

Resolution No. 3: Informing Museums on Intellectual Property Issues

Response from the Ethics Committee

Bernice Murphy, *Chairperson, ICOM Ethics Committee*

The Resolutions passed at the 2007 General Assembly in Vienna concerning cultural property protection are noted and appreciated by the Ethics Committee. I repeat that ICOM's ethical position on repatriation claims – namely, that well-founded claims need to be addressed by museums – continues to be exactly as set out in the revised *ICOM Code of Ethics for Museums* (2006) ratified at the General Assembly in Seoul in September 2004.

> There has been some confusion recently about digitisation of cultural heritage. In particular, some misunderstanding has arisen about the potentiality of digital repatriation to assist affirmative action on both intellectual property (IP) recognition of Indigenous knowledge rights and the reclamation of culture by communities that have experienced great loss historically.

> It must be stressed again that work on digitisation of heritage, and affirmative programs of digital repatriation, have never been proposed as a 'soft option' or easy alternative to physical repatriation. On the contrary, digital repatriation may be just one among many paths of additional, *complementary* support to benefit source communities to regain access, control, or physical restitution of important items of their cultural heritage. The situations of need and the particularities of case-claims concerning ownership or control of cultural heritage vary greatly throughout the world.

> I might explain (from one context I know well) that in 1992, the museums community in Australia began – collectively and voluntarily – to pursue a collaborative program of maximum effort across state borders to provenance, and where possible fully repatriate to their source communities or descendants, Aboriginal and Torres Strait Islander human remains held in museums. Human remains were the first priority for repatriation (to begin to address the worst scars of colonial history), followed by important items of a sacred nature afterwards. The latter are items most necessary for ritual use, historical memory, or identity-securing transmission of culture among kinship groups and families.

> The point I would make is that digital repatriation in Australia, where this has been implemented in recent years, has been a direct consequence of a long-standing program of affirmative action on community consultation and physical repatriation by museums. One result of this collective effort is that a Return of Indigenous Cultural Property Program continues in Australia, and is formally recognised and administratively supported (with some funding since 1992) by national and state governments.

> A national policy drafted collectively by museums people and Australian Indigenous people (in a joint-consultation process in the early 1990s) has provided a clear and ethically binding framework for reformed relationships between museums and source communities for fifteen years. On Indigenous issues it is stronger and more specific than the *ICOM Code of Ethics*.

> It would be helpful to the Ethics Committee to receive case-study reports from different parts of the world that highlight action and outcomes achieved through affirmative effort by museums on matters of repatriation and relationship building in the protection and renewal of heritage. In particular, our committee would like to know about long-term relationships with

Museums are, together with other cultural institutions, both owners and managers of intellectual property. ICOM recognizes that traditional knowledge, traditional cultural expressions and related fields are in many cases under very serious threats around the world. Therefore, the close relationship and cooperation with the World Intellectual Property Organization (WIPO) with regard to all aspects of intellectual property, and in particular copyright, is essential.

The ICOM General Assembly focuses on awareness-raising for the global heritage community with regard to intellectual property, including the full recognition of the rights of Indigenous people and existing communities related to the heritage. It is essential to make the resources available to enable due diligence for new acquisitions, and provenance research, thereby contributing to the ethical dissemination of knowledge and appreciation of the value of heritage.

ICOM recognizes that sharing and providing access to online resources are never substitutes for the physical repatriation of objects.

The ICOM General Assembly resolves

- to support the efforts of WIPO and other relevant organisations to develop and implement a new WIPO Convention and other Conventions aiming to ensure the protection of the collective moral rights of the originators, inheritors, transmitters, and performers of the world's traditional cultural expressions, and traditional knowledge.

source communities that have served local needs in locally-defined ways, making possible new initiatives in cultural heritage care that directly advance cultural objectives at a grass-roots level.

> Australia's formal governmental position on the UNESCO Conventions in recent years has been deeply disappointing to large sections of the museums community. However, this has not prevented museums people from continuing their own networked efforts to try to rectify the tragedies of the past and to build identity-affirming and just relationships in the present.

> Such effort by colleagues of shared purpose and good will points to the heart of what an ethical consciousness among museums people can achieve – pressing far beyond the positions that governments may proclaim or laws require.

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"Copyright and Intellectual Property Rights: the Implications for Museums", introduced by Patrick Boylan, Chairperson, Legal Affairs Committee, included presentations by: Shawn van Slujs, Director, CAMD, Ottawa: "Museums, Visual Arts and Copyright: An International Comparative Study"; Cristina Manasse, Co-Chair, Art, Cultural Institutions and Heritage Committee, IBA, Studio Legale Rubini, Milan: "The role of the law and lawyers in relation to museums copyright and other intellectual property problems"; Martin Skrydstrup, Dept. of Anthropology, Columbia University, New York and Cultural Expert Consultant to the WIPO: "The work of WIPO in relation to intellectual property rights and their protection"; Daniel Winfree Papuga, ICME Chair, "Museums and Intellectual Property: Individual or Universal Responsibility?" and Lief Pareli, Norwegian Museum of Cultural History: "The Sami Case: some experiences of working with Indigenous material".

In the previously published "Conversations..." (ICOM News 2, page 8), Bernice Murphy referred to "Aboriginal people" (not to 'Aborigenes', as was transcribed) and the term "Indigenous peoples" should have been capitalized. References made to examples of knowledge sharing should have been annotated to include the "reassertion of Aboriginal intellectual authority through Indigenous Knowledge Centres (including withholding secret-sacred knowledge where desired) in the far north, in Arnhem Land".