrogate documents for heavily used original documents or materials.

## **Digitization and Archiving Project**

In line with the objectives of the museum with regard to the above, the Gramophone Records Museum and Research Centre of Ghana is presently undertaking a digitization and archiving project with a grant from the Daniel Langlois Foundation for the Art, Science and Technology, an NGO based in Montreal, Canada [7]. The project, *Ghana's Highlife Music: A digital repertoire of recordings and pop art at the Gramophone Records Museum*, involves processing of the entire collections of highlife music on the 78rpm shellac discs.

The project is based on the existing collection in the museum. The objectives are to develop an interactive research tool based on the collections to include textual information, recorded music, and images from disc sleeves and record labels, and to give access to this information to musicologists, musicians, students, researchers

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and members of the public who are interested in intangible culture using the Internet. The project will come out with a comprehensive report and provide a detailed picture of the Ghanaian music recordings on the 78's, 45's and 33.3's from the 1920's to the mid-1960's and 1970's.

With this funding from the Daniel Langlois Foundation, the Gramophone Records Museum and Research Centre of Ghana has managed implementation of the project, selected audio samples of 500 discs, and is now digitising sounds and selecting images from sleeves and labels. Research on musicians, writing biographies and discographies of the artists, and research into copyright are all also part of our responsibilities in this project. In the final stage of the project, we will provide digital visual, sound and text material to the Foundation, which will design the web site, integrate the content (audio, text and visual data files), construct the database search interface, and host the web site on its servers.

The project began in March 2003 with the arrival of sophisticated audio restoration and archiving equipment from Canada. This was followed by a visit by the chief audio technologist from the National Library of Canada, Gilles St. Laurent, who installed the equipment and trained the museum staff and two students from Cape Coast University for the operation [9,10].

The process begins with cleaning the disc on the Professional Record Cleaning Machine (HW-17F, VPI Industries Inc., USA). The record is then played on Esoteric Sound Professional Restoration Deck (Esoteric Sound Inc., USA). The songs are converted from analogue to digital through a Chronologic Equalizer (K.A.B Electro Acoustics, USA), an external Audio Interface (Dua 11, Merging Technologies, Switzerland), an internal Audio Processing Board (Mykerinos, Merging Technologies, Switzerland) and a Denoising and Descratching Software (Pyramix Virtual Studio, Merging Technologies, Switzerland).

Two CDs are burnt. The first is unprocessed and the second is processed, i.e. the noise, scratches and hisses are removed. The unprocessed CD is meant for the archives, to be used by researchers who may wish to further research from the original recording. The processed CD, which may include some sound enhancements, will be used on the Internet.

Pictures are taken of the album sleeves and disc labels with a digital camera (Canon Powershot G2) and stored on CD-ROM.

The first funding phase, which ends in June 2004, is focused on 1000 songs released by various labels on the 10-inch 78 shellac discs between 1928 and the mid-1960s. In addition to the sound and images, detailed information about the original recordings is gathered for building up a comprehensive text database. The Daniel Langlois

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Foundation for Arts, Science and Technology will incorporate these selected entries and will link them to the digitally scanned images of the labels, to biographies of the artists (see below), and to the digital reproductions of the music. Once the copyright is cleared, all these data will be uploaded onto the internet.

The text information given for each disc in the collection is:

- *Sequence Number*, which is the number assigned in the order of digitisation
- *Company Label*
- *Names of musicians or group*
- *Titles of songs*
- *Date of Recording* which is the year the disc was first produced. Where it is unconfirmed, the year is entered as "ca" indicating an approximate date. This is subject to change when the actual date is known.
- *Genre or a sub-set of Genre*, which gives information about the specific nature of the selection, such as dance step, e.g. Highlife, Cha-Cha, Blues, Dagomba, Rumba etc.
- *Language*, which is the local language used (Twi, Ga, Ewe, Fante etc.)
- *Serial Number*, which is the number the record company assigned to the disc. It is the principal number as it appears on the disc.
- *Matrix Number*, which is often handwritten or stamped on the run-out area of the disc. It is the number assigned to identify the source of a recording.
- *Source Material Description*, which refers to the physical format of the recording (shellac etc.)
- *Dimension,s* which refers to the size of the disc (10in etc.)
- *Instrumentation*, which is the various types of instruments used (from listening)
- *Duration* of each song (in minutes and seconds)
- *Image Number* as assigned by the Canon digital camera

Further, comprehensive data of biographies and discographies of the artists/groups and their works being held in the archives are being collected. These discographies will be updated from time to time with the addition of works the museum acquires to add to its collections. The interviews are done using standardised questionnaires, including such questions as name of musician, date of birth, place of birth, ethnic identity and life story, and are recorded using a Digital Audio Tape Recorder (TCD-D 8, Sony Corporation, Japan), transcribed, edited and copied onto a text database being prepared.

At the end of July 2003, 560 of the 1000 songs had already been digitised and the first phase is scheduled to end in June 2004. However, cataloguing and finding aid system as well as conservation of the discs in individual jackets has still do be done.

Already five artists of the era have been interviewed, out of a total of 700 artists and groups listed in the collection:

- Oscarmore Ofori (1950's composer, guitarist, cultural affairs instructor at the National Commission on Culture)
- El Grand Koffie (1960's bandleader, composer, guitarist)
- Ebow Taylor (1960's bandleader, guitarist, composer)
- C K Mann (1960's and 70's bandleader, vocalist, guitarist, composer)
- Pat Thomas (1970's bandleader, vocalist)

## **Outlook**

The collection is expanding fast and there is a question of space. To address this, management of the museum has put in a proposal to the Ghana Museums and Monuments Board for relocation of the collections to Fort St. Jago in Elmina, Central Region, Ghana.

The second phase of the project will be further processing of the remaining discs, and possible reissuing of some of those already processed, as a way of assisting the living musicians, via the Copyright Society of Ghana (COSGA). This work is accompanied by research into copyright on the music archived. The final report will then include a detailed description of the copyright situation in terms of the Ghana copyright law [11] that deals with musical productions etc.

## **Conclusion**

The Ghana Highlife Music: a digital repertoire of recordings and pop art, involves the GRMRC and major international organisations. The success of our project should contribute to establishing ourselves as a research and archival institution concerned with preservation of our intangible heritage. We will involve ourselves in many other projects in the future, and the museum expects to co-operate on an interdisciplinary research project to be carried out jointly by the University of Cape Coast, the University of Ghana (Legon), and Scientific African e.V., Witten/Herdecke University in Germany. With the launch of our web site in 2004, we will have achieved our objective of giving a wider public access to the richness of our musical heritage.

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## References

- [0] CD-ROM prepared on behalf of UNESCO by the IFLA/PAC with the assistance of the Mission on Research and Technology of the French Ministry of Culture and Communication. - Project Director : Marie-Thérèse Varlamoff ; Scientific Coordination: Astrid Brandt-Grau - Paris : UNESCO, 2000 (CD-ROM, Mac /PC- Windows). On-line at: <http://webworld.unesco.org/safeguarding/en/>
- [1] <http://www.panafest.org>
- [2] C.K. Sackey, Highlife - Entwicklung und Stilformen ghanaischer Gegenwartsmusik - Mainzer Beiträge zur Afrika-Forschung 3, Münster: Lit Verlag (1996)
- [3] <http://www.loc.gov>  
Kenneth E. Harris & Susan Schur, Caring for America's Library: A Brief History of Preservation and Conservation at the Library of Congress, Washington DC: Library of Congress (2000)  
A.G. Pickett and M.M. Lemco, Preservation and Storage of Sound Recordings, Washington DC: Library of Congress (1959)
- [4] <http://www.si.edu>
- [5] <http://www.civilization.ca>
- [6] <http://www.bl.uk/collections/sound-archive/cat.html>
- [7] <http://www.fondation-langlois.org>
- [8] <http://www.loc.gov/folklife/>
- [9] Trevor Clayton, Restoring Ghana's Highlife. NLC Bulletin. 35(4), 2003 (<http://www.nlc-bnc.ca/bulletin/p2-0403-06-e.html>)
- [10] National Library of Canada: Virtual Gramophone (<http://www2.nlc-bnc.ca/gramophone/>)
- [11] P.N.D.C 110 of 1985, revision 2003

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## Cultural Heritage Archives and Databases, Intellectual Property and the Protection of Traditional Cultural Expressions

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Paper presented at the IASA Conference, Pretoria, 2003

### Introduction

Indigenous peoples and other traditional communities have long argued that their traditions, knowledge systems and cultures are under threat from a variety of sources, such as new technologies and globalisation of culture and commerce.

It is also argued by some that their traditional knowledge systems and cultural expression are not adequately protected by or against current intellectual property (IP) laws.

In particular, they refer *inter alia* to

- (i) unauthorised adaptation, reproduction and subsequent commercialisation of traditional cultural expressions, with no sharing of economic benefits;
- (ii) use of traditional cultural expressions in ways that are insulting, degrading and/or culturally offensive;
- (iii) appropriation of the reputation or distinctive character of traditional cultural expressions in ways that evoke an authentic traditional product, by use of misleading or false indications of authenticity or origin, or adoption of their methods of manufacture and “style”;
- (iv) failure to acknowledge the source of a tradition-based creation or innovation.

In this regard, the World Intellectual Property Organisation (WIPO) is engaged in a programme examining the interfaces and relationships between IP laws and the protection of indigenous and traditional forms of creativity and innovation.

One issue that WIPO’s work has begun to address more recently is the relationship between protection of indigenous and traditional forms of creativity and innovation on the one hand, and management of rights in cultural heritage archives, databases, registers and other such collections on the other. This issue has arisen because some Indigenous and traditional community representatives have suggested that the rights and interests of communities, including those under customary and indigenous laws, are not always taken into account when their traditional cultural expressions are first recorded and documented by folklorists and other fieldworkers, and/or when they are subsequently displayed and made available to the public by museums and archives, or through databases.

This paper will examine this issue further. As this is a relatively new issue, the paper does not seek to provide definitive answers, but rather to raise the issue and questions related to it for discussion. The comments and suggestions of members of the International Association of Sound and Audiovisual Archives (IASA) would be most welcome, and would be incorporated into future versions of this paper.

Before discussing this issue, however, the paper first provides some brief background information.

### Describing 'traditional cultural expressions'

The term 'traditional cultural expressions' (or 'expressions of folklore'), and other terms referring to more or less the same subject matter, such as 'indigenous culture and intellectual property' and 'intangible and tangible cultural heritage', potentially cover an enormous variety of customs, traditions, forms of artistic expression, knowledge, beliefs, products, processes of production and spaces that originate in many communities throughout the world.

The terms 'traditional cultural expressions' and 'expressions of folklore' are used synonymously in this paper. 'Traditional cultural expressions' (or TCEs) is used as a neutral working term because some communities have expressed reservations about the negative connotations of the word 'folklore.'

TCEs may be either intangible, tangible or, usually, a combination of the two. For example, the Mardi Gras 'Indians' of New Orleans exhibit a true example of tangible (costumes, instruments, floats) and intangible (music, song, dance, chant) elements of traditional culture that cannot be separated. In some cases, TCEs may be associated with technical know-how such as medicinal knowledge (referred to as 'traditional knowledge' in WIPO's work program), but this is not always the case. This paper does not address technical traditional knowledge directly. Of interest, however, would be extensive and ongoing work on the documentation and publication of traditional knowledge as part of 'prior art', as a defensive strategy to avoid its patentability. See WIPO documents WIPO/GRTKF/IC/5/6, for example).

For present purposes, TCEs could be described broadly as productions consisting of characteristic elements of the traditional cultural heritage developed and maintained by a community, including verbal expressions, such as stories, poetry, signs, symbols and indications; musical expressions, such as songs and music; expressions by actions, such as dances, plays and rituals; and tangible expressions, such as paintings, carvings, sculptures, pottery, mosaic, jewellery, basket weaving, textiles, carpets, handicrafts, musical instruments and architectural forms.

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## Wipo and its Work on TCEs

WIPO is a specialized agency within the United Nations system. The Convention Establishing the World Intellectual Property Organization of 1967 provides that WIPO's primary objective is 'to promote the protection of intellectual property throughout the world through co-operation among States and, where appropriate, in collaboration with any other international organisation.' The Convention's preamble records that the promotion of intellectual property protection is desirable 'in order to encourage creative activity'.

WIPO's work on TCEs began several decades ago, leading *inter alia* to an amendment to the Berne Convention for the Protection of Literary and Artistic Works in 1967, which provides a mechanism for the international protection of unpublished and anonymous works and, in 1982, to Model Provisions for national laws, developed jointly by WIPO and the United Nations Educational, Scientific and Cultural Organization (UNESCO).

More recently, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the Committee) was established in 2000 to facilitate Member State discussion of these three related themes.

Specifically as regards TCEs, the Committee is making significant progress in articulating, in intellectual property terms, the needs and expectations of Indigenous peoples and traditional communities in relation to their TCEs, marking out a conceptual framework within which to view those needs and expectations, and developing policy options and practical tools in response to them.

The Committee has considered detailed Secretariat analysis of the use of existing intellectual property and *sui generis* approaches for the legal protection of TCEs. This analysis was based on the national experiences of 64 Member States, surveyed through a questionnaire issued by WIPO in 2001 and presentations made during Committee sessions, and a set of case studies. One of these, titled "Minding Culture – Case Studies on Intellectual Property and Traditional Cultural Expressions", comprises practical studies of actual cases in which Indigenous Australians have sought to use intellectual property to protect their TCEs. In addition, WIPO has also published a study of practical experiences in India, Indonesia, and the Philippines. The Committee has received detailed briefings by New Zealand, Nigeria, Panama, the Russian Federation, Tunisia, the United States of America and the Secretariat of the Pacific Community on their recent legislative experiences with the legal protection of TCEs.

As mandated by the Committee, WIPO is working on publication of a 'Practical

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Guide' to the IP protection of TCEs. This publication is intended to be a useful guide for policy makers, legislators, Indigenous and local communities, cultural heritage archives and institutions, and other stakeholders wishing to establish and implement effective systems for TCE protection. A practical study of the recognition of Indigenous and customary laws and protocols is also being worked on.

## **Key concepts**

### **'Protection' and 'Preservation/Safeguarding'**

It is useful to clarify the distinct notions of 'intellectual property protection' and 'preservation/safeguarding' when applied to cultural heritage. The term 'protection' is widely used, but this can mask a wide range of potential objectives. In some cases, it appears that the needs of Indigenous and traditional communities are perhaps more concerned with preservation and safeguarding than protection in the IP sense, which refers, in short, to enforceable property rights in intangible creations and innovations in order to control their commercialisation.

However, while 'intellectual property protection' and 'preservation/safeguarding' are distinct notions, there is a relationship between them which requires greater understanding, balance and co-ordination.

### **'Traditional'**

While the cultural heritage of a community or nation lies at the heart of its identity and links its past with its present and future, cultural heritage is also "living". As the

Japanese industrial designer Sori Yanagi has said, incorporating the element of traditional folk craft into modern design can be more valuable than imitating folk craft itself. While it is often thought, therefore, that tradition is only about imitation and reproduction, it is also about innovation and creation within the traditional framework. Thus, the term 'traditional' does not mean 'old' but rather that the cultural expressions derive from or are based on tradition, identify or are associated with an indigenous or traditional people, and may be made or practised in traditional ways.

From an IP perspective, a contemporary literary and artistic production based on, derived from, or inspired by traditional culture that incorporates new elements or expression is a "new" work, which is generally protected by existing copyright. For example, the Australian case *Milpurruru v Indofurn Pty Ltd (1995) 30 IPR 209* involved carpets that reproduced (without permission) either all or parts of well-known works, based on traditional creation stories, made by Indigenous artists. The artists

successfully claimed infringement of copyright. Similarly, a new design, although tradition-based, can receive industrial design protection. For example, a designer from the Yunnan Province of China has received industrial design protection for his tradition-based silver-plated tea-set.

The law, however, makes no distinction based on 'authenticity' or the identity of the author. The originality requirement of copyright would be met by an author who is not a member of the relevant community in which the tradition originated or has been preserved. Paradoxically, the greater the borrowing and adaptation (or "distortion", depending on one's perspective) made to the TCE, the greater the chances that the derivative product will emerge as a "new" IP-protected creation! This is the root of the complaint by communities that wish to prevent or control the use of their cultures as sources of "new" creations by third parties operating outside the traditional or customary context. However, not only third parties can benefit. Indigenous and traditional communities and individuals can also receive IP protection for their tradition-based creations and innovations as a contribution to their economic development. This, it may be argued, is how the IP system functions properly – not to reward mere preservation of the past, but to revitalise it and incentivise tradition-based creativity for economic growth.

### **The 'Public Domain'**

The appropriate role, contours and boundaries of the "public domain" are also integral to developing an appropriate conceptual framework for protection of TCEs. While contemporary tradition-based creativity appears more or less protected by conventional IP laws, pre-existing cultural heritage *per se*, and mere imitations and recreations of it, are regarded by the IP system as "public domain." Some argue that the public domain character of pre-existing cultural heritage does not hamper its development - on the contrary, copyright encourages members of a community to keep alive pre-existing cultural heritage by providing individuals of the community with copyright protection when they use various expressions of it in their present-day creations or works. A robust public domain allows, too, for the kind of cultural flow and exchange that has forever marked music and other cultural forms. Musical traditions such as jazz emerged in the early twentieth century in cultural crossroads such as New Orleans, combining elements of African American, Afro-Caribbean and European cultures. Rock music evolved from blues, valuing or rewarding imitation, revision and improvisation. So, too, cultural expressions and practices from "dominant cultures" continue to be absorbed and popularised in less dominant cultures. Is it intended to control or demand compensation in all these cases?

Indigenous and other cultural communities, however, challenge the 'public domain' status of traditional cultures under IP law. They argue validly that the "public domain" is purely a construct of the IP system and that it does not take into account private

domains established by Indigenous and customary legal systems. Their TCEs were never protected and are thus not part of a “public domain”. Furthermore, they question whether the “public domain” status of cultural heritage, as seen through the eyes of the IP system, offers the greatest opportunities for creation and development. Should all historic materials be denied protection simply because they are not recent enough? Providing IP protection for only contemporary tradition-based creations is an inappropriate “survival of the fittest” approach that does not best serve cultural diversity and cultural preservation, it is argued. Almost everything created has cultural and historical antecedents, and systems should be established that yield benefits for cultural communities from all the creations and innovations that draw upon tradition.

### **IP Needs and Expectations of Indigenous and Traditional Communities**

In the course of the extensive fact-finding and consultations undertaken by WIPO, Indigenous peoples and traditional communities have expressed various IP-related needs, such as:

- (a) *IP protection to support economic development*: some communities wish to claim and exercise IP in their tradition-based creations and innovations to enable them to exploit their creations and innovations commercially as a contribution to their economic development.
- (b) *IP protection to prevent unwanted use by others*: some communities may wish to claim IP in order to be able to exercise IP rights actively that prevent the use and commercialisation of their cultural heritage and TCEs by others, including culturally offensive or demeaning use. Uses that may wish to be prevented could include, for example: (i) uses that falsely suggest a connection with a community; (ii) derogatory, libellous, defamatory or fallacious uses; (iii) uses of sacred and secret TCEs.
- (c) *Prevention of others acquiring IP rights over TCEs*: communities are also concerned to prevent others from gaining or maintaining IP over derivations and adaptations of TCEs and representations. This entails the use of defensive mechanisms to block or pre-empt third parties’ IP rights that are considered prejudicial to the community’s interests, and to the integrity of their cultural heritage and cultural expressions. This kind of strategy is distinct from positive IP protection, in which a community actively obtains and exercises IP rights ((a) and (b) above). Both defensive and positive protection strategies may be used in parallel by the one community, depending on their assessment of their overall objectives and interests. Specific defensive protection mechanisms may also be built into national or regional IP laws: for instance, specific measures to prevent acquisition of trademark rights over indigenous or traditional symbols have already been adopted by New Zealand, the United States of America and the Andean Community.

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Generally speaking, a single form of protection for TCEs is unlikely to meet all the needs of a traditional community: it may need to use a range of positive and defensive legal tools to achieve its chosen objectives in protecting and preserving its traditional culture.

## **Trends and Experiences at Local, National and Regional Levels**

One of the tangible deliverables of the WIPO Committee's work so far has been gathering, analysis and publication of extensive information on actual community, national and regional experiences (see above for references). These evidence a wide diversity of approaches to the legal protection of TCEs. For example, several States already provide specific legal protection for TCEs, principally in copyright legislation. In most of these cases, the provisions are based, to differing degrees, on the Model Provisions of 1982. However, it appears that there are few countries in which such provisions are actively utilised. In this respect, the IGC has endorsed enhanced legal-technical co-operation for strengthening and more effective implementation of national systems. Many States have also suggested that it would be desirable to provide States and regional organisations with updated and improved guidelines, or model provisions for national laws.

A few States have established stand-alone *sui generis* (meaning 'unique' or 'of its own kind') systems, such as Panama and the Philippines. For example, Panama's Law, the "Special Intellectual Property Regime on Collective Rights of Indigenous Peoples for the Protection and Defence of their Cultural Identity as their Traditional Knowledge" of 2000, provides perpetual and collective IP-type protection, based on registration, for the handicrafts and other creations of its Indigenous peoples. The Bangui Agreement of the African Intellectual Property Organization (OAPI), as revised in 1999, also establishes *sui generis* protection for TCEs. More recently, the Secretariat of the Pacific Community has developed a *sui generis* model law for Pacific Island countries.

However, there are other States which argue that no specific protection for TCEs is necessary or desirable. They argue that existing and conventional IP systems are adequate, if their full potential is explored. Members of cultural communities and others are free to create and innovate on the basis of their cultural traditions, and acquire and benefit from any IP that may subsist in the creations and innovations (as the copyright and industrial designs examples above show). Interestingly, quite a number of countries from all regions regard folklore as part of the 'public domain' (as discussed above). For example, the copyright law of one country expressly considers "folklore works and traditions of unknown authors" to be in the public domain. Another article of the same law provides: "Indigenous art in all its forms, including dances, songs, handicraft, designs and sculptures, shall belong to the cultural heritage."

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It should be noted, however, that not only copyright and industrial designs are relevant to TCEs. Australia, Canada, New Zealand and Portugal have provided examples of the use of trademarks, particularly certification marks, to ensure authenticity and quality of Indigenous arts and crafts. Unfair competition is another part of the IP system that could be useful, particularly to combat false and misleading indications of the “authenticity” of certain creations, notably arts and crafts. And, the WIPO Performances and Phonograms Treaty of 1996 provides international protection for the performers of “expressions of folklore.”

Some of these States consider that some adaptation of existing rights and/or some special measures in the IP system may be necessary to meet specific needs – for instance, copyright protection for collective works or works that have not been fixed (e.g. works that have been passed only in oral form), and special remedies for copyright infringement that is also culturally offensive. In the trademark area, the United States of America has, for example, established a database that may be searched to prevent registration of a mark confusingly similar to an official insignia of a federally or State-recognised Native American tribe. In New Zealand, a recent amendment to the Trade Marks Act allows the Commissioner of Trade Marks to refuse to register a trademark where its use or registration would be likely to offend a significant section of the community, including Maori.

### **Cultural Heritage Archives, Databases, Recordings and Other Collections**

As already pointed out, Indigenous peoples and local communities argue that their IP-related rights and interests, including those under customary and indigenous laws, are not always taken into account when their TCEs are first recorded and documented by folklorists and other fieldworkers, and/or when they are subsequently displayed and made available to the public by museums, archives and other collections.

Indigenous peoples and local communities have pointed out that IP rights to the recordings and documentation of their TCEs often are not vested in them, and that unregulated public access to these recordings facilitates making of unauthorised and inappropriate derivative works in which they do not hold IP. These concerns have sharpened in recent years in the face of the growing trend of museums to digitise their collections and make them publicly accessible on the Internet for both museological/curatorial and commercial purposes. To illustrate their concerns, Indigenous peoples and local communities point to cases in which published ethnomusicological collections were used as the source of commercially successful ‘world music’ albums.

#### *An Example*

Let's take a practical example to illustrate and examine this concern. Imagine a case in which a fieldworker makes an audiovisual recording of the performance of an

old folk song with the consent of the performer, who is a member of the cultural community from which the song originated. The fieldworker deposits the recording in an archive or other cultural heritage collection. Subsequently, a commercial composer accesses the collection, makes a copy of the recording and, at some later date, records a successful hit that borrows from the old folk song. The hit is sufficiently 'original' to enjoy copyright protection, as discussed earlier. No mention is made of the source community or performer, who, needless to say, also receive no share of the commercial success of the hit. Could IP rights be used to advance the rights and interests of the performer and his or her community?

There are potentially four distinct IP rights that could be relied on: copyright in the music; copyright in the lyrics; related rights in the performance vested in the performer of the song; related rights in the audiovisual recording.

However, there is no copyright in the song or the lyrics, because, as discussed earlier, they are too old and anonymous to meet the requirements for copyright (they are in the so-called 'public domain'). Therefore, no steps could be taken to prevent copying of parts of the folk song. As for related rights of the performer in his or her performance, performances of 'expressions of folklore' are now protected as performances (this is so under the new WIPO Performances and Phonograms Treaty of 1996, which came into force on May 20, 2002). However, performer's rights do not at present extend to audiovisual performances, only to the audio (sound) aspects of them. In addition, the rights of performers are limited in that once a performer has consented to fixation of his performance, he loses the right to prevent making of copies of the fixation. It follows that the performer would not be entitled to prevent copying of the recording or parts of it. So far, the performer's and the community's position seems rather bleak.

However, related rights to the recording made by the fieldworker are potentially useful and, if managed and exercised strategically, could offer opportunities for protecting the performer and the community. These rights include the right to prevent or authorise copying of the recording. Therefore, this right could be used to ensure that any copying of the field recording takes into account the rights and interests of the performer and the relevant community. For example, and this is already common practice in many public archives and museums, it may be stipulated that copies of recordings be released only on evidence that the consent of the performers and/or the relevant community has been obtained, or there have been good faith efforts to find their heirs.

### *Discussion*

The field recording assumes a central importance, therefore, because it may be the only recording of particular music that is available and accessible by commercial

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and other users. Archives, museums and other such collections, which have a valuable educational role, and are essential for preservation, conservation, maintenance and transmission of tangible and intangible forms of cultural heritage, thus also lie at a critical juncture between communities and the marketplace. Proper and strategic management of their IP rights, then, can advance the rights and interests of the original providers and custodians of TCEs making up their collections. These IP rights could be used in ways, too, that recognise Indigenous and customary laws and protocols, a long-standing demand of Indigenous peoples and local communities.

Over-strict protection is not desirable, however. Cultural heritage and traditions can and perhaps should act as sources of inspiration and forward-looking creativity. In the example above, the composer is in a sense ensuring onward transmission of the TCE and perhaps securing its survival (as Chaudhuri has remarked, the recording, broadcasting and tourism industries have become the 'new patrons of oral traditions and folklore'. The key is distinguishing between legitimate inspiration and undesirable misappropriation.

This brief and perhaps simplistic example demonstrates in a practical way tensions that can arise between preservation and protection, as discussed earlier. This is because the very process of preservation can trigger concerns about lack of protection and can run the risk of unintentionally placing TCEs in the public domain, or inadvertently giving third parties unrestricted capacity to use TCEs against the originating community's own values and interests. This occurs most obviously when preservation is undertaken without the authorisation of the traditional owner or custodian, for example unauthorised recording of performances of expressions of folklore. But this tension also arises when the process of preservation is undertaken with the consent or involvement of the TCE custodian, but unwittingly or incidentally undermines IP protection of the TCE. This can occur when material is recorded or documented without full understanding of the IP implications.

The relationship between preservation in the form of recordings and databases and protection is also a positive one. Recording and fixing TCEs in a material form (such as in an audiovisual recording) may be the only effective way of establishing IP in intangible, oral forms of TCEs that would otherwise be in the public domain. However, in whom are those IP rights vested? Is documentation and recording of TCEs an appropriate IP strategy for either establishing rights in 'public domain' TCEs and/or for preventing others from acquiring IP over TCEs and works derived therefrom (as part of a defensive protection strategy, as described above)?

### *Possible Practical Tools and Other Avenues*

There are several practical tools that could address these and other such IP issues

in relation to recordings and databases of TCEs. These tools could include:

- (a) development of IP-related *protocols, codes of conduct and guidelines* for use by folklorists, museums and archives;
- (b) development of an IP *check list* and *model IP contractual clauses* for use in elaborating deposit, access, release and license agreements used by folklorists, museums and archives;
- (c) regarding specifically digitised cultural heritage, development of model IP-related “*Rules of Use*” and “*Copyright Notices*” for use in connection with websites, CD-ROMs, specialised databases and other electronic multimedia products.

Two further avenues worth exploring are the use of software and digital rights management tools, and IP protection of collections and databases.

The Member States of WIPO have expressed support for WIPO exploring these options and issues further, working closely with relevant institutions, associations and centres, inter-governmental organisations, non-governmental organisations, and other experts.

### ***Protocols, Codes of Conduct and Guidelines***

Anthropologists, folklorists, ethnomusicologists and others have discussed this issue at length, and there are already several policies, ethical codes, protocols and guidelines developed by folklorist, ethnographic and anthropological societies and other professional bodies, although it may be said that few appear to deal directly or in detail with IP questions.

In developing IP-related protocols, codes of conduct and/or guidelines, some existing examples of protocols and codes of conduct could be used as a starting point:

- (i) the Australian National Association for the Visual Art's (NAVA) report *Valuing Art, Respecting Culture: Protocols for Working with the Australian Indigenous Visual Arts and Crafts Sector*. The report has raised public awareness and encouraged discussion of Indigenous cultural and IP issues. The report details protocols for dealing with material created by Indigenous people and with material containing imagery, motifs or styles that are identifiably Indigenous. These codes are not legally enforceable, but they do establish industry standards of conduct setting the course for legal rights;
- (ii) the Statement of Ethics of the American Folklore Society;
- (iii) the Aboriginal and Torres Strait Islander Protocols for Libraries, Archives and Information Services;

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- (iv) the Code of Practice of the Australian Arts Council for the Australian Visual Arts and Craft Sector;
  - (v) the Research Policy of the Working Group of Indigenous Minorities of Southern Africa (WIMSA);
  - (vi) from Canada, the Inuit Tapiriit Kanatami Guidelines for Responsible Research, the Dene Cultural Institute Guidelines and the Traditional Knowledge Research Guidelines: A Guide for Researchers in the Yukon, prepared by the Council of Yukon First Nations;
  - (vii) previous Possessions, New Obligations (Policies for Museums in Australia and Aboriginal and Torres Strait Islander Peoples).

Certain archives and institutions address these questions in their day to day activities. For example, Chaudhuri reports on efforts at the Archives and Research Centre for Ethnomusicology, American Institute for Indian Studies in India, to protect the rights of performers by limiting the rights of the depositors of field recordings and by contacting the performers of deposited recordings to explain their rights. The American Folklife Center, of the Library of Congress, follows a similar approach, viewing the collector/donor as well as the archive as being in a curatorial position only, and committed to fulfilling the wishes of the original performer of the tradition:

“In other words, only the performer and his/her community or heirs are the rights-holders to the material; the collector/donor and the repository are curators, who are bound by the agreements reached among the parties. Where there are no written agreements, the researchers (sometimes with the help of the repository) must make a good faith effort to contact the original performer(s) to obtain written permission to re-use the material. This is especially in the case of where money may be made in a commercial recording. If that good faith effort fails, the researcher may still contact the collector/donor, who may have an opinion as the intermediary as to the wishes of the performer or the performer’s community. Thus, there is a four-way dialogue among the performer, the collector/donor, the repository, and the researcher, where each has a role: The performer is the rights-holder, the collector/donor is the intermediate curator, the repository is the final curator, and the researcher is the applicant for permission to use the material.”

At the Oman Centre of Traditional Music, experts at the centre regard development of new ways of promoting the musical heritage in Oman without consent of the traditional performer as a violation of the customary understanding of heritage use. They do not believe that exclusive rights should be granted in the reproduction of traditional music. Nevertheless, they do welcome granting of performers’ rights to the performers of traditional Omani music.

## ***A Checklist and Model IP Contractual Clauses***

Closely linked to development of protocols, codes of conduct and/or guidelines, would be development of IP tools to use in elaborating deposit, access, release and licence agreements used by ethnomusicologists and other fieldworkers, archives, museums, libraries and other institutions. These tools could include a checklist of key issues that should be considered and model IP-related clauses for such agreements. Member States of WIPO have expressed support for work in this area.

Several examples exist of licence and other agreements that could be used as a basis for such work. For example, the Australian Arts Law Centre and the Working Group on Indigenous Minorities of Southern Africa (WIMSA) have developed model agreements and The Center for Folklife and Cultural Heritage of the Smithsonian Institution in the United States of America has extensive archives and collections of original sound recordings, drawings, posters, business records, correspondence, audiovisual recordings and photographic material. As a part of the Center, Smithsonian Folkway Recordings holds extensive collections of American Indian, bluegrass, blues, children's, and classical music as well as other genres. It licenses its music collection for non-profit or commercial purposes, and for this purpose has developed a "Master Recording License Request Form."

## ***Digitized Cultural Heritage – "Rules of Use" and "Copyright Notices***

Cultural heritage is a rich resource for feeding the communication networks of the information society with cultural content. Museum and other collections are increasingly being digitised and presented in a variety of electronic media, such as websites, CD-ROMs, and specialised databases. This is being done for museological/curatorial and commercial purposes, such as for making educational, scientific and commercial by-products. Interaction of the cultural heritage with the information society poses some complex challenges and questions, however, particularly in so far as public domain TCEs are concerned.

Regarding digitised cultural heritage specifically in relation to public domain TCEs, development of model IP-related "Rules of Use" and notices (such as "Copyright Notices" for copyright works) for use in connection with websites, CD-ROMS, specialised databases and other electronic multimedia products could be useful. Useful here would be experiences of the Canadian Heritage Information Network (CHIN) and the Arts Law Centre of Australia, among others.

## ***Software and Digital Rights Management Tools***

Much work is being done on using software and digital rights management tools for management of rights and interests in digitized collections of TCEs. These may

offer useful avenues for protection of a technological nature and are worthy of further consideration. An example is work being undertaken by the Indigenous Collections Management Project, a collaborative project of the Distributed Systems Technology Centre in Australia and the Smithsonian Institute's National Museum of the American Indian (NMAI) Cultural Resources Center. While recognising the potential benefits that digital technologies can offer with regard to preservation and documentation of their histories and cultures, indigenous communities are also coming to understand the opportunities for misuse and misappropriation of their knowledge that may accompany digitization. Software tools that have been designed to enable indigenous communities to protect unique cultural knowledge and materials that have been preserved through digitization. The software tools described here enable authorised members of communities to: define and control the rights, accessibility and reuse of their digital resources; uphold traditional laws pertaining to secret/sacred knowledge or objects; prevent misuse of indigenous heritage in culturally inappropriate or insensitive ways; ensure proper attribution to the traditional owners; and enable indigenous communities to describe their resources in their own words.

#### *IP Protection of Databases and Collections*

Secondly, the legal protection afforded collections, anthologies and databases may offer some protection for documented and recorded TCEs. For example, a database of fading Native American rock art is both preserving and protecting the art.

There are already many electronic databases of traditional cultural expressions throughout the world, such as a CD-ROM containing "Folk Performances of Thailand," published by the Office of the National Culture Commission of Thailand; the Lao database referred to earlier; and the "Cultural Stories" database being developed by the Tulalip Tribes of the United States of America. It is not clear, however, to what extent copyright and related rights issues may be relevant or have been considered in their development and dissemination.

It is often suggested that expressions of folklore may be protected indirectly, either by copyright protection afforded to databases that are "original" by reason of the selection or arrangement of their contents, or by proposed *sui generis* protection for non-original databases.

Database protection under copyright does not protect the contents of the database and is without prejudice to any rights subsisting in the contents. Therefore, the protection in question would not apply to expressions of folklore in the database, but only to their publication and presentation in the form of a collection, anthology or compilation. There would be nothing, therefore, to prevent a non-Indigenous person from extracting one of the songs making up a collection of traditional music and reproducing, adapting and commercialising that song, assuming for the present that no other rights attach to the song.

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However, the prospect of *sui generis* database protection may have application in this area. A European Community directive and certain national laws now provide for protection of non-original databases. As an example, the European Community directive provides, for the makers of databases, which represent a substantial investment in either obtaining, verification or presentation of the contents, the rights to prevent extraction and/or reutilisation of the whole, or of a substantial part, of the database contents. This protection applies, irrespective of eligibility of the contents for protection by copyright, or by other rights.

Therefore, from the perspective of Indigenous peoples and traditional communities, it is possible that collections and databases of expressions of folklore made by the relevant communities, whether or not the individual expressions are regarded as “literary and artistic works,” could be protected under proposals for *sui generis* database protection. However, whether this protection could, in principle, extend to individual expressions being extracted and reutilised is doubtful.

However, in cases where the collection or other form of database is made by a person or persons other than the Indigenous or traditional persons or community that is the source of the expressions of folklore, it is that other person or persons who would own the rights in the database. In order for the relevant Indigenous peoples and traditional communities to hold the rights to such databases, they must be regarded as the creators or makers of the databases, or at least acquire the rights from the creators and makers. In this respect, the use of contracts to protect the rights of the TCE performers and/or tradition-bearers could be explored further.

## **Conclusion**

As I have said, this is a relatively new issue, and this paper poses only several questions for discussion by experts in audiovisual archives, databases and other forms of collection. Comments and suggestions are most welcome. They will be incorporated in future versions of this paper, as well as informed of future WIPO activities in this area, in particular the forthcoming WIPO 'Practical Guide' on protection of TCEs.

## EKOFISK I – AN INDUSTRIAL CULTURAL HERITAGE MEMORY

*Lars Gaustad, National Library of Norway, Oslo*

*Paper presented at the IASA Conference, Pretoria (City of Tswane), 2003*

Ekofisk was the first oilfield in the North Sea to be exploited in what may be described as The Adventure of the Oil Age in Norway. The first wells containing any oil were found in 1969, and actual production began in 1974. By 1987 Ekofisk I consisted of 16 platforms, and with new fields being developed it was expanded into Ekofisk II, with 29 platforms by 1998.

When the drilling platform Gullfide began test production in 1971, it was not just the preface to an industrial adventure. Whole new groups of workers and trades were shaped in the encounter with foreign cultures and forms of work in new and unusual environments. The start of the production was the start of a completely new era in the economic and political history of Norway, comparable with the transition from horse to mechanical power in the agricultural area, or from sail to steam in shipping.

By 1986 the oil industry contributed 19.6 % to Norway's BNP, with the amount of 96 billion NKr, and tax revenue was 46 billion NKr. At the time of writing, 1 US\$ equals 7 NKr, 1 € around 8 Nkr.

By 1998 the wells on Ekofisk I had dried up, and Philips, being the operator of the field, began making plans for dismantling and disposal of the structures. This plan was in print by 2000, and sent to the government for approval. A comment from the National Heritage stated that Ekofisk I "is the single most complex and important cultural memory in recent history" and advocated a documentation project to be done prior to any dismantling of the structures.

Philips then set up a pre-project, which concluded that the functional links between structures and space, organisation of production lines and machinery, and the impact all this had had on individuals and society, should be the main perspectives. The group made their case largely on the background of "Historic American Engineering Record" (HAER), and guidelines established by the US National Park Service for documenting industrial sites. The group also made the recommendation that the format to a web site.

Philips, now ConocoPhilips after a merger in the spring of 2003, provided the funding for the project that began in the spring of 2002, with the following partners: Norwegian Oil Museum, The State Archives and the National Library of Norway.

The main themes of the work were to:

- Identify and trace relevant material
- Identify missing bits
- Collect
- Digitise
- Construct a technical interface

The first two themes concluded with the following

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|-------------------------|------------------------------|
| - Paper documentation   | more than 1 500 shelf metres |
| - Physical objects      | unlimited                    |
| - Photos                | more than 10 000             |
| - Film and video        | 300 hours                    |
| - Broadcasting material | more than 350 items          |
| - Newspaper articles    | 2 500                        |
| - Other publications    | still to identify            |
| - Technical drawings    | 250 000                      |
| - Interviews            | non-existent                 |

from which the following were chosen for the web project:

- |                         |                    |
|-------------------------|--------------------|
| - Paper documentation   | 250 shelf metres   |
| - Physical objects      | 50                 |
| - Photos                | 5 000              |
| - Film and video        | 50 hours           |
| - Broadcasting material | all radio material |
| - Newspaper articles    | all                |
| - Other publications    | 5 periodicals      |
| - Technical drawings    | 1 500              |
| - Interviews            | 30                 |

Most of this material was or would be held by the partners, and registered and catalogued on various databases. The question of search facilities was raised and at an early stage there was a request for a common search interface with all the databases. The National Library suggested, and was hired to develop and implement, the Open Archive Initiative protocol, and indexed the data with FAST search engine providing a single search interface with all the relevant material and links to the digitised objects. 7 different databases were identified, all different in relation to standards and structure. These include Norway's national database of literature, a governmental database of newspapers and periodicals, the National Library database of audiovisual material, the State Archive database of documents, the Oil Museums database, and the Digital Radio Archive database.

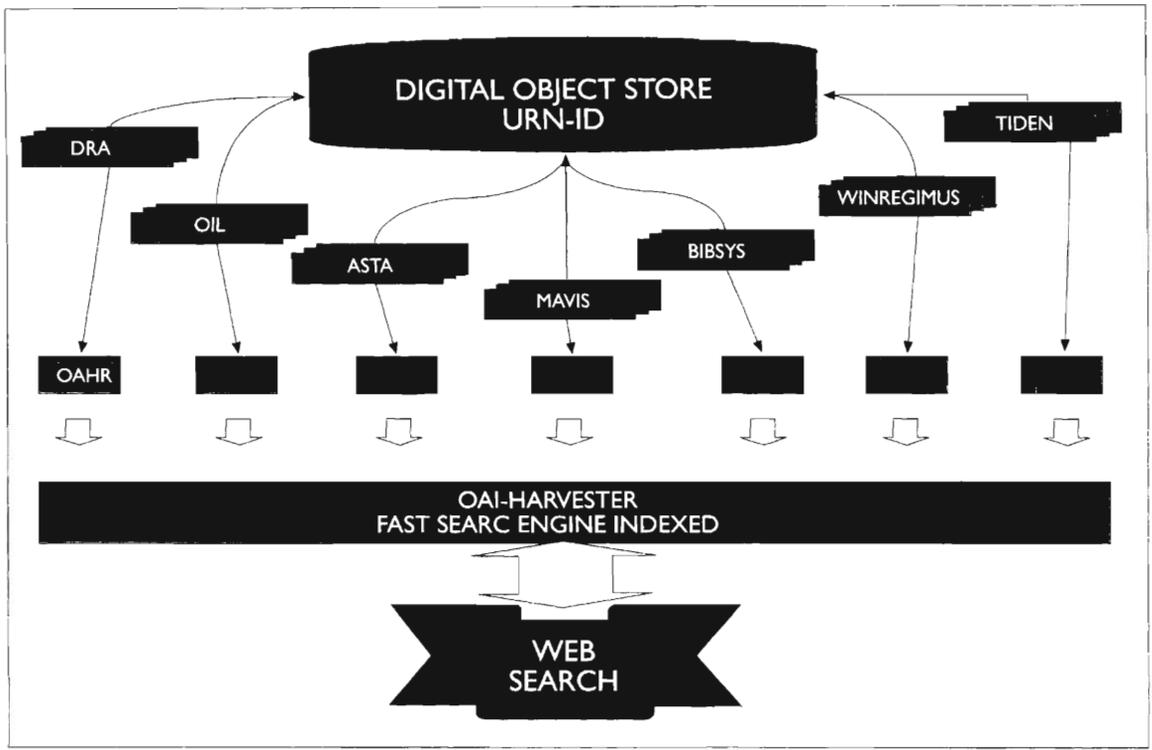
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The Open Archives initiative saw the beginning of its creation at a meeting on October 21-22 1999, in Santa Fe, New Mexico. This was a meeting set up to create a forum to discuss and solve matters of interoperability between author self-archiving solutions, as a way to promote their global acceptance. The participants in the meeting were digital librarians and computer scientists specialising in archiving, metadata, and interoperability, and they included the founders of the principal US public research archives that existed so far. The participants were diverse in their underlying motivations, but entirely unified in their objective of paving the way for universal public archiving of the scientific and scholarly research literature on the Web. Since the start in 1999 the OAI has spread world wide and the latest protocol OAI-PMH v 2.0 now focuses on cross-platform searches of Internet resources, as development over the past two to three years has seen a move from the specific to the generic – from discovery of e-prints to sharing of descriptions of any resources. PMH translates Protocol for Metadata Harvesting.

The OAI works on the basis of a repository shell that communicates on a dynamic level with the database and extracts the relevant fields from the database to a repository. A common Dublin Core based XML format for the seven databases was defined, and the repositories were mapped to each of these databases. At the National Library there is an OAI harvester who gathers the information from the repositories using http; this information is then indexed, and searchable through a single web interface. Two of the databases had a structure that made it impossible to implement a dynamic OAI repository, and these will be harvested through an export filter. More information on the Open Archive Initiative, documents, ready to download tools, and a very informative tutorial is to be found on [www.openarchive.org](http://www.openarchive.org)

All the digital objects will be named using URN, Unique Resource Numbering, and linked to the search results for direct access from the web interface. The objects themselves will be stored at the Digital Mass Store at the National Library.

We do, then, have a solution to a single search on many databases that complies with international standards and open protocols, http, xml, Dublin Core, OAI. The next question that comes to mind is, when will we implement this in the IASA community to allow for global access to our catalogues from any computer hooked up to the World Wide Web?



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