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Giving Diligence Its Due: Accessing Digital Images in Indigenous Repatriation Efforts

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Abstract: An increasing volume of images is available online, but barriers such as digital locks, proprietary interests and narrow scope of information uploaded to image databases maintain structures that have impeded repatriation efforts in the real world. Images of objects (cultural material) in the digital environment support cultural heritage. Institutions are developing complex solutions relevant in the network environment to further repatriation initiatives. These solutions facilitate discovery, opening avenues for research into the ethics of ownership that cross the physical/digital divide. There have been calls for strengthening the potential for use of pertinent information in order to protect and recover cultural heritage through increased visibility. However, some museums still limit access to images. We examine the issues and their implications referencing case studies specific to Indigenous, Inuit and Métis peoples of Canada.

Keywords: digital images; indigenous cultural material; copyright; repatriation; provenance; heritage; knowledge mobilization; archives; repositories

1. Introduction

In recent years, Canadian museums have developed innovative ways of making their collections accessible and interesting through a range of visualization tools and platforms, providing access to their collections electronically. Collections of images of cultural material in the digital environment frame and support cultural heritage.¹ An ever-increasing volume of images is available online but barriers such as digital locks, proprietary interests, monopoly of information, software design issues, and the narrow scope of information uploaded to online image repositories maintain structures that have impeded repatriation of cultural material and potentially limit critical research in claims specific to the Indigenous, Métis and Inuit peoples of Canada. Institutions are developing complex solutions relevant in the network environment to further repatriation initiatives. Such undertakings facilitate discovery, opening avenues for research into the ethics of ownership that cross the physical/digital divide. However, while there have been calls for strengthening the potential for use of pertinent information in order to protect and recover cultural heritage through increased visibility, some museums and repositories still limit access to images. Further, inadequate funding, especially at the federal level, limits the ability to create, develop and maintain appropriate resource databases. This paper examines the barriers and concerns over permissions and the monopolization of information that limits the

¹ Examples of such materials in the heritage context include, but are not limited to: photographs of artifacts in museum collections, facsimiles of books and letters, visualizations of visual works (e.g. manuscripts, maps and quilts) in institutional libraries and archives, collections of digitized 3D artefacts, statues and models, virtual reconstructions of archaeological or historical sites, data visualizations (infographics, timelines, networks), and images rendered for scientific analysis in the context of the art restoration and conservation as well as the detection of forgeries.

potential of shared visual information about cultural material. We are referencing two international organizations, the World Intellectual Property Organization (WIPO) and the United Nations (UN), that provide guidelines for indigenous rights via intellectual property management, and calling for greater access to indigenous collections for researchers, but in particular indigenous researchers and communities. In 2002, Dr. Ruth Phillips, then Director of the Museum of Anthropology in Vancouver, British Columbia, Canada, called for a database that would “reach beyond the walls of the building into First Nations communities and link them with each other and with museum and academic research partners” [1] (p. 107). After providing a brief historical background, this paper will explore complex relationships between indigenous interests and images in the digital environment illustrated with specific examples from the museum context. Following Kapitzke and Bruce, we will argue that images of objects in the digital environment support cultural heritage and, therefore, we need to overcome perceived institutional, structural and legal (and pseudo-legal) limitations to accessing data [2].

2. The Contexts of Repatriation Claims

2.1. *Digital and Digitized Images Held by Archives Nationwide*

Institutional constraints in the area of digital and digitized images form the primary context of the repatriation issue for Indigenous people in Canada. National collections have inherent systemic problems associated with museum culture dating back to the nineteenth century. Fixed practices of collecting, owning, and naming follow from what they have historically acquired, exhibited and researched, and these will have been influenced by modes of knowledge production that mirror a colonial structure [3]. This has far-reaching political, cultural and epistemological implications, one of which is the availability or lack of data and digital reproductions for research. Digitized data plays a major role in repatriation claims, as claimants try to authenticate works and establish provenance. Challenges arise in discovery or due diligence research where the discovery of relevant information is put to the test by the legal requirement of time-sensitive delivery. Thus, lack of access to data has the possible cultural consequence of slowing the repatriation process down or even causing it to stall altogether when museum cultures and systems vary dramatically and design limitations lead to a lack of interoperability. It is for this reason that experts say it is fundamental to discuss, interpret and collaborate within and across institutions.

Successful repatriation cases also depend on establishing good faith, which places the burden of proof on the party bringing the claim forward. At present, establishing good faith requires combing through museum collections worldwide for material from Canada as this is currently the only way to identify objects. And, across the country, although online resources for some of the archives are available and have proven helpful, the process is hindered by being extremely time consuming. Moreover, it takes creative searching to find the material. For example, an indigenous group or researcher aiming to study indigenous material is faced with examining primary sources in library, archives and/or collections and searching through everything from scrapbooks to media releases, from House of Commons Debates to the physical shelves of the Royal Ontario Museum (ROM).

2.2. *Canadian Values and Indigenous Rights*

The broader context for Canadian claims is the Canadian Government’s perceived failure to deliver on its promise to the indigenous community of a full partnership with Aboriginal governments as part of the federation and to “work with Indigenous Peoples to create fairness and equal opportunity in Canada” three years after the publication of the Truth and Reconciliation Commission (TRC). This commission held its closing events in 2015 and, along with the executive summary of its findings, released a document titled Calls to Action [4,5]. The executive summary called for the federal government to take action in compliance with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and included a set of recommendations encouraging the development of ethical standards for cultural heritage management expressly intended for museums and archives.

The TRC called for the creation of best practices and standards developed at the national level. Accordingly, it called for museums to work collaboratively with local indigenous communities and be respectful of indigenous worldviews. More importantly, the Calls to Action proposed that the Canadian Museum Association (CMA) and Library and Archives Canada (LAC) should commit to the care of indigenous intellectual property rights (IPR), cultural traditions, and sacred items. Calls to Action recognized that “Indigenous people have a right to access material created by and written about them and to ensure Indigenous voices are being preserved in a complete and respectful way” [6].

In May 2018 the CMA established a 15-member working group to work on this initiative over the next three years [7]. These actions come two years after Canada fully endorsed the UNDRIP in 2016 without qualifications, but it has not been incorporated into national legislation as of time of writing.² Ultimately, this document has led to a national review of existing museum policies and procedures that, among other things, looks into whether cultural institutions are in line with the Declaration. Article 31 of the UNDRIP states:

- (1) Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of flora and fauna, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.
- (2) In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

The UNDRIP has been endorsed by the Canadian government, but it is not legally binding under international law. The Government of Canada had begun a Review of Laws and Policies Related to Indigenous Peoples to ensure that Canada is “meeting its constitutional obligations with respect to Aboriginal and treaty rights; adhering to human rights standards including UNDRIP; and supporting the implementation of the Truth and Reconciliation Commission’s Calls to Action” [8].

2.3. Cultural Appropriation

The final issue is cultural appropriation. Cultural material in museum collections, other institutions and/or government agencies may include items that, from an indigenous perspective, have been acquired “under illegal, potentially illegal, or questionable ethical circumstances” [9] (p. 89). Repatriation claims involving indigenous peoples and communities concern two related classes of objects: ancestral human remains and ceremonial objects removed from burial sites confiscated by the Canadian government or otherwise acquired by private collectors. The well-known case of the “Potlatch Collection” illustrates some of the complexities of what on first impression may seem straightforward contextual definitions for constituent objects. In 1922, the Canadian government confiscated an estimated 500 ceremonial objects including potlatch regalia from the Kwakwaka’wakw people. Ownership of this material was disputed since some of the “Potlatch Collection” had been acquired by George Heye for the Museum of the American Indian in New York, while the rest of the collection went to the Canadian Museum of History and the Royal Ontario Museum respectively. In the late 1960s, the Kwakwaka’wakw began campaigning for the return of their ceremonial treasures and, after many years of negotiations, in 1979 the Canadian Museum of History returned its items from the “Collection” [10]. This brief example illustrates how complex it might be to pursue a claim for the return of ancestral human remains or ceremonial treasures. It is also important to keep in mind that

² Canada officially declared its endorsement of the Declaration in 2010, at the same time as the United States, Australia and New Zealand.

not only objects but essential knowledge can be recovered, such as the knowledge of lost techniques and artistic processes required for museum restoration.³

A further point should be added here and leads to the conclusion that databases dealing with indigenous heritage represent facets of control over cultural property. Museum collections also include material that was legitimately acquired under the laws of Canada and affected First Nations communities of the time of acquisition. According to Catherine Bell, it is in this broader context that both domestic and international museums are mandated to “recognize a moral obligation to return to ‘originating culture(s) [collections] or individual objects . . . judged by current legal standards to have been acquired illegally’” [11] (p. 21). Such a line of reasoning goes some way in explaining the expressed concerns of the indigenous peoples whose search for ancestral remains in collections responds to the history of their unauthorized removal from traditional burial sites and originates from collecting activities deemed inappropriate and inconsistent with the spiritual beliefs and religious practices of the indigenous community in question resulting in feelings of violation and loss [12].

To pursue this further, there is an important parallel to be drawn, not just as concerns the colonial narratives but the ethical codes and procedures that museums have a duty to abide by and that apply to both tangible and intangible indigenous cultural property. According to legal scholar John Borrows, for indigenous peoples to properly assert their rights and to counter narratives of colonial control that often operated via legal mechanisms, there should be a marked return to indigenous law. Copyright is the primary intellectual property tool used in the management of cultural information sharing, it stands to reason that there should be discussion of indigenous uses and theories on copyright protections in terms of information sharing or safeguarding. Building on Burrows’ argument that sources of Canadian law (i.e. English common law, French civil law, indigenous law) be harmonized [13] (p. 180), Brundson suggests that the Canadian conception of copyright laws, wherein a balance between creator and user rights has become essential would be a useful area in which to incorporate Indigenous Legal Theory (ILT) to support indigenous initiatives, writing: “it seems intuitively wrong that the oppressor’s laws should be relied upon to protect the culture of the oppressed” [14] (p. 8, 13). In practice, database Terms of Use pages would be one area in which to share information regarding the wishes of indigenous groups regarding the respect for and use of applicable cultural heritage information. Notably, the databases we will be referring to as case studies in the next section, and which were produced in conjunction with indigenous groups, are remarkable in their consistency of language regarding use permissions or lack thereof. In what follows, some interesting and original collaborative reference systems are examined along with consideration for the practical challenges of using them. As has been discussed, access to information is not enough.⁴ International experience from investigating accessibility would suggest that open access will benefit cultural heritage.⁵ Image databases would benefit everyone by providing researchers with the ability to cross-reference material and sharing resources would benefit everyone if digitized museum collections and a collaborative digital reference system supported users with the most dynamic resources and the ability to cross-reference many institutional databases simultaneously [15,16]. The heritage community would also benefit from consistent, reliable and accessible content and a single descriptive method and set of vocabularies.

³ See, relatedly, Phillips (2011) on the Canadian Museum of History and the Gwich’in Cultural Centre joining forces to recover the knowledge needed to recreate a historical example of the style of a man’s summer outfit from the nineteenth century, but this did not result in a request for repatriation.

⁴ For more on this, see Douglas and Hayes (2017) Ethical Databases: Case Studies and Remaining Gaps in Cultural Heritage Information Sharing. In *Cultural Heritage Law and Ethics: Mapping Recent Developments*; Chechi, A., Renold, M., Eds.; Schulthess: Geneva, 2017, pp. 143–170.

⁵ Exploring the international experience of open access is a key area of research that will be discussed in a future publication.

3. Digital Inventories in Canada

3.1. National Programs

Until the 1990s, the Canadian government had no official policy on digital inventories. Canada was an early signatory to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and as a result in a 1972 pilot policy the National Inventory Programme was created. When this was dismantled it was replaced by the Canadian Heritage Information Network (CHIN), a component of a national strategy to create a digital repository containing a collection of all the records in Canadian museums. The main priority for CHIN was to provide seamless access to cultural content through publicly funded websites. This was part of a broader cultural policy to establish a uniquely Canadian presence on the internet. With the possibility of adding images to the original records, CHIN became more proactive and attempted to create a more effective site. However, they ran out of funds and asked museums to both finance the initiative and contribute records. From the outset, the Royal Ontario Museum and the Canadian Museum of History prioritized digitizing their public collections, contributing content, and inviting stakeholders to participate in knowledge production through CHIN Data Dictionaries [17]. Many cultural professionals in collections institutions across Canada looked to CHIN as a model form of knowledge representation, both educational and classificatory. It offered meaningful open, searchable and publicly accessible information and visual data. This was because CHIN, the museum's collections management database, enabled museum professionals and others to search across institutional platforms using PARIS (a version of BASIC software) to maximize accessibility and compatibility [18]. BASIC, which stands for "Beginners All-Purpose Symbolic Instruction Code," was a general purpose, easy-to-use programming language in common use until the 1980s. PARIS (Pictorial and Artifact Retrieval and Information System) was adopted for the management of collections until 1982.

Established in 2001 to foster media literacy and digitization, the Canadian Culture Online Program (CCOP) designed a portal, Culture.ca, with an eye to the "needs of Francophones, young people and Aboriginal people." It promoted "the exploration, creation and sharing of interactive content, including archival content, while simultaneously being an online space." In terms of standards, research and development, the CCOP was charged with developing a digital rights management policy to deal with copyright issues. Canadian museums were focusing on museum management software and CHIN's responsibility was not only helping museums find software that was appropriate to their needs, but publishing digitization guidelines and standards. With regard to the access and sharing of digital Canadian content online, including digital objects, it was the vision of the public servants who devised CHIN that, "Instead of privatizing public space, [the CCOP] wants to de-emphasize commerce on Canada's corner of the Web." [19]. Economic issues and proprietary software provided a challenge and consequently CHIN was superseded. As the database grew, the notion of creating a virtual museum took hold. The virtual museum was handed over to the Canadian Museum of History in Ottawa c. 2010 and is no longer maintained by CHIN.

3.2. Institutional Responses

In the 1990s, Phillips' began to explore promoting intercultural understanding and new knowledge through "radical ways of sharing power and developing multivocal understandings of collections" [20] (p. 285). This had to do with the 1992 Task Force on Museums and First Peoples which recommended that "museums return items that were illegally acquired or can be defined as 'sacred' or as objects of cultural patrimony" [21] (p. 135). But it also led to the digitized documentation and online library catalogues developed to facilitate interdisciplinary and collaborative research initiatives. It was Phillips who spearheaded the creation of a digital repository known as the Reciprocal Research Network (RRN) housed in University of British Columbia's Museum of Anthropology. The overall aim of this crucial project was "to re-connect objects, people, land, languages, and traditions culturally and historically significant to First Nations community researchers, and to create a collaborative, reciprocal,

and inclusive environment in which to explore museum collections of First Nations' cultural heritage". Thus the Museum involved multiple collaborators in the design process including the Musqueam Indian Band, the Stó:lō Nation/Tribal Council, the U'mista Cultural Society, and the Museum of Anthropology at the University of British Columbia. A number of national and international cultural institutions were also involved including the Royal British Columbia Museum, Burke Museum, Glenbow Museum, Royal Ontario Museum, Canadian Museum of History, McCord Museum, American Museum of Natural History, National Museum of the American Indian, National Museum of Natural History, Cambridge University Museum of Archaeology and Ethnology, and the Pitt Rivers Museum.

Few museums have overcome the challenge of recovering the original integrity of historical collections in a way that is meaningful to Canada's diverse indigenous communities or by creating access to museum holdings originating from particular community groups or regions. The Reciprocal Research Network (RRN) is one exception. The RRN is linked to a network of museums around the world and thus notably represents an important milestone in Canadian museum history because it encourages indigenous involvement in matters of authentication and provenance that cross legal jurisdictions [22,23]. The RRN plays another essential role. As Srinivasan et al. point out: "The object, as a piece of tangible cultural heritage, is a gateway to a number of intangible, yet critically connected, practices: the telling of a story, a prayer, the process of research, the history of the exhibition . . ." [24] (p. 9). We shall return to this hypothesis following discussion of the case studies' functionality.

4. Methodology

As part of the ongoing investigation into databases, images and copyright for this study, we used a social constructionist approach to examine three projects related to indigenous cultural heritage (Table 1). These case studies were chosen to explore the directions along which databases related to indigenous cultural heritage are being developed [25,26]. Images of collections, objects and associated text have been examined in order to situate the applications of intellectual property protections to digital versions of collection items. We begin this discussion from the perspective that management of databases in the context of indigenous cultural heritage is part of ongoing efforts to develop and present diverse ideas about material culture and its online management. These development efforts are complicated by the historical sociology of museum collecting as well as that of intellectual property regimes in the international and Canadian context. The case studies chosen all link back to the RRN and serve to demonstrate conceptual issues of information sharing at the international level as well as those supporting more localized initiatives. The RRN (Case Study 1) is a critical case within database development in Canada in that it connects museums in different countries and contains provisions for use by more local groups, such as those described in Case Studies 2 and 3.⁶

Table 1. Comparison of digital repositories that would expedite indigenous knowledge claims.

Institution Details	Case Study 1: Reciprocal Research Network (RRN)	Case Study 2: Inuvialuit Pitqusiit Inuuniarutait/ Inuvialuit Living History	Case Study 3: Searching for Our Heritage Database
Established	2009	2012	2013
Created By	First Nations Councils and Bands, University of British Columbia, Museum of Anthropology and 28 partner institutions in Canada, the US and UK	The Inuvialuit Cultural Resource Center Smithsonian Inst. Parks Canada and other partners. Provides access to the MacFarlane Collection and other institutions via RNN	Territorial Government of Yukon and its First Nations. Site allows access to Reciprocal Research Network (RRN) and other institutions via RRN

⁶ A full sampling of projects related to indigenous cultural heritage management is outside of the scope of this paper, and intersects with broader issues of repatriation, conceptions of property rights, definitions of material culture, and cultural appropriation.

Table 1. Cont.

Institution Details	Case Study 1: Reciprocal Research Network (RRN)	Case Study 2: Inuvialuit Pitqusiit Inuuniarutait/ Inuvialuit Living History	Case Study 3: Searching for Our Heritage Database
Geographic Area Covered	North West Coast of British Columbia	Inuvialuit Settlement Region NWT	Yukon Territory
Database Accessibility	Accessible to originating communities First Nations organizations, researchers, students, museum professionals, and academic cultural and heritage organizations	Accessible to Inuvialuit people, institutions and the public	Original access from Yukon First Nation Heritage centres Public access since 2018
Items in Database	534,259 ¹	349 ²	3940 ³
Access	Public/account required [†]	Account required	Public
Copyright Holder	Copyright is held by the institutions holding the artifacts	Copyright is held by Inuvialuit Cultural Resource Centre or indicated owners	Copyright is held by the institutions holding the artifacts
Limitations	Watermarks Copyright notices Image quality—image quality varies with holding institution		

¹ Figure from the RRN Project web page <https://www.rrncommunity.org/items>. (Accessed 23 March 2019); ² Objects relevant to the Yukon from the MacFarlane Collection at the Smithsonian Institution. Figure calculated from “item type” data in http://www.inuvialuitlivinghistory.ca/item_types. (Accessed 23 March 2019); ³ Figure calculated from http://199.247.132.202/fmi/iwp/cgi?-db=SFOH_Web2&-loadframes. (Accessed 23 March 2019); [†] Not all the objects the RRN contains are accessible without an account.

5. Case Studies

5.1. Case Study 1: Reciprocal Research Network (RRN)

The RRN was established online in 2009 and covers the North West Coast of British Columbia. It is “an open-source, web-based, federated museum information system intended to provide First Nations, researchers and museum professionals with interactive access to worldwide collections of Northwest Coast and British Columbia First Nations’ cultural heritage.”⁷ The RRN base data set includes 534,259 items, object records and images derived from the process of digitization. It includes accessible metadata and many of the images are organized comparatively. Designed for researchers, who must sign up in order to access the full database, the RRN aims to facilitate collaboration and interdisciplinary research across local, national, and international borders and provide a way for communities to share information and pass on their values. The site may be found at <https://www.rrncommunity.org>.

The images themselves contain watermarks as well as legalistic language in captions and surrounding texts. The Terms of Use page outlines a basic set of guidelines the researcher agrees to follow in signing up for access to the database. Copyright is held by the institutions holding the physical artefacts and commercial or publication use is prohibited. The Copyright provisions contain a blanket term of all images and catalogue data being protected by copyright and requiring the permission of the holding owner for reproduction or reuse. Requests for information on the use of the images are also the responsibility of the institution holding the physical object itself.

In the context of image archives, the question often arises as to access to and rights of reuse of the images. Although the RRN database displays images and accompanying data it restricts what content can be used in other contexts. This suggests, with regard to proprietary interests, that a dominant copyright regime prevails. The structural limitations of two related digital collections provide a further illustrative example to demonstrate that this is not an isolated phenomenon.

⁷ <https://www.rrncommunity.org> (accessed 23 March 2019).

5.2. Case Study 2: The Inuvialuit Pitqusiit Inuuniarutait (Inuvialuit Living History) Portal

The Inuvialuit Pitqusiit Inuuniarutait (Inuvialuit Living History) Portal was designed to provide access to a small collection (the MacFarlane Collection) housed at the Smithsonian Institution. The portal is for Inuvialuit people and others to use and the database was designed to show how the Collection is a “living collection” by connecting data and museum objects to Inuvialuit people and enabling users to explore how the collection was shaped through historical attitudes, values and collecting practices. The site may be found at <http://www.inuvialuitlivinghistory.ca>.

In recent years, Inuit communities have played an important role in the dissemination of their cultural heritage in debates and discussions concerning the politics of cultural property and intellectual rights to institutional and museum collections. The Portal grew out of the Intellectual Property Issues in Cultural Heritage (IPinCH) project led by George Nicholas at Simon Fraser University in British Columbia, Canada. Using a problem-based research paradigm, this seven-year project worked to explore intellectual property and ethical concerns relating to “the rights, values, and responsibilities of material culture, cultural knowledge and the practice of heritage research.” The project posed questions and sought responses required for culturally valuable activities in the area of cultural heritage.

This website uses descriptions and images from the Smithsonian Institution. It provides information about the history of the collection, about the Smithsonian Institution, and about repatriation, ownership, and intellectual property rights to the collection. In addition to artefact records as well as video and photographs, the website includes other resources such as an interactive map related to the people and places within the Anderson River area from which many of the pieces originated.

In terms of copyright iconography, some images display a Smithsonian Institution watermark. In this respect, the Inuvialuit Living History might be likened to a knowledge archive: in fact, some of the information cards provided are copied directly from the Smithsonian and carry its watermarks or copyright notices.

Rather than Terms of Use or other overt designation of intellectual property management, Inuvialuit Living History includes a dedicated page regarding copyright. The copyright information provided is a single paragraph stating that all “images, illustrations, designs, icons, photographs, video clips, and written and other materials are copyright, trademarks, trade dress and/or other intellectual properties owned, controlled or licensed by the Inuvialuit Cultural Resource Centre”, but users are invited to use the material for educational and personal purposes.⁸ The copyright page for the project specifies that copyright and other proprietary notices should be kept intact with any material used but does not state a reason for requiring this visual means of linking back to the project. Images with a Smithsonian watermark are used with permission of the Smithsonian. For commercial use, permission from the Inuvialuit Cultural Resource Centre or other copyright and/or intellectual property rights holders is required.

5.3. Case Study 3: The Searching for Our Heritage Database

Focused on artefacts of Yukon First Nations origin, our final case study, the Searching for our Heritage database, incorporates resources for users all around the world. Rather than build a new database, this repository aggregates items of interest to the Yukon by reusing data from the collections of external institutions.⁹ The RRN is the primary source of resources and users can gain access to other institutional collections through the RRN. Since the RRN also facilitates the exchange of knowledge about collections and artefacts by allowing users to communicate with one another through its portal, this site serves indigenous peoples’ informational needs helping to fill out the picture of nineteenth-century life in the Yukon. The site may be found at <http://searchingforourheritage.ca>; and http://www.tc.gov.yk.ca/museum_resources.html.

⁸ <http://www.inuvialuitlivinghistory.ca> (accessed 23 March 2019).

⁹ <http://searchingforourheritage.ca>; http://www.tc.gov.yk.ca/museum_resources.html (accessed 23 March 2019).

Since the information in the collection is from institutions external to the Yukon, the availability of images relies on holding institutions possessing digital images associated with their object records. In the Searching for our Heritage database, each object record has been set up to have the appearance of a physical archival record. However, its images are not high resolution and, while the collection is large, many of the items lack digital images. Records from external institutions bear watermarks and carry copyright notices. Interestingly, concepts relating to content, navigation and information retrieval are presented in a manual, but the current manual does not contain any information regarding image or information use permissions. In this repository associated archival records appear constrained by predetermined program architecture, making the site difficult to navigate for end-users. It appears that their internal interface has been directly translated into the online environment and this contributes to a lack of practical functionality.

5.4. Discussion

We have been exploring how communities are empowering themselves in the Canadian context with greater access to online tools. It is beyond doubt that indigenous cultural heritage digital content should be treated as one particular case in the domain of copyright protection laws. Our findings led us to consider the important question of access to digital collections for research towards repatriation and to focus on potential image reuse. We found it to be hampered by data quality, legalistic language and other proprietary notices all of which would constrain community-driven repatriation initiatives. This was particularly obvious in the RRN repository, but since related databases incorporate RRN material, the challenges should likely be understood as universal.

In all the case studies noted, the copyright or terms of use page does not make it exactly clear to users what they can and cannot do with any copyright protected materials. Mention of copyright often gets passed back to host institutions, requiring permissions from disparate sources for reuse. Hence the case studies substantiate our contention that accessibility issues limit usage of collections documentation. Contrasting with use of traditional intellectual property management programs, as observed in our case studies, the Local Contexts initiative provides “legal, extra-legal, and educational strategies” to support Native, First Nations, Aboriginal and indigenous communities in the management of their intellectual property in digital environments. The initiative’s Traditional Knowledge Labels can be used in conjunction with or as an alternative classification system for indigenous cultural heritage items online [27].

We noted earlier that there are differences of perspective expressed in law and in writing about the law from an indigenous perspective. Reducing the limitations imposed by copyright to access should also take account of differences between indigenous peoples’ views on the signification of cultural expression in the public domain. Such differences would affect the structure of the databases we have examined as well as access to individual collections records. Such practices are evident in the databases we explored. There are items on the RRN that users cannot access on the database owing to the knowledge traditions of the community. This is a clear example that the indigenous community is asserting its own ideas about access to information. Hence, as many experts have suggested [28,29], social considerations must be taken into account in discussions of how information is linked and distributed.

Beyond the lack of provenance information accessible through archives, the question of open access provision raises another set of considerations. Ultimately, our research led us to a broader understanding of the latent content in image archives. We arrived at the conclusion that discourses on archives and technology, legal and social issues are mutually enfolded and entwined in the contemporary digital environment as evidenced in indigenous collections. What is most striking is that databases are sites of overlapping and sometimes competing discourses (epistemological, legal, cultural), and this is why we are overlapping a discourse on archives and technology, legal and social issues in this analysis. Often a question arises about just how opening up collections (objects and metadata) would help indigenous peoples whose cultural heritage has been usurped. How would this

happen? Would alternative metadata be added to existing museum databanks of objects? What would the desired outcome be? What would we suggest? The answer depends on different community groups. Every database is managed individually and we see this as an opportunity to expand our research directions. Besides this, everyone would benefit from getting beyond formulaic “best practices” that historically favor dominant epistemological structures.

Yet our most important finding in our exploration of the RRN, the Inuvialuit Living History Portal and Searching for our Heritage has revealed that a WIPO framework for the protection of indigenous heritage information is at work restricting access and reuse within Canada. This is not entirely surprising, since digital image repositories often conceal a broader context of proprietary interests and monopoly of information in the name of intellectual property rights that function to limit access to information and to maintain structures that have placed constraints on repatriation efforts.

The WIPO defines IPR broadly as a general concept addressing ownership and usage conditions that apply to image content, in two different categories: 1. Moral rights, which function to conceive of creators as attached to the objects and information associated with their works, and 2. Economic copyright protections, which are conditional rights to copying, using, or otherwise exploiting content. In this WIPO framework, information included in a file becomes an integral part of that file that should persist without modification across potential sites of use such as different websites or platforms. Access to information associated with an image file might be restricted due to certain conditions, such as if the information is confidential or of a sensitive nature, or in order to preserve accuracy and the association of the relevant metadata to an image. Hence, while intellectual property protections may not meet all community needs, they can be used as tools to prevent exploitation and misappropriation or misattribution, or even to “maximize economic value”. The primary focus of the WIPO recommendations for indigenous intellectual property rights is to empower communities to tailor the protections to their specific needs [30].

This is an important element to keep in mind when reflecting upon facilitating access to images in repatriation claims. The research of digital humanities specialists Fiona Cameron and Helena Robinson on digital collections and museum documentation practices challenges us to consider how image management might affect usage and access to online collections. There is a legitimate concern that classic existing intellectual property forms are unable to meet the current needs of indigenous communities in protecting their cultural property. Many would agree that this concern is more pressing in an age of relatively easy digital information sharing [31] (p. 172). Nevertheless, classic intellectual property protections may be adapted for use by indigenous groups. Use or creation of special or sui generis intellectual property protections for the management of indigenous heritage and information have been suggested to address the diversity of world views, types of articles and information, as well as conceptions of property and knowledge stewardship that are not necessarily consistent across indigenous communities whose geographic presence and values across communities may or may not align with those of the colonial nations that typically govern intellectual property. Steps to empower indigenous claims on a more focused and local level should be of paramount concern in protecting rights to control cultural information [32].

However, copyright protections are just one type of intellectual property right suggested by the WIPO to use in the protection of indigenous rights to cultural heritage information management. Copyright is the primary means of controlling information that is of a cultural nature. Broadly speaking, digital protection measures have the potential to further enforce copyright protection and to tilt the conception of a need for balance between rights holders and rights owners in copyright to favor exclusivity and exclusive rights holders. This movement of power leads to the question of what rights holders intend to accomplish by placing barriers to access on their property.

The WIPO recognizes that the objectives of documenting traditional knowledge (TK) and traditional cultural expressions (TCEs) are valuable for multiple reasons, including the safeguarding, preservation, and passing along of culture for present as well as future generations [33]. Documentation of images and data accompanying these images fixes these as creations, and in the IPR conception

positions these creations to be collectively under the purview of intellectual property protections. Issues with invoking intellectual property rights in such contexts include an understandable concern that documentation and sharing of information openly or without those protections can lead to misuse or unwanted disclosure of specific and potentially sensitive information; that intellectual property rights in cultural heritage databases end up being claimed as the sole intellectual property of the host institution that place the information online; and that protection granted to documented content under protection such as copyright has a limited scope (minimum life of the author plus 50 years by the standards laid out in the Berne Convention). Hence, while the opening up of records such as the Smithsonian's online collections database and the creation of shared museum strategies to provide information pertaining to works whose provenance is in dispute have led to gains in this area, repatriation remains a concern. As "the most pervasive cultural regulatory system in the world" (Vaidhyathan 2017 p. 6) limitations necessary to copyright such as fair use/fair dealing provisions and expiration of copyright protection vary in strength and relevance according to the national laws they are subject to. In a digitally connected world, the protections and exceptions therefore remain a patchwork that can be manipulated to reflect localized values and power [34].

6. Conclusion: Linking Access Provision to Indigenous Knowledge-Making

Sharing of visual information may be limited by more than just intellectual property protection concerns and the potential for lack of clarity surrounding what users can and cannot do with images and associated information. One of the issues we have struggled with is that the types of indigenous property appearing in cultural collections and databases does not always readily fit into definitions of things that are protected by traditional conceptions of intellectual property. Generally, intellectual property law is designed to protect new, original creations and innovations. Thus, in the context of indigenous cultural material, IP protections would need be changed or adapted to fit with protecting cultural information. This is because many traditional practices remain as they were in the past: about a continuing lineage in the present extending into the future. Experts in the field would agree that, by virtue of representing the narratives of indigenous people, images collected and managed online are likely to be defined as both incorporating traditional knowledge as well as the expression of individual creators using the TK and TCE framework outlined by the WIPO.¹⁰ Accordingly, within the Canadian intellectual property system, as with IP protections in much of the world, the focus on innovation and originality seemingly runs counter to practices that are or develop from those that are traditional in nature. This is because, in an indigenous context, traditional cultural expressions are not static, rather they are key components of dynamic community practices and evolving development [35].

Gish Hill and Csoba DeHass suggest that to fully explore issues regarding responsible digital collaboration, stakeholders must start at the level of addressing digital design. This may mean recognizing the First Nations call to "decolonize heritage preservation and management practices" (p. 44). It may also mean addressing "the reification of fluid cultural knowledge", which has been raised as a concern in indigenous communities [36] (p. 45).

The aspect of mobilizing the museum community to adopt best practices is also vitally important. More than 10 years after the release of the UN Declaration on the Rights of Indigenous Peoples (2007), there is more collaboration and control over indigenous cultural property manifesting via legal tools and/or showing up in practice in cultural heritage databases [37] (p. 36). Yet there is still no particular set of policy or legislation outlining, at the very least, best practices regarding indigenous cultural

¹⁰ The WIPO established the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore with the aim of developing international legal instruments that could be used to protect types of objects (and knowledge associated with them) that are part of living bodies of traditional knowledge. These parameters apply across limited conceptions of traditional knowledge such as technical know-how and skills as well as traditional cultural expressions (TCEs) such as designs and symbols. Therefore, the overarching concept of traditional knowledge is one means by which the diversity of belongings in a cultural heritage database can be accounted for, potentially in conjunction with existing systems such as copyright, trademarks, and geographical indicators as appropriate.

property. It is both a legal and extra-legal combination of policy, trade agreements, parks regulation, cultural heritage, environmental law, access to information and privacy law, contract and administrative law, international instruments, and land claim/treaty/self-governance agreements that play a role in administering indigenous cultural heritage in Canada. Legal scholar Daniel Gervais points out that at least some indigenous groups conceive of property in ways that are adaptable to traditional or Eurocentric legal systems, even where concepts of stewardship and collective rather than individual rights are paramount [38] (p. 475), and the broader-scale consequences involve those outlined in the United Nations Declaration on the Rights of Indigenous Peoples 2007.

Case law on Aboriginal rights, for example the pivotal restitution case *Mohawk Bands of Kahnawake, Akwesasne and Kanesatake vs. Glenbow-Alberta Institute* [1988] 3 CNLR 70 (Alta QB), demonstrates that Canadian courts have long recognized First Nations principles, illustrating how they can be articulated to help communities achieve their heritage preservation goals. We argue, along the same lines as Catherine Bell, that allowing museums to establish parameters for control and access of indigenous information may not be the most appropriate solution if it does not comply with indigenous groups' rights as stakeholders. More could be done in a broad sense with expertise from stakeholders with minority-ethnic backgrounds in the museum context. Museums could play a strategic role in raising awareness of the issues involved with the twin aims of education around preserving rights to access and management of information and improving sensitivity towards indigenous heritage. In the repatriation context, this means more than just educating professionals in the heritage sector and providing guidelines. The challenge is to develop uniform standards for visual materials and image quality as well as for access and information exchange while ensuring the information shared can be protected from misappropriation without overextending protections to the point of creating barriers to meeting the end goal of repatriation. Overall, key factors to be addressed are clarifying goals in making use of intellectual property tools to limit access to information. A well-defined model that promotes the interoperability of existing databases would facilitate an articulation of these goals as well as the frameworks for articulation of associated intellectual property rights.

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